



## CHP STANDARD OFFER PROGRAM CONTRACT (CHPSOP CONTRACT)

Version 1.0.1 (June 15, 2011)

1. **CONTRACT IDENTIFICATION #** \_\_\_\_\_ CHPSOP-\_\_\_\_\_
2. **CHPSOP REFERENCE #** \_\_\_\_\_ CHPSOP-\_\_\_\_\_
3. **CONTRACT DATE** \_\_\_\_\_
4. **SUPPLIER** \_\_\_\_\_
5. **SUPPLIER'S ADDRESS** \_\_\_\_\_ Fax: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Contact Person: \_\_\_\_\_ Email: \_\_\_\_\_
6. **SUPPLIER INFORMATION** ☐ Not a Non-Resident of Canada  
☐ Non-Resident of Canada
7. **GROSS NAMEPLATE CAPACITY** \_\_\_\_\_ MW  
Season 1 Contract Capacity \_\_\_\_\_ MW Season 2 Contract Capacity \_\_\_\_\_ MW
8. **CONTRACT CAPACITY** \_\_\_\_\_ MW  
Season 3 Contract Capacity \_\_\_\_\_ MW Season 4 Contract Capacity \_\_\_\_\_ MW
9. **ANNUAL AVERAGE CONTRACT CAPACITY** \_\_\_\_\_ MW  
*[Note to Finalization: This should be the arithmetic average of each of the seasonal Contract Capacities.]*
10. **HEAT RATE SEASONALITY DESIGNATION** ☐ Seasonal UHO Facility  
☐ Non-Seasonal UHO Facility
11. **MINIMUM UHO REQUIREMENT** \_\_\_\_\_  
*[Note to Finalization: This should be 15% for all Facilities except those which provided Increased UHO Commitments in accordance with the Program Rules applicable to the Launch Period.]*

12.	<b>FACILITY STATUS</b>	<input type="checkbox"/> New CHP 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 CHP Facility  IN-SERVICE DATE: _____ DURATION OF TERM: _____  <hr/>
13.	<b>NON-PRIMARY FUEL USE</b>	Contract Facility uses Eligible Alternative Fuel in addition to natural gas <input type="checkbox"/> yes <input type="checkbox"/> no If yes, identify all Eligible Alternative Fuels:  <hr/> <hr/>
14.	<b>FACILITY LOCATION:</b>	Municipal Address: _____ <hr/> Legal Description: _____ <hr/> <hr/>
15.	<b>CONNECTION POINT</b>	<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: _____ <hr/>
16.	<b>IMPACT ASSESSMENT PRIORITY START TIME</b>	<div style="text-align: right;"><b>IMPACT ASSESSMENT PRIORITY STOP TIME</b></div> <hr/>
17.	<b>ELECTRICAL HOST FACILITY (IF APPLICABLE)</b>	Name: _____ Municipal Address: _____ <hr/> Legal Description: _____ <hr/>
18.	<b>PRESCRIBED DISPATCH FACILITY</b>	<input type="checkbox"/> yes <input type="checkbox"/> no

**19. UHO HOST FACILITY AFFILIATION**

The owner(s) of one or more Host Facilities is(are) not at Arm's Length from the Supplier.

☐ yes ☐ no

**20. CHPSOP RULES**

Applicable version: \_\_\_\_\_

**21. INCORPORATED SCHEDULES, APPENDICES AND EXHIBITS**

Schedule 1 – General Terms and Conditions, version \_\_\_\_

Exhibit A – Useful Heat Output Plan

Exhibit B – Virtual Power Plant Stated Variables

Exhibit C – Form of Irrevocable Standby Letter of Credit

Exhibit D – Arbitration Provisions Applicable to Sections 1.7, 1.8, 1.9, 1.10, & 12.2

Exhibit E – Determination of Availability

Exhibit F – Form of Supplier Certificate re: Commercial Operation

Exhibit G – Prescribed Dispatch

Exhibit H – Form of Secured Lender Consent and Acknowledgement

Exhibit I – Form of Independent Engineer Certificate re: Commercial Operation

Exhibit J – Calculation of Monthly Payment

Schedule 2 – Special Terms and Conditions, version \_\_\_\_ or ☐ 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 CHPSOP Contract and the Schedules, Appendices and Exhibits attached hereto as noted in item 21 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.



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**CHP STANDARD OFFER PROGRAM CONTRACT (CHPSOP CONTRACT)**

**SCHEDULE 1**

**GENERAL TERMS AND CONDITIONS**

**VERSION 1.0.0**

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## **CHPSOP 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 Introduction of a Day-Ahead Energy Forward Market**

- (a) If a Day-Ahead Energy Forward Market is opened for operation in Ontario, then the Replacement Price and the Replacement Provision(s) will be based on the following principles with such modifications to take effect from and after the date set out in Section 1.7(d):



- (i) in Exhibit J, all references to HOEP will be replaced with an hourly Electricity price established under the Day-Ahead Energy Forward Market (the “**Replacement Price**”); and
  - (ii) in Exhibit J, all references to Imputed Start-up Hour and Imputed Shut-Down Hour shall continue, but be modified (the “**Replacement Provision(s)**”) by using information or prices made available under the Day-Ahead Energy Forward Market to deem an operating pattern for a facility with the attributes of the Virtual Power Plant that emulates a facility’s commitment that will maximize deemed operation during 5x16 Hours of positive Imputed Net Revenue and minimize deemed operation during 5x16 Hours of negative Imputed Net Revenue, with due consideration for compensatory market-based payments that may be made available to such generators to off-set incurred non-recovered costs.
- (b) If (i) the IESO has made an announcement that the Day-Ahead Energy Forward Market is likely to be opened within the succeeding 12 calendar months, and (ii) the amendments to the IESO Market Rules for the Day-Ahead Energy Forward Market have been substantially developed by the IESO, the OPA shall propose a Replacement Price and Replacement Provision(s), based on Sections 1.7(a) and 1.7(c), to the Supplier and, at the OPA’s discretion, those Other Suppliers that are required by the OPA to participate. 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 date the Day-Ahead Energy Forward Market is opened for operation in Ontario, then the Replacement Price and the Replacement Provision(s), as applicable, 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 set out in Section 1.7(d)(iii).
- (c) For the purposes of Section 1.7(b), the following additional principles shall apply in Exhibit J, if the Day-Ahead Energy Forward Market is opened for operation:
  - (i) Start-up Costs shall continue to be imputed for only up to two Start-ups per day;
  - (ii) the Contract Facility shall continue to be deemed to commence and cease operation based on an Imputed Start-up Hour and Imputed Shut-down Hour, provided that the conditions for an Imputed Start-up Hour and an Imputed Shut-down Hour may be amended to reflect additional pricing information available in the Day-Ahead Energy Forward Market and the objective of fully recovering start costs incurred in respect of an Imputed Production Interval; and
  - (iii) any amendments to Exhibit J of this Agreement to accommodate the opening of the Day-Ahead Energy Forward Market as contemplated by this Section 1.7 shall be made on the basis that the economic effect of such amendments substantially reflect the Supplier’s economics as contemplated by Exhibit J prior to the introduction of the Day-Ahead Energy Forward Market.
- (d) The terms of this Agreement shall be amended either:

- (i) by the agreement of the Parties, where no award of an Arbitration Panel has been made pursuant to Section 1.7(b);
- (ii) by the agreement of the Parties made pursuant to and to implement an award of the Arbitration Panel, made pursuant to Section 1.7(b); or
- (iii) by an amendment prepared by the OPA made pursuant to and to implement an award of the Arbitration Panel made pursuant to Section 1.7(b), where the Supplier failed to participate in such arbitration,

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

- (e) Until such time as this Agreement is amended in accordance with Section 1.7(d), Exhibit J will continue to apply to calculate CSP and RSP, as applicable, and all references to HOEP shall continue, and payments of CSP and RSP shall continue to be made until such time, provided that all such payments shall be subject to recalculation and readjustment as a result of the agreement or award set out in Section 1.7(d), and any Party owing monies to the other pursuant to such recalculation and readjustment shall pay, within 40 Business Days after receipt of an invoice from the other Party, such monies owing together with interest at the Interest Rate, calculated daily, from and including the time such payments were due to the date of payment thereof. If Pre-Dispatch Prices are not applicable in the context of the Day-Ahead Energy Forward Market, then all references in Exhibit J to Pre-Dispatch Prices and their use in determining Imputed Start-up Hours and Imputed Shut-down Hours shall be deleted and replaced with an appropriate replacement value determined by the OPA.

## 1.8 Price Evolution in the IESO-Administered Markets

- (a) For the purposes of Section 1.8(b), a “**Price Evolution Event**” means that the IESO Market Rules have changed (including the implementation of LMP by the IESO) such that HOEP, or the replacement value for HOEP under a Day-Ahead Energy Forward Market as determined through the application of Section 1.7, is no longer provided for, and is replaced by another market-based price signal(s). In such a case, this Agreement will be modified based on the following principles, with such modifications (the “**Replacement Provisions**”) to take effect from and after the date set out in Section 1.8(d):
  - (i) in Exhibit J, HOEP, or its replacement value under a Day-Ahead Energy Forward Market, if applicable, will be replaced with the Ontario Electricity market price that most closely emulates the price actually paid by the Ontario Electricity market for Electricity output from the Contract Facility;
  - (ii) if Pre-Dispatch Prices are not applicable in the context of any such Price Evolution Event, then all references in Exhibit J to Pre-Dispatch Prices and their use in determining Imputed Start-up Hours and Imputed Shut-down Hours shall be deleted and replaced with an appropriate replacement value determined by the OPA; and
  - (iii) it is expected that all other features of Exhibit J will be applicable.

- (b) If (i) the IESO or the Government of Ontario have made an announcement with the effect that a Price Evolution Event is likely to occur within the succeeding 12 calendar months, and (ii) the replacement rules and regulations pertaining to the Price Evolution Event have been approved by the applicable authority, the OPA shall propose Replacement Provisions, based on Section 1.8(a), to the Supplier and, at the OPA's discretion, those Other Suppliers that are required by the OPA to participate. If the Parties are unable to agree on the OPA's proposal or that of the Supplier or those Other Suppliers, as the case may be, within 30 days after the Price Evolution Event occurs, then the Replacement Provisions 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 set out in Section 1.8(d)(iii).
- (c) If the IESO Market Rules are amended to provide for an installed capacity market, then either Party may propose, by notice in writing to the other Party, amendments to this Agreement and the OPA and the Supplier and, at the OPA's discretion, those Other Suppliers that are required by the OPA to participate, shall then engage in good faith negotiations to amend this Agreement and the respective agreements of those Other Suppliers so as to facilitate the Supplier's participation in such installed capacity market, on the basis that the economic effect of such amendments substantially reflect the Supplier's economics as contemplated hereunder prior to the introduction of the installed capacity market. If the Parties are unable to agree on such amendments, the matter shall be determined by mandatory and binding arbitration, from which there shall be no appeal, with such arbitration to be conducted in accordance with the procedures set out in Exhibit 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 set out in Section 1.8(d)(iii).
- (d) In respect of the matters set forth in Sections 1.8(b) and 1.8(c), the terms of this Agreement shall be amended either:
  - (i) by the agreement of the Parties, where no award of an Arbitration Panel has been made pursuant to Section 1.8(b) or 1.8(c), as the case may be;
  - (ii) by the agreement of the Parties made pursuant to and in implementation of an award of the Arbitration Panel made pursuant to Sections 1.8(b) or 1.8(c), as the case may be; or
  - (iii) by an amendment prepared by the OPA made pursuant to and to implement an award of the Arbitration Panel made pursuant to Sections 1.8(b) or 1.8(c), as the case may be, where the Supplier failed to participate in such arbitration,

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

- (e) Until such time as this Agreement is amended in accordance with Section 1.8(d), Exhibit J will continue to apply to calculate CSP and RSP, as applicable, using the OPA's proposal submitted under Section 1.8(b), provided that all such payments shall be subject to recalculation and readjustment as a result of the agreement or award set out in Section 1.8(d), and any Party owing monies to the other pursuant to such recalculation and readjustment shall, within 40 Business Days after receipt of an invoice from the other Party, pay such monies owing together with interest at the Interest Rate, calculated daily, from and including the time such payments were due to the date of payment thereof.
- (f) This Section 1.8 shall not apply in the circumstances addressed in Sections 1.7 or 2.11.

## 1.9 Price Unavailability Events

- (a) For the purposes of Section 1.9(b), a **"Price Unavailability Event"** means that if HOEP, or the replacement value for HOEP under a Day-Ahead Energy Forward Market as determined through the application of Section 1.7, or the replacement market-based price signals referred to in Section 1.8, is no longer available. In such a case, this Agreement will be modified based on the following principles, with such modifications to take effect from and after the date set out in Section 1.9(c):
  - (i) this Agreement will be amended as necessary to ensure the Supplier will participate in any revised processes determined by the IESO to facilitate unit commitment, unit dispatch and/or outage scheduling;
  - (ii) Exhibit J will be modified to define the Imputed Net Revenue to be based on Imputed Variable Energy Costs for the actual Electricity produced in a month and any actual Electricity payments made to the Supplier for Electricity produced by the Contract Facility. In calculating the Imputed Variable Energy Cost, the stated variables contained in Exhibit B of this Agreement will be used; and
  - (iii) in Exhibit J, HOEP, or the replacement value for HOEP under a Day-Ahead Energy Forward Market as determined through the application of Section 1.7, or the replacement market-based price signals referred to in Section 1.8, will be replaced with the actual price received by the Supplier for Electricity produced by the Contract Facility,

and the modifications and amendments described in Sections 1.9(a)(i), 1.9(a)(ii), and 1.9(a)(iii) are collectively referred to as the **"Replacement Provision(s)"**.

- (b) If (i) the IESO or the Government of Ontario has made an announcement to the effect that a Price Unavailability Event is likely to occur within the succeeding twelve calendar months, and (ii) the replacement rules and regulations pertaining to the Replacement Provision(s) have been approved by the applicable authority, the OPA shall propose Replacement Provision(s), based on Section 1.9(a), to the Supplier and, at the OPA's discretion, those Other Suppliers that are required by the OPA to participate. 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 30 days after the occurrence of the Price Unavailability Event, then the Replacement Provision(s) shall be determined by mandatory and binding arbitration, from which there shall be no appeal, with such arbitration(s) to be conducted in accordance with the procedures set out in Exhibit 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 the Agreement made by the OPA to implement such award of the Arbitration Panel set out in Section 1.9(c)(iii).

- (c) The terms of this Agreement shall be amended either:
  - (i) by the agreement of the Parties, where no award of an Arbitration Panel has been made pursuant to Section 1.9(b);
  - (ii) by the agreement of the Parties made pursuant to and to implement an award of the Arbitration Panel, made pursuant to Section 1.9(b); or
  - (iii) by an amendment prepared by the OPA made pursuant to and to implement an award of the Arbitration Panel made pursuant to Section 1.9(b), where the Supplier failed to participate in such arbitration,

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

- (d) Until such time as this Agreement is amended in accordance with Section 1.9(c), Exhibit J will continue to apply to calculate CSP and RSP, as applicable, using the OPA's proposal submitted under Section 1.9(b), provided that all such payments shall be subject to recalculation and readjustment as a result of the agreement or award set out in Section 1.9(c), and any Party owing monies to the other pursuant to such recalculation shall pay, within 40 Business Days after receiving an invoice from the other Party, such monies owing together with interest at the Interest Rate, calculated daily, from and including the time such payments were due to the date of payment thereof.
- (e) This Section 1.9 shall not apply to the circumstances addressed in Sections 1.7, 1.8 or 2.11.

#### **1.10 Invalidity, Unenforceability or Inapplicability of Indices and Other Provisions**

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

- (a) if a provision is considered to be invalid, inapplicable or unenforceable, then the Party considering such provision to be invalid, inapplicable or unenforceable may propose, by notice in writing to the other Party, a replacement provision and the 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;
- (b) if any index or price quotation referred to in this Agreement, other than the Gas Price Index, ceases to be published, or if the basis therefor is changed materially, then 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 substitute an available

replacement index or price quotation that most nearly, of those then publicly available, approximates the intent and purpose of the index or price quotation that has so ceased or changed and this Agreement shall be amended as necessary to accommodate such replacement index or price quotation;

- (c) if the Gas Price Index ceases to be published or announced, or if the basis therefor is changed materially (the date that the first of such events occurs being herein called the “**Gas Price Redetermination Date**”), then 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 substitute an available replacement index or price source that most nearly, of those then publicly available, approximates the intent and purpose of the Gas Price Index. During the negotiations (and any subsequent arbitration conducted in accordance with Section 1.10(d)) for determining an alternate Gas Price Index, the last Gas Price in effect before the Gas Price Redetermination Date shall continue to be used for purposes of this Agreement as the Gas Price, but if a replacement index or price source is determined and this Agreement is amended pursuant to Section 1.10(e), an adjustment will be made and such replacement index or price source shall be used as the new Gas Price Index for purposes of this Agreement, retroactive from the Gas Price Redetermination Date to the date that the Agreement is amended pursuant to Section 1.10(e), on which basis the Monthly Payment in respect of such retroactive period shall be recalculated and readjusted by the Parties;
- (d) if a Party does not believe that a provision is invalid, inapplicable or unenforceable, or that the basis for any index or price quotation is changed materially, or the negotiations set out in Sections 1.10(a), 1.10(b) or 1.10(c) are not successful, then if the Parties are unable to agree on all such issues and any amendments required to this Agreement (the “**Replacement Provision(s)**”) within 30 days after either the giving of the notice under Section 1.10(a) or the occurrence of the event in Section 1.10(b) or 1.10(c), 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 set out in Section 1.10(e)(iii);
- (e) the terms of this Agreement shall be amended either:
  - (i) by the agreement of the Parties, where no award of an Arbitration Panel has been made pursuant to Section 1.10(d);
  - (ii) by the agreement of the Parties made pursuant to and in implementation of an award of the Arbitration Panel made pursuant to Section 1.10(d); or
  - (iii) by an amendment prepared by the OPA made pursuant to and to implement an award of the Arbitration Panel made pursuant to Section 1.10(d), where the Supplier failed to participate in such arbitration,

with such agreement or amendment, as applicable, having effect as of the date of the invalidity, inapplicability or unenforceability or from and after the date that the relevant

index or quotation ceased to be published or the basis therefor is changed materially, as the case may be; and

- (f) this Section 1.10 shall not apply to the circumstances addressed in Sections 1.7, 1.8, 1.9 or 2.11.

#### **1.11 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 CHPSOP Rules, such reference shall be to the CHPSOP Rules in effect on the Contract Date.

#### **1.12 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.

#### **1.13 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.

#### **1.14 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.

#### **1.15 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.

## **1.16 Exhibits, Schedules and Appendices**

Each of the exhibits, schedules and appendices set out in item 21 on the CHPSOP Contract Cover Page are integral to 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 CHP 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 CHP 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 Contract Facility as outlined in the Application or the CHPSOP Contract Cover Page or make any change as to the Facility's status as a Registered Facility (a "**Contract 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, including with respect to Useful Heat Output. For purposes of this paragraph, the failure of the Facility to have a Connection Point as described in the CHPSOP Contract Cover Page shall be deemed to be a Contract Facility Amendment. The Supplier acknowledges that it does not have any right pursuant to this Agreement to increase the Contract Capacity.
- (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 CHP 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 not permit the Facility to be or become a Behind-the-Meter Facility unless the OPA has provided prior written consent, such consent to be given in 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 CHP Facility, and (ii) 90 days after the Contract Date, in respect of an Eligible Existing CHP 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 calculation of Useful Heat Output so as to verify the delivery of Useful Heat Output in accordance with the Useful Heat Output 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 Contract 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 Contract 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. 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 Monthly Payment that the OPA owes to the Supplier.
- (e) In addition to the requirements set out in Sections 2.2(c) and (d), the Supplier also covenants and agrees to provide, at its expense, separate meters and ancillary metering and monitoring equipment in order to calculate energy attributable to Useful Heat Output generated by the Contract Facility, net of any thermal energy returned to or imported by the Contract Facility, providing a level of accuracy acceptable to the OPA, acting reasonably. The Supplier will provide such data to the OPA at an interval of at least every 30 days. The data provided shall represent the hourly flows of Useful Heat Output at a minimum frequency of every hour. For greater certainty, the hourly flows of Useful Heat Output and of the return of thermal energy to the Contract Facility shall be measured separately from any flows of energy that do not constitute Useful Heat Output.
- (f) 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 Section 2.6. 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.
- (g) 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 and to permit the delivery of Useful Heat Output in accordance with its Useful Heat Output Plan.
- (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 Contract Facility required by applicable Laws and Regulations. Other than in respect of an Eligible Existing CHP 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 a CHPSOP 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 a CHPSOP 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 Contract Facility was submitted.

## **2.4 Milestone Date for Commercial Operation**

The following paragraph shall apply only in respect of a New CHP 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 CHPSOP 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 20<sup>th</sup> 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 CHP 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 90<sup>th</sup> 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 CHP 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 I directly from the Independent Engineer, stating that:
    - (A) the Contract Facility has been completed in all material respects, excepting punch list items that do not materially and adversely affect the ability of the Contract Facility to operate in accordance with this Agreement;
    - (B) the Connection Point of the Facility is that set out on the CHPSOP Contract Cover Page; and
    - (C) the Contract Facility has generated Electricity in compliance with Good Engineering and Operating Practices and all Laws and Regulations for four continuous hours at an uninterrupted rate not less than 100% of the Contract Capacity. This requirement shall be evaluated based on the calculation of the generator output at the Connection Point net of any Station Service Loads, in accordance with the Metering Plan, and shall be satisfied if the energy output in each of the four hours (in MWh), divided by one hour, is equal to or greater than the Contract Capacity. The Supplier acknowledges and agrees that the Contract Capacity, the energy output of the Contract Facility, the Station Service Loads, and the energy attributable to Useful Heat Output, as may be measured by the foregoing test, shall not be adjusted for ambient weather or other conditions whatsoever, provided that if the Contract Facility is designed or configured such

that the Measured Electricity at any point time is capable of being affected by the level of Useful Heat Output being produced by the Contract Facility at such time, the output of the Contract Facility shall be adjusted downwards to account for any incremental Measured Electricity that was capable of being produced as a result of the Actual UHO Percentage during this test being less than the Minimum UHO Requirement over the duration of such test. Additionally, if the Facility is not operating under normal operation conditions during such test, the Measured Electricity shall be adjusted downwards to account for any incremental Measured Electricity that was capable of being produced as a result of the Facility not operating under normal conditions; 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 CHP 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 CHP 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 utilize natural gas as its Primary Fuel and shall only supplement its Primary Fuel with the Eligible Alternative Fuel(s) identified on the CHPSOP Contract Cover Page.

## 2.7 Useful Heat Output

- (a) The Supplier shall use Commercially Reasonable Efforts to implement and comply with the Useful Heat Output 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 shall, within 30 days of the end of each Contract Year, provide to the OPA a written report in the Prescribed Form (the “**UHO Report**”) setting out the Actual UHO Percentage applicable to such Contract Year. The “**Actual UHO Percentage**” for any time period “*t*” shall be calculated as follows:

$\mathbf{AUHOP}_t = \frac{AUHO_t}{AUHO_t + DDE_t}$	
where:	
$\mathbf{AUHOP}_t$	is the Actual UHO Percentage applicable to time period “ <i>t</i> ”.
$\mathbf{AUHO}_t$	is the actual Useful Heat Output (in MWh <sub>t</sub> ) applicable to time period “ <i>t</i> ”, and is the Useful Heat Output delivered from the Contract Facility to the Host Facility as measured at the thermal energy delivery point to the Host Facility net of any thermal energy returned from the Host Facility and net of any thermal energy imported to the Contract Facility, during time period “ <i>t</i> ”.
$\mathbf{DDE}_t$	is the Deemed Delivered Electricity (in MWh <sub>e</sub> ) and is the greater of (i) the Delivered Electricity during time period “ <i>t</i> ” and (ii) the Electricity that would have been Delivered during time period “ <i>t</i> ” had the Contract Facility been generating Electricity at the Contract Capacity at all times when the Virtual Power Plant was deemed to be operating in accordance with Exhibit J, excluding any Force Majeure Outage Hours.

- (c) If the Actual UHO Percentage in respect of any Contract Year is less than the Minimum UHO Requirement, then the Supplier shall include with the UHO Report documentation demonstrating the Supplier’s efforts to implement the Useful Heat Output Plan and its compliance with the Useful Heat Output Plan.
- (i) If the Actual UHO Percentage in respect of any Contract Year is less than the Minimum UHO Requirement, and the OPA determines, acting reasonably, that the Contract Facility is not delivering Useful Heat Output in the amount required by the Useful Heat Output Plan, the Supplier shall, within, 60 days of receiving a written request from the OPA, deliver a written remedial plan specifying the manner and schedule in which the Supplier will arrange for additional users of Useful Heat Output or an increase in use of Useful Heat Output by existing users, such that within a period of time acceptable to the OPA, acting reasonably, the Contract Facility’s Actual UHO Percentage for future Contract Years is

reasonably expected to be no less than the Minimum UHO Requirement (such plan, a “**UHO Remediation Plan**”).

- (ii) The OPA shall review a proposed UHO Remediation Plan and, where the OPA has determined, acting reasonably, that such UHO Remediation Plan is reasonably expected to result in an average Actual UHO Percentage of no less than the Minimum UHO Requirement within a reasonable period of time, the OPA shall provide written notice to the Supplier of its acceptance of such UHO Remediation Plan, at which time the Useful Heat Output Plan shall be deemed to be amended to incorporate the UHO Remediation Plan. If the OPA does not accept the Supplier’s proposed UHO Remediation Plan, the Supplier shall amend such proposed UHO Remediation Plan as the OPA may reasonably require.
- (d) If the Actual UHO Percentage in respect of any Contract Year other than the first and second Contract Years is less than the Minimum UHO Requirement, then, commencing the first day of the Contract Year immediately following the Contract Year in which the Actual UHO Percentage is less than the Minimum UHO Requirement, and until the last day of such Contract Year, the UHO Capacity Reduction Factor shall, for the purposes of Exhibit J, be calculated in accordance with Exhibit J; otherwise, the UHO Capacity Reduction Factor shall be equal to 1.0.
  - (i) If the OPA does not have the information required to calculate the UHO Capacity Reduction Factor applicable to a Settlement Month until after the Statement for such Settlement Month is prepared in accordance with Section 4.2, then when the OPA has calculated the UHO Capacity Reduction Factor it shall apply it retroactively to any Settlement Months to which it was to apply, and may offset the amount of any overpayment (without interest) from a subsequent Monthly Payment owing to the Supplier, or if the Monthly Payment is owing from the Supplier to the OPA, it shall be added to such Monthly Payment.
- (e) The Supplier may, from time to time, propose amendments to the Useful Heat Output 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 serve to reduce anticipated Actual UHO Percentage in respect of any Contract Year to less than the lower of the Minimum UHO Requirement and the Actual UHO Percentage provided for in the existing Useful Heat Output Plan for such Contract Year.

## **2.8 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.

## **2.9 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.

## **2.10 Supplier’s Reporting Requirements**

- (a) In respect of a New CHP Facility, prior to the Facility achieving Commercial Operation, the OPA may request up to four times per calendar year on no less than 15 days’ prior



notice, that by the 15<sup>th</sup> 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.

## 2.11 Environmental Attributes

- (a) The Supplier shall from time to time obtain, qualify, and register with the relevant authorities or agencies all Environmental Attributes that are created by, or allocated or credited to, the Contract Facility pursuant to Laws and Regulations (including the Ontario Emissions Trading Program, if applicable to the Contract Facility) (collectively, the **"Regulatory Environmental Attributes"**).
- (b) The Supplier shall be entitled to any and all right, title and interest in any Regulatory Environmental Attributes that were available under the Ontario Emissions Trading Program as of the date of the execution of this Agreement (**"OETP Attributes"**). However, the amount of the Supplier's entitlement to any such OETP Attributes shall be determined with reference to the levels in effect under the Ontario Emissions Trading Program as of the date of the Supplier's claim from time to time to any such entitlement. For certainty, revenue arising from such OETP Attributes will not be included in Imputed Net Revenue for purposes of Exhibit J.
- (c) With respect to Regulatory Environmental Attributes, other than OETP Attributes, for whatever compliance period may be prescribed by future Laws and Regulations involving Regulatory Environmental Attributes, the OPA shall, acting reasonably, impute the amount of the Regulatory Environmental Attributes that are deemed to be consumed as a result of the Contracted Facility Operation during the applicable compliance period using assumptions (in the case of emissions, being a rate of emissions) that are consistent with the Contract Capacity and the attributes of the Virtual Power Plant, including the Applicable Heat Rate (the **"Consumed REAs"**). The OPA shall be entitled to and the Supplier shall, from time to time, transfer or assign to the OPA any Regulatory Environmental Attributes in respect of a compliance period during the Term that are in

excess of the Consumed REAs within 10 Business Days of receiving a written statement from the OPA setting out the calculation thereof; provided however, that if future Laws and Regulations allocate or create Regulatory Environmental Attributes based on the Contract Facility's actual Electricity production or Primary Fuel consumption, then the OPA's entitlement to any Regulatory Environmental Attributes that are in excess of the Consumed REAs shall not apply to the portion of such excess Regulatory Environmental Attributes that relate to the portion of the Contract Facility's actual Electricity production that is greater than Contracted Facility Operation for the applicable period.

- (i) Further to Section 15.11, each of the Supplier and the OPA shall 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 give effect to the provisions of this Section 2.11(c), including assigning, transferring or, if necessary, holding in trust for the other Party, such Regulatory Environmental Attributes.
- (d) The Supplier shall not participate in any voluntary programs with respect to any Environmental Attributes associated with the Contract Facility without the prior written consent of the OPA, which consent may be unreasonably withheld.
- (e) The Parties acknowledge that the Government of Canada and the Government of Ontario may, from time to time, implement Laws and Regulations covering Greenhouse Gas emissions that may be applicable to the Contract Facility and that may contain provisions requiring the Contract Facility to have, obtain and/or retire permits, credits, allowances, offsets, or similar instruments or other compliance mechanisms ("**GHG Emissions Credits**") in connection with the emission of Greenhouse Gases due to the operation of the Contract Facility or prescribe other compliance mechanisms (the "**GHG Laws and Regulations**"). If the GHG Laws and Regulations are promulgated, and once the applicable details of the GHG Laws and Regulations and the details of their application to the Contract Facility are known, the OPA shall, acting reasonably, amend this Agreement (the "**Replacement Provision(s)**") based on the principles set out in Section 2.11(f) (the "**GHG Amendment Principles**"), such amendments to be effective as of the first day of the first Settlement Month following the date upon which the GHG Laws and Regulations begin to apply to the operation of the Contract Facility.
- (f) For the purposes of Section 2.11(e), the GHG Amendment Principles upon which the Replacement Provision(s) will be based are as follows:
  - (i) The objective of the amendments will be to substantially reflect the Supplier's reasonable costs of compliance with GHG Laws and Regulations, assuming (i) that the Contract Facility's actual operation corresponds to Contracted Facility Operation for the applicable period and (ii) a rate of emissions that is consistent with the Contract Capacity and the attributes of the Virtual Power Plant, including the Applicable Heat Rate.
  - (ii) If GHG Emissions Credits are required by GHG Laws and Regulations for Contracted Facility Operation and the amount of the Regulatory Environmental Attributes that are GHG Emission Credits (the "**Facility GHG Credits**"), if any, is less than the amount required by GHG Laws and Regulations for Contracted Facility Operation (which shall be determined (i) based on the assumption that the Contract Facility's actual operation corresponds to Contracted Facility

Operation for the applicable period and (ii) by using assumptions as to the rate of emissions that are consistent with the Contract Capacity and the attributes of the Virtual Power Plant, including the Applicable Heat Rate) the amendments may include amendments to Exhibit J or other provisions of this Agreement for future periods, including amendments to the calculation of Imputed Variable Energy Cost to take into account the costs of compliance with GHG Laws and Regulations on a per MWh basis.

- (iii) Where the Supplier provides reasonable advanced written notice to the OPA of a shortfall (or anticipated shortfall) in Facility GHG Credits based on the assumptions set out in Section 2.11(f)(ii), at the option of the OPA, the amendments may include:
  - (D) the addition of provisions which allow or require the OPA to pay to the Supplier the reasonable cost of any required GHG Emissions Credits beyond the amount that are available to the Supplier (acting prudently and excluding transaction costs); or
  - (E) the addition of provisions which allow or require the OPA to obtain the GHG Emissions Credits and transfer them to the Supplier at no cost to the Supplier; or
  - (F) the addition of provisions which allow or require the OPA to pay any compliance penalties associated with any deficit in required GHG Emissions Credits; or
  - (G) the addition of provisions whereby the Imputed Net Revenue is reduced by an amount equal to the reasonable cost of the required supplemental GHG Emission Credits or other adjustments that facilitate the reduction of Contracted Facility Operation, such that the emissions corresponding to such reduced Contracted Facility Operation will not require additional GHG Emission Credits.
- (iv) For greater certainty, if GHG Emissions Credits are required by GHG Laws and Regulations for Contracted Facility Operation and the amount of the Facility GHG Credits is greater than the amount required by GHG Laws and Regulations for Contracted Facility Operation, the OPA shall be entitled to any and all right, title and interest in any such excess GHG Emissions Credits pursuant to Section 2.11(c).
- (v) If GHG Emissions Credits are required by GHG Laws and Regulations for the operation of the Contract Facility that is not Contracted Facility Operation, the Supplier is solely responsible for ensuring that it has a sufficient amount of GHG Emissions Credits for such operation.

## **2.12 Supplier Option to Terminate**

- (a) The Supplier shall have the right within 30 days after the end of any Settlement Month in which the UHOCRF calculated in accordance with Exhibit J, if applicable, is less than or equal to 0.9, to provide notice in writing to the OPA specifying an effective date of termination in accordance with Section 2.12(c), that this Agreement is to be terminated,

provided that (i) the amount of Contract Capacity shall have been verified by a Capacity Check Test conducted within 30 days prior to the date of such notice and (ii) 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 2.12(b) shall take effect on a date designated by the Supplier in the notice given pursuant to Section 2.12(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 2.12, 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 Contract Facility except for emergency standby purposes should the Host Facility experience a long-term electrical or thermal energy interruption. If, following the termination of this Agreement in accordance with this Section 2.12, 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 or thermal interruption(s) corresponding to such operation.
- (e) For greater certainty, the termination of this Agreement in accordance with this Section 2.12 is permanent and irreversible notwithstanding any change in the Supplier's circumstances.

### **ARTICLE 3**

#### **CONTRACT SETTLEMENT AND PAYMENT OBLIGATIONS**

##### **3.1 Contract Operation and Settlement**

- (a) 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 Monthly Payments shall begin to accrue and be payable in accordance with Section 3.1(b) and Article 4.
- (b) The “**Monthly Payment**” shall be an amount equal to one of the following:
  - (i) the Contingent Support Payment, if any, which shall be owed by the OPA to the Supplier; or

- (ii) the Revenue Sharing Payment, if any, which shall be owed by the Supplier to the OPA,

in either case, as calculated in accordance with Exhibit J.

- (c) 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.

### **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, nor is the Supplier obligated hereunder to operate the Facility in a manner consistent with the imputed dispatch model set out in Exhibit J. 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, Useful Heat Output, 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 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 Revenue Sharing Payment due to the OPA. If any HST is payable in connection with the Revenue Sharing 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.

### **3.4 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 Contingent Support Payment due to the Supplier hereunder. If any HST is payable in connection with the Contingent Support 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.

### **3.5 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 Statements**

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 Month**”), setting out the basis for the Monthly Payment with respect to the Settlement Month, as well as the basis for any other payments owing under this Agreement by either Party to the other in the Settlement Month (including, if applicable, any costs of a metering service provider retained by the OPA to be reimbursed by the Supplier). A Statement may be delivered by the OPA to the Supplier by facsimile or electronic means and shall include the reference number assigned to this Agreement by the OPA and a description of the components of the Monthly Payment and other payments owing to either Party for the Settlement Month.

#### **4.3 Payment**

The Party owing the Monthly 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 Month to which the Statement relates (the “**Payment Date**”). Any and all payments required to be made by either Party under any provision of this Agreement shall be made by wire transfer to the account designated by the Supplier in the Prescribed Form, or 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.

#### **4.4 Interest**

The Party owing the Monthly Payment shall pay interest on any late payment to the other Party, from the Payment Date to the date of payment, unless such late payment was through the fault of the other Party. The interest rate applicable to such late payment shall be the Interest Rate in effect on the date that the payment went into arrears, calculated daily, but shall not, under any circumstances, exceed the maximum interest rate permitted by Laws and Regulations.

#### **4.5 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, the determination by the IESO of any information that is relevant to the calculation of the Monthly 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 4.5(a) shall not apply to the correction of such error or the OPA's ability to readjust the Statement.
- (c) Subject to Section 4.6, any adjustment to a Statement made pursuant to this Section 4.5 shall be made in the subsequent Statement.

#### **4.6 Disputed Statements**

If the Supplier disputes a Statement or any portion thereof, the Party owing any amount set forth in the Statement shall, notwithstanding such dispute, pay the entire amount set forth in the Statement to the other Party. The Supplier shall provide written notice to the 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 10 Business Days after receipt of written 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.

#### **4.7 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 Monthly Payment made thereunder in accordance with Section 14.2.

### **ARTICLE 5 SECURITY REQUIREMENTS**

#### **5.1 Completion and Performance Security**

- (a) Where the Facility is a New CHP 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 Annual Average 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 Annual Average 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 Annual Average Contract Capacity.
  - (iv) Commencing on the 10<sup>th</sup> anniversary of the Commercial Operation Date, the amount of the Completion and Performance Security shall be reduced to \$10,000 per MW of Annual Average Contract Capacity.
  - (v) Commencing on the 15<sup>th</sup> anniversary of the Commercial Operation Date, the amount of the Completion and Performance Security shall be reduced to \$5,000 per MW of Annual Average Contract Capacity.
- (b) Where the Facility is an Eligible Existing CHP 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 Annual Average 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 Annual Average Contract Capacity.
  - (iii) Commencing on the 10<sup>th</sup> anniversary of the Contract Date, the amount of the Completion and Performance Security shall be reduced to \$5,000 per MW of Annual Average 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 constating documents or resolutions of the directors or shareholders of the Supplier;
  - (iii) any judgment, decree, order or award of any Governmental Authority or arbitrator;
  - (iv) any licence, permit, approval, consent or authorization held by the Supplier; or
  - (v) any Laws and Regulations,that could have a Material Adverse Effect on the Supplier.

- (d) There are no bankruptcy, insolvency, reorganization, receivership, seizure, realization, arrangement or other similar proceedings pending against or being contemplated by the Supplier or, to the knowledge of the Supplier, threatened against the Supplier.
- (e) There are no actions, suits, proceedings, judgments, rulings or orders by or before any Governmental Authority or arbitrator, or, to the knowledge of the Supplier, threatened against the Supplier, that could have a Material Adverse Effect on the Supplier.
- (f) All 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 3.5(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 its name and contact particulars, including on the Website, (ii) of the Site, Contract Capacity, applicable Eligible Alternative Fuel(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, 1.8, 1.9, 1.10 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 CHPSOP Program or the CHPSOP 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 CHP 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 20<sup>th</sup> 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(d) 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 190 Dollars per MW multiplied by the Annual Average 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 20<sup>th</sup> anniversary of the Commercial Operation Date.
- (d) Where the Commercial Operation Date occurs after the Milestone Date for Commercial Operation and the Supplier does not exercise 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 20<sup>th</sup> anniversary of the Commercial Operation Date.

### **8.2 Term for Existing CHPSOP Facilities**

The following shall apply in respect of any Eligible Existing CHP 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, 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 Contract 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 CHP 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 default described in Section 14.7(g)(i) or 14.7(i)(i) has occurred.
- (l) The Supplier fails to deliver a UHO Remediation Plan if required to do so in accordance with Section 2.7(c).
- (m) 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.
- (n) The Availability is less than: (i) 70% in respect of any Settlement Month during the second Contract Year, (ii) 75% in respect of any Settlement Month during the third Contract Year, or (iii) 80% in respect of any Settlement Month during the fourth and each succeeding Contract Year thereafter.
- (o) The Supplier undergoes a change in Control without first obtaining the written approval of the OPA, if required pursuant to this Agreement.



- (p) The Supplier assigns this Agreement without first obtaining the consent of the OPA, if required pursuant to this Agreement.

## **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 referred to in Sections 9.1(b), 9.1(k), or 9.1(n) occurs and is continuing, in addition to the remedy set out in Section 9.2(a), at the discretion of the OPA, either:
  - (i) the Supplier will forfeit an amount equivalent to the Assumed Deemed Dispatch Payment that would be payable to the Supplier, if any, for the Settlement Month in which such Supplier Event of Default occurs, as liquidated damages and not as a penalty; or
  - (ii) the OPA may levy a performance assessment set-off, as liquidated damages and not as a penalty, equal to three times the average Assumed Deemed Dispatch Payment that would be payable to the Supplier, if any, for the most recent 12 Settlement Months (or the number of Settlement Months that have elapsed from the Term Commencement Date if less than 12 Settlement Months have elapsed), in the event that three or more Supplier Events of Default referred to in Sections 9.1(b), 9.1(k), or 9.1(n) have occurred within a Contract Year, regardless of whether such Supplier Events of Default have been subsequently cured,and which may be satisfied by the OPA setting 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 by drawing on the Completion and Performance Security, or any part thereof, and if the remedy in Section 9.2(a) has not been exercised, requiring the Supplier to replace such drawn security with new security.
- (c) If a Supplier Event of Default 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.
- (d) 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).

- (e) If the OPA terminates this Agreement pursuant to Section 9.2(a) or the Agreement is terminated pursuant to Section 9.2(d),
  - (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(e)(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.
- (f) Termination shall not relieve the Supplier or the OPA of their respective responsibilities relating to the availability of the Facility, Useful Heat Output, Environmental Attributes from the Facility, 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 remedying 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 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 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 Contract Facility, or is unable to deliver from the Contract 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 Contract 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 fuel supply to be utilized by the Contract 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 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;
- (e) if the Force Majeure was caused by a lack of funds or other financial cause;
- (f) if the Party invoking Force Majeure fails to comply with the notice provisions in Sections 10.1(b) or 10.1(d); or
- (g) if and to the extent the Supplier is seeking to invoke Force Majeure because of a Host Facility Force Majeure, and the Contract 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 Contract

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 Contract 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 Contract 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 Contract 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(d)) 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 H 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 Contract 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 Contract 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 Contract 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 Contract 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 information provided in accordance with this Agreement, including, for greater certainty, information provided pursuant to Sections 2.7, 14.7 and 14.8. 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 Reports to the OPA After Commercial Operation

- (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 CHP Facility, and (B) 30 days after the Term Commencement Date in respect of an Eligible Existing CHP 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 during 5x16 Hours other than a Planned Outage, or any anticipated Outage during 5x16 Hours 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, if such Outage is to occur during 5x16 Hours;



- (b) All Outages during 5x16 Hours 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 CHPSOP 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](mailto: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 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.

#### 14.7 Capacity Check Test

- (a) **Right to Request Capacity Check Test and Test Protocol.** The OPA shall have the option, exercisable on no more than two occasions per Contract Year, to require the Supplier, within 10 Business Days after written notice has been delivered to the Supplier, provided it is not during an Outage, to conduct a test (the “**Capacity Check Test**”), at the Supplier’s sole cost and expense, that may be witnessed by the OPA or its Representative, to confirm the ability of the Contract Facility to produce the Contract Capacity. If the Supplier intends to terminate this Agreement in accordance with Section 2.12, the Supplier may request, within 20 Business Days after written notice has been delivered to the OPA, a Capacity Check Test. The Capacity Check Test will be carried out in accordance with a test protocol (the “**Test Protocol**”) which is to be prepared by the Supplier in the Prescribed Form and submitted in writing to the OPA for review and approval within three months after the Term Commencement Date. If the Contract Facility is designed or configured such that the Measured Electricity at any point in time is capable of being affected by the level of Useful Heat Output being produced by the Contract Facility at such time, the Test Protocol shall set out a methodology for adjusting the Measured Electricity downwards to account for any incremental Measured Electricity that was capable of being produced as a result of the Actual UHO Percentage during a Capacity Check Test being less than the Minimum UHO Requirement over the duration of the Capacity Check Test. Additionally, if the Contract Facility is designed or configured such that the Measured Electricity at any point in time is affected by whether the Facility is operating under normal operating conditions, the Test Protocol shall set out a methodology for adjusting the Measured Electricity downwards to account for any incremental Measured Electricity that was capable of being produced as a result of the Facility operating other than under normal operating conditions during a Capacity Check Test. The measurements of the Capacity Check Test shall be made using high accuracy calibrated instruments and recording systems or Facility instrumentation, including tariff

meters for Electricity, fuel and Useful Heat Output as set out in the Metering Plan and acceptable to the OPA, acting reasonably.

- (b) **Test Parameters.** Each Capacity Check Test (including any Further Capacity Check Test) consists of the Contract Facility generating Electricity and Useful Heat Output for four continuous hours during a period during 5x16 Hours that is designated by the Supplier and agreed to by the OPA in advance as a test period, subject to coordination and approval of the IESO or LDC, as applicable. The Supplier acknowledges and agrees that the Contract Capacity, the Electricity output of the Contract Facility, the Station Service Loads, and Useful Heat Output, as may be measured by the Capacity Check Test, shall not be adjusted for ambient weather conditions. If the Facility is not operating under normal operation conditions during a Capacity Check Test, the Measured Electricity shall be adjusted downwards in accordance with the Test Protocol. Additionally, if the Useful Heat Output during the Capacity Check Test does not satisfy the Minimum UHO Requirement, the Measured Electricity shall be adjusted downwards in accordance with the Test Protocol, as applicable.
- (c) **Optional Re-Performance of a Capacity Check Test as a result of Weather or Force Majeure.** If a Capacity Check Test is interrupted by an event of Force Majeure, or if at any point during the Capacity Check Test the air temperature, as reported at the Environment Canada weather station that is physically nearest to the Facility, exceeded:
  - (i) in respect of a Capacity Check Test conducted during Season 1, 7.0 degrees Celsius;
  - (ii) in respect of a Capacity Check Test conducted during Season 2, 21.0 degrees Celsius;
  - (iii) in respect of a Capacity Check Test conducted during Season 3, 30.0 degrees Celsius; or
  - (iv) in respect of a Capacity Check Test conducted during Season 4, 24.0 degrees Celsius,then the Supplier may, at the Supplier's sole cost and expense, re-perform the Capacity Check Test within 10 Business Days after the receipt by the Supplier of the Capacity Confirmation relating to such Capacity Check Test from the OPA.
- (d) **Capacity Check Test Report.** The Supplier shall at the Supplier's sole cost and expense and within 10 Business Days, or as provided in the Test Protocol, after completion of the Capacity Check Test prepare and submit to the OPA a written Capacity Check Test report that includes the data collected during the test period, computation of test data, any adjustment to the Measured Electricity in accordance with Section 14.7(b), and the test results. The OPA shall provide to the Supplier within 10 Business Days after receipt of the Capacity Check Test report from the Supplier, written confirmation of the Measured Electricity and the Measured UHO for each hour during the Capacity Check Test (the "Capacity Confirmation").
- (e) **Requirements to Pass a Capacity Check Test.** In order to pass the Capacity Check Test, the Contract Facility must, for four continuous hours, using Primary Fuel and in

compliance with all Laws and Regulations, generate Measured Electricity at an uninterrupted rate, in each of such hours, of not less than 100% of the Contract Capacity.

- (f) **Further Capacity Check Test.** If the Supplier has not passed the Capacity Check Test as described above, then the Supplier shall, at the Supplier's cost and expense, perform a further Capacity Check Test (the "**Further Capacity Check Test**") within 30 Business Days after the receipt by the Supplier of the Capacity Confirmation from the OPA, on the same terms and conditions as the Capacity Check Test described in Sections 14.7(a) and 14.7(b).
- (g) Following completion of the Further Capacity Check Test:
  - (i) if the Measured Electricity for the four continuous hours of each of the Capacity Check Test and the Further Capacity Check Test, as stated in their respective Capacity Confirmations, divided by the number of hours in their respective check test (each an "**Average Test Capacity**"), are both less than 80% of the Contract Capacity, then this shall be considered a Supplier Event of Default; and
  - (ii) if the Further Capacity Check Test shows that the Average Test Capacity was less than 100% of the Contract Capacity, then the Capacity Reduction Factor for the purposes of Exhibit J shall be as set out in the next sentence, effective on the date of the Capacity Confirmation in relation to the Further Capacity Check Test. The Capacity Reduction Factor shall be an amount equal to a fraction, the numerator of which is (A) the greater of the Average Test Capacities resulting from the Capacity Check Test and the Further Capacity Check Test and the denominator of which is (B) the Contract Capacity which relates to such greater Average Test Capacity.
- (h) **Final Capacity Check Test.** If a Capacity Reduction Factor is applicable in accordance with Section 14.7(g)(ii), then the Supplier shall perform a further Capacity Check Test (the "**Final Capacity Check Test**") at the Supplier's cost and expense within 10 Business Days after written notice has been delivered by the Supplier to the OPA, no earlier than one month and no later than one year after the date of the Capacity Confirmation with respect to the Further Capacity Check Test, failing which this shall be considered to be a Supplier Event of Default. The Final Capacity Check Test shall take place on the same terms and conditions as the Capacity Check Test described in Sections 14.7(a) and 14.7(b), and including the delivery of the Capacity Confirmation in relation to the Final Capacity Check Test.
- (i) If the Measured Electricity for the four continuous hours of the Final Capacity Check Test, as stated in the Capacity Confirmation with respect to the Final Capacity Check Test, divided by the number of hours in such check test:
  - (i) is less than 95% of the Contract Capacity, then this shall be considered a Supplier Event of Default; or
  - (ii) is equal to or greater than 95% and less than 100% of the Contract Capacity, then the Capacity Reduction Factor shall, for the purposes of Exhibit J, be an amount equal to a fraction, the numerator of which is (A) the Average Test Capacity in relation to the Final Capacity Check Test and the denominator of which is (B) the Contract Capacity; or

- (iii) is equal to 100% of the Contract Capacity, then the Supplier shall be considered to have passed the Final Capacity Check Test and the Capacity Reduction Factor shall, for the purposes of Exhibit J, be an amount equal to 1.0, effective from the date of the Capacity Confirmation in relation to the Final Capacity Check Test.

#### 14.8 Availability Check Test

- (a) The Supplier shall at all times maintain with the OPA a facsimile number to be used for the purposes of the OPA requesting an Availability Check Test. The Supplier may, at its discretion, also provide the OPA with a telephone number for the purposes of the OPA providing supplemental notice of an Availability Check Test. The Supplier may, from time to time, on no less than 10 Business Days' prior notice, change such numbers by providing notice to the OPA in the Prescribed Form.
- (b) The OPA shall have the option, exercisable on no more than two occasions per Contract Year, to require the Supplier, within 120 minutes after the OPA has provided facsimile notice to the Supplier at the facsimile number provided pursuant to Section 14.8(a), provided it is not during an Outage, to conduct a test (the "**Availability Check Test**"), at the Supplier's sole cost and expense, which test may be witnessed by the OPA or its Representative, to confirm the ability of the Contract Facility to produce at least 95% of the Contract Capacity. Notwithstanding the foregoing, the OPA may not request an Availability Check Test outside of 5x16 Hours, and where the OPA requests an Availability Check Test during the last two 5x16 Hours of a Business Day, the Supplier shall not be required to commence the Availability Check Test until the end of the second 5x16 Hour on the following Business Day. If the Supplier has provided a telephone number pursuant to Section 14.8(a) (which, for greater certainty, is in addition to a facsimile number), the OPA shall use its best efforts to provide oral notice of the Availability Check Test at the telephone number so provided within 10 minutes prior to providing facsimile notice, provided that no failure to successfully give such telephone notice shall affect the validity of the OPA's notice or the Supplier's obligation to perform an Availability Check Test.
- (c) In order to pass the Availability Check Test, the Contract Facility must, starting within 120 minutes after the Supplier received facsimile notice from the OPA in accordance with Section 14.8, and continuing for two continuous hours, using Primary Fuel and in compliance with all Laws and Regulations, generate Measured Electricity at an uninterrupted rate, in each of such hours, of not less than 80% of the Contract Capacity.
- (d) The Supplier shall, at the Supplier's sole cost and expense, within two Business Days after completion of the Availability Check Test prepare and submit to the OPA a written Availability Check Test report (the "**Availability Check Test Report**") that includes the data collected during the test period, computation of test data and the test results. The OPA shall provide to the Supplier within 20 Business Days after receipt of the Availability Check Test Report from the Supplier, written confirmation of the Availability Check Test Report (the "**Availability Check Test Confirmation**").
- (e) If the Contract Facility fails to pass an Availability Check Test in accordance with Section 14.8(c), the Supplier shall, within 10 Business Days after receipt of the Availability Check Test Confirmation, provide the OPA with evidence to the OPA's satisfaction, acting reasonably, of the cause of the failure to pass the Availability Check Test and the period of time prior to the Availability Check Test (the "**Deemed**

**Unavailability Period**”) for which such circumstances existed at the Contract Facility, provided that where the Supplier is unable to provide evidence to the satisfaction of the OPA, acting reasonably, of the period of time for which the circumstances which caused of the failure to pass the Availability Check Test existed at the Contract Facility, the Deemed Unavailability Period shall be for a period of time that is equal to one half of any 5x16 Hours between and including the date of the failed Availability Check Test, and the most recent date prior to the date of the failed Availability Check Test on which the Supplier can demonstrate that the Contract Facility did, for one continuous hour, generate Measured Electricity at an uninterrupted rate of not less than 80% of the Contract Capacity.

- (f) For the purposes of calculating Availability in accordance with Exhibit E, the Contract Facility shall be deemed to be in an Outage:
  - (i) for the duration of the Deemed Unavailability Period; and
  - (ii) from and after the failed Availability Check Test until such time as the cause of such failure is remedied and the Supplier has demonstrated that the Contract Facility has, for one continuous hour, generated Measured Electricity at an uninterrupted rate of not less than 80% of the Contract Capacity.
- (g) Notwithstanding Section 14.8(b), where the Contract Facility fails to pass an Availability Check Test, the OPA shall be permitted to request an additional Availability Check Test during the Contract Year in which the Contract Facility failed such Availability Check Test.

## **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 any Host Facilities, following such change of Control

## **15.7 Survival**

The provisions of Sections 2.11, 3.2, 3.3, 3.4, 3.5, Article 4, Section 5.1(d), 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 1.7(e), 1.8(e), 1.9(d), 1.10(c), 2.2(d), 2.7(d)(i), 2.8(c), 3.1, 3.3, 3.5, 4.3, 4.4, 9.2, 9.5, 13.3 and 15.5(e) against any monies owed by the OPA to the Supplier in connection with Sections 1.7(e), 1.8(e), 1.9(d), 1.10(c), 2.7(d)(i), 3.1, 3.4, 3.5(a), 4.3, 4.4, 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 1.7(e), 1.8(e), 1.9(d), 1.10(c), 3.1, 3.4, 3.5(a), 4.3, 4.4, 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 1.7(e), 1.8(e), 1.9(d), 1.10(c), 2.2(d), 2.7(d)(i), 2.8(c), 3.1, 3.3, 3.5, 4.3, 4.4, 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**  
**USEFUL HEAT OUTPUT PLAN**

*[Note to Finalization: Attach Useful Heat Output Plan provided with the Application.]*

**EXHIBIT B**  
**VIRTUAL POWER PLANT STATED VARIABLES**

Parameter	Units	Seasonal UHO Facilities	Non-Seasonal UHO Facilities
Net Revenue Support Level	\$/MW-month	28,900	
Heat Rate	MMBtu/MWh	Season 1: 4.98 Season 2: 6.18 Season 3: 7.38 Season 4: 6.18	6.00
Variable Operation and Maintenance and Gas Distribution Charge	\$/MWh	6.0	
Start-up Gas	MMBtu/MW/Start	0.5	

**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:	<b>[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>]</b>
TYPE:	Irrevocable and Unconditional Standby Letter of Credit Number: [●] (the “Credit”)

The Credit is issued in connection with the CHP 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, 1.8, 1.9, 1.10 & 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, 1.8, 1.9, 1.10 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, 1.8, 1.9, 1.10 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**  
**DETERMINATION OF AVAILABILITY**

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

(a) First Contract Year

The Availability of the Facility will not be tested during the Contract Year.

(b) Second and Third Contract Years

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

$AV = (THM - OH - FMH) / (THM - FMH) \times 100$	
where:	
AV	is the Availability of the Facility (expressed as a percentage figure).
OH	is the total number of Outage Hours occurring during 5x16 Hours in the period between the Term Commencement Date and the last day of the applicable Settlement Month, provided that Outage Hours shall not include the hours of any Outage where and to the extent that the Outage is caused by an event of Force Majeure.
THM	is the total number of 5x16 Hours in the period between the Term Commencement Date and the last day of the applicable Settlement Month.
FMH	is the total number of 5x16 Hours in the period between the Term Commencement Date and the last day of the applicable Settlement Month during which the Supplier was subject to an event of Force Majeure.

(c) Fourth and Subsequent Contract Years

The Availability of the Facility for each Settlement Month during the fourth and subsequent Contract Year shall be calculated as follows:

$AV = (THM - OH - FMH) / (THM - FMH) \times 100$	
where:	
AV	is the Availability of the Facility (expressed as a percentage figure).
OH	is the total number of Outage Hours occurring during 5x16 Hours in the most recent 36 month period which ends on the last day of the Settlement Month, provided that Outage Hours shall not include the hours of any Outage where

	and to the extent that the Outage is caused by an event of Force Majeure
THM	is the total number of 5x16 Hours in the most recent 36 month period which ends on the last day of the Settlement Month.
FMH	is the total number of 5x16 Hours in the most recent 36 month period which ends on the last day of the Settlement Month during which the Supplier was subject to an event of Force Majeure.

**EXHIBIT F**  
**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.**

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

**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 I 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 2.8(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 2.9(b) of the Agreement.

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

**[Legal Name of Supplier]**

By:

---

Name: **[Name]**

Title: **[Title]**

**EXHIBIT G**  
**PRESCRIBED DISPATCH**

**1. General**

- (a) the Supplier shall be free to operate the Facility (including the purchase of Gas) and generate Electricity, Useful Heat Output and Related Products at its own discretion and for its own account, with the knowledge that payment settlements in each Settlement Month shall be based on the imputed revenue model set out in Exhibit J; and
- (b) the Monthly Payment, payable by the Supplier to the OPA or the OPA to the Supplier, as the case may be, in a Settlement Month will be based on the imputed revenue model set out in Exhibit J.

**2. Prescribed Dispatch**

Prescribed Dispatch shall be governed by the following rules:

- (a) the OPA shall, in accordance with the terms of the Agreement, issue one or more Prescribed Dispatch Orders;
- (b) a Prescribed Dispatch Order may be issued by the OPA in respect of any one or more whole Settlement Months;
- (c) a Prescribed Dispatch Order shall be posted on the Website no less than 30 days prior to the start of the first Settlement Month to be subject to such Prescribed Dispatch Order;
- (d) the OPA may remove or supersede a Prescribed Dispatch Order until 30 days prior to the start of the first Settlement Month to be subject to such Prescribed Dispatch Order, after which time, the OPA may only remove or supersede those aspects of the Prescribed Dispatch Order relating to Settlement Months for which there is at least 30 days until the start of such Settlement Months;
- (e) the Prescribed Dispatch Order shall, for each Business Day in a Settlement Month, specify the Prescribed Start-Up Hour and the Prescribed Shut-Down Hour;
- (f) each Imputed Production Interval specified by a Prescribed Dispatch Order shall constitute a consecutive run time of at least two Imputed Production Hours, and there may be up to two Imputed Production Intervals per day, with a minimum down time of at least two hours between Imputed Production Intervals;
- (g) a Prescribed Dispatch Order may apply to all Prescribed Dispatch Facilities or any subset of Prescribed Dispatch Facilities, including any subset delineated by Contract Capacity, location, Heat Rate Seasonality Designation or Connection Point;
- (h) it is the Supplier's responsibility to monitor the Website for Prescribed Dispatch Orders; and
- (i) if there is no Prescribed Dispatch Order in respect of a Settlement Month posted on the Website 30 days prior to the start of such Settlement Month, then:

- (i) the Prescribed Dispatch Order applicable to the Settlement Month most recently preceding the applicable Settlement Month shall be used, provided that such Prescribed Dispatch Order is posted on the Website at least 30 days prior to the start of the applicable Settlement Month, or if there is no such Prescribed Dispatch Order,
- (ii) for each Business Day in such Settlement Month, the hour ending 0800 (EST) shall be a Prescribed Start-Up Hour and the hour ending 2100 (EST) shall be a Prescribed Shut-Down Hour.

**EXHIBIT H**  
**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 CHPSOP 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 CHP 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 "CHPSOP Contract") in order to formalize the long-term contractual arrangements for the Supplier to develop and operate the Contract Facility and to supply, directly or indirectly, Electricity, Useful Heat Output and Related Products from the Contract 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 CHPSOP 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 Contract Facility or the Contract 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 CHPSOP 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 CHPSOP Contract and are binding on the OPA in the enforcement of the OPA's rights and remedies provided in the CHPSOP Contract (as contemplated by Section 11.1(d) of the CHPSOP Contract); and
- (iii) the Security Agent constitutes the Secured Lender for purposes of the CHPSOP Contract and, without limiting the generality of the foregoing, is entitled to the benefit of the provisions of Article 11 of the CHPSOP Contract in favour of a Secured Lender and is entitled to enforce the same as if the Security Agent were a party to the CHPSOP 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 CHPSOP Contract, it will comply with the terms, conditions and obligations applicable to a Secured Lender under Section 11.2 of the CHPSOP Contract as they relate to the Security Agent's security interests in the CHPSOP Contract during such enforcement.
- (ii) The Security Agent agrees that it will comply with Section 11.2(f) of the CHPSOP 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 CHPSOP 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 CHPSOP 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 CHPSOP 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 CHPSOP 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 CHPSOP Contract.
- (x) The address of the Security Agent to which notices may be sent pursuant to Section 11.1(d) of the CHPSOP Contract is set forth in Section F of this Exhibit H.
- (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 CHPSOP 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 CHPSOP 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 CHPSOP 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: **CHPSOP 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 CHPSOP 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 CHPSOP 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.

***[EXECUTION PAGE IMMEDIATELY FOLLOWS]***

**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 H**

### **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 I**  
**FORM OF INDEPENDENT ENGINEER 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.

<b>Date</b>	
<b>Legal Name of Supplier</b>	
<b>Name of Facility</b>	
<b>Agreement Title</b>	CHP Standard Offer Program Contract #[ <b>Insert Contract #</b> ] (the “Agreement”)
<b>Agreement Date</b>	
<b>Legal Name of Independent Engineer</b>	

**WHEREAS** Section 2.5(a)(iii) of the Agreement between the Supplier and the OPA dated as of [Contract Date] provides that the Contract 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 Contract Facility;
- (iii) the Undersigned is not an affiliate of the Supplier nor directly or indirectly Controlled by the Supplier;
- (iv) the Contract Facility has been completed in all material respects, excepting punch list items that do not materially and adversely affect the ability of the Contract Facility to operate in accordance with the Agreement;
- (v) the Connection Point of the Contract Facility is at the location specified on the CHPSOP Contract Cover Page;
- (vi) the Contract Facility has been constructed, connected, commissioned and synchronized to a Distribution System or an Electrical Host Facility such that at least 100% of the Contract

Capacity for the Contract Facility is available to generate Electricity in compliance with Good Engineering and Operating Practices and the requirements of all Laws and Regulations;

- (vii) the Contract Facility has generated Electricity in compliance with Good Engineering and Operating Practices and all Laws and Regulations for four continuous hours at an uninterrupted rate not less than 100% of the Contract Capacity. This requirement shall be evaluated based on the calculation of the generator output at the Connection Point net of any Station Service Loads, in accordance with the Metering Plan, and shall be satisfied if the energy output in each of the four hours (in MWh), divided by one hour, is equal to or greater than the Contract Capacity. The Contract Capacity, the energy output of the Contract Facility, the Station Service Loads, and the energy attributable to Useful Heat Output, as may be measured by the foregoing test, shall not be adjusted for ambient weather or other conditions whatsoever, provided that if the Contract Facility is designed or configured such that the Measured Electricity at any point time is capable of being affected by the level of Useful Heat Output being produced by the Contract Facility at such time, the output of the Contract Facility shall be adjusted downwards to account for any incremental Measured Electricity that was capable of being produced as a result of the amount Useful Heat Output being produced during this test being less than the Minimum UHO Requirement over the duration of such test. Additionally, if the Facility is not operating under normal operation conditions during such test, the Measured Electricity shall be adjusted downwards to account for any incremental Measured Electricity that was capable of being produced as a result of the Facility not operating under normal conditions; and
- (viii) 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]

<b>Professional Engineer Stamp of Signing Engineer</b>

**EXHIBIT J**  
**CALCULATION OF MONTHLY PAYMENT**

This Exhibit J sets out the calculation of the Contingent Support Payment and the Revenue Sharing Payment, as applicable, for a given Settlement Month “*m*” in calendar year “*y*”, which is a four stage calculation which involves:

<b>Stage I</b>	Determination of the Total Monthly Fixed Capacity Payment;
<b>Stage II</b>	Determination of the Variable Energy Cost;
<b>Stage III</b>	Determination of the Imputed Net Revenue; and
<b>Stage IV</b>	Determination of the Contingent Support Payment and the Revenue Sharing Payment.

Except as expressly set forth below, all references to Sections are to Sections of the Agreement.

**1.0 STAGE I: DETERMINATION OF TOTAL MONTHLY FIXED CAPACITY PAYMENT**

**1.1** The Total Monthly Fixed Capacity Payment is calculated as follows:

<b>TMFCP<sub>m</sub></b> = $AACC \times CRF_m \times FMCRF_m \times NRSL_y$	
<b>where:</b>	
TMFCP <sub>m</sub>	TMFCP <sub>m</sub> is the Total Monthly Fixed Capacity Payment (in \$ for the Settlement Month), provided that if the Settlement Month is the first or last Settlement Month of the Term, such amount will be prorated for the number of days of the Term in the Settlement Month, and the Total Monthly Fixed Capacity Payment shall be calculated as follows:  <b>TMFCP<sub>m</sub></b> = $(AACC \times CRF_m \times FMCRF_m \times NRSL_y) \times (SMD_m / CMD_m)$
SMD <sub>m</sub>	is the number of days in the Settlement Month “ <i>m</i> ” (i.e. the number of days of the Term in such month).
CMD <sub>m</sub>	is the total number of days in the calendar month in which the Settlement Month “ <i>m</i> ” falls.



AACC	is the Annual Average Contract Capacity.
$CRF_m$	is the Capacity Reduction Factor for Settlement Month “ <i>m</i> ” as defined in Section 14.7, and expressed as a fraction. The Capacity Reduction Factor shall be 1.0 unless and to the extent the circumstances set out in Sections 14.7(g) or 14.7(i) applies. If the Capacity Reduction Factor changes during the Settlement Month, then CRF will be calculated as a weighted average based on the number of days of the Settlement Month during which the different values of CRF apply.
$NRSL_y$	<p>is the Net Revenue Support Level (in \$/MW-month) for calendar year “<i>y</i>”. For the calendar year in which the Term Commencement Date occurs, the Net Revenue Support Level shall be equal to the amount set out in Exhibit B. For the second and each succeeding calendar year, a portion of the Net Revenue Support Level 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 <math>NRSL_y</math> shall be calculated as follows:</p> $NRSL_y = (NRSL_B \times 0.30 \times IF_y) + (NRSL_B \times 0.70)$
$IF_y$	<p>is the Index Factor for calendar year “<i>y</i>” and shall be calculated as follows:</p> $IF_y = CPI_y / CPI_B$
$CPI_y$	is the CPI effective as of the month of December immediately preceding the commencement of calendar year “ <i>y</i> ”.
$CPI_B$	is the CPI effective as of the month of December immediately preceding the calendar year in which Term Commencement Date occurs.
$FMCRF_m$	<p>is the Force Majeure Capacity Reduction Factor for Settlement Month “<i>m</i>” which shall be equal to 1.0 if there are no Outages affecting an Imputed Production Hour in the Settlement Month resulting from an event of Force Majeure, otherwise it shall be calculated as follows:</p> $FMCRF_m = 1 - \frac{FMOH_m}{IPH_m}$

$CC_m$	is the Contract Capacity (in MW) in Settlement Month “ $m$ ”.
IPH	is an Imputed Production Hour, which is an hour in Settlement Month “ $m$ ” that is contained within an Imputed Production Interval which occurred, in whole or in part, in Settlement Month “ $m$ ”.
$IPH_m$	is the total number of Imputed Production Hours in Settlement Month “ $m$ ”.
FMOH	is a Force Majeure Outage Hour, which is an hour within any Imputed Production Interval in Settlement Month “ $m$ ” for which the Supplier has notified the OPA of an Outage caused by an event of Force Majeure.
$FMOH_m$	is the total number of Force Majeure Outage Hours in Settlement Month “ $m$ ”.

## 2.0 STAGE II: DETERMINATION OF VARIABLE ENERGY COST

### 2.1 Calculation of Variable Energy Cost

The calculation of the Variable Energy Cost for each hour “ $h$ ” during Settlement Month “ $m$ ” is as follows:

$VEC_h = (GP_h \times AHR) + O\&M_y$	
where:	
$VEC_h$	is the Variable Energy Cost for hour “ $h$ ” (in \$/MWh).
$GP_h$	is the Gas Price for hour “ $h$ ” (in \$/MMBTU) and shall be equal to the Gas Price (DA) for the day.  The Gas Price (DA) shall be converted from US dollars to Dollars using the applicable conversion rate set out in Section 1.1.
AHR	is the Applicable Heat Rate (in MMBTU/MWh), which,  (i) in the case of a Seasonal UHO Facility, shall be the Season 1 VPP Heat Rate, Season 2 VPP Heat Rate, Season 3 VPP Heat Rate or the Season 4 VPP Heat Rate, as applicable; and  (ii) in the case of a Non-Seasonal UHO Facility, shall be the Non-Seasonal VPP Heat Rate.
$O\&M_y$	is the Variable O&M/Gas Distribution Charge set out in Exhibit B, as adjusted for indexation to the CPI as described in Section 2.2 of this Exhibit J (in \$/MWh).

### 2.2 Indexation of Variable O&M/Gas Distribution Charge

For the calendar year in which Term Commencement Date occurs, the Variable O&M/Gas Distribution Charge shall be equal to the amount set out in Exhibit B. For the each succeeding calendar year, the Variable O&M/Gas Distribution Charge 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 such calendar year compared with the CPI effective as of the month of December immediately preceding the calendar year in which Term Commencement Date occurs, and shall be calculated as follows:

<b><math>O\&amp;M_y = O\&amp;M_B \times IF_y</math></b>	
where:	
$O\&M_y$	is the Variable O&M/Gas Distribution Charge (in \$/MWh) for calendar year “y”. For the calendar year in which Term Commencement Date occurs, the Variable O&M/Gas Distribution Charge shall be equal to the amount set out in Exhibit B.
$O\&M_B$	is the Variable O&M/Gas Distribution Charge (in \$/MWh) as set out in Exhibit B.
$IF_y$	is the Index Factor for calendar year “y” which is calculated as described in Section 1.1 of this Exhibit J.

### 2.3 Calculation of Start-Up Costs

The Start-Up Costs for each day “d” during Settlement Month “m” is calculated as follows:

<b><math>SUC_d = ACC_m \times SUG \times GP_d</math></b>	
where:	
$SUC_d$	is the Start-Up Costs (in \$/start-up) for day “d”.
$ACC_m$	is the Adjusted Contract Capacity (in MW) for the Settlement Month “m”, and is calculated as follows:  <b><math>ACC_m = CC_m \times CRF_m</math></b>
$SUG$	is the Start-Up Gas (in MMBTU/start-up/MW) as defined in Section 1.1 of this Agreement.
$GP_d$	is the Gas Price applicable for day “d” (in \$/MMBTU) and shall be equal to the Gas Price (DA) for the day.  The Gas Price (DA) shall be converted from US dollars to Dollars using the applicable conversion rate set out in Section 1.1.
$CC_m$	is the Contract Capacity (in MW) in Settlement Month “m”.

$CRF_m$	is the Capacity Reduction Factor for Settlement Month “ $m$ ”, as described in Section 1.1 of this Exhibit J.
---------	---

## 2.4 Calculation of Hourly Start-up Cost Allocation Rate

The Hourly Start-up Cost Allocation Rate for each day “ $d$ ” during Settlement Month “ $m$ ” is calculated as follows:

$HSCAR_d = 0.25 \times \frac{SUC_d}{ACC_m \times 1 \text{ hour}}$	
where:	
$HSCAR_d$	is the Hourly Start-up Cost Allocation Rate (in \$/MWh) for day “ $d$ ”.
$SUC_d$	is the Start-Up Costs (in \$/start-up) for day “ $d$ ”, calculated in accordance with Section 2.3 of this Exhibit J.
$ACC_m$	is the Adjusted Contract Capacity applicable to month “ $m$ ” calculated in accordance with Section 2.3 of this Exhibit J.

### 3.0 STAGE III: DETERMINATION OF IMPUTED PRODUCTION INTERVALS, IMPUTED GROSS ENERGY MARKET REVENUE AND IMPUTED NET REVENUE

Subject to the provisions below, the Contract Facility shall be deemed to operate, and hence, be imputed to produce Electricity at the Adjusted Contract Capacity ( $ACC_m$ ), for all hours within all Imputed Production Intervals contained in whole or in part in any Settlement Month " $m$ ". For purposes of this Exhibit J, day " $d$ " shall mean the 24 hour period between the beginning of the hour ending 01:00 hours (EST) and the end of hour ending 24:00 (EST).

#### 3.1 Prescribed Dispatch Facilities

The following Section 3.1 shall apply only in respect of Prescribed Dispatch Facilities:

- (i) All Settlement Months during the Term shall be subject to "Prescribed Dispatch" in accordance with the provisions of Exhibit G. An "**Imputed Production Interval**" ("IPI") is a contiguous set of  $n$  hours (each such hour, an "**Imputed Production Hour**") for which the Contract Facility is prescribed to operate, which is all hours between and including a Prescribed Start-Up Hour and a Prescribed Shut-Down Hour, as set out in a Prescribed Dispatch Order, in accordance with the terms set out in Exhibit G.
- (ii) Any Imputed Production Hour that is not immediately preceded by an Imputed Production Hour will be considered an Imputed Start-Up Hour, and  $ISU_d$  will equal the total of the Imputed Start-Up Hours in day " $d$ ".

#### 3.2 Facilities Other Than Prescribed Dispatch Facilities

The following Section 3.2 shall apply only in respect of Facilities other than Prescribed Dispatch Facilities:

- (i) Facilities other than Prescribed Dispatch Facilities shall not be subject to "Prescribed Dispatch". An "**Imputed Production Interval**" ("IPI") a contiguous set of  $n$  hours (each such hour, an "**Imputed Production Hour**") for which the Contract Facility is imputed to operate, which is all hours between and including an Imputed Start-Up Hour and an Imputed Shut-Down Hour.
- (ii) An "**Imputed Start-Up Hour**" is the first hour of an Imputed Production Interval, and is the first hour following an Imputed Shut-Down Hour in which,
  - (a) both the hour " $h$ " and the following hour " $h+1$ " are 5x16 Hours; and
  - (b) the immediately preceding hour " $h-1$ " is not an Imputed Dispatch Hour; and
  - (c) the Pre-Dispatch Price for that hour " $h$ ", as published two hours prior to that hour " $h$ ", exceeds the Variable Energy Cost plus the applicable Hourly Start-up Cost Allocation Rate applicable to such hour " $h$ "; and
  - (d) the Pre-Dispatch Price for the following hour, " $h+1$ ", as published two hours prior to the current hour " $h$ " (i.e. the three-hour ahead Pre-Dispatch Price for hour " $h+1$ "), exceeds the Variable Energy Cost plus the applicable Hourly Start-up Cost Allocation Rate applicable to such hour " $h+1$ ".

Notwithstanding the foregoing, the requirement that an Imputed Start-Up Hour follow an Imputed Shut-Down Hour shall not apply to the first Imputed Start-Up Hour in the Term.

- (iii) An “**Imputed Shut-Down Hour**” is the last hour in an Imputed Production Interval, and is the first hour within an Imputed Production Interval other than an Imputed Start-Up Hour, in which,
  - (a) the following hour is not a 5x16 Hour; or
  - (b) the Pre-Dispatch Prices published in that hour “*h*” for the hours “*h+1*” and “*h+2*” are both less than the applicable Variable Energy Cost; or
  - (c) the Pre-Dispatch Price published in that hour “*h*” for the hours “*h+1*” is less than the applicable Variable Energy Cost and the hour “*h+2*” is not a 5x16 Hour.
- (iv)  $ISU_d$  will equal the total of the Imputed Start-Up Hours in day “*d*”, provided that  $ISU_d$  shall not be greater than two.

### 3.3 Calculation of Imputed Gross Energy Market Revenue

The Imputed Gross Energy Market Revenue is calculated as follows:

$IGEMR_m = ACC_m \times 1 \text{ hour} \times \sum_{IPH=1}^{IPH=IPH_m} (HOEP_{IPH} - FMHOEP_{IPH})$	
where:	
$IGEMR_m$	is the Imputed Gross Energy Market Revenue (in \$) for Settlement Month “ <i>m</i> ”.
$ACC_m$	is the Adjusted Contract Capacity (in MW) for the Settlement Month “ <i>m</i> ”, and is calculated in accordance with Section 2.3 of this Exhibit J.
IPH	is an Imputed Production Hour, which is an hour in Settlement Month “ <i>m</i> ” that is contained within an Imputed Production Interval which occurred, in whole or in part, in Settlement Month “ <i>m</i> ”. For greater certainty, IPH shall include all FMOH.
$IPH_m$	is the total number of Imputed Production Hours in Settlement Month “ <i>m</i> ”.
$HOEP_{IPH}$	is the Hourly Ontario Energy Price corresponding to a given Imputed Production Hour (expressed in \$/MWh).
$FMHOEP_{IPH}$	is the HOEP (expressed in \$/MWh) corresponding to any Imputed Production Hour that is a Force Majeure Outage Hour, and is equal to zero (0) for any Imputed Production Hour that is not a Force Majeure Outage Hour.
FMOH	is a Force Majeure Outage Hour as defined in Section 1.1 of this Exhibit J.

### 3.4 Calculation of Imputed Net Revenue

#### 3.4.1 Calculation of Imputed Net Energy Revenue

The Imputed Net Energy Revenue for Settlement Month “*m*” is calculated as follows:

<b>INER<sub>m</sub> = IGEMR<sub>m</sub> – IVEC<sub>m</sub></b>	
where:	
INER <sub>m</sub>	is the Imputed Net Energy Revenue (in \$) in Settlement Month “ <i>m</i> ”.
IGEMR <sub>m</sub>	is the Imputed Gross Energy Market Revenue (in \$) in Settlement Month “ <i>m</i> ”.
IVEC <sub>m</sub>	<p>is the Imputed Variable Energy Cost (in \$) in Settlement Month “<i>m</i>”, which is equal to the aggregate Variable Energy Cost and Start-Up Costs for the total Imputed Production during the Settlement Month “<i>m</i>”, calculated as follows:</p> $\text{IVEC}_m = \sum_{d=1}^{d=\text{day}_m} \left[ (SUC_d \times ISU_d) + \sum_{IPH=1}^{IPH=IPH_d} VEC_{IPH} \times IP_{IPH} \right] \times \left( 1 - \frac{FMOH_d}{IPH_d} \right)$ <p>provided that if IVEC<sub>m</sub> is greater than IGEMR<sub>m</sub>, IVEC<sub>m</sub> shall be equal to IGEMR<sub>m</sub>.</p>
day <sub>m</sub>	is the number of days in the Settlement Month “ <i>m</i> ”.
SUC <sub>d</sub>	is the Start-Up Costs (in \$/start-up) for day “ <i>d</i> ” calculated according to Section 2.3 of this Exhibit J.
ISU <sub>d</sub>	is the number of Imputed Start-Ups for day “ <i>d</i> ” calculated according to Section 3.1 of this Exhibit J.
IPH	is an Imputed Production Hour, which is an hour in day “ <i>d</i> ” that is contained within an Imputed Production Interval which occurred, in whole or in part, in day “ <i>d</i> ”.
IPH <sub>d</sub>	is the total number of Imputed Production Hours in day “ <i>d</i> ”.
FMOH	is a Force Majeure Outage Hour, which is an hour within any Imputed Production Interval in day “ <i>d</i> ” for which the Supplier has notified the OPA of an Outage caused by an event of Force Majeure.
FMOH <sub>d</sub>	is the total number of Force Majeure Outage Hours in day “ <i>d</i> ”.

$VEC_{IPH}$	is the Variable Energy Cost corresponding to a given Imputed Production Hour (in \$/MWh), calculated according to Section 2.1 of this Exhibit J.
$IP_{IPH}$	is the Imputed Production corresponding to a given Imputed Production Hour (in MWh), which is calculated as the Adjusted Contract Capacity for the Settlement Month, “ $m$ ” ( $ACC_m$ ), calculated in accordance with Section 1.1 of this Exhibit J, multiplied by one hour.

### 3.4.2 Calculation of the Imputed Net Revenue

The Imputed Net Revenue is calculated as follows:

$INR_m = INER_m + RFCRP_m$	
where:	
$INR_m$	is the Imputed Net Revenue for Settlement Month “ $m$ ”.
$INER_m$	is the Imputed Net Energy Revenue (in \$) for Settlement Month “ $m$ ”, calculated in accordance with Section 3.3 of this Exhibit J.
$RFCRP_m$	<p>is:</p> <p>(a) 100% of the net revenue (in \$) arising from any Future Contract Related Products that are Capacity Products; and</p> <p>(b) 50% of the net revenue (in \$) arising from all Future Contract Related Products other than Capacity Products;</p> <p>corresponding to Settlement Month “<math>m</math>”, where net revenue is calculated as the revenue received from the applicable Future Contract Related Products less any reasonable costs incurred by the Supplier to receive such revenue. For greater certainty, such costs shall be determined on an actual cost basis without mark-up, as confirmed by the OPA and Supplier, and which shall be subject to verification by the OPA, from time to time.</p>

## 4.0 STAGE IV: DETERMINATION OF CONTINGENT SUPPORT PAYMENT AND REVENUE SHARING PAYMENT

4.1 The UHO Capacity Reduction Factor, if applicable in accordance with Section 2.7, is calculated as follows:

$UHO CRF_m = 1 - 0.2 \times UHO5SP_{CY}$	
where:	
$UHO CRF_m$	is the UHO Capacity Reduction Factor applicable to Settlement Month “ $m$ ”, provided



	that $UHOCRF_m$ is subject to a maximum value of 1.0.
$UHO5SP_{CY}$	<p>is the UHO 5-Year Shortfall Percentage applicable to Contract Year “CY”.</p> <p>(a) The UHO 5-Year Shortfall Percentage shall not apply to the first, second and third Contract Years.</p> <p>(b) For the fourth Contract Year, the UHO 5-Year Shortfall Percentage is calculated as follows:</p> $UHO5SP_4 = \frac{UHOSP_3 + UHOSP_2 + UHOSP_1}{3}$ <p>(c) For the fifth Contract Year, the UHO 5-Year Shortfall Percentage is calculated as follows:</p> $UHO5SP_5 = \frac{UHOSP_4 + UHOSP_3 + UHOSP_2 + UHOSP_1}{4}$ <p>(d) For the sixth and subsequent Contract Years, the UHO 5-Year Shortfall Percentage is calculated as follows:</p> $UHO5SP_{CY} = \frac{UHOSP_{CY-1} + UHOSP_{CY-2} + UHOSP_{CY-3} + UHOSP_{CY-4} + UHOSP_{CY-5}}{5}$
$UHOSP_{CY}$	<p>is the UHO Shortfall Percentage in Contract Year “CY”, and is calculated as follows:</p> $UHOSP_{CY} = (MUHOR - AUHOP_{CY}) / 0.15$
$MUHOR$	is the Minimum UHO Requirement.
$AUHOP_{CY}$	is the Actual UHO Percentage in respect of Contract Year “CY”, determined in accordance with Section 2.7(b).

**4.2** The Contingent Support Payment and Revenue Sharing Payment for a Settlement Month are calculated as follows:

<p>If <math>TMFCP_m &gt; INR_m</math>, then: <math>CSP_m = (TMFCP_m - INR_m) \times UHOCRF_m</math> and <math>RSP_m = 0</math>.</p> <p>If <math>TMFCP_m &lt; INR_m</math>, then: <math>RSP_m = INR_m - TMFCP_m</math> and <math>CSP_m = 0</math>.</p> <p>If <math>TMFCP_m = INR_m</math>, then: <math>RSP_m = 0</math> and <math>CSP_m = 0</math>.</p>	
where:	
$TMFCP_m$	is the Total Monthly Fixed Capacity Payment (in \$) for Settlement Month “m”.
$INR_m$	is the Imputed Net Revenue (in \$) in Settlement Month “m”.

$CSP_m$	is the Contingent Support Payment (in \$), if any, for Settlement Month “ $m$ ”.
$RSP_m$	is the Revenue Sharing Payment (in \$), if any, for Settlement Month “ $m$ ”.
$UHOCRF_m$	is the UHO Capacity Reduction Factor applicable to Settlement Month “ $m$ ”, as defined in Section 2.7. The UHO Capacity Reduction Factor shall be 1.0 unless and to the extent the circumstances set out in Section 2.7 applies.