ADDENDUM No. 3
Dated July 31, 2006, to the
CHP PPA
associated with the Ontario Power Authority's Request for Proposals
for up to 1,000 MW of Combined Heat and Power Generation
in Ontario (CHP RFP)
referenced as RFP No. CHP- 2006

In accordance with Section 4.1.2 of the CHP RFP, this Addendum No. 3 contains amendments to the Final CHP PPA posted on the OPA's website, as ammended, which will be reflected and incorporated into the Final CHP PPA.

This Addendum No. 3 contains the "clean" version of the Final CHP PPA. A blackline copy is also provided on the CHP RFP website for the ease of reference of prospective Proponents.

Reference: [●]

REVISED: July 31, 2006

COMBINED HEAT AND POWER

(Power Purchase Agreement)

Between

[●]

- and -

ONTARIO POWER AUTHORITY

DATED as of [●], 200[●]

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COMBINED HEAT AND POWER
POWER PURCHASE AGREEMENT

This power purchase agreement is dated as of the [● day of ●, 200●] between [●] (the "**Supplier**") and the Ontario Power Authority (the "**Buyer**").

WHEREAS the Buyer, pursuant to and in accordance with the directive issued by the Ontario Minister of Energy to the Ontario Power Authority dated June 15, 2005, issued a request for proposals dated _____, 2006, to solicit the supply of up to 1,000 MW of high efficiency combined heat and power generation from projects in Ontario (the "**CHP RFP**"), comprising district energy facilities and natural gas-fired industrial, by-product fuel-fired industrial and renewable fuel-fired industrial cogeneration facilities;

AND WHEREAS the Supplier submitted the Proposal in response to the CHP RFP and the Proposal was selected by the Buyer;

AND WHEREAS 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 Facility, and to supply Electricity and Related Products from the Facility, directly or indirectly, to the IESO-Administered Markets or to an End-User and Useful Heat Output from the Facility to a Host Facility, all on the terms and conditions set out herein;

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 meanings stated below when used in this Agreement:

"**Actual Fuel Percentage**" or "**AFP**" has the meaning ascribed to it in Section 2.8(c).

"**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.

"**Agreement**" means, subject to Section 1.11, this power purchase agreement, the CHP RFP and the Proposal, collectively, as the same may be amended, restated or replaced from time to time.

"**Amendment**" has the meaning ascribed to it in Section 2.1(c).

"**Ancillary Services**" has the meaning ascribed to it in the IESO Market Rules.

"**Annual Fuel Adjustment Amount**" has the meaning ascribed to it in Section 4.2(a).

"**Annual Profile Adjustment Amount**" has the meaning ascribed to it in Section 4.1(a).

"**Annual Delivered Electricity**" means, for a Contract Year, the aggregate amount of Delivered Electricity, expressed in MWh, actually delivered to the Delivery Point during such Contract Year.

"**Annual Operating Plan**" has the meaning ascribed to it in Section 15.3(c)(ii).

"**Annual Price Ratio**" means, for a Contract Year, the quotient obtained by dividing (i) the Annual Production-Weighted Average Price for such Contract Year by (ii) the Annual Submitted Profile-Weighted Average Price for such Contract Year.

"**Annual Production-Weighted Average Price**" or "**APWAP**" means, for a Contract Year, an amount expressed in Dollars per MWh and calculated by dividing (i) the aggregate sum of (a) the Contract Price Hours in such Contract Year multiplied by (b) the Hourly Delivered Electricity for such Contract Price Hours multiplied by (c) the corresponding HOEP for such Contract Price Hours by (ii) the Contract Price Delivered Electricity for such Contract Year.

"**Annual Submitted Electricity Profile**" means, for a Contract Year, the aggregate amount of Electricity, expressed in MWh, that the Facility would have delivered to the Delivery Point if the Facility had produced all of the Submitted Hourly Electricity Profile during all Contract Price Hours in such Contract Year.

"**Annual Submitted Profile-Weighted Average Price**" or "**ASPWAP**" means, for a Contract Year, an amount expressed in Dollars per MWh and calculated by dividing (i) the aggregate sum of (a) the Contract Price Hours in such Contract Year multiplied by (b) the Submitted Hourly Electricity Profile for such Contract Price Hours multiplied by (c) the corresponding HOEP for such Contract Price Hours by (ii) the Annual Submitted Electricity Profile for such Contract Year.

"**Approved Incremental Costs**" has the meaning ascribed to it in Section 3.4(c).

"**Arbitration Panel**" has the meaning ascribed to it in Exhibit I.

"**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 16.5(c).

"**Assignment Period**" has the meaning ascribed to it in Section 16.5(e).

"**Availability**" or "**AV**" has the meaning ascribed to it in Exhibit J.

"**Average Annual Contract Capacity**" means the simple average of the Average Seasonal Contract Capacity for Season 1, Season 2, Season 3 and Season 4 as set out in Exhibit B.

"**Average Seasonal Contract Capacity**" means the average On Peak capacities in the Submitted Hourly Electricity Profile over Season 1, Season 2, Season 3 or Season 4, as applicable, as set out in Exhibit B.

"**Average Test Capacity**" has the meaning ascribed to it in Section 15.6(d).

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

"**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 the Ontario Power Authority and its successors and permitted assigns.

"**Buyer Event of Default**" has the meaning ascribed to it in Section 10.3.

"**Buyer Statement**" has the meaning ascribed to it in Section 12.2(g).

"**By-Product Fuel**" means the product of another process that can be burned to produce Electricity and Useful Heat Output, but does not include natural gas;

"**By-Product Fuel-Fired Industrial Cogeneration Facility**" means a cogeneration facility that burns By-Product Fuel or uses Thermal Waste as its Primary Fuel and generates electricity while simultaneously producing Useful Heat Output for a gainful commercial or industrial purpose. For greater certainty, a By-Product Fuel-Fired Industrial Generation Facility may burn natural gas as a supplementary fuel.

"**Capacity Check Test**" has the meaning ascribed to it in Section 15.6(a).

"**Capacity Confirmation**" has the meaning ascribed to it in Section 15.6(c).

"**Capacity Products**" means any products related to the rated, continuous load-carrying capability of a generating facility to generate and deliver Electricity at a given time.

"**CHP Contract**" means a contract entered into by the Ontario Power Authority pursuant to the CHP RFP.

"**CHP 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 CHP RFP provided in writing by or on behalf of the Ontario Power Authority from time to time prior to the date of this Agreement. A copy of the CHP RFP is attached as Exhibit F and is incorporated herein.

"**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 2.6.

"**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 (or in the case of a Host Facility Force Majeure, the Host), directly or indirectly, to satisfy a condition to, or otherwise assist in the consummation of, the transactions contemplated by this Agreement (or in the case of a Host Facility Force Majeure, the Off-Take 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 transactions contemplated by this Agreement (or in the case of a Host Facility Force Majeure, the Off-Take Agreement).

"**Company Representative**" has the meaning ascribed to it in Section 15.1.

"**Completion and Performance Security**" has the meaning ascribed to it in Section 6.1(c).

"**Confidential Information**" means all information that has been identified as confidential and which is furnished or disclosed by the Disclosing Party and its Representatives to the Receiving Party and its Representatives in connection with this Agreement, whether before or after its execution, including all new information derived at any time from any such confidential information, but excluding: (i) publicly-available information, unless made public by the Receiving Party or its Representatives in a manner not permitted by this Agreement; (ii) information already known to the Receiving Party prior to being furnished by the Disclosing Party; and (iii) information disclosed to the Receiving Party from a source other than the Disclosing Party or its Representative, if such source is not subject to any agreement with the Disclosing Party prohibiting such disclosure to the Receiving Party; and (iv) information that is independently developed by the Receiving Party.

"**Connection Agreement**" means the agreement entered into by a Transmitter, an LDC or an End-User, as the case may be, with the Supplier with respect to the connection of the Facility to a Transmission System, a Local Distribution System or an End-User Load, respectively, in accordance with the Transmission System Code, the Distribution System Code or the specifications of the End-User, as applicable, and governing the terms and conditions of such connection.

"**Connection Costs**" mean those costs which are payable by the Supplier related to the reliable connection of the Facility to a Transmission System, a Local Distribution System or an End-User Load, as applicable, as more particularly specified pursuant to the System Impact Assessment, Customer Impact Assessment, and Connection Impact Assessment, as applicable, and/or Distribution System Code and Transmission System Code for generator connections. For greater certainty, Connection Costs consist of Transmitter Connection Costs and Supplier Connection Costs, but shall not include Network Upgrade Costs.

"**Connection Impact Assessment**" means an assessment conducted by an LDC to determine the impact on the Local Distribution System of connecting the Facility to its Local Distribution System, a Transmission System or an End-User Load, as applicable.

"**Connection Point**" means: (i) the electrical point or points of connection, as defined in the IESO Market Rules, between the Facility and the IESO-Controlled Grid; (ii) where the Facility is connected to a Local Distribution System, the embedded connection point or points, as defined in the IESO Market Rules, between the Facility and the Local Distribution System; and (iii) where the Facility is connected to an End-User Load, the point or points where the End-User Load is connected to either a Transmission System or a Local Distribution System or, where not so connected, the Delivery Point. For certainty, the Connection Point is defined by reference to electrical connection points.

"**Consumer Price Index**" means the consumer price index for "All Items" published or established by Statistics Canada (or its successors) for any relevant calendar month in relation to the Province of Ontario.

"**Contract Capacity**" means the maximum capacity of the Facility, expressed in MW, for Season 1, Season 2, Season 3 or Season 4, as applicable, set out in the Submitted Hourly Electricity Profile in Exhibit B.

"**Contract Price**" or "$\mathbf{CP_y}$" means the price, expressed in Dollars and cents per MWh, for each MWh of Delivered Electricity delivered to the Delivery Point during the Term, up to the maximum, in each month, of 125% of the Submitted Profile Hourly Electricity in such month, as set forth in Sections 3.1(a), 3.4 and Exhibit B and adjusted in accordance with Section 3.5. On and after the Restatement Date, if any, the Contract Price shall be deemed to be replaced by the Contract Price plus the Incremental Contract Price.

"**Contract Price Delivered Electricity**" means that amount of Electricity in a given Contract Year, expressed in MWh, for which the Buyer, in accordance with Sections 3.1(a) and 3.4, paid the Supplier the Contract Price.

"**Contract Price Hours**" means those hours, in a given Contract Year, for which the Buyer, in accordance with Sections 3.1(a) and 3.4, paid the Supplier the Contract Price for Delivered Electricity.

"**Contract Related Products**" means those Related Products which relate to the Contract Capacity.

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

"**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 fifty percent (50%) or more of the 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.

"**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 any other Person, 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 agreed to by the Parties, acting reasonably, from time to time.

"**Creditworthiness Value**" has the meaning ascribed to it in Section 6.4(b)(i).

"**Current Credit Entitlement**" has the meaning ascribed to it in Section 2.11(c).

"**Customer Impact Assessment**" means a study conducted by a Transmitter to assess the impact of the connection of the Facility on the transmission customers in the area and a Local Distribution System, if applicable.

"**Day-Ahead Energy Forward Market**" means a forward market, established under the IESO Market Rules or otherwise, for Electricity or for Electricity and Related Products for each hour of a given day, that clears the day before based upon submitted bids to buy and offers to sell, and shall include, for purposes of this Agreement, such other mechanisms or amendments to the IESO Market Rules to enhance pre-dispatch scheduling and unit commitment of generators on a day-ahead basis.

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

"**Delivered Electricity**" means the net quantity of Electricity as recorded by the Facility's revenue-quality meter, expressed in MWh, delivered by the Facility to the Delivery Point for delivery to the IESO-Controlled Grid or consumption by the End User, as applicable;

"**Delivery Point**" means (i) if the Supplier is a "market participant" with the IESO, a uniquely identified reference point determined in accordance with the IESO Market Rules and used for settlement purposes in the real-time markets and (ii) if the Supplier is not a "market participant" with the IESO, the point at which the Facility's revenue-quality meter records the net Electricity delivered by the Facility to the End User.

"**Disclosing Party**", with respect to Confidential Information, is the Party providing or disclosing such Confidential Information and may be the Buyer or the Supplier, as applicable.

"**Discriminatory Action**" has the meaning ascribed to it in Section 13.1.

"**Discriminatory Action Compensation**" has the meaning ascribed to it in Section 13.2.

"**Discriminatory Action Compensation Amount**" has the meaning ascribed to it in Section 13.3(e).

"**Discriminatory Action Compensation Notice**" has the meaning ascribed to it in Section 13.3(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 an LDC with respect to the services and terms of service to be offered to customers and retailers and provides minimum technical operating standards of Local Distribution Systems.

"**Dollars**" or "**$**" means Canadian dollars and cents.

"**Earliest Restatement Date**" has the meaning ascribed to it in Section 2.12(a)(i).

"**Electricity**" means electric energy.

"**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-User**" means a Person who owns or operates an End-User Load.

"**End-User Load**" means a load facility which utilizes electricity supplied through a direct connection to the Transmission System, the Local Distribution System or the Facility.

"**Energy From Nameplate Capacity**" means the entire quantity of Electricity, expressed in MWh, generated by the Nameplate Capacity and supplied to the Delivery Point.

"**Environmental Attributes**" means environmental attributes associated with a generating facility having decreased environmental impacts, and includes:

(a) rights to any fungible or non-fungible attributes, whether arising from the generating facility itself, from the interaction of the generating facility with the IESO-Controlled Grid, the Local Distribution System or an End-User or because of applicable legislation or voluntary programs established by Governmental Authorities;

(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 generating facility with the IESO-Controlled Grid, the Local Distribution System or an End-User or as specified by applicable legislation or voluntary programs, and the right to qualify and register these with competent authorities; and

(c) all revenues, entitlements, benefits and other proceeds arising from or related to the foregoing,

but which excludes,

(d) the Government of Canada's Renewable Power Production Incentive Program which may be available in connection with a renewable generating facility;

(e) any right, title and interest to any nitric oxide and sulphur dioxide emission allowances, and any nitric oxide and sulphur dioxide Emission Reduction Credits, that pertain to the Facility that were available as of the date of the CHP RFP under the Ontario Emissions Trading Program operating under Regulation 397/01 of the *Environmental Protection Act* (Ontario), as amended from time to time; and

(f) any tax or other benefit under the Government of Canada's Canadian Renewable and Conversation Expenses (CRCE) or successor program which may be available in connection with a renewable generating facility.

"**EST**" means the Eastern Standard Time applicable in the IESO Administered Markets, as set forth in the IESO Market Rules.

"**Event of Default**" means a Supplier Event of Default or a Buyer Event of Default.

"**Facility**" means the generation facility developed, constructed, owned (or leased) and operated by the Supplier, as described in Exhibit A hereto.

"**Federal Emissions Credits**" has the meaning ascribed to it in Section 2.11(c).

"**Financial Closing**" means the first date on which drawdown is permissible under the credit facility for the financing of the Facility or that funding is otherwise available and dedicated for the financing of the Facility.

"**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 8.5.

"**First Additional Completion and Performance Security**" has the meaning ascribed to it in Section 6.1(b)(i).

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

"**Force Majeure**" has the meaning ascribed to it in Section 11.3.

"**Further Capacity Check Test**" has the meaning ascribed to it in Section 15.6(d).

"**Further Credits**" has the meaning ascribed to it in Section 2.11(d)(iv)(A).

"**Future Contract Related Products**" means all Related Products (including, for greater certainty, Environmental Attributes) that relate to the Contract Capacity and that were not capable of being traded by the Supplier in the IESO-Administered Markets or other markets on or before the date of this Agreement, but shall not include Useful Heat Output produced by the Facility.

"**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 generation facilities 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 judgment by a prudent generator 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 Facility, 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 Facility'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 Facility properly, efficiently and taking into account manufacturers' guidelines and specifications and are capable of responding to reasonably anticipated 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 utilizing 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 reasonably anticipated abnormal conditions.

"**Government of Canada**" means Her Majesty the Queen in right of Canada.

"**Government of Ontario**" means Her Majesty the Queen in right of Ontario.

"**Governmental Authority**" means any federal, provincial or municipal 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 the IESO, the OEB, the Electrical Safety Authority and any Person acting under the authority of any Governmental Authority, but excluding the Ontario Power Authority.

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

"**Guarantee**" has the meaning ascribed to it in Section 6.4(a).

"**Guarantor**" has the meaning ascribed to it in Section 6.4(a).

"**HHV**" means higher heating value.

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

"**Host**" means • or, pursuant to Section 2.13(b), such other Persons from time to time that have entered into an Off-Take Agreement with the Supplier.

"**Host Developed Contract Facility**" means a Facility for which the legal entity that is the Host or Controls the Host (i) is also the legal entity that is the Supplier or (ii) owns thirty percent (30%) or more of the Supplier. If the legal entities are not the same, then, if required pursuant to the CHP RFP, the legal entity that is the Host or Controls the Host shall provide a guarantee of the Supplier's obligations under this Agreement in the form of Exhibit Q.

"**Host Facility**" means the facility or facilities owned or operated by the Host which receives Useful Heat Output generated by the Facility.

"**Host Facility Force Majeure**" means any act, event, cause or condition that (i) is beyond the Host's reasonable control, (ii) causes an unplanned outage of the Host Facility that completely prevents the Host Facility from receiving any Useful Heat Output generated by the Facility, (iii) results from an equipment failure or other Host Facility shutdown that could not reasonably have been anticipated by the Host and (iv) was not caused by the Host and could not have been prevented by the Host exercising Commercially Reasonable Efforts to prevent.

"**Host Facility Force Majeure Period**" has the meaning ascribed to it in Section 11.1(j).

"**Host Facility Outage**" an outage of the Host Facility, whether planned or unplanned, that is not a Host Facility Force Majeure.

"**Hourly Delivered Electricity**" means the amount of Delivered Electricity expressed in MWh actually delivered by the Supplier at the Delivery Point, in any hour.

"**IESO**" means the Independent Electricity System Operator established under Part II of the Electricity Act, or its successor.

"**IESO-Administered Markets**" has the meaning ascribed to it by the IESO Market Rules.

"**IESO-Controlled Grid**" has the meaning ascribed to it by the IESO Market Rules.

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

"**including**" means "including, without limitation".

"**Incremental Contract Price**" means the restated Contract Price set forth in Exhibit B.

"**Indemnifiable Loss**" has the meaning ascribed to it in Section 14.3.

"**Indemnitees**" has the meaning ascribed to it in Section 14.3.

"**Independent Engineer**" is an engineer that is: (i) a Professional Engineer duly qualified and licensed to practice engineering in the Province of Ontario; and (ii) employed by an independent engineering firm which holds a certificate of authorization issued by the Professional Engineers Ontario that is not affiliated with or directly or indirectly controlled by the Supplier and that does not have a vested interest in the design, engineering, procurement, construction, metering and/or testing of the Facility.

"**Indexed Portion**" or "**IPy**" has the meaning ascribed to it in Section 3.5.

"**Initial Contract Price**" is an amount equal to the Contract Price as initially set out in Exhibit "B".

"**Initial Completion and Performance Security**" has the meaning ascribed to it in Section 6.1(a).

"**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 the Royal Bank of Canada 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 the Royal Bank of Canada.

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

"**kW**" means kilowatt.

"**kWh**" means kilowatt hour.

"**Laws and Regulations**" means:

(a) applicable Canadian 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 IESO Market Rules, as well as any manuals or interpretation bulletins issued by the IESO from time to time that are binding on the Supplier.

"**LDC**" means a Person licensed by the OEB as a "distributor" in connection with a Local Distribution System.

"**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 (Canada) 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 6.3.

"**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.

"**Locational Marginal Pricing**" or "**LMP**" means the form of pricing of Electricity, as determined and modified by the IESO from time to time, to be considered and implemented by the IESO, if at all, based upon a non-uniform, real-time, price of Electricity at each point, node, zone or other price reference location on the IESO-Controlled Grid and having the effect that such real-time prices reflect the costs of transmission congestion.

"**Long Term Operating Plan**" has the meaning ascribed to it in Section 15.3(c)(i).

"**market price**" means the spot price per MWh for Electricity in the IESO-Administered Markets applicable to the class of generator to which the Supplier belongs in accordance with the IESO Market Rules.

"**Market Settlement Charges**" means all market settlement amounts and charges described in Chapter 9 of the IESO Market Rules.

"**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.

"**Metering Plan**" has the meaning ascribed to it in Section 2.2(i).

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

"**Milestone Events**" means those events set forth in the first column of the table contained in Exhibit H which are considered critical by the Parties for the timely construction, financing, completion and operation of the Facility, and which are to be completed by the corresponding Milestone Dates.

"**Minimum Required Fuel Percentage**" or "**MRFP**" means (i) for a Renewable Fuel-Fired Industrial Cogeneration Facility, 95% or 0.95 (expressed as a ratio) and (ii) for a By-Product Fuel-Fired Industrial Cogeneration Facility, 75% or 0.75 (expressed as a ratio).

"**Monthly Delivered Electricity**" means, for a specified month within the Term, the aggregate amount of Delivered Electricity, expressed in MWh, delivered by the Facility in such month.

"**Monthly Payment**" has the meaning ascribed to it in Section 3.4.

"**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; 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,

but which, for greater certainty, shall not include hazardous waste, liquid industrial waste, gaseous waste and Renewable Biomass.

"**MW**" means megawatt.

"**MWh**" means megawatt hour.

"**Nameplate Capacity**" means the rated, continuous load-carrying capability, expressed in MW, of the Facility to generate and deliver Electricity at a given time, and which includes the Contract Capacity.

"**Negative Outlook**" means, with respect to any credit rating agency providing a Credit Rating for purposes of this Agreement, a potential or threatened downgrade to the Credit Rating of any Person.

"**Network Upgrade Costs**" means all costs for facilities in relation to Network Upgrades. Responsibility for these costs is defined by the Transmission System Code. For greater certainty, Network Upgrade Costs shall not include Connection Costs.

"**Network Upgrade**s" means all additions, improvements and upgrades to the network facilities, as defined by the Transmission System Code, for the connection of the Facility to a Transmission System, as more particularly specified pursuant to the System Impact Assessment, Customer Impact Assessment and Transmission System Code for generator connections.

"**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 this Agreement, as set out in Section 12.2(g).

"**Notice of Discriminatory Action**" has the meaning ascribed to it in Section 13.3(a).

"Notice of Dispute" has the meaning ascribed to it in Section 13.3(b).

"**Off-Take Agreement**" means an agreement to purchase Useful Heat Output generated by the Facility.

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

"**On Peak**" means those hours on Monday through Friday inclusive, but excluding statutory holidays, between the hour ending 8 am to the hour ending 11 pm (EST).

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

"**Other Suppliers**" means all of the other suppliers that have a CHP Contract or other bilateral arrangements with the Buyer similar in nature to this Agreement.

"**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, repairs or maintenance on equipment, which results in a partial or total interruption in the ability of the Facility to make the Contract Capacity available and deliver the Electricity from the Facility. For greater certainty, in the event that the capacity of the Facility is de-rated, the amount by which such capacity is reduced shall be deemed to first reduce the Supplier's Capacity, with any excess of the reduction of the capacity over the Supplier's Capacity then being deemed to reduce the Contract Capacity.

"**Outage Notice**" means the notice issued by the Supplier to the Buyer as specified in the form set out as Exhibit M.

"**Party**" means each of the Supplier and the Buyer, and the Supplier and the Buyer are collectively referred to as the "Parties".

"**Payment Date**" has the meaning ascribed to it in Section 5.3.

"**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 15.3(a)(i) or Section 15.3(b).

"**Preliminary Notice**" has the meaning ascribed to it in Section 13.3(a).

"**Prevailing Party**" has the meaning ascribed to it in Section 13.3(e)(ii).

"**Price Evolution Event**" has the meaning ascribed to it in Section 1.8(a).

"**Price Unavailability Event**" has the meaning ascribed to it in Section 1.9(a).

"**Primary Fuel**" means

(a) for Facilities other than Renewable Fuel-Fired Industrial Cogeneration Facilities, fuel used for electricity generation which represents more than 75% of the total fuel heat input, on a HHV basis, in any calendar year.

(b) for Renewable Fuel-Fired Industrial Cogeneration Facilities means fuel which represents no less than 95% of the total fuel heat input (oven-dry) on a HHV basis in any calendar year.

"**Production-Weighted Average Price**" means an amount expressed in Dollars and calculated by dividing (i) the aggregate sum for all hours in the month of the amount of the Hourly Delivered Electricity for each hour in the month multiplied by the corresponding HOEP for such hour, subject to a maximum of $150.00 per MWh in each such hour, by (ii) the Monthly Delivered Electricity.

"**Proposal**" means the proposal submission made by the Supplier in response to the CHP RFP in respect of constructing and developing the Facility and which was selected by the Ontario Power Authority, and all clarifications in respect of such Proposal provided by the Supplier in writing as requested by or on behalf of the Ontario Power Authority from time to time in accordance with the CHP RFP prior to the date of this Agreement. A copy of the Proposal is attached as Exhibit G and is incorporated herein.

"**Proposed Monthly Delivered Electricity**" means the aggregate number of MWh proposed to be delivered by the Facility in the month in question during a Contract Year, equal to the aggregate number of MWh that the Facility would produce in such month if the Facility operated in accordance with the Submitted Hourly Electricity Profile.

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

"**Receiving Party**", with respect to Confidential Information, is the Party receiving Confidential Information and may be Buyer or the Supplier, as applicable.

"**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 this Agreement.

"**Related Products**" means all Capacity Products, Ancillary Services, transmission rights, any Environmental Attributes and any other products or services that may be provided by the Facility from time to time (excluding Useful Heat Output produced by the Facility) that may be traded in the IESO-Administered Markets or other markets, or otherwise sold, and which shall be deemed to include products and services for which no market may exist, such as capacity reserves.

"**Remaining Completion and Performance Security**" has the meaning ascribed to it in Section 6.1(c).

"**Renewable 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 (including spent pulping liquor) and sewage including manure, provided that:

(a) such organic matter is not Municipal Solid Waste;

(b) such organic matter is not peat or a peat derivative;

(c) waste organic material shall not contain any treated by-products of manufacturing processes (for example, chipwood, plywood, painted or varnished wood, pressure treated lumber or wood contaminated with plastics or metals); and

(d) supplementary non-renewable fuels used for start up, combustion, stabilization and low combustion zone temperatures shall be no more than three percent of the total fuel heat input, on a HHV basis, in any calendar year.

"**Renewable Fuel**" means one of the following fuels used for the purposes of generating heat and power: Renewable Biomass, bio-gas or landfill gas.

"**Renewable Fuel-Fired Industrial Cogeneration Facility**" means a cogeneration facility that burns Renewable Fuels as its Primary Fuel and generates electricity while simultaneously producing Useful Heat Output for a gainful commercial or industrial purpose.

"**Replacement Guarantee**" has the meaning ascribed to it in Section 6.4(c).

"**Replacement Price**" has the meaning ascribed to it in Sections 1.7(a) and 1.8(a), as applicable.

"**Replacement Provision(s)**" has the meaning ascribed to it in Sections 1.9(a), 1.10(c) and 2.11(c), as applicable.

"**Reportable Events**" means the following:

(a) obtaining project and site approvals and permitting for the Facility;

(b) completion of connection assessments, including receipt of approvals from the IESO, the Transmitter, the LDC and the End-User, as applicable;

(c) execution of engineering, equipment procurement and construction contract(s) in respect of the Facility;

(d) Financial Closing in respect of the Facility;

(e) ordering of major equipment for the Facility;

(f) delivery of major equipment for the Facility;

(g) commencement of construction of the Facility;

(h) completion of construction of the Facility;

(i) connection of the Facility to the Transmission System, LDC or End-User, as applicable; and

(j) Commercial Operation.

"**Representatives**" means a Party's directors, officers, employees, auditors, consultants (including economic and legal advisors), contractors and agents and those of its Affiliates and the agents and advisors of such Persons. While the Buyer is the Ontario Power Authority, this definition shall also include the Government of Ontario, the IESO and their respective directors, officers, employees, auditors, consultants (including economic and legal advisors), contractors and agents.

"**Restated Submitted Hourly Electricity Profile**" means the restated Submitted Hourly Electricity Profile set forth in Exhibit B.

"**Restatement**" means a restatement in accordance with the restatement submitted in the Proposal and subject to Section 2.12, of the Submitted Hourly Electricity Profile and/or Contract Price on or after the Restatement Date and "**Restate**" has a corresponding meaning.

"**Restatement Date**" has the meaning ascribed to it in Section 2.12(a)(ii).

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

"**Schedule**" means all acts necessary for the Supplier to schedule, or cause to be scheduled, including the submission of dispatch data, the Electricity at the Delivery Point throughout the Term.

"**Season**" means, as applicable, Season 1, Season 2, Season 3 or Season 4.

"**Season 1**" means that portion of each Contract Year that begins at the beginning of the hour ending 01:00 (EST) on January 1 and ending at 24:00 (EST) on March 31 of each Contract Year.

"**Season 2**" means that portion of each Contract Year that begins at the beginning of the hour ending 01:00 (EST) on April 1 and ending at 24:00 (EST) on June 30 of each Contract Year.

"**Season 3**" means that portion of each Contract Year that begins at the beginning of the hour ending 01:00 (EST) on July 1 and ending at 24:00 (EST) on September 30 of each Contract Year.

"**Season 4**" means that portion of each Contract Year that begins at the beginning of the hour ending 01:00 (EST) on October 1 and ending at 24:00 (EST) on December 31 of each Contract Year.

"**Second Additional Completion and Performance Security**" has the meaning ascribed to it in Section 6.1(b)(ii).

"**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 16.1.

"**Settlement Month**" has the meaning ascribed to it in Section 5.2, provided that if the remaining Term is less than one calendar month, the Settlement Month shall be the remaining Term of this Agreement.

"**Statement**" has the meaning ascribed to it in Section 5.2.

"**Station Service Loads**" means energy consumed to power the on-site maintenance and operation of generation facilities, but excludes energy consumed in association with activities which could be ceased or moved to other locations without impeding the normal and safe operation of the Facility.

"**Submitted Hourly Electricity Profile**" means the annual hourly electricity output profile for the Facility as set out in Exhibit B, which profile was submitted by the Supplier in its Proposal. For purposes of determining the Annual Submitted Electricity Profile and the Annual Submitted Profile-Weighted Average Price, the Facility will be notionally considered to have produced electricity according to the Submitted Hourly Electricity Profile in each Contract Year.

"**Supplier**" means • and its successors and permitted assigns.

"**Supplier Connection Costs**" means those Connection Costs associated with providing the required connection facilities to connect the Facility to a Transmission System, a Local Distribution System or an End-User Load, as applicable, but not including Transmitter Connection Costs.

"**Supplier Event of Default**" has the meaning ascribed to it in Section 10.1.

"**Supplier Non-acceptance Notice**" has the meaning ascribed to it in Section 13.3(e).

"**Supplier's Capacity**" means the Nameplate Capacity less the Contract Capacity.

"**Supplier's Interest**" means the right, title and interest of the Supplier in or to the Facility and this Agreement, or any benefit or advantage of any of the foregoing.

"**System Impact Assessment**" means a study conducted by the IESO pursuant to section 6.1.5 of Chapter 4 of the IESO Market Rules to assess the impact of a new connection of the Facility to the IESO-Controlled Grid, or of the modification of an existing connection of the Facility to the IESO-Controlled Grid, on the reliability of the integrated power system.

"**Tangible Net Worth**" means, in respect of the Supplier or a 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 the 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 9.1(b).

"**Term Commencement Date**" has the meaning ascribed to it in Section 9.1(b).

"**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.

"**Test Protocol**" has the meaning ascribed to it in Section 15.6(a).

"**Thermal Waste**" means heat produced from another process that can be used to generate electric output.

"**Third Additional Completion and Performance Security**" has the meaning ascribed to it in Section 6.1(b)(iii).

"**Time-Average Price**" means an amount expressed in Dollars and calculated by dividing (i) the aggregate sum of the HOEP for all hours of a given month, subject to a maximum of $150.00 per MWh in each such hour, by (ii) the total number of hours in such month.

"**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.

"**Transmitter Connection Costs**" means those Connection Costs associated with modifications to Transmitter-owned facilities required to connect the Facility. These costs involve modifications that only the Transmitter can perform and are payable by the Supplier to the Transmitter as required by the Transmission System Code.

"**Unindexed Portion**" or "**UIP**" has the meaning ascribed to it in Section 3.5.

"**Useful Heat Output**" means thermal energy (expressed in MWh-thermal) produced by the Facility and used for a gainful commercial or industrial purpose such as district energy, manufacturing, mining, chemical or other industrial process, where such use: (a) avoids or reduces the use of fuel to produce thermal energy in an alternate process; and (b) is not a use within the Facility' s combined heat and power cycle for gas turbine injection, inlet conditioning, fuel heating, natural gas compression or other similar purpose; and (c) is not a use outside the Facility's combined heat and power cycle for applications such as heating rivers, lakes or the atmosphere. For greater certainty, gainful commercial or industrial purpose also does not include the use of the thermal energy primarily for generating Electricity.

1.2 Exhibits

The following Exhibits are attached to and form part of this Agreement:

Exhibit A	Description of Facility
Exhibit B	Contract Price, Nameplate Capacity, Contract Capacity and Submitted Hourly Electricity Profile
Exhibit C	Form of Irrevocable Standby Letter of Credit
Exhibit D	Form of Guarantee
Exhibit E	Records under FIPPA
Exhibit F	CHP RFP
Exhibit G	Proposal
Exhibit H	Milestone Events and Milestone Dates for the Facility
Exhibit I	Arbitration Provisions Applicable to Sections 1.6, 1.7, 1.8, 1.9, 1.10 and 2.11

Exhibit J	Determination of Availability
Exhibit K	Form of Statutory Declaration
Exhibit L	Form of Force Majeure Notice
Exhibit M	Form of Outage Notice
Exhibit N	Form of Quarterly Report
Exhibit O	Form of Annual Report
Exhibit P	Form of Restatement Report
Exhibit Q	Form of Guarantee for Host Developed Contract Facility

The Buyer may, at any time and from time to time after the date hereof, upon written notice to the Supplier, amend or replace the forms of certificates, notices and reports set out in Exhibits K, L, M, N, O and P.

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 IESO Market Rules and Statutes

Unless otherwise expressly stipulated, any reference in this Agreement to the IESO 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 IESO Market Rules, statute, regulation, rule or provision as amended, re-enacted or replaced from time to time. If the Supplier is a “market participant” with the IESO, in the event of any conflict or inconsistency with the IESO Market Rules and the terms of this Agreement, the IESO Market Rules shall govern to the extent of such conflict or inconsistency. If the Supplier is a “market participant” with the IESO, to the extent that there is a change in the IESO Market Rules following the date hereof, which such change has the effect of materially affecting the Supplier’s economics as contemplated hereunder prior to the introduction of such change, then:

(a) either Party upon becoming aware of the consequences of such change shall promptly notify the other Party;

(b) the Parties and, at the Buyer's discretion, those Other Suppliers that are required by the Buyer to participate, shall engage in good faith negotiations to amend this Agreement and the respective agreements of those Other Suppliers on the basis that such amendments together with the change in the IESO Market Rules will substantially reflect the economics as contemplated hereunder of the Supplier and, at the Buyer's discretion, those Other Suppliers, prior to the introduction of such change in the IESO Market Rules;

(c) if the Parties fail to reach agreement on the amendments described in Section 1.6(b), the matter 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 I. However, if the Supplier fails to participate in such arbitration, the Supplier acknowledges that it waives its right to participate in such arbitration, which shall nevertheless proceed, and the Supplier shall be bound by the award of the Arbitration Panel and the subsequent amendments to this Agreement made by the Buyer to implement such award of the Arbitration Panel set out in Section 1.6(d)(iii);

(d) the terms of this Agreement shall be amended either:

(i) by the agreement of the Parties, where no award of an Arbitration Panel has been made pursuant to Section 1.6(c);

(ii) by the agreement of the Parties made pursuant to and to implement an award of the Arbitration Panel made pursuant to Section 1.6(c); or

(iii) by an amendment prepared by the Buyer made pursuant to and to implement an award of the Arbitration Panel made pursuant to Section 1.6(c), where the Supplier failed to participate in such arbitration,

with such agreement or amendment, as the case may be, having effect from and after the date that the change in the IESO Market Rules became effective; and

(e) this Section 1.6 shall not apply to the circumstances addressed in Sections 1.7, 1.8, 1.9, 1.10 and 2.11.

1.7 Introduction of the Day-Ahead Energy Forward Market

(a) If a Day-Ahead Energy Forward Market is opened for operation in Ontario, then this Agreement will be modified such that all references to HOEP will be replaced with an hourly Electricity price established under the Day-Ahead Energy Forward Market (the "**Replacement Price**").

(b) If (i) the IESO has made an announcement that the Day-Ahead Energy Forward Market is likely to be opened within the succeeding twelve (12) calendar months, and (ii) the amendments to the IESO Market Rules for the Day-Ahead Energy Forward Market have been substantially developed by the IESO, the Buyer shall

propose a Replacement Price, based on Sections 1.7(a) and 1.7(c), to the Supplier and, at the Buyer's discretion, those Other Suppliers that are required by the Buyer to participate. If the Parties are unable to agree on the Buyer's proposal or that of the Supplier or any of those Other Suppliers, as the case may be, within thirty (30) days after the Day-Ahead Energy Forward Market is opened for operation in Ontario, 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 I. However, if the Supplier fails to participate in such arbitration, the Supplier acknowledges that it waives its right to participate in such arbitration, which shall nevertheless proceed, and the Supplier shall be bound by the award of the Arbitration Panel and the subsequent amendments to this Agreement made by the Buyer to implement such award of the Arbitration Panel set out in Section 1.7(c)(iii).

(c) The terms of this Agreement shall be amended either:

(i) by the agreement of the Parties, where no award of an Arbitration Panel has been made pursuant to Section 1.7(b);

(ii) by the agreement of the Parties made pursuant to and to implement an award of the Arbitration Panel, made pursuant to Section 1.7(b); or

(iii) by an amendment prepared by the Buyer made pursuant to and to implement an award of the Arbitration Panel made pursuant to Section 1.7(b), where the Supplier failed to participate in such arbitration,

with such agreement or amendment, as the case may be, having effect from and after the date the Day-Ahead Energy Forward Market was opened for operation in Ontario.

(d) Until such time as this Agreement is amended in accordance with Section 1.7(c), all references to HOEP shall continue and payments hereunder shall continue to be made until such time, 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 pay, within ten (10) Business Days after receipt of an invoice from the other Party, 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 payment thereof.

1.8 Evolution of the IESO-Administered Markets

(a) For the purposes of Section 1.8(b), a "**Price Evolution Event**" means that the IESO Market Rules have changed (including the implementation of LMP by the IESO) such that HOEP, or the replacement value for HOEP under a Day-Ahead Energy Forward Market as determined through the application of Section 1.7, is

no longer provided for, and is replaced by another market-based price signal(s), then HOEP, or its replacement value under a Day-Ahead Energy Forward Market, if applicable, will be replaced with the Ontario Electricity market price that most closely emulates the price actually paid by the Ontario Electricity market for Electricity output from the Facility (the "**Replacement Price**").

(b) If (i) the IESO or the Government of Ontario have made an announcement with the effect that a Price Evolution Event is likely to occur within the succeeding twelve (12) calendar months, and (ii) the replacement rules and regulations pertaining to the Price Evolution Event have been approved by the applicable authority, the Buyer shall propose a Replacement Price, based on Section 1.8(a), to the Supplier and, at the Buyer's discretion, those Other Suppliers that are required by the Buyer to participate. If the Parties are unable to agree on the Buyer's proposal or that of the Supplier or those Other Suppliers, as the case may be, within thirty (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 I. However, if the Supplier fails to participate in such arbitration, the Supplier acknowledges that it waives its right to participate in such arbitration, which shall nevertheless proceed, and the Supplier shall be bound by the award of the Arbitration Panel and the subsequent amendments to this Agreement made by the Buyer to implement such award of the Arbitration Panel set out in Section 1.8(d)(iii).

(c) If the IESO Market Rules are amended to provide for an installed capacity market, then either Party may propose, by notice in writing to the other Party, amendments to this Agreement and the Buyer and the Supplier and, at the Buyer's discretion, those Other Suppliers that are required by the Buyer to participate, shall then engage in good faith negotiations to amend this Agreement and the respective agreements of those Other Suppliers so as to facilitate the Supplier's participation in such installed capacity market, on the basis that the economic effect of such amendments substantially reflect the Supplier's economics as contemplated hereunder prior to the introduction of the installed capacity market. If the Parties are unable to agree on such amendments, the matter shall be determined by mandatory and binding arbitration, from which there shall be no appeal, with such arbitration to be conducted in accordance with the procedures set out in Exhibit I. However, if the Supplier fails to participate in such arbitration, the Supplier acknowledges that it waives its right to participate in such arbitration, which shall nevertheless proceed, and the Supplier shall be bound by the award of the Arbitration Panel and the subsequent amendments to this Agreement made by the Buyer to implement such award of the Arbitration Panel set out in Section 1.8(d)(iii).

(d) In respect of the matters set forth in Sections 1.8(b) and 1.8(c), the terms of this Agreement shall be amended either:

(i) by the agreement of the Parties, where no award of an Arbitration Panel has been made pursuant to Section 1.8(b) or 1.8(c), as the case may be;

(ii) by the agreement of the Parties made pursuant to and to implement an award of the Arbitration Panel, made pursuant to Section 1.8(b) or 1.8(c), as the case may be; or

(iii) by an amendment prepared by the Buyer made pursuant to and to implement an award of the Arbitration Panel made pursuant to Sections 1.8(b) or 1.8(c), as the case may be, where the Supplier failed to participate in such arbitration,

with such agreement or amendment, as applicable, having effect from and after the date the Price Evolution Event occurred or the installed capacity market was introduced, respectively.

(e) Until such time as this Agreement is amended in accordance with Section 1.8(d), calculations required hereunder shall be made 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(d), and any Party owing monies to the other pursuant to such recalculation shall, within ten (10) Business Days after receipt of an invoice from the other Party, 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 payment thereof.

(f) This Section 1.8 shall not apply in the circumstances addressed in Section 1.7.

1.9 Price Unavailability Events

(a) For the purposes of Section 1.9(b), a "**Price Unavailability Event**" means that if HOEP, or the replacement value for HOEP under a Day-Ahead Energy Forward Market as determined through the application of Section 1.7, or the replacement market-based price signals referred to in Section 1.8, is no longer available. In such a case, this Agreement will be modified on the basis that the economic effect of such amendments comes as close as possible to reflecting the Parties' economics hereunder prior to such occurrence, and the modifications and amendments described in this Section 1.9(a) are collectively referred to as the "**Replacement Provision(s)**", with such modifications to take effect from and after the date set out in Section 1.9(c):

(b) If (i) the IESO or the Government of Ontario has made an announcement to the effect that a Price Unavailability Event is likely to occur within the succeeding twelve (12) calendar months, and (ii) the replacement rules and regulations pertaining to the Replacement Provision(s) have been approved by the applicable authority, the Buyer shall propose Replacement Provision(s), based on Section 1.9(a) to the Supplier and, at the Buyer's discretion, those Other Suppliers

that are required by the Buyer to participate. If the Parties are unable to agree on the Buyer's proposal or that of the Supplier or any of those Other Suppliers, as the case may be, within thirty (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 I. However, if the Supplier fails to participate in such arbitration, the Supplier acknowledges that it waives its right to participate in such arbitration, which shall nevertheless proceed, and the Supplier shall be bound by the award of the Arbitration Panel and the subsequent amendments to the Agreement made by the Buyer to implement such award of the Arbitration Panel set out in Section 1.9(c)(iii).

(c) The terms of this Agreement shall be amended either:

(i) by the agreement of the Parties, where no award of an Arbitration Panel has been made pursuant to Section 1.9(b);

(ii) by the agreement of the Parties made pursuant to and to implement an award of the Arbitration Panel, made pursuant to Section 1.9(b); or

(iii) by an amendment prepared by the Buyer made pursuant to and to implement an award of the Arbitration Panel made pursuant to Section 1.9(a), where the Supplier failed to participate in such arbitration,

with such agreement or amendment, as the case may be, having effect from and after the date the Price Unavailability Event occurred.

(d) Until such time as this Agreement is amended in accordance with Section 1.9(c), calculations required hereunder shall continue to be made using the Buyer's proposal submitted under Section 1.9(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 1.9(c), and any Party owing monies to the other pursuant to such recalculation shall pay, within ten (10) Business Days after receiving an invoice from the other Party, 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 payment thereof.

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

1.10 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 and, at the Buyer's discretion, those Other Suppliers that are required by the Buyer to participate, shall engage in good faith negotiations to replace such provision with a valid, enforceable and applicable provision, the economic effect of which substantially reflects 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 Buyer and the Supplier and, at the Buyer's discretion, all of those Other Suppliers that are required by the Buyer to participate, 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 1.10(a) or 1.10(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 thirty (30) days after either the giving of the notice under Section 1.10(a) or the occurrence of the event in Section 1.10(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 I. However, if the Supplier fails to participate in such arbitration, the Supplier acknowledges that it waives its right to participate in such arbitration, which shall nevertheless proceed, and the Supplier shall be bound by the award of the Arbitration Panel and the subsequent amendments to this Agreement made by the Buyer to implement such award of the Arbitration Panel set out in Section 1.10(d)(iii); and

(d) the terms of this Agreement shall be amended either:

(i) by the agreement of the Parties, where no award of an Arbitration Panel has been made pursuant to Section 1.10(c);

(ii) by the agreement of the Parties made pursuant to and in implementation of an award of the Arbitration Panel made pursuant to Section 1.10(c); or

(iii) by an amendment prepared by the Buyer made pursuant to and to implement an award of the Arbitration Panel made pursuant to Section 1.10(c), where the Supplier failed to participate in such arbitration,

with such agreement or amendment, as applicable, having effect as of 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 therefor is changed materially, as the case may be.

This Section 1.10 shall not apply to the circumstances addressed in Sections 1.7, 1.8 and 1.9.

1.11 Entire Agreement

This Agreement, the CHP 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 CHP RFP solicits district energy projects and natural gas-fired, by-product fuel-fired industrial and renewable fuel-fired industrial cogeneration projects, any references to, or provisions in the CHP RFP addressing only district energy projects and natural gas-fired industrial cogeneration projects 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 this Agreement, the CHP 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 CHP RFP on •, 2006 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 this Agreement, the CHP RFP and the Proposal shall be resolved by interpreting such documents in the following order, from highest to lowest priority, namely:

- this Agreement;
- the CHP 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.

1.12 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.

1.13 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.

1.14 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 FACILITY

2.1 Design and Construction of the Facility

(a) The Supplier agrees to design and build the Facility using Good Engineering and Operating Practices and meeting all relevant requirements of the IESO Market Rules, Transmission System Code, Distribution System Code, the Connection Agreement, in each case, as applicable, and all other Laws and Regulations. The Supplier shall ensure that the Facility is designed, engineered and constructed to operate in accordance with the requirements of this Agreement.

(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 Facility.

(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 Facility outlined in Exhibit A (an "**Amendment**") without first notifying the Buyer in writing and obtaining the Buyer's consent in writing, which consent shall not be unreasonably withheld, provided that it shall not be unreasonable for the Buyer to withhold its consent to any modification, variation or amendment which would, or would be likely to, materially adversely affect the ability of the Supplier to comply with its obligations under this Agreement. Any Amendment that has not been consented to by the Buyer (other than in instances where such consent has been unreasonably withheld) shall constitute a Supplier Event of Default. For purposes of this paragraph, the failure of the Facility to have a Connection Point as described in Exhibit A shall be deemed to be an Amendment.

(d) If the Buyer's consent in writing has been given in relation to a reduction in the Contract Capacity pursuant to Section 2.1(c), the Contract Capacity 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

Contract Capacity pursuant to Section 2.1(c), the Contract Capacity shall be increased to the higher amount, effective as of the time stated in such notice, provided that such increase shall not be effective until: (i) the Supplier performs a Capacity Check Test confirming the increased amount of the Contract Capacity, and (ii) the Supplier has delivered to the Buyer the amount of Completion and Performance Security corresponding to the increased amount of the Contract Capacity, as calculated in accordance with Section 6.1.

(e) For purposes of Section 2.1(c), in the event that the Nameplate Capacity of the Facility will be reduced 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 Facility, then the amount by which such Nameplate Capacity is reduced shall be deemed to first reduce the Supplier's Capacity, with any excess of the reduction of the Nameplate Capacity over the Supplier's Capacity then being deemed to reduce the Contract Capacity.

2.2 Additional Development and Construction Covenants

(a) The Supplier agrees that the Facility shall be located in the Province of Ontario. The Supplier agrees that the Facility shall have a Connection Point on the • and shall affect supply or demand in the IESO-Administered Markets.

(b) The Supplier agrees to arrange, at its expense (including payment of all Supplier Connection Costs), for all Facility connection requirements in accordance with the Connection Agreement to permit the delivery of Electricity to the IESO-Controlled Grid, Local Distribution System or End-User, as the case may be.

(c) If the Supplier becomes a "market participant" with the IESO, the Supplier covenants and agrees to provide, at its expense, separate meters and ancillary metering and monitoring equipment as required by the IESO Market Rules.

(d) If the Supplier does not become a "market participant" with the IESO, the Supplier agrees to ensure that revenue-quality interval meters will be operated and maintained, at its expense, to calculate the output of Electricity from the Facility at the Delivery Point net of any Station Service Loads. Revenue meters registered with the IESO or provided by an LDC can be used to fulfil this obligation, in whole or in part, so long as the Metering Plan specifies: (i) how the metered quantities from those meters will be adjusted, if necessary, to account for any electrical losses that may occur due to differences between the physical locations of the meters and the Delivery Point, and (ii) how the metered quantities from those meters will be totalled, if necessary, with other revenue-quality metered data to accurately calculate the output of the Facility at the Delivery Point net of any Station Service Loads. Furthermore, the Supplier agrees that the Buyer may retain a metering service provider for such revenue-quality interval meters and the Supplier shall reimburse the Buyer for the costs of such metering service provider. Such costs may be netted from any Monthly Payment that the Buyer owes to the Supplier.

(e) The Supplier also covenants and agrees to provide, at its expense, separate meters and ancillary metering and monitoring equipment in order to calculate energy attributable to Useful Heat Output generated by the Facility providing a level of accuracy acceptable to the Buyer, acting reasonably.

(f) The Buyer retains the right to audit at any time during the Term, on reasonable notice to the Supplier and during normal business hours, the metering equipment to confirm the accuracy of the Metering Plan. The Supplier shall have the Metering Plan approved by the Buyer and shall deliver a copy to the Buyer for its approval no later than **o**ne hundred and twenty (120) days prior to Commercial Operation. The Buyer agrees to review the Metering Plan submitted by the Supplier and to either approve the plan or provide the Supplier with its comments within thirty (30) days after receipt. If, within ten (10) days after the Buyer has delivered its comments on the Metering Plan to the Supplier, the parties are not able to agree on the final terms of the Metering Plan, the Parties shall submit the matter for determination by the Independent Engineer, whose determination on the terms of the Metering Plan shall be final and binding on the parties (and from whose determination there shall be no recourse to the dispute resolution provisions of this Agreement). The Supplier will provide the Buyer with a commissioning report for all revenue meters referenced in the Metering Plan prior to any use of metered data for the purposes expressed in Section 15.6.

(g) The Supplier shall not make any material changes to the Metering Plan following approval by the Buyer or determination by the Independent Engineer as set out in Section 2.2(f) without the prior written approval of the Buyer.

(h) 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 IESO, 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 End-User, as applicable, to protect the safety and security of the IESO-Controlled Grid, the Local Distribution System, each of their customers and the End-User Load, as the case may be. The equipment to be so provided by the Supplier shall include such electrical equipment as the IESO, the Transmitter, the LDC and the End-User, as applicable, deem necessary, from time to time, for the safe and secure operation of the IESO-Controlled Grid, the Local Distribution System and the End-User Load, as required by the IESO Market Rules, the Transmission System Code, the Distribution System Code and the End-User, as applicable.

(i) "**Metering Plan**" means a report that is provided by the Supplier to the Buyer and that (a) verifies that the revenue-quality interval meters conform with Measurement Canada Regulations, and (b) provides all required information and equipment specifications needed to permit the Buyer to remotely access, verify, adjust and/or total revenue meter readings to accurately calculate the generator

output at the Delivery Point net of any Station Service Loads and to calculate energy attributable to Useful Heat Output generated by the Facility, and which is updated promptly, and, in any event, within ten (10) Business Days after any change to the metering installation occurs.

2.3 Allocation and Treatment of Connection Costs and Network Upgrade Costs

(a) The Supplier agrees to arrange for all Network Upgrades that may be required to permit the delivery of Electricity and Related Products to the IESO-Controlled Grid, the Local Distribution System or the End-User, as the case may be. Network Upgrade Costs shall, subject to Section 2.3(c), be allocated as set forth in the Transmission System Code.

(b) All Connection Costs shall be for the account of the Supplier and, as applicable, the Transmitter and/or LDC with which the Supplier has arranged connection of the Facility.

(c) If pursuant to an order or directive of the OEB or the Transmission System Code, the Supplier is required to pay, without reimbursement, any Network Upgrade Costs, the Buyer shall reimburse the Supplier for all such Network Upgrade Costs paid by the Supplier on the following basis:

(i) The Supplier shall pay all Network Upgrade Costs to the Transmitter as and when due.

(ii) The Supplier shall submit to the Buyer an invoice itemizing and describing the Network Upgrade Costs, together with copies of each of the paid receipts issued by the Transmitter. If the Network Upgrade Costs are adjusted subsequent to the Commercial Operation Date, the Supplier shall forthwith provide written evidence thereof to the Buyer.

(iii) The Buyer shall, within a reasonable time, review the Supplier's invoices and copies of each of the paid receipts to verify that all of the amounts described in each such invoice constitute Network Upgrade Costs paid by the Supplier to the Transmitter. The Supplier consents to the applicable Transmitter disclosing to the Buyer, on request, all information relating to Network Upgrade Costs, including any information provided by the Supplier to the applicable Transmitter that relates to, or affects, Network Upgrade Costs.

(iv) Subject to the Buyer being satisfied of its review of the Supplier's invoices and paid receipts, the Buyer will reimburse the Network Upgrade Costs (for greater certainty, without any interest accruing from the date such amounts were paid by the Supplier) to the Supplier on or before the later of (i) the date which is sixty (60) days after submittal of each invoice and (ii) the Commercial Operation Date.

(v) If the OEB issues an order or directive resulting in an increase or decrease in the Network Upgrade Costs to be paid by the Supplier, then, the amount of Network Upgrade Costs shall be deemed, from the date of such order or directive, to be adjusted by the amount of such increase or decrease, and the adjusted unpaid amount shall be paid by the Buyer to the Supplier, or by the Supplier to the Buyer, as applicable, within sixty (60) days after the date that the OEB issues such order or directive.

(vi) If the Agreement has been terminated by the Buyer as a result of a Supplier Event of Default, then the Supplier shall forfeit all rights to receive any payments after the Termination Date on account of Network Upgrade Costs pursuant to Sections 2.3(c)(iv) or 2.3(c)(v), as applicable, as liquidated damages and not as a penalty.

2.4 Allocation and Treatment of Supplier Connection Costs

If the OEB issues an order or directive resulting in a Transmitter or an LDC, instead of the Supplier as a generator, being responsible for the payment of any Supplier Connection Costs, then the Supplier shall provide written notice to the Buyer of the issuance of such order or directive within ten (10) Business Days of its issuance, and the Supplier shall cooperate in good faith with the Buyer and/or the Transmitter and/or the LDC as required by the Buyer to assess the amount of Supplier Connection Costs for which the Supplier is no longer responsible. Notwithstanding anything in this Agreement to the contrary, the Contract Price applicable from and after the effective date of such order or directive shall be reduced, by mutual agreement, by an amount commensurate with such reduction in Supplier Connection Costs as a result of such OEB order or directive, amortized on a straight-line basis over the balance of the Term.

2.5 Milestone Dates

The Supplier acknowledges that time is of the essence to the Buyer with respect to attaining Commercial Operation of the Facility, and the other Milestone Events, by their corresponding Milestone Dates set out by the Supplier in Exhibit H, and the Parties agree:

(a) that each of the Milestone Events corresponding to:

(i) Financial Closing; and

(ii) attaining Commercial Operation,

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 (A) 50 Dollars per MW multiplied by the Average Annual Contract Capacity for each calendar day after the Milestone Date in respect of Financial Closing; and (B) 150 Dollars per MW multiplied by the Average Annual Contract Capacity for each calendar day after the Milestone Date in respect of Commercial Operation, until the corresponding Milestone Event has

been achieved. However, if Commercial Operation is achieved on or before its corresponding Milestone Date, then all liquidated damages for delay in achieving Financial Closing paid by the Supplier under this Section 2.5(a) shall be refunded to the Supplier, without interest, two weeks following the Commercial Operation Date; and

(b) the maximum time period that liquidated damages shall be calculated and payable under Section 2.5(a) by the Supplier (A) for failure to meet the Milestone Date in respect of Financial Closing shall be ninety (90) days and (B) for failure to meet the Milestone Date in respect of Commercial Operation shall be five hundred and forty-five (545) days.

2.6 Requirements for Commercial Operation

The Facility will be deemed to have achieved "**Commercial Operation**" at the point in time when the Buyer has (i) received and approved the Metering Plan as set out in Section 2.2 and (ii) received a certificate addressed to it from an Independent Engineer, procured at the expense of the Supplier, in a form acceptable to the Buyer, acting reasonably, stating that:

(a) the Facility has been completed in all material respects, excepting punch list items that do not materially and adversely affect the ability of the Facility to operate in accordance with this Agreement;

(b) the Connection Point of the Facility is [•]; and

(c) the Facility has been constructed, connected, commissioned and synchronized to the IESO-Controlled Grid, a Local Distribution System or an End-User Load, such that at least 100% of the Contract Capacity is available to generate Electricity in accordance with the requirements of all applicable Laws and Regulations;

(d) the Facility has successfully undertaken a performance test in accordance with recognised standards demonstrating the maximum capacity of the Facility and that the Facility it has met the Contract Capacity. A copy of the performance test report is to be attached to the Independent Engineer's certificate. For avoidance of doubt, the Supplier's obligation to put into effect and maintain insurance based on Nameplate Capacity and any other obligations of the Supplier under this Agreement relating to Nameplate Capacity shall remain in effect, unamended, if the maximum capacity demonstrated during the performance test is less than the Nameplate Capacity; and

(e) the Facility has generated Electricity in compliance with all Laws and Regulations for four (4) continuous hours at an uninterrupted rate not less than 100% of the Average Seasonal Contract Capacity using the maximum feasible amount of Renewable Fuel or By- Product Fuel as set out in the Proposal. This requirement shall be evaluated based on calculation of the generator output at the Delivery Point net of any Station Service Loads, in accordance with the Metering Plan, and

shall be satisfied if the energy output in each of the four (4) hours (in MWh), divided by one hour, is equal to or greater than the Average Seasonal Contract Capacity. The Supplier acknowledges and agrees that the Average Seasonal Contract Capacity, the energy output of the Facility, the Station Service Loads and the energy attributable to Useful Heat Output, as may be measured by the foregoing test, shall not be adjusted for ambient weather or other conditions whatsoever.

2.7 Buyer Information During Design and Construction and After Term Commencement Date

(a) Prior to the Term Commencement Date, the Supplier shall provide the Buyer with progress reports as follows:

(i) By the fifteenth (15th) day of each calendar quarter following the date of this Agreement and continuing until the Term Commencement Date, the Supplier shall provide the Buyer with quarterly progress reports substantially in the form of Exhibit N, describing the status of efforts made by the Supplier to meet each Milestone Date and the progress of the design and construction work and the status of permitting and approvals relating to the Facility. Such quarterly progress reports shall report on the progress of all applicable Reportable Events. 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.

(ii) In addition to the quarterly reports it is required to provide pursuant to Section 2.7(a)(i), the Supplier shall also provide the Buyer with notice of any material incident, event or concern which may occur or arise during the course of the development, construction or commissioning of the Facility, promptly and, in any event, within ten (10) Business Days following the later of: (i) the Supplier becoming aware of any such incident, event or concern occurring or arising; and (ii) the Supplier becoming aware of the materiality of same, with such timing in each case based upon the Supplier having acted in accordance with Good Engineering and Operating Practices.

(b) On and after the Term Commencement Date, in addition to other notices or reports as set out in this Agreement, the Supplier shall provide the Buyer with:

(i) an annual report in the form and covering the matters specified in Exhibit O; and

(ii) a Restatement report in the form and covering the matters specified in Exhibit P, if the Supplier is entitled under this Agreement to a Restatement and, upon such Restatement, the Supplier proposes to reconfigure the equipment at the Facility.

2.8 Operation Covenants

(a) The Supplier agrees to own or lease the Facility during the Term and to operate and maintain the Facility during the Term using Good Engineering and Operating Practices, and meeting all applicable requirements of the IESO Market Rules (if the Supplier becomes a "market participant" with the IESO), the Transmission System Code, the Distribution System Code, the Connection Agreement and all other Laws and Regulations.

(b) 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 Facility 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, 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 or wilful misconduct of the Indemnitees.

(c) 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 Facility during the Term. The Supplier shall provide to the Buyer a written report within sixty (60) days of the end of each Contract Year setting out the percentage of Renewable Fuels or By-Product Fuels, as applicable (the "**Actual Fuel Percentage**" or "**AFP**") utilized by the Facility (as compared to all fuels so utilized) during such prior Contract Year. This report shall provide the calculations and assumptions used to determine the total fuel heat input of each fuel burned by the Facility, including the assumptions regarding the heat content of the Renewable Fuels and the basis for these assumptions. If the Actual Fuel Percentage in a Contract Year is less than 95 for a Renewable Fuel-Fired Industrial Cogeneration Facility or 75 for a By-Product Fuel-Fired Industrial Cogeneration Facility, as applicable, then the Supplier shall pay the Buyer an Annual Fuel Adjustment Amount for such Contract Year, calculated in accordance with Section 4.1(a).

(d) Without limiting the generality of the foregoing, a Supplier who is also a load facility under the IESO Market Rules shall be solely responsible for all charges (net of any applicable credits) in relation to Electricity consumed by it in order to operate the Facility in accordance with this Agreement.

2.9 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 Facility to the expiry of the Term, at its own cost and expense, with insurers having an overall A.M. Best rating of at least A- and financial size

of category VIII or equivalent rating and permitted to provide insurance in the Province of Ontario (in the case of the "all-risk" property insurance under clause (i) below) or licensed to underwrite insurance in the Province of Ontario (in the case of the commercial general liability and environmental/pollution liability under clauses (ii) and (iii) below), all the necessary and appropriate insurance that a prudent Person in the business of the Supplier developing and operating the Facility would maintain including the following:

(i) "all-risk" property and equipment breakdown insurance covering property of every description, in the joint names of at least the Supplier and, during construction, its principal contractors, insuring not less than the full replacement value of the Facility with deductibles for all perils as follows:

(A) prior to the Commercial Operation Date:

an amount equal to the greater of: (i) $100,000 and (ii) $5,000 per MW of Nameplate Capacity to a maximum of $250,000 for any one loss (but the lesser of (x) $3,000,000 and (y) $50,000 per MW of Nameplate Capacity with respect to start up and testing perils and major equipment). The policy shall also provide delayed start-up coverage on not less than a gross earnings form with an indemnity period of not less than twelve (12) months and a waiting period deductible of not more than sixty (60) days; and

(B) from and after the Commercial Operation Date:

an amount equal to the greater of: (i) $100,000 and (ii) $5,000 per MW of Nameplate Capacity to a maximum of $250,000 for any one loss (but the lesser of (x) $3,000,000 and (y) $50,000 per MW of Nameplate Capacity with respect to major equipment). The policy shall also provide for business interruption coverage with a waiting period of not more than sixty (60) days.

In the event that such insurance coverage is not available to the Supplier on commercially reasonable terms, the insurance requirements may be modified provided that the Supplier provides to the Buyer evidence confirming the unavailability of such insurance coverage on commercially reasonable terms. Any modification to such insurance coverage shall be subject to the approval of the Buyer acting reasonably.

These policies shall contain a waiver of subrogation in favour of the Buyer and each of its directors, officers and employees and a severability of interest and cross-liability endorsement. During the construction of the Facility 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 extended to include testing and commissioning or their equivalent replacement;

(ii) commercial general liability insurance on an occurrence basis for death, bodily injury and property damage that may be caused to third parties as a result of the Supplier's activities in connection with the Facility 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) the Buyer and each of its 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) cross-liability and severability of interest endorsements;

(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 extended for a period of twenty-four (24) months after the Commercial Operation Date; and

(I) coverage for liability on the part of the Supplier resulting from activities or work performed by its contractors and subcontractors;

(iii) environmental/pollution liability insurance, providing coverage for first party property damage and site clean-up 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 Facility, with a limit of not less than $5,000,000 per occurrence and in the aggregate. The policy shall include as additional insureds the Buyer and each of its 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. The policy shall include a severability of interest and cross-liability endorsement; and

(iv) professional liability insurance covering liability arising out of the rendering or failure to render professional services by or on behalf of the Supplier and its contractors, with a limit per claim and in the aggregate equal to the greater of: (i) $1,000,000; and $25,000 per MW of Nameplate Capacity to a maximum of $5,000,000, and a deductible not to exceed $250,000. This insurance shall be written on a claims made basis, with an extended reporting period of 24 months from the Commercial Operation Date. The policy shall contain a severability of interests clause.

(b) For purposes of the insurance coverage under Section 2.9(a)(i), 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.

(c) 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 Facility, and renewals or 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 2.9(a)(ii), (iii) and (iv) shall be endorsed to provide the Buyer with not less than thirty (30) days notice in writing in advance of any cancellation, and of any change or amendment restricting coverage.

(d) 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 this 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 contractors and subcontractors pays when due, all amounts required to be paid by it and its contractors and 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 contractors and 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.

2.10 Compliance with Laws and Regulations and Registration with the IESO

(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.

(c) Unless required by the IESO, registration by the Supplier with the IESO as a "Metered Market Participant" and as a "Generator" pursuant to the IESO Market Rules will be optional. If the IESO requires or the Supplier chooses such registration:

(i) the settlement of Market Settlement Charges shall take place directly between the Supplier as the "Metered Market Participant" and the IESO, and any costs incurred by the Supplier acting as the "Metered Market Participant" pursuant to the IESO Market Rules in respect of this Agreement shall be charged to and be the sole responsibility of the Supplier and

(ii) the Supplier agrees to meet all applicable Facility registration requirements as specified in the IESO Market Rules.

2.11 Environmental Attributes and Future Contract Related Products

(a) The Supplier shall from time to time during the Term of this Agreement, on behalf of the Buyer, obtain, qualify and register with the relevant authorities or agencies all Future Contract Related Products (including Environmental Attributes that are created and allocated or credited with respect to the Facility pursuant to applicable legislation) and same shall be immediately transferred or assigned to, or to the extent transfer or assignment is not permitted, held in trust for, the Buyer who thereafter shall, subject to Section 2.11(g), retain, all rights, title, and interest to or in all such Future Contract Related Products. The Supplier shall not participate in any voluntary programs with respect to any Environmental Attributes associated with the Facility that are Future Contract Related Products without the prior written consent of the Buyer, which consent may be unreasonably withheld.

(b) Notwithstanding Section 2.11(a), the Supplier shall continue to be entitled to all right, title and interest to all emission allowances and Emission Reduction Credits that pertain to the Facility and of a type that were available under the Ontario Emissions Trading Program as of the date of the CHP RFP. 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 entitlementto the levels in effect as of the date of the Supplier's claim to any such entitlement.

(c) The Parties acknowledge that the Government of Canada is proposing upcoming regulations covering greenhouse gas emissions that may be applicable to the Facility that may contain provisions for greenhouse gas emissions permits, credits or other allowances (the "**Federal Emissions Credits**"), and those Federal Emissions Credits to which the Buyer is entitled from time to time pursuant to Section 2.11(a) shall be referred to as the "**Current Credit Entitlement**". If these regulations are promulgated, and once the applicable details of such regulations and their effect on the Buyer and Supplier are known, then the Buyer agrees to propose such amendments to this Agreement to the Supplier and, at the Buyer's discretion, to all of the Other Suppliers that are required by the Buyer to participate, based on the principles set out in Section 2.11(d) (the "**Replacement Provision(s)**"). If the Parties are unable to agree on the Buyer's proposal or that of the Supplier or any of those Other Suppliers, as the case may be, within thirty (30) days after the applicable details of such regulations covering greenhouse gas emissions have been published, 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 I. However, if the Supplier fails to participate in such arbitration, the Supplier acknowledges that it waives its right to participate in such arbitration, which shall nevertheless proceed, and the Supplier shall be bound by the award of the Arbitration Panel and the subsequent amendments to the Agreement made by the Buyer to implement such award of the Arbitration Panel pursuant to Section 2.11(e).

(d) For the purposes of Section 2.11(c), the Replacement Provision(s) shall reflect the following principles:

(i) the Supplier shall, pursuant to Sections 2.11(d)(ii) but subject to Section 2.11(d)(v), obtain those Federal Emissions Credits that are required pursuant to legislation for the Supplier to operate the Facility in accordance with this Agreement and for the Facility or the Host Facility to meet emissions targets, in exchange for no direct or indirect payment from, or set-off against, the Supplier;

(ii) the Buyer will transfer or assign to, or to the extent transfer or assignment is not permitted, hold in trust for, the Supplier, or otherwise relinquish the Buyer's rights to, such Federal Emissions Credits that are required pursuant to legislation for the Supplier to operate the Facility in accordance with this Agreement or for the Facility or the Host Facility to meet emissions targets, provided that, except as provided in Section 2.11(d)(iv)(B), the Buyer has no obligation to transfer, assign, hold in trust or otherwise relinquish to the Supplier any interest in Federal Emissions Credits under the regulations in excess of the Current Credit Entitlement;

(iii) that the Supplier will not be entitled to any Federal Emissions Credits otherwise allocated to it under the regulations other than those that are required pursuant to legislation for the Supplier to operate the Facility in

accordance with this Agreement or for the Facility or the Host Facility to meet emissions targets and shall transfer or assign to the Buyer, or to the extent transfer or assignment is not permitted, hold in trust for, the Buyer, or otherwise relinquish the Supplier's rights to, such excess Federal Emissions Credits;

(iv) for any Settlement Month, at the sole option of the Buyer, the Buyer may select the application of either subparagraph (A) or subparagraph (B) below:

(A) an amount equal to the reasonable cost of Federal Emissions Credits that are required by the Supplier in excess of the Current Credit Entitlement (the "**Further Credits**") and available to the Supplier (acting prudently and excluding transaction costs) shall be added to the Monthly Payment by the Buyer to the Supplier or the deducted from the Monthly Payment from the Supplier to the Buyer, as applicable; or

(B) the Buyer shall obtain the Further Credits and transfer them to the Supplier at no cost to the Supplier;

(v) in the event that, in the Settlement Month referred to in paragraph (iv), the Buyer is unable, at reasonable expense and effort, to exercise an option described in either subparagraphs (A) or (B) of such paragraph (iv), the relevant amendments to this Agreement will otherwise ensure that the requirements of the Supplier for Further Credits do not result in an adverse economic effect on the Supplier, but only to the extent of an adverse economic effect that would have been remedied by the Buyer's exercise of an option described in either subparagraphs (A) or (B) and no other adverse economic effect; and

(vi) subject to the Buyer complying with its obligations herein relating to the portion of the Current Credit Entitlement required to operate the Facility in accordance with this Agreement, the Buyer shall be entitled to transfer, trade, sell, encumber or otherwise deal with the Current Credit Entitlement in its sole discretion.

(e) The terms of this Agreement shall be amended either:

(i) by the agreement of the Parties, where no award of an Arbitration Panel has been made pursuant to Section 2.11(c);

(ii) by the agreement of the Parties made pursuant to and to implement an award of the Arbitration Panel, made pursuant to Section 2.11(c); or

(iii) by an amendment prepared by the Buyer made pursuant to and to implement an award of the Arbitration Panel made pursuant to Section 2.11(c), where the Supplier failed to participate in such arbitration,

with such agreement or amendment, as the case may be, having effect from and after the date that the applicable details of such greenhouse gas regulations and their effect on the Buyer and Supplier were known.

(f) The Supplier will provide the Buyer with prior written notice of the development by the Supplier of any Future Contract Related Products from time to time.

(g) Upon the expiry of the Term or any termination of this Agreement:

(i) to the extent that the Buyer determines, acting reasonably, that any portion of the Current Credit Entitlement relates to the period up to and including the expiry of the Term or the termination of this Agreement, then such portion of the Current Credit Entitlement shall remain the sole and absolute property of the Buyer, without compensation to or set-off in favour of the Supplier and where the Supplier was holding such portion of the Current Credit Entitlement in trust for the Buyer, the Supplier shall continue to hold such portion of the Current Credit Entitlement in trust for the Buyer; and

(ii) to the extent that the Buyer determines, acting reasonably, that any portion of the Current Credit Entitlement relates to the period after the expiry of the Term or the termination of this Agreement, then the Buyer shall transfer or assign to, or to the extent transfer or assignment is not permitted, hold in trust for, the Supplier, the Buyer's rights, title and interest to or in such portion of the Current Credit Entitlement.

Notwithstanding the foregoing, in the event of a termination of this Agreement as a result of a Supplier Event of Default, then in addition to any other remedies available to the Buyer under this Agreement, the entire Current Credit Entitlement, regardless of the period to which the Current Credit Entitlement relates, shall remain the sole and absolute property of the Buyer, without compensation to or set-off in favour of the Supplier, as liquidated damages and not as a penalty.

2.12 Restatement

(a) If permitted in accordance with its Proposal, the Supplier may, one time during the Term on a minimum of ninety (90) days written notice to the Buyer, restate the Contract Price and/or the Submitted Hourly Electricity Profile, subject to the following:

(i) a Restatement shall not be permitted if the Proposal does not specify an Incremental Contract Price expressed in the same format (expressed in

Dollars and cents per MWH) as the Contract Price, a Restated Submitted Hourly Electricity Profile expressed in the same format as the Submitted Hourly Electricity Profile and the earliest Restatement date (the "**Earliest Restatement Date**") as set out in Exhibit B;

(ii) the "**Restatement Date**" shall be the later of: (A) the date specified for Restatement in the Proposal, provided that the Supplier has demonstrated to the Buyer's reasonable satisfaction the matters set out in Section 2.12(a)(iii); and (B) the date the agreement between the Supplier and the Host Facility for the supply of Useful Heat Output from the Facility expires in accordance with its terms, including any renewals thereof;

(iii) a Restatement shall not be permitted unless the Supplier has first demonstrated to the Buyer's reasonable satisfaction that:

(A) the Host Facility has permanently ceased to purchase any of the Facility's Useful Heat Output;

(B) to the knowledge of the Supplier, the Host Facility has not acquired, nor does it intend to acquire during the remainder of the Term, any thermal energy from any source other than the Facility, where such acquired thermal energy could reasonably be considered a replacement, in whole or in part, of the Useful Heat Output provided by the Facility; and

(C) the Supplier has:

A. exhausted all commercially reasonable avenues of legal recourse to enforce continuation or reinstatement of the purchase of Useful Heat Output by the Host Facility; and

B. failing such continuation or reinstatement, exhausted all commercially reasonable avenues of legal recourse to obtain financial compensation from the Host Facility and used the net proceeds of any compensation so received to defer the Restatement Date by the same amount of time that the Restatement Date would otherwise have been deferred if the compensation so received had instead been revenue received from continued Useful Heat Output sales to the Host Facility;

(iv) following implementation of a Restatement, the Useful Heat Output that was previously supplied to the Host Facility pursuant to an Off-Take Agreement may not, without the consent of the Buyer, which consent may not be unreasonably withheld, be used for any purpose other than to generate additional Electricity at the Facility for the purpose of meeting

the Supplier's obligations arising from a Restatement of the Submitted Hourly Electricity Profile;

(v) unless the Buyer agrees otherwise, the Supplier shall implement, on or before the Restatement Date, or as soon as practicable thereafter, the reconfiguration of the Facility equipment as set forth in the Proposal to occur on a Restatement.

(b) The Supplier shall be considered to have satisfied the requirements of Section 2.12(a)(iii) if it delivers a statutory declaration, in the form attached as Exhibit K.

(c) Upon a Restatement in accordance with this Agreement, on and after the Restatement Date, the Contract Price shall be replaced by the Contract Price plus the Incremental Contract Price and the Submitted Hourly Electricity Profile shall be replaced by the Restated Submitted Hourly Electricity Profile.

2.13 Covenants in respect of Host Facility

(a) If the Host Facility is a Host Developed Contract Facility and the Supplier is not also the Host, the Supplier shall have caused the delivery prior to the date hereof, or shall cause the delivery concurrently with the execution of this Agreement, the guarantee in the form of Exhibit Q.

(b) Except with the prior written consent of the Buyer, which consent may not be unreasonably withheld, the Supplier shall not change, replace or substitute the Host or Host Facility during the Term. Notwithstanding the foregoing, the prior written consent of the Buyer shall not be required (i) for the sale of the Host Facility, provided that the Supplier has provided prompt written notice of such sale to the Buyer and the new owner of the Host Facility has agreed in writing to assume the Off-Take Agreement and the Host related obligations under this Agreement, including, if applicable, the provision of a guarantee in the form of Exhibit Q or (ii) with respect to a take-over bid made for the voting securities of the Host or an amalgamation, merger, arrangement or similar statutory procedure by which the Host combines with another entity, provided that the Supplier has provided prompt written notice of such take-over bid, amalgamation, merger, arrangement or other statutory procedure to the Buyer.

(c) The Supplier shall not, during the Term, enter into an Off-Take Agreement with a Host whose primary business is the generation of Electricity.

ARTICLE 3
ELECTRICITY AND RELATED PRODUCTS

3.1 Sale and Purchase of Electricity and Future Contract Related Products

(a) From and after the Term Commencement Date, the Supplier agrees to sell and to deliver to the Delivery Point and:

(i) the Buyer agrees to pay the Supplier in each month of a Contract Year (i) for the Delivered Electricity at the Contract Price up to the point in time during such month that the Delivered Electricity equals 125% of the Proposed Monthly Delivered Electricity and (ii) after such point in time during such month, for the Delivered Electricity, if any, in excess of 125% of the Proposed Monthly Delivered Electricity, at HOEP or such other market price applicable during the Term;

(ii) the Supplier agrees to pay the Buyer the Delivered Electricity at the HOEP or such other market price applicable during the Term; and

(iii) the Buyer shall receive the benefit of all Future Contract Related Products as requested or approved by the Buyer for no additional remuneration (except as expressly set forth in Section 3.4), and the Supplier agrees to deliver all Future Contract Related Products as requested or approved by the Buyer to the IESO-Administered Markets or other markets on behalf, or for the benefit, of the Buyer. Without limiting the generality of the foregoing, the Supplier shall from time to time during the Term, on behalf of the Buyer, obtain, qualify and register with the relevant authorities or agencies all Future Contract Related Products (including Environmental Attributes related to the Facility or the Contract Capacity that are created pursuant to applicable legislation) and, for no additional remuneration save and except for that described in Section 3.4(c), same shall be immediately transferred, assigned or held in trust for the Buyer who thereafter shall retain all right, title and interest in all such Future Contract Related Products. The Buyer shall be entitled, unilaterally and without the consent of the Supplier, to retire or cancel any or all such Future Contract Related Products from time to time, regardless of whether any consideration is being received by the Buyer therefor. The Supplier covenants not to sell, supply or deliver any Future Contract Related Products to the IESO-Administered Markets or other markets, unless such Contract Related Products have been requested or approved by the Buyer. Notwithstanding the foregoing, the Supplier shall not participate in any voluntary programs with respect to any Future Contract Related Products associated with the Facility without the prior written consent of the Buyer, which consent may be unreasonably withheld.

(b) For greater certainty, all Related Products other than Future Contract Related Products shall belong to the Supplier.

3.2 Delivery of Electricity and Related Products

If the Supplier is a "market participant" with the IESO, the Supplier shall meet the requirements of the IESO Market Rules, including the provision of dispatch data for Delivered Electricity and Contract Related Products required to include these services in the IESO-Administered Markets at no less than minus $1.00 per MWh and no more than the Supplier's variable cost for generating same. For greater certainty, in such case, the Supplier's variable cost shall be determined on an actual cost basis incurred by the Supplier without markup, as first confirmed by the Buyer and the Supplier, and which shall be subject to verification by the Buyer from time to time.

3.3 Risk and Responsibility for Delivered Electricity and Contract Related Products

As between the Buyer and the Supplier, the Supplier shall be responsible for, and shall indemnify, defend and hold harmless the Indemnitees against, any loss, damage, action, cost and expense (including Market Settlement Charges, if applicable, and reasonable legal costs and expenses) or injury to any Person or property, caused by the generation, sale and delivery of the Electricity and Related Products hereunder, except to the extent that any loss, damage, action, cost, expense or injury is attributable to the negligence or wilful misconduct of the Indemnitees.

3.4 Monthly Payment

The total payment from the Buyer to the Supplier for selling the Electricity and Future Contract Related Products flowing from the Contract Capacity for a given month of the Term (the "**Monthly Payment**") shall be an amount expressed in Dollars and cents and equal to:

(a) the Contract Price multiplied by the Monthly Delivered Electricity, up to a maximum of 125% of the Proposed Monthly Delivered Electricity, as set forth in Section 3.1(a)(i);

plus

(b) HOEP or such other market price as may be applicable at the time multiplied by the Monthly Delivered Electricity in excess of 125% of the Proposed Monthly Delivered Electricity, as set forth in Section 3.1(a)(i);

minus

(c) in relation to the supply and delivery of any Future Contract Related Products pursuant to Section 3.1(a), an amount equal to 80% of the difference, if positive, of the total revenues received by the Supplier from the sale of such Future Contract Related Products in the IESO-Administered Markets or other markets for that month less the Approved Incremental Costs. For the purposes of this Section 3.4(c), "**Approved Incremental Costs**" means the incremental costs incurred by the Supplier for that month in excess of the cost of production of the Delivered Electricity, relating to the supply and delivery of such Contract Related Products, and which costs are reasonable and have first been verified and approved by the

Buyer. For greater certainty, the no payments shall be made under this Section 3.4(c) in respect of Future Contract Related Products unless the Buyer has requested or required such Future Contract Related Products pursuant to Section 3.1(a) or the Supplier has first obtained the Buyer's prior written approval to the supply and delivery of such Future Contract Related Products,

minus

(d) the Electricity delivered in each hour of such month multiplied by the corresponding HOEP applicable in those hours (or such other market price as may be applicable at the time).

For greater certainty, if the amount set forth in paragraphs (c) and (d) above exceeds the aggregate of the amounts set forth in paragraphs (a) and (b) above, the Supplier shall make a payment to the Buyer for such month equal to the excess.

3.5 Indexation of Portion of Contract Price

The Parties agree that a portion equal to [● **percent (●%)**] [**as specified in the Proposal**] of the Initial Contract Price (with such portion, as adjusted for indexation as set out below, being the "**Indexed Portion**") shall be indexed to the percentage increase or decrease (if any) between the Consumer Price Index effective as of January 1 of each year during the Term and the Consumer Price Index effective as of January 1 of the prior year, with the exception of the first year of the Term, where the percentage increase or decrease (if any) as calculated above shall then be prorated by the ratio of the number of days from the Term Commencement Date to and including December 31 of that year in which the Term Commencement Date falls, divided by 365. The remaining percentage of the Initial Contract Price (the "**Unindexed Portion**") shall not be subject to any indexation whatsoever. The Contract Price for a given calendar year during the Term is the sum of the Unindexed Portion and the Indexed Portion, and is calculated as follows:

$\mathbf{CP}_y = UIP + IP_y$	
where:	
CP_y	is the Contract Price applicable in calendar year "**y**" during the Term, expressed in $/MWh.
UIP	is the Unindexed Portion, expressed in $/MWh.
IP_y	is the Indexed Portion applicable in calendar year "**y**" during the Term, expressed in $/MWh, as adjusted for indexation as set out above on January 1 of such year.

3.6 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 Delivered Electricity and Future Contract Related Products sold hereunder which may be imposed up to the Delivery Point. 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.

3.7 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 the Electricity and Future Contract Related Products sold hereunder which may be imposed at and from the Delivery Point. The Contract Price does not include any GST or PST payable by the Buyer in respect of the Electricity and Future Contract Related Products purchased hereunder. If any GST or PST is payable in connection with the Electricity and Future Contract Related Products purchased hereunder, such GST or PST shall be paid by the Buyer. In the event that the Supplier is required to remit such Taxes, the amount thereof shall be deducted from any sums becoming due to the Buyer hereunder.

3.8 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
ANNUAL ADJUSTMENT AMOUNTS

4.1 Annual Profile Adjustment Amount

(a) Within sixty (60) days after the end of each Contract Year, the Buyer shall determine the Annual Price Ratio for the Contract Year just ended. If the Annual Price Ratio for such Contract Year is greater than 1.05 or less than 0.95, the Buyer or the Seller shall pay, respectively, an amount (the "**Annual Profile Adjustment Amount**") calculated in accordance with Section 4.2(b) or 4.2(c), as applicable.

(b) If the Annual Price Ratio for such Contract Year is greater than 1.05 the Buyer shall pay the Supplier an Annual Profile Adjustment Amount for such Contract Year, determined in accordance with the following formula:

Payment to Supplier = [APWAP – (1.05) x (ASPWAP)] x Q	
where:	
APWAP	is the Annual Production-Weighted Average Price, expressed in $/MWh, for such Contract Year;
ASPWAP	is the Annual Submitted Profile-Weighted Average Price, expressed in $/MWh, for such Contract Year; and
Q	is the Contract Price Delivered Electricity, expressed in MWh, for such Contract Year.

(c) If the Annual Price Ratio for such Contract Year is less than 0.95, the Supplier shall pay the Buyer an Annual Profile Adjustment Amount for such Contract Year, determined in accordance with the following formula:

Payment to Buyer = [(0.95) x (ASPWAP) – APWAP] x Q

where ASPWAP, APWAP and Q have the same meanings as set out in Section 4.1(b) above.

(d) If the Annual Price Ratio for a Contract Year is equal to or greater than 0.95 and less than or equal to 1.05, neither Party shall owe the other Party a payment in respect of an Annual Profile Adjustment Amount for such Contract Year.

(e) The amount of the Annual Profile Adjustment Amount shall be included in the Statement for the Settlement Month following the date of determination and shall be paid in accordance with Article 5.

4.2 Annual Fuel Adjustment Amount

(a) In the event that the Actual Fuel Percentage for a Contract Year, as determined in accordance with Section 2.8(c), is less than 95 for a Renewable Fuel-Fired Industrial Cogeneration Facility or less than 75 for a By-Product Fuel-Fired Industrial Cogeneration Facility, the Supplier shall pay to the Buyer an amount (the "**Annual Fuel Adjustment Amount**") for such Contract Year, determined in accordance with the following formula:

Payment to Buyer = (CPy) x [1 – (AFP / MRFP)] x Q	
where:	
CPy	is the Contract Price, expressed in $/MWh, in the Contract Year for which the Actual Fuel Percentage was determined;
AFP	is the Actual Fuel Percentage, expressed as a ratio, for such Contract Year, provided that (i) if the Facility is a Renewable Fuel-Fired Industrial Cogeneration Facility and AFP for such Contract Year is below 0.80, it shall be deemed to be 0.80 and (ii) if the Facility is a By-Product Fuel-Fired Industrial Cogeneration Facility and AFP for such Contract Year is below 0.60, it shall be deemed to be 0.60;
MRFP	is the Minimum Required Fuel Percentage applicable the Facility, expressed as a ratio; and
Q	is the Contract Price Delivered Electricity, expressed in MWh, for such Contract Year.

(b) If the Actual Fuel Percentage is equal to or greater than 0.95 (in the case of a Renewable Fuel-Fired Industrial Cogeneration Facility) or 0.75 (in the case of a By-Product Fuel-Fired Industrial Cogeneration Facility), the Supplier shall not owe the Buyer an Annual Fuel Adjustment Amount for such Contract Year.

(c) The amount of the Annual Fuel Adjustment Amount shall be included in the Statement for the Settlement Month following the date of determination and shall be paid in accordance with Article 5.

ARTICLE 5
STATEMENTS AND PAYMENTS

5.1 Meter and Other Data

The Supplier agrees to provide to the Buyer access to the meters in the Metering Plan to accommodate remote interrogation of the metered data on a daily basis at all times. If the Supplier is not a "**market participant**" with the IESO, the Supplier shall provide to the Buyer access at all times to any data or information relating to the Facility (including information related to Outages), that would have been provided to the IESO if the Supplier were governed by the IESO Market Rules, forthwith upon request by the Buyer. The Supplier shall notify the Buyer of any errors and omissions in any such data or information on a timely basis so as to permit the Buyer, within a reasonable time, to require the IESO, if applicable, to correct such errors and omissions pursuant to the IESO Market Rules. Upon a Party becoming aware of any errors or omissions in any data or information provided in accordance with this Section 5.1, such Party shall notify the other Party, and if applicable, the IESO in accordance with the IESO Market Rules, on a timely basis.

5.2 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 (including, if applicable, any costs of a metering service provider retained by the Buyer to be reimbursed by the Supplier). 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 and a description of the components of the Monthly Payment and other payments owing to the Supplier for the Settlement Month.

5.3 Payment

The Party owing the Monthly Payment shall remit to the other Party 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 5.5, or as otherwise agreed by the Parties.

5.4 Interest

The Party owing the Monthly Payment 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 the 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.

5.5 Payment Account Information

Account for payments to Supplier:

Bank:
Bank address:

Account Name:
Account Number:
Transit Number:

GST Registration Number of Supplier:

The Buyer acknowledges that the account information and GST registration number of the Supplier above constitutes Supplier's Confidential Information and is subject to the obligations of the Buyer as set out in Article 8.

Account for payments to Buyer:

Royal Bank of Canada
Main Branch
200 Bay Street, Main Floor
Toronto, ON M5J 2J5

Account Number: [•1
Transit Number: 00002

GST Registration Number of Buyer:

85419 5039 RT0001

The Supplier acknowledges that the account information and GST registration number of the Buyer above constitutes Buyer' s Confidential Information and is subject to the obligations of the Supplier as set out in Article 8.

Either Party may change its account information from time to time by written notice to the other in accordance with Section 15.8.

5.6 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, if the Supplier is a "**market participant**" with the IESO, the determination by the IESO of any information shall be final and binding on the Parties in accordance with the IESO Market Rules, and without limiting the generality of the foregoing, if a Statement contains an error in the data or information issued by the IESO which the IESO has requested be corrected, then the one (1) year limit set forth in Section 5.6(a) shall not apply to the correction of such error or the Buyer's ability to readjust the Statement.

(c) Subject to Section 5.7, any adjustment to a Statement made pursuant to this Section 5.6 shall be made in the next subsequent Statement.

5.7 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 any amount due under 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 16.1.

5.8 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 15.2.

ARTICLE 6
CREDIT AND SECURITY REQUIREMENTS

6.1 Completion and Performance Security

(a) The Parties acknowledge that the Supplier has, prior to the execution of this Agreement, provided to the Buyer security for the performance of the Supplier's obligations under this Agreement in an amount equal to $20,000 per MW of Average Annual Contract Capacity up to a maximum of $2,000,000 and in the form described in Section 6.2 (the "**Initial Completion and Performance Security**").

(b) The Parties agree that the Supplier shall provide to the Buyer:

(i) on or before the date that is thirty (30) days after the date of this Agreement, additional security (the "**First Additional Completion and Performance Security**") for the performance of the Supplier's obligations under this Agreement in an amount equal to an additional $5,000 per MW of Average Annual Contract Capacity up to an aggregate maximum (inclusive of the Initial Completion and Performance Security) of $5,000,000 and in the form described in Section 6.2;

(ii) on or before the date that is sixty (60) days after the date of this Agreement, additional security (the "**Second Additional Completion and Performance Security**") for the performance of the Supplier's obligations under this Agreement in an amount equal to an additional $5,000 per MW of Average Annual Contract Capacity up to an aggregate maximum (inclusive of the Initial Completion and Performance Security and the First Additional Completion and Performance Security) of $5,000,000 and in the form described in Section 6.2; and

(iii) on or before the date that is ninety (90) days after the date of this Agreement, additional security (the "**Third Additional Completion and Performance Security**") for the performance of the Supplier's obligations under this Agreement in an amount equal to an additional $5,000 per MW of Average Annual Contract Capacity up to an aggregate maximum (inclusive of the Initial Completion and Performance Security, the First Additional Completion and Performance Security and the Second Additional Completion and Performance Security) of $5,000,000 and in the form described in Section 6.2;

(c) The Parties agree that the Supplier shall provide to the Buyer, on or before the earlier of Financial Closing and the date that is three hundred and sixty-five (365) days after the date of this Agreement, further security (the "**Remaining Completion and Performance Security**", and together with the Initial Completion and Performance Security, the First Additional Completion and Performance Security, the Second Additional Completion and Performance Security and the Third Additional Completion and Performance Security, the "**Completion and Performance Security**") for the performance of the Supplier's obligations under this Agreement in an amount equal to an additional $15,000 per MW of Average Annual Contract Capacity up to an aggregate maximum (inclusive of the Initial Completion and Performance Security, the First Additional Completion and Performance Security, the Second Additional Completion and Performance Security and the Third Additional Completion and Performance Security) of $25,000,000 and in the form described in Section 6.2.

(d) Effective upon the Term Commencement Date, and provided that the Buyer has determined that any liquidated damages payable by the Supplier under Section 2.5 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 Average Annual Contract Capacity, to a maximum of $25,000,000. The amount of the Completion and Performance Security shall be reduced to an amount equal to (i) $20,000 per MW of Average Annual Contract Capacity effective upon the fifth anniversary of the Term Commencement Date, (ii) $15,000 per MW of Average Annual Contract Capacity effective upon the tenth anniversary of the Term Commencement Date and (iii) $10,000 per MW of Average Annual Contract Capacity effective upon the fifteen anniversary of the Term Commencement Date, in each case to a maximum of $25,000,000.

(e) If the Buyer has agreed to an increase in the Contract Capacity pursuant to Section 2.1(c), then the amount of the Completion and Performance Security shall be increased in accordance with this Section. 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.

(f) If prior to Financial Closing or the date of receipt by the Buyer of the Completion and Performance Security, there occurs or arises incidents, events or circumstances which results, or is likely to result, in a delay in the aggregate of thirty (30) days or more in the achievement of Commercial Operation by the Milestone Date therefor, including delays arising from events of Force Majeure, the Party first becoming aware of such delay or likely delay shall promptly (and, in any event, within ten (10) Business Days) notify the other Party and the Parties shall meet to discuss strategies for restoring, to the extent possible and practicable to do so, the development, construction and/or commissioning of the Facility to the schedule which will achieve Commercial Operation by the Milestone Date therefor. Notwithstanding the foregoing and any other provision of this Agreement, an event of Force Majeure shall not extend the date by which the Additional Completion and Performance Security and Remaining Completion and Performance Security are required to be provided by the Supplier pursuant to Section 6.1(a) and 6.1(b), respectively.

6.2 Composition of Security

(a) Prior to the Term Commencement Date, 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 Section 6.2(b)(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 6.2(d), a Guarantee, up to a maximum amount determined pursuant to Section 6.4, but not to exceed ninety percent (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 6, 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 the amount specified in Section 6.1(d) at the relevant date.

(c) If the aggregate of the Supplier's Creditworthiness Value determined pursuant to Section 6.4(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 6.2(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 6.4(b) is equal to or greater than the Creditworthiness Value of the Guarantor determined pursuant to Section 6.4(b), provided the Guarantor has a Credit Rating required of a guarantor as set out in Section 6.4; 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 6.2(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.

6.3 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, without limiting any other remedies the Buyer may have under this Agreement, the Buyer may draw on the undrawn portion of any outstanding Letter of Credit and retain for its own account, as liquidated damages and not as a penalty, the amount of one (1%) percent of the face value of such outstanding Letter of Credit and/or may draw on the entire, undrawn portion of any outstanding Letter of Credit, as liquidated damages and not as a penalty, 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 6.3(a), within five (5) Business Days from the Buyer's receipt of such substituted Letter of Credit.

6.4 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 6.4(b)(i), will be automatically demoted by one row in the table in Section 6.4(b)(i). 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. Subject to Section 6.2(a), the amount of the Guarantee shall be equal to or less than the Creditworthiness Value of the Guarantor, failing which the Supplier shall be required to provide alternative acceptable security as provided in Section 6.2(c) so as to remain in compliance

with the Completion and Performance Security requirements set out in Section 6.1.

(b) (i) A Person's creditworthiness value (the "**Creditworthiness Value**") shall be determined by the following formula:

S x 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 column entitled "**Value of T**" in the table below of the appropriate row corresponding to the Person's Credit Rating as adjusted by any Negative Outlook in accordance with Section 6.4(a) or 6.4(b)(ii), as applicable, 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 in accordance with Section 6.4(a) or 6.4(b)(ii), as applicable, 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

(ii) In the event that any Person has a Negative Outlook, then its Credit Rating will automatically be demoted by one row in the table in Section 6.4(b)(i).

(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 this Agreement that refer to (i) the Guarantor or similar references, or (ii) the Creditworthiness Value of the Guarantor or similar references, shall:

(1) 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

(2) 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.

6.5 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 one hundred and twenty (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 6.5 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 6.2(d), then the obligations to provide financial statements under this Section 6.5 shall apply in full to the Supplier instead of the Guarantor.

6.6 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 7
REPRESENTATIONS

7.1 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 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) As at the date hereof, 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) As at the date hereof, 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 hereunder 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.

7.2 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 without share capital created under the laws 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 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) As at the date hereof, 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) As at the date hereof, 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 8
CONFIDENTIALITY AND FIPPA

8.1 Confidential Information

From the date of this Agreement to and following the expiry of the Term, the Receiving Party shall keep confidential and secure and not disclose Confidential Information, except as follows:

(a) The Receiving Party may disclose Confidential Information to its Representatives who need to know Confidential Information for the purpose of assisting the Receiving Party in complying with its obligations under this Agreement. On each copy made by the Receiving Party, the Receiving Party must reproduce all notices which appear on the original. The Receiving Party shall inform its Representatives of the confidentiality of Confidential Information and shall be responsible for any breach of this Article 8 by any of its Representatives;

(b) If the Receiving Party or any of its Representatives are requested or required (by oral question, interrogatories, requests for information or documents, court order, civil investigative demand or similar process) to disclose any Confidential Information in connection with litigation or any regulatory proceeding or investigation, or pursuant to any applicable law, order, regulation or ruling, the Receiving Party shall promptly notify the Disclosing Party. Unless the Disclosing Party obtains a protective order, the Receiving Party and its Representatives may disclose such portion of the Confidential Information to the Party seeking disclosure as is required by law or regulation in accordance with Section 8.2;

(c) Where the Supplier is the Receiving Party, the Supplier may disclose Confidential Information to any Secured Lender or investor or prospective Secured Lender or

investor and its advisors, to the extent necessary for securing financing for the Facility, provided that any such lender or investor has been informed of the Supplier's confidentiality obligations hereunder and such lender or investor has covenanted in favour of the Buyer to hold such Confidential Information confidential on terms substantially similar to this Article 8; and

(d) 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 who have entered into a CHP Contract, for the purposes of Sections 1.7, 1.8, 1.9 and 1.10.

8.2 Notice Preceding Compelled Disclosure

If the Receiving Party or any of its Representatives are requested or required to disclose any Confidential Information, the Receiving Party shall promptly notify the Disclosing Party of such request or requirement so that the Disclosing Party may seek an appropriate protective order or waive compliance with this Agreement. If, in the absence of a protective order or the receipt of a waiver hereunder, the Receiving Party or its Representatives are compelled to disclose the Confidential Information, the Receiving Party and its Representatives may disclose only such of the Confidential Information to the party compelling disclosure as is required by law only to such Person or Persons to which the Receiving Party is legally compelled to disclose and, in connection with such compelled disclosure, the Receiving Party and its Representatives shall provide notice to each such recipient (in co-operation with legal counsel for the Disclosing Party) that such Confidential Information is confidential and subject to non-disclosure on terms and conditions equal to those contained in this Agreement and, if possible, shall obtain each recipient's written agreement to receive and use such Confidential Information subject to those terms and conditions.

8.3 Return of Information

Upon written request by the Disclosing Party, Confidential Information provided by the Disclosing Party in printed paper format or electronic format will be returned to the Disclosing Party and Confidential Information transmitted by the Disclosing Party in electronic format will be deleted from the emails and directories of the Receiving Party's and its Representatives' computers; provided, however, any Confidential Information (i) found in drafts, notes, studies and other documents prepared by or for the Receiving Party or its Representatives, or (ii) found in electronic format as part of the Receiving Party's off-site or on-site data storage/archival process system, will be held by the Receiving Party and kept subject to the terms of this Agreement or destroyed at the Receiving Party's option. Notwithstanding the foregoing, a Receiving Party shall be entitled to make at its own expense and retain one copy of any Confidential Information materials it receives for the limited purpose of discharging any obligation it may have under Laws and Regulations and shall keep such retained copy subject to the terms of this Article 8.

8.4 Injunctive and Other Relief

The Receiving Party acknowledges that breach of any provisions of this Article may cause irreparable harm to the Disclosing Party or to any third party to whom the Disclosing Party owes a duty of confidence and that the injury to the Disclosing Party or to any third party may be difficult to calculate and inadequately compensable in damages. The Receiving Party agrees that the Disclosing Party 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.

8.5 FIPPA Records and Compliance

The Parties acknowledge and agree that the Ontario Power Authority is subject to FIPPA and that FIPPA applies to and governs all Confidential Information in the custody or control of the Ontario Power Authority ("**FIPPA Records**") and may, subject to FIPPA, require the disclosure of such FIPPA Records to third parties. The Supplier agrees to provide a copy of any FIPPA Records that it previously provided to the Ontario Power Authority if the Supplier continues to possess such FIPPA Records in a deliverable form at the time of the Ontario Power Authority's request. If the Supplier does possess such FIPPA Records in a deliverable form, it shall provide the same within a reasonable time after being directed to do so by the Ontario Power Authority. The provisions of this Section shall survive any termination or expiry of this Agreement and shall prevail over any inconsistent provisions in this Agreement.

ARTICLE 9
TERM

9.1 Term

(a) This Agreement shall become effective upon the date hereof.

(b) The "**Term**" means that period of time commencing at the beginning of the hour ending 01:00 hours (EST) of the first day of the Commercial Operation Date (the "**Term Commencement Date**") and ending at 24:00 hours (EST) on the day before the 20th anniversary date thereafter, subject to earlier termination in accordance with the provisions hereof. Neither Party shall have any right to extend or renew the Term except as agreed in writing by the Parties.

(c) The obligations of the Parties under Section 3.1(a) to deliver, or cause to be delivered, and sell, or to purchase and receive, or cause to be received, Electricity and Future Contract Related Products, as applicable, 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 10
TERMINATION AND DEFAULT

10.1 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 when due, or, subject to Sections 10.1(s) and 10.1(t), deliver and/or maintain the Completion and Performance Security as required under this Agreement, 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, provided that such cure period shall be extended by a further fifteen (15) Business Days if the Supplier is diligently remedying such failure and such failure is capable of being cured during such extended cure period.

(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, provided that such cure period shall be extended by a further thirty (30) Business Days if the Supplier is diligently remedying such failure or cessation and such failure or cessation is capable of being corrected during such extended cure period.

(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, provided that such cure period shall be extended by a further thirty (30) Business Days if the Supplier is diligently correcting such breach and such breach is capable of being corrected during such extended cure period.

(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 the Facility or 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, judgment or order 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 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.

(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 provisions 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 greatest of: (1) five percent (5%) of its Tangible Net Worth, (2) $50,000/MW times the Nameplate Capacity and (3) $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, provided that such cure period shall be extended by a further fifteen (15) Business Days if the Supplier is diligently remedying such default and such default is capable of being cured during such extended cure period; 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 made an Amendment that has not first been consented to by the Buyer.

(k) 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 2.5 and the full amount of the required Completion and Performance Security is being held by the Buyer in accordance with Section 6.1.

(l) The Commercial Operation Date has not occurred on or before the date which is eighteen (18) months after the Milestone Date for Commercial Operation.

(m) The Supplier has not disclosed each actual or potential Conflict of Interest (as that term is defined in the CHP RFP) in the Proposal and, if any such actual or potential Conflict of Interest is capable of being remedied, it has not been remedied within fifteen (15) Business Days after written notice of such nondisclosure from the Buyer.

(n) The Availability is less than: (i) seventy percent (70%) during the second Contract Year, (ii) seventy-five percent (75%) during the third Contract Year, or (iii) eighty percent (80%) during the fourth and each succeeding Contract Year.

(o) The Supplier undergoes a change in Control without first obtaining the written approval of the Buyer if required pursuant to Sections 16.6 or 16.7.

(p) If the Facility is a Host Developed Contract Facility, the Host or person who Controls the Host fails to hold the minimum specified ownership in the Supplier as required by Section 16.6 without first obtaining the written approval of the Buyer.

(q) The Supplier assigns this Agreement without first obtaining the consent of the Buyer, if required pursuant to this Agreement.

(r) The default described in Section 15.6(d) has occurred.

(s) The Supplier has failed to provide the First Additional Completion and Performance Security, the Second Additional Completion and Performance Security or the Third Additional Completion and Performance Security by the dates required in Section 6.1(b)(i), 6.1(b)(ii), 6.1(b)(iii), respectively.

(t) The Supplier has failed to provide the Remaining Completion and Performance Security by the date required in Section 6.1(c).

10.2 Remedies of the Buyer

(a) If any Supplier Event of Default (other than a Supplier Event of Default relating to the Supplier referred to in Sections 10.1(e), 10.1(g) and 10.1(h)) occurs and is continuing, upon written notice to the Supplier, the Buyer may terminate this Agreement.

(b) If a Supplier Event of Default occurs and is continuing, the Buyer may, in addition to the remedy set out in Section 10.2(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 6; and

(ii) draw on the Completion and Performance Security, or any part thereof and, if the remedy in Section 10.2(a) has not been exercised, require the Supplier to replace such drawn security with new security.

(c) Notwithstanding Sections 10.2(a) and 10.2(b), upon the occurrence of a Supplier Event of Default relating to the Supplier referred to in Sections 10.1(e), 10.1(g) or 10.1(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 12.2(g).

(d) If the Buyer terminates this Agreement pursuant to Section 10.2(a) or the Agreement is terminated pursuant to Section 10.2(c), the Buyer shall have the following option, exercisable in the sole and absolute discretion of the Buyer:

(i) if the Termination Date precedes the Commercial Operation Date, the Supplier shall pay as liquidated damages and not as a penalty, a sum equivalent to the amount of all Completion and Performance Security provided by or on behalf of the Supplier (together with the amount of any portion of the Completion and Performance Security that the Supplier was required under Section 6.1 to provide to the Buyer as of the Termination Date), and the Buyer shall be entitled to retain all Completion and Performance Security provided by or on behalf of the Supplier and exercise all other remedies available to the Buyer including pursuing a claim for damages with respect to the amount of any portion of the Completion and Performance Security that the Supplier was required under Section 6.1 to provide to the Buyer as of the Termination Date, as contemplated in Section 10.5; or

(ii) if the Termination Date is on or after the Commercial Operation Date, the Buyer shall be entitled to retain all Completion and Performance Security provided by or on behalf of the Supplier and exercise all such other remedies available to the Buyer, including pursuing a claim for damages, as contemplated under Section 10.5.

(e) Termination shall not relieve the Supplier or the Buyer of their respective responsibilities relating to the availability of the Contract Capacity and delivery of the Delivered Electricity and Future Contract Related Products from the Facility, or amounts payable under this Agreement, 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.

10.3 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, provided that such cure period shall be extended by a further fifteen (15) Business Days if the Buyer is diligently remedying such failure and such failure is capable of being cured during such extended cure period.

(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, provided that such cure period shall be extended by a further thirty (30) Business Days if the Buyer is diligently remedying such failure or cessation and such failure or cessation is capable of being corrected during such extended cure period.

(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, provided that such cure period shall be extended by a further thirty (30) Business Days if the Buyer is diligently correcting such breach and such breach is capable of being corrected during such extended cure period.

(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, judgment or order 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 Sections 16.5(d) or 16.5(e)) without first obtaining the consent of the Supplier, if required pursuant to this Agreement.

10.4 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) terminate this Agreement and (ii) set off any payments due to the Buyer against any amounts payable by the Buyer to the Supplier.

(b) Notwithstanding the foregoing , if applicable, the Buyer shall be responsible for payment of amounts accruing under this Agreement only up to and including the Termination Date. 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.

10.5 Remedies for Termination Non-Exclusive

The termination of this Agreement by either Party and the payment of all amounts then due and owing to the other Party as expressly provided in this Agreement shall not limit, waive or extinguish in any way the recourse of either Party to any remedies available to it in relation to

such termination at law, in equity or otherwise, nor shall such termination affect any rights that the Indemnitees may have pursuant to any indemnity given under this Agreement. Notwithstanding the foregoing, if the Buyer has exercised the option set out in Section 10.2(d)(i), then the Buyer's remedies against the Supplier in respect of the termination of the Agreement shall be limited to the amount of liquidated damages payable by the Supplier pursuant to Section 10.2(d)(i).

ARTICLE 11
FORCE MAJEURE

11.1 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 Contract Capacity or is unable to generate at the Facility, or is unable to deliver from the Facility to the Delivery Point, all or any part of the Delivered Electricity or Future Contract Related Products (and notwithstanding whether the Supplier may be able to Schedule any part of the Energy From Nameplate Capacity);

(ii) the Buyer is unable to receive at the Delivery Point, or is unable to transmit or distribute from the Delivery Point, all or any part of the Delivered Electricity (and notwithstanding whether the Buyer may be able to otherwise cause all or any part of the Delivered Electricity to be received at the Delivery Point or to be transmitted or distributed from the Delivery Point); or

(iii) 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, except where the Supplier has elected not to operate as a result of a Host Facility Force Majeure, during such time as the Supplier is unable to perform or comply with its obligations as a result of a Force Majeure, to the extent the Supplier is able to deliver a portion of the Contract Capacity despite the event of Force Majeure, then, with respect to such portion of

Contract Capacity, the Supplier shall be deemed to have delivered such portion of the Contract Capacity and received the HOEP therefor, for the purposes of calculating the relevant Monthly Payment(s) hereunder.

(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, in substantially the form set forth as Exhibit L, provided that such notice shall be given within ten (10) Business Days of the commencement of the event or circumstances constituting Force Majeure. If the effect of the Force Majeure and full particulars of the cause thereof cannot be reasonably determined within such ten (10) Business Day period, the Party invoking Force Majeure shall be allowed a further ten (10) Business Days (or such longer period as the Parties may agree in writing) to provide such full particulars, in substantially the form set forth as Exhibit L, to the other Party. For greater certainty, the reporting or discussion of a Force Majeure event provided in a periodic report from the Supplier to the Buyer pursuant to Section 2.7 shall not constitute sufficient notice of the occurrence of a Force Majeure event.

(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.

(d) The Party invoking Force Majeure shall give prompt written notice of the termination of the event of Force Majeure, provided that such notice shall be given within ten (10) Business Days of the termination of the event or circumstances constituting Force Majeure.

(e) Nothing in this Section 11.1 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.

(g) If an event of Force Majeure described in Section 11.3(h) has delayed the Commercial Operation Date by more than 365 days after the original Milestone Date (prior to any extension pursuant to Section 11.1(f)) set out for attaining Commercial Operation of the Facility, 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 Commercial Operation Date is delayed by more than twenty-four (24) months after the original Milestone Date for Commercial Operation, prior to any extension pursuant to Section 11.1(f), then notwithstanding anything in this Agreement to the contrary, 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.

(i) 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 an aggregate of thirty-six (36) months in any sixty (60) month period during the Term, then either Party may terminate this Agreement upon notice to the other Party without any costs or payments of any kind to either Party, except for any amounts that were due or payable by a Party hereunder up to the date of termination, and all security shall be returned forthwith.

(j) If the Host Facility is subject to a Host Facility Force Majeure, the Supplier shall provide prompt notice to the Buyer, written or oral (but if oral, promptly confirmed in writing) and, in any event, within ten (10) Business Days, of the effect of the Host Facility Force Majeure and reasonably full particulars of the cause thereof (including an explanation of why the event claimed as a Host Facility Force Majeure is not a Host Facility Outage), in substantially the form set forth as Exhibit L, together with an election by the Supplier of whether or not it shall operate the Facility to produce Electricity during the period of the Host Facility Force Majeure (the "**Host Facility Force Majeure Period**").

(k) If the Supplier has invoked Force Majeure by reason of a Host Facility Force Majeure and elects to operate the Facility during the Host Facility Force Majeure Period,

(i) the Supplier shall be paid for any Electricity delivered during the Host Facility Force Majeure Period in accordance with Section 3.4; and

(ii) the operational data for the Facility during the Host Facility Force Majeure Period shall not be included in the calculation of Availability or the determination, pursuant to Section 15.7, of the percentage of energy generated by the Facility attributable to Useful Heat Output sold by the Supplier to the Host Facility.

(l) If the Supplier has invoked Force Majeure by reason of a Host Facility Force Majeure and elects not to operate the Facility during the Host Facility Force Majeure Period, the operational data for the Facility during the Host Facility Force Majeure Period shall not be included in the calculation of Availability or

the determination, pursuant to Section 15.7, of the percentage of energy generated by the Facility attributable to Useful Heat Output sold by the Supplier to the Host Facility.

11.2 Exclusions

A Party shall not be entitled to invoke Force Majeure under this Article 11, 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 Facility;

(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 seeking to invoke Force Majeure because it is able to sell any of the Delivered Electricity on more advantageous terms to a third party buyer;

(d) 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;

(e) if the Force Majeure was caused by a lack of funds or other financial cause; or

(f) if the Party invoking Force Majeure fails to comply with the notice provisions in Sections 11.1(b) or (d).

11.3 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, 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 a third party invoking Force Majeure, unless such strikes or other 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), and provided that it shall be considered an event of Force Majeure if delays or disruptions in fuel supply arise as a result of the Supplier being unable to secure transportation capacity for fuel supply to the Facility after having made Commercially Reasonable Efforts to do so, but it shall not be considered an event of Force Majeure if such transportation capacity was available and the Supplier failed to secure it or failed to maintain it after having secured it;

(f) civil disobedience or disturbances, war (whether declared or not), acts of sabotage, blockades, insurrections, terrorism, revolution, riots or epidemics;

(g) subject to Section 11.2(d), 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;

(i) any unanticipated maintenance or outage affecting the Facility:

(i) which is not identified in the Supplier's then current schedule of planned outages submitted to the IESO, 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 11.3, 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 11.3, or which results from a failure of equipment that prevents the Facility from producing Electricity, provided that:

(A) notice of the unanticipated maintenance or outage is provided to the Buyer by the Supplier as soon as reasonably possible (or, if applicable, concurrently with the notice in respect thereof provided to the IESO or as soon as reasonably possible thereafter) but, in any event, within ten (10) Business Days thereof;

(B) the Supplier provides notice to the Buyer immediately, or as soon as reasonably possible thereafter, upon receipt from the IESO of advance acceptance or other proposed scheduling or approval of such maintenance or outage, if such approval is required to be obtained from the IESO;

(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; and

(j) a Host Facility Force Majeure.

For greater certainty, nothing in Section 11.3(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 12
LENDER'S RIGHTS

12.1 Lender Security

Notwithstanding Section 16.5, 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 must secure indebtedness, liabilities or obligations of the Supplier that are in whole or in part related to the Facility. 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) If the Supplier is in default under or pursuant to the Secured Lender's Security Agreement and the Secured Lender intends to exercise any rights afforded to the Secured Lender under this Agreement, then the Secured Lender shall give notice of such default to the Buyer at least five (5) Business Days prior to exercising any such rights.

(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 12.

(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 12.

(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 this 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.

12.2 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 12.1(d) or the contents thereof are embodied in the agreement entered into by the Buyer in accordance with Section 12.3, the following provisions shall apply:

(a) No Supplier Event of Default (other than those set out in Section 10.2(c)) shall be grounds for the termination by the Buyer of this Agreement until:

(i) any notice required to be given under Section 10.1 and 10.2(a) has been given to the Supplier and to the Secured Lender; and

(ii) the cure period set out in Section 12.2(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 10.1, 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 this Section 12.2. 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 Facility 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 12.2(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 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 6.

(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 12, 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 12.2(g).

(h) Despite anything to the contrary contained in this Agreement, the provisions of this Article 12 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 12.2 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.

12.3 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 13
DISCRIMINATORY ACTION

13.1 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 13.1(a):

(i) is borne principally by the Supplier; or

(ii) is borne principally by the Supplier and one or more Other Suppliers who have a CHP Contract or another bilateral arrangement with the Buyer similar in nature to this Agreement; and

(c) such action increases the costs that the Supplier would reasonably be expected to incur under this Agreement in the delivery of the Delivered Electricity and/or Future Contract Related Products from the Facility or the availability of the Contract Capacity or adversely affects the revenues of the Supplier from the Facility, 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 that the Supplier submitted its Proposal in accordance with the CHP RFP:

(A) has been introduced as a bill in the Legislative Assembly of Ontario 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; and

(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 CHP RFP:

(A) have been published but by the terms of such regulations come into force on or after five (5) Business Days prior to the date that the Supplier submitted its Proposal in accordance with the CHP 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.

13.2 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 in the delivery of the Delivered Electricity and/or Future Contract Related Products from the Facility 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 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 revenues from the Facility that are forecast to be earned 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 revenues from the Facility that are forecast to be earned 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 the generation and delivery of the Electricity and Related Products by the Facility.

13.3 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 in the delivery of the Electricity and Related Products from the Facility or making the Contract Capacity 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 16.2 without first having to comply with Section 16.1.

(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 13.3(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 13.3(e)(ii) and Sections 16.1 and 16.2 shall not apply to such determination.

(ii) If the negotiation described in Section 13.3(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 sixty (60) 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 therefrom 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 13.3(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.

13.4 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 13.3(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 16.2 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 13.2, 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 14
LIABILITY AND INDEMNIFICATION

14.1 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 13.2), loss of use of any property or claims of customers or contractors of the Parties for any such damages.

14.2 Liquidated Damages

Nothing in this Article shall reduce a Party's claim for liquidated damages pursuant to Sections 2.3(c)(vi), 2.5, 6.3(c), 10.2(b) and 10.2(d). 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 Sections 10.2(b) or (e) constitutes a fair and reasonable means of compensating the Supplier for such damages likely to be incurred and does not constitute a penalty.

14.3 Buyer Indemnification

In addition to the indemnity provided by the Supplier in Section 2.8(b), the Supplier shall indemnify, defend and hold the Buyer, the Ontario Power Authority (to the extent that it is no longer the Buyer), 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 Facility, 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, warranties 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.

14.4 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 14.3 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 (5) 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 14.3 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 14.4(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 14.3), 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 14.3, 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.

14.5 Joint and Several Liability

If the Supplier is not a single legal entity (for example, an unincorporated joint venture), then all such entities set out in the definition of the term "**Supplier**", namely • and •, shall be jointly and severally liable to the Buyer for all representations, warranties, obligations, covenants and liabilities of the Supplier hereunder. ***[Note to Finalization: List names of all entities comprising the Supplier.***

ARTICLE 15
CONTRACT OPERATION AND ADMINISTRATION

15.1 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.

15.2 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 8 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 or audit billings or to verify or audit information provided in accordance with this Agreement, including, for greater certainty, information provided pursuant to Sections 2.8(c), 3.1, 4.1, 15.6 and 15.7. Moreover, the Supplier agrees and consents to Ontario Electricity Financial Corporation, the IESO, an LDC or any other relevant third party providing to the Buyer all relevant meter and invoice data regarding the Facility required by the Buyer in order to verify the amount of Delivered Electricity. 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 8. 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.

15.3 Reports to the Buyer

(a) If the Supplier is not required to report Outages directly to the IESO, the Supplier shall deliver to the Buyer the following documentation with respect to each calendar month:

(i) no later than seven (7) Business Days prior to the beginning of each calendar month, an Outage Notice providing advance notice of all Planned Outages for such calendar month; and

(ii) no later than one (1) Business Day following the end of each calendar month, an Outage Notice confirming the occurrence and duration of all Outages for such calendar month.

(b) If the Supplier is required to report Outages directly to the IESO, the Supplier shall deliver to the Buyer a copy of all reports, plans and notices that the Supplier is required to provide to the IESO with respect to Outages, at the same time or within one (1) Business Day after such reports, plans and notices are delivered by the Supplier to the IESO.

(c) In addition to the documentation provided in Sections 15.3(a) or 15.3(b), as applicable, the Supplier shall deliver at the times specified below the following documents, reports, plans and notices to the Buyer:

(i) no later than the date which is sixty (60) days prior to the Commercial Operation Date, the Supplier shall provide to the Buyer an operating plan for the Facility for the Term commencing no later than the date of execution of this Agreement, including a long term major maintenance schedule (the "**Long Term Operating Plan**"). The Supplier shall provide the Buyer with copies of any amendments or modifications to the Long Term Operating Plan within ten (10) Business Days of such amendments or modifications being made. 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 15.3(c)(i), and

(B) in respect of the second Contract Year and each Contract Year thereafter, sixty (60) days prior to each Contract Year,

the Supplier shall provide to the Buyer an operating plan for the Facility for the succeeding Contract Year (the "**Annual Operating Plan**"). The Annual Operating Plan shall include a schedule of Planned Outages for that twelve (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, consistent with the Long Term Operating Plan and, to the extent the Supplier is required to do so by the IESO Market Rules, coordinated with and approved by the IESO. The Supplier may, on not less than ten (10) Business Days prior notice to the Buyer, amend the Annual Operating Plan;

(d) The Supplier shall use Commercially Reasonable Efforts to promptly end or reduce the length of any Outage other than a Planned Outage, or any anticipated Outage other than a Planned Outage.

(e) In addition to the foregoing, upon a Restatement, the Supplier shall provide the Buyer with quarterly status reports relating to the reconfiguration of the Facility equipment in connection with the Restatement, together with such other information relating to the Restatement as the Buyer may reasonably request.

15.4 Inspection of Facility

(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 Facility and every part thereof during regular business hours and the Supplier shall, and shall cause all personnel operating and managing the Facility, to furnish the Buyer with all reasonable assistance in inspecting the Facility 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 Facility, as applicable, and shall not interfere with the operation of the Facility.

(b) The inspection of the Facility 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.

15.5 Inspection Not Waiver

(a) Failure by the Buyer to inspect the Facility or any part thereof under Section 15.4, or to exercise its audit rights under Section 15.2, 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 15.2 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.

15.6 Capacity 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 (the "**Capacity Check Test**"), at the Supplier's sole cost and expense, that may be witnessed by the Buyer or its Representative, to confirm the ability of the Facility to produce the Average Seasonal Contract Capacity for the Season in which the Capacity Check Test takes place, as described below. If the Buyer has consented to an Amendment pursuant to Section 2.1(c), the Supplier may request, within ten (10) Business Days after written notice has been delivered to the Buyer, a Capacity Check Test. The Capacity Check Test will be carried out in accordance with a test protocol (the "**Test Protocol**") which will include the format of the report to be prepared in respect of the Capacity Check Test and which Test Protocol is to be prepared by the Supplier and submitted in writing to the Buyer for approval within three (3) months after the Facility has attained Commercial Operation. The measurements of the Capacity Check Test shall be made using high accuracy calibrated instruments and recording systems or Facility instrumentation, including tariff meters for Electricity, fuel and Useful Heat Output as set out in the Metering Plan and acceptable to the Buyer, acting reasonably. Each Capacity Check Test consists of the Facility generating Electricity and Useful Heat Output for four (4) continuous hours during a period designated by the Supplier and agreed to by the Buyer in advance as a test period, subject to coordination and approval of the IESO or LDC, as applicable, and shall be evaluated based on calculation of the generator(s) Electricity output at the Delivery Point for Electricity and Useful Heat Output at the delivery point for Useful Heat Output to the Host Facility as stipulated in the Proposal. For greater certainty, Electricity output at the Delivery Point shall be equal to the generator(s) Electricity output at the Delivery Point net of any Station Service Loads and transformer losses as applicable. Useful Heat Output shall be evaluated at the Host Facility delivery point net of any heat returned to or imported by the Facility. The Supplier acknowledges and agrees that the Average Seasonal Contract Capacity, the Electricity output of the Facility, the Station Service Loads and Useful Heat Output, as may be measured by the Capacity Check Test, shall not be adjusted for ambient weather conditions. If the Useful Heat Output during the Capacity Check Test is less than or in excess of the amount specified in the Proposal, the Electricity output of the Facility shall be adjusted in accordance with the Test Protocol. If the Facility is a Renewable Fuel-Fired Industrial Cogeneration Facility and the percentage of Renewable Fuel utilized during the Capacity Check Test is less than 95, the Supplier shall be considered to have failed the Capacity Check Test. If the Facility is a By-Product Fuel-Fired Industrial Cogeneration facility and the percentage of By-Product Fuel utilized during the Capacity Check Test is less than 75, the Supplier shall be considered to have failed the Capacity Check Test. The Capacity Check Test will be based on the Average Annual Contract Capacity and Useful Heat Output calculated based on the Submitted Hourly Electricity Profile.

(b) If the Capacity Check Test is interrupted by an event of Force Majeure, or if at any point during the Capacity Check Test the air temperature, as reported at the Environment Canada weather station that is physically nearest to the Facility, exceeds 30.0 degrees Celsius, then the Supplier may, at the Supplier's sole cost and expense, re-perform the Capacity Check Test within ten (10) Business Days after receipt by the Supplier of the Capacity Confirmation relating to such Capacity Check Test from the Buyer.

(c) The Supplier shall at the Supplier's sole cost and expense and within ten (10) Business Days, or as provided in the Test Protocol, after completion of the Capacity Check Test prepare and submit to the Buyer a written Capacity Check Test report that includes the data collected during the test period, computation of test data and the test results. The Buyer shall provide to the Supplier within ten (10) Business Days after receipt of the Capacity Check Test report from the Supplier, written confirmation of the Electricity output for each hour during the Capacity Check Test (the "**Capacity Confirmation**").

(d) To pass the Capacity Check Test, the Electricity output (in MWh) for each hour of the Capacity Check Test, divided by one hour, must be equal to or greater than the Contract Capacity and the Useful Heat Output (in MWh (thermal)) for each hour of the Capacity Check Test, divided by one hour, must be equal or adjusted to equal the net Useful Heat Output specified in this Agreement. If the Supplier has not passed the Capacity Check Test for each one of the four (4) continuous hours, then the Supplier shall, at the Supplier's cost and expense, perform a further Capacity Check Test (the "**Further Capacity Check Test**") within thirty (30) Business Days after the receipt by the Supplier of the Capacity Confirmation from the Buyer, on the same terms and conditions as the Capacity Check Test described in Section 15.6(a). If the total Electricity output of the Facility for the four (4) continuous hours of each of the Capacity Check Test and the Further Capacity Check Test, as stated in their respective Capacity Confirmations, divided by the number of hours in each of the respective check tests (each an "**Average Test Capacity**"), are both less than 80% of the Average Seasonal Contract Capacity for the respective Season(s) in which the Capacity Check Test and Further Capacity Check Test is conducted, then this shall be considered a Supplier Event of Default. For purposes of calculating the Average Test Capacity in this Section 15.6, the Electricity output from each hour shall not exceed a maximum amount equal to the Contract Capacity multiplied by one hour.

15.7 Useful Heat Output

The Supplier shall provide to the Buyer a written report within sixty (60) days of the end of each Contract Year setting out the percentage of energy generated by the Facility attributable to Useful Heat Output sold by the Supplier to the Host in respect of the Host Facility (as compared to such Useful Heat Output and Delivered Electricity during such Contract Year, but excluding any periods in such Contract Year during which there was a Host Facility Force Majeure and the Supplier elected to operate the Facility). If such percentage in any Contract Year is less than fifteen (15), the Supplier agrees to provide, within thirty (30) days after submission of the report

setting forth such percentage, a written plan to the Buyer outlining the steps that the Supplier will take to increase the percentage of energy generated by the Facility attributable to Useful Heat Output back to fifteen (15) or greater. The Supplier shall provide quarterly progress reports with respect to such steps until the Supplier demonstrates that such percentage has, for a full Contract Year, equaled or exceeded fifteen (15). This Section 15.7 shall not apply after a Restatement.

15.8 Notices

(a) All notices pertaining to this Agreement not explicitly permitted to be in a form other than writing shall be in writing and shall be addressed to the other Party as follows:

If to the Supplier: **[insert details]**
[insert details]

Attention: **[insert details]**
Facsimile: **[insert details]**

and to: **[insert details]**
[insert details]

Attention: **[insert details]**
Facsimile: **[insert details]**

If to the Buyer: Ontario Power Authority
120 Adelaide Street West
Suite 1600
Toronto, Ontario
M5H 1T1

Attention: Director, Contract Management
Facsimile: 416-969-6071
E-mail: contract.management@powerauthority.on.ca

Either Party may, by written notice to the other, change its respective Company Representative or the address to which notices are to be sent.

(b) Notices shall be delivered or transmitted as set out below, and shall be considered to have been received by the other Party:

(i) on the date of delivery if delivered by hand or by courier prior to 5:00 p.m. (local time of the recipient) on a Business Day and otherwise on the next following Business Day;

(ii) in those circumstances where electronic transmission (other than transmission by facsimile) is expressly permitted under this Agreement, on the date of delivery if delivered prior to 5:00 p.m. (local time of the

recipient) on a Business Day and otherwise on the next following Business Day, provided that a copy of such notice is also delivered by regular post within a reasonable time thereafter;

(iii) on the third (3rd) Business Day following the date of transmission by facsimile, if transmitted prior to 5:00 p.m. (local time of the recipient) on a Business Day and otherwise on the fourth (4th) following Business Day, provided that a copy of such notice is also delivered by regular post within a reasonable time thereafter; and

(iv) on the fifth (5th) Business Day following the date of mailing by regular post.

(c) Notwithstanding Section 15.8(b):

(i) any notices of an Event of Default and termination of this Agreement shall only be given by hand or courier delivery; and

(ii) if regular post service, facsimile or other form of electronic communication is interrupted by strike, slowdown, a Force Majeure event or other cause, a notice, direction or other instrument sent by the impaired means of communication will not be deemed to be received until actually received, and the Party sending the notice shall utilize any other such service which has not been so interrupted to deliver such notice.

ARTICLE 16
MISCELLANEOUS

16.1 Informal Dispute Resolution

If either Party considers that any dispute has arisen under or in connection with this Agreement that the Parties cannot resolve, then such Party may deliver a notice to the other Party describing the nature and the particulars of such dispute. Within ten (10) Business Days following delivery of such notice to the other Party, 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 16.2, if agreed to by both Parties.

16.2 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 16.1. 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 this 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.

16.3 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.

16.4 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.

16.5 Assignment

(a) Except as set out below and as provided in Article 12, 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 Facility; 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 6 have been met in accordance with the terms of Article 6. If a valid assignment of this Agreement is made by the Supplier in accordance with this Section 16.5(b), 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) The Ontario Power Authority shall have the right to assign this Agreement and all benefits and obligations hereunder for the balance of the Term without the consent of the Supplier to an assignee which shall assume the obligations and liability of the Ontario Power Authority under this Agreement and be novated into this Agreement in the place and stead of the Ontario Power Authority (except for the Ontario Power Authority's obligation in Section 16.5(d)(iii) which will remain in force), provided that the assignee agrees in writing to assume and be bound by the terms and conditions of this Agreement and further agrees not to make any material amendments to or terminate this Agreement after such Assignment without the prior written consent of the Ontario Power Authority, whereupon:

(i) the representation set forth in Section 7.2(a) shall apply to the assignee with all necessary amendments to reflect the form and the manner in which the assignee was established;

(ii) all of the representations set forth in Section 7.2 shall be deemed to be made by the assignee to the Supplier at the time of such assignment and assumption; and

(iii) the Ontario Power Authority shall be relieved of all obligations and liability arising pursuant to this Agreement; notwithstanding the foregoing, the Ontario Power Authority shall remain liable to the Supplier for remedying any payment defaults under Section 10.3(a) and shall remain liable for any obligations and liabilities of the assignee arising from any Buyer Event of Default, provided that any notice required to be given under Sections 10.3 and 10.4(a) is given on the same day to the assignee and to the Ontario Power Authority. The time periods in Section 10.3 shall not begin to run until both the assignee and the Ontario Power Authority have been so notified.

(e) The Ontario Power Authority shall have the right to assign this Agreement and all benefits and obligations hereunder from time to time throughout the Term for a period less than the balance of the Term (the "**Assignment Period**") without the consent of the Supplier to an assignee which shall assume the obligations of the Ontario Power Authority under this Agreement and be novated into this Agreement in the place and stead of the Ontario Power Authority (except for the Ontario Power Authority's obligation in Section 16.5(e)(iii) which will remain in force), provided that the assignee agrees in writing to assume and be bound by the terms and conditions of this Agreement and further agrees not to make any material amendments to or terminate this Agreement during the Assignment Period without the prior written consent of the Ontario Power Authority, whereupon:

(i) the representation set forth in Section 7.2(a) shall apply to the assignee with all necessary amendments to reflect the form and the manner in which the assignee was established;

(ii) all of the representations set forth in Section 7.2 shall be deemed to be made by the assignee to the Supplier at the time of such assignment and assumption;

(iii) the Ontario Power Authority shall be relieved of all obligations and liability arising pursuant to this Agreement; notwithstanding the foregoing, the Ontario Power Authority shall remain liable to the Supplier for remedying any payment defaults under Section 10.3(a) and shall remain liable to the Supplier for any obligations and liabilities of the assignee arising from any Buyer Event of Default, provided that any notice required to be given under Sections 10.3 and 10.4(a) is given on the same day to the assignee and to the Ontario Power Authority. The time periods in Section 10.3 shall not begin to run until both the assignee and the Ontario Power Authority have been so notified; and

(iv) upon the expiry of the Assignment Period:

(A) this Agreement, without requiring the execution of any assignment, consent or other documentation of any nature, shall automatically revert and be assigned back to the Ontario Power Authority;

(B) the assignee shall remain responsible to the Supplier for all obligations and liabilities incurred or accrued by the assignee during the Assignment Period; and

(C) the Ontario Power Authority, as Buyer pursuant to the automatic assignment back to it, shall be deemed to be in good standing under this Agreement, provided that such good standing shall not relieve the Ontario Power Authority from any obligation to the Supplier pursuant to Section 16.5(e)(iii) that arose prior to the expiry of the Assignment Period.

16.6 No Change of Control; Minimum Ownership

(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.

(b) If the Facility is a Host Developed Contract Facility and the Buyer has not been provided a guarantee in the form of Exhibit Q, the ownership in the Supplier by the Host or person who Controls the Host shall not be less than thirty percent (30%), except with the prior written consent of the Buyer, which consent, prior to the Commercial Operation Date, may be unreasonably withheld and, on and after the Commercial Operation Date, may not be unreasonably withheld.

(c) For the purposes of Sections 16.6(a) and 16.6(b), it shall not be unreasonable for the Buyer to withhold consent if the change of Control or failure to hold the minimum specified equity ownership in the Supplier, as applicable, will have or is likely to have, as determined by the Buyer acting reasonably, 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.

(d) For the purposes of Sections 16.6(a) and 16.7(a), a change of Control shall exclude a change in ownership of any shares or units of ownership that are listed on a recognized stock exchange and shall include a change of Control resulting from a change in ownership in any shares or units of ownership in any entity that directly owns the Facility whose special or sole purpose is the ownership of the Facility or the Facility and other generation facilities under a CHP Contract..

16.7 No Assignment or Change of Control for Specified Period

Notwithstanding the provisions of Sections 16.5(a), 16.5(b), 16.5(c) and 16.6(a) to the contrary, and except as provided in Article 12, under no circumstances shall:

(a) any assignment of this Agreement by the Supplier; or

(b) any change of Control in respect of the Supplier,

be permitted until the third (3rd) anniversary of the Term Commencement Date.

Notwithstanding the foregoing, for a period of six (6) months following the execution hereof, but prior to Financial Closing, the Supplier may, without the Buyer's further consent, assign all (but not less than all) of the Supplier's interest in this Agreement to a partnership in which the Supplier holds not less than a fifty percent (50%) interest, provided that: (i) the Supplier shall provide the Buyer with written notice of any such assignment; and (ii) all partners of such partnership agree with the Buyer in writing to be jointly and severally liable to the Buyer for all of the obligations and liabilities of the Supplier hereunder.

16.8 Survival

The provisions of Sections 2.8(b), 3.3, 3.6, 3.7, 3.8, Article 5, Article 8, Sections 10.2, 10.4, 10.5, and 12.2(g), Article 14, Sections 15.2, 16.1, 16.2, 16.5(c), 16.5(d) and 16.5(e) 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.

16.9 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.

16.10 Additional Rights of 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), 1.8(e), 1.9(d), 2.3, 2.5, 2.8(b), 2.8(c), 2.9, 3.4, 4.1, 4.1(a), 5.3, 10.2, 10.5 and 14.3 against any monies owed by the Buyer to the Supplier in connection with Sections 1.7(d), 1.8(e), 1.9(d), 2.3, 3.4, 4.1, 5.3, 10.5 and 13.3(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), 1.8(e), 1.9(d), 2.3, 3.4, 4.1, 5.3, 10.4, 10.5 and 13.3(d) against any monies owed by the Supplier to the Buyer in connection with Sections 1.7(d), 1.8(e), 1.9(d), 2.3, 2.5, 2.8(b), 2.8(c), 2.9, 3.4, 4.1, 4.1(a), 5.3, 10.2, 10.5 and 14.3.

16.11 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.

16.12 Time of Essence

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

16.13 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 required, acting reasonably, 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 POWER AUTHORITY**
By: _____ Name: Title:	By: _____ Name: Jan Carr Title: Chief Executive Officer I have authority to bind the corporation.
By: _____ Name: Title: I/We have authority to bind the Corporation.	

EXHIBIT A
DESCRIPTION OF FACILITY

Name of Facility: [●]

Municipal Location: [●]

Connection Point: [●]

Description of Generation: [●]

Detailed Description of Facility:

1.0 Overview

[insert details]

1.1 Site Description

[insert details]

1.2 Project Design and Major Equipment

[insert details]

1.3 Environmental Features (including a description of features that mitigate environmental concerns, such as air quality, noise, water, sewage discharge, etc and a list of environmental approvals and permits and their status):

[insert details]

1.4 Fuel Supply (including description of work required to obtain fuel supply)

[insert details]

1.5 Electrical Interconnection (including description of work required to connect Facility and attach Single Line Diagram)

[insert details]

1.6 Plant General Arrangement

[insert details]

1.7 Network Upgrades (as specified in connection assessment studies):

[insert details]

EXHIBIT B
CONTRACT PRICE, NAMEPLATE CAPACITY, CONTRACT CAPACITY AND SUBMITTED HOURLY ELECTRICITY PROFILE

PRIOR TO RESTATEMENT

Contract Price (Dollars and Cents/MWh of COD)	Nameplate Capacity (MW)	Average Annual Contract Capacity (MW)	Average Seasonal Contract Capacity (MW)
$_____/MWh	_____MW	_____MW	Season 1: _____ MW Season 2: _____ MW Season 3: _____ MW Season 4: _____ MW

Escalation Rate for Contract Price_____ % of specified index (between 0% and 100%)

Useful Heat Output _____ (MW – thermal)

Submitted Hourly Electricity Profile:

Day Type	Hour	Season			
		1	2	3	4
Weekday	1				
	2				
	3				
	4				
	5				
	6				
	7				
	8				
	9				
	10				
	11				
	12				
	13				
	14				
	15				
	16				
	17				
	18				
	19				
	20				
	21				

Day Type	Hour	Season			
	22				
	23				
	24				
Weekend	1				
	2				
	3				
	4				
	5				
	6				
	7				
	8				
	9				
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	24				

Earliest Restatement : ____ months and _____ years from Commercial Operation Date

AFTER RESTATEMENT

Incremental Contract Price (Dollars and Cents/MWh of COD)	Nameplate Capacity after Restatement (MW)	Average Annual Contract Capacity after Restatement (MW)	Average Seasonal Contract Capacity after Restatement (MW)
$_____/MWh	_____MW	_____MW	Season 1: _____ MW Season 2: _____ MW Season 3: _____ MW Season 4: _____ MW

Escalation Rate for Contract Price_____*Same as above given prior to Restatement, expressed as a % specified index*

Restated Submitted Hourly Electricity Profile:

Day Type	Hour	Season			
		1	2	3	4
Weekday	1				
	2				
	3				
	4				
	5				
	6				
	7				
	8				
	9				
	10				
	11				
	12				
	13				
	14				
	15				
	16				
	17				
	18				
	19				
	20				
	21				
	22				
	23				
	24				
Weekend	1				
	2				
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	4				
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EXHIBIT C
FORM OF IRREVOCABLE STANDBY LETTER OF CREDIT

DATE OF ISSUE:	[•]
APPLICANT:	**[Insert Name of Supplier]**
BENEFICIARY:	Ontario Power Authority and its permitted assigns
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 draft at sight, accompanied by the Beneficiary's signed certificate stating that:

"**[Insert name of Supplier]** is in breach of, or default under, the Combined Heat and Power Power Purchase Agreement (the "**CHP PPA**") between the Beneficiary and the Applicant, 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 CHP PPA dated • , 200• between the Beneficiary and **[insert name of Supplier]**.

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.

It is a term of this letter of credit that the above name of the Beneficiary will be amended to another entity by way of an amendment hereto, without the consent of the Applicant, and upon receipt by **[the financial institution]** of the above Beneficiary's dated and signed letter addressed to **[the financial institution]** and completed as follows: "We, the undersigned Beneficiary to **[the financial institution]**'s letter of credit no. •, hereby waive all our rights under the said letter of credit and request that the current name and address of the Beneficiary thereunder be amended to read **[insert name and address of new Beneficiary]**. Please forward the original amendment to the [new Beneficiary], care of the Applicant to whom we have delivered the original of the letter of credit along with its amendment(s) (if any)."

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

FORM OF GUARANTEE

THIS GUARANTEE dated as of [•] is made and entered into between [•], a corporation incorporated under the laws of [•] (the "**Guarantor**"), and the Ontario Power Authority (the "**Buyer**").

RECITALS:

A. The Buyer and **[insert name of Supplier]**, a [•],[•] under the laws of [•] ("**Supplier**"), have entered into a Combined Heat and Power Power Purchase Agreement 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 the 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 them 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 or indemnity obligations of the Supplier: (i) under the Agreement or (ii) under any award or order under any binding arbitration or by a court of competent jurisdiction in respect of the Agreement, 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 pay to the Buyer the amount due within ten (10) Business Days after demand for payment has been received by the Guarantor from the Buyer in writing in accordance with Section 11 hereof. 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 or 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 of any Guaranteed Obligation is rescinded or must otherwise be returned for any reason whatsoever, including the insolvency or bankruptcy of the Supplier or otherwise, the Guarantor shall remain liable hereunder in respect of such Guaranteed Obligation 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 the 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 the Supplier or any Person other than the Guarantor;

(iv) the 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 the 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 defences, 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 the 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 the 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 the 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 the 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 the 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 the Supplier or the Buyer, except to the extent specifically provided in the Agreement to be due from the 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 the Supplier of its payment or indemnity obligations: (i) under the Agreement or (ii) under any award or order under any binding arbitration or by a court of competent jurisdiction in respect of 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 6.2(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 6.2(d) of the Agreement is applicable.

7. Defences

The Guarantor reserves the right to assert all rights, setoffs, counterclaims and other defences of the Supplier relating to the Guaranteed Obligations, other than defences arising out of the bankruptcy, insolvency, dissolution or liquidation of the 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 the 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 transactions 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 be a waiver of any other right, remedy or power and each such right, remedy or power 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:

[•]

Attention: [•]
Facsimile: [•]

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 section 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 enure 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 Buyer assigns the Agreement to an assignee pursuant to Sections 16.5(d) or 16.5(e) thereof, then the Buyer may assign this Guarantee to such assignee without the consent of the Guarantor or the Supplier.

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]

By: _____

Name: •

Title: •

By: _____

Name: •

Title: •

I/We have the authority to bind the Guarantor.

[BUYER]

By: _____

Name: •

Title: •

I have the authority to bind the corporation.

EXHIBIT E

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

EXHIBIT F

CHP RFP

CHP RFP dated •, as amended, attached.

EXHIBIT G

PROPOSAL

Proposal dated • , as amended (if applicable), attached.

EXHIBIT H

MILESTONE EVENTS AND MILESTONE DATES FOR THE FACILITY

MILESTONE EVENT	MILESTONE DATE (Month/Day/Year)
1. Financial Closing	[●]
2. Commercial Operation	[●]

EXHIBIT I

ARBITRATION PROVISIONS APPLICABLE TO SECTIONS 1.6, 1.7, 1.8, 1.9, 1.10 AND 2.11

The following rules and procedures (the "**Rules**") shall govern, exclusively, any matter or matters to be arbitrated between the Parties under Sections 1.6, 1.7, 1.8, 1.9, 1.10 and 2.11 of this Agreement.

1. **Commencement of Arbitration** – If the Parties and, at the Buyer's option, all Other Suppliers required by the Buyer to participate, have been unable to reach agreement as contemplated in Sections 1.6, 1.7, 1.8, 1.9, 1.10 or 2.11, as applicable, then the Buyer shall commence arbitration by delivery a written notice ("**Request**") to the Supplier and such Other Suppliers required by the Buyer to participate (collectively the "**Suppliers**"). If the Buyer has not already done so, the Buyer shall then deliver to the Suppliers the names of all Suppliers. Within twenty (20) days of the delivery of the Request, the Buyer shall deliver to the Suppliers a written notice nominating an arbitrator who shall be familiar with commercial law matters and has no financial or personal interest in the business affairs of any of the parties. Within twenty (20) days of the receipt of the Buyer's notice nominating its arbitrator, the Suppliers shall by written notice to the Buyer nominate an arbitrator who shall be familiar with commercial law matters and has no financial or personal interest in the business affairs of any of the parties. The two arbitrators nominated shall then select a chair person of the arbitration panel (the "**Arbitration Panel**") who shall be a former judge of a Superior Court or appellate court in Canada.

2. **Application to Court -** If the Suppliers are unable to agree on the nomination of an arbitrator within twenty (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 (2) arbitrators are unable to agree on a chair person within thirty (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 the Replacement Provision, as the case may be, 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 the 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 Price or 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.

EXHIBIT J

DETERMINATION OF AVAILABILITY

1. The availability of the Facility 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 Facility will not be tested for the purposes of Section 10.1(n).

   (b) Second and Third Contract Years

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

AV = (THM – OH – FMH) / (THM – FMH) x 100	
where:	
AV	is the Availability of the Facility (expressed as a percentage figure);
OH	is the total number of Outage Hours in the period between the Term Commencement Date and the last day of the applicable Settlement Month, subject to the following: (a) in determining Outage Hours, an hour may be a partial Outage Hour as a result of an Outage, including an inability of the Facility to produce at the full Contract Capacity or as a result of an Outage lasting for a part but not all of an hour. An hour in which a partial Outage occurs will be counted as a fractional Outage Hour by subtracting from one the quotient obtained by dividing: (i) the maximum production in that hour that could have been achieved given the partial Outage (in MWh) by (ii) the Contract Capacity multiplied by one hour (in MWh). This fraction will be the contribution of that hour to the Outage Hours in the given Settlement Month; and (b) Outage Hours shall not include the hours of any Outage where and to the extent that the Outage is caused by an event of Force Majeure (including a Host Facility Force Majeure where the Supplier has elected not to run).
THM	is the total number of hours in the period between the Term Commencement Date and the last day of the applicable Settlement Month
FMH	is the total number of hours in the period between the Term Commencement Date and the last day of the applicable Settlement Month during which the Supplier was subject to an event of Force Majeure (including a Host Facility Force Majeure where the Supplier has elected not to run)

(c) Fourth Contract Year and Balance of Term

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

AV = (THM – OH –FMH) / (THM – FMH) x 100	
where:	
AV	is the Availability of the Facility (expressed as a percentage figure);
OH	is the total number of Outage Hours in the most recent 36 month period which ends on the last day of the Settlement Month, subject to the following: (a) in determining Outage Hours, an hour may be a partial Outage Hour as a result of an Outage, including an inability of the Facility to produce at the full Contract Capacity or as a result of an Outage lasting for a part but not all of an hour. An hour in which a partial Outage occurs will be counted as a fractional Outage Hour by subtracting from one the quotient obtained by dividing: (i) the maximum production in that hour that could have been achieved given the partial Outage (in MWh) by (ii) the Contract Capacity multiplied by one hour (in MWh). This fraction will be the contribution of that hour to the Outage Hours in the given Settlement Month; and (b) Outage Hours shall not include the hours of any Outage where and to the extent that the Outage is caused by an event of Force Majeure (including a Host Facility Force Majeure where the Supplier has elected not to run).
THM	is the total number of hours in the most recent 36 month period which ends on the last day of the Settlement Month.
FMH	is the total number of hours in the most recent 36 month period which ends on the last day of the Settlement Month during which the Supplier was subject to an event of Force Majeure (including a Host Facility Force Majeure where the Supplier has elected not to run)

EXHIBIT K

FORM OF STATUTORY DECLARATION

PROVINCE OF ONTARIO TO WIT	IN THE MATTER OF a Combined Heat and Power Purchase Agreement dated •, 2006 (the "**Agreement**") between the Ontario Power Authority and **[insert name of Supplier]** (the "**Supplier**")

I, •

OF THE •

IN THE •

SOLEMNLY DECLARE THAT

(1) I am the • of the Supplier and as such, have knowledge of the matters declared below, and am duly authorized by the Supplier to execute this declaration. All capitalized terms used in this declaration, unless otherwise stated, have the meanings ascribed to them in the Agreement.

(2) The Supplier entered into an Off-Take Agreement dated •, 2006 with **[insert Host name]** pursuant to which the Supplier supplied Useful Heat Output from the Facility to the Host Facility.

(3) The Host Facility has permanently ceased to purchase the Facility's Useful Heat Output as a direct result of **[a permanent closure of the operations of the Host Facility / a permanent cessation of the Host Facility's requirements for any of the Useful Heat Output of the Facility as a result of a change in the Host Facility's industrial processes]**, the details of which are described below:

_____

_____

_____

_____

_____

_____

(4) To the knowledge of the Supplier, the Host Facility has not acquired, nor does it intend to acquire during the remainder of the Term, any thermal energy from any source other than the Facility, where such acquired thermal energy could reasonably be considered a replacement, in whole or in part, of the Useful Heat Output provided by the Facility.

(5) The Supplier has (i) exhausted all commercially reasonable avenues of legal recourse to enforce continuation or reinstatement of the purchase of Useful Heat Output by the Host Facility and (ii) failing such continuation or reinstatement, exhausted all commercially reasonable avenues of legal recourse to obtain financial compensation from the Host Facility and used the net proceeds of any compensation so received to defer the Restatement Date by the same amount of time that the Restatement Date would otherwise have been deferred if the compensation so received had instead been revenue received from continued Useful Heat Output sales to the Host Facility.

AND I make this solemn declaration conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath.

DECLARED BEFORE ME at the • of •,
in the **[County/Region]** of •, on •, 20••.

_____	_____
Commissioner for taking affidavits	Name

EXHIBIT L

FORM OF FORCE MAJEURE NOTICE

TO: ONTARIO POWER AUTHORITY

DATE: _____
RE: CHP Contract/PPA

Supplier:	Project:
Contractual COD:	OPA Approved Revised COD:
1. Description of events leading to Force Majeure (Provide reasonably full particulars of the cause and timing of events relating to the invoked Force Majeure) (If you are claiming a Host Facility Force Majeure, also provide an explanation of why the event is not a Host Facility Outage)	
2. Effect of Force Majeure (Provide reasonably full particulars of the effect of the Force Majeure on the Supplier's ability to fulfill its obligations under the Agreement)	
3. Cost of Alternatives available to remedy or remove the Force Majeure (Provide reasonably full particulars of alternatives available to the Supplier to remedy or remove the Force Majeure, together with an estimation of related costs with respect to each alternative)	
4. Commercially Reasonable Efforts – Reasonably full particulars of efforts, if any, undertaken or contemplated by the Supplier to remedy or remove the Force Majeure (or, in the. case of a Host Facility Force Majeure, undertaken as contemplated by the Host to remedy or remove the Host Facility Force Majeure, if known to the Supplier).	

EXHIBIT M
FORM OF OUTAGE NOTICE

Ontario Power Authority

Facility	*[insert]*
Contact Name	*[insert]*
Telephone Number	*[insert]*
Email	*[insert]*
Submission Date	*[insert]*

Request Type	Description	Derated To (MW)	Duration	Start Date	Start Time	End Date	End Time
New			Daily				
Change			Continuous				
Cancel							

All Times in Eastern Standard Time (EST) - Including Switching Time.

EXHIBIT N
FORM OF QUARTERLY REPORT

INSTRUCTIONS:

The Quarterly Report shall be in the form of the template provided herein and shall contain the following information with respect to the Agreement and the obligations of the Supplier thereunder:

1. **Executive Summary** - A brief overview of major work accomplished during, and any significant safety or environmental events that have occurred in, the subject reporting period, and any issues that could have potential schedule impacts or invoke Force Majeure

2. **Change of Control** – Report the status of assignment and/or change of control, if any (this section is to report status only, the Supplier is required to give the Buyer prompt notice before this occurs as per Section 16.5 or 16.6)

3. **Force Majeure** – Report the status of Force Majeure events, if any (this section is to report status only, the Supplier is required to give the Buyer prompt notice when Force Majeure is invoked, in accordance with Article 11)

4. **Representations of the Supplier** – Report that the representations of the Supplier stipulated in Section 7.1 of the Agreement are still true and accurate or provide a statement of the exceptions

5. **Development, Design and Construction Progress** – Report the status of each Reportable Event as shown on the attached quarterly progress report template; if the Reportable Event is also a Milestone Event, then enter the contractual Milestone Date as per Exhibit H

6. **Supplier Submittals Prior to Term Commencement Date**– Report the status of the submittals as shown on the attached quarterly report template

7. **Progress Photos** – Provide a minimum of three photos, in digital format, that can best represent the progress of construction work.

Quarterly Report

TO: ONTARIO POWER AUTHORITY
RE: COMBINED HEAT AND POWER (Power Purchase Agreement or CHP Contract) dated [•]

Supplier:		Date:	
Project:		Reporting Period:	
Contractual COD:		OPA Approved Revised COD:	

1. Executive Summary

-

2. Assignment and Change of Control (Section 16.5 and 16.6 of the Agreement)

-

3. Force Majeure (Section 11.1 of the Agreement)

-

4. Representations of the Supplier (Section 7.1 of the Agreement)

Section	Still Valid (Yes or No)	If No, details of exception
7.1 (a)		
7.1 (b)		
7.1(c)(i)		
7.1(c)(ii)		

7.1(c)(iii)		
7.1(c)(iv)		
7.1(c)(v)		
7.1 (d)		
7.1(e)		
7.1(f)		
7.1(g)		
7.1(h)		
7.1(i)		

5. Development, Design, and Construction Progress

Item	Reportable Events	Status of Efforts / Progress Description		Date		
				Contractual	Forecast	Actual
1	Facility and Site Approvals, and Permitting	Progress: • Issues: •	% Comp			
2	Completions of connection assessments including receipt of approvals from the IESO, the Transmitter, the LDC and End-User, as applicable	Progress: • Issues: •	% Comp			

3	Financial closing	Progress: • Issues: •	% Comp			
4	Equipment Order	Progress: • Issues: •	% Comp			
5	Equipment Delivered	Progress: • Issues: •	% Comp			
6	Commencement of Construction	Progress: • Issues: •	% Comp			

7	Completion of Construction	Progress: • Issues: •	% Comp			
8	Connection of the Contract Facility to the transmission or distribution system or End-User, as applicable	Progress: • Issues: •	% Comp			
9	Commercial Operation	Progress: • Issues: •	% Comp			

6. Supplier Submittals Prior to Term Commencement Date

Item	Reference Section	Description of Submittals	Submission Date		
			Contractual	Forecast	Actual
1		Single Line Diagram			
2	2.11(a) (i)	Valid certificates of insurance for “all risk”			
3	2.11(a) (ii)	Valid certificates of insurance for commercial general liability			
4	2.11(a) (ii)	Valid certificates of insurance for environmental liability			
5	2.11(a) (ii)	Valid certificates of insurance for professional liability			
6	2.11(c)	Clearance certificate of *Workplace Safety and Insurance Act*			
7	2.5 (c)	Evidence on Supplier registered with the IESO as a “Registered			

		Market Participant" and as a "Generator" (if applicable)			
8	6.1	Initial Completion and Performance Security			
9	6.1	First Additional Completion and Performance Security			
10	6.1	Second Additional Completion and Performance Security			
11	6.1	Third Additional Completion and Performance Security			
12	6.1	Remaining Completion and Performance Security upon the earlier of Financial Closing or 365 days after the date of the Agreement			

7. Progress Photos:

EXHIBIT O
FORM OF ANNUAL REPORT

Post COD Annual Report - The report provides updated information on the Off-Take Agreement. This information includes:

1. Contract expiry date
2. Status of contract negotiations
3. Length of a new contract
4. New Host name if it has changed

POST COMMERCIAL OPERATION ANNUAL REPORT

TO: ONTARIO POWER AUTHORITY DATE: _____
RE: COMBINED HEAT AND POWER (Power Purchase Agreement or CHP Contract) dated [•]

Supplier:		Facility:	
Useful Heat Output:		Revised Useful Heat Output (if applicable):	
1. Status of Off-Take Agreement:			
2. Expiry date of Off-Take Agreement:			
3. Status of any Host Facility contract negotiations indicating (a) Status of revisions:			
(b) Term of Off-Take Agreement:			
(c) Counterparty of Off-Take Agreement:			

EXHIBIT P
FORM OF RESTATEMENT REPORT

Restatement Progress Report – If the Restatement involves reconfiguration, modifications, etc. construction progress reports are required for the construction reconfiguration. The frequency of the report depends on the forecasted duration of the work.

Restatement Progress Report

TO: ONTARIO POWER AUTHORITY
RE: COMBINED HEAT AND POWER (Power Purchase Agreement or CHP Contract) dated [•]

If the period of construction upon Restatement is:

- less than 6 months in duration then the Supplier is required to submit a monthly construction progress report to the OPA.
- greater than 6 months and less than 12 months then the Supplier is required to submit a bi-monthly construction progress report to the OPA.
- greater than 12 months then the Supplier is required to submit a quarterly construction progress report to the OPA.

1.	Reporting Period:
2.	Description of Restatement
3.	Executive Summary
4.	Development Design and Construction Progress related to Restatement

Item	Reportable Events	Status of Efforts/Progress Description		Date		
				Planned	Forecast	Actual
1	Regulatory Permitting	Progress • Issues	% Comp			

		•				
2.	Outage Application, Execution and Grid re-connection	Progress: • Issues: •				
3	Equipment Ordered	Progress: • Issues: •	% Comp			
4	Equipment Delivered	Progress: • Issues: •	% Comp			
5	Commencement of Construction	Progress: • Issues: •	% Comp			

6	Completion of Construction	Progress: • Issues: •	% Comp			
7	Commercial Operation	Progress: • Issues: •	% Comp			

2. Proof of construction insurance coverage (certificates or other statements):

3. Progress Photos:

EXHIBIT Q

FORM OF GUARANTEE FOR HOST DEVELOPED CONTRACT FACILITY

THIS GUARANTEE dated as of [•] is made and entered into between [•], a corporation incorporated under the laws of [•] (the "Guarantor"), and [•] (the "Buyer").

RECITALS:

A. The Buyer and **[insert name of Supplier]**, a [•],[•] under the laws of [•] ("Supplier"), have entered into a Combined Heat and Power **[Power Purchase Agreement / Contract]** dated as of [•], (as extended, amended, replaced and supplemented, collectively, the "Agreement");

B. The Guarantor is developing the Facility through the Supplier and owns and/or operates the Host Facility that will receive Useful Heat Output from the Facility;

C. The Guarantor will directly or indirectly benefit from the Agreement;

D. Pursuant to the terms of the Agreement, the Buyer has required that the Guarantor shall deliver a guarantee of all obligations of the Supplier under the Agreement to the Buyer; and

E. Capitalized terms used in this Guarantee but not otherwise defined herein have the meanings ascribed to them 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 and performance when due, of all obligations and liabilities of all kinds of the Supplier to the Buyer, whether due or to become due, absolute or contingent, set forth in the Agreement from time to time (including, in respect of payment obligations, interest thereon accrued as provided in the Agreement), irrespective of when such obligations were incurred (the "Guaranteed Obligations"). To the extent that Supplier fails to pay or perform any Guaranteed Obligation, the Guarantor shall promptly pay to the Buyer the amount due or perform or cause the performance of such Guaranteed Obligation. 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 and performance of, the Guaranteed Obligations.

2. Demand

The Guarantor's obligation to make payment and/or to perform or cause performance under this Guarantee shall arise forthwith after demand therefor has been received by the Guarantor from the Buyer in writing in accordance with Section 10 hereof and the Guarantor's liability for the Guaranteed Obligations which are payment obligations shall bear interest in accordance with the terms and conditions set forth in the Agreement. The only condition (and no other document or 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 and/or performance. 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 of any Guaranteed Obligation is rescinded or must otherwise be returned for any reason whatsoever, including the insolvency or bankruptcy of the Supplier or otherwise, the Guarantor shall remain liable hereunder in respect of such Guaranteed Obligation 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 the 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 the Supplier or any Person other than the Guarantor;

(iv) the 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 the 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 defences, 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 the 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 the 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 the 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 the 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 the 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 the Supplier or the Buyer, except to the extent specifically provided in the Agreement to be due from the 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 the Supplier of its 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). 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. Defences

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

7. Subrogation

The Guarantor shall not be or claim to be subrogated, in whole or in part, to the rights of the Buyer against the 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 7, nothing contained in this Guarantee shall limit the rights at law and in equity of the Guarantor to subrogation.

8. 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 transactions 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.

9. 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 be a waiver of any other right, remedy or power and each such right, remedy or power 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.

10. 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:

[●]

Attention: [●]
Facsimile: [●]

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.

11. 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 section shall restrict the bringing of any such suit, action or proceeding in the courts of any other jurisdiction.

12. 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.

13. 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.

14. 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 Buyer assigns the Agreement to an assignee pursuant to Sections 16.5(d) or 16.5(e) thereof, then the Buyer may assign this Guarantee to such assignee without the consent of the Guarantor or the Supplier.

15. 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]

By: _____

Name: ●

Title: ●

By: _____

Name: ●

Title: ●

I/We have the authority to bind the Guarantor.

[BUYER]

By: _____

Name: ●

Title: ●

I have the authority to bind the corporation.