

16 August 2019

BCUC File 61252

Via E-filing

Mr. Patrick Wruck  
Commission Secretary  
BC Utilities Commission  
Suite 410, 900 Howe Street  
Vancouver, BC V6Z 2N3

Dear Mr. Wruck:

**Re: British Columbia Utilities Commission (BCUC, Commission)  
Creative Energy Vancouver Platforms Inc. (Creative Energy)  
Application for a Certificate of Public Convenience and Necessity (CPCN) to Acquire  
and Operate a Thermal Energy System for Cooling at the Vancouver House  
Development (Application)**

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Creative Energy is pleased to attach its application for a CPCN, pursuant to sections 45 and 46 of the *Utilities Commission Act*, for the acquisition and operation of a district thermal energy system to provide cooling to the Vancouver House Development in the South Downtown neighbourhood of Vancouver.

Creative Energy will deliver 5 paper copies of the Application to your office in the next few business days.

Yours sincerely,



Rob Gorter  
Director, Regulatory Affairs and Customer Relations

Enclosure

**APPLICATION FOR A CPCN TO ACQUIRE  
AND OPERATE A THERMAL ENERGY  
SYSTEM FOR COOLING THE VANCOUVER  
HOUSE DEVELOPMENT**

**August 16, 2019**

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## 1 Introduction

### 1.1 Application and Project Overview

Creative Energy Vancouver Platforms Inc (**Creative Energy**) submits this application to the British Columbia Utilities Commission (**BCUC, Commission**) for a Certificate of Public Convenience and Necessity (**CPCN**), pursuant to sections 45 and 46 of the *Utilities Commission Act* (the **UCA**), for the acquisition and operation of a district thermal energy system to provide cooling (**District Cooling System, or DCS**) to the Vancouver House Development in the South Downtown neighbourhood of Vancouver (the **Vancouver House Development**)(the **Application**). A Draft Order with the requested approval is attached as Appendix 1 to this Application.

Westbank Projects Corp. (the **Developer**), a party affiliated with Creative Energy, is constructing the Vancouver House Development, which consists of four buildings on three parcels of land, with a total floor area of 64,598 meters squared (**m<sup>2</sup>**):

- Buildings 1 and 2 at 1480 Howe Street;
- Building 3 at 1461 Granville; and
- Building 4 at 1462 Granville Street.

Three of the buildings in the Vancouver House Development are commercial use (Buildings 1, 3 and 4), while the fourth is a residential tower (Building 2). The thermal generation and distribution equipment and facilities of the DCS are located within the central plant room of Vancouver House Building 2. The DCS will distribute cooling energy via short runs of underground pipes to the other Vancouver House Development buildings. Initially, the Developer will be the only customer of the DCS. The Developer will transfer Vancouver House Building 2 to a Strata Corporation, at which time the DCS will have two customers: the Developer and the Strata Corporation.

The Developer has been responsible for the design and construction of the works associated with the DCS as part of the construction of the Vancouver House Development. Creative Energy and the Developer entered into a Construction and Purchase Agreement<sup>1</sup> (the **Purchase Agreement**), whereby Creative Energy has agreed to purchase the completed DCS and operate the DCS as a utility to provide thermal energy (cooling) services to the Vancouver House Development. Please refer to Appendix 2 for a copy of the Purchase Agreement.

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<sup>1</sup> The Purchase Agreement is between Howe Street Ventures Ltd. and Howe Street Property Inc., subsidiaries of the Developer and collectively the “Owner”, and Creative Energy.

Creative Energy's obligation to purchase the DCS under the Purchase Agreement is contingent on Creative Energy receiving CPCN approval for the acquisition and operation of the DCS.

The Purchase Agreement caps the purchase price for the DCS at the Developer's actual cost of constructing the DCS but in any case no more than \$2.2 million + 15 percent, for a total of \$2.53 million<sup>2</sup>. The Developer has assumed the risk of any construction costs over and above the purchase price. The Developer's costs of constructing the DCS are in excess of \$2.53 million. Creative Energy's cost savings on the purchase price will be passed on to the customers in the form of lower rates as compared to if Creative Energy were to not purchase and operate the DCS. As an experienced operator of district thermal energy systems, Creative Energy can operate and maintain the DCS more efficiently than the Developer.

The DCS will not connect to any other developments and Creative Energy's purchase and operation of the DCS will not impact rates or service for any Creative Energy customers outside of the Vancouver House Development. Existing Creative Energy customers will not bear any risk as a result of this acquisition.

Once Creative Energy acquires the DCS and the Vancouver House Development reaches occupancy stage, and with Commission CPCN approval, Creative Energy will operate the DCS as a public utility. Creative Energy will execute individual Customer Service Agreements (**CSA**) with the Developer for each building and the Developer will assign the CSA for the residential tower to the Strata Corporation at the prescribed time.

## **1.2 Recommended Regulatory Review of the Application**

On November 7, 2018, Creative Energy sought to register the DCS with the Commission as a Stream A Thermal Energy System (**TES**); however, by Order G-251-18, dated December 21, 2019, the Commission denied Creative Energy's application that the DCS be considered a Stream A TES. Creative Energy submits this Application consistent with the requirements of a Stream B TES, in accordance with Appendix A of Commission Order G-27-15 (the TES Regulatory Framework Guidelines), and in accordance with Appendix A of Commission Order G-20-15 (the CPCN Application Guidelines).

The need for the DCS is clear and the design and construction by the Developer is nearly complete. Creative Energy provides in this Application supporting information on DCS project detail, load requirements, risk assessment and indicative revenue requirements and rates to place the Commission's consideration of Creative Energy's acquisition and operation of the DCS within the context of the CPCN Application Guidelines even though those guidelines may

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<sup>2</sup> Creative Energy has confirmed with the Developer that PST is not applicable to the purchase price, noting that the November 7, 2018 Stream A application for the DCS contemplated that PST would apply.

apply more specifically to prospective projects for Commission approval to construct and operate.

The procedural considerations in the Commission's CPCN Application Guidelines duly reminds applicants that pursuant to section 46(2) of the UCA, the Commission has discretion whether or not to hold any hearing on an application for a CPCN; that it may grant a CPCN without any process or establish an appropriate hearing method to proceed with the review of the application.

Creative Energy submits that no hearing is required to approve this Application given the specific circumstances. Communications between Commission staff and Creative Energy staff could be pursued to support better understanding of the Application, if clarification is required for example. Creative Energy requests that the Commission grant the requested CPCN for the acquisition and operation of the complete DCS by November 1, 2019, given the expected occupancy dates. Creative Energy plans to submit a rates application in September for interim approval of rates in advance of that date if possible, and subject to CPCN approval.

Creative Energy believes that the following considerations support Commission approval of the DCS CPCN without a hearing.

The Commission's key principles and guidelines for regulation of TES are as articulated on page 5 of the TES Guidelines Decision, referencing the Commission's AES Inquiry Report:<sup>3</sup>

Key Principles:

- i) Where regulation is required use the least amount of regulation needed to protect the ratepayer.
- ii) The benefits of regulation should outweigh the costs.

Guidelines:

- The form of regulation should:
  - provide adequate customer protection in a cost-effective manner;
  - consider administrative efficiency;
  - consider the level of expenditure, the number of customers, the sophistication of the parties involved and the track record of the utility in undertaking similar projects; and
  - require the provision of sufficient information to allow the Commission to assess the new business activity, and any rates to be set, against BC's Energy Objectives and the requirements of the *Utilities Commission Act* and the *Clean Energy Act*.

There is currently only one customer that is a highly sophisticated commercial party and the design and construction of the DCS is driven by the competitive requirements of that

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<sup>3</sup> Report on the Inquiry into the Offering of Products and Services in Alternative Energy Solutions and Other New Initiatives (**AES Inquiry Report**), p. 18.

customer. The DCS consists of well-established technology and has low operating and maintenance risks, and Creative Energy is able to acquire the DCS for less than its cost of construction.

Further, Creative Energy does not expect there will be any parties interested in this Application because there is currently only one customer who is also party to the Purchase Agreement. We also note that there were no parties interested in the matter of the Commission's review and approval of Creative Energy's CPCN application for a TES of similar scale and scope for heating in the Vancouver House Development.<sup>4</sup>

Finally, as noted above, the Commission has the discretion to tailor its regulatory oversight so as to use the least amount of regulation needed consistent with the Commission's key principles and guidelines above. Specifically, subsection 46(2) of the UCA provides the Commission with discretion not to hold any hearing on the application:

*46 (2) The commission has a discretion whether or not to hold any hearing on the application.*

In summary, the scale and circumstances of the DCS project allow the Commission to appropriately exercise its discretion to review and approve this Application without a hearing. Any matters that might require clarification could be supported by communication directly between Commission staff and Creative Energy as necessary.

### **1.3 Organization of the Application**

This Application is organized as follows:

**Section 1** – provides an overview of the Application and a proposed regulatory process;

**Section 2** - includes information about Creative Energy, the project team, and the company's technical and financial capacity to undertake the project;

**Section 3** – provides the reasons why the Application is in the public interest and includes specific detail on the DCS project;

**Section 4** – provides estimates of the capital, development, and operations costs of the project as well as indicative revenue requirements and rates;

**Section 5** – provides an assessment of the potential risks regarding the DCS and in respect of Creative Energy's acquisition and operation of the DCS;

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<sup>4</sup> Refer to Commission Order C-1-19.

**Section 6** – summarizes the impact of the DCS in consideration of British Columbia’s Energy Objectives; and

**Section 7** – reviews that public consultation was not directly required in respect of this Application.

## 2 Applicant and Related Parties

### 2.1 About Creative Energy

Creative Energy Vancouver Platforms Inc. is a privately held energy infrastructure business with a focus on district energy system service in urban areas.

The Creative Energy team has extensive experience in the development, design implementation, operation and maintenance of district thermal energy systems, including TES that are regulated public utilities. The Creative Energy team that will support the ownership and ongoing operation and regulation of the DCS is set out in Table 1.

**Table 1: Creative Energy team supporting the Application**

Role	Individual
Application Lead	<p>Krishnan Iyer President &amp; CEO, Creative Energy</p> <ul style="list-style-type: none"> <li>• Krishnan Iyer is an experienced district energy and infrastructure executive with over 20 years of management expertise in leading teams and executing organizational change and growth, including strategy development, structuring, capital sourcing, and governance oversight.</li> </ul>
Project Director	<p>Kieran McConnell Vice President, Projects &amp; Engineering, Creative Energy</p> <ul style="list-style-type: none"> <li>• Kieran has 15 years of engineering experience in District Energy Systems, power generation and industrial water and energy management. Playing a key role in the development of the Southeast False Creek Neighbourhood Energy Utility, he was involved in the feasibility, design, construction, and commissioning of this utility. Kieran has a Bachelor of Engineering from McGill University.</li> </ul>

<b>Role</b>	<b>Individual</b>
Project Manager	<p>Amin Hassanshahi Senior Manager, Projects &amp; Construction</p> <ul style="list-style-type: none"> <li>Amin joined Creative Energy in 2008 and manages planning, design, construction, commissioning, inspection and repair of Energy Centers, Distribution Piping Systems, underground structures, and Energy Transfer Stations. Amin oversees and directs the implementation of District Energy projects to ensure timely and cost-effective connection of buildings to thermal energy systems. He is a graduate of BCIT Engineering.</li> </ul>
Regulatory Affairs	<p>Rob Gorter, Director, Regulatory Affairs &amp; Customer Relations, Creative Energy</p> <ul style="list-style-type: none"> <li>Rob is an economist and energy utility professional with considerable regulatory affairs and stakeholder relations experience, including extensive work related to utility revenue requirements and rate design strategy and implementation.</li> </ul>
Financial Controls	<p>Michael Lloyd Controller, Creative Energy</p> <ul style="list-style-type: none"> <li>Michael is a CPA, CA with over 10 years' experience; he began his career working in public practice at a Big 4 accounting firm and has also worked in industry as an Operations Controller for a large construction company.</li> </ul>
Operations Director	<p>Lori Parker Operations Director, Creative Energy</p> <ul style="list-style-type: none"> <li>Lori oversees Plant operations and the Distribution network. Lori's 30 years of varied experience, including as Chief Engineer of a steam plant, has given her the ability to look at the overall operations picture of the team, the customer and Creative Energy. Lori's team will be responsible for day to day operations of the DCS once operational.</li> </ul>
Corporate Development	<p>Jeff Mayhew Manager of Corporate Development, Creative Energy</p> <ul style="list-style-type: none"> <li>Jeff is responsible for financial analysis, project financing, and the structuring of legal agreements for existing and proposed infrastructure assets. His background spans 7 years of experience across private equity and commercial banking. Jeff has a Bachelor of Management in Finance and Economics from UBC and is a CFA Charterholder.</li> </ul>

## 2.2 Technical Capacity to Operate the Project

Creative Energy has the technical capacity to operate the DCS. Creative Energy has over 50 years of experience operating a reliable, efficient and low-cost district energy system in downtown Vancouver, and currently serves over 210 customers and accounts, including condo buildings, hotels, office buildings, social housing, small manufacturers, a major hospital, and other institutions through its North East False Creek steam utility.

### **2.3 Financial Capacity to Acquire and Operate the Project**

Creative Energy's purchase of the DCS is part of the company's board-approved capital expenditure plan for 2019. Consequently, Creative Energy expects to fund its purchase via cash-on-hand upon approval by the BCUC.

### **2.4 About Westbank**

The Westbank group of companies manages a diverse portfolio of businesses, including real estate development, construction, property and asset management, restaurants, hotels and mini-storage facilities. Westbank has over \$25 billion worth of real estate development projects completed or under development, including involvement in the utility sector in British Columbia through Creative Energy Canada and real estate development activities. Westbank, in partnership with TELUS developed a mixed-use commercial and residential development, known as TELUS Garden Development in downtown Vancouver, which includes a regulated heating and cooling system providing thermal energy to an office tower, retail space and residential condo tower. The system captures waste heat from the adjacent TELUS data centre, along with waste heat from on-site office cooling to supply the bulk of heating needs for all buildings on the site. The system is also connected to the Creative Energy system for peaking and backup (in lieu of on-site boilers).

### **2.5 Name, Title, and Address for Creative Energy Contact**

Rob Gorter  
Director, Regulatory Affairs & Customer Relations  
Suite 1, 720 Beatty Street,  
Vancouver, BC V6B 2M1  
Tel: 604.692.2118  
Email: [rob@creative.energy](mailto:rob@creative.energy)

### **3 Application to Acquire and Operate the Vancouver House Development DCS**

#### **3.1 Creative Energy's acquisition and operation of the DCS is in the public interest**

On February 12, 2016, Creative Energy entered into a Construction and Purchase Agreement with Howe Street Ventures Ltd. and Howe Street Property Inc., subsidiaries of the Developer. A copy of the Purchase Agreement is attached as Appendix 2 to this Application. Pursuant to the Purchase Agreement, the Developer will build the DCS as part of the construction of the Vancouver House Development.

Creative Energy will leverage its utility and operations expertise and achieve efficiency for all parties concerned through its acquisition and operation of the DCS. Creative Energy is acquiring the DCS for less than the total cost of construction and will pass on this cost saving to the customer(s) in the form of lower rates.

With Commission approval, Creative Energy will purchase the DCS from the Developer upon substantial completion of construction of the DCS and prior to occupancy of Vancouver House. Creative Energy will assume the entirety of the DCS assets on an unencumbered basis. At that stage, Creative Energy will operate the DCS as a public utility to provide cooling services to the four Vancouver House Development buildings.

Creative Energy's acquisition of the DCS will provide better separation of the ownership of the regulated DCS from the unregulated Vancouver House Development, simplifying the ownership, regulatory, managerial, and administrative aspects of the DCS and facilitating reporting to the Commission, which will in turn increase regulatory efficiency. These benefits will be leveraged further through Creative Energy's operation of the thermal system for heating in the Vancouver House Development, for which Creative Energy was granted a CPCN to construct and operate by Commission Order C-1-19.

The Purchase Agreement includes a price cap on the purchase price that Creative Energy will pay to the Developer for the DCS. The Purchase Agreement caps the purchase price for the DCS at the Developer's actual cost of constructing the DCS, but in any case no more than \$2.2 million + 15 percent, for a total of \$2.53 million. By comparison, the Developer currently forecasts actual construction costs of the DCS in the range of \$2.8 million.

Creative Energy is not required to compensate the Developer for any construction costs above the agreed purchase price. The Developer has assumed the risk of any construction costs over and above the purchase price. Creative Energy retained Kerr Wood Leidel to provide third party review of the design and costs of the DCS. Further, as an end user of the DCS, the Developer has an incentive to manage construction costs and avoid overruns. Creative Energy does not expect to receive any contributions, grants, or other funding for the acquisition and operation of the DCS. However, as noted above, the purchase price for the DCS set out in the Purchase Agreement is below the actual construction cost of the DCS.

A CPCN was not requested or granted in respect of the construction of the DCS. Rather, Creative Energy executed Stream A customer service agreements with the Developer for each building to support its application in 2018 to register the DCS as a Stream A TES. By Order G-251-18 dated December 21, 2018, the Commission denied that application on the basis of alignment to the six Stream A TES Characteristics as defined by the TES Guidelines. Approval of this Application will promote regulatory efficiency and necessarily allow the Commission to provide its oversight of the DCS in accordance with the applicable legislation.

If this Application is not approved by the Commission, the Developer will continue to own and operate the DCS and, as a result of providing service to the residential strata building would be a new public utility under the UCA. The Developer would need to apply for a CPCN for operation of the DCS, potentially reorganize to separate the utility business from the non-utility business at Vancouver House and seek rate recovery based in part on the higher actual costs of construction. The result would be higher customer costs, in particular to the residential strata upon assignment of the customer service agreement. In addition, overall transaction costs and regulatory costs would increase, diminishing regulatory efficiency overall, which would also therefore not support the public interest.

### **3.2 The DCS is needed and there are no practical alternatives**

The Developer's design of the Vancouver House Development drove the need and design for the DCS and there are no practical alternatives. On the Developer's prerogative, the design and construction of the buildings can only accommodate the DCS. The Developer retained Integral Group to design the DCS and has incorporated that design into the overall design of the Vancouver House Development. Integral Group is an experienced and respected designer of residential and commercial developments in North America and is the Mechanical Engineer of Record for Vancouver House.

The Vancouver House Development requires space cooling for occupancy, for both residential and commercial use. Without an operational DCS, occupants of the Vancouver House Development would be without space cooling. The Developer is constructing all four buildings in the Vancouver House Development on similar timelines, and within close proximity to each other, which provides the opportunity for a thermal energy system like the DCS. These developments require cooling for liveability and comfort and the need for the project is clear.

The DCS will serve only the Vancouver House Development, and only for the provision of cooling services. The DCS will not connect to Creative Energy's existing customer core, North East False Creek, or other service areas. The DCS will not connect to the heating TES at the same location and for which CPCN approval has already been granted by the Commission as per Order C-1-19.

The only option otherwise was for each building to have its own individual cooling plant. Although this would eliminate the distribution piping connection between the buildings for the

cooling (which was already being trenched for the heating TES pipes), it would require a significantly larger footprint in each of Buildings 1, 3, and 4 for the additional equipment, including cooling towers that would be required in each building, which the constructed buildings do not have space to accommodate, and additional capital would be needed for pumping systems, controls, and additional cooling plant equipment.

The cost of operating and maintaining four separate systems as opposed to one DCS would be higher overall, both from an operating efficiency perspective, and due to the cost of additional operators.

### 3.3 The DCS has been appropriately designed and located

#### 3.3.1 Description

The main goal of the DCS is to ensure the selected technology and system meets the thermal energy demands of the Vancouver House Development cost-effectively.

The DCS is located within the central plant room at 1480 Howe Street, Vancouver, BC, and will provide cooling services to the entire Vancouver House Development.

The Vancouver House Development will have a total floor space of 64,598 m<sup>2</sup>. Vancouver House Buildings 1, 3 and 4 are commercial mid-rise buildings, while Building 2 is a residential high rise. The total floor space for each of the buildings is set out in Table 2. As construction of the Vancouver House Development is nearing completion, the floor spaces are known.

**Table 2: DCS floor area and completion timing**

<b>Building</b>	<b>Floor Area (m<sup>2</sup>)</b>	<b>Expected Occupancy</b>
Building 1 (1480 Howe Street)	11,875	November 2019
Building 2 (1480 Howe Street)	42,860	November 2019
Building 3 (1461 Granville Street)	4,726	December 2019
Building 4 (1462 Granville Street)	5,137	December 2019
Total	64,598	n/a

The DCS consists of two 350 ton chillers and one 200 ton chiller and also includes feed and distribution pumps, a control system, expansion tanks, electricity input connections, and cooling towers on the roof of Vancouver House Building 1. The DCS will circulate chilled water from the central plant through supply piping to Energy Transfer Stations (ETS) in Vancouver House Buildings 3 and 4, where the cool water exchanges heat with the Buildings' heat exchangers for space cooling. The water will then return to the central plant via return piping.

Construction of the centralized plant in Vancouver House Building 2 is mostly complete, as is construction of most of the supporting infrastructure. Although most of the construction for

the DCS is already complete, the DCS is not operating at this time and is scheduled to be commissioned and operational prior to occupancy of the Vancouver House Development.

### 3.3.2 Technical Information

The Technical Information for the DCS is set out in the table below.

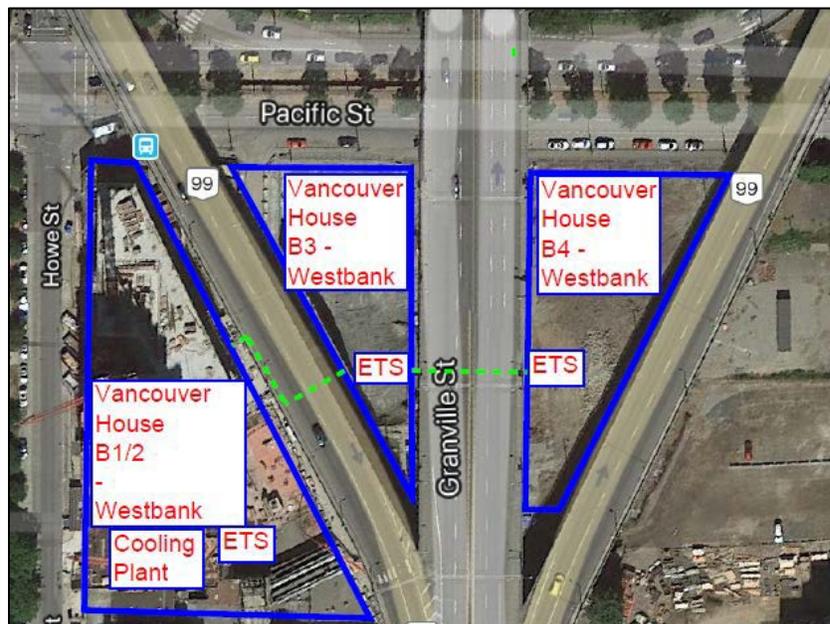
**Table 3: DCS Technical Information**

Category	Capacity
Output capacity for each Chiller (kW)	350 ton: 1231 kW x 2 chillers 200 ton: 703 kW Total: 3,165 kW
Peak supply temperature (°C)	5°C
Max Return temperature (°C)	33.6°C
Max Thermal Efficiency	97.5%
Operating Strategy (e.g. staged implementation)	Staged
Distribution Piping System efficiency	99%

### 3.3.3 Location

Figure 1 shows the location of the Vancouver House Development, as well as the location of the DCS works, including the centralized cooling plant, the energy transfer stations, and the distribution piping network to connect the centralized cooling plant to each Vancouver House building.

**Figure 1: Map of Vancouver House Development and DCS Works**



### 3.3.4 Load Forecast and Capacity Requirements

Creative Energy retained a third-party engineering consultant, Kerr Wood Leidel Consulting Engineers (Kerr Wood), to conduct a peer review of Integral Group's design in comparison to generally accepted specific demand and energy factors for similar types of buildings. The Load Analysis and Energy Demand Forecast, as designed by Integral Group and confirmed by Kerr Wood, is summarized in this section.

Total load requirements at project completion are provided in the tables that follow below. Annual energy and peak heating loads for each building were provided by Integral Group, which used HAP (Hourly Analysis Program) software to calculate cooling loads for each individual building using weather data for the local region provided by ASHRAE<sup>5</sup>. Inputs to the load analysis include:

- building envelope conditions (glazing and wall data provided by the architects);
- floor, wall, window and roof area measurements;
- internal mechanical loads;
- people load (the heat generated from people);
- air filtration rates; and
- temperature set points, based on design development reports and agreements with the Developers for occupied and unoccupied space.

The output of this assessment included hourly load demand information, zone by zone information, system by system load information, and building peak loads.

Table 4 sets out the forecast peak cooling and annual cooling for the Vancouver House Development based on outputs of the HAP analysis.

**Table 4: Peak cooling and annual cooling for the Vancouver House Development**

<b>Building</b>	<b>Floor Area (m<sup>2</sup>)</b>	<b>Peak cooling (kW)</b>	<b>Annual cooling (MWh)</b>
Building 1 (1480 Howe Street)	11,875	322	274
Building 2 (1480 Howe Street)	42,860	1,457	1,300
Building 3 (1461 Granville Street)	4,726	370	237
Building 4 (1462 Granville Street)	5,137	340	199
<b>Total</b>	<b>64,598</b>	<b>2,489</b>	<b>2,010</b>

Table 5 reports the average demand and energy use intensities for each building, which equal the demand and energy values in Table 4 divided by the floor area of each building provided in

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<sup>5</sup> American Society of Heating, Refrigerating and Air-Conditioning Engineers

Table 2. Creative Energy provides these figures as a general check of the load estimates and considers them to be representative for commercial and residential buildings in Vancouver.

**Table 5: Average Demand and Energy Use Intensity for Individual Buildings**

Development	Peak W/ m <sup>2</sup>	Annual kWh / m <sup>2</sup>
Building 1 (1480 Howe Street)	27	23
Building 2 (1480 Howe Street)	33	30
Building 3 (1461 Granville Street)	78	50
Building 4 (1462 Granville Street)	66	39

The individual building peak load requirements above do not account for distribution losses associated with system efficiency in the transmission of energy from the cooling plant through the pipe network. The thermal efficiency of the distribution network is approximately 98% percent.

An estimate of diversified peak demand on the central plant must also account for diversity between the individual buildings. The diversity factor is different for every system, as it is impacted by the nature and timing of tenant occupancy, HVAC control systems configuration, solar shading, air leakage and a number of other minor factors. An estimated diversity factor of 95% has been applied as a conservative estimate.

Please refer to Table 6 for an accounting of the impact of these factors on the generation requirements of the DCS.

**Table 6: DCS Load and Generation requirements**

Load and Generation Requirements	Peak demand (kW)	Annual Energy (MWh)
	Total	Total
1. Total load requirement	2,489	2,010
2. Production requirement (97% system efficiency)	2,566	2015
3. Net Production requirement (95% building diversity factor)	2,438	n/a

Table 6 accounts for system efficiency and peak load diversity as follows:

- Row 2: Production requirements reflect the additional generation required assuming overall system efficiency of 97 percent (general plant losses of 1 percent (efficiency of 99 percent) multiplied by distribution network efficiency of 98 percent).

- Row 3: Net production requirements reflect a conservative building diversity factor of 0.95. The demand diversity of buildings can generally range from 0.7 – 0.95 depending on the mix of commercial and residential loads. The closer a diversity number is to 1, the lower the diversity between uses and therefore the greater the required generation to meet load. Given that the load of the DCS is mainly residential, Creative Energy has used a higher and therefore more conservative diversity factor of 0.95 for planning purposes, yielding a peak demand production requirement of 2,438kW.

As described above in Section 3.3, the central plant of the DCS has a total peak capacity of 3,165 kW, which is reflective of the necessary, and lumpy, capacity investments required to meet net production requirements. The spare capacity will allow Creative Energy to meet 80 percent of peak demand if the largest unit was down.

### **3.4 Appropriate Customer Service Agreements will be executed**

Creative Energy will be executing CSAs with each of the four buildings of the Vancouver House Development. The CSAs will be substantially the same as the approved Customer Service Agreement for NEFC. Creative Energy attaches the Customer Service Agreement template at Appendix 3.

The NEFC service agreement was subject to several rounds of Commission-led review, as well as public consultation with the Urban Development Institute and other stakeholder groups, prior to approval. Creative Energy is not requesting approval of a CSA as part of this Application. Creative Energy would submit executed Customer Service Agreements in due course as required.

Buildings 1, 3, and 4 will be retained by Westbank. Building 2 is a residential tower that Westbank will transfer to a Strata Corporation following occupancy of the building. Creative Energy's Customer Service Agreement with Westbank for Building 2 will be assigned from Westbank to the Strata Corporation once the Strata Corporation is formed. Creative Energy will bill Westbank and the Strata Corporation solely and directly, and those entities will determine how their costs for cooling energy will be passed through to tenants and strata unit owners.

### **3.5 No expected adverse effects of the DCS on the physical, biological and social environment**

The Developer incorporated the DCS design into the overall design of the Vancouver House Development. As a result, the DCS is not expected to have any adverse effects on the physical, biological and social environment.

The construction of the development overall is being managed to limit disruptions to the surrounding residential and commercial developments. Traffic Management plans have been

implemented to minimize traffic delays, and the site is protected by fencing and security monitoring. The development complies with City of Vancouver Noise Bylaw requirements.

The DCS centralizes the cooling equipment, which would otherwise have been located on each of the individual buildings of Vancouver House. By doing this the project removes the need for cooling towers on the roofs of Vancouver House Buildings 2, 3 and 4, which would have otherwise been sources of noise and water vapour emissions.

### **3.6 Required permitting will be in place to operate the DCS**

Creative Energy will engage Technical Safety BC in the normal course to receive an operating permit prior to operating the central plant. There are no other federal, provincial, or municipal approvals, permits, licenses, or authorizations, including material conditions required to operate the central plant.

## **4 Cost of Service, Indicative Revenue Requirements and Rates**

Creative Energy is not seeking approval of revenue requirements and customer rates for the DCS at this time. The following costs, revenue requirements and rates are based on current estimates and are reasonably indicative of the expected cost of service of the DCS and the required rates for cost recovery over time.

### **4.1 Capital and Development Costs**

The Developer's estimated costs to construct the DCS, reflecting recent updates, are approximately \$2.77 million. This compares to Creative Energy's cost to acquire the DCS of \$2.53 million, which is the applicable capital cost factored into the determination of overall revenue requirements and customer rates as set out in Table 7 below. Table 7 also includes Creative Energy costs for the peer review of system design as well as support to application and commissioning of the system, which would similarly be capitalized to determine overall revenue requirements and rates. These costs would reasonably be expected to incur also by the Developer and factored into customer rates if Creative Energy were to not acquire the DCS.

**Table 7: Estimated capital and development costs**

<b>Component</b>	<b>\$</b>
1. Creative Energy Purchase Price (Note 1)	2,530,000
2. Creative Energy design review, application and commissioning services	46,532
<b>Total</b>	<b>2,576,532</b>

Note 1: comparative cost of Developer Equipment, Materials and Construction equals \$2,773,683.

## 4.2 Fuel Costs

The DCS will utilize only electricity to run the central plant equipment and will be served under BC Hydro Medium General Service rates.

**Table 8: Estimated annual electricity costs at project completion**

Component	\$
Electricity	58,488

## 4.3 Non-Fuel Operating Costs

Non-fuel operating costs include maintenance costs, operator costs, insurance and administrative costs; and municipal access fees (in lieu of property taxes).

- DCS administration costs are estimated as \$25,000 per annum, escalated at inflation, which includes the costs of billing and customer management.
- The DCS requires a part-time operator, estimated at 20 percent of a full-time equivalent position.
- Maintenance costs are estimated at 1.14 percent of plant in service costs for all assets, escalated at inflation. This assumption is based on Creative Energy's experience that a budget of 1 percent of actual construction costs per year is sufficient and appropriate for both routine and sustained maintenance throughout the service term, including emergency repair if required and if not covered under warranty.
- Owner's insurance costs are estimated as 0.123 percent of net book value, escalated at inflation and general liability insurance is estimated at 0.25 percent of revenues.
- The DCS will pay Municipal Access Fees to the City at a rate of 1.25 percent of revenue as per the Municipal Access Agreement.
- The DCS will be required to be a lease for the space it occupies on the subject site. The plant will occupy a space of 1,600 square feet and will pay a rate of \$20 per square feet. The results plant lease cost is \$32,000 per annum, and will escalate at inflation.

Table 9 reports an estimate of annual non-fuel operating costs in 2020, when the DCS is complete.

**Table 9: Estimated annual non-fuel operating costs at project completion - 2020**

Component	\$
Maintenance	29,897
Operator	20,400
Insurance	4,200

Administration	25,500
Lease Payments	32,640
Municipal Access Fee	5,407
<b>Total</b>	<b>118,044</b>

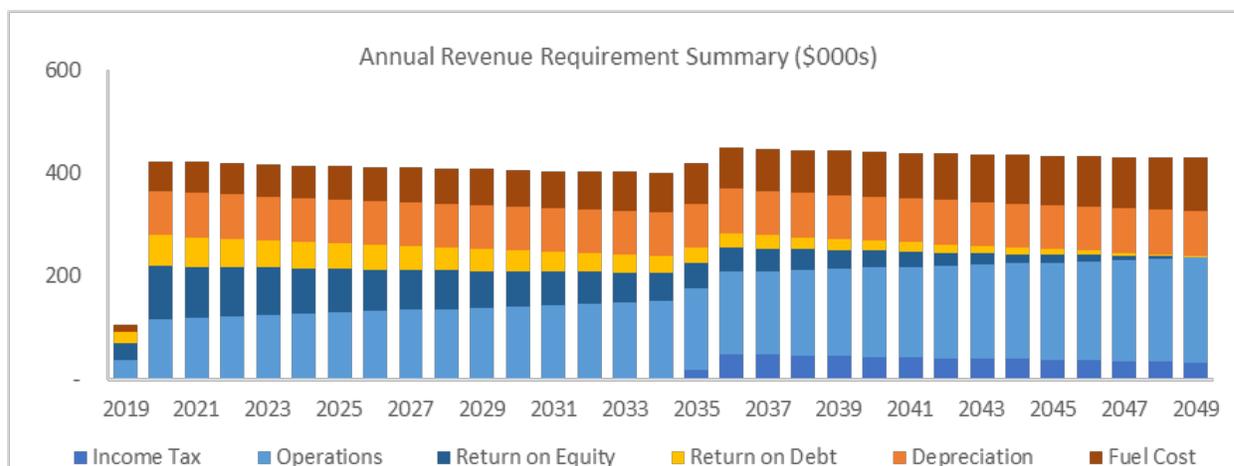
#### 4.4 Indicative Revenue Requirements

Table 10 sets out the annual revenue requirement for the DCS at project completion, modelled based on the estimate of costs set out above. Figure 2 illustrates the annual revenue requirements over the contract term.

**Table 10: Indicative annual revenue requirement at project completion – 2020**

Component	\$	Note
Fuel – Electricity Cost	58,488	BC Hydro Medium General Service Rate 1500 (Effective April 1, 2019) increasing at annual inflation of 2.0%
Maintenance	29,897	1.14% of capital costs with inflation of 2.0% annually
Operator Cost	20,400	20.0% of an FTE at \$100,000 base salary with inflation of 2.0% annually
Insurance	4,200	Owner's insurance of 0.123% of net book value and general liability insurance of 0.25% of revenues with inflation of 2.0% annually
Municipal Access Fee	5,407	1.25% of revenues with inflation of 2.0% annually
Lease Payments	32,640	Plant size of 1,600 square feet at a rate of \$20 per square feet with inflation of 2.0% annually
Administration	25,500	Administrative fees of \$25,000 annually with inflation of 2.0% annually
Depreciation	85,926	Straight line depreciation of all assets in line with customer contract of 30 years
Income Taxes	0	Blended corporate tax rate of 27.0% and CCA deduction rate of 8.0% annually
Interest	59,289	As per deemed corporate structure: debt/rate base of 57.5% and blended interest rate of 4.5%
Return on Equity	102,344	As per deemed corporate structure: equity/rate base of 42.5% and return of equity of 9.5%
<b>Total Revenue Requirement 2020</b>	<b>424,092</b>	

**Figure 2: Indicative annual revenue requirements**



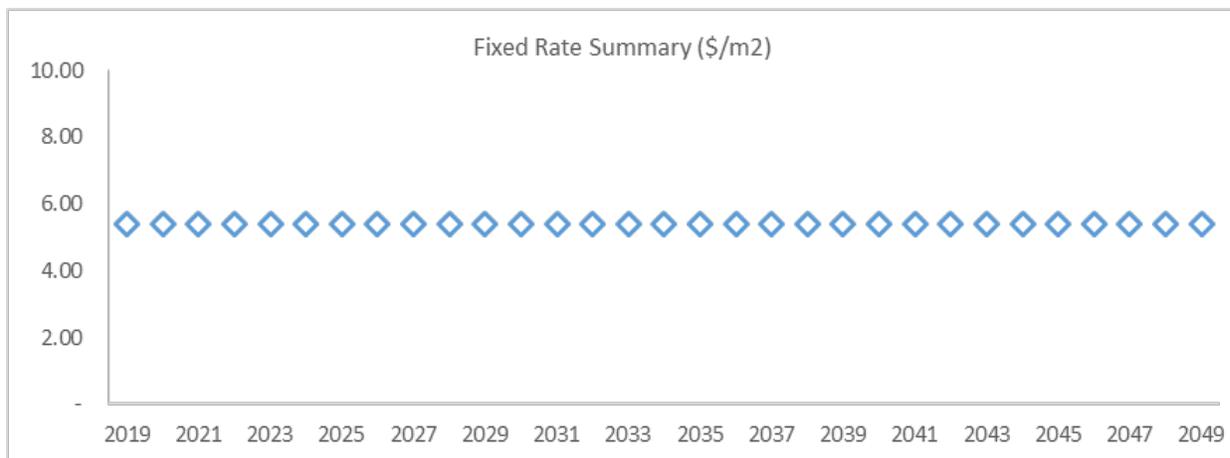
#### 4.5 Indicative Rates

Creative Energy plans to implement a two-part rate structure consisting of a fixed and a variable charge. The variable charge would recover fuel costs and would therefore be adjusted annually, or as needed, to flow-through actual energy costs related to the cost of electricity. The fixed charge would recover the remainder of the annual revenue requirement and would be a charge per square meter of connected floor area, consistent with other thermal energy systems. Each customer would pay the same rate.

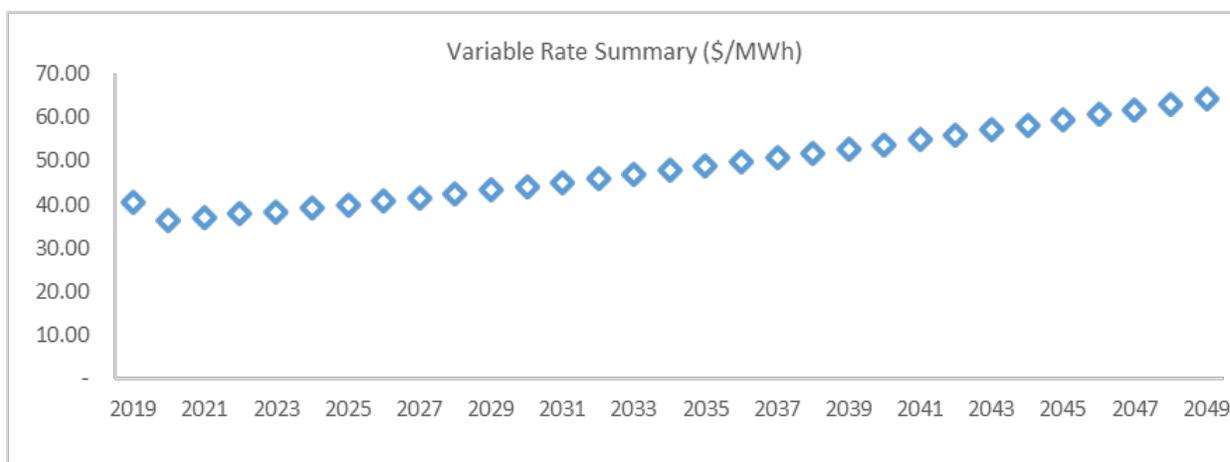
Figure 3 illustrates an indicative fixed charge assuming a levelized rate structure, a structure that would support stable, predictable and competitive rates. Creative Energy estimates that under a levelized fixed charge the revenue to cost ratio would be approximately 95 percent in the initial years of the term of customer service and approximately 120 percent at the end of the 30-year term, which would therefore require a revenue deficiency deferral balance to be carried forward for recovery over the initial years of the contract term. Figure 4 illustrates the indicative variable charge over the 30-year contract term.

The indicative fixed and variable charges illustrated in Figures 3 and 4 are in the same range as the Stream A rates that Creative Energy has contracted for with customers for cooling services at its Kensington Gardens TES.

**Figure 3: Indicative levelized fixed rate**



**Figure 4: Indicative variable rates**



## 5 Risk Assessment

### 5.1 Construction Cost

There is no construction cost risk associated with Creative Energy's acquisition of the DCS.

The Purchase Agreement sets a fixed price for the purchase of the DCS and the Developer accepted the risk that the actual construction cost of the DCS may exceed the purchase price set out in the Purchase Agreement. Therefore, although the actual cost of the construction of the DCS has exceeded the maximum price set out in the Purchase Agreement, this will not affect Creative Energy's purchase price and will not be passed on to customers.

Furthermore, the works associated with the DCS are nearly complete, and construction costs are known.

## **5.2 Operations**

The operations and reliability risk of the DCS is low.

Creative Energy has extensive experience managing thermal energy systems. Creative Energy's experience in operating thermal energy systems of this nature, along with the reliable technology being implemented will result in minimal to no risk in operating and maintaining the DCS outside of normal practice. In addition, the proposed system is entirely self-contained within the development, and therefore poses no risk from additional operational complexity that may arise from an extension of the system.

Furthermore, Creative Energy has previously purchased and operated a DCS from the developer of the Kensington Gardens project, which was approved by the BCUC as a Steam A application. While Creative Energy has primarily operated thermal energy systems that supply heating energy in the past, the company also possesses expertise in cooling systems as well, operating the DCS at of Kensington Gardens. Thus, Creative Energy has a good understanding of the issues associated with operating a DCS that it has not designed and has various operating procedures in place to ensure a reliable delivery of service.

## **5.3 Load**

There is very little load risk associated with the DCS. The entirety of DCS load is comprised of two customers: Westbank and the Strata Corporation. The majority of load will be in place when Creative Energy purchases the DCS, as Vancouver House Buildings 1 and 2 will be complete. The remainder of the load, Vancouver House Buildings 3 and 4, will come online shortly after and Creative Energy will only acquire the DCS once the cooling plant is proven to serve all 4 buildings as designed.

The design of the DCS was properly sized to the load requirements, with recognition of the lumpy nature of the investment in the central plant chillers. The DCS peak capacity of 3,165kW exceeds the estimated new production requirement (the diversified peak cooling requirement) of 2,438kW, ensuring that the DCS can meet the expected load requirements.

## **5.4 Public Acceptance**

The risk of public concern with the DCS is low. The DCS is a small-scale system serving the four buildings of the Vancouver House Development. The works are in place and are primarily contained in the buildings or in the underground road crossings.

## **5.5 Cost Recovery and Financial Risk**

The risk of under-recovered costs and/or stranded assets is low. A Purchase Agreement is in place for a DCS system that is near commissioning and at a price that is less than the total cost

of construction. Customer Rates will be set to allow for full cost recovery over a 30-year term for the customer service agreements.

The DCS will not connect to any other developments and Creative Energy’s purchase and operation of the DCS will not impact rates or service for any Creative Energy customers outside of the Vancouver House Development. Existing Creative Energy customers will not bear any risk as a result of this acquisition.

## 6 Provincial Government Energy Objectives and Policy Considerations

The DCS aligns with a number of provincial government objectives under the *Clean Energy Act* as summarized in Table 11 below.

**Table 11: DCS support for British Columbia’s Energy Objectives**

Energy Objectives (Section 2 of <i>Clean Energy Act</i> )	Contribution of DCS Project
(a) to achieve electricity self-sufficiency	<ul style="list-style-type: none"> <li>• N/a</li> </ul>
(b) to take demand-side measures and to conserve energy, including the objective of the authority reducing its expected increase in demand for electricity by the year 2020 by at least 66%	<ul style="list-style-type: none"> <li>• N/a</li> </ul>
(c) to generate at least 93% of the electricity in British Columbia from clean or renewable resources and to build the infrastructure necessary to transmit that electricity	<ul style="list-style-type: none"> <li>• N/a</li> </ul>
(d) to use and foster the development in British Columbia of innovative technologies that support energy conservation and efficiency and the use of clean or renewable resources	<ul style="list-style-type: none"> <li>• This project will support one or more innovative low carbon energy sources.</li> </ul>
(e) to ensure the authority’s ratepayers receive the benefits of the heritage assets and to ensure the benefits of the heritage contract under the <i>BC Hydro Public Power Legacy and Heritage Contract Act</i> continue to accrue to the authority’s ratepayers	<ul style="list-style-type: none"> <li>• N/a</li> </ul>
(f) to ensure the authority’s rates remain among the most competitive of rates charged by public utilities in North America	<ul style="list-style-type: none"> <li>• N/a</li> </ul>
(g) to reduce BC greenhouse gas emissions	<ul style="list-style-type: none"> <li>• The project will reduce GHG emissions upwards of 4,000 tonnes per year at full build-out relative to business-as-usual.</li> </ul>
(h) to encourage the switching from one kind of energy source or use to another that decreases greenhouse gas emissions in British Columbia	<ul style="list-style-type: none"> <li>• N/a</li> </ul>
(i) to encourage communities to reduce greenhouse gas emissions and use energy efficiently	<ul style="list-style-type: none"> <li>• District energy systems promote energy efficiency.</li> <li>• The DCS uses electricity only</li> </ul>

(j) to reduce waste by encouraging the use of waste heat, biogas and biomass	<ul style="list-style-type: none"> <li>• N/a</li> </ul>
(k) to encourage economic development and the creation and retention of jobs	<ul style="list-style-type: none"> <li>• Development of the DCS sustains employment for local contractors, consultants, and developers. The continued operation of the DCS will support jobs at Creative Energy, a BC energy firm</li> </ul>
(l) to foster the development of first nation and rural communities through the use and development of clean or renewable resources	<ul style="list-style-type: none"> <li>• N/a</li> </ul>
(m) to maximize the value, including the incremental value of the resources being clean or renewable resources, of British Columbia's generation and transmission assets for the benefit of British Columbia	<ul style="list-style-type: none"> <li>• N/a</li> </ul>
(n) to be a net exporter of electricity from clean or renewable resources with the intention of benefiting all British Columbians and reducing greenhouse gas emissions in regions in which British Columbia trades electricity while protecting the interests of persons who receive or may receive service in British Columbia	<ul style="list-style-type: none"> <li>• N/a</li> </ul>
(o) to achieve British Columbia's energy objectives without the use of nuclear power	<ul style="list-style-type: none"> <li>• The project does not utilize nuclear power.</li> </ul>
(p) to ensure the commission, under the <i>Utilities Commission Act</i> , continues to regulate the authority with respect to domestic rates but not with respect to expenditures for export, except as provided by this Act.	<ul style="list-style-type: none"> <li>• N/a</li> </ul>

## 7 Consultation

### 7.1 First Nations Consultation

Development of the DCS did not impose a duty to consult First Nations. All DCS infrastructure is installed on titled land, with the exception of two small crossings of City of Vancouver streets.

### 7.2 Public Consultation

Creative Energy did not consult with the public in regards to its planned purchase and operation of the DCS. The DCS is a small-scale system meant to serve one customer, and eventually two customers. It will have no direct impact on the public beyond those served by the DCS, and therefore no wider consultation process was necessary.

The design of the DCS was directed by the Developer and there were no alternatives about which to consult with the public. The DCS will not connect to any other developments and

Creative Energy's purchase and operation of the DCS will not impact rates or service for any Creative Energy customers outside of the Vancouver House Development.

The Project will only directly impact the occupants of the Vancouver House Development. Westbank, as the initial sole customer of the DCS, is fully aware of the DCS and does not require further information. All potential purchasers of units in the residential tower (Vancouver House Building 1 and 2) were provided with information about the DCS as part of the disclosure statement for the development. An extract of the relevant portion is copied for reference below. Future members of the Strata Corporation were also informed about the DCS during the marketing of units in the residential tower and thus were able to purchase on an informed basis.

It is intended that the Development will be designed to accommodate a connection to a district energy utility (the "**District Energy Utility**"), for the provision of domestic hot water, heating and cooling to the Development by way of community energy plants and systems operated by a utility provider (the "**Utility Provider**"). The Utility Provider may be Creative Energy Vancouver Platforms Inc., a utility regulated by the British Columbia Utilities Commission and an entity that is related to the Developer. A District Energy Utility Charge may be registered on title to the Lands to secure the obligation of the Strata Corporation to connect to the District Energy Utility in the future. If the Development is connected to the District Energy Utility prior to its completion, the Developer will enter into or cause the Nominee to enter into and cause the Strata Corporation to assume or to cause the Strata Corporation to enter into a service agreement (the "**District Energy Utility Service Agreement**"), which may also include the owners of the Rental Parcel, the Remainder Lands and the Granville Lands and the Utility Provider, for the provision of such utilities to Development, the Rental Component, the Commercial Component, the Building 3 Component and the Building 4 Component by the Utility Provider. Rates and service agreements will be regulated by the British Columbia Utilities Commission.

The Developer's disclosure statements to potential purchasers in Vancouver House Building 2 indicated that the Vancouver House Development was intended to accommodate a connection to a district energy utility for cooling services. The disclosure statement also indicated that the Developer would enter into and cause the Strata Corporation to assume a service agreement for the district energy utility.

## **Appendices**

**Appendix 1 – Draft Order**

**Appendix 2 – Purchase Agreement**

**Appendix 3 – Customer Service Agreement template**

**Appendix 1**

**Draft Order**

**Order Number**



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

and

Creative Energy Vancouver Platforms Inc.  
Application for a Certificate of Public Convenience and Necessity to Acquire and Operate a  
Thermal Energy System for Cooling the Vancouver House Development

**ORDER**

**WHEREAS:**

- A. On August 28, 2014, the British Columbia Utilities Commission (**Commission**) issued Order G-127-14 approving the Thermal Energy Systems (TES) Regulatory Framework Guidelines (**TES Guidelines**);
- B. On November 7, 2018, in accordance with the TES Guidelines, Creative Energy Vancouver Platforms Inc. (**Creative Energy**) filed with the Commission an application to register as a Stream A Thermal Energy System the thermal energy system for cooling at the Vancouver House Development (in the neighbourhood of 1480 Howe Street in Vancouver);
- C. On December 21, 2018, by Order G-251-18, the Commission denied the November 7, 2018 Stream A application;
- D. On August 16, 2019, consistent with the requirements of the TES Guidelines for a Stream B TES, Creative Energy applied to the Commission for a Certificate of Public Convenience and Necessity to acquire and operate a thermal energy system for cooling at the Vancouver House Development (**the CPCN Application**); and
- E. The Commission has reviewed the CPCN Application and is satisfied that it should be approved.

**NOW THEREFORE** the British Columbia Utilities Commission orders as follows:

1. The Commission approves Creative Energy's CPCN Application and pursuant to sections 45 and 46 of the UCA issues a CPCN to Creative Energy to acquire and operate the thermal energy system for cooling at the Vancouver House Development.

**DATED** at the City of Vancouver, in the Province of British Columbia, this \_\_\_\_ day of October, 2019.

**Appendix 2**  
**Purchase Agreement**

## CONSTRUCTION AND PURCHASE AGREEMENT

THIS AGREEMENT is dated for reference February 12, 2016 (the "**Effective Date**").

BETWEEN:

**HOWE STREET VENTURES LTD.** (INC. NO. BC0683469)  
501 – 1067 West Cordova Street, Vancouver, BC V6C 1C7

AND

**HOWE STREET PROPERTY INC.** (INC. NO. BC0792393)  
501 – 1067 West Cordova Street, Vancouver, BC V6C 1C7

(collectively, the "**Owner**")

AND:

**CREATIVE ENERGY VANCOUVER PLATFORMS INC.**  
(Inc. No. BC0410371)  
Suite 1 – 720 Beatty Street, Vancouver, BC V6B 2M1

("Creative Energy")

WHEREAS:

- A. The Owner collectively is the legal and beneficial owner of the Development Lands (as hereinafter defined);
- B. The Owner is constructing a mixed use commercial and residential development on the Development Lands to be known as "Vancouver House", which will employ the Energy System to provide the Development with its energy needs for heating and cooling, and for domestic hot water;
- C. Creative Energy is a public utility as defined in the *Utilities Commission Act* (British Columbia); and
- D. The Parties wish to enter into this Agreement to record the terms and conditions on which the Energy System will be constructed and will connect to the Buildings constructed on the Development Lands and for the provision of Energy Services to the Development Lands.

**NOW THEREFORE THIS AGREEMENT WITNESSES THAT** in consideration of the premises and the covenants, agreements, representations, warranties and payments set out herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each party, the parties covenant and agree as follows:

## ARTICLE 1 - INTERPRETATION

### 1.1 DEFINITIONS

In this Agreement, the following words and phrases have the meanings set out below and all other terms defined within the text of this Agreement will have the meanings so ascribed:

- (a) “**Affiliate**” has the meaning set out in the *Business Corporation Act*, S.B.C. 2002, c.57;
- (b) “**Agreement**” means this agreement, including the preamble hereto and any schedules attached hereto and the terms "this Agreement", "hereof", "herein", "hereunder" and "hereinafter" and similar expressions refer to the Agreement and not to any particular section or other portion thereof and includes any agreement supplementary or ancillary thereto;
- (c) “**BCUC**” means the British Columbia Utilities Commission and includes any replacement authority, commission or board having similar jurisdictional authority;
- (d) “**BCUC Approvals**” has the meaning ascribed to that term in section 3.6(d);
- (e) “**Building**” means any building or buildings constructed on the Development Lands as part of the Development;
- (f) “**Building System**” means the complete heating and ventilating (which may include air conditioning) system and domestic hot water system and storage equipment to be installed and used for distributing and storing thermal energy in a Building, connected to but downstream of and excluding the Demarcation Points located within that Building;
- (g) “**Building System Application**” means an application in the form attached hereto as SCHEDULE E, setting out:
  - (i) the specifications for each Building System, including all design and engineering components and the Owner’s proposed energy loads, temperatures and any connection requirements, and attaching copies of specifications, drawings and other information relating to the design and location of the Building Systems;
  - (ii) the plans and schematics for the base building construction of the Designated Premises, including plans setting out the roughed-in plumbing and electrical services and the ventilation shaft to serve as an exhaust conduit for any component of the Energy System to be constructed within the Designated Premises; and

- (iii) such other information as Creative Energy may reasonably require to confirm that the Building Systems conform to the Design Guide and are compatible with the Energy System;
- (h) **“Building System Commissioning”** means, in relation to a Building System, the process by which the Building System is tested by the Owner (including operational and performance testing) to verify and confirm that it performs in accordance with the final Building System Application approved pursuant to Section 3.2(e);
- (i) **“Business Day”** means any day that is not a Saturday, Sunday, a statutory holiday in British Columbia, Easter Monday or Boxing Day;
- (j) **“Closing Date”** has the meaning ascribed to that term in section 4.3;
- (k) **“Commercial Component”** means the remainder of Lot A after the subdivision of Lot A to form the Residential Strata Component and the Residential Rental Component, and the Buildings located on Lot B and Lot C;
- (l) **“Contaminants”** means, collectively, any contaminant, toxic substance, dangerous goods or pollutant or any other substance which when Released to the natural environment is likely to cause, at some immediate or future time, material harm or degradation to the natural environment or material risk to human health, and includes any radioactive materials, asbestos materials, urea formaldehyde, underground or aboveground tanks, pollutants, contaminants, deleterious substances, dangerous substances or goods, hazardous, corrosive or toxic substances, hazardous waste or waste of any kind, pesticides, defoliant, or any other solid, liquid, gas, vapour, odour, or any other substance, the storage, manufacture, disposal, handling, treatment, generation, use, transport, remediation or Release of which into the Environment is now or hereafter prohibited, controlled or regulated under Environmental Laws;
- (m) **“Cooling Plant”** means one or more cooling plants consisting of water pipes and all ancillary equipment, components, controls, appliances and fittings, energy meters, chillers and cooling towers, all up to the applicable Demarcation Points, for the generation, distribution and exchange of thermal energy for the purposes of providing Cooling Services, substantially as shown on the schematic drawings attached as SCHEDULE C, and all additions thereto and replacements thereof;
- (n) **“Cooling Plant Costs”** means the actual costs and expenses incurred by the Owner in respect of the design, engineering, permitting, construction, installation, commissioning and warranty of any component of the Cooling Plant, as well as certain deemed costs relating to such actual costs and expenses, as more particularly set out and estimated in the Preliminary Budget;
- (o) **“Cooling Plant Design”** means the design for the Cooling Plant, as set out in SCHEDULE C;

- (p) “**Cooling Plant Specifications**” means the requirements and specifications for the Cooling Plant as identified in SCHEDULE C, as amended by the Parties in accordance with section 1.3;
- (q) “**Cooling Services**” means the supply of thermal energy for cooling purposes;
- (r) “**Contribution Agreement**” means the agreement between Creative Energy and the Owner under which Creative Energy agrees to make financial contributions to the Owner in recognition of the benefits associated with Creative Energy’s use of the applicable portions of Lot A;
- (s) “**Creative Energy Engineer**” means the professional engineer or engineers retained by or on behalf of Creative Energy, who designed the Energy System, other than the Cooling Plant, for and on behalf of Creative Energy;
- (t) “**Customer Service Agreements**” means the terms and conditions under which Creative Energy will provide Energy Services to the Residential Strata Component, the Residential Rental Component and the Commercial Component, in the form attached hereto as SCHEDULE B or in the form approved by the BCUC to the extent the provisions of section 5.2(a) are applicable;
- (u) “**Demarcation Points**” means:
  - (i) in respect of the components of the Energy System relating to the provision of Heating Services to the Buildings, the Energy Transfer Stations; and
  - (ii) in respect of the Cooling Plant, the isolation valves located at the heat exchangers more particularly described in drawings M0-301A, M3-301A and M4-301A forming part of the Cooling Plant Design;
- (v) “**Design Guide**” means the Design Guide for Compatibility with District Energy, as administered and issued by Creative Energy, and as amended from time to time, a current version of which is attached to this Agreement as SCHEDULE D;
- (w) “**Designated Premises**” has the meaning ascribed to that term in section 3.5(a);
- (x) “**Development**” means the mixed use residential and commercial development being constructed on the Development Lands by the Owner and known as “Vancouver House”;
- (y) “**Development Lands**” means, collectively, Lot A, Lot B and Lot C;
- (z) “**Dispute**” has the meaning ascribed to that term in section 13.1;
- (aa) “**Distribution System**” means, collectively, the system of pipes, fittings and ancillary components and equipment supplying Heating Services to, *inter alia*, the Demarcation Points;

- (bb) **“Downstream Meters”** means one or more energy consumption meters which may be installed within the Buildings, downstream of the Demarcation Points, to meter the consumption of energy from the Energy System by residential rental units within the Residential Rental Component or certain premises within the Commercial Component;
- (cc) **“Effective Date”** means the date set out on page 1 of this Agreement;
- (dd) **“Energy Services”** means Heating Services and Cooling Services to be provided through the Energy System to the Demarcation Points for the Residential Strata Component and the Commercial Component, and Heating Services to be provided through the Energy System to the Demarcation Points for the Residential Rental Component;
- (ee) **“Energy System”** means the thermal energy system consisting of the Cooling Plant, the On-Site TES, the Local District Energy Utility, the Distribution System (or any combination of the foregoing), the Energy Transfer Stations and related components, equipment and controls used for generating and distributing the Energy Services to the Demarcation Points, and all additions thereto and replacements thereof, but specifically excluding all Building Systems;
- (ff) **“Energy Transfer Station”** means, in respect of each Building, one or more separate exchangers for space heating and domestic hot water (excluding domestic hot water storage tanks), energy metering equipment including temperature sensors and flow meters, control panel and all pipes, fittings and other associated equipment which control the transfer, and measure Energy Services from the Distribution System to the Building System for such Building;
- (gg) **“Environment”** includes the air (including all layers of the atmosphere), land (including soil, sediment deposited on land, fill, lands submerged under water, buildings, and improvements), water (including oceans, lakes, rivers, streams, groundwater, and surface water), and all other external conditions and influences under which humans, animals, and plants live or are developed and "Environmental" will have a corresponding meaning;
- (hh) **“Environmental Attributes”** means:
  - (i) all attributes associated with, or that may be derived from the Energy System installed having decreased environmental impacts relative to the use of conventional heating and cooling and hot water heating systems including any existing or future credit, allowance, certificate, right, benefit or advantage or proprietary or contractual right whether or not tradable;
  - (ii) any existing or future instrument, including without limitation any environmental emission allowances and environmental emission reduction credits, reduction right, allowance, certificate or other unit of any kind whatsoever, whether or not tradable and any other proprietary or contractual right, whether or not tradable, and any resulting from, or

otherwise related to the actual assumed reduction, displacement or offset of emissions associated with, or that may be derived from the Energy System; and

- (iii) all revenues, entitlement, benefits and other proceeds arising from or related to any of the foregoing;
- (ii) “**Environmental Laws**” means any and all statutes, laws, regulations, orders, bylaws, standards, guidelines, protocols, permits, and other lawful requirements of any Governmental Authority having jurisdiction over the Development Lands now or hereafter in force with respect in any way to the Environment, environmental assessment, health, occupational health and safety, protection of any form of plant or animal life, or transportation of dangerous goods, including the principles of common law and equity;
- (jj) “**Force Majeure**” has the meaning ascribed to that term in section 12.2;
- (kk) “**Functional**” means in respect of each of the Building Systems and the Energy System, or any component thereof, such systems are compatible with each other, each system and component thereof is substantially complete in compliance with the Cooling Plant Design, Cooling Plant Specifications and the design and specifications for the Building Systems, as applicable, performance tests and system commissioning have been successfully completed and the Energy System is ready for use or is being used for the purpose intended in relation to a particular Building System;
- (ll) “**Governmental Authority**” means any federal, provincial, regional, municipal, local or other government, governmental or public department, court, tribunal, arbitral body, commission, board, bureau or agency and any subdivision, agent, commission, board or authority thereof;
- (mm) “**Heating Services**” means the supply of thermal energy for heating purposes, which includes domestic hot water;
- (nn) “**Heating Services Infrastructure**” means the On-Site TES, if applicable, the Energy Transfer Stations and those portions of the Distribution System located on the Development Lands, but excluding the Cooling Plant;
- (oo) “**Heating Services Infrastructure Work**” means the design, engineering, installation and verification by Creative Energy of Heating Services Infrastructure on the Development Lands;
- (pp) “**Laws**” means laws, statutes, regulations, bylaws, Permits and orders or legal requirement of or issued by or under the direction or authority of any Governmental Authority having jurisdiction, including Environmental Laws;
- (qq) “**Local District Energy Utility**” means the district energy utility that is intended to be constructed and operated by Creative Energy in the South Downtown area

of Vancouver, British Columbia, that will generate, distribute, meter, and transfer low carbon thermal energy from one or more sources of heat to and from connected buildings through a network of pipes and associated permanent or temporary equipment and infrastructure to provide Heating Services to each building within its service area, including the Buildings;

- (rr) “**Lot A**” means the lands located in Vancouver, British Columbia, and legally described as:

PID: 029-349-362, Lot A Block 122 District Lot 541 Group 1 New Westminster District Plan EPP40230;

- (ss) “**Lot B**” means the lands located in Vancouver, British Columbia, and legally described as:

PID: 029-349-371, Lot B Block 122 District Lot 541 Group 1 New Westminster District Plan EPP40230;

- (tt) “**Lot C**” means the lands located in Vancouver, British Columbia, and legally described as:

PID: 029-349-389, Lot C Block 122 District Lot 541 Group 1 New Westminster District Plan EPP40230;

- (uu) “**LTO**” means the applicable Land Title Office;

- (vv) “**Meter**” means an energy consumption meter owned and operated by Creative Energy and comprising part of the Energy System, excluding any Downstream Meters and any energy consumption meter comprising part of a Building System and owned by the Owner or any Person other than Creative Energy;

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

- (xx) “**On-site TES**” means the energy system which may be constructed by Creative Energy entirely on the Development Lands by which Creative Energy generates and delivers Heating Services to the Buildings and includes any on-site boiler or boilers, the on-site Distribution System and the Energy Transfer Stations;

- (yy) “**Option**” has the meaning ascribed to that term in section 3.5(a);

- (zz) “**Option Date**” has the meaning ascribed to that term in section 3.5(b);

- (aaa) “**Owner’s Engineer**” means the professional engineer or engineers retained by or on behalf of the Owner, who designed the Building Systems and the Cooling Plant for and on behalf of the Owner;

- (bbb) **“Party”** means a signatory to this Agreement and **“Parties”** means all of the signatories;
- (ccc) **“Permits”** means all permits, licences, certificates, approvals, authorizations, consents and the like issued by any Governmental Authority;
- (ddd) **“Person”** means any natural person, firm, corporation (including a strata corporation), general or limited partnership, limited liability company, association, society, joint venture, trust, estate, lawful authority or other legal entity, in each case whether in its own capacity or a representative capacity;
- (eee) **“Preliminary Budget”** means the AACE Class 3 estimate of the anticipated Cooling Plant Costs as attached as SCHEDULE F, which budget is subject to change based on actual Cooling Plant Costs, and including, without duplication, the following costs and expenses:
- (i) the cost for all external labour and materials;
  - (ii) the cost for the purchase and installation of all meters and data recording devices installed in the Development to capture and monitor data from the Cooling Plant;
  - (iii) licence, permit, approval, application and registration fees directly associated with the Cooling Plant and costs associated with obtaining the same;
  - (iv) the cost of flushing and purging of the pipes, pumps and related equipment;
  - (v) all Sales Taxes paid by the Owner in relation to the cost of materials, supplies and equipment used in the construction of the Cooling Plant for which the Owner has not received, or will not receive, input tax credits;
  - (vi) legal and consulting costs and expenses;
  - (vii) general contractor conditions and fees equal to 10% of the construction costs;
  - (viii) architectural oversight fees;
  - (ix) civil engineering fees;
  - (x) development management fees equal to 5% of the construction costs; and
  - (xi) financing costs at a rate of interest equal to 10% per annum compounded monthly and calculated on the amount of actual costs paid by the Owner during the construction of the Cooling Plant, commencing on the date such payments are made and continuing to the Closing Date;

- (fff) **“Purchase Price”** means the price to be paid by Creative Energy to the Owner as described in section 4.1;
- (ggg) **“Purchased Assets”** has the meaning ascribed to that term in section 4.2;
- (hhh) **“Release”** includes any release, spill, leak, pumping, pouring, emission, emptying, discharge, injection, escape, leaching, migration, disposal, or dumping;
- (iii) **“Residential Rental Component”** means the air space parcel to be created by the subdivision of Lot A and in which the residential rental strata units and common facilities relating thereto will be located;
- (jjj) **“Residential Strata Component”** means the air space parcel to be created by the subdivision of Lot A, which air space parcel will be further subdivided by the deposit of a strata plan, and in which the residential strata units and common facilities relating thereto will be located;
- (kkk) **“Sales Taxes”** has the meaning ascribed to that term in section 4.1(b);
- (lll) **“Statutory Rights of Way”** means any agreements or instruments in a form registrable in the LTO, including a right of way and covenant, which grants Creative Energy and its agents, contractors and employees the right of access on, over and under the applicable portions of the Development Lands and within and through the applicable portions of the Buildings for the purpose of:
- (i) constructing, operating, maintaining, repairing, replacing, upgrading and expanding the Energy System and, if necessary, connecting the Building Systems to the Local District Energy Utility, on terms substantially similar to those set out in the form attached as SCHEDULE A but as reasonably modified by Creative Energy, to reflect the Development as constructed and the location of the Energy System; and
  - (ii) if necessary, installing, operating, maintaining, repairing, replacing and upgrading the Downstream Meters, on such terms as are acceptable to Creative Energy, acting reasonably;
- (mmm) **“Target Date”** has the meaning ascribed to that term in section 3.10(a);
- (nnn) **“Warranty Period”** means the period commencing on the Closing Date and continuing until the second anniversary of the Closing Date, unless and to the extent otherwise provided or extended in accordance with the terms of this Agreement; and
- (ooo) **“Zoning and Building Regulations”** means the Zoning and Development Bylaw and the Building Bylaw of the City of Vancouver, as amended and replaced from time to time.

## 1.2 SCHEDULES

The following Schedules, as may be amended from time to time, are incorporated by reference into this Agreement:

SCHEDULE A	Form of Statutory Right of Way Agreement
SCHEDULE B	Customer Service Agreements
SCHEDULE C	Cooling Plant Plans and Specifications
SCHEDULE D	Design Guide
SCHEDULE E	Building System Application
SCHEDULE F	Preliminary Budget
SCHEDULE G	Plan of Designated Premises

## 1.3 AMENDMENTS TO DESIGN AND SPECIFICATIONS

The Parties further acknowledge that during the design and construction phases of the Development, the Building Systems and the Cooling Plant, there may be additions and alterations to the design, scope and specifications for the Cooling Plant, all of which such changes shall be as mutually agreed upon between the Parties. If these agreed upon additions or alterations result in changes to SCHEDULE C, the Parties mutually agree to amend such Schedule by way of a written amendment to this Agreement as soon as is practical. The costs associated with any additions or alterations to the design, scope and specifications for the Cooling Plant shall be borne by the Party requesting such addition or alteration.

## 1.4 INTERPRETATION

Except where the context requires otherwise or except as otherwise expressly provided, in this Agreement:

- (a) all references to a designated Article or section are to the designated Article or section of this Agreement unless otherwise specifically stated;
- (b) 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, body corporate;
- (c) any reference to a corporate entity includes and is also a reference to any corporate entity that is a successor by merger, amalgamation, consolidation or otherwise to such entity;
- (d) the preamble hereto will form a part hereof;
- (e) all sums of money which are referred to in this Agreement are unless expressly stated otherwise expressed in lawful money of Canada;

- (f) all words, phrases and expressions used in this Agreement that have a common usage in the utilities industry and that are not defined herein have the meanings commonly ascribed thereto in the utilities industry;
- (g) SCHEDULE C (Cooling Plant Plans and Specifications) referred to and attached to this Agreement, including all drawings, plans, proposals and other documents referred to therein, as such schedules may be amended from time to time upon the written agreement of the parties, are incorporated by reference and form part of this Agreement; and
- (h) the headings of the Articles and sections set out in this Agreement are for convenience only and will not be considered in any interpretation of this Agreement.

## **ARTICLE 2 - CONDITIONS PRECEDENT**

2.1 The obligation of Creative Energy to carry out the transactions contemplated by this Agreement is conditional upon each of the following conditions being fulfilled within thirty (30) days of the Effective Date, or such later dates as agreed between the parties, which conditions are for the sole benefit of Creative Energy and may be waived by Creative Energy in whole or in part:

- (a) the board of directors of Creative Energy approving the terms and conditions of this Agreement;
- (b) Creative Energy being satisfied, in its sole discretion, with its review of the Cooling Plant Design, Cooling Plant Specifications and all documents, records and contracts relating to the Cooling Plant and the design thereof, including the contracts entered into by the Owner with the Owner's Engineer for the design of the Cooling Plant;
- (c) the Owner having executed and delivered to Creative Energy the Customer Service Agreements in the form attached hereto as SCHEDULE B relating to the provision of the Energy Services to the Buildings; and
- (d) the Owner having executed and delivered to Creative Energy the Statutory Rights of Way registered in priority to all financial encumbrances,

provided that if any of the foregoing conditions are not met to the satisfaction of Creative Energy, acting reasonably, by the specified date (unless Creative Energy has agreed in writing to waive any conditions), Creative Energy reserves the right to terminate this Agreement, in whole or in part, and, except for those obligations and provisions which are specifically stated to survive the expiration or termination of this Agreement, its obligations hereunder will cease, without penalty or liability.

2.2 The obligation of Creative Energy to carry out the transactions contemplated by this Agreement is conditional upon Creative Energy obtaining, by no later than October 1, 2017, the necessary approvals of all Governmental Authorities, including BCUC, to allow for the construction and operation of the Energy System in accordance with this Agreement, on terms and conditions which are satisfactory to Creative Energy acting

reasonably having regard to its *bona fide* business interests. If the foregoing condition is not met to the satisfaction of Creative Energy, acting reasonably, by the specified date (unless Creative Energy has agreed in writing to waive such condition), Creative Energy reserves the right to terminate this Agreement, in whole or in part, and, except for those obligations and provisions which are specifically stated to survive the expiration or termination of this Agreement, its obligations hereunder will cease, without penalty or liability.

### **ARTICLE 3 DESIGN AND CONSTRUCTION**

#### **3.1 DEVELOPMENT**

The Owner will, at its own cost and expense, undertake, diligently proceed with, and complete the design, engineering and construction of the Development, including the Building Systems, in accordance with applicable zoning, applicable Laws (including without limitation the Zoning and Building Regulations), the Design Guide and this Agreement.

#### **3.2 BUILDING SYSTEMS**

To achieve compatibility between each Building System and the Energy System the Owner will:

- (a) review the Design Guide attached hereto at SCHEDULE D;
- (b) at least 180 days prior to the Option Date, submit to Creative Energy for approval a duly completed Building System Application;
- (c) allow Creative Energy a minimum of 30 days to review the Building System Application and comment on the specifications and designs set out therein;
- (d) promptly make such changes to the specifications and design of the Building Systems as set out in the Building System Application as are required by Creative Energy, acting reasonably, to ensure the Building Systems are compatible with the Energy System, and submit a revised Building System Application to Creative Energy incorporating such changes;
- (e) not commence the installation of any Building System until such time as a final Building System Application has been certified by the Owner's Engineer and approved by Creative Energy, which approval shall be evidenced by the execution of the Building System Application by a duly authorized representative of Creative Energy;
- (f) not amend the final Building System Application approved pursuant to Section 3.2(e) above without the prior written consent of Creative Energy, not to be unreasonably withheld, and pay or reimburse (as applicable) Creative Energy for any additional costs reasonably incurred by Creative Energy in connection with any such approved amendments within 30 days of Creative Energy delivering an invoice therefor to the Owner;

- (g) the Owner will construct and install each Building System in accordance with the Design Guide and the final Building System Application approved pursuant to Section 3.2(e); and
- (h) the Owner shall permit Creative Energy, and its employees, contractors engineers, consultants, or advisors, at all reasonable times and upon reasonable notice to enter upon the applicable portions of the Development Lands in order to monitor the construction and installation of the Building Systems.

### 3.3 HEATING SERVICES INFRASTRUCTURE

- (a) Prior to the approval of the final Building System Application pursuant to Section 3.2(e), Creative Energy will provide details to the Owner of the proposed number and location of the Energy Transfer Stations to be constructed within the Development for the approval of the Owner, acting reasonably.
- (b) Creative Energy will:
  - (i) at its own cost and expense, perform the Heating Services Infrastructure Work in a good and workmanlike manner, consistent with industry standards and in compliance with all applicable Laws and this Section 3.3 in order to enable Creative Energy to deliver the Energy Services in accordance with the provisions of the Customer Service Agreements; and
  - (ii) to the extent reasonably possible in light of Creative Energy's obligations to other developers and customers receiving Heating Services, in performing the work set out in subsection (i) above:
    - (A) work in a timely manner compatible with the Owner's construction/installation schedule;
    - (B) keep the Owner reasonably informed regarding the progress of the Heating Services Infrastructure Work; and
    - (C) install the Heating Services Infrastructure in utility corridors and other rights of way.
- (c) To the extent the Parties are able to coordinate their construction and installation activities on the Development Lands, the Owner will pay all costs relating to excavation, bedding material and backfilling of trenches where such items and activities are related to both the construction activities of the Owner and installation of the Heating Services Infrastructure.
- (d) Notwithstanding any degree of annexation or affixation, or rule of law or equity to the contrary, all components of the Heating Services Infrastructure and all additions or extensions will be and remain the property of and vest in Creative Energy.

### 3.4 COOLING PLANT

- (a) The Owner will undertake, diligently proceed with, and complete the design, engineering, construction and installation of the Cooling Plant:
  - (i) in a good and workmanlike manner using qualified workers and in accordance with sound and currently accepted industry standards and codes of practice normally employed at the time and place of performance, in projects of a similar type and nature;
  - (ii) in compliance with all applicable Laws;
  - (iii) in accordance and in compliance with:
    - (A) any specifications provided by Owner's mechanical and technical consultants and approved by the Owner's Engineer; and
    - (B) in compliance with all applicable codes and specifications as certified by the Owner's Engineer,

as are sufficient to provide the Development with a majority of its energy needs for cooling based on summer design conditions and which are incorporated into and form a part of SCHEDULE C;
  - (iv) in a manner so that the designs and operating parameters for the Cooling Plant are compatible with and support the applicable components of the Energy System;
  - (v) in accordance and in compliance with the Cooling Plant Design and the Cooling Plant Specifications, as such may be amended from time to time in accordance with the provisions hereof; and
  - (vi) in accordance with the terms of this Agreement.
- (b) The Owner shall permit Creative Energy, and its employees, contractors engineers, consultants, or advisors, at all reasonable times and upon reasonable notice to enter upon the applicable portions of the Development Lands in order to monitor the construction and installation of the Cooling Plant.
- (c) Subject to section 4.1, the Owner will be responsible for the payment of the Cooling Plant Costs.
- (d) Forthwith following the execution of this Agreement, the Owner and Creative Energy shall execute and deliver the Contribution Agreement.

### 3.5 OPTION FOR DESIGNATED PREMISES

- (a) The Owner hereby grants to Creative Energy an exclusive and irrevocable option to exclusively occupy (the “**Option**”) those premises in the Building located on Lot A as more particularly described and shown on the drawings attached hereto as SCHEDULE G (the “**Designated Premises**”) for the purposes of the construction, operation and maintenance of any component of the Energy System, including the On-site TES, as determined by Creative Energy in its sole and absolute discretion.
- (b) The Option is open for exercise by Creative Energy at any time from the Effective Date until October 1, 2017 (the “**Option Date**”).
- (c) At any time during the period the Option is open for exercise, Creative Energy may exercise the Option over the Designated Premises by giving to the Owner written notice of the exercise of the Option, which notice shall be unequivocal and unconditional.
- (d) If the Option is exercised by Creative Energy in the manner provided herein:
  - (i) Creative Energy will be permitted to have the exclusive use of the Designated Premises in accordance with the terms of the Statutory Right of Way registered against title to Lot A; and
  - (ii) the Owner will construct the Designated Premises in accordance with the final Building System Application approved pursuant to Section 3.2(e).
- (e) Creative Energy shall not provide any Cooling Services to buildings on properties other than the Development Lands without the prior written consent of the Developer, and upon such terms and conditions as are agreeable to the Parties.

### 3.6 PERMITS

- (a) The Owner will obtain and maintain all Permits and other documentation necessary for the design, engineering, construction, installation, operation and maintenance of the Development, the Cooling Plant and the Building Systems, other than the approvals to be obtained by Creative Energy pursuant to subsections 3.6(b), 3.6(c) and 3.6(d) below, in such form as may from time to time be required by any Governmental Authority and will ensure any Permits and other documentation related to the Energy System are duly transferred to Creative Energy, where permitted, forthwith after the Closing Date.
- (b) Creative Energy will obtain and maintain all Permits and other documentation necessary for the design, engineering, construction, installation, operation and maintenance of the Energy System, other than the Cooling Plant.

- (c) Creative Energy will obtain and maintain all Permits and other documentation necessary for the operation and maintenance of the Cooling Plant after the construction thereof.
- (d) Creative Energy will apply, at its own cost, to BCUC, on its own behalf and on behalf of the Owner, for all necessary approvals to allow for the construction, acquisition and operation of the Energy System in accordance with this Agreement (collectively, the “**BCUC Approvals**”).
- (e) The parties agree to take all steps reasonably required to obtain the BCUC Approvals and the Owner agrees to support Creative Energy in its applications to BCUC for the BCUC Approvals.
- (f) Each party shall, upon request, use commercially reasonable efforts to advise and assist the other party in obtaining any Permits.

### 3.7 **RESPONSIBILITY FOR THE ENERGY SYSTEM**

- (a) Creative Energy shall own the Distribution System, the Energy Transfer Stations and the Local District Energy Utility, if any, and shall be responsible for all costs associated therewith, including the design, engineering, construction and installation of any expansions thereof to provide connectivity to adjacent or nearby properties.
- (b) Save and except with respect to the Owner’s obligations expressly set out in this Agreement, from and after the Closing Date Creative Energy shall own the Cooling Plant and shall be responsible for the Cooling Plant and all costs associated therewith, including the design, engineering, construction and installation of any expansions of the Cooling Plant to provide connectivity to adjacent or nearby properties.
- (c) Nothing herein shall prevent Creative Energy from expanding the Energy System or any portion thereof to provide Heating Services to properties other than the Development Lands.
- (d) Despite any assistance, input or support provided by Creative Energy with respect to the Cooling Plant or any portion thereof, Creative Energy shall not, in any way, be responsible for the design, construction or installation of the Building Systems or the Cooling Plant.

### 3.8 **SPECIFICATIONS**

- (a) The Owner and the Owner’s Engineer have designed the Cooling Plant and the Building Systems to meet the Cooling Plant Specifications and the specifications set out in the Design Guide and energy requirements of the Development based on investigations and due diligence conducted by the Owner as to the heating and cooling loads and demands of the Development. Creative Energy shall not have any duty to independently verify any information used or supplied by the Owner

or any liability or responsibility resulting from any such information being incorrect, inaccurate or incomplete, despite Creative Energy reviewing and providing comments on the Cooling Plant Design and Cooling Plant Specifications and the design and specifications for the Building Systems. Without limiting the generality of the foregoing, the Owner is solely responsible for determining the heating and cooling loads of the Buildings.

- (b) Creative Energy shall review the Cooling Plant Design and Cooling Plant Specifications with the Owner's Engineer and will coordinate with the Owner and the Owner's Engineer in respect of:
  - (i) any modifications which to the actual knowledge of Creative Energy can be made to the Cooling Plant Design and Cooling Plant Specifications which may improve the functionality, operation, cost-effectiveness or maintenance of the Cooling Plant;
  - (ii) the correction of any defects in the Cooling Plant Design, Cooling Plant Specifications or construction of the Cooling Plant which to the actual knowledge of Creative Energy may impact the functionality, operation or cost-effectiveness of the Cooling Plant;
  - (iii) any special design or construction standards that Creative Energy has which may facilitate functionality, operation, cost-effectiveness or maintenance of the Cooling Plant; and
  - (iv) any recommended contractors.

### 3.9 USE OF CONTRACTORS

- (a) The Owner may assign primary responsibility for the engineering, design and construction of the Building Systems and the Cooling Plant to contractors selected by the Owner. Subject to section 3.11, the Owner shall be fully responsible for the acts and omission of any contractors or subcontractors retained by the Owner and those directly employed by them to the same extent as the Owner for its own acts and omissions.
- (b) Subject to the terms of the Statutory Right of Way, Creative Energy may assign primary responsibility for the engineering, design and construction of the Energy System, other than the Cooling Plant, to contractors selected by Creative Energy. Creative Energy shall be fully responsible for the negligent acts and omission of any contractors or subcontractors retained by Creative Energy and those directly employed by them to the same extent as Creative Energy's responsibility hereunder for its own acts and omissions.

### 3.10 CERTIFICATION OF FUNCTIONALITY

- (a) The Owner will keep Creative Energy reasonably informed regarding the progress of construction and installation of the Cooling Plant and each Building System. Without

limiting the generality of the foregoing, the Owner will provide at least 180 days' written notice to Creative Energy of the Owner's scheduled target date (the "**Target Date**") by which (a) the Owner will have completed the construction and installation of the Cooling Plant and each Building System in accordance with this Article 3; (b) the Owner will have each Building System ready for connection to the applicable Demarcation Points; and (c) each Building will be ready to receive Energy Services from Creative Energy.

- (b) Upon substantial completion of construction and installation of the Cooling Plant and any Building System, the Owner will forthwith provide to Creative Energy, for its approval, as-built drawings for the Cooling Plant and such Building System together with such documentation verifying that:
  - (i) the applicable Building System has been designed, constructed and installed in full compliance with the final Building System Application approved pursuant to Section 3.2(e), has been flushed and cleaned and is capable of performing the function for which it was designed; and
  - (ii) the Cooling Plant has been designed, constructed and installed in full compliance with the Cooling Plant Design and the Cooling Plant Specifications, has been flushed and cleaned and is capable of performing the function for which it was designed.
- (c) The Owner, at its sole cost and expense, will promptly rectify any components of the Building Systems which are identified by Creative Energy as being non-compliant with the final Building System Application approved pursuant to Section 3.2(e).
- (d) Forthwith following the approval by Creative Energy of the Building Systems in accordance with this Section 3.10, the Owner will connect each Building System to the applicable Demarcation Points as designated by Creative Energy and in the presence of a Creative Energy representative.
- (e) Upon connection of each Building System to the designated Demarcation Points pursuant to Section 3.10(d), the Owner will perform Building System Commissioning. During Building System Commissioning, the Owner will take all required steps to remedy any defects in the design, engineering, construction or installation of the Building System identified by the Owner's Engineer within such period of time as may be reasonably required to remedy such defects and will forthwith provide to Creative Energy documentation from the Owner's Engineer (in a form that is satisfactory to Creative Energy, acting reasonably) verifying that the Building System is Functional.
- (f) Any defects in the Cooling Plant Design, construction or installation of the Cooling Plant, or non-compliance with the Cooling Plant Specifications (collectively, "**Deficiencies**"), identified by the Owner's Engineer or the Creative Energy Engineer shall be remedied by the Owner within fourteen (14) days of notification of the Deficiencies and the Owner shall obtain certification under seal from the Owner's Engineer confirming the Deficiencies have been remedied; provided that if any such Deficiency is not capable of being remedied within such fourteen (14) day period, the Owner will commence the

corrective actions of such Deficiency within such period and continue to diligently pursue the curing of such Deficiency thereafter until cured within a reasonable period of time.

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

### 3.11 OCCUPANCY PERMIT

The Owner will not:

- (a) apply for an Occupancy Permit; or
- (b) take any action to compel issuance of an Occupancy Permit

until such time as the Owner has delivered to Creative Energy the documentation verifying that the Building Systems are Functional in accordance with Section 3.10.

### 3.12 WARRANTY

- (a) The Owner is fully and exclusively responsible to ensure the Cooling Plant is designed, constructed and installed in accordance with the Cooling Plant Design and Cooling Plant Specifications and is Functional as at the Closing Date, and to further ensure that any modifications to the Cooling Plant after the Closing Date arising from the rectification of any Deficiencies in accordance with section 3.10 or any warranty work undertaken, are in accordance with the Cooling Plant Specifications.
- (b) Despite anything to the contrary in this Agreement, but subject to section 11.3 of this Agreement, Creative Energy may commence claims in relation to the negligent design, engineering, construction or installation of the Cooling Plant, at any time, and from time to time, subject to any applicable limitation period imposed by Law.
- (c) No transfer of the Owner's interest in the Purchased Assets is intended to limit, constrain, reduce, or restrict, in any manner or to any extent whatsoever:
  - (i) Creative Energy's right of indemnification under Article 11; or
  - (ii) any of the Owner's obligations to perform warranty services set out in this section 3.11.
- (d) The Owner shall complete, remedy and correct, until they are in accordance with and meet the requirements of this Agreement, any and all parts of the Cooling Plant that are discovered, prior to the expiration of the Warranty Period, to be incomplete, which fail to perform or are otherwise not in accordance with this Agreement. Creative Energy will provide the Owner with written notice of any such defect or failure prior to the expiration of the Warranty Period and the

Owner will, within three (3) business days, meet with Creative Energy to investigate the defect or failure and develop an execution plan for its correction or remediation to the satisfaction of Creative Energy. The Owner shall be responsive and make every reasonable effort to mitigate any operational lost time or damages experienced by Creative Energy or its customers arising as a result of any defects discovered by Creative Energy during the Warranty Period, including, as necessary, providing an alternative energy solution to ensure continued provision of space cooling services to the Buildings during any period of repair. The Owner may in writing from time to time during the Warranty Period request Creative Energy to perform specific warranty work for and on behalf of the Owner, and the cost and expenses of any such work performed by Creative Energy, including for its personnel, contractors, supplies, equipment and replacement parts, shall be paid by the Owner promptly upon receipt of an invoice with respect to the same.

- (e) Without limiting the Owner's own representations and warranties with respect to the Cooling Plant, the Owner will obtain and assign to Creative Energy, effective the Closing Date, all warranties and guarantees from its subcontractors and vendors having a validity period of not less than the Warranty Period and which are capable of being assigned. The Owner will use reasonable commercial efforts to obtain from its subcontractors and vendors, in a form assignable to Creative Energy, such additional and longer duration warranties and guarantees as may be offered by such subcontractors and vendors without additional cost to the Owner. Despite the assignment of any subcontractor and vendor warranties and guarantees to Creative Energy, the Owner shall be entitled to enforce each such warranty and guarantees through the end of the Warranty Period.
- (f) Except as to any claim made pursuant to sub-section 3.12(b), if any warranty claim is made by Creative Energy pursuant to this section and any work with respect to the Cooling Plant is re-performed or any part is replaced, the Warranty Period for that work or part, as the case may be, shall commence again from the date of re-performance or replacement, unless such work or replacement was of a minor nature not exceeding \$1,000. The foregoing provision shall not be interpreted to extend the warranties for the Cooling Plant as a whole, but only for such work re-performed or part replaced. Despite the foregoing, in no event will the operation of this sub-section extend the Warranty Period beyond eighteen (18) months after the Closing Date.
- (g) The warranties pursuant to this section will not apply to:
  - (i) damage after the Closing Date to the extent such damage is caused by the failure of Creative Energy to operate or maintain the Cooling Plant in accordance with applicable standard operating procedures and the recommendations set forth in any operating manuals supplied by the Owner to Creative Energy on the Closing Date;

- (ii) any damage for which insurance proceeds have been received by Creative Energy;
- (iii) modifications to the Cooling Plant made by Creative Energy; and
- (iv) items that require regular replacement due to normal wear and tear.

The terms and conditions provided under this section 3.11 will survive the termination of this Agreement.

#### **ARTICLE 4 – PURCHASE AND SALE OF THE COOLING PLANT**

##### **4.1 PURCHASE PRICE**

- (a) The purchase price (the “**Purchase Price**”) payable by Creative Energy to the Owner for the purchase of the Purchased Assets will be the actual Cooling Plant Costs paid by the Owner, which Purchase Price shall not exceed the amount set out in the Preliminary Budget as at the Effective Date by more than 15%.
- (b) The Purchase Price is exclusive of any applicable sales taxes, including Goods and Services Tax (GST) or Provincial Sales Tax (PST) (collectively, the “**Sales Taxes**”). To the extent the Purchased Assets constitute real property, Creative Energy shall self-assess GST payable as required by subsection 228(4) of the *Excise Tax Act* (Canada). To the extent the Purchased Assets do not constitute real property subject to self-assessment by Creative Energy, Creative Energy shall pay to the Owner any applicable Sales Taxes. The Owner shall remit such Sales Taxes to the appropriate government authority. The Owner shall disclose all Sales Taxes as separate line items on invoices and related documentation and in the case where the GST are charged shall also disclose its GST registration number on the invoice and such other information as may be required for Creative Energy to claim an input tax credit.
- (c) Creative Energy will indemnify and save harmless the Owner from any GST, penalty, interest and other amounts which may be payable by or assessed against the Owner under the *Excise Tax Act* as a result of or in connection with the Owner’s failure to collect and, in respect of all GST that is self-assessed by Creative Energy, remit any GST applicable with respect to the transaction contemplated hereby. This indemnity will survive the completion of the transaction contemplated hereby indefinitely.

##### **4.2 PURCHASE OF THE COOLING PLANT**

- (a) Upon and subject to the terms and conditions of this Agreement, on the Closing Date the Owner agrees to sell, assign, transfer and convey to Creative Energy, and Creative Energy agrees to purchase from the Owner the Owner’s right, title and interest in and to the Cooling Plant, including all Permits and warranties/guarantees attributable to the Cooling Plant which are capable of being assigned, and all drawings, Designs, manuals, operating instructions, and other

records and information created as part of the Design, construction or installation of the Cooling Plant or necessary for the ownership, operation and maintenance of the Cooling Plant (collectively, the “**Purchased Assets**”).

- (b) Except as otherwise provided in this Agreement, including the Owner’s obligations pursuant to sections 3.10(f) and 3.11, on and after Closing Date Creative Energy shall assume and pay all costs, expenses and other liabilities associated with the ownership, operation and maintenance of the Purchased Assets arising after the Closing Date, and Creative Energy shall indemnify and save the Owner harmless from all claims, demands, suits and actions in respect of any such costs, expenses and liabilities.

#### 4.3 CLOSING DATE

Within five (5) Business Days of the last Building System being certified as Functional in accordance with Section 3.10(e), the Owner will provide to Creative Energy evidence of the Cooling Plant Costs, in such form as is reasonably satisfactory to Creative Energy. The Purchase Price will be paid by Creative Energy to the Owner within fifteen (15) Business Days after receipt by Creative Energy of such evidence of the Cooling Plant Costs (the “**Closing Date**”), subject to the holdback provisions contained in section 4.4 and subject to the following conditions being met on or before the Closing Date:

- (a) the Owner providing to Creative Energy:
  - (i) evidence, reasonably satisfactory to Creative Energy, that the Owner is the sole beneficial owner of the Development Lands and no transfer of any interest in that portion of the Development constructed on the Development Lands has been transferred to any purchaser; and
  - (ii) written confirmation of the commitment from the financial institution(s) funding the Development that the financial institution(s) will fund the completion of the construction of the Development in the normal course and in accordance with the terms and conditions of the applicable credit or loan agreement, such commitment being in a form satisfactory to the Superintendent of Real Estate for the purpose of a disclosure statement prepared pursuant to the *Real Estate Development Marketing Act* (British Columbia);
- (b) the Owner making the following representations and warranties, effective as at the Closing Date, knowing that Creative Energy is relying on these representations and warranties being true and accurate in all material respects in deciding to complete the purchase of the Purchased Assets:
  - (i) the Cooling Plant will be in compliance with all Laws and the Owner has complied with all reporting and monitoring requirements under all Laws and the Owner has not received any notice of any non-compliance with any Laws with respect to the Cooling Plant and any portion thereof, and

has never been convicted of an offence for non-compliance with any Environmental Laws in connection with the Cooling Plant or been fined or otherwise sentenced or settled such prosecution short of conviction;

- (ii) the Owner is or will be the legal and beneficial owner of the Cooling Plant with good and marketable title thereto free and clear of any liens, charges, encumbrances or rights of others, save for those encumbrances to be discharged by the Owner pursuant to section 4.6, and is exclusively entitled to possess and dispose of the same;
  - (iii) the Owner has the right to assign its interest in and to the Permits, warranties and agreements forming part of the Purchased Assets which are capable of being assigned to Creative Energy and no such Permits, warranties or agreements will become void or voidable as a result of the consummation of the transactions contemplated hereby and no consent to such transactions is required to maintain such Permits, warranties or agreements in full force and effect;
  - (iv) the Owner has disclosed to Creative Energy all environmental reports relating to the environmental condition of the Development Lands in its possession or information relating to any environmental reports it has commissioned and not yet received;
  - (v) the Development Lands are free of Contaminants, except as disclosed to Creative Energy, or set out in or contemplated by the environmental reports disclosed to Creative Energy, or in amounts which are permissible under Environmental Laws, and there are no actions, proceedings, investigations, claims (including remediation cost recovery claims) pending, or threatened that would interfere with Creative Energy's use of the Development Lands or that relate to the presence of Contaminants in, on, under or migrating to or from the Development Lands; and
  - (vi) its representations and warranties set out in section 8.1 remain true and correct in all material respects as of the Closing Date;
- (c) the Owner is diligently proceeding with the completion of construction of the Development in compliance with section 3.1;
  - (d) the Statutory Rights of Way has been registered against title to the Development Lands in accordance with section 7.1(a); and
  - (e) all consents and approvals from all applicable Governmental Authorities required to complete the transactions contemplated herein will have been obtained without conditions relating to Creative Energy or the operation of the Cooling Plant which are satisfactory to Creative Energy acting reasonably having regard to its bona fide business interests.

#### 4.4 **HOLDBACK**

Creative Energy may hold back from the Purchase Price an amount equal to 125% of the cost which the Creative Energy Engineer estimates will be incurred to correct or complete any Deficiencies which remain to be completed on the Closing Date, and which shall be broken down as to each item of Deficiency. The amount of the holdback for each item of Deficiency shall be released to the Owner on completion of such item of Deficiency.

#### 4.5 **OWNERSHIP AND RISK**

- (a) Upon payment of the Purchase Price, the Owner will assign and transfer to Creative Energy all the Owner's right, title and interest in and to the Purchased Assets. The Owner will execute all documentation reasonably required by Creative Energy to effect the transfer.
- (b) The Purchased Assets will be at the risk of the Owner until the Closing Date at which time title and risk of loss will transfer to and vest in Creative Energy, without prejudice to any warranty or other claims by Creative Energy against the Owner pursuant to this Agreement, and despite any degree of annexation or affixation, or rule of law or equity to the contrary.

#### 4.6 **DISCHARGE OF ENCUMBRANCES BY THE OWNER**

If on the Closing Date there are any judgments, liens, claims of lien or any other financial charges against title to the Purchased Assets, the Owner shall not be required to clear title to Purchased Assets prior to the receipt of the net sales proceeds of the Purchased Assets, and shall be obliged to do so forthwith following receipt of such net sales proceeds and, in that event, Creative Energy's solicitor may pay the net sales proceeds to the Owner's solicitor on the condition that the Owner's solicitor undertake to discharge any such judgment, lien, claim of lien or any other financial charge.

### **ARTICLE 5 – PROVISION OF ENERGY SERVICES BY CREATIVE ENERGY**

#### 5.1 **PROVISION OF ENERGY SERVICES**

Creative Energy will provide Energy Services to the Buildings in accordance with the provisions of the Customer Service Agreements once the following conditions have been satisfied:

- (a) that each of the Building Systems and the Energy System shall have been certified as Functional in accordance with Section 3.10(e); and
- (b) that an occupancy certificate shall have been issued by the City of Vancouver in respect of each Building containing no material conditions or restrictions related to such Building, including the Energy System and the applicable Building System; and
- (c) that the Owner is not in default in respect of its obligations under this Agreement.

Such conditions are for the sole benefit of Creative Energy and any one or all of them may be waived by Creative Energy.

## 5.2 CUSTOMER SERVICE AGREEMENTS

- (a) If:
- (i) the application by Creative Energy for the BCUC Approvals contemplates the construction and operation by Creative Energy of the Local District Energy Utility; or
  - (ii) the BCUC determines that the Energy System, or any component thereof, is not a “Stream A TES” pursuant to section 2.3.4 of BCUC Order #G-127-14,

the Customer shall, forthwith upon the direction of Creative Energy, enter into one or more Customer Service Agreements for the provision of Energy Services to the Buildings at such rates and on the terms and conditions as are approved by the BCUC, and such Customer Service Agreements shall replace the agreement(s) entered into by the Parties in the form set out in SCHEDULE B.

- (b) The Owner will complete, execute and deliver, or will cause the applicable Person to complete, execute and deliver, to Creative Energy at its option and direction a Customer Service Agreement in respect of any one or more of the following:
- (i) the Development Lands;
  - (ii) any Building;
  - (iii) any legal parcel, including without limitation an air space parcel or a remainder parcel, that is subdivided from the Development Lands or any portion thereof; and
  - (iv) a strata corporation that is formed within any Building by way of the deposit of a strata plan, and in each such case the applicable Customer Service Agreement shall be executed and delivered to Creative Energy by the strata corporation prior to the first conveyance of a strata lot within the applicable strata plan.
- (c) The Owner will cause any Person to whom the Owner transfers or otherwise disposes, whether directly or indirectly, all or any portion of its interest in the Project to complete, execute and deliver to Creative Energy a Customer Service Agreement covering the applicable Building or Buildings.

## **ARTICLE 6 – ENVIRONMENTAL ATTRIBUTES**

### **6.1 ENVIRONMENTAL ATTRIBUTES**

Despite any other provision of this Agreement, all right, title and interest existing as of the Effective Date in the potential or actual commercial value of any Environmental Attributes that arise or accrue by virtue of the construction and operation of the Energy System will belong to Creative Energy. The Owner will, at the cost and expense of Creative Energy, support Creative Energy in all applications for the Environmental Attributes and provide any authorizations and information Creative Energy reasonably requires in this regard.

## **ARTICLE 7 - ACCESS**

### **7.1 STATUTORY RIGHTS OF WAY**

- (a) In consideration of the covenants and agreements set out in this Agreement, the Owner will execute and register the Statutory Rights of Way against title to the Development Lands, in priority to all financial charges, granting Creative Energy the right to enter on, over and under the applicable portions of the Development Lands for the purpose of fulfilling its obligations and exercising its rights under this Agreement and the Customer Service Agreements and for servicing other properties.
- (b) If the parties mutually agree to install Downstream Meters in the Development, the Owner will execute and register the Statutory Rights of Way relating to such Downstream Meters against title to the applicable Development Lands, in priority to all financial charges.

## **ARTICLE 8 – REPRESENTATIONS AND WARRANTIES**

### **8.1 OWNER'S REPRESENTATIONS AND WARRANTIES**

The Owner hereby represents and warrants to Creative Energy as follows, as representations and warranties that are true and correct as at the Effective Date, and acknowledges that Creative Energy is relying on these representations and warranties in entering into the transactions contemplated by this Agreement:

- (a) the Owner is duly formed and validly existing under the laws of the Province of British Columbia and is in good standing under all applicable laws;
- (b) the Owner has the full right, power and authority to enter into, and perform all of its obligations under, this Agreement;
- (c) all necessary actions on the part of the Owner have been taken to authorize and approve the execution and delivery of this Agreement and the performance by the Owner of its obligations hereunder;

- (d) this Agreement and the performance of its obligations under this Agreement does not and will not breach any provisions of any other agreement or Law that is binding on or applicable to the Owner as of the date of this Agreement;
- (e) the Owner is not party to any action, suit or legal proceeding, actual or threatened, and there are no circumstances, matters or things known to the Owner which might give rise to any such action, suit or legal proceeding, and there are no actions, suits or proceedings pending or threatened against the Owner before or by any Governmental Authority, which could adversely affect the Owner's ability to perform its obligations under this Agreement;
- (f) the Owner collectively is the legal and beneficial owner of the Development Lands;
- (g) no Person, has any agreement, right, or option or right capable of becoming an agreement, right, or option for any of the design, construction, operation, maintenance or ownership of an energy system to provide the majority of energy needs to the Development for space heating and cooling, and for domestic hot water; and
- (h) there are no liabilities of the Owner of any kind whatsoever (including absolute, accrued, unknown or contingent liabilities) nor any commitments whether or not determined or determinable relating to the Energy System in respect of which Creative Energy may become liable, except where specifically acknowledged and agreed to in writing by Creative Energy.

## 8.2 CREATIVE ENERGY'S REPRESENTATIONS AND WARRANTIES

Creative Energy hereby represents and warrants to the Owner as follows as representations and warranties that are true and correct as at the Effective Date and acknowledges that the Owner is relying on these representations and warranties in entering into the transactions contemplated by this Agreement:

- (a) Creative Energy is a corporation duly incorporated and validly existing under the laws of British Columbia;
- (b) Creative Energy is a public utility as defined under the *Utilities Commission Act* (British Columbia);
- (c) Creative Energy has the full right, power and authority to enter into and perform all of its obligations under this Agreement;
- (d) all necessary corporate action on the part of Creative Energy has been taken to authorize and approve the execution and delivery of this Agreement and the performance by Creative Energy of its obligations hereunder;

- (e) this Agreement and the performance of its obligations under this Agreement does not and will not breach any provisions of any other agreement or Law that is binding on or applicable to Creative Energy as of the date of this Agreement; and
- (f) Creative Energy is not party to any action, suit or legal proceeding, actual or threatened, and there are no circumstances, matters or things known to Creative Energy which might give rise to any such action, suit or legal proceeding, and there are no actions, suits or proceedings pending or threatened against Creative Energy before or by any Governmental Authority, which could affect Creative Energy's ability to perform its obligations under this Agreement.

### 8.3 SURVIVAL OF REPRESENTATIONS AND WARRANTIES

- (a) Unless otherwise expressly stated in this Agreement, all representations and warranties made by the Owner in section 8.1 shall be made with effect as at the Effective Date and shall survive the Effective Date.
- (b) Unless otherwise expressly stated in this Agreement, all representations and warranties made by Creative Energy in section 8.2 shall be made with effect as at the Effective Date and shall survive the Effective Date.

## ARTICLE 9 - TERMINATION

### 9.1 DEFAULT

If either party (the "**Defaulting Party**"):

- (a) breaches a term of this Agreement and fails to cure such breach within thirty (30) days after receipt of written notice thereof from the other party (the "**Non-Defaulting Party**") or, if such breach is not being capable of being cured within such thirty (30) day notice period, fails to commence in good faith the curing of such breach forthwith upon receipt of written notice thereof from the Non-Defaulting Party and to continue to diligently pursue the curing of such breach thereafter until cured;
- (b) becomes insolvent, commits an act of bankruptcy, has a receiver or liquidator appointed for its assets, or files for protection from its creditors under insolvency legislation; or
- (c) assigns this Agreement in whole or in part except where such assignment is permitted under section 14.19, then

the Non-Defaulting Party may, without prejudice to any other rights or remedies it has, terminate this Agreement by giving the Defaulting Party seven (7) days written notice thereof whereupon this Agreement will be immediately terminate.

## ARTICLE 10 - INSURANCE REQUIREMENTS

### 10.1 INSURANCE

Each party shall obtain and maintain the following insurance coverage and provide proof of coverage to the other party:

- (a) General Commercial or Wrap-Up Liability Insurance from insurers registered in and licensed to underwrite insurance in British Columbia for bodily injury, death and property damage in the amount of \$5,000,000 per occurrence naming the other party as an additional insured with respect to this Agreement;
- (b) Such other insurance as reasonably required by the other party from time to time; and
- (c) Each party shall be responsible for payment of any deductibles of their policies. All such policies shall contain a provision obligating the insurer to give the other party thirty (30) days advance written notice of policy cancellation.

## ARTICLE 11 - INDEMNITY

### 11.1 MUTUAL INDEMNITY

Without limiting any other obligations of the parties provided herein, each party (the “**Indemnifying Party**”) will indemnify, defend, and save harmless the other party (the “**Indemnified Party**”), and its shareholders, directors, officers, employees, agents, successors, and assigns from any and all liabilities, actions, damages, claims, losses, costs, orders, fines, penalties, and expenses whatsoever (including the full amount of all legal fees and expenses on a solicitor-client basis) which may be paid by, incurred by, or asserted against the Indemnified Party, or its shareholders, directors, officers, employees, agents, successors, or assigns, arising from or in connection with:

- (a) the breach or non-performance by the Indemnifying Party of any of its obligations or warranties hereunder;
- (b) the negligence or wilful misconduct of the Indemnifying Party, its employees, contractors or agents occurring during the term of this Agreement in respect of the Energy System or any portion thereof; or
- (c) the negligence or wilful misconduct of the Indemnifying Party, its employees, contractors or agents occurring during the term of this Agreement in respect of the Building Systems or any portion thereof;

excluding only such of the foregoing to the extent arising from the fraud, negligence or wilful misconduct of the Indemnified Party or any of its officers, directors, members, employees, contractors or agents, or the breach or non-performance by the Indemnified Party of any of its obligations or warranties hereunder.

## 11.2 ENVIRONMENTAL INDEMNITY

The Owner will indemnify and save harmless Creative Energy, its directors, officers, shareholders, employees, agents, successors and permitted assigns, from any and all liabilities, actions, damages, claims, remediation cost recovery claims, losses, costs, orders, fines, penalties and expenses whatsoever (including the full amount of all consulting and legal fees and expenses on a solicitor-client basis and the costs of removal, treatment, storage and disposal of Contaminants and remediation of the Development Lands and any affected adjacent property) which may be paid by, incurred by or asserted against Creative Energy, its directors, officers, shareholders, employees, agents, successors or permitted assigns, arising from or in connection with any Contaminants existing on the Development Lands prior to the date of this Agreement or brought onto the Development Lands or Released onto the Development Lands by the Owner or any Person for whom it is in law responsible or Released from the Energy System excluding Releases by Creative Energy or its directors, officers, shareholders, employees, contractors, subcontractors, agents, successors and permitted assigns or Releases caused by the negligence or wilful misconduct of Creative Energy.

## 11.3 LIMITATION OF LIABILITY

Despite any other provisions of this Agreement, in no event will the Owner or Creative Energy or any of their respective officers, directors, employees, contractors or agents be liable to the other party for any indirect or consequential loss, cost or expense whatsoever, including any loss of profits, revenues or other economic loss, suffered by the other party or its officers, directors, employees, contractors or agents.

## 11.4 DUTY TO MITIGATE

Each party has a duty to mitigate the damages that would otherwise be recoverable from the other party pursuant to this Agreement by taking appropriate and commercially reasonable actions to reduce or limit the amount of such damages or amounts.

## 11.5 SURVIVAL OF INDEMNITY

The indemnities provided under this Article 11, and the provisions of this Article 11, will survive the termination of this Agreement.

## ARTICLE 12 - FORCE MAJEURE

### 12.1 SUSPENSION

Subject to the other provisions of this Article, if either party is unable or fails by reason of Force Majeure to perform in whole or in part any obligation or covenant set forth in this Agreement, with the exception of unpaid financial obligations, such inability or failure will be deemed not to be a breach of such obligation or covenant and the obligations of both parties under this Agreement will be suspended to the extent necessary during the continuation of any inability or failure so caused by such Force Majeure.

## 12.2 DEFINITION OF FORCE MAJEURE

For purposes of this Agreement, “**Force Majeure**” means any event or occurrence not reasonably within the control of the party claiming Force Majeure and which by the exercise of reasonable diligence such party is unable to prevent or overcome, including any acts of God, including lightning, earthquakes, storms, washouts, landslides, avalanches, fires, epidemics and floods; strikes, lockouts or other industrial disturbances; acts of the Queen’s or public enemies, sabotage, wars, blockades, blackouts, insurrections, riots or civil disturbances, arrests and restraints of rulers or people, fires, explosions; and interruptions by government or court orders. For the purposes of this Article, a party is deemed to have control over the actions or omissions of those persons to which it, its agents, contractors or employees, have delegated, assigned or subcontracted its obligations and responsibilities.

## 12.3 EXCEPTIONS

Neither party will be entitled to the benefit of section 12.1 under any of the following circumstances:

- (a) to the extent that the inability or failure was caused by the wilful misconduct, negligence or contributory negligence of the party claiming Force Majeure;
- (b) to the extent that the inability or failure was caused by the party claiming Force Majeure having failed to diligently attempt to remedy the condition by taking all reasonable acts and to resume the performance of such covenants and obligations with reasonable dispatch;
- (c) if the inability or failure was caused by lack of funds or is in respect of any amount due hereunder; or
- (d) unless, as soon as possible after the happening of the occurrence relied upon or as soon as possible after determining that the occurrence was in the nature of Force Majeure and would affect the claiming party’s ability to observe or perform any of its covenants or obligations under this Agreement, the claiming party will have given to the other party notice to the effect that the claiming party is unable by reason of Force Majeure (the nature whereof will be therein specified) to perform the particular covenants or obligations.

## 12.4 RESUMPTION OF OBLIGATIONS

The party claiming Force Majeure will give notice to the other party, as soon as possible after the Force Majeure condition is remedied, to the effect that the same had been remedied and that such party has resumed, or is then in a position to resume, the performance of its suspended covenants and obligations hereunder either in whole or in part.

## 12.5 SETTLEMENT OF LABOUR DISPUTES

Despite any of the provisions of this Article 12, and subject to section 12.3, the settlement of labour disputes or industrial disturbances is entirely within the discretion of the particular party

involved and the party may make settlement of it at the time and on terms and conditions as it may deem to be advisable and no delay in making settlement will deprive the party of the benefit of section 12.1.

## **ARTICLE 13 - DISPUTE RESOLUTION**

### **13.1 REFERENCE TO ARBITRATION**

The parties will make a bona fide attempt to settle any dispute (a “**Dispute**”) which may arise under, out of, in connection with or in relation to this Agreement, including, without limitation, with respect to the warranty provisions, by amicable negotiations and will provide frank and timely disclosure to one another of all relevant facts and information to facilitate negotiations. If any Dispute remains unresolved within fifteen (15) days of either party requesting that the other party enter into negotiations to resolve the Dispute, or if the parties agree to waive such discussions in respect of a particular issue, then the Dispute shall be promptly submitted to and finally settled by arbitration in a manner agreed by the parties or, if the parties have not agreed to a manner of arbitration within such fifteen (15) days, then by an arbitrator who is appointed and renders a decision in accordance with the then current “Shorter Rules for Domestic Commercial Arbitration” or similar rules of the British Columbia International Commercial Arbitration Centre (“**BCICAC**”). The arbitration will take place in Vancouver, British Columbia, Canada and be conducted in English.

### **13.2 BINDING DECISION**

The decision of the arbitrator will, regardless of the arbitration process used, for all purposes of this Agreement, be final and binding on the parties.

### **13.3 CONTINUATION OF SERVICES**

Each of the parties will perform all of its respective obligations under this Agreement notwithstanding the existence of any Dispute that arises from time to time between the parties in respect of any matter related to this Agreement or during the resolution of any Dispute in accordance with this Article.

### **13.4 COSTS**

The costs and expenses of the arbitration, but not those incurred by the parties, shall be shared equally, unless the arbitrator determines that a specific party prevailed. In such a case, the non-prevailing party shall pay all costs and expenses of the arbitration, but not those of the prevailing party.

## **ARTICLE 14 - GENERAL**

### **14.1 SOLICITATION**

Nothing in this Agreement precludes Creative Energy from soliciting or entering into other contracts with the Owner or any other Person.

## 14.2 NOTICES

Any notice or other communication required or permitted to be given under this Agreement will be effective only if in writing and when it is actually delivered (which delivery may be by telecopy or other telecommunications device) to the party for whom it is intended at the following address or such other address in British Columbia as such party may designate to the other party by notice in writing delivered in accordance with this section 14.2:

- (a) if to Creative Energy:

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

Attention: Stacey Bernier

Phone: (604) 692-2110

Fax: (604) 688-2213

- (b) if to the Owner:

501 – 1067 West Cordova Street, Vancouver, BC V6C 1C7

Attention: Development Manager

Phone: (604) 685-8986

Fax: (604) 893-1708

Despite the foregoing, notices with respect to Force Majeure will be given in writing by telecopy, or orally in person or by telephone (to be confirmed by telecopy), to the person or persons designated from time to time by the parties as the person or persons authorized to receive such notices.

## 14.3 CONFIDENTIALITY

Creative Energy and the Owner shall treat as confidential the terms of this Agreement and all Confidential Information (as defined below) and will at all times during the term of this Agreement and for a reasonable time thereafter hold the terms of this Agreement and all Confidential Information in confidence and no party will, without the prior written consent of the other parties, disclose or divulge the terms of this Agreement or any Confidential Information to any Person, provided that nothing in this section 14.3 will restrict or prevent either party from making any disclosure of such terms or any Confidential Information:

- (a) which is reasonably necessary or desirable for such party to carry out and give full effect to the terms, conditions and intent of this Agreement and the matters contemplated hereby (including, without limitation, the Owner's disclosure to its lenders);
- (b) which is required by any Law (including, without limitation, disclosure in any disclosure statement provided to purchasers or prospective purchasers at the Development) or as ordered by a court of competent jurisdiction;

- (c) which is necessary for the preparation for and conduct of submissions to regulatory agencies, in which event, this Agreement made become a public document;
- (d) to any Governmental Authority;
- (e) to the directors, officers or employees of such party or to an Affiliate of such party or to the directors, officers or employees of an Affiliate of such party;
- (f) to the professional advisors of such party; or
- (g) in connection with legal proceedings or steps being taken to remedy a breach or default under this Agreement by the other party.

The terms of this Agreement may be disclosed to the owners and purchasers of the Development.

For the purposes of this section 14.3, “**Confidential Information**” means proprietary information of either party such as data, plans, drawings, manuals, or specifications which have been provided by such party, its employees, contractors, agents, subcontractors, Affiliates to the other party pursuant to this Agreement or proprietary information either party conceived or developed by or for such party concerning construction practices, operation and maintenance practices, agreements, marketing plans and strategies, profits, costs, pricing and systems of procedure; provided however, “Confidential Information” does not include information which was disclosed to the receiving party by a third party (unless, to the knowledge of the receiving party, the third party is under an obligation of confidentiality to the other party) or any information developed or conceived by the receiving party without using the “Confidential Information” of the other party or information already in the public domain.

#### 14.4 SEVERABILITY

If any provision of this Agreement is found or determined to be invalid, illegal or unenforceable it will be construed to be separate and severable from this Agreement and will not impair the validity, legality or enforceability of any other provisions of this Agreement, and the remainder of this Agreement will continue to be binding on the parties as if such provision had been deleted.

#### 14.5 NO WAIVER

No waiver by either party of any default by the other in the performance of any of the provisions of this Agreement will operate or be construed as a waiver of any other or future default or defaults hereunder, whether of a like or a different character. To be binding, any waiver of any provision of this Agreement must be clearly expressed in writing and be signed by the waiving party.

#### **14.6 BURDEN AND BENEFIT**

This Agreement shall enure to the benefit of and be binding upon the parties and their respective successors and permitted assigns, including without limitation, successor by merger, amalgamation or consolidation.

#### **14.7 GOVERNING LAW**

This Agreement and all matters arising hereunder will be governed by the laws of British Columbia and the federal laws of Canada applicable in British Columbia.

#### **14.8 ENTIRE AGREEMENT**

This Agreement contains the whole agreement between the parties in respect of the subject matter hereof and there are no terms, conditions or collateral agreements express, implied or statutory other than as expressly set forth in this Agreement and this Agreement supersedes all of the terms of any written or oral agreement or understanding between the parties.

#### **14.9 AMENDMENTS TO BE IN WRITING**

Except as set out in this Agreement, no amendment or variation of this Agreement will be effective or binding upon the Parties unless such amendment or variation is set out in writing and duly executed by an officer of each of the Parties.

#### **14.10 COSTS AND EXPENSES**

- (a) Except as otherwise set out in this Agreement, each party will be responsible for the payment of its own costs related to performing its obligations under this Agreement.
- (b) Each party to this Agreement shall be responsible for the payment of all costs, expenses, legal fees, and disbursements incurred or to be incurred by it in negotiating and preparing this Agreement and all documents required to be delivered under this Agreement and otherwise relating to the transactions contemplated by this Agreement.

#### **14.11 NO CONTRARY AGREEMENTS**

No Party shall enter into an agreement or other commitment with any Person if such agreement or commitment has terms or provisions in conflict with or inconsistent with the terms of this Agreement or which could reasonably be expected to lead to actions or consequences that would result in the Party being in breach of the commitments and obligations of the Party pursuant to this Agreement unless such other agreement or commitment is expressly approved by the other Parties.

#### **14.12 TIME OF ESSENCE**

Time is of the essence of this Agreement.

#### **14.13 FURTHER ASSURANCES**

Each of Creative Energy and the Owner will, on demand by the other, execute and deliver or cause to be executed and delivered all such further documents and instruments and do all such further acts and things as the other may reasonably require to evidence, carry out and give full effect to the terms, conditions, intent and meaning of this Agreement and to assure the completion of the transactions contemplated hereby.

#### **14.14 SUBJECT TO LEGISLATION**

Despite any other provision hereof, this Agreement and the rights and obligations of Creative Energy and the Owner under this Agreement are subject to all present and future laws, rules, regulations and orders of any legislative body, governmental agency or duly constituted authority now or hereafter having jurisdiction over Creative Energy or the Owner.

#### **14.15 NO PARTNERSHIP**

This Agreement is not intended to create, nor will it be construed as creating, any partnership, joint venture or agency whatsoever between the Parties and no Party will be deemed to be the legal representative of the other Party for the purposes of this Agreement, the Building Systems or Energy System, as the case may be, or otherwise nor will either Party have, nor represent itself to have, any authority or power to act for, to undertake any obligation or responsibility on behalf of, or to pledge the credit of the other Party, or otherwise except as may herein be expressly provided or as may hereafter be expressly agreed upon between the Parties.

#### **14.16 SURVIVAL**

Upon expiry or earlier termination of this Agreement for any reason, all of the provisions of this Agreement relating to confidentiality or to the obligation of either of the Parties to account to or indemnify the other and to pay to the other any amounts owing as at the date of expiry or termination in connection with this Agreement will survive such expiry or termination.

#### **14.17 FACSIMILE AND OTHER ELECTRONIC TRANSMISSION**

This Agreement may be executed by the parties and transmitted by facsimile transmission or other electronic transmission and, if so executed, transmitted and received, this Agreement will for all purposes be effective as if the parties had delivered and executed the original Agreement and each party undertakes to provide the other party with a copy of this Agreement bearing original signatures forthwith upon demand.

#### **14.18 COUNTERPARTS**

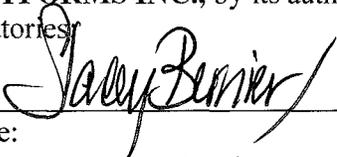
This Agreement may be executed in counterparts with the same effect as if the parties had signed the same document. All counterparts will be construed together and will constitute one agreement.

14.19 ASSIGNMENT

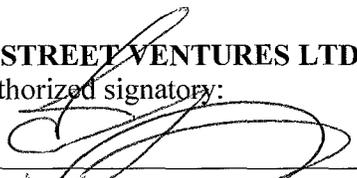
- (a) The Owner may, in its sole discretion, with prior written notice to Creative Energy, assign, transfer or sell its right, title and interest in this Agreement or the Customer Service Agreements to any of its Affiliates, without the consent of Creative Energy, provided such Affiliate agrees to be bound by the terms and conditions of this Agreement and the Customer Service Agreements.
  
- (b) Creative Energy may, in its sole discretion, with prior written notice to the Owner, assign, transfer or sell its right, title and interest in this Agreement or the Customer Service Agreements or sell the majority of its shares or business or its material assets to, or amalgamate with, any of its Affiliates, without the consent of the Owner, or to another company with the consent of the Owner, such consent not to be unreasonably withheld, delayed or conditioned, provided such Affiliate or other company agrees to be bound by the terms and conditions of this Agreement and the Customer Service Agreements.

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

**CREATIVE ENERGY VANCOUVER  
PLATFORMS INC.**, by its authorized  
signatories

  
\_\_\_\_\_  
Name: **Stacey Bernier**

**HOWE STREET VENTURES LTD.**  
by its authorized signatory:

  
\_\_\_\_\_  
Name: **Judy Leung**

**HOWE STREET PROPERTY INC.**  
by its authorized signatory:

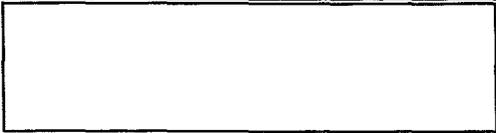
  
\_\_\_\_\_  
Name: **Judy Leung**

**SCHEDULE A**  
**STATUTORY RIGHTS OF WAY**

See attached forms of Statutory Rights of Way

**LAND TITLE ACT  
FORM C (Section 233) CHARGE  
GENERAL INSTRUMENT - PART 1 Province of British Columbia**

Your electronic signature is a representation that you are a subscriber as defined by the Land Title Act, RSBC 1996 c.250, and that you have applied your electronic signature in accordance with Section 168.3, and a true copy, or a copy of that true copy, is in your possession.



1. APPLICATION: (Name, address, phone number of applicant, applicant's solicitor or agent)

Kornfeld LLP  
Barristers & Solicitors  
1100 - 505 Burrard Street  
Vancouver

BC V7X 1M5

Telephone No. (604) 331-8300  
LTO Client No. 010448  
File No. CRE008GEN141 JEL

Deduct LTSA Fees? Yes

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:  
[PID] [LEGAL DESCRIPTION]

**029-349-362 LOT A BLOCK 122 DISTRICT LOT 541 GROUP 1 NEW WESTMINSTER  
DISTRICT PLAN EPP40230**

STC? YES

3. NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

**SEE SCHEDULE**

4. TERMS: Part 2 of this instrument consists of (select one only)

(a)  Filed Standard Charge Terms D.F. No.

(b)  Express Charge Terms Annexed as Part 2

A selection of (a) includes any additional or modified terms referred to in Item 7 or in a schedule annexed to this instrument.

5. TRANSFEROR(S):

**SEE SCHEDULE**

6. TRANSFEREE(S): (including postal address(es) and postal code(s))

**CREATIVE ENERGY VANCOUVER PLATFORMS INC.  
SUITE 1 - 720 BEATTY STREET**

VANCOUVER

BRITISH COLUMBIA  
CANADA

Incorporation No  
BC0410371

7. ADDITIONAL OR MODIFIED TERMS:

N/A

8. EXECUTION(S): This instrument creates, assigns, modifies, enlarges, discharges or governs the priority of the interest(s) described in Item 3 and the Transferor(s) and every other signatory agree to be bound by this instrument, and acknowledge(s) receipt of a true copy of the filed standard charge terms, if any.

Officer Signature(s)

Execution Date

Y	M	D

Transferor(s) Signature(s)

HOWE STREET VENTURES LTD.  
by its authorized signatory(ies):

Print Name:

Print Name:

**OFFICER CERTIFICATION:**

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

LAND TITLE ACT  
FORM D

EXECUTIONS CONTINUED

Officer Signature(s)

Execution Date

Transferor / Borrower / Party Signature(s)

Y	M	D

HSBC BANK CANADA by its  
authorized signatory(ies):

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

FULCRUM CAPITAL PARTNERS INC.  
by its authorized signatory(ies):

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

CREATIVE ENERGY VANCOUVER  
PLATFORMS INC. by its authorized  
signatory(ies):

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

OFFICER CERTIFICATION:

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

**LAND TITLE ACT  
FORM E****SCHEDULE**

PAGE 3 OF 27 PAGES

NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
Statutory Right of Way		Section 4, Page 10
Priority Agreement		Granting Statutory Right of Way herein priority over Mortgage CA3809858 and Assignment of Rents CA3809859 - Page 23
Priority Agreement		Granting Statutory Right of Way herein priority over Mortgage CA3809860 and Assignment of Rents CA3809861 - Page 24
Statutory Right of Way		Section 5, Page 10
Priority Agreement		Granting Statutory Right of Way herein priority over Mortgage CA3809858 and Assignment of Rents CA3809859 - Page 23
Priority Agreement		Granting Statutory Right of Way herein priority over Mortgage CA3809860 and Assignment of Rents CA3809861 - Page 24

**LAND TITLE ACT  
FORM E****SCHEDULE**

PAGE 4 OF 27 PAGES

NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
Statutory Right of Way		Section 6, Page 11
Priority Agreement		Granting Statutory Right of Way herein priority over Mortgage CA3809858 and Assignment of Rents CA3809859 - Page 23
Priority Agreement		Granting Statutory Right of Way herein priority over Mortgage CA3809860 and Assignment of Rents CA3809861 - Page 24
Covenant		Section 10, Pages 12 - 13
Priority Agreement		Granting Section 219 Covenant herein priority over Mortgage CA3809858 and Assignment of Rents CA3809859 - Page 23
Priority Agreement		Granting Section 219 Covenant herein priority over Mortgage CA3809860 and Assignment of Rents CA3809861 - Page 24

**LAND TITLE ACT  
FORM E**

**SCHEDULE**

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

**5. TRANSFEROR(S):**

HOWE STREET VENTURES LTD. (INC. NO. BC0683469)

HSBC BANK CANADA (as to priority)

FULCRUM CAPITAL PARTNERS INC. (INC. NO. A83659) (as to priority)

**PART 2 - TERMS****SECTION 219 COVENANT AND STATUTORY RIGHT OF WAY****LOT A**

BETWEEN:

**HOWE STREET VENTURES LTD.** (INC. NO. BC0683469)  
501 – 1067 West Cordova Street, Vancouver, BC V6C 1C7

(the “Grantor”)

AND:

**CREATIVE ENERGY VANCOUVER PLATFORMS INC.**, (Inc. No.  
BC0410371)  
Suite 1 – 720 Beatty Street, Vancouver, BC V6B 2M1

(the “Grantee”)

WHEREAS:

- A. The Grantor is the registered owner in fee simple of the Lands.
- B. The Grantee will own and operate the Energy System in respect of, *inter alia*, the Lands.
- C. The right of way granted and covenant under this Agreement are necessary for the operation and maintenance of the Energy System and the provision of Energy Services in respect of, *inter alia*, the Lands.

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

1. Definitions. In this Agreement:
  - (a) “**Building**” means the mixed use tower located on the Lands and includes all outside areas, landscaped areas, roadways and driveways, ramps, outside and covered parking areas and walkways, existing or to be constructed from time to time in connection therewith.
  - (b) “**Building System**” means the complete heating and ventilating (which may include air conditioning) system and domestic hot water system and storage equipment to be installed and used for distributing and storing Thermal Energy in

a Building, connected to but downstream of and excluding the Demarcation Points for that Building.

- (c) “**Business Day**” means any day that is not a Saturday, Sunday, a statutory holiday in British Columbia, Easter Monday or Boxing Day.
- (d) “**Consultant**” means a duly qualified and licensed engineer or other professional having expertise in respect of the Works referred to in the applicable Works Plans.
- (e) “**Cooling Plant**” means one or more cooling plants consisting of water pipes and all ancillary equipment, components, controls, appliances and fittings, energy meters, chillers and cooling towers, for the generation, distribution and exchange of thermal energy for the purposes of providing cooling to the applicable Demarcation Points.
- (f) “**Cooling Services**” means the supply of thermal energy for cooling purposes.
- (g) “**Customer Service Agreement**” means any agreement pursuant to which the Grantee provides Energy Services to the Building, as such agreement may be amended or restated from time to time.
- (h) “**Demarcation Points**” means:
  - (i) in respect of the components of the Energy System relating to the provision of Heating Services to the Building, the Energy Transfer Stations; and
  - (ii) in respect of the Cooling Plant, the applicable isolation valves;
- (i) “**Designated Premises**” means those premises in the Building as more particularly described as shown shaded on the drawings attached hereto as Schedule A.
- (j) “**Development**” means the multi-use commercial and residential development partially located on the Lands known as “Vancouver House” in Vancouver, British Columbia, which is comprised of the Building, two commercial buildings, certain parking facilities and all other improvements and facilities relating thereto from time to time.
- (k) “**Distribution System**” means, collectively, the system of pipes, fittings and ancillary components and equipment supplying Heating Services to, *inter alia*, the Demarcation Points.
- (l) “**Energy Services**” means Heating Services and, where applicable, Cooling Services to be provided through the Energy System to the Demarcation Points in accordance with the applicable Customer Service Agreement.

- (m) “**Energy System**” means the thermal energy system consisting of the Cooling Plant, the On-Site TES, the Local District Energy Utility, the Distribution System (or any combination of the foregoing), the Energy Transfer Stations and related components, equipment and controls used for generating and distributing the Energy Services to the Demarcation Points, and all additions thereto and replacements thereof, but specifically excluding all Building Systems.
- (n) “**Energy Transfer Station**” means, in respect of each Building, one or more separate exchangers for space heating and domestic hot water (excluding domestic hot water storage tanks), energy metering equipment including temperature sensors and flow meters, control panel and all pipes, fittings and other associated equipment which control the transfer, and measure Energy Services from the Distribution System to the Building System for such Building.
- (o) “**Heating Services**” means the supply of thermal energy for heating purposes, which includes domestic hot water.
- (p) “**Interfere**” means, except as otherwise provided in this Agreement, interfere with, impede, disturb or adversely affect except in a non-material and temporary way and “**Interference**” has a corresponding meaning.
- (q) “**Lands**” means those lands and premises defined in Item 2 of the Form C Instrument General Part 1 of which this Agreement forms part.
- (r) “**Local District Energy Utility**” means the district energy utility that is intended to be constructed and operated by the Grantee in the South Downtown area of Vancouver, British Columbia, that will generate, distribute, meter, and transfer low carbon thermal energy from one or more sources of heat to and from connected buildings through a network of pipes and associated permanent or temporary equipment and infrastructure to provide all or a portion of the annual space and hot water heating requirements of each building within its service area, including the Building.
- (s) “**On-site TES**” means the energy system which may be constructed by Creative Energy entirely on the Development Lands by which Creative Energy generates and delivers Heating Services to the Buildings and includes any on-site boiler or boilers, the on-site Distribution System and the Energy Transfer Stations.
- (t) “**Option**” has the meaning ascribed to that term in Section 11(a).
- (u) “**person**” means an individual, corporation, body corporate, partnership, joint venture, association, society or unincorporated organization or any trustee, executor, administrator or other legal representative.
- (v) “**Related Person**” in respect of any person, means:
  - (i) any affiliate of such person, within the meaning of the *Business Corporations Act* (British Columbia);

- (ii) any associate of such person, within the meaning of the Business Corporations Act (British Columbia) or the *Securities Act* (British Columbia); and
  - (iii) any partnership, including a limited partnership, in which such person is a partner.
- (w) “**Representatives**” means, with respect to either party, any person who is a Related Person to such party and any officer, director, employee, agent, contractor, subcontractor, consultant, or advisor of such party or its Related Person, or any person for whom the such party is responsible at law.
- (x) “**Strata Property Act**” means the *Strata Property Act* (British Columbia) from time to time in force and all amendments thereto or other similar legislation which may hereafter be enacted in its place.
- (y) “**Works**” means any installation, inspection, maintenance, operation, repair, construction, replacement, removal, steps or any other acts contemplated by the Grantee in exercising any of its rights under this Agreement if such installation, inspection, maintenance, operation, repair, construction, replacement, removal, steps or any other acts contemplated by the Grantee requires the exclusive use of any Building elevators or requires the interruption of any Building services or utilities in any way or in any way is likely to cause any material interference in the construction or operation of the Building or access to or egress from the Building or the movement within the Building by the owners, tenants or other occupants of the Building or any part thereof or any of their respective invitees.
- (z) “**Works Plans**” means the plans and specifications for the Works intended to be undertaken as identified therein as prepared by a Consultant, which Works Plans will include:
- (i) a schedule for undertaking and completing the Works;
  - (ii) particulars of anticipated power or other building service or utility interruptions necessitated by the Works; and
  - (iii) particulars of any restrictions on access to or from or movement within the Building necessitated by the Works.
2. Benefit to the Lands. The Grantor hereby acknowledges and agrees the Energy System and the Energy Services provided by the Grantee in respect of the Lands constitutes an amenity in relation to the Lands within the meaning of Section 219 of the *Land Title Act* (British Columbia).
3. Provision of Service. The Grantor will connect the Building to the Energy System and will enter into one or more Customer Service Agreements with the Grantee for such connection to the Energy System, and the Grantor will provide the Grantee with any information and documentation reasonably required by the Grantee in connection

therewith. In the event of a conflict between the terms and conditions of any such Customer Service Agreement with respect to the use of and access to the Lands and this Agreement, the terms and conditions of this Agreement shall prevail.

4. Statutory Right of Way re: Energy System. Pursuant to Section 218 of the Land Title Act and subject always to the terms of this Agreement, the Grantor hereby grants to the Grantee for so long as the Grantee shall require it, a statutory right of way over that portion of the Lands which contains the Energy System from time to time, for the Grantee and the Grantee's Representatives to enter onto the Lands at any time and from time to time to:
  - (a) construct, install, inspect, maintain, operate, repair, replace and remove the Energy System or any portion thereof located on, under and over the Lands and in the buildings located on the Lands;
  - (b) make, inspect, maintain, remove and repair the Energy System service connections and connect and disconnect the Energy System service lines;
  - (c) clear the Lands of any obstructions, including, without limitation, trees or other vegetation, buildings, structures, foundations, pavements, improvements or obstructions, which Interfere with any of the rights granted to the Grantee herein; provided, however, that the Grantee agrees that any improvements on the Lands as at the date of this Agreement do not Interfere with the rights granted to the Grantee herein;
  - (d) install marking posts to mark the location of the Energy System or any portion thereof;
  - (e) take such steps as the Grantee deems necessary to protect and secure the Energy System on the Lands;
  - (f) bring onto the Lands all machinery, vehicles, materials and equipment it requires or desires for any of the foregoing purposes;
  - (g) generally do all acts necessary or incidental to the foregoing or to the business of operating, maintaining and repairing the Energy System on, *inter alia*, the Lands;
  - (h) connect the Energy System to buildings on properties other than the Lands in order to provide Heating Services or Cooling Services, or both, to such buildings from the Energy System; and
  - (i) exercise any of the Grantee's other rights set out in this Agreement.
5. Statutory Right of Way re: Access. Pursuant to Section 218 of the Land Title Act and subject always to the terms of this Agreement, the Grantor hereby grants to the Grantee for so long as the Grantee shall require it, a statutory right of way over the Lands as reasonably required by the Grantee and its Representatives for the purpose of access to and egress from that portion of the Lands which contains the Energy System.

6. Statutory Right of Way re: Local District Energy Utility. Pursuant to Section 218 of the Land Title Act and subject always to the terms of this Agreement, the Grantor hereby grants to the Grantee for so long as the Grantee shall require it, a statutory right of way over the Lands as reasonably required by the Grantee and its Representatives for the purpose of:
  - (a) excavating for, constructing, installing, inspecting, maintaining, operating, repairing, replacing and removing the system of water pipes and all ancillary equipment, appliances and fittings as are necessary to connect the Energy System or the Building System to the Local District Energy Utility for the provision of Heating Services to the Building from the Local District Energy Utility;
  - (b) retrofitting and modifying the Energy System and the Building System for the purpose of connecting the Building to the Local District Energy Utility; and
  - (c) connecting the Energy System or the Building System to the Local District Energy Utility.
  
7. Grantee to Act Reasonably. The Grantee agrees to act reasonably when exercising its rights pursuant to sections 4, 5 and 6 herein and to minimize as much as reasonably possible any disruption or disturbance to the Grantor or its consultants, contractors and subcontractors, the Building, or the tenants, occupants and licensees of the Building in connection with the exercise by the Grantee and the Grantee's Representatives of such rights, and to promptly clean up and restore the Building after having exercised any such rights, to the condition the Building was in prior to the exercise of any such rights, to the extent reasonably possible.
  
8. Covenants Regarding the Works.
  - (a) The Grantee hereby covenants and agrees with the Grantor the Grantee will not carry out any Works except in accordance with the terms of this Section 8.
  - (b) Prior to undertaking any Works, the Grantee will cause to be prepared and delivered to the Grantor for review the Works Plans.
  - (c) If and to the extent required by applicable laws, none of the Works shall be commenced until the applicable Works Plans have been approved by the applicable governmental authorities having jurisdiction.
  - (d) During the construction of the Building, the Work and the construction of the Building will be reasonably co-ordinated with a view to enabling both the Works and the construction of the Building to be completed without delay or undue interference.
  - (e) The Grantee shall not deviate from the Works Plans in any material respect unless revised Works Plans with respect to any such deviation are submitted to the Grantor for review.

- (f) The Grantee's Consultant shall supervise the applicable Works.
  - (g) The parties agree that the Grantor shall have the right, at its sole election and at its cost, to appoint its own representative (the "**Grantor's Monitor**") and the Grantee shall permit the Grantor's Monitor, at all reasonable times during the period beginning with such appointment and continuing until the completion of the Works, to monitor the applicable Works.
  - (h) The Grantee covenants and agrees to use due care and attention to identify, before commencing any Works, the location of all works servicing the Building including, without limitation, utilities and building systems, to ensure that the Grantee does not Interfere (except as may be described in the Works Plans) with the operation of such works in the undertaking of the Works.
  - (i) After the completion of the Works, the Grantee shall, upon request by the Grantor, promptly provide the Grantor with copies of all professionally signed and sealed drawings, reports, specifications, field reports, site instructions and final as-built drawings with respect to the Works, including surveys, if any, setting out the location of the Works.
  - (j) If the Grantee, in exercising its rights under this Agreement, causes any damage to the Building or Lands, the Grantee shall promptly make good any such damage caused to the Building or Lands by restoring such property to a condition at least as good as it or they were in prior to such damage and if the Grantee does not make good such damage, the Grantor shall have the right to restore the Building and the Lands at the expense of the Grantee.
9. No Alternate System. The Grantor will not itself supply or install nor allow any other person to install any system that would supply any Heating Services or Cooling Services to the Building. The Grantee acknowledges and agrees that the foregoing prohibition shall not apply to emergency generators or any electric or gas fireplaces intended for decorative purposes and not primarily for heating located within premises or units in the Building or common areas of the Building.
10. Section 219 Covenant. The Grantor acknowledges, covenants and agrees, pursuant to Section 219 of the *Land Title Act*, with the Grantee:
- (a) not to do or permit to be done on the Lands or in the Building anything which Interferes with or damages the Energy System or impairs the operation or otherwise adversely impacts the Energy System and the provision of Energy Services or creates any hazard or adversely impacts the safety or security of the Energy System. Such acts include, but are not limited to, the acts referred to in this Section 10;
  - (b) not to make, place, erect, operate, use or maintain upon the Lands any building, structure, foundation, pavement, excavation, well, culvert, swimming pool, open drain or ditch, pond, pile or material, obstruction, equipment or thing, or to plant any vegetation which:

- (i) Interferes with or endangers the Energy System or the installation, construction, operation, maintenance, repair, removal or replacement of the Energy System;
  - (ii) materially obstructs the access granted in accordance with this Agreement to the Grantee or the Grantee's Representatives to the Energy System; or
  - (iii) adversely impacts the safety or security of the Energy System by its operation, use, maintenance or existence on the Lands;
- (c) not to add or remove ground cover over the Energy System or carry out blasting on or next to the Lands without the prior written consent of the Grantee, which consent will not be unreasonably withheld or delayed, and if such consent is granted, only in accordance with the reasonable written requirements of the Grantee; and
- (d) to act reasonably and cooperate with the Grantee in connection with the provision by the Grantee of Energy Services to, *inter alia*, the Lands and, without limiting the generality of the foregoing, the Grantor will ensure the Grantee has reasonable access to the Energy System and any part thereof on the Lands at all reasonable times and in the case of emergency, at any time, subject to the terms and conditions set out in this Agreement and in the case of emergency.

11. Option for Designated Premises.

- (a) The Grantor hereby grants to to the Grantee an exclusive and irrevocable option to exclusively occupy (the "**Option**") the Designated Premises for the purposes of the construction, operation and maintenance of any component of the Energy System, as determined by the Grantee in its sole and absolute discretion.
- (b) The Option is open for exercise by the Grantee at any time from the date hereof until October 1, 2017.
- (c) At any time during the period the Option is open for exercise, the Grantee may exercise the Option over the Designated Premises by giving to the Grantor written notice of the exercise of the Option, which notice shall be unequivocal and unconditional.
- (d) If the Option is exercised by the Grantee in the manner provided herein:
  - i) the Grantee shall have the exclusive use of the Designated Premises in accordance with the terms hereof; and
  - ii) the Grantor shall be entitled, upon reasonable notice to, and with the consent of the Grantee, which consent will not be unreasonably withheld, delayed or conditioned, and at any time in case of emergency, to access the Designated Premises for the purpose of undertaking repairs, maintenance and improvements to the Building, provided that such works

will not Interfere with Grantee's use of the Designated Premises or interrupt the operation of the Energy System. In undertaking such works, the Grantor agrees to comply with the reasonable conditions imposed by the Grantee for the protection of the Energy System and the continued operation of Energy Services, including requirements for escorted access. Prior to undertaking such works and as a condition of the Grantee's consent for access to the Designated Premises, the Grantor will submit plans of the proposed work to the Grantee, which plans will include a work schedule for access to the Designated Premises and the particulars of any anticipated interruption to power or other service or utility which may impact the operation of the Energy System.

12. Landscaping. Subject to limitations in Section 10, the Grantor may landscape that portion of the Lands that is on, over, under any portion of the Energy System with lawns, trees, flowers and shrubs and other surface growth and erect, place, install and maintain concrete driveways, patios, walkways and other surface materials (collectively "**Improvements**"), on, over and under any portion of the Energy System, provided that the Grantor will be solely responsible for any and all damage to, and costs and expenses associated with repairing or replacing the Energy System or any portion thereof caused by or arising from the construction or existence of such Improvements on the Lands. In addition, the Grantee will not be responsible for any damage whatsoever to, and costs and expenses associated with repairing any damage to the Improvements resulting from the Grantee exercising its rights and obligations under this Agreement, except for any damage which could have been avoided if the Grantee exercised reasonable caution in the applicable circumstances.

13. Environmental Matters. For the purpose of this Section 13:

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

**"Hazardous Substance"** means any radioactive materials, asbestos materials, urea formaldehyde, underground or aboveground tanks, pollutants, hazardous substances, deleterious substances, dangerous substances or goods, hazardous, corrosive or toxic substances, special waste or waste of any kind or any other substance the storage, manufacture, disposal, bundling, treatment, generation, use, transport, remediation or release into the environment of which is now or hereafter prohibited, controlled or regulated under Environmental Laws; and

**"Pre-existing Hazardous Substances"** means any Hazardous Substance present in, on or under the Lands, including without limitation surface and ground water, as at the date of the Grantee becomes the owner of the Energy System.

(e) Control and Management of Site

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

(f) Grantor's Environmental Covenants

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

- i) not to use or permit the Lands to be used for the sale, storage, manufacture, disposal, handling, treatment, use or any other dealing with any Hazardous Substance, except in compliance with Environmental Laws; and
- ii) to comply with and to continue to comply with Environmental Laws and to use its best efforts to cause any tenants or other occupants of the Lands to comply with Environmental Laws in their use and occupancy of the Lands.

(g) Grantor's Environmental Indemnity

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

- i) any breach of or non-compliance with the provisions of this Section 13 by the Grantor; and
- ii) the presence or alleged presence of any Hazardous Substance in, on or under the Lands, including without limitation surface and ground water, and the release or alleged release of any Hazardous Substance at or from the Lands, including without limitation surface and ground water, except to the extent that such presence or release arises from the negligent act or omission of the Grantee or a breach or non-compliance by the Grantee with applicable Environmental Laws.

(h) Grantee's Environmental Covenants

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

- i) not to use the Lands for the sale, storage, manufacture, disposal, handling, treatment, use or any other dealing with any Hazardous Substance, except in compliance with Environmental Laws; and
- ii) to comply with and to continue to comply with Environmental Laws in its use and occupancy of the Lands hereunder.

(i) Grantee's Environmental Indemnity

From and after the date on which the Grantee becomes the owner of the Energy System, the Grantee will release and indemnify and hold harmless the Grantor and its Representatives from any and all liabilities, actions, damages, claims (including remediation cost recovery claims), losses, costs, orders, fines, penalties and expenses whatsoever (including all consulting and legal fees and expenses on a solicitor-client basis) and the costs of removal, treatment, storage and disposal of Hazardous Substances (except any Pre-Existing Hazardous Substance) and remediation of the Lands and any adjacent property affected by the transmission of Hazardous Substances (except any Pre-Existing Hazardous Substance) from the Lands which may be paid by, incurred by or asserted against the Grantor or its Representatives arising from or in connection with any breach of or non-compliance with the provisions of this Section 13 by the Grantee except to the extent that such breach or non-compliance was contributed to or caused by any negligent act or omission of the Grantor or its Representatives or a breach or non-compliance by the Grantor with applicable Environmental Laws.

- (j) The obligations of the Grantee under this Section 13 shall survive the registration of this Agreement and the termination and release thereof, if any. The obligations of the Grantee under this Section 13 are in addition to, and shall not limit, the obligations of the Grantee contained in other provisions of this Agreement.

14. No Requirement to Do Works, Pay Fees, Etc. This Agreement does not in any way require the Grantee to provide any works or services whatsoever to the Lands, to develop, construct, inspect, clean, maintain, repair or replace any works or improvements whatsoever within or in respect of the Lands or to pay any fee or other amount whatsoever in connection with this Agreement, unless the Grantee is expressly required to do so under the terms of this Agreement or under any other agreement in writing.
15. Subdivision / Effect of Agreement. This Agreement and the rights herein granted will run with the Lands and each part into which the Lands may be subdivided, whether by subdivision plan, strata plan or otherwise howsoever, and the term "Grantor" includes the owner of each subdivided portion of the Lands and the successors in title thereof. Despite anything contained in this Agreement, if the Lands are subdivided by subdivision plan, strata plan or otherwise howsoever, a default in respect of any subdivided portion of

the Lands, including a default with respect to any amount payable in connection with any subdivided portion of the Lands, will not be a default with respect to any other portion of the Lands for which there has not been a default and the Grantee will not be entitled to exercise any of its rights or remedies under this Agreement except with respect to the subdivided portion or portions of the Lands for which there has been a default. Despite any other provision of this Agreement, in the event that the Lands are subdivided by means of a strata plan pursuant to the *Strata Property Act*:

- (a) the “Grantor” under this Agreement shall be the strata corporation created by the filing of such strata plan and the individual owners of the strata lots created by such strata plan shall have no obligations or liabilities under this Agreement other than as members of the strata corporation;
  - (b) the individual strata lots created by any strata plan in respect of any portion of the Lands will not form part of the “Lands” and will not be subject to this Agreement;
  - (c) the statutory rights of way and section 219 covenants granted pursuant to this Agreement are intended to apply to and burden only the common property created by such strata plan and not at any time to burden any strata lot or the owner of any strata lot; and
  - (d) upon the request of and at the expense of the Grantor or any strata lot owner, the Grantee will execute and deliver in registrable form a discharge of this Agreement from any such strata lot provided however, that this section 15(d) will not apply in the case of bare land strata lots.
16. Application to Strata Corporation. Without limiting anything set out in this Agreement, any strata corporation created in respect of any portion of the Lands will be a “Grantor” and will be bound by all of the terms and conditions of this Agreement and any common property created by any strata plan in respect of any portion of the Lands will remain as part of the “Lands” and will be subject to this Agreement.
17. Injunctive Relief. The Grantor acknowledges and agrees that, without limiting any other right or remedy of the Grantee, the Grantee may obtain from a court of competent jurisdiction injunctive relief in respect of any breach or anticipated breach by the Grantor of any of the Grantor’s duties or obligations under this Agreement.
18. Grantor’s Indemnity. Subject to section 20, the Grantor does hereby agree to indemnify and save harmless the Grantee from all liabilities, claims, demands, actions, damages, losses, costs and expenses which the Grantee may suffer or incur arising from or connected to the non-performance of its rights and obligations hereunder, save to the extent that such liabilities, claims, demands, actions, damages, losses, costs and expenses which the Grantee may suffer or incur result from the negligence or wilful misconduct of the Grantee. The provisions of this Section shall survive the expiration or termination of this Agreement.
19. Grantee’s Liability and Indemnity. The Grantee shall indemnify the Grantor and save it harmless from all loss claims, actions, damages, liability and expense in connection with

loss of life, personal injury, damage to property or any other loss or injury whatsoever arising out of this Agreement, or any occurrence in, upon or at the Lands, or the occupancy or use by the Grantee of the Lands or any part thereof, or occasioned wholly or in part by any act or omission of the Grantee or its Representatives or anyone permitted by the Grantee to be on the Lands or in the Development. If the Grantor shall, without fault on its part, be made a party to any litigation commenced by or against the Grantee, then the Grantee shall protect, indemnify and hold the Grantor harmless in connection with such litigation. The Grantor may, at its option, participate in or assume carriage of any litigation or settlement discussions relating to the foregoing, or any other matter for which the Grantee is required to indemnify the Grantor under this Agreement. Alternatively, the Grantor may require the Grantee to assume carriage of and responsibility for all or any part of such litigation or discussions.

20. Limitation of Liability.

- (a) Neither party shall be liable for any indirect, incidental, special or consequential damages or losses, including any loss of profits, loss of business revenue, failure to realize expected savings or any other commercial or economic loss suffer or incurred by the other party or its Representatives, howsoever caused.
- (b) The Grantor shall not be liable for any death or injury arising from or out of any occurrence in, upon, at, or relating to the Lands, or damage to property of the Grantee or of others located on the Lands, nor shall it be responsible for any loss of or damage to any property of the Grantee or others from any cause, except to the extent that such death, injury, loss or damage directly or indirectly results from the negligence or willful misconduct of the Grantor, its agents, employees, contractors, or others for whom it may, in law, be responsible. The Grantor shall not be liable for any such damage caused by other tenants or persons on the Lands or in the Building or the Development or by occupants of adjacent property thereto, or the public, or caused by any public or quasi-public work. All property of the Grantee kept or stored on the Grantor shall be so kept or stored at the risk of the Grantee only and the Grantee releases and agrees to indemnify the Grantor and save it harmless from any claims arising out of any damage to the same including, without limitation, any subrogation claims by the Grantee's insurers unless such damage results from the negligence or willful misconduct of the Grantor, its agents, employees, contractors, or others for whom it may, in law, be responsible.
- (c) The provisions of this Section shall survive the expiration or termination of this Agreement.

21. Insurance. The Grantee will, without limiting its liability under this Agreement or its obligations under applicable laws, at its own expense, obtain and maintain in full force and effect throughout the Term, the insurance coverage described in this Section 21 including coverage for their officers, directors and employees and, unless otherwise agreed in writing by the Grantor, will also cause any subcontractors or sub-consultants of the Grantee to obtain and maintain reasonable levels of the relevant types of insurance

coverage described in this Section 21, including such coverage for their respective officers, directors and employees.

- (a) **General Commercial or Wrap-Up Liability Insurance**, on an occurrence basis having a limit of not less than five million dollars (\$5,000,000) inclusive per occurrence and in the aggregate for products and completed operations, and insuring against claims for bodily injury, personal injury, death, and property damage, including loss of use, arising out of the operations of the Grantee under this Agreement. The Commercial General Liability or Wrap-Up Liability policy shall name the Grantor and its directors, officers, employees and agents as additional insureds in respect of the operations of the Grantee under this Agreement and shall be non-contributory and apply only as primary, and not as excess, to any other insurance available to the Grantor.
- (b) **Automobile Liability Insurance** having a limit of not less than two million dollars (\$2,000,000) inclusive per occurrence and insuring against claims for bodily injury, including death, and for property damage arising out of the use of the Grantee's owned, leased and non-owned vehicles if such vehicles are used in the performance of this Agreement.
- (c) **All Risks Property Insurance** (including flood and earthquake) upon all property owned by the Grantee or in their care, custody or control or installed by or on behalf of the Grantee which is located in the Building in an amount not less than the full replacement cost thereof.
- (d) **Boiler and Machinery Insurance** with limits for each accident in an amount not less than the full replacement cost of all boilers, pressure vessels, heating, ventilating and air-conditioning equipment and miscellaneous electrical apparatus owned or operated by the Grantee or by others (other than the Grantor) on behalf of the Grantee.  
  
The policies in (c) and (d) above shall name as loss payee the Grantor, and anyone else with an interest in the Building from time to time designated in writing by the Grantor, shall not contain a co-insurance clause and shall contain a waiver of any rights of subrogation which the insurer may have against the Grantor.
- (e) **Workers' Compensation Insurance** in compliance with the applicable Laws pertaining to the compensation of injured employees assigned to the operations of the Grantee under this Agreement including voluntary compensation.

All insurance policies required pursuant to this Section 21 will be in accordance with the following requirements:

- (f) The policies will contain a provision obligating the insurer to give the Grantor thirty (30) days advance written notice of policy cancellation.

- (g) Any self-insured retention, deductible, and exclusion in coverage in the policies will be assumed by, for the account of, and at the sole risk of the Grantee and, to the extent applicable, will be paid by the Grantee.
  - (h) The Grantee will deliver to the Grantor up-to-date insurance certificates evidencing such required coverage before the commencement of the operations of the Grantee under this Agreement within fifteen (15) days of the renewal of any such policy, and otherwise from time to time as is reasonably required by the Grantor, provided that the Grantor has no obligation to examine such certificates or to advise the Grantee in the event its insurance is not in compliance with this Section 21.
  - (i) The insurance shall be placed with insurers which have an "AM Best" rating of A- or better and which are licensed to provide insurance coverage in the Province of British Columbia.
  - (j) Neither the providing of insurance by the Grantee in accordance with the requirements of this Agreement nor the insolvency, bankruptcy or failure of any insurance company to pay any claim accruing shall be held to waive any of the provisions of this Agreement with respect to the liability of the Grantee or otherwise. The presence or absence of such insurance coverage as contemplated by this Agreement does not in any way decrease the Grantee's liability owed to the Grantor.
22. Discharge. If this Agreement is terminated for any reason, the Grantee will execute and deliver in registrable form a discharge of this Agreement within 15 days of such termination.
23. Amendment. Except as expressly set out herein, this Agreement may only be amended by an agreement in writing signed by the Grantee and the Grantor. No modification or amendment of any provision of this Agreement will be inferred from anything done or omitted by any of the parties except by an express agreement in writing duly executed and delivered by all of the parties.
24. No Waiver. No condoning, excusing or overlooking of any default nor any delay in proceeding or failure to proceed in the case of any default under this Agreement will operate as a waiver of or otherwise affect in any way any rights or remedies under this Agreement or at law. No waiver of any rights or remedies will be inferred from anything done or omitted to be done by any party except by an express waiver in writing. No waiver in respect of any matter or thing will operate as a waiver in respect of any other matter or thing.
25. Governing Law. This Agreement will be governed by and interpreted in accordance with the laws of in force in the Province of British Columbia, which is the proper law hereof, and the courts of British Columbia will have the exclusive jurisdiction with respect to all matters arising under or in respect of this Agreement.

26. Time is of the Essence. Time is of the essence of this Agreement and will remain of the essence despite any extension of time given under or in connection with this Agreement.
27. Notices. All notices under this Agreement must be given in writing and delivered in accordance with this provision. The parties agree that:
- (a) any notice to the Grantor may be sent to the Grantor's address according to the Land Title Office records in respect of the Lands or delivered to the Grantor; and
  - (b) all notices to the Grantee must be sent to the Grantee at the address set out above or such other address as the Grantee may notify the Grantor in accordance with the terms hereof at any time and from time to time.

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

28. Grantee's Licences and Authorizations. The Grantee may grant to any other person a licence or other agreement, authorizing such person to exercise any right granted to the Grantee pursuant to this Agreement without limiting or restricting its obligations and liabilities contained in this Agreement.
29. Priority. The Grantor will do all acts and things determined by the Grantee to be necessary to gain priority for this Agreement over any financial charge or encumbrance registered against title to the Lands or any portion thereof, other than any financial charge or encumbrance consented to in writing by the Grantee in its absolute discretion.
30. Severability. The provisions hereof are severable and if any of them should be found to be void or unenforceable at law, the remaining provisions shall not be affected thereby.
31. Assignment by Grantee/Release. The Grantee may assign this Agreement to any person, provided that the Grantee and its assignee satisfy any requirements set out in Sections 218 and 219 of the *Land Title Act* (British Columbia), and provided that upon any assignment of this Agreement by the Grantee, the Grantee shall cause the assignee to enter into an agreement with the Grantor under which such assignee covenants that it shall perform the obligations of the Grantee hereunder and be bound by all of the provisions of this Agreement, including the provisions of this Section 31, which will apply to each and every subsequent assignment of any interest under this Agreement by such assignee.

32. Further Assurances. The Grantor will execute and deliver any further agreement, document or instrument and do and perform any further act or thing as may be required by the Grantee at any time and from time to time in order to evidence or give full force and effect to the terms, conditions and intent of this Agreement.
33. Ownership of Energy System. Despite any degree of annexation or affixation, or rule of law or equity to the contrary, all components of the Energy System shall not be considered a fixture and will be and remain the property of and vest in the Grantee.
34. Release of Grantor. For greater certainty, no person who has been "Grantor" will be liable for any breach of this Agreement occurring after such person has ceased to be an owner of, or strata corporation with respect to any part of the Lands, provided that the Grantor has obtained from the transferee of the Lands an assumption agreement whereby the transferee covenants and agrees to be bound by the obligations of the Grantor set out in this Agreement from and after the date of such conveyance and transfer.
35. Restriction of Right of Way Area. The Grantee agrees that, once the Energy System is installed on, in and under the Lands, the Grantor shall at its cost and option prepare a reference plan ("**Plan**") showing the location of the right of way area for the Energy System on the Lands (the "**Right of Way Area**") and file the Plan in the applicable Land Title Office. Upon registration of the Plan in the applicable Land Title Office, the rights granted to the Grantee under Sections 4(a-h) of this Agreement and the covenants given by the Grantor under Section 10 of this Agreement, will be limited to the Right of Way Area.
36. Term. The term of this Agreement shall commence upon registration at the Land Title Office and shall continue for so long as the Grantee provides Energy Services to the Building from the Energy System (the "**Term**").
37. Default and Termination. Either party may, at its option and without further liability to the other party, terminate this Agreement: (i) upon the material default by such other party in the performance of any of its covenants or obligations under this Agreement, if such default is not remedied within thirty (30) days of the party in default receiving written notice of such default, or within such longer period as is reasonable in the circumstances, so long as the party in default is diligently moving to implement remedial action; or (ii) if such other party becomes insolvent, ceases to do business as a going concern, is adjudged bankrupt or made subject to the appointment of a receiver-manager, makes a general assignment for the benefit of creditors, or takes the benefit of any statute in force for the winding up or liquidation of business enterprises.

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

**PRIORITY CONSENT**

For One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and agreed to by HSBC Bank Canada (the "Chargeholder"), being the holder of Mortgage CA3809858 and Assignment of Rents CA3809859 (collectively, the "Charges"), hereby approves and consents to the granting of the Statutory Rights of Way and the Section 219 Covenant (collectively, the "Encumbrances") attached, and consents and agrees that the Encumbrances shall be binding upon the Chargeholder's interest in or charge upon the Lands and shall be encumbrances upon such Lands in priority to the Charges in the same manner and to the same effect as if the Encumbrances had been granted and registered against such Lands prior to the dating, execution and registration of the Charges and the advance of any monies thereunder.

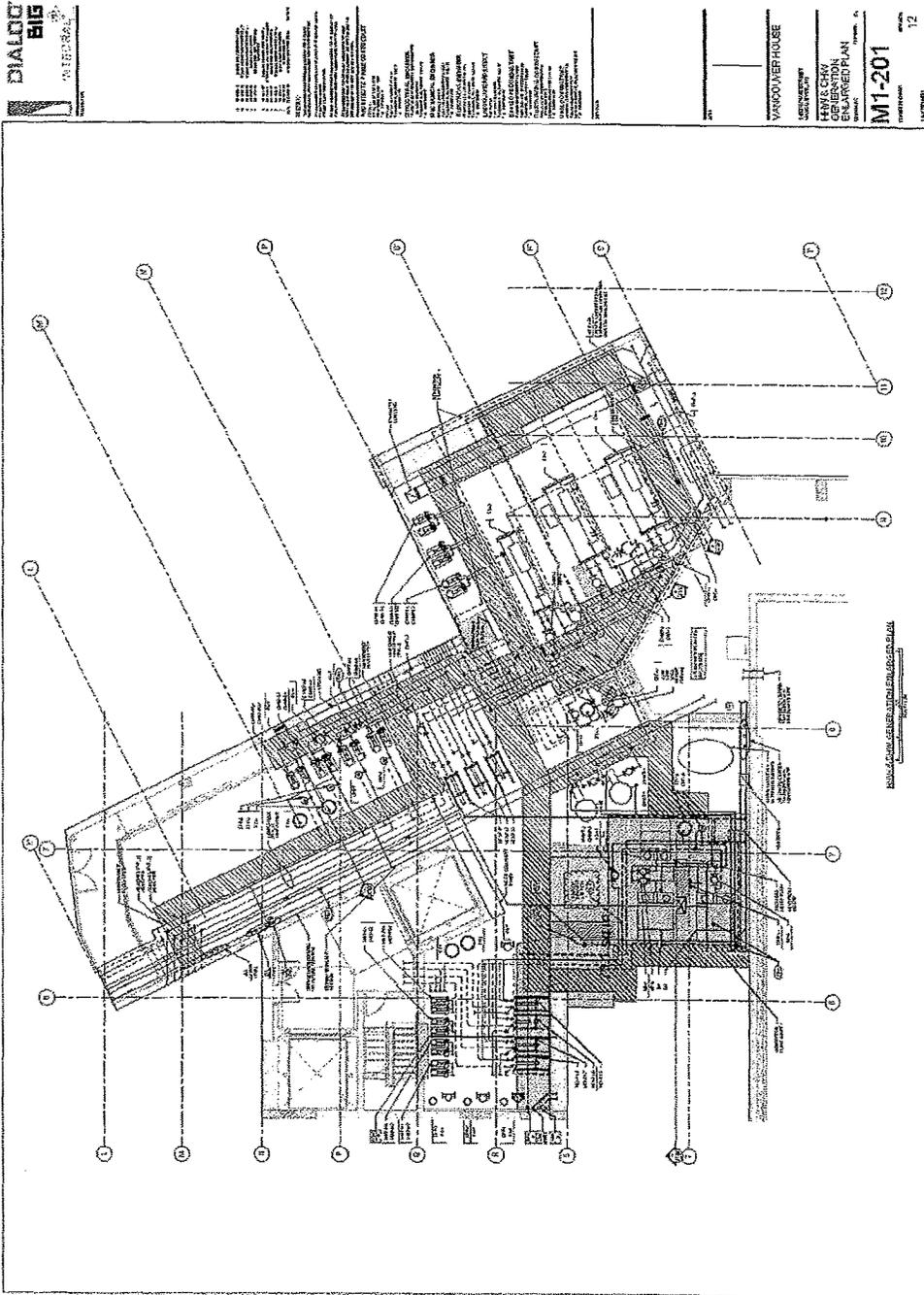
To witness this priority consent, the Chargeholder has caused its duly authorized signatory(ies) to sign the *Land Title Act* Form C above.

**PRIORITY CONSENT**

For One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and agreed to by Fulcrum Capital Partners Inc. (the "Chargeholder"), being the holder of Mortgage CA3809860 and Assignment of Rents CA3809861 (collectively, the "Charges"), hereby approves and consents to the granting of the Statutory Rights of Way and the Section 219 Covenant (collectively, the "Encumbrances") attached, and consents and agrees that the Encumbrances shall be binding upon the Chargeholder's interest in or charge upon the Lands and shall be encumbrances upon such Lands in priority to the Charges in the same manner and to the same effect as if the Encumbrances had been granted and registered against such Lands prior to the dating, execution and registration of the Charges and the advance of any monies thereunder.

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

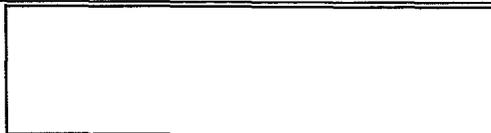
**SCHEDULE A**  
**PLAN OF DESIGNATED PREMISES**





**LAND TITLE ACT  
FORM C (Section 233) CHARGE  
GENERAL INSTRUMENT - PART 1 Province of British Columbia**

Your electronic signature is a representation that you are a subscriber as defined by the Land Title Act, RSBC 1996 c.250, and that you have applied your electronic signature in accordance with Section 168.3, and a true copy, or a copy of that true copy, is in your possession.



1. APPLICATION: (Name, address, phone number of applicant, applicant's solicitor or agent)

**Kornfeld LLP**  
Barristers & Solicitors  
1100 - 505 Burrard Street  
Vancouver BC V7X 1M5  
Telephone No. (604) 331-8300  
LTO Client No. 010448  
File No. CRE008GEN141 JEL

Deduct LTSA Fees? Yes

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:  
[PID] [LEGAL DESCRIPTION]

**029-349-371 LOT B BLOCK 122 DISTRICT LOT 541 GROUP 1 NEW WESTMINSTER  
DISTRICT PLAN EPP40230**

STC? YES

3. NATURE OF INTEREST CHARGE NO. ADDITIONAL INFORMATION

**SEE SCHEDULE**

4. TERMS: Part 2 of this instrument consists of (select one only)

(a)  Filed Standard Charge Terms D.F. No. (b)  Express Charge Terms Annexed as Part 2

A selection of (a) includes any additional or modified terms referred to in Item 7 or in a schedule annexed to this instrument.

5. TRANSFEROR(S):

**SEE SCHEDULE**

6. TRANSFEREE(S): (including postal address(es) and postal code(s))

**CREATIVE ENERGY VANCOUVER PLATFORMS INC.  
SUITE 1 - 720 BEATTY STREET**

VANCOUVER BRITISH COLUMBIA INCORPORATION No  
CANADA BC0410371

7. ADDITIONAL OR MODIFIED TERMS:

N/A

8. EXECUTION(S): This instrument creates, assigns, modifies, enlarges, discharges or governs the priority of the interest(s) described in Item 3 and the Transferor(s) and every other signatory agree to be bound by this instrument, and acknowledge(s) receipt of a true copy of the filed standard charge terms, if any.

Officer Signature(s)

\_\_\_\_\_

Execution Date

Y	M	D

Transferor(s) Signature(s)

**HOWE STREET VENTURES LTD.**  
by its authorized signatory(ies):

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

**OFFICER CERTIFICATION:**

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



**LAND TITLE ACT  
FORM E****SCHEDULE**

PAGE 3 OF 24 PAGES

NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

Statutory Right of Way

Section 4, Page 9

NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

Priority Agreement

Granting Statutory Right of Way herein priority over  
Mortgage CA3809858 and Assignment of Rents  
CA3809859 - Page 23

NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

Priority Agreement

Granting Statutory Right of Way herein priority over  
Mortgage CA3809860 and Assignment of Rents  
CA3809861 - Page 24

NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

Statutory Right of Way

Section 5, Page 10

NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

Priority Agreement

Granting Statutory Right of Way herein priority over  
Mortgage CA3809858 and Assignment of Rents  
CA3809859 - Page 23

NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

Priority Agreement

Granting Statutory Right of Way herein priority over  
Mortgage CA3809860 and Assignment of Rents  
CA3809861 - Page 24

**LAND TITLE ACT  
FORM E****SCHEDULE**

PAGE 4 OF 24 PAGES

NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
Statutory Right of Way		Section 6, Pages 10 - 11
Priority Agreement		Granting Statutory Right of Way herein priority over Mortgage CA3809858 and Assignment of Rents CA3809859 - Page 23
Priority Agreement		Granting Statutory Right of Way herein priority over Mortgage CA3809860 and Assignment of Rents CA3809861 - Page 24
Covenant		Section 10, Page 13
Priority Agreement		Granting Section 219 Covenant herein priority over Mortgage CA3809858 and Assignment of Rents CA3809859 - Page 23
Priority Agreement		Granting Section 219 Covenant herein priority over Mortgage CA3809860 and Assignment of Rents CA3809861 - Page 24

**LAND TITLE ACT  
FORM E**

**SCHEDULE**

**PAGE 5 OF 24 PAGES**

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

**5. TRANSFEROR(S):**

HOWE STREET VENTURES LTD. (INC. NO. BC0683469)

HSBC BANK CANADA (as to priority)

FULCRUM CAPITAL PARTNERS INC. (INC. NO. A83659) (as to priority)

**PART 2 - TERMS****SECTION 219 COVENANT AND STATUTORY RIGHT OF WAY****LOT B**

BETWEEN:

**HOWE STREET VENTURES LTD.** (INC. NO. BC0683469)  
501 – 1067 West Cordova Street, Vancouver, BC V6C 1C7

(the “**Grantor**”)

AND:

**CREATIVE ENERGY VANCOUVER PLATFORMS INC.**,  
(Inc. No. BC0410371)  
Suite 1 – 720 Beatty Street, Vancouver, BC V6B 2M1

(the “**Grantee**”)

WHEREAS:

- A. The Grantor is the registered owner in fee simple of the Lands on which a portion of a mixed use development known as “Vancouver House” is or will be constructed.
- B. The Grantee will own and operate the Energy System in respect of, *inter alia*, the Lands.
- C. The right of way granted and covenant under this Agreement are necessary for the operation and maintenance of the Energy System and the provision of Energy Services in respect of, *inter alia*, the Lands.

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

1. Definitions. In this Agreement:
  - (a) “**Building**” means the commercial building located on the Lands and includes all outside areas, landscaped areas, roadways and driveways, ramps, outside and covered parking areas and walkways, existing or to be constructed from time to time in connection therewith.
  - (b) “**Building System**” means the complete heating and ventilating (which may include air conditioning) system and domestic hot water system and storage equipment to be installed and used for distributing and storing Thermal Energy in

a Building, connected to but downstream of and excluding the Demarcation Points for that Building.

- (c) **“Business Day”** means any day that is not a Saturday, Sunday, a statutory holiday in British Columbia, Easter Monday or Boxing Day.
- (d) **“Consultant”** means a duly qualified and licensed engineer or other professional having expertise in respect of the Works referred to in the applicable Works Plans.
- (e) **“Cooling Plant”** means one or more cooling plants consisting of water pipes and all ancillary equipment, components, controls, appliances and fittings, energy meters, chillers and cooling towers, for the generation, distribution and exchange of thermal energy for the purposes of providing cooling to the applicable Demarcation Points.
- (f) **“Development”** means the multi-use commercial and residential development partially located on the Lands known as “Vancouver House” in Vancouver, British Columbia, which is comprised of two commercial buildings, including the Building, a mixed-use residential and commercial tower, certain parking facilities and all other improvements and facilities relating thereto from time to time.
- (g) **“Demarcation Points”** means:
  - (i) in respect of the components of the Energy System relating to the provision of Heating Services to the Building, the Energy Transfer Stations; and
  - (ii) in respect of the Cooling Plant, the applicable isolation valves;
- (h) **“Distribution System”** means, collectively, the system of pipes, fittings and ancillary components and equipment supplying Heating Services to, *inter alia*, the Demarcation Points.
- (i) **“Energy Services”** means Heating Services and, where applicable, Cooling Services to be provided through the Energy System to the Demarcation Points in accordance with the applicable Customer Service Agreement.
- (j) **“Energy System”** means the thermal energy system consisting of the Cooling Plant, the On-Site TES, the Local District Energy Utility, the Distribution System (or any combination of the foregoing), the Energy Transfer Stations and related components, equipment and controls used for generating and distributing the Energy Services to the Demarcation Points, and all additions thereto and replacements thereof, but specifically excluding all Building Systems.
- (k) **“Energy Transfer Station”** means, in respect of each Building, one or more separate exchangers for space heating and domestic hot water (excluding domestic hot water storage tanks), energy metering equipment including

temperature sensors and flow meters, control panel and all pipes, fittings and other associated equipment which control the transfer, and measure Energy Services from the Distribution System to the Building System for such Building.

- (l) “**Interfere**” means, except as otherwise provided in this Agreement, interfere with, impede, disturb or adversely affect except in a non-material and temporary way and “Interference” has a corresponding meaning.
- (m) “**Lands**” means those lands and premises defined in Item 2 of the Form C Instrument General Part 1 of which this Agreement forms part.
- (n) “**Local District Energy Utility**” means the district energy utility that is intended to be constructed and operated by the Grantee in the South Downtown area of Vancouver, British Columbia, that will generate, distribute, meter, and transfer low carbon thermal energy from one or more sources of heat to and from connected buildings through a network of pipes and associated permanent or temporary equipment and infrastructure to provide all or a portion of the annual space and hot water heating requirements of each building within its service area, including the Building.
- (o) “**person**” means an individual, corporation, body corporate, partnership, joint venture, association, society or unincorporated organization or any trustee, executor, administrator or other legal representative.
- (p) “**Related Person**” in respect of any person, means:
  - (i) any affiliate of such person, within the meaning of the *Business Corporations Act* (British Columbia);
  - (ii) any associate of such person, within the meaning of the *Business Corporations Act* (British Columbia) or the *Securities Act* (British Columbia); and
  - (iii) any partnership, including a limited partnership, in which such person is a partner.
- (q) “**Representatives**” means, with respect to either party, any person who is a Related Person to such party and any officer, director, employee, agent, contractor, subcontractor, consultant, or advisor of such party or its Related Person, or any person for whom the such party is responsible at law.
- (r) “**Service Agreement**” means any agreement pursuant to which the Grantee provides Energy Services to the Building, as such agreement may be amended or restated from time to time.
- (s) “**Strata Property Act**” means the *Strata Property Act* (British Columbia) from time to time in force and all amendments thereto or other similar legislation which may hereafter be enacted in its place.

- (t) **“Works”** means any installation, inspection, maintenance, operation, repair, construction, replacement, removal, steps or any other acts contemplated by the Grantee in exercising any of its rights under this Agreement if such installation, inspection, maintenance, operation, repair, construction, replacement, removal, steps or any other acts contemplated by the Grantee requires the exclusive use of any Building elevators or requires the interruption of any Building services or utilities in any way or in any way is likely to cause any material interference in the construction or operation of the Building or access to or egress from the Building or the movement within the Building by the owners, tenants or other occupants of the Building or any part thereof or any of their respective invitees.
- (u) **“Works Plans”** means the plans and specifications for the Works intended to be undertaken as identified therein as prepared by a Consultant, which Works Plans will include:
- (i) a schedule for undertaking and completing the Works;
  - (ii) particulars of anticipated power or other building service or utility interruptions necessitated by the Works; and
  - (iii) particulars of any restrictions on access to or from or movement within the Building necessitated by the Works.
2. Benefit to the Lands. The Grantor hereby acknowledges and agrees the Energy System and the Energy Services provided by the Grantee in respect of the Lands constitutes an amenity in relation to the Lands within the meaning of Section 219 of the *Land Title Act* (British Columbia).
3. Provision of Service. The Grantor will connect the Building to the Energy System and will enter into one or more Service Agreements with the Grantee for such connection to the Energy System, and the Grantor will provide the Grantee with any information and documentation reasonably required by the Grantee in connection therewith. In the event of a conflict between the terms and conditions of any such Service Agreement with respect to the use of and access to the Lands and this Agreement, the terms and conditions of this Agreement shall prevail.
4. Statutory Right of Way re: Energy System. Pursuant to Section 218 of the Land Title Act and subject always to the terms of this Agreement, the Grantor hereby grants to the Grantee for so long as the Grantee shall require it, a statutory right of way over that portion of the Lands which contains the Energy System, for the Grantee and the Grantee’s Representatives to enter onto the Lands at any time and from time to time to:
- (a) construct, install, inspect, maintain, operate, repair, replace and remove the Energy System or any portion thereof located on, under and over the Lands and in the buildings located on the Lands;
  - (b) make, inspect, maintain, remove and repair the Energy System service connections and connect and disconnect the Energy System service lines;

- (c) clear the Lands of any obstructions, including, without limitation, trees or other vegetation, buildings, structures, foundations, pavements, improvements or obstructions, which Interfere with any of the rights granted to the Grantee herein; provided, however, that the Grantee agrees that any improvements on the Lands as at the date of this Agreement do not Interfere with the rights granted to the Grantee herein;
  - (d) install marking posts to mark the location of the Energy System or any portion thereof;
  - (e) take such steps as the Grantee deems necessary, to protect and secure the Energy System on the Lands;
  - (f) bring onto the Lands all machinery, vehicles, materials and equipment it requires or desires for any of the foregoing purposes;
  - (g) generally do all acts necessary or incidental to the foregoing or to the business of operating, maintaining and repairing the Energy System on, *inter alia*, the Lands;
  - (h) connect the Energy System to buildings on properties other than the Lands in order to provide space heating and cooling and domestic hot water services to such buildings from the Energy System; and
  - (i) exercise any of the Grantee's other rights set out in this Agreement.
5. Statutory Right of Way re: Access. Pursuant to Section 218 of the Land Title Act and subject always to the terms of this Agreement, the Grantor hereby grants to the Grantee for so long as the Grantee shall require it, a statutory right of way over the Lands as reasonably required by the Grantee and its Representatives for the purpose of access to and egress from that portion of the Lands which contains the Energy System.
6. Statutory Right of Way re: Local District Energy Utility. Pursuant to Section 218 of the Land Title Act and subject always to the terms of this Agreement, the Grantor hereby grants to the Grantee for so long as the Grantee shall require it, a statutory right of way over the Lands as reasonably required by the Grantee and its Representatives for the purpose of:
- (a) excavating for, constructing, installing, inspecting, maintaining, operating, repairing, replacing and removing the system of water pipes and all ancillary equipment, appliances and fittings as are necessary to connect the Energy System or the Building System to the Local District Energy Utility for the provision of space heating or cooling or domestic hot water services (or any combination thereof) to the Building from the Local District Energy Utility;
  - (b) retrofitting and modifying the Energy System and the Base Building System for the purpose of connecting the Building to the Local District Energy Utility; and

- (c) connecting the Energy System or the Base Building System to the Local District Energy Utility.

7. Grantee to Act Reasonably. The Grantee agrees to act reasonably when exercising its rights pursuant to sections 4, 5 and 6 herein and to minimize as much as reasonably possible any disruption or disturbance to the Grantor or its consultants, contractors and subcontractors, the Building, or the tenants, occupants and licensees of the Building in connection with the exercise by the Grantee and the Grantee's Representatives of such rights, and to promptly clean up and restore the Building after having exercised any such rights, to the condition the Building was in prior to the exercise of any such rights, to the extent reasonably possible.

8. Covenants Regarding the Works.

- (a) The Grantee hereby covenants and agrees with the Grantor the Grantee will not carry out any Works except in accordance with the terms of this Section 8.
- (b) Prior to undertaking any Works, the Grantee will cause to be prepared and delivered to the Grantor for its approval the Works Plans and the Grantor shall have delivered its written approval to the Grantee of the Works therein described, such approval not to be unreasonably withheld, conditioned or delayed.
- (c) If and to the extent required by applicable laws, none of the Works shall be commenced until the applicable Works Plans have been approved by the applicable governmental authorities having jurisdiction.
- (d) During the construction of the Building, the Work and the construction of the Building will be reasonably co-ordinated with a view to enabling both the Work and the construction of the Building to be completed without delay or undue interference.
- (e) The Grantee shall not deviate from the Works Plans in any material respect unless revised Works Plans with respect to any such deviation are submitted to the Grantor for approval and the Grantor has delivered its written approval to such deviation to the Grantee, such approval not to be unreasonably withheld, conditioned or delayed.
- (f) The Grantee's Consultant shall supervise the applicable Works.
- (g) The parties agree that the Grantor shall have the right, at its sole election, appoint its own representative (the "**Grantor's Monitor**") and the Grantee shall permit the Grantor's Monitor, at all reasonable times during the period beginning with such appointment and continuing until the completion of the Works, to monitor the applicable Works.
- (h) The Grantee shall obtain the prior approval of the Grantor, not to be unreasonably withheld, conditioned or delayed, of the nature, extent and method of any repair

or restoration of the Building and to any improvements thereon resulting from the Works.

- (i) The Grantee covenants and agrees to use due care and attention to identify, before commencing any Works, the location of all works servicing the Building including, without limitation, utilities and building systems, to ensure that the Grantee does not Interfere (except as may be described in the Works Plans) with the operation of such works in the undertaking of the Works.
  - (j) After the completion of the Works, the Grantee shall, upon request by the Grantor, promptly provide the Grantor with copies of all professionally signed and sealed drawings, reports, specifications, field reports, site instructions and final as-built drawings with respect to the Works, including surveys, if any, setting out the location of the Works.
  - (k) The Grantee will reimburse the Grantor, within forty-five (45) days after receipt of invoice from the Grantor evidencing such costs, for any reasonable and proper third party costs and expenses, without mark-up, incurred by the Grantor in connection with the review and approval of the Work Plans and monitoring the Works.
  - (l) If the Grantee, in exercising its rights under this Agreement, causes any damage to the Building or Lands, the Grantee shall promptly make good any such damage caused to the Building or Lands by restoring such property to a condition at least as good as it or they were in prior to such damage and if the Grantee does not make good such damage, the Grantor shall have the right to restore the Building and the Lands at the expense of the Grantee.
  - (m) If in the opinion of the Grantor, acting reasonably, any of the Works would materially and adversely affect the structure of the Building, the Base Building System or any of the electrical, plumbing, mechanical, heating, ventilating or air conditioning systems, such Works shall, at the option of the Grantor, be performed by the Grantor at the Grantee's cost. If the Grantor performs such work, then on completion of such work, the cost of the work (including the fees of any architectural and engineering consultants) plus a sum equal to 15% of said cost representing the Grantor's overhead shall be paid by the Grantee to the Grantor. No Works shall be permitted which may weaken or endanger the structure or adversely affect the condition or operation of the Energy System, the Building, or any portion thereof, or any other portion of the Development or any mechanical or electrical system or facility thereof, or diminish the value thereof. The Grantee shall not cut or drill into, nail or otherwise attach or secure any fixture, sign, apparatus or equipment to any part of the Lands without first obtaining the Grantor's prior written consent, which consent will not be unreasonably withheld, delayed or conditioned.
9. No Alternate System. The Grantor will not itself supply or install nor allow any other person to install any system that would supply any or all of domestic hot water, cooling

or space heating to the Building unless the Energy System, as determined by the Grantor acting reasonably following consultation with the Grantee, is not capable of supplying adequate space heating and cooling, and domestic hot water services to the Building to meet the consumption demands of the Building. The Grantee acknowledges and agrees that the foregoing prohibition shall not apply to emergency generators or any electric or gas fireplaces intended for decorative purposes and not primarily for heating located within premises or units in the Building or common areas of the Building.

10. Section 219 Covenant. The Grantor acknowledges, covenants and agrees, pursuant to Section 219 of the *Land Title Act*, with the Grantee:
- (a) not to do or permit to be done on the Lands or in the Building anything which Interferes with or damages the Energy System or impairs the operation or otherwise adversely impacts the Energy System and the provision of Energy Services or creates any hazard or adversely impacts the safety or security of the Energy System. Such acts include, but are not limited to, the acts referred to in this Section 10;
  - (b) not to make, place, erect, operate, use or maintain upon the Lands any building, structure, foundation, pavement, excavation, well, culvert, swimming pool, open drain or ditch, pond, pile or material, obstruction, equipment or thing, or to plant any vegetation which:
    - (i) Interferes with or endangers the Energy System or the installation, construction, operation, maintenance, repair, removal or replacement of the Energy System;
    - (ii) materially obstructs the access granted in accordance with this Agreement to the Grantee or the Grantee's Representatives to the Energy System; or
    - (iii) adversely impacts the safety or security of the Energy System by its operation, use, maintenance or existence on the Lands;
  - (c) not to add or remove ground cover over the Energy System or carry out blasting on or next to the Lands without the prior written consent of the Grantee, which consent will not be unreasonably withheld or delayed, and if such consent is granted, only in accordance with the reasonable written requirements of the Grantee; and
  - (d) to act reasonably and cooperate with the Grantee in connection with the provision by the Grantee of Energy Services to, *inter alia*, the Lands and, without limiting the generality of the foregoing, the Grantor will ensure the Grantee has reasonable access to the Energy System and any part thereof on the Lands at all reasonable times and in the case of emergency, at any time, subject to the terms and conditions set out in this Agreement and in the case of emergency.
11. Landscaping. Subject to limitations in Section 10, the Grantor may landscape that portion of the Lands that is on, over, under any portion of the Energy System with lawns,

trees, flowers and shrubs and other surface growth and erect, place, install and maintain concrete driveways, patios, walkways and other surface materials (collectively “**Improvements**”), on, over and under any portion of the Energy System, provided that the Grantor will be solely responsible for any and all damage to, and costs and expenses associated with repairing or replacing the Energy System or any portion thereof caused by or arising from the construction or existence of such Improvements on the Lands. In addition, the Grantee will not be responsible for any damage whatsoever to, and costs and expenses associated with repairing any damage to the Improvements resulting from the Grantee exercising its rights and obligations under this Agreement, except for any damage which could have been avoided if the Grantee exercised reasonable caution in the applicable circumstances.

12. Environmental Matters. For the purpose of this Section 12:

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

“**Hazardous Substance**” means any radioactive materials, asbestos materials, urea formaldehyde, underground or aboveground tanks, pollutants, hazardous substances, deleterious substances, dangerous substances or goods, hazardous, corrosive or toxic substances, special waste or waste of any kind or any other substance the storage, manufacture, disposal, bundling, treatment, generation, use, transport, remediation or release into the environment of which is now or hereafter prohibited, controlled or regulated under Environmental Laws; and

“**Pre-existing Hazardous Substances**” means any Hazardous Substance present in, on or under the Lands, including without limitation surface and ground water, as at the date of the Grantee becomes the owner of the Energy System.

(a) Control and Management of Site

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

(b) Grantor’s Environmental Covenants

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

- i) not to use or permit the Lands to be used for the sale, storage, manufacture, disposal, handling, treatment, use or any other dealing with

any Hazardous Substance, except in compliance with Environmental Laws; and

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

(c) Grantor's Environmental Indemnity

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

- i) any breach of or non-compliance with the provisions of this Section 12 by the Grantor; and
- ii) the presence or alleged presence of any Hazardous Substance in, on or under the Lands, including without limitation surface and ground water, and the release or alleged release of any Hazardous Substance at or from the Lands, including without limitation surface and ground water, except to the extent that such presence or release arises from the negligent act or omission of the Grantee or a breach or non-compliance by the Grantee with applicable Environmental Laws.

(d) Grantee's Environmental Covenants

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

- i) not to use the Lands for the sale, storage, manufacture, disposal, handling, treatment, use or any other dealing with any Hazardous Substance, except in compliance with Environmental Laws; and
- ii) to comply with and to continue to comply with Environmental Laws in its use and occupancy of the Lands hereunder.

(e) Grantee's Environmental Indemnity

From and after the date on which the Grantee becomes the owner of the Energy System, the Grantee will release and indemnify and hold harmless the Grantor and its Representatives from any and all liabilities, actions, damages, claims (including remediation cost recovery claims), losses, costs, orders, fines, penalties and expenses whatsoever (including all consulting and legal fees and expenses on a solicitor-client basis) and the costs of removal, treatment, storage and disposal of Hazardous Substances (except any Pre-Existing Hazardous Substance) and remediation of the Lands and any adjacent property affected by the transmission of Hazardous Substances (except any Pre-Existing Hazardous Substance) from the Lands which may be paid by, incurred by or asserted against the Grantor or its Representatives arising from or in connection with any breach of or non-compliance with the provisions of this Section 12 by the Grantee except to the extent that such breach or non-compliance was contributed to or caused by any negligent act or omission of the Grantor or its Representatives or a breach or non-compliance by the Grantor with applicable Environmental Laws.

- (f) The obligations of the Grantee under this Section 12 shall survive the registration of this Agreement and the termination and release thereof, if any. The obligations of the Grantee under this Section 12 are in addition to, and shall not limit, the obligations of the Grantee contained in other provisions of this Agreement.
13. No Requirement to Do Works, Pay Fees, Etc. This Agreement does not in any way require the Grantee to provide any works or services whatsoever to the Lands, to develop, construct, inspect, clean, maintain, repair or replace any works or improvements whatsoever within or in respect of the Lands or to pay any fee or other amount whatsoever in connection with this Agreement, unless the Grantee is expressly required to do so under the terms of this Agreement or under any other agreement in writing.
14. Subdivision / Effect of Agreement. This Agreement and the rights herein granted will run with the Lands and each part into which the Lands may be subdivided, whether by subdivision plan, strata plan or otherwise howsoever, and the term "Grantor" includes the owner of each subdivided portion of the Lands and the successors in title thereof. Despite anything contained in this Agreement, if the Lands are subdivided by subdivision plan, strata plan or otherwise howsoever, a default in respect of any subdivided portion of the Lands, including a default with respect to any amount payable in connection with any subdivided portion of the Lands, will not be a default with respect to any other portion of the Lands for which there has not been a default and the Grantee will not be entitled to exercise any of its rights or remedies under this Agreement except with respect to the subdivided portion or portions of the Lands for which there has been a default. Despite any other provision of this Agreement, in the event that the Lands are subdivided by means of a strata plan pursuant to the *Strata Property Act*:
- (a) the "Grantor" under this Agreement shall be the strata corporation created by the filing of such strata plan and the individual owners of the strata lots created by such strata plan shall have no obligations or liabilities under this Agreement other than as members of the strata corporation;

- (b) the individual strata lots created by any strata plan in respect of any portion of the Lands will not form part of the “Lands” and will not be subject to this Agreement;
  - (c) the statutory rights of way and section 219 covenant granted pursuant to this Agreement are intended to apply to and burden only the common property created by such strata plan and not at any time to burden any strata lot or the owner of any strata lot; and
  - (d) upon the request of and at the expense of the Grantor or any strata lot owner, the Grantee will execute and deliver in registrable form a discharge of this Agreement from any such strata lot provided however, that this section 14(d) will not apply in the case of bare land strata lots.
15. Application to Strata Corporation. Without limiting anything set out in this Agreement, any strata corporation created in respect of any portion of the Lands will be a “Grantor” and will be bound by all of the terms and conditions of this Agreement and any common property created by any strata plan in respect of any portion of the Lands will remain as part of the “Lands” and will be subject to this Agreement.
16. Injunctive Relief. The Grantor acknowledges and agrees that, without limiting any other right or remedy of the Grantee, the Grantee may obtain from a court of competent jurisdiction injunctive relief in respect of any breach or anticipated breach by the Grantor of any of the Grantor’s duties or obligations under this Agreement.
17. Grantor’s Indemnity. Subject to section 19, the Grantor does hereby agree to indemnify and save harmless the Grantee from all liabilities, claims, demands, actions, damages, losses, costs and expenses which the Grantee may suffer or incur arising from or connected to the non-performance of its rights and obligations hereunder, save to the extent that such liabilities, claims, demands, actions, damages, losses, costs and expenses which the Grantee may suffer or incur result from the negligence or wilful misconduct of the Grantee. The provisions of this Section shall survive the expiration or termination of this Agreement.
18. Grantee’s Liability and Indemnity. The Grantee shall indemnify the Grantor and save it harmless from all loss claims, actions, damages, liability and expense in connection with loss of life, personal injury, damage to property or any other loss or injury whatsoever arising out of this Agreement, or any occurrence in, upon or at the Lands, or the occupancy or use by the Grantee of the Lands or any part thereof, or occasioned wholly or in part by any act or omission of the Grantee or its Representatives or anyone permitted by the Grantee to be on the Lands or in the Development. If the Grantor shall, without fault on its part, be made a party to any litigation commenced by or against the Grantee, then the Grantee shall protect, indemnify and hold the Grantor harmless in connection with such litigation. The Grantor may, at its option, participate in or assume carriage of any litigation or settlement discussions relating to the foregoing, or any other matter for which the Grantee is required to indemnify the Grantor under this Agreement. Alternatively, the Grantor may require the Grantee to assume carriage of and responsibility for all or any part of such litigation or discussions.

19. Limitation of Liability.

- (a) Neither party shall be liable for any indirect, incidental, special or consequential damages or losses, including any loss of profits, loss of business revenue, failure to realize expected savings or any other commercial or economic loss suffer or incurred by the other party or its Representatives, howsoever caused.
- (b) The Grantor shall not be liable for any death or injury arising from or out of any occurrence in, upon, at, or relating to the Lands, or damage to property of the Grantee or of others located on the Lands, nor shall it be responsible for any loss of or damage to any property of the Grantee or others from any cause, except to the extent that such death, injury, loss or damage directly or indirectly results from the negligence or willful misconduct of the Grantor, its agents, employees, contractors, or others for whom it may, in law, be responsible. The Grantor shall not be liable for any such damage caused by other tenants or persons on the Lands or in the Building or the Development or by occupants of adjacent property thereto, or the public, or caused by any public or quasi-public work. All property of the Grantee kept or stored on the Grantor shall be so kept or stored at the risk of the Grantee only and the Grantee releases and agrees to indemnify the Grantor and save it harmless from any claims arising out of any damage to the same including, without limitation, any subrogation claims by the Grantee's insurers unless such damage results from the negligence or willful misconduct of the Grantor, its agents, employees, contractors, or others for whom it may, in law, be responsible.
- (c) The provisions of this Section shall survive the expiration or termination of this Agreement.

20. Insurance. The Grantee will, without limiting its liability under this Agreement or its obligations under applicable laws, at its own expense, obtain and maintain in full force and effect throughout the Term, the insurance coverage described in this Section 20 including coverage for their officers, directors and employees and, unless otherwise agreed in writing by the Grantor, will also cause any subcontractors or sub-consultants of the Grantee to obtain and maintain reasonable levels of the relevant types of insurance coverage described in this Section 20, including such coverage for their respective officers, directors and employees.

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

- (b) **Automobile Liability Insurance** having a limit of not less than two million dollars (\$2,000,000) inclusive per occurrence and insuring against claims for bodily injury, including death, and for property damage arising out of the use of the Grantee's owned, leased and non-owned vehicles if such vehicles are used in the performance of this Agreement.
- (c) **All Risks Property Insurance** (including flood and earthquake) upon all property owned by the Grantee or in their care, custody or control or installed by or on behalf of the Grantee which is located in the Building in an amount not less than the full replacement cost thereof.
- (d) **Boiler and Machinery Insurance** with limits for each accident in an amount not less than the full replacement cost of all boilers, pressure vessels, heating, ventilating and air-conditioning equipment and miscellaneous electrical apparatus owned or operated by the Grantee or by others (other than the Grantor) on behalf of the Grantee.

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

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

All insurance policies required pursuant to this Section 20 will be in accordance with the following requirements:

- (f) The policies will contain a provision obligating the insurer to give the Grantor thirty (30) days advance written notice of policy cancellation.
- (g) Any self-insured retention, deductible, and exclusion in coverage in the policies will be assumed by, for the account of, and at the sole risk of the Grantee and, to the extent applicable, will be paid by the Grantee.
- (h) The Grantee will deliver to the Grantor up-to-date insurance certificates evidencing such required coverage before the commencement of the operations of the Grantee under this Agreement within fifteen (15) days of the renewal of any such policy, and otherwise from time to time as is reasonably required by the Grantor, provided that the Grantor has no obligation to examine such certificates or to advise the Grantee in the event its insurance is not in compliance with this Section 20.

- (i) The insurance shall be placed with insurers which have an “AM Best” rating of A- or better and which are licensed to provide insurance coverage in the Province of British Columbia.
  - (j) Neither the providing of insurance by the Grantee in accordance with the requirements of this Agreement nor the insolvency, bankruptcy or failure of any insurance company to pay any claim accruing shall be held to waive any of the provisions of this Agreement with respect to the liability of the Grantee or otherwise. The presence or absence of such insurance coverage as contemplated by this Agreement does not in any way decrease the Grantee’s liability owed to the Grantor.
21. Discharge. If this Agreement is terminated for any reason, the Grantee will execute and deliver in registrable form a discharge of this Agreement within 15 days of such termination.
22. Amendment. Except as expressly set out herein, this Agreement may only be amended by an agreement in writing signed by the Grantee and the Grantor. No modification or amendment of any provision of this Agreement will be inferred from anything done or omitted by any of the parties except by an express agreement in writing duly executed and delivered by all of the parties.
23. No Waiver. No condoning, excusing or overlooking of any default nor any delay in proceeding or failure to proceed in the case of any default under this Agreement will operate as a waiver of or otherwise affect in any way any rights or remedies under this Agreement or at law. No waiver of any rights or remedies will be inferred from anything done or omitted to be done by any party except by an express waiver in writing. No waiver in respect of any matter or thing will operate as a waiver in respect of any other matter or thing.
24. Governing Law. This Agreement will be governed by and interpreted in accordance with the laws of in force in the Province of British Columbia, which is the proper law hereof, and the courts of British Columbia will have the exclusive jurisdiction with respect to all matters arising under or in respect of this Agreement.
25. Time is of the Essence. Time is of the essence of this Agreement and will remain of the essence despite any extension of time given under or in connection with this Agreement.
26. Notices. All notices under this Agreement must be given in writing and delivered in accordance with this provision. The parties agree that:
- (a) any notice to the Grantor may be sent to the Grantor’s address according to the Land Title Office records in respect of the Lands or delivered to the Grantor; and
  - (b) all notices to the Grantee must be sent to the Grantee at the address set out above or such other address as the Grantee may notify the Grantor in accordance with the terms hereof at any time and from time to time.

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

27. Grantee's Licences and Authorizations. The Grantee may grant to any other person a licence or other agreement, authorizing such person to exercise any right granted to the Grantee pursuant to this Agreement without limiting or restricting its obligations and liabilities contained in this Agreement..
28. Priority. The Grantor will do all acts and things determined by the Grantee to be necessary to gain priority for this Agreement over any financial charge or encumbrance registered against title to the Lands or any portion thereof, other than any financial charge or encumbrance consented to in writing by the Grantee in its absolute discretion.
29. Severability. The provisions hereof are severable and if any of them should be found to be void or unenforceable at law, the remaining provisions shall not be affected thereby.
30. Assignment by Grantee/Release. The Grantee may assign this Agreement to any person, provided that the Grantee and its assignee satisfy any requirements set out in Sections 218 and 219 of the *Land Title Act* (British Columbia), and provided that upon any assignment of this Agreement by the Grantee, the Grantee shall cause the assignee to enter into an agreement with the Grantor under which such assignee covenants that it shall perform the obligations of the Grantee hereunder and be bound by all of the provisions of this Agreement, including the provisions of this Section 30, which will apply to each and every subsequent assignment of any interest under this Agreement by such assignee.
31. Further Assurances. The Grantor will execute and deliver any further agreement, document or instrument and do and perform any further act or thing as may be required by the Grantee at any time and from time to time in order to evidence or give full force and effect to the terms, conditions and intent of this Agreement.
32. Ownership of Energy System. Despite any degree of annexation or affixation, or rule of law or equity to the contrary, all components of the Energy System shall not be considered a fixture and will be and remain the property of and vest in the Grantee.
33. Release of Grantor. For greater certainty, no person who has been "Grantor" will be liable for any breach of this Agreement occurring after such person has ceased to be an owner of, or strata corporation with respect to any part of the Lands, provided that the Grantor has obtained from the transferee of the Lands an assumption agreement whereby

the transferee covenants and agrees to be bound by the obligations of the Grantor set out in this Agreement from and after the date of such conveyance and transfer.

34. Restriction of Right of Way Area. The Grantee agrees that, once the Energy System is installed on, in and under the Lands, the Grantor shall at its cost and option prepare a reference plan (“**Plan**”) showing the location of the right of way area for the Energy System on the Lands (the “**Right of Way Area**”) and file the Plan in the applicable Land Title Office. Upon registration of the Plan in the applicable Land Title Office, the rights granted to the Grantee under Sections 4(a-h) of this Agreement and the covenants given by the Grantor under Section 10 of this Agreement, will be limited to the Right of Way Area.
35. Term. The term of this Agreement shall commence upon registration at the Land Title Office and shall continue for so long as the Grantee provides Energy Services to the Building from the Energy System (the “**Term**”).
36. Default and Termination. Either party may, at its option and without further liability to the other party, terminate this Agreement: (i) upon the material default by such other party in the performance of any of its covenants or obligations under this Agreement, if such default is not remedied within thirty (30) days of the party in default receiving written notice of such default, or within such longer period as is reasonable in the circumstances, so long as the party in default is diligently moving to implement remedial action; or (ii) if such other party becomes insolvent, ceases to do business as a going concern, is adjudged bankrupt or made subject to the appointment of a receiver-manager, makes a general assignment for the benefit of creditors, or takes the benefit of any statute in force for the winding up or liquidation of business enterprises.

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

**PRIORITY CONSENT**

For One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and agreed to by HSBC Bank Canada (the "Chargeholder"), being the holder of Mortgage CA3809858 and Assignment of Rents CA3809859 (collectively, the "Charges"), hereby approves and consents to the granting of the Statutory Rights of Way and the Section 219 Covenant (collectively, the "Encumbrances") attached, and consents and agrees that the Encumbrances shall be binding upon the Chargeholder's interest in or charge upon the Lands and shall be encumbrances upon such Lands in priority to the Charges in the same manner and to the same effect as if the Encumbrances had been granted and registered against such Lands prior to the dating, execution and registration of the Charges and the advance of any monies thereunder.

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

**PRIORITY CONSENT**

For One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and agreed to by Fulcrum Capital Partners Inc. (the "Chargeholder"), being the holder of Mortgage CA3809860 and Assignment of Rents CA3809861 (collectively, the "Charges"), hereby approves and consents to the granting of the Statutory Rights of Way and the Section 219 Covenant (collectively, the "Encumbrances") attached, and consents and agrees that the Encumbrances shall be binding upon the Chargeholder's interest in or charge upon the Lands and shall be encumbrances upon such Lands in priority to the Charges in the same manner and to the same effect as if the Encumbrances had been granted and registered against such Lands prior to the dating, execution and registration of the Charges and the advance of any monies thereunder.

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

**END OF DOCUMENT**

**LAND TITLE ACT  
FORM C (Section 233) CHARGE  
GENERAL INSTRUMENT - PART 1 Province of British Columbia**

Your electronic signature is a representation that you are a subscriber as defined by the Land Title Act, RSBC 1996 c.250, and that you have applied your electronic signature in accordance with Section 168.3, and a true copy, or a copy of that true copy, is in your possession.

1. APPLICATION: (Name, address, phone number of applicant, applicant's solicitor or agent)

**Kornfeld LLP**  
Barristers & Solicitors  
1100 - 505 Burrard Street  
Vancouver

BC V7X 1M5

Telephone No. (604) 331-8300  
LTO Client No. 010448  
File No. CRE008GEN141 JEL

Deduct LTSA Fees? Yes

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:

[PID] [LEGAL DESCRIPTION]

**029-349-389 LOT C BLOCK 122 DISTRICT LOT 541 GROUP 1 NEW WESTMINSTER  
DISTRICT PLAN EPP40230**

STC? YES

3. NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

**SEE SCHEDULE**

4. TERMS: Part 2 of this instrument consists of (select one only)

(a)  Filed Standard Charge Terms D.F. No.

(b)  Express Charge Terms Annexed as Part 2

A selection of (a) includes any additional or modified terms referred to in Item 7 or in a schedule annexed to this instrument.

5. TRANSFEROR(S):

**SEE SCHEDULE**

6. TRANSFEREE(S): (including postal address(es) and postal code(s))

**CREATIVE ENERGY VANCOUVER PLATFORMS INC.  
SUITE 1 - 720 BEATTY STREET**

VANCOUVER

BRITISH COLUMBIA  
CANADA

Incorporation No  
BC0410371

7. ADDITIONAL OR MODIFIED TERMS:

N/A

8. EXECUTION(S): This instrument creates, assigns, modifies, enlarges, discharges or governs the priority of the interest(s) described in Item 3 and the Transferor(s) and every other signatory agree to be bound by this instrument, and acknowledge(s) receipt of a true copy of the filed standard charge terms, if any.

Officer Signature(s)

\_\_\_\_\_

Execution Date		
Y	M	D

Transferor(s) Signature(s)

**HOWE STREET VENTURES LTD.**  
by its authorized signatory(ies):

\_\_\_\_\_  
Print Name:

\_\_\_\_\_  
Print Name:

**OFFICER CERTIFICATION:**

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



**LAND TITLE ACT  
FORM E****SCHEDULE**

PAGE 3 OF 24 PAGES

NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
Statutory Right of Way		Section 4, Page 9
Priority Agreement		Granting Statutory Right of Way herein priority over Mortgage CA3809858 and Assignment of Rents CA3809859 - Page 23
Priority Agreement		Granting Statutory Right of Way herein priority over Mortgage CA3809860 and Assignment of Rents CA3809861 - Page 24
Statutory Right of Way		Section 5, Page 10
Priority Agreement		Granting Statutory Right of Way herein priority over Mortgage CA3809858 and Assignment of Rents CA3809859 - Page 23
Priority Agreement		Granting Statutory Right of Way herein priority over Mortgage CA3809860 and Assignment of Rents CA3809861 - Page 24

**LAND TITLE ACT  
FORM E**

**SCHEDULE**

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NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
Statutory Right of Way		Section 6, Pages 10 - 11

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NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
Priority Agreement		Granting Statutory Right of Way herein priority over Mortgage CA3809858 and Assignment of Rents CA3809859 - Page 23

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NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
Priority Agreement		Granting Statutory Right of Way herein priority over Mortgage CA3809860 and Assignment of Rents CA3809861 - Page 24

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NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
Covenant		Section 10, Page 13

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NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
Priority Agreement		Granting Section 219 Covenant herein priority over Mortgage CA3809858 and Assignment of Rents CA3809859 - Page 23

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NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
Priority Agreement		Granting Section 219 Covenant herein priority over Mortgage CA3809860 and Assignment of Rents CA3809861 - Page 24

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**LAND TITLE ACT  
FORM E**

**SCHEDULE**

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

**5. TRANSFEROR(S):**

HOWE STREET VENTURES LTD. (INC. NO. BC0683469)

HSBC BANK CANADA (as to priority)

FULCRUM CAPITAL PARTNERS INC. (INC. NO. A83659) (as to priority)

**PART 2 - TERMS****SECTION 219 COVENANT AND STATUTORY RIGHT OF WAY****LOT C**

BETWEEN:

**HOWE STREET VENTURES LTD.** (INC. NO. BC0683469)  
501 – 1067 West Cordova Street, Vancouver, BC V6C 1C7

(the “**Grantor**”)

AND:

**CREATIVE ENERGY VANCOUVER PLATFORMS INC.**, (Inc. No. BC0410371)  
Suite 1 – 720 Beatty Street, Vancouver, BC V6B 2M1

(the “**Grantee**”)

WHEREAS:

- A. The Grantor is the registered owner in fee simple of the Lands on which a portion of a mixed use development known as “Vancouver House” is or will be constructed.
- B. The Grantee will own and operate the Energy System in respect of, *inter alia*, the Lands.
- C. The right of way granted and covenant under this Agreement are necessary for the operation and maintenance of the Energy System and the provision of Energy Services in respect of, *inter alia*, the Lands.

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

1. Definitions. In this Agreement:
  - (a) “**Building**” means the commercial building located on the Lands and includes all outside areas, landscaped areas, roadways and driveways, ramps, outside and covered parking areas and walkways, existing or to be constructed from time to time in connection therewith.
  - (b) “**Building System**” means the complete heating and ventilating (which may include air conditioning) system and domestic hot water system and storage equipment to be installed and used for distributing and storing Thermal Energy in

a Building, connected to but downstream of and excluding the Demarcation Points for that Building.

- (c) “**Business Day**” means any day that is not a Saturday, Sunday, a statutory holiday in British Columbia, Easter Monday or Boxing Day.
- (d) “**Consultant**” means a duly qualified and licensed engineer or other professional having expertise in respect of the Works referred to in the applicable Works Plans.
- (e) “**Cooling Plant**” means one or more cooling plants consisting of water pipes and all ancillary equipment, components, controls, appliances and fittings, energy meters, chillers and cooling towers, for the generation, distribution and exchange of thermal energy for the purposes of providing cooling to the applicable Demarcation Points.
- (f) “**Development**” means the multi-use commercial and residential development partially located on the Lands known as “Vancouver House” in Vancouver, British Columbia, which is comprised of two commercial buildings, including the Building, a mixed-use residential and commercial tower, certain parking facilities and all other improvements and facilities relating thereto from time to time.
- (g) “**Demarcation Points**” means:
  - (i) in respect of the components of the Energy System relating to the provision of Heating Services to the Building, the Energy Transfer Stations; and
  - (ii) in respect of the Cooling Plant, the applicable isolation valves;
- (h) “**Distribution System**” means, collectively, the system of pipes, fittings and ancillary components and equipment supplying Heating Services to, *inter alia*, the Demarcation Points.
- (i) “**Energy Services**” means Heating Services and, where applicable, Cooling Services to be provided through the Energy System to the Demarcation Points in accordance with the applicable Customer Service Agreement.
- (j) “**Energy System**” means the thermal energy system consisting of the Cooling Plant, the On-Site TES, the Local District Energy Utility, the Distribution System (or any combination of the foregoing), the Energy Transfer Stations and related components, equipment and controls used for generating and distributing the Energy Services to the Demarcation Points, and all additions thereto and replacements thereof, but specifically excluding all Building Systems.
- (k) “**Energy Transfer Station**” means, in respect of each Building, one or more separate exchangers for space heating and domestic hot water (excluding domestic hot water storage tanks), energy metering equipment including

temperature sensors and flow meters, control panel and all pipes, fittings and other associated equipment which control the transfer, and measure Energy Services from the Distribution System to the Building System for such Building.

- (l) “**Interfere**” means, except as otherwise provided in this Agreement, interfere with, impede, disturb or adversely affect except in a non-material and temporary way and “Interference” has a corresponding meaning.
- (m) “**Lands**” means those lands and premises defined in Item 2 of the Form C Instrument General Part 1 of which this Agreement forms part.
- (n) “**Local District Energy Utility**” means the district energy utility that is intended to be constructed and operated by the Grantee in the South Downtown area of Vancouver, British Columbia, that will generate, distribute, meter, and transfer low carbon thermal energy from one or more sources of heat to and from connected buildings through a network of pipes and associated permanent or temporary equipment and infrastructure to provide all or a portion of the annual space and hot water heating requirements of each building within its service area, including the Building.
- (o) “**person**” means an individual, corporation, body corporate, partnership, joint venture, association, society or unincorporated organization or any trustee, executor, administrator or other legal representative.
- (p) “**Related Person**” in respect of any person, means:
  - (i) any affiliate of such person, within the meaning of the *Business Corporations Act* (British Columbia);
  - (ii) any associate of such person, within the meaning of the *Business Corporations Act* (British Columbia) or the *Securities Act* (British Columbia); and
  - (iii) any partnership, including a limited partnership, in which such person is a partner.
- (q) “**Representatives**” means, with respect to either party, any person who is a Related Person to such party and any officer, director, employee, agent, contractor, subcontractor, consultant, or advisor of such party or its Related Person, or any person for whom the such party is responsible at law.
- (r) “**Service Agreement**” means any agreement pursuant to which the Grantee provides Energy Services to the Building, as such agreement may be amended or restated from time to time.
- (s) “**Strata Property Act**” means the *Strata Property Act* (British Columbia) from time to time in force and all amendments thereto or other similar legislation which may hereafter be enacted in its place.

- (t) **“Works”** means any installation, inspection, maintenance, operation, repair, construction, replacement, removal, steps or any other acts contemplated by the Grantee in exercising any of its rights under this Agreement if such installation, inspection, maintenance, operation, repair, construction, replacement, removal, steps or any other acts contemplated by the Grantee requires the exclusive use of any Building elevators or requires the interruption of any Building services or utilities in any way or in any way is likely to cause any material interference in the construction or operation of the Building or access to or egress from the Building or the movement within the Building by the owners, tenants or other occupants of the Building or any part thereof or any of their respective invitees.
- (u) **“Works Plans”** means the plans and specifications for the Works intended to be undertaken as identified therein as prepared by a Consultant, which Works Plans will include:
- (i) a schedule for undertaking and completing the Works;
  - (ii) particulars of anticipated power or other building service or utility interruptions necessitated by the Works; and
  - (iii) particulars of any restrictions on access to or from or movement within the Building necessitated by the Works.
2. Benefit to the Lands. The Grantor hereby acknowledges and agrees the Energy System and the Energy Services provided by the Grantee in respect of the Lands constitutes an amenity in relation to the Lands within the meaning of Section 219 of the *Land Title Act* (British Columbia).
3. Provision of Service. The Grantor will connect the Building to the Energy System and will enter into one or more Service Agreements with the Grantee for such connection to the Energy System, and the Grantor will provide the Grantee with any information and documentation reasonably required by the Grantee in connection therewith. In the event of a conflict between the terms and conditions of any such Service Agreement with respect to the use of and access to the Lands and this Agreement, the terms and conditions of this Agreement shall prevail.
4. Statutory Right of Way re: Energy System. Pursuant to Section 218 of the Land Title Act and subject always to the terms of this Agreement, the Grantor hereby grants to the Grantee for so long as the Grantee shall require it, a statutory right of way over that portion of the Lands which contains the Energy System, for the Grantee and the Grantee’s Representatives to enter onto the Lands at any time and from time to time to:
- (a) construct, install, inspect, maintain, operate, repair, replace and remove the Energy System or any portion thereof located on, under and over the Lands and in the buildings located on the Lands;
  - (b) make, inspect, maintain, remove and repair the Energy System service connections and connect and disconnect the Energy System service lines;

- (c) clear the Lands of any obstructions, including, without limitation, trees or other vegetation, buildings, structures, foundations, pavements, improvements or obstructions, which Interfere with any of the rights granted to the Grantee herein; provided, however, that the Grantee agrees that any improvements on the Lands as at the date of this Agreement do not Interfere with the rights granted to the Grantee herein;
  - (d) install marking posts to mark the location of the Energy System or any portion thereof;
  - (e) take such steps as the Grantee deems necessary, to protect and secure the Energy System on the Lands;
  - (f) bring onto the Lands all machinery, vehicles, materials and equipment it requires or desires for any of the foregoing purposes;
  - (g) generally do all acts necessary or incidental to the foregoing or to the business of operating, maintaining and repairing the Energy System on, *inter alia*, the Lands;
  - (h) connect the Energy System to buildings on properties other than the Lands in order to provide space heating and cooling and domestic hot water services to such buildings from the Energy System; and
  - (i) exercise any of the Grantee's other rights set out in this Agreement.
5. Statutory Right of Way re: Access. Pursuant to Section 218 of the Land Title Act and subject always to the terms of this Agreement, the Grantor hereby grants to the Grantee for so long as the Grantee shall require it, a statutory right of way over the Lands as reasonably required by the Grantee and its Representatives for the purpose of access to and egress from that portion of the Lands which contains the Energy System.
6. Statutory Right of Way re: Local District Energy Utility. Pursuant to Section 218 of the Land Title Act and subject always to the terms of this Agreement, the Grantor hereby grants to the Grantee for so long as the Grantee shall require it, a statutory right of way over the Lands as reasonably required by the Grantee and its Representatives for the purpose of:
- (a) excavating for, constructing, installing, inspecting, maintaining, operating, repairing, replacing and removing the system of water pipes and all ancillary equipment, appliances and fittings as are necessary to connect the Energy System or the Building System to the Local District Energy Utility for the provision of space heating or cooling or domestic hot water services (or any combination thereof) to the Building from the Local District Energy Utility;
  - (b) retrofitting and modifying the Energy System and the Base Building System for the purpose of connecting the Building to the Local District Energy Utility; and

- (c) connecting the Energy System or the Base Building System to the Local District Energy Utility.
7. Grantee to Act Reasonably. The Grantee agrees to act reasonably when exercising its rights pursuant to sections 4, 5 and 6 herein and to minimize as much as reasonably possible any disruption or disturbance to the Grantor or its consultants, contractors and subcontractors, the Building, or the tenants, occupants and licensees of the Building in connection with the exercise by the Grantee and the Grantee's Representatives of such rights, and to promptly clean up and restore the Building after having exercised any such rights, to the condition the Building was in prior to the exercise of any such rights, to the extent reasonably possible.
8. Covenants Regarding the Works.
- (a) The Grantee hereby covenants and agrees with the Grantor the Grantee will not carry out any Works except in accordance with the terms of this Section 8.
  - (b) Prior to undertaking any Works, the Grantee will cause to be prepared and delivered to the Grantor for its approval the Works Plans and the Grantor shall have delivered its written approval to the Grantee of the Works therein described, such approval not to be unreasonably withheld, conditioned or delayed.
  - (c) If and to the extent required by applicable laws, none of the Works shall be commenced until the applicable Works Plans have been approved by the applicable governmental authorities having jurisdiction.
  - (d) During the construction of the Building, the Work and the construction of the Building will be reasonably co-ordinated with a view to enabling both the Work and the construction of the Building to be completed without delay or undue interference.
  - (e) The Grantee shall not deviate from the Works Plans in any material respect unless revised Works Plans with respect to any such deviation are submitted to the Grantor for approval and the Grantor has delivered its written approval to such deviation to the Grantee, such approval not to be unreasonably withheld, conditioned or delayed.
  - (f) The Grantee's Consultant shall supervise the applicable Works.
  - (g) The parties agree that the Grantor shall have the right, at its sole election, appoint its own representative (the "**Grantor's Monitor**") and the Grantee shall permit the Grantor's Monitor, at all reasonable times during the period beginning with such appointment and continuing until the completion of the Works, to monitor the applicable Works.
  - (h) The Grantee shall obtain the prior approval of the Grantor, not to be unreasonably withheld, conditioned or delayed, of the nature, extent and method of any repair

or restoration of the Building and to any improvements thereon resulting from the Works.

- (i) The Grantee covenants and agrees to use due care and attention to identify, before commencing any Works, the location of all works servicing the Building including, without limitation, utilities and building systems, to ensure that the Grantee does not Interfere (except as may be described in the Works Plans) with the operation of such works in the undertaking of the Works.
  - (j) After the completion of the Works, the Grantee shall, upon request by the Grantor, promptly provide the Grantor with copies of all professionally signed and sealed drawings, reports, specifications, field reports, site instructions and final as-built drawings with respect to the Works, including surveys, if any, setting out the location of the Works.
  - (k) The Grantee will reimburse the Grantor, within forty-five (45) days after receipt of invoice from the Grantor evidencing such costs, for any reasonable and proper third party costs and expenses, without mark-up, incurred by the Grantor in connection with the review and approval of the Work Plans and monitoring the Works.
  - (l) If the Grantee, in exercising its rights under this Agreement, causes any damage to the Building or Lands, the Grantee shall promptly make good any such damage caused to the Building or Lands by restoring such property to a condition at least as good as it or they were in prior to such damage and if the Grantee does not make good such damage, the Grantor shall have the right to restore the Building and the Lands at the expense of the Grantee.
  - (m) If in the opinion of the Grantor, acting reasonably, any of the Works would materially and adversely affect the structure of the Building, the Base Building System or any of the electrical, plumbing, mechanical, heating, ventilating or air conditioning systems, such Works shall, at the option of the Grantor, be performed by the Grantor at the Grantee's cost. If the Grantor performs such work, then on completion of such work, the cost of the work (including the fees of any architectural and engineering consultants) plus a sum equal to 15% of said cost representing the Grantor's overhead shall be paid by the Grantee to the Grantor. No Works shall be permitted which may weaken or endanger the structure or adversely affect the condition or operation of the Energy System, the Building, or any portion thereof, or any other portion of the Development or any mechanical or electrical system or facility thereof, or diminish the value thereof. The Grantee shall not cut or drill into, nail or otherwise attach or secure any fixture, sign, apparatus or equipment to any part of the Lands without first obtaining the Grantor's prior written consent, which consent will not be unreasonably withheld, delayed or conditioned.
9. No Alternate System. The Grantor will not itself supply or install nor allow any other person to install any system that would supply any or all of domestic hot water, cooling

or space heating to the Building unless the Energy System, as determined by the Grantor acting reasonably following consultation with the Grantee, is not capable of supplying adequate space heating and cooling, and domestic hot water services to the Building to meet the consumption demands of the Building. The Grantee acknowledges and agrees that the foregoing prohibition shall not apply to emergency generators or any electric or gas fireplaces intended for decorative purposes and not primarily for heating located within premises or units in the Building or common areas of the Building.

10. Section 219 Covenant. The Grantor acknowledges, covenants and agrees, pursuant to Section 219 of the *Land Title Act*, with the Grantee:
- (a) not to do or permit to be done on the Lands or in the Building anything which Interferes with or damages the Energy System or impairs the operation or otherwise adversely impacts the Energy System and the provision of Energy Services or creates any hazard or adversely impacts the safety or security of the Energy System. Such acts include, but are not limited to, the acts referred to in this Section 10;
  - (b) not to make, place, erect, operate, use or maintain upon the Lands any building, structure, foundation, pavement, excavation, well, culvert, swimming pool, open drain or ditch, pond, pile or material, obstruction, equipment or thing, or to plant any vegetation which:
    - (i) Interferes with or endangers the Energy System or the installation, construction, operation, maintenance, repair, removal or replacement of the Energy System;
    - (ii) materially obstructs the access granted in accordance with this Agreement to the Grantee or the Grantee's Representatives to the Energy System; or
    - (iii) adversely impacts the safety or security of the Energy System by its operation, use, maintenance or existence on the Lands;
  - (c) not to add or remove ground cover over the Energy System or carry out blasting on or next to the Lands without the prior written consent of the Grantee, which consent will not be unreasonably withheld or delayed, and if such consent is granted, only in accordance with the reasonable written requirements of the Grantee; and
  - (d) to act reasonably and cooperate with the Grantee in connection with the provision by the Grantee of Energy Services to, *inter alia*, the Lands and, without limiting the generality of the foregoing, the Grantor will ensure the Grantee has reasonable access to the Energy System and any part thereof on the Lands at all reasonable times and in the case of emergency, at any time, subject to the terms and conditions set out in this Agreement and in the case of emergency.
11. Landscaping. Subject to limitations in Section 10, the Grantor may landscape that portion of the Lands that is on, over, under any portion of the Energy System with lawns,

trees, flowers and shrubs and other surface growth and erect, place, install and maintain concrete driveways, patios, walkways and other surface materials (collectively “**Improvements**”), on, over and under any portion of the Energy System, provided that the Grantor will be solely responsible for any and all damage to, and costs and expenses associated with repairing or replacing the Energy System or any portion thereof caused by or arising from the construction or existence of such Improvements on the Lands. In addition, the Grantee will not be responsible for any damage whatsoever to, and costs and expenses associated with repairing any damage to the Improvements resulting from the Grantee exercising its rights and obligations under this Agreement, except for any damage which could have been avoided if the Grantee exercised reasonable caution in the applicable circumstances.

12. Environmental Matters. For the purpose of this Section 12:

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

“**Hazardous Substance**” means any radioactive materials, asbestos materials, urea formaldehyde, underground or aboveground tanks, pollutants, hazardous substances, deleterious substances, dangerous substances or goods, hazardous, corrosive or toxic substances, special waste or waste of any kind or any other substance the storage, manufacture, disposal, bundling, treatment, generation, use, transport, remediation or release into the environment of which is now or hereafter prohibited, controlled or regulated under Environmental Laws; and

“**Pre-existing Hazardous Substances**” means any Hazardous Substance present in, on or under the Lands, including without limitation surface and ground water, as at the date of the Grantee becomes the owner of the Energy System.

(a) Control and Management of Site

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

(b) Grantor’s Environmental Covenants

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

- i) not to use or permit the Lands to be used for the sale, storage, manufacture, disposal, handling, treatment, use or any other dealing with

any Hazardous Substance, except in compliance with Environmental Laws; and

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

(c) Grantor's Environmental Indemnity

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

- i) any breach of or non-compliance with the provisions of this Section 12 by the Grantor; and
- ii) the presence or alleged presence of any Hazardous Substance in, on or under the Lands, including without limitation surface and ground water, and the release or alleged release of any Hazardous Substance at or from the Lands, including without limitation surface and ground water, except to the extent that such presence or release arises from the negligent act or omission of the Grantee or a breach or non-compliance by the Grantee with applicable Environmental Laws.

(d) Grantee's Environmental Covenants

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

- i) not to use the Lands for the sale, storage, manufacture, disposal, handling, treatment, use or any other dealing with any Hazardous Substance, except in compliance with Environmental Laws; and
- ii) to comply with and to continue to comply with Environmental Laws in its use and occupancy of the Lands hereunder.

(e) Grantee's Environmental Indemnity

From and after the date on which the Grantee becomes the owner of the Energy System, the Grantee will release and indemnify and hold harmless the Grantor and its Representatives from any and all liabilities, actions, damages, claims (including remediation cost recovery claims), losses, costs, orders, fines, penalties and expenses whatsoever (including all consulting and legal fees and expenses on a solicitor-client basis) and the costs of removal, treatment, storage and disposal of Hazardous Substances (except any Pre-Existing Hazardous Substance) and remediation of the Lands and any adjacent property affected by the transmission of Hazardous Substances (except any Pre-Existing Hazardous Substance) from the Lands which may be paid by, incurred by or asserted against the Grantor or its Representatives arising from or in connection with any breach of or non-compliance with the provisions of this Section 12 by the Grantee except to the extent that such breach or non-compliance was contributed to or caused by any negligent act or omission of the Grantor or its Representatives or a breach or non-compliance by the Grantor with applicable Environmental Laws.

- (f) The obligations of the Grantee under this Section 12 shall survive the registration of this Agreement and the termination and release thereof, if any. The obligations of the Grantee under this Section 12 are in addition to, and shall not limit, the obligations of the Grantee contained in other provisions of this Agreement.
13. No Requirement to Do Works, Pay Fees, Etc. This Agreement does not in any way require the Grantee to provide any works or services whatsoever to the Lands, to develop, construct, inspect, clean, maintain, repair or replace any works or improvements whatsoever within or in respect of the Lands or to pay any fee or other amount whatsoever in connection with this Agreement, unless the Grantee is expressly required to do so under the terms of this Agreement or under any other agreement in writing.
14. Subdivision / Effect of Agreement. This Agreement and the rights herein granted will run with the Lands and each part into which the Lands may be subdivided, whether by subdivision plan, strata plan or otherwise howsoever, and the term "Grantor" includes the owner of each subdivided portion of the Lands and the successors in title thereof. Despite anything contained in this Agreement, if the Lands are subdivided by subdivision plan, strata plan or otherwise howsoever, a default in respect of any subdivided portion of the Lands, including a default with respect to any amount payable in connection with any subdivided portion of the Lands, will not be a default with respect to any other portion of the Lands for which there has not been a default and the Grantee will not be entitled to exercise any of its rights or remedies under this Agreement except with respect to the subdivided portion or portions of the Lands for which there has been a default. Despite any other provision of this Agreement, in the event that the Lands are subdivided by means of a strata plan pursuant to the *Strata Property Act*:
- (a) the "Grantor" under this Agreement shall be the strata corporation created by the filing of such strata plan and the individual owners of the strata lots created by such strata plan shall have no obligations or liabilities under this Agreement other than as members of the strata corporation;

- (b) the individual strata lots created by any strata plan in respect of any portion of the Lands will not form part of the "Lands" and will not be subject to this Agreement;
  - (c) the statutory rights of way and section 219 covenant granted pursuant to this Agreement are intended to apply to and burden only the common property created by such strata plan and not at any time to burden any strata lot or the owner of any strata lot; and
  - (d) upon the request of and at the expense of the Grantor or any strata lot owner, the Grantee will execute and deliver in registrable form a discharge of this Agreement from any such strata lot provided however, that this section 14(d) will not apply in the case of bare land strata lots.
15. Application to Strata Corporation. Without limiting anything set out in this Agreement, any strata corporation created in respect of any portion of the Lands will be a "Grantor" and will be bound by all of the terms and conditions of this Agreement and any common property created by any strata plan in respect of any portion of the Lands will remain as part of the "Lands" and will be subject to this Agreement.
16. Injunctive Relief. The Grantor acknowledges and agrees that, without limiting any other right or remedy of the Grantee, the Grantee may obtain from a court of competent jurisdiction injunctive relief in respect of any breach or anticipated breach by the Grantor of any of the Grantor's duties or obligations under this Agreement.
17. Grantor's Indemnity. Subject to section 19, the Grantor does hereby agree to indemnify and save harmless the Grantee from all liabilities, claims, demands, actions, damages, losses, costs and expenses which the Grantee may suffer or incur arising from or connected to the non-performance of its rights and obligations hereunder, save to the extent that such liabilities, claims, demands, actions, damages, losses, costs and expenses which the Grantee may suffer or incur result from the negligence or wilful misconduct of the Grantee. The provisions of this Section shall survive the expiration or termination of this Agreement.
18. Grantee's Liability and Indemnity. The Grantee shall indemnify the Grantor and save it harmless from all loss claims, actions, damages, liability and expense in connection with loss of life, personal injury, damage to property or any other loss or injury whatsoever arising out of this Agreement, or any occurrence in, upon or at the Lands, or the occupancy or use by the Grantee of the Lands or any part thereof, or occasioned wholly or in part by any act or omission of the Grantee or its Representatives or anyone permitted by the Grantee to be on the Lands or in the Development. If the Grantor shall, without fault on its part, be made a party to any litigation commenced by or against the Grantee, then the Grantee shall protect, indemnify and hold the Grantor harmless in connection with such litigation. The Grantor may, at its option, participate in or assume carriage of any litigation or settlement discussions relating to the foregoing, or any other matter for which the Grantee is required to indemnify the Grantor under this Agreement. Alternatively, the Grantor may require the Grantee to assume carriage of and responsibility for all or any part of such litigation or discussions.

19. Limitation of Liability.

- (a) Neither party shall be liable for any indirect, incidental, special or consequential damages or losses, including any loss of profits, loss of business revenue, failure to realize expected savings or any other commercial or economic loss suffer or incurred by the other party or its Representatives, howsoever caused.
- (b) The Grantor shall not be liable for any death or injury arising from or out of any occurrence in, upon, at, or relating to the Lands, or damage to property of the Grantee or of others located on the Lands, nor shall it be responsible for any loss of or damage to any property of the Grantee or others from any cause, except to the extent that such death, injury, loss or damage directly or indirectly results from the negligence or willful misconduct of the Grantor, its agents, employees, contractors, or others for whom it may, in law, be responsible. The Grantor shall not be liable for any such damage caused by other tenants or persons on the Lands or in the Building or the Development or by occupants of adjacent property thereto, or the public, or caused by any public or quasi-public work. All property of the Grantee kept or stored on the Grantor shall be so kept or stored at the risk of the Grantee only and the Grantee releases and agrees to indemnify the Grantor and save it harmless from any claims arising out of any damage to the same including, without limitation, any subrogation claims by the Grantee's insurers unless such damage results from the negligence or willful misconduct of the Grantor, its agents, employees, contractors, or others for whom it may, in law, be responsible.
- (c) The provisions of this Section shall survive the expiration or termination of this Agreement.

20. Insurance. The Grantee will, without limiting its liability under this Agreement or its obligations under applicable laws, at its own expense, obtain and maintain in full force and effect throughout the Term, the insurance coverage described in this Section 20 including coverage for their officers, directors and employees and, unless otherwise agreed in writing by the Grantor, will also cause any subcontractors or sub-consultants of the Grantee to obtain and maintain reasonable levels of the relevant types of insurance coverage described in this Section 20, including such coverage for their respective officers, directors and employees.

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

- (b) **Automobile Liability Insurance** having a limit of not less than two million dollars (\$2,000,000) inclusive per occurrence and insuring against claims for bodily injury, including death, and for property damage arising out of the use of the Grantee's owned, leased and non-owned vehicles if such vehicles are used in the performance of this Agreement.
- (c) **All Risks Property Insurance** (including flood and earthquake) upon all property owned by the Grantee or in their care, custody or control or installed by or on behalf of the Grantee which is located in the Building in an amount not less than the full replacement cost thereof.
- (d) **Boiler and Machinery Insurance** with limits for each accident in an amount not less than the full replacement cost of all boilers, pressure vessels, heating, ventilating and air-conditioning equipment and miscellaneous electrical apparatus owned or operated by the Grantee or by others (other than the Grantor) on behalf of the Grantee.

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

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

All insurance policies required pursuant to this Section 20 will be in accordance with the following requirements:

- (f) The policies will contain a provision obligating the insurer to give the Grantor thirty (30) days advance written notice of policy cancellation.
- (g) Any self-insured retention, deductible, and exclusion in coverage in the policies will be assumed by, for the account of, and at the sole risk of the Grantee and, to the extent applicable, will be paid by the Grantee.
- (h) The Grantee will deliver to the Grantor up-to-date insurance certificates evidencing such required coverage before the commencement of the operations of the Grantee under this Agreement within fifteen (15) days of the renewal of any such policy, and otherwise from time to time as is reasonably required by the Grantor, provided that the Grantor has no obligation to examine such certificates or to advise the Grantee in the event its insurance is not in compliance with this Section 20.

- (i) The insurance shall be placed with insurers which have an “AM Best” rating of A- or better and which are licensed to provide insurance coverage in the Province of British Columbia.
  - (j) Neither the providing of insurance by the Grantee in accordance with the requirements of this Agreement nor the insolvency, bankruptcy or failure of any insurance company to pay any claim accruing shall be held to waive any of the provisions of this Agreement with respect to the liability of the Grantee or otherwise. The presence or absence of such insurance coverage as contemplated by this Agreement does not in any way decrease the Grantee’s liability owed to the Grantor.
21. Discharge. If this Agreement is terminated for any reason, the Grantee will execute and deliver in registrable form a discharge of this Agreement within 15 days of such termination.
22. Amendment. Except as expressly set out herein, this Agreement may only be amended by an agreement in writing signed by the Grantee and the Grantor. No modification or amendment of any provision of this Agreement will be inferred from anything done or omitted by any of the parties except by an express agreement in writing duly executed and delivered by all of the parties.
23. No Waiver. No condoning, excusing or overlooking of any default nor any delay in proceeding or failure to proceed in the case of any default under this Agreement will operate as a waiver of or otherwise affect in any way any rights or remedies under this Agreement or at law. No waiver of any rights or remedies will be inferred from anything done or omitted to be done by any party except by an express waiver in writing. No waiver in respect of any matter or thing will operate as a waiver in respect of any other matter or thing.
24. Governing Law. This Agreement will be governed by and interpreted in accordance with the laws of in force in the Province of British Columbia, which is the proper law hereof, and the courts of British Columbia will have the exclusive jurisdiction with respect to all matters arising under or in respect of this Agreement.
25. Time is of the Essence. Time is of the essence of this Agreement and will remain of the essence despite any extension of time given under or in connection with this Agreement.
26. Notices. All notices under this Agreement must be given in writing and delivered in accordance with this provision. The parties agree that:
- (a) any notice to the Grantor may be sent to the Grantor’s address according to the Land Title Office records in respect of the Lands or delivered to the Grantor; and
  - (b) all notices to the Grantee must be sent to the Grantee at the address set out above or such other address as the Grantee may notify the Grantor in accordance with the terms hereof at any time and from time to time.

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

27. Grantee's Licences and Authorizations. The Grantee may grant to any other person a licence or other agreement, authorizing such person to exercise any right granted to the Grantee pursuant to this Agreement without limiting or restricting its obligations and liabilities contained in this Agreement..
28. Priority. The Grantor will do all acts and things determined by the Grantee to be necessary to gain priority for this Agreement over any financial charge or encumbrance registered against title to the Lands or any portion thereof, other than any financial charge or encumbrance consented to in writing by the Grantee in its absolute discretion.
29. Severability. The provisions hereof are severable and if any of them should be found to be void or unenforceable at law, the remaining provisions shall not be affected thereby.
30. Assignment by Grantee/Release. The Grantee may assign this Agreement to any person, provided that the Grantee and its assignee satisfy any requirements set out in Sections 218 and 219 of the *Land Title Act* (British Columbia), and provided that upon any assignment of this Agreement by the Grantee, the Grantee shall cause the assignee to enter into an agreement with the Grantor under which such assignee covenants that it shall perform the obligations of the Grantee hereunder and be bound by all of the provisions of this Agreement, including the provisions of this Section 30, which will apply to each and every subsequent assignment of any interest under this Agreement by such assignee.
31. Further Assurances. The Grantor will execute and deliver any further agreement, document or instrument and do and perform any further act or thing as may be required by the Grantee at any time and from time to time in order to evidence or give full force and effect to the terms, conditions and intent of this Agreement.
32. Ownership of Energy System. Despite any degree of annexation or affixation, or rule of law or equity to the contrary, all components of the Energy System shall not be considered a fixture and will be and remain the property of and vest in the Grantee.
33. Release of Grantor. For greater certainty, no person who has been "Grantor" will be liable for any breach of this Agreement occurring after such person has ceased to be an owner of, or strata corporation with respect to any part of the Lands, provided that the Grantor has obtained from the transferee of the Lands an assumption agreement whereby

the transferee covenants and agrees to be bound by the obligations of the Grantor set out in this Agreement from and after the date of such conveyance and transfer.

34. Restriction of Right of Way Area. The Grantee agrees that, once the Energy System is installed on, in and under the Lands, the Grantor shall at its cost and option prepare a reference plan (“**Plan**”) showing the location of the right of way area for the Energy System on the Lands (the “**Right of Way Area**”) and file the Plan in the applicable Land Title Office. Upon registration of the Plan in the applicable Land Title Office, the rights granted to the Grantee under Sections 4(a-h) of this Agreement and the covenants given by the Grantor under Section 10 of this Agreement, will be limited to the Right of Way Area.
35. Term. The term of this Agreement shall commence upon registration at the Land Title Office and shall continue for so long as the Grantee provides Energy Services to the Building from the Energy System (the “**Term**”).
36. Default and Termination. Either party may, at its option and without further liability to the other party, terminate this Agreement: (i) upon the material default by such other party in the performance of any of its covenants or obligations under this Agreement, if such default is not remedied within thirty (30) days of the party in default receiving written notice of such default, or within such longer period as is reasonable in the circumstances, so long as the party in default is diligently moving to implement remedial action; or (ii) if such other party becomes insolvent, ceases to do business as a going concern, is adjudged bankrupt or made subject to the appointment of a receiver-manager, makes a general assignment for the benefit of creditors, or takes the benefit of any statute in force for the winding up or liquidation of business enterprises.

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

**PRIORITY CONSENT**

For One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and agreed to by HSBC Bank Canada (the "Chargeholder"), being the holder of Mortgage CA3809858 and Assignment of Rents CA3809859 (collectively, the "Charges"), hereby approves and consents to the granting of the Statutory Rights of Way and the Section 219 Covenant (collectively, the "Encumbrances") attached, and consents and agrees that the Encumbrances shall be binding upon the Chargeholder's interest in or charge upon the Lands and shall be encumbrances upon such Lands in priority to the Charges in the same manner and to the same effect as if the Encumbrances had been granted and registered against such Lands prior to the dating, execution and registration of the Charges and the advance of any monies thereunder.

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

**PRIORITY CONSENT**

For One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and agreed to by Fulcrum Capital Partners Inc. (the "Chargeholder"), being the holder of Mortgage CA3809860 and Assignment of Rents CA3809861 (collectively, the "Charges"), hereby approves and consents to the granting of the Statutory Rights of Way and the Section 219 Covenant (collectively, the "Encumbrances") attached, and consents and agrees that the Encumbrances shall be binding upon the Chargeholder's interest in or charge upon the Lands and shall be encumbrances upon such Lands in priority to the Charges in the same manner and to the same effect as if the Encumbrances had been granted and registered against such Lands prior to the dating, execution and registration of the Charges and the advance of any monies thereunder.

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

**END OF DOCUMENT**

**SCHEDULE B**  
**CUSTOMER SERVICE AGREEMENTS**

See attached Customer Service Agreements

**CUSTOMER SERVICE AGREEMENT**

**CREATIVE ENERGY VANCOUVER PLATFORMS INC.**

**STREAM A THERMAL ENERGY SYSTEM**

THERMAL ENERGY SERVICE

CIVIC ADDRESS: \_\_\_\_\_, **Vancouver, B.C.**

LEGALLY DESCRIBED AS:

**PID:** \_\_\_\_\_

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**TERMS & CONDITIONS OF CUSTOMER SERVICE**

CONTAINING

DEFINITIONS, TERMS AND CONDITIONS OF SERVICE, SCHEDULES AND SERVICE APPLICATION

Effective: \_\_\_\_\_

These Terms and Conditions are available for inspection during business hours at the office of Creative Energy Vancouver Platforms Inc. in Vancouver, British Columbia.

## SECTION A - DEFINITIONS

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

**Affiliate:** has the meaning ascribed to it in the British Columbia *Business Corporations Act*.

**Application for Service:** means the application referred to in Section 2.

**Basic Charge:** means a fixed charge required to be paid by the Customer for Energy Services during a prescribed period as specified in the Rate Schedule.

**BCUC:** means the British Columbia Utilities Commission.

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

**Building System:** means the complete heating and ventilating (which may include air conditioning) system and domestic hot water system and storage equipment to be installed and used for distributing and storing Thermal Energy in the Building, connected to but downstream of and excluding the Demarcation Points for the Building and any other component of the TES Onsite.

**Cooling Services:** means the supply of thermal energy for cooling purposes.

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

**Customer Agreement:** means this Customer Service Agreement, which is comprised of an Application for Service and these Terms and Conditions.

**Demarcation Points** means:

- (a) in respect of the components of the TES Onsite relating to the provision of Heating Services to the Buildings, the Energy Transfer Stations; and
- (b) in respect of the components of the TES Onsite relating to the provision of Cooling Services to the Buildings, the applicable isolation valves.

**Design Capacity:** means the load for which the TES Onsite has been designed for the provision of the Energy Services to the Buildings, as set out in the Application.

**Distribution Extension:** means an extension or upgrade of the Distribution System, not including the installation of the Energy Transfer Station, for the provision of Energy Services to buildings on properties other than the Lands.

**Distribution Extension Customer:** means a Person or building to be served by a Distribution Extension.

**Distribution System:** means, collectively, the system of water pipes, fittings and ancillary components and equipment connecting the TES Onsite to the Demarcation Points, and if approved by the BCUC as provided in and subject to Section 27 hereof will include the connection to the Neighbourhood Energy System.

**Energy Services:** means the provision by the Utility of Thermal Energy via the TES Onsite.

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

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

**Heating Services:** means the supply of thermal energy for heating purposes, which includes domestic hot water.

**Initial Term:** has the meaning set out in Section 20.1.

**Lands:** means the lands located at or around ♦, Vancouver, British Columbia, and legally described as:

PID: ♦

♦.

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

**Neighbourhood Energy System:** means the neighbourhood energy system constructed or to be constructed by the Utility by which the Utility delivers Heating Services to other buildings located on properties other than the Lands and potentially to the Buildings, which neighbourhood energy system may include the TES Onsite, any central thermal energy plant or neighbourhood energy utility system, the Distribution System and the Energy Transfer Stations, or any combination of the foregoing.

**Owner:** means Howe Street Ventures Ltd., the registered owner of the Lands.

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

**Rate Schedule:** means that schedule attached to and forming part of these Terms and Conditions as Section C, which sets out the Basic Charge as well as the estimated Variable Charge and certain related terms and conditions, as amended from time to time by the Utility with the approval of, and as filed with, the BCUC to the extent required by the BCUC.

**Standard Fees and Charges Schedule:** means that schedule attached to and forming part of these Terms and Conditions which sets out certain standard fees and charges which may be charged to the Customer in accordance with these Terms and Conditions.

**Terms and Conditions:** means these Thermal Energy Service Terms & Conditions, including the definitions and schedules hereto, all as amended from time to time by the Utility with the approval of, and as filed with, the BCUC to the extent required by the BCUC.

**TES Onsite:** means the energy system situate entirely on the Lands by which the Utility generates and delivers Thermal Energy to Customers and includes any onsite boiler or boilers, chillers, cooling towers, the onsite Distribution System and the Energy Transfer Station, but does not include the Building System.

**Thermal Energy:** means thermal energy for Heating Services and, where available, Cooling Services.

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

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

**Variable Charge:** means a metered charge required to be paid by the Customer for Energy Services during a prescribed period as specified in the Rate Schedule, under which charge the Utility will recover all costs, excluding the costs of capital, associated with the production and generation of Thermal Energy in the provision of the Energy Services to the Customer during the prescribed period, including, without limitation, the costs of natural gas, water and electricity.

## SECTION B – TERMS AND CONDITIONS

### 1. **Stream A Thermal Energy System**

- 1.1 The Utility pursuant to one or more agreements with the Owner, has agreed to design, procure, construct and install the TES Onsite for the provision of Energy Services to the Buildings and has agreed to own, operate and maintain the TES Onsite.
- 1.2 The Utility will apply, at its own cost, to BCUC for an order confirming that the TES Onsite is a “Stream A TES” pursuant to section 2.3.4 of BCUC Order #G-127-14, and shall deliver a copy of such order to the Customer promptly upon receipt thereof.
- 1.3 The Buildings are intended to comprise a mixed use residential and commercial development and the Lands may be further subdivided to create individual parcels for the ownership and operation of the components of the said development and each component may be further subdivided by air space or strata plan or both.
- 1.4 The Owner will at the request of the Utility as a condition of continued service, enter into or cause the owner or tenant of each separate parcel or component to enter into a separate Customer Agreement for each component of the Lands or parcel into which the Lands may be subdivided which contains a separate Meter, provided that if any part of the Lands are subdivided by strata plan, the Owner will cause the strata corporation created upon the filing of the strata plan to enter into a Customer Agreement for the lands and premises within the strata plan, and each such Customer Agreement will be on the terms and conditions of this Customer Agreement and will be for a term equal to the duration of the Term; provided always that the Utility may allow the Owner to assign or partially assign this Customer Agreement to any one or more of such strata corporations and each owner or tenant of any part of the Lands (each such Person being a Customer) so long as the assignee or assignees agree to assume and be bound by the terms hereof.

### 2. **Application for Energy Services**

- 2.1 The Utility will provide Energy Services to the Customer solely in accordance with these Terms and Conditions. Persons seeking to become a Customer must apply for Energy Services in accordance with this Section.
- 2.2 To apply for the Energy Services, applicants will be required by the Utility to complete and sign an Application for Service form which, together with these Terms and Conditions, constitutes a Customer Agreement. The Customer Agreement will become binding on the parties thereto only and forthwith upon commencement by the Utility of Energy Services to the Customer. Applicants may be required to provide reference information and identification acceptable to the Utility in connection with an Application for Service.
- 2.3 If an applicant is requesting Energy Services at more than one Building, the Utility will determine in its sole discretion whether to consider the applicant the same Customer for each such Building or to consider the applicant a separate Customer for each of the Buildings. If an applicant is requesting Energy Services for more than one unit, area or premises within the same Building, the applicant will be considered the same Customer

for all such units, areas or premises. The Utility intends that there will be no more than one Customer per Building.

- 2.4 The Utility may refuse to provide Energy Services to a person submitting an Application for Service if there is an unpaid account for Energy Services in respect of such person or the relevant Building(s).
- 2.5 This Customer Agreement relates only to the provision of the Energy Services by the Utility to the Customer, upon the terms and conditions contained herein. The Utility shall not be responsible for the provision of any utility services other than the Energy Services, such as electricity and natural gas, and the Customer shall be solely responsible for any fees and charges associated with such utility services, in addition to the fees and charges payable to the Utility hereunder.

### **3. Assignment**

- 3.1 The Customer may not assign a Customer Agreement or any of its rights or obligations thereunder without the prior written consent of the Utility, such consent not to be unreasonably withheld. The Utility may assign a Customer Agreement or any of its rights or obligations thereunder (including, without limitation, by way of the sale of the majority of its shares or business or its material assets or by way of an amalgamation, merger or other corporate reorganization) to any of its Affiliates or to any other Person without the consent of the Customer, provided such Affiliate or Person is duly qualified to carry out the Customer Agreement and agrees to be bound by the terms and conditions of the Customer Agreement. Forthwith upon such assignment, the Utility shall be released from any ongoing obligations and responsibilities under the Customer Agreement from and after such date.

### **4. Use of Thermal Energy**

- 4.1 A Customer will use Thermal Energy only for space heating and domestic hot water within the Buildings.
- 4.2 Unless authorized by the Utility in writing and in advance, a Customer will not sell or supply to any other Person Thermal Energy provided by the Utility, nor use Thermal Energy supplied by the Utility for any purpose other than as specified in this Section.
- 4.3 The Utility acknowledges and agrees that a Customer shall be permitted to allocate the rates, fees and charges associated with the Energy Services among the components, parcels, units, areas or premises within each Building.

### **5. Applicable Rate Schedule**

- 5.1 The Rate Schedule has been determined on the basis of the estimated connected loads and Design Capacity which are in turn based on the intended design and use of the Buildings. A Customer must not significantly change its connected load without the prior written approval of the Utility. The Utility may conduct periodic reviews of the quantity of Thermal Energy delivered and the rate of delivery of Thermal Energy to a Customer for the purpose of, among other things, determining whether to submit a more applicable Rate Schedule to a Customer for approval.

- 5.2 If the maximum Thermal Energy demand exceeds the Design Capacity, the Utility may assess additional fees and charges to the Customer for usage exceeding such limits provided that if usage exceeds such limits, the Utility reserves the right to temporarily suspend or limit the Energy Services to reduce the load on the TES Onsite.

## **6. Ownership and Care of TES Onsite**

- 6.1 Notwithstanding any degree of annexation or affixation, or rule of law or equity to the contrary, the Utility owns all components of the TES Onsite, and all additions or extensions thereto will be and remain the property of and vest in the Utility, whether located inside or outside of any Building. No component of the TES Onsite shall be moved or removed from a Customer's lands (whether located inside or outside of any Building) without the advance written permission of the Utility. The Utility will not, under any circumstances whatsoever (including, without limitation, if the Utility is not providing Energy Services for any reason or if the Customer Agreement is terminated for any reason), be required to remove any component of the TES Onsite from the Customer's lands (whether located inside or outside of any Building).
- 6.2 The Customer will take reasonable care of and protect all components of the TES Onsite in, on or under the Customer's lands (whether located inside or outside of any Building) against damage and must advise the Utility promptly of any damage to or disappearance of the whole or part of any such component. Further, the Customer will pay to the Utility promptly upon request the cost of any broken, missing or damaged component of the TES Onsite (or part thereof), except to the extent that the Customer demonstrates that such component (or part thereof) was broken, missing or damaged due to a defect therein or to any act or omission of the Utility or any of the Utility's Representatives.

## **7. Meter Reading**

- 7.1 The Utility intends that there will be no more than one Meter per Building.
- 7.2 The amount of Thermal Energy registered by the Meter during each billing period will be converted to megawatt-hour.
- 7.3 The interval between consecutive Meter readings will be at the sole discretion of the Utility. The Meter will typically be read at monthly intervals.

## **8. Meter Testing**

- 8.1 Any Customer who doubts the accuracy of a Meter may request to have the Meter tested by the original equipment manufacturer.
- 8.2 If the testing indicates that the Meter is recording correctly, the Customer must pay the Utility for the cost of removing, replacing and testing the Meter as set out in the Standard Fees and Charges Schedule and the reconnection charge as set out in Section 11.
- 8.3 If the Meter is found to be inaccurate by the manufacturer, the Utility will incur the cost of removing, replacing and testing the Meter or (if applicable) refund such costs to the Customer if paid by the Customer.

## **9. Maintenance**

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

## **10. Connections and Disconnections**

- 10.1 No connection, disconnection, reconnection, extension, installation, replacement or any other change is to be made to any component of the TES Onsite by anyone except by the Utility's Representatives authorized by the Utility.

## **11. Energy Services Reconnections**

- 11.1 If:
- (a) Energy Services are discontinued to a Customer for any of the reasons specified in Section 17 or any other provision of this Customer Agreement;
  - (b) a Building System is disconnected from the TES Onsite or Energy Services are discontinued to a Customer:
    - (i) at the request of the Customer with the approval of the Utility; or
    - (ii) to permit a test of a meter at the request of the Customer, which Meter is subsequently determined by the Utility to be accurate;

without termination of this Customer Agreement, and such Customer or the employee, agent or other representative of such Customer re-applies for Energy Services for the same Building within 12 months of such discontinuance or disconnection (as applicable), then if the Building's Building System is reconnected to the TES Onsite or if Energy Services are restored to such Customer, such Customer will pay, as part of fees owing for the first month of Energy Services, a reconnection charge equal to the sum of:

- (c) the costs that the Utility estimates it will incur in reconnecting the Building's Building System to the TES Onsite or restoring Energy Services to such Customer; and
- (d) the Basic Charge that such Customer would have paid had Energy Services continued during the period between the date of discontinuance or disconnection (as applicable) and the date of such re-application.

11.2 If a Building System is disconnected from the TES Onsite or Energy Services are discontinued to a Customer for public safety or Utility service requirement reasons, there will be no reconnection charge to reconnect the Building's Building System to the TES Onsite or to restore Energy Services to such Customer.

## **12. Distribution Extensions**

12.1 The Customer acknowledges the following terms and conditions which will apply to the Utility's determination of whether or not to complete a Distribution Extension in order to assess the economic impact of such Distribution Extension on existing Customers.

- (a) The Utility will complete Distribution Extensions as necessary in accordance with the requirements of the BCUC.
- (b) All components of Distribution Extensions will be and remain the property of the Utility.
- (c) Applications for Distribution Extensions will be subject to an economic test, a model which is accepted by the BCUC. The economic test will be a discounted cash flow analysis of the projected revenue and costs associated with the Distribution Extension. The Distribution Extension will be deemed to be economic and constructed if the results of the economic test indicate a zero or positive net present value.
- (d) The projected revenue used in the economic test will be established by the Utility by:
  - (i) estimating the number of Distribution Extension Customers;
  - (ii) establishing consumption estimates for each such Distribution Extension Customer;
  - (iii) projecting when such Distribution Extension Customers will be connected to the Distribution Extension; and
  - (iv) applying appropriate revenue margins for such Distribution Extension Customers' consumption.

12.2 The revenue projection will also take into consideration the estimated number and type of Thermal Energy appliances used and the effect of variations in weather conditions on consumption.

12.3 The costs used in the economic test will include, without limitation:

- (a) the full projected labour, material, and other costs necessary to serve the Distribution Extension Customers including such costs applicable to new mains (subject to the provisions of Section 12.4), Energy Transfer Station(s) and related facilities;

- (b) the appropriate allocation of Utility overhead associated with construction of the Distribution Extension; and
- (c) projected incremental operating and maintenance expenses necessary to serve the Distribution Extension Customers.

In addition to these costs, the economic test will incorporate applicable taxes and the appropriate return on investment as approved by the BCUC where required.

- 12.4 In cases where a larger Thermal Energy distribution main is installed to satisfy anticipated future demand requirements, the difference in cost between the installed, larger main and a smaller main that would be adequate to serve only those Distribution Extension Customers supporting the particular application may be eliminated from the economic test.
- 12.5 If the economic test results indicate a negative net present value, the Distribution Extension may proceed provided that the shortfall in revenue is eliminated by contributions in aid of construction by or on behalf of Distribution Extension Customers, or if there are non-financial factors offsetting the revenue shortfall that are deemed to be acceptable by the BCUC, the Utility may finance the contributions in aid of construction for Distribution Extension Customers.
- 12.6 In those situations where the financial viability of a Distribution Extension is uncertain, the Utility may require a security deposit in cash or an equivalent form acceptable to the Utility.

### **13. Billing**

- 13.1 Bills will be rendered to the Customer in accordance with the Customer's Customer Agreement, including the Rate Schedule.
- 13.2 Subject to Section 13.4 below, if Meter readings cannot be obtained for any reason, consumption may be estimated by the Utility for billing purposes and the next bill that is based on actual Meter readings will be adjusted for the difference between estimated and actual use over the interval between meter readings.
- 13.3 If any Meter fails to register or registers incorrectly, the consumption may be estimated by the Utility for billing purposes, subject to Section 14.
- 13.4 If the Customer terminates a Customer Agreement, the final bill rendered to the Customer will be based on an actual Meter reading.
- 13.5 Bills will be rendered as often as deemed necessary by the Utility, but generally on a monthly basis. The due date for payment of bills shown on the face of the bill will be the first business day after:
  - (a) the 21st calendar day following the billing date; or
  - (b) such other period as may be specified in the Application for Service or otherwise agreed in writing by the Customer and the Utility.

- 13.6 Bills will be paid in the manner specified therein, which may include payment by regular mail, payment at a designated office of the Utility and/or payment by on-line banking or electronic funds transfer.
- 13.7 Customers requesting historic billing information may be charged the cost of processing and providing this information.

**14. Back-billing**

- 14.1 Minor adjustments to a Customer's bill, such as an estimated bill or an equal payment plan billing, do not require back-billing treatment.
- 14.2 Back-billing means the re-billing by the Utility for Energy Services rendered to a Customer because the original billings were discovered to be either too high (over-billed) or too low (under-billed). The discovery may be made by either the Customer or the Utility. The cause of the billing error may include any of the following non-exhaustive reasons or combination thereof:
- (a) stopped Meter;
  - (b) metering equipment failure;
  - (c) inaccurate Meter, as determined pursuant to Section 7;
  - (d) switched Meters;
  - (e) double metering;
  - (f) incorrect Meter connections;
  - (g) incorrect use of any prescribed apparatus respecting the registration of a Meter;
  - (h) incorrect Meter multiplier;
  - (i) the application of an incorrect rate;
  - (j) incorrect reading of Meters or data processing; or
  - (k) tampering, fraud, theft or any other criminal act.
- 14.3 Where the Customer requests that the Meter be tested, the provisions of Section 8 will apply in addition to those set forth in this Section.
- 14.4 Where metering or billing errors occur and the Customer does not request that the Meter be tested, the consumption and demand will be based on the records of the Utility for the Customer or on the Customer's own records to the extent they are available and accurate or, if not available, on reasonable and fair estimates made by the Utility. Such estimates will be on a consistent basis within each Customer class or according to a contract with the Customer, if applicable.
- 14.5 If there are reasonable grounds to believe that the Customer has tampered with or otherwise used the Thermal Energy or any component of the TES Onsite in an unauthorized way, or there is evidence of fraud, theft or another criminal act, back-billing will be applied for the duration of the unauthorized use, subject to the applicable limitation period provided by law, and the provisions of Sections 14.10, 14.11, 14.12 and 14.13 below will not apply.

- 14.6 In addition, the Customer is liable for the direct administrative costs incurred by the Utility in the investigation of any incident of tampering, including the direct costs of repair, or replacement of equipment.
- 14.7 Under-billing resulting from circumstances described in Section 14.5 will bear interest at the rate set out in the Standard Fees and Charges Schedule for unpaid accounts from the date of the original under-billed invoice until the amount under-billed is paid in full.
- 14.8 In every case of under-billing or over-billing, the cause of the error will be remedied without delay, and the Customer will be promptly notified of the error and of the effect on the Customer's ongoing bill.
- 14.9 In every case of over-billing, the Utility will refund to the Customer money incorrectly collected, without any interest thereon, for the shorter of:
- (a) the duration of the error; and
  - (b) six months prior to the discovery of the error.
- 14.10 Subject to Section 14.5 above, in every case of under-billing, the Utility will back-bill the Customer for the shorter of:
- (a) the duration of the error; and
  - (b) six months prior to the discovery of the error.
- 14.11 In every case of under-billing, the Utility will offer the Customer reasonable terms of repayment. If requested by the Customer, the repayment term will be equivalent in length to the back-billing period. The repayment will be interest free and in equal instalments corresponding to the normal billing cycle. Delinquency in payment of such instalments will be subject to the usual late payment charges.
- 14.12 If a Customer disputes a portion of a back-billing due to under-billing based upon either consumption, demand or duration of the error, the Utility will not threaten or cause the discontinuance of Energy Services for the Customer's failure to pay that portion of the back-billing, unless there is no reasonable ground for the Customer to dispute that portion of the back-billing. The undisputed portion of the bill will be paid by the Customer and the Utility may threaten or cause the discontinuance of Energy Services if such undisputed portion of the bill is not paid.
- 14.13 In all instances of back-billing where changes of occupancy have occurred, the Utility will make a reasonable attempt to locate the former Customer. If, after a period of one year, such Customer cannot be located, the over-billing or under-billing applicable to them will be cancelled.
- 15. Late Payment Charge And Collection Charge**
- 15.1 If the amount due on any bill has not been paid in full on or before the due date shown on such bill, a further bill will be rendered to include the overdue amount plus a late payment charge as set out in the Standard Fees and Charges Schedule. Notwithstanding the due date shown, to allow time for payments made to reach the Utility and to co-ordinate the billing of late payment charges with scheduled billing cycles, the Utility may, in its discretion, waive late payment charges on payments not processed until a

number of days after the due date. If the Customer's account is overdue and requires additional effort to collect, the Utility may charge the Customer a collection charge as set out in the Standard Fees and Charges Schedule.

**16. Dishonoured Payments Charge**

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

**17. Refusal to Provide Energy Services and Discontinuance of Energy Services**

- 17.1 The Utility may refuse to provide Energy Services to any Applicant, or the Utility may, after having given 48 hours prior written notice, discontinue providing Energy Services to any Customer, who:
- (a) fails to fully pay for any Energy Services provided to it on or before the due date for such payment; or
  - (b) fails to provide or pay by the applicable date required any security deposit, equivalent form of security or guarantee or any requisite increase thereof.
- 17.2 The Utility may refuse to provide Energy Services to any Applicant, or the Utility may, without having to give any notice, discontinue providing Energy Services to any Customer, who:
- (a) refuses to provide reference information and identification acceptable to the Utility when applying for Energy Services or at any subsequent time on request by the Utility;
  - (b) breaches the terms and conditions of the applicable Customer Agreement (including, without limitation, these Terms and Conditions);
  - (c) has defective pipes, appliances or fittings in any part or parts of the Building System;
  - (d) uses the provided Thermal Energy in a manner that, in the opinion of the Utility, may:
    - (i) lead to a dangerous situation; or
    - (ii) cause undue or abnormal fluctuations in the temperature of any component of the TES Onsite;
  - (e) fails to make modifications or additions to the Customer's equipment as required by the Utility to prevent the danger or control the fluctuations described in paragraph (d) above;

- (f) negligently or fraudulently misrepresents to the Utility its use of Thermal Energy or the Thermal Energy load requirements of, or Thermal Energy volume consumed within and by, any Building;
- (g) makes any alterations to any Building or Building System that may increase the load requirements in excess of the Design Capacity without the prior written approval of the Utility;
- (h) terminates the applicable Customer Agreement pursuant to Section 21 or causes the termination of the applicable Customer Agreement for any reason; of
- (i) stops consuming Thermal Energy in any of the Buildings.

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

## **18. Security for Payment of Bills**

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

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

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

18.4 A security deposit (plus any accrued interest) will be returned to the Customer after one year of good payment history, or when the Customer's Customer Agreement is terminated pursuant to Section 21, whichever occurs first.

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

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

## **19. Account Charge**

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

**20. Term of Customer Agreement**

- 20.1 The initial term of a Customer Agreement will be 25 years from the commencement of the delivery of the Energy Services (the “**Initial Term**”) and will thereafter automatically be renewed from year to year unless the Customer Agreement is terminated pursuant to Section 21 below.

**21. Termination of Customer Agreement**

- 21.1 A Customer may, following the initial term specified in Section 20, terminate the applicable Customer Agreement by giving at least 60 days written notice to the Utility at the address specified in the most recent bill rendered to the Customer.

**22. Effect of Termination**

- 22.1 The Customer is not released from any previously existing obligations to the Utility by terminating the Customer Agreement.
- 22.2 If this Customer Agreement is terminated for any reason other than termination for default of the Utility, in addition to any other amounts due and owing by the Customer to the Utility and despite any other remedies available at law or in equity, the Customer shall pay to the Utility, within 60 days of invoicing, the following amounts (plus applicable taxes thereon):
- (a) if this Customer Agreement is terminated during the initial term specified in Section 20, the balance of the Basic Charge for the remainder of such initial term; and
  - (b) if this Customer Agreement is terminated prior to the expiry of any renewal term, the balance of the Basic Charge for the remainder of such renewal term.
- 22.3 Notwithstanding any termination by the Customer pursuant to Section 21, and without derogating from the generality of Section 6, all components of the TES Onsite will remain the property of and vest in the Utility.

**23. Liability**

- 23.1 The Utility will endeavour to provide a regular and uninterrupted supply of Thermal Energy, but it does not guarantee a constant supply of Thermal Energy or the maintenance of unvaried temperatures. Neither the Utility, nor any of the Utility’s Representatives is responsible or liable for any loss, injury (including death), damage or expense incurred by any Customer or any Person claiming by or through a Customer, that is caused by or results from, directly or indirectly, any discontinuance, suspension, or interruption of, or failure or defect in the supply, delivery or transportation of, or any refusal to supply, deliver, or transport Thermal Energy, or provide Energy Services, in each such case in accordance with these Terms and Conditions, except to the extent the loss, injury (including death), damage or expense is directly and solely attributable to the gross negligence or wilful misconduct of the Utility or any of the Utility’s Representatives, provided however that neither the Utility nor any of the Utility’s Representatives is responsible for any loss of profit, loss of revenue or other economic loss, even if the loss is directly attributable to the gross negligence or wilful misconduct of the Utility or any of the Utility’s Representatives.

- 23.2 Energy Services may be temporarily suspended to make repairs or improvements to the TES Onsite or in the event of fire, flood or other sudden emergency. The Utility will, whenever reasonably practicable, give notice of such suspension to the Customer and will restore Energy Services as soon as possible. Telephone, newspaper, flyer, radio or other acceptable announcement method may be used for notice purposes. The Utility will not be liable for any loss, injury or damage caused by or arising out of any such suspension of Energy Services.
- 23.3 The Customer shall bear and retain the risk of, and hereby indemnifies and holds harmless the Utility and all of the Utility's Representatives from, all loss and damage to all components of the TES Onsite in, on or under the Lands (whether located inside or outside of Building(s)) except to the extent any loss or damage is directly attributable to the negligence of the Utility or any of the Utility's Representatives, or is caused by or results from a defect in the TES Onsite. The Customer must prove such negligence or defect.
- 23.4 The Customer agrees to indemnify and hold harmless the Utility and all of the Utility's Representatives from all claims, losses, damages, liabilities, costs, expenses and injury (including death) suffered by the Customer or any person claiming by or through the Customer or any third party and caused by or resulting from the use of the Customer's lands by the Utility as contemplated herein or the use of Thermal Energy by the Customer or the presence of Thermal Energy on or in any part of the Building(s) or from the Customer or the Customer's employees, contractors or agents damaging any component of the TES Onsite. This paragraph will survive any termination of the Customer Agreement.
- 23.5 The Customer acknowledges and agrees that the Utility will not in any way be responsible for any aspect of the design, engineering, permitting, construction or installation of any Building System.
- 23.6 The Customer will obtain and maintain at its own expense appropriate insurance coverage (including property and liability) throughout the term of the Customer Agreement and will provide the Utility with evidence of same upon request.

#### **24. Access to Buildings and Equipment**

- 24.1 The Utility's Representatives will have, at all reasonable times, free access to all components of the Thermal Energy System in, on or under the Customer's lands (whether located inside or outside of Building(s)) to ascertain the quantity or method of use of Energy Services, as well as for the purpose of reading, testing, repairing or removing the whole or any such component (or part thereof), turning Thermal Energy on or off, conducting system leakage surveys, stopping leaks, and examining pipes, fittings, connections and appliances.
- 24.2 In furtherance of the above, the Customer hereby grants and covenants to secure for the Utility and its subcontractors, agents, employees and representatives, by licenses, statutory rights of way, easements, leases or other agreements, and for nominal consideration, non-exclusive access to, on, over and under the Customer's lands for the purposes of performing its obligations under the Customer Agreement, and if applicable for the connection of the TES Onsite to other customers of the Utility as may be approved

by the BCUC where required. Without limiting the generality of the foregoing, the Customer will, forthwith upon the Utility's request, grant or cause to be granted to the Utility and duly register in the relevant Land Title Office a statutory right of way in the Utility's standard form in respect of each lot comprising a part of the Customer's lands and otherwise as required to allow the Utility to perform its obligations. For greater certainty, the access granted pursuant to this Section will be adequate, in the sole discretion and determination of the Utility, to allow the Utility to efficiently and effectively carry out its obligations without undue disturbance or interference from the Customer or any of its contractors, agents, employees or representatives.

- 24.3 The Customer acknowledges and agrees that each statutory right of way, lease or other registrable interest granted pursuant to this Section may be registered by the Utility in the relevant Land Title Office, together with any priority agreements as the Utility may deem necessary or advisable. The Customer will at the request of the Utility ensure that each statutory right of way granted pursuant to this Section will have priority over any financial encumbrance registered against the title to the Lands or the applicable subdivided parcel thereof.
- 24.4 To the extent there is a statutory right of way in favour of the Utility registered against the Customer's lands, the Customer hereby covenants and agrees to be bound by, and to comply with, such registered statutory right of way.

## **25. Curtailment of Energy Services**

- 25.1 If there is a breakdown or failure of any component of the TES Onsite, or at any time to comply with the requirements of any law, the Utility will have the right to require any Customer or class or classes of Customers or all its Customers, until notice of termination of the requirement is given, or between specified hours, to discontinue use of Thermal Energy for any purpose or purposes or to reduce in any specified degree or quantity such Customer(s)' consumption of Thermal Energy for any purpose or purposes.
- 25.2 Any such requirement may be communicated to any Customer or Customers or to all Customers by either or both of public notices in the press and announcements over the radio, and may be communicated to any individual Customer by either or both of notice in writing (via e-mail, regular mail or personal delivery, or left at the relevant Building) and oral communication (including by telephone). Any notice of the termination of any such requirement may be communicated similarly.
- 25.3 If in the opinion of any official of the Utility any Customer has failed to comply with any requirement of the Utility communicated in accordance with this Section, the Utility will be at liberty, after notice to the Customer is communicated in accordance with this Section, to discontinue Energy Service to such Customer for the period specified in such notice.
- 25.4 The Utility will not be liable for any loss, injury, damage or expense occasioned to or suffered by any Customer for or by reason of any discontinuance of Energy Services as contemplated by this Section.

**26. Disturbing Use**

- 26.1 All equipment for which Thermal Energy is supplied will be subject to the reasonable approval of the Utility and the Customer will take and use the Thermal Energy so as not to endanger apparatus or cause any undue or abnormal fluctuations on the TES Onsite.
- 26.2 The Utility may require the Customer, at the Customer's expense, to provide equipment which will reasonably limit such fluctuations or disturbances and may refuse to supply Thermal Energy or suspend the supply thereof until such equipment is provided.

**27. Sources of Energy – Neighbourhood Energy System**

- 27.1 The Utility may connect the TES Onsite or the Building System to a Neighbourhood Energy System operated by the Utility which includes either or both a central plant or neighbourhood energy utility system and in such case the Customer will be required to enter into a replacement service agreement for a term commensurate with the balance of the term of this Agreement then remaining for the continued provision to the Customer of Energy Services at such rates and on the terms and conditions as approved by the BCUC.
- 27.2 The Customer acknowledges and agrees that the Utility may, without the need to obtain any approval from the Customer, from time to time incorporate other sources of energy or other energy supply systems into the TES Onsite or the Neighbourhood Energy System.

**28. Taxes**

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

**29. Rate Schedule**

- 29.1 The rates to be charged by, and paid to, the Utility for Energy Services will be the Basic Charge and Variable Charge set out in the Rate Schedule.
- 29.2 Prior to the commencement of the delivery of the Energy Services, the Utility shall calculate the Basic Charge and the estimated Variable Charge in accordance with the formula set out in the Rate Schedule and will deliver to the Customer a revised Rate Schedule for the Initial Term, and such revised Rate Schedule shall apply in respect of the Initial Term.
- 29.3 Not later than 90 days prior to the expiration of the initial term specified in Section 20 and any renewal term thereafter, the Utility shall deliver to the Customer a revised Rate Schedule for the applicable renewal term, and such revised Rate Schedule shall apply in respect of the applicable renewal term.

**30. Conflicting Terms and Conditions**

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

**31. Authority of Agents of the Utility**

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

**32. BCUC Oversight**

- 32.1 The Customer acknowledges that Creative Energy is a public utility as defined in the UCA. However, the TES Onsite has a limited exemption, granted by BCUC Order #G-127-14, from direct oversight of rates. Accordingly, the BCUC has not reviewed this Agreement, nor has it approved the rates charged for the Energy Service. However, other provisions of the Utilities Commission Act (UCA) apply, including the obligation to provide safe and reliable service. Any disputes between the Customer and the Utility that are within the jurisdiction of the BCUC pursuant to the UCA, may be referred for determination to the BCUC.

**33. Utility Contact Information**

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

**34. Facilities and Trained Personnel**

- 34.1 Section F attached to and forming part of these Terms and Conditions sets out a description of the facilities and trained personnel that will provide emergency response in respect of the TES Onsite and the provision of the Energy Services.

**35. Complaint Process**

- 35.1 Customers wishing to file a complaint are directed to view the BCUC's Complaint Guidelines (found at <http://www.bcuc.com/Complaint.aspx>). As per the Complaint Guidelines, customers are encouraged to bring their complaint directly to their Utility first, to give them an opportunity to resolve the customer's issues or concerns before involving the BCUC. A complaint to the BCUC will only be considered if other forms of resolution are unsuccessful. As per the Complaint Guidelines, a complainant must submit evidence that supports the allegations.

## SECTION C - RATE SCHEDULE

Formula for the calculation of the Variable Charge and the Basic Charge in year “x” of the Initial Term:

**Estimated Variable Charge calculation:**

Year: 20\_\_

Flowthrough of estimated variable costs:

Gas G

Electricity E

Other Direct Variable Costs OD

Total Flow through Variable Costs (VC) VC=G+E+OD

Assumed Thermal Energy Sales (MW/h) S

Variable Rate per MW/h VC/S

**Basic Charge calculation:**

Non Fuel Operations O

Labour

Cost of Capital

Contingency for repairs and replacements

Depreciation (straight line) D

Financing Costs on Rate Base F

Rate Base\*Deemed debt ratio\*debt rate

Rate Base\*Deemed Equity ratio\*Allowable rate of return

Income and other taxes T

Total Fixed Costs (FC) FC=O+D+F+T

Basic Charge = FC (subject to rate smoothing)

The Basic Charge will be smoothed over the Initial Term such that the annual increase in the Basic Charge is approximately 2%.



## SECTION D - STANDARD FEES AND CHARGES SCHEDULE

**Account Charge: \$50.00**

The Account Charge is a single initial set up charge payable by each Applicant for Energy Services.

### ADMINISTRATIVE CHARGES

**Reconnection Charge: \$250.00**

**Dishonoured Payments Charge:** Equivalent to the Utility's lead bank's NSF charge effective 1 April of each year: currently \$35.00

**Late Payment Charge:** Interest on outstanding balance equal to the lesser of 2.0% per month  
(19.6% compounded annually) and the maximum legal interest rate allowable.

**Disputed Meter Testing Fees:** Actual costs of removal, replacement and/or testing.

#### Interest on Cash Security Deposit:

The Utility will pay interest on any cash security deposit at the Utility's prime interest rate. The Utility's prime interest rate is defined as the floating annual rate of interest which is equal to the rate of interest declared from time to time by the Utility's lead bank as its "**prime rate**" for loans in Canadian dollars.

Payment of interest will be credited to the Customer's account in January of each year.

## **SECTION E - UTILITY CONTACT INFORMATION**

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

Telephone: 604-688-9584

**For all general inquiries:**

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

Telephone: 604-688-9584

Fax: 604-688-2213

Email: [info@creativeenergycanada.com](mailto:info@creativeenergycanada.com)

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

## **SECTION F - FACILITIES AND TRAINED PERSONNEL**

Operated 24 hours a day, 365 days a year, the steam plant is operated by a

- 1 - Shift Engineer, minimum 2<sup>nd</sup> Class Power Engineer
- 1 - Assistant Shift Engineer, minimum 4<sup>th</sup> Class Power engineer

On staff, responsible for the steam plant's daily operations is the Chief Engineer who is a 1st Class Power Engineer

Staff includes:

- 1 – 1<sup>st</sup> Class Power Engineer,
- 6 – 2<sup>nd</sup> Class Power Engineers,
- 6 – 3<sup>rd</sup> Class Power Engineers
- 4 – 4<sup>th</sup> Class Power Engineers

**STREAM A THERMAL ENERGY SYSTEM SERVICE AGREEMENT  
APPLICATION FOR SERVICE**

<b>Customer Information and Billing Address</b>		
Name or company name <i>(include business registration no. if applicable)</i>		
Mailing/billing address		
If company, contact name	Telephone	Email
<b>Property/Service location address</b>		
Legally described as:		
<b>Term of Service</b>		
Commencement Date	Initial Term (years) 25 years	Renewal
<b>Permitted Thermal Energy Use</b>		
Space heating and domestic hot water heating		
<b>Design Capacity</b>		

The Customer and Utility, by signing this Application, accept and agree to be bound by the terms and conditions herein contained and contained in the Utility's Customer Services Agreement and all schedules and attachments thereto.			
<b>CUSTOMER:</b>		<b>CREATIVE ENERGY VANCOUVER PLATFORMS INC.</b>	
Signature	Date	Signature	Date
Name	Title	Name	Title

## SCHEDULE C

### COOLING PLANT PLANS AND SPECIFICATIONS

1. See drawing issued by Dialog, BIG and Integral Group titled Vancouver House Site Plan M0-002.
2. See drawing issued by Dialog, BIG and Integral Group titled Vancouver House Major Equipment Schedules Plan M0-003.
3. See drawing issued by Dialog, BIG and Integral Group titled Vancouver House Services Distribution Room Plan M1-202.
4. See drawing issued by Dialog, BIG and Integral Group titled Vancouver House Central Plant 3D Views Plan M1-203.
5. See drawing issued by Dialog, BIG and Integral Group titled Vancouver House Central Plant Schematic Plan M0-301A.
6. See drawing issued by Dialog, BIG and Integral Group titled Vancouver House Central Plant Schematic Details Plan M0-301B.
7. See drawing issued by Dialog, BIG and Integral Group titled Vancouver House Heating & Cooling Schematic B1 Plan M0-303A.
8. See drawing issued by Dialog, BIG and Integral Group titled Vancouver House Heating & Cooling Schematic B2 Lower Plan M0-303B.
9. See drawing issued by Dialog, BIG and Integral Group titled Vancouver House Heating & Cooling Schematic B2 Upper Plan M0-303C.
10. See drawing issued by Dialog, BIG and Integral Group titled Vancouver House Title Sheet Plan M3-000.
11. See drawing issued by Dialog, BIG and Integral Group titled Vancouver House Legend, Drawing List, Notes and Site Plan M3-001.
12. See drawing issued by Dialog, BIG and Integral Group titled Vancouver House Equipment Schedules M3-002.
13. See drawing issued by Dialog, BIG and Integral Group titled Vancouver House B3 – Level P3 Plan M3-1P3.
14. See drawing issued by Dialog, BIG and Integral Group titled Vancouver House B3 – Level P2 Plan M3-1P2.
15. See drawing issued by Dialog, BIG and Integral Group titled Vancouver House B3 – Level P1 Plan M3-1P1.

16. See drawing issued by Dialog, BIG and Integral Group titled Vancouver House Hydronic Schematic Plan M3-301A.
17. See drawing issued by Dialog, BIG and Integral Group titled Vancouver House Hydronic Schematic Plan M3-301B.
18. See drawing issued by Dialog, BIG and Integral Group titled Vancouver House Title Sheet Plan M4-000.
19. See drawing issued by Dialog, BIG and Integral Group titled Vancouver House Legend, Drawing List, Notes and Site Plan M4-001.
20. See drawing issued by Dialog, BIG and Integral Group titled Vancouver House Level P2 Plan M4-1P2.
21. See drawing issued by Dialog, BIG and Integral Group titled Vancouver House Level P1 Plan M4-1P1.
22. See drawing issued by Dialog, BIG and Integral Group titled Vancouver House Hydronic Schematic Plan M4-301A.
23. See drawing issued by Dialog, BIG and Integral Group titled Vancouver House Hydronic Schematic Plan M4-301B.
24. Specifications of Mechanical Work for Vancouver House issued September 15, 2015.

**SCHEDULE D**  
**DESIGN GUIDE**

CREATIVEENERGY

City Builders

Energy Innovators

Creative Thinkers

## CREATIVE ENERGY NES

Building Compatibility Design Guide – October 15

CREATIVE ENERGY VANCOUVER  
PLATFORMS INC.

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

604 688 9584 TEL  
604 688 2213 FAX  
[creativeenergycanada.com](http://creativeenergycanada.com)

# CREATIVENERGY

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*Disclaimer: The following information is provided for general use and the user assumes all responsibility. The information contained within is general in nature and does not substitute for the execution of detailed engineering relative to specific projects or problems. The Utility nor any of their contractors or employees give any warranty expressed or implied, or assume any legal liability or responsibility for the accuracy, completeness, or usefulness of any information, product application, or process disclosed within this document. Nor are they liable for consequential damage whatever (including, without limitation, damages for loss of business profits, business interruption, loss of business information, or other losses) arising from the use of inability to use this document.*

## 1. Introduction & Intent

Creative Energy Vancouver Platforms Inc. (CE) is a publically regulated utility that provides district energy services to buildings in the Neighbourhood Energy System (NES).

This document summarizes building design strategies required of developers in anticipation of connection to a Neighbourhood Energy System (NES). Developers are required to adopt these standards and make appropriate provisions in building mechanical design to enable them to take full advantage of the benefits offered through future NES connection.

The goal of the guidelines is to optimize NES connection, thereby creating seamless integration and operation. Compliance with the guidelines will improve overall building mechanical system efficiency.

This Guideline is structured as follows:

- Introduction
- List of general steps to follow for the compatibility coordination,
- General information regarding Creative Energy
- Overview of District energy and its benefits.

***Appendix 1 and Appendix 2 contain the technical guidelines for the base building engineer to follow.***

***Appendix 3 is the BUILDING SERVICE APPLICATION form, which is the framework to guide compatibility co-ordination and documentation for compatibility approval.***

This document deals with heating and hot water services only. If interested in cooling service, please call Creative Energy at 604-688-9584.

## 2. General Steps to Ensure Building Compatibility to the NES

The Utility generally will install, own and operate all NES equipment within the customer building up to and including Energy Transfer Stations – further information is provided in Section 4. The following steps are undertaken between the Utility and the Building mechanical engineer to ensure compatibility to the NES.

### During Design Stage:

1. Kickoff Meeting with Building Developer and Design Engineer – CE to supply copy of Building Compatibility Design Guide to Building Engineer to provide a copy of “Project Statistics” (from Architect).
2. Building Engineer to provide Building Services Application (form attached) with copies of relevant design information (drawings, equipment schedules and specifications), plus load and temperature details at the earliest stage possible – minimum 90 days before Building Permit application.  
*NB: If an energy model has been performed, please provide energy profile summaries.*
3. CE to review and provide feedback on Building Services Application within 90 days.
4. Ongoing reviews of the Building Service Application by CE and Engineer.
5. Building Engineer approves (sealed by professional engineer of record) the final Building Service Application.
6. CE signs off the Building Services Application
7. Developer applies for Building Permit
8. Amendments to Building Service Application to be approved by CE

### During Construction and Commissioning Stage

1. Construction of building mechanical systems starts
2. CE to review relevant submittals/Shop Drawings to ensure compatibility.
3. Connection to ETS
4. Building mechanical system as-builts provided to CE for review.
5. Remedies completed by building owner, as required.
6. Commissioning and Functional testing
7. Occupancy permit and Energy Service commencement

## 3. Background

### *Sustainable Energy Strategy*

The City of Vancouver's Sustainable Energy Strategy is focused on identifying and implementing actions that reduce greenhouse gas (GHG) emissions associated with energy usage for building space, ventilation, and hot water heating. The strategy focuses on neighbourhood energy as a means to significantly reduce GHG emissions over a business-as-usual approach to building heating and hot water design. Neighbourhood energy accomplishes these GHG reductions through the flexibility to adapt to a wide variety of renewable energy sources that would otherwise be unavailable to an individual building development. Further benefits include avoided capital costs for installed thermal equipment, increased reliability, and reduced operational costs.

The City's NES strategy involves two key actions:

1. Convert existing steam district heating systems to a low carbon fuel, and
2. Establish new NES in high density areas of the City.

These guidelines are provided to assist developers in meeting the design requirements of a NES-compatible heating..

### *What is Neighbourhood Energy and Benefits*

Neighbourhood Energy Systems (NES) are commonplace in many parts of the world, and provide heat energy services (for space heat and domestic hot water) and/or cooling energy services.

These systems provide the following general benefits:

- **Environmental Benefits:** NES provide economies of scale and flexible infrastructure that can adapt to using a wide variety of renewable and waste energy options that would otherwise not be available to an individual building heating system. The heating of buildings generates half of the City's greenhouse gas emissions, and the use of renewables-based NES results in substantial emission reductions.
- **Social Benefits:** Through NES's use of local and renewable energy sources and flexibility to adapt to future energy technologies, it is anticipated that NES customers typically enjoy rate stability that outperforms conventional options. Also, NES support the use of radiant hot

water heating systems in buildings which provide customers with a higher level of comfort at a lower energy use, as compared to conventional space heating options.

- **Economic Benefits:** In the appropriately sized communities, connection to an NES can help building owners meet the energy efficiency and green building targets more cost effectively as compared to the use of distributed stand-alone green energy options, such as geoexchange.

Additional specific building benefits of note include:

- No boilers and/or heaters required in the building
- No associated flue stacks (or local emissions)
- Frees up valuable floor space as the connection requires a fraction of the space.
- Provides a “hassle-free” path to a low carbon future.

### ***Neighbourhood Energy System (NES) Components***

The NES is comprised of three major components; the Energy Centre, the distribution network, and the customer energy Transfer Stations. The latter is the key equipment located in the customer building. All components are owned and operated by the Utility.

- 1. Neighbourhood Energy Centre (EC):** A centralized energy plant employing one or more technologies to produce hot water. Energy sources may change over time in response to changes in fuel prices and technological innovation. The long-term objective is for energy production to be provided by renewable technologies. Natural gas boilers may be used for back-up and peaking energy, and also as an interim heat source until there is adequate energy demand to support renewable technology.
- 2. Thermal Distribution Piping System (DPS):** Consists of a two pipe system providing separate supply and return loop hot water, buried in the streets between the Community Energy Centre and the building Energy Transfer Stations. The mains will typically be located in adjacent public Rights of Ways (ROW). Branch connections for each customer will typically enter the building at approximately 1000 mm below grade. For new proposed buildings sleeves can be placed ahead of time, otherwise cores are common. Water sealing will be provided per building specifications.
- 3. Energy Transfer Stations (ETS):** Each NES customer building has an ETS as the interface between the NES and the in-building thermal distribution system. The ETS includes

equipment installed and operated by the neighbourhood energy provider including the necessary pipes, heat exchangers, associated controls and energy meters. This equipment is typically located inside the customer building mechanical room, which preferably is either at P1 or L1 and adjacent the branch connection point of entry. Information gathered by the Utility at the ETS, e.g. metering data, will be available in real time to the customer (method to be determined at design stage). See **Appendix 1** for more information on the building connection.

Further information can be found at the following:

1. Creative Energy's website, [www.creativeenergycanada.com](http://www.creativeenergycanada.com)
2. International District Energy Association website, <http://www.districtenergy.org/what-is-district-energy/>

## **4 Building Service Application**

The Building Service Application form is the document that demonstrates the building owner and the Utility have undertaken to coordinate designs to ensure compatibility and have signed off on the result.

The general steps identified in Section 2 of this document will be followed to guide the process.

The Building Services Application form is included in Appendix 3.

## **5 City of Vancouver Letters of Assurance**

Creative Energy will provide the following documents to support the process:

1. Signed City of Vancouver Schedule C-B to confirm that the design of the ETS complies with necessary requirements by the registered professional of record (NES mechanical engineer).
2. A City of Vancouver issued "Utility Building Permit" to demonstrate approval for construction of the ETS within the customer building.

## **6 Contact Information**

For additional information contact Creative Energy at [info@creativeenergycanada.com](mailto:info@creativeenergycanada.com) or 604-688-9584, attention: Jim Manson.

## Appendix 1 – NES Design Overview

To achieve reliable and efficient operation of the neighbourhood energy system (NES) high temperature differentials ( $\Delta T$ ) between the supply and return water is required. This is critical to minimize the heat and pumping losses and maximize the energy center (plant) efficiency to ensure that the NES system can meet optimal design efficiencies. The following table outlines the NES and base building temperature expectations (Note, these are maximums).

Temperature C (*note 1)	NES Design		HVAC Design	
	Winter	Summer	Winter	Summer
Supply	95	65	70	60
Return	55	50	50	45
Delta-T	40	15	20	15

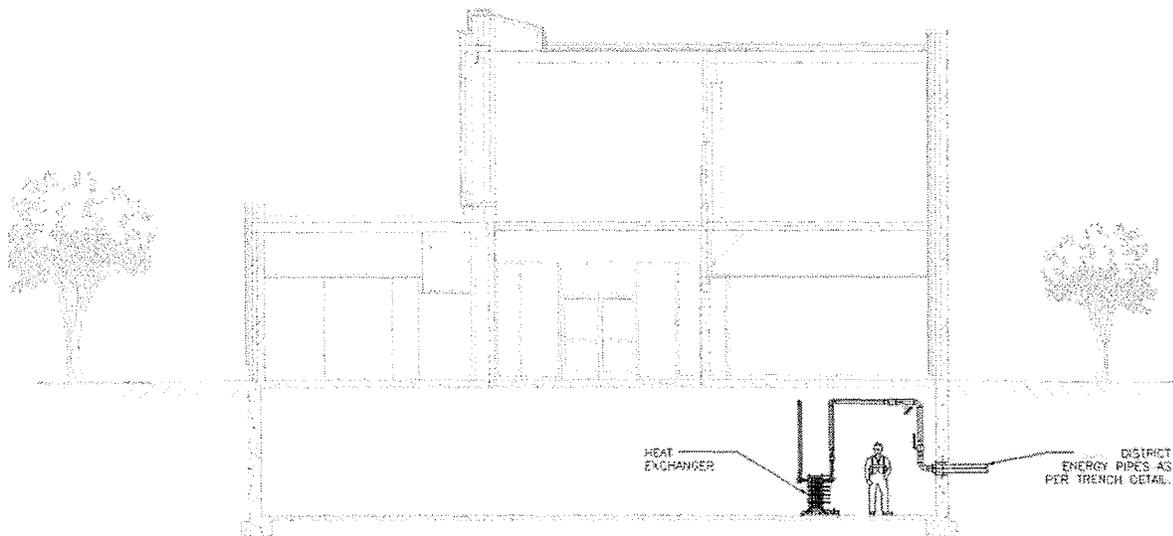
*\*Note 1 – if customers require “condensing efficiencies”, temperatures will be reviewed.*

The building heating system must be designed to operate in a temperate regime that will be compatible with the neighbourhood energy service.

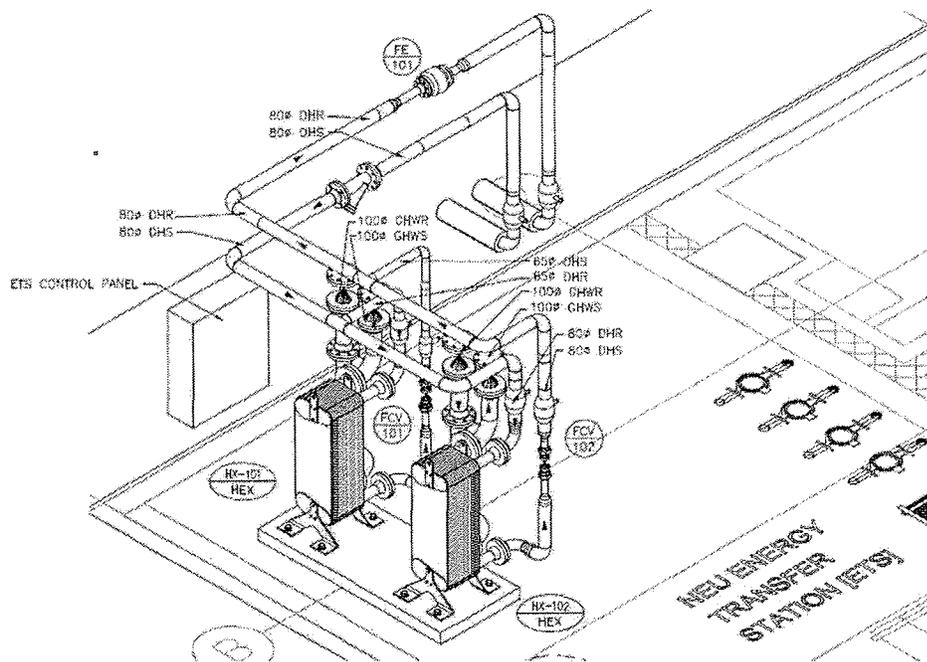
### **Energy Transfer Station Overview**

The following figures outlines how a building connects to the NES. Typically the NES piping comes into the building approximately 1000 mm below grade and enters directly into the mechanical room where the ETS is located on the Utility side of the ETS. The ETS is the only equipment required for the building and replaces boilers. Isolation valves will provided immediately upon entering. A primary service meter located on the Utility side of the ETS indicates the demarcation point between the utility and the building.

Sub-metering on the building side of the ETS is possible – if this is a service of interest please contact the Utility.



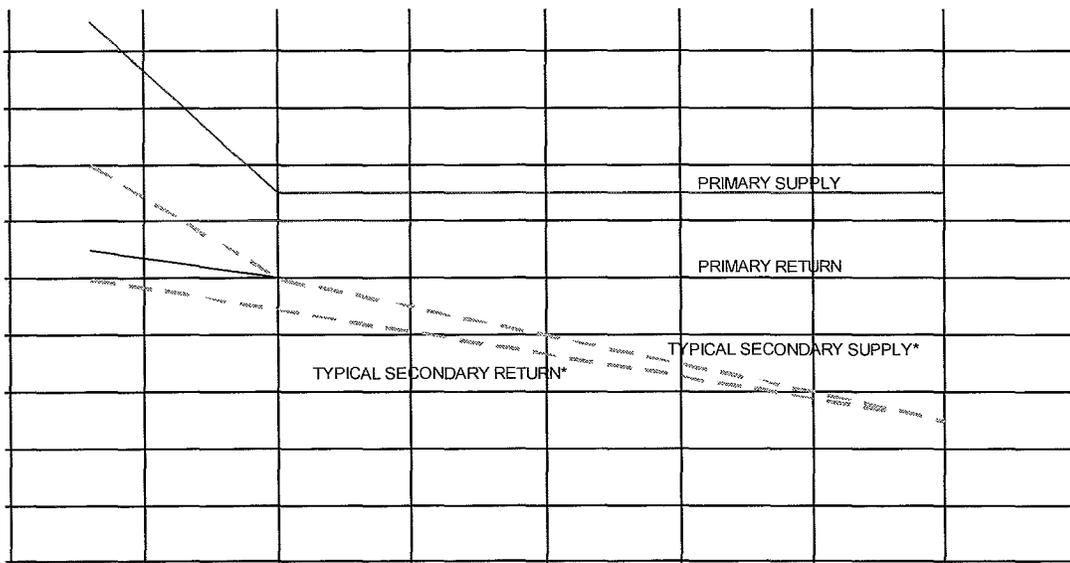
Standard practice has a single heat exchanger installed for the space heating and domestic hot water of each customer. Depending on flow range, multiple control valves can be provided to accommodate a range of seasonal loads.



## ***ETS Control Strategy***

The building heating system shall be designed for variable volume flow operation (preferably with variable speed pumps to minimize the pumping power requirements and to achieve the minimum water temperature drop). All control valves (terminal units and zone valves) are to be of 2-way modulating (or on/off for Fan Coil Units) type. The system must not include 3-way valves that allow flow to by-pass the heating elements.

**Figure A-1. Temperature Reset Curve for Vancouver**



**Notes:**

\* Space heating only, direct primary domestic hot water heating with maximum 60°C domestic hot water supply

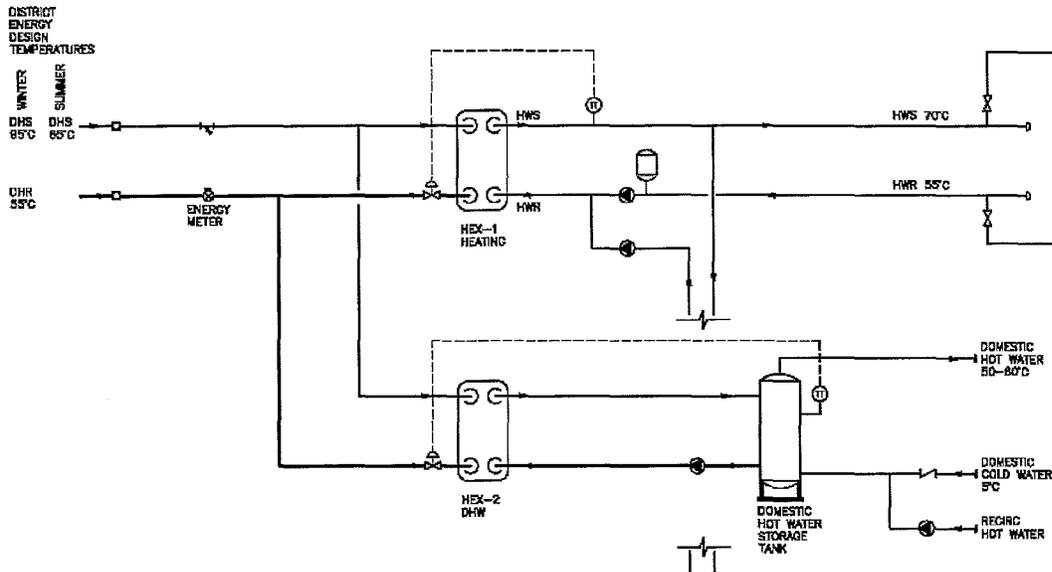
Primary supply / return = Neighbourhood heating system supply / return

Secondary supply / return = Building mechanical system supply /return

The building (secondary) supply temperature shall be reset based on outside air temperature according to the guidelines provided in Figure A-1 above. The temperature reset strategy needs to be designed to allow the control valves to operate within the middle portion of their operating range. This prevent laminar flow conditions (by maintaining tube velocities above minimum) and thus maintaining a high heat transfer coefficient through the heating coils and other terminal devices, producing low return temperatures at all load conditions.

As shown in Figure A-2 below, the primary (utility) system flow through the ETS is controlled to achieve the design supply temperature in the secondary (building) system.

**Figure A-2. In Building ETS Flow Schematic**



## Domestic Hot Water Options

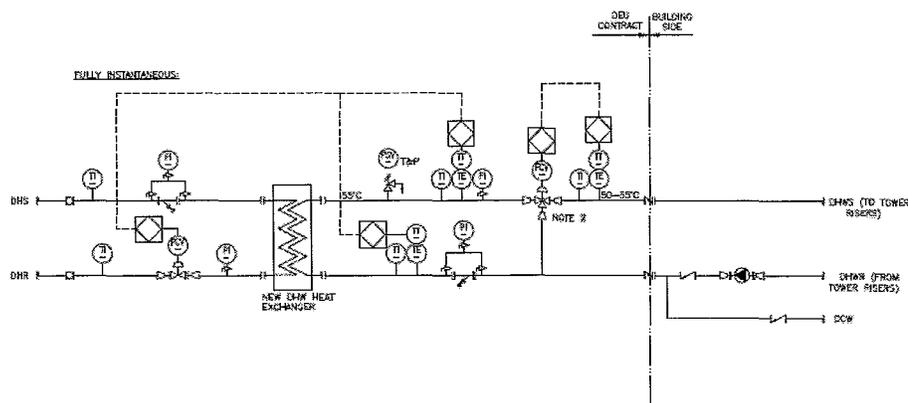
To optimize domestic hot water (“DHW”) load it is essential to centralize the DHW system, preferably in one main mechanical room.

There are options available to for DHW systems. The table below outlines the options and suitability with NES:

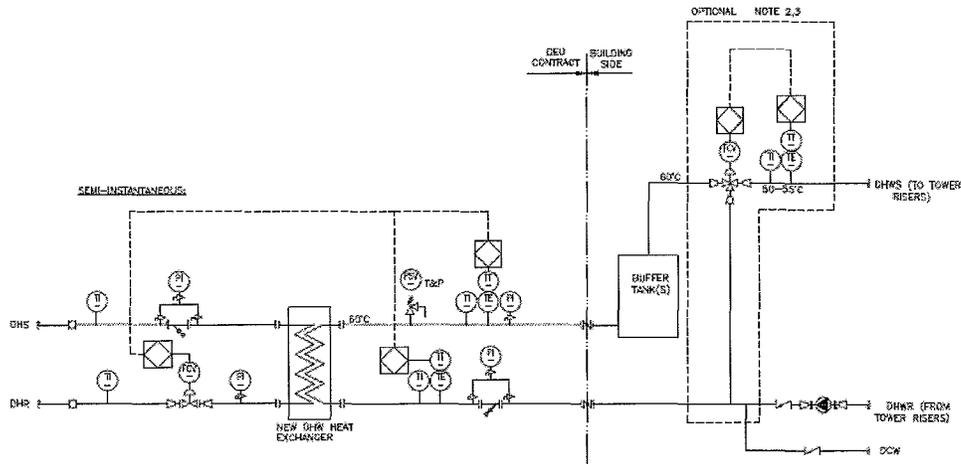
Setup Type	Description	Pro’s	Con’s
Instantaneous	No storage	Lower supply temps. Lower return temps for NES.	Larger heat exchanger required. Need tempering.
Semi-Instantaneous	Small buffer storage		
Charging	Traditional storage		

The preferred design for NES performance is the ‘semi-instantaneous’ system, for buffering purposes. This system optimizes efficiency while reducing capital costs for hot water storage. Note, in all setups cold water make-up should be introduced directly to the ETS, rather than to the storage tanks.

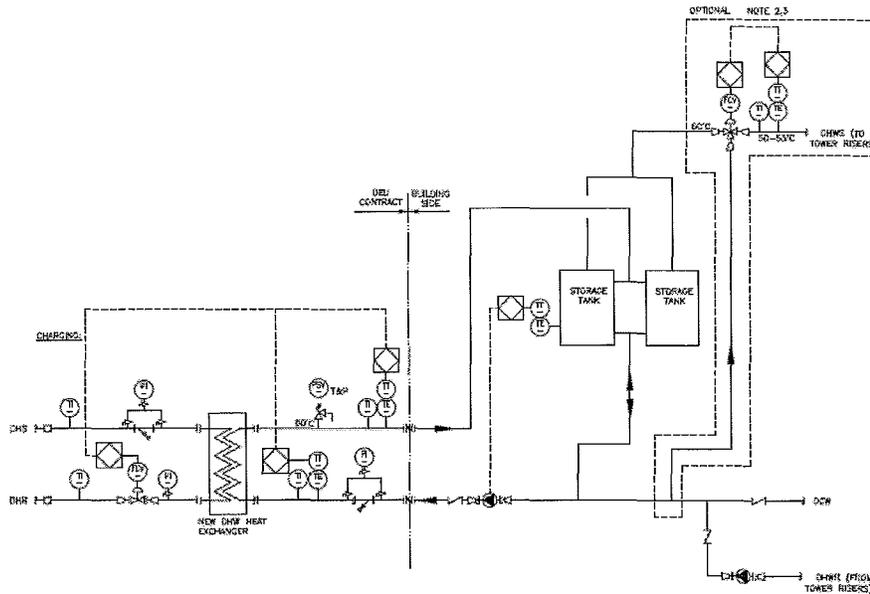
**Figure A-3. DHW INSTANTANEOUS SET-UP**



**Figure A-4**  
**. SEMI-INSTANTANEOUS SET-UP**



**Figure A-5. CHARGING SET-UP**



The DHW system is to be designed in accordance with the design temperature specified below.

Domestic cold water: 5°C  
Domestic hot water: 60°C

***Additional Services Available:***

Other services, including steam for humidification or other process loads, central cooling and sub metering. Please contact Creative Energy to discuss other services.

## Appendix 2 – Base Building Heating System Design Guidelines

The hot water hydronic heating system shall be designed to provide all of the space heating and ventilation air heating requirements for the individual suites, hallways/stairwells and other common areas in the building, supplied from a central mechanical room within the building. Hot water shall be distributed, via a 2-pipe (direct return) piping system, to the various heating elements throughout the building.

The specified  $\Delta T$  shall be regarded as a minimum requirement, and a larger  $\Delta T$  is desirable to further reduce the pipe sizes and associated valves, fittings, etc., pumping requirements and energy losses. The building return temperatures must be kept to a minimum to allow the NES to operate in a cost-effective manner.

Hydronic heating can be delivered in a variety of forms including radiant floor/ceiling systems, hot water base-boards, fan coils, etc. The building (secondary) heating system shall be designed according to the maximum design temperatures specified below for several common types of systems.

### The following systems are deemed compatible with the NES.

#### **1. Hydronic Radiant Floor Heating**

Floor heating shall be designed for the following maximum temperatures:

Hot water supply:	45°C
Hot water return:	35°C

#### ***Fin Type Baseboard Convectors / Perimeter Radiators***

The radiant heating shall be provided by 2-pass commercial fin type radiators or perimeter style radiant panels. The baseboard convectors and radiant panels shall be designed for the following maximum temperatures:

Convectors:	Hot water supply:	70°C
	Hot water return:	50°C
Radiators:	Hot water supply:	60°C
	Hot water return:	45°C

## **2. Fan Coils**

Packaged fan coil units designed with hot water coils can be used to provide individual unit heating. The fan coil units shall be designed for the following maximum temperatures:

Hot water supply: 70°C  
Hot water return: 50°C

## **3. Ventilation Make-Up Air Units**

The ventilation (make-up air) requirements shall be provided by air handling units designed with hot water/glycol heating coils. The heating coils shall be designed for the following maximum temperatures:

Hot water supply: 65°C  
Hot water return: 45°C

## **4. Hybrid Heat Pumps**

Hybrid heat pump units designed with hot water coils can be used if cooling is required. The major benefit of these units is that the compressor only runs when cooling is required and shuts down when in heating mode. This results in lower operating costs, reduced maintenance, reduced noise, extended unit life, and a more efficient system due to heat recovery options.

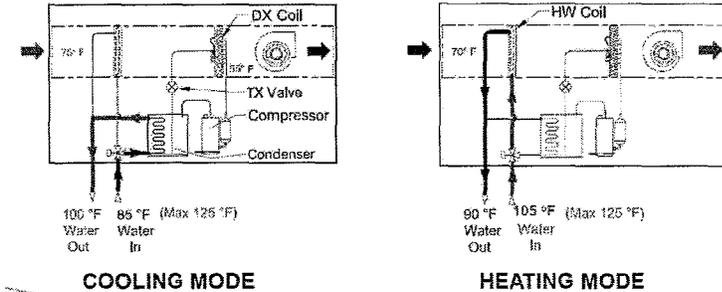
The following schematic illustrates the different operating modes.

## Mechanical Systems Comparison Hybrid Heat Pumps (CGC Bulldog)



Operation:

- Heating Mode – two speed fan operation, no compressor operation
- Cooling Mode – compressor operation with oversized condensers
- Building Loop temperatures of 30C Summer, 49C winter



The hybrid heat pump units shall be designed for the following maximum temperatures:

Hot water supply: 51.7 C (125°F)  
Hot water return: 32.2 C (90°F)

The following systems are not compatible with NES and should not be considered for the building mechanical system:

- Electric baseboards
- Water Source Heat Pumps
- VRF systems

## Appendix 3 –Building Service Application Sample

# Building Service Application

<b>Building Name and Address:</b>	
<b>Conditioned Floor Area:</b>	
<b>Intended Use and Occupancy:</b>	
<b>Mechanical Engineer of Record:</b>	
<b>Building services requested (circle):</b>	DHW / Heating / Cooling / Other  If Other, please specify
<b>Target Date for Service<sup>1</sup>:</b>	

### GENERAL STEPS OF BUILDING PEER REVIEW FOR COMPATIBILITY:

1. Kickoff Meeting with Building Developer and Design Engineer – CE to supply copy of Building Compatibility Design Guide to Building Engineer to provide a copy of “Project Statistics” (from Architect).
2. Building Engineer to provide Building Services Application (form attached) with copies of relevant design information (drawings, equipment schedules and specifications), plus

<sup>1</sup> Target Date is for building occupancy. CE will endeavour to have the ETS commissioned a minimum 30 days prior to building occupancy. Construction heat service will be accommodated when possible.

# CREATIVENERGY

load and temperature details at the earliest stage possible – minimum 90 days before Building Permit application.

**NB: If an energy model has been performed, please provide energy profile summaries.**

3. CE to review and provide feedback on Building Services Application within 30 to 90 days, depending on complexity and response.
4. Ongoing reviews of the Building Service Application by CE and Engineer.
5. Building Engineer approves (sealed by professional engineer of record) the final Building Service Application.
6. CE signs off the Building Services Application
7. Developer applies for Building Permit
8. Amendments to Building Service Application to be approved by CE
9. Construction of building mechanical systems starts
10. CE to review relevant submittals/Shop Drawings to ensure compatibility.
11. Connection to ETS
12. Building mechanical system as-builts to be provided to CE for review.
13. Remedies by building owner, as required.
14. Commissioning and Functional testing
15. Occupancy permit and Energy Service commencement

## Floor Area Breakdown (m2):

Residential	Commercial	Other (if applicable)

## Estimated Loads:

	Residential	Commercial
Space Heating, KW peak		
Space Heating, MWh annual		

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Space Heating supply/return temperatures, C (at ETS)		
DHW Heating, KW peak		
DHW Heating, MWh annual		
DHW supply/return temperatures, C (at ETS)		
Cooling, KW peak		
Cooling, MWh annual		
Heat Recovery from Cooling, KW and MWh		

## COMPATIBILITY CHECK LIST

Item:	Units	Engineer Initial	Comments:
HVAC system is hydronic with direct return arrangement			
Heating loads 100% served by hydronic system			
No other sources of heat generation other than that allowed (solar or waste heat recovery)			Demonstrate no more than 1% via prohibited equipment (typ. for remote area needs)
Space provided for Energy Transfer Station			Location and sq. meters; preferable at P1 level – attach drawing of location
Compatible with district energy supply/return temperatures			
Designed to minimize return temperatures			

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DHW configured as: _____			Choose from instantaneous, semi-instantaneous, or charging (see Guide)
HVAC system design fully variable flow with 2-way control			
HVAC system design with outdoor air temperature reset strategy			

## **Certification:**

I certify that I am a registered professional as defined in the BC Building Code.

\_\_\_\_\_  
Registered Professional of Record's Name (Print)

\_\_\_\_\_  
Address

\_\_\_\_\_  
Phone No.

\_\_\_\_\_  
Date

DE Utility review by: \_\_\_\_\_

Date: \_\_\_\_\_

Professional's Seal, Signature and Date

**SCHEDULE E**  
**BUILDING SYSTEM APPLICATION**

## Building Service Application

Building Name and Address:	Vancouver House. 1480 Howe St
Conditioned Floor Area:	43210 m <sup>2</sup>
Intended Use:	Mixed Use: Residential, Retail
Mechanical Engineer of Record:	J. S. Tessier
Building services requested (circle):	<input checked="" type="checkbox"/> DHW / <input checked="" type="checkbox"/> Heating / <input checked="" type="checkbox"/> Cooling / <input type="checkbox"/> Other
	<small>If Other, please specify</small>

### GENERAL STEPS OF BUILDING PEER REVIEW FOR COMPATIBILITY:

1. Kickoff Meeting with Building Developer and Design Engineer – CE to supply copy of Design Guide to Building Engineer
2. Building Engineer to provide Building Services Application (form attached) with copies of relevant design information (drawings, equipment schedules and specifications), plus load and temperature details at the earliest stage possible – minimum 90 days before Building Permit application.
3. CE to review and provide feedback on Building Services Application within 90 days.
4. Ongoing reviews of the Building Service Application by CE and Engineer.
5. Building Engineer approves (sealed by professional engineer of record) the final Building Service Application.
6. CE signs off the Building Services Application
7. Developer applies for Building Permit
8. Amendments to Building Service Application to be approved by CE
9. Construction of building mechanical systems starts
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12. Building mechanical system as-builts to be provided to CE for review.
13. Remedies by building owner, as required.
14. Commissioning and Functional testing
15. Occupancy permit and Energy Service commencement

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## COMPATIBILITY CHECK LIST

Item:	Units	Engineer Initial	Comments:
HVAC system is hydronic with direct return arrangement ✓		OS	
Heating loads 100% served by hydronic system ✓		OS	
No other sources of heat ✓		OS	No more than 1% for remote needs
Space provided for Energy Transfer Station ✓		OS	
Compatible with district energy supply/return temperatures		OS	Yes. Plant to be high efficiency contributing to LEED/Regenring.
Designed to minimize return temperatures ✓		OS	
DHW maximum design temperature to be 60 C ✓ 1. Heating S/R temps 2. DHW S Temp		OS	
DHW configured as <u>Charging</u>		OS	Choose from instantaneous, semi-instantaneous, or charging.
HVAC system design fully variable flow with 2-way control ✓		OS	
HVAC system design with outdoor air temperature reset strategy ✓		OS	
Space Heating Loads: Peak = 2488 kW Energy = 57.6 kW/m <sup>2</sup> Energy/m <sup>2</sup> gm		OS	Basis of numbers? Energy Model EUI should be within acceptable range
DHW loads: Peak = 1161 kW Energy = 26.9 kW/m <sup>2</sup> Energy/m <sup>2</sup> gm Flow =		OS	EUI should be within acceptable range LOAD PROFILE ATTACHED
Cooling loads: Peak = 900 tons = 3163 kW Energy = 250 Btu/m <sup>2</sup> 73 kW/m <sup>2</sup> gm		OS	

# CREATIVENERGY

## Certification:

I certify that I am a registered professional as defined in the BC Building Code.

Sean Sebastian Tessor

Registered Professional of Record's Name (Print)

100-200 Cornville St.

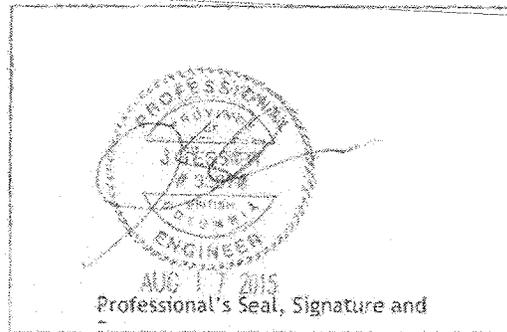
Address

604-687-1800

Phone No.

Aug 17, 2015

Date



DE Utility review by:

Jim Manson, Director Engineering & Innovation

[Signature]

Date:

Aug. 19, 2015

DE Utility review by:

\_\_\_\_\_

Date:

\_\_\_\_\_

"Target Date" for Service \_\_\_\_\_

August 17, 2015

Jim Manson  
Creative Energy Canada  
Platforms Corp. 1067 West Cordova St. #501  
Vancouver, BC V6C 1C7

Project No: 11-1398-M03  
Email: J.Manson@creativeenergycanada.com

Dear Jim:

Re: Beach & Howe- Mixed Use-Mech

Please find below the estimated annual heating, cooling and domestic hot water load on a month by month basis for Vancouver House:

	Heating Load (MBTU)	Cooling Load (MBTU)	DHW Load (MBTU)
Jan	1,423	24	133
Feb	822	97	123
Mar	694	228	136
Apr	269	626	130
May	79	1,070	129
Jun	14	1,509	120
Jul	5	2,088	119
Aug	5	1,848	116
Sep	75	1,114	112
Oct	370	272	118
Nov	1,042	50	119
Dec	1,421	28	128
Annual	6,219	8,954	1,485

*EUI's: (kWh/m<sup>2</sup>/yr)*

DHW	Heat	Cool
10	42.2	60.7

*JM*

*Month 1822 2624 435*

Please note: The above estimates are not predictions of actual heating, cooling and domestic hot water load of the proposed design after construction. Actual experience will differ from these calculations due to variations such as occupancy, building operation and maintenance, weather, and precision of the calculation tool.

Regards,

INTEGRAL GROUP



JS Tessier, PEng  
Associate Principal

/jst

## SCHEDULE F

### PRELIMINARY BUDGET

Total Estimated Cooling Plant Estimate is 2.2 million.

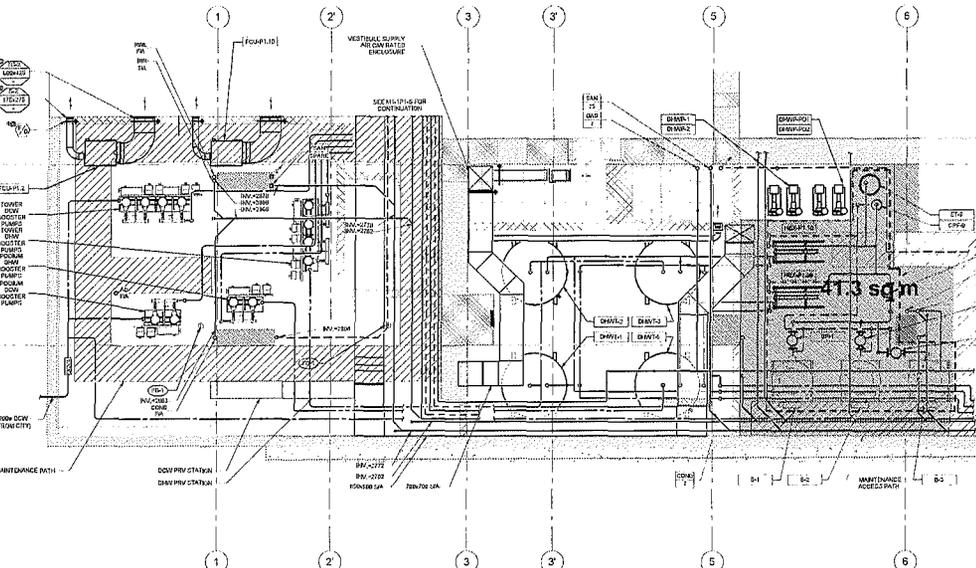
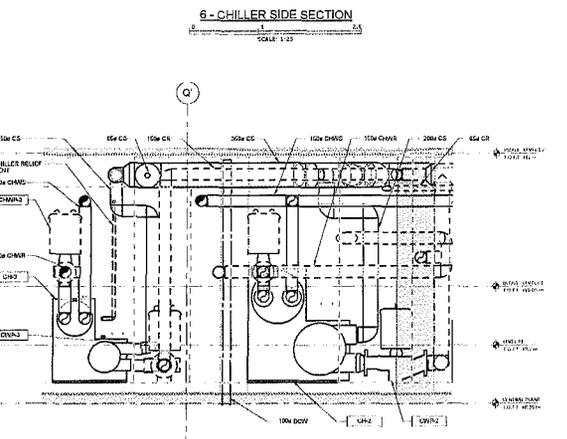
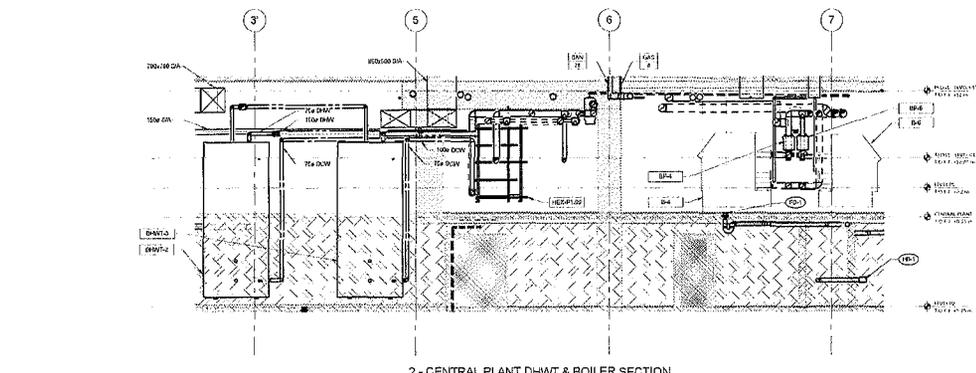
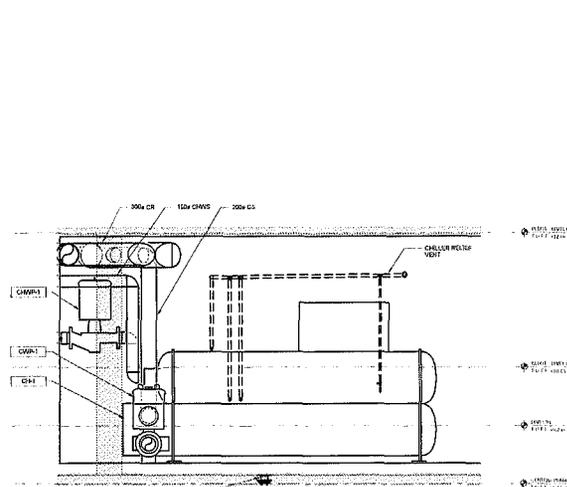
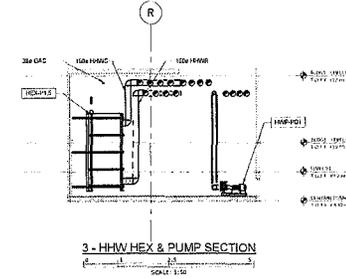
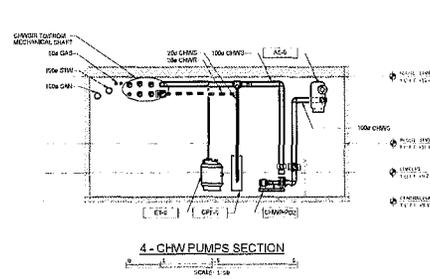
Conditions in following table to be fulfilled prior to equipment being ordered

the cost for all external labour and materials
the cost for the purchase and installation of all meters and data recording devices installed in the Development to capture and monitor data from the Cooling Plant
licence, permit, approval, application and registration fees directly associated with the Cooling Plant and costs associated with obtaining the same
the cost of flushing and purging of the pipes, pumps and related equipment
all Sales Taxes paid by the Owner in relation to the cost of materials, supplies and equipment used in the construction of the Cooling Plant for which the Owner has not received, or will not receive, input tax credits
legal and consulting costs and expenses
general contractor conditions and fees equal to 10% of the construction costs
architectural oversight fees
civil engineering fees
financing costs at a rate of interest equal to 10% per annum compounded monthly and calculated on the amount of actual costs paid by the Owner during the construction of the Cooling Plant, commencing on the date such payments are made and continuing to the Closing Date

**SCHEDULE G**  
**PLAN OF DESIGNATED PREMISES**



ISSUED FOR:



- 1. GENERAL CONTRACTOR
- 2. ARCHITECT
- 3. MECHANICAL ENGINEER
- 4. ELECTRICAL ENGINEER
- 5. LANDSCAPE ARCHITECT
- 6. ENVIRONMENTAL ENGINEER
- 7. CURTAINWALL CONSULTANT
- 8. CIVIL CONSULTANT

**METRIC**  
DIMENSIONS ARE IN METRIC UNITS. DIMENSIONS IN PARENTHESES ARE IN IMPERIAL UNITS. DIMENSIONS IN IMPERIAL UNITS ARE FOR REFERENCE ONLY. DIMENSIONS IN METRIC UNITS ARE THE GOVERNING DIMENSIONS.

**ARCHITECT & PRIME CONSULTANT**  
DIALOG & IG  
1000 HOWE STREET  
VANCOUVER, BC V6Z 1R8  
TEL: 604-681-1111  
WWW.DIALOGANDIG.COM

**MECHANICAL ENGINEER**  
DIALOG & IG  
1000 HOWE STREET  
VANCOUVER, BC V6Z 1R8  
TEL: 604-681-1111  
WWW.DIALOGANDIG.COM

**ELECTRICAL ENGINEER**  
DIALOG & IG  
1000 HOWE STREET  
VANCOUVER, BC V6Z 1R8  
TEL: 604-681-1111  
WWW.DIALOGANDIG.COM

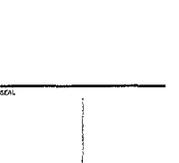
**LANDSCAPE ARCHITECT**  
DIALOG & IG  
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**ENVIRONMENTAL ENGINEER**  
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**CURTAINWALL CONSULTANT**  
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**CIVIL CONSULTANT**  
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TEL: 604-681-1111  
WWW.DIALOGANDIG.COM

**KEY PLAN**



**VANCOUVER HOUSE**

1400 HOWE STREET  
VANCOUVER, BC

**SERVICES  
DISTRIBUTION ROOM**

ISSUED FOR: 11-1308-001

**M1-202**

REVISION: 12

## **Appendix 3**

### **Customer Service Agreement template**

**CUSTOMER SERVICE AGREEMENT**

**CREATIVE ENERGY VANCOUVER PLATFORMS INC.**

**NEIGHBOURHOOD ENERGY SYSTEM**

**THERMAL ENERGY SERVICE**

**CIVIC ADDRESS: ♦**

**LEGALLY DESCRIBED AS:**



**TERMS & CONDITIONS OF CUSTOMER SERVICE**

Effective: \_\_\_\_\_

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



## SECTION A - DEFINITIONS

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

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

**BCUC:** British Columbia Utilities Commission.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**NES Area:** means the south downtown neighbourhood in the City of Vancouver, within which the Lands are situate.

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

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

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

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

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

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

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

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

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

## **SECTION B – NATURE OF AGREEMENT**

### **1. The Lands**

- 1.1 If a Customer wishes to subdivide the Lands, including by way of air space or strata plan or both, such Customer shall provide prior notice of such subdivision to the Utility, together with subdivision plans for the Lands and such further information as the Utility may require, and the Customer will execute and deliver, or will cause the applicable Person to complete, execute and deliver, to the Utility at its option forthwith following such subdivision, a Customer Service Agreement in respect of any one or more of the following:
- (a) any Building;
  - (b) any legal parcel, including without limitation an air space parcel or a remainder parcel, that is subdivided from the Lands or any portion thereof; and
  - (c) a strata corporation that is formed within any Building by way of the deposit of a strata plan, and in each such case the applicable Customer Service Agreement shall be executed and delivered to the Utility by the strata corporation prior to the first conveyance of a strata lot within the applicable strata plan.
- 1.2 A Customer will cause any Person to whom the Customer transfers or otherwise disposes, whether directly or indirectly, all or any portion of its interest in the Lands to complete, execute and deliver to the Utility a Customer Service Agreement covering the applicable portion of the Lands.

### **2. Provision of Energy Services**

- 2.1 The Utility will provide Energy Services to Customers solely in accordance with these Terms and Conditions.
- 2.2 A Customer may be required to provide reference information and identification acceptable to the Utility.
- 2.3 The Utility may refuse to provide Energy Services to a Customer if there is an unpaid account for Energy Services in respect of such Customer or the relevant Building(s).
- 2.4 This Customer Service Agreement relates only to the provision of the Energy Services by the Utility to the Customer, upon the terms and conditions contained herein. The Utility shall not be responsible for the provision of any utility services other than the Energy Services, such as electricity and natural gas, and the Customer shall be solely responsible for any fees and charges associated with such utility services, in addition to the fees and charges payable to the Utility hereunder.

### **3. Assignment**

- 3.1 A Customer may not assign a Customer Service Agreement or any of its rights or obligations thereunder without the prior written consent of the Utility, such consent not to be unreasonably withheld. The Utility may, subject to BCUC approval, assign a Customer Service Agreement or any of its rights or obligations thereunder (including,

without limitation, by way of the sale of the majority of its shares or business or its material assets or by way of an amalgamation, merger or other corporate reorganization) to any of its Affiliates or to any other Person without the consent of the Customer, provided such Affiliate or Person is duly qualified to carry out the Customer Service Agreement and enters into a written agreement with the Customer to be bound by the provisions of this Agreement in all respects and to the same extent as the Utility is bound.

#### **4. Applicable Rates**

- 4.1 The rates to be charged by, and paid to, the Utility for Energy Services are set out in the Tariff from time to time in effect, which may be reviewed on the website of the BCUC or at the office of the BCUC in Vancouver, British Columbia.
- 4.2 The rates have been determined on the basis of the estimated connected loads and Design Capacity which are in turn based on the intended design and use of the Buildings. A Customer must not significantly change its connected load without the prior written approval of the Utility.
- 4.3 The Utility may conduct periodic reviews of the quantity of Thermal Energy delivered and the rate of delivery of Thermal Energy to a Customer for the purpose of, among other things, determining whether to substitute a more applicable Tariff.
- 4.4 If the maximum Thermal Energy demand exceeds the Design Capacity, the Utility may, subject to BCUC approval, assess additional fees and charges to the Customer for usage exceeding such limits as approved by the BCUC, provided that if usage exceeds such limits, the Utility reserves the right to temporarily suspend or limit the Energy Services to reduce the load on the Neighbourhood Energy System.

#### **5. Ownership and Care of Neighbourhood Energy System**

- 5.1 Notwithstanding any degree of annexation or affixation, or rule of law or equity to the contrary, the Utility owns all components of the Neighbourhood Energy System and all additions or extensions thereto will be and remain the property of and vest in the Utility, whether located inside or outside of any Building. No component of the Neighbourhood Energy System shall be moved or removed from a Customer's lands (whether located inside or outside of any Building) without the advance written permission of the Utility.
- 5.2 The Customer will take reasonable care of and protect all components of the Neighbourhood Energy System in, on or under the Customer's lands (whether located inside or outside of any Building) against damage and must advise the Utility promptly of any damage to or disappearance of the whole or part of any such component. Further, the Customer will pay to the Utility promptly upon request the cost of any broken, missing or damaged component of the Neighbourhood Energy System (or part thereof), except to the extent that the Customer demonstrates that such component (or part thereof) was broken, missing or damaged due to a defect therein or to any act or omission of the Utility or any of the Utility's Representatives.

#### **6. Meter Reading**

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

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

## **7. Meter Testing**

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

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

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

## **8. Maintenance**

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

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

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

## **9. Connections and Disconnections**

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

## **10. Energy Services Reconnections**

10.1 If:

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

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

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

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

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

- (c) the actual costs that the Utility will incur in reconnecting the Building's Building System to the Neighbourhood Energy System or restoring Energy Services to such Customer; and
- (d) the Basic Charge (as set out in the Tariff) that such Customer would have paid had Energy Services continued during the period between the date of discontinuance or disconnection (as applicable) and the date of such re-application.

10.2 If a Building System is disconnected from the Neighbourhood Energy System or Energy Services are discontinued to a Customer for public safety or Utility service requirement reasons, there will be no reconnection charge to reconnect the Building's Building System to the Neighbourhood Energy System or to restore Energy Services to such Customer.

## **11. Billing**

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

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

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

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

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

- (a) the 21st calendar day following the billing date; or
- (b) such other period as may be specified in the Application for Service or otherwise agreed in writing by the Customer and the Utility.

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

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

## **12. Back-billing**

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

12.2 Back-billing means the re-billing by the Utility for Energy Services rendered to a Customer because the original billings were discovered to be either too high (over-billed) or too low (under-billed). The discovery may be made by either the Customer or the Utility. The cause of the billing error may include any of the following non-exhaustive reasons or combination thereof:

- (a) stopped Meter;
- (b) metering equipment failure;
- (c) inaccurate Meter, as determined pursuant to Section 7;
- (d) switched Meters;
- (e) double metering;
- (f) incorrect Meter connections;
- (g) incorrect use of any prescribed apparatus respecting the registration of a Meter;
- (h) incorrect Meter multiplier;
- (i) the application of an incorrect rate;
- (j) incorrect reading of Meters or data processing; or
- (k) tampering, fraud, theft or any other criminal act.

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

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

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

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

- (a) the duration of the error; or
- (b) six months prior to the discovery of the error.

- 12.7 Subject to paragraph 12.11 below, in every case of under-billing, the Utility will back-bill the Customer for the shorter of:
- (a) the duration of the error; or
  - (b) six months prior to the discovery of the error.
- 12.8 Subject to paragraph 12.11 below, in every case of under-billing, the Utility will offer the Customer reasonable terms of repayment. If requested by the Customer, the repayment term will be equivalent in length to the back-billing period. The repayment will be interest free and in equal instalments corresponding to the normal billing cycle. Delinquency in payment of such instalments will be subject to the usual late payment charges.
- 12.9 Subject to paragraph 12.11 below, if a Customer disputes a portion of a back-billing due to under-billing based upon either consumption, demand or duration of the error, the Utility will not threaten or cause the discontinuance of Energy Services for the Customer's failure to pay that portion of the back-billing, unless there is no reasonable ground for the Customer to dispute that portion of the back-billing. The undisputed portion of the bill will be paid by the Customer and the Utility may threaten or cause the discontinuance of Energy Services if such undisputed portion of the bill is not paid.
- 12.10 Subject to paragraph 12.11 below, in all instances of back-billing where changes of occupancy have occurred, the Utility will make a reasonable attempt to locate the former Customer. If, after a period of one year, such Customer cannot be located, the over-billing or under-billing applicable to them will be cancelled.
- 12.11 Notwithstanding anything herein to the contrary, if there are reasonable grounds to believe that the Customer has tampered with or otherwise used the Thermal Energy or any component of the Neighbourhood Energy System in an unauthorized way, or there is evidence of fraud, theft or another criminal act, back-billing will be applied for the duration of the unauthorized use, and the provisions of paragraphs 12.7, 12.8, 12.9 and 12.10 above will not apply.
- 12.12 Under-billing resulting from circumstances described in paragraph 12.11 will bear interest at the rate specified in the Tariff on unpaid accounts from the date of the original under-billed invoice until the amount under-billed is paid in full.
- 12.13 In addition, the Customer is liable for the direct administrative costs incurred by the Utility in the investigation of any incident of tampering, including the direct costs of repair, or replacement of equipment.

### **13. Late Payment Charge And Collection Charge**

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

collect, the Utility may charge the Customer a collection charge as set out in the Standard Fees and Charges.

#### **14. Dishonoured Payments Charge**

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

#### **15. Refusal to Provide Energy Services and Discontinuance of Energy Services**

- 15.1 The Utility may, after having given 48 hours prior written notice, discontinue providing Energy Services to any Customer, who:
- (a) fails to fully pay for any Energy Services provided to any Building(s) on or before the due date for such payment; or
  - (b) fails to provide or pay by the applicable date required any security deposit, equivalent form of security or guarantee or any requisite increase thereof.
- 15.2 The Utility may, without having to give any notice, discontinue providing Energy Services to any Customer, who:
- (a) refuses to provide reference information and identification acceptable to the Utility when applying for Energy Services or at any subsequent time on request by the Utility;
  - (b) breaches any material terms and conditions of the applicable Customer Service Agreement (including, without limitation, these Terms and Conditions);
  - (c) has defective pipes, appliances, or Thermal Energy fittings in any part or parts of Building(s) which may adversely impact the provision of the Energy Services by the Utility;
  - (d) uses the provided Thermal Energy in a manner that may, in the opinion of the Utility:
    - (i) lead to a dangerous situation; or
    - (ii) have a negative impact on the Neighbourhood Energy System, or any components thereof;
  - (e) fails to make modifications or additions to the Customer's equipment as required by the Utility to prevent the danger or negative impact described in paragraph (d) above;
  - (f) negligently or fraudulently misrepresents to the Utility its use of Thermal Energy or the Thermal Energy load requirements of, or Thermal Energy volume consumed within and by, any Building;

- (g) makes any alterations to any Building System which may impact the provision of the Energy Services by the Utility without the prior written approval of the Utility;
  - (h) terminates the applicable Customer Service Agreement pursuant to Section 19 or causes the termination of the applicable Customer Service Agreement for any reason; or
- 15.3 The Utility may, without having to give notice, discontinue providing Energy Service to any Customer, who stops consuming Thermal Energy in any of the buildings, for a time period determined by Creative Energy, acting reasonably, and no soon than six months, unless agreed by the Customer.
- 15.4 The Utility will not be liable for any loss, injury or damage suffered by any Customer by reason of the discontinuation of or refusal to provide Energy Services as set out in this Section.

## **16. Security for Payment of Bills**

- 16.1 Customer who has not established or maintained credit to the satisfaction of the Utility may be required to provide a security deposit or equivalent form of security, the amount of which may not exceed the estimated total bill for the two highest consecutive months' consumption of Thermal Energy by the Customer.
- 16.2 A security deposit or equivalent form of security is not an advance payment.
- 16.3 The Utility will pay interest on a security deposit at the rate and at the times specified in the Standard Fees and Charges. If a security deposit is returned to a Customer for any reason, the Utility will credit any accrued interest to the Customer's account at that time. No interest is payable on any unclaimed deposit left with the Utility after the account for which it is security is closed, or on a deposit held by the Utility in a form other than cash.
- 16.4 A security deposit (plus any accrued interest) will be returned to the Customer after one year of good payment history, or when the Customer's Customer Service Agreement is terminated pursuant to Section 19, whichever occurs first.
- 16.5 If a Customer's bill is not paid when due, the Utility may apply all or any part of the Customer's security deposit or equivalent form of security and any accrued interest towards payment of the bill. Under these circumstances, the Utility may still elect to discontinue Energy Services to the Customer for failure to pay for Energy Services.
- 16.6 If a Customer's security deposit or equivalent form of security is appropriated by the Utility for payment of an unpaid bill, the Customer must re-establish the security deposit or equivalent form of security before the Utility will reconnect or continue Energy Services to the Customer.

## **17. Account Charge**

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

**18. Term of Customer Service Agreement**

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

**19. Termination of Customer Service Agreement**

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

**20. Effect of Termination**

- 20.1 The Customer is not released from any previously existing obligations to the Utility by terminating the Customer Service Agreement.
- 20.2 If this Customer Service Agreement is terminated for any reason other than termination for default of the Utility, in addition to any other amounts due and owing by the Customer to the Utility and despite any other remedies available at law or in equity, the Customer shall pay to the Utility, within 60 days of invoicing, such amount as the Utility determines is necessary to ensure other Customers are not adversely impacted by such termination.
- 20.3 Notwithstanding any termination by the Customer pursuant to this Section, and without derogating from the generality of Section 5, all components of the Neighbourhood Energy System will remain the property of and vest in the Utility.

**21. Liability**

- 21.1 Neither the Utility, nor any of the Utility's Representatives is responsible or liable for any loss, injury (including death), damage or expense incurred by any Customer or any Person claiming by or through a Customer, that is caused by or results from, directly or indirectly, any discontinuance, suspension, or interruption of, or failure or defect in the supply, delivery or transportation of, or any refusal to supply, deliver, or transport Thermal Energy, or provide Energy Services, unless the loss, injury (including death), damage or expense is directly and solely attributable to the gross negligence or wilful misconduct of the Utility or any of the Utility's Representatives, provided however that neither the Utility nor any of the Utility's Representatives is responsible for any loss of profit, loss of revenue or other economic loss, even if the loss is directly attributable to the gross negligence or wilful misconduct of the Utility or any of the Utility's Representatives.
- 21.2 Energy Services may be temporarily suspended to make repairs or improvements to the Neighbourhood Energy System or in the event of fire, flood or other sudden emergency. The Utility will, whenever reasonably practicable, give notice of such suspension to the Customer and will restore Energy Services as soon as possible. Telephone, newspaper, flyer, radio or other acceptable announcement method may be used for notice purposes.
- 21.3 The Customer shall bear and retain the risk of, and hereby indemnifies and holds harmless the Utility and all of the Utility's Representatives from, all loss and damage to

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

- 21.4 The Customer agrees to indemnify and hold harmless the Utility and all of the Utility's Representatives from all claims, losses, damages, liabilities, costs, expenses and injury (including death) suffered by the Customer or any person claiming by or through the Customer or any third party and caused by or resulting from the use of Thermal Energy by the Customer or the presence of Thermal Energy on or in any part of the Building(s) or from the Customer or the Customer's employees, contractors or agents damaging any component of the Neighbourhood Energy System. This paragraph will survive any termination of the Customer Service Agreement.
- 21.5 The Customer acknowledges and agrees that the Utility will not in any way be responsible for any aspect of the design, engineering, permitting, construction or installation of any Building System.
- 21.6 The Customer will release, indemnify and hold harmless the Utility and all of the Utility's Representatives from any and all liabilities, actions, damages, claims (including remediation cost recovery claims), losses, costs, orders, fines, penalties and expenses whatsoever (including all consulting and legal fees and expenses on a solicitor-client basis) and the costs of removal, treatment, storage and disposal of Contaminants and remediation of the Customer's lands and any affected adjacent property which may be paid by, incurred by or asserted against the Utility or any of the Utility's Representatives arising from or in connection with the presence of Contaminants on, in or under the Customer's lands or any Release or alleged Release of any Contaminants at or from the Customer's lands related to or as a result of the presence of any pre-existing Contaminants at, on, under or in the Customer's lands, including without limitation surface and ground water at the date of the Customer Service Agreement or as a result at any time of the operations of the Customer or any act or omission of the Customer or its tenants or other occupants or any person for whom it is in law responsible.
- 21.7 The Customer will obtain and maintain at its own expense appropriate insurance coverage (including property and liability) throughout the term of the Customer Service Agreement and will provide the Utility with evidence of same upon request.

## **22. Access to Buildings and Equipment**

- 22.1 The Utility's Representatives will have, at all reasonable times, free access to all components of the Neighbourhood Energy System in, on or under the Customer's lands (whether located inside or outside of Building(s)) to ascertain the quantity or method of use of Energy Services, as well as for the purpose of reading, testing, repairing or removing the whole or any such component (or part thereof), turning Thermal Energy on or off, conducting system leakage surveys, stopping leaks, and examining pipes, fittings, connections and appliances.
- 22.2 In furtherance of the above, the Customer hereby grants and covenants to secure for the Utility and its subcontractors, agents, employees and representatives, by licenses,

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

- 22.3 The Customer acknowledges and agrees that each statutory right of way, lease or other registrable interest granted pursuant to this Section may be registered by the Utility in the relevant Land Title Office, together with any priority agreements as the Utility may deem necessary or advisable. The Customer will at the request of the Utility ensure that each statutory right of way granted pursuant to this Section will have priority over any Encumbrance registered against the title to the Lands, the applicable subdivided parcel thereof or the Customer's leasehold interest therein, as applicable.
- 22.4 To the extent there is a statutory right of way in favour of the Utility registered against the Customer's lands or leasehold interest, the Customer hereby covenants and agrees to be bound by, and to comply with, such registered statutory right of way.

### **23. Curtailment of Energy Services**

- 23.1 If there is a breakdown or failure of any component of the Neighbourhood Energy System, or at any time to comply with the requirements of any law, the Utility will have the right to require any Customer or class or classes of Customers or all its Customers, until notice of termination of the requirement is given, or between specified hours, to discontinue use of Thermal Energy for any purpose or purposes or to reduce in any specified degree or quantity such Customer(s)' consumption of Thermal Energy for any purpose or purposes.
- 23.2 Any such requirement may be communicated to any Customer or Customers or to all Customers by either or both of public notices in the press and announcements over the radio, and may be communicated to any individual Customer by either or both of notice in writing (via e-mail, regular mail or personal delivery, or left at the relevant Building) and oral communication (including by telephone). Any notice of the termination of any such requirement may be communicated similarly.
- 23.3 If in the opinion of the Utility any Customer has failed to comply with any requirement of the Utility communicated in accordance with this Section, the Utility will be at liberty, after notice to the Customer is communicated in accordance with this Section, to discontinue Energy Service to such Customer.

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

**24. Disturbing Use**

- 24.1 The Customer will take and use the Thermal Energy supplied by the Utility so as not to endanger or negatively impact the Neighbourhood Energy System.
- 24.2 The Utility may require the Customer, at the Customer's expense, to provide equipment which will reasonably limit such fluctuations or disturbances and may refuse to supply Thermal Energy or suspend the supply thereof until such equipment is provided.

**25. Taxes**

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

**26. Special Contracts and Supplements**

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

**27. Conflicting Terms and Conditions**

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

**28. Authority of Agents of the Utility**

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

**29. Utility Contact Information**

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

**30. Collection and Use of Data**

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

**SECTION C - UTILITY CONTACT INFORMATION**

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

Telephone: 604-688-9584

**For all general inquiries:**

Telephone: 604-688-9584

Fax: 604-688-2213

Email: [info@creativeenergycanada.com](mailto:info@creativeenergycanada.com)

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