



**ENERGY RECOVERY
STANDARD OFFER PROGRAM
CONTRACT
(ERSOP CONTRACT)**

Version 1.0.1 (June 15, 2011)

1.	CONTRACT IDENTIFICATION #	ERSOP- _____	
2.	ERSOP REFERENCE #	ERSOP- _____	
3.	CONTRACT DATE	_____	
4.	SUPPLIER	_____	
5.	SUPPLIER'S ADDRESS	_____	Fax: _____
			Phone: _____
		Contact Person: _____	Email: _____
6.	SUPPLIER INFORMATION	<input type="checkbox"/> Not a Non-Resident of Canada <input type="checkbox"/> Non-Resident of Canada	
7.	GROSS NAMEPLATE CAPACITY	_____ MW	
8.	CONTRACT CAPACITY	_____ MW	
9.	CONTRACT PRICE	_____ \$/MWh	
10.	FACILITY STATUS	<input type="checkbox"/> New Energy Recover Facility	
		MILESTONE DATE FOR COMMERCIAL OPERATION: _____	
		<i>[Note to finalization: This should be three years from the Contract Date]</i>	
		<input type="checkbox"/> Eligible Existing Energy Recovery Facility	
		IN-SERVICE DATE: _____ DURATION OF TERM: _____	

11.	ELIGIBLE PRIMARY ENERGY SOURCE DESCRIPTION	_____	

12.	ELIGIBLE SUPPLEMENTARY FUEL USE	<hr/> Facility uses Eligible Supplementary Fuel in addition to Eligible Primary Energy Source <input type="checkbox"/> yes <input type="checkbox"/> no
13.	FACILITY LOCATION:	<hr/> Municipal Address: <hr/> Legal Description: <hr/> <hr/>
14.	CONNECTION POINT	<input type="checkbox"/> Distribution System (LDC: _____) <input type="checkbox"/> Distribution System-connected Electrical Host Facility (behind-the-meter) Technical Description of Connection Point: Feeder: _____ Bus: _____
15.	IMPACT ASSESSMENT PRIORITY START TIME	IMPACT ASSESSMENT PRIORITY STOP TIME <hr/>
16.	HOST FACILITY AFFILIATION	The owner of the Host Facility is not at Arm's Length from the Supplier. <input type="checkbox"/> yes <input type="checkbox"/> no <hr/>
17.	ERSOP RULES	Applicable version: _____
18.	INCORPORATED SCHEDULES, APPENDICES AND EXHIBITS	Schedule 1 – General Terms and Conditions, version ____ Exhibit A – Fuel Supply Plan Exhibit B – Settlement Exhibit C – Form of Irrevocable Standby Letter of Credit Exhibit D – Arbitration Provisions Applicable to Sections 1.7, 2.12 & 12.2 Exhibit E – Form of Secured Lender Consent and Acknowledgement Exhibit F – Form of Independent Engineer Certificate re: Commercial Operation Exhibit G – Form of Supplier Certificate re: Commercial Operation Schedule 2 – Special Terms and Conditions, version ____ or <input type="checkbox"/> N/A Appendix 1 – Standard Definitions, version ____

For valuable consideration, the OPA and the Supplier hereby mutually agree to be bound by the terms and conditions set out in this ERSOP Contract and the Schedules, Appendices and Exhibits attached hereto as noted in item 18 above (the “**Agreement**”). Each of the OPA and the Supplier confirms that it has received a copy of and has reviewed this Agreement, and that its representations and warranties set out herein are true and correct.

IN WITNESS OF WHICH, 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.

[Note to Finalization: Insert name of Supplier, or where Supplier is not a single legal entity, insert the name of all Persons that individually and collectively comprise the Supplier.]

ONTARIO POWER AUTHORITY

By: _____

Name:

Title:

By: _____

Name:

Title:

I have authority to bind the corporation.

By: _____

Name:

Title:

I/We have authority to bind the corporation.



**ENERGY RECOVERY STANDARD OFFER PROGRAM CONTRACT (ERSOP
CONTRACT)**

SCHEDULE 1

GENERAL TERMS AND CONDITIONS

VERSION 1.0.0

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ERSOP CONTRACT

GENERAL TERMS AND CONDITIONS

ARTICLE 1 DEFINITIONS AND RULES OF INTERPRETATION

1.1 Definitions

In addition to the terms defined elsewhere in this Agreement, capitalized terms shall have the meanings given to them in the attached Appendix – Standard Definitions.

1.2 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. Unless otherwise indicated, references to Articles, Sections and Exhibits are references to Articles, Sections and Exhibits in this Agreement.

1.3 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.

1.4 Currency

Except where otherwise expressly provided, all amounts in this Agreement are stated, and shall be paid, in Dollars and Cents, and shall be rounded to the nearest Cent.

1.5 Statutory References

A reference to a statute includes all regulations and rules made pursuant to the statute and, unless otherwise specified, the provisions of any statute, regulation or rule which amends, supplements or supersedes any such statute, regulation or rule.

1.6 IESO Market Rules

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. 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.

1.7 Invalidity, Unenforceability or Inapplicability of Provisions

In the event that a court of competent jurisdiction determines that any provision of this Agreement is invalid, inapplicable or unenforceable, then either Party may propose, by notice to the other Party, a replacement provision, and the OPA and the Supplier and, at the OPA's discretion, those Other Suppliers that are required by the OPA 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 (the “**Replacement Provision(s)**”). If the Parties are unable to agree on the Replacement Provisions within 60 days after the commencement of negotiations under this Section 1.7 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 D. 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 OPA to implement such award of the Arbitration Panel. This Section 1.7 shall not apply to the circumstances addressed in Section 2.12.

1.8 Entire Agreement

- (a) This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter of 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. No reliance is placed on any warranty, representation, opinion, advice or assertion of fact made by a Party to this Agreement, or its Representatives, to the other Party to this Agreement, or its Representatives, except to the extent that the same has been reduced to writing and included as a term of this Agreement.
- (b) Where this Agreement explicitly incorporates by reference any definitions set out in the ERSOP Rules, such reference shall be to the ERSOP Rules in effect on the Contract Date.

1.9 Waiver, Amendment

Except as expressly provided in this Agreement, no waiver of any provision of this Agreement shall be binding unless executed in writing by the Party to be bound thereby and no amendment of any provision of this Agreement shall be binding unless executed in writing by both Parties to this Agreement. 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.

1.10 Time Periods

Unless otherwise specified, time periods within or following which any payment is to be made or act is to be done, shall be calculated by excluding the day on which the period commences and including the day on which the period ends and by extending the period to the next Business Day following if the last day of the period is not a Business Day.

1.11 Governing Law

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

1.12 Preparation of Agreement

Notwithstanding the fact that this Agreement was drafted by the OPA'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 OPA or in favour of the Supplier when interpreting such term or provision, by virtue of such fact.

1.13 Exhibits, Schedules and Appendices

Each of the exhibits, schedules and appendices set out in item 18 on the ERSOP Contract Cover Page are referenced in and form part of this Agreement.

ARTICLE 2 DEVELOPMENT AND OPERATION OF THE FACILITY

2.1 Design and Construction of the Facility

- (a) If the Facility is a New Energy Recovery Facility, the Supplier shall design, engineer and construct the Facility using Good Engineering and Operating Practices and meeting all requirements of this Agreement, the IESO Market Rules, Distribution System Code, Transmission System Code, the Connection Agreement, in each case, as applicable, and all other Laws and Regulations. If the Facility is an Eligible Existing Energy Recovery Facility, the Supplier shall ensure that the Facility's design, engineering and construction complies with Good Engineering and Operating Practices and meets all requirements of this Agreement, the IESO Market Rules, Distribution System Code, Transmission System Code, the Connection Agreement, in each case, as applicable, and all other Laws and Regulations.
- (b) The Supplier agrees to provide the OPA with a single line electrical drawing bearing the stamp of a Professional Engineer licensed to practice in Ontario, 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 or the Fuel Supply Plan as outlined in the ERSOP Contract Cover Page and Exhibit A, or make any change as to the Facility's status as a Registered Facility (a "**Facility Amendment**"), without first notifying the OPA in writing and obtaining the OPA's consent in writing, which consent shall not be unreasonably withheld. For the purpose of this Section 2.1(c), it shall not be unreasonable for the OPA 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. For purposes of this paragraph, the failure of the Facility to have a Connection Point as described in the ERSOP Contract Cover Page shall be deemed to be a Facility Amendment. The Supplier acknowledges that it does not have any right pursuant to this Agreement to increase the Contract Capacity. For greater certainty, a variation or amendment to the Host Facility that does not result in a change to the Fuel Supply Plan shall not constitute a Facility Amendment.

- (d) If the OPA'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.
- (e) If the Supplier in respect of a New Energy Recovery Facility receives from a Transmitter or an LDC, written estimates of the Supplier's Network Upgrade Costs, Transmitter Connection Costs or LDC Connection Costs, as applicable, that are substantially more than the costs that would have been reasonably foreseeable by a prudent Supplier taking Commercially Reasonable Efforts to estimate such costs, the Supplier may, within 20 Business Days of receiving any such written estimate, submit a written request to the OPA to terminate this Agreement, along with such evidence as the OPA may reasonably require. The OPA shall, acting reasonably, within 20 Business Days of any such request, either:
 - (i) approve the request, in which case this Agreement shall be terminated without any costs or payments of any kind to either Party, and all Completion and Performance Security shall be returned or refunded (as applicable) to the Supplier within 20 Business Days following receipt by the OPA of a written request for the return or refund (as applicable) of such Completion and Performance Security; or
 - (ii) deny the request, in which case the Supplier may continue under this Agreement or request a Senior Conference pursuant to the terms of Section 15.1.
- (f) The Supplier shall ensure that the Facility does not constitute a Behind-the-Meter Facility unless the Supplier has obtained prior written consent from the OPA, which consent may be withheld at the OPA's sole and absolute discretion.

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 as set out in the Application and shall affect supply or demand on a Distribution System or of an Electrical Host Facility that is connected to a Distribution System, as applicable.
- (b) The Supplier shall have a Metering Plan in the Prescribed Form approved by the OPA and shall deliver a copy to the OPA for its approval no later than (i) 90 days prior to the Milestone Date for Commercial Operation in respect of a New Energy Recovery Facility, and (ii) 90 days after the Contract Date, in respect of an Eligible Existing Energy Recovery Facility. The OPA shall review the Metering Plan submitted by the Supplier and either approve the Metering Plan or provide the Supplier with its comments within 45 days after receipt. The OPA shall, when considering whether to approve the Metering Plan, have regard to those Electricity matters in the Metering Plan that have received IESO or LDC approval, as applicable, as well as matters relating to the ability to verify the use of Eligible Primary Energy Source and Eligible Supplementary Fuel, as applicable, in accordance with the Fuel Supply Plan and the requirements of this Agreement. If, within 15 days after the OPA 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 an Independent Engineer agreed upon by the Parties, acting reasonably, 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).

- (c) If the Facility is or becomes a Registered Facility in the IESO-Administered Market, the Supplier covenants and agrees to provide, at its expense, separate meter(s) and ancillary metering and monitoring equipment as required by the IESO Market Rules. The Supplier agrees to allow the OPA to have viewing access rights only to the revenue-quality interval meter data of the Facility to calculate the output of Electricity from the Facility net of any Station Service Loads and inclusive of any loss adjustment factors by establishing an Associated Relationship between the OPA and the Connection Point of the Facility within the MVPortal application tool or equivalent, at no cost to the OPA. For greater certainty, the OPA shall maintain in confidence in accordance with this Agreement and shall not access or use for any purpose (other than for the purposes of administering this Agreement) any information related to the Electricity consumption of the Electrical Host Facility (if applicable).
- (d) If the Facility does not become, or ceases to be, a Registered Facility in the IESO-Administered Market, the Supplier agrees to ensure that revenue-quality interval meter(s) will be operated and maintained, at its expense, to calculate the Delivered Electricity from the Facility at the Connection Point, net of any Station Service Loads and inclusive of any loss adjustment factors and to provide the OPA with access to the LDC Portal or the IESO's MVPortal, or equivalent, at no cost to the OPA. In the event that the LDC Portal, the IESO's MVPortal or equivalent is not available, the Supplier must supply validated metering data to the OPA in one of the following formats: .XML or .CSV at an interval of at least every 30 days. Revenue meter(s) 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 meter(s) will be adjusted, if necessary, to account for any electrical losses that may occur due to differences between the physical locations of the meter(s) and the Connection Point, and (ii) how the metered quantities from those meter(s) will be totalled, if necessary, with other revenue-quality metered data to accurately calculate the Delivered Electricity net of any Station Service Loads. Furthermore, the Supplier agrees that the OPA may retain a metering service provider for such revenue-quality interval meter(s) and the Supplier shall reimburse the OPA for the costs of such metering service provider. Such costs may be netted from any Contract Payment that the OPA owes to the Supplier.
- (e) The Supplier will provide the OPA with a commissioning report for all revenue meter(s) referenced in the Metering Plan prior to any use of metered data for the purposes expressed in Sections 2.6, 2.7 and 2.8. The OPA 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, and the meter data of the Facility to confirm the accuracy of such data. The Supplier shall not make any material changes to the Metering Plan following approval by the OPA or determination by the Independent Engineer (as applicable) without the prior written approval of the OPA, acting reasonably.
- (f) The Supplier shall 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 Laws and Regulations and any requirements deemed necessary by the IESO, the Transmitter, the LDC or the Electrical Host Facility, as applicable, from time to time

to protect the safety and security of the IESO-Controlled Grid, the Distribution System, each of their customers and the Electrical Host Facility, each as the case may be. The Supplier shall install protective equipment to protect its own personnel, property, and equipment from variations in frequency and voltage or from temporary delivery of other than three-phase power, whether caused by the Facility or otherwise.

2.3 Connection Assessments, Connection Costs and Network Upgrade Costs

- (a) The Supplier shall arrange, at its sole expense, for all Facility connection requirements in accordance with Laws and Regulations to permit the delivery of Delivered Electricity to the Connection Point.
- (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 pursuant to the Connection Agreement, the Distribution System Code and the Transmission System Code, as applicable. The Supplier acknowledges that the responsibility for any Network Upgrade Costs associated with the connection of the Facility shall be allocated as set forth in the Distribution System Code and Transmission System Code.
- (c) The Supplier shall apply for any Impact Assessments in respect of the Facility required by applicable Laws and Regulations. Other than in respect of an Eligible Existing Energy Recovery Facility, the Supplier shall not apply for any such Impact Assessments until after the Impact Assessment Priority Start Time, unless such application was complete, submitted and paid for prior to November 23, 2010. The OPA shall use its best efforts to not issue an Impact Assessment Priority Start Time that is earlier than the Impact Assessment Priority Start Time issued under this Agreement to any Other Supplier that is offered an ERSOP Contract following the time that this Agreement was offered.
- (d) The Supplier acknowledges that if it applies for any required Impact Assessment after the Impact Assessment Priority Stop Time, Other Suppliers that were offered an ERSOP Contract after the Supplier may have already applied for an impact assessment for their project, which may have connection cost and resource availability implications for the Supplier.
- (e) The Supplier shall provide documentation to the OPA, within 10 Business Days of receiving a written request for such documentation from the OPA, confirming the date that any application for an Impact Assessment in respect of the Facility was submitted.

2.4 Milestone Date for Commercial Operation

The following paragraph shall apply only in respect of a New Energy Recovery Facility:

- (a) The Supplier acknowledges that time is of the essence to the OPA with respect to attaining Commercial Operation of the Facility by the Milestone Date for Commercial Operation set out in the ERSOP Contract Cover Page. The Supplier shall cause Commercial Operation to be achieved in a timely manner and by the Milestone Date for Commercial Operation. The Supplier acknowledges that even if the Facility has not achieved Commercial Operation by the Milestone Date for Commercial Operation, the

Term shall nevertheless expire on the day before the 20th anniversary of the Milestone Date for Commercial Operation, pursuant to Section 8.1.

The following paragraph shall apply only in respect of an Eligible Existing Energy Recovery Facility:

- (b) The Supplier acknowledges that time is of the essence to the OPA with respect to the completion of the items set out in Section 2.5(a). The Supplier shall cause such items to be completed in a timely manner and by no later than 90 days after the Contract Date. The Supplier acknowledges that even if the items set out in Section 2.5(a) have not been completed by the 90th day after the Contract Date, the Term shall nevertheless expire on the day before the expiration of the Duration of Term pursuant to Section 8.2.

2.5 Commercial Operation

- (a) In respect of a New Energy Recovery Facility, the Facility will be deemed to have achieved “**Commercial Operation**” at the point in time when, as subsequently confirmed by the OPA in a written notice to the Supplier as described in Section 2.5(d):
 - (i) the OPA has received the Metering Plan in the Prescribed Form, and has approved it, acting reasonably;
 - (ii) the OPA has received a single line electrical drawing in accordance with Section 2.1(b), which identifies the as-built Connection Point, clearly showing area transmission and distribution facilities, including the transformer station(s) that is electrically closest to the Facility;
 - (iii) the OPA has received an IE Certificate in the form set out in Exhibit F directly from the Independent Engineer, 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 that set out on the ERSOP Contract Cover Page; and
 - (C) the Facility has been constructed, connected, commissioned and synchronized to a Distribution System or a Host Facility, as applicable, such that 100% of the Contract Capacity is available to Deliver Electricity in compliance with Good Engineering and Operating Practices and Laws and Regulation and substantially in accordance with the Fuel Supply Plan; and
 - (iv) the OPA has received a certificate addressed to it from the Supplier in the form set out in Exhibit F with respect to the Commercial Operation of the Facility, together with such documentation required to be provided under such form to the OPA.
- (b) In respect of an Eligible Existing Energy Recovery Facility, the “**Term Commencement Date**” shall be the point in time when, as subsequently confirmed by the OPA in a written notice to the Supplier as described in Section 2.5(d), the Supplier

has satisfied all of the requirements of Section 2.5(a) in respect of the Eligible Existing Energy Recovery Facility.

- (c) The OPA or its Representative shall be entitled, at the OPA's option, to attend any performance and generation test(s) for purposes of Section 2.5(a)(iii)(C) and the Supplier shall provide to the OPA confirmation in writing of the timing of such test(s) at least 10 Business Days in advance.
- (d) The OPA shall notify the Supplier in writing within 20 Business Days following receipt of all of the documentation required by Section 2.5(a) as to whether such documentation is acceptable to the OPA, acting reasonably. If the OPA determines that such documentation is not acceptable, the OPA shall provide to the Supplier reasonable particulars in respect of the deficiencies in such documentation.

2.6 Operation Covenants

- (a) The Supplier shall own or lease the Facility during the Term and shall operate and maintain the Facility or cause the Facility to be operated and maintained during the Term using Good Engineering and Operating Practices, and meeting all applicable requirements of the IESO Market Rules, the Distribution System Code, the Transmission System Code, the Connection Agreement, each as may be applicable, and all other Laws and Regulations.
- (b) The Supplier shall connect the Facility exclusively to the Connection Point. For greater certainty, the Supplier shall deliver all Delivered Electricity through the Connection Point.
- (c) The Supplier covenants and agrees that the Facility shall not utilize any sources or fuels other than the Eligible Primary Energy Source and Eligible Supplementary Fuel as identified on the ERSOP Contract Cover Page and as further described in the Fuel Supply Plan.

2.7 Fuel Supply Plan

- (a) The Supplier shall use Commercially Reasonable Efforts to comply with the Fuel Supply Plan attached as Exhibit A, as such plan may be amended from time to time in accordance with the terms of this Agreement.
- (b) The Supplier may, from time to time, propose amendments to the Fuel Supply Plan by submitting the applicable Prescribed Form to the OPA. The OPA shall, acting reasonably, determine whether or not to approve such amendments, provided that it shall not be unreasonable for the OPA to refuse to approve amendments if the amendments would cause the Facility to utilize any fuel source other than an Eligible Primary Energy Source or an Eligible Supplementary Fuel, or to materially increase the use of Eligible Supplementary Fuel.
- (c) At any time and from time to time the Supplier shall, within 30 days of receiving a written request from the OPA, provide to the OPA a comprehensive report including all data relating to the production and use of the Eligible Primary Energy Source, which is required to demonstrate compliance with the requirements of the Fuel Supply Plan.

2.8 Primary Energy Source Percentage

- (a) The Supplier shall, within 30 days of the end of each Contract Year, provide to the OPA a written report in the Prescribed Form (the “**PESP Report**”) setting out the Primary Energy Source Percentage applicable to such Contract Year. The Primary Energy Source Percentage in respect of any Contract Year “y” shall be calculated as follows:

$\text{PESP}_y = \frac{DE_y - SE_y}{DE_y}$	
where:	
PESP_y	is the Primary Energy Source Percentage in respect of Contract Year “y”;
DE_y	is the total Delivered Electricity in Contract Year “y” (in MWh);
SE_y	is the total energy produced by an Eligible Supplementary Fuel in Contract Year “y” (in MWh) and is calculated as the total Eligible Supplementary Fuel (in MMBTU) consumed in Contract Year “y” divided by 10.0 MMBTU/MWh (HHV).

- (b) Starting with the completion of the third Contract Year, the 2-Year Average Primary Energy Source Percentage shall be calculated based on the most recently completed two Contract Years. The Primary Energy Source Shortfall applicable to any Contract Year “y” shall be calculated as follows:

$2\text{YAPESP}_y = (\text{PESP}_{y-1} + \text{PESP}_{y-2}) / 2$	
where:	
2YAPESP_y	is the Two-Year Average Primary Energy Source Percentage (expressed as a decimal) applicable to Contract Year “y”.
PESP_{y-1}	Primary Energy Source Percentage calculated in respect of Contract Year “y-1”;
PESP_{y-2}	Primary Energy Source Percentage calculated in respect of Contract Year “y-2”.

- (c) If the 2YAPESP_y is less than 90%, the PESP Shortfall Reduction applicable to Contract Year “y” or PESPSR_y shall be calculated for purposes of determining the Contract Payment in Exhibit B. If the PESPSR_y is less than 50% it shall be a Supplier Event of Default.
- (d) The OPA may from time to time during the final Contract Year request a report of the Primary Energy Source Percentage applicable to any period of time during the final Contract Year. The Supplier shall, within 10 Business Days of any such request provide such a report to the OPA. If the Primary Energy Source Percentage applicable to any period covered by such a report is less than 90%, the OPA may apply an interim PESP

Shortfall Reduction to the calculation of any future Contract Payments, but with the necessary changes to reflect the fact that this is being applied within a Contract Year because there are no subsequent Contract Years for which it is to apply.

2.9 Insurance Covenants

- (a) The Supplier shall put in effect and maintain, or cause its contractors, where appropriate, to maintain, from the commencement of the construction of the Facility to the expiry of the Term, at its own cost and expense, all the necessary and appropriate insurance that a prudent Person in the business of developing and operating the Facility would maintain including policies for “all-risk” property insurance covering not less than the full replacement value of the Facility, equipment breakdown insurance, commercial general liability insurance and environmental impairment liability insurance. Any such policies must (i) for any property insurance, contain a waiver of subrogation in favour of the Indemnitees and (ii) for any liability insurance, include the Indemnitees as additional insureds with respect to liability arising in the course of performance of the obligations under, or otherwise in connection with, this Agreement, in which case the policy shall be non-contributing and primary with respect to coverage in favour of the Indemnitees.
- (b) Upon the request of the OPA, the Supplier will provide the OPA with a copy of each insurance policy, to be furnished within 10 Business Days of such request being made by the OPA.
- (c) If the Supplier is subject to the *Workplace Safety and Insurance Act, 1997* (Ontario), it shall submit a valid clearance certificate of Workplace Safety and Insurance Act coverage to the OPA prior to the commencement of construction of the Facility. In addition, the Supplier shall, from time to time at the request of the OPA, provide additional Workplace Safety and Insurance Act clearance certificates. The Supplier shall pay when due, and shall 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 of construction of the Facility, under the *Workplace Safety and Insurance Act, 1997* (Ontario), failing which the OPA has 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, 1997* (Ontario) 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 OPA in connection therewith.

2.10 Compliance with Laws and Regulations and Registration with the IESO

- (a) The OPA 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 OPA 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 licensing as is required by the OEB.

- (c) Unless required by Laws and Regulations, participation by the Supplier as a Market Participant and registration of the Facility with the IESO is optional. If the IESO requires or the Supplier chooses such participation and/or registration:
 - (i) the settlement of Market Settlement Charges shall take place directly between the “Metered Market Participant” and the IESO, and any costs incurred by the Supplier pursuant to the IESO Market Rules in respect of this Agreement shall be the sole responsibility of the Supplier; and
 - (ii) the Supplier shall meet all applicable Facility registration requirements as specified in the IESO Market Rules.

2.11 Supplier’s Reporting Requirements

- (a) In respect of a New Energy Recovery Facility, prior to the Facility achieving Commercial Operation, the OPA may request up to four times per calendar year that, on no less than 15 days’ prior notice, that by the 15th day of the following calendar quarter, the Supplier provide the OPA with a status report (i) describing the efforts made by the Supplier to meet the Milestone Date for Commercial Operation, (ii) setting out the progress of the design and construction work and the status of permitting and approvals related to the Facility, and (iii) containing photographs showing the status of the Facility or the construction work. At the OPA’s request, the Supplier shall provide an opportunity for the OPA to meet with personnel of the Supplier familiar with the information presented in such status report. The Supplier acknowledges that photographs of the Facility or the construction work may be posted or printed by the OPA on the Website or in publications.
- (b) The Supplier shall provide the OPA 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 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.
- (c) The Supplier shall, within 10 Business Days after any request by the OPA, provide the OPA with a copy of any licence, permit, certificate, registration, authorization, consent, Impact Assessment, or approval which is required by Laws and Regulations or Good Engineering and Operating Practices for the Supplier to develop, construct, commission, own and operate the Facility.

2.12 Environmental Attributes

- (a) The Supplier hereby transfers and assigns to, or to the extent transfer or assignment is not permitted, holds in trust for, the OPA who thereafter shall, subject to Section 2.12(d), retain, all rights, title, and interest in all Environmental Attributes associated with the Facility or the use of the Eligible Primary Energy Source or Eligible Supplementary Fuel, during the Term.
- (b) The Supplier shall from time to time, upon written direction of the OPA, take all such actions and do all such things necessary to effect the transfer and assignment to, or

holding in trust for, the OPA, all rights, title, and interest in all Environmental Attributes as set out in Section 2.12(a).

- (c) The Supplier shall from time to time, upon written direction of the OPA, take all such actions and do all such things necessary to certify, obtain, qualify, and register with the relevant authorities or agencies Environmental Attributes that are created and allocated or credited with respect to the Facility pursuant to Laws and Regulations from time to time (collectively, the “**Regulatory Environmental Attributes**”) for the purposes of transferring such Regulatory Environmental Attributes to the OPA in accordance with Section 2.12(a). The Supplier shall be entitled to reimbursement of the cost of complying with a direction under this Section 2.12(c), provided that the OPA, acting reasonably, approved such cost in writing prior to the cost being incurred by the Supplier.
- (d) To the extent that Laws and Regulations require the Facility to utilize, consume or obtain Regulatory Environmental Attributes in connection with Delivering Electricity, then the OPA shall propose such amendments to this Agreement to the Supplier and, at the OPA’s discretion, to all of the Other Suppliers who are required by the OPA to participate, based on the principle that the OPA will permit the Supplier to retain any Regulatory Environmental Attributes that may be created and allocated or credited with respect to the Facility and that are required by such Laws and Regulations in order for the Facility to Deliver Electricity. If the Parties are unable to agree on the OPA’s proposal or that of the Supplier or any of those Other Suppliers, as the case may be, within 60 days after the delivery or communication of the OPA’s proposal for such amendments, then such amendments 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 D. 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 OPA to implement such award of the Arbitration Panel.

2.13 Supplier Option to Terminate

- (a) The Supplier shall have the right within 90 days after becoming aware that the Host Facility is to be indefinitely shut down within the next 12 months, to provide notice in writing to the OPA specifying an effective date of termination in accordance with Section 2.13(c), that this Agreement is to be terminated, provided that no Supplier Event of Default has occurred and is continuing on the date of such notice.
- (b) Provided that no Supplier Event of Default has occurred and is continuing on the effective date of termination, this Agreement shall be terminated on the date specified in such notice, without any costs or payments of any kind to either Party (save and except for the payment of all amounts owed but not yet paid by the OPA or the Supplier to each other under the terms of this Agreement, whether or not such amounts are then due and payable pursuant to this Agreement), and all Completion and Performance Security which the OPA is not otherwise entitled to draw upon shall be returned or refunded, as applicable, within 20 Business Days.
- (c) The termination of this Agreement pursuant to Section 2.13(b) shall take effect on a date designated by the Supplier in the notice given pursuant to Section 2.13(a) that is no

earlier than 60 days following the date of delivery of such notice to the OPA and no later than 12 months following the date of delivery of such notice to the OPA. The Supplier acknowledges that any such termination shall not reduce any obligations of the Supplier in existence prior to the effective date of such termination.

- (d) If this Agreement is terminated in accordance with this Section 2.13, following the termination of this Agreement for the remainder of what would have been the Term, but for the early termination of this Agreement, and including any option the OPA has to extend the Term (if applicable) in accordance with Section 8.1(c), the Supplier shall not operate the Facility except for emergency standby purposes, as applicable. If, following the termination of this Agreement in accordance with this Section 2.13, the Contract Facility is operated in emergency standby mode for an aggregate of more than 60 days, the Supplier shall promptly notify the OPA and provide evidence to the reasonable satisfaction of the OPA of the nature and duration of any long-term electrical interruption(s) corresponding to such operation.
- (e) For greater certainty, the termination of this Agreement in accordance with this Section 2.13 is permanent and irreversible notwithstanding any change in the Supplier's circumstances.

ARTICLE 3 FACILITY OPERATION AND PAYMENT OBLIGATIONS

3.1 Contract Operation and Settlement

From and after the beginning of the Term, the Supplier agrees to operate the Facility in accordance with the terms of this Agreement and the Contract Payments shall begin to accrue and be payable in accordance with Exhibit B and the requirements of Article 4.

3.2 Risk and Responsibility for Facility Operation, Delivered Electricity and Related Products

The Parties acknowledge that the OPA is not purchasing from the Supplier, nor is the Supplier selling to the OPA, any Electricity or Related Products. As between the Supplier and the OPA, 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 Delivered Electricity and Related Products, except to the extent that any loss, damage, action, cost, expense or injury is attributable to the negligence or wilful misconduct of the Indemnitees.

3.3 Future Contract Related Products

- (a) All Related Products, other than Future Contract Related Products and any benefits associated therewith, shall belong to the Supplier.
- (b) The Supplier will provide the OPA with prior written notice of the development by the Supplier of any Future Contract Related Products from time to time.
- (c) The Supplier shall sell, supply or deliver all Future Contract Related Products as requested, directed or approved by the OPA, provided that the OPA shall not require the

Supplier to sell, supply or deliver any Future Contract Related Product where the Approved Incremental Costs in relation to such Future Contract Related Product are reasonably expected to exceed the total revenues received by the Supplier from the sale, supply or delivery of such Future Contract Related Product.

- (d) The Supplier covenants not to sell, supply or deliver any Future Contract Related Products unless such sale, supply or delivery has been requested, directed or approved by the OPA.
- (e) The Supplier will notify the OPA of any revenue received by the Supplier in connection with the sale, supply or delivery of any Future Contract Related Products.
- (f) The OPA may, in its sole and absolute discretion, deem any Ancillary Service or other Related Product that is a Future Contract Related Product not to be a Future Contract Related Product.

3.4 Supplier's Responsibility for Taxes

The Supplier is liable for and shall pay, or cause to be paid, or reimburse the OPA if the OPA has paid, all Taxes applicable to any Contract Payment due to the OPA hereunder. If any HST is payable in connection with such Contract Payment, such HST shall be paid by the Supplier. In the event that the OPA is required to remit such Taxes, the amount thereof shall be deducted from any sums becoming due to the Supplier hereunder.

3.5 OPA's Responsibility for Taxes

The OPA is liable for and shall pay, or cause to be paid, or reimburse the Supplier if the Supplier has paid any Taxes applicable to any Contract Payment due to the Supplier hereunder. If any HST is payable in connection with such Contract Payment, such HST shall be paid by the OPA. 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 OPA hereunder.

3.6 Non-residency

- (a) If the Supplier is a non-resident of Canada, as that term is defined in the ITA, then payments under this Agreement by the OPA shall be reduced by the amount of any applicable withholding or other similar Taxes and the OPA shall remit such withholding or other similar Taxes to the applicable taxing authorities. The OPA shall, within 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 OPA has paid such amounts, the OPA receives a refund, rebate or credit on account of such Taxes, then the OPA shall promptly remit such refund, rebate or credit amount to the Supplier.
- (b) If the Supplier is or becomes a non-resident of Canada, as that term is defined in the ITA, the Supplier shall notify the OPA forthwith of such status and shall provide the OPA with all such information reasonably required by the OPA to comply with any withholding tax or other tax obligations to which the OPA is or may become subject as a result of thereof.

ARTICLE 4

STATEMENTS AND PAYMENTS

4.1 Meter and Other Data

The Supplier shall provide to the OPA access to any electricity meter(s) in any Metering Plan to accommodate remote interrogation of the metered data on a daily basis. If the Supplier is not a Market Participant, the Supplier shall provide to the OPA 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 a Market Participant, forthwith upon request by the OPA. The Supplier shall notify the OPA of any material errors and omissions in any such data or information on a timely basis so as to permit the OPA, within a reasonable time, to advise 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 4.1, such Party shall notify the other Party and, if applicable, the IESO in accordance with the IESO Market Rules, on a timely basis.

4.2 Settlement for Non-IESO Market Participants

- (a) This Section 4.2 shall apply only to a Facility that is not a Registered Facility.
- (b) The Parties agree that all Contract Payments shall be settled in accordance with the Retail Settlement Code by the LDC to which the Facility or the Electrical Host Facility (as applicable) is connected.
- (c) The Contract Payments shall be settled periodically and on a schedule consistent with the monthly, bimonthly, quarterly or other periodic billing cycle of the applicable LDC (the “**Settlement Period**”), provided that if the Term begins on a day other than the first day of the Settlement Period, the initial Contract Payment may be deferred and incorporated with that of the first full Settlement Period following the commencement of the Term. All settlement documentation, requirements and details, including the date that any Contract Payment is due (the “**Payment Date**”) and the statement of amounts owing (the “**Statement**”) shall be governed by the applicable LDC. The Supplier shall provide its account information and HST number to the LDC responsible for settling Contract Payments, in the form and manner specified by such LDC, prior to achieving Commercial Operation.
- (d) 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 (or, where the Party owing such amount is the OPA, the applicable LDC shall make such payment on behalf of the OPA). Prior to engaging the OPA in a dispute, the Supplier shall make all reasonable efforts to resolve the dispute directly with the applicable LDC, failing which the Supplier shall provide notice to the OPA setting out the portions of the Statement that are in dispute with a brief explanation of the dispute and the steps taken towards resolving such dispute directly with the applicable LDC. If it is subsequently determined or agreed that an adjustment to the Statement is appropriate, the OPA will work the applicable LDC to 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 next Payment Date 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 Business Days after receipt of notice of such dispute by the OPA, the dispute may be submitted by either Party to a Senior Conference pursuant to the terms of Section 15.1.

4.3 Settlement for IESO Market Participants

- (a) This Section 4.3 shall apply only to a Facility that is a Registered Facility.
- (b) The OPA shall prepare and deliver a settlement statement (the “**Statement**”) to the Supplier, within 20 Business Days after the end of each calendar month in the Term that is the subject of the Statement (the “**Settlement Period**”), setting out the basis for the Contract Payment with respect to the Settlement Period, as well as the basis for any other payments owing under this Agreement by either Party to the other Party in the Settlement Period. If the Term begins on a day other than the first day of the Settlement Period, the initial Contract Payment may be deferred and incorporated with that of the first full Settlement Period following the commencement of the Term. A Statement may be delivered by the OPA to the Supplier by facsimile, e-mail or other electronic means and shall include the reference number assigned to this Agreement by the OPA and a description of the components of the Contract Payment and other payments owing to the Supplier for the Settlement Period.
- (c) The Party owing the Contract Payment shall remit to the other Party full payment in respect of the Statement no later than the last Business Day of the month following the end of the Settlement Period to which the Statement relates, provided that where the Supplier owes the Contract Payment, the Supplier shall not be required to make such payment earlier than five Business Days following delivery of the Statement (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 either the account designated by the Supplier in the Prescribed Form, or to the account designated by the OPA, as applicable. The account information and HST registration numbers of the Supplier and the OPA constitute Supplier’s Confidential Information and OPA’s Confidential Information, respectively, and are subject to the obligations as set out in Article 7. The Supplier shall provide its account information and HST number to the OPA in the Prescribed Form prior to achieving Commercial Operation. Either Party may change its account information from time to time by notice to the other in accordance with Section 14.6.
- (d) 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 notice to the OPA 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 OPA 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 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 Business Days after receipt of notice of such dispute by the OPA, the dispute may be submitted by either Party to a Senior Conference pursuant to the terms of Section 15.1.

4.4 General Settlement Provisions

The OPA shall have the right to designate a settlement agent or implement such alternative settlement mechanisms other than as set out in Sections 4.2 and 4.3, as it may in its sole and absolute discretion determine, provided that such alternative arrangement does not have a Material Adverse Effect on the Supplier. The OPA shall provide 30 days' prior notice to the Supplier of any such designation or change.

4.5 Interest

The Party owing the Contract 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.

4.6 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 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, the determination by the IESO of any information that is relevant to the calculation of the Contract Payment 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 corrected, then the one year limit set forth in Section 4.6(a) shall not apply to the correction of such error or the OPA's ability to readjust the Statement.
- (c) Subject to Sections 4.2(d) and 4.3(d), any adjustment to a Statement made pursuant to this Section 4.6 shall be made in the subsequent Statement.

4.7 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 Contract Payment made thereunder as well as all settlement statements and records of Contract Payments issued by applicable LDCs in accordance with Section 14.2.

ARTICLE 5 SECURITY REQUIREMENTS

5.1 Completion and Performance Security

- (a) Where the Facility is a New Energy Recovery Facility, the following shall apply:
 - (i) The Parties acknowledge that the Supplier has, prior to the execution of this Agreement, provided to the OPA Completion and Performance Security in the form described in Section 5.2 in the amount equal to \$30,000 per MW of Contract Capacity.

- (ii) Commencing on the Commercial Operation Date, the amount of the Completion and Performance Security shall be reduced to \$20,000 per MW of Contract Capacity.
 - (iii) Commencing on the fifth anniversary of the Commercial Operation Date, the amount of the Completion and Performance Security shall be reduced to \$15,000 per MW of Contract Capacity.
 - (iv) Commencing on the tenth anniversary of the Commercial Operation Date, the amount of the Completion and Performance Security shall be reduced to \$10,000 per MW of Contract Capacity.
 - (v) Commencing on the 15th anniversary of the Commercial Operation Date, the amount of the Completion and Performance Security shall be reduced to \$5,000 per MW of Contract Capacity.
- (b) Where the Facility is an Eligible Existing Energy Recovery Facility, the following shall apply:
 - (i) The Parties acknowledge that the Supplier has, prior to the execution of this Agreement, provided to the OPA Completion and Performance Security in the form described in Section 5.2 in the amount equal to \$15,000 per MW of Contract Capacity.
 - (ii) Commencing on the fifth anniversary of the Contract Date, the amount of the Completion and Performance Security shall be reduced to \$10,000 per MW of Contract Capacity.
 - (iii) Commencing on the tenth anniversary of the Contract Date, the amount of the Completion and Performance Security shall be reduced to \$5,000 per MW of Contract Capacity.
- (c) If the Supplier has provided any Completion and Performance Security in the form of a certified cheque or bank draft, and the amount of Completion and Performance Security required to be provided has been reduced in accordance with this Section 5.1, the OPA shall refund to the Supplier the difference between the amount outstanding and the amount required to be provided within 20 Business Days after receiving a written request from the Supplier, net of amounts owing from the Supplier to the OPA.
- (d) After the end of the Term, the OPA shall return or refund (as applicable) the Completion and Performance Security to the Supplier within 20 Business Days following receipt of a written request from the Supplier, net of any amounts owing by the Supplier to the OPA.

5.2 Composition of Completion and Performance Security

- (a) The obligation of the Supplier to post and maintain Completion and Performance Security as required by Section 5.1 must be satisfied in accordance with this Section 5.2(a) by the Supplier providing such security in the form of a certified cheque, bank draft or an irrevocable and unconditional standby letter of credit in substantially the form referenced as Exhibit C 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. Notwithstanding the foregoing, where the amount of the Completion and Performance Security required to be provided exceeds \$200,000, the Supplier must provide the Completion and Performance Security in the form of a letter of credit as described in this Section 5.2(a). For greater certainty, at any time the OPA holds a letter of credit as Completion and Performance Security, the Supplier shall ensure that such letter of credit does not expire or terminate for any reason prior to a date that is 60 days from such time.

- (b) Where the Supplier has provided Completion and Performance Security to the OPA in the form of a certified cheque or bank draft, the Supplier acknowledges that such amounts shall be deemed to have been paid by the Supplier to the OPA and the OPA shall have the right to invest, use, commingle or otherwise dispose of any such amounts, free from any claim or right of any nature whatsoever of the Supplier, including any equity or right of redemption by Supplier, subject to Section 5.1(d) above.

5.3 Adequacy of Security; Replacement Security

- (a) The Supplier shall ensure that, at all times, the aggregate value of all Completion and Performance Security provided to the OPA is at least equal to the then currently required amount of Completion and Performance Security and that the Completion and Performance Security is current, valid, enforceable and in an acceptable form, including:
 - (i) following realization by the OPA of any amount of Completion and Performance Security, increasing the amount of Completion and Performance Security, by an amount equal to that realized by the OPA; and
 - (ii) forthwith providing replacement security for any letter of credit (A) where the provider thereof has given notice that it does not wish to extend the letter of credit for an additional term, (B) which expires, terminates or fails, or ceases to be in full force and effect for the purposes hereof, (C) which is disaffirmed, disclaimed, dishonoured, repudiated or rejected in whole or in part by the provider thereof, or (D) the validity of which is challenged by the provider thereof.
- (b) All costs associated with the requirement to provide and maintain Completion and Performance Security shall be borne by the Supplier.
- (c) If existing Completion and Performance Security in the form of a letter of credit is replaced with new Completion and Performance Security, the OPA shall return the existing Completion and Performance Security held by the OPA to the Supplier, within 15 Business Days of the OPA's receipt of such new Completion and Performance Security. If existing Completion and Performance Security in the form of a certified cheque or bank draft has been paid to the OPA and the Supplier provides new Completion and Performance Security to the OPA in the form of a letter of credit, the OPA shall pay to the Supplier within 15 Business Days the amount of Completion and Performance Security that had been previously paid to the OPA in the form of a certified cheque or bank draft. A Supplier may from time to time consolidate any separate amounts of Completion and Performance Security held by the OPA by providing to the OPA replacement Completion and Performance Security in the cumulative amount of Completion and Performance Security outstanding, in which case the OPA shall return

or refund (as applicable) the existing Completion and Performance Security in accordance with this Section 5.3(c).

- (d) Notwithstanding any other provision of this Agreement, no delay, including a delay resulting from an event of Force Majeure shall extend the date by which any component of the Completion and Performance Security is required to be provided by the Supplier or returned or refunded (as applicable) by the OPA.

5.4 Interest on Completion and Performance Security

Any interest earned by the OPA on any Completion and Performance Security provided to the OPA shall be for the sole account of the OPA and the Supplier shall not have any right to such interest.

ARTICLE 6 REPRESENTATIONS

6.1 Representations of the Supplier

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

- (a) The Supplier 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 constituting documents or resolutions of the directors or shareholders of the Supplier;
 - (iii) any judgment, decree, order or award of any Governmental Authority or arbitrator;
 - (iv) any licence, permit, approval, consent or authorization held by the Supplier; or
 - (v) any Laws and Regulations,

that could have a Material Adverse Effect on the Supplier.

- (d) There are no bankruptcy, insolvency, reorganization, receivership, seizure, realization, arrangement or other similar proceedings pending against or being contemplated by the Supplier or, to the knowledge of the Supplier, threatened against the Supplier.
- (e) There are no actions, suits, proceedings, judgments, rulings or orders by or before any Governmental Authority or arbitrator, or, to the knowledge of the Supplier, threatened against the Supplier, that could have a Material Adverse Effect on the Supplier.
- (f) All statements, specifications, data, confirmations, and information that have been set out in the Application are complete and accurate in all material respects and are hereby restated and reaffirmed by the Supplier as representations made to the OPA hereunder and there is no material information omitted from the Application which makes the information in the Application misleading or inaccurate.
- (g) The Supplier is in compliance with all Laws and Regulations, other than acts of non-compliance which, individually or in the aggregate, would not have a Material Adverse Effect on the Supplier.
- (h) Unless the Supplier has otherwise notified the OPA pursuant to Section 3.6(b), the Supplier is not a non-resident of Canada for the purposes of the ITA.
- (i) An application for an Impact Assessment has not been submitted in respect of the Facility prior to the Impact Assessment Priority Start Time, unless such application was complete, submitted and paid for prior to November 23, 2010.

6.2 Representations of the OPA

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

- (a) The Ontario Power Authority 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 OPA and is a valid and binding obligation of the OPA 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 OPA 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 OPA under:
 - (i) any contract or obligation to which the OPA 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 shareholders of the OPA;
- (iii) any judgment, decree, order or award of any Governmental Authority or arbitrator;
- (iv) any licence, permit, approval, consent or authorization held by the OPA; or
- (v) any Laws and Regulations,

that could have a Material Adverse Effect on the OPA.

- (d) There are no bankruptcy, insolvency, reorganization, receivership, seizure, realization, arrangement or other similar proceedings pending against, or being contemplated by the OPA or, to the knowledge of the OPA, threatened against the OPA.
- (e) There are no actions, suits, proceedings, judgments, rulings or orders by or before any Governmental Authority or arbitrator, or, to the knowledge of the OPA, threatened against the OPA, that could have a Material Adverse Effect on the OPA.
- (f) The OPA is in compliance with all Laws and Regulations, other than acts of non-compliance which, individually or in the aggregate, would not have a Material Adverse Effect on the OPA.

ARTICLE 7

CONFIDENTIALITY AND FIPPA

7.1 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 or under Laws and Regulations. 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 7 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 Law and Regulations, 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 Laws and Regulations in accordance with Section 7.2.

- (c) Where the Supplier is the Receiving Party, the Supplier may disclose Confidential Information to any Secured Lender or prospective lender or investor and its advisors, to the extent necessary, for securing financing for the Facility, provided that any such Secured Lender or prospective lender or investor has been informed of the Supplier's confidentiality obligations hereunder and such Secured Lender or prospective lender or investor has completed and executed a confidentiality undertaking (the "**Confidentiality Undertaking**") in the Prescribed Form covenanting in favour of the OPA to hold such Confidential Information confidential on terms substantially similar to this Article 7.
- (d) Notwithstanding the foregoing, the Supplier consents to the disclosure: (i) of the name and contact particulars, including on the Website, (ii) of the Site, Contract Capacity, applicable Eligible Primary Energy Source(s) and Connection Point, including on the Website, (iii) of its address for service and the name of its Company Representative to all Other Suppliers, for the purposes of Sections 1.7, 2.12 and 12.2, (iv) on a confidential basis, of any information received by the OPA in respect of this Agreement for such internal purposes as the OPA may reasonably determine from time to time to the OPA's Representatives, and (v) of aggregated data relating to the ERSOP Program or the ERSOP Contracts.

7.2 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.

7.3 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 7.

7.4 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 7.

7.5 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 shall 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 7.5 shall survive any termination or expiry of this Agreement and shall prevail over any inconsistent provisions in this Agreement.

ARTICLE 8 TERM

8.1 Term for New Facilities

The following shall apply in respect of any New Energy Recovery Facility:

- (a) This Agreement shall become effective upon the Contract Date.
- (b) The “**Term**” means that period of time commencing at the beginning of the hour ending 01:00 hours (EST) of the date that is the Commercial Operation Date (the “**Term Commencement Date**”), and ending at 24:00 hours (EST) on the day before the 20th anniversary of the date that is the earlier of (A) the Milestone Date for Commercial Operation and (B) the Commercial Operation Date, subject to earlier termination in accordance with the provisions hereof. Subject to Sections 8.1(c) and (c), neither Party shall have any right to extend or renew the Term except as agreed in writing by the Parties.
- (c) Where the Commercial Operation Date occurs after the Milestone Date for Commercial Operation, the Supplier shall have the option to, no later than 60 days after the Commercial Operation Date, provide notice to the OPA along with a payment in the amount of 120 Dollars per MW multiplied by the Contract Capacity and multiplied by the number of calendar days that the Commercial Operation Date followed the Milestone Date for Commercial Operation. Where the Supplier exercises such option, the Term shall be extended such that the Term will expire at 24:00 hours (EST) on the day before the 20th anniversary of the Commercial Operation Date.
- (d) Where the Commercial Operation Date occurs after the Milestone Date for Commercial Operation and the Supplier has not exercised the option set out in Section 8.1(c), the OPA shall have the right, by providing notice to the Supplier no later than 180 days prior to the

expiration of the Term, to extend the Term such that the Term will expire at 24:00 hours (EST) on the day before the 20th anniversary of the Commercial Operation Date.

8.2 Term for Eligible Existing Energy Recovery Facilities

The following shall apply in respect of any Eligible Existing Energy Recovery Facility:

- (a) This Agreement shall become effective upon the Contract Date.
- (b) The “**Term**” means that period of time commencing at the beginning of the hour ending 01:00 hours (EST) of the Term Commencement Date (as such term is defined in Section 2.5(b)), and ending at 24:00 hours (EST) on the last day before the date that the Duration of Term lapses, measured from the earlier of (i) the Term Commencement Date and (ii) the date that is 90 days after the Contract Date.

ARTICLE 9 TERMINATION AND DEFAULT

9.1 Events of Default by the Supplier

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

- (a) The Supplier fails to make any payment when due or deliver, and/or maintain, the Completion and Performance Security as required under this Agreement, if such failure is not remedied within 10 Business Days after written notice of such failure from the OPA.
- (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 15 Business Days after written notice of such failure from the OPA, provided that such cure period shall be extended by a further 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 or the Facility and is not remedied within 30 Business Days after receipt by the Supplier of written notice of such failure or cessation from the OPA, provided that such cure period shall be extended by a further 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 30 Business Days after receipt by the Supplier of written notice of such fact from the OPA, provided that such cure period shall be extended by a further 30 Business Days if the Supplier, in the reasonable opinion of the OPA, 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 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 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 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 made a Facility Amendment that has not first been consented to by the OPA (other than in instances where such consent has been unreasonably withheld).
- (j) If the Facility is a New Energy Recovery Facility, and the Commercial Operation Date has not occurred on or before the date which is 18 months after the Milestone Date for Commercial Operation.
- (k) The Supplier applies for an Impact Assessment prior to the Impact Assessment Priority Start Time, and does not rescind any such Impact Assessment within five Business Days after receiving written notice from the OPA, unless such Impact Assessment was submitted and paid for prior to November 23, 2010.
- (l) The Supplier undergoes a change in Control without first obtaining the written approval of the OPA if required pursuant to this Agreement.

- (m) The Supplier assigns this Agreement without first obtaining the consent of the OPA, if required pursuant to this Agreement.
- (n) The default described in Section 2.8(c) has occurred.

9.2 Remedies of the OPA

- (a) If any Supplier Event of Default (other than a Supplier Event of Default relating to the Supplier referred to in Sections 9.1(e), 9.1(g) and 9.1(h)) occurs and is continuing, upon written notice to the Supplier, the OPA may terminate this Agreement.
- (b) If a Supplier Event of Default occurs and is continuing, the OPA may, in addition to the remedy set out in Section 9.2(a):
 - (i) set off any payments due to the Supplier against any amounts payable by the Supplier to the OPA including, at the OPA's option, the amount of any Completion and Performance Security provided to the OPA pursuant to Article 5; and
 - (ii) draw on all or part of the Completion and Performance Security, and if the remedy in Section 9.2(a) has not been exercised, require the Supplier to replace such drawn security with new security.
- (c) Notwithstanding Sections 9.2(a) and 9.2(b), upon the occurrence of a Supplier Event of Default relating to the Supplier referred to in Sections 9.1(e), 9.1(g) or 9.1(h), this Agreement shall automatically terminate without notice, act or formality, effective immediately before the occurrence of such Supplier Event of Default, in which case, for certainty, the Secured Lender shall have the rights available to it under Section 11.2(g).
- (d) If the OPA terminates this Agreement pursuant to Section 9.2(a) or the Agreement is terminated pursuant to Section 9.2(c),
 - (i) if the Termination Date precedes the Term Commencement Date, the OPA may, in its sole and absolute discretion, require the Supplier to pay as liquidated damages and not as a penalty, a sum equivalent to the amount of all Completion and Performance Security required to be provided by the Supplier as of the Termination Date, and the OPA shall be entitled to pursue a Claim for damages with respect to the amount of any portion of the Completion and Performance Security that the Supplier failed to provide but was required to provide to the OPA as of the Termination Date pursuant to Section 5.1; and in such circumstances, notwithstanding Section 9.5, the OPA'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 this Section 9.2(d)(i); and
 - (ii) if the Termination Date is on or after the Term Commencement Date, the OPA shall be entitled to retain all Completion and Performance Security provided by the Supplier and exercise all such other remedies available to the OPA, including pursuing a Claim for damages, as contemplated under Section 9.5.

- (e) Termination shall not relieve the Supplier or the OPA of their respective responsibilities relating to the availability of the Facility and delivery of the Delivered Electricity and Environmental Attributes from the Facility that relate to 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 OPA 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 OPA 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.

9.3 Events of Default by the OPA

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

- (a) The OPA fails to make any payment under this Agreement when due, if such failure is not remedied within 10 Business Days after written notice of such failure from the Supplier.
- (b) The OPA fails to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate OPA Event of Default), if such failure is not remedied within 15 Business Days after written notice of such failure from the Supplier, provided that such cure period shall be extended by a further 15 Business Days if the OPA is diligently remediating such failure and such failure is capable of being cured during such extended cure period.
- (c) The OPA 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 OPA and is not remedied within 30 Business Days after receipt by the OPA of written notice of such failure or cessation from the Supplier, provided that such cure period shall be extended by a further 30 Business Days if the OPA is diligently remediating 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 OPA in this Agreement is not materially true or correct in any material respect when made and is not made materially true or correct within 30 Business Days after receipt by the OPA of written notice of such fact from the Supplier, provided that such cure period shall be extended by a further 30 Business Days if the OPA 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 OPA 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 OPA 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 OPA's obligations under this Agreement.

- (f) A receiver, manager, receiver-manager, liquidator, monitor or trustee in bankruptcy of the OPA or of any of the OPA'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 30 days of the appointment. By decree, judgment or order of Governmental Authority, the OPA is adjudicated bankrupt or insolvent or any substantial part of the OPA's property is sequestered, and such decree, judgment or order continues undischarged and unstayed for a period of 30 days after the entry thereof. A petition, proceeding or filing is made against the OPA 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 30 days.
- (g) The OPA 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 OPA assigns this Agreement (other than an assignment made pursuant to Section 15.5(g)) without first obtaining the consent of the Supplier, if such consent is required pursuant to this Agreement.

9.4 Termination by the Supplier

- (a) If any OPA Event of Default occurs and is continuing, then upon written notice to the OPA, the Supplier may (i) terminate this Agreement and (ii) set off any payments due to the OPA against any amounts payable by the OPA to the Supplier. Where the Supplier has so terminated this Agreement, the OPA shall return any Completion and Performance Security it holds within 20 Business Days following receipt of a written request from the Supplier.
- (b) Notwithstanding the foregoing, if applicable, the OPA 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 OPA fails to comply with its obligations on termination.

9.5 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.

ARTICLE 10 FORCE MAJEURE

10.1 Effect of Invoking Force Majeure

- (a) If, by reason of Force Majeure:

- (i) the Supplier is unable to make available all or any part of the Contract Capacity or is unable to generate at the Facility, or is unable to deliver from the Facility to the Connection Point, all or any part of the Delivered Electricity or Future Contract Related Products;
- (ii) all or any part of the Delivered Electricity cannot be received at or transmitted or distributed from the Connection Point; or
- (iii) either Party is unable, wholly or partially, to perform or comply with its other obligations (other than payment obligations) hereunder, including, if applicable, the Supplier being unable to achieve Commercial Operation by the Milestone Date for Commercial Operation,

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.

- (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 written notice in substantially the Prescribed Form, provided that such notice shall be given within 20 Business Days of the later of (i) the commencement of the event or circumstances constituting Force Majeure or (ii) the date that the Party invoking Force Majeure knew or ought to have known that the event or circumstances constituting Force Majeure could have a Material Adverse Effect on the development or operation of the Facility. If the effect of the Force Majeure and full particulars of the cause thereof cannot be reasonably determined within such 20 Business Day period, the Party invoking Force Majeure shall be allowed a further 10 Business Days (or such longer period as the Parties may agree in writing) to provide such full particulars in substantially the Prescribed Form to the other Party.
- (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 20 Business Days of the termination of the event or circumstances constituting Force Majeure.
- (e) Nothing in this Section 10.1 shall relieve a Party of its obligations to make payments of any amounts that were due and owing before the occurrence of the Force Majeure or that otherwise may become due and payable during any period of Force Majeure.
- (f) If an event of Force Majeure causes the Supplier to not achieve Commercial Operation by the Milestone Date for Commercial Operation, then the Milestone Date for Commercial Operation 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, by reason of one or more events of Force Majeure, the Commercial Operation Date is delayed by such event(s) of Force Majeure for an aggregate of more than 24 months after the original Milestone Date for Commercial Operation (prior to any extension pursuant to Section 10.1(f)), then notwithstanding anything in this Agreement to the contrary, 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 Completion and Performance Security shall be returned or refunded (as applicable) to the Supplier forthwith.
- (h) If, by reason of Force Majeure, the Supplier is unable to perform or comply with its obligations (other than payment obligations) hereunder for more than an aggregate of 36 months in any 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 Completion and Performance Security shall be returned or refunded (as applicable) forthwith.

10.2 Exclusions

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

- (a) if and to the extent the Party seeking to invoke Force Majeure has caused the applicable event of Force Majeure by its fault or negligence;
- (b) if and to the extent the Party is seeking to invoke Force Majeure because it is unable to procure or maintain any Eligible Supplementary Fuel supply to be utilized by the Facility;
- (c) 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);
- (d) 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;
- (e) 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 of or failure to comply with Laws and Regulations by such Party;
- (f) if the Force Majeure was caused by a lack of funds or other financial cause;
- (g) if the Party invoking Force Majeure fails to comply with the notice provisions in Sections 10.1(b) or 10.1(d); or

- (h) if and to the extent the Supplier is seeking to invoke Force Majeure because of a Host Facility Force Majeure, and the Facility Delivers Electricity during such time.

10.3 Definition of Force Majeure

For the purposes of this Agreement, the term “**Force Majeure**” means any act, event, cause or condition that prevents a Party from performing its obligations (other than payment obligations) hereunder, 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 (i) such Party, or (ii) a third party contractor of such Party, unless, in either such case, 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) delays or disruptions (including those arising from events of Force Majeure referred to in this Section 10.3) in the construction of any Transmission System or Distribution System assets that are required for the Facility to Deliver Electricity;
- (g) civil disobedience or disturbances, war (whether declared or not), acts of sabotage, blockades, insurrections, terrorism, revolution, riots or epidemics;
- (h) 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;
- (i) 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;
- (j) any unanticipated maintenance or Outage affecting the Facility which is not identified in the Supplier’s then current schedule of Planned Outages submitted to the OPA or the LDC as applicable, in advance of the occurrence of an event of Force Majeure;

- (k) any unanticipated maintenance or Outage affecting the Facility which results directly from, or is scheduled or planned directly as a consequence of, an event of Force Majeure; and
- (l) a Host Facility Force Majeure.

ARTICLE 11 LENDER'S RIGHTS

11.1 Lender Security

Notwithstanding Section 15.5, the Supplier, from time to time on or after the date of this Agreement shall have the right, at its cost, to enter into a Secured Lender's Security Agreement. For greater certainty, 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 based upon and subject to the following conditions:

- (a) A Secured Lender's Security Agreement may be made for any amounts and upon any terms (including terms of the loans, interest rates, payment terms and prepayment privileges or restrictions) as desired by the Supplier, except as otherwise provided in this Agreement.
- (b) A Secured Lender's Security Agreement may not secure any indebtedness, liability or obligation of the Supplier that is not related to the Facility or cover any real or personal property of the Supplier not related to the Facility. For greater certainty, a Secured Lender's Security Agreement may cover shares or partnership interests in the capital of the Supplier.
- (c) The OPA 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 OPA for any or all of the same.
- (d) No Secured Lender's Security Agreement shall be binding upon the OPA in the enforcement of the OPA'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 OPA 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 OPA 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 OPA 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 written notice of such default to the OPA at least 10 Business Days prior to exercising any such rights.

- (f) Any Secured Lender's Security Agreement permitted hereunder may secure two or more separate debts, liabilities or obligations in favour of two or more separate Secured Lenders, provided that such Secured Lender's Security Agreement complies with the provisions of this Article 11.
- (g) Any number of permitted Secured Lender's Security Agreements may be outstanding at any one time, provided that each such Secured Lender's Security Agreement complies with the provisions of this Article 11.
- (h) All rights acquired by a Secured Lender under any Secured Lender's Security Agreement shall be subject to all of the provisions of this Agreement, including the restrictions on assignment contained herein. While any Secured Lender's Security Agreement is outstanding, the OPA 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. Prior to any such amendment, supplement or termination, the Supplier shall provide to the OPA such Secured Lender's consent in writing. 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 OPA for the payment of all sums owing to the OPA under this Agreement and for the performance of all of the Supplier's obligations under this Agreement.

11.2 Rights and Obligations of Secured Lenders

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

- (a) No Supplier Event of Default (other than those referred to in Section 9.2(c)) shall be grounds for the termination by the OPA of this Agreement until:
 - (i) any notice required to be given under Section 9.1 and 9.2(a) has been given to the Supplier and to the Secured Lender; and
 - (ii) the cure period set out in Section 11.2(b) has expired without a cure having been completed and without the Secured Lender having taken the actions therein contemplated.
- (b) In the event the OPA has given any notice required to be given under Section 9.1, the Secured Lender shall, within the applicable cure period (including any extensions), if any, have the right (but not the obligation) to cure such default, and the OPA 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 11.2. A Secured Lender may, subject to the provisions of this Agreement, enforce any Secured Lender's Security Agreement and acquire the Supplier's Interest in any lawful way and, without limitation, a Secured Lender or its nominee or agent or a receiver or receiver and manager appointed by or on the application of the Secured Lender, may take possession of and manage the 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 OPA as required under Section 11.2(f).
- (e) Until a Secured Lender (i) forecloses or has otherwise taken ownership of the Supplier's Interest or (ii) has taken possession or control of the Supplier's Interest, whether directly or by an agent as a mortgagee in possession, or a receiver or receiver and manager has taken possession or control of the Supplier's Interest by reference to the Secured Lender's Security Agreement, the Secured Lender shall not be liable for any of the Supplier's obligations or be entitled to any of the Supplier's rights and benefits contained in this Agreement, except by way of security. If the Secured Lender itself or by a nominee or agent, or a receiver or a receiver and manager appointed by or on the application of the Secured Lender, is the owner or is in control or possession of the Supplier's Interest, then the entity that is the owner or is in control or possession of the Supplier's Interest shall be bound by all of the Supplier's obligations. Once the Secured Lender or such other Person goes out of possession or control of the Supplier's Interest or transfers the Supplier's Interest in accordance with this Agreement to another Person who is at Arm's 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, the Secured Lender agrees that it shall not transfer, sell or dispose of the Supplier's Interest or any other interest in the Facility to any Person unless such transferee or purchaser takes the Supplier's Interest or other applicable interest subject to the Supplier's obligations pursuant to this Agreement. No transfer shall be effective unless the OPA:
 - (i) acting reasonably, if such transferee is at Arm's Length with the Secured Lender; or
 - (ii) acting in its sole and subjective discretion, if such transferee is not at Arm's Length with the Secured Lender,

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

- (g) In the event of the termination of this Agreement prior to the end of the Term due to a Supplier Event of Default, the OPA shall, within 20 Business Days after the date of such termination, deliver to each Secured Lender that is at Arm's Length with the Supplier, a statement of all sums then known to the OPA 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 OPA is willing to enter into a New Agreement (the "**OPA Statement**"). Subject to the provisions of this Article 11, each such Secured Lender or its transferee approved by the OPA pursuant to Section 11.2(f) shall thereupon have the option to obtain from the OPA a New Agreement in accordance with the following terms:
- (i) Upon receipt of the written request of the Secured Lender within 30 days after the date on which it received the OPA Statement, the OPA 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 OPA'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 OPA in connection with such default and termination, and the preparation, execution and delivery of such New Agreement and related agreements and documents, provided, however, that with respect to any default that could not be cured by such Secured Lender until it obtains possession, such Secured Lender shall have the applicable cure period commencing on the date that it obtains possession to cure such default.

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

- (h) Despite anything to the contrary contained in this Agreement, the provisions of this Article 11 shall enure only to the benefit of the holders of a Secured Lender's Security Agreement. If the holders of more than one such Secured Lender's Security Agreement who are at Arm's Length with the Supplier make written requests to the OPA in accordance with this Section 11.2 to obtain a New Agreement, the OPA 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 OPA 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 OPA in its unqualified subjective discretion or may apply to a court of competent jurisdiction for a declaration as to such priorities, which opinion or declaration shall be conclusively binding upon all parties concerned.

11.3 Co-operation

The OPA and the Supplier shall enter into an agreement with any Secured Lender substantially in the form of Exhibit E for the purpose of implementing the Secured Lender's Security Agreement protection provisions contained in this Agreement. The OPA, 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 OPA are not adversely affected thereby, the obligations of the Supplier to the OPA are not altered thereby and the consent of any other Secured Lender to such amendment has been obtained by the Supplier or the Secured Lender making the request for the amendment.

ARTICLE 12 DISCRIMINATORY ACTION

12.1 Discriminatory Action

- (a) A "**Discriminatory Action**" shall occur if:
 - (i) either (A) the Legislative Assembly of Ontario causes to come into force any statute that was introduced as a bill in the Legislative Assembly of Ontario or the Government of Ontario causes to come into force or makes any order-in-council or regulation first having legal effect on or after the date of the Contract Date; or (B) the Legislative Assembly of Ontario directly or indirectly amends this Agreement without the consent of the Supplier;
 - (ii) the effect of the action referred to in Section 12.1(a)(i) is either (A) borne principally by the Supplier; or (B) borne principally by the Supplier and one or more Other Suppliers; and
 - (iii) such action increases the costs that the Supplier would reasonably be expected to incur under this Agreement in respect of Delivering Electricity, 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.
- (b) Notwithstanding the foregoing, 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 Business Days prior to the Contract Date:
 - (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 Ontario Power Authority, the Government of Ontario, and/or the Ministry of Energy that appeared on

the Website, the website of the Ontario Power Authority, the Government of Ontario and/or the Ministry of Energy, provided that any amendments made to such public form, in becoming such statute, do not have a Material Adverse Effect on the Supplier;

- (iii) any of such regulations that prior to five Business Days prior to the Contract Date:
 - (A) have been published in the Ontario Gazette but by the terms of such regulations come into force on or after five Business Days prior to the Contract Date; or
 - (B) have been referred to in a press release issued by the Ontario Power Authority, the Government of Ontario and/or the Ministry of Energy that appeared on the website of the Government of Ontario or the Ministry of Energy, provided that any amendments made to such regulations in coming into force do not have a Material Adverse Effect on the Supplier.

12.2 Consequences of Discriminatory Action

- (a) If a Discriminatory Action occurs, the Supplier shall have the right to obtain, without duplication, compensation (the “**Discriminatory Action Compensation**”) from the OPA for:
 - (i) the amount of the increase in the costs that the Supplier would reasonably be expected to incur in the delivery of the Electricity and 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
 - (ii) 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.
- (b) To the extent that there is a Discriminatory Action, then:
 - (i) the Supplier, upon becoming aware of the consequences of such Discriminatory Action, shall promptly notify the OPA;

- (ii) the Parties and, at the OPA's discretion, those Other Suppliers that are required by the OPA to participate, shall engage in good faith negotiations to determine the amount of the Discriminatory Action Compensation; and
- (iii) if the Parties fail to reach agreement on the amount of Discriminatory Action Compensation described in Section 12.2(a), 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 D. 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 any subsequent amendments to this Agreement made by the OPA to implement such award of the Arbitration Panel.

12.3 Right of the OPA to Remedy a Discriminatory Action

If the OPA wishes to remedy or cause to be remedied the occurrence of a Discriminatory Action, the OPA must give notice to the Supplier within 30 days after the date of receipt of notice of the Discriminatory Action. If the OPA gives such notice, the OPA must remedy or cause to be remedied the Discriminatory Action within 180 days after the date of receipt of the notice of the Discriminatory Action. If the OPA 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, compensation for any detrimental effect the Discriminatory Action had on the Supplier's economics, adjusted to apply only to the period during which the Discriminatory Action detrimentally affected the Supplier's economics.

ARTICLE 13 LIABILITY AND INDEMNIFICATION

13.1 Exclusion of Consequential Damages

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

13.2 Liquidated Damages

The Supplier acknowledges and agrees that it would be extremely difficult and impracticable to determine precisely the amount of actual damages that would be suffered by the OPA and the Ontario ratepayer as result of a failure by the Supplier to meet its obligations under this Agreement. The Supplier further acknowledges and agrees that the liquidated damages set forth in this Agreement are a fair and reasonable approximation of the amount of actual damages that would be suffered by the OPA and the Ontario ratepayer as a result of a failure by the Supplier to meet its obligations under this Agreement, and does not constitute a penalty.

13.3 OPA Indemnification

The Supplier shall indemnify, defend and hold the Ontario Power Authority, any assignee of the OPA, 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, (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, and (iii) 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 Laws and Regulations, except to the degree that such discharge shall have been due to the negligence or wilful misconduct of the Indemnitees. For greater certainty, in the event of contributory negligence or other fault of the Indemnitees, then such Indemnitees shall not be indemnified hereunder in the proportion that the Indemnitees’ negligence or other fault contributed to any Indemnifiable Loss.

13.4 Defence of Claims

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

13.5 Joint and Several Liability

Other than in the case of an Ontario limited partnership, if the Supplier is not a single legal entity, then all such entities that constitute the Supplier shall be jointly and severally liable to the OPA for all representations, warranties, obligations, covenants and liabilities of the Supplier hereunder.

ARTICLE 14 CONTRACT OPERATION AND ADMINISTRATION

14.1 Company Representative

The Supplier and the OPA shall, by notice in the Prescribed Form, each appoint, from time to time, a representative (a “**Company Representative**”), who shall be duly authorized to act on behalf of the Party that has made the appointment, and with whom the other Party may consult at all reasonable times, and whose instructions, requests and decisions, provided the same are in writing signed by the respective Company Representative, shall be binding on the appointing Party as to all matters pertaining to this Agreement. The Company Representatives shall not have the power or authority to amend this Agreement.

14.2 Record Retention; Audit Rights

The Supplier and the OPA 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 seven years after the creation of the record or data. The Supplier and the OPA, on a confidential basis as provided for in Article 7 of this Agreement, shall provide reasonable access to the relevant and appropriate financial and operating records and data kept by such Party relating to this Agreement reasonably required for the other Party to comply with its obligations to Governmental Authorities or to verify or audit any information provided in accordance with this Agreement. For greater certainty, the Supplier shall provide to the OPA any information required by the OPA to verify compliance with the Fuel Supply Plan and the calculation of the Primary Energy Source Percentage. Moreover, the Supplier agrees and consents to the IESO, an LDC or any other relevant third party providing to the OPA all relevant meter and invoice data regarding the Facility required by the OPA in order to verify any information provided pursuant hereto. A Party may use its own employees for purposes of any such review of records, provided that those employees are bound by the confidentiality requirements provided for in Article 7. Alternatively, and at the election of the auditing Party, access shall be through the use of a mutually agreed upon third party auditor. The Party seeking access to such records in this manner shall pay the fees and expenses associated with use of the third party auditor.

14.3 Operating and Outage Reports to the OPA

- (a) In addition to the documentation provided in Section 14.3(c), the Supplier shall deliver at the times specified below the following documents, reports, plans and notices to the OPA:
 - (i) No later than the date that is (A) 60 days before the Milestone Date for Commercial Operation of the Facility in respect of a New Energy Recovery Facility, and (B) 30 days after the Term Commencement Date in respect of an Eligible Existing Energy Recovery Facility, and in respect of the second Contract Year and each Contract Year thereafter, 60 days prior to each Contract Year, an operating plan for the Facility for the succeeding Contract Year, in the Prescribed

Form (the “**Annual Operating Plan**”). The Annual Operating Plan shall include a schedule of Planned Outages for that 12 month period (together with the Supplier’s estimate of the expected duration of each Planned Outage) which shall be consistent with Good Engineering and Operating Practices, and 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 20 Business Days’ prior notice to the OPA, amend the Annual Operating Plan;

- (ii) prompt notice to the OPA of any Outage other than a Planned Outage, or any anticipated Outage other than a Planned Outage. Any notice under this subsection shall include a statement of the cause of such Outage, the proposed corrective action and the Supplier’s estimate of the expected duration of such Outage. The Supplier shall use Commercially Reasonable Efforts to promptly end or reduce the length of such Outage; and
 - (iii) 30 days prior written notice (or such lesser number of days as is possible in the circumstances) to the OPA of any Planned Outage of the Facility that is not being taken at the time and for the duration disclosed in the Annual Operating Plan;
- (b) All Outages shall take place in accordance with the notices of Outages provided by the Supplier to the OPA under this Section 14.3.
 - (c) If the Supplier is required to report Outages directly to the IESO or an LDC, the Supplier shall deliver to the OPA a copy of all reports, plans and notices that the Supplier is required to provide to the IESO or such LDC with respect to Outages, at the same time or within one Business Day after such reports, plans and notices are delivered by the Supplier to the IESO or the LDC, as applicable.

14.4 Inspection of Facility

- (a) The OPA and its Representatives shall, at all times upon two Business Days’ prior notice, at any time after the Contract Date, 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 OPA 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 OPA shall not relieve the Supplier of any of its obligations to comply with the terms of this Agreement. No Supplier Event of Default will be waived or deemed to have been waived by any inspection by or on behalf of the OPA. In no event will any inspection by the OPA hereunder be a representation that there has been or will be compliance with this Agreement and Laws and Regulations.

14.5 Inspection Not Waiver

- (a) Failure by the OPA to inspect the Facility or any part thereof under Section 14.4, or to exercise its audit rights under Section 14.2, shall not constitute a waiver of any of the

rights of the OPA hereunder. An inspection or audit not followed by a notice of a Supplier Event of Default shall not constitute or be deemed to constitute a waiver of any Supplier Event of Default, nor shall it constitute or be deemed to constitute an acknowledgement that there has been or will be compliance by the Supplier with this Agreement.

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

14.6 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, all contact details shall be as set out in the ERSOP Contract Cover Page.

If to the OPA: 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) Notice delivered or transmitted as provided above shall be deemed to have been given and received on the day it is received or transmitted, provided that it is received or transmitted on a Business Day prior to 5:00 p.m. local time in the place of receipt. Otherwise such notice shall be deemed to have been given and received on the next following Business Day.
- (c) Any notices of an Event of Default and termination of this Agreement shall only be given by hand or courier delivery.

ARTICLE 15 MISCELLANEOUS

15.1 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 20 Business Days following delivery of such notice to the other Party, a senior executive of the Supplier shall meet with a director of the OPA, either in person or by telephone (the “**Senior Conference**”), to attempt to resolve the dispute. Each Party shall be prepared to propose a solution to the dispute. If, following the Senior Conference, the dispute is not resolved, the dispute may be settled by arbitration pursuant to Section 15.2, if agreed to by both Parties.

15.2 Arbitration

Except as otherwise specifically provided for in this Agreement, any matter in issue between the Parties as to their rights under this Agreement may be decided by arbitration provided, however, that the Parties have first completed a Senior Conference pursuant to Section 15.1. Any dispute to be decided by arbitration will be decided by a single arbitrator appointed by the Parties or, if such Parties fail to appoint an arbitrator within 15 Business 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 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.

15.3 Business Relationship

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

15.4 Binding Agreement

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

15.5 Assignment

- (a) Following the third anniversary of the Term Commencement Date, this Agreement along with all of the rights, interests and obligations under this Agreement (including for greater certainty those rights, interests and obligations relating to Environmental Attributes) may be assigned by the Supplier, with the prior written consent of the OPA, which consent shall not be unreasonably withheld, except as set out in Section 15.5(b) below and as provided in Article 11. Prior to the third anniversary of the Term Commencement Date, neither this Agreement nor any of the rights, interests or obligations under this Agreement may be assigned by the Supplier.
- (b) For the purposes of Section 15.5(a), it shall not be unreasonable for the OPA to withhold its consent if the proposed assignment would (i) cause a Supplier to breach the obligation to own the Facility as set out in Section 2.6(a), or (ii) have or is likely to have, as determined by the OPA acting reasonably, a Material Adverse Effect on the Supplier's ability to perform its obligations under this Agreement.
- (c) Notwithstanding Section 15.5(a), 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 OPA 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 enters into a written agreement with the OPA to assume all of the Supplier's obligations under this Agreement and be bound by the terms of this Agreement, and the arrangements and obligations of the Supplier set forth in Article 5 have been met in accordance with the terms of Article 5.
- (d) Notwithstanding Section 15.5(a), 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 OPA, where following such assignment, the Facility becomes, or continues to be, a Host Developed Project; provided, however, that no such assignment by the Supplier or any of its successors or permitted assigns hereunder shall be valid or effective unless and until such assignee enters into an agreement with the OPA to assume all of the Supplier's obligations under this Agreement and be bound by the terms of this Agreement, and the arrangements and obligations of the Supplier set forth in Article 5 have been met in accordance with the terms of Article 5.
- (e) If the Supplier assigns this Agreement to a non-resident of Canada as that term is defined in the ITA, and the OPA incurs any additional Taxes, at any time thereafter, solely as the result of such assignment, then payments under this Agreement by the OPA shall be reduced by the amount of such additional Taxes and the OPA shall remit such additional Taxes to the applicable taxing authorities. The OPA shall within 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 OPA has paid such amounts, the OPA receives a refund, rebate or credit on account of such Taxes, then the OPA shall promptly remit such refund, rebate or credit amount to the assignee.
- (f) If a valid assignment of this Agreement is made by the Supplier in accordance with this Section 15.5, the OPA acknowledges and agrees that, upon such assignment and

assumption and notice thereof by the assignor to the OPA, the assignor shall be relieved of all its duties, obligations and liabilities hereunder.

- (g) The OPA shall have the right to assign this Agreement from time to time 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 OPA under this Agreement and be novated into this Agreement in the place and stead of the OPA (except for the OPA's obligation in Section 15.5(g)(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 OPA, whereupon:
 - (i) the representation set forth in Section 6.2(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 6.2 shall be deemed to be made by the assignee to the Supplier at the time of such assignment and assumption; and
 - (iii) the OPA shall be relieved of all obligations and liability arising pursuant to this Agreement; notwithstanding the foregoing, the OPA shall remain liable to the Supplier for remedying any payment defaults under Section 9.3(a) and shall remain liable for any obligations and liabilities of the assignee arising from any OPA Event of Default, provided that any notice required to be given under Sections 9.3 and 9.4(a) is given on the same day to the assignee and to the OPA. The time periods in Section 9.3 shall not begin to run until both the assignee and the OPA have been so notified.

15.6 Change of Control

- (a) No change of Control of the Supplier shall be permitted prior to the third anniversary of the Term Commencement Date. From and after the third anniversary of the Term Commencement Date, a change of Control of the Supplier shall be permitted, provided that the Supplier, within 10 Business Days following such change of Control having effect, provides the OPA with notice of such change of Control and such additional information as the OPA may reasonably require regarding the names of the Persons who Control or otherwise indirectly or directly have an ownership interest in the Supplier, following such change of Control.
- (b) For the purposes of Sections 15.6(a), a change of Control shall include a change from no Person having Control of the Supplier to any Person having Control of the Supplier, a change from any Person having Control of the Supplier to no Person having Control of the Supplier or a change from two Persons having Control of the Supplier to one or no Person having Control of the Supplier.
- (c) Notwithstanding Section 15.6(a), a change of Control of the Supplier shall be permitted in circumstances where following such change of Control, the Facility becomes, or continues to be, a Host Developed Project, provided that the Supplier, within 10 Business Days following such change of Control having effect, provides the OPA with notice of such change of Control and such additional information as the OPA may

reasonably require regarding the names of the Persons who Control or otherwise indirectly or directly have an ownership interest in the Supplier and the Host Facility, following such change of Control

15.7 Survival

The provisions of Sections 2.12, 3.2, 3.4, 3.5, 3.6, 5.1(d), Article 4, Article 7, Sections 9.2, 9.4, 9.5, 11.2(g), Article 13, Sections 14.2, 15.1, 15.2, 15.5(e) and 15.5(g) shall survive the expiration of the Term or earlier termination of this Agreement. The expiration of the Term or a termination of this Agreement shall not affect or prejudice any rights or obligations that have accrued or arisen under this Agreement prior to the time of expiration or termination and such rights and obligations shall survive the expiration of the Term or the termination of this Agreement for a period of time equal to the applicable statute of limitations.

15.8 Counterparts

This Agreement may be executed in two or more counterparts, and all such counterparts shall together constitute one and the same Agreement. It shall not be necessary in making proof of the contents of this Agreement to produce or account for more than one such counterpart. Any Party may deliver an executed copy of this Agreement by facsimile or electronic mail but such Party shall, within 10 Business Days of such delivery by facsimile or electronic mail, promptly deliver to the other Party an originally executed copy of this Agreement.

15.9 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 OPA may set off any amounts owing by the Supplier to the OPA in connection with Sections, 2.2(d), 2.9(c), 3.1, 3.4, 3.6, 4.2, 4.3, 4.5, 9.2, 9.5, 13.3 and 15.5(e) against any monies owed by the OPA to the Supplier in connection with Sections 3.1, 3.5, 3.6(a), 4.2, 4.3, 4.5, 5.1(c), 5.1(d), 9.4(b), 9.5, 12.2, 12.3 and 15.5(e).
- (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 OPA to the Supplier in connection with Sections 3.1, 3.5, 3.6(a), 4.2, 4.3, 4.5, 5.1(c), 5.1(d), 9.4(b), 9.5, 12.2, 12.3 and 15.5(e) against any monies owed by the Supplier to the OPA in connection with Sections 2.2(d), 2.9(c), 3.1, 3.4, 3.6, 4.2, 4.3, 4.5, 9.2, 9.5, 13.3 and 15.5(e).

15.10 Rights and Remedies Not Limited to Contract

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

15.11 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.

[END OF STANDARD TERMS AND CONDITIONS]

EXHIBIT A – FUEL SUPPLY PLAN

[Note to Finalization: Attach Fuel Supply Plan from Application.]

EXHIBIT B – SETTLEMENT

1.1 Indexation

The “**Indexed Contract Price**” for the calendar year in which the Term Commencement Date occurs shall be equal to the Contract Price. For the second and each succeeding calendar year, a portion of the Contract Price shall be adjusted on the first day of such calendar year to the percentage increase or decrease (if any) between the CPI effective as of the month of December immediately preceding the calendar year compared with the CPI effective as of the first day of the calendar year in which Term Commencement Date occurred. The Indexed Contract Price shall be calculated as follows:

$CP_y = (CP_B \times 0.3 \times IF_y) + (CP_B \times 0.7) - PESPSR_y$	
where:	
CP_y	is the Indexed Contract Price applicable in any calendar year “y” during the Term, after the year in which the Term Commencement Date occurs.
CP_B	is the Contract Price set out on the ERSOP Contract Cover Page.
IF_y	is the Index Factor for calendar year “y” and shall be calculated as follows: $IF_y = CPI_y / CPI_B$
CPI_y	is the CPI effective as of the month of December immediately preceding the commencement of calendar year “y”.
CPI_B	is the CPI effective as of the month of December immediately preceding the calendar year in which Term Commencement Date occurs.
$PESPSR_y$	is the PESP Shortfall Reduction in respect of Contract Year “y”, which is calculated as follows: $PESPSR_y = \frac{(0.90 - 2YAPESP_y)}{0.01} \times \$1.00/MWh \times IF_y,$ <p>provided that if $PESPSR_y$ is less than zero, it shall be equal to zero.</p>
$2YAPESP_y$	is the 2-Year Average Primary Energy Source Percentage (in %) applicable to Contract Year “y”, calculated in accordance with Section 2.8 of this Agreement.

1.2 Calculation of Contract Payment for Non-IESO Market Participants

This Section 1.2 of Exhibit B shall only apply to a Facility that is not a Registered Facility:

- (a) For each hour in a Settlement Period, the Contract Payment shall be an amount expressed in Dollars and equal to:
 - (i) where HOEP in such hour is greater than or equal to \$0.00/MWh, the Hourly Delivered Electricity multiplied by (A) the Indexed Contract Price applicable during the corresponding calendar year, and (B) the Peak Performance Factor applicable during the corresponding hour; or
 - (ii) where HOEP in such hour is less than \$0.00/MWh, the Hourly Delivered Electricity multiplied by the price that results from multiplying (x) the Indexed Contract Price applicable during the corresponding calendar year by (y) the Peak Performance Factor applicable during the corresponding hour, and then subtracting the absolute value of HOEP for that hour,

provided that, if in any hour the Hourly Delivered Electricity exceeds the Contract Capacity times one hour, then for the purposes of the calculations set out in Section 1.2(a)(i) and (ii) of Exhibit B, the Contract Capacity times one hour shall be used instead of the Hourly Delivered Electricity, and the Contract Payment for such hour shall include an additional amount equal to (A) the HOEP for such hour multiplied by (B) the Hourly Delivered Electricity minus the Contract Capacity times one hour.

- (b) The “**Contract Payment**” in respect of a Settlement Period shall be:
 - (iii) the sum of the Contract Payments in respect of each hour in such Settlement Period;

minus
 - (iv) in relation to the sale, supply or delivery of any Future Contract Related Products, 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 for that Settlement Period, less the Approved Incremental Costs. For the purposes of this Section 1.2(b) of Exhibit B, “**Approved Incremental Costs**” means the incremental costs incurred by the Supplier for that Settlement Period in excess of the cost of production of the Delivered Electricity, relating to the sale, supply or delivery of such Future Contract Related Products, and which costs are reasonable and have first been verified and approved by the OPA.
- (c) Where the Contract Payment is a positive number, such amount shall be owed by the OPA to the Supplier (and the applicable LDC shall pay such amount on behalf of the OPA). Where such amount is a negative number, the absolute value of such amount shall be owed by the Supplier to the OPA (and shall be paid to the applicable LDC on behalf of the OPA).

1.3 Calculation of Contract Payment for IESO Market Participants

This Section 1.3 of Exhibit B shall only apply to a Facility that is a Registered Facility:

- (a) For each hour in a Settlement Period, the Contract Payment shall be an amount expressed in Dollars and equal to:
 - (i) the Hourly Delivered Electricity multiplied by (A) the Indexed Contract Price applicable during the corresponding calendar year, and (B) the Peak Performance Factor applicable during the corresponding hour;

minus

- (ii) the Hourly Delivered Electricity multiplied by the greater of (A) HOEP for such hour, and (B) zero;

provided that, if in any hour the Hourly Delivered Electricity exceeds the Contract Capacity times one hour, then for the purposes of the calculation set out in this Section 1.3(a) of Exhibit B, the Contract Capacity times one hour shall be used instead of the Hourly Delivered Electricity.

- (b) The “**Contract Payment**” in respect of a Settlement Period shall be:
 - (i) the sum of the Contract Payments in respect of each hour in such Settlement Period;minus
 - (ii) in relation to the sale, supply or delivery of any Future Contract Related Products, 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 for that Settlement Period, less the Approved Incremental Costs. For the purposes of this Section 1.3(b) of Exhibit B, “**Approved Incremental Costs**” means the incremental costs incurred by the Supplier for that Settlement Period in excess of the cost of production of the Delivered Electricity, relating to the sale, supply or delivery of such Future Contract Related Products, and which costs are reasonable and have first been verified and approved by the OPA.
- (c) Where the Contract Payment is a positive number, such amount shall be owed by the OPA to the Supplier. Where such amount is a negative number, the absolute value of such amount shall be owed by the Supplier to the OPA.

1.4 IESO Instructions

This Section 1.4 of Exhibit B shall only apply to (i) a Facility that is a Registered Facility or (ii) a Facility that is not a Registered Facility but has a Contract Capacity greater than 5 MW:

- (a) Insofar as the IESO issues instructions to reduce all or part of the output of the Facility on an economic basis in order to mitigate over generation on the entire IESO-Controlled Grid or substantially all of the IESO-Controlled Grid, then the calculation set out in Section 1.2 or 1.3 of this Exhibit B, as applicable, shall provide for an additional Contract Payment (the “**Additional Contract Payment**”) for any hour, “h”, in which:
 - (i) either (A) the Pre-Dispatch Price for such hour “h”, as published in the immediately preceding hour “h-1” is less than \$5.00/MWh or (B) the IESO has published an over generation advisory or equivalent notice in respect of such hour “h” for the entire IESO-Controlled Grid or substantially all of the IESO-Controlled Grid;
 - (ii) the IESO has issued an instruction on an economic basis to reduce the output of the Facility to a level below that which it otherwise could have achieved for that hour “h”, but for such instruction; and
 - (iii) the Supplier has complied with such instruction.
- (b) The Additional Contract Payment for any such hour shall be the Hourly Delivered Electricity foregone as a result of compliance with the IESO’s instruction multiplied by (A) the Indexed Contract Price applicable during the corresponding calendar year, and (B) the Peak Performance Factor applicable during the corresponding hour, provided that such amount of foregone Hourly Delivered Electricity shall not in any case exceed the Contract Capacity times one hour.
- (c) The OPA will, acting reasonably, develop a methodology to determine the Hourly Delivered Electricity foregone as a result of compliance with an instruction from the IESO pursuant to Section 1.4(a) of this Exhibit B.

EXHIBIT C
FORM OF IRREVOCABLE STANDBY LETTER OF CREDIT

DATE OF ISSUE:	[●]
APPLICANT:	[●]
BENEFICIARY:	Ontario Power Authority and its permitted assigns (the “ Beneficiary ”)
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 <i>Bank Act</i>]
TYPE:	Irrevocable and Unconditional Standby Letter of Credit Number: [●] (the “ Credit ”)

The Credit is issued in connection with the Energy Recovery Standard Offer Program Contract dated **[Insert Date of Contract]** as amended from time to time (the “**Contract**”) between the Beneficiary and the “Supplier”, as such term is defined under the Contract.

We hereby authorize the Beneficiary to draw on **[Issuing Bank Name/Address]**, in respect of the Credit, for the account of the Applicant, up to an aggregate amount of \$● ● Canadian Dollars) available by the Beneficiary’s draft at sight accompanied by the Beneficiary’s signed certificate stating that:

“The Supplier is in breach of, or default under, the Contract, 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. ● issued by **[Issuing Bank Name]** dated **[Issue Date]**.”

Partial drawings are permitted.

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

We engage with you that all drafts drawn under and in compliance with the terms of the Credit will be duly honoured, if presented at the counters of **[Issuing Bank Name/Address (must be at the counters of the branch in the City of Toronto)]** at or before **[Expiry Time]** (EST) on **[Expiry Date]**, as extended.

The 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.

This Credit is transferable at the written request of the Beneficiary, without the consent of the Applicant, but subject to consent of the issuing financial institution, acting reasonably. All fees incurred by the issuing financial institution in relation to such transfer shall be at the Applicant’s expense, but failure of the Applicant to pay such fees shall not restrict the ability of the Beneficiary to transfer the Credit.

In the event of a transfer of this Credit, as provided for above, 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 **[Issuing Bank Name]** of the Beneficiary's dated and signed letter addressed to **[Issuing Bank Name]** and completed as follows:

“We, the undersigned Beneficiary to **[Issuing Bank Name]** Letter of Credit No. ●, hereby waive all our rights under the 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]**. We have enclosed the original Letter of Credit and all amendments (if any) thereto. Please forward the original Letter of Credit and all amendments (if any), including the current amendment to the **[new Beneficiary]**, care of the Applicant.”

[Issuing Bank Name]

By: _____

By: _____

EXHIBIT D
ARBITRATION PROVISIONS APPLICABLE TO SECTIONS 1.7, 2.12 & 12.2

The following rules and procedures (the “**Rules**”) shall govern, exclusively, any matter or matters to be arbitrated between the Parties under Sections 1.7, 2.12 and 12.2 of this Agreement.

1. **Commencement of Arbitration** – If the Parties and, at the OPA’s option, all Other Suppliers required by the OPA to participate, have been unable to reach agreement as contemplated in Sections 1.7, 2.12 and 12.2 of this Agreement, as applicable, then the OPA shall commence arbitration by delivering a written notice (the “**Request**”) to the Supplier and such Other Suppliers required by the OPA to participate (collectively the “**Suppliers**”). If the OPA has not already done so, the OPA shall then deliver to the Suppliers the names of such Other Suppliers. Within 20 days of the delivery of the Request, the OPA 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 20 days of the receipt of the OPA’s notice nominating its arbitrator, the Suppliers shall by written notice to the OPA 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 20 days of the receipt of the OPA’s notice nominating its arbitrator, any of the Suppliers or the OPA may apply to a judge of the Superior Court of Justice of Ontario to appoint the arbitrator. If the two arbitrators are unable to agree on a chair person within 30 days of the nomination or appointment of the Supplier’s arbitrator, any of the Suppliers or the OPA 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, the Replacement Provision or the Discriminatory Action Compensation, 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 OPA and the Supplier that there be, to the extent possible, one arbitration proceeding and hearing to determine the Replacement Price, the Replacement Provision or the Discriminatory Action Compensation, as applicable. 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, the Replacement Provision or the Discriminatory Action Compensation, as applicable, 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, Replacement Provision or the Discriminatory Action Compensation, as applicable, 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 OPA.
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 E
FORM OF SECURED LENDER CONSENT AND ACKNOWLEDGEMENT
CONSENT AND ACKNOWLEDGMENT AGREEMENT

THIS AGREEMENT made as of this ● day of ●, 20●,

BETWEEN:

[●], *[insert legal form of the Supplier and jurisdiction of organization]*

(the "**Supplier**"),

-and -

[●], in its capacity as [{**Secured Lender under the ERSOP Contract**}
or {*insert form of Secured Lender representation, e.g., security trustee,
collateral agent and trustee, etc. for and on behalf of the Secured
Lenders (as defined below)*}]

(the "**Security Agent**"),

-and-

ONTARIO POWER AUTHORITY, a corporation governed by the laws
of the Province of Ontario

(the "**OPA**"),

RECITALS:

- 1.** The Supplier and the OPA have entered into a Energy Recovery Standard Offer Program Contract dated as of ●, 20●, contract identification # ● (as amended, supplemented, restated or replaced from time to time in accordance with its terms and this agreement, the "ERSOP Contract") in order to formalize the long-term contractual arrangements for the Supplier to develop and operate the Facility and to supply, directly or indirectly, Electricity and Related Products from the Facility;
- 2.** *[Note to finalization: describe structure of collateral arrangements; describe any bond issuance and related trust indentures; identify underlying security and debt documents; identify the "Secured Lenders" if they are anyone other than the Security Agent; identify any inter-creditor or collateral agency arrangements];*
- 3.** The Supplier has granted security against, inter alia, all of its right, title, entitlement and interest in and to the ERSOP Contract in favour of the Security Agent pursuant to the security agreements identified in Schedule "A" (collectively, as amended, supplemented, restated or replaced from time to time, the "Security Agreements"), as security for its present and future indebtedness, liabilities and obligations under and in respect of the *[Note to finalization: describe underlying debt instrument(s)]* (the "Secured Debt"); and
- 4.** The Supplier has agreed that it will incur Secured Debt only for the purposes of financing its acquisition, construction, re-development, ownership, operation and maintenance of the Facility or the Facility together with one or more other renewable generating facilities in Ontario and any refinancing of any such debt;

THEREFORE, the parties agree as follows:

B. DEFINED TERMS

Unless otherwise provided in this agreement or the context otherwise requires, all capitalized terms which are not defined in this agreement have the respective meanings given to them in the ERSOP Contract.

C. Acknowledgement and Confirmation of Rights of Security Agent

The OPA acknowledges and confirms that:

- (i) the Supplier has delivered to the OPA copies of the Security Agreements [**Note to finalization:** *and any applicable trust indenture*];
- (ii) the Security Agreements [**Note to finalization:** *and any applicable trust indenture*] constitute Secured Lender's Security Agreements for purposes of the ERSOP Contract and are binding on the OPA in the enforcement of the OPA's rights and remedies provided in the ERSOP Contract (as contemplated by Section 11.1(d) of the ERSOP Contract); and
- (iii) the Security Agent constitutes the Secured Lender for purposes of the ERSOP Contract and, without limiting the generality of the foregoing, is entitled to the benefit of the provisions of Article 11 of the ERSOP Contract in favour of a Secured Lender and is entitled to enforce the same as if the Security Agent were a party to the ERSOP Contract.

D. Covenants of the Security Agent

The Security Agent covenants and agrees with the OPA (and in the case of paragraphs (a), (d), (f) and (h) below, covenants, agrees, represents and warrants to the OPA) as follows:

- (i) Should the Security Agent commence enforcement of the Security Agreements with respect to the ERSOP Contract, it will comply with the terms, conditions and obligations applicable to a Secured Lender under Section 11.2 of the ERSOP Contract as they relate to the Security Agent's security interests in the ERSOP Contract during such enforcement.
- (ii) The Security Agent agrees that it will comply with Section 11.2(f) of the ERSOP Contract.
- (iii) The Security Agent [**Note to finalization:** *(is and will be) or (is not)*] at Arm's Length from the Supplier.
- (iv) The Security Agreements listed on Schedule "A" constitute all of the security granted by the Supplier in favour of the Security Agent as at the date first written above.
- (v) Except the Security Agreements [**Note to finalization:** *any applicable trust indenture*] and any other security that is delivered by the Security Agent to the OPA in accordance with Section 11.1 (d) of the ERSOP Contract, the Security Agent acknowledges that any other security granted in favour of the Security Agent will not be binding upon the OPA.
- (vi) All of the security registrations made pursuant to the *Personal Property Security Act* (Ontario) in respect of the Security Agreements are set out in Schedule "A".
- (vii) If the Supplier is in default under or pursuant to any Security Agreement [**Note to finalization:** *or the trust indenture*] and the Security Agent intends to exercise any rights

afforded to it with respect to the ERSOP Contract, then the Security Agent will give notice of such default to the OPA at least 10 Business Days prior to exercising any such rights under the ERSOP Contract.

- (viii) The Security Agent has entered into this agreement and holds the security granted pursuant to the Security Agreements.
- (ix) Only the Security Agent will be entitled to exercise the rights and remedies under the Security Agreements as the Secured Lender except that in accordance with Section 11.2(g) of the ERSOP Contract, when the Security Agent 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 Security Agent's security, that Person may exercise any of the Security Agent's rights under Section 11.2 of the ERSOP Contract.
- (x) The address of the Security Agent to which notices may be sent pursuant to Section 11.1(d) of the ERSOP Contract is set forth in Section F of this Exhibit E.
- (xi) The Security Agent will provide the OPA with written notice of any change in the identity or address of the Security Agent.

E. Covenants of the Supplier

The Supplier covenants, agrees, represents and warrants to the OPA as follows:

- (i) The Security Agreements [**Note to finalization:** *and any applicable trust indenture*] are subject to the terms and conditions applicable to a Secured Lender's Security Agreement that are contained in Article 11 of the ERSOP Contract, and comply therewith.
- (ii) The Supplier has provided to the OPA true and complete copies of the Security Agreements [**Note to finalization:** *and any applicable trust indenture*], and the Security Agreements [**Note to finalization:** *and any applicable trust indenture*] constitute Secured Lender's Security Agreements and the Security Agent constitutes a Secured Lender for purposes of the ERSOP Contract.
- (iii) All of the security registrations made pursuant to the *Personal Property Security Act* (Ontario) in respect of the Security Agreements are set out in Schedule "A".
- (iv) The recitals to this agreement are true and accurate and the Supplier agrees that all Secured Debt will have been incurred in connection with the acquisition, construction, re-development, ownership, operation and maintenance of the Contract Facility or the Contract Facility together with any together with one or more other renewable generating facilities in Ontario and any refinancing of any such debt.
- (v) The Supplier will provide the OPA with true and complete copies of any new or amendments to any Secured Lender's Security Agreement.
- (vi) The Security Agreements [**Note to finalization:** *and any applicable trust indenture*] do not and will not secure any indebtedness, liability or obligation of the Supplier that is not related to the Contract Facility, the Contract Facility together with any together with one or more other renewable generating facilities in Ontario, or the ERSOP Contract, or cover any real or personal property of the Supplier not related to the Contract Facility or the Contract Facility together with any together with one or more other renewable generating facilities in Ontario.

F. Notice

All notices pertaining to this agreement not explicitly permitted to be in a form other than writing will be in writing and will be given by facsimile or other means of electronic transmission or by hand or courier delivery. Any notice will be addressed to the parties as follows:

If to the Supplier:

-
-
-
-

Attention: ●
Facsimile: ●

If to the OPA:

Ontario Power Authority
120 Adelaide Street West
Suite 1600
Toronto, Ontario
M5H 1T1

Attention: **ERSOP Contract Manager**
Facsimile: (416) 967-1947

If to the Security Agent:

-
-
-
-

Attention: ●
Facsimile: ●

Notice delivered or transmitted as provided above will 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 will be deemed to have been given and received on the next Business Day. Any party may, by written notice to the other parties, change its respective representative or the address to which notices are to be sent.

G. Successors and Assigns

Subject to complying with Sections 15.5 and 15.6 of the ERSOP Contract, the benefits under this agreement accruing to each of the parties to this agreement will extend to all their respective successors and permitted assigns, only if they agree, according to their interests, to be bound by all the provisions of this agreement (it being the responsibility of each party to give notice to each other party of such assignment and to require its successors and permitted assigns to expressly acknowledge and agree in favour of each other party to be bound by this agreement). Subject to complying with Section 15.5 of the

ERSOP Contract, upon the acquisition by any such successor or permitted assign of such an interest, such successor or permitted assign will be joined, as a party benefiting and bound by this agreement, by an appropriate further agreement supplementary to this agreement in form and substance acceptable to the OPA, acting reasonably.

H. Execution and Delivery

This agreement may be executed by the parties hereto in counterparts and may be executed and delivered by facsimile and all such counterparts and facsimiles will together constitute one and the same agreement.

I. Governing Law

This agreement will be governed by and interpreted in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable in the Province of Ontario.

IN WITNESS OF WHICH, the parties have duly executed this agreement as of the date first written above.

●

By: _____

Name: ●

Title: ●

By: _____

Name: ●

Title: ●

●

By: _____

Name: ●

Title: ●

By: _____

Name: ●

Title: ●

ONTARIO POWER AUTHORITY

By: _____

Name: ●

Title: ●

SCHEDULE "A" TO EXHIBIT E

LIST OF SECURITY AGREEMENTS AND REGISTRATION DETAILS

The following Security Agreements were granted by the Supplier in favour of the Security Agent (each of which was dated ●, 20●):

- (i) ●
- (ii) ●
- (iii) ●

The following registrations were made against the Supplier in favour of the Security Agent under the *Personal Property Security Act* (Ontario):

-

EXHIBIT F
FORM OF INDEPENDENT ENGINEER CERTIFICATE
RE: COMMERCIAL OPERATION

SUBMIT BY E-MAIL (PDF WITH SIGNATURE) TO
contract.management@powerauthority.on.ca

Capitalized terms not defined herein have the meanings ascribed thereto in the Agreement.

Date	
Legal Name of Supplier	
Name of Facility	
Agreement Title	Energy Recovery Standard Offer Program Contract #[Insert Contract #] (the “Agreement”)
Agreement Date	
Legal Name of Independent Engineer	

WHEREAS Section 2.5(a)(iii) of the Agreement between the Supplier and the OPA dated as of [Contract Date] provides that the Facility will be deemed to have achieved Commercial Operation at the point in time when, *inter alia*, the OPA has received a certificate (this “Certificate”) addressed to it from an Independent Engineer containing certain statements with respect to the Contract Facility;

AND WHEREAS [Legal Name of Independent Engineer] (the “Undersigned”) acts as the Independent Engineer for the purposes of delivery of this Certificate;

NOW THEREFORE, THE UNDERSIGNED CERTIFIES to the OPA, and acknowledges that the OPA is relying on this Certificate, that:

- (i) the Undersigned is duly qualified and licensed to practice engineering in the province of Ontario;
- (ii) the Undersigned is neither an employee nor a consultant of the Supplier such that the majority of either the time or billings of the Undersigned during the 18 month period prior to the date hereof were devoted to the Facility;
- (iii) the Undersigned is not an affiliate of the Supplier nor directly or indirectly Controlled by the Supplier;
- (iv) 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 the Agreement;
- (v) the Connection Point of the Facility is at the location specified on the ERSOP Contract Cover Page;
- (vi) the Facility has been constructed, connected, commissioned and synchronized to a Distribution System or a Host Facility, as applicable, such that 100% of the Contract Capacity is available to

Deliver Electricity in compliance with Good Engineering and Operating Practices and Laws and Regulation and substantially in accordance with the Fuel Supply Plan; and

- (vii) the Independent Engineer reviewed the Metering Plan approved by the OPA pursuant to Section 2.2(b) of the Agreement, and all calculations have been performed in accordance therewith.

Signed [Day] of [Month] , [Year]

[Legal Name of Independent Engineer]

Per: _____
Name: [Name, P.Eng.]
Title: [Title]

Professional Engineer Stamp of Signing Engineer

EXHIBIT G
FORM OF SUPPLIER CERTIFICATE RE: COMMERCIAL OPERATION

SUBMIT BY E-MAIL (PDF WITH SIGNATURE) TO
[**contract.management@powerauthority.on.ca**](mailto:contract.management@powerauthority.on.ca)

Capitalized terms not defined herein have the meanings ascribed thereto in the Agreement.

Date	
Legal Name of Supplier	
Name of Facility	
Agreement Title	Energy Recovery Standard Offer Program Contract # [Insert Contract #] (the “Agreement”)
Agreement Date	
Commercial Operation Date or Term Commencement Date	
Beginning of the Hour Ending	

WHEREAS Section 2.5(a)(iv) of the Agreement between [Supplier Short Name] and the OPA dated as of [Contract Date] provides that the Facility will be deemed to have achieved Commercial Operation at the point in time when, *inter alia*, the OPA has received a certificate (this “Certificate”) addressed to it from the Supplier containing certain statements with respect to the Facility, in addition to a separate IE Certificate referenced in Exhibit F of the Agreement;

NOW THEREFORE, [SUPPLIER LEGAL NAME] CERTIFIES to the OPA that:

- (a) [Independent Engineering Company Legal Name] is:
 - (i) duly qualified and licensed to practice engineering in the province of Ontario and which holds a certificate of authorization issued by Professional Engineers Ontario;
 - (ii) does not have a vested interest in the design, engineering, procurement, construction, metering and/or testing of the facility; and
 - (iii) not an affiliate of [Supplier Short Name] nor directly or indirectly Controlled by [Supplier Short Name].
- (b) [Supplier Short Name] has provided, or in the case of Section (b)(i), has caused the Independent Engineer to provide, to the OPA the following documentation required to be so provided at or prior to Commercial Operation:
 - (i) certificate of an independent professional engineer using OPA’s “Form of Independent Engineer Certificate” (OPACM-Form-016) in accordance with Section 2.5(a)(iii) of the Agreement;

- (ii) as-built single line diagram in accordance with Section 2.5(a)(ii) of the Agreement;
- (iii) *Workplace Safety and Insurance Act* (Ontario) clearance certificate pursuant to Section 2.9(c) of the Agreement;
- (iv) Metering Plan that has been approved by the OPA pursuant to Section 2.2(b) of the Agreement; and
- (v) Ontario Energy Board Generator License pursuant to Section 2.10(b) of the Agreement.

Signed [Day] of [Month] , [Year]

[Legal Name of Supplier]

By:

Name: **[Name]**

Title: **[Title]**