

ADDENDUM No. 2
Dated August 29, 2006, to the
GTA West Trafalgar Clean Energy Supply (CES) Contract
in connection with the Ontario Power Authority's Request for Proposals for a
Generating Facility with a Summer Contract Capacity of 500 MW to 600 MW
Connected to the Area surrounding Trafalgar TS
("GTA West Trafalgar RFP")

In accordance with Section 5.4 of the GTA West Trafalgar RFP, this Addendum No. 2 contains amendments to the Final GTA West Trafalgar Clean Energy Supply (CES) Contract posted on the Ontario Power Authority's website and dated August 22, 2006.

Specifically, this Addendum No. 2 contains the "clean" version of the Final GTA West Trafalgar Clean Energy Supply (CES) Contract. A blackline copy, outlining changes to the version of the Contract dated August 22, 2006, is also provided for ease of reference.

GTA WEST TRAFALGAR CLEAN ENERGY SUPPLY (CES) CONTRACT

Between

[●]

- and -

ONTARIO POWER AUTHORITY

DATED as of the [●] day of [●], 2006

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GTA WEST TRAFALGAR CLEAN ENERGY SUPPLY (CES) CONTRACT

This GTA West Trafalgar Clean Energy Supply (CES) Contract is dated as of the [●] day of [●] between [●], [*insert legal form of the Supplier and jurisdiction of organization*] (the “**Supplier**”), and the Ontario Power Authority (the “**Buyer**”). The Supplier and the Buyer are each referred to herein as a “**Party**” and collectively as the “**Parties**”.

WHEREAS on July 14, 2006, the Buyer, pursuant to and in accordance with the directive issued by the Ontario Minister of Energy to the Ontario Power Authority dated June 15, 2005, as amended (with the directive, as amended, referred to as the “**Ministerial Directive**”), issued a request for proposals for a generating facility with a Summer Contract Capacity between 500 MW and 600 MW connected to the area surrounding Trafalgar TS (with any and all amendments, referred to as the “**GTA West Trafalgar RFP**”);

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

AND WHEREAS the Supplier and the Buyer wish to execute this Agreement in order to formalize the long-term contractual arrangements for the Supplier to develop and operate the Contract Facility and to supply Electricity and Related Products from the Contract Facility, directly or indirectly, to the IESO-Administered Markets during the Term on the terms and conditions set out herein;

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

**ARTICLE 1
DEFINITIONS**

1.1 Definitions

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

“**Adjusted Contract Capacity**” or “**ACC**” has the meaning ascribed to it in Exhibit J.

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

“**Agreement**” means this GTA West Trafalgar Clean Energy Supply (CES) Contract as it may be amended, restated or replaced from time to time.

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

“**Annual Average Contract Capacity**” means the simple average, expressed in MW, of the Summer Contract Capacity and the Winter Contract Capacity.

“**Annual Operating Plan**” has the meaning ascribed to it in Section 15.3(b)(ii).

“**Approved Gas Plan Assumptions**” has the meaning ascribed to it in Section 4(a)(ii) of Exhibit S.

“**Approved Gas Proposal Assumptions**” has the meaning ascribed to it in Section 2(c) of Exhibit S.

“**Arbitration Option**” has the meaning ascribed to it in Section 3(a)(ii) of Exhibit S.

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

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

“**Assignee**” has the meaning ascribed to it in Section 16.5(c).

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

“**Assumed Deemed Dispatch Payment**” means an amount equivalent to the Monthly Payment that would have been payable by the Buyer to the Supplier or payable by the Supplier to the Buyer in a given Settlement Month, as the case may be, if the Contract Capacity of the Contract Facility had been subject to the Deemed Dispatch Option for all hours in the entire Settlement Month.

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

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

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

“**BTU**” means British thermal unit (HHV).

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

“**Buyer**” means the Ontario Power Authority and its successors and permitted assigns.

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

“**Buyer Security**” has the meaning ascribed to it in Exhibit G.

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

“**Cancellation Notice**” has the meaning ascribed to it in Exhibit G.

“**Cancelled Directed Dispatch Order**”, with respect to the Directed Dispatch Option, has the meaning ascribed to it in Exhibit G.

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

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

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

“**Capacity Reduction Factor**” or “**CRF**” shall be an amount equivalent to 1.0 until, and to the extent, determined otherwise pursuant to Sections 15.6(e) and (f).

“**CES Contract**” means a clean energy supply contract entered into by the Ontario Power Authority in accordance with the directive issued by the Ontario Minister of Energy to the Ontario Power Authority dated March 24, 2005.

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

“**Commencement Notice**” has the meaning ascribed to it in Section 5(a)(i) of Exhibit S.

“**Commercial Operation**” has the meaning ascribed to it in Section 2.6(a).

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

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

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

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

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

“**Connection Agreement**” means the agreement entered into by a Transmitter with the Supplier with respect to the connection of the Contract Facility to a Transmission System in accordance with the Transmission System Code and governing the terms and conditions of such connection.

“**Connection Cost Recovery Agreement**” means the agreement entered into by a Transmitter with the Supplier with respect to the recovery of costs with respect to the connection of the Contract Facility to a Transmission System in accordance with the Transmission System Code.

“**Connection Costs**” mean those costs which are payable by the Supplier related to new or modified connection facilities, as defined by the Transmission System Code, for the reliable connection of the Contract Facility to a Transmission System, as more particularly specified pursuant to the System Impact Assessment, Customer Impact Assessment and Transmission System Code for generator connections. For greater certainty, Connection Costs consists of Transmitter Connection Costs and Supplier Connection Costs, but shall not include Network Upgrade Costs.

“**Connection Point**” means the electrical point or points of connection, as defined in the IESO Market Rules, between the Contract Facility and the IESO-Controlled Grid and as specified in Exhibit A. For certainty, the Connection Point is defined by reference to electrical connection points.

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

“**Contract Capacity**” means, as applicable, the Summer Contract Capacity or Winter Contract Capacity, expressed in MW.

“**Contract Facility**” means the extent to which the Facility is used to produce the Contract Capacity and Related Products.

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

“**Contract Heat Rate**” or “**CHR**” means, as applicable, the Summer Contract Heat Rate or the Winter Contract Heat Rate, expressed in MMBTU/MWh using higher heating value.

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

“**Control**” means, with respect to any Person at any time, (i) holding, whether directly or indirectly, as owner or other beneficiary, other than solely as the beneficiary of an unrealized security interest, securities or ownership interests of that Person carrying votes or ownership interests sufficient to elect or appoint fifty percent (50%) or more of the individuals who are responsible for the supervision or management of that Person, or (ii) the exercise of *de facto* control of that Person, whether direct or indirect and whether through the ownership of securities or ownership interests, by contract or trust or otherwise.

“**Cost of Service GD&M Services**” has the meaning ascribed to it in Section 4(a) of Exhibit S.

“**Cost of Service Option**” has the meaning ascribed to it in Section 3(a)(i) of Exhibit S.

“**Counterparty**” has the meaning ascribed to it in Exhibit L.

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

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

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

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

“**CTG**” means a combustion turbine-generator.

“**Current Credit Entitlement**” has the meaning ascribed to it in Section 2.12(c).

“**Customer Impact Assessment**” means a study conducted by a Transmitter to assess the impact of the connection of the Contract Facility on the transmission customers in the area.

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

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

“**Decision Notice**” has the meaning ascribed to it in Section 5(a)(i) of Exhibit S.

“**Deemed Dispatch Hour**” has the meaning ascribed to it in Exhibit J.

“**Deemed Dispatch Interval**” or “**DDI**” has the meaning ascribed to it in Exhibit J.

“**Deemed Dispatch Option**” has the meaning ascribed to it in Exhibit G.

“**Deemed Shut-Down Hour**” has the meaning ascribed to it in Exhibit J.

“**Deemed Start-Up**” or “**DeemSU**” has the meaning ascribed to it in Exhibit J.

“**Deemed Start-Up Hour**” has the meaning ascribed to it in Exhibit J.

“**Delivery Point**” means the reference point determined in accordance with the IESO Market Rules and used for settlement purposes in the real-time markets.

“**Directed Dispatch Hour**” has the meaning ascribed to it in Exhibit J.

“**Directed Dispatch Interval**” has the meaning ascribed to it in Exhibit J.

“**Directed Dispatch Option**” has the meaning ascribed to it in Exhibit G.

“**Directed Dispatch Order**” means a Directed Dispatch Order (DA) or Directed Dispatch Order (LT), as applicable.

“**Directed Dispatch Order (DA)**” means a daily directed dispatch order issued by the Buyer in the form attached as Exhibit H.

“**Directed Dispatch Order (LT)**” means a long term directed dispatch order issued by the Buyer in the form attached as Exhibit H.

“**Directed Shut-Down Hour**” is the last hour of a Directed Dispatch Interval as set out in a Directed Dispatch Order.

“**Directed Start-Up**” or “**DirSU**” has the meaning ascribed to it in Exhibit J.

“**Directed Start-Up Hour**” is the first hour of a Directed Dispatch Interval as set out in a Directed Dispatch Order.

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

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

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

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

“**Discriminatory Action Compensation Notice**” has the meaning ascribed to it in Section 13.3(e)(i).

“**Dispatch Rights**” has the meaning ascribed to it in Section 3.1.

“**Dispatcher**” has the meaning ascribed to it in Section 3.3.

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

“**Electricity**” means electric energy.

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

“**Emission Reduction Credits**” means the credits associated with the amount of emissions to the air avoided by reducing the emissions below the lower of actual historical emissions or regulatory limits, including “emission reduction credits” as defined in O. Reg. 397/01 made

under the *Environmental Protection Act* (Ontario), as amended from time to time, or such other regulation as may be promulgated under the *Environmental Protection Act* (Ontario).

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

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

“**EPC Contract**” means the engineering, procurement and construction contract for the Contract Facility entered into by the Supplier and the EPC Contractor.

“**EPC Contractor**” means the contractor engaged by the Supplier to perform the engineering, procurement and construction of the Contract Facility.

“**EPT**” means Eastern Prevailing Time.

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

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

“**Exposure Amount**” has the meaning ascribed to it in Exhibit G.

“**Exposure Threshold Amount**” has the meaning ascribed to it in Exhibit G.

“**Facility**” means the generation facility to be developed, constructed, owned, and operated by the Supplier, as described in Exhibit A hereto.

“**Federal Emissions Credits**” has the meaning ascribed to it in Section 2.12(c).

“**Final Capacity Check Test**” has the meaning ascribed to it in Section 15.6(f).

“**Financial Closing**” means the first date on which drawdown is permissible under the credit facility for the financing of the Contract Facility or, in the event that financing of the Contract Facility does not include a credit facility, the first date on which funding is otherwise available and dedicated for the financing of the Contract Facility.

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

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

“**FIPPA Records**” has the meaning ascribed to it in Section 8.5.

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

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

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

“**Force Majeure Capacity Reduction Factor**” or “**FMCRF**” has the meaning ascribed to it in Exhibit J.

“**Force Majeure Imputed Production**” or “**FMIP**” has the meaning ascribed to it in Exhibit J.

“**Force Majeure Outage Capacity**” or “**FMOG**” has the meaning ascribed to it in Exhibit J.

“**Force Majeure Outage Hour**” or “**FMOH**” has the meaning ascribed to it in Exhibit J.

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

“**Further Credits**” has the meaning ascribed to it in Section 2.12(d)(iv).

“**Future Contract Related Products**” means all Related Products that relate to the Contract Capacity and that were not capable of being traded by the Supplier in the IESO-Administered Markets or other markets on or before the date of this Agreement, but shall not include steam and hot water produced by the Contract Facility.

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

“**Gas**” means natural gas as supplied by pipeline.

“**Gas Cancellation Amount**” or “**GCA_m**” has the meaning ascribed to it in Exhibit J.

“**Gas Cancellation Price**” or “**GCP_d**” has the meaning ascribed to it in Exhibit J.

“**Gas Cancellation Volume**” or “**GCV_d**” has the meaning ascribed to it in Exhibit J.

“**Gas Delivery and Management Services**” has the meaning ascribed to it in Section 1(b)(i) of Exhibit S.

“**Gas Management Plan**” has the meaning ascribed to it in Section 4(a)(ii) of Exhibit S.

“**Gas Management Proposal**” has the meaning ascribed to it in Section 2(c) of Exhibit S.

“**Gas Negotiation Deadline**” shall mean 5:00 p.m. (EPT) on the later of the following:

- (i) the first anniversary of the date of this Agreement; and
- (ii) such later date that is mutually agreed to by the Parties and that is no later than one year prior to the Milestone Date for Commercial Operation.

“**Gas Price**” or “**GP_d**” means either Gas Price (DA) or Gas Price (LT), as applicable.

“**Gas Price (DA)**” or “**GP(DA)_d**” means the “day-ahead” price of natural gas applicable for day “*d*”, determined in accordance with the Gas Price Index (DA), and converted from US dollars per MMBTU into Dollars per MMBTU as follows: the Gas Price (DA) applicable during each day “*d*”, which is posted on the Gas Price Index (DA) on day “*d-1*” (which for purposes of the Gas Price Index (DA) shall be the last Business Day prior to day “*d*”) will be converted from US dollars to Dollars utilizing the Bank of Canada noon spot exchange rate between US dollars and Dollars on day “*d-1*”.

“**Gas Price (LT)**” or “**GP(LT)_d**” means the “long-term” price of natural gas applicable for day “*d*”, in Dollars per MMBTU, determined in accordance with Exhibit G.

“**Gas Price Index (DA)**” means the Union Dawn Daily Spot Gas Price Index (day ahead) administered by NGx.

“**Gas Price Redetermination Date**” has the meaning ascribed to it in Section 1.10(c).

“**Gas Provider**” has the meaning ascribed to it in Exhibit G.

“**Gas Review Committee**” has the meaning ascribed to it in Section 2(a) of Exhibit S.

“**Gas Sale Transaction Costs**” or “**GSTC**” has the meaning ascribed to it in Exhibit J.

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

Engineering and Operating Practices include taking Commercial Reasonable Efforts to ensure that:

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

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

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

"Governmental Authority" means any federal, provincial, or municipal government, parliament or legislature, or any regulatory authority, agency, tribunal, commission, board or department of any such government, parliament or legislature, or any court or other law, regulation or rule-making entity, having jurisdiction in the relevant circumstances, including the IESO, the OEB, the Electrical Safety Authority, and any Person acting under the authority of any Governmental Authority, but excluding the Ontario Power Authority.

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

"GTA West Trafalgar RFP" has the meaning ascribed to it in the recitals to this Agreement.

"Guarantee" has the meaning ascribed to it in Section 6.4.

"Guarantor" has the meaning ascribed to it in Section 6.4.

"HHV" means higher heating value.

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

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

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

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

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

“**Imputed Gross Energy Market Revenue**” or “**IGEMR**” is the total gross revenue deemed to be earned by the Supplier for the Contract Facility for a Settlement Month, as calculated in accordance with Exhibit J.

“**Imputed Net Revenue**” or “**INR**” means, for a Settlement Month, the Imputed Gross Energy Market Revenue less the Imputed Variable Energy Cost, as calculated in accordance with Exhibit J.

“**Imputed Production**” or “**IP**” means, for a specified period within the Term, the aggregate amount of Electricity, expressed in MWh, imputed to be produced by the Contract Facility in accordance with Exhibit J.

“**Imputed Production Hour**” or “**IPH**” is a Directed Dispatch Hour or Deemed Dispatch Hour, as applicable.

“**Imputed Production Interval**” or “**IPI**” is a Directed Dispatch Interval or Deemed Dispatch Interval, as applicable.

“**Imputed Shut-Down Hour**” is a Directed Shut-Down Hour or a Deemed Shut-Down Hour, as applicable.

“**Imputed Start-Up**” or “**ISU**” has the meaning ascribed to it in Exhibit J.

“**Imputed Start-Up Hour**” is a Directed Start-Up Hour or a Deemed Start-Up Hour, as applicable.

“**Imputed Variable Energy Cost**” or “**IVEC**” means the total Variable Energy Cost in relation to the Imputed Production as calculated in accordance with Exhibit J.

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

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

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

“**Independent Engineer**” has the meaning ascribed to it in Section 2.6(b).

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

“**Insolvency Legislation**” means the *Bankruptcy and Insolvency Act* (Canada), the *Winding Up and Restructuring Act* (Canada) and the *Companies’ Creditors Arrangement Act* (Canada) and the bankruptcy, insolvency, creditor protection or similar laws of any other jurisdiction

(regardless of the jurisdiction of such application or competence of such law), as they may be amended from time to time.

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

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

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

“**Key Equipment Suppliers**” means the third party equipment suppliers supplying key engineered equipment to the EPC Contractor, as specified pursuant to Exhibit P.

“**kV**” means kilovolts.

“**kW**” means kilowatt.

“**kWh**” means kilowatt hour.

“**Laws and Regulations**” means:

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

“**Letter of Credit**” means one or more irrevocable and unconditional standby letters of credit issued by a financial institution listed in either Schedule I or II of the *Bank Act* (Canada) or such other financial institution having a minimum Credit Rating of (i) A- with S&P, (ii) A3 with Moody’s, (iii) A (low) with DBRS, or (iv) A- with Fitch IBCA, in substantially the form attached as Exhibit C or in a form acceptable to the Buyer, acting reasonably, and otherwise conforming to the provisions of Section 6.3.

“**Locational Marginal Pricing**” or “**LMP**” means the form of pricing of Electricity, as determined and modified by the IESO from time to time, to be considered and implemented by the IESO, if at all, based upon a non-uniform, real-time, price of Electricity at each point, node,

zone or other price reference location on the IESO-Controlled Grid and having the effect that such real-time prices reflect the costs of transmission congestion.

“**Long Term Operating Plan**” has the meaning ascribed to it in Section 15.3(b)(i).

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

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

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

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

“**Metering Plan**” means a report that is provided by the Supplier to the Buyer and that (a) verifies that the revenue-quality interval meters conform with Measurement Canada Regulations, and (b) provides all required information, and equipment specifications needed to permit the Buyer to remotely access, verify, adjust, and/or total revenue meter readings to accurately calculate the generator output at the Delivery Point net of any Station Service Loads, and which is updated promptly, and, in any event, within ten (10) Business Days after any change to the metering installation occurs.

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

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

“**Ministerial Directive**” has the meaning ascribed to it in the recitals to this Agreement.

“**MMBTU**” means one million BTUs.

“**Monthly Payment**” has the meaning ascribed to it in Section 4.2.

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

“**MW**” means megawatt.

“**MWh**” means megawatt hour.

“**Nameplate Capacity**” means the rated, continuous load-carrying capability, expressed in MW, of the Facility to generate and deliver Electricity at a given time as set out in Exhibit B, and which includes the Contract Capacity.

“**Negative Interval Net Revenue Recapture**” or “**NINRR**” has the meaning ascribed to it in Exhibit J.

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

“**Negotiated GD&M Services**” has the meaning ascribed to it in Section 2(c) of Exhibit S.

“**Net Revenue Requirement**” or “**NRR_y**” means the amount, expressed in Dollars per MW-month for any given Settlement Month, as set out in Exhibit B as being applicable for such month, and subject to indexation as set out in Exhibit J.

“**Net Revenue Requirement Indexing Factor**” or “**NRRIF**” has the meaning ascribed to it in Exhibit J.

“**Network Upgrade Costs**” means those costs related to Network Upgrades. For greater certainty, Network Upgrade Costs shall not include Connection Costs.

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

“**New Agreement**” means a new agreement substantially in the form of this Agreement, which is to be entered into with a Secured Lender who is at Arm’s Length with the Supplier or a Person identified by such Secured Lender following termination of this Agreement, as set out in Section 12.2(g).

“**NGEIR Process**” has the meaning ascribed to it in Section 1(a) of Exhibit S.

“**NGx**” means the Natural Gas Exchange of the Toronto Stock Exchange, or its successor.

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

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

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

“**O&M Cost**” or “**O&M**” means the costs required to operate and maintain the Contract Facility, as set out in Exhibit B, as adjusted from time to time in accordance with Exhibit J.

“**O&M_y**” and “**O&M_{y-1}**” mean the O&M Costs for Contract Year “y” and “y-1”, respectively.

“**Obligations**” has the meaning ascribed to it in Exhibit L.

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

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

“**Operating Reserve**” has the meaning ascribed to it in the IESO Market Rules.

“**Option Notice**” has the meaning ascribed to it in Section 3(a) of Exhibit S.

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

“**Outage**” means the removal of equipment from service, unavailability for connection of equipment or temporary de-rating, restriction of use or reduction in performance of equipment for any reason, including to permit the performance of inspections, tests, repairs or maintenance on equipment, which results in a partial or total interruption in the ability of the Contract Facility to make the Contract Capacity available and deliver the Electricity from the Contract Facility. For greater certainty, in the event that the capacity of the Facility is de-rated, the amount by which such capacity is reduced shall be deemed to first reduce the Supplier’s Capacity, with any excess of the reduction of the capacity over the Supplier’s Capacity then being deemed to reduce the Contract Capacity.

“**Outage HOEP**” or “**OHOEP**” has the meaning ascribed to it in Exhibit J.

“**Outage Hours**” means the duration, expressed in hours, of any Outages.

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

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

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

“**Planned Outage**” means an Outage which is planned and intentional, and has been disclosed to the Buyer pursuant to Section 15.3(b)(ii)(B) or Section 15.3(b)(iv).

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

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

“**Price Evolution Event**” has the meaning ascribed to it in Section 1.8.

“**Price Unavailability Event**” has the meaning ascribed to it in Section 1.9.

“**Proposal**” means the proposal submission made by the Supplier in response to the GTA West Trafalgar RFP in respect of constructing and developing the Contract Facility and which was selected by the Ontario Power Authority, and all clarifications in respect of such Proposal provided by the Supplier in writing as requested by or on behalf of the Ontario Power Authority from time to time in accordance with the GTA West Trafalgar RFP prior to the date of this Agreement.

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

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

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

“**Records**” means any recorded information in any form: (a) provided by the Buyer to the Supplier, or provided by the Supplier to the Buyer, for purposes of this Agreement, or (b) created by the Supplier in the performance of this Agreement.

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

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

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

“**Replacement Price**” has the meaning ascribed to it in Sections 1.7(b)(i) and 1.8(b)(i), as applicable.

“**Replacement Provision(s)**” has the meaning ascribed to it in Sections 1.7(b)(ii), 1.9(b), 1.10(d), and 2.12(c), as applicable.

“**Reportable Events**” means any one or more of the following:

- (a) obtaining project and site approvals and permitting for the Contract Facility;
- (b) completion of connection assessments, including receipt of approvals from the IESO, and the Transmitter as applicable;
- (c) execution of the EPC Contract in respect of the Contract Facility;
- (d) Financial Closing in respect of the Contract Facility;
- (e) ordering of major equipment for the Contract Facility;
- (f) delivery of major equipment for the Contract Facility;
- (g) commencement of construction of the Contract Facility;
- (h) completion of construction of the Contract Facility;
- (i) connection of the Contract Facility to the Transmission System; and
- (j) Commercial Operation.

“**Representatives**” means a Party’s directors, officers, employees, auditors, consultants (including economic and legal advisors), contractors and agents and those of its Affiliates and, in the case of the Buyer, shall include without limitation any Person from time to time appointed as the Dispatcher, and the agents and advisors of such Persons. While the Buyer is the Ontario Power Authority, this definition shall also include the Government of Ontario, the IESO, and their respective directors, officers, employees, auditors, consultants (including economic and legal advisors), contractors and agents.

“**Revenue Sharing Payment**” or “**RSP**” means the positive amount, if any, by which the Imputed Net Revenue exceeds the Total Monthly Fixed Capacity Payment, expressed in Dollars, and calculated in accordance with Exhibit J.

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

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

“**ROC**” or “**Reported Outage Capacity**” has the meaning ascribed to it in Exhibit J.

“**ROH**” or “**Reported Outage Hour**” has the meaning ascribed to it in Exhibit J.

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

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

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

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

“**Senior Conference**” has the meaning ascribed to it in Section 16.1.

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

“**Start-Up Costs**” or “**SUC_d**” means the costs to start up the Contract Facility as required by this Agreement, and calculated, with respect to day “*d*”, as the number of MMBTU per start-up set out in Exhibit B multiplied by the Gas Price.

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

“**Station Service Loads**” means energy consumed to power the on-site maintenance and operation of generation facilities but excludes energy consumed in association with activities

which could be ceased or moved to other locations without impeding the normal and safe operation of the Contract Facility.

“**Summer Contract Capacity**” means that portion of the Nameplate Capacity set out in Exhibit B, and expressed in MW, as being applicable for the calendar months of May through October, inclusive.

“**Summer Contract Heat Rate**” means the heat rate set out in Exhibit B, and expressed in MMBTU/MWh using higher heating value, as being applicable for the calendar months of May through October, inclusive.

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

“**Supplier Connection Costs**” means those Connection Costs associated with providing the required connection facilities to connect the Contract Facility to a Transmission System (including costs associated with facilities provided or work performed by the Transmitter on a third-party basis to the Supplier) that are not Transmitter Connection Costs.

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

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

“**Supplier’s Capacity**” means that amount of capacity, expressed in MW, set out in Exhibit B, that is equivalent to the Nameplate Capacity less the Contract Capacity.

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

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

“**Tangible Net Worth**” means in respect of the Supplier or a Guarantor, at any time and without duplication, an amount determined in accordance with GAAP, and calculated as (a) the aggregate book value of all assets, minus (b) the aggregate book value of all liabilities, minus (c) the sum of any amounts shown on account of patents, patent applications, service marks, industrial designs, copyrights, trade marks and trade names, and licenses, prepaid assets, goodwill and all other intangibles.

“**Taxes**” means all *ad valorem*, property, occupation, severance, production, transmission, utility, gross production, gross receipts, sales, use, excise and other taxes, governmental charges, licenses, permits and assessments, other than (i) GST and PST and (ii) taxes based on profits, net income or net worth.

“**Term**” has the meaning ascribed to it in Section 9.1(b).

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

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

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

“**Total Monthly Fixed Capacity Payment**” or “**TMFCP_m**” means the total monthly fixed capacity payment applicable to the Contract Facility for a Settlement Month, expressed in \$, and calculated in accordance with Exhibit J.

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

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

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

“**Transmitter Connection Costs**” means those Connection Costs associated with those modifications to Transmitter-owned facilities required to connect the Contract Facility to a Transmission System that only the Transmitter can perform, and that are payable by the Supplier to the Transmitter as required by the Transmission System Code.

“**Variable Energy Cost**” means the amount calculated on a daily basis in accordance with Exhibit J, and which is abbreviated as “**VEC_d**”.

“**Winter Contract Capacity**” means that portion of the Nameplate Capacity, expressed in MW, set out in Exhibit B, as being applicable for the calendar months of November through April, inclusive.

“**Winter Contract Heat Rate**” means the heat rate expressed in MMBTU/MWh using higher heating value, as set out in Exhibit B, as being applicable for the calendar months of November through April, inclusive.

1.2 Exhibits

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

Exhibit A	Project Description
Exhibit B	Contract Capacity, Net Revenue Requirement, and Other Stated Variables
Exhibit C	Form of Irrevocable Standby Letter of Credit
Exhibit D	Form of Guarantee
Exhibit E	Determination of Availability
Exhibit F	Milestone Events and Milestone Dates for the Contract Facility

Exhibit A	Project Description
Exhibit G	Dispatch Options
Exhibit H	Form of Directed Dispatch Order
Exhibit I	Form of Force Majeure Report
Exhibit J	Calculation of CSP and RSP
Exhibit K	Arbitration Provisions Applicable to Section 1.6 to 1.10 inclusive and 2.12
Exhibit L	Form of Buyer Guarantee to Support Directed Dispatch (LT)
Exhibit M	Section 16.7 Test Conditions
Exhibit N	Form of Acknowledgement of Secured Lender's Rights
Exhibit O	Form of Quarterly Progress Report
Exhibit P	Key Equipment Suppliers
Exhibit Q	Long Term Operating Plan
Exhibit R	Annual Operating Plan
Exhibit S	Gas Adjustment Protocol

The Buyer may, at any time and from time to time after the date hereof, upon written notice to the Supplier, reasonably amend or replace the forms of certificates, notices and reports set out in Exhibits H, I, O, Q, and R.

1.3 Headings and Table of Contents

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

1.4 Gender and Number

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

1.5 Currency

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

1.6 IESO Market Rules and Statutes

- (a) 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.

- (b) To the extent that there is a change in the IESO Market Rules following the date hereof, such that the Supplier's economics as contemplated hereunder after the introduction of such change do not substantially reflect the Supplier's economics as contemplated hereunder prior to the introduction of such change, then:
 - (i) either Party shall notify the other Party promptly and, in any event, within ten (10) Business Days upon becoming aware of the consequences of such change;
 - (ii) the Parties and, at the Buyer's discretion, those Other Suppliers who are required by the Buyer to participate, shall engage in good faith negotiations to amend this Agreement and the respective agreements of those Other Suppliers on the basis that such amendments together with the change in the IESO Market Rules will substantially reflect the economics as contemplated hereunder of the Supplier and, at the Buyer's discretion, those Other Suppliers, prior to the introduction of such change in the IESO Market Rules; and
 - (iii) if the Parties fail to reach agreement on the amendments described in Section 1.6(b)(ii) within sixty (60) days after the change in the IESO Market Rules became effective, 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 K. However, if the Supplier fails to participate in such arbitration, the Supplier acknowledges that it waives its right to participate in such arbitration, which shall nevertheless proceed, and the Supplier shall be bound by the award of the Arbitration Panel and the subsequent amendments to this Agreement made by the Buyer to implement such award of the Arbitration Panel set out in Section 1.6(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 1.6(b)(iii);
 - (ii) by the agreement of the Parties made pursuant to and to implement an award of the Arbitration Panel made pursuant to Section 1.6(b)(iii); or
 - (iii) by an amendment prepared by the Buyer made pursuant to and to implement an award of the Arbitration Panel made pursuant to Section 1.6(b)(iii), where the Supplier failed to participate in such arbitration,with such agreement or amendment, as the case may be, having effect from and after the date that the change in the IESO Market Rules became effective.
- (d) This Section 1.6 shall not apply to the circumstances addressed in Sections 1.7, 1.8, 1.9, and 1.10, or 2.12(c).

1.7 Introduction of the Day-Ahead Energy Forward Market

- (a) If (i) the IESO has made an announcement that the Day-Ahead Energy Forward Market is likely to be opened within the succeeding twelve (12) calendar months, and (ii) the amendments to the IESO Market Rules for the Day-Ahead Energy Forward Market have been substantially developed by the IESO, the Buyer shall propose a Replacement Price and Replacement Provision(s), based on Sections 1.7(b) and 1.7(c), to the Supplier and, at the Buyer's discretion, those Other Suppliers who are required by the Buyer to participate. If the Parties are unable to agree on the Buyer's proposal or that of the Supplier or any of those Other Suppliers, as the case may be, within sixty (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 K. However, if the Supplier fails to participate in such arbitration, the Supplier acknowledges that it waives its right to participate in such arbitration, which shall nevertheless proceed, and the Supplier shall be bound by the award of the Arbitration Panel and the subsequent amendments to this Agreement made by the Buyer to implement such award of the Arbitration Panel set out in Section 1.7(d)(iii).
- (b) For purposes of Section 1.7(a), 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 shall 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 as set out in this Agreement that emulates a facility's commitment to maximize deemed operation during hours of positive Imputed Net Revenue and minimize deemed operation during hours of negative Imputed Net Revenue, with due consideration for compensatory market-based payments that may be made available to such generators to offset incurred but non-recovered costs.
- (c) For purposes of Section 1.7(a), 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 one (1) Start-Up per day in accordance with Exhibit J;
 - (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 as determined in accordance with the provisions of Section 1.7(b)(ii) above; and

- (iii) any amendments to 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 hereunder 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(a);
 - (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(a); or
 - (iii) by an amendment prepared by the Buyer made pursuant to and to implement an award of the Arbitration Panel made pursuant to Section 1.7(a), where the Supplier failed to participate in such arbitration,

with such agreement or amendment, as the case may be, having effect from and after the date the 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 shall pay, within ten (10) Business Days after receipt of an invoice from the other Party, such monies owing together with interest at the Interest Rate, calculated daily, from and including the time such payments were due to the date of payment thereof. If Pre-Dispatch Prices are not applicable in the context of the Day-Ahead Energy Forward Market, then all references in Stage III of Exhibit J to Pre-Dispatch Prices and their use in determining Imputed Start-Up Hours and Imputed Shut-Down Hours shall be deleted.

1.8 Evolution of the IESO-Administered Markets

- (a) If (i) the IESO or the Government of Ontario have made an announcement with the effect that a Price Evolution Event is likely to occur within the succeeding twelve (12) calendar months, and (ii) the replacement rules and regulations pertaining to the Price Evolution Event have been approved by the applicable authority, the Buyer shall propose a Replacement Price, based on Section 1.8(b), to the Supplier and, at the Buyer's discretion, those Other Suppliers who are required by the Buyer to participate. If the Parties are unable to agree on the Buyer's proposal or that of the Supplier or any of those Other Suppliers, as the

case may be, within sixty (60) days after the date the Price Evolution Event occurs, then the Replacement Price shall be determined by mandatory and binding arbitration, from which there shall be no appeal, with such arbitration(s) to be conducted in accordance with the procedures set out in Exhibit K. However, if the Supplier fails to participate in such arbitration, the Supplier acknowledges that it waives its right to participate in such arbitration, which shall nevertheless proceed, and the Supplier shall be bound by the award of the Arbitration Panel and the subsequent amendments to this Agreement made by the Buyer to implement such award of the Arbitration Panel set out in Section 1.8(d)(iii).

- (b) For purposes of Section 1.8(a), 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 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 to Supplier by the Ontario Electricity market for Electricity output from the Contract Facility (the “**Replacement Price**”); and
 - (ii) it is expected that all other features of Exhibit J will be applicable.
- (c) If the IESO Market Rules are amended to provide for an installed capacity market, then either Party may propose, by notice in writing to the other Party, amendments to this Agreement and the Buyer and the Supplier and, at the Buyer’s discretion, those Other Suppliers who are required by the Buyer to participate, shall then engage in good faith negotiations to amend this Agreement and the respective agreements of those Other Suppliers so as to facilitate the Supplier’s participation in such installed capacity market, on the basis that the economic effect of such amendments substantially reflect the Supplier’s economics as contemplated hereunder prior to the introduction of the installed capacity market. If the Parties fail to reach agreement on the amendments described in this Section 1.8(c), 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 K. However, if the Supplier fails to participate in such arbitration, the Supplier acknowledges that it waives its right to participate in such arbitration, which shall nevertheless proceed, and the Supplier shall be bound by the award of the Arbitration Panel and the subsequent amendments to this Agreement made by the Buyer to implement such award of the Arbitration Panel set out in Section 1.8(d)(iii).

- (d) 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 Sections 1.8(a) 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(a) or 1.8(c), as the case may be; or
 - (iii) by an amendment prepared by the Buyer made pursuant to and to implement an award of the Arbitration Panel made pursuant to Sections 1.8(a) 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 that 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 Buyer's proposal submitted under Sections 1.8(a) or 1.8(c), as the case may be, provided that all such payments shall be subject to recalculation and readjustment as a result of the agreement or award set out in Section 1.8(d), and any Party owing monies to the other pursuant to such recalculation shall, within ten (10) Business Days after receipt of an invoice from the other Party, pay such monies owing together with interest at the Interest Rate, calculated daily, from and including the time such payments were due to the date of payment thereof.
- (f) This Section 1.8 shall not apply in the circumstances addressed in Section 1.7 or 2.12.

1.9 Price Unavailability Events

- (a) If (i) the IESO or the Government of Ontario has made an announcement with the effect that a Price Unavailability Event is likely to occur within the succeeding twelve (12) calendar months, and (ii) the replacement rules and regulations pertaining to the Replacement Provision(s) have been approved by the applicable authority, the Buyer shall propose Replacement Provision(s), based on Section 1.9(b), to the Supplier and, at the Buyer's discretion, those Other Suppliers who are required by the Buyer to participate. If the Parties are unable to agree on the Buyer's proposal or that of the Supplier or any of those Other Suppliers, as the case may be, within sixty (60) days after the date the Price Unavailability Event occurs, 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 K. However, if the Supplier fails to participate in such arbitration, the Supplier acknowledges that it waives its right to participate in such arbitration, which shall nevertheless proceed, and the Supplier shall be bound by the award of the Arbitration Panel

and the subsequent amendments to this Agreement made by the Buyer to implement such award of the Arbitration Panel set out in Section 1.9(c)(iii).

- (b) For purposes of Section 1.9(a), a “**Price Unavailability Event**” means that 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 Capacity. 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(b)(i), 1.9(b)(ii), and (iii) are collectively referred to as the “**Replacement Provision(s)**”.

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

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

- (d) Until such time as this Agreement is amended in accordance with Section 1.9(c), Exhibit J will continue to apply to calculate CSP and RSP, as applicable, using the Buyer’s proposal submitted under Section 1.9(a), provided that all such payments shall be subject to recalculation and readjustment as a result of the agreement or

award set out in Section 1.9(c), and any Party owing monies to the other pursuant to such recalculation shall pay, within ten (10) Business Days after 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.

- (e) This Section 1.9 shall not apply to the circumstances addressed in Sections 1.7 and 1.8 or 2.12.

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

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

- (a) if a provision is considered to be invalid, inapplicable or unenforceable, then the Party considering such provision to be invalid, inapplicable or unenforceable may propose, by notice in writing to the other Party, a replacement provision and the Buyer and the Supplier and, at the Buyer's discretion, those Other Suppliers who are required by the Buyer to participate, shall engage in good faith negotiations to replace such provision with a valid, enforceable, and applicable provision, the economic effect of which substantially reflects that of the invalid, unenforceable, or inapplicable provision which it replaces;
- (b) if any index or price quotation referred to in this Agreement, other than the Gas Price Index (DA), ceases to be published, or if the basis therefor is changed materially, then the Buyer and the Supplier and, at the Buyer's discretion, those Other Suppliers who are required by the Buyer to participate, shall engage in good faith negotiations to substitute an available replacement index or price quotation that most nearly, of those then publicly available, approximates the intent and purpose of the index or price quotation that has so ceased or changed and this Agreement shall be amended as necessary to accommodate such replacement index or price quotation;
- (c) if the Gas Price Index (DA) 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 Buyer and the Supplier and, at the Buyer's discretion, those Other Suppliers who are required by the Buyer 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 (DA). During the negotiations (and any subsequent arbitration conducted in accordance with Section 1.10(d)) for determining an alternate Gas Price Index (DA), the last Gas Price (DA) in effect before the Gas Price Redetermination Date shall continue to be used for purposes of this Agreement as the Gas Price (DA), 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 (DA)

for purposes of this Agreement, retroactive from the Gas Price Redetermination Date to the date that this 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 if the negotiations set out in Sections 1.10(a) or 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 thirty (30) days after either the giving of the notice under Section 1.10(a) or the occurrence of the event in Section 1.10(b) 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 K. However, if the Supplier fails to participate in such arbitration, the Supplier acknowledges that it waives its right to participate in such arbitration, which shall nevertheless proceed, and the Supplier shall be bound by the award of the Arbitration Panel and the subsequent amendments to this Agreement made by the Buyer to implement such award of the Arbitration Panel set out in Section 1.10(e)(iii); and
- (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 Buyer 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.

This Section 1.10 shall not apply to the circumstances addressed in Sections 1.7, 1.8, 1.9 or 2.12.

1.11 Entire Agreement

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 directors, officers, employees or agents, to the other Party to this

Agreement or its directors, officers, employees or agents, except to the extent that the same has been reduced to writing and included as a term of this Agreement.

1.12 Waiver, Amendment

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

1.13 Governing Law

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

1.14 Preparation of Agreement

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

ARTICLE 2

DEVELOPMENT AND OPERATION OF THE CONTRACT FACILITY

2.1 Design and Construction of the Contract Facility

- (a) The Supplier agrees to design and build the Contract Facility using Good Engineering and Operating Practices and meeting all relevant requirements of the IESO Market Rules, Transmission System Code, the Connection Agreement, in each case, as applicable, and all other Laws and Regulations. The Supplier shall ensure that the Contract Facility is designed, engineered and constructed to operate in accordance with the requirements of this Agreement during the Term.
- (b) The Supplier agrees to provide a single line electrical drawing which identifies the as-built Connection Point(s), clearly showing area transmission and distribution facilities, including the transmission station(s) that is electrically closest to the Contract 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 outlined in Exhibit A (the "**Contract Facility Amendment**") without first notifying the Buyer in writing and obtaining the Buyer's consent in writing, which consent shall not be unreasonably withheld, provided that it shall not be unreasonable for the Buyer to withhold its consent to any modification, variation or amendment which would, or would be likely to, materially adversely affect the

ability of the Supplier to comply with its obligations under this Agreement. Any Contract Facility Amendment that has not been consented to by the Buyer (other than in instances where such consent has been unreasonably withheld) shall, if not removed within ten (10) Business Days after such Contract Facility Amendment occurred, constitute a Supplier Event of Default. For purposes of this paragraph, the failure of the Contract Facility to have a Connection Point as described in Exhibit A shall be deemed to be a Contract Facility Amendment.

- (d) If the Buyer's consent in writing has been given in relation to a reduction in the Contract Capacity pursuant to Section 2.1(c), the Contract Capacity shall be deemed to be reduced to the lower amount, effective at the time stated in such notice. If the Buyer's consent has been given in relation to an increase in the Contract Capacity pursuant to Section 2.1(c), the Contract Capacity shall be increased to the higher amount, effective as of the time stated in such notice, provided that such increase shall not be effective until the Supplier performs a Capacity Check Test confirming the increased amount of the Contract Capacity.
- (e) For purposes of Section 2.1(c), in the event that the Nameplate Capacity of the Facility will be reduced as a result of a term, condition, or restriction imposed by, or contained in a permit, certificate, licence or other approval issued by, a Governmental Authority in respect of the Facility, then the amount by which such Nameplate Capacity is reduced shall be deemed to first reduce the Supplier's Capacity, with any excess of the reduction of the Nameplate Capacity over the Supplier's Capacity then being deemed to reduce the Contract Capacity.

2.2 Additional Development and Construction Covenants

- (a) The Supplier agrees that the Facility shall be located in the Province of Ontario. The Supplier agrees that the Facility shall have a Connection Point as set out in Exhibit A and shall affect supply or demand in the IESO-Administered Markets.
- (b) The Supplier agrees to arrange, at its expense (including the payment of all Supplier Connection Costs), for all Facility connection requirements in accordance with the Connection Agreement to permit the delivery of Electricity to the IESO-Controlled Grid. The Supplier agrees to provide to the Buyer a copy of the Customer Impact Assessment final report and the executed Connection Cost Recovery Agreement within ten (10) Business Days of the Supplier's receipt of each of such documents.
- (c) The Supplier agrees to provide, at its expense, all power system components and associated facilities on the Supplier's side of the Connection Point, including all connection lines from the Contract Facility to the Connection Point and all transformation, switching, synchronizing, protection and control, teleprotection, metering, and auxiliary equipment (such as grounding, monitoring and testing equipment), pursuant to requirements deemed necessary by the IESO and the Transmitter (including those requirements specified in the System Impact Assessment or the Customer Impact Assessment, as applicable) to protect the safety and security of the IESO-Controlled Grid. The equipment to be so provided by the Supplier shall include such electrical equipment as the IESO and

the Transmitter deem necessary, from time to time, for the safe and secure operation of the IESO-Controlled Grid as required by the IESO Market Rules and the Transmission System Code.

- (d) The Parties agree to comply with the provisions set out in Exhibit S.

2.3 Allocation and Treatment of Transmitter Connection Costs and Network Upgrade Costs

- (a) The Buyer shall reimburse the Supplier for all Transmitter Connection Costs incurred by the Supplier on the following basis:
 - (i) The Supplier shall pay all Transmitter Connection Costs to the Transmitter as and when due.
 - (ii) The Supplier shall submit to the Buyer an invoice itemizing and describing the Transmitter Connection Costs, together with copies of each of the paid receipts issued by the Transmitter to the Supplier. If the Transmitter Connection Costs are adjusted subsequent to the Commercial Operation Date, the Supplier shall forthwith provide written evidence thereof to the Buyer.
 - (iii) The Buyer shall, within a reasonable time, review the Supplier's invoices and copies of each of the paid receipts to verify that all of the amounts described in each such invoice constitute Transmitter Connection Costs paid by the Supplier to the Transmitter. The Supplier consents to the Transmitter disclosing to the Buyer, on request, all information relating to Transmitter Connection Costs, including any information provided by the Supplier to the applicable Transmitter that relates to, or affects, Transmitter Connection Costs.
 - (iv) Subject to the Buyer's review and approval of the Supplier's invoices and paid receipts for Transmitter Connection Costs, the Buyer will reimburse such Transmitter Connection Costs (for greater certainty, without any interest accruing from the date such amounts were paid by the Supplier) to the Supplier on or before the later of (i) the date which is sixty (60) days after submittal of each invoice and (ii) the date that is one year prior to the Milestone Date for Commercial Operation.
 - (v) If the OEB issues an order or directive resulting in an increase or decrease in the Transmitter Connection Costs to be paid by the Supplier, then the amount of Transmitter Connection Costs shall be deemed, from the date of such order or directive, to be adjusted by the amount of such increase or decrease, and the adjusted unpaid amount or excess reimbursement shall be paid by the Buyer to the Supplier, or by the Supplier to the Buyer, as applicable, within sixty (60) days after the date that the OEB issues such order or directive.

(vi) If this Agreement has been terminated by the Buyer as a result of a Supplier Event of Default, then in addition to any other remedies available to the Buyer under this Agreement, the Supplier shall forfeit all rights to receive any payments not reimbursed to the Supplier pursuant to Section 2.3(a)(iv) as of the Termination Date on account of Transmitter Connection Costs, as liquidated damages and not as a penalty.

(b) The Supplier agrees to cause the Transmitter to construct all Network Upgrades that may be required to permit the delivery of Electricity and Related Products from the Contract Facility to the IESO-Controlled Grid. The Supplier acknowledges that the responsibility for Network Upgrade Costs shall be allocated as between the Transmitter and the Supplier as set forth in the Transmission System Code provided, however, that if pursuant to an order or directive of the OEB or pursuant to the Transmission System Code, the Supplier is required to pay, without reimbursement, any Network Upgrade Costs, then the provisions of Section 2.3(a) shall apply to such unreimbursed Network Upgrade Costs paid by the Supplier, *mutatis mutandis*.

2.4 Allocation and Treatment of Supplier Connection Costs

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

2.5 Milestone Dates

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

- (a) that each of the Milestone Events corresponding to:
 - (i) Financial Closing; and
 - (ii) attaining Commercial Operation,

shall be achieved in a timely manner and by its corresponding Milestone Date, failing which the Supplier shall pay to the Buyer within five (5) Business Days after receipt of an invoice from the Buyer, as liquidated damages and not as a penalty, a sum of money equal to (A) \$50 per MW multiplied by the Annual Average Contract Capacity for each calendar day after the Milestone Date in respect of Financial Closing; and (B) \$150 per MW multiplied by the Annual

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

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

2.6 Requirements for Commercial Operation

- (a) The Contract Facility will be deemed to have achieved “**Commercial Operation**” at the point in time when the Buyer has received a certificate addressed to it from an Independent Engineer, procured at the expense of the Supplier, in a form acceptable to the Buyer, acting reasonably, stating that:
 - (i) 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;
 - (ii) the Connection Point of the Contract Facility is at the location specified in Exhibit A;
 - (iii) the Contract Facility has been constructed, connected, commissioned and synchronized to the IESO-Controlled Grid, such that at least 100% of the Contract Capacity is available to generate Electricity in accordance with the requirements of all applicable Laws and Regulations;
 - (iv) the Contract Facility has generated Electricity in compliance with all Laws and Regulations for four (4) continuous hours at an uninterrupted rate not less than 100% of the Contract Capacity. This requirement shall be evaluated based on calculation of the generator output at the Delivery Point net of any Station Service Loads, in accordance with the Metering Plan, and shall be satisfied if the energy output in each of the four (4) hours (in MWh), divided by one hour, is equal to or greater than the Contract Capacity. The Supplier acknowledges and agrees that the Contract Capacity and the Station Service Loads, as may be measured by the foregoing test, shall not be adjusted for ambient weather or other conditions whatsoever;

- (v) it has been demonstrated, through performance testing in accordance with the American Society of Mechanical Engineers PTC 22 – 1997 Performance Test Code on Gas Turbines for a simple cycle gas turbine (SCGT) generation facility or PTC 46 – 1996 Performance Test Code on Overall Plant Performance for a combined cycle gas turbine (CCGT) generation facility, or other equivalent international performance test procedures agreed to by the Buyer acting reasonably, an electrical output, measured at the Delivery Point net of any Station Service Loads, demonstrating the maximum capacity of the Contract Facility and that the Contract Facility has achieved the Contract Capacity. A copy of the performance test report is to be attached to the Independent Engineer’s certificate. For greater certainty, any obligations of the Supplier under this Agreement relating to or premised upon the amount of Nameplate Capacity shall remain in effect, unamended, notwithstanding that the maximum capacity of the Contract Facility as demonstrated during the performance test may be less than the Nameplate Capacity;
 - (vi) it has been demonstrated that the Contract Facility has a minimum ramp rate (being defined as the rate of increase or decrease in energy output that the Contract Facility is capable of achieving after start-up, synchronization to the IESO-Controlled Grid, and technically required hold points, with such interval being between the minimum load and the maximum continuous unfired output rating, being the maximum continuous output rating of the plant without supplementary firing) over a single five minute interval of at least “x” MW/minute, where “x” is a value equal to 4% of the Nameplate Capacity.
- (b) For the purposes of Section 2.6(a), an “**Independent Engineer**” is an engineer that is:
- (i) a Professional Engineer duly qualified and licensed to practice engineering in the Province of Ontario; and
 - (ii) employed by an independent engineering firm which holds a certificate of authorization issued by the Professional Engineers Ontario that is not affiliated with or directly or indirectly controlled by the Supplier and that does not have a vested interest in the design, engineering, procurement, construction and/or testing of the Contract Facility.

2.7 Buyer Information During Design and Construction

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

- (a) By the fifteenth (15th) day of each calendar quarter following the date of this Agreement and continuing until the Term Commencement Date, the Supplier shall provide the Buyer with quarterly progress reports substantially in the form of Exhibit O, describing the status of efforts made by the Supplier to meet each Milestone Date and the progress of the design and construction work and the

status of permitting and approvals relating to the Facility. Such quarterly progress reports shall report on the progress of all applicable Reportable Events. At the Buyer's request, the Supplier shall provide an opportunity for the Buyer to meet with appropriate personnel of the Supplier to discuss and assess the contents of any such quarterly progress report.

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

2.8 Operation Covenants

- (a) The Supplier agrees to own the Contract Facility during the Term and to operate and maintain the Contract Facility during the Term using Good Engineering and Operating Practices, and meeting all applicable requirements of the IESO Market Rules, the Transmission System Code, the Connection Agreement and all other Laws and Regulations. For certainty, the Parties acknowledge that the Buyer is not purchasing from the Supplier, nor is the Supplier selling to the Buyer, any Electricity or Related Products.
- (b) The Supplier agrees to assume all risk, liability and obligation and to indemnify, defend and hold harmless the Indemnitees in respect of all actions, causes of action, suits, proceedings, claims, demands, losses, damages, penalties, fines, costs, obligations and liabilities arising out of a discharge of any contaminant into the natural environment, at or related to, the Facility and any fines or orders of any kind that may be levied or made in connection therewith pursuant to the *Environmental Protection Act* (Ontario), the *Ontario Water Resources Act*, the *Dangerous Goods Transportation Act* (Ontario) or other similar legislation, whether federal or provincial, except to the degree that such discharge shall have been due to the negligence or wilful misconduct of the Indemnitees.
- (c) The Supplier agrees to use Commercially Reasonable Efforts to maintain or enter into any fuel supply contracts that are necessary for the proper operation of the Contract Facility during the Term. In addition, any Gas distribution services forming part of the Cost of Service GD&M Services or the Negotiated GD&M Services, as applicable, must be obtained from either Enbridge Gas Distribution Inc. or Union Gas Limited, and the Supplier must not construct, own, or operate the gas pipeline that serves the Contract Facility. Without limiting the generality of the foregoing, a Supplier who is also a load facility under the IESO Market Rules shall be solely responsible for all charges (net of any applicable credits) in relation to Electricity consumed by it in order to operate the Facility in accordance with this Agreement.

2.9 Metering and Dispatch Capabilities

- (a) The Supplier covenants and agrees to provide, at its expense, separate meters and ancillary metering and monitoring equipment for the Contract Facility as required by the IESO Market Rules.
- (b) The Buyer retains the right to audit, at any time during the Term, on reasonable notice to the Supplier and during normal business hours, the metering equipment to confirm the accuracy of the Metering Plan. The Supplier shall have the Metering Plan approved by the Buyer and shall deliver a copy to the Buyer for its approval no later than sixty (60) days prior to Commercial Operation. The Buyer agrees to review the Metering Plan submitted by the Supplier and to either approve the plan or provide the Supplier with its comments within fifteen (15) Business Days after receipt. The Supplier will provide the Buyer with a commissioning report for all revenue meters referenced in the Metering Plan prior to any use of metered data for the purposes expressed in Section 15.6.
- (c) The Supplier shall maintain (or be responsible for arranging on its behalf) a system satisfactory to the Buyer commencing the day prior to the Term Commencement Date and continuing every day throughout the Term, to receive Directed Dispatch Orders from either the Buyer or the Dispatcher, as the case may be, prior to the applicable daily deadlines set out in Exhibit G.

2.10 Insurance Covenants

- (a) The Supplier hereby agrees to put in effect and maintain, or cause its contractors and subcontractors, where appropriate, to maintain from the commencement of construction of the Facility to the expiry of the Term, at its own cost and expense, with insurers having an overall A.M. Best rating of at least A- and financial size of category VIII or equivalent rating and permitted to provide insurance in the Province of Ontario (in the case of the “all-risk” property insurance under clause (i) below) or licensed to underwrite insurance in the Province of Ontario (in the case of the commercial general liability and environmental/pollution liability under clauses (ii) and (iii) below), all the necessary and appropriate insurance that a prudent Person in the business of the Supplier developing and operating the Facility would maintain including the following:
 - (i) “all-risk” property and equipment breakdown insurance covering property of every description, in the joint names of at least the Supplier and, during construction, its principal contractors, insuring not less than the full replacement value of the Facility with deductibles as follows:
 - (A) prior to the Commercial Operation Date:

an amount not to exceed \$250,000 property damage for all losses except (A) \$3,000,000 property damage for testing and commissioning of equipment, and (B) two percent (2%), minimum \$250,000 property damage for each of flood and earthquake. The policy shall also provide delayed start-up coverage on a fixed

expenses basis with an indemnity period of not less than twelve (12) months and a deductible waiting period of not more than sixty (60) days; and

(B) from and after the Commercial Operation Date:

an amount not to exceed \$250,000 property damage for all losses except (A) \$3,000,000 property damage for heat recovery steam generator units, steam turbine generator unit, 230 kV step-up transformer units and the combustion gas turbine-generator units and (B) two percent (2%), minimum \$250,000 property damage for each of flood and earthquake. The policy shall also provide for business interruption coverage with a waiting period of not more than sixty (60) days.

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

These policies shall contain a waiver of subrogation in favour of the Indemnitees. During the construction of the Facility until the Commercial Operation Date, the policy shall include as additional insureds all subcontractors and the coverage shall not be less than the insurance required by IBC Forms 4042 and 4047 extended to include testing and commissioning, or their equivalent replacement. For clarity, the London Insurance Market policy wording commonly referred to as the "Swiss RE 7FB" shall be considered as equivalent replacement;

- (ii) commercial general liability insurance on an occurrence basis for death, bodily injury and property damage that may be caused to third parties as a result of the Supplier's activities in connection with the Facility or performance of its obligations under this Agreement, to an inclusive limit of not less than \$10,000,000 per occurrence and in the aggregate, with a deductible not exceeding \$100,000. The coverage shall not be less than the insurance required by IBC Forms 2100 and 2320, or their equivalent replacement. The policy shall include the following clauses:
 - (A) the Buyer and its directors, officers and employees shall be additional insureds with respect to liability arising in the course of performance of the obligations under, or otherwise in connection with, this Agreement;
 - (B) cross-liability and severability of interest endorsements;
 - (C) coverage for non-owned automobile liability with blanket contractual coverage for hired automobiles;

- (D) coverage for contingent employer's liability;
 - (E) coverage for tenant's legal liability (if applicable and with applicable sub-limits);
 - (F) coverage for broad form property damage;
 - (G) coverage for contractual liability of the Supplier under this Agreement;
 - (H) coverage for liability resulting from completed products and operations extended for a period of twenty-four (24) months after the Commercial Operation Date; and
 - (I) coverage for liability on the part of the Supplier resulting from activities or work performed by its contractors and subcontractors; and
- (iii) environmental/pollution liability insurance, providing coverage for first party property damage and site clean-up and any third party claims for bodily injury, property damage and clean-up for pollution and environmental incidents arising out of the construction, operation or maintenance of the Facility, with a limit of not less than \$5,000,000 per occurrence and in the aggregate. The policy shall include as additional insureds the Buyer and its directors, officers and employees with respect to liability arising in the course of performance of the obligations under, or otherwise in connection with, this Agreement.
- (b) For purposes of the insurance coverage under Section 2.10(a)(i), the Supplier may procure and maintain separate insurance policies to cover the construction period prior to the Commercial Operation Date and the operations period from and after the Commercial Operation Date.
- (c) The Supplier shall provide the Buyer with proof of the insurance required by this Agreement in the form of valid certificates of insurance that reference this Agreement and confirm the required coverage, on or before the commencement of construction of the Facility, and renewals or replacements on or before the expiry of any such insurance. Upon the request of the Buyer, a copy of each insurance policy shall be made available to it. The policies for the insurance coverage under Sections 2.10(a)(ii), (iii), and (iv) shall be endorsed to provide the Buyer with not less than thirty (30) days' notice in writing in advance of any cancellation, and of any change or amendment restricting coverage.
- (d) If the Supplier is subject to the *Workplace Safety and Insurance Act* (Ontario), it shall submit a valid clearance certificate of *Workplace Safety and Insurance Act* coverage to the Buyer prior to the execution of this Agreement. In addition, the Supplier shall, from time to time at the request of the Buyer, provide additional *Workplace Safety and Insurance Act* clearance certificates. The Supplier agrees to pay when due, and to ensure that each of its contractors and subcontractors

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

2.11 Compliance with Laws and Regulations and Registration with the IESO

- (a) The Buyer and the Supplier shall each comply, in all material respects, with all Laws and Regulations required to perform or comply with their respective obligations under this Agreement.
- (b) The Buyer and the Supplier shall each furnish, in a timely manner, information to Governmental Authorities and shall each obtain and maintain in good standing any licence, permit, certificate, registration, authorization, consent or approval of any Governmental Authority required to perform or comply with their respective obligations under this Agreement, including such licensing as is required by the OEB. Without limiting the generality of the foregoing, the Supplier agrees to meet all applicable Facility registration requirements as specified in the IESO Market Rules.
- (c) The Supplier shall register with the IESO as a “Metered Market Participant” and as a “Generator” pursuant to the IESO Market Rules. The settlement of Market Settlement Charges shall take place directly between the Supplier as the “Metered Market Participant” and the IESO, and any costs incurred by the Supplier acting as the “Metered Market Participant” pursuant to the IESO Market Rules in respect of this Agreement shall be charged to and be the sole responsibility of the Supplier, unless otherwise expressly determined pursuant to Section 1.6, 1.7, 1.8 or 1.9 hereof.

2.12 Environmental Attributes and Future Contract Related Products

- (a) The Supplier shall from time to time during the Term of this Agreement, on behalf of the Buyer, obtain, qualify, and register with the relevant authorities or agencies all Environmental Attributes that are created and allocated or credited with respect to the Contract Facility pursuant to applicable legislation, and same shall be immediately transferred or assigned to, or to the extent transfer or assignment is not permitted, held in trust for, the Buyer who thereafter shall, subject to Section 2.12(g), retain, all rights, title, and interest in all such Environmental Attributes. The Supplier shall not participate in any voluntary programs with respect to any Environmental Attributes associated with the Contract Facility without the prior written consent of the Buyer, which consent may be unreasonably withheld.

- (b) Notwithstanding Section 2.12(a), the Supplier shall continue to be entitled to all rights, title, and interest to all emission allowances and Emission Reduction Credits that pertain to the Contract Facility and that are of a type that were available under the Ontario Emissions Trading Program as of November 21, 2005. However, the amount of the Supplier's entitlement to any such emission allowances or Emission Reduction Credits shall be determined with reference to the levels in effect as of the date of the Supplier's claim to any such entitlement. For certainty, revenue arising from such OETP credits and allowances will not be included in Imputed Net Revenue for purposes of Exhibit J.
- (c) The Parties acknowledge that the Government of Canada is proposing upcoming regulations covering greenhouse gas emissions that may be applicable to the Contract Facility that may contain provisions for greenhouse gas emissions permits, credits, allowances, or similar instruments (the "**Federal Emissions Credits**"), and those Federal Emissions Credits to which the Buyer is entitled from time to time pursuant to Section 2.12(a) shall be referred to as the "**Current Credit Entitlement**". If these regulations are promulgated, and once the applicable details of such regulations and their effect on the Buyer and Supplier are known, then the Buyer agrees to propose such amendments to this Agreement to the Supplier and, at the Buyer's discretion, to all of the Other Suppliers who are required by the Buyer to participate, based on the principles set out in Section 2.12(d) (the "**Replacement Provision(s)**"). If the Parties are unable to agree on the Buyer's proposal or that of the Supplier or any of those Other Suppliers, as the case may be, within sixty (60) days after the applicable details of such regulations covering greenhouse gas emissions have been published, then the Replacement Provision(s) shall be determined by mandatory and binding arbitration, from which there shall be no appeal, with such arbitration(s) to be conducted in accordance with the procedures set out in Exhibit K. However, if the Supplier fails to participate in such arbitration, the Supplier acknowledges that it waives its right to participate in such arbitration, which shall nevertheless proceed, and the Supplier shall be bound by the award of the Arbitration Panel and the subsequent amendments to this Agreement made by the Buyer to implement such award of the Arbitration Panel pursuant to Section 2.12(e).
- (d) For the purposes of Section 2.12(c), the Replacement Provision(s) shall reflect the following principles:
 - (i) the Buyer shall, pursuant to Sections 2.12(d)(ii), 2.12(d)(iv)(A), or 2.12(d)(iv)(B), but subject to Section 2.12(d)(iv)(C), obtain those Federal Emissions Credits that are required pursuant to applicable legislation for the Supplier to operate the Contract Facility:
 - (A) in the case of operation of the Contract Facility pursuant to the Deemed Dispatch Option, sufficient to allow imputed emissions in respect of such Settlement Month reasonably appropriate to the operation of the Contract Facility as contemplated under Deemed Dispatch; and

(B) in the case of operation of the Contract Facility pursuant to the Directed Dispatch Option, sufficient to allow imputed emissions in respect of such Settlement Month reasonably appropriate to the operation of the Contract Facility as contemplated under the Directed Dispatch Option,

in exchange for no direct or indirect payment from, or set-off against, the Supplier;

- (ii) the Buyer will transfer or assign to, or to the extent transfer or assignment is not permitted, hold in trust for, the Supplier, or otherwise relinquish the Buyer's rights to, such amount of Federal Emissions Credits that is required pursuant to applicable legislation for the Supplier to operate the Contract Facility in accordance with Sections 2.12(d)(i)(A) and (B) of this Agreement, as applicable, provided that, except as provided in Section 2.12(d)(iv)(B), the Buyer has no obligation to transfer, assign, hold in trust or otherwise relinquish to the Supplier any interest in Federal Emissions Credits under the regulations in excess of the Current Credit Entitlement.
- (iii) subject to Section 2.12(g), the Supplier will not be entitled to any Federal Emissions Credits otherwise allocated to it under the regulations other than those that are required pursuant to applicable legislation for the Supplier to operate the Contract Facility in accordance with Sections 2.12(d)(i)(A) and (B) of this Agreement, as applicable, and the Supplier shall transfer or assign to the Buyer, or to the extent transfer or assignment is not permitted, hold in trust for, the Buyer, or otherwise relinquish the Supplier's rights to, such excess Federal Emissions Credits;
- (iv) if, for any Settlement Month, the Supplier requires Federal Emissions Credits in an amount that is in excess of the Current Credit Entitlement and that is required pursuant to applicable legislation for the Supplier to operate the Contract Facility in accordance with Sections 2.12(d)(i)(A) and (B) of this Agreement, as applicable (the "**Further Credits**"), then, at the Buyer's sole discretion, the Buyer shall select one of the options set out in Section 2.12(d)(iv)(A), (B), or (C) below:
 - (A) the Imputed Net Revenue shall be deemed to be reduced by an amount equal to the reasonable cost of the Further Credits that are available to the Supplier (acting prudently and excluding transaction costs), and the relevant Contingent Support Payment or Revenue Sharing Payment, as the case may be, shall be adjusted accordingly; or
 - (B) the Buyer shall obtain the Further Credits and transfer them to the Supplier at no cost to the Supplier; or
 - (C) in the event that, in the Settlement Month referred to in Section 2.12(d)(iv), the Buyer is unable, at reasonable expense and effort, to exercise one of the options described in Sections 2.12(d)(iv)(A)

or (B), then the relevant amendments to this Agreement will otherwise ensure that the requirements of the Supplier for Further Credits do not result in an adverse economic effect on the Supplier, but only to the extent of an adverse economic effect that would have been remedied by the Buyer's exercise of an option described in either Sections 2.12(d)(iv)(A) or (B), and no other adverse economic effect. For greater certainty, such relevant amendments may include, without limitation, the option of the Buyer to require the Supplier, under both the Deemed Dispatch Option and the Directed Dispatch Option, to reduce the output of the Contract Facility by operating at a lower Contract Capacity and/or for fewer number of hours, such that the emissions corresponding to such reduced operations will not require Further Credits;

- (v) any revenue to the Supplier arising from any sale, disposition or encumbrance of the Current Credit Entitlement will not be included in Imputed Net Revenue for purposes of Exhibit J; however, any revenue to the Supplier arising from any sale, disposition or encumbrance of the Supplier's interest in the Further Credits will be included in Imputed Net Revenue for purposes of Exhibit J; and
 - (vi) subject to the Buyer complying with its obligations herein relating to the portion of the Current Credit Entitlement required to operate the Contract Facility that are required pursuant to applicable legislation for the Supplier to operate the Contract Facility in accordance with Section 2.12(d)(i)(A) and (B) of this Agreement, as applicable, the Buyer shall be entitled to transfer, trade, sell, encumber or otherwise deal with the Current Credit Entitlement in its sole discretion.
- (e) The terms of this Agreement shall be amended either:
- (i) by the agreement of the Parties, where no award of an Arbitration Panel has been made pursuant to Section 2.12(c);
 - (ii) by the agreement of the Parties made pursuant to and to implement an award of the Arbitration Panel, made pursuant to Section 2.12(c); or
 - (iii) by an amendment prepared by the Buyer made pursuant to and to implement an award of the Arbitration Panel made pursuant to Section 2.12(c), where the Supplier failed to participate in such arbitration,

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

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

- (g) Upon the expiry of the Term or any termination of this Agreement, to the extent that any portion of the Current Credit Entitlement relates to the period up to and including the expiry of the Term or the termination of this Agreement, then such portion of the Current Credit Entitlement shall be the property of the Buyer, and any remaining portion of the Current Credit Entitlement shall be the property of the Supplier.

ARTICLE 3 DISPATCH OPTIONS

3.1 Rights to Dispatch the Contract Facility

The Buyer shall have the right, from time to time throughout the Term, to select the dispatch mechanism governing the Contract Facility (the “**Dispatch Rights**”) in every given hour of the Term in accordance with, and subject to, the provisions of this Article 3.

3.2 Available Dispatch Options

The Buyer’s Dispatch Rights shall be restricted to the Deemed Dispatch Option and the Directed Dispatch Option in each case as described in Exhibit G.

3.3 Appointment of the Dispatcher Under the Directed Dispatch Option

- (a) The Buyer shall be entitled, without the consent of the Supplier, to appoint any Person from time to time throughout the Term and for any stated length of time up to the balance of the Term (the “**Dispatcher**”) to exercise the Dispatch Rights under the Directed Dispatch Option in the place of the Buyer.
- (b) The appointment of the Dispatcher will be made on the following basis:
- (i) the Buyer will provide written notice to the Supplier at least five (5) Business Days prior to the exercise of Dispatch Rights by the Dispatcher;
 - (ii) the Dispatcher shall be entitled, during the term of its appointment, to exercise the Dispatch Rights under the Directed Dispatch Option in the place of the Buyer and communicate all Directed Dispatch Orders directly with the Supplier. However, the Dispatcher shall not have the authority to act for, or in the place of, the Buyer in any other respect under this Agreement and shall not be directly liable to the Supplier;
 - (iii) the appointment of the Dispatcher will not relieve the Buyer of its obligations to the Supplier under this Agreement, and all Monthly Payments shall continue to be made and settled directly between the Buyer and the Supplier; and
 - (iv) the appointment of the Dispatcher may be revoked by the Buyer at any time prior to the expiry of the term of the Dispatcher’s appointment by providing written notice to the Supplier at least one (1) Business Day prior

to the revocation of the appointment of the Dispatcher. For greater certainty, the revocation of the appointment of the Dispatcher shall not affect the validity of any outstanding Directed Dispatch Order, which shall continue to be governed by the terms of Exhibit G.

3.4 Future Tolling Dispatch

The Parties acknowledge that the market for Electricity and Related Products continues to evolve within the Province of Ontario, and that it is important to the Buyer to encourage market evolution in certain directions. Subject to Section 12.1(h), the Supplier agrees that if requested to do so by the Buyer, it will enter into good faith negotiations with the Buyer to allow the Contract Capacity to be dispatched by the Buyer, a Dispatcher or an assignee of the Buyer during all or any portion of the then remaining Term on a tolling basis, provided that it shall be a principle of such negotiations that the Supplier shall not be required to accept any tolling dispatch mechanism which adversely impacts the Supplier's economics as contemplated hereunder prior to the introduction of such tolling dispatch mechanism. Any disputes arising under this Section 3.4 are not subject to resolution pursuant to Section 16.2.

ARTICLE 4

OPERATION OF CONTRACT FACILITY AND PAYMENT OBLIGATIONS

4.1 Operation of Contract Facility During the Term

- (a) From and after the beginning of the hour ending 01:00 (EST) of the Term Commencement Date, the Supplier agrees to operate the Contract Facility in accordance with the terms of this Agreement and the Monthly Payments shall begin to accrue and be payable in accordance with Section 4.2 and Article 5. For certainty, the Parties acknowledge that the Buyer is not purchasing from the Supplier, nor is the Supplier selling to the Buyer, any Electricity or Related Products.
- (b) The Supplier will provide the Buyer with prior written notice of the development by the Supplier of any Future Contract Related Products from time to time.

4.2 Amount of Monthly Payment

The "Monthly Payment" shall be an amount equal to one of the following:

- (a) the Contingent Support Payment, if any, which shall be owed by the Buyer to the Supplier; or
- (b) the Revenue Sharing Payment, if any, which shall be owed by the Supplier to the Buyer.

4.3 Supplier Option to Reduce Contract Capacity

At any time within the six (6) month period immediately prior to the Term Commencement Date, the Supplier shall, once during such period, have the right to reduce the Summer Contract Capacity and/or the Winter Contract Capacity to a lower amount by providing written notice thereof to the Buyer during such period, provided that any such reduction shall not be greater

than twenty-five (25) MW. The reduction in the Contract Capacity set out in this Section 4.3 shall take effect on the Term Commencement Date, provided that there is no Supplier Event of Default as of the Term Commencement Date. The Supplier acknowledges that any such reductions in the Contract Capacity shall not reduce any obligations of the Supplier in existence prior to the effective date of such reduction and that such reductions shall be permanent and the Contract Capacity, as reduced, cannot be increased at any point during the balance of the Term.

4.4 Supplier's Responsibility for Taxes

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

4.5 Buyer's Responsibility for Taxes

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

4.6 Non-Residency

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

ARTICLE 5 STATEMENTS AND PAYMENTS

5.1 Meter and Other Data

- (a) The Supplier agrees to provide to the Buyer access to the meters in the Metering Plan to accommodate remote interrogation of the metered data on a daily basis. The Supplier agrees to provide to the Buyer, at all times, access to any other information relating to the Contract Facility that the Supplier has provided to, or received from, the IESO from time to time. The Buyer agrees to provide to the Supplier, upon the Supplier's request, any Market Price information and any other information that the Buyer will be utilizing in preparing any Statement that is not

available directly to the Supplier from the IESO. Upon a Party becoming aware of any errors or omissions in any data or information provided in accordance with this Section 5.1, such Party shall notify the other Party, and if applicable, the IESO in accordance with the IESO Market Rules, on a timely basis.

- (b) Notwithstanding the foregoing, the Parties acknowledge and agree that all Statements shall be prepared based on market price information and settlement data from the IESO, and in the event of a discrepancy between market price information and settlement data from the IESO and information received directly from the Supplier pursuant to Section 5.1(a), then the market price information and settlement data from the IESO shall, subject to Section 5.7, be considered to be correct.

5.2 Statements

The Buyer shall prepare and deliver a settlement statement (the “**Statement**”) to the Supplier, within ten (10) Business Days after the end of each calendar month in the Term that is the subject of the Statement (the “**Settlement Month**”), setting out the basis for the Monthly Payment with respect to the Settlement Month, as well as the basis for any other payments owing under this Agreement by either Party to the other in the Settlement Month. A Statement may be delivered by the Buyer to the Supplier by facsimile or electronic means and shall include the reference number assigned to this Agreement by the Buyer and a description of the components of the Monthly Payment and other payments, as described in this Agreement, including Sections 2.3(a)(iv) and 4.2, as applicable, owing to the Supplier for the Settlement Month.

5.3 Payment

The Party owing the Monthly Payment shall remit to the other Party full payment in respect of the Statement no later than twenty (20) Business Days after the end of the Settlement Month to which the Statement relates (the “**Payment Date**”). Any and all payments required to be made by either Party under any provision of this Agreement shall be made by wire transfer to the applicable account designated in Section 5.5, or as otherwise agreed by the Parties.

5.4 Interest

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

5.5 Payment Account Information

Account for payments to Supplier:

Bank:

Bank address:

Account Name:

Account Number:

Transit Number:

Supplier's GST Registration Number: [●]

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

Account for payments to Buyer:

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

Account Number: [●]

Transit Number: 00002

Buyer's GST Registration Number: 854195039RT0001

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

Either Party may change its account information from time to time by written notice to the other in accordance with Section 15.7.

5.6 Adjustment to Statement

- (a) Each Statement shall be subject to adjustment for errors in arithmetic, computation, or other errors, raised by a party during the period of one (1) year following the end of the calendar year in which such Statement was issued. If there are no complaints raised, or if any complaints raised in the time period have been resolved, such Statement shall be final and subject to no further adjustment after the expiration of such period.
- (b) Notwithstanding the foregoing, the determination by the IESO of any information shall be final and binding on the Parties in accordance with the IESO Market Rules, and without limiting the generality of the foregoing, if a Statement contains an error in the data or information issued by the IESO which the IESO has requested be corrected, then the one (1) year limit set forth in Section 5.6(a) shall not apply to the correction of such error or the Buyer's ability to readjust the Statement.
- (c) Subject to Section 5.7, any adjustment to a Statement made pursuant to this Section 5.6 shall be made in the next subsequent Statement.

5.7 Disputed Statement

If the Supplier disputes a Statement or any portion thereof, the Party owing any amount set forth in the Statement shall, notwithstanding such dispute, pay the entire amount set forth in the Statement to the other Party. The Supplier shall provide written notice to the Buyer setting out the portions of the Statement that are in dispute with a brief explanation of the dispute. If it is subsequently determined or agreed that an adjustment to the Statement is appropriate, the Buyer will promptly prepare a revised Statement. Any overpayment or underpayment of any amount due under a Statement shall bear interest at the Interest Rate, calculated daily, from and including the time of such overpayment or underpayment to the date of the refund or payment thereof. Payment pursuant to the revised Statement shall be made on the tenth (10th) Business Day following the date on which the revised Statement is delivered to the Supplier. If a Statement dispute has not been resolved between the Parties within five (5) Business Days after receipt of written notice of such dispute by the Buyer, the dispute may be submitted by either Party to a Senior Conference pursuant to the terms of Section 16.1.

5.8 Statements and Payment Records

The Parties shall keep all books and records necessary to support the information contained in and with respect to each Statement and Monthly Payment made thereunder, in accordance with Section 15.2.

ARTICLE 6 CREDIT AND SECURITY REQUIREMENTS

6.1 Completion and Performance Security

- (a) The Parties acknowledge that the Supplier has, prior to the execution of this Agreement, provided to the Buyer security for the performance of the Supplier's obligations under this Agreement in an amount equal to \$2,000,000 and in the form described in Section 6.2 (the "**Initial Completion and Performance Security**").
- (b) The Parties agree that the Supplier shall provide to the Buyer:
 - (i) on or before the date that is thirty (30) days after the date of this Agreement, additional security (the "**First Additional Completion and Performance Security**") for the performance of the Supplier's obligations under this Agreement in an amount equal to an additional \$5,000,000 resulting in an aggregate security (inclusive of the Initial Completion and Performance Security) of \$7,000,000 and in the form described in Section 6.2;
 - (ii) on or before the date that is sixty (60) days after the date of this Agreement, additional security (the "**Second Additional Completion and Performance Security**") for the performance of the Supplier's obligations under this Agreement in an amount equal to an additional \$5,000,000 resulting in an aggregate security (inclusive of the Initial Completion and Performance Security and the First Additional

Completion and Performance Security) of \$12,000,000 and in the form described in Section 6.2; and

- (iii) on or before the date that is ninety (90) days after the date of this Agreement, additional security (the “**Third Additional Completion and Performance Security**”) for the performance of the Supplier’s obligations under this Agreement in an amount equal to an additional \$5,000,000 resulting in an aggregate security (inclusive of the Initial Completion and Performance Security, the First Additional Completion and Performance Security and the Second Additional Completion and Performance Security) of \$17,000,000 and in the form described in Section 6.2;
- (c) The Parties agree that the Supplier shall provide to the Buyer, on or before the earlier of Financial Closing and the date that is three hundred and sixty-five (365) days after the date of this Agreement, further security (the “**Remaining Completion and Performance Security**”, and together with the Initial Completion and Performance Security, the First Additional Completion and Performance Security, the Second Additional Completion and Performance Security and the Third Additional Completion and Performance Security, the “**Completion and Performance Security**”) for the performance of the Supplier’s obligations under this Agreement in an amount equal to an additional \$8,000,000 resulting in an aggregate Completion and Performance Security (inclusive of the Initial Completion and Performance Security, the First Additional Completion and Performance Security, the Second Additional Completion and Performance Security, the Third Additional Completion and Performance Security and the Remaining Completion and Performance Security) of \$25,000,000 and in the form described in Section 6.2.
- (d) Effective upon the Term Commencement Date, and provided that the Buyer has determined that any liquidated damages payable by the Supplier under Section 2.5 have been paid by the Supplier, then the amount of the Completion and Performance Security shall be reduced to an amount equal to \$20,000,000. The amount of the Completion and Performance Security shall be reduced to an amount equal to (i) \$15,000,000 effective upon the fifth anniversary of the Term Commencement Date, (ii) \$10,000,000 effective upon the tenth anniversary of the Term Commencement Date and (iii) \$5,000,000 effective upon the fifteenth anniversary of the Term Commencement Date.
- (e) In the event that the Buyer, in accordance with this Agreement, has recovered monies that were due to it using all or part of the Completion and Performance Security, the Supplier shall forthwith provide replacement security to cover an amount equal to that recovered or paid out of the Completion and Performance Security. In exchange for the Completion and Performance Security in the amended amount, the Buyer will return to the Supplier the original Completion and Performance Security.
- (f) If prior to Financial Closing or the date of receipt by the Buyer of the Completion and Performance Security, there occurs or arises incidents, events or circumstances which results, or is likely to result, in a delay in the aggregate of

thirty (30) days or more in the achievement of Commercial Operation by the Milestone Date therefor including delays arising from events of Force Majeure, the Party first becoming aware of such delay or likely delay shall promptly (and, in any event, within ten (10) Business Days) notify the other Party and the Parties shall meet to discuss strategies for restoring, to the extent possible and practicable to do so, the development, construction and/or commissioning of the Facility to the schedule which will achieve Commercial Operation by the Milestone Date therefor. Notwithstanding the foregoing and any other provision of this Agreement, an event of Force Majeure shall not extend the date by which the First Additional Completion and Performance Security, the Second Additional Completion and Performance Security, the Third Additional Completion and Performance Security and the Remaining Completion and Performance Security are each required to be provided by the Supplier pursuant to Sections 6.1(b) and 6.1(c).

6.2 Composition of Security

- (a) Prior to the Term Commencement Date, the Completion and Performance Security shall be provided in the form of a Letter of Credit, certified cheque, bank draft, or other equivalent form of surety instrument acceptable to the Buyer, acting reasonably, for the full amount, but for certainty, shall not include guarantees.
- (b) From and after the Term Commencement Date, the Completion and Performance Security shall be provided as set out in Section 6.2(b)(i) or (ii) below:
 - (i) a Letter of Credit, certified cheque, bank draft, or other equivalent form of surety instrument acceptable to the Buyer, for the full amount of the Completion and Performance Security; or
 - (ii) subject to Section 6.2(d), a Guarantee, up to a maximum amount determined pursuant to Section 6.4, but not to exceed ninety percent (90%) of the amount of the Completion and Performance Security, together with a Letter of Credit, certified cheque, bank draft, or other equivalent form of surety instrument acceptable to the Buyer, for the balance of the amount of the Completion and Performance Security.

To the extent that the amount of the Guarantee requirement increases or decreases from time to time in accordance with this Article 6, the amount of the Letter of Credit shall correspondingly be required to be decreased or increased, respectively, so that the total amount of the Completion and Performance Security held by the Buyer at all times from and after the Term Commencement Date remains in an aggregate amount as required pursuant to Section 6.1.

- (c) If the aggregate of the Supplier's Creditworthiness Value determined pursuant to Section 6.4(b) and the principal amount of the Letter of Credit, certified cheque, bank draft, or other equivalent form of surety instrument acceptable to the Buyer described in Section 6.2(b)(ii) is equal to or greater than the amount of the Completion and Performance Security, then no Guarantee is required.

- (d) If a Guarantee forms part of the Completion and Performance Security and:
- (i) the Creditworthiness Value of the Supplier determined pursuant to Section 6.4(b) is equal to or greater than the Creditworthiness Value of the Guarantor determined pursuant to Section 6.4(b), provided the Guarantor has a Credit Rating required of a guarantor as set out in Section 6.4, or
 - (ii) the aggregate of the Supplier's Creditworthiness Value and the principal amount of the Letter of Credit, certified cheque, bank draft, or other equivalent form of surety instrument acceptable to the Buyer described in Section 6.2(b)(ii) is equal to or greater than the amount of the Completion and Performance Security,

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

6.3 Letter of Credit Provisions

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

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

satisfactory to the Buyer when required hereunder, then without limiting any other remedies the Buyer may have under this Agreement, the Buyer (i) may draw on the undrawn portion of any outstanding Letter of Credit and retain for its own account, as liquidated damages and not as a penalty, the amount equal to one (1%) percent of the face value of such outstanding Letter of Credit and/or (ii) prior to the expiry of such Letter of Credit, may draw on the entire, undrawn portion of any outstanding Letter of Credit, upon submission to the financial institution issuing such Letter of Credit of a certificate specifying the entire amount of the Letter of Credit is owing to the Buyer in accordance with the specific requirements of the Letter of Credit. Any amount then due and owing to the Buyer shall be received by the Buyer as liquidated damages and not as a penalty. If the amounts then due and owing are less than the amount drawn under such Letter of Credit, then such excess amount shall be held as Completion and Performance Security. The Supplier shall remain liable for any amounts due and owing to the Buyer and remaining unpaid after the application of the amounts so drawn by the Buyer. If the Supplier subsequently delivers a Letter of Credit or other surety instrument or other collateral permitted pursuant hereto, in each case satisfactory to the Buyer in its sole and absolute discretion as to form, substance and amount, then upon acceptance by the Buyer thereof, the Buyer shall remit to the Supplier all amounts held by the Buyer as Completion and Performance Security pursuant to this Section 6.3(c).

- (d) The costs and expenses of establishing, renewing, substituting, cancelling, increasing and reducing the amount of (as the case may be) one or more Letters of Credit shall be borne by the Supplier.
- (e) The Buyer shall return a Letter of Credit held by the Buyer to the Supplier, if the Supplier is substituting a Letter of Credit of a greater or lesser amount pursuant to Section 6.3(a), within five (5) Business Days from the Buyer's receipt of such substituted Letter of Credit.

6.4 Guarantee Provisions

- (a) The Buyer shall accept a guarantee in the form attached hereto as Exhibit D (the "**Guarantee**") from a guarantor of the Supplier (with the applicable party providing the Guarantee being referred to as the "**Guarantor**"), provided however that the Guarantor shall have a Credit Rating as listed in any of the four rows contained in the table below. Notwithstanding the foregoing, in the event the Guarantor has a Negative Outlook, then its Credit Rating, for purposes of calculating the Creditworthiness Value of the Guarantor in Section 6.4(b)(i), will be automatically demoted by one (1) row in the table in Section 6.4(b)(i). For greater certainty, a Guarantor with a Credit Rating in the fourth (4th) level set forth below without a Negative Outlook will no longer be able to provide a Guarantee if it subsequently receives a Negative Outlook. Subject to Section 6.2, the amount of the Guarantee shall be equal to or less than the Creditworthiness Value of the Guarantor, failing which the Supplier shall be required to provide alternative acceptable security as provided in Section 6.2(b) so as to remain in compliance with the Completion and Performance Security requirements set out in Section 6.1.

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

$$S \times T$$

where S represents the Tangible Net Worth of the Person, expressed in Dollars, and T is a figure, used for weighting purposes, taken from the column entitled "Value of T" in the table below of the appropriate row corresponding to the Person's Credit Rating as adjusted by any Negative Outlook in accordance with Section 6.4(a) or 6.4(b)(ii), as applicable, provided that where the Person has Credit Ratings from more than one rating agency set out in the table below, then the lowest of such Credit Ratings, as adjusted by any Negative Outlook in accordance with Section 6.4(a) or 6.4(b)(ii), as applicable, shall be used:

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

- (ii) In the event that any Person has a Negative Outlook, then its Credit Rating will automatically be demoted by one (1) row in the table in Section 6.4(b)(i).
- (c) Upon the consent of the Buyer, which consent shall not be unreasonably withheld, the Guarantor may substitute its Guarantee with a guarantee from an Affiliate or from any other Person who would qualify as a guarantor for an amount equivalent to the amount of the Guarantee (the "**Replacement Guarantee**"). The Replacement Guarantee shall be in the form of the Guarantee. Upon delivery of the Replacement Guarantee, (i) such Replacement Guarantee shall be deemed to be the "**Guarantee**" and such Affiliate or other Person providing such guarantee, as the case may be, shall be deemed to be the "**Guarantor**" for all purposes of this Agreement and (ii) the Buyer shall return the original Guarantee to the original Guarantor within five (5) Business Days of such delivery.
- (d) For greater clarity, all provisions of this Agreement that refer to (i) the Guarantor or similar references, or (ii) the Creditworthiness Value of the Guarantor or similar references, shall:
- (1) only apply in respect of the Guarantor if that Guarantor has, at the applicable time, issued a Guarantee in favour of the Buyer and that Guarantee remains in effect at that time (otherwise, the reference to

Guarantor shall be excluded when interpreting the provision until such time as a Guarantee is provided); and

- (2) only refer to the Creditworthiness Value of the Supplier (and not the Creditworthiness Value of its Guarantor) when and for so long as its Guarantor has not provided a Guarantee that remains in effect at the applicable time.

6.5 Financial Statements

If there is a Guarantor, the Supplier shall, on a quarterly basis, provide to the Buyer (i) as soon as available and in no event later than sixty (60) days after the end of each fiscal quarter of the Guarantor, unaudited consolidated financial statements of the Guarantor, for such fiscal quarter prepared in accordance with GAAP, and (ii) as soon as possible and in no event later than one hundred and twenty (120) days after the end of each fiscal year, audited consolidated financial statements of the Guarantor for such fiscal year prepared in accordance with GAAP. Notwithstanding the foregoing, if any such financial statements are not available in a timely manner due to a delay in preparation or auditing, such delay shall not be considered a breach of this Section 6.5 so long as the Guarantor is diligently pursuing the preparation, audit and delivery of such financial statements. Quarterly financial statements may be delivered electronically to the Buyer in PDF form. Upon each delivery of the Guarantor's financial statements to the Buyer, the Guarantor providing such financial statements shall be deemed to represent to the Buyer that its financial statements were prepared in accordance with GAAP and present fairly the financial position of the Guarantor for the relevant period then ended. In the event that the Guarantor does not publish financial statements on a quarterly basis, then unaudited consolidated financial statements shall be provided by the Guarantor, at a minimum, on a semi-annual basis. To the extent that the Supplier's Creditworthiness Value is such that the Guarantee is not required or it is returned to the Guarantor and cancelled pursuant to Section 6.2(d), then the obligations to provide financial statements under this Section 6.5 shall apply in full to the Supplier instead of the Guarantor.

6.6 Notice of Deterioration in Financial Indicators

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

ARTICLE 7 REPRESENTATIONS

7.1 Representations of the Supplier

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

- (a) The Supplier is a [●], [●] under the laws of [●], is registered or otherwise qualified to carry on business in the Province of Ontario, and has the requisite power to enter into this Agreement and to perform its obligations hereunder.

- (b) This Agreement has been duly authorized, executed, and delivered by the Supplier and is a valid and binding obligation of the Supplier enforceable in accordance with its terms except as such enforcement may be limited by bankruptcy, insolvency and other laws affecting the rights of creditors generally and except that equitable remedies may only be granted in the discretion of a court of competent jurisdiction.
- (c) The execution and delivery of this Agreement by the Supplier and the consummation of the transactions contemplated by this Agreement will not result in the breach or violation of any of the provisions of, or constitute a default under, or conflict with or cause the termination, cancellation or acceleration of any material obligation of the Supplier under:
 - (i) any contract or obligation to which the Supplier is a party or by which it or its assets may be bound, except for such defaults or conflicts as to which requisite waivers or consents have been obtained;
 - (ii) the articles, by-laws or other constating documents, or resolutions of the directors or shareholders of the Supplier;
 - (iii) any judgment, decree, order or award of any Governmental Authority or arbitrator;
 - (iv) any licence, permit, approval, consent or authorization held by the Supplier; or
 - (v) any Laws and Regulations,that could have a Material Adverse Effect on the Supplier.
- (d) There are no bankruptcy, insolvency, reorganization, receivership, seizure, realization, arrangement or other similar proceedings pending against or being contemplated by the Supplier or, to the knowledge of the Supplier, threatened against the Supplier.
- (e) There are no actions, suits, proceedings, judgments, rulings or orders by or before any Governmental Authority or arbitrator, or, to the knowledge of the Supplier, threatened against the Supplier, that could have a Material Adverse Effect on the Supplier.
- (f) All requirements for the Supplier to make any filing, declaration or registration with, give any notice to or obtain any licence, permit, certificate, registration, authorization, consent or approval of, any Governmental Authority as a condition to entering into this Agreement have been satisfied.
- (g) The Supplier is not a non-resident of Canada for the purposes of the ITA.
- (h) All statements, specifications, data confirmations and information that have been set out in the Proposal are complete and accurate in all material respects and are hereby restated and reaffirmed by the Supplier as representations made to the

Buyer hereunder and there is no material information omitted from the Proposal which makes the information in the Proposal misleading or inaccurate.

In addition, the Supplier shall, upon delivery of each of the quarterly progress reports required to be provided to the Buyer pursuant to Section 2.7, represent in writing that each of the foregoing statements set out in Sections 7.1(a) to (h) inclusive continues to be true or, if any of such statements are no longer true, then the Supplier shall provide to the Buyer a qualified representation with respect to such statement. Such qualified representation provided by the Supplier to the Buyer shall be subject, however, to the rights of the Buyer in Section 10.1(d) to require the Supplier to cure or remove any such qualification with respect to such statement.

7.2 Representations of the Buyer

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

- (a) The Buyer that was the original counterparty to this Agreement is a corporation without share capital created under the laws of Ontario, and has the requisite power to enter into this Agreement and to perform its obligations hereunder.
- (b) This Agreement has been duly authorized, executed, and delivered by the Buyer and is a valid and binding obligation of the Buyer enforceable in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency and other laws affecting the rights of creditors generally and except that equitable remedies may be granted solely in the discretion of a court of competent jurisdiction.
- (c) The execution and delivery of this Agreement by the Buyer and the consummation of the transactions contemplated by this Agreement will not result in the breach or violation of any of the provisions of, or constitute a default under, or conflict with or cause the termination, cancellation or acceleration of any material obligation of the Buyer under:
 - (i) any contract or obligation to which the Buyer is a party or by which it or its assets may be bound, except for such defaults or conflicts as to which requisite waivers or consents have been obtained;
 - (ii) the by-laws or resolutions of the directors (or any committee thereof) or shareholder of the Buyer;
 - (iii) any judgment, decree, order or award of any Governmental Authority or arbitrator;
 - (iv) any licence, permit, approval, consent or authorization held by the Buyer; or
 - (v) any Laws and Regulations,

that could have a Material Adverse Effect on the Buyer.

- (d) There are no bankruptcy, insolvency, reorganization, receivership, seizure, realization, arrangement or other similar proceedings pending against, or being contemplated by the Buyer or, to the knowledge of the Buyer, threatened against the Buyer.
- (e) There are no actions, suits, proceedings, judgments, rulings or orders by or before any Governmental Authority or arbitrator, or, to the knowledge of the Buyer, threatened against the Buyer, that could have a Material Adverse Effect on the Buyer.
- (f) All requirements for the Buyer to make any declaration, filing or registration with, give any notice to or obtain any licence, permit, certificate, registration, authorization, consent or approval of, any Governmental Authority as a condition to entering into this Agreement have been satisfied.

ARTICLE 8 CONFIDENTIALITY AND FIPPA

8.1 Confidential Information

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

- (a) The Receiving Party may disclose Confidential Information to its Representatives who need to know Confidential Information for the purpose of assisting the Receiving Party in complying with its obligations under this Agreement. On each copy made by the Receiving Party, the Receiving Party must reproduce all notices which appear on the original. The Receiving Party shall inform its Representatives of the confidentiality of Confidential Information and shall be responsible for any breach of this Article 8 by any of its Representatives.
- (b) If the Receiving Party or any of its Representatives are requested or required (by oral question, interrogatories, requests for information or documents, court order, civil investigative demand, or similar process) to disclose any Confidential Information in connection with litigation or any regulatory proceeding or investigation, or pursuant to any applicable law, order, regulation or ruling, the Receiving Party shall promptly notify the Disclosing Party. Unless the Disclosing Party obtains a protective order, the Receiving Party and its Representatives may disclose such portion of the Confidential Information to the Party seeking disclosure as is required by law or regulation in accordance with Section 8.2.
- (c) Where the Supplier is the Receiving Party, the Supplier may disclose Confidential Information to any Secured Lender or prospective lender or investor and its advisors, to the extent necessary, for securing financing for the Contract 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 covenanted in favour of the Buyer to hold such Confidential Information confidential on terms substantially similar to this Article 8.

- (d) Notwithstanding the foregoing, the Supplier consents to the disclosure of its name and contact particulars (including its address for service and the name of its Company Representative) by the Buyer to all Other Suppliers for the purposes of Sections 1.6 to 1.10 inclusive, and Section 2.12.

8.2 Notice Preceding Compelled Disclosure

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

8.3 Return of Information

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

8.4 Injunctive and Other Relief

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

8.5 FIPPA Records and Compliance

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

ARTICLE 9 TERM

9.1 Term

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

ARTICLE 10 TERMINATION AND DEFAULT

10.1 Events of Default by the Supplier

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

- (a) The Supplier or the Guarantor fails to make any payment when due, or, subject to Sections 10.1(r) and 10.1(s), deliver and/or maintain the Completion and Performance Security as required under this Agreement, if such failure is not remedied within five (5) Business Days after written notice of such failure from the Buyer.
- (b) The Supplier fails to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Supplier Event of Default) if such failure is not remedied within fifteen (15) Business Days after written notice of such failure from the Buyer, provided that such cure period shall be extended by a further fifteen (15) Business Days if the Supplier is diligently remedying such failure and such failure is capable of being cured during such extended cure period.

- (c) The Supplier fails or ceases to hold a valid licence, permit, certificate, registration, authorization, consent or approval issued by a Governmental Authority where such failure or cessation results in, or could be reasonably expected to result in, a Material Adverse Effect on the Supplier and is not remedied within thirty (30) Business Days after receipt by the Supplier of written notice of such failure or cessation from the Buyer, provided that such cure period shall be extended by a further thirty (30) Business Days if the Supplier is diligently remedying such failure or cessation and such failure or cessation is capable of being corrected during such extended cure period.
- (d) Any representation made by the Supplier in this Agreement is not true or correct in any material respect when made and is not made true or correct in all material respects within thirty (30) Business Days after receipt by the Supplier of written notice of such fact from the Buyer, provided that such cure period (i) shall be extended for a further period of thirty (30) Business Days and (ii) may be extended by such further period of time as the Buyer in its sole and absolute discretion determines is reasonable, if, in each case, the Supplier is diligently correcting such breach and such breach is capable of being corrected during such extended cure period. For certainty, notwithstanding the receipt by the Buyer of a qualified representation by the Supplier with respect to any statement referred to in Sections 7.1(a) to (h), inclusive, the Buyer may, in its sole and absolute discretion, require the Supplier, within the time limits set out in this Section 10.1(d), to cure or remove any such qualification to such statement.
- (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, in the case of the Supplier, there has been a permitted and valid assignment of this Agreement by the Supplier under this Agreement to a Person which is not dissolving, terminating its existence, liquidating or winding up and such Person has assumed all of the Supplier's obligations under this Agreement.
- (f) The Supplier amalgamates with, or merges with or into, or transfers the Facility or all or substantially all of its assets to, another Person unless, at the time of such amalgamation, merger or transfer, there has been a permitted and valid assignment hereof by the Supplier under this Agreement to the resulting, surviving or transferee Person and such Person has assumed all of the Supplier's obligations under this Agreement.
- (g) A receiver, manager, receiver-manager, liquidator, monitor or trustee in bankruptcy of the Supplier or of any of the Supplier's property is appointed by a Governmental Authority or pursuant to the terms of a debenture or a similar instrument, and such receiver, manager, receiver-manager, liquidator, monitor or trustee in bankruptcy is not discharged or such appointment is not revoked or withdrawn within thirty (30) days of the appointment. By decree, judgment or order of a Governmental Authority, the Supplier is adjudicated bankrupt or insolvent or any substantial part of the Supplier's property is sequestered, and

such decree, judgment or order continues undischarged and unstayed for a period of thirty (30) days after the entry thereof. A petition, proceeding or filing is made against the Supplier seeking to have the Supplier declared bankrupt or insolvent, or seeking adjustment or composition of any of its debts pursuant to the provisions of any Insolvency Legislation, and such petition, proceeding or filing is not dismissed or withdrawn within thirty (30) days.

- (h) The Supplier makes an assignment for the benefit of its creditors generally under any Insolvency Legislation, or consents to the appointment of a receiver, manager, receiver-manager, monitor, trustee in bankruptcy, or liquidator for all or part of its property or files a petition or proposal to declare bankruptcy or to reorganize pursuant to the provisions of any Insolvency Legislation.
- (i) The Supplier has defaulted under one or more obligations for indebtedness to other Persons, resulting in obligations for indebtedness in an aggregate amount of more than the greatest of: (1) five percent (5%) of its Tangible Net Worth, (2) \$50,000/MW multiplied by the Annual Average Contract Capacity, and (3) \$2,000,000, becoming immediately due and payable, unless: (A) such default is remedied within fifteen (15) Business Days after written notice of such failure from the Buyer, provided that such cure period shall be extended by a further fifteen (15) Business Days if the Supplier is diligently remedying such default and such default is capable of being cured during such extended cure period; or (B) the Supplier has satisfied the Buyer that such default does not have a Material Adverse Effect on the Supplier's ability to perform its obligations under this Agreement.
- (j) The Supplier has made a Contract Facility Amendment that has not first been consented to by the Buyer and that has not been removed within ten (10) Business Days after such Contract Facility Amendment occurred.
- (k) The Commercial Operation Date has not occurred on or before the date which is one (1) year after the Milestone Date for Commercial Operation, unless the Supplier has, on or prior to such one year date, paid all liquidated damages accruing to such one year date pursuant to Section 2.5 and the full amount of the required Completion and Performance Security is being held by the Buyer in accordance with Section 6.1.
- (l) The Commercial Operation Date has not occurred on or before the date which is eighteen (18) months after the Milestone Date for Commercial Operation.
- (m) Either of the defaults described in Sections 15.6(d) and 15.6(f)(i) has occurred.
- (n) The Availability is less than: (i) seventy percent (70%) during the second Contract Year, (ii) seventy-five percent (75%) during the third Contract Year, or (iii) eighty percent (80%) during the fourth and each succeeding Contract Year.
- (o) The Supplier undergoes a change in Control without first obtaining the written approval of the Buyer if required pursuant to Sections 16.6 or 16.7.

- (p) The Supplier assigns this Agreement without first obtaining the consent of the Buyer, if required pursuant to this Agreement.
- (q) The Supplier has not disclosed each actual or potential Conflict of Interest (as that term is defined in the GTA West Trafalgar RFP) and, if any such actual or potential Conflict of Interest is capable of being remedied, it has not been remedied within fifteen (15) Business Days after written notice of such nondisclosure from the Buyer.
- (r) The Supplier has failed to provide the First Additional Completion and Performance Security, the Second Additional Completion and Performance Security or the Third Additional Completion and Performance Security by the dates required in Section 6.1(b)(i), 6.1(b)(ii), 6.1(b)(iii), respectively.
- (s) The Supplier has failed to provide the Remaining Completion and Performance Security by the date required in Section 6.1(c).

10.2 Remedies of the Buyer

- (a) If any Supplier Event of Default (other than a Supplier Event of Default referred to in Sections 10.1(e), 10.1(g), and 10.1(h)) occurs and is continuing, upon written notice to the Supplier, the Buyer may, subject to Article 12, terminate this Agreement.
- (b) If a Supplier Event of Default referred to in Sections 10.1(b), 10.1(m), or 10.1(n) occurs and is continuing, in addition to the remedies set out in Section 10.2(a), at the discretion of the Buyer, 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 Buyer may levy a performance assessment set-off, as liquidated damages and not as a penalty, equal to three (3) times the average Assumed Deemed Dispatch Payment that would be payable to the Supplier, if any, for the most recent twelve (12) Settlement Months (or the number of Settlement Months that have elapsed from the Term Commencement Date if less than twelve (12) Settlement Months have elapsed), in the event that three (3) or more Supplier Events of Default referred to in Sections 10.1(b), 10.1(m), or 10.1(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 Buyer setting off any payments due to the Supplier against any amounts payable by the Supplier to the Buyer including, at the Buyer's option, the amount of any Completion and Performance Security provided to the Buyer pursuant to Article 6, and by drawing on the Completion and Performance Security, or any part thereof, and if the remedy in

Section 10.2(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 Buyer may, in addition to the remedies set out in Section 10.2(a):
 - (i) set off any payments due to the Supplier against any amounts payable by the Supplier to the Buyer including, at the Buyer's option, the amount of any Completion and Performance Security provided to the Buyer pursuant to Article 6; and
 - (ii) draw on the Completion and Performance Security, or any part thereof and, if the remedy in Section 10.2(a) has not been exercised, require the Supplier to replace such drawn security with new security.
- (d) Notwithstanding Sections 10.2(a), 10.2(b), and 10.2(c), upon the occurrence of a Supplier Event of Default referred to in Sections 10.1(e), 10.1(g) or 10.1(h), this Agreement shall automatically terminate without notice, act or formality, effective immediately before the occurrence of such Supplier Event of Default, in which case, for certainty, the Secured Lender shall have the rights available to it under Section 12.2(g).
- (e) If the Buyer terminates this Agreement pursuant to Section 10.2(a) or this Agreement is terminated pursuant to Section 10.2(d), the Buyer shall have the following option, exercisable in the sole and absolute discretion of the Buyer:
 - (i) if the Termination Date precedes the Commercial Operation Date, the Supplier shall pay, as liquidated damages and not as a penalty, an amount equivalent to (1) the amount of all Completion and Performance Security provided by or on behalf of the Supplier, plus (2) the amount of any portion of the Completion and Performance Security that the Supplier was required under Section 6.1 to provide to the Buyer as of the Termination Date (with the total amount of such liquidated damages being referred to as the "**Sum**"). The Buyer shall be entitled to retain all Completion and Performance Security provided by or on behalf of the Supplier and apply it towards the Supplier's obligation to pay the Sum. With respect to any unpaid portion of the Sum, the Buyer may exercise all remedies available to the Buyer including pursuing a claim for damages, as contemplated in Section 10.5; or
 - (ii) if the Termination Date is on or after the Commercial Operation Date, the Buyer shall be entitled to retain all Completion and Performance Security provided by or on behalf of the Supplier and exercise all other remedies available to the Buyer including pursuing a claim for damages, as contemplated in Section 10.5.
- (f) Termination shall not relieve the Supplier or the Buyer of their respective responsibilities relating to the availability of the Contract Capacity and delivery of the Electricity and Related Products from the Contract Facility, or amounts

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

10.3 Events of Default by the Buyer

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

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

which is not dissolving, terminating its existence, liquidating or winding up and such Person has assumed all of the Buyer's obligations under this Agreement.

- (f) A receiver, manager, receiver-manager, liquidator, monitor or trustee in bankruptcy of the Buyer or of any of the Buyer's property is appointed by a Governmental Authority or pursuant to the terms of a debenture or a similar instrument, and such receiver, manager, receiver-manager, liquidator, monitor or trustee in bankruptcy is not discharged or such appointment is not revoked or withdrawn within thirty (30) days of the appointment. By decree, judgment or order of Governmental Authority, the Buyer is adjudicated bankrupt or insolvent or any substantial part of the Buyer's property is sequestered, and such decree, judgment or order continues undischarged and unstayed for a period of thirty (30) days after the entry thereof. A petition, proceeding or filing is made against the Buyer seeking to have it declared bankrupt or insolvent, or seeking adjustment or composition of any of its debts pursuant to the provisions of any Insolvency Legislation, and such petition, proceeding or filing is not dismissed or withdrawn within thirty (30) days.
- (g) The Buyer makes an assignment for the benefit of its creditors generally under any Insolvency Legislation, or consents to the appointment of a receiver, manager, receiver-manager, monitor, trustee in bankruptcy or liquidator, of it or of all or part of its property or files a petition or proposal to declare bankruptcy or to reorganize pursuant to the provision of any Insolvency Legislation.
- (h) The Buyer assigns this Agreement (other than an assignment made pursuant to Sections 16.5(d) or 16.5(e)) without first obtaining the consent of the Supplier, if required pursuant to this Agreement.

10.4 Termination by the Supplier

- (a) If any Buyer Event of Default occurs and is continuing, then upon written notice to the Buyer, the Supplier may: (i) in accordance with Sections 16.5(d)(iii) and 16.5(e)(iii), terminate this Agreement, and (ii) set off any payments due to the Buyer against any amounts payable by the Buyer to the Supplier.
- (b) Notwithstanding the foregoing, if applicable, the Buyer shall be responsible for payment of amounts accruing under this Agreement only up to and including the Termination Date. The Supplier may hold back payment or set off against any payments owed by it if the Buyer fails to comply with its obligations on termination.

10.5 Remedies for Termination Non-Exclusive

The termination of this Agreement by either Party and the payment of all amounts then due and owing to the other Party as expressly provided in this Agreement shall not limit, waive or extinguish in any way the recourse of either Party to any remedies available to it in relation to such termination at law, in equity or otherwise, nor shall such termination affect any rights that the Indemnitees may have pursuant to any indemnity given under this Agreement. Notwithstanding the foregoing, if the Buyer has exercised the option set

out in Section 10.2(e)(i), then the Buyer's remedies against the Supplier in respect of the termination of this Agreement shall be limited to any unpaid portion of the Sum set out in Section 10.2(e)(i).

ARTICLE 11 FORCE MAJEURE

11.1 Effect of Invoking Force Majeure

- (a) If, by reason of Force Majeure:
 - (i) the Supplier is unable to make available all or any part of the Contract Capacity or is unable to deliver Electricity from the Contract Facility; or
 - (ii) either Party is unable, wholly or partially, to perform or comply with its other obligations (other than payment obligations) hereunder, including the Supplier being unable to achieve a Milestone Event by the relevant Milestone Date;

then the Party so affected by Force Majeure shall be excused and relieved from performing or complying with such obligations (other than payment obligations) and shall not be liable for any liabilities, damages, losses, payments, costs, expenses (or Indemnifiable Losses, in the case of the Supplier affected by Force Majeure) to, or incurred by, the other Party in respect of or relating to such Force Majeure and such Party's failure to so perform or comply during the continuance and to the extent of the inability so caused from and after the invocation of Force Majeure. Notwithstanding the foregoing, during such time as the Supplier is so unable to perform or comply with its obligations as a result of a Force Majeure, to the extent that the Supplier is able to deliver a portion of the Contract Capacity and Electricity from the Contract Facility despite an event of Force Majeure, then the calculation of payment will be made with respect to such portion of the Contract Capacity and Electricity delivered in accordance with Exhibit J.

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

- (c) The Party invoking Force Majeure shall use Commercially Reasonable Efforts to remedy the situation and remove, so far as possible and with reasonable dispatch, the Force Majeure, but settlement of strikes, lockouts and other labour disturbances shall be wholly within the discretion of the Party involved.
- (d) The Party invoking Force Majeure shall give prompt written notice of the termination of the event of Force Majeure, provided that such notice shall be given within ten (10) Business Days of the termination of the event or circumstances constituting Force Majeure.
- (e) Nothing in this Section 11.1 shall relieve a Party of its obligations to make payments of any amounts that were due and owing before the occurrence of the Force Majeure or that otherwise may become due and payable during any period of Force Majeure.
- (f) If an event of Force Majeure causes the Supplier to not achieve a Milestone Event by the relevant Milestone Date, then such Milestone Date shall be extended for such reasonable period of delay directly resulting from such Force Majeure event. After the Term Commencement Date, an event of Force Majeure shall not extend the Term.
- (g) If an event of Force Majeure described in Section 11.3(h) has delayed the Commercial Operation Date by more than 365 days after the original Milestone Date (prior to any extension pursuant to Section 11.1(f)) set out for attaining Commercial Operation of the Facility, then notwithstanding anything in this Agreement to the contrary, while the delay that is a result of the event of Force Majeure is continuing, the Supplier at its sole option may terminate this Agreement upon notice to the Buyer and without any costs or payments of any kind to either Party, and all security shall be returned forthwith.
- (h) If, by reason of Force Majeure, the Commercial Operation Date is delayed by more than twenty-four (24) months after the original Milestone Date for Commercial Operation, prior to any extension pursuant to Section 11.1(f), then notwithstanding anything in this Agreement to the contrary, either Party may terminate this Agreement upon notice to the other Party and without any costs or payments of any kind to either Party, and all security shall be returned forthwith.
- (i) If, by reason of Force Majeure, the Supplier is unable to perform or comply with its obligations (other than payment obligations) hereunder for more than an aggregate of thirty-six (36) months in any sixty (60) month period during the Term, then either Party may terminate this Agreement upon notice to the other Party without any costs or payments of any kind to either Party, except for any amounts that were due or payable by a Party hereunder up to the date of termination, and all security shall be returned forthwith.

11.2 Exclusions

A Party shall not be entitled to invoke Force Majeure under this Article 11, nor shall it be relieved of its obligations hereunder in any of the following circumstances:

- (a) if and to the extent the Party seeking to invoke Force Majeure has caused the applicable event of Force Majeure by its fault or negligence, including the Supplier's failure to procure or maintain any fuel supply to be utilized by the Contract Facility;
- (b) if and to the extent the Party seeking to invoke Force Majeure has failed to use Commercially Reasonable Efforts to prevent or remedy the event of Force Majeure and remove, so far as possible and within a reasonable time period, the Force Majeure (except in the case of strikes, lockouts and other labour disturbances (other than those involving the employees of any Key Equipment Supplier, in which case Section 11.2(c) shall apply), the settlement of which shall be wholly within the discretion of the Party involved);
- (c) if and to the extent the Supplier is seeking to invoke Force Majeure under Section 11.3(d) in respect of strikes or labour disputes by employees of any Key Equipment Supplier and if (i) the due diligence procedures outlined in Section 2 of Exhibit O in selecting the Key Equipment Supplier have not been complied with; and/or (ii) the mitigation measures outlined in Section 3 of Exhibit O have not been complied with;
- (d) if and to the extent that the Party seeking to invoke Force Majeure because of arrest or restraint by a Governmental Authority, such arrest or restraint was the result of a breach by such Party of Laws and Regulations;
- (e) if the Force Majeure was caused by a lack of funds or other financial cause;
- (f) if the IESO amends the schedule of Planned Outages for the Contract Facility as set out in the Annual Operating Plan; or
- (g) if the Party invoking Force Majeure fails to comply with the notice provisions in Sections 11.1(b) or (d).

11.3 Definition of Force Majeure

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

- (a) acts of God, including extreme wind, ice, lightning or other storms, earthquakes, tornadoes, hurricanes, cyclones, landslides, drought, floods and washouts;
- (b) fires or explosions;
- (c) local, regional or national states of emergency;
- (d) strikes and other labour disputes (other than legal strikes or labour disputes by employees of such Party or a third party (other than any Key Equipment Supplier) invoking Force Majeure, unless such strikes or labour disputes are the result or part of a general industry strike or labour dispute); for greater certainty, Force

Majeure shall include strikes or other labour disputes by employees of any Key Equipment Supplier;

- (e) delays or disruptions in fuel supply resulting from a Force Majeure event (whether such event is in respect of a Party or a third party);
- (f) civil disobedience or disturbances, war (whether declared or not), acts of sabotage, blockades, insurrections, terrorism, revolution, riots or epidemics;
- (g) an order, judgment, legislation, ruling or direction by Governmental Authorities restraining a Party, provided that the affected Party has not applied for or assisted in the application for and has used Commercially Reasonable Efforts to oppose said order, judgment, legislation, ruling or direction; and
- (h) any inability to obtain, or to secure the renewal or amendment of, any permit, certificate, impact assessment, licence or approval of any Governmental Authority, Transmitter required to perform or comply with any obligation under this Agreement, unless the revocation or modification of any such necessary permit, certificate, impact assessment, licence or approval was caused by the violation of the terms thereof or consented to by the Party invoking Force Majeure;
- (i) any delay in achieving Commercial Operation on or before the corresponding Milestone Date set forth in Exhibit F, as a result of an amendment by the IESO to the outage schedule: (1) relating to the connection of the Contract Facility to the IESO-Controlled Grid, and/or (2) relating to the completion of any Network Upgrades.
- (j) any unanticipated maintenance or outage affecting the Contract Facility:
 - (i) which is not identified in the Supplier's then current schedule of Planned Outages submitted to the IESO, or the Buyer, as the case may be, in advance of the occurrence of an event of Force Majeure referred to in this Section 11.3, and
 - (ii) which results directly from, or is scheduled or planned directly as a consequence of, an event of Force Majeure referred to in this Section 11.3, or which results from a failure of equipment that prevents the Contract Facility from producing Electricity, provided that:
 - (A) notice of the unanticipated maintenance or outage is provided to the Buyer by the Supplier concurrently, or as soon as reasonably possible thereafter, with the notice in respect thereof provided to the IESO but, in any event, within ten (10) Business Days thereof;
 - (B) the Supplier provides notice to the Buyer immediately, or as soon as reasonably possible thereafter, upon receipt from the IESO of advance acceptance or other proposed scheduling or approval of

such maintenance or outage, if such approval is required to be obtained from the IESO;

- (C) the Supplier provides timely updates to the Buyer of the commencement date of the maintenance or outage and, where possible, provides seven (7) days advance notice of such date;
- (D) the unanticipated maintenance or outage is commenced within one hundred twenty (120) days of the commencement of the occurrence of the relevant event of Force Majeure; and
- (E) the Supplier schedules the unanticipated maintenance or outage in accordance with Good Engineering and Operating Practices.

For greater certainty, nothing in Section 11.3(j) shall be construed as limiting the duration of an event of Force Majeure. Each Party shall resume its obligations as soon as the event of Force Majeure has been overcome.

ARTICLE 12 LENDER'S RIGHTS

12.1 Lender Security

Notwithstanding Section 16.5, the Supplier, from time to time on or after the date of this Agreement shall have the right, at its cost, to enter into a Secured Lender's Security Agreement. For the avoidance of doubt, in the case of a deed of trust or similar instrument securing bonds or debentures where the trustee holds security on behalf of, or for the benefit of, other lenders, only the trustee shall be entitled to exercise the rights and remedies under the Secured Lender's Security Agreement as the Secured Lender on behalf of the lenders. A Secured Lender's Security Agreement shall be upon and subject to the following conditions:

- (a) A Secured Lender's Security Agreement may be made for any amounts and upon any terms (including terms of the loans, interest rates, payment terms and prepayment privileges or restrictions) as desired by the Supplier, except as otherwise provided in this Agreement.
- (b) A Secured Lender's Security Agreement may not secure any indebtedness, liability or obligation of the Supplier that is not related to the Contract Facility or cover any real or personal property of the Supplier not related to the Contract Facility. For greater certainty, a Secured Lender's Security Agreement may cover shares or partnership interests in the capital of the Supplier.
- (c) No Secured Lender's Security Agreement shall affect or encumber in any manner the Buyer's title to any government-owned premises. The Buyer shall have no liability whatsoever for payment of the principal sum secured by any Secured Lender's Security Agreement, or any interest accrued thereon or any other sum secured thereby or accruing thereunder; and the Secured Lender shall not be entitled to seek any damages against the Buyer for any or all of the same.

- (d) No Secured Lender's Security Agreement shall be binding upon the Buyer in the enforcement of the Buyer's rights and remedies provided in this Agreement or by Laws and Regulations, unless and until a copy of the original thereof and the registration details, if applicable, together with written notice of the address of the Secured Lender to which notices may be sent have been delivered to the Buyer by the Supplier or the Secured Lender; and in the event of an assignment of such Secured Lender's Security Agreement, such assignment shall not be binding upon the Buyer unless and until a copy thereof and the registration details, if applicable, together with written notice of the address of the assignee thereof to which notices may be sent, have been delivered to the Buyer by the Supplier or the Secured Lender.
- (e) If the Supplier is in default under or pursuant to the Secured Lender's Security Agreement and the Secured Lender intends to exercise any rights afforded to the Secured Lender under this Agreement, then the Secured Lender shall give notice of such default to the Buyer at least five (5) Business Days prior to exercising any such rights.
- (f) Any Secured Lender's Security Agreement permitted hereunder may secure two (2) or more separate debts, liabilities or obligations in favour of two (2) or more separate Secured Lenders, provided that such Secured Lender's Security Agreement complies with the provisions of this Article 12.
- (g) Any number of permitted Secured Lender's Security Agreements may be outstanding at any one time, provided that each such Secured Lender's Security Agreement complies with the provisions of this Article 12.
- (h) All rights acquired by a Secured Lender under any Secured Lender's Security Agreement shall be subject to all of the provisions of this Agreement, including the restrictions on assignment contained herein. While any Secured Lender's Security Agreement is outstanding, the Buyer and the Supplier shall not amend or supplement this Agreement (including agreeing to a tolling arrangement contemplated in Section 3.4 of this Agreement) or agree to a termination of this Agreement without the consent of the Secured Lender, which consent shall not be unreasonably withheld, conditioned, or delayed. A Secured Lender must respond within a reasonable period of time to any request to amend or supplement this Agreement.
- (i) Despite any enforcement of any Secured Lender's Security Agreement, the Supplier shall remain liable to the Buyer for the payment of all sums owing to the Buyer under this Agreement and for the performance of all of the Supplier's obligations under this Agreement.

12.2 Rights and Obligations of Secured Lenders

While any Secured Lender's Security Agreement remains outstanding, and if the Buyer has received the notice referred to in Section 12.1(d) or the contents thereof are embodied in the agreement entered into by the Buyer in accordance with Section 12.3, the following provisions shall apply:

- (a) No Supplier Event of Default (other than those set out in Section 10.2(d)) shall be grounds for the termination by the Buyer of this Agreement until:
 - (i) any notice required to be given under Section 10.1 and 10.2(a) has been given to the Supplier and to the Secured Lender; and
 - (ii) the cure period set out in Section 12.2(b) has expired without a cure having been completed and without the Secured Lender having taken the actions therein contemplated.
- (b) In the event the Buyer has given any notice required to be given under Section 10.1, the Secured Lender shall, within the applicable cure period (including any extensions), if any, have the right (but not the obligation) to cure such default, and the Buyer shall accept such performance by such Secured Lender as if the same had been performed by the Supplier.
- (c) Any payment to be made or action to be taken by a Secured Lender hereunder as a prerequisite to keeping this Agreement in effect shall be deemed properly to have been made or taken by the Secured Lender if such payment is made or action is taken by a nominee or agent of the Secured Lender or a receiver or receiver and manager appointed by or on the application of the Secured Lender.
- (d) A Secured Lender shall be entitled to the Supplier's rights and benefits contained in this Agreement and shall become liable for the Supplier's obligations solely as provided in Section 12.2. A Secured Lender may, subject to the provisions of this Agreement, enforce any Secured Lender's Security Agreement and acquire the Supplier's Interest in any lawful way and, without limitation, a Secured Lender or its nominee or agent or a receiver or receiver and manager appointed by or on the application of the Secured Lender, may take possession of and manage the Contract Facility and, upon foreclosure, or without foreclosure upon exercise of any contractual or statutory power of sale under such Secured Lender's Security Agreement, may sell or assign the Supplier's Interest with the consent of the Buyer as required under Section 12.2(f).
- (e) Until a Secured Lender (i) forecloses or has otherwise taken ownership of the Supplier's Interest or (ii) has taken possession or control of the Supplier's Interest, whether directly or by an agent as a mortgagee in possession, or a receiver or receiver and manager has taken possession or control of the Supplier's Interest by reference to the Secured Lender's Security Agreement, the Secured Lender shall not be liable for any of the Supplier's obligations or be entitled to any of the Supplier's rights and benefits contained in this Agreement, except by way of security. If the Secured Lender itself or by a nominee or agent, or a receiver or a receiver and manager appointed by or on the application of the Secured Lender, is the owner or is in control or possession of the Supplier's Interest, then the entity that is the owner or is in control or possession of the Supplier's Interest shall be bound by all of the Supplier's obligations. Once the Secured Lender or such other Person goes out of possession or control of the Supplier's Interest or transfers the Supplier's Interest in accordance with this Agreement to another Person who is at 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, any Person to whom the Supplier's Interest is transferred shall take the Supplier's Interest subject to the Supplier's obligations. No transfer shall be effective unless the Buyer:
- (i) acting reasonably, if such transferee is at 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 and the transferee has entered into an agreement with the Buyer in form and substance satisfactory to the Buyer, acting reasonably, wherein the transferee agrees to assume and to perform the obligations of the Supplier in respect of the Supplier's Interest, whether arising before or after the transfer, and including the posting of the Completion and Performance Security required under Article 6.

- (g) In the event of the termination of this Agreement prior to the end of the Term due to a Supplier Event of Default, the Buyer shall, within ten (10) days after the date of such termination, deliver to each Secured Lender which is at Arm's Length with the Supplier a statement of all sums then known to the Buyer that would at that time be due under this Agreement but for the termination and a notice to each such Secured Lender stating that the Buyer is willing to enter into a New Agreement (the "**Buyer Statement**"). Subject to the provisions of this Article 12, each such Secured Lender or its transferee approved by the Buyer pursuant to Section 12.2(f) hereof shall thereupon have the option to obtain from the Buyer a New Agreement in accordance with the following terms:
- (i) Upon receipt of the written request of the Secured Lender within thirty (30) days after the date on which it received the Buyer Statement, the Buyer shall enter into a New Agreement.
 - (ii) Such New Agreement shall be effective as of the Termination Date and shall be for the remainder of the Term at the time this Agreement was terminated and otherwise upon the terms contained in this Agreement. The Buyer's obligation to enter into a New Agreement is conditional upon the Secured Lender (A) paying all sums that would, at the time of the execution and delivery thereof, be due under this Agreement but for such termination, (B) otherwise fully curing any defaults under this Agreement existing immediately prior to termination of this Agreement that are capable of being cured, and (C) paying all reasonable costs and expenses, including legal fees, so as to provide a full indemnity (and not only substantial indemnity), incurred by the Buyer in connection with such default and termination, and the preparation, execution and delivery of

such New Agreement and related agreements and documents, provided, however, that with respect to any default that could not be cured by such Secured Lender until it obtains possession, such Secured Lender or its transferee approved by the Buyer pursuant to Section 12.2(f) hereof, as the case may be, shall have the applicable cure period commencing on the date that it obtains possession to cure such default.

When the Secured Lender has appointed an agent, a receiver or a receiver and manager or has obtained a court-appointed receiver or receiver and manager for the purpose of enforcing the Secured Lender's security, that Person may exercise any of the Secured Lender's rights under this Section 12.2(g).

- (h) Despite anything to the contrary contained in this Agreement, the provisions of this Article 12 shall enure only to the benefit of the holders of a Secured Lender's Security Agreement. If the holders of more than one such Secured Lender's Security Agreement who are at Arm's Length with the Supplier make written requests to the Buyer in accordance with this Section 12.2 to obtain a New Agreement, the Buyer shall accept the request of the holder whose Secured Lender's Security Agreement had priority immediately prior to the termination of this Agreement over the Secured Lender's Security Agreements of the other Secured Lenders making such requests and thereupon the written request of each other Secured Lender shall be deemed to be void. In the event of any dispute or disagreement as to the respective priorities of any such Secured Lender's Security Agreement, the Buyer may rely upon the opinion as to such priorities of any law firm qualified to practise law in the Province of Ontario retained by the Buyer in its unqualified subjective discretion or may apply to a court of competent jurisdiction for a declaration as to such priorities, which opinion or declaration shall be conclusively binding upon all parties concerned.

12.3 Cooperation

The Buyer and the Supplier shall enter into an agreement with any Secured Lender for the purpose of implementing the Secured Lender's Security Agreement protection provisions contained in this Agreement. The Buyer, acting reasonably, shall consider any request jointly made by the Supplier and a Secured Lender or proposed Secured Lender to facilitate a provision of a Secured Lender's Security Agreement or proposed Secured Lender's Security Agreement that may require an amendment to this Agreement, provided that the rights of the Buyer are not adversely affected thereby, the obligations of the Supplier to the Buyer are not altered thereby and the consent of any other Secured Lender to such amendment has been obtained by the Supplier or the Secured Lender making the request for the amendment.

**ARTICLE 13
DISCRIMINATORY ACTION**

13.1 Discriminatory Action

A “**Discriminatory Action**” shall occur if:

- (a)
 - (i) the Legislative Assembly of Ontario causes to come into force any statute that was introduced as a government bill in the Legislative Assembly of Ontario or causes to come into force or makes any order-in-council or regulation first having legal effect on or after the date of the submission of the Proposal in response to the GTA West Trafalgar RFP; or
 - (ii) the Legislative Assembly of Ontario directly or indirectly amends this Agreement without the agreement of the Supplier;
- (b) the effect of the action referred to in Section 13.1(a):
 - (i) is borne principally by the Supplier; or
 - (ii) is borne principally by the Supplier and one or more Other Suppliers who have a CES Contract or another bilateral arrangement with the Buyer similar in nature to this Agreement; and
- (c) such action increases the costs that the Supplier would reasonably be expected to incur under this Agreement in the delivery of the Electricity and Related Products from the Contract Facility or the availability of the Contract Capacity or adversely affects the revenues of the Supplier from the Contract Facility, except where such action is in response to any act or omission on the part of the Supplier that is contrary to Laws and Regulations (other than an act or omission rendered illegal by virtue of such action) or such action is permitted under this Agreement. Despite the preceding sentence, none of the following shall be a Discriminatory Action:
 - (i) Laws and Regulations of general application, including an increase of Taxes of general application, or any action of the Government of Ontario pursuant thereto;
 - (ii) any such statute that prior to five (5) Business Days prior to the date of submission of the Proposal in response to the GTA West Trafalgar RFP:
 - (A) has been introduced as a bill in the Legislative Assembly of Ontario in a similar form as such statute takes when it has legal effect, provided that any amendments made to such bill in becoming such statute do not have a Material Adverse Effect on the Supplier; or

- (B) has been made public in a discussion or consultation paper, press release or announcement issued by the Ontario Power Authority, the Government of Ontario, and/or the Ministry of Energy that appeared on 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; and
- (iii) any of such regulations that prior to five (5) Business Days prior to the date of submission of the Proposal in response to the GTA West Trafalgar RFP:
 - (A) have been published in the Ontario Gazette but by the terms of such regulations come into force on or after five (5) Business Days prior to the date of execution of this Agreement, 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.

13.2 Consequences of Discriminatory Action

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

- (a) the amount of the increase in the costs that the Supplier would reasonably be expected to incur in the delivery of the 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
- (b) 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.

13.3 Notice of Discriminatory Action

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

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

- (b) If the Buyer wishes to dispute the occurrence of a Discriminatory Action, the Buyer shall give a notice of dispute (the “**Notice of Dispute**”) to the Supplier, stating the grounds for such dispute, within thirty (30) days after the date of receipt of the Notice of Discriminatory Action or within thirty (30) days after the date of receipt of the further supporting particulars, as applicable.
- (c) If neither the Notice of Discriminatory Action nor the Notice of Dispute has been withdrawn within thirty (30) days after the date of receipt of the Notice of Dispute by the Supplier, the dispute of the occurrence of a Discriminatory Action shall be submitted to mandatory and binding arbitration in accordance with Section 16.2 without first having to comply with Section 16.1.
- (d) If the Buyer does not dispute the occurrence of a Discriminatory Action or the amount of Discriminatory Action Compensation claimed in the Notice of Discriminatory Action, the Buyer shall pay to the Supplier the amount of Discriminatory Action Compensation claimed within sixty (60) days after the date of receipt of the Notice of Discriminatory Action. If a Notice of Dispute has been

given, the Buyer shall pay to the Supplier the Discriminatory Action Compensation Amount determined in accordance with Section 13.3(e) not later than sixty (60) days after the later of the date on which the dispute with respect to the occurrence of a Discriminatory Action is resolved and the date on which the Discriminatory Action Compensation Amount is determined.

(e)

- (i) If the Buyer wishes to dispute the amount of the Discriminatory Action Compensation, the Buyer shall give to the Supplier a notice (the “**Discriminatory Action Compensation Notice**”) setting out an amount that the Buyer proposes as the Discriminatory Action Compensation (the “**Discriminatory Action Compensation Amount**”), if any, together with details of the computation. If the Supplier does not give notice (the “**Supplier Non-acceptance Notice**”) to the Buyer stating that it does not accept the Discriminatory Action Compensation Amount proposed within thirty (30) days after the date of receipt of the Discriminatory Action Compensation Notice, the Supplier shall be deemed to have accepted the Discriminatory Action Compensation Amount so proposed. If the Supplier Non-acceptance Notice is given, the Buyer and the Supplier shall attempt to determine the Discriminatory Action Compensation Amount through negotiation, and any amount so agreed in writing shall be the Discriminatory Action Compensation Amount. If the Buyer and the Supplier do not agree in writing upon the Discriminatory Action Compensation Amount within sixty (60) days after the date of receipt of the Supplier Non-acceptance Notice, the Discriminatory Action Compensation Amount shall be determined in accordance with the procedure set forth in Section 13.3(e)(ii) and Sections 16.1 and 16.2 shall not apply to such determination.
- (ii) If the negotiation described in Section 13.3(e)(i) does not result in an agreement in writing on the Discriminatory Action Compensation Amount, either the Buyer or the Supplier may, after the later of (A) the date on which a dispute with respect to the occurrence of a Discriminatory Action is resolved and (B) the date of the expiry of a period of thirty (30) days after the date of receipt of the Supplier Non-acceptance Notice, by notice to the other require the dispute to be resolved by arbitration as set out below. The Buyer and the Supplier shall, within thirty (30) days after the date of receipt of such notice of arbitration, jointly appoint a valuator to determine the Discriminatory Action Compensation Amount. The valuator so appointed shall be a duly qualified business valuator where the individual responsible for the valuation has not less than ten (10) years’ experience in the field of business valuation. If the Buyer and the Supplier are unable to agree upon a valuator within such period, the Buyer and the Supplier shall jointly make application (provided that if a party does not participate in such application, the other party may make application alone) under the *Arbitration Act, 1991* (Ontario) to a judge of the Superior Court of Justice to appoint a valuator, and the provisions of the *Arbitration*

Act, 1991 (Ontario) shall govern such appointment. The valuator shall determine the Discriminatory Action Compensation Amount within sixty (60) Business Days after the date of his or her appointment. Pending a decision by the valuator, the Buyer and the Supplier shall share equally, and be responsible for their respective shares of, all fees and expenses of the valuator. The fees and expenses of the valuator shall be paid by the non-prevailing party. "Prevailing party" means the Party whose determination of the Discriminatory Action Compensation Amount is most nearly equal to that of the valuator's determination. The Supplier's and the Buyer's respective determinations of the Discriminatory Action Compensation Amount shall be based upon the Notice of Discriminatory Action and the Discriminatory Action Compensation Notice, as applicable.

- (iii) In order to facilitate the determination of the Discriminatory Action Compensation Amount by the valuator, each of the Buyer and the Supplier shall provide to the valuator such information as may be requested by the valuator, acting reasonably, and the Supplier shall permit the valuator and the valuator's representatives to have reasonable access during normal business hours to such information and to take extracts therefrom and to make copies thereof.
- (iv) The Discriminatory Action Compensation Amount as determined by the valuator shall be final and conclusive and not subject to any appeal.
- (f) Any amount to be paid under Section 13.3(d) shall bear interest at a variable nominal rate per annum equal on each day to the Interest Rate then in effect from the date of receipt of the Notice of Discriminatory Action to the date of payment.
- (g) Payment of the Discriminatory Action Compensation and interest thereon by the Buyer to the Supplier shall constitute full and final satisfaction of all amounts that may be claimed by the Supplier for and in respect of the occurrence of the Discriminatory Action and, upon such payment, the Buyer shall be released and forever discharged by the Supplier from any and all liability in respect of such Discriminatory Action.

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

If the Buyer wishes to remedy or cause to be remedied the occurrence of a Discriminatory Action, the Buyer must give notice to the Supplier within thirty (30) days after the later of the date of receipt of the Notice of Discriminatory Action and the date of the receipt by the Buyer of the further supporting particulars referred to in Section 13.3(b). If the Buyer gives such notice, the Buyer must remedy or cause to be remedied the Discriminatory Action within one hundred and eighty (180) days after the date of receipt of the Notice of Discriminatory Action or, if a Notice of Dispute has been given, within one hundred and eighty (180) days after the date of the final award pursuant to Section 16.2 to the effect that a Discriminatory Action occurred. If the Buyer remedies or causes to be remedied the Discriminatory Action in accordance with the preceding sentence, the Supplier shall have the right to obtain, without duplication, the amount that the Supplier would have the right to claim in respect of that Discriminatory Action pursuant

to Section 13.2, adjusted to apply only to the period commencing on the first day of the first calendar month following the date of the Discriminatory Action and expiring on the day preceding the day on which the Discriminatory Action was remedied.

ARTICLE 14 LIABILITY AND INDEMNIFICATION

14.1 Exclusion of Consequential Damages

Notwithstanding anything contained herein to the contrary, neither Party will be liable under this Agreement or under any cause of action relating to the subject matter of this Agreement for any special, indirect, incidental, punitive, exemplary or consequential damages, including loss of profits (save and except as provided in Section 13.2), loss of use of any property or claims of customers or contractors of the Parties for any such damages.

14.2 Liquidated Damages

Nothing in this Article shall reduce a Party's claim for liquidated damages pursuant to Sections 2.3(a)(vi), 2.5, 6.3(c), 10.2(b) and 10.2(e). The Supplier acknowledges and agrees with the Buyer that the actual damages incurred by the Buyer and Electricity consumers as a result of a failure by the Supplier to meet its obligations under this Agreement are impossible to definitively quantify and the Supplier further agrees that the payment of the liquidated damages set forth in this Agreement constitutes a fair and reasonable means of compensating the Buyer for damages likely to be incurred as a result of such delays and does not constitute a penalty.

14.3 Buyer Indemnification

In addition to the indemnity provided by the Supplier in Section 2.8(b), the Supplier shall indemnify, defend and hold the Buyer, the Ontario Power Authority (to the extent that it is no longer the Buyer), the Government of Ontario, the members of the Government of Ontario's Executive Council, and their respective Affiliates, and each of the foregoing Persons' respective directors, officers, employees, shareholders, advisors, and agents (including contractors and their employees) (collectively, the "**Indemnitees**") harmless from and against any and all claims, demands, suits, losses, damages, liabilities, penalties, obligations, payments, costs and expenses and accrued interest thereon (including the costs and expenses of, and accrued interest on, any and all actions, suits, proceedings for personal injury (including death) or property damage, assessments, judgments, settlements and compromises relating thereto and reasonable lawyers' fees and reasonable disbursements in connection therewith) (each, an "**Indemnifiable Loss**"), asserted against or suffered by the Indemnitees relating to, in connection with, resulting from, or arising out of (i) any occurrence or event relating to the Contract Facility, except to the extent that any injury or damage is attributable to the negligence or wilful misconduct of the Indemnitees or the failure of the Indemnitees to comply with Laws and Regulations and (ii) any breach by the Supplier of any representations, warranties, and covenants contained in this Agreement, except to the extent that any injury or damage is attributable to the negligence or wilful misconduct of the Indemnitees. For greater certainty, in the event of contributory negligence or other fault of the Indemnitees, then such Indemnitees shall not be indemnified hereunder in the proportion that the Indemnitees' negligence or other fault contributed to any Indemnifiable Loss.

14.4 Defence of Claims

- (a) Promptly after receipt by the Indemnitees of any Claim or notice of the commencement of any action, administrative or legal proceeding, or investigation as to which the indemnity provided for in Section 14.3 may apply, the Buyer shall notify the Supplier in writing of such fact. The Supplier shall assume the defence thereof with counsel designated by the Supplier and satisfactory to the affected Indemnitees, acting reasonably; provided, however, that if the defendants in any such action include both the Indemnitees and the Supplier and the Indemnitees shall have reasonably concluded that there may be legal defences available to them which are different from or additional to, or inconsistent with, those available to the Supplier, the Indemnitees shall have the right to select separate counsel satisfactory to the Supplier acting reasonably (at no additional cost to the Indemnitees) to participate in the defence of such action on behalf of the Indemnitees. The Supplier shall promptly confirm that it is assuming the defence of the Indemnitees by providing written notice to the Indemnitees. Such notice shall be provided no later than five (5) days prior to the deadline for responding to any Claim relating to any Indemnifiable Loss.
- (b) Should any of the Indemnitees be entitled to indemnification under Section 14.3 as a result of a Claim by a third party, and the Supplier fails to assume the defence of such Claim (which failure shall be assumed if the Supplier fails to provide the notice prescribed by Section 14.4(a)), the Indemnitees shall, at the expense of the Supplier, contest (or, with the prior written consent of the Supplier, settle) such Claim, provided that no such contest need be made and settlement or full payment of any such Claim may be made without consent of the Supplier (with the Supplier remaining obligated to indemnify the Indemnitees under Section 14.3), if, in the written opinion of an independent third party counsel chosen by the Company Representatives, such Claim is meritorious. If the Supplier is obligated to indemnify any Indemnitees under Section 14.3, the amount owing to the Indemnitees will be the amount of such Indemnitees' actual out-of-pocket loss net of any insurance proceeds received or other recovery.

14.5 Joint and Several Liability

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

ARTICLE 15 CONTRACT OPERATION AND ADMINISTRATION

15.1 Company Representative

The Supplier and the Buyer shall each appoint, from time to time, a representative (a "**Company Representative**"), who shall be duly authorized to act on behalf of the Party that has made the appointment, and with whom the other Party may consult at all reasonable times, and whose

instructions, requests, and decisions, provided the same are in writing signed by the respective Company Representative, shall be binding on the appointing Party as to all matters pertaining to this Agreement. The Company Representatives shall not have the power or authority to amend this Agreement.

15.2 Record Retention; Audit Rights

The Supplier and the Buyer shall both keep complete and accurate records and all other data required by either of them for the purpose of proper administration of this Agreement. All such records shall be maintained as required by Laws and Regulations but for no less than for seven (7) years after the creation of the record or data. The Supplier and the Buyer, on a confidential basis as provided for in Article 8 of this Agreement, shall provide reasonable access to the relevant and appropriate financial and operating records and data kept by it relating to this Agreement reasonably required for the other Party to comply with its obligations to Governmental Authorities or to verify or audit billings or to verify or audit information provided in accordance with this Agreement. A Party may use its own employees for purposes of any such review of records provided that those employees are bound by the confidentiality requirements provided for in Article 8. Alternatively, a Party may at its own expense appoint an auditor to conduct its audit. The Party seeking access to such records in this manner shall pay the fees and expenses associated with use of the third party auditor.

15.3 Reports to the Buyer

- (a) The Supplier shall deliver to the Buyer a copy of all reports, plans and notices that the Supplier is required to provide to the IESO with respect to Outages, at the same time or within one (1) Business Day after such reports, plans and notices are delivered by the Supplier to the IESO.
- (b) In addition to the documentation provided in Section 15.3(a), the Supplier shall deliver at the times specified below the following documents, reports, plans and notices to the Buyer:
 - (i) no later than sixty (60) days before the Commercial Operation Date, the Supplier shall provide to the Buyer an operating plan for the Contract Facility for the Term, including a long term major maintenance schedule, in the form set out in Exhibit Q (the “**Long Term Operating Plan**”). The Supplier shall provide the Buyer with copies of any amendments or modifications to the Long Term Operating Plan within ten (10) Business Days of such amendments or modifications being made. The Long Term Operating Plan shall be consistent with Good Engineering and Operating Practices and is not a guarantee of the timing of Planned Outages;
 - (ii) no later than:
 - (A) the date that the Long Term Operating Plan is to be provided to the Buyer in accordance with Section 15.3(b)(i), and
 - (B) in respect of the second Contract Year and each Contract Year thereafter, sixty (60) days prior to each Contract Year,

the Supplier shall provide to the Buyer an operating plan for the Facility for the succeeding Contract Year, in the form set out in Exhibit R (the “**Annual Operating Plan**”). The Annual Operating Plan shall include a schedule of Planned Outages for that twelve (12) month period (together with the Supplier’s estimate of the expected duration of each Planned Outage) which shall be consistent with Good Engineering and Operating Practices, consistent with the Long Term Operating Plan and, to the extent the Supplier is required to do so by the IESO Market Rules, coordinated with and approved by the IESO. The Supplier may, on not less than ten (10) Business Days’ prior notice to the Buyer, amend the Annual Operating Plan;

- (iii) prompt notice to the Buyer of any Outage other than a Planned Outage, or any anticipated Outage other than a Planned Outage. Any notice under this subsection shall include a statement of the cause of such Outage, the proposed corrective action and the Supplier’s estimate of the expected duration of such Outage. The Supplier shall use Commercially Reasonable Efforts to promptly end or reduce the length of such Outage;
- (iv) thirty (30) days prior written notice (or such lesser number of days as is possible in the circumstances) to the Buyer of any Planned Outage of the Contract Facility.

- (c) All Outages shall take place in accordance with the notices of Outages provided by the Supplier to the Buyer under this Section 15.3.

15.4 Inspection of Contract Facility

- (a) The Buyer and its authorized agents and representatives shall, at all times upon two (2) Business Days’ prior notice, at any time after execution of this Agreement, have access to the Contract Facility and every part thereof during regular business hours and the Supplier shall, and shall cause all personnel operating and managing the Contract Facility, to furnish the Buyer with all reasonable assistance in inspecting the Contract 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 Contract Facility, as applicable, and shall not interfere with the operation of the Contract Facility.
- (b) The inspection of the Contract Facility by or on behalf of the Buyer shall not relieve the Supplier of any of its obligations to comply with the terms of this Agreement. No Supplier Event of Default by the Supplier will be waived or deemed to have been waived by any inspection by or on behalf of the Buyer. In no event will any inspection by the Buyer hereunder be a representation that there has been or will be compliance with this Agreement and Laws and Regulations.

15.5 Inspection Not Waiver

- (a) Failure by the Buyer to inspect the Contract Facility or any part thereof under Section 15.4, or to exercise its audit rights under Section 15.2, shall not constitute a waiver of any of the rights of the Buyer hereunder. An inspection or audit not followed by a notice of a Supplier Event of Default shall not constitute or be deemed to constitute a waiver of any Supplier Event of Default, nor shall it constitute or be deemed to constitute an acknowledgement that there has been or will be compliance by the Supplier with this Agreement.
- (b) Failure by the Supplier to exercise its audit rights under Section 15.2 shall not constitute or be deemed to constitute a waiver of any of the rights of the Supplier hereunder. An audit not followed by a notice of a Buyer Event of Default shall not constitute or be deemed to constitute a waiver of any Buyer Event of Default, nor shall it constitute or be deemed to constitute an acknowledgement that there has been or will be compliance by the Buyer with this Agreement.

15.6 Capacity Check Tests

- (a) The Buyer shall have the option, exercisable on no more than two (2) occasions per Contract Year, to require the Supplier, within ten (10) Business Days after written notice has been delivered to the Supplier, provided it is not during an Outage, to conduct a test (the “**Capacity Check Test**”), at the Supplier’s sole cost and expense, that may be witnessed by the Buyer or its Representative, to confirm the ability of the Contract Facility to produce the Contract Capacity, as described below. For purposes of Section 16.7, the Supplier shall be entitled, without the consent of the Buyer, to schedule and conduct, at its sole cost and expense, Capacity Check Tests to demonstrate compliance with the test conditions set out in Exhibit M. If the Buyer has consented to a Contract Facility Amendment pursuant to Section 2.1(c), the Supplier may request, within ten (10) Business Days after written notice has been delivered to the Buyer, a Capacity Check Test. The Capacity Check Test will be carried out in accordance with a test protocol (the “**Test Protocol**”) which will include the format of the report to be prepared in respect of the Capacity Check Test and which Test Protocol is to be prepared by the Supplier and submitted in writing to the Buyer for approval within three (3) months after the Contract Facility has attained Commercial Operation. The measurements of the Capacity Check Test shall be made using high accuracy calibrated instruments and recording systems or Facility instrumentation, including tariff meters for Electricity acceptable to the Buyer, acting reasonably. Each Capacity Check Test consists of the Contract Facility generating Electricity for four (4) continuous hours during a period designated by the Supplier on prior written notice to the Buyer in advance as a test period, subject to coordination and approval of the IESO, and shall be evaluated based on calculation of the generator output at the Delivery Point net of any Station Service Loads in accordance with the Metering Plan. The Supplier acknowledges and agrees that the Contract Capacity, the Electricity output of the Contract Facility and the Station Service Loads, as may be measured by the Capacity Check Test, shall not be adjusted for ambient weather conditions. For greater certainty, the Capacity Check Test shall be based on either the Summer Contract Capacity or the Winter Contract Capacity

depending on the calendar month during which the Capacity Check Test is conducted.

- (b) If the Capacity Check Test is interrupted by an event of Force Majeure, or if at any point during the Capacity Check Test the air temperature, as reported at the Environment Canada weather station that is physically nearest to the Facility, exceeded (i) in respect of a Capacity Check Test conducted in the months of May through October, inclusive, 30.0 degrees Celsius or (ii) in respect of a Capacity Check Test conducted in the months of November through April, inclusive, 15.0 degrees Celsius, then the Supplier may, at the Supplier's sole cost and expense, re-perform the Capacity Check Test within ten (10) Business Days after the receipt by the Supplier of the Capacity Confirmation relating to such Capacity Check Test from the Buyer.
- (c) The Supplier shall at the Supplier's sole cost and expense and within ten (10) Business Days, or as provided in the Test Protocol, after completion of the Capacity Check Test prepare and submit to the Buyer a written Capacity Check Test report that includes the data collected during the test period, computation of test data and the test results. The Buyer shall provide to the Supplier within ten (10) Business Days after receipt of the Capacity Check Test report from the Supplier, written confirmation of the Electricity output for each hour during the Capacity Check Test (the "**Capacity Confirmation**").
- (d) To pass the Capacity Check Test, the Electricity output (in MWh) for each hour of the Capacity Check Test, divided by one hour, must be equal to or greater than the Contract Capacity, in which case 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 Capacity Check Test. If the Supplier has not passed the Capacity Check Test for each one of the four (4) continuous hours, then the Supplier shall, at the Supplier's cost and expense, perform a further Capacity Check Test (the "**Further Capacity Check Test**") within thirty (30) Business Days after the receipt by the Supplier of the Capacity Confirmation from the Buyer, on the same terms and conditions as the Capacity Check Test described in Section 15.6(a). If the total Electricity output of the Contract Facility for the four (4) continuous hours of each of the Capacity Check Test and the Further Capacity Check Test, as stated in their respective Capacity Confirmations, divided by the number of hours in each of the respective check tests (each an "**Average Test Capacity**"), are both less than eighty percent (80%) of the Contract Capacity, then this shall be considered a Supplier Event of Default. For purposes of calculating the Average Test Capacity in this Section 15.6, the Electricity output from each hour shall not exceed a maximum amount equal to the Contract Capacity multiplied by one hour.
- (e) If the Further Capacity Check Test shows that the Average Test Capacity was between eighty percent (80%) and one hundred percent (100%) of the Contract Capacity then the Capacity Reduction Factor for purposes of Exhibit J shall be reduced as set out below, 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 (i) 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 (ii) the Contract Capacity set out in Exhibit B.

- (f) If Section 15.6(e) is applicable, then the Supplier shall perform a further Capacity Check Test (the “**Final Capacity Check Test**”) at the Supplier’s cost and expense within ten (10) Business Days after written notice has been delivered by the Supplier to the Buyer, no earlier than one month and no later than one year after the date of the 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 Section 15.6(a) and including the delivery of the Capacity Confirmation in relation to the Final Capacity Check Test. If the total Electricity output of the Contract Facility for the four (4) 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 (which result shall also be an “**Average Test Capacity**” as calculated pursuant to Section 15.6(d)):
 - (i) is less than ninety-five percent (95%) of the Contract Capacity, then this shall be considered a Supplier Event of Default;
 - (ii) is equal or greater to ninety-five percent (95%) and less than one hundred percent (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 (i) the Average Test Capacity in relation to the Final Capacity Check Test, and the denominator of which is (ii) the Contract Capacity set out in Exhibit B; and
 - (iii) is equal to one hundred percent (100%) of the Contract Capacity, then 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.

15.7 Notices

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

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

 Attention: **[insert details]**
 Facsimile: **[insert details]**
 E-mail: **[insert details]**

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

Addendum No. 2: August 29, 2006

Attention: [insert details]
Facsimile: [insert details]
E-mail: [insert details]

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

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

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

- (b) Notices shall be delivered or transmitted as set out below, and shall be considered to have been received by the other Party:
- (i) on the date of delivery if delivered by hand or by courier prior to 5:00 p.m. (local time of the recipient) on a Business Day and otherwise on the next following Business Day;
 - (ii) in those circumstances where electronic transmission (other than transmission by facsimile) is expressly permitted under this Agreement, on the date of delivery if delivered prior to 5:00 p.m. (local time of the recipient) on a Business Day and otherwise on the next following Business Day, provided that a copy of such notice is also delivered by regular post within a reasonable time thereafter; and
 - (iii) on the third (3rd) Business Day following the date of transmission by facsimile, if transmitted prior to 5:00 p.m. (local time of the recipient) on a Business Day and otherwise on the fourth (4th) following Business Day, provided that a copy of such notice is also delivered by regular post within a reasonable time thereafter.
- (c) Notwithstanding Section 15.7(b):
- (i) any notices of an Event of Default and termination of this Agreement shall only be given by hand or courier delivery; and
 - (ii) if regular post service, facsimile, or other form of electronic communication is interrupted by strike, slowdown, a Force Majeure event or other cause, a notice, direction or other instrument sent by the impaired means of communication will not be deemed to be received until actually received, and the Party sending the notice shall utilize any other such service which has not been so interrupted to deliver such notice.

ARTICLE 16 MISCELLANEOUS

16.1 Informal Dispute Resolution

If either Party considers that a dispute has arisen under or in connection with this Agreement that the Parties cannot resolve, then such Party may deliver a notice to the other Party describing the nature and the particulars of such dispute. Within ten (10) Business Days following delivery of such notice to the other Party, a senior executive (Senior Vice-President or higher) from each Party shall meet, either in person or by telephone (the “**Senior Conference**”), to attempt to resolve the dispute. Each senior executive shall be prepared to propose a solution to the dispute. If, following the Senior Conference, the dispute is not resolved, the dispute may be settled by arbitration pursuant to Section 16.2, if agreed to by both Parties.

16.2 Arbitration

Except as otherwise specifically provided for in this Agreement, any matter in issue between the Parties as to their rights under this Agreement may be decided by arbitration provided, however, that the Parties have first completed a Senior Conference pursuant to Section 16.1. Any dispute to be decided by arbitration will be decided by a single arbitrator appointed by the Parties or, if such Parties fail to appoint an arbitrator within fifteen (15) days following the agreement to refer the dispute to arbitration, upon the application of either of the Parties, the arbitrator shall be appointed by a Judge of the Superior Court of Justice (Ontario) sitting in the Judicial District of Toronto Region. The arbitrator shall not have any current or past business or financial relationships with any Party (except prior arbitration). The arbitrator shall provide each of the Parties an opportunity to be heard and shall conduct the arbitration hearing in accordance with the provisions of the *Arbitration Act, 1991* (Ontario). Unless otherwise agreed by the Parties, the arbitrator shall render a decision within ninety (90) days after the end of the arbitration hearing and shall notify the Parties in writing of such decision and the reasons therefor. The arbitrator shall be authorized only to interpret and apply the provisions of this Agreement and shall have no power to modify or change this Agreement in any manner. The decision of the arbitrator shall be conclusive, final and binding upon the Parties. The decision of the arbitrator may be appealed solely on the grounds that the conduct of the arbitrator, or the decision itself, violated the provisions of the *Arbitration Act, 1991* (Ontario) or solely on a question of law as provided for in the *Arbitration Act, 1991* (Ontario). The *Arbitration Act, 1991* (Ontario) shall govern the procedures to apply in the enforcement of any award made. If it is necessary to enforce such award, all costs of enforcement shall be payable and paid by the Party against whom such award is enforced. Unless otherwise provided in the arbitral award to the contrary, each Party shall bear (and be solely responsible for) its own costs incurred during the arbitration process, and each Party shall bear (and be solely responsible for) its equal share of the costs of the arbitrator. Each Party shall be otherwise responsible for its own costs incurred during the arbitration process.

16.3 Business Relationship

Each Party shall be solely liable for the payment of all wages, taxes, and other costs related to the employment by such Party of Persons who perform this Agreement, including all federal, provincial, and local income, social insurance, health, payroll and employment taxes and statutorily-mandated workers' compensation coverage. None of the Persons employed by either

Party shall be considered employees of the other Party for any purpose. Nothing in this Agreement shall create or be deemed to create a relationship of partners, joint venturers, fiduciary, principal and agent or any other relationship between the Parties.

16.4 Binding Agreement

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

16.5 Assignment

- (a) Except as set out below and as provided in Article 12, neither this Agreement nor any of the rights, interests or obligations under this Agreement may be assigned by either Party, including by operation of Laws and Regulations, without the prior written consent of the other Party, which consent shall not be unreasonably withheld.
- (b) The Supplier may, subject to compliance with Laws and Regulations and provided that there is not a Supplier Event of Default that has not been remedied, assign this Agreement without the consent of the Buyer to an Affiliate acquiring the Contract Facility; provided, however, that no such assignment by the Supplier or any of its successors or permitted assigns hereunder shall be valid or effective unless and until such Affiliate agrees with the Buyer in writing to assume all of the Supplier's obligations and be bound by the terms of this Agreement, and the arrangements and obligations of the Supplier set forth in Article 6 have been met in accordance with the terms of Article 6. If a valid assignment of this Agreement is made by the Supplier in accordance with this Section 16.5, the Buyer acknowledges and agrees that, upon such assignment and assumption and notice thereof by the assignor to the Buyer, the assignor shall be relieved of all its duties, obligations and liabilities hereunder.
- (c) If the Supplier assigns this Agreement to a non-resident of Canada (the "**Assignee**"), as that term is defined in the ITA, and the Buyer incurs any additional Taxes, at any time thereafter, solely as the result of such assignment, then payments under this Agreement by the Buyer shall be reduced by the amount of such additional or withholding Taxes and the Buyer shall remit such additional or withholding Taxes to the applicable taxing authorities. The Buyer shall within sixty (60) days after remitting such Taxes, notify the Assignee in writing, providing reasonable detail of such payment so that the Assignee may claim any applicable rebates, refunds or credits from the applicable taxing authorities. If after the Buyer has paid such amounts, the Buyer receives a refund, rebate or credit on account of such Taxes, then the Buyer shall promptly remit such refund, rebate or credit amount to the Assignee.
- (d) The Ontario Power Authority shall have the right to assign this Agreement and all benefits and obligations hereunder for the balance of the Term without the

consent of the Supplier to an assignee with a Credit Rating no lower than that set forth in the fourth (4th) row of the table in Section 6.4(b)(i), which such assignee shall assume the obligations and liability of the Ontario Power Authority under this Agreement and be novated into this Agreement in the place and stead of the Ontario Power Authority (except for the Ontario Power Authority's obligation in Section 16.5(d)(iii) which will remain in force), provided that the assignee agrees in writing to assume and be bound by the terms and conditions of this Agreement, and further agrees to provide the Secured Lender with a written acknowledgement of the Secured Lender's rights in relation to this Agreement in the form set out in Exhibit N, whereupon:

- (i) the representation set forth in Section 7.2(a) shall apply to the assignee with all necessary amendments to reflect the form and the manner in which the assignee was established;
 - (ii) all of the representations set forth in Section 7.2 shall be deemed to be made by the assignee to the Supplier at the time of such assignment and assumption; and
 - (iii) the Ontario Power Authority shall be relieved of all obligations and liability arising pursuant to this Agreement; notwithstanding the foregoing, the Ontario Power Authority shall remain liable to the Supplier for remedying any payment defaults under Section 10.3(a) before any such payment default becomes a Buyer Event of Default, and shall remain liable for any obligations and liabilities of the assignee arising from any Buyer Event of Default. Any notice required to be given under Sections 10.3 and 10.4(a) shall be given to the assignee and to the Ontario Power Authority. The time periods in Section 10.3 shall not begin to run until both the assignee and the Ontario Power Authority have been so notified.
- (e) The Ontario Power Authority shall have the right to assign this Agreement and all benefits and obligations hereunder from time to time throughout the Term for a period less than the balance of the Term (the "**Assignment Period**") without the consent of the Supplier to an assignee with a Credit Rating no lower than that set forth in the fourth (4th) row of the table in Section 6.4(b)(i), which such assignee shall assume the obligations of the Ontario Power Authority under this Agreement and be novated into this Agreement in the place and stead of the Ontario Power Authority (except for the Ontario Power Authority's obligation in Section 16.5(e)(iii) which will remain in force), provided that the assignee agrees in writing to assume and be bound by the terms and conditions of this Agreement, and further agrees to provide the Secured Lender with a written acknowledgement of the Secured Lender's rights in relation to this Agreement in the form set out in Exhibit N, whereupon:
- (i) the representation set forth in Section 7.2(a) shall apply to the assignee with all necessary amendments to reflect the form and the manner in which the assignee was established;

- (ii) all of the representations set forth in Section 7.2 shall be deemed to be made by the assignee to the Supplier at the time of such assignment and assumption;
- (iii) the Ontario Power Authority shall be relieved of all obligations and liability arising pursuant to this Agreement; notwithstanding the foregoing, the Ontario Power Authority shall remain liable to the Supplier for remedying any payment defaults under Section 10.3(a) before any such payment default becomes a Buyer Event of Default, and shall remain liable to the Supplier for any obligations and liabilities of the assignee arising from any Buyer Event of Default. Any notice required to be given under Sections 10.3 and 10.4(a) shall be given to the assignee and to the Ontario Power Authority. The time periods in Section 10.3 shall not begin to run until both the assignee and the Ontario Power Authority have been so notified; and
- (iv) upon the expiry of the Assignment Period:
 - (A) this Agreement, without requiring the execution of any assignment, consent or other documentation of any nature, shall automatically revert and be assigned back to the Ontario Power Authority;
 - (B) the assignee shall remain responsible to the Supplier for all obligations and liabilities incurred or accrued by the assignee during the Assignment Period; and
 - (C) the Ontario Power Authority, as Buyer pursuant to the automatic assignment back to it, shall be deemed to be in good standing under this Agreement, provided that such good standing shall not relieve the Ontario Power Authority from any obligation to the Supplier pursuant to Section 16.5(e)(iii) that arose prior to the expiry of the Assignment Period.

16.6 No Change of Control

- (a) The Supplier shall not permit or allow a change of Control of the Supplier, except with the prior written consent of the Buyer, which consent may not be unreasonably withheld. It shall not be unreasonable to withhold such consent if the change of Control will have or is likely to have, as determined by the Buyer acting reasonably, a Material Adverse Effect on the Supplier's ability to perform its obligations under this Agreement, in which case such consent may be withheld by the Buyer.
- (b) For the purposes of Sections 16.6(a) and 16.7(a), a change of Control shall exclude a change in ownership of any shares or units of ownership that are listed on a recognized stock exchange, provided that such shares or units of ownership are not those of an entity that directly owns the Contract Facility whose special or sole purpose is the ownership of the Facility or the Contract Facility and other

generation facilities under a CES Contract or other bilateral arrangements with the Buyer similar in nature to this Agreement.

16.7 No Assignment or Change of Control for Specified Period

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

- (a) any assignment of this Agreement by the Supplier;
- (b) any change of Control in respect of the Supplier;
- (c) fifty (50%) or more of securities or ownership interests carrying votes or ownership interests in respect of the Supplier be directly or indirectly held, whether as owner or other beneficiary and other than solely as the beneficiary of an unrealized security interest, individually or collectively by any Person or Persons who, as of the date of this Agreement, did not directly or indirectly hold any of such securities or ownership interests in respect of the Supplier, whether as owner or other beneficiary and other than solely as the beneficiary of an unrealized security interest,

be permitted until the earlier of: (i) the third (3rd) anniversary of the Term Commencement Date; and (ii) the date that the Contract Facility has achieved the test conditions set out in Exhibit M. For greater certainty, a change of Control in respect of the Supplier referenced in Section 16.7(b) shall include a change from no Person having Control of the Supplier to any Person having Control of the Supplier.

Notwithstanding the foregoing, for a period commencing on the date of this Agreement and ending the earlier of (i) six (6) months following the date of this Agreement and (ii) Financial Closing, the Supplier may, without the Buyer's further consent, assign all (but not less than all) of the Supplier's interest in this Agreement to a partnership in which the Supplier holds not less than a fifty percent (50%) interest, provided that: (1) the Supplier shall provide the Buyer with written notice of any such assignment; and (2) all partners of such partnership agree with the Buyer in writing to be jointly and severally liable to the Buyer for all the obligations and liabilities of the Supplier hereunder.

16.8 Survival

The provisions of Sections 2.8(b), 2.12(f), 4.4, 4.5, 4.6, Article 5, Article 8, Sections 10.2, 10.4, 10.5, and 12.2(g), Article 14, Sections 15.2, 16.1, 16.2, and 16.5(c) shall survive the expiration of the Term or earlier termination of this Agreement. The expiration of the Term or a termination of this Agreement shall not affect or prejudice any rights or obligations that have accrued or arisen under this Agreement prior to the time of expiration or termination and such rights and obligations shall survive the expiration of the Term or the termination of this Agreement for a period of time equal to the applicable statute of limitations.

16.9 Counterparts

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

16.10 Additional Rights of Set-Off

- (a) In addition to its other rights of set-off under this Agreement or otherwise arising in law or equity, the Buyer may set off any amounts owing by the Supplier to the Buyer in connection with Sections 1.7(e), 1.8(e), 1.9(d), 1.10(c), 2.3, 2.5, 2.8(b), 2.10, 4.2, 4.4, 5.3, 10.2, 10.5, and 14.3 against any monies owed by the Buyer to the Supplier in connection with Sections 1.7(e), 1.8(e), 1.9(d), 1.10(c), 2.3, 4.2, 4.5, 4.6, 5.3, 10.5, and 13.3(d).
- (b) In addition to its other rights of set-off under this Agreement or otherwise arising in law or equity, the Supplier may set-off any amounts owing by the Buyer to the Supplier in connection with Sections 1.7(e), 1.8(e), 1.9(d), 1.10(c), 2.3, 4.2, 4.5, 4.6, 5.3, 10.5, and 13.3(d) against any monies owed by the Supplier to the Buyer in connection with Sections 1.7(e), 1.8(e), 1.9(d), 1.10(c), 2.3, 2.5, 2.8(b), 2.10, 4.2, 4.4, 5.3, 10.2, 10.5, and 14.3.

16.11 Rights and Remedies Not Limited to Contract

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

16.12 Time of Essence

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

16.13 Further Assurances

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

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

[INSERT NAME OF SUPPLIER]

ONTARIO POWER AUTHORITY

By: _____

By: _____

Name:

Name:

Title:

Title:

I have authority to bind the corporation.

I have authority to bind the corporation.

Addendum No. 2: August 29, 2006

**EXHIBIT A
PROJECT DESCRIPTION**

Name of Facility: [insert details]

Nameplate Capacity: [insert details]

**Municipal Location
and Address:** [insert details]

**Connection Point and
Circuit Designation:** [insert details]

**Description of
Generation
Technology:** [insert details]

**Brief Description of
Contract Facility:** [insert details]

Detailed Description of Contract Facility:

1.0 Overview

[insert details]

1.1 Site Description

[insert details]

1.2 Project Design and Major Equipment

[insert details]

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

[insert details]

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

[insert details]

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

[insert details]

1.6 Plant General Arrangement

[insert details]

**EXHIBIT B
 CONTRACT CAPACITY, NET REVENUE REQUIREMENT,
 AND OTHER STATED VARIABLES**

CONFIDENTIAL

Net Revenue Requirement	\$ [●] /MW-month
Net Revenue Requirement Indexing Factor	[●] %
Contract Heat Rate	Summer Contract Heat Rate: [●]MMBTU/MWh (HHV) Winter Contract Heat Rate: [●]MMBTU/MWh (HHV)
Contract Capacity	Summer Contract Capacity: [●] MW Winter Contract Capacity: [●] MW
Annual Average Contract Capacity	[●] MW
Nameplate Capacity	[●] MW
Start-Up Costs	[●] MMBTU/start-up
O&M Costs	\$ [●]/MWh

Addendum No. 2: August 29, 2006

EXHIBIT C
FORM OF IRREVOCABLE STANDBY LETTER OF CREDIT

DATE OF ISSUE: ●

APPLICANT: **[Insert Name of Supplier]**

BENEFICIARY: Ontario Power Authority and its permitted assigns

AMOUNT: ●

EXPIRY DATE: ●

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

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

TYPE: IRREVOCABLE AND UNCONDITIONAL STANDBY LETTER OF CREDIT

Number:

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

"[Insert name of Supplier] is in breach of, or default under, the GTA West Trafalgar Clean Energy Supply Contract between the Beneficiary and the Applicant, and therefore the Beneficiary is entitled to draw upon the Credit in the amount of the draft attached hereto."

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

Partial drawings are permitted.

This Credit is issued in connection with the GTA West Trafalgar Clean Energy Supply Contract dated as of the ● day of ●, 2006 between the Beneficiary and **[insert name of Supplier]** (the "**GTA West Trafalgar Clean Energy Supply Contract**").

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

We agree with you that all drafts drawn under, and in compliance with the terms of this Credit will be duly honoured, if presented at the counters of **[insert the financial institution and financial institution's address, located in Toronto, Ontario]** at or before 5:00 pm (EST) on **[insert the expiry date]**.

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

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

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

- END -

[Insert name of Financial Institution]

By: _____
Authorized Signatory

Addendum No. 2: August 29, 2006

**EXHIBIT D
FORM OF GUARANTEE**

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

RECITALS:

- A. The Buyer and [**insert name of Supplier**], a ●, ● under the laws of ● (“**Supplier**”), have entered into the GTA West Trafalgar Clean Energy Supply Contract dated as of the ● day of ●, 2006 (as extended, amended, replaced and supplemented, collectively, the “**Agreement**”);
- B. The Guarantor will directly or indirectly benefit from the Agreement;
- C. Pursuant to the terms of the Agreement, the Buyer has required that the Guarantor shall deliver a guarantee of all payment obligations of the Supplier under the Agreement to the Buyer; and
- D. Capitalized terms used in this Guarantee but not otherwise defined herein have the meanings ascribed to them in the Agreement.

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

1. Guarantee

Subject to the terms and conditions hereof, the Guarantor absolutely, irrevocably and unconditionally guarantees to the Buyer the full and timely payment when due, whether at stated maturity, by acceleration or otherwise, of the payment or indemnity obligations of the Supplier: (i) under the Agreement or (ii) under any award or order of any binding arbitration or court of competent jurisdiction in respect of the Agreement, and interest thereon accrued as provided in the Agreement, irrespective of when such obligations were incurred (the “**Guaranteed Obligations**”); provided, however, that the applicable rate of interest shall never exceed the maximum rate permitted by law. The aggregate amount of the Guarantor’s liability under this Guarantee shall not exceed ● CANADIAN DOLLARS (Cdn. \$●) (the “**Maximum Guarantee Amount**”), plus reasonable legal fees and expenses payable by the Guarantor as provided herein. To the extent that Supplier fails to pay any Guaranteed Obligation, the Guarantor shall pay to the Buyer the amount due within ten (10) Business Days after demand for payment has been received by the Guarantor from the Buyer in writing in accordance with Section 11 hereof. The Guarantor shall also be liable for all reasonable out-of-pocket expenses (including the legal fees and expenses of the Buyer) incurred to collect or enforce any of the Guaranteed Obligations; provided however, that such legal fees and expenses shall be payable by the Guarantor only to the extent that the Buyer is successful in enforcing the Guaranteed Obligations. This Guarantee shall be a continuing guarantee effective during the term of the Agreement and until fulfillment of, including payment in full of, the Guaranteed Obligations.

2. Demand

The Guarantor's obligation to make payment under this Guarantee shall arise forthwith after demand for payment has been received by the Guarantor from the Buyer in writing in accordance with Section 11 hereof and the Guarantor's liability for the Guaranteed Obligations shall bear interest in accordance with the terms and conditions set forth in the Agreement. The only condition (and no other document, proof or action other than as specifically provided in this Guarantee is necessary as a condition) of the Guarantor honouring its obligations under this Guarantee shall be such demand for payment. No notice of the Guaranteed Obligations need be given in any form to the Guarantor at any time and the Guarantor waives any such notice and the right to consent to the Guaranteed Obligations. In the event that any payment to the Buyer in respect of any Guaranteed Obligations is rescinded or must otherwise be returned for any reason whatsoever, including the insolvency or bankruptcy of the Supplier or otherwise, the Guarantor shall remain liable hereunder in respect of such Guaranteed Obligations as if such payment had not been made.

3. Waivers

- (a) The Guarantor waives any right to require as a condition to its obligations hereunder that:
 - (i) collateral be applied to the Guaranteed Obligations;
 - (ii) an action be brought against the Supplier or any Person other than the Guarantor should the Buyer seek to enforce the obligations of the Guarantor;
 - (iii) a judgment be rendered against the Supplier or any Person other than the Guarantor;
 - (iv) the Supplier or any other Person be joined in any action against the Guarantor;
 - (v) an action separate from one against the Guarantor be brought against the Supplier or any other Person or under any other security or guarantee held by the Buyer; and
 - (vi) any Supplier Event of Default under the Agreement has occurred.
- (b) The Guarantor further waives:
 - (i) all defences, set-offs, counterclaims, estoppels or privileges which might but for this provision exonerate or discharge it from its obligations hereunder; and
 - (ii) notice of acceptance of this Guarantee, notice of any liability to which it may apply, presentment, demand, protest and notice of dishonour, non-payment or non-performance and marshalling of assets.

- (c) The obligations of the Guarantor hereunder shall in no way be affected or impaired by reason, and the Guarantor waives its right to prior notice, of the happening from time to time of any of the following:
- (i) any invalidity or unenforceability of all or any part of the Guaranteed Obligations or any agreement or instrument relating to or securing the Guaranteed Obligations;
 - (ii) any insolvency, bankruptcy, reorganization, or dissolution, or any proceeding of the Supplier or any other guarantor, including without limitation, rejection of the Guaranteed Obligations in such bankruptcy;
 - (iii) extensions (whether or not material) of the time for payment or performance of all or any portion of the Guaranteed Obligations;
 - (iv) the modification or amendment in any manner (whether or not material) of the Agreement or the Guaranteed Obligations;
 - (v) subject to applicable statutes of limitations, any failure, delay or lack of diligence on the part of the Buyer or any other Person to enforce, assert or exercise any right, privilege, power or remedy conferred on the Buyer or any Person in the Agreement or at law, or any action on the part of the Buyer or such other Person granting an indulgence or extension of any kind;
 - (vi) the settlement or compromise of any Guaranteed Obligations;
 - (vii) the change of status, composition, structure or name of the Supplier, including by reason of merger, amalgamation, continuance, dissolution, reorganization or consolidation with or into another legal entity;
 - (viii) the release or waiver, by operation of law or otherwise, of the performance or observance by the Supplier of any express or implied covenant, term or condition in the Agreement or the enforceability of any covenant, term or condition thereof;
 - (ix) the release or waiver, by operation of law or otherwise, of the performance or observance by any co-guarantor, surety, endorser or other obligor of any express or implied covenant, term or condition to be performed or observed by it under the Agreement or any related document;
 - (x) the failure to acquire, perfect or maintain perfection of any lien on, or security interest in, any collateral provided by the Supplier to the Buyer or the release of any such collateral or the release, modification or waiver of, or failure to enforce, any pledge, security, guarantee, surety or other indemnity agreement in respect of such collateral;
 - (xi) the assignment of the Agreement and/or any rights thereunder from or by the Supplier to any other Person; and

- (xii) any other circumstance similar, or having a similar effect, as those set out in subsections 3(c)(i) through (xi) inclusive, which might constitute in whole or in part a defence available to the release and discharge of this Guarantee.

4. Limitation of Liability

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

5. Indemnity

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

6. Release of Guarantee

If Section 6.2(d) of the Agreement is applicable, then upon request by the Supplier, the Buyer shall promptly return this Guarantee to the Guarantor and the Guarantor shall be released and discharged of its obligations hereunder with respect to any Guaranteed Obligations existing or arising after the date that Section 6.2(d) of the Agreement is applicable.

7. Defences

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

8. Subrogation

The Guarantor shall not be or claim to be subrogated, in whole or in part, to the rights of the Buyer against the Supplier under the Agreement or otherwise, until (a) the Buyer shall have received full and indefeasible payment of all Guaranteed Obligations; and (b) either the

Agreement has been terminated or this Guarantee has been terminated pursuant to the terms hereof and the terms and conditions of the Agreement as applicable. Except as set out in this Section 8, nothing contained in this Guarantee shall limit the rights at law and in equity of the Guarantor to subrogation.

9. Representations

The Guarantor represents that:

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

10. No Waiver by the Buyer

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

11. Notices

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

(a) if to the Buyer, to:

●

Attention: ●

Facsimile: ●

if to the Guarantor, to:

●

Attention: ●

Facsimile: ●

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

12. Governing Law

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

13. Severability

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

14. Entire Agreement

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

15. Binding and Assignment

- (a) This Guarantee and all of the provisions hereof shall be binding upon and enure to the benefit of the parties and their respective successors and permitted assigns. This Guarantee is not intended to confer upon any other Person, except the parties and their respective successors and permitted assigns, any rights, interests, obligations or remedies under this Guarantee.
- (b) Neither this Guarantee nor any of the rights, interests or obligations under this Guarantee shall be assigned by either party without the prior written consent of the other party. Notwithstanding the foregoing, if the Buyer assigns the Agreement to an assignee pursuant to Sections 16.5(d) or 16.5(e) thereof, then the Buyer may assign this Guarantee to such assignee without the consent of the Guarantor or the Supplier.

16. Facsimile and Counterparts

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

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

[GUARANTOR]

[BUYER]

By: _____

By: _____

Name: ●

Name: ●

Title: ●

Title: ●

I have the authority to bind the Corporation.

By: _____

Name: ●

Title: ●

I/We have the authority to bind the Guarantor.

**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

For each Settlement Month in the first Contract Year, the Availability of the Contract Facility will not be tested for the purposes of Section 10.1(n) of the Agreement.

(b) Second and Third Contract Years

For the purposes of the formula to calculate Availability set out below, the Availability of the Contract Facility for each Settlement Month in 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 Contract Facility (expressed as a percentage figure).
OH	<p>is the total number of Outage Hours in the period between the Term Commencement Date and the last day of the applicable Settlement Month, subject to the following:</p> <p>(a) in determining Outage Hours, an hour may be a partial Outage Hour as a result of an Outage, including an inability of the Contract Facility to produce at the full Contract Capacity or as a result of an Outage lasting for a part but not all of an hour. An hour in which a partial Outage occurs will be counted as a fractional Outage Hour by subtracting from one the quotient obtained by dividing: (i) the maximum production in that hour that could have been achieved given the partial Outage (in MWh) by (ii) the Contract Capacity multiplied by one (1) hour (in MWh). This fraction will be the contribution of that hour to the Outage Hours in the given Settlement Month; and</p> <p>(b) Outage Hours shall not include the hours of any Outage where and to the extent that the Outage is caused by an event of Force Majeure.</p>
THM	is the total number of hours in the period between the Term Commencement Date and the last day of the applicable Settlement Month.

FMH	is the total number of hours in the period between the Term Commencement Date and the last day of the applicable Settlement Month during which the Supplier was subject to an event of Force Majeure.
-----	---

(c) Fourth Contract Year and Balance of Term

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

$AV = (THM - OH - FMH) / (THM - FMH) \times 100$	
where:	
AV	is the Availability of the Contract Facility (expressed as a percentage figure).
OH	<p>is the total number of Outage Hours in the most recent 36 month period which ends on the last day of the Settlement Month, subject to the following:</p> <p>(a) in determining Outage Hours, an hour may be a partial Outage Hour as a result of an Outage, including an inability of the Contract Facility to produce at the full Contract Capacity or as a result of an Outage lasting for a part but not all of an hour. An hour in which a partial Outage occurs will be counted as a fractional Outage Hour by subtracting from one the quotient obtained by dividing: (i) the maximum production in that hour that could have been achieved given the partial Outage (in MWh) by (ii) the Contract Capacity multiplied by one (1) hour (in MWh). This fraction will be the contribution of that hour to the Outage Hours in the given Settlement Month; and</p> <p>(b) Outage Hours shall not include the hours of any Outage where and to the extent that the Outage is caused by an event of Force Majeure.</p>
THM	is the total number of hours in the most recent 36 month period which ends on the last day of the Settlement Month.
FMH	is the total number of hours in the most recent thirty-six (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
MILESTONE EVENTS AND MILESTONE DATES FOR THE CONTRACT FACILITY

	MILESTONE EVENT	MILESTONE DATE (Month/Day/Year)
1.	Financial Closing	<i>[insert date from Proposal]</i>
2.	Commercial Operation	<i>[insert date from Proposal]</i>

**EXHIBIT G
DISPATCH OPTIONS**

1. General

The following shall apply to the Deemed Dispatch Option and the Directed Dispatch Option:

- (a) the Supplier shall be free to operate the Contract Facility (including the nomination and purchase of gas) and generate Electricity 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 Buyer or the Buyer 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. Deemed Dispatch Option

The Deemed Dispatch Option shall be the default dispatch payment model governing the Contract Facility for all hours in the Term that are not associated with a Directed Dispatch Order, and shall be governed by the following rules:

- (a) all hours in a Settlement Month that are not the subject of a Directed Dispatch Order and all hours that are the subject of a Cancelled Directed Dispatch Order shall be subject to the Deemed Dispatch Option; and
- (b) for purposes of calculating the Monthly Payment, Deemed Dispatch Hours shall include all Outage Hours and all Force Majeure Outage Hours occurring during Deemed Dispatch Intervals.

3. Directed Dispatch Option

The Directed Dispatch Option shall be governed by the following rules:

- (a) the Buyer (or the Dispatcher, if one has been appointed) may, in accordance with the terms of the Agreement, issue a Directed Dispatch Order (DA) or a Directed Dispatch Order (LT), as applicable;
- (b) for greater certainty, for purposes of this Exhibit G, day “*d*” shall mean the twenty-four (24) hour period between the beginning of the hour ending 01:00 (EST) and the end of hour ending 24:00 (EST);
- (c) the Buyer shall not issue a provisional Directed Dispatch Order in respect of any hour in which a Planned Outage was scheduled with the IESO and that notice of which was given to the Buyer, prior to the issuance of such provisional Directed Dispatch Order, in accordance with Sections 15.3(b)(ii)(B) and 15.3(b)(iv).

- (d) long term directed dispatch arrangements set out in a Directed Dispatch Order (LT) are to cover a period of one (1) or more calendar months, but may be subject to daily cancellation by the Buyer by issuing an order cancelling the Directed Dispatch Order (a “**Cancelled Directed Dispatch Order**”);
- (e) the Buyer, if requested by the Supplier, shall establish a standing credit support guarantee in favour of the supplier of gas to the Supplier (the “**Gas Provider**”) (in a form substantially similar to Exhibit L) and other security provided to the Gas Provider in accordance with subparagraph (iv)(A) below (collectively, the “**Buyer Security**”) as follows:
- (i) the Supplier shall, on a daily basis, determine the amount owed or that will be owed (whether or not then due) by the Supplier to the Gas Provider with respect to any and all gas purchase transactions and any and all derivative transactions which relate to any Gas to be purchased for the Contract Facility for any day that is the subject of a Directed Dispatch Order (LT) and which have been or will be entered into in accordance with this Exhibit G (the “**Exposure Amount**”);
- (ii) the maximum Exposure Amount which the Buyer shall be entitled to maintain in relation to any Directed Dispatch Order (LT) shall be based on the Credit Rating of the Buyer and shall be the amount (the “**Exposure Threshold Amount**”) set out in the following table:

EXPOSURE THRESHOLD AMOUNT	CREDIT RATING		
	DBRS	S&P	Moody’s
CAD \$75,000,000	A to A (high)	A to A+	A2 to A1
CAD \$50,000,000	A (low)	A-	A3
CAD \$20,000,000	BBB (high)	BBB+	Baa1
CAD \$15,000,000	BBB	BBB	Baa2
CAD \$5,000,000	BBB (low)	BBB-	Baa3
\$0	below BBB (low)	below BBB-	below Baa3

Notwithstanding the foregoing, (A) in the event the Buyer has a Negative Outlook, then its Credit Rating, for purposes of calculating the Exposure Threshold Amount and the amount of the guarantee, will be automatically demoted by one row in the above table and (B) in the event the Buyer has a Credit Rating from more than one of the above credit rating agencies, then its Credit Rating for the above purposes will be based on the lowest credit rating granted by any such credit rating agency.

- (iii) the amount of the guarantee to be provided by the Buyer from time to time shall be equal to the Exposure Threshold Amount listed in that row of the table in subparagraph (ii) above which contains the Buyer’s then current

Credit Rating, as adjusted by any Negative Outlook in accordance with subparagraph (ii) above;

- (iv) in the event that the Exposure Amount on any day exceeds the Exposure Threshold Amount on such day then the Buyer shall, within two (2) Business Days of receiving notice of such fact:
 - (A) provide to the Gas Provider an irrevocable standby letter of credit, cash collateral or other form of collateral security, in each case, in form and substance acceptable to the Gas Provider (acting reasonably) for the full amount of the difference between the Exposure Amount and the Exposure Threshold Amount; or
 - (B) issue a full or partial Cancelled Directed Dispatch Order such that the Exposure Amount does not exceed the Exposure Threshold Amount;
- (v) in the event that the Buyer should fail to provide or maintain any of the applicable Buyer Security required hereunder, at the Supplier's option to be exercised by notice (the "**Cancellation Notice**") in writing to the Buyer, the Buyer shall be deemed to have issued a Cancelled Directed Dispatch Order in respect of the balance of the Directed Dispatch Order (LT) then outstanding and such Cancelled Directed Dispatch Order shall be deemed to be effective as of the day specified in the Cancellation Notice, provided that, if applicable, such date shall not be earlier than the date of receipt by the Buyer of the notice set out in subparagraph (iv) above; and
- (vi) the Supplier shall not vary the "**Obligations**" (as defined in Exhibit L) in respect of the standing credit support arrangement established by the Buyer in accordance with this Section 3(e), except: (i) as a direct result of the issuance of a new Directed Dispatch Order (LT) or the full or partial cancellation of an existing Directed Dispatch Order (LT); or (ii) if the Buyer has first consented in writing to a variation of such Obligations on any other basis. Notwithstanding Section 7 of Exhibit L, if the Supplier agrees with the "**Counterparty**" (as defined in Exhibit L) to vary such Obligations on any other basis, any increased cost to the Buyer of discharging such Obligations, to the extent relating to or caused by such variance, shall be for the Supplier's sole account and may be set off by the Buyer against any payment owing by the Buyer under this Agreement;
- (f) a Directed Dispatch Order (LT) shall not relate to any calendar month ending more than one (1) year from the date of the order;
- (g) long term directed dispatch arrangements may also be amended on a daily basis by issuing a Cancelled Directed Dispatch Order for applicable day followed by a Directed Dispatch Order (DA) for such day;
- (h) a Directed Dispatch Order will be issued in the form provided in Exhibit H;

- (i) a Directed Dispatch Order (DA) may be issued by the Buyer (or the Dispatcher, if one has been appointed) in respect of any day “*d*” of the Term provided that it shall not be issued later than 09:00 EPT on the prior Business Day; however, if the Directed Dispatch Order (DA) is being issued in respect of a day that was the subject of a Cancelled Directed Dispatch Order and the Buyer is seeking to add additional Directed Dispatch Hours in respect of day “*d*” prior to 10:00 EPT, such Directed Dispatch Order (DA) shall not be issued later than 09:00 EPT on the day which is two (2) Business Days prior to day “*d*”;
- (j) the Directed Dispatch Order (DA) shall specify the Directed Dispatch Hours for up to two (2) Directed Dispatch Interval(s) for the day by specifying the Directed Start-Up Hour and the Directed Shut-Down Hour for each Directed Dispatch Interval; each Directed Dispatch Interval shall constitute a consecutive run time that may continue into the next calendar day; for greater certainty, all hours in the day that are not Directed Dispatch Hours as specified in the Directed Dispatch Order (DA) shall be subject to the Deemed Dispatch Option;
- (k) a provisional Directed Dispatch Order (LT) may be issued by the Buyer (or the Dispatcher, if one has been appointed) in respect of one or more calendar months of the Term provided that it shall not be issued later than 09:00 EPT on the day which is five (5) Business Days before the first day of the first calendar month covered by such order;
- (l) a provisional Directed Dispatch Order (LT) shall specify the Directed Dispatch Hours for up to two (2) Directed Dispatch Interval(s) in each day of each applicable month by specifying the Directed Start-Up Hour and the Directed Shut-Down Hour for each Directed Dispatch Interval on a specific basis (e.g., 12:00 to 22:00 EST on Monday, the *n*th day of the month) or on a generic basis (e.g. 07:00 to 20:00 EST on each Business Day of the month); each Directed Dispatch Interval shall constitute a consecutive run time that may continue into the next calendar day; for greater certainty, all hours in a day that are not Directed Dispatch Hours as specified in the Directed Dispatch Order (LT) shall be subject to the Deemed Dispatch Option;
- (m) each Directed Dispatch Interval specified by a Directed Dispatch Order (DA) or Directed Dispatch Order (LT) shall constitute a consecutive run time of at least four (4) Directed Dispatch Hours;
- (n) if specifically requested by the Buyer in the provisional Directed Dispatch Order (LT), the Supplier shall secure a long-term non-binding price quote (in Dollars per MMBTU) for the supply of Gas required to cover the specified Directed Dispatch Hours and Directed Start-Ups, based on the Contract Heat Rate and Start-Up Costs set out in Exhibit B, for each month covered by the provisional Directed Dispatch Order (LT) and advise the Buyer of such price quote within two (2) Business Days of the receipt of the provisional Directed Dispatch Order (LT) from the Buyer; if the Buyer does not specifically request a long-term non-binding price quote in the provisional Directed Dispatch Order (LT), the Supplier shall purchase gas at its discretion in order to comply with the Directed Dispatch Order (LT) and the Buyer shall compensate the Supplier for such gas purchased

based on the Gas Price (DA) and in such event, paragraphs (o) and (p) shall not apply;

- (o) upon receipt of the price quote set forth in paragraph (n), the Buyer shall within one (1) Business Day of receipt of the price quote from the Supplier either:
 - (i) confirm its acceptance of the price quote and thereby approve the Directed Dispatch Order (LT) on the condition that the Gas Price (LT) applicable for such Directed Dispatch Order (LT) shall not exceed such price quote by more than an amount to be agreed upon by the Parties at such time; or
 - (ii) withdraw the provisional Directed Dispatch Order (LT), in which case the Buyer may issue a new or revised provisional Directed Dispatch Order (LT) in accordance with paragraph (k);
- (p) as soon as reasonably practicable, but no later than two (2) Business Days of the confirmation from the Buyer under paragraph (o)(i), the Supplier shall confirm to the Buyer that:
 - (i) it has secured the required physical or financial gas supply arrangement based on the gas price limit established under paragraph (o)(i), in which case the Gas Price (LT) applicable for such Directed Dispatch Order (LT) shall be equal to the long-term price so determined; for purposes of this paragraph, the Supplier may, but is not obligated to, secure the required physical or financial gas supply arrangements by electing to supply Gas from its gas portfolio, and the Gas Price (LT) applicable for such Directed Dispatch Order (LT) shall in such case be equal to the price quote set forth in paragraph (n); or
 - (ii) the required physical or financial gas supply arrangement is not available based on the gas price limit established under paragraph (o)(i), in which case the Buyer may issue a new or revised provisional Directed Dispatch Order (LT) in accordance with paragraph (k);
- (q) the Buyer (or the Dispatcher, if one has been appointed) may issue a Cancelled Directed Dispatch Order in respect of any Directed Dispatch Interval which is the subject of a Directed Dispatch Order (LT) cancelling the Directed Dispatch Order for such day, provided that the Cancelled Directed Dispatch Order shall not be issued later than 09:00 EPT on the prior day "*d-1*";
- (r) any hour that is the subject of a Cancelled Directed Dispatch Order shall be subject to the Deemed Dispatch Option, unless the Buyer issues a Directed Dispatch Order (DA) in respect of such hour in accordance with paragraph (i);
- (s) a Cancelled Directed Dispatch Order shall cover periods equal to increments of one or more Directed Dispatch Intervals;
- (t) a Cancelled Directed Dispatch Order shall also require the Supplier to sell, using Commercially Reasonable Efforts, the applicable Gas Cancellation Volume of

Gas that the Buyer had requested be purchased on a forward basis under the Directed Dispatch Order (LT), provided that the Supplier may, but is not required, to sell such Gas if: (i) the Supplier would have provided such Gas from its gas portfolio, or (ii) the Supplier will transfer such Gas into the Supplier's portfolio, as long as the Supplier, in either case, is willing to have a "deemed sale" at a target price mutually agreed by the Parties;

- (u) the amount of capacity imputed to be delivered in respect of any Directed Dispatch Hour under any Directed Dispatch Order shall always be equal to the Adjusted Contract Capacity;
- (v) the Buyer (or the Dispatcher, if one has been appointed) makes no guarantee or assurance to the Supplier as to whether, how often, or how long the Buyer (or the Dispatcher, if one has been appointed) will issue Directed Dispatch Orders to the Supplier during the Term; and
- (w) for purposes of calculating the Monthly Payment, Directed Dispatch Hours shall include all Outage Hours and all Force Majeure Outage Hours occurring during Directed Dispatch Intervals.

EXHIBIT H
FORM OF DIRECTED DISPATCH ORDER

The Parties agree that the form of order shall be agreed upon no later than six (6) months prior to the Term Commencement Date in accordance with the protocol set out in Exhibit G.

Addendum No. 2: August 29, 2006

EXHIBIT I
FORM OF FORCE MAJEURE REPORT

TO: [insert name of Buyer or Supplier, as applicable]

DATE: _____

RE:

Supplier:	Name of Contract Facility:
COD per Contract:	Buyer Approved Revised COD:
<p>1. Description of events leading to Force Majeure (Provide reasonably full particulars of the cause and timing of events relating to the invoked Force Majeure)</p>	
<p>2. Effect of Force Majeure (Provide reasonably full particulars of the effect of the Force Majeure on the [Buyer or Supplier]'s ability to fulfill its obligations under the Agreement)</p>	
<p>3. Cost of Alternatives available to remedy or remove the Force Majeure (Provide reasonably full particulars of alternatives available to the [Buyer or Supplier] to remedy or remove the Force Majeure, together with an estimation of related costs with respect to each alternative)</p>	
<p>4. Commercially Reasonable Efforts – Reasonably full particulars of efforts, if any, undertaken or contemplated by the [Buyer or Supplier] to remedy or remove the Force Majeure.</p>	

Addendum No. 2: August 29, 2006

**EXHIBIT J
CALCULATION OF CSP AND RSP**

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 Contract Year “y”, which is a four stage calculation which involves:

Stage I	Determination of the Total Monthly Fixed Capacity Payment;
Stage II	Determination of the Variable Energy Cost;
Stage III	Determination of the Imputed Net Revenue; and
Stage IV	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:

TMFCP_m = (CRF _m x FMCRF _m x NRR _y x AACC)	
where:	
TMFCP _m	is the Total Monthly Fixed Capacity Payment for the Contract Facility (in \$ for the month).
CRF _m	is the Capacity Reduction Factor for Settlement Month “m” as defined in Section 15.6, and expressed as a fraction. The Capacity Reduction Factor shall be 1.0 unless and to the extent the circumstances set out in Sections 15.6(d) and (e) apply. 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.
NRR _y	is the Net Revenue Requirement (in \$/MW-month). For the first Contract Year, the Net Revenue Requirement shall be equal to the amount set out in Exhibit B. For the second and each succeeding Contract Year, a portion of the Net Revenue Requirement shall be adjusted on the first day of such Contract Year to the percentage increase or decrease (if any) between the CPI effective as of the first day of such Contract Year compared with the CPI effective as of the Term Commencement Date, and shall be calculated as follows: NRR_y = (NRR _B x NRRIF x CPI _Y /CPI _B) + (NRR _B x (1-NRRIF))
NRR _B	is the Net Revenue Requirement (in \$/MW-month) as set out in Exhibit B.

NRRIF	is the Net Revenue Requirement Indexing Factor set out in Exhibit B, and expressed as a decimal figure between 0.00 and 0.20.
CPI _y	is the CPI applicable to the calendar month during which the first day of Contract Year “y” occurs.
CPI _B	is the CPI applicable to the calendar month during which the Term Commencement Date occurs.
AACC	is the Annual Average Contract Capacity (in MW), which shall be the simple average of the Summer Contract Capacity and the Winter Contract Capacity.
FMCRF _m	<p>is the Force Majeure Capacity Reduction Factor for the Settlement Month which shall be equal to 1.0 if there are no Outages affecting a Imputed Production Hour resulting from an event of Force Majeure, otherwise it shall be calculated as follows:</p> $\mathbf{FMCRF}_m = 1 - \frac{\sum_{\substack{FMOH=FMOH_m \\ FMOH=1}} FMO C_{FMOH}}{ACC_m \times IPH_m}$
ACC _m	<p>is the Adjusted Contract Capacity (in MW) for the Settlement Month “m”, and is calculated as follows:</p> $\mathbf{ACC}_m = CC_m \times CRF_m$
CC _m	is the Contract Capacity (in MW) in Settlement Month “m”, which shall be the Summer Contract Capacity or the Winter Contract Capacity, as applicable.
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”.
FMO C _{FMOH}	<p>is the Force Majeure Outage Capacity in any Force Majeure Outage Hour, which is calculated as follows:</p> $\mathbf{FMO C}_{FMOH} = ACC_m - FMAC_{FMOH}$
FMAC _{FMOH}	is the Force Majeure Available Capacity (in MW), which is the capacity available for dispatch from the Contract Facility as reported by the Supplier to the IESO in respect of a Force Majeure Outage Hour.
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 IESO and the Buyer, as applicable, of an Outage caused by an event of Force Majeure. For greater certainty, any FMOH is by definition also an IPH; however, Outages must continue to be reported

	to the IESO and the Buyer for all Outage Hours.
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 x CHR) + 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 determined as follows: (i) for Directed Dispatch Hours that are subject to a Directed Dispatch Order (LT) and are not subject to a Cancelled Directed Dispatch Order, the Gas Price (in \$/MMBTU) is the Gas Price (LT) applicable for the day as agreed upon by the Parties pursuant to paragraphs 3(o)(i) and (p)(i) of Exhibit G, otherwise the Gas Price is the Gas Price (DA) for the day, as applicable; and (ii) for all other hours, the Gas Price is 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.
CHR	is the Contract Heat Rate (in MMBTU/MWh), which shall be the Summer Contract Heat Rate or the Winter Contract Heat Rate, as applicable.
O&M _y	is the O&M Cost 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 O&M Cost

For the first Contract Year, the O&M Cost shall be equal to the amount set out in Exhibit B. For the second and each succeeding Contract Year, the O&M Cost shall be adjusted on the first day of such Contract Year to the percentage increase or decrease (if any) between the CPI applicable to the calendar month during which the first day of such Contract Year occurs and the CPI applicable to the calendar month during which the first day of the immediately prior Contract Year occurs and shall be calculated as follows:

$O\&M_y = O\&M_{y-1} \times \frac{CPI_y}{CPI_{y-1}}$	
where:	
O&M _y	is the O&M Cost (in \$/MWh) for Contract Year “y”. For the first Contract Year, the O&M Cost shall be equal to the amount set out in Exhibit B.
O&M _{y-1}	is the O&M Cost (in \$/MWh) for the Contract Year immediately preceding Contract year “y”.
CPI _y	is the CPI applicable to the calendar month during which the first day of Contract Year “y” occurs.
CPI _{y-1}	is the CPI applicable to the calendar month during which the first day of the Contract Year immediately preceding Contract Year “y” occurs.

2.3 Calculation of Start-Up Costs

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

$SUC_d = \text{Start-Up Costs (in MMBTU/start-up)} \times GP_d$	
where:	
Start-Up Costs	are the Start-Up Costs (in MMBTU/start-up) as set out in Exhibit B.
GP _d	is the Gas Price applicable for day “d” (in \$/MMBTU) and shall be determined as follows: (i) for days that are subject to a Directed Dispatch Order (LT) and are not subject to a Cancelled Directed Dispatch Order, the Gas Price (in \$/MMBTU) is the Gas Price (LT) applicable for the day as agreed upon by the Parties pursuant to paragraphs 3(o)(i) and (p)(i) of Exhibit G, otherwise the Gas Price is the Gas Price (DA) for the day, as applicable; and (ii) for all other days, the Gas Price is 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.

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”), for all hours within all Imputed Production Intervals contained in whole or in part in any month.

3.1 Imputed Production Intervals

An “**Imputed Production Interval**” (“IP”) is either a Deemed Dispatch Interval or a Directed Dispatch Interval. For purposes of this Exhibit J, a set of two or more contiguous Deemed Dispatch Intervals shall be treated as a single Imputed Production Interval and day “*d*” shall mean the twenty-four (24) hour period between the beginning of the hour ending 01:00 (EST) and the end of hour ending 24:00 (EST). In respect of any hours in an Imputed Production Interval, the following shall apply:

- (i) Any hour that is either a Deemed Dispatch Hour or a Directed Dispatch Hour will be an Imputed Production Hour.
- (ii) Any Imputed Production Hour that is not immediately preceded by an Imputed Production Hour (including Imputed Production Hours in the previous day) will be considered an Imputed Start-Up Hour, and ISU_d will equal the total of the Imputed Start-Up Hours in day “*d*”, subject to ISU_d not being greater than the sum of $DeemSU_d$ plus $DirSU_d$. If zero (0), one (1), two (2), or three (3) Imputed Start-Up Hours occur in a day, then $ISU_d = 0, 1, 2, \text{ or } 3$, respectively, subject to ISU_d not being greater than the sum of $DeemSU_d$ and $DirSU_d$.

3.1.1. Deemed Dispatch Interval

In respect of any hour which is not the subject of a Directed Dispatch Order or is the subject of a Cancelled Directed Dispatch Order, the following shall apply:

- (i) A “**Deemed Dispatch Interval**” is a contiguous set of n Deemed Dispatch Hours for which the Contract Facility is deemed to have operated, which is all hours between and including a Deemed Start-Up Hour and a Deemed Shut-Down Hour. For greater certainty, it is possible for two or more Deemed Dispatch Intervals to be contiguous. A Deemed Dispatch Interval may consist of only one hour. For greater certainty, it is possible for a Deemed Start-Up Hour and a Deemed Shut-Down Hour to be the same hour.
- (ii) A “**Deemed Start-Up Hour**” is the first hour of a Deemed Dispatch Interval, and is the first hour, other than a Directed Dispatch Hour, following a Deemed Shut-Down Hour in which the Pre-Dispatch Price for that hour h , as published three hours prior to that hour, exceeds the applicable Variable Energy Cost, and the HOEP was greater than or equal to the applicable Variable Energy Cost for the Contract Facility for that

hour h or for the previous hour $h-1$. Notwithstanding the foregoing, the requirement that the Deemed Start-Up Hour follow a Deemed Shut-Down Hour shall not apply to the first Deemed Start-Up Hour in the Term.

- (iii) A “**Deemed Start-Up**” (“**DeemSU**”) is deemed to have occurred at the time of the first Deemed Start-Up Hour in day “ d ”. If one or more Deemed Start-Ups takes place in a day, then $\text{DeemSU}_d = 1$; otherwise $\text{DeemSU}_d = 0$.
- (iv) A “**Deemed Shut-Down Hour**” is the last hour in a Deemed Dispatch Interval, and is the first hour within a Deemed Dispatch Interval in which,
 - (a) HOEP was less than or equal to the applicable Variable Energy Cost for the Contract Facility for that hour h , and for the previous hour $h-1$, or
 - (b) the Pre-Dispatch Prices, as published in that hour h , for hours $h+1$, $h+2$ and $h+3$ are all less than the applicable Variable Energy Cost for the Contract Facility, or
 - (c) the following hour is a Directed Start-Up Hour.

3.1.2. Directed Dispatch Interval

In respect of any hours which are the subject of a Directed Dispatch Order, in addition to the terms set forth in Exhibit G, the following shall apply:

- (i) A “**Directed Dispatch Interval**” is a contiguous set of n Directed Dispatch Hours for which the Contract Facility is directed to operate, which is all hours between and including a Directed Start-Up Hour and a Directed Shut-Down Hour as set out in a Directed Dispatch Order. For greater certainty, it is possible for a Directed Dispatch Interval and a Deemed Dispatch Interval to be contiguous.
- (ii) A “**Directed Start-Up**” (“**DirSU**”) is deemed to have occurred at the time of the first Directed Start-Up Hour that starts in day “ d ”, resulting from a Directed Dispatch Order. If the Directed Dispatch Order specifies a second Directed Production Interval in day “ d ”, a second Directed Start-Up is deemed to have occurred at the time of the second Directed Start-Up Hour in day “ d ”. If one Directed Start-Up takes place in a day, then $\text{DirSU}_d = 1$ and if two Directed Start-Ups take place in a day, then $\text{DirSU}_d = 2$.

3.2 Calculation of Imputed Gross Energy Market Revenue

The Imputed Gross Energy Market Revenue is calculated as follows:

$\text{IGEMR}_m = \sum_{\text{IPH}=1}^{\text{IPH}=\text{IPH}_m} \text{IP}_{\text{IPH}} \times \text{HOEP}_{\text{IPH}} - \sum_{\text{ROH}=1}^{\text{ROH}=\text{ROH}_m} \text{ROC}_{\text{ROH}} \times \text{OHOEP}_m - \sum_{\text{FMOH}=1}^{\text{FMOH}=\text{FMOH}_m} \text{FMOC}_{\text{FMOH}} \times \text{HOEP}_{\text{FMOH}}$	
where:	
IGEMR _m	is the Imputed Gross Energy Market Revenue (in \$) for Settlement Month “m”.
IP _{IPH}	is the Imputed Production corresponding to a given Imputed Production Hour, 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.
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”. For greater certainty, IPH shall include all ROH and FMOH.
IPH _m	is the total number of Imputed Production Hours in Settlement Month “m”.
HOEP _{IPH}	is the Hourly Ontario Energy Price corresponding to a given Imputed Production Hour (expressed in \$/MWh).
OHOEP _m	<p>is the Outage HOEP adjustment for Settlement Month “m”, determined as follows:</p> <p>(a) if the difference between the weighted average HOEP for all Reported Outage Hours in month <i>m</i> and the weighted average relevant Variable Energy Cost for all Reported Outage Hours in month <i>m</i> is equal to or less than Max Increment_y, then OHOEP_m = zero; and</p> <p>(b) if the difference between the weighted average HOEP for all Reported Outage Hours in month <i>m</i> and the weighted average relevant Variable Energy Cost for all Reported Outage Hours in month <i>m</i> is greater than Max Increment_y, then OHOEP_m equals that calculated difference minus Max Increment_y.</p> <p>For the purposes of determining Outage HOEP, where a weighted average is referred to, the weight for each hour shall be expressed by multiplying ROC for such hour multiplied by one hour.</p>

ROC	is the Reported Outage Capacity in any hour, which is calculated as follows: ROC = $ACC_m - ROAC_{ROH}$ where ACC_m the Adjusted Contract Capacity (in MW) in Settlement Month “ <i>m</i> ”, calculated in accordance with the formula provided in Section 1.1 of this Exhibit J.
ROC_{ROH}	is the ROC corresponding to a given Reported Outage Hour.
$ROAC_{ROH}$	is the Reported Outage Availability Capacity (in MW), which is the capacity available for dispatch from the Contract Facility as reported by the Supplier to the IESO in respect of a Reported Outage Hour.
ROH	is a Reported Outage Hour, which is an hour within any Imputed Production Interval in Settlement Month “ <i>m</i> ” for which the Supplier has notified the IESO and the Buyer, as appropriate, of an Outage that is not the result of an event of Force Majeure. For greater certainty, any ROH is by definition also an IPH; however, Outages must continue to be reported to the IESO and the Buyer for all Outage Hours.
ROH_m	is the total number of Reported Outage Hours in Settlement Month “ <i>m</i> ”.
Max Increment _y	is equal to \$75.00/MWh until December 31, 2007. From and after January 1, 2008, and for each succeeding calendar year, Max Increment _y 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 first day of such calendar year and the CPI effective as of the first day of the immediately prior calendar year.
FMO_{FMOH}	is the Force Majeure Outage Capacity in any Force Majeure Outage Hour, which is calculated as described in Section 1.1 of this Exhibit J.
FMOH	is a Force Majeure Outage Hour as defined in Section 1.1 of this Exhibit J.
$FMOH_m$	is the total number of Force Majeure Outage Hours in Settlement Month “ <i>m</i> ”.
$HOEP_{FMOH}$	is the HOEP corresponding to a given Force Majeure Outage Hour.

3.3 Calculation of Imputed Net Revenue

The Imputed Net Revenue is calculated as follows:

INR_m = $IGEMR_m - IVEC_m + RFCRP_m + RFFC_m + NINRR_m - GCA_m$	
where:	

INR _m	is the Imputed Net Revenue (in \$) in Settlement Month “m”.
IGEMR _m	is the Imputed Gross Energy Market Revenue (in \$) in Settlement Month “m”.
IVEC _m	<p>is the Imputed Variable Energy Cost (in \$) in Settlement Month “m”, which is equal to the aggregate Variable Energy Cost for the total Imputed Production during the Settlement Month “m”, calculated as follows:</p> $\text{IVEC}_m = \sum_{d=1}^{d=\text{day}_m} \left[\begin{aligned} & (SUC_d \times ISU_d) + \left(\sum_{IPH=1}^{IPH=IPH_d} VEC_h \times IP_{IPH} \right) - \\ & (SUC_d \times ISU_d) \times \left(\frac{\sum_{FMOH=1}^{FMOH=FMOH_d} FMO C_{FMOH}}{ACC_m \times IPH_d} \right) - \\ & \left(\sum_{FMOH=1}^{FMOH=FMOH_d} VEC_h \times FMO C_{FMOH} \right) - \\ & (SUC_d \times ISU_d) \times \left(\frac{\sum_{ROH=1}^{ROH=ROH_d} ROC_{ROH}}{ACC_m \times IPH_d} \right) \end{aligned} \right]$
day _m	is the number of days in the Settlement Month “m”.
ISU _d	is the number of Imputed Start-Ups for day “d” calculated according to Section 3.1 of this Exhibit J.
SUC _d	are the Start-Up Costs (in \$) for day “d” calculated according to Section 2.3 of this Exhibit J.
VEC _h	is the Variable Energy Cost for hour “h” (in \$/MWh) calculated according to Section 2.1 of this Exhibit J.
IPH	is an Imputed Production Hour, which is an hour in day “d” that is contained within an Imputed Production Interval which occurred, in whole or in part, in day “d”.
IPH _d	is the total number of Imputed Production Hours in day “d”.
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.
FMOH	is a Force Majeure Outage Hour as defined in Section 1.1 of this Exhibit J.

FMOH _d	is the number of Force Majeure Outage Hours in day “d”.
FMOCFMOH	is the Force Majeure Outage Capacity in any Force Majeure Outage Hour, which is calculated as described in Section 1.1 of this Exhibit J.
ROH	is a Reported Outage Hour as defined in Section 3.2 of this Exhibit J.
ROH _d	is the total number of Reported Outage Hours in day “d”.
ROC	is the Reported Outage Capacity in any hour, which is calculated according to Section 3.2 of this Exhibit J.
ROCR _{OH}	is the ROC corresponding to a given Reported Outage Hour.
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 “m”, 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 Buyer and Supplier, and which shall be subject to verification by the Buyer, from time to time.</p>
NINRR _m	<p>is the Negative Interval Net Revenue Recapture that is applicable to all those Imputed Production Intervals that are Deemed Dispatch Intervals only (provided that for purposes of calculating NINRR, (i) a set of two or more contiguous Deemed Dispatch Intervals shall be treated as a single Imputed Production Interval, and (ii) any Deemed Dispatch Interval having a Deemed Shut-Down Hour that meet the conditions set out in Section 3.1.1(iv)(c) of this Exhibit J shall be excluded from the calculation of NINRR) in Settlement Month “m” where IVEC_{IPI} was greater than IGEMR_{IPI}, and is calculated as the cumulated sum of IVEC_{IPI} less IGEMR_{IPI}, where:</p> $\mathbf{IVEC}_{IPI} = \left[\sum_{IPH=1}^{IPH=IPIH} VEC_{IPH} \times IP_{IPH} \right] + SUC_{IPI}$ <p>and</p> $\mathbf{IGEMR}_{IPI} = \sum_{IPH=1}^{IPH=IPIH} IP_{IPH} \times HOEP_{IPH}$
VEC _{IPH}	is the applicable Variable Energy Cost for the Contract Facility for those Imputed Production Hours during an Imputed Production Interval where IVEC _{IPI} was greater than IGEMR _{IPI} .
SUC _{IPI}	are the Start-Up Costs, if the Imputed Production Interval for which IVEC _{IPI} was greater than IGEMR _{IPI} has an Imputed Start-Up Hour that

	is the first Imputed Start-Up Hour of the day in which such Imputed Production Interval falls.
IPIH	is the total number of Imputed Production Hours in the Imputed Production Interval for which $IVEC_{IPI}$ was greater than $IGEMR_{IPI}$.
GCA_m	is the Gas Cancellation Amount (in \$) in Settlement Month “ m ”, calculated as follows: $GCA_m = \sum_{d=1}^{d=day_c} GCP_d \times GCV_d$
GCP_d	is the Gas Cancellation Price (in \$/MMBTU) for any day “ d ” that was the subject of a Directed Dispatch Order (LT) and (i) which order was cancelled by a full or partial Cancelled Directed Dispatch Order, or (ii) during which day any Directed Dispatch Hour is affected by an Outage caused by an event of Force Majeure, and is calculated as follows: (a) In the event of a sale of the Gas Cancellation Volume of Gas that is not a deemed sale pursuant to Section 3(r) of Exhibit G, then the Gas Cancellation Price is equal to the Gas Price $(LT)_d$ minus the price (net of Gas Sale Transaction Costs) at which the Gas Cancellation Volume (GCV_d) , as calculated below, is sold by the Supplier using Commercially Reasonable Efforts. (b) In the event of a sale of the Gas Cancellation Volume of Gas that is a deemed sale pursuant to Section 3(t) of Exhibit G, then the Gas Cancellation Price is equal to Gas Price $(LT)_d$ minus the target price mutually agreed by the Parties pursuant to Section 3(t) of Exhibit G. For greater certainty, GCP_d may be a negative number.
GCV_d	is the Gas Cancellation Volume (in MMBTU) associated with the total Directed Dispatch Hours for any day “ d ” that were the subject of a Directed Dispatch Order (LT) and: (i) where such order was cancelled by a full or partial Cancelled Directed Dispatch Order, the Gas Cancellation Volume shall be an amount equivalent to (A) the applicable Contract Heat Rate multiplied by the applicable Adjusted Contract Capacity in the Settlement Month, “ m ”, and multiplied by such total number of cancelled Directed Dispatch Hours, plus (B) the Start-Up Costs (in MMBTU per start-up) set out in Exhibit B multiplied by the applicable number of $DirSU_d$ cancelled as a result of the Cancelled Directed Dispatch Order; or (ii) where during such day any Directed Dispatch Hour is affected by an Outage caused by an event of Force Majeure, the Gas Cancellation Volume shall be an amount equivalent to (A) the applicable Contract Heat Rate multiplied by the weighted average $FMO C_{FMOH}$ over all FMOH in day “ d ” and multiplied by $FMOH_d$, plus (B) the Start-Up Costs (in MMBTU per start-up) set out in Exhibit B multiplied by the

	applicable number of $DirSU_d$ cancelled as a result of the Outage caused by the event of Force Majeure.
GSTC	is the Gas Sale Transaction Costs (in \$/MMBTU) which represents those transaction costs incurred by the Supplier in a sale of the Gas Cancellation Volume that is not a deemed sale pursuant to Section 3(t) of Exhibit G. The Supplier shall, upon the Buyer's request, provide reasonable evidence of the GSTC for audit and verification by the Buyer from time to time.
day_c	is the total number of days in Settlement Month " m " which were the subject of a Directed Dispatch Order (LT) and (i) which order was cancelled for such days by a full or partial Cancelled Directed Dispatch Order, or (ii) were affected by an Outage caused by an event of Force Majeure.
$RFFC_m$	is any revenue to the Supplier in the Settlement Month " m " arising from the sale, disposition, or encumbrance of the Supplier's interest in the Further Credits as set out in Section 2.12(d)(v) of the Agreement.

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

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

If $TMFCP_m > INR_m$, then: $CSP_m = TMFCP_m - INR_m$ and $RSP_m = 0$.	
If $TMFCP_m < INR_m$, then: $RSP_m = INR_m - TMFCP_m$ and $CSP_m = 0$.	
If $TMFCP_m = INR_m$, then: $RSP_m = 0$ and $CSP_m = 0$.	
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 ".

EXHIBIT K
ARBITRATION PROCEDURES APPLICABLE TO SECTIONS 1.6 TO 1.10
INCLUSIVE AND SECTION 2.12

The following rules and procedures (the “**Rules**”) shall govern, exclusively, any matter or matters to be arbitrated between the Parties under Sections 1.6 to 1.10 inclusive and Section 2.12 of this Agreement.

1. **Commencement of Arbitration** – If the Parties and, at the Buyer’s option, all Other Suppliers required by the Buyer to participate, have been unable to reach agreement as contemplated in Sections 1.6 to 1.10 inclusive and Section 2.12 of this Agreement, as applicable, then the Buyer shall commence arbitration by delivering a written notice (the “**Request**”) to the Supplier and such Other Suppliers required by the Buyer to participate (collectively the “**Suppliers**”). If the Buyer has not already done so, the Buyer shall then deliver to the Suppliers the names of such Other Suppliers. Within twenty (20) days of the delivery of the Request, the Buyer shall deliver to the Suppliers a written notice nominating an arbitrator who shall be familiar with commercial law matters and has no financial or personal interest in the business affairs of any of the parties. Within twenty (20) days of the receipt of the Buyer’s notice nominating its arbitrator, the Suppliers shall by written notice to the Buyer nominate an arbitrator who shall be familiar with commercial law matters and has no financial or personal interest in the business affairs of any of the parties. The two (2) arbitrators nominated shall then select a chair person of the arbitration panel (the “**Arbitration Panel**”) who shall be a former judge of a Superior Court or appellate court in Canada.
2. **Application to Court** - If the Suppliers are unable to agree on the nomination of an arbitrator within twenty (20) days of the receipt of the Buyer’s notice nominating its arbitrator, any of the Suppliers or the Buyer may apply to a judge of the Superior Court of Justice of Ontario to appoint the arbitrator. If the two (2) arbitrators are unable to agree on a chair person within thirty (30) days of the nomination or appointment of the Supplier’s arbitrator, any of the Suppliers or the Buyer may apply to a judge of the Superior Court of Justice of Ontario to appoint the chair person.
3. **General** - The Arbitration Panel, once appointed, shall proceed immediately to determine the Replacement Price and/or the Replacement Provision, as the case may be, in accordance with the *Ontario Arbitration Act, 1991* and, where applicable, the Ontario International Commercial Arbitration Act, it being the intention of the Buyer and the Supplier that there be, to the extent possible, one arbitration proceeding and hearing to determine the Replacement Price and/or the Replacement Provision. Unless otherwise agreed by the Parties, the Arbitration Panel shall determine the conduct of the arbitral proceedings, including the exchange of statements of claim and defence, the need for documentary and oral discovery and whether to hold oral hearings with a presentation of evidence or oral argument so that the award may be made within the time period set out below. Each of the Suppliers shall have a right to participate in the arbitration proceeding.

4. **Consolidation** – The Parties agree that should the Arbitration Panel determine that the Replacement Price and/or the Replacement Provision needs to be determined through more than one (1) 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 and/or Replacement Provision, shall be made within six months after the appointment of the Arbitration Panel, subject to any extended date to be agreed by the Parties or any reasonable delay due to unforeseen circumstances.
6. **Costs** – The Parties shall pay their own costs of participating in the arbitration proceedings.
7. **Fees** - Each of the arbitrators on the Arbitration Panel shall be paid their normal professional fees for their time and attendances, which fees together with any hearing room fees, shall be paid by the Buyer.
8. **Computation of Time** - In the computation of time under these Rules or an order or direction given by the Arbitration Panel, except where a contrary intention appears, or the parties otherwise agree:
 - (a) where there is a reference to a number of days between two events, those days shall be counted by excluding the day on which the first event happens and including the day on which the second event happens, even if they are described as clear days or the words “at least” are used;
 - (b) statutory holidays shall not be counted;
 - (c) where the time for doing any act or any order or direction given by the Arbitration Panel expires on a day which is not a Business Day, the act may be done on the next day that is a Business Day; and
 - (d) service of a document or notice or any order or direction given by the Arbitration Panel made after 4:00 p.m. (Toronto time), or at any time on a day which is not a business day, shall be deemed to have been made on the next business day.
9. **Place of Arbitration** - The arbitration, including the rendering of the award, shall take place in Toronto, Ontario, which shall be the seat of the proceedings. The language to be used in the arbitration shall be English.

EXHIBIT L
FORM OF BUYER GUARANTEE TO SUPPORT DIRECTED DISPATCH (LT)

THIS GUARANTEE dated and effective as of [the Term Commencement Date] by the Ontario Power Authority (the “**Guarantor**”) to and in favour of [●] [insert legal form of the gas supplier and jurisdiction of organization] (the “**Counterparty**”). Capitalized words and phrases used in this Guarantee shall have the meanings given to them in the GTA West Trafalgar Clean Energy Supply Contract dated as of the ● day of ●, 2006 between [●] [insert legal form of the Supplier and jurisdiction of organization], and the Guarantor (the “**Agreement**”) on the date hereof unless otherwise defined herein or unless otherwise indicated by the context of their use.

IN CONSIDERATION of: (i) agreements between the Counterparty and [●] or its permitted assigns under the Agreement (the “**Debtor**”) and (ii) the Counterparty agreeing that it may grant credit to the Debtor (being transactions which the Guarantor will benefit from, directly or indirectly), the Guarantor agrees as follows:

1. Obligations

The Guarantor irrevocably and unconditionally guarantees to the Counterparty, its successors and permitted assigns the due and punctual payment of all present and future amounts payable (including damages, if any, arising from a failure to perform) by the Debtor to the Counterparty under or pursuant to one or more gas purchase transactions (including physical and financial transactions) entered into by the Debtor with the Counterparty which relate to the Gas required by the Debtor to comply with a Directed Dispatch Order (LT) (a “**DDO**”) issued by the Guarantor in accordance with Exhibit G of the Agreement (collectively, the “**Obligations**”). For certainty, and without limiting the generality of the foregoing, upon receipt by the Counterparty of a copy of a DDO delivered by the Guarantor pursuant to Section 8 hereof, all gas purchase obligations of the Debtor which relate to such DDO shall be deemed to be Obligations guaranteed hereunder. In addition, the Guarantor agrees to pay the Counterparty, upon demand, all out-of-pocket costs and expenses (including, without limitation, reasonable legal fees on a solicitor/client basis) that the Counterparty incurs in connection with enforcing any of its rights under and collecting upon this Guarantee, to the extent that the Guarantor has received written notice of the claim for any satisfaction of the Obligations before any such out-of-pocket costs and expenses for which the Guarantor is to be responsible are incurred by the Counterparty.

2. Nature of Guarantee

The liability of the Guarantor in respect of the Obligations shall be absolute and unconditional irrespective of any change in the name, ownership, objects, capital, constating documents or by-laws of the Debtor or any amalgamation, sale, merger or re-organization of the Debtor or, if a partnership, in the firm (in which case this Guarantee shall apply to the corporation or partnership, as the case may be, resulting or continuing therefrom). This Guarantee is a guarantee of payment and not of collection.

3. **Liability as Primary Debtor**

This Guarantee shall apply in respect of all Obligations despite (i) any incapacity, disability, or lack or limitation of status, authorization or power of the Debtor or any of its directors, officers or agents; (ii) the Debtor not being a legal entity; (iii) the bankruptcy, insolvency, dissolution or liquidation of the Debtor; and (iv) any lack of a written contract or of execution of documents by the Debtor if the Debtor has agreed in writing with the Counterparty to be bound by transactions without such writing or execution. Any such Obligations which may not be recoverable from the Guarantor as guarantor shall be recoverable from the Guarantor as principal debtor upon demand and with interest, calculated and payable as provided in this Guarantee.

4. **Continuing Guarantee**

This is a continuing guarantee and shall apply to and secure payment of all Obligations and any ultimate unpaid balance thereof. Notwithstanding anything in this Guarantee to the contrary, this Guarantee shall continue to be effective or shall be reinstated (as the case may be) in respect of a particular Obligation if at any time (before or after termination of this Guarantee) any payment in connection with that Obligation is rescinded or must otherwise be restored or returned by the Counterparty upon the insolvency, bankruptcy or reorganization of the Debtor or for any other reason whatsoever, all as though such payment had not been made.

5. **Term**

This Guarantee will remain in full force and effect until the end of the "Term" (as defined in the Agreement) ("**Expiry**") or until it is terminated with regard to future transactions by the Guarantor giving Notice of termination to the Counterparty (a "**Termination Notice**"). If the Guarantor delivers a Termination Notice to the Counterparty, this Guarantee shall be terminated, subject to any prior expiry as set out above, effective as at the later of (i) the effective date of such termination as specified in the Termination Notice; and (ii) the sixtieth (60th) day following actual receipt of the Termination Notice by the Counterparty. Neither Expiry nor delivery of a Termination Notice shall affect the Guarantor's liability relating to Obligations arising from transactions entered into on or prior to the effective date of the Expiry or Termination Notice, and this Guarantee shall remain in effect with respect to such Obligations.

6. **Right to Payment**

The Guarantor's liability under this Guarantee will not be affected by the existence, validity, enforceability, perfection or extent of any collateral or security for the Obligations. The Counterparty shall not be obligated to file any claim relating to the Obligations if the Debtor becomes subject to a bankruptcy, reorganization or similar proceeding and the failure of Counterparty to do so shall not affect the Guarantor's obligations under this Guarantee. The Counterparty shall not be bound to file suit or seek or exhaust its recourse against the Debtor or any other person or to realize on any security it may hold in respect of the Obligations before being entitled to payment under this Guarantee. The Guarantor renounces all benefits of discussion and division.

7. **Dealings by Counterparty**

The Counterparty may, without giving Notice to or obtaining the consent of the Guarantor, enter into agreements and transactions with the Debtor, amend or modify agreements with the Debtor, settle or compromise any of the Obligations, grant extensions of time and other indulgences, take and give up securities, accept compositions, grant releases and discharges, whether full, partial, conditional or otherwise, perfect or fail to perfect any securities, release any undertaking, property or assets charged by any securities to third parties and otherwise deal or fail to deal with the Debtor and others (including, without limitation, any other guarantors) and securities, hold moneys received from the Debtor and others or from any securities unappropriated, apply such moneys against part of the Obligations and change any such application in whole or in part from time to time, all as the Counterparty may see fit, without prejudice to or in any way discharging or diminishing the liability of the Guarantor. No loss of any securities received by the Counterparty from the Debtor or any other persons shall in any way discharge or diminish the liability of the Guarantor, unless occasioned through the fault of the Counterparty.

8. **Delivery of Copies of Directed Dispatch Orders**

The Guarantor shall deliver, or cause to be delivered, to the Counterparty, a copy of each DDO issued by the Buyer to the Debtor in accordance with Exhibit G of the Agreement.

9. **Payment**

If the Debtor fails to pay any Obligation when due, the Guarantor will pay that Obligations directly to the Counterparty promptly upon the Counterparty's demand in accordance with this Guarantee. The liability of the Guarantor shall be payable within five (5) Business Days following written demand delivered to the Guarantor's address set forth in this Guarantee or at such other address as the Guarantor may from time to time designate by Notice to the Counterparty. The liability of the Guarantor shall bear interest from the date five (5) Business Days following Guarantor's receipt of such demand to the date of payment (and both before and after any judgement) at the lesser of (i) the rate equal to the Interest Rate plus two percent (2%) per annum; and (ii) the maximum legal rate per annum.

10. **Waivers**

The Guarantor waives notice of acceptance of this Guarantee and waives diligence, presentment, protest, notice of protest, acceleration or dishonour and all demands whatsoever other than the demand described in the preceding section of this Guarantee. Any failure of the Counterparty to exercise, and any delay by the Counterparty (other than a delay that gives rise to a defence under an applicable statute of limitation) in exercising, any right, remedy or power under this Guarantee shall not operate as a waiver of such right, remedy or power. Any single or partial exercise by the Counterparty of any right, remedy or power under this Guarantee shall not preclude any other or future exercise of any right, remedy or power.

11. **Maximum Liability**

Notwithstanding any other provision of this Guarantee, the Guarantor's aggregate liability under this Guarantee is limited to [●] Million Canadian Dollars (\$ [●]) [insert as per paragraph 3(e) of Exhibit G]; provided that this Guarantee shall cover and the Guarantor shall pay, in addition, (i) interest (at the rate set forth in Section 9 above) after demand by the Counterparty under this Guarantee until payment by the Guarantor and (ii) the enforcement costs and expenses (including, without limitation, legal fees on a solicitor/client basis) to which the Counterparty is entitled under this Guarantee.

Except to the extent that the agreements between the Debtor and the Counterparty expressly provide that the Debtor shall have liability for damages other than direct, actual damages, THE LIABILITY OF THE GUARANTOR SHALL BE LIMITED TO DIRECT, ACTUAL DAMAGES SUFFERED OR INCURRED BY THE COUNTERPARTY IN RELATION ONLY TO THE OBLIGATIONS AND THE GUARANTOR SHALL NOT BE LIABLE FOR CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES IN TORT, CONTRACT OR OTHERWISE, INCLUDING DAMAGES FOR LOST PROFITS.

12. **Subrogation Rights**

Until the Obligations have been fully paid and discharged, the Guarantor shall not have any right to be subrogated to any rights of the Counterparty against the Debtor. Upon the Guarantor having fully and unconditionally paid and discharged its obligations under this Guarantee, the Guarantor shall be subrogated to the rights of the Counterparty against the Debtor.

13. **Taxes and Set-Off**

All amounts payable by the Guarantor shall be paid without any deduction or withholding whatsoever for amounts payable to third parties (other than the Debtor), whether for duties, levies or taxes imposed, levied or assessed by any authority or any other matter whatsoever, unless and to the extent that the Guarantor shall be prohibited by law from doing so, in which event the Guarantor shall (i) forthwith pay to the Counterparty an additional amount so that the amount received by the Counterparty will equal the full amount of the Obligations; and (ii) pay to the relevant authorities the full amount of the deduction or withholding (including any deduction or withholding on any additional amounts payable pursuant to this sentence). The Guarantor has the right to set-off any amounts due by the Counterparty to the Debtor under any of the agreements relating to the Obligations against any payment due under this Guarantee.

14. **Reservation of Defences**

The Guarantor hereby waives all suretyship defences of every kind and all payments required hereunder shall be made in accordance with the terms hereof, provided that the Guarantor shall have the benefit of and the right to assert any defences against the claims of the Counterparty which are available to the Debtor and which would have been available to the Guarantor if it were in the contractual position of the Debtor under the agreements relating to the Obligations, other than defences (i) arising from the bankruptcy of the Debtor; (ii) expressly waived in this Guarantee; (iii) arising from the lack of due authorization, execution or delivery by the Debtor of any agreement(s) creating or giving rise to the Obligations; and (iv) previously asserted by the

Debtor, to the extent that the claim of the Counterparty against which any defence was asserted by the Debtor has been successfully and finally resolved in favour of the Counterparty by a court of competent jurisdiction and last resort.

15. Representations and Warranties

The Guarantor hereby represents and warrants that (i) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation; (ii) the execution, delivery and performance of this Guarantee are within the Guarantor’s powers, have been duly authorized by all necessary action and do not violate the Guarantor’s charter or by-laws or any law, order or contractual restriction binding on the Guarantor; (iii) any governmental and other consents required with respect to the execution, delivery and performance of this Guarantee by the Guarantor have been obtained and are in full force and effect and all conditions of any such consents have been complied with; (iv) this Guarantee constitutes the legal, valid and binding obligation of the Guarantor, enforceable against it in accordance with its terms (except as enforceability may be limited by bankruptcy, insolvency, moratorium and other laws affecting enforcement of creditors’ rights in general and general principles of equity); and (v) it expects to derive advantage from each and every extension of credit to the Debtor.

16. Additional Security

This Guarantee is in addition and without prejudice to any security of any kind (including, without limitation, any other guarantees, whether or not in the same form) held by the Counterparty.

17. Notices

Every communication, request, demand and notice of any kind (in each case, a “**Notice**”) delivered or required to be delivered under this Guarantee shall be in writing and delivered either personally, via prepaid overnight courier service, via certified or registered mail or via facsimile transmission. A Notice shall be deemed received if sent to the address or fax number specified below (i) on the day received if sent by overnight courier delivery and received during the recipient's normal business hours, or at the beginning of the recipient’s next business day after receipt if not received during the recipient's normal business hours; (ii) on the next business day if sent by facsimile transmission when sender has machine confirmation that the Notice was transmitted; and (iii) ten (10) Business Days after mailing if sent by certified or registered mail.

To the Guarantor:

- [address]
- [city/state/province]
- [zip/postal code]

Attn: •

Fax: •

To the Counterparty:

- [address]
- [city/state/province]
- [zip/postal code]

Attn: •

Fax: •

Addendum No. 2: August 29, 2006

The Guarantor or the Counterparty may change its address for Notices by providing Notice to the other.

18. Further Assurances

The Guarantor shall from time to time upon the request of the Counterparty, execute and deliver, under seal or otherwise, all such further agreements, instruments and documents and do all such further acts and things as the Counterparty may require to give effect to the transactions contemplated by this Guarantee.

19. Successors and Assigns

This Guarantee shall enure to the benefit of and be binding upon the successors and permitted assigns of the Guarantor and the Counterparty. This Guarantee shall not be assigned or otherwise transferred, in whole or in part, by the Guarantor or the Counterparty without the prior written consent of the other, which consent shall not be withheld unreasonably.

20. Governing Law and Attornment

This Guarantee shall be governed by and construed in accordance with the laws of the Province of Ontario, without regard to its conflicts of laws principles. Each of the Guarantor and the Counterparty irrevocably submits to the non-exclusive jurisdiction of the courts of the Province of Ontario in any action or proceeding arising out of or relating to this Guarantee and waives any objection to such jurisdiction on the grounds that it is an inconvenient forum or any similar grounds. The Guarantor consents to the service of process in any action or proceeding relating to this Guarantee by Notice to the Guarantor in accordance with the provisions of Section 17 hereof. Nothing in this Section 20 shall prevent the Counterparty from enforcing any judgment arising from this Guarantee against the Guarantor in any other jurisdiction.

21. Entire Agreement

There are no representations, conditions, agreements or understandings with respect to this Guarantee or affecting the liability of the Guarantor or the Counterparty other than as set forth or referred to in this Guarantee. No provision of this Guarantee may be amended or waived except by a written instrument executed by the Guarantor and the Counterparty.

The Guarantor has executed this Guarantee as of the date first above written.

ONTARIO POWER AUTHORITY

By: _____

Name:

Title:

Addendum No. 2: August 29, 2006

EXHIBIT M
SECTION 16.7 TEST CONDITIONS

1. The Contract Facility has completed at least 2,000 hours of operation after the Commercial Operation Date, of which not less than 160 hours has been at no less than the Contract Capacity and the balance has been at output no less than sixty percent (60%) of Annual Average Contract Capacity.
2. For a period of at least six (6) consecutive calendar months within the last twelve (12) calendar months prior to application to the Buyer under Section 16.7 of the Agreement, the Contract Facility has satisfied the following criteria when evaluated on a cumulative basis over the six (6) month period:
 - (a) The average Availability (as determined below) of the Contract Capacity exceeds ninety three percent (93%).

The Availability shall be calculated in accordance with the formula set out Exhibit E with the exception that the time period for calculating the “OH”, “FHM” and “THM” shall be the six-month period specified above.
 - (b) The operating reliability is demonstrated by an average forced outage factor (as defined below) not exceeding two and one-half percent (2.5%).

The forced outage factor is calculated as the fraction of (i) the sum of the amount of Contract Capacity (expressed in MW) not available for dispatch by the IESO in each hour (or pro rata for a portion of an hour) during the six (6) month period as a result of an Outage (other than any Planned Outages or any Outages caused by an event of Force Majeure) over (ii) the product of the Contract Capacity and the total number of hours in the six (6) month period.
 - (c) The start reliability is demonstrated by the number of failed starts (as defined below) not exceeding the greater of:
 - (i) four (4); or
 - (ii) four percent (4%) of attempted starts,where a failed start is an attempted start where all initially available units are not at sixty percent (60%) of base unfired load within 270 minutes of initiating the first CTG start other than for reasons of a CTG failed start, and where attempted starts exclude circumstances in which IESO approvals (e.g., for synchronization), pre-dispatch schedules or dispatch instructions render it inappropriate to come to sixty percent (60%) of base unfired load.
3. The Contract Facility has completed and passed a Capacity Check Test within the last six (6) months prior to application to the Buyer under Section 16.7 of the Agreement.

EXHIBIT N
FORM OF ACKNOWLEDGEMENT OF SECURED LENDER'S RIGHTS

TO: [Insert name of agent for Secured Lenders] (the "Agent")

RECITALS:

A. The Ontario Power Authority has exercised its right to assign the GTA West Trafalgar Clean Energy Supply Contract (the "**GTA West Trafalgar CES Contract**") dated as of the [●] day of [●] between [●] (the "**Supplier**") and the Ontario Power Authority pursuant to Section 16.5(d) or (e) thereof to [insert name of assignee] (the "**Assignee**").

B. The Supplier has delivered to the Ontario Power Authority a copy of the [**Credit Agreement and the Security, the registration details of the Credit Agreement and the Security**], together with written notice of the address of the Agent to which notices may be sent pursuant to Section 12.1(d) of the GTA West Trafalgar CES Contract.

The Assignee acknowledges and confirms that:

- (i) the provisions of Section 16.5(d) or (e) of the GTA West Trafalgar CES Contract have been complied with by the Ontario Power Authority and the Assignee;
- (ii) all of the representations, as amended below, set forth in Section 7.2 of the GTA West Trafalgar CES Contract are deemed to be made by the Assignee to the Supplier, and subject to Article 12 of the GTA West Trafalgar CES Contract, by the Assignee to the Agent, as of the date of the assignment;
- (iii) the representation set forth in Section 7.2(a) of the GTA West Trafalgar CES Contract is amended as follows:
 - “(a) The Assignee is a [**corporation/partnership/unlimited liability company**] created under the laws of [**Province/Canada**], and has the requisite power to enter into this Agreement and to perform its obligations hereunder.”
- (iv) the [**Credit Agreement and the Security**], collectively, constitutes a Secured Lender's Security Agreement under the GTA West Trafalgar CES Contract and that the Agent constitutes a Secured Lender thereunder; and
- (v) subject to the provisions of Article 12 of the GTA West Trafalgar CES Contract and compliance therewith by the Agent and the Supplier, as applicable, the Agent shall be entitled to the benefit of the provisions of Article 12 of the GTA West Trafalgar CES Contract in favour of a Secured Lender and the Agent shall be entitled to enforce the same as if the Agent were a party to the GTA West Trafalgar CES Contract.

Addendum No. 2: August 29, 2006

Dated this ● day of ●

[Insert name of Assignee]

By: _____

Name:

Title:

EXHIBIT O
FORM OF QUARTERLY PROGRESS REPORTS

Quarterly progress reports shall be submitted, electronically only and without covering letter, to the Director of Contract Management of the Buyer by the fifteenth (15th) day of each calendar quarter following the date of the Agreement and continuing until the Term Commencement Date. The reports shall be prepared in bullet forms, and shall contain the following:

1. **Executive Summary** - A brief overview of major work accomplished, any significant safety or environmental events that have occurred in the reporting period, and any issues that could have potential schedule impacts or invoking Force Majeure
2. **Change of Control** – Report the status of Assignment and/or Change of Control, if any (this section is to report status only, the Supplier is required to comply with Section 16.7)
3. **Force Majeure** – Report the status of Force Majeure events, if any (this section is to report status only, the Supplier is required to give the Buyer prompt notice when Force Majeure is invoked as per Section 11.1)
4. **Representations of the Supplier** – Report that the representations of the Supplier stipulated in Section 7.1 of the Agreement are still valid or provide a statement of the exceptions
5. **Development, design, and Construction Progress** – Report the status of each reportable event as shown on the attached quarterly progress report template; if the reportable event is also a Milestone Event, then enter the contractual Milestone Date as per Exhibit F
6. **Supplier Submittals Prior to Term Commencement Date**– Report the status of the submittals as shown on the attached quarterly progress report template
7. **Progress Photos** – Provide a maximum of three photos, in digital format, that can best represent the progress of construction work.

The following is the quarterly progress report template:

ONTARIO POWER AUTHORITY
Quarterly Progress Report

Pursuant to Section 2.7 of the Agreement, the Supplier is hereby submitting this quarterly progress report to the Buyer.

Supplier:		Date:	
Name of Contract Facility:		Reporting Period:	
Contractual COD:		OPA Approved COD:	Revised COD:

Executive Summary
<ul style="list-style-type: none"> ▪
Change of Control (Section 16.7 of the Agreement)
<ul style="list-style-type: none"> ▪
Force Majeure (Section 11.1 of the Agreement)
<ul style="list-style-type: none"> ▪

Representations of the Supplier (Section 7.1 of the Agreement)		
Section	Still Valid (Yes or No)	If No, details of exception
7.1 (a)		
7.1 (b)		
7.1 (c)		
7.1 (c) (i)		
7.1 (c)(ii)		
7.1 (c)(iii)		
7.1 (c)(iv)		
7.1 (c)(v)		
7.1 (d)		
7.1 (e)		
7.1 (f)		
7.1 (g)		
7.1 (h)		

Addendum No. 2: August 29, 2006

Development, Design, and Construction Progress						
Item	Reportable Events	Status of Efforts / Progress Description		Date		
				Contractual	Forecast	Actual
1	Obtaining Project and Site Approvals and Permitting	<u>Progress:</u> <ul style="list-style-type: none"> ▪ 	% Comp			
		<u>Issues:</u> <ul style="list-style-type: none"> ▪ 				
2	Completions of connection assessments including receipt of approvals from the IESO and the Transmitter	<u>Progress:</u> <ul style="list-style-type: none"> ▪ 	% Comp			
		<u>Issues:</u> <ul style="list-style-type: none"> ▪ 				
3	EPC Contract executed	<u>Progress:</u> <ul style="list-style-type: none"> ▪ 	% Comp			
		<u>Issues:</u> <ul style="list-style-type: none"> ▪ 				
4	Financial Closing	<u>Progress:</u> <ul style="list-style-type: none"> ▪ 	% Comp			
		<u>Issues:</u> <ul style="list-style-type: none"> ▪ 				
5	Equipment Order	<u>Progress:</u> <ul style="list-style-type: none"> ▪ 	% Comp			
		<u>Issues:</u> <ul style="list-style-type: none"> ▪ 				
6	Equipment Delivered	<u>Progress:</u> <ul style="list-style-type: none"> ▪ 	% Comp			
		<u>Issues:</u> <ul style="list-style-type: none"> ▪ 				

Addendum No. 2: August 29, 2006

7	Commencement of Construction	<u>Progress:</u> <ul style="list-style-type: none"> ▪ <u>Issues:</u> <ul style="list-style-type: none"> ▪ 	% Comp			
8	Completion of Construction	<u>Progress:</u> <ul style="list-style-type: none"> ▪ <u>Issues:</u> <ul style="list-style-type: none"> ▪ 	% Comp			
9	Connection of the Contract Facility to the Transmission System	<u>Progress:</u> <ul style="list-style-type: none"> ▪ <u>Issues:</u> <ul style="list-style-type: none"> ▪ 	% Comp			
10	Commercial Operation	<u>Progress:</u> <ul style="list-style-type: none"> ▪ <u>Issues:</u> <ul style="list-style-type: none"> ▪ 	% Comp			

Supplier Submittals Prior to Term Commencement Date

Item	Reference Section	Description of Submittals	Submission Date		
			Contractual	Forecast	Actual
1	2.1 (b)	Single Line Diagram			
2	2.3 (a) and 2.3 (b)	Invoice itemizing and describing the Transmitter Connection Costs and Network Upgrade Costs paid by the Supplier			
3	2.6 (a)	Independent professional engineer certificate			
4	2.9 (b)	Metering Plan			
5	2.10 (a) (i)	Valid certificates of insurance for "all risk"			
6	2.10 (a) (ii)	Valid certificates of insurance for commercial general liability			
7	2.10 (a) (iii)	Valid certificates of insurance for environmental/ pollution liability			
8	2.10 (d)	Clearance certificate of			

		<i>Workplace Safety and Insurance Act</i>			
9	2.11 (c)	Evidence on Supplier registered with the IESO as a “Metered Market Participant” and as a “Generator”			
10	6.1(a) 6.1(b)(i) 6.1(b)(ii) 6.1(b)(iii) 6.1(c)	Completion and Performance Security before Term Commencement Date			
11	15.3 (b) (i)	Long Term Operating Plan			

Progress Photos:

**EXHIBIT P
KEY EQUIPMENT SUPPLIERS**

1. List of Key Equipment Suppliers

The Key Equipment Suppliers shall include the following:

- (a) Key Equipment Suppliers under contract with the EPC Contractor as of the date of the Agreement:

[note to finalization: insert name(s) and jurisdiction(s) of equipment suppliers]

- (b) Key Equipment Suppliers (to be selected by the EPC Contractor following execution of the EPC Contract) shall include the third party equipment suppliers which are at Arm's Length to the Supplier and the EPC Contractor and under contract with the EPC Contractor to supply the following key engineered equipment:

- Combustion Turbine/Generator
- Heat Recovery Steam Generators
- Steam Turbine/Generator
- HRSG Bypass Stacks
- HRSG Bypass Stack Heaters
- Generator Step Up Transformers
- Distributed Control System
- Continuous Emissions Monitoring System
- Air Cooled Condenser
- Fin Fan Coolers
- High Pressure Boiler Feed Water Pumps
- Condensate Pumps
- Demineralized Water Treatment System
- Medium Voltage Switchgear and Motor Control Centers
- Condensate Polisher System

2. Due Diligence Process Relating to Selection of Key Equipment Suppliers

As part of the procurement process undertaken to select Key Equipment Suppliers (except for the supplier of the combustion turbine/generator sets as noted in Section 1 above), the Supplier shall enforce the provisions of the EPC Contract which shall require the EPC Contractor to undertake the following minimum due diligence procedures to mitigate the risk associated with strikes or labour disputes relating to the employees of Key Equipment Suppliers:

(a) The EPC Contractor shall require each bidder to submit the following information as part of its bid submission:

- Is Bidder's shop and/or Subcontractor's shop affiliated with any labour union?
_____ (yes)_____ (no)
- If yes, provide the following information:
 - (i) Name of Bidder's and/or Subcontractor's Labour Union(s) by Trade and Local Union Number(s).
 - (ii) Dates of expiration and/or renegotiation dates of each labour contract or collective agreement.
 - (iii) Is Bidder's shop(s) and/or Subcontractor's shop(s) presently experiencing any work stoppages as a result of a strike or labour dispute?
_____ (yes) _____ (no)
 - (iv) Furnish date and length of last work stoppage resulting from a strike or labour dispute.

(b) The EPC Contractor shall review and analyze the answers to these questions to determine whether there is an impending risk of a strike or labour dispute affecting a bidder and its subcontractors. To the extent that a labour contract or collective agreement is set to expire during the execution of the work, the EPC Contractor shall consider the bidder's prior history relating to strikes and labour disputes and any pending or potential issues between the bidder and its labour union(s).

(c) If, after completing the foregoing due diligence procedures, the EPC Contractor concludes that there is a reasonable risk that a bidder or its subcontractors may be subject to a strike or labour dispute which will unduly delay the execution of the work under the EPC Contract, the EPC Contractor shall disqualify such bidder from the procurement process.

3. Measures to Mitigate Impact of Key Equipment Supplier Strikes or Labour Disputes

In the event of a strike or labour dispute by employees of any Key Equipment Supplier, the Supplier shall use, and shall enforce the provisions of the EPC Contract which shall require the EPC Contractor to use, Commercially Reasonable Efforts to mitigate the duration and impact of such a strike or labour dispute, including using Commercially Reasonable Efforts to recover any time lost as a result of such delay.

**EXHIBIT Q
LONG TERM OPERATING PLAN**

**ONTARIO POWER AUTHORITY
Long Term Operating Plan**

Pursuant to Section 15.3 (b) (i) of the Agreement, the Supplier is hereby submitting this Long Term Operating Plan to the Buyer.

Supplier		Date	
Name of Contract Facility		Facility Location	

1. Unit Ratings

Note: Unit Ratings are ratings when the units are in a new and clean condition; Supplier to add additional units as applicable.

Generating Unit	Unit 1	Unit 2	Unit 3	Unit 4
Unit Rating (MW)				

2. Unit Outages

2.1 Planned Outages

Assumptions:

Addendum No. 2: August 29, 2006

Contract Year	Year	Unit 1	Unit 2	Unit 3	Unit 4
		Planned Outages (Days)			
1					
2					
3					
4					
5					
6					
7					
8					
9					
10					
11					
12					
13					
14					
15					
16					
17					
18					
19					
20					

2.2 Unplanned Outages

Assumptions:

Addendum No. 2: August 29, 2006

Contract Year	Year	Unit 1	Unit 2	Unit 3	Unit 4
		Unplanned Outages (%)			
1					
2					
3					
4					
5					
6					
7					
8					
9					
10					
11					
12					
13					
14					
15					
16					
17					
18					
19					
20					

3. Overall Availability

Assumptions:

Addendum No. 2: August 29, 2006

Contract Year	Year	Unit 1	Unit 2	Unit 3	Unit 4
		Availability (%)			
1					
2					
3					
4					
5					
6					
7					
8					
9					
10					
11					
12					
13					
14					
15					
16					
17					
18					
19					
20					

**EXHIBIT R
ANNUAL OPERATING PLAN**

**ONTARIO POWER AUTHORITY
Annual Operating Plan**

Pursuant to Section 15.3 (b) (ii) of the Agreement, the Supplier is hereby submitting this Annual Operating Plan to the Buyer.

Supplier		Date	
Project		Facility Number or Location	
Contract Year No.		From Month / Year to Month / Year	

1. Unit Ratings

Note: Supplier to add additional units, as applicable.

1.1 New and Clean Condition

Generating Unit	Unit 1	Unit 2	Unit 3	Unit 4
Unit Rating (MW)				

1.2 Unit Ratings for the Contract Year

Generating Unit	Unit 1	Unit 2	Unit 3	Unit 4
Unit Rating (MW)				

2. Unit Outages

2.1 Planned Outages

Assumptions:

Addendum No. 2: August 29, 2006

Contract Month	Month / Year	Unit 1	Unit 2	Unit 3	Unit 4
		Planned Outages (From / To and Number of Days)			
1					
2					
3					
4					
5					
6					
7					
8					
9					
10					
11					
12					

2.2 Unplanned Outages

Assumptions:

Contract Month	Month / Year	Unit 1	Unit 2	Unit 3	Unit 4
		Unplanned Outages (%)			
1					
2					
3					
4					
5					
6					
7					
8					
9					
10					
11					
12					

3. Overall Availability

Assumptions:

Addendum No. 2: August 29, 2006

Contract Month	Month / Year	Unit 1	Unit 2	Unit 3	Unit 4
		Availability (%)			
1					
2					
3					
4					
5					
6					
7					
8					
9					
10					
11					
12					

**EXHIBIT S
GAS ADJUSTMENT PROTOCOL**

1. Confirmation Regarding Existing Net Revenue Requirement

- (a) As a result of the Ontario Energy Board's Natural Gas Electricity Interface Review (the "**NGEIR Process**"), it is anticipated that Gas transportation, distribution, storage, and balancing services will be modified following the execution of this Agreement to assist Gas-fired generators in Ontario, including the Supplier, to more effectively manage their Gas requirements within the IESO-Administered Markets.
 - (b) In light of the foregoing:
 - (i) the Supplier acknowledges and agrees that except for any capital cost contributions relating to any pipeline capacity upgrades or connection costs, the Net Revenue Requirement set out in Exhibit B as of the date of this Agreement does not contain or incorporate any costs, contingencies, compensation or risk premiums whatsoever associated with Gas transportation, distribution, storage, and balancing services from Union Dawn to the Facility's burner-tip (collectively, the "**Gas Delivery and Management Services**" or "**GD&M Services**"); and
 - (ii) the purpose of the Gas adjustment protocol set out in this Exhibit is to determine:
 - A. the appropriate compensation to the Supplier from the Buyer for the Negotiated GD&M Services, and as more particularly set out in Sections 2 or 5 of this Exhibit, as applicable, which compensation shall be in addition to the Net Revenue Requirement set out in Exhibit B as of the date of this Agreement; or
 - B. the appropriate compensation to the Supplier from the Buyer for, and the restrictions on the Supplier on the procurement of, the Cost of Service GD&M Services, as more particularly set out in Section 4 of this Exhibit, and which compensation shall be in addition to the Monthly Payment,
- as applicable.

2. Gas Review Committee

- (a) Within sixty (60) days after the date of this Agreement, the Supplier and Buyer shall form a Gas review committee (the "**Gas Review Committee**") which will be comprised of two nominees from each of the Supplier and the Buyer. All decisions of the Gas Review Committee shall be unanimous.

- (b) As soon as reasonably possible after the conclusion of the NGEIR Process, the Supplier shall prepare and submit a Gas Management Proposal (as defined herein) to the Gas Review Committee, and the Gas Review Committee shall discuss and consider such Gas Management Proposal prior to the Gas Negotiation Deadline, acting reasonably and in good faith. For greater certainty, the Gas Management Proposal may be amended by the Supplier from time to time upon notice to the Gas Review Committee within a reasonable time prior to the Gas Negotiation Deadline.
- (c) The proposal prepared by the Supplier pursuant to Section 2(b) of this Exhibit (as amended from time to time, the “**Gas Management Proposal**”) shall set out the Supplier’s proposed Gas management strategy associated with the procurement of those GD&M Services (including, without limitation, any new or amended GD&M Services resulting from the NGEIR Process) that are in existence prior to the Gas Negotiation Deadline and that are required to operate the Contract Facility during the Term in accordance with this Agreement (collectively, the “**Negotiated GD&M Services**”), and the corresponding amount by which the Supplier proposes that the Net Revenue Requirement set out in Exhibit B as of the date of this Agreement be increased to compensate the Supplier with respect to the costs and risks associated with such strategy. If the assumptions and methodologies set out in the Gas Management Overview section of the Proposal which apply to the Negotiated GD&M Services (collectively, the “**Approved Gas Proposal Assumptions**”) are approved by the Buyer acting in its sole and absolute discretion, and by notice to the Gas Review Committee, then the Approved Gas Proposal Assumptions shall form the basis of the Gas Management Proposal, and the Approved Gas Proposal Assumptions shall govern over any other information contained in the Gas Management Proposal to the extent of any conflict or inconsistency. Subject to the foregoing, the Gas Management Proposal shall be based on the following principles:
- (i) the Gas Management Proposal shall only contain commercially reasonable assumptions;
 - (ii) any Gas distribution services forming part of the Negotiated GD&M Services must be obtained from either Enbridge Gas Distribution Inc. or Union Gas Limited, and the Supplier must not construct, own, or operate the gas pipeline that serves the Contract Facility;
 - (iii) the Negotiated GD&M Services shall not relate to any Supplier’s Capacity and shall not include any capital cost contributions for any pipeline capacity upgrades or connection costs;
 - (iv) the adherence of the Negotiated GD&M Services to Good Engineering and Operating Practices;
 - (v) the ability of the Supplier to operate the Contract Facility in a manner that is in accordance with this Agreement using the Negotiated GD&M Services; and

- (vi) after giving effect to the principles set out in Sections 2(c)(i) to (v) of this Exhibit associated with the Negotiated GD&M Services, the minimization of costs and risks to both the Supplier and the Buyer.
- (d) If the Gas Review Committee approves the Gas Management Proposal, then the Gas Review Committee shall propose to the Parties the amount by which the Net Revenue Requirement set out in Exhibit B as of the date of this Agreement should be increased to compensate the Supplier with respect to the costs and risks associated with the strategy described in the Gas Management Proposal, and the Parties shall amend the Net Revenue Requirement set out in Exhibit B as of the date of this Agreement to reflect the increase in the Net Revenue Requirement proposed by the Gas Review Committee. Upon the implementation by the Parties of any such amendment to this Agreement, the Gas Review Committee shall be disbanded and the terms of this Exhibit shall no longer apply.

3. Inability to Agree on Gas Management Proposal

- (a) If, as of the Gas Negotiation Deadline, the Gas Review Committee has not approved the Gas Management Proposal (including, for greater certainty, a dispute within the Gas Review Committee over how costs and/or risks are allocated or valued in the Gas Management Proposal, or the amount of the proposed increase in the Net Revenue Requirement set out in Exhibit B as of the date of this Agreement), then the Buyer, in its sole and absolute discretion, shall select between one of the following options, by notice in writing (the “**Option Notice**”) delivered to the Supplier by no later than fifteen (15) Business Days after the Gas Negotiation Deadline:
 - (i) the Supplier’s compensation by the Buyer with respect to Gas Delivery and Management Services shall be determined on the basis set out in Section 4 of this Exhibit (the “**Cost of Service Option**”); or
 - (ii) the Supplier’s compensation by the Buyer with respect to Gas Delivery and Management Services shall be determined on the basis set out in Section 5 of this Exhibit (the “**Arbitration Option**”).

4. Cost of Service Option

- (a) In the event that the Cost of Service Option is selected by the Buyer pursuant to Section 3(a)(i) of this Exhibit, the Supplier shall be restricted to procuring those GD&M Services from time to time (including, without limitation, any new or amended GD&M Services resulting from the NGEIR Process) that are required to operate the Contract Facility during the Term in accordance with this Agreement (collectively, the “**Cost of Service GD&M Services**”) on the following basis:
 - (i) the Supplier shall provide to the Buyer, within thirty (30) days after the date of the Option Notice, a copy of the Supplier’s proposed Gas Management Plan (as defined herein). The Supplier shall provide to the Buyer a copy of any proposed amendments to the Gas Management Plan from time to time;

- (ii) the plan prepared by the Supplier pursuant to Section 4(a)(i) of this Exhibit (as amended from time to time, the “**Gas Management Plan**”) shall contain the Supplier’s proposed Gas management strategy associated with the procurement of the Cost of Service GD&M Services. If the assumptions and methodologies set out in the Gas Management Overview section of the Proposal with respect to the Cost of Service GD&M Services (collectively, the “**Approved Gas Plan Assumptions**”) are approved by the Buyer acting in its sole and absolute discretion, by notice to the Supplier, then the Approved Gas Plan Assumptions shall form the basis of the Gas Management Plan, and the Approved Gas Plan Assumptions shall govern over any other information contained in the Gas Management Plan to the extent of any conflict or inconsistency. Subject to the foregoing, the Gas Management Plan shall be based upon the following principles:
 - A. the Gas Management Plan shall only contain commercially reasonable assumptions;
 - B. any Gas distribution services forming part of the Cost of Service GD&M Services must be obtained from either Enbridge Gas Distribution Inc. or Union Gas Limited, and the Supplier must not construct, own, or operate the gas pipeline that serves the Contract Facility;
 - C. the Cost of Service GD&M Services shall not relate to any Supplier’s Capacity and shall not include any capital cost contributions for any pipeline capacity upgrades or connection costs;
 - D. the adherence of the Cost of Service GD&M Services to Good Engineering and Operating Practices;
 - E. the ability of the Supplier to operate the Contract Facility in a manner that is in accordance with this Agreement using the Cost of Service GD&M Services; and
 - F. after giving effect to the principles set out in Sections 4(a)(ii)(A) to (E) of this Exhibit associated with the Cost of Service GD&M Services, the minimization of costs and risks to both the Supplier and the Buyer;
- (iii) the Gas Management Plan shall also contain the methodology of monitoring the Supplier’s compliance with the Gas Management Plan from time to time, and the consequences, if any, to the Supplier if the Supplier does not comply with the Gas Management Plan; and
- (iv) the Gas Management Plan may also contain proposed amendments to this Agreement that are required to implement the Gas Management Plan

provided, however, that any amendments to the Agreement shall only be implemented by written agreement of the Parties.

- (b) The Gas Management Plan (and any amendments proposed by the Supplier) shall be subject to the prior written approval of the Buyer.
- (c) Under the Cost of Service Option, the Supplier shall be entitled to compensation by the Buyer on the following basis:
 - (i) no later than ten (10) Business Days after the end of each calendar month following the Term Commencement Date, the Supplier shall prepare and deliver to the Buyer a detailed monthly invoice setting out the total amount for those Cost of Service GD&M Services:
 - A. that were paid for by the Supplier in the previous calendar month as a result of the operation of the Contract Facility in accordance with this Agreement; and
 - B. that were consistent with the strategy and principles set out in the Gas Management Plan;

together with reasonable supporting documentation to confirm the amounts and the breakdown of such Cost of Service GD&M Services including, without limitation, receipts issued by the providers of such Cost of Service GD&M Services to the Supplier setting out the amounts paid to them by the Supplier;

- (ii) the Buyer shall review the monthly invoice and the supporting documentation described in Section 4(c)(i). If the Buyer, acting reasonably, disputes the amount of the Supplier's invoice or considers that the procurement of such Cost of Service GD&M Services were not consistent with the strategy and principles set out in the Gas Management Plan, then the Buyer shall provide notice thereof to the Supplier within ten (10) Business Days of receipt of the invoice and supporting documentation, along with a brief explanation of the dispute. If it is subsequently determined or agreed that an adjustment to the invoice is appropriate, the Supplier shall promptly prepare a revised invoice. Any overpayment or underpayment of an invoice 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 invoice shall be due at the same time as the next Monthly Payment is due for a Settlement Month. If an invoice dispute has not been resolved between the Parties within five (5) Business Days after receipt of written notice of such dispute by the Supplier, the dispute may be submitted by either Party to a Senior Conference pursuant to the terms of Section 16.1 of the Agreement;
- (iii) subject to the Buyer's right to dispute any monthly invoice pursuant to Section 4(c)(ii) of this Exhibit, the Buyer agrees to pay to the Supplier the

amount due to the Supplier under such invoice. Such payment will be due at the same time as the Monthly Payment is due for the Settlement Month to which the monthly invoice relates, provided that if the Supplier's monthly invoice and supporting documentation is not received by the Buyer within the time set out in Section 4(c)(i), then such payment will be due at the same time as the Monthly Payment is due for the following Settlement Month.

- (d) Following the Term Commencement Date, the Gas Review Committee shall review the Gas Management Plan on an annual basis (or more often if the Parties so agree) to determine whether any modifications are required to the Gas Management Plan based on the prior twelve months of operational history of the Contract Facility. Any modifications to the Gas Management Plan shall be subject to the prior written approval of the Buyer, and to the extent that any amendments are required to this Agreement to implement such modifications, then any such amendments shall only be implemented by written agreement of the Parties.

5. Arbitration Option

- (a) In the event that the Arbitration Option is selected by the Buyer pursuant to Section 3(a)(ii) of this Exhibit, then the Parties agree that the compensation to the Supplier shall be based upon the Negotiated GD&M Services and the principles set out in Section 2(c)(i) to (vi) of this Exhibit, and shall result in an increase in the Net Revenue Requirement set out in Exhibit B as of the date of this Agreement, in accordance with the following procedure:
 - (i) the Buyer shall notify the Supplier in reasonable detail of the issues to be arbitrated in relation to the Negotiated GD&M Services (the "**Commencement Notice**"), and within ten (10) Business Days from the receipt of the Commencement Notice, the Supplier may set forth in reasonable detail additional related issues to be arbitrated. Within ten (10) Business Days after the last day for giving of such notice by the Supplier, each Party shall furnish to the other Party a notice (a "**Decision Notice**") setting forth the decision (on a word-for-word basis including, without limitation, the corresponding amount by which the Party proposes that the Net Revenue Requirement set out in Exhibit B as of the date of this Agreement be increased to compensate the Supplier with respect to the costs and risks associated with the Negotiated GD&M Services) that such Party wishes the arbitrator to make with respect to all of the issues to be arbitrated. For greater certainty, the Commencement Notice will not constitute the issuing Party's Decision Notice and the Buyer may vary in its Decision Notice any position set out in its Commencement Notice, and the Decision Notice from either Party may be prepared and furnished without reference to the content, issues or details contained in the Gas Management Proposal or in the Commencement Notice;
 - (ii) within ten (10) Business Days after the giving of the latter of the Decision Notices, the Parties shall attend a meeting at a mutually acceptable time

and place to discuss fully the content of such Decision Notices and based thereon determine whether either of the Parties wishes to modify their Decision Notices in any way. Any such modifications shall be discussed with each Party so that when each Party finalizes its Decision Notice, it shall do so with full knowledge of the content of the other Party's final Decision Notice. The finalization of such Decision Notices and the delivery of same by each Party to the other Party shall occur at the meeting unless by mutual agreement they agree to have one or more additional meetings for such purposes;

- (iii) it is the intent of the Parties that, to the extent practicable, such binding arbitration shall be conducted by a Person knowledgeable and experienced in the type of matter that is the subject of the dispute. In the event that the Parties are unable to agree upon such Person within ten (10) Business Days after the last meeting held pursuant to Section 5(a)(ii) of this Exhibit, then, upon the application of either Party, 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);
 - (iv) upon final selection of the arbitrator, the arbitrator shall, as expeditiously as possible (and if possible, within thirty (30) days after his or her selection), render a decision on the matter submitted for arbitration and shall notify the Parties in writing of such decision and the reasons therefor. The arbitrator shall be required to select one or the other of the Decision Notices and shall have no power whatsoever to reach any other result. Aside from selecting one or the other of the Decision Notices, the arbitrator shall have no power to modify or change the Agreement. The arbitrator shall select the Decision Notice that in its judgment most closely meets the principles set out in Sections 2(c)(i) to (vi) of this Exhibit and the Approved Gas Proposal Assumptions, if any. 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) an equal share of the costs of the arbitrator; and
 - (v) the arbitration, including the rendering of the decision, shall take place in Toronto, Ontario, which shall be the location of the proceedings. The language to be used in the arbitration shall be English. 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).
- (b) The provisions of Sections 16.1 and 16.2 of the Agreement shall not apply to a dispute under Section 5(a) of this Exhibit.

- (c) The Parties shall amend the Net Revenue Requirement set out in Exhibit B as of the date of this Agreement to reflect the increase in the Net Revenue Requirement set out in the Decision Notice selected by the arbitrator pursuant to Section 5 of this Exhibit.