
ELECTRICITY PURCHASE AGREEMENT

BETWEEN

[SELLER]

- and -

[UTILITY]

[PROJECT NAME]

(YUKON STANDING OFFER PROGRAM)

Dated the ___ day of ____, 20_

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[UTILITY]

STANDARD FORM ELECTRICITY PURCHASE AGREEMENT

STANDING OFFER PROGRAM

THIS ELECTRICITY PURCHASE AGREEMENT ("EPA") is made as of the day of _____, 20__

BETWEEN:

[SELLER], a corporation incorporated under the laws of _____
("Seller")

- and -

[UTILITY], a corporation incorporated under the laws of the Yukon
("Buyer")

WHEREAS:

- A. The Government of Yukon issued the *Energy Strategy for Yukon* in January 2009 and in October 2015 issued the *Independent Power Production Policy* as reviewed and updated in October, 2018 (the "**IPP Policy**") as part of the strategy's priority action to "update and develop a policy framework for electricity that emphasizes efficiency, conservation and renewable energy". The IPP Policy created a framework for the development of the Standing Offer Program. In support of the objectives of the IPP Policy, the Government of Yukon issued the SOP OIC and, together with the Utilities, developed the SOP Rules;
- B. Seller has proposed the development of the Project on the Electrical Grid pursuant to the Standing Offer Program and such Project has been reviewed and approved in accordance with the SOP Rules; and
- C. This EPA is being entered into by the Parties in respect of the Project under the Standing Offer Program in accordance with the SOP Rules.

NOW THEREFORE Seller and Buyer agree as follows:

**ARTICLE 1
DEFINITIONS, INTERPRETATION AND SCHEDULES**

1.1 Definitions and Interpretation

The definitions and certain principles of interpretation that apply to this EPA are set out in Schedule "A".

1.2 Schedules

The following Schedules attached hereto are incorporated into and made a part of this EPA:

- Schedule "A" - Definitions and Interpretation
- Schedule "B" - Project Description

Schedule "C"	-	Form of Annual Operating Plan
Schedule "D"	-	System Interconnection Study Report
Schedule "E"	-	Monthly Energy Shortfall Payment
Schedule "F"	-	Termination Payment
Schedule "G"	-	System Interconnection Guidelines
Schedule "H"	-	Draft Joint Operating Procedure
Schedule "I"	-	Delivery Time Adjustment Table
Schedule "J"	-	Draft Interconnection Agreement

ARTICLE 2 CONDITIONS PRECEDENT AND TERM

2.1 Conditions Precedent

- (a) Except as provided in this Section, this EPA has no legal force until the Conditions Precedent described in Schedule "B" are satisfied by Seller or waived by Buyer. The Conditions Precedent may only be waived by Buyer by notice in writing to Seller.
- (b) Seller will:
 - (i) seek to satisfy each of the Conditions Precedent on or before the Condition Date;
 - (ii) keep Buyer informed of any circumstances which may result in any of those Conditions Precedent not being satisfied in accordance with their terms; and
 - (iii) promptly notify Buyer upon satisfaction of any of those Conditions Precedent and provide such supporting evidence as may be reasonably required by Buyer.
- (c) If the Conditions Precedent are not satisfied or waived on or before the Condition Date, or it becomes apparent that the Conditions Precedent will not, in the reasonable opinion of Buyer, be satisfied by the Condition Date, the Conditions Precedent will be taken to have failed and Buyer shall be entitled to terminate this EPA, in which event each Party shall release the other from any and all claims, damages, costs, expenses or liabilities whatsoever incurred by it and its Affiliates in relation this EPA provided that (i) Seller shall remain liable for all costs incurred by Buyer in respect of the System Interconnection Study Report, System Upgrade Costs or New Interconnection Facilities Costs and (ii) otherwise each Party shall be responsible for its own costs incurred by it in connection with this EPA.
- (d) Section 2.1(a) does not apply to this Article 2, Section 3.5 and Articles 10, 11, 12, 13 and 15 which shall be in full force and effect from the date of this EPA.

2.2 Term

Subject to Section 2.1, this EPA shall commence on the Effective Date and continues for the period specified in Schedule "B", unless it is terminated earlier in accordance with this EPA.

**ARTICLE 3
CONSTRUCTION AND OPERATION**

3.1 Construction and Operation Costs, Liabilities and Actions

Seller will be fully responsible for the permitting, design, engineering, construction, Interconnection, commissioning, operation, maintenance, reclamation and decommissioning of the Seller's Plant and shall be responsible for all costs, expenses, liabilities and other obligations associated with such activities.

3.2 Standard of Construction and Operation

Except as otherwise consented to in writing by Buyer, such consent not to be unreasonably withheld, conditioned or delayed, Seller will ensure that the location, design, engineering, construction, Interconnection, commissioning, operation and maintenance of the Seller's Plant, are and will be carried out at all times during the Term:

- (a) in accordance with the description of the Seller's Plant in Schedule "B" and the information in the Application in all material respects;
- (b) in compliance with the Project Standards; and
- (c) by qualified and experienced individuals.

The Parties shall conduct their respective operations in accordance with the Joint Operating Procedure.

3.3 Project Changes

Without Buyer's prior written consent, not to be unreasonably withheld, conditioned or delayed Seller will not make any change to:

- (a) the Seller's Plant as described in Schedule "B"; or
- (b) any other aspects of the Seller's Plant or the information in any System Interconnection Study Report completed for Seller's Plant prior to the Effective Date which would require changes by Buyer to the System Upgrades where such change would increase Buyer's liability for any costs or otherwise increase the obligations or risks of Buyer with respect to the Seller's Plant or any other project.

Seller acknowledges that Buyer may require, as a condition of its consent to any change described in this Section, that Seller agree in writing to reimburse Buyer for any reasonable incremental liability for any losses, costs and damages incurred by Buyer or any third party, with respect to the Seller's Plant or any other project, as a result of any change described in this Section. Buyer may also require that Seller provide performance assurance or security to Buyer in order to ensure that Buyer has no financial exposure in respect of such reimbursement obligation.

3.4 Development Progress Reports

Seller will deliver a Development Progress Report to Buyer on each January 1, April 1, July 1 and October 1 after the Effective Date until Seller's COD. Buyer shall be entitled to request such

additional information as it may reasonably require from time to time in respect of Seller's development of Seller's Plant.

3.5 Responsibility for Upgrade Costs

Seller will be responsible for and shall pay Buyer for all System Upgrade Costs and New Interconnection Facilities Costs in accordance with the following:

- (a) the System Interconnection Study Report sets out Buyer's estimate of System Upgrade Costs and the New Interconnection Facilities Costs. Seller shall (i) pay to Buyer in advance an amount equal to such estimate of System Upgrade Costs and New Interconnection Facilities Costs ("**Upgrade Costs Advance**") and/or (ii) provide such other security in form, substance and amount as may be acceptable to Buyer in its Discretion to secure the obligation of Seller to pay such costs ("**Upgrade Costs Security**"). Buyer shall not be required in any circumstances to accept Upgrade Costs Security except in its Discretion. Buyer shall not be required to perform any work or incur any System Upgrade Costs or New Interconnection Facilities Costs where Buyer determines in its Discretion that the amount of Upgrade Costs Advance it has received together with any Upgrade Costs Security is not sufficient to adequately secure the obligation of Seller to pay all System Upgrade Costs and New Interconnection Facilities Costs and Seller shall forthwith provide to Buyer such additional Upgrade Costs Advance and/or Upgrade Costs Security as may be reasonably required by Buyer;
- (b) Buyer will exercise Good Industry Practice to perform, or cause to be performed, the work required in respect of the System Upgrades and the New Interconnection Facilities for the Project. Buyer shall be entitled to draw upon the Upgrade Costs Advance and Upgrade Costs Security from time to time in its Discretion to satisfy any System Upgrade Costs and New Interconnection Facilities Costs as and when incurred by Buyer; and
- (c) notwithstanding the estimate of System Upgrade Costs and New Interconnection Facilities Costs provided by Buyer to Seller contemplated in Section 3.5(a) or the amount of any Upgrade Costs Advance and Upgrade Costs Security provided by Seller, Seller shall be responsible for and shall pay Buyer the actual System Upgrade Costs relating to the System Upgrades incurred by Buyer. Following the completion of the System Upgrades and the payment in full by Seller of all System Upgrade Costs incurred by Buyer for such work, Buyer shall release to Seller any undrawn portion of the Upgrade Costs Advance and Upgrade Costs Security.

3.6 Metering

As part of the System Upgrades and New Interconnection Facilities, Buyer will install and maintain an appropriate Meter installation at the POI, and ensure that such Meter is tested and sealed according to any Measurement Canada standards. Seller will allow Buyer to access the Seller's Plant as may be necessary from time to time to install and maintain the Meter at the POI. If there is any dispute regarding the accuracy of the Meter, either Party may give notice to the other Party of the dispute. In that case, the Parties will resolve the matter in accordance with the *Electricity and Gas Inspection Act* (Canada).

3.7 Insurance

Seller will, at its cost, obtain and maintain (a) policies of commercial general liability insurance with a per occurrence limit of liability not less than \$5,000,000, and (b) property insurance, with limits of liability and deductibles consistent with those a prudent owner of a facility similar to the Seller's Plant would maintain and those the Facility Lender may require. All commercial general liability policies must include Buyer, its directors, officers, employees and agents as additional insureds and must contain a cross liability and severability of interest clause. All policies of insurance must include a waiver of subrogation in favour of Buyer. All policies of insurance must be placed with insurers that have a minimum rating of A- (or equivalent) by A.M. Best Company and are licensed to transact business in the Yukon and must be endorsed to provide to Buyer 30 days' prior written notice of cancellation, non-renewal or any material amendment that results in a reduction in coverage. Seller will give Buyer a copy of the insurance certificate(s) for the insurance required to be maintained by Seller under this Section not more than 30 days after the effective date of coverage and promptly upon renewal thereafter. Seller will be responsible for the full amount of all deductibles under all insurance policies required to be maintained by Seller under this Section.

3.8 Seller's COD

- (a) Except with Buyer's prior written consent, Seller's COD may not occur earlier than 90 days prior to Target Seller's COD.
- (b) Buyer will not be required to incur any incremental expense or other liability of any kind to enable Seller's COD to occur prior to Target Seller's COD.

3.9 Change in Target Seller's COD

If the estimated date for completing the System Upgrades or the New Interconnection Facilities as required to achieve Buyer's COD is later than 90 days prior to the Target Seller's COD, Buyer shall provide notice to Seller of such delay and, provided Seller is not responsible for any delay in completing the System Upgrades or the New Interconnection Facilities (including a failure to pay amounts contemplated in Section 3.5), upon Seller's written request that the Target Seller's COD be postponed, Buyer will postpone the Target Seller's COD to the estimated date for completing the System Upgrades and the New Interconnection Facilities plus 90 days.

3.10 No Liability For Delay

Buyer shall exercise reasonable commercial efforts to achieve Buyer's COD prior to Target Buyer's COD. Buyer will have no liability under this EPA for delays in completion of (a) any System Upgrades or the New Interconnection Facilities, or (b) other work undertaken by Buyer or any of Buyer's Affiliates on the Seller's Plant side of the POI, in each case howsoever arising.

3.11 Outages

- (a) **Notice of Seller's Outage** - Seller will notify Buyer of any Outages in Seller's Plant, or changes in any such Outages, by delivering to Buyer an Outage Notice or revised Outage Notice:
 - (i) promptly in the case of a Forced Outage or a Maintenance Outage;

- (ii) not less than 30 days in advance of any Planned Outage which is scheduled to last longer than 12 hours or 5 Business Days' notice for any Planned Outage which is scheduled to last less than 12 hours, or such shorter time period with Buyer's written consent, such consent not to be unreasonably withheld, delayed or conditioned; and
 - (iii) promptly in the case of any changes to the duration, start time or end time of any Outage.
- (b) **Notice of Buyer's Outage** - In addition to Buyer's reporting requirements under Section 4.8(d), Buyer will notify Seller of any Planned Outages that will result in a Buyer's Distribution/Transmission Constraint or changes in any such Planned Outages, by delivering to Seller an Outage Notice or revised Outage Notice:
 - (i) promptly in the case of a Forced Outage or a Maintenance Outage;
 - (ii) not less than 30 days in advance of any such Planned Outage which is scheduled to last longer than 12 hours or 5 Business Days' notice for any Planned Outage which is scheduled to last less than 12 hours, or such shorter time period with Seller's written consent, such consent not to be unreasonably withheld, delayed or conditioned; and
 - (iii) promptly in the case of any changes to the duration, start time or end time of any Outage.
- (c) **Coordination and Scheduling of Outages** - Seller will coordinate all Planned Outages or Maintenance Outages with Buyer's maintenance schedule or other requirements where such schedule or requirements are publicly available or otherwise notified to Seller.

3.12 Annual Operating Plan

On or before October 31 in each year during the Term, Seller will provide to Buyer its Annual Operating Plan, including any required update to the then current Annual Operating Plan, for the 12-month period commencing on January 1 of the next year. Seller will promptly provide Buyer with a revised Annual Operating Plan from time to time upon Seller becoming aware of any expected material change in the original Annual Operating Plan for that period. The Parties agree the Annual Operating Plan is provided for planning purposes and does not guarantee or limit the quantity or timing of Delivered Energy to the POI.

ARTICLE 4 PURCHASE AND SALE OBLIGATIONS

4.1 Energy prior to Buyer's COD

Subject to satisfaction of all obligations of Seller under this EPA, upon the occurrence of Seller's COD but prior to the occurrence of Buyer's COD, Buyer will not be obligated to purchase, or accept delivery from Seller of, any Energy, provided if Buyer does accept, in its sole discretion, delivery of Energy at the POI, Buyer will pay for such Energy accepted by Buyer prior to Buyer's COD in accordance with Section 5.1.

4.2 Energy after Buyer's COD

From and after Buyer's COD for the remainder of the Term, Seller will sell and deliver all Energy to Buyer at the POI and Buyer will, subject to Sections 4.3 and 4.4, purchase and accept delivery of all Delivered Energy. Buyer will pay for Delivered Energy from and after Buyer's COD in accordance with Section 5.1.

4.3 Limit on Delivered Energy and Capacity

Notwithstanding the foregoing provisions of this Article 4:

- (a) in any hour, Buyer will not be obligated at any time to purchase or accept delivery from Seller at the POI of any Energy generated in excess of the Seller's Plant Capacity in such hour (as measured in kWh) and no amount will be payable by Buyer for Delivered Energy in excess of the Seller's Plant Capacity in such hour, whether prior to or after COD, and regardless of whether Buyer consented to and accepted delivery of such Energy at the POI;
- (b) in any calendar year, Buyer will not be obligated to purchase or accept delivery from Seller at the POI of any Energy generated in excess of the Project Energy Volume and no amount will be payable by Buyer for Delivered Energy in any such calendar year in excess of the Project Energy Volume in such calendar year, whether prior to or after COD, and regardless of whether Buyer consented to and accepted delivery of such Energy at the POI; and
- (c) in determining the total amount of Delivered Energy for a year, month, hour or any other time period under this EPA for any purpose, the amount of Delivered Energy in each hour of such time period will not exceed the Seller's Plant Capacity in such hour, even if Seller delivered to the POI Energy in excess of such amounts, or the Seller's Plant was capable of generating Energy in excess of such amounts.

4.4 Distribution/Transmission Constraints

Buyer will not be in breach or default of its obligations under Sections 4.1, 4.2 or 5.1 if Buyer is not able to accept delivery of Energy at the POI as a result of a Distribution/Transmission Constraint. Buyer will have no liability with respect to a Distribution/Transmission Constraint, except as set out in Section 4.8, if applicable.

4.5 Exclusivity

- (a) Seller will not at any time during the Term commit, sell or deliver any Energy (or related Environmental Attributes) to any Person other than Buyer under this EPA. Seller will not use any Energy (or related Environmental Attributes) for any purpose whatsoever except for sale to Buyer under this EPA. These prohibitions do not apply if, and for so long as, Buyer is in breach of its obligations under Section 4.2.
- (b) Seller shall not be entitled to interconnect additional generating facilities to the Seller's Plant and transmit electricity via the Seller's Plant to the POI.

4.6 Custody, Control, Risk of and Title To Energy

Custody, control, risk of, and title to, all Energy (including any Delivered Energy exceeding the limits set out in Section 4.3 even where Buyer has not paid for such excess Delivered Energy) shall pass from Seller to Buyer at the POI. Seller will ensure that all Energy delivered to Buyer under this EPA is free and clear of all liens, claims, charges and encumbrances.

4.7 Line Losses

Seller will be responsible for all Line Losses, costs and liabilities relating to the transmission of Energy and other electricity, if applicable, from the POI to the interconnection point between the New Interconnection Facilities and the Electrical Grid. Such Line Losses shall be determined in accordance with the Line Loss Methodology.

4.8 Distribution/Transmission Constraint

- (a) If, in any month after Buyer's COD, Seller is unable to deliver Energy at the POI or Seller's ability to deliver Energy at the POI is reduced solely as a result of a continuous Distribution/Transmission Constraint which exceeds 30 minutes in duration and which:
- (i) is not caused by a Planned Outage by Buyer of the Distribution System or Transmission System;
 - (ii) is not caused by an event beyond the reasonable control of the Utilities; and
 - (iii) is not caused by Seller, the Seller's Plant or anything on Seller's side of the POI;
- (a "**Non-Permitted Distribution/Transmission Constraint**") then, notwithstanding that Buyer is excused under Section 4.4 from its obligations under Section 4.2, Buyer shall pay Seller, for each calendar month in which the Non-Permitted Distribution/Transmission Constraint has occurred, the Monthly Energy Shortfall Payment calculated in accordance with Schedule "E" less any costs Seller avoided or, acting reasonably, could have avoided during the Non-Permitted Distribution/Transmission Constraint.
- (b) Buyer will not be required to pay any Monthly Energy Shortfall Amount under this Section in any of the following circumstances:
- (i) during any period specified as a Seller's Outage in any Outage Notice, revised Outage Notice or in the Annual Operating Plan or during any other period where the Seller's Plant would otherwise not have been operating;
 - (ii) during any period when either Party is or would be excused, in accordance with Section 14.1, from its obligation to deliver or to accept delivery of Energy as a result of Force Majeure; or
 - (iii) if Seller has not provided Buyer with an Annual Operating Plan in accordance with Section 3.12 for the year in which the Non-Permitted Distribution/Transmission Constraint occurs.
- (c) Seller will maintain accurate and complete Records of all costs Seller avoided or, acting reasonably, could have avoided during the Non-Permitted Distribution/Transmission Constraint and will report all such costs to Buyer and provide Buyer with all information required to calculate such costs.
- (d) Buyer will give Seller notice of all Distribution/Transmission Constraints in each month which individually exceed 30 minutes in duration when it provides its monthly statements in accordance with Section 5.3.

- (e) In the event of a Dispute by the Parties in respect of the amount of any Monthly Energy Shortfall Amount, the matter shall be resolved in accordance with Article 12.

4.9 Buyer Dispatch/Turn-Down Right

- (a) Buyer may at any time during the Term deliver notice to Seller requiring Seller to Dispatch/Turn-Down and Seller will promptly comply with any such direction except to the extent that any operational, technical or regulatory constraint prevents or limits Seller's ability to comply with such direction.
- (b) For each hour of the applicable Dispatch/Turn-Down, Buyer will pay Seller an amount equal to:
 - (i) the price payable for post-COD Delivered Energy under Section 5.1 multiplied by the positive difference, if any, of (A) the aggregate of the duration of the applicable Dispatch/Turn-Down (measured as a fraction determined as the aggregate number of minutes in such Dispatch/Turn-Down period divided by 60) multiplied by (B) the "Projected Hourly Energy" set out in Table E-1 of Schedule "E" for the applicable calendar month less (C) the amount of Delivered Energy in such period of Dispatch/Turn-Down (the positive difference being the "**Dispatch/Turn-Down Deemed Energy**"); less
 - (ii) any costs Seller avoided or, acting reasonably, could have avoided during the period of the Dispatch/Turn-Down.
- (c) Buyer will not be required to pay any amount in respect of Dispatch/Turn-Down Deemed Energy under this Section in any of the following circumstances:
 - (i) during any period specified as a Seller's Outage in any Outage Notice, revised Outage Notice or in the Annual Operating Plan or during any other period where the Seller's Plant would otherwise not have been operating;
 - (ii) during any period when either Party is or would be excused, in accordance with Section 14.1, from its obligation to deliver or to accept delivery of Energy as a result of Force Majeure;
 - (iii) if Seller has not provided Buyer with an Annual Operating Plan in accordance with Section 3.12 for the year in which the Dispatch/Turn-Down occurs;
 - (iv) during any other hour when the Seller's Plant would otherwise not have been operating if there had been no Dispatch/Turn-Down notice; or
 - (v) where Buyer's requirement for Seller to Dispatch/Turn Down is the result of the operation of the Seller's Plant in a manner inconsistent with Section 3.2.
- (d) Where Buyer requires the Dispatch/Turn-Down as result of a Non-Permitted Distribution/Transmission Constraint, Section 4.8 will apply.

4.10 Electric Service to Seller

If at any time Buyer delivers electrical energy to service Seller's Plant Load, then such electrical energy shall be accounted and paid for separately under the applicable agreement for such electricity energy services and will not be netted off of Delivered Energy for the purposes of determining amounts payable by Buyer in accordance with Section 5.1.

ARTICLE 5 PRICE AND PAYMENT TERMS

5.1 Energy Price

In each billing period, the Energy Price calculated in accordance with Schedule "B" shall be used by the Buyer to pay the Seller, for each kWh of Delivered Energy, and Non-Permitted Distribution/Transmission Constraint or Dispatch/Turn-Down Deemed Energy, if applicable.

5.2 No Further Payment

The amount payable by Buyer as specified in Section 5.1 is the full and complete payment and consideration payable by Buyer for Delivered Energy and for Environmental Attributes.

5.3 Statements and Payment

(a) Statements

- (i) Buyer will, by the 15th day of each month after the Buyer's COD, deliver to Seller a statement for the preceding month. The statement must indicate, among other things:
 - (A) the amount of, and price payable for, Delivered Energy for that month;
 - (B) any amount owing by Buyer in respect of a Non-Permitted Distribution/Transmission Constraint pursuant to Section 4.8;
 - (C) any amount owing by Buyer in respect of any Dispatch/Turn-Down Deemed Energy pursuant to Section 4.9;
 - (D) any Final Amounts owing by either Party to the other Party.

Where there has been any Delivered Energy purchased by Buyer in the period prior to Buyer's COD, the first statement following Buyer's COD shall also account for all amounts payable by Buyer to Seller for such period prior to Buyer's COD. The statement must set out in reasonable detail the manner by which the statement and the amounts shown thereon were computed and be accompanied by sufficient data to enable Seller, acting reasonably, to satisfy itself as to the accuracy of the statement.

- (ii) Either Party may give notice to the other Party of an error, omission or disputed amount on a statement within 36 months after the statement was first issued together with reasonable detail to support its claim. After expiry of that 36 month period, except in the case of willful misstatement, fraud or concealment, amounts on a previously issued statement will be considered accurate and amounts which were omitted will be considered to be nil, other than amounts disputed in

accordance with this Section within the 36 month period, which will be resolved in accordance with this EPA.

- (iii) If Seller gives notice to Buyer of an error, omission or disputed amount on a statement as described in Section 5.3(a)(ii), Seller may direct Buyer to promptly produce new statements for the relevant month(s). The new statements will show the undisputed amount and disputed amount each in a separate statement or will otherwise separate the amounts in a single statement in a manner acceptable to Seller, acting reasonably.

(b) Payment

- (i) Within 30 days after receipt of a statement delivered under Section 5.3(a), and subject to Section 5.5, Buyer will pay to Seller or Seller will pay to Buyer the amount set out in the statement, except to the extent Seller in good faith disputes all or part of the statement by notice to Buyer as described in Section 5.3(a)(ii).
- (ii) If Seller disputes any portion of a statement, the applicable Party must pay the undisputed net amount payable by it pursuant to the statement or, if applicable, the new statement of the undisputed amount described in Section 5.3(a)(iii).
- (iii) The Parties will endeavor to resolve any error, omission or disputed amount on a statement amount within 30 days of the notice described in Section 5.3(a)(ii).
- (iv) Any amount required to be paid in accordance with this EPA, but not paid by either Party when due, will accrue interest at an annual rate equal to the Prime Rate plus 2%, compounded monthly. Any disputed amount that is found to be payable will be deemed to have been due within 30 days after the date of receipt of the statement which included or should have included the disputed amount.

(c) Payment Calculations

- (i) For the purpose of all payment calculations under this EPA:
 - (A) all payment calculations will be rounded to the nearest cent; and
 - (B) Energy will be expressed in kWh rounded to two decimal places.
- (ii) For the purpose of all payment calculations under this EPA, where CPI is to apply, if Statistics Canada (or the then recognized statistical branch of the Canadian Government):
 - (A) 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);
 - (B) at any time ceases to publish or provide the CPI, then the provisions of Section 2.7 of Schedule "A" will apply;
 - (C) has not published the CPI for a relevant period at the time Buyer is required to provide Seller with a statement, Seller will prepare the invoice based on the CPI in effect at the time the invoice is issued and

when the CPI for the relevant period is published, Buyer will recalculate the invoice amounts in the next succeeding invoice and will include a credit or debit, without interest, in the next succeeding invoice based on the results of the recalculation; or

- (D) recalculates the CPI within 36 months after an invoice affected by that CPI calculation has been issued, then Buyer will recalculate the invoice amounts for the relevant period in the next succeeding invoice and will include a credit or debit, without interest, in the next succeeding invoice based on the results of the recalculation.

5.4 Taxes

All dollar amounts in this EPA do not include any value added, consumption, commodity or similar taxes, including GST and any successor thereto, which, if applicable, will be added to each statement and paid by Buyer.

5.5 Set-off

If Buyer and Seller each owe the other an amount under this EPA in the same month, then such amounts with respect to each Party will be aggregated and the Parties may discharge their obligations to pay through netting, in which case the Party, if any, owing the greater aggregate amount will pay to the other Party the difference between the amounts owed, provided that this Section applies only to any purchase price for Delivered Energy and any Final Amount owing by either Party to the other Party. Except as otherwise expressly provided herein, each Party reserves all rights, counterclaims and other remedies and defenses which such Party has, or may be entitled to, arising from or related to this EPA.

5.6 Change in Law and GRA Cost Recovery

- (a) If at any time after the Effective Date:
 - (i) the costs to Buyer of complying with its obligations under this EPA are, as a result of one or more Changes in Law, increased or decreased (including, for greater certainty, any increase of the obligations or risks of Buyer with respect to the Seller's Plant, but excluding any increase of the obligations or risks of Buyer with respect to the System Upgrades or New Interconnection Facilities); or
 - (ii) the costs to Buyer of complying with its obligations under this EPA which were of a category or type previously recovered under a General Rate Application are determined under a General Rate Application to no longer be approved for recovery from Buyer's customers in such General Rate Application;

then, to the extent that Buyer would not have incurred such costs except for the Seller's Project and/or the entering into of this EPA, the amount payable by Buyer as specified in Section 5.1 shall be adjusted by the amount necessary to reflect those changed costs which Buyer is unable to recover from Buyer's customers in a General Rate Application.

- (b) For each relevant event in Section 5.6(a)(i) or 5.6(a)(ii), Buyer shall provide Seller with a statement setting out such information as is reasonably necessary to demonstrate that such an event has occurred, the reasonableness and necessity of the measures taken by

Buyer in relation to the event, its efforts to mitigate the costs associated with such event including reasonable efforts of Buyer to recover such costs from its customers in a General Rate Application, the nature and extent of any increase or decrease in the amount payable by Buyer as specified in Section 5.1, and any such other information as may be reasonably requested by Seller.

- (c) If in Seller's view there has been a Change in Law that may decrease Buyer's costs, Seller may request Buyer to demonstrate how such Change in Law has affected its costs under this EPA by providing the applicable information contemplated in Section 5.6(b).
- (d) The payments between the Parties shall thereafter be adjusted effective as of the date such event in Section 5.6(a)(i) or 5.6(a)(ii) affects the costs of Buyer hereunder.
- (e) If there is any Dispute between the Parties with respect to this Section 5.6, including as to the appropriate increase or decrease in any payments between the Parties under this Agreement, the Dispute shall be resolved in accordance with Article 12.

ARTICLE 6 ENVIRONMENTAL ATTRIBUTES

6.1 Environmental Attributes

Seller hereby transfers, assigns and sets over to Buyer all right, title and interest in and to the Environmental Attributes. Seller will ensure that all Environmental Attributes transferred to Buyer under this EPA are free and clear of all liens, claims, charges and encumbrances. Seller shall use commercially reasonable efforts to (i) provide information reasonably requested by Buyer in relation to such Environmental Attributes, including as may be required to allow Buyer to verify or certify that such Environmental Attributes exist or have been created and (ii) assist in having Seller's Plant certified, licensed, qualified or approved under any rules, regulations, programs or applicable Laws of any Governmental Authority or independent certification agency in respect of Environmental Attributes, provided that Buyer shall pay Seller all costs reasonably incurred by Seller in respect of the same. Any failure by Seller to exercise such commercially reasonable efforts under this Section 6.1 is a "material default" for the purposes of this EPA, and Buyer may terminate this EPA under Section 9.1(j).

ARTICLE 7 EPA ADMINISTRATION, RECORDS AND AUDITS

7.1 Records

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

7.2 Inspection and Audit Rights

For the sole purpose of verifying:

- (a) compliance with this EPA;
- (b) the accuracy of statements, supporting information and calculations delivered by a Party under this EPA;
- (c) the qualification of the Seller's Plant and the Energy for the Environmental Certification; or
- (d) the liability of Seller for System Upgrades Costs and New Interconnection Facilities Costs,

Buyer or Seller, as applicable, will, on reasonable prior written notice from either Party desiring to conduct an audit, provide the Audit Parties with prompt access during normal business hours to (i) in respect of Buyer, Buyer's records solely relating to this EPA, or (ii) in respect of Seller, Seller's Plant and all records relating to the Seller's Plant, including any Seller Confidential Information, as applicable, to enable the Audit Parties to conduct an inspection or audit thereof. The Audit Parties will exercise any access and audit rights under this Section in a manner that minimizes disruption to the operation of the Party subject to the audit. The audit rights contained in this Section 7.2 shall be subject to the limitations set forth in Section 5.3.

7.3 Seller Consents

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

ARTICLE 8 FIRST NATION CLAIMS

8.1 Notification of First Nation Claim

Given the ownership and location of the Project, Seller and Buyer do not expect any First Nation Claims. However, if Buyer or Seller receives or obtains evidence of a First Nations Claim, it will notify the other Party as soon as practicable.

8.2 Buyer Termination for First Nation Claim

If Buyer receives, obtains evidence or becomes aware of a First Nations Claim, it may direct Seller, at Seller's cost, to:

- (a) consult with the First Nations making the First Nation Claim, or, if requested by Buyer, assist Buyer in the consultation process;

- (b) take any measures Seller deems necessary to address, prevent, mitigate, compensate or otherwise accommodate any Potential Impacts provided the measures are consented to in advance by Buyer and the First Nations making the First Nation Claim; and
- (c) provide regular written reports to Buyer concerning Seller's compliance with this Section, as may be reasonably requested by Buyer.

After consultation by Seller with the First Nations making the First Nations Claim under section 8.2(a) and Seller taking measures under Section 8.2(b), it becomes clear to Buyer after 60 days that the consultation and/or measure(s) necessary for Seller to resolve the First Nations Claim or to prevent, mitigate, accommodate or otherwise accommodate any Potential Impact would, in Buyer's discretion, impose a commercially unreasonable cost on Buyer, expose the Buyer to potential reputational harm, or would require the amendment of the EPA in order to address any Potential Impacts, then Buyer may, at its sole discretion, terminate this EPA on notice to Seller.

Such termination will be effective 30 days after the date of delivery of such notice of termination unless otherwise agreed by the Parties. Upon a termination by Buyer under this Section 8.2, Seller shall reimburse Buyer for costs or liabilities described in Sections 9.7(a), (b) and (c). The reimbursement by Seller of such costs or liabilities, the indemnification by Seller contemplated in Section 8.4 and the termination of this EPA are the exclusive remedies to which Buyer may be entitled to if Buyer elects to terminate this EPA under Section 8.2.

8.3 Seller Termination for First Nation Claim

At any time prior to Buyer's COD, if:

- (a) within 60 days of Buyer receiving, obtaining evidence or becoming aware of a First Nations Claim, Buyer does not make a direction to Seller as contemplated in Section 8.2;
- (b) Buyer notifies Seller in writing that it will not make a direction to Seller as contemplated in Section 8.2; or
- (c) after consultation with the First Nations making the First Nation Claim it becomes clear that the measure(s) necessary for Seller to resolve the First Nation Claim or to address, prevent, mitigate, compensate or otherwise accommodate any Potential Impacts would, in Seller's discretion, impose a commercially unreasonable cost on Seller, or would require the consent of Buyer under this EPA or agreement by Buyer to amend this EPA in order to address any Potential Impacts and such consent or agreement to amend is not provided within 60 days after Seller's request to Buyer,

then Seller may terminate this EPA on notice to Buyer. Such termination will be effective 30 days after the date of delivery of such notice of termination unless otherwise agreed by the Parties. A termination by Seller under this Section will, for all purposes of this EPA, be treated in the same manner as a termination by Seller under Section 9.3(c) of this EPA (including the obligations of Seller under Section 9.7). The termination of this EPA is the exclusive remedy to which Seller may be entitled to if Seller elects to terminate this EPA under this Section.

8.4 Seller Indemnity for First Nation Claim

Seller shall indemnify and hold Buyer and its Affiliates harmless from any and all claims, damages,

costs, expenses, or liabilities whatsoever incurred by Buyer and its Affiliates in relation to such First Nation Claim and such indemnity shall survive termination of this EPA.

ARTICLE 9 TERMINATION

9.1 Termination by Buyer

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

- (a) Seller's COD does not occur within 730 days following Target Seller's COD for any reason whatsoever (including Force Majeure), provided that Buyer may terminate this EPA under this provision only if Buyer delivers a termination notice prior to Seller's COD; or
- (b) at any time after Buyer's COD, Seller fails to deliver at least an average of 25% of the aggregate Projected Monthly Energy as set out in Schedule "E" to Buyer over all hours in a period of 730 continuous days for any reason whatsoever (including Force Majeure, a Distribution/Transmission Constraint), but excluding a Non-Permitted Distribution/Transmission Constraint for which Seller is entitled to receive payment under Section 4.8; or
- (c) at any time after Buyer's COD, Buyer is unable to accept delivery of Energy at the POI for a period of 730 continuous days due to Force Majeure invoked by Buyer or a Distribution/Transmission Constraint other than a Non-Permitted Distribution/Transmission Constraint for which Seller is entitled to receive payment under Section 4.8; or
- (d) Seller breaches Section 4.5; or
- (e) Seller fails to complete any application, payment, filing, study, document or other step in the process for interconnecting the Seller's Plant to the Distribution System, Transmission System or New Interconnection Facilities, as applicable, in accordance with the requirements of, and within the time limits, including any cure periods, specified by Buyer, and such failure could reasonably be expected to have an adverse impact on Buyer or any third party; or
- (f) any System Interconnection Study Report completed after the Effective Date contains information that is inconsistent with the description of the Seller's Plant in Schedule "B" and Seller has not received Buyer's consent under Section 3.3 for the change to Schedule "B"; or
- (g) Seller is Bankrupt or Insolvent; or
- (h) Seller, as a result of an act or omission of Seller, ceases to be exempt from regulation as a "public utility" as defined in the *Public Utilities Act* with respect to the Seller's Plant and the sale of Energy to Buyer under this EPA, and the loss of such exemption could reasonably be expected to have an adverse effect on the benefit to Buyer of this EPA; or
- (i) an amount due and payable by Seller to Buyer under this EPA remains unpaid for 30 days after its due date and such default has not been cured within 30 days after Buyer has given notice of the default to Seller; or

- (j) 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 Buyer to Seller of the default Seller has cured the default or, if the default cannot be cured within that 30 day period, Seller demonstrates to the reasonable satisfaction of Buyer that Seller is working diligently and expeditiously to cure the default and the default is cured within a further reasonable period of time. A "material default" includes any purported Assignment of this EPA without the consent of Buyer.

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

9.2 Notice of Termination Event

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

9.3 Termination by Seller

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

- (a) after Buyer's COD, Buyer has not accepted delivery of Energy for a period of 730 continuous days due to an event described in Section 4.4 or any event of Force Majeure and Seller is not entitled to receive any payment pursuant to Section 4.8 in respect of that period; or
- (b) the Seller's Plant has suffered major damage where the cost to repair the damage exceeds the net present value (using the Present Value Rate) of the expected revenues under the EPA for the remainder of the Term less the net present value (using the Present Value Rate) of the estimated operating and maintenance costs for the Seller's Plant for the remainder of the Term; or
- (c) Seller has been unable to achieve Seller's COD for a period of 730 days after Target Seller's COD or has been unable to deliver Energy to the POI for a period of 730 continuous days after Seller's COD in either case solely as a result of Force Majeure invoked by Seller or a Distribution/Transmission Constraint other than a Non-Permitted Distribution/Transmission Constraint for which Seller is entitled to receive payment under Section 4.8; or
- (d) Buyer is Bankrupt or Insolvent; or
- (e) except where an amount has been disputed in the manner specified in Section 5.3(a)(ii), an amount due and payable by Buyer to Seller under this EPA remains unpaid for 30 days after its due date and such default has not been cured within 30 days after Seller has given notice of the default to Buyer; or
- (f) 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), unless within 30 days after the

date of notice by Seller to Buyer of the default Buyer has cured the default or, if the default cannot be cured within that 30 day period, Buyer demonstrates to the reasonable satisfaction of Seller that Buyer is working diligently and expeditiously to cure the default and the default is cured within a further reasonable period of time.

Any termination pursuant to this Section will be effective immediately upon delivery of the notice of termination to Buyer.

9.4 Termination by Buyer for Convenience

In addition to any other right to terminate this EPA expressly set out in any other provision of this EPA and in addition to all other rights and remedies Buyer may have under this EPA or at law or in equity in respect of any of the following events, Buyer may terminate this EPA for convenience upon 90 days prior notice to Seller.

9.5 Effect of Termination

Upon expiry of the Term or earlier termination of this EPA in accordance with its terms:

- (a) the Parties may pursue and enforce any rights and remedies permitted by law or equity in respect of any prior breach or breaches of this EPA and may enforce any liabilities and obligations that have accrued under this EPA prior to the expiry of the Term or the date of termination or that are stated to arise on termination of this EPA, subject to any express restrictions on remedies and limitations or exclusions of liability set out in this EPA;
- (b) both Parties will remain bound by Section 3.5 with respect to the satisfaction of residual obligations for the period prior to termination or that are specified to arise on, or continue following, termination, and Sections 12.1 and 13.1 associated with Delivered Energy prior to termination of this EPA; and
- (c) Seller will remain bound by Sections 7.1 and 7.2 for a period of 36 months following expiry or termination of this EPA;

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

9.6 Buyer Payment on Termination

If Seller terminates this EPA under any of Sections 9.3(d), 9.3(e) or 9.3(f) or Buyer terminates this EPA for convenience under Section 9.4, Buyer will pay to Seller an amount equal to the applicable Termination Payment due at the time of termination determined in accordance with Schedule "F".

9.7 Seller Payment on Termination

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

- (a) all System Upgrade Costs and New Interconnection Facilities Costs incurred by Buyer, or which Buyer has become contractually obligated to pay, prior to the termination of the EPA including System Upgrade Costs and New Interconnection Facilities Costs Seller would otherwise be responsible for under Section 3.5;
- (b) any incremental liability for System Upgrade Costs and New Interconnection Facilities Costs which Buyer will incur as a result of the termination of this EPA; and
- (c) any System Upgrade Costs and New Interconnection Facilities Costs which Seller is responsible for under any reimbursement agreement pursuant to Section 3.3.

9.8 Calculation and Payment

Buyer will pay any amount which it owes under Section 9.6 within 30 Business Days after the date of delivery of an invoice by Seller to Buyer. Any amounts owing by Seller to Buyer under this EPA will be netted against any amount owing by Buyer to Seller under Section 9.6.

9.9 Exclusive Remedies

Payment by Buyer of the amount determined under Section 9.6 is the exclusive remedy to which Seller is entitled, and Buyer's limit of liability, for termination of this EPA by Seller pursuant to any of Sections 9.3(d), 9.3(e) or 9.3(f). Subject to Section 9.4 and 9.7, termination of this EPA is the exclusive remedy to which Buyer or Seller, as the case may be, is entitled if Buyer or Seller elects to exercise its right to terminate this EPA under any of Section 9.1, 9.3(a), 9.3(b) or 9.3(c). For greater certainty, subject to Section 9.4 and 9.7, Seller will not be required to pay any termination payment on termination by Buyer of this EPA. Neither Party will have any right to terminate this EPA except as expressly set out herein.

ARTICLE 10 REPRESENTATIONS AND WARRANTIES

10.1 Seller's Representations

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

- (a) Seller is a corporation formed under the laws of , is validly existing and is in good standing under the laws of , is lawfully authorized to carry on business in , and has full corporate power, capacity and authority to enter into and to perform its obligations under this EPA;
- (b) this EPA constitutes a valid and binding obligation of Seller enforceable against Seller in accordance with its terms; and
- (c) this EPA has been duly authorized, executed and delivered by Seller.

10.2 Buyer's Representations

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

- (a) Buyer is a corporation formed under the laws of the Yukon, is validly existing and is in good standing under the laws of the Yukon, is lawfully authorized to carry on business in the Yukon, and has full corporate power, capacity and authority to enter into and to perform its obligations under this EPA;
- (b) this EPA constitutes a valid and binding obligation of Buyer enforceable against Buyer in accordance with its terms; and
- (c) this EPA has been duly authorized, executed and delivered by Buyer.

ARTICLE 11 LIABILITY LIMITATIONS

11.1 Limit of Liability

Buyer's liability for damages for any failure to take or pay for Delivered Energy under this EPA is limited to the amount payable by Buyer for that Delivered Energy under Article 5, amounts owing under Sections 4.8 and any interest thereon calculated under this EPA.

11.2 Consequential Damages

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

ARTICLE 12 DISPUTES

12.1 Dispute Resolution Procedure

Any dispute, controversy or claim arising out of or relating to this EPA ("**Dispute**") shall be exclusively and finally resolved in accordance with the dispute resolution procedure set forth in this Article 12 (the "**Dispute Resolution Procedure**").

12.2 Commencement of the Dispute Resolution Procedure

The Parties shall make reasonable efforts to first resolve any Dispute. If a Dispute cannot be resolved by the Parties, then either Party may initiate the Dispute Resolution Procedure by giving notice of the Dispute to the other Party (the "**Notice of Dispute**"). The Notice of Dispute shall contain a brief statement of the nature of the Dispute, set out the relief requested, and request that the Dispute Resolution Procedure be commenced.

12.3 Negotiations

Upon the submission of a Notice of Dispute pursuant to Section 12.2, each of the Parties shall refer the Dispute to a designated senior management executive with the authority to negotiate a

settlement of the Dispute for that Party (the "**Senior Management Executives**"). The Senior Management Executives of the Parties shall attempt to resolve the Dispute within 30 days from the date on which the Notice of Dispute was issued, or such longer period as the Senior Management Executives may otherwise unanimously agree. If the Senior Management Executives unanimously agree upon a resolution of the Dispute, such resolution shall be memorialized in a written settlement agreement mutually acceptable to the Parties and shall be binding on the Parties.

12.4 Arbitration

If a Dispute is not resolved by Senior Management Executives within 30 days from receipt of a Notice of Dispute (or such longer period as the Senior Management Executives may otherwise agree in writing), the Dispute shall, at the request of either Party, be resolved by binding arbitration under the Rules of Arbitration of the International Chamber of Commerce (the "**ICC Rules**"), except to the extent of conflicts between the ICC Rules and the provisions of this EPA, in which event the provisions of this EPA shall prevail. The following provisions shall apply to an arbitration commenced pursuant to this Section 12.4:

- (a) the number of arbitrators shall be one;
- (b) the place, or legal seat, of the arbitration shall be Whitehorse, Yukon;
- (c) the language to be used in the arbitral proceedings shall be English;
- (d) all awards issued by the arbitrator shall be final, non-appealable and binding on the Parties. Any award may be filed in any court of competent jurisdiction and may be enforced by a Party as a final judgment in such court. The Parties expressly waive, to the maximum extent permitted by law, any right of appeal of any award or reference of any matter to any court, other than as may be necessary to recognize or enforce an award;
- (e) the arbitrator shall be guided by the International Bar Association's Rules on the Taking of Evidence in International Commercial Arbitration;
- (f) the Parties shall request that the arbitrator render its final award within 12 months of the commencement of the arbitration, or as soon as possible thereafter, provided that no award shall be invalid if it is not rendered within the time period herein specified;
- (g) any award for monetary damages shall be made and payable in Canadian Dollars and may include interest from the date of any breach or violation of this EPA until paid in full at the rate determined by the arbitrator;
- (h) the Parties agree that any arbitration carried out hereunder shall be kept private and confidential, and that the existence of the proceedings and any element of it (including all awards, the identity of the Parties and all witnesses and experts, all materials created for the purposes of the arbitration, all testimony or other oral submissions, and all documents produced by a Party that were not already in the possession of the other Party) shall be kept confidential, except (i) with the consent of the Parties, (ii) to the extent disclosure may be lawfully required in bona fide judicial proceedings relating to the arbitration, (iii) where disclosure is lawfully required by a legal duty, and (iv) where such information is already in the public domain other than as a result of a breach of this clause. The Parties

also agree not to use any information disclosed to them during the arbitration for any purpose other than in connection with the arbitration;

- (i) where a Dispute relates to the EPA, the Parties shall agree to consolidate the matters in Dispute under such agreements in a single arbitration;
- (j) the Parties agree that during the resolution of a Dispute pursuant to this Article 12, the Parties shall continue to perform their obligations under this EPA, provided that such performance shall be without prejudice to the rights and remedies of the Parties and shall not be read or construed as a waiver of a Party's right to claim for recovery of any loss, costs, expenses or damages suffered as a result of the continued performance of this EPA; and
- (k) each Party will be responsible for its own costs under this Article 12, subject to the award of an arbitrator.

ARTICLE 13 CONFIDENTIALITY

13.1 Confidentiality

- (a) **Additional Confidentiality Obligation** - During the Term and for two years thereafter:
 - (i) Buyer will treat as confidential, and will not disclose to any third Person, Seller Confidential Information, and
 - (ii) Seller will treat as confidential, and will not disclose to any third Person, Buyer Confidential Information.
- (b) **Disclosure of Confidential Information** - Notwithstanding Section 13.1(a) above:
 - (i) Seller may also disclose Buyer Confidential Information and Buyer may disclose Seller Confidential information in the following circumstances:
 - (A) disclosures expressly authorized under this EPA or otherwise set out in this EPA;
 - (B) disclosures to enable a Party to fulfill its obligations under the EPA;
 - (C) disclosure in any arbitration or legal proceedings for the enforcement of the EPA;
 - (D) disclosure to the Party's directors, officers, employees, Facility Lenders, consultants and advisors, and purchasers of the Environmental Attributes, provided each of them is advised of the confidential nature of the information and agrees to respect such confidentiality;
 - (E) subject to Section 13.1(b)(ii)(D), disclosure required to be made by a Party by an order of a court, a regulatory agency or a tribunal or under any law, regulatory requirements or any requirement of any stock exchange that is binding upon a Party, provided that (i) to the extent

reasonably practicable, the Party intending to make such disclosure gives reasonable notice to the other Party before make the disclosure, and (ii) limits the disclosure to that required by the applicable order, Laws or regulatory or stock exchange requirement;

- (F) disclosure to a third Person if such information was known by that third Person before disclosure by Buyer or Seller, as the case may be, provided the third Person did not know of the information as a result of a breach of the non-disclosure obligations in this EPA; or
 - (G) disclosure with the consent of Buyer, in the case of Buyer Confidential Information, or Seller, in the case of Seller Confidential Information.
- (ii) Buyer may disclose Seller Confidential Information in the following circumstances:
- (A) disclosure to Buyer's Affiliates or to a third Person, and their respective employees, consultants and advisors, for the purpose of reselling or marketing any Energy, including disclosure of Seller Confidential Information by such Affiliate or third Person to those who have purchased or may purchase the Energy;
 - (B) for purposes other than those described in Section 13.1(b)(i), to Buyer's Affiliates and to any directors, officers, employees, consultants and advisors of any Affiliates, provided each of them is advised of the confidential nature of the information and agrees to respect such confidentiality;
 - (C) to any ministers, deputy ministers, servants or employees of the Yukon or the federal government, provided each of them is advised of the confidential nature of the information and agrees to respect such confidentiality; or
 - (D) disclosure in any regulatory proceeding, whether related to this EPA or not, to the extent that Buyer considers disclosure is necessary or desirable to support its position in such proceeding.

ARTICLE 14 FORCE MAJEURE

14.1 Force Majeure

- (a) If there is a Force Majeure affecting a Party's ability to perform an obligation under this EPA, and that Party wishes to declare a Force Majeure, that Party will promptly notify the other Party of the Force Majeure. The notice of Force Majeure must identify the nature of the Force Majeure, the date the Force Majeure commenced, the expected duration of the Force Majeure, and the particular obligations affected by the Force Majeure. If (i) a notice of Force Majeure is provided in accordance with this Section, (ii) the event in question is in fact an event of Force Majeure as defined in this EPA, and (iii) the event of Force Majeure commenced on the commencement date in the notice of Force

Majeure, then the Force Majeure will be deemed to have been invoked as of the commencement date stated in the notice.

- (b) Neither Party will be in default of any obligation under this EPA if a Party is unable to perform that obligation due to an event or circumstance of Force Majeure, provided notice is delivered in accordance with this Section and the circumstances are, in fact, an event or circumstance of Force Majeure.
- (c) Subject to any limitations expressly set out in this EPA, the time for performance of such obligation will be extended by the number of days that Party is unable to perform such obligation as a result of the event or circumstance of Force Majeure. The Party invoking Force Majeure will make commercially reasonable efforts to promptly remove the Force Majeure and will promptly respond to any inquiry from the other Party regarding the efforts being undertaken to remove the Force Majeure and will give prompt notice of the end of the Force Majeure.

ARTICLE 15 GENERAL PROVISIONS

15.1 Independence

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

15.2 Enurement

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

15.3 Assignment

- (a) Seller may not assign this EPA except with the prior consent of Buyer, which consent may not be unreasonably withheld, conditioned or delayed provided such Assignment is to a Facility Lender. Any Assignment (other than an Assignment to a Facility Lender) is subject to the assignee entering into and becoming bound by this EPA, assuming all the obligations and liabilities of Seller under this EPA arising both before and after the Assignment, and providing the representations and warranties set out in Section 10.1 effective as at the time of Assignment, and Seller not being in default under this EPA. Unless agreed to in writing by Buyer, Seller shall remain jointly and severally liable with the assignee for all obligations of Seller under this EPA.
- (b) Any request by Seller for Buyer's consent under Section 15.3(a) must be delivered to Buyer not less than 30 days before the date of the proposed Assignment. A request under this Section must be accompanied by such information as reasonably required by Buyer to assess the request for consent including the name, address and ownership structure of the assignee, details of any consultation with First Nations that may be impacted by the Seller's Plant or the Assignment with respect to the proposed Assignment, list of the directors and officers of the assignee and information concerning the assignee's operations, experience and financial status.
- (c) If Seller seeks consent to Assign this EPA to a Facility Lender, Buyer may require, as a condition of its consent to the Assignment, that Seller and the Facility Lender enter into a

Lender Consent Agreement with Buyer containing customary provisions. If required by a Facility Lender, Buyer will enter into a Lender Consent Agreement with the Facility Lender and Seller containing customary provisions. Seller will reimburse Buyer for all costs reasonably incurred by Buyer in connection with any request by Seller for Buyer's consent pursuant to Section 15.3(a).

15.4 Entire Agreement

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. 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. **[Note to Developers – as described in the SOP Rules, to the extent that a Project interconnects into AEY's portion of the YIS, there may be additional agreements required between AEY and Seller, in which case this section may need to be modified]**

15.5 Amendment

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

15.6 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.

15.7 Notices

Any notice, consent, waiver, declaration, request for approval or other request, statement or bill that either Party may be required or may desire to give to the other Party under this EPA must be in writing addressed to the other Party at the address for that Party stated in Schedule "A" and:

- (a) notices under Section 14.1, Article 8 and Article 9 must be delivered by hand or by a courier service during normal business hours on a Business Day and a notice so delivered will be deemed to have been delivered on that Business Day;
- (b) all notices other than notices described in Section 15.7(a) may be delivered by email during normal business hours on a Business Day and a notice so delivered will be deemed to have been delivered on that Business Day; and
- (c) either Party may change its address for notices under Section 3 of Schedule "A" to this EPA by notice to the other Party.

15.8 Interconnection Notices

Nothing in the System Interconnection Guidelines and no exercise of any right thereunder, restricts or otherwise affects any right, obligation or liability of either Party under this EPA,

except to the extent set out expressly herein, and no notice, consent, approval or other communication or decision under or in relation to the System Interconnection Guidelines will constitute or be relied upon as a notice, consent, approval or communication or decision under this EPA.

15.9 Commodity Contract/Forward Contract

The Parties agree and intend that this EPA constitutes an "eligible financial contract" under the *Bankruptcy and Insolvency Act* (Canada) and *Companies' Creditors Arrangement Act* (Canada).

15.10 Further Assurances

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

15.11 Severability

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

15.12 Counterparts

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

[Signature Page Follows]

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

[SELLER]

[UTILITY - BUYER]

Per: _____
[Name]
[Title]

Per: _____
[Name]
[Title]

Per: _____
[Name]
[Title]

Per: _____
[Name]
[Title]

SCHEDULE "A"

DEFINITIONS AND INTERPRETATION

1. DEFINITIONS

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

- 1.1 "Affiliate"** means, with respect to any Party or any third Person, any Person directly or indirectly Controlled by, Controlling, or under common Control with, such Party or the third Person.
- 1.2 "Annual Operating Plan"** means a 12-month operating plan for the Seller's Plant that includes for term of each operating plan, (a) a schedule of the expected total deliveries of Energy at the POI in each month and (b) a schedule of any Planned Outages of the Seller's Plant expected by Seller. The Annual Operating Plan will be consistent with Good Industry Practice and shall be substantially in the form attached hereto as Schedule "C", subject to such modifications thereto as may be reasonably required by Buyer.
- 1.3 "Application"** means the application and all supporting documents and information with respect to the Seller's Plant filed by Seller with Buyer in the Standing Offer Program.
- 1.4 "Assign" or "Assignment"** means to assign or dispose of this EPA or any direct or indirect interest in this EPA, in whole or in part, for all or part of the Term and, without limiting the foregoing, each of the following is deemed to be an Assignment of this EPA by Seller:
- (a) any sale or other disposition of all or a substantial part of Seller's ownership interest in the Seller's Plant, or of all or any interest of Seller in this EPA or revenue derived from this EPA;
 - (b) any mortgage, pledge, charge or grant of a security interest in all or any part of the Seller's Plant or Seller's ownership interest therein; and
 - (c) any change of Control, merger, amalgamation or reorganization of Seller.
- 1.5 "Audit Parties"** means the applicable Party conducting an audit under this EPA and its Affiliates, representatives, consultants, advisors and any other third Person retained in respect of the applicable audit.
- 1.6 "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;
 - (b) the Person has filed a petition or similar proceeding seeking reorganization, arrangement or similar relief under any bankruptcy or insolvency law;
 - (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;

- (d) the Person has voluntarily suspended the transaction of its usual business; or
 - (e) a court of competent jurisdiction has issued an order declaring the Person bankrupt or insolvent.
- 1.7 "Business Day"** means any calendar day which is not a Saturday, Sunday or Yukon statutory holiday.
- 1.8 "Buyer"** means _____ and its successors and permitted assigns.
- 1.9 "Buyer Confidential Information"** means technical or commercial information disclosed by Buyer to Seller that Buyer directs, and clearly marks, as confidential, including the System Interconnection Guidelines and this EPA but excluding information that (i) is or becomes in the public domain, other than as a result of a breach of this EPA by Seller, or (ii) is known to Seller before disclosure to it by Buyer, or becomes known to Seller, thereafter by way of disclosure to Seller by any other Person who is not under an obligation of confidentiality with respect thereto.
- 1.10 "Buyer's COD"** shall occur when the System Upgrades have been completed and Buyer provides a notice of completion of the same to Seller.
- 1.11 "Change in Law"** means (a) the enactment, adoption, promulgation, modification or repeal of any applicable Laws or any change in the interpretation or administration of any applicable Laws resulting from a decision of a Governmental Authority which occurs after the Effective Date; but in each case excluding a Change in Law relating to income tax, or (b) the requirement for a new Permit (including due to a change in the circumstances in which a Permit is required), a change in the terms of any Permit after the date such Permit is granted, or any change in the interpretation or administration of any Permits resulting from a decision of a Governmental Authority.
- 1.12 "Condition Date"** means the date specified as such in Schedule "B".
- 1.13 "Conditions Precedent"** means those conditions precedent set out in Schedule "B".
- 1.14 "Control"** of any Person means:
- (a) with respect to any corporation or other Person having voting shares or the equivalent, the ownership or power to vote, directly or indirectly, shares, or the equivalent, representing 50% or more of the power to vote in the election of directors, managers or Persons performing similar functions;
 - (b) ownership of 50% or more of the equity or beneficial interest in that Person; or
 - (c) the ability to direct the business and affairs of any Person by acting as a general partner, manager or otherwise.
- 1.15 "CPI"** means the "Canada All Items (Not Seasonally Adjusted)" Consumer Price Index as published by Statistics Canada or any successor agency thereto.
- 1.16 "Delivered Energy"** means in each month after Buyer's COD the amount of Energy delivered by Seller at the POI in that month as recorded by Buyer's Meter less the applicable Line Losses.

- 1.17 **"Development Progress Report"** means a report describing the progress of the financing, design, engineering, construction, Interconnection, and commissioning of the Seller's Plant, that is in form and content acceptable to Buyer, acting reasonably.
- 1.18 **"Discretion"** (whether or not capitalized) means sole, absolute and unfettered discretion unless this EPA expressly states otherwise.
- 1.19 **"Dispatch/Turn-Down"** means for Seller to turn down, limit the output, or shut off the Seller's Plant.
- 1.20 **"Dispatch/Turn-Down Deemed Energy"** has the meaning given to such term in Section 4.9(b)(i).
- 1.21 **"Distribution System"** means the distribution, protection, control and communication facilities in the Yukon that are or may be used in connection with, or that otherwise relate to, the transmission of electrical energy at 35 kilovolts or less, and includes all additions and modifications thereto and repairs or replacements thereof.
- 1.22 **"Distribution/Transmission Constraint"** means any disconnection of the Seller's Plant from the Distribution System or Transmission System, or any outage, suspension, constraint or curtailment in the operation of the Distribution System or Transmission System preventing or limiting deliveries of Energy at the POI or within the Distribution System or Transmission System or any direction from Buyer to reduce generation of the Seller's Plant as a result of any outage, suspension, constraint or curtailment in the operation of the Distribution System or Transmission System.
- 1.23 **"Effective Date"** shall mean the date on which all Conditions Precedent have been satisfied or waived in accordance with Section 2.1.
- 1.24 **"Electrical Grid"** means the electrical grid into which the Seller's Plant will be interconnected, as identified in Schedule "B".
- 1.25 **"Eligible Clean Energy"** means wind, hydro, geothermal, biomass and solar energy sources permitted under the IPP Policy for the SOP generated by a Project located in Yukon which is directly connected into the YIS or the WLG through the New Interconnection Facilities.
- 1.26 **"Energy"** means all electrical energy expressed in kWh generated by the Seller's Plant, excluding electrical energy generated by the Seller's Plant which is required to service the Seller's Plant Load.
- 1.27 **"Energy Price"** has the meaning given to such term in Schedule "B".
- 1.28 **"Environmental Attributes"** means the following as attributable to Energy delivered to Buyer under this EPA:
- (a) all attributes directly associated with, or that may be derived from, the Energy delivered to Buyer under this EPA having decreased environmental impacts relative to certain other generation facilities or technologies including any existing or future credit, allowance, "green" tag, ticket, certificate or other "green" marketing attribute or proprietary or contractual right, whether or not tradeable;

- (b) any credit, reduction right, offset, allowance, allocated pollution right, certificate or other unit of any kind whatsoever, whether or not tradeable and any other proprietary or contractual right, whether or not tradeable, resulting from, or otherwise related to the actual or assumed reduction, displacement or offset of emissions at any location other than the Seller's Plant as a result of the generation, purchase or sale of the Energy delivered to Buyer under this EPA;
- (c) any credit, reduction right, off-set, allowance, allocated pollution right, certificate or other unit of any kind whatsoever whether or not tradeable resulting from or otherwise related to the reduction, removal, or sequestration of emissions at or from the Seller's Plant; and
- (d) all revenues, entitlements, benefits and other proceeds arising from or related to the foregoing, but for certainty not including:
 - i. benefits or proceeds from environmental incentive programs offered by Governmental Authorities that do not require a transfer of the attributes in (a) to (c) above; and
 - ii. benefits or proceeds from social programs, including programs relating to northern or rural development, employment or skills training, or First Nations, that do not require a transfer of the attributes in Sections (a) to (c) above.

1.29 "Environmental Certification" means any certification Buyer requires Seller to obtain under Section 6.1.

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

1.31 "Final Amount" means an amount owing by either Party to the other Party under this EPA, including as a result of a breach of this EPA, where such amount is: (a) undisputed by the Party owing such amount; or (b) has been finally determined by an arbitration award under Section 12.1 of this EPA or by a court order and all rights of appeal in respect of such award or order have been exhausted or have expired.

1.32 "First Nation Claim" means a legal claim or proceeding or written threat to commence a legal claim or proceeding from or on behalf of First Nations where such claim or threat alleges a breach or potential breach of, or an impact to: any First Nations' Treaty rights, rights under a Settlement Agreement (as that term is defined in the Yukon Umbrella Final Agreement), or rights under section 35 of the *Constitution Act, 1982*, by (a) this EPA, (b) the Seller's Plant, (c) the Interconnection or any works related to the Interconnection, or (d) any authorization granted by the Yukon or federal government relating to the Seller's Plant and its operations.

1.33 "First Nations" means any one of the 14 First Nations in the Yukon.

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

- (a) any economic hardship or lack of money, credit or markets;

- (b) an event or circumstance that is the result of a breach by the Party seeking to invoke Force Majeure of a Permit or of any applicable Laws;
- (c) a mechanical breakdown or control system hardware or software failure, unless the Party seeking to invoke Force Majeure can demonstrate by clear and convincing evidence that the breakdown or failure was caused by a latent defect in the design or manufacture of the equipment, hardware or software, which could not reasonably have been identified by normal inspection or testing of the equipment, hardware or software;
- (d) an event or circumstance caused by a breach of, or default under, this EPA or a willful or negligent act or omission by the Party seeking to invoke Force Majeure;
- (e) any Distribution/Transmission Constraint unless such event is caused by an event or circumstance not within the control of Buyer; or
- (f) any acts or omissions of: (i) any Affiliate, employee, director, officer, agent or other representative of the Party invoking Force Majeure; (ii) any vendor, supplier, contractor, subcontractor, consultant or customer of or to the Party invoking Force Majeure; or (iii) any other Person for whom the Party invoking Force Majeure is responsible at law,

unless the act or omission is caused by an event or circumstance that would constitute Force Majeure if the Person described above was a party to this EPA in place of a Party invoking Force Majeure.

1.35 "Forced Outage" means the immediate removal of one or more generating units of the Seller's Plant or transmission or distribution infrastructure of the Seller's Plant from service in response to equipment alarms or any damage identified during a Planned Outage or Maintenance Outage requiring extension of those Planned Outage or Maintenance Outage.

1.36 "General Rate Application" means any application, review, process, or procedure in which the YUB sets and approves rates to be charged by Buyer for the supply of the service for which it is franchised in accordance with the *Public Utilities Act*.

1.37 "Good Industry Practice" means:

- (a) in respect of Buyer, any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition; provided such practices, methods and acts are 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 Yukon; and provided that Buyer shall be in compliance with Good Industry Practice in respect of any equipment comprising the Distribution System or Transmission System, if it operates such equipment in accordance with all applicable original equipment manufacturer guidelines and requirements provided to Buyer by supplier of such equipment; and
- (b) in respect of Seller, any of the practices, methods and acts engaged in or approved by a significant portion of the electric generation industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in

light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition; provided such practices, methods and acts are 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 Western Canada.

- 1.38 "**Governmental Authority**" means any federal, provincial, local or foreign government or any of their boards or agencies, or any regulatory authority other than Buyer and Seller and entities controlled by Buyer or Seller.
- 1.39 "**GST**" means the goods and services tax imposed under the *Excise Tax Act* (Canada) as that Act may be amended or replaced from time to time.
- 1.40 "**Interconnection**" means the POI.
- 1.41 "**IPP Policy**" has the meaning given to such term in the recitals to this EPA.
- 1.42 "**Joint Operating Procedure**" means the joint operating procedure attached as Schedule "H" as may be modified by Buyer from time to time. [**Note to Developer - where the Project is located on AEY's portion of the YIS, the EPA will be entered into between Seller and YEC, however the System Interconnection Guidelines and the Joint Operating Procedure will be established under a 3 party agreement among Seller, YEC and AEY**]
- 1.43 "**kW**" means kilowatt.
- 1.44 "**kWh**" means kilowatt-hour.
- 1.45 "**Laws**" means any and all statutes, laws (including common law), ordinances, rules, regulations, codes, orders, bylaws, policies, directions, standards, guidelines, protocols and other lawful requirements of any Governmental Authority in effect from time to time.
- 1.46 "**Lender Consent Agreement**" means a lender consent agreement in the form and substance acceptable to Buyer, acting reasonably.
- 1.47 "**Line Losses**" means losses of electricity associated with the transmission and transformation of Energy and other electricity, if applicable, from the Seller's Plant to the POI that are recorded by the Meter or reasonably estimated by Buyer.
- 1.48 "**Line Loss Methodology**" means the Line Loss Methodology set forth in the System Interconnection Study Report for the purposes of this Project.
- 1.49 "**Maintenance Outage**" means any outage of Buyer's Distribution System or Transmission System or the Seller's Plant that is not a Planned Outage or a Forced Outage that typically has a flexible start and end time and of shorter duration than a Planned Outage.
- 1.50 "**Meter**" means a meter owned by Buyer that is: (a) capable of accurately measuring the quantity of Energy generated by the Seller's Plant and delivered to the POI independent of all other generation equipment or facilities, (b) capable of being remotely interrogated; and (b) calibrated to measure on an hourly basis the quantity of Energy delivered by Seller to the POI.

- 1.51 **"Monthly Energy Shortfall Payment"** has the meaning given to such term in Schedule "E".
- 1.52 **"New Interconnection Facilities"** means those additions, modifications and upgrades required to interconnect the Project to the Electrical Grid which are identified in the System Interconnection Study Report (and as further refined in subsequent interconnection studies, if required by Buyer) and approved by Buyer, but excluding any System Upgrades.
- 1.53 **"New Interconnection Facilities Costs"** means all costs incurred by Buyer for the design, engineering, procurement, construction, installation and commissioning of the New Interconnection Facilities, including applicable studies required by Buyer, an estimate of which is set out in the System Interconnection Study Report.
- 1.54 **"Non-Permitted Distribution/Transmission Constraint"** has the meaning given to such term in Section 4.8(a).
- 1.55 **"Outage"** means a Forced Outage, Maintenance Outage, or Planned Outage of Buyer's Distribution System or Transmission System or Seller's Plant.
- 1.56 **"Outage Notice"** means a notification of any Outage or revised notification of any Outage required to be delivered by Seller to Buyer or Buyer to Seller under this EPA that describes the timing, frequency, nature and duration of the Outage and that is in a format that may be prescribed by Buyer from time to time.
- 1.57 **"Party"** means Buyer or Seller, and **"Parties"** means both Buyer and Seller.
- 1.58 **"Permits"** means permits, certificates, licences, approvals and other authorizations issued by any Governmental Authorities as may be required for the design, construction, ownership, operation, maintenance and decommissioning of (i) the Seller's Plant and the delivery of Energy to the POI, and (ii) the System Upgrades and the New Interconnection Facilities.
- 1.59 **"Person"** means an individual, body corporate, firm, partnership, joint venture, trust, legal representative or other legal entity.
- 1.60 **"Planned Outage"** means an outage that is scheduled well in advance for purposes of inspections, maintenance, or repair of Buyer's Distribution System or Transmission System or Seller's Plant, that typically has a predetermined duration and scope of work, occurs only once or twice per year, and may last for several days.
- 1.61 **"POI" or "Point of Interconnection"** means the point at which the Seller's Plant interconnects with the Distribution System or Transmission System, as identified on the Single Line Diagram.
- 1.62 **"Potential Impacts"** means any adverse or potentially adverse impact on the established or potential aboriginal rights (including title) of First Nations as a result of:
- (a) this EPA;
 - (b) the Project;
 - (c) the interconnection of the Seller's Plant to the Distribution System or Transmission System;
or

- (d) any activities directly related to the Seller's Plant that enable Seller to comply with its obligations under this EPA that are carried out by Seller, any Affiliate, consultant or contractor of Seller, or any other Person for whom Seller is responsible at law.
- 1.63** "PPT" means Pacific Prevailing Time, which means Pacific Daylight Time or Pacific Standard Time as applicable.
- 1.64** "**Present Value Rate**" means the annual yield on a Government of Canada bond having a term and maturity date that most closely matches the remaining Term (as at the date of the applicable calculation) and expiry date of this EPA, plus 3%.
- 1.65** "**Prime Rate**" means the floating prime interest rate announced from time to time by the main branch of Bank of Montreal in Whitehorse, Yukon, or any successor thereto, expressed as an annual rate, as the reference rate it will use to determine rates of interest payable on Canadian dollar commercial loans made in Canada.
- 1.66** "**Project**" means the financing, design, engineering, procurement, construction, commissioning, operation and maintenance of the Seller's Plant.
- 1.67** "**Project Cluster**" means two or more existing or proposed Projects under the SOP Rules that Buyer determines in its Discretion are so closely related to each other that they should be considered a project cluster for the purposes of the Standing Offer Program.
- 1.68** "**Project Energy Volume**" (in kWh) means the maximum annual Energy which Seller may sell to Buyer from the Project in any calendar year as set out in Schedule "B"; provided that where the Term does not commence on January 1, such amount shall be prorated for the first and last contract year which do not reflect a full calendar year. [**Note to Developers – this amount will be set when the EPA is executed. It will be determined based on the annual energy volume which is expected to be generated by the Project in a calendar year determined based on the maximum number of kWh which the applicable Project would generate assuming that it generated in accordance with the Nameplate Capacity after taking into account a reasonable capacity factor for the applicable Eligible Clean Energy type**]
- 1.69** "**Project Standards**" means:
- (a) all applicable Laws;
 - (b) the terms and conditions of all Permits, including land tenure agreements, issued in connection with the Seller's Plant;
 - (c) Good Industry Practice;
 - (d) the description of the Seller's Plant in Schedule "B";
 - (e) the requirement that Energy must qualify as Eligible Clean Energy; and
 - (f) the terms and conditions of this EPA (including the System Interconnection Guidelines, Joint Operating Procedure and Interconnection Agreement).
- 1.70** "**Public Utilities Act**" means the *Public Utilities Act* (Yukon) and any successor or replacement legislation.

- 1.71 "Records"** means all records and logs required to properly administer this EPA, including:
- (a) Energy generation records and operating logs;
 - (b) Meter readings;
 - (c) maintenance reports;
 - (d) invoice support records;
 - (e) documents concerning compliance with Project Standards, but excluding any such documents that are protected by solicitor-client privilege;
 - (f) records related to System Upgrade Costs and New Interconnection Facilities Costs;
 - (g) all information reasonably required to establish the amount of Energy Seller could have sold during a Distribution/Transmission Constraint including logs of all Outages of the Seller's Plant and other reductions in Energy output (specifying the date, time, duration and reasons for each such outage and each reduction in Energy output); and
 - (h) information relating to the Environmental Certification, information relating to the existence, nature and quality of Environmental Attributes, information required for the purposes of any Environmental Attributes or energy certification or tracking system, and any other information Buyer requires to enable it or any of its Affiliates to obtain and realize the benefit of the Environmental Attributes,

all consistent with Good Industry Practice.

- 1.72 "Regulatory Agency Authorizations"** means the issuance of those Permits which are specified as required for the Project in the YESAB assessment report recommendation to proceed issued in respect of the Project.

- 1.73 "Seller"** means the Party so identified on page one of this EPA, and its successors and permitted assigns.

- 1.74 "Seller Confidential Information"** means any of Seller's confidential technical or financial information provided by Seller to Buyer in confidence with express written notice to Buyer of the confidential nature of the information, but excluding:

- (a) this EPA; and
- (b) information that (i) is or becomes in the public domain, other than as a result of a breach of this EPA by Buyer, or (ii) is known to Buyer before disclosure to it by Seller, or becomes known to Buyer thereafter by way of disclosure to Buyer by any other Person who is not under an obligation of confidentiality with respect thereto.

- 1.75 "Seller's COD"** means the commercial operation date of Seller's Plant which is the date on which all of the following conditions have been satisfied in respect of the Seller's Plant:

- (a) Seller has obtained all Permits required for the construction, commissioning, and operation of the Seller's Plant and all such Permits are in full force and effect;

- (b) the Seller's Plant has been fully constructed in accordance with the Project Standards;
- (c) Seller is not: (A) Bankrupt or Insolvent; (B) in default of any payment obligation or requirement to post security under this EPA; (C) in material default of any of its other covenants, representations, warranties or obligations under this EPA; or (D) in material default under any Permit or Law applicable to the construction, commissioning or operation of the Seller's Plant or under any land tenure agreement for the site on which the Seller's Plant is located;
- (d) a Meter has been installed at the POI in accordance with Section 3.6 of this EPA;
- (e) Seller has delivered to Buyer a written notice together with certificate of Seller's professional registered engineer confirming that Seller's COD has been achieved; and
- (f) Buyer has delivered a Commission Notice to Operate, or such other document(s) of similar effect as may be substituted therefor, which evidences no material deficiencies, in respect of the Seller's Plant Capacity and Seller's Plant operations;

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

- 1.76** "**Seller's Plant**" means Seller's plant described in Schedule "B" and all assets required to interconnect that plant to the Distribution System or Transmission System; all rights, property, facilities, assets, equipment, materials, Permits and contracts required to design, engineer, procure, construct, commission, operate and maintain the plant described in Schedule "B" and to interconnect that plant to the Distribution System or Transmission System, whether real or personal and whether tangible or intangible including all land tenure and all books, Records and accounts with respect to the Seller's Plant described in Schedule "B"; and shall include replacement parts or equipment which are of the same or similar nature as the parts or equipment being replaced and which do not materially increase the amount of Energy available from Seller's Plant.
- 1.77** "**Seller's Plant Capacity**" means the electrical generating capacity of the Seller's Plant set out in Schedule "B".
- 1.78** "**Seller's Plant Load**" means any electrical energy consumed by Seller's Plant.
- 1.79** "**Single Line Diagram**" means the simplified electrical representations of the Seller's Plant, the Interconnection, the Distribution System and Transmission System attached hereto in Schedule "B".
- 1.80** "**SOP OIC**" means that Order in Council issued by the Government of Yukon on January 24, 2019 regarding, among other things, the Standing Offer Program.
- 1.81** "**SOP Rules**" means the Standing Offer Program Rules developed by the Government of Yukon which governed this EPA as at the date of this EPA.
- 1.82** "**Standing Offer Program**" or "**SOP**" means the Standing Offer Program as described in the IPP Policy.

- 1.83** "**System Interconnection Guidelines**" means those system interconnection guidelines in the form attached as Schedule "G" hereto, as amended or replaced by Buyer from time to time. [**Note to Developer - where the Project is located on AEY's portion of the YIS, the EPA will be entered into between Seller and YEC, however the System Interconnection Guidelines and the Joint Operating Procedure will be established under a 3 party agreement among Seller, YEC and AEY**]
- 1.84** "**System Interconnection Study Report**" means the detailed interconnection study issued to Seller by Buyer which, among other things, (i) evaluates the impact of the Project on the reliability of Buyer's system, (ii) provides a planning-level estimate of the required System Upgrades and New Interconnection Facilities and associated costs, and (iii) establishes the Line Loss Methodology for this Project, a copy of which is attached as Schedule "D".
- 1.85** "**System Upgrades**" means additions, modifications and upgrades to the Distribution System, Transmission System or any portion of Buyer's generation system that are determined by Buyer to be required in order to facilitate the interconnection and to allow such Distribution System, Transmission System or any portion of Buyer's generation system to support the integration of the Energy produced by the Seller's Plant in accordance with this EPA and the System Interconnection Guidelines, which are identified in the System Interconnection Study Report (and as further refined in subsequent interconnection studies, if required by Buyer) and approved by Buyer, but excluding any New Interconnection Facilities.
- 1.86** "**System Upgrade Costs**" means all costs incurred by Buyer for the design, engineering, procurement, construction, installation and commissioning of the System Upgrades, including applicable studies required by Buyer, an estimate of which is set out in the System Interconnection Study Report.
- 1.87** "**Target Buyer's COD**" means the target date for achieving Buyer's COD, being the date specified for such term in Schedule "B", as may be extended pursuant to Section 3.9, if applicable.
- 1.88** "**Target Seller's COD**" means the target date for achieving Seller's COD, being the date specified for such term in Schedule "B", as may be extended pursuant to Section 3.9, if applicable.
- 1.89** "**Term**" has the meaning given to such term in Section 2.1.
- 1.90** "**Termination Payment**" has the meaning given to such term in Schedule "F".
- 1.91** "**Transmission System**" means the transmission, substation, protection, control and communication facilities owned and operated by Buyer, and includes all additions and modifications to those facilities and repairs or replacements of those facilities.
- 1.92** "**Upgrade Costs Advance**" has the meaning given to such term in Section 3.5(a).
- 1.93** "**Upgrade Costs Security**" has the meaning given to such term in Section 3.5(a).
- 1.94** "**Utilities**" means both Yukon Energy Corporation and/or Yukon Electrical Company, doing business as ATCO Electric Yukon, as applicable.
- 1.95** "**YESAA**" means the *Yukon Environmental and Socio-economic Assessment Act*, SC 2003, c 7.

- 1.96 "YESAB" means the Yukon Environmental and Socio-economic Assessment Board.
- 1.97 "YUB" means the Yukon Utilities Board and any successor thereto appointed from time to time under the *Public Utilities Act*.

2. INTERPRETATION

- 2.1 **Headings** - The division of this EPA into Articles, sections, Sections, paragraphs and Schedules and the insertion of headings are for convenience of reference only and do not affect the interpretation of this EPA.
- 2.2 **Plurality and Gender** - Words in the singular include the plural and vice versa. Words importing gender include the masculine, feminine and neuter genders.
- 2.3 **Governing Law** - This EPA is made under, and will be interpreted in accordance with, the Laws of the Yukon. Subject to Section 12.1, any suit, action or proceeding (a "**Proceeding**") arising out of or relating to this EPA may be brought in the courts of the Yukon at Whitehorse, and those courts have non-exclusive jurisdiction in respect of any Proceeding and the Parties hereby irrevocably attorn to the jurisdiction of such courts in respect of any Proceeding.
- 2.4 **Industry Terms** - Technical or industry specific phrases or words not otherwise defined in this EPA have the well-known meaning given to those terms as of the date of this EPA in the industry or trade in which they are applied or used.
- 2.5 **Statutory References** - Reference to a statute means, unless otherwise stated, the statute and regulations, if any, under that statute, in force from time to time, and any statute or regulation passed and in force which has the effect of supplementing or superseding that statute or those regulations.
- 2.6 **Currency** - References to dollars or \$ means Canadian dollars, unless otherwise stated.
- 2.7 **Reference Indices** - If any index, tariff or price quotation referred to in this EPA ceases to be published, or if the basis therefor is changed materially, there will be substituted an available replacement index, tariff or price quotation that most nearly, of those then publicly available, approximates the intent and purpose of the index, tariff or quotation that has so ceased or changed. This EPA will be amended as necessary to accommodate such replacement index, tariff or price quotation, all as determined by written agreement between the Parties, or failing agreement, by arbitration under Section 12.1 of this EPA.
- 2.8 **Conversions** - If a value used in a calculation in this EPA must be converted to another unit of measurement for purposes of consistency or to achieve a meaningful answer, the value will be converted to that different unit for purposes of the calculation.
- 2.9 **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 Schedules 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, Section or other subdivision;

- (c) the word "including" or "includes" is not limiting whether or not non-limiting language (such as "without limitation" or "but not limited to" or words of similar import) is used with reference thereto;
- (d) the words "year" and "month" refer to a calendar year and a calendar month;
- (e) any consent, approval or waiver contemplated by this EPA must be in writing and signed by the Party against whom its enforcement is sought, and may be given, withheld or conditioned in the unfettered discretion of the Party of whom it is requested, unless otherwise expressly stated;
- (f) all rights and remedies of either Party under this EPA are cumulative and not exclusive of any other remedies to which either Party may be lawfully entitled, and either Party may pursue any and all of its remedies concurrently, consecutively and alternatively; and
- (g) any notice required to be given, or other thing required to be done, under this EPA on or before a day that is not a Business Day, will be deemed to be given or done when required hereunder if given or done on or before the next following Business Day.

3. ADDRESSES FOR NOTICES

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

To: [BUYER]

 Whitehorse, YT

 Attention: Attention: Manager
 Email: _____

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

To: [SELLER]

 Whitehorse, YT

 Attention: Attention: Manager
 Email: _____

SCHEDULE "B"

PROJECT DESCRIPTION

CONTRACT PARTICULARS:

1. Condition Date:

[Insert the date on which the Conditions Precedent must be satisfied by Seller]

2. Conditions Precedent:

The Conditions Precedent are as follows:

(a) *[Seller shall have received all of the Permits described below in form and substance acceptable to Seller and Buyer, acting reasonably:*

(i) *[Regulatory Agency Authorizations]*

(ii) *[Development Permits]*

(iii) *[Electrical Permits]*

(iv) *[Other]*

b. *\ Seller acceptance and compliance with interconnection requirements outlined in Buyer's System Interconnection Study;*

c. *Seller acceptance of Buyer's System Upgrade Costs and New Interconnection Facilities Costs;*

d. *Provision of security under Section 3.5 for System Upgrade Costs and New Interconnection Facilities Costs;*

e. *Seller will have entered into an Interconnection Agreement with Buyer and ATCO Electric Yukon to interconnect Seller's Plant to the Distribution System or the Transmission System at the POI substantially in the form attached to this EPA; and*

f. *Seller will have entered into the Joint Operating Procedure with Buyer and ATCO Electric Yukon substantially in the form attached to this EPA*

g. *[others Conditions Precedent].*

3. Term:

The "**Term**" of this EPA commences on the Effective Date and continues for a period of years following Buyer's COD.

[Note to Developers: Developers may elect a single term under an EPA of up to the following number of years for the applicable Eligible Clean Energy:

<u>Eligible Clean Energy</u>	<u>Term Limit</u>
Wind	25 years
Hydro	40 years
Geothermal	40 years
Biomass	20 years
Solar	25 years]

4. Energy Price and Seasonal Adjustment:

- (a) In each billing period, Buyer shall pay to Seller, for each kWh of Delivered Energy the "Energy Price" calculated as follows:

[Note to Developers: For Projects connected to the YIS, the Energy Price will be calculated as follows. The first and third blanks above will be completed with the applicable Base Fuel Price as described in Section 4.2 of the SOP Rules. The blank in the subscript will be completed with the year in which the EPA is signed.]

$$\text{Energy Price}_n = (.5 * \$ \text{ /kWh} * \text{CPI}_{\text{January 1, n}} / \text{CPI}_{\text{January 1, x}}) + (.5 * \$ \text{ /kWh})]$$

[Note to Developers: For Projects connected to the WLG, the Energy Price will be calculated as follows. The first blank above will be completed with the applicable Base Fuel Price as described in Section 4.2 of the SOP Rules. The blank in the subscript will be completed with the year in which the EPA is signed]

Where:

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

x = the year in which the EPA is executed and delivered by Seller and Buyer.

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

- (b) For each hour, the Energy Price determined above for Delivered Energy during that hour will be adjusted to an amount (expressed in \$/kWh) equal to the percentage of that Energy Price applicable for that hour as set out in the table in Schedule "I".

SELLER'S PLANT

1. Location of Control Building:

[Insert nearest latitude and longitude]

2. Eligible Clean Energy Type:

[Describe Eligible Clean Energy utilized]

3. Seller's Plant Capacity:

[Insert Project Nameplate Capacity]

4. Project Energy Volume:

[Insert Project Energy Volume in kWh in any year, being the annual energy volume which is expected to be generated by the Project determined based on the maximum number of kWh which the applicable Project would generate assuming that it generated in accordance with the Seller's Plant Capacity after taking into account a reasonable capacity factor for the applicable Eligible Clean Energy type]

5. Seller's Plant Description:

[Insert Project description]

Please refer to Seller's single line diagram in Exhibit B-1.

Total AC Power:
Primary AC line voltage:
Total AC line current:
Total DC power:
Open-circuit DC voltage:
Operating DC voltage:
Total DC operating current:

6. Target Seller's COD:

[Insert]

7. Electrical Grid:

[Insert Yukon Integrated System (YIS) or Watson Lake Grid (WLG)].

BUYER'S SYSTEM UPGRADES

[Note to Developers – These System Upgrades will be more fully scoped in the System Interconnection Study Report]

1. System Upgrades:

[Description to come]

Please refer to Buyer's single line diagram in Exhibit B-2.

2. New Interconnection Facilities:

[Description to come]

Please refer to Buyer's single line diagram in Exhibit B-2.

3. Target Buyer's COD:

[To come]

BREAKERS/SWITCHES AND SYNCHRONIZATION

[Note to Developers – To be developed for each Project]

EXHIBIT B-1

Seller's Single Line Diagram

[Note to Developers – To be developed for each Project]

EXHIBIT B-2

Buyer's Single Line Diagram

[Note to Developers – To be developed for each Project]

SCHEDULE "C"

FORM OF ANNUAL OPERATING PLAN

DATE: _____, 20 .

TO: _____ ("Buyer")

RE: Electricity Purchase Agreement between _____ ("Seller") and Buyer dated the ____ day of _____, 20 (the "EPA")

The following sets out the Annual Operating Plan of Seller for the 12 months commencing on January 1, 20 (the "**Applicable Period**").

- (a) The following (from Table E-1 of Schedule "E" of the EPA) is the schedule of the expected total deliveries of Energy at the POI in each month of the Applicable Period:

	Projected Hourly Energy (kWh/h) (A)	Projected Monthly Energy (kWh) (B)
January		
February		
March		
April		
May		
June		
July		
August		
September		
October		
November		
December		

- (b) The following is the schedule of any Planned Outages of the Seller's Plant expected by Seller for the Applicable Period:

[to come]

- (c) The following is the schedule of operations and maintenance activities planned for the Seller's Plant expected by Seller for the Applicable Period:

[to come]

Dated effective as of the date set forth above.

[SELLER]

Per: _____
[Name]
[Title]

Per: _____
[Name]
[Title]

SCHEDULE "D"
SYSTEM INTERCONNECTION STUDY REPORT

SCHEDULE "E"

MONTHLY ENERGY SHORTFALL PAYMENT

Monthly Energy Shortfall Payments

In any calendar month in which there has occurred a Non-Permitted Distribution/Transmission Constraint then Buyer shall pay Seller Monthly Energy Shortfall Payment,

where:

"**Monthly Energy Shortfall Payment**" means the Monthly Constraint Shortfall multiplied by the price which is payable for Delivered Energy under Section 5.1 of the EPA; and

"**Monthly Constraint Shortfall**" (expressed in kWh) means, for each calendar month, means the aggregate of the duration of each Non-Permitted Distribution/Transmission Constraint (F1), (measured as a fraction determined as the aggregate number of minutes in such Non-Permitted Distribution/Transmission Constraint divided by 60), multiplied by the "Projected Hourly Energy (A)", the result being the "Non-Permitted Distribution/Transmission Constraint Hourly Deemed Energy (A X F1)" set out in Table E-1 below for the applicable calendar month.

Table E-1

	Projected Hourly Energy (kWh/h) (A)	Projected Monthly Energy (kWh) (B)	Non-Permitted Distribution/Transmission Constraint Factor (F1)	Non-Permitted Distribution/Transmission Constraint Hourly Deemed Energy (kWh/h) (A x F1)
January			_ %	
February			_ %	
March			_ %	
April			_ %	
May			_ %	
June			_ %	
July			_ %	
August			_ %	
September			_ %	
October			_ %	
November			_ %	
December			_ %	

Revisions to Projected Hourly Energy and Projected Monthly Energy

Within 90 days following the end of the 2nd year after Buyer's COD, the Parties shall review and revise the values in Table E-1 above for Projected Hourly Energy and Projected Monthly Energy to reflect the average actual amount of Delivered Energy sold to Buyer in the 2 years following Buyer's COD for the applicable months.

SCHEDULE "F"

TERMINATION PAYMENT

The "**Termination Payment**" at any time shall be equal to (a) the Gross Termination Payment set out below for the Contract Year in which the termination occurred, less (b) the actual amounts paid or owing by Buyer to Seller for Delivered Energy for the Contract Year in which the termination occurred.

Table F-1

Termination Year	Gross Termination Payment
Year 1	
Year 2	
Year 3	
Year 4	
Year 5	
Year 6	
Year 7	
Year 8	
Year 9	
Year 10	
Year 11	
Year 12	
Year 13	
Year 14	
Year 15	
Year 16	
Year 17	
Year 18	
Year 19	
Year 20	
Year 21	
Year 22	
Year 23	
Year 24	
<u>Year 25</u>	

SCHEDULE "G"
SYSTEM INTERCONNECTION GUIDELINES

SCHEDULE "H"
DRAFT JOINT OPERATING PROCEDURE

SCHEDULE "I"

DELIVERY TIME ADJUSTMENT TABLE

Seasonal Adjustment is subject to change.

Month	Seasonal Adjustment
January	100%
February	100%
March	100%
April	100%
May	100%
June	100%
July	100%
August	100%
September	100%
October	100%
November	100%
December	100%

SCHEDULE "J"
DRAFT INTERCONNECTION AGREEMENT