



Excess Energy Purchase Agreement

BETWEEN:

MANITOBA HYDRO
(“MH”)

— and —

_____ (jointly and collectively, where applicable, referred to as the “**Seller**”)

WHEREAS:

- A. The Seller is a MH customer with MH account number (*14 digits*) _____ for that parcel of land located at _____ (“**Site**”);
- B. The Seller has designed and constructed, and now operates, owns and maintains, a _____ (e.g. solar, wind, biomass) system with a total operating nameplate capacity of _____ alternating current kilowatts (“**Aggregate Nameplate Capacity**”) located at the Site (“**System**”);
- C. The Seller has been approved for interconnection to distribution facilities owned and operated by MH (“**Electrical System**”) in accordance with the terms and conditions of MH’s distributed resource interconnection procedures which require MH to install and own a bi-directional meter with applicable apparatus at the Site (“**Metering Equipment**”);
- D. MH and the Seller acknowledge that while the System is in operation it may, from time to time, produce electrical energy, measured by the Metering Equipment in kilowatt hours (“**kWh**”), that is greater than the consumption of electrical energy at the Site (“**Excess Energy**”); and
- E. MH has agreed to purchase from the Seller, and the Seller has agreed to sell to MH, the Excess Energy.

IN CONSIDERATION of the mutual promises and obligations contained in this Agreement, MH and the Seller (each may be referred to as the “**Party**” or collectively as the “**Parties**”) agree as follows:

1. General Terms & Conditions

The general terms and conditions of this Agreement are set forth in Schedule A which is attached and incorporated herein by reference.

2. Agreement Effective Date and Term

This Agreement shall be effective as of the date it is signed by MH (“**Effective Date**”) and shall continue in effect unless terminated earlier in accordance with Schedule A.

3. Excess Energy Price

The purchase price to be paid for Excess Energy by MH shall be the price as determined by MH from time to time and published on the Manitoba Hydro website (“**Excess Energy Price**”). The Parties acknowledge that the Excess Energy Price is subject to change by MH without notice.

4. Mandatory Notice to MH

If the Seller desires to:

- increase the Aggregate Nameplate Capacity of the System;
- produce Excess Energy from a source other than the System;
- add a generation resource that results in an increased volume of Excess Energy produced by the System; or
- make a change to the System that may cause a material adverse condition for, or material adverse effect on, the Electrical System (each a “**Material Modification**”);

then the Seller shall provide prior notice to MH and obtain MH’s consent, which shall not be unreasonably withheld.

If the Seller:

- transfers, removes, or relocates the System off the Site; or
 - the Seller ceases to be the MH account holder for the Site;
- then the Seller shall promptly provide notice to MH.

5. Notices & Inquiries

The addresses for notices and inquiries to be given or made pursuant to this Agreement are as follows:

Notice to MH:

Manitoba Hydro
 Customer Energy Services
 Attention: Manager
 360 Portage Avenue, Winnipeg, MB R3C 0G8
drip@hydro.mb.ca

Metering and Billing Inquiries:

Manitoba Hydro
 Customer Contact Centre
 360 Portage Avenue, Winnipeg, MB R3C 0G8
 Phone 204-480-5900 or toll-free 1-888-624-9376
customerservice@hydro.mb.ca

Notice to the Seller:

Attention: _____

Address: _____

Email: _____

6. Entire Agreement

This Agreement and the attached Schedule A constitutes the entire agreement between the Seller and MH regarding its subject matter and it supersedes all prior agreements, understandings, representations and statements, oral or written. The preamble hereto forms an integral part of this Agreement.

IN WITNESS WHEREOF MH and the Seller have duly executed and delivered this Agreement on the Effective Date.

SELLER: Please sign this agreement in the presence of a witness and send it by registered mail or email to:

Manitoba Hydro
Energy Market Strategies and Wholesale Power Marketing
Attention: Independent Power
360 Portage Avenue, Winnipeg, MB R3C 0G8
independentpower@hydro.mb.ca

In the presence of:

THE SELLER

Witness Signature

Signature

Witness Name (*print*)

Name (*print*)

Date

Date

In the presence of (*applicable if multiple Sellers*):

THE SELLER (*applicable if multiple MH account holders*)

Witness Signature

Signature

Witness Name (*print*)

Name (*print*)

Date

Date

MANITOBA HYDRO

Per: _____

Signature

Name (*print*)

Title

Effective Date

I have the authority to bind the corporation.

Excess Energy Purchase Agreement

Schedule A – General Terms & Conditions

1. Term

This Agreement shall begin on the Effective Date and shall continue unless terminated earlier in accordance with this Agreement.

2. Purchase & Sale of Excess Energy

The Seller may sell and deliver to MH Excess Energy, and MH shall purchase and accept delivery of Excess Energy sold and delivered by the Seller to MH at the designated point between the System and the Electrical System where Excess Energy enters the Electrical System (“**Delivery Point**”). Excess Energy sold and delivered by the Seller shall be free of liens, encumbrances and adverse claims. MH shall pay to the Seller the Excess Energy Price for Excess Energy sold and delivered. The Seller shall not be entitled to any payment from MH for Excess Energy prior to the date that the Seller is approved to interconnect to the Electrical System. Custody, control, risk of loss and title to Excess Energy shall pass from the Seller to MH at the Delivery Point.

The Excess Energy Price paid for Excess Energy is representative of the full consideration and compensation payable by MH to the Seller, and for greater certainty includes, without limitation, compensation for: (a) all Excess Energy; (b) any and all costs and expenses incurred in the delivery of Excess Energy to the Delivery Point; (c) the acquisition of or retention by MH of the environmental attributes associated with the Seller’s System; and (d) System capacity. There shall be no further or other consideration, compensation, fees, expenses or other charges paid or payable by MH to the Seller. For greater certainty, Excess Energy shall only be electrical energy produced by the System.

3. Billing & Payment

The amount of Excess Energy delivered by the System to the Delivery Point shall be measured and determined solely by the Metering Equipment. MH shall apply monetary credits for Excess Energy (which shall be equal to the number of kWh of Excess Energy multiplied by the Excess Energy Price) to the Seller’s monthly MH bill. If the Seller is a GST registrant, GST shall be charged on Excess Energy purchased by MH so long as the Seller has provided MH with a valid GST registration number. Payment to MH shall be made in accordance with the terms stated on the MH bill. In the event a MH bill account balance shows a credit owing to the Seller, the Seller agrees that the credit shall be carried over to the next MH bill. The Seller may request a cheque or alternate method of payment for a credit balance owing to the Seller in the month of March of each calendar year.

4. Environmental Attributes

The Seller agrees that MH has the right, and further agrees to cooperate with MH, to claim the acquisition of, or retention of, all existing and future right, title, interest and benefit in and to any credit, emissions reduction, reduction right, allowance, ‘green’ tag, ticket, certificate, environmental attribute or other ‘green’ or environmental marketing attribute or proprietary or contractual right, whether tangible or intangible, or tradable or not tradable associated with, related to or derived or resulting from the generation of Excess Energy.

5. Ownership of the System

The Seller shall be the sole and exclusive owner of the System.

6. Maintenance & Repair

The Seller shall, at its sole cost and expense, maintain the System in good condition and repair in accordance with the terms and conditions of all applicable licenses, permits, certificates, approvals, and laws including, but not limited to, the Manitoba Electrical Code. The Seller shall not make any repairs to the System which could adversely affect the operation and maintenance of the Electrical System without MH’s prior written consent.

7. Material Modification

The Seller shall not make a Material Modification without MH’s prior consent. For greater certainty: (i) the Seller may maintain and repair the System from time to time without notice to MH so long as maintenance and repair do not constitute a Material Modification; and (ii) any other modification, alteration or addition with respect to technological upgrades or energy storage devices (ex. batteries), are not, for the purposes of this Agreement, a Material Modification, but shall require MH’s prior written consent prior to implementation and shall be made in accordance with the Manitoba Electrical Code.

8. Risk & Limitation of Liability

The Seller shall be solely responsible for: (a) the design, development, construction, operation, maintenance and modification of the System; (b) the protection of the System in such a manner that faults or other disturbances of MH’s Electrical System do not cause damage to the System; (c) the suitability of the Site for the System; and (d) the economics, technical feasibility, safety, operational capability, and reliability of the System.

The Seller agrees and acknowledges that MH may interrupt or curtail all or a portion of the electrical energy produced by the System to the extent that such interruption or curtailment is necessary to install equipment, make repairs, make replacements, perform investigations or inspections of MH’s Electrical System, or aid in the restoration of service on the Electrical System. The Seller shall not be entitled to any claim, damages, payment or compensation for electrical energy curtailed by MH or interrupted.

Notwithstanding any other provisions of this Agreement, neither Party shall be liable to the other Party, or the other Party’s officers, directors, employees, contractors, agents, successors and assigns, as applicable, or anyone claiming through or under the other Party, whether by reason of breach of contract or in tort, including liability for negligence, or on any other legal or equitable basis, for punitive, consequential or indirect damages of any nature whatsoever including loss of use, loss of revenue, loss of profit, loss of contract or loss of goodwill or any other loss or damage of an indirect or consequential nature suffered by the Party in connection with this Agreement other than as specifically provided for herein.

9. Default & Termination

A Party that fails to perform its obligations or experiences a Default Event as hereinafter described shall be deemed to be the “**Defaulting Party**”, and the other Party shall be deemed to be the “**Non-Defaulting Party**”. The following events or circumstances shall be a “**Default Event**” for the applicable Party: (a) the Seller makes a Material Modification to the System without MH’s prior consent; (b) the Seller fails to pay the amount due and payable on a MH bill in the name of the

Seller within 90 calendar days following the date stated on the said MH bill; (c) a Party becomes insolvent or bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada), or makes a general assignment for the benefit of, or enters into any contract or arrangement with, the creditors of the Party; (d) a Party applies for, or consents to, the appointment of a receiver, trustee or liquidator for the Party or for all or substantially all of its assets which proceedings continue without dismissal or stay for a period of 30 calendar days; (e) a Party fails to perform or observe any of its material obligations under this Agreement, other than the Seller's obligation for the payment of a MH bill as provided in Subsection 9(b) hereof, if such failure is not remedied within 30 calendar days after notice has been given by the Non-Defaulting Party to the Defaulting Party; or (f) a representation or warranty of a Party proves at any time to have been incorrect in any material respect when made and is material to this Agreement.

If a Default Event has occurred and is continuing beyond any applicable cure period, the Non-Defaulting Party may: (a) pursue any remedy under this Agreement, at law or in equity; and/or (b) at any time during the continuation of the Default Event, terminate this Agreement by providing not less than 30 calendar days' notice to the Defaulting Party which notice shall specify the relevant Default Event and the date the Agreement shall terminate.

MH may terminate this Agreement immediately upon notice to the Seller if any of the following events, conditions, or circumstances occurs: (a) the Seller transfers, removes, or relocates the System off the Site; or (b) the Seller ceases to be the MH account holder for the Site.

The Seller may terminate this Agreement at any time immediately upon written notice to MH.

In the event this Agreement terminates in accordance with this Section 9, final payment shall be made in accordance with Section 3.

10. Assignment

Neither Party shall assign any of its rights under this Agreement. Any purported assignment or delegation in violation of this Section shall be null and void.

11. Notice

Any notice required by this Agreement shall be made in writing, and shall be delivered personally, by prepaid registered mail, or by email to the Parties at the addresses specified in this Agreement or such other addresses as may be designated in writing from time to time. Notice delivered personally shall be deemed received upon the date of personal service. Notice given by registered mail shall be deemed received 5 business days following the date of mailing. Notice given by email shall be deemed received when acknowledged by the recipient. If the recipient does not acknowledge receipt within 3 business days, a true copy of the notice, including all transmission and address information details, must be sent to the recipient using one of the other methods of delivery set out in this Section. An automatic "read receipt" shall not constitute acknowledgement of an email. Business day means Monday through Friday excluding Canadian banking holidays and a MH normally scheduled Monday off.

12. Representations & Warranties

Each Party covenants, represents, and warrants that: (a) the Party has all necessary power, authority and capacity to enter this Agreement and to carry out the obligations under this Agreement; (b) the Party's execution, delivery and performance

of this Agreement has been duly authorized by all necessary action; (c) there is no claim, action, proceeding, or other litigation pending or, to the knowledge of the Party, which, if adversely determined, would restrict or otherwise interfere in any material respect with the obligations under this Agreement; and (d) the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby will not result in the breach or violation of any of the provisions of, or constitute a default under, or conflict with or cause the termination, cancellation, or acceleration of, the Party's material obligations or any judgment, decree, order, or award to which the Party is subject or any licence, permit, approval, consent, or authorization held by the Party.

13. General Provisions

Unless otherwise permitted by this Agreement, this Agreement may not be changed, modified or amended unless such change, modification or amendment is made in writing and signed by the Parties.

This Agreement shall be governed and construed in accordance with the laws of Manitoba and the laws of Canada applicable thereto. Reference to any legislation in this Agreement is a reference to that legislation in force from time to time and to any subsequent legislation which has the effect of supplementing or superseding that legislation. The Parties agree to the exclusive jurisdiction of the courts of Manitoba.

Headings are inserted for convenience only and shall not affect the interpretation of this Agreement.

This Agreement shall be binding upon and enure to the benefit of the Parties to this Agreement and their respective heirs, executors, administrators, successors and assigns where applicable.

Nothing in this Agreement shall be construed as creating any relationship between the Parties other than that of the sale and purchase of Excess Energy generated by the System. The Parties do not intend to create any rights, or grant any remedies to, any third-party beneficiary of this Agreement.

If any provision of this Agreement is for any reason invalid, that provision shall be considered separate and severable from this Agreement and the other provisions of this Agreement shall remain in force and continue to be binding upon the parties as though the invalid provision had never been included in this Agreement.

The applicable provisions of this Agreement shall continue in effect after termination to the extent necessary to provide for final billings, billing adjustments, the determination and enforcement of liability and indemnification obligations arising from acts or events that occurred while this Agreement was in effect, and for the enforcement of obligations that continue beyond this Agreement as specifically provided herein.

The failure of either Party to require compliance with any provision of this Agreement shall not affect that Party's right to later enforce the same. It is agreed that the waiver by either Party of performance of any of the terms of this Agreement will not be held or deemed to be a waiver by that Party of any subsequent failure to perform the same or any other term or condition of this Agreement.

This Agreement may be signed in any number of counterparts, each of which is an original, and all of which taken together constitute one single document. This Agreement may be executed by electronic signatures, which shall be accepted as if they were original signatures.