



*Name of Project*

*TFS ID #*

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# Technical Feasibility Study Agreement

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Between

**FULL BUSINESS NAME OF CONNECTION APPLICANT**

as Applicant

and

**INDEPENDENT ELECTRICITY SYSTEM OPERATOR**

**AGREEMENT**

**TECHNICAL FEASIBILITY STUDY AGREEMENT**

**THIS AGREEMENT** is dated this .....day of....., 20....

**BETWEEN**

<<*Insert name of business/individual*>>, having its [registered/head] address at [•] (the “*applicant*”)

- and -

*Independent Electricity System Operator*, a corporation established and continued under the *Electricity Act, 1998*, S.O. 1998, c. 15, Schedule. A, having its registered address at 1600 – 120 Adelaide Street West, Toronto, Ontario M5H 1T1 and its principal place of business in Ontario (the “*IESO*”)

**WHEREAS:**

- A. The *applicant* is making a request for a technical feasibility study to be conducted by the *IESO* of a new or modified connection to the *IESO-controlled grid* (the “*project*”);
- B. The *applicant* has complied with the requirements set forth in section 6.1.15 of Chapter 4 of the *market rules* and has tendered to the *IESO* the *deposit*; and
- C. The *applicant* agrees, pursuant to Chapter 4 of the *market rules*, to pay the costs and expenses incurred by the *IESO* in performing the technical feasibility study associated with the *project* (the “*TECHNICAL FEASIBILITY STUDY*”).

**THEREFORE**, for good and valuable consideration, the *IESO* and the *applicant* agree as follows:

**SECTION 1**

**INTERPRETATION**

- 1.1 **Incorporation of Market Rules Definitions:** Subject to section 1.2, italicized expressions used in this agreement have the meanings ascribed thereto in Chapter 11 of the *market rules*.
- 1.2 **Supplementary Definitions:** In this agreement, the following italicized expressions shall have the meanings set out below unless the context otherwise requires:
  - “*deposit*” means the deposit referred to in section 6.1.15.2 of Chapter 4 of the *market rules* paid by the *applicant* to the *IESO*;
  - “*party*” means a party to this agreement and “*parties*” means every *party*;
  - “*procedures*” means the procedures established pursuant to section 6.1.14 of Chapter 4 of the *market rules*.
  - “*project*” means the new or modified connection to the *IESO-controlled grid* proposed by the *applicant* that is to be assessed by the *IESO* pursuant to this agreement.
- 1.3 **Interpretation:** In this agreement, unless the context otherwise requires:

- 1.3.1 words importing the singular include the plural and vice versa; and words importing a gender include any gender;
- 1.3.2 when italicized, other parts of speech and grammatical forms of a word or phrase defined in this agreement have a corresponding meaning;
- 1.3.3 the expression “person” includes a natural person, any company, partnership, trust, joint venture, association, corporation or other private or public body corporate, and any government agency or body politic or collegiate;
- 1.3.4 a reference to a thing includes a part of that thing;
- 1.3.5 a reference to a section, provision or schedule is to a section, provision or schedule of this agreement, unless otherwise indicated;
- 1.3.6 a reference to any statute, regulation, proclamation, order in council, ordinance, by-law, resolution, rule, order or directive includes all statutes, regulations, proclamations, orders in council, ordinances, by-laws or resolutions, rules, orders or directives varying, consolidating, re-enacting, extending or replacing it and a reference to a statute includes all regulations, proclamations, orders in council, rules and by-laws of a legislative nature issued under that statute;
- 1.3.7 a reference to a document or provision of a document, including this agreement, the *market rules* and the procedures, or a provision of this agreement, the *market rules* or the procedures, includes an amendment or supplement to, or replacement or novation of, that document or that provision of that document, as well as any exhibit, schedule, appendix or other annexure thereto;
- 1.3.8 a reference to a person includes that person’s heirs, executors, administrators, successors and permitted assigns;
- 1.3.9 the expression “including”, “includes” and “include” are to be read as if they were followed by the phrase “without limitation”; and
- 1.3.10 a reference in this agreement to the *market rules* includes a reference to the procedures and to any policies, guidelines or other documents established by the *IESO* and adopted by the *IESO Board* pursuant to section 7.7 of Chapter 1 of the *market rules*.

**SECTION 2**

**MARKET RULES**

- 2.1 **Market Rules Govern:** In the event of any inconsistency between this agreement and the *market rules*, the *market rules* shall prevail to the extent of the inconsistency.
- 2.2 **Compliance with Market Rules:** The *parties* shall be bound by and comply with all of the provisions of the *market rules* applicable to the *applicant*.

**SECTION 3**

**COSTS AND SCOPE OF TECHNICAL FEASIBILITY STUDY**

- 3.1 **Receipt of Deposit:** The *IESO* confirms having received payment of the *deposit*.

- 3.2 **Costs and Expenses:** The *applicant* shall pay, in accordance with section 6 of Chapter 4 of the *market rules*, all of the costs and expenses incurred, directly or indirectly, by or on behalf of the *IESO*, in processing the *applicant's* request for the technical feasibility study and performing the technical feasibility study, including:
- 3.2.1 costs and expenses incurred by the *IESO* from the *transmitter*;
  - 3.2.2 costs and expenses incurred by the *IESO* relating to the *applicant's* proceeding(s) before the Ontario Energy Board, including regulatory support costs, legal fees, and costs resulting from related studies and analysis required to be performed by, or under the supervision, of the *IESO*;
  - 3.2.3 costs and expenses incurred by the *IESO* relating to any further studies and analysis performed by, or under the supervision of, the *IESO* that are necessary in performing the technical feasibility study but are supplemental to the scope of work annexed as Schedule 1 (including the preparation of an addendum to the technical feasibility study in accordance with the procedures or the withdrawal of a request for technical feasibility study subsequent to the completion of the technical feasibility study); and
  - 3.2.4 costs and expenses invoiced to the *IESO* from external consultants engaged to assist in completing the technical feasibility study.
- 3.3 **Payment of Invoice:** The *applicant* shall, within the time stated in section 6.1.21 of Chapter 4 of the *market rules*, pay to the *IESO* all amounts owing under an invoice submitted to it by the *IESO* pursuant to section 6.1.20 of Chapter 4 of the *market rules*. Such amounts may, without prejudice to any other manner of recovery available at law, be recovered by the *IESO* in the same manner as an obligation to make payment under the *market rules*.
- 3.4 **Refund of the Deposit:** Where section 4 does not apply, and where the aggregate amount of the costs apportioned to the *applicant* is less than the amount of the *deposit*, the *IESO* shall refund to the *applicant* the amount of the differential.
- 3.5 **No Stay of Payment Obligation:** The *applicant* shall pay to the *IESO* all invoiced amounts notwithstanding any dispute resolution process that may be initiated by the *applicant*.
- 3.6 **Notification of Costs & Expenses:** The *IESO* will update the *connection applicant* during the 2<sup>nd</sup> and 4<sup>th</sup> quarters of the year of the estimated assessment costs and expenses incurred to date.
- 3.7 **Scope of the Technical Feasibility Study:** Annexed as Schedule 1 to, and forming part of, this agreement is a description of the scope of the technical feasibility study associated with the *project*.
- 3.8 **HST:** For further certainty, the *applicant* is responsible for the payment of, and shall pay, any and all invoiced amounts of HST resulting from the *IESO's* performance hereunder or otherwise resulting from activities related to this Agreement. "HST" means excise tax, harmonized sales tax, or goods and services tax, imposed under the *Excise Tax Act* (Canada) or any provincial or territorial legislation imposing sales tax, harmonized sales tax or goods and services tax.
- 3.9 **Setoff:** Notwithstanding any other provision of this agreement, to the extent consistent with the *market rules*, the *IESO* may set off any amounts owed to the *IESO* by the *applicant* and to which the *IESO* became entitled under the *market rules* or under any other agreement between the *parties* against any amount remaining by way of *deposit* after payment in full has been made to the *IESO* for the activities hereunder.

**SECTION 4**

**TERMINATION**

- 4.1 **Withdrawal:** The *applicant* may at any time:
  - 4.1.1 withdraw its request for the technical feasibility study by the giving written notice to the *IESO* in accordance with the *procedures*; or
  - 4.1.2 be deemed to have withdrawn its request for the technical feasibility study in accordance with the *procedures*, effective as of the date of issuance to the *applicant* of a notice of deemed withdrawal by the *IESO*.
- 4.2 **Costs to the Date of Withdrawal:** Upon the *IESO*'s receipt or issuance of a notice referred to in section 4.1.1 as the case may be, the *IESO* shall:
  - 4.2.1 where the aggregate amount of the costs exceed the amount of the *deposit*, submit to the *applicant* an invoice for the amount of the differential; or
  - 4.2.2 subject to section 4.3, and in accordance with the *procedures*, where the aggregate amount of the costs are less than the amount of the *deposit*, refund to the *applicant* the amount of the differential.
- 4.3 **Costs after the Date of Withdrawal:** Where costs are incurred by the *IESO* to repeat studies or to conduct additional studies as a result of the *applicant* withdrawing its request for technical feasibility study, the *applicant* shall pay the costs associated with such repeated or additional studies up to a maximum amount of \$15,000.
- 4.4 **Payment of Invoice:** In the event that the *applicant* withdraws or is deemed to have withdrawn its request for technical feasibility study, it shall pay to the *IESO* the amount specified in any invoice received by it within ten *business days* of receipt of such invoice. Such invoice shall be considered to create an obligation under the *market rules* for the *applicant* to pay the amount specified in such invoice and such amount may, without prejudice to any other manner of recovery available at law, be recovered by the *IESO* accordingly.
- 4.5 **No Stay of Payment Obligation:** The *applicant* shall pay to the *IESO* the amount referred to in section 4.4 notwithstanding any dispute resolution process that may be initiated by the *applicant*.
- 4.6 **No Obligation to Remit Reports, etc.:** Where the *applicant*'s request for the technical feasibility study has been withdrawn or has been deemed to have been withdrawn, the *IESO* shall have no obligation to provide the *applicant* with any information or documentation pertaining to or comprising, in whole or in part, the technical feasibility study.
- 4.7 **Termination and Survival:** This agreement shall terminate on:
  - 4.7.1 the date of the *IESO*'s receipt or issuance of a notice referred to in section 4.1, as the case may be; or
  - 4.7.2 the date on which the *IESO* tenders to the *applicant* the report of the results of the completed technical feasibility study;

whichever is the earlier, provided that sections 3.2, 3.3, 3.4, 3.8, 3.9, 4.2, 4.3, 4.4, 4.5 and 4.6, as may be applicable, shall survive the termination of this agreement until such time as payment has been made as required thereby.

## SECTION 5

### FURTHER INFORMATION AND DOCUMENTATION

- 5.1 **Obligation to Provide Information:** The *applicant* shall provide the *IESO* with such information and documentation as the *IESO* may reasonably request for purposes of the completion of the technical feasibility study. Such information shall be provided within the time noted in the request.
- 5.2 **Failure to Provide Information:** The failure by the *applicant* to provide the information requested pursuant to section 5.1 within the time noted in the request shall constitute grounds upon which its request for the technical feasibility study may be deemed to have been withdrawn.
- 5.3 **Disclosure of Information to *Transmitter*:** The *IESO* may disclose such information and documentation as may be reasonably requested by the *transmitter*, in order for the *transmitter* to discharge its responsibilities in respect of the technical feasibility study.
- 5.4 **Disclosure of Information to External Consultants:** The *IESO* may disclose relevant information, including *confidential information*, and documentation to external consultants retained by the *IESO* to assist in completing the technical feasibility study. Such information is information that may be reasonably required by a consultant to perform or assist in performing the technical feasibility study and will be treated in accordance with the *market rules* and the *IESO's* standard policies pertaining to the use of *confidential information*.

## SECTION 6

### REPRESENTATIONS AND WARRANTIES, DISCLAIMER, INSURANCE

- 6.1 **Representations and Warranties:** Each of the parties hereby represents and warrants as follows to the other, and acknowledges and confirms that the other is relying on such representations and warranties:
- 6.1.1 that the execution, delivery and performance of this agreement by it has been duly authorized by all necessary corporate and/or governmental action; and
- 6.1.2 that this agreement constitutes a legal and binding obligation on it, enforceable against it by the other in accordance with its terms.
- 6.2 **Disclaimer:** By entering into this agreement, the *applicant* acknowledges that the technical feasibility study contemplated hereby, including any communication or advice provided by the *IESO* in the course of preparing same:
- 6.2.1 is being provided solely for use by the *applicant* in respect of the *project* and for no other purpose; and
- 6.2.2 does not in any way constitute an endorsement, agreement, consent or acknowledgement of any kind of the proposed connection for any purposes, including but not limited to, obtaining or administering a contract with the *IESO* for the procurement of electricity supply, generation, demand response, conservation and demand management or ancillary services.
- 6.3 **Disclosure Notice re Insurance Status:** To the extent it may be required under Ontario's *Professional Engineers Act (PEA)* with respect to the performance of the technical feasibility study by the *IESO* hereunder, Schedule 3 includes a disclosure notice as mandated by Regulation 941

under the *PEA*. This notice discloses that, in respect of the performance of the technical feasibility study hereunder, the *IESO* does not meet the minimum requirements for professional liability insurance set out in the Regulation. The *applicant* must acknowledge receipt of this notice and authorize the provision of the technical feasibility study without said insurance by separately signing the disclosure notice in the space provided in Schedule 3 at the time of execution of this agreement.

**SECTION 7**

**MISCELLANEOUS**

- 7.1 **Amendment:** No amendment of this agreement shall be effective unless made in writing and signed by the *parties*.
- 7.2 **Assignment:** Neither *party* may assign or transfer, whether absolutely, by way of security or otherwise, all or any part of its rights or obligations under this agreement without the prior written consent of the other *party*.
- 7.3 **Successors and Assigns:** This agreement benefits and binds the *parties* and their respective heirs, administrators, executors, successors and permitted assigns.
- 7.4 **Further Assurances:** Each *party* shall promptly execute and deliver or cause to be executed and delivered all further documents in connection with this agreement that the other *party* may reasonably require for the purposes of giving effect to this agreement.
- 7.5 **Waiver:** A waiver of any default, breach or non-compliance under this agreement is not effective unless in writing and signed by the *party* to be bound by the waiver. No waiver will be inferred or implied by any failure to act or by the delay in acting by a *party* in respect of any default, breach or non-observance or by anything done or omitted to be done by the other *party*. The waiver by a *party* of any default, breach or non-compliance under this agreement shall not operate as a waiver of that *party's* rights under this agreement in respect of any continuing or subsequent default, breach or non-observance (whether of the same or any other nature).
- 7.6 **Severability:** Any provision of this agreement that is invalid or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of that invalidity or unenforceability and shall be deemed severed from the remainder of this agreement, all without affecting the validity or enforceability of the remaining provisions of this agreement or affecting the validity or enforceability of such provision in any other jurisdiction.
- 7.7 **Notices:** Any notice, demand, consent, request or other communication required or permitted to be given or made under this agreement shall:
  - 7.7.1 be given or made in the manner set forth in section 8.1 of Chapter 1 of the *market rules*;
  - 7.7.2 be addressed to the other *party* in accordance with the information set forth in Schedule 2; and
  - 7.7.3 be treated as having been duly given or made in accordance with the provisions of section 8.2 of Chapter 1 of the *market rules*.

Either *party* may change its address and representative as set forth in Schedule 2 by written notice to the other *party* given as aforesaid. Such change shall not constitute an amendment to this agreement for the purposes of the application of section 7.1.

- 7.8 **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 therein.
- 7.9 **Attornment:** Subject to section 7.10, the *applicant* hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of the courts of Ontario in any action or proceeding arising out of or relating to this *agreement* or for the recognition and enforcement of any judgment. A final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions in any manner permitted by law. Nothing in this agreement shall preclude the *IESO* from bringing any action or other proceeding relating to this agreement against the *applicant* or its properties in any other jurisdiction.
- 7.10 **Dispute Resolution:** Except as may otherwise be provided in the *market rules*, any disputes arising under this agreement shall be resolved using the dispute resolution process set out in section 2 of Chapter 3 of the *market rules*.
- 7.11 **FIPPA:** The *parties* acknowledge that the *IESO* is subject to the Freedom of Information and Protection of Privacy Act and that said act applies to *confidential information* in the custody or control of the *IESO*.
- 7.12 **Counterparts:** This agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument. Counterparts may be executed either in original or faxed form and the *parties* adopt any signatures received by a receiving facsimile machine as original signatures of the parties; provided, however, that any *party* providing its signature in such manner shall promptly forward to the other *party* an original signed copy of this agreement which was so faxed.
- 7.13 **Liability:** The provisions of section 13 of Chapter 1 of the *market rules* apply to this agreement and are hereby incorporated by reference herein, with all references in such section to a *market participant* being deemed to be references to the *applicant*.

**IN WITNESS WHEREOF** the *Parties* have, by their duly appointed and authorized representatives, executed this agreement.

<p>[Insert name of applicant]</p> <p>By:</p> <p>Name:</p> <p>Title:</p> <p>Date:</p>	<p><i>Independent Electricity System Operator</i></p> <p>By:</p> <p>Name:</p> <p>Title:</p> <p>Date:</p>
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**SCHEDULE 1**  
**SCOPE OF TECHNICAL FEASIBILITY STUDY**

**SCHEDULE 2**

**NOMINATED REPRESENTATIVES FOR OFFICIAL NOTIFICATIONS**

[Section 7.7]

***IESO***

Name of <i>IESO's</i> Authorized Representative:	
Title:	
Address:	
City/Province/Postal Code	
Email address:	
Phone:	
Fax:	

***Applicant***

Name of <i>Applicant's</i> Authorized Representative:	
Title:	
Address:	
City/Province/Postal Code	
Email address:	
Phone:	
Fax:	

**SCHEDULE 3**

**DISCLOSURE NOTICE**

**(*APPLICANT* MUST EXECUTE)**

The *Professional Engineers Act* and the Regulations thereunder require that each holder of a Certificate of Authorization be insured against professional liability in accordance with specified minimum requirements. As an alternative, the Certificate of Authorization holder is required to give notice to each person to whom the holder provides services within the practice of professional engineering, stating that the holder is not insured in accordance with such minimum requirements. This notice is given to you in compliance with this legislation.

THE UNDERSIGNED HEREBY ADVISES YOU THAT THE *IESO* IS NOT INSURED FOR PROFESSIONAL LIABILITY IN ACCORDANCE WITH THE MINIMUM REQUIREMENTS OF ONTARIO REGULATION 941 MADE UNDER THE PROFESSIONAL ENGINEERS ACT.

DATED this \_\_\_\_ day of \_\_\_\_\_ 20\_\_.

\_\_\_\_\_  
Name:

Title:

The legislation referred to above requires this disclosure notice to include a statement to be signed by the person (the client) to whom the services are to be provided, to the effect that the client understands that the Certificate of Authorization holder is not so insured. The legislation also requires the holder to receive from such client written authority to provide those services without that insurance. In compliance with this legislation, please sign the statement set forth below on both copies of this disclosure notice and return one copy to us.

THE UNDERSIGNED ACKNOWLEDGES RECEIPT OF THIS DISCLOSURE NOTICE AND CONFIRMS THAT THE UNDERSIGNED UNDERSTANDS THAT THE ABOVE IS NOT INSURED IN ACCORDANCE WITH THE MINIMUM REQUIREMENTS DESCRIBED ABOVE AND CONFIRMS THAT THE ABOVE HAS THE WRITTEN AUTHORITY TO PROVIDE PROFESSIONAL ENGINEERING SERVICES TO THE UNDERSIGNED WITHOUT THAT INSURANCE.

DATED this \_\_\_\_ day of \_\_\_\_\_ 20\_\_.

***APPLICANT***

\_\_\_\_\_  
Name:

Title: