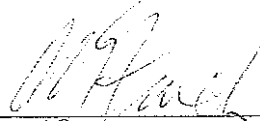


PROVINCE OF BRITISH COLUMBIA  
ORDER OF THE LIEUTENANT GOVERNOR IN COUNCIL

Order in Council No. **182**, Approved and Ordered **MAR 22 2013**

  
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~~Lieutenant Governor~~  
Administrator

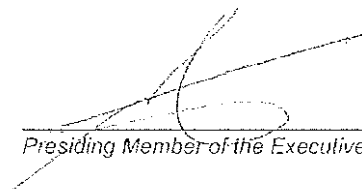
Executive Council Chambers, Victoria

On the recommendation of the undersigned, the ~~Lieutenant Governor~~ <sup>Administrator</sup>, by and with the advice and consent of the Executive Council, orders that the attached Direction to the British Columbia Utilities Commission Respecting the Iskut Extension Project is made.

**DEPOSITED**  
March 22, 2013  
B.C. REG. 137/2013



Minister of Energy, Mines and Natural Gas  
and Minister Responsible for Housing and  
Deputy Premier



Presiding Member of the Executive Council

*(This part is for administrative purposes only and is not part of the Order.)*

Authority under which Order is made:

Act and section: Utilities Commission Act, R.S.B.C. 1996, c. 473, s. 3

Other: \_\_\_\_\_

February 12, 2013

## DIRECTION TO THE BRITISH COLUMBIA UTILITIES COMMISSION RESPECTING THE ISKUT EXTENSION PROJECT

### Definition

- 1 In this direction, "Act" means the *Utilities Commission Act*.

### Application

- 2 This direction is issued to the commission under section 3 of the Act.

### Extensions

- 3 The commission must not exercise its powers under sections 45 (5) of the Act in respect of the following extensions of the authority's plant or system:
  - (a) a new 287 kV/25 kV substation near Tatogga Lake, consisting of a 287 kV switchyard and a 25 kV feeder line and related equipment, including communication, voltage support and protection and control equipment;
  - (b) a new 287 kV transmission line, towers and related equipment, including communication, voltage support and protection and control equipment, between the Bob Quinn substation and the Tatogga substation;
  - (c) upgrades to the Bob Quinn substation to extend the 287 kV system to the Tatogga substation, including communication, voltage support and protection and control equipment;
  - (d) a new distribution line from the Tatogga substation to the community of Iskut.

### Rates

- 4 (1) The commission, as soon as practicable, must set as a rate an agreement among Highway 37 Power Corporation, Red Chris Development Company Limited and the authority that is substantially in the form of the attached draft agreement.  
(2) In setting rates for the authority under the Act, the commission must ensure that the rates allow the authority to collect sufficient revenue to recover its costs incurred in relation to the extensions referred to in section 3, including, without limitation, costs incurred negotiating, entering into and carrying out agreements with first nations.

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**TRANSMISSION DEVELOPMENT AGREEMENT**

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February , 2013

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## TRANSMISSION DEVELOPMENT AGREEMENT

THIS AGREEMENT is made February ②, 2013

AMONG:

**BRITISH COLUMBIA HYDRO AND POWER  
AUTHORITY**, with an office on the 18<sup>th</sup> Floor, 333 Dunsmuir  
Street, Vancouver, BC V6B 5R3

("BC Hydro");

AND:

**HIGHWAY 37 POWER CORP.**, a corporation formed under the  
laws of British Columbia with an office at Suite 200 – 580 Hornby  
Street, Vancouver, BC V6C 3B6

("H37P");

AND:

**RED CHRIS DEVELOPMENT COMPANY LTD.**, a  
corporation formed under the laws of British Columbia with an  
office at Suite 200 – 580 Hornby Street, Vancouver, BC V6C 3B6

("RCDC");

WHEREAS:

- A. RCDC holds certain agreements, rights and permits to develop the Red Chris Mine, and has submitted a service request, as amended, to BC Hydro for the Red Chris Mine (the "**RCDC Service Request**") in accordance with the Tariff to take electrical service at 55,000 kV.A at BC Hydro's Bob Quinn Substation ("**BQN**") which is currently under construction;
- B. H37P holds certain agreements, rights and permits to develop a proposed 287kV transmission line (the "**287kV Line**") between BQN and a substation to be developed by BC Hydro in the vicinity of Tatogga Lake ("**TAT**") or if BC Hydro elects not to develop TAT then to the Mine Link in the vicinity of Tatogga Lake; and
- C. RCDC, H37P and BC Hydro have determined that, as an alternative to RCDC taking electrical service for the Red Chris Mine at BQN, H37P should develop the 287kV Line, BC Hydro should acquire the 287kV Line from H37P, and RCDC should take electrical service for the Red Chris Mine at TAT, or on an interim basis via the Tap, as that is expected to permit RCDC to meet its expected Red Chris Mine ISD, would provide a better means of providing electrical service to the Red Chris Mine, and would facilitate the supply of electricity by BC Hydro to and the receipt of electricity by BC Hydro from other existing and future communities and developments in the region, all on the terms and conditions set out in this Agreement.

IN CONSIDERATION of \$1 paid by each of the Parties to the other and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged by each of the Parties) and the mutual promises contained in this Agreement the Parties agree as follows:

## SECTION 1 INTERPRETATION

1.1 **Definitions.** In this Agreement, capitalized words not otherwise defined will have the meanings given to them in the Tariff, and:

- (a) “**287kV Line**” has the meaning given to that term in Recital B;
- (b) “**287kV Line ISD Deadline**” means the deadline determined pursuant to Section 2.3;
- (c) “**Access Roads**” means all access roads required in connection with the 287kV Line pursuant to the Functional Requirements, and which are required for the ongoing operation and maintenance of the 287kV Line as contemplated by the Functional Requirements, including all gates, ditches, culverts, bridges, retaining walls, fences, and related works and facilities;
- (d) “**Affiliate**” in the case of a corporation, has the meaning specified in the *Canada Business Corporations Act* and in the case of any other Person, means a Person that controls or is controlled by such other Person or is under the same or common control as that Person. For the purposes of this definition, a Person will be deemed to control another Person if it possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the other Person, whether through the ownership of voting securities, by contract or otherwise; and the term “controlled” shall have a similar meaning;
- (e) “**Agreement**” means this Transmission Development Agreement, including all of the Schedules hereto, as they may be amended, replaced or supplemented from time to time;
- (f) “**Allocation**” has the meaning given to that term in Section 3.2(b);
- (g) “**Applicable Laws**” means, at any given time, all applicable federal, provincial, municipal, local and foreign statutes, codes, ordinances, decrees, rules, regulations and by-laws, and judicial, executive, arbitral, administrative, ministerial, departmental or regulatory judgments, decrees, decisions, rulings, awards, policies, requirements, standards, guidelines, permits, licences, authorizations, approvals and orders, and all applicable common law and the law of equity, in each case having the force of law and in effect at that time;
- (h) “**Assumed Contracts**” means, except for those BC Hydro elects in writing on or before the Closing not to assume, all contracts necessary for the ownership or operation of the 287kV Line in accordance with the Functional Requirements, including without limitation all contracts evidencing the Real Properties, the Access Roads, the Personal Properties and all Third Party warranties in connection with the Purchased Assets;



- (i) “**Assumed Liabilities**” has the meaning given to that term in Section 3.6;
- (j) “**BC Hydro’s Indemnified Persons**” has the meaning given to that term in Section 9.1;
- (k) “**BQN**” has the meaning given to that term in Recital A;
- (l) “**BQN Upgrades**” means those upgrades required to BQN to allow for the interconnection of the 287kV Line and the provision of electrical service to the Red Chris Mine at the Point of Delivery pursuant to the Red Chris Mine ESA, to be completed at BC Hydro’s cost;
- (m) “**Business Day**” means any day except Saturdays, Sundays or statutory holidays in British Columbia;
- (n) “**Canadian GAAP**” means accounting principles generally accepted in Canada from time to time;
- (o) “**Claim**” means any actual or threatened civil, criminal, administrative, regulatory, arbitral or investigative inquiry, action, suit, order, direction, investigation or proceeding and any claim or demand resulting therefrom or any other claim or demand of whatever nature or kind;
- (p) “**Closing**” means the completion of the Transaction as contemplated by this Agreement;
- (q) “**Closing Date**” means the fifth (5<sup>th</sup>) Business Day following satisfaction of the conditions set out in Sections 5.1, 5.2, 5.5 and 5.6 or such earlier or later date as the Parties may agree in writing, but in any event shall not be later than September 30, 2015;
- (r) “**Closing Time**” means 10:00 a.m. in the City of Vancouver on the Closing Date or such other time on the Closing Date as the Parties may agree upon as the time at which the Closing shall take place;
- (s) “**Consents**” means all consents from and acts of Third Parties, including Governmental Entities, required to complete the Transaction, including all consents in connection with the transfer and assignment of all Permits and Assumed Contracts;
- (t) “**Dispute**” has the meaning given to that term in Section 10.1;
- (u) “**Dispute Notice**” has the meaning given to that term in Section 10.2;
- (v) “**Encumbrance**” means whether or not registered or registrable or recorded or recordable, and regardless of how created or arising, any:
  - (i) mortgage, charge, pledge, lien, hypothec, assignment by way of security, lease, conditional sale or title retention agreement (including any capital lease), security created under the *Bank Act* (Canada) or any other

encumbrance or security interest, howsoever created or arising, whether absolute or contingent, fixed or floating, legal or equitable, perfected or otherwise, and any other interest in property or assets that secures payment or performance of any obligation;

- (ii) claim, interest or estate against or in assets or property (whether real, personal, mixed, tangible or intangible), including easements, rights-of-way, servitudes or other similar rights in property granted to or reserved or taken by any Person;
- (iii) option or other right to acquire, or to acquire any interest in, any assets or property (whether real, personal, mixed, tangible or intangible); and
- (iv) any agreements to create, or right capable of becoming, any of the foregoing;
- (w) **“Environment”** includes the air (including all layers of the atmosphere), land (including soil, sediment deposited on land, fill, and lands submerged under water), and water (including oceans, lakes, reservoirs, rivers, streams, groundwater and surface water);
- (x) **“Environmental Contaminants”** means any substance or material, the storage, manufacture, disposal, treatment, generation, use, transport, remediation or release of which into the Environment is prohibited, regulated, controlled or licensed by any Governmental Entity under any Environmental Laws including any contaminant, pollutant, hazardous, corrosive or toxic substance, flammable material, explosive material, radioactive material, dangerous goods or substance, gas, microwaves, waste, urea formaldehyde, mercury, asbestos materials, hydrocarbon contaminant, deleterious substance, noxious substance, and compounds known as chlorobiphenyls, and hazardous waste, provided however, for purposes of this definition, water shall be considered an Environmental Contaminant only to the extent that it contains, or is itself a deleterious substance for purposes of Environmental Laws;
- (y) **“Environmental Laws”** means all Applicable Laws relating in whole or in part to the Environment, including those relating to the storage, generation, use, handling, manufacture, processing, transportation, import, export, treatment, remediation, Release or disposal of any Environmental Contaminants;
- (z) **“Excluded Liabilities”** has the meaning given to that term in Section 3.7(a);
- (aa) **“First Nation”** means any band, band council, tribal council, aboriginal treaty nation or other aboriginal group or government body, however organized and established by aboriginal people within their asserted traditional territory in British Columbia, that is identified by the Crown as a band, band council, tribal council, aboriginal treaty nation or other aboriginal group or government body with which consultation regarding any of the Potential Impacts is required in accordance with Applicable Laws as a result of an application or request by H37P for any Permit, tenure or authorization required in respect of any of the 287kV Line or any other of the Purchased Assets or any amendment, renewal,

replacement, assignment or other decision by the Crown with respect to any such Permit, tenure or authorization;

- (bb) **“Force Majeure”** means any act of God, civil disobedience, labour disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, explosion, breakage or accident to machinery or equipment, any order, regulation or restriction imposed by governmental, military or lawfully established civilian authorities, but does not include acts of negligence or intentional wrongdoing by the Party claiming Force Majeure;
- (cc) **“Functional Requirements”** means those functional requirements, standards and/or specifications in connection with the 287kV Line attached hereto as Schedule E;
- (dd) **“Good Utility Practice”** means any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be acceptable practices, methods or acts generally accepted in the Western Electricity Coordinating Council region;
- (ee) **“Governmental Entity”** means:
  - (i) any multinational, federal, provincial, municipal, local or other government or governmental or public department, central bank, court, commission, board, bureau, agency or instrumentality, domestic or foreign;
  - (ii) any subdivision or authority of any of the foregoing; or
  - (iii) any quasi-governmental or private body exercising any regulatory, expropriation or taxing authority under or for the account of any of the above;
- (ff) **“GST/HST”** means the tax payable under Part IX of the *Excise Tax Act* (Canada);
- (gg) **“H37P and RCDC Indemnified Persons”** has the meaning given to that term in Section 9.2;
- (hh) **“H37P’s Consultation and Accommodation Obligations”** has the meaning given to that term in Section 2.7(a);
- (ii) **“Knowledge”** means:
  - (i) with respect to H37P or RCDC, the actual knowledge of Brian Kynoch, Byng Giraud and Raj Anand, after due inquiry; and

- (ii) with respect to BC Hydro, the actual knowledge of Rohan Soulsby, Tim Jennings and Ivan Kuun, after due inquiry;
- (jj) “**Liabilities**” means all actions, charges, claims, costs, damage, damages, debts, demands, expenses, (including reasonable legal and consulting fees), fines, liabilities, losses, penalties, proceedings and obligations, whether primary or secondary, direct or indirect, known or unknown, fixed, contingent, absolute or otherwise, howsoever arising;
- (kk) “**Mediation Notice**” has the meaning given to that term in Section 10.3(a);
- (ll) “**Mediation Period**” has the meaning given to that term in Section 10.3(b);
- (mm) “**Mine Link**” means a new 287kV transmission line from RCDC’s Red Chris Mine to:
  - (i) TAT; or
  - (ii) if BC Hydro elects not to develop TAT, or if BC Hydro has not completed TAT by the Red Chris Mine ISD so as to allow for the provision of electrical service to the Red Chris Mine at TAT pursuant to the Red Chris Mine ESA, then to the 287kV Line in close proximity to TAT or the expected location of TAT via the Tap;
- (nn) “**Negotiation Meeting**” has the meaning given to that term in Section 10.2;
- (oo) “**NTL**” means BQN and the 287kV transmission line being constructed by BC Hydro between its Skeena Substation and BQN;
- (pp) “**NTL ISD**” means the in-service date for NTL;
- (qq) “**Ordinary Course**” means, with respect to an action taken by a Person, that such action is consistent with the past practices of the Person and is taken in the ordinary course of the normal day-to-day operations of the Person;
- (rr) “**Parties**” means BC Hydro, H37P and RCDC, and “**Party**” means any one of them;
- (ss) “**Permits**” means those permits, licences, consents and other authorizations from or with Third Parties, including Governmental Entities, required by Applicable Laws or otherwise required or reasonably necessary or desirable for the long-term ownership, operation or maintenance of the 287kV Line;
- (tt) “**Permitted Encumbrances**” means any one or more of the following:
  - (i) Encumbrances for Taxes, assessments or governmental charges or levies which are not delinquent;
  - (ii) Encumbrances for Taxes, assessments or governmental charges or levies, the validity of which is being contested at the time by H37P in good faith

by proper legal proceedings if, in BC Hydro's reasonable opinion, adequate provision has been made for their payment;

- (iii) inchoate or statutory Encumbrances of contractors, subcontractors, mechanics, workers, suppliers, material men, carriers and others in respect of the construction, maintenance, repair or operation of the Purchased Assets, provided that such Encumbrances are related to obligations not due or delinquent, are not registered against title to any Purchased Assets and in respect of which adequate holdbacks are being maintained by H37P as required by Applicable Laws; and
- (iv) the right reserved to or vested in any Governmental Entity pursuant to the original grant of title to the real properties, by any statutory provision or by the terms of any permits, licences and other authorizations from, or with Governmental Entities, including rights to terminate any such permits, licences or other authorizations or to require annual or other payments as a condition of their continuance;
- (uu) "**Person**" means an individual, legal personal representative, corporation, body corporate, firm, partnership, trust, trustee, syndicate, joint venture, unincorporated organization, association or Governmental Entity;
- (vv) "**Personal Property**" means those chattels and items comprising part of, or necessary for the ownership or operation of the 287kV Line;
- (ww) "**Plans and Specifications**" means all plans and specifications related to the Purchased Assets, including all construction, engineering, electrical, mechanical and structural drawings and all surveys and plans of survey related thereto, that have been commissioned by or for, or are in the possession or control of, H37P;
- (xx) "**Point of Delivery**" means, subject to Section 7.5(b):
  - (i) the 287kV line termination structure at BQN until the Closing; and
  - (ii) from and after the Closing:
    - (A) if and for so long as the Mine Link is connected to the 287kV Line via the Tap, the point of change of ownership between the 287kV Line and the Mine Link; and
    - (B) if and for so long as the Mine Link is connected to TAT, the termination structure at TAT where the Mine Link connects to TAT;
- (yy) "**Potential Impact**" means any adverse impact or potential adverse impact on the established or potential aboriginal rights or title of a First Nation as a result of:
  - (i) this Agreement;

- (ii) the engineering, design, construction, development and commissioning of the 287kV Line, and all procurement in connection therewith;
- (iii) the Transaction, including the transfer of the 287kV Line to BC Hydro; or
- (iv) any activities carried out to enable H37P to comply with its obligations under this Agreement undertaken by H37P or any Affiliate, consultant or contractor of H37P, or any other Person for whom H37P is responsible at law with respect to the Purchased Assets,

but for greater certainty, "**Potential Impact**" does not include any adverse impact or potential adverse impact on the established or potential aboriginal rights or title of a First Nation resulting from Crown actions or decisions related to the 287kV Line after its transfer to BC Hydro, its incorporation into and operation as part of the Transmission System, or its use to service other loads or interconnect other generation in the region;

- (zz) "**Prepaid Expenses**" means all prepaid expenses of H37P in the Ordinary Course of the ownership, operation and use of the Purchased Assets, determined in accordance with Canadian GAAP;
- (aaa) "**Provisional Wheeling Agreement**" means the Provisional Wheeling Agreement in the form attached hereto as Schedule E; and
- (bbb) "**Purchase Price**" has the meaning given to that term in Section 3.2(a);
- (ccc) "**Purchased Assets**" means, collectively, the 287kV Line and all property, assets, equipment, parts, and undertaking of H37P of every nature and kind, real, personal or mixed, and whether tangible or intangible and wheresoever situate, owned and used by H37P in the operation of the 287kV Line, including the following:
  - (i) the Real Properties;
  - (ii) the Personal Property;
  - (iii) the Access Roads;
  - (iv) the Assumed Contracts;
  - (v) the Permits;
  - (vi) the Plans and Specifications; and
  - (vii) the Prepaid Expenses;
- (ddd) "**RCDC Service Request**" has the meaning given to that term in Recital A;
- (eee) "**Real Properties**" means those interests in real property required for the ownership, operation and maintenance of the 287kV Line in accordance with the Functional Requirements;

- (fff) **"Red Chris Mine ESA"** means an Electricity Supply Agreement between RCDC and BC Hydro in the form attached hereto as Schedule B;
- (ggg) **"Red Chris Mine ISD"** means, subject to Section 2.2, May 31, 2014;
- (hhh) **"Release"** means any release or discharge of any Environmental Contaminants including any discharge, spray, injection, inoculation, abandonment, deposit, spillage, leakage, seepage, pouring, emission, emptying, throwing, dumping, placing, exhausting, escape, leach, migration, dispersal, dispensing or disposal;
- (iii) **"Tap"** means a connection between the Mine Link and the 287kV Line using two dead end structures, constructed in compliance with Good Utility Practice;
- (jjj) **"Tariff"** means BC Hydro's tariff for electrical service, including without limitation BC Hydro's Electric Tariff Supplements No. 5 and No. 6 and related rate schedules, and BC Hydro's tariffs in place from time to time for NTL and the 287kV Line;
- (kkk) **"TAT"** has the meaning given to that term in Recital B;
- (lll) **"Tax"** and **"Taxes"** means any or all Canadian federal, provincial, local or foreign (i.e., non-Canadian) income, gross receipts, real property gains, goods and services, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental, customs duties, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property, personal property, sales, use, transfer, registration, value added, alternative or add-on minimum, or other taxes, levies, governmental charges or assessments of any kind whatsoever, including, without limitation, any estimated tax payments, interest, penalties or other additions thereto, whether or not disputed;
- (mmm) **"Third Party"** means any Person other than the Parties or their assignees or Affiliates;
- (nnn) **"Transaction"** means the purchase and sale of the Purchased Assets by BC Hydro as contemplated by this Agreement;
- (ooo) **"Transfer Taxes"** means all sales taxes, sales and use taxes, value added taxes, goods and services taxes, property transfer taxes, harmonized sales taxes and other transfer taxes and similar charges required to be reported upon or paid to any Governmental Entity in respect of a transaction for the sale or transfer or provision of property, goods or services, and all interest and penalties on any of them, whether initially or as a result of reassessment;
- (ppp) **"Transmission System"** means those facilities owned and operated by BC Hydro over or in connection with which BC Hydro offers transmission service;
- (qqq) **"Unassigned Interests"** has the meaning given to that term in Section 6.7; and
- (rrr) **"Working Group"** has the meaning given to that term in Section 11.1.

1.2 **Interpretation.** For the purposes of this Agreement:

- (a) all references to a designated section, subsection, paragraph, or other subdivision, or to a Schedule, is to the designated section, subsection, paragraph or other subdivision of or Schedule to this Agreement unless otherwise specifically stated, and includes in respect of those Schedules that contain the form of an agreement to be entered into by the Parties, any such agreement entered into by them;
- (b) the words “**herein**”, “**hereof**” and “**hereunder**” and other words of similar import refer to this Agreement as a whole and not to any particular section, subsection, paragraph or other subdivision of or Schedule to this Agreement;
- (c) the singular of any term includes the plural and vice versa and the use of any term is equally applicable to any gender and where applicable to a body corporate;
- (d) the word “including” or similar words means “including but not limited to”;
- (e) all references to money refer to lawful money of Canada and all amounts to be calculated or paid pursuant to this Agreement are to be calculated and paid in lawful money of Canada;
- (f) all references to any statute include any subsequent legislation enacted in substitution thereof and all regulations made thereunder; and
- (g) any reference to a corporate or other business entity includes and is also a reference to any corporate or other business entity that is a successor to such entity by operation of law or is a permitted assignee.

1.3 **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the Province of British Columbia, without reference to its conflict of law principles, and, subject to SECTION 10, the Parties submit and attorn to the exclusive jurisdiction of the courts of the Province of British Columbia.

1.4 **Headings.** The headings in this Agreement are inserted for convenience of reference only and shall not affect the interpretation of this Agreement.

1.5 **Entire Agreement.** This Agreement constitutes the entire agreement among the Parties and supersedes all prior understandings, representations, communications and agreements, oral or written, by and among the Parties with respect to the subject matter of this Agreement. No inducements have been made, given or relied upon by any one or more of such entities in connection herewith.

1.6 **Schedules.** The following are the Schedules attached to and forming a part of this Agreement:

|            |                                       |
|------------|---------------------------------------|
| Schedule A | Closing Certificate;                  |
| Schedule B | Red Chris Mine ESA;                   |
| Schedule C | Form of Declaration of Compatibility; |



|                 |                                 |
|-----------------|---------------------------------|
| Schedule D      | Provisional Wheeling Agreement; |
| Schedule E      | Functional Requirements         |
| Schedule 3.2(b) | Purchase Price Allocation       |

## SECTION 2 TRANSMISSION DEVELOPMENT

**2.1**        **Development of NTL.** BC Hydro shall use its reasonable commercial efforts to achieve NTL ISD by the Red Chris Mine ISD.

**2.2**        **Changes to Red Chris Mine ISD.** At BC Hydro's request from time to time, RCDC shall consider the reasonableness of the then current Red Chris Mine ISD. If at any time, or from time to time, whether as a result of BC Hydro's request or otherwise, RCDC determines in good faith and acting reasonably that it will not require electrical service for the Red Chris Mine to begin commercial operation on the then current Red Chris Mine ISD, it shall, as soon as practicable, provide written notice to BC Hydro extending the Red Chris Mine ISD to such later date as on which it reasonably expects to require electrical service for the Red Chris Mine to begin commercial operation, and the Red Chris Mine ISD shall thereupon be amended accordingly.

**2.3**        **Development of the 287kV Line.** H37P shall use its reasonable commercial efforts to engineer, design, construct, develop and commission the 287kV Line and the Access Roads in compliance with the Functional Requirements and Applicable Laws and no later than the earlier of: (i) twelve (12) months following the NTL ISD; and (ii) September 30, 2015 or such later date to which the deadline for the electrification of the community of Iskut pursuant to the Green Infrastructure Fund Agreement for Northwest Transmission Line Project between Her Majesty the Queen in Right of Canada and Her Majesty the Queen in Right of the Province of British Columbia and signed June 30, 2010 may be extended from time to time.

**2.4**        **Operation and Maintenance of the 287kV Line.** H37P shall operate and maintain the Access Roads and the 287kV Line in accordance with Good Utility Practice from the energization of the 287kV Line until the Closing Time.

**2.5**        **Insurance.** H37P shall obtain and maintain at its cost a commercial general liability policy in an amount not less than \$10,000,000 per occurrence. The policy shall also include a Forest and Prairie Protection Acts expense endorsement, a standard "non-owned automobile liability endorsement", products and completed operations liability, broad form property damage, and shall provide coverage not less than the insurance required by IBC Form 2100 or its equivalent replacement. The policy shall remain in place for a period ending not earlier than twenty four (24) months after the Closing Date. The policy shall name BC Hydro as additional insured and shall contain a cross-liability and severability of interest clause and a waiver of subrogation clause in favour of BC Hydro. H37P shall require the same insurance, including naming BC Hydro as additional insured, of its contractors for the 287kV Line. BC Hydro acknowledges that such insurance may be provided on a wrap-up liability basis. At BC Hydro's request, H37P shall provide or cause to be provided to BC Hydro certificates of insurance evidencing the insurance required by this Section 2.5.

**2.6**            **Consult on Contractors.** H37P will consult and cooperate with BC Hydro with respect to the selection and retention of contractors in respect of the 287kV Line, but nothing herein shall restrict or limit H37P's sole and absolute discretion in selecting and retaining contractors.

**2.7**            **First Nations Consultation for the 287kV Line.**

- (a) To the extent H37P is legally capable of doing so and in accordance with Applicable Laws, H37P shall carry out adequate consultation with First Nations in respect of any Potential Impacts, and if required shall take measures to address, prevent, mitigate or otherwise accommodate First Nations in respect of any Potential Impacts as required by Applicable Laws: ("**H37P's Consultation and Accommodation Obligations**").
- (b) H37P shall not agree to accommodation arrangements that include any equity participation in or revenue sharing in respect of the 287kV Line.
- (c) As soon as reasonably possible after H37P determines that it has met H37P's Consultation and Accommodation Obligations, and in any event no later than twelve (12) months before the 287kV Line ISD Deadline, H37P shall provide to BC Hydro full and complete consultation records, details of any accommodation offered and accepted, and such other information related to H37P's Consultation and Accommodation Obligations as BC Hydro may reasonably request. BC Hydro shall, as soon as reasonably possible after receipt of such records and other information, determine, acting reasonably, whether H37P has met H37P's Consultation and Accommodation Obligations.
- (d) If BC Hydro determines, acting reasonably, that H37P has not met or is unable to meet H37P's Consultation and Accommodation Obligations, then BC Hydro may assume H37P's Consultation and Accommodation Obligations on behalf of H37P, and BC Hydro's actual costs of doing so and costs related to adequately accommodating First Nations for Potential Impacts, if any, shall be deducted from the Purchase Price.

**2.8**            **Warranty on 287kV Line.**

- (a) H37P warrants and represents to BC Hydro that the Purchased Assets shall remain free from any and all defects arising from faulty construction, installation or workmanship which appear within twenty four (24) months from the energization of the 287kV Line.
- (b) On receiving written notice from BC Hydro, H37P shall remedy in a timely manner, and to the satisfaction of BC Hydro, any defects arising from faulty construction, installation or workmanship which appear within the twenty four (24) months from the energization of the 287kV Line, and any damage to BC Hydro or other property arising from such defects. If H37P does not respond in a timely manner, BC Hydro may remedy any such defects or damage and H37P shall be responsible for BC Hydro's actual costs of doing so, including loaded internal costs, consultant and legal costs, to carry out such remedial activities and shall indemnify BC Hydro for such costs forthwith upon demand.

- (c) H37P warrants and represents that all remedial work performed under Section 2.8(b) shall be free from any and all defects to the same extent as provided in Section 2.8(a) which appear within twenty four (24) months from the date BC Hydro gives or should have given written acceptance of the remedial work performed by H37P.
- (d) The warranties and representations in this Section 2.8 stand separate and apart from any other warranties or representations given in this Agreement, and do not detract from or amend said warranties or representations or BC Hydro's remedies thereunder.

**2.9 Development of TAT.**

- (a) BC Hydro may, at its option, engineer, design, construct, develop and commission TAT.
- (b) Subject to Section 2.9(d), if the 287kV Line is interconnected with the Mine Link via the Tap, then as soon as practicable after the completion of TAT, whether before or after the Closing:
  - (i) RCDC shall, at its cost, disconnect the Mine Link from the 287kV Line via the Tap and interconnect the Mine Link to TAT;
  - (ii) H37P shall, at its cost, disconnect the 287kV Line from the Mine Link via the Tap and interconnect the 287kV Line to TAT,

each in compliance with the Functional Requirements and BC Hydro's interconnection procedures.

- (c) If:
  - (i) the 287kV Line is interconnected to TAT, and H37P was never required to interconnect the 287kV Line with the Mine Link via the Tap; or
  - (ii) 287kV Line is interconnected with the Mine Link via the Tap but TAT is completed one (1) year or less after the Red Chris Mine ISD,

then RCDC shall pay \$5.5 million to BC Hydro, on account of the Basic Transmission Extension (as that term is defined in Tariff Supplement No. 6) that RCDC would have been required to pay in accordance with Tariff Supplement No. 6, as follows:

- (iii) \$[REDACTED] by [REDACTED]; and
  - (iv) \$[REDACTED] by [REDACTED].
- (d) Any work required pursuant to Section 2.9(b) within the boundaries of TAT shall be undertaken by BC Hydro and not by RCDC or H37P, as applicable, but at RCDC's or H37P's cost, as applicable. BC Hydro may invoice RCDC or H37P

or both for BC Hydro's actual costs of doing such work, and RCDC and H37P shall pay all such invoices within thirty (30) days of receipt.

- (e) If RCDC disconnects the Mine Link from the 287kV Line via the Tap and interconnects the Mine Link to TAT as required by Section 2.9(b) prior to the Closing Time, then from that time until the Closing Time BC Hydro shall allow RCDC to wheel electricity delivered at the Point of Delivery by BC Hydro pursuant to the Red Chris Mine ESA from the 287kV Line to the Mine Link across such of TAT's facilities as necessary at no cost to RCDC.

**2.10**      **Application of Tariff.** RCDC agrees that for purposes of calculating rates payable by RCDC in connection with electrical service to RCDC's Red Chris Mine, this Agreement constitutes and shall be deemed to be the equivalent of the Facilities Agreement provided for in Tariff Supplement No. 6 for the construction and installation of facilities to permit interconnection of the Red Chris Mine with the NTL or with an extension thereto. Without limiting the generality of the foregoing, RCDC acknowledges that accordingly, and in combination with the Red Chris Mine ESA, RCDC is a customer to which BC Hydro's Tariff Supplement No. 37 as filed with the British Columbia Utilities Commission on December 11, 2012 would apply.

### SECTION 3 PURCHASE AND SALE OF 287kV LINE

**3.1**      **Purchase and Sale of 287kV Line.** Subject to the terms and conditions of this Agreement, H37P shall sell and assign to BC Hydro, and BC Hydro shall purchase and assume from H37P, the Purchased Assets free and clear of all Encumbrances (other than Permitted Encumbrances), at the Closing Time on the Closing Date.

**3.2**      **Purchase Price.**

- (a) The aggregate purchase price payable by BC Hydro for the Purchased Assets is \$52 million subject to adjustment as provided in Sections 2.7(d) and 3.5 and exclusive of any applicable Transfer Taxes payable by BC Hydro hereunder (the "**Purchase Price**").
- (b) The allocation of the Purchase Price among the assets comprising the Purchased Assets shall be in accordance with the particulars set forth in Schedule 3.2(b) (the "**Allocation**"). Except to the extent otherwise required by Applicable Laws, the Parties will file all Tax returns in a manner consistent with the Allocation and will not make any inconsistent statement or adjustment on any returns or during the course of any Tax audit.
- (c) BC Hydro shall pay the Purchase Price at Closing by bank draft or wire transfer of immediately available funds to or to the order of H37P.

**3.3**      **Transfer Taxes.** BC Hydro shall pay all Transfer Taxes arising out of or in connection with the purchase of the Purchased Assets, provided that, for greater certainty, BC Hydro shall not be responsible for or required to pay any capital gains Tax, income Tax or similar Tax incurred by, assessed upon or otherwise sustained by H37P in connection with the

Transaction. Any Transfer Taxes required to be collected and remitted by H37P shall be paid to H37P on Closing.

**3.4 Bulk Sale Certificate.** H37P shall secure a bulk sale certificate under the *Provincial Sales Tax Act* (British Columbia) from the British Columbia Consumer Taxation Branch with respect to the Transaction and provide a copy to BC Hydro on or before the Closing Time. H37P shall indemnify and save harmless BC Hydro from and against all Liabilities incurred by BC Hydro arising out of the failure of H37P to provide such bulk sale certificate.

**3.5 Adjustment of Purchase Price.** The Purchase Price shall be adjusted for all Prepaid Expenses so that H37P will bear and pay all expenses and receive all income relative to the Purchased Assets up to the Closing Date, and BC Hydro shall bear and pay all expenses and receive all income relative to the Purchased Assets from and after the Closing Date. All other matters to be adjusted, and all items adjusted for on the Closing Date but requiring readjustment, if any, shall be settled directly between the parties within forty five (45) days after the Closing Date or at such earlier time as the information required to complete such adjustments becomes available.

**3.6 Assumption of Obligations and Liabilities.** BC Hydro will assume, fulfil and perform Liabilities of H37P accruing after the Closing Time pursuant to the Real Properties, the Assumed Contracts and the Permits (the "Assumed Liabilities").

**3.7 Excluded Liabilities.**

- (a) Except as provided in this Agreement, BC Hydro does not assume and will not be liable for any Liabilities of H37P whatsoever relating to the engineering, design, construction, development, commission, ownership, operation or maintenance of the 287kV Line, or any of the Purchased Assets, other than the Assumed Liabilities. All such Liabilities other than the Assumed Liabilities shall be "Excluded Liabilities" and shall include:
- (i) all amounts owing by H37P in respect of the Purchased Assets accruing prior to and until the Closing Time;
  - (ii) all Liabilities arising in connection with the engineering, design, construction, development, commissioning, ownership and use of the Purchased Assets prior to and until the Closing Time;
  - (iii) all Liabilities for Taxes that may be or become payable by H37P including any income or corporation Taxes resulting from or arising as a consequence of the engineering, design, construction, development, commissioning, ownership or use of the Purchased Assets prior to and until the Closing Time, or the sale by H37P of the Purchased Assets, other than Transfer Taxes; and
  - (iv) all Liabilities in respect of any employees of H37P, whether or not accruing prior to or after the Closing Time, and whether or not such employees were engaged in H37P's business operations with respect to the Purchased Assets.

- (b) H37P and each of its successors, assigns and Affiliates, do hereby remise, release and forever discharge BC Hydro from and against any and all Claims and Liabilities of every kind and nature whatsoever, whether at law or at equity, or under any statute, which it ever had, now has, or may in the future have against BC Hydro, to the extent related to the Excluded Liabilities.

**3.8** Reasonable Access. Subject to any Applicable Laws, H37P shall permit BC Hydro and its employees, agents, counsel, accountants or other representatives during the period before Closing, without undue interference to the ordinary conduct of H37P's businesses, to have reasonable access on a supervised basis during normal business hours and upon reasonable notice to the 287kV Line and the Real Properties, and to such other documents, materials and information, including the Plans and Specifications, as reasonably required by BC Hydro for the purposes of Section 5.9(c), assessing H37P's compliance with this Agreement, the Functional Requirements and completing and confirming reasonable transition planning activities.

**3.9** Consents. H37P shall use its commercially reasonable efforts to obtain, or cause to be obtained, and secure all Consents necessary or advisable to be obtained by it in order to sell and assign the Purchased Assets to BC Hydro. Subject to any Applicable Laws, H37P and BC Hydro will coordinate and co-operate with one another in exchanging such information and supplying such assistance as may be reasonably requested by each in connection with the foregoing including providing each other with all notices and information supplied or filed with any Governmental Entity and all notices and correspondence received from any Governmental Entity.

**3.10** No Pioneer Rights. H37P and RCDC acknowledge and agree that from and after the Closing Date neither shall have any rights, capacity, reservations, compensation or service in connection with or on the 287kV Line, or any part thereof, other than pursuant to the Red Chris Mine ESA. For certainty, neither H37P or RCDC shall acquire or have any ownership in or ownership-like rights to the 287kV Line, or any part thereof, or the right to receive reimbursement for any of the costs or expenses incurred by either of them in connection with the 287kV Line, or the right to receive any portion of any revenues that may be received from future users of the 287kV Line.

#### SECTION 4 REPRESENTATIONS AND WARRANTIES

**4.1** BC Hydro's Representations and Warranties. BC Hydro represents and warrants to H37P and RCDC that:

- (a) **Incorporation.** It is a corporation duly incorporated or amalgamated and validly existing under the Applicable Laws of its jurisdiction of incorporation or amalgamation.
- (b) **Power and Capacity.** It has the corporate power and capacity to own and operate its property, carry on its business and enter into and perform its obligations under this Agreement and all documents, instruments and agreements required to be delivered by it pursuant to this Agreement.

- (c) **Due Authorization, Absence of Conflict.** The execution, delivery and performance by it of this Agreement and all documents, instruments and agreements required to be delivered by it pursuant to this Agreement:
- (i) have been duly authorized by all necessary corporate action on its part;
  - (ii) do not (and would not with the giving of notice, the lapse of time or the happening of any other event or condition) result in a breach or a violation of or default under, or conflict with any of the terms or provisions of, or allow any other Person to exercise any rights under or terminate or cancel, its constating documents or by-laws or any contracts or instruments to which it is a party or pursuant to which any of its assets or property may be affected (subject in each case to obtaining applicable Consents) or any judgment, order, writ, injunction or, to the best of its Knowledge, any decree of any Government Entity having jurisdiction over it; and
  - (iii) will not result in the violation of any Applicable Laws (subject to obtaining applicable Consents).
- (d) **Enforceability.** This Agreement and all documents, instruments and agreements required to be delivered by it pursuant to this Agreement constitute legal, valid and binding obligations, enforceable against it in accordance with their respective terms, except as enforcement may be limited by bankruptcy, insolvency and other laws affecting the rights of creditors generally and except that equitable remedies may be granted only in the discretion of a court of competent jurisdiction.
- (e) **GST Registration.** It is registered for the purposes of GST/HST under registration number R121454151.
- (f) **Proceedings.** There are no proceedings before or pending before any Governmental Entity, or, to BC Hydro's Knowledge, threatened to be brought by or before any Governmental Entity by or against BC Hydro affecting the legality, validity or enforceability of this Agreement or the consummation of the transactions contemplated herein.

**4.2 Representations and Warranties of H37P.** H37P hereby represents and warrants to BC Hydro that:

- (a) **Incorporation.** It is a corporation duly incorporated or amalgamated and validly existing under the Applicable Laws of its jurisdiction of incorporation or amalgamation. It is a wholly-owned subsidiary of Imperial Metals Corporation.
- (b) **Power and Capacity.** It has the corporate power and capacity to own and operate its property, carry on its business and enter into and perform its obligations under this Agreement and all documents, instruments and agreements required to be delivered by it pursuant to this Agreement.
- (c) **Due Authorization, Absence of Conflict.** The execution, delivery and performance by it of this Agreement and all documents, instruments and agreements required to be delivered by it pursuant to this Agreement:

- (i) have been duly authorized by all necessary corporate action on its part;
  - (ii) do not (and would not with the giving of notice, the lapse of time or the happening of any other event or condition) result in a breach or a violation of or default under, or conflict with any of the terms or provisions of, or allow any other Person to exercise any rights under or terminate or cancel, its constating documents or by-laws or any contracts or instruments to which it is a party or pursuant to which any of its assets or property may be affected (subject in each case to obtaining applicable Consents) or any judgment, order, writ, injunction or, to the best of its Knowledge, any decree of any Government Entity having jurisdiction over it; and
  - (iii) will not result in the violation of any Applicable Laws (subject to obtaining applicable Consents).
- (d) **Enforceability.** This Agreement and all documents, instruments and agreements required to be delivered by it pursuant to this Agreement constitute legal, valid and binding obligations, enforceable against it in accordance with their respective terms, except as enforcement may be limited by bankruptcy, insolvency and other laws affecting the rights of creditors generally and except that equitable remedies may be granted only in the discretion of a court of competent jurisdiction.
- (e) **GST Registration.** It is registered for the purposes of GST/HST under registration number 844848135 RT0001.
- (f) **Proceedings.** There are no proceedings before or pending before any Governmental Entity, or, to H37P's Knowledge, threatened to be brought by or before any Governmental Entity by or against H37P affecting the legality, validity or enforceability of this Agreement or the consummation of the transactions contemplated herein.

**4.3 Representations and Warranties of RCDC.** RCDC hereby represents and warrants to BC Hydro that:

- (a) **Incorporation.** It is a corporation duly incorporated or amalgamated and validly existing under the Applicable Laws of its jurisdiction of incorporation or amalgamation. It is a wholly-owned subsidiary of Imperial Metals Corporation.
- (b) **Power and Capacity.** It has the corporate power and capacity to own and operate its property, carry on its business and enter into and perform its obligations under this Agreement and all documents, instruments and agreements required to be delivered by it pursuant to this Agreement.
- (c) **Due Authorization, Absence of Conflict.** The execution, delivery and performance by it of this Agreement and all documents, instruments and agreements required to be delivered by it pursuant to this Agreement:
  - (i) have been duly authorized by all necessary corporate action on its part;



- (ii) do not (and would not with the giving of notice, the lapse of time or the happening of any other event or condition) result in a breach or a violation of or default under, or conflict with any of the terms or provisions of, or allow any other Person to exercise any rights under or terminate or cancel, its constating documents or by-laws or any contracts or instruments to which it is a party or pursuant to which any of its assets or property may be affected (subject in each case to obtaining applicable Consents) or any judgment, order, writ, injunction or, to the best of its Knowledge, any decree of any Government Entity having jurisdiction over it; and
- (iii) will not result in the violation of any Applicable Laws (subject to obtaining applicable Consents).
- (d) **Enforceability.** This Agreement and all documents, instruments and agreements required to be delivered by it pursuant to this Agreement constitute legal, valid and binding obligations, enforceable against it in accordance with their respective terms, except as enforcement may be limited by bankruptcy, insolvency and other laws affecting the rights of creditors generally and except that equitable remedies may be granted only in the discretion of a court of competent jurisdiction.
- (e) **GST Registration.** It is registered for the purposes of GST/HST under registration number 863583282 RT0001.
- (f) **Proceedings.** There are no proceedings before or pending before any Governmental Entity, or, to RCDC's Knowledge, threatened to be brought by or before any Governmental Entity by or against RCDC affecting the legality, validity or enforceability of this Agreement or the consummation of the transactions contemplated herein.

## SECTION 5 CONDITIONS

**5.1 Conditions for the Benefit of BC Hydro.** The obligations of BC Hydro pursuant to this Agreement are subject to the following conditions to be fulfilled or performed on or before the date specified, which conditions are for the exclusive benefit of BC Hydro and may be waived, in whole or in part, by BC Hydro in its sole discretion:

- (a) The Red Chris ESA being executed and delivered by RCDC at the same time as this Agreement;
- (b) The Provisional Wheeling Agreement being executed and delivered by H37P at the same time as this Agreement; and
- (c) BC Hydro being satisfied, in its sole and absolute discretion, with the regulatory support or regulatory exemptions available to it in order to complete its obligations pursuant to this Agreement, and recover its costs in connection with this Agreement and related infrastructure in rates, no later than April 15, 2013.

**5.2 Conditions to Closing for the Benefit of BC Hydro.** The obligation of BC Hydro to complete the Transaction is subject to the following conditions to be fulfilled or

performed on or before the date specified, or if no date is specified prior to or contemporaneous with Closing, which conditions are for the exclusive benefit of BC Hydro and may be waived, in whole or in part, by BC Hydro in its sole discretion:

- (a) **Standards and Specifications.** The 287kV Line being engineered, designed, constructed, developed and commissioned in compliance with the Functional Requirements and Applicable Laws by the 287kV Line ISD Deadline, including H37P having obtained from BC Hydro a Declaration of Compatibility in substantially the same form attached hereto as Schedule C;
- (b) **Interconnected to BQN.** The 287kV Line being interconnected to BQN in compliance with the Functional Requirements, and BC Hydro's interconnection procedures;
- (c) **Interconnected to TAT or Mine Link.** The 287kV Line being interconnected to TAT, or if BC Hydro has elected not to develop TAT then to the Mine Link via the Tap, in either case in compliance with the Functional Requirements, and interconnection procedures;
- (d) **Terms and Conditions of Permits and Real Properties.** All Permits and Real Properties required for the construction, development, commissioning, operation, ownership and maintenance of the 287kV Line having been obtained by H37P on terms and conditions satisfactory to BC Hydro, acting reasonably, and shall be transferred to BC Hydro on Closing;
- (e) **BQN Upgrades.** The BQN Upgrades being complete;
- (f) **Energization.** The 287kV Line having been energized in compliance with the Functional Requirements, and BC Hydro's energization procedures;
- (g) **H37P First Nations Consultation.** BC Hydro being satisfied, acting reasonably, that H37P's Consultation and Accommodation Obligations have been met;
- (h) **BC Hydro First Nations Consultation.** BC Hydro being satisfied, acting reasonably, that BC Hydro has adequately consulted the First Nations, and if required, addressed, prevented, mitigated or otherwise accommodated any potential adverse impacts on their established or potential aboriginal rights (including aboriginal title) of (i) the 287kV Line and its incorporation into and operation as part of the Transmission System, or its use to service other loads or interconnect other generation in the region, and to the extent arising after the 287kV Line's transfer to BC Hydro; (ii) BQN Upgrades; and (iii) TAT;
- (i) **Representations and Warranties.** The representations and warranties of H37P and RCDC made pursuant to the certificates referred to in Sections 6.3(c) and 6.4(b) being true and correct in all material respects as of the Closing Date, and shall be equivalent, in all material respects, as those contained in Sections 4.2 and 4.3 of this Agreement;
- (j) **Covenants.** H37P and RCDC having fulfilled or complied with all of their respective covenants contained in this Agreement in all material respects, and

H37P and RCDC having each executed and delivered to BC Hydro certificates, executed by a senior officer of H37P and RCDC, respectively, to that effect;

- (k) **Deliveries.** H37P and RCDC having delivered or caused to be delivered to BC Hydro the documents specified in Sections 6.3 and 6.4, respectively;
- (l) **No Insolvency Proceedings.** Neither H37P nor RCDC having initiated material proceedings with respect to a compromise or arrangement with its creditors or for its winding up, liquidation or dissolution, and no receiver having been appointed in respect of it or any of its assets and no execution or distress having been levied upon its assets;
- (m) **Consents.** All Consents having been obtained on terms acceptable to BC Hydro acting reasonably; and
- (n) **No Encumbrances.** The Purchased Assets being free of all Encumbrances, except for Permitted Encumbrances.

**5.3 Sole Benefit of BC Hydro.** H37P and RCDC agree that the conditions set out in Sections 5.1 and 5.2 are for the sole benefit of BC Hydro, and that none of such conditions shall be waived except by written notice from BC Hydro or its solicitors to H37P and RCDC or their solicitors.

**5.4 H37P and RCDC Bound.** Notwithstanding that Sections 5.1 and 5.2 may leave discretion in BC Hydro whether to complete the Transaction, H37P and RCDC agree, for \$10 and other good and valuable consideration, that they shall be bound by this Agreement.

**5.5 Conditions for the Benefit of H37P and RCDC.** The obligations of H37P and RCDC pursuant to this Agreement are subject to the following conditions to be fulfilled or performed on or before the date specified, which conditions are for the exclusive benefit of H37P and RCDC and may be waived, in whole or in part, by H37P and RCDC in their sole discretion:

- (a) The Red Chris Mine-ESA being executed and delivered by BC Hydro at the same time as this Agreement.

**5.6 Conditions to Closing for the Benefit of H37P.** The obligation of H37P to complete the Transaction is subject to the following conditions to be fulfilled or performed on or before the date specified, or if no date is specified prior to or contemporaneous with Closing, which conditions are for the exclusive benefit of H37P and may be waived, in whole or in part, by H37P in its sole discretion:

- (a) **Representations and Warranties.** The representations and warranties of BC Hydro made pursuant to the certificate referred to in Section 6.5(b) being true and correct in all material respects as of the Closing Date, and being equivalent, in all material respects, as those contained in Section 4.1 of this Agreement;
- (b) **Covenants.** BC Hydro having fulfilled or complied with all of its covenants contained in this Agreement in all material respects, and BC Hydro having executed and delivered to H37P a certificate, executed by a senior officer of BC Hydro to that effect;

- (c) **Deliveries.** BC Hydro having delivered or cause to be delivered to H37P the documents specified in Section 6.5; and
- (d) **No Insolvency Proceedings.** BC Hydro not having initiated material proceedings with respect to a compromise or arrangement with its creditors or for its winding up, liquidation or dissolution, and no receiver having been appointed in respect of BC Hydro or any of its assets and no execution or distress shall have been levied upon BC Hydro's assets;

**5.7** **Sole Benefit of H37P.** BC Hydro agrees that the conditions set out in Section 5.5 are for the sole benefit of H37P and RCDC, and the conditions set out in Section 5.6 are for the sole benefit of H37P, and that none of such conditions shall be waived except by written notice from H37P and RCDC, or H37P, respectively, or their or its solicitors, respectively, to BC Hydro or its solicitors.

**5.8** **BC Hydro Bound.** Notwithstanding that Sections 5.5 and 5.6 may leave discretion in H37P or RCDC or both whether to complete the Transaction BC Hydro agrees, for \$10 and other good and valuable consideration, that BC Hydro shall be bound by this Agreement.

**5.9** **Actions to Satisfy Conditions.**

- (a) H37P and RCDC shall each take all such actions, steps and proceedings as are reasonably within its control as may be necessary to ensure that all of the conditions set forth in Sections 5.1 and 5.2 are fulfilled at or before the time specified in such Section.
- (b) BC Hydro shall take all such actions, steps and proceedings as are reasonably within its control as may be necessary to ensure that all of the conditions set forth in Sections 5.5 and 5.6, and the condition set forth in Section 5.2(h), are fulfilled at or before the time specified in such Section.
- (c) BC Hydro will reasonably cooperate with H37P and RCDC so as to permit H37P and RCDC to obtain interim assessments by BC Hydro as to the adequacy of H37P's and RCDC's activities in satisfying the requirements of Sections 5.1 and 5.2. In completing such assessments BC Hydro shall advise H37P and RCDC of any material deficiencies BC Hydro identifies with such activities, provided no such interim assessment shall prevent BC Hydro, acting reasonably, from subsequently taking the position that the requirements of Sections 5.1 and 5.2 have not been satisfied.

**SECTION 6  
CLOSING**

**6.1** **Date, Time and Place of Closing.** The Closing shall take place at the Vancouver offices of BC Hydro's legal counsel, at the Closing Time on the Closing Date or at such other place, on such other date and at such other time as may be agreed upon in writing among the Parties.

**6.2**            **Compensation for Delay in Closing Because of Remaining Conditions.** If the only matter preventing the establishment of a Closing Date is a failure to satisfy or waive the condition in Section 5.2(e) or 5.2(h) or both, or a failure to satisfy or waive the conditions in Sections 5.2(e) and 5.2(f) if the failure to satisfy the condition in Section 5.2(f) is solely as a result of the BQN Upgrades not being complete, then BC Hydro shall reimburse H37P for interest incurred in financing a portion of the construction costs of the 287kV Line equal to the Purchase Price at an interest rate equal to the greater of the actual interest rate payable by H37P or 5% per annum from the time the balance of the conditions precedent in Section 5.2 are satisfied or waived until the BQN Upgrades are complete or the conditions in each of Sections 5.2(e) and 5.2(f) are satisfied or waived, whichever is first to occur. For greater certainty, a delay in establishing a Closing Date that triggers an obligation for BC Hydro to reimburse H37P for interest incurred in financing the Purchase Price pursuant to this Section 6.2 will not result in a termination of this Agreement, and provided the applicable conditions are satisfied or waived as required to establish a Closing Date not later than September 30, 2015, the Transaction shall proceed in accordance with the terms and conditions of this Agreement.

**6.3**            **H37P's Closing Deliveries.** On or before the Closing, H37P shall deliver or cause to be delivered to BC Hydro the following documents:

- (a) certified copies of resolutions of the directors of H37P approving the completion of the Transaction, and the execution and delivery by H37P of this Agreement and all documents, instruments and agreements required to be delivered by it pursuant to this Agreement;
- (b) certified copies of resolutions of the shareholders of H37P approving the sale of substantially all of H37P's assets to BC Hydro;
- (c) a certificate of H37P executed by a senior officer of H37P confirming that, except as disclosed in the certificate, the representations and warranties of H37P contained in this Agreement are true and correct in all material respects as of the Closing Date with the same effect as though they had made representations and warranties to that effect as of the Closing Time;
- (d) the closing certificate attached hereto as Schedule A duly executed by H37P;
- (e) the bulk sale certificate referred to in Section 3.4;
- (f) all Consents obtained by H37P;
- (g) all deeds, bills of sale, conveyances, transfers, assignments, instruments and other documents which are necessary to assign, sell and transfer the Purchased Assets to BC Hydro, each effective as of the Closing Time on the Closing Date as contemplated by this Agreement in such form and content as BC Hydro may reasonably require to give effect to the Transaction, duly executed by H37P; and
- (h) all such other assurances, consents, agreements, documents and instruments as may be reasonably required by BC Hydro to complete the Transaction.

**6.4**            **RCDC's Closing Deliveries.** On or before the Closing, RCDC shall deliver or cause to be delivered to BC Hydro the following documents:

- (a) certified copies of resolutions of the directors of RCDC approving the execution and delivery by RCDC of this Agreement and all documents, instruments and agreements required to be delivered by it pursuant to this Agreement;
- (b) a certificate of RCDC executed by a senior officer of RCDC confirming that, except as disclosed in the certificates, the representations and warranties of RCDC contained in this Agreement are true and correct in all material respects as of the Closing Date with the same effect as though they had made representations and warranties to that effect as of the Closing Time; and
- (c) all such other assurances, consents, agreements, documents and instruments as may be reasonably required by BC Hydro to complete the Transaction.

**6.5** BC Hydro's Closing Deliveries. On or before the Closing, BC Hydro shall deliver or cause to be delivered to H37P and RCDC the following documents and payments:

- (a) certified copies of resolutions of the directors of BC Hydro approving the completion of the Transaction and the execution and delivery of this Agreement and all documents, instruments and agreements required to be delivered by it pursuant to this Agreement;
- (b) a certificate, executed by a senior officer(s) of BC Hydro confirming that, except as disclosed in the certificate, the representations and warranties of BC Hydro contained in this Agreement are true and correct in all material respects as of the Closing Date, with the same effect as though BC Hydro had made representations and warranties to that effect as of the Closing Time;
- (c) all deeds, bills of sale, conveyances, transfers, assignments, instruments and other documents which are necessary to assign, sell and transfer the Purchased Assets to BC Hydro, each effective as of the Closing Time on the Closing Date and for BC Hydro to assume the Assumed Liabilities as contemplated by this Agreement in such form and content as H37P may reasonably require to give effect to the Transaction, duly executed by BC Hydro;
- (d) the Purchase Price and any Transfer Taxes required to be collected and remitted by H37P in immediately available funds pursuant to and in accordance with this Agreement; and
- (e) all such other assurances, consents, agreements, documents and instruments as may be reasonably required by H37P and RCDC to complete the Transaction.

**6.6** Closing Procedure. On the Closing Date, if all documents and funds have been delivered as provided in Sections 6.3, 6.4 and 6.5, all documents and funds will be held in escrow with the exception of any registrable transfer(s) of Real Properties, which shall be tendered for registration in the appropriate Land Title Office. Upon acceptance for registration thereof and receipt by BC Hydro of a post-filing index search indicating that in the normal course of Land Title Office routine, title to such Real Properties will be issued in the name of BC Hydro subject only to the Permitted Encumbrances, the escrow shall terminate and the balance of H37P's and RCDC's closing deliveries shall be released to BC Hydro and BC Hydro's closing deliveries shall be released to H37P and RCDC.

6.7 **Unassignable Assumed Contracts and Permits.** With respect to interests in Assumed Contracts and Permits that form part of the Purchased Assets for which Consents are not received on or before Closing (collectively, the "Unassigned Interests"), the transfer and assignment of the Unassigned Interests will not be effective in each case until the applicable Consent has been received, and such Unassigned Interests will be held by H37P following the Closing in trust (to the extent permitted by Applicable Laws) for the benefit and exclusive use of BC Hydro. H37P shall continue to use its commercially reasonable efforts to obtain the applicable Consents and until such time as they are received, H37P shall only make use of any Unassigned Interests in accordance with the lawful directions of BC Hydro that do not conflict with the terms of such Unassigned Interests. BC Hydro will reimburse H37P for all out-of-pocket liabilities, costs and expenses incurred by H37P from and after the Closing Date at the direction of BC Hydro and arising out of H37P's performance of its obligations under this Section 6.7.

## SECTION 7 ABANDONMENT AND TERMINATION

7.1 **Termination for Failure to Satisfy Conditions Precedent.** This Agreement shall terminate, without liability or penalty attaching to any Party, if any of the conditions precedent set out in Section 5.1 or 5.5 are not fulfilled, performed or waived within the times specified.

7.2 **Termination for Anticipated Delay Beyond 287kV Line ISD Deadline.** Notwithstanding SECTION 8, BC Hydro may terminate this Agreement by notice in writing to H37P and RCDC at any time if BC Hydro determines that H37P is unlikely to complete its obligations pursuant to Section 2.3 by the 287kV Line ISD Deadline, and H37P fails in BC Hydro's opinion to accelerate the likely completion date of its obligations pursuant to Section 2.3 to a date on or before the 287kV Line ISD Deadline within thirty (30) days of receiving a written demand notice from BC Hydro to that effect, and in such event:

- (a) at BC Hydro's request BC Hydro and H37P shall enter into good faith discussions with respect to, and H37P shall consider in good faith, the purchase by BC Hydro of H37P's interest in and to some or all of the Purchased Assets, as they then exist, for fair market value consideration less the reasonable costs RCDC would have incurred had it had to develop a transmission line between BQN and the Mine Link sufficient to provide electrical service to the Red Chris Mine; and
- (b) BC Hydro shall be released from all obligations hereunder save and except for its obligations under Section 9.2, SECTION 10 and Section 11.5 which shall survive.

BC Hydro may not terminate this Agreement pursuant to this Section 7.2 if the only matter supporting BC Hydro's determination that H37P is unlikely to complete its obligations pursuant to Section 2.3 by the 287kV Line ISD Deadline is an anticipated failure by BC Hydro to complete the BQN Upgrades by the 287kV Line ISD Deadline.

7.3 **Termination by BC Hydro.** If any of the conditions set forth in Section 5.2 have not been fulfilled or waived on or before the Closing Time other than as a result of any failure of BC Hydro to perform or fulfil, in all material respects, any of its covenants under this Agreement to be performed or fulfilled on or before the Closing Time, BC Hydro may terminate this

Agreement by notice in writing to H37P and RCDC, and in such event BC Hydro shall be released from all obligations hereunder save and except for its obligations under Section 9.2, SECTION 10 and Section 11.5 which shall survive.

**7.4**            **Termination by H37P.** If any of the conditions set forth in Section 5.6 have not been fulfilled or waived on or before the Closing Time, other than as a result of any failure of H37P to perform or fulfil, in all material respects, any of its covenants under this Agreement to be performed or fulfilled on or before the Closing Time, H37P may terminate this Agreement by notice in writing to BC Hydro and RCDC, and in such event H37P and RCDC shall be released from all obligations hereunder save and except for their obligations under Section 9.1, SECTION 10 and Section 11.5 which shall survive.

**7.5**            **Effect of Termination.**

- (a) Each of BC Hydro's and H37P's right of termination under Sections 7.2, 7.3 and 7.4 is in addition to any other rights it may have under this Agreement or otherwise, and the exercise of a right of termination will not be an election of remedies. Except as otherwise expressly provided in this SECTION 7, nothing in this SECTION 7 shall limit or affect any other rights or causes of action any Party may have with respect to the representations, warranties, covenants and indemnities in its favour contained in this Agreement.
- (b) On termination of this Agreement, the agreement contained herein to modify the Point of Delivery and configuration of the RCDC Service Request to specify a Point of Delivery for the Red Chris Mine at TAT, or at the Tap if the Mine Link is connected to the 287kV Line via the Tap, terminates, and the Point of Delivery of the RCDC Service Request shall revert to BQN and remain subject to the Tariff without modification in any way by this Agreement. If a transmission line between BQN and TAT or another location in the vicinity of Tatogga Lake is subsequently developed or acquired by BC Hydro, any service request for the Red Chris Mine, whether or not specifying a Point of Delivery at any point on that line shall be subject to the Tariff and all applicable rates for electrical service pursuant thereto.
- (c) This Section 7.5 shall survive the termination of this Agreement.

**SECTION 8**  
**FORCE MAJEURE**

**8.1**            **Force Majeure.** A Party shall not be considered in breach of its obligations hereunder to the extent it is prevented or delayed in performing one or more of its obligations hereunder by Force Majeure. A Party relying upon Force Majeure shall give prompt written notice to the other Party of any such Force Majeure and shall use all commercially reasonable efforts to mitigate the effect of the Force Majeure. Where a time or period of time is stipulated for the performance of any obligation and Force Majeure has been relied upon as delaying such performance, the time or period of time for such performance shall be extended by the length of time the Force Majeure operates to delay or prevent such performance.



**SECTION 9**  
**INDEMNIFICATION AND LIMITATION OF LIABILITY**

**9.1 Indemnification in Favour of BC Hydro.** Subject to Section 9.3, H37P and RCDC shall jointly and severally indemnify and save each of BC Hydro, and its directors, officers, employees and agents (collectively, "BC Hydro's Indemnified Persons") harmless of and from any Liabilities suffered by, imposed upon or asserted against any of BC Hydro's Indemnified Persons to the extent they are the result of, in respect of, connected with, or arising out of, under, or pursuant to:

- (a) any failure of either H37P or RCDC to perform or fulfil any of its covenants under this Agreement;
- (b) any breach or inaccuracy of any representation or warranty given by either of H37P or RCDC in or pursuant to this Agreement, including in the certificate referred to in Section 6.3(d); and
- (c) the Excluded Liabilities.

**9.2 Indemnification in Favour of H37P and RCDC.** Subject to Section 9.3, BC Hydro shall indemnify and save each of H37P and RCDC, and each of their directors, officers, employees and agents (collectively, the "H37P and RCDC Indemnified Persons") harmless of and from any Liabilities suffered by, imposed upon or asserted against any of the H37P and RCDC Indemnified Persons to the extent they are the result of, in respect of, connected with, or arising out of, under or pursuant to:

- (a) any failure of BC Hydro to perform or fulfil any of its covenants under this Agreement;
- (b) any breach or inaccuracy of any representation or warranty given by BC Hydro in or pursuant to this Agreement; and
- (c) any failure of BC Hydro to pay, discharge or perform any of the Assumed Liabilities.

**9.3 Limitation of Liabilities.**

- (a) *No Consequential Damages* – Notwithstanding any other provision of this Agreement, in no event whatsoever will either Party be liable to the other Party for indirect, consequential, exemplary, incidental, special, indirect or other similar damages including lost profits and lost business revenue.
- (b) *H37P's and RCDC's Basket* – Subject to Section 9.3(c) and 9.3(d), and except with respect to any breach by H37P in respect of its obligation to pay, discharge or perform the Excluded Liabilities, H37P and RCDC will have no liability (for indemnification or otherwise) with respect to the matters described in Section 9.1, until the total of all Liabilities incurred by BC Hydro with respect to such matters exceeds \$100,000; provided that, once the total of all such Liabilities with respect to such matters exceeds such amount, H37P and RCDC shall be liable for the full amount of such Liabilities without reduction or deduction.

- (c) *Exclusions from H37P's and RCDC's Basket* – Notwithstanding any provision in this Agreement to the contrary, any claim made under this Agreement by BC Hydro which is based upon or relates to any intentional misrepresentation or fraud by H37P or RCDC may be made or brought by BC Hydro at any time and is not subject to any limitations set forth in this Section 9.3.
- (d) *H37P's and RCDC's Liability Cap* – Except with respect to any breach by H37P in respect of its obligation to pay, discharge or perform the Excluded Liabilities, the maximum liability of H37P and RCDC, collectively, with respect to the matters described in Section 9.1 will be limited to \$85M.
- (e) *BC Hydro's Basket* – Except with respect to any breach by BC Hydro in respect of its obligation to pay, discharge or perform the Assumed Liabilities, or to deliver the Purchase Price and any Transfer Taxes required to be collected and remitted by H37P in immediately available funds pursuant to and in accordance with this Agreement to H37P on Closing, BC Hydro will have no liability (for indemnification or otherwise) with respect to the matters described in Section 9.2 until the total of all Liabilities incurred by H37P and RCDC with respect to such matters exceeds \$100,000; provided that, once the total of all such Liabilities with respect to such matters exceeds such amount, BC Hydro shall be liable for the full amount of such Liabilities without reduction or deduction.
- (f) *Exclusions from BC Hydro's Basket* – Notwithstanding any provision in this Agreement to the contrary, any claim made under this Agreement by H37P or RCDC which is based upon or relates to any intentional misrepresentation or fraud by BC Hydro may be made or brought by H37P or RCDC at any time and is not subject to any limitations set forth in this Section 9.3.

## SECTION 10 DISPUTE RESOLUTION

**10.1**     **Dispute.** All disputes arising out of or in connection with this Agreement (a "Dispute") shall be dealt with in accordance with this SECTION 10.

**10.2**     **Meeting To Negotiate Resolution.** A Party may at any time deliver written notice specifying in reasonable detail the nature of a Dispute (a "Dispute Notice") to the other Party, in which case representatives of both Parties with decision making authority shall meet to attempt to negotiate a resolution to the Dispute (a "Negotiation Meeting") within 14 days of delivery of the Dispute Notice.

**10.3**     **Mediation.**

- (a) If a Dispute is not resolved at a Negotiation Meeting, or the Parties fail to have a Negotiation Meeting within the 14 day period provided for in Section 10.2, a Party may deliver written notice (a "**Mediation Notice**") to the other Party requiring the Dispute go to mediation, in which case the Parties shall appoint a mutually acceptable mediator within 14 days of delivery of the Mediation Notice.
- (b) The Parties shall participate in good faith in the mediation and related negotiations for a period of at least 30 days (the "**Mediation Period**").

- (c) The Parties will bear their own mediation costs.

**10.4 Inadmissibility of Negotiations and Discussions.** All negotiations conducted pursuant to Section 10.2 and mediated discussions conducted pursuant Section 10.3 shall be treated as compromise and settlement negotiations between the Parties and shall not be subject to disclosure through discovery or any other process and shall not be admissible as evidence in any proceeding.

**10.5 Arbitration.** If a Dispute is not resolved during the Mediation Period, or the Parties fail to appoint a mediator within the 14 day period provided for in Section 10.3(a), any Party may refer the Dispute for final resolution to arbitration administered by the British Columbia International Commercial Arbitration Centre pursuant to its Rules for Domestic Commercial Arbitration Proceedings. The number of arbitrators shall be three. The place of arbitration shall be Vancouver, British Columbia, Canada. The language used shall be English.

**10.6 Adjudication in Law and Equity.** The arbitrators must adjudicate the dispute, and may grant remedies, in both law and equity; provided that the arbitrators shall not grant remedies that are inconsistent with the provisions of this Agreement.

**10.7 Shared Costs.** Each Party shall bear its own costs of legal representation and presentation of its case in respect of any arbitration. The other costs of the arbitration, including the fees and expenses of the arbitrators and administrative fees and charges, shall be shared equally by the Parties.

## SECTION 11 PROJECT COMMUNICATION

**11.1 Working Group.** Each of the Parties shall designate an individual as its representative, and a second individual as its substitute representative, to a working group (the "Working Group"). Each of the Parties shall advise the other Party in writing of its representative and substitute representative.

**11.2 Working Group Meetings.** Until the Closing, the Working Group shall meet in person or by telephone conference call at least monthly, or as the Parties may otherwise agree. Each Party shall ensure that its Working Group representative or substitute representative attends each such meeting.

**11.3 Working Group Mandate.** The purpose of the Working Group is to establish dialogue among the Parties to facilitate the development of the 287kV Line and to keep all Parties advised of material events, including: permitting; regulatory applications and approvals; construction scheduling; changes to target and anticipated in service date; and First Nation and stakeholder consultations.

**11.4 Exchange of Information.** Each Party shall make available to the other Party any and all information reasonably requested by that other Party in connection with the matters set out in Section 11.3.

**11.5 Press Releases and Other Public Statements.** Except as required by Applicable Laws, no Party shall issue any press release or make or release any other similar kind of public

statement in connection with this Agreement or the 287kV Line without first providing the other Parties with a copy of such press release or statement at least twenty-four (24) hours in advance.

**11.6**        Restrictions on Disclosure. Notwithstanding anything else contained in this SECTION 11, no Party shall be required to disclose or share with the other Parties any information the disclosure of which would constitute a breach by the disclosing Party of Applicable Laws, including BC Hydro's standards of conduct.

## SECTION 12 GENERAL

**12.1**        Notice. Any communication or notice required or desired to be given pursuant to this Agreement shall be in writing and actually delivered (including by facsimile) to the other Party addressed as follows:

If to BC Hydro:

British Columbia Hydro and Power Authority  
10<sup>th</sup> Floor – 333 Dunsmuir Street  
Vancouver, BC V6B 5R3  
Attention: Vice President, Energy Planning & Economic Development  
Fax Number: 604 623 4540

With a copy to:

British Columbia Hydro and Power Authority  
900 – 4555 Kingsway  
Burnaby, BC V5H 4T8  
Attention: Manager, Load Interconnections  
Fax Number: 604 453 6378

If to H37P:

580 Hornby St  
Suite 200  
Vancouver, BC V6C 3B6  
Attention: President

If to RCDC:

580 Hornby St  
Suite 200  
Vancouver, BC V6C 3B6  
Attention: President

or at such other address as that Party may from time to time designate by notice delivered in accordance with this Section 12.1. Any notice shall be deemed to have been given on the day delivered, if delivered by hand. If faxed, notice will be deemed to have been given and received on the Business Day following the date of successful faxing.

**12.2**            **Enurement.** This Agreement enures to the benefit of and shall be binding upon the Parties and their respective successors and assigns.

**12.3**            **Non-Merger.** The covenants, representations and warranties of the Parties contained in this Agreement will not merge on and will survive the Closing.

**12.4**            **Time of the Essence.** Time is expressly declared to be of the essence of this Agreement.

**12.5**            **Waiver.** Any waiver by a Party must be made in writing and shall be limited to the particular instance and shall not extend to any other instance or matter in this Agreement or in any other way affect the rights or remedies of such Party.

**12.6**            **Further Assurances.** The Parties shall use all reasonable efforts to execute and deliver all such other and additional instruments or documents and to do all such other acts and things as may be necessary to give full effect to this Agreement.

**12.7**            **Assignment.** No Party has any right to transfer or otherwise assign this Agreement or any rights, powers, duties or obligations hereunder to any other Person without the prior written consent of the other Parties, which is not to be unreasonably withheld. Without limiting the generality of the foregoing, H37P shall not transfer or otherwise dispose of any interest in the 287kV Line unless the transferee first enters into a written agreement with BC Hydro, acting reasonably, pursuant to which the transferee assumes H37P's obligations hereunder.

**12.8**            **No Partnership.** The Parties acknowledge and agree that this Agreement does not create a partnership or joint venture relationship between or among them. No Party has any authority or capacity whatsoever to contract for or on behalf of or bind any other Party in respect of any matter related to this Agreement or otherwise.

**12.9**            **Set-Off.** If at any time BC Hydro on the one hand, and H37P or RCDC or both on the other hand, each agrees that each owes the other an amount hereunder, or under any other agreement, then such amounts shall be aggregated and the relevant Party may discharge its obligations to the other Party by set-off and netting, in which case the Party, if any, owing the greater aggregate amount shall pay to the other Party the difference between the amounts owed. Any payment obligations of a Party hereunder that are so set-off and netted against payment obligations of the other Party shall for all purposes be and be deemed to be satisfied and discharged in full.

**12.10**        Counterparts. This Agreement may be executed in one or more counterparts or by facsimile transmission and if so executed such counterparts or facsimile transmissions shall be read and construed together as if they formed one document.

IN WITNESS WHEREOF the Parties have executed this Agreement on the date first above written.

**BRITISH COLUMBIA HYDRO AND  
POWER AUTHORITY**

Per: \_\_\_\_\_  
Authorized Signatory

**HIGHWAY 37 POWER CORP.**

Per: \_\_\_\_\_  
Authorized Signatory

**RED CHRIS DEVELOPMENT COMPANY LTD.**

Per: \_\_\_\_\_  
Authorized Signatory

DRAFT

**SCHEDULE A**  
**CLOSING CERTIFICATE**

**TO: BRITISH COLUMBIA HYDRO AND POWER AUTHORITY**  
**("BC Hydro")**

**WHEREAS** Highway 37 Power Corp., BC Hydro and Red Chris Development Company Limited are parties to a Transmission Development Agreement made February 20, 2013 (the "TDA");

**AND WHEREAS** capitalized terms used but not defined in this Closing Certificate shall have the meaning given to those terms in the TDA;

**AND WHEREAS** pursuant to the TDA H37P has agreed to sell and BC Hydro has agreed to purchase the Purchased Assets;

**AND WHEREAS** it is a condition of BC Hydro's obligation to proceed with the Transaction that H37P deliver this Closing Certificate to BC Hydro on or before the Closing,

NOW THEREFORE IN CONSIDERATION of \$1 paid by each of H37P and BC Hydro to the other and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged by each of H37P and BC Hydro) and the mutual promises contained in the TDA and BC Hydro accepting this Closing Certificate as satisfaction of its condition precedent in that regard and agreeing to proceed with the Closing, H37P hereby represents and warrants to BC Hydro as follows, with the same effect as though they were part of and included in the TDA but with effect as of the Closing Date, and H37P acknowledges that BC Hydro is relying upon such representations and warranties in connection with proceeding with the Closing:

1. **Title.** Except with respect to Purchased Assets which are leased or licensed pursuant to Assumed Contracts, H37P is the owner of and has good and marketable title to all of the Purchased Assets free and clear of all Encumbrances other than Permitted Encumbrances.
2. **Options.** Other than this Agreement, there are no contracts, options, agreements or other arrangements of any sort whatsoever binding upon or which at any time in the future may become binding upon H37P to sell, transfer, assign, pledge, charge, mortgage or in any other way dispose of or encumber, or granting any Person any right or option of purchase or sale with respect to, any of the Purchased Assets, nor have any equity interests, royalties or rights or interests similar to equity interest or royalties been granted by H37P in favour of any Person with respect to any of the Purchased Assets.
3. **Sufficiency.** The Purchased Assets comprise all of the assets necessary to own and operate the 287kV Line in compliance with Applicable Laws and the Functional Requirements.

4. **Standards and Specifications.** The 287kV Line and the Access Roads were engineered, designed, constructed, developed and commissioned in compliance with the Functional Requirements.
5. **True Copies.** H37P has provided to BC Hydro true and complete copies of all Assumed Contracts, Permits and Plans and Specifications, and H37P has not amended, modified or consented to the amendment, modification or termination of any of such Assumed Contracts, Permits or Plans and Specifications, or H37P's rights thereunder.
6. **Valid and Binding.** Each Assigned Contract is valid and binding and is in full force and effect and, subject to obtaining the Consents, is freely assignable without penalty or other adverse consequences to BC Hydro.
7. **No Breach of Default.** To H37P's Knowledge, no other party to any Assumed Contract is in breach thereof or default thereunder and H37P has not received any notice of termination, cancellation, breach or default under any Assumed Contract.
8. **Permits.** All of the Permits are in good standing, there are no material breaches thereunder, and H37P has not allowed any of the Permits to lapse or terminate or failed to renew any of the Permits in accordance with their terms.
9. **Consents.** Other than the Consents, there is no requirement to make any filing with, give any notice to or obtain any approval, authorization, certificate, consent, permit, registration, franchise, right, privilege or exemption and the like, or any waiver of any Governmental Authority or other Person in order to assign or transfer to BC Hydro all or any of the Purchased Assets, without default thereunder, or to otherwise complete the Transaction in accordance with Applicable Law.
10. **Compliance with Laws.** H37P has complied in all material respects with all Applicable Laws in respect of the Purchased Assets, including all Environmental Laws and all Permits and, to H37P's Knowledge, there are no facts which could give rise to any material non-compliance therewith.
11. **Environmental Compliance.** H37P has not used any of the Purchased Assets or lands on which they are situate, or permitted them to be used, to generate, manufacture, refine, treat, transport, store, handle, dispose, transfer, produce or process Environmental Contaminants except in compliance in all material respects with all Environmental Laws. To H37P's Knowledge, none of the Real Properties or the lands on which the Purchased Assets are situate have been used for or been designated as a waste disposal site.
12. **Environmental Contaminants.** H37P has not caused or permitted the Release of any Environmental Contaminants at, on or under the Real Properties or the lands on which the Purchased Assets are situate, or the Release of any Environmental Contaminants off-site of the Real Properties or the lands on which the Purchased Assets are situate, except in compliance in all material respects with Environmental Laws. To H37P's Knowledge there are no Environmental Contaminants present at, on or under the Real Properties or the lands on which the Purchased Assets are situate, including in the soil or groundwater, or migrating to or from the



lands on which the Purchased Assets are situate, in concentrations that exceed applicable standards under Environmental Laws or which could give rise to any Claim.

13. **Not a Non-Resident.** H37P is not a non-resident of Canada within the meaning of section 116 of the *Income Tax Act* (Canada).

14. **No Defects.** To H37P's Knowledge, all improvements (including all plant, buildings, structures, erections, appurtenances and fixtures) constructed by or on behalf of H37P that are situate on or form part of the Real Properties or that form part of the Purchased Assets were completed in a good and competent manner and in accordance with Applicable Laws and the requirements of all applicable Governmental Entities, and all such improvements are now free, and will during the same periods as provided for in Section 2.8 remain free, from all defects arising from faulty or negligent design, construction, manufacturing, installation or workmanship, including any remedial work performed thereon.

IN WITNESS WHEREOF Highway 37 Power Corp. has executed this Agreement on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**HIGHWAY 37 POWER CORP.**


Per: \_\_\_\_\_  
Authorized Signatory

Per: \_\_\_\_\_  
Authorized Signatory

**SCHEDULE B**  
**RED CHRIS MINE ESA**

DRAFT

**SCHEDULE C****FORM OF DECLARATION OF COMPATIBILITY**

|   |                             |                          |
|---|-----------------------------|--------------------------|
| <b>BC hydro</b>    |                             |                          |
|   |                             |                          |
|   | <b>Circuit Designation:</b> |                          |
|   |                             |                          |
| 1. Submitted the Professional Engineer's declaration(s) that the Customer System has been designed, constructed, and tested to a state suitable for operation in accordance with Good Utility Practice.   | <input type="checkbox"/>    | <input type="checkbox"/> |
| 1. Confirmation of correct phase rotation where applicable.   | <input type="checkbox"/>    | <input type="checkbox"/> |
| 2. Confirmed the coordination of the protective relay settings: <ul style="list-style-type: none"> <li>• Line Protection.</li> </ul>  | <input type="checkbox"/>    | <input type="checkbox"/> |
| 3. Reviewed the 287kV Line to confirm compliance with BC Hydro's technical requirements for operation.  | <input type="checkbox"/>    | <input type="checkbox"/> |
| 4. Approved the Operating Order by BC Hydro and RCDC. RCDC and Control Centre have copies.  | <input type="checkbox"/>    | <input type="checkbox"/> |
| 5. Received a copy of the Electrical Inspection Approval.   | <input type="checkbox"/>    | <input type="checkbox"/> |
| 6. Completed the 287kV Line and confirmed to meet Functional Requirements: <ul style="list-style-type: none"> <li>• Property Rights.</li> <li>• Right of way standard, design and preparation and damage restoration.</li> <li>• Transmission line design and materials</li> <li>• Transmission line construction</li> <li>• Environmental aspects</li> </ul> | <input type="checkbox"/>    | <input type="checkbox"/> |
| 7. Approval by BC Hydro Real Time Operations to allow energization.   | <input type="checkbox"/>    | <input type="checkbox"/> |
| 8. Operating One-Line Diagram   | <input type="checkbox"/>    | <input type="checkbox"/> |

Provide explanation if "No" has been checked for any item above.

*Print Name*

*Print Name*

*Signature*

*Signature*

*Date*

*Date*

Distribution: Project Manager  
 (electronic) Area BCH Field Operations Office  
 Construction Agency  
 BC Hydro Asset Program Manager (Station or Transmission Line)  
 BC Hydro Control Centre  
 Project File  
 BC Hydro Interconnections  
 BC Hydro System Performance & Assessment

SCHEDULE D

PROVISIONAL WHEELING AGREEMENT

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SCHEDULE E

FUNCTIONAL REQUIREMENTS

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SCHEDULE 3.2(b)

PURCHASE PRICE ALLOCATION

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