

**CALSTOCK BIOMASS POWER
PURCHASE AGREEMENT
(CALSTOCK BIOMASS PPA)**

1. **CONTRACT DATE** March 24, 2022
-
2. **SUPPLIER** Atlantic Power Limited Partnership
-
3. **SUPPLIER'S ADDRESS** Atlantic Power Limited Partnership
c/o Atlantic Power & Utilities, 3 Allied
Drive – Suite 155, Dedham, MA 02026
USA
-
4. **SUPPLIER INFORMATION** Not a Non-Resident of Canada
 Non-Resident of Canada
-
5. **NAME OF FACILITY** Calstock Generating Station
6. **GROSS NAMEPLATE CAPACITY** 38 MW
7. **CONTRACT CAPACITY** (a) On-peak Contract Capacity: 24 MW during On-peak Hours
(b) Off-peak Contract Capacity: 11 MW during Off-peak Hours
8. **CONTRACT PRICE** \$XX/MWh, subject to annual escalation in accordance with Exhibit B.
9. **TECHNOLOGY CLASS** Rankine cycle biomass generating facility

10. DETAILED DESCRIPTION OF FACILITY

1.0 Overview

Calstock is a nominal 38 MW power plant located 30km west of the town of Hearst, Ontario.

2.0 Site Description (including zoning)

The 84 acres site is situated adjacent to TC Energy's Compressor Station 88, approximately 30 km west of Hearst Ontario, on Highway 11N. Plant is also located in the North East zone of the IESO-Controlled Grid.

3.0 Project Design and Major Equipment (including Single Line Diagram and manufacturer's spec sheets), and Nameplate MVA Rating, including:

- Wood Boiler – Foster Wheeler boiler with a maximum steam capacity of 275,000 LBS/HR.
- Steam Turbine – ABB MP turbine with a rated maximum output capacity of 46 MW.
- Gearbox – ABB MP turbine reduction gear with a rated capacity of 42 MW.
- Generator – ABB generator with a maximum output of 48 kVA.
- Main Output Transformer – ABB transformer takes the 13,800 volts power generated and steps it up to 115,000 volts for export to the grid.
- Cooling Tower – GEA Integrated Cooling Technologies water cooled cooling tower with 3 cooling cells.
- Two (2) IST Once Through Steam Generator boiler. Not used for Contract Capacity generation.

4.0 Environmental Features (including a description of features and technologies that mitigate environmental concerns in relation to air quality, noise, water, sewage discharge, etc.)

The Calstock facility is permitted under its Amended Environmental Compliance Approval (ECA) number 6508-53KPWK. This ECA covers air quality, noise, sewage discharge, and landfill approval.

Some of the equipment in place to ensure compliance are:

- Settling basins, a lagoon, and a pond;
- Water treatment plant;
- Leachate collection system;
- Mechanical dust collectors;
- Continuous Emission Monitoring System;
- Electrostatic precipitator;
- Plant effluent sampling program.

5.0 List of Environmental Approvals and Permits, and Status

The facility was constructed under permits in accordance with regulations in effect at time of construction. The following permits are required for the operation of the Facility:

- Amended Environmental Compliance Approval No. 6508-53KPWK

- Issued: March 9, 2021.
- Reason: ECA for air quality, noise, sewage discharge, and landfill approval.
- The latest amendment was to reflect the new Financial Assurance amount with the Ministry.

- Permit to Take Water No. 2173-BKFQKA
 - Issued: February 25, 2020.
 - Expiry: February 25, 2030 (renewable every ten years).
 - Reason: Allows plant intake of up to 3,183 litres per minute of water, to a maximum of 4,582,368 litres per day from the Kabinakagami River.

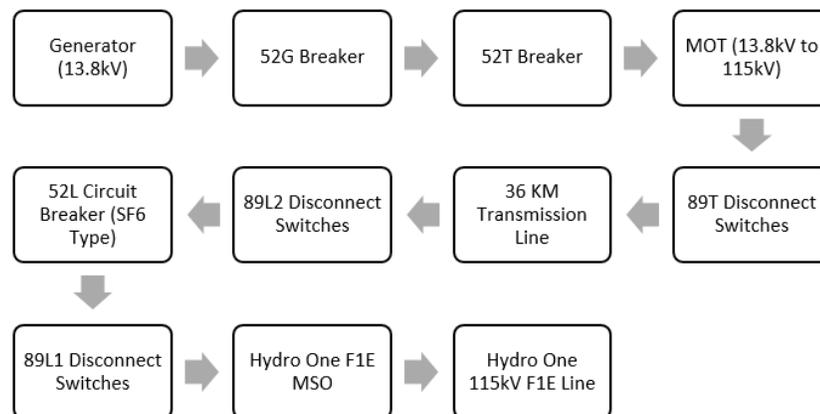
- Land Use Permit LUP1455-1002267
 - Issued: August 1, 2016.
 - Expiry: July 31, 2026 (renewable every ten years).
 - Reason: Permit which allows use of land for the river pumphouse, under water intake pipe to the plant, underground cable to the plant, and the transmission line to feed the pumphouse.

- Land Use Permit LUP1455-1002266
 - Issued: August 1, 2016.
 - Expiry: July 31, 2026 (renewable every ten years).
 - Reason: Permit which allows use of land for the transmission line from the plant to our connection point in Hearst.

6.0 Electrical Interconnection

Our electrical interconnection flow is as follow:

Please refer to the plant's single line diagram in Exhibit K for the exact and precise representation of the interconnection.



7.0 Fuel Supply

Biomass fuel is trucked on-site from various locations. The fuel may consist of mills' by-products or other biomass sources.

Natural gas comes directly from the neighboring TC Energy metering building. The high-pressure gas is used for the wood boiler burners while the low-pressure gas is used for domestic purposes.

Waste Heat from the neighboring TC Energy compressor station is converted to steam on site in a Once Through Steam Generator.

8.0 Water and Wastewater Supply and Return (including a description of the Facility's cooling needs and equipment washing requirements)

Water is supplied from the Kabinakagami river.

Sewage from the plant's washroom facilities is routed to a septic system within the site boundaries.

All process wastewater from the plant is released through the approved process in our Environmental Compliance of Approval permit.

All of the cooling needs for the plant are done by the water-cooled tower.

- | | | |
|-----|--|---|
| 11. | FACILITY LOCATION: | Calstock, Lot 26, 27, 28, Concession 4, Stoddart Unorganised Township, District of Cochrane, Province of Ontario |
| 12. | CONNECTION POINT | 115 kV circuit C1C, which is tapped to 115 V circuit F1E at Calstock Switching Station (SS) |
| 13. | INCORPORATED SCHEDULES, APPENDICES AND EXHIBITS | <hr/> <p>Schedule 1 – General Terms and Conditions
Exhibit A – Fuel Supply Plan
Exhibit B – Contract Settlement
Exhibit C – Form of Irrevocable Standby Letter of Credit
Exhibit D – Arbitration Provisions Applicable to Sections 1.7, 2.8 and 12.2
Exhibit E – Form of Acknowledgement of Secured Lender's Rights
Exhibit F – Form of Independent Engineer Certificate
Exhibit G – Form of Supplier Certificate
Exhibit H – Form of Confidentiality Undertaking
Exhibit I – Form of Force Majeure Notice
Exhibit J – Not Used
Exhibit K – Metering Plan</p> |

Exhibits C, H, and I in the forms attached to this Agreement, reflect the corresponding forms appearing on the Website as at the date of this Agreement. However, the Supplier acknowledges and agrees that the Sponsor may, at any time and from time to time after the date of this Agreement, acting reasonably, without notice to the Supplier, amend or replace each such form of certificate, notice or report, and post such amended or replacement form on the Website, and thereafter such amended or replaced form as it appears on the Website shall replace and shall be used by the Supplier or the Sponsor, as the case may be, in the stead of the then current form. Accordingly, it is the responsibility of the Supplier to ensure that the latest draft of the relevant form, as posted on the Website, is used.

For valuable consideration, the Sponsor and the Supplier hereby mutually agree to be bound by the terms and conditions set out in this Calstock Biomass PPA and the Schedules, Appendices and Exhibits attached hereto as noted in item 13 above (the "Agreement"). Each of the Sponsor and the Supplier confirms that it has received a copy of and has reviewed this Agreement, and that its representations and warranties set out herein are true and correct.

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

ATLANTIC POWER GP INC. as general partner for and on behalf of **ATLANTIC POWER LIMITED PARTNERSHIP**

By: _____
Name:
Title:

By: _____
Name:
Title:

I/We have authority to bind the corporation.

INDEPENDENT ELECTRICITY SYSTEM OPERATOR

By: _____
Name:
Title:

By: _____
Name:
Title:

I/We have authority to bind the corporation.

**CALSTOCK BIOMASS POWER PURCHASE AGREEMENT
(CALSTOCK BIOMASS PPA)**

SCHEDULE 1

GENERAL TERMS AND CONDITIONS

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CALSTOCK BIOMASS PPA

GENERAL TERMS AND CONDITIONS

ARTICLE 1 DEFINITIONS AND RULES OF INTERPRETATION

1.1 Definitions

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

1. ***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.
2. ***Agreement*** has the meaning given to it on the Calstock PPA Cover Page.
3. ***Ancillary Service*** has the meaning given to it in the IESO Market Rules.
4. ***Annual Maximum Contract Output*** or ***AMCO*** means the maximum Delivered Electricity paid for under this Agreement in each Contract Year, as set out in Exhibit B, expressed in MWh.
5. ***Approved Incremental Costs*** means the incremental costs incurred by the Supplier for a Settlement Month in excess of the cost of production of the Delivered Electricity, relating to the sale, supply or delivery of Future Contract Related Products during such month, and which costs are reasonable and have first been verified and approved by the Sponsor.
6. ***Arbitration Panel*** has the meaning given to it in Exhibit D.
7. ***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 ITA or that such Persons, as a matter of fact, deal with each other at a particular time at arm's length.
8. ***Biomass*** has the meaning given to it in O. Reg. 160/99 made under the Electricity Act.
9. ***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.
10. ***Calstock PPA Cover Page*** means the front pages of the Agreement setting out specific features of the Facility, including its Connection Point, Contract Capacity, Gross Nameplate Capacity, and Contract Price.
11. ***Capacity Products*** means any products related to the rated, continuous load-carrying capability of a Facility to generate and Deliver Electricity at a given time.
12. ***Cents*** or ¢ means hundredths of a Dollar.
13. ***Claim*** means a claim or cause of action in contract, in tort, under any Laws and Regulations, or otherwise.
14. ***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, a transaction,

activity or undertaking 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 transaction therein contemplated.

15. **Company Representative** has the meaning given to it in Section 14.1.
16. **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 (a) publicly-available information, unless made public by the Receiving Party or its Representatives in a manner not permitted by this Agreement; (b) information already known to the Receiving Party prior to being furnished by the Disclosing Party; (c) 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; (d) information that is independently developed by the Receiving Party; and (e) this Agreement in its entirety, except for the Contract Price and Section 4.5.
17. **Confidentiality Undertaking** has the meaning given to it in Section 7.1.
18. **Connection Agreement** means the agreement or agreements entered into between the Transmitter and the Supplier with respect to the connection of the Facility to the IESO-Controlled Grid, and governing the terms and conditions of such connection.
19. **Connection Point** means the electrical point or points of connection, as defined in the IESO Market Rules, between the Facility and the IESO-Controlled Grid.
20. **Contract Capacity** means, as applicable, the On-peak Contract Capacity on Designated Days or the Off-peak Contract Capacity on Designated Days, expressed in MW, and is equal to zero in all hours other than Contract Hours.
21. **Contract Execution Date** means the date this Agreement is actually executed and delivered by both parties.
22. **Contract Hours** means, collectively, the On-peak Hours and the Off-peak Hours, each on Designated Days.
23. **Contract Price** means the “Contract Price”, as set out on the Calstock PPA Cover Page.
24. **Contract Year** means a 12-month period which begins on the Term Commencement Date or an anniversary thereof, during the Term.
25. **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 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 or by contract, trust or otherwise, and Controlled by has a corresponding meaning.
26. **CPI or Consumer Price Index** means the consumer price index for “All Items” published or established by Statistics Canada (or its successor) for any relevant calendar month in relation to the Province of Ontario.

27. **Delivered** means, in relation to Electricity and certain Related Products, delivered to the Connection Point (which, for greater certainty, is net of Site-Specific Losses), and *Deliver* and *Delivering* have the corresponding meanings.
28. **Designated Days** has the meaning given to it in Exhibit B.
29. **Disclosing Party** means, with respect to Confidential Information, the Party and/or its Representatives providing or disclosing such Confidential Information and may be the Sponsor or the Supplier, as applicable.
30. **Discriminatory Action** has the meaning given to it in Section 12.1.
31. **Discriminatory Action Compensation** has the meaning given to it in Section 12.2.
32. **Dollar** or **\$** means Canadian dollars and cents, unless otherwise specifically set out to the contrary.
33. **Electricity** means electric energy, measured in MWh-electrical.
34. **Electricity Act** means the *Electricity Act, 1998* (Ontario).
35. **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 may be defined in any regulation as may be promulgated under the *Environmental Protection Act* (Ontario).
36. **Environmental Attributes** means the interests or rights arising out of attributes or characteristics relating to the environmental impacts associated with the Facility or the output of the Facility, now or in the future, and the right to quantify and register these with competent authorities, including:
- (a) all right, title, interest and benefit in and to any renewable energy certificate, credit, reduction right, offset, allocated pollution right, emission reduction allowance or other proprietary or contractual right, whether or not tradable, resulting from the actual or assumed displacement of emissions by the production of Electricity from the Facility as a result of the utilization of renewable energy technology;
 - (b) rights to any fungible or non-fungible attributes or entitlements relating to environmental impacts, whether arising from the Facility itself, from the interaction of the Facility with the IESO-Controlled Grid, or because of Laws and Regulations or voluntary programs established by Governmental Authorities;
 - (c) any and all rights, title and interest relating to the nature of an energy source (including a renewable fuel) as may be defined and awarded through Laws and Regulations or voluntary programs, including all Emission Reduction Credits; and
 - (d) all revenues, entitlements, benefits, and other proceeds arising from or related to the foregoing which may be available in connection with the Facility,
- but excluding:
- (e) payments under the Government of Canada’s ecoENERGY for Renewable Power Program (or any predecessor program thereto) which may be available in connection with a renewable generating facility;

- (f) any tax benefit, or other benefit under the Government of Canada's Canadian Renewable and Conservation Expenses (CRCE) or successor program which may be available in connection with a renewable generating facility; and
- (g) such other items as the Sponsor may determine in its sole discretion at any time and from time to time, such excluded items to be posted on the Website and revised periodically.

For greater certainty, in the event that any governmental or non-governmental agency, whether provincial, federal, national or international in scope or authority, creates or sanctions a registry, trading system, credit, offset or other program relating to Environmental Attributes or their equivalent, the term "Environmental Attributes" shall include the rights or benefits created or sanctioned under any such program or programs to the extent available as a result of, or arising from, the production of Electricity or Related Products from the Facility.

- 37. **EST** means Eastern Standard Time.
- 38. **Event of Default** means an event of default by the Supplier or the Sponsor.
- 39. **Facility** means all equipment, property and facilities comprising the facility as described on the Calstock PPA Cover Page, with any modifications thereto approved by the Sponsor, and includes, for greater certainty, all equipment, property and facilities necessary to operate the Facility to produce and deliver Electricity to the point at which the Facility's revenue-quality meter records the net Electricity Delivered.
- 40. **Facility Amendment** has the meaning given to it in Section 2.1.
- 41. **FIPPA** means the *Freedom of Information and Protection of Privacy Act* (Ontario).
- 42. **FIPPA Records** has the meaning given to it in Section 7.5.
- 43. **Force Majeure** has the meaning given to it in Section 10.3.
- 44. **Fuel Supply Plan** means the plan attached as Exhibit A to this Agreement.
- 45. **Future Contract Related Products** means all Related Products that relate to the Facility and that were not capable of being traded or sold by the Supplier in the IESO-Administered Markets or other markets on or before the Contract Date.
- 46. **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 generating 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 of Electricity in light of the facts known at the time the decision was made, could reasonably have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety, expedition and Laws and Regulations. Good Engineering and Operating Practices are not intended to be limited to the optimum practices, methods or acts to the exclusion of all others, but rather are intended to delineate acceptable practices, methods, or acts generally accepted in the North American electric utility industry. Without limiting the generality of the foregoing and in respect of the operation of the Facility, Good Engineering and Operating Practices include taking reasonable steps to ensure that:

- (a) adequate materials, resources and supplies, including fuel, are available to meet the Facility's needs under reasonable conditions and reasonably anticipated abnormal conditions;
 - (b) sufficient operating personnel are available and are adequately experienced and trained to operate the Facility properly, efficiently and taking into account manufacturers' guidelines and specifications and are capable of responding to reasonably anticipated abnormal conditions;
 - (c) preventative, routine and non-routine maintenance and repairs are performed on a basis that ensures reliable long-term and safe operation and taking into account manufacturers' recommendations and are performed by knowledgeable, trained and experienced personnel utilizing proper equipment, tools and procedures; and
 - (d) appropriate monitoring and testing is done to ensure equipment is functioning as designed and to provide assurance that equipment will function properly under both normal and reasonably anticipated abnormal conditions.
47. **Government of Canada** means Her Majesty the Queen in right of Canada.
48. **Government of Ontario** means Her Majesty the Queen in right of Ontario.
49. **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 System Operator, the OEB, the Electrical Safety Authority, and any Person acting under the authority of any Governmental Authority, but excluding the Sponsor.
50. **Grid Incapability** means that all or any part of the Electricity from the Facility cannot physically be received at or transmitted or distributed from any Connection Point as a result of a system constraint on the IESO-Controlled Grid.
51. **Gross Nameplate Capacity** means the manufacturer's total installed rated capacity of the Facility to generate Electricity.
52. **Hourly Delivered Electricity** means the Electricity generated and Delivered (net of Station Service Loads) by the Facility during any hour, provided such Electricity is delivered to the Connection Point and successfully injected into the IESO-Controlled Grid.
53. **Hourly Ontario Energy Price** or **HOEP** has the meaning provided to it in the IESO Market Rules, and expressed in Dollars per MWh, and includes any applicable successor price, including any applicable successor locational marginal price.
54. **HST** means the harmonized sales tax exigible pursuant to the *Excise Tax Act* (Canada), or any successor thereto.
55. **IE Certificate** means a certificate addressed to the Sponsor from an Independent Engineer, procured by the Supplier and at the Supplier's sole expense, that complies with the requirements of Section 2.3(a)(ii).
56. **IESO** means the Independent Electricity System Operator of Ontario established under Part II of the *Electricity Act* or its successor.

57. ***IESO-Administered Markets*** has the meaning given to it by the IESO Market Rules.
58. ***IESO-Controlled Grid*** has the meaning given to it by the IESO Market Rules.
59. ***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 System Operator, all as amended or replaced from time to time.
60. ***including*** means including (or includes) without limitation.
61. ***Indemnitees*** has the meaning given to it in Section 13.3.
62. ***Indemnifiable Loss*** has the meaning given to it in Section 13.3.
63. ***Independent Engineer*** is an engineer that is (i) a Professional Engineer duly qualified and licensed to practise engineering in the Province of Ontario; and (ii) employed by an independent engineering firm which holds a certificate of authorization issued by Professional Engineers Ontario that is not affiliated with or directly or indirectly Controlled by the Supplier; that does not have a vested interest in the design, engineering, procurement, construction, metering and/or testing of the Facility; and that has not been engaged by any lender or prospective lender for the Facility.
64. ***Indexed Contract Price*** has the meaning given to it in Exhibit B.
65. ***Insolvency Legislation*** means the *Bankruptcy and Insolvency Act* (Canada), the *Winding Up and Restructuring Act* (Canada) and the *Companies' Creditors Arrangement Act* (Canada) or any analogous legislation, 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).
66. ***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.
67. ***ITA*** means the *Income Tax Act* (Canada), as amended from time to time and all regulations promulgated thereunder from time to time.
68. ***kW*** means kilowatt and ***kWh*** means kilowatt-hour.
69. ***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;
 - (e) the Transmission System Code and any other codes issued by the OEB; and

- (f) the IESO Market Rules, as well as any manuals or interpretation bulletins issued by the System Operator from time to time that are binding on the Supplier.
70. **Market Participant** has the meaning given to it by the IESO Market Rules.
71. **Market Settlement Charges** means all market settlement amounts and charges described in Chapter 9 of the IESO Market Rules.
72. **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 under this Agreement.
73. **Metered Market Participant** has the meaning given to that term by the IESO Market Rules.
74. **Metering Plan** means a report that is attached as Exhibit K to this Agreement that (a) verifies that the revenue-quality interval meters conform with Laws and Regulations administered by Measurement Canada with respect to such meter(s), and (b) provides all required information and equipment specifications needed to permit the Sponsor to remotely access, verify, estimate and edit for calculation purposes and/or total revenue meter readings in order to accurately determine the output of the Facility generated by Biomass net of any Station Service Loads.
75. **MMBTU** means one million BTUs (higher heating value).
76. **Monthly Payment** has the meaning given to it in Exhibit B.
77. **MVPortal** or **MV-Web** means the internet-based communications interface application for Market Participants supplied by the System Operator that allows Market Participants to access physical and financial data for the IESO-Administered Markets, and includes any systems or applications that may replace, supplement or succeed MVPortal or MV-Web.
78. **MW** means megawatt.
79. **MWh** means megawatt-hour.
80. **New Agreement** means a new agreement substantially in the form of this Agreement and for the then balance of the Term (had this Agreement not been terminated early), which may be entered into with a Secured Lender who is at Arm's Length with the Supplier or with a Person identified by such Secured Lender following an event of default under the Secured Lender's Security Agreement.
81. **OEB** means the Ontario Energy Board or its successor.
82. **Off-peak Contract Capacity** means the "Off-peak Contract Capacity", as set out on the Calstock PPA Cover Page.
83. **Off-peak Hours** has the meaning given to it in Exhibit B.
84. **On-peak Contract Capacity** means the "On-peak Contract Capacity", as set out on the Calstock PPA Cover Page.
85. **On-peak Hours** has the meaning given to it in Exhibit B.

86. **Other Suppliers** means the other counterparties to bilateral arrangements with the Sponsor that are designated by the Sponsor from time to time as being “Other Suppliers” for the purposes of this Agreement.
87. **Outage** means the removal of equipment from service, unavailability for connection of equipment or temporary de-rating, restriction of use or reduction in performance of equipment for any reason, including to permit the performance of inspections, tests, repairs or maintenance on equipment, which results in a partial or total interruption in the ability of the Facility to make the Contract Capacity available and Deliver Electricity up to the Contract Capacity during Contract Hours from the Facility.
88. **Party** means any one of the Supplier and the Sponsor, and the Sponsor and the Supplier are collectively referred to as the **Parties**.
89. **Payment Date** has the meaning given to it in Section 4.3.
90. **Performance Security** means the financial security for the performance of the Supplier’s obligations under the Agreement that the Supplier may be required to provide and maintain with the Sponsor in accordance with Article 5.
91. **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.
92. **Planned Outage** means an Outage which is planned and intentional and has been disclosed to the Sponsor pursuant to Section 14.3.
93. **Receiving Party** means, with respect to Confidential Information, the Party receiving Confidential Information and may be the Sponsor or the Supplier, as applicable.
94. **Registered Facility** has the meaning given to it in the IESO Market Rules.
95. **Regulatory Environmental Attributes** has the meaning given to it in Section 2.8
96. **Related Products** means all Capacity Products, Ancillary Services, transmission rights and any other products or services that may be provided by the Facility from time to time, excluding Environmental Attributes produced by the Facility, that may be traded or sold 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.
97. **Replacement Provision(s)** has the meaning given to it in Section 1.7.
98. **Representatives** means a Party’s directors, officers, shareholders, employees, auditors, consultants, advisors (including economic and legal advisors), contractors, and agents and those of its Affiliates and the agents and advisors of such Persons. Prior to any assignment by the Sponsor, this definition shall also include the Government of Ontario, the Legislative Assembly of Ontario, and their respective directors, officers, shareholders, employees, auditors, consultants, advisors (including economic and legal advisors), contractors and agents.
99. **Secured Lender** means the lender(s) under a Secured Lender’s Security Agreement.
100. **Secured Lender’s Security Agreement** means an agreement or instrument, including a deed of trust or similar instrument securing bonds or debentures, containing a charge, mortgage, pledge, security

interest, assignment, sublease, deed of trust or similar instrument with respect to all or any part of the Supplier's Interest granted by the Supplier that is security for any indebtedness, liability or obligation of the Supplier, together with any amendment, change, supplement, restatement, extension, renewal or modification thereof.

101. **Senior Conference** has the meaning given to it in Section 15.1.
102. **Settlement Month** has the meaning given to it in Section 4.2(a).
103. **Site-Specific Losses** means Electricity losses due to line resistance, the operation of transformers and switches, and other associated losses of Electricity generated by the Facility which may occur as a result of the difference between the location of the meter and the Connection Point, as determined pursuant to loss factors applied in accordance with applicable regulatory instruments.
104. **Sponsor** means the IESO.
105. **Sponsor Event of Default** has the meaning given to it in Section 9.3.
106. **Sponsor Statement** has the meaning given to it in Section 11.2.
107. **Statement** has the meaning given to it in Section 4.2(a).
108. **Station Service Loads** means the Electricity used for excitation and on-site maintenance and operation of power generation facilities, including auxiliary facilities, but excludes energy consumed in association with activities which could be ceased or moved to other locations without impeding the normal and safe operation of the Facility.
109. **Supplier** means the Person identified as such on the Calstock PPA Cover Page, and includes its successors and permitted assigns.
110. **Supplier Event of Default** has the meaning given to it in Section 9.1.
111. **Supplier's Interest** means the right, title and interest of the Supplier in or to the Facility and the Agreement or any benefit or advantage of any of the foregoing.
112. **System Operator** means the IESO acting pursuant to its authority to make, administer and enforce the IESO Market Rules.
113. **Taxes** means all ad valorem, property, occupation, severance, production, governmental charges, utility, gross production, gross receipts, HST, value-added, sales, stamp, use, excise, levies, countervailing, anti-dumping and special import measures, imposts, duties including customs' duties, fees, withholdings, assessments, premiums, deductions, taxes based on profits, net income or net worth and any other taxes or charges whatsoever, whether directly or indirectly imposed, assessed, levied or collected by any Governmental Authority, together with interest thereon and penalties with respect thereto.
114. **Term** has the meaning given to it in Section 8.1.
115. **Term Commencement Date** has the meaning given to it in Section 8.1.
116. **Termination Date** means the date on which the Agreement terminates as a result of an early termination of the Agreement in accordance with its provisions.

117. **Transmission System** means a system for conveying Electricity at voltages of more than 50 kilovolts and includes any structures, equipment or other things used for that purpose.
118. **Transmission System Code** means the “Transmission System Code” established and approved by the OEB, which, among other things, establishes the obligations of a Transmitter with respect to the services and terms of service to be offered to customers and retailers and provides minimum technical operating standards for the IESO-Controlled Grid.
119. **Transmitter** means a Person licensed as a “transmitter” by the OEB in connection with a Transmission System.
120. **Website** means the website of the Sponsor located at uniform resource locator (URL) <https://www.ieso.ca>/or such other URL, or other electronic or non-electronic format, as the Sponsor may provide to the Supplier from time to time.

1.2 Headings and Table of Contents

The inclusion of headings and a table of contents in this Agreement are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. Unless otherwise indicated, references to Articles, Sections and Exhibits are references to Articles, Sections and Exhibits in this Agreement.

1.3 Gender and Number

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

1.4 Currency

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

1.5 Statutory References

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

1.6 IESO Market Rules

Unless otherwise expressly stipulated, any reference in this Agreement to the IESO Market Rules or to a statute or to a regulation or rule promulgated under a statute or to any provision of a statute, regulation or rule shall be a reference to the IESO Market Rules, statute, regulation, rule or provision as amended, re-enacted or replaced from time to time. In the event of any conflict or inconsistency with the IESO Market Rules and the terms of this Agreement, the IESO Market Rules shall govern to the extent of such conflict or inconsistency.

1.7 Invalidity, Unenforceability or Inapplicability of Provisions

In the event that a court of competent jurisdiction determines that any provision of this Agreement is invalid, inapplicable or unenforceable, then either Party may propose, by notice to the other Party, a replacement provision, and the Sponsor and the Supplier and, at the Sponsor’s discretion, those Other Suppliers that are required by the Sponsor to participate shall engage in good faith negotiations to replace such provision with

a valid, enforceable and applicable provision, the economic effect of which substantially reflects that of the invalid, unenforceable or inapplicable provision which it replaces (the “**Replacement Provision(s)**”). If the Parties are unable to agree on the Replacement Provisions within 60 days after the commencement of negotiations under this Section 1.7 then the Replacement Provision(s) shall be determined by mandatory and binding arbitration from which there shall be no appeal, with such arbitration(s) to be conducted in accordance with the procedures set out in Exhibit D. However, if the Supplier fails to participate in such arbitration, the Supplier acknowledges that it waives its right to participate in such arbitration, which shall nevertheless proceed, and the Supplier shall be bound by the award of the Arbitration Panel and the subsequent amendments to this Agreement made by the Sponsor to implement such award of the Arbitration Panel. This Section 1.7 shall not apply to the circumstances addressed in Section 2.8.

1.8 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 Representatives, to the other Party to this Agreement, or its Representatives, except to the extent that the same has been reduced to writing and included as a term of this Agreement.

1.9 Waiver, Amendment

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

1.10 Time Periods

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

1.11 Governing Law

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

1.12 Preparation of Agreement

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

1.13 Exhibits, Schedules and Appendices

Each of the exhibits, schedules and appendices set out in item 13 on the Calstock PPA Cover Page are referenced in and form part of this Agreement.

ARTICLE 2
DESIGN, MAINTENANCE AND OPERATION OF THE FACILITY

2.1 Design of the Facility

- (a) The Supplier shall ensure that the Facility's design, engineering and construction complies with Good Engineering and Operating Practices and meets all requirements of this Agreement, the IESO Market Rules, Transmission System Code, the Connection Agreement, in each case, as applicable, and all other Laws and Regulations.
- (b) The Supplier agrees to provide the Sponsor no later than 90 days after the Contract Execution Date with a single line electrical drawing bearing the stamp of a Professional Engineer licensed to practice in Ontario, which identifies the as-built Connection Point(s), clearly showing area transmission and distribution facilities, including the transmission station(s) that is electrically closest to the Facility.
- (c) The Supplier shall at no time after the date of this Agreement modify, vary or amend in any material respect any of the features or specifications of the Facility as outlined in the Calstock PPA Cover Page, or make any change as to the Facility's status as a Registered Facility (a "**Facility Amendment**"), without first notifying the Sponsor in writing and obtaining the Sponsor's consent in writing, which consent shall not be unreasonably withheld. For the purpose of this Section 2.1(c), it shall not be unreasonable for the Sponsor to withhold its consent to any modification, variation or amendment which would, or would be likely to materially adversely affect the ability of the Supplier to comply with its obligations under this Agreement. For purposes of this paragraph, the failure of the Facility to have a Connection Point as described in the Calstock PPA Cover Page shall be deemed to be a Facility Amendment. The Supplier acknowledges that it does not have any right pursuant to this Agreement to increase the Contract Capacity.
- (d) If the Sponsor's consent in writing has been given in relation to a reduction in the Contract Capacity pursuant to Section 2.1(c), the Contract Capacity shall be deemed to be reduced to the lower amount, effective at the time stated in such notice.
- (e) The Supplier represents and warrants that the Facility does not constitute a behind-the-meter facility, and covenants not to permit the Facility to become a behind-the-meter facility during the Term, without the Sponsor's consent, not to be unreasonably withheld. It shall not be unreasonable for the Sponsor to withhold its consent in circumstances where the Facility is to become a behind-the-meter facility unless amendments are made to the Contract Price or other settlement terms to account for any additional value streams derived from such changes to the Facility's configuration.

2.2 Additional Facility 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 on the Calstock PPA Cover Page and shall affect supply or demand on a IESO-Controlled Grid.
- (b) The Metering Plan is attached as Exhibit K. The Supplier shall promptly, and in any event, within 10 Business Days after any change to the metering installation occurs, update the Metering Plan and submit it to the Sponsor for approval.
- (c) The Supplier covenants and agrees to provide, at its expense, individual meters and ancillary metering and monitoring equipment for the Facility as required by the IESO

Market Rules and sufficient to calculate the output of Electricity from the Facility net of any Station Service Loads and inclusive for any loss adjustment factors.

- (d) The Supplier will provide the Sponsor with a commissioning report for all revenue meter(s) referenced in the Metering Plan prior to any use of metered data for the purposes expressed in Sections 2.4 and 2.5. The Sponsor retains the right to audit, at any time during the Term, on reasonable notice to the Supplier and during normal business hours, the metering equipment to confirm the accuracy of the Metering Plan, and the meter data of the Facility to confirm the accuracy of such data. The Supplier shall not make any material changes to the Metering Plan following approval by the Sponsor or determination by the Independent Engineer (as applicable) without the prior written approval of the Sponsor, acting reasonably.
- (e) The Supplier shall arrange, at its sole expense, for all Facility connection requirements in accordance with Laws and Regulations to permit the delivery of Delivered Electricity to the Connection Point. The Supplier shall provide, at its expense, all power system components on the Supplier's side of the Connection Point, including all transformation, switching and auxiliary equipment, such as synchronizing and protection and control equipment, pursuant to Laws and Regulations and any requirements deemed necessary by the System Operator, and the Transmitter, from time to time to protect the safety and security of the IESO-Controlled Grid, each of their customers, each as the case may be. The Supplier shall install protective equipment to protect its own personnel, property, and equipment from variations in frequency and voltage or from temporary delivery of other than three-phase power, whether caused by the Facility or otherwise.
- (f) The Supplier shall be responsible for maintaining all necessary permits, regulations and approvals as well as obtaining communities' support as required under Laws and Regulations, for the operation of the Facility.

2.3 Required Information

- (a) The Supplier acknowledges that time is of the essence to the Sponsor with respect to the completion of the following items and that the Supplier shall cause such items to be completed in a timely manner and by no later than 90 days after the Contract Execution Date:
 - (i) delivery to the Sponsor of a single line electrical drawing in accordance with Section 2.1(b), which identifies the as-built Connection Point, clearly showing area transmission and distribution facilities, including the transformer station(s) that is electrically closest to the Facility;
 - (ii) delivery to the Sponsor of an IE Certificate in the form set out in Exhibit F directly from the Independent Engineer, stating that:
 - (A) the Connection Point of the Facility is that set out on the Calstock PPA Cover Page; and
 - (B) the Facility has been connected to IESO-Controlled Grid such that 100% of the Contract Capacity is available to Deliver Electricity in compliance with Good Engineering and Operating Practices and Laws and Regulation and substantially in accordance with the Agreement.

- (iii) delivery to the Sponsor of a certificate addressed to it from the Supplier in the form set out in Exhibit G with respect to the Facility, together with such documentation required to be provided under such form to the Sponsor.
- (b) The Supplier acknowledges that if the items set out in Section 2.3(a) have not been completed by the 90th day after the Contract Execution Date, the Sponsor shall have the right to withhold any payments owing to the Supplier under this Agreement until such time as all such items have been completed, at which time the Sponsor will pay to the Supplier such withheld payments (without interest).
- (c) The Sponsor shall notify the Supplier in writing within 20 Business Days following receipt of all of the documentation required by Section 2.3(a) as to whether such documentation is acceptable to the Sponsor, acting reasonably. If the Sponsor determines that such documentation is not acceptable, the Sponsor shall provide to the Supplier reasonable particulars in respect of the deficiencies in such documentation.
- (d) The Supplier shall, within 10 Business Days after any request by the Sponsor, provide the Sponsor with a copy of any licence, permit, certificate, registration, authorization, consent, or approval which is required by Laws and Regulations or Good Engineering and Operating Practices for the Supplier to own and operate the Facility.

2.4 Operation Covenants

- (a) The Supplier shall own or lease the Facility during the Term and shall operate and maintain the Facility or cause the Facility to be operated and maintained during the Term using Good Engineering and Operating Practices, and meeting all applicable requirements of the IESO Market Rules, the Transmission System Code, the Connection Agreement, each as may be applicable, and all other Laws and Regulations.
- (b) The Supplier shall connect the Facility exclusively to the Connection Point. For greater certainty, the Supplier shall deliver all Delivered Electricity through the Connection Point.
- (c) The Supplier covenants and agrees that for the purpose of Delivering Electricity as contemplated by this Agreement up to the Contract Capacity during the Contract Hours, the Facility shall not utilize any sources or fuels other than Biomass and, in respect of Facility start-up and to maintain operations in the event of a Biomass fuel supply disruption, natural gas.

2.5 Fuel Supply Plan

- (a) The initial Fuel Supply Plan is attached as Exhibit A.
- (b) No later than sixty (60) days after the end of each Contract Year, the Supplier shall provide the Sponsor with a comprehensive report including all data relating to the delivery of Biomass to the Facility in the prior Contract Year, indicating any deviations from the preceding Contract Year's Fuel Supply Plan, and establishing the Fuel Supply Plan for the current Contract Year. The report shall identify all the Biomass received at the Facility and include the Biomass' origin, a description of the product, and its quantity measured in green metric tonnes at the truck scale.

2.6 Insurance Covenants

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

2.7 Compliance with Laws and Regulations and Registration with the System Operator

- (a) The Sponsor 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 Sponsor and the Supplier shall each furnish, in a timely manner, information to Governmental Authorities and shall each obtain and maintain in good standing any licence, permit, certificate, registration, authorization, consent or approval of any Governmental Authority required to perform or comply with their respective obligations under this Agreement, including such licensing as is required by the OEB.
- (c) The Supplier acknowledges that it shall, register with the System Operator as a “Metered Market Participant” and as a “Generator” pursuant to the IESO Market Rules and cause the settlement of Market Settlement Charges to take place directly between the Supplier as the “Metered Market Participant” and the System Operator. 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. The

Supplier shall meet all applicable Facility registration requirements as specified in the IESO Market Rules.

2.8 Environmental Attributes

- (a) The Supplier hereby transfers and assigns to, or to the extent transfer or assignment is not permitted, holds in trust for, the Sponsor who thereafter shall, subject to Section 2.8(d), retain, all rights, title, and interest in all Environmental Attributes associated with the Facility during the Term.
- (b) The Supplier shall from time to time, upon written direction of the Sponsor, take all such actions and do all such things necessary to effect the transfer and assignment to, or holding in trust for, the Sponsor, all rights, title, and interest in all Environmental Attributes as set out in Section 2.8(a).
- (c) The Supplier shall from time to time, upon written direction of the Sponsor, take all such actions and do all such things necessary to certify, obtain, qualify, and register with the relevant authorities or agencies Environmental Attributes that are created and allocated or credited with respect to the Facility pursuant to Laws and Regulations from time to time (collectively, the “**Regulatory Environmental Attributes**”) for the purposes of transferring such Regulatory Environmental Attributes to the Sponsor in accordance with Section 2.8(a). The Supplier shall be entitled to reimbursement of the cost of complying with a direction under this Section 2.8(c), provided that the Sponsor, acting reasonably, approved such cost in writing prior to the cost being incurred by the Supplier.
- (d) To the extent that Laws and Regulations require the Facility to utilize, consume or obtain Regulatory Environmental Attributes in connection with Delivering Electricity, then the Sponsor shall propose such amendments to this Agreement to the Supplier and, at the Sponsor’s discretion, to all of the Other Suppliers who are required by the Sponsor to participate, based on the principle that the Sponsor will permit the Supplier to retain any Regulatory Environmental Attributes that may be created and allocated or credited with respect to the Facility and that the Facility is required, by such Laws and Regulations, to utilize, consume or obtain or in order for the Facility to Deliver Electricity. If the Parties are unable to agree on the Sponsor’s proposal or that of the Supplier or any of those Other Suppliers, as the case may be, within 60 days after the delivery or communication of the Sponsor’s proposal for such amendments, then such amendments shall be determined by mandatory and binding arbitration, from which there shall be no appeal, with such arbitration(s) to be conducted in accordance with the procedures set out in Exhibit D. However, if the Supplier fails to participate in such arbitration, the Supplier acknowledges that it waives its right to participate in such arbitration, which shall nevertheless proceed, and the Supplier shall be bound by the award of the Arbitration Panel and the subsequent amendments to this Agreement made by the Sponsor to implement such award of the Arbitration Panel.

2.9 Early Termination for Competitive Process

Nothing in this Agreement restricts the Supplier from participating in any Sponsor competitive procurement mechanisms for which it otherwise qualifies to participate in. Should the Supplier receive a commitment from the Sponsor under such a competitive procurement, the Supplier shall provide prompt written notice to the Sponsor and this Agreement shall terminate immediately prior to the start of the commitment period for sales commencing under such procurement.

**ARTICLE 3
FACILITY OPERATION AND PAYMENT OBLIGATIONS**

3.1 Contract Operation and Settlement

- (a) From and after the beginning of the Term, the Supplier agrees to operate the Facility in accordance with the terms of this Agreement and the Monthly Payments shall begin to accrue and be payable in accordance with Exhibit B and the requirements of Article 4.
- (b) If the Supplier is unable to Deliver Electricity up to the Contract Capacity during Contract Hours due to Grid Incapability, the Supplier shall provide written notice to the Sponsor within 15 days of such event. Upon receipt of any such notice, subject to confirmation of the particulars by the Sponsor, the Supplier shall be allocated additional Contract Hours by the Sponsor equal to the number and type (i.e. On-peak Hours or Off-peak Hours) of foregone Contract Hours (or otherwise on an equivalent basis) resulting from such Grid Incapability. Any additional Contract Hours allocated to the Supplier under this Section 3.1(b) shall remain subject to, and be counted towards, the AMCO of the Contract Year in which the Grid Incapability occurred, including, for greater certainty, where the additional hours are allocated to a subsequent Contract Year from which the Grid Incapability occurred.

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

The Parties acknowledge that the Sponsor is not purchasing from the Supplier, nor is the Supplier selling to the Sponsor, any Electricity or Related Products, provided however, nothing in this sentence restricts the Supplier's right to sell Electricity and Related Products attributable to the Contract Capacity into the IESO-Administered Markets. As between the Supplier and the Sponsor, the Supplier shall be responsible for, and shall indemnify, defend and hold harmless the Indemnitees against, any loss, damage, action, cost and expense (including Market Settlement Charges, if applicable, and reasonable legal costs and expenses) or injury to any Person or property, caused by the generation, sale and delivery of the Delivered Electricity and Related Products, except to the extent that any loss, damage, action, cost, expense or injury is attributable to the negligence or wilful misconduct of the Indemnitees.

3.3 Future Contract Related Products

- (a) All Related Products, other than Future Contract Related Products and any benefits associated therewith, shall belong to the Supplier.
- (b) The Supplier will provide the Sponsor with prior written notice of the development by the Supplier of any Future Contract Related Products from time to time.
- (c) The Supplier shall sell, supply or deliver all Future Contract Related Products as requested, directed or approved by the Sponsor, provided that the Sponsor shall not require the Supplier to sell, supply or deliver any Future Contract Related Product where the Approved Incremental Costs in relation to such Future Contract Related Product are reasonably expected to exceed the share of total revenues received by the Supplier from the sale, supply or delivery of such Future Contract Related Product pursuant to Exhibit B.
- (d) The Supplier covenants not to sell, supply or deliver any Future Contract Related Products unless such sale, supply or delivery has been requested, directed or approved by the Sponsor.

- (e) The Supplier will notify the Sponsor of any revenue received by the Supplier in connection with the sale, supply or delivery of any Future Contract Related Products.
- (f) The Sponsor may, in its sole and absolute discretion, deem any Ancillary Service or other Related Product that is a Future Contract Related Product not to be a Future Contract Related Product.

3.4 Supplier's Responsibility for Taxes

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

3.5 Sponsor's Responsibility for Taxes

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

3.6 Non-residency

- (a) If the Supplier is a non-resident of Canada, as that term is defined in the ITA, then payments under this Agreement by the Sponsor shall be reduced by the amount of any applicable withholding or other similar Taxes and the Sponsor shall remit such withholding or other similar Taxes to the applicable taxing authorities. The Sponsor shall, within 60 days after remitting such Taxes, notify the Supplier in writing, providing reasonable detail of such payment so that the Supplier may claim any applicable rebates, refunds or credits from the applicable taxing authorities. If, after the Sponsor has paid such amounts, the Sponsor receives a refund, rebate or credit on account of such Taxes, then the Sponsor shall promptly remit such refund, rebate or credit amount to the Supplier.
- (b) If the Supplier is or becomes a non-resident of Canada, as that term is defined in the ITA, the Supplier shall notify the Sponsor forthwith of such status and shall provide the Sponsor with all such information reasonably required by the Sponsor to comply with any withholding tax or other tax obligations to which the Sponsor is or may become subject as a result of thereof.

ARTICLE 4 STATEMENTS AND PAYMENTS

4.1 Meter and Other Data

- (a) The Supplier agrees to provide to the Sponsor, at all times, access to any other information relating to the Facility that the Supplier has provided to, or received from, the System Operator from time to time. The Supplier agrees to provide to the Sponsor, upon the Sponsor's request, any information that the Supplier will be utilizing in preparing any Statement that is not available directly to the Sponsor from the System Operator. Upon a Party becoming aware of any errors or omissions in any data or information provided in

accordance with this Section 4.1, such Party shall notify the other Party, and if applicable, the System Operator 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 System Operator and in the event of a discrepancy between market price information and settlement data from the System Operator and information received directly from the Supplier pursuant to Section 4.1(a), then the market price information and settlement data from the System Operator shall, subject to Section 4.7, be considered to be correct.
- (c) The Sponsor may obtain access internally to the revenue-quality interval meter data of the Facility provided to the System Operator to calculate the output of Electricity from the Facility net of any Station Service Loads and inclusive for any loss adjustment factors, or, if required, the Supplier shall provide the Sponsor, for the purposes of this Agreement, the right to view, download, and request such revenue-quality interval meter data of the Facility by establishing a “Meter Data Associate Relationship” with the Sponsor at each delivery point of the Facility within the System Operator’s “Meter Data Management” or “MDM” and “Meter Data Distribution” or “MDD” systems or their successors, at no cost to the Sponsor.

4.2 Statement

- (a) Provided the Supplier has provided the required information within the specified timeframe set forth in Section 4.2(b), the Sponsor 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 Sponsor to the Supplier by electronic means and shall include the reference number assigned to this Agreement by the Sponsor and a description of the components of the Monthly Payment and other payments, as described in this Agreement, including Section 3.1 as applicable, owing for the Settlement Month. If the information required by Section 4.2(b) is not provided within the requisite timeframe, the Statement shall not be prepared until ten (10) Business Days after the end of the calendar month in which such information is provided.
- (b) No later than five (5) Business Days after end of each Settlement Month, the Supplier shall provide the Sponsor with a report setting out how much Electricity the Facility generated from the natural gas burners and the waste heat boiler during Contract Hours in the applicable Settlement Month.

4.3 Payment

The Party owing the Monthly Payment shall remit to the other Party full payment in respect of the Statement no later than twenty (20) Business Days after the end of the Settlement Month to which the Statement relates (the “**Payment Date**”), provided that if the Statement or the required supporting documentation is not provided in the timeframes required by Section 4.2, then any Monthly Payment shall not be due until the 20th Business Day following the month in which such information is provided. Any and all payments required to be made by either Party under any provision of this Agreement shall be made by electronic funds transfer to the applicable account designated in Section 4.5, or as otherwise agreed by the Parties. The Supplier’s account shall be at a bank named in a Schedule to the *Bank Act* (Canada), located in Canada, and capable of performing electronic fund transfers.

4.4 Interest

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

4.5 Payment Account Information

- (a) Account for payments to Supplier:

[Insert Supplier Account Information]

The Sponsor acknowledges that the account information and HST/GST registration number of the Supplier above constitutes Supplier's Confidential Information and is subject to the obligations of the Sponsor as set out in Article 7.

- (b) Account for payments to Sponsor:

[Insert Sponsor Account Information]

The Supplier acknowledges that the account information and HST registration number of the Sponsor above constitutes Sponsor's Confidential Information and is subject to the obligations of the Supplier as set out in Article 7.

Either Party may change its account information from time to time by written notice to the other in accordance with Section 14.6.

4.6 Adjustment to Statement

- (a) Each Statement shall be subject to adjustment for errors in arithmetic, computation, or other errors, raised by a Party during the period of one (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 System Operator 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 System Operator which the System Operator has requested be corrected, then the one (1) year limit set forth in Section 4.6(a) shall not apply to the correction of such error or the Sponsor's ability to readjust, or the Supplier's ability to require a readjustment of, the Statement.
- (c) Subject to Section 4.7, any adjustment to a Statement made pursuant to this Section 4.6 shall be made in the next subsequent Statement.

4.7 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 Sponsor 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 Sponsor 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 Sponsor, the dispute may be submitted by either Party to a Senior Conference pursuant to the terms of Section 15.1.

4.8 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 14.2.

ARTICLE 5 SECURITY REQUIREMENTS

5.1 Performance Security

- (a) If the average of HOEP over a contiguous six month period is greater than seventy-five percent (75%) of the Indexed Contract Price, the Sponsor may at any time, by providing notice to the Supplier, require the Supplier to provide to and maintain with the Sponsor Performance Security within 30 days of such notice. The amount of the Performance Security shall be a fixed amount of one hundred and seventy-five thousand dollars (\$175,000).
- (b) After the end of the Term, if applicable, the Sponsor shall return or refund, as applicable, the Performance Security to the Supplier within 20 Business Days following receipt of a written request from the Supplier, net of any amounts owing by the Supplier to the Sponsor.

5.2 Composition of Performance Security

The obligation of the Supplier to post and maintain Performance Security as required by Section 5.1 must be satisfied in accordance with this Section 5.2 by the Supplier providing such security in the form of an unconditional standby letter of credit in substantially the form referenced as Exhibit C issued by a financial institution listed in either Schedule I or II of the *Bank Act* (Canada), or such other financial institution having a minimum credit rating of (i) A- with S&P, (ii) A3 with Moody's, (iii) A low with DBRS, or (iv) A with Fitch IBCA. For greater certainty, at any time the Sponsor holds a letter of credit as Performance Security, the Supplier shall ensure that such letter of credit does not expire or terminate for any reason prior to a date that is 60 days from such time.

5.3 Adequacy of Security; Replacement Security

- (a) The Supplier shall ensure that, at all times when Performance Security is required to be provided, the aggregate value of all Performance Security provided to the Sponsor is at least equal to the then currently required amount of Performance Security and that the Performance Security is current, valid, enforceable and in an acceptable form, including:
 - (i) following realization by the Sponsor of any amount of Performance Security, increasing the amount of Performance Security, by an amount equal to that realized by the Sponsor; and

- (ii) forthwith providing replacement security for any letter of credit (A) where the provider thereof has given notice that it does not wish to extend the letter of credit for an additional term, (B) which expires, terminates or fails, or ceases to be in full force and effect for the purposes hereof, (C) which is disaffirmed, disclaimed, dishonoured, repudiated or rejected in whole or in part by the provider thereof, or (D) the validity of which is challenged by the provider thereof.
- (b) All costs associated with the requirement to provide and maintain Performance Security shall be borne by the Supplier.
- (c) If existing Performance Security in the form of a letter of credit is replaced with new Performance Security, the Sponsor shall return the existing Performance Security held by the Sponsor to the Supplier, within 15 Business Days of the Sponsor's receipt of such new Performance Security. A Supplier may from time to time consolidate any separate amounts of Performance Security held by the Sponsor by providing to the Sponsor replacement Performance Security in the cumulative amount of Performance Security outstanding, in which case the Sponsor shall return or refund (as applicable) the existing Performance Security in accordance with this Section 5.3(c).
- (d) Notwithstanding any other provision of this Agreement, no delay, including a delay resulting from an event of Force Majeure shall extend the date by which any component of the Performance Security is required to be provided by the Supplier or returned or refunded (as applicable) by the Sponsor.

5.4 Interest on Performance Security

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

ARTICLE 6 REPRESENTATIONS

6.1 Representations of the Supplier

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

- (a) The Supplier is registered or otherwise qualified to carry on business in the Province of Ontario, and has the requisite power to enter into this Agreement and to perform its obligations hereunder.
- (b) This Agreement has been duly authorized, executed, and delivered by the Supplier and is a valid and binding obligation of the Supplier enforceable in accordance with its terms, except as such enforcement may be limited by bankruptcy, insolvency and other laws affecting the rights of creditors' generally and except that equitable remedies may only be granted in the discretion of a court of competent jurisdiction.
- (c) The execution and delivery of this Agreement by the Supplier and the consummation of the transactions contemplated by this Agreement will not result in the breach or violation of any of the provisions of, or constitute a default under, or conflict with or cause the termination, cancellation or acceleration of any material obligation of the Supplier under:

- (i) any contract or obligation to which the Supplier is a party or by which it or its assets may be bound, except for such defaults or conflicts as to which requisite waivers or consents have been obtained;
- (ii) the articles, by-laws or other constating documents or resolutions of the directors or shareholders of the Supplier;
- (iii) any judgment, decree, order or award of any Governmental Authority or arbitrator;
- (iv) any licence, permit, approval, consent or authorization held by the Supplier; or
- (v) any Laws and Regulations,

that could have a Material Adverse Effect on the Supplier.

- (d) There are no bankruptcy, insolvency, reorganization, receivership, seizure, realization, arrangement or other similar proceedings pending against or being contemplated by the Supplier or, to the knowledge of the Supplier, threatened against the Supplier.
- (e) There are no actions, suits, proceedings, judgments, rulings or orders by or before any Governmental Authority or arbitrator, or, to the knowledge of the Supplier, threatened against the Supplier, that could have a Material Adverse Effect on the Supplier.
- (f) The Supplier is in compliance with all Laws and Regulations, other than acts of non-compliance which, individually or in the aggregate, would not have a Material Adverse Effect on the Supplier.
- (g) Unless the Supplier has otherwise notified the Sponsor pursuant to Section 3.6(b), the Supplier is not a non-resident of Canada for the purposes of the ITA.
- (h) Any contract for electricity generation from the Facility with any Governmental Authority has expired (other than this Agreement) or will expire prior to the Term Commencement Date.

6.2 Representations of the Sponsor

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

- (a) The Sponsor 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 Sponsor and is a valid and binding obligation of the Sponsor 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 Sponsor 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 Sponsor under:

- (i) any contract or obligation to which the Sponsor is a party or by which it or its assets may be bound, except for such defaults or conflicts as to which requisite waivers or consents have been obtained;
- (ii) the by-laws or resolutions of the directors (or any committee thereof) or shareholders of the Sponsor;
- (iii) any judgment, decree, order or award of any Governmental Authority or arbitrator;
- (iv) any licence, permit, approval, consent or authorization held by the Sponsor; or
- (v) any Laws and Regulations,

that could have a Material Adverse Effect on the Sponsor.

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

ARTICLE 7 CONFIDENTIALITY AND FIPPA

7.1 Confidential Information

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

- (a) The Receiving Party may disclose Confidential Information to its Representatives who need to know Confidential Information for the purpose of assisting the Receiving Party in complying with its obligations under this Agreement or under Laws and Regulations. On each copy made by the Receiving Party, the Receiving Party must reproduce all notices which appear on the original. The Receiving Party shall inform its Representatives of the confidentiality of Confidential Information and shall be responsible for any breach of this Article 7 by any of its Representatives.
- (b) If the Receiving Party or any of its Representatives are requested or required (by oral question, interrogatories, requests for information or documents, court order, civil investigative demand or similar process) to disclose any Confidential Information in connection with litigation or any regulatory proceeding or investigation, or pursuant to any Law and Regulations, the Receiving Party shall promptly notify the Disclosing Party. Unless the Disclosing Party obtains a protective order, the Receiving Party and its Representatives may disclose such portion of the Confidential Information to the Party seeking disclosure as is required by Laws and Regulations in accordance with Section 7.2.

- (c) Where the Supplier is the Receiving Party, the Supplier may disclose Confidential Information to any Secured Lender or prospective lender or investor and its advisors, to the extent necessary, for securing financing for the Facility, provided that any such Secured Lender or prospective lender or investor has been informed of the Supplier's confidentiality obligations hereunder and such Secured Lender or prospective lender or investor has completed and executed a confidentiality undertaking (the "**Confidentiality Undertaking**") in substantially the form as set forth in Exhibit H covenanting in favour of the Sponsor to hold such Confidential Information confidential on terms substantially similar to this Article 7. Where the Supplier is the Receiving Party, the Supplier may also, with the Sponsor's consent, disclose Confidential Information, to the extent necessary, for the purposes of public stakeholder processes, community engagement or support, engagement and consultation with Indigenous communities, and similar activities required to be undertaken in the ordinary course of operations of the Facility and to comply with this Agreement and Laws and Regulations.
- (d) Notwithstanding the foregoing, the Supplier consents to the disclosure: (i) of its name and contact particulars, including on the Website, (ii) of the location of the Facility, Contract Capacity, fuel, and Connection Point, including on the Website, (iii) of its address for service and the name of its Company Representative to all Other Suppliers, for the purposes of Sections 1.7, 2.8 and 12.2, and (iv) any information the Sponsor or the System Operator is required to publish under the IESO Market Rules.

7.2 Notice Preceding Compelled Disclosure

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

7.3 Return of Information

Upon written request by the Disclosing Party, Confidential Information provided by the Disclosing Party in printed paper format or electronic format will be returned to the Disclosing Party and Confidential Information transmitted by the Disclosing Party in electronic format will be deleted from the emails and directories of the Receiving Party's and its Representatives' computers; provided, however, any Confidential Information (i) found in drafts, notes, studies and other documents prepared by or for the Receiving Party or its Representatives or (ii) found in electronic format as part of the Receiving Party's off-site or on-site data storage/archival process system, will be held by the Receiving Party and kept subject to the terms of this Agreement or destroyed at the Receiving Party's option. Notwithstanding the foregoing, a Receiving Party shall be entitled to make, at its own expense, and retain one copy of, any Confidential Information materials it receives for the limited purpose of discharging any obligation it may have under Laws and Regulations and shall keep such retained copy subject to the terms of this Article 7.

7.4 Injunctive and Other Relief

The Receiving Party acknowledges that breach of any provisions of this Article may cause irreparable harm to the Disclosing Party or to any third party to whom the Disclosing Party owes a duty of confidence and that the injury to the Disclosing Party or to any third party may be difficult to calculate and inadequately compensable in damages. The Receiving Party agrees that the Disclosing Party is entitled to obtain injunctive relief (without proving any damage sustained by it or by any third party) or any other remedy against any actual or potential breach of the provisions of this Article 7.

7.5 FIPPA Records and Compliance

The Parties acknowledge and agree that the IESO is subject to FIPPA and that FIPPA applies to and governs all Confidential Information in the custody or control of the IESO (“**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 Sponsor, if the Supplier continues to possess such FIPPA Records in a deliverable form, at the time of the Sponsor’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 Sponsor. The provisions of this Section 7.5 shall survive any termination or expiry of this Agreement and shall prevail over any inconsistent provisions in this Agreement.

ARTICLE 8 TERM

8.1 Term

- (a) This Agreement shall become effective upon the Contract Date.
- (b) The “**Term**” means that period of time commencing at the beginning of the hour ending 01:00 hours (EST) of April 1, 2022 (the “**Term Commencement Date**”), and ending at 24:00 hours (EST) on the day before the fifth (5th) anniversary of the Term Commencement Date, unless sooner terminated in accordance with Section 2.9 or as otherwise provided for in this Agreement.
- (c) Notwithstanding anything to the contrary in Article 4, the Sponsor shall not be required to produce any Statements until 60 days following the Contract Execution Date and no Monthly Payment shall be due and no interest shall accumulate thereon until 90 days following the Contract Execution Date.

ARTICLE 9 TERMINATION AND DEFAULT

9.1 Events of Default by the Supplier

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

- (a) The Supplier fails to make any payment when due or deliver, and/or maintain, the Performance Security as and if required under this Agreement, if such failure is not remedied within 10 Business Days after written notice of such failure from the Sponsor.
- (b) The Supplier fails to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Supplier Event of Default) if such failure is not remedied within 15 Business Days after written notice of such failure from

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

- (c) The Supplier fails or ceases to hold a valid licence, permit, certificate, registration, authorization, consent or approval issued by a Governmental Authority where such failure or cessation results in, or could be reasonably expected to result in, a Material Adverse Effect on the Supplier or the Facility and is not remedied within 30 Business Days after receipt by the Supplier of written notice of such failure or cessation from the Sponsor, provided that such cure period shall be extended by a further 30 Business Days if the Supplier is diligently remedying such failure or cessation and such failure or cessation is capable of being corrected during such extended cure period.
- (d) Any representation made by the Supplier in this Agreement is not true or correct in any material respect when made and is not made true or correct in all material respects within 30 Business Days after receipt by the Supplier of written notice of such fact from the Sponsor, provided that such cure period shall be extended by a further 30 Business Days if the Supplier, in the reasonable opinion of the Sponsor, is diligently correcting such breach and such breach is capable of being corrected during such extended cure period.
- (e) An effective resolution is passed or documents are filed in an office of public record in respect of, or a judgment or order is issued by a court of competent jurisdiction ordering, the dissolution, termination of existence, liquidation or winding up of the Supplier, unless such filed documents are immediately revoked or otherwise rendered inapplicable, or unless there has been a permitted and valid assignment of this Agreement by the Supplier under this Agreement to a Person which is not dissolving, terminating its existence, liquidating or winding up and such Person has assumed all of the Supplier's obligations under this Agreement.
- (f) The Supplier amalgamates with, or merges with or into, or transfers the Facility or all or substantially all of its assets to, another Person unless, at the time of such amalgamation, merger or transfer, there has been a permitted and valid assignment hereof by the Supplier under this Agreement to the resulting, surviving or transferee Person and such Person has assumed all of the Supplier's obligations under this Agreement.
- (g) A receiver, manager, receiver-manager, liquidator, monitor or trustee in bankruptcy of the Supplier or of any of the Supplier's property is appointed by a Governmental Authority or pursuant to the terms of a debenture or a similar instrument, and such receiver, manager, receiver-manager, liquidator, monitor or trustee in bankruptcy is not discharged or such appointment is not revoked or withdrawn within 30 days of the appointment. By decree, judgment or order of a Governmental Authority, the Supplier is adjudicated bankrupt or insolvent or any substantial part of the Supplier's property is sequestered, and such decree, judgment or order continues undischarged and unstayed for a period of 30 days after the entry thereof. A petition, proceeding or filing is made against the Supplier seeking to have the Supplier declared bankrupt or insolvent, or seeking adjustment or composition of any of its debts pursuant to the provisions of any Insolvency Legislation, and such petition, proceeding or filing is not dismissed or withdrawn within 30 days.
- (h) The Supplier makes an assignment for the benefit of its creditors generally under any Insolvency Legislation, or consents to the appointment of a receiver, manager, receiver-manager, monitor, trustee in bankruptcy or liquidator for all or part of its property or files a petition or proposal to declare bankruptcy or to reorganize pursuant to the provisions of any Insolvency Legislation.

- (i) The Supplier has made a Facility Amendment that has not first been consented to by the Sponsor (other than in instances where such consent has been unreasonably withheld) and that has not been removed within ten (10) Business Days after such Facility Amendment occurred.
- (j) The Supplier undergoes a change in Control without first obtaining the written approval of the Sponsor if required pursuant to this Agreement.
- (k) The Supplier assigns this Agreement without first obtaining the consent of the Sponsor, if required pursuant to this Agreement.

9.2 Remedies of the Sponsor

- (a) If any Supplier Event of Default (other than a Supplier Event of Default relating to the Supplier referred to in Sections 9.1(e), 9.1(g) and 9.1(h)) occurs and is continuing, upon written notice to the Supplier, the Sponsor may terminate this Agreement.
- (b) If a Supplier Event of Default occurs and is continuing, the Sponsor may, in addition to the remedy set out in Section 9.2(a):
 - (i) set off any payments due to the Supplier against any amounts payable by the Supplier to the Sponsor including, at the Sponsor's option, the amount of any Performance Security provided to the Sponsor pursuant to Article 5; and
 - (ii) draw on all or part of the Performance Security, and if the remedy in Section 9.2(a) has not been exercised, require the Supplier to replace such drawn security with new security.
- (c) Notwithstanding Sections 9.2(a) and 9.2(b), upon the occurrence of a Supplier Event of Default relating to the Supplier referred to in Sections 9.1(e), 9.1(g) or 9.1(h), this Agreement shall automatically terminate without notice, act or formality, effective immediately before the occurrence of such Supplier Event of Default, in which case, for certainty, the Secured Lender shall have the rights available to it under Section 11.2(g).
- (d) If the Sponsor terminates this Agreement pursuant to Section 9.2(a) or the Agreement is terminated pursuant to Section 9.2(c), the Sponsor shall be entitled to retain all Performance Security provided by the Supplier and exercise all such other remedies available to the Sponsor, including pursuing a Claim for damages, as contemplated under Section 9.5.
- (e) Termination shall not relieve the Supplier or the Sponsor of their respective responsibilities, or amounts payable, under this Agreement, up to and including the Termination Date. The Sponsor 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 Sponsor may hold back payment or set off its obligation to make such payment against any payments owed to it if the Supplier fails to comply with its obligations on termination.

9.3 Events of Default by the Sponsor

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

- (a) The Sponsor fails to make any payment under this Agreement when due, if such failure is not remedied within 10 Business Days after written notice of such failure from the Supplier.
- (b) The Sponsor fails to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Sponsor Event of Default), if such failure is not remedied within 15 Business Days after written notice of such failure from the Supplier, provided that such cure period shall be extended by a further 15 Business Days if the Sponsor is diligently remedying such failure and such failure is capable of being cured during such extended cure period.
- (c) The Sponsor 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 Sponsor and is not remedied within 30 Business Days after receipt by the Sponsor of written notice of such failure or cessation from the Supplier, provided that such cure period shall be extended by a further 30 Business Days if the Sponsor 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 Sponsor in this Agreement is not materially true or correct in any material respect when made and is not made materially true or correct within 30 Business Days after receipt by the Sponsor of written notice of such fact from the Supplier, provided that such cure period shall be extended by a further 30 Business Days if the Sponsor 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 Sponsor 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 Sponsor 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 Sponsor's obligations under this Agreement.
- (f) A receiver, manager, receiver-manager, liquidator, monitor or trustee in bankruptcy of the Sponsor or of any of the Sponsor's property is appointed by a Governmental Authority or pursuant to the terms of a debenture or a similar instrument, and such receiver, manager, receiver-manager, liquidator, monitor or trustee in bankruptcy is not discharged or such appointment is not revoked or withdrawn within 30 days of the appointment. By decree, judgment or order of Governmental Authority, the Sponsor is adjudicated bankrupt or insolvent or any substantial part of the Sponsor's property is sequestered, and such decree, judgment or order continues undischarged and unstayed for a period of 30 days after the entry thereof. A petition, proceeding or filing is made against the Sponsor seeking to have it declared bankrupt or insolvent, or seeking adjustment or composition of any of its debts pursuant to the provisions of any Insolvency Legislation, and such petition, proceeding or filing is not dismissed or withdrawn within 30 days.
- (g) The Sponsor 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 Sponsor assigns this Agreement (other than an assignment made pursuant to Section 15.5(f)) without first obtaining the consent of the Supplier, if such consent is required pursuant to this Agreement.

9.4 Termination by the Supplier

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

9.5 Remedies for Termination Non-Exclusive

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

ARTICLE 10 FORCE MAJEURE

10.1 Effect of Invoking Force Majeure

- (a) If, by reason of Force Majeure:
 - (i) the Supplier is unable to make available all or any part of the Contract Capacity or is unable to generate at the Facility, or is unable to deliver from the Facility to the Connection Point, all or any part of the Delivered Electricity or Future Contract Related Products;
 - (ii) all or any part of the Delivered Electricity cannot be received at or transmitted or distributed from the Connection Point; or
 - (iii) either Party is unable, wholly or partially, to perform or comply with its other obligations (other than payment obligations) hereunder,

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. An event of Force Majeure shall not extend the Term.

- (b) A Party shall be deemed to have invoked Force Majeure with effect from the commencement of the event or circumstances constituting Force Majeure when that Party gives to the other Party prompt written notice in substantially the form as set forth in Exhibit I, provided that such notice shall be given within 20 Business Days of the later of (i) the commencement of the event or circumstances constituting Force Majeure or (ii) the date that the Party invoking Force Majeure knew or ought to have known that the event or circumstances constituting Force Majeure could have a Material Adverse Effect on the development or operation of the Facility. If the effect of the Force Majeure and full particulars of the cause thereof cannot be reasonably determined within such 20 Business Day period, the Party invoking Force Majeure shall be allowed a further 10 Business Days (or such longer period as the Parties may agree in writing) to provide such full particulars in substantially the form as set forth in Exhibit I to the other Party.
- (c) The Party invoking Force Majeure shall use Commercially Reasonable Efforts to remedy the situation and remove, so far as possible and with reasonable dispatch, the Force Majeure, but settlement of strikes, lockouts and other labour disturbances shall be wholly within the discretion of the Party involved.
- (d) The Party invoking Force Majeure shall give prompt written notice of the termination of the event of Force Majeure, provided that such notice shall be given within 20 Business Days of the termination of the event or circumstances constituting Force Majeure.
- (e) Nothing in this Section 10.1 shall relieve a Party of its obligations to make payments of any amounts that were due and owing before the occurrence of the Force Majeure or that otherwise may become due and payable during any period of Force Majeure.
- (f) If, by reason of Force Majeure, the Supplier is unable to perform or comply with its obligations (other than payment obligations) hereunder for more than an aggregate of 36 months in any 60 month period during the Term, then either Party may terminate this Agreement upon notice to the other Party without any costs or payments of any kind to either Party, except for any amounts that were due or payable by a Party hereunder up to the date of termination, and all Performance Security shall be returned or refunded (as applicable) forthwith.

10.2 Exclusions

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

- (a) if and to the extent the Party seeking to invoke Force Majeure has caused the applicable event of Force Majeure by its fault or negligence;
- (b) if and to the extent the Party has not used Commercially Reasonable Efforts to procure or maintain any fuel supply and is seeking to invoke Force Majeure because it is unable to procure or maintain any fuel supply to be utilized by the Facility;
- (c) if and to the extent the Party seeking to invoke Force Majeure has failed to use Commercially Reasonable Efforts to prevent or remedy the event of Force Majeure and remove, so far as possible and within a reasonable time period, the Force Majeure (except in the case of strikes, lockouts and other labour disturbances, the settlement of which shall be wholly within the discretion of the Party involved);

- (d) if and to the extent that the Supplier is seeking to invoke Force Majeure because it is able to sell any of the Delivered Electricity up to the Contract Capacity during Contract Hours on more advantageous terms to a third party buyer;
- (e) if and to the extent that the Party seeking to invoke Force Majeure because of arrest or restraint by a Governmental Authority, such arrest or restraint was the result of a breach of or failure to comply with Laws and Regulations by such Party;
- (f) if the Force Majeure was caused by a lack of funds or other financial cause; or
- (g) if the Party invoking Force Majeure fails to comply with the notice provisions in Sections 10.1(b) or 10.1(d).

10.3 Definition of Force Majeure

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

- (a) acts of God, including extreme wind, ice, lightning or other storms, earthquakes, tornadoes, hurricanes, cyclones, landslides, drought, floods and washouts;
- (b) fires or explosions;
- (c) local, regional or national states of emergency;
- (d) strikes and other labour disputes (other than legal strikes or labour disputes by employees of (i) such Party, or (ii) a third party contractor of such Party, unless, in either such case, such strikes or other labour disputes are the result or part of a general industry strike or labour dispute);
- (e) delays or disruptions in fuel supply resulting from a Force Majeure event (whether such event is in respect of a Party or a third party);
- (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;
- (h) any inability to obtain, or to secure the renewal or amendment of, any permit, certificate, licence or approval of any Governmental Authority, or Transmitter required to perform or comply with any obligation under this Agreement, unless the revocation or modification of any such necessary permit, certificate, licence or approval was caused by the violation of the terms thereof or consented to by the Party invoking Force Majeure;
- (i) any unanticipated maintenance or Outage affecting the Facility which is not identified in the Supplier’s then current schedule of Planned Outages submitted to the System Operator, in advance of the occurrence of an event of Force Majeure; and

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

ARTICLE 11 LENDER'S RIGHTS

11.1 Lender Security

Notwithstanding Section 15.5, the Supplier, from time to time on or after the date of this Agreement shall have the right, at its cost, to enter into a Secured Lender's Security Agreement. For greater certainty, in the case of a deed of trust or similar instrument securing bonds or debentures where the trustee holds security on behalf of, or for the benefit of, other lenders, only the trustee shall be entitled to exercise the rights and remedies under the Secured Lender's Security Agreement as the Secured Lender on behalf of the lenders. A Secured Lender's Security Agreement shall be based upon and subject to the following conditions:

- (a) A Secured Lender's Security Agreement may be made for any amounts and upon any terms (including terms of the loans, interest rates, payment terms and prepayment privileges or restrictions) as desired by the Supplier, except as otherwise provided in this Agreement.
- (b) A Secured Lender's Security Agreement may not secure any indebtedness, liability or obligation of the Supplier that is not related to the Facility or cover any real or personal property of the Supplier not related to the Facility. For greater certainty, a Secured Lender's Security Agreement may cover shares or partnership interests in the capital of the Supplier.
- (c) The Sponsor 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 Sponsor for any or all of the same.
- (d) No Secured Lender's Security Agreement shall be binding upon the Sponsor in the enforcement of the Sponsor'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 Sponsor 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 Sponsor 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 Sponsor by the Supplier or the Secured Lender.
- (e) If the Supplier is in default under or pursuant to the Secured Lender's Security Agreement and the Secured Lender intends to exercise any rights afforded to the Secured Lender under this Agreement, then the Secured Lender shall give written notice of such default to the Sponsor at least 10 Business Days prior to exercising any such rights.
- (f) Any Secured Lender's Security Agreement permitted hereunder may secure two or more separate debts, liabilities or obligations in favour of two or more separate Secured Lenders, provided that such Secured Lender's Security Agreement complies with the provisions of this Article 11.
- (g) Any number of permitted Secured Lender's Security Agreements may be outstanding at any one time, provided that each such Secured Lender's Security Agreement complies with the provisions of this Article 11.

- (h) All rights acquired by a Secured Lender under any Secured Lender's Security Agreement shall be subject to all of the provisions of this Agreement, including the restrictions on assignment contained herein. While any Secured Lender's Security Agreement is outstanding, the Sponsor and the Supplier shall not amend or supplement this Agreement or agree to a termination of this Agreement without the consent of the Secured Lender, which consent shall not be unreasonably withheld, conditioned or delayed. Prior to any such amendment, supplement or termination, the Supplier shall provide to the Sponsor such Secured Lender's consent in writing. A Secured Lender must respond within a reasonable period of time to any request to amend or supplement this Agreement.
- (i) Despite any enforcement of any Secured Lender's Security Agreement, the Supplier shall remain liable to the Sponsor for the payment of all sums owing to the Sponsor under this Agreement and for the performance of all of the Supplier's obligations under this Agreement.

11.2 Rights and Obligations of Secured Lenders

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

- (a) No Supplier Event of Default (other than those referred to in Section 9.2(c)) shall be grounds for the termination by the Sponsor of this Agreement until:
 - (i) any notice required to be given under Section 9.1 and 9.2(a) has been given to the Supplier and to the Secured Lender; and
 - (ii) the cure period set out in Section 11.2(b) has expired without a cure having been completed and without the Secured Lender having taken the actions therein contemplated.
- (b) In the event the Sponsor has given any notice required to be given under Section 9.1, the Secured Lender shall, within the applicable cure period (including any extensions), if any, have the right (but not the obligation) to cure such default, and the Sponsor shall accept such performance by such Secured Lender as if the same had been performed by the Supplier.
- (c) Any payment to be made or action to be taken by a Secured Lender hereunder as a prerequisite to keeping this Agreement in effect shall be deemed properly to have been made or taken by the Secured Lender if such payment is made or action is taken by a nominee or agent of the Secured Lender or a receiver or receiver and manager appointed by or on the application of the Secured Lender.
- (d) A Secured Lender shall be entitled to the Supplier's rights and benefits contained in this Agreement and shall become liable for the Supplier's obligations solely as provided in this Section 11.2. A Secured Lender may, subject to the provisions of this Agreement, enforce any Secured Lender's Security Agreement and acquire the Supplier's Interest in any lawful way and, without limitation, a Secured Lender or its nominee or agent or a receiver or receiver and manager appointed by or on the application of the Secured Lender, may take possession of and manage the Facility and, upon foreclosure, or without foreclosure upon exercise of any contractual or statutory power of sale under such Secured Lender's Security Agreement, may sell or assign the Supplier's Interest with the consent of the Sponsor as required under Section 11.2(f).

- (e) Until a Secured Lender (i) forecloses or has otherwise taken ownership of the Supplier's Interest or (ii) has taken possession or control of the Supplier's Interest, whether directly or by an agent as a mortgagee in possession, or a receiver or receiver and manager has taken possession or control of the Supplier's Interest by reference to the Secured Lender's Security Agreement, the Secured Lender shall not be liable for any of the Supplier's obligations or be entitled to any of the Supplier's rights and benefits contained in this Agreement, except by way of security. If the Secured Lender itself or by a nominee or agent, or a receiver or a receiver and manager appointed by or on the application of the Secured Lender, is the owner or is in control or possession of the Supplier's Interest, then the entity that is the owner or is in control or possession of the Supplier's Interest shall be bound by all of the Supplier's obligations. Once the Secured Lender or such other Person goes out of possession or control of the Supplier's Interest or transfers the Supplier's Interest in accordance with this Agreement to another Person who is at Arm's Length with the Secured Lender, the Secured Lender shall cease to be liable for any of the Supplier's obligations and shall cease to be entitled to any of the Supplier's rights and benefits contained in this Agreement, except, if the Secured Lender's Security Agreement remains outstanding, by way of security.
- (f) Despite anything else contained in this Agreement, the Secured Lender agrees that it shall not transfer, sell or dispose of the Supplier's Interest or any other interest in the Facility to any Person unless such transferee or purchaser takes the Supplier's Interest or other applicable interest subject to the Supplier's obligations pursuant to this Agreement. No transfer shall be effective unless the Sponsor:
- (i) acting reasonably, if such transferee is at Arm's Length with the Secured Lender; or
 - (ii) acting in its sole and subjective discretion, if such transferee is not at Arm's Length with the Secured Lender,
- has approved of the transferee or purchaser and the transferee or purchaser has entered into an agreement with the Sponsor in form and substance satisfactory to the Sponsor, acting reasonably, wherein the transferee or purchaser agrees to assume and to perform the obligations of the Supplier in respect of the Supplier's Interest or the other applicable interest, whether arising before or after the transfer, sale or disposition and including the posting of the Performance Security, if any, required under Article 5. For clarity, Section 15.5 and Section 15.6 will not apply in respect of a *bona fide* enforcement of a security interest duly granted under a Secured Lender's Security Agreement.
- (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 Sponsor shall, within 20 Business Days after the date of such termination, deliver to each Secured Lender that is at Arm's Length with the Supplier, a statement of all sums then known to the Sponsor 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 Sponsor is willing to enter into a New Agreement (the "**Sponsor Statement**"). Subject to the provisions of this Article 11, each such Secured Lender or its transferee approved by the Sponsor pursuant to Section 11.2(f) shall thereupon have the option to obtain from the Sponsor a New Agreement in accordance with the following terms:
- (i) Upon receipt of the written request of the Secured Lender within 30 days after the date on which it received the Sponsor Statement, the Sponsor 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 Sponsor'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 Sponsor in connection with such default and termination, and the preparation, execution and delivery of such New Agreement and related agreements and documents, provided, however, that with respect to any default that could not be cured by such Secured Lender until it obtains possession, such Secured Lender shall have the applicable cure period commencing on the date that it obtains possession to cure such default.

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

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

11.3 Co-operation

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

**ARTICLE 12
DISCRIMINATORY ACTION**

12.1 Discriminatory Action

- (a) A “Discriminatory Action” shall occur if:
 - (i) either (A) the Legislative Assembly of Ontario causes to come into force any statute that was introduced as a bill in the Legislative Assembly of Ontario or the Government of Ontario causes to come into force or makes any order-in-council or regulation first having legal effect on or after the date of the Contract Date; or (B) the Legislative Assembly of Ontario directly or indirectly amends this Agreement without the consent of the Supplier;
 - (ii) the effect of the action referred to in Section 12.1(a)(i) is either (A) borne principally by the Supplier; or (B) borne principally by the Supplier and one or more Other Suppliers; and
 - (iii) such action increases the costs that the Supplier would reasonably be expected to incur under this Agreement in respect of Delivering Electricity, except where such action is in response to any act or omission on the part of the Supplier that is contrary to Laws and Regulations (other than an act or omission rendered illegal by virtue of such action) or such action is permitted under this Agreement.
- (b) Notwithstanding the foregoing, none of the following shall be a Discriminatory Action:
 - (i) Laws and Regulations of general application, including an increase of Taxes of general application, or any action of the Government of Ontario pursuant thereto;
 - (ii) any such statute that prior to five Business Days prior to the Contract Date:
 - (A) has been introduced as a bill in the Legislative Assembly of Ontario in a similar form as such statute takes when it has legal effect, provided that any amendments made to such bill in becoming such statute do not have a Material Adverse Effect on the Supplier; or
 - (B) has been made public in a discussion or consultation paper, press release or announcement issued by the IESO, the Government of Ontario, and/or the Ministry of Energy that appeared on the Website, the website of the IESO, the Government of Ontario and/or the Ministry of Energy, provided that any amendments made to such public form, in becoming such statute, do not have a Material Adverse Effect on the Supplier;
 - (iii) any of such regulations that prior to five Business Days prior to the Contract Date:
 - (A) have been published in the Ontario Gazette but by the terms of such regulations come into force on or after five Business Days prior to the Contract Date; or
 - (B) have been referred to in a press release issued by the IESO, the Government of Ontario and/or the Ministry of Energy that appeared on the website of the Government of Ontario or the Ministry of Energy, provided

that any amendments made to such regulations in coming into force do not have a Material Adverse Effect on the Supplier.

12.2 Consequences of Discriminatory Action

- (a) If a Discriminatory Action occurs, the Supplier shall have the right to obtain, without duplication, compensation (the “**Discriminatory Action Compensation**”) from the Sponsor for:
 - (i) the amount of the increase in the costs that the Supplier would reasonably be expected to incur in the delivery of the Electricity and Related Products from the Facility as a result of the occurrence of such Discriminatory Action, commencing on the first day of the first calendar month following the date of the Discriminatory Action and ending at the expiry of the Term, but excluding the portion of any costs charged by a Person who does not deal at Arm’s Length with the Supplier that is in excess of the costs that would have been charged had such Person been at Arm’s Length with the Supplier; and
 - (ii) the amount by which (i) the net present value of the net revenues from the Facility that are forecast to be earned by the Supplier during the period of time commencing on the first day of the first calendar month following the date of the Discriminatory Action and ending at the expiry of the Term, exceeds (ii) the net present value of the net revenues from the Facility that are forecast to be earned by the Supplier during the period of time commencing on the first day of the first calendar month following the date of the Discriminatory Action and ending on the expiry of the Term, taking into account the occurrence of the Discriminatory Action and any actions that the Supplier should reasonably be expected to take to mitigate the effect of the Discriminatory Action, such as by mitigating operating expenses and normal capital expenditures of the business of the generation and delivery of the Electricity and Related Products by the Facility.
- (b) To the extent that there is a Discriminatory Action, then:
 - (i) the Supplier, upon becoming aware of the consequences of such Discriminatory Action, shall promptly notify the Sponsor;
 - (ii) the Parties and, at the Sponsor’s discretion, those Other Suppliers that are required by the Sponsor to participate, shall engage in good faith negotiations to determine the amount of the Discriminatory Action Compensation; and
 - (iii) if the Parties fail to reach agreement on the amount of Discriminatory Action Compensation described in Section 12.2(a), the matter shall be determined by mandatory and binding arbitration, from which there shall be no appeal, with such arbitration(s) to be conducted in accordance with the procedures set out in Exhibit D. However, if the Supplier fails to participate in such arbitration, the Supplier acknowledges that it waives its right to participate in such arbitration, which shall nevertheless proceed, and the Supplier shall be bound by the award of the Arbitration Panel and any subsequent amendments to this Agreement made by the Sponsor to implement such award of the Arbitration Panel.

12.3 Right of the Sponsor to Remedy a Discriminatory Action

If the Sponsor wishes to remedy or cause to be remedied the occurrence of a Discriminatory Action, the Sponsor must give notice to the Supplier within 30 days after the date of receipt of notice of the Discriminatory Action. If the Sponsor gives such notice, the Sponsor must remedy or cause to be remedied the Discriminatory Action within 180 days after the date of receipt of the notice of the Discriminatory Action. If the Sponsor remedies or causes to be remedied the Discriminatory Action in accordance with the preceding sentence, the Supplier shall have the right to obtain, without duplication, compensation for any detrimental effect the Discriminatory Action had on the Supplier's economics, adjusted to apply only to the period during which the Discriminatory Action detrimentally affected the Supplier's economics.

ARTICLE 13 LIABILITY AND INDEMNIFICATION

13.1 Exclusion of Consequential Damages

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

13.2 Intentionally Deleted.

13.3 Sponsor Indemnification

The Supplier shall indemnify, defend and hold the Sponsor, any assignee of the Sponsor, the System Operator (to the extent that it is no longer the Sponsor), the Government of Ontario, the members of the Government of Ontario's Executive Council and their respective Affiliates, and each of the foregoing Persons' respective directors, officers, employees, shareholders, advisors and agents (including contractors and their employees) (collectively, the "**Indemnitees**") harmless from and against any and all Claims, demands, suits, losses, damages, liabilities, penalties, obligations, payments, costs and expenses and accrued interest thereon (including the costs and expenses of, and accrued interest on, any and all actions, suits, proceedings for personal injury (including death) or property damage, assessments, judgments, settlements and compromises relating thereto and reasonable lawyers' fees and reasonable disbursements in connection therewith) (each, an "**Indemnifiable Loss**"), asserted against or suffered by the Indemnitees relating to, in connection with, resulting from, or arising out of (i) any occurrence or event relating to the Facility, except to the extent that any injury or damage is attributable to the negligence or wilful misconduct of the Indemnitees or the failure of the Indemnitees to comply with Laws and Regulations, (ii) any breach by the Supplier of any representations, warranties and covenants contained in this Agreement, except to the extent that any injury or damage is attributable to the negligence or wilful misconduct of the Indemnitees, and (iii) a discharge of any contaminant into the natural environment, at or related to, the Facility and any fines or orders of any kind that may be levied or made in connection therewith pursuant to Laws and Regulations, except to the degree that such discharge shall have been due to the negligence or wilful misconduct of the Indemnitees. For greater certainty, in the event of contributory negligence or other fault of the Indemnitees, then such Indemnitees shall not be indemnified hereunder in the proportion that the Indemnitees' negligence or other fault contributed to any Indemnifiable Loss.

13.4 Defence of Claims

- (a) Promptly after receipt by the Indemnitees of any Claim or notice of the commencement of any action, administrative or legal proceeding or investigation as to which the indemnity provided for in Section 13.3 may apply, the Sponsor shall notify the Supplier in writing of

such fact. The Supplier shall assume the defence thereof with counsel designated by the Supplier and satisfactory to the affected Indemnitees, acting reasonably; provided, however, that if the defendants in any such action include both the Indemnitees and the Supplier and the Indemnitees shall have reasonably concluded that there may be legal defences available to them which are different from or additional to, or inconsistent with, those available to the Supplier, the Indemnitees shall have the right to select separate counsel satisfactory to the Supplier acting reasonably (at no additional cost to the Indemnitees) to participate in the defence of such action on behalf of the Indemnitees. The Supplier shall promptly confirm that it is assuming the defence of the Indemnitees by providing written notice to the Indemnitees. Such notice shall be provided no later than five days prior to the deadline for responding to any Claim relating to any Indemnifiable Loss.

- (b) Should any of the Indemnitees be entitled to indemnification under Section 13.3 as a result of a Claim by a third party, and the Supplier fails to assume the defence of such Claim (which failure shall be assumed if the Supplier fails to provide the notice prescribed by Section 13.4(a)), the Indemnitees shall, at the expense of the Supplier, contest (or, with the prior written consent of the Supplier, settle) such Claim, provided that no such contest need be made and settlement or full payment of any such Claim may be made without consent of the Supplier (with the Supplier remaining obligated to indemnify the Indemnitees under Section 13.3), if, in the written opinion of an independent third party counsel chosen by the Company Representatives, such Claim is meritorious. If the Supplier is obligated to indemnify any Indemnitees under Section 13.3, the amount owing to the Indemnitees will be the amount of such Indemnitees' actual out-of-pocket loss net of any insurance proceeds received or other recovery.

13.5 Joint and Several Liability

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

ARTICLE 14 CONTRACT OPERATION AND ADMINISTRATION

14.1 Company Representative

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

14.2 Record Retention; Audit Rights

The Supplier and the Sponsor shall both keep complete and accurate records and all other data required by either of them for the purpose of proper administration of this Agreement. All such records shall be maintained as required by Laws and Regulations but for no less than seven years after the creation of the record or data. The Supplier and the Sponsor, on a confidential basis as provided for in Article 7 of this Agreement, shall provide reasonable access to the relevant and appropriate financial and operating records and data kept by such Party relating to this Agreement reasonably required for the other Party to comply with its obligations to Governmental Authorities or to verify or audit any information provided in

accordance with this Agreement. For greater certainty, the Supplier shall provide to the Sponsor any information required by the Sponsor to verify compliance with the Fuel Supply Plan. Moreover, the Supplier agrees and consents to the System Operator, or any other relevant third party providing to the Sponsor all relevant meter and invoice data regarding the Facility required by the Sponsor in order to verify any information provided pursuant hereto. A Party may use its own employees for purposes of any such review of records, provided that those employees are bound by the confidentiality requirements provided for in Article 7. Alternatively, and at the election of the auditing Party, access shall be through the use of a mutually agreed upon third party auditor. The Party seeking access to such records in this manner shall pay the fees and expenses associated with use of the third party auditor.

14.3 Operating and Outage Reports to the Sponsor

- (a) In addition to the documentation provided in Section 14.3(c), the Supplier shall deliver at the times specified below the following documents, reports, plans and notices to the Sponsor:
 - (i) prompt notice to the Sponsor of any Outage other than a Planned Outage, or any anticipated Outage other than a Planned Outage. Any notice under this subsection shall include a statement of the cause of such Outage, the proposed corrective action and the Supplier's estimate of the expected duration of such Outage. The Supplier shall use Commercially Reasonable Efforts to promptly end or reduce the length of such Outage; and
 - (ii) 30 days prior written notice (or such lesser number of days as is possible in the circumstances) to the Sponsor of any Planned Outage of the Facility.
- (b) All Outages shall take place in accordance with the notices of Outages provided by the Supplier to the Sponsor under this Section 14.3.
- (c) If the Supplier is required to report Outages directly to the System Operator, the Supplier shall deliver to the Sponsor a copy of all reports, plans and notices that the Supplier is required to provide to the System Operator with respect to Outages, at the same time or within one Business Day after such reports, plans and notices are delivered by the Supplier to the System Operator.

14.4 Inspection of Facility

- (a) The Sponsor and its Representatives shall, at all times upon two Business Days' prior notice, at any time after the Contract Date, have access to the Facility and every part thereof during regular business hours and the Supplier shall, and shall cause all personnel operating and managing the Facility, to furnish the Sponsor with all reasonable assistance in inspecting the Facility for the purpose of ascertaining compliance with this Agreement; provided that such access and assistance shall be carried out in accordance with and subject to the reasonable safety and security requirements of the Supplier and all personnel operating and managing the Facility, as applicable, and shall not interfere with the operation of the Facility.
- (b) The inspection of the Facility by or on behalf of the Sponsor shall not relieve the Supplier of any of its obligations to comply with the terms of this Agreement. No Supplier Event of Default will be waived or deemed to have been waived by any inspection by or on behalf of the Sponsor. In no event will any inspection by the Sponsor hereunder be a representation that there has been or will be compliance with this Agreement and Laws and Regulations.

14.5 Inspection Not Waiver

- (a) Failure by the Sponsor to inspect the Facility or any part thereof under Section 14.4, or to exercise its audit rights under Section 14.2, shall not constitute a waiver of any of the rights of the Sponsor hereunder. An inspection or audit not followed by a notice of a Supplier Event of Default shall not constitute or be deemed to constitute a waiver of any Supplier Event of Default, nor shall it constitute or be deemed to constitute an acknowledgement that there has been or will be compliance by the Supplier with this Agreement.
- (b) Failure by the Supplier to exercise its audit rights under Section 14.2 shall not constitute or be deemed to constitute a waiver of any of the rights of the Supplier hereunder. An audit not followed by a notice of a Sponsor Event of Default shall not constitute or be deemed to constitute a waiver of any Sponsor Event of Default, nor shall it constitute or be deemed to constitute an acknowledgement that there has been or will be compliance by the Sponsor with this Agreement.

14.6 Notices

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

If to the Supplier, all contact details shall be as set out in the Calstock PPA Cover Page.

If to the Sponsor: IESO
 120 Adelaide Street West
 Suite 1600
 Toronto, Ontario
 M5H 1T1

Attention: Director, Contract Management
E-mail: contract.management@ieso.ca

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

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

ARTICLE 15 MISCELLANEOUS

15.1 Informal Dispute Resolution

If either Party considers that any dispute has arisen under or in connection with this Agreement that the Parties cannot resolve, then such Party may deliver a notice to the other Party describing the nature and the particulars of such dispute. Within 20 Business Days following delivery of such notice to the other Party, a senior executive of the Supplier shall meet with a director of the Sponsor, either in person or by telephone

(the “**Senior Conference**”), to attempt to resolve the dispute. Each Party shall be prepared to propose a solution to the dispute. If, following the Senior Conference, the dispute is not resolved, the dispute may be settled by arbitration pursuant to Section 15.2, if agreed to by both Parties.

15.2 Arbitration

Except as otherwise specifically provided for in this Agreement, any matter in issue between the Parties as to their rights under this Agreement may be decided by arbitration provided, however, that the Parties have first completed a Senior Conference pursuant to Section 15.1. Any dispute to be decided by arbitration will be decided by a single arbitrator appointed by the Parties or, if such Parties fail to appoint an arbitrator within 15 Business Days following the agreement to refer the dispute to arbitration, upon the application of either of the Parties, the arbitrator shall be appointed by a Judge of the Superior Court of Justice (Ontario) sitting in the Judicial District of Toronto Region. The arbitrator shall not have any current or past business or financial relationships with any Party (except prior arbitration). The arbitrator shall provide each of the Parties an opportunity to be heard and shall conduct the arbitration hearing in accordance with the provisions of the *Arbitration Act, 1991* (Ontario). Unless otherwise agreed by the Parties, the arbitrator shall render a decision within 90 days after the end of the arbitration hearing and shall notify the Parties in writing of such decision and the reasons therefor. The arbitrator shall be authorized only to interpret and apply the provisions of this Agreement and shall have no power to modify or change this Agreement in any manner. The decision of the arbitrator shall be conclusive, final and binding upon the Parties. The decision of the arbitrator may be appealed solely on the grounds that the conduct of the arbitrator, or the decision itself, violated the provisions of the *Arbitration Act, 1991* (Ontario) or solely on a question of law as provided for in the *Arbitration Act, 1991* (Ontario). The *Arbitration Act, 1991* (Ontario) shall govern the procedures to apply in the enforcement of any award made. If it is necessary to enforce such award, all costs of enforcement shall be payable and paid by the Party against whom such award is enforced. Unless otherwise provided in the arbitral award to the contrary, each Party shall bear (and be solely responsible for) its own costs incurred during the arbitration process, and each Party shall bear (and be solely responsible for) its equal share of the costs of the arbitrator. Each Party shall be otherwise responsible for its own costs incurred during the arbitration process.

15.3 Business Relationship

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

15.4 Binding Agreement

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

15.5 Assignment

- (a) Following the third anniversary of the Term Commencement Date, this Agreement along with all of the rights, interests and obligations under this Agreement (including for greater certainty those rights, interests and obligations relating to Environmental Attributes) may be assigned by the Supplier, with the prior written consent of the Sponsor, which consent shall not be unreasonably withheld, except as set out in Section 15.5(b) below and as

provided in Article 11. Prior to the third anniversary of the Term Commencement Date, neither this Agreement nor any of the rights, interests or obligations under this Agreement may be assigned by the Supplier.

- (b) For the purposes of Section 15.5(a), it shall not be unreasonable for the Sponsor to withhold its consent if the proposed assignment would (i) cause a Supplier to breach the obligation to own the Facility as set out in Section 2.4(a), or (ii) have or is likely to have, as determined by the Sponsor acting reasonably, a Material Adverse Effect on the Supplier's ability to perform its obligations under this Agreement.
- (c) Notwithstanding Section 15.5(a), the Supplier may, subject to compliance with Laws and Regulations and provided that there is not a Supplier Event of Default that has not been remedied, assign this Agreement without the consent of the Sponsor to an Affiliate acquiring the Facility; provided, however, that no such assignment by the Supplier or any of its successors or permitted assigns hereunder shall be valid or effective unless and until such Affiliate enters into a written agreement with the Sponsor to assume all of the Supplier's obligations under this Agreement and be bound by the terms of this Agreement, and the arrangements and obligations of the Supplier set forth in Article 5, if applicable, have been met in accordance with the terms of Article 5.
- (d) If the Supplier assigns this Agreement to a non-resident of Canada as that term is defined in the ITA, and the Sponsor incurs any additional Taxes, at any time thereafter, solely as the result of such assignment, then payments under this Agreement by the Sponsor shall be reduced by the amount of such additional Taxes and the Sponsor shall remit such additional Taxes to the applicable taxing authorities. The Sponsor shall within 60 days after remitting such Taxes, notify the assignee in writing, providing reasonable detail of such payment so that the assignee may claim any applicable rebates, refunds or credits from the applicable taxing authorities. If after the Sponsor has paid such amounts, the Sponsor receives a refund, rebate or credit on account of such Taxes, then the Sponsor shall promptly remit such refund, rebate or credit amount to the assignee.
- (e) If a valid assignment of this Agreement is made by the Supplier in accordance with this Section 15.5, the Sponsor acknowledges and agrees that, upon such assignment and assumption and notice thereof by the assignor to the Sponsor, the assignor shall be relieved of all its duties, obligations and liabilities hereunder.
- (f) The Sponsor shall have the right to assign this Agreement from time to time and all benefits and obligations hereunder for the balance of the Term without the consent of the Supplier to an assignee which shall assume the obligations and liability of the Sponsor under this Agreement and be novated into this Agreement in the place and stead of the Sponsor (except for the Sponsor's obligation in Section 15.5(f)(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 any agreement entered into by the Sponsor in accordance with Section 11.3 and further agrees not to make any material amendments to or terminate this Agreement after such assignment without the prior written consent of the Sponsor, whereupon:
 - (i) the representation set forth in Section 6.2(a) shall apply to the assignee with all necessary amendments to reflect the form and the manner in which the assignee was established;
 - (ii) all of the representations set forth in Section 6.2 shall be deemed to be made by the assignee to the Supplier at the time of such assignment and assumption; and

- (iii) the Sponsor shall be relieved of all obligations and liability arising pursuant to this Agreement; notwithstanding the foregoing, the Sponsor shall remain liable to the Supplier for remedying any payment defaults under Section 9.3(a) and shall remain liable for any obligations and liabilities of the assignee arising from any Sponsor Event of Default, provided that any notice required to be given under Sections 9.3 and 9.4(a) is given on the same day to the assignee and to the Sponsor. The time periods in Section 9.3 shall not begin to run until both the assignee and the Sponsor have been so notified.

15.6 Change of Control

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

15.7 Survival

The provisions of Sections 2.8, 2.9, 3.2, 3.4, 3.5, 3.6, 5.1(b), Article 4, Article 7, Sections 9.2, 9.4, 9.5, 11.2(g), Article 13, Sections 14.2, 15.1, 15.2, 15.5(d) and 15.5(f) shall survive the expiration of the Term or earlier termination of this Agreement. The expiration of the Term or a termination of this Agreement shall not affect or prejudice any rights or obligations that have accrued or arisen under this Agreement prior to the time of expiration or termination and such rights and obligations shall survive the expiration of the Term or the termination of this Agreement for a period of time equal to the applicable statute of limitations.

15.8 Counterparts

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

15.9 Additional Rights of Set-Off

In addition to the other rights of set-off under this Agreement or otherwise arising in law or equity, either Party may set off any amounts owing to such Party under this Agreement against any amounts owed to the other Party.

15.10 Rights and Remedies Not Limited to Contract

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

15.11 Further Assurances

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

[END OF TERMS AND CONDITIONS]

EXHIBIT A – FUEL SUPPLY PLAN

EXHIBIT B – CONTRACT SETTLEMENT

This Exhibit B sets out the calculation of the Monthly Payment for the Facility in a given Settlement Month “m” in calendar year “y”, during the Term which is a two-stage calculation that involves:

Stage I	Calculation of Indexed Contract Price
Stage II	Calculation of Monthly Payment

Stage I: Calculation of Indexed Contract Price

The “**Indexed Contract Price**” applicable during the corresponding calendar year shall be determined as follows:

- (a) The Indexed Contract Price in any year “y” shall be the greater of the Indexed Contract Price in the preceding year, “y-1”, and the following calculation:

$CP_y = \left(CP_{y-1} \times \frac{CPI_y}{CPI_{y-1}} \right)$	
where:	
CP _y	is the Indexed Contract Price (\$/MWh) applicable in calendar year “y” during the Term. In the first calendar year, the Indexed Contract Price shall be equal to the value set out on the Calstock PPA Cover Page.
CP _{y-1}	is the Contract Price (\$/MWh) applicable in calendar year “y-1” during the Term.
CPI _y	is the CPI effective as of the month of December immediately preceding the commencement of calendar year “y”.
CPI _{y-1}	is the CPI effective as of the month of December immediately preceding the commencement of calendar year “y-1”.

Stage II: Calculation of Monthly Payment

- (a) The Monthly Payment for Delivered Electricity during a Contract Hour is equal to:
 - (i) the lesser of the Delivered Electricity and the applicable Contract Capacity times one hour, during such Contract Hour, multiplied by the Indexed Contract Price applicable during the corresponding calendar year;
 - minus
 - (ii) the lesser of the Delivered Electricity and the applicable Contract Capacity times one hour during such Contract Hour multiplied by HOEP for such Contract Hour,

in all cases excluding any Delivered Electricity that was not generated from Biomass.

Table B.1 Designated Days

Month	Designated Days
January	Every day
February	Every day
March	First eight (8) days
April	None
May	None
June	Business Days
July	Every day
August	Every day
September	Every day
October	None
November	Last eight (8) days
December	Business Days

Table B.2 On-peak Hours and Off-peak Hours

Month	On-peak Hours (Hour Ending EST)	Off-peak Hours (Hour Ending EST)
January	8 – 23	1 – 7, 24
February	8 – 23	1 – 7, 24
March	N/A	1 – 24
April	N/A	N/A
May	N/A	N/A
June	16 – 21	1 – 15, 22 – 24
July	8 – 24	1 – 7
August	9 – 23	1 – 8, 24
September	11 – 23	1 – 10, 24
October	N/A	N/A
November	N/A	1 – 24
December	N/A	1 – 24

Table B.3 Annual Maximum Contract Output

Contract Year	AMCO (MWh)
1	76,309
2	76,488
3	75,920
4	76,703
5	77,016

If in any Contract Year the Delivered Electricity in respect of all applicable Contract Hours during such Contract Year exceeds the applicable AMCO, for the purposes of this Agreement any such Delivered Electricity in excess of the applicable AMCO shall be deemed not to have been Delivered for the purposes of calculating the Monthly Payment set out in this Agreement. For greater certainty, subject to Section 3.1(b), unused portions of the AMCO for a Contract Year are not permitted to be shifted to between different Contract Years.

- (b) The Monthly Payment in respect of a Settlement Month shall be:
- (i) the sum of the Monthly Payments in respect of each Contract Hour in such Settlement Month;

minus
 - (ii) if positive, eighty per cent (80%) of the total revenues, if any, received by the Supplier in relation to the sale, supply or delivery of any Future Contract Related Products for that Settlement Month.
- (c) Where the Monthly Payment in respect of a Settlement Month is a positive number, such amount shall be owed by the Sponsor to the Supplier. Where such amount is a negative number, the absolute value of such amount shall be owed by the Supplier to the Sponsor.

EXHIBIT C
FORM OF IRREVOCABLE STANDBY LETTER OF CREDIT

DATE OF ISSUE: [●]
APPLICANT: [●]
BENEFICIARY: Independent Electricity System Operator and its permitted assigns
(the “**Beneficiary**”)
120 Adelaide Street West, Suite 1600
Toronto, ON M5H 1T1
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: [●]
(the “**Credit**”)

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

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

“The Supplier is in breach of, or default under, the Contract, and therefore the Beneficiary is entitled to draw upon the Credit in the amount of the draft attached hereto.”

Drafts drawn hereunder must bear the clause “Drawn under irrevocable and unconditional Standby Letter of Credit No. [●] issued by [**Issuing Bank Name**] dated [**Issue Date**].”

Partial drawings are permitted.

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

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

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

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

In the event of a transfer of this Credit as provided for above, the above name of the Beneficiary will be amended to another entity by way of an amendment hereto, without the consent of the Applicant, and upon receipt by **[Issuing Bank Name]** of the Beneficiary's dated and signed letter addressed to **[Issuing Bank Name]** and completed as follows:

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

[Issuing Bank Name]

By: _____

By: _____

EXHIBIT D
ARBITRATION PROVISIONS APPLICABLE TO SECTIONS 1.7, 2.8 & 12.2

The following rules and procedures (the “**Rules**”) shall govern, exclusively, any matter or matters to be arbitrated between the Parties under Sections 1.7, 2.8 and 12.2 of this Agreement.

1. **Commencement of Arbitration** – If the Parties and, at the Sponsor’s option, all Other Suppliers required by the Sponsor to participate, have been unable to reach agreement as contemplated in Sections 1.7, 2.8 and 12.2 of this Agreement, as applicable, then the Sponsor shall commence arbitration by delivering a written notice (the “**Request**”) to the Supplier and such Other Suppliers required by the Sponsor to participate (collectively the “**Suppliers**”). If the Sponsor has not already done so, the Sponsor shall then deliver to the Suppliers the names of such Other Suppliers. Within 20 days of the delivery of the Request, the Sponsor shall deliver to the Suppliers a written notice nominating an arbitrator who shall be familiar with commercial law matters and has no financial or personal interest in the business affairs of any of the parties. Within 20 days of the receipt of the Sponsor’s notice nominating its arbitrator, the Suppliers shall by written notice to the Sponsor nominate an arbitrator who shall be familiar with commercial law matters and has no financial or personal interest in the business affairs of any of the parties. The two arbitrators nominated shall then select a chair person of the arbitration panel (the “**Arbitration Panel**”) who shall be a former judge of a Superior Court or appellate court in Canada.
2. **Application to Court** – If the Suppliers are unable to agree on the nomination of an arbitrator within 20 days of the receipt of the Sponsor’s notice nominating its arbitrator, any of the Suppliers or the Sponsor may apply to a judge of the Superior Court of Justice of Ontario to appoint the arbitrator. If the two arbitrators are unable to agree on a chair person within 30 days of the nomination or appointment of the Supplier’s arbitrator, any of the Suppliers or the Sponsor 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 Provision or the Discriminatory Action Compensation, as the case may be, in accordance with the Ontario *Arbitration Act, 1991* and, where applicable, the Ontario *International Commercial Arbitration Act*, it being the intention of the Sponsor and the Supplier that there be, to the extent possible, one arbitration proceeding and hearing to determine the Replacement Provision or the Discriminatory Action Compensation, as applicable. Unless otherwise agreed by the Parties, the Arbitration Panel shall determine the conduct of the arbitral proceedings, including the exchange of statements of claim and defence, the need for documentary and oral discovery and whether to hold oral hearings with a presentation of evidence or oral argument so that the award may be made within the time period set out below. Each of the Suppliers shall have a right to participate in the arbitration proceeding.
4. **Consolidation** – The Parties agree that should the Arbitration Panel determine that the the Replacement Provision or the Discriminatory Action Compensation, as applicable, needs to be determined through more than one arbitration proceeding, then the Parties agree that the Arbitration Panel shall determine whether the arbitration proceedings shall be consolidated, conducted simultaneously or consecutively or whether any of the arbitration proceedings should be stayed until any of the others are completed.
5. **Award** – The award of the Arbitration Panel, which shall include the Replacement Provision or the Discriminatory Action Compensation, as applicable, shall be made within six months after the appointment of the Arbitration Panel, subject to any extended date to be agreed by the Parties or any reasonable delay due to unforeseen circumstances.
6. **Costs** – The Parties shall pay their own costs of participating in the arbitration proceedings.

7. **Fees** – Each of the arbitrators on the Arbitration Panel shall be paid their normal professional fees for their time and attendances, which fees together with any hearing room fees, shall be paid by the Sponsor.
8. **Computation of Time** – In the computation of time under these Rules or an order or direction given by the Arbitration Panel, except where a contrary intention appears, or the parties otherwise agree:
 - (a) where there is a reference to a number of days between two events, those days shall be counted by excluding the day on which the first event happens and including the day on which the second event happens, even if they are described as clear days or the words “at least” are used;
 - (b) statutory holidays shall not be counted;
 - (c) where the time for doing any act or any order or direction given by the Arbitration Panel expires on a day which is not a Business Day, the act may be done on the next day that is a Business Day; and
 - (d) service of a document or notice or any order or direction given by the Arbitration Panel made after 4:00 p.m. (Toronto time), or at any time on a day which is not a business day, shall be deemed to have been made on the next business day.
9. **Place of Arbitration** – The arbitration, including the rendering of the award, shall take place in Toronto, Ontario, which shall be the seat of the proceedings. The language to be used in the arbitration shall be English.

EXHIBIT E
FORM OF ACKNOWLEDGEMENT OF SECURED LENDER'S RIGHTS

THIS AGREEMENT made as of this _____ day of _____, 20____,

BETWEEN:

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

(the "Supplier"),

- and -

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

(the "Security Agent"),

- and -

INDEPENDENT ELECTRICITY SYSTEM OPERATOR, a
statutory corporation without share capital amalgamated under the
laws of the Province of Ontario

(the "IESO"),

RECITALS:

- A. The Supplier and the IESO, entered into the Calstock Biomass PPA dated as of **[insert date]** (as amended, supplemented, restated or replaced from time to time in accordance with its terms and this agreement, the "Contract");
- B. *[Note to finalization: describe structure of collateral arrangements; describe any bond issuance and related trust indentures; identify underlying security and debt documents; identify the "Secured Lenders" if they are anyone other than the Security Agent; identify any intercreditor or collateral agency arrangements];*
- C. The Supplier has granted security against, *inter alia*, all of their right, title, entitlement and interest in and to the Contract in favour of the Security Agent pursuant to the security agreements identified in Schedule "A" (collectively, as amended, supplemented, restated or replaced from time to time, the "Security Agreements"), as security for its present and future indebtedness, liabilities and obligations under and in respect of the *[Note to finalization: describe underlying debt instrument(s)]* (the "Secured Debt"); and
- D. The Supplier has agreed and the Security Agent acknowledges that the Secured Debt secured by the Security Agreements is only for the purposes of financing the Supplier's acquisition, construction, re-development, ownership, operation and maintenance of the Facility and any refinancing of any such debt, and for no other purpose;

THEREFORE, the parties agree as follows:

1. Defined Terms

Unless otherwise provided in this agreement or the context otherwise requires, all capitalized terms which are not defined in this agreement have the respective meanings given to them in the Contract, and “including” shall mean “including without limitation”.

2. Acknowledgement and Confirmation of Rights of Security Agent

The IESO, the Security Agent and the Supplier each acknowledge and confirm that:

- (a) the Supplier has delivered to the IESO copies of the Security Agreements listed on Schedule “A”;
- (b) the Security Agreements listed on Schedule “A” are acknowledged to be Security Agreements to which the provisions of Article 11 of the Contract apply; and
- (c) the Security Agent constitutes the Secured Lender for purposes of the Contract and, without limiting the generality of the foregoing, is entitled to the benefit of the provisions of Article 11 of the Contract in favour of a Secured Lender and is entitled to enforce the same as if the Security Agent were a party to the Contract, until such time as IESO has received notice from the Security Agent that the Security Agreements have been terminated.

Notwithstanding any other provision of this agreement, no Security Agreement other than the Security Agreements listed on Schedule “A” shall be entitled to the benefit of the provisions of Article 11 of the Contract, unless and until the IESO has received a copy thereof (as provided for in Section 11.1(d) of the Contract) and each of the parties has acknowledged such additional Security Agreement by fully executing an amendment to Schedule “A” to include such additional Security Agreement. It is a condition precedent to the acknowledgement and confirmation provided in this Section 2 that the representations and warranties contained in Sections 3 and 4 hereof are true and accurate.

3. Covenants of the Security Agent

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

- (a) Should the Security Agent enforce the Security Agreements with respect to the Contract, it will comply with the terms, conditions and obligations applicable to a Secured Lender under Section 11.2 of the Contract as they relate to the Security Agent’s security interests in the Contract during such enforcement.
- (b) The Security Agent agrees that it will comply with Section 11.2(f) of the Contract if ever applicable.
- (c) The Security Agent is and will be at Arm’s Length from the Supplier.
- (d) The Security Agreements listed on Schedule “A” constitute all of the security granted by the Supplier in favour of the Security Agent as at the date first written above.
- (e) Except for the Security Agreements and any other security that is delivered by the Security Agent to the IESO in accordance with Section 11.1(d) of the Contract, the Security Agent acknowledges that any other security granted in favour of the Security Agent will not impose any obligations upon the IESO pursuant to the Contract.

- (f) All of the security registrations made pursuant to the *Personal Property Security Act* (Ontario) in respect of the Security Agreements are set out in Schedule “A”.
- (g) If the Supplier is in default under or pursuant to any Security Agreement and the Security Agent intends to exercise any rights afforded to it with respect to the Contract, then the Security Agent will give notice of such default to the IESO at least five (5) Business Days prior to exercising any such rights under the Contract.
- (h) The Security Agent has entered into this agreement and holds the security granted pursuant to the Security Agreements on behalf of all parties having any right, title or interest in the Security Agreements.
- (i) Only the Security Agent will be entitled to exercise the rights and remedies under the Security Agreements as the Secured Lender except that in accordance with Section 11.2 of the Contract, when the Security Agent has appointed an agent, a receiver or a receiver and manager, or has obtained a court-appointed receiver or receiver and manager for the purpose of enforcing the Security Agent’s security, that Person may exercise any of the Security Agent’s rights under Section 11.2 of the Contract.
- (j) The address of the Security Agent to which notices may be sent pursuant to Section 11.1(d) of the Contract is set forth in Section 6 of this agreement.
- (k) The Security Agent will provide the IESO with written notice of any change in the identity or address of the Security Agent, and the Security Agent agrees to promptly notify IESO in writing of any discharge or termination of all or any of the Security Agreements listed on Schedule “A”.
- (l) The recitals to this agreement are true and accurate.
- (m) The sale, assignment or other transfer of any rights in shares, partnership interests or similar rights in the capital of the Supplier in respect of which the Security Agent holds a security interest granted pursuant to the Security Agreements shall be subject to Section 11.2(f) of the Contract.
- (n) The Security Agreements have been and shall be entered into, and any security thereunder has been and shall be held and assigned, solely by way of security and not for any other purpose. The Security Agent acknowledges that any acknowledgement, agreement or confirmation of the IESO hereunder is not and shall not be construed as a consent to any assignment of the Contract or to any change of Control of the Supplier other than for the *bona fide* enforcement of a security interest duly granted under a Security Agreement as provided for in Article 11 of the Contract.
- (o) The Security Agreements do not and will not secure any indebtedness, liability or obligation of the Supplier that is not related to the Facility or cover any real or personal property of the Supplier not related to the Facility.

4. Covenants of the Supplier

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

- (a) The Security Agreements are subject to the terms and conditions applicable to a Secured Lender’s Security Agreement that are contained in Article 11 of the Contract, and comply therewith.

- (b) The Supplier has provided to the IESO true and complete copies of the Security Agreements listed on Schedule “A”, and such Security Agreements constitute Secured Lender’s Security Agreements and the Security Agent constitutes a Secured Lender for purposes of the Contract.
- (c) All of the security registrations made pursuant to the *Personal Property Security Act* (Ontario) in respect of the Security Agreements are set out in Schedule “A”.
- (d) The recitals to this agreement are true and accurate and the Supplier agrees that all Secured Debt will have been incurred in connection with the ownership, operation and maintenance of the Facility and any refinancing of any such debt.
- (e) The Supplier will provide the IESO with true and complete copies of any new agreements relating to, or amendments to, any Secured Lender’s Security Agreement.
- (f) There is no existing unremedied Supplier Event(s) of Default.
- (g) The Security Agreements have been and shall be entered into, and any security thereunder has been and shall be held and assigned, solely by way of security and not for any other purpose. The Supplier acknowledges that any acknowledgement, agreement or confirmation of the IESO hereunder is not and shall not be construed as a consent to any assignment of the Contract or to any change of Control of the Supplier other than for the *bona fide* enforcement of a security interest duly granted under a Security Agreement.

5. Notice of Default by Security Agent

The parties hereto agree that the IESO shall not be bound or have any obligation to make any inquiry regarding the status of the Supplier’s account with the Security Agent or regarding any breach or default under or pursuant to the Security Agreements other than the written notice (a “**Default Notice**”) to be given to the IESO by the Security Agent pursuant to Section 11.1(e) of the Contract, which may be accepted by the IESO as conclusive evidence of the Supplier’s default thereunder. Following receipt by the IESO of a Default Notice, the IESO may at all times, subject to transfer of such interest or entry into a New Agreement in accordance with Article 11 of the Contract, rely on the instructions (the “**Security Agent’s Instructions**”) of the Security Agent or its nominee or agent or a receiver or receiver and manager appointed in accordance with Section 11.2(d) until the Default Notice is withdrawn by the Security Agent by written notice to the IESO. The IESO shall have no liability to the Supplier for honouring a Default Notice or any Security Agent’s Instructions and the Supplier hereby agrees to indemnify the IESO and hold it harmless in respect of any losses or claims incurred or suffered by the IESO due to or arising out of IESO honouring any Default Notice or complying with any Security Agent’s Instructions, and the sole remedy of the Supplier in any such circumstances shall be against the Security Agent. Prior to receipt by the IESO of a Default Notice, the IESO may at all times rely on the instructions of the Supplier (the “**Supplier’s Instructions**”). The IESO shall have no liability to the Security Agent for complying with any Supplier’s Instructions prior to such receipt.

6. Notice

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

If to the Supplier:

[insert Supplier’s mailing address]

Attention: [insert name of contact person or position title]
Facsimile: [insert fax number]

If to the IESO:

Independent Electricity System Operator
120 Adelaide Street West
Suite 1600
Toronto, Ontario
M5H 1T1

Attention: Contract Manager
Facsimile: (416) 967-6071

If to the Security Agent:

[insert Security Agent's mailing address]

Attention: [insert name of contact person or position title]
Facsimile: [insert fax number]

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

7. Successors and Assigns

Subject to complying with Sections 11.1(d), 15.5 and 15.6 of the Contract, as applicable, the benefits under this agreement accruing to each of the parties to this agreement will extend to all their respective successors and permitted assigns, only if they agree, according to their interests, to be bound by all the provisions of this agreement (it being the responsibility of each party to give notice to each other party of such assignment and to require its successors and permitted assigns to expressly acknowledge and agree in favour of each other party to be bound by this agreement). Subject to complying with Sections 11.1(d), 15.5 and 15.6 of the Contract, as applicable, upon the acquisition by any such successor or permitted assign of such an interest, such successor or permitted assign will be joined, as a party benefiting and bound by this agreement, by an appropriate further agreement supplementary to this agreement in form and substance acceptable to the IESO, acting reasonably.

8. No Waiver

The parties hereto confirm that the Contract remains in full force and effect in accordance with its terms and that this agreement shall not be deemed to waive or modify in any respect any rights of the IESO under the Contract. Without limiting the foregoing, this agreement shall not constitute or be deemed to constitute:

- (a) a waiver of any Supplier Event of Default or other default of the Supplier;
- (b) waiver of any prohibition or restriction on, or the IESO's consent to, any assignment of the Contract or change of Control under the Contract; or

- (c) an acknowledgement that there has been or will be compliance by the Supplier with the Contract, except to the extent of the acknowledgement of the rights of the Security Agent as expressly provided herein.

The parties hereto acknowledge and agree that this agreement is being entered into pursuant to, and with respect to, the Contract only and shall not be construed as an amendment or waiver of any other agreement. This agreement, and any notice delivered pursuant to this agreement, shall not be deemed to be notice for any other purpose, including any obligation to provide notice to the IESO pursuant to the IESO Market Rules.

9. Execution and Delivery

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

10. Governing Law

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

[EXECUTION PAGE IMMEDIATELY FOLLOWS]

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

[insert Supplier name]

[insert Security Agent name]

By: _____
Name: [insert name]
Title: [insert position title]

By: _____
Name: [insert name]
Title: [insert position title]

By: _____
Name: [insert name]
Title: [insert position title]

By: _____
Name: [insert name]
Title: [insert position title]

I/We have authority to bind the corporation.

I/We have authority to bind the corporation.

INDEPENDENT ELECTRICITY SYSTEM OPERATOR

By: _____
Name:
Title:

I/We have authority to bind the corporation.

SCHEDULE "A" TO EXHIBIT E

LIST OF SECURITY AGREEMENTS AND REGISTRATION DETAILS

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

- (i) ●
- (ii) ●
- (iii) ●

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

- (i) [insert description of PPSA registrations, if applicable]

EXHIBIT F
FORM OF INDEPENDENT ENGINEER CERTIFICATE

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

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

Date	
Legal Name of Supplier	
Name of Facility	
Agreement Title	Calstock Biomass PPA #[Insert Contract #] (the "Agreement")
Agreement Date	
Legal Name of Independent Engineer	

WHEREAS Section 2.3(a)(ii) of the Agreement between the Supplier and the Sponsor dated as of [Contract Date] provides that the Supplier shall provide the Sponsor with a certificate (this "Certificate") addressed to it from an Independent Engineer containing certain statements with respect to the Facility;

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

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

- (i) the Undersigned is duly qualified and licensed to practice engineering in the province of Ontario;
- (ii) the Undersigned is neither an employee nor a consultant of the Supplier such that the majority of either the time or billings of the Undersigned during the 18 month period prior to the date hereof were devoted to the Facility;
- (iii) the Undersigned is not an affiliate of the Supplier nor directly or indirectly Controlled by the Supplier;
- (iv) the Connection Point of the Facility is at the location specified on the Calstock PPA Cover Page; and
- (v) the Facility has been connected to the IESO-Controlled Grid such that 100% of the Contract Capacity is available to Deliver Electricity in compliance with Good Engineering and Operating Practices and Laws and Regulation and substantially in accordance with the Agreement.

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

[Legal Name of Independent Engineer]

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

Professional Engineer Stamp of Signing Engineer

**EXHIBIT G
FORM OF SUPPLIER CERTIFICATE**

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

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

Date	
Legal Name of Supplier	
Name of Facility	
Agreement Title	Calstock Biomass PPA [Insert Contract #] (the "Agreement")
Agreement Date	
Term Commencement Date	
Beginning of the Hour Ending	

WHEREAS Section 2.3(a)(iii) of the Agreement between [Supplier Short Name] and the Sponsor dated as of [Contract Date] provides that the Supplier shall provide the Sponsor with a certificate (this "Certificate") addressed to it from the Supplier containing certain statements with respect to the Facility, in addition to a separate IE Certificate referenced in Exhibit F of the Agreement;

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

- (a) [Independent Engineering Company Legal Name] is:
- (i) duly qualified and licensed to practice engineering in the province of Ontario and which holds a certificate of authorization issued by Professional Engineers Ontario;
 - (ii) does not have a vested interest in the design, engineering, procurement, construction, metering and/or testing of the facility; and
 - (iii) not an affiliate of [Supplier Short Name] nor directly or indirectly Controlled by [Supplier Short Name].
- (b) [Supplier Short Name] has provided, or in the case of Section (b)(i), has caused the Independent Engineer to provide, to the Sponsor the following documentation required to be so provided:
- (i) certificate of an independent professional engineer using Sponsor's "Form of Independent Engineer Certificate" in accordance with Section 2.3(a)(ii) of the Agreement;
 - (ii) as-built single line diagram in accordance with Section 2.3(a)(i) of the Agreement; and
 - (iii) *Workplace Safety and Insurance Act* (Ontario) clearance certificate pursuant to Section 2.6(c) of the Agreement.

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

[Legal Name of Supplier]

By:

Name: **[Name]**
Title: **[Title]**

**EXHIBIT H
FORM OF CONFIDENTIALITY UNDERTAKING**

SUBMIT FORM BY E-MAIL TO
contract.management@ieso.ca

Pursuant to Section [No.] of the Agreement, the Supplier is hereby submitting this Form of Confidentiality Undertaking to the Sponsor.

Date	
Legal Name of Supplier	
Facility	
Contract Title	
Contract Date	

WHEREAS the Supplier is a party to the Agreement;

AND WHEREAS the undersigned is a Secured Lender or prospective Secured Lender;

AND WHEREAS the Supplier wishes to disclose Confidential Information contained in the Agreement to the undersigned with respect to the financing of the Facility such disclosure is prohibited without the provision to the Sponsor of this Confidentiality Undertaking;

NOW THEREFORE the undersigned covenants and agrees in favour of the Sponsor to hold any and all Confidential Information confidential on the terms set out in Article 7 of the Agreement as applicable to the Supplier, mutatis mutandis.

All capitalized terms used in this Confidentiality Undertaking and not defined herein shall have the respective meanings ascribed thereto in the Agreement.

Signed this	[Day]	day of	[Month, Year]	.
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[Supplier Legal Name]
By:

Name: [Name]
Title: [Title]

[Name of Secured Lender]
By:

Name: [Name]
Title: [Title]

EXHIBIT I
FORM OF FORCE MAJEURE NOTICE

SUBMIT BY E-MAIL (PDF WITH SIGNATURE) TO

contract.management@ieso.ca

Pursuant to Section [No.] of the Contract, the Supplier is hereby submitting this completed Force Majeure Notice to the Buyer.
Capitalized terms not defined herein have the meanings ascribed thereto in the Contract.

- This is a new Force Majeure event, start date and time: _____
- This is an update to existing Force Majeure No.: _____
- This is a termination notice, termination date and time: _____

Date	
Force Majeure No.	
Title of Force Majeure	
Legal Name of Supplier	
Name of Facility	
Contract Title	(the "Contract")
Contract Date	
Original Milestone Date for COD (if applicable)	N/A
IESO Approved Revised Milestone Date for COD (if applicable)	N/A
Type of Force Majeure	<input type="checkbox"/> ENVIRONMENTAL PERMITTING <input type="checkbox"/> FIRST NATIONS CONSULTATIONS <input type="checkbox"/> MUNICIPAL ZONING BYLAW/PERMITS <input type="checkbox"/> ACTS OF GOD / EXTREME WEATHER <input type="checkbox"/> LABOUR DISPUTES <input type="checkbox"/> OTHER (SPECIFY):
1. Description of events leading to Force Majeure (Provide reasonably full particulars of the cause and timing events relating to the invoked Force Majeure. Please also provide documentary evidence of the same, including, without limitation, the following: newspaper articles, correspondence, emails, notes, reports, memoranda and any other documentation relevant to establishing the description.)	
2. Effect of Force Majeure (Provide reasonably full particulars of the effect of the Force Majeure on the supplier's ability to fulfill its obligations under the Contract. Please also provide documentary evidence of the same, including, without limitation, the following: reports, policy documents, correspondence, notes, memoranda and any other documentation relevant to establishing the effect.)	

3. Cost of Alternatives available to remedy or remove the Force Majeure (Provide reasonably full particulars of alternatives available to the Supplier to remedy or remove the Force Majeure, together with an estimation of related costs with respect to each alternative. Please also provide documentary evidence of the same, including, without limitation, the following: written cost estimates, legal or professional opinions and reports, municipal or other government policy documentation and any other documentation relevant to establishing the cost.)

4. Commercially Reasonable Efforts (Reasonably full particulars of efforts, if any, undertaken or contemplated by the Supplier to remedy or remove Force Majeure. Please also provide documentary evidence of the commercially reasonable efforts listed, including, without limitation, the following as applicable: meeting requests with municipal officials, notes from meetings or telephone calls, minutes of meetings, letter or email correspondence with third parties, copies of reports, policies, proposals, newspaper articles and any other documentation relevant to establishing the commercially reasonable efforts.)

AUTHORIZED SIGNATORY

The Authorized Signatory must be either a signatory of the Contract, a person authorized to receive Notices, or the Company Representative. If not, a Form of Certificate of Incumbency (IESOCM-FORM-18A/Corporation or IESOCM-FORM-18B/General Partner) must be submitted with this form.

By: _____ Date: _____
[Name]
[Title]
[Legal Name of Supplier]

**EXHIBIT J
NOT USED**

**EXHIBIT K
METERING PLAN**