

(Consolidated)

DEMAND RESPONSE CONTRACT (DR Contract)

Between

●

- and -

ONTARIO ELECTRICITY FINANCIAL CORPORATION

DATED as of the ● day of ●, 200●

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DEMAND RESPONSE CONTRACT

This Demand Response Contract is dated as of the ● day of ●, 200● between ●, a [●]*[Note to Finalization: Set forth the legal form of the Supplier]* created under the laws of ● (the “**Supplier**”), and having its principal place of business at ●, and Ontario Electricity Financial Corporation (the “**Buyer**”). The Supplier and the Buyer are each referred to herein as a “**Party**” and collectively as the “**Parties**”.

WHEREAS the Government of Ontario, through the Minister of Energy, issued a request for proposals dated September 13, 2004, as amended, to solicit the long-term supply of approximately 2,500 MW of new clean generating capacity and demand-side projects in Ontario (the “**2,500 MW RFP**”);

AND WHEREAS the Supplier submitted a proposal to plan, design, finance, construct, operate, and maintain the DR Project and to curtail the Electricity demand of the Load as a direct result of the operation of the Control Equipment in response to the market price for Electricity or at the request of the IMO;

AND WHEREAS the Supplier’s proposal was selected by the Government of Ontario, and accordingly the Supplier and the Buyer wish to execute this Agreement in order to formalize the long-term contractual arrangements for the Supplier to develop and operate the DR Project and to curtail the Electricity demand of the Load as a direct result of the operation of the Control Equipment in response to the market price for Electricity or at the request of the IMO on the terms and conditions set out herein;

AND WHEREAS the Government of Ontario introduced Bill 100 into the Legislative Assembly of Ontario on June 15, 2004, being draft legislation entitled the *Electricity Restructuring Act, 2004* which, if enacted, would amongst other things create the Ontario Power Authority, a statutory body with the right to recover its costs, including all costs under this Agreement, from electricity consumers through appropriate settlement mechanisms;

AND WHEREAS this Agreement is being entered into by the Buyer on the understanding that upon the coming into effect of appropriate legislation and the establishment of the Ontario Power Authority, the Buyer shall have the unilateral right to assign this Agreement and all benefits thereunder to the Ontario Power Authority, and the Ontario Power Authority shall assume the obligations of the Buyer hereunder and be novated into this Agreement in the place and stead of the Buyer;

NOW THEREFORE, in consideration of the mutual agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the Parties agree as follows:

ARTICLE 1 DEFINITIONS

1.1 Definitions

In addition to the terms defined elsewhere herein, the following capitalized terms shall have the meaning stated below when used in this Agreement:

“**2,500 MW RFP**” has the meaning ascribed to it in the recitals to this Agreement and, for greater certainty, shall include all addenda in respect of the 2,500 MW RFP provided in writing by or on behalf of the Ontario Ministry of Energy from time to time prior to the date of this Agreement, a copy of which is attached as Exhibit H.

“**Actual M&V Costs**” or “**AM&V**” means an aggregate amount equal to the M&V Costs actually incurred by the Supplier for all Settlement Months in a given Settlement Period, expressed in Dollars, as determined in accordance with Exhibit J.

“**Adjusted MDR**” or “**AMDR_{(m)SPx}**” has the meaning ascribed to it in Exhibit J.

“**Affiliate**” means any Person that: (i) Controls a Party; (ii) is Controlled by a Party; or (iii) is Controlled by the same Person that Controls a Party.

“**Agencies**” means all advisory, adjudicative, regulatory (including those with governing boards), and operational service agencies (which deliver goods or services to the public), of the Government of Ontario.

“**Agreement**” means, subject to Section 1.10, the DR Contract, the 2,500 MW RFP, and the Proposal, collectively, as may be amended, restated or replaced from time to time.

“**AM&V(Max)_{SPx-1}**” shall have the meaning ascribed to it in Exhibit J.

“**AMFC**” shall have the meaning ascribed to it in Exhibit J.

“**Annual Operating Plan**” has the meaning ascribed to it in Section 14.3(b)(ii).

“**Arbitration Panel**” has the meaning ascribed to it in Exhibit O.

“**Arm’s Length**” means, with respect to two or more Persons, that such Persons are not related to each other within the meaning of subsections 251(2), (3), (3.1), (3.2), (4), (5) and (6) of the *Income Tax Act* (Canada) or that such Persons, as a matter of fact, deal with each other at a particular time at arm’s length.

“**Assignee**” has the meaning ascribed to it in Section 15.5(c).

“**Automatic System Voltage Support**” means the capability of the DR Project to, both automatically and under the direction of the IMO, respond to changes in system voltage in such a manner as to control these changes within an acceptable range and which requires the automatic or manual adjustment in production or absorption of reactive power by the DR Project. Automatic System Voltage Support shall be deemed to be provided if the requirements set out in Section 2.6(f) have been met.

“**Availability**” or “**AV**” has the meaning ascribed to it in Exhibit K.

“**Average Test Curtailment**” has the meaning referred to in Section 14.6.

“**Bank Act**” means the *Bank Act* (Canada), as amended from time to time.

“**Biomass**” means organic matter that is derived from a plant and available on a renewable basis, including organic matter derived from dedicated energy crops, dedicated trees, agricultural food and feed crops, and waste organic material from harvesting or processing agricultural products, forestry products and sewage, provided that: (i) waste organic material shall contain no treated by-products of manufacturing processes (e.g. treated chipwood, plywood, painted or varnished wood, pressure treated lumber, or wood contaminated with plastics or metals); and (ii) supplementary non-renewable fuels used for start up, combustion, stabilization and low combustion zone temperatures shall be no more than 3.00% of the total fuel heat input in any calendar year.

“**Business Day**” means a day, other than a Saturday or Sunday or statutory holiday in the Province of Ontario or any other day on which banking institutions in Toronto, Ontario are not open for the transaction of business.

“**Buyer**” means Ontario Electricity Financial Corporation and its successors and permitted assigns.

“**Buyer Event of Default**” has the meaning ascribed to it in Section 9.3.

“**Buyer Statement**” has the meaning ascribed to it in Section 11.2(g).

“**Callable Hours**” means any hour, on Business Days, between 8:00 a.m. and 8:00 p.m. (EST).

“**CDR Check Test**” has the meaning ascribed to it in Section 14.6(a).

“**CEOH**” or “**Control Equipment Outage Hours**” means the duration, expressed in hours in the relevant period as set out in Exhibit K, of any Control Equipment Outages.

“**CH**” has the meaning ascribed to it in Exhibit J.

“**Claim**” means a claim or cause of action in contract, in tort, under any Laws and Regulations or otherwise.

“**Commercial Operation**” has the meaning ascribed to it in Section 2.4.

“**Commercial Operation Date**” means the date on which Commercial Operation is first attained.

“**Commercially Reasonable Efforts**” means efforts which are designed to enable a Party, directly or indirectly, to satisfy a condition to, or otherwise assist in the consummation of, the transaction contemplated by this Agreement and which do not require the performing Party to expend any funds or assume liabilities other than expenditures and liabilities which are reasonable in nature and amount in the context of the transaction contemplated by this Agreement.

“**Company Representative**” has the meaning ascribed to it in Section 14.1.

“**Completion and Performance Security**” has the meaning ascribed to it in Section 5.1.

“**Connection Costs**” means, if the Control Equipment includes a generator, the costs incurred by a Transmitter or LDC in connecting the generator to the Load.

“**Connection Impact Assessment**” means, if the Control Equipment includes a generator, a study conducted by a LDC to determine the impact on the Local Distribution System of connecting the generator of a Load.

“**Connection Point**” means the point or points where the Load of a DR Project is connected to either the Transmission System or Local Distribution System. For certainty, the Connection Point will be defined by reference to electrical connection points.

“**Contingent Support Payment**” or “**CSP**” means the positive amount, if any, by which the Total Monthly Net Revenue Requirement exceeds the Imputed Net Curtailment Savings for a Settlement Month, expressed in Dollars and calculated in accordance with Exhibit J.

“**Contracted Demand Capacity**” means the capability, expressed in MW, of a DR Project to curtail the Electricity demand of the Load at a given time in response to market prices, or during Callable Hours in accordance with an Operational Directive.

“**Contract Year**” means a twelve (12) month period during the Term which begins on the Term Commencement Date or an anniversary date thereof.

“**Contracted Demand Reduction**” or “**CDR**” means the Electricity demand, expressed in MW and which shall be no less than 5 MW in at least one Season, that will be curtailed by the Supplier in a given Season based on the operation of the DR Project and as a direct result of the Control Equipment, as set out in Exhibit B. For certainty, if the DR Project consists of an aggregation of multiple Loads, then the Contracted Demand Reduction shall be comprised of the Electricity demand that will be curtailed in respect of the aggregate of such Loads.

“**Control**” means, with respect to any Person at any time, (i) holding, whether directly or indirectly, as owner or other beneficiary, other than solely as the beneficiary of an unrealized security interest, securities or ownership interests of that Person carrying votes or ownership interests sufficient to elect or appoint the majority of individuals who are responsible for the supervision or management of that Person, or (ii) the exercise of de facto control of that Person, whether direct or indirect and whether through the ownership of securities or ownership interests, by contract or trust or otherwise.

“**Control Equipment**” means the new capital equipment (which may include new generating facilities), software and associated services of the DR Project that enable the Supplier to curtail the Electricity demand of the Load in response to Operational Directives and the market prices for Electricity, and provide Automatic System Voltage Support, where the Proposal for the DR Project is stated to provide Automatic System Voltage Support.

“**Control Equipment Outage**” is an Outage of the Control Equipment. For greater certainty, a Control Equipment Outage does not include a Load Outage.

“**Costs**” means all costs and expenses reasonably incurred by the Terminating Party either in terminating any arrangements relating to the transactions provided for under this Agreement, or for entering into any new arrangements to replace this Agreement, and all reasonable legal fees and expenses incurred in connection with enforcing its rights under this Agreement.

“**Credit Rating**” means, (i) with respect to the Supplier (or the Guarantor, if a Guarantee is in place) its long-term senior unsecured debt rating (not supported by third party credit enhancement) or its corporate credit rating (as applicable) as provided by S&P, Moody’s or DBRS or any other established and reputable debt rating agency, agreed to by the Parties from time to time, each acting reasonably, and (ii) with respect to a financial institution, its long-term senior unsecured debt rating or its deposit rating as provided by Moody’s, S&P, Fitch IBCA, or DBRS or any other established and reputable rating agency, as reasonably agreed to by the Parties from time to time.

“**Creditworthiness Value**” has the meaning ascribed to it in Section 5.4(b).

“**Customer Impact Assessment**” means, if the Control Equipment includes a generator, a study conducted by a Transmitter to assess the impact of the connection of the generator to a Load on the transmission customers in the area.

“**DBRS**” means Dominion Bond Rating Service Limited or its successors.

“**Defaulting Party**” has the meaning ascribed to it in Section 9.5.

“**Demand Reduction Factor**” or “**DRF**” has the meaning ascribed to it in Exhibit J.

“**Discriminatory Action**” has the meaning ascribed to it in Section 12.1.

“**Discriminatory Action Compensation**” has the meaning ascribed to it in Section 12.2.

“**Discriminatory Action Compensation Amount**” has the meaning ascribed to it in Section 12.3(e).

“**Discriminatory Action Compensation Notice**” has the meaning ascribed to it in Section 12.3(e).

“**Distribution System Code**” means the code approved by the OEB, as amended from time to time, which, among other things, establishes the obligations of a LDC with respect to the services and terms of service to be offered to customers and retailers and provides minimum technical operating standards of distribution systems.

“**Dollars**”, or “**\$**” means Canadian dollars and cents.

“**DR Contract**” means, subject to Section 1.10, this Demand Response Contract, including the Exhibits attached hereto, as it may be amended, restated or replaced from time to time. Unless otherwise indicated, references to Articles, Sections and Exhibits are references to Articles, Sections and Exhibits in the DR Contract.

“**DR Costs**” means, all costs of the Supplier directly associated with the implementation of the DR Project in accordance with the terms and conditions of this Agreement, including the design,

implementation, building, acquiring, installation, and operation of the Control Equipment and the measurement and verification of demand curtailment of the Load during the Term of this Agreement.

“DR Curtailment” or **“DRC”** means, for a specified period of time during the Term, the aggregate amount of Electricity demand, expressed in MWh, that is curtailed by the DR Project in response to Operational Directives during such period, in accordance with Exhibit J.

“DR Project” means the demand response project to be constructed, developed and operated by the Supplier, as summarized in Exhibit A and described in the Proposal, as required to provide the Contracted Demand Reduction and response to Operational Directives, and includes the Control Equipment and the Load. For certainty, if the demand response project consists of an aggregation of multiple Loads, then the DR Project shall be comprised of the aggregate of all such Loads.

“DR Protocols” has the meaning ascribed to it in Section 2.6(b).

“DR Strike Price” or **“DRSP”** is the price in Dollars per MWh calculated and set for each calendar year in accordance with Exhibit J.

“DR Strike Price Payment” or **“DRSPP”** is the payment that shall be owing by the Buyer to the Supplier as compensation for the Non-Strike Curtailment during Non-Strike Curtailment Hours in a Settlement Month, as calculated in accordance with Exhibit J.

“DR Strike Price Reduction” or **“DRSPR”** is the amount by which the TMNRR shall be reduced as a result of the imputed savings from Imputed Curtailment of Electricity demand of the Load as a direct result of the operation of the Control Equipment during Imputed Curtailment Hours in a Settlement Month, as calculated in accordance with Exhibit J.

“DR Third Party Agreement” means a written agreement with a third party Load, containing the provisions set out in Exhibit M.

“DR Verification Certificate” means a certificate prepared by the DR Verification Consultant as required pursuant to this Agreement, and containing the minimum required elements set out in Section 4.2(b).

“DR Verification Consultant” means the third party technical consultant or successor thereof approved by the Buyer, with the qualifications set out below, and whose services are procured at the expense of the Supplier to, among other things, carry out the Measurement and Verification Activities specified in the Measurement and Verification Plan and to confirm to the Buyer, as required, that the terms of the Measurement and Verification Plan have been satisfied. If the DR Verification Consultant is an individual acting in his or her personal capacity, then he or she must be licensed by Professional Engineers Ontario (PEO) as a Professional Engineer in Ontario, and if the DR Verification Consultant is a consulting firm, then such firm must hold a certificate of authorization issued by PEO.

“Early Termination Date” has the meaning ascribed to it in Section 9.5.

“Early Termination Payment” has the meaning ascribed to it in Section 9.5.

“**Electricity**” means electric energy, measured in MWh.

“**Electricity Act**” means the *Electricity Act, 1998* (Ontario), as amended or replaced from time to time.

“**Emission Reduction Credits**” means the credits associated with the amount of emissions to the air avoided by reducing the emissions below the lower of actual historical emissions or regulatory limits, including “emission reduction credits” as defined in O. Reg. 397/01 made under the *Environmental Protection Act* (Ontario), as amended from time to time, or such other regulation as may be promulgated under the *Environmental Protection Act* (Ontario).

“**End of Term Payment**” shall have the meaning ascribed to it in Exhibit J.

“**End of Term Statement**” shall have the meaning ascribed to it in Exhibit J.

“**Environmental Attributes**” means environmental attributes associated with the DR Project having decreased environmental impacts, and includes:

- (a) rights to any fungible or non-fungible attributes, whether arising from the DR Project itself, from the interaction of the DR Project with the IMO-Controlled Grid or the Local Distribution System or because of applicable legislation or voluntary programs established by governmental authorities or agencies;
- (b) any and all rights relating to the nature of the energy source as may be defined and awarded through applicable legislation or voluntary programs. Specific environmental attributes include ownership rights to Emission Reduction Credits or entitlements resulting from interaction of the DR Project with the IMO-Controlled Grid or the Local Distribution System or as specified by applicable legislation or voluntary programs, and the right to quantify and register these with competent authorities; and
- (c) all revenues, entitlements, benefits, and other proceeds arising from or related to the foregoing.

“**EST**” shall mean Eastern Standard Time.

“**Event of Default**” means a Supplier Event of Default or a Buyer Event of Default.

“**Final CDR Check Test**” has the meaning ascribed to it in Section 14.6(f).

“**Financial Indicators**” means the Tangible Net Worth and the Credit Rating.

“**FIPPA**” means the *Freedom of Information and Protection of Privacy Act* (Ontario), as amended or supplemented from time to time.

“**FIPPA Records**” has the meaning ascribed to it in Section 7.5.

“**Fitch IBCA**” means Fitch IBCA, Duff & Phelps, a division of Fitch Inc., or its successors.

“Fixed Costs” means, as of the Term Commencement Date, those capital costs of the design, implementation, building, acquiring, and the installation of the Control Equipment incurred by the Supplier in connection with the DR Project.

“Force Majeure” has the meaning ascribed to it in Section 10.3.

“Further CDR Check Test” has the meaning ascribed to it in Section 14.6(d).

“GAAP” means Canadian or U.S. generally accepted accounting principles approved or recommended from time to time by the Canadian Institute of Chartered Accountants, or the Financial Accounting Standards Board, as applicable, or any successor institutes, applied on a consistent basis.

“Good Engineering and Operating Practices” means any of the practices, methods and activities adopted by a significant portion of the North American electric utility industry as good practices applicable to the design, building, and operation of projects of similar type, size and capacity or any of the practices, methods or activities which, in the exercise of skill, diligence, prudence, foresight and reasonable judgement by a prudent operator of a demand response project in light of the facts known at the time the decision was made, could reasonably have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety, expedition and Laws and Regulations. Good Engineering and Operating Practices are not intended to be limited to the optimum practices, methods or acts to the exclusion of all others, but rather are intended to delineate acceptable practices, methods, or acts generally accepted in the North American electric utility industry. Without limiting the generality of the foregoing and in respect of the operation of the DR Project, Good Engineering and Operating Practices include taking reasonable steps to ensure that:

- (a) adequate materials, resources and supplies, including fuel, are available to meet the DR Project’s needs under reasonable conditions and reasonably anticipated abnormal conditions;
- (b) sufficient operating personnel are available and are adequately experienced and trained to operate the DR Project properly, efficiently and taking into account manufacturers’ guidelines and specifications and are capable of responding to abnormal conditions;
- (c) preventative, routine and non-routine maintenance and repairs are performed on a basis that ensures reliable long-term and safe operation and taking into account manufacturers’ recommendations and are performed by knowledgeable, trained and experienced personnel utilising proper equipment, tools and procedures; and
- (d) appropriate monitoring and testing is done to ensure equipment is functioning as designed and to provide assurance that equipment will function properly under both normal and abnormal conditions.

“Government of Ontario” means Her Majesty the Queen in right of Ontario.

“Governmental Authority” means any federal, provincial, municipal or local government, parliament or legislature, or any regulatory authority, agency, tribunal, commission, board or department of any such government, parliament or legislature, or any court or other law,

regulation or rule-making entity, having jurisdiction in the relevant circumstances, including, for greater certainty, the IMO, the OEB, the Electrical Safety Authority, and any Person acting under the authority of any Governmental Authority.

“**GST**” means the goods and services tax eligible pursuant to the *Excise Tax Act* (Canada), as amended from time to time.

“**Guarantee**” has the meaning ascribed to it in Section 5.4.

“**Guarantor**” has the meaning ascribed to it in Section 5.4.

“**HOEP**” or the “**Hourly Ontario Energy Price**” has the meaning provided to it in the IMO Market Rules, and expressed in Dollars per MWh.

“**Hourly Availability Ratio**” or “**HAR**” has the meaning ascribed to it in Exhibit J.

“**IC_{ICH}**” has the meaning ascribed to it in Exhibit J.

“**IMO**” means the Independent Electricity Market Operator established under Part II of the *Electricity Act*, or its successor.

“**IMO-Administered Markets**” has the meaning ascribed to it by the IMO Market Rules.

“**IMO-Controlled Grid**” has the meaning ascribed to it by the IMO Market Rules.

“**IMO Market Rules**” means the rules governing the IMO-Controlled Grid and establishing and governing the IMO-Administered Markets, together with all market manuals, policies, and guidelines issued by the IMO, all as amended or replaced from time to time.

“**Imputed Curtailment**” means, the amount of Electricity demand, expressed in MWh, that is imputed to be curtailed by the DR Project as a direct result of the operation of the Control Equipment during an Imputed Curtailment Hour, as calculated in accordance with Exhibit J.

“**Imputed Curtailment Hour**” or “**ICH**” has the meaning ascribed to it in Exhibit J.

“**Imputed Net Curtailment Savings**” or “**INCS**” means, for a Settlement Month, the DR Strike Price Reduction less the DR Strike Price Payment, as calculated in accordance with Exhibit J.

“**including**” means “including, without limitation”.

“**Indemnifiable Loss**” has the meaning ascribed to it in Section 13.3.

“**Indemnitees**” has the meaning ascribed to it in Section 13.3.

“**Insolvency Legislation**” means the *Bankruptcy and Insolvency Act* (Canada), the *Winding Up and Restructuring Act* (Canada) and the *Companies’ Creditors Arrangement Act* (Canada) and the bankruptcy, insolvency, creditor protection or similar laws of any other jurisdiction (regardless of the jurisdiction of such application or competence of such law), as they may be amended from time to time.

“**Interest Rate**” means the annual rate of interest established by [*Note to Finalization: Buyer to name a Schedule I bank*] or its successor, from time to time, as the interest rate it will charge for demand loans in Dollars to its commercial customers in Canada and which it designates as its “**prime rate**” based on a year of 365 or 366 days, as applicable. Any change in such prime rate shall be effective automatically on the date such change is announced by [*Note to Finalization: Buyer to name a Schedule I bank*].

“**ITA**” means the *Income Tax Act* (Canada), as amended from time to time.

“**kW**” means kilowatt.

“**kWh**” means kilowatt hour.

“**Late Certificate**” has the meaning ascribed to it in Section 4.2.

“**Late Certificate Capacity Check Test**” has the meaning ascribed to it in Section 4.2(c).

“**Laws and Regulations**” means:

- (a) applicable federal, provincial or municipal laws, orders-in-council, by-laws, codes, rules, policies, regulations and statutes;
- (b) applicable orders, decisions, codes, judgments, injunctions, decrees, awards and writs of any court, tribunal, arbitrator, Governmental Authority or other Person having jurisdiction;
- (c) applicable rulings and conditions of any licence, permit, certificate, registration, authorization, consent and approval issued by a Governmental Authority;
- (d) any requirements under or prescribed by applicable common law; and
- (e) the IMO Market Rules, as well as any manuals or interpretation bulletins issued by the IMO from time to time that are binding on the Supplier.

“**Letter of Credit**” means one or more irrevocable and unconditional standby letters of credit issued by a financial institution listed in either Schedule I or II of the *Bank Act* or such other financial institution having a minimum Credit Rating of (i) A- with S&P, (ii) A3 with Moody’s, (iii) A low with DBRS, or (iv) A with Fitch IBCA, in substantially the form attached as Exhibit C or in a form acceptable to the Buyer, acting reasonably, and otherwise conforming to the provisions of Section 5.3.

“**Load**” means the load or loads that will be curtailed by the Supplier as a direct result of the operation of the Control Equipment, or as applicable, the person who owns or operates such load or loads.

“**Load Outage**” means an Outage of the Load.

“**Local Distribution Company**” or “**LDC**” means a Person licensed by the OEB as a “Distributor” in connection with a Local Distribution System.

“Local Distribution System” means a system for conveying Electricity at voltages of 50 kilovolts or less and includes any structures, equipment or other things used for that purpose.

“Long Term Operating Plan” has the meaning ascribed to it in Section 14.3(b)(i).

“M&V Costs” means the costs of the Supplier directly associated with the implementation of the Measurement and Verification Plan during the Term of this Agreement.

“Material Adverse Effect” means any change (or changes taken together) in, or effect on, the affected Party that materially and adversely affects the ability of such Party to perform its obligations hereunder.

“Max Increment” has the meaning ascribed to it in Exhibit J.

“Maximum Contracted Demand Reduction” or **“MCDR”** means the highest Contracted Demand Reduction, expressed in MW, amongst the three Seasons set out in the first column of Exhibit B.

“Maximum Curtailment” is the maximum number of hours in a given Season that a Supplier may be required to curtail the Electricity demand of the Load as a direct result of the operation of the Control Equipment in response to Operational Directives, as set out in Exhibit B. For greater certainty, only the hours for which the Supplier has verified that it has curtailed the Electricity demand of the Load as a direct result of the Control Equipment in response to an Operational Directive, by delivering the appropriate DR Verification Certificate to the Buyer, will be counted as hours for the purposes of the Maximum Curtailment.

“MDR” or **“Monthly Demand Reduction”** has the meaning ascribed to it in Exhibit J.

“Measurement and Verification Activities” means all measurement and verification activities carried out by the DR Verification Consultant, as set out in the Measurement and Verification Plan.

“Measurement and Verification Data” means all measurement and verification data collected by the DR Verification Consultant in connection with the Measurement and Verification Activities described in the Measurement and Verification Plan.

“Measurement and Verification Guidelines for DR” means Issue 1.0 of IMO_PRO_0105 – Market Manual 5: Settlements Part 5.10: Transitional Demand Response Program, Appendix C: Measurement and Verification Protocol Development, a copy of which is contained in Exhibit N.

“Measurement and Verification Plan” means the measurement and verification plan prepared and submitted by the Supplier in accordance with Section 4.1, which outlines in detail the methodology and all of the Measurement and Verification Activities that shall be undertaken by the DR Verification Consultant during each Settlement Month, or such other applicable period, to measure and verify: (1) the curtailment of Electricity demand of the Load in response to Operational Directives; (2) the Contracted Demand Reduction as measured pursuant to the tests set out in Section 14.6; (3) the Availability of the DR Project; and (4) to confirm that the terms of the Measurement and Verification Plan have been complied with.

“**Milestone Dates**” means those dates set forth in the second column of the table contained in Exhibit F, with respect to the attainment of the corresponding Milestone Events set out in the first column of the table contained in Exhibit F.

“**Milestone Events**” means those events set forth in the first column of the table contained in Exhibit F which are considered critical by the Parties for the timely design, construction, completion, and operation of the DR Project, and which are to be completed by the corresponding Milestone Dates.

“**Monthly Payment**” has the meaning ascribed to it in Section 3.2.

“**Moody’s**” shall mean Moody’s Investors Service, Inc. or its successor.

“**Municipal Solid Waste**” means:

- (a) any waste, whether or not it is owned, controlled or managed by a municipality, except hazardous waste, liquid industrial waste, gaseous waste, and Biomass; and
- (b) solid fuel, whether or not it is waste, that is derived in whole or in part from the waste included in clause (a) of this definition.

“**MVA**” means mega volt-ampere.

“**MW**” means megawatt.

“**MWh**” means megawatt hour.

“**Negative Outlook**” means, with respect to any of S&P, Moody’s, DBRS, a potential or threatened downgrade to the Credit Rating of the Supplier or Guarantor or their respective permitted assignees.

“**Net Revenue Requirement**” or “**NRR_y**” means the amount, expressed in Dollars per MW-month, as set out in Exhibit B.

“**New Agreement**” means a new agreement substantially in the form of this Agreement, which is to be entered into with a Secured Lender who is at Arm’s Length with the Supplier or a Person identified by such Secured Lender following termination of the Agreement, as set out in Section 11.2(g).

“**Non-Strike Curtailment**” or “**NSC_{NSCH}**” means, the amount of Electricity demand, expressed in MWh, that is curtailed by the DR Project as a direct result of the operation of the Control Equipment in response to Operational Directives during a Non-Strike Curtailment Hour, as calculated in accordance with Exhibit J.

“**Non-Strike Curtailment Hour**” or “**NSCH**” has the meaning ascribed to it in Exhibit J.

“**Notice of Discriminatory Action**” has the meaning ascribed to it in Section 12.3(a).

“**Notice of Dispute**” has the meaning ascribed to it in Section 12.3(b).

“**NRR(Fixed Costs)**” or “**NRR(FC)**” is the monthly payment, expressed in \$/MW-month, that the Supplier requires in order to cover the Fixed Costs of the DR Project, which is calculated as of the Term Commencement Date and fixed for the Term in accordance with Exhibit J, but which shall not exceed the amount set out in Exhibit B.

“**NRR(M&V)**” is the monthly payment, expressed in \$/MW-month, that the Supplier requires to cover the M&V Costs of the DR Project, and determined in accordance with Exhibit J.

“**NSC_{NSCH}**” has the meaning ascribed to it in Exhibit J.

“**NSCH_m**” has the meaning ascribed to it in Exhibit J.

“**OEB**” means the Ontario Energy Board, or its successor.

“**OETP**” or “**Ontario Emissions Trading Program**” means the Ontario Emissions Trading Program operating under Regulation 397/01 of the *Environmental Protection Act* (Ontario).

“**Oil**” means any liquid fuel derived from petroleum, including but not limited to heavy fuel oil and diesel fuel.

“**Operational Directive**” means an operational directive to curtail the Electricity demand of the load, issued by the IMO to the Supplier (or to a representative of the Supplier with the authority to curtail the Electricity demand of the load) a minimum of three (3) hours in advance of the time at which the curtailment of the Load is to commence and which specifies the duration of the curtailment in whole hours to a maximum of six (6) hours while not exceeding the Maximum Curtailment with Callable Hours.

“**OPS**” or “**Ontario Public Service**” means the ministries, Ontario Electricity Financial Corporation, and other administrative units of the Government of Ontario over which Ministers of the Crown preside, and for the purposes of this Agreement includes the Agencies and the Ontario Power Authority (if created).

“**OPS Confidential Information**” means all information of the Ontario Public Service that is of a confidential nature, including all confidential information in the custody or control of the OPS, whether recorded or not and however fixed, stored, expressed or embodied, that has been identified as confidential and which comes into the knowledge, possession or control of the Supplier in connection with the Agreement. For greater certainty, OPS Confidential Information shall:

- (a) include: (i) all new information derived at any time from any such confidential information described above, whether created by the OPS, the Supplier or any third-party; and (ii) all information that the OPS is obliged, or has the discretion, not to disclose under provincial or federal legislation; and
- (b) not include information that: (i) is or becomes generally available to the public without fault or breach on the part of the Supplier of any duty of confidentiality owed by the Supplier to the OPS or to any third-party; (ii) the Supplier can demonstrate to have been rightfully obtained by the Supplier, without any obligation of confidence, from a third-party who had the right to transfer or disclose it to the Supplier free of any obligation of confidence; (iii) the Supplier

can demonstrate to have been rightfully known to or in the possession of the Supplier at the time of disclosure, free of any obligation of confidence when disclosed; or (iv) is independently developed by the Supplier.

“Other Season” means all calendar days that are not calendar days in Summer or Winter.

“Outage” means the removal of equipment from service, unavailability for connection of equipment or temporary de-rating, restriction of use, or reduction in performance of equipment for any reason including to permit the performance of inspections, tests or repairs on equipment, and a reduction of the Electricity demand of the Load, which results in a partial or total interruption in the ability of the DR Project to make the Contracted Demand Reduction available, and shall include a Load Outage and a Control Equipment Outage.

“Outage Hourly Price”, **“OHP_{ICH}”** or **“OHP_{NSCH}”** have the respective meanings ascribed to them in Exhibit J.

“Payment Adjustment” shall have the meaning ascribed to it in Exhibit J.

“Payment Adjustment Outstanding” shall have the meaning ascribed to it in Exhibit J.

“Payment Date” has the meaning ascribed to it in Section 4.4.

“Payment Variation” and **“PV_{SPx-1}”** shall have the meaning ascribed to it in Exhibit J.

“Person” means a natural person, firm, trust, partnership, limited partnership, company or corporation (with or without share capital), joint venture, sole proprietorship, Governmental Authority or other entity of any kind.

“Planned Outage” means an Outage which is planned and intentional and has been disclosed to the Buyer pursuant to Section 14.3(b)(ii)(B) or Section 14.3(b)(iv).

“Pre-Dispatch Price” means the pre-dispatch price for Electricity, being the hourly price determined from the Pre-Dispatch Schedule for a specified number of hours in advance of clearing of the Real-Time Market, as determined by the IMO-Administered Markets.

“Pre-Dispatch Schedule” has the meaning ascribed to it in the IMO-Market Rules.

“Present Value Discount Rate” means:

- (a) if the time remaining in the Term is one (1) year or less, the yield of Canadian Government Treasury Bills with a term closest to the time remaining in the Term; and
- (b) if the time remaining in the Term is greater than one (1) year, the yield of Government of Canada Bonds with a term closest to the time remaining in the Term.

“Primary Fuel” means, in respect of a DR Project which includes a generator, a fuel which is used by the DR Project for the production of ten percent (10%) or more of the Electricity generated by such DR Project, as averaged over a Contract Year.

“**Priority Electrical Zone**” means an electrical area identified as a Priority Electrical Zone in Appendix O of the 2,500 MW RFP.

“**Proposal**” means the proposal submission made by the Supplier in response to the 2,500 MW RFP in respect of constructing and developing the DR Project and which was selected by the Government of Ontario, and all clarifications in respect of such Proposal provided by the Supplier in writing as requested by or on behalf of the Ontario Ministry of Energy from time to time in accordance with the 2,500 MW RFP prior to the date of this Agreement, a copy of all of which is attached as Exhibit I.

“**Proposal Amendment**” has the meaning ascribed to it in Section 2.1(c).

“**PST**” means the Ontario provincial sales tax exigible under the *Retail Sales Tax Act* (Ontario), as amended from time to time.

“**RC_{RCH}**” has the meaning ascribed to it in Exhibit J.

“**Real-Time Market**” has the meaning ascribed to it in the IMO Market Rules.

“**Records**” means any recorded information in any form: (a) provided by the Buyer to the Supplier, or provided by the Supplier to the Buyer, for purposes of this Agreement, or (b) created by the Supplier in the performance of the Agreement, and shall include or exclude any information specifically described in Exhibit G.

“**Replacement Price**” has the meaning given in Section 1.7 and 1.8, as applicable.

“**Replacement Provision(s)**” has the meanings given in Section 1.8 and 1.9, as applicable.

“**Residual Payment Adjustment**”, “**RPA_{SPX}**”, and “**RPA_{SPX-1}**” shall have the meanings ascribed to them in Exhibit J.

“**S&P**” means the Standard and Poors Rating Group (a division of McGraw-Hill Inc.) or its successors.

“**Season**” means each of Summer, Winter, and Other Season.

“**Secured Lender**” means a lender under a Secured Lender’s Security Agreement.

“**Secured Lender’s Security Agreement**” means an agreement or instrument, including a deed of trust or similar instrument securing bonds or debentures, containing a charge, mortgage, pledge, security interest, assignment, sublease, deed of trust or similar instrument with respect to all or any part of the Supplier’s Interest granted by the Supplier that is security for any indebtedness, liability or obligation of the Supplier, together with any amendment, change, supplement, restatement, extension, renewal or modification thereof.

“**Senior Conference**” has the meaning ascribed to it in Section 15.1.

“**Settlement Month**” means (i) for the first Settlement Month of the Term, the period commencing on the Term Commencement Date and ending at the end of the first full calendar month of the Term, (ii) for each Settlement Month thereafter except for the last Settlement Month of the Term, the period comprising each calendar month, and (iii) for the last Settlement

Month of the Term, the period commencing on the first day of the last full calendar month prior to the expiry of the Term and ending on the last day of the Term.

“Settlement Period” means a period commencing on the Term Commencement Date and comprising twelve (12) consecutive Settlement Months, and each successive period of twelve (12) consecutive Settlement Months.

“Statement” means either a Monthly Statement or the End of Term Statement.

“Summer” means all calendar days for the period commencing on June 16 and ending September 15 inclusive.

“Supplier” means ●, and includes any successor to ● resulting from any merger, arrangement or other reorganization of or including ● or any continuance under the laws of another jurisdiction or permitted assignee. [*Note to Finalization: Complete name of Supplier.*]

“Supplier Event of Default” has the meaning ascribed to it in Section 9.1.

“Supplier Non-acceptance Notice” has the meaning ascribed to it in Section 12.3(e).

“Supplier’s Confidential Information” means all information of the Supplier that is confidential and that has been marked “Confidential” by the Supplier, but which for greater certainty shall not include information that: (i) is or becomes generally available to the public without fault or breach on the part of the Buyer of any duty of confidentiality owed by the Buyer to the Supplier or to any third-party; (ii) the Buyer can demonstrate to have been rightfully obtained by the Buyer, without any obligation of confidence, from a third-party who had the right to transfer or disclose it to the Buyer free of any obligation of confidence; (iii) the Buyer can demonstrate to have been rightfully known to or in the possession of the Buyer at the time of disclosure, free of any obligation of confidence when disclosed; or (iv) is independently developed by the Buyer.

“Supplier’s Interest” means the right, title and interest of the Supplier in or to the DR Project and this Agreement, or any benefit or advantage of any of the foregoing.

“System Impact Assessment” means, if the Control Equipment includes a generator, a study conducted by the IMO, pursuant to section 6.1.5 of Chapter 4 of the IMO Market Rules, to assess the impact of a new connection of a generator to a Load, or of the modification of an existing connection of a generator to a Load, on the reliability of the integrated power system.

“Tangible Net Worth” means, in respect of the Supplier or Guarantor, at any time and without duplication, an amount determined in accordance with GAAP, and calculated as (a) the sum of capital stock, preferred stock, paid-in capital, contributed surplus, retained earnings, capital reserves, and cumulative translation adjustment (whether positive or negative), minus (b) the sum of any amounts shown on account of any common stock reacquired by the Supplier or Guarantor, as applicable, patents, patent applications, service marks, industrial designs, copyrights, trade marks and trade names, and licenses, prepaid assets, goodwill and all other intangibles.

“Taxes” means all *ad valorem*, property, occupation, severance, production, transmission, utility, gross production, gross receipts, sales, use, excise and other taxes, governmental charges,

licenses, permits and assessments, other than (i) GST and PST and (ii) taxes based on profits, net income or net worth.

“**Term**” has the meaning ascribed to it in Section 8.1(b).

“**Term Commencement Date**” means the first day of the Term.

“**Terminating Party**” has the meaning ascribed to it in Section 9.5.

“**Termination Date**” means the date on which this Agreement terminates as a result of an early termination of this Agreement in accordance with this Agreement.

“**THM**” has the meaning ascribed to it in Exhibit J.

“**TMNRR**” or “**Total Monthly Net Revenue Requirement**” means, for a Settlement Month, the total Net Revenue Requirement for the Contracted Demand Reduction, expressed in Dollars, and calculated in accordance with Exhibit J.

“**Total Payment Adjustment**” and “**TPA_{SPx}**” shall have the meanings ascribed to them in Exhibit J.

“**Transmission System**” means a system for conveying Electricity at voltages of more than 50 kilovolts and includes any structures, equipment or other things used for that purpose.

“**Transmission System Code**” means the code approved by the OEB and in effect from time to time, which, among other things, sets the standards for a Transmitter’s existing Transmission System and for expanding the Transmitter’s transmission facilities in order to connect new customers to it or accommodate increase in capacity or load of existing customers.

“**Transmitter**” means a Person licensed as a “transmitter” by the OEB in connection with a Transmission System.

“**Winter**” means all calendar days for the period commencing on December 16 and ending on March 15 inclusive.

1.2 Exhibits

The following Exhibits are attached to this Agreement:

- Exhibit A Summary of DR Project
- Exhibit B Contracted Demand Reduction and Net Revenue Requirement
- Exhibit C Form of Irrevocable Standby Letter of Credit
- Exhibit D Guarantee
- Exhibit E Form of Certificate of Incumbency
- Exhibit F Milestone Events and Milestone Dates for the DR Project
- Exhibit G Records Under FIPPA
- Exhibit H 2,500 MW RFP

Exhibit I	Proposal
Exhibit J	Calculation of CSP
Exhibit K	Determination of Availability
Exhibit L	Required Minimum Elements for a Measurement and Verification Plan
Exhibit M	DR Third Party Agreement Provision
Exhibit N	Measurement and Verification Guidelines for DR
Exhibit O	Arbitration Procedures Applicable to Sections 1.7, 1.8, and 1.9

1.3 Headings and Table of Contents

The inclusion of headings and a table of contents in this Agreement are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

1.4 Gender and Number

In this Agreement, unless the context otherwise requires, words importing the singular include the plural and vice versa and words importing gender include all genders.

1.5 Currency

Except where otherwise expressly provided, all amounts in this Agreement are stated, and shall be paid, in Dollars.

1.6 IMO Market Rules and Statutes

Unless otherwise expressly stipulated, any reference in this Agreement to the IMO Market Rules or to a statute or to a regulation or rule promulgated under a statute or to any provision of a statute, regulation or rule shall be a reference to the IMO Market Rules, statute, regulation, rule or provision as amended, re-enacted or replaced from time to time. In the event of any conflict or inconsistency with the IMO Market Rules and the terms of this Agreement, the IMO Market Rules shall govern to the extent of such conflict or inconsistency.

1.7 Evolution of the IMO-Administered Markets

- (a) If the IMO Market Rules change such that HOEP is no longer provided for, and is replaced by another market-based price signal(s), (the “Price Evolution Event”), then:
 - (i) HOEP will be replaced with an Ontario wholesale electricity market price that most closely emulates the price actually charged to the Load associated with the DR Project (the “Replacement Price”); and
 - (ii) it is expected that all other features of Exhibit J will be applicable.
- (b) If the Government of Ontario has made an announcement with the effect that a Price Evolution Event is likely to occur within the succeeding 12 calendar months, the Buyer shall propose a Replacement Price to the Supplier or, at the

Buyer's discretion, all of the Suppliers to implement the provisions of Section 1.7(a). If the Parties are unable to agree on the Buyer's proposal or that of the Supplier or any of the Suppliers, as the case may be, within 30 days after the Price Evolution Event occurs, then the Replacement Price shall be determined by mandatory and binding arbitration, from which there shall be no appeal, with such arbitration(s) to be conducted in accordance with the procedures set out in Exhibit O.

- (c) The terms of this Agreement shall be deemed to be amended by the agreement of the Parties or the award of the Arbitration Panel, as the case may be, from and after the date the Price Evolution Event occurred.
- (d) Until such time as this Agreement is amended in accordance with Section 1.7(c), Exhibit J will continue to apply to calculate CSP using the Buyer's proposal submitted under Section 1.7(b), provided that all such payments shall be subject to recalculation and readjustment as a result of the agreement or award set out in Section 1.7(c), and any Party owing monies to the other pursuant to such recalculation shall promptly pay such monies owing together with interest at the Interest Rate, calculated daily, from and including the time such payments were due to the date of the payment thereof.

1.8 Price Unavailability Events

- (a) If HOEP or the replacement market-based price signals referred to in Section 1.7, is no longer available (the "Price Unavailability Event"), then for the purposes of Exhibit J, HOEP is replaced by the price paid by the Load associated with the DR Project, the ("Replacement Price"), and any modifications that may be necessary to implement such Replacement Price are collectively referred to as the Replacement Provision(s).
- (b) If the Government of Ontario has made an announcement with the effect that a Price Unavailability Event is likely to occur within the succeeding 12 calendar months, the Buyer shall propose Replacement Provision(s) to the Supplier or, at the Buyer's discretion, all of the Suppliers to implement the provisions of Section 1.8(a). If the Parties are unable to agree on the Buyer's proposal or that of the Supplier or any of the Suppliers, as the case may be, within 30 days after the occurrence of the Price Unavailability Event, then the Replacement Provision(s) shall be determined by mandatory and binding arbitration, from which there shall be no appeal, with such arbitration(s) to be conducted in accordance with the procedures set out in Exhibit O.
- (c) The terms of this Agreement shall be deemed to be amended by the agreement of the Parties or the award of the Arbitration Panel, as the case may be, from and after the date that the Price Unavailability Event occurred.
- (d) Until such time as this Agreement is amended in accordance with Section 1.8(c), Exhibit J will continue to apply to calculate CSP using the Buyer's proposal submitted under Section 1.8(b), provided that all such payments shall be subject to recalculation and readjustment as a result of the agreement or award set out in Section 1.8(c), and any Party owing monies to the other pursuant to such

recalculation shall promptly pay such monies owing together with interest at the Interest Rate, calculated daily, from and including the time such payments were due to the date of the payment thereof.

- (e) This Section 1.8 shall not apply to the circumstances addressed in Section 1.7.

1.9 Invalidity, Unenforceability, or Inapplicability of Indices and Other Provisions

In the event that either the Buyer or the Supplier, acting reasonably, considers that any provision of this Agreement is invalid, inapplicable, or unenforceable, or in the event that any index or price quotation referred to in this Agreement ceases to be published, or if the basis therefor is changed materially, then:

- (a) if a provision is considered to be invalid, inapplicable or unenforceable, then the Party considering such provision to be invalid, inapplicable or unenforceable may propose, by notice in writing to the other Party, a replacement provision and the Buyer and the Supplier or, at the Buyer's discretion, all of the Suppliers shall then engage in good faith negotiations to replace such provision with a valid, enforceable, and applicable provision, the economic effect of which comes as close as possible to that of the invalid, unenforceable, or inapplicable provision which it replaces;
- (b) if any index or price quotation referred to in this Agreement ceases to be published, or if the basis therefor is changed materially, then the Parties shall engage in good faith negotiations to substitute an available replacement index or price quotation that most nearly, of those then publicly available, approximates the intent and purpose of the index or price quotation that has so ceased or changed and this Agreement shall be amended as necessary to accommodate such replacement index or price quotation;
- (c) if a Party does not believe that a provision is invalid, inapplicable or unenforceable, or that the basis for any index or price quotation is changed materially, or the negotiations set out in Sections 1.9(a) or 1.9(b) are not successful, then if the Parties are unable to agree on all such issues and any amendments required to this Agreement (the "Replacement Provision(s)") within 30 days after the giving of notice under Section 1.9(a) or the occurrence of the event in Section 1.9(b) then the Replacement Provision(s) shall be determined by mandatory and binding arbitration from which there shall be no appeal, with such arbitration(s) to be conducted in accordance with the procedures set out in Exhibit O; and
- (d) the terms of this Agreement shall be deemed to be amended by the agreement of the Parties or the award of the Arbitration Panel, as the case may be, from and after the date of the invalidity, inapplicability or unenforceability or from and after the date that the relevant index or quotation ceased to be published or the basis therefore is changed materially.

This Section 1.9 shall not apply to the circumstances addressed in Sections 1.7 and 1.8.

1.10 Entire Agreement

The DR Contract, the 2,500 MW RFP, and the Proposal together constitute the entire agreement between the Parties pertaining to the subject matter of this Agreement. Notwithstanding the foregoing, the Parties acknowledge and agree that even though the 2,500 MW RFP solicits both demand-side projects and the supply of new clean generating capacity, any references to, or provisions in the 2,500 MW RFP addressing only new generating facilities are not intended to apply to this Agreement. There are no warranties, conditions, or representations (including any that may be implied by statute) and there are no agreements in connection with the subject matter of this Agreement except as specifically set forth or referred to in the DR Contract, the 2,500 MW RFP, and the Proposal. No reliance is placed on any warranty, representation, opinion, advice or assertion of fact made, prior to the issuance of the 2,500 MW RFP on September 13, 2004, by a Party to this Agreement, or its directors, officers, employees or agents, to the other Party to this Agreement or its directors, officers, employees or agents, except to the extent that the same has been reduced to writing and included as a term of this Agreement. Any conflict or inconsistency between the DR Contract, the 2,500 MW RFP, and the Proposal shall be resolved by interpreting such documents in the following order, from highest to lowest priority, namely:

- the DR Contract;
- the 2,500 MW RFP; and
- the Proposal,

where a document of a higher priority shall govern over a document of a lower priority to the extent of any conflict or inconsistency.

1.11 Waiver, Amendment

Except as expressly provided in this Agreement, no amendment or waiver of any provision of this Agreement shall be binding unless executed in writing by the Party to be bound thereby. No waiver of any provision of this Agreement shall constitute a waiver of any other provision nor shall any waiver of any provision of this Agreement constitute a continuing waiver or operate as a waiver of, or estoppel with respect to, any subsequent failure to comply, unless otherwise expressly provided.

1.12 Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

1.13 Preparation of Agreement

Notwithstanding the fact that this Agreement was drafted by the Buyer's legal and other professional advisors, the Parties acknowledge and agree that any doubt or ambiguity in the meaning, application, or enforceability of any term or provision of this Agreement shall not be construed or interpreted against the Buyer or in favour of the Supplier when interpreting such term or provision, by virtue of such fact.

ARTICLE 2 DEVELOPMENT AND OPERATION OF THE DR PROJECT

2.1 Design and Implementation of the Control Equipment

- (a) The Supplier agrees to design, implement and, where applicable, build or acquire the Control Equipment as described in the Proposal using Good Engineering and Operating Practices and meeting all relevant requirements of the IMO Market Rules, the Transmission System Code, the Distribution System Code, and all other Laws and Regulations. The Supplier shall ensure that the Control Equipment is designed, engineered, constructed and installed to operate in accordance with the requirements of this Agreement from the Term Commencement Date until the expiry of the Term.
- (b) The Supplier agrees to provide a single line electrical drawing which identifies the as-built Connection Point(s), clearly showing area transmission and distribution facilities, including the transmission station(s) that is electrically closest to the DR Project. If the Proposal provides that the Connection Point, or all Connection Points with respect to multiple Loads being aggregated, are within a Priority Electrical Zone, then the Supplier agrees that such Connection Point(s) or all Connection Points with respect to multiple Loads being aggregated shall be located within a Priority Electrical Zone.
- (c) The Supplier shall at no time after the date of this Agreement modify, vary, or amend in any material respect any of the features or specifications of the Control Equipment as outlined in the Proposal (the “**Proposal Amendment**”) without first notifying the Buyer in writing and obtaining the Buyer’s consent in writing, which consent may be unreasonably withheld. Notwithstanding the foregoing, if:
 - (i) subject to Section 2.1(d), the Contracted Demand Reduction for any Season will be materially reduced to a lower amount, expressed in MW and stated in such notice, as a result of a term, condition, or restriction imposed by, or contained in a permit, certificate, licence or other approval issued by, a Governmental Authority in respect of the DR Project, where the imposition of such term, condition, or restriction was beyond the reasonable control of the Supplier;
 - (ii) the term, condition, or restriction referred to in Section 2.1(c)(i) is subsequently removed or relaxed, such that the Contracted Demand Reduction may be increased up to and including the original Contracted Demand Reduction set out in Exhibit B; or
 - (iii) the capability of the DR Project to curtail demand will be materially increased to a higher amount stated in such notice without affecting the Contracted Demand Reduction;

the Buyer’s consent to such Proposal Amendment shall not be unreasonably withheld. Any Proposal Amendment that has not been consented to by the Buyer shall constitute a Supplier Event of Default. For purposes of this paragraph, if the Proposal provides that the Connection Point, or Connection Points with

respect with respect to multiple Loads being aggregated, are within a Priority Electrical Zone, and/or if the Proposal provides that the DR Project will provide Automatic System Voltage Support, then the failure of the DR Project to meet any one or more of such requirements shall be deemed to be a Proposal Amendment.

- (d) If the Buyer's consent in writing has been given in relation to a reduction in the Contracted Demand Reduction described in Section 2.1(c)(i), the Contracted Demand Reduction shall be deemed to be reduced to the lower amount, effective at the time stated in such notice. If the Buyer's consent has been given in relation to an increase in the Contracted Demand Reduction described in Section 2.1(c)(ii), the Contracted Demand Reduction shall be increased to the higher amount stated in such notice, not to exceed the Contracted Demand Reduction set out in Exhibit B, effective as of the time stated in such notice, provided that such increase shall not be effective until the Supplier has delivered to the Buyer the amount of Completion and Performance Security corresponding to the Maximum Contracted Demand Reduction, as calculated in accordance with Section 5.1.

2.2 Additional Development and Construction Covenants

- (a) The Supplier agrees that the Control Equipment and the Load shall be located in the Province of Ontario and shall affect demand on the IMO-Administered Markets.
- (b) If a Control Equipment includes a generator, the Supplier agrees to arrange, at its expense, for all connection requirements and the payment of all Connection Costs.
- (c) The Supplier agrees to provide, operate, and maintain, at its expense, such equipment or software as is necessary to measure and verify the curtailment of Electricity demand of the Load as a direct result of the operation of the Control Equipment in accordance with the terms of the Measurement and Verification Plan.
- (d) If the Control Equipment includes a generator, the Supplier agrees to provide, at its expense, all power system components on the Supplier's side of the Connection Point, including all transformation, switching and auxiliary equipment, such as synchronizing and protection and control equipment, pursuant to requirements deemed necessary by the IMO, the Transmitter, the LDC (and as specified in the System Impact Assessment, the Customer Impact Assessment and the Connection Impact Assessment, as applicable), and the Load, as applicable, to protect the safety and security of the IMO-Controlled Grid, the Local Distribution System, each of their respective customers, and the Load, as the case may be. The equipment to be so provided by the Supplier shall include such electrical equipment as the IMO, the Transmitter, the LDC, and the Load, as applicable, deem necessary, from time to time, for the safe and secure operation of the IMO-Controlled Grid, the Local Distribution System, and the

Load, as required by the IMO Market Rules, the Transmission System Code, the Distribution System Code, and the Load, as applicable.

2.3 Milestone Dates

The Supplier acknowledges that time is of the essence to the Buyer with respect to attaining Commercial Operation of the DR Project by the corresponding Milestone Date set out by the Supplier in Exhibit F, and agrees:

- (a) that each of the Milestone Events corresponding to:
 - (i) the delivery to the Buyer of a certificate addressed to it from the DR Verification Consultant, stating that the Supplier has executed DR Third Party Agreements as collectively represent 80% of the Maximum Contracted Demand Reduction (which Milestone Event is only required where a DR Project requires the participation of multiple Loads that are third parties to the Supplier);
 - (ii) the execution by the Supplier of engineering, procurement and construction contracts (which Milestone Event is only required where the Control Equipment includes a generator); and
 - (iii) financial closing;

shall be achieved in a timely manner and by its corresponding Milestone Date, failing which the Supplier shall pay to the Buyer within five (5) Business Days after receipt of an invoice from the Buyer, as liquidated damages and not as a penalty, a sum of money equal to Fifty (\$50.00) Dollars per MW multiplied by the Maximum Contracted Demand Reduction for each calendar day after the applicable Milestone Date, until the corresponding Milestone Event has been achieved. However, if Commercial Operation is achieved on or before its corresponding Milestone Date, then all such liquidated damages for delays prior to Commercial Operation paid by the Supplier under this Section 2.3(a) shall be refunded to the Supplier, without interest, two weeks following the Commercial Operation Date;

- (b) that Commercial Operation shall be achieved by the corresponding Milestone Date, failing which the Supplier shall pay to the Buyer on or before five (5) Business Days after receipt of an invoice from the Buyer, as liquidated damages and not as a penalty, an amount equal to Two Hundred (\$200.00) Dollars per MW multiplied by the Maximum Contracted Demand Reduction, for each calendar day after such Milestone Date until Commercial Operation has been achieved; and
- (c) The maximum amount of liquidated damages payable by the Supplier under Section 2.3 shall be an amount, expressed in Dollars, equal to the product of: (1) Two Hundred (\$200.00) Dollars per MW; (2) the Maximum Contracted Demand Reduction, and (3) 545.

2.4 Requirements for Commercial Operation

The DR Project will be deemed to have achieved “**Commercial Operation**” at the point in time when:

- (a) the Measurement and Verification Plan submitted by the Supplier in accordance with Section 4.1 has been approved by the Buyer;
- (b) the Supplier agreed to abide by the DR Protocols specified by the IMO and has demonstrated its readiness to do so, which has been confirmed by the IMO;
- (c) the Buyer has received a certificate addressed to it from the DR Verification Consultant, procured at the expense of the Supplier, stating that:
 - (i) the DR Project has been completed in all material respects excepting punch list items that do not materially and adversely affect the ability of the DR Project to operate in accordance with this Agreement. In the alternative, the statement set out in this Section 2.4(c)(i) may be provided to the Buyer from an independent professional engineer duly qualified to practice engineering in Ontario;
 - (ii) on two (2) separate occasions, in response to Operational Directives, the DR Project has curtailed the Electricity demand of the Load as a direct result of the operation of the Control Equipment at 100% of the Contracted Demand Reduction in compliance with all Laws and Regulations for six (6) continuous hours on each occasion. The hours of curtailment on these two separate occasions must be such that when these two separate occasions are taken together the Supplier has curtailed the Electricity demand of the Load during all Callable Hours. This requirement shall be evaluated based on the meter data as measured by the DR Project’s meters, and shall be satisfied if the energy reduction in each of the six (6) hours (in MWh), divided by one hour, is equal to or greater than the Contracted Demand Reduction. The Supplier acknowledges and agrees that the Contracted Demand Reduction and meter data, as may be measured by the foregoing test, shall not be adjusted for ambient, weather, or other conditions whatsoever;
 - (iii) if the Proposal provides that the Connection Point, or Connection Points with respect to multiple Loads being aggregated, are within a Priority Electrical Zone, such Connection Point(s) are located within a Priority Electrical Zone; and
 - (iv) if the Proposal provides that the DR Project will provide Automatic System Voltage Support, the DR Project has provided Automatic System Voltage Support for six (6) continuous hours on each of two (2) separate occasions.

2.5 Buyer Information During Design and Construction

By the fifteenth (15th) day of each calendar quarter following the date of this Agreement and continuing until the Commercial Operation Date, the Supplier shall provide the Buyer with quarterly progress reports in a form agreed to by the Parties describing the status of efforts made by the Supplier to meet each Milestone Date and the progress of the design and construction work. At the Buyer's request, the Supplier shall provide an opportunity for the Buyer to meet with appropriate personnel of the Supplier to discuss and assess the contents of any such quarterly progress report.

2.6 Operation Covenants

- (a) The Supplier agrees to own the Control Equipment, including a generator if applicable, and to operate and maintain the Control Equipment during the Term such that the requirements of the Measurement and Verification Plan, the applicable IMO Market Rules, and other requirements as set out in Section 14.3 are met and in accordance with Good Engineering and Operating Practices, and meeting all applicable requirements of the Transmission System Code, the Distribution System Code, and all other Laws and Regulations. In the event that the IMO Market Rules are not applicable to the Supplier because the Supplier is not a "market participant" pursuant to the IMO Market Rules, then the Supplier shall be required to meet the requirements of the IMO Market Rules with respect to the DR Project to the same extent and standards as would have been required if the Supplier were governed by the IMO Market Rules with respect to the DR Project.
- (b) In the event that the IMO establishes protocols from time to time with respect to demand response that are applicable to the Supplier (the "**DR Protocols**"), the Supplier agrees to operate and maintain the DR Project during the Term at its sole expense in accordance with such DR Protocols.
- (c) The Supplier agrees to respond to all Operational Directives in accordance with Section 3.2 of Exhibit J and any applicable DR Protocols. In addition:
 - (i) the Supplier acknowledges that the Buyer makes no representations as to the number or extent of any Operational Directives that may be issued to the Supplier over any period of time during the Term, and further acknowledges that in the event that the amount of demand response required by the IMO in any given period of time during the Term is less than the total of contracted demand reduction under all demand response contracts executed by the Buyer with suppliers under the 2,500 MW RFP, then the IMO will call on suppliers with demand response contracts according to the priority as specified by the IMO in its sole discretion from time to time; and
 - (ii) the Buyer recognizes that an Operational Directive may be issued during a Callable Hour in which the Supplier has already curtailed the Electricity demand of the Load in response to market prices. In such circumstances, the Supplier will only be required to verify that the Electricity demand of the Load was curtailed as a direct result of the Control Equipment, due to

actions that had already been taken by the Supplier or in response to the Operational Directive, for the duration specified in the Operational Directive. In such a circumstance the Supplier will not be required to provide any further curtailment in the Electricity demand of the Load beyond what was specified in the Operational Directive.

- (d) The Supplier agrees to assume all risk, liability and obligation and to indemnify, defend, and hold harmless the Indemnitees in respect of all actions, causes of action, suits, proceedings, claims, demands, losses, damages, penalties, fines, costs, obligations and liabilities arising out of a discharge of any contaminant into the natural environment, at or related to, the DR Project and any fines or orders of any kind that may be levied or made in connection therewith pursuant to the *Environmental Protection Act* (Ontario), the *Ontario Water Resources Act*, or the *Dangerous Goods Transportation Act* (Ontario), or other similar legislation whether federal or provincial except to the degree that such discharge shall have been due to the negligence of the Indemnitees.
- (e) If the Control Equipment for the DR Project includes a generator, the Supplier agrees to use Commercially Reasonable Efforts to maintain or enter into any fuel supply contracts that are necessary for the proper operation of the Control Equipment during the Term. The Supplier further agrees that the DR Project shall not burn Oil as a Primary Fuel and shall not burn any coal or Municipal Solid Waste. Without limiting the generality of the foregoing, a Supplier who is also a load facility under the IMO Market Rules shall be solely responsible for all charges (net of any applicable credits) in relation to Electricity consumed by the Control Equipment in accordance with this Agreement and consumed by the Supplier.
- (f) If the Proposal provides that Automatic System Voltage Support will be provided by the DR Project, the Supplier agrees to provide such Automatic System Voltage Support throughout the Term in accordance with the following requirements, as applicable:
 - (i) for a DR Project which involves the generation of electricity:
 - (A) the DR Project meets all relevant requirements under the IMO Market Rules for a generator, whether directly connected to a Transmission System, Local Distribution System, or Load, including the requirements described in the amendments approved by the IMO and described in http://www.theimo.com/imoweb/pubs/mr/mr_00244-R00_BA.pdf.
 - (ii) for a DR Project which does not involve the generation of electricity:
 - (A) the DR Project shall be equipped with facilities to provide continuously acting power factor or VAR (i.e. volt amperes reactive) control that can automatically maintain, at the Connection Point: (i) a power factor within a range of +/- 1% between power factors of 90% lagging and 95% leading, or (ii)

VAR consumption within +/- 2.5% of the rated MVA of such project under steady state conditions;

- (B) the power factor or VAR controller shall have an adjustable effective response time between 10 and 60 seconds;
 - (C) the power factor or VAR controller will automatically, and in less than 5 seconds, reduce the project's reactive power consumption by (1) 0 MVAR in response to a voltage change of 2 percent or less, and by (2) an amount increasing continuously to a maximum amount equal to "X" MVAR in response to a voltage reduction at the Connection Point of 5 percent or greater, where "X" is a number equal to one-half of the Contracted Demand Reduction as expressed in MW. By way of example, if a DR Project has a Contracted Demand Reduction of 8 MW, then the maximum amount of reduction referred to in subparagraph (2) will be equal to 4 MVAR in response to a voltage reduction at the Connection Point of 5 percent or greater;
 - (D) the DR Project will operate in compliance with the IMO Market Rules associated with reactive power dispatch including, when directed by the IMO, reducing its reactive power consumption up to a maximum amount equal to "X" MVAR, where "X" is a number equal to one-half of the Contracted Demand Reduction as expressed in MW; and
 - (E) the DR Project will operate at all times in compliance with the load power factor requirements under the IMO Market Rules.
- (g) The Supplier shall not enrol the DR Project under any other demand management program during the Term of the DR Contract without the prior written consent of the Buyer.

2.7 Insurance Covenants

- (a) The Supplier hereby agrees to put in effect and maintain, or cause its contractors and subcontractors, where appropriate, to maintain from the commencement of construction of the DR Project to the expiry of the Term, at its own cost and expense, with insurers reasonably acceptable to the Buyer and licensed to underwrite insurance in the Province of Ontario, all the necessary and appropriate insurance that a prudent Person in the business of the Supplier developing and operating the DR Project would maintain including the following:
 - (i) "all-risk" property insurance covering property of every description, in the joint names of at least the Supplier and its principal contractors, insuring not less than the full replacement value of the DR Project with a deductible for all perils not exceeding \$100,000. The policy shall also provide delayed start-up coverage for an indemnity period of not less than 30 days and a deductible period of not more than 60 days. The policy

shall contain a waiver of subrogation in favour of the Indemnitees. During the construction of the DR Project until the Commercial Operation Date, the policy shall include as additional insureds all subcontractors and the coverage shall not be less than the insurance required by IBC Forms 4042 and 4047, or their equivalent replacement;

- (ii) boiler and machinery insurance, if applicable, in the joint names of at least the Supplier and its principal contractors, insuring not less than the full replacement value of the boilers, machinery, pressure vessels, service supply objects and other insurable objects forming part of the DR Project. The coverage shall not be less than the insurance provided by the “Comprehensive Boiler and Machinery Form”. The policy shall contain a waiver of subrogation in favour of the Indemnitees;
- (iii) commercial general liability insurance on an occurrence basis for death, bodily injury and property damage and other types of damage that may be caused to third parties as a result of the Supplier’s activities in connection with the DR Project or performance of its obligations under this Agreement, to an inclusive limit of not less than \$10,000,000 per occurrence and in the aggregate, with a deductible not exceeding \$100,000. The coverage shall not be less than the insurance required by IBC Forms 2100 and 2320, or their equivalent replacement. The policy shall include the following clauses:
 - (A) Ontario Electricity Financial Corporation, the Ontario Power Authority (if created), the Government of Ontario, and each of the foregoing Person’s respective directors, officers and employees shall be additional insureds with respect to liability arising in the course of performance of the obligations under, or otherwise in connection with, this Agreement;
 - (B) a cross-liability endorsement;
 - (C) coverage for non-owned automobile liability with blanket contractual coverage for hired automobiles;
 - (D) coverage for contingent employer’s liability;
 - (E) coverage for tenant’s legal liability (if applicable and with applicable sub-limits);
 - (F) coverage for broad form property damage;
 - (G) coverage for contractual liability of the Supplier under this Agreement;
 - (H) coverage for liability resulting from completed products and operations; and

- (I) coverage for liability on the part of the Supplier resulting from activities or work performed by its contractors and subcontractors; and
- (iv) environmental/pollution liability insurance, providing coverage for first party damage and any third party claims for bodily injury, property damage and clean-up for pollution and environmental incidents arising out of the construction, operation or maintenance of the DR Project, with a limit of not less than \$5,000,000 per occurrence and in the aggregate. The policy shall include as additional insureds Ontario Electricity Financial Corporation, the Ontario Power Authority (if created), the Government of Ontario, and each of the foregoing Person's respective directors, officers and employees with respect to liability arising in the course of performance of the obligations under, or otherwise in connection with, this Agreement.
- (b) Following the Commercial Operation Date, the Supplier may propose to the Buyer a self-insured retention program in lieu of the deductibles set forth in the insurance coverage under Sections 2.7(a)(i) and (iii). The Buyer shall consider such proposed programs in a timely fashion and, acting reasonably, shall consent to such programs provided that the interests of the Supplier are not materially adversely affected thereby and that the savings, if any, on insurance premiums resulting therefrom are shared on an equitable basis between the Buyer and the Supplier.
- (c) For purposes of the insurance coverage under Sections 2.7(a)(i) and (ii), the Supplier may procure and maintain separate insurance policies to cover the construction period prior to the Commercial Operation Date and the operations period from and after the Commercial Operation Date.
- (d) The Supplier shall provide the Buyer with proof of the insurance required by this Agreement in the form of valid certificates of insurance that reference this Agreement and confirm the required coverage, on or before the commencement of construction of the DR Project, and renewal replacements on or before the expiry of any such insurance. Upon the request of the Buyer, a copy of each insurance policy shall be made available to it. The policies for the insurance coverage under Sections 2.7(a)(iii) and (iv) shall be endorsed to provide the Buyer with not less than 30 days notice in writing in advance of any cancellation, and of any change or amendment restricting coverage.
- (e) If the Supplier is subject to the *Workplace Safety and Insurance Act* (Ontario), it shall submit a valid clearance certificate of *Workplace Safety and Insurance Act* coverage to the Buyer prior to the commencement date of the Agreement. In addition, the Supplier shall, from time to time at the request of the Buyer, provide additional *Workplace Safety and Insurance Act* clearance certificates. The Supplier agrees to pay when due, and to ensure that each of its subcontractors pays when due, all amounts required to be paid by it and its subcontractors, from time to time from the commencement date of this Agreement, under the *Workplace Safety and Insurance Act*, failing which the

Buyer shall have the right, in addition to and not in substitution for any other right it may have pursuant to this Agreement or otherwise at law or in equity, to pay to the Workplace Safety and Insurance Board any amount due pursuant to the *Workplace Safety and Insurance Act* and unpaid by the Supplier or its subcontractors and to deduct such amount from any amount due and owing from time to time to the Supplier pursuant to this Agreement together with all costs incurred by the Buyer in connection therewith.

2.8 Compliance with Laws and Regulations and Governing Documentation

- (a) The Buyer and the Supplier shall each comply, in all material respects, with all Laws and Regulations required to perform or comply with their respective obligations under this Agreement.
- (b) The Buyer and the Supplier shall each furnish, in a timely manner, information to Governmental Authorities and shall each obtain and maintain in good standing any licence, permit, certificate, registration, authorization, consent or approval of any Governmental Authority required to perform or comply with their respective obligations under this Agreement, including such licencing as is required by the OEB.

ARTICLE 3 SUPPLY AND PAYMENT OBLIGATIONS

3.1 Supply of Contracted Demand Reduction

- (a) The Parties acknowledge that prior to the Term Commencement Date, the Supplier shall have no obligation to curtail the Electricity demand of the Load.
- (b) From and after the beginning of the hour ending 01:00 hours (EST) of the Term Commencement Date, the Supplier agrees to curtail the Electricity demand, expressed in MW, of the Load as a direct result of the operation of the Control Equipment in accordance with the terms of this Agreement, and the Monthly Payments shall begin to accrue and be payable in accordance with Section 3.2 and Article 4.
- (c) The Supplier shall from time to time during the Term of this Agreement, on behalf of the Buyer, obtain, quantify, and register with the relevant authorities or agencies all Environmental Attributes related to the DR Project that are required pursuant to applicable legislation, and same shall be immediately transferred, assigned or held in trust for the Buyer who thereafter shall retain, all rights, title, and interest in all such Environmental Attributes. The Supplier shall not participate in any voluntary programs with respect to any Environmental Attributes associated with the DR Project without the prior written consent of the Buyer, which consent may be unreasonably withheld.
- (d) Notwithstanding Section 3.1(c), the Supplier shall continue to be entitled to all rights, title, and interest to all emission allowances and Emission Reduction Credits that pertain to the DR Project and are of a type that were available under the Ontario Emissions Trading Program as of September 13, 2004. However, the

amount of the Supplier's entitlement to any such emission allowance or Emission Reduction Credit shall be determined with reference to the levels in effect as of the date of the Supplier's claim to any such entitlement.

- (e) If the Supplier receives any compensation for curtailing the Electricity demand of the Load in addition to the revenues attributed to the DR Contract, then such compensation shall be shared between the Supplier and the Buyer in equal proportions.

3.2 Amount of Monthly Payment

The "Monthly Payment" shall be an amount equal to the Contingent Support Payment, if any, which shall be owed by the Buyer to the Supplier.

3.3 Supplier's Responsibility for Taxes

The Supplier is liable for and shall pay, or cause to be paid, or reimburse the Buyer if the Buyer has paid, all Taxes applicable to the supply of the Contracted Demand Reduction which relate to DR Project. In the event that the Buyer is required to remit such Taxes, the amount thereof shall be deducted from any sums becoming due to the Supplier hereunder.

3.4 Buyer's Responsibility for Taxes

The Buyer is liable for and shall pay, or cause to be paid, or reimburse the Supplier if the Supplier has paid, all Taxes applicable to any Contingent Support Payment due to the Supplier. If any GST or PST is payable in connection with the Contingent Support Payment, such GST or PST shall be paid by the Buyer.

3.5 Non-residency

If the Supplier is a non-resident of Canada, as that term is defined in the ITA, and the Buyer incurs any withholding or other similar Taxes as a result of such non-residency, then payments under this Agreement by the Buyer shall be reduced by the amount of such withholding Taxes and the Buyer shall remit such withholding Taxes to the applicable taxing authorities. The Buyer shall within sixty (60) days after remitting such Taxes, notify the Supplier in writing, providing reasonable detail of such payment so that the Supplier may claim any applicable rebates, refunds or credits from the applicable taxing authorities. If after the Buyer has paid such amounts, the Buyer receives a refund, rebate or credit on account of such Taxes, then the Buyer shall promptly remit such refund, rebate or credit amount to the Supplier.

ARTICLE 4

MEASUREMENT AND VERIFICATION, STATEMENTS AND PAYMENTS

4.1 Measurement and Verification Plan

- (a) Not less than ninety (90) Business Days prior to the Term Commencement Date, the Supplier shall submit to the Buyer for its approval a Measurement and Verification Plan for the DR Project containing the minimum elements set out in Exhibit L. The Buyer agrees to review the Measurement and Verification Plan submitted by the Supplier, and to either approve the plan or provide the Supplier

with its comments by the later of fifteen (15) Business Days after receipt and fifteen (15) Business Days prior to the Term Commencement Date. The receipt and review by the Ontario Ministry of Energy of an outline of a measurement and verification plan as part of the Proposal shall not, under any circumstances, be constituted or deemed to be an express or implied acceptance or approval by the Ministry of the form, content, or methodology set out therein and shall not bind or constitute an estoppel against the Buyer or the Supplier for purposes of agreeing upon the form, content, and methodology of the Measurement and Verification Plan required to be provide by the Supplier pursuant to this Section 4.1(a).

- (b) The Supplier agrees to promptly notify and provide the Buyer with copies of any proposed amendments or modifications to the Measurement and Verification Plan, and acknowledges that no such proposed amendment or modification to the Measurement and Verification Plan shall be effective without the consent of the Buyer, which consent shall not be unreasonably withheld.

4.2 DR Verification Certificate

- (a) The Supplier acknowledges and agrees that no payments shall be made by the Buyer in respect of a Settlement Month until the Supplier has delivered to the Buyer a DR Verification Certificate in respect of such Settlement Month executed by the DR Verification Consultant. A DR Verification Certificate for a particular Settlement Month that is delivered to the Buyer within ten (10) Business Days following the end of such Settlement Month shall be considered by the Buyer in the preparation of the Statement for such Settlement Month. A DR Verification Certificate for a particular Settlement Month that is delivered by the Supplier more than ten (10), but less than ninety (90), Business Days, following the end of the applicable Settlement Month (a “**Late Certificate**”) shall be considered by the Buyer in the preparation of the Statement for the Settlement Month in which such Late Certificate is received by the Buyer, and any payments that are owing from the Buyer to the Supplier in respect of a Settlement Month for which a Late Certificate has been delivered shall be added to the Statement for the Settlement Month in which such Late Certificate is received by the Buyer. The Buyer shall not make, nor shall it owe, any payments to the Supplier in respect of any Settlement Month for which the Supplier fails to deliver a DR Verification Certificate prior to the ninetieth (90th) Business Day following the end of such Settlement Month.
- (b) The DR Verification Certificate will be prepared by the DR Verification Consultant in a manner consistent with the M&V Plan, in respect of the applicable Settlement Month, and will specifically confirm that the DR Project has curtailed the Electricity demand of the Load in response to all Operational Directives, as a direct result of the operation of the Control Equipment, and in accordance with this Agreement. To the extent that the DR Project has failed to do so at any time, the DR Verification Certificate shall so state and set out the reasons for such failure.

- (c) In the event that the Supplier has failed to deliver a DR Verification Certificate in respect of a particular Settlement Month within thirty (30) Business Days following the end of such Settlement Month, then the Supplier shall be required, at its sole cost and expense, to conduct a CDR Check Test in accordance with the provisions of Section 14.6 (a “**Late Certificate Capacity Check Test**”).
- (d) In the event the DR Verification Consultant ceases to be the DR Verification Consultant, or is unable, for any reason, to perform Measurement and Verification Activities in respect of the DR Project, the Supplier shall be required to appoint a replacement DR Verification Consultant that is reasonably acceptable to the Buyer within thirty (30) Business Days of the date on which the Supplier first knew or ought to have known of the occurrence of such event. If the Supplier fails to appoint a replacement DR Verification Consultant within forty-five (45) Business Days of such date, upon notice to the Supplier, the Buyer may, but shall not be obligated to, appoint, at the Supplier’s sole cost and expense, a successor DR Verification Consultant who shall serve until such time as the Supplier appoints a replacement DR Verification Consultant.
- (e) If the Buyer, acting reasonably, determines that the DR Verification Consultant is not acting in an impartial and independent manner, the Buyer shall have the right to require the Supplier to replace the DR Verification Consultant, at the Supplier’s sole cost and expense, with a new third party technical consultant acceptable to the Buyer.
- (f) In addition to the obligations of the Supplier to provide Measurement and Verification Data to the Buyer under the Measurement and Verification Plan, the Supplier shall provide to the Buyer all Measurement and Verification Data together with any other data or information relating to the DR Project (including information related to Outages), forthwith upon request by the Buyer. Upon the Supplier becoming aware of any errors or omissions in any data or information provided in accordance with this Section, the Supplier shall notify the Buyer, and if applicable, the IMO, on a timely basis.

4.3 Statements

The Buyer shall prepare and deliver a settlement statement (the “**Statement**”) to the Supplier, within ten (10) Business Days after the end of each calendar month in the Term that is the subject of the Statement (the “**Settlement Month**”), setting out the basis for the Monthly Payment with respect to the Settlement Month, as well as the basis for any other payments owing under this Agreement by either Party to the other in the Settlement Month. A Statement may be delivered by the Buyer to the Supplier by facsimile or electronic means, and shall include the reference number assigned to this Agreement by the Buyer. In preparing the Statement, the Buyer shall consider any DR Verification Certificate delivered by the Supplier, but the Buyer, acting reasonably, shall not be bound by any statement, value, or certification set out in any DR Verification Certificate.

4.4 Payment

The Buyer shall remit to the Supplier the full payment in respect of the Statement no later than twenty (20) Business Days after the end of the Settlement Month to which the Statement relates

(the “**Payment Date**”). Any and all payments required to be made by either Party under any provision of this Agreement shall be made by wire transfer to the applicable account designated in Section 4.6 or as otherwise agreed by the Parties.

4.5 Interest

Each Party shall pay interest on any late payment to the other Party, from the Payment Date to the date of payment unless such late payment was through no fault of the other Party. The interest rate applicable to such late payment shall be the Interest Rate in effect on the date that the payment went into arrears, calculated daily, but shall not, under any circumstances, exceed the maximum interest rate permitted by Laws and Regulations.

4.6 Payment Account Information

Account for payments to Supplier:

[Bank]

[Bank address]

Account Name: ●

Account Number: ●

Transit Number: ●

Account for payments to Buyer:

[Bank]

[Bank address]

Account Name: ●

Account Number: ●

Transit Number: ●

Either Party may change its account information from time to time by written notice to the other in accordance with Section 14.7.

4.7 Adjustment of NRR based on Actual DR Costs

The Supplier acknowledges that each of the variables $NRR(FC)$ and $NRR(M\&V)_{SPX}$, which together are used to calculate NRR_{SPX} pursuant to Section 2.1 of Exhibit J, are based on Fixed Costs and Actual M&V Costs, respectively. The Supplier shall deliver to the Buyer all invoices, certifications, and other documentation forthwith as required by the Buyer from time to time in order to substantiate the calculation of Fixed Costs, and the calculations of Actual M&V Costs from time to time, in accordance with Exhibit J.

4.8 Adjustment to Statement

- (a) Each Statement shall be subject to adjustment for errors in arithmetic, computation, or other errors, raised by a party during the period of one (1) year following the end of the calendar year in which such Statement was issued. If there are no complaints raised, or if any complaints raised in the time period have

been resolved, such Statement shall be final and subject to no further adjustment after the expiration of such period.

- (b) Notwithstanding the foregoing, the determination by the IMO of any information shall be final and binding on the Parties in accordance with the IMO Market Rules, and without limiting the generality of the foregoing, if a Statement contains an error in the data or information issued by the IMO which the IMO has requested be corrected, then the one (1) year limit set forth in Section 4.8(a) shall not apply to the correction of such error or the Buyer's ability to readjust the Statement.
- (c) Subject to Section 4.9, any adjustment to a Statement made pursuant to this Section 4.8 shall be made in the next subsequent Statement.

4.9 Disputed Statement

If the Supplier disputes a Statement or any portion thereof, the Party owing any amount set forth in the Statement shall, notwithstanding such dispute, pay the entire amount set forth in the Statement to the other Party. The Supplier shall provide written notice to the Buyer setting out the portions of the Statement that are in dispute with a brief explanation of the dispute. If it is subsequently determined or agreed that an adjustment to the Statement is appropriate, the Buyer will promptly prepare a revised Statement. Any overpayment or underpayment of a Statement shall bear interest at the Interest Rate, calculated daily, from and including the time of such overpayment or underpayment to the date of the refund or payment thereof. Payment pursuant to the revised Statement shall be made on the tenth (10th) Business Day following the date on which the revised Statement is delivered to the Supplier. If a Statement dispute has not been resolved between the Parties within five (5) Business Days after receipt of written notice of such dispute by the Buyer, the dispute may be submitted by either Party to a Senior Conference pursuant to the terms of Section 15.1.

4.10 Statements and Payment Records

The Parties shall keep all books and records necessary to support the information contained in and with respect to each Statement and Monthly Payment made thereunder, in accordance with Section 14.2.

ARTICLE 5 CREDIT AND SECURITY REQUIREMENTS

5.1 Completion and Performance Security

The Supplier shall provide security to the Buyer upon execution of this Agreement for the performance of the Supplier's obligations under this Agreement, in an amount equal to \$50,000 per MW of Maximum Contracted Demand Reduction and in the form described in Section 5.2 (the "**Completion and Performance Security**"). Effective upon the Term Commencement Date, and provided that the Buyer has determined that any liquidated damages payable by the Supplier under Section 2.3 have been paid by the Supplier, then the amount of the Completion and Performance Security shall be reduced to an amount equal to \$25,000 per MW of Maximum Contracted Demand Reduction. If the Buyer has agreed to a reduction in the Maximum Contracted Demand Reduction pursuant to Section 2.1(c), then the amount of Completion and

Performance Security shall be reduced in accordance with this Section 5.1. If the Buyer has agreed to the increase in the Maximum Contract Demand Reduction in accordance with Section 2.1(c)(ii), then the amount of the Completion and Performance Security shall be increased in accordance with this Section 5.1. In the event that the Buyer, in accordance with this Agreement, has recovered monies that were due to it using all or part of the Completion and Performance Security, the Supplier shall forthwith provide replacement security to cover an amount equal to that recovered or paid out of the Completion and Performance Security. In exchange for the Completion and Performance Security in the amended amount, the Buyer will return to the Supplier the original Completion and Performance Security.

5.2 Composition of Security

- (a) Prior to the Term Commencement Date, where the Commercial Operation Date occurs after the date of this Agreement, the Completion and Performance Security shall be provided in the form of a Letter of Credit, certified cheque, bank draft, or other equivalent form of surety instrument acceptable to the Buyer, acting reasonably, for the full amount, but for certainty, shall not include guarantees.
- (b) From and after the Term Commencement Date, the Completion and Performance Security shall be provided as set out in (i) or (ii) below:
 - (i) a Letter of Credit, certified cheque, bank draft, or other equivalent form of surety instrument acceptable to the Buyer, for the full amount of the Completion and Performance Security; or
 - (ii) subject to Section 5.2(c), a Guarantee, up to a maximum amount determined pursuant to Section 5.4, but not to exceed 90% of the amount of the Completion and Performance Security, together with a Letter of Credit, certified cheque, bank draft, or other equivalent form of surety instrument acceptable to the Buyer, for the balance of the amount of the Completion and Performance Security.

To the extent that the amount of the Guarantee requirement increases or decreases from time to time in accordance with this Article 5, the amount of the Letter of Credit shall correspondingly be required to be decreased or increased, respectively, so that the total amount of the Completion and Performance Security held by the Buyer at all times from and after the Term Commencement Date remains in an aggregate amount equal to \$25,000 per MW of Maximum Contracted Demand Reduction.

- (c) If the aggregate of the Supplier's Creditworthiness Value, determined pursuant to Section 5.4(b) and the principal amount of the Letter of Credit, certified cheque, bank draft, or other equivalent form of surety instrument acceptable to the Buyer described in Section 5.2(b)(ii) is equal to or greater than the amount of the Completion and Performance Security, then no Guarantee is required.
- (d) If a Guarantee forms part of the Completion and Performance Security and:

- (i) the Creditworthiness Value of the Supplier determined pursuant to Section 5.4(b) is equal to or greater than the Creditworthiness Value of the Guarantor determined pursuant to Section 5.4(b), provided the Guarantor has a Credit Rating required of a guarantor as set out in Section 5.4, or
- (ii) the aggregate of the Supplier's Creditworthiness Value and the principal amount of the Letter of Credit, certified cheque, bank draft, or other equivalent form of surety instrument acceptable to the Buyer described in Section 5.2(b)(ii) is equal to or greater than the amount of the Completion and Performance Security,

then, provided the Supplier is not then in default under this Agreement, the Buyer shall, upon request by the Supplier, return the Guarantee to the Supplier.

5.3 Letter of Credit Provisions

Any Letter of Credit delivered hereunder shall be subject to the following provisions:

- (a) The Supplier shall (i) renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit, (ii) if the financial institution that issued an outstanding Letter of Credit has indicated its intent not to renew such Letter of Credit, provide a substitute Letter of Credit or other equivalent form of surety instrument satisfactory to the Buyer at least ten (10) Business Days prior to the expiration of the outstanding Letter of Credit, and (iii) if a financial institution issuing a Letter of Credit fails to honour the Buyer's properly documented request to draw on an outstanding Letter of Credit (other than a failure to honour as a result of a request to draw that does not conform to the requirements of such Letter of Credit), provide for the benefit of the Buyer (A) a substitute Letter of Credit that is issued by another financial institution, or (B) other surety instrument satisfactory to the Buyer in an amount equal to such outstanding Letter of Credit, in either case within five (5) Business Days after the Supplier receives notice of such refusal.
- (b) A Letter of Credit shall provide that the Buyer may draw upon the Letter of Credit in an amount (up to the face amount for which the Letter of Credit has been issued) that is equal to all amounts that are due and owing from the Supplier but that have not been paid to the Buyer within the time allowed for such payments under this Agreement (including any related notice or grace period or both). A Letter of Credit shall provide that a drawing may be made on the Letter of Credit upon submission to the financial institution issuing the Letter of Credit of one or more certificates specifying the amounts due and owing to the Buyer in accordance with the specific requirements of the Letter of Credit.
- (c) If the Supplier shall fail to renew, substitute, or sufficiently increase the amount of an outstanding Letter of Credit (as the case may be), or establish one or more additional Letters of Credit or other equivalent form of surety instrument satisfactory to the Buyer when required hereunder, then the Buyer may draw on the entire, undrawn portion of any outstanding Letter of Credit upon submission to the financial institution issuing such Letter of Credit of one or more

certificates specifying the amounts due and owing to the Buyer in accordance with the specific requirements of the Letter of Credit. If the amounts due and owing are less than the amount drawn under such Letter of Credit, then such excess amount shall be held as Completion and Performance Security. The Supplier shall remain liable for any amounts due and owing to the Buyer and remaining unpaid after the application of the amounts so drawn by the Buyer.

- (d) The costs and expenses of establishing, renewing, substituting, cancelling, increasing and reducing the amount of (as the case may be) one or more Letters of Credit shall be borne by the Supplier.
- (e) The Buyer shall return a Letter of Credit held by the Buyer to the Supplier if the Supplier is substituting a Letter of Credit of a greater or lesser amount pursuant to Section 5.3(a), within five (5) Business Days from the Buyer's receipt of such substituted Letter of Credit.

5.4 Guarantee Provisions

- (a) The Buyer shall accept a guarantee in the form attached hereto as Exhibit D (the "**Guarantee**") from a guarantor of the Supplier (with the applicable party providing the Guarantee being referred to as the "**Guarantor**"), provided however that the Guarantor shall have a Credit Rating as listed in any of the four rows contained in the table below. Notwithstanding the foregoing, in the event the Guarantor has a Negative Outlook, then its Credit Rating, for purposes of calculating the Creditworthiness Value of the Guarantor in Section 5.4(b), will be automatically demoted by one level as set forth below. For greater certainty, a Guarantor with a Credit Rating in the 4th level set forth below without a Negative Outlook will no longer be able to provide a Guarantee if it subsequently receives a Negative Outlook. In such event, the Supplier shall be required to provide alternative acceptable security as provided in Section 5.2(b) so as to remain in compliance with the Completion and Performance Security requirements set out in Section 5.1.
- (b) A Person's Creditworthiness Value (the "**Creditworthiness Value**") shall be determined by the following formula:

$$S \times T$$

where S represents the Tangible Net Worth of the Person, expressed in Dollars, and T is a figure, used for weighting purposes, taken from the 4th column of the table below of the appropriate row corresponding to the Person's Credit Rating as adjusted by any Negative Outlook, provided that where the Person has Credit Ratings from more than one rating agency set out in the table below, then the lowest of such Credit Ratings, as adjusted by any Negative Outlook, shall be used:

Credit Rating of Person				
	S & P	DBRS	Moody's	Value of T
1.	At least A-	At least A low	At least A3	0.10
2.	At least BBB+	At least BBB high	At least Baa1	0.08
3.	At least BBB	At least BBB	At least Baa2	0.06
4.	At least BBB-	At least BBB low	At least Baa3	0.05

Subject to Section 5.2(b)(ii), the amount of the Guarantee shall be equal to or less than the Creditworthiness Value of the Guarantor as determined by the foregoing, failing which the Supplier shall be required to provide alternative acceptable security as provided in Section 5.2(b) so as to remain in compliance with the Completion and Performance Security requirements set out in Section 5.1.

- (c) Upon the consent of the Buyer, which consent shall not be unreasonably withheld, the Guarantor may substitute its Guarantee with a guarantee from an Affiliate or from any other Person who would qualify as a guarantor for an amount equivalent to the amount of the Guarantee (the “**Replacement Guarantee**”). The Replacement Guarantee shall be in the form of the Guarantee. Upon delivery of the Replacement Guarantee, (i) such Replacement Guarantee shall be deemed to be the “**Guarantee**” and such Affiliate or other Person providing such guarantee, as the case may be, shall be deemed to be the “**Guarantor**” for all purposes of this Agreement and (ii) the Buyer shall return the original Guarantee to the original Guarantor within five (5) Business Days of such delivery.
- (d) For greater clarity, all provisions of the Agreement that refer to (1) the Guarantor or similar references, or (2) the Creditworthiness Value of the Guarantor or similar references, shall:
 - (i) only apply in respect of the Guarantor if that Guarantor has, at the applicable time, issued a Guarantee in favour of the Buyer and that Guarantee remains in effect at that time (otherwise, the reference to Guarantor shall be excluded when interpreting the provision until such time as a Guarantee is provided); and
 - (ii) only refer to the Creditworthiness Value of the Supplier (and not the Creditworthiness Value of its Guarantor) when and for so long as its Guarantor has not provided a Guarantee that remains in effect at the applicable time.

5.5 Financial Statements

The Supplier shall, on a quarterly basis, provide to the Buyer (i) as soon as available and in no event later than sixty (60) days after the end of each fiscal quarter of the Guarantor, unaudited

consolidated financial statements of the Guarantor, for such fiscal quarter prepared in accordance with GAAP, and (ii) as soon as possible and in no event later than 120 days after the end of each fiscal year, audited consolidated financial statements of the Guarantor for such fiscal year prepared in accordance with GAAP. Notwithstanding the foregoing, if any such financial statements are not available in a timely manner due to a delay in preparation or auditing, such delay shall not be considered a breach of this Section 5.5 so long as the Guarantor is diligently pursuing the preparation, audit and delivery of such financial statements. Quarterly financial statements may be delivered electronically to the Buyer in PDF form. Upon each delivery of the Guarantor's financial statements to the Buyer, the Guarantor providing such financial statements shall be deemed to represent to the Buyer that its financial statements were prepared in accordance with GAAP and present fairly the financial position of the Guarantor for the relevant period then ended. In the event that the Guarantor does not publish financial statements on a quarterly basis, then unaudited consolidated financial statements shall be provided by the Guarantor, at a minimum, on a semi-annual basis. To the extent that the Supplier's Creditworthiness Value is such that the Guarantee is not required or it is returned to the Guarantor and cancelled pursuant to Section 5.4(d), then the obligations to provide financial statements under this Section 5.5 shall apply in full to the Supplier instead of the Guarantor.

5.6 Notice of Deterioration in Financial Indicators

The Supplier shall provide notice to the Buyer of any material deterioration of any of the Financial Indicators of the Supplier or the Guarantor immediately upon the Supplier becoming aware of such deterioration.

ARTICLE 6 REPRESENTATIONS

6.1 Representations of the Supplier

The Supplier represents to the Buyer as follows, and acknowledges that the Buyer is relying on such representations in entering into this Agreement:

- (a) The Supplier is a ●, **[incorporated]** [*Note to Finalization: Set forth legal form of the Supplier*] under the laws of ●, is registered or otherwise qualified to carry on business in the Province of Ontario, and has the requisite power to enter into this Agreement and to perform its obligations hereunder.
- (b) This Agreement has been duly authorized, executed, and delivered by the Supplier and is a valid and binding obligation of the Supplier enforceable in accordance with its terms except as such enforcement may be limited by bankruptcy, insolvency and other laws affecting the rights of creditors generally and except that equitable remedies may only be granted in the discretion of a court of competent jurisdiction.
- (c) The execution and delivery of this Agreement by the Supplier and the consummation of the transactions contemplated by this Agreement will not result in the breach or violation of any of the provisions of, or constitute a default under, or conflict with or cause the termination, cancellation or acceleration of any material obligation of the Supplier under:

- (i) any contract or obligation to which the Supplier is a party or by which it or its assets may be bound, except for such defaults or conflicts as to which requisite waivers or consents have been obtained;
- (ii) the articles, by-laws or other constating documents, or resolutions of the directors or shareholders of the Supplier;
- (iii) any judgment, decree, order or award of any Governmental Authority or arbitrator;
- (iv) any licence, permit, approval, consent or authorization held by the Supplier; or
- (v) any Laws and Regulations,

that could have a Material Adverse Effect on the Supplier.

- (d) There are no bankruptcy, insolvency, reorganization, receivership, seizure, realization, arrangement or other similar proceedings pending against or being contemplated by the Supplier or, to the knowledge of the Supplier, threatened against the Supplier.
- (e) There are no actions, suits, proceedings, judgments, rulings or orders by or before any Governmental Authority or arbitrator, or, to the knowledge of the Supplier, threatened against the Supplier, that could have a Material Adverse Effect on the Supplier.
- (f) All requirements for the Supplier to make any filing, declaration or registration with, give any notice to or obtain any licence, permit, certificate, registration, authorization, consent or approval of, any Governmental Authority as a condition to entering into this Agreement have been satisfied.
- (g) All statements, specifications, data, confirmations, and information that have been set out in the Proposal are complete and accurate in all material respects and are hereby restated and reaffirmed by the Supplier as representations made to the Buyer under this DR Contract and there is no material information omitted from the Proposal which makes the information in the Proposal misleading or inaccurate.
- (h) The Supplier has no reason to believe, acting reasonably, that any one or more of the Milestone Events may not be achieved by the corresponding Milestone Dates.
- (i) The Supplier is **[not]** *[Note to Finalization: Delete if inapplicable.]* a non-resident of Canada for the purposes of the ITA.
- (j) The Supplier is in compliance with all tax statutes administered by the Ontario Ministry of Finance.

6.2 Representations of the Buyer

The Buyer represents to the Supplier as follows, and acknowledges that the Supplier is relying on such representations in entering into this Agreement:

- (a) The Buyer is a corporation continued under the *Electricity Act* (Ontario) and has the requisite power to enter into this Agreement and to perform its obligations hereunder.
- (b) This Agreement has been duly authorized, executed, and delivered by the Buyer and is a valid and binding obligation of the Buyer enforceable in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency and other laws affecting the rights of creditors generally and except that equitable remedies may be granted solely in the discretion of a court of competent jurisdiction.
- (c) The execution and delivery of this Agreement by the Buyer and the consummation of the transactions contemplated by this Agreement will not result in the breach or violation of any of the provisions of, or constitute a default under, or conflict with or cause the termination, cancellation or acceleration of any material obligation of the Buyer under:
 - (i) any contract or obligation to which the Buyer is a party or by which it or its assets may be bound, except for such defaults or conflicts as to which requisite waivers or consents have been obtained;
 - (ii) the by-laws or resolutions of the directors (or any committee thereof) or shareholder of the Buyer;
 - (iii) any judgment, decree, order or award of any Governmental Authority or arbitrator;
 - (iv) any licence, permit, approval, consent or authorization held by the Buyer; or
 - (v) any Laws and Regulations,

that could have a Material Adverse Effect on the Buyer.

- (d) There are no bankruptcy, insolvency, reorganization, receivership, seizure, realization, arrangement or other similar proceedings pending against, or being contemplated by the Buyer or, to the knowledge of the Buyer, threatened against the Buyer.
- (e) There are no actions, suits, proceedings, judgments, rulings or orders by or before any Governmental Authority or arbitrator, or, to the knowledge of the Buyer, threatened against the Buyer, that could have a Material Adverse Effect on the Buyer.

- (f) All requirements for the Buyer to make any declaration, filing or registration with, give any notice to or obtain any licence, permit, certificate, registration, authorization, consent or approval of, any Governmental Authority as a condition to entering into this Agreement have been satisfied.

ARTICLE 7 CONFIDENTIALITY AND FIPPA

7.1 OPS Confidential Information

From the date of this Agreement to and following the expiry of the Term, the Supplier shall:

- (a) keep all OPS Confidential Information confidential and secure;
- (b) limit the disclosure of OPS Confidential Information to the Supplier and any member of the Proponent Team (as that term is defined in the 2,500 MW RFP) who has a need to know it and who has been specifically authorized by the Supplier to have such disclosure;
- (c) not directly or indirectly disclose, exploit or use any OPS Confidential Information (except for the purpose of curtailing the Electricity demand of the Load under the terms of this Agreement, or except if required by order of a court or tribunal), without first obtaining: (i) the written consent of the Buyer and (ii) in respect of any OPS Confidential Information about any third-party, the written consent of such third-party;
- (d) provide OPS Confidential Information to the Buyer on demand; and
- (e) destroy, or return all OPS Confidential Information to the Buyer, on or before the expiry of the Term, with no copy or portion kept by the Supplier without the consent of the Buyer.

7.2 Supplier Restrictions on Copying

The Supplier shall not copy any OPS Confidential Information, in whole or in part, unless copying is essential to curtail the Electricity demand of the Load as a direct result of the operation of the Control Equipment under the terms of this Agreement. On each copy made by the Supplier, the Supplier must reproduce all notices which appear on the original.

7.3 Buyer Injunctive and Other Relief

The Supplier acknowledges that breach of any provisions of this Article may cause irreparable harm to the Buyer or to any third-party to whom the Buyer owes a duty of confidence, and that the injury to the Buyer or to any third-party may be difficult to calculate and inadequately compensable in damages. The Supplier agrees that the Buyer is entitled to obtain injunctive relief (without proving any damage sustained by it or by any third-party) or any other remedy against any actual or potential breach of the provisions of this Article.

7.4 Notice and Buyer Protective Order

If the Supplier, any Affiliate of the Supplier, the Guarantor, or any of their respective directors, officers, employees, agents, representatives or advisors, become legally compelled to disclose any OPS Confidential Information, the Supplier will provide the Buyer with prompt notice to that effect in order to allow the Buyer to seek one or more protective orders or other appropriate remedies to prevent or limit such disclosure, and it shall co-operate with the Buyer and its legal counsel to the fullest extent. If such protective orders or other remedies are not obtained, the Supplier will disclose only that portion of OPS Confidential Information which the Supplier is legally compelled to disclose, only to such person or persons to which the Supplier is legally compelled to disclose, and the Supplier shall provide notice to each such recipient (in co-operation with legal counsel for the Buyer) that such OPS Confidential Information is confidential and subject to non-disclosure on terms and conditions equal to those contained in the Agreement and, if possible, shall obtain each recipient's written agreement to receive and use such OPS Confidential Information subject to those terms and conditions.

7.5 FIPPA Records and Compliance

The Supplier and the Buyer acknowledge and agree that the Buyer is subject to FIPPA and that FIPPA applies to and governs all Records in the custody or control of the Buyer (“**FIPPA Records**”) and may require the disclosure of such Records to third parties. Furthermore, the Supplier agrees:

- (a) to keep FIPPA Records secure;
- (b) to provide FIPPA Records to the Buyer within seven (7) calendar days of being directed to do so by the Buyer for any reason including an access request or privacy issue; and
- (c) to implement other specific security measures that in the reasonable opinion of the Buyer would improve the adequacy and effectiveness of the Supplier's measures to ensure the security and integrity of FIPPA Records,

and the provisions of this Section shall survive any termination or expiry of this Agreement and shall prevail over any inconsistent provisions in this Agreement.

7.6 Responsibility of Buyer

Subject to the provisions of this Agreement and all Laws and Regulations (including FIPPA), from the date of the Agreement to and following the expiry of the Term, the Buyer shall (a) keep the Supplier's Confidential Information confidential and secure; (b) limit the disclosure of Supplier's Confidential Information to only those employees, agents, representatives, or advisors of the Ontario Power Authority (if created), Ontario Electricity Financial Corporation, the OPS, the IMO, and their respective Affiliates who have a need to know it and who have been authorized by the Buyer to have such disclosure; (c) not directly or indirectly disclose, destroy, exploit or use any Supplier's Confidential Information (except in the course of complying with its obligations under this Agreement and except if required by order of a court or tribunal), without first obtaining: (i) the written consent of the Supplier and (ii) in respect of any Supplier's Confidential Information about any third-party, the written consent of such third-party; and (d) provide the Supplier's Confidential Information to the Supplier on demand. Notwithstanding the

foregoing, the Supplier consents to the disclosure of its name and contact particulars (including its address for service and the name of its Company Representative) by the Buyer to all other suppliers under DR Contracts awarded pursuant to the 2,500 MW RFP, for the purposes of Sections 1.7, 1.8, and 1.9.

ARTICLE 8 TERM

8.1 Term

- (a) The DR Contract shall become effective upon the date hereof.
- (b) The “**Term**” means that period of time commencing upon the later of the Commercial Operation Date and the date of this Agreement and ending at 24:00 hours (EST) on the day before the [5]th anniversary date thereafter, subject to earlier termination in accordance with the provisions hereof. *[Note to Finalization: Insert the anniversary date that reflects the term specified in the Proposal, provided that no Term shall be less than five years and more than twenty years.]*
- (c) The obligations of the Supplier to make the Contracted Demand Reduction available and of the Buyer to make any applicable Monthly Payment to the Supplier, shall commence at the beginning of the hour ending 01:00 hours (EST) of the Term Commencement Date. Neither Party shall have any right to extend or renew the Term except as agreed in writing by the Parties.

ARTICLE 9 TERMINATION AND DEFAULT

9.1 Events of Default by the Supplier

Each of the following will constitute an Event of Default by the Supplier (each, a “**Supplier Event of Default**”):

- (a) The Supplier or the Guarantor fails to make any payment, or deliver and/or maintain the Completion and Performance Security under this Agreement when due, if such failure is not remedied within five (5) Business Days after written notice of such failure from the Buyer.
- (b) The Supplier fails to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Supplier Event of Default) if such failure is not remedied within fifteen (15) Business Days after written notice of such failure from the Buyer. For certainty, material covenants include Section 2.6(f).
- (c) The Supplier fails or ceases to hold a valid licence, permit, certificate, registration, authorization, consent or approval issued by a Governmental Authority where such failure or cessation results in, or could be reasonably expected to result in, a Material Adverse Effect on the Supplier and is not

remedied within thirty (30) Business Days after receipt by the Supplier of written notice of such failure or cessation from the Buyer.

- (d) Any representation made by the Supplier in this Agreement is not true or correct in any material respect when made and is not made true or correct in all material respects within thirty (30) Business Days after receipt by the Supplier of written notice of such fact from the Buyer.
- (e) An effective resolution is passed or documents are filed in an office of public record in respect of, or a judgment or order is issued by a court of competent jurisdiction ordering, the dissolution, termination of existence, liquidation or winding up of the Supplier, unless such filed documents are immediately revoked or otherwise rendered inapplicable, or unless there has been a permitted and valid assignment of this Agreement by the Supplier under this Agreement to a Person which is not dissolving, terminating its existence, liquidating or winding up and such Person has assumed all of the Supplier's obligations under this Agreement.
- (f) The Supplier amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another Person unless, at the time of such amalgamation, merger or transfer, there has been a permitted and valid assignment hereof by the Supplier under this Agreement to the resulting, surviving or transferee Person and such Person has assumed all of the Supplier's obligations under this Agreement.
- (g) A receiver, manager, receiver-manager, liquidator, monitor or trustee in bankruptcy of the Supplier or of any of the Supplier's property is appointed by a Governmental Authority or pursuant to the terms of a debenture or a similar instrument, and such receiver, manager, receiver-manager, liquidator, monitor or trustee in bankruptcy is not discharged or such appointment is not revoked or withdrawn within thirty (30) days of the appointment. By decree, judgment or order of a Governmental Authority, the Supplier is adjudicated bankrupt or insolvent or any substantial part of the Supplier's property is sequestered, and such decree continues undischarged and unstayed for a period of thirty (30) days after the entry thereof. A petition, proceeding or filing is made against the Supplier seeking to have the Supplier declared bankrupt or insolvent, or seeking adjustment or composition of any of their respective debts pursuant to the provisions of any Insolvency Legislation, and such petition, proceeding or filing is not dismissed or withdrawn within thirty (30) days.
- (h) The Supplier makes an assignment for the benefit of its creditors generally under any Insolvency Legislation, or consents to the appointment of a receiver, manager, receiver-manager, monitor, trustee in bankruptcy, or liquidator for all or part of its property or files a petition or proposal to declare bankruptcy or to reorganize pursuant to the provision of any Insolvency Legislation.
- (i) The Supplier has defaulted under one or more obligations for indebtedness to other Persons, resulting in obligations for indebtedness in an aggregate amount of more than the greater of 5% of its Tangible Net Worth and \$2,000,000 becoming immediately due and payable, unless: (A) such default is remedied within fifteen

- (15) Business Days after written notice of such failure from the Buyer, or (B) the Supplier has satisfied the Buyer that such default does not have a Material Adverse Effect on the Supplier's ability to perform its obligations under this Agreement.
- (j) The Supplier has not disclosed all actual or potential Conflicts of Interest (as that term is defined in the 2,500 MW RFP) in the Proposal, and, if any such actual or potential Conflicts of Interest is capable of being remedied, it has not been remedied within fifteen (15) Business Days after written notice of such non-disclosure from the Buyer.
 - (k) The Supplier has made a Proposal Amendment that has not first been consented to by the Buyer.
 - (l) The Commercial Operation Date has not occurred on or before the date which is one (1) year after the Milestone Date for Commercial Operation, unless the Supplier has, on or prior to such one year date, paid all liquidated damages accruing to such one year date pursuant to Section 2.3 and the full amount of the required Completion and Performance Security is being held by the Buyer in accordance with Section 5.1.
 - (m) The Commercial Operation Date has not occurred on or before the date which is eighteen (18) months after the Milestone Date for Commercial Operation.
 - (n) Either of the defaults described in Sections 14.6(d) and 14.6(f) has occurred.
 - (o) The Availability is less than ninety-five (95%) percent.
 - (p) The Supplier fails to respond to an Operational Directive as required by Section 2.6(c).
 - (q) The Supplier undergoes a change in Control without first obtaining the written approval of the Buyer if required pursuant to Section 15.6.
 - (r) The Supplier assigns this Agreement without first obtaining such consent of the Buyer if required pursuant to this Agreement.
 - (s) The Supplier amends or modifies the Measurement and Verification Plan without the consent of the Buyer or replaces the DR Verification Consultant without the consent of the Buyer.

9.2 Remedies of the Buyer

- (a) If any Supplier Event of Default (other than a Supplier Event of Default referred to in Sections 9.1(e), 9.1(g), and 9.1(h)) occurs and is continuing, upon written notice to the Supplier, the Buyer may, subject to Article 11, in accordance with Section 9.5(a), terminate this Agreement and, if applicable, demand the Early Termination Payment.

- (b) If a Supplier Event of Default referred to in Sections 9.1(b), 9.1(n), or 9.1(o) occurs and is continuing, the Buyer may, in addition to the remedies set out in Section 9.2(a), at the discretion of the Buyer, either:
 - (i) the Supplier will forfeit the entire Contingent Support Payment, otherwise payable to the Supplier for the Settlement Month in which such Supplier Event of Default occurs, as liquidated damages and not as a penalty; or
 - (ii) the Buyer may levy a performance assessment set-off, as liquidated damages and not as a penalty, equal to three (3) times the average Contingent Support Payment payable to the Supplier for the most recent twelve (12) Settlement Months (or the number of Settlement Months that have elapsed from the Term Commencement Date if less than twelve Settlement Months have elapsed), in the event that three (3) or more Supplier Events of Default referred to in Sections 9.1(b), 9.1(n), or 9.1(o) have occurred within a Contract Year, regardless of whether such Supplier Events of Default had been subsequently cured,

and which may be satisfied by the Buyer setting off any payments due to the Supplier against any amounts payable by the Supplier to the Buyer including, at the Buyer's option, the amount of any Completion and Performance Security provided to the Buyer pursuant to Article 5, and by drawing on the Completion and Performance Security, or any part thereof, and if the remedy in Section 9.2(a) has not been exercised, requiring the Supplier to replace such drawn security with new security.

- (c) If a Supplier Event of Default referred to in Sections 9.1(a), 9.1(l), or 9.1(m) occurs and is continuing, the Buyer may, in addition to the remedies set out in Section 9.2(a):
 - (i) set off any payments due to the Supplier against any amounts payable by the Supplier to the Buyer including, at the Buyer's option, the amount of any Completion and Performance Security provided to the Buyer pursuant to Article 5, and
 - (ii) draw on the Completion and Performance Security, or any part thereof and, if the remedy in Section 9.2(a) has not been exercised, require the Supplier to replace such drawn security with new security.
- (d) Notwithstanding Sections 9.2(a), 9.2(b), and 9.3(c), upon the occurrence of a Supplier Event of Default referred to in Sections 9.1(e), 9.1(g), or 9.1(h), this Agreement shall automatically terminate without notice, act or formality, effective immediately before the occurrence of such Supplier Event of Default, in which case, for certainty, the Secured Lender shall have the rights available to it under Section 11.2(g).
- (e) Termination shall not relieve the Supplier or the Buyer of their respective responsibilities relating to the availability of the Contracted Demand Reduction and curtailment of the Electricity demand of the Load as a direct result of the operation of the Control Equipment up to and including the Termination Date.

The Buyer shall be responsible only for the payment of amounts accruing under this Agreement up to and including the Termination Date. In addition to its other rights of set off available to it pursuant to this Agreement and at law, the Buyer may hold back payment or set off its obligation to make such payment against any payments owed to it if the Supplier fails to comply with its obligations on termination.

- (f) To the extent that any Supplier Event of Default is curable, the Buyer shall have the right, but not the obligation, to cure or attempt to cure such Supplier Event of Default on behalf of the Supplier, and at the Supplier's expense. Prior to doing so, the Buyer will advise the Supplier of its intention to take steps to cure. The Supplier shall reimburse the Buyer, forthwith upon written demand, for its costs, charges, and expenses (including legal fees) incurred in curing or attempting to cure such Supplier Event of Default.

9.3 Events of Default by the Buyer

Each of the following will constitute an Event of Default by the Buyer (each, a “**Buyer Event of Default**”):

- (a) The Buyer fails to make any payment under this Agreement when due, if such failure is not remedied within five (5) Business Days after written notice of such failure from the Supplier.
- (b) The Buyer fails to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Buyer Event of Default), if such failure is not remedied within fifteen (15) Business Days after written notice of such failure from the Supplier.
- (c) The Buyer fails or ceases to hold a valid licence, permit, certificate, registration, authorization, consent or approval issued by a Governmental Authority where such failure or cessation results in, or could be reasonably expected to result in, a Material Adverse Effect on the Buyer and is not remedied within thirty (30) Business Days after receipt by the Buyer of written notice of such failure or cessation from the Supplier.
- (d) Any representation made by the Buyer in this Agreement is not materially true or correct in any material respect when made and is not made materially true or correct within thirty (30) Business Days after receipt by the Buyer of written notice of such fact from the Supplier.
- (e) An effective resolution is passed or documents are filed in an office of public record in respect of, or a judgment or order is issued by a court of competent jurisdiction ordering the dissolution, termination of existence, liquidation or winding up of the Buyer unless such filed documents are immediately revoked or otherwise rendered inapplicable, or unless there has been a permitted and valid assignment of this Agreement by the Buyer under this Agreement to a Person which is not dissolving, terminating its existence, liquidating or winding up and such Person has assumed all of the Buyer's obligations under this Agreement.

- (f) A receiver, manager, receiver-manager, liquidator, monitor or trustee in bankruptcy of the Buyer or of any of the Buyer's property is appointed by a Governmental Authority or pursuant to the terms of a debenture or a similar instrument, and such receiver, manager, receiver-manager, liquidator, monitor or trustee in bankruptcy is not discharged or such appointment is not revoked or withdrawn within thirty (30) days of the appointment. By decree, judgment or order of Governmental Authority, the Buyer is adjudicated bankrupt or insolvent or any substantial part of the Buyer's property is sequestered, and such decree continues undischarged and unstayed for a period of thirty (30) days after the entry thereof. A petition, proceeding or filing is made against the Buyer seeking to have it declared bankrupt or insolvent, or seeking adjustment or composition of any of its debts pursuant to the provisions of any Insolvency Legislation, and such petition, proceeding or filing is not dismissed or withdrawn within thirty (30) days.
- (g) The Buyer makes an assignment for the benefit of its creditors generally under any Insolvency Legislation, or consents to the appointment of a receiver, manager, receiver-manager, monitor, trustee in bankruptcy, or liquidator, of it or of all or part of its property or files a petition or proposal to declare bankruptcy or to reorganize pursuant to the provision of any Insolvency Legislation.
- (h) The Buyer assigns this Agreement (other than an assignment made pursuant to Section 15.5(d)), without first obtaining the consent of the Supplier if required pursuant to this Agreement.

9.4 Termination by the Supplier

- (a) If any Buyer Event of Default occurs and is continuing, then upon written notice to the Buyer, the Supplier may: (i) in accordance with Section 9.5(a), terminate this Agreement and, if applicable, demand the Early Termination Payment, and (ii) set off any payments due to the Buyer against any amounts payable by the Buyer to the Supplier.
- (b) Notwithstanding the foregoing, and except for any Early Termination Payment, if applicable, the Buyer shall be responsible for payment of amounts accruing under this Agreement only up to and including the effective date of any termination. The Supplier may hold back payment or set off against any payments owed by it if the Buyer fails to comply with its obligations on termination.

9.5 Liquidated Damages for Early Termination

- (a) If an Event of Default occurs with respect to a Party (the "**Defaulting Party**") at any time during the term of this Agreement, and is continuing, then the other Party (the "**Terminating Party**") may: (i) upon two (2) Business Days written notice to the Defaulting Party, which notice shall be given no later than sixty (60) days after the discovery of the occurrence of the Event of Default, establish a date on which this Agreement may be terminated (the "**Early Termination Date**"), (ii) withhold any payments due in respect of this Agreement and/or (iii) suspend performance hereunder; provided, however, upon the occurrence of any

Event of Default listed in Section 9.2(d), then this Agreement shall automatically terminate at the time set out therein, without notice, as if an Early Termination Date had been immediately declared at the point in time immediately prior to the occurrence of such Event of Default. If an Early Termination Date occurs, the Terminating Party shall in good faith calculate its damages, including its Costs, resulting from the termination of this Agreement in accordance with this Section 9.5 (the “**Early Termination Payment**”).

- (b) If the Terminating Party is the Supplier, the Early Termination Payment will be an amount equal to:
 - (i) the average CSP paid or payable to the Supplier over the most recent three (3) year period of the Term prior to the termination of this Agreement, or if three years of the Term have not elapsed, the period between the Early Termination Date and the Term Commencement Date, multiplied by the number of Settlement Months (or part thereof) remaining in the Term had the Agreement not been terminated and discounted to the Early Termination Date at the Present Value Discount Rate; plus
 - (ii) the Costs of the Supplier.
- (c) If the Terminating Party is the Buyer, then the Early Termination Payment will be an amount equal to:
 - (i) the positive excess, if any, of:
 - (A) the aggregate of any CSP payable to the Supplier pursuant to a replacement contract on the same terms and conditions as this Agreement, for each month that would have been remaining in the Term had this Agreement not been terminated, discounted to the Early Termination Date at the Present Value Discount Rate, and calculated using the Contracted Demand Reduction for each Season remaining in the Term, and the average values for all variables utilized in Exhibit J over the most recent three (3) year period prior to the Early Termination Date (utilizing historical data to the extent that such period extends prior to the Term Commencement Date), with the exception of the net revenue requirement which shall be estimated as of the Early Termination Date in the manner set out below; less
 - (B) the aggregate of any CSP payable to the Supplier pursuant to this Agreement, for each month that would have been remaining in the Term had this Agreement not been terminated, discounted to the Early Termination Date at the Present Value Discount Rate, and calculated using the Contracted Demand Reduction for each Season remaining in the Term and the NRR, and the same average values for all variables in Exhibit J for purposes of Section 9.5(c)(i)(A) for each month remaining in the Term had this Agreement not been terminated; plus

- (ii) the Costs of the Buyer.
- (d) For purposes of Section 9.5(c), in order to ascertain the market prices of a replacement contract for purposes of calculating the net revenue requirement, the Buyer shall consider, among other valuations, at least two (2) quotations from leading dealers or brokers in demand response contracts and other bona fide third party offers, all adjusted for the length of the remaining Term. The Parties agree that the Terminating Party shall not be required to enter into any replacement contract or transaction in order to determine or be entitled to the Early Termination Payment.
- (e) The Parties agree that the Terminating Party shall not be required to enter into any replacement contract or transaction in order to determine or be entitled to the Early Termination Payment.
- (f) The Terminating Party shall give the Defaulting Party written notice of the amount of the Early Termination Payment, together with a statement showing its determination of the amount thereof. The Defaulting Party shall pay the Early Termination Payment to the Terminating Party within ten (10) Business Days of receipt of such notice, together with interest at the Interest Rate from and including the Early Termination Date until and including the date the Early Termination Payment is paid in full. Regardless of whether the Defaulting Party is the Buyer or Supplier, there shall be added to the Early Termination Payment an amount equal to the difference between (i) all amounts owed but not yet paid by the Buyer to the Supplier, whether or not such amounts are then due pursuant to this Agreement and (ii) all amounts owed but not yet paid by the Supplier to the Buyer, whether or not such amounts are then due pursuant to this Agreement.
- (g) If the Defaulting Party disputes the Terminating Party's calculation of the Early Termination Payment, in whole or in part, the Defaulting Party shall, within fifteen (15) Business Days of receipt of the Terminating Party's calculation of the Early Termination Payment, provide to the Terminating Party a detailed written explanation of the basis for such dispute; provided, however, that if the Early Termination Payment is due from the Defaulting Party, the Defaulting Party shall first pay into court or deliver security to the Terminating Party, in a form acceptable to the Terminating Party, in an amount equal to the amount of the Early Termination Payment.

9.6 Sole Remedies

If the Agreement is terminated pursuant to Section 9.2(a) or Section 9.4(a), then and subject to the Terminating Party's right to receive the Early Termination Payment pursuant to Section 9.5 and to be paid for all other amounts then due and owing to the Terminating Party, such right of termination shall represent that Terminating Party's sole and exclusive remedy for the Defaulting Party's default that gave rise to the termination but shall not affect any rights that the Indemnitees may have pursuant to any indemnity hereunder.

ARTICLE 10
FORCE MAJEURE

10.1 Effect of Invoking Force Majeure

- (a) If, by reason of Force Majeure:
 - (i) the Supplier is unable to make available all or any part of the Contracted Demand Reduction; or
 - (ii) either Party is unable, wholly or partially, to perform or comply with its other obligations (other than payment obligations) hereunder, including the Supplier being unable to achieve a Milestone Event by the relevant Milestone Date, or the Supplier not achieving Commercial Operation on or before the date which is one (1) year or eighteen (18) months after the Milestone Date for Commercial Operation, as applicable;

then the Party so affected by Force Majeure shall be excused and relieved from performing or complying with such obligations (other than payment obligations) and shall not be liable for any liabilities, damages, losses, payments, costs, expenses (or Indemnifiable Losses, in the case of the Supplier affected by Force Majeure) to, or incurred by, the other Party in respect of or relating to such Force Majeure and such Party's failure to so perform or comply during the continuance and to the extent of the inability so caused from and after the invocation of Force Majeure. Notwithstanding the foregoing, during such time as the Supplier is so unable to perform or comply as a result of a Force Majeure, no calculations pursuant to Exhibit J shall be made, and no amounts shall be imputed or payable, in respect of such time.

- (b) A Party shall be deemed to have invoked Force Majeure with effect from the commencement of the event or circumstances constituting Force Majeure when that Party gives to the other Party prompt notice, written or oral (but if oral, promptly confirmed in writing) of the effect of the Force Majeure and reasonably full particulars of the cause thereof.
- (c) The Party invoking Force Majeure shall use Commercially Reasonable Efforts to remedy the situation and remove, so far as possible and with reasonable dispatch, the Force Majeure, but settlement of strikes, lockouts and other labour disturbances shall be wholly within the discretion of the Party involved, except where such Loan Outage is otherwise caused by an event of Force Majeure.
- (d) The Party invoking Force Majeure shall give prompt notice, written or oral (but if oral, promptly confirmed in writing) of the termination of the event of Force Majeure.
- (e) Nothing in this Section 10.1 shall relieve a Party of its obligations to make payments of any amounts that were due and owing before the occurrence of the Force Majeure or that otherwise may become due and payable during any period of Force Majeure.

- (f) If an event of Force Majeure causes the Supplier to not achieve a Milestone Event by the relevant Milestone Date, or to not achieve Commercial Operation on or before the date which is one (1) year after the Milestone Date for Commercial Operation, as applicable, then such Milestone Date shall be extended for such reasonable period of delay directly resulting from such Force Majeure event. After the Term Commencement Date, an event of Force Majeure shall not extend the Term of this Agreement.
- (g) If an event of Force Majeure described in Section 10.3(h) has delayed the Commercial Operation Date by more than 365 days after the original Milestone Date (prior to any extension pursuant to Section 10.1(f)) set out for attaining Commercial Operation of the DR Project, then notwithstanding anything in this Agreement to the contrary, while the delay that is a result of the event of Force Majeure is continuing, the Supplier at its sole option may terminate this Agreement upon notice to the Buyer and without any costs or payments of any kind to either Party, and all security shall be returned forthwith.
- (h) If, by reason of Force Majeure, the Supplier is unable to perform or comply with its obligations (other than payment obligations) hereunder for more than three (3) continuous years (including the delay of the Commercial Operation Date by more than three (3) years after the original Milestone Date for Commercial Operation, prior to any extension pursuant to Section 10.1(f)), then notwithstanding anything in this Agreement to the contrary, while the delay that is a result of the event of Force Majeure is continuing, either Party may terminate this Agreement upon notice to the other Party and without any costs or payments of any kind to either Party, and all security shall be returned forthwith.

10.2 Exclusions

A Party shall not be entitled to invoke Force Majeure under this Article 10, nor shall it be relieved of its obligations hereunder in any of the following circumstances:

- (a) if and to the extent the Party seeking to invoke Force Majeure has caused the applicable event of Force Majeure by its fault or negligence, including the Supplier's failure to procure or maintain any fuel supply to be utilized by the DR Project;
- (b) if and to the extent the Party seeking to invoke Force Majeure has failed to use Commercially Reasonable Efforts to prevent or remedy the event of Force Majeure and remove, so far as possible and within a reasonable time period, the Force Majeure (except in the case of strikes, lockouts and other labour disturbances, the settlement of which shall be wholly within the discretion of the Party involved);
- (c) if and to the extent that the Supplier is unable to curtail the Electricity demand of the Load as a direct result of the operation of the Control Equipment due to a result of a Load Outage, except where such Load Outage is otherwise caused by an event of Force Majeure;

- (d) if and to the extent that the Supplier is able to sell any of the Contracted Demand Reduction, or any fuel where the Control Equipment includes a generator, on more advantageous terms to a third party buyer;
- (e) if and to the extent that the Supplier has, by its negligence, failed to procure or maintain any fuel supply to be utilized by the Control Equipment;
- (f) if and to the extent that the Party seeking to invoke Force Majeure because of arrest or restraint by a Governmental Authority, such arrest or restraint was the result of a breach by such Party of Laws and Regulations; or
- (g) if the Force Majeure was caused by a lack of funds or other financial cause.

10.3 Definition of Force Majeure

For the purposes of this Agreement, the term “**Force Majeure**” means any act, event, cause or condition that prevents a Party from performing its obligations (other than payment obligations) hereunder, and that is beyond the affected Party’s reasonable control, and shall include:

- (a) acts of God, including extreme wind, ice, lightning or other storms, earthquakes, tornadoes, hurricanes, cyclones, landslides, drought, floods and washouts;
- (b) fires or explosions;
- (c) local, regional or national states of emergency;
- (d) strikes and other labour disputes (other than legal strikes or labour disputes by employees of such Party or third party invoking Force Majeure, unless such strikes or labour disputes are the result or part of a general industry strike or labour dispute);
- (e) delays or disruptions in fuel supply resulting from a Force Majeure event (whether such event is in respect of a Party or a third party);
- (f) civil disobedience or disturbances, war (whether declared or not), acts of sabotage, blockades, insurrections, terrorism, revolution, riots or epidemics;
- (g) an order, judgment, legislation, ruling or direction by Governmental Authorities restraining a Party, provided that the affected Party has not applied for or assisted in the application for and has used Commercially Reasonable Efforts to oppose said order, judgment, legislation, ruling or direction;
- (h) any inability to obtain, or to secure the renewal or amendment of, any permit, certificate, impact assessment, licence or approval of any Governmental Authority, Transmitter, or LDC required to perform or comply with any obligation under this Agreement, unless the revocation or modification of any such necessary permit, certificate, impact assessment, licence or approval was caused by the violation of the terms thereof or consented to by the Party invoking Force Majeure; and

- (i) any unanticipated maintenance or outage affecting the Control Equipment of the DR Project:
 - (i) which is not identified in the Supplier's then current schedule of Planned Outages submitted to the IMO, the LDC, or the Buyer, as the case may be, in advance of the occurrence of an event of Force Majeure referred to in this Section 10.3, and
 - (ii) which results directly from, or is scheduled or planned directly as a consequence of, an event of Force Majeure referred to in this Section 10.3, or which results from a failure of equipment that prevents the DR Project from operating, provided that:
 - (A) notice of the unanticipated maintenance or outage is provided to the Buyer by the Supplier concurrently, or as soon as reasonably possible thereafter, with the notice in respect thereof provided to the IMO;
 - (B) the Supplier provides notice to the Buyer immediately, or as soon as reasonably possible thereafter, upon receipt from the IMO of advance acceptance or other proposed scheduling or approval of such maintenance or outage;
 - (C) the Supplier provides timely updates to the Buyer of the commencement date of the maintenance or outage and, where possible, provides seven (7) days advance notice of such date;
 - (D) the unanticipated maintenance or outage is commenced within 120 days of the commencement of the occurrence of the relevant event of Force Majeure; and
 - (E) the Supplier schedules the unanticipated maintenance or outage in accordance with Good Engineering and Operating Practices.

For greater certainty, nothing in Section 10.3(i) shall be construed as limiting the duration of an event of Force Majeure. Each Party shall resume its obligations as soon as the event of Force Majeure has been overcome.

ARTICLE 11 LENDER'S RIGHTS

11.1 Lender Security

Notwithstanding Section 15.5, the Supplier, from time to time on or after the date of this Agreement shall have the right, at its cost, to enter into a Secured Lender's Security Agreement. For the avoidance of doubt, in the case of a deed of trust or similar instrument securing bonds or debentures where the trustee holds security on behalf of, or for the benefit of, other lenders, only the trustee shall be entitled to exercise the rights and remedies under the Secured Lender's Security Agreement as the Secured Lender on behalf of the lenders. A Secured Lender's Security Agreement shall be upon and subject to the following conditions:

- (a) A Secured Lender's Security Agreement may be made for any amounts and upon any terms (including terms of the loans, interest rates, payment terms and prepayment privileges or restrictions) as desired by the Supplier, except as otherwise provided in this Agreement.
- (b) A Secured Lender's Security Agreement may not secure any indebtedness, liability or obligation of the Supplier that is not related to the DR Project or cover any real or personal property of the Supplier not related to the DR Project, except in relation to any one or more projects, developed in response to the 2,500 MW RFP, owned by the Supplier and subject to a contract with the Buyer as contemplated in the 2,500 MW RFP. For greater certainty, a Secured Lender's Security Agreement may cover shares in the capital of the Supplier.
- (c) No Secured Lender's Security Agreement shall affect or encumber in any manner the Buyer's title to any government-owned premises. The Buyer shall have no liability whatsoever for payment of the principal sum secured by any Secured Lender's Security Agreement, or any interest accrued thereon or any other sum secured thereby or accruing thereunder; and the Secured Lender shall not be entitled to seek any damages against the Buyer for any or all of the same.
- (d) No Secured Lender's Security Agreement shall be binding upon the Buyer in the enforcement of the Buyer's rights and remedies provided in this Agreement or by Laws and Regulations, unless and until a copy of the original thereof and the registration details, if applicable, together with written notice of the address of the Secured Lender to which notices may be sent have been delivered to the Buyer by the Supplier or the Secured Lender; and in the event of an assignment of such Secured Lender's Security Agreement, such assignment shall not be binding upon the Buyer unless and until a copy thereof and the registration details, if applicable, together with written notice of the address of the assignee thereof to which notices may be sent, have been delivered to the Buyer by the Supplier or the Secured Lender.
- (e) The Secured Lender shall provide reasonable notice, which shall not be less than five (5) Business Days, to the Buyer of a default of the Supplier under such Secured Lender's Security Agreement, which shall be a condition precedent to the Secured Lender exercising any rights afforded to it under this Agreement.
- (f) Any Secured Lender's Security Agreement permitted hereunder may secure two (2) or more separate debts, liabilities or obligations in favour of two (2) or more separate Secured Lenders, provided that such Secured Lender's Security Agreement complies with the provisions of this Article 11.
- (g) Any number of permitted Secured Lender's Security Agreements may be outstanding at any one time, provided that each such Secured Lender's Security Agreement complies with the provisions of this Article 11.
- (h) All rights acquired by a Secured Lender under any Secured Lender's Security Agreement shall be subject to all of the provisions of this Agreement, including the restrictions on assignment contained herein. While any Secured Lender's Security Agreement is outstanding, the Buyer and the Supplier shall not amend

or supplement this Agreement or agree to a termination of the Agreement without the consent of the Secured Lender, which consent shall not be unreasonably withheld, conditioned, or delayed. A Secured Lender must respond within a reasonable period of time to any request to amend or supplement this Agreement.

- (i) Despite any enforcement of any Secured Lender's Security Agreement, the Supplier shall remain liable to the Buyer for the payment of all sums owing to the Buyer under this Agreement and for the performance of all of the Supplier's obligations under this Agreement.

11.2 Rights and Obligations of Secured Lenders

While any Secured Lender's Security Agreement remains outstanding, and if the Buyer has received the notice referred to in Section 11.1(d) or the contents thereof are embodied in the agreement entered into by the Buyer in accordance with Section 11.3, the following provisions shall apply:

- (a) No Supplier Event of Default (other than those set out in Section 9.2(d)) shall be grounds for the termination by the Buyer of this Agreement until:
 - (i) any notice required to be given under Section 9.1 and 9.2(a) has been given on the same day to the Supplier and to the Secured Lender; and
 - (ii) the cure period set out in Section 11.2(b) has expired without a cure having been completed and without the Secured Lender having taken the actions therein contemplated.
- (b) In the event the Buyer has given any notice required to be given under Section 9.1, the Secured Lender shall, within the applicable cure period (including any extensions), if any, have the right (but not the obligation) to cure such default, and the Buyer shall accept such performance by such Secured Lender as if the same had been performed by the Supplier.
- (c) Any payment to be made or action to be taken by a Secured Lender hereunder as a prerequisite to keeping this Agreement in effect shall be deemed properly to have been made or taken by the Secured Lender if such payment is made or action is taken by a nominee or agent of the Secured Lender or a receiver or receiver and manager appointed by or on the application of the Secured Lender.
- (d) A Secured Lender shall be entitled to the Supplier's rights and benefits contained in this Agreement and shall become liable for the Supplier's obligations solely as provided in Section 11.2. A Secured Lender may, subject to the provisions of this Agreement, enforce any Secured Lender's Security Agreement and acquire the Supplier's Interest in any lawful way and, without limitation, a Secured Lender or its nominee or agent or a receiver or receiver and manager appointed by or on the application of the Secured Lender, may take possession of and manage the DR Project and, upon foreclosure, or without foreclosure upon exercise of any contractual or statutory power of sale under such Secured Lender's Security

Agreement, may sell or assign the Supplier's Interest, with the consent of the Buyer as required under Section 11.2(f).

- (e) Until a Secured Lender (i) forecloses or has otherwise taken ownership of the Supplier's Interest or (ii) has taken possession or control of the Supplier's Interest, whether directly or by an agent as a mortgagee in possession, or a receiver or receiver and manager has taken possession or control of the Supplier's Interest by reference to the Secured Lender's Security Agreement, the Secured Lender shall not be liable for any of the Supplier's obligations or be entitled to any of the Supplier's rights and benefits contained in this Agreement except by way of security. If the Secured Lender itself or by a nominee or agent, or a receiver or a receiver and manager appointed by or on the application of the Secured Lender, is the owner or is in control or possession of the Supplier's Interest, then the entity that is the owner or is in control or possession of the Supplier's interest shall be bound by all of the Supplier's obligations. Once the Secured Lender or such other Person goes out of possession or control of the Supplier's Interest or transfers the Supplier's Interest in accordance with this Agreement to another Person who is not at Arms' Length with the Secured Lender, the Secured Lender shall cease to be liable for any of the Supplier's obligations and shall cease to be entitled to any of the Supplier's rights and benefits contained in this Agreement, except, if the Secured Lender's Security Agreement remains outstanding, by way of security.
- (f) Despite anything else contained in this Agreement, any Person to whom the Supplier's Interest is transferred shall take the Supplier's Interest subject to the Supplier's obligations. No transfer shall be effective unless the Buyer:
 - (i) acting reasonably, if such transferee is at Arms' Length with the Secured Lender; or
 - (ii) acting in its sole and subjective discretion, if such transferee is not at Arms' Length with the Secured Lender,

has approved of the transferee and the transferee has entered into an agreement with the Buyer in form and substance satisfactory to the Buyer, acting reasonably, wherein the transferee agrees to assume and to perform the obligations of the Supplier in respect of the Supplier's Interest, whether arising before or after the transfer, and including the posting of the Completion and Performance Security required under Article 5.

- (g) In the event of the termination of this Agreement prior to the end of the Term due to a Supplier Event of Default, the Buyer shall, within ten (10) days after the date of such termination, deliver to each Secured Lender which is at Arms' Length with the Supplier a statement of all sums then known to the Buyer that would at that time be due under this Agreement but for the termination and a notice to each such Secured Lender stating that the Buyer is willing to enter into a New Agreement (the "**Buyer Statement**"). Subject to the provisions of this Article 11, each such Secured Lender shall thereupon have the option to obtain from the Buyer a New Agreement in accordance with the following terms:

- (i) Upon receipt of the written request of the Secured Lender within thirty (30) days after the date on which it received the Buyer Statement, the Buyer shall enter into a New Agreement.
- (ii) Such New Agreement shall be effective as of the Termination Date and shall be for the remainder of the Term at the time this Agreement was terminated and otherwise upon the terms contained in this Agreement. The Buyer's obligation to enter into a New Agreement is conditional upon the Secured Lender (A) paying all sums that would, at the time of the execution and delivery thereof, be due under this Agreement but for such termination, (B) otherwise fully curing any defaults under this Agreement existing immediately prior to termination of this Agreement that are capable of being cured, and (C) paying all reasonable costs and expenses, including legal fees, so as to provide a full indemnity (and not only substantial indemnity), incurred by the Buyer in connection with such default and termination, and the preparation, execution and delivery of such New Agreement and related agreements and documents, provided, however, that with respect to any default that could not be cured by such Secured Lender until it obtains possession, such Secured Lender shall have the applicable cure period commencing on the date that it obtains possession to cure such default.

When the Secured Lender has appointed an agent, a receiver or a receiver and manager or has obtained a court-appointed receiver or receiver and manager for the purpose of enforcing the Secured Lender's security, that Person may exercise any of the Secured Lender's rights under this Section 11.2(g).

- (h) Despite anything to the contrary contained in this Agreement, the provisions of this Article 11 shall enure only to the benefit of the holders of a Secured Lender's Security Agreement. If the holders of more than one such Secured Lender's Security Agreement who are at Arms' Length with the Supplier make written requests to the Buyer in accordance with this Section 11.2 to obtain a New Agreement, the Buyer shall accept the request of the holder whose Secured Lender's Security Agreement had priority immediately prior to the termination of this Agreement over the Secured Lender's Security Agreements of the other Secured Lenders making such requests and thereupon the written request of each other Secured Lender shall be deemed to be void. In the event of any dispute or disagreement as to the respective priorities of any such Secured Lender's Security Agreement, the Buyer may rely upon the opinion as to such priorities of any law firm qualified to practise law in the Province of Ontario retained by the Buyer in its unqualified subjective discretion or may apply to a court of competent jurisdiction for a declaration as to such priorities, which opinion or declaration shall be conclusively binding upon all parties concerned.

11.3 Cooperation

The Buyer and the Supplier shall enter into an agreement with any Secured Lender for the purpose of implementing the Secured Lender's Security Agreement protection provisions contained in this Agreement. The Buyer, acting reasonably, shall consider any request jointly

made by the Supplier and a Secured Lender or proposed Secured Lender to facilitate a provision of a Secured Lender's Security Agreement or proposed Secured Lender's Security Agreement that may require an amendment to this Agreement, provided that the rights of the Buyer are not adversely affected thereby, the obligations of the Supplier to the Buyer are not altered thereby and the consent of any other Secured Lender to such amendment has been obtained by the Supplier or the Secured Lender making the request for the amendment.

ARTICLE 12 DISCRIMINATORY ACTION

12.1 Discriminatory Action

A "**Discriminatory Action**" shall occur if:

- (a)
 - (i) the Legislative Assembly of Ontario causes to come into force any statute that was introduced as a government bill in the Legislative Assembly of Ontario or causes to come into force or makes any order-in-council or regulation first having legal effect on or after the date of the submission of the Proposal; or
 - (ii) the Legislative Assembly of Ontario directly or indirectly amends this Agreement without the agreement of the Supplier;
- (b) the effect of the action referred to in Section 12.1(a):
 - (i) is borne principally by the Supplier; or
 - (ii) is borne principally by the Supplier and one or more other suppliers who have executed, pursuant to the 2,500 MW RFP, either a DR Contract (as that term is defined in the 2,500 MW RFP) with the Buyer, or if the DR Project is based on a generator, a CES Contract (as that term is defined in the 2,500 MW RFP) with the Buyer, and
- (c) such action increases the costs that the Supplier would reasonably be expected to incur under this Agreement to curtail the Electricity demand of the Load as a direct result of the operation of the Control Equipment or adversely affects the net savings that the Supplier is able to achieve through curtailing the Electricity demand of the Load as a direct result of the operation of the Control Equipment, except where such action is in response to any act or omission on the part of the Supplier that is contrary to Laws and Regulations (other than an act or omission rendered illegal by virtue of such action) or such action is permitted under this Agreement. Despite the preceding sentence, none of the following shall be a Discriminatory Action:
 - (i) Laws and Regulations of general application, including an increase of Taxes of general application, or any action of the Government of Ontario pursuant thereto;

- (ii) any such statute that prior to five (5) Business Days prior to the date of the submission of the Proposal:
 - (A) has been introduced as a bill in the Legislative Assembly of Ontario (including Bill 100 being draft legislation entitled the *Electricity Restructuring Act, 2004*) in a similar form as such statute takes when it has legal effect, provided that any amendments made to such Bill in becoming such statute do not have a Material Adverse Effect on the Supplier; or
 - (B) has been made public in a discussion or consultation paper, press release or announcement issued by the Government of Ontario and/or the Ministry of Energy that appeared on the website of the Government of Ontario and/or the Ministry of Energy, provided that any amendments made to such public form, in becoming such statute, do not have a Material Adverse Effect on the Supplier;
- (iii) any of such regulations that prior to five (5) Business Days prior to the date that the Supplier submitted its Proposal in accordance with the 2,500 MW RFP:
 - (A) have been published but by the terms of such regulations come into force on or after five (5) Business Days prior to date that the Supplier submitted its Proposal in accordance with the 2,500 MW RFP, or
 - (B) have been referred to in a press release issued by the Government of Ontario and/or the Ministry of Energy that appeared on the website of the Government of Ontario or the Ministry of Energy, provided that any amendments made to such regulations in coming into force do not have a Material Adverse Effect on the Supplier.

12.2 Consequences of Discriminatory Action

If a Discriminatory Action occurs, the Supplier shall have the right to obtain, without duplication, compensation (the “**Discriminatory Action Compensation**”) from the Buyer for:

- (a) the amount of the increase in the costs that the Supplier would reasonably be expected to incur to curtail the Electricity demand of the Load as a direct result of the operation of the Control Equipment as a result of the occurrence of such Discriminatory Action, commencing on the first day of the first calendar month following the date of the Discriminatory Action and ending at the expiry of the Term, but excluding, for the avoidance of doubt, the portion of any costs charged by a Person who does not deal at Arm’s Length with the Supplier that is in excess of the costs that would have been charged had such Person been at Arm’s Length with the Supplier; and
- (b) the amount by which (i) the net present value of the net savings from the Electricity curtailed as a direct result of the operation of the Control Equipment in accordance with this Agreement that are forecast to be saved by the Supplier

during the period of time commencing on the first day of the first calendar month following the date of the Discriminatory Action and ending at the expiry of the Term, exceeds (ii) the net present value of the net savings from the Electricity curtailed as a direct result of the operation of the Control Equipment that are forecast to be saved by the Supplier during the period of time commencing on the first day of the first calendar month following the date of the Discriminatory Action and ending on the expiry of the Term, taking into account the occurrence of the Discriminatory Action and any actions that the Supplier should reasonably be expected to take to mitigate the effect of the Discriminatory Action, such as by mitigating operating expenses and normal capital expenditures of the business of curtailing the Electricity demand of the Load as a direct result of the operation of the Control Equipment.

12.3 Notice of Discriminatory Action

- (a) In order to exercise its rights in the event of the occurrence of a Discriminatory Action, the Supplier must give a notice (the “**Preliminary Notice**”) to the Buyer within sixty (60) days after the date on which the Supplier first became aware (or should have been aware, using reasonable due diligence) of the Discriminatory Action stating that a Discriminatory Action has occurred. Within sixty (60) days after the date of receipt of the Preliminary Notice, the Supplier must give another notice (the “**Notice of Discriminatory Action**”). A Notice of Discriminatory Action must include:
 - (i) a statement of the Discriminatory Action that has occurred;
 - (ii) details of the effect of the said occurrence that is borne by the Supplier;
 - (iii) details of the manner in which the Discriminatory Action increases the costs that the Supplier would reasonably be expected to incur to curtail the Electricity demand of the Load as a direct result of the operation of the Control Equipment or to make the Contracted Demand Reduction available and adversely affects the revenues of the Supplier; and
 - (iv) the amount claimed as Discriminatory Action Compensation and details of the computation thereof.

The Buyer shall, after receipt of a Notice of Discriminatory Action, be entitled, by notice given within thirty (30) days after the date of receipt of the Notice of Discriminatory Action, to require the Supplier to provide such further supporting particulars as the Buyer considers necessary, acting reasonably.

- (b) If the Buyer wishes to dispute the occurrence of a Discriminatory Action, the Buyer shall give a notice of dispute (the “**Notice of Dispute**”) to the Supplier, stating the grounds for such dispute, within thirty (30) days after the date of receipt of the Notice of Discriminatory Action or within thirty (30) days after the date of receipt of the further supporting particulars, as applicable.
- (c) If neither the Notice of Discriminatory Action nor the Notice of Dispute has been withdrawn within thirty (30) days after the date of receipt of the Notice of

Dispute by the Supplier, the dispute of the occurrence of a Discriminatory Action shall be submitted to mandatory and binding arbitration in accordance with Section 15.2.

- (d) If the Buyer does not dispute the occurrence of a Discriminatory Action or the amount of Discriminatory Action Compensation claimed in the Notice of Discriminatory Action, the Buyer shall pay to the Supplier the amount of Discriminatory Action Compensation claimed within sixty (60) days after the date of receipt of the Notice of Discriminatory Action. If a Notice of Dispute has been given, the Buyer shall pay to the Supplier the Discriminatory Action Compensation Amount determined in accordance with Section 12.3(e) not later than sixty (60) days after the later of the date on which the dispute with respect to the occurrence of a Discriminatory Action is resolved and the date on which the Discriminatory Action Compensation Amount is determined.
- (e)
 - (i) If the Buyer wishes to dispute the amount of the Discriminatory Action Compensation, the Buyer shall give to the Supplier a notice (the “**Discriminatory Action Compensation Notice**”) setting out an amount that the Buyer proposes as the Discriminatory Action Compensation (the “**Discriminatory Action Compensation Amount**”), if any, together with details of the computation. If the Supplier does not give notice (the “**Supplier Non-acceptance Notice**”) to the Buyer stating that it does not accept the Discriminatory Action Compensation Amount proposed within thirty (30) days after the date of receipt of the Discriminatory Action Compensation Notice, the Supplier shall be deemed to have accepted the Discriminatory Action Compensation Amount so proposed. If the Supplier Non-acceptance Notice is given, the Buyer and the Supplier shall attempt to determine the Discriminatory Action Compensation Amount through negotiation, and any amount so agreed in writing shall be the Discriminatory Action Compensation Amount. If the Buyer and the Supplier do not agree in writing upon the Discriminatory Action Compensation Amount within sixty (60) days after the date of receipt of the Supplier Non-acceptance Notice, the Discriminatory Action Compensation Amount shall be determined in accordance with the procedure set forth in Section 12.3(e)(ii) and Sections 15.1 and 15.2 shall not apply to such determination.
 - (ii) If the negotiation described in Section 12.3(e)(i) does not result in an agreement in writing on the Discriminatory Action Compensation Amount, either the Buyer or the Supplier may, after the later of (A) the date on which a dispute with respect to the occurrence of a Discriminatory Action is resolved and (B) the date of the expiry of a period of thirty (30) days after the date of receipt of the Supplier Non-acceptance Notice, by notice to the other require the dispute to be resolved by arbitration as set out below. The Buyer and the Supplier shall, within thirty (30) days after the date of receipt of such notice of arbitration, jointly appoint a valuator to determine the Discriminatory Action Compensation Amount. The valuator so appointed shall be a duly qualified business valuator where the individual responsible for the valuation has not less than ten (10) years’

experience in the field of business valuation. If the Buyer and the Supplier are unable to agree upon a valuator within such period, the Buyer and the Supplier shall jointly make application (provided that if a party does not participate in such application, the other party may make application alone) under the *Arbitration Act, 1991* (Ontario) to a judge of the Superior Court of Justice to appoint a valuator, and the provisions of the *Arbitration Act, 1991* (Ontario) shall govern such appointment. The valuator shall determine the Discriminatory Action Compensation Amount within sixty (60) Business Days after the date of his or her appointment. Pending a decision by the valuator, the Buyer and the Supplier shall share equally, and be responsible for their respective shares of, all fees and expenses of the valuator. The fees and expenses of the valuator shall be paid by the non-prevailing party. "Prevailing party" means the party whose determination of the Discriminatory Action Compensation Amount is most nearly equal to that of the valuator's determination. The Supplier's and the Buyer's respective determinations of the Discriminatory Action Compensation Amount shall be based upon the Notice of Discriminatory Action and the Discriminatory Action Compensation Notice, as applicable.

- (iii) In order to facilitate the determination of the Discriminatory Action Compensation Amount by the valuator, each of the Buyer and the Supplier shall provide to the valuator such information as may be requested by the valuator, acting reasonably, and the Supplier shall permit the valuator and the valuator's representatives to have reasonable access during normal business hours to such information and to take extracts there from and to make copies thereof.
- (iv) The Discriminatory Action Compensation Amount as determined by the valuator shall be final and conclusive and not subject to any appeal.
- (f) Any amount to be paid under Section 12.3(d) shall bear interest at a variable nominal rate per annum equal on each day to the Interest Rate then in effect from the date of receipt of the Notice of Discriminatory Action to the date of payment.
- (g) Payment of the Discriminatory Action Compensation and interest thereon by the Buyer to the Supplier shall constitute full and final satisfaction of all amounts that may be claimed by the Supplier for and in respect of the occurrence of the Discriminatory Action and, upon such payment, the Buyer shall be released and forever discharged by the Supplier from any and all liability in respect of such Discriminatory Action.

12.4 Right of the Buyer to Remedy or Cause to be Remedied a Discriminatory Action

If the Buyer wishes to remedy or cause to be remedied the occurrence of a Discriminatory Action, the Buyer must give notice to the Supplier within thirty (30) days after the later of the date of receipt of the Notice of Discriminatory Action and the date of the receipt by the Buyer of the further supporting particulars referred to in Section 12.3(b). If the Buyer gives such notice, the Buyer must remedy or cause to be remedied the Discriminatory Action within one hundred

and eighty (180) days after the date of receipt of the Notice of Discriminatory Action or, if a Notice of Dispute has been given, within one hundred and eighty (180) days after the date of the final award pursuant to Section 15.2 to the effect that a Discriminatory Action occurred. If the Buyer remedies or causes to be remedied the Discriminatory Action in accordance with the preceding sentence, the Supplier shall have the right to obtain, without duplication, the amount that the Supplier would have the right to claim in respect of that Discriminatory Action pursuant to Section 12.2, adjusted to apply only to the period commencing on the first day of the first calendar month following the date of the Discriminatory Action and expiring on the day preceding the day on which the Discriminatory Action was remedied.

ARTICLE 13 LIABILITY AND INDEMNIFICATION

13.1 Exclusion of Consequential Damages

Notwithstanding anything contained herein to the contrary, neither Party will be liable under this Agreement or under any cause of action relating to the subject matter of this Agreement for any special, indirect, incidental, punitive, exemplary or consequential damages, including loss of profits (save and except as provided in Section 9.5 and Section 12.2), loss of use of any property or claims of customers or contractors of the Parties for any such damages.

13.2 Liquidated Damages

Nothing in this Article shall reduce a Party's right to claim for liquidated damages pursuant to Sections 2.3 and Section 9.2(b), or for an Early Termination Payment pursuant to Section 9.5. The Supplier acknowledges and agrees with the Buyer that the actual damages incurred by the Buyer and Electricity consumers as a result of a failure by the Supplier to meet its obligations under this Agreement are impossible to definitively quantify and the Supplier further agrees that the payment of the liquidated damages set forth in this Agreement constitutes a fair and reasonable means of compensating the Buyer for damages likely to be incurred as a result of such delays and does not constitute a penalty. The Buyer agrees that the payment of liquidated damages pursuant to Section 9.5 constitutes a fair and reasonable means of compensating the Supplier for such damages likely to be incurred and does not constitute a penalty.

13.3 Indemnification

In addition to the indemnity provided by the Supplier in Section 2.6(d), the Supplier shall indemnify, defend and hold Ontario Electricity Financial Corporation, the Ontario Power Authority (if created), the Government of Ontario, the members of the Government of Ontario's Executive Council, and their respective Affiliates, and each of the foregoing Persons' respective directors, officers, employees, shareholders, advisors, and agents (including contractors and their employees) (collectively, the "**Indemnitees**") harmless from and against any and all claims, demands, suits, losses, damages, liabilities, penalties, obligations, payments, costs and expenses and accrued interest thereon (including the costs and expenses of, and accrued interest on, any and all actions, suits, proceedings for personal injury (including death) or property damage, assessments, judgments, settlements and compromises relating thereto and reasonable lawyers' fees and reasonable disbursements in connection therewith) (each, an "**Indemnifiable Loss**"), asserted against or suffered by the Indemnitees relating to, in connection with, resulting from, or arising out of (i) any occurrence or event relating to the DR Project except to the extent that any injury or damage is attributable to the negligence or wilful misconduct of the Indemnitees or the

failure of the Indemnitees to comply with Laws and Regulations and (ii) any breach by the Supplier of any representations and covenants contained in this Agreement, except to the extent that any injury or damage is attributable to the negligence or wilful misconduct of the Indemnitees. For greater certainty, in the event of contributory negligence or other fault of the Indemnitees, then such Indemnitees shall not be indemnified hereunder in the proportion that the Indemnitees' negligence or other fault contributed to any Indemnifiable Loss.

13.4 Defence of Claims

- (a) Promptly after receipt by the Indemnitees of any Claim or notice of the commencement of any action, administrative or legal proceeding, or investigation as to which the indemnity provided for in Section 13.3 may apply, the Buyer shall notify the Supplier in writing of such fact. The Supplier shall assume the defence thereof with counsel designated by the Supplier and satisfactory to the affected Indemnitees, acting reasonably; provided, however, that if the defendants in any such action include both the Indemnitees and the Supplier and the Indemnitees shall have reasonably concluded that there may be legal defences available to them which are different from or additional to, or inconsistent with, those available to the Supplier, the Indemnitees shall have the right to select separate counsel satisfactory to the Supplier acting reasonably (at no additional cost to the Indemnitees) to participate in the defence of such action on behalf of the Indemnitees. The Supplier shall promptly confirm that it is assuming the defence of the Indemnitees by providing written notice to the Indemnitees. Such notice shall be provided no later than five days prior to the deadline for responding to any Claim relating to any Indemnifiable Loss.
- (b) Should any of the Indemnitees be entitled to indemnification under Section 13.3 as a result of a Claim by a third party, and the Supplier fails to assume the defence of such Claim (which failure shall be assumed if the Supplier fails to provide the notice prescribed by Section 13.4(a)), the Indemnitees shall, at the expense of the Supplier, contest (or, with the prior written consent of the Supplier, settle) such Claim, provided that no such contest need be made and settlement or full payment of any such Claim may be made without consent of the Supplier (with the Supplier remaining obligated to indemnify the Indemnitees under Section 13.3), if, in the written opinion of an independent third party counsel chosen by the Company Representatives, such Claim is meritorious. If the Supplier is obligated to indemnify any Indemnitees under Section 13.3, the amount owing to the Indemnitees will be the amount of such Indemnitees' actual out-of-pocket loss net of any insurance proceeds received or other recovery.

ARTICLE 14 CONTRACT OPERATION AND ADMINISTRATION

14.1 Company Representative

The Supplier and the Buyer shall each appoint, from time to time, a representative (a "**Company Representative**"), who shall be duly authorized to act on behalf of the Party that has made the appointment, and with whom the other Party may consult at all reasonable times, and whose instructions, requests, and decisions, provided the same are in writing signed by the respective

Company Representative, shall be binding on the appointing Party as to all matters pertaining to this Agreement. The Company Representatives shall not have the power or authority to amend this Agreement.

14.2 Record Retention; Audit Rights

The Supplier and the Buyer shall both keep complete and accurate records and all other data required by either of them for the purpose of proper administration of this Agreement. All such records shall be maintained as required by Laws and Regulations but for no less than for seven (7) years after the creation of the record or data. The Supplier and the Buyer, on a confidential basis as provided for in Article 7 of this Agreement, shall provide reasonable access to the relevant and appropriate financial and operating records and data kept by it relating to this Agreement reasonably required for the other Party to comply with its obligations to Governmental Authorities or to verify billings or to verify information provided in accordance with this Agreement. A Party may use its own employees for purposes of any such review of records provided that those employees are bound by the confidentiality requirements provided for in Article 7. Alternatively, a Party may at its own expense appoint an auditor to conduct its audit. The Party seeking access to such records in this manner shall pay the fees and expenses associated with use of the third party auditor.

14.3 Reports to the Buyer

- (a) The Supplier agrees to provide to the Buyer a copy of all reports, plans, and notices that the Supplier is required to provide to the IMO with respect to Control Equipment Outages, at the same time or as soon as possible thereafter as such reports, plans, and notices are delivered by the Supplier to the IMO. If the Supplier is not governed by the IMO Market Rules in respect to Outages, the Supplier shall provide to the Buyer a copy of all reports, plans, and notices that the Supplier would have been required to provide to the IMO with respect to Control Equipment Outages if the Supplier were subject to the IMO Market Rules in that regard, within the same timelines prescribed by the IMO Market Rules.
- (b) In addition to the foregoing, the Supplier shall deliver at the times specified below the following documents, reports, plans and notices to the Buyer:
 - (i) No later than: (1) the date of this Agreement, where the Commercial Operation Date occurs prior to, or within sixty (60) days after, the date of this Agreement, or (2) sixty (60) days prior to the Commercial Operation Date, where the Commercial Operation Date occurs more than sixty (60) days after the date of this Agreement, the Supplier shall provide to the Buyer an operating plan for the Control Equipment for the Term (the “**Long Term Operating Plan**”) commencing at the Term Commencement Date, including a long term major maintenance schedule. The Supplier shall promptly provide the Buyer with copies of any amendments or modifications to the Long Term Operating Plan. The Long Term Operating Plan shall be consistent with Good Engineering and Operating Practices and is not a guarantee of the timing of Planned Outages.

- (ii) No later than:
 - (A) the date that the Long Term Operating Plan is to be provided to the Buyer in accordance with Section 14.3(b)(i), and
 - (B) in respect of each Contract Year thereafter, sixty (60) days prior to each Contract Year,

the Supplier shall provide to the Buyer an operating plan for the Control Equipment for the succeeding Contract Year (the “**Annual Operating Plan**”). The Annual Operating Plan shall include a schedule of Planned Outages for that 12 month period (together with the Supplier’s estimate of the expected duration of each Planned Outage) which shall be consistent with Good Engineering and Operating Practices and consistent with the Long Term Operating Plan. The Supplier may, on not less than 15 days’ prior notice to the Buyer, amend the Annual Operating Plan.

- (iii) The Supplier shall promptly notify the Buyer of any Control Equipment Outage other than a Planned Outage, or any anticipated Control Equipment Outage other than a Planned Outage. Any notice under this subsection shall include a statement of the cause of such Outage, the proposed corrective action and the Supplier’s estimate of the expected duration of such Outage. The Supplier shall use Commercially Reasonable Efforts to promptly end or reduce the length of such Outage.
 - (iv) The Supplier shall give the Buyer thirty (30) days prior written notice (or such lesser number of days as is possible in the circumstances) of any Planned Outage of the Control Equipment.
 - (v) All Outages shall take place in accordance with the notices of Outages provided by the Supplier to the Buyer under this Section 14.3.
- (c) Notwithstanding the foregoing, the Supplier acknowledges that the value of RC_{RCH} set out in Section 2.1 of Exhibit J shall be determined by reference to Load Outages which the Supplier has reported to the Buyer and the IMO at least 1 day in advance of such Load Outage and any other Load Outage reported in the DR Verification Certificate, and no such report will be valid unless supported by a verification statement from the DR Verification Consultant which provides that the DR Project from which the relevant curtailment of Electricity demand would otherwise have been drawn was operating below the normal load levels during the relevant period.

14.4 Inspection of DR Project

- (a) The Buyer and its authorized agents and representatives shall, at all times upon two (2) Business Days’ prior notice, at any time after execution of this Agreement, have access to the DR Project and every part thereof during regular business hours and the Supplier shall and shall cause all personnel operating and managing the DR Project to furnish the Buyer with all reasonable assistance in inspecting the DR Project for the purpose of ascertaining compliance with this

Agreement; provided that such access and assistance shall be carried out in accordance with and subject to the reasonable safety and security requirements of the Supplier and all personnel operating and managing the DR Project, as applicable.

- (b) The inspection of the DR Project by or on behalf of the Buyer shall not relieve the Supplier of any of its obligations to comply with the terms of this Agreement. No Supplier Event of Default by the Supplier will be waived or deemed to have been waived by any inspection by or on behalf of the Buyer. In no event will any inspection by the Buyer hereunder be a representation that there has been or will be compliance with this Agreement and Laws and Regulations.

14.5 Inspection Not Waiver

- (a) Failure by the Buyer to inspect the DR Project or any part thereof under Section 14.4, or to exercise its audit rights under Section 14.2, shall not constitute a waiver of any of the rights of the Buyer hereunder. An inspection or audit not followed by a notice of a Supplier Event of Default shall not constitute or be deemed to constitute a waiver of any Supplier Event of Default, nor shall it constitute or be deemed to constitute an acknowledgement that there has been or will be compliance by the Supplier with this Agreement.
- (b) Failure by the Supplier to exercise its audit rights under Section 14.2 shall not constitute or be deemed to constitute a waiver of any of the rights of the Supplier hereunder. An audit not followed by a notice of a Buyer Event of Default shall not constitute or be deemed to constitute a waiver of any Buyer Event of Default, nor shall it constitute or be deemed to constitute an acknowledgement that there has been or will be compliance by the Buyer with this Agreement.

14.6 Contracted Demand Reduction Check Tests

- (a) The Buyer shall have the option, exercisable on no more than two (2) occasions per Contract Year, to require the Supplier, within ten (10) Business Days after written notice has been delivered to the Supplier, provided it is not during an Outage, to conduct a test, at the Supplier's sole cost and expense, to confirm the Contracted Demand Reduction of the DR Project (the "**CDR Check Test**") for that Season. Each CDR Check Test shall consist of the DR Project curtailing Electricity demand in response to Operational Directives for six (6) continuous hours during a period designated by the Supplier in advance as a test period (but which hours shall be during Callable Hours) subject to coordination and approval of the IMO. If the Control Equipment includes a generator, then the Contracted Demand Reduction shall be evaluated based on the meter data in relation to the generator. The Supplier acknowledges and agrees that the Contracted Demand Reduction and the meter data, as measured by the CDR Check Test, shall not be adjusted for ambient, weather, or other conditions whatsoever. If: (i) the CDR Check Test is interrupted by an event of Force Majeure, or (ii) if the Control Equipment includes a generator and at any point during the CDR Check Test, the air temperature, as reported at the Environment Canada weather station that is physically nearest to the Contract Facility (or in the case of a Contract Facility

that is comprised of two or more generating facilities that are aggregated, the weather station that is physically nearest to one of the generating facilities so aggregated that has been selected by the Supplier), exceeded 30.0 degrees Celsius, then the Supplier may, at the Supplier's sole cost and expense, re-perform the CDR Check Test within ten (10) Business Days after the receipt by the Supplier of the DR Verification Certificate relating to such CDR Check Test from the Buyer. The Buyer and its authorized agents and representatives shall be entitled to attend any CDR Check Test, and the Supplier shall provide the Buyer with any Measurement and Verification Data resulting from each test forthwith upon completion of the CDR Check Test. For greater certainty, a Late Certificate Capacity Check Test required pursuant to Section 4.2(a) shall not count as one of the two (2) occasions per Contract Year that the Buyer may require the Supplier to conduct a CDR Check Test.

- (b) The Supplier shall deliver to the Buyer, within five (5) Business Days after the completion of the CDR Check Test, a DR Verification Certificate, stating the Electricity curtailed by the DR Project for each hour of the CDR Check Test.
- (c) To pass the CDR Check Test, the Electricity (in MWh) curtailed by the DR Project for each hour of the CDR Check Test, divided by one hour, must be equal to or greater than the Contracted Demand Reduction.
- (d) If the Supplier has not passed the CDR Check Test for each one of the six continuous hours, then the Supplier shall, at the Supplier's cost and expense, perform a further CDR Check Test (the "**Further CDR Check Test**") within ten (10) Business Days of the receipt by the Supplier of the DR Verification Certificate, on the same terms and conditions as the CDR Check Test described in Section 14.6(a), including the delivery of a DR Verification Certificate in relation to the Further CDR Check Test. If the total amount of Electricity curtailed by the DR Project for the six continuous hours of each of the CDR Check Test and the Further CDR Check Test, as stated in their respective DR Verification Certificates, divided by the number of hours in each of the respective check tests (each an "**Average Test Curtailment**"), are both less than 80% of the Contracted Demand Reduction, then this shall be considered a Supplier Event of Default. For purposes of calculating the Average Test Curtailment in Section 14.6, the amount of Electricity curtailed by the DR Project for each hour shall not exceed a maximum amount equal to the Contracted Demand Reduction multiplied by one hour.
- (e) If the Further CDR Check Test shows that the Average Test Curtailment was between 80% and 100% of the Contracted Demand Reduction, then the Demand Reduction Factor (as defined below and used in the calculation of Adjusted MDR in Exhibit J) shall be reduced as set out below, effective on the date of the DR Verification Certificate in relation to the Further CDR Check Test. The "**Demand Reduction Factor**" is defined as a fraction, the numerator of which is (i) the greater of the Average Test Curtailments resulting from the CDR Check Test and the Further CDR Check Test, and the denominator of which is (ii) the Contracted Demand Reduction set out in Exhibit B.

- (f) If Section 14.6(e) is applicable, then the Supplier shall perform a further CDR Check Test (the “**Final CDR Check Test**”) at the Supplier’s cost and expense within ten (10) Business Days after written notice has been delivered by the Supplier to the Buyer, no earlier than one month and no later than one year after the date of the Further CDR Check Test, failing which this shall be considered to be a Supplier Event of Default. The Final CDR Check Test shall take place on the same terms and conditions as the CDR Check Test described in Section 14.6(a) and including the delivery of the DR Verification Certificate in relation to the Further CDR Check Test. If the total amount of Electricity curtailed by the DR Project for the six continuous hours of the Final CDR Check Test, as stated in the DR Verification Certificate, divided by the number of hours in such check test (which result shall be an “Average Test Curtailment” as calculated pursuant to Section 14.6(d)), is less than the Contracted Demand Reduction, then this shall be considered a Supplier Event of Default. If the Final CDR Check Test has passed, then the Demand Reduction Factor shall, for the purposes of Exhibit J, be set to 1.0 effective from the date of the DR Verification Certificate in relation to the Final CDR Check Test.

14.7 Notices

All notices pertaining to this Agreement not explicitly permitted to be in a form other than writing shall be in writing and shall be given by facsimile or other means of electronic transmission or by hand or courier delivery. Notwithstanding the foregoing, any notices of an Event of Default and termination of this Agreement shall only be given by hand or courier delivery. Any notice shall be addressed to the other Party as follows:

If to the Supplier: ●

Attention: ●

Facsimile: ●

and to: ●

Attention: ●

Facsimile: ●

(which shall not be required to constitute notice)

If to the Buyer: Ontario Electricity Financial Corporation
1 Dundas Street West
Suite 1400
Toronto, ON M5G 1Z3

Attention: ●

Facsimile : ●

and to: ●

Attention: ●

Facsimile: ●

(which shall not be required to constitute notice)

Notice delivered or transmitted as provided above shall be deemed to have been given and received on the day it is delivered or transmitted, provided that it is delivered or transmitted on a Business Day prior to 5:00 p.m. local time in the place of delivery or receipt. However, if a notice is delivered or transmitted after 5:00 p.m. local time or such day is not a Business Day, then such notice shall be deemed to have been given and received on the next Business Day. Either Party may, by written notice to the other, change its respective Company Representative or the address to which notices are to be sent.

ARTICLE 15 MISCELLANEOUS

15.1 Informal Dispute Resolution

If any dispute arises under or in connection with this Agreement that the Parties cannot resolve, each of the Parties shall promptly advise its senior management, in writing, of such dispute. Within ten (10) Business Days following delivery of such notice, a senior executive (Senior Vice-President or higher) from each Party shall meet, either in person or by telephone (the “**Senior Conference**”), to attempt to resolve the dispute. Each senior executive shall be prepared to propose a solution to the dispute. If, following the Senior Conference, the dispute is not resolved, the dispute may be settled by arbitration pursuant to Section 15.2, if agreed to by both Parties.

15.2 Arbitration

Except as otherwise specifically provided for in this Agreement, any matter in issue between the Parties as to their rights under this Agreement may be decided by arbitration provided, however, that the Parties have first completed a Senior Conference pursuant to Section 15.1. Any dispute to be decided by arbitration will be decided by a single arbitrator appointed by the Parties or, if such Parties fail to appoint an arbitrator within fifteen (15) days following the agreement to refer the dispute to arbitration, upon the application of either of the Parties, the arbitrator shall be appointed by a Judge of the Superior Court of Justice (Ontario) sitting in the Judicial District of Toronto Region. The arbitrator shall not have any current or past business or financial relationships with any Party (except prior arbitration). The arbitrator shall provide each of the Parties an opportunity to be heard and shall conduct the arbitration hearing in accordance with the provisions of the *Arbitration Act, 1991* (Ontario). Unless otherwise agreed by the Parties, the arbitrator shall render a decision within ninety (90) days after the end of the arbitration hearing and shall notify the Parties in writing of such decision and the reasons therefor. The arbitrator shall be authorized only to interpret and apply the provisions of this Agreement and shall have no power to modify or change the Agreement in any manner. The decision of the arbitrator shall be conclusive, final and binding upon the Parties. The decision of the arbitrator may be appealed solely on the grounds that the conduct of the arbitrator, or the decision itself, violated the provisions of the *Arbitration Act, 1991* (Ontario) or solely on a question of law as provided for in the *Arbitration Act, 1991* (Ontario). The *Arbitration Act, 1991* (Ontario) shall govern the procedures to apply in the enforcement of any award made. If it is necessary to enforce such award, all costs of enforcement shall be payable and paid by the Party against whom such award is enforced. Unless otherwise provided in the arbitral award to the contrary, each Party shall bear (and be solely responsible for) its own costs incurred during the arbitration process, and

each Party shall bear (and be solely responsible for) its equal share of the costs of the arbitrator. Each Party shall be otherwise responsible for its own costs incurred during the arbitration process.

15.3 Business Relationship

Each Party shall be solely liable for the payment of all wages, taxes, and other costs related to the employment by such Party of persons who perform this Agreement, including all federal, provincial, and local income, social insurance, health, payroll and employment taxes and statutorily-mandated workers' compensation coverage. None of the persons employed by either Party shall be considered employees of the other Party for any purpose. Nothing in this Agreement shall create or be deemed to create a relationship of partners, joint venturers, fiduciary, principal and agent or any other relationship between the Parties.

15.4 Binding Agreement

Except as otherwise set out in this Agreement, this Agreement shall not confer upon any other Person, except the Parties and their respective successors and permitted assigns, any rights, interests, obligations or remedies under this Agreement. This Agreement and all of the provisions of this Agreement shall be binding upon and shall enure to the benefit of the Parties and their respective successors and permitted assigns.

15.5 Assignment

- (a) Except as set out below and as provided in Article 11, neither this Agreement nor any of the rights, interests or obligations under this Agreement may be assigned by either Party, including by operation of Laws and Regulations, without the prior written consent of the other Party, which consent shall not be unreasonably withheld.
- (b) The Supplier may, subject to compliance with Laws and Regulations and provided that there is not a Supplier Event of Default that has not been remedied, assign this Agreement without the consent of the Buyer to an Affiliate acquiring the DR Project; provided, however, that no such assignment by the Supplier or any of its successors or permitted assigns hereunder shall be valid or effective unless and until such Affiliate agrees with the Buyer in writing to assume all of the Supplier's obligations and be bound by the terms of this Agreement, and the arrangements and obligations of the Supplier set forth in Article 5 have been met in accordance with the terms of Article 5. If a valid assignment of this Agreement is made by the Supplier in accordance with this Section 15.5, the Buyer acknowledges and agrees that, upon such assignment and assumption and notice thereof by the assignor to the Buyer, the assignor shall be relieved of all its duties, obligations and liabilities hereunder.
- (c) If the Supplier assigns this Agreement to a non-resident of Canada (the "Assignee"), as that term is defined in the ITA, and the Buyer incurs any additional Taxes, at any time thereafter, solely as the result of such assignment, then payments under this Agreement by the Buyer shall be reduced by the amount of such additional or withholding Taxes and the Buyer shall remit such additional or withholding Taxes to the applicable taxing authorities. The Buyer

shall within sixty (60) days after remitting such Taxes, notify the Assignee in writing, providing reasonable detail of such payment so that the Assignee may claim any applicable rebates, refunds or credits from the applicable taxing authorities. If after the Buyer has paid such amounts, the Buyer receives a refund, rebate or credit on account of such Taxes, then the Buyer shall promptly remit such refund, rebate or credit amount to the Assignee.

- (d) If the Ontario Power Authority has been established pursuant to legislation, then the Buyer shall have the unilateral right to assign this Agreement and all benefits and obligations thereunder to the Ontario Power Authority, which shall assume the obligations of the Buyer hereunder and be novated into this Agreement in the place and stead of the Buyer, whereupon Ontario Electricity Financial Corporation shall be relieved of all obligations and liability arising pursuant to this Agreement, provided however, that no assignment to the Ontario Power Authority will be valid or effective unless and until the Ontario Power Authority agrees in writing to assume and be bound by the terms and conditions of this Agreement. Upon such assignment and assumption, the representation set forth in Section 6.2(a) shall apply to the Ontario Power Authority with all necessary amendments to reflect the form and the manner in which the Ontario Power Authority was established, and all of the representations set forth in Section 6.2 shall be deemed to be made by the Buyer to the Supplier at the time of such assignment and assumption.

15.6 No Change of Control

- (a) The Supplier shall not permit or allow a change of Control of the Supplier, except with the prior written consent of the Buyer, which consent may not be unreasonably withheld. It shall not be unreasonable to withhold such consent if the change of Control will have or is likely to have a Material Adverse Effect on the Supplier's ability to perform its obligations under this Agreement, in which case such consent may be withheld by the Buyer.
- (b) For the purposes of Sections 15.5(a) and 15.6(b), a change in ownership of any shares or units of ownership that are listed on a recognized stock exchange shall not constitute a change of Control provided that such listed entity does not have as its special or sole purpose the ownership of the DR Project and other demand response projects under contract with the Buyer pursuant to the 2,500 MW RFP, and one or more generating facilities under a CES Contract (as that term is defined in the 2,500 MW RFP) where the Control Equipment includes a generator.

15.7 Survival

The provisions of Sections 2.7(b), 3.3, 3.4, 3.5, Article 4, Article 7, Article 9, Section 11.2(g), Article 13, Section 14.2, Sections 15.1, 15.2 and 15.5(c) shall survive the expiration of the Term or earlier termination of this Agreement. The expiration of the Term or a termination of this Agreement shall not affect or prejudice any rights or obligations that have accrued or arisen under this Agreement prior to the time of expiration or termination and such rights and

obligations shall survive the expiration of the Term or the Termination of this Agreement for a period of time equal to the applicable statute of limitations.

15.8 Counterparts

This Agreement may be executed in two or more counterparts, and all such counterparts shall together constitute one and the same Agreement. It shall not be necessary in making proof of the contents of this Agreement to produce or account for more than one such counterpart. Any Party may deliver an executed copy of this Agreement by facsimile but such Party shall promptly deliver to the other Party an originally executed copy of this Agreement.

15.9 Use of Insignia

The Supplier shall not use any insignia or logo of Her Majesty the Queen in right of Ontario except where required to make available the Contracted Demand Reduction, and only if it has received the prior written permission of the Buyer to do so.

15.10 Additional Rights to Set Off

- (a) In addition to its other rights of set-off under this Agreement or otherwise arising in law or equity, the Buyer may set off any amounts owing by the Supplier to the Buyer in connection with Sections 1.7(d), 2.3, 2.7, 3.3, 4.5, 9.2, 9.5, 13.3, and 15.5(c) against any monies owed by the Buyer to the Supplier in connection with Section 1.7(d), 3.2, 3.4, 3.5, 4.4, 4.5, 9.4, 9.5, and 12.3(d).
- (b) In addition to its other rights of set-off under this Agreement or otherwise arising in law or equity, the Supplier may set-off any amounts owing by the Buyer to the Supplier in connection with Sections 1.7(d), 3.2, 3.4, 3.5, 4.4, 4.5, 9.4, 9.5, and 12.3(d) against any monies owed by the Supplier to the Buyer in connection with Sections 1.7(d), 2.3, 2.7, 3.3, 4.5, 9.2, 9.5, 13.3, and 15.5(c).

15.11 Rights and Remedies Not Limited to Contract

Unless expressly provided in this Agreement, the express rights and remedies of the Buyer or the Supplier set out in this Agreement are in addition to and shall not limit any other rights and remedies available to the Buyer or the Supplier, respectively, at law or in equity.

15.12 Time of Essence

Time is of the essence in the performance of the Parties' respective obligations under this Agreement.

15.13 Further Assurances

Each of the Parties shall, from time to time on written request of the other Party, do all such further acts and execute and deliver or cause to be done, executed or delivered all such further acts, deeds, documents, assurances and things as may be reasonably required in order to fully perform and to more effectively implement and carry out the terms of this Agreement. The Parties agree to promptly execute and deliver any documentation required by any Governmental Authority in connection with any termination of this Agreement.

IN WITNESS WHEREOF, and intending to be legally bound, the Parties have executed this Agreement by the undersigned duly authorized representatives as of the date first stated above.

●

ONTARIO ELECTRICITY FINANCIAL CORPORATION

By: _____

Name: ●

Title: ●

By: _____

Name: ●

Title: ●

I/We have authority to bind the ●

By: _____

Name: ●

Title: ●

By: _____

Name: ●

Title: ●

We have authority to bind the Corporation.

EXHIBIT A
SUMMARY OF DR PROJECT

- (a) Project Name: _____
Project Location: _____
- (b) The DR Project is a demand response project that will meet the demand response requirements of the DR Contract through (choose one):
- (i) load shifting; or
- (ii) load interruption; or
- (iii) the generation of Electricity. If so, the source(s) or fuel(s) consumed by the DR Project as its Primary Fuel(s) are as follows: _____

_____.
- and all other source(s) or fuel(s) consumed by the proposed DR Project are as follows: : _____

_____.
- (c) The Supplier [*Note to finalization: insert "is" or "is not"*] aggregating two (2) or more Loads in the DR Project.

EXHIBIT B
CONTRACTED DEMAND REDUCTION AND NET REVENUE REQUIREMENT

Contracted Demand Reduction	Summer = _____MW Winter = _____MW Other Season = _____MW
Net Revenue Requirement	\$____.____/MW-month

EXHIBIT C
FORM OF IRREVOCABLE STANDBY LETTER OF CREDIT

DATE OF ISSUE: ●

APPLICANT: ●

BENEFICIARY: Ontario Electricity Financial Corporation (or, Ontario Power Authority, if created)

AMOUNT: ●

EXPIRY DATE: ●

EXPIRY PLACE: Counters of the issuing financial institution in Toronto, Ontario

CREDIT RATING: **[Insert credit rating only if the issuer is not a financial institution listed in either Schedule I or II of the Bank Act]**

TYPE: IRREVOCABLE AND UNCONDITIONAL STANDBY LETTER OF CREDIT

Number:

We hereby authorize you to draw on **[insert name of financial institution and financial institution's address in Toronto, Ontario]** in respect of irrevocable standby letter of credit No. _____ (the "**Credit**"), for the account of the Applicant up to an aggregate amount of \$● (● Canadian dollars) available by your drafts at sight, accompanied by the Beneficiary's signed certificate stating that:

"The Applicant has defaulted under the DR Contract between the Beneficiary and **[insert name of Supplier]**, and therefore the Beneficiary is entitled to draw upon the Credit in the amount of the draft attached hereto."

Drafts drawn hereunder must bear the clause "Drawn under irrevocable and unconditional Standby Letter of Credit No. **[insert number]** issued by **[the financial institution]** dated **[insert date]**".

Partial drawings are permitted.

This Credit is issued in connection with the Demand Response Contract dated **[insert date]** between the Beneficiary and **[insert name of Supplier]** (the "DR Contract").

This Letter of Credit will automatically extend for additional, successive terms of one (1) year each, unless the undersigned provides the Beneficiary with written notice, at least sixty (60) days prior to the expiration date, that it does not wish to extend this Letter of Credit for an additional term.

We engage with you that all drafts drawn under, and in compliance with the terms of this Credit will be duly honoured, if presented at the counters of **[insert the financial institution and**

financial institution's address, located in Toronto, Ontario] at or before 5:00 pm (EST) on **[insert the expiry date]**.

This irrevocable standby letter of credit is subject to the International Standby Practices ISP 98, International Chamber of Commerce publication No. 590 and, as to matters not addressed by the ISP 98, shall be governed by the laws of the Province of Ontario and applicable Canadian federal law, and the parties hereby irrevocably agree to attorn to the non-exclusive jurisdiction of the courts of the Province of Ontario.

The Beneficiary may transfer this Letter of Credit without the consent of the Applicant or the issuing financial institution.

- END -

[Insert name of Financial Institution]

By:

Authorized Signatory

EXHIBIT D GUARANTEE

THIS GUARANTEE dated as of ● is made and entered into between ●, a corporation incorporated under the laws of ● (the “Guarantor”), and Ontario Electricity Financial Corporation (the “Buyer”).

RECITALS:

- A. The Buyer and ●, a ● ● corporation incorporated under the laws of ● (“Supplier”), have entered into a demand response contract dated as of ● (as extended, amended, replaced and supplemented, collectively, the “Agreement”);
- B. The Guarantor will directly or indirectly benefit from the Agreement;
- C. Pursuant to the terms of the Agreement, the Buyer has required that the Guarantor shall deliver a guarantee of all payment obligations of Supplier under the Agreement to the Buyer; and
- D. Capitalized terms used in this Guarantee but not otherwise defined herein have the meanings ascribed to it in the Agreement.

NOW THEREFORE for good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged) the Guarantor hereby agrees as follows:

1. **Guarantee**

Subject to the terms and conditions hereof, the Guarantor absolutely, irrevocably and unconditionally guarantees to the Buyer the full and timely payment when due, whether at stated maturity, by acceleration or otherwise, of the payment obligations of Supplier set forth in the Agreement from time to time and interest thereon accrued as provided in the Agreement, irrespective of when such obligations were incurred (the “Guaranteed Obligations”); provided, however, that the applicable rate of interest shall never exceed the maximum rate permitted by law. The aggregate amount of the Guarantor’s liability under this Guarantee shall not exceed ● CANADIAN DOLLARS (Cdn. \$●) (the “Maximum Guarantee Amount”), plus reasonable legal fees and expenses payable by the Guarantor as provided herein. To the extent that Supplier fails to pay any Guaranteed Obligation, the Guarantor shall promptly pay to the Buyer the amount due. The Guarantor shall also be liable for all reasonable out-of-pocket expenses (including the legal fees and expenses of the Buyer) incurred to collect or enforce any of the Guaranteed Obligations; provided however, that such legal fees and expenses shall be payable by the Guarantor only to the extent that the Buyer is successful in enforcing the Guaranteed Obligations. This Guarantee shall be a continuing guarantee effective during the term of the Agreement and until fulfillment of, including payment in full of, the Guaranteed Obligations.

2. **Demand**

The Guarantor’s obligation to make payment under this Guarantee shall arise forthwith after demand for payment has been received by the Guarantor from the Buyer in writing in accordance with Section 11 hereof and the Guarantor’s liability for the Guaranteed Obligations shall bear interest in accordance with the terms and conditions set forth in the Agreement. The only

condition (and no other document, proof or action other than as specifically provided in this Guarantee is necessary as a condition) of the Guarantor honouring its obligations under this Guarantee shall be such demand for payment. No notice of the Guaranteed Obligations need be given in any form to the Guarantor at any time and the Guarantor waives any such notice and the right to consent to the Guaranteed Obligations. In the event that any payment to the Buyer in respect to any Guaranteed Obligations is rescinded or must otherwise be returned for any reason whatsoever, including the insolvency or bankruptcy of Supplier or otherwise, the Guarantor shall remain liable hereunder in respect to such Guaranteed Obligations as if such payment had not been made.

3. Waivers

- (a) The Guarantor waives any right to require as a condition to its obligations hereunder that:
 - (i) collateral be applied to the Guaranteed Obligations;
 - (ii) an action be brought against Supplier or any Person other than the Guarantor should the Buyer seek to enforce the obligations of the Guarantor;
 - (iii) a judgment be rendered against Supplier or any Person other than the Guarantor;
 - (iv) Supplier or any other Person be joined in any action against the Guarantor;
 - (v) an action separate from one against the Guarantor be brought against Supplier or any other Person or under any other security or guarantee held by the Buyer; and
 - (vi) any Supplier Event of Default under the Agreement has occurred.
- (b) The Guarantor further waives:
 - (i) all defenses, set-offs, counterclaims, estoppels or privileges which might but for this provision exonerate or discharge it from its obligations hereunder; and
 - (ii) notice of acceptance of this Guarantee, notice of any liability to which it may apply, presentment, demand, protest and notice of dishonour, non-payment or non-performance and marshalling of assets.
- (c) The obligations of the Guarantor hereunder shall in no way be affected or impaired by reason, and the Guarantor waives its right to prior notice, of the happening from time to time of any of the following:
 - (i) any invalidity or unenforceability of all or any part of the Guaranteed Obligations or any agreement or instrument relating to or securing the Guaranteed Obligations;

- (ii) any insolvency, bankruptcy, reorganization, or dissolution, or any proceeding of Supplier or any other guarantor, including without limitation, rejection of the Guaranteed Obligations in such bankruptcy;
- (iii) extensions (whether or not material) of the time for payment or performance of all or any portion of the Guaranteed Obligations;
- (iv) the modification or amendment in any manner (whether or not material) of the Agreement or the Guaranteed Obligations;
- (v) subject to applicable statutes of limitations, any failure, delay or lack of diligence on the part of the Buyer or any other Person to enforce, assert or exercise any right, privilege, power or remedy conferred on the Buyer or any Person in the Agreement or at law, or any action on the part of the Buyer or such other Person granting an indulgence or extension of any kind;
- (vi) the settlement or compromise of any Guaranteed Obligations;
- (vii) the change of status, composition, structure or name of Supplier, including by reason of merger, amalgamation, continuance, dissolution; reorganization or consolidation with or into another legal entity;
- (viii) the release or waiver, by operation of law or otherwise, of the performance or observance by Supplier of any express or implied covenant, term or condition in the Agreement or the enforceability of any covenant, term or condition thereof;
- (ix) the release or waiver, by operation of law or otherwise, of the performance or observance by any co-guarantor, surety, endorser or other obligor of any express or implied covenant, term or condition to be performed or observed by it under the Agreement or any related document;
- (x) the failure to acquire, perfect or maintain perfection of any lien on, or security interest in, any collateral provided by Supplier to the Buyer or the release of any such collateral or the release, modification or waiver of, or failure to enforce, any pledge, security, guarantee, surety or other indemnity agreement in respect of such collateral;
- (xi) the assignment of the Agreement and/or any rights thereunder from or by Supplier to any other Person; and
- (xii) any other circumstance similar, or having a similar effect, as those set out in subsections 3(c)(i) through (xi) inclusive, which might constitute in whole or in part a defence available to the release and discharge of this Guarantee.

4. Limitation of Liability

The Guarantor shall not be liable hereunder for any special, consequential, incidental, punitive, exemplary or indirect damages, including loss of use of any property or claims of customers of Supplier or the Buyer, except to the extent specifically provided in the Agreement to be due from Supplier.

5. Indemnity

The Guarantor hereby indemnifies and saves the Buyer harmless from and against any and all damages, losses, costs and expenses of any nature whatsoever resulting from or in consequence of any default, non-payment or non-performance by Supplier of its payment obligations under the Agreement, irrespective of when such obligations were incurred, including its obligations to pay interest as provided in the Agreement and all reasonable out-of-pocket expenses (including legal fees and expenses incurred to collect or enforce the Agreement); provided however, that the maximum amount recoverable under the foregoing indemnity and otherwise under this Guarantee shall be an amount equal to the Maximum Guarantee Amount. In addition, the Guarantor shall also be liable to the Buyer for all reasonable out-of-pocket expenses (including legal fees and expenses of the Buyer) incurred to collect or enforce this indemnity; provided however, that such legal fees and expenses shall be payable by the Guarantor only to the extent that the Buyer is successful in enforcing the indemnity provided herein. Any payment made pursuant to this section 5 shall be reduced by any amount that is fully and indefeasibly paid by the Guarantor to the Buyer pursuant to its obligations under section 1 hereof.

6. Release of Guarantee

If Section 5.2(d) of the Agreement is applicable, then upon request by the Supplier, the Buyer shall promptly return this Guarantee to the Guarantor and the Guarantor shall be released and discharged of its obligations hereunder with respect to any Guaranteed Obligations existing or arising after the date that Section 5.2(d) of the Agreement is applicable.

7. Defences

The Guarantor reserves the right to assert all rights, setoffs, counterclaims and other defences of Supplier relating to the Guaranteed Obligations, other than defences arising out of the bankruptcy, insolvency, dissolution or liquidation of Supplier.

8. Subrogation

The Guarantor shall not be or claim to be subrogated, in whole or in part, to the rights of the Buyer against Supplier under the Agreement or otherwise, until (a) the Buyer shall have received full and indefeasible payment of all Guaranteed Obligations; and (b) either the Agreement has been terminated or this Guarantee has been terminated pursuant to the terms hereof and the terms and conditions of the Agreement as applicable. Except as set out in this section 8, nothing contained in this Guarantee shall limit the rights at law and in equity of the Guarantor to subrogation.

9. Representations

The Guarantor represents that:

- (a) it is a [**corporation duly incorporated**] and existing under the laws of the Province of [**Ontario**] [*Note to Finalization: Reflect form and jurisdiction of Guarantor*] and has the corporate power and capacity to enter into this Guarantee and to perform its obligations hereunder;
- (b) this Guarantee has been duly authorized, executed and delivered by the Guarantor and is a valid and binding obligation of the Guarantor enforceable in accordance with its terms;
- (c) no declaration, filing or registration with, or notice to, or licence, permit, certificate, registration, authorization, consent or approval of or from, any Governmental Authority is necessary or required for the consummation by the Guarantor of the transaction contemplated by this Guarantee; and
- (d) the execution and delivery of this Guarantee and performance of its obligations hereunder do not conflict with or result in a breach of its constating documents or by-laws, any applicable law, rule or regulation, any judgment, order, contractual restriction or agreement binding on it or affecting its properties.

10. **No Waiver by the Buyer**

No failure on the part of the Buyer to exercise, and no delay in exercising, any right, remedy or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise by the Buyer of any right, remedy or power hereby granted to the Buyer or allowed it by law or other agreement shall be cumulative and not exclusive of any other, and may be exercised by the Buyer from time to time. No term, condition or provision hereof or any right hereunder or in respect hereof shall be, or shall be deemed to have been, waived by the Buyer except by express written waiver signed by the Buyer, all such waivers to extend only to the particular circumstances therein specified.

11. **Notices**

Any notice or other communication required or permitted to be given hereunder shall be in writing and shall be sufficiently given if transmitted by facsimile or delivered by hand or courier delivery:

- (a) if to the Buyer, to:

Ontario Electricity Financial Corporation
1 Dundas Street West
Suite 1400
Toronto, ON M5G 1Z3

Attention: ●
Facsimile: ●

(b) if to the Guarantor, to:

●

Attention: ●

Facsimile: ●

Notice delivered or transmitted as provided above shall be deemed to have been given and received on the day it is delivered or transmitted, provided that it is delivered or transmitted on a Business Day prior to 5:00 p.m. local time in the place of delivery or receipt. However, if a notice is delivered or transmitted after 5:00 p.m. local time or such day is not a Business Day, then such notice shall be deemed to have been given and received on the next Business Day. Either Party may, by written notice to the other, change its address to which notices are to be sent.

12. **Governing Law**

This Guarantee shall be governed by the laws of the Province of Ontario and the laws of Canada applicable therein. The Guarantor agrees that any suit, action or proceeding against the Guarantor arising out of or relating to this Guarantee against it may be brought in any court in the Province of Ontario and the Guarantor irrevocably and unconditionally attorns and submits to the non-exclusive jurisdiction of such courts. The Guarantor irrevocably waives and agrees not to raise any objection it might now or hereafter have to the bringing of any such suit, action or proceeding in any such court, including any objection that the place where such court is located is an inconvenient forum or that there is any other suit, action or proceeding in any other place relating in whole or in part to the same subject matter. The Guarantor agrees that any judgment or order in any such suit, action or proceeding brought in such a court shall be conclusive and binding upon it and consents to any such judgment or order being recognized and enforced in the courts of its jurisdiction of incorporation or any other courts, by registration of such judgment or order, by a suit, action or proceeding upon such judgment or order, or any other means available for enforcement of judgments or orders, at the option of the Buyer, provided that service of any required process is effected upon it as permitted by applicable law. Nothing in this paragraph shall restrict the bringing of any such suit, action or proceeding in the courts of any other jurisdiction.

13. **Severability**

Each of the provisions contained in this Guarantee is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction shall not affect the validity or enforceability of any other provision of this Guarantee.

14. **Entire Agreement**

This Guarantee constitutes the entire agreement between the parties pertaining to the subject matter of this Guarantee. There are no warranties, conditions, representations or agreements in connection with such subject matter except as specifically set forth or referred to in this Guarantee.

15. Binding and Assignment

- (a) This Guarantee and all of the provisions hereof shall be binding upon and ensure to the benefit of the parties and their respective successors and permitted assigns. This Guarantee is not intended to confer upon any other Person, except the parties and their respective successors and permitted assigns, any rights, interests, obligations or remedies under this Guarantee.
- (b) Neither this Guarantee nor any of the rights, interests or obligations under this Guarantee shall be assigned by either party without the prior written consent of the other party. Notwithstanding the foregoing, if the Ontario Power Authority has been established pursuant to legislation and assigns the Agreement to the Ontario Power Authority, the Buyer may assign this Guarantee to the Ontario Power Authority without the consent of the Guarantor.

16. Facsimile and Counterparts

The parties may deliver an executed copy of this Guarantee by facsimile and this Guarantee may be executed and delivered by the parties in counterparts. All such facsimiles and counterparts shall together constitute one and the same agreement.

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

[GUARANTOR]

ONTARIO ELECTRICITY FINANCIAL CORPORATION

By: _____

Name: ●

Title: ●

By: _____

Name: ●

Title: ●

By: _____

Name: ●

Title: ●

By: _____

Name: ●

Title: ●

I/We have the authority to bind the Guarantor.

I/We have the authority to bind the Corporation.

EXHIBIT E
FORM OF CERTIFICATE OF INCUMBENCY

CERTIFICATE OF INCUMBENCY

I, the undersigned, do hereby certify for and on behalf of ● (the “Supplier”) [*Note to Finalization: Amend to suit legal form of Supplier, if necessary.*] in my capacity as an officer of the Supplier, and not in my personal capacity, that the following persons are duly appointed directors or officers of the Supplier holding the respective offices set opposite their names and that the signatures set forth opposite their names are their genuine signatures:

[Note to Finalization: Add additional rows as necessary]

Name	Office	Signature
●	●	●
●	●	●

and [*Note to Finalization: Insert the appropriate name(s) from the above list*] has/have the authority to execute the DR Contract dated as of ● 200● (the “Agreement”) between the Supplier and the Buyer and any other related document under the Agreement.

DATED this ● day of ● ●, 200●

Name: ●
Title: Secretary

I, ● [*insert name*], being the ● [*President*] of the Supplier hereby certify that ● is the duly appointed Secretary of the Supplier and that the signature appearing beside his or her name above is his or her genuine signature.

DATED this ● day of ● ●, 200●

EXHIBIT F
MILESTONE EVENTS AND MILESTONE DATES FOR THE DR PROJECT

NO.	MILESTONE EVENT	MILESTONE DATE (dd/mm/yyyy)
1.	DR Project Approvals, Site Approvals and Permitting <i>(Applicable only if the Control Equipment includes a generator)</i>	
2.	Completion of connection assessments (including receipt of approvals from the IMO, the Transmitter, LDC, or Load, as applicable.) <i>(Applicable only if the Control Equipment includes a generator)</i>	
3.	Engineering, equipment procurement and construction contracts executed, which shall occur no later than the later of: (i) 2.5 years before the milestone date for Commercial Operation and (ii) six (6) months after signing the DR Contract. <i>(Applicable only if the Control Equipment includes a generator)</i>	
4.	Financial Closing, which shall occur no later than the later of: (i) 2.5 years before the milestone date for Commercial Operation and (ii) twelve (12) months after signing the DR Contract. <i>(Applicable only if the Control Equipment includes a generator)</i>	
5.	Equipment Order	
6.	Equipment Delivered	
7.	If the DR Project requires the participation of third party loads, delivery to the Buyer of a certificate addressed to it from the DR Verification Consultant, stating that the Supplier has executed DR Third Party Agreements as collectively represent 80% of the Maximum Contracted Demand Reduction, which shall occur no later than one year prior to the milestone for Commercial Operation.	
8.	Commencement of Construction <i>(Applicable only if the Control Equipment includes a generator)</i>	
9.	Completion of Construction <i>(Applicable only if the Control Equipment includes a generator)</i>	
10.	Connection of Control Equipment to the Load	
11.	Commercial Operation, which must be on or before December 31, 2007	

Note: Only those Milestone Dates corresponding to the Milestone Events numbered 1, 2, 5, 6, 8, 9, and 10 above are subject to revision by the Supplier in writing from time to time.

EXHIBIT G
RECORDS UNDER FIPPA

Specific Inclusions to and Exclusions from the Definition of “Records” under FIPPA

The following shall be included in the definition of Records under the Agreement:

- | |
|---|
| <ul style="list-style-type: none">● |
|---|

The following shall not be included in the definition of Records under the Agreement:

- | |
|---|
| <ul style="list-style-type: none">● |
|---|

EXHIBIT H
2,500 MW RFP

[Note to Finalization: Attach]

**EXHIBIT I
PROPOSAL**

[Note to Finalization: Attach consolidated copy]

EXHIBIT J CALCULATION OF CSP

This Exhibit J sets out the calculation of the Contingent Support Payment for a given Settlement Month and a description of the operating methodologies under which the DR Project will be assumed to operate in calculating the Contingent Support Payment.

The calculation of the Contingent Support Payment involves six (6) stages:

- (Stage I)** Determination of the NRR(Fixed Costs);
- (Stage II)** Determination of the Total Monthly Net Revenue Requirement;
- (Stage III)** Determination of the DR Strike Price;
- (Stage IV)** Determination of the DR Strike Price Reduction, DR Strike Price Payment, and Imputed Net Curtailment Savings;
- (Stage V)** Determination of any Payment Variation and the estimated NRR (M&V) to be applied in the next Settlement Period; and
- (Stage VI)** Determination of the Contingent Support Payment.

Notwithstanding the foregoing, during such time as the Supplier is unable to perform or comply with its obligations under this Agreement as a result of a Force Majeure (as set out in Article 10 of the DR Contract), no calculations pursuant to Exhibit J shall be made, and no amounts shall be imputed or payable, in respect of such time.

1. STAGE I: DETERMINATION OF THE NRR(FIXED COSTS)

As set out in Exhibit B, the Net Revenue Requirement, or NRR, which is stated as a single value, is comprised of two components: (1) the NRR(Fixed Costs), which is the monthly payment amount required by the Supplier to cover the Fixed Costs of the DR Project, and (2) the NRR(M&V), which is the monthly amount required by the Supplier to cover the M&V Costs of the DR Project over the Term. The NRR(Fixed Costs), which is subject to audit by the Buyer at any time during the Term in accordance with the terms of the Agreement, will be determined as follows:

- 1.1** On or before the Term Commencement Date, the Supplier shall submit to the Buyer copies of all invoices itemizing and describing the Fixed Costs together with a written certification of a representative of the Supplier confirming that such invoices constitute the Fixed Costs. The Supplier acknowledges that the Buyer will not accept nor consider any invoices on account of Fixed Costs received by the Buyer after the Term Commencement Date and that the NRR(Fixed Costs) shall not be adjusted as a result of any such late invoices.
- 1.2** The Buyer shall review the Supplier's invoices and certification received pursuant to Section 1.1 of this Exhibit J to verify that all of the amounts described in such invoices constitute Fixed Costs, and the Buyer, acting reasonably, shall not be bound by any statement, value, or certification set out in the Supplier's invoices and certification.

- 1.3** The Fixed Costs, as determined by the Buyer pursuant to Section 1.2 of this Exhibit J, shall be amortized into equal monthly payments over the full Term of the Agreement utilizing an interest rate equal to ten percent (10%) per annum, compounded annually not in advance.
- 1.4** The NRR(Fixed Costs) expressed in Dollars per MW-month shall be calculated by dividing: (i) the monthly amortized amount determined in Section 1.3 of this Exhibit J (expressed in Dollars) by (ii) the average monthly Contracted Demand Reduction (expressed in MW) which is calculated as 25% of Contracted Demand Reduction in Summer + 25% of Contracted Demand Reduction in Winter + 50% of Contracted Demand Reduction in Other Season, divided by 12. The calculation of NRR(FC) is set out as follows:

$\text{NRR(FC)} = \frac{\text{AMFC}}{[25\% \times \text{CDR(Summer)} + 25\% \times \text{CDR (Winter)} + 50\% \times \text{CDR (Other Season)}] / 12}$	
where:	
NRR(FC)	is the NRR(Fixed Costs), expressed in \$/MW-month. Notwithstanding the foregoing, if the amount of NRR(FC) as calculated pursuant to this formula exceeds the amount of NRR as set out in Exhibit B, then NRR(FC) shall equal the amount of NRR set out in Exhibit B.
AMFC	is the monthly amortized amount of Fixed Costs as determined pursuant to Section 1.3 of this Exhibit J, expressed in Dollars.

2. STAGE II: DETERMINATION OF THE TOTAL MONTHLY NET REVENUE REQUIREMENT

- 2.1** The Total Monthly Net Revenue Requirement is calculated as follows:

$\text{TMNRR} = \text{NRR}_{\text{SPx}} \times \text{AMDR(m)}_{\text{SPx}}$	
where:	
TMNRR	is the Total Monthly Net Revenue Requirement for the DR Project (in \$) for Settlement Month (m).
NRR_{SPx}	<p>is the Net Revenue Requirement in respect of the DR Project for Settlement Period (x) (in \$/MW-month), calculated as follows:</p> $\text{NRR}_{\text{SPx}} = \text{NRR(FC)} + \text{NRR(M\&V)}_{\text{SPx}}$ <p>Notwithstanding the foregoing, if the amount of NRR_{SPx} as calculated pursuant to this formula exceeds the amount of NRR as set out in Exhibit B, then NRR_{SPx} shall equal the amount of NRR set out in Exhibit B and $\text{NRR(M\&V)}_{\text{SPx}}$ shall be deemed to be an amount equal to NRR set out in</p>

	Exhibit B minus NRR(FC).
NRR(FC)	is the NRR(Fixed Costs) as calculated in Section 1.4 of this Exhibit J.
NRR(M&V) _{SPx}	<p>is the component of NRR expressed in \$/MW – month attributable to M&V Costs for each Settlement Month in Settlement Period (x), and which will be subject to audit by the Buyer in accordance with the terms of this Agreement. No later than the Term Commencement Date, the Supplier shall provide to the Buyer the initial value of NRR(M&V) to be applied for the first Settlement Period, which the Supplier covenants shall represent a reasonable estimate of the M&V Costs to be incurred by the Supplier in the first Settlement Period. For the second and succeeding Settlement Periods, NRR(M&V) shall be estimated as follows:</p> $NRR(M\&V)_{SPx} = \frac{AM\&V_{SPx-1}}{\sum_{m=1}^{m=12} MDR_{(m)SPx-1}}$ <p>NRR(M&V)_{SPx} may be reduced pursuant to the calculation of NRR_{SPx} as set out above.</p>
AM&V _{SPx-1}	is the total Actual M&V Costs for Settlement Period (x-1), expressed in Dollars, as calculated pursuant to Section 5.1 of this Exhibit J.
AMDR _{(m)SPx}	<p>is the Adjusted Monthly Demand Reduction (in MW) for the Settlement Month, and is calculated as follows:</p> $AMDR = MDR_{(m)SPx} \times DRF$
MDR _{(m)SPx-1}	is the Monthly Demand Reduction (in MW) for each Settlement Month in Settlement Period (x-1).
MDR _{(m)SPx}	<p>is the Monthly Demand Reduction (in MW) for Settlement Month(m), and is calculated as follows:</p> $MDR_{(m)SPx} = \frac{CDR - \left(\sum_{RCH=1}^{RCH=CH} RC_{RCH} \right)}{CH_{(m)}}$
CDR	is the Contracted Demand Reduction applicable in the Season in which Settlement Month (m) falls (in MW). In the event that Settlement Month(m) falls within two Seasons, then CDR shall be calculated as the weighted average of the Contracted Demand Reduction based on the number of days of the Settlement Month that fall within

	each such Season.
RC _{RCH}	is the reduced curtailment, if any, of the demand of the Load (in MWh), during Callable Hour RCH in Settlement Month (m) as a result of a Load Outage and any other Load Outage reported in the DR Verification Certificate.
CH _(m)	is the total number of Callable Hours in Settlement Month (m), expressed in hours.
DRF	is the Demand Reduction Factor for the Settlement Month as defined in Section 14.6, and expressed as a fraction. The Demand Reduction Factor shall be 1.0 unless and to the extent set out in Sections 14.6(e) and 14.6(f). If the Demand Reduction Factor changes during a Settlement Month, then DRF will be calculated as a weighted average based on the number of days of the Settlement Month during which the different values of DRF apply.

3. STAGE III: DETERMINATION OF THE DR STRIKE PRICE

3.1 The DR Strike Price up to and including December 31, 2007 shall be fixed at \$350/MWh. From and after January 1, 2008, the DR Strike Price shall be calculated as follows:

DRSP_y = DRSP_{y-1} x $\frac{(\text{HOEP}_{y-1})}{(\text{HOEP}_{y-2})}$	
where:	
DRSP _y	is the DR Strike Price (in \$/MWh) applicable in a given calendar year “y” during the Term, and which shall be calculated on January 1 of year “y” commencing on January 1, 2008.
DRSP _{y-1}	is the DR Strike Price (in \$/MWh) applicable in the calendar year immediately preceding year “y”.
HOEP _{y-1}	is the average HOEP as determined by the IMO for all Callable Hours for the calendar year immediately preceding year “y”.
HOEP _{y-2}	is the average HOEP as determined by the IMO for all Callable Hours for the calendar year that is the second year preceding year “y”.

4. STAGE IV: DETERMINATION OF THE DR STRIKE PRICE REDUCTION, THE DR STRIKE PRICE PAYMENT AND THE IMPUTED NET CURTAILMENT SAVINGS

4.1 During the Term, in any Season in which the Supplier has agreed to make Contracted Demand Reduction available, the Supplier shall be deemed to curtail the Electricity demand of the Load as a direct result of the operation of the Control Equipment, and hence have Imputed Curtailment, at the Contracted

Demand Reduction applicable to that Season, in each Imputed Curtailment Hour. An “**Imputed Curtailment Hour**” is any Callable Hour where both the 3-hour Pre-Dispatch Price and HOEP for that hour are equal to or greater than the DR Strike Price.

In the event that the Supplier is unable to curtail the Electricity demand of the Load as a result of a Control Equipment Outage during an Imputed Curtailment Hour of a Settlement Month, the Supplier will continue to be deemed to curtail the Electricity demand of the Load, subject to the adjustments set out in the formula below.

The Imputed Curtailment and the DR Strike Price Reduction for Settlement Month (m) in calendar year “y” are calculated as follows:

$DRSPR = \sum_{ICH=1}^{ICH = ICH_m} [IC_{ICH} \times (HOEP_{ICH} - DRSP_y) \times HAR_{ICH} + IC_{ICH} \times (OHP_{ICH} - DRSP_y) \times (1 - HAR_{ICH})]$	
where:	
DRSPR	is the DR Strike Price Reduction (in \$).
IC _{ICH}	is the Imputed Curtailment (in MWh) during any Imputed Curtailment Hour which is calculated as the MDR _{(m)SPx} multiplied by one hour.
ICH	is an Imputed Curtailment Hour, which is any Callable Hour where both the 3-hour Pre-Dispatch Price and HOEP for that hour are equal to or greater than the DR Strike Price.
ICH _m	is the total number of Imputed Curtailment Hours for Settlement Month (m).
HOEP _{ICH}	is the Hourly Ontario Energy Price, as defined in Section 1.1 of the DR Contract, and corresponding to a given Imputed Curtailment Hour (in \$/MWh).
DRSP _y	is defined in Section 3.1 of this Exhibit J (in \$/MWh).
OHP _{ICH}	is the Outage Hourly Price for a given Imputed Curtailment Hour (in \$/MWh), which is equal to the lesser of (i) HOEP _{ICH} , and (ii) the DR Strike Price plus the applicable Max Increment.
HAR _{ICH}	is the Hourly Availability Ratio, which (i) is equal to one if the DR Project is not in a Control Equipment Outage and (ii) is calculated by dividing (A) the maximum Electricity curtailment in a given Imputed Curtailment Hour (expressed in MWh) that could have been achieved given the Control Equipment Outage, by (B) the MDR _{(m)SPx} multiplied by one hour, if the DR Project is in any Control Equipment Outage.
Max Increment _y	is equal to \$75/MWh up to and including December 31, 2007. From and after January 1, 2008, the Max Increment for calendar year “y” shall be calculated on January 1 of year “y” commencing

	<p>on January 1, 2008, as follows:</p> $\text{Max Increment}_y = \text{Max Increment}_{y-1} \times \frac{(\text{HOEP}_{y-1})}{(\text{HOEP}_{y-2})}$ <p>where $\text{Max Increment}_{y-1}$ is the Max Increment (in \$/MWh) applicable in the calendar year immediately preceding year “y”.</p>
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4.2 During the Term, in any Season in which the Supplier has agreed to make Contracted Demand Reduction available, the Supplier may be directed by the IMO to provide DR Curtailment not to exceed the applicable Maximum Curtailment. The IMO may issue one Operational Directive to a Supplier per day requesting the Supplier to provide DR Curtailment during the Callable Hours of that day. The Supplier agrees to respond to such Operational Directives by curtailing the Electricity demand of the Load through the use of the Control Equipment.

The Buyer recognizes that an Operational Directive may be issued during a Callable Hour in which the Supplier has already curtailed the Electricity demand of the Load in response to market prices. In such circumstances, the Supplier will only be required to verify that the Electricity demand of the Load was curtailed as a direct result of the Control Equipment, due to actions that had already been taken by the Supplier or in response to the Operational Directive, for the duration specified in the Operational Directive. In such a circumstance the Supplier will not be required to provide any further curtailment in the Electricity demand of the Load beyond what was specified in the Operational Directive.

In the event that, the IMO issues an Operational Directive that results in the Supplier providing DR Curtailment during a Callable Hour in which the HOEP, as provided by the IMO, is less than the DR Strike Price, the Supplier will be compensated by the Buyer for all Non-Strike Curtailment provided by it during Settlement Month by way of a DR Strike Price Payment from the Buyer calculated in accordance with the formula set out below.

In the event that the Supplier is only partially able to curtail the Electricity demand of the Load as a result of a Control Equipment Outage, or a Load Outage as a result of Force Majeure, then upon receiving such an Operational Directive, the Supplier will only receive a portion of the DR Strike Price Payment in accordance with the formula set out below.

The Non-Strike Curtailment and the DR Strike Price Payment for Settlement Month are calculated as follows:

$\text{NSCH} = \text{NSCH}_m$	
$\text{DRSPP} = \sum_{\text{NSCH}=1}^{\text{NSCH}} \text{NSC}_{\text{NSCH}} \times (\text{DRSP}_y - \text{HOEP}_{\text{NSCH}}) \times \text{HAR}_{\text{NSCH}}$	
where:	
DRSPP	is the DR Strike Price Payment (in \$).

NSC_{NSCH}	is the Non-Strike Curtailment during any Non-Strike Curtailment Hour which is calculated as the $MDR_{(m)SPx}$ multiplied by one hour.
NSCH	is a Non-Strike Curtailment Hour, which is a Callable Hour in any given day during which HOEP is less than the DR Strike Price, and in respect of which the Supplier has received an Operational Directive.
$NSCH_m$	is the total number of Non-Strike Curtailment Hours for Settlement Month (m).
$DRSP_y$	is the DR Strike Price (in \$/MWh) defined in Section 3.1 of this Exhibit J.
$HOEP_{NSCH}$	is the Hourly Ontario Energy Price, as defined in Section 1.1 of the DR Contract, and corresponding to a given Non-Strike Curtailment Hour (in \$/MWh).
HAR_{NSCH}	is the Hourly Availability Ratio, which (i) is equal to one if the DR Project is not in a Control Equipment Outage; and (ii) is calculated by dividing (A) the maximum Electricity curtailment in a given Non-Strike Curtailment Hour (in MWh) that could have been achieved given the Control Equipment Outage, as the case may be, by (B) the $MDR_{(m)SPx}$ multiplied by one hour, if the DR Project is in any Control Equipment Outage.

4.3 The Imputed Net Curtailment Savings for a Settlement Month is calculated as follows:

$INCS = DRSPR - DRSP$	
where:	
INCS	is the Imputed Net Curtailment Savings (in \$). For greater certainty, INCS may be a negative number.
DRSPR	is the DR Strike Price Reduction (in \$).
DRSP	is the DR Strike Price Payment (in \$).

5. STAGE V: DETERMINATION OF ANY PAYMENT VARIATION AND RESIDUAL PAYMENT ADJUSTMENT

For each Settlement Month in the second and all subsequent Settlement Periods, an adjustment shall be made to the calculation of CSP (the “**Total Payment Adjustment**”) to account for any payments during each Settlement Month in the immediately preceding Settlement Period, being Settlement Period (x-1), that were either greater than or less than the payments that would have been made during each Settlement Month in Settlement Period (x-1) had the payments been based on the Actual M&V Costs for Settlement Period (x-1) and to the extent that such Actual M&V Costs (as converted into $NRR(M\&V)$ in accordance with the formula for $NRR(M\&V)_{SPx}$ set out in Section 2.1 of this Exhibit J) plus the $NRR(FC)$, did not exceed NRR (with the variance for each such

Settlement Months being a “**Payment Variation**”). The Total Payment Adjustment is intended: (i) to enable the Buyer to recover from the Supplier all prior CSP amounts that exceeded the amount that the Supplier would have received had the calculation of CSP been based on Actual M&V Costs for Settlement Period (x-1), or (ii) to compensate the Supplier for any underpayment, subject to restrictions described below, by the Buyer had the calculation of CSP been based on the Actual M&V Costs for Settlement Period (x-1). Actual M&V Costs are subject to audit by the Buyer throughout the Term, and subject to a maximum set out below of $AM\&V(Max)_{SPx}$.

5.1 Determine the amount of the Payment Variation in Settlement Period (x-1)

An adjustment to CSP shall be made if there is a Payment Variation between the payments made by the Buyer in respect of M&V Costs during Settlement Period (x-1) and the Actual M&V Costs incurred by the Supplier, as more particularly set out below:

The Payment Variation shall be determined pursuant to the following methodology:

$PV_{SPx-1} = \left[\sum_{m=1}^{m=12} (MDR_{(m)SPx-1} \times NRR(M\&V)_{SPx-1}) - (AM\&V_{SPx-1}) \right] / 12$	
where:	
PV_{SPx-1}	is the Payment Variation based on review of the Actual M&V Costs incurred by the Supplier during Settlement Period (x-1), which shall be expressed in Dollars per Settlement Month in Settlement Period (x-1), and represents: (i) if it is a positive number, the overpayment by the Buyer to the Supplier, or (ii) if it is a negative number, the underpayment by the Buyer to the Supplier.
$MDR_{(m)SPx-1}$	is the Monthly Demand Reduction described in Section 2.1 of this Exhibit J.
$NRR(M\&V)_{SPx-1}$	is the NRR(M&V) that had been applied during Settlement Period (x-1) (in \$/MW-month).
$AM\&V_{SPx-1}$	is the total Actual M&V Costs for Settlement Period (x-1), expressed in Dollars. Notwithstanding the foregoing, if the value of $AM\&V_{SPx-1}$ exceeds $AM\&V(Max)_{SPx-1}$, then $AM\&V_{SPx-1}$ shall equal $AM\&V(Max)_{SPx-1}$.

$AM\&V(Max)_{SPx-1}$	<p>is the maximum amount of Actual M&V Costs that may be reimbursed to the Supplier for Settlement Period (x-1), expressed in Dollars, based on the maximum amount of NRR set out in Exhibit B, and is calculated as:</p> $\sum_{m=1}^{m=12} [MDR_{(m)SPx-1} \times (NRR - NRR(FC))]$
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5.2 Determine the amount of any Residual Payment Adjustment

It may be necessary to apply a further adjustment to the CSP in order to capture any Residual Payment Adjustments from Settlement Period (x-1) that remain outstanding at the commencement of Settlement Period (x) (a “**Payment Adjustment Outstanding**”) given that the Total Payment Adjustment cannot be applied so as to reduce CSP below zero within any Settlement Month. The amount of the Residual Payment Adjustment to be carried forward from each Settlement Month in Settlement Period (x-1), until no later than the End of Term Payment described in Section 7 of this Exhibit J, is defined as follows:

RPA_{SPx-1}	is the Residual Payment Adjustment (in \$) for each Settlement Month in Settlement Period (x-1), as calculated pursuant to Section 6.1 of this Exhibit J.
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5.3 Determine the Total Payment Adjustment Including Interest

The Total Payment Adjustment to be applied to the CSP for each Settlement Month in Settlement Period (x) shall be determined as follows:

$TPA_{SPx} = (PV_{SPx-1} + RPA_{SPx-1}) \times (1 + \text{Interest Rate})$	
where:	
TPA_{SPx}	is the Total Payment Adjustment to be applied to the CSP for each Settlement Month in Settlement Period (x) to account for any outstanding Payment Variations in respect of any prior period during the Term (in \$).
PV_{SPx-1}	is the Payment Variation determined in accordance with Section 5.1 of this Exhibit J (in \$/month).
RPA_{SPx-1}	is the Residual Payment Adjustment determined in accordance with Section 5.2 of this Exhibit J (in \$).
Interest Rate	is the Interest Rate per annum in effect as of the first day of Settlement Period (x), expressed as a decimal figure. For greater certainty and by way of example, an Interest Rate of 5% shall be equal to 0.05.

6. STAGE VI: DETERMINATION OF THE CONTINGENT SUPPORT PAYMENT

6.1 The Contingent Support Payment for Settlement Month (m) is calculated as follows:

(A) If $TMNRR > INCS$, then apply one of the following:	
(i) If $(TMNRR-INCS) - TPA_{SPx} = \text{or} > 0$, then: CSP = (TMNRR-INCS) - TPA_{SPx}, and RPA_{SPx} = 0 ; or	
(ii) If $(TMNRR-INCS) - TPA_{SPx} < 0$, then: CSP = 0 and RPA_{SPx} = TPA_{SPx} - (TMNRR-INCS)	
(B) If $TMNRR < \text{or} = INCS$, then: CSP = 0 , and RPA_{SPx} = TPA_{SPx}	
where:	
CSP	is the Contingent Support Payment (in \$-month), if any.
TMNRR	is the Total Monthly Net Revenue Requirement (in \$).
INCS	is the Imputed Net Curtailment Savings (in \$).
TPA _{SPx}	is the Total Payment Adjustment to be applied for Settlement Month (x) (in \$).

7. END OF TERM STATEMENT AND END OF TERM PAYMENT

The Buyer shall prepare and deliver a settlement statement (the “**End of Term Statement**”) to the Supplier, within twenty (20) Business Days following receipt of a DR Verification Certificate setting out the basis for any adjustments to the CSP made in respect of the final Settlement Period of the Term. To the extent that any Payment Variations occurred in such final Settlement Period or any Residual Payment Adjustments remain outstanding as of the end of the Term, the Party owing such payments shall pay such monies to the other Party, which payments may be set off against each other (with the difference being the “**End of Term Payment**”). An End of Term Statement may be delivered by the Buyer to the Supplier by facsimile or electronic means, and shall include the reference number assigned to this Agreement by the Buyer. In preparing the Statement, the Buyer shall consider any DR Verification Certificate delivered by the Supplier, but the Buyer, acting reasonably, shall not be bound by any statement, value, or certification set out in any such DR Verification Certificate.

**EXHIBIT K
DETERMINATION OF AVAILABILITY**

1. The availability of the DR Project in respect of a given Settlement Month (the “**Availability**”) shall be calculated as set out below.

(a) First Contract Year

For each Settlement Month in the first Contract Year, the Availability of the DR Project will not be tested for the purposes of the 95% test set out in Section 9.1(o).

(b) Second and Third Contract Years

For the purposes of the formula to calculate Availability set out below, the Availability of the DR Project for each Settlement Month in the second and third Contract Years shall be calculated as follows:

$AV = (1 - CEOH/THM) \times 100$	
where:	
AV	is the Availability of the DR Project (expressed as a percentage figure);
CEOH	<p>is the number of Control Equipment Outage Hours in the period between the Term Commencement Date and the last day of the applicable Settlement Month, subject to the following:</p> <p>(a) in determining Control Equipment Outage Hours, an hour may be a partial Control Equipment Outage Hour as a result of a Control Equipment Outage, including an inability of the DR Project to produce at the Contracted Demand Reduction required for such period or as a result of a Control Equipment Outage lasting for a part but not all of an hour. An hour in which a partial Control Equipment Outage occurs will be counted as a fractional Control Equipment Outage Hour by dividing: (i) the maximum curtailment in that hour that could have been achieved given the partial Control Equipment Outage (in MWh) by (ii) the Contracted Demand Reduction multiplied by one hour (in MWh). This fraction will be the contribution of that hour to the Control Equipment Outage Hours in such period; and</p> <p>(b) Control Equipment Outage Hours shall not include the hours of any Control Equipment Outage where and to the extent that the Control Equipment Outage is caused by an event of Force Majeure described in Section 10.3(k).</p>
THM	is the total number of hours in the period between the Term Commencement Date and the last day of the applicable Settlement

	Month.
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(c) Fourth Contract Year and Balance of Term

The Availability of the DR Project for each Settlement Month in the fourth Contract Year and for the balance of the Term shall be calculated as follows:

$AV = (1 - CEOH/THM) \times 100$	
where:	
AV	is the Availability of the DR Project (expressed as a percentage figure);
CEOH	<p>is the total number of Control Equipment Outage Hours in the most recent 36 month period which ends on the last day of the Settlement Month, subject to the following:</p> <ul style="list-style-type: none"> (a) in determining Control Equipment Outage Hours, an hour may be a partial Control Equipment Outage Hour as a result of a Control Equipment Outage, including an inability of the DR Project to produce at the Contracted Demand Reduction required for such period or as a result of a Control Equipment Outage lasting for a part but not all of an hour. An hour in which a partial Control Equipment Outage occurs will be counted as a fractional Control Equipment Outage Hour by dividing: (i) the maximum curtailment in that hour that could have been achieved given the partial Control Equipment Outage (in MWh) by (ii) the Contracted Demand Reduction multiplied by one hour (in MWh). This fraction will be the contribution of that hour to the Control Equipment Outage Hours in such period; and (b) Control Equipment Outage Hours shall not include the hours of any Control Equipment Outage where and to the extent that the Control Equipment Outage is caused by an event of Force Majeure described in Section 10.3(k).
THM	is the total number of hours in the most recent 36 month period which ends on the last day of the Settlement Month.

EXHIBIT L
REQUIRED MINIMUM ELEMENTS FOR A
MEASUREMENT AND VERIFICATION PLAN

The Measurement and Verification Plan must contain the following minimum elements:

- (a) A Statement that specifies whether the DR Project will meet the demand response requirements of the DR Contract through load shifting, load interruption, or the generation of Electricity.
- (b) Where applicable, a statement that the M&V Plan is consistent with the Measurement and Verification Guidelines for DR in Exhibit N, and how the baseline will be measured;
- (c) A description of the electrical location(s) of the Contracted Demand Reduction.
- (d) A description of how the use and effectiveness of the Control Equipment in achieving the Contracted Demand Reduction will be reported in the DR Verification Certificate, including measurement techniques and data collection frequency.
- (e) A description of how Load Outages will be monitored and reported in the DR Verification Certificate.
- (f) A description of how Control Equipment Outages will be monitored and reported in the DR Verification Certificate.

EXHIBIT M
DR THIRD PARTY AGREEMENT PROVISION

The DR Third Party Agreement shall contain the following agreement or an agreement using language with similar effect:

“The Load hereby agrees to permit the installation of the Control Equipment that enables the Supplier to curtail the Electricity demand of the Load in accordance with the terms of the DR Contract. The Load understands that the installation of the Control Equipment requires inspections, monitoring and measurement of the performance of the measures and agrees to provide access to the project site to the Supplier, the Buyer, and their respective agents during the term of the DR Contract. Unless otherwise defined herein, capitalized terms used herein shall have the respective meanings given to them in the DR Contract.”

EXHIBIT N
MEASUREMENT AND VERIFICATION GUIDELINES FOR DR

[Note to Finalization: Attach]

EXHIBIT O
ARBITRATION PROCEDURES APPLICABLE TO SECTIONS 1.7, 1.8, AND 1.9

The following rules and procedures (the “Rules”) shall govern, exclusively, any matter or matters to be arbitrated between the Parties under Sections 1.7, 1.8, and 1.9 of this Agreement.

1. **Commencement of Arbitration** – If the Parties and the parties to all other DR Contracts entered into under the 2,500 MW RFP have been unable to reach agreement on the Replacement Price or Replacement Provision within the periods prescribed by Sections 1.7(b), 1.8(b), and 1.9(c), the Supplier or any supplier under the other DR Contracts entered into under the 2,500 MW RFP (collectively the “Suppliers”) or the Buyer may commence arbitration by delivering a written notice to the party opposite requesting arbitration (the “Request”).
2. **Application to Court** - If the Suppliers are unable to agree on the nomination of an arbitrator within 20 days of the receipt of the Buyer’s notice nominating its arbitrator, any supplier or the Buyer may apply to a judge of the Superior Court of Justice of Ontario to appoint the arbitrator. If the two arbitrators are unable to agree on a chair person within 30 days of the nomination or appointment of the Suppliers’ arbitrator, any supplier or the Buyer may apply to a judge of the Superior Court of Justice of Ontario to appoint the chair person.
3. **General** - The Arbitration Panel, once appointed, shall proceed immediately to determine the Replacement Price or Replacement Provision in accordance with the Ontario Arbitration Act, 1991 and, where applicable, the Ontario International Commercial Arbitration Act, it being the intention of the Buyer and the Supplier that there be, to the extent possible, one arbitration proceeding and hearing to determine the Replacement Price or Replacement Provision. Unless otherwise agreed by the Parties, the Arbitration Panel shall determine the conduct of the arbitral proceedings, including the exchange of statements of claim and defence, the need for documentary and oral discovery and whether to hold oral hearings with a presentation of evidence or oral argument so that the award may be made within the time period set out below. Each of the Suppliers shall have a right to participate in the arbitration proceeding.
4. **Consolidation** – The Parties agree that should the Arbitration Panel determine that the Replacement Provision needs to be determined through more than one arbitration proceeding, then the Parties agree that the Arbitration Panel shall determine whether the arbitration proceedings shall be consolidated, conducted simultaneously or consecutively or whether any of the arbitration proceedings should be stayed until any of the others are completed.
5. **Award** - The award of the Arbitration Panel, which shall include the Replacement Price or Replacement Provision, shall be made within six months after the appointment of the Arbitration Panel, subject to any extended date to be agreed by the Parties or any reasonable delay due to unforeseen circumstances.
6. **Costs** – The Parties shall pay their own costs of participating in the arbitration proceedings.

7. **Fees** - Each of the arbitrators on the Arbitration Panel shall be paid their normal professional fees for their time and attendances, which fees together with any hearing room fees, shall be paid by the Buyer.
8. **Computation of Time** - In the computation of time under these Rules or an order or direction given by the Arbitration Panel, except where a contrary intention appears, or the parties otherwise agree:
 - (a) where there is a reference to a number of days between two events, those days shall be counted by excluding the day on which the first event happens and including the day on which the second event happens, even if they are described as clear days or the words “at least” are used;
 - (b) statutory holidays shall not be counted;
 - (c) where the time for doing any act or any order or direction given by the Arbitration Panel expires on a day which is not a business day, the act may be done on the next day that is a business day; and
 - (d) service of a document or notice or any order or direction given by the Arbitration Panel made after 4:00 p.m. (Toronto time), or at any time on a day which is not a business day, shall be deemed to have been made on the next business day.
9. **Place of Arbitration** - The arbitration, including the rendering of the award, shall take place in Toronto, Ontario, which shall be the seat of the proceedings. The language to be used in the arbitration shall be English.