British Columbia Utilities Commission

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**ORDER NUMBER**
**G-42-17**

IN THE MATTER OF
the *Utilities Commission Act*, RSBC 1996, Chapter 473

and

Creative Energy Vancouver Platforms Inc.
Application for Approval of Northeast False Creek Connection Agreement

**BEFORE:**
H. G. Harowitz, Panel Chair/Commissioner
B. A. Magnan, Commissioner
R. D. Revel, Commissioner

on March 23, 2017

**ORDER**

**WHEREAS:**

A. On April 17, 2015, Creative Energy Vancouver Platforms Inc. (Creative Energy) applied to the British Columbia Utilities Commission (Commission) for approval of a Neighbourhood Energy Agreement between Creative Energy and the City of Vancouver (Original NEA) and a Certificate of Public Convenience and Necessity (CPCN) to construct and operate a new Neighbourhood Energy System to serve new developments in the Northeast False Creek (NEFC) and Chinatown neighbourhoods of Vancouver;

B. On December 8, 2015, by Order C-12-15, the Commission granted a CPCN for the NEFC area (excluding the Chinatown area) and did not approve the Original NEA;

C. On February 5, 2016, Creative Energy filed an application with the Commission for its restated and amended NEFC and Chinatown Neighbourhood Energy Agreement seeking approval under section 45 of the *Utilities Commission Act* (UCA);

D. On June 15, 2016, pursuant to sections 59 to 61 of the UCA, Creative Energy applied to the Commission for approval of the NEFC and Chinatown Connection Agreement which includes Customer Service Agreement and Statutory Right of Way Schedules (Schedules). Pursuant to sections 89 to 90 of the UCA, Creative Energy also sought interim approval of the Connection Agreement and Schedules by July 15, 2016;

E. On June 16, 2016, by Order G-88-16, the Commission denied Creative Energy's Application for Approval of the restated and amended NEFC and Chinatown Neighbourhood Energy Agreement (Franchise Decision);

F. On July 6, 2016, pursuant to section 99 of the UCA, Creative Energy applied for reconsideration and variance of Order G-88-16 and the Franchise Decision;

G. On July 11, 2016, pursuant to section 90 of the UCA, the Commission issued Order G-109-16, adjourning Creative Energy's application for approval of the Connection Agreement including Customer Service Agreement and Schedules, until such time as a decision is made on Creative Energy's application to vary

…/2

Order G-88-16 or Creative Energy files an updated application for approval of the NEFC and Chinatown Connection Agreement that it is consistent with the Franchise Decision;

H. On September 26, 2016, by Order G-151-16, the Commission denied Creative Energy's application to vary Order G-88-16 and subsequently reopened Creative Energy's application for approval of the Connection Agreement including Customer Service Agreement and Schedules by Order G-153-16;

I. On January 23, 2017 and January 25 2017, in accordance with Creative Energy's IR responses, Creative Energy filed a 3rd and 4th revision of the Connection Agreements, respectively (Exhibit B-1-2 and Exhibit B-1-3);

J. On January 18, 2017, interveners' final arguments were received, followed by Creative Energy's reply argument on February 1, 2017; and

K. The Commission has reviewed and considered all of the evidence filed in this proceeding and finds that the following approvals are warranted.

**NOW THEREFORE,** pursuant to sections 59 to 61 of the *Utilities Commission Act*, and for the reasons attached as Appendix A to this order, the British Columbia Utilities Commission orders that the Creative Energy Vancouver Platforms Inc. Northeast False Creek Connection Agreement, including the Customer Service Agreement (Schedule A) and Statutory Right of Way (Schedule D) as filed in Exhibit B-1-3, is approved and attached as Appendix B to this order.

**DATED** at the City of Vancouver, in the Province of British Columbia, this 23rd day of March 2017.

BY ORDER

*Original Signed By:*

H. G. Harowitz
Commissioner

British Columbia Utilities Commission

**IN THE MATTER OF**

**Creative Energy Vancouver Platforms Inc.**
**Application for Approval of**
**Northeast False Creek Connection Agreement**

# REASONS FOR DECISION

**March 23, 2017**

**Before:**
**H. G. Harowitz, Panel Chair/Commissioner**
**B. A. Magnan, Commissioner**
**R. D. Revel, Commissioner**

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## 1.0 INTRODUCTION

### 1.1 Proceeding at a glance

Creative Energy Vancouver Platforms Inc. (Creative Energy)
Application for Approval of Northeast False Creek Connection Agreement

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|---|---|
| Date of application | • June 15, 2016 |
| Approvals sought | • Approval of the Northeast False Creek (NEFC) Connection Agreement |
| Registered interveners | • BC Sustainable Energy Association and Sierra Club BC (BCSEA);<br>• Commercial Energy Consumers Association of BC (CEC);<br>• FortisBC Alternative Energy Services Inc. (FAES); and<br>• FortisBC Energy Inc. (FEI). |
| Regulatory process | • June 15, 2016: Creative Energy filed the initial application;<br>• July 11, 2016: Commission Order G-109-16 adjourned the proceeding, pending outcome of Creative Energy's Application for Reconsideration and Variance of Order G-88-16 and the NEFC Franchise Agreement;<br>• September 30, 2016: Commission Order G-153-16 established the Regulatory Timetable to resume the proceeding;<br>• November 1, 2016: Creative Energy filed an updated Connection Agreement;<br>• January 4, 2017: Creative Energy filed responses to Commission and interveners' information requests;<br>• January 17/18, 2017: BCSEA, CEC and FEI filed final arguments; and<br>• February 1, 2017: Creative Energy filed a reply argument. |

### 1.2 Background and context

On April 17, 2015, Creative Energy Vancouver Platforms Inc. (Creative Energy) applied for a Certificate of Public Convenience and Necessity (CPCN) for its Northeast False Creek (NEFC) Neighbourhood Energy System (CPCN Application). On December 8, 2015, the British Columbia Utilities Commission (Commission) issued the CPCN Decision[1] concurrently with Order C-12-15 that granted Creative Energy a CPCN for the NEFC area (excluding the Chinatown area), but at the same time denied approval of the companion Connection Agreement.

In denying the Connection Agreement, the Commission stated in the CPCN Decision that any subsequent filing for approval of a connection agreement must include the following evidence:

[1] Creative Energy Vancouver Platforms Inc. (Creative Energy) Certificate of Public Convenience and Necessity Application for a Low Carbon Neighbourhood Energy System for Northeast False Creek and Chinatown Neighbourhoods of Vancouver, Decision dated December 8, 2015 (CPCN Decision), Order C-12-15.

1. A comparison of the statutory right of way provisions of tariffs of other similar utilities, with a view of supporting that this provision is in the public interest and meets the standards applicable in sections 59-61 of the UCA.
2. A fulsome analysis of an alternative to the requirement that developers must not apply for a building permit until Creative Energy has approved the developer's design.
3. A revised section 2.2 that indicates that the requirement to have exclusive end-use is a part of the [City of Vancouver] policy and bylaws, and that the developer is required to comply with such policy/bylaws.
4. Evidence that the design guidelines and review process is consistent with other similar utilities.
5. Evidence that the other terms and conditions of concern raised by [Urban Design Institute] and others do not go further than necessary in order to provide like service by other utility operators.[2]

In response to the CPCN Decision, Creative Energy filed an application for approval of the NEFC Connection Agreement (Connection Agreement Application) on June 15, 2016. Therefore, the principal task for this Panel is to review the Connection Agreement Application from the perspective of whether it adequately addresses these above five issues.

A complicating factor arises from the fact that Creative Energy's pursuit of a Commission-approved NEFC franchise agreement had not been fully resolved at the time the Connection Agreement Application was submitted. More specifically, Creative Energy's 2015 CPCN Application also included an application for approval of a franchise agreement, and while the CPCN Decision approved the CPCN, the Commission did not approve the franchise agreement.

On February 5, 2016, Creative Energy filed an application for approval of a restated and amended franchise agreement (Franchise Application) and on June 16, 2016, the Commission issued its Franchise Decision[3] that did not approve the amended franchise agreement. Creative Energy filed the Connection Agreement Application on June 15, 2016. On July 6, 2016, Creative Energy applied for reconsideration and variance of Order G-88-16 and the Franchise Decision (Reconsideration).

On July 11, 2016, having concluded that the Connection Agreement Application included content that was inconsistent with the Franchise Decision (which was the subject of the Reconsideration), the Commission adjourned the Connection Agreement proceeding until such time as a decision was made on the Reconsideration or Creative Energy filed an updated Connection Agreement that was consistent with the Franchise Decision.[4] On September 26, 2016, the Commission issued Order G-151-16 with reasons for decision,

[2] Creative Energy CPCN Decision, Section 4.3.
[3] Creative Energy Application for Approval of the Restated and Amended Northeast False Creek and Chinatown Neighbourhood Energy Agreement, Order G-88-16 with reasons for decision dated June 16, 2016 (Franchise Decision).
[4] Exhibit A-2, Order G-109-16.

denying Creative Energy's application for Reconsideration.[5] On November 1, 2016, Creative Energy filed a revised Connection Agreement to reflect the Commission decision(s) denying a franchise agreement (Exhibit B-1-1). On January 23, 2017 and January 25, 2017, in keeping with undertakings provided by Creative Energy in response to various intervener and Commission IRs, Creative Energy submitted further revisions to the Connection Agreement as Exhibit B-1-2 and Exhibit B-1-3, respectively.

In this context, the Panel reviewed the revised version of the Connection Agreement (as contained in Exhibit B-1-3) and the supporting documents contained in Exhibit B-1 (Schedules A and D) from two principal perspectives:

- Does the Connection Agreement adequately align with the Commission's prior decisions regarding the NEFC area?
- Does the application adequately address the five issues set out in the CPCN Decision?

The final revised Connection Agreement is attached as Appendix B to this decision.

## 2.0 DOES THE CONNECTION AGREEMENT ADEQUATELY ALIGN WITH THE COMMISSION'S PRIOR DECISIONS REGARDING THE NEFC AREA?

The Panel determines that the initial version of the Connection Agreement (filed on June 15, 2016) is inconsistent with the Commission's CPCN Decision that denied a franchise agreement for the NEFC area. Furthermore, the two Commission decisions (the Franchise Decision[6] and the Reconsideration Decision[7]) issued subsequent to the filing of the initial Connection Agreement Application maintain a situation in which no franchise agreement has been approved. Hence, a necessary but not sufficient condition for Panel-approval of the Connection Agreement is that the Connection Agreement must be consistent with the absence of a franchise agreement.

On November 1, 2016, Creative Energy provided a revised Connection Agreement,[8] including a red-lined version that highlights changes from the original version, that Creative Energy contends has adequately removed any and all references to a franchise agreement.

Through the IR process, FEI attempted to explore the nature of any agreements between Creative Energy and the City of Vancouver that might dictate terms of mandatory connection and/or end-use: the very things that sat at the heart of the Commission's decisions regarding a franchise agreement. When Creative Energy declined to answer a number of FEI's IRs, arguing that they are beyond the scope of this proceeding, FEI asked the Commission to direct Creative Energy to answer the IRs, stating that:

[5] Creative Energy Application for Reconsideration and Variance of Order G-88-16, Order G-151-16 with reasons for decision dated September 26, 2016 (Reconsideration Decision).
[6] Creative Energy Franchise Decision, Order G-88-16.
[7] Creative Energy Reconsideration Decision, Order C-151-16.
[8] Exhibit B-1-1.

- The Commission had issued three prior decisions (the CPCN Decision, the Franchise Decision and the Reconsideration Decision) that rejected instruments brought forward by Creative Energy that would result in mandatory connection; and
- The Commission's jurisdiction is not limited to what appears in a Connection Agreement and/or Customer Service Agreement if other obligations on the customer arise by other channels.[9]

In response to FEI's letter dated January 6, 2017 (Exhibit C2-5), the Panel issued a letter that states:

> The information FEI seeks relates directly to agreements between the City of Vancouver and Creative Energy for the North East *[sic]* False Creek Neighbourhood Energy System (NEFC NES). Any agreements that Creative Energy holds regarding the NEFC NES that are not linkages in the above-noted proceeding and are not pursuant to sections 59–61 of the UCA, are therefore considered out of the scope of this proceeding.[10]

In light of this scoping determination, FEI states in its final argument it is satisfied that "strictly on the face of the Connection Agreement," the agreement does not impose mandatory connection.[11]

CEC argues the Connection Agreement is at odds with the prior decisions of the Commission. CEC cites specific comments from the Franchise Decision and Reconsideration Decision that indicate the Commission's unwillingness to confer monopoly rights on the basis of the public interest test.[12] CEC argues that the "Connection Agreement provides for monopoly powers well beyond normal practice for a public utility and is demonstrably not in the public interest."[13]

BCSEA argues the revised Connection Agreement is consistent with Commission decisions pertaining to a franchise agreement. More specifically, it notes that the current Connection Agreement Application is governed by sections 59 to 61 of the *Utilities Commission Act* (UCA) that applies a test of whether rates are not unjust, unreasonable or unduly discriminatory/preferential. BCSEA further argues that this application is consistent with and supported by the Commission's Reconsideration Decision that stated that the City of Vancouver (CoV) can achieve its objective by enacting a mandatory connection bylaw entirely independently from the agreements that are brought before the Commission for approval.[14]

The Panel finds that the Connection Agreement filed as Exhibit B-1-3 is consistent with prior Commission decisions regarding the NEFC area. The Panel notes that although the Commission denied a franchise to Creative Energy, it did grant a CPCN for the project under that same application. Thus, the Connection Agreement is to be seen as a tariff that serves to enable the CPCN, and not the (non-existent) franchise. In that context, it is imperative that the Connection Agreement must in no way reference a franchise agreement, and the Panel finds that the proposed Connection Agreement meets that test.

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[9] Creative Energy CPCN Decision, Order C-12-15.
[10] Exhibit A-7.
[11] FEI Final Argument, p. 1.
[12] CEC Final Argument, pp. 2–3.
[13] CEC Final Argument, p. 3.
[14] BCSEA Final Argument, pp. 6–7.

The Panel is not persuaded by CEC's line of argument that the Connection Agreement Application is at odds with prior Commission rulings on the NEFC franchise by virtue of the Connection Agreement not being in the public interest. The Panel makes a distinction between CPCN/franchise decisions that are governed by section 45 of the UCA, and this application that is governed by sections 59 to 61 of the UCA. Whereas section 45 of the UCA requires that the CPCN and/or franchise must be necessary for the public convenience and properly conserves the public interest, sections 59 to 61 of the UCA speak to requirements that a rate must not be unjust, unreasonable or unduly discriminatory or preferential.

That being said, the Panel is mindful that, although sections 59 to 61 of the UCA do not explicitly contain the words "public interest," an overarching principle of protecting the public interest still remains in making our decision. However, the Panel considers the application of public interest under section 45 versus under sections 59 to 61 of the UCA to be quite different. More specifically, the Panel finds that consideration of the public interest under section 45 evaluates whether/if the service is necessary, whereas consideration of the public interest under sections 59 to 61 more narrowly evaluates whether the specific terms of service are not unjust, unreasonable and not unduly discriminatory, and thus, in the public interest. Considering that CEC's arguments that the application is at odds with the Commission's prior franchise decisions rely predominantly, if not exclusively, on the broader section 45 use of the public interest test, the Panel gives them little or no weight in reaching the determination that the application is consistent with prior Commission decisions.

Finally, as BCSEA points out, the Commission in its Reconsideration Decision specifically commented that the CoV can achieve its objectives in the absence of a Commission-approved franchise agreement by enacting bylaws and/or other agreements entirely independently from agreements brought before the Commission for approval. Such agreements, if they exist, do not in and of themselves, put the Connection Agreement off side with respect to sections 59 to 61 of the UCA.

## 3.0 DOES THE APPLICATION ADEQUATELY ADDRESS THE FIVE ISSUES SET OUT IN THE CPCN DECISION?

As discussed further in Sections 1 and 2 of these reasons for decision, the principal issue before this Panel is whether the Application sufficiently addresses the five points raised in the CPCN Decision, and more specifically, whether the terms of service set out in the Connection Agreement satisfy sections 59 to 61 of the UCA.

### 3.1 A comparison of the statutory right of way provisions of tariffs of other similar utilities

In Appendix 2 of Exhibit B-1, Creative Energy provides a table of comparison showing the statutory right of way (SRW) provisions of tariffs proposed by Creative Energy compared to two similar utilities: FAES' SRW provisions regarding the TELUS Garden district energy system (DES) and Corix Multi-Utility Services Inc.'s (Corix) SRW provisions regarding the Neighbourhood District Energy Service (NDES) at the University of British Columbia (UBC).

Overall comparisons of the SRW provisions show that the access rights are substantially the same between all three utilities, with the notable difference being Creative Energy applying a few additional requirements on the

Grantor and Grantee under section 3 and 4.[15] Both SRWs used as comparators received approval from the Commission.

The Panel finds that the right of way provisions contained in the Connection Agreement are in keeping with similar agreements in effect. The Panel is persuaded that the FAES Telus Garden and Corix UBC district energy systems are valid comparators. Furthermore, we consider the terms and conditions relating to the right of way to be sufficiently aligned amongst the three agreements to satisfy the issue raised.

### 3.2 An alternative to the requirement that developers must not apply for a building permit until Creative Energy has approved the developer's design

As requested by the Commission in the CPCN Decision and accompanying Order C-12-15, Creative Energy was to provide a fulsome analysis of the alternatives to the requirement that developers must not apply for a building permit until the developer design is approved. In Appendix 3 of Exhibit B-1, Creative Energy shows a comparison to the City of Vancouver's Southeast False Creek system and Surrey City Energy. The comparison shows that the review process and technical requirements are similar. Furthermore, Creative Energy has removed section 3.2 of the Connection Agreement which prevented the owner from applying for a building permit or to take any action to compel issuance of a building permit until such time as Creative Energy approves the final Building System Application. This section now stipulates: "(b) Submit to Creative Energy for approval a duly completed Building System Application a minimum of 90 days prior to applying for any Building Permit."[16]

The Panel finds that the current provisions regarding the relationship between Creative Energy's approval of a developer's Building System Application design and application for a building permit provide an adequate remedy to the issue.

The Connection Agreement has satisfactorily removed the specific restriction that inserted Creative Energy in the middle of a developer's ability to pursue a building permit from the CoV. The conditions that remain in the Connection Agreement are reasonable for ensuring that the developer's project simultaneously satisfies the connection requirements of the energy system as well as overarching criteria imposed by CoV regulations.

### 3.3 A revised section pertaining to exclusive end-use

Creative Energy's June 15, 2016 cover letter to the Commission states:

> …evidence related to CoV policy and bylaws and compliance with such policy/bylaws is not evidence that Creative Energy can file to support approval of this Application. However, Creative Energy will ensure that the parties to the Connection Agreement are familiar with the CoV policy and bylaws. Creative Energy believes that compliance with such policy and bylaws need not be a provision of the Connection Agreement.[17]

[15] Exhibit B-1, Appendix 2, pp. 5–6.
[16] Exhibit B-1-3, p. 11.
[17] Exhibit B-1, p. 2.

Further to section 2.3 of the Connection Agreement, the "no alternate system or service provider"[18] clause is consistent with comparator utilities, as shown in Creative Energy's comparison analysis of SRWs.[19]

The Panel finds that current provisions regarding exclusive end-use are satisfactory. This finding is based largely on the Panel being satisfied regarding three specific sub-issues: reference to CoV bylaws; wording on exclusivity and/or alternative systems; and term of the agreement.

The Panel agrees with Creative Energy that compliance with CoV policies and/or bylaws need not be a provision of the Connection Agreement.

As to the use of "no alternative system or service provider," the Panel is satisfied that the provisions in the Connection Agreement are consistent with the Commission-approved provisions contained in the Corix UBC NDES energy services agreement.

Finally, the Panel is satisfied that the imposition of a 30-year term is reasonable in the circumstances, to ensure adequate load security.

### 3.4 Evidence that the design guidelines and review process is consistent with other similar utilities

The Commission required Creative Energy to provide evidence that its design guidelines and review process is consistent with other similar utilities. In Appendix 3 of Exhibit B-1, Creative Energy compared its design guidelines to the City of Vancouver's Southeast False Creek system and Surrey City Energy. Creative Energy's design guidelines are consistent with the other two utilities. In Table 2 of Appendix 3, Creative Energy compared its review process to Corix UBC NDES, Surrey City Energy, the City of Richmond's Richmond Oval DES and the CoV's Southeast False Creek DES review process. Creative Energy's review process is consistent with the other utilities.

The Panel finds that the design guidelines and review process is consistent with other utilities. The Panel is satisfied that the comparators put forward by Creative Energy for both design guidelines and technical requirements are valid for purposes of this application and that the provisions contained therein are consistent with the Connection Agreement.

### 3.5 Evidence that the other terms and conditions of concern raised by Urban Design Institute and others do not go further than necessary

In Appendix 4 of Exhibit B-1, Creative Energy provided a table summarising the concerns raised by Urban Design Institute (UDI) and others in the 2015 NEFC CPCN proceeding.[20] The table addresses each issue raised as well as providing comparable provisions to the Commission-approved Corix UBC NDES Energy Services Agreement, which serves a similar purpose to the Creative Energy Connection Agreement.

[18] Exhibit B-1-3, p. 10.
[19] Exhibit B-1, Appendix 2.
[20] Exhibit B-26.

Furthermore, in response to CEC IR 1.2, which sought clarity from Creative Energy regarding whom Creative Energy consulted in addressing the issues raised by potential customers, Creative Energy stated:

> Creative Energy and its counsel had an in person meeting with the Vice-President and Senior Policy Advisor for the Urban Development Institute (UDI) together with counsel for UDI on or about March 13, 2016, and at that meeting the attendees went through the Connection Agreement and the schedules thereto in its entirety and discussed certain proposed revisions from UDI. Creative Energy implemented a majority of those proposed revisions and they are all contained in the draft of the Connection Agreement that is the subject of this Application. Creative Energy has also consulted with counsel for the Parq casino development in NEFC and has included several comments and proposed revisions from counsel in the draft of the Connection Agreement that is the subject of this Application[21]

Concerns raised have also been addressed through amendments to the Connection Agreement.[22]

The Panel finds that the concerns raised by UDI have been adequately addressed. The Panel's own conclusions are supported by all the interveners that the Connection Agreement does not go further than necessary to provide like service by other utility operators.

## 4.0 FINAL DETERMINATION

For the reasons set out in the prior sections, **pursuant to sections 59 to 61 of the *Utilities Commission Act*, the British Columbia Utilities Commission orders that the Creative Energy Vancouver Platforms Inc. Northeast False Creek Connection Agreement, including the Customer Service Agreement (Schedule A) and Statutory Right of Way (Schedule D) as filed in Exhibit B-1-3, is approved.**

[21] Exhibit B-7, CEC IR 1.2.
[22] Exhibit B-1, black-lined copy.

# NORTHEAST FALSE CREEK

# CONNECTION AGREEMENT

THIS AGREEMENT dated for reference ♦ day of ♦, 20♦.

BETWEEN:

> **[OWNER],** a ***[company existing or limited partnership formed]*** under the laws of [British Columbia], with an address at ♦
>
> (the "**Owner**")

AND:

> **CREATIVE ENERGY VANCOUVER PLATFORMS INC**., a company existing under the laws of British Columbia, with an address at Suite 1 – 720 Beatty Street, Vancouver, BC V6B 2M1
>
> ("**Creative Energy**")

**WHEREAS**:

A. The Owner is ***[the legal and beneficial owner of the Lands*** or ***the tenant under a ground lease of the Lands]*** situate within the NES Area and intends to construct a development on the Lands (the "**Project**");

B. Creative Energy is public utility regulated pursuant to the Utilities Commission Act, RSBC 1996 c. 473;

C. The BCUC has issued to Creative Energy a *Certificate of Public Necessity and Convenience* (CPCN) which allows for the construction and operation of the NES and the provision of the Energy Services by Creative Energy; and

D. The Parties wish to enter into this Agreement to record the terms and conditions on which the NES will connect to Buildings constructed on the Lands and for the provision of Energy Services to the Lands.

**NOW THEREFORE** the Parties covenant and agree as follows

## 1. INTERPRETATION

1.1 Definitions. In this Agreement, the following terms have the meanings set out below:

(a) "**Affiliate**" means, with respect to any Person (i) any entity over which such Person exercises, directly or indirectly, Control, (ii) any entity that is under the common Control of the same entity as such Person, or (iii) any entity which exercises control over such Person by virtue of ownership, financial participation or the rules which govern it;

(b) "**BCUC**" means the British Columbia Utilities Commission or its successor entity;

(c) "**Building**" means each permanent residential, commercial or other structure or building on or to be constructed on the Lands and which will receive Energy Services;

(d) "**Building Permit**" means a permit issued under the Building Bylaw of the City permitting the construction or renovation of any Building from foundation to grade, or above grade, whichever is issued first;

(e) "**Building System**" means the complete heating and ventilating (which may include air conditioning) system and domestic hot water system and storage equipment to be installed and used for distributing and storing Thermal Energy in a Building, connected to but downstream of and excluding the Energy Transfer Stations for that Building;

(f) "**Building System Application**" means an application in the form attached hereto as Schedule C, setting out:

(i) the specifications for each Building System, including all design and engineering components and the Owner's proposed energy loads, temperatures and any connection requirements; and

(ii) details of any proposed subdivision of the Lands in conjunction with the development of the Project, including any air space parcel subdivisions and subdivisions by way of strata plan,

and attaching copies of:

(iii) specifications, drawings and other information relating to the design and location of the Building Systems; and

(iv) such other information as Creative Energy may reasonably require: (1) related to any proposed subdivision of the Lands; or (2) to confirm that the Building Systems conform to the Design Guide and are compatible with the NES;

(g) "**Building System Commissioning**" means, in relation to a Building System, the process by which the Building System is tested by the Owner (including operational and performance testing) to verify and confirm that it substantially performs in accordance with the Final Building System Application, subject to minor defects and deficiencies which do not materially interfere with the performance of the Building System;

(h) "**Business Day**" means any day except a Saturday, Sunday, or a statutory holiday in the Province of British Columbia;

(i) "**Changes of Law**" means any change in, or the introduction of new, applicable Laws affecting any one or more of (i) the performance, operation, maintenance or routine repair of the NES; (ii) the provision of Energy Services; and (iii) the creation and delivery of Thermal Energy;

(j) "**City**" means the City of Vancouver in its capacity as regulatory, inspection and permitting authority for the approval of new developments within the NES Area, including all departments therein responsible for such function from time to time;

(k) "**Contaminants**" means any radioactive materials, asbestos materials, urea formaldehyde, pollutants, contaminants, deleterious substances, dangerous substances or goods, hazardous, corrosive, or toxic substances, hazardous waste, pesticides, defoliants, or any other solid, liquid, gas, vapour, odour, heat, sound, vibration, radiation, or combination of any of them, the storage, manufacture, handling, disposal, treatment, generation, use, transport, remediation, or Release into the Environment of which is now or hereafter prohibited, controlled, or regulated under Environmental Laws;

(l) "**Contaminated Site**" has the meaning ascribed to it in the *Environmental Management Act* (British Columbia);

(m) **"Control"** means, with respect to any Person, the power, directly or indirectly, to vote more than fifty per cent (50%) of the securities having ordinary voting power for the election of directors of such Person or to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise;

(n) "**Creative Energy Group**" means Creative Energy and its shareholders, directors, officers, employees, agents, successors, and permitted assigns;

(o) "**Customers**" means any Persons who receive Energy Services pursuant to a Customer Service Agreement;

(p) "**Customer Service Agreement**" means the agreement between a Customer and Creative Energy that sets out the terms and conditions on which Energy Services will be provided to a Building or Buildings in such form as approved by the BCUC from time to time (a current copy of the standard form of this agreement, as approved by the BCUC, is attached as Schedule A), as amended in accordance with its terms;

(q) "**Deadline**" has the meaning ascribed to it in Section 3.6;

(r) "**Design Guide**" means the Design Guidelines for NES, as issued and administered by Creative Energy, and as amended from time to time in accordance with the provisions hereof, a current version of which is attached hereto as Schedule B;

(s) "**Distribution System**" means, collectively, the system of pipes, fittings and ancillary components and equipment within the NES Area supplying Thermal Energy to, *inter alia*, the Energy Transfer Station;

(t) "**Encumbrance**" means any mortgage, lien, charge, pledge, judgement, execution, financial charge, security interest, claim or other financial encumbrance, excluding any financial encumbrance in favour of the City;

(u) "**Energy Services**" means the provision of Thermal Energy via the NES;

(v) "**Energy Services Commencement**" has the meaning ascribed to it in Section6.1;

(w) "**Energy Transfer Station**" means, collectively, the system of one or more heat exchangers for heating and domestic hot water (excluding domestic hot water storage tanks), energy meter equipment (including temperature sensors and flow meter), control panel and all pipes, fittings and ancillary equipment and facilities necessary to measure and control the transfer of Thermal Energy from the Distribution System to a Building System;

(x) "**Environment**" includes the air (including all layers of the atmosphere), land (including soil, sediment deposited on land, fill, lands submerged under water, buildings, and improvements), water (including oceans, lakes, rivers, streams, groundwater, and surface water), and all other external conditions and influences under which humans, animals, and plants live or are developed and "**Environmental**" has a corresponding meaning;

(y) "**Environmental Credits**" means any income, credit, right, benefit or advantage, whether in the form of monetary value or some other form or character, relating to Environmental matters including type and level of Environmental emissions, input sources and compliance with Environmental Laws, and any market instrument, including without limitation any Environmental emission allowances and Environmental emission reduction credits that may accrue;

(z) "**Environmental Laws**" means any and all applicable statutes, laws, regulations, orders, bylaws, standards, guidelines, protocols, permits, and other lawful requirements of any Governmental Authority now or hereafter in force relating to or for the Environment or its protection, environmental assessment, health, occupational health and safety, protection of any form of plant or animal life, or transportation of dangerous goods, including the principles of common law and equity;

(aa) "**Fees**" means the fees, rates and charges which may from time to time be charged by Creative Energy and paid by the Owner and Customers for Energy Services, as approved by the BCUC;

(bb) "**Final Building System Application**" means the Building System Application approved pursuant to Section 3.2(e), as such Building System Application may be amended pursuant to Section 3.2(f);

(cc) "**Force Majeure**" has the meaning ascribed to it in Section 15;

(dd) "**Functional**" means, in relation to a Building System, when that Building System fully complies with Section 3, has satisfied Building System Commissioning and is performing the function for which it was designed, subject to minor defects and deficiencies which do not materially interfere with the performance of the Building System;

(ee) "**Governmental Authority**" means any federal, provincial, regional, municipal, local or other government, governmental or public department, court, tribunal, arbitral body, commission, board, bureau or agency and any subdivision, agent, commission, board or authority, including without limitation the City and the BCUC.

(ff) "**Laws**" means any law, statute, regulation, bylaw, code, Permit, order or legal requirement of or issued by or under the direction or authority of any Governmental Authority having jurisdiction;

(gg) "**Lands**" means those lands and premises situate at ♦, Vancouver, British Columbia, and legally described as:

PID: ♦

(hh) "**NES**" means the neighbourhood energy system owned and operated by Creative Energy consisting of the Distribution System, Energy Transfer Stations, any sources of Thermal Energy located in the NES Area and connected to the Distribution System, and any ancillary equipment and facilities;

(ii) "**NES Area**" means, collectively, the areas within the City of Vancouver known as Northeast False Creek, within which the Lands are situate;

(jj) "**Occupancy Permit**" means a Permit issued by the City confirming that a Building complies with the fire, health and life safety requirements of the City, whether such permit is temporary, conditional or final;

(kk) "**Owner's Engineer**" means a professional engineer acceptable to Creative Energy, acting reasonably, engaged by the Owner at the Owner's sole cost and expense;

(ll) "**Owner Group**" means

(i) in the case where the Owner is a company, the Owner and its shareholders, directors, officers, employees, agents, successors and permitted assigns; and

(ii) in the case where the Owner is a general or limited partnership, the Owner and its officers, employees, agents, successors and permitted assigns and the partners of the Owners and their shareholders, directors, officers, employees, agents, successors and permitted assigns;

(mm) "**Party**" means either the Owner or Creative Energy and "**Parties**" means both of them;

(nn) "**Permits**" means all permits, licences, certificates, approvals, authorizations, consents and the like issued by any Governmental Authority;

(oo) "**Person**" means an individual or his or her legal personal representative, an unincorporated organization or association, or a corporation, partnership, limited partnership, trust, trustee, strata corporation, syndicate, joint venture, limited liability company, union, Governmental Authority or other entity or organization;

(pp) "**Project**" has the meaning ascribed to it in Recital A;

(qq) "**Project Infrastructure**" means those portions of the NES located on the Lands;

(rr) "**Project Infrastructure Work**" means the design, engineering, installation and verification by Creative Energy of Project Infrastructure on the Lands;

(ss) "**Release**" includes any release, spill, leak, pumping, pouring, emission, emptying or discharge, injection, escape, leaching, migration, disposal, or dumping;

(tt) "**Statutory Right of Way**" means a statutory right of way agreement and covenant, substantially in the form attached hereto as Schedule D, which permits Creative Energy access to the Lands for the purpose of performing its obligations under this Agreement and Customer Service Agreements;

(uu) "**Target Date**" means the date identified as such in the Building System Application, as such date may be revised by the Owner upon written notice to Creative Energy delivered within 90 days following the issuance of the first Building Permit for the Project;

(vv) "**Thermal Energy**" means all thermal energy for heating purposes, and includes domestic hot water; and

(ww) "**Zoning and Building Regulations**" means the Zoning and Development Bylaw and the Building Bylaw of the City, as amended from time to time including any replacement thereof.

1.2 Interpretation. Unless otherwise expressly provided, in this Agreement:

(a) "**this Agreement**" means this Agreement as it may from time to time be supplemented or amended by the Parties, and includes the attached Schedules;

(b) all references in this Agreement to a designated "**Article**", "**Section**", "**subsection**" or "**Schedule**" is to the designated Article, Section or subsection of or Schedule to this Agreement;

(c) the headings are for convenience only, do not form a part of this Agreement and are not intended to interpret, define or limit the scope, extent or intent of this Agreement or any provision hereof;

(d) the singular of any term includes the plural, and vice versa; the use of any term is equally applicable to any gender and, where applicable, a body corporate;

(e) the word "**including**" 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;

(f) references to time of day or date mean the local time or date in the city of Vancouver, British Columbia; and

(g) all references to amounts of money mean lawful currency of Canada.

1.3 Governing Law. This Agreement and each of the documents contemplated by or delivered under or in connection with this Agreement are governed exclusively by, and are to be enforced, construed and interpreted exclusively in accordance with, the laws of British Columbia and the laws of Canada applicable in British Columbia which will be deemed to be the proper law of the Agreement.

1.4 Severability. Each provision of this Agreement is severable. If any provision of this Agreement is or becomes illegal, invalid or unenforceable in any jurisdiction, the illegality, invalidity or unenforceability of that provision will not affect:

(a) the legality, validity or enforceability of the remaining provisions of this Agreement, or

(b) the legality, validity or enforceability of that provision in any other jurisdiction, except that if:

(i) on the reasonable construction of this Agreement as a whole, the applicability of the other provision presumes the validity and enforceability of the particular provision, the other provision will be deemed also to be invalid or unenforceable, and

(ii) as a result of the determination by a court of competent jurisdiction that any part of this Agreement is unenforceable or invalid and, as a result of this section, the basic intentions of the parties in this Agreement are entirely frustrated,

the Parties will use all reasonable efforts to amend, supplement or otherwise vary this Agreement to confirm their mutual intention in entering into this Agreement.

1.5 Time of Essence. Time is of the essence of this Agreement.

1.6 Statutory References. Unless otherwise specified, each reference to a statute is deemed to be a reference to that statute and to the regulations made under that statute as amended or re-enacted from time to time.

1.7 Schedules. The following are the Schedules to this Agreement:

Schedule A Form of Customer Service Agreement

Schedule B Design Guide for Compatibility with District Energy

Schedule C Form of Building System Application

Schedule D Form of Statutory Right of Way

## 2. DEVELOPMENT OBLIGATIONS OF OWNER

2.1 Development of Project. The Owner will, at its own cost and expense, develop the Project in accordance with applicable zoning, applicable Laws (including without limitation the Zoning and Building Regulations), the Design Guide, the Final Building System Application and this Agreement.

2.2 Design Guide. The Owner acknowledges and agrees that Creative Energy may make amendments to the Design Guide prior to the submission by the Owner of the Building System Application, and Creative Energy will provide prompt notice to the Owner of any such amendments. The Parties will replace Schedule B hereto by of a written amendment to this Agreement to reflect any such amendments to the Design Guide. Except as may be agreed by the Parties in writing, the Design Guide attached hereto as Schedule B will not be amended after the Owner submits the Building System Application to Creative Energy.

2.3 No Alternate System or Service Provider. The powers and rights granted to Creative Energy under this Agreement are exclusive to Creative Energy and, except as expressly provided hereunder or in the Design Guide or as otherwise agreed in writing by the Parties, the Owner will not itself perform, provide or install, nor allow any other Person to perform, provide, install or realize any other system to provide primary domestic hot water or space heating to any Building, nor use or allow or consent to any other Person supplying or distributing Thermal Energy to the Lands.

## 3. BUILDING SYSTEMS

3.1 Collaboration. Prior to the submission of the Building System Application by the Owner, Creative Energy will respond to the reasonable inquiries of the Owner in respect of the Design Guide in order to assist the Owner in ensuring that the specifications and design for each Building System are compatible with the Design Guide.

3.2 Review and Approval of Specifications. To achieve compatibility between each Building System and the NES the Owner will:

(a) review the Design Guide attached hereto at Schedule B;

(b) submit to Creative Energy for approval a duly completed Building System Application a minimum of 90 days prior to applying for any Building Permit;

(c) allow Creative Energy a minimum of 30 days to review the Building System Application and comment on the specifications and designs set out therein;

(d) promptly make such changes to the specifications and design of the Building Systems as set out in the Building System Application as are required by Creative Energy, acting reasonably in accordance with the Design Guide and prevailing industry standards, to ensure the Building Systems are compatible with the NES, and submit a revised Building System Application to Creative Energy incorporating such changes;

(e) not commence the installation of any Building System until such time as the Building System Application has been certified by the Owner's Engineer and approved by Creative Energy, acting reasonably in accordance with the Design Guide and prevailing industry standards, which approval shall be evidenced by the execution of the Building System Application by a duly authorized representative of Creative Energy; and

(f) not amend the Building System Application approved pursuant to Section 3.2(e) above without the prior written consent of Creative Energy, not to be unreasonably withheld, and pay or reimburse (as applicable) Creative Energy for any additional costs reasonably incurred by Creative Energy in connection with any such approved

amendments within 30 days of Creative Energy delivering an invoice therefor to the Owner.

3.3 Construction and Installation of the Building Systems.

(a) The Owner will construct and install each Building System in accordance with the Final Building System Application. The Owner will keep Creative Energy reasonably informed regarding the progress of construction and installation of each Building System and promptly provide to Creative Energy such information and documentation as it requests, acting reasonably, in connection with the construction and installation of any Building System. The Owner currently anticipates that by the Target Date (a) the Owner will have completed the construction and installation of each Building System in accordance with this Section 3.3; (b) the Owner will have each Building System ready for connection to the Energy Transfer Station in accordance with Section 3.4; and (c) each Building will be ready to receive Energy Services from Creative Energy.

(b) The Owner shall permit Creative Energy, and its employees, contractors engineers, consultants, or advisors, at all reasonable times and upon reasonable notice to enter upon the applicable portions of the Lands in order to monitor the construction and installation of the Building Systems, subject to the Owner's reasonable safety protocols. If Creative Energy, in exercising its rights under this Section 3.3(b), causes any damage to the Building or Lands, Creative Energy shall promptly make good any such damage caused to the Building or Lands by restoring such property to a condition at least as good as it or they were in prior to such damage.

3.4 Connection to Energy Transfer Station and Commissioning.

(a) As soon as is reasonably practicable following the completion of construction and installation of each Building System, the Owner will provide to Creative Energy, for its approval:

(i) a certificate from the Owner's Engineer certifying that the Building System has been constructed in accordance with the Final Building System Application, as amended in accordance with Section 3.2(f), if applicable;

(ii) a certificate of flushing certifying that the Building System has been flushed in accordance with the relevant provisions in the Design Guide; and

(iii) such further documentation as is requested by Creative Energy, acting reasonably, to verify that the Building System has been designed, constructed and installed in full compliance with the Final Building System Application, has been flushed and cleaned and is capable of performing the function for which it was designed.

(b) The Owner, at its sole cost and expense, will promptly rectify any components of the Building Systems which are identified by the Owner's Engineer or Creative Energy, acting reasonably, as being non-compliant with the Final Building System Application.

(c) As soon as is reasonably practicable following the approval by Creative Energy of the Building Systems in accordance with Section 3.4(a), the Owner will connect each Building System to the applicable Energy Transfer Station as designated by Creative Energy and in the presence of a Creative Energy representative.

(d) Upon connection of each Building System to the Energy Transfer Station pursuant to Section 3.4, the Owner will perform Building System Commissioning and will provide to Creative Energy a certificate of the Owner's Engineer certifying that the Building System Commissioning has completed and the Building System is Functional forthwith upon the issuance thereof.

(e) During and after Building System Commissioning, the Owner will take all steps required to remedy any defects in the design, engineering, construction or installation of the Building System identified by the Owner's Engineer or Creative Energy within such period of time as may be reasonably required to remedy such defects and will forthwith provide to Creative Energy documentation from the Owner's Engineer (in a form that is satisfactory to Creative Energy, acting reasonably) verifying that such defects have been remedied, together with as-built drawings for such Building System.

(f) Notwithstanding anything to the contrary in this Agreement, the Parties acknowledge and agree that a Building System will not be connected to the NES before the Target Date, unless the Parties mutually agree otherwise in writing.

3.5 Occupancy Permit. The Owner will not:

(a) apply for an Occupancy Permit; or

(b) take any action to compel issuance of an Occupancy Permit

until such time as the Owner has delivered to Creative Energy the documentation verifying that the Building System Commissioning has completed and the Building System is Functional in accordance with Section 3.4(d).

3.6 The Owner's Responsibility. Notwithstanding anything to the contrary in this Section 3, Creative Energy will not be responsible for any aspect of the design, engineering, permitting, construction or installation of any Building System. Each Building System has or will be engineered, designed, constructed and installed by or on behalf of the Owner solely at its own expense and in a good and workmanlike manner consistent with industry standards and in compliance with all applicable Laws and this Agreement. The Owner will ensure that each Building includes a Building System that complies with this Section 3.

3.7 Delays. If the Energy Services Commencement has not occurred within 90 days after the Target Date or such other date that is mutually agreed by the Parties in writing (the "**Deadline**"), the Owner will commence paying Creative Energy the Basic Charge (as specified in the Tariff, as defined in the Customer Service Agreement attached as Schedule A) with effect as of the Deadline as if Creative Energy had commenced providing Energy Services to the Building as of the Deadline. The Owner will pay such Basic Charge whether or not it has signed a Customer Service Agreement by the Deadline. Notwithstanding the foregoing, the Owner will not be required to pay such Basic Charge if Creative Energy is the cause of the delay (in which case Creative Energy will use commercially reasonable efforts to commence providing Energy Services as soon as possible).

## 4. PROJECT INFRASTRUCTURE

4.1 Project Infrastructure. Prior to the approval of the Building System Application pursuant to Section 3.2(e), Creative Energy will provide details to the Owner of the proposed Project

Infrastructure, including the location thereof and the number of Energy Transfer Stations to be constructed within the Project, for the approval of the Owner, acting reasonably. If the Owner requires any Project Infrastructure to be installed in a manner or in a location that does not conform with the applicable provisions of the Design Guide, the Owner will pay and reimburse (as applicable) Creative Energy, within 30 days of Creative Energy delivering an invoice therefor to the Owner, for any additional costs reasonably incurred by Creative Energy in connection with the installation of any such Project Infrastructure.

4.2 Project Infrastructure Work. Subject to Sections 3.3, 3.5, 4.1, 4.3, 4.4 and 4.7, Creative Energy will:

(a) at its own cost and expense, perform the Project Infrastructure Work in a good and workmanlike manner, consistent with industry standards and in compliance with all applicable Laws and this Section 4 in order to enable Creative Energy to deliver the Energy Services by the Target Date, or such other date that is mutually agreed by the parties in writing, in accordance with the provisions of the Customer Service Agreements; and

(b) to the extent reasonably possible in light of other obligations of Creative Energy under Creative Energy's services, customer and other agreements with other developers and Customers receiving Energy Services, in performing the work set out in subsection (a) above:

(i) work in a timely manner compatible with the Owner's construction/installation schedule;

(ii) keep the Owner reasonably informed regarding the progress of the Project Infrastructure Work; and

(iii) install the Project Infrastructure only in such locations as are approved by the Owner in accordance with Section 4.1.

4.3 Installation Costs Borne by the Owner. To the extent the Parties are able to coordinate their construction and installation activities on the Lands, the Owner will pay all costs relating to excavation, bedding material and backfilling of trenches where such items and activities are related to both the construction activities of the Owner and installation of the Project Infrastructure.

4.4 Contributions by the Owner. The Owner shall pay to Creative Energy such contributions in aid of the capital costs relating to the construction of the Project Infrastructure as:

(a) may be mutually agreed upon by the Parties; or

(b) set out in the Tariff (as defined in the Customer Service Agreement attached as Schedule A).

4.5 Ownership. Notwithstanding any degree of annexation or affixation, or rule of law or equity to the contrary, all components of the Project Infrastructure and all additions or extensions will be and remain the property of and vest in Creative Energy, and if requested by Creative Energy, acting reasonably, the Owner shall permit Creative Energy to register a charge over the Lands to reflect such ownership.

4.6 Removal or Relocation. Subject to Section 4.2, Creative Energy may from time to time, in its sole discretion and at its sole cost and expense, remove or relocate all or part of the Project Infrastructure, provided that Creative Energy continues to provide the Energy Services in accordance with the provisions of the Customer Service Agreements.

4.7 Permits Regarding Project Infrastructure. Creative Energy will apply for and use commercially reasonable efforts to obtain and maintain all requisite Permits for the Project Infrastructure Work and for the operation of the Project Infrastructure. If requested to do so by Creative Energy, the Owner will use reasonable efforts to assist Creative Energy obtain such Permits, and, subject to the approval of the BCUC where required, Creative Energy shall reimburse the Owner for any reasonable costs incurred by the Owner in connection therewith.

4.8 Project Infrastructure Required by Zoning and Building Regulations. The Owner acknowledges that the City, as part of the conditions to its approval of the Project under the Zoning and Building Regulations, may require that certain components of the NES in addition to Energy Transfer Stations be installed on the Lands by Creative Energy to provide Energy Services to the Buildings, buildings on properties other than the Lands, or any combination thereof. In addition to the obligations of the Owner under Section 10(d), the Owner will, if applicable, ensure that the disclosure statement provided to the Owner's purchasers in accordance with applicable Laws includes material facts regarding any such components of the NES.

## 5. ACCESS TO LANDS

5.1 The Owner grants and covenants to secure for Creative Energy and its subcontractors, agents, employees and representatives, by licenses, statutory rights of way, easements or other agreements as may be required by Creative Energy, acting reasonably and in a manner that is compatible with and does not cause undue disturbance or interference with the development of the Project by the Owner or the operation of the businesses conducted on the Lands, and for nominal consideration, non-exclusive access to, on, over and under those portions of the Lands that are reasonably required for the purposes of performing its obligations under this Agreement and Customer Service Agreements. If Creative Energy or any of its employees, contractors, agents or representatives, in exercising their rights under this Section 5.1, cause any damage to the Building or Lands, Creative Energy shall promptly make good any such damage caused to the Building or Lands by restoring such property to a condition at least as good as it or they were in prior to such damage.

5.2 Without limiting the generality of the provisions of Section 5.1, the Owner will, as soon as is reasonably practicable upon Creative Energy's request, grant or cause to be granted to Creative Energy and duly registered in the relevant Land Title Office the Statutory Right of Way for each lot comprising a part of the Lands and otherwise as required to allow Creative Energy to perform its obligations under this Agreement and Customer Service Agreements. The Owner shall ensure, at its cost, that each Statutory Right of Way granted pursuant to this Section 5 will have priority over any Encumbrance.

5.3 Each statutory right of way or other registrable interest granted pursuant to this Section 5 may be registered by Creative Energy (at Creative Energy's sole cost) in the relevant Land Title Office.

## 6. PROVISION OF ENERGY SERVICES BY CREATIVE ENERGY

6.1 Provision of Energy Services. Creative Energy will provide Energy Services to a Building, subject to and provided that the following conditions have been satisfied:

(a) that the Building System for such Building has been connected to the NES in accordance with Section 3;

(b) that the relevant Customer Service Agreements have been completed, executed and delivered in accordance with Section 6.2; and

(c) that the Owner is not in material default in respect of its obligations under this Agreement, provided that a failure by the Owner to make any payment to Creative Energy when due pursuant to the terms hereof shall be a material default.

Such conditions are for the sole benefit of Creative Energy and any one or all of them may be waived by Creative Energy. The date and time when Thermal Energy is first transferred between the NES and the Building System will be the "**Energy Services Commencement**".

6.2 Customer Service Agreements.

(a) Before Building System Commissioning, the Owner will complete, execute and deliver, or will cause the applicable Person to complete, execute and deliver, to Creative Energy at its option a Customer Service Agreement in respect of any one or more of the following:

(i) the Lands;

(ii) any Building;

(iii) any legal parcel, including without limitation an air space parcel or a remainder parcel, that is subdivided from the Lands or any portion thereof;

(iv) a strata corporation that is formed within any Building by way of the deposit of a strata plan, and in each such case the applicable Customer Service Agreement shall be executed by the strata corporation prior to the first conveyance of a strata lot within the applicable strata plan.

(b) The Owner will cause any Person to whom the Owner transfers or otherwise disposes, whether directly or indirectly, all or any portion of its interest in the Project to complete, execute and deliver to Creative Energy a Customer Service Agreement covering the applicable Building or Buildings.

## 7. FEES

7.1 Fees. Subject to Section 3.6, Creative Energy will charge each Customer the applicable Fees, commencing on Energy Services Commencement, as provided in the Customer Service Agreement.

7.2 Adjustment to Fees. Creative Energy may, subject to BCUC approval, adjust the Fees at any time and from time to time in accordance with the applicable Customer Service Agreement.

7.3 Recovery of Costs and Expenses through Fees. Creative Energy will, to the extent possible and subject to BCUC approval, recover all costs and expenses reasonably and prudently incurred by it in connection with the NES or Energy Services, including without limitation design, inspection, construction and operation costs, Permit fees, and all federal, provincial, regional and municipal taxes (including property taxes), levies and fees, through Fees.

## 8. REPRESENTATIONS AND WARRANTIES

8.1 Representations and Warranties of the Owner. The Owner represents and warrants to Creative Energy the following, and acknowledges that Creative Energy is relying on such representations and warranties in entering into the transactions contemplated by this Agreement.

(a) *Ownership of the Lands*. [***The Owner is the legal and beneficial owner of the Lands*** or ***is a tenant under a ground lease of the Lands***].

(b) *Status of the Owner*. The Owner, and each of them if more than one, is either, as applicable, a company duly incorporated and validly existing under the laws of the Province of British Columbia, a society or not-for-profit corporation duly formed under the laws of the Province of British Columbia or Canada or a limited partnership, partnership or other similar entity formed in accordance with the laws of the Province of British Columbia, with full power and authority to enter into and perform all of its obligations under this Agreement.

(c) *Litigation*. The Owner is not a party to any action, suit or legal proceeding, actual or threatened, and there are no circumstances, matters or things known to the Owner that might give rise to any such action, suit or legal proceeding, and there are no

actions, suits or proceedings pending or threatened against the Owner before or by any Governmental Authority, that could affect the Owner's ability to perform its obligations under this Agreement.

(d) *No Breach of Agreement*. This Agreement and the performance by the Owner of its obligations does not and will not breach any provisions of any other agreement that is binding on or applicable to the Owner.

(e) *No Conflict with Constating Documents*. Neither the entering into of this Agreement nor the consummation of the transactions contemplated hereby will result in a breach of any of the terms or provisions of the constating documents of the Owner or of any indenture or other agreement, written or oral, to which the Owner is a party, and all necessary corporate action on the part of the Owner has been or will be taken to authorize and approve the execution and delivery of this Agreement and the performance by the Owner of its obligations.

8.2 Creative Energy's Representations and Warranties. Creative Energy represents and warrants to the Owner the following, and acknowledges that the Owner is relying on such representations and warranties in entering into the transactions contemplated by this Agreement.

(a) *Status of Creative Energy*. Creative Energy is a company duly incorporated and validly existing under the laws of British Columbia.

(b) *Public Utility*. Creative Energy is a public utility as defined under the *Utilities Commission Act* (British Columbia).

(c) *Power and* Capacity. Creative Energy has the power and authority to enter into and perform all of its obligations under the Agreement.

(d) *No Breach of Agreement*. This Agreement and the performance by Creative Energy of its obligations does not and will not breach any provisions of any other agreement that is binding on or applicable to Creative Energy.

(e) *Litigation*. Creative Energy is not a party to any action, suit or legal proceeding, actual or threatened, and there are no circumstances, matters or things known to Creative Energy that might give rise to any such action, suit or legal proceeding,

and there are no actions, suits or proceedings pending or threatened against Creative Energy before or by any Governmental Authority, other than any proceedings before the BCUC, that could affect Creative Energy's ability to perform its obligations under this Agreement.

(f) *No Conflict with Constating Documents*. Neither the entering into of this Agreement nor the consummation of the transactions contemplated hereby will result in a breach of any of the terms or provisions of the constating documents of Creative Energy or of any indenture or other agreement, written or oral, to which Creative Energy is a party, and all necessary corporate action on the part of Creative Energy has been or will be taken to authorize and approve the execution and delivery of this Agreement and the performance by Creative Energy of its obligations.

## 9. ENVIRONMENTAL MATTERS

9.1 Control and Management of Site. For the purposes of applicable Environmental Laws, the Owner will be deemed to have control and management of the Lands with respect to their environmental condition except as otherwise expressly provided in this Agreement.

9.2 Environmental Condition of the Lands. The Owner represents and warrants to Creative Energy as of the date of this Agreement that:

(a) to the best of the Owner's knowledge, the Lands are free of Contaminants, except for the existence of any Contaminants which have been disclosed in writing to Creative Energy prior to the date hereof;

(b) to the best of the Owner's knowledge, no part of the Lands is a Contaminated Site, except to the extent disclosed in writing to Creative Energy prior to the date hereof;

(c) the Owner has disclosed to Creative Energy all site investigations, assessments, audits and reports relating to the Lands conducted by or on behalf of the Owner or of which the Owner has a copy; and

(d) there are no actions, proceedings, investigations, claims (including remediation cost recovery claims) pending, or to the best of the Owner's knowledge, threatened, that

relate to the presence or Release of Contaminants on the Lands, except to the extent disclosed in writing to Creative Energy prior to the date hereof.

9.3 Owner's Environmental Covenants. The Owner covenants with Creative Energy as follows:

(a) if, prior to the date hereof, any part of the Lands is a Contaminated Site or there are Contaminants on the Lands or any part thereof in excess of the amounts permissible under Environmental Laws, the Owner shall at its own cost cause the Lands to comply or to be developed in a manner that complies with Environmental Laws prior to the Energy Services Commencement;

(b) not to use or permit the Lands to be used for the sale, storage, manufacture, disposal, handling, treatment, use or any other dealing with any Contaminants, except in compliance with Environmental Laws; and

(c) to comply with and to continue to comply with, and at its own cost to cause the Lands to comply with Environmental Laws and to use commercially reasonable efforts to cause any tenants, subcontractors or other occupants or users of the Lands to comply with Environmental Laws in their use and occupancy of the Lands.

9.4 Owner's Release and Environmental Indemnity. The Owner (i) does hereby release the Creative Energy Group from any and all actions, causes of action, claims (including remediation cost recovery claims) and demands, suits, debts, dues, accounts, expenses whatsoever or wheresoever, whether at law or in equity and whether known or unknown which the Owner Group shall or may have arising from or in connection with; and (ii) will indemnify and hold harmless Creative Energy from any and all liabilities, actions, damages, claims (including remediation cost recovery claims), losses, costs, orders, fines, penalties and expenses (including all consulting and legal fees and expenses on a solicitor-client basis) and the costs of removal, treatment, storage and disposal of Contaminants and remediation of the Lands and any affected adjacent property which may be paid by, incurred by or asserted against any member of the Creative Energy Group arising from or in connection with:

(a) any breach of or non-compliance by the Owner with the provisions of this Section 9 on the part of the Owner to be observed and performed;

(b) any Release or alleged Release of any Contaminants at or from the Lands related to or as a result of the presence of any pre-existing Contaminants at, on, under or in the Lands, including without limitation surface and ground water as at the date of this Agreement or as a result at any time of the operations of the Owner or any act or omission of the Owner or its tenants or other occupants or any person for whom it is in law responsible, except to the extent that such Release arises from a wrongful act or omission of Creative Energy or a breach or non-compliance by Creative Energy with applicable Environmental Laws; or

(c) the presence or alleged presence of any Contaminants in, on or within the Lands, including without limitation surface and ground water, and the release or alleged release of any Contaminants at or from the Lands, including without limitation surface and ground water, except to the extent that such presence or release arises from a wrongful act or omission of Creative Energy or a breach or non-compliance by Creative Energy with applicable Environmental Laws.

9.5 Creative Energy Environmental Covenants. Creative Energy will not install or use in the Project Infrastructure, or on, in or within the Lands any materials, equipment or apparatus the installation, use or storage of which does or is likely to cause the generation, accumulation, migration or Release of any Contaminants in contravention of the terms of this Agreement or any applicable Environmental Laws. Without limiting the generality of the foregoing, neither Creative Energy, nor its employees, contractors, engineers, consultants or advisors, will in any event use the Lands to dispose of, handle or treat any Contaminants in a manner in whole or in part that would either violate applicable Environmental Laws or cause the Lands, or any adjacent property to become a Contaminated Site under applicable Environmental Laws, or both.

9.6 Creative Energy Environmental Indemnity. Creative Energy will indemnify and hold harmless the Owner Group from any and all liabilities, actions, damages, claims (including remediation cost recovery claims), losses, costs, orders, fines, penalties and expenses (including all consulting and legal fees and expenses on a solicitor-client basis) and the costs of removal, treatment, storage and disposal of Contaminants and remediation of the Lands and any affected adjacent property which may be paid by, incurred by or asserted against the Owner Group arising from any breach of or non-compliance by Creative Energy with the provisions of this Section 9 on the part of Creative Energy to be observed and performed.

9.7 Survival. Notwithstanding any other provision in this Agreement, the indemnities granted in this Section 9 will survive the expiry or termination of this Agreement.

9.8 Environmental Credits. All rights, title and interest at any time existing in the potential or actual commercial value of any Environmental Credits that arise or accrue by virtue of the construction and operation of the NES will belong to Creative Energy who, to the extent possible using commercially reasonable efforts, shall apply the Environmental Credits towards reducing the cost of providing Energy Services in a manner approved by the BCUC.

## 10. COVENANTS OF OWNER

In addition to the other obligations set out in this Agreement, the Owner covenants and agrees with Creative Energy at all times and from time to time as follows:

(a) *Continued Existence*. The Owner will, if applicable, maintain its status in good standing with the Registrar of Companies at all times while this Agreement remains in effect.

(b) *Assist in Recovery of Third Party Damage*. The Owner will report to Creative Energy any damage to the NES of which it becomes aware and will act reasonably to assist Creative Energy to recover from and against third parties for such damage to the NES, to the extent Creative Energy is not able, as if the Owner owned the NES. Provided that such damage to the NES is not caused, either in whole or in part, by any negligence or wilful misconduct of the Owner, Creative Energy shall indemnify and save harmless the Owner from all liabilities, costs and expenses, including reasonable consultant and legal fees on a solicitor and client basis, incurred by the Owner in connection with any assistance provided by the Owner to Creative Energy pursuant to this Section 10(b).

(c) *Compliance with Laws*. The Owner will, at its sole cost and expense, abide by and comply with all applicable Laws (including Environmental Laws) in discharging its obligations under this Agreement.

(d) *Disclosure Statement*. To the extent that the Project comprises or will comprise strata lots that are intended to be sold by the Owner, the Owner will ensure that any disclosure statement provided to the Owner's purchasers in accordance with

applicable Laws includes material facts regarding the NES, this Agreement, the Customer Service Agreement and the Statutory Right of Way, together with the Owner's obligations to enter into such agreements and be bound by the terms thereof.

## 11. INSURANCE

11.1 Owner Insurance. The Owner will obtain and maintain at its own expense throughout the term of this Agreement the following insurance coverage:

(a) Comprehensive General Liability Insurance against claims for personal injury, death or property damage arising out of its operations, in amounts it deems adequate but in any event, not less than $5 million per occurrence and in annual aggregate;

(b) boiler and machinery insurance, written on a comprehensive form, including repair and replacement coverage, in an amount not less than $2 million per occurrence;

(c) the Owner's Engineer will provide errors and omissions liability insurance for a value of not less than $2 million per occurrence and in annual aggregate.

11.2 Responsibility. The Owner will be responsible for the full amount of all premiums and deductibles required under Section 11.1. All policies required must be effective as at the date the Owner commences any construction and/or installation activities on the Lands. Insurance will be purchased from reputable insurers registered and licensed to underwrite insurance in British Columbia.

11.3 Evidence of Insurance. The Owner will deliver or cause to be delivered to Creative Energy upon request made from time to time evidence of all insurance policies required to be obtained and maintained by the Owner under this Section 11 and any amendments, modifications or replacements.

11.4 Creative Energy Insurance. Creative Energy will obtain and maintain at its own expense throughout the term of this Agreement the following insurance coverage:

(a) Comprehensive General Liability Insurance against claims for personal injury, death or property damage, covering its operations, in an amount not less than $5 million per occurrence;

(b) Property Insurance insuring the Project Infrastructure against perils normally included in a standard "**all risk**" policy, in an amount equal to 100% of the current replacement cost of the Project Infrastructure, and adjusted at least annually to reflect changes in replacement value due to inflation or other factors, and shall contain a waiver of any rights of subrogation which the insurer may have against the Owner and any third party performing work on the Lands;

(c) All Risks Builder's Risk policy covering the Project Infrastructure while under construction or installation against fire and other perils, including but not limited to loss arising from testing and commissioning, from time to time included in such policies affecting similar properties in British Columbia with extended or additional perils supplemental coverage as would be insured against by a prudent owner in an amount not less than 100% of the replacement cost;

(d) boiler and machinery insurance covering relevant equipment owned by Creative Energy from time to time, written on a comprehensive form, including repair and replacement coverage, in an amount not less than replacement cost of the Project Infrastructure;

(e) a standard automobile liability policy including standard contractual liability endorsement against claims for bodily injury, death and damage to property, in an amount of not less than $2 million per occurrence; and

(f) Creative Energy and/or its prime engineering consultant will provide errors and omissions liability insurance for a value of not less than $2 million per occurrence in the aggregate.

(g) Workers' Compensation Insurance in compliance with applicable Laws pertaining to the compensation of insured employees assigned to operations of Creative Energy or work performed in any capacity under this Agreement, including voluntary compensation.

11.5 Responsibility. Creative Energy will be responsible for the full amount of all premiums and deductibles required under Section 11.4. All policies required must be effective as at the date that Creative Energy commences the Project Infrastructure Work and must, to the extent obtainable, provide that the insurance will not be cancelled without the insurer

giving at least 30 days written notice to the Owner. Insurance will be purchased from reputable insurers registered and licensed to underwrite insurance in British Columbia. Where Creative Energy fails to comply with requirements of this Section 11.5, the Owner may take all necessary steps to effect and maintain the required insurance coverage at Creative Energy's expense.

11.6 Evidence of Insurance. Creative Energy will deliver or cause to be delivered to the Owner upon request made from time to time evidence of all insurance policies required to be obtained and maintained by Creative Energy under this Section 11 and any amendments, modifications or replacements.

## 12. INDEMNITY

12.1 Creative Energy Indemnity. Without limiting any other obligation of Creative Energy provided herein, Creative Energy will indemnify, defend, and save harmless the Owner Group from any and all liabilities, actions, damages, claims, losses, costs, orders, fines, penalties, and expenses (including the full amount of all legal fees and expenses on a solicitor-client basis) which may be paid by, incurred by, or asserted against the Owner Group or any one of them arising from or in connection with any negligence or wilful misconduct perpetrated by Creative Energy or those for whom it is in law responsible.

12.2 Owner Indemnity. Without limiting any other obligation of the Owner provided herein, the Owner will indemnify, defend, and save harmless the Creative Energy Group from any and all liabilities, actions, damages, claims, losses, costs, orders, fines, penalties, and expenses (including the full amount of all legal fees and expenses on a solicitor-client basis) which may be paid or incurred by, or asserted against the Creative Energy Group, arising from or in connection with any negligence or wilful misconduct perpetrated by the Owner or anyone for whom it is in law responsible.

12.3 Damages Limitation. Notwithstanding any other provision of this Agreement, in no event will either Party be liable to the other Party for any indirect or consequential loss, cost or expense, including any indirect or consequential loss of profits, revenues or other indirect or consequential economic loss and punitive damages, suffered by the other Party or its Affiliates or their respective officers, directors, shareholders, employees, contractors, agents, successors or permitted assigns.

12.4 Survival. Notwithstanding any other provision in this Agreement, the indemnities set out in this Section 12 will survive the termination or expiry of this Agreement.

## 13. TERMINATION

13.1 Subject to the provisions of Section 14.1, this Agreement and the obligations of the Parties will terminate on the occurrence of the last of the following:

(a) the Project, including the installation of all Building Systems has been completed in accordance with this Agreement;

(b) each Building System has been connected to the NES in accordance with Section 3.4;

(c) all required Customer Service Agreements have been executed and delivered by the appropriate parties for each Building in the Project in accordance with Section 6.2; and

(d) the Parties have otherwise carried out their respective obligations under Sections 3, 4 and 6 of this Agreement, except to the extent such obligations are expressly stated to survive termination of this Agreement.

## 14. TERMINATION FOR DEFAULT

14.1 Default. A Party (the "**Defaulting Party**") will be in default under this Agreement (a "**Default**") if during the term hereof:

(a) it passes a resolution for its winding-up or dissolution, is adjudged bankrupt or insolvent by a court of competent jurisdiction, commences or consents to the institution of bankruptcy proceedings, proposes a compromise or an arrangement, files any petition seeking re-organization, arrangement, composition, liquidation or similar relief for itself, has a receiver or a receiver-manager appointed for its affairs, or makes a general assignment for the benefit of its creditors under any Law relating to bankruptcy, insolvency or other relief for or against debtors generally, which is not set aside within 30 days;

(b) it is in breach of a material term, covenant, agreement, condition or obligation under this Agreement, the Statutory Right of Way, or is in breach of multiple terms, covenants, agreements, conditions or obligations under the Statutory Right of Way or this Agreement which in the aggregate are material, and fails to cure such default within 30 days after receipt from the non-Defaulting Party of written notice or, if such default is not capable of being cured within such 30 day notice period, fails to commence in good faith the curing of such default forthwith upon receipt from the non-Defaulting Party of written notice and to continue to diligently pursue the curing of such default until cured; or

(c) in the case of the Owner, it:

(i) fails or refuses to make to Creative Energy any payment due under this Agreement within 15 days of the date that such payment is due; or

(ii) is in material default of any term or condition of any Permit relating to the Building System.

Subject to the provisions of the *Utilities Commission Act* (British Columbia), in the event of a Default, the non-Defaulting Party may, at its option and without liability therefor or prejudice to any other right or remedy it may have, terminate this Agreement by written notice to the Defaulting Party. In addition, in the event of a Default by the Owner, Creative Energy may, at its option and without liability or prejudice to any other right or remedy it may have:

(d) suspend its work until the default has been fully remedied, and no such suspension or refusal will relieve the Owner from any of its obligations under this Agreement to the extent such obligations can be performed notwithstanding the suspension of Creative Energy's work; or

(e) perform or cause to be performed any of the covenants or obligations of the Owner and for that purpose may do such things as Creative Energy may consider requisite or necessary and all expenses incurred and expenditures made by or on behalf of Creative Energy in respect of the performance of such covenants or obligations plus a sum equal to 15% of the total costs thereof for overhead and management shall be paid by the Owner to Creative Energy within 30 days of Creative Energy

delivering an invoice therefor to the Owner. Creative Energy shall have no liability to the Owner for loss or damages resulting from such action by Creative Energy and the Owner will indemnify, defend, and save harmless the Creative Energy Group from any and all liabilities, actions, damages, claims, losses, costs, orders, fines, penalties, and expenses (including the full amount of all legal fees and expenses on a solicitor-client basis) which may be paid or incurred by, or asserted against the Creative Energy Group, arising from or in connection with such action by Creative Energy.

14.2 Amounts Owing. Upon termination of this Agreement under Section 13.1 or 14.1, the Parties will forthwith pay to each other all sums due and owing to the date of termination.

14.3 Reimbursement of Creative Energy's Costs. Without limiting the generality of Section 14.2, if this Agreement is terminated by Creative Energy pursuant to Section 14.1, the Owner will, upon request by and receipt of invoices from Creative Energy, reimburse Creative Energy for all of its costs and expenses (including all third party costs and expenses) incurred in connection with the Project Infrastructure Work to the date.

14.4 Abandonment. Upon termination of this Agreement, notwithstanding Section 4.5, Creative Energy may, in its sole discretion, abandon and leave all or part of the Project Infrastructure, provided that the Project Infrastructure to be abandoned is safely decommissioned in accordance with all applicable Laws and does not pose or constitute any environmental hazard, and any abandoned Project Infrastructure will belong to the owners of the lands on which the Project Infrastructure is located.

14.5 Survival. Upon the expiry or termination of this Agreement for any reason, all claims, causes of action or other outstanding obligations remaining or being unfulfilled as of the expiry or termination date and all of the provisions in this Agreement relating to the obligation of either Party to account to or indemnify the other and to pay to the other any amount owing as at the date of expiry or termination in connection with this Agreement will survive such expiry or termination

## 15. FORCE MAJEURE

15.1 Suspension. Subject to the other provisions of this Article 15, if either Party is unable or fails by reason of Force Majeure to perform in whole or in part any of its obligations or

covenants set forth in this Agreement (except an obligation or covenant to pay), such inability or failure will be deemed not to be a breach of such obligation or covenant and the obligations of both Parties under this Agreement will be suspended to the extent necessary during the continuation of any inability or failure so caused by such Force Majeure.

15.2 Definition of Force Majeure. For purposes of this Agreement, "**Force Majeure**" means any event or occurrence not within the control of the Party claiming Force Majeure, and which by the exercise of reasonable diligence such Party is unable to prevent or overcome, including any acts of nature, including lightning, earthquakes, storms, washouts, landslides, avalanches, fires, epidemics and floods; strikes, lockouts or other industrial disturbances; acts of the Queen's or public enemies, sabotage, wars, blockades, insurrections, riots or civil disturbances, fires, explosions, breakages of or accidents to machinery or lines of pipe and any Changes of Law. For the purposes of this Article 15, a party is deemed to have control over the actions or omissions of those Persons to which it, its agents, contractors or employees, have delegated, assigned or subcontracted its obligations and responsibilities.

15.3 Exceptions. Neither party will be entitled to the benefit of Section 15.1 under any of the following circumstances:

(a) to the extent that the inability or failure was caused by the negligence or contributory negligence of the Party claiming Force Majeure;

(b) to the extent that the inability or failure was caused by the Party claiming Force Majeure having failed to diligently attempt to remedy the condition and/or to resume the performance of such covenants and obligations with reasonable dispatch;

(c) if the inability or failure was caused by lack of funds or is for any amount due; or

(d) unless, within a reasonable period after the happening of the occurrence relied upon or as soon as reasonably possible after determining that the occurrence was in the nature of Force Majeure and would affect the claiming Party's ability to observe or perform any of its covenants or obligations under this Agreement, the claiming Party will have given to the other Party notice to the effect that the claiming Party

is unable by reason of Force Majeure (the nature whereof will be therein specified) to perform the particular covenants or obligations.

15.4 Resumption of Obligations. Within a reasonable period after the Force Majeure condition is remedied or discontinued, the Party claiming Force Majeure will give notice to the other Party of such remedy, and that such Party has resumed, or is then in a position to resume, the performance of its suspended covenants and obligations either in whole or in part.

15.5 Settlement of Labour Disputes. Notwithstanding any of the provisions of this Article 15, but subject to Section 15.3, the settlement of labour disputes or industrial disturbances in which a Party is involved is entirely within the discretion of that Party, which Party may make settlement of it at the time and on terms and conditions as it may deem to be advisable and no delay in making settlement will deprive the Party of the benefit of Section 15.1.

15.6 No Exemption for Payments. Force Majeure will not in any event relieve or release either Party from its obligations to make payments to the other Party under this Agreement.

## 16. DISPUTE RESOLUTION

16.1 Informal Dispute Resolution. The Parties will make a bona fide attempt to settle all disputes that may arise under, out of, in connection with or in relation to this Agreement by amicable negotiations and will provide frank and timely disclosure to one another of all relevant facts and information to facilitate negotiations.

16.2 Arbitration. If any dispute remains unresolved within 15 days of either Party requesting that the other Party engage in negotiations to resolve the dispute, or if the Parties otherwise agree, the dispute may be referred to and resolved by arbitration before a single arbitrator and the following shall apply:

(a) In the event the Parties cannot agree on the appointment of an arbitrator within five Business Days, either Party may refer the matter to the British Columbia International Commercial Arbitration Centre, or such mediation or arbitration centre as may be mutually agreed upon. The arbitration will:

(i) to the extent possible, and with the necessary modifications as determined by the arbitrator, be administered in accordance with the Shorter Rules for Domestic Commercial Arbitration or similar rules; and

(ii) be conducted in Vancouver, British Columbia.

(b) Notwithstanding the above, no one will be nominated to act as an arbitrator who is in any way financially interested in the business affairs of either of the Owner or Creative Energy.

(c) The arbitrator will issue a written award that sets forth the essential findings and conclusions on which the award is based.

(d) If the arbitrator fails to render a decision within 30 days following the final hearing of the arbitration, either Party may terminate the arbitration and a new arbitrator will be appointed in accordance with these provisions. If the Parties are unable to agree on an arbitrator or if the appointment of an arbitrator is terminated in the manner provided for above, then any party to this Agreement will be entitled to apply to a judge of the British Columbia Supreme Court to appoint an arbitrator and the arbitrator so appointed will proceed to determine the matter mutatis mutandis in accordance with the provisions of this Section 16.

16.3 Arbitrator's Authority. The arbitrator will have the authority to award:

(a) monetary damages;

(b) interest on unpaid amounts from the date due;

(c) specific performance; and

(d) permanent relief.

The costs and expenses of the arbitration, but not those incurred by the Parties, will be shared equally, unless the arbitrator determines otherwise having regard to the issue and the conduct and *bona fides* of the Parties.

16.4 Continuation of Services. Except as otherwise expressly provided herein, each of the Parties will perform all of its respective obligations under this Agreement notwithstanding the existence of any dispute that arises from time to time between the Parties for any matter related to this Agreement or during the resolution of any dispute in accordance with this

Section 16 except where to do so would threaten public health and safety or the environment.

16.5 Injunctive Relief. Nothing in this Section 16 will preclude either Party from applying to a court of competent jurisdiction for interlocutory or interim relief.

## 17. GENERAL

17.1 Notices. Any notice or other communication required or permitted to be given under this Agreement will be effective only if in writing and when it is actually delivered (which delivery may be by telecopy or other telecommunications device) to the party for whom it is intended at the following address or such other address in British Columbia as such Party may designate to the other Party by notice in writing delivered in accordance with this Section 17.1:

(a) if to Creative Energy:

Creative Energy Vancouver Platforms Inc.
Suite 1 – 720 Beatty Street
Vancouver, BC V6B 2M1

Attention: President

Facsimile: 604.688.9584

Email: info@creativeenergycanada.com

(b) if to the Owner:

♦

Attention: ♦

Facsimile: ♦

Email: ♦

Notwithstanding the foregoing, notices with respect to Force Majeure will be given in writing by facsimile or by email, to the person or persons designated from time to time by the Parties as the person or persons authorized to receive such notices.

17.2 Confidentiality. Each Party (the "**Receiving Party**") will treat as confidential all Confidential Information (as defined below) of the other Party (the "**Disclosing Party**") and will at all times during the term of this Agreement and for a period of two years thereafter hold the same in confidence and will not, without the prior written consent of the Disclosing Party, disclose or divulge to any Person any Confidential Information of the Disclosing Party, provided that nothing in this Section 17.2 will restrict or prevent any Party from making any disclosure of such terms or any Confidential Information:

(a) that is reasonably necessary or desirable for the Receiving Party to carry out and give full effect to the terms, conditions and intent of this Agreement, including but not limited to necessary disclosure to a strata corporation or other parties for the purposes of fulfilment of the obligations under Section 10;

(b) that is required by any Law or Governmental Authority;

(c) to an Affiliate of the Receiving Party or to the directors, officers or employees of such Party or its Affiliates;

(d) to the professional advisors of the Receiving Party;

(e) that the Receiving Party, in its sole discretion determines is required, prudent or necessary to be disclosed by that Party in connection with any prospectus filing, public securities offering or other applicable securities matters or laws; and

(f) that is already in the public domain, that was in the possession of the Receiving Party before its receipt of the information from the Disclosing Party or that was disclosed to the Receiving Party by a third party free of any obligation of confidentiality.

For the purposes of this Section 17.2, "**Confidential Information**" means proprietary information of the Disclosing Party such as data, plans, drawings, manuals, or specifications which have been provided by the Disclosing Party or its employees, contractors, agents, subcontractors or Affiliates to the Receiving Party pursuant to this

Agreement, or proprietary information conceived or developed by or for the Disclosing Party concerning construction practices, operation and maintenance practices, agreements, marketing plans and strategies, profits, costs, pricing and systems of procedure, but excluding information developed or conceived by the Receiving Party without using the Confidential Information of the Disclosing Party.

Notwithstanding the foregoing, the Owner acknowledges and agrees that Creative Energy may from time to time collect and provide to the City data regarding the performance of the NES on a system-wide basis or on the basis of a specified area within the system.

17.3 No Waiver. No waiver by either Party of any default by the other in the performance of any of the provisions of this Agreement will operate or be construed as a waiver of any other or future default or defaults, whether of a like or different character.

17.4 Enurement. This Agreement will enure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

17.5 Entire Agreement. This Agreement contains the whole agreement between the Parties for the subject matter hereof and supersedes any pre-existing written or oral agreement or understanding, express or implied, between the Parties.

17.6 Further Assurances. Each Party will execute and deliver all such further documents and do all such further things as may be reasonably requested by the other Party to give full effect to the intent and meaning of this Agreement.

17.7 Counterparts and Facsimile. This Agreement may be executed in counterparts and by facsimile or other electronic means with the same effect as if the Parties had signed the same original document. All counterparts will be construed together and will constitute one and the same agreement and, if delivered by facsimile or other electronic means, each Party will promptly dispatch an original to the other Party.

17.8 Assignment. The Owner may not assign this Agreement or any of its rights or obligations without the prior written consent of Creative Energy, such consent not to be unreasonably withheld. Creative Energy may, subject to BCUC approval, assign this Agreement or any of its rights or obligations (including, without limitation, by way of the sale of the majority of its shares or business or its material assets or by way of an amalgamation, merger or other corporate reorganization) to any of its Affiliates or to any other Person without the

consent of the Owner, provided such Affiliate or Person is duly qualified to carry out this Agreement and enters into a written agreement with the Owner to be bound by the terms and conditions of this Agreement, in all respects and to the same extent as Creative Energy is bound.

17.9 Relationship. Nothing in this Agreement will create a partnership or joint venture, or a relationship of landlord and tenant between the Owner and Creative Energy.

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

Company Name(Owner) )
)
Per: _____ )
Authorized Signatory )
Name: Name )
Title: ♦ )

**CREATIVE ENERGY VANCOUVER PLATFORMS INC.** )
)

Per: _____ )
Authorized Signatory )
Name: Name )
Title: ♦ )

# SCHEDULE A

## CUSTOMER SERVICE AGREEMENT

## CREATIVE ENERGY VANCOUVER PLATFORMS INC.

## NEIGHBOURHOOD ENERGY SYSTEM

THERMAL ENERGY SERVICE

CIVIC ADDRESS: ♦

LEGALLY DESCRIBED AS:

♦

TERMS & CONDITIONS OF CUSTOMER SERVICE

Effective: _____

These Terms and Conditions are available for public inspection on the website of the British Columbia Utilities Commission and at the office of the British Columbia Utilities Commission in Vancouver, British Columbia.

# NEIGHBOURHOOD ENERGY SYSTEM SERVICE AGREEMENT

| **Customer Information and Billing Address** | | |
|---|---|---|
| **Name or company name** *(include business registration no. if applicable)* | | |
| **Mailing/billing address** | | |
| **If company, contact name** | **Telephone** | **Email** |
| **Property/Service location address (the "Lands")** | | |
| | | |
| Legally described as: | | |

The Customer, by signing this Agreement, accepts and agrees to be bound by the terms and conditions herein contained, including in Sections A, B and C below.

| **CUSTOMER:** | |
|---|---|
| Signature / Date | |
| Name / Title | |

## SECTION A - DEFINITIONS

Unless the context otherwise requires, in these Terms and Conditions the following terms have the following meanings:

**Affiliate**: means, with respect to any Person (i) any entity over which such Person exercises, directly or indirectly, Control, (ii) any entity that is under the common Control of the same entity as such Person, or (iii) any entity which exercises control over such Person by virtue of ownership, financial participation or the rules which govern it.

**BCUC**: British Columbia Utilities Commission.

**Buildings**: means the buildings, structures and improvements on the Lands, and **Building** means any one or more Buildings comprising the residential or commercial component, as applicable, that may be situate on any parcel created upon the subdivision of the Lands and includes a subdivision by air space plan or strata plan, or a Building operated as a separate component of the development on the Lands, and which may be subject to a separate Customer Service Agreement.

**Building System**: means the system of water pipes and heat and domestic hot water delivery and storage equipment to be installed and used for distributing and storing Thermal Energy in a Building, connected to but downstream of and excluding the Energy Transfer Stations.

**Contaminants**: means any radioactive materials, asbestos materials, urea formaldehyde, underground or above ground tanks, pollutants, contaminants, deleterious substances, dangerous substances or goods, hazardous, corrosive, or toxic substances, hazardous waste, waste, pesticides, defoliants, or any other solid, liquid, gas, vapour, odour, heat, sound, vibration, radiation, or combination of any of them, the storage, manufacture, handling, disposal, treatment, generation, use, transport, remediation, or Release into the environment of which is now or hereafter prohibited, controlled, or regulated under Environmental Laws.

**Control:** means a Person receiving Energy Services pursuant to a Customer Service Agreement. means more than fifty per cent (50%) of the securities having ordinary voting power for the election of directors of such Person or to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise.

**Customer**: means a Person receiving Energy Services pursuant to a Customer Service Agreement.

**Customer Service Agreement**: means an agreement between the Utility and a Customer for the provision of Energy Services to a Building or Buildings, which agreement is comprised of a page bearing the information and signature of the Customer and these Terms and Conditions.

**Design Capacity**: means the load for which the Neighbourhood Energy System has been designed.

**Distribution System**: means, collectively, the system of pipes, fittings and ancillary components and equipment within the NES Area distributing Thermal Energy to the Energy Transfer Station.

**Encumbrance**: means any mortgage, lien, charge, pledge, judgement, execution, financial charge, security interest, claim or other financial encumbrance, excluding any financial encumbrance in favour of the City of Vancouver.

**Energy Services**: means the provision by the Utility of Thermal Energy via the Neighbourhood Energy System.

**Energy Transfer Station**: means the separate heat exchanger for heating and domestic hot water (excluding domestic hot water storage tanks), energy meter including temperature sensors and flow meter, control panel and all pipes, fittings and other associated equipment that control the transfer, and measure Thermal Energy from the Distribution System to a Building System.

**Environment**: includes the air (including all layers of the atmosphere), land (including soil, sediment deposited on land, fill, lands submerged under water, buildings, and improvements), water (including oceans, lakes, rivers, streams, groundwater, and surface water), and all other external conditions and influences under which humans, animals, and plants live or are developed and "**Environmental**" has a corresponding meaning.

**Environmental Laws**: means any and all applicable statutes, laws, regulations, orders, bylaws, standards, guidelines, protocols, permits, and other lawful requirements of any Governmental Authority now or hereafter in force relating to or for the Environment or its protection, environmental assessment, health, occupational health and safety, protection of any form of plant or animal life, or transportation of dangerous goods, including the principles of common law and equity.

**Governmental Authority**: means any federal, provincial, regional, municipal, local or other government, governmental or public department, court, tribunal, arbitral body, commission, board, bureau or agency and any subdivision, agent, commission, board or authority.

**Lands:** means those lands and premises situate in Vancouver, British Columbia, and as more particularly described on the signature page forming part of this Customer Service Agreement.

**Meter:** means an energy consumption meter owned and operated by the Utility and comprising part of an Energy Transfer Station, excluding any energy consumption meter owned by a Customer or a Person other than the Utility comprising part of a Building System.

**NES Area**: means, collectively, the areas within the City of Vancouver known as Northeast False Creek, within which the Lands are situate.

**Neighbourhood Energy System**: means the energy system by which the Utility delivers Thermal Energy to Customers, including the Distribution System and the Energy Transfer Stations.

**Person**: means an individual or his or her legal personal representative, an unincorporated organization or association, or a corporation, partnership, limited partnership, trust, trustee, strata corporation, syndicate, joint venture, limited liability company, union, Governmental Authority or other entity or organization.

**Release**: means any release, spill, leak, pumping, pouring, emission, emptying or discharge, injection, escape, leaching, migration, disposal, or dumping.

**Standard Fees and Charges**: means the standard fees and charges which may be charged to the Customer by the Utility and set out in the Tariff.

**Tariff**: means Tariff No. ♦, which sets out the rates for Energy Services and certain related terms and conditions, as amended from time to time by the Utility with the approval of, and as filed with, the BCUC.

**Terms and Conditions**: means these Thermal Energy Service Terms & Conditions, including Sections A, B and C herein, all as amended from time to time by the Utility with the approval of, and as filed with, the BCUC to the extent required by the BCUC.

**Thermal Energy**: means all thermal energy for heating purposes, which includes domestic hot water.

**Utility**: means Creative Energy Vancouver Platforms Inc. carrying on the business of a public utility.

**Utility's Representatives**: means any Person who is an officer, director, employee, agent, contractor, subcontractor, consultant or advisor of either the Utility or any Affiliate of the Utility.

## SECTION B – NATURE OF AGREEMENT

### 1. The Lands

1.1 If a Customer wishes to subdivide the Lands, including by way of air space or strata plan or both, such Customer shall provide prior notice of such subdivision to the Utility, together with subdivision plans for the Lands and such further information as the Utility may require, and the Customer will execute and deliver, or will cause the applicable Person to complete, execute and deliver, to the Utility at its option forthwith following such subdivision, a Customer Service Agreement in respect of any one or more of the following:

(a) any Building;

(b) any legal parcel, including without limitation an air space parcel or a remainder parcel, that is subdivided from the Lands or any portion thereof; and

(c) a strata corporation that is formed within any Building by way of the deposit of a strata plan, and in each such case the applicable Customer Service Agreement shall be executed and delivered to the Utility by the strata corporation prior to the first conveyance of a strata lot within the applicable strata plan.

1.2 A Customer will cause any Person to whom the Customer transfers or otherwise disposes, whether directly or indirectly, all or any portion of its interest in the Lands to complete, execute and deliver to the Utility a Customer Service Agreement covering the applicable portion of the Lands.

### 2. Provision of Energy Services

2.1 The Utility will provide Energy Services to Customers solely in accordance with these Terms and Conditions.

2.2 A Customer may be required to provide reference information and identification acceptable to the Utility.

2.3 The Utility may refuse to provide Energy Services to a Customer if there is an unpaid account for Energy Services in respect of such Customer or the relevant Building(s).

2.4 This Customer Service Agreement relates only to the provision of the Energy Services by the Utility to the Customer, upon the terms and conditions contained herein. The Utility shall not be responsible for the provision of any utility services other than the Energy

Services, such as electricity and natural gas, and the Customer shall be solely responsible for any fees and charges associated with such utility services, in addition to the fees and charges payable to the Utility hereunder.

## 3. Applicable Rates

3.1 The rates to be charged by, and paid to, the Utility for Energy Services are set out in the Tariff from time to time in effect, which may be reviewed on the website of the BCUC or at the office of the BCUC in Vancouver, British Columbia.

3.2 The rates have been determined on the basis of the estimated connected loads and Design Capacity which are in turn based on the intended design and use of the Buildings. A Customer must not significantly change its connected load without the prior written approval of the Utility.

3.3 The Utility may conduct periodic reviews of the quantity of Thermal Energy delivered and the rate of delivery of Thermal Energy to a Customer for the purpose of, among other things, determining whether to substitute a more applicable Tariff.

3.4 If the maximum Thermal Energy demand exceeds the Design Capacity, the Utility may, subject to BCUC approval, assess additional fees and charges to the Customer for usage exceeding such limits as approved by the BCUC, provided that if usage exceeds such limits, the Utility reserves the right to temporarily suspend or limit the Energy Services to reduce the load on the Neighbourhood Energy System.

## 4. Ownership and Care of Neighbourhood Energy System

4.1 Notwithstanding any degree of annexation or affixation, or rule of law or equity to the contrary, the Utility owns all components of the Neighbourhood Energy System and all additions or extensions thereto will be and remain the property of and vest in the Utility, whether located inside or outside of any Building. No component of the Neighbourhood Energy System shall be moved or removed from a Customer's lands (whether located inside or outside of any Building) without the advance written permission of the Utility.

4.2 The Customer will take reasonable care of and protect all components of the Neighbourhood Energy System in, on or under the Customer's lands (whether located inside or outside of any Building) against damage and must advise the Utility promptly of any damage to or disappearance of the whole or part of any such component. Further, the Customer will pay to the Utility promptly upon request the cost of any broken, missing or damaged component of the Neighbourhood Energy System (or part thereof), except to the

extent that the Customer demonstrates that such component (or part thereof) was broken, missing or damaged due to a defect therein or to any act or omission of the Utility or any of the Utility's Representatives.

## 5. Meter Reading

5.1 The amount of Thermal Energy registered by a Meter during each billing period will be converted to megawatt-hour.

5.2 The interval between consecutive Meter readings will be at the sole discretion of the Utility. The Meter will typically be read at monthly intervals.

## 6. Meter Testing

6.1 Any Customer who doubts the accuracy of a Meter may request to have the Meter tested by an independent qualified third party.

6.2 If the testing indicates that the Meter is recording accurately, the Customer must pay the Utility for the cost of removing, replacing and testing the Meter as set out in the Standard Fees and Charges and the reconnection charge as set out in Section 10.

6.3 If the testing indicates that the Meter is recording inaccurately, the Utility will incur the cost of removing, replacing and testing the Meter.

## 7. Maintenance

7.1 The Utility will repair, maintain and replace all components of the Neighbourhood Energy System in, on or under the Customer's lands (whether located inside or outside of the Buildings or any of them), from time to time at its own cost to keep the same in good working order. For greater certainty, except for the Utility's obligation to repair, maintain and replace such components of the Neighbourhood Energy System as aforesaid, the Utility is not, and will not be, responsible for repairing, maintaining or replacing any Building System or part thereof or other facility or equipment in, on or under a Customer's lands (whether located inside or outside of the Buildings or any of them.

7.2 The Customer shall not make any alterations to any Building System which may impact the provision of the Energy Services by the Utility without the prior written approval of the Utility.

7.3 The Customer will promptly repair, maintain and replace the Building Systems from time to time at its own cost to keep the same in good working order.

## 8. Connections and Disconnections

8.1 No connection, disconnection, reconnection, extension, installation, replacement or any other change is to be made to any component of the Neighbourhood Energy System by anyone except by the Utility's Representatives authorized by the Utility.

## 9. Energy Services Reconnections

9.1 If:

(a) Energy Services are discontinued to a Customer for any of the reasons specified in Section 15 or any other provision of this Customer Service Agreement.

(b) a Building System is disconnected from the Neighbourhood Energy System or Energy Services are discontinued to a Customer:

(i) at the request of the Customer with the approval of the Utility; or

(ii) to permit a test of a Meter at the request of the Customer, which Meter is subsequently determined to be accurate;

and such Customer or the employee, agent or other representative of such Customer re-applies for Energy Services for the same Building within 12 months of such discontinuance or disconnection (as applicable), then if the Building's Building System is reconnected to the Neighbourhood Energy System or if Energy Services are restored to such Customer, such Customer will pay, as part of fees owing for the first month of Energy Services, a reconnection charge equal to the sum of:

(c) the actual costs that the Utility will incur in reconnecting the Building's Building System to the Neighbourhood Energy System or restoring Energy Services to such Customer; and

(d) the Basic Charge (as set out in the Tariff) that such Customer would have paid had Energy Services continued during the period between the date of discontinuance or disconnection (as applicable) and the date of such re- application.

9.2 If a Building System is disconnected from the Neighbourhood Energy System or Energy Services are discontinued to a Customer for public safety or Utility service requirement

reasons, there will be no reconnection charge to reconnect the Building's Building System to the Neighbourhood Energy System or to restore Energy Services to such Customer.

## 10. Billing

10.1 Bills will be rendered to the Customer in accordance with the Customer's Customer Service Agreement, including the Tariff.

10.2 Subject to Section 11.4 below, if Meter readings cannot be obtained for any reason, consumption may be estimated by the Utility for billing purposes and the next bill that is based on actual Meter readings will be adjusted for the difference between estimated and actual use over the interval between Meter readings.

10.3 If any Meter fails to register or registers incorrectly, the consumption may be estimated by the Utility for billing purposes, subject to Section 12.

10.4 If the Customer terminates a Customer Service Agreement, the final bill rendered to the Customer will be based on an actual Meter reading.

10.5 Bills will be rendered as often as deemed necessary by the Utility, but generally on a monthly basis. The due date for payment of bills shown on the face of the bill will be the first business day after:

(a) the 21st calendar day following the billing date; or

(b) such other period as may be specified in the Application for Service or otherwise agreed in writing by the Customer and the Utility.

10.6 Bills will be paid in the manner specified therein, which may include payment by regular mail, payment at a designated office of the Utility and/or payment by on-line banking or electronic funds transfer.

10.7 Customers requesting historic billing information may be charged the cost of processing and providing this information.

## 11. Back-billing

11.1 Minor adjustments to a Customer's bill, such as an estimated bill or an equal payment plan billing, do not require back-billing treatment.

11.2 Back-billing means the re-billing by the Utility for Energy Services rendered to a Customer because the original billings were discovered to be either too high (over-billed) or too low (under-billed). The discovery may be made by either the Customer or the Utility. The

cause of the billing error may include any of the following non-exhaustive reasons or combination thereof:

(a) stopped Meter;

(b) metering equipment failure;

(c) inaccurate Meter, as determined pursuant to Section 7;

(d) switched Meters;

(e) double metering;

(f) incorrect Meter connections;

(g) incorrect use of any prescribed apparatus respecting the registration of a Meter;

(h) incorrect Meter multiplier;

(i) the application of an incorrect rate;

(j) incorrect reading of Meters or data processing; or

(k) tampering, fraud, theft or any other criminal act.

11.3 Where the Customer requests that the Meter be tested, the provisions of Section 7 will apply in addition to those set forth in this Section.

11.4 Where metering or billing errors occur and the Customer does not request that the Meter be tested, the consumption and demand will be based on the records of the Utility for the Customer or on the Customer's own records to the extent they are available and accurate or, if not available, on reasonable and fair estimates made by the Utility. Such estimates will be on a consistent basis within each Customer class or according to a contract with the Customer, if applicable.

11.5 In every case of under-billing or over-billing, the cause of the error will be remedied without delay, and the Customer will be promptly notified of the error and of the effect on the Customer's ongoing bill.

11.6 In every case of over-billing, the Utility will refund to the Customer money incorrectly collected, with interest computed at the short-term bank loan rate applicable to the Utility on a monthly basis thereon, for the shorter of:

(a) the duration of the error; or

(b) six months prior to the discovery of the error.

11.7 Subject to paragraph 12.11 below, in every case of under-billing, the Utility will back-bill the Customer for the shorter of:

(a) the duration of the error; or

(b) six months prior to the discovery of the error.

11.8 Subject to paragraph 12.11 below, in every case of under-billing, the Utility will offer the Customer reasonable terms of repayment. If requested by the Customer, the repayment term will be equivalent in length to the back-billing period. The repayment will be interest free and in equal instalments corresponding to the normal billing cycle. Delinquency in payment of such instalments will be subject to the usual late payment charges.

11.9 Subject to paragraph 12.11 below, if a Customer disputes a portion of a back-billing due to under-billing based upon either consumption, demand or duration of the error, the Utility will not threaten or cause the discontinuance of Energy Services for the Customer's failure to pay that portion of the back- billing, unless there is no reasonable ground for the Customer to dispute that portion of the back- billing. The undisputed portion of the bill will be paid by the Customer and the Utility may threaten or cause the discontinuance of Energy Services if such undisputed portion of the bill is not paid.

11.10 Subject to paragraph 12.11 below, in all instances of back-billing where changes of occupancy have occurred, the Utility will make a reasonable attempt to locate the former Customer. If, after a period of one year, such Customer cannot be located, the over-billing or under-billing applicable to them will be cancelled.

11.11 Notwithstanding anything herein to the contrary, if there are reasonable grounds to believe that the Customer has tampered with or otherwise used the Thermal Energy or any component of the Neighbourhood Energy System in an unauthorized way, or there is evidence of fraud, theft or another criminal act, back-billing will be applied for the duration of the unauthorized use, and the provisions of paragraphs 12.7, 12.8, 12.9 and 12.10 above will not apply.

11.12 Under-billing resulting from circumstances described in paragraph 12.11 will bear interest at the rate specified in the Tariff on unpaid accounts from the date of the original under-billed invoice until the amount under-billed is paid in full.

11.13 In addition, the Customer is liable for the direct administrative costs incurred by the Utility in the investigation of any incident of tampering, including the direct costs of repair, or replacement of equipment.

## 12. Late Payment Charge And Collection Charge

12.1 If the amount due on any bill has not been paid in full on or before the due date shown on such bill, a further bill will be rendered to include the overdue amount plus a late payment charge as set out in the Standard Fees and Charges. Notwithstanding the due date shown, to allow time for payments made to reach the Utility and to co-ordinate the billing of late payment charges with scheduled billing cycles, the Utility may, in its discretion, waive late payment charges on payments not processed until a number of days after the due date. If the Customer's account is overdue and requires additional effort to collect, the Utility may charge the Customer a collection charge as set out in the Standard Fees and Charges.

## 13. Dishonoured Payments Charge

13.1 If a cheque received by the Utility from a Customer in payment of any account is returned by the Customer's bank, trust company or financial institution because of insufficient funds (NSF), or any reason other than clerical error, a returned cheque charge as set out in the Standard Fees and Charges will be added to the amount due and payable by the Customer whether or not the applicable Building System has been disconnected from the Neighbourhood Energy System or Energy Services have been discontinued to the Customer.

## 14. Refusal to Provide Energy Services and Discontinuance of Energy Services

14.1 The Utility may, after having given 48 hours prior written notice, discontinue providing Energy Services to any Customer, who:

(a) fails to fully pay for any Energy Services provided to any Building(s) on or before the due date for such payment; or

(b) fails to provide or pay by the applicable date required any security deposit, equivalent form of security or guarantee or any requisite increase thereof.

14.2 The Utility may, without having to give any notice, discontinue providing Energy Services to any Customer, who:

(a) refuses to provide reference information and identification acceptable to the Utility when applying for Energy Services or at any subsequent time on request by the Utility;

(b) breaches any material terms and conditions of the applicable Customer Service Agreement (including, without limitation, these Terms and Conditions);

(c) has defective pipes, appliances, or Thermal Energy fittings in any part or parts of Building(s) which may adversely impact the provision of the Energy Services by the Utility;

(d) uses the provided Thermal Energy in a manner that may, in the opinion of the Utility:

(i) lead to a dangerous situation; or

(ii) have a negative impact on the Neighbourhood Energy System, or any components thereof;

(e) fails to make modifications or additions to the Customer's equipment as required by the Utility to prevent the danger or negative impact described in paragraph (d) above;

(f) negligently or fraudulently misrepresents to the Utility its use of Thermal Energy or the Thermal Energy load requirements of, or Thermal Energy volume consumed within and by, any Building;

(g) makes any alterations to any Building System which may impact the provision of the Energy Services by the Utility without the prior written approval of the Utility;

(h) terminates the applicable Customer Service Agreement pursuant to Section 19 or causes the termination of the applicable Customer Service Agreement for any reason; or

14.3 The Utility may, without having to give notice, discontinue proving Energy Service to any Customer, who stops consuming Thermal Energy in any of the buildings, for a time period determined by Creative Energy, acting reasonable, and no soon than six months, unless agreed by the Customer.

14.4 The Utility will not be liable for any loss, injury or damage suffered by any Customer by reason of the discontinuation of or refusal to provide Energy Services as set out in this Section.

## 15. Security for Payment of Bills

15.1 Customer who has not established or maintained credit to the satisfaction of the Utility may be required to provide a security deposit or equivalent form of security, the amount of which may not exceed the estimated total bill for the two highest consecutive months' consumption of Thermal Energy by the Customer.

15.2 A security deposit or equivalent form of security is not an advance payment.

15.3 The Utility will pay interest on a security deposit at the rate and at the times specified in the Standard Fees and Charges. If a security deposit is returned to a Customer for any reason, the Utility will credit any accrued interest to the Customer's account at that time. No interest is payable on any unclaimed deposit left with the Utility after the account for which it is security is closed, or on a deposit held by the Utility in a form other than cash.

15.4 A security deposit (plus any accrued interest) will be returned to the Customer after one year of good payment history, or when the Customer's Customer Service Agreement is terminated pursuant to Section 19, whichever occurs first.

15.5 If a Customer's bill is not paid when due, the Utility may apply all or any part of the Customer's security deposit or equivalent form of security and any accrued interest towards payment of the bill. Under these circumstances, the Utility may still elect to discontinue Energy Services to the Customer for failure to pay for Energy Services.

15.6 If a Customer's security deposit or equivalent form of security is appropriated by the Utility for payment of an unpaid bill, the Customer must re-establish the security deposit or equivalent form of security before the Utility will reconnect or continue Energy Services to the Customer.

## 16. Account Charge

16.1 When a change of Customer occurs, an account charge, as set out in the Standard Fees and Charges, will be paid by the new Customer with respect to each account in that Customer's name for which a separate bill is rendered by the Utility.

## 17. Term of Customer Service Agreement

17.1 The initial term of a Customer Service Agreement will be 30 years from the commencement of the Energy Services and will thereafter automatically be renewed from year to year unless the Customer Service Agreement is terminated pursuant to Section 19 below.

## 18. Termination of Customer Service Agreement

18.1 A Customer may, following the initial term specified in Section 18, terminate the applicable Customer Service Agreement by giving at least 60 days written notice to the Utility at the address specified in the most recent bill rendered to the Customer.

## 19. Effect of Termination

19.1 The Customer is not released from any previously existing obligations to the Utility by terminating the Customer Service Agreement.

19.2 If this Customer Service Agreement is terminated for any reason other than termination for default of the Utility, in addition to any other amounts due and owing by the Customer to the Utility and despite any other remedies available at law or in equity, the Customer shall pay to the Utility, within 60 days of invoicing, such amount as the Utility determines is necessary to ensure other Customers are not adversely impacted by such termination.

19.3 Notwithstanding any termination by the Customer pursuant to this Section, and without derogating from the generality of Section 5, all components of the Neighbourhood Energy System will remain the property of and vest in the Utility.

## 20. Liability

20.1 Neither the Utility, nor any of the Utility's Representatives is responsible or liable for any loss, injury (including death), damage or expense incurred by any Customer or any Person claiming by or through a Customer, that is caused by or results from, directly or indirectly, any discontinuance, suspension, or interruption of, or failure or defect in the supply, delivery or transportation of, or any refusal to supply, deliver, or transport Thermal Energy, or provide Energy Services, unless the loss, injury (including death), damage or expense is directly and solely attributable to the gross negligence or wilful misconduct of the Utility or any of the Utility's Representatives, provided however that neither the Utility nor any of the Utility's Representatives is responsible for any loss of profit, loss of revenue or other economic loss, even if the loss is directly attributable to the gross negligence or wilful misconduct of the Utility or any of the Utility's Representatives.

20.2 Energy Services may be temporarily suspended to make repairs or improvements to the Neighbourhood Energy System or in the event of fire, flood or other sudden emergency. The Utility will, whenever reasonably practicable, give notice of such suspension to the Customer and will restore Energy Services as soon as possible. Telephone, newspaper, flyer, radio or other acceptable announcement method may be used for notice purposes.

20.3 The Customer shall bear and retain the risk of, and hereby indemnifies and holds harmless the Utility and all of the Utility's Representatives from, all loss and damage to all components of the Neighbourhood Energy System in, on or under the Customer's lands (whether located inside or outside of Building(s)) except to the extent any loss or damage is attributable to the negligence or wilful misconduct of the Utility or any of the Utility's Representatives, or is caused by or results from a defect in the Neighbourhood Energy System or such components of the Neighbourhood Energy System.

20.4 The Customer agrees to indemnify and hold harmless the Utility and all of the Utility's Representatives from all claims, losses, damages, liabilities, costs, expenses and injury (including death) suffered by the Customer or any person claiming by or through the Customer or any third party and caused by or resulting from the use of Thermal Energy by the Customer or the presence of Thermal Energy on or in any part of the Building(s) or from the Customer or the Customer's employees, contractors or agents damaging any component of the Neighbourhood Energy System. This paragraph will survive any termination of the Customer Service Agreement.

20.5 The Customer acknowledges and agrees that the Utility will not in any way be responsible for any aspect of the design, engineering, permitting, construction or installation of any Building System.

20.6 The Customer will release, indemnify and hold harmless the Utility and all of the Utility's Representatives from any and all liabilities, actions, damages, claims (including remediation cost recovery claims), losses, costs, orders, fines, penalties and expenses whatsoever (including all consulting and legal fees and expenses on a solicitor-client basis) and the costs of removal, treatment, storage and disposal of Contaminants and remediation of the Customer's lands and any affected adjacent property which may be paid by, incurred by or asserted against the Utility or any of the Utility's Representatives arising from or in connection with the presence of Contaminants on, in or under the Customer's lands or any Release or alleged Release of any Contaminants at or from the Customer's lands related to or as a result of the presence of any pre-existing Contaminants at, on, under or in the Customer's lands, including without limitation surface and ground water at the date of the

Customer Service Agreement or as a result at any time of the operations of the Customer or any act or omission of the Customer or its tenants or other occupants or any person for whom it is in law responsible.

20.7 The Customer will obtain and maintain at its own expense appropriate insurance coverage (including property and liability) throughout the term of the Customer Service Agreement and will provide the Utility with evidence of same upon request.

## 21. Access to Buildings and Equipment

21.1 The Utility's Representatives will have, at all reasonable times, free access to all components of the Neighbourhood Energy System in, on or under the Customer's lands (whether located inside or outside of Building(s)) to ascertain the quantity or method of use of Energy Services, as well as for the purpose of reading, testing, repairing or removing the whole or any such component (or part thereof), turning Thermal Energy on or off, conducting system leakage surveys, stopping leaks, and examining pipes, fittings, connections and appliances.

21.2 In furtherance of the above, the Customer hereby grants and covenants to secure for the Utility and its subcontractors, agents, employees and representatives, by licenses, statutory rights of way, easements, leases or other agreements, and for nominal consideration, non-exclusive access to, on, over and under the Customer's lands for the purposes of performing its obligations under the Customer Service Agreement, and if applicable for the connection of the Neighbourhood Energy System to other customers of the Utility as may be approved by the BCUC where required. Without limiting the generality of the foregoing, the Customer will, forthwith upon the Utility's request, grant or cause to be granted to the Utility and duly register in the relevant Land Title Office a statutory right of way in the Utility's standard form in respect of each lot comprising a part of the Customer's lands or the Customer's leasehold interest therein, as applicable, and otherwise as required to allow the Utility to perform its obligations. For greater certainty, the access granted pursuant to this Section will be adequate, in the sole discretion and determination of the Utility, to allow the Utility to efficiently and effectively carry out its obligations without undue disturbance or interference from the Customer or any of its contractors, agents, employees or representatives.

21.3 The Customer acknowledges and agrees that each statutory right of way, lease or other registrable interest granted pursuant to this Section may be registered by the Utility in the relevant Land Title Office, together with any priority agreements as the Utility may deem

necessary or advisable. The Customer will at the request of the Utility ensure that each statutory right of way granted pursuant to this Section will have priority over any Encumbrance registered against the title to the Lands, the applicable subdivided parcel thereof or the Customer's leasehold interest therein, as applicable.

21.4 To the extent there is a statutory right of way in favour of the Utility registered against the Customer's lands or leasehold interest, the Customer hereby covenants and agrees to be bound by, and to comply with, such registered statutory right of way.

## 22. Curtailment of Energy Services

22.1 If there is a breakdown or failure of any component of the Neighbourhood Energy System, or at any time to comply with the requirements of any law, the Utility will have the right to require any Customer or class or classes of Customers or all its Customers, until notice of termination of the requirement is given, or between specified hours, to discontinue use of Thermal Energy for any purpose or purposes or to reduce in any specified degree or quantity such Customer(s)' consumption of Thermal Energy for any purpose or purposes.

22.2 Any such requirement may be communicated to any Customer or Customers or to all Customers by either or both of public notices in the press and announcements over the radio, and may be communicated to any individual Customer by either or both of notice in writing (via e-mail, regular mail or personal delivery, or left at the relevant Building) and oral communication (including by telephone). Any notice of the termination of any such requirement may be communicated similarly.

22.3 If in the opinion of the Utility any Customer has failed to comply with any requirement of the Utility communicated in accordance with this Section, the Utility will be at liberty, after notice to the Customer is communicated in accordance with this Section, to discontinue Energy Service to such Customer.

22.4 The Utility will not be liable for any loss, injury, damage or expense occasioned to or suffered by any Customer for or by reason of any discontinuance of Energy Services as contemplated by this Section.

## 23. Disturbing Use

23.1 The Customer will take and use the Thermal Energy supplied by the Utility so as not to endanger or negatively impact the Neighbourhood Energy System.

23.2 The Utility may require the Customer, at the Customer's expense, to provide equipment which will reasonably limit such fluctuations or disturbances and may refuse to supply Thermal Energy or suspend the supply thereof until such equipment is provided.

## 24. Taxes

24.1 The rates and charges set out in these Terms and Conditions do not include social services tax, goods and services tax, harmonized sales tax or any other tax that the Utility may be lawfully authorized or required to add to its normal rates and charges.

## 25. Special Contracts and Supplements

25.1 In unusual circumstances, special contracts and supplements to these Terms and Conditions may be negotiated between the Utility and the Customer and submitted for approval by the BCUC where a minimum rate or revenue stream is required by the Utility to ensure that the provision of Energy Services to the Customer is economic.

## 26. Conflicting Terms and Conditions

26.1 Whenever anything in these Terms and Conditions is in conflict with any special terms or conditions provided in the Tariff, the terms or conditions provided in the Tariff will prevail and whenever anything in these Terms and Conditions or in the Tariff is in conflict with the terms of any special contract the terms of such special contract will prevail.

## 27. Authority of Agents of the Utility

27.1 None of the Utility's Representatives has authority to make any promise, agreement or representation not incorporated in a Customer Service Agreement, and any such unauthorized promise, agreement or representation is not binding on the Utility.

## 28. Utility Contact Information

28.1 Section E attached to and forming part of these Terms and Conditions sets out the contact information and hours of operation for the Utility in the event of an emergency or in the event the Customer has any inquiries with respect to the Energy Services or the fees and charges payable by the Customer to the Utility hereunder or in the event of any disputes.

## 29. Collection and Use of Data

The Customer acknowledges and agrees that the Utility may from time to time collect and provide to the City of Vancouver data regarding the performance of the Neighbourhood Energy System on a system-wide basis or on the basis of a specified area within the system.

Northeast False Creek

Customer Service Agreement

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## SECTION C - UTILITY CONTACT INFORMATION

**In the case of an Emergency (at any time):**

Telephone: 604-688-9584

**For all general inquiries:**

Telephone: 604-688-9584
Fax: 604-688-2213
Email: info@creativeenergycanada.com

Hours of Operation: Monday – Friday 9 a.m. to 5 p.m. (closed on statutory holidays)

# SCHEDULE B

# DESIGN GUIDE FOR COMPATIBILITY WITH NES

# SCHEDULE C

# FORM OF BUILDING SYSTEM APPLICATION

## SCHEDULE D

## FORM OF STATUTORY RIGHT OF WAY

BETWEEN:

♦

(the "**Grantor**")

AND:

**CREATIVE ENERGY VANCOUVER PLATFORMS INC.**, (Inc. No. BC0410371)

Suite 1 – 720 Beatty Street, Vancouver, BC V6B 2M1

(the "**Grantee**")

WHEREAS:

A. The Grantor is the registered owner in fee simple of the Lands on which a development is or will be constructed.

B. The Grantee owns and operates or will own and operate the Infrastructure in respect of, *inter alia*, the Lands.

C. The right of way granted and covenant under this Agreement are necessary for the operation and maintenance of the Infrastructure and the provision of Energy Services in respect of, *inter alia*, the Lands.

THEREFORE in consideration of the premises, the terms and conditions herein contained, ONE DOLLAR ($1.00) now paid by the Grantee to the Grantor and other good and valuable consideration, the receipt and sufficiency whereof are hereby acknowledged by the Grantor, the parties agree as follows:

1. Definitions. In this Agreement:

(a) "**Building**" means each permanent residential, commercial or other structure or building on or to be constructed on the Lands.

(b) "**Building System"** means the complete heating and ventilating (which may include air conditioning) system and domestic hot water system and storage equipment to be installed and used for distributing and storing Thermal Energy in a Building, connected to but downstream of and excluding the Energy Transfer Station for that Building.

(c) "**Business Day**" means any day that is not a Saturday, Sunday, a statutory holiday in British Columbia, Easter Monday or Boxing Day.

(d) "**Consultant**" means a duly qualified and licensed engineer or other professional having expertise in respect of the Works referred to in the applicable Works Plans.

(e) "**Customer Service Agreement**" means any agreement pursuant to which the Grantee provides Energy Services to the Building, as such agreement may be amended or restated from time to time.

(f) "**Distribution System**" means, collectively, the system of pipes, fittings and ancillary components and equipment distributing Thermal Energy to the Energy Transfer Station.

(g) "**Energy Services**" means the provision of Thermal Energy to the Building via the Infrastructure.

(h) "**Energy Transfer Station**" means, collectively, the system of one or more heat exchangers for space heating and domestic hot water (excluding domestic hot water storage tanks), energy meter equipment (including temperature sensors and flow meter), control panel and all pipes, fittings and ancillary equipment and facilities on the Lands necessary to measure and control the transfer of Thermal Energy from the Distribution System to the Building System;

(i) "**Infrastructure**" means the Grantee's utility infrastructure located on the Lands consisting of the Distribution System, Energy Transfer Stations, connections to alternate energy source(s), and all additions thereto and replacements thereof, which utility infrastructure is used or intended to be used for the delivery of Thermal Energy to the Buildings and buildings on properties other than the Lands.

(j) "**Infrastructure Area**" means that portion of the Lands containing the Infrastructure;

(k) "**Interfere**" means, except as otherwise provided in this Agreement, interfere with, impede, disturb or adversely affect except in a non-material and temporary way and "Interference" has a corresponding meaning.

(l) "**Interfering Works**" means any Works which require the exclusive use of any Building elevators or interruption of any Building services or utilities, or which are in any way likely to interfere with, impede, disturb or adversely affect the construction or operation of the Building or which are in any way likely to impede access to or egress from the Building or the movement within the Building by the owners, tenants or other occupants of the Building or any part thereof or any of their respective invitees.

(m) "**Lands**" means those lands and premises defined in Item 2 of the Form C Instrument General Part 1 of which this Agreement forms part.

(n) "**person**" means an individual, corporation, body corporate, partnership, limited partnership, joint venture, association, society or unincorporated organization, strata corporation or any trustee, executor, administrator or other legal representative.

(o) "**Plan**" has the meaning given to it in Section 30.

(p) "**Representatives**" means, with respect to either party, any officer, director, employee, agent, contractor, subcontractor, consultant, or advisor of such party or any person for whom the such party is responsible at law.

(q) "***Strata Property Act***" means the *Strata Property Act* (British Columbia) from time to time in force and all amendments thereto or other similar legislation which may hereafter be enacted in its place.

(r) "**Term**" has the meaning given to it in Section 33.

(s) "**Thermal Energy**" means all thermal energy for heating purposes, which includes domestic hot water.

(t) "**Works**" means any installation, inspection, maintenance, operation, repair, construction, replacement, removal of the Infrastructure or any other acts of the Grantee required for it to exercise any of its rights under this Agreement;

(u) **"Works Plans**" means the plans and specifications for the Works intended to be undertaken as identified therein as prepared by a Consultant, which Works Plans will include:

(i) a schedule for undertaking and completing the Works;

(ii) plans setting out the locations of the Works;

(iii) particulars of anticipated power or other building service or utility interruptions necessitated by the Works; and

(iv) particulars of any restrictions on access to or from or movement within the Building necessitated by the Works.

2. Benefit to the Lands. The Grantor hereby acknowledges and agrees the Infrastructure and the Energy Services provided by the Grantee in respect of the Lands constitutes an amenity in relation to the Lands within the meaning of Section 219 of the *Land Title Act* (British Columbia).

3. Statutory Right of Way re: Infrastructure. Pursuant to Section 218 of the *Land Title Act* and subject always to the terms of this Agreement, the Grantor hereby grants to the Grantee for the Term, a statutory right of way over that portion of the Lands which from time to time contains the Infrastructure or any portion thereof, for the Grantee and the Grantee's Representatives to enter onto the Lands at any time and from time to time to:

(a) excavate for, construct, install, inspect, maintain, operate, repair, replace and remove the Infrastructure or any portion thereof on, under and over the Lands and in the Buildings;

(b) clear the Lands of any obstructions, including, without limitation, trees or other vegetation, pavements, non-structural improvements or obstructions, which Interfere with any of the rights granted to the Grantee herein;

(c) install marking posts to mark the location of the Infrastructure or any portion thereof;

(d) take such steps as the Grantee deems necessary, to protect and secure the Infrastructure on the Lands;

(e) bring onto the Lands all machinery, vehicles, materials and equipment it reasonably requires for any of the foregoing purposes;

(f) generally do all acts necessary or incidental to the foregoing or to the business of operating, maintaining and repairing the Infrastructure on the Lands;

(g) excavate for, construct, install, inspect, maintain, operate, repair, replace and remove the system of water pipes and all ancillary equipment, appliances and fittings as are necessary to connect any Building System to the Infrastructure for the provision of Energy Services to any Building from the Infrastructure;

(h) retrofit and modify the Infrastructure and any Building System for the purpose of connecting any Building to the Infrastructure;

(i) connect any Building System to the Infrastructure; and

(j) exercise any of the Grantee's other rights set out in this Agreement.

4. Statutory Right of Way re: Access. Pursuant to Section 218 of the *Land Title Act* and subject always to the terms of this Agreement, the Grantor hereby grants to the Grantee for the Term, a statutory right of way over the Lands as reasonably required by the Grantee and its Representatives for the purpose of access to and egress from that portion of the Lands which from time to time contains the Infrastructure.

5. Grantee to Act Reasonably. The Grantee agrees to do the work that it is entitled to do under this Agreement in a good and workmanlike manner, to act reasonably when exercising its rights pursuant to sections 3 and 4 herein, and to minimize as much as reasonably possible any disruption or disturbance to the Grantor or its consultants, contractors and subcontractors, the Building, or the tenants, occupants and licensees of the Building in connection with the exercise by the Grantee and the Grantee's Representatives of such rights, and, subject to Section 9, to promptly clean up and restore the Lands and the Building after having exercised any such rights, to the condition the Lands and the Building were in prior to the exercise of any such rights.

6. Covenants Regarding the Infrastructure and the Works.

   (a) The Grantee hereby covenants and agrees with the Grantor the Grantee will not carry out any Works except in accordance with the terms of this Section 6.

   (b) Except in the event of an emergency, prior to undertaking any Interfering Works, the Grantee will cause the Works Plans to be prepared and delivered to the Grantor for its review.

   (c) If and to the extent required by applicable laws, the Grantee will not commence any of the Works or the installation, inspection, maintenance, operation, repair, construction, replacement, removal of the Infrastructure until the applicable Works Plans have been approved by the applicable governmental authorities having jurisdiction.

   (d) During the construction of the Building, the Work and the construction of the Building will be reasonably co-ordinated with a view to enabling both the Works and the construction of the Building to be completed without delay or Interference.

(e) The Grantee shall not deviate from the Works Plans provided pursuant to sub-paragraph (b) above in any material respect unless revised Works Plans with respect to any such deviation are submitted to the Grantor for review.

(f) The Grantee's Consultant shall supervise the Works.

(g) The parties agree that the Grantor shall have the right, at its sole election and at its cost, to appoint its own representative (the "**Grantor's Monitor**") and the Grantee shall permit the Grantor's Monitor, at all reasonable times during the period beginning with such appointment and continuing until the completion of the Works, to monitor the Works.

(h) The Grantee covenants and agrees to use due care and attention to identify, before commencing any Works, the location of all works servicing the Building including, without limitation, utilities and building systems, to ensure that the Grantee does not Interfere with the operation of such works in the undertaking of the Works.

(i) After the completion of the Works, the Grantee shall, upon request by the Grantor, promptly provide the Grantor with copies of all professionally signed and sealed drawings, reports, specifications, field reports, site instructions and final as-built drawings with respect to the Infrastructure, or the Works, as the case may be, including surveys, if any, setting out the location of the Infrastructure or the Works.

(j) If the Grantee, in exercising its rights under this Agreement, causes any damage to the Building or Lands, the Grantee shall promptly make good any such damage caused to the Building or Lands by restoring such property to a condition at least as good as it or they were in prior to such damage and if the Grantee does not make good such damage, the Grantor shall have the right to restore the Building and the Lands at the expense of the Grantee.

7. No Alternate System. The Grantor will not itself perform, provide, install or realize, nor allow any other person to perform, provide, install or realize any other system to provide primary domestic hot water or space heating to any Building, nor use or allow or consent to any other person supplying or distributing Thermal Energy to the Lands, without the prior written consent of the Grantee.

8. Section 219 Covenant. The Grantor acknowledges, covenants and agrees, pursuant to Section 219 of the *Land Title Act*, with the Grantee:

(a) not to do or permit to be done on the Lands or in the Building anything which Interferes with or damages the Infrastructure or impairs the operation or otherwise adversely impacts the Infrastructure and the provision of Energy Services to the Lands or creates any hazard or adversely impacts the safety or security of the Infrastructure. Such acts include, but are not limited to, the acts referred to in this Section 8;

(b) not to make, place, erect, operate, use or maintain upon the Lands any building, structure, foundation, pavement, excavation, well, culvert, swimming pool, open drain or ditch, pond, pile or material, obstruction, equipment or thing, or to plant any vegetation which:

(i) Interferes with or endangers the Infrastructure or the installation, construction, operation, maintenance, repair, removal or replacement of the Infrastructure;

(ii) materially obstructs the access granted in accordance with this Agreement to the Grantee or the Grantee's Representatives to the Infrastructure; or

(iii) adversely impacts the safety or security of the Infrastructure by its operation, use, maintenance or existence on the Lands;

(c) not to add or remove ground cover over the Infrastructure or carry out blasting in the vicinity of the Infrastructure without the prior written consent of the Grantee, which consent will not be unreasonably withheld or delayed, and if such consent is granted, only in accordance with the reasonable written requirements of the Grantee; and

(d) the Grantor will ensure the Grantee has reasonable access to the Infrastructure and any part thereof on the Lands at all reasonable times, and in the case of emergency, at any time, subject to the terms and conditions set out in this Agreement.

9. Landscaping and Improvements. Subject to limitations in Section 8, the Grantee acknowledges and agrees that the Grantor may landscape that portion of surface of the Infrastructure Area with lawns, non-deep rooting trees, flowers and shrubs and other surface growth (collectively, the "**Landscaping**") and erect, place, install and maintain concrete driveways, patios, walkways and other surface materials, on, over and under the Infrastructure Area (collectively "**Improvements**"), provided that the Grantor will be solely responsible for any and all damage to, including costs and expenses associated with repairing or replacing, the Infrastructure or any portion thereof caused by or arising from the construction or existence of the Landscaping and Improvements. The Grantee will not be responsible for any damage whatsoever to, and costs and expenses associated with repairing any damage to the Improvements resulting from the Grantee exercising its rights and obligations under this Agreement, except for damage arising from the Grantee's negligence or the negligence of the Grantee's Representatives, or which could have been avoided if the Grantee exercised reasonable caution in the applicable circumstances.

10. Environmental Matters. For the purpose of this Section 10:

"**Contaminants**" means any radioactive materials, asbestos materials, urea formaldehyde, underground or above ground tanks, pollutants, contaminants, deleterious substances, dangerous substances or goods, hazardous, corrosive, or toxic substances, hazardous waste, waste, pesticides, defoliants, or any other solid, liquid, gas, vapour, odour, heat, sound, vibration, radiation, or combination of any of them, the storage, manufacture, handling, disposal, treatment, generation, use, transport, remediation, or Release into the Environment of which is now or hereafter prohibited, controlled, or regulated under Environmental Laws;

"**Environment**" includes the air (including all layers of the atmosphere), land (including soil, sediment deposited on land, fill, lands submerged under water, buildings, and improvements), water (including oceans, lakes, rivers, streams, groundwater, and surface water), and all other external conditions and influences under which humans, animals, and plants live or are developed and "**Environmental**" has a corresponding meaning;

"**Environmental Laws**" means any and all statutes, laws, regulations, orders, bylaws standards, guidelines, permits and other lawful requirements of any federal, provincial, municipal or other governmental authority having jurisdiction over the Lands now or hereafter in force with respect in any way to the environment, health, occupational health and safety, product liability or transportation of dangerous goods, including the principles of common law and equity; and

"**Pre-existing Contaminants**" means any Contaminants present in, on or under the Lands, including without limitation surface and ground water, as at the date of the Grantee becomes the owner of the Infrastructure; and

"**Release**" includes any release, spill, leak, pumping, pouring, emission, emptying or discharge, injection, escape, leaching, migration, disposal, or dumping.

(a) Control and Management of Site

For the purposes of applicable Environmental Laws, the Grantor will be deemed to have responsibility for, and control and management of the Lands with respect to their environmental condition except as otherwise expressly provided in this Agreement or any other agreement between the Grantee and the Grantor or the beneficial owner of the Lands.

(b) Grantor's Environmental Covenants

The Grantor covenants and agrees with the Grantee at all times and from time to time as follows:

i) not to use or permit the Lands to be used for the sale, storage, manufacture, disposal, handling, treatment, use or any other dealing with any Contaminants, except in compliance with Environmental Laws; and

ii) to comply with and to continue to comply with Environmental Laws and to use its best efforts to cause any tenants or other occupants of the Lands to comply with Environmental Laws in their use and occupancy of the Lands.

(c) Grantor's Environmental Indemnity

The Grantor will release and indemnify and hold harmless the Grantee and its officers, directors, shareholders, employees, contractors, agents, successors and permitted assigns from any and all liabilities, actions, damages, claims (including remediation cost recovery claims), losses, costs, orders, fines, penalties and expenses whatsoever (including all consulting and legal fees and expenses on a solicitor-client basis) and the costs of removal, treatment, storage and disposal of Contaminants and remediation of the Lands and any adjacent property affected by the transmission of Contaminants from the Lands which may be paid by, incurred by or asserted against the Grantee, its Related Persons and their respective directors, officers, shareholders, employees, agents, successors or permitted assigns arising from or in connection with:

i) any breach of or non-compliance with the provisions of this Section 10 by the Grantor; and

ii) the presence or alleged presence of any Contaminants in, on or under the Lands, including without limitation surface and ground water, and the release or alleged release of any Contaminants at or from the Lands, including without limitation surface and ground water, except to the extent that such presence or release arises from an act or omission of the Grantee or a breach or non-compliance by the Grantee with applicable Environmental Laws.

(d) Grantee's Environmental Covenants

The Grantee covenants and agrees with the Grantor at all times and from time to time as follows:

i) not to use the Lands for the sale, storage, manufacture, disposal, handling, treatment, use or any other dealing with any Contaminants, except in compliance with Environmental Laws; and

ii) to comply with and to continue to comply with Environmental Laws in its use and occupancy of the Lands hereunder.

(e) Grantee's Environmental Indemnity

The Grantee will release and indemnify and hold harmless the Grantor and its Representatives from any and all liabilities, actions, damages, claims (including remediation cost recovery claims), losses, costs, orders, fines, penalties and expenses whatsoever (including all consulting and legal fees and expenses on a solicitor-client basis) and the costs of removal, treatment, storage and disposal of Contaminants (except any Pre-Existing Contaminants) and remediation of the Lands and any adjacent property affected by the transmission of Contaminants (except any Pre-Existing Contaminants) from the Lands which may be paid by, incurred by or asserted against the Grantor or its Representatives arising from or in connection with any breach of or non-compliance with the provisions of this Section 10 by the Grantee except to the extent that such breach or non-compliance was contributed to or caused by any negligent act or omission of the Grantor or its Representatives or a breach or non-compliance by the Grantor with applicable Environmental Laws.

(f) The obligations of the Grantee and the Grantor under this Section 10 shall survive the registration of this Agreement and the termination and release thereof, if any. The obligations of the Grantee and the Grantor under this Section 10 are in addition to, and shall not limit, the obligations of the Grantee and the Grantor contained in other provisions of this Agreement.

11. No Requirement to Do Works, Pay Fees, Etc. This Agreement does not in any way require the Grantee to provide any works or services whatsoever to the Lands, to develop, construct, inspect, clean, maintain, repair or replace any works or improvements whatsoever within or in respect of the Lands or to pay any fee or other amount whatsoever in connection with this Agreement, unless the Grantee is expressly required to do so under the terms of this Agreement or under any other agreement in writing.

12. Subdivision / Effect of Agreement. This Agreement and the rights herein granted will run with the Lands and each part into which the Lands may be subdivided, whether by subdivision plan, strata plan or otherwise howsoever, and the term "Grantor" includes the owner of each subdivided portion of the Lands and the successors in title thereof. Despite anything contained in this Agreement, if the Lands are subdivided by subdivision plan, strata plan or otherwise howsoever, a default in respect of any subdivided portion of the Lands, including a default with respect to any amount payable in connection with any subdivided portion of the Lands, will not be a default with respect to any other portion of the Lands for which there has not been a default and the Grantee will not be entitled to exercise any of its rights or remedies under this Agreement except with respect to the subdivided portion or portions of the Lands for which there has been a default. Despite any other provision of this Agreement, in the event that the Lands are subdivided by means of a strata plan pursuant to the *Strata Property Act*:

(a) the "Grantor" under this Agreement shall be the strata corporation created by the filing of such strata plan and the individual owners of the strata lots created by such strata plan shall have no obligations or liabilities under this Agreement other than as members of the strata corporation;

(b) the individual strata lots created by any strata plan in respect of any portion of the Lands will not form part of the "Lands" and will not be subject to this Agreement;

(c) the statutory rights of way and section 219 covenant granted pursuant to this Agreement are intended to apply to and burden only the common property created by such strata plan and not at any time to burden any strata lot or the owner of any strata lot; and

(d) upon the request of and at the expense of the Grantor or any strata lot owner, the Grantee will execute and deliver in registrable form a discharge of this Agreement from any such strata lot provided however, that this section 12(d) will not apply in the case of bare land strata lots.

13. Application to Strata Corporation. Without limiting anything set out in this Agreement, any strata corporation created in respect of any portion of the Lands will be a "Grantor" and will be bound by all of the terms and conditions of this Agreement and any common property created by any strata plan in respect of any portion of the Lands will remain as part of the "Lands" and will be subject to this Agreement.

14. Injunctive Relief. The Grantor acknowledges and agrees that, without limiting any other right or remedy of the Grantee, the Grantee may obtain from a court of competent jurisdiction injunctive relief in respect of any breach or anticipated breach by the Grantor of any of the Grantor's duties or obligations under this Agreement.

15. Grantor's Indemnity. Subject to section 17, the Grantor does hereby agree to indemnify and save harmless the Grantee from all liabilities, claims, demands, actions, damages, losses, costs and expenses which the Grantee may suffer or incur (including in respect of all legal fees on a solicitor and client basis) arising from or connected to the non-performance of its rights and obligations hereunder, save to the extent that such liabilities, claims, demands, actions, damages, losses, costs and expenses which the Grantee may suffer or incur result from the negligence or wilful misconduct of the Grantee. The provisions of this Section shall survive the expiration or termination of this Agreement.

16. Grantee's Liability and Indemnity. The Grantee shall indemnify the Grantor and save it harmless from all loss claims, actions, damages, liability and expense in connection with loss of life, personal injury, damage to property or any other loss or injury whatsoever arising out of this Agreement, or any occurrence in, upon or at the Lands, or the occupancy or use by the Grantee of the Lands or any part thereof, or occasioned wholly by any act or omission of the Grantee or its Representatives or anyone permitted by the Grantee to be on the Lands or in the Project. If the Grantor shall, without fault on its part, be made a party to any litigation commenced by or against the Grantee, then the Grantee shall protect, indemnify and hold the Grantor harmless in connection with such litigation (including in respect of all legal fees on a solicitor and client basis). The Grantor may, at its option, participate in or assume carriage of any litigation or settlement discussions relating to the foregoing, or any other matter for which the Grantee is required to indemnify the Grantor under this Agreement. Alternatively, the Grantor may require the Grantee to assume carriage of and responsibility for all or any part of such litigation or discussions.

17. Limitation of Liability. Neither party shall be liable for any indirect, incidental, special or consequential damages or losses, including any loss of profits, loss of business revenue, failure to realize expected savings or any other commercial or economic loss suffer or incurred by the other party or its Representatives, howsoever caused.

18. Insurance. The Grantee will, without limiting its liability under this Agreement or its obligations under applicable laws, at its own expense, obtain and maintain in full force and effect throughout the Term, the insurance coverage described in this Section 18 including coverage for their officers, directors and employees and, unless otherwise agreed in writing by the Grantor, will also cause any subcontractors or sub-consultants of the Grantee to obtain and maintain reasonable levels of the relevant types of insurance coverage described in this Section 18, including such coverage for their respective officers, directors and employees.

(a) **General Commercial or Wrap-Up Liability Insurance**, on an occurrence basis having a limit of not less than five million dollars ($5,000,000) inclusive per occurrence and in the aggregate for products and completed operations, and insuring against claims for bodily injury, personal injury, death, and property damage, including loss of use, arising out of the operations of the Grantee under this Agreement. The Commercial General Liability or Wrap-Up Liability policy shall name the Grantor and its directors, officers, employees and agents as additional insureds in respect of the operations of the Grantee under this Agreement and shall be non-contributory and apply only as primary, and not as excess, to any other insurance available to the Grantor.

(b) **Automobile Liability Insurance** having a limit of not less than two million dollars ($2,000,000) inclusive per occurrence and insuring against claims for bodily injury, including death, and for property damage arising out of the use of the Grantee's owned, leased and non-owned vehicles if such vehicles are used in the performance of this Agreement.

(c) **All Risks Property Insurance** upon all property owned by the Grantee or in its care, custody or control or installed by or on behalf of the Grantee which is located on the Lands in an amount not less than the full replacement cost thereof.

(d) **Boiler and Machinery Insurance** with limits for each accident in an amount not less than the full replacement cost of all boilers, pressure vessels, heating, ventilating and air-conditioning equipment and miscellaneous electrical apparatus owned or operated by the Grantee or by others (other than the Grantor) on behalf of the Grantee.

(e) The policies in (c) and (d) above shall name as loss payee the Grantor, and anyone else with an interest in the Building from time to time designated in writing by the Grantor, shall not contain a co-insurance clause and shall contain a waiver of any rights of subrogation which the insurer may have against the Grantor.

(f) **Workers' Compensation Insurance** in compliance with the applicable Laws pertaining to the compensation of injured employees assigned to the operations of the Grantee under this Agreement including voluntary compensation.

All insurance policies required pursuant to this Section 18 will be in accordance with the following requirements:

(g) Any self-insured retention, deductible, and exclusion in coverage in the policies will be assumed by, for the account of, and at the sole risk of the Grantee and, to the extent applicable, will be paid by the Grantee.

(h) The Grantee will deliver to the Grantor up-to-date insurance certificates evidencing such required coverage from time to time as is reasonably required by the Grantor, provided that the Grantor has no obligation to examine such certificates or to advise the Grantee in the event its insurance is not in compliance with this Section 18.

19. Discharge. If this Agreement is terminated for any reason, the Grantee will execute and deliver in registrable form a discharge of this Agreement within 15 days of such termination.

20. Amendment. Except as expressly set out herein, this Agreement may only be amended by an agreement in writing signed by the Grantee and the Grantor. No modification or amendment of any provision of this Agreement will be inferred from anything done or omitted by any of the parties except by an express agreement in writing duly executed and delivered by all of the parties.

21. No Waiver. No condoning, excusing or overlooking of any default nor any delay in proceeding or failure to proceed in the case of any default under this Agreement will operate as a waiver of or otherwise affect in any way any rights or remedies under this Agreement or at law. No waiver of any rights or remedies will be inferred from anything done or omitted to be done by any party except by an express waiver in writing. No waiver in respect of any matter or thing will operate as a waiver in respect of any other matter or thing.

22. Governing Law. This Agreement will be governed by and interpreted in accordance with the laws of in force in the Province of British Columbia, which is the proper law hereof, and the courts of British Columbia will have the exclusive jurisdiction with respect to all matters arising under or in respect of this Agreement.

23. Time is of the Essence. Time is of the essence of this Agreement and will remain of the essence despite any extension of time given under or in connection with this Agreement.

24. Notices. All notices under this Agreement must be given in writing and delivered in accordance with this provision. The parties agree that:

    (a) any notice to the Grantor may be sent to the Grantor's address according to the Land Title Office records in respect of the Lands or delivered to the Grantor; and

    (b) all notices to the Grantee must be sent to the Grantee at the address set out above or such other address as the Grantee may notify the Grantor in accordance with the terms hereof at any time and from time to time.

    If any portion of the Lands is stratified by a strata plan (including a bare land strata plan), any notice in respect of such stratified lands will be sufficiently given if given to the strata corporation and it will not be necessary to give notice to all of the owners of strata lots within the strata plan. Notices will be sent by personal delivery, electronic transmission (including by fax) or by registered mail. Notices will be deemed to have been delivered (i) upon delivery, if delivered by hand, (ii) upon receipt, if sent by electronic transmission, or (iii) on the fifth Business Day after the mailing thereof, if sent by registered mail from a post office in British Columbia. In any court proceedings, any notice may be given in accordance with any requirements for service provided for pursuant to the Supreme Court Rules of the Province of British Columbia.

25. Grantee's Licences and Authorizations. The Grantee may grant to any other person a licence or other agreement, authorizing such person to exercise any right granted to the Grantee pursuant to this Agreement without limiting or restricting its obligations and liabilities contained in this Agreement.

26. Priority. The Grantor will do all acts and things determined by the Grantee to be necessary to gain priority for this Agreement over any financial Encumbrance registered against title to the Lands or any portion thereof, other than any financial Encumbrance consented to in writing by the Grantee in its absolute discretion.

27. Severability. The provisions hereof are severable and if any of them should be found to be void or unenforceable at law, the remaining provisions shall not be affected thereby.

28. Assignment by Grantee. The Grantee may assign this Agreement to any person, provided that the Grantee and its assignee satisfy any requirements set out in Sections 218 and 219 of the *Land Title Act* (British Columbia), and provided that upon any assignment of this Agreement by the Grantee, the Grantee shall cause the assignee to enter into an agreement with the Grantor under which such assignee covenants that it shall perform the obligations of the Grantee hereunder and be bound by all of the provisions of this Agreement, including the provisions of this Section 28, which will apply to each and every subsequent assignment of any interest under this Agreement by such assignee.

29. Further Assurances. The Grantor will execute and deliver any further agreement, document or instrument and do and perform any further act or thing as may be required by the Grantee at any time and from time to time in order to evidence or give full force and effect to the terms, conditions and intent of this Agreement.

30. Restriction to Infrastructure Area. The Grantee agrees that, once the Infrastructure is installed on, in and under the Lands, the Grantor may at its cost and option prepare a reference plan ("**Plan**") showing the location of the Infrastructure Area, which shall include the volume occupied by the Infrastructure, and file the Plan in the applicable Land Title Office. The Grantee shall execute such documents as may be required for registration of the Plan. Upon registration of the Plan in the applicable Land Title Office, the rights granted to the Grantee under Sections 3(a-j) of this Agreement and the covenants given by the Grantor under Section 7 of this Agreement, will be limited to the Infrastructure Area.

31. Ownership of Infrastructure. Despite any degree of annexation or affixation, or rule of law or equity to the contrary, all components of the Infrastructure shall not be considered a fixture and will be and remain the property of and vest in the Grantee.

32. Release of Grantor. For greater certainty, no person who has been "Grantor" will be liable for any breach of this Agreement occurring after such person has ceased to be an owner of, or strata corporation with respect to any part of the Lands, provided that the Grantor has obtained from the transferee of the Lands an assumption agreement whereby the transferee covenants and agrees to be bound by the obligations of the Grantor set out in this Agreement from and after the date of such conveyance and transfer.

33. Term. The term of this Agreement shall commence upon registration at the Land Title Office and shall continue for so long as the Grantee provides Energy Services to the Building from the Infrastructure (the "**Term**").

34. Abandonment. The Grantee may, in its sole discretion, abandon and leave all or part of the Infrastructure located on the Lands, provided that the portion of the Infrastructure to be abandoned is safely decommissioned and does not pose or constitute any environmental hazard, and such portion of the Infrastructure so abandoned shall belong to the Grantor.

IN WITNESS WHEREOF the parties hereto have executed and delivered this Agreement by signing on the *Land Title Act* Form C above.

## PRIORITY CONSENT

For One Dollar ($1.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and agreed to by ♦ (the "Chargeholder"), being the holder of Mortgage ♦ and Assignment of Rents ♦ (collectively, the "Charges"), hereby approves and consents to the granting of the Statutory Rights of Way and the Section 219 Covenants (collectively, the "Encumbrances") attached, and consents and agrees that the Encumbrances shall be binding upon the Chargeholder's interest in or charge upon the Lands and shall be encumbrances upon such Lands in priority to the Charges in the same manner and to the same effect as if the Encumbrances had been granted and registered against such Lands prior to the dating, execution and registration of the Charges and the advance of any monies thereunder.

To witness this priority consent, the Chargeholder has caused its duly authorized signatory(ies) to sign the *Land Title Act* Form C above.

**END OF DOCUMENT**