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September 10, 2021

British Columbia Utilities Commission
Suite 410, 900 Howe Street
Vancouver, BC
V6Z 2N3

Attention: Mr. Patrick Wruck, Commission Secretary

Dear Mr. Wruck:

Re: FortisBC Energy Inc. (FEI)

Section 71 of the *Utilities Commission Act* (UCA) and British Columbia Utilities Commission (BCUC) Rules for Natural Gas Energy Supply Contracts

Filing of a Biomethane Purchase Agreement (BPA) between FEI and Net Zero Waste Abbotsford Inc. (NZW).

In accordance with section 71 of the UCA and the BCUC's Rules for Natural Gas Energy Supply Contracts (Rules), FEI files the attached fully executed BPA between FEI and NZW (NZW BPA). A copy of the executed NZW BPA is provided in Appendix A.

The NZW BPA establishes the terms and conditions for NZW to supply biomethane, or renewable natural gas (RNG)¹, to FEI for injection into FEI's existing natural gas system. In order to monitor the quantity and quality of the biomethane supplied to FEI from NZW, and to inject the supplied biomethane into FEI's pipeline, FEI will construct, own, and operate an interconnection station and interconnection pipeline (collectively the FEI Facilities) at the edge of the NZW Facility. The cost of the FEI Facilities will be fully paid for by NZW through a contribution in aid of construction (CIAC). Additionally, the operating and maintenance (O&M) costs incurred by FEI for the FEI Facilities will be recovered from NZW annually. Collectively, the NZW BPA and the FEI Facilities will be referred to as the Project.

The acquisition of biomethane under the NZW BPA qualifies as a prescribed undertaking under section 18 of the *Clean Energy Act* (CEA) and section 2(3.7) to (3.9) of the *Greenhouse Gas Reduction (Clean Energy) Regulation* (GGRR).

¹ RNG is a synonym for biomethane.

1. APPROVALS SOUGHT

FEI is seeking acceptance from the BCUC of the NZW BPA, pursuant to section 71 of the UCA and the Rules. As the NZW BPA is a prescribed undertaking under section 18 of the CEA and the GGRR, FEI respectfully submits that the BCUC should accept the BPA without any regulatory process. FEI acquires RNG in an increasingly competitive market, and unnecessary regulatory process can adversely impact FEI's ability to negotiate acquisitions of RNG at the lowest reasonable cost. The BCUC has previously accepted BPAs located in British Columbia that are prescribed undertakings with either minimal regulatory process, or without any regulatory process, e.g., BCUC Orders G-60-20, and E-13-20.

FEI further requests that the confidential, unredacted version of this Application, including the unredacted version of the NZW BPA attached as Appendix A, and the confidential financial schedules attached as Appendix B, be treated as confidential by the BCUC pursuant to section 71(5) of the UCA, Section 18 of the BCUC's Rules of Practice and Procedure regarding confidential documents adopted by Order G-15-19, and Section 6.0 of the Rules for Natural Gas Energy Supply Contracts.

The NZW BPA contains confidential and commercially sensitive terms, including negotiated rates and volumes. The public disclosure of this information could compromise FEI's ability to negotiate favourable terms with other Biomethane suppliers which could serve to increase overall costs of the Biomethane Program and potentially impact rates for all non-bypass customers. FEI has redacted the confidential information from the public version of this Application. Keeping this information confidential will ensure that market sensitive information is protected, preserving FEI's ability to negotiate competitive pricing for RNG in the future.

A draft form of Order sought is provided in Appendix C.

2. LEGAL COUNSEL

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3. LEGISLATIVE AND REGULATORY FRAMEWORK

On April 18, 2010, the Province of BC enacted the CEA. The CEA established a number of energy objectives and provided that the Lieutenant Governor in Council (LGIC) can prescribe undertakings to encourage public utilities to pursue certain greenhouse gas (GHG) reducing initiatives. Section 18 of the CEA states:

18 (1) In this section, "prescribed undertaking" means a project, program, contract or expenditure that is in a class of projects, programs, contracts or expenditures prescribed for the purpose of reducing greenhouse gas emissions in British Columbia.

(2) In setting rates under the Utilities Commission Act for a public utility carrying out a prescribed undertaking, the commission must set rates that allow the public utility to collect sufficient revenue in each fiscal year to enable it to recover its costs incurred with respect to the prescribed undertaking.

(3) The commission must not exercise a power under the Utilities Commission Act in a way that would directly or indirectly prevent a public utility referred to in subsection (2) from carrying out a prescribed undertaking.

(4) A public utility referred to in subsection (2) must submit to the minister, on the minister's request, a report respecting the prescribed undertaking.

(5) A report to be submitted under subsection (4) must include the information the minister specifies and be submitted in the form and by the time the minister specifies.

On May 14, 2012, the LGIC issued Order in Council (OIC) 295/2012 approving the GGRR, which described classes of prescribed undertakings pursuant to section 18 of the CEA.

On March 21, 2017, the LGIC issued OIC 161/2017 approving an amendment to the GGRR related to RNG as follows:

(3.7) A public utility's undertaking that is in the class defined in subsection (3.8) is a prescribed undertaking for the purposes of section 18 of the Act.

(3.8) The public utility acquires renewable natural gas

(a) for which the public utility pays no more than \$30 per GJ [gigajoule], and

(b) that, subject to subsection (3.9), in a calendar year, does not exceed 5% of the total volume of natural gas provided by the public utility to its non-bypass customers in 2015.

(3.9) The volume referred to in subsection (3.8) (b) does not include renewable natural gas acquired by the public utility that the public utility provides to a customer in accordance with a rate under which the full cost of the following is recovered from the customer:

(a) the acquisition of the renewable natural gas;

(b) the service related to the provision of the renewable natural gas.

The Ministry has stated that the “amendments were made to the Greenhouse Gas Reduction (Clean Energy) Regulation in the spring of 2017 to increase incentives for using renewable natural gas in transportation and to establish measures to increase the supply of RNG.”²

The BCUC in its Decision and Order G-122-19³ determined that for a project to qualify as a prescribed undertaking under section 2(3.8) of the GGRR, it must satisfy the following three-part test:

- The public utility must be acquiring renewable natural gas (as opposed to some other form of commodity);
- The utility must pay no more than \$30 per GJ for that renewable natural gas; and
- Subject to certain exceptions, the annual volume of renewable natural gas acquired must not exceed 5% of the total volume of natural gas the utility provided to its non-bypass customers in 2015.⁴

On May 25, 2021 the LGIC issued OIC 306/2021 which further amended section 2 to the GGRR related to RNG, including as follows:

(a) by adding the following subsection:

(3.71) For the purposes of subsection (3.8), “acquires renewable natural gas” includes producing renewable natural gas by producing or purchasing biogas and upgrading it to renewable natural gas. , and

(b) by repealing subsection (3.8) and substituting the following:

(3.8) The public utility acquires renewable natural gas

(a) at costs that meet the following criteria, as applicable:

(i) if the public utility acquires renewable natural gas by purchasing it, the price of the renewable natural gas does not exceed the maximum amount, determined in accordance with section 9, in effect in the fiscal year in which the contract for purchase is signed;

(ii) if the public utility acquires renewable natural gas by producing it, the levelized cost of production reasonably expected by the public utility does not exceed the maximum amount, determined in accordance with section

² In the Matter of FEI’s Application for Acceptance of the Biogas Purchase Agreement between FEI and the City of Vancouver, Exhibit C1-2.

³ In the Matter of FEI’s Application for Acceptance of the Biogas Purchase Agreement between FEI and the City of Vancouver.

⁴ Decision and Order G-122-19, page 8.

9, in effect in the fiscal year in which the public utility decides to construct or purchase the production facility, and

(b) that, in a calendar year, does not exceed 15% of the total amount, in GJ, of natural gas provided by the public utility to its non-bypass customers in 2019, subject to subsection (3.9) and section 10.

OIC 306/2021 also added section 9 of the GGRR, which sets a maximum price of \$31 dollars for fiscal year 2021/22.⁵ The maximum price increases each fiscal year.

OIC 306/2021 also added section 10 of the GGRR, which indicates that acquisitions of hydrogen, synthesis gas, and lignin under sections 6, 7 and 8 of the GGRR also count towards the maximum volume.

The maximum volume of 15 percent in the GGRR is the implementation of the Province's CleanBC plan. The CleanBC plan states that it will put in place a minimum requirement for 15 per cent renewable content in natural gas by 2030, stating:⁶

As part of CleanBC, we will work with natural gas providers to put in place a minimum requirement for 15 per cent renewable content in natural gas by 2030. That means the gas we use in our furnaces, water heaters, dryers, stoves and other gas appliances will have less impact on the environment, and the methane that is wasted from agriculture, sewage and landfills will be significantly reduced. Waste hydrogen can also be mixed with the natural gas we use in our homes and will provide additional renewable natural gas for our needs.

The purpose of this class of prescribed undertaking is to facilitate FEI acquiring RNG, or other renewable gases, up to the maximum amount so that the Province can realize its greenhouse gas reduction goals in the CleanBC plan.

4. THE NZW BPA IS A PRESCRIBED UNDERTAKING

Under the amended GGRR, the three part-test for a BPA or project to qualify as a prescribed undertaking can be restated as follows:

- The public utility must be acquiring RNG (as opposed to some other form of commodity);
- The public utility must pay no more than the applicable maximum price for that RNG; and
- The volume of RNG, hydrogen, synthesis gas, and lignin that the public utility acquires in a calendar year must not exceed 15% of the total amount, in GJ, of natural gas provided by the public utility to its non-bypass customers in 2019, subject to subsection (3.9) and section 10 of the GGRR.

⁵ Beginning April 1, 2021.

⁶ CleanBC plan, at page 36. Online: [CleanBC: our nature. our power. our future. \(gov.bc.ca\)](https://www2.gov.bc.ca/gov/content/sustainability/2030/cleanbc-plan)

The NZW BPA satisfies the three-part test and qualifies as a prescribed undertaking based on the following:

1. Under BPA, FEI is acquiring RNG by purchasing finished biomethane from NZW. Biomethane is a synonym for RNG.

As noted in by the BCUC in its Reasons for Decision accompanying Order E-14-21, there are two aspects to this portion of the test: “that FEI is acquiring something, and that what is being acquired is RNG.”

The BCUC has repeatedly agreed with FEI, including in its Reasons for Decision accompanying Order E-14-21, that purchasing meets the “acquire” aspect of the test. This is primarily based on the *Interpretation Act*, which states that, in an enactment, “acquire” means “to obtain by any method and includes accept, receive, purchase, be vested with, lease, take possession, control or occupation of, and agree to do any of those things, but does not include expropriate.” [Emphasis added.] As FEI is purchasing something under the NZW BPA, this aspect of the test is met.

As for the second aspect of this part of the test, the terms of the NZW BPA make it clear that FEI is acquiring RNG, as opposed to some other commodity. FEI will be purchasing biomethane produced by the NZW facilities, which will mix approximately [REDACTED] of yard and food waste per year from local residents and industry in an anaerobic digester to produce raw biogas and upgrade the biogas to biomethane. Section 8.2(a) of the NZW BPA states that the “Supplier represents and warrants that: The Biomethane produced is generated through the anaerobic digestion of organic matter and is not supplemented, replaced in whole or in part with fuels purchased or extracted other than from the Supplier Facilities.” The only B.C. statutory definition of biomethane is in the *Carbon Tax Act*, which states that biomethane is methane produced from biomass. This is consistent with how FEI has defined RNG since the beginning of its biomethane program over a decade ago, as embedded in FEI’s BCUC-approved General Tariff Terms and Conditions. As with its other BPAs, FEI is acquiring all environmental attributes associated with the RNG, as specified in Section 8.1 of the NZW BPA.

It is therefore clear that FEI is acquiring RNG through the NZW BPA.

2. The NZW BPA was signed in April 2021, which is within the 2021/2022 fiscal year as defined in the GGRR, and, therefore, the applicable maximum price is \$31. The acquisition price for RNG in the NZW BPA is no more than the \$31 per GJ maximum acquisition price. Section 2.4 of Schedule D in the NZW BPA states that the purchase price must not exceed the maximum regulated purchase price established by the Province of BC. NZW will fully pay for the capital and O&M costs of the FEI Facilities as indicated in Article 7 of the NZW BPA.
3. FEI will manage its RNG acquisitions in each calendar year to be within the maximum amount specified in the GGRR. Specifically, if FEI were to acquire more than the maximum amount of RNG in any calendar year, FEI would sell an amount of RNG equivalent to the overage at full cost such that this amount would not count towards the cap per s. 2(3.9) of the GGRR. FEI reports regularly to the BCUC on its RNG acquisitions. As such, FEI’s compliance with the cap on RNG acquisitions can be

overseen. In any case, FEI's total capacity to acquire RNG is well below the calculated maximum volume set out in section 2(3.8)(b) in the GGRR for FEI of approximately 30.079 PJs. The contractual maximum volume of RNG under the NZW BPA is [REDACTED], and the total maximum of FEI's contracted RNG volume in its portfolio, if the NZW BPA is accepted, would be [REDACTED] GJs annually.⁷ FEI has not yet acquired any hydrogen, synthesis gas, or lignin.

As FEI has demonstrated above, the three-part test under Section 2(3.8) of the GGRR is satisfied.

5. PROJECT OVERVIEW

This section provides a high-level overview of the project that will supply finished biomethane to FEI under the NZW BPA (Project).

5.1 PROJECT SUMMARY

The following table summarizes the Project and its concordance with the GGRR's three-part test.

Table 1: Table of Concordance

Project Characteristic	Description
Is FEI acquiring biogas or biomethane?	Yes - FEI is purchasing finished biomethane from NZW
Is FEI making a capital investment?	Yes – FEI will construct, own and operate an interconnection facility.
Are the costs of the capital investment recovered from the producer (if applicable)?	Yes – NZW will pay for the actual capital cost of FEI's interconnection facilities and will pay for FEI's annual operating costs related to the interconnection facilities.
Does the price to acquire biomethane (including any capital or operating costs incurred by FEI) exceed the \$31 per GJ maximum price at any time during the Project term?	No – Section 2.4 of Schedule D and Article 7 of the NZW BPA stipulate that the Maximum Price payable to NZW for RNG cannot exceed the GGRR maximum and that NZW will pay for the actual costs (capital and O&M) of FEI's interconnection facilities.
Will the Project's supply of biogas or biomethane result in FEI's total annual volume of biomethane, hydrogen, synthesis gas, and lignin exceeding 15% of the total volume of natural gas provided by FEI to its non-bypass customers in 2019?	No

⁷ Figure is inclusive of the Assai BPA, Metro Vancouver BPA amendments and Capital Regional District BPA.

5.2 PROJECT LOCATION AND FACILITIES

NZW will be constructing, owning, and operating a facility, which will receive and process organic waste to produce biomethane. The plant will process approximately [REDACTED] of yard and food waste per year from local residents and industry. Similar to other agricultural projects, NZW will mix organic waste in an anaerobic digester to produce raw biogas and upgrade the biogas to biomethane with proven technology (NZW Facilities). NZW has leased a parcel of land situated on an existing compost site located in Abbotsford, BC. FEI will own and operate interconnection facilities onsite to test and odourize the RNG before it enters FEI's distribution system. Biomethane will be delivered to FEI via the FEI Facilities, as described in Section 5.4, which is an FEI-owned interconnection station and pipe to the existing FEI natural gas system. The facility locations are shown in Figure 1 below.

Figure 1: Facility Locations



5.3 PROJECTED SUPPLY

Based on the process information provided by NZW, the NZW Facilities will be capable of producing up to [REDACTED] GJs of RNG. NZW expects commercial operation to commence in the fall of 2022. The project is expected to produce approximately [REDACTED] GJ/year.

5.4 FEI FACILITIES

In order to monitor the quantity and quality of the biomethane supplied to FEI from the NZW Facilities, and to inject the supplied biomethane into FEI's pipeline, FEI will construct, own, and operate the FEI Facilities, which include an interconnection station and interconnection pipeline at the southwestern edge of the NZW Facilities. As previously discussed, NZW will

fully pay for the FEI Facilities through a CIAC and FEI will recover the O&M costs for the FEI Facilities from NZW annually.

The interconnection station will serve the same function as other biomethane injection stations, including the following:

- Gas Composition analysis (methane, oxygen, carbon dioxide, carbon monoxide, hydrogen, and hydrogen sulphide);
- Biomethane flow measurement;
- Pressure regulation;
- Safety shutoff and return to customer flow;
- Odourization;
- Communications; and
- Automatic control.

The maximum annual production equates to an injection rate of approximately [REDACTED] [REDACTED].⁸ Based on the project location and the flow rate, FEI will connect the project to the existing FEI Intermediate Pressure main nearby. This will require FEI to construct approximately 2,100 metres of 114 millimetre steel interconnection pipe between the FEI interconnect station and the existing FEI Intermediate Pressure main located northeast of the property. The interconnection pipe route is shown in Figure 2 below.

⁸ This translates to an equivalent of [REDACTED] GJ annually, the contract maximum.

Figure 2: FEI Interconnection Pipe



6. ANALYSIS OF THE PROJECT

This section provides an analysis of the Project, including a summary of key terms of the NZW BPA, the risks and mitigation measures associated with the Project, the FEI Facilities costs, the cost of service attributable to the NZW BPA, and the incremental rate impact of the Project for FEI's non-bypass customers.

6.1 SUMMARY OF THE NZW BPA

The NZW BPA is a ■-year agreement that allows FEI to acquire RNG from NZW. The key elements of the NZW BPA are summarized in the table below.

Table 2: NZW BPA Summary

Item	NZW BPA Amount	BPA Clause	Comment
Contract Term	■ Years	Section 2.1	
Renewal Term	■ Years	Section 2.3	
Minimum Annual Volume	■ GJs	Schedule D Section 1.1(b)	Represents the minimum biomethane volume that FEI agrees to purchase annually from NZW.
Maximum Annual Volume	■ GJs	Schedule D Section 1.1(a)	Represents the maximum biomethane volume that FEI agrees to purchase annually from NZW.
Price (per GJ)	■ + Inflation Factor	Schedule D Section 2.1	Represents the price (in CAD), that FEI will pay to NZW for biomethane, subject to the maximum acquisition price.
Inflation Factor on Price	■	Schedule D Section 2.2	■ ■ after the first anniversary of the start date.
Maximum Price	BCUC or BC Government RNG Supply Purchase Price	Schedule D Section 2.4	Maximum Price as determined by FEI will not exceed the GGRR maximum acquisition cost.
Contribution In Aid of Construction – FEI Facilities	Capital Cost Contribution and Annual Operations and Maintenance Costs	Section 7.1, 7.2 and 7.3	NZW will pay the actual capital cost of the FEI Facilities through a CIAC and pay for actual O&M costs attributable to the FEI Facilities.
Carbon Intensity (CI)	■ kgCO ₂ e/GJ	Section 8.2(b)	CI of the biomethane will be less than or equal to ■ kgCO ₂ e per GJ.

6.2 RISKS AND MITIGATION

FEI has obtained contractual assurances from NZW within the BPA to mitigate project risks on the biomethane volume and FEI stranded assets. Further, the maximum price payable by FEI to NZW for biomethane cannot exceed the GGRR maximum acquisition cost. This contractually established maximum price, coupled with NZW's agreement to fully pay for the capital and O&M costs of the FEI Facilities, eliminates the risk that FEI's acquisition cost for biomethane will exceed \$31 per GJ.

The risks and associated mitigation measures are summarized in Table 3.

Table 3: Risks and Mitigation

Risk Item	Description of Risk Item	Risk Mitigation – BPA Clause	Description of Risk Mitigation
Undersupply	NZW is not able to deliver the minimum contractual volume of biomethane.	Section 9.1, 9.2, 10.1 and 10.2	In the event of default by NZW, FEI may terminate at no cost and recover the cost of the FEI Facilities, including the cost of removal.
Stranded Assets	FEI assets not recoverable in the event the agreement is terminated.	Article 10 and Section 10.2	NZW will provide FEI with a Parental Guarantee and Letter of Credit for costs attributable to FEI Facilities. In the event of default by NZW, FEI may terminate at no cost and recover the cost of the FEI Facilities, including the cost of removal. FEI may recover the termination payment from the Parental Guarantee or Letter of Credit.

6.3 COST FOR THE FEI FACILITIES

The estimated capital cost for the FEI Facilities is between [REDACTED], excluding Allowance for Funds Used During Construction (AFUDC) which is estimated to be [REDACTED]. As specified in the NZW BPA, NZW will pay, in the form of a CIAC, the actual capital cost of the FEI Facilities, including AFUDC, to FEI subsequent to the completion of the construction of the FEI Facilities.

The annual O&M cost for the FEI Facilities is forecast to be approximately [REDACTED]. This amount is primarily comprised of parts, labour, electricity costs and odourant. FEI will invoice NZW annually for the actual O&M costs incurred for the FEI Facilities.

6.4 COST OF SERVICE AND INCREMENTAL RATE IMPACT

The costs associated with the NZW BPA includes the price paid to NZW for biomethane, which is [REDACTED] escalated [REDACTED] up to the maximum supply purchase price established by the Province of BC, as specified in Section 2.4 of Schedule D of the BPA.

To calculate the incremental rate impact, FEI used the expected annual volume of [REDACTED] GJs for the duration of the NZW BPA term.

The incremental rate impact associated with the NZW BPA is the difference between the biomethane acquisition cost and the amount recovered from biomethane customers at the current Biomethane Energy Recovery Charge (BERC) rate. FEI has calculated the initial delivery rate impact to non-bypass residential customers due to the difference between costs

and recoveries to be 0.28 percent or \$0.013 per GJ⁹, resulting in an average annual bill impact of \$1.139. This analysis is based on an average residential customer consuming 90 GJs per year.

7. CONCLUSION

The CleanBC plan provides policy direction in BC to increase renewable gas supply to 15 percent by 2030. To help achieve that policy goal, the recent amendments to the GGRR facilitate the acquisition of renewable gases, including RNG, hydrogen, synthesis gas, and lignin, up to 15 percent of the total amount, in GJ, of natural gas provided by FEI to its non-bypass customers in 2019.

The NZW BPA will help achieve the Province's 15 percent target as the expected annual RNG that will be delivered to FEI under the BPA is approximately [REDACTED] GJ/year. Further, the NZW BPA enables FEI to acquire RNG for its customers beginning in 2022, thus expediting FEI's ability to re-open its RNG Program to new enrollments and meet demand for RNG from its customers.

The NZW BPA satisfies the three-part test to be a prescribed undertaking under section 2(3.8) of the GGRR. The NZW BPA is for the acquisition of RNG at an acquisition price that cannot exceed the GGRR maximum price. While FEI's current capacity to acquire RNG, hydrogen, synthesis gas, and lignin does not approach the maximum volume in the GGRR at this time, in the future FEI will manage its volumes of RNG supply to be within the maximum volume allowed by the GGRR each calendar year.

FEI has filed a copy of the NZW BPA with the BCUC pursuant to FEI's obligation under section 71 of the UCA to file energy supply contracts. RNG is methane and, therefore, the NZW BPA is an energy supply contract as defined in section 68 of the UCA. As the acquisition of RNG under the NZW BPA is a prescribed undertaking, the BCUC must accept the BPA under section 71 of the UCA due to section 18 of the *Clean Energy Act*, which forbids the BCUC from exercising its powers in any way that would directly or indirectly prevent FEI from carrying out a prescribed undertaking. Therefore, FEI respectfully requests that the BCUC accept the BPA under section 71 of the UCA without regulatory process.

If further information is required, please contact Scott Gramm, Manager, Renewable Gas Supply, at (604) 576-7242.

Sincerely,

FORTISBC ENERGY INC.

Original signed:

Diane Roy

Attachments

⁹ Appendix B, Schedule 11, Line 10.

Appendix A

**FEI-NET ZERO WASTE
BIOMETHANE PURCHASE AGREEMENT**

BIOMETHANE PURCHASE AGREEMENT

THIS AGREEMENT made as of April 23, 2021 (the “Execution Date”)

BETWEEN:

FORTISBC ENERGY INC., 16705 Fraser Highway, Surrey, British Columbia, V4N 0E8
 (“FEI”)

AND:

NET ZERO WASTE ABBOTSFORD INC., 5050 Gladwin Road, Abbotsford British Columbia,
 V4X 1X8
 (the “Supplier”)

(FEI and the Supplier each a “Party” and together the “Parties”)

WHEREAS:

- A. The Supplier intends to finance, design, construct, own, operate and maintain an anaerobic digestion facility on premises located at 5050 Gladwin Road, Abbotsford BC (the “Lands”) to capture, purify and upgrade biogas to pipeline quality Biomethane (the “Biomethane”) for injection into FEI’s existing natural gas distribution system.
- B. The Lands are leased to the Supplier, pursuant to a written agreement with owner of the Lands, [REDACTED] (the “Landlord”) dated [REDACTED] which was amended on [REDACTED] [REDACTED] (the “Landlord Agreement”).
- C. To monitor the quality and quantity of the Biomethane and inject the Biomethane into FEI’s existing natural gas distribution system adjacent to the Lands, FEI intends to construct and operate facilities on the Lands to connect the Supplier Facilities (as defined in section 3.1 below) to FEI’s gas distribution system. The Supplier has agreed to grant FEI continued access to, and use of a portion of the Lands to operate and maintain its facilities on the Lands.
- D. FEI wishes to purchase and the Supplier wishes to sell the Biomethane to FEI on the terms and conditions provided in this Agreement.

NOW THEREFORE, in consideration of the mutual promises set out herein and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged) the Supplier and FEI (collectively the “Parties” and either of them a “Party”) agree as follows:

ARTICLE 1 – REGULATORY REVIEW AND CONDITION PRECEDENT

- 1.1 **Application of *Utilities Commission Act*.** The Supplier acknowledges FEI is a public utility as defined in the British Columbia *Utilities Commission Act* [RSBC 1996] CHAPTER 473 and this Agreement, and any amendments thereto, are subject to acceptance and approval by the British Columbia Utilities Commission (“BCUC”) in accordance with the *Utilities Commission Act*.
- 1.2 **Filing with BCUC.**

- (a) FEI will file this Agreement with the BCUC, for their review and approval, within 180 days after the Execution Date.
- (b) The Supplier will, at the request of FEI, provide any assistance reasonably required by FEI to secure BCUC acceptance and approval, including filing documents in support of FEI's application to the BCUC and providing argument and witnesses in support of the filing.

1.3 **Conditions Precedent.** Except for ARTICLE 1 (*Regulatory Review and Conditions Precedent*), ARTICLE 17 (*Confidentiality*), ARTICLE 18 (*Representations and Warranties*), ARTICLE 14 (*Indemnification*) and ARTICLE 19 (*General*), the obligation of FEI to carry out the transactions contemplated by this Agreement is subject to fulfillment of the following conditions on or before the dates set out below, which are for the sole benefit of FEI, and which may be waived by FEI, in its sole and absolute discretion, in writing to the Supplier (the "**Conditions Precedent**"):

- (a) FEI having obtained unconditional BCUC approval of this Agreement and the transactions contemplated in this Agreement, within 180 days, or such later date as agreed to by the Parties in writing, of filing with BCUC;
- (b) FEI having obtained approval from the Oil and Gas Commission and the Provincial Agricultural Land Commission for FEI Facilities, and municipal approval for the location of the FEI pipeline on terms acceptable to FEI, in its sole and absolute discretion acting reasonably within 180 days, or such later date as agreed to by the Parties in writing, of BCUC approval;
- (c) Within fifteen (15) business days of execution of this Agreement, the Supplier providing FEI a fully executed SRW and Section 219 Covenant and priority agreements as described in Section 4.1;
- (d) Within seven (7) days upon execution of this Agreement by both Parties, the Supplier having delivered to FEI a duly executed guarantee from its affiliate company, [REDACTED] (the "Guarantor"), in the form of and on the terms as attached hereto as Schedule "F" (the "Guarantee"), guaranteeing the obligations of the Supplier under this Agreement.

If the foregoing Conditions Precedent are not fulfilled or waived by FEI by the respective dates set out above, then the parties' obligations under this Agreement will be at an end, and thereafter neither party shall have any further or continuing obligation or liability to the other under this agreement, except for those obligations and provisions which are specifically stated to survive the expiration or termination of this Agreement.

1.4 **Costs Incurred Prior to Satisfaction/Waiver of Conditions Precedent.** The Parties acknowledge and agree that if either Party elects to undertake any work or incur any costs with respect to this Agreement prior to the satisfaction or waiver of the Conditions Precedents, such Party will be solely responsible for all costs so incurred.

ARTICLE 2 - TERM

2.1 **Term.** This Agreement will commence on the Execution Date and will expire on October 31st following the [REDACTED] anniversary of the In-Service Date (the "**Initial Term**"), unless

terminated earlier or renewed in accordance with the terms of this Agreement (the “**Term**”), where “**In-Service Date**” means the earlier of:

- (a) the business day after FEI Facilities have accepted at least [REDACTED] gigajoules (“**GJ**”) of Biomethane per day for seven (7) consecutive days; and
- (b) the business day after the FEI Facilities have accepted Biomethane for a cumulative period of thirty (30) days.

2.2 **Delay of the In-Service Date.** Unless the Supplier, in the reasonable opinion of FEI, is continuing to undertake the work necessary to construct and install the Supplier Facilities with reasonable diligence, if the In-Service Date does not occur within twenty-four (24) months of acceptance of this Agreement by BCUC, or such later date as agreed by the Parties in writing, FortisBC may, at its option, and in addition to and without prejudice to any other right or remedy it may have, terminate this Agreement by written notice to the Supplier effective the date set out in such notice, without liability therefore or payment of any damages or penalties by FEI to the Supplier as a result of such termination, and the provisions of section 9.2 [*Effect of Default*] shall apply.

2.3 **Renewal.** This Agreement will renew automatically for one (1) additional term of [REDACTED] years (the “**Renewal Term**”) unless a Party provides the other Party with written notice of its intention to not renew this Agreement for the Renewal Term at least one (1) year prior to the expiry of the Initial Term.

ARTICLE 3 - DIVISION OF RESPONSIBILITIES

3.1 **Supplier Facilities.** The Supplier will design, build, own, operate, maintain, repair, upgrade, replace and support facilities on the Lands, at its own expense, as more particularly identified in Schedule “C” (the “**Supplier Facilities**”), to produce, capture and purify biogas and deliver Biomethane to the FEI Facilities.

3.2 **FEI Facilities.** FEI will design, build, operate, maintain, repair, upgrade, replace and support facilities on the License Area (as defined below), as more particularly identified in Schedule C (the “**FEI Facilities**”), to connect to the Supplier Facilities, measure and monitor Biomethane quantity and quality and inject the accepted Biomethane into FEI’s existing gas distribution system.

3.3 **FEI Approvals.** FEI shall obtain and maintain any consents, permits, filings, orders or other approvals, including governmental consents and approvals, building and construction permits, environmental permits, Oil and Gas Commission permits, Provincial Agricultural Land Commission exemptions, zoning changes or variances (collectively the “**Approvals**”) required, affecting or necessary for the ownership, installation, maintenance and operation of the FEI Facilities.

3.4 **Supplier Approvals.** The Supplier shall obtain and maintain all approvals required, affecting or necessary for the ownership, installation, maintenance and operation of the Supplier Facilities.

3.5 **Ownership of FEI Facilities.** The FEI Facilities are, and shall at all times remain, the personal property of FEI, despite the degree to which they may be annexed or affixed to the Lands and despite any rule of law or equity to the contrary and shall be freely alienable by FEI as its own property. FEI shall be entitled to install notices on the FEI Facilities identifying FEI’s ownership and pipeline location markers.

- 3.6 **Existing Supplier Approvals.** If any existing Approvals issued to the Supplier need to be updated to reflect the operation of the FEI Facilities on the Lands, and FEI is not able to update such Approvals in accordance with section 3.3 [*FEI Approvals*], the Supplier shall ensure such approvals are updated as required and FEI shall cooperate with and support the Supplier in obtaining such Approvals.
- 3.7 **Utilities.** The Supplier will, at no cost to FEI, provide the electrical and telephone connections to the limits of the FEI Facilities. The Supplier shall not be liable for any disruptions in such services, unless caused by any negligent act or omission of the Supplier.
- 3.8 **Cooperation.** To facilitate the connectivity between the Supplier Facilities and the FEI Facilities and manage the monitoring and injection of Biomethane into FEI's natural gas distribution system, the Parties agree to:
- (a) cooperate in the design, permitting, construction and connection of the respective facilities, including any upgrades and modifications to such facilities; provided that despite the exchange or review of, or comment on, any design drawings, by the other Party, each Party shall be solely responsible for the design and construction of their respective facilities;
 - (b) share operating data and data related to the interface between the FEI Facilities and the Supplier Facilities, and work together to optimize operation of their respective facilities; and
 - (c) notify each other in advance of proposed operational changes or system modifications or upgrades to their respective facilities and cooperate in the design of upgrades and modifications to the respective facilities, to ensure such changes, modifications or upgrades do not negatively impact the operation of the other Party's facilities; provided that despite the exchange or review of, or comment on, any design drawings, by the other Party, each Party shall be solely responsible for the design, construction, operation and maintenance of their own facilities.

ARTICLE 4 – ACCESS TO AND USE OF LANDS

- 4.1 **Grant of Land Rights.** The Supplier agrees to cause the Landlord to grant to FEI by written instrument, including a right of way and covenant, rights of access to operate, maintain, repair, replace and upgrade the FEI Facilities ("SRW and Section 219 Covenant"), over that portion of the Lands shown outlined on the drawings attached as Schedule B (the "SRW Area"), and on terms substantially similar to those set out in the form attached as Schedule "E". The Supplier shall do or cause all things to be done necessary to ensure that the SRW and Section 219 Covenant will be registered on title against the Lands in priority over all other encumbrances on title to the Lands as FEI may require.
- 4.2 **Access over the Lands.** The Supplier, hereby grants to FEI, at no cost, the free and unobstructed right to access over and across the Lands, with or without vehicles, machinery and equipment, as required from time to time, for FEI and its authorized employees, contractors and agents to access the FEI Facilities; provided however this right shall in no way restrict the Supplier from maintaining, changing or improving the Lands as long as FEI and its authorized employees,

contractors and agents continue to have access to the FEI Facilities. FEI's right of access over the Lands is subject to FEI's compliance with the reasonable requirements of the Supplier for the safety and security of the Lands, including as to access points and limitation on access during normal working hours except in the case of emergency.

4.3 **Grant of Rights to Third Parties.** Subject to section 4.5 [*Non-Interference*], the grant of rights to FEI hereunder does not preclude or prevent the Supplier from granting easements, statutory rights of way or other grants, leases or licenses over the Lands to any other person.

4.4 **Use of SRW Area.** FEI shall:

- (a) not do, suffer or permit anything in, on or from the SRW Area that may be or become a nuisance or annoyance to the owners, occupiers or users of land or premises adjacent to or near the Lands or to the public, including the accumulation of rubbish or unused personal property of any kind;
- (b) not do, suffer or permit any act or neglect that may in any manner directly or indirectly cause injury to the SRW Area;
- (c) use the SRW Area only for the purposes set out in this Agreement;
- (d) except as otherwise provided in this Agreement, pay all costs and expenses of any kind whatsoever associated with and payable in respect of FEI's use of the SRW Area, the FEI Facilities and all equipment, furniture and other personal property brought onto the SRW Area by FEI, including without limitation, property taxes, levies, charges and assessments, permit and license fees, repair and maintenance costs, administration and service fees, gas, water, sewage disposal and other utility and service charges and payments for work and materials;
- (e) carry on and conduct its activities in, on and from the SRW Area in compliance with any and all applicable laws from time to time in force, and to obtain all required approvals and permits thereunder, and not to do or omit to do anything in, on or from the SRW Area in contravention thereof;
- (f) not erect or place any sign or advertising within the SRW Area (save and except signage identifying FEI's ownership of the FEI Facilities in accordance with section 3.5 [*Ownership of FEI Facilities*]) without the prior written approval of the Supplier, acting reasonably; not to bring on or deposit any soil or fill onto the SRW Area except with the written consent of the Supplier;
- (g) co-ordinate all installation and construction activities on the SRW Area with the Supplier; and
- (h) cover all below ground works and restore the surface of the SRW Area to the same condition that existed at the commencement of the works to the reasonable satisfaction of the Supplier.

4.5 **Non-Interference.** The Supplier will not do or knowingly permit to be done anything in, under, over, upon or with respect to the Lands which, in the reasonable opinion of FEI, may interfere

with, diminish or injure FEI's rights hereunder or the installation, maintenance use or operation of the FEI Facilities, including but not limited to, anything which:

- (a) interrupts, endangers, impedes, disturbs or causes damage to the FEI Facilities or its operation, use, security or functionality;
- (b) removes, diminishes or impairs any vertical or lateral support for, or causes the movement or settlement of, the FEI Facilities; and
- (c) causes, permits or suffers any structure, equipment, act or function to exert any vertical load or lateral load upon or against, or impair the structural integrity of, the FEI Facilities;

without the prior written consent of FEI and in accordance with any conditions FEI may reasonably specify as a condition of such consent.

- 4.6 **Sale or Transfer of the Lands.** During the term of this Agreement, the Supplier shall not transfer its interest or rights under its lease with respect to the Lands, unless, with the written consent of FEI in accordance with section 19.9 [Assignment], the transferee assumes all the terms and conditions of this Agreement.

ARTICLE 5 – QUALITY, QUANTITY, TITLE AND INDEMNITY

5.1 Biomethane Quality and Delivery Quantity.

- (a) FEI will monitor Biomethane quality and quantity at the interconnection point between the Supplier Facilities and the FEI Facilities, as generally shown in the schematic drawing attached as part of Schedule C (the “**Interconnection Point**”) to determine whether the Biomethane meets the Specifications and the Volumetric Limits.
- (b) FEI agrees to accept and pay for any Biomethane made available by the Supplier which:
 - (i) meets the specifications as prescribed by FEI from time to time, acting reasonably, (the “**Specifications**”), the current of which are set out in Schedule A; and
 - (ii) subject to the volumetric requirements set out in Schedule D (the “**Volumetric Limits**”).
- (c) Any Biomethane not accepted by FEI will be returned to the Supplier Facilities or will be prevented from entering the FEI Facilities at the Interconnection Point.

5.2 **Acceptance of Non-Compliant Biomethane.** FEI, at its sole discretion and without any obligation to do so, may accept Biomethane that does not meet the Specifications or is outside the Volumetric Limits. Acceptance of Biomethane by FEI will be without prejudice to any other rights FEI may have under this Agreement, will be subject to FEI's continuing review and may be revoked, at FEI's sole option, at any time and for any reason, effective upon delivery to the Supplier of ten (10) days' prior written notice

5.3 **Minimum Annual Biomethane Supply.** If the Supplier does not supply:

- (a) the Minimum Annual Quantity (as defined in Schedule D (*Commercial Terms*)) for any two (2) consecutive Contract Years (as defined in Schedule D (*Commercial Terms*)), or
- (b) the Minimum Monthly Quantity (as defined in Schedule D (*Commercial Terms*)) for any six (6) consecutive months;

FEI, at its option, may:

- (c) reduce the Minimum Annual Quantity and/or the Minimum Monthly Quantity, as the case may be, to such quantities as established by FEI in its sole discretion; or
- (d) terminate this Agreement upon written notice to the Supplier, effective immediately, whereupon the provisions of ARTICLE 10 will apply.

5.4

[REDACTED]

5.5 **Increased Production Volume.** The Supplier will notify FEI of any proposed changes or improvements to the Supplier Facilities or the Lands or any other activity or circumstance which may result in a long-term increase to Biomethane above the Maximum Annual Quantity (the "**Excess Biomethane**") to allow FEI to evaluate the impacts of such increase on the FEI Facilities and its gas distribution system and FEI's ability to accommodate and accept such increased production volume. Provided such Excess Biomethane meets the Specifications, FEI shall have a right of first refusal to accept and purchase all or any portion of the additional production volume at the rates determined by Schedule D (*Commercial Terms*) either temporarily or permanently. If FEI does not accept and refuses to purchase all or any of the Excess Biomethane, the Supplier shall be entitled to use, sell or otherwise dispose of the excess production in a commercially and environmentally reasonable manner after consultation with FEI.

5.6 **Exclusivity.** In addition to its obligations to supply the minimum quantities of Biomethane as established in Schedule D (*Commercial Terms*), the Supplier covenants and agrees to exclusively

sell any additional Biomethane produced up to the Maximum Annual Quantity to FEI on the terms described in Schedule D.

- 5.7 **Excuse from Non-Performance for Maintenance.** Neither Party will be considered to be in default under this Agreement where such Party's non-performance is as a result of undertaking maintenance or repair on their respective facilities provided that
- (a) the non-performing Party is diligently undertaking such maintenance or repair to minimize its impacts and;
 - (b) maintenance or repair work will not exceed 5 days per month and 90 days per year in aggregate.
- 5.8 **Title and Warranty.** Provided the Biomethane meets the Specifications, or having failed to meet the Specifications, is accepted by FEI pursuant to section 5.2 [*Acceptance of Non-Compliant Biomethane*], title to and responsibility for that Biomethane shall pass from the Supplier to FEI at the Interconnection Point. Any Biomethane rejected by FEI will be redirected back to the Supplier Facilities and title to and responsibility for such Biomethane shall not pass to FEI. The Supplier warrants that it has the right to convey and will transfer good and merchantable title to the Biomethane free and clear of all liens, encumbrances and claims.
- 5.9 **Audit and Verification.** Each Party will provide access to the other Party, from time to time during ordinary business hours, to its records and measurement equipment as reasonably requested by the other Party to verify compliance with the terms of this Agreement, including to verify the quality and quantity of Biomethane.

ARTICLE 6 – PURCHASE PRICE AND PAYMENT

- 6.1 **Payment for Biomethane.** Commencing from the In-Service Date and each month during the Term thereafter, FEI shall pay the Supplier for the quantity of Biomethane accepted by FEI into the FEI Facilities, as determined by meter readings, at the rates and subject to the adjustments and any deductions set out in Schedule D, plus applicable taxes thereon. The Supplier shall not be entitled to receive any payment from FEI for any Biomethane rejected by FEI and returned to the Supplier Facilities.
- 6.2 **Payment Terms.**
- (a) On or about the 15th day of each month, FEI shall generate a statement for the preceding month showing the quantity of Biomethane accepted by FEI in GJ, the applicable rates and adjustments, the net amount payable and the cumulative quantity of Biomethane accepted for the then current year up to that month. If the quantity of Biomethane accepted is not known by the billing date, FEI will issue the statement based on a reasonable estimate of the quantity accepted and make the necessary adjustments as soon as practical and in any event by the next billing date.
 - (b) FEI will pay the net amount payable within 30 days of delivery of the statement to the Supplier.
 - (c) Any errors in any statement or disputes as to amounts due shall be promptly reported to FEI and any resulting underpayments or overpayments identified will be refunded or repaid with accrued interest at the rate of 1.5% per month (19.56% per annum).

ARTICLE 7 – CONTRIBUTION IN AID OF CONSTRUCTION – FEI FACILITIES

7.1 **Contribution in Aid of Construction.** The Supplier hereby agrees to contribute towards all or part of the capital costs associated with the design and construction of the FEI Facilities as well as the extension of and upgrades to FEI's natural gas distribution system to enable connectivity to the FEI Facilities, provided that FEI shall deliver a summary of all of such costs for the Supplier's review, and on the terms described in section 7.2 below (the "Supplier Contribution").

7.2 Capital Cost Contribution

- (a) The Supplier shall pay to FEI a one-time monetary lump sum payment equal to the capital costs of FEI's Facilities (the "Supplier Contribution") on or before the first anniversary of the In-Service Date or at another later date as determined by FEI in its sole discretion. FEI will provide the Supplier with an invoice for the Supplier Contribution;
- (b) at FEI's request and discretion, as a monetary payment made to FEI's designated contractors promptly upon receipt of notice from FEI as to the contractor name and payment details; and/or
- (c) through undertaking some of the work for the FEI Facilities of a scope and manner agreed to by FEI, at its sole discretion; and/or
- (d) in such other manner as required by FEI, in its sole discretion.

7.3 Annual Operations and Maintenance Costs

- (a) The Supplier shall pay FEI's costs to operate and maintain the FEI Facilities annually. FEI shall send the Supplier an invoice for FEI's costs to operate and maintain the FEI Facilities for the previous year no later than March 31st of each calendar year, and Supplier shall pay FEI no later than 30 days after receipt of the invoice by the Supplier.
- (b) The Supplier may demand further documentation or explanation of annual operations and maintenance costs once it received an invoice from FEI. Any disputed costs shall be resolved in the manner described in Article 16 (*Dispute Resolution*) below.

ARTICLE 8 – ENVIRONMENTAL ATTRIBUTES AND REPORTING

8.1 **Offsets.** The parties agree FEI shall have the sole right, benefit, title and interest in and to, arising out of or resulting from the environmental benefits associated with the capture of biogas by the Supplier Facilities and purchased by FEI pursuant to the terms herein and the displacement of traditional natural gas by biomethane in FEI's natural gas distribution system ("**GHG Reductions**"), whether such right, benefit, title or interest is in existence as of the Effective Date or arises after the Effective Date, including:

- (a) the sole right to claim title to, interest in, the benefit of or the responsibility for the GHG Reductions;
- (b) the sole right to register, certify or apply for the issuance or validation of any current or future credits, allowance, instrument, offset, certificate, right, benefit or advantage or proprietary or contractual right, whether or not tradable (a “**Credit**”) associated with the GHG Reductions;
- (c) the sole right to hold and to transfer or assign to any person its title to, benefit of or responsibility for the GHG Reductions or the associated Credits;
- (d) the sole right to apply the GHG Reductions against its own or a third party’s greenhouse gas emissions or to net those emissions to zero, whether or not as part of a legal obligation to reduce greenhouse gas emissions;
- (e) all revenues, entitlement, benefits and other proceeds arising from or related to the foregoing;

(collectively, the “**Environmental Attributes**”).

8.2 Representations and Warranties – Environmental Attributes

The Supplier represents and warrants that:

- (a) The Biomethane produced is generated through the anaerobic digestion of organic matter and is not supplemented, replaced in whole or in part with fuels purchased or extracted other than from the Supplier Facilities;
- (b) At the In-Service Date, the carbon intensity of the Biomethane will be ■ gCO₂e/MJ and will not exceed ■ gCO₂e/MJ during the Term of the Agreement;
- (c) Supplier will provide FEI with a report calculating the carbon intensity as described in section 8.2(b) above (the “Carbon Intensity Report”), within two (2) business days upon written request by FEI to the Supplier;
- (d) Environmental Attributes that could be associated with the produced Biomethane at the time of acceptance by FEI as described herein are attached thereto and that neither the Biomethane nor the Environmental Attributes associated therewith have been sold more than once by the Supplier at any point between production and acceptance by FEI, whether by sales into carbon markets or otherwise;
- (e) Up to the Interconnection Point, neither the Environment Attributes nor the Biomethane have been used by Supplier to meet any federal, provincial or local renewable energy requirement, renewable energy procurement, renewable energy portfolio standard, or other renewable energy mandate; and
- (f) will transfer to FEI, at the Interconnection Point, all Environmental Attributes, whether current or future, known or unknown at the time of acceptance, associated with the Biomethane along with the transfer of title in the Biomethane.

8.3 **Support and Assistance.** The Supplier will, at FEI's expense, support FEI in all applications for the Environmental Attributes and provide any assistance, authorizations, documentation and information FEI reasonably requires in this regard, including:

- (a) the quantification and verification of the carbon intensity of the Biomethane produced at the Supplier's Facilities;
- (b) authorization or enabling FEI to apply, on the Supplier's behalf, for designation as a Part 3 fuel supplier with respect to the resulting Biomethane, for the purposes of the *Greenhouse Gas Reduction (Renewable and Low Carbon Fuel Requirements) Act [BC 2008] Chapter 16 ("RLCFRA")*; and
- (c) the carbon intensity shall be calculated in accordance with the requirements of the government of British Columbia as set out in section 6(6) of the RLCFRA and shall be certified by an authorized signatory of Supplier.

8.4 **Reporting Requirements.** Each Party shall be responsible to comply with all reporting requirements of all applicable environmental laws with respect to emissions from their respective facilities.

8.5 **Production Audit**

- (a) At least once, but no more than twice in any 12-month period, the Supplier shall, upon request by FEI, provide records and any other documentation and provide FEI and/or FEI's consultant with reasonable and physical access to the Supplier Facilities for the purpose of confirming compliance with the obligations, representations and warranties regarding the Biomethane and the Environmental Attributes associated with the Biomethane.
- (b) No more than twice in any 12-month period, FEI may request Supplier to confirm in writing that the representations and warranties concerning the Biomethane and Environmental Attributes associated with the Biomethane, as made by Supplier, under ARTICLE 8 (*Environmental Attributes and Reporting*) remain valid.
- (c) If FEI, acting reasonably, finds that the obligations, representations or warranties regarding the Biomethane and the Environmental Attributes associated with the Biomethane are in non-compliance with this Agreement, then Supplier may, acting reasonably, dispute such finding. Each Party agrees to provide the other Party with its findings and supporting documentation and agrees to cooperate, in good faith, with each other to resolve the dispute.

ARTICLE 9 – DEFAULT

9.1 **Default.** Either Party (the "Defaulting Party") shall be in default of this Agreement if:

- (a) it makes an assignment or any general arrangement for the benefit of creditors, files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause under any bankruptcy or similar law for the protection of creditors or has such petition filed or proceeding commenced against it, becomes bankrupt or

insolvent (however evidenced) or is unable to pay debts as they fall due (any one of which is an "Insolvency Event");

(b) the Defaulting Party is in breach of any term, covenant, agreement, , condition or obligation imposed on it under this Agreement, provided that:

(i) the other Party (the "**Non-Defaulting Party**") provides the Defaulting Party with a written notice of such default and a 20-day period within which to cure such a default (the "**Cure Period**"); and

(ii) the Defaulting Party fails to cure such default during the Cure Period, or if such default is not capable of being cured within the Cure Period, fails in good faith to commence the curing of such default upon receipt of notice of default and to continue to diligently pursue the curing of such default thereafter until cured.

9.2 **Effect of Default.** Upon default, the Non-Defaulting Party may, at its option and in addition to and without liability therefore or prejudice to any other right or remedy it may have:

(a) cease performing its obligations under this Agreement, including suspending or refusing to make any payment due hereunder, until the default has been fully remedied, and no such action shall relieve the Defaulting Party from any of its obligations under this Agreement;

(b) undertake the necessary steps to remedy the default at the Defaulting Party's expense, and such action shall not relieve the Defaulting Party from any of its obligations under this Agreement;

(c) terminate this Agreement immediately upon notice to the other Party, whereupon the provisions of ARTICLE 10 shall apply; and

(d) in the case of the Non-Defaulting Party being FEI, FEI may exercise its rights pursuant to the Security, including drawing down the Letter of Credit.

ARTICLE 10 - EFFECT OF EXPIRY OR TERMINATION.

10.1 **Removal of FEI Facilities.** Upon the expiry or early termination of this Agreement, unless otherwise agreed by the Parties, FEI will, within 90 days following the expiry date or termination date, as the case may be, remove the FEI Facilities from the Lands and repair any damage to the Lands arising from such removal; provided that FEI will be obligated to remove only those portions of the FEI Facilities located above surface level and may leave any un-removed portions in a safe manner in accordance with FEI standard practice. Any portion of the FEI Facilities not removed by FEI will become the property of the Supplier at no cost to the Supplier.

10.2 **Termination Payment.** If:

FEI terminates this Agreement pursuant to section 9.29.2(c) , Section 15.3 (Force Majeure) or Section 5.3; or

(a) the Supplier sells or otherwise transfers its interest in and to the Lands in contravention of section 4.6 (*Sale or Transfer of the Lands*);

then, in addition to any other amounts due and owing by the Supplier to FEI, the Supplier shall pay to FEI, within thirty (30) days of invoicing, a termination payment (the Termination Payment") consisting of the following amounts (plus applicable taxes thereon):

- (i) FEI's net costs associated with removing the FEI Facilities, plus
- (ii) the unrecovered net book value of the FEI Facilities that will be stranded, adjusted for the positive or negative salvage value of the FEI Facilities.

ARTICLE 11 - SECURITY

- 11.1 The Supplier will provide FEI with the Guarantee and a Letter of Credit (together, the "Security") as described herein.
- 11.2 **The Guarantee.** The Guarantee will be in the form of as attached hereto as Schedule F and will be accompanied by a certificate from an officer of the Guarantor and an opinion from the Guarantor's counsel, addressed and delivered directly to FEI in the form –acceptable to FEI, in its sole discretion.
- 11.3 **Guarantee Validity Period.** The Guarantee provided by the Guarantor pursuant to this Agreement must be valid and in full force and effect for the Term unless otherwise agreed to by FEI in writing.
- 11.4 **Letter of Credit.** The Supplier will deliver a letter of credit ("Letter of Credit") to FEI prior to the date of commencement of construction of the FEI Facilities, and will:
- (a) be an irrevocable letter of credit in favour of FEI and be in the form and on the terms and conditions specified in Schedule "G" – Letter of Credit or any other form agreed in writing by FEI, acting reasonably;
 - (b) be for the amount of the Supplier Contribution not to exceed [REDACTED];
 - (c) be issued by a bank or financial institution in Canada approved by FEI which has a rating with Standard and Poor's of not less than AA- (or the Moody's equivalent rating or is a Schedule 1 Bank or alternative acceptable to FEI); and
 - (d) be capable of being draw down on at the issuing bank or financial institution's counters in the City of Vancouver, British Columbia or such other city or municipality within the Province of British Columbia as may be acceptable to FEI.
- 11.5 **Letter of Credit Validity Period.** The Letter of Credit provided by the Supplier pursuant to this Agreement must be valid and in full force and effect from the commencement of construction by FEI of the FEI Facilities until the In-Service Date. Written notice of commencement of construction of the FEI Facilities will be provided to the Supplier five (5) business days in advance of the commencement of the work. Upon the In-Service Date, FEI shall do such things and deliver such documents as may be required by the issuing bank or financial institution of the Letter of Credit, to facilitate the cancellation of the Letter of Credit. .

11.6 Calls on the Security

- (a) If the Supplier has breached or fails to perform its obligations in accordance with this Agreement, then:
 - (i) FEI may have recourse to the Security to recover any or all of the following:
 - (a) the Termination Payment;
 - (b) the Supplier Contribution;
 - (c) any debt or other monies due from the Supplier to FEI which the Supplier has failed to pay; and
 - (d) any money or any claim to money that FEI may have against the Supplier, whether for damages or otherwise,which are due or which FEI reasonably considers are likely to become due under this Agreement, provided the Letter of Credit will no longer form part of the Security if cancelled pursuant to section 11.5
- (b) Nothing in this section will affect the right of FEI to:
 - (i) recover from the Supplier the whole of any debt, money or claim, or any balance that remains, after the recourse to the Security; and
 - (ii) call on or make demand under the Security provided or procured by the Supplier under this Agreement.
- (c) The Supplier agrees that it will not, in any proceedings whatsoever, exercise any rights it may otherwise have, nor take any steps to enjoin or otherwise restrain:
 - (i) FEI from using any sum or sums received from the conversion or a call upon of the Security;
 - (ii) FEI from using any sum or sums received from the Security pursuant to the Security;
 - (iii) FEI from exercising its rights under the Security;
 - (iv) the Guarantor from exercising its rights or performing its obligations under the Guarantee; or
 - (v) the Guarantor from fulfilling any of its obligations pursuant to the Guarantee.

The Supplier acknowledges and agrees that the Security in no way derogates from the Supplier's liability for the performance of its obligations under this Agreement.

11.7 Replacement Security

- (a) The Guarantor or the Supplier, as the case may be, shall provide FEI with quarterly financial statements and annual audited financial statements for FEI's review during the Term. If, in FEI's sole discretion, there is a change to the financial situation which could adversely impact the ability of the Security to satisfy the obligations of the Supplier under this Agreement, of the Security, FEI may request that the Supplier must, at the Supplier's cost and expense, lodge with FEI replacement security issued by a bank or financial institution in Canada approved by FEI which has a rating with Standard and Poor's of not less than AA- (or the Moody's equivalent rating or is a Schedule 1 Bank, or alternative acceptable to FEI) within thirty (30) days after FEI's request.
- (b) If at any time after the Security has been delivered by the Supplier to FEI:
 - (i) the Guarantor or the Supplier is subject to an Insolvency Event;
 - (ii) the Guarantor or the Supplier proposes to sell, dispose, or assign all or substantially all of its assets, or at any time before the Supplier Contribution has been paid in full, the Guarantor issues dividends greater than [REDACTED]; or
 - (iii) the Guarantor's or the Supplier's obligations under the Security become impossible to perform or enforce,then the Supplier, if requested by FEI, must lodge with FEI replacement security in the form of a substitute guarantee or a letter of credit or performance bond issued by a bank or financial institution in Canada approved by FEI within thirty (30) days after FEI's request and which otherwise satisfies the requirements of this section.
- (c) The Supplier must promptly provide notice to FEI if it becomes aware of any of the matters or things described in sections 11.7 (a) and (b) above.
- (d) If the Supplier fails to renew or replace the Letter of Credit at least 30 days prior to its expiry or the bank or financial institution fails to comply with or perform its obligations under the Letter of Credit or disclaims, repudiates, terminates, rejects or challenges the validity of the Letter of Credit, then, FortisBC may draw on the Letter of Credit for up to its full amount without further notice to the Supplier. Upon receipt of a satisfactory replacement Letter of Credit, FEI will return the proceeds, to the Supplier, drawn from the original Letter of Credit, without interest.

ARTICLE 12 - INSURANCE REQUIREMENTS

- 12.1 **Insurance.** Each Party shall obtain and maintain the following insurance coverage and provide proof of coverage to the other Party:

- (a) General Commercial 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; and
- (b) Such other insurance as reasonably required by the other Party from time to time.

Each Party shall be responsible for payment of any deductibles of their policies. All such policies shall provide that the insurance shall not be cancelled or changed in any way without the insurer giving at least 10 calendar days' written notice to the other Party.

ARTICLE 13 - ENVIRONMENTAL RELEASE AND INDEMNITY

- 13.1 **Definition of Contaminants.** ("Contaminants") means collectively, any contaminant, toxic substances, 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, defoliants, or any other solid, liquid, gas, vapour, odour or any other substance the storage, manufacture, disposal, handling, treatment, generation, use, transport, remediation or release into the environment of which is now or hereafter prohibited, controlled or regulated by law.
- 13.2 **Supplier Release and Indemnity.** Despite any other provision of this Agreement, the Supplier acknowledges and agrees that FEI is not and shall not be responsible for any Contaminants now present, or present in the future, in, on or under the Lands, or that may or may have migrated on or off the Lands and hereby releases and agrees to indemnify FEI and its directors, officers, employees, 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) arising from or in connection with:
- (a) any release or alleged release of any Contaminants at or from the Lands;
 - (b) the presence of any Contaminants on or off the Lands before or after the Execution Date;

except with respect to any Contaminants brought onto the Lands by FEI or any Contaminants released from the Lands as a result of any negligent act or omission of FEI.

- 13.3 **FEI Release and Indemnity.** Despite any other provision of this Agreement, FEI shall release and indemnify the Supplier and its directors, officers, employees, 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) arising from or in connection with to any Contaminants brought onto the Lands by FEI or any Contaminants released from the Lands as a result of any negligent act or omission of FEI.

ARTICLE 14 - INDEMNIFICATION AND LIMITATION OF LIABILITY

- 14.1 **Indemnification.** Each Party hereby indemnifies and holds harmless the other Party and its employees, directors and officers from and against any and all adverse claims, losses, suits, actions, judgments, demands, debts, accounts, damages, costs, penalties and expenses (including all legal fees and disbursements) arising from or out of:
- (a) the negligence or wilful misconduct of such Party, its employees, directors, officers or contractors; or
 - (b) the breach by such Party of any of the provisions contained in this Agreement.
- 14.2 **Limitation of Liability.** Each Party's liability to the other Party under this ARTICLE 14 shall be limited to the payment of direct damages. In no event shall either Party be responsible or liable to the other Party for any indirect, consequential, punitive, exemplary or incidental damages of the other Party or any third party arising out of or related to this Agreement even if the loss is directly attributable to the gross negligence or wilful misconduct of such Party, its employees, or contractors.
- 14.3 **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.

ARTICLE 15 - FORCE MAJEURE

- 15.1 **Effect of Force Majeure.** Neither Party will be in default of this Agreement by reason only of any failure in the performance of such Party's obligations pursuant to this Agreement if such failure arises without the fault or negligence of such Party and is caused by any event of Force Majeure (as defined below) that makes it commercially impracticable or unreasonable for such Party to perform its obligations under this Agreement and, in such event, the obligations of the Parties will be suspended to the extent necessary for the period of the Force Majeure condition, save and except neither Party will be relieved of or released from its obligations to make payments to the other Party as a result of an event of Force Majeure. For the purpose of this section, "**Force Majeure**" means any cause which is unavoidable or beyond the reasonable control of any Party to this Agreement and which, by the exercise of its reasonable efforts, such Party is unable to prevent or overcome, including, acts of God, war, riots, intervention by civil or military authority, strikes, lockouts, accidents, acts of civil or military authority, or orders of government or regulatory bodies having jurisdiction, or freezing of pipelines or the failure of gas supply, temporary or otherwise; provided however, the lack of funds or other financial cause shall not be an event of Force Majeure.
- 15.2 **Notice of Force Majeure.** The Party whose performance is prevented by an event of Force Majeure must provide notification to the other Party of the occurrence of such event as soon as reasonably possible.
- 15.3 **Notice of Termination as a result of Force Majeure.** Either Party may, by notice to the other Party, terminate the Agreement if, as a result of Force Majeure, performance of all or a substantial portion of the obligations pursuant to the Agreement has become impossible or impractical, and such status persists or is highly likely to persist for at least two (2) years. If the Agreement is

terminated pursuant to this provision, no liability or penalty be imposed on either party as a result of such termination except:

- (a) the Supplier shall remain liable to FEI for the Supplier Contribution; and
- (b) the provisions of Article 10 will apply.

ARTICLE 16 - DISPUTE RESOLUTION

- 16.1 **Dispute Resolution.** The Parties will make a *bona fide* attempt to settle any dispute which may arise under, out of, in connection with or in relation to this Agreement by amicable negotiations between their respective senior representatives and will provide frank and timely disclosure to one another of all relevant facts and information to facilitate negotiations. If the Parties are unable to resolve the dispute within fifteen (15) days, or if the Parties agree to waive such discussions in respect of a particular issue, either Party may refer the dispute to a single arbitrator who is appointed and renders a decision in accordance with the then current "Domestic Commercial Arbitration Shorter Rules of Procedure" or similar rules of the British Columbia International Commercial Arbitration Centre ("**BCICAC**"). The decision of the arbitrator shall be final and binding. 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, and in such a case the non-prevailing Party shall pay all costs and expenses of the arbitration, but not those of the prevailing Party. The arbitration will take place in Vancouver, British Columbia and be conducted in English.
- 16.2 **Performance of Obligations.** The Parties shall continue to fulfill their respective obligations pursuant to this Agreement during the resolution of any dispute in accordance with this section.
- 16.3 **Litigation.** Nothing contained in this Article precludes either Party from:
- (a) having a dispute determined by the BCUC if the dispute is within the jurisdiction of the BCUC; and
 - (b) having a dispute that has not been referred to arbitration be determined by a court of competent jurisdiction in the Province of British Columbia.

ARTICLE 17 - CONFIDENTIALITY

- 17.1 **Confidentiality.** All information or documentation (no matter in what form or media) received by a Party (the "**Receiving Party**") which has been specifically marked by other Party (the "**Disclosing Party**") as confidential (the "**Information**") shall be deemed to be confidential and proprietary to the Disclosing Party. Except as otherwise provided herein, the Receiving Party shall not directly or indirectly disclose the Information to any third party without the prior written consent of the Disclosing Party. Such consent is not required where the Receiving Party discloses such Confidential Information:
- (a) to its directors, officers, employees, agents, accountants, lawyers, consultants or financial advisers or those of its affiliates; or
 - (b) to a third party that is another contractor or consultant retained by the Disclosing Party for the purposes of this MOU and the activities described herein;

who need to know such information for the proper performance of the Parties' respective obligations contemplated herein.

- 17.2 **Exception for Regulatory Submission.** Despite the foregoing, the Receiving Party may use the Information in connection with the preparation for and conduct of submissions to regulatory agencies, subject to requesting that the regulatory agency treat the Information as confidential in accordance with the agency's rules of procedure for confidential filings.
- 17.3 **Exclusions** The obligation of confidentiality set out above shall not apply to material, data or information which: (1) is known to the Receiving Party prior to its receipt thereof; (2) is generally available to the public; (3) has been obtained from a third party which has the right to disclose the same; and (4) is required by law to be disclosed, provided that where disclosure is required by law, the Receiving Party will, unless prohibited by law, forthwith notify the Disclosing Party to enable the Disclosing Party to mount a defense to such disclosure.

ARTICLE 18 – REPRESENTATIONS AND WARRANTIES

18.1 The Supplier represents and warrants to FEI:

- (a) That it is duly incorporated or registered and validly existing in good standing under the laws of Canada (provincially or federally), and has the power and authority to carry on its business, undertake to take all necessary action to maintain itself in good standing and preserve its legal capacity during the Term.
- (b) It has the full right, power and authority to enter into this Agreement and the Letter of Credit and all necessary corporate action has been taken to authorize and approve the execution and delivery of this Agreement and performance of the obligations hereunder;
- (c) this Agreement and the Letter of Credit and the performance of its obligations hereunder do not breach any provisions of any other agreement or law that is binding on or applicable to such party; and
- (d) it is not party to any action, suit or legal proceeding, actual or threatened, and there are no circumstances, matters or things known to such party which might give rise to any such action, suit or legal proceeding, and there are no actions, suits or proceedings pending or threatened against such party before or by any governmental authority, which could affect its ability to perform its obligations under this Agreement and the Letter of Credit.

18.2 FEI represents and warrants to the Supplier:

- (a) It has the full right, power and authority to enter into this Agreement and all necessary corporate action has been taken to authorize and approve the execution and delivery of this Agreement and performance of the obligations hereunder;
- (b) this Agreement and the performance of its obligations hereunder do not breach any provisions of any other agreement or law that is binding on or applicable to such party; and

- (c) it is not party to any action, suit or legal proceeding, actual or threatened, and there are no circumstances, matters or things known to such party which might give rise to any such action, suit or legal proceeding, and there are no actions, suits or proceedings pending or threatened against such party before or by any governmental authority, which could affect its ability to perform its obligations under this Agreement.

ARTICLE 19 – GENERAL

- 19.1 **Costs.** 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.
- 19.2 **Publicity.** Neither Party shall initiate any media releases, interviews, or presentations to the media regarding the terms of this Agreement without the agreement and approval of the other Party, not to be unreasonably withheld or delayed.
- 19.3 **Compliance with Laws.** Each Party covenants, as a material provision of this Agreement, it will comply with all applicable codes, statutes, by-laws, regulations or other laws in force in British Columbia during the Term.
- 19.4 **Governing law.** This Agreement shall be governed by and construed in accordance with the laws of the Province of British Columbia and the laws of Canada. To the extent Article 16 (*Dispute Resolution*) is not applicable to a dispute between the Parties, the Parties hereby attorn to the exclusive jurisdiction of the courts of British Columbia and all courts competent to hear appeals therefrom.
- 19.5 **Notice.** Any invoices, payments, notices or other communication required to be given or made pursuant to the Agreement shall, unless otherwise expressly provided herein, shall be in writing and shall be personally delivered to or sent by facsimile to either Party at its address set forth below and deemed to have been received the next business day following delivery or facsimile transmittal:

If to: **FortisBC Energy Inc.**
16705 Fraser Highway, Surrey, BC V4N 0E8
Attention: Director, Renewable Gas and Low
Carbon Fuels
Fax: 604 592 7444
With a copy to:
biogasprogram@fortisbc.com

If to: **Net Zero Waste Abbotsford
Inc.** 5050 Gladwin Road,
Abbotsford British Columbia, V4X
1X8

Attention: [REDACTED]
[REDACTED]
[REDACTED]

- 19.6 **Schedules.** The schedules attached to this agreement are an integral Part of this Agreement and are hereby incorporated into this Agreement as a part thereof.
- 19.7 **Amendments to be in writing.** Except as set out in this Agreement, no amendment or variation of the Agreement shall be effective or binding upon the Parties unless such amendment or variation is set forth in writing and duly executed by the Parties, and accepted by the BCUC if required pursuant to the *Utilities Commission Act*.

- 19.8 **Waiver.** No Party is bound by any waiver of any provision of this Agreement unless such waiver is consented to in writing by that Party. No waiver of any provisions of this Agreement constitutes a waiver of any other provision, nor does any waiver constitute a continuing waiver unless otherwise provided.
- 19.9 **Assignment.** Neither Party shall assign its rights and obligations under this Agreement without the prior written consent of the other Party. Despite the foregoing, FEI may assign this Agreement, or parts thereof, to any of its affiliates.
- 19.10 **Enurement.** This Agreement enures to the benefit of and is binding on the Parties and their respective successors and permitted assigns.
- 19.11 **Survival.** The following provisions shall survive the termination or expiration of this Agreement: ARTICLE 13 [*Environmental Release and Indemnity*], 14 [*Indemnification and Limitation of Liability*], ARTICLE 16 [*Dispute Resolution*], ARTICLE 17 [*Confidentiality*], Section 19.4 [*Governing Law*] and Section 19.5 [*Notice*].
- 19.12 **Remedies Cumulative.** All rights and remedies of each Party under this Agreement are cumulative and may be exercised at any time and from time to time, independently and in combination.
- 19.13 **Severability.** If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such determination does not impair or affect the validity, legality or enforceability of any other provision of this Agreement.
- 19.14 **Further Assurances.** The Parties shall sign such further and other documents and do and perform and cause to be done and performed such further and other acts and things as may be necessary or desirable to give full effect to this Agreement.
- 19.15 **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written. There are no conditions, covenants, representations, warranties or other provisions, whether express or implied, collateral, statutory or otherwise, relating to the subject matter of this Agreement except as provided in this Agreement.
- 19.16 **Time is of the essence.** Time is of the essence of this Agreement.
- 19.17 **Execution.** This Agreement may be executed in counterparts, each of which shall be deemed as an original, but all of which shall constitute one and the same instrument. Delivery of an executed counterpart of this Agreement by facsimile or electronic transmission hereof shall be as effective as delivery of an originally executed counterpart hereof.

19.18 **Interpretation.** In and for the purpose of this Agreement:

- (a) this “**Agreement**” means this agreement as the same may from time to time be modified, supplemented or amended in effect,
- (b) the headings are for convenience only and do not form a part of this Agreement and are not intended to interpret, define or limit the scope, extent or intent of this Agreement, and
- (c) the singular of any term includes the plural, and vice versa, the use of any term is generally applicable to any gender and, where applicable, a corporation, the word “or” is not exclusive and the word “including” is not limiting (whether or not non-limiting language (such as “without limitation” or “but not limited to” or words of similar import) is used with reference thereto).

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

FORTISBC ENERGY INC.

by its authorized signatory(ies):



Roger Dall'Antonia, President and CEO

NET ZERO WASTE ABBOTSFORD INC.

by its authorized signatory(ies):





Schedules attached:

Schedule A – Biomethane Acceptance Specifications

Schedule B – Drawing of SRW Area

Schedule C – Description of Supplier Facilities and FEI Facilities

Schedule D – Commercial Terms

Schedule E – SRW and Section 219 Covenant

Schedule F – Guarantee

Schedule G – Letter of Credit

Schedule A
Biomethane Acceptance Specifications

The Biomethane must be free of contaminants, bacteria and pathogens, and not contain sand, dust, gums, oils and other impurities or other objectionable substances, except in such quantities as approved in writing by FEI and which are not injurious to pipelines or do not interfere with the transmission or commercial utilization of the biomethane within the FEI distribution system, as determined by FEI.

Despite the foregoing, the Biomethane may contain the following properties / contaminants within the limits shown in the table below, provided that FEI may revise this list (including adding properties / contaminants and/or revising limits) should property / contaminants and/or limits be shown to be injurious to pipelines or interfere with the transmission or commercial utilization of the Biomethane, as determined by FEI:

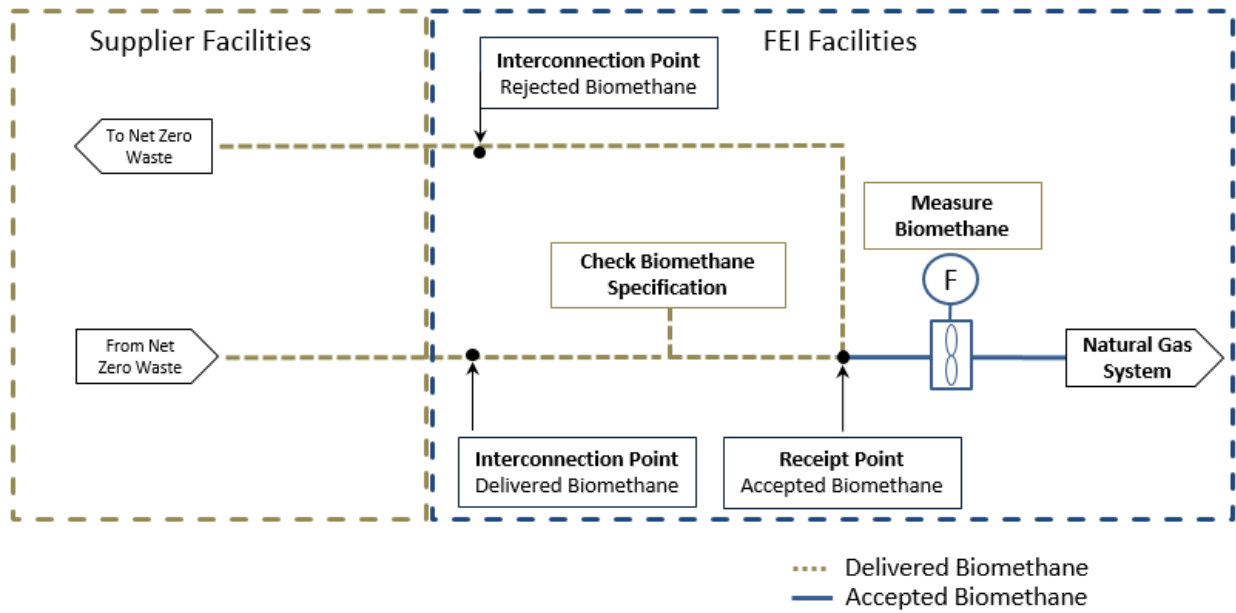
PROPERTY/ CONTAMINANT	LIMITS
Pressure	not less than 420 kilopascals
Hydrogen Sulphide (H ₂ S)	Less than 6 mg/m ³
Water	Less than 65 mg/m ³ of water vapour
	No liquid water
Hydrocarbons	Not have a hydrocarbon dewpoint in excess of minus 9°C at the delivery pressure
	No hydrocarbons in liquid form
Total Sulfur	Less than 23 mg/m ³
Carbon Dioxide (CO ₂)	Less than 2% by volume
Oxygen (O ₂)	Less than 0.4% by volume
Temperature	54°C maximum
Heating value/calorific power	36.00 MJ/m ³ minimum (15°C, 101.3kPa)
Siloxanes	Less than 1 mg/m ³
Carbon monoxide (CO)	Less than 2% by volume
Inert gases	Less than 4% by volume
Ammonia (NH ₃)	3mg/m ³
Bacteria and pathogens	Impurity filter (0.3 to 5 microns)



Schedule C
Description of Supplier Facilities and FEI Facilities

- A. Supplier Facilities** means those facilities necessary to capture and purify biogas and deliver the resulting Biomethane to the FEI Facilities, including but not limited to:
- (a) anaerobic digesters
 - (b) waste receiving and conditioning facilities (such as pasteurizer);
 - (c) biogas purification/upgrading equipment;
 - (d) control systems,
 - (e) compression equipment to reach the minimum delivery pressure;
 - (f) a flare system; and
 - (g) piping between the purification/upgrading equipment and the FEI Facilities.
- B. FEI Facilities** means those facilities necessary to connect to the Supplier Facilities, measure and monitor Biomethane quantity and quality and inject the accepted Biomethane into FEI's existing gas distribution system, including but not limited to:
- (a) main extension and connection;
 - (b) metering;
 - (c) gas quality monitoring;
 - (d) pressure regulation;
 - (e) odorizing;
 - (f) safety shut offs;
 - (g) monitoring sensors and communications equipment capable of automatically re-starting injection of Biomethane into the distribution system once Biomethane has met the Specifications, if the Biomethane has temporarily failed to meet the Specifications;
 - (h) foundation;
 - (i) signage;
 - (j) fencing;
 - (k) outlet piping from fenced area to main line located adjacent to the Lands; and
 - (l) inlet shut-off valves located immediately adjacent to fenced area built by FEI.
- C. Interconnection Point** - The Interconnection Point between the Supplier Facilities and the FEI Facilities is within the location shown on the schematic diagram attached to this Schedule C.

Description of Supplier Facilities and FEI Facilities



1. VOLUMETRIC LIMITS

- 1.1 The following quantity limitations, as established as a result of the system and capacity limitations of the Supplier Facilities and the limitations and thresholds established by the BCUC and applicable to FEI with respect to acceptance and injection of Biomethane into its natural gas distribution system, as measured by equipment forming part of the FEI Facilities (the “**Volumetric Limits**”) apply to this Agreement:
- (a) **Maximum Annual Quantity** - [REDACTED] GJ per Contract Year, where “**Contract Year**” means the period from November 1st to October 31st of each year; provided that the Maximum Annual Quantity will be prorated for part years;
 - (b) **Minimum Annual Quantity** – [REDACTED] GJ per Contract Year.
 - (c) **Minimum Monthly Quantity** – 1/12th of the Minimum Annual Quantity.
 - (d) **Maximum Hourly Flow Rate**
Summer term - for the months of June, July and August – [REDACTED] GJ per hour;
Winter term - For the months of December, January and February – [REDACTED] GJ per hour;
At all other times – [REDACTED] GJ per hour.

2. PRICE AND ADJUSTMENTS

- 2.1. **Purchase Price.** FEI shall pay the Supplier for the quantity of Biomethane accepted by FEI per month, commencing from the In-Service Date, at the following rate, subject to annual adjustment pursuant to section 2.2 (*Annual Adjustment*) of this Schedule, plus applicable taxes thereon:
- [REDACTED] per GJ (the “**Base Rate**”).
- 2.2. **Annual Adjustment.** Subject to section 2.4 (*Maximum Rate*) of this Schedule, the Base Rate shall be adjusted annually on each November 1st of each year (commencing from the November 1st occurring after completion of the first full year of operations) by [REDACTED]
[REDACTED]
[REDACTED]
- 2.3. **Application of Natural Gas Rate:** Despite the rate set out in section 2.1 (*Purchase Price*) of this Schedule and subject to section 2.4 (*Maximum Rate*) of this Schedule, if the natural gas commodity prices identified as the Sumas Monthly Index Price contained in ‘Inside FERC’ published by Platts on a “per GJ” basis (the “**Natural Gas Rate**”) exceeds the Base Rate in any month, FEI shall pay the Natural Gas Rate in lieu of the Base Rate for that month.
- 2.4. **Maximum Rate.** No adjustment will be made which results in the applicable rate payable by FEI exceeding the applicable of:
- (a) Then current BCUC - approved maximum RNG supply Purchase Price; or
 - (b) the maximum RNG supply Purchase Price established by the Province of British Columbia as calculated by FEI (the “**Maximum Rate**”).
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TERMS OF INSTRUMENT -- PART 2

STATUTORY RIGHT OF WAY AGREEMENT
AND SECTION 219 COVENANT

BACKGROUND:

- A. "Owner" means the party(ies) described as Transferor(s) in Form C - Part 1, item 5 hereto.
- B. "FortisBC" means the party described as Transferee(s) in Form C - Part 1, item 6 hereto.
- C. "Land" means the land described in Form C - Part 1, item 2 hereto.
- D. The Owner is the registered owner or is entitled to become the registered owner of the Land in fee simple.
- E. It is necessary for the operation and maintenance of FortisBC's undertaking to obtain a statutory right of way to enter on, be within, go over, pass and repass through, under and across the Land.
- F. Section 218 of the *Land Title Act* enables the Owner to grant a statutory right of way ("SRW") to FortisBC.
- G. The Owner has agreed to grant to FortisBC a SRW on the terms contained herein.
- H. FortisBC has been designated by the minister pursuant to section 219(3)(c) of the *Land Title Act* as a person authorized to receive a covenant under Section 219 of the *Land Title Act*.
- I. The Owner has agreed to grant to FortisBC a covenant under Section 219 of the *Land Title Act* to secure the covenants of the Owner herein.

AGREEMENT:

NOW THEREFORE in consideration of \$10 and other good and valuable consideration including the covenants and agreements herein, the receipt and sufficiency of which each party acknowledges, the parties agree as follows:

1. GRANT OF RIGHTS TO FORTISBC

The Owner hereby grants, conveys and transfers to FortisBC in perpetuity, a full, free and uninterrupted right, license, liberty, privilege, easement and statutory right of way pursuant to section 218 of the *Land Title Act* for FortisBC and its officials, employees, contractors, subcontractors, agents, licensees, invitees and permittees (collectively, "FortisBC Personnel"), at all times hereafter from time to time at their will and pleasure to enter on, be within, go over, pass and repass through, under and across the Land, with or without vehicles, personal property and equipment:

- (a) To carry out surveys, tests, examinations and inspections and excavate, install, construct, operate, maintain, inspect, alter, repair, reconstruct, abandon, remove and replace one or more underground pipelines of any kind or dimension with any aboveground and underground valves, structures, meters and other appliances and fittings, and devices for inspection, controlling corrosion and erosion, all for use in connection with such pipeline(s), for the distribution and transmission of natural and artificial gas and other gaseous or liquid hydrocarbons or any product or by-product thereof (the "Works") for the purposes of the operation and maintenance of the undertaking of FortisBC wherever located. Upon completion of the initial excavation, installation and construction of the Works on the Land, the rights granted to FortisBC under this sub-paragraph shall be restricted to a strip of the Land not more than eighteen (18) metres in perpendicular width which contain the Works (the "Right of Way Area"), which Right of Way Area shall subsequently be defined by a survey made by a British Columbia land surveyor and delineated by a statutory right of way plan to be filed by FortisBC at the appropriate Land Title Office, as more fully described in subparagraph 4(a);
- (b) To clear the Right of Way Area and keep it cleared of any trees, or other vegetation, buildings, structures, foundations, pavement, improvements or obstructions which, in the opinion of FortisBC, may interfere with any of the rights granted to FortisBC herein;
- (c) For the purposes of securing access to and from the Works and any other uses or purposes permitted by this paragraph 1, including for the use or purpose of digging up, excavating and disturbing the surface of the Right of Way Area together with any trees, or other vegetation, buildings, structures, foundations, pavement, obstructions, or other improvements therein or thereon, and, subject to subparagraph 1(b), FortisBC shall restore, within a reasonable time, the surface of the Right of Way Area as nearly as reasonably practicable in the circumstances to the condition it was in before being dug up, excavated or disturbed;
- (d) To use such of the Land as may reasonably be required adjacent to either side of the Right of Way Area in connection with the construction, repair or replacement of the pipelines and for ingress to and egress from the Right of Way Area including the right, which right shall be exercised so as to minimize impact on the Land, to construct, maintain and use on the Land any road or roads for all purposes useful or convenient in connection with or incidental to the exercise and enjoyment of the rights and privileges granted in paragraph 1 for so long as FortisBC desires to exercise the same;
- (e) To install, maintain and use gates in all fences which now or hereafter shall cross the Right of Way Area;
- (f) To install and maintain legal survey posts to mark the boundaries of the Right of Way Area and marking posts with warning signs attached to mark the location of the Works upon the Right of Way Area; and
- (g) Generally to do all things necessary or incidental to the foregoing or to the business of FortisBC.

2. GRANT OF SECTION 219 COVENANT

The Owner covenants and agrees with FortisBC, as a covenant under Section 219 of the *Land Title Act* over the Land to secure on the Land in perpetuity, that the Owner:

- (a) will not do or knowingly permit to be done anything which may, in the opinion of FortisBC, interfere with or injure or endanger the Works or impair the operating efficiency of the Works or any part of them or create any hazard. Such acts include, but are not limited to, the acts referred to in this paragraph 2;
 - (b) will not burn or permit the burning of anything on the Right of Way Area except the normal burning of land for crop clearing purposes;
 - (c) except with the prior written consent of FortisBC and, if such consent is granted, only in accordance with the written requirements of FortisBC, will not store or use any inflammable substance or make, place, erect, operate, use or maintain any building, structure, foundation, pavement, excavation, well, swimming pool, pile of material, obstruction, detention or retention pond, equipment, thing, or to plant any vegetation upon, or within the Right of Way Area which, in the opinion of FortisBC, may:
 - (i) interfere with or endanger the Works or the installation, construction, operation, maintenance, repair, removal, or replacement of the Works; or
 - (ii) obstruct access by FortisBC or FortisBC Personnel to the Works; or
 - (iii) create any hazard by its operation, use, maintenance or existence on the Right of Way Area;
 - (d) subject to subparagraph 2(c), will not cultivate the Land inside the Right of Way Area to a depth of more than forty-five (45) centimetres;
 - (e) will not add or remove ground cover over the Works or carry out blasting on or next to the Right of Way Area without the prior written consent of FortisBC and, if such consent is granted, only in accordance with the written requirements of FortisBC;
 - (f) will not construct or maintain culverts, open drains, ditches, utility crossings or roads across the Right of Way Area without the prior written consent of FortisBC and, if such consent is granted, only in accordance with the written requirements of FortisBC;
 - (g) will not allow the release, discharge or escape of any contamination within the Right of Way Area that may impact the safety, security, integrity or operating efficiency of the Works, except in amounts permitted by, and in compliance with, environmental law, regulations and bylaws in effect in British Columbia. For certainty, “contamination” herein means any chemicals, pollutants, contaminants, hazardous, corrosive or toxic substances, waste or similar materials prohibited, controlled or regulated under any environmental law, regulations and bylaws in effect in British Columbia;
 - (h) upon FortisBC issuing invoices for the same, will promptly pay to FortisBC any costs and expenses incurred by FortisBC (I) caused by or arising from any damage caused to the Works by the Owner or by anyone for whom the Owner is responsible at law, or (II) resulting from anything made, placed, erected or cultivated on the Right of Way Area, including
-

- (i) in contravention of paragraphs 2(c), 2(d), or 2(f) herein ("Prohibited Improvements"); or
- (ii) under permit issued by FortisBC pursuant to paragraphs 2(c) or 2(f) herein (the "Permitted Improvements").

For certainty, FortisBC will not be responsible for replacing any Prohibited Improvements or any Permitted Improvements or repairing any damage caused to Prohibited Improvements or any Permitted Improvements, nor will FortisBC be liable for costs, expenses, losses or damages resulting from damage or destruction of any Prohibited Improvements or any Permitted Improvements; and

- (i) at Owner's sole cost and expense will:
 - (i) promptly and diligently remedy any breach of this Agreement by the Owner or by anyone for whom the Owner is responsible at law; and
 - (ii) remove or alter any Permitted Improvements in accordance with the reasonable requirements of FortisBC if at any time FortisBC determines that the Permitted Improvements pose a material danger to the Works, or materially interfere with the exercise of FortisBC's rights under this Agreement.

3. DUTIES OF FORTISBC

FortisBC covenants and agrees with the Owner:

- (a) subject to paragraph 2(h), FortisBC will repair or cause to be repaired any damage caused by FortisBC to the Land, buildings, structures and vegetation as a result of FortisBC's exercise of its rights under this Agreement (the "Damage"), provided that the Damage was not caused by the negligence or wilful misconduct of the Owner. Any such repairs will be made to a good and workmanlike standard and will return the Land, buildings, structures and vegetation to a condition that FortisBC determines to be similar or better to the condition that existed prior to the Damage.
 - (b) to reimburse the Owner for any reasonable costs incurred as a result of any injury or harm to livestock caused by FortisBC's exercise of its rights under this Agreement.
 - (c) to pay all fees and other charges which may be levied by the Crown against any timber that FortisBC cuts on the Land;
 - (d) to pay compensation to the Owner for all merchantable timber cut or damaged on the Land by FortisBC in the exercise of any of its rights under this Agreement;
 - (e) that FortisBC shall, as soon as weather and soil conditions permit and where practicable to do so, bury and maintain any underground Works so the Works do not interfere with the drainage of the Land; and
-

- (f) that, except to the extent caused or contributed to by the negligence or wilful misconduct of the Owner or a breach of this Agreement by the Owner, FortisBC shall indemnify and save harmless the Owner from and against any and all claims, actions, liabilities, losses, charges, damages, costs and expenses whatsoever, occasioned to, or suffered by, or imposed upon the Owner as a result of claims made by third parties in respect of any injury or death to any person or animal, or damage to property in connection with, or arising out of the exercise of FortisBC's rights under this Agreement. For certainty, FortisBC is not responsible for special, indirect or consequential losses, charges, damages, costs or expenses, including, without limitation, loss of revenue or profit or loss due to business interruption.

4. AGREEMENTS BETWEEN THE OWNER AND FORTISBC

The Owner and FortisBC covenant and agree that:

- (a) Upon FortisBC's determination that the initial excavation, installation and construction of the Works on the Land is completed, FortisBC shall cause a survey of the Right of Way Area to be made. FortisBC shall then make application for registration of a statutory right of way plan (the "Plan") in the appropriate Land Title Office and the Plan shall fully define the Right of Way Area. The Land, excluding the Right of Way Area, shall be released, except for ancillary rights, from the rights granted under this Agreement. FortisBC shall provide the Owner with a copy of the Plan and the Owner agrees to accept the accuracy of the Plan without further examination or approval;
 - (b) This Agreement shall terminate within • (•) years of the date of execution of this Agreement by FortisBC if FortisBC has not either applied to register the Plan described in subparagraph 4(a) or commenced exercising its rights granted in paragraph 1. Upon termination of this Agreement, FortisBC shall execute and file such documents in the appropriate Land Title Office as may be necessary to effect a release of this Agreement from the Land;
 - (c) The amount of any compensation for Damages caused by FortisBC and payable under paragraph 3 herein shall be mutually agreed upon between the Owner and FortisBC but failing such agreement, shall be settled by arbitration pursuant to the *Arbitration Act* of British Columbia before a single arbitrator. No compensation shall be payable by FortisBC to the Owner for any Damage for which compensation has already been paid;
 - (d) FortisBC has ownership of all timber cut on the Land by FortisBC in the exercise of its rights under this Agreement;
 - (e) The terms, conditions, covenants and agreements of the Owner hereunder will charge the Land- pursuant to Sections 218 and 219 of the *Land Title Act* as applicable, and will run with the Land and bind the Land and each and every part into which the Land may be divided or subdivided and will bind all present and future owners of the Land and any portion thereof, but no part of the freehold estate will vest thereby in FortisBC;
 - (f) 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;
-

- (g) Subject to subparagraph 4(h) of this Agreement and notwithstanding any rule of law or equity to the contrary, the Works shall remain the property of FortisBC who may at any time remove them in whole or in part;
 - (h) If FortisBC abandons the Works, it may, at its option, leave the Works or any part thereof, and FortisBC shall release and register, in the appropriate Land Title office, a discharge of the rights granted by this Agreement. Upon the release of the rights granted to FortisBC by this Agreement any abandoned Works shall belong to the Owner;
 - (i) The expressions "Owner" and "FortisBC" shall include, and this Agreement shall enure to the benefit of and be binding upon, the executors, administrators, successors and legal assigns of the Owner and FortisBC;
 - (j) FortisBC may assign this Agreement without the consent of the Owner;
 - (k) Where the expression "Owner" includes more than one person, all of the covenants granted by the Owner in this Agreement shall be construed as being several as well as joint;
 - (l) Nothing contained herein shall diminish or otherwise interfere with rights enjoyed by FortisBC by statute or otherwise;
 - (m) Wherever the singular or the masculine is used in this Agreement, the same shall be construed as meaning the plural or the feminine or body corporate or politic where the context so requires or the parties so require;
 - (n) The Owner will, at its expense, do or cause to be done all acts reasonably necessary to grant priority to this Agreement over all financial charges and encumbrances other than encumbrances registered against the title to the Land in the Land Title Office which have been specifically approved in writing by FortisBC;
 - (o) The Owner will, on request by FortisBC, do or execute or cause to be done or executed all such further and other lawful acts, deeds, things, conveyances and assurances whatsoever for better assuring FortisBC the rights, liberties rights of way and covenants herein granted and to give effect to the Owner's grants and agreements hereunder;
 - (p) Any consent, approval or decision of FortisBC contemplated or required hereunder will only be binding on FortisBC if it is in writing signed by such officer or employee as FortisBC may determine from time to time. Unless otherwise stated herein, such consent, approval or decision will be in the sole, absolute and unfettered discretion of FortisBC. Any consent by FortisBC hereunder shall be in writing and may be withheld or conditioned by FortisBC at its discretion;
 - (q) No default by FortisBC or act or failure to act by FortisBC in connection with the rights granted hereunder will result or be deemed to result in the interruption, suspension, or termination of FortisBC's rights hereunder, and the Owner will not seek any judgment, order, declaration or injunction to that effect;
-

- (r) Unless and except to the extent caused by FortisBC, FortisBC will not be liable or responsible for any contamination on the Land or which has migrated, whether or not pre-existing, and whether caused by the Owner, a predecessor in title of the Land or an owner or past owner of other property or any other person. "Contamination" here has the same meaning as in subparagraph 2(g) of this Agreement;
- (s) FortisBC is entitled to peaceably hold and enjoy the rights, liberties and SRW hereby granted without hindrance, molestation or interruption by the Owner or any person claiming by, through or under the Owner;
- (t) FortisBC on default by the Owner of its obligations hereunder may, but is not obliged to, remedy the default, provided that, except in the case of an emergency, FortisBC will first give no less than ten (10) days' prior notice to the Owner specifying the default and requiring it to be remedied; and
- (u) Any notice or communication contemplated by this Agreement, to be effective, must be in writing and delivered by hand, prepaid registered mail or facsimile or email (if a facsimile or email address has been provided for the receiving party) and will be deemed to be satisfactory if and deemed to have occurred when:
 - (i) If personally delivered or sent by facsimile or email, on the date of delivery during normal business hours, or if such date is not a business day, on the next business day; or
 - (ii) If mailed by prepaid registered mail, on the date received or on the fifth (5th) business day after receipt of mailing by any Canada Post office in British Columbia, whichever is the earlier, unless there is between the date of mailing and actual receipt a mail strike or other labour disburse which adversely affects mail service in British Columbia, in which case the party giving notice, demand or request will send the notice, demand or request by delivery,

to the party at the address shown on the Form C – General Instrument – Part 1, or in the case of a subsequent Owner, to the address of that Owner shown on title to the Land in the Land Title Office, or to whatever address a party may from time to time in writing advise.

In witness whereof the parties acknowledge that this Agreement has been duly executed and delivered by the parties executing Forms C and D (pages 1 & 2) hereto.

[REDACTED]
[REDACTED]

THIS **GUARANTEE**, dated as of [•], 2021 by [REDACTED] a British Columbia corporation with its principal place of business at [REDACTED] (the "**Guarantor**") in favour of Beneficiary (as defined below).

Introduction

- A. Beneficiary and NZWA are parties to a biomethane purchase agreement as defined below.
- B. The Guarantor is an affiliate of NZWA.
- C. Pursuant to the Agreement, NZWA has agreed to cause the Guarantor to guarantee all of the Obligations of NZWA under the Agreement and the Guarantor has agreed to do so on the terms and conditions of this Guarantee.
- D. The Guarantor acknowledges and agrees that in view of its business relations with NZWA:
 - (2) the Guarantor and NZWA are mutually dependent on each other in the conduct of their respective businesses and do business together as an integrated business enterprise;
 - (3) the entering into and performance by NZWA of its obligations under the Agreement and the guarantee granted in this Guarantee are in the interests and to the advantage of the Guarantor; and
 - (4) the Guarantor will derive significant commercial benefit from these arrangements.

1.1 Definitions. In this Guarantee and the recitals hereto, unless something in the subject matter or context is inconsistent therewith:

- (a) "**Agreement**" means the Biomethane Purchase Agreement dated as of the date hereof between NZWA and Beneficiary.
- (b) "**Business Day**" means any day except a Saturday, Sunday or statutory holiday in British Columbia.
- (c) "**Beneficiary**" means, FortisBC Energy Inc.
- (d) "**NZWA**" means, Net Zero Waste Abbotsford Inc.
- (e) "**Obligations**" means, collectively, and at any time and from time to time, all performance obligations and all obligations to pay any and all amounts due and owing (whether matured or unmatured, present or future, direct or indirect, absolute or contingent) or liabilities of NZWA to Beneficiary, pursuant to or arising out of the Agreement and the transactions thereunder.
- (f) "**Payment in Full**" means the irrevocable and unconditional final payment or performance in full of all Obligations in accordance with the provisions of the Agreement and this Guarantee (including Section 2.6), which payment or performance is not required to be rescinded in whole or in part.

Unless the contrary intention appears, where a word or expression is defined or given meaning in the Agreement, that word or expression has the same meaning when used in this Guarantee

1.2 Other Usages. References to "this Guarantee", "the Guarantee", "hereof", "herein", "hereto" and like references refer to this Guarantee, as amended, modified, supplemented or replaced from time to time, and not to any particular Article, Section or other subdivision of this Guarantee. Any references herein to any other agreements or documents shall mean such agreements or documents as amended, modified, supplemented, restated or replaced from time to time. Reference to "including" means "including without limitation". Where the context so requires, words importing the singular number shall include the plural and vice versa.

1.3 Headings. The division of this Guarantee into Articles and Sections and the insertion of headings in this Guarantee are for convenience of reference only and shall not affect the construction or interpretation of this Guarantee

1.4 Rule of Construction. This Guarantee has been negotiated with the benefit of legal representation for Guarantor and Beneficiary, and any rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not apply to the construction or interpretation of this Guarantee

2.1 Guarantee. For value received, and to induce the Beneficiary to enter into the Agreement to which it is a party, Guarantor unconditionally and irrevocably guarantees to Beneficiary, and its successors, endorsees, and permitted assigns, the performance of all Obligations and/or the full and prompt payment when due of all Obligations.

2.2 Nature of Guarantee. The guarantee provided herein shall in all respects be an unconditional, continuing, absolute, and irrevocable guarantee of the Obligations. The obligations of the Guarantor under this Guarantee are those of a primary obligor, and not merely a surety, and are independent of the Obligations.

2.3 Conditions Precedent. No action based upon this Guarantee shall be instituted until (i) NZWA has failed to pay or perform its Obligations when due in accordance with the terms of the Agreement (including after giving effect to any grace period or Cure Period in the Agreement); and (ii) a demand for payment or performance has been made upon Guarantor by the Beneficiary in accordance with Section 11 reasonably and briefly specifying in what manner NZWA has failed to perform or in what amount NZWA has failed to pay and an explanation of why such payment is due, with a statement that Beneficiary is calling upon Guarantor to pay or perform under this Guarantee. The demand by the Beneficiary shall be prima facie evidence against Guarantor as to the amount remaining unpaid to Beneficiary or failure to perform at such time by NZWA, under the Agreement.

2.4 Payment/Performance. Guarantor shall make payment to Beneficiary in immediately available funds any due but unpaid payments under the Agreement or perform the Obligations as specified in Beneficiary's demand within 5 Business Days after receipt of Beneficiary's written demand upon Guarantor.

2.5 No Requirement to Pursue Others. The Beneficiary shall not be bound to pursue or exhaust its recourse against other persons who have guaranteed the Obligations or any security or other guarantees it may at any time hold before being entitled to make demand and receive payment hereunder from the Guarantor.

2.6 Taxes and Set-off. All payments to be made by the Guarantor hereunder will be made without set-off or counterclaim and without deduction for any taxes, levies, duties, fees, deductions, withholdings, restrictions or conditions of any nature whatsoever. If at any time any applicable law, regulation or international agreement requires the Guarantor to make any such deduction or withholding from any such payment, the sum due from the Guarantor with respect to such payment will be increased to the extent necessary to ensure that, after the making of such deduction or withholding, Beneficiary receives a net sum equal to the sum which it would have received had no deduction or withholding been required.

2.7 Waiver of Notice, etc. The Guarantor hereby waives: (a) promptness, diligence, presentment, protest, and order; and (b) notice of acceptance of this Guarantee, notice of the creation of Obligations or the amounts and terms thereof and any modifications thereof, notice of demand, notice of non-performance, and any other notice with respect to any of the Obligations and this Guarantee.

2.8 Liability Not Lessened or Limited. The liability of the Guarantor under this Guarantee shall be irrespective of, and shall not be lessened or limited or prejudiced by the existence or occurrence (with or without Guarantor's knowledge or consent) of any one or more of the following:

- (a) any change in the name, existence, business, financial condition, control or ownership of NZWA or any amalgamation, reorganization, insolvency, bankruptcy, dissolution, liquidation or other similar event or proceeding affecting NZWA or its assets;

- (b) Beneficiary filing any claim for payment with any administrator, provisional liquidator, monitor, conservator, trustee, receiver, receiver-manager, custodian or other similar officer for NZWA or for all or substantially all NZWA's assets;
- (c) any event, whether or not attributable to Beneficiary, that may be considered to have caused or accelerated the insolvency or bankruptcy of NZWA, or to have resulted in the initiation of any such proceedings;
- (d) any lack of validity, legality, effectiveness or enforceability relating to or against NZWA, the Agreement or any transaction, or any provision of any applicable law purporting to prohibit the payment by NZWA of the Obligations;
- (e) the existence of any claim, counterclaim, set-off, recoupment or other rights which Guarantor may have at any time against NZWA, whether in connection with this Guarantee or any other transactions;
- (f) Beneficiary from time to time: (i) granting time, extensions, indulgences, substitutions, concessions, renewals, compromises, acceleration or other changes in the time, manner or place of payment of the Obligations, or any changes in the terms of the Obligations; (ii) accepting compositions from or granting releases or discharges to NZWA; or (iii) refraining from extending credit to, entering into transactions with or otherwise dealing with NZWA;
- (g) the termination of the Agreement;
- (h) any loss of or in respect of, any reduction, release, waiver, consent to departure from, limitation, variation, impairment, discontinuance, termination or unenforceability of any Obligations for any reason other than by reason of Payment in Full, whether occasioned by the fault of Beneficiary or otherwise;
- (i) any existence, addition, exchange, release, discharge, renewal, realization, perfection or non-perfection of any security or other guarantees held by Beneficiary in respect of the Obligations; or
- (j) any other fact or circumstance, whether similar or dissimilar to the foregoing, which might, but for the provisions of this Section 2.8, otherwise constitute: (i) a defence available to, or a legal or equitable discharge of, any surety or any guarantor; or (ii) a limitation or reduction of Guarantor's obligations under this Guarantee, except in either case, Payment in Full,

provided however, the Guarantor reserves to itself all claims, counterclaims, set-offs, recoupments and other rights and defenses which NZWA is or may be entitled to arising from or out of the Agreement, except for any such rights and defenses arising out of the insolvency, bankruptcy or dissolution or other event or proceeding described in Section 2.8 in so far as they relate to NZWA or its assets.

2.9 Guarantee in Addition to Other Security. This Guarantee shall be in addition to and not in substitution for any other guarantee or other security which Beneficiary may now or hereafter hold in respect of the Obligations.

2.10 Reinstatement. All terms of this Guarantee shall continue to be effective or shall be reinstated, as the case may be, if at any time any payment or performance (in whole or in part) of any of the Obligations is rescinded or must otherwise be returned or restored by Beneficiary by reason of the amalgamation, reorganization, insolvency, bankruptcy, dissolution or liquidation of NZWA, or for any other reason, all as though such payment had not been made.

2.11 Subrogation Rights. The Guarantor shall not exercise any rights which it may acquire by way of subrogation under this Guarantee, by any payment made hereunder or otherwise, until Payment in Full of all Obligations, although Guarantor may take such actions as may be necessary to preserve its claims. Any amount paid to Guarantor on account of any such subrogation rights prior thereto shall be held in trust by Guarantor for the benefit of Beneficiary and shall immediately be paid to Beneficiary and credited and applied against the Obligations.

2.12 **Acknowledgement of Receipt.** The Guarantor acknowledges that it has been given a copy of the Agreement and has had a full opportunity to consider its provisions before entering into this Guarantee.

3. Term of Guarantee. This Guarantee shall expire upon the earlier to occur of the following:

- (a) at such time as the Obligations have been unconditionally and irrevocably, in respect of Obligations requiring payment, paid in full in cash, and, in respect of Obligations requiring performance, satisfied or performed in full and there remain no contingent obligations, indebtedness and liabilities of NZWA under any of the Agreement; and
- (b) on the termination or expiration of the Agreement, provided, however, such termination or expiration shall not affect, in any manner, rights of Beneficiary arising under this Guarantee and the obligations of the Guarantor with respect to Obligations created, incurred, contracted or assumed prior to such termination or expiration of the Agreement (and, for certainty, the Guarantor will not be liable hereunder for Obligations created, incurred, contracted or assumed after the termination or expiration of the Agreement).

4. Payments and Interest

4.1 The Guarantor must pay interest on any amount owing under this Guarantee at the applicable rate of interest of 1.5% per month..

4.2 Interest payable under section 4.1:

- (a) is compounded daily;
- (b) is computed from and including the day when the money on which interest is payable becomes owing to the Beneficiary by the Guarantor until but excluding the day of payment of that money;
- (c) is calculated on the actual number of days elapsed based on a 365 day year; and
- (d) must be paid by the Guarantor on demand.

5. Costs and Expenses

5.1 The Guarantor agrees to pay or reimburse the Beneficiary on demand for:

- (e) its reasonable costs, charges and expenses of making, enforcing and doing anything in connection with this Guarantee, including all costs actually payable by the Beneficiary to its legal representatives; and
- (f) if paid by the Beneficiary, all tax (including GST) which is payable in connection with this Guarantee or any payment, receipt or other transaction contemplated by it,

(individually and collectively “**Enforcement Expenses**”).

5.2 Money paid to the Beneficiary by the Guarantor may be applied against payment of the Enforcement Expenses, against interest and against other obligations under this Guarantee in such manner as the Beneficiary considers fit.

6. CONSENTS, WAIVERS AND RENEWALS. The Guarantor agrees that Beneficiary and NZWA may, without notice to or consent of the Guarantor, mutually agree to modify the Obligations as described in the Agreement

or any agreement between any Beneficiary and NZWA, as described in the Agreement, without in any way impairing or affecting this Guarantee.

7. Binding Obligation, Governing Law, Modification, Time of Essence.

(a) This Guarantee is a guarantee of payment and not of collection and shall be construed in accordance with the exclusive laws of the Province of British Columbia and the federal laws of Canada applicable therein, without regard to principles of conflict of laws.

(b) This Guarantee shall remain in full force until full and final payment, satisfaction and/or performance of all the Obligations of NZWA to Beneficiary guaranteed hereby. This Guarantee may not be amended except by a written instrument executed by the Guarantor and Beneficiary.

(c) Time is of the essence with respect to this Guarantee and the time for performance of the obligations of the Guarantor under this Guarantee may be strictly enforced by Beneficiary.

8. Assignment.

(a) Beneficiary may not assign its rights, interest or obligations hereunder, in whole or in part, to any other person or entity without the prior written consent of the Guarantor, not to be unreasonably withheld or delayed.

(b) The Guarantor may not assign its rights, interest or obligations hereunder, in whole or in part, to any other person or entity without the prior written consent of Beneficiary, not to be unreasonably withheld or delayed.

(c) Subject to this Section 8, this Guarantee shall be binding upon the Guarantor, its successors and assigns and enure to the benefit of and be enforceable by Beneficiary and its successors and assigns.

9. Representations and Warranties. The Guarantor represents and warrants to and in favour of Beneficiary that:

(a) it is duly organized and validly existing under the law of the jurisdiction of its organization or incorporation and, if relevant under such laws, is in good standing and has full corporate power and authority to execute, deliver and perform this Guarantee;

(b) the execution, delivery and performance of this Guarantee by Guarantor has been duly and validly authorized by all necessary corporation action;

(c) Guarantor has duly executed and delivered this Guarantee, and it constitutes the legal, valid and binding obligation of e Guarantor in accordance with its terms, subject to (i) general principles of equity, regardless of whether enforcement is sought in a proceeding in equity or at law, and (ii) bankruptcy, reorganization, insolvency, fraudulent conveyance, moratorium, receivership or other similar laws relating to or affecting creditors' rights generally; and

(d) neither the execution nor the delivery of this Guarantee, nor compliance with the terms, conditions and provisions hereof conflicts with or will conflict with the constating documents of Guarantor, or results or will result in the contravention of any applicable law to which Guarantor or its assets are subject, and as a consequence of which would materially adversely affect the ability of Guarantor to perform its obligations under this Guarantee.

10. Covenants. Guarantor hereby covenants and agrees to and in favour of Beneficiary as follows:

(a) **Corporate Existence.** Guarantor shall maintain its corporate existence in good standing and qualify and remain duly qualified to carry on business and own property in each jurisdiction where the nature of its

business makes such qualification necessary, except where the failure to be so qualified and in good standing would not reasonably be expected to have, individually or in the aggregate, a material adverse effect.

- (b) Condition of NZWA. Guarantor acknowledges that it has fully informed itself about the financial condition of NZWA, and assumes full responsibility for keeping fully informed of the financial condition of NZWA and all other circumstances affecting the ability of NZWA to pay the Obligations, and agrees that Beneficiary has no duty to report to Guarantor any information which Beneficiary has or receives about the financial condition of NZWA or any circumstances bearing on NZWA's ability to pay or perform the Obligations.
- (c) Disposition of Assets or Dividends. Until the Supplier Contribution (as defined in the Agreement) has been paid in full, the Guarantor shall not dispose of any or all of its assets in excess of \$2 million in aggregate, and shall not issue any dividends in excess of \$2 million in aggregate.

11. Notices. All notices, demands and other communications provided for herein shall be in writing and shall be personally delivered (which includes delivery by reputable courier service) or delivered by email to the officer(s) of the addressees as set forth as follows:

To: GUARANTOR

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

To: SUBSIDIARY:

Net Zero Waste Abbotsford Inc.
5050 Gladwin Road, Abbotsford British Columbia, V4X 1X8

[REDACTED]
[REDACTED]

or to such other address or addresses as Guarantor or NZWA may from time to time designate in such manner. Any communication which is delivered as aforesaid shall be deemed to have been validly and effectively given on the date of such delivery if such date is a Business Day and such delivery was made prior to 12:00 p.m. (Pacific Standard Time); otherwise, it shall be deemed to have been validly and effectively given on the Business Day next following such date of delivery.

12. **Further Assurances.** Guarantor shall do, execute and deliver or shall cause to be done, executed and delivered all such further acts, documents and things as Beneficiary may reasonably request for the purpose of giving effect to this Guarantee.

13. **Severability.** Wherever possible, each provision of this Guarantee shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Guarantee shall be prohibited by or invalid under such law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Guarantee.

14. **Entire Agreement.** This Guarantee and the agreements referred to herein constitute the entire agreement and understanding between Guarantor and Beneficiary in respect of the subject matter hereof, and supersede any prior guarantees, agreements, undertakings, declarations, representations and understandings, both written and verbal, in respect of the subject matter hereof.

15. **No Waiver; Remedies.** In addition to, and not in limitation of, Section 2.7 and Section 2.8, no failure on the part of Beneficiary to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law or equity.

16. **Amendment.** This Guarantee may be amended only by another agreement executed by each party.

17. **Legal Advice.** The Guarantor represents and confirms that it has obtained independent legal advice in respect of this Guarantee prior to the execution and delivery of this Guarantee to the Beneficiary

18. **Counterpart.** This Guarantee may be executed in any number of counterparts. Each counterpart is an original, but the counterparts together are one and the same agreement. This Guarantee is binding on the Parties on the exchange of counterparts.

19. **Execution – Authorized Officer to Sign.** Each person signing this Guarantee as an authorized officer of a party hereby represents and warrants that he or she is duly authorized to sign this Guarantee for that party, and that this Guarantee will, upon having been so executed, be binding on that party in accordance with its terms.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties have executed this Guarantee as of the date first above written.

[REDACTED]

By: _____
Authorized Signatory

Name:

Title:

By: _____
Authorized Signatory

Name:

Title:

FORTISBC ENERGY INC.

By: _____

Name:

Title:

LETTER OF CREDIT

To: FortisBC Energy Inc.
16705 Fraser Highway
Surrey, British Columbia
Canada V3S 2X7

DATE: _____

(**"Beneficiary"**)

Biomethane Purchase Agreement dated <◆> <◆>, 20<◆> Between Net Zero Waste Abbotsford Inc. ("Applicant") and FortisBC Energy Inc. ("Agreement")

Irrevocable Standby Letter of Credit No: _____

At the request of the Applicant, we hereby issue in your favour our irrevocable standby letter of credit No. _____ (**"Letter of Credit"**) for a sum not exceeding in the aggregate [REDACTED] effective immediately.

Subject to compliance with the drawing conditions set out in this Letter of Credit, this Bank hereby agrees to immediately pay to you under this Letter of Credit any amount or amounts claimed, not exceeding in the aggregate the sum of [REDACTED] upon your written demand(s) for payment being made upon us at our counter during normal business hours, upon <◆> (Vancouver office), <◆>, Suite <◆>, Vancouver, British Columbia, <◆> <◆>, Canada referencing this Letter of Credit No. _____ dated _____.

Partial drawings are permitted.

This Letter of Credit is issued subject to the Uniform Customs and Practice for Documentary Credits, 1993 revision, ICC publication no. 500 and the laws of the Province of British Columbia. In case of conflict between the rules of the ICC publication no. 500 and the laws of the Province of British Columbia, the laws of the Province of British Columbia will prevail.

Drawings up to the full amount of this Letter of Credit may be made where the drawing is accompanied by a certificate executed by an officer or director of the Beneficiary stating that:

- (a) the person signing the certificate is an officer or director of FortisBC Energy Inc.; and
- (b) the Beneficiary is entitled to call down upon this Letter of Credit pursuant to provisions of the Agreement.

Any drawings made under this Letter of Credit must be accompanied by the original of this Letter of Credit, together with an original certificate complying with the conditions set out above.

We will honour your written demand(s) for payment on presentation without enquiring whether you have a legitimate claim between yourself and the Applicant.

All banking charges are for the account of the Applicant.

Schedule G
Letter of Credit

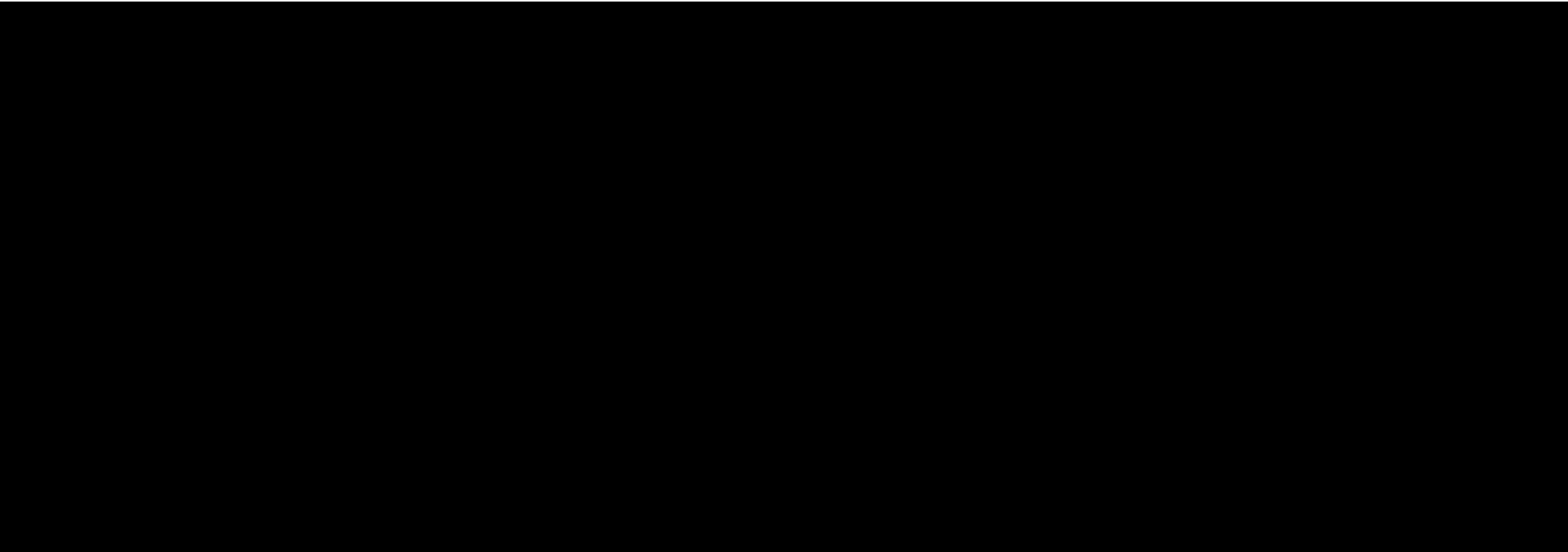
This Letter of Credit will expire at the counters of our Vancouver office at the close of business on _____ . It is a condition of this Letter of Credit that it will be automatically extended for an additional period(s) of one year from the present, or any future, expiry date, unless not less than one hundred twenty (120) days prior to such date we notify the Beneficiary in writing by registered mail or by hand-delivered courier that we elect not to extend this Letter of Credit for such additional period(s).

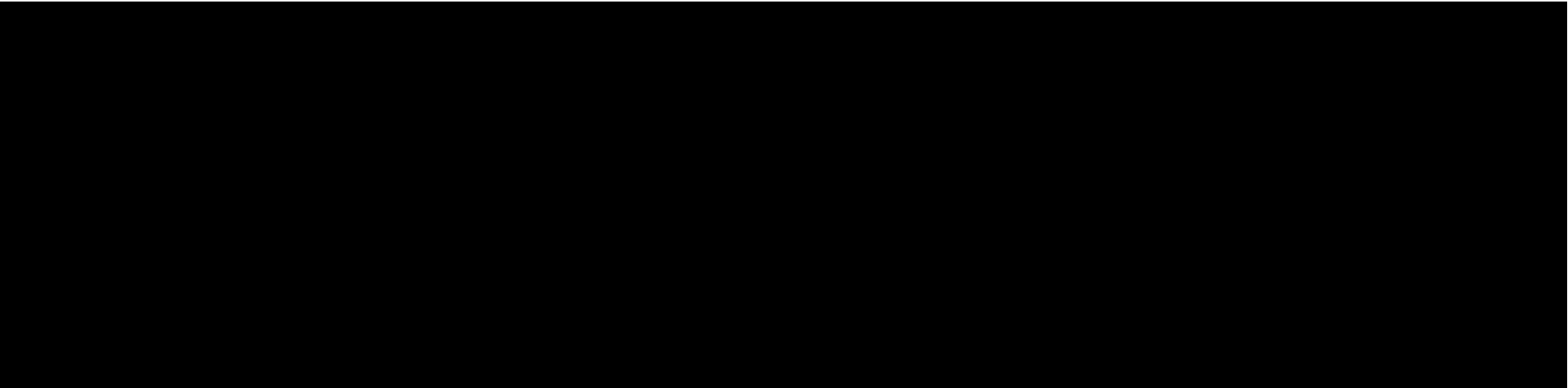
Authorized Signatory

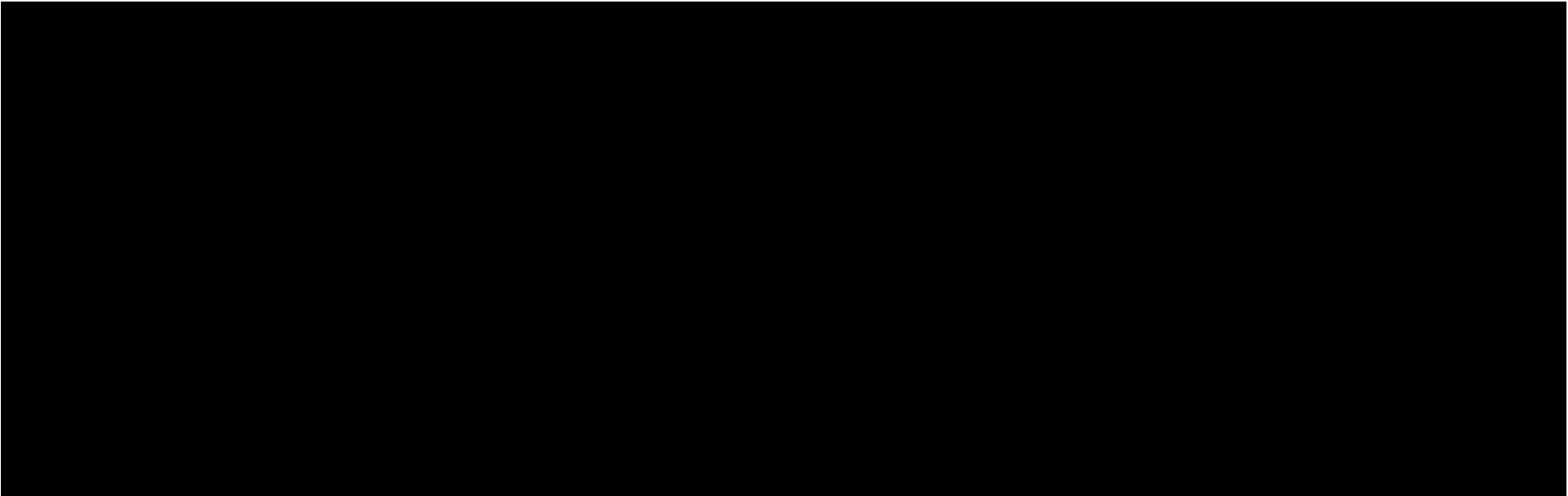
Authorized Signatory

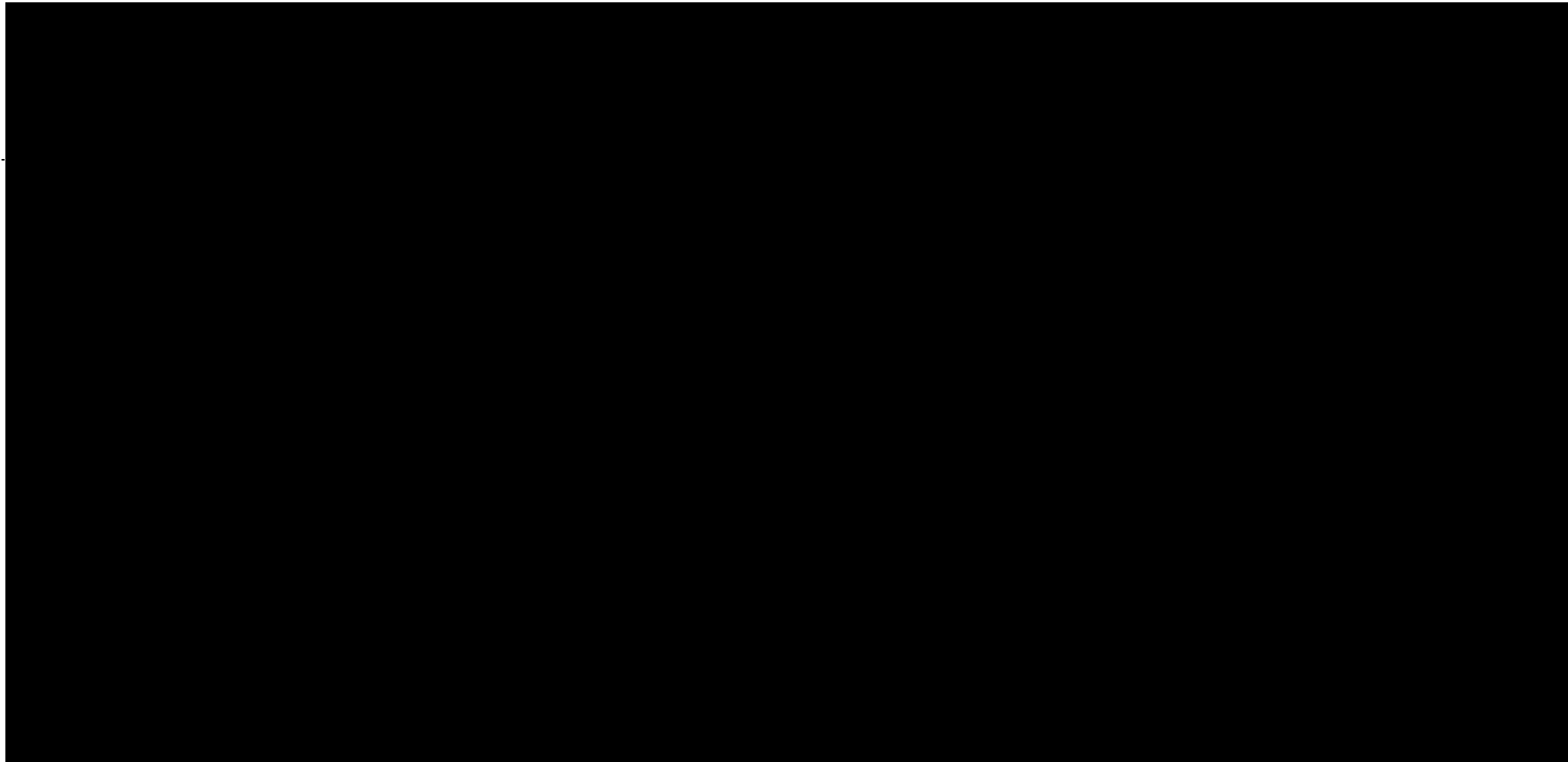
Appendix B
FINANCIAL SCHEDULES

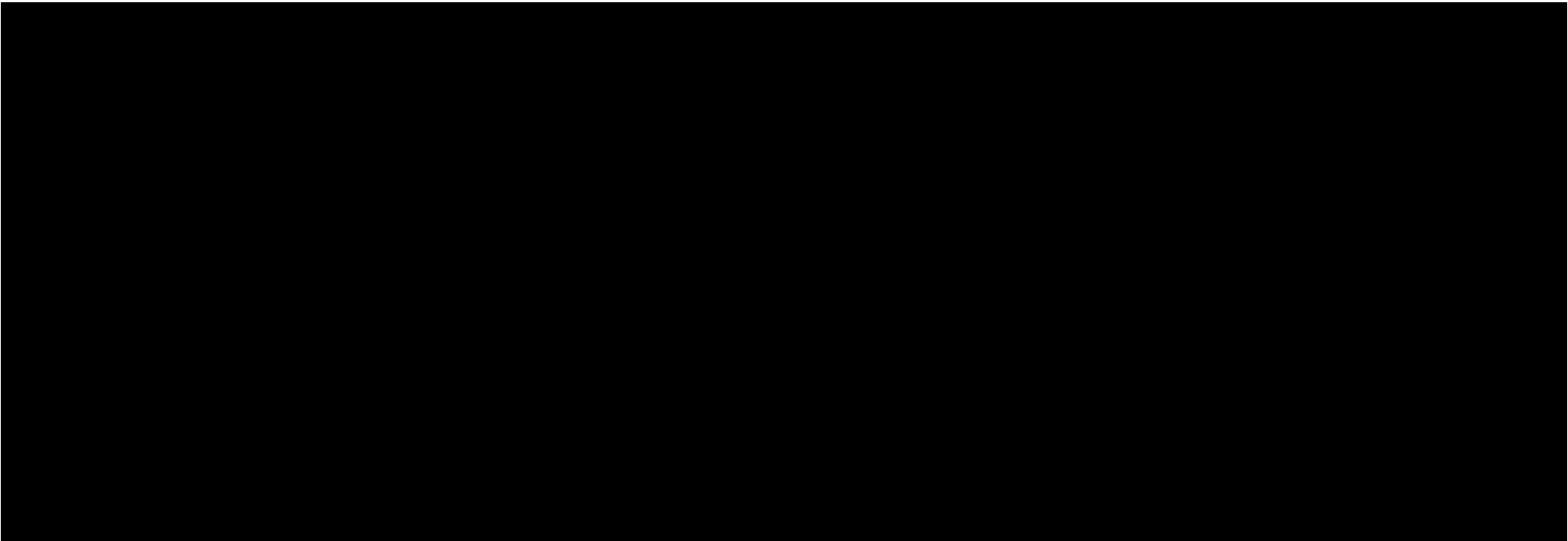
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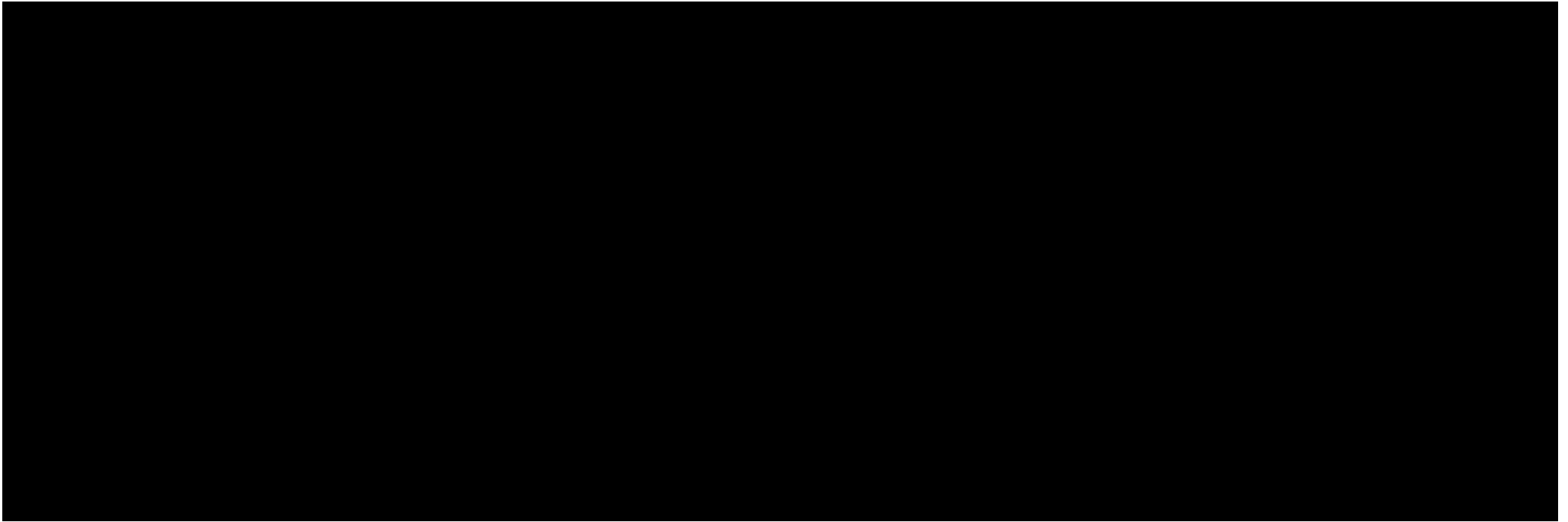


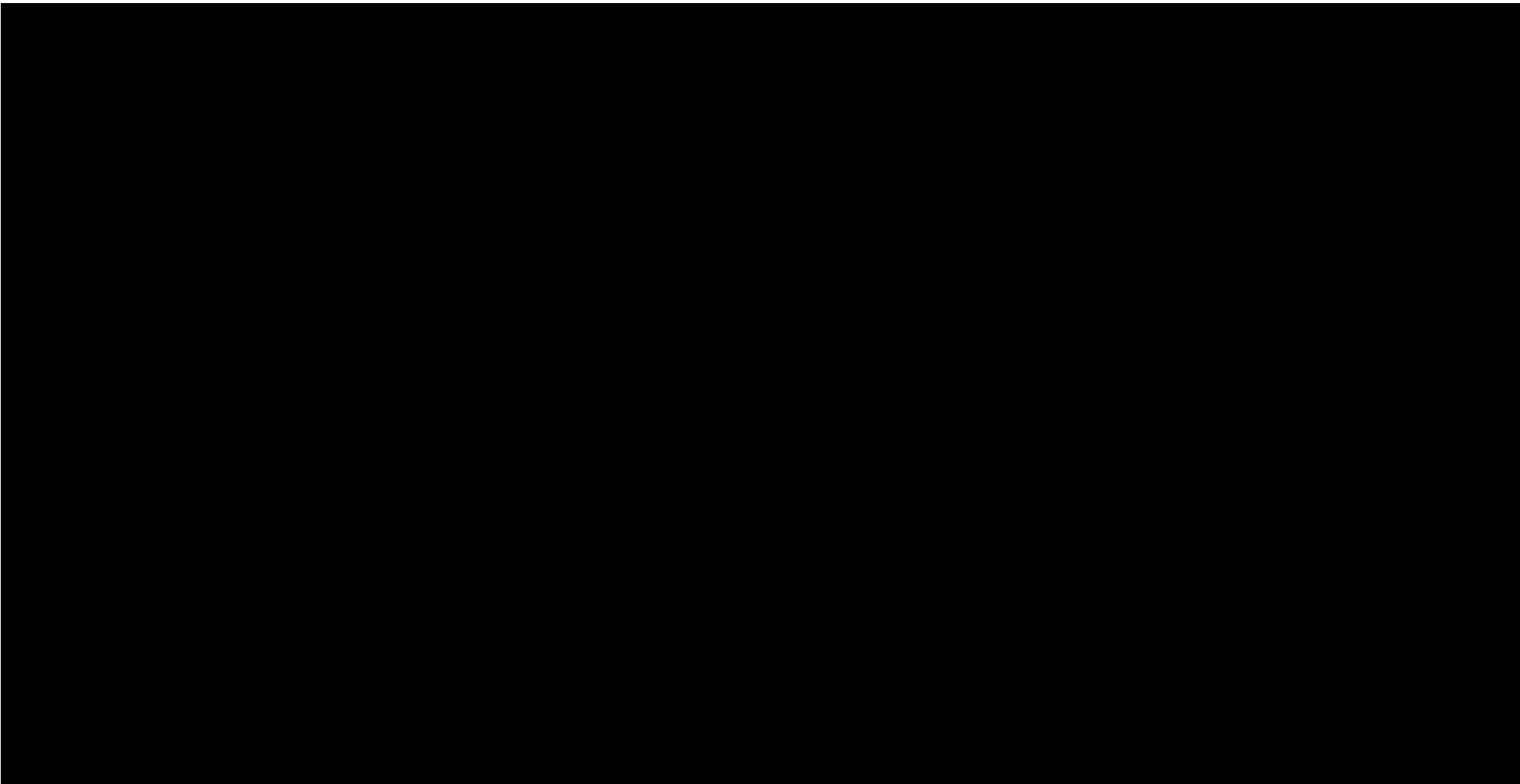


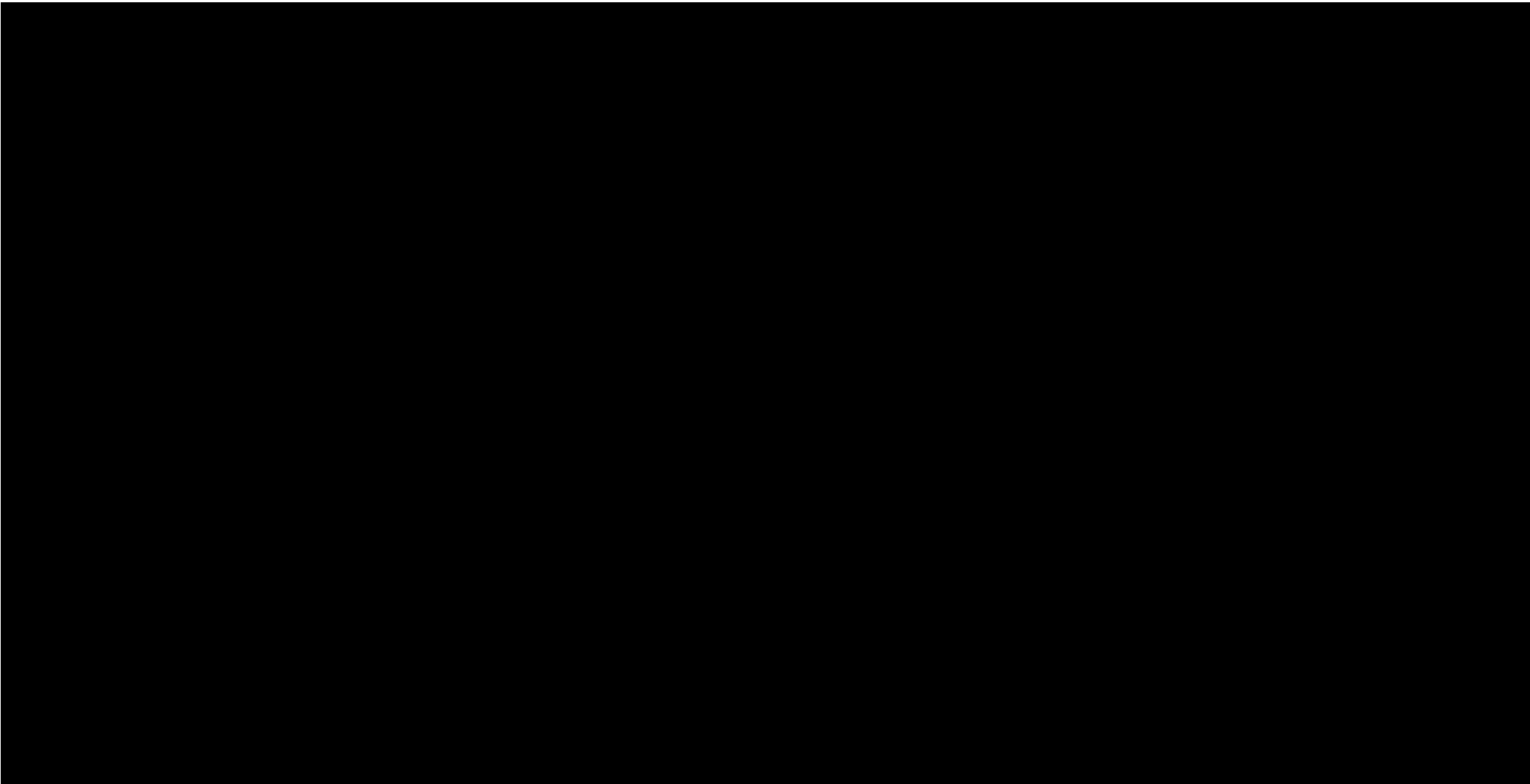


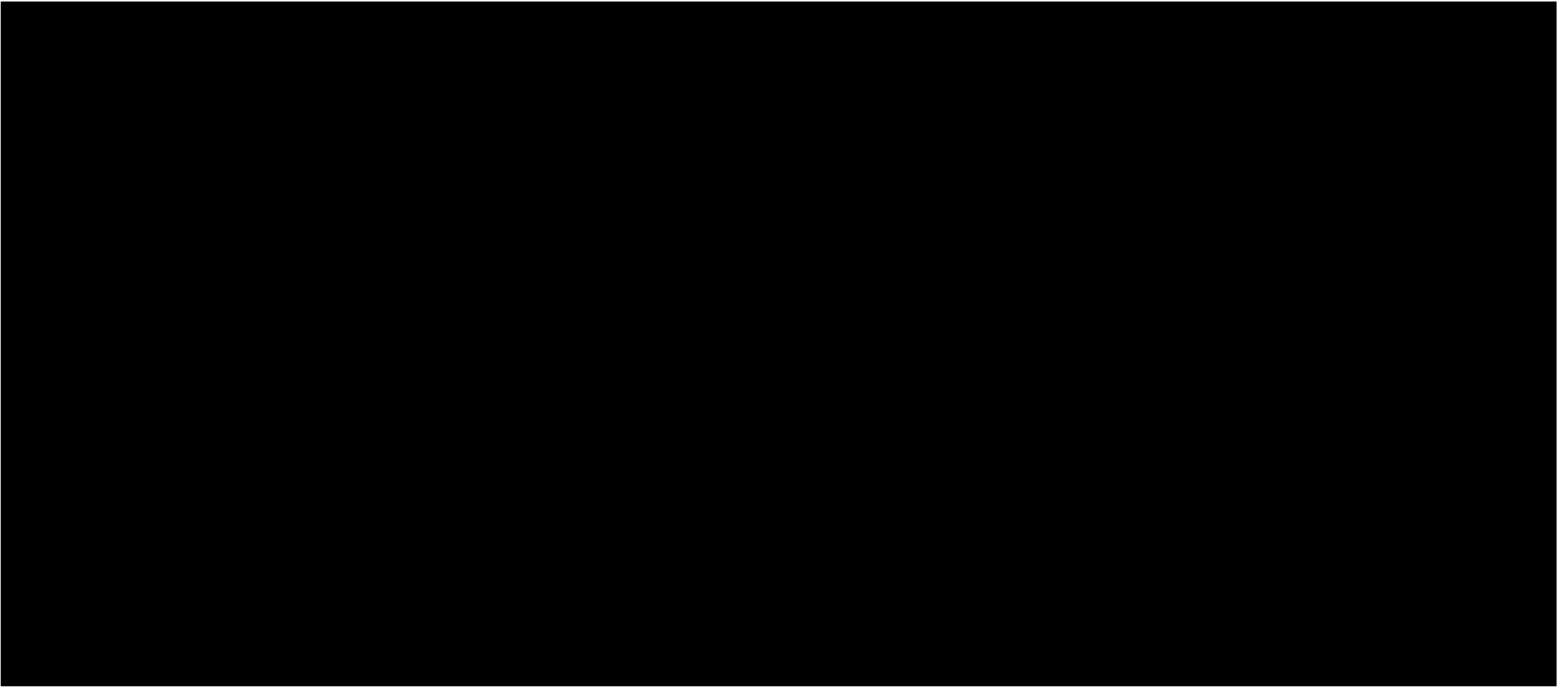


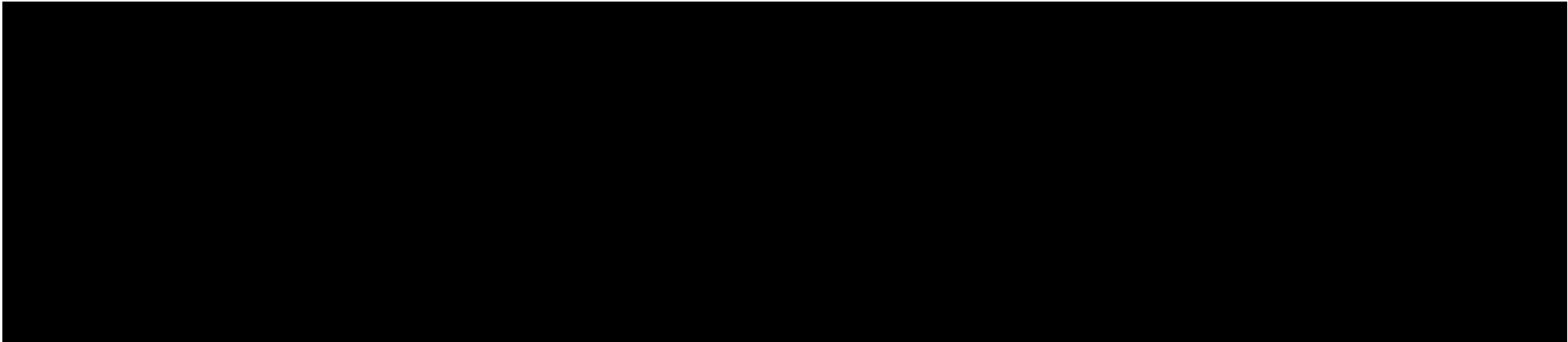














ORDER NUMBER

E-xx-xx

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

and

FortisBC Energy Inc.

Section 71 Filing of a Biomethane Purchase Agreement between FortisBC Energy Inc. and Net Zero Waste
Abbotsford Inc.

BEFORE:

[Panel Chair]
Commissioner
Commissioner

on Date

ORDER

WHEREAS:

- A. On September 10, 2021, pursuant to section 71 of the *Utilities Commission Act* (UCA) and British Columbia Utilities Commission (BCUC) Rules for Natural Gas Energy Supply Contracts (Rules), FortisBC Energy Inc. (FEI) applied to the BCUC seeking acceptance for a Biomethane Purchase Agreement (BPA) between FEI and Net Zero Waste Abbotsford Inc. (NZW) (Application);
- B. Section 18(1) of the Clean Energy Act (CEA) defines a prescribed undertaking as “...a project, program, contract or expenditure that is in a class of projects, programs, contracts or expenditures prescribed for the purpose of reducing greenhouse gas emissions in British Columbia”;
- C. Section 18(3) of the CEA states that “the commission must not exercise a power under the UCA in a way that would directly or indirectly prevent a public utility...from carrying out a prescribed undertaking”;
- D. On May 25, 2021, the LGIC, by Order in Council (OIC) 306/2021, approved an amendment to the Greenhouse Gas Reduction (Clean Energy) Regulation (GGRR), which among other things, repealed and replaced section 2 (3.8) to state:

(3.8) The public utility acquires renewable natural gas

a) at costs that meet the following criteria, as applicable:

- i. if the public utility acquires renewable natural gas by purchasing it, the price of the renewable natural gas does not exceed the maximum amount, determined in accordance with section 9, in effect in the fiscal year in which the contract for purchase is signed;

- ii. if the public utility acquires renewable natural gas by producing it, the levelized cost of production reasonably expected by the public utility does not exceed the maximum amount, determined in accordance with section 9, in effect in the fiscal year in which the public utility decides to construct or purchase the production facility, and
 - b) that, in a calendar year, does not exceed 15% of the total amount, in GJ, of natural gas provided by the public utility to its non-bypass customers in 2019, subject to subsection (3.9) and section 10;
- E. Under the BPA, NZW will supply biomethane, which is a type of renewable natural gas (RNG), processed from a compost site located in Abbotsford, British Columbia, which will be purchased by FEI for injection into FEI's existing natural gas system;
- F. The BCUC has not reviewed the Application from a public interest perspective as BPAs are prescribed undertakings under section 18(1) of the CEA; and
- G. The BCUC has reviewed the Application and determines that the BPA qualifies as a prescribed undertaking under the GGRR and makes the following directives.

NOW THEREFORE pursuant to section 71 of the UCA and section 18 of the CEA and the GGRR, the BCUC orders as follows:

1. The BCUC accepts for filing the BPA between FEI and NZW.
2. The BCUC will keep the redacted portions of the Application confidential as requested by FEI as they contain commercially sensitive information.

DATED at the City of Vancouver, in the Province of British Columbia, this (XX) day of (Month Year).

BY ORDER

(X. X. last name)
Commissioner

Attachment (Yes? No?)