

DRAFT FOR DISCUSSION

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**LONG LEAD-TIME ENERGY SUPPLY (LLT(e)) CONTRACT**

**Between**



**– and –**

**INDEPENDENT ELECTRICITY SYSTEM OPERATOR**

**CONTRACT ID #: [●]**

DATED as of the {{execution-date}} day of {{execution-month}}, {{execution-year}}

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DRAFT FOR DISCUSSION

## **LONG LEAD-TIME ENERGY SUPPLY (LLT(E)) CONTRACT**

This Long Lead-Time Energy Supply (LLT(e)) Contract is dated as of the {{execution-date}} day of {{execution-month}} {{execution-year}} (the “**Contract Date**”) between [●] (the “**Supplier**”), and the Independent Electricity System Operator (the “**Buyer**”).  
**[Note to Finalization: To be updated prior to execution.]**

**WHEREAS** on [●], the Minister of Energy and Mines issued a directive to the Buyer pursuant to subsection 25.32 of the Electricity Act to procure contracts for energy resources from facilities that [●] (the “**Ministerial Directive**”); **[NTD: multiple policy mechanisms under ongoing consideration for both the LLT(e) RFP and this LLT(e) Contract and to be reflected in Ministerial Directive.]**

**AND WHEREAS** the Buyer, issued the Long Lead-Time Energy Supply Request for Proposals on [●], as amended, to solicit energy generation services from New Build facilities in Ontario (the “**LLT(e) RFP**”);

**AND WHEREAS** the Supplier submitted a proposal to develop, construct, operate and maintain the Facility under the LLT(e) RFP;

**AND WHEREAS** the Supplier’s proposal was selected by the Buyer and accordingly the Supplier and the Buyer wish to execute this Agreement in order to formalize the long-term contractual arrangements for the Supplier to develop, construct, operate and maintain 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 herein, the following capitalized terms shall have the meanings stated below when used in this Agreement:

“**Actual Performance Factor**” or “**APF**” has the meaning ascribed to it in Exhibit F.

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

“**Additional Term**” has the meaning ascribed to it in Exhibit C.

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

**“Agreement”** means this LLT(e) Contract as it may be amended, restated or replaced from time to time.

**“AIA Components Two and Three Requirement”** means an evaluation of project impacts with supporting evidence on approaches for minimizing and mitigating adverse impacts, as informed by OMAFA Guidance.

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

**“Annual Average Imputed Production Factor”** means the percentage listed as such in Exhibit B.

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

**“Applicable Accounting Principles”** means GAAP or IFRS, whichever is applicable to the Supplier.

**“Arbitration Act”** means the *Arbitration Act, 1991* (Ontario).

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

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

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

**“Associated Relationship”** means the relationship between a meter at a Delivery Point and a Market Participant (where such Market Participant is not the Metered Market Participant), as established by certain processes in the Meter Data Distribution or MDD.

**“Bank Act”** means the *Bank Act* (Canada).

**“Business Day”** means a day, other than a Saturday or Sunday or statutory holiday in the Province of Ontario that is listed on the *“Physical and Financial Market Holiday Schedule”* (or any substantially equivalent future schedule) published by the System Operator for purposes of the IESO Market Rules, from time to time, but excluding from such statutory holidays Easter Monday, Remembrance Day and National Day for Truth and Reconciliation.

**“Buyer”** has the meaning ascribed to it in the first paragraph of this Agreement and includes such Person’s successors and permitted assigns acting in a capacity other than as the System Operator.

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

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

**“Buyer’s Website”** means the website of the Buyer located at uniform resource locator (URL) <https://www.ieso.ca/> or such other URL, or other electronic or non-electronic format, as the Buyer may provide to the Supplier from time to time.

**“Canadian-Status Proponent”** [NTD: to be confirmed if applicable.]

**“Capital Cost”** has the meaning ascribed to it in Section 2.14(b).

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

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

**“Clean Energy Credit”** has the meaning given to such term in Section 25.11 of the Electricity Act.

**“Commercial Operation”** has the meaning ascribed to it in Section 2.5.

**“Commercial Operation Date”** or **“COD”** means the later of [(i) the fifth (5th) anniversary of the Contract Date and (ii)] the date on which Commercial Operation is first attained. [NTD: The IESO may need to restrict connection in years 5-7 post contract award, depending on conditions assumed as part of deliverability testing.]

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

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

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

**“Confidential Information”** means:

- (a) all information which is furnished or disclosed by the Disclosing Party and its Representatives to the Receiving Party and its Representatives in connection with this Agreement, whether before or after its execution, that has been identified as confidential at the time it was furnished or disclosed, and including all new information derived at any time from any such confidential information, but excluding:
  - (i) publicly-available information, unless made public by the Receiving Party or its Representatives in a manner not permitted by this Agreement;
  - (ii) information already known to the Receiving Party prior to being furnished by the Disclosing Party;



- (iii) information disclosed to the Receiving Party from a source other than the Disclosing Party or its Representative, if such source is not subject to any agreement with the Disclosing Party prohibiting such disclosure to the Receiving Party; and
  - (iv) information that is independently developed by the Receiving Party; and
- (b) Mutually Confidential Information.

**“Confidentiality Undertaking”** has the meaning ascribed to it in Section 8.1(c).

**“Connection Agreement”** means the agreement or agreements required to be entered into by the applicable LDC or Transmitter and the Supplier with respect to the connection of the Facility to a Distribution System or Transmission System in accordance with the Distribution System Code or Transmission System Code, as applicable and governing the terms and conditions of such connection, including all studies and impact assessments incorporated therein, and including the payment of all costs that are the responsibility of the Supplier thereunder.

**“Connection Impact Assessment”** means an assessment conducted by an LDC to determine the impact on the Distribution System of connecting the Facility to its Distribution System pursuant to the Distribution System Code.

**“Connection Line”** means the electrical connection line that connects the Facility to the Connection Point, including ancillary equipment such as transformers and switchgear.

**“Connection Point”** means, (i) where the Facility is connected to the IESO-Controlled Grid, the electrical point or points of connection, as defined in the IESO Market Rules, between the Facility and the IESO-Controlled Grid; and (ii) where the Facility is connected to a Distribution System, the embedded connection point(s), as defined in the IESO Market Rules, between the Facility and the Distribution System, in either case as specified in Exhibit A.

**“Connection Point Weighted Average”** means, (i) where the Connection Point is comprised of multiple physical points of interconnection as set out in Exhibit A, the weighted average of the locational marginal prices generated under the IESO Market Rules for such locations, such prices weighted according to the registered capacity of each resource comprising the Facility connected at each such location pursuant to the IESO Market Rules, rounded to the nearest cent per MWh or, (ii) where the Connection Point is comprised of a single physical point of interconnection as set out in Exhibit A, the single locational marginal price generated under the IESO Market Rules for such location.

**“Contract Capacity” or “CC”** is the Nameplate Capacity of the Facility, expressed in MW and set out in Exhibit B.

**“Contract Date”** has the meaning ascribed to that term in the first paragraph of this Agreement.

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

**“Control”** means, with respect to any Person at any time:

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

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

**“Credit Rating”** means, with respect to any Person, its long-term senior unsecured debt rating or its deposit rating as provided by Moody’s, S&P, DBRS Morningstar, or, if such Person is a financial institution, Fitch IBCA, or DBRS Morningstar or any other established and reputable rating agency, as agreed to by the Parties, acting reasonably, from time to time.

**“Crown”** means His Majesty the King in right of Ontario.

**“CTITCs”** means the measures referred to as the “Clean Technology Investment Tax Credit” set out in section 127.45 of the ITA or the “Clean Electricity Investment Tax Credit” proposed in the Government of Canada’s Bill C-15, *An Act to implement certain provisions of the budget tabled in Parliament on November 4, 2025*.

**“DACP”** means the “Day Ahead Commitment Process” as set out in the IESO Market Rules.

**“DAM Suspension Day”** means any day for which the DAM is suspended (in whole or in part) by the System Operator. For greater certainty, the foregoing applies to both the DAM suspension as part of the market renewal transition and any subsequent DAM failures.

**“Day-Ahead Market” or “DAM”** means the forward market, established under the IESO Market Rules, for Electricity or for Electricity and Related Products for each hour of a given day, that clears the day before based upon submitted hourly bids to buy and offers to sell, and shall include, for purposes of this Agreement, such other mechanisms or amendments to the IESO Market Rules to enhance pre-dispatch scheduling and unit commitment of generators on a day-ahead basis. In the event that the DAM is suspended in accordance with the IESO Market Rules and the DACP is otherwise reestablished or becomes applicable under the IESO Market Rules, **“Day-Ahead Market” or “DAM”** shall mean the DACP plus the real-time energy market under the IESO Market Rules corresponding with any scheduled or committed generation established under the DACP.

**“DBRS Morningstar”** means DBRS Limited or its successor.

**“Delay Liquidated Damages”** has the meaning ascribed to it in Section 2.3(b).

**“Delivered”** means, in relation to Electricity, delivered to the Delivery Point net of any Station Service Loads in accordance with the Metering Plan, and **“Deliver”** and **“Delivery”** have corresponding meaning.

**“Delivery Point”** means (i) uniquely identified reference point determined in accordance with the IESO Market Rules and used for settlement purposes in the real-time markets and (ii) the point(s) at which revenue-quality metering records the net Electricity delivered to an End-User, as set out in Exhibit A.

**“Disclosing Party”**, with respect to Confidential Information, is the Party and/or its Representatives providing or disclosing such Confidential Information and may be the Buyer or the Supplier, as applicable; provided, however, that where such Confidential Information is Mutually Confidential Information, both the Buyer and the Supplier shall be deemed to be the Disclosing Party.

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

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

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

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

**“Dispatch Interval”** has the meaning ascribed to it in the IESO Market Rules.

**“Distribution System”** has the meaning ascribed to it in the IESO Market Rules.

**“Distribution System Code”** means the code approved by the OEB, as amended, supplemented, re-enacted or replaced from time to time, which, among other things, establishes the obligations of an LDC with respect to the services and terms of service to be offered to customers and retailers and provides minimum technical operating standards of distribution systems.

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

**“Economic Interest”** means, with respect to any Person other than a natural Person, the right to receive or the opportunity to participate in any payments arising out of or return from, and an exposure to a loss or a risk of loss by, the business activities of such Person, by means, directly or indirectly, of an equity interest in a corporation, limited partnership interest in a limited partnership, partnership interest in a partnership, units or interests in a trust, membership in a co-op, or, in the sole and absolute discretion of the Buyer, other similar ownership interest.

**“Electrical Safety Authority”** means the organization created and described pursuant to O.Reg 89/99 under the Electricity Act.

**“Electricity”** means electric energy.

**“Electricity Act”** means the *Electricity Act, 1998* (Ontario)

**“Electricity Scheduled for DA Delivery”** means, with respect to any hour the quantity of Electricity (in MWh) scheduled in the DAM for injection by the Supplier at the Delivery Point that corresponds to the Facility’s Connection Point.

**“Emission Reduction Credits”** means the credits associated with the amount of emissions to the air avoided by reducing the emissions below the lower of actual historical emissions or regulatory limits, including “emission reduction credits” as may be defined in any regulation as may be promulgated under the *Environmental Protection Act* (Ontario).

**“End-User”** means a Person who owns or operates an End-User Load.

**“End-User Load”** means a load facility which utilizes Electricity supplied through a direct connection to the Transmission System, a Distribution System or the Facility.

**“Environmental Attributes”** means all current or future interests or rights arising out of attributes or characteristics relating to the environmental benefits or impacts associated with the Facility, howsoever entitled, named, registered, created, measured, certificated, allocated or validated that are at any time recognized or deemed of value, and includes:

- (a) rights to any fungible or non-fungible attributes, Clean Energy Credits, Emission Reduction Credits, offsets, allowances, credits, certificates of origin, or similar instruments, whether arising from the Facility itself, from the interaction of the Facility with the IESO-Controlled Grid, a Distribution System or an End-User, relating to the nature of the Facility’s energy source, or because of applicable legislation or any voluntary program, standard, protocol, certification, methodology agreement or attestation established by a Governmental Authority or other competent authority;
- (b) the right to qualify, register, transfer or retire any of the foregoing; and
- (c) all revenues, entitlements, benefits and other proceeds arising from or related to the foregoing.

**“Environmental Incident”** means any happening or occurrence (which without limiting the generality thereof includes any release, discharge, leak or spill of a substance contrary to Laws and Regulations) which could give rise to an environmental claim as against the Buyer. Without limiting the generality thereof, environmental claim means any notice of violation or offence, action, claim, lien, demand, proceeding, loss, penalty, fine, cost obligation or liability and any order or directive by a Governmental Authority under Laws and Regulations.

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

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

**“Excluded Hours”** or **“EH<sub>p</sub>”** has the meaning ascribed to it in Exhibit F.

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

“**Facility**” means the facility described in Exhibit A.

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

“**FIPPA**” means the *Freedom of Information and Protection of Privacy Act* (Ontario).

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

“**First Nation Community**” means:

- (a) a First Nation located in whole or in part in Ontario that is a “band” as defined in the *Indian Act* (Canada); or
- (b) a Person, other than a natural Person, that has been determined by the Government of Ontario (for purposes of this Agreement or the LLT(e) RFP) to represent the collective interests of a community that is composed of First Nation natural Persons in Ontario.

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

“**Fixed Price**” means the amount (in \$/MWh) set out as the Fixed Price in Exhibit B.

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

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

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

“**Future Capacity Related Products**” means all Capacity Products that relate to the Contract Capacity and that were not capable of being traded by the Supplier in the IESO-Administered Markets or other markets on or before the Contract Date.

“**Future Government Support Program**” means any program, facility or offering administered or made available by a Governmental Authority that provides cash subsidies, grants or payments on account of capital costs for the development and construction of the Facility or based on the output or performance of the Facility, pursuant to documented guidelines, program rules, prescribed forms of contracts or standardized commercial terms that are published or first publicly announced by the applicable Governmental Authority after the Proposal Submission Deadline. For certainty, Future Government Support Program excludes the CTITCs.

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

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

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

**“Government of Canada”** means His Majesty the King in right of Canada.

**“Government of Ontario”** means His Majesty the King in right of Ontario.

**“Governmental Authority”** means any federal, provincial, or municipal government, parliament or legislature, or any regulatory authority, agency, tribunal, commission, board or department of any such government, parliament or legislature, or any court or other law, regulation or rule-making entity, having jurisdiction in the relevant circumstances, including the OEB, the Electrical Safety Authority, the System Operator and any Person acting under the authority of any Governmental Authority, but excluding the Buyer when acting in a capacity other than as the System Operator.

**“Grid-Based Unavailability”** means an Outage other than a Planned Outage that is not the subject of an assertion of Force Majeure hereunder, in respect of which the Supplier has complied with the Outage reporting requirements set out herein and demonstrated to the satisfaction of the Buyer, acting reasonably, that:



- (a) such Outage was caused solely by unavailability of a Distribution System or a Transmission System owned and operated by a Person other than the Supplier;
- (b) such Outage prevented physical Delivery of any Electricity, and
- (c) such Distribution System or Transmission System unavailability was not caused, directly or indirectly, by any act or omission of the Supplier.

“HST” means the harmonized sales tax exigible pursuant to the *Excise Tax Act* (Canada).

“IE Certificate” means a certificate in the form set out in Exhibit N addressed to the Buyer from an Independent Engineer, procured at the expense of the Supplier.

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

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

“IESO Centralized Forecast” has the meaning ascribed to it in Exhibit J.

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

“IFRS” means the International Financial Reporting Standards, being the accounting standards and interpretations adopted or recommended from time to time by the International Accounting Standards Board (IASB) or any successor organization, applied on a consistent basis.

“including” means “including, without limitation”.

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

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

“Independent Engineer” means an engineer that is:

- (a) a professional engineer duly qualified and licensed to practice engineering in the Province of Ontario; and
- (b) employed by an independent engineering firm which holds a certificate of authorization issued by Professional Engineers Ontario that is not affiliated with or directly or indirectly controlled by the Supplier and that does not have a vested interest in the design, engineering, procurement, construction and/or testing of the Facility.

“Indexed Fixed Price” or “IFP<sub>my</sub>” has the meaning ascribed to it in Exhibit J.

“Indigenous Community” means, for the purposes of this Agreement, a First Nation Community or a Métis Community.

**“Indigenous Holding Vehicle”** means a Person, other than a natural Person, where the Economic Interest in such Person is held, directly or indirectly, solely by one or more Indigenous Communities.

**“Indigenous Participation Level”** means the percentage of the total Economic Interest in the Supplier that is held by one or more Indigenous Communities or Indigenous Holding Vehicles that each hold at least ten percent (10%) of the Supplier’s total Economic Interest as of the Contract Date, provided that if a Supplier is itself an Indigenous Community, the applicable Indigenous Participation Level shall be one hundred percent (100%).

**“Indigenous Participation Supplier”** means a Supplier in respect of which the Indigenous Participation Level is greater than or equal to ten percent (10%).

**“Initial IPL”** means the Indigenous Participation Level as of the Contract Date as set out in Exhibit B.

**“Insolvency Legislation”** means the *Bankruptcy and Insolvency Act* (Canada), the *Winding Up and Restructuring Act* (Canada), the *Companies’ Creditors Arrangement Act* (Canada), each as now and hereafter in effect, any successors to such statutes and any other applicable bankruptcy, insolvency, liquidation, winding-up, administration, receivership, arrangement or other similar law of any jurisdiction (regardless of the jurisdiction of such application or competence of such law), including any law of any jurisdiction permitting a debtor to obtain a stay or a compromise of the claims of its creditors against it and any law of any jurisdiction relating to receivership, reorganization, liquidation, conservatorship, moratorium, rearrangement or corporate or other arrangement affecting the rights of creditors generally.

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

**“IPF<sub>AA</sub>”** has the meaning ascribed to it in Exhibit F.

**“ITA”** means the *Income Tax Act* (Canada).

**“kV”** means kilovolt.

**“Late Report Administrative Charge”** has the meaning ascribed to it in Section 2.4(b).

**“Laws and Regulations”** means:

- (a) applicable Canadian federal, provincial or municipal laws, orders-in-council, by-laws, codes, rules, policies, regulations and statutes;
- (b) applicable orders, decisions, codes, judgments, injunctions, decrees, awards and writs of any court, tribunal, arbitrator, Governmental Authority or other Person having jurisdiction;



- (c) applicable rulings and conditions of any licence, permit, certificate, registration, authorization, consent and approval issued by a Governmental Authority;
- (d) any requirements under or prescribed by applicable common law; and
- (e) the IESO Market Rules, as well as any manuals or interpretation bulletins issued by the System Operator from time to time that are binding on the Supplier.

**“Letter of Credit”** means one or more irrevocable and unconditional standby letters of credit issued by a financial institution listed in either Schedule I or II of the Bank Act or such other financial institution having a minimum Credit Rating of (i) A- with S&P, (ii) A3 with Moody’s, (iii) A (low) with DBRS Morningstar, or (iv) A- with Fitch IBCA, in substantially the form attached as Exhibit C or in a form acceptable to the Buyer, acting reasonably, and otherwise conforming to the provisions of Section 6.2.

**“Liquidated Damages Rate”** means an amount, expressed in Dollars per MW per Business Day, which shall be \$150 per MW-Business Day.

**“LLT(e) RFP”** has the meaning ascribed to it in the recitals to this Agreement.

**“Local Distribution Company”** or **“LDC”** means a Person licensed by the OEB as a “Distributor” in connection with a Distribution System.

**“Local Municipality”** means any corporation that is a “local municipality” as defined in and for the purposes of the *Municipal Act, 2001* (Ontario) or the *City of Toronto Act, 2006*, (Ontario).

**“Longstop Date”** means the date that is eighteen (18) months after the Milestone Date for Commercial Operation.

**“Market Participant”** has the meaning ascribed to it by the IESO Market Rules.

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

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

**“Meter Data Distribution”** or **“MDD”** has the meaning ascribed to it in Section 2.7(b).

**“Meter Data Management”** or **“MDM”** has the meaning ascribed to it in Section 2.7(b).

**“Metered Market Participant”** has the meaning ascribed to it in the IESO Market Rules.

**“Metering Plan”** means a document that is provided by the Supplier to be approved by the Buyer and that (a) verifies that the revenue-quality interval meters used to measure Electricity conform with Measurement Canada Regulations, (b) provides technical specifications for meters,

instrument transformers and relevant instruments for main and backup metering, and (c) provides all required information, and equipment specifications needed to permit the Buyer to remotely access, verify, estimate and edit for calculation purposes, and/or total Revenue Meter readings in order to accurately determine the generator output at the Delivery Point net of any Station Service Loads, and which is updated promptly, and, in any event, within ten (10) Business Days after any change to the metering installation occurs.

**“Métis Community”** means:

- (a) the Métis Nation of Ontario or any of its regions or active Chartered Community Councils; or
- (b) a Person, other than a natural Person, that has been determined by the Government of Ontario (for purposes of this LLT(e) Contract or the LLT(e) RFP) to represent the collective interests of a community that is composed of Métis natural Persons in Ontario.

**“Mid-Term Extended Outage”** has the meaning ascribed to it in Section 15.3(d).

**“Mid-Term Extended Outage Month”** means any month during the Term in which a Mid-Term Extended Outage occurs.

**“Milestone Date for Commercial Operation”** means the date identified as such in Exhibit P.

**“Minimum Performance Factor”** has the meaning ascribed to it in Section 3.1.

**“Minimum Reduced IPL”** means (i), forty percent (40%) where the Initial IPL was equal to or greater than fifty percent (50%); (ii) twenty-five percent (25%) where the Initial IPL was equal to or greater than twenty-five percent (25%) and less than fifty percent (50%); and (iii) ten percent (10%) where the Initial IPL was equal to or greater than ten percent (10%) and less than twenty-five percent (25%).

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

**“Monthly Imputed Production Factor”** means the percentage listed as such in Exhibit B.

**“Monthly Payment”** has the meaning ascribed to it in Section 4.1.

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

**“Municipality”** means any corporation that is a Local Municipality.

**“Mutually Confidential Information”** means the Fixed Price, the Monthly Imputed Production Factor and the Annual Average Imputed Production Factor and any information identified by the Parties as Confidential Information of both the Buyer and the Supplier.

**“MW”** means megawatt.

**“MWh”** means megawatt hour.

**“Nameplate Capacity”** means the rated, continuous load-carrying capability, expressed in MW in Exhibit B, of the Facility to generate or store (as applicable) and Deliver Electricity at a given time, and which is equal to the Contract Capacity.

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

**“New Build”** means the development and construction of a new Electricity generating or storage facility that is not an Upgrade or Redevelopment.

**“Non-Performance Charge”** or **“NPC”** means the monthly non-performance factor set out in Exhibit F.

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

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

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

**“Official Plan”** means the current official plan of a Local Municipality approved under Section 17 of the Planning Act or that of a planning board established pursuant to Section 10 of the Planning Act.

**“OMAFRA”** means the Ontario Ministry of Agriculture, Food and Agribusiness, or any future replacement thereof.

**“OMAFRA Guidance”** means the documents and materials published by OMAFRA on the Buyer’s website in respect of agricultural impact assessments or any future equivalent or replacement thereof.

**“Other Suppliers”** means all of the other suppliers that have entered into a contract with the Buyer that is similar in nature to this Agreement as contemplated by the Ministerial Directive.

**“Outage”** means the removal of equipment from service, unavailability for connection of equipment or temporary de-rating, restriction of use or reduction in performance of equipment for any reason, including to permit the performance of inspections, tests, repairs or maintenance on equipment, which results in a partial or total interruption in the ability of the Facility to make the Contract Capacity available and Deliver the Electricity from the Facility.

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

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

**“Performance Factor Shortfall”** has the meaning ascribed to it in Exhibit F.

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

**“Planned Outage”** means an Outage which is planned and intentional, has been scheduled with the System Operator in accordance with the IESO Market Rules and has been disclosed to the Buyer pursuant to Section 15.3.

**“Planning Act”** means the *Planning Act* (Ontario).

**“Post-Proposal Applicable Tariffs”** means import tariffs imposed by any Governmental Authority pursuant to Laws and Regulations introduced after the Proposal Submission Deadline that are applicable to the Facility or any part thereof on importation into Canada.

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

**“Prevailing Party”** has the meaning ascribed to it in Section 13.3(e)(ii).

**“Prime Agricultural Area”** has the meaning given to that term in any Official Plan and includes any substantially similar designation in any Official Plan, or in any substantially similar instrument issued pursuant to the *Northern Services Boards Act* (Ontario), for agricultural land use designation purposes based on the definition of “Prime Agricultural Area” in the Provincial Planning Statement, 2024.

**“Project Site”** means all Properties on which the Facility is located, excluding any Connection Line.

**“Property”** means a parcel or lot of real property as identified by a Property Identification Number or, in the absence thereof, by another legal description by lot and/or parcel number or similar legal description or by other appropriate description using metes and bounds or GPS coordinates. In the case of provincial Crown lands, Property means real property identified by a grid cell, or a waterpower site number (as applicable) or in the absence thereof, GPS co-ordinates of the Property, as applicable.

**“Property Identification Number”** or **“PIN”** means the property identifier assigned to a property in accordance with the *Registry Act* (Ontario), s 21(2) or in accordance with the *Land Titles Act* (Ontario), s 141(2).

**“Proposal”** means the proposal in respect of the Facility submitted pursuant to the LLT(e) RFP.

**“Proposal Submission Deadline”** has the meaning ascribed to such term in the LLT(e) RFP.

**“Provincial Planning Statement, 2024”** means the 2024 provincial policy statement issued by the Minister of Municipal Affairs and Housing under section 3 of the Planning Act and approved by the Lieutenant Governor in Council via Order in Council No. 1099/2024.

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

**“Redevelopment”** means the substantial replacement of physical infrastructure constituting an existing Electricity resource.

**“Regulation Services Readiness Requirements”** means [●]. **[[NTD: Technical capabilities in respect of ramp rate, telemetry and IT requirements to enable delivery of regulation services to be specified by IESO.]**

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

**“Replacement Provision(s)”** has the meaning ascribed to it in Section 1.7(c).

**“Reportable Events”** means the following:

- (a) obtaining environmental, land-use and other required approvals and permitting for the Facility;
- (b) completion of any system impact assessment, connection impact assessment or customer impact assessment, including receipt of approvals from the System Operator, Transmitter or LDC, as applicable;
- (c) ordering of major equipment for the Facility;
- (d) delivery of major equipment for the Facility;
- (e) status of construction of the Facility;
- (f) commencement or performance of any clearing, grading or material alteration of the Project Site by or on behalf of the Supplier;
- (g) completion of construction of the Facility;
- (h) connection of the Facility to the Transmission System or a Distribution System, as applicable;
- (i) Commercial Operation; and
- (j) application for or receipt of any Additional Source of Funding by the Supplier.

**“Representatives”** means a Party’s directors, officers, employees, auditors, consultants, advisors (including economic and legal advisors), contractors and agents and those of its Affiliates or

owners of Economic Interest in such Party, and the agents and advisors of such Persons. While the Buyer is the Independent Electricity System Operator, this definition shall also include the Government of Ontario, the System Operator, and their respective directors, officers, employees, auditors, consultants (including economic and legal advisors), contractors and agents.

**“Revenue Meter”** means the equipment located at the “Registered Wholesale Meter” location (as such term is defined in the IESO Market Rules), and used for settlement purposes.

**“RFP Effective Date”** means [●].

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

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

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

**“Security Step-Up Date”** means the date that is the fourth (4<sup>th</sup>) anniversary of the Contract Date.

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

**“Settlement Month”** has the meaning ascribed to it in Section 5.2, provided that if the first or last Settlement Month in the Term is less than a full calendar month, for the purposes of Exhibit J such month shall be equal to the number of days of the Term in such calendar month.

**“Special Purpose Entity”** means a Person other than a natural Person whose special or sole purpose is ownership, direct or indirect, of the Facility. The special purpose of a Person shall not be considered to be the ownership, direct or indirect, of the Facility where, at such time, the total capacity of the Facility (existing or proposed) owned, directly or indirectly, by such Person multiplied by the per cent equity interest that such Person holds in the Facility, is less than 50% of the total nameplate capacity of, all Electricity generating facilities that have reached commercial operation and continue in operation owned, directly or indirectly, by such Person, multiplied by the per cent equity interest that such Person holds in each such Electricity generating facility.

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

**“Station Service Loads”** means energy consumed to power the on-site maintenance and operation of the Facility but excludes energy consumed in association with activities which could be ceased or moved to other locations without impeding the normal and safe operation of the Facility.

**“Supplier”** has the meaning ascribed to it in the first paragraph of this Agreement and includes such Person’s successors and permitted assigns.

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

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

**“Supplier’s Certificate”** means a certificate in the form set out in Exhibit O addressed to the Buyer from the Supplier.

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

**“System Operator”** means the Independent Electricity System Operator of Ontario established under Part II of the *Electricity Act*, and its successors, acting pursuant to its authority to make, administer and enforce the IESO Market Rules.

**“TAE Confirmation Notice”** has the meaning ascribed to it in Section 2.14(d).

**“Tariff Adjustment Event”** has the meaning ascribed to it in Section 2.14(b).

**“Tariff Adjustment Notice”** has the meaning ascribed to it in Section 2.14(b).

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

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

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

**“Transaction Party”** means a current, prospective or previous direct or indirect investor in or financier to the Supplier.

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

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

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



“**Upgrade**” means the refurbishment, replacement or addition of equipment or technology in respect of an existing Electricity resource.

[“**Ultimate Controlling Parent**” means, in respect of any reference Person other than a natural person, a Person that controls such reference Person and that is not itself Controlled by any other Person.]

“**WSIA**” means the *Workplace Safety and Insurance Act, 1997* (Ontario).

## 1.2 Exhibits

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

Exhibit A	Facility Description
Exhibit B	Contract Capacity, Fixed Price, and Other Stated Variables
Exhibit C	Form of Irrevocable Standby Letter of Credit
Exhibit D	Form of Company Representative Notice
Exhibit E	[ <i>Intentionally Deleted</i> ]
Exhibit F	Non-Performance Charges
Exhibit G	Form of Secured Lender Consent and Acknowledgement Agreement
Exhibit H	Form of Force Majeure Notice
Exhibit I	Form of Confidentiality Undertaking
Exhibit J	Calculation of Monthly Payment
Exhibit K	Arbitration Procedures Applicable to Section 1.6 and 1.7
Exhibit L	Form of Annual Operating Plan
Exhibit M	[ <i>Intentionally Deleted</i> ]
Exhibit N	Form of Independent Engineer Certificate
Exhibit O	Form of Supplier’s Certificate
Exhibit P	Milestone Dates
Exhibit Q	Form of Quarterly Progress Report
Exhibit R	Form of Outage Report
Exhibit S	[ <i>Intentionally Deleted</i> ]
Exhibit T	Form of AIA Confirmation Certificate

(b) Exhibits D, G, H, I, L, N, O, Q, R and T in the forms attached to this Agreement substantially reflect corresponding forms appearing on the Buyer’s Website as at the date of this Agreement. However, the Supplier acknowledges and agrees that the Buyer may, at any time and from time to time after the date of this Agreement,



acting reasonably, without notice to the Supplier, amend or replace each such form of certificate, notice or report, and post such amended or replacement form on the Buyer's Website, and thereafter such amended or replaced form as it appears on the Buyer's Website shall replace and shall be used by the Supplier or the Buyer, as the case may be, in the stead of the then current form. Accordingly, it is the responsibility of the Supplier to ensure that the latest draft version of the relevant form, as posted on the Buyer's Website, is used.

- (c) If there is more than one version of an Exhibit identified above, the Parties acknowledge that only one version of such Exhibit type shall apply to the Facility and this Agreement and the Parties acknowledge that Exhibit A specifies the specific version of any such Exhibit applicable hereunder.

### **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, supplemented, 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 Supplier is or would be unable to comply with its obligations under this Agreement without incurring material costs, where the Supplier would not reasonably incur such material costs if the Facility were operating in the IESO-Administered Markets without this Agreement being in place, then:

- (i) the Supplier shall notify the Buyer promptly and, in any event, within ten (10) Business Days upon becoming aware of the consequences of such change;
- (ii) the Parties and, at the Buyer's discretion, those Other Suppliers who are required by the Buyer to participate, shall engage in good faith negotiations to amend the affected obligations under this Agreement and the respective agreements of those Other Suppliers on the basis that such amendments shall alter or reduce the applicable obligation only to the extent necessary to eliminate the need to incur such material costs as set out above, where such altered or reduced obligation is as close as possible to the obligation hereunder 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 the Parties 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 K. However, if the Supplier fails to participate in such arbitration, the Supplier acknowledges that it waives its right to participate in such arbitration, which may nevertheless proceed, and the Supplier shall be bound by the award of the Arbitration Panel and the subsequent amendments to this Agreement (if any) made by the Buyer 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 an increase in the Fixed Price or a decrease in any Monthly Imputed Production Factor, unless otherwise agreed by the Parties.

- (c) The terms of this Agreement shall be amended either:
  - (i) by the agreement of the Parties, where no award of an Arbitration Panel has been made pursuant to Section 1.6(b)(iii);
  - (ii) by the agreement of the Parties made pursuant to and to implement an award of the Arbitration Panel made pursuant to Section 1.6(b)(iii); or
  - (iii) by an amendment prepared by the Buyer made pursuant to and to implement an award of the Arbitration Panel made pursuant to Section 1.6(b)(iii), where the Supplier failed to participate in such arbitration, with such agreement or amendment, as the case may be, having effect from and after the date that the change in the IESO Market Rules became effective.

This Section 1.6 shall not apply to the circumstances addressed in Section 1.7.

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

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

- (a) if a provision is considered to be invalid, inapplicable or unenforceable, then the Party considering such provision to be invalid, inapplicable or unenforceable may propose, by notice in writing to the other Party, a replacement provision and the Buyer and the Supplier and, at the Buyer's discretion, those Other Suppliers who are required by the Buyer to participate, shall then engage in good faith negotiations to replace such provision with a valid, enforceable, and applicable provision, the economic effect of which substantially reflects that of the invalid, unenforceable, or inapplicable provision which it replaces;
- (b) if any index or price quotation referred to in this Agreement, ceases to be published, or if the basis therefor is changed materially, then the Buyer and the Supplier shall engage in good faith negotiations to substitute an available replacement index or price quotation that most nearly, of those then publicly available, approximates the intent and purpose of the index or price quotation that has so ceased or changed and this Agreement shall be amended as necessary to accommodate such replacement index or price quotation;
- (c) if the 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 the occurrence of the event in Section 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 to be conducted in accordance with the procedures set out in Exhibit K. However, if the Supplier fails to participate in such arbitration, the Supplier acknowledges that it waives its right to participate in such arbitration, which shall nevertheless proceed, and the Supplier shall be bound by the award of the Arbitration Panel and the subsequent amendments to this Agreement made by the Buyer to implement such award of the Arbitration Panel set out in Section 1.7(d)(iii); and
- (d) the terms of this Agreement shall be amended either:
  - (i) by the agreement of the Parties, where no award of an Arbitration Panel has been made pursuant to Section 1.7(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

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

with such agreement or amendment, as applicable, having effect as of the date of the invalidity, inapplicability or unenforceability, as the case may be.

## **1.8 Entire Agreement**

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

## **1.9 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 (or Parties) to be bound thereby. No waiver of any provision of this Agreement shall constitute a waiver of any other provision nor shall any waiver of any provision of this Agreement constitute a continuing waiver or operate as a waiver of, or estoppel with respect to, any subsequent failure to comply unless otherwise expressly provided.

## **1.10 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.

## **1.11 Preparation of Agreement**

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

## **1.12 Time**

Where the time for performance of an obligation under this Agreement expires on a day which is not a Business Day, the deadline for performance of such obligation shall be the next day that is a Business Day.

## ARTICLE 2 DESIGN AND OPERATION

### 2.1 Design and Construction of the Facility

- (a) The Supplier agrees to design and build the Facility using Good Engineering and Operating Practices and meeting all relevant requirements of the IESO Market Rules, Transmission System Code, Distribution System Code and the Connection Agreement, in each case, as applicable, and all other Laws and Regulations, including any such requirements relating to decommissioning of the Facility or reclamation of the Project Site. The Supplier shall ensure that the Facility is designed, engineered and constructed to operate in accordance with the requirements of this Agreement.
- (b) The Supplier shall at no time after the Contract Date modify, vary, or amend in any material respect any of the features or specifications of the Facility outlined in Exhibit A (a “**Facility Amendment**”) without first notifying the Buyer in writing and obtaining the Buyer’s consent in writing, which consent shall not be unreasonably withheld, provided that it shall not be unreasonable for the Buyer to withhold its consent to any modification, variation or amendment which would, or would be likely to materially adversely affect the ability of the Supplier to comply with its obligations under this Agreement. Any Facility Amendment that has not been consented to by the Buyer (other than in instances where such consent has been unreasonably withheld) shall, if not removed within ten (10) Business Days after such Facility Amendment occurred, constitute a Supplier Event of Default. Notwithstanding the foregoing, the Buyer’s consent to a Facility Amendment that results in an increase or a decrease to the Contract Capacity, the Fixed Price or any Monthly Imputed Production Factor shall be subject to the Buyer’s sole and absolute discretion.
- (c) If the Buyer’s consent in writing has been given in relation to a reduction in the Contract Capacity pursuant to Section 2.1(b), the Contract Capacity shall be deemed to be reduced to the lower amount, effective at the time stated in such notice. If the Buyer’s consent has been given in relation to an increase in the Contract Capacity pursuant to Section 2.1(b) the Contract Capacity shall be increased to the higher amount, effective as of the time stated in such notice, provided that:
  - (i) such increase shall not be effective until the Supplier delivers an IE Certificate confirming the increased amount of the Contract Capacity (if occurring at a later time than the delivery of the IE Certificate required pursuant to Section 2.5(a)); and
  - (ii) the Supplier has delivered to the Buyer an amount of Completion and Performance Security corresponding to the increased amount of the Contract Capacity as calculated in accordance with Section 6.1.

## 2.2 Additional Development and Construction Covenants

- (a) The Supplier agrees that the Facility shall be located in the Province of Ontario. The Supplier agrees that the Facility shall have a Connection Point as set out in Exhibit A and shall affect supply or demand in the IESO-Administered Markets.
- (b) The Supplier agrees to arrange for all Facility connection requirements in accordance with the Connection Agreement to permit the delivery of Electricity to the IESO-Controlled Grid. The Supplier agrees that the responsibility for all costs that are allocated to or are otherwise the responsibility of the Supplier in accordance with the Connection Agreement, the Transmission System Code and the Distribution System Code, as applicable, and as each may be interpreted or administered in accordance with any applicable interpretation bulletins issued by the OEB, shall rest with the Supplier.
- (c) The Supplier shall provide, at its expense, all power system components on the Supplier's side of the Connection Point, including all transformation, switching and auxiliary equipment, such as synchronizing and protection and control equipment, pursuant to Laws and Regulations and any requirements deemed necessary by the System Operator, the Transmitter or the LDC, as applicable from time to time, to protect the safety and security of the IESO-Controlled Grid, the Transmission System, the Distribution System and each of their customers, each as the case may be.
- (d) The Supplier agrees to install protective equipment to protect its own personnel, property, and equipment from variations in frequency and voltage or from temporary delivery of other than three-phase power, whether caused by the Facility, the IESO-Controlled Grid, the Transmission System or the Distribution System.

## 2.3 Milestone Date for Commercial Operation

- (a) The Supplier acknowledges that time is of the essence to the Buyer with respect to attaining Commercial Operation of the Facility by the Milestone Date for Commercial Operation. The Supplier shall use Commercially Reasonable Efforts to achieve COD by the Milestone Date for Commercial Operation and, in any case, COD must be achieved no later than the Longstop Date.
- (b) The Parties agree that if Commercial Operation of the Facility is not achieved by Milestone Date for Commercial Operation, the Supplier shall pay to the Buyer, within ten (10) Business Days after receipt of an invoice from the Buyer, as liquidated damages and not as a penalty, a sum of money equal to the amount of (i) the Liquidated Damages Rate multiplied by (ii) the Contract Capacity multiplied by (iii) each Business Day after the Milestone Date for Commercial Operation until Commercial Operation has been achieved (such amounts, "**Delay Liquidated Damages**"). The Buyer may issue an invoice in respect of Delay Liquidated Damages at any time that Delay Liquidated Damages are owing from the Supplier



to the Buyer, but no more frequently than once per calendar month. If the Supplier fails to pay to the Buyer the amount of the Delay Liquidated Damages within ten (10) Business Days after receipt of an invoice from the Buyer, the Buyer shall be entitled to draw and retain from the Completion and Performance Security the amount of such Delay Liquidated Damages.

- (c) The maximum time period that liquidated damages shall be calculated and payable under Section 2.3(b) shall be five hundred and forty-eight (548) days.
- (d) The Supplier agrees that if the Facility fails to achieve Commercial Operation on or before the Longstop Date, it shall constitute a Supplier Event of Default.

## 2.4 Buyer Information During Design and Construction

Prior to COD, the Supplier shall provide the Buyer with progress reports as follows:

- (a) By the fifteenth (15th) day of each calendar quarter following the Contract Date and continuing until COD, the Supplier shall provide the Buyer with a quarterly progress report in the form of Exhibit Q, describing the status of efforts made by the Supplier to achieve Commercial Operation and the progress of the design and construction work and the status of approvals of any Governmental Authority relating to the Facility. Such quarterly progress reports shall report on the progress of all applicable Reportable Events. At the Buyer's request, the Supplier shall provide an opportunity for the Buyer to meet with appropriate personnel of the Supplier to discuss and assess the contents of any such quarterly progress report. The Supplier acknowledges that the quarterly progress reports and photographs of the Facility may be posted or printed by the Buyer on the Buyer's Website or in publications.
- (b) The Supplier acknowledges that time is of the essence to the Buyer with respect to providing quarterly progress reports pursuant to Section 2.4(a). Where the Supplier fails to satisfy the requirements of Section 2.4(a), the Supplier shall pay to the Buyer, within ten (10) Business Days after receipt of an invoice from the Buyer, as liquidated damages and not as a penalty, a sum of five thousand Dollars (\$5,000) (the "**Late Report Administrative Charge**"). The Late Report Administrative Charge shall not limit other remedies the Buyer may have under this Agreement in respect of ongoing failure to deliver the quarterly progress reports within the time period set out in this Section 2.4. If the Supplier fails to pay to the Buyer the amount of the Late Report Administrative Charge within ten (10) Business Days after receipt of an invoice from the Buyer, the Buyer shall be entitled to draw and retain from the Completion and Performance Security the amount of such Late Report Administrative Charge.
- (c) In addition to the quarterly progress reports it is required to provide pursuant to Section 2.4(a), the Supplier shall also provide the Buyer with notice of any material incident, loss, casualty, event or concern which may occur or arise during the course

of the development, construction or commissioning of the Facility, promptly and, in any event, within ten (10) Business Days following the later of: (i) the Supplier becoming aware of any such incident, loss, casualty, event or concern occurring or arising; and (ii) the Supplier becoming aware of the materiality of same, with such timing in each case based upon the Supplier having acted in accordance with Good Engineering and Operating Practices. Without limiting the generality of the foregoing, if there occurs or arises any incident, event or circumstance which results, or is likely to result, in a delay in the aggregate of thirty (30) days or more in the achievement of Commercial Operation following the Milestone Date for Commercial Operation, including delays arising from events of Force Majeure, the Supplier shall promptly (and, in any event, within ten (10) Business Days of the date that such delay was first reasonably known or should reasonably have been known by the Supplier) notify the Buyer and the Parties shall meet to discuss the Supplier's strategies for eliminating or reducing, to the extent possible and practicable to do so, the impact of such delay on the development, construction and/or commissioning of the Facility.

## 2.5 Requirements for Commercial Operation

- (a) The Facility will be deemed to have achieved “**Commercial Operation**” pursuant to this Agreement at the point in time when, as subsequently confirmed by the Buyer in a written notice to the Supplier as described in Section 2.5(b), the Buyer has received:
  - (i) directly from an Independent Engineer, an IE Certificate, in the form set out in Exhibit N, stating that:
    - (A) the Facility has been completed in all material respects, excepting punch list items that do not materially and adversely affect the ability of the Facility to operate in accordance with this Agreement;
    - (B) the Connection Point of the Facility is at the location specified in Exhibit A;
    - (C) the Facility has been constructed, connected, commissioned and synchronized to the IESO-Controlled Grid or a Distribution System, such that 100% of the Contract Capacity is available to generate and Deliver Electricity (as applicable) in accordance with the requirements of all applicable Laws and Regulations;
    - (D) the Facility or the Supplier (as applicable) has all permits and approvals issued by Governmental Authorities which are required to construct, operate and maintain the Facility in accordance with Laws and Regulations, including the final Registration Approval Notification (RAN) issued by the System Operator; and



(E) the Facility has met the **[Regulation Services Readiness Requirements]**;

- (ii) a Supplier's Certificate, together with such documentation required to be provided under such form to the Buyer;
  - (iii) an updated Metering Plan that has been approved by the Buyer pursuant to Section 2.7;
  - (iv) a single line electrical drawing that identifies the as-built Connection Point sealed by a professional engineer licensed in Ontario, clearly showing area transmission and distribution facilities, including the transformer station that is electrically closest to the Facility;
  - (v) a copy of the final Registration Approval Notification (RAN) issued by the System Operator; and
  - (vi) a copy of the generation license issued by OEB.
- (b) The Buyer shall notify the Supplier in writing within ten (10) Business Days following receipt of the IE Certificate and the Supplier's Certificate as to whether the IE Certificate, Supplier's Certificate, and the materials provided by the Supplier pursuant to Section 2.5(a) are acceptable to the Buyer, acting reasonably, in which case the Buyer will confirm the achievement of Commercial Operation effective as of the date of the Supplier's completed submission. If the Buyer determines that any such materials are not acceptable to the Buyer, acting reasonably, the Buyer shall at the time of such notification provide to the Supplier reasonable particulars in respect of the deficiencies.

## 2.6 Operational Covenants

- (a) From the COD until the expiry of the Term, the Supplier shall operate and maintain the Facility in accordance with Good Engineering and Operating Practices and meeting all applicable requirements of the IESO Market Rules, the Transmission System Code, the Distribution System Code and any Connection Agreements.
- (b) From and after the beginning of the hour ending 01:00 hours (EST) of the Commercial Operation Date, the Monthly Payments shall begin to accrue and be payable in accordance with Section 4.1 and Article 5. For certainty, the Parties acknowledge that the Buyer is not purchasing from the Supplier, nor is the Supplier selling to the Buyer, any Electricity or Related Products hereunder.
- (c) The Supplier agrees to assume all risk, liability and obligation and to indemnify, defend and hold harmless the Indemnitees in respect of all actions, causes of action, suits, proceedings, claims, demands, losses, damages, penalties, fines, costs, obligations and liabilities arising out of a discharge of any contaminant into the natural environment, at or related to, the Facility, or arising out of any requirement

under Laws and Regulations for the decommissioning of the Facility or reclamation of the Project Site, 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 any such discharge shall have been due to the negligence or willful misconduct of the Indemnitees.

- (d) A Facility which is also a load facility under the IESO Market Rules or a consumer under the Distribution System Code, as applicable, shall be solely responsible for all charges in relation to Electricity consumed by it in order to operate the Facility in accordance with this Agreement.
- (e) Supplier shall use Commercially Reasonable Efforts to procure and maintain sufficient fuel supply (as applicable) to be utilized by the Facility necessary for meeting its operations hereunder.

## 2.7 Metering and Dispatch Capabilities

- (a) The Supplier shall have a Metering Plan approved by the Buyer and shall deliver a copy to the Buyer for its approval no later than ninety (90) days prior to the earlier of the Milestone Date for Commercial Operation and the anticipated Commercial Operation Date. The Buyer shall review the Metering Plan submitted by the Supplier and either approve the Metering Plan or provide the Supplier with its comments within forty-five (45) days after receipt. The Buyer shall, when considering whether to approve the Metering Plan, have regard to those Electricity matters in the Metering Plan that have received System Operator approval. If, within fifteen (15) days after the Buyer has delivered its comments on the Metering Plan to the Supplier, the Parties are not able to agree on the final terms of the Metering Plan, the Parties shall submit the matter for determination by an Independent Engineer agreed upon by the Parties, acting reasonably, whose determination on the terms of the Metering Plan shall be final and binding on the Parties (and from whose determination there shall be no recourse to the dispute resolution provisions of this Agreement).
- (b) The Supplier covenants and agrees to provide, at its expense, individual meters and ancillary metering and monitoring equipment for the Facility as required by the IESO Market Rules and sufficient to calculate the output of Electricity from the Facility net of any Station Service Loads and inclusive of any loss adjustment factors. The Buyer may obtain access internally to the revenue-quality interval meter data of the Facility provided to the System Operator under the IESO Market Rules to calculate the output of Electricity from the Facility net of any Station Service Loads and inclusive of any loss adjustment factors, or, if required, the Supplier shall provide the Buyer, for the purposes of this Agreement, the right to view, download and request such revenue-quality interval meter data of the Facility by establishing an Associated Relationship with the Buyer at the Delivery Point of

the Facility within the Buyer's "Meter Data Management" or "MDM" or "Meter Data Distribution" or "MDD" systems or their successors, at no cost to the Buyer.

- (c) The Supplier will provide the Buyer with a commissioning report for all Revenue Meter(s) referenced in the Metering Plan prior to any use of metering data for the purposes contemplated by this Agreement. The Buyer retains the right to audit, at any time during the Term, on reasonable notice to the Supplier and during normal business hours, the metering equipment to confirm the accuracy of the Metering Plan and the meter data of the Facility to confirm the accuracy of such data. The Supplier shall not make any material changes to the Metering Plan following approval by the Buyer or determination by the Independent Engineer contemplated in Section 2.7(a) (as applicable) without the prior written approval of the Buyer, which will not be unreasonably withheld or delayed. The Supplier shall promptly, and, in any event, within ten (10) Business Days after any change to the metering installation reflected in the Metering Plan occurs, provide an update to the Metering Plan for approval by the Buyer.

## 2.8 Insurance Covenants

- (a) The Supplier shall put in effect and maintain, or cause its contractors, where appropriate, to maintain, from the commencement of the construction of the Facility to the expiry of the Term, at its own cost and expense, all the necessary and appropriate insurance that a prudent Person in the business of developing, constructing, financing and operating the Facility would maintain including policies for "all-risk" property insurance covering not less than the full replacement value of the Facility, "all-risk" equipment breakdown insurance, "wrap-up" liability insurance and "commercial general liability" insurance with a rider to extend coverage to include Environmental Incidents.
- (b) Any policies described in this Section 2.8 must (i) for any property insurance, contain a waiver of subrogation in favour of the Indemnitees; and (ii) for any liability insurance, include the Indemnitees as additional insureds with respect to liability arising in the course of performance of the obligations under, or otherwise in connection with, this Agreement, in which case the policy shall be non-contributing and primary with respect to coverage in favour of the Indemnitees. The limit for liability policies described in this Section 2.8 shall be for an amount appropriate for the size and scope of the Facility.
- (c) Within ten (10) Business Days of any request therefore by the Buyer, the Supplier shall provide the Buyer, via electronic submission, with an electronic certificate of each insurance policy required in this Section 2.8 which confirms the relevant coverage, including endorsements, and that is issued in the name of, or otherwise confirms coverage of, the Supplier and the Facility, as applicable.
- (d) If the Supplier is subject to the WSIA it shall submit a valid clearance certificate of WSIA coverage to the Buyer on or prior to the commencement of construction of

the Facility. In addition, the Supplier shall, from time to time at the request of the Buyer, provide additional WSIA clearance certificates. The Supplier agrees to pay when due, and to ensure that each of its contractors and subcontractors pays when due, all amounts required to be paid by it and its contractors and subcontractors, from time to time from the commencement of construction of the Facility, under the WSIA, failing which the Buyer shall have the right, in addition to and not in substitution for any other right it may have pursuant to this Agreement or otherwise at law or in equity, to pay to the Workplace Safety and Insurance Board any amount due pursuant to the WSIA, and unpaid by the Supplier or its contractors and subcontractors and to deduct such amount from any amount due and owing from time to time to the Supplier pursuant to this Agreement together with all costs incurred by the Buyer in connection therewith.

## **2.9 Compliance with Laws and Regulations**

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

## **2.10 Environmental Attributes**

- (a) Until the twentieth (20th) anniversary of the Commercial Operation Date, the Buyer shall have no interest hereunder in any Environmental Attributes arising from the operation of the Facility or, except in respect of any Future Capacity Related Products, other products or services associated with the generation of Electricity by the Facility. In the event the Supplier transfers or receives compensation for Environmental Attributes arising from the operation of the Facility from the twentieth (20th) anniversary of the COD until the end of the Term, the Supplier

shall provide written notice to the Buyer within thirty (30) days of transferring such Environmental Attributes or receiving any such proceeds and, together with such notice, the Supplier shall make a payment to the Buyer equal to fifty percent (50%) of any such proceeds (excluding any HST received by the Supplier in respect of such proceeds). For clarity, no payment from the Supplier to the Buyer shall be required in relation to the remaining fifty percent (50%) of any such proceeds.

- (b) The Supplier shall, at its sole expense, be responsible for complying with any Laws and Regulations relating to environmental matters, including those that may require the use or procurement of Environmental Attributes, including any costs associated with obtaining, qualifying, registering, transferring or retiring Environmental Attributes for the operation of the Facility or otherwise.

## 2.11 Future Capacity Related Products

- (a) The Supplier will provide the Buyer with prior written notice of the development by the Supplier of any Future Capacity Related Products, from time to time.
- (b) The Supplier shall not, without the Buyer's prior written consent, which consent shall be subject to the Buyer's sole and absolute discretion, develop, register or monetize any Future Capacity Related Products during the Term.

## 2.12 AIA Components Two and Three Requirement Confirmation [NTD: to be confirmed]

- (a) Where the Project Site is located in whole or in part on lands that are within any Prime Agricultural Areas, as indicated in Exhibit B, the Supplier shall, by no later than eighteen (18) month anniversary of the Contract Date, provide the Buyer with a written notice in the form set out in Exhibit T containing confirmation from an authorized representative of any Local Municipality that has jurisdiction over land use planning in respect of all or any portion of the Project Site confirming that the Supplier has completed the AIA Components Two and Three Requirement with respect to the Facility and stating that such AIA Components Two and Three Requirement is satisfactory to the Local Municipality.
- (b) If the Supplier fails to meet the requirements set out in Section 2.12(a), such failure shall constitute a Supplier Event of Default. If the Buyer elects to terminate this Agreement as a result of a Supplier Event of Default arising under this Section 2.12(b), this Agreement shall be terminated without any costs or payments of any kind to either Party and all Completion and Performance Security shall be returned to the Supplier within twenty (20) Business Days of the Buyer's written notice of termination.

## 2.13 Additional Sources of Government Support

- (a) In the event the Supplier is awarded any direct financial funding pursuant to any Future Government Support Program (any such funds, an "**Additional Source of Funding**"), the Supplier shall provide written notice to the Buyer within thirty (30)

days of receiving any such funding, and together with such notice, the Supplier shall make a payment to the Buyer equal to fifty percent (50%) multiplied by the total amount of the Additional Source of Funding. For clarity, no payment from the Supplier to the Buyer shall be required in relation to the remaining fifty percent (50%) of any Additional Source of Funding. Notwithstanding the foregoing, the treatment of any such Additional Source of Funding under this Agreement shall in no event contravene the requirements of the relevant governmental program and in the case of any such possible contravention, the Supplier shall not participate in the applicable Future Government Support Program without the Buyer's prior written consent, which may be granted in the Buyer's sole and absolute discretion.

## 2.14 Adjustment for Post-Proposal Applicable Tariffs

- (a) If any Post-Proposal Applicable Tariffs are introduced, the Supplier shall use Commercially Reasonable Efforts to avoid or mitigate the cost of any such Post-Proposal Applicable Tariffs, whether via alternate supply chains or otherwise.
- (b) If, notwithstanding Section 2.14(a), the Supplier's reasonably expected total capital cost for the development and construction of the Facility, based on bona fide third-party pricing documentation and calculated in accordance with Applicable Accounting Principles (the "**Capital Cost**") increases by more than ten percent (10%) as a direct result of the Supplier or its direct or indirect contractor or subcontractor being required to pay any Post-Proposal Applicable Tariffs (such circumstances, a "**Tariff Adjustment Event**"), the Supplier may submit a notice thereof to the Buyer (a "**Tariff Adjustment Notice**"). The Supplier may deliver a Tariff Adjustment Notice no earlier than six (6) months after the Contract Date and no later than six (6) months prior to the Milestone Date for Commercial Operation. If a Tariff Adjustment Notice delivered by the Supplier pursuant to prior sentence is accepted by the Buyer as set out in this Section 2.14 and any further Post-Proposal Applicable Tariffs are introduced following the delivery of such Tariff Adjustment Notice, the Supplier may deliver one additional (second) Tariff Adjustment Notice no later than six (6) months prior to the Milestone Date for Commercial Operation.
- (c) A Tariff Adjustment Notice shall contain (i) reasonable supporting details describing such Post-Proposal Applicable Tariffs, the Supplier's Commercially Reasonable Efforts to avoid or mitigate the impact of such Post-Proposal Applicable Tariffs and documentation confirming that such Post-Proposal Applicable Tariffs increases the Supplier's Capital Cost by more than ten percent (10%), each as determined by the Buyer, acting reasonably and (ii) a proposed revised Fixed Price that the Supplier requires solely in order to address the impact of such Post-Proposal Applicable Tariffs.
- (d) Upon the Buyer's receipt of a Tariff Adjustment Notice, the Buyer shall respond by notice to the Supplier within fifty (50) Business Days of its receipt of the Tariff Adjustment Notice, identifying any supplemental information it may require to



verify, acting reasonably, that a Tariff Adjustment Event has occurred, or otherwise indicating whether it accepts or rejects the proposed revised Fixed Price (such response, a “**TAE Confirmation Notice**”). Where the TAE Confirmation Notice indicates that the Buyer requires further supporting information determine whether a Tariff Adjustment Event has occurred, acting reasonably, the Supplier shall provide such materials to the Buyer by no later than ten (10) Business Days after its receipt of the TAE Confirmation Notice, failing which, the Buyer’s TAE Confirmation Notice shall be deemed to have rejected the proposed revised Fixed Price. Where there is any dispute as to whether a Tariff Adjustment Event has occurred, such dispute shall be submitted to mandatory and binding arbitration in accordance with Section 16.2 without first having to comply with Section 16.1. Where the Supplier has provided supplemental supporting details in response to the Buyer’s TAE Confirmation Notice enabling the Buyer to verify, acting reasonably, that a Tariff Adjustment Event has occurred, the Buyer shall respond by notice to the Supplier within twenty (20) Business Days to update its TAE Confirmation Notice indicating whether it accepts or rejects the proposed revised Fixed Price contained in the Tariff Adjustment Notice.

- (e) If the Buyer accepts the proposed revised Fixed Price contained in the Tariff Adjustment Notice, as indicated in the TAE Confirmation Notice, this Agreement shall automatically be amended by replacing the amount of the Fixed Price set out in Exhibit B with the revised amount set out in the Supplier’s Tariff Adjustment Notice. If the Buyer, in its sole and absolute discretion, rejects the proposed revised Fixed Price contained in the Tariff Adjustment Notice, as indicated in the TAE Confirmation Notice, this Agreement shall be automatically terminated without any costs or payments of any kind to either Party and all Completion and Performance Security shall be returned to the Supplier within twenty (20) Business Days of the Buyer’s written notice of termination in the TAE Confirmation Notice. **[NTD: Tariff risks and related policy will be continuously monitored by IESO until the RFP Effective Date.]**

### ARTICLE 3 PERFORMANCE OBLIGATIONS

#### 3.1 Minimum Performance Factor

Throughout the Term, the Supplier must offer Electricity output from the Facility into the IESO-Administered Markets from the Contract Capacity that is not subject to an Outage in accordance with Good Engineering and Operating Practices. Without limiting the generality of the foregoing, starting after the end of the third Contract Year, where the Actual Performance Factor is less than eighty percent (80%) of the Annual Average Imputed Production Factor (the “**Minimum Performance Factor**”), a Non-Performance Charge shall be assessed in accordance with Exhibit F and charged to the Supplier for the applicable Settlement Month as liquidated damages and not as a penalty, being a genuine pre-estimate of the damages suffered by the Buyer as a result of such shortfall in performance. Except for the Supplier Event of Default set out in Section 10.1(j), and subject to Supplier’s compliance with the other requirements set out in this Agreement (including



the obligation to operate and maintain the Facility in accordance with Good Engineering and Operating Practices), the Non-Performance Charge shall be the sole and exclusive remedy for the Supplier's failure to satisfy the Minimum Performance Factor. **[NTD: The treatment of low production periods outside of the Supplier's control is under consideration by IESO in light of the unavailability of a forecast for output from hydroelectric facilities.]**

## ARTICLE 4 CALCULATION OF MONTHLY PAYMENT

### 4.1 Calculation of Monthly Payment

The “**Monthly Payment**” shall be an amount, based on the imputed operating and revenue model calculated in accordance with Exhibit J. If the Monthly Payment is a positive amount, it shall be payable from the Buyer to the Supplier. If the Monthly Payment is a negative amount, the absolute value of the Monthly Payment shall be payable from the Supplier to the Buyer.

### 4.2 Supplier's Responsibility for Taxes

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

### 4.3 Buyer's Responsibility for Taxes

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

### 4.4 Non-Residency

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

Buyer receives a refund, rebate or credit on account of such Taxes, then the Buyer shall promptly remit such refund, rebate or credit amount to the Supplier.

## ARTICLE 5 STATEMENTS AND PAYMENTS

### 5.1 Meter and Other Data

The Supplier agrees to provide to the Buyer access to the meters in the Metering Plan to accommodate remote interrogation of the metered data on a daily basis. The Supplier agrees to provide to the Buyer, at all times, access to any other information relating to the Facility that the Supplier has provided or received pursuant to the IESO Market Rules or that the Supplier has provided to or received from the LDC, as applicable, from time to time. The Buyer agrees to provide to the Supplier, upon the Supplier's request, any documentation with respect to the IESO-Administered Markets and any other information that the Buyer will be utilizing in preparing any Statement that is not otherwise available directly to the Supplier. Without limiting the generality of the foregoing, the Supplier shall provide to the Buyer promptly upon request all offer quantities data for the last lamination for all hours (i.e. the quantity information of "p-q pairs") provided to the System Operator evidencing the Supplier's compliance with the Minimum Performance Factor from time to time. Upon a Party becoming aware of any errors or omissions in any data or information provided in accordance with this Section 5.1, such Party shall notify the other Party thereof on a timely basis.

### 5.2 Statements

The Buyer shall prepare and deliver a settlement statement (the "**Statement**") to the Supplier, within twenty (20) Business Days after the end of each calendar month in the Term that is the subject of the Statement (the "**Settlement Month**"), setting out the basis for the Monthly Payment with respect to the Settlement Month, as well as the basis for any other payments owing under this Agreement by either Party to the other in the Settlement Month. A Statement may be delivered by the Buyer to the Supplier by electronic means and shall include the reference number assigned to this Agreement by the Buyer and a description of the components of the Monthly Payment and other payments, as described in this Agreement, including Section 4.1 as applicable, owing to the Supplier for the Settlement Month.

### 5.3 Payment

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

## 5.4 Interest

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

## 5.5 Payment Account Information

**[Note to Finalization: To be updated prior to execution.]**

### (a) Account for Payments to Supplier:

Account Name: [●]  
Swift Code: [●]  
Bank Number: [●]  
Transit: [●]  
Account: [●]

Supplier's HST Registration Number: [●]

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

### (b) Account for payments to Buyer:

Account Number: [●]  
Transit Number: [●]

Buyer's HST Registration Number: [●]

Either Party may change its account information from time to time by written notice to the other in accordance with Section 15.6.

## 5.6 Adjustment to Statement

- (a) Each Statement shall be subject to adjustment for errors in arithmetic, computation, or other errors, raised by a Party during the period of one (1) year following the end of the calendar year in which such Statement was issued. If there are no complaints raised, or if any complaints raised in the time period have been resolved, such Statement shall be final and subject to no further adjustment after the expiration of such period.
- (b) Notwithstanding the foregoing, the determination by the System Operator of any information shall be final and binding on the Parties in accordance with the IESO

Market Rules, and without limiting the generality of the foregoing, if a Statement contains an error in the data or information issued by the System Operator which the System Operator has requested be corrected, then the one (1) year limit set forth in Section 5.6(a) shall not apply to the correction of such error or the Buyer's ability to readjust the Statement.

- (c) Subject to Section 5.7, any adjustment to a Statement made pursuant to this Section 5.6 shall be made in the next subsequent Statement.

## 5.7 Disputed Statement

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

## 5.8 Statements and Payment Records

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

# ARTICLE 6 CREDIT AND SECURITY REQUIREMENTS

## 6.1 Completion and Performance Security

- (a) The Parties acknowledge that the Supplier has, as of the Contract Date, provided to the Buyer security in the form described in Section 6.2(a) for the performance of the Supplier's obligations under this Agreement (the "**Completion and Performance Security**") in an amount equal to \$[20,000/MW of Maximum Contract Capacity], provided that in no event shall the amount of the Completion and Performance Security be less than three hundred thousand Dollars (\$300,000) or exceed fifteen million Dollars (\$15,000,000). *[Note to Finalization: This is based on the Proposal Security amount set out in the LLT(e) RFP. To be updated prior to execution.]*

- (b) From and after the Contract Date and until the end of the Term, the Supplier shall maintain the Completion and Performance Security in the amount and for the period specified below:
- (i) from the Contract Date until the Security Step-Up Date, in an amount specified in Section 6.1(a);
  - (ii) from the Security Step-Up Date until COD, in an amount equal to **[\$35,000/MW of Maximum Contract Capacity]**; and
  - (iii) from COD until the end of the Term, in an amount equal to \$20,000/MW of Maximum Contract Capacity,
- provided that, in no event, shall the amount of the Completion and Performance Security be less than three hundred thousand Dollars (\$300,000) or exceed fifteen million Dollars (\$15,000,000).
- (c) Notwithstanding any other provision of this Agreement, no delay, including a delay resulting from an event of Force Majeure, shall extend the date by which any component of the Completion and Performance Security is required to be provided by the Supplier.
- (d) In the event that the Buyer, in accordance with this Agreement, has recovered monies that were due to it using all or part of the Completion and Performance Security, the Supplier shall forthwith provide replacement security to cover an amount equal to that recovered or paid out of the Completion and Performance Security.

## 6.2 Composition of Security

- (a) The Completion and Performance Security shall be in the form of a Letter of Credit (or multiple Letters of Credit), for the full amount of the Completion and Performance Security.
- (b) A Letter of Credit delivered hereunder shall be subject to the following provisions:
- (i) The Supplier shall (i) renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit, (ii) if the financial institution that issued an outstanding Letter of Credit has indicated its intent not to renew such Letter of Credit, provide a substitute Letter of Credit or other equivalent form of security satisfactory to the Buyer at least ten (10) Business Days prior to the expiration of the outstanding Letter of Credit, and (iii) if a financial institution issuing a Letter of Credit fails to honour the Buyer's properly documented request to draw on an outstanding Letter of Credit (other than a failure to honour as a result of a request to draw that does not conform to the requirements of such Letter of Credit), provide for the benefit of the Buyer (A) a substitute Letter

of Credit that is issued by another financial institution, or (B) other security satisfactory to the Buyer in an amount equal to such outstanding Letter of Credit, in either case within five (5) Business Days after the Supplier receives notice of such refusal.

- (ii) A Letter of Credit shall provide that the Buyer may draw upon the Letter of Credit in an amount (up to the face amount or part thereof remaining available to be drawn thereunder for which the Letter of Credit has been issued) that is equal to all amounts that are due and owing from the Supplier but that have not been paid to the Buyer within the time allowed for such payments under this Agreement (including any related notice or grace period or both). A Letter of Credit shall provide that a drawing may be made on the Letter of Credit upon submission to the financial institution issuing the Letter of Credit of one or more certificates specifying the amounts due and owing to the Buyer in accordance with the specific requirements of the Letter of Credit. The location where the drawing may be made must be Toronto, Ontario.
- (iii) If the Supplier shall fail to renew, substitute, or sufficiently increase the amount of an outstanding Letter of Credit (as the case may be), or establish one or more additional Letters of Credit or other equivalent form of security satisfactory to the Buyer when required hereunder, then without limiting other remedies the Buyer may have under this Agreement, the Buyer (i) may draw on the undrawn portion of any outstanding Letter of Credit and retain for its own account, as liquidated damages and not as a penalty, the amount equal to one (1%) percent of the face value of such outstanding Letter of Credit and/or (ii) prior to the expiry of such Letter of Credit, may draw on the entire, undrawn portion of any outstanding Letter of Credit, upon submission to the financial institution issuing such Letter of Credit of a certificate specifying the entire amount of the Letter of Credit is owing to the Buyer in accordance with the specific requirements of the Letter of Credit. Any amount then due and owing to the Buyer shall be received by the Buyer as liquidated damages and not as a penalty. If the amounts then due and owing are less than the amount drawn under such Letter of Credit, then such excess amount shall be held as Completion and Performance Security. The Supplier shall remain liable for any amounts due and owing to the Buyer and remaining unpaid after the application of the amounts so drawn by the Buyer. If the Supplier subsequently delivers a Letter of Credit or other security or other collateral permitted pursuant hereto, in each case satisfactory to the Buyer in its sole and absolute discretion as to form, substance and amount, then upon acceptance by the Buyer thereof, the Buyer shall remit to the Supplier all amounts held by the Buyer as Completion and Performance Security pursuant to this Section 6.2(b)(iii).

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- (c) The costs and expenses of establishing, renewing, substituting, cancelling, increasing and reducing the amount of (as the case may be) one or more Letters of Credit shall be borne by the Supplier.
- (d) The Buyer shall return a Letter of Credit held by the Buyer to the Supplier, if the Supplier is substituting a Letter of Credit of a greater or lesser amount pursuant to Section 6.2(b)(i), within ten (10) Business Days from the Buyer's receipt of such substituted Letter of Credit.

## ARTICLE 7 REPRESENTATIONS AND WARRANTIES

### 7.1 Representations and Warranties of the Supplier

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

- (a) The Supplier is a [●] [formed/incorporated] under the laws of [●], is registered or otherwise qualified to carry on business in the Province of Ontario and has the requisite power to enter into this Agreement and to perform its obligations hereunder. **[Note to Finalization: To be updated prior to execution.]**
- (b) This Agreement has been duly authorized, executed, and delivered by the Supplier and is a valid and binding obligation of the Supplier enforceable in accordance with its terms except as such enforcement may be limited by bankruptcy, insolvency and other laws affecting the rights of creditors generally and except that equitable remedies may only be granted in the discretion of a court of competent jurisdiction.
- (c) The execution and delivery of this Agreement by the Supplier and the consummation of the transactions contemplated by this Agreement will not result in the breach or violation of any of the provisions of, or constitute a default under, or conflict with or cause the termination, cancellation or acceleration of any material obligation of the Supplier under:
  - (i) any contract or obligation to which the Supplier is a party or by which it or its assets may be bound, except for such defaults or conflicts as to which requisite waivers or consents have been obtained;
  - (ii) the articles, by-laws or other constating documents, or resolutions of the directors or shareholders of the Supplier;
  - (iii) any judgment, decree, order or award of any Governmental Authority or arbitrator;
  - (iv) any licence, permit, approval, consent or authorization held by the Supplier; or



(v) any Laws and Regulations,

that could have a Material Adverse Effect on the Supplier.

- (d) There are no bankruptcy, insolvency, reorganization, receivership, seizure, realization, arrangement or other similar proceedings pending against or being contemplated by the Supplier or, to the knowledge of the Supplier, threatened against the Supplier.
- (e) There is no proceeding under any Insolvency Legislation pending against or being contemplated by the Supplier or, to the knowledge of the Supplier, threatened against the Supplier or any of its property, nor has the Supplier 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 Supplier to make any filing, declaration or registration with, give any notice to or obtain any licence, permit, certificate, registration, authorization, consent or approval of, any Governmental Authority as a condition to entering into this Agreement have been satisfied.
- (g) The Supplier is not a non-resident of Canada for the purposes of the ITA, unless it has notified the Buyer of such non-resident status as per Section 4.4.
- (h) The Supplier is in compliance with all Laws and Regulations, other than acts of non-compliance which, individually or in the aggregate, would not have a Material Adverse Effect on the Supplier or on its obligations under this Agreement.
- (i) Following COD, the Supplier will be the owner of the Facility.
- (j) The Facility is not subject to any other procurement contract with the IESO nor to any other physical or contractual arrangement that conflicts with the Supplier's ability to satisfy the Minimum Performance Factor hereunder.
- (k) Following COD, the Facility will be capable of Delivering Electricity from the Contract Capacity while operating in accordance with Good Engineering and Operating Practices, under normal operating conditions.
- (l) The statements and information contained in the Proposal in respect of the Facility are true and correct in all material respects, except to the extent consented to by the Buyer in a Facility Amendment or to the extent alteration of the Facility is otherwise permitted hereunder, and the statements and information contained in the Proposal in respect of the Supplier were true and correct in all material respects as of the Proposal Submission Deadline.
- (m) There are no actions, suits, proceedings, judgments, rulings or orders by or before any Governmental Authority or arbitrator, or, to the knowledge of the Supplier,

threatened against the Supplier that could have a Material Adverse Effect on the Supplier.

- (n) The Facility is not the subject of a Connection Impact Assessment submitted by or on behalf of the Supplier or any of its Affiliates as of the Contract Date.

In addition, the Supplier shall, upon delivery of each of the quarterly progress reports required to be provided to the Buyer pursuant to Section 2.4(a), represent and warrant in writing that each of the foregoing statements set out in Sections 7.1(a) to 7.1(m) inclusive continues to be true or, if any of such statements are no longer true, then the Supplier shall provide to the Buyer a qualified representation and warranty with respect to such statement. Such qualified representation and warranty provided by the Supplier to the Buyer shall be subject, however, to the rights of the Buyer in Section 10.1(d) to require the Supplier to cure or remove any such qualification with respect to such statement.

## **7.2 Representations and Warranties of the Buyer**

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

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

(iv) any licence, permit, approval, consent or authorization held by the Buyer;  
or

(v) any Laws and Regulations,

that could have a Material Adverse Effect on the Buyer.

- (d) There is no proceeding under any Insolvency Legislation pending against or being contemplated by the Buyer or, to the knowledge of the Buyer, threatened against the Buyer or any of its property, nor has the Buyer 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 Buyer, threatened against the Buyer, that could have a Material Adverse Effect on the Buyer.
- (f) All requirements for the Buyer to make any declaration, filing or registration with, give any notice to or obtain any licence, permit, certificate, registration, authorization, consent or approval of, any Governmental Authority as a condition to entering into this Agreement have been satisfied.
- (g) The Buyer 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 Buyer or on its obligations under this Agreement.

## **ARTICLE 8**

### **CONFIDENTIALITY AND FIPPA**

#### **8.1 Confidential Information**

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

- (a) The Receiving Party may disclose Confidential Information to its Representatives who need to know Confidential Information for the purpose of assisting the Receiving Party in complying with its obligations under this Agreement. On each copy made by the Receiving Party, the Receiving Party must reproduce all notices which appear on the original. The Receiving Party shall inform its Representatives of the confidentiality of Confidential Information and shall be responsible for any breach of this Article 8 by any of its Representatives.
- (b) If the Receiving Party or any of its Representatives are requested or required (by oral question, interrogatories, requests for information or documents, court order, civil investigative demand, or similar process) to disclose any Confidential

Information in connection with litigation or any regulatory proceeding or investigation, or pursuant to any Laws and Regulations, order, regulation or ruling, the Receiving Party shall promptly notify the Disclosing Party. Unless the Disclosing Party obtains a protective order, the Receiving Party and its Representatives may disclose such portion of the Confidential Information to the Party seeking disclosure as is required by law or regulation in accordance with Section 8.2.

- (c) Where the Supplier is the Receiving Party, the Supplier may disclose Confidential Information to any Secured Lender or prospective lender or investor and its advisors, to the extent necessary, for securing financing for the Facility, provided that any such Secured Lender or prospective lender or investor has been informed of the Supplier's confidentiality obligations hereunder and such Secured Lender or prospective lender or investor has completed and executed a confidentiality undertaking (the “**Confidentiality Undertaking**”) in the form referenced as Exhibit I, covenanting in favour of the Buyer to hold such Confidential Information confidential on terms substantially similar to this Article 8.
- (d) Notwithstanding the foregoing, the Supplier consents to the disclosure of: (i) its name and contact particulars (including its address for service and the name of its Company Representative) by the Buyer to all Other Suppliers for the purposes of Sections 1.6 and 1.7; (ii) any information the Buyer or the System Operator is required or entitled to publish under the LLT(e) RFP or the IESO Market Rules; and (iii) this Agreement in its entirety, except for any Mutually Confidential Information and the Supplier's account information in Section 5.5.

## 8.2 Notice Preceding Compelled Disclosure

If the Receiving Party or any of its Representatives are requested or required to disclose any Confidential Information, then, to the extent permitted by Laws and Regulations and, except in circumstances in which such Confidential Information is disclosed by a Transaction Party in connection with reviews or audits by internal auditors or Governmental Authorities that regulate the activities of such Transaction Party, in each case carried out in accordance with Laws and Regulations, 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 Laws and Regulations only to such Person or Persons to which the Receiving Party is legally compelled to disclose and, in connection with such compelled disclosure, the Receiving Party and its Representatives shall provide notice to each such recipient (in co-operation with legal counsel for the Disclosing Party) that such Confidential Information is confidential and subject to non-disclosure on terms and conditions equal to those contained in this Agreement and, if possible, shall obtain each recipient's written agreement to receive and use such Confidential Information subject to those terms and conditions.

### 8.3 Return of Information

Upon written request by the Disclosing Party, Confidential Information provided by the Disclosing Party in printed paper format or electronic format will be returned to the Disclosing Party and Confidential Information transmitted by the Disclosing Party in electronic format will be deleted from the emails and directories of the Receiving Party's and its Representatives' computers; provided, however, any Confidential Information (i) found in drafts, notes, studies and other documents prepared by or for the Receiving Party or its Representatives, (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 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 Buyer is subject to FIPPA and that FIPPA applies to and governs all Confidential Information in the custody or control of the Buyer ("**FIPPA Records**") and may, subject to FIPPA, require the disclosure of such FIPPA Records to third parties. The Supplier agrees to provide a copy of any FIPPA Records that it previously provided to the Buyer if the Supplier continues to possess such FIPPA Records in a deliverable form at the time of the Buyer's request. If the Supplier does possess such FIPPA Records in a deliverable form, it shall provide the same within a reasonable time after being directed to do so by the Buyer. 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 Term.

- (b) The “**Term**” means that period of time commencing at the beginning of the hour ending 01:00 hours (EST) on the Commercial Operation Date of the Facility and ending at 24:00 hours (EST) on the date that is forty (40) years following the Commercial Operation Date of the Facility (the “**Expiry Date**”), subject to an earlier termination in accordance with the provisions hereof.

## ARTICLE 10 TERMINATION AND DEFAULT

### 10.1 Events of Default by the Supplier

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

- (a) The Supplier fails to make any payment when due or deliver and/or maintain the Completion and Performance Security as required under this Agreement, if such failure is not remedied within ten (10) Business Days after written notice of such failure from the Buyer.
- (b) The Supplier fails to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Supplier Event of Default) if such failure is not remedied within fifteen (15) Business Days after written notice of such failure from the Buyer, provided that such cure period shall be extended by a further fifteen (15) Business Days if the Supplier is diligently remediating such failure and such failure is capable of being cured during such extended cure period.
- (c) The Supplier fails or ceases to hold a valid licence, permit, certificate, registration, authorization, consent or approval issued by a Governmental Authority where such failure or cessation results in, or could be reasonably expected to result in, a Material Adverse Effect on the Supplier and is not remedied within thirty (30) Business Days after receipt by the Supplier of written notice of such failure or cessation from the Buyer, provided that such cure period shall be extended by a further thirty (30) Business Days if the Supplier is diligently remediating such failure or cessation and such failure or cessation is capable of being corrected during such extended cure period.
- (d) Any representation made by the Supplier in this Agreement is not true or correct in any material respect when made and is not made true or correct in all material respects within thirty (30) Business Days after receipt by the Supplier of written notice of such fact from the Buyer, provided that such cure period (i) shall be extended for a further period of thirty (30) Business Days and (ii) may be extended by such further period of time as the Buyer in its sole and absolute discretion determines is reasonable, if, in each case, the Supplier is diligently correcting such breach and such breach is capable of being corrected during such extended cure period.



- (e) An effective resolution is passed or documents are filed in an office of public record in respect of, or a judgment or order is issued by a court of competent jurisdiction ordering, the dissolution, termination of existence, liquidation or winding up of the Supplier, unless such filed documents are immediately revoked or otherwise rendered inapplicable, or unless, in the case of the Supplier, there has been a permitted and valid assignment of this Agreement by the Supplier under this Agreement to a Person which is not dissolving, terminating its existence, liquidating or winding up and such Person has assumed all of the Supplier's obligations under this Agreement.
- (f) The Supplier amalgamates with, or merges with or into, or transfers the Facility or all or substantially all of its assets to, another Person unless, at the time of such amalgamation, merger or transfer, there has been a permitted and valid assignment hereof by the Supplier under this Agreement to the resulting, surviving or transferee Person and such Person has assumed all of the Supplier's obligations under this Agreement.
- (g) 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 Supplier, or all or any part of the Supplier's property, or any filing is made or proceeding is commenced in respect of the Supplier on application of a creditor or with consent of or by the Supplier 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.
- (h) The Supplier 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 Supplier 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.
- (i) The Supplier fails to achieve Commercial Operation on or before the Longstop Date pursuant to Section 2.3(d).



- (j) Commencing after the completion of the third Contract Year, the Actual Performance Factor is less than sixty-five percent (65%) of the Annual Average Imputed Production Factor.
- (k) The Supplier has made, or caused or allowed to have been made, a Facility Amendment that has not first been consented to by the Buyer and that has not been removed within ten (10) Business Days after such Facility Amendment occurred.
- (l) The Supplier assigns this Agreement without first obtaining the consent of the Buyer, if required pursuant to this Agreement.
- (m) The Supplier undergoes a change in Control without first obtaining the written approval of the Buyer if required pursuant to Sections 16.6 or 16.7.
- (n) Where the Supplier is an Indigenous Participation Supplier, the default described in Section 16.7(b) has occurred.
- (o) The default described in Section 2.12(b) has occurred.

## **10.2 Remedies of the Buyer**

- (a) If any Supplier Event of Default (other than a Supplier Event of Default referred to in Sections 10.1(e), 10.1(g) and 10.1(h)) occurs and is continuing, upon written notice to the Supplier, the Buyer may, subject to Article 12, terminate this Agreement.
- (b) If a Supplier Event of Default (other than a Supplier Event of Default referred to in Section 10.1(o)) occurs and is continuing, the Buyer may, in addition to the remedies set out in Section 10.2(a):
  - (i) set off any payments due to the Supplier following the Commercial Operation Date against any amounts payable by the Supplier to the Buyer following the Commercial Operation Date including, at the Buyer's option, the amount of any Completion and Performance Security provided to the Buyer pursuant to Article 6; and
  - (ii) draw on the Completion and Performance Security, or any part thereof and, if the remedy in Section 10.2(a) has not been exercised, require the Supplier to replace such drawn security with new security.
- (c) Notwithstanding Sections 10.2(a), and 10.2(b), upon the occurrence of a Supplier Event of Default referred to in Sections 10.1(e), 10.1(g) or 10.1(h), this Agreement shall automatically terminate without notice, act or formality, effective immediately before the occurrence of such Supplier Event of Default, in which case, for certainty, the Secured Lender shall have the rights available to it under Section 12.2(g).

- (d) If the Buyer terminates this Agreement pursuant to Section 10.2(a) or this Agreement is terminated pursuant to Section 10.2(c),
  - (i) where the Termination Date precedes the Commercial Operation Date, the Buyer may, in its sole and absolute discretion, require the Supplier to pay to the Buyer, as liquidated damages and not as a penalty, a sum equal to the Dollar amount of all Completion and Performance Security required to be provided by the Supplier as of the Termination Date, and the Buyer shall be entitled to pursue a Claim for damages with respect to the amount of any portion of the Completion and Performance Security that the Supplier was required to provide to the Buyer as of the Termination Date pursuant to Section 6.1 and, in such circumstances, notwithstanding Section 10.5, the Buyer's remedies against the Supplier in respect of the termination of the Agreement shall be limited to the amount of liquidated damages payable by the Supplier pursuant to this Section 10.2(d)(i); and (ii) where the Termination Date is on or after the Commercial Operation Date the Buyer shall have the option, exercisable in the sole and absolute discretion of the Buyer, to retain all Completion and Performance Security provided by or on behalf of the Supplier and exercise all other remedies available to the Buyer including pursuing a claim for damages, as contemplated in Section 10.5.
- (e) Termination shall not relieve the Supplier or the Buyer of their respective responsibilities relating to the availability of the Contract Capacity, or amounts payable under this Agreement, up to and including the Termination Date. The Buyer shall be responsible only for the payment of amounts accruing under this Agreement up to and including the Termination Date. In addition to its other rights of set off available to it pursuant to this Agreement and at law, the Buyer may hold back payment or set off its obligation to make such payment against any payments owed to it if the Supplier fails to comply with its obligations on termination.

### 10.3 Events of Default by the Buyer

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

- (a) The Buyer fails to make any payment under this Agreement when due, if such failure is not remedied within ten (10) Business Days after written notice of such failure from the Supplier.
- (b) The Buyer fails to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Buyer Event of Default), if such failure is not remedied within fifteen (15) Business Days after written notice of such failure from the Supplier, provided that such cure period shall be extended by a further fifteen (15) Business Days if the Buyer is diligently remedying such failure and such failure is capable of being cured during such extended cure period.

- (c) The Buyer fails or ceases to hold a valid licence, permit, certificate, registration, authorization, consent or approval issued by a Governmental Authority where such failure or cessation results in, or could be reasonably expected to result in, a Material Adverse Effect on the Buyer and is not remedied within thirty (30) Business Days after receipt by the Buyer of written notice of such failure or cessation from the Supplier, provided that such cure period shall be extended by a further thirty (30) Business Days if the Buyer is diligently remedying such failure or cessation and such failure or cessation is capable of being corrected during such extended cure period.
- (d) Any representation made by the Buyer in this Agreement is not materially true or correct in any material respect when made and is not made materially true or correct within thirty (30) Business Days after receipt by the Buyer of written notice of such fact from the Supplier, provided that such cure period shall be extended by a further thirty (30) Business Days if the Buyer is diligently correcting such breach and such breach is capable of being corrected during such extended cure period.
- (e) An effective resolution is passed or documents are filed in an office of public record in respect of, or a judgment or order is issued by a court of competent jurisdiction ordering the dissolution, termination of existence, liquidation or winding up of the Buyer unless such filed documents are immediately revoked or otherwise rendered inapplicable, or unless there has been a permitted and valid assignment of this Agreement by the Buyer under this Agreement to a Person which is not dissolving, terminating its existence, liquidating or winding up and such Person has assumed all of the Buyer's obligations under this Agreement.
- (f) 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 Buyer, or all or any part of the Buyer's property, or any filing is made or proceeding is commenced in respect of the Buyer on application of a creditor or with consent of or by the Buyer 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.
- (g) The Buyer 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 Buyer 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.

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

#### **10.4 Termination by the Supplier**

- (a) If any Buyer Event of Default occurs and is continuing, then upon written notice to the Buyer, the Supplier may: (i) terminate this Agreement, and (ii) set off any payments due to the Buyer against any amounts payable by the Buyer to the Supplier and, in such circumstances, the Buyer shall return to the Supplier any remaining Completion and Performance Security that has been provided by the Supplier hereunder.
- (b) Notwithstanding the foregoing, if applicable, the Buyer shall be responsible for payment of amounts accruing under this Agreement only up to and including the Termination Date. The Supplier may hold back payment or set off against any payments owed by it if the Buyer fails to comply with its obligations on termination.

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

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

### **ARTICLE 11 FORCE MAJEURE**

#### **11.1 Effect of Invoking Force Majeure**

- (a) If, by reason of any act, event, cause or condition that constitutes Force Majeure hereunder:
  - (i) the Supplier is unable to make available all or any part of the Contract Capacity during the Term or is unable to deliver Electricity from the Facility during the Term; or
  - (ii) either Party is unable, wholly or partially, to perform or comply with its other obligations (other than payment obligations) hereunder, or the Supplier is unable to achieve Commercial Operation by the Milestone Date for Commercial Operation or the Longstop Date;

then the Party so affected by Force Majeure shall be excused and relieved from performing or complying with such obligations (other than payment obligations) or meeting such timelines, as applicable, and shall not be liable for any liabilities, damages, losses, payments, costs, expenses (or Indemnifiable Losses, in the case of the Supplier affected by Force Majeure) to, or incurred by, the other Party in respect of or relating to such Force Majeure and such Party's failure to so perform or comply during the continuance and to the extent of the inability so caused from and after the invocation of Force Majeure.

If an event of Force Majeure causes the Supplier to not achieve Commercial Operation by the Milestone Date for Commercial Operation, then the Milestone Date for Commercial Operation shall be extended for such reasonable period of delay directly resulting from such Force Majeure event. If an event of Force Majeure causes the Supplier to not achieve Commercial Operation by the Longstop Date and did not previously extend the Milestone Date for Commercial Operation as contemplated in the preceding sentence, then the Longstop Date shall be extended for such reasonable period of delay directly resulting from such Force Majeure event. Following the Commercial Operation Date, an event of Force Majeure shall not extend the Term. Additionally, notwithstanding the prior paragraph of this Section 11.1(a), following the Commercial Operation Date, during such time as the Supplier is so unable to perform or comply with its obligations as a result of a Force Majeure, then adjustments to the Monthly Payment with respect to the portion of the Contract Capacity affected by Force Majeure will be calculated in accordance with Exhibit J.

- (b) A Party shall be deemed to have invoked Force Majeure with effect from the commencement of the event or circumstances constituting Force Majeure when that Party gives to the other Party prompt notice in writing of the effect of the Force Majeure and reasonably full particulars of the cause thereof, in substantially the form as set forth in Exhibit H, provided that such notice shall be given within ten (10) Business Days of: (i) the commencement of the event or circumstances constituting Force Majeure; or (ii) the date that the Party invoking Force Majeure knew or ought to have known that the event or circumstances constituting Force Majeure could have a Material Adverse Effect on the development or operation of the Facility. Where a Party fails to provide notice of the commencement of the event or circumstances constituting Force Majeure within ten (10) Business Days of the commencement of such event or circumstances, such Party shall be deemed to have invoked Force Majeure with effect from the date when that Party gives to the other Party written notice in substantially the form as set forth in Exhibit H, of the event or circumstances constituting Force Majeure. If the effect of the Force Majeure and full particulars of the cause thereof cannot be reasonably determined within such ten (10) Business Day period, the Party invoking Force Majeure shall be allowed a further ten (10) Business Days (or such longer period as the Parties may agree in writing) to provide such full particulars, in substantially the form set forth as Exhibit H, to the other Party.

- (c) The Party invoking Force Majeure shall use Commercially Reasonable Efforts to remedy the situation and remove, so far as possible and with reasonable dispatch, the Force Majeure, but settlement of strikes, lockouts and other labour disturbances shall be wholly within the discretion of the Party involved. Where the Supplier invokes Force Majeure, the Supplier shall: (i) provide to the Buyer information and documentation confirming to the satisfaction of the Buyer, acting reasonably, that such Commercially Reasonable Efforts were used, and (ii) represent and warrant that such information and documentation are true, complete and accurate in all material respects and that no material information is omitted that would make such information or documentation misleading or inaccurate.
- (d) The Party invoking Force Majeure shall give prompt written notice of the termination of the event of Force Majeure, provided that such notice shall be given within ten (10) Business Days of the termination of the event or circumstances constituting Force Majeure.
- (e) Nothing in this Section 11.1 shall relieve a Party of its obligations to make payments of any amounts that were due and owing before the occurrence of the Force Majeure or that otherwise may become due and payable during any period of Force Majeure.
- (f) If, prior to COD, the aggregate duration of all events of Force Majeure exceeds twenty-four (24) months, then notwithstanding anything in this Agreement to the contrary, either Party may terminate this Agreement upon notice to the other Party and without any costs or payments of any kind to either Party, and the Completion and Performance Security shall be returned forthwith.
- (g) If, on or following COD, by reason of Force Majeure, the Supplier is unable to perform or comply with its obligations (other than payment obligations) hereunder for more than an aggregate of thirty-six (36) months in any sixty (60) month period during the Term, then either Party may terminate this Agreement upon notice to the other Party without any costs or payments of any kind to either Party, except for any amounts that were due or payable by a Party hereunder up to the date of termination, and the Completion and Performance Security shall be returned forthwith.

## 11.2 Exclusions

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

- (a) if and to the extent the Party seeking to invoke Force Majeure has caused the applicable event of Force Majeure by its fault or negligence, including the Supplier's failure to procure or maintain fuel supply (as applicable) or delivery services to be utilized by the Facility;



- (b) if and to the extent the Party seeking to invoke Force Majeure has failed to use Commercially Reasonable Efforts to prevent or remedy the event of Force Majeure and remove, so far as possible and within a reasonable time period, the Force Majeure (except in the case of strikes, lockouts and other labour disturbances, the settlement of which shall be wholly within the discretion of the Party involved);
- (c) if and to the extent that the Party seeking to invoke Force Majeure because of arrest or restraint by a Governmental Authority, such arrest or restraint was the result of a breach by such Party of Laws and Regulations;
- (d) if the Force Majeure was caused by a lack of funds or other financial cause;
- (e) if the System Operator amends the schedule of Planned Outages for the Facility as set out in the Annual Operating Plan;
- (f) if the Party invoking Force Majeure fails to comply with the notice provisions in Sections 11.1(b) or 11.1(d);
- (g) in respect of any impacts of the COVID-19 pandemic, the Russo-Ukrainian military conflict or the military conflict in, adjacent to or relating to the state of Israel or the Islamic Republic of Iran, that were known or ought reasonably to be known by the Supplier, in each case, based on their magnitude, scope and geographic scale as of the Contract Date;
- (h) if the demand for Electricity or Capacity Products in the Province of Ontario is reduced in any material respect;
- (i) if and to the extent the Party is seeking to invoke Force Majeure as a result of the failure of performance of any other third party (including contractors or subcontractors) that is or was a direct or indirect vendor, materials supplier, service provider, transportation carrier, or other supplier, or customer, to or of such Party, unless such failure of performance of such third party was itself directly caused by an event that would be considered an event of Force Majeure under this Agreement, mutatis mutandis; or
- (j) if and to the extent the Party is seeking to invoke Force Majeure because of its inability to obtain any consent, amendment or other approval of the Buyer pursuant to the terms of this Agreement.

For greater certainty, actions of the Buyer that are not actions of the System Operator shall not constitute Force Majeure.

### 11.3 Definition of Force Majeure

For the purposes of this Agreement, the term “**Force Majeure**” means any act, event, cause or condition that prevents a Party from performing its obligations (other than payment obligations) hereunder or prevents the Supplier from achieving Commercial Operation by the Milestone Date



for Commercial Operation, but only if and to the extent the impact of such act, event, cause or condition on the affected Party could not reasonably have been anticipated as at the Contract Date and is beyond the affected Party's reasonable control, including:

- (a) acts of God, including extreme wind, ice, lightning or other storms, earthquakes, tornadoes, hurricanes, cyclones, landslides, drought, floods and washouts;
- (b) fires or explosions;
- (c) local, regional or national states of emergency;
- (d) strikes and other labour disputes, other than legal strikes or labour disputes by employees or personnel of (i) such Party, or (ii) a third party contractor of such Party, unless, in either such case, such strikes or other labour disputes are the result or part of a general industry strike or labour dispute;
- (e) delays or disruptions (including those arising from other events of Force Majeure referred to in this Section 11.3) in the construction of any Transmission System or Distribution System assets that are required for the Facility to Deliver Electricity;
- (f) delays or disruptions (including those arising from other events of Force Majeure referred to in this Section 11.3) in fuel supply, as applicable, (whether such Force Majeure event is in respect of a Party or a third party);
- (g) civil disobedience or disturbances, war (whether declared or not), acts of sabotage, blockades, insurrections, terrorism, revolution, riots or epidemics;
- (h) an order, judgment, legislation, ruling or direction by Governmental Authorities restraining a Party, provided that the affected Party has not applied for or assisted in the application for and has used Commercially Reasonable Efforts to oppose said order, judgment, legislation, ruling or direction;
- (i) any inability, despite the use of Commercially Reasonable Efforts, to obtain, or to secure the renewal or amendment of, any permit, certificate, impact assessment, licence or approval of any Governmental Authority, Transmitter or LDC required to perform or comply with any obligation under this Agreement, excluding, for certainty, inability to obtain a confirmation from any Municipality of its satisfaction with the AIA Components Two and Three Requirement in accordance with Section 2.12, unless the revocation or modification of any such necessary permit, certificate, impact assessment, licence or approval was caused by the violation of the terms thereof or consented to by the Party invoking Force Majeure;
- (j) following the Commercial Operation Date, any unanticipated maintenance or Outage affecting the Facility;

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- (i) which is not identified in the Supplier's then current schedule of Planned Outages submitted to the Buyer in advance of the occurrence of an event of Force Majeure referred to in any other subsection of this Section 11.3, and
- (ii) which results directly from, or is scheduled or planned directly as a consequence of, an event of Force Majeure referred to in any other subsection of this Section 11.3, or which results from a failure of equipment that prevents the Facility from producing Electricity, provided that:
  - (A) notice of the unanticipated maintenance or Outage is provided to the Buyer by the Supplier concurrently, or as soon as reasonably possible thereafter, with the notice in respect thereof provided to the System Operator under the IESO Market Rules but, in any event, within ten (10) Business Days thereof;
  - (B) the Supplier provides notice to the Buyer immediately, or as soon as reasonably possible thereafter, upon receipt from the System Operator of advance acceptance or other proposed scheduling or approval of such maintenance or outage, if such approval is required to be obtained from the System Operator;
  - (C) the Supplier provides timely updates to the Buyer of the commencement date of the maintenance or outage and, where possible, provides seven (7) days advance notice of such date;
  - (D) the unanticipated maintenance or Outage is commenced within one hundred and twenty (120) days of the commencement of the occurrence of the relevant event of Force Majeure; and
  - (E) the Supplier schedules the unanticipated maintenance or outage in accordance with Good Engineering and Operating Practices.

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

## **ARTICLE 12**

### **LENDER'S RIGHTS**

#### **12.1 Lender Security**

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

Lender's Security Agreement as the Secured Lender on behalf of the lenders. A Secured Lender's Security Agreement shall be based upon and subject to the following conditions:

- (a) A Secured Lender's Security Agreement may be made in respect of obligations for any amounts and subject to any terms (including terms of applicable loans, interest rates, payment terms and prepayment privileges or restrictions) as desired by the Supplier, except as otherwise provided in this Agreement. A Secured Lender's Security Agreement may secure any indebtedness, liability or obligation of the Supplier, whether exclusively related to the Facility or otherwise, and may cover any real or personal property in addition to the Supplier's Interest. For greater certainty, a Secured Lender's Security Agreement may cover shares or partnership interests in the capital of the Supplier.
- (b) The Buyer shall have no liability whatsoever for payment of the principal sum secured by any Secured Lender's Security Agreement, or any interest accrued thereon or any other sum secured thereby or accruing thereunder; and the Secured Lender shall not be entitled to seek any damages against the Buyer for any or all of the same.
- (c) No Secured Lender's Security Agreement shall be recognized by the Buyer or give rise to any rights hereunder in the enforcement of the Buyer's rights and remedies provided in this Agreement or by Laws and Regulations, unless and until an electronic copy thereof and the registration details, if applicable, together with written notice of the address of the Secured Lender to which notices may be sent have been delivered to the Buyer by the Supplier or the Secured Lender; and in the event of an assignment of such Secured Lender's Security Agreement, such assignment shall not be recognized by the Buyer or establish any rights hereunder in favour of such assignee unless and until a copy thereof and the registration details, if applicable, together with written notice of the address of the assignee thereof to which notices may be sent, have been delivered to the Buyer by the Supplier or the Secured Lender.
- (d) If the Supplier is in default under or pursuant to the Secured Lender's Security Agreement and the Secured Lender intends to exercise any rights afforded to the Secured Lender under this Agreement, then the Secured Lender shall give written notice of such default to the Buyer at least ten (10) Business Days prior to exercising any such rights.
- (e) Any Secured Lender's Security Agreement permitted hereunder may secure two (2) or more separate debts, liabilities or obligations in favour of two (2) or more separate Secured Lenders, provided that such Secured Lender's Security Agreement complies with the provisions of this Article 12.
- (f) Any number of permitted Secured Lender's Security Agreements may be outstanding at any one time, provided that each such Secured Lender's Security Agreement complies with the provisions of this Article 12.

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

## 12.2 Rights and Obligations of Secured Lenders

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

- (a) No Supplier Event of Default (other than those referenced in Section 10.2(c)) shall be grounds for the termination by the Buyer of this Agreement until:
  - (i) any notice required to be given under Section 10.1 and Section 10.2(a) has been given to the Supplier and to the Secured Lender; and
  - (ii) the cure period set out in Section 12.2(b) has expired without a cure having been completed and without the Secured Lender having taken the actions therein contemplated.
- (b) In the event the Buyer has given any notice required to be given under Section 10.1, the Secured Lender shall, within the applicable cure period (including any extensions), if any, have the right (but not the obligation) to cure such default, and the Buyer shall accept such performance by such Secured Lender as if the same had been performed by the Supplier.
- (c) Any payment to be made or action to be taken by a Secured Lender hereunder as a prerequisite to keeping this Agreement in effect shall be deemed properly to have been made or taken by the Secured Lender if such payment is made or action is taken by a nominee or agent of the Secured Lender or a receiver or receiver and manager appointed by or on the application of the Secured Lender.
- (d) A Secured Lender shall be entitled to the Supplier's rights and benefits contained in this Agreement and shall become liable for the Supplier's obligations solely as provided in Section 12.2(e). A Secured Lender may, subject to the provisions of this Agreement, enforce any Secured Lender's Security Agreement and acquire the

Supplier's Interest in any lawful way and, without limitation, a Secured Lender or its nominee or agent or a receiver or receiver and manager appointed by or on the application of the Secured Lender, may take possession of and manage the Facility and, upon foreclosure, or without foreclosure upon exercise of any contractual or statutory power of sale under such Secured Lender's Security Agreement, may sell or assign the Supplier's Interest with the consent of the Buyer as required under Section 12.2(f).

- (e) Until a Secured Lender (i) forecloses or has otherwise taken ownership of the Supplier's Interest or (ii) has taken possession or control of the Supplier's Interest, whether directly or by an agent as a mortgagee in possession, or a receiver or receiver and manager has taken possession or control of the Supplier's Interest by reference to the Secured Lender's Security Agreement, the Secured Lender shall not be liable for any of the Supplier's obligations or be entitled to any of the Supplier's rights and benefits contained in this Agreement, except by way of security. If the Secured Lender itself or by a nominee or agent, or a receiver or a receiver and manager appointed by or on the application of the Secured Lender, is the owner or is in control or possession of the Supplier's Interest, then the entity that is the owner or is in control or possession of the Supplier's Interest shall be bound by all of the Supplier's obligations. Once the Secured Lender or such other Person goes out of possession or control of the Supplier's Interest or transfers the Supplier's Interest in accordance with this Agreement to another Person, the Secured Lender shall cease to be liable for any of the Supplier's obligations and shall cease to be entitled to any of the Supplier's rights and benefits contained in this Agreement, except, if the Secured Lender's Security Agreement remains outstanding, by way of security.
- (f) Despite anything else contained in this Agreement, the Secured Lender shall not transfer, sell or dispose of the Supplier's Interest or any other interest in the Facility or shares or partnership interests in the capital of the Supplier (or that of its general partner(s) in the case of a Supplier that is a partnership) to any Person unless such transferee takes the Supplier Interest or other applicable interest subject to the Supplier's obligations pursuant to this Agreement. No transfer shall be effective unless the Buyer:
  - (i) acting reasonably, if such transferee is at Arm's Length with the Secured Lender; or
  - (ii) acting in its sole and subjective discretion, if such transferee is not at Arm's Length with the Secured Lender,

has approved of the transferee and the transferee has entered into an agreement with the Buyer in form and substance satisfactory to the Buyer, acting reasonably, wherein the transferee agrees to assume and to perform the obligations of the Supplier in respect of the Supplier's Interest, whether arising before or after the transfer, and including the posting of the Completion and Performance Security

required under Article 6, and in the case of a transfer with respect to all or any part of the securities of the Supplier (or that of its general partner(s) in the case of a Supplier that is a partnership), be subject to Section 16.6.

- (g) In the event of the termination of this Agreement prior to the end of the Term due to a Supplier Event of Default, the Buyer shall, within twenty (20) Business Days after the date of such termination, deliver to each Secured Lender which is at Arm's Length with the Supplier a statement of all sums then known to the Buyer that would at that time be due under this Agreement but for the termination and a notice to each such Secured Lender stating that the Buyer is willing to enter into a New Agreement (the "Buyer Statement"). Subject to the provisions of this Article 12, each such Secured Lender or its transferee approved by the Buyer pursuant to Section 12.2(f) hereof shall thereupon have the option to obtain from the Buyer a New Agreement in accordance with the following terms:
- (i) Upon receipt of the written request of the Secured Lender within thirty (30) days after the date on which it received the Buyer Statement, the Buyer shall enter into a New Agreement.
  - (ii) Such New Agreement shall be effective as of the Termination Date and shall be for the remainder of the Term at the time this Agreement was terminated and otherwise upon the terms contained in this Agreement. The Buyer's obligation to enter into a New Agreement is conditional upon the Secured Lender (A) paying all sums that would, at the time of the execution and delivery thereof, be due under this Agreement but for such termination, (B) otherwise fully curing any defaults under this Agreement existing immediately prior to termination of this Agreement that are capable of being cured, and (C) paying all reasonable costs and expenses, including legal fees, so as to provide a full indemnity (and not only substantial indemnity), incurred by the Buyer in connection with such default and termination, and the preparation, execution and delivery of such New Agreement and related agreements and documents, provided, however, that with respect to any default that could not be cured by such Secured Lender until it obtains possession, such Secured Lender or its transferee approved by the Buyer pursuant to Section 12.2(f) hereof, as the case may be, shall have the applicable cure period commencing on the date that it obtains possession to cure such default.

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

- (h) Despite anything to the contrary contained in this Agreement, the provisions of this Article 12 shall enure only to the benefit of the holders of a Secured Lender's Security Agreement. If the holders of more than one such Secured Lender's



Security Agreement who are at Arm's Length with the Supplier make written requests to the Buyer in accordance with this Section 12.2 to obtain a New Agreement, the Buyer shall accept the request of the holder whose Secured Lender's Security Agreement had priority pursuant to Laws and Regulations immediately prior to the termination of this Agreement over the Secured Lender's Security Agreements of the other Secured Lenders making such requests and thereupon the written request of each other Secured Lender shall be deemed to be void. In the event of any dispute or disagreement as to the respective priorities of any such Secured Lender's Security Agreement, the Buyer may rely upon the opinion as to such priorities of any law firm qualified to practice law in the Province of Ontario retained by the Buyer in its unqualified subjective discretion or may apply to a court of competent jurisdiction for a declaration as to such priorities, which opinion or declaration shall be conclusively binding upon all parties concerned.

### 12.3 Cooperation

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

## ARTICLE 13 DISCRIMINATORY ACTION

### 13.1 Discriminatory Action

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

- (a) the Legislative Assembly of Ontario:
  - (i) causes to come into force any statute that was introduced as a bill in the Legislative Assembly of Ontario or the Government of Ontario causes to come into force or makes any order-in-council or regulation first having legal effect on or after the Contract Date; or
  - (ii) directly or indirectly amends this Agreement without the agreement of the Supplier;
- (b) the effect of the action referred to in Section 13.1(a):
  - (i) is borne principally by the Supplier; or



- (ii) is borne principally by the Supplier and one or more Other Suppliers; and
- (c) the action referred to in Section 13.1(a) directly reduces or precludes payments otherwise due to the Supplier hereunder or has the effect of increasing the costs that the Supplier would reasonably be expected to incur in respect of the development, construction, operation and maintenance of the Facility hereunder, including costs related to satisfy the Minimum Performance Factor, except where such action is in response to any act or omission on the part of the Supplier that is contrary to Laws and Regulations (other than an act or omission rendered illegal by virtue of such action) or such action is permitted under this Agreement. Despite the preceding sentence, none of the following shall be a Discriminatory Action:
  - (i) Laws and Regulations of general application, including an increase of Taxes of general application, or any action of the Government of Ontario pursuant thereto;
  - (ii) any such statute that prior to five (5) Business Days prior to the Contract Date:
    - (A) has been introduced as a bill in the Legislative Assembly of Ontario in a similar form as such statute takes when it has legal effect, provided that any amendments made to such bill in becoming such statute do not have a Material Adverse Effect on the Supplier; or
    - (B) has been made public in a discussion or consultation paper, press release or announcement issued by the Buyer, the Government of Ontario, and/or the Ministry of Energy and Mines that appeared on the Buyer's Website or the website of the Government of Ontario and/or the Ministry of Energy and Mines, provided that any amendments made to such public form, in becoming such statute, do not have a Material Adverse Effect on the Supplier; and
  - (iii) any of such regulations that prior to five (5) Business Days prior to the Contract Date:
    - (A) have been published in the Ontario Gazette but by the terms of such regulations come into force on or after five (5) Business Days prior to the Contract Date, or
    - (B) have been referred to in a press release issued by the Buyer, the Government of Ontario and/or the Ministry of Energy and Mines that appeared on the website of the Government of Ontario or the Ministry of Energy and Mines, provided that any amendments made to such regulations in coming into force do not have a Material Adverse Effect on the Supplier.

### 13.2 Consequences of Discriminatory Action

If a Discriminatory Action occurs, the Supplier shall have the right to obtain, without duplication, compensation (the “**Discriminatory Action Compensation**”) from the Buyer for the amount of the payments otherwise due to the Supplier hereunder that are reduced or precluded as a result of the Discriminatory Action or the increase in the costs that the Supplier would reasonably be expected to incur to satisfy the Minimum Performance Factor as a result of the occurrence of such Discriminatory Action, commencing on the first day of the first calendar month following the date of the Discriminatory Action and ending at the expiry of the Term, but excluding the portion of any costs charged by a Person who does not deal at Arm’s Length with the Supplier that is in excess of the costs that would have been charged had such Person been at Arm’s Length with the Supplier.

### 13.3 Notice of Discriminatory Action

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

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

- (b) If the Buyer wishes to dispute the occurrence of a Discriminatory Action, the Buyer shall give a notice of dispute (the “**Notice of Dispute**”) to the Supplier, stating the grounds for such dispute, within thirty (30) days after the date of receipt of the Notice of Discriminatory Action or within thirty (30) days after the date of receipt of the further supporting particulars, as applicable.

- (c) If neither the Notice of Discriminatory Action nor the Notice of Dispute has been withdrawn within thirty (30) days after the date of receipt of the Notice of Dispute by the Supplier, the dispute of the occurrence of a Discriminatory Action shall be submitted to mandatory and binding arbitration in accordance with Section 16.2 without first having to comply with Section 16.1.
- (d) If the Buyer does not dispute the occurrence of a Discriminatory Action or the amount of Discriminatory Action Compensation claimed in the Notice of Discriminatory Action, the Buyer shall pay to the Supplier the amount of Discriminatory Action Compensation claimed within sixty (60) days after the date of receipt of the Notice of Discriminatory Action. If a Notice of Dispute has been given, the Buyer shall pay to the Supplier the Discriminatory Action Compensation Amount determined in accordance with Section 13.3(e) not later than sixty (60) days after the later of the date on which the dispute with respect to the occurrence of a Discriminatory Action is resolved and the date on which the Discriminatory Action Compensation Amount is determined.
- (e) Discriminatory Action Compensation Notice
  - (i) If the Buyer wishes to dispute the amount of the Discriminatory Action Compensation, the Buyer shall give to the Supplier a notice (the **“Discriminatory Action Compensation Notice”**) setting out an amount that the Buyer proposes as the Discriminatory Action Compensation (the **“Discriminatory Action Compensation Amount”**), if any, together with details of the computation. If the Supplier does not give notice (the **“Supplier Non-acceptance Notice”**) to the Buyer stating that it does not accept the Discriminatory Action Compensation Amount proposed within thirty (30) days after the date of receipt of the Discriminatory Action Compensation Notice, the Supplier shall be deemed to have accepted the Discriminatory Action Compensation Amount so proposed. If the Supplier Non-acceptance Notice is given, the Buyer and the Supplier shall attempt to determine the Discriminatory Action Compensation Amount through negotiation, and any amount so agreed in writing shall be the Discriminatory Action Compensation Amount. If the Buyer and the Supplier do not agree in writing upon the Discriminatory Action Compensation Amount within sixty (60) days after the date of receipt of the Supplier Non-acceptance Notice, the Discriminatory Action Compensation Amount shall be determined in accordance with the procedure set forth in Section 13.3(e)(ii) and Sections 16.1 and 16.2 shall not apply to such determination.
  - (ii) If the negotiation described in Section 13.3(e)(i) does not result in an agreement in writing on the Discriminatory Action Compensation Amount, either the Buyer or the Supplier may, after the later of (A) the date on which a dispute with respect to the occurrence of a Discriminatory Action is resolved and (B) the date of the expiry of a period of thirty (30) days after

the date of receipt of the Supplier Non-acceptance Notice, by notice to the other require the dispute to be resolved by arbitration as set out below. The Buyer and the Supplier shall, within thirty (30) days after the date of receipt of such notice of arbitration, jointly appoint a valuator to determine the Discriminatory Action Compensation Amount. The valuator so appointed shall be a duly qualified business valuator where the individual responsible for the valuation has not less than ten (10) years' experience in the field of business valuation. If the Buyer and the Supplier are unable to agree upon a valuator within such period, the Buyer and the Supplier shall jointly make application (provided that if a Party does not participate in such application, the other Party may make application alone) under the Arbitration Act, to a judge of the Superior Court of Justice to appoint a valuator, and the provisions of the Arbitration Act shall govern such appointment. The valuator shall determine the Discriminatory Action Compensation Amount within sixty (60) Business Days after the date of his or her appointment. Pending a decision by the valuator, the Buyer and the Supplier shall share equally, and be responsible for their respective shares of, all fees and expenses of the valuator. The fees and expenses of the valuator shall be paid by the non-Prevailing Party. "**Prevailing Party**" means the Party whose determination of the Discriminatory Action Compensation Amount is most nearly equal to that of the valuator's determination. The Supplier's and the Buyer's respective determinations of the Discriminatory Action Compensation Amount shall be based upon the Notice of Discriminatory Action and the Discriminatory Action Compensation Notice, as applicable.

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

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

If the Buyer wishes to remedy or cause to be remedied the occurrence of a Discriminatory Action, the Buyer must give notice to the Supplier within thirty (30) days after the later of the date of receipt of the Notice of Discriminatory Action and the date of the receipt by the Buyer of the further supporting particulars referred to in Section 13.3(a). If the Buyer gives such notice, the Buyer must remedy or cause to be remedied the Discriminatory Action within one hundred and eighty (180) days after the date of receipt of the Notice of Discriminatory Action or, if a Notice of Dispute has been given, within one hundred and eighty (180) days after the date of the final award pursuant to Section 16.2 to the effect that a Discriminatory Action occurred. If the Buyer remedies or causes to be remedied the Discriminatory Action in accordance with the preceding sentence, the Supplier shall have the right to obtain, without duplication, the amount that the Supplier would have the right to claim in respect of that Discriminatory Action pursuant to Section 13.2, adjusted to apply only to the period commencing on the first day of the first calendar month following the date of the Discriminatory Action and expiring on the day preceding the day on which the Discriminatory Action was remedied.

## **ARTICLE 14 LIABILITY AND INDEMNIFICATION**

### **14.1 Exclusion of Consequential Damages**

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

### **14.2 Liquidated Damages**

Nothing in this Article shall reduce a Party's claim for liquidated damages pursuant to Sections 2.3(b), 2.4(b), 3.1, or 6.2(b)(iii). The Supplier acknowledges and agrees with the Buyer that the actual damages incurred by the Buyer and Electricity consumers as a result of a failure by the Supplier to meet its obligations under this Agreement are impossible to definitively quantify and the Supplier further agrees that the payment of the liquidated damages set forth in this Agreement constitutes a fair and reasonable means of compensating the Buyer for damages likely to be incurred as a result of such delays and does not constitute a penalty.

### **14.3 Buyer Indemnification**

In addition to the indemnity provided by the Supplier in Section 2.6(c), the Supplier shall indemnify, defend and hold the Buyer, 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, demands, suits, losses, damages, liabilities, penalties, obligations, payments, costs and expenses and accrued interest thereon (including the costs and

expenses of, and accrued interest on, any and all actions, suits, proceedings for personal injury (including death) or property damage, assessments, judgments, settlements and compromises relating thereto and reasonable lawyers' fees and reasonable disbursements in connection therewith) (each, an "**Indemnifiable Loss**"), asserted against or suffered by the Indemnitees relating to, in connection with, resulting from, or arising out of:

- (a) 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; or
- (b) any breach by the Supplier of any representations, warranties, and covenants contained in this Agreement, except to the extent that any injury or damage is attributable to the negligence or wilful misconduct of the Indemnitees.

For greater certainty, in the event of contributory negligence or other fault of the Indemnitees, then such Indemnitees shall not be indemnified hereunder in the proportion that the Indemnitees' negligence or other fault contributed to any Indemnifiable Loss.

#### **14.4 Defence of Claims**

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



Representatives, such Claim is meritorious. If the Supplier is obligated to indemnify any Indemnitees under Section 14.3, the amount owing to the Indemnitees will be the amount of such Indemnitees' actual out-of-pocket loss net of any insurance proceeds received or other recovery.

## **ARTICLE 15**

### **CONTRACT OPERATION AND ADMINISTRATION**

#### **15.1 Company Representative**

The Supplier shall, by notice in the form of Exhibit D, appoint from time to time, a representative (a “**Company Representative**”), who shall be duly authorized to act on behalf of the Supplier, and with whom the Buyer 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 Supplier as to all matters pertaining to this Agreement. The Company Representative shall not have the power or authority to amend this Agreement.

#### **15.2 Record Retention; Audit Rights and Obligations**

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

#### **15.3 Reports to the Buyer**

- (a) The Supplier shall deliver to the Buyer a copy of all reports, plans and notices that the Supplier is required to provide under the IESO Market Rules with respect to Outages, at the same time or within one (1) Business Day after such reports, plans and notices are delivered by the Supplier under the IESO Market Rules.
- (b) In addition to the documentation provided in Section 15.3(a):



- (i) the Supplier shall, no later than thirty (30) days following any written request therefor from the Buyer, provide to the Buyer an annual operating plan for the Facility for the forthcoming or succeeding Contract Year, in the form set out in Exhibit L (the “**Annual Operating Plan**”). The Annual Operating Plan shall include a schedule of Planned Outages for that twelve (12) month period (together with the Supplier’s estimate of the expected duration of each Planned Outage) which shall be consistent with Good Engineering and Operating Practices and, to the extent the Supplier is required to do so by the IESO Market Rules, coordinated with and approved by the System Operator. The Supplier may, on not less than ten (10) Business Days’ prior notice to the Buyer, amend the Annual Operating Plan and its schedule of Planned Outages, provided that where the System Operator directs the Supplier to amend its schedule of Planned Outages on less than ten (10) Business Days’ prior notice, the Supplier shall make the corresponding amendments to its Annual Operating Plan and shall provide the Buyer with notice of such amendment within two (2) Business Days of receipt of any such direction from the System Operator; and
- (ii) the Supplier shall provide prompt notice to the Buyer, and in any case within ten (10) Business Days, of any (A) Outage, (B) Planned Outage (in accordance with the Annual Operating Plan), or (C) anticipated Outage other than a Planned Outage, in each case utilizing the form attached as Exhibit R (including any Grid-Based Unavailability), followed thereafter by a subsequent notice, to be delivered as soon as reasonably practicable, which subsequent notice shall include a statement of the cause of such Outage, the proposed corrective action and the Supplier’s estimate of the expected duration of such Outage. The Supplier shall use Commercially Reasonable Efforts to promptly end or reduce the length of such Outage.
- (c) All Outages shall take place in accordance with the notices of Outages provided by the Supplier to the Buyer under this Section 15.3, provided that where the System Operator directs the Supplier to amend its schedule of Planned Outages on less than ten (10) Business Days’ prior notice, the Supplier shall follow such direction and provide notice of any changes to the Buyer within two (2) Business Days of receipt of such direction from the System Operator.
- (d) In addition to the Planned Outages discussed above, the Supplier may, but is not obligated to, on a one-time basis, no earlier than the twentieth (20<sup>th</sup>) anniversary of the COD, schedule a long-term Planned Outage for a single contiguous period of no more than twelve (12) Settlement Months, **[that begins at the start of a Settlement Month and ends at the end of a Settlement Month]**, for purposes of maintenance activities in respect of the Facility (such outage, a “**Mid-Term Extended Outage**”). The Supplier must provide the Buyer with notice of the proposed Mid-Term Extended Outage **[at least twelve (12) months]** in advance and must schedule such Outage in accordance with all requirements under the IESO Market Rules. For purposes of Exhibit J and the calculation of the Monthly

Payment, the IFP<sub>m</sub> and the IPP<sub>m</sub> shall both be \$0/MWh for all Settlement Months during which a Mid-Term Extended Outage occurs. **[NTD: to be confirmed.]**

#### 15.4 Inspection of Facility

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

#### 15.5 Inspection Not Waiver

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

#### 15.6 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: **[Note to Finalization: To be updated prior to execution.]**

If to the Supplier: [●]

Attention: [●]  
E-mail: [●]

If to the Buyer: 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)

Supplier may, by written notice to the Buyer, change its respective Company Representative in accordance with Exhibit D or the address to which notices are to be sent.

- (b) Notice delivered or transmitted as provided above shall be deemed to have been given and received on the day it is received or transmitted, provided that it is received or transmitted on a Business Day prior to 5:00 p.m. local time in the place of receipt. Otherwise such notice shall be deemed to have been given and received on the next following Business Day.
- (c) Any notices of an Event of Default and termination of this Agreement shall 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 Buyer shall be deemed delivered unless the addressee of such notice is identified in such notice as “Contract Management”. No notice from the Buyer shall be binding on the Buyer pursuant to this Agreement unless the sender of such notice is identified in such notice as “Contract Management”.

## ARTICLE 16 MISCELLANEOUS

### 16.1 Informal Dispute Resolution

If either Party considers that a dispute has arisen under or in connection with this Agreement that the Parties cannot resolve, then such Party may deliver a notice to the other Party describing the nature and the particulars of such dispute. Within ten (10) Business Days following delivery of such notice to the other Party, a senior executive (Vice-President or higher) from each Party shall meet, either in person or by telephone (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 16.2, if agreed to by both Parties.

## 16.2 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 16.1.
- (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.
- (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, or solely on a question of law as provided for in the Arbitration Act. The Arbitration Act shall govern the procedures to apply in the enforcement of any award made. If it is necessary to enforce such award, all costs of enforcement shall be payable and paid by the Party against whom such award is enforced. Unless otherwise provided in the arbitral award to the contrary, each Party shall bear (and be solely responsible for) its own costs incurred during the arbitration process, and each Party shall bear (and be solely responsible for) its equal share of the costs of the arbitrator. Each Party shall be otherwise responsible for its own costs incurred during the arbitration process.

## 16.3 Business Relationship

Each Party shall be solely liable for the payment of all wages, taxes, and other costs related to the employment by such Party of Persons who perform this Agreement, including all federal, provincial, and local income, social insurance, health, payroll and employment taxes and statutorily-mandated workers' compensation coverage. None of the Persons employed by either Party shall be considered employees of the other Party for any purpose. Nothing in this Agreement

shall create or be deemed to create a relationship of partners, joint venturers, fiduciary, principal and agent or any other relationship between the Parties.

#### 16.4 Binding Agreement

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

#### 16.5 Assignment

- (a) Except as set out below and as provided in Article 12, neither this Agreement nor any of the rights, interests or obligations under this Agreement may be assigned by either Party, including by operation of Laws and Regulations, without the prior written consent of the other Party, which consent shall not be unreasonably withheld.
- (b) The Supplier may, subject to compliance with Laws and Regulations and provided that there is not a Supplier Event of Default that has not been remedied, assign this Agreement to an Affiliate acquiring the Facility upon such Affiliate agreeing in writing with the Buyer, in such form as is reasonably requested by the Buyer to assume all of the Supplier's obligations and be bound by the terms of this Agreement, provided that the arrangements and obligations of the Supplier set forth in Article 6 have been met in accordance with the terms of Article 6. If a valid assignment of this Agreement is made by the Supplier in accordance with this Section 16.5, the Buyer acknowledges and agrees that, upon such assignment and assumption and notice thereof by the assignor to the Buyer, the assignor shall be relieved of all its duties, obligations and liabilities hereunder.
- (c) If the Supplier assigns this Agreement to a non-resident of Canada (the "**Assignee**"), as that term is defined in the ITA, and the Buyer incurs any additional Taxes, at any time thereafter, solely as the result of such assignment, then payments under this Agreement by the Buyer shall be reduced by the amount of such additional or withholding Taxes and the Buyer shall remit such additional or withholding Taxes to the applicable taxing authorities. The Buyer shall within sixty (60) days after remitting such Taxes, notify the Assignee in writing, providing reasonable detail of such payment so that the Assignee may claim any applicable rebates, refunds or credits from the applicable taxing authorities. If after the Buyer has paid such amounts, the Buyer receives a refund, rebate or credit on account of such Taxes, then the Buyer shall promptly remit such refund, rebate or credit amount to the Assignee.
- (d) The Buyer shall have the right to assign this Agreement and all benefits and obligations hereunder for the balance of the Term without the consent of the

Supplier to an assignee with a Credit Rating equal to or higher than that of the Buyer at the time of the assignment, which such assignee shall assume the obligations and liability of the Buyer under this Agreement and be novated into this Agreement in the place and stead of the Buyer (except for the Buyer's obligation in Section 16.5(d)(iii) which will remain in force as against the Buyer), provided that the assignee agrees in writing to assume and be bound by the terms and conditions of this Agreement, and further agrees to provide the Secured Lender with a written acknowledgement of the Secured Lender's rights in relation to this Agreement in the form prescribed by the Buyer, whereupon:

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

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

#### **16.6 No Change of Control**

- (a) Except as provided in this Section 16.6(b), the Supplier shall not permit or allow a change of Control of the Supplier, except with the prior written consent of the Buyer.
  - (i) Prior to COD, such consent shall be at the sole and absolute discretion of the Buyer.
  - (ii) From and after COD, such consent may not be unreasonably withheld. Following COD, it shall not be unreasonable to withhold such consent if the change of Control will have or is likely to have, as determined by the Buyer acting reasonably, a Material Adverse Effect on the Supplier's ability to perform its obligations under this Agreement, in which case such consent may be withheld by the Buyer.



- (b) The restriction on change of Control in Sections 16.6(a) and the restriction on transfer of Economic Interest in the Supplier in Section 16.7(a)(ii) shall not apply to a change of Control or a transfer of Economic Interest in the Supplier where:
- (i) the Person that is the direct subject of the transaction giving rise to the change of Control of the Supplier or transfer of Economic Interest in the Supplier is not a Special Purpose Entity; or
  - (ii) each Person Controlling the Supplier following such change of Control is an Affiliate of one or more of the Persons Controlling the Supplier prior to such change of Control,

provided that, in either case, the Supplier provides the Buyer, within ten (10) Business Days following such change of Control or transfer of Economic Interest, with notice of such change of Control or transfer of Economic Interest and such additional information as the Buyer may reasonably require regarding the names of the Persons who Control or hold Economic Interests in the Supplier, following such transaction(s). For greater certainty, and the purposes of Section 16.6(a), a change of Control shall include a change from no Person having Control of the Supplier to any Person having Control of the Supplier, as well as a change from any Person having Control of the Supplier to no Person having Control of the Supplier.

#### **16.7 No Assignment or Change of Control for Specified Period; Other Rights and Restrictions**

- (a) Notwithstanding the provisions of Sections 16.5(a), 16.5(b), 16.5(c) and 16.6(a) to the contrary, and except as provided in Article 12, under no circumstances shall:
- (i) any assignment of this Agreement by the Supplier, other than an assignment made pursuant to Section 16.5(b) be permitted; and
  - (ii) fifty percent (50%) or more of the Economic Interest in the Supplier be held, directly or indirectly, whether as owner or other beneficiary and other than solely as the beneficiary of an unrealized security interest, individually or collectively by any Person or Persons who, as of the Contract Date, did not directly or indirectly hold any of such Economic Interest in the Supplier, other than solely as the beneficiary of an unrealized security interest,

until the COD. For clarity, the foregoing transfer restrictions shall not apply in respect of a *bona fide* enforcement of a Secured Lender Security Agreement under Article 12 of this Agreement.

- (b) If the Supplier was awarded rated criteria points as an Indigenous Participation Supplier, as specified in Exhibit B, then the Supplier shall, within twenty (20) Business Days of a request by the Buyer, provide written evidence documenting the Economic Interest in the Supplier that is held by the applicable Indigenous Community(ies) or Indigenous Holding Vehicle that is to the satisfaction of the

Buyer, acting reasonably. Until the fifth (5<sup>th</sup>) anniversary of the Commercial Operation Date, if the Indigenous Participation Level falls below the Initial IPL, the Supplier shall provide written notice thereof to the Buyer within twenty (20) days of such decrease, which notice shall include the revised Indigenous Participation Level and the effective date thereof. If the Indigenous Participation Level is not restored to a level of at least the Initial IPL within six (6) months after such written notice, then such failure to maintain an Indigenous Participation Level of at least the Initial IPL until at least the fifth (5<sup>th</sup>) anniversary of the Commercial Operation Date shall constitute a Supplier Event of Default. Notwithstanding the foregoing, where an individual Indigenous Community that held more than ten percent (10%) of the Economic Interest in the Supplier as of the Contract Date (including through an Indigenous Holding Vehicle, if applicable) provides a written notice to the Buyer, signed by one or more individuals with authority to bind the applicable Indigenous Community, requesting a reduction in the Indigenous Participation Level relative to the Initial IPL prior to the fifth (5<sup>th</sup>) anniversary of the Commercial Operation Date, to a level that may not be less than the Minimum Reduced IPL, such reduced Indigenous Participation Level shall be deemed to constitute the Initial IPL for purposes of this Section 16.7(b). The foregoing reduction of the Initial IPL may be exercised only once prior to the fifth (5<sup>th</sup>) anniversary of the Commercial Operation Date. The provisions of this Section 16.7(b) shall not apply to any New Agreement resulting from a *bona fide* enforcement of a Secured Lender Security Agreement under Article 12 of this Agreement.

- (c) Except as otherwise provided for in Sections 16.6, 16.7(a) and 16.7(b), nothing in this Agreement restricts the transfer of ownership interests in the Supplier among the owners of such interests in the Supplier.

## 16.8 Survival

The provisions of Sections 2.6(c), 2.7, 4.2, 4.4, Article 5, Section 6.2(b)(iii), Article 8, Sections 10.2, 10.4, 10.5, and 12.2(g), Article 14, Sections 15.2, 16.1, 16.2, and 16.5(c) shall survive the expiration of the Term or earlier termination of this Agreement. The expiration of the Term or a termination of this Agreement shall not affect or prejudice any rights or obligations that have accrued or arisen under this Agreement prior to the time of expiration or termination and such rights and obligations shall survive the expiration of the Term or the termination of this Agreement for a period of time equal to the applicable statute of limitations.

## 16.9 Counterparts

This Agreement may be executed in two or more counterparts, and all such counterparts shall together constitute one and the same Agreement. It shall not be necessary in making proof of the contents of this Agreement to produce or account for more than one such counterpart. This Agreement may be executed by printing, signing and scanning, or by electronic signature in a format approved by the Buyer. 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.

#### **16.10 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.

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

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

#### **16.12 Time of Essence**

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

#### **16.13 Further Assurances**

Each of the Parties shall, from time to time on written request of the other Party, do all such further acts and execute and deliver or cause to be done, executed or delivered all such further acts, deeds, documents, assurances and things as may be required, acting reasonably, in order to fully perform and to more effectively implement and carry out the terms of this Agreement. Without limiting the generality of the foregoing, upon request of the Buyer, the Supplier shall enroll in or utilize an internet-based or software program utilized by the Buyer for the administration of this Agreement, and shall communicate with the Buyer through such website or software program for purposes of administering this Agreement, as requested by the Buyer. The Parties agree to promptly execute and deliver any documentation required by any Governmental Authority in connection with any termination of this Agreement.

*[Remainder of Page Intentionally Blank]*

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

[●]

***[Note to Finalization: To be updated prior to execution.]***

**INDEPENDENT ELECTRICITY SYSTEM OPERATOR**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

We have authority to bind the corporation.

We have authority to bind the corporation.

DRAFT FOR DISCUSSION

## EXHIBIT A FACILITY DESCRIPTION

**[Note to Finalization: To be updated prior to execution.]**

<b>Name of Facility:</b>	[●]
<b>Municipal Address [or description of Indigenous Lands (as defined in the LLT(e) RFP), if applicable] and PIN(s), if applicable:</b>	[●]
<b>GPS Coordinates of Connection Point:</b>	[●]
<b>Connection Point Details:</b>	<b>[Note to Finalization: Name of transmitter, transmission circuit and transformer station for Tx system connected Facilities. Local distribution company, associated transformer station, associated transformer station feeder and distribution station and feeder (if applicable) for Dx connected Facilities. Where the Connection Point is comprised of multiple physical points of interconnection, indicate the percentage of the Contract Capacity to be connected at each such location. ]</b>
<b>Description of Hydroelectric Generation Technology:</b>	<b>[describe turbine(s), powerhouse and civil structures.]</b>
<b>Energy Source</b>	Hydroelectric waterpower

### Detailed Description of Facility:

#### 1.0 Overview

[●]

#### 1.1 Site Description

[●]

#### 1.2 Facility Design and Major Equipment and Nameplate MVA Rating

[●]

1.3 List of Environmental Approvals and Permits, and Status (including a description of the Facility's treatment under the Ontario Ministry of the Environment Conservation and Parks' "Guide to Environmental Assessment Requirements for Electricity Projects").

[●]

1.4 Electrical Interconnection (including description of work required to connect Facility)

[●].

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**EXHIBIT B**  
**CONTRACT CAPACITY, FIXED PRICE, AND OTHER STATED VARIABLES**

***[Note to Finalization: To be updated prior to execution.]***

<b>Fixed Price</b>	\$[●]/MWh	
<b>Nameplate Capacity/Contract Capacity</b>	[●]MW	
<b>Monthly Imputed Production Factor</b>	January	[●]%
	February	[●]%
	March	[●]%
	April	[●]%
	May	[●]%
	June	[●]%
	July	[●]%
	August	[●]%
	September	[●]%
	October	[●]%
	November	[●]%
	December	[●]%
<b>Annual Average Imputed Production Factor</b>	<b>[●%] <i>[simple average of Monthly Imputed Production Factors above]</i></b>	
<b>Indigenous Participation Level</b>	<p>The Supplier <b>[is/is not]</b> an Indigenous Participation Supplier as of the Contract Date. [The Initial IPL is ____% which is held, directly or indirectly, by _____.]</p> <p><b><i>[Note to Finalization: Insert Indigenous Community(ies) or Indigenous Holding Vehicle(s) and percentage(s) from Proposal, if applicable.]</i></b></p>	
<b>Prime Agricultural Areas</b>	The Project Site <b>[is/is not]</b> located in whole or in part on any lands that are included in a Prime Agricultural Area and the requirements of Section 2.12 [do/do not] apply.	

DRAFT FOR DISCUSSION



**EXHIBIT C**  
**FORM OF IRREVOCABLE STANDBY LETTER OF CREDIT**

DATE OF ISSUE: [●]  
APPLICANT: [●]  
BENEFICIARY: Independent Electricity System Operator and its permitted assigns  
(the “**Beneficiary**”)  
120 Adelaide Street West, Suite 1600  
Toronto, ON M5H 1T1  
AMOUNT: [●]  
EXPIRY DATE: [●]  
EXPIRY PLACE: Counters of the issuing financial institution in Toronto, Ontario  
CREDIT RATING: **[Insert credit rating only if the issuer is not a financial  
institution listed in either Schedule I or II of the *Bank Act*]**  
TYPE: Irrevocable and Unconditional Standby Letter of Credit Number:  
[●] (the “**Credit**”)

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

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

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

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

Partial drawings are permitted.

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

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

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

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

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

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

**[Issuing Bank Name]**

By: \_\_\_\_\_

By: \_\_\_\_\_

## EXHIBIT D FORM OF COMPANY REPRESENTATIVE NOTICE

SUBMIT BY E-MAIL (PDF WITH SIGNATURE) TO CONTRACT MANAGEMENT:

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

Capitalized terms not defined herein have the meanings ascribed thereto in the Contract. This Exhibit reflects the corresponding form appearing on the Buyer's Website as at the date of the Contract. In accordance with Section 1.2 of the Contract, the Buyer may, without notice to the Supplier, amend or replace this form. It is the responsibility of the Supplier to ensure that the latest draft of this form, as posted on the Buyer's Website, is used.

Pursuant to Section 15.1 of the Contract, the Supplier is hereby submitting this completed Prescribed Form – Form of Company Representative Notice to the Buyer.

### ESTABLISHING OR REPLACING THE COMPANY REPRESENTATIVE

- ☐ The Authorized Signatory below is either a signatory of the Contract, a person authorized to receive Notices, or the Company Representative. No other forms are required.
- ☐ The Authorized Signatory below is neither a signatory of the Contract, a person authorized to receive Notices, nor the Company Representative. A Prescribed Form - Certificate of Incumbency must also be submitted with this form.

Date	insert date
Legal Name of Supplier	insert legal name of Supplier (the "Supplier")
Name of Facility	insert name of Facility
Contract Title	insert contract title or Contract ID as appropriate (the "Contract")
Contract Date	insert Contract Date

**NOTE: The current Company Representative will be removed when a new Company Representative is appointed.**

Name of Company Representative	insert name of new Company Representative
Title	insert title of new Company Representative
Mailing Address Including Postal Code	insert mailing address of new Company Representative
Telephone	insert telephone number of new Company Representative
E-Mail Address	insert email address of new Company Representative

AUTHORIZED SIGNATORY	
Supplier: insert legal name of Supplier	
Signature:	
Name:	insert name
Title:	insert title
I have the authority to bind the Supplier and, if applicable, by signing this form using electronic signature, I agree to the content, terms and conditions set out in the document on behalf of the Supplier.	
Dated this <u>insert day</u> day of <u>insert month</u> , <u>insert year</u>	

**EXHIBIT E**  
**[*INTENTIONALLY DELETED*]**

**DRAFT FOR DISCUSSION**

## EXHIBIT F NON-PERFORMANCE CHARGES

This Exhibit F sets out the calculation of the “**Non-Performance Charge**” (or “**NPC**”) in respect of the Facility which will be calculated and, if applicable, charged on an annual basis during the Term and included in the Monthly Payment corresponding to the first Settlement Month of a Contract Year starting after the end of the third Contract Year. Except as expressly set forth below, all references to Sections are to Sections of the Agreement.

### 1. Calculation of the Actual Performance Factor

Commencing after the end of the third Contract Year, the Facility’s “**Actual Performance Factor**” (or “**APF**”) (expressed as a percentage figure) for any three (3) Contract Years period “*p*” will be calculated as follows:

$APF_p = TDE_p / [CC \times (TH_p - EH_p)]$	
where:	
APF <sub>p</sub>	is the Facility’s Actual Performance Factor (expressed as a percentage figure) for the most recent three (3) Contract Years period “ <i>p</i> ”.
TDE <sub>p</sub>	is the total Delivered Electricity measured over the most recent three (3) Contract Years period “ <i>p</i> ”.
CC	is the Contract Capacity (in MW).
TH <sub>p</sub>	is the total number of hours in the most recent three (3) Contract Years period “ <i>p</i> ”.
EH <sub>p</sub>	is the total number of “ <b>Excluded Hours</b> ” in each Settlement Month measured over the most recent three (3) Contract Years period “ <i>p</i> ”, being the total of all hours (or partial hours) in such period, without duplication, that are: (i) Force Majeure Outage Hours; (ii) Grid-Based Unavailability Hours; (iii) hours where the average ADALMP for all Dispatch Intervals in such hour are negative; or (iv) all hours in any Mid-Term Extended Outage Months.
Grid-Based Unavailability Hours	is the total number of hours (or partial hours) that are the subject of Grid-Based Unavailability.

### 2. Calculation of Performance Factor Shortfall and Non-Performance Charge

The “**Performance Factor Shortfall**” (or “**PFS**”) for any completed Contract Year “y” will be calculated as follows:

<b><math>PFS_y = (1 - APF_y / IPF_{AA})</math></b>	
where:	
$PFS_y$	is the Performance Factor Shortfall for the completed Contract Year “y”.
$APF_y$	is the $APF_p$ measured as of the end of Contract Year “y” expressed as a decimal, to three (3) decimal places (by dividing such percentage by 100).
$IPF_{AA}$	is the Annual Average Imputed Production Factor set out in Exhibit B expressed as a decimal, to three (3) decimal places (by dividing such percentage by 100).

Where the Performance Factor Shortfall for any completed Contract Year “y” is less than or equal to 0.20, the Non-Performance Charge for such completed Contract Year “y” shall be \$0. Where the Performance Factor Shortfall for any completed Contract Year “y” is greater than 0.35 it shall constitute a Supplier Event of Default. Where the Performance Factor Shortfall for any completed Contract Year “y” is greater than 0.20 the Non-Performance Charge for such completed Contract Year “y” shall be calculated as follows:

<b><math>NPC_y = IFP_{AVGy-3} \times [PFS - 0.2] \times CC \times TH_y \times IPF_{AA}</math></b>	
where:	
$NPC_y$	is Non-Performance Charge for the completed Contract Year “y”.
$IFP_{AVGy-3}$	is the simple average of the Indexed Fixed Price (in \$/MWh) for the most recent three (3) completed Contract Years ending with the completion of Contract Year “y”.
$PFS_y$	is the Performance Factor Shortfall calculated in accordance with Section 2 of this Exhibit F.
$CC$	is the Contract Capacity (in MW).
$TH_y$	is the total number of hours in the Contract Year “y”.
$IPF_{AA}$	is the Annual Average Imputed Production Factor set out in Exhibit B expressed as a decimal, to three (3) decimal places (by dividing such percentage by 100).



**EXHIBIT G**  
**FORM OF SECURED LENDER CONSENT AND ACKNOWLEDGEMENT**  
**AGREEMENT**

**THIS AGREEMENT** made as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,

*[Note to Finalization: IESO to insert date when executed by the IESO – Supplier to leave the date blank]*

BETWEEN:

[insert Supplier name],

*[insert legal form of the Supplier and jurisdiction of organization]*

(the “**Supplier**”),

- and -

[insert Security Agent name],

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

(the “**Security Agent**”),

- and -

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

(the “**IESO**”),

**RECITALS:**

- A. The Supplier and the IESO, entered into a LLT(e) Contract dated as of **[insert date]** (as amended, supplemented, restated or replaced from time to time in accordance with its terms and this agreement, the “**Contract**”);
- B. *[Note to finalization: describe structure of collateral arrangements; describe any bond issuance and related trust indentures; identify underlying security and debt documents; identify the “Secured Lenders” if they are anyone other than the Security Agent; identify any intercreditor or collateral agency arrangements]; and*

- C. The Supplier has granted security against, *inter alia*, all of their right, title, entitlement and interest in and to the Contract in favour of the Security Agent pursuant to the security agreements identified in Schedule “A” (collectively, as amended, supplemented, restated or replaced from time to time, the “**Security Agreements**”), as security for its present and future indebtedness, liabilities and obligations under and in respect of the *[Note to finalization: describe underlying debt instrument(s)]* (the “**Secured Debt**”);

**THEREFORE**, the parties agree as follows:

## 1. Defined Terms

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

## 2. Acknowledgement and Confirmation of Rights of Security Agent

- (a) The IESO, the Security Agent and the Supplier each acknowledge and confirm that:
- (i) the Supplier has delivered to the IESO copies of the Security Agreements listed on Schedule “A”;
  - (ii) the Security Agreements listed on Schedule “A” are acknowledged to be Security Agreements to which the provisions of Article 12 of the Contract apply; and (iii) the Security Agent constitutes the Secured Lender for purposes of the Contract and, without limiting the generality of the foregoing, is entitled to the benefit of the provisions of Article 12 of the Contract in favour of a Secured Lender and is entitled to enforce the same as if the Security Agent were a party to the Contract, until such time as IESO has received notice from the Security Agent that the Security Agreements have been terminated.
- (b) The Security Agent acknowledges, confirms and agrees that:
- (i) it has read and understood the requirements and restrictions pertaining to a Secured Lender Security Agreement in Section 12.1 of the Contract; and
  - (ii) it has complied with Section 12.1 of the Contract in entering into financing and security documents with the Supplier, including but not limited to the Secured Lender Security Agreement(s), in respect of the Contract.

Notwithstanding any other provision of this agreement, no Secured Lender Security Agreements other than the Security Agreements listed on Schedule “A” shall be entitled to the benefit of the provisions of Article 12 of the Contract, unless and until the IESO has received a copy thereof (as provided for in Section 12.1 of the Contract) and each of the parties has acknowledged such additional Security Agreement by fully executing an amendment to Schedule “A” to include such

additional Security Agreement. It is a condition precedent to the acknowledgement and confirmation provided in this Section 2 that the representations and warranties contained in Sections 3 and 4 hereof are true and accurate.

### 3. Covenants of the Security Agent

The Security Agent covenants and agrees with the IESO (and in the case of paragraphs (a), (c), (d), (f), (g), (i), (j), (k), (l) and (n) below, covenants, agrees, represents and warrants to the IESO) as follows:

- (a) Should the Security Agent enforce the Security Agreements with respect to the Contract, it will comply with the terms, conditions and obligations applicable to a Secured Lender under Section 12.2 of the Contract as they relate to the Security Agent's security interests in the Contract during such enforcement.
- (b) The Security Agent agrees that it will comply with Section 12.2(f) of the Contract if ever applicable.
- (c) The Security Agent is and will be at Arm's Length from the Supplier.
- (d) The Security Agreements listed on Schedule "A" constitute all of the security granted by the Supplier in favour of the Security Agent as at the date first written above.
- (e) Except for the Security Agreements and any other security that is delivered by the Security Agent to the IESO in accordance with Section 12.2(c) of the Contract, the Security Agent acknowledges that any other security granted in favour of the Security Agent will not impose any obligations upon the IESO pursuant to the Contract.
- (f) All of the security registrations made pursuant to the *Personal Property Security Act* (Ontario) or similar registrations made in respect of a security interest in personal property (or its equivalent) in any other jurisdiction(s) in respect of the Security Agreements are set out in Schedule "A".
- (g) If the Supplier is in default under or pursuant to any Security Agreement and the Security Agent intends to exercise any rights afforded to it with respect to the Contract, then the Security Agent will give notice of such default to the IESO at least ten (10) Business Days prior to exercising any such rights under the Contract.
- (h) The Security Agent has entered into this agreement and holds the security granted pursuant to the Security Agreements on behalf of all parties having any right, title or interest in the Security Agreements.
- (i) Only the Security Agent will be entitled to exercise the rights and remedies under the Security Agreements as the Secured Lender except that in accordance with

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

- (j) The address of the Security Agent to which notices may be sent pursuant to Section 12.1(c) of the Contract is set forth in Section 6 of this agreement.
- (k) The Security Agent will provide the IESO with written notice of any change in the identity or address of the Security Agent, and the Security Agent agrees to promptly notify IESO in writing of any discharge or termination of all or any of the Security Agreements listed on Schedule "A".
- (l) The recitals to this agreement are true and accurate.
- (m) The sale, assignment or other transfer of any rights in shares, partnership interests or similar rights in the capital of the Supplier with respect to all or any part of the securities of the Supplier (or that of its general partner(s) in the case of a Supplier that is a partnership) in respect of which the Security Agent holds a security interest granted pursuant to the Security Agreements shall be subject to Section 12.2(f) of the Contract.
- (n) The Security Agreements have been and shall be entered into, and any security thereunder has been and shall be held and assigned, solely by way of security and not for any other purpose. The Security Agent acknowledges that any acknowledgement, agreement or confirmation of the IESO hereunder is not and shall not be construed as a consent to any assignment of the Contract or to any change of Control of the Supplier other than for the *bona fide* enforcement of a security interest duly granted under a Security Agreement as provided for in Article 12 of the Contract.

#### 4. Covenants of the Supplier

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

- (a) The Security Agreements are subject to the terms and conditions applicable to a Secured Lender's Security Agreement that are contained in Article 12 of the Contract, and comply therewith.
- (b) The Supplier has provided to the IESO true and complete copies of the Security Agreements listed on Schedule "A", and such Security Agreements constitute Secured Lender's Security Agreements and the Security Agent constitutes a Secured Lender for purposes of the Contract.

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

## 5. Notice of Default by Security Agent

The parties hereto agree that the IESO shall not be bound or have any obligation to make any inquiry regarding the status of the Supplier’s account with the Security Agent or regarding any breach or default under or pursuant to the Security Agreements other than the written notice (a “**Default Notice**”) to be given to the IESO by the Security Agent pursuant to Section 12.1(d) of the Contract, which may be accepted by the IESO as conclusive evidence of the Supplier’s default thereunder. Following receipt by the IESO of a Default Notice, the IESO may at all times, subject to transfer of such interest or entry into a New Agreement in accordance with Article 12 of the Contract, rely on the instructions (the “**Security Agent’s Instructions**”) of the Security Agent or its nominee or agent or a receiver or receiver and manager appointed in accordance with Section 12.2(d) until the Default Notice is withdrawn by the Security Agent by written notice to the IESO. The IESO shall have no liability to the Supplier for honouring a Default Notice or any Security Agent’s Instructions and the Supplier hereby agrees to indemnify the IESO and hold it harmless in respect of any losses or claims incurred or suffered by the IESO due to or arising out of IESO honouring any Default Notice or complying with any Security Agent’s Instructions, and the sole remedy of the Supplier in any such circumstances shall be against the Security Agent. Prior to receipt by the IESO of a Default Notice, the IESO may at all times rely on the instructions of the Supplier (the “**Supplier’s Instructions**”). The IESO shall have no liability to the Security Agent for complying with any Supplier’s Instructions prior to such receipt.

## 6. Notice

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

If to the Supplier:

[insert Supplier's mailing address]

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

Email: ●

If to the IESO:

Independent Electricity System Operator  
120 Adelaide Street West  
Suite 1600

Toronto, Ontario  
M5H 1T1

Attention: Director, Contract Management

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

If to the Security Agent:

[insert Security Agent's mailing address]

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

Email: ●

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

## 7. Successors and Assigns

Subject to complying with Section 12.1 and sections 16.5, 16.6 and 16.7 of the Contract, the benefits under this agreement accruing to each of the parties to this agreement will extend to all their respective successors and permitted assigns, only if they agree, according to their interests, to be bound by all the provisions of this agreement (it being the responsibility of each party to give notice to each other party of such assignment and to require its successors and permitted assigns to expressly acknowledge and agree in favour of each other party to be bound by this agreement). Subject to complying with Section 12.1 and Section 16.5 of the Contract, upon the acquisition by

any such successor or permitted assign of such an interest, such successor or permitted assign will be joined, as a party benefiting and bound by this agreement, by an appropriate further agreement supplementary to this agreement in form and substance acceptable to the IESO, acting reasonably.

## **8. No Waiver**

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

- (a) a waiver of any Supplier Event of Default or other default of the Supplier;
- (b) waiver of any prohibition or restriction on, or the IESO's consent to, any assignment of the Contract or change of Control under the Contract; or
- (c) an acknowledgement that there has been or will be compliance by the Supplier with the Contract, except to the extent of the acknowledgement of the rights of the Security Agent as expressly provided herein.

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

## **9. Execution and Delivery**

This agreement may be executed by the parties hereto in counterparts and may be executed and delivered by electronic mail and all such counterparts and electronic mail will together constitute one and the same agreement.

## **10. Governing Law**

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

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



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

**[insert Supplier name]**

**[insert Security Agent name]**

By: \_\_\_\_\_  
Name: [insert name]  
Title: [insert position title]

By: \_\_\_\_\_  
Name: [insert name]  
Title: [insert position title]

By: \_\_\_\_\_  
Name: [insert name]  
Title: [insert position title]  
  
I/We have authority to bind the  
corporation.

By: \_\_\_\_\_  
Name: [insert name]  
Title: [insert position title]  
  
I/We have authority to bind the  
corporation.

**INDEPENDENT ELECTRICITY SYSTEM  
OPERATOR**

By: \_\_\_\_\_  
Name:  
Title:  
  
I/We have authority to bind the  
corporation.

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## SCHEDULE “A”

### LIST OF SECURITY AGREEMENTS AND REGISTRATION DETAILS

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

[insert description of Security Agreements]

....

....

....

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

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

(b) ...

The following registrations were made in the following jurisdictions against the Supplier in favour of the Security Agent:

(a) ●

DRAFT FOR DISCUSSION

## EXHIBIT H FORM OF FORCE MAJEURE NOTICE

**SUBMIT BY E-MAIL (PDF WITH SIGNATURE) TO CONTRACT MANAGEMENT:**

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

This Exhibit reflects the corresponding forms appearing on the Buyer's Website as at the date of this Contract. In accordance with Section 1.2 of the Contract, the Buyer may, without notice to the Supplier, amend or replace this form. It is the responsibility of the Supplier to ensure that the latest draft of this form, as posted on the Buyer's Website, is used. Capitalized terms not defined herein have the meanings ascribed thereto in the Contract.

Pursuant to Article 11 of the Contract, the Supplier is hereby submitting this completed Prescribed Form – Form of Force Majeure Notice to the Buyer.

- ☐ This is a new Force Majeure event, start date:      insert date, if applicable
- ☐ This is an update to an existing Force Majeure No.:      insert the Force Majeure #
- ☐ This is a termination Notice, termination date:      insert date, if applicable

<b>Date</b>	insert date
<b>Legal Name of Supplier</b>	insert legal name of Supplier (the "Supplier")
<b>Name of Facility</b>	insert name of Facility
<b>Contract Title</b>	insert contract title or Contract ID, as applicable (the "Contract")
<b>Contract Date</b>	insert Contract Date
<b>Force Majeure No.</b>	insert force majeure number
<b>Title of Force Majeure</b>	insert title of force majeure
<b>Type of Force Majeure</b>	<div><input type="checkbox"/> ACTS OF GOD / EXTREME WEATHER      <input type="checkbox"/> DELAYS / DISRUPTIONS TO FUEL SUPPLY</div> <div><input type="checkbox"/> LABOUR DISPUTES      <input type="checkbox"/> LICENCES / PERMITTING</div> <div><input type="checkbox"/> LEGAL ORDER / LEGISLATION      <input type="checkbox"/> OTHER (SPECIFY):</div>

The Supplier represents and warrants that all of the information in this Prescribed Form – Form of Force Majeure Notice, including all documentation provided herewith, is complete, true and accurate, and there is no material information omitted from this Prescribed Form – Form of Force Majeure Notice that makes the information contained herein misleading or inaccurate.

The Supplier acknowledges and agrees that this Prescribed Form – Form of Force Majeure Notice is being delivered to the IESO solely for the purposes of the Contract. It does not constitute a notice for any other purpose, including, without limitation, to meet an obligation to provide notice to the System Operator pursuant to the IESO Market Rules.

Supplier: insert legal name of Supplier
Signature:
Name:
Title:
I have the authority to bind the Supplier and, if applicable, by signing this form using electronic signature, I agree to the content, terms and conditions set out in the document on behalf of the Supplier.
Dated this <u>insert day</u> day of <u>insert month</u> , <u>insert year</u>
The signatory must be either a signatory of the Contract, a person authorized to receive Notices, or the Company Representative.

**1. Description of the events leading to Force Majeure**

Provide reasonably full particulars of the cause and timing of the events relating to the invoked Force Majeure. Also provide documentary evidence of the same, including without limitation, the following: newspaper articles, correspondence, emails, notes, reports, memoranda and any other documentation relevant to establishing Force Majeure.

insert description of the events leading to the invoked Force Majeure

**2. Effect of Force Majeure**

Provide reasonably full particulars of the effect of the Force Majeure on the Supplier's ability to fulfill its obligations under the Contract. Also provide documentary evidence of the same, including without limitation, the following: reports, policy documents, correspondence, emails, notes, memoranda and any other documentation relevant to establishing the effect of Force Majeure.

insert description of the effect of the invoked Force Majeure

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**3. Cost of alternatives available to remedy or remove the Force Majeure**

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

insert description of available alternatives and the associated costs

**4. Commercially Reasonable Efforts**

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

insert description of the effect of commercially reasonable efforts

*(Use separate attachments or extra pages, as necessary)*

## EXHIBIT I FORM OF CONFIDENTIALITY UNDERTAKING

**SUBMIT BY EMAIL (PDF WITH SIGNATURE) TO CONTRACT MANAGEMENT:**

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

This Exhibit reflects the corresponding forms appearing on the Buyer's Website as at the date of this Contract. In accordance with Section 1.2 of the Contract, the Buyer may, without notice to the Supplier, amend or replace this form. It is the responsibility of the Supplier to ensure that the latest draft of this form, as posted on the Buyer's Website, is used. Capitalized terms not defined herein have the meanings ascribed thereto in the Contract.

Pursuant to Section 8.1(c) of the Contract, the Supplier is hereby submitting this completed Prescribed Form – Form of Confidentiality Undertaking.

<b>Date</b>	insert date
<b>Legal Name of Supplier</b>	insert legal name of Supplier (the "Supplier")
<b>Name of Facility</b>	insert name of Facility
<b>Contract Title</b>	insert contract title or Contract ID, as applicable (the "Contract")
<b>Contract Date</b>	insert Contract Date

**WHEREAS** the Supplier is a party to the Contract;

**WHEREAS** the undersigned is a prospective direct or indirect investor in or financier to the Supplier (the "**Transaction Party**");

**AND WHEREAS** the Transaction Party is a prospective transaction party for the purposes of prospective direct or indirect investment in the Supplier (including through a direct or indirect acquisition of an interest in Supplier) or purchasing the Facility or for the provision of debt or other financing to the Supplier in respect of the Facility (the "**Purpose**");

**AND WHEREAS** the Supplier wishes to disclose Confidential Information to the Transaction Party for the Purpose, and such disclosure is prohibited without the provision to the IESO of this Confidentiality Undertaking;

**AND WHEREAS** the Buyer is prepared to provide written consent to the Supplier in respect of the disclosure of Confidential Information to the Transaction Party for the Purpose;

**NOW THEREFORE:**

1. The Supplier acknowledges and agrees that:
  - a. the Transaction Party has been informed of the Supplier's confidentiality obligations under the Contract; and
  - b. prior to disclosing Confidential Information to the Transaction Party, it will provide a copy of this executed Confidentiality Undertaking to the Buyer.
2. The Transaction Party acknowledges and agrees that:



- a. it is a prospective transaction party for the Purpose;
- b. it has been informed of the Supplier's confidentiality obligations under the Contract;
- c. it will hold any and all Confidential Information confidential on the terms set out herein and in accordance with Article 8 of the Contract as applicable to the Supplier, mutatis mutandis; and
- d. it will use the Confidential Information only for the Purpose.

<b>Supplier:</b> insert legal name of Supplier
Signature:
Name:
Title:
I have the authority to bind the Supplier and, if applicable, by signing this form using electronic signature, I agree to the content, terms and conditions set out in the document on behalf of the Supplier.
Dated this ____ day of ____, 20__

<b>Purchaser:</b> insert legal name of Transaction Party
Signature:
Name:
Title:
I have the authority to bind the Transaction Party and, if applicable, by signing this form using electronic signature, I agree to the content, terms and conditions set out in the document on behalf of the Transaction Party.
Dated this ____ day of ____, 20__

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## EXHIBIT J CALCULATION OF MONTHLY PAYMENT

This Exhibit J sets out the calculation of the Monthly Payment. Except as expressly set forth below, all references to Sections are to Sections of the Agreement.

### 1. DETERMINATION OF MONTHLY PAYMENT

For Settlement Months, or partial Settlement Months, commencing on the Commercial Operation Date, the Monthly Payment is calculated as follows:

$\mathbf{MP_m} = [\mathbf{IFP_{my}} \times \mathbf{CC} \times \mathbf{IPF_{AA}} \times \mathbf{SMH_m} \times \mathbf{FMCRF_m}] - [\mathbf{IPP_m} \times \mathbf{IPF_m} \times \mathbf{CC} \times \mathbf{SMH_m} \times \mathbf{FMCRF_m}] - \mathbf{NPC_m}$	
<b>where:</b>	
$\mathbf{MP_m}$	is the Monthly Payment (in \$ for the Settlement Month “ <i>m</i> ”)
$\mathbf{IFP_{my}}$	<p>is the Indexed Fixed Price (in \$/MWh) in the Settlement Month “<i>m</i>” for Contract Year “<i>y</i>”.</p> <p>For the first Contract Year, the Indexed Fixed Price shall be equal to the Fixed Price multiplied by the Pre-COD Indexing Factor (such adjusted baseline Fixed Price, the “<b>FP<sub>B</sub></b>”).</p> <p>For the second and each succeeding Contract Year, <math>\mathbf{IFP_{my}}</math> shall be calculated as follows:</p> $\mathbf{IFP_{my}} = (\mathbf{FP_B} \times 0.2 \times \mathbf{IF_y}) + (\mathbf{FP_B} \times 0.8)$ <p>Notwithstanding the foregoing, <math>\mathbf{IFP_{my}}</math> shall be \$0/MWh for any Mid-Term Extended Outage Months.</p>
Pre-COD Indexing Factor	is the factor calculated by dividing $\mathbf{CPI_{COD}}$ by $\mathbf{CPI_{CD}}$ .
$\mathbf{CPI_{COD}}$	is the CPI applicable to the earlier of (i) the calendar month immediately prior to the COD and (ii) the calendar month immediately prior to the Milestone Date for Commercial Operation.
$\mathbf{CPI_{CD}}$	is the CPI applicable to the calendar month immediately prior to the Contract Date.
$\mathbf{IF_y}$	<p>is the Index Factor for Contract Year “<i>y</i>” and shall be calculated as follows:</p> $\mathbf{IF_y} = \mathbf{CPI_y} / \mathbf{CPI_{COD}}$
$\mathbf{CPI_y}$	is the CPI applicable to the calendar month immediately prior to the first day of Contract Year “ <i>y</i> ”.
$\mathbf{CC}$	is the Contract Capacity (in MW).

IPF <sub>AA</sub>	has the meaning ascribed to it in Exhibit F.
SMH <sub>m</sub>	is the number of hours in the Settlement Month “ <i>m</i> ”, provided that if the Settlement Month is the first or last Settlement Month of the Term, the SMH <sub>m</sub> will be only the number of hours in the Term in such Settlement Month.
FMCRF <sub>m</sub>	is the Force Majeure Capacity Reduction Factor for Settlement Month “ <i>m</i> ” which shall be equal to 1.0 if there are no Outages affecting the Facility in the Settlement Month resulting from an event of Force Majeure, otherwise it shall be calculated as follows: <b><math>FMCRF_m = 1 - \frac{FMOH_m}{SMH_m}</math></b>
FMOH	is a Force Majeure Outage Hour, which is an hour in Settlement Month “ <i>m</i> ” for which the Facility is the subject of an event of Force Majeure.
FMOH <sub>m</sub>	is the total number of Force Majeure Outage Hours in Settlement Month “ <i>m</i> ”.  In determining Force Majeure Outage Hours occurring during a Settlement Month, an hour may be a partial Force Majeure Outage Hour as a result of an inability of the Facility to produce at the full Contract Capacity or as a result of an event of Force Majeure lasting for a part but not all of an hour. An hour in which either such partial Force Majeure occurs (or both of them) will be counted as a fractional Force Majeure Outage Hour by subtracting from one the quotient obtained by dividing: (i) the maximum output of the Facility in that hour that could have been achieved given the partial Force Majeure or derate (in MWh) by (ii) the Contract Capacity multiplied by one (1) hour (in MWh). This fraction will be the contribution of that hour to the FMOH in the given Settlement Month.
IPP <sub>m</sub>	is the Imputed Production Price for Settlement Month “ <i>m</i> ” and which will be the simple average of the ADALMP for each Dispatch Interval in the month, with any negative ADALMP deemed to be \$0/MWh.  Notwithstanding the foregoing, IPP <sub>m</sub> shall be \$0/MWh for any Mid-Term Extended Outage Months.
IPF <sub>m</sub>	is the Monthly Imputed Production Factor corresponding to Settlement Month “ <i>m</i> ” as set out in Exhibit B expressed as a decimal, to three (3) decimal places (by dividing such percentage by 100).
ADALMP	means, with respect to any Dispatch Interval, the Connection Point Weighted Average of the locational marginal price for energy (in \$/MWh) at the Connection Point for the hour to which the Dispatch Interval belongs.

	During any day that is a DAM Suspension Day, ADALMP shall be deemed to be the arithmetic average of the ARTLMP for each Dispatch Interval in each hour of such day, with any negative ARTLMP deemed to be \$0/MWh.
IESO Centralized Forecast	means the forecasted generating capability for the Facility (in MW) for a given Dispatch Interval established by or on behalf of the System Operator pursuant to the IESO Market Rules.
ARTLMP	means, with respect to any Dispatch Interval, the Connection Point Weighted Average of the real-time locational marginal price for energy (in \$/MWh) at the Connection Point.
NPC <sub>m</sub>	is the Non-Performance Charge (in \$) applicable for the Settlement Month (if any) calculated in accordance with Exhibit F and included in the Monthly Payment corresponding to the first Settlement Month of a Contract Year starting after the end of the third Contract Year, as well as in the final Monthly Payment following the end of the Term. In all other Settlement Months, NPC shall be zero.

## EXHIBIT K

### ARBITRATION PROCEDURES 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 Buyer’s option, all Other Suppliers required by the Buyer to participate, have been unable to reach agreement as contemplated in Sections 1.6 and 1.7 of this Agreement, as applicable, then the Buyer shall commence arbitration by delivering a written notice (the “**Request**”) to the Supplier and such Other Suppliers required by the Buyer to participate (collectively the “**Suppliers**”). If the Buyer has not already done so, the Buyer shall then deliver to the Suppliers the names of such Other Suppliers. Within twenty (20) days of the delivery of the Request, the Buyer shall deliver to the Suppliers a written notice nominating an arbitrator who shall be familiar with commercial law matters and has no financial or personal interest in the business affairs of any of the parties. Within twenty (20) days of the receipt of the Buyer’s notice nominating its arbitrator, the Suppliers shall by written notice to the Buyer nominate an arbitrator who shall be familiar with commercial law matters and has no financial or personal interest in the business affairs of any of the parties. The two (2) arbitrators nominated shall then select a chairperson of the arbitration panel (the “**Arbitration Panel**”) who shall be a former judge of a Superior Court or appellate court in Canada.
2. **Application to Court** - If the Suppliers are unable to agree on the nomination of an arbitrator within twenty (20) days of the receipt of the Buyer’s notice nominating its arbitrator, any of the Suppliers or the Buyer may apply to a judge of the Superior Court of Justice of Ontario to appoint the arbitrator. If the two (2) arbitrators are unable to agree on a chair person within thirty (30) days of the nomination or appointment of the Supplier’s arbitrator, any of the Suppliers or the Buyer may apply to a judge of the Superior Court of Justice of Ontario to appoint the chair person.
3. **General** - The Arbitration Panel, once appointed, shall proceed immediately to determine the amendments to the Agreement and/or the Replacement Provision, as the case may be, in accordance with the Arbitration Act and, where applicable, the Ontario *International Commercial Arbitration Act*, it being the intention of the Buyer and the Supplier that there be, to the extent possible, one arbitration proceeding and hearing to determine the amendments to the Agreement and/or the Replacement Provision. Unless otherwise agreed by the Parties, the Arbitration Panel shall determine the conduct of the arbitral proceedings, including the exchange of statements of claim and defence, the need for documentary and oral discovery and whether to hold oral hearings with a presentation of evidence or oral argument so that the award may be made within the time period set out below. Each of the Suppliers shall have a right to participate in the arbitration proceeding.
4. **Consolidation** – The Parties agree that should the Arbitration Panel determine that the amendments to the Agreement and/or the Replacement Provision needs to be determined through more than one (1) arbitration proceeding, then the Parties agree that the Arbitration Panel shall determine whether the arbitration proceedings shall be consolidated, conducted

simultaneously or consecutively or whether any of the arbitration proceedings should be stayed until any of the others are completed.

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

## EXHIBIT L FORM OF ANNUAL OPERATING PLAN

**SUBMIT BY E-MAIL (PDF WITH SIGNATURE) TO CONTRACT MANAGEMENT:**

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

This Exhibit reflects the corresponding forms appearing on the Buyer's Website as at the date of this Contract. In accordance with Section 1.2 of the Contract, the Buyer may, without notice to the Supplier, amend or replace this form. It is the responsibility of the Supplier to ensure that the latest draft of this form, as posted on the Buyer's Website, is used. Capitalized terms not defined herein have the meanings ascribed thereto in the Contract.

Pursuant to Section 15.3(b)(i)(ii) of the Contract, the Supplier is hereby submitting this completed Prescribed Form – Form of Annual Operating Plan to the Buyer.

<b>Date</b>	insert date
<b>Legal Name of Supplier</b>	insert legal name of Supplier (the "Supplier")
<b>Name of Facility</b>	insert name of Facility
<b>Contract Title</b>	insert contract title or Contract ID as appropriate (the "Contract")
<b>Contract Date</b>	insert Contract Date
<b>Contract Year No.</b>	insert contract year number
<b>Time Period</b>	<b>From:</b> insert date <b>To:</b> insert date

### 1. Unit Outages

#### 2.1 Planned Outages

**Assumptions:** include any/all assumptions

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

8							
9							
10							
11							
12							

## 2.2 Overall Availability

**Assumptions:** include any/all assumptions

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

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**EXHIBIT M**  
***[INTENTIONALLY DELETED]***

**DRAFT FOR DISCUSSION**

## EXHIBIT N FORM OF INDEPENDENT ENGINEER CERTIFICATE

**SUBMIT BY EMAIL (PDF WITH SIGNATURE) TO CONTRACT MANAGEMENT:**

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

This Exhibit reflects the corresponding forms appearing on the Buyer's Website as at the date of this Contract. In accordance with Section 1.2 of the Contract, the Buyer may, without notice to the Supplier, amend or replace this form. It is the responsibility of the Supplier to ensure that the latest draft of this form, as posted on the Buyer's Website, is used. Capitalized terms not defined herein have the meanings ascribed thereto in the Contract.

<b>Date</b>	insert date
<b>Legal Name of Supplier</b>	insert legal name of Supplier (the "Supplier")
<b>Name of Facility</b>	insert name of Facility
<b>Resource ID</b>	insert resource ID
<b>Contract Title</b>	insert contract title or Contract ID as appropriate (the "Contract")
<b>Contract Date</b>	insert Contract Date
<b>Milestone Date for Commercial Operation</b>	insert Milestone Date for Commercial Operation
<b>Contract Capacity (MW)</b>	insert Contract Capacity

WHEREAS Section 2.5(a)(i) of the Contract provides that the Facility will be deemed to have achieved Commercial Operation at the point in time when, *inter alia*, the Buyer has received a certificate directly from an Independent Engineer containing certain statements with respect to the Facility (this "Certificate");

AND WHEREAS, insert name of Independent Engineer (the "Undersigned") acts as the Independent Engineer for the purposes of providing this Certificate;

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

- a) the Undersigned is:
  - (i) a professional engineer duly qualified and licensed to practice engineering in the Province of Ontario; and
  - (ii) employed by an independent engineering firm which holds a certificate of authorization from Professional Engineers Ontario that is not affiliated with the Supplier nor directly or indirectly Controlled by the Supplier and that does not have a vested interest in the design, engineering, procurement, construction, metering and/or testing of the Facility.
- b) the Facility has been completed in all material respects, excepting punch list items that do not materially and adversely affect the ability of the Facility to operate in accordance with the Contract;
- c) the Connection Point of the Facility is at the location specified in Exhibit A of the Contract;

- d) the Facility has been constructed, connected, commissioned and synchronized to the IESO-Controlled Grid or a Distribution System, as applicable, such that 100% of the Contract Capacity is available to generate and Deliver Electricity, as applicable, in compliance with Good Engineering and Operating Practices and Laws and Regulations;
- e) the Facility or the Supplier, as applicable, has all permits and approvals issued by Governmental Authorities which are required to construct, operate and maintain the Facility in accordance with Laws and Regulations, including the final Registration Approval Notification (RAN) issued by the System Operator; and
- f) the Facility has met the **[Regulation Services Readiness Requirements]**.

The Independent Engineer represents and warrants that all of the information in this Certificate is complete, true and accurate, and there is no material information omitted from this Certificate that makes the information contained herein misleading or inaccurate.

Independent Engineer: <u>insert name of Independent Engineer</u>
Signature and Professional Engineer Stamp of Signing Engineer:
Name:
Title:
Dated this ____ day of ____, 20__

DRAFT FOR DISCUSSION

## EXHIBIT O FORM OF SUPPLIER'S CERTIFICATE

**SUBMIT BY EMAIL (PDF WITH SIGNATURE) TO CONTRACT MANAGEMENT:**

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

This Exhibit reflects the corresponding forms appearing on the Buyer's Website as at the date of this Contract. In accordance with Section 1.2 of the Contract, the Buyer may, without notice to the Supplier, amend or replace this form. It is the responsibility of the Supplier to ensure that the latest draft of this form, as posted on the Buyer's Website, is used. Capitalized terms not defined herein have the meanings ascribed thereto in the Contract.

<b>Date</b>	insert date
<b>Legal Name of Supplier</b>	insert legal name of Supplier (the "Supplier")
<b>Name of Facility</b>	insert name of Facility
<b>Resource ID</b>	insert resource ID
<b>Contract Title</b>	insert contract title or Contract ID as appropriate (the "Contract")
<b>Contract Date</b>	insert Contract Date
<b>Milestone Date for Commercial Operation (MCOD)</b>	insert Milestone Date for Commercial Operation
<b>Commercial Operation Date Requested</b>	insert date

Pursuant to section 2.5(a)(ii) of the Contract, the Supplier is hereby submitting this completed Prescribed Form – Form of Supplier's Certificate (the "Certificate") and all relevant supporting documentation as listed below to the Buyer.

**WHEREAS** Section 2.5(a) of the Contract provides that the Facility will be deemed to have achieved Commercial Operation when the Buyer notifies the Supplier that all of the documentation required by the Buyer has been provided and accepted by the Buyer;

**NOW THEREFORE**, insert legal name of Supplier

**CERTIFIES** to the Buyer that:

- a) insert name of Independent Engineer is a professional engineer that is:
  - (i) duly qualified and licensed to practice engineering in the Province of Ontario; and,
  - (ii) employed by an independent engineering firm which holds a certificate of authorization issued by Professional Engineers Ontario that is not affiliated with or directly or indirectly Controlled by the Supplier, and that does not have a vested interest in the design, engineering, procurement, construction, metering and/or testing of the Facility.
- b) insert legal name of Supplier has provided, or in the case of section (b)(iii) of this Certificate, has caused the Independent Engineer referenced in section (a) of this Certificate to provide, to the Buyer the following:

- (i) the Metering Plan that has been approved by the Buyer, pursuant to Section 2.7 of the Contract;
- (ii) a single line electrical drawing that identifies the as-built Connection Point sealed by a professional engineer licensed in Ontario, clearly showing area transmission and distribution facilities, including the transformer station(s) that is electrically closest to the Facility, pursuant to Section 2.5(a)(v) of the Contract;
- (iii) the IE Certificate in the Prescribed Form, pursuant to Section 2.5(a)(i) of the Contract;
- (iv) a copy of the final Registration Approval Notice (RAN) issued by the System Operator; and
- (v) a copy of the generation license issued by OEB.

The Supplier represents and warrants that all of the information in this Certificate is complete, true and accurate, and there is no material information omitted from this Certificate that makes the information contained herein misleading or inaccurate.

The Supplier acknowledges and agrees that this Certificate is being delivered to the Buyer solely for the purposes of the LLT(e) Contract. It does not constitute a notice for any other purpose, including, without limitation, to meet an obligation to provide notice to the System Operator pursuant to the IESO Market Rules.

Supplier: insert legal name of Supplier
Signature:
Name:
Title:
I have the authority to bind the Supplier and, if applicable, by signing this form using electronic signature, I agree to the content, terms and conditions set out in the document on behalf of the Supplier.
Dated this       day of       , 20

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**EXHIBIT P**  
**MILESTONE DATES**

	<b>MILESTONE EVENT</b>	<b>MILESTONE DATE (Month/Day/Year)</b>
<b>1.</b>	Security Step-Up Date	date that is fourth (4 <sup>th</sup> ) anniversary of the Contract Date
<b>2.</b>	Milestone Date for Commercial Operation	date that is eighth (8) anniversary of the Contract Date

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## EXHIBIT Q FORM OF QUARTERLY PROGRESS REPORT

**SUBMIT BY EMAIL (PDF WITH SIGNATURE) TO CONTRACT MANAGEMENT:**

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

This Exhibit reflects the corresponding forms appearing on the Buyer's Website as at the date of this Contract. In accordance with Section 1.2 of the Contract, the Buyer may, without notice to the Supplier, amend or replace this form. It is the responsibility of the Supplier to ensure that the latest draft of this form, as posted on the Buyer's Website, is used. Capitalized terms not defined herein have the meanings ascribed thereto in the Contract.

<b>Date</b>	insert date
<b>Legal Name of Supplier</b>	insert legal name of Supplier (the "Supplier")
<b>Name of Facility</b>	insert name of Facility
<b>Contract Title</b>	insert contract title or Contract ID as appropriate (the "Contract")
<b>Contract Date</b>	insert date
<b>Milestone Date for Commercial Operation</b>	insert Milestone Date for Commercial Operation
<b>Reporting Period</b>	<input type="checkbox"/> Q1 <input type="checkbox"/> Q2 <input type="checkbox"/> Q3 <input type="checkbox"/> Q4      Reporting Year: <u>insert year</u>

Pursuant to section 2.4(a) of the Contract, the Supplier is hereby submitting this completed Prescribed Form – Quarterly Progress Report and all relevant supporting documentation as listed below to the Buyer. Information provided by the Supplier may be disclosed by the Buyer in accordance with the provisions of the Contract.

The Supplier represents and warrants that all of the information in this Prescribed Form – Quarterly Progress Report is complete, true and accurate, and there is no material information omitted from this Prescribed Form – Quarterly Progress Report that makes the information contained herein misleading or inaccurate.

The Supplier acknowledges and agrees that this Notice is being delivered to the Buyer solely for the purposes of the Contract. It does not constitute a notice for any other purpose, including, without limitation, to meet an obligation to provide notice to the System Operator pursuant to the IESO Market Rules.

Supplier: insert legal name of Supplier
Signature:
Name:
Title:
I have the authority to bind the Supplier and, if applicable, by signing this form using electronic signature, I agree to the content, terms and conditions set out in the document on behalf of the Supplier.



Dated this	day of	, 20
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## SUBMISSION CHECKLIST

- ☐ 1. This completed Prescribed Form – Form of Quarterly Progress Report
- ☐ 2. If the Facility is under construction, 5-10 photos in .JPEG format as set out in this Prescribed Form – Form of Quarterly Progress Report

**1. Project Completion:** Please state the overall completeness percentage of the project and select the option that best describes the overall project status. Please also include the projected in-service date.

Project Completion Level (%)	Overall Project Status	Projected Commercial Operation Date
	Not Started	Click to enter date.

**2. Executive Summary of Quarterly Activities:** In bullet point form, please provide a brief overview of major work accomplished, any significant safety, environmental or other events that have occurred in the reporting period, and any issues that could have potential schedule impacts.

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**3. Assignment and Change of Control RE: Sections 16.5 and 16.6 of the Contract:** Report the status of assignment of the Contract and/or change of Control of the Supplier, if any. This section is to report status only, the Supplier is required to give the Buyer prompt notice or seek consent, as applicable, before this occurs as per Section 16.5 and 16.6 of the Contract. If yes to either, please provide details below.

**Assignment:** ☐ Yes ☐ No

**Change of Control:** ☐ Yes ☐ No

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<b>4. Ownership Interest of the Supplier:</b> Is ownership interest of the Supplier held by a publicly traded company? If “Yes”, please provide the name of the publicly traded company and any relevant details below.	
<input type="checkbox"/> Yes <input type="checkbox"/> No  •	
<b>5. Force Majeure RE: Article 11 of the Contract:</b> Report the status of Force Majeure events, if any. This section is to report status only. The Supplier is required to give the Buyer notice of Force Majeure as per Section 11.1(b) of the Contract.	
•	
<b>6. Secured Lender’s Security Agreement RE: Article 12 of the Contract:</b> If a Secured Lender’s Security Agreement has been entered into by the Supplier, please provide details below. This section is to report status only. The Supplier shall provide the Buyer prompt notice if it intends to enter into an agreement with a Secured Lender under Article 12 of the Contract.	
<input type="checkbox"/> Yes <input type="checkbox"/> No  •	
<b>7. Additional Sources of Government Support RE: Section 2.3 of the Contract:</b> Has the Supplier been awarded any direct financial funding pursuant to any Future Government Support Program?	
<input type="checkbox"/> Yes <input type="checkbox"/> No   (If Yes, please elaborate and include the amount of funding that has been awarded)  •	
<b>8. [INTENTIONALLY DELETED FOR LLT(e) CONTRACT]</b>	
<b>9. Company Representative:</b> Confirm contact information for the individual who, pursuant to Section 15.1 of the Contract, is authorized to act on behalf of the Supplier. If there has been a change since the previous report, an updated <i>Prescribed Form – Notice of Company Representative</i> must also be provided.	
Name of Company Representative	
Title	
Mailing Address	
Email Address	
Telephone	

10. <b>Representations of the Supplier RE: Section 7.1 of the Contract:</b> Please restate that the representations of the Supplier stipulated in Section 7.1 of the Contract are still true or provide a qualified representation.		
Section	Still True	If No, details of how qualified
7.1(a)	<input type="checkbox"/> Yes <input type="checkbox"/> No	
7.1(b)	<input type="checkbox"/> Yes <input type="checkbox"/> No	
7.1(c)	<input type="checkbox"/> Yes <input type="checkbox"/> No	
7.1(d)	<input type="checkbox"/> Yes <input type="checkbox"/> No	
7.1(e)	<input type="checkbox"/> Yes <input type="checkbox"/> No	
7.1(f)	<input type="checkbox"/> Yes <input type="checkbox"/> No	
7.1(g)	<input type="checkbox"/> Yes <input type="checkbox"/> No	
7.1(h)	<input type="checkbox"/> Yes <input type="checkbox"/> No	
7.1(i)	<input type="checkbox"/> Yes <input type="checkbox"/> No	
7.1(j)	<input type="checkbox"/> Yes <input type="checkbox"/> No	
7.1(k)	<input type="checkbox"/> Yes <input type="checkbox"/> No	
7.1(l)	<input type="checkbox"/> Yes <input type="checkbox"/> No	
7.1(m)	<input type="checkbox"/> Yes <input type="checkbox"/> No	
7.1(n)	<input type="checkbox"/> Yes <input type="checkbox"/> No	
7.1(o)	<input type="checkbox"/> Yes <input type="checkbox"/> No	

11. <b>Further Progress Descriptions:</b> Please complete the table below with the required details. Include progress updates, any issues that might cause delays and the forecasted completion date for each task if it is not yet complete or has not yet occurred.		
1.	Approvals	Obtaining environmental, Facility and Project Site approvals and applicable permitting for the Facility.
2.	Connection Assessment	Completion of any connection impact assessment or customer impact assessment, including receipt of approvals from the Transmitter or LDC, as applicable.
3.	System Impact Assessment	Completion of any system impact assessment including receipt of approvals from the System Operator, as applicable.

4.	Construction Contract	Execution of an EPC contract or balance-of plant construction contract in respect of the Project. If contracts have been executed, include the name of the contracted company.
5.	Financial Close	Completion of financial arrangements, including receipt of any Additional Source of Funding, allowing the Project to proceed.
6.	Ordering of major equipment	Note the original equipment manufacturer and the corresponding model of each piece of major equipment.
7.	Delivery of major equipment	Note the equipment and quantity delivered, including how many units have been delivered out of the total remaining, and confirm once delivery is complete.
8.	Pre-construction	Commencement or performance of any clearing, grading or material alteration of the Project Site by or on behalf of the Supplier.
9.	Construction of the Facility	Note the status of the construction of the Facility.
10.	Connection Construction	Construction of the infrastructure required for connecting the Facility to the Transmission System or Distribution System, as applicable.
11.	Connection	Connection of the Facility to the Transmission System or Distribution System, as applicable.
12.	Registration	Registration of the Facility as a Market Participant (MP).
13.	Testing	The process of evaluating the Facility and equipment to ensure compliance to performance criteria.
14.	Commercial Operation	Submission of required documentation for the Commercial Operation Package, in accordance with section 2.5 of the Contract.

Item	Reportable Events	Status	Progress Description	Issues	Issues Description	% Complete	Forecast Date	Actual Date
1	Approvals	Not Started		No Issues			Click to enter date.	Click to enter date.
2	Connection Assessment	Not Started		No Issues			Click to enter date.	Click to enter date.
3	System Impact Assessment	Not Started		No Issues			Click to enter date.	Click to enter date.
4	Construction Contract	Not Started		No Issues			Click to enter date.	Click to enter date.
5	Financial Close	Not Started		No Issues			Click to enter date.	Click to enter date.
6	Ordering of major equipment	Not Started		No Issues			Click to enter date.	Click to enter date.

Item	Reportable Events	Status	Progress Description	Issues	Issues Description	% Complete	Forecast Date	Actual Date
7	Delivery of major equipment	Not Started		No Issues			Click to enter date.	Click to enter date.
8	Pre-construction	Not Started		No Issues			Click to enter date.	Click to enter date.
9	Construction	Not Started		No Issues			Click to enter date.	Click to enter date.
10	Connection Construction	Not Started		No Issues			Click to enter date.	Click to enter date.
11	Connection	Not Started		No Issues			Click to enter date.	Click to enter date.
12	Registration	Not Started		No Issues			Click to enter date.	Click to enter date.
13	Testing	Not Started		No Issues			Click to enter date.	Click to enter date.
14	Commercial Operation	Not Started		No Issues			Click to enter date.	Click to enter date.

<b>12. Supplier Submittals Prior to Commercial Operation Date:</b> Please confirm the completeness of necessary submissions, if applicable.				
Item	Description of Submittals	Submission Date		
		Contractual	Forecast	Actual
1	AIA Components Two and Three Requirement Confirmation (if applicable)	Click to enter date.	Click to enter date.	Click to enter date.
2	Metering Plan	Click to enter date.	Click to enter date.	Click to enter date.
3	<i>Workplace Safety and Insurance Act (Ontario)</i> clearance certificate	Click to enter date.	Click to enter date.	Click to enter date.
4	Requirements for Commercial Operation under section 2.5 of the <b>Contract</b> with supporting documentation	Click to enter date.	Click to enter date.	Click to enter date.
<b>13. Progress Photos:</b> If the Facility is under construction, provide 5-10 photos that best represent the progress of construction work during the quarter as described in the Executive Summary above.				

- Photos should not be inserted into this section of the Prescribed Form – Quarterly Progress Status Report
- Photos should be sent as JPEG attachments in a separate email (the email must not exceed 10MB)
- Use descriptive filenames to reflect or explain the content of each photo (e.g. “Turbine installation in progress.jpg” and not “Photo 1.jpg”)

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## EXHIBIT R FORM OF OUTAGE REPORT

**SUBMIT BY EMAIL (PDF WITH SIGNATURE) TO CONTRACT MANAGEMENT:**

[outage.notice@ieso.ca](mailto:outage.notice@ieso.ca)

with a cc to [contract.management@ieso.ca](mailto:contract.management@ieso.ca)

This Exhibit reflects the corresponding forms appearing on the Buyer's Website as at the date of this Contract. In accordance with Section 1.2 of the Contract, the Buyer may, without notice to the Supplier, amend or replace this form. It is the responsibility of the Supplier to ensure that the latest draft of this form, as posted on the Buyer's Website, is used. Capitalized terms not defined herein have the meanings ascribed thereto in the Contract.

<b>Date</b>	insert date
<b>Legal Name of Supplier</b>	insert legal name of Supplier (the "Supplier")
<b>Name of Facility</b>	insert name of Facility
<b>Contract Title</b>	insert contract title or Contract ID, as appropriate (the "Contract")
<b>Contract Date</b>	insert date

Pursuant to Section 15.3(b)(ii) of the Contract, the Supplier is hereby submitting this Prescribed Form – Outage Notice to the Buyer.

### Supplier Outage Notice Contact Details

<b>Supplier Contact Name</b>	insert Supplier contact name
<b>Supplier Contact Telephone</b>	insert Supplier contact telephone
<b>Supplier Contact E-Mail</b>	insert Supplier Contact email address

### Outage Equipment Details

Equipment Name	Equipment Type	Nameplate Capacity (MW)
insert equipment name	insert equipment type	insert Nameplate Capacity in megawatts

[illegible]

2Time in EST, including switching time.

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### Grid-Based Unavailability Details

<b>Name of Distributor or Transmitter whose system unavailability is the sole cause of the Outage</b>	Provide name and contact details for applicable Distributor or Transmitter.
<b>Description of Distribution System or Transmission System Outage</b>	Provide narrative description of Grid-Based Unavailability, together with evidence of Transmitter, Distributor or System Operator communication or documentation of such forced Outage.
<b>Period</b>	Start date and time:  End date and time:

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**EXHIBIT S**  
**[*INTENTIONALLY DELETED*]**

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**EXHIBIT T**  
**FORM OF AIA CONFIRMATION CERTIFICATE**

**SUBMIT BY EMAIL (PDF WITH SIGNATURE) TO CONTRACT MANAGEMENT:**

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

<b>Date</b>	insert date
<b>Legal Name of Supplier</b>	insert legal name of Supplier (the "Supplier")
<b>Name of Facility</b>	insert name of Facility
<b>Contract Title</b>	insert contract title or Contract ID, as appropriate (the "Contract")
<b>Contract Date</b>	insert date
<b>Local Municipality</b>	Insert name of Local Municipality (the "Confirming Municipality")

Capitalized terms used in this form have the meaning given to such terms in the Contract.

Pursuant to section 2.12(a) of the Contract, by no later than eighteen (18) months after the Contract Date, the Supplier is required to provide the Buyer with a written notice from an authorized representative of any Local Municipality that has jurisdiction over land use planning in respect of all or any portion of the Project Site confirming that the Supplier has completed the AIA Components Two and Three Requirement with respect to the Facility and stating that such AIA Components Two and Three Requirement is satisfactory to the Local Municipality.

The undersigned, as a duly authorized representative of the Confirming Municipality, hereby confirms to the Buyer that the Supplier has completed the AIA Components Two and Three Requirement in respect of the Facility and that such AIA Components Two and Three Requirement is satisfactory to the Confirming Municipality.

This Notice is being delivered to the Buyer solely for the purposes of the Contract. It does not constitute a notice for any other purpose, including, without limitation, in relation to that satisfaction of any environmental or land-use regulatory obligations applicable to the Supplier or the Facility.

Local Municipality Authorized Representative:
Signature:
Name:
Title:
I have the authority to bind the Confirming Municipality and, if applicable, by signing this form using electronic signature, I agree to the content, terms and conditions set out in the document on behalf of the Confirming Municipality.
Dated this ____ day of ____, 20__