

# **INTERRUPTIBLE RATE PILOT CONTRACT (IRP CONTRACT)**

## **SCHEDULE 1**

### **GENERAL TERMS AND CONDITIONS**

#### **VERSION [●]**

This draft document as well as the statements and information contained herein, are based on the proposed design as of the date of posting and remain subject to amendment. Nothing in this draft obligates the IESO to continue or conduct the Interruptible Rate Pilot (the “Pilot”) as contemplated herein. Nothing in this draft constitutes, nor shall it be construed to constitute, an agreement, guarantee, representation, or warranty, express or implied, on behalf of the IESO. The IESO provides no such agreement, guarantee, representation, or warranty and disclaims all liability associated therewith. In the event there is any conflict or inconsistency between this draft and the IESO market rules, any legislation or regulation, the terms in the market rules, legislation, or regulation, as applicable, shall govern.

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# INTERRUPTIBLE RATE PILOT CONTRACT

## GENERAL TERMS AND CONDITIONS

### RECITALS

- (a) **WHEREAS** on [date] the Minister of Energy issued the IRP Directive to the [Sponsor] to undertake the Pilot;
- (b) **AND WHEREAS** the [Sponsor] issued the Pilot Rules to solicit eligible Load Facilities to apply for participation in the Pilot;
- (c) **AND WHEREAS** the Participant submitted an Application to participate in the Pilot with the Facility pursuant to the Pilot Rules;
- (d) **AND WHEREAS** the Participant's Application was selected by the [Sponsor] and accordingly the Participant and the [Sponsor] wish to execute this Agreement in order to formalize the contractual arrangements for the Participant to operate the Facility during the Term on the terms and conditions set out herein;

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

### **Article 1 DEFINITIONS**

#### **1.1 Definitions**

In addition to the terms defined elsewhere in this Agreement, capitalized terms shall have the meanings given to them in the attached Appendix 1 - Standard Definitions.

#### **1.2 Exhibits**

- (a) The following Exhibits form part of this Agreement:

- Exhibit [A] Form of Company Representative Notice
- Exhibit [B] Form of Confidentiality Undertaking
- Exhibit [C] Arbitration Provisions Applicable to Sections 1.6 and 1.7
- Exhibit [D] [Sponsor] Website Information
- Exhibit [E] Interruption Conditions and Procedures for Interruption Events
- Exhibit [F] Calculation of Monthly Settlement
- Exhibit [G] Maps of IESO Electrical Zones

- (b) Exhibits [A, B, D, and E] in the forms attached to this Agreement substantially reflect corresponding forms appearing on the Website as at the date of this Agreement. However, the Participant 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 Participant, 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 Participant or the [Sponsor], as the case may be, in the stead of the then current form. Accordingly, it is the responsibility of the Participant to ensure that the latest draft version of the relevant form, as posted on the Website, is used.

### **1.3 Headings and Table of Contents**

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

### **1.4 Gender and Number**

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

### **1.5 Currency**

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

### **1.6 IESO Market Rules and Statutes**

- (a) Unless otherwise expressly stipulated, any reference in this Agreement to the IESO Market Rules or to a statute or to a regulation or rule promulgated under a statute or to any provision of a statute, regulation or rule shall be a reference to the IESO Market Rules, statute, regulation, rule or provision as amended, re-enacted or replaced from time to time. In the event of any conflict or inconsistency with the IESO Market Rules and the terms of this Agreement, the IESO Market Rules shall govern to the extent of such conflict or inconsistency.
- (b) To the extent that the board of directors of the [System Operator] has given final approval to an amendment or addition to the IESO Market Rules following the Contract Date, unless such amendment or addition is stayed by the OEB, and as a result of such amendment or addition, the Participant is or would be unable to comply with the Facility Performance Obligations under this Agreement without incurring material costs, where the Participant would not reasonably incur such material costs if the Facility were operating in the IESO-Administered Markets without this Agreement being in place, then:

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- (i) the Participant shall notify the [Sponsor] promptly and, in any event, within ten (10) Business Days upon becoming aware of the consequences of such change;
- (ii) the Parties and, at the [Sponsor's] discretion, those Other Participants who are required by the [Sponsor] to participate, shall engage in good faith negotiations to amend the affected Facility Performance Obligations in this Agreement and the respective agreements of those Other Participants on the basis that such amendments shall alter the applicable Facility Performance Obligations only to the extent necessary to eliminate the need to incur such material costs as set out above, where such altered Facility Performance Obligations is as close as possible to the applicable Facility Performance Obligations prior to such alteration or reduction; and
- (iii) if the Parties agree that amendments to this Agreement are required pursuant to Section 1.6(b)(ii) but fail to reach agreement on such amendments within sixty (60) days after the change in the IESO Market Rules became effective, the matter shall be determined by mandatory and binding arbitration, from which there shall be no appeal, with such arbitration(s) to be conducted in accordance with the procedures set out in Exhibit [C]. However, if the Participant fails to participate in such arbitration, the Participant acknowledges that it waives its right to participate in such arbitration, which shall nevertheless proceed, and the Participant shall be bound by the award of the Arbitration Panel and the subsequent amendments to this Agreement (if any) made by the [Sponsor] to implement such award of the Arbitration Panel set out in Section 1.6(c)(iii).

For greater certainty, the amendments contemplated in this Section 1.6(b) shall not involve, unless otherwise agreed by the Parties, a change in the Demand Charge or any changes resulting from the [Sponsor's] proposed "market renewal" program.

- (c) The terms of this Agreement shall be amended either:
  - (i) by the agreement of the Parties, where no award of an Arbitration Panel has been made pursuant to Section 1.6(b)(iii);
  - (ii) by the agreement of the Parties made pursuant to and to implement an award of the Arbitration Panel made pursuant to Section 1.6(b)(iii); or
  - (iii) by an amendment prepared by the [Sponsor] made pursuant to and to implement an award of the Arbitration Panel made pursuant to Section 1.6(b)(iii), where the Participant failed to participate in such arbitration,with such agreement or amendment, as the case may be, having effect from and after the date that the change in the IESO Market Rules became effective.
- (d) This Section 1.6 shall not apply to the circumstances addressed in Section 1.7.

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## 1.7 Invalidity, Unenforceability, or Inapplicability of Indices and Other Provisions

[NTD: under review.]

In the event that either the [Sponsor] or the Participant, acting reasonably, considers that any provision of this Agreement is invalid, inapplicable or unenforceable, or in the event that any index or price quotation or Charge referred to in this Agreement ceases to be published or charged, or if the basis therefor or the application thereof is changed materially, then:

- (a) if a provision is considered to be invalid, inapplicable or unenforceable, then the Party considering such provision to be invalid, inapplicable or unenforceable may propose, by notice in writing to the other Party, a replacement provision and the [Sponsor] and the Participant and, at the [Sponsor's] discretion, those Other Participants 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;
- (b) if any index or price quotation or Charge referred to in this Agreement ceases to be published or charged, or if the basis therefor or the application thereof is changed materially, then the [Sponsor] and the Participant and, at the [Sponsor's] discretion, those Other Participants who are required by the [Sponsor] to participate, shall engage in good faith negotiations to substitute an available replacement index or price quotation or Charge that most nearly, of those then publicly available, approximates the intent and purpose of the index or price quotation or Charge that has so ceased or changed and this Agreement shall be amended as necessary to accommodate such replacement index or price quotation or Charge;
- (c) if the Parties agree that amendments to this Agreement are required pursuant to this Section 1.7 and the negotiations set out in Sections 1.7(a) or 1.7(b) are not successful, then if the Parties are unable to agree on all such issues and any amendments required to this Agreement (the "**Replacement Provision(s)**") within thirty (30) days after the receipt of the notice under Section 1.7(a) or 1.7(b), 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 [C]. However, if the Participant fails to participate in such arbitration, the Participant acknowledges that it waives its right to participate in such arbitration, which shall nevertheless proceed, and the Participant shall be bound by the award of the Arbitration Panel the terms of this Agreement shall be amended either:
  - (i) by the agreement of the Parties, where no award of an Arbitration Panel has been made pursuant to Section 1.7(c);
  - (ii) by the agreement of the Parties made pursuant to and in implementation of an award of the Arbitration Panel made pursuant to Section 1.7(c); or

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- (iii) by an amendment prepared by the [Sponsor] made pursuant to and to implement an award of the Arbitration Panel made pursuant to Section 1.7(c), where the Participant failed to participate in such arbitration,

with such agreement or amendment, as applicable, having effect as of the date of the invalidity, inapplicability or unenforceability or from and after the date that the relevant index or price quotation or Charge ceased to be published or the basis therefor is changed materially, as the case may be.

## **1.8 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.

## **1.9 Entire Agreement**

This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter of this Agreement. There are no warranties, conditions, or representations (including any that may be implied by statute) and there are no agreements in connection with the subject matter of this Agreement except as specifically set forth or referred to in this Agreement. No reliance is placed on any warranty, representation, opinion, advice or assertion of fact made by a Party to this Agreement, or its directors, officers, employees or agents, to the other Party to this Agreement or its directors, officers, employees or agents, except to the extent that the same has been reduced to writing and included as a term of this Agreement.

## **1.10 Waiver, Amendment**

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

## **1.11 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 therein.

## **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 Participant when interpreting such term or provision, by virtue of such fact.

## Article 2 OPERATION OF THE FACILITY

### 2.1 Operational Covenants

- (a) Commencing on the Start Date and continuing until the Obligation End Date, the Participant acknowledges and agrees that the Facility must meet the Facility Performance Obligations, each of which shall be determined by the [Sponsor] acting reasonably.
- (b) The Participant shall own the Facility during the Term and shall operate and maintain the Facility during the Term using Good Engineering and Operating Practices, and meeting all applicable requirements of the IESO Market Rules, the Transmission System Code, the Distribution System Code, the Connection Agreement, any environmental approvals applicable to the Facility and all other Laws and Regulations.
- (c) The Participant agrees to assume all risk, liability and obligation and to indemnify, defend and hold harmless the Indemnitees in respect of all actions, causes of action, suits, proceedings, claims, demands, losses, damages, penalties, fines, costs, obligations and liabilities arising out of a discharge of any contaminant into the natural environment, at or related to, the Facility and any fines or orders of any kind that may be levied or made in connection therewith pursuant to the *Environmental Protection Act* (Ontario), the *Ontario Water Resources Act* (Ontario), the *Dangerous Goods Transportation Act* (Ontario) or other similar legislation, whether federal or provincial, except to the degree that such discharge shall have been due to the negligence or wilful misconduct of the Indemnitees.
- (d) The Participant acknowledges and agrees that under this Agreement:
  - (i) any Electricity received at the Facility is being transmitted and distributed to the Participant by the Connecting Authority and not by the [Sponsor];
  - (ii) the [Sponsor] does not provide transmission or distribution services; and
  - (iii) the [Sponsor] is not purchasing from the Participant, nor is the Participant selling to the [Sponsor], any Electricity or Related Products.
- (e) The Participant acknowledges and agrees that the [Sponsor] shall not be liable for any Claim by the Participant or its Representatives arising out of or in any way connected with: (i) receiving or failing to receive Electricity at the Facility; (ii) receiving or failing to receive transmission or distribution services, howsoever arising; and whether in contract, tort or otherwise.

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- (f) The Participant acknowledges and agrees that the [Sponsor] is providing no guarantee and is making no representations and warranties regarding the reliability of the Transmission System and Distribution System or facilities to supply Electricity to the Facility from the Transmission System and Distribution System.
- (g) The Participant will pay for all Electricity consumed at the Facility, including all related charges, in accordance with the payment terms of the [Sponsor] or the applicable Connecting Authority.

## 2.2 Facility and Participant Amendments

- (a) The Participant 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 provided for in items [1.d, 2.a, 4.b, 4.c, 4.f, 4.g, 4.h, and 4.i] on the IRP Contract Cover Page (a “**Facility Amendment**”) without first notifying the [Sponsor] in writing and obtaining the [Sponsor’s] consent in writing, such consent not to be unreasonably withheld. Any Facility Amendment that has not been consented to by the [Sponsor] shall, if not rectified within ten (10) Business Days after such Facility Amendment occurred, constitute a Participant Event of Default. Without limiting the generality of the foregoing, it shall not be unreasonable for the [Sponsor] to withhold consent to a requested Facility Amendment which would, or would be likely to,
  - (i) have a Material Adverse Effect on the ability of the Participant to comply with its obligations under this Agreement;
  - (ii) result in the failure of the Facility to be registered as a Registered Facility; or
  - (iii) result in the failure of the Participant to be authorized as a Market Participant, or designated as the Metered Market Participant in respect of the Facility.
- (b) At any time during the Term, the Participant may change its Global Adjustment Class from a Class A Market Participant to a Class B Market Participant or from a Class B Market Participant to a Class A Market Participant, as applicable.
- (c) The Participant may, [at least 60 days prior to the start of a] Pilot Year, send a notice in writing to the [Sponsor] requesting an amendment to the Contract Demand or Peak Demand for such Pilot Year (each, a “**Demand Change**”). The request (“**Demand Change Request**”) shall specify the amended Contract Demand or Peak Demand, as applicable, being requested. [Any Demand Change Request shall be in the Prescribed Form.] No Demand Change shall come into effect unless and until the Demand Change has been approved by the [Sponsor] in writing. Where such Demand Change is approved by the [Sponsor] in accordance with this Section 2.2(c), such Demand Change will come into effect as of July 1 of the applicable Pilot Year.

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### 2.3 Compliance with Laws and Regulations and Registration with the [System Operator]

- (a) The [Sponsor] and the Participant 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 Participant 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 Participant shall:
  - (i) be authorized as a Market Participant and designated as a Metered Market Participant in respect of the Facility; and
  - (ii) meet all applicable Facility registration requirements as specified in the IESO Market Rules.

### 2.4 Environmental Attributes

[NTD: under review.]

- (a) The Participant shall be wholly responsible for complying with all Laws and Regulations relating to emissions from the Facility and its consumption of Electricity.
- (b) The Participant shall be entitled to any and all right, title and interest in any Environmental Attributes that are created by, or allocated or credited to, the Facility pursuant to Laws and Regulations (collectively, the “**Regulatory Environmental Attributes**”).
- (c) The Parties acknowledge that the Government of Canada, a region of Canada, or the Government of Ontario may, from time to time during the Term of this Agreement, implement Laws and Regulations regulating Greenhouse Gas emissions that may be applicable to the Facility and that may contain provisions requiring the Facility to have, obtain and/or retire permits, credits, allowances, offsets, or similar instruments or other compliance mechanisms (“**GHG Emissions Credits**”) in connection with the emission of Greenhouse Gases due to the operation of the Facility or prescribe other compliance mechanisms (the “**GHG Laws and Regulations**”).
- (d) The Participant acknowledges and agrees that the Participant, and not the [Sponsor] or its Indemnitees, will be solely responsible for ensuring that it has a sufficient amount of:

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- (i) Regulatory Environmental Attributes for the operation of the Facility as required under Laws and Regulations; and
- (ii) GHG Emissions Credits for the operation of the Facility as required under GHG Laws and Regulations.

## 2.5 Other Commitments of Facility Demand

- (a) Subject to Section 2.5(b), other than in respect of a Participation Agreement as required under the IESO Market Rules and unless otherwise expressly permitted by the [Sponsor] in writing, during the Obligation Period, the Participant shall ensure that:
  - (i) the Demand is exclusively committed to the [Sponsor] hereunder and that no part of the Facility is subject to any physical or financial purchase contract for energy, capacity, or ancillary services, or any other contractual arrangement with the [Sponsor], a Transmitter or a Distributor in respect of the Facility's Peak Demand that conflicts with the Participant's ability to satisfy the Interruption Obligation; and
  - (ii) in respect of any Capacity Auction, the Facility is not (i) the subject of a Capacity Obligation, or (ii) a Demand Response Contributor.
- (b) Notwithstanding Section 2.5(a), a Participant may, in accordance with the IESO Market Rules, submit into the Real-Time Market:
  - (i) Energy Bids in any hour that is not an Interruption Hour; or
  - (ii) Operating Reserve Offers
    - (A) in any hour that is not an Interruption Hour in respect of a Short-Notice Event, or
    - (B) in any hour that is not in an Interruption Day in respect of a Long-Notice Event.

## Article 3 PERFORMANCE OBLIGATIONS

### 3.1 Facility Performance Obligations

During the Obligation Period:

- (a) the Participant is wholly responsible for keeping the Company Representative's contact information up to date and monitoring for and receiving Interruption Notices (the "**Monitoring and Receiving Obligation**");

- (b) the Facility shall reduce its Demand in the Interruption Hour(s) specified in an Interruption Notice to no greater than the Contract Demand (the “**Interruption Obligation**”);
- (c) except as permitted under Section 2.5(b), the Participant shall not, with respect to the Facility, submit into the Real-Time Market: (i) Energy Bids in any hour that is an Interruption Hour; (ii) Operating Reserve Offers in any hour that is an Interruption Hour in respect of a Short-Notice Event; or (iii) Operating Reserve Offers in any hour that is in an Interruption Day in respect of a Long-Notice Event (the “**Demand Exclusivity Obligation**”).

### 3.2 Failure to Comply with Demand Exclusivity Obligation

If the [Sponsor] determines that the Participant failed to comply with the Demand Exclusivity Obligation at any time during the Obligation Period (a “**Demand Exclusivity Obligation Default**”), the following procedure shall apply:

- (a) Following the first occurrence of a Demand Exclusivity Obligation Default, the [Sponsor] shall promptly notify the Participant in writing of the occurrence of such Demand Exclusivity Obligation Default (an “**Obligation Default Notice**”). The Obligation Default Notice shall specify the particulars of the Demand Exclusivity Obligation Default, including the applicable Interruption Day and Interruption Hour(s) at which the Demand Exclusivity Obligation Default occurred, and may contain requests for information to be provided by the Participant regarding the Demand Exclusivity Obligation Default.
- (b) The Participant shall, within [5 Business Days] of receiving the Obligation Default Notice, provide a written response to the [Sponsor], which contains (i) the Participant’s acknowledgement that it committed a Demand Exclusivity Obligation Default; (ii) the reasons for, or the factors that resulted in, the Demand Exclusivity Obligation Default; (iii) mitigation measures that the Participant has implemented at the Facility to ensure that no further Demand Exclusivity Obligation Defaults occur during the Obligation Period; and (iv) any other information requested by the [Sponsor] in the Obligation Default Notice (the “**Obligation Default Response**”).
- (c) If the Participant fails to provide Obligation Default Response within [5 Business Days] of receiving the Obligation Default Notice, or if the [Sponsor] determines that the Obligation Default Response is deficient in any respect, then this shall be considered a Participant Event of Default.
- (d) If the Participant is subject to a subsequent Demand Exclusivity Obligation Default during the Obligation Period, then this shall be considered a Participant Event of Default.

### 3.3 Over-Performance Adjustment and Non-Performance Adjustment

- (a) Following the end of each Pilot Year, the [Sponsor] shall calculate the Over-Performance Adjustment applicable to the previous Pilot Year as set out in Exhibit

J. As more fully specified in Exhibit J, the Over-Performance Adjustment will be calculated for each Interruption Hour in the applicable Pilot Year in which the Facility's Actual Demand is less than the Over-Performance Threshold and the Over-Performance Adjustments will be settled in the subsequent Pilot Year or the Residual Term, as applicable.

- (b) Following the end of each Pilot Year, the [Sponsor] shall calculate the Non-Performance Adjustment applicable to the previous Pilot Year as set out in Exhibit J. As more fully specified in Exhibit J, the Non-Performance Adjustment will be calculated for each Interruption Hour in the applicable Pilot Year in which the Facility's Actual Demand is greater than the Non-Performance Threshold and the Non-Performance Adjustments will be settled in the subsequent Pilot Year or the Residual Term, as applicable.
- (c) Subject to Participant's compliance with the other requirements set out in this Agreement, the Non-Performance Adjustment shall be the sole and exclusive remedy for the Participant's failure to satisfy the Facility Performance Obligations.

## Article 4 INTERRUPTIONS

### 4.1 Interruption Conditions

The [System Operator] shall determine, at any time during the Term, whether any Interruption Conditions are present on the Ontario Transmission System or in any of the IESO Electrical Zones. The [Sponsor] shall publish on the Website the Interruption Conditions during the Term. The [System Operator] may, at its discretion, amend, update, delete or supplement any of the Interruption Conditions set out on the Website from time to time, including, for clarity, the creation of new Interruption Conditions (each an "**Interruption Condition Amendment**"). The [Sponsor] shall promptly notify the Participant following any Interruption Condition Amendment.

### 4.2 Interruption Events and Interruption Notices

- (a) In any Pilot Year, where the [System Operator] determines that any Interruption Conditions are present on the Ontario Transmission System or in any of the IESO Electrical Zones, the [System Operator] may, but shall not be required to, declare an Interruption Event in accordance with the Interruption Procedures. For clarity, the [System Operator] may declare, at its discretion, an Interruption Event in one or more IESO Electrical Zones, or in respect of any one or more Load Facilities that are participating in the Pilot. All Interruption Notices shall be sent to the Company Representative.
- (b) The [System Operator] may declare a Short-Notice Event only if:
  - (i) the Facility is a Short-Notice Facility; and
  - (ii) a Short-Notice Condition exists.

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- (c) In any Pilot Year, prior to the Obligation End Date:
- (i) where the [System Operator] declares a Long-Notice Event in respect of the Facility, the [System Operator] shall, within the Long-Notice Timeframe, issue to the Participant an Interruption Notice;
  - (ii) where the [System Operator] declares a Short-Notice Event in respect of the Facility, the [System Operator] shall, within the Short-Notice Timeframe, issue to the Participant an Interruption Notice;
  - (iii) the number of Interruption Events and Interruption Hours declared by the [System Operator] shall not exceed the Maximum Interruption Events, and Maximum Interruption Hours, respectively; and
  - (iv) the number of Short-Notice Events and Short-Notice Hours declared by the [System Operator] shall not exceed the Maximum Short-Notice Events, and Maximum Short-Notice Hours, respectively.
- (d) The [System Operator] may, at its discretion, amend, update, or supplement the Interruption Procedures from time to time (each, an “**Interruption Procedures Amendment**”). The [Sponsor] shall promptly notify the Participant following any Interruption Procedures Amendment.

## Article 5 PAYMENT OBLIGATIONS

### 5.1 Monthly Settlement Obligations

- (a) From the Contract Date until the expiry of the Term or Residual Term, as applicable, the Participant shall be responsible for all Market Settlement Charges and all other financial obligations arising from the IESO-Administered Markets, the provisions of the IESO Market Rules, and other Laws and Regulations, as applicable, in respect of the Facility.
- (b) From and after the beginning of the hour ending [01:00 (EST)] on the Start Date, the Monthly Settlements shall begin to accrue in accordance with Sections 5.2 and 6.2.
- (c) The Participant acknowledges and agrees that, at the [Sponsor’s] discretion, the Monthly Settlement for any Settlement Month, in addition to any Sum payable by the Participant, may be set off or netted against the Market Settlement Charges or other charges included in the Participant’s Settlement Statements corresponding to the applicable Settlement Month, or one or more subsequent Settlement Statement as determined by the [Sponsor].
- (d) The Participant acknowledges and agrees that a Force Majeure Event under the IESO Market Rules affecting the Participant or Facility, as applicable, shall not relieve the Participant of its obligations under this Agreement, including the

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Facility Performance Obligations, or the obligation to pay any amounts payable under this Agreement.

## 5.2 Calculation of Monthly Settlement

The “**Monthly Settlement**” shall be an amount calculated in accordance with Exhibit J. If the Monthly Settlement is a positive amount, it shall be payable from the Participant to the [Sponsor]. If the Monthly Settlement is a negative amount, the absolute value of the Monthly Settlement shall be payable from the [Sponsor] to the Participant. Subject to Article 6, the Monthly Settlement will be settled as part of the Participant’s Settlement Statements for the Facility.

## 5.3 Participant’s Responsibility for Taxes

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

## 5.4 [Sponsor’s] Responsibility for Taxes

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

## 5.5 Non-residency

If the Participant is or becomes a non-resident of Canada, as that term is defined in the ITA, the Participant shall notify the [Sponsor] forthwith of such status and shall provide the [Sponsor] with information sufficient to permit the [Sponsor] to comply with any withholding Tax, or other Tax obligations, to which the [Sponsor] may be subject as a result thereof. If the [Sponsor] incurs any withholding or other similar liability for Taxes as a result of such non-residency, then payments under this Agreement by the [Sponsor] shall be reduced by the amount of such withholding Taxes and the [Sponsor] shall remit such withholding Taxes to the applicable taxing authorities. The [Sponsor] shall within sixty (60) days after remitting such Taxes, notify the Participant in writing, providing reasonable detail of such payment so that the Participant 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 Participant.

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## Article 6 STATEMENTS AND PAYMENTS

### 6.1 Meter and Other Data

- (a) The Participant shall provide to the [Sponsor] access to the Facility's meter to accommodate remote interrogation of the metered data on a daily basis. The Participant agrees to allow the [Sponsor] to have viewing access rights only to the revenue-quality interval meter data of the Facility to calculate Electricity received at the Facility inclusive for any loss adjustment factors by establishing an Associated Relationship between the [Sponsor] and the Delivery Point of the Facility within the MDD application tool or equivalent, at no cost to the [Sponsor]. The [Sponsor] agrees to provide to the Participant, upon the Participant's request, any information that the [Sponsor] will be utilizing to determine the Monthly Settlement that is not available directly to the Participant from the [Sponsor]. The Participant shall notify the [Sponsor] of any errors and omissions in any such data or information on a timely basis so as to permit the [Sponsor], within a reasonable time, to advise the [Sponsor], if applicable, to correct such errors and omissions pursuant to the IESO Market Rules. Upon a Party becoming aware of any errors or omissions in any data or information provided in accordance with this Section 6.1(a), such Party shall notify the other Party, and if applicable, the [Sponsor] in accordance with the IESO Market Rules, on a timely basis.
- (b) The [Sponsor] retains the right to audit, at any time until the end of the Term or Residual Term, as applicable, on reasonable notice to the Participant and during normal business hours, the metering equipment to confirm the accuracy of the meter data of the Facility to confirm the accuracy of such data.

### 6.2 Settlement Adjustments

- (a) The [Sponsor] shall make any adjustments applicable to any Monthly Settlement and any Sum payable by the Participant, on the Participant's Settlement Statement in respect of the Facility for the last day of the month in which the [Sponsor] determines the applicable Monthly Settlement adjustment amounts and, if applicable, Sums, or such later month as determined by the [Sponsor]. Any Settlement Statement that is subject to any Monthly Settlement adjustments shall, in accordance with the IESO Market Rules, set out the basis for the Monthly Settlement with respect to the applicable Settlement Month, the basis for any other payments owing under this Agreement by either Party to the other in the Settlement Month, and will include a description of the components of the Monthly Settlement and other adjustments, as described in this Agreement owing to or from the Participant, as applicable, for the Settlement Month.
- (b) The Monthly Settlement adjustments shall be assessed by means of debits or credits, as applicable, in the Participant's applicable Settlement Statement in respect of the Facility in accordance with the IESO Market Rules. The Participant is required to pay any net debit shown in a Settlement Statement on the

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corresponding Market Participant Payment Date and shall be entitled to receive any net credit shown in a Settlement Statement on the corresponding IESO Payment Date, whether or not there is any outstanding disagreement regarding the amount of the debit or credit, in accordance with the IESO Market Rules.

- (c) The Participant acknowledges and agrees that the [Sponsor] shall, in accordance with the provisions of the IESO Market Rules, be entitled to draw on the Prudential Support provided by the Participant in the event the Participant fails to make any payments when due under this Agreement.

### **6.3 General Settlement Provisions**

The [Sponsor] shall have the right to designate a settlement agent or implement such alternative settlement mechanisms other than as set out in Sections 6.1 to 6.2 as it may in its sole and absolute discretion determine, provided that such alternative arrangement does not have a Material Adverse Effect on the Participant. The [Sponsor] shall provide thirty (30) days' prior notice to the Participant of any such designation or change.

### **6.4 Interest**

The Party owing the Monthly Settlement shall pay interest on any late payment to the other Party in accordance with the provisions of the IESO Market Rules.

### **6.5 Account Information**

The Participant acknowledges that the [Sponsor] may use, for the purposes of settling the Monthly Settlement adjustments under this agreement, the account information provided by the Participant to the [Sponsor], which is used to settle its Market Settlement Charges under the IESO Market Rules.

### **6.6 Adjustment to Settlement Statement**

Each Settlement Statement that is subject to a Monthly Settlement shall be subject to adjustment for errors and omissions in accordance with the provisions of the IESO Market Rules. Any adjustment to a Settlement Statement made pursuant to this Section 6.6 shall be made in a subsequent Settlement Statement.

### **6.7 Disputed Statement**

If the Participant disputes a Monthly Settlement or any portion thereof, the Party owing any amount pertaining to the Monthly Settlement set forth in the Settlement Statement shall, notwithstanding such dispute, pay the entire applicable amount set forth in the Settlement Statement to the other Party. The Participant shall provide written notice to the [Sponsor] setting out the portions of the Monthly Settlement that are in dispute with a brief explanation of the dispute. If it is subsequently determined or agreed that an adjustment to the Settlement Statement is appropriate, such adjustment will be made on a subsequent Settlement Statement. If a dispute under this Section 6.7 has not been resolved between the Parties within five (5) Business Days after receipt of written

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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 13.1.

## 6.8 Settlement Statements and Payment Records

The Parties shall keep all books and records necessary to support the information contained in and with respect to each Settlement Statement and Monthly Settlement made thereunder in accordance with Section 12.2.

## Article 7 REPRESENTATIONS

### 7.1 Representations of the Participant

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

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

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that could have a Material Adverse Effect on the Participant.

- (d) There are no bankruptcy, insolvency, reorganization, receivership, seizure, realization, arrangement or other similar proceedings pending against or being contemplated by the Participant or, to the knowledge of the Participant, threatened against the Participant.
- (e) There is no proceeding under any Insolvency Legislation pending against or being contemplated by the Participant or, to the knowledge of the Participant, threatened against the Participant or any of its property, nor has the Participant consented to an order for a proceeding under Insolvency Legislation under the terms of a forbearance agreement or otherwise, or otherwise taken any steps to commence a proceeding under Insolvency Legislation.
- (f) All requirements for the Participant to make any filing, declaration or registration with, give any notice to or obtain any licence, permit, certificate, registration, authorization, consent or approval of, any Governmental Authority as a condition to entering into this Agreement have been satisfied.
- (g) Except for any statements, specifications, data, confirmations, representations, and information set out on the IRP Contract Cover Page that materially differ from those set out in the Application and any and all supporting evidence and documentation submitted in connection with the Application, all statements, specifications, data, confirmations, representations and information that have been set out in the Application, except to the extent consented to by the [Sponsor] in a Facility Amendment or as otherwise permitted under this Agreement, are complete and accurate in all material respects and are hereby restated and reaffirmed by the Participant as representations made to the [Sponsor] hereunder and there is no material information omitted from the Application which makes the information in the Application misleading or inaccurate.
- (h) The Participant is the owner of the Facility.
- (i) Subject to Section 2.5(a), the Demand is exclusively committed to the [Sponsor] hereunder and no part of the Demand is subject to any physical or contractual arrangement that conflicts with the Participant's ability to satisfy the Interruption Obligation hereunder.
- (j) The Facility is capable of reducing its Demand to the Contract Demand while operating in accordance with Good Engineering and Operating Practices.
- (k) There are no actions, suits, proceedings, judgments, rulings or orders by or before any Governmental Authority or arbitrator, or, to the knowledge of the Participant, threatened against the Participant, that could have a Material Adverse Effect on the Participant.

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- (l) The Participant 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 Participant.
- (m) Unless the Participant has otherwise notified the [Sponsor] pursuant to Section 5.5, the Participant is not a non-resident of Canada for the purposes of the ITA.

## 7.2 Representations of the [Sponsor]

The [Sponsor] represents to the Participant as follows, and acknowledges that the Participant 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 shareholder 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 is no proceeding under any Insolvency Legislation pending against or being contemplated by the [Sponsor] or, to the knowledge of the [Sponsor], threatened

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against the [Sponsor] or any of its property, nor has the [Sponsor] consented to an order for a proceeding under Insolvency Legislation under the terms of a forbearance agreement or otherwise, or otherwise taken any steps to commence a proceeding under Insolvency Legislation.

- (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) All requirements for the [Sponsor] to make any declaration, filing or registration with, give any notice to or obtain any licence, permit, certificate, registration, authorization, consent or approval of, any Governmental Authority as a condition to entering into this Agreement have been satisfied.
- (g) 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] or on its obligations under this Agreement.

## **Article 8** **CONFIDENTIALITY AND FIPPA**

### **8.1 Confidential Information**

From the date of this Agreement to and following the expiry of the Term or Residual Term, as applicable, 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 or exercising its rights under this Agreement. On each copy made by the Receiving Party, the Receiving Party must reproduce all notices which appear on the original. The Receiving Party shall inform its Representatives of the confidentiality of the Confidential Information and shall be responsible for any breach of this Article 8 by any of its Representatives;
- (b) The [Sponsor] may disclose Confidential Information to the OEB for the purposes of evaluating the Pilot. The [Sponsor] shall inform the OEB of the confidentiality of the Confidential Information and shall be responsible for any breach of this Article 8 by the OEB;
- (c) 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 Law and Regulations, the Receiving Party shall promptly notify the Disclosing Party. Unless the Disclosing Party obtains a

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protective order, the Receiving Party and its Representatives may disclose such portion of the Confidential Information to the party seeking disclosure as is required by Law and Regulations in accordance with Section 8.2;

- (d) Where the Participant is the Receiving Party, the Participant may disclose Confidential Information to any prospective lender or investor and its advisors, to the extent necessary, for securing financing for the Facility, provided that any such prospective lender or investor has been informed of the Participant's confidentiality obligations hereunder and such prospective lender or investor has completed and executed a confidentiality undertaking (the "**Confidentiality Undertaking**") (see Exhibit [B]), covenanting in favour of the [Sponsor] to hold such Confidential Information confidential on terms substantially similar to this Article 8; and
- (e) Notwithstanding the foregoing, the Participant consents to the disclosure of:
- (i) its name and contact particulars (including its address for service and the name of its Company Representative) by the [Sponsor] to all Other Participants who have entered into an IRP Contract, for the purposes of Section 1.7;
  - (ii) on a confidential basis, any information received by the [Sponsor] in respect of this Agreement to brief and inform the Government of Ontario, the OEB, the [System Operator], or for such internal purposes as the [Sponsor] may reasonably determine from time to time to brief and inform the [Sponsor's] Representatives;
  - (iii) any information the [Sponsor] or the [System Operator] is required to publish under the IESO Market Rules and the Pilot;
  - (iv) aggregated data relating to the Facility, Agreement, or the Pilot to the public;
  - (v) data relating to Interruption Hours and Interruption Events in respect of the Facility;
  - (vi) this Agreement in its entirety, except for any Mutually Confidential Information; and
  - (vii) any information contained on the Website, including the information set out in Exhibit [D], or otherwise publically disclosed.
- (f) The Participant acknowledges and agrees that the [Sponsor] and [System Operator] may share and exchange any data and information regarding the Participant and the Facility as reasonably required to allow:
- (i) the [Sponsor] to administer this Agreement; and

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- (ii) the [System Operator] to perform all activities pertaining to the Facility in connection with this Agreement.

## **8.2 Notice Preceding Compelled Disclosure**

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

## **8.3 Return of Information**

Upon written request by the Disclosing Party, Confidential Information provided by the Disclosing Party in printed paper format or electronic format will be returned to the Disclosing Party and Confidential Information transmitted by the Disclosing Party in electronic format will be deleted from the e-mails 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, or (iii) which is Mutually Confidential Information, will be held by the Receiving Party and kept subject to the terms of this Agreement or destroyed at the Receiving Party's option. Notwithstanding the foregoing, a Receiving Party shall be entitled to make at its own expense and retain one copy of any Confidential Information materials it receives for the limited purpose of discharging any obligation it may have under Laws and Regulations and shall keep such retained copy subject to the terms of this Article 8.

## **8.4 Injunctive and Other Relief**

The Receiving Party acknowledges that breach of any provisions of this Article 8 may cause irreparable harm to the Disclosing Party or to any third party to whom the Disclosing Party owes a duty of confidence and that the injury to the Disclosing Party or to any third party may be difficult to calculate and inadequately compensable in damages. The Receiving Party agrees that the Disclosing Party is entitled to obtain injunctive relief (without proving any damage sustained by it or by any third party) or any other remedy against any actual or potential breach of the provisions of this Article 8.

## 8.5 FIPPA Records and Compliance

The Parties acknowledge and agree that the [Sponsor] is subject to FIPPA and that FIPPA applies to and governs all Confidential Information in the custody or control of the [Sponsor] (“**FIPPA Records**”) and may, subject to FIPPA, require the disclosure of such FIPPA Records to third parties. The Participant shall provide a copy of any FIPPA Records that it previously provided to the [Sponsor] if the Participant continues to possess such FIPPA Records in a deliverable form at the time of the [Sponsor’s] request. If the Participant 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 8.5 shall survive any termination or expiry of this Agreement and shall prevail over any inconsistent provisions in this Agreement.

## Article 9 TERM

### 9.1 Term

- (a) This Agreement shall be effective from the Contract Date to and until the end of the later of the Term or, if applicable, the Residual Term.
- (b) The “**Term**” means that period of time commencing at the beginning of the hour ending 01:00 hours (EST) on the Start Date, and ending at 24:00 hours (EST) on the Facility End Date, subject to an earlier termination in accordance with the provisions hereof.
- (c) Following the Facility End Date, the [Sponsor] shall determine whether
- (d) Unless the [Sponsor] determines, at least [5 Business Days] prior to the Facility End Date, that a Residual Term shall not apply, the Participant will be subject to a Residual Term if one or more of the following applies: (i) the Participant is subject to the Non-Performance Adjustment for the final Pilot Year; (ii) the Participant is subject to the Over-Performance Adjustment for the final Pilot Year; or (iii) the ICI Return Adjustment will be applied in accordance with Section 6 of Exhibit [F]. If the ICI Return Adjustment will not be applied and the Participant and the [Sponsor] agree in writing to settle any Non-Performance Adjustments or Over-Performance Adjustments that would otherwise be applicable during the Residual Term as a single lump sum payment within [20] Business Days following the Facility End Date, then the Participant will not be subject to a Residual Term. The “**Residual Term**” means that period of time commencing at the beginning of the hour ending 01:00 hours (EST) on the day after the Facility End Date, and ending at 24:00 hours (EST) on the date that is one year after the Facility End Date.
- (e) One time during the Term, no later than January 31<sup>st</sup> in any Pilot Year, the Participant may designate an earlier Facility End Date that is a Permitted Early End Date by providing written notice to the [Sponsor], which notice shall specify the applicable Permitted Early End Date that the Participant proposes to be the earlier

Facility End Date (an “**Early Exit Notice**”). Subject to any objection of the [Sponsor], the [Sponsor] shall, within [sixty (60) days] of its receipt Early Exit Notice, provide a written notice to the Participant designating the applicable Permitted Early End Date as the new Facility End Date. For clarity, a Facility that is subject to a Permitted Early End Date will continue to be subject to a Residual Term in accordance with Section 9.1(c).

- (f) Neither Party shall have any right to renew the Term or the Residual Term, if applicable, except as agreed in writing by the Parties.

## **Article 10** **TERMINATION AND DEFAULT**

### **10.1 Events of Default by the Participant**

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

- (a) The Participant fails to make any payment when due as required under this Agreement, or deliver and/or maintain the Prudential Support as required under the IESO Market Rules, if such failure is not remedied within ten (10) Business Days after written notice of such failure from the [Sponsor].
- (b) The Participant fails to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Participant Event of Default) if such failure is not remedied within fifteen (15) Business Days after written notice of such failure from the [Sponsor], provided that such cure period shall be extended by a further fifteen (15) Business Days if the Participant is diligently remedying such failure and such failure is capable of being cured during such extended cure period.
- (c) The Participant 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 Participant or the Facility and is not remedied within thirty (30) Business Days after receipt by the Participant of written notice of such failure or cessation from the [Sponsor], provided that such cure period shall be extended by a further thirty (30) Business Days if the Participant is diligently remedying such failure or cessation and such failure or cessation is capable of being corrected during such extended cure period.
- (d) The Participant: (i) fails or ceases to be authorized as a Market Participant, or designated as the Metered Market Participant in respect of the Facility; or (ii) causes the Facility to cease to be registered as a Registered Facility.
- (e) Any representation made by the Participant in this Agreement is not true or correct in any material respect when made and is not made true or correct in all material respects within thirty (30) Business Days after receipt by the Participant of written

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notice of such fact from the [Sponsor], provided that such cure period shall be extended by a further thirty (30) Business Days if the Participant, 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.

- (f) 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 Participant, unless such filed documents are immediately revoked or otherwise rendered inapplicable, or unless, in the case of the Participant, there has been a permitted and valid assignment of this Agreement by the Participant 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 Participant's obligations under this Agreement.
- (g) The Participant 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 Participant under this Agreement to the resulting, surviving or transferee Person and such Person has assumed all of the Participant's obligations under this Agreement.
- (h) Any receiver, interim receiver, manager, receiver and manager, liquidator, monitor, custodian, sequestrator, or trustee in bankruptcy or other Person with similar powers shall be appointed in respect of the Participant, or all or any part of the Participant's property, or any filing is made or proceeding is commenced in respect of the Participant on application of a creditor or with consent of or by the Participant seeking the entry of an order for the appointment or relief in respect of any of the foregoing; provided that, with respect to any such involuntary appointment, filing or proceeding, such appointment, filing or proceeding shall not have been revoked, withdrawn or dismissed within thirty (30) days of the filing or commencement of the proceeding or such other time as the Parties may agree to or pursuant to court order.
- (i) The Participant makes an assignment for the benefit of its creditors, commits an act of bankruptcy under any Insolvency Legislation, acknowledges its insolvency or is declared or deemed bankrupt or insolvent under any Insolvency Legislation, or makes a voluntary assignment into bankruptcy. Any filing is made or a proceeding is commenced in respect of the Participant seeking any stay of proceedings, declaration of bankruptcy or insolvency, protection from creditors, moratorium, reorganization, arrangement, composition, re-adjustment or any other relief, under any Insolvency Legislation, including any filing of a proposal or notice of intention to make a proposal; provided that, with respect to any such involuntary filing or proceeding, such filing or proceeding shall not have been revoked, withdrawn or dismissed within thirty (30) days of the filing or commencement of the proceeding or such other time as the Parties may agree to or pursuant to court order.

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- (j) The Participant has made a Facility Amendment that has not first been consented to by the [Sponsor] and that has not been rectified within ten (10) Business Days after such Facility amendment occurred.
- (k) The Participant fails to keep complete and accurate records and data as required by Section 12.2.
- (l) The Participant undergoes a change in Control without first obtaining the written approval of the [Sponsor] if required pursuant to Section 13.6.
- (m) The Participant assigns this Agreement without first obtaining the consent of the [Sponsor], if required pursuant to this Agreement.
- (n) The Participant commits any act of fraud in relation to the [Sponsor] or this Agreement.
- (o) Either of the defaults described in Sections 3.2(c) or 3.2(d) has occurred.

## 10.2 Remedies of the [Sponsor]

- (a) If any Participant Event of Default (other than a Participant Event of Default relating to the Participant referred to in Sections 10.1(f), 10.1(h) and 10.1(i)) occurs and is continuing, upon written notice to the Participant, the [Sponsor] may, terminate this Agreement.
- (b) If a Participant Event of Default occurs and is continuing, the [Sponsor] may, in addition to the remedy set out in Section 10.2(a), set off any payments due to the Participant against any amounts payable by the Participant to the [Sponsor].
- (c) Notwithstanding Sections 10.2(a) and 10.2(b) upon the occurrence of a Participant Event of Default relating to the Participant referred to in Sections 10.1(f), 10.1(h) and 10.1(i) this Agreement shall automatically terminate without notice, act or formality, effective immediately before the occurrence of such Participant Event of Default.
- (d) If the [Sponsor] terminates this Agreement pursuant to Section 10.2(a) or the Agreement is terminated pursuant to Section 10.2(c), the [Sponsor] shall have the option, exercisable in the sole and absolute discretion of the [Sponsor], to require the Participant to pay to the [Sponsor], as liquidated damages and not as a penalty, an amount equal to the sum of all Non-Performance Adjustments assessed in the previous Pilot Year, which remain unpaid as of the Termination Date, plus the sum of all Non-Performance Adjustments accrued in the present Pilot Year until the Termination Date, and the [Sponsor] shall be entitled to pursue a Claim for damages with respect to the amount of any portion of such sum that the Participant failed to provide but was required under this Section 10.2(d) to provide to the [Sponsor] as of the Termination Date (with the total amount of such liquidated damages being referred to as the “**Sum**”).

- (e) Termination shall not relieve the Participant or the [Sponsor] of their respective responsibilities relating to the 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 Participant fails to comply with its obligations on termination.

### 10.3 Events of Default by the [Sponsor]

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

- (a) The [Sponsor] fails to make any payment under this Agreement when due, if such failure is not remedied within fifteen (15) Business Days after written notice of such failure from the Participant.
- (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 fifteen (15) Business Days after written notice of such failure from the Participant, provided that such cure period shall be extended by a further fifteen (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 thirty (30) Business Days after receipt by the [Sponsor] of written notice of such failure or cessation from the Participant, provided that such cure period shall be extended by a further thirty (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 thirty (30) Business Days after receipt by the [Sponsor] of written notice of such fact from the Participant, provided that such cure period shall be extended by a further thirty (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

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[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 thirty (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 thirty (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 thirty (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 without first obtaining the consent of the Participant, if such consent is required pursuant to this Agreement.

#### **10.4 Termination by the Participant**

- (a) If any [Sponsor] Event of Default occurs and is continuing, then upon written notice to the [Sponsor], the Participant may: (i) terminate this Agreement; and (ii) set off any payments due to the [Sponsor] against any amounts payable by the [Sponsor] to the Participant.
- (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 Participant may hold back payment or set off against any payments owed by it if the [Sponsor] fails to comply with its obligations on termination.

#### **10.5 Remedies for Termination Non-Exclusive**

The termination of this Agreement by either Party and the payment of all amounts then due and owing to the other Party as expressly provided in this Agreement shall not limit, waive or extinguish in any way the recourse of either Party to any remedies available to it in relation to such

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termination at law, in equity or otherwise, nor shall such termination affect any rights that the Indemnitees may have pursuant to any indemnity given under this Agreement. Notwithstanding the foregoing, if the [Sponsor] has exercised the option set out in Section 10.2(d), then the [Sponsor's] remedies against the Participant in respect of the termination of this Agreement shall be limited to any unpaid portion of the Sum set out in Section 10.2(d).

## **Article 11**

### **LIABILITY AND INDEMNIFICATION**

#### **11.1 Exclusion of Consequential Damages**

Notwithstanding anything contained herein, neither Party will be liable under this Agreement or under any cause of action relating to the subject matter of this Agreement for any indirect damages, including special, incidental, punitive, exemplary or consequential damages, including loss of profits, loss of use of any property or claims of customers, suppliers or contractors of the Parties for any such damages.

#### **11.2 Liquidated Damages**

Nothing in this Article 11 shall reduce a Party's claim for liquidated damages pursuant to Sections 10.2(d). The Participant acknowledges and agrees with the [Sponsor] that actual damages incurred by the [Sponsor] and Electricity consumers as a result of a failure by the Participant to meet its obligations under this Agreement are impossible to definitively quantify and the Participant further agrees that the payment of the liquidated damages set forth in this Agreement constitutes a fair and reasonable means of compensating the [Sponsor] for such damages likely to be incurred as a result of such failures and does not constitute a penalty.

#### **11.3 [Sponsor] Indemnification**

In addition to the indemnity provided by the Participant in Section 2.1(c), the Participant shall indemnify, defend and hold the [Sponsor], the [System Operator], 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, 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; and (ii) any breach by the Participant of any representations, warranties and covenants contained in this Agreement, except to the extent that any injury or damage is attributable to the negligence or wilful misconduct of the Indemnitees. For greater certainty, in the event of contributory negligence or other fault of the

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Indemnites, then such Indemnites shall not be indemnified hereunder in the proportion that the Indemnites' negligence or other fault contributed to any Indemnifiable Loss.

#### 11.4 Defence of Claims

- (a) Promptly after receipt by the Indemnites 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 11.3 may apply, the [Sponsor] shall notify the Participant in writing of such fact. The Participant shall assume the defence thereof with counsel designated by the Participant and satisfactory to the affected Indemnites, acting reasonably; provided, however, that if the defendants in any such action include both the Indemnites and the Participant and the Indemnites 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 Participant, the Indemnites shall have the right to select separate counsel satisfactory to the Participant acting reasonably (at no additional cost to the Indemnites) to participate in the defence of such action on behalf of the Indemnites. The Participant shall promptly confirm that it is assuming the defence of the Indemnites by providing written notice to the Indemnites. Such notice shall be provided no later than five (5) Business Days prior to the deadline for responding to any Claim relating to any Indemnifiable Loss.
- (b) Should any of the Indemnites be entitled to indemnification under Section 11.3 as a result of a Claim by a third party, and the Participant fails to assume the defence of such Claim (which failure shall be assumed if the Participant fails to provide the notice prescribed by Section 11.4(a)), the Indemnites shall, at the expense of the Participant, contest (or, with the prior written consent of the Participant, 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 Participant (with the Participant remaining obligated to indemnify the Indemnites under Section 11.3), if, in the written opinion of an independent third party counsel chosen by the Company Representatives, such Claim is meritorious. If the Participant is obligated to indemnify any Indemnites under Section 11.3, the amount owing to the Indemnites will be the amount of such Indemnites' actual out-of-pocket loss net of any insurance proceeds received or other recovery.

### Article 12

#### CONTRACT OPERATION AND ADMINISTRATION

##### 12.1 Company Representative

The Participant shall appoint two representatives (each a “**Company Representative**”) each who shall be duly authorized to act on behalf of the Participant, and with whom the [Sponsor] 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 Participant as to all matters pertaining to this Agreement. The Company Representatives shall not have the power or authority to amend this Agreement. The Participant's Company Representatives shall be

the Company Representatives as set out on the IRP Contract Cover Page. The Participant shall notify the [Sponsor] in writing in the Prescribed Form of any change in the identity of a Company Representative or a Company Representative's contact information, and such change will take effect within [ten (10)] Business Days from the date on which the [Sponsor] receives the duly executed Prescribed Form in respect of such change (the "CR Change Period"). The Participant shall be responsible for satisfying the Facility Performance Obligations at all times during the CR Change Period.

## 12.2 Record Retention; Audit Rights

- (a) The Participant 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 in the Province of Ontario as required by Laws and Regulations but for no less than for seven (7) years after the creation of the record or data.
- (b) The Participant, on a confidential basis as provided for in Article 8 of this Agreement, shall provide reasonable access by the [Sponsor] and its Representatives to the relevant and appropriate financial and operating records and data kept by it relating to this Agreement reasonably required for the [Sponsor] to comply with its obligations to Governmental Authorities or to verify or audit information provided in accordance with this Agreement, including the provision of copies of documents and all other information reasonably required by the [Sponsor] or its Representatives, which shall be delivered to the premises of the [Sponsor] or its Representatives as directed by the [Sponsor]. Moreover, the Participant agrees and consents to the [System Operator], an LDC or any other relevant third party providing to the [Sponsor] and its Representatives all relevant meter and invoice data regarding the Facility required by the [Sponsor] in order to verify information provided pursuant hereto. The [Sponsor] may use its own employees or Representatives for purposes of any such review of records, provided that those employees or Representatives are bound by the confidentiality requirements provided for in Article 8, in which case no further confidentiality agreements or arrangements need be entered into. The Participant shall ensure that any confidentiality agreements or arrangements between it and any third party (including any subcontractor, supplier, or other supplier of goods or services to Participant) shall not have the effect of preventing, impairing or delaying any disclosure or access to or by the [Sponsor] or any of its Representatives as contemplated in this Section 12.2.

## 12.3 Reports to the [Sponsor]

- (a) The Participant shall deliver to the [Sponsor] prompt written notice of any Reportable Event.

## 12.4 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 Participant: [insert details]  
[insert details]

and to: Attention: [insert details]  
[insert details]  
[insert details]

Attention: [insert details]  
Email: [insert details]

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](mailto:contract.management@ieso.ca)

The Participant may, by written notice to the [Sponsor], change its respective Company Representative in accordance with Exhibit [A].

- (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 be given electronically and then followed by hand or courier delivery.
- (d) No notice delivered pursuant to this Agreement shall be deemed to be notice for any other purpose, including any obligation to provide notice to the [System Operator] pursuant to the IESO Market Rules. No notice to the [Sponsor] shall be deemed delivered unless the addressee of such notice is identified in such notice as “Contract Management”. No notice from the [Sponsor] shall be binding on the [Sponsor] pursuant to this Agreement unless the sender of such notice is identified in such notice as “Contract Management”.

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## Article 13 MISCELLANEOUS

### 13.1 Informal Dispute Resolution

If either Party considers that a dispute has arisen under or in connection with this Agreement that the Parties cannot resolve, then such Party may deliver a notice to the other Party describing the nature and the particulars of such dispute. Within ten (10) Business Days following delivery of such notice to the other Party, a senior executive (Vice-President or higher) from each Party shall meet, either in person, by telephone or video conference (the “**Senior Conference**”), to attempt to resolve the dispute. The Parties shall use Commercially Reasonable Efforts to cause their respective senior executives attending a Senior Conference to be informed with all relevant background information in respect of the dispute and to be prepared to propose a resolution to the dispute. If, following the Senior Conference, the dispute is not resolved, the dispute may be settled by arbitration pursuant to Section 13.2, if agreed to by both Parties.

### 13.2 Arbitration

- (a) 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 13.1.
- (b) Any dispute to be decided by arbitration will be decided by a single arbitrator appointed by the Parties or, if such Parties fail to appoint an arbitrator within fifteen (15) days following the agreement to refer the dispute to arbitration, upon the application of either of the Parties, the arbitrator shall be appointed by a Judge of the Superior Court of Justice (Ontario) sitting in the Judicial District of Toronto Region. The arbitrator shall not have any current or past business or financial relationships with any Party (except prior arbitration). The arbitrator shall provide each of the Parties an opportunity to be heard and shall conduct the arbitration hearing in accordance with the provisions of the *Arbitration Act, 1991* (Ontario).
- (c) Unless otherwise agreed by the Parties, the arbitrator shall render a decision within ninety (90) days after the end of the arbitration hearing and shall notify the Parties in writing of such decision and the reasons therefor. The arbitrator shall be authorized only to interpret and apply the provisions of this Agreement and shall have no power to modify or change this Agreement in any manner. The decision of the arbitrator shall be conclusive, final and binding upon the Parties. The decision of the arbitrator may be appealed solely on the grounds that the conduct of the arbitrator, or the decision itself, violated the provisions of the *Arbitration Act, 1991* (Ontario) or solely on a question of law as provided for in the *Arbitration Act, 1991* (Ontario). The *Arbitration Act, 1991* (Ontario) shall govern the procedures to apply in the enforcement of any award made. If it is necessary to enforce such award, all costs of enforcement shall be payable and paid by the Party against whom such award is enforced. Unless otherwise provided in the arbitral award to the contrary, each Party shall bear (and be solely responsible for) its own costs incurred during

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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.

### 13.3 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.

### 13.4 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.

### 13.5 Assignment

- (a) Neither this Agreement nor any of the rights, interests or obligations under this Agreement may be assigned by either Party, including by operation of Laws and Regulations, without the prior written consent of the other Party, which consent shall not be unreasonably withheld.
- (b) The Participant may, subject to compliance with Laws and Regulations and provided that there is not a Participant 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 Participant or any of its successors or permitted assigns hereunder shall be valid or effective unless and until such Affiliate agrees with the [Sponsor] in writing to assume all of the Participant's obligations and be bound by the terms of this Agreement. If a valid assignment of this Agreement is made by the Participant in accordance with this Section 13.5, 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.
- (c) If the Participant assigns this Agreement to a non-resident of Canada (the "Assignee"), 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 or withholding Taxes and the [Sponsor] shall remit such additional or withholding Taxes to the applicable taxing authorities. The [Sponsor] shall within sixty (60) days after remitting such Taxes, notify the Assignee in

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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.

### 13.6 Change of Control

- (a) The Participant shall not permit or allow a change of Control of the Participant, except with the prior written consent of the [Sponsor], which consent may not be unreasonably withheld. It shall not be unreasonable to withhold such consent if the change of Control will have or is likely to have, as determined by the [Sponsor] acting reasonably, a Material Adverse Effect on the Participant's ability to perform its obligations under this Agreement, in which case such consent may be withheld by the [Sponsor].
- (b) The restriction on change of Control in Section 13.6(a) shall not apply to a change of Control in the Participant where:
  - (i) the Person that is the direct subject of the transaction giving rise to the change of Control of the Participant is not a Special Purpose Entity; or
  - (ii) each Person Controlling the Participant following such change of Control is an Affiliate of one or more of the Persons Controlling the Participant prior to such change of Control

provided that, in either case, the Participant provides the [Sponsor], within ten (10) Business Days following such change of Control, 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 the Participant, following such transaction(s). For greater certainty, and the purposes of Section 13.6(a), a change of Control shall include a change from no Person having Control of the Participant to any Person having Control of the Participant, as well as a change from any Person having Control of the Participant to no Person having Control of the Participant.

### 13.7 Survival

The provisions of Sections [1.1 to 1.6, 1.8 to 1.12, 2.1(c), 2.1(e), 2.2, Article 5, Article 6, Article 8, Sections 10.2, 10.4, 10.5, Article 11, Sections 12.2, 13.1, 13.2, 13.5(c), and 13.7] shall survive the expiration of the Term or the Residual Term, as applicable, or earlier termination of this Agreement. The expiration of the Term or the Residual Term, as applicable, 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 Residual Term, as applicable, or the termination of this Agreement for a period of time equal to the applicable statute of limitations.

### **13.8 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. This Agreement may be executed by printing, signing and scanning, or by electronic signature in a format approved by the [Sponsor]. Delivery by electronic mail or similar electronic transmission of an executed signature page to this Agreement shall be as effective as delivery of a manually executed copy of this Agreement by such Party.

### **13.9 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 under this Agreement.

### **13.10 Rights and Remedies Not Limited to Contract**

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

### **13.11 Time of Essence**

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

### **13.12 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. Without limiting the generality of the foregoing, upon request of the [Sponsor], the Participant shall enroll in or utilize an internet-based or software program utilized by the [Sponsor] for the administration of this Agreement, and shall communicate with the [Sponsor] through such website or software program for purposes of administering this Agreement, as requested by the [Sponsor]. The Parties agree to promptly execute and deliver any documentation required by any Governmental Authority in connection with any termination of this Agreement.

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**Exhibit A**  
**FORM OF COMPANY REPRESENTATIVE NOTICE**

[NTD: to be attached.]

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**Exhibit B**  
**FORM OF CONFIDENTIALITY UNDERTAKING**

[NTD: to be attached.]

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**Exhibit C**  
**ARBITRATION PROVISIONS APPLICABLE TO SECTIONS 1.6 AND 1.7**

The following rules and procedures (the “**Rules**”) shall govern, exclusively, any matter or matters to be arbitrated between the Parties under Sections 1.6 and 1.7 of this Agreement.

1. **Commencement of Arbitration** – If the Parties and, at the [Sponsor’s] option, all Other Participants required by the [Sponsor] to participate, have been unable to reach agreement as contemplated in Sections 1.6 and 1.7, as applicable, then the [Sponsor] shall commence arbitration by delivering a written notice (the “**Request**”) to the Participant and such Other Participants required by the [Sponsor] to participate (collectively the “**Arbitration Participants**”). If the [Sponsor] has not already done so, the [Sponsor] shall then deliver to the Arbitration Participants the names of all Arbitration Participants. Within twenty (20) Business Days of the delivery of the Request, the [Sponsor] shall deliver to the Arbitration Participants a written notice nominating an arbitrator who shall be familiar with commercial law matters and has no financial or personal interest in the business affairs of any of the parties. Within twenty (20) Business Days of the receipt of the [Sponsor’s] notice nominating its arbitrator, the Arbitration Participants 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 Arbitration Participants are unable to agree on the nomination of an arbitrator within twenty (20) Business Days of the receipt of the [Sponsor’s] notice nominating its arbitrator, any Arbitration Participant or the [Sponsor] may apply to a judge of the Superior Court of Justice of Ontario to appoint the arbitrator. If the two (2) arbitrators are unable to agree on a chair person within thirty (30) days of the nomination or appointment of the Arbitration Participants’ arbitrator, any supplier 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(s) 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 Participant that there be, to the extent possible, one arbitration proceeding and hearing to determine the Replacement Provision(s). 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 Arbitration Participants shall have a right to participate in the arbitration proceeding.

4. **Consolidation** – The Parties agree that should the Arbitration Panel determine that the Replacement Provision(s) 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.

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5. **Award** - The award of the Arbitration Panel, which shall include the Replacement Provision(s) shall be made within six (6) 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 pro-rata by the parties.

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 as defined in Section 88 of the Legislation Act, SO 2006, c. 21 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. (EPT), 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.

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**Exhibit D**  
**[SPONSOR] WEBPAGE INFORMATION**

The Participant agrees to provide to the [Sponsor] any information specified herein and agrees that the information may be disclosed by the [Sponsor] on its Website or otherwise publically disclosed in accordance with Section 8.1(e) of the Agreement:

- Legal Name of the Participant
- Facility Name
- Location of the Facility or Nearest Population Centre
- Start Date
- Interruptible Demand
- Participant Website Link
- Participant Public Relations Contact
- Description of the Facility

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**Exhibit E**  
**INTERRUPTION CONDITIONS AND PROCEDURES FOR INTERRUPTION EVENTS**

**[NTD: this Exhibit is still under development and is being posted exclusively for the convenience of stakeholders, prospective participants, and other interested parties. The Exhibit will be finalized and posted to the Website in advance of the Pilot’s launch.]**

This Exhibit describes: (a) the Interruption Conditions in response to which the [System Operator] may, but would not be required to, declare Interruption Events; and (b) the procedures that the [System Operator] will undertake to declare Interruption Events and issue Interruption Notices (the “**Interruption Procedures**”).

**INTERRUPTION CONDITIONS**

An Interruption Condition may be classified as a Long-Notice Condition or a Short-Notice Condition, as further described below.

**Long-Notice Conditions:**

The [System Operator] may, but would not be required to, declare a Long-Notice Event if any of the following Long-Notice Conditions are present on the Ontario Transmission System or in any applicable IESO Electrical Zone:

1. The forecasted Ontario demand for Electricity in an hour exceeds [21,000 MW] in the adequacy report published by the System Operator at [approximately 13:45 EST on the day ahead] of a potential Interruption Day.
2. Any hour in the predispach market price report published by the System Operator after 15:00 EST on the day ahead of a potential Interruption Day has an energy price for the Ontario zone that is equal to or greater than [\$200/MWh].
3. The [System Operator] has initiated a control action [no. 5 “Issue an advisory notice for the declaration of a Conservative Operating State”] or control actions that are numbered higher than 5 in table B.1 in Appendix B: Emergency Operating State Control Actions of Market Manual 7: System Operations Part 7.1: IESO-Controlled Grid Operating Procedures. Table B.1 addresses the actions initiated both in advance of the declaration of and during the Emergency Operating State where only the [System Operator’s] control area is deficient.

**Short-Notice Conditions:**

The [System Operator] may, but would not be required to, declare a Short-Notice Event if any of the following Short-Notice Conditions are present on the Ontario Transmission System or in any applicable IESO Electrical Zone:

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1. The forecasted Ontario demand in an hour exceeds [21,000 MW] in the adequacy report published by the System Operator on a potential Interruption Day.
2. Any hour in the predispatch market price report published by the System Operator on a potential Interruption Day has an energy price for the Ontario zone in any hour that is equal to or greater than [\$200/MWh].
3. The [System Operator] has initiated a control action [no. 5 “Issue an advisory notice for the declaration of a Conservative Operating State”] or control actions that are numbered higher than 5 in table B.1 in Appendix B: Emergency Operating State Control Actions of Market Manual 7: System Operations Part 7.1: IESO-Controlled Grid Operating Procedures. Table B.1 addresses the actions initiated both in advance of the declaration of and during the Emergency Operating State where only the [System Operator’s] control area is deficient.

## INTERRUPTION PROCEDURES

Interruption Notices will be issued to the Participant by the [Sponsor] to instruct the Participant to reduce the Facility’s Demand to the Contract Demand in order to satisfy its Interruption Obligation.

If the Facility is a Dispatchable Load the Participant is required to identify the entire consumption of Electricity at the Facility as a Non-Dispatchable Load in the Energy Market Interface. This must be done in accordance with Section 2.5(b) and Market Manual 4: Market Operations Part 4.2: Submission of Dispatch Data in the Real-Time Energy and Operating Reserve Markets by submitting Dispatch Data changes to remove all Bids and Offers:

1. for Long-Notice Events, by no later than 21:00:00 EST on the day ahead of an Interruption Day; and
2. for Short-Notice Events, by no later than the mandatory window applicable to the first Short-Notice Hour.

In accordance with Market Manual 4: Market Operations Part 4.2: Submission of Dispatch Data in the Real-Time Energy and Operating Reserve Markets:

*The IESO will automatically dispatch the load to 0 MW in the first interval (Interval 1) of the first hour that does not have dispatch data. The dispatchable load is required to ignore the 0 MW dispatch instruction to confirm its intention to becoming non-dispatchable. The IESO will consider the load as non-dispatchable until new bids are submitted, resulting in a new dispatch instruction.*

## Exhibit F CALCULATION OF MONTHLY SETTLEMENT

This Exhibit [F] sets out the calculation of the Monthly Settlement. Except as expressly set forth below, all references to Sections are to Sections of the Agreement.

All calculations in this Exhibit J will be done to the number of decimal places in accordance with the provisions of the IESO Market Rules and O.Reg. 429/04, as applicable.

### 1. Monthly Settlement

Equation (“Eq.”) 1a sets out the calculation of the Monthly Settlement (\$) in month “m” in each Pilot Year “y” throughout the Term. Eq. 1b sets out the Monthly Settlement (\$) in month “m” in the single year “y” in the Residual Term, if applicable.

$$MS^m = -GAC^m + DC^m \times CD^y + FPB - OPA^m + NPA^m \quad (1a)$$

$$MS^m = NPA^m - OPA^m - IRA^m \quad (1b)$$

Where

- $MS^m$  is the Monthly Settlement applicable to month “m” in any Pilot Year and the Residual Term, as applicable.
- $GAC^m$  is the Global Adjustment Credit (\$) applicable to month “m” in each Pilot Year, which shall be obtained from the System Operator for the purposes of this Agreement.
- $DC^m$  is the Demand Charge (\$/MW) applicable to month “m” as set out in Eq. 2.
- $CD^y$  is the Contract Demand (MW) applicable to Pilot Year “y”.
- $FPB$  is the Fixed Price Bid (\$) applicable to each month “m” in each Pilot Year and is set out on the IRP Contract Cover Page.
- $OPA^m$  is the Over-Performance Adjustment (\$) applicable to month “m” as set out in Eq. 3.
- $NPA^m$  is the Non-Performance Adjustment (\$) applicable to month “m” as at out in Eq. 4.
- $IRA^m$  is the ICI Return Adjustment (\$) applicable to month “m” as set out in Eq. 5.

Note that both  $NPA^m$  and  $OPA^m$  quantities are zero for the Participant’s first Pilot Year.

### 2. Pilot Demand Charge

Eq. 2 sets out the calculation for the Demand Charge (\$/MW) for month “m” in the applicable Pilot Year. The Demand Charge shall not apply during the Residual Term, if applicable.

$$DC^m = PDF_{1MW}^m \times GA^m \quad (2)$$

Where

- $PDF_{1MWh}^m$  is the Peak Demand Factor applicable to month “m” for a hypothetical Load Facility operated by a Class A Market Participant with 1 MWh of Electricity withdrawal in each Coincident Peak Hour in the applicable Base Period, as calculated by the System Operator in a manner consistent with section 11(4) of O. Reg. 429/04.
- $GA^m$  is the Actual Global Adjustment applicable to month “m”.

### 3. Over-Performance Adjustment

The Over-Performance Adjustment for a Pilot Year will be calculated at the end of such Pilot Year, and will be applied to the Participant’s Monthly Settlements in the following Pilot Year, or during the Residual Term, as applicable. For clarity, the Over-Performance Adjustment will not be applied in the first Pilot Year.

The Participant will be subject to an Over-Performance Adjustment if the Facility’s Actual Demand during an Interruption Hour is less than the Over-Performance Threshold, i.e.:

$$AD^{h,y-1} < 0.95 \times CD^{y-1}.$$

Where

- $AD^{h,y-1}$  is the Actual Demand during Interruption Hour “h” in the previous Pilot Year “y-1”.
- $CD^{y-1}$  is the Contract Demand (MW) applicable to the previous Pilot Year “y-1”.

If the Over-Performance Adjustment is applicable, Eq. 3 sets out the calculation for the Over-Performance Adjustment (\$) applicable to month “m” in Pilot Year “y”.

$$\begin{aligned} OPA^m = OPF \times \frac{\sum_{m=1}^{m=12} DC^{m,y-1}}{12} \times \frac{1}{H_1^{y-1} + H_s^{y-1}} \quad (3) \\ \times \left( \sum_{lnh=1}^{H_1^{y-1}} \max(0.95 \times CD^{y-1} - AD^{lnh,y-1}, 0) \right. \\ \left. + \sum_{snh=1}^{H_s^{y-1}} \max(0.95 \times CD^{y-1} - AD^{snh,y-1}, 0) \right) \end{aligned}$$

Where

- OPF is the Over-Performance Factor and is set at [0.90].

- $DC^{m,y-1}$  is the Demand Charge applicable in the month “m” of the previous Pilot Year “y-1”.
- $H_l^{y-1}$  is the total number of Long-Notice Hours applicable to the Facility in the previous Pilot Year “y-1”.
- $H_s^{y-1}$  is the total number of Short-Notice Hours applicable to the Facility in the previous Pilot Year “y-1”.
- $lnh$  refers to each Long-Notice Hour applicable to the Facility in the previous Pilot Year “y-1”.
- $snh$  refers to each Short-Notice Hour applicable to the Facility in the previous Pilot Year “y-1”.

#### 4. Non-Performance Adjustment

The Non-Performance Adjustment for a Pilot Year will be calculated at the end of such Pilot Year, and will be applied to the Participant’s Monthly Settlements in the following Pilot Year, or during the Residual Term, as applicable. For clarity, Non-Performance Adjustment will not be applied in the first Pilot Year.

The Participant will be subject to a Non-Performance Adjustment if the Facility’s Actual Demand during an Interruption Hour exceeds than the Non-Performance Threshold, i.e.:

$$AD^{h,y-1} > 1.05 \times CD^{y-1}.$$

Where

- $AD^{h,y-1}$  is the Actual Demand during Interruption Hour “h” in the previous Pilot Year “y-1”.
- $CD^{y-1}$  is the Contract Demand (MW) applicable to the previous Pilot Year “y-1”.

If the Non-Performance Adjustment is applicable, Eq. 4 sets out the calculation for the Non-Performance Adjustment (\$) applicable to month “m” in Pilot Year “y”.

$$\begin{aligned}
 NPA^m = NPF \times & \frac{\sum_{m=1}^{12} DC^{m,y-1}}{12} \times \frac{1}{H_l^{y-1} + H_s^{y-1}} & (4) \\
 & \times \left( \sum_{lnh=1}^{H_l^{y-1}} \max(AD^{lnh,y-1} - 1.05 \times CD^{y-1}, 0) \right. \\
 & \left. + \sum_{snh=1}^{H_s^{y-1}} \max(AD^{snh,y-1} - 1.05 \times CD^{y-1}, 0) \right)
 \end{aligned}$$

Where  
NPF is the Non-Performance Factor and is set at [1.1].

## 6. ICI Return Adjustment

The ICI Return Adjustment will be applied during the Residual Term if:

- a) the Participant was a Class A Market Participant as of the Start Date;
- b) the Participant is a Class A Market Participant as of the Facility End Date; and
- c) in respect of the Facility, the Peak Demand Factor established in the Base Period ending immediately prior to the Start Date was lower than the Peak Demand Factor established in the final Pilot Year.

Eq. 5 sets out the calculation for the ICI Return Adjustment (\$) applicable to month “m”.

$$IRA^m = (FPYPDF - SPDF) \times GA^m \quad (5)$$

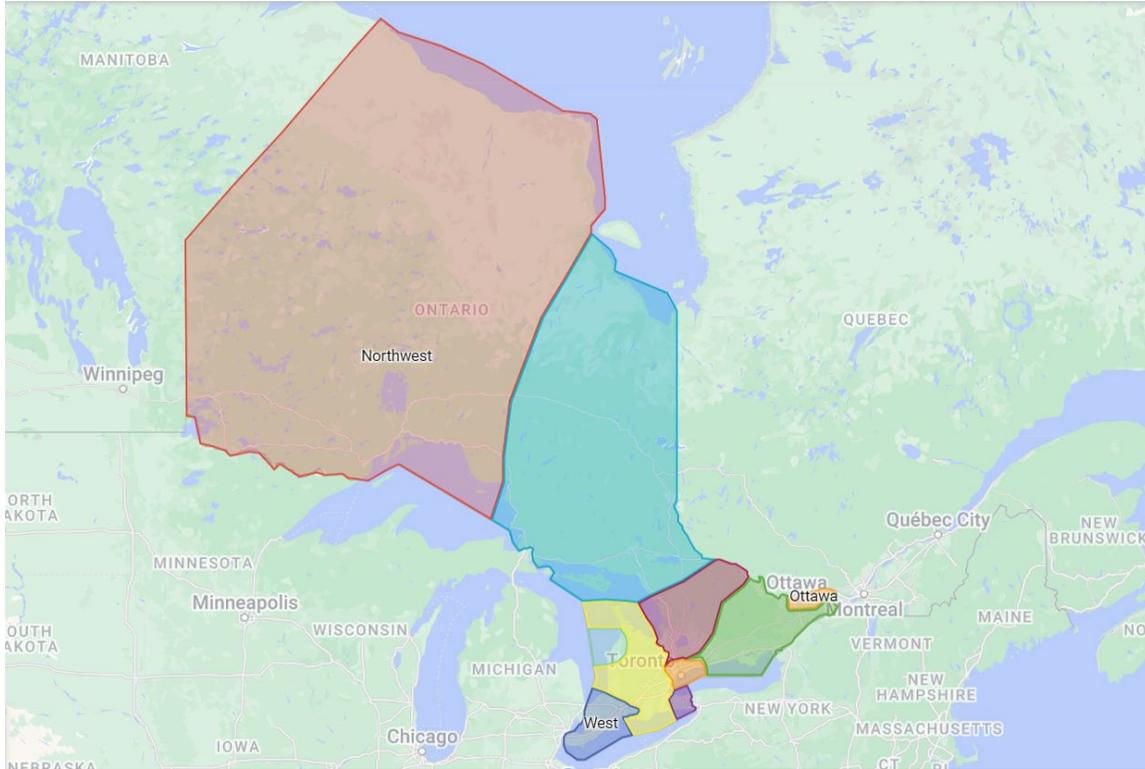
Where

- SPDF is the Saved Peak Demand Factor, which is equal to the Peak Demand Factor for the Facility applicable to the Base Period ending immediately prior to the Start Date, as calculated by the System Operator in a manner consistent with section 11(4) of O. Reg. 429/04.
- FPYPDF is the Final Pilot Year Peak Demand Factor, which is equal to the Peak Demand Factor for the Facility applicable to the final Pilot Year, as calculated by the System Operator in a manner consistent with section 11(4) of O. Reg. 429/04.

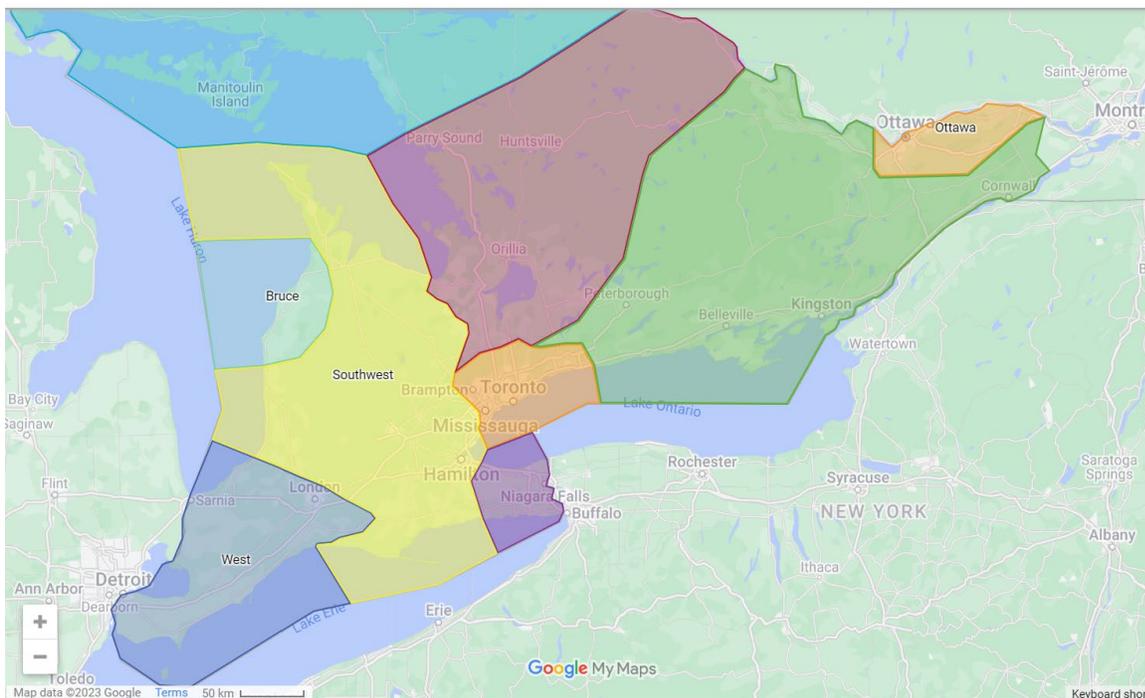
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# Exhibit G MAPS OF IESO ELECTRICAL ZONES

Overall Map of the IESO Electrical Zones



Zoomed-in Map of the IESO Electrical Zones in Southern Ontario



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