

BC HYDRO
ELECTRICITY PURCHASE AGREEMENT
LARGE PROJECTS
F2006 OPEN CALL FOR POWER

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THIS ELECTRICITY PURCHASE AGREEMENT ("EPA") is made as of 31 August 2006 (the "Effective Date")

BETWEEN:

PLUTONIC POWER CORPORATION, a corporation incorporated under the laws of British Columbia with its head office at 900-808 West Hastings Street, Vancouver, BC V6C 2X4

("Seller")

AND:

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

("Buyer").

WHEREAS:

A. The Buyer issued a Call for Tenders on 8 December 2005 for the sale of electrical energy to the Buyer from independent power producers' generation plants in British Columbia with a capacity greater than .05 MW.

B. A Tender in respect of the Project was submitted in response to the CFT not later than 7 April 2006.

C. The Seller desires to sell to the Buyer, and the Buyer desires to purchase from the Seller, Energy from the Seller's Plant on the terms, conditions and exceptions set forth in this EPA.

1. INTERPRETATION

1.1 **Definitions** - Appendix 1 sets out or references the definitions applicable to certain words and expressions used in this EPA.

1.2 **Appendices** - Attached to and forming part of this EPA are the following Appendices:

Appendix 1	-	Definitions
Appendix 2	-	Energy Profile
Appendix 3	-	Energy Price
Appendix 4	-	COD Certificate
Appendix 5	-	Seller's Plant Description
Appendix 6	-	Sample Form Standby Letter of Credit
Appendix 7	-	Sample Form Lender Consent Agreement
Appendix 8	-	Sample Form Development Progress Report
Appendix 9	-	Addresses for Delivery of Notices

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

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

1.5 Governing Law - This EPA is made under, and will be interpreted in accordance with, the laws of the Province of British Columbia. Subject to section 20.7, any suit, action or proceeding (a "Proceeding") arising out of or relating to this EPA may be brought in the courts of the Province of British Columbia at Vancouver, and those courts have non-exclusive jurisdiction in respect of any Proceeding and the Parties hereby irrevocably attorn to the jurisdiction of such courts in respect of any Proceeding.

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

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

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

1.9 Reference Indices - If any index, tariff or price quotation referred to in this EPA ceases to be published, or if the basis therefor is changed materially, there will be substituted an available replacement index, tariff or price quotation that most nearly, of those then publicly available, approximates the intent and purpose of the index, tariff or quotation that has so ceased or changed. This EPA shall be amended as necessary to accommodate such replacement index, tariff or price quotation, all as determined by written agreement between the Parties, or failing agreement, by arbitration under section 20.7.

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

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

- (a) "this EPA" means this EPA as it may from time to time be supplemented or amended and in effect, and includes the Appendices attached to this EPA;
- (b) the words "herein", "hereof" and "hereunder" and other words of similar import refer to this EPA as a whole and not to any particular section, subsection or other subdivision;
- (c) the word "including" or "includes" is not limiting whether or not non-limiting language (such as "without limitation" or "but not limited to" or words of similar import) is used with reference thereto;
- (d) unless otherwise expressly stated in this EPA, the words "year" and "month" refer to a calendar year and a calendar month;

And

- (e) any consent, approval or waiver contemplated by this EPA must be in writing and signed by the Party against whom its enforcement is sought, and may be given, withheld or conditioned in the unfettered discretion of the Party of whom it is requested, unless otherwise expressly stated;
- (f) unless otherwise expressly stated in this EPA, all rights and remedies of either Party under this EPA are cumulative and not exclusive of any other remedies to which either Party may be lawfully entitled, and either Party may pursue any and all of its remedies concurrently, consecutively and alternatively;
- (g) the provisions of Appendix 10, if any, govern over the other provisions of this EPA, and all provisions of this EPA are mutually explanatory of one another; and
- (h) any notice required to be given, or other thing required to be done, under this EPA on or before a day that is not a Business Day, shall be deemed to be given or done when required hereunder if given or done on or before the next following Business Day.

2. TERM

2.1 Term - The term ("Term") of this EPA commences on the Effective Date and continues until the 35th anniversary of COD, subject to extension for the period specified pursuant to section 10.2, unless it is terminated earlier as authorized under this EPA.

3. REGULATORY REVIEW

3.1 Regulatory Review Termination - Either Party may terminate this EPA if, within 120 days after the Effective Date, the BCUC has not accepted the EPA for filing as an energy supply contract under section 71 of the UCA on terms and conditions that do not materially alter, or require, as a condition of the acceptance for filing, a material alteration to, the price or any other material term or condition of the EPA ("BCUC Acceptance").

3.2 Regulatory Filing - The Buyer, on behalf of itself and the Seller, shall file the EPA with the BCUC within a reasonable time after the Effective Date.

3.3 EPA Support - The Buyer shall take all steps reasonably required to secure the BCUC Acceptance and the Seller shall provide any assistance reasonably requested by the Buyer to secure the BCUC Acceptance. The Parties will not take, and will cause their Affiliates not to take, any action inconsistent with the performance by the Parties of their obligations under this section 3.3. If a Party fails to comply with this section (the "**Breaching Party**") and, as a result, the EPA is terminated under section 3.1, the Breaching Party shall pay the non-Breaching Party, by not later than 5 Business Days after the date of termination, an amount equal to \$60,000/MW multiplied by the Plant Capacity. The Breaching Party's liability for a breach of this section 3.3 is limited to the amount set out in this section.

3.4 Termination - A Party entitled to terminate under section 3.1 must do so by giving notice to terminate to the other Party at any time after the right to terminate arises pursuant to section 3.1 and prior to the earlier of:

- (a) the date of issuance of the BCUC Acceptance; and
- (b) the date that is 150 days after the Effective Date.

3.5 Effect of Termination - If this EPA is terminated by either Party in accordance with sections 3.1 and 3.4, the following provisions shall apply:

- (a) on or before the 30th day following the date of termination, or if that day is not a Business Day, then on or before the next succeeding Business Day, the Buyer shall return the Performance Security to the Seller after deducting any amount to which the Buyer is entitled but which has not been paid pursuant to section 3.3 of this EPA; and
- (b) except as set out in section 15.3, the Parties shall have no further liabilities or obligations under, or in relation to, this EPA.

4. DEVELOPMENT

4.1 Development and Construction of the Seller's Plant - The Seller shall, at its expense, perform, or cause to be performed, all Project activities necessary to complete the construction and commissioning of the Seller's Plant and achieve COD in accordance with the terms and conditions of this EPA. The Seller shall commence such Project activities by the date that is the later of: (a) 30 days after the BCUC Acceptance; or (b) if a right to terminate arises under section 3.1, 30 days after that right to terminate has expired, and shall thereafter diligently and continuously carry out such Project activities.

4.2 Modification to Plant Capacity - The Seller shall construct the Seller's Plant with a capacity that does not exceed the Plant Capacity. Except as set out in this section and notwithstanding section 6.2, the Seller shall not increase or decrease the Plant Capacity without the Buyer's prior consent. The Seller may at any time prior to the Guaranteed COD give notice to the Buyer that the Seller intends to increase or decrease the Plant Capacity by an amount not exceeding 10% of the Plant Capacity specified in Appendix 5, provided that:

- (a) the Seller has completed all studies required by the Transmission Authority in connection with the proposed increase or decrease in Plant Capacity, such studies include an estimate of any increase in Network Upgrade Costs resulting from the proposed increase or decrease in the Plant Capacity, and the Seller provides copies of such studies to the Buyer together with the notice to the Buyer;
- (b) the Seller shall be responsible for, and shall pay, all costs associated with the increase or decrease in the Plant Capacity, including all additional Direct Assignment Costs and Network Upgrade Costs in accordance with section 4.5;
- (c) prior to the earlier of:
 - (i) 30 days after the date of delivery of a notice to the Buyer under this section, and
 - (ii) the date on which any additional Network Upgrade Costs associated with the increase or decrease in Plant Capacity are incurred,

the Seller shall deliver to the Buyer replacement Performance Security calculated in the manner set out in Appendix 1 to reflect any proposed increase or decrease in the Plant Capacity and an amount equal to the total estimated increase in Network Upgrade Costs resulting from the proposed increase or decrease in the Plant Capacity. Upon receipt of the replacement Performance Security in the required form, the Buyer shall release the

existing Performance Security to the Seller, without deduction, other than prior deductions, if any, properly made hereunder;

- (d) the Seller shall complete all construction and commissioning associated with the increase or decrease in the Plant Capacity prior to COD;
- (e) the Guaranteed COD will not be extended by any increase or decrease in the Plant Capacity; and
- (f) the Seller may give only one notice under this section.

Upon delivery by the Seller of a notice under this section and compliance by the Seller with subsections (a) and (c) above, the Buyer and the Seller shall execute an amendment to this EPA to amend Appendix 5 to reflect the proposed increase or decrease in the Plant Capacity as set out in the Seller's notice. The Buyer is not required to accept or pay for any Energy associated with an increase in the Plant Capacity that does not comply with this section and section 7.5 applies to such Energy.

4.3 Permits - The Seller shall promptly obtain, comply with and maintain in full force and effect all Permits. The Seller shall on request promptly provide to the Buyer copies of all Material Permits.

4.4 Development Reports - On each January 1, April 1, July 1 and October 1 after the Effective Date, (or, where such day is not a Business Day, on the first Business Day thereafter) and continuing until COD, the Seller shall deliver to the Buyer a report in the form specified in Appendix 8, describing the progress of the Project.

4.5 Project Changes - The Seller shall not make any change to the point of interconnection with the Transmission System (including any change to the point of interconnection specified in the F2006 CFT Preliminary Interconnection Study Report) without the prior consent of the Buyer, such consent not to be unreasonably withheld, provided that the Seller acknowledges that the Buyer is entitled to require as a condition of the Buyer's consent that the Seller enter into an amendment to this EPA as required to put the Buyer in the position it would have been in under this EPA had the Seller not made a change to the point of interconnection, including with respect to the amount of Eligible Energy. If the Seller makes any change to the point of interconnection between the Seller's Plant and the Transmission System as set out in the F2006 CFT Preliminary Interconnection Study Report or any other change to the information relied on by the Transmission Authority in completing the F2006 CFT Preliminary Interconnection Study Report and developing the Network Upgrade Cost estimate for purposes of the CFT, the Seller shall be liable for all costs related directly or indirectly to such change and for all other losses, costs and damages suffered or incurred by the Buyer, whether as a transmission customer or otherwise, as a result of such change and the Seller shall pay any such amount within 30 days after receiving an invoice from the Buyer for such amount.

5. COMMERCIAL OPERATION DATE

5.1 Guaranteed COD - The Seller shall ensure that the Seller's Plant achieves COD by the Guaranteed COD plus Force Majeure Days.

5.2 Requirements for COD - Subject to sections 5.5 and 5.6, the Seller's Plant will have achieved COD at the commencement of the hour immediately following the hour in which all of the following conditions have been satisfied:

- (a) the Seller has obtained all Material Permits and all such Material Permits are in full force and effect;
- (b) the Seller's Plant has generated Energy over any continuous 72 hour period, in compliance with all Material Permits, and delivered such Energy to the POI in an amount not less than the greater of:
 - (i) 90% of the applicable Monthly Firm Energy Delivery Rate multiplied by 72; and
 - (ii) 20% of the Plant Capacity multiplied by 1 hour multiplied by 72;
- (c) the Seller is not: (i) Bankrupt or Insolvent; (ii) in material default of any of its covenants, representations, warranties or obligations under this EPA (other than those defaults in respect of which the Seller has paid all LDs owing under this EPA); or (iii) in material default under any Material Permit, any tenure agreement for the site on which the Seller's Plant is located, the Interconnection Agreement or the Facilities Agreement; and
- (d) the Seller has delivered to the Buyer:
 - (i) a Declaration of Compatibility-Generator (Operating), or such other document(s) of similar effect as may be substituted therefor, issued by the Transmission Authority to the Seller under the Interconnection Agreement;
 - (ii) data from the Metering Equipment sufficient to demonstrate compliance by the Seller with subsection 5.2(b);
 - (iii) payment of any amounts owing by the Seller to the Buyer under any of sections 4.2, 4.5 and 5.7; and
 - (iv) proof of registration by the Seller with Measurements Canada as an energy seller with respect to the Seller's Plant,

provided that, except as hereinafter provided, within 30 days after the last of the requirements set out above is satisfied the Seller delivers to the Buyer: (I) a COD Certificate; (II) the Long Term Operating Plan; and (III) the Annual Operating Plan for the period from COD to December 31 next following COD or if COD occurs after September 30, for the period from COD to December 31 in the year following COD. If the COD Certificate, Long Term Operating Plan and Annual Operating Plan are not delivered by that date, COD will occur at 12:00 PPT on the day of delivery to the Buyer of the last of the foregoing documents. For greater certainty, the Parties acknowledge that, notwithstanding satisfaction of all the conditions set out in subparagraphs (a) to (d) above, the Seller may defer delivery of the documents described in (I), (II) and (III) above until, and the COD will not occur earlier than, the date determined under section 5.5.

5.3 Buyer Right to Observe - The Seller shall provide not less than 10 days' prior notice to the Buyer of the commencement of any proposed testing under subsection 5.2(b) and the Buyer may attend and observe each test under that subsection. If the Seller has given notice to the Buyer in accordance with this section, the Seller shall not be required to give a notice to the Buyer of any further tests which are commenced within 72 hours of the prior test under subsection 5.2(b). The Seller shall provide a new notice in accordance with this section 5.3 in respect of any test that commences more than 72 hours after the end of an unsuccessful test under subsection 5.2(b).

5.4 COD Disputes - The Buyer may, by notice to the Seller within 10 Business Days after the date of delivery to the Buyer of a COD Certificate, contest the COD Certificate on the grounds that the Seller has not satisfied the requirements for COD in section 5.2. Pending the final resolution of any dispute relating to whether the requirements for COD have been satisfied, the Seller shall not be required to remit any COD Delay LDs, provided that upon final determination of the matter, if the determination is made that COD has not been achieved, the Seller shall forthwith remit COD Delay LDs in accordance with section 12.1 calculated from the Guaranteed COD plus Force Majeure Days, together with applicable interest in accordance with subsection 9.2(b). If the Buyer does not deliver a notice to the Seller contesting the COD Certificate within the time specified in this section, COD will be deemed to have occurred as provided in section 5.2.

5.5 Early COD - Except with the Buyer's prior consent, COD may not occur earlier than the later of: (a) 1 October 2007; and (b) 365 days prior to the Guaranteed COD. The Buyer shall not be required to incur any incremental expense (other than payment for Eligible Energy) to enable COD to occur prior to the Guaranteed COD.

5.6 Deemed COD - If on or after the Guaranteed COD, the Seller's Plant has satisfied all requirements for COD, other than those requirements that depend on completion of Network Upgrades, and if the Seller cannot achieve COD solely as a result of a delay in completion of Network Upgrades and such delay is solely caused by the Buyer, then COD will be deemed to have occurred on or after the Guaranteed COD at the commencement of the hour following the hour in which all other conditions for COD were satisfied. The Buyer shall thereafter be liable to pay the Seller for that portion of the Monthly Firm Energy Amount that could have been generated and delivered at the POI but for the delay in completion of the Network Upgrades described above, and all such Energy will be considered Eligible Energy for purposes of this EPA. The portion of the Monthly Firm Energy Amount that could have been generated and delivered at the POI will be determined based on the information described in section 7.9. Except for the payments for deemed Eligible Energy provided for pursuant to this section, the Seller shall have no other rights or remedies against the Buyer, and the Buyer shall have no other liability, with respect to any delay in completion of the Network Upgrades. If the Seller's Plant fails to satisfy the requirements specified in section 5.2 within a reasonable period, but not later than 60 days after completion of the Network Upgrades, the Seller will be deemed not to have achieved COD and the Seller shall within 10 days after receipt of an invoice from the Buyer, refund to the Buyer all payments made by the Buyer to the Seller prior to that date. This section 5.6 will not apply if a delay in completion of any Network Upgrades is due, in whole or in part, to any increase or decrease in Plant Capacity from the Plant Capacity specified in Appendix 5 or to any increase in any Monthly Firm Energy Amount pursuant to section 7.2 or to any change described in section 4.5.

5.7 Early Network Upgrades - If the Seller requires Network Upgrades to be completed prior to 90 days prior to the Guaranteed COD to enable early COD or to enable sales of Pre-COD Energy to third parties, the Seller shall give notice of such requirement to the Buyer and following delivery of such notice, the Seller and the Buyer shall discuss such requirement with the Transmission Authority to determine the incremental costs, if any, required to complete the Network Upgrades prior to 90 days prior to the Guaranteed COD. The Seller shall be responsible for and shall indemnify the Buyer from and against all such incremental costs and expenses and, prior to commencement by the Transmission Authority of any work required to advance the completion date for the Network Upgrades, shall provide to the Buyer replacement Performance Security which includes an amount equal to the total estimated increase in Network Upgrade Costs resulting from any request by the Seller to complete the Network Upgrades prior to 90 days prior to the Guaranteed COD.

6. OPERATION OF SELLER'S PLANT

6.1 Owner and Operator - The Seller shall own the Seller's Plant and shall ensure that the Seller's Plant is operated using qualified and experienced individuals.

6.2 Modifications to Seller's Plant/Additional Generators

- (a) **Modifications to Seller's Plant** - The Seller shall not make, without the Buyer's prior consent, any modification or addition, or series of modifications or additions, to the Seller's Plant, except for those modifications or additions which: (i) are not likely to have an adverse effect on the Seller's ability to observe and perform its obligations under this EPA, including the Seller's obligations under subsection 6.3(f) and under section 7A.5; or (ii) are required to comply with a change in Law or a change in Permit conditions (where such change in Permit conditions is initiated by a Governmental Authority) after the Effective Date. The Seller shall provide prior notice to the Buyer of any modifications or additions, or series of modifications or additions, to the Seller's Plant together with an explanation of the reason for such modifications or additions.
- (b) **Additional Generators** - The Seller shall not add any additional generators on the site of the Seller's Plant or that otherwise inject output at the same POI as the Seller's Plant, unless the Seller has first entered into an amendment to this EPA with the Buyer as required to address any adverse impacts on the Buyer or on the benefit to the Buyer of this EPA resulting from the construction or operation of such additional generators.

6.3 Standard of Construction and Operation - The Seller shall cause the Seller's Plant to be designed, engineered, constructed, interconnected to the Transmission System, commissioned, operated and maintained in compliance with: (a) all applicable Laws; (b) the terms and conditions of all Permits and land tenure agreements issued in connection with the Seller's Plant; (c) Good Utility Practice; (d) the specifications in Appendix 5, as changed from time to time with the prior consent of the Buyer, provided that, subject to section 6.2, the Seller may amend the information in sections 4 and 5 of Appendix 5 at any time without consent on notice to the Buyer not less than 30 days prior to such change and the Buyer and the Seller will enter into an amendment to this EPA to amend Appendix 5 in accordance with such notice; (e) the Code of Conduct Guidelines Applicable to BC Hydro Contracts in effect as of the date specified for submission of Tenders under the CFT; (f) if applicable, the information provided to the British Columbia Minister of Energy, Mines and Petroleum Resources or to TerraChoice Environmental Marketing to obtain confirmation that the output from the Seller's Plant could be considered BC Clean Electricity in the CFT process; and (g) the terms and conditions of this EPA, the Interconnection Agreement and the Facilities Agreement. Without limiting the foregoing, all equipment installed in the Seller's Plant shall conform to the codes, standards and rules applicable to power plants in British Columbia and the Seller shall ensure that the Seller's Plant is designed, engineered and constructed to operate in accordance with the requirements of this EPA for the full Term of this EPA. Without limiting section 7.3 but subject to subsection 7.8(a), when the Seller is delivering Energy to the Buyer, the Seller shall make commercially reasonable efforts to operate the Seller's Plant in a manner that ensures delivery of Energy at the POI at a uniform rate within each hour.

6.4 Planned Outages - The Seller shall: (a) ensure that no Planned Outage occurs during the Peak Demand Months without the Buyer's prior consent, such consent not to be unreasonably withheld, delayed or conditioned; (b) give the Buyer not less than 90 days' prior notice of any Planned Outage and such notice shall state the start date and hour and the end date and hour for the Planned Outage; (c) make commercially reasonable efforts to coordinate all Planned Outages with the Buyer's requirements as

notified to the Seller; and (d) make best efforts to coordinate Planned Outages with the Transmission Authority's maintenance schedule where such schedule is publicly available or otherwise notified to the Seller. Within 45 days after the date of receipt of the Annual Operating Plan or within 14 days after receipt of any adjustment to the Annual Operating Plan pursuant to subsection 6.6(b), the Buyer may request the Seller to reschedule any Planned Outage. Within 14 days after receipt of such a request, the Seller shall provide the Buyer with an estimate, together with reasonable supporting detail, of the costs the Seller expects to incur, acting reasonably, as a result of rescheduling the Planned Outage in accordance with the Buyer's request. Within 7 days after receipt of such cost estimate, the Buyer shall notify the Seller if the Buyer requires the Seller to reschedule the Planned Outage and upon receipt of such notice from the Buyer, the Seller shall adjust the schedule for the Planned Outage as required by the Buyer, provided that the rescheduling is consistent with Good Utility Practice and does not have a materially adverse effect on the operation of the Seller's Plant or on any facility that is a thermal host for the Seller's Plant. The Buyer shall reimburse the Seller for all costs reasonably incurred by the Seller as a result of such rescheduling, but not exceeding the estimate delivered by the Seller to the Buyer under this section. For payment and all other purposes of this EPA, all Planned Outages will be deemed to start at the beginning of an hour and to end at the end of an hour.

6.5 Records - During the Term the Seller shall prepare and maintain all records required to properly administer this EPA, including Energy generation records and operating logs, a log book of all Outages and other reductions in Energy output (specifying the date, time, duration and reasons for each Outage and each reduction in Energy output), meter readings, maintenance reports, invoice support records, documents concerning compliance with Permits and applicable Laws, and all other records and logs consistent with Good Utility Practice. The Seller shall maintain such records or duplicates of such records at the Seller's Plant, or following the expiry of the Term or the earlier termination of this EPA, at such other location as may be agreed to by the Buyer, acting reasonably, for a period of not less than 7 years from the date on which each such record is created.

6.6 Reports to the Buyer - The Seller shall deliver the following documents, reports, plans and notices to the Buyer:

- (a) **Long Term Operating Plan** - By the date specified in section 5.2, the Seller shall provide to the Buyer an operating plan for the Seller's Plant for a 10 year period commencing at COD and ending on December 31 of the year in which the tenth anniversary of COD occurs, including the long term major maintenance schedule. On or before September 30 in each year during the Term after the year in which COD occurs, the Seller shall provide the Buyer with an updated plan for the 10 year period commencing on the next succeeding January 1 or to the end of the Term, whichever is less. The Seller shall promptly provide the Buyer with copies of any amendments or modifications to the Long Term Operating Plan. The Long Term Operating Plan shall be consistent with Good Utility Practice and is intended to assist the Buyer in planning activities and is not a guarantee of the timing of Planned Outages;
- (b) **Annual Operating Plan** - On or before September 30 in each year during the Term, the Seller shall provide to the Buyer an operating plan for the Seller's Plant for the 12 month period commencing on the next succeeding January 1 which plan may be included in the Long Term Operating Plan. The plan shall include a schedule of Planned Outages for that 12 month period which shall comply with the provisions of section 6.4 and be consistent with Good Utility Practice. The Seller may, on not less than 90 days prior notice to the Buyer, amend the Annual Operating Plan, subject to the provisions of section 6.4;

- (c) **Notice of Outages** - Other than for a Planned Outage for which notice has been given pursuant to section 6.4, the Seller shall promptly notify the Buyer of any Outage, or any anticipated Outage, of the Seller's Plant. Any notice under this subsection shall include a statement of the cause of the Outage, the proposed corrective action and the Seller's estimate of the expected duration of the Outage. The Seller shall, except with the Buyer's consent, such consent not to be unreasonably withheld, use best efforts to promptly remove or mitigate any Forced Outage. The Seller shall deliver to the Buyer concurrently with delivery of the statement described in subsection 9.1(a), a report of all Outages during the month for which the statement described in subsection 9.1(a) is issued, including a statement of the cause of each Outage;
- (d) **Interconnection Agreement and Facilities Agreement Defaults** - The Seller shall give promptly to the Buyer a copy of any notice of a breach of, or default under, the Interconnection Agreement or the Facilities Agreement, whether given or received by the Seller;
- (e) **Notice of Buyer Termination Event** - The Seller shall notify the Buyer promptly of any Buyer Termination Event or any material risk that a Buyer Termination Event will occur or any default by the Seller under any agreement with a Facility Lender; and
- (f) **Energy Schedules** - After COD the Seller shall either (as elected by the Seller in a notice delivered to the Buyer prior to COD):
 - (i) on each Thursday by 12:00 PPT, deliver to the Buyer a schedule of the expected deliveries of Eligible Energy in each day during the next succeeding week commencing at 00:00 PPT on Monday; or
 - (ii) by 12:00 PPT on each day deliver to the Buyer a schedule of expected deliveries of Eligible Energy for the next succeeding 24 hour period commencing at 00:00 PPT,

provided that such schedules are provided for planning purposes only and do not constitute a guarantee by the Seller that Energy will be delivered in accordance with the schedules and do not limit the amount of Energy the Seller may deliver during the periods covered by the schedules. The Seller shall deliver a revised schedule to the Buyer forthwith upon becoming aware of any expected material change in a filed Energy schedule. The Seller may change its election with respect to the delivery of Energy schedules in accordance with subsection (i) or (ii) above at any time on 60 days' prior notice to the Buyer.

6.7 Exemption from Utility Regulation - The Seller shall not take any action that would cause the Seller to cease to be exempt, or omit to take any action necessary for the Seller to continue to be exempt, from regulation as a "public utility", as defined in the UCA, with respect to the Seller's Plant, the sale of Energy and the performance by the Seller of its obligations under this EPA where such designation as a "public utility" could reasonably be expected to have an adverse effect on the Buyer or its interests under this EPA.

6.8 Compliance with Emissions Requirements

- (a) **GHG Requirements** - Without limiting section 4.3 or section 6.3, the Seller shall comply with all applicable Laws and all Permits regulating GHG emissions from the Seller's Plant. The Seller shall by each January 31 after COD (or, if alternate reporting dates are established under any Laws or Permits regulating GHG emissions from the Seller's Plant, then by such alternate reporting dates) deliver to the Buyer a report signed by a senior officer of the Seller, in a form satisfactory to the Buyer acting reasonably, detailing the status of compliance by the Seller with this section during the immediately preceding year (or if an alternate compliance period is established under any Laws or Permits regulating GHG emissions from the Seller's Plant, then the report shall address such alternate compliance period). If the Seller is not in compliance with any Law or Permit regulating GHG emissions from the Seller's Plant and the Seller fails to remedy such non-compliance within 30 days after the date of notice from the Buyer to the Seller, the Buyer may, but is not required to, on behalf of the Seller, purchase any Compliance Units required to remedy, in whole or in part, the Seller's non-compliance with the applicable Law or Permit. The Seller shall cooperate with the Buyer as necessary to enable the Buyer to purchase such Compliance Units. The Seller shall reimburse the Buyer for all costs (including all commissions, charges, brokerage, consulting and legal fees, taxes, duties, transfer and registration fees and all other transaction costs and expenses) incurred by the Buyer in purchasing such Compliance Units, together with an administration fee equal to 15% of such costs within 30 days after receipt of an invoice from the Buyer for such amount.
- (b) **Other Emissions** - Without limiting subsection (a), the Seller is solely responsible at the Seller's cost for compliance with all applicable Laws and Permits regulating all emissions from the Seller's Plant, including GHG emissions. The Buyer has no responsibility or liability of any kind whatsoever with respect to any such emissions.

6.9 Disclosure of Information by Transmission Authority - The Seller consents to the Transmission Authority disclosing to the Buyer on request:

- (a) all information with respect to Network Upgrades, including any information provided by the Seller to the Transmission Authority that relates to, or affects, Network Upgrades including any preliminary interconnection application, study and report, and any subsequent applications, studies and reports, that contain information relevant to Network Upgrades;
- (b) all metering data collected by, or provided to, the Transmission Authority with respect to the Seller's Plant;
- (c) copies of any notice of a breach of, or default under, the Interconnection Agreement or the Facilities Agreement given or received by the Transmission Authority; and
- (d) any other information provided by the Seller to the Transmission Authority or by the Transmission Authority to the Seller that is relevant to the administration of this EPA.

The Seller shall promptly on request by the Buyer provide to the Buyer written confirmation of the foregoing consents for delivery by the Buyer to the Transmission Authority.

6.10 Islanding - Subject to the provisions of this section, at any time after the Effective Date and prior to completion by the Seller of the final engineering design for the Seller's Plant, the Seller shall, at the request of the Buyer, provide all information and cooperation required to enable the Buyer to undertake, at the Buyer's cost, any studies the Buyer considers necessary to determine the ability of the Seller's Plant to provide Planned Islanding Capability and the estimated cost of providing, operating and maintaining such Planned Islanding Capability. The Seller shall provide the Buyer with not less than 120 days prior notice of the anticipated date of completion of the final engineering design for the Seller's Plant and the Buyer shall advise the Seller within 60 days after receipt of such notice if the Buyer intends to undertake any studies pursuant to this section. The Buyer shall, within 30 days after receipt of an invoice together with reasonable supporting information, reimburse the Seller for all reasonable costs incurred by the Seller, that the Seller would not otherwise have incurred, to provide the Buyer with information required for any studies pursuant to this section. The Buyer may on notice to the Seller within 30 days after receipt of all studies commissioned by the Buyer under this section advise the Seller that the Buyer wishes to enter into negotiations with the Seller with respect to the Seller's Plant providing Planned Islanding Capability, including any amendments required to this EPA as a result thereof. Upon receipt of such notice the Parties shall negotiate in good faith to determine the terms and conditions on which the Seller will provide such Planned Islanding Capability.

6.11 BC Clean Electricity - If in the CFT process the output from the Seller's Plant was treated as BC Clean Electricity based on a letter from TerraChoice Environmental Marketing confirming eligibility of the Seller's Plant for EcoLogo^M Certification, and if the Seller does not obtain EcoLogo^M Certification by the date that is one year after COD, the Seller shall within 60 days after the first anniversary of COD, provide a letter to the Buyer from the British Columbia Minister of Energy, Mines and Petroleum Resources confirming that the output from the Seller's Plant is BC Clean Electricity together with a copy of all information provided to the Minister to obtain such confirmation. Without limiting section 6.5, the Seller shall maintain, and shall within 10 Business Days after a request from the Buyer, provide to the Buyer all information the Buyer requires to verify qualification of the output from the Seller's Plant as BC Clean Electricity. The Buyer may at any time during the Term conduct or have a third Person with the necessary expertise conduct, at the Buyer's expense, an audit of the Project Assets and relevant documentation to verify qualification of the output from the Seller's Plant as BC Clean Electricity. The Seller shall promptly provide to the Buyer any consents required to enable the Buyer to make enquiries with any Governmental Authorities concerning the qualification of the output from the Seller's Plant as BC Clean Electricity. The Seller consents to the disclosure by the Buyer to any Person or any Governmental Authority of any Confidential Information with respect to the Seller's Plant that the Buyer is required to disclose to verify qualification of the output of the Seller's Plant as BC Clean Electricity or to provide confirmation to any such Person or Governmental Authority that the output from the Seller's Plant qualifies as BC Clean Electricity.

7. PURCHASE AND SALE OBLIGATIONS

7.1 Pre-COD Energy - The Buyer shall make commercially reasonable efforts to accept delivery at the POI of all Pre-COD Energy, provided that the Buyer shall not be required to take any steps or to incur any incremental expense to enable the delivery of Pre-COD Energy to the POI prior to 90 days before the Guaranteed COD. Prior to the earlier of COD and the Guaranteed COD the Seller may, on prior notice to the Buyer, sell any Energy to any Person other than the Buyer, and in that case such Energy shall not be delivered, or be deemed to be delivered, to the Buyer.

7.2 Modification to Monthly Firm Energy Amount - The Seller may at any time prior to the first anniversary of COD, give notice to the Buyer that the Seller elects to increase or decrease the Monthly Firm Energy Amount for one or more months, to take effect on the first day of the month

immediately following the giving of such notice, provided that the net change in the annual total of the Monthly Firm Energy Amounts resulting from such increase or decrease in the Monthly Firm Energy Amounts does not exceed 10%. Upon receipt of such notice, the Buyer and the Seller shall execute an amendment to this EPA to amend Appendix 2 in accordance with the Seller's notice, provided that:

- (a) any such increase or decrease in the Monthly Firm Energy Amounts does not result in the total of the Monthly Firm Energy Amounts for the period from April to July, inclusive, exceeding one-third of the annual total of the Monthly Firm Energy Amounts;
- (b) any such increase or decrease in the Monthly Firm Energy Amounts does not result in the Monthly Firm Energy Amount for any month exceeding the Plant Capacity multiplied by the number of hours in the applicable month;
- (c) the provisions of subsections 4.2(a) and (b) apply to any such increase or decrease in the Monthly Firm Energy Amounts, *mutatis mutandis*; and
- (d) the Seller may give only one notice under this section.

7.3 Post-COD Sale of Energy - Subject to subsection 7.8(a), in each month during the Term after COD, the Seller shall sell and deliver to the Buyer at the POI the Monthly Firm Energy Amount for the applicable month, provided that if COD occurs on any day other than the first day of the month, the Monthly Firm Energy Amount for the month in which COD occurs and for the last month of the Term will be reduced to reflect in the former case, the number of days in the month after COD, and in the latter case, the number of days prior to the expiry of the Term.

7.4 Post-COD Purchase of Energy - Subject to subsection 7.8(b), in each month during the Term after COD, the Buyer shall purchase, and accept delivery from the Seller at the POI of, all Eligible Energy.

7.5 Exclusivity - The Seller shall not at any time during the Term commit, sell or deliver any Energy to any Person, other than the Buyer under this EPA, except:

- (a) Pre-COD Energy sold to third Persons in accordance with section 7.1;
- (b) during any period in which the Buyer is in breach of its obligations under section 7.4; and
- (c) during any period in which the Buyer is not accepting deliveries of Energy from the Seller due to Force Majeure invoked by the Buyer.

7.6 Custody, Control and Risk of Energy - Custody, control, risk of, and title to all Pre-COD Energy delivered to the Buyer and all Eligible Energy passes from the Seller to the Buyer at the POI. The Seller shall ensure that all Energy delivered to the Buyer under this EPA is free and clear of all liens, claims, charges and encumbrances. The Seller shall be responsible for all transmission losses and costs, if any, relating to the transmission of Energy from the Seller's Plant to the POI.

7.7 Price and Payment Obligation - The Buyer shall pay for all Test Energy in respect of which the Seller has not given a notice under section 7.1 and all Eligible Energy in accordance with Appendix 3.

7.8 Limitations on Delivery and Acceptance Obligations

- (a) **Limitations on Delivery Obligations** - The obligations of the Seller under section 7.3 are subject to:
- (i) Force Majeure invoked by the Seller in accordance with Article 11;
 - (ii) any Outage, suspension, constraint or curtailment in the operation of the Transmission System preventing or limiting physical deliveries of Eligible Energy at the POI for reasons that are not attributable to the Seller or the Seller's Plant;
 - (iii) disconnection of the Seller's Plant from the Transmission System by the Transmission Authority for reasons that are not attributable to the Seller or the Seller's Plant;
 - (iv) the right of the Seller to suspend its performance under this EPA in accordance with Article 14; and
 - (v) Authorized Planned Outages.
- (b) **Limitations on Acceptance Obligations** - The obligations of the Buyer under sections 7.1 and 7.4 are subject to:
- (i) Force Majeure invoked by the Buyer in accordance with Article 11;
 - (ii) disconnection of the Seller's Plant from the Transmission System for reasons not attributable to the Buyer;
 - (iii) any Outage, suspension, constraint or curtailment in the operation of the Transmission System preventing or limiting physical deliveries of Eligible Energy at the POI for reasons not attributable to the Buyer; and
 - (iv) the right of the Buyer to suspend the Seller's performance under the EPA in accordance with Article 14.

7.9 Deemed Deliveries - If in any month after COD the Seller is unable to deliver Energy at the POI at any time during that month solely as a result of:

- (a) any disconnection of the Seller's Plant from the Transmission System or any Outage, suspension, constraint or curtailment in the operation of the Transmission System preventing or limiting physical deliveries of Eligible Energy at the POI where:
- (i) the Transmission Authority is authorized to disconnect the Seller's Plant or suspend firm transmission service under the Interconnection Agreement, Facilities Agreement, any tariff applicable to firm transmission or interconnection service or any other legally enforceable right; and
 - (ii) such disconnections, Outages, suspensions, constraints or curtailments exceed in the aggregate 24 hours, whether or not continuous, in that month,

but excluding any disconnection, Outage, suspension, constraint or curtailment attributable to the Seller or the Seller's Plant; or

(b) a breach by the Buyer of its obligations under section 7.4,

then, notwithstanding that the Buyer is excused under subsection 7.8(b) from its obligations under section 7.4, in the case of an event described in subsection 7.9(a), all or that portion of the applicable Monthly Firm Energy Amount that could have been generated and delivered at the POI in each hour after the 24 hours has elapsed, but for the occurrence of the event described in subsection 7.9(a) will be deemed to be Eligible Energy, and in the case of an event described in subsection 7.9(b), the amount of Energy, not exceeding the Plant Capacity, that could have been generated and delivered at the POI but for the occurrence of the event described in subsection 7.9(b) will be deemed to be Eligible Energy. The amount of Energy that could have been generated and delivered at the POI during an event described in subsection 7.9(a) or (b) will be determined based on the Seller's Energy schedule for the applicable period, meter readings with respect to the Energy Source, if applicable, readings of the Metering Equipment before and after the occurrence of the event described in subsection 7.9(a) or (b) and other available information. There will be no deemed Eligible Energy during any period specified as a Planned Outage in a notice delivered by the Seller under section 6.4. For greater certainty, the provisions of this section 7.9 will not apply during any period when either Party is excused, in accordance with Article 11, from its obligation to deliver, or to accept delivery of, Energy as a result of a Force Majeure.

7A. GREEN ATTRIBUTES

7A.1 Transfer of Green Attributes - The Seller hereby transfers, assigns and sets over to the Buyer all right, title and interest in and to the Green Attributes. The Buyer shall not be required to make any payment for the Green Attributes other than payment for Eligible Energy in accordance with Appendix 3. The Seller, upon the reasonable request of the Buyer, shall do, sign or cause to be done or signed all further acts, deeds, things, documents and assurances required to give effect to this section.

7A.2 On-Site Emission Reduction Rights - The Seller retains all right, title and interest in and to any On-Site Emission Reduction Rights.

7A.3 Exclusivity - Except as set out in section 7A.13, the Seller shall not commit, sell, or transfer any Green Attributes to any Person other than the Buyer, or otherwise use or apply any Green Attributes for any purpose whatsoever at any time during the Term. The Seller shall ensure that all marketing materials produced by or for the Seller, all public or other statements by the Seller and all other communications by the Seller in any form whatsoever, contain no false or misleading statements concerning the ownership of the Energy or Green Attributes or the destination, end user or recipient of the Energy or Green Attributes. The Seller acknowledges that damages are not an adequate remedy to the Buyer for a breach by the Seller of this section and that the Buyer shall be entitled to an injunction to prevent any breach by the Seller of this section and to an order requiring the Seller to take such other actions as may be required to remedy the effects of any breach of this section.

7A.4 Representations and Warranties - The Seller represents and warrants to the Buyer and acknowledges that the Buyer is relying on those representations and warranties in entering into this EPA that the Seller is the legal and beneficial owner of the Green Attributes free and clear of all liens, claims, charges and encumbrances of any kind whatsoever and no other Person has any agreement or right of any kind whatsoever to purchase or otherwise to acquire or to claim or otherwise make any use whatsoever of the Green Attributes.

7A.5 EcoLogo^M Certification - The Seller shall obtain EcoLogo^M Certification by the first anniversary of COD and shall maintain the EcoLogo^M Certification throughout the remainder of the Term. By May 15 in each year after COD, the Seller shall deliver to the Buyer a certificate issued pursuant to Environment Canada's Environmental Choice^M program certifying the amount (MWh) of Eligible Energy delivered by the Seller to the Buyer in the immediately preceding year that qualified for the EcoLogo^M designation. The Seller shall notify the Buyer forthwith if the Seller fails to obtain EcoLogo^M Certification by the date specified in this section or if at any time during the Term the Seller does not have EcoLogo^M Certification.

7A.6 Alternate Certification - The Seller shall at the Buyer's request and at the Buyer's cost use commercially reasonable efforts to apply for and diligently pursue and maintain any additional or alternate certification, licensing or approval offered by any Governmental Authority or independent certification agency evidencing that the Seller's Plant and the Energy has Green Attributes. Any failure by the Seller to use commercially reasonable efforts pursuant to this section is a "material default" for purposes of this EPA, and the Buyer may terminate the EPA under subsection 15.1(d).

7A.7 Fees - Except as set out in this section, the Buyer shall reimburse the Seller for all certification, audit and licensing fees paid by the Seller to obtain the EcoLogo^M Certification (including the annual certificate described in section 7A.5) or any alternate certification under section 7A.6, but excluding any fees to obtain the letter from TerraChoice Environmental Marketing required pursuant to the CFT. The Buyer shall reimburse the Seller for such fees within 30 days after receipt of an invoice, together with reasonable supporting information, for such fees. The Buyer shall not be required to pay for any audit or other certification process in which the Seller's Plant and all or part of the Energy does not qualify for EcoLogo^M Certification, or for any audit or recertification process following a loss of EcoLogo^M Certification by the Seller's Plant, and the Seller shall pay all costs associated with any such audit and certification process.

7A.8 Energy Price Reduction - If:

- (a) the Seller fails to obtain EcoLogo^M Certification by the date specified in section 7A.5; or
- (b) at any time during the Term the Seller's Plant does not have EcoLogo^M Certification for any reason whatsoever,

then the Escalated Bid Price for Eligible Energy will be reduced by an amount equal to the Green Reduction Amount. In the case of subsection (a) above, such reductions shall take effect from COD and the Seller shall within 30 days after receipt of an invoice from the Buyer, refund to the Buyer an amount equal to the Green Reduction Amount multiplied by the amount of Eligible Energy in respect of which the Seller has received payment from and after COD. In the case of subsection (b) above the reduction will take effect from and after the date on which the EcoLogo^M Certification ceased to be in effect and the Seller shall within 30 days after receipt of an invoice from the Buyer, refund to the Buyer an amount equal to the Green Reduction Amount multiplied by the amount of Eligible Energy in respect of which the Seller has received payment from and after the date on which the EcoLogo^M Certification ceased to be in effect. For greater certainty, notwithstanding any payment reduction pursuant to this section, the Buyer will throughout the remainder of the Term have title to the Green Attributes and the provisions of section 7A.3 will remain in effect.

7A.9 Restoration of Price - If the Escalated Bid Price is reduced under section 7A.8 and thereafter the Seller demonstrates to the Buyer that the Seller's Plant has obtained EcoLogo^M Certification, other than as a result of expenditures by the Buyer under section 7A.10, or if the Seller obtains an alternate

certification at the Buyer's request under section 7A.6, then from and after the date on which the Seller provides such evidence to the Buyer or obtains such alternate certification the Escalated Bid Price will no longer be reduced by an amount equal to the Green Reduction Amount.

7A.10 Cure by the Buyer - If the Seller fails to obtain or maintain EcoLogo^M Certification, as required under section 7A.5 or any alternate certification under section 7A.6, then in addition to applying the payment reduction specified in section 7A.8 (applicable only to the EcoLogo^M Certification), the Buyer in its sole and unfettered discretion, may direct the Seller to take all steps required to obtain EcoLogo^M Certification or an alternate certification by implementing measures that are technologically feasible and not inconsistent with Good Utility Practice, Permits or Applicable Laws and the Seller shall comply promptly and diligently with that direction. Except where the failure to obtain or maintain EcoLogo^M Certification or an alternate certification results from a breach of Laws or Permits, the Buyer shall reimburse the Seller for reasonable direct capital and incremental operating costs incurred by the Seller resulting from compliance with the Buyer's direction within 30 days after submission of an invoice and supporting documentation reasonably satisfactory to the Buyer to evidence such costs. The Seller shall maintain accurate and complete records of such costs, and the Buyer or its designated representative may audit such costs and in that event the Seller shall provide all reasonable cooperation to the Buyer or its designated representative including access to all original records related to such costs. For greater certainty, notwithstanding the performance and completion of compliance measures under this section and the grant or reinstatement of EcoLogo^M Certification, the payment reductions under section 7A.8 will continue in effect for the remainder of the Term and the Buyer will continue to have title to the Green Attributes.

7A.11 Termination - If the Seller fails to comply promptly and diligently with a direction under section 7A.10 and such failure is not cured within 30 days of notice from the Buyer to the Seller, then the Seller will be in material default of its obligations under this EPA and the Buyer may terminate the EPA under subsection 15.1(d).

7A.12 Exclusive Remedy - The remedies set out or referenced in sections 7A.6, 7A.8, 7A.10 and 7A.11 are the sole and exclusive remedies available to the Buyer for any failure by the Seller to obtain or maintain EcoLogo^M Certification or any alternate certification.

7A.13 Transfer to Governmental Authority - If the Seller has been notified that the Seller's Plant or the Energy qualifies for Canada's Renewable Power Production Incentive or Wind Power Production Incentive or any other Governmental Authority incentive associated with the generation of energy with specified environmental attributes and the transfer of the Green Attributes to the applicable Governmental Authority is required for the Seller to obtain the incentive, the Buyer shall transfer the Green Attributes to such Governmental Authority, provided that the Seller has given notice to the Buyer pursuant to this section by not later than COD. If the Buyer is required to transfer the Green Attributes to a Governmental Authority pursuant to this section, then the Parties shall enter into an amendment to this EPA to delete Article 7A from the EPA and to reduce the Escalated Bid Price by an amount equal to the Green Reduction Amount for all Eligible Energy delivered or deemed to be delivered from and after the date of the notice by the Seller to the Buyer under this section and the Seller shall within 15 days after receipt of an invoice, reimburse the Buyer for all costs incurred by the Buyer under section 7A.7 prior to the date of notice from the Seller under this section.

7A.14 Information Requirements - Without limiting section 6.5, the Seller shall maintain, and shall within 10 Business Days after a request from the Buyer, provide to the Buyer: (a) all information the Buyer requires to verify the quantity of Energy generated by the Seller's Plant, qualification of the Seller's Plant and all or part of the Energy for EcoLogo^M Certification or an alternate certification under

section 7A.6, the status of the EcoLogo^M Certification or an alternate certification under section 7A.6, and the existence, nature and quantity of Green Attributes; (b) any information required for the purposes of any Green Attribute or energy tracking system as directed by the Buyer; and (c) any other information the Buyer requires to enable the Buyer or its Affiliates to obtain or realize the full benefit of the Green Attributes, including sales of the Green Attributes to third parties, provided that if the Buyer requests any information pursuant to subsection (b) or (c) above that the Seller would not otherwise be required to maintain for purposes of administering this EPA, the Buyer shall reimburse the Seller for all reasonable costs incurred by the Seller in obtaining or maintaining such information.

7A.15 Audit Rights - The Buyer, any Affiliate of the Buyer and any third Person who has entered into a contract with the Buyer or any Affiliate of the Buyer to purchase Green Attributes may at any time during the Term conduct or have a third Person with the necessary expertise conduct, at the Buyer's expense, an audit of the Project Assets to verify compliance with the requirements for EcoLogo^M Certification or an alternate certification under section 7A.6. The Seller shall promptly provide any consents required to enable the Buyer, any Affiliate of the Buyer or any third Person who has entered into a contract with the Buyer to purchase Green Attributes to: (i) make enquiries with Governmental Authorities concerning the status of compliance by the Seller and the Seller's Plant with applicable Laws and Permits; (ii) make enquiries of TerraChoice Environmental Marketing or any other third Person regarding the status of the EcoLogo^M Certification; and (iii) obtain copies of all audits, reviews or inspections conducted by the Seller, TerraChoice Environmental Marketing or any other third Person in connection with the application by the Seller to obtain and maintain EcoLogo^M Certification, or any alternate certification under section 7A.6.

7A.16 Confidentiality - The Seller consents to the disclosure to any Person or any Governmental Authority of any Confidential Information with respect to the Energy and/or the Seller's Plant the Buyer is required to disclose to enable the Buyer to obtain or realize the full benefit to the Buyer of the Green Attributes, including sales of Green Attributes to third parties.

7A.17 Annual Payment Calculation - By not later than June 15 in each year after COD the Seller shall pay to the Buyer an amount calculated in accordance with the following formula:

Payment Amount = the greater of (a) zero and (b) the amount determined in accordance with the following formula:

$$[(A \times B) - C] \times \text{GRA}$$

Where:

A = the percentage of the Energy generated at the Seller's Plant from the Energy Source(s), as set out in Appendix 5, that is designated as acceptable to generate Energy that qualifies for EcoLogo^M Certification in the letter from TerraChocie Environmental Marketing as filed with the Seller's Tender.

B = the total amount of Eligible Energy (as determined under subsection (a) of the definition of Eligible Energy) delivered by the Seller to the Buyer in the immediately preceding year.

C = the EcoLogo^M Certified Energy Amount.

The foregoing amount shall only be payable by the Seller for periods in which subsection 7A.8 does not apply.

8. METERING

8.1 Installation of Metering Equipment - The Seller shall, at its cost, ensure that revenue metering equipment (the "**Metering Equipment**") is installed, operated and maintained in accordance with the requirements of the Transmission Authority and the requirements of this section. The Seller shall ensure that the Seller's Plant is equipped with electronic meters and SCADA capability. The Metering Equipment shall be installed at a location approved by the Buyer, acting reasonably, which location shall be such that the Metering Equipment can measure the Energy generated by the Seller's Plant independent of all other generation equipment or facilities. The Seller shall ensure that the Metering Equipment is: (a) capable of being remotely interrogated; (b) sufficient to accurately meter the quantity of Energy to be purchased and sold hereunder; (c) calibrated to measure the quantity of Energy delivered to the POI, after adjusting for any line losses from the Seller's Plant to the POI; and (d) in compliance with all requirements set out in the *Electricity and Gas Inspection Act* (Canada) and associated regulations.

8.2 Operation of Metering Equipment - The Metering Equipment shall be used for purposes of calculating the amount of Eligible Energy. In the event of any failure of the Metering Equipment, the Parties shall, until such time as the Metering Equipment has been repaired or replaced, rely upon information provided by any back-up meter installed pursuant to section 8.3, or, in the absence of such back-up meter, the Seller's metering equipment, if any, for purposes of calculating payments due under this EPA. If there is any dispute regarding the accuracy of the Metering Equipment, either Party may give notice to the other Party of the dispute, in which case the Buyer and the Seller will proceed to rectify the matter in accordance with the *Electricity and Gas Inspection Act* (Canada). The Seller shall allow the Buyer to access the Seller's Plant at any time during normal business hours on reasonable advance notice for purposes of inspecting the Metering Equipment. The Seller shall, on the Buyer's request, cause the Metering Equipment to be inspected, tested and adjusted provided that, except as set out below, the Buyer shall not make such a request more than once in each year during the Term. The Seller shall give the Buyer reasonable prior notice of all inspections, tests and calibrations of the Metering Equipment and shall permit a representative of the Buyer to witness and verify such inspections, tests and calibration. If either Party has reason to believe that the Metering Equipment is inaccurate, the Seller shall cause the Metering Equipment to be tested forthwith upon becoming aware of the potential inaccuracy. The Seller shall provide the Buyer with copies of all meter calibration test results and all other results of any test of the Metering Equipment. If any test of the Metering Equipment discloses an inaccuracy outside the inaccuracies permitted under the *Electricity and Gas Inspection Act* (Canada), any payments or adjustments made or calculated under this EPA that would have been affected by the inaccuracy shall be recalculated to correct for the inaccuracy. For purposes of such correction, if the inaccuracy is traceable to a specific event or occurrence at a reasonably ascertainable time, then the adjustment shall extend back to that time; otherwise, it shall be assumed that the error has existed for a period equal to one half of the time elapsed since COD or one half of the time since the last meter test, whichever is more recent, but in any event shall not extend back more than 36 months. Any amounts which are determined to be payable or subject to refund as a result of such re-computations shall be paid to the Party entitled to such amounts within 20 days after the paying Party is notified of the re-computation.

8.3 Duplicate Metering Equipment - The Buyer may at any time during the Term at the Buyer's sole cost, on not less than 30 days prior notice to the Seller, install a duplicate revenue meter at the Seller's Plant at a location to be agreed upon by the Buyer and the Seller, acting reasonably, and the Seller shall allow the Buyer to access the Seller's Plant for such purpose and for the purpose of inspecting

and maintaining such equipment. The Seller shall make transformers, transformer connections and telephone access available to the Buyer, as required, if the Buyer elects to install a duplicate revenue meter. Any duplicate revenue meter and metering equipment installed by the Buyer will remain the property of the Buyer, and the Seller shall not tamper with, remove or move such meter or equipment.

8.4 Energy Source Meters - The Seller shall, at its cost, ensure that meters are installed at the Seller's Plant capable of measuring the Energy Source available to the Seller's Plant.

9. STATEMENTS AND PAYMENT

9.1 Statements

- (a) In each month after the month in which Pre-COD Energy is first delivered to the Buyer, the Seller shall, by the 15th day of the month or the first Business Day thereafter, deliver to the Buyer a statement prepared by the Seller for the preceding month. The statement must comply with any billing guideline issued by the Buyer pursuant to section 9.4 and must indicate, among other things, the amount of Eligible Energy, the price payable for the Eligible Energy, any LDs payable by the Seller to the Buyer and any Final Amounts owing by either Party to the other Party and set out in reasonable detail the manner by which the statement and the amounts shown thereon were computed. To the extent not previously delivered pursuant to the requirements of this EPA, the statement must be accompanied by sufficient data to enable the Buyer, acting reasonably, to satisfy itself as to the accuracy of the statement.
- (b) Either Party may give notice to the other Party of an error, omission or disputed amount on a statement within 36 months after the statement was first issued together with reasonable detail to support its claim. After expiry of that 36 month period, except in the case of wilful misstatement or concealment, amounts on a previously issued statement will be considered accurate and amounts which were omitted will be considered to be nil, other than amounts disputed in accordance with this subsection within the 36 month period, which will be resolved in accordance with this EPA.

9.2 Payment

- (a) Within 30 days after receipt of a statement delivered pursuant to subsection 9.1(a) and subject to sections 9.5 and 13.6, the Buyer shall pay to the Seller the amount set out in the statement, except to the extent the Buyer in good faith disputes all or part of the statement by notice to the Seller in compliance with subsection 9.1(b). If the Buyer disputes any portion of a statement, the Buyer must nevertheless pay the undisputed net amount payable by the Buyer pursuant to the statement.
- (b) Any amount required to be paid in accordance with this EPA, but not paid by either Party when due, will accrue interest at an annual rate equal to the Prime Rate plus 3%, compounded monthly. Any disputed amount that is found to be payable will be deemed to have been due within 30 days after the date of receipt of the statement which included or should have included the disputed amount.

9.3 Taxes - All dollar amounts in this EPA do not include any value added, consumption, commodity or similar taxes applicable to the purchase by the Buyer of the Eligible Energy, including GST and PST, which, if applicable, will be borne by the Buyer and added to each statement.

9.4 Billing Guideline - The Seller shall comply with any reasonable written billing guideline (including any requirements with respect to the form of statements pursuant to section 9.1) issued by the Buyer during the Term, provided that any such billing guideline shall not vary the express terms of this EPA. If there is any conflict between a billing guideline and this EPA, this EPA will govern.

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

- (a) this section 9.5 applies only to any purchase price for Eligible Energy owing by the Buyer to the Seller, any LDs owing by the Seller to the Buyer, any Termination Payment or Final Amount owing by either Party to the other Party and any amount owing by the Seller to the Buyer under section 6.8; and
- (b) no LD, Termination Payment, Final Amount or amount owing by the Seller to the Buyer under section 6.8 shall be added to or deducted from the price owing by the Buyer to the Seller for Eligible Energy unless the LD, Termination Payment, Final Amount or amount owing under section 6.8 remains unpaid 30 days after the Party owed the LD, Termination Payment, Final Amount or amount owing under section 6.8 gives notice to the other Party.

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

10. INSURANCE/DAMAGE AND DESTRUCTION

10.1 Insurance - The Seller shall, by the date specified in section 4.1 for the commencement of the Project activities necessary to construct the Seller's Plant, obtain, maintain and pay for: (a) policies of commercial general liability insurance with a per occurrence limit of liability not less than \$20,000,000 applicable to the Project separate from all other projects and operations of the Seller; and (b) property insurance and Construction Insurance with limits of liability and deductibles consistent with those a prudent owner of a facility similar to the Seller's Plant would maintain and those the Facility Lender requires. All commercial general liability policies must include the Buyer, its directors, officers, employees and agents as additional insureds and must contain a cross liability and severability of interest clause. All policies of insurance must be placed with insurers that have a minimum rating of A- (or equivalent) by A.M. Best Company and are licensed to transact business in the Province of British Columbia and must be endorsed to provide to the Buyer 30 days prior written notice of cancellation, non-renewal or any material amendment that results in a reduction in coverage. The Seller shall give the Buyer a copy of the insurance certificate(s) for the insurance required to be maintained by the Seller under this section not more than 30 days after the effective date of coverage and immediately upon renewal thereafter. The Seller shall be responsible for the full amount of all deductibles under all insurance policies required to be maintained by the Seller under this section.

10.2 Damage or Destruction of the Seller's Plant

- (a) **Major Damage** - If the Seller's Plant suffers Major Damage caused by a Force Majeure event in respect of which the Seller has invoked Force Majeure in accordance with Article 11, then the Seller may at its option exercisable by notice to the Buyer within 120 days after the occurrence thereof, either: (i) proceed to diligently and expeditiously

and at its own cost repair the Major Damage and restore the Seller's Plant to at least the condition in which it was in immediately prior to the Major Damage and resume deliveries of Energy hereunder; or (ii) terminate this EPA, and in that event, the provisions of section 15.3 and subsection 15.5(c) apply. If the Seller fails to give notice exercising its option within such 120 day period, it will be deemed to have exercised the option described in (i) above. Nothing in this section limits the rights of either Party to terminate this EPA under any other section of this EPA.

- (b) **Non-Major Damage** - If the Seller's Plant is damaged or destroyed, in whole or in part, by any cause or peril, then, except in the case of Major Damage caused by a Force Majeure event in respect of which the Seller has invoked Force Majeure in accordance with Article 11, the Seller shall within 30 days after the date of the damage or destruction provide notice to the Buyer setting out the date by which the Seller, acting reasonably, can resume delivering Energy to the Buyer which date shall be not more than 365 days after the date of occurrence of the damage or destruction. The Seller shall diligently and expeditiously, and at its own cost, repair the Seller's Plant and restore the same to at least the condition in which it was in immediately prior to the damage or destruction and shall complete such work not later than the date specified in the notice delivered by the Seller to the Buyer under this section. Nothing in this section limits the rights of either Party to terminate this EPA under any other section of this EPA.
- (c) **Extension of Term** - Provided the Seller complies with its obligations under this section 10.2, the Term shall be extended by the number of days from the date of the event of damage or destruction to the date on which the Seller resumes delivering Energy to the Buyer.

11. FORCE MAJEURE

11.1 Invoking Force Majeure and Notice

- (a) Neither Party will be in breach or default as to any obligation under this EPA if that Party is unable to perform that obligation due to an event or circumstance of Force Majeure, of which notice is given as required in this section 11.1 and, subject to any limitations expressly set out in this EPA, the time for performance of such obligation will be extended by the number of days that Party is unable to perform such obligation as a result of the event or circumstance of Force Majeure.
- (b) If there is a Force Majeure preventing a Party from performing an obligation under this EPA, that Party shall promptly notify the other Party of the Force Majeure. The notice must identify the nature of the Force Majeure, its expected duration and the particular obligations affected by the Force Majeure. The affected Party shall provide reports to the other Party with respect to the Force Majeure at such intervals as the other Party may reasonably request while the Force Majeure continues. A Party will be deemed to have invoked Force Majeure from the date when that Party gives notice of the Force Majeure in accordance with this subsection 11.1(b), provided that if such notice is given within 24 hours after the later of: (i) the occurrence of the Force Majeure; and (ii) the time when the Party knew, or reasonably ought to have known, of the occurrence of the Force Majeure, the Party will be deemed to have invoked Force Majeure from the date on which the event of Force Majeure occurred. The Party invoking Force Majeure shall promptly respond to any inquiry from the other Party regarding the efforts being undertaken to

remove the Force Majeure. The Party invoking Force Majeure shall give prompt notice of the end of the Force Majeure.

11.2 Exclusions - A Party may not invoke Force Majeure:

- (a) for any economic hardship, or for lack of money, credit or markets; or
- (b) if the Force Majeure is the result of a breach by the Party seeking to invoke Force Majeure of a Permit or of any applicable Laws; or
- (c) for a mechanical breakdown, unless the Party seeking to invoke Force Majeure can demonstrate by clear and convincing evidence that the mechanical breakdown was caused by a latent defect in the design or manufacture of the equipment which could not reasonably have been identified by normal inspection or testing of the equipment; or
- (d) if the Force Majeure was caused by a breach of, or default under, this EPA or a wilful or negligent act or omission by the Party seeking to invoke Force Majeure; or
- (e) for any acts or omissions of third parties, including any Affiliate of the Seller, or any vendor, supplier, contractor or customer of a Party, but excluding Governmental Authorities, unless such acts or omissions are themselves excused by reason of Force Majeure as defined in this EPA; or
- (f) for any disconnection of the Seller's Plant from the Transmission System, or any Outage, suspension, constraint or curtailment in the operation of the Transmission System; or
- (g) based on the cost or unavailability of the Energy Source for any reason, including natural causes, unless: (i) transport of the Energy Source to the Seller's Plant is prevented by an event or circumstance that constitutes Force Majeure (as defined in this EPA); or (ii) if the Energy Source is water, wind or solar, the Seller can demonstrate by clear and convincing evidence that the unavailability of the Energy Source is caused by a significant landslide, earthquake or volcanic eruption resulting in a significant reduction in the flow of the Energy Source to the Seller's Plant.

12. LIQUIDATED DAMAGES

12.1 COD Delay - If the Seller's Plant fails to achieve COD by the date that is the earlier of:

- (a) 185 days after the Guaranteed COD plus Force Majeure Days, and
- (b) the COD Deadline plus Force Majeure Days,

the Seller shall pay COD Delay LDs to the Buyer in an amount equal to the amount determined in accordance with subsection (b) of the definition of "Performance Security" divided by 180 for each day COD is delayed to a maximum of 180 days. The Seller shall pay any COD Delay LDs owing by the Seller to the Buyer in respect of the immediately preceding month on the 30th day after the last day of that month.

12.2 Delivery Shortfalls - If in any month after the first anniversary of COD, the Delivered Eligible Energy during the month is less than 90% of the Monthly Firm Energy Amount for that month, the Seller shall pay LDs to the Buyer calculated as follows:

$$\text{LD Amount} = \text{LD Factor} * ((0.9 * \text{Monthly Firm Energy Amount}) - \text{Delivered Eligible Energy})$$

Where:

- (a) the Monthly Firm Energy Amount is (i) the tendered Monthly Firm Energy Amount for that month set out in Appendix 2 minus (ii) an amount equal to the tendered Monthly Firm Energy Amount for that month set out in Appendix 2, divided by the number of minutes in the month multiplied by the number of minutes in the month for which the Seller is excused under subsection 7.8(a) from the obligation to deliver Energy; and
- (b) "Delivered Eligible Energy" means in each month the amount of Eligible Energy determined pursuant to subsection (a) of the definition of Eligible Energy for that month, but excluding any Energy delivered after the start time and prior to the end time for an Authorized Planned Outage as set out in the notice with respect to the Authorized Planned Outage under section 6.4; and
- (c) LD Factor = the greater of: (i) zero and (ii) $A - [(EBP / (1 - L)) + EBPA]$

Where:

- (i) A = the lesser of:
 - (I) the LD Cap; and
 - (II) the Mid-C Index;
- (ii) L = 6.19%;
- (iii) EBP = Escalated Bid Price;
- (iv) $EBPA \text{ (Escalated Bid Price Adjuster)}_n = -\$3.00/\text{MWh} * \text{CPI}_{\text{January 1 } n} / \text{CPI}_{\text{January 1 2006}}$

Where:

n = the year for which the Escalated Bid Price Adjuster is being calculated

$\text{CPI}_{\text{January 1 } n}$ = the CPI for December in the year immediately preceding the year for which the Escalated Bid Price Adjuster is being calculated;

- (v) Mid-C means the mid-Columbia electricity region;
- (vi) "Mid-C Index" means the weighted average for the relevant month of the Dow Jones Mid-C daily firm On-Peak Index and the Dow Jones Mid-C daily firm Off-Peak Index weighted based on the number of on-peak and off-peak hours (as defined in the Mid-C index) in the relevant month. Amounts quoted in U.S.

dollars will be converted to Canadian dollars using the average of the Bank of Canada daily "noon rates" for the applicable month; and

- (vii) "LD Cap" means \$100/MWh adjusted effective as of January 1 in each year after the Effective Date in accordance with the following formula:

$$LD\ Cap_n = \$100 / MWh * CPI_{January\ 1\ n} / CPI_{January\ 1\ 2006}$$

Where:

n = the year for which the escalated LD Cap is being calculated

$CPI_{January\ 1\ n}$ = the CPI for December in the year immediately preceding the year for which the escalated LD Cap is being calculated.

Any LDs owing by the Seller to the Buyer pursuant to this section 12.2 shall be payable on 15th day of the month following the month in which the delivery shortfall occurred.

12.3 Exclusive Remedies for Buyer - Except in the case of Deliberate Breach, payment by the Seller of the LDs in this Article 12 is the exclusive remedy to which the Buyer is entitled for: (i) the Seller's failure to achieve COD by the Guaranteed COD; (ii) the Seller's failure to deliver the Monthly Firm Energy Amount; or (iii) any other failure to comply with section 7.3 or the last sentence of section 6.3, provided that the foregoing does not limit or otherwise affect any right to receive interest on LDs or any right to terminate the EPA, or any right to receive a Termination Payment, in each case as expressly set out in this EPA, or the exercise of any other right or remedy expressly set out in this EPA, including any rights under section 9.5, or Article 13, or any right to apply any invoice adjustments in accordance with Appendix 3.

12.4 Exclusive Remedies for Seller - The Seller's exclusive remedy for the Buyer's failure to take or pay for Eligible Energy is a claim for the price payable by the Buyer for Eligible Energy pursuant to Appendix 3 and any interest on any such amount owing by the Buyer to the Seller, provided that the foregoing does not limit or otherwise affect any right to terminate the EPA, any rights under section 9.5, or any right to receive a Termination Payment expressly set out in this EPA.

12.5 Limits of Liability - Except in the case of Deliberate Breach, in each year during the Term the Seller's liability for damages for all breaches of, or defaults under, this EPA in that year is limited to an amount equal to 200% of the required amount of the Performance Security for the relevant year, provided that the foregoing does not apply to: (i) any liability under any of sections 4.2, 4.5, 5.7, or 6.8; (ii) any liability under section 19.1; (iii) interest on any amount owing under this EPA; (iv) any right to receive a Termination Payment expressly set out in this EPA; or (v) any other provision in this EPA that is expressly excluded from the limits of liability in this section.

12.6 Consequential Damages - Neither Party shall be liable to the other Party for any special, incidental, exemplary, punitive or consequential damages arising out of a Party's performance or non-performance under this EPA, whether based on or claimed under contract, tort, strict liability or any other theory at law or in equity.

13. PERFORMANCE SECURITY

13.1 Delivery - The Parties acknowledge that the Seller has delivered the Performance Security, in the form required pursuant to section 13.4, to the Buyer concurrently with execution and delivery of this EPA. The Seller shall maintain the Performance Security until the time provided in section 13.2. The Performance Security secures the obligations of the Seller under this EPA, but is not a limitation of the Seller's liability in respect of any breach of, or default under, this EPA.

13.2 Return - The Buyer shall return or release the Performance Security to the Seller, without deduction, other than prior deductions, if any, properly made hereunder on the earlier of:

- (a) upon termination of this EPA under section 3.1, by the date specified in subsection 3.5(a); or
- (b) 10 Business Days after termination of this EPA under subsection 10.2(a), section 15.1 or section 15.2 and discharge of all obligations and liabilities of the Seller to the Buyer under this EPA.

13.3 Enforcement - If:

- (a) the Seller fails to pay amounts owing by the Seller to the Buyer pursuant to any of sections 4.2, 4.5, 5.7, or 6.8; or
- (b) the Seller fails to pay any Final Amount owing by the Seller to the Buyer; or
- (c) the Seller fails to pay any LDs owing by the Seller to the Buyer; or
- (d) the Seller fails to pay any Termination Payment owing by the Seller to the Buyer,

and, in each case, the Seller fails to cure such failure to pay within 15 days after notice from the Buyer to the Seller, then the Buyer may enforce the Performance Security and apply the proceeds thereof on account of amounts owing to the Buyer in respect of any or all of the foregoing.

13.4 Form - The Seller shall maintain the Performance Security in the form of a letter of credit that is:

- (a) issued or advised by a branch in Vancouver, Canada of a bank or financial institution where the issuing bank or financial institution has a credit rating not less than Standard & Poor's A-, Moody's A3 or Dominion Bond Rating Service A (low) and if such credit rating agencies publish differing credit ratings for the same bank or financial institution, the lowest credit rating of any of the credit rating agencies shall apply for purposes of this section;
- (b) in the form set out in Appendix 6, or in such other form as agreed to by the Buyer; and
- (c) for a term of not less than one year and must provide that it is renewed automatically, unless the issuing or confirming bank advises otherwise by the date specified in Appendix 6.

13.5 Replenishment - If the Buyer draws on the Performance Security, as permitted hereunder, then the Seller shall within 3 Business Days after such draw provide additional security in the form specified in section 13.4 sufficient to replenish or maintain the aggregate amount of the Performance Security at the amount required hereunder.

13.6 Right to Withhold Payment - If the Seller has failed to maintain the Performance Security at the level required hereunder (subject to the cure period specified in section 13.5), the Buyer shall be entitled to withhold payment of any amount owing by the Buyer to the Seller under this EPA until 5 days after the date when the Seller has delivered the required amount of Performance Security to the Buyer. Any amounts withheld by the Buyer in accordance with this section 13.6 will not bear interest.

13.7 Letter of Credit Failure - The Buyer shall be entitled to enforce the Performance Security in the event of a Letter of Credit Failure and the Buyer shall be entitled to hold the proceeds of such enforcement until such time as the Seller delivers replacement Performance Security in the amount and in the form required under this EPA. Upon receipt of such replacement security, the Buyer shall return the proceeds of enforcement of the original Performance Security to the Seller without interest after deducting any amounts the Buyer is entitled to deduct under this EPA. The Seller shall notify the Buyer promptly of any Letter of Credit Failure.

14. SUSPENSION

14.1 Buyer Suspension - If a Buyer Termination Event has occurred and is continuing, the Buyer may, upon notice to the Seller, suspend performance under this EPA provided that in no event shall any such suspension continue for longer than 90 days and further provided that such right shall not affect the Buyer's obligation to make any payment owing to the Seller in respect of performance by the Seller of its obligations under this EPA prior to the date of suspension by the Buyer.

14.2 Seller Suspension - If a Seller Termination Event has occurred and is continuing, the Seller may, upon notice to the Buyer, suspend performance under this EPA, provided that such right shall not affect the Seller's obligation to pay any amount owing by the Seller to the Buyer in respect of performance of, or failure to perform, the Seller's obligations under this EPA prior to the date of suspension by the Seller.

14.3 Resuming Deliveries - The non-defaulting Party's right to suspend performance pursuant to this Article 14 shall cease when the defaulting Party has demonstrated to the satisfaction of the non-defaulting Party, acting reasonably, that the defaulting Party has cured the cause for the suspension.

15. TERMINATION

15.1 Termination by the Buyer - In addition to any other right to terminate this EPA expressly set out in any other provision of this EPA, the Buyer may terminate this EPA, by notice to the Seller if:

- (a) the Seller has failed to obtain all Material Permits by the date that is 365 days prior to the Guaranteed COD, provided that the Buyer shall only be entitled to terminate the EPA under this provision if the Buyer delivers a termination notice prior to the date on which the Seller has secured all Material Permits; or

- (b) COD does not occur by the earlier of:
 - (i) the Guaranteed COD plus 365 days plus all Force Majeure Days (not exceeding 365 Force Majeure Days); and
 - (ii) the COD Deadline plus 180 days plus all Force Majeure Days (not exceeding 185 Force Majeure Days),

provided that the Buyer shall only be entitled to terminate the EPA under this provision if the Buyer delivers a termination notice prior to COD, and further provided that if the Buyer has not exercised its right to terminate the EPA within 30 days after the right to terminate arises under this subsection, the Seller may deliver a notice to the Buyer setting out a new date by which the Seller, acting reasonably, expects to achieve COD. If the Buyer does not elect to terminate the EPA within 60 days after receipt of such a notice, the Buyer shall only be entitled to terminate this EPA under this provision if the Seller does not achieve COD by the date specified in such notice; or

- (c) at any time after COD, the Buyer has received a notice from the Seller invoking Force Majeure and:
 - (i) the Force Majeure has not been removed by the date that is 365 days after the date of the notice invoking Force Majeure; or
 - (ii) if the Force Majeure cannot be removed within that 365 day period, by the date that is 730 days after the date of the notice invoking Force Majeure, provided that the Seller is working diligently and expeditiously to remove the Force Majeure.

The Buyer shall only be entitled to terminate the EPA under this provision if the Buyer delivers a termination notice prior to the end of the Force Majeure; or

- (d) a Buyer Termination Event occurs.

Any termination pursuant to this section 15.1 shall be effective immediately upon delivery of the notice of termination to the Seller.

15.2 Termination by the Seller - In addition to any other right to terminate this EPA expressly set out in any other provision of this EPA, the Seller may terminate this EPA by notice to the Buyer if:

- (a) the Seller, after using commercially reasonable efforts, has failed to obtain all Material Permits on terms satisfactory to the Seller, acting reasonably, on or before the date that is 545 days before the Guaranteed COD, provided that if the Seller has not given notice of termination pursuant to this subsection 15.2(a) by the date that is 15 days after the Seller's right to terminate arises under this subsection 15.2(a), the Seller will be deemed to have elected not to terminate this EPA and will not thereafter be entitled to terminate this EPA under this subsection 15.2(a); or
- (b) the Seller has received a notice from the Buyer invoking Force Majeure and the Force Majeure has not been removed by the date that is 365 days after the date of notice invoking Force Majeure, provided that the Seller shall only be entitled to terminate the

EPA under this provision if the Seller delivers a termination notice prior to the end of the Force Majeure; or

- (c) a Seller Termination Event occurs.

Any termination pursuant to this section 15.2 shall be effective immediately upon delivery of the notice of termination to the Buyer.

15.3 Effect of Termination - Upon expiry of the Term or if this EPA is terminated pursuant to section 3.1, subsection 10.2(a) or this Article 15:

- (a) the Parties may pursue and enforce any rights and remedies permitted by law or equity in respect of any prior breach or breaches of the EPA, and may enforce any liabilities and obligations that have accrued under this EPA prior to the expiry of the Term or the date of termination (including any claims by the Buyer for amounts that would have been payable by the Seller under any of sections 4.2, 4.5, 5.7 or 6.8 but for the expiry or termination of the EPA), subject to any express restrictions on remedies and limitations or exclusions of liability set out in this EPA; and
- (b) (i) with respect to a termination under section 3.1 only, both Parties will remain bound by (A) Article 19 and sections 20.7 and 20.8, and (B) sections 3.3, 3.5, 13.2 and 13.3, in respect of the satisfaction of residual obligations specified to arise on termination only;
- (ii) upon expiry of the Term or upon any termination other than a termination under section 3.1:
- (A) both Parties will remain bound by: (I) Article 9 in respect of any final billing and resolution of disputed amounts only; (II) Article 13 and Article 15, in respect of the satisfaction of residual obligations specified to arise on termination only; (III) Article 19 and sections 20.7 and 20.8; and (IV) Article 7A with respect only to Green Attributes associated with Eligible Energy delivered prior to termination of the EPA; and
- (B) the Seller will remain bound by: (I) section 6.5; and (II) for a period of 36 months following expiry of the Term or termination of this EPA, Article 17, with respect to records only,

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

15.4 Payment on Termination by the Buyer

- (a) If the Buyer terminates this EPA under section 15.1, except for a termination pursuant to subsection 15.1(c), the Seller shall pay to the Buyer an amount equal to \$60,000/MW multiplied by the Plant Capacity where termination occurs prior to the first anniversary of COD, or; where termination occurs on or after the first anniversary of COD, an amount equal to \$40,000/MW multiplied by the total of the Monthly Firm Energy Amounts set out in Appendix 2 divided by 8760.

- (b) If the Buyer terminates this EPA under subsection 15.1(c), no Termination Payment is payable by the Seller to the Buyer, except as set out in subsection 15.4(c).
- (c) If the Buyer terminates this EPA under subsection 15.1(c) prior to the first anniversary of COD, the Seller shall reimburse the Buyer, within 30 days after the date of delivery by the Buyer to the Seller of an invoice therefor (which invoice shall be delivered not later than 60 days after the date of termination of the EPA), for an amount, not exceeding the amount of the Performance Security required hereunder, equal to the Network Upgrade Costs.

15.5 Payment on Termination by the Seller

- (a) If the Seller terminates this EPA under subsection 15.2(a), the Seller shall pay to the Buyer an amount equal to \$20,000/MW multiplied by the total of the Monthly Firm Energy Amounts set out in Appendix 2 divided by 8760.
- (b) If the Seller terminates this EPA under subsection 15.2(b), no Termination Payment is payable by the Buyer to the Seller.
- (c) If the Seller terminates this EPA under subsection 10.2(a), no Termination Payment is payable by the Seller to the Buyer except that if the Seller terminates the EPA under subsection 10.2(a) prior to the first anniversary of COD, subsection 15.4(c) applies.
- (d) If the Seller terminates this EPA under subsection 15.2(c) prior to COD, the Buyer shall pay to the Seller an amount equal to the lesser of:
 - (i) 115% of the Development Costs; and
 - (ii) the positive amount, if any, by which the Seller's Losses and Costs exceed its aggregate Gains.
- (e) If the Seller terminates this EPA under subsection 15.2(c) after COD, the Buyer shall pay to the Seller an amount equal to the positive amount, if any, by which the Seller's Losses and Costs exceed its aggregate Gains.
- (f) The Buyer may audit the Seller's Development Costs and in that event, the Seller shall provide all reasonable cooperation to the Buyer or its designated representative, including access to all original records related to Development Costs.
- (g) The Seller's Gains, Losses and Costs shall be determined by comparing the value of the remaining Term, contract quantities and price payable under this EPA had it not been terminated to the relevant market prices for equivalent quantities for the remaining Term either quoted by a bona fide arm's length third party or which are reasonably expected to be available in the market under a replacement contract for this EPA. Market prices will be adjusted for differences between the product subject to the market prices and the product specified under this EPA including with respect to quantity, place of delivery and length of term.
- (h) The Seller shall not be required to enter into a replacement transaction in order to determine the amount payable by the Buyer pursuant to subsection 15.5(d) or (e).

- (i) The Seller shall determine the amount of any Termination Payment owed by the Buyer pursuant to subsection 15.5(d) or (e) as applicable and shall notify the Buyer of such amount and provide reasonable particulars with respect to its determination within 120 days after the effective date of termination of this EPA, failing which the Seller will not be entitled to any Termination Payment under this section.
- (j) If the Seller's aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this EPA, the amount of the Termination Payment shall be zero.
- (k) The Seller's Gains, Losses and Costs will be discounted to the present value of those Gains, Losses and Costs at the effective date of termination of the EPA (to take into account the time value of money for the period between the effective date of termination of the EPA and the date the Gains, Losses and Costs would have occurred but for the termination of the EPA) using the Present Value Rate applicable at the effective date of termination of the EPA, where the "Present Value Rate" means the annual yield on a Government of Canada Bond having a maturity date that most closely matches the date on which the Term would have expired but for the termination of the EPA, plus 3%.

15.6 Termination Payment Date - A Party required to make a Termination Payment to the other Party shall, except in the case of a Termination Payment payable pursuant to subsection 15.5(d) or (e), pay the Termination Payment within 5 Business Days after the effective date of termination of this EPA. The Buyer shall pay any Termination Payment owing by the Buyer pursuant to subsection 15.5(d) or (e) within 30 Business Days after the date of delivery of an invoice by the Seller to the Buyer pursuant to subsection 15.5(d) or (e) as applicable. At the time for payment of the Termination Payment, each Party shall pay to the other Party all additional amounts payable by it pursuant to this EPA, but all such amounts will be netted and aggregated with any Termination Payment.

15.7 Exclusive Remedies - Subject to section 15.3, the payments and actions contemplated by section 3.5 shall be the exclusive remedy to which the Parties are entitled for termination of this EPA pursuant to section 3.1. Except in the case of Deliberate Breach or as otherwise expressly set out in this EPA, and subject to section 15.3: (a) payment by the Seller of the Termination Payment is the exclusive remedy to which the Buyer is entitled for termination of this EPA pursuant to subsections 15.1(a), (b) or (d) or 15.2(a); and (b) payment by the Seller of any amount payable pursuant to subsection 15.4(c) is the exclusive remedy to which the Buyer is entitled for termination of this EPA pursuant to subsection 15.1(c). Payment by the Buyer of the Termination Payment is the exclusive remedy to which the Seller is entitled for termination of this EPA pursuant to subsection 15.2(c). Termination of this EPA is the exclusive remedy to which the Seller is entitled for termination of this EPA pursuant to subsection 15.2(b).

16. ASSIGNMENT

16.1 Assignment - A Party may not assign or dispose of this EPA or any direct or indirect interest in this EPA, in whole or in part, for all or part of the Term, except:

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

Notice of intent to assign, and where applicable a request for consent to assign, must be given by the assignor to the other Party not less than 30 days before the date of assignment, and, except in the case of assignment to a Facility Lender, must be accompanied by a proposed form of assignment and assumption agreement, and, in the case of an assignment pursuant to subsection 16.1(a), other than to a Facility Lender, evidence of the capability of the assignee as required by subsection 16.2(b). Consent to an assignment to a Facility Lender will not be given or be deemed to be given until full execution and delivery of the agreement contemplated by section 16.3. Any sale or other disposition of all or a substantial part of the Seller's ownership interest in the Seller's Plant, or of all or any interest of the Seller in this EPA or revenue derived from this EPA, and any mortgage, pledge, charge or grant of a security interest in all or any part of the Seller's ownership interest in the Project Assets and any change of Control, merger, amalgamation or reorganization of the Seller is deemed to be an assignment of this EPA by the Seller for the purpose of this Article 16, including section 16.2, provided that where Control is transferred to an Affiliate or where the Seller merges or amalgamates with an Affiliate or enters into a reorganization with an Affiliate, subsection 16.1(b) shall apply.

16.2 Preconditions to Assignment - Without limiting subsection 16.1(a), any assignment pursuant to section 16.1 (other than an assignment to a Facility Lender) is subject to:

- (a) the assignee entering into and becoming bound by this EPA, assuming all the obligations and liabilities of the assignor under the EPA arising both before and after the assignment of the EPA, providing any Performance Security, as applicable at the time of assignment and providing the representations and warranties set out in section 18.1 effective as at the time of assignment; and
- (b) except for an assignment under subsection 16.1(b), the assignee demonstrating to the reasonable satisfaction of the other Party its capability (financial, technical and otherwise) to fulfil the obligations of the assignor under this EPA or, in the case of a change of Control, merger, amalgamation or reorganization of the Seller, the parties to that transaction demonstrating to the reasonable satisfaction of the Buyer, the continued ability of the Seller to perform its obligations under this EPA and, in the case only of an assignment of 100% of the assignor's interest in the Project Assets, the Seller's Plant, or this EPA or revenue derived from this EPA, upon such demonstration and concurrently with the agreement providing for the assumption of liabilities and obligations and the provision of Performance Security required under subsection 16.2(a), the assignor shall be released from all future obligations and liabilities under the EPA and the Performance Security provided by it will be returned or released.

16.3 Assignment to Facility Lender - If the Seller seeks consent to assign this EPA to a Facility Lender or Facility Lenders, the Seller acknowledges that the Buyer is entitled to require, as a condition of the Buyer's consent to such assignment, that the Seller and the Facility Lender enter into an agreement with the Buyer substantially in the form attached as Appendix 7.

16.4 No Implied Consent to Exercise of Rights - No consent to any assignment given by the Buyer under this Article 16 implies or constitutes a consent to the exercise by the assignee, or any Affiliate of the assignee, whether or not a Facility Lender, of any right if the exercise of that right, at the time it was acquired, would require the consent of the Buyer under this Article 16, and the exercise of any such right will require the further consent of the Buyer.

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

16.6 No Assignment Before COD - Notwithstanding subsection 16.1(a), the Seller shall not assign (including any event or action that is deemed under section 16.1 to be an assignment) or otherwise dispose of any interest in this EPA prior to COD, except: (i) to an Affiliate as permitted under subsection 16.1(b); (ii) to a Facility Lender as permitted under subsection 16.1(a) and section 16.3; or (iii) with the prior consent of the Buyer, which consent may be given, withheld or conditioned in the unfettered discretion of the Buyer.

17. INSPECTION

For the sole purpose of verifying compliance with this EPA, of verifying the accuracy of invoices and other statements or calculations delivered by the Seller to the Buyer under this EPA and of verifying the Seller's right to rely on any relief claimed by the Seller under this EPA, on reasonable prior notice to the Seller, the Seller shall provide the Buyer and the Buyer's representatives and advisors with prompt access during normal business hours to the Seller's Plant and to the records relating to the Seller's Plant including all records required to be maintained by the Seller under section 6.5 and the Seller shall promptly provide copies of any such records to the Buyer on request by the Buyer at any time. The Buyer and the Buyer's representatives and advisors may take copies of all such records. All such records that contain confidential technical or proprietary information are Confidential Information under section 20.8. The Buyer shall exercise any access under this Article 17 at the Buyer's cost and in a manner that minimizes disruption to the operation of the Seller's Plant. Any review, inspection or audit by the Buyer of the Seller's Plant, its design, construction, operation, maintenance, repair, records or other activities of the Seller may not be relied upon by the Seller, or others, as confirming or approving those matters.

18. REPRESENTATIONS AND WARRANTIES

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

- (a) **Corporate Status** - The Seller is duly incorporated, organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation, is registered or otherwise lawfully authorized to carry on business in British Columbia, and has full power, capacity and authority to own its assets and to carry on its business as now conducted and to enter into and to perform its obligations under this EPA;
- (b) **Bankruptcy** - No actions have been taken or authorized by the Seller or any other Person to initiate proceedings for, or in respect of, the bankruptcy, insolvency, liquidation, dissolution or winding-up of the Seller or to appoint a receiver, liquidator, trustee or assignee in bankruptcy in respect of the Seller;
- (c) **Assets** - No appropriation, expropriation or seizure of all or any portion of the Seller's Plant is pending or threatened;
- (d) **No Conflict** - Neither the signing of this EPA, nor the carrying out of the Seller's obligations under this EPA will: (i) constitute or cause a breach of, default under, or violation of, the constating documents or bylaws of the Seller, any permit, franchise, lease, license, approval or agreement to which the Seller is a party, or any other covenant or obligation binding on the Seller or affecting any of its properties; (ii) cause a lien or encumbrance to attach to the Seller's Plant, other than a security interest granted in respect of financing the design, construction or operation of the Seller's Plant; or (iii) result in the acceleration, or the right to accelerate, any obligation under, or the

termination of, or the right to terminate, any permit, franchise, lease, license, approval or agreement related to the Seller's Plant;

- (e) **Binding Obligation** - This EPA constitutes a valid and binding obligation of the Seller enforceable against the Seller in accordance with its terms;
- (f) **Authorization, Execution and Delivery** - This EPA has been duly authorized, executed and delivered by the Seller;
- (g) **Bid Documents** - All material information in the Bid Documents is true and correct in all material respects and there is no material information omitted from the Bid Documents which makes the information in the Bid Documents misleading or inaccurate in any material respect; and
- (h) **Exemption From Regulation** - The Seller is exempt from regulation as a "public utility", as defined in the UCA, with respect to the Seller's Plant, the sale of Energy and the performance by the Seller of its obligations under this EPA.

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

- (a) **Corporate Status** - The Buyer is a corporation continued under the *Hydro and Power Authority Act*, R.S.B.C. 1996, c. 212, is validly existing and is in good standing under the laws of British Columbia, is lawfully authorized to carry on business in British Columbia, and has full power, capacity and authority to own its assets and to carry on its business as now conducted and to enter into and to perform its obligations under this EPA;
- (b) **Bankruptcy** - No actions have been taken or authorized by the Buyer or any other Person to initiate proceedings for, or in respect of, the bankruptcy, insolvency, liquidation, dissolution or winding-up of the Buyer or to appoint a receiver, liquidator, trustee or assignee in bankruptcy in respect of the Buyer;
- (c) **Assets** - There is no appropriation, expropriation or seizure of any of the material assets of the Buyer pending or threatened;
- (d) **No Conflict** - Neither the signing of this EPA nor the carrying out of the Buyer's obligations under this EPA will constitute or cause a breach of, default under, or violation of, the *Hydro and Power Authority Act* (British Columbia), any permit, franchise, lease, license, approval or agreement to which the Buyer is a party, or any other covenant or obligation binding on the Buyer or affecting any of its properties;
- (e) **Binding Obligation** - This EPA constitutes a valid and binding obligation of the Buyer enforceable against the Buyer in accordance with its terms; and
- (f) **Authorization, Execution and Delivery** - This EPA has been duly authorized, executed and delivered by the Buyer.

19. INDEMNITIES

19.1 Seller Indemnity - The Seller shall indemnify, defend and hold harmless the Buyer and its shareholder(s) and Affiliates, and their respective directors, officers, employees, agents, representatives, successors and permitted assigns (the "**Buyer Indemnified Parties**") from and against all claims, demands, actions, causes of action, suits, orders and proceedings made or brought against any of the Buyer Indemnified Parties:

- (a) with respect to any emissions from the Seller's Plant; or
- (b) for personal injury, including death, to third Persons and for damage to property of third Persons, to the extent caused or contributed to by the wilful act or omission or negligence of the Seller, any contractor or subcontractor or supplier to the Seller or any director, officer, employee or agent of the Seller or any other Person for whom the Seller is responsible at law where such wilful act or omission or negligence is in connection with the Project or the performance of, or the failure to perform, any of the Seller's obligations under this EPA.

19.2 Buyer Indemnity - The Buyer shall indemnify, defend and hold harmless the Seller and its shareholder(s) and Affiliates, and their respective directors, officers, employees, agents, representatives, successors and permitted assigns (the "**Seller Indemnified Parties**") from and against all claims, demands, actions, causes of action, suits, orders and proceedings made or brought against any of the Seller Indemnified Parties for personal injury, including death, to third Persons and for damage to property of third Persons, to the extent caused or contributed to by the wilful act or omission or negligence of the Buyer, any contractor or subcontractor or supplier to the Buyer or any director, officer, employee or agent of the Buyer or any other person for whom the Buyer is responsible at law while the Buyer or any such Person is at the Seller's Plant.

19.3 Indemnification Conditions - The right of a Party ("**Indemnatee**") to be indemnified by the other Party ("**Indemnitor**") under any indemnity contained in this EPA in respect of a claim by a third Person is subject to the conditions that:

- (a) the Indemnatee gives the Indemnitor prompt notice of such claim, the right to select and instruct counsel, and all reasonable cooperation and assistance, including the availability of documents and witnesses within the control of the Indemnatee, in the defence or settlement of the claim; and
- (b) the Indemnatee does not compromise or settle the claim without the prior written consent of the Indemnitor.

20. GENERAL PROVISIONS

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

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

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

20.4 Notices - Any notice, consent, waiver, declaration, request for approval or other request, statement or bill (a "**notice**") that either Party may be required or may desire to give to the other Party under this EPA must be in writing addressed to the other Party at the address stated in subsection 20.4(c) or (d) and:

- (a) may be delivered by hand or by a courier service during normal business hours on a Business Day, in which case the notice will be deemed to have been delivered on that Business Day;
- (b) notices, other than notices under section 3.4, 4.2, or 7.2 or any of Articles 11, 13, 14, 15 or 16, may be sent by email during normal business hours on a Business Day, in which case provided that the Party delivering the notice obtains a confirmation of delivery, the notice will be deemed to have been delivered on that Business Day;
- (c) subject to subsection 20.4(e), the address of the Buyer for notices is as set out in Appendix 9;
- (d) subject to subsection 20.4(e), the address of the Seller for notices is as set out in Appendix 9 and the Buyer may, but is not required to (except as otherwise provided in a Lender Consent Agreement, if any) provide a copy of any such notice to the Facility Lender; and
- (e) either Party may change its address or fax number for notices under this EPA by notice to the other Party.

20.5 Entire Agreement and Amendment - This EPA contains the entire agreement between the Parties with respect to the purchase and sale of Energy and supersedes all previous communications, understandings and agreements between the Parties with respect to the subject matter hereof including, without limitation, the Call for Tenders issued by the Buyer on 8 December 2005 and all Addenda, questions and answers and any other communications of any kind whatsoever by the Buyer in connection therewith or relating thereto. There are no representations, warranties, terms, conditions, undertakings or collateral agreements express, implied or statutory between the Parties other than as expressly set out in this EPA. This EPA may not be amended, except by an agreement in writing signed by both Parties.

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

20.7 Dispute Resolution - If any dispute arises under or in relation to this EPA, that dispute will be referred to and finally resolved by arbitration by a single arbitrator. The arbitration will be administered by the British Columbia International Commercial Arbitration Centre ("**BCICAC**") pursuant to its rules. The place of arbitration will be Vancouver, British Columbia. If at the time a dispute arises the BCICAC does not exist, the dispute will be finally settled by arbitration by a single arbitrator who, failing agreement of the parties, shall be appointed under the *Commercial Arbitration Act* (British Columbia) or under the *International Commercial Arbitration Act* (British Columbia), as applicable, and

the arbitrator shall conduct the arbitration in accordance with such rules as the Parties may agree in writing, or failing agreement, such rules as may be determined or adopted by the arbitrator. The decision of the arbitrator will be final and binding on the Parties. The arbitrator will have jurisdiction and power to make interim, partial or final awards ordering specific performance, injunction and any other equitable remedy. The Parties are entitled to seek interim measures of protection from the courts pending completion of any arbitration. All performance required under this EPA by the Parties and payments required under this EPA will continue during the dispute resolution proceedings contemplated by this section 20.7, provided that this section may not be interpreted or applied to delay or restrict the exercise of any right to suspend performance under or terminate this EPA pursuant to the express terms hereof. Any payments or reimbursements required by an arbitration award will be due as of the date determined in accordance with section 9.2 or, where section 9.2 is not applicable, as of the date determined in the award, and, without duplication with subsection 9.2(b), will bear interest at an annual rate equal to the Prime Rate plus 3% compounded monthly, from the date such payment was due until the amount is paid. To the fullest extent permitted by law, the Parties shall maintain in confidence the fact that an arbitration has been commenced, all documents and information exchanged during the course of the arbitration proceeding, and the arbitrators' award, provided that each of the Parties shall be entitled to disclose such matters to its own officers, directors, shareholders and employees, its professional advisors and other representatives, and may make such disclosures in the course of any Proceedings required to pursue any legal right arising out of or in connection with the arbitration and may make such disclosures as are required by law or for regulatory purposes. Nothing in this EPA precludes either Party from bringing a Proceeding in any jurisdiction to enforce an arbitration award or any judgment enforcing an arbitration award, nor will the bringing of such Proceedings in any one or more jurisdictions preclude the bringing of enforcement Proceedings in any other jurisdiction. In connection with any court proceedings, each Party waives its respective rights to any jury trial.

20.8 Confidentiality

- (a) Without limiting any other confidentiality agreement between the Parties, during the Term and for 5 years thereafter, the Buyer shall treat as confidential and will not cause or permit the publication, release or disclosure of any Confidential Information received by the Buyer from the Seller, except to the extent that publication, release or disclosure: (i) is expressly authorized under any section of this EPA; (ii) is necessary to enable the Buyer to fulfil its obligations under this EPA, including under section 3.3; (iii) is required by law or for regulatory purposes; (iv) is made with the prior consent of the Seller; or if (v) such information has entered the public domain other than through the actions of the Buyer. The Buyer may also disclose Confidential Information: (vi) to consultants and advisors to the Buyer and representatives of the Government of British Columbia who have a need to know the Confidential Information and who have been informed by the Buyer of the need to maintain the confidentiality of the Confidential Information disclosed to them; (vii) as may be necessary for the Buyer to adequately pursue or defend any legal or regulatory proceeding relating to the CFT or this EPA or any EPA awarded under the CFT process; and (viii) as otherwise set out in this EPA.
- (b) The Seller acknowledges that the Buyer is subject to the *Freedom of Information and Protection of Privacy Act* (British Columbia) and agrees that the Buyer's non-disclosure obligations under this EPA are subject to the provisions of that legislation.
- (c) The Parties confirm that Confidential Information constitutes commercial and financial information of the Seller, which has been supplied, or may be supplied, in confidence and the disclosure of which could reasonably be expected to harm significantly the

competitive position and/or interfere significantly with the negotiating position of the Seller. Accordingly, the Parties confirm their intention that all Confidential Information disclosed by the Seller to the Buyer shall be deemed to be confidential and exempt from disclosure to third persons in accordance with section 21 of the *Freedom of Information and Protection of Privacy Act* (British Columbia), as amended from time to time.

20.9 Distribution Authority - This EPA shall be interpreted and applied as though the Distribution Authority were a third party, including for purposes of determining whether or not a Force Majeure has occurred.

20.10 Commodity Contract/Forward Contract - The Parties agree and intend that this EPA constitutes a commodity contract for the purposes of subsection (h) of the definition of "eligible financial contract" in section 65.1(8) of the *Bankruptcy and Insolvency Act* (Canada) and in section 11.1(1) of the *Companies' Creditors Arrangement Act* (Canada) and that this EPA and the transactions contemplated under this EPA constitute a "forward contract" within the meaning of section 556 of the United States Bankruptcy Code and that the Parties are "forward contract merchants" within the meaning of the United States Bankruptcy Code.

20.11 Further Assurances - Each Party shall, upon the reasonable request of the other Party, do, sign or cause to be done or signed all further acts, deeds, things, documents and assurances required for the performance of this EPA.

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

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

IN WITNESS WHEREOF each Party by its duly authorized representative(s) has signed this EPA as of the date set out on page 1 of this EPA.

For **PLUTONIC POWER CORPORATION:**


Authorized Representative

Donna McInnes President
Print Name and Office

August 28/06
Date

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


Authorized Representative

DAWN FARRELL, Executive VP,
Engineering, Aboriginal Relations & Generation
Print Name and Office

30 AUGUST 2006
Date



Aug 27, 2006

APPENDIX 1

DEFINITIONS

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

1. **"Affiliate"** means, with respect to the Seller, any Person directly or indirectly Controlled by, Controlling, or under common Control with, the Seller and with respect to the Buyer, any Person directly or indirectly Controlled by the Buyer and, if at any time the Buyer is not Controlled, directly or indirectly, by the Province of British Columbia, shall include any Person directly or indirectly Controlling, or under common Control with, the Buyer.
2. **"Annual Operating Plan"** means each plan delivered by the Seller to the Buyer under subsection 6.6(b) and all amendments to such plan in accordance with subsection 6.6(b).
3. **"Authorized Planned Outage"** means a Planned Outage that is scheduled in accordance with Good Utility Practice, complies with the requirements of section 6.4 and does not exceed the duration of the Planned Outage set out in the notice of the Planned Outage delivered by the Seller under section 6.4.
4. **"Bankrupt or Insolvent"** means, with respect to a Person:
 - (a) the Person has started proceedings to be adjudicated a voluntary bankrupt or consented to the filing of a bankruptcy proceeding against it; or
 - (b) the Person has filed a petition or similar proceeding seeking reorganization, arrangement or similar relief under any bankruptcy or insolvency law; or
 - (c) a receiver, liquidator, trustee or assignee in bankruptcy has been appointed for the Person or the Person has consented to the appointment of a receiver, liquidator, trustee or assignee in bankruptcy; or
 - (d) the Person has voluntarily suspended the transaction of its usual business; or
 - (e) a court has issued an order declaring the Person bankrupt or insolvent.
5. **"BCUC"** means the British Columbia Utilities Commission or any successor thereto.
6. **"BCUC Acceptance"** has the meaning given in section 3.1.
7. **"BC Clean Electricity"** means electricity that meets the requirements set out in the "BC Clean Electricity Guidelines" issued by the British Columbia Ministry of Energy, Mines and Petroleum Resources" dated 15 September, 2005, as amended at any time prior to the first anniversary of COD.
8. **"Bid Documents"** means the Tender and all documents and information provided by the Seller to the Buyer in connection with such Tender, whether concurrently with or after the date of submission of the Tender to the Buyer.

9. **"Business Day"** means any calendar day which is not a Saturday, Sunday or other day recognized as a statutory holiday in British Columbia.
10. **"Buyer"** means British Columbia Hydro and Power Authority and its successors and permitted assigns.
11. **"Buyer Termination Event"** means any one of the following:
 - (a) the Seller is Bankrupt or Insolvent;
 - (b) a Letter of Credit Failure has occurred and the Seller has failed to deliver a replacement Performance Security within 5 Business Days after the Letter of Credit Failure occurred;
 - (c) the Seller has not, by the date that is the earlier of: (i) 60 days after the date of award of this EPA under the CFT; and (ii) 240 days after the date of issuance by the Transmission Authority to the Seller of the F2006 CFT Preliminary Interconnection Study Report, executed and delivered to, or caused to be executed and delivered to, the Transmission Authority a Combined Study Agreement for the Seller's Plant together with the applicable fee, in the form and amount prescribed by the Transmission Authority;
 - (d) except where an amount has been disputed in the manner specified in subsection 9.1(b), an amount due and payable by the Seller to the Buyer under this EPA remains unpaid for 15 days after its due date and such default has not been cured within 15 days after the Buyer has given notice of the default to the Seller; or
 - (e) the Seller is in material default of any of its covenants, representations and warranties or other obligations under this EPA (other than as set out above), unless within 30 days after the date of notice by the Buyer to the Seller of the default the Seller has cured the default or, if the default cannot be cured within that 30 day period, the Seller demonstrates to the reasonable satisfaction of the Buyer that the Seller is working diligently and expeditiously to cure the default and the default is cured within a further reasonable period of time. A "material default" includes any failure by the Seller to comply with subsection 6.3(f) or any of sections 6.8, 6.11 or 7.5, any Deliberate Breach by the Seller of its obligations under section 7.3, and any purported assignment of this EPA without the consent of the Buyer where such consent is required under Article 16. A "material default" does not include any failure, other than a failure resulting from a Deliberate Breach, to deliver the Monthly Firm Energy Amount in respect of which failure the Seller has paid any LDs owing under section 12.2.
12. **"CFT"** means the "F2006 Open Call for Power - Call for Tenders" issued by the Buyer on 8 December 2005, together with all Addenda thereto, and all other documents and forms referenced therein as forming part of the CFT.
13. **"COD"** or **"Commercial Operation Date"** means the time when the Seller's Plant achieves COD pursuant to section 5.2.
14. **"COD Certificate"** means a certificate in the form set out in Appendix 4 signed by a senior officer of the Seller.
15. **"COD Deadline"** means 1 November 2010.

16. **"COD Delay LDs"** means the LDs specified in section 12.1.
17. **"Combined Study Agreement"** means an agreement, in prescribed form, between the Seller and the Transmission Authority wherein the Seller contracts with the Transmission Authority for an interconnection impact study and interconnection facility study.
18. **"Compliance Units"** means any credit, offset, unit, allowance or other instrument that may be used to achieve compliance with emission limitation or intensity obligations as prescribed under Laws and Permits regulating GHG emissions from the Seller's Plant.
19. **"Confidential Information"** means: (i) information that is described as confidential information in any section of this EPA; and (ii) information disclosed by the Seller to the Buyer in the CFT process and that is described in the CFT as confidential.
20. **"Construction Insurance"** means all insurance generally accepted in the insurance industry as being required to construct a facility similar to the Seller's Plant, including course of construction insurance.
21. **"Control"** of any Person means: (i) with respect to any corporation or other Person having voting shares or the equivalent, the ownership or power to vote, directly or indirectly, shares, or the equivalent, representing 50% or more of the power to vote in the election of directors, managers or persons performing similar functions; (ii) ownership of 50% or more of the equity or beneficial interest in that Person; or (iii) the ability to direct the business and affairs of any Person by acting as a general partner, manager or otherwise.
22. **"Costs"** means brokerage fees, commissions and other similar transaction costs and expenses reasonably incurred or that would reasonably be expected to be incurred by the Seller in entering into new arrangements which replace this EPA, and legal fees, if any, incurred in connection with enforcing the Seller's rights under this EPA.
23. **"Deliberate Breach"** means:
 - (a) any failure by the Seller to achieve COD by the earlier of: (i) Guaranteed COD plus 365 days plus all Force Majeure Days (not exceeding 365 Force Majeure Days); and (ii) the COD Deadline plus 180 days plus all Force Majeure Days (not exceeding 185 Force Majeure Days), resulting from any wilful or grossly negligent act or omission of the Seller;
 - (b) any breach of or default under any provision of this EPA by the Seller resulting from any wilful or grossly negligent act or omission by the Seller;
 - (c) a Buyer Termination Event constituting a repudiation of the EPA by the Seller; or
 - (d) any sale or transfer by the Seller of Energy to any Person, other than the Buyer, except where such sale or transfer is expressly permitted under this EPA.
24. **"Development Costs"** means all costs reasonably incurred or committed by the Seller, after the date of issuance of the CFT, for the Project and all costs reasonably incurred, or that are reasonably likely to be incurred by the Seller, after taking reasonable mitigation measures, to terminate all contractual commitments with respect to the Project and to otherwise cease

development of the Project, but excluding any lost profits, loss of opportunity costs or damages and all other special, incidental, indirect or consequential losses.

25. **"Direct Assignment Costs"** means all costs of design, engineering, procurement, construction, installation and commissioning of Direct Assignment Facilities incurred by the Transmission Authority (in respect of the Transmission System) and/or the Distribution Authority (in respect of the Distribution System).
26. **"Direct Assignment Facilities"** means modifications or additions to transmission, or distribution, related facilities that are integrated with the Transmission System or the Distribution System, as the case may be, that are required to accommodate the interconnection of the Seller's Plant and are for the sole benefit of the Seller's Plant, as determined by the Transmission Authority (as to the Transmission System) or the Distribution Authority (as to the Distribution System).
27. **"Distribution Authority"** means the Person or Persons who is or are responsible for the planning, asset management, and operation of the Distribution System, in whole or in part, including an independent system operator.
28. **"Distribution System"** means the distribution, protection, control and communication facilities in British Columbia that are or may be used in connection with, or that otherwise relate to, the transmission of electrical energy at 35kV or less, and includes all additions and modifications thereto and repairs or replacements thereof.
29. **"EcoLogo^M Certification"** means certification pursuant to Environment Canada's Environmental Choice^M program confirming that the Seller's Plant and all or part of the Energy complies with the "Guideline on Renewable Low-Impact Electricity", as amended from time to time and is therefore entitled to the EcoLogo^M designation.
30. **"EcoLogo^M Certified Energy Amount"** means the amount of Eligible Energy in each year that qualified for the EcoLogo^M designation as evidenced in a certificate delivered by the Seller to the Buyer under section 7A.5.
31. **"Effective Date"** means the date set out on page one hereof.
32. **"Eligible Energy"** means in each month after COD:
 - (a) the amount of Metered Energy delivered by the Seller at the POI in that month, but excluding any portion of the Metered Energy that at any time exceeds 120% of the Plant Capacity; and
 - (b) Energy that is deemed to be "Eligible Energy" in that month pursuant to section 7.9.
33. **"Energy"** means electric energy expressed in MWh generated by the Seller's Plant excluding Station Service.
34. **"Energy Source"** means the source of energy used to generate Energy at the Seller's Plant as specified in Appendix 5.
35. **"Escalated Bid Price"** has the meaning given in Appendix 3.

36. **"F2006 CFT Preliminary Interconnection Study Report"** means the report referenced in section 7 of Appendix 5.
37. **"Facilities Agreement"** means the agreement between the Seller and the Transmission Authority setting out the commercial terms and conditions applicable to the construction of the Direct Assignment Facilities and Network Upgrades as amended or replaced from time to time.
38. **"Facility Lender"** means any lender(s) providing any debt financing for the Project and any successors or assigns thereto.
39. **"Final Amount"** means an amount owing by either Party to the other Party pursuant to this EPA (including as a result of a breach of this EPA) where such amount is: (a) undisputed by the Party owing such amount; or (b) has been finally determined by an arbitration award pursuant to section 20.7 or by a court order and all rights of appeal in respect of such award or order have been exhausted or have expired.
40. **"Firm Energy"** has the meaning given in Appendix 3.
41. **"Force Majeure"** means, subject to the exclusions in section 11.2, any event or circumstance not within the control of the Party claiming Force Majeure and, to the extent not within that Party's control, includes:
- (a) acts of God, including wind, ice and other storms, lightning, floods, earthquakes, volcanic eruptions and landslides;
 - (b) strikes, lockouts and other industrial disturbances, provided that settlement of strikes, lockouts and other labour disturbances will be wholly within the discretion of the Party involved;
 - (c) epidemics, war (whether or not declared), blockades, acts of public enemies, acts of sabotage, civil insurrection, riots and civil disobedience;
 - (d) acts or omissions of Governmental Authorities, including delays in regulatory process and orders of a regulatory authority or court of competent jurisdiction;
 - (e) explosions and fires; and
 - (f) notwithstanding subsection 11.2(f), an inability of the Seller to achieve COD solely as a result of a delay by the Transmission Authority in completion of Direct Assignment Facilities or Network Upgrades and such delay is not attributable to the Seller or the Seller's Plant, including any change to the point of interconnection with the Transmission System or other Project change made by the Seller under section 4.5,
- but does not include:
- (g) any refusal, failure or delay of any Governmental Authority in granting any Material Permit to the Seller, whether or not on terms and conditions that permit the Seller to perform its obligations under this EPA, except where such failure or delay is a result of an event described in paragraph (a), (b), (c) or (e) above.

42. **"Force Majeure Days"** means the number of days the Seller is delayed in achieving COD as a result of Force Majeure invoked by the Seller in accordance with Article 11.
43. **"Forced Outage"** means a partial or total interruption in the delivery of, or ability to deliver, Energy that is not a result of an Authorized Planned Outage or a Force Majeure.
44. **"Gains"** means an amount equal to the present value of the economic benefit (exclusive of Costs), if any, to the Seller resulting from the termination of this EPA, determined in a commercially reasonable manner.
45. **"GHG" or "Greenhouse Gas(es)"** means: (i) one or more of the following gases: carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons and sulphur hexafluoride; and (ii) any other gas that is identified as having significant global warming potential and is added, at any time before the expiry of the Term, to Schedule 1 to the *Canadian Environmental Protection Act, 1999* or to any other regulation(s) governing the emission of the gases noted in (i) from the Seller's Plant.
46. **"Good Utility Practice"** means any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgement in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be acceptable practices, methods or acts generally accepted in the WECC region.
47. **"Governmental Authorities"** means any federal, provincial, local or foreign governments or any of their boards or agencies, or any regulatory authority, other than the Buyer and the Seller and entities controlled by the Buyer or the Seller.
48. **"Green Attributes"** means:
- (a) all attributes associated with, or that may be derived from, the Energy and/or the Seller's Plant having decreased environmental impacts, including any existing or future credit, allowance, "green" tag, ticket, certificate or other "green" marketing attribute or proprietary or contractual right, whether or not tradeable, resulting from the Energy during the Term;
 - (b) any credit, reduction right, offset, allowance, allocated pollution right, certificate or other unit of any kind whatsoever, whether or not tradeable and any other proprietary or contractual right, whether or not tradeable, resulting from, or otherwise related to: the actual or assumed reduction, displacement or offset of emissions at any location other than the Seller's Plant as a result of the generation, purchase or sale of the Energy; and
 - (c) all revenues, entitlements, benefits and other proceeds arising from or related to the foregoing,

but excluding any On-Site Emission Reduction Rights and any of the foregoing that arise in connection with Pre-COD Energy, other than Test Energy paid for by the Buyer under section 2.2 of Appendix 3.

49. **"Green Reduction Amount"** or **"GRA"** means \$3.00/ MWh as adjusted effective as of January 1 in each year after the Effective Date in accordance with the following formula:

$$GRA_n = \$3.00/\text{MWh} * CPI_{\text{January 1 } n} / CPI_{\text{January 1 } 2006}$$

Where:

n= the year for which the Green Reduction Amount is being calculated

$CPI_{\text{January 1 } n}$ = the CPI for December in the year immediately prior to the year for which the Green Reduction Amount is being calculated.

50. **"GST"** means the goods and services tax imposed under the *Excise Tax Act* (Canada) as that Act may be amended or replaced from time to time.
51. **"Guaranteed COD"** means [REDACTED]
52. **"Interconnection"** means the facilities and procedures that permit the flow of electric power from the Seller's Plant to the Transmission System and vice versa.
53. **"Interconnection Agreement"** means the agreement between the Seller and the Transmission Authority which provides for the implementation and operation of the Interconnection, as amended or replaced from time to time.
54. **"kV"** means kilovolts.
55. **"Laws"** means any and all statutes, laws (including common law), ordinances, rules, regulations, codes, orders, bylaws, policies, directions, standards, guidelines, protocols and other lawful requirements of any Governmental Authority.
56. **"LDs"** means liquidated damages payable by the Seller to the Buyer under Article 12.
57. **"Lender Consent Agreement"** means an agreement referred to in section 16.3.
58. **"Letter of Credit Failure"** means:
- (a) a failure to renew or substitute the Performance Security by no later than 60 days prior to the expiry thereof;
 - (b) the issuer of the Performance Security fails to maintain a credit rating of at least the minimum rating specified in section 13.4;
 - (c) the issuer of the Performance Security fails to comply with or perform its obligations under the Performance Security;
 - (d) the issuer of the Performance Security disaffirms, disclaims, repudiates, terminates, rejects, in whole or in part, or challenges the validity of, the Performance Security; or
 - (e) the Performance Security fails or ceases to be in full force and effect for purposes of this EPA (whether or not in accordance with its terms) prior to the date specified in Article 13 for return of the Performance Security to the Seller.

59. **"Long Term Operating Plan"** means the plan referred to in subsection 6.6(a) as amended by the Seller from time to time.
60. **"Losses"** means an amount equal to the present value of the economic loss (exclusive of Costs), if any, to the Seller resulting from the termination of this EPA, determined in a commercially reasonable manner.
61. **"Major Damage"** means damage where the cost to repair the damage exceeds the present value (using the Present Value Rate) of (a) the projected Energy deliveries from the Seller's Plant for the remainder of the Term, multiplied by (b) the projected payments under this EPA for that Energy, (calculated on the basis that the Tier 2 Non-Firm Energy Price will be equal to the Tier 1 Non-Firm Energy Price), less a \$/MWh amount representing the estimated operating and maintenance costs for the Seller's Plant (including costs of the Energy Source).
62. **"Material Permits"** means all of the following if and as required for the Seller's Plant:
- (a) environmental assessment certificate;
 - (b) air emissions permit;
 - (c) any permits, licenses or approvals required with respect to the discharge of any type of waste liquids from the Seller's Plant;
 - (d) water licence;
 - (e) zoning appropriate for the Seller's Plant;
 - (f) any subdivision approvals required to create the site on which the Seller's Plant is or will be located as a separate legal parcel;
 - (g) any permits or approvals required with respect to the storage of the Energy Source at the Seller's Plant; and
 - (h) any lease, license or occupation or similar agreement required with respect to the Seller's Plant including all access roads to the Seller's Plant,
- on terms and conditions that permit the Seller to comply with its obligations under this EPA.
63. **"Metered Energy"** means Energy recorded by the Metering Equipment.
64. **"Metering Equipment"** means the metering equipment described in section 8.1.
65. **"Monthly Firm Energy Amount"** means the amount of Energy the Seller is required to deliver to the Buyer at the POI in each month of the Term after COD as set out in Appendix 2.
66. **"Monthly Firm Energy Delivery Rate"** means the Monthly Firm Energy Amount for the relevant month as set out in Appendix 2 divided by the number of hours in that month.
67. **"MW"** means megawatt.
68. **"MWh"** means megawatt-hour.

69. **"NERC"** means the North American Electric Reliability Council or a successor organization.
70. **"Network Upgrades"** means modifications or additions to transmission, or distribution, related facilities that are integrated with and support the overall Transmission System or Distribution System, as the case may be, that are required to accommodate the interconnection of the Seller's Plant to the system and to transmit the electricity from the Seller's Plant through the system to the Buyer's network loads, but which benefit all users of the system, as determined by the Transmission Authority (as to the Transmission System) or the Distribution Authority (as to the Distribution System).
71. **"Network Upgrade Costs"** means all costs incurred by the Transmission Authority (in respect of the Transmission System) and/or the Distribution Authority (in respect of the Distribution System) for the design, engineering, procurement, construction, installation and commissioning of Network Upgrades.
72. **"On-Site Emission Reduction Rights"** means any credit, reduction right, offset, allowance, allocated pollution right, certificate or other unit of any kind whatsoever, whether or not tradeable, resulting from, or otherwise related to the reduction, removal, avoidance, sequestration or mitigation of emissions at or from the Seller's Plant.
73. **"Outage"** means:
- (a) in the case of the Seller's Plant, a partial or total interruption in the delivery of, or ability to deliver, Energy; and
 - (b) in the case of the Transmission System, a partial or total interruption in the transmission of, or ability to transmit, Energy from the Seller's Plant.
74. **"Party"** means: (i) the Buyer and its successors and permitted assigns; or (ii) the Seller and its successors and permitted assigns, and **"Parties"** means both the Buyer and the Seller and their respective successors and permitted assigns, provided that the Distribution Authority shall be deemed not to be a **"Party"**, whether or not owned or operated by British Columbia Hydro and Power Authority.
75. **"Peak Demand Months"** means January, February, March, November and December.
76. **"Performance Security"** means a letter of credit in the form specified in section 13.4 in an amount equal to:
- (a) prior to the first anniversary of COD, \$60,000/MW multiplied by the Plant Capacity; or
 - (b) from and after the first anniversary of COD, \$40,000/MW multiplied by the total of the Monthly Firm Energy Amounts set out in Appendix 2 divided by 8760.
77. **"Permits"** means permits, certificates, licences, and other approvals required for the design, construction, ownership, operation and maintenance of the Seller's Plant and the delivery of Eligible Energy at the POI, including all Material Permits.
78. **"Person"** means an individual, body corporate, firm, partnership, joint venture, trust, legal representative or other legal entity.

79. **"Planned Islanding Capability"** means the ability of a generator to electrically energize, in a safe, controlled and reliable manner, a portion of the Transmission System or Distribution System, including loads, that is separated from the rest of the Transmission System or Distribution System.
80. **"Planned Outage"** means an Outage for purposes of inspection and/or general overhaul of equipment in the Seller's Plant.
81. **"Plant Capacity"** means the electrical capacity of the Seller's Plant expressed in MW, determined as the nameplate capacity if expressed in MW, or as the nameplate capacity if expressed in MVA multiplied by a power factor of 0.95, as set out in Appendix 5, as amended in accordance with section 4.2.
82. **"POI" or "Point of Interconnection"** means the point at which the Seller's Plant interconnects with the Transmission System as more particularly defined in the Interconnection Agreement.
83. **"PPT"** means Pacific Prevailing Time, which means Pacific Daylight Time or Pacific Standard Time as applicable.
84. **"Pre-COD Energy"** means that amount of Metered Energy delivered by the Seller at the POI prior to COD including Test Energy, but excluding:
- (a) any portion of the Metered Energy that at any time exceeds 120% of the Plant Capacity; and
 - (b) that portion of the Metered Energy that is sold to third parties in accordance with section 7.1.
85. **"Present Value Rate"** has the meaning given in subsection 15.5(k).
86. **"Prime Rate"** means the floating prime interest rate announced from time to time by the main branch of Bank of Montreal in Vancouver, or any successor thereto, expressed as an annual rate, as the reference rate it will use to determine rates of interest payable on Canadian dollar commercial loans made in Canada.
87. **"Proceeding"** has the meaning given in section 1.5.
88. **"Project"** means the financing, design, engineering, procurement, construction, commissioning, operation and maintenance of the Seller's Plant.
89. **"Project Assets"** means the Seller's Plant and all rights, property, assets, equipment, materials and contracts required to design, engineer, procure, construct, commission, operate and maintain the Seller's Plant, whether real or personal and whether tangible or intangible, including equipment and other warranties, Permits, supply and other contracts, the goodwill in and right to use the name by which the Seller's Plant is commonly known, the books, records and accounts with respect to the Seller's Plant, and all land tenure and land tenure agreements with respect to the Seller's Plant.
90. **"PST"** means British Columbia provincial social service or sales taxes and similar or replacement assessments, if any.

91. **"Seller"** means the Party so identified on page one of this EPA, and its successors and permitted assigns.
92. **"Seller Termination Event"** means:
- (a) the Buyer is Bankrupt or Insolvent;
 - (b) except where an amount has been disputed in the manner specified in subsection 9.1(b), an amount due and payable by the Buyer to the Seller under this EPA remains unpaid for 15 days after its due date and such default has not been cured within 15 days after the Seller has given notice of the default to the Buyer; or
 - (c) the Buyer is in material default of any of its covenants, representations and warranties or other obligations under this EPA (other than as set out above), and such default has not been cured within 30 days after the Seller has given notice of the default to the Buyer or, if the default cannot be cured within that 30 day period, the Buyer fails to demonstrate to the reasonable satisfaction of the Seller that the Buyer is working diligently and expeditiously to cure the default or the default is not cured within a further reasonable period of time.
93. **"Seller's Plant"** means the Seller's plant described in Appendix 5 and all facilities and equipment required to construct, operate and maintain the plant described in Appendix 5 and to interconnect that plant to the Transmission System.
94. **"Station Service"** means electricity required to service the Seller's Plant, including electricity required for fuel processing.
95. **"Tender"** means the Tender submitted by the Seller pursuant to the CFT.
96. **"Term"** has the meaning given in section 2.1.
97. **"Termination Payment"** means the amount payable by the Seller to the Buyer or the amount payable by the Buyer to the Seller pursuant to section 15.4 or section 15.5, as the case may be.
98. **"Test Energy"** means Metered Energy delivered at the POI during any successful test pursuant to subsection 5.2(b), but excluding all Metered Energy that at any time exceeds 120% of the Plant Capacity.
99. **"Transmission Authority"** means the British Columbia Transmission Corporation or any successor thereto.
100. **"Transmission System"** means the transmission, substation, protection, control and communication facilities: (i) owned by the Buyer or by the Transmission Authority; and (ii) operated by the Transmission Authority in British Columbia, and includes all additions and modifications thereto and repairs or replacements thereof.
101. **"UCA"** means the *Utilities Commission Act* (British Columbia).
102. **"WECC"** means the Western Electricity Coordinating Council or any successor organization of which the Buyer is a member.

APPENDIX 2

ENERGY PROFILE

MONTH	TENDERED MONTHLY FIRM ENERGY AMOUNT (MWh/month)
January	[REDACTED]
February	[REDACTED]
March	[REDACTED]
April	[REDACTED]
May	[REDACTED]
June	[REDACTED]
July	[REDACTED]
August	[REDACTED]
September	[REDACTED]
October	[REDACTED]
November	[REDACTED]
December	[REDACTED]

*For leap years, the Monthly Firm Energy Amount for the month of February will be multiplied by 29/28.

APPENDIX 3

ENERGY PRICE

1. Definitions and Interpretation

1.1 **Definitions** - In this Appendix 3 or elsewhere in the EPA, the following words and expressions have the following meanings:

- (a) **"BPP" or "Bid Price Percentage"** means 50%, which is the percentage of the Bid Price that is subject to escalation pursuant to section 3.3 of this Appendix.
- (b) **"CPI"** means the Consumer Price Index for Canada, All Items (Not Seasonally Adjusted) as published by Statistics Canada, adjusted or replaced in accordance with subsection 1.2(d) of this Appendix.
- (c) **"Discount Amount"** means \$8.00/MWh.
- (d) **"Escalated Bid Price"** means the Bid Price [REDACTED] MWh as adjusted pursuant to section 3.3 of this Appendix.
- (e) **"Escalated Discount Amount"** means the Discount Amount as adjusted pursuant to section 3.3 of this Appendix.
- (f) **"Firm Energy"** means in each month of the Term after COD, all Eligible Energy in that month not exceeding the Monthly Firm Energy Amount for that month, but excluding any Eligible Energy delivered after the start time and prior to the end time for an Authorized Planned Outage as set out in the notice with respect to the Authorized Planned Outage under section 6.4 and all such Eligible Energy will be considered Non-Firm Energy.
- (g) **"Firm Energy Price"** means the Escalated Bid Price as adjusted pursuant to section 3.4 of this Appendix.
- (h) **"HLH" or "Heavy Load Hours"** means the hours commencing at 06:00 PPT and ending at 22:00 PPT Monday through Saturday inclusive but excluding British Columbia statutory holidays.
- (i) **"Bid Price"** means [REDACTED] MWh.
- (j) **"LLH" or "Light Load Hours"** means all hours other than Heavy Load Hours.
- (k) **"Mid-C"** means the Mid-Columbia electricity region.
- (l) **"Non-Firm Energy"** means in each month of the Term after COD all Eligible Energy in that month in excess of the Monthly Firm Energy Amount for that month and all Eligible Energy deemed to be Non-Firm Energy pursuant to subsection 1.1(f) of this Appendix.
- (m) **"Non-Firm Energy Discount"** means the Escalated Discount Amount as adjusted pursuant to section 3.4 of this Appendix.
- (n) **"Off-Peak Index"** means the Dow Jones Mid-C daily firm Off-Peak Index.

- (o) **"Tier 1 Non-Firm Energy"** means in each month during the Term after COD all Non-Firm Energy not exceeding an amount equal to the Monthly Firm Energy Amount for the month.
- (p) **"Tier 1 Non-Firm Energy Price"** means the Firm Energy Price minus the Non-Firm Energy Discount.
- (q) **"Tier 2 Non-Firm Energy"** means in each month during the Term after COD all Non-Firm Energy in excess of the Tier 1 Non-Firm Energy for that month.
- (r) **"Tier 2 Non-Firm Energy Price"** means the lesser of:
 - (i) the Tier 1 Non-Firm Energy Price; and
 - (ii) an amount equal to 70% of the average of the daily non-firm Mid-C Off-Peak Index prices in the applicable month. Amounts quoted in U.S. dollars will be converted to Canadian dollars using the average of the Bank of Canada daily "noon rates" for that month.

1.2 **Interpretation** - All payments will be calculated applying the following principles:

- (a) all payment calculations will be rounded to the nearest cent;
- (b) Energy will be expressed in MWh rounded to two decimal places;
- (c) any escalators or percentages will be expressed as a percentage and will be rounded to four decimal places (i.e. 0.0000%); and
- (d) if Statistics Canada (or the then recognized statistical branch of the Canadian Government):
 - (i) computes, at any time after the Effective Date, the CPI on a basis different to that employed at the Effective Date, then the CPI will be converted using the appropriate formula recommended by Statistics Canada (or the then recognized statistical branch of the Canadian Government);
 - (ii) at any time ceases to publish or provide the CPI, then the provisions of section 1.9 of this EPA will apply;
 - (iii) has not published the CPI for a relevant period at the time the Seller is required to provide the Buyer with an invoice, the Seller shall prepare the invoice based on the CPI in effect at the time the invoice is issued and when the CPI for the relevant period is published, the Seller shall recalculate the invoice amounts in the next succeeding invoice and shall include a credit or debit, without interest, in the next succeeding invoice based on the results of the recalculation; or
 - (iv) recalculates the CPI within 36 months after an invoice affected by that CPI calculation has been issued, then the Seller shall recalculate the invoice amounts for the relevant period in the next succeeding invoice and shall include a credit or debit, without interest, in the next succeeding invoice based on the results of the recalculation.

2. Pre-COD Energy

2.1 No price is payable by the Buyer for Energy, if any, delivered to the Buyer before COD, except as set out in section 2.2 of this Appendix.

2.2 The price payable by the Buyer for Test Energy in respect of which the Seller has not given a notice under section 7.1 is \$25.00/MWh. If the Seller's Plant does not satisfy the requirements of section 5.2, no price is payable by the Buyer for any Energy generated during the period specified in subsection 5.2(b).

3. Post-COD Energy

3.1 **Firm Energy** - The price payable by the Buyer for each MWh of Firm Energy is the Firm Energy Price.

3.2 **Non-Firm Energy** - The price payable by the Buyer for each MWh of Tier 1 Non-Firm Energy is the Tier 1 Non-Firm Energy Price. The price payable by the Buyer for each MWh of Tier 2 Non-Firm Energy is the Tier 2 Non-Firm Energy Price.

3.3 **CPI Adjustment** - The Bid Price ("BP") and the Discount Amount ("DA") will be adjusted effective as of January 1 in each year after the Effective Date in accordance with the following applicable formula:

$$BP_n = BP_{\text{January 1 2006}} * [(BPP * CPI_{\text{January 1 } n} / CPI_{\text{January 1 2006}}) + (1 - BPP)]$$

$$DA_n = DA_{\text{January 1 2006}} * CPI_{\text{January 1 } n} / CPI_{\text{January 1 2006}}$$

Where:

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

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

3.4 **Delivery Time Adjustment** - For each hour during the Term, the Escalated Bid Price and the Escalated Discount Amount will be adjusted to an amount (expressed in \$/MWh) equal to the percentage of the Escalated Bid Price or the Escalated Discount Amount, as applicable, expressed in the following table:

Month	Escalated Bid Price Adjustment		Escalated Discount Amount Adjustment	
	HLH	LLH	HLH	LLH
January	113%	97%	88%	103%
February	109%	102%	92%	98%
March	105%	100%	95%	100%
April	103%	88%	97%	114%
May	104%	73%	96%	137%
June	104%	71%	96%	141%
July	104%	77%	96%	130%
August	104%	97%	96%	103%
September	105%	98%	95%	102%

Month	Escalated Bid Price Adjustment		Escalated Discount Amount Adjustment	
	HLH	LLH	HLH	LLH
October	103%	89%	97%	112%
November	106%	104%	94%	96%
December	117%	101%	85%	99%

3.5 Calculation of Firm and Non-Firm Energy Amounts - If in any month after COD the Eligible Energy for the month exceeds the Monthly Firm Energy Amount for that month, the amount of Firm Energy and Non-Firm Energy delivered during Heavy Load Hours is determined by multiplying the total Firm Energy or Non-Firm Energy amount for that month, as applicable, by the proportion of total Eligible Energy delivered during Heavy Load Hours in that month. The remainder of the Energy in each case will be deemed to have been delivered in Light Load Hours. The following provides an illustration of the application of this section:

	HLH	LLH	Total
Tendered Firm Energy	N/A	N/A	20
Total Eligible Energy delivered <i>as a % of total</i>	30 60%	20 40%	50 100%
Firm Energy delivered	12	8	20
Tier 1 Non-Firm Energy delivered	12	8	20
Tier 2 Non-Firm Energy delivered	6	4	10

3.6 Third Person Sales - Where the Seller has sold Energy to a third Person in accordance with section 7.5, there shall be deducted from the amount otherwise payable by the Buyer to the Seller in respect of the Energy that is deemed to be Eligible Energy pursuant to section 7.9 an amount equal to any revenue received by the Seller from the third Person for that Energy.

4. Property Tax Flow Through

In each year during the Term after COD, provided that the taxes payable in respect of the Seller's Plant in that year exceed the taxes payable in respect of the Seller's Plant during the year in which COD occurred determined in accordance with the following formula (where the definitions applicable to such formula have the meaning given below):

$$[(TRI_n * AVI_n) + (TRi_n * AVI_n)] > [(TRI_{COD} * AVI_{COD}) + (TRi_{COD} * AVI_{COD})],$$

then, the Buyer shall pay the Seller an amount determined in accordance with the following formula:

Payment Amount = (the greater of (i) zero and (ii) the amount determined in accordance with the following formula):

$$\{[(TRI_n - TRI_{COD}) * AVI_n] + [(TRi_n - TRi_{COD}) * AVI_n]\} * 0.5$$

Where:

TRI = Tax rates for the land on which the Seller's Plant is located

TRi = Tax rates for the improvements

AVI = Assessed value of the land on which the Seller's Plant is located

AVi = Assessed value of the improvements

n = the year in which the tax invoice is received by the Seller

"tax" means any ad valorem tax imposed by any Governmental Authority with respect to the Seller's Plant, including the associated land, as shown on the annual property tax notice for the Seller's Plant.

"improvements" means those improvements forming part of the Seller's Plant at COD.

Notwithstanding the foregoing, the Buyer will only be required to pay a portion of the amount determined in accordance with the foregoing formula based on the portion of the year following COD or the portion of the year prior to termination, as applicable. In addition, the amount payable by the Buyer will be reduced on a proportionate basis for each day in which the Seller does not deliver Eligible Energy to the Buyer, except where the Seller is excused from its delivery obligation under subsection 7.8(a).

The Seller shall have the burden of proving which improvements formed part of the Seller's Plant at COD. In each year during the Term after COD, within 60 days after receipt of the tax statement for the Seller's Plant, the Seller shall provide an invoice to the Buyer for any amount owing by the Buyer to the Seller pursuant to this section, together with all information and documents reasonably required to support the invoice. The Buyer shall pay any amount owing by the Buyer to the Seller under this section within 60 days after receipt from the Seller of an invoice in accordance with this section.

5. No Further Payment

5.1 The amounts payable by the Buyer as specified in this Appendix 3 are the full and complete payment and consideration payable by the Buyer for all Eligible Energy under this EPA.

APPENDIX 4

COD CERTIFICATE

EAST TOBA AND MONTROSE PROJECT

TO: British Columbia Hydro and Power Authority (the "Buyer")

RE: Electricity Purchase Agreement ("EPA") made as of 31 August 2006 between the Buyer and Plutonic Power Corporation (the "Seller") for East Toba and Montrose Project

I, [name of senior officer], in my capacity as [title of senior officer] of the Seller, and not in my personal capacity, certify on behalf of the Seller that:

1. **Defined Terms** - Words and phrases having initial capitalized letters in this Certificate have the meanings given in the EPA.
2. **COD Requirements** - The Seller has satisfied the requirements for COD as set out in section 5.2 of the EPA. Attached to this Certificate is all evidence required to demonstrate that the Seller has satisfied all such requirements.
3. **No Material Default** - No event which constitutes a Buyer Termination Event under subsection (a) or (e) of the definition of "Buyer Termination Event" in Appendix 1 to the EPA has occurred. The Seller has obtained all Material Permits and is not in material default under any Material Permit (and all Material Permits are in full force and effect), any tenure agreement for the site on which the Seller's Plant is located, the Interconnection Agreement or the Facilities Agreement.

Dated this ____ day of _____, 200____.

[name of senior officer]

[title of senior officer]

[Attach to the Certificate in tabbed format all documents and evidence required under section 5.2 of the EPA. Where documents have previously been provided to the Buyer, so indicate and attach a copy of the letter transmitting such documents to the Buyer.]

APPENDIX 5

SELLER'S PLANT DESCRIPTION

1. **Location:** The Seller's Plant is located at: the Toba Valley, approximately 100km North of Powell River, British Columbia

The approximate latitude and longitude of the site of the power house forming part of the Seller's Plant is: UTM Coordinates NAD 83, Zone 10:

East Toba River 5 614 062 N (latitude) and 432 296 E (longitude)

Montrose Creek 5 608 475 N (latitude) and 416 197 E (longitude)

2. **Site:** The Seller's Plant is located on property legally described as: untitled Crown Land

3. **Energy Source:** The primary Energy Source used to generate Energy at the Seller's Plant is Hydro which accounts for 100% (+/-5%) of the annual Energy generated. The following additional Energy Sources are used to generate Energy at the Seller's Plant (including applicable percentages (+/-5%) of the annual Energy generated): N/A

Where more than one Energy Source is used to generate energy at the Seller's Plant, describe whether the Energy Sources are consumed separately or whether multiple Energy Sources are consumed at the same time: N/A

Describe all storage facilities for the Energy Source(s): N/A (Run-of-River Hydroelectric Project)

4. **Principal Equipment:** The Seller's Plant includes the following principal equipment:

Type of Equipment	Description of Function/Location	Manufacturer	Model	Key Technical Parameters (include nameplate capacity of generators and state applicable units)
Hydraulic turbines and synchronous generators (complete "Water-to-Wire" Package will be procured)	Generating power/Powerhouse	Negotiations currently underway with suppliers including: - Alstom - Voith Siemens - VA Tech	Pelton Units	East Toba: 2 x 61.5 MW, Pelton, Vertical Axis, 6 Jet Units Montrose: 2 x 36.7 MW, Pelton, Vertical Axis, 6 Jet units Governors – Digital governor control system with HPU Generators – 3 phase, synchronous

Type of Equipment	Description of Function/Location	Manufacturer	Model	Key Technical Parameters (include nameplate capacity of generators and state applicable units)
				Transformer – Outdoor, oil immersed, air cooled, 3 phase

5. **Key Structures/Facilities:** The Seller's Plant includes the following key structures and facilities:

Structure/Facilities	Location	Description of Structure/Facility (including approx. size in square meters)
East Toba Intake	Located 5km upstream of the confluence of East Toba River with Toba River, at elevation 690m.	Low gated concrete weir with inflatable 3m high rubber weir, concrete retaining walls and earth embankments.
Montrose Intake	Located 4km upstream of the confluence of Montrose Creek with Filer Creek, at elevation 512m.	Low gated concrete weir with inflatable rubber weir, concrete retaining walls and earth embankments.
Water Conveyance East Toba River	Low pressure conduit and high pressure penstock both located on the right bank of the river.	The low pressure conduit is a HDPE pipe 1000m long. The high pressure penstock is a buried steel pipe, 3800m long and 3.0m diameter.
Water Conveyance Montrose Creek	Low pressure conduit and high pressure penstock both located on right bank of the creek.	The low pressure conduit is a HDPE pipe 1800m long. The high pressure penstock is a buried steel pipe, 2200m long and 1.9m diameter.
East Toba Powerhouse	Located on a raised bench adjacent to the right bank of the East Toba River at an elevation of 125 masl, approx. 0.1km upstream from the confluence with the Toba River.	Concrete foundation and substructure, steel frame superstructure with concrete block or steel clad walls and steel roof. Approx. 1200 square meters in size.

Structure/Facilities	Location	Description of Structure/Facility (including approx. size in square meters)
Montrose Powerhouse	Located on a raised bench adjacent to the right bank of the Montrose Creek at an elevation of 55 masl, approx. 0.6km upstream from the confluence with the Filer Creek.	Concrete foundation and substructure, steel frame superstructure with concrete block or steel clad walls and steel roof. Approximately 650 square meters in size.
Transmission Line	Will run from the powerhouses down the Toba River Valley to the head of Toba Inlet and then to Saltery Bay.	New 230kV transmission line from East Toba River powerhouse to Saltery Bay, with a total length of 145km.
Interconnection	Point of interconnection to the BCTC grid is near Saltery Bay.	A new 138/230kV substation will be built near Saltery Bay.
	<u>For Further Project Details, see the BC EAO website</u>	@: www.eao.gov.bc.ca (East Toba + Montrose Project)

6. **Access Roads:** Access to the site on which the Seller's Plant is located is via an existing forestry road that follows the Toba River Valley, and will be upgraded. Existing Barge Facility at the head of Toba Inlet will also be used which is owned by: Crown Land.

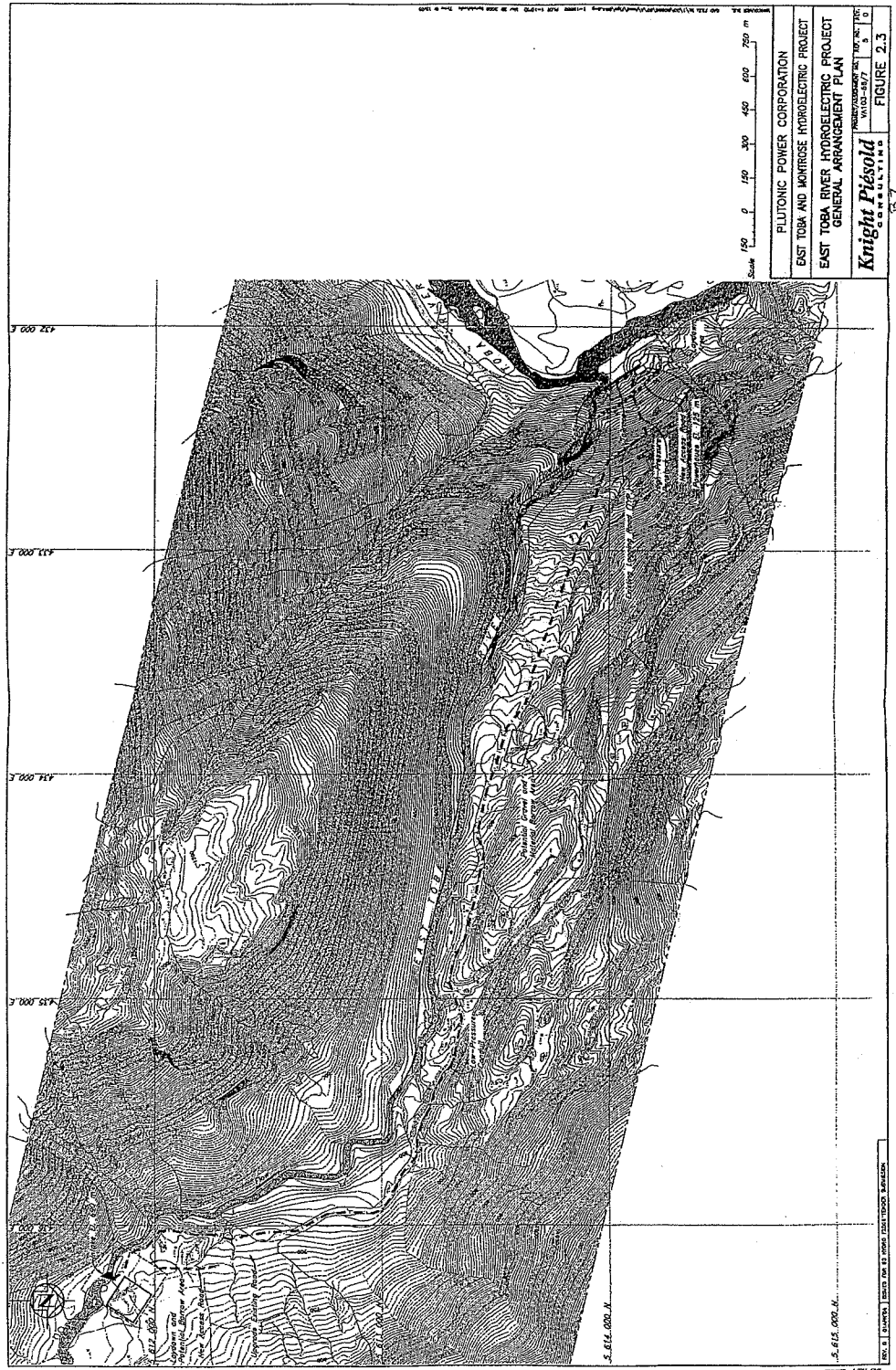
7. **Interconnection Facilities:** As described in the F2006 CFT Preliminary Interconnection Study Report prepared by the Transmission Authority or the Distribution Authority (as applicable) dated March 24, 2006.

8. **Water Supply:** East Toba River + Montrose Creek.

9. **Effluent Disposal:** Septic Tank will be provided at Powerhouse site for Wastewater Disposal.

10. **Site Layout:** Attach depiction of the expected layout of the key facilities in the Seller's Plant as Schedule 1.

11. **Plant Capacity:** 196 MW.



APPENDIX 6

SAMPLE FORM STANDBY LETTER OF CREDIT

[Issuing Bank Name & Address]

Date of Issue: [Date]

Irrevocable Standby Letter of Credit

[Number]

Applicant:

[Seller Name and Address]

Beneficiary:

British Columbia Hydro and Power Authority
333 Dunsmuir Street
Vancouver, BC
V6B 5R3

At the request and for the account of the Applicant, we hereby establish in favour of the Beneficiary our irrevocable standby Letter Of Credit No. ([Number]) (hereinafter called the "**Letter of Credit**") for an amount not exceeding *[Currency and Amount both in letters and numbers]*.

We, *[Bank Name and Address]* hereby unconditionally and irrevocably undertake and bind ourselves, and our successors and assigns, to pay you immediately, the sum, which you claim upon receipt of the following documents:

- (1) your signed written demand specifying the amount claimed (not exceeding *[Dollar Amount]*), and certifying that such amount is due to you by the Applicant under the terms of an Electricity Purchase Agreement between you and the Applicant made as of *[Date]*; and
- (2) this original Letter of Credit must be presented with your demand for payment for endorsement purposes.

Partial drawings are allowed. The amount of this Letter of Credit shall be automatically reduced by the amount of any drawing paid hereunder.

This Letter of Credit takes effect from the date of issue set forth above, and shall remain valid until [] However, it is a condition of this Letter of Credit that it will be automatically extended without notice for a further one year period from the present or any future expiry date unless at least ninety (90) days prior to such expiry date we notify you in writing by courier or registered mail at your address above that we elect not to consider this Letter of Credit to be extended for any additional period.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (1993 Revision), International Chamber of Commerce, (Publication No. 500). This Letter of Credit is governed by the laws applicable in the Province of British Columbia. The parties hereby irrevocably attorn to the non-exclusive jurisdiction of the courts of British Columbia. The number of this Letter of Credit must be quoted on all documents required hereby. Notwithstanding Article 17 of said publication, if this Letter of Credit expires during an interruption of business as described in Article 17, we agree to effect payment if this Letter of Credit is drawn within 15 days after resumption of normal business.

Authorized Signing Officer

[Bank Name]

Authorized Signing Officer

[Bank Name]

APPENDIX 7

SAMPLE FORM LENDER CONSENT AGREEMENT

(See section 16.3)

THIS AGREEMENT is made as of _____, 200_,

AMONG:

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

(the "Buyer")

AND:

[COMPANY], a company under the laws of _____ having an address at _____,

(the "Company")

AND:

[LENDER], a _____ under the laws of _____ having an address at _____,

(the "Lender").

WHEREAS:

A. The Buyer and the Company entered into an Electricity Purchase Agreement made as of _____ (as amended from time to time, the "EPA");

B. The Company has obtained certain credit facilities (the "Credit") from the Lender for the purposes of financing the design, construction, operation and maintenance of the Seller's Plant (as defined in the EPA);

C. To secure the due payment of all principal, interest (including interest on overdue interest), premium (if any) and other amounts payable in respect of the Credit and the due performance of all other obligations of the Company under the Credit, the Company has granted certain security to and in favour of the Lender, including an assignment of the right, title and interest of the Company under the EPA and security on the Seller's Plant (collectively, the "Lender Security"); and

D. The Lender has requested the Buyer to enter into this Agreement confirming certain matters.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the premises and of the sum of \$10 and other good and valuable consideration now paid by each of the Company and the Lender

to the Buyer (the receipt and sufficiency of which are hereby acknowledged by the Buyer), the parties covenant and agree that:

1. **Additional Definitions:** In this Agreement, including the recitals:

- (a) **"Assumption Notice"** means a notice given by the Lender to the Buyer pursuant to subsection 6.1(a) of this Agreement;
- (b) **"Default or Termination Notice"** means a notice given to the Company by the Buyer under the EPA that, with or without the lapse of time, entitles, or will entitle, the Buyer to terminate the EPA, subject to rights, if any, of the Company to cure the default or other circumstance in respect of which the notice is given;
- (c) **"Receiver"** means a receiver, manager or receiver-manager appointed or designated by, or on the initiative of, the Lender; and
- (d) words and phrases defined in the EPA, and not otherwise defined herein, when used herein have the meanings given in the EPA.

2. **EPA Amendments:** The Buyer and the Company acknowledge and agree that the EPA is in full force and effect, and that the EPA, as originally executed, has been amended only by the documents attached hereto as Schedule A.

3. **Buyer Confirmations Concerning the EPA:** The Buyer confirms to the Lender that:

- (a) the EPA has been duly authorized, executed and delivered by the Buyer;
- (b) the Buyer has not received any notice of assignment by the Company of all or any part of their right, title and interest in and to the EPA, except to the Lender;
- (c) the Buyer has not given any Default or Termination Notice;
- (d) the Buyer is not aware of any default or other circumstance that would entitle the Buyer to give a Default or Termination Notice, provided however that the Buyer has not undertaken any investigation or due diligence in respect of this confirmation; and
- (e) the Buyer shall not enter into any agreement with the Company to materially amend the EPA, or enter into any agreement with the Company to terminate the EPA, without giving the Lender not less than 30 days' prior written notice.

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

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

4.2 ***Lender Acknowledgement:*** The Lender acknowledges that:

- (a) it has received a copy of the EPA; and

- (b) the assignment by the Company to the Lender of the EPA pursuant to the Lender Security is subject in all respects to the terms and conditions of the EPA and this Agreement.

4.3 *Confidentiality:* The Lender covenants and agrees with the Buyer to be bound by the provisions of section 20.8 of the EPA regarding confidentiality, as if an original signatory thereto.

4.4 *Company Representation:* The Company represents and warrants to the Buyer that the Lender is the only person, other than the Buyer, to whom it has granted a security interest in the EPA or the Seller's Plant.

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

- (a) shall give the Lender a copy of any Default or Termination Notice concurrently with, or promptly after, any such notice is given to the Company;
- (b) shall not exercise any right it may have to terminate the EPA or any right pursuant to Article 14 of the EPA until the later of: (i) the date that is 45 days after the date on which the Buyer delivered to the Lender a copy of the Default or Termination Notice entitling the Buyer to terminate or exercise any right pursuant to Article 14 of the EPA; and (ii) the date on which the Buyer is entitled to terminate or exercise any right pursuant to Article 14 of the EPA;
- (c) shall not, provided that there is no other Buyer Termination Event under the EPA, terminate the EPA based on the Bankruptcy or Insolvency of the Seller if the Lender is promptly and diligently prosecuting to completion enforcement proceedings under the Lender Security until 30 days after the expiry of any court ordered period restricting the termination of the EPA; and
- (d) shall not exercise any right it may have under section 9.5 of the EPA to deduct any amounts owing by the Seller to the Buyer under the EPA from amounts owing by the Buyer to the Seller under the EPA until the date that is 15 days after the date the Buyer provides the Lender with a copy of the notice delivered by the Buyer to the Seller under section 9.5 of the EPA.

Nothing in this Agreement prevents or restricts: (i) the exercise by the Buyer of any other right or remedy that it may be entitled to exercise under or in relation to the EPA; or (ii) the right of the Lender to cure, or cause the cure of, any default of the Company under the EPA that would be curable by the Company, whether or not an Assumption Notice is given.

6. **Realization by Lender:**

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

- (a) give the Buyer written notice (an "Assumption Notice") stating that the Lender is assuming the EPA, whereupon:
 - (i) the Lender shall be entitled to all the rights and benefits, and shall have assumed, and shall perform and discharge, all the obligations and liabilities, of the

Company under the EPA, and the Lender shall be a party to, and bound by, the EPA as if an original signatory thereto in the place and stead of the Company;

- (ii) notwithstanding subparagraph (i), the Lender shall not be liable to the Buyer for defaults of the Company occurring before the Assumption Notice is given, except to the extent that such defaults continue thereafter; provided however that the Buyer may at any time before or after such notice is given exercise any rights of set-off in respect of any such prior default under or in relation to the EPA which the Buyer would otherwise be entitled to exercise; or
- (b) give written notice to the Buyer that the Lender wishes to cause the Company to assign all of the Company's right, title and interest in and to the EPA and the Seller's Plant to a third person or persons, subject however to the Company and the assignee complying with all provisions of the EPA relative to such assignment.

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

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

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

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

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

- (a) Buyer at:

British Columbia Hydro and Power Authority

Attention: _____

Facsimile No.: _____

- (b) [Company] at:

Attention: _____

Facsimile No.: _____

(c) [Lender] at:

Attention: _____

Facsimile No.: _____

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

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

9. **Jurisdiction:** Each party to this Agreement attorns irrevocably and unconditionally to the courts of the Province of British Columbia, and to courts to which appeals therefrom may be taken, in connection with any action, suit or proceeding commenced under or in relation to this Agreement. Notwithstanding the foregoing, the Lender acknowledges that upon an Assumption Notice being given, the Lender will become party to, and bound by, the agreements to arbitrate contained in section 20.7 of the EPA.

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

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

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

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

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

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

**BRITISH COLUMBIA HYDRO AND
POWER AUTHORITY**

[COMPANY]

By: _____
(Signature)

By: _____
(Signature)

Name: _____

Name: _____

Title: _____

Title: _____

[LENDER]

By: _____
(Signature)

Name: _____

Title: _____

APPENDIX 8

SAMPLE FORM DEVELOPMENT PROGRESS REPORT

BC Hydro Quarterly Development Report

For the quarter ending: _____

Report Number: _____

Project Name: _____

Tasks:	Percentage of Completion					Comments
	5%	25%	50%	75%	100%	
Permitting:						
Water Licence						
EA Certificate						
Fisheries Act						
Zoning Approval						
Subdivision Approval						
Leave to Construct						
Other Permits						
Financing:						
Construction						
Project Equity						
Long Term Financing						
Project Design:						
Preliminary						
Final						
Interconnection:						
Studies (Please describe the status of each interconnection study)						
Construction						
Major Equipment:						
Ordering						
Delivery						
Installation						
Construction:						
Road						
Powerhouse						
Other						

Key Project Tasks:	Target	Actual
Permitting Complete		
Financing Complete		
Interconnection/Facilities Agreements Signed		
Major Equipment Ordered		
Commence Construction		
Begin Commissioning		

COD:

Current Estimate: _____

Prepared by: _____

Submitted by: _____

APPENDIX 9

ADDRESSES FOR DELIVERY OF NOTICES

Subject to subsection 20.4(e), the address for each of the Parties for notices is as follows:

Buyer: BC Hydro		Seller: Plutonic Power Corporation	
All Notices (Except as set out below)			
To: Manager, Contract Management Address: 333 Dunsmuir Street, 10 th floor Vancouver, B.C. V6B 5R3 Attention: Manager, Contract Management Email: IPP.Contract@bchydro.com		To: Marc J. Stachiw Address: 900-808 West Hastings Street Vancouver, B.C. V6C 2X4 Email: marcs@plutonic.ca	
Development Reports			
To: Manager, Contract Management Address: 333 Dunsmuir Street, 10 th floor Vancouver, B.C. V6B 5R3 Attention: Manager, Contract Management Email: IPP.Contract@bchydro.com		N/A	
Planned Outages, Operating Plans, Notice of Outages, Energy Schedules			
To: Resource Coordinator, Plant Operations Group, Generation Address: 6911 Southpoint Drive, E15 Burnaby, B.C. V3N 4X8 Attention: [To Be Advised prior to COD] Email: [To Be Advised prior to COD] Copy to: Contract Management, as per all Notices address		To: Marc J. Stachiw Address: 900-808 West Hastings Street Vancouver, B.C. V6C 2X4 Email: marcs@plutonic.ca	
GHG Compliance Reports			
To: Triple Bottom Line Strategy Address: 333 Dunsmuir Street, 9 th floor Vancouver, B.C. V6B 5R3 Attention: [To Be Advised prior to COD] Email: [To Be Advised prior to COD] Copy to: Contract Management, as per all Notices address		To: Marc J. Stachiw Address: 900-808 West Hastings Street Vancouver, B.C. V6C 2X4 Email: marcs@plutonic.ca	

Buyer: BC Hydro		Seller: Plutonic Power Corporation	
Invoices and Statements			
To: IPP Invoicing Address: 333 Dunsmuir Street, 16 th floor Vancouver, B.C. V6B 5R3 Attention: [To Be Advised prior to COD] Email: IPP.Invoicing@bchydro.com		To: Marc J. Stachiw Address: 900-808 West Hastings Street Vancouver, B.C. V6C 2X4 Email: marcs@plutonic.ca	
Performance Security			
To: Manager, Contract Management Address: 333 Dunsmuir Street, 10 th floor Vancouver, B.C. V6B 5R3 Attention: Manager, Contract Management Email: IPP.Contract@bchydro.com		To: Marc J. Stachiw Address: 900-808 West Hastings Street Vancouver, B.C. V6C 2X4 Email: marcs@plutonic.ca	
Insurance			
To: Manager, Contract Management Address: 333 Dunsmuir Street, 10 th floor Vancouver, B.C. V6B 5R3 Attention: Manager, Contract Management Email: IPP.Contract@bchydro.com		To: Marc J. Stachiw Address: 900-808 West Hastings Street Vancouver, B.C. V6C 2X4 Email: marcs@plutonic.ca	

If the Seller is a joint venture, general partnership or limited partnership, a notice given in accordance with the foregoing provisions is deemed to have been given to the Seller and to each joint venturer and/or partner as applicable.