

CLEAN ENERGY SUPPLY (CES) CONTRACT

Between

BRIGHTON BEACH POWER L.P.

– and –

INDEPENDENT ELECTRICITY SYSTEM OPERATOR

DATED as of the 27th day of April, 2023

TABLE OF CONTENTS

	Page
ARTICLE 1 DEFINITIONS.....	1
1.1 Definitions.....	1
1.2 Exhibits	21
1.3 Headings and Table of Contents.....	23
1.4 Gender and Number	23
1.5 Currency.....	23
1.6 IESO Market Rules and Statutes.....	23
1.7 Implementation of Market Renewal	24
1.8 Evolution of the IESO-Administered Markets	26
1.9 Price Unavailability Events.....	28
1.10 Invalidity, Unenforceability, or Inapplicability of Indices and Other Provisions.....	29
1.11 Entire Agreement	31
1.12 Waiver, Amendment	31
1.13 Governing Law	31
1.14 Preparation of Agreement.....	31
ARTICLE 2 DEVELOPMENT AND OPERATION OF THE FACILITY.....	32
2.1 Design of the Facility.....	32
2.2 Buyer Information Prior to the Upgrade In-Service Date.....	33
2.3 Operation Covenants.....	33
2.4 Metering and Dispatch Capabilities.....	34
2.5 Insurance Covenants	35
2.6 Compliance with Laws and Regulations and Registration with the IESO	39
2.7 Environmental Attributes.....	39
2.8 Existing GHG Laws and Regulations	40
2.9 New or Amended GHG Laws and Regulations	41
2.10 Facility Upgrade.....	44
ARTICLE 3 DISPATCH OPTIONS	47
3.1 Rights to Dispatch the Facility.....	47
3.2 Available Dispatch Options	47
3.3 Appointment of the Dispatcher Under the Directed Dispatch Option.....	48
3.4 Future Tolling Dispatch	48
ARTICLE 4 OPERATION OF FACILITY AND PAYMENT OBLIGATIONS.....	49
4.1 Operation of Facility During the Term	49
4.2 Payment Amounts.....	49
4.3 Supplier’s Responsibility for Taxes.....	49
4.4 Buyer’s Responsibility for Taxes.....	49
4.5 Non-Residency.....	49
ARTICLE 5 STATEMENTS AND PAYMENTS	50
5.1 Meter and Other Data.....	50

TABLE OF CONTENTS

	Page
5.2 Statements	50
5.3 Payment.....	51
5.4 Interest.....	51
5.5 Payment Account Information.....	51
5.6 Adjustment to Statement.....	52
5.7 Disputed Statement	52
5.8 Statements and Payment Records	52
ARTICLE 6 CREDIT AND SECURITY REQUIREMENTS	53
6.1 Completion and Performance Security	53
6.2 Composition of Security	53
6.3 Letter of Credit Provisions.....	54
6.4 Guarantee Provisions	55
6.5 Financial Statements	57
6.6 Notice of Deterioration in Financial Indicators	57
6.7 Interest on Completion and Performance Security	58
ARTICLE 7 REPRESENTATIONS.....	58
7.1 Representations of the Supplier	58
7.2 Representations of the Buyer	59
ARTICLE 8 CONFIDENTIALITY AND FIPPA	61
8.1 Confidential Information	61
8.2 Notice Preceding Compelled Disclosure	62
8.3 Return of Information	62
8.4 Injunctive and Other Relief.....	63
8.5 FIPPA Records and Compliance	63
ARTICLE 9 TERM.....	63
9.1 Term.....	63
ARTICLE 10 TERMINATION AND DEFAULT	63
10.1 Events of Default by the Supplier.....	63
10.2 Remedies of the Buyer.....	66
10.3 Events of Default by the Buyer.....	67
10.4 Termination by the Supplier	69
10.5 Remedies for Termination Non-Exclusive	69
ARTICLE 11 FORCE MAJEURE	69
11.1 Effect of Invoking Force Majeure.....	69
11.2 Exclusions.....	71
11.3 Definition of Force Majeure	71
ARTICLE 12 LENDER’S RIGHTS	73
12.1 Lender Security.....	73

TABLE OF CONTENTS

	Page
12.2 Rights and Obligations of Secured Lenders.....	75
12.3 Cooperation.....	77
ARTICLE 13 DISCRIMINATORY ACTION.....	78
13.1 Discriminatory Action	78
13.2 Consequences of Discriminatory Action	79
13.3 Notice of Discriminatory Action	80
13.4 Right of the Buyer to Remedy or Cause to be Remedied a Discriminatory Action.....	82
ARTICLE 14 LIABILITY AND INDEMNIFICATION	83
14.1 Exclusion of Consequential Damages	83
14.2 Liquidated Damages	83
14.3 Buyer Indemnification	83
14.4 Defence of Claims.....	84
14.5 Joint and Several Liability	84
ARTICLE 15 CONTRACT OPERATION AND ADMINISTRATION	85
15.1 Company Representative	85
15.2 Record Retention; Audit Rights.....	85
15.3 Reports to the Buyer	85
15.4 Inspection of Facility	86
15.5 Inspection Not Waiver	87
15.6 Capacity Check Tests.....	87
15.7 Notices	90
ARTICLE 16 MISCELLANEOUS	91
16.1 Informal Dispute Resolution.....	91
16.2 Arbitration.....	91
16.3 Business Relationship.....	92
16.4 Binding Agreement.....	92
16.5 Assignment	92
16.6 No Change of Control.....	95
16.7 No Assignment or Change of Control for Specified Period	95
16.8 Survival.....	96
16.9 Counterparts	96
16.10 Additional Rights of Set-Off.....	96
16.11 Rights and Remedies Not Limited to Contract.....	97
16.12 Time of Essence.....	97
16.13 Further Assurances.....	98
EXHIBIT A FACILITY DESCRIPTION	99
EXHIBIT B CONTRACT CAPACITY, NET REVENUE REQUIREMENT, AND OTHER STATED VARIABLES	102

TABLE OF CONTENTS

	Page
EXHIBIT C FORM OF IRREVOCABLE STANDBY LETTER OF CREDIT	104
EXHIBIT D FORM OF GUARANTEE.....	107
EXHIBIT E DETERMINATION OF AVAILABILITY	114
EXHIBIT F RESERVED.....	117
EXHIBIT G DISPATCH OPTIONS	118
EXHIBIT H FORM OF DIRECTED DISPATCH ORDER	124
EXHIBIT I FORM OF FORCE MAJEURE NOTICE.....	125
EXHIBIT J CALCULATION OF CSP AND RSP.....	128
EXHIBIT K ARBITRATION PROCEDURES APPLICABLE TO SECTIONS 1.6, 1.8, 1.9, 1.10 AND 2.9.....	145
EXHIBIT L FORM OF BUYER GUARANTEE TO SUPPORT DIRECTED DISPATCH (LT)	147
EXHIBIT M RESERVED	154
EXHIBIT N FORM OF ACKNOWLEDGEMENT OF SECURED LENDER’S RIGHTS.....	155
EXHIBIT O FORM OF QUARTERLY REPORT FOR FACILITY UPGRADE.....	157
EXHIBIT P RESERVED.....	161
EXHIBIT Q LONG TERM OPERATING PLAN	162
EXHIBIT R FORM OF ANNUAL OPERATING PLAN	166
EXHIBIT S FORM OF COMPANY REPRESENTATIVE NOTICE.....	170
EXHIBIT T FORM OF CONFIDENTIALITY UNDERTAKING.....	172
EXHIBIT U FORM OF SUPPLIER’S CERTIFICATE RE UPGRADE IN-SERVICE	174
EXHIBIT V FORM OF INDEPENDENT ENGINEER’S CERTIFICATE RE UPGRADE IN-SERVICE	176
EXHIBIT W FORM OF FACILITY UPGRADE PERFORMANCE TEST PROTOCOL.....	178
EXHIBIT X GAS DELIVERY SERVICES RE PANHANDLE PROJECT	184

CLEAN ENERGY SUPPLY (CES) CONTRACT

This Clean Energy Supply (CES) Contract (the “**Agreement**”) is dated as of the 27th day of April, 2023 (the “**Effective Date**”), between Brighton Beach Power L.P., a limited partnership existing under the laws of the Province of Ontario, doing business as Atura Power (the “**Supplier**”) and the Independent Electricity System Operator (the “**Buyer**”). The Supplier and the Buyer are each referred to herein as a “**Party**” and collectively as the “**Parties**”.

WHEREAS on April 27, 2023 the Minister of Energy issued a directive to the Buyer (the “**Ministerial Directive**”), pursuant to subsection 25.32 of the *Electricity Act, 1998* (Ontario), directing the Buyer to enter into a long-term agreement with the Supplier in respect of the Facility;

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

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

ARTICLE 1 DEFINITIONS

1.1 Definitions

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

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

“**Achieved Seasonal Upgrade Capacity**” has the meaning given to it in Section 2.10(d).

“**Achieved Upgrade Capacity**” or “**AUC**” means the simple average of the Achieved Seasonal Upgrade Capacity for each Season.

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

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

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

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

“**Annual Average Contract Capacity**” means the simple average of the Season 1 Contract Capacity, Season 2 Contract Capacity, Season 3 Contract Capacity and Season 4 Contract Capacity.

“**Annual Average Nameplate Capacity**” means the simple average of the Season 1 Nameplate Capacity, Season 2 Nameplate Capacity, Season 3 Nameplate Capacity, and Season 4 Nameplate Capacity.

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

“**Applicable Calculated Carbon Index Price**” or “**ACCIP**” has the meaning given to it in Exhibit J.

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

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

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

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

“**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.

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

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

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

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

“**Benchmark(NG)**” has the meaning given to it in Exhibit J.

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

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

“**Buyer**” means the Independent Electricity System Operator and its successors and permitted assigns.

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

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

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

“**Buyer’s Website**” means the website of the Buyer located at uniform resource locator (URL) 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.

“**Calculated Carbon Index Price**” or “**CCIP**” has the meaning given to it in Exhibit J.

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

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

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

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

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

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

“**CES Contract**” means a bilateral contract between the IESO and the owner of a combined cycle generating station that utilizes the concept of Imputed Production.

“**CIAC**” has the meaning ascribed to it in Exhibit X.

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

“**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).

“**Compressor**” means that electric drive gas compressor and associated building and equipment utilised by the Facility.

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

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

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

“**Contingent Support Payment**” or “**CSP**” means the amount, if any, for a Settlement Month, expressed in Dollars, as calculated in accordance with Exhibit J.

“**Contract Capacity**”, means that figure, expressed in MW, that shall be determined from time to time as follows: the Season 1 Contract Capacity, Season 2 Contract Capacity, Season 3 Contract Capacity or Season 4 Contract Capacity, as applicable, subject to adjustment as expressly provided pursuant to this Agreement.

“**Contract Heat Rate**” or “**CHR**” means, as applicable, the Season 1 Contract Heat Rate, Season 2 Contract Heat Rate, Season 3 Contract Heat Rate or the Season 4 Contract Heat Rate, expressed in MMBTU/MWh using higher heating value.

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

“**Contracted Facility Operation**” means:

- (a) in the case of the deemed operation of the Facility pursuant to the Deemed Dispatch Option, the deemed operation of the Facility to produce Electricity, Related Products, and Environmental Attributes that relate to the Contract Capacity, as contemplated under the Deemed Dispatch Option; and

- (b) in the case of the directed operation of the Facility pursuant to the Directed Dispatch Option, the directed operation of the Facility to produce Electricity, Related Products, and Environmental Attributes that relate to the Contract Capacity, as contemplated under the Directed Dispatch Option.

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

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

Without limiting the generality of the foregoing, and by way of example, if Person “A” Controls Person “B”, Person “B” Controls Person “C”, and Person “C” Controls Person “D”, then each of Persons “A”, “B”, and “C” are deemed to Control Person “D”.

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

“**Covered Facility**” has the meaning given to it in Federal GHG Laws and Regulations or Provincial GHG Laws and Regulations, as applicable.

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

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

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

“**Customer Impact Assessment**” means a study conducted by a Transmitter to assess the impact of the connection of the Facility on the transmission customers in the area and a Local Distribution System, if applicable.

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

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

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

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

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

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

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

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

“Detailed Design” means Issue 2.0 of the “Market Renewal Program: Energy-Detailed Design” dated January 28, 2021.

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

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

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

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

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

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

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

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

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

“Disclosing Party”, with respect to Confidential Information, is the Party 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).

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

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

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

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

“**EEC**” has the meaning given to it in Exhibit J.

“**Effective Date**” has the meaning given to it in the recitals.

“**Electricity**” means electric energy.

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

“**Emission Reduction Credits**” means the credits associated with the amount of emissions to the air avoided by reducing the emissions below the lower of actual historical emissions or regulatory limits.

“**Environmental Attributes**” means the interests or rights arising out of attributes or characteristics relating to the environmental impacts associated with a generating facility or the output of a generating facility, and includes:

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

“**EPS**” means the emissions performance standards program under Provincial GHG Laws and Regulations.

“**EPS Facility**” has the meaning given to it in Section 2.8.

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

“**ER(NG)**” has the meaning given to it in Exhibit J.

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

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

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

“**Facility**” means the generation facility owned and operated by the Supplier, as described in Exhibit A hereto, with any modifications thereto (not including the Facility Upgrade) approved by the Buyer, and as it may be modified in connection with or as a result of the Facility Upgrade.

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

“**Facility Upgrade**” means those amendments to the Facility as described in Exhibit A under the heading “Facility Upgrade”.

“**Facility Upgrade Performance Test**” has the meaning ascribed to it in Exhibit W.

“**Federal GHG Laws and Regulations**” means the GGPPA and any regulations made thereunder, including the Output-Based Pricing System Regulations: SOR/2019-266.

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

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

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

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

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

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

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

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

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

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

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

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

“Gas” means natural gas as supplied by pipeline.

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

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

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

“Gas Distribution Services” means Gas distribution services required for the operation of the Facility in accordance with Good Engineering and Operating Practices.

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

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

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

“Gas Price Index (DA)” means the NGX Union-Dawn Day Ahead Index, or its successor indices.

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

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

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

“GGEPS Regulation” means the *Greenhouse Gas Emissions Performance Standards* regulation (O. Reg. 241/19) made under the *Environmental Protection Act*.

“GGEQRV Regulation” means the *Greenhouse Gas Emissions: Quantification, Reporting And Verification* regulation (O. Reg. 390/18) made under the *Environmental Protection Act*.

“**GGPPA**” means *Greenhouse Gas Pollution Pricing Act* (Canada).

“**GHG Amendment Principles**” has the meaning given to it in Section 2.8.

“**GHG Emissions Credits**” has the meaning given to it in Section 2.8.

“**GHG Laws and Regulations**” has the meaning given to it in Section 2.8.

“**GHG Termination Event**” means Federal GHG Laws and Regulations and Provincial GHG Laws and Regulations, as applicable, are terminated or repealed, cease to have effect, cease to apply to the Facility, or are declared *ultra vires* the Government of Canada or the Government of Ontario, as applicable, in a final decision of a court having jurisdiction in Ontario.

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

- (a) adequate materials, resources and supplies, including fuel, are available to meet the 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 utilising proper equipment, tools and procedures; and
- (d) appropriate monitoring and testing is done to ensure equipment is functioning as designed and to provide assurance that equipment will function properly under both normal and abnormal conditions.

“**Government of Canada**” means 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, and any Person acting under the authority of any Governmental Authority, but excluding the IESO.

“**Greenhouse Gas**” means carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

“**Guarantee**” has the meaning ascribed to it in Section 6.4.

“**Guarantor**” has the meaning ascribed to it in Section 6.4.

“**HHV**” means higher heating value.

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

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

“**IE Certificate**” means a certificate in the form set out in Exhibit V 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 Market Rules**” means the rules governing the IESO-Controlled Grid and establishing and governing the IESO-Administered Markets, together with all market manuals, policies, and guidelines issued by the IESO, all as amended or replaced from time to time.

“**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.

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

“**Imputed Gross Up Factor**” or “**IGUF**” has the meaning given to it in Exhibit J.

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

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

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

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

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

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

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

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

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

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

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

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

“**Independent Engineer**”, for the purposes of Section 2.10, 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, installation and/or testing of the Facility.

“**Index Factor**” or “**IF**” has the meaning ascribed to it in Section 1.1 of Exhibit J.

“**Insolvency Legislation**” means the *Bankruptcy and Insolvency Act* (Canada), the *Winding Up and Restructuring Act* (Canada), the *Companies’ Creditors Arrangement Act* (Canada) and analogous legislation in effect in the provinces and territories of Canada and the bankruptcy, insolvency, creditor protection or similar laws of any other jurisdiction (regardless of the jurisdiction of such application or competence of such law), as they may be amended from time to time.

“**Insurance Costs**” has the meaning ascribed to it in Section 2.5(e)(i).

“**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.

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

“**ITA**” means the *Income Tax Act* (Canada), as amended from time to time and all regulations promulgated thereunder from time to time.

“**Key Equipment Supplier**” means GEPR Energy Canada Inc.

“**kV**” means kilovolts.

“**kW**” means kilowatt.

“**kWh**” means kilowatt hour.

“**Laws and Regulations**” means:

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

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

“**Levied Facility**” has the meaning given to it in Section 2.8.

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

“Local Distribution System” means a system for conveying Electricity at voltages of 50 kilovolts or less and includes any structures, equipment or other things used for that purpose.

“Locational Marginal Pricing” or **“LMP”** means the form of pricing of Electricity, as determined and modified by the IESO from time to time, to be considered and implemented by the IESO, if at all, based upon a non-uniform, real-time, price of Electricity at each point, node, zone or other price reference location on the IESO-Controlled Grid and having the effect that such real-time prices reflect the costs of transmission congestion.

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

“Longstop Date for Upgrade In-Service” means the date that is one year after the Milestone Date for Upgrade In-Service, as may be extended in accordance with the terms of this Agreement.

“Market Renewal” means those changes to the IESO-Administered Markets to provide for the implementation of a single schedule market and a day-ahead market.

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

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

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

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

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

“Maximum Market Clearing Price” has the meaning ascribed to it in the IESO Market Rules.

“Metered Market Participant” has the meaning ascribed to that term by the IESO Market Rules.

“Metering Plan” means a report that is provided by the Supplier to the Buyer and that (a) verifies that the revenue-quality interval meters conform with Measurement Canada Regulations, and (b) provides all required information, and equipment specifications needed to permit the Buyer to remotely access, verify, 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.

“Milestone Date for Upgrade In-Service” means June 1, 2025, as may be extended in accordance with the terms of this Agreement.

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

“**MMBTU**” means one million BTUs.

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

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

“**MW**” means megawatt.

“**MWh**” means megawatt hour.

“**Nameplate Capacity**” means the rated, continuous load-carrying capability net of parasitic or station service loads, expressed in MW in Exhibit B for each Season, of the Facility to generate and deliver Electricity at a given time, and which includes the Contract Capacity.

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

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

“**Net Calculated Carbon Index Price**” or “**NCCIP**” has the meaning given to it in Exhibit J.

“**Net Revenue Requirement**” or “**NRR_y**” has the meaning given to it in Exhibit J.

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

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

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

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

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

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

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

“**OBPS**” means the output-based pricing system under Federal GHG Laws and Regulations.

“**OBPS Facility**” has the meaning given to it in Section 2.8.

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

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

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

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

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

“**Panhandle Decision**” has the meaning ascribed to it in Exhibit X.

“**Panhandle Project**” means the project associated with the OEB application EB-2022-0157, involving the construction of two pipelines and associated ancillary facilities.

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

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

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

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

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

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

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

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

“**Price Unavailability Event**” has the meaning ascribed to it in Section 1.8(a).

“**Provincial GHG Laws and Regulations**” means the GGEPS Regulation and the GGEQRV Regulation.

“**Rate Rider**” has the meaning ascribed to it in Exhibit X.

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

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

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

“**Regulatory Environmental Attributes**” has the meaning given to it in Section 2.7(a).

“**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.

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

“**Replacement Price**” has the meaning ascribed to it in Sections 1.8.

“**Replacement Provision(s)**” has the meaning ascribed to it in Sections 1.9(b), 1.10(d), and 2.8, as applicable.

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

- (a) execution of main Facility Upgrade contract with the Key Equipment Supplier;
- (b) ordering of major equipment for the Facility Upgrade;
- (c) delivery of major equipment for the Facility Upgrade;
- (d) commencement of the Facility Upgrade installation;
- (e) testing and commissioning; and
- (f) Upgrade In-Service.

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

“**Revenue Sharing Payment**” or “**RSP**” means the amount, if any, for a Settlement Month, expressed in Dollars, as calculated in accordance with Exhibit J.

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

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

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

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

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

“**Season**” means, as applicable, Season 1, Season 2, Season 3 or Season 4.

“**Season 1**” means that portion of each Contract Year that begins at the beginning of the hour ending 01:00 (EST) on December 1 and ending at 24:00 (EST) on February 28 or February 29, as the case may be, of each Contract Year.

“**Season 1 Contract Capacity**” means that portion of the Season 1 Nameplate Capacity set out in Exhibit B and expressed in MW, as being applicable for Season 1, subject to adjustment as expressly provided for pursuant to this Agreement.

“**Season 1 Contract Heat Rate**” means the heat rate set out in Exhibit B, and expressed in MMBTU/MW using higher heating value, as being applicable for Season 1.

“**Season 1 Nameplate Capacity**” means the Nameplate Capacity for Season 1 set out in Exhibit B and expressed in MW, subject to adjustment as expressly provided for pursuant to this Agreement.

“**Season 2**” means that portion of each Contract Year that begins at the beginning of the hour ending 01:00 (EST) on March 1 and ending at 24:00 (EST) on May 31 of each Contract Year.

“**Season 2 Contract Capacity**” means that portion of the Season 2 Nameplate Capacity set out in Exhibit B and expressed in MW, as being applicable for Season 2, subject to adjustment as expressly provided for pursuant to this Agreement.

“**Season 2 Contract Heat Rate**” means the heat rate set out in Exhibit B, and expressed in MMBTU/MW using higher heating value, as being applicable for Season 2.

“**Season 2 Nameplate Capacity**” means the Nameplate Capacity for Season 2 set out in Exhibit B and expressed in MW, subject to adjustment as expressly provided for pursuant to this Agreement.

“**Season 3**” means that portion of each Contract Year that begins at the beginning of the hour ending 01:00 (EST) on June 1 and ending at 24:00 (EST) on August 31 of each Contract Year.

“Season 3 Contract Capacity” means that portion of the Season 3 Nameplate Capacity set out in Exhibit B and expressed in MW, as being applicable for Season 3, subject to adjustment as expressly provided for pursuant to this Agreement.

“Season 3 Contract Heat Rate” means the heat rate set out in Exhibit B, and expressed in MMBTU/MW using higher heating value, as being applicable for Season 3.

“Season 3 Nameplate Capacity” means the Nameplate Capacity for Season 3 set out in Exhibit B and expressed in MW, subject to adjustment as expressly provided for pursuant to this Agreement.

“Season 4” means that portion of each Contract Year that begins at the beginning of the hour ending 01:00 (EST) on September 1 and ending at 24:00 (EST) on November 30 of each Contract Year.

“Season 4 Contract Capacity” means that portion of the Season 4 Nameplate Capacity set out in Exhibit B and expressed in MW, as being applicable for Season 4, subject to adjustment as expressly provided for pursuant to this Agreement.

“Season 4 Contract Heat Rate” means the heat rate set out in Exhibit B, and expressed in MMBTU/MW using higher heating value, as being applicable for Season 4.

“Season 4 Nameplate Capacity” means the Nameplate Capacity for Season 4 set out in Exhibit B and expressed in MW, subject to adjustment as expressly provided for pursuant to this Agreement.

“Seasonal Upgrade Capacity” has the meaning ascribed to it in Exhibit A.

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

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

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

“Settlement Month” has the meaning ascribed to it in Section 5.2, provided that if the 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 month.

“Start-Up Costs” or **“SUC”** means the start-up costs, as determined in accordance with Exhibit J.

“Start-Up Gas” or **“SUG”** means the number of MMBTU per start-up, as set out in Exhibit B.

“**Start-Up Maintenance Cost**” or “**SUMC**” means the start-up maintenance cost, expressed in \$/start-up, set out in Exhibit B, as adjusted from time to time in accordance with Exhibit J.

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

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

“**Supplier**” means Brighton Beach Power L.P., and includes any successor to Brighton Beach Power L.P. resulting from any merger, arrangement or other reorganization of or including Brighton Beach Power L.P. or any continuance under the laws of another jurisdiction or permitted assignee.

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

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

“**Supplier’s Capacity**” means that amount of capacity of the Facility, expressed in MW, that is in excess of the Contract Capacity for any given Season.

“**Supplier’s Certificate**”, with respect to attaining Upgrade In-Service, means a certificate from the Supplier in the form set out in Exhibit U, procured at the expense of 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 Impact Assessment**” means a study conducted by the IESO pursuant to section 6.1.5 of Chapter 4 of the IESO Market Rules, to assess the impact of a new connection of the Facility to the IESO-Controlled Grid, or of the modification of an existing connection of the Facility to the IESO-Controlled Grid on the reliability of the integrated power system.

“**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.

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

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

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

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

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

“**Test Period**” has the meaning ascribed to it in Exhibit W.

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

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

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

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

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

“**Unit**” means each generation unit and ancillary equipment forming part of the Facility.

“**Upgrade Capacity**” has the meaning ascribed to it in Exhibit A.

“**Upgrade In-Service**” has the meaning ascribed to it in Section 2.10(b).

“**Upgrade In-Service Date**” means the date on which Upgrade In-Service occurs.

“**Upgrade NRR**” or “**UNRR**” has the meaning given to it in Section 2.10(k).

“**Upgrade Security**” has the meaning given to it in Section 2.10(j).

“**Upgrade Test Result**” has the meaning given to it in Section 2.10(d).

“**Upgraded Capability Range**” has the meaning ascribed to it in Exhibit W.

“**Variable Energy Cost**” has the meaning ascribed to it in Exhibit J.

1.2 Exhibits

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

Exhibit A	Project Description
Exhibit B	Contract Capacity, Net Revenue Requirement, and Other Stated Variables
Exhibit C	Form of Irrevocable Standby Letter of Credit
Exhibit D	Form of Guarantee
Exhibit E	Determination of Availability
Exhibit F	Reserved
Exhibit G	Dispatch Options
Exhibit H	Form of Directed Dispatch Order
Exhibit I	Form of Force Majeure Notice
Exhibit J	Calculation of CSP and RSP
Exhibit K	Arbitration Procedures Applicable to Sections 1.6, 1.8, 1.9, 1.10 and 2.9
Exhibit L	Form of Buyer Guarantee to Support Directed Dispatch (LT)
Exhibit M	Reserved
Exhibit N	Form of Acknowledgement of Secured Lender's Rights
Exhibit O	Form of Quarterly Report for Facility Upgrade
Exhibit P	Reserved
Exhibit Q	Long Term Operating Plan
Exhibit R	Form of Annual Operating Plan
Exhibit S	Form of Company Representative Notice
Exhibit T	Form of Confidentiality Undertaking
Exhibit U	Form of Supplier Certificate re: Upgrade In-Service
Exhibit V	Form of Independent Engineer's Certificate re: Upgrade In-Service
Exhibit W	Form of Facility Upgrade Performance Test Protocol
Exhibit X	Gas Delivery Services Re Panhandle Project

Exhibits I, O, Q, R, S, T, U, and V, in the forms attached to this Agreement, reflect the 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 certificates, 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 of the relevant form, as posted on the Buyer's Website, is used.

1.3 Headings and Table of Contents

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

1.4 Gender and Number

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

1.5 Currency

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

1.6 IESO Market Rules and Statutes

- (a) Unless otherwise expressly stipulated, any reference in this Agreement to the IESO Market Rules or to a statute or to a regulation or rule promulgated under a statute or to any provision of a statute, regulation or rule shall be a reference to the IESO Market Rules, statute, regulation, rule or provision as amended, re-enacted or replaced from time to time. In the event of any conflict or inconsistency with the IESO Market Rules and the terms of this Agreement, the IESO Market Rules shall govern to the extent of such conflict or inconsistency.
- (b) To the extent that there is an amendment to the IESO Market Rules following the Effective Date, unless such amendment is stayed by the OEB, such that the Supplier's economics as contemplated hereunder after the introduction of such change do not substantially reflect the Supplier's economics as contemplated hereunder prior to the introduction of such change, then:
 - (i) either Party shall notify the other Party promptly and, in any event, within ten (10) Business Days upon becoming aware of the consequences of such change;
 - (ii) the Parties and, at the Buyer's discretion, those Other Suppliers who are required by the Buyer to participate, shall engage in good faith negotiations to amend this Agreement and the respective agreements of those Other Suppliers on the basis that such amendments together with the change in the IESO Market Rules will substantially reflect the economics as contemplated hereunder of the Supplier and, at the Buyer's discretion, those Other Suppliers, prior to the introduction of such change in the IESO Market Rules; and
 - (iii) if the Parties fail to reach agreement on the amendments described in Section 1.6(b)(ii) within sixty (60) days after the change in the IESO Market Rules became effective, the matter shall be determined by mandatory and binding arbitration, from which there shall be no appeal, with such

arbitration(s) to be conducted in accordance with the procedures set out in Exhibit K. However, if the Supplier fails to participate in such arbitration, the Supplier acknowledges that it waives its right to participate in such arbitration, which shall nevertheless proceed, and the Supplier shall be bound by the award of the Arbitration Panel and the subsequent amendments to this Agreement made by the Buyer to implement such award of the Arbitration Panel set out in Section 1.6(c)(iii).

- (c) The terms of this Agreement shall be amended either:
- (i) by the agreement of the Parties, where no award of an Arbitration Panel has been made pursuant to Section 1.6(b)(iii);
 - (ii) by the agreement of the Parties made pursuant to and to implement an award of the Arbitration Panel made pursuant to Section 1.6(b)(iii); or
 - (iii) by an amendment prepared by the Buyer made pursuant to and to implement an award of the Arbitration Panel made pursuant to Section 1.6(b)(iii), where the Supplier failed to participate in such arbitration,

with such agreement or amendment, as the case may be, having effect from and after the date that the change in the IESO Market Rules became effective.

- (d) This Section 1.6 shall not apply to the circumstances addressed in Sections 1.7(a), 1.8, 1.9, 1.10, 2.7 or 2.9.

1.7 Implementation of Market Renewal

- (a) If IESO Market Rule amendments implementing Market Renewal come into effect either (A) on the basis contemplated by the Detailed Design (disregarding any changes to final terminology); or (B) on a basis that is not the basis (disregarding any changes to final terminology) contemplated by the Detailed Design, and notwithstanding such different basis, the Supplier's economics as contemplated under this Agreement are substantially the same as they would have been had Market Renewal come into effect on the basis contemplated by the Detailed Design, then in either such case the following changes to this Agreement shall automatically come into effect,
- (i) in Section 1.1, the following definition for Applicable Day-Ahead Hourly Locational Marginal Price, as reasonably adjusted by the Buyer as necessary to align with the final terminology used in the IESO Market Rules after Market Renewal, shall be added:

“Applicable Day-Ahead Hourly Locational Marginal Price” or **“AD AHLMP”** means, with respect to any hour, the weighted average of the locational marginal prices applicable to the Facility based on the registered capacity with the System Operator for the

gas turbine(s) and steam turbine, and the corresponding Connection Point of such turbines, in the day-ahead IESO-Administered Market for Electricity for that hour. As of the Effective Date, the weighting that would be applied for the purpose of averaging is thirty-one point seven percent (31.7%) for the 115 kV Connection Point and sixty-eight point three percent (68.3%) for the 230 kV Connection Point. Any future changes to the weighting require the consent of the Buyer, not to be unreasonably withheld.

- (ii) in Section 3.1.1(ii) of Exhibit J, the definition of Deemed Start-Up Hour shall be deleted and replaced with the following definition:

A “**Deemed Start-Up Hour**” is the first hour of a Deemed Dispatch Interval, and is the first hour, other than a Directed Dispatch Hour, following a Deemed Shut-Down Hour in which the ADAHLMP was greater than or equal to the applicable Variable Energy Cost for that hour h. Notwithstanding the foregoing, the requirement that the Deemed Start-Up Hour follow a Deemed Shut-Down Hour shall not apply to the first Deemed Start-Up Hour in the Term.

- (iii) in Section 3.1.1(iv) of Exhibit J, the definition of Deemed Shut-Down Hour shall be deleted and replaced with the following definition:

A “**Deemed Shut-Down Hour**” is the last hour in a Deemed Dispatch Interval, and is the first hour within a Deemed Dispatch Interval in which,

- (a) ADAHLMP was less than or equal to the applicable Variable Energy Cost for that hour h and for the previous hour h-1; or
- (b) ADAHLMP for hours h+1, h+2 and h+3 are all less than the applicable Variable Energy Cost; or
- (c) the following hour is a Directed Start-Up Hour.

- (iv) in Sections 3.2 and 3.3.4 of Exhibit J, all references to HOEP shall be deleted and replaced with ADAHLMP; and

- (v) in Section 3.3.4 of Exhibit J, the following is added immediately after the table:

Notwithstanding anything in the foregoing to the contrary, where (A) there are two or more Imputed Production Intervals (IPI) that start in a single day (being IPI=1, IPI=2 and IPI=3, respectively); and (B) IVEC₁ was greater than IGEMR₁, then for the purposes of this Section 3.3.4 of Exhibit J, IPI₁, IPI₂ and IPI₃ shall be treated as

a single Imputed Production Interval. For clarity, Start-Up Costs shall continue to be imputed for only one (1) Start-Up per day.

- (b) If IESO Market Rule amendments implementing Market Renewal come into effect and neither clause 1.7(a)(A) or 1.7(a)(B) applies, then Section 1.6 shall apply, save and except that the negotiations to amend this Agreement thereunder shall be to ensure such amendments together with the IESO Market Rule amendments will substantially reflect the Supplier's economics as contemplated under this Agreement had the IESO Market Rules changes been made on the basis of the Detailed Design along with the amendments contemplated by Section 1.7(a).

1.8 Evolution of the IESO-Administered Markets

- (a) If (i) the IESO or the Government of Ontario have made an announcement with the effect that a Price Evolution Event is likely to occur within the succeeding twelve (12) calendar months, and (ii) the replacement rules and regulations pertaining to the Price Evolution Event have been approved by the applicable authority, the Buyer shall propose a Replacement Price, based on Section 1.8(b), to the Supplier and, at the Buyer's discretion, those Other Suppliers who are required by the Buyer to participate. If the Parties are unable to agree on the Buyer's proposal or that of the Supplier or any of those Other Suppliers, as the case may be, within sixty (60) days after the date the Price Evolution Event occurs, then the Replacement Price shall be determined by mandatory and binding arbitration, from which there shall be no appeal, with such arbitration(s) to be conducted in accordance with the procedures set out in Exhibit K. However, if the Supplier fails to participate in such arbitration, the Supplier acknowledges that it waives its right to participate in such arbitration, which shall nevertheless proceed, and the Supplier shall be bound by the award of the Arbitration Panel and the subsequent amendments to this Agreement made by the Buyer to implement such award of the Arbitration Panel set out in Section 1.8(d)(iii).
- (b) For purposes of Section 1.8(a), a "**Price Evolution Event**" means that the IESO Market Rules have changed such that HOEP or the replacement value for HOEP under Market Renewal, as determined through the application of Section 1.7 is no longer provided for, and is replaced by another market-based price signal(s). In such a case, this Agreement will be modified based on the following principles, with such modifications to take effect from and after the date set out in Section 1.8(d):
 - (i) in Exhibit J, HOEP, or its replacement value under Market Renewal, if applicable, will be replaced with the Ontario Electricity market price that most closely emulates the price actually paid to Supplier by the Ontario Electricity market for Electricity output from the Facility (the "**Replacement Price**"); and
 - (ii) it is expected that all other features of Exhibit J will be applicable.

- (c) If the IESO Market Rules are amended to provide for an installed capacity market, then either Party may propose, by notice in writing to the other Party, amendments to this Agreement and the Buyer and the Supplier and, at the Buyer's discretion, those Other Suppliers who are required by the Buyer to participate, shall then engage in good faith negotiations to amend this Agreement and the respective agreements of those Other Suppliers so as to facilitate the Supplier's participation in such installed capacity market, on the basis that the economic effect of such amendments substantially reflect the Supplier's economics as contemplated hereunder prior to the introduction of the installed capacity market. If the Parties fail to reach agreement on the amendments described in this Section 1.8(c), the matter shall be determined by mandatory and binding arbitration, from which there shall be no appeal, with such arbitration(s) to be conducted in accordance with the procedures set out in Exhibit K. However, if the Supplier fails to participate in such arbitration, the Supplier acknowledges that it waives its right to participate in such arbitration, which shall nevertheless proceed, and the Supplier shall be bound by the award of the Arbitration Panel and the subsequent amendments to this Agreement made by the Buyer to implement such award of the Arbitration Panel set out in Section 1.8(d)(iii).
- (d) The terms of this Agreement shall be amended either:
- (i) by the agreement of the Parties, where no award of an Arbitration Panel has been made pursuant to Sections 1.8(a) or 1.8(c), as the case may be;
 - (ii) by the agreement of the Parties made pursuant to and in implementation of an award of the Arbitration Panel made pursuant to Sections 1.8(a) or 1.8(c), as the case may be; or
 - (iii) by an amendment prepared by the Buyer made pursuant to and to implement an award of the Arbitration Panel made pursuant to Sections 1.8(a) or 1.8(c), as the case may be, where the Supplier failed to participate in such arbitration,

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

- (e) Until such time as this Agreement is amended in accordance with Section 1.8(d), Exhibit J will continue to apply to calculate CSP and RSP, as applicable, using the Buyer's proposal submitted under Sections 1.8(a) or 1.8(c), as the case may be, provided that all such payments shall be subject to recalculation and readjustment as a result of the agreement or award set out in Section 1.8(d), and any Party owing monies to the other pursuant to such recalculation shall, within ten (10) Business Days after receipt of an invoice from the other Party, pay such monies owing together with interest at the Interest Rate, calculated daily, from and including the time such payments were due to the date of payment thereof.

- (f) This Section 1.8 shall not apply in the circumstances addressed in Sections 1.7, 2.7 or 2.9.

1.9 Price Unavailability Events

- (a) If (i) the IESO or the Government of Ontario has made an announcement with the effect that a Price Unavailability Event is likely to occur within the succeeding twelve (12) calendar months, and (ii) the replacement rules and regulations pertaining to the Replacement Provision(s) have been approved by the applicable authority, the Buyer shall propose Replacement Provision(s), based on Section 1.9(b), to the Supplier and, at the Buyer's discretion, those Other Suppliers who are required by the Buyer to participate. If the Parties are unable to agree on the Buyer's proposal or that of the Supplier or any of those Other Suppliers, as the case may be, within sixty (60) days after the date the Price Unavailability Event occurs, then the Replacement Provision(s) shall be determined by mandatory and binding arbitration, from which there shall be no appeal, with such arbitration(s) to be conducted in accordance with the procedures set out in Exhibit K. However, if the Supplier fails to participate in such arbitration, the Supplier acknowledges that it waives its right to participate in such arbitration, which shall nevertheless proceed, and the Supplier shall be bound by the award of the Arbitration Panel and the subsequent amendments to this Agreement made by the Buyer to implement such award of the Arbitration Panel set out in Section 1.9(c)(iii).
- (b) For purposes of Section 1.9(a), a "**Price Unavailability Event**" means that HOEP, or the replacement value for HOEP under Market Renewal, is no longer available. In such a case, this Agreement will be modified based on the following principles, with such modifications to take effect from and after the date set out in Section 1.9(c):
 - (i) this Agreement will be amended as necessary to ensure the Supplier will participate in any revised processes determined by the IESO to facilitate commitment, dispatch, and/or outage scheduling;
 - (ii) Exhibit J will be modified to define the Imputed Net Revenue to be based on Imputed Variable Energy Costs for the actual Electricity produced in a month and any actual Electricity payments made to the Supplier for Electricity produced by the Contract Capacity. In calculating the Imputed Variable Energy Cost, the stated variables contained in Exhibit B of this Agreement will be used, and
 - (iii) in Exhibit J, HOEP, or the replacement value for HOEP under Market Renewal, will be replaced with the actual price received by the Supplier for Electricity produced by the Facility,

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

- (c) The terms of this Agreement shall be amended either:
 - (i) by the agreement of the Parties, where no award of an Arbitration Panel has been made pursuant to Section 1.9(a);
 - (ii) by the agreement of the Parties made pursuant to and to implement an award of the Arbitration Panel, made pursuant to Section 1.9(a); or
 - (iii) by an amendment prepared by the Buyer made pursuant to and to implement an award of the Arbitration Panel made pursuant to Section 1.9(a), where the Supplier failed to participate in such arbitration,with such agreement or amendment, as the case may be, having effect from and after the date the Price Unavailability Event occurred.
- (d) Until such time as this Agreement is amended in accordance with Section 1.9(c), Exhibit J will continue to apply to calculate CSP and RSP, as applicable, using the Buyer's proposal submitted under Section 1.9(a), provided that all such payments shall be subject to recalculation and readjustment as a result of the agreement or award set out in Section 1.9(c), and any Party owing monies to the other pursuant to such recalculation shall pay, within ten (10) Business Days after receipt of an invoice from the other Party, such monies owing together with interest at the Interest Rate, calculated daily, from and including the time such payments were due to the date of payment thereof.
- (e) This Section 1.9 shall not apply to the circumstances addressed in Sections 1.7, 2.7 or 2.9.

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

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

- (a) if a provision is considered to be invalid, inapplicable or unenforceable, then the Party considering such provision to be invalid, inapplicable or unenforceable may propose, by notice in writing to the other Party, a replacement provision and the Buyer and the Supplier and, at the Buyer's discretion, those Other Suppliers who are required by the Buyer to participate, shall engage in good faith negotiations to replace such provision with a valid, enforceable, and applicable provision, the economic effect of which substantially reflects that of the invalid, unenforceable, or inapplicable provision which it replaces;
- (b) if any index or price quotation referred to in this Agreement, other than the Gas Price Index (DA), ceases to be published, or if the basis therefor is changed materially, then the Buyer and the Supplier and, at the Buyer's discretion, those

Other Suppliers who are required by the Buyer to participate, shall engage in good faith negotiations to substitute an available replacement index or price quotation that most nearly, of those then publicly available, approximates the intent and purpose of the index or price quotation that has so ceased or changed and this Agreement shall be amended as necessary to accommodate such replacement index or price quotation;

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

- (ii) by the agreement of the Parties made pursuant to and in implementation of an award of the Arbitration Panel made pursuant to Section 1.10(d); or
- (iii) by an amendment prepared by the Buyer made pursuant to and to implement an award of the Arbitration Panel made pursuant to Section 1.10(d), where the Supplier failed to participate in such arbitration,

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

This Section 1.10 shall not apply to the circumstances addressed in Sections 1.7, 1.8, 1.9, 2.7, or 2.9.

1.11 Entire Agreement

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

1.12 Waiver, Amendment

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

1.13 Governing Law

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

1.14 Preparation of Agreement

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

ARTICLE 2
DEVELOPMENT AND OPERATION OF THE FACILITY

2.1 Design of the Facility

- (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 that it has arranged, at its expense, for all Facility connection requirements in accordance with all applicable connection agreements to permit the delivery of Electricity to the IESO-Controlled Grid. The Supplier agrees to provide a single line electrical drawing which identifies the as-built Connection Point(s), clearly showing area transmission and distribution facilities, including the transmission station(s) that is electrically closest to the Facility.
- (c) The Supplier agrees to provide all power system components and associated facilities on the Supplier's side of the Connection Point, including all connection lines from the Facility to the Connection Point and all transformation, switching, synchronizing, protection and control, teleprotection, metering, and auxiliary equipment (such as grounding, monitoring and testing equipment), pursuant to requirements deemed necessary by the IESO and the Transmitter (and as specified in the System Impact Assessment and the Customer Impact Assessment, as applicable) to protect the safety and security of the IESO-Controlled Grid and its customers. The equipment to be so provided by the Supplier shall include such electrical equipment as the IESO or the Transmitter deem necessary, from time to time, for the safe and secure operation of the IESO-Controlled Grid as required by the IESO Market Rules and the Transmission System Code.
- (d) Except in connection with the Facility Upgrade, the Supplier shall at no time after the date of this Agreement modify, vary, or amend in any material respect any of the features or specifications of the Facility outlined in Exhibit A (the "**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. Without limiting the generality of the foregoing, and for purposes of this paragraph, the failure of the Facility to have a Connection Point as described in Exhibit A shall be deemed to be a Facility Amendment.
- (e) For purposes of Section 2.1(d), in the event that the Nameplate Capacity of the Facility will be reduced as a result of a term, condition, or restriction imposed by,

or contained in a permit, certificate, licence or other approval issued by, a Governmental Authority in respect of the Facility, then the amount by which such Nameplate Capacity is reduced shall be deemed to first reduce the Supplier's Capacity, with any excess of the reduction of the Nameplate Capacity over the Supplier's Capacity then being deemed to reduce the Contract Capacity.

2.2 Buyer Information Prior to the Upgrade In-Service Date

Prior to the Upgrade In-Service Date, the Supplier shall provide the Buyer with progress reports as follows:

- (a) By the fifteenth (15th) day of each calendar quarter following the date of this Agreement and continuing until the Upgrade In-Service Date, the Supplier shall provide the Buyer with quarterly progress reports substantially in the form of Exhibit O, describing the status of efforts made by the Supplier to progress the design and installation work and the status of permitting and approvals relating to the Facility Upgrade. 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 its website or in publications.
- (b) In addition to the quarterly progress reports it is required to provide pursuant to Section 2.2(a), the Supplier shall also provide the Buyer with notice of any material incident, event or concern which may occur or arise during the course of the development, installation or commissioning of the Facility Upgrade, promptly and, in any event, within ten (10) Business Days following the later of: (i) the Supplier becoming aware of any such incident, event or concern occurring or arising; and (ii) the Supplier becoming aware of the materiality of same, with such timing in each case based upon the Supplier having acted in accordance with Good Engineering and Operating Practices.

2.3 Operation Covenants

- (a) The Supplier agrees to own the Facility and to own, lease or have another legal right to use the Compressor throughout the Term and to operate and maintain the Facility and the Compressor during the Term using Good Engineering and Operating Practices, and meeting all applicable requirements of the IESO Market Rules, the Transmission System Code, the Connection Agreement and all other Laws and Regulations. For certainty, the Parties acknowledge that the Buyer is not purchasing from the Supplier, nor is the Supplier selling to the Buyer, any Electricity or Related Products.
- (b) The Supplier agrees to assume all risk, liability and obligation and to indemnify, defend and hold harmless the Indemnitees in respect of all actions, causes of action,

suits, proceedings, claims, demands, losses, damages, penalties, fines, costs, obligations and liabilities arising out of a discharge of any contaminant into the natural environment, at or related to, the Facility and any fines or orders of any kind that may be levied or made in connection therewith pursuant to the *Environmental Protection Act* (Ontario), the *Ontario Water Resources Act* (Ontario), the *Dangerous Goods Transportation Act* (Ontario) or other similar legislation, whether federal or provincial and all as amended from time to time, except to the degree that such discharge shall have been due to the negligence or wilful misconduct of the Indemnitees.

- (c) The Supplier agrees to use Commercially Reasonable Efforts to maintain or enter into any fuel supply contracts that are necessary for the proper operation of the Facility during the Term. In addition, the Supplier must not construct, own, or operate the gas pipeline that serves the Facility. Without limiting the generality of the foregoing, a Supplier who is also a load facility under the IESO Market Rules shall be solely responsible for all charges (net of any applicable credits) in relation to Electricity consumed by it in order to operate the Facility in accordance with this Agreement.

2.4 Metering and Dispatch Capabilities

- (a) 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 Buyer 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.
- (b) The Buyer retains the right to audit, at any time during the Term, on reasonable notice to the Supplier and during normal business hours, the metering equipment to confirm the accuracy of the Metering Plan, and the meter data of Facility to confirm the accuracy of such data. The Supplier shall have the Metering Plan approved by the Buyer and shall use its Commercially Reasonable Efforts to deliver a copy to the Buyer for its approval no later than sixty (60) days prior to the Term Commencement Date and amend the plan, if required, by no later than sixty (60) days after Term Commencement Date to incorporate any information that the Supplier was not able to acquire before becoming the Market Participant and Metered Market Participant. The Buyer agrees to review the Metering Plan submitted by the Supplier and to either approve the plan or provide the Supplier with its comments within fifteen (15) Business Days after receipt. The Supplier will

provide the Buyer with a commissioning report for all revenue meters referenced in the Metering Plan prior to any use of metered data for the purposes expressed in Section 15.6.

- (c) The Supplier shall maintain (or be responsible for arranging on its behalf) a system satisfactory to the Buyer commencing the day prior to the Term Commencement Date and continuing every day throughout the Term, to receive Directed Dispatch Orders from either the Buyer or the Dispatcher, as the case may be, prior to the applicable daily deadlines set out in Exhibit G.

2.5 Insurance Covenants

- (a) The Supplier hereby agrees to put in effect and maintain, or cause its contractors, where appropriate, to maintain, during the Term, at its own cost and expense, all the necessary and appropriate insurance that a prudent Person in the business of developing and operating the Facility would maintain including the policies set out in this Section 2.5. All insurance policies to be effected and maintained as required hereunder shall:
 - (i) be placed with insurers licensed to underwrite insurance in the Province of Ontario and having an overall A.M. Best's Rating of at least A- (except in the case of automobile liability insurance where the minimum rating of the insurer shall be B+); and
 - (ii) be capable of being reviewed and altered during the term of the policy to account for any changes in Laws and Regulations which affect coverage of the risk insured.
- (b) The Supplier shall put in effect and maintain, or cause its contractors, where appropriate, to maintain, at a minimum, the following insurance policies:
 - (i) "all-risk" property insurance covering property of every description insuring not less than the full replacement value of the Facility; and
 - (A) shall be in the name of the Supplier; and
 - (B) shall provide for business interruption coverage on an actual loss sustained basis with a waiting period of not more than ninety (90) days.

The policy shall contain a waiver of subrogation in favour of the Indemnitees. Deductible for the policy shall not exceed \$500,000 for all losses (other than damage to Equipment (as defined below) which will be subject to the deductibles set forth in Section 2.5(b)(ii)), except for 3% of full replacement value of damage to property (with a minimum deductible of \$500,000) for damage to property arising from or relating to each of flood and earthquake.

- (ii) equipment breakdown insurance, insuring not less than the full replacement value of the boilers, machinery, pressure vessels, electrical and mechanical machines, air conditioning and refrigeration systems, computers, communications and electronic systems, service supply objects, heat recovery steam generator units, steam turbine generator units, generator step-up transformer units and combustion gas turbine generator units and all other equipment forming part of the Facility (the “**Equipment**”). The coverage shall not be less than the insurance provided by the forms known and referred to in the insurance industry as “Comprehensive Boiler and Machinery Form” or “Equipment Breakdown Insurance”. This policy shall contain a waiver of subrogation in favour of the Indemnitees. Deductibles in respect of this policy or the portion of the “all risk” property insurance relating to the Equipment (as described in Section 2.5(b)(i)) shall not exceed \$3,000,000. Equipment breakdown insurance coverage may be obtained as part of the “all risk” property insurance.

- (iii) commercial general liability insurance on an occurrence basis for death, bodily injury and property damage and other types of damage that may be caused to third parties as a result of the Supplier’s activities in connection with the Facility or performance of its obligations under this Agreement, to an inclusive limit of not less than \$10,000,000 per occurrence and in aggregate and with a deductible not exceeding \$100,000. This policy shall include the Indemnitees as additional insureds and shall be non-contributing and primary with respect to coverage in favour of the Indemnitees. The coverage provided shall not be less than the insurance required by IBC Form 2100-2, 4-1998 (or its equivalent replacement) and IBC Form 2320 (version in effect as at the date hereof or its equivalent replacement). The policy shall include the following coverage:
 - (A) broad form products, premises and completed operations liability;
 - (B) cross-liability and severability of interests clause;
 - (C) contingent employer’s liability;
 - (D) tenant’s legal liability (if applicable and with applicable sublimits);
 - (E) blanket contractual liability of the Supplier under this Agreement;
 - (F) damage arising from shoring, blasting, excavating, underpinning, demolition pile driving and caisson work, work below ground surface, tunnelling, and grading (if applicable);
 - (G) non-owned automobile liability with blanket contractual coverage for hired automobiles;

- (H) liability on the part of the Supplier resulting from activities or work performed by its contractors and subcontractors; and
 - (I) coverage shall be on an occurrence basis (and not a claims made basis).
- (iv) automobile liability insurance, providing coverage for owned, non-owned or hired automobiles with a combined single liability limit of not less than \$2,000,000 per occurrence;
 - (v) environmental impairment liability insurance, providing coverage for first party property damage and site clean-up and any third party claims for bodily injury, property damage and clean-up for any environmental incidents arising out of the construction, operation or maintenance of the Facility, with a limit of not less than \$5,000,000 per occurrence and in aggregate and with a deductible not exceeding \$200,000. This policy shall include the Indemnitees as additional insureds and shall be non-contributing and primary with respect to coverage in favour of the Indemnitees. The policy shall contain a cross-liability and severability of interests clause; and
 - (vi) any additional insurance required to be provided under all Laws and Regulations.
- (c) The Supplier shall provide the Buyer with proof of the insurance required by this Agreement in the form of valid certificates of insurance that reference this Agreement and confirm the required coverage on or before the Term Commencement Date, and renewals or replacements on or before the expiry of any such insurance. The policies for the insurance coverage under Sections 2.5(b)(i), 2.5(b)(ii), 2.5(b)(iii) and 2.5(b)(v) shall be endorsed to provide the Buyer with:
- (i) not less than sixty (60) days notice in writing in advance of any termination, cancellation or non-renewal thereof, and the Supplier shall ensure that the Buyer receives such notice prior to the commencement of such sixty (60) day period; and
 - (ii) notice in writing at the time of any material change or amendment thereto (including any reduction in limits, increase in deductibles, exhaustion of aggregate limits, and change in named insured), and the Supplier shall ensure that the Buyer receives such notice at such time.

Upon the request of the Buyer, the Supplier will provide the Buyer with a copy of each insurance policy to be furnished within ten (10) Business Days of the request being made by the Buyer. The provision to the Buyer of any certificate of insurance, insurance policy or other evidence of compliance with this Section 2.5 shall not imply acceptance by the Buyer that the extent of insurance coverage is sufficient and otherwise complies with this Section 2.5.

- (d) If the Supplier is subject to the *Workplace Safety and Insurance Act* (Ontario), it shall submit a valid clearance certificate of Workplace Safety and Insurance Act coverage to the Buyer prior to the commencement of the installation of the Facility Upgrade. In addition, the Supplier shall, from time to time at the request of the Buyer, provide additional Workplace Safety and Insurance Act clearance certificates. The Supplier agrees to pay when due, and to ensure that each of its contractors and subcontractors pays when due, all amounts required to be paid by it and its contractors and subcontractors, from time to time from the commencement of installation of the Facility Upgrade, under the *Workplace Safety and Insurance Act* (Ontario), failing which the Buyer shall have the right, in addition to and not in substitution for any other right it may have pursuant to this Agreement or otherwise at law or in equity, to pay to the Workplace Safety and Insurance Board any amount due pursuant to the *Workplace Safety and Insurance Act* (Ontario) and unpaid by the Supplier or its contractors and subcontractors and to deduct such amount from any amount due and owing from time to time to the Supplier pursuant to this Agreement together with all costs incurred by the Buyer in connection therewith.
- (e) In addition to all other rights and remedies available to the Buyer in this Agreement, if the Supplier fails to comply with this Section 2.5, the Buyer shall have the right (but not the obligation) to:
- (i) obtain any and all insurance policies that the Supplier has failed to obtain and maintain or in respect of which the Supplier has failed to notify the Buyer in the manner contemplated herein. The Buyer shall have the right to deliver an invoice to the Supplier containing a statement of the reasonable costs of obtaining such insurance policies, together with any associated administrative and legal and other reasonable costs (collectively, the “**Insurance Costs**”) and the Supplier shall within ten (10) days of the date of receiving such invoice pay to the Buyer an amount equal to the Insurance Costs, irrespective of whether or not the Buyer proceeds to obtain or has in fact obtained any such insurance policy or policies. The Parties agree that the Insurance Costs are a reasonable pre-estimate of damages and not a penalty. If the Supplier fails to pay to the Buyer the amount of the Insurance Costs, the Buyer shall be entitled to draw and retain from the Completion and Performance Security the amount of the Insurance Costs; or
 - (ii) withhold any Contingent Support Payment until such time as the Supplier provides the certificates of insurance or copies of insurance policies as required under this Section 2.5.
- (f) Where the Supplier is made up of more than one legal entity (whether in the form of partnership, joint venture or otherwise), the Supplier shall provide to the Buyer an irrevocable direction designating one such legal entity as responsible for all insurance matters under this Section 2.5, and for the provision of information in relation thereto to the Buyer as contemplated in this Agreement, and such entity shall be so responsible. The Supplier agrees that such designate shall be authorized

to bind the Supplier and all legal entities constituting the Supplier in respect of all matters relating to this Section 2.5.

2.6 Compliance with Laws and Regulations and Registration with the IESO

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

2.7 Environmental Attributes

- (a) The Supplier shall from time to time during the Term of this Agreement obtain, qualify, and register with the relevant authorities or agencies all Environmental Attributes that are created by, or allocated or credited to, the Facility pursuant to Laws and Regulations (including the Ontario Emissions Trading Program, if applicable to the Facility) (collectively, the “**Regulatory Environmental Attributes**”).
- (b) With respect to Regulatory Environmental Attributes:
 - (i) The Buyer shall be entitled to any and all right, title and interest in any Regulatory Environmental Attributes created, credited or allocated to the Facility in an amount related to Contracted Facility Operation; and
 - (ii) The Supplier shall be entitled to any and all right, title and interest in any remaining Regulatory Environmental Attributes net of the Buyer’s entitlement in Section 2.7(b)(i).

Further to Section 16.13, each of the Supplier and the Buyer shall do all such further acts and execute and deliver or cause to be done, executed or delivered all such

further acts, deeds, documents, assurances and things as may be required, acting reasonably, in order to give effect to the provisions of this Section 2.7(b)(i), including assigning, transferring or, if necessary, holding in trust for the other Party, such Regulatory Environmental Attributes.

- (c) The Supplier shall not participate in any voluntary programs with respect to any Environmental Attributes associated with the Facility without the prior written consent of the Buyer, which consent may be unreasonably withheld.

2.8 Existing GHG Laws and Regulations

- (a) For any period of time that the Facility is a Covered Facility or meets the requirement to submit a request to be designated as a Covered Facility under the Federal GHG Laws and Regulations, the Facility shall be an “**OBPS Facility**”. For any period of time that the Facility is a Covered Facility or meets the requirement to submit a request to be designated as a Covered Facility under the Provincial GHG Laws and Regulations, the Facility shall be an “**EPS Facility**”. At all times that the Facility is not an OBPS Facility or an EPS Facility, it shall be a “**Levied Facility**”. For greater certainty, if the Facility is eligible to be designated to be a Covered Facility but the Supplier does not make such a request, the Facility shall still be considered an OBPS Facility or an EPS Facility, as applicable.
- (b) The Supplier shall notify the Buyer within fourteen (14) days of the Supplier becoming aware of a change in its status as between an OBPS Facility, an EPS Facility, or a Levied Facility, along with any documentation supporting such change in status.
- (c) If the Facility is being settled as a Levied Facility under the Agreement, the Buyer may from time to time request documentation from the Supplier demonstrating that the Facility is not a Covered Facility and is not eligible to request to be designated as a Covered Facility, and the Supplier shall provide such documentation within thirty (30) days after any such request. If the Supplier fails to provide such documentation to the reasonable satisfaction of the Buyer, then the Facility shall be deemed to be an OBPS Facility or an EPS Facility, as applicable, effective as of the earliest date the Buyer reasonably believes the Facility became an OBPS Facility or an EPS Facility, as applicable.
- (d) If at any time the Supplier becomes entitled to a rebate, refund or other credit on account of any liability it has or will have in connection with the application of Federal GHG Laws and Regulations or Provincial GHG Laws and Regulations to the Facility, the Supplier shall promptly notify the Buyer and the Parties shall make such amendments to the Agreement as are required to take into account the impact of such rebate, refund or other credit.
- (e) If a GHG Termination Event occurs and the Facility is an OBPS Facility or an EPS Facility, as applicable, the CCIP and NCCIP shall become zero on the day following the earlier of (i) the occurrence of the GHG Termination Event and (ii)

the date the Government of Canada or the Government of Ontario, as applicable, makes a public statement indicating that a GHG Termination Event is forthcoming with sufficient detail such that a prudent generator would not reasonably be expected to continue to accrue a liability in respect of the Federal GHG Laws and Regulations or the Provincial GHG Laws and Regulations, as applicable, but in any event such date shall be no sooner than the final day of any period for which the Supplier is required to pay an emissions charge pursuant to Federal GHG Laws and Regulations or the Provincial GHG Laws and Regulations, as applicable. With respect to any period prior to the occurrence of the GHG Termination Event for which the CCIP and NCCIP was included in the calculation of the Imputed Net Revenue but for which the Supplier will not be required to pay an emissions charge, the Buyer shall be entitled to a credit equal to the value of the CCIP and NCCIP included in the IVEC during such period. For greater certainty, in any such case, the Imputed Production Hours shall not be recalculated.

- (f) If a GHG Termination Event occurs and the Facility is a Levied Facility, the CCIP shall become zero on the day that the Supplier ceases to be charged the carbon levy by its gas distributor or gas transmitter.
- (g) If at any time until twenty-four (24) months after the expiry of the Term or early termination of the Agreement, the Supplier is entitled to any rebate, refund or other credit on account of emissions charges previously paid or accrued by the Supplier or if the Supplier is liable for an incremental charge on account of a deficiency in the amount of emissions charges previously paid or accrued by the Supplier for natural gas consumed (including in connection with a GHG Termination Event), the Buyer shall be entitled to a share of such rebate, refund or other credit or the Supplier shall be entitled to a credit on account of a portion of such liability, as applicable, with such amount to be calculated based on the amount of the CCIP or NCCIP included in the calculation of Imputed Net Revenue during the relevant period. For greater certainty, in any such case, the Imputed Production Hours shall not be recalculated.
- (h) For greater certainty, for the purposes of any adjustment to be made pursuant to Sections 2.8(e) or 2.8(g), no CCIP or NCCIP is deemed to be included in the Imputed Net Revenue in respect of an Imputed Production Interval that is subject to the NINRR.
- (i) If NCCIP becomes less than zero, Federal GHG Laws and Regulations or Provincial GHG Laws and Regulations, as applicable, shall be deemed amended and either Party shall be entitled to trigger a requirement for further Replacement Provision(s) pursuant to Section 2.9(a).

2.9 New or Amended GHG Laws and Regulations

- (a) The Parties acknowledge that the Government of Canada and the Government of Ontario may, from time to time during the Term of this Agreement, implement Laws and Regulations covering Greenhouse Gas emissions that may be applicable

to the Facility and that may contain provisions requiring the Facility to have, obtain and/or retire permits, credits, allowances, offsets, or similar instruments or other compliance mechanisms (“**GHG Emissions Credits**”) in connection with the emission of Greenhouse Gases due to the operation of the Facility or prescribe other compliance mechanisms (the “**GHG Laws and Regulations**”). If new GHG Laws and Regulations are promulgated or existing GHG Laws and Regulations (as referred to in Section 2.8) are amended or the interpretation, implementation or application thereof is changed after the Effective Date, and once the applicable details of the GHG Laws and Regulations and the details of their application to the Facility are known, then notwithstanding Section 2.7(b), the Buyer agrees to propose such amendments to this Agreement (the “**Replacement Provision(s)**”) to the Supplier and, at the Buyer’s discretion, to all of the Other Suppliers who are required by the Buyer to participate, based on the principles set out in Section 2.9(b) (the “**GHG Amendment Principles**”). If the Parties are unable to agree on the Buyer’s proposal or that of the Supplier or any of those Other Suppliers, as the case may be, within sixty (60) days after the applicable details or applicable changes of the GHG Laws and Regulations have been published or determined in final form, then the Replacement Provision(s) shall be determined by mandatory and binding arbitration, from which there shall be no appeal, with such arbitration(s) to be conducted in accordance with the procedures set out in Exhibit K. However, if the Supplier fails to participate in such arbitration, the Supplier acknowledges that it waives its right to participate in such arbitration, which shall nevertheless proceed, and the Supplier shall be bound by the award of the Arbitration Panel and the subsequent amendments to this Agreement made by the Buyer to implement such award of the Arbitration Panel pursuant to Section 2.9(c).

- (b) For the purposes of Section 2.9, the GHG Amendment Principles upon which the Replacement Provision(s) will be based are as follows:
 - (i) The objective of the amendments, together with the GHG Laws and Regulations, will be to substantially reflect the economics of the Supplier under this Agreement with respect to Contracted Facility Operation prior to the implementation of the GHG Laws and Regulations or the relevant changes hereto.
 - (ii) If GHG Emissions Credits are created by, or allocated or credited to, the Facility, such GHG Emissions Credits will be allocated to the operation of the Facility based on:
 - (A) the requirements of Contracted Facility Operation; and
 - (B) the requirements of operation of the Facility that is not Contracted Facility Operation, if and to the extent that the requirements of Contracted Facility Operation have been satisfied.
 - (iii) If GHG Emissions Credits are required by GHG Laws and Regulations for Contracted Facility Operation and the amount of GHG Emission Credits, if

any, allocated to Contracted Facility Operation is less than the amount required by GHG Laws and Regulations for Contracted Facility Operation, the amendments may include, at the option of the Buyer:

- (A) amendments to Exhibit J; or
 - (B) the addition of provisions which allow or require the Buyer to pay to the Supplier the reasonable cost of any required GHG Emissions Credits beyond the amount that are available to the Supplier (acting prudently and excluding transaction costs); or
 - (C) the addition of provisions which allow or require the Buyer to obtain the GHG Emissions Credits and transfer them to the Supplier at no cost to the Supplier; or
 - (D) the addition of provisions which allow or require the Buyer to pay any compliance penalties associated with any deficit in required GHG Emissions Credits; or
 - (E) the addition of provisions which enable the Buyer to require the Supplier to stop delivering Electricity beyond a specified amount below the maximum amount of Contracted Facility Operation otherwise permitted under this Agreement together with the necessary amendments to Exhibit J.
- (iv) If GHG Emissions Credits are required by GHG Laws and Regulations for Contracted Facility Operation and the amount of GHG Emission Credits, if any, allocated to Contracted Facility Operation is greater than the amount required by GHG Laws and Regulations for Contracted Facility Operation, the Buyer shall be entitled to any and all right, title and interest in any such excess GHG Emissions Credits.
- (v) If GHG Emissions Credits are required by GHG Laws and Regulations for the operation of the Facility that is not Contracted Facility Operation, the Supplier is solely responsible for ensuring that it has a sufficient amount of GHG Emissions Credits for such operation.
- (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 2.9(b);
 - (ii) by the agreement of the Parties made pursuant to and to implement an award of the Arbitration Panel, made pursuant to Section 2.9(b); or
 - (iii) by an amendment prepared by the Buyer made pursuant to and to implement an award of the Arbitration Panel made pursuant to Section 2.9(b), where the Supplier failed to participate in such arbitration,

with such agreement or amendment, as the case may be, having effect from and after the date that the applicable details of such GHG Laws and Regulations, and their effect on Contracted Facility Operation, were known.

2.10 Facility Upgrade

- (a) The Supplier shall use Commercially Reasonable Efforts to achieve Upgrade In-Service by no later than the Milestone Date for Upgrade In-Service.
- (b) The Facility will be deemed to have achieved “**Upgrade In-Service**” at the point in time when:
 - (i) the Buyer has received a certificate from the Supplier in the form set out in Exhibit U;
 - (ii) the Buyer has received an IE Certificate, in the form set out in Exhibit V; and
 - (iii) the Facility has completed the Facility Upgrade Performance Test.
- (c) Upgrade In-Service may be achieved in respect of part or all of the Upgrade Capacity provided that once Upgrade In-Service has been achieved, there shall be no further opportunity to increase the Achieved Upgrade Capacity.
- (d) Once Upgrade In-Service is achieved, the value of the “**Achieved Seasonal Upgrade Capacity**” for each Season shall be established based on the result of the Facility Upgrade Performance Test performed in accordance with Exhibit W, and in particular with respect to the Electricity output (in MWh) for the lowest production hour of the Test Period, divided by one hour (“**Upgrade Test Result**”). If the Upgrade Test Result is greater than or equal to the Upgraded Capability Range at the highest ambient air temperature for the relevant hour (based on linear interpolation of the observed highest ambient air temperature falling between two indicated ambient air temperatures outlined in Section 2 of Exhibit W) then the Achieved Seasonal Upgrade Capacity shall be equal to the Seasonal Upgrade Capacity for each Season. If the Upgrade Test Result is less than the Upgraded Capability Range at the highest ambient air temperature for the relevant hour (based on linear interpolation of the observed highest ambient air temperature falling between two indicated ambient air temperatures outlined in Section 2 of Exhibit W) then:
 - (i) the Achieved Seasonal Upgrade Capacity for the Season in which the Facility Upgrade Performance Test was conducted shall be equal to the Seasonal Upgrade Capacity for such Season less the positive difference between the Upgraded Capability Range at the highest ambient air temperature for the relevant hour (based on linear interpolation of the observed highest ambient air temperature falling between two indicated

ambient air temperatures outlined in Section 2 of Exhibit W) and the Upgrade Test Result; and

- (ii) the Achieved Seasonal Upgrade Capacity for each Season other than the one in which the Facility Upgrade Performance Test was conducted shall be equal to the Seasonal Upgrade Capacity for the applicable Season multiplied by a fraction, the numerator of which is equal to the Achieved Seasonal Upgrade Capacity for the Season in which the Facility Upgrade Performance Test was conducted determined in accordance with Section 2.10(d)(i) and the denominator of which is equal to the Seasonal Upgrade Capacity for the Season in which the Facility Upgrade Performance Test was conducted.
- (e) For clarity, subject to Section 2.10(f), there is no restriction in this Agreement on the number of times the Supplier may conduct the Facility Upgrade Performance Test prior to requesting Upgrade In-Service from the Buyer; and the Achieved Seasonal Upgrade Capacity for each Season shall not exceed the corresponding Seasonal Upgrade Capacity as set out in Exhibit A prior to Upgrade In-Service.
- (f) If Upgrade In-Service has not been achieved in whole or in part by the Longstop Date for Upgrade In-Service, the Supplier will forfeit as liquidated damages and not as a penalty the full amount of the Upgrade Security. If Upgrade In-Service is achieved with less than the full Seasonal Upgrade Capacity, the Supplier will forfeit as liquidated damages and not as a penalty that proportion of the Upgrade Security equal to one minus the fraction determined in Section 2.10(d)(ii). The remedies set out in this Section 2.10(f) are the Buyer's sole and exclusive remedies and the Supplier's sole and exclusive liabilities for any failure to achieve Upgrade In-Service (in whole or in part) by the Longstop Date for Upgrade In-Service.
- (g) The Milestone Date for Upgrade In-Service and the Longstop Date for Upgrade in Service shall be subject to extension by (i) up to one (1) year (in the aggregate) for events of Force Majeure, and (ii) up to one (1) additional year for delays attributable to a denial by the IESO of an Outage required for the Supplier to complete the Facility Upgrade, in each case for the reasonable period of delay directly resulting from such event (i.e., for a total extension of up to two (2) additional years, as applicable).
- (h) With respect to any claim under Section 2.10(g)(ii), the Supplier shall (x) use Commercially Reasonable Efforts to avoid or mitigate the impact of any such delay and (y) give the Buyer written notice within ten (10) Business Days after becoming aware of such delay.
- (i) If:
 - (i) there is either a Force Majeure or an Outage denial by the IESO (but not both), in either case as contemplated by Section 2.10(g); or

- (ii) there is both a Force Majeure and an Outage denial by the IESO as contemplated by Section 2.10(g),

and the available extension under Section 2.10(g) has been exhausted whether in relation to the Milestone Date for Upgrade In-Service or the Longstop Date for Upgrade In-Service or both, either Party may, at any time after the relevant time period has lapsed, terminate the obligations in respect of the Facility Upgrade upon written notice to the other Party, and the Upgrade Security shall be returned to the Supplier.

- (j) In addition to and without limiting Supplier's obligations under Article 6, the Supplier shall increase the amount of the Completion and Performance Security for the performance of the Supplier's obligations under this Section 2.10 from the Effective Date until the Upgrade In-Service Date by the amount of \$40,000 per MW of Upgrade Capacity (such increase of the Completion and Performance Security being the "**Upgrade Security**"; for greater certainty the Upgrade Security does not include the base amount of the Completion and Performance Security prior to such increase). Notwithstanding Section 6.2(a), the obligation of the Supplier to maintain the Upgrade Security must be satisfied in full by the Supplier providing to the Buyer a Letter of Credit for the full amount of the Upgrade Security in addition to the amount otherwise required by Section 6.2(a)(i), to the Buyer's satisfaction, acting reasonably, to allow for a draw by the Buyer (for a maximum amount equal to the Upgrade Security only) in accordance with this Section 2.10. For certainty, no part of the Upgrade Security may be provided by the provision of a Guarantee.
- (k) The Buyer shall notify the Supplier in writing within ten (10) Business Days following receipt of the materials referenced in Sections 2.10(b)(i) and 2.10(b)(ii) whether such materials are acceptable to the Buyer, acting reasonably. If the Buyer determines that such materials are not acceptable to the Buyer, the Buyer shall at the time of such notification provide to the Supplier reasonable particulars in respect of the deficiencies. If the Buyer determines that such materials are acceptable to the Buyer, Upgrade In-Service shall be deemed achieved as of the day after the date of the applicable Facility Upgrade Performance Test, and as of such date:
 - (i) the Contract Capacity and Nameplate Capacity in each Season shall be increased by the amount of the applicable Achieved Seasonal Upgrade Capacity;
 - (ii) the Annual Average Nameplate Capacity and Annual Average Contract Capacity shall be recalculated based on the updated Contract Capacities and Nameplate Capacities, respectively;
 - (iii) the Net Revenue Requirement, as set forth in Exhibit B, shall be replaced by the amount calculated as follows:

$\text{NRR}_{\text{B-new}} = (\text{NRR}_{\text{B-old}} \times \text{AACC}_{\text{old}} + \text{UNRR} \times \text{AUC}) / \text{AACC}_{\text{new}}$	
where:	
$\text{NRR}_{\text{B-new}}$	is the Net Revenue Requirement to be set forth in Exhibit B in accordance with this Section 2.10(k).
$\text{NRR}_{\text{B-old}}$	is the Net Revenue Requirement as set forth in Exhibit B and as adjusted per Exhibit J from time to time, prior to the application of this Section 2.10(k).
AACC_{old}	is the Annual Average Contract Capacity as set forth in Exhibit B prior to the application of this Section 2.10(k).
UNRR	is the Upgrade NRR, and is equal to \$13,000/MW-month.
AUC	is the Achieved Upgrade Capacity (in MW), which shall not exceed 42.5 MW.
AACC_{new}	is the Annual Average Contract Capacity to be set forth in Exhibit B in accordance with this Section 2.10(k); and

and;

- (iv) subject to liquidated damages, if any, pursuant to Section 2.10(f) having been paid, the Upgrade Security shall no longer be required to be maintained, and the amount of Completion and Performance Security required to be posted and maintained pursuant to Section 6.1 shall be as set forth in Section 6.1.
- (l) As of the date hereof, the Supplier warrants that it has no reason to believe, acting reasonably, that Upgrade In-Service may not be achieved by the Milestone Date for Upgrade In-Service.

ARTICLE 3 DISPATCH OPTIONS

3.1 Rights to Dispatch the Facility

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

3.2 Available Dispatch Options

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

3.3 Appointment of the Dispatcher Under the Directed Dispatch Option

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

3.4 Future Tolling Dispatch

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

ARTICLE 4
OPERATION OF FACILITY AND PAYMENT OBLIGATIONS

4.1 Operation of Facility During the Term

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

4.2 Payment Amounts

- (a) The “**Monthly Payment**” shall be an amount equal to one of the following:
 - (i) the Contingent Support Payment, if any, which shall be owed by the Buyer to the Supplier; or
 - (ii) the Revenue Sharing Payment, if any, which shall be owed by the Supplier to the Buyer.

4.3 Supplier’s Responsibility for Taxes

The Supplier is liable for and shall pay, or cause to be paid, or reimburse the Buyer if the Buyer has paid, all Taxes applicable to any Revenue Sharing Payment due to the Buyer. If any HST is payable in connection with the Revenue Sharing 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.

4.4 Buyer’s Responsibility for Taxes

The Buyer is liable for and shall pay, or cause to be paid, or reimburse the Supplier if the Supplier has paid, all Taxes applicable to any Contingent Support Payment due to the Supplier. If any HST is payable in connection with the Contingent Support 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.

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

ARTICLE 5 STATEMENTS AND PAYMENTS

5.1 Meter and Other Data

- (a) The Supplier agrees to provide to the Buyer access to the meters in the Metering Plan to accommodate remote interrogation of the metered data on a daily basis. The Supplier agrees to provide to the Buyer, at all times, access to any other information relating to the Facility that the Supplier has provided to, or received from, the IESO from time to time. The Buyer agrees to provide to the Supplier, upon the Supplier's request, any Market Price information and any other information that the Buyer will be utilizing in preparing any Statement that is not available directly to the Supplier from the IESO. Upon a Party becoming aware of any errors or omissions in any data or information provided in accordance with this Section 5.1, such Party shall notify the other Party, and if applicable, the IESO in accordance with the IESO Market Rules, on a timely basis.
- (b) Notwithstanding the foregoing, the Parties acknowledge and agree that all Statements shall be prepared based on market price information and settlement data from the IESO and in the event of a discrepancy between market price information and settlement data from the IESO and information received directly from the Supplier pursuant to Section 5.1(a), then the market price information and settlement data from the IESO shall, subject to Section 5.7, be considered to be correct.

5.2 Statements

The Buyer shall prepare and deliver a settlement statement (the "**Statement**") to the Supplier, within ten (10) Business Days after the end of each calendar month in the Term that is the subject of the Statement (the "**Settlement Month**"), setting out the basis for the Monthly Payment with respect to the Settlement Month, as well as the basis for any other payments owing under this Agreement by either Party to the other in the Settlement Month. A Statement may be delivered by the Buyer to the Supplier by electronic mail 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 4.2, as applicable, owing to the Supplier for the Settlement Month.

5.3 Payment

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

5.4 Interest

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

5.5 Payment Account Information

Account for payments to Supplier:

Bank:

Bank Address:

Account Name:

Account Number:

Transit Number:

Supplier’s 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.

Account for payments to Buyer:

Swift Code:

Bank Number:

Account Number:

Transit Number:

Buyer’s HST Registration Number:

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

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

5.6 Adjustment to Statement

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

5.7 Disputed Statement

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

5.8 Statements and Payment Records

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

ARTICLE 6
CREDIT AND SECURITY REQUIREMENTS

6.1 Completion and Performance Security

- (a) The Supplier must, from the Effective Date, post and maintain security for the performance of the Supplier's obligations under this Agreement (the "**Completion and Performance Security**") in the amount of \$20,000 per MW of Annual Average Contract Capacity (as may be amended from time to time).
- (b) In the event that Buyer, in accordance with this Agreement, has recovered monies that were due to it using all or part of the Completion and Performance Security, the Supplier shall forthwith provide replacement security to cover an amount equal to that recovered or paid out of the Completion and Performance Security. In exchange for the Completion and Performance Security in the amended amount, the Buyer will return to the Supplier the original Completion and Performance Security.

6.2 Composition of Security

- (a) The Completion and Performance Security shall be provided as set out in Section 6.2(a)(i) or (ii) below:
 - (i) a Letter of Credit acceptable to the Buyer, for the full amount of the Completion and Performance Security; or
 - (ii) subject to Section 6.2(c), a Guarantee, up to a maximum amount determined pursuant to Section 6.4, but not to exceed ninety percent (90%) of the amount of the Completion and Performance Security, together with a Letter of Credit, certified cheque, bank draft, or other equivalent form of security acceptable to the Buyer, for the balance of the amount of the Completion and Performance Security.

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

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

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

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

6.3 Letter of Credit Provisions

Any Letter of Credit delivered under this Agreement shall be subject to the following provisions:

- (a) The Supplier shall (i) renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit, (ii) if the financial institution that issued an outstanding Letter of Credit has indicated its intent not to renew such Letter of Credit, provide a substitute Letter of Credit or other equivalent form of 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.
- (b) A Letter of Credit shall provide that the Buyer may draw upon the Letter of Credit in an amount (up to the face amount or part thereof remaining available to be drawn thereunder for which the Letter of Credit has been issued) that is equal to all amounts that are due and owing from the Supplier but that have not been paid to the Buyer within the time allowed for such payments under this Agreement (including any related notice or grace period or both). A Letter of Credit shall provide that a drawing may be made on the Letter of Credit upon submission to the financial institution issuing the Letter of Credit of one or more certificates specifying the amounts due and owing to the Buyer in accordance with the specific requirements of the Letter of Credit. The location where the drawing may be made must be Toronto, Ontario.
- (c) If the Supplier shall fail to renew, substitute, or sufficiently increase the amount of an outstanding Letter of Credit (as the case may be), or establish one or more

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

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

6.4 Guarantee Provisions

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

Section 6.2(a) so as to remain in compliance with the Completion and Performance Security requirements set out in Section 6.1.

- (b) (i) A Person’s Creditworthiness Value (the “**Creditworthiness Value**”) shall be determined by the following formula:

$$S \times T$$

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

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

- (ii) In the event that any Person has a Negative Outlook, then its Credit Rating will automatically be demoted by one (1) row in the table in Section 6.4(b).
- (c) Upon the consent of the Buyer, which consent shall not be unreasonably withheld, the Guarantor may substitute its Guarantee with a guarantee from an Affiliate or from any other Person who would qualify as a guarantor for an amount equivalent to the amount of the Guarantee (the “**Replacement Guarantee**”). The Replacement Guarantee shall be in the form of the Guarantee. Upon delivery of the Replacement Guarantee, (i) such Replacement Guarantee shall be deemed to be the “**Guarantee**” and such Affiliate or other Person providing such guarantee, as the case may be, shall be deemed to be the “**Guarantor**” for all purposes of this Agreement and (ii) the Buyer shall return the original Guarantee to the original Guarantor within five (5) Business Days of such delivery.

- (d) For greater clarity, all provisions of this Agreement that refer to (i) the Guarantor or similar references, or (ii) the Creditworthiness Value of the Guarantor or similar references, shall:
- (1) only apply in respect of the Guarantor if that Guarantor has, at the applicable time, issued a Guarantee in favour of the Buyer and that Guarantee remains in effect at that time (otherwise, the reference to Guarantor shall be excluded when interpreting the provision until such time as a Guarantee is provided); and
 - (2) only refer to the Creditworthiness Value of the Supplier (and not the Creditworthiness Value of its Guarantor) when and for so long as its Guarantor has not provided a Guarantee that remains in effect at the applicable time.

6.5 Financial Statements

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

6.6 Notice of Deterioration in Financial Indicators

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

6.7 Interest on Completion and Performance Security

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

ARTICLE 7 REPRESENTATIONS

7.1 Representations of the Supplier

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

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

- (d) There are no bankruptcy, insolvency, reorganization, receivership, seizure, realization, arrangement or other similar proceedings pending against or being contemplated by the Supplier or, to the knowledge of the Supplier, threatened against the Supplier.
- (e) There are no actions, suits, proceedings, judgments, rulings or orders by or before any Governmental Authority or arbitrator, or, to the knowledge of the Supplier, threatened against the Supplier that could have a Material Adverse Effect on the Supplier.
- (f) All requirements for the Supplier to make any filing, declaration or registration with, give any notice to or obtain any licence, permit, certificate, registration, authorization, consent or approval of, any Governmental Authority as a condition to entering into this Agreement have been satisfied.
- (g) The Supplier is a “Canadian partnership” for the purposes of the ITA, unless it has notified the IESO of such non-resident status as per Section 4.5.
- (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.

In addition, the Supplier shall, upon delivery of each of the quarterly progress reports required to be provided to the Buyer pursuant to Section 2.2, represent in writing that each of the foregoing statements set out in Sections 7.1(a) to 7.1(h) inclusive continues to be true or, if any of such statements are no longer true, then the Supplier shall provide to the Buyer a qualified representation with respect to such statement. Such qualified representation provided by the Supplier to the Buyer shall be subject, however, to the rights of the Buyer in Section 10.1(d) to require the Supplier to cure or remove any such qualification with respect to such statement.

7.2 Representations of the Buyer

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

- (a) The Buyer is a corporation without share capital created under the laws of Ontario, and has the requisite power to enter into this Agreement and to perform its obligations hereunder.
- (b) This Agreement has been duly authorized, executed, and delivered by the Buyer and is a valid and binding obligation of the Buyer enforceable in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency and other laws affecting the rights of creditors generally and except that equitable remedies may be granted solely in the discretion of a court of competent jurisdiction.

- (c) The execution and delivery of this Agreement by the Buyer and the consummation of the transactions contemplated by this Agreement will not result in the breach or violation of any of the provisions of, or constitute a default under, or conflict with or cause the termination, cancellation or acceleration of any material obligation of the Buyer under:
- (i) any contract or obligation to which the Buyer is a party or by which it or its assets may be bound, except for such defaults or conflicts as to which requisite waivers or consents have been obtained;
 - (ii) the by-laws or resolutions of the directors (or any committee thereof) or shareholder of the Buyer;
 - (iii) any judgment, decree, order or award of any Governmental Authority or arbitrator;
 - (iv) any licence, permit, approval, consent or authorization held by the Buyer;
or
 - (v) any Laws and Regulations,
- that could have a Material Adverse Effect on the Buyer.
- (d) There are no bankruptcy, insolvency, reorganization, receivership, seizure, realization, arrangement or other similar proceedings pending against, or being contemplated by the Buyer or, to the knowledge of the Buyer, threatened against the Buyer.
- (e) There are no actions, suits, proceedings, judgments, rulings or orders by or before any Governmental Authority or arbitrator, or, to the knowledge of the Buyer, threatened against the Buyer, that could have a Material Adverse Effect on the Buyer.
- (f) All requirements for the Buyer to make any declaration, filing or registration with, give any notice to or obtain any licence, permit, certificate, registration, authorization, consent or approval of, any Governmental Authority as a condition to entering into this Agreement have been satisfied.
- (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 date of this Agreement to and following the expiry of the Term, the Receiving Party shall keep confidential and secure and not disclose Confidential Information, except as follows:

- (a) The Receiving Party may disclose Confidential Information to: (i) its Representatives who need to know Confidential Information for the purpose of assisting the Receiving Party in complying with its obligations under this Agreement; and (ii) where the Buyer is the Receiving Party, to the Government of Ontario for the purpose of releasing the Agreement (but not other Confidential Information) or making a public statement or announcement regarding the existence or contents of this Agreement (but not other Confidential Information). On each copy made by the Receiving Party, the Receiving Party must reproduce all notices which appear on the original. The Receiving Party shall inform its Representatives of the confidentiality of Confidential Information and shall be responsible for any breach of this Article 8 by any of its Representatives.
- (b) If the Receiving Party or any of its Representatives are requested or required (by oral question, interrogatories, requests for information or documents, court order, civil investigative demand, or similar process) to disclose any Confidential Information in connection with litigation or any regulatory proceeding or investigation, or pursuant to any applicable law, order, regulation or ruling, the Receiving Party shall promptly notify the Disclosing Party. Unless the Disclosing Party obtains a protective order, the Receiving Party and its Representatives may disclose such portion of the Confidential Information to the Party seeking disclosure as is required by law or regulation in accordance with Section 8.2.
- (c) Where the Supplier is the Receiving Party, the Supplier may disclose Confidential Information to any Secured Lender or prospective lender or investor and its advisors, to the extent necessary, for securing financing for the 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 T, 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, 1.8, 1.9, 1.10 and 2.9; (ii) on a confidential basis, any information received by the Buyer in respect of this Agreement to the Buyer's Representatives for such internal purposes as the Buyer may reasonably determine from time to time; (iii) operational or performance data for research studies and analytics,

provided that such data is disclosed on an anonymous or aggregated basis; (iv) any information the Buyer or the System Operator is required to publish under the IESO Market Rules; and (v) this Agreement in its entirety with the following redacted: in Section 5.5, the Supplier's bank, bank account and HST registration number details, and in Exhibit B, the values for Start-Up Gas, Start-Up Maintenance Cost, O&M Costs and Contract Heat Rate.

- (e) The Supplier hereby irrevocably authorizes and consents to the System Operator and any Transmitter releasing, disclosing, providing, delivering and otherwise making available to the Buyer or its agents, and to the Buyer releasing, disclosing, providing, delivering and otherwise making available to the System Operator and a Transmitter (subject to there being an agreement on confidentiality as between the IESO and the Transmitter), a copy of this Agreement and any and all such information relating to connections, proposed connections, meters, metering data, testing data pertaining to commercial operation, billing data, Transmitter account or Metered Market Participant account (as applicable), of the Supplier or Facility as the Buyer or its agents may determine is required in connection with the administration of this Agreement.

8.2 Notice Preceding Compelled Disclosure

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

8.3 Return of Information

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

for the limited purpose of discharging any obligation it may have under Laws and Regulations, and shall keep such retained copy subject to the terms of this Article 8.

8.4 Injunctive and Other Relief

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

8.5 FIPPA Records and Compliance

The Parties acknowledge and agree that the IESO and Brighton Beach Power L.P. are subject to FIPPA and that FIPPA applies to and governs all Confidential Information in the custody or control of the IESO and Brighton Beach Power L.P. (“**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 IESO as required by or in fulfillment of this Agreement, if the Supplier continues to possess such FIPPA Records in a deliverable form at the time of the IESO’s request. If the Supplier does possess such FIPPA Records in a deliverable form, having conducted a reasonable search therefor, it shall provide the same within a reasonable time after being directed to do so by the IESO. The provisions of this Section 8.5 shall prevail over, and apply in lieu of, any other applicable provisions in this Agreement.

ARTICLE 9 TERM

9.1 Term

- (a) This Agreement shall become effective upon the date of this Agreement.
- (b) The “**Term**” means that period of time commencing at the beginning of the hour ending 01:00 (EST) on July 16, 2024 (the “**Term Commencement Date**”); and ending at 24:00 hours (EST) on the day ten (10) years after Term Commencement Date, subject to earlier termination in accordance with the provisions hereof. Neither Party shall have any right to extend or renew the Term except as agreed in writing by the Parties.

ARTICLE 10 TERMINATION AND DEFAULT

10.1 Events of Default by the Supplier

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

- (a) The Supplier or the Guarantor fails to make any payment when due, or deliver and/or maintain the Completion and Performance Security as required under this Agreement, if such failure is not remedied within five (5) Business Days after written notice of such failure from the Buyer.
- (b) The Supplier fails to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Supplier Event of Default) if such failure is not remedied within fifteen (15) Business Days after written notice of such failure from the Buyer, provided that such cure period shall be extended by a further fifteen (15) Business Days if the Supplier is diligently 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. For certainty, notwithstanding the receipt by the Buyer of a qualified representation by the Supplier with respect to any statement referred to in Sections 7.1(a) to 7.1(h) inclusive, the Buyer may, in its sole and absolute discretion, require the Supplier, within the time limits set out in this Section 10.1(d), to cure or remove any such qualification to such statement.
- (e) An effective resolution is passed or documents are filed in an office of public record in respect of, or a judgment or order is issued by a court of competent jurisdiction ordering, the dissolution, termination of existence, liquidation or winding up of the Supplier, unless such filed documents are immediately revoked or otherwise rendered inapplicable, or unless, in the case of the Supplier, there has been a permitted and valid assignment of this Agreement by the Supplier under this Agreement to a Person which is not dissolving, terminating its existence, liquidating or winding up and such Person has assumed all of the Supplier's obligations under this Agreement.

- (f) The Supplier amalgamates with, or merges with or into, or transfers the Facility or all or substantially all of its assets to, another Person other than the Buyer or its nominee unless, at the time of such amalgamation, merger or transfer, there has been a permitted and valid assignment hereof by the Supplier under this Agreement to the resulting, surviving or transferee Person and such Person has assumed all of the Supplier's obligations under this Agreement.
- (g) A receiver, manager, receiver-manager, liquidator, monitor or trustee in bankruptcy of the Supplier or of any of the Supplier's property is appointed by a Governmental Authority or pursuant to the terms of a debenture or a similar instrument, and such receiver, manager, receiver-manager, liquidator, monitor or trustee in bankruptcy is not discharged or such appointment is not revoked or withdrawn within thirty (30) days of the appointment. By decree, judgment or order of a Governmental Authority, the Supplier is adjudicated bankrupt or insolvent or any substantial part of the Supplier's property is sequestered, and such decree, judgment or order continues undischarged and unstayed for a period of thirty (30) days after the entry thereof. A petition, proceeding or filing is made against the Supplier seeking to have the Supplier declared bankrupt or insolvent, or seeking adjustment or composition of any of its debts pursuant to the provisions of any Insolvency Legislation, and such petition, proceeding or filing is not dismissed or withdrawn within thirty (30) days.
- (h) The Supplier makes an assignment for the benefit of its creditors generally under any Insolvency Legislation, or consents to the appointment of a receiver, manager, receiver-manager, monitor, trustee in bankruptcy, or liquidator for all or part of its property or files a petition or proposal to declare bankruptcy or to reorganize pursuant to the provisions of any Insolvency Legislation.
- (i) The Supplier has defaulted under one or more obligations for indebtedness to other Persons, resulting in obligations for indebtedness in an aggregate amount of more than the greater of: (1) five percent (5%) of its Tangible Net Worth and (2) \$50,000/MW multiplied by the Annual Average Contract Capacity becoming immediately due and payable, unless: (A) such default is remedied within fifteen (15) Business Days after written notice of such failure from the Buyer, provided that such cure period shall be extended by a further fifteen (15) Business Days if the Supplier is diligently remedying such default and such default is capable of being cured during such extended cure period; or (B) the Supplier has satisfied the Buyer that such default does not have a Material Adverse Effect on the Supplier's ability to perform its obligations under this Agreement.
- (j) The Supplier has made a 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.
- (k) Either of the defaults described in Sections 15.6(d) and 15.6(f)(i) has occurred.
- (l) The Availability is less than eighty (80%) percent.

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

10.2 Remedies of the Buyer

- (a) If any Supplier Event of Default (other than a Supplier Event of Default referred to in Sections 10.1(e), 10.1(g), and 10.1(h)) occurs and is continuing, upon written notice to the Supplier, the Buyer may, subject to Article 12, terminate this Agreement.
- (b) If a Supplier Event of Default referred to in Sections 10.1(b), 10.1(k), or 10.1(l) occurs and is continuing, in addition to the remedies set out in Section 10.2(a), at the discretion of the Buyer, either:
 - (i) the Supplier will forfeit an amount equivalent to the Assumed Deemed Dispatch Payment that would be payable to the Supplier, if any, for the Settlement Month in which such Supplier Event of Default occurs, as liquidated damages and not as a penalty; or
 - (ii) the Buyer may levy a performance assessment set-off, as liquidated damages and not as a penalty, equal to three (3) times the average Assumed Deemed Dispatch Payment that would be payable to the Supplier, if any, for the most recent twelve (12) Settlement Months (or the number of Settlement Months that have elapsed from the Term Commencement Date if less than twelve (12) Settlement Months have elapsed), in the event that three (3) or more Supplier Events of Default referred to in Sections 10.1(b), 10.1(k), or 10.1(l) have occurred within a Contract Year, regardless of whether such Supplier Events of Default have been subsequently cured,

and which may be satisfied by the Buyer setting off any payments due to the Supplier against any amounts payable by the Supplier to the Buyer including, at the Buyer's option, the amount of any Completion and Performance Security provided to the Buyer pursuant to Article 6, and by drawing on the Completion and Performance Security, or any part thereof, and if the remedy in Section 10.2(a) has not been exercised, requiring the Supplier to replace such drawn security with new security.
- (c) If a Supplier Event of Default occurs and is continuing, the Buyer may, in addition to the remedies set out in Section 10.2(a):
 - (i) set off any payments due to the Supplier against any amounts payable by the Supplier to the Buyer including, at the Buyer's option, the amount of any Completion and Performance Security provided to the Buyer pursuant to Article 6; and

- (ii) draw on the Completion and Performance Security, or any part thereof and, if the remedy in Section 10.2(a) has not been exercised, require the Supplier to replace such drawn security with new security.
- (d) Notwithstanding Sections 10.2(a), 10.2(b), and 10.2(c), upon the occurrence of a Supplier Event of Default referred to in Sections 10.1(e), 10.1(g) or 10.1(h), this Agreement shall automatically terminate without notice, act or formality, effective immediately before the occurrence of such Supplier Event of Default, in which case, for certainty, the Secured Lender shall have the rights available to it under Section 12.2(g).
- (e) If the Buyer terminates this Agreement pursuant to Section 10.2(a) or this Agreement is terminated pursuant to Section 10.2(d), the Buyer shall have the following option, exercisable in the sole and absolute discretion of the Buyer: the Buyer shall be entitled to retain all Completion and Performance Security provided by or on behalf of the Supplier and exercise all other remedies available to the Buyer including pursuing a claim for damages, as contemplated in Section 10.5.
- (f) Termination shall not relieve the Supplier or the Buyer of their respective responsibilities relating to the availability of the Contract Capacity and delivery of the Electricity, Related Products, and Environmental Attributes from the Facility that relate to 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 five (5) Business Days after written notice of such failure from the Supplier.
- (b) The Buyer fails to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Buyer Event of Default), if such failure is not remedied within fifteen (15) Business Days after written notice of such failure from the Supplier, provided that such cure period shall be extended by a further fifteen (15) Business Days if the Buyer is diligently remedying such failure and such failure is capable of being cured during such extended cure period.
- (c) The Buyer fails or ceases to hold a valid licence, permit, certificate, registration, authorization, consent or approval issued by a Governmental Authority where such

failure or cessation results in, or could be reasonably expected to result in, a Material Adverse Effect on the Buyer and is not remedied within thirty (30) Business Days after receipt by the Buyer of written notice of such failure or cessation from the Supplier, provided that such cure period shall be extended by a further thirty (30) Business Days if the Buyer is diligently remedying such failure or cessation and such failure or cessation is capable of being corrected during such extended cure period.

- (d) Any representation made by the Buyer in this Agreement is not materially true or correct in any material respect when made and is not made materially true or correct within thirty (30) Business Days after receipt by the Buyer of written notice of such fact from the Supplier, provided that such cure period shall be extended by a further thirty (30) Business Days if the Buyer is diligently correcting such breach and such breach is capable of being corrected during such extended cure period.
- (e) An effective resolution is passed or documents are filed in an office of public record in respect of, or a judgment or order is issued by a court of competent jurisdiction ordering the dissolution, termination of existence, liquidation or winding up of the Buyer unless such filed documents are immediately revoked or otherwise rendered inapplicable, or unless there has been a permitted and valid assignment of this Agreement by the Buyer under this Agreement to a Person which is not dissolving, terminating its existence, liquidating or winding up and such Person has assumed all of the Buyer's obligations under this Agreement.
- (f) A receiver, manager, receiver-manager, liquidator, monitor or trustee in bankruptcy of the Buyer or of any of the Buyer's property is appointed by a Governmental Authority or pursuant to the terms of a debenture or a similar instrument, and such receiver, manager, receiver-manager, liquidator, monitor or trustee in bankruptcy is not discharged or such appointment is not revoked or withdrawn within thirty (30) days of the appointment. By decree, judgment or order of Governmental Authority, the Buyer is adjudicated bankrupt or insolvent or any substantial part of the Buyer's property is sequestered, and such decree, judgment or order continues undischarged and unstayed for a period of thirty (30) days after the entry thereof. A petition, proceeding or filing is made against the Buyer seeking to have it declared bankrupt or insolvent, or seeking adjustment or composition of any of its debts pursuant to the provisions of any Insolvency Legislation, and such petition, proceeding or filing is not dismissed or withdrawn within thirty (30) days.
- (g) The Buyer makes an assignment for the benefit of its creditors generally under any Insolvency Legislation, or consents to the appointment of a receiver, manager, receiver-manager, monitor, trustee in bankruptcy or liquidator, of it or of all or part of its property or files a petition or proposal to declare bankruptcy or to reorganize pursuant to the provision of any Insolvency Legislation.
- (h) The Buyer assigns this Agreement (other than an assignment made pursuant to Sections 16.5(d) or 16.5(e)) without first obtaining the consent of the Supplier, if required pursuant to this Agreement.

10.4 Termination by the Supplier

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

10.5 Remedies for Termination Non-Exclusive

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

ARTICLE 11 FORCE MAJEURE

11.1 Effect of Invoking Force Majeure

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

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

will be made with respect to such portion of the Contract Capacity and Electricity delivered in accordance with Exhibit J.

- (b) A Party shall be deemed to have invoked Force Majeure with effect from the commencement of the event or circumstances constituting Force Majeure when that Party gives to the other Party prompt notice, written or oral (but if oral, promptly confirmed in writing) of the effect of the Force Majeure and reasonably full particulars of the cause thereof, in substantially the form as set forth in Exhibit I, provided that such notice shall be given within ten (10) Business Days of the commencement of the event or circumstances constituting Force Majeure. If the effect of the Force Majeure and full particulars of the cause thereof cannot be reasonably determined within such ten (10) Business Day period, the Party invoking Force Majeure shall be allowed a further ten (10) Business Days (or such longer period as the Parties may agree in writing) to provide such full particulars, in substantially the form set forth as Exhibit I, to the other Party. For greater certainty, the reporting or discussion of a Force Majeure event provided in a periodic report from the Supplier to the Buyer pursuant to Section 2.2 shall not constitute sufficient notice of the occurrence of a Force Majeure event.
- (c) The Party invoking Force Majeure shall use Commercially Reasonable Efforts to remedy the situation and remove, so far as possible and with reasonable dispatch, the Force Majeure, but settlement of strikes, lockouts and other labour disturbances shall be wholly within the discretion of the Party involved.
- (d) The Party invoking Force Majeure shall give prompt written notice of the termination of the event of Force Majeure, provided that such notice shall be given within ten (10) Business Days of the termination of the event or circumstances constituting Force Majeure.
- (e) Nothing in this Section 11.1 shall relieve a Party of its obligations to make payments of any amounts that were due and owing before the occurrence of the Force Majeure or that otherwise may become due and payable during any period of Force Majeure.
- (f) An event of Force Majeure shall not extend the Term.
- (g) If, by reason of Force Majeure, the Supplier is unable to perform or comply with its obligations (other than payment obligations) hereunder for more than an aggregate of thirty-six (36) months in any sixty (60) month period during the Term, then either Party may terminate this Agreement upon notice to the other Party without any costs or payments of any kind to either Party, except for any amounts that were due or payable by a Party hereunder up to the date of termination, and all security shall be returned forthwith.

11.2 Exclusions

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

- (a) if and to the extent the Party seeking to invoke Force Majeure has caused the applicable event of Force Majeure by its fault or negligence;
- (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 IESO 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); or
- (g) in respect of any impacts of the COVID-19 pandemic or the Russo-Ukrainian military conflict 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 Effective Date.

11.3 Definition of Force Majeure

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

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

dispute or such strikes or labour disputes are of employees of a Key Equipment Supplier);

- (e) delays or disruptions in fuel supply resulting from a Force Majeure event (whether such event is in respect of a Party or a third party), and provided that it shall be considered an event of Force Majeure if delays or disruptions in fuel supply arise as a result of the Supplier being unable to secure transportation capacity for fuel supply to the Facility after having made Commercially Reasonable Efforts to do so, but it shall not be considered an event of Force Majeure if such transportation capacity was available and the Supplier failed to secure it or failed to maintain it after having secured it;
- (f) civil disobedience or disturbances, war (whether declared or not), acts of sabotage, blockades, insurrections, terrorism, revolution, riots or epidemics;
- (g) an order, judgment, legislation, ruling or direction by Governmental Authorities restraining a Party, provided that the affected Party has not applied for or assisted in the application for and has used Commercially Reasonable Efforts to oppose said order, judgment, legislation, ruling or direction;
- (h) any inability to obtain, or to secure the renewal or amendment of, any permit, certificate, impact assessment, licence or approval of any Governmental Authority or Transmitter required to perform or comply with any obligation under this Agreement, unless the revocation or modification of any such necessary permit, certificate, impact assessment, licence or approval was caused by the violation of the terms thereof or consented to by the Party invoking Force Majeure;
- (i) any unanticipated maintenance or outage affecting the Facility:
 - (i) which is not identified in the Supplier's then current schedule of Planned Outages submitted to the IESO or the Buyer, as the case may be, in advance of the occurrence of an event of Force Majeure referred to in this Section 11.3, and
 - (ii) which results directly from, or is scheduled or planned directly as a consequence of, an event of Force Majeure referred to in this Section 11.3, or which results from a failure of equipment that prevents the Facility from producing Electricity, provided that:
 - (A) notice of the unanticipated maintenance or outage is provided to the Buyer by the Supplier concurrently, or as soon as reasonably possible thereafter, with the notice in respect thereof provided to the IESO but, in any event, within ten (10) Business Days thereof;
 - (B) the Supplier provides notice to the Buyer immediately, or as soon as reasonably possible thereafter, upon receipt from the IESO of advance acceptance or other proposed scheduling or approval of

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

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

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

ARTICLE 12 LENDER'S RIGHTS

12.1 Lender Security

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

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

secured thereby or accruing thereunder; and the Secured Lender shall not be entitled to seek any damages against the Buyer for any or all of the same.

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

12.2 Rights and Obligations of Secured Lenders

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

- (a) No Supplier Event of Default (other than those set out in Section 10.2(d)) shall be grounds for the termination by the Buyer of this Agreement until:
 - (i) any notice required to be given under Section 10.1 and 10.2(a) has been given to the Supplier and to the Secured Lender; and
 - (ii) the cure period set out in Section 12.2(b) has expired without a cure having been completed and without the Secured Lender having taken the actions therein contemplated.
- (b) In the event the Buyer has given any notice required to be given under Section 10.1, the Secured Lender shall, within the applicable cure period (including any extensions), if any, have the right (but not the obligation) to cure such default, and the Buyer shall accept such performance by such Secured Lender as if the same had been performed by the Supplier.
- (c) Any payment to be made or action to be taken by a Secured Lender hereunder as a prerequisite to keeping this Agreement in effect shall be deemed properly to have been made or taken by the Secured Lender if such payment is made or action is taken by a nominee or agent of the Secured Lender or a receiver or receiver and manager appointed by or on the application of the Secured Lender.
- (d) A Secured Lender shall be entitled to the Supplier's rights and benefits contained in this Agreement and shall become liable for the Supplier's obligations solely as provided in Section 12.2. A Secured Lender may, subject to the provisions of this Agreement, enforce any Secured Lender's Security Agreement and acquire the Supplier's Interest in any lawful way and, without limitation, a Secured Lender or its nominee or agent or a receiver or receiver and manager appointed by or on the application of the Secured Lender, may take possession of and manage the Facility and, upon foreclosure, or without foreclosure upon exercise of any contractual or statutory power of sale under such Secured Lender's Security Agreement, may sell or assign the Supplier's Interest with the consent of the Buyer as required under Section 12.2(f).
- (e) Until a Secured Lender (i) forecloses or has otherwise taken ownership of the Supplier's Interest or (ii) has taken possession or control of the Supplier's Interest, whether directly or by an agent as a mortgagee in possession, or a receiver or receiver and manager has taken possession or control of the Supplier's Interest by reference to the Secured Lender's Security Agreement, the Secured Lender shall not be liable for any of the Supplier's obligations or be entitled to any of the

Supplier's rights and benefits contained in this Agreement, except by way of security. If the Secured Lender itself or by a nominee or agent, or a receiver or a receiver and manager appointed by or on the application of the Secured Lender, is the owner or is in control or possession of the Supplier's Interest, then the entity that is the owner or is in control or possession of the Supplier's Interest shall be bound by all of the Supplier's obligations. Once the Secured Lender or such other Person goes out of possession or control of the Supplier's Interest or transfers the Supplier's Interest in accordance with this Agreement to another Person who is at Arm's Length with the Secured Lender, the Secured Lender shall cease to be liable for any of the Supplier's obligations and shall cease to be entitled to any of the Supplier's rights and benefits contained in this Agreement, except, if the Secured Lender's Security Agreement remains outstanding, by way of security.

- (f) Despite anything else contained in this Agreement, any Person to whom the Supplier's Interest is transferred shall take the Supplier's Interest subject to the Supplier's obligations. No transfer shall be effective unless the Buyer:
- (i) acting reasonably, if such transferee is at Arm's Length with the Secured Lender; or
 - (ii) acting in its sole and subjective discretion, if such transferee is not at Arm's Length with the Secured Lender,

has approved of the transferee and the transferee has entered into an agreement with the Buyer in form and substance satisfactory to the Buyer, acting reasonably, wherein the transferee agrees to assume and to perform the obligations of the Supplier in respect of the Supplier's Interest, whether arising before or after the transfer, and including the posting of the Completion and Performance Security required under Article 6.

- (g) In the event of the termination of this Agreement prior to the end of the Term due to a Supplier Event of Default, the Buyer shall, within ten (10) days after the date of such termination, deliver to each Secured Lender which is at Arm's Length with the Supplier a statement of all sums then known to the Buyer that would at that time be due under this Agreement but for the termination and a notice to each such Secured Lender stating that the Buyer is willing to enter into a New Agreement (the "**Buyer Statement**"). Subject to the provisions of this Article 12, each such Secured Lender or its transferee approved by the Buyer pursuant to Section 12.2(f) hereof shall thereupon have the option to obtain from the Buyer a New Agreement in accordance with the following terms:
- (i) Upon receipt of the written request of the Secured Lender within thirty (30) days after the date on which it received the Buyer Statement, the Buyer shall enter into a New Agreement.
 - (ii) Such New Agreement shall be effective as of the Termination Date and shall be for the remainder of the Term at the time this Agreement was terminated

and otherwise upon the terms contained in this Agreement. The Buyer's obligation to enter into a New Agreement is conditional upon the Secured Lender (A) paying all sums that would, at the time of the execution and delivery thereof, be due under this Agreement but for such termination, (B) otherwise fully curing any defaults under this Agreement existing immediately prior to termination of this Agreement that are capable of being cured, and (C) paying all reasonable costs and expenses, including legal fees, so as to provide a full indemnity (and not only substantial indemnity), incurred by the Buyer in connection with such default and termination, and the preparation, execution and delivery of such New Agreement and related agreements and documents, provided, however, that with respect to any default that could not be cured by such Secured Lender until it obtains possession, such Secured Lender or its transferee approved by the Buyer pursuant to Section 12.2(f) hereof, as the case may be, shall have the applicable cure period commencing on the date that it obtains possession to cure such default.

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

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

12.3 Cooperation

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

thereby, the obligations of the Supplier to the Buyer are not altered thereby and the consent of any other Secured Lender to such amendment has been obtained by the Supplier or the Secured Lender making the request for the amendment.

ARTICLE 13 DISCRIMINATORY ACTION

13.1 Discriminatory Action

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

- (a)
 - (i) the Legislative Assembly of Ontario causes to come into force any statute that was introduced as a government bill in the Legislative Assembly of Ontario or causes to come into force or makes any order-in-council or regulation first having legal effect on or after the Effective Date; or
 - (ii) the Legislative Assembly of Ontario directly or indirectly amends this Agreement without the agreement of the Supplier;
- (b) the effect of the action referred to in Section 13.1(a):
 - (i) is borne principally by the Supplier; or
 - (ii) is borne principally by the Supplier and one or more Other Suppliers who have a CES Contract or another bilateral arrangement with the Buyer similar in nature to this Agreement; and
- (c) such action increases the costs that the Supplier would reasonably be expected to incur under this Agreement in respect of Contracted Facility Operation, or adversely affects the revenues of the Supplier from Electricity and Related Products in respect of Contracted Facility Operation, 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 Effective 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 Independent Electricity System Operator, the Government of Ontario, and/or the Ministry of Energy and Infrastructure that appeared on the website of the Independent Electricity System Operator, the Government of Ontario and/or the Ministry of Energy and Infrastructure, 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 Effective 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 date of execution of this Agreement, or
 - (B) have been referred to in a press release issued by the Independent Electricity System Operator, the Government of Ontario and/or the Ministry of Energy and Infrastructure that appeared on the website of the Government of Ontario or the Ministry of Energy and Infrastructure, provided that any amendments made to such regulations in coming into force do not have a Material Adverse Effect on the Supplier.

13.2 Consequences of Discriminatory Action

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

- (a) the amount of the increase in the costs that the Supplier would reasonably be expected to incur in respect of Contracted Facility Operation as a result of the occurrence of such Discriminatory Action, commencing on the first day of the first calendar month following the date of the Discriminatory Action and ending at the expiry of the Term, but excluding the portion of any costs charged by a Person who does not deal at Arm’s Length with the Supplier that is in excess of the costs that would have been charged had such Person been at Arm’s Length with the Supplier; and
- (b) the amount by which (i) the net present value of the net revenues from the Electricity and Related Products in respect of Contracted Facility Operation that are forecast to be earned by the Supplier during the period of time commencing on the first day of the first calendar month following the date of the Discriminatory Action and ending at the expiry of the Term, exceeds (ii) the net present value of the net revenues from the Electricity and Related Products in respect of Contracted Facility Operation that are forecast to be earned by the Supplier during the period of time commencing on the first day of the first calendar month following the date of the Discriminatory Action and ending on the expiry of the Term, taking into account

the occurrence of the Discriminatory Action and any actions that the Supplier should reasonably be expected to take to mitigate the effect of the Discriminatory Action, such as by mitigating operating expenses and normal capital expenditures of the business of the generation and delivery of the Electricity and Related Products in respect of Contracted Facility Operation.

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 in respect of Contracted Facility Operation, or adversely affects the revenues of the Supplier from Electricity and Related Products in respect of Contracted Facility Operation; and
 - (iv) the amount claimed as Discriminatory Action Compensation and details of the computation thereof.

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

- (b) If the Buyer wishes to dispute the occurrence of a Discriminatory Action, the Buyer shall give a notice of dispute (the “**Notice of Dispute**”) to the Supplier, stating the grounds for such dispute, within thirty (30) days after the date of receipt of the Notice of Discriminatory Action or within thirty (30) days after the date of receipt of the further supporting particulars, as applicable.
- (c) If neither the Notice of Discriminatory Action nor the Notice of Dispute has been withdrawn within thirty (30) days after the date of receipt of the Notice of Dispute by the Supplier, the dispute of the occurrence of a Discriminatory Action shall be submitted to mandatory and binding arbitration in accordance with Section 16.2 without first having to comply with Section 16.1.

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

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

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

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

If the Buyer wishes to remedy or cause to be remedied the occurrence of a Discriminatory Action, the Buyer must give notice to the Supplier within thirty (30) days after the later of the date of receipt of the Notice of Discriminatory Action and the date of the receipt by the Buyer of the further supporting particulars referred to in Section 13.3(b). If the Buyer gives such notice, the Buyer must remedy or cause to be remedied the Discriminatory Action within one hundred and eighty (180) days after the date of receipt of the Notice of Discriminatory Action or, if a Notice of Dispute has been given, within one hundred and eighty (180) days after the date of the final award

pursuant to Section 16.2 to the effect that a Discriminatory Action occurred. If the Buyer remedies or causes to be remedied the Discriminatory Action in accordance with the preceding sentence, the Supplier shall have the right to obtain, without duplication, the amount that the Supplier would have the right to claim in respect of that Discriminatory Action pursuant to Section 13.2, adjusted to apply only to the period commencing on the first day of the first calendar month following the date of the Discriminatory Action and expiring on the day preceding the day on which the Discriminatory Action was remedied.

ARTICLE 14 LIABILITY AND INDEMNIFICATION

14.1 Exclusion of Consequential Damages

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

14.2 Liquidated Damages

Nothing in this Article shall reduce a Party's claim for liquidated damages pursuant to Sections 2.10(f), 6.3(c), 10.2(b) and 10.2(e). The Supplier acknowledges and agrees with the Buyer that the actual damages incurred by the Buyer and Electricity consumers as a result of a failure by the Supplier to meet its obligations under this Agreement are impossible to definitively quantify and the Supplier further agrees that the payment of the liquidated damages set forth in this Agreement constitutes a fair and reasonable means of compensating the Buyer for damages likely to be incurred as a result of such delays and does not constitute a penalty.

14.3 Buyer Indemnification

In addition to the indemnity provided by the Supplier in Section 2.3(b), the Supplier shall indemnify, defend and hold the Buyer, the Independent Electricity System Operator (to the extent that it is no longer the Buyer), the Government of Ontario, the members of the Government of Ontario's Executive Council, and their respective Affiliates, and each of the foregoing Persons' respective directors, officers, employees, shareholders, advisors, and agents (including contractors and their employees) (collectively, the "**Indemnitees**") harmless from and against any and all claims, demands, suits, losses, damages, liabilities, penalties, obligations, payments, costs and expenses and accrued interest thereon (including the costs and expenses of, and accrued interest on, any and all actions, suits, proceedings for personal injury (including death) or property damage, assessments, judgments, settlements and compromises relating thereto and reasonable lawyers' fees and reasonable disbursements in connection therewith) (each, an "**Indemnifiable Loss**"), asserted against or suffered by the Indemnitees relating to, in connection with, resulting from, or arising out of (i) any occurrence or event relating to the Facility, except to the extent that any injury or damage is attributable to the negligence or wilful misconduct of the Indemnitees or the failure of the Indemnitees to comply with Laws and Regulations and (ii) any breach by the Supplier of any representations, warranties, and covenants contained in this Agreement, except to the extent

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

14.4 Defence of Claims

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

14.5 Joint and Several Liability

If the Supplier is not a single legal entity (for example, an unincorporated joint venture or a general partnership), then each of the legal entities forming the Supplier shall execute this Agreement and shall be jointly and severally liable to the Buyer for all representations, warranties, obligations, covenants and liabilities of the Supplier hereunder.

ARTICLE 15
CONTRACT OPERATION AND ADMINISTRATION

15.1 Company Representative

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

15.2 Record Retention; Audit Rights

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

15.3 Reports to the Buyer

- (a) The Supplier shall deliver to the Buyer a copy of all reports, plans and notices that the Supplier is required to provide to the IESO with respect to Outages occurring after the Term Commencement Date, at the same time or within one (1) Business Day after such reports, plans and notices are delivered by the Supplier to the IESO.
- (b) In addition to the documentation provided in Section 15.3(a), the Supplier shall deliver at the times specified below the following documents, reports, plans and notices to the Buyer:
 - (i) no later than sixty (60) days before the Term Commencement Date, the Supplier shall provide to the Buyer an operating plan for the Facility for the Term, including a long term major maintenance schedule, in the form set out in Exhibit Q (the “**Long Term Operating Plan**”). The Supplier shall provide the Buyer with copies of any amendments or modifications to the Long Term Operating Plan within ten (10) Business Days of such amendments or modifications being made. The Long Term Operating Plan

shall be consistent with Good Engineering and Operating Practices and is not a guarantee of the timing of Planned Outages;

- (ii) no later than:
 - (A) the date that the Long Term Operating Plan is to be provided to the Buyer in accordance with Section 15.3(b)(i), and
 - (B) in respect of the second Contract Year and each Contract Year thereafter, sixty (60) days prior to each Contract Year,

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

- (iii) prompt notice to the Buyer of any Outage other than a Planned Outage, or any anticipated Outage other than a Planned Outage. Any notice under this subsection shall include a statement of the cause of such Outage, the proposed corrective action and the Supplier’s estimate of the expected duration of such Outage. The Supplier shall use Commercially Reasonable Efforts to promptly end or reduce the length of such Outage;
 - (iv) thirty (30) days prior written notice (or such lesser number of days as is possible in the circumstances) to the Buyer of any Planned Outage of the Facility.
- (c) All Outages shall take place in accordance with the notices of Outages provided by the Supplier to the Buyer under this Section 15.3.

15.4 Inspection of Facility

- (a) The Buyer’s Representatives shall, at all times upon two (2) Business Days’ prior notice, at any time after the execution of this Agreement, 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 by the Supplier will be waived or deemed to have been waived by any inspection by or on behalf of the Buyer. In no event will any inspection by the Buyer hereunder be a representation that there has been or will be compliance with this Agreement and Laws and Regulations.

15.5 Inspection Not Waiver

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

15.6 Capacity Check Tests

- (a) **Right to Request Capacity Check Test and Test Protocol.** The Buyer shall have the option, exercisable on no more than two (2) occasions per Contract Year, to require the Supplier, within ten (10) Business Days after written notice has been delivered to the Supplier, provided it is not during an Outage, to conduct a test (the “**Capacity Check Test**”), at the Supplier’s sole cost and expense, that may be witnessed by the Buyer or its Representative, to confirm the ability of the Facility to produce the Contract Capacity, as described below. The Capacity Check Test will be carried out in accordance with a test protocol (the “**Test Protocol**”) which will include the format of the report to be prepared in respect of the Capacity Check Test and which Test Protocol is to be prepared by the Supplier and submitted in writing to the Buyer for approval at least three (3) months prior to the Term Commencement Date. The measurements of the Capacity Check Test shall be made using high accuracy calibrated instruments and recording systems or Facility instrumentation, including tariff meters for Electricity acceptable to the Buyer, acting reasonably. Each Capacity Check Test consists of the Facility generating Electricity for four (4) continuous hours during a period designated by the Supplier on prior written notice to the Buyer in advance as a test period, subject to coordination and approval of the IESO, and shall be evaluated based on calculation

of the generator output at the Delivery Point net of any Station Service Loads in accordance with the Metering Plan. The Supplier acknowledges and agrees that the Contract Capacity, the Electricity output of the Facility and the Station Service Loads, as may be measured by the Capacity Check Test, shall not be adjusted for ambient weather conditions. For greater certainty, the Capacity Check Test shall be based on the Season 1 Contract Capacity, Season 2 Contract Capacity, Season 3 Contract Capacity or the Season 4 Contract Capacity, as applicable, depending on the calendar month during which the Capacity Check Test is conducted.

- (b) **Optional Re-Performance of Capacity Check Test as a result of Weather or Force Majeure.** If the Capacity Check Test is interrupted by an event of Force Majeure, or if at any point during the Capacity Check Test the ambient air temperature, as reported at the Environment Canada weather station that is physically nearest to the Facility, exceeded
- (i) in respect of a Capacity Check Test conducted during Season 1, 7.0 degrees Celsius,
 - (ii) in respect of a Capacity Check Test conducted during Season 2, 21.0 degrees Celsius,
 - (iii) in respect of a Capacity Check Test conducted during Season 3, 30.0 degrees Celsius or
 - (iv) in respect of a Capacity Check Test conducted during Season 4, 24.0 degrees Celsius,

then the Supplier may, at the Supplier's sole cost and expense, re-perform the Capacity Check Test within ten (10) Business Days after the receipt by the Supplier of the Capacity Confirmation relating to such Capacity Check Test from the Buyer.

- (c) **Capacity Check Test Report.** The Supplier shall at the Supplier's sole cost and expense and within ten (10) Business Days, or as provided in the Test Protocol, after completion of the Capacity Check Test prepare and submit to the Buyer a written Capacity Check Test report that includes the data collected during the test period, computation of test data and the test results. The Buyer shall provide to the Supplier within ten (10) Business Days after receipt of the Capacity Check Test report from the Supplier, written confirmation of the Electricity output for each hour during the Capacity Check Test (the "**Capacity Confirmation**").
- (d) **Requirements to Pass a Capacity Check Test.** To pass the Capacity Check Test, the Electricity output (in MWh) for each hour of the Capacity Check Test, divided by one hour, must be equal to or greater than the Contract Capacity, in which case the Capacity Reduction Factor shall, for the purposes of Exhibit J, be an amount equal to 1.0, effective from the date of the Capacity Confirmation in relation to the Capacity Check Test. If the Supplier has not passed the Capacity Check Test for each one of the four (4) continuous hours, then the Supplier shall, at the Supplier's

cost and expense, perform a further Capacity Check Test (the “**Further Capacity Check Test**”) within thirty (30) Business Days after the receipt by the Supplier of the Capacity Confirmation from the Buyer, on the same terms and conditions as the Capacity Check Test described in Section 15.6(a). If the total Electricity output of the Facility for the four (4) continuous hours of each of the Capacity Check Test and the Further Capacity Check Test, as stated in their respective Capacity Confirmations, divided by the number of hours in each of the respective check tests (each an “**Average Test Capacity**”), are both less than eighty percent (80%) of the Contract Capacity, then this shall be considered a Supplier Event of Default. For purposes of calculating the Average Test Capacity in this Section 15.6, the Electricity output from each hour shall not exceed a maximum amount equal to the Contract Capacity multiplied by one hour.

- (e) **Result of Further Capacity Check Test.** If the Further Capacity Check Test shows that the Average Test Capacity was less than 100% of the Contract Capacity, then the Capacity Reduction Factor for purposes of Exhibit J shall be reduced as set out below, effective on the date of the Capacity Confirmation in relation to the Further Capacity Check Test. The Capacity Reduction Factor shall be an amount equal to a fraction, the numerator of which is (i) the greater of the Average Test Capacities resulting from the Capacity Check Test and the Further Capacity Check Test, and the denominator of which is (ii) the Contract Capacity which relates to such greater Average Test Capacity.
- (f) **Final Capacity Check Test.** If Section 15.6(e) is applicable, then the Supplier shall perform a further Capacity Check Test (the “**Final Capacity Check Test**”) at the Supplier’s cost and expense within ten (10) Business Days after written notice has been delivered by the Supplier to the Buyer, no earlier than one month and no later than one year after the date of the Capacity Confirmation with respect to the Further Capacity Check Test, failing which this shall be considered to be a Supplier Event of Default. The Final Capacity Check Test shall take place on the same terms and conditions as the Capacity Check Test described in Section 15.6(a) and including the delivery of the Capacity Confirmation in relation to the Final Capacity Check Test. If the total Electricity output of the Facility for the four (4) continuous hours of the Final Capacity Check Test, as stated in the Capacity Confirmation with respect to the Final Capacity Check Test, divided by the number of hours in such check test (which result shall also be an “**Average Test Capacity**” as calculated pursuant to Section 15.6(d)):
 - (i) is less than ninety-five percent (95%) of the Contract Capacity, then this shall be considered a Supplier Event of Default;
 - (ii) is equal or greater to ninety-five percent (95%) and less than one hundred percent (100%) of the Contract Capacity, then the Capacity Reduction Factor shall, for the purposes of Exhibit J, be an amount equal to a fraction, the numerator of which is (i) the Average Test Capacity in relation to the Final Capacity Check Test, and the denominator of which is (ii) the Contract Capacity; and

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

15.7 Notices

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

If to the Supplier: Portlands Energy Centre L.P. (d/b/a Atura Power)
1415 Joshuas Creek Drive, Unit #101
Oakville, ON L6H 7G4

Attention: Tom Patterson
Email: tom.patterson@aturapower.com

With a copy to: Portlands Energy Centre L.P. (d/b/a Atura Power)
1415 Joshuas Creek Drive, Unit #101
Oakville, ON L6H 7G4

Attention: Shelley Babin, President & CEO
Email: shelley.babin@aturapower.com

If to the Buyer: Independent Electricity System Operator
120 Adelaide Street West
Suite 1600
Toronto, Ontario
M5H 1T1

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

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

- (b) Notices shall be delivered or transmitted as set out below, and shall be considered to have been received by the other Party:
 - (i) on the date of delivery if delivered by hand or by courier prior to 5:00 p.m. (local time of the recipient) on a Business Day and otherwise on the next following Business Day, it being agreed that the onus of establishing delivery shall fall on the Party delivering the notice;

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

ARTICLE 16 MISCELLANEOUS

16.1 Informal Dispute Resolution

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

16.2 Arbitration

Except as otherwise specifically provided for in this Agreement, any matter in issue between the Parties as to their rights under this Agreement may be decided by arbitration provided, however, that the Parties have first completed a Senior Conference pursuant to Section 16.1. Any dispute to be decided by arbitration will be decided by a single arbitrator appointed by the Parties or, if such Parties fail to appoint an arbitrator within fifteen (15) days following the agreement to refer the dispute to arbitration, upon the application of either of the Parties, the arbitrator shall be appointed by a Judge of the Superior Court of Justice (Ontario) sitting in the Judicial District of Toronto Region. The arbitrator shall not have any current or past business or financial relationships with any Party (except prior arbitration). The arbitrator shall provide each of the Parties an opportunity to be heard and shall conduct the arbitration hearing in accordance with the

provisions of the *Arbitration Act, 1991* (Ontario). Unless otherwise agreed by the Parties, the arbitrator shall render a decision within ninety (90) days after the end of the arbitration hearing and shall notify the Parties in writing of such decision and the reasons therefor. The arbitrator shall be authorized only to interpret and apply the provisions of this Agreement and shall have no power to modify or change this Agreement in any manner. The decision of the arbitrator shall be conclusive, final and binding upon the Parties. The decision of the arbitrator may be appealed solely on the grounds that the conduct of the arbitrator, or the decision itself, violated the provisions of the *Arbitration Act, 1991* (Ontario) or solely on a question of law as provided for in the *Arbitration Act, 1991* (Ontario). The *Arbitration Act, 1991* (Ontario) shall govern the procedures to apply in the enforcement of any award made. If it is necessary to enforce such award, all costs of enforcement shall be payable and paid by the Party against whom such award is enforced. Unless otherwise provided in the arbitral award to the contrary, each Party shall bear (and be solely responsible for) its own costs incurred during the arbitration process, and each Party shall bear (and be solely responsible for) its equal share of the costs of the arbitrator. Each Party shall be otherwise responsible for its own costs incurred during the arbitration process.

16.3 Business Relationship

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

16.4 Binding Agreement

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

16.5 Assignment

- (a) Except as set out below and as provided in Article 12, neither this Agreement nor any of the rights, interests or obligations under this Agreement may be assigned by either Party, including by operation of Laws and Regulations, without the prior written consent of the other Party, which consent shall not be unreasonably withheld.
- (b) The Supplier may, subject to compliance with Laws and Regulations and provided that there is not a Supplier Event of Default that has not been remedied, assign this Agreement without the consent of the Buyer to an Affiliate acquiring the Facility; provided, however, that no such assignment by the Supplier or any of its successors or permitted assigns hereunder shall be valid or effective unless and until such

Affiliate agrees with the Buyer in writing to assume all of the Supplier's obligations and be bound by the terms of this Agreement, and the arrangements and obligations of the Supplier set forth in Article 6 have been met in accordance with the terms of Article 6. If a valid assignment of this Agreement is made by the Supplier in accordance with this Section 16.5, the Buyer acknowledges and agrees that, upon such assignment and assumption and notice thereof by the assignor to the Buyer, the assignor shall be relieved of all its duties, obligations and liabilities hereunder.

- (c) If the Supplier assigns this Agreement to a non-resident of Canada (the “**Assignee**”), as that term is defined in the ITA, and the Buyer incurs any additional Taxes, at any time thereafter, solely as the result of such assignment, then payments under this Agreement by the Buyer shall be reduced by the amount of such additional or withholding Taxes and the Buyer shall remit such additional or withholding Taxes to the applicable taxing authorities. The Buyer shall within sixty (60) days after remitting such Taxes, notify the Assignee in writing, providing reasonable detail of such payment so that the Assignee may claim any applicable rebates, refunds or credits from the applicable taxing authorities. If after the Buyer has paid such amounts, the Buyer receives a refund, rebate or credit on account of such Taxes, then the Buyer shall promptly remit such refund, rebate or credit amount to the Assignee.
- (d) The Independent Electricity System Operator shall have the right to assign this Agreement and all benefits and obligations hereunder for the balance of the Term without the consent of the Supplier to an assignee with a Credit Rating no lower than that set forth in the fourth (4th) row of the table in Section 6.4(b), which such assignee shall assume the obligations and liability of the Independent Electricity System Operator under this Agreement and be novated into this Agreement in the place and stead of the Independent Electricity System Operator (except for the Independent Electricity System Operator's obligation in Section 16.5(d)(iii) which will remain in force), provided that the assignee agrees in writing to assume and be bound by the terms and conditions of this Agreement, and further agrees to provide the Secured Lender with a written acknowledgement of the Secured Lender's rights in relation to this Agreement in the form set out in Exhibit N, whereupon:
 - (i) the representation set forth in Section 7.2(a) shall apply to the assignee with all necessary amendments to reflect the form and the manner in which the assignee was established;
 - (ii) all of the representations set forth in Section 7.2 shall be deemed to be made by the assignee to the Supplier at the time of such assignment and assumption; and
 - (iii) the Independent Electricity System Operator shall be relieved of all obligations and liability arising pursuant to this Agreement; notwithstanding the foregoing, the Independent Electricity System Operator 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 Independent Electricity System Operator. The time periods in Section 10.3 shall not begin to run until both the assignee and the Independent Electricity System Operator have been so notified.

- (e) The Independent Electricity System Operator shall have the right to assign this Agreement and all benefits and obligations hereunder from time to time throughout the Term for a period less than the balance of the Term (the “**Assignment Period**”) without the consent of the Supplier to an assignee with a Credit Rating no lower than that set forth in the fourth (4th) row of the table in Section 6.4(b), which such assignee shall assume the obligations of the Independent Electricity System Operator under this Agreement and be novated into this Agreement in the place and stead of the Independent Electricity System Operator (except for the Independent Electricity System Operator’s obligation in Section 16.5(e)(iii) which will remain in force), provided that the assignee agrees in writing to assume and be bound by the terms and conditions of this Agreement, and further agrees to provide the Secured Lender with a written acknowledgement of the Secured Lender’s rights in relation to this Agreement in the form set out in Exhibit N, whereupon:
- (i) the representation set forth in Section 7.2(a) shall apply to the assignee with all necessary amendments to reflect the form and the manner in which the assignee was established;
 - (ii) all of the representations set forth in Section 7.2 shall be deemed to be made by the assignee to the Supplier at the time of such assignment and assumption;
 - (iii) the Independent Electricity System Operator shall be relieved of all obligations and liability arising pursuant to this Agreement; notwithstanding the foregoing, the Independent Electricity System Operator 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 Independent Electricity System Operator. The time periods in Section 10.3 shall not begin to run until both the assignee and the Independent Electricity System Operator 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 Independent Electricity System Operator;

- (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) The Supplier shall not permit or allow a change of Control of the Supplier, except with the prior written consent of the Buyer, which consent may not be unreasonably withheld. It shall not be unreasonable to withhold such consent if the change of Control will have or is likely to have, as determined by the Buyer acting reasonably, a Material Adverse Effect on the Supplier's ability to perform its obligations under this Agreement, in which case such consent may be withheld by the Buyer.
- (b) For the purposes of Sections 16.6(a) and 16.7(a)(ii), a change of Control shall exclude a change in ownership of any shares or units of ownership:
 - (i) that are listed on a recognized stock exchange, provided that such shares or units of ownership are not those of an entity that directly owns the Facility whose special or sole purpose is the ownership of the Facility or the Facility and other generation facilities under a CES Contract or other bilateral arrangements with the Buyer similar in nature to this Agreement. For greater certainty, and the purposes of Sections 16.6(a) and 16.7(a)(ii), 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; and
 - (ii) of any Person, if each Person Controlling the Supplier following such change of Control is an Affiliate of one or more Persons Controlling the Supplier prior to such change of Control, provided the Supplier provides Buyer, within ten (10) Business Days following such change of Control with notice of such change of Control and such additional information as the Buyer may reasonably request regarding the names of the Persons Controlling the Supplier following such transaction.

16.7 No Assignment or Change of Control for Specified Period

- (a) Notwithstanding the provisions of Sections 16.5(a), 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);
- (ii) any change of Control in respect of the Supplier; or
- (iii) fifty (50%) or more of securities or ownership interests carrying votes or ownership interests in respect of the Supplier be directly or indirectly held, whether as owner or other beneficiary and other than solely as the beneficiary of an unrealized security interest, individually or collectively by any Person or Persons who, as of the date of this Agreement, did not directly or indirectly hold any of such securities or ownership interests in respect of the Supplier, whether as owner or other beneficiary and other than solely as the beneficiary of an unrealized security interest,

be permitted until the third (3rd) anniversary of the Term Commencement Date.

16.8 Survival

The provisions of Sections 2.3(b), 2.7, 2.8(g), 2.10(f), 4.3, 4.4, 4.5, Article 5, Article 6.3(c), 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) to 16.5(e) shall survive the expiration of the Term or earlier termination of this Agreement. The expiration of the Term or a termination of this Agreement shall not affect or prejudice any rights or obligations that have accrued or arisen under this Agreement prior to the time of expiration or termination and such rights and obligations shall survive the expiration of the Term or the termination of this Agreement for a period of time equal to the applicable statute of limitations.

16.9 Counterparts

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

16.10 Additional Rights of Set-Off

- (a) In addition to its other rights of set-off under this Agreement or otherwise arising in law or equity, the Buyer may set off any amounts owing by the Supplier to the Buyer under this Agreement against any monies owed by the Buyer to the Supplier under this Agreement.
- (b) In addition to its other rights of set-off under this Agreement or otherwise arising in law or equity, the Supplier may set-off any amounts owing by the Buyer to the Supplier under this Agreement against any monies owed by the Supplier to the Buyer 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. The Parties agree to promptly execute and deliver any documentation required by any Governmental Authority in connection with any termination of this Agreement.

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

BRIGHTON BEACH POWER L.P., by its
general partner, **BRIGHTON BEACH
POWER LTD.**

**INDEPENDENT ELECTRICITY
SYSTEM OPERATOR**

By: _____
Name:
Title:

By: _____
Name:
Title:

By: _____
Name:
Title:

I have authority to bind the corporation.

We have authority to bind the
corporation.

**EXHIBIT A
FACILITY DESCRIPTION**

Name of Facility:	<i>Brighton Beach Power Station</i>	
Municipal Location and Address:	<i>Windsor, Ontario</i>	
Connection Point and Circuit Designation:	<i>J. Clark Keith substation at 115 kV and 230 kV</i>	
Description of Generation Technology:	<i>Combined Cycle Gas Turbine</i>	
Brief Description of Facility:	<i>Dispatchable, combined cycle power generation facility utilizing natural gas as a fuel</i>	

Detailed Description of Facility:

1.0 Overview

The Facility is designed to be a natural gas fueled, 570 MW (nominal), combined cycle power generation facility comprised of a “2x1” combined cycle block as further outlined below.

2.0 Site

The Facility is located in the city of Windsor.

3.0 Technology

The Facility will consist of a 2 x 1 combined cycle block: two combustion turbine generators (CTG), each exhausting into its respective heat recovery steam generator (HRSG), with the combined steam supplying a single steam turbine generator (STG). The HRSGs incorporate natural gas fueled duct burners which can be used to increase the steam production for additional output from the steam turbine generator. After passing through the steam turbine the steam is condensed in water cooled condenser.

4.0 Environmental Features

The gas turbines will use dry low NOx combustion technology.

The Facility will utilize water and sewer services supplied by the city of Windsor for potable water.

The gas turbines will be located outdoors enclosed in weather-proof acoustic enclosures. The STG will be located within a building. The Facility will be designed to meet site noise level requirements.

5.0 Fuel Supply

Except for the emergency generator (diesel) and firewater pump (diesel), the Facility will be fueled by natural gas.

6.0 Electrical Interconnect

The generator for CTG 1A will connect by the Keith TS to the Hydro One 115 kV circuit 23J1B and the generators for CTG1B and the STG will connect by the Keith TS to the Hydro One 230 kV circuit 23J20B.Facility Upgrade.

Facility Upgrade

“**Upgrade Capacity**” means forty-two and one-half megawatts (42.5 MW)

“**Seasonal Upgrade Capacity**” means: (i) thirty-seven megawatts (37 MW) in respect of Season 1; (ii) forty-seven megawatts (47 MW) in respect of Season 2; (iii) forty-eight megawatts (48 MW) in respect of Season 3; and (iv) thirty-eight megawatts (38 MW) in respect of Season 4.

The Facility Upgrade consists of the AGP Tech and DLN 2.6+ Upgrade from the gas turbine Key Equipment Supplier and HRSG Modifications.

The **AGP Tech and DLN 2.6+ Upgrade** makes it possible to increase gas turbine firing temperature which results in greater output from the gas turbine across all ambient conditions until shaft limit is reached. The AGP Tech and DLN 2.6+ Upgrade consists of the following scope items on each gas turbine.

Advance Gas Path (AGP) Tech: All three stages of turbine buckets, shrouds, and nozzles are replaced with upgraded parts that have improved materials and optimized cooling.

DLN 2.6+ Combustion System: The combustion hardware is replaced with upgraded parts that can handle a higher firing temperature.

Extended Turndown Valves: Additional valves in the cooling and sealing air system allow current MLP to be maintained.

Variable IGV Angle Optimization: Allows maximum IGV angle to be adjusted to increase output or maximize heat rate at baseload.

OpFlex Cold Day Performance: Control system changes to remove firing temperature suppression and thereby increase output at colder ambient temperatures.

OpFlex Autotune: Control system modified to automatically tune for combustion dynamics and provides greater stability to the combustion system.

OpFlex Variable Peak Load: Adds peak fire ability to each gas turbine which allows the firing temperature to be increased on demand (with a maintenance cost adder) to provide greater output

OpFlex Enhanced Transient Stability (ETS): Control system modifications provides better combustion stability for varying fuel compositions.

Shaft Limit Increase: The shaft limit is also being increased from 197 MW to 214 MW.

The **HRSG Modifications** consist of the following scope items to accommodate the increased gas turbine exhaust temperature due to the gas turbine upgrades.

HPSH-3 Attenuator Modifications: The HPSH-3 attenuator on each HRSG will require a modification (most likely spray valve or possibly trim replacement) in order to reduce HPSH-3 steam temperature and maintain the tube metal temperature limit of HPSH-3 to compensate for the increased exhaust temperature from the gas turbine upgrades.

LP Superheater PSV: Replace LP Superheater PSV with a greater capacity PSV on each HRSG.

HRSG Controls Changes: Minor controls changes to update duct burner and gas turbine tripping and runback logic per latest ASME guidelines in case of HRSG overpressure.

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

CONFIDENTIAL

Net Revenue Requirement	\$9,685 /MW-month
Net Revenue Requirement Indexing Factor	0.40
Annual Average Nameplate Capacity	541.25 MW
Annual Average Contract Capacity	541.25 MW
Start-Up Gas	██████ MMBTU/start-up
Start-Up Maintenance Cost	██████ /start-up ██████████
O&M Costs	██████ /MWh ██████████

continued on next page

	Season 1	Season 2	Season 3	Season 4
Nameplate Capacity	570 MW	540 MW	515 MW	540 MW
Contract Capacity	570 MW	540 MW	515 MW	540 MW
Contract Heat Rate	■ MMBTU/MWh (HHV)	■ MMBTU/MWh (HHV)	■ MMBTU/MWh (HHV)	■ MMBTU/MWh (HHV)

EXHIBIT C
FORM OF IRREVOCABLE STANDBY LETTER OF CREDIT

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [●]

ISSUE DATE:[●]

EXPIRY DATE: [●]

BENEFICIARY:

INDEPENDENT ELECTRICITY SYSTEM OPERATOR AND ITS PERMITTED ASSIGNS
120 ADELAIDE STREET WEST, SUITE 1600
TORONTO, ON M5H 1T1

APPLICANT:

ONTARIO POWER GENERATION INC.
700 UNIVERSITY AVENUE
TORONTO, ON M5G 1X6

AMOUNT: [●]

THE CREDIT IS ISSUED IN CONNECTION WITH THE CLEAN ENERGY SUPPLY (CES) CONTRACT (THE “**CONTRACT**”) DATED [●], 2023 BETWEEN THE BENEFICIARY AND THE BRIGHTON BEACH POWER L.P.

WE HEREBY AUTHORIZE THE BENEFICIARY TO DRAW ON [ISSUING BANK NAME/ADDRESS] IN RESPECT OF THE CREDIT, FOR THE ACCOUNT OF APPLICANT, UP TO AN AGGREGATE AMOUNT OF [●] AVAILABLE BY THE BENEFICIARY’S DRAFT AT SIGHT ACCOMPANIED BY THE BENEFICIARY’S SIGNED CERTIFICATE STATING THAT:

“BRIGHTON BEACH POWER L.P. IS IN BREACH OF, OR DEFAULT UNDER, THE CONTRACT, OR HAS OTHERWISE FAILED TO ACHIEVE UPGRADE IN-SERVICE IN WHOLE OR PART BY THE LONGSTOP DATE FOR UPGRADE IN-SERVICE 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 [●].”

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 SIXTY (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 ON OR BEFORE **[●]**, 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.

IT IS A TERM OF THIS TRANSFERABLE LETTER OF CREDIT, THE ABOVE NAME OF THE BENEFICIARY WILL BE TRANSFERRED TO ANOTHER ENTITY BY WAY OF A TRANSFER 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 SAID LETTER OF CREDIT AND REQUEST THAT THE CURRENT NAME AND ADDRESS OF THE BENEFICIARY THEREUNDER BE AMENDED TO READ **[INSERT NAME AND ADDRESS OF NEW BENEFICIARY]**. 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) TO THE **[NEW BENEFICIARY]**, CARE OF THE APPLICANT.”

THIS CREDIT IS TRANSFERABLE AT THE WRITTEN REQUEST OF THE BENEFICIARY, WITHOUT THE CONSENT OF THE APPLICANT, BUT SUBJECT TO CONSENT OF **[ISSUING BANK NAME]**, ACTING REASONABLY. ALL FEES INCURRED BY **[ISSUING BANK NAME]** 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.

PRIOR TO EFFECTING ANY TRANSFER, WE ARE OBLIGATED TO VERIFY THE PROPOSED TRANSFEREE AND RESERVE THE RIGHT NOT TO HONOUR A TRANSFER THAT IS NOT IN COMPLIANCE WITH ANY APPLICABLE LEGAL SANCTIONS OR ANTI-TERRORISM AND ANTI-MONEY LAUNDERING LAWS AND REGULATIONS.

[ISSUING BANK NAME]

AUTHORISED SIGNATURE

EXHIBIT D
FORM OF GUARANTEE

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

RECITALS:

- A. The Buyer and [insert name of Supplier], a [●], [●] under the laws of [●] (“**Supplier**”), have entered into the Clean Energy Supply (CES) Contract dated as of the [●] day of [●], 2023 (as extended, amended, replaced and supplemented, collectively, the “**Agreement**”);
- B. The Guarantor will directly or indirectly benefit from the Agreement;
- C. Pursuant to the terms of the Agreement, the Buyer has required that the Guarantor shall deliver a guarantee of all payment obligations of the Supplier under the Agreement to the Buyer; and
- D. Capitalized terms used in this Guarantee but not otherwise defined herein have the meanings ascribed to them in the Agreement.

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

1. Guarantee

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

2. Demand

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

3. Waivers

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

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

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

4. Limitation of Liability

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

5. Indemnity

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

6. Release of Guarantee

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

7. Defences

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

8. Subrogation

The Guarantor shall not be or claim to be subrogated, in whole or in part, to the rights of the Buyer against the Supplier under the Agreement or otherwise, until (a) the Buyer shall have received full

and infeasible payment of all Guaranteed Obligations; and (b) either the Agreement has been terminated or this Guarantee has been terminated pursuant to the terms hereof and the terms and conditions of the Agreement as applicable. Except as set out in this Section 8, nothing contained in this Guarantee shall limit the rights at law and in equity of the Guarantor to subrogation.

9. Representations

The Guarantor represents that:

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

10. No Waiver by the Buyer

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

11. Notices

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

- (a) if to the Buyer, to:

[●]

Attention: [●]
E-mail: [●]

(b) if to the Guarantor, to:

[●]
Attention: [●]
E-mail: [●]

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

12. Governing Law

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

13. Severability

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

14. Entire Agreement

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

15. Binding and Assignment

- (a) This Guarantee and all of the provisions hereof shall be binding upon and enure to the benefit of the parties and their respective successors and permitted assigns. This Guarantee is not intended to confer upon any other Person, except the parties and their respective successors and permitted assigns, any rights, interests, obligations or remedies under this Guarantee.

- (b) Neither this Guarantee nor any of the rights, interests or obligations under this Guarantee shall be assigned by either party without the prior written consent of the other party. Notwithstanding the foregoing, if the Buyer assigns the Agreement to an assignee pursuant to Sections 16.5(d) or 16.5(e) thereof, then the Buyer may assign this Guarantee to such assignee without the consent of the Guarantor or the Supplier.

16. Limitation Period

The limitation period applicable to any claim hereunder shall not begin to run until actual demand is made by the Buyer pursuant to Section 2 of this Guarantee. The Buyer and the Guarantor of this Guarantee agree to extend such limitation period to six (6) years from the date of such actual demand.

17. Electronic Mail and Counterparts

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

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

[GUARANTOR]

[BUYER]

By: _____

By: _____

Name: [●]

Name: [●]

Title: [●]

Title: [●]

I have the authority to bind the Corporation.

By: _____

Name: [●]

Title: [●]

I/We have the authority to bind the Guarantor.

EXHIBIT E
DETERMINATION OF AVAILABILITY

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

(a) First Year after Term Commencement Date

For each Settlement Month in the period prior to the end of the first anniversary after Term Commencement Date, the Availability of the Facility will not be tested for the purposes of Section 10.1(l) of the Agreement.

(b) Second and Third Years after Term Commencement Date

For the purposes of the formula to calculate Availability set out below, the Availability of the Facility for each Settlement Month in the second and third years after Term Commencement Date shall be calculated as follows:

$AV = (THM - OH - FMH) / (THM - FMH) \times 100$	
where:	
AV	is the Availability of the Facility (expressed as a percentage figure).
OH	is the total number of Outage Hours in the period between the Term Commencement Date and the last day of the applicable Settlement Month, subject to the following: <ul style="list-style-type: none"> (a) in determining Outage Hours, an hour may be a partial Outage Hour as a result of an Outage, including an inability of the Facility to produce at the full Contract Capacity or as a result of an Outage lasting for a part but not all of an hour. An hour in which a partial Outage occurs will be counted as a fractional Outage Hour by subtracting from one the quotient obtained by dividing: (i) the maximum production in that hour that could have been achieved given the partial Outage (in MWh) by (ii) the Contract Capacity multiplied by one (1) hour (in MWh). This fraction will be the contribution of that hour to the Outage Hours in the given Settlement Month; (b) Outage Hours shall not include the hours of any Outage where and to the extent that the Outage is caused by an event of Force Majeure; and (c) if the Panhandle Project does not proceed, and the Supplier submits an Outage or derate request to the System Operator as a result of the Supplier’s inability to secure interruptible Gas Distribution Services despite its Commercially Reasonable

	Efforts to do so, then provided the Supplier provides reasonable notice and substantiation thereof to the Buyer, Outage Hours shall not include any hours associated with such Outage or derate request except to the extent such hours exceed 438 hours in any Contract Year.
THM	is the total number of hours in the period between the Term Commencement Date and the last day of the applicable Settlement Month less the total number of hours of any Outage or derate request excluded from OH pursuant to clause (c) above.
FMH	is the total number of hours in the period between the Term Commencement Date and the last day of the applicable Settlement Month during which the Supplier was subject to an event of Force Majeure.

(c) Fourth and Subsequent Years after Term Commencement Date

The Availability of the Facility for each Settlement Month in the fourth and subsequent year after Term Commencement Date shall be calculated as follows:

$AV = (THM - OH - FMH) / (THM - FMH) \times 100$	
where:	
AV	is the Availability of the Facility (expressed as a percentage figure).
OH	is the total number of Outage Hours in the most recent 36-month period which ends on the last day of the Settlement Month, subject to the following: <ul style="list-style-type: none"> (a) in determining Outage Hours, an hour may be a partial Outage Hour as a result of an Outage, including an inability of the Facility to produce at the full Contract Capacity or as a result of an Outage lasting for a part but not all of an hour. An hour in which a partial Outage occurs will be counted as a fractional Outage Hour by subtracting from one the quotient obtained by dividing: (i) the maximum production in that hour that could have been achieved given the partial Outage (in MWh) by (ii) the Contract Capacity multiplied by one (1) hour (in MWh). This fraction will be the contribution of that hour to the Outage Hours in the given Settlement Month;

	<p>(b) Outage Hours shall not include the hours of any Outage where and to the extent that the Outage is caused by an event of Force Majeure; and</p> <p>(c) if the Panhandle Project does not proceed, and the Supplier submits an Outage or derate request to the System Operator as a result of the Supplier’s inability to secure interruptible Gas Distribution Services despite its Commercially Reasonable Efforts to do so, then provided the Supplier provides reasonable notice and substantiation thereof to the Buyer, Outage Hours shall not include any hours associated with such Outage or derate request except to the extent such hours exceed 438 hours in any Contract Year.</p>
THM	is the total number of hours in the most recent 36 month period which ends on the last day of the Settlement Month less the total number of hours of any Outage or derate request excluded from OH pursuant to clause (c) above.
FMH	is the total number of hours in the most recent thirty-six (36) month period which ends on the last day of the Settlement Month during which the Supplier was subject to an event of Force Majeure.

- (d) In determining Availability, the Outage Hours resulting from any one or more Outages taken for the purpose of completing the installation of the Facility Upgrade and a Facility overhaul, shall be excluded from both OH and THM for the purposes of determining the Availability in this Exhibit E, up to a maximum amount of 1,560 hours. As of the date hereof, the relevant Outages are expected to occur in Spring 2025. The timing and duration of such Outages may be revised by the Supplier or the System Operator.

**EXHIBIT F
RESERVED**

EXHIBIT G DISPATCH OPTIONS

1. General

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

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

2. Deemed Dispatch Option

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

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

3. Directed Dispatch Option

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

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

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

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

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

- (iii) the amount of the guarantee to be provided by the Buyer from time to time shall be equal to the Exposure Threshold Amount listed in that row of the table in subparagraph (ii) above which contains the Buyer's then current Credit Rating, as adjusted by any Negative Outlook in accordance with subparagraph (ii) above;
- (iv) in the event that the Exposure Amount on any day exceeds the Exposure Threshold Amount on such day then the Buyer shall, within two (2) Business Days of receiving notice of such fact:
 - (A) provide to the Gas Provider an irrevocable standby letter of credit, cash collateral or other form of collateral security, in each case, in form and substance acceptable to the Gas Provider (acting reasonably) for the full amount of the difference between the Exposure Amount and the Exposure Threshold Amount; or
 - (B) issue a full or partial Cancelled Directed Dispatch Order such that the Exposure Amount does not exceed the Exposure Threshold Amount;
- (v) in the event that the Buyer should fail to provide or maintain any of the applicable Buyer Security required hereunder, at the Supplier's option to be exercised by notice (the "**Cancellation Notice**") in writing to the Buyer, the Buyer shall be deemed to have issued a Cancelled Directed Dispatch Order in respect of the balance of the Directed Dispatch Order (LT) then outstanding and such Cancelled Directed Dispatch Order shall be deemed to be effective as of the day specified in the Cancellation Notice, provided that, if applicable, such date shall not be earlier than the date of receipt by the Buyer of the notice set out in subparagraph (iv) above; and
- (vi) the Supplier shall not vary the "**Obligations**" (as defined in Exhibit L) in respect of the standing credit support arrangement established by the Buyer in accordance with this Section 3(e), except: (i) as a direct result of the issuance of a new Directed Dispatch Order (LT) or the full or partial cancellation of an existing Directed Dispatch Order (LT); or (ii) if the Buyer has first consented in writing to a variation of such Obligations on any other basis. Notwithstanding Section 24 of Exhibit L, if the Supplier agrees with the "**Counterparty**" (as defined in Exhibit L) to vary such Obligations on any other basis, any increased cost to the Buyer of discharging such Obligations, to the extent relating to or caused by such variance, shall be for the Supplier's sole account and may be set off by the Buyer against any payment owing by the Buyer under this Agreement;
- (f) a Directed Dispatch Order (LT) shall not relate to any calendar month ending more than one (1) year from the date of the order;

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

Hours and Directed Start-Ups, based on the Contract Heat Rate and Start-Up Costs set out in Exhibit B, for each month covered by the provisional Directed Dispatch Order (LT) and advise the Buyer of such price quote within two (2) Business Days of the receipt of the provisional Directed Dispatch Order (LT) from the Buyer; if the Buyer does not specifically request a long-term non-binding price quote in the provisional Directed Dispatch Order (LT), the Supplier shall purchase Gas at its discretion in order to comply with the Directed Dispatch Order (LT) and the Buyer shall compensate the Supplier for such Gas purchased based on the Gas Price (DA) and in such event, paragraphs (o) and (p) shall not apply;

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

- (r) any hour that is the subject of a Cancelled Directed Dispatch Order shall be subject to the Deemed Dispatch Option, unless the Buyer issues a Directed Dispatch Order (DA) in respect of such hour in accordance with paragraph (i);
- (s) a Cancelled Directed Dispatch Order shall cover periods equal to increments of one or more Directed Dispatch Intervals;
- (t) a Cancelled Directed Dispatch Order shall also require the Supplier to sell, using Commercially Reasonable Efforts, the applicable Gas Cancellation Volume of Gas that the Buyer had requested be purchased on a forward basis under the Directed Dispatch Order (LT), provided that the Supplier may, but is not required, to sell such Gas if: (i) the Supplier would have provided such Gas from its Gas portfolio, or (ii) the Supplier will transfer such Gas into the Supplier's portfolio, as long as the Supplier, in either case, is willing to have a "deemed sale" at a target price mutually agreed by the Parties;
- (u) the amount of capacity imputed to be delivered in respect of any Directed Dispatch Hour under any Directed Dispatch Order shall always be equal to the Adjusted Contract Capacity;
- (v) the Buyer (or the Dispatcher, if one has been appointed) makes no guarantee or assurance to the Supplier as to whether, how often, or how long the Buyer (or the Dispatcher, if one has been appointed) will issue Directed Dispatch Orders to the Supplier during the Term; and
- (w) for purposes of calculating the Monthly Payment, Directed Dispatch Hours shall include all Outage Hours and all Force Majeure Outage Hours occurring during Directed Dispatch Intervals.

EXHIBIT H
FORM OF DIRECTED DISPATCH ORDER

The Parties agree that the form of order shall be agreed upon, if required, in accordance with the protocol set out in Exhibit G.

EXHIBIT I FORM OF FORCE MAJEURE NOTICE

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

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

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 applicable (the “Contract”)
Contract Date	insert Contract Date
Force Majeure No.	insert force majeure number
Title of Force Majeure	insert title of force majeure
Type of Force Majeure	<input type="checkbox"/> ACTS OF GOD / EXTREME WEATHER <input type="checkbox"/> DELAYS / DISRUPTIONS TO FUEL SUPPLY <input type="checkbox"/> LABOUR DISPUTES <input type="checkbox"/> LICENCES / PERMITTING <input type="checkbox"/> LEGAL ORDER / LEGISLATION <input type="checkbox"/> OTHER (SPECIFY):

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.

<p>1. Description of the events leading to Force Majeure</p> <p>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.</p>
<p>insert description of the events leading to the invoked Force Majeure</p>

<p>2. Effect of Force Majeure</p> <p>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.</p>
<p>insert description of the effect of the invoked Force Majeure</p>

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 J
CALCULATION OF CSP AND RSP**

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

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

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

1.0 STAGE I: DETERMINATION OF TOTAL MONTHLY FIXED CAPACITY PAYMENT

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

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

CRF _m	is the Capacity Reduction Factor for Settlement Month “m” as defined in Section 15.6, and expressed as a fraction. The Capacity Reduction Factor shall be 1.0 unless and to the extent the circumstances set out in Sections 15.6(e) and (f) apply. If the Capacity Reduction Factor changes during the Settlement Month, then CRF will be calculated as a weighted average based on the number of days of the Settlement Month during which the different values of CRF apply.
NRR _y	is the Net Revenue Requirement (in \$/MW-month). For the first Contract Year, the Net Revenue Requirement shall be equal to the amount set out in Exhibit B. For the second and each succeeding Contract Year, a portion of the Net Revenue Requirement shall be adjusted on the first day of such Contract Year to the percentage increase or decrease (if any) between the CPI effective as of the first day of such Contract Year compared with the CPI effective as of the Term Commencement Date. The NRR _y shall be calculated as follows: NRR_y = (NRR_B x NRRIF x IF_y) + (NRR_B x (1-NRRIF))
NRR _B	is the Net Revenue Requirement (in \$/MW-month) as set forth in Exhibit B.
NRRIF	is the Net Revenue Requirement Indexing Factor set out in Exhibit B.
AACC	is the Annual Average Contract Capacity (in MW).
IF _y	is the Index Factor for year “y” and shall be calculated as follows: IF_y = CPI_y / CPI_B
CPI _y	is the CPI applicable to the calendar month during which the first day of Contract Year “y” occurs.
CPI _B	is the CPI applicable to the calendar month during which the Term Commencement Date occurs.
FMCRF _m	is the Force Majeure Capacity Reduction Factor for Settlement Month “m” which shall be equal to 1.0 if there are no Outages affecting an Imputed Production Hour in the Settlement Month resulting from an event of Force Majeure, otherwise it shall be calculated as follows: $\mathbf{FMCRF}_m = 1 - \frac{\sum_{FMOH=1}^{FMOH=FMOH_m} FMO C_{FMOH}}{ACC_m \times IPH_m}$

ACC _m	is the Adjusted Contract Capacity (in MW) for the Settlement Month “ <i>m</i> ”, and is calculated as follows: ACC_m = CC_m x CRF_m
CC _m	is the Contract Capacity (in MW) in Settlement Month “ <i>m</i> ”.
IPH	is an Imputed Production Hour, which is an hour in Settlement Month “ <i>m</i> ” that is contained within an Imputed Production Interval which occurred, in whole or in part, in Settlement Month “ <i>m</i> ”.
IPH _m	is the total number of Imputed Production Hours in Settlement Month “ <i>m</i> ”.
FMOCF _{FMOH}	is the Force Majeure Outage Capacity in any Force Majeure Outage Hour, which is calculated as follows: FMOCF_{FMOH} = ACC_m – FMAC_{FMOH}
FMAC _{FMOH}	is the Force Majeure Available Capacity (in MW), which is the portion of the Adjusted Contract Capacity available for dispatch as reported by the Supplier to the IESO in respect of a Force Majeure Outage Hour.
FMOH	is a Force Majeure Outage Hour, which is an hour within any Imputed Production Interval in Settlement Month “ <i>m</i> ” for which the Supplier has notified the IESO and the Buyer, as applicable, of an Outage caused by an event of Force Majeure. For greater certainty, any FMOH is by definition also an IPH; however, Outages must continue to be reported to the IESO and the Buyer for all Outage Hours.
FMOH _m	is the total number of Force Majeure Outage Hours in Settlement Month “ <i>m</i> ”.

2.0 STAGE II: DETERMINATION OF VARIABLE ENERGY COST

2.1 Calculation of Variable Energy Cost

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

$VEC_h = ((GP_h + ACCIP_h) \times CHR) + O\&M_y$	
where:	
VEC_h	is the Variable Energy Cost for hour “h” (in \$/MWh).
GP_h	is the Gas Price for hour “h” (in \$/MMBTU) and shall be determined as follows: (i) for Directed Dispatch Hours that are subject to a Directed Dispatch Order (LT) and are not subject to a Cancelled Directed Dispatch Order, the Gas Price (in \$/MMBTU) is the Gas Price (LT) applicable for the day as agreed upon by the Parties pursuant to paragraphs 3(o)(i) and (p)(i) of Exhibit G, otherwise the Gas Price is the Gas Price (DA) for the day, as applicable; and (ii) for all other hours, the Gas Price is the Gas Price (DA) for the day. The Gas Price (DA) shall be converted from US dollars to Dollars using the applicable conversion rate set out in Section 1.1.
CHR	is the Contract Heat Rate (in MMBTU/MWh), which shall be the Season 1 Contract Heat Rate, Season 2 Contract Heat Rate, Season 3 Contract Heat Rate or the Season 4 Contract Heat Rate, as applicable.
$O\&M_y$	is the O&M Cost (in \$/MWh) set out in Exhibit B, as adjusted for indexation to the CPI as described in Section 2.2 of this Exhibit J.
$ACCIP_h$	is the Applicable Calculated Carbon Index Price applicable to hour “h” in calendar day “d” (in \$/MMBTU). Where in respect of hour “h” the Facility is an OBPS Facility or an EPS Facility, the $ACCIP_h$ shall be equal to the $NCCIP_h$; and where in respect of hour “h” the Facility is a Levied Facility, the $ACCIP_h$ shall be equal to the $CCIP_h$, each as calculated in accordance with Section 2.4 of this Exhibit J.

2.2 Indexation of O&M Cost

For each Contract Year, the O&M Cost shall be adjusted on the first day of such Contract Year to the percentage increase or decrease (if any) between the CPI effective as of the first day of such Contract Year compared with the CPI effective as of December 2009, and shall be calculated as follows:

$O\&M_y = O\&M_B \times IF_{O_y}$

where:	
O&M _y	is the O&M Cost (in \$/MWh) for Contract Year “y”.
O&M _B	is the O&M Cost (in \$/MWh) as set out in Exhibit B.
IF _{0y}	is the Index Factor Original for year “y” and shall be calculated as follows: $IF_y = CPI_y / CPI_0$
CPI _y	is the CPI applicable to the calendar month during which the first day of Contract Year “y” occurs.
CPI ₀	is the CPI applicable to the calendar month December 2009.

2.3 Calculation of Start-Up Costs

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

$SUC_d = CRF_m \times [SUG \times (GP_d + CCIP_d) + SUMC_y]$	
where:	
SUC _d	is the Start-Up Costs (in \$/start-up) for day “d”.
CRF _m	is the Capacity Reduction Factor for Settlement Month “m” determined according to Section 1.1 of this Exhibit J.
SUG	is the Start-Up Gas (in MMBTU/start-up) as defined in Section 1.1 of this Agreement.
GP _d	is the Gas Price applicable for day “d” (in \$/MMBTU) and shall be determined as follows: (i) for days that are subject to a Directed Dispatch Order (LT) and are not subject to a Cancelled Directed Dispatch Order, the Gas Price (in \$/MMBTU) is the Gas Price (LT) applicable for the day as agreed upon by the Parties pursuant to paragraphs 3(o)(i) and (p)(i) of Exhibit G, otherwise the Gas Price is the Gas Price (DA) for the day, as applicable; and (ii) for all other days, the Gas Price is the Gas Price (DA) for the day. The Gas Price (DA) shall be converted from US dollars to Dollars using the applicable conversion rate set out in Section 1.1.
CCIP _d	is the Calculated Carbon Index Price applicable to day “d” (in \$/MMBTU) and is equal to the value of CCIP _h for all hours “h” in day “d”, calculated in accordance with Section 2.4 of Exhibit J.

SUMC _y	is the Start-Up Maintenance Cost (in \$/start-up) for Contract Year “y”. For each Contract Year, the Start-Up Maintenance Cost shall be adjusted on the first day of such Contract Year to the percentage increase or decrease (if any) between the CPI effective as of the first day of such Contract Year compared with the CPI effective as of December 2009, and shall be calculated as follows: SUMC _y = SUMC _B x IF _{Oy}
IF _{Oy}	is the Index Factor Original for year “y” which is calculated as described in Section 2.2 of this Exhibit J.
SUMC _B	is the Start-Up Maintenance Cost (in \$/start-up) as defined in Section 1.1 of this Agreement.

2.4 Calculation of Calculated Carbon Index Price and Net Calculated Carbon Index Price

2.4.1 The calculation of the Calculated Carbon Index Price is as follows:

CCIP_h = ER(NG) × EEC_y	
Where	
CCIP _h	is the applicable Calculated Carbon Index Price (in \$/MMBTU) applicable to hour “h” in calendar year “y”.
ER(NG)	is the emissions rate for natural gas calculated using (A) the Canada Energy Regulator’s published conversion rate from MMBTU to cubic meters, (B) the rate of charge for “marketable natural gas” as set out in Schedule 2 of the GGPPA, and (C) the Excess Emissions Charge applicable under Federal GHG Laws and Regulations corresponding to the same period for which the value of (B) was used, after accounting for the lag between the annual increase between (B) and (C), all as amended or replaced from time to time. For example: <ul style="list-style-type: none"> As of January 1, 2022, it is calculated as (A) 28.328 m³/MMBTU multiplied by (B) \$0.0783/m³ divided by (C) \$40/tCO_{2e}, and is equal to 0.0554 tCO_{2e}/MMBTU; and As of April 1, 2022, it is calculated as (A) 28.328 m³/MMBTU multiplied by (B) \$0.0979/m³ divided by (C) \$50/tCO_{2e}, and is equal to 0.0554 tCO_{2e}/MMBTU.
EEC _y	is the “Excess Emissions Charge” (in \$/tCO _{2e}) as set out in Schedule 4 of the GGPPA or the cost of an “excess emissions units”

	(in \$/tCO ₂ e) as set out in the GGEPS Regulation, as applicable, for calendar year “y”.
--	--

2.4.2 The calculation of the Net Calculated Carbon Index Price is as follows:

$\text{NCCIP}_d = [\text{CHR} \times \text{ER}(\text{NG}) - \text{Benchmark}(\text{NG})_y \times \frac{1 \text{ GWh}}{1000 \text{ MWh}} \times \text{IGUF}] \times \text{EEC}_y / \text{CHR}$	
Where	
NCCIP _d	Is the applicable Net Calculated Carbon Index Price (in \$/MMBTU) applicable to day “d” in calendar year “y” (which amount may be positive or negative, provided that if NCCIP is negative, Section 2.8(i) shall apply).
CHR	is the applicable Contract Heat Rate, as set out in Exhibit B to the Agreement (in MMBTU/MWh (HHV)).
ER(NG)	is the emissions rate for natural gas, as defined in the table set out in Section 2.4.1 of this Exhibit J.
Benchmark(NG) _y	is the benchmark emissions rate for the generation of electricity from the combustion of natural gas for calendar year “y” (in tCO ₂ e/GWh), as prescribed by the OBPS or in accordance with the GGEPS Regulation, as applicable, from time to time. As of the Effective Date, it is equal to 310 tCO ₂ e/GWh under both the OBPS and the GGEPS Regulation.
IGUF	is the Imputed Gross Up Factor, and is equal to 1.02. If at any time the Government of Canada or the Government of Ontario, as applicable, provides additional information with respect to how “gross electricity generated” is to be determined for the purposes of the Federal GHG Laws and Regulations or Provincial GHG Laws and Regulations, as applicable, the Parties shall negotiate in good faith to determine a revised value of IGUF to be implemented on a prospective basis from the date such information was made available, which more closely approximates the ratio for the Facility of “gross electricity generated” (as such phrase is used in Federal GHG Laws and Regulations) to the “actual quantity of energy injected (AQEI)” (as such term is used in the IESO Market Rules).
EEC _y	is the “Excess Emissions Charge”, as defined in the table set out in Section 2.4.1 of this Exhibit J.

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

Subject to the provisions below, the Facility shall be deemed to operate, and hence, be imputed to produce Electricity at the Adjusted Contract Capacity (“ACC”), for all hours within all Imputed Production Intervals contained in whole or in part in any month.

3.1 Imputed Production Intervals

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

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

3.1.1 Deemed Dispatch Interval

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

- (i) A “**Deemed Dispatch Interval**” is a contiguous set of n Deemed Dispatch Hours for which the Facility is deemed to have operated, which is all hours between and including a Deemed Start-Up Hour and a Deemed Shut-Down Hour. A Deemed Dispatch Interval may consist of only one hour. For greater certainty, it is possible for a Deemed Start-Up Hour and a Deemed Shut-Down Hour to be the same hour.
- (ii) A “**Deemed Start-Up Hour**” is the first hour of a Deemed Dispatch Interval, and is the first hour, other than a Directed Dispatch Hour, following a Deemed Shut-Down Hour in which the Pre-Dispatch Price for that hour h , as published three hours prior to that hour, exceeds the applicable Variable Energy Cost, and the HOEP was greater than or equal to the applicable Variable Energy Cost for that hour h or for the previous hour $h-1$. Notwithstanding the foregoing, the requirement that the Deemed Start-Up Hour follow a Deemed Shut-Down Hour shall not apply to the first Deemed Start-Up Hour in the Term.

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

3.1.2 Directed Dispatch Interval

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

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

3.2 Calculation of Imputed Gross Energy Market Revenue

The Imputed Gross Energy Market Revenue is calculated as follows:

$IGEMR_m = \sum_{IPH=1}^{IPH=IPH_m} IP_{IPH} \times HOEP_{IPH} - \sum_{ROH=1}^{ROH=ROH_m} ROC_{ROH} \times OHOEP_m - \sum_{FMOH=1}^{FMOH=FMOH_m} FMOC_{FMOH} \times HOEP_{FMOH}$
where:

IGEMR _m	is the Imputed Gross Energy Market Revenue (in \$) for Settlement Month “m”.
IP _{IPH}	is the Imputed Production corresponding to a given Imputed Production Hour, which is calculated as the Adjusted Contract Capacity for the Settlement Month, “m”, (ACC _m), calculated in accordance with Section 1.1 of this Exhibit J, multiplied by one hour.
IPH	is an Imputed Production Hour, which is an hour in Settlement Month “m” that is contained within an Imputed Production Interval which occurred, in whole or in part, in Settlement Month “m”. For greater certainty, IPH shall include all ROH and FMOH.
IPH _m	is the total number of Imputed Production Hours in Settlement Month “m”.
HOEP _{IPH}	is the Hourly Ontario Energy Price corresponding to a given Imputed Production Hour (expressed in \$/MWh).
OHOEP _m	<p>is the Outage HOEP adjustment for Settlement Month “m”, determined as follows:</p> <p>(a) if the difference between the weighted average HOEP for all Reported Outage Hours in month <i>m</i> and the weighted average relevant Variable Energy Cost for all Reported Outage Hours in month <i>m</i> is equal to or less than Max Increment_y, then OHOEP_m = zero; and</p> <p>(b) if the difference between the weighted average HOEP for all Reported Outage Hours in month <i>m</i> and the weighted average relevant Variable Energy Cost for all Reported Outage Hours in month <i>m</i> is greater than Max Increment_y, then OHOEP_m equals that calculated difference minus Max Increment_y.</p> <p>For the purposes of determining Outage HOEP, where a weighted average is referred to, the weight for each hour shall be expressed by multiplying ROC for such hour multiplied by one hour.</p>
ROC	<p>is the Reported Outage Capacity in any hour, which is calculated as follows:</p> $\mathbf{ROC} = \mathbf{ACC}_m - \mathbf{ROAC}_{\mathbf{ROH}}$ <p>where ACC_m the Adjusted Contract Capacity (in MW) in Settlement Month “m”, calculated in accordance with the formula provided in Section 1.1 of this Exhibit J.</p>
ROC _{ROH}	is the ROC corresponding to a given Reported Outage Hour.
ROAC _{ROH}	is the Reported Outage Availability Capacity (in MW), which is the portion of the Adjusted Contract Capacity available for dispatch as reported by the Supplier to the IESO in respect of a Reported Outage Hour.

ROH	is a Reported Outage Hour, which is an hour within any Imputed Production Interval in Settlement Month “ <i>m</i> ” for which the Supplier has notified the IESO and the Buyer, as appropriate, of an Outage that is not the result of an event of Force Majeure. For greater certainty, any ROH is by definition also an IPH; however, Outages must continue to be reported to the IESO and the Buyer for all Outage Hours.
ROH _{<i>m</i>}	is the total number of Reported Outage Hours in Settlement Month “ <i>m</i> ”.
Max Increment _{<i>y</i>}	is equal to \$75.00/MWh as of December 31, 2007. From and after January 1, 2008, and for each succeeding calendar year, Max Increment _{<i>y</i>} shall be adjusted on the first day of such calendar year to the percentage increase or decrease (if any) between the CPI effective as of the first day of such calendar year and the CPI effective as of the first day of the immediately prior calendar year.
FMOCF _{FMOH}	is the Force Majeure Outage Capacity in any Force Majeure Outage Hour, which is calculated as described in Section 1.1 of this Exhibit J.
FMOH	is a Force Majeure Outage Hour as defined in Section 1.1 of this Exhibit J.
FMOH _{<i>m</i>}	is the total number of Force Majeure Outage Hours in Settlement Month “ <i>m</i> ”.
HOEP _{FMOH}	is the HOEP corresponding to a given Force Majeure Outage Hour.

3.3 Calculation of Imputed Net Revenue

3.3.1 Calculation of Imputed Net Energy Revenue

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

INER_{<i>m</i>} = IGEMR_{<i>m</i>} – IVEC_{<i>m</i>}	
where:	
INER _{<i>m</i>}	is the Imputed Net Energy Revenue (in \$) in Settlement Month “ <i>m</i> ”.
IGEMR _{<i>m</i>}	is the Imputed Gross Energy Market Revenue (in \$) in Settlement Month “ <i>m</i> ”.
IVEC _{<i>m</i>}	is the Imputed Variable Energy Cost (in \$) in Settlement Month “ <i>m</i> ”, which is equal to the aggregate Variable Energy Cost for the total Imputed Production during the Settlement Month “ <i>m</i> ”, calculated as follows:

	$\mathbf{IVEC}_m = \sum_{d=1}^{d=\text{day}_m} \left[(SUC_d \times ISU_d) + \left(\sum_{IPH=1}^{IPH=IPH_d} VEC_h \times IP_{IPH} \right) - \left(\sum_{FMOH=1}^{FMOH=FMOH_d} FMO C_{FMOH} \right) \times \frac{1}{ACC_m \times IPH_d} - \left(\sum_{FMOH=1}^{FMOH=FMOH_d} VEC_h \times FMO C_{FMOH} \right) \right]$
day _m	is the number of days in the Settlement Month “m”.
ISU _d	is the number of Imputed Start-Ups for day “d” calculated according to Section 3.1 of this Exhibit J.
SUC _d	is the Start-Up Costs (in \$/start-up) for day “d” calculated according to Section 2.3 of this Exhibit J.
VEC _h	is the Variable Energy Cost for hour “h” (in \$/MWh) calculated according to Section 2.1 of this Exhibit J.
IPH	is an Imputed Production Hour, which is an hour in day “d” that is contained within an Imputed Production Interval which occurred, in whole or in part, in day “d”.
IPH _d	is the total number of Imputed Production Hours in day “d”.
IP _{IPH}	is the Imputed Production corresponding to a given Imputed Production Hour (in MWh), which is calculated as the Adjusted Contract Capacity for the Settlement Month, “m” (ACC _m), calculated in accordance with Section 1.1 of this Exhibit J, multiplied by one hour.
FMOH	is a Force Majeure Outage Hour as defined in Section 1.1 of this Exhibit J.
FMOH _d	is the number of Force Majeure Outage Hours in day “d”.
FMO C _{FMOH}	is the Force Majeure Outage Capacity in any Force Majeure Outage Hour, which is calculated as described in Section 1.1 of this Exhibit J.

3.3.2 Calculation of Future Contract Related Products Revenue

The Future Contract Related Products Revenue for Settlement Month “m” is calculated as follows:

FCRPR_m = RFCRP_m + RFREC_m	
where:	

FCRPR _m	is the Future Contract Related Products Revenue (in \$) for Settlement Month “m”.
RFCRP _m	is: (a) 100% of the net revenue (in \$) arising from any Future Contract Related Products that are Capacity Products; and (b) 50% of the net revenue (in \$) arising from all Future Contract Related Products other than Capacity Products; corresponding to Settlement Month “m”, where net revenue is calculated as the revenue received from the applicable Future Contract Related Products less any reasonable costs incurred by the Supplier to receive such revenue. For greater certainty, such costs shall be determined on an actual cost basis without mark-up, as confirmed by the Buyer and Supplier, and which shall be subject to verification by the Buyer, from time to time.
RFREC _m	is any revenue to the Supplier in the Settlement Month “m” arising from the sale, disposition, or encumbrance of the Supplier’s interest in the GHG Emissions Credits provided or paid for by the Buyer pursuant to Section 2.9(b)(iii) of the Agreement.

3.3.3 Calculation of Gas Cancellation Amount

The Gas Cancellation Amount (in \$) in Settlement Month “m” is calculated as follows:

$GCA_m = \sum_{d=1}^{d=day_c} GCP_d \times GCV_d$	
where:	
GCA _m	is the Gas Cancellation Amount (in \$) for Settlement Month “m”.
GCP _d	is the Gas Cancellation Price (in \$/MMBTU) for any day “d” that was the subject of a Directed Dispatch Order (LT) and (i) which order was cancelled by a full or partial Cancelled Directed Dispatch Order, or (ii) during which day any Directed Dispatch Hour is affected by an Outage caused by an event of Force Majeure, and is calculated as follows: (a) In the event of a sale of the Gas Cancellation Volume of Gas that is not a deemed sale pursuant to Section 3(r) of Exhibit G, then the Gas Cancellation Price is equal to the Gas Price (LT) _d minus the price (net of Gas Sale Transaction Costs) at which the Gas Cancellation Volume (GCV _d), as calculated below, is sold by the Supplier using Commercially Reasonable Efforts.

	<p>(b) In the event of a sale of the Gas Cancellation Volume of Gas that is a deemed sale pursuant to Section 3(t) of Exhibit G, then the Gas Cancellation Price is equal to Gas Price (LT)_d minus the target price mutually agreed by the Parties pursuant to Section 3(t) of Exhibit G.</p> <p>For greater certainty, GCP_d may be a negative number.</p>
GCV _d	<p>is the Gas Cancellation Volume (in MMBTU) associated with the total Directed Dispatch Hours for any day “d” that were the subject of a Directed Dispatch Order (LT) and:</p> <p>(i) where such order was cancelled by a full or partial Cancelled Directed Dispatch Order, the Gas Cancellation Volume shall be an amount equivalent to (A) the applicable Contract Heat Rate multiplied by the applicable Adjusted Contract Capacity in the Settlement Month, “m”, and multiplied by such total number of cancelled Directed Dispatch Hours, plus (B) the Start-Up Costs (in MMBTU per start-up) set out in Exhibit B multiplied by the applicable number of DirSU_d cancelled as a result of the Cancelled Directed Dispatch Order; or</p> <p>(ii) where during such day any Directed Dispatch Hour is affected by an Outage caused by an event of Force Majeure, the Gas Cancellation Volume shall be an amount equivalent to (A) the applicable Contract Heat Rate multiplied by the weighted average FMOCFMOH over all FMOH in day “d” and multiplied by FMOH_d, plus (B) the Start-Up Costs (in MMBTU per start-up) set out in Exhibit B multiplied by the applicable number of DirSU_d cancelled as a result of the Outage caused by the event of Force Majeure.</p>
GSTC	<p>is the Gas Sale Transaction Costs (in \$/MMBTU) which represents those transaction costs incurred by the Supplier in a sale of the Gas Cancellation Volume that is not a deemed sale pursuant to Section 3(t) of Exhibit G. The Supplier shall, upon the Buyer’s request, provide reasonable evidence of the GSTC for audit and verification by the Buyer from time to time.</p>
day _c	<p>is the total number of days in Settlement Month “m” which were the subject of a Directed Dispatch Order (LT) and (i) which order was cancelled for such days by a full or partial Cancelled Directed Dispatch Order, or (ii) were affected by an Outage caused by an event of Force Majeure.</p>

3.3.4 Calculation of Negative Interval Net Revenue Recapture

<p>NINRR_m</p>	<p>is the Negative Interval Net Revenue Recapture that is applicable to all those Imputed Production Intervals that are Deemed Dispatch Intervals only (provided that for purposes of calculating NINRR, (i) a set of two or more contiguous Deemed Dispatch Intervals shall be treated as a single Imputed Production Interval, and (ii) any Deemed Dispatch Interval having a Deemed Shut-Down Hour that meets the conditions set out in Section 3.1.1(iv)(c) of this Exhibit J shall be excluded from the calculation of NINRR) in Settlement Month “m” where IVEC_{IPI} was greater than IGEMR_{IPI}, and is calculated as the sum, over all such Imputed Production Intervals, of IVEC_{IPI} less IGEMR_{IPI}, where:</p> $IVEC_{IPI} = \left[\sum_{IPH=1}^{IPH=IPIH} (VEC_{IPH} \times IP_{IPH} - VEC_{FMOH/N} \times FMOCF_{FMOH/N}) \right]$ $+ SUC_{IPI} - SUC_{IPI} \times \left[\frac{\sum_{IPH=1}^{IPH=IPIH} FMOCF_{FMOH/N}}{ACC_m \times IPIH} \right]$ <p>and</p> $IGEMR_{IPI} = \sum_{IPH=1}^{IPH=IPIH} (IP_{IPH} \times HOEP_{IPH} - FMOCF_{FMOH/N} \times HOEP_{FMOH/N})$ <p>and</p> $NINRR_m = \sum_{IPI=1}^{IPI=IPI_m} (IVEC_{IPI} - IGEMR_{IPI})$
<p>VEC_{IPH}</p>	<p>is the applicable Variable Energy Cost for those Imputed Production Hours during an Imputed Production Interval where IVEC_{IPI} was greater than IGEMR_{IPI}.</p>
<p>SUC_{IPI}</p>	<p>are the Start-Up Costs, if the Imputed Production Interval for which IVEC_{IPI} was greater than IGEMR_{IPI} has an Imputed Start-Up Hour that is the first Imputed Start-Up Hour of the day in which such Imputed Production Interval falls.</p>
<p>IPI_m</p>	<p>is the total number of Imputed Production Intervals in Settlement Month “m” where IVEC_{IPI} was greater than IGEMR_{IPI}.</p>
<p>IPIH</p>	<p>is the total number of Imputed Production Hours in the Imputed Production Interval for which IVEC_{IPI} was greater than IGEMR_{IPI}.</p>
<p>FMOCF_{FMOH/N}</p>	<p>is the Force Majeure Outage Capacity in any Force Majeure Outage Hour (which is calculated as described in Section 1.1 of this Exhibit J) during an Imputed Production Interval where IVEC_{IPI} was greater than IGEMR_{IPI}.</p>

FMOH/N	is a Force Majeure Outage Hour (as defined in Section 1.1 of this Exhibit J) during an Imputed Production Interval where $IV\text{EC}_{\text{IPI}}$ was greater than $IG\text{EMR}_{\text{IPI}}$.
--------	--

3.3.5 Calculation of the Imputed Net Revenue

The Imputed Net Revenue shall be calculated by adding (i) the Imputed Net Energy Revenue determined in accordance with Section 3.3.1 of this Exhibit J; (ii) the Future Contract Related Products Revenue determined in accordance with Section 3.3.2 of this Exhibit J, and (iii) the Negative Interval Net Revenue Recapture determined in accordance with Section 3.3.4 of this Exhibit J, and subtracting (iv) the Gas Cancellation Amount determined in accordance with Section 3.3.3 of this Exhibit J, expressed as:

$\text{INR}_m = \text{INER}_m + \text{FCRPR}_m + \text{NINRR}_m - \text{GCA}_m$

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

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

If $\text{TMFCP}_m > \text{INR}_m$, then: $\text{CSP}_m = \text{TMFCP}_m - \text{INR}_m$ and $\text{RSP}_m = 0$. If $\text{TMFCP}_m < \text{INR}_m$, then: $\text{RSP}_m = \text{INR}_m - \text{TMFCP}_m$ and $\text{CSP}_m = 0$. If $\text{TMFCP}_m = \text{INR}_m$, then: $\text{RSP}_m = 0$ and $\text{CSP}_m = 0$.	
where:	
TMFCP_m	is the Total Monthly Fixed Capacity Payment (in \$) for Settlement Month “m”.
INR_m	is the Imputed Net Revenue (in \$) in Settlement Month “m”.
CSP_m	is the Contingent Support Payment (in \$), if any, for Settlement Month “m”.
RSP_m	is the Revenue Sharing Payment (in \$), if any, for Settlement Month “m”.

EXHIBIT K
ARBITRATION PROCEDURES APPLICABLE TO
SECTIONS 1.6, 1.8, 1.9, 1.10 AND 2.9

The following rules and procedures (the “**Rules**”) shall govern, exclusively, any matter or matters to be arbitrated between the Parties under Sections 1.6, 1.8, 1.9, 1.10 and 2.9 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, 1.8, 1.9, 1.10 and 2.9 of this Agreement, as applicable, then the Buyer shall commence arbitration by delivering a written notice (the “**Request**”) to the Supplier and such Other Suppliers required by the Buyer to participate (collectively the “**Suppliers**”). If the Buyer has not already done so, the Buyer shall then deliver to the Suppliers the names of such Other Suppliers. Within twenty (20) days of the delivery of the Request, the Buyer shall deliver to the Suppliers a written notice nominating an arbitrator who shall be familiar with commercial law matters and has no financial or personal interest in the business affairs of any of the parties. Within twenty (20) days of the receipt of the Buyer’s notice nominating its arbitrator, the Suppliers shall by written notice to the Buyer nominate an arbitrator who shall be familiar with commercial law matters and has no financial or personal interest in the business affairs of any of the parties. The two (2) arbitrators nominated shall then select a chair person of the arbitration panel (the “**Arbitration Panel**”) who shall be a former judge of a Superior Court or appellate court in Canada.
2. **Application to Court** - If the Suppliers are unable to agree on the nomination of an arbitrator within twenty (20) days of the receipt of the Buyer’s notice nominating its arbitrator, any of the Suppliers or the Buyer may apply to a judge of the Superior Court of Justice of Ontario to appoint the arbitrator. If the two (2) arbitrators are unable to agree on a chair person within thirty (30) days of the nomination or appointment of the Supplier’s arbitrator, any of the Suppliers or the Buyer may apply to a judge of the Superior Court of Justice of Ontario to appoint the chair person.
3. **General** - The Arbitration Panel, once appointed, shall proceed immediately to determine the Replacement Price and/or the Replacement Provision, as the case may be, in accordance with the Ontario *Arbitration Act, 1991* and, where applicable, the Ontario International Commercial Arbitration Act, it being the intention of the Buyer and the Supplier that there be, to the extent possible, one arbitration proceeding and hearing to determine the Replacement Price and/or the Replacement Provision. Unless otherwise agreed by the Parties, the Arbitration Panel shall determine the conduct of the arbitral proceedings, including the exchange of statements of claim and defence, the need for documentary and oral discovery and whether to hold oral hearings with a presentation of evidence or oral argument so that the award may be made within the time period set out below. Each of the Suppliers shall have a right to participate in the arbitration proceeding.
4. **Consolidation** – The Parties agree that should the Arbitration Panel determine that the Replacement Price and/or the Replacement Provision needs to be determined through more than one (1) arbitration proceeding, then the Parties agree that the Arbitration Panel shall

determine whether the arbitration proceedings shall be consolidated, conducted simultaneously or consecutively or whether any of the arbitration proceedings should be stayed until any of the others are completed.

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

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

THIS GUARANTEE dated and effective as of the Term Commencement Date by the Independent Electricity System Operator (the “**Guarantor**”) to and in favour of [●] [**insert legal form of the Gas supplier and jurisdiction of organization**] (the “**Counterparty**”). Capitalized words and phrases used in this Guarantee shall have the meanings given to them in the Clean Energy Supply (CES) Contract dated as of the [●] day of [●], 2023 between [●] [**insert legal form of the Supplier and jurisdiction of organization**], and the Guarantor (the “**Agreement**”) on the date hereof unless otherwise defined herein or unless otherwise indicated by the context of their use.

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

18. Obligations

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

19. Nature of Guarantee

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

20. Liability as Primary Debtor

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

21. Continuing Guarantee

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

22. Term

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

23. Right to Payment

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

24. Dealings by Counterparty

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

25. Delivery of Copies of Directed Dispatch Orders

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

26. Payment

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

27. Waivers

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

28. Maximum Liability

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

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

29. Subrogation Rights

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

30. Taxes and Set-Off

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

31. Reservation of Defences

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

the Debtor has been successfully and finally resolved in favour of the Counterparty by a court of competent jurisdiction and last resort.

32. Representations and Warranties

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

33. Additional Security

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

34. Notices

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

To the Guarantor:

[●] [address]

[●] [city/state/province]

[●] [zip/postal code]

Attn: [●]

Email: [●]

To the Counterparty:

[●] [address]

[●] [city/state/province]

[●] [zip/postal code]

Attn: [●]

Email: [●]

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

35. Further Assurances

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

36. Successors and Assigns

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

37. Governing Law and Attornment

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

38. Limitation Period

The limitation period applicable to any claim hereunder shall not begin to run until actual demand is made by the Counterparty pursuant to this Guarantee. The Guarantor and the Counterparty of this Guarantee agree to extend such limitation period to six (6) years from the date of such actual demand.

39. Entire Agreement

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

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

INDEPENDENT ELECTRICITY SYSTEM OPERATOR

By: _____
Name:

Title:

**EXHIBIT M
RESERVED**

EXHIBIT N
FORM OF ACKNOWLEDGEMENT OF SECURED LENDER'S RIGHTS

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

RECITALS:

- A. The Independent Electricity System Operator has exercised its right to assign the Clean Energy Supply (CES) Contract (the "**CES Contract**") dated as of the [●] day of [●] between [●] (the "**Supplier**") and the Independent Electricity System Operator pursuant to Section 16.5(d) or (e) thereof to **[insert name of assignee]** (the "**Assignee**").
- B. The Supplier has delivered to the Independent Electricity System Operator a copy of the **[Credit Agreement and the Security, the registration details of the Credit Agreement and the Security]**, together with written notice of the address of the Agent to which notices may be sent pursuant to Section 12.1(d) of the CES Contract.

The Assignee acknowledges and confirms that:

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

Dated this [●] day of [●]

[Insert name of Assignee]

By: _____

Name:

Title:

**EXHIBIT O
FORM OF QUARTERLY REPORT FOR FACILITY UPGRADE**

FORM OF QUARTERLY REPORT

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

Pursuant to Section 2.3 of the Agreement, the Supplier is hereby submitting this Quarterly Progress Report to the Buyer

Date	
Legal Name of Supplier	
Facility	
Contract Title	
Contract Date	
Reporting Period	
Upgrade In-Service Date	
IESO Approved Revised Upgrade In-Service Date	
1. Executive Summary (of Quarterly Activities in 4-6 Bullet Points)	
<ul style="list-style-type: none"> ▪ ▪ ▪ ▪ 	
2. Assignment and Change of Control (Sections [No.] and [No.] of the Agreement)	
<ul style="list-style-type: none"> ▪ 	
3. Force Majeure (Section [No.] of the Agreement)	
<ul style="list-style-type: none"> ▪ 	
4. Secured Lender's Security Agreement (Section [No.] of the Agreement) If a Secured Lender's Security Agreement has been entered into by the Supplier, the Supplier needs to provide details.	
<ul style="list-style-type: none"> ▪ 	

5. Company Representative (If there has been a change, pursuant to Section [No.] of the Agreement, the Supplier is required to submit a new Form of Company Representative Notice [\[IESOCM-Form-005\]](#))

Name of Company Representative [Name]

Title [Title]

Mailing Address [Mailing Address incl Postal Code]

Telephone () [No.]

Fax () [No.]

E-Mail Address [Email Address]

7. Representations of the Supplier (Section [No.] of the Agreement)

Section	Still Valid (Yes or No)	If No, details of exception
7.1 (a)		
7.1 (b)		
7.1 (c)		
7.1 (d)		
7.1 (e)		
7.1 (f)		
7.1 (g)		
7.1 (h)		

8. Facility Upgrade Progress

Item	Reportable Events	Status of Efforts / Progress Description	% Complete	Date		
				Contractual	Forecast	Actual
1	Required regulatory approvals including environmental permitting to allow Facility Upgrade installation to commence	Progress: <ul style="list-style-type: none"> ▪ Issues: <ul style="list-style-type: none"> ▪ 				

2	Completion of connection assessment and approval process including issuance of impact assessment reports by IESO, the Transmitter and LDC, as applicable	Progress: <ul style="list-style-type: none"> ▪ Issues: <ul style="list-style-type: none"> ▪ 				
3	Execution of main Facility Upgrade contract with OEM	Progress: <ul style="list-style-type: none"> ▪ Issues: <ul style="list-style-type: none"> ▪ 				
4	n/a	Progress: <ul style="list-style-type: none"> ▪ Issues: <ul style="list-style-type: none"> ▪ 				
5	Major equipment or long lead time equipment ordered	Progress: <ul style="list-style-type: none"> ▪ Issues: <ul style="list-style-type: none"> ▪ 				
6	Major equipment or long lead time equipment delivered	Progress: <ul style="list-style-type: none"> ▪ Issues: <ul style="list-style-type: none"> ▪ 				
7	Commencement of Facility Upgrade installation	Progress: <ul style="list-style-type: none"> ▪ Issues: <ul style="list-style-type: none"> ▪ 				
8	n/a	Progress: <ul style="list-style-type: none"> ▪ Issues: <ul style="list-style-type: none"> ▪ 				

9	Testing and commissioning	Progress: <ul style="list-style-type: none"> ▪ Issues: <ul style="list-style-type: none"> ▪ 				
10	Upgrade In-Service Date	Progress: <ul style="list-style-type: none"> ▪ Issues: <ul style="list-style-type: none"> ▪ 				

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

1. **Executive Summary** – A brief overview of major work accomplished, any significant safety or environmental events that have occurred in the reporting period, and any issues that could have potential schedule impacts or invoking Force Majeure.
2. **Assignment and Change of Control** – Report the status of Assignment and/or Change of Control, if any (this section is to report status only, the Supplier is required to give the Buyer prompt notice before this occurs as per Section [No.]).
3. **Force Majeure** – Report the status of Force Majeure events, if any (this section is to report status only, the Supplier is required to give the Buyer prompt notice when Force Majeure is invoked as per Section [No.]).
4. **Secured Lender’s Security Agreement** – Report the status of the Secured Lender’s Security Agreement (this section is to report status only. The Supplier is required to give the Buyer promptly the details of the Secured Lender’s Security Agreement as per Section [No.]).
5. **Company Representative** – Report the details of the current Supplier Company Representative. (The Supplier is required to give the Buyer promptly the details of the Supplier Company Representative as per Section [No.]).
6. **Representations of the Supplier** – Report that the representations of the Supplier stipulated in Section 7.1 of the Agreement are still valid or provide a statement of the exceptions.
7. **Facility Upgrade Progress** – Report the status of each reportable event as shown on the quarterly progress report form.

**EXHIBIT P
RESERVED**

**EXHIBIT Q
LONG TERM OPERATING PLAN**

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

Pursuant to Section [No.] of the Contract, the Supplier is hereby submitting this Long Term Operating Plan to the Buyer.
Capitalized terms not defined herein have the meanings ascribed thereto in the Contract.

Date	
Legal Name of Supplier	
Name of Facility	
Contract Title	(the “Contract”)
Contract Date	

1. Contract Capacity

Contract Capacity (MW – electrical)					
As Applicable		As Applicable		As Applicable	
Season 1		Summer		Year	
Season 2					
Season 3		Winter			
Season 4					
Annual Average Contract Capacity					

2. Unit Outages

2.1 Planned Outages

Assumptions:

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

2.2 Unplanned Outages

Assumptions:

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

3. Overall Availability

Assumptions:

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

**EXHIBIT R
FORM OF ANNUAL OPERATING PLAN**

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

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

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
Contract Year No.	insert contract year number
Time Period	From: insert date To: insert date

1. Contract Capacity

Contract Capacity (MW)					
MONTHLY CONTRACT CAPACITY FOR THE CONTRACT YEAR					
As Applicable		As Applicable		As Applicable	
May		Summer		Year	
June					
July					
August					
September					
October		Winter			
January					
February					
March					
April					
November					

December				
----------	--	--	--	--

2. 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 Unplanned Outages

Assumptions: include any/all assumptions

	Month/Year	Unit 1	Unit 2	Unit 3	Unit 4	Unit 5	Unit 6
--	------------	--------	--------	--------	--------	--------	--------

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

3. 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							

4. Non-Storage Facility Optional Designation of Sole Annual Planned Maintenance Month or Split Annual Planned Maintenance Months

<p>The Supplier designates:</p>	<p><input type="checkbox"/> NO SOLE ANNUAL PLANNED MAINTENANCE MONTH OR SPLIT ANNUAL PLANNED MAINTENANCE MONTHS FOR THE TIME PERIOD.</p> <p><input type="checkbox"/> _____ AS THE SOLE ANNUAL PLANNED MAINTENANCE MONTH FOR THE TIME PERIOD. <i>(MAY ONLY BE APRIL, MAY, OCTOBER OR NOVEMBER).</i></p> <p><input type="checkbox"/> _____ AND _____ AS THE SPLIT ANNUAL PLANNED MAINTENANCE MONTHS FOR THE TIME PERIOD. <i>(MAY ONLY BE APRIL, MAY, OCTOBER OR NOVEMBER).</i></p>
--	--

EXHIBIT S
FORM OF COMPANY REPRESENTATIVE NOTICE

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

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

<i>NOTE: The current Company Representative will be removed when a new Company Representative is appointed.</i>	
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 T
FORM OF CONFIDENTIALITY UNDERTAKING

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

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.

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 applicable (the “Contract”)
Contract Date	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.

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__

Purchaser: 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__

**EXHIBIT U
FORM OF SUPPLIER'S CERTIFICATE RE UPGRADE IN-SERVICE**

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

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

Date	
Legal Name of Supplier	
Name of Facility	
Contract Title	(the "Contract")
Contract Date	
Upgrade In-Service Date or Term Commencement Date	
Beginning of the Hour Ending	01:00 hours (EST)

WHEREAS subsection [No.] of the Clean Energy Supply (CES) Contract (the "Contract") between [Supplier Short Name] and the Buyer dated as of [Contract Date] provides that the Facility Upgrade will be deemed to have achieved Upgrade In-Service at the point in time when, *inter alia*, the Buyer has received a certificate (this "Certificate") addressed to it from the Supplier containing certain statements with respect to the Facility Upgrade;

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

- a) [Independent Engineering Company Legal Name] is:
 - (i) duly qualified and licensed to practice engineering in the province of Ontario and which holds a certificate of authorization issued by Professional Engineers Ontario;
 - (ii) does not have a vested interest in the design, engineering, procurement, construction, metering and/or testing of the facility, or installation of the Facility Upgrade; and
 - (iii) not an affiliate of [Supplier Short Name] nor directly or indirectly Controlled by [Supplier Short Name].

- b) [Supplier Short Name] has provided to the Buyer the following documentation required to be so provided at or prior to Upgrade In-Service:
 - i) Certificate of an independent professional engineer per Exhibit V.

Signed this	[Day]	day of	[Month, Year]	.
----------------	-------	--------	---------------	---

			[Legal Name of Supplier]		
			Per:		
				Name: [Name]	
				Title: [Title]	

**EXHIBIT V
FORM OF INDEPENDENT ENGINEER’S CERTIFICATE
RE UPGRADE IN-SERVICE**

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

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

Date	
Legal Name of Supplier	
Name of Facility	
Contract Title	(the “Contract”)
Contract Date	
Legal Name of Independent Engineer	

WHEREAS subsection [No.] of the CES Contract (the “Contract”) between the Supplier and the Buyer dated as of [Contract Date] provides that the Facility will be deemed to have achieved Upgrade In-Service at the point in time when, *inter alia*, the Buyer has received a certificate (this “Certificate”) addressed to it from an Independent Engineer containing certain statements with respect to the Facility;

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

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

- (i) the Undersigned is duly qualified and licensed to practice engineering in the province of Ontario;
- (ii) the Undersigned is neither an employee nor a consultant of the Supplier such that the majority of either the time or billings of the Undersigned during the 18 month period prior to the date hereof were devoted to the Supplier or the Facility;
- (iii) the Undersigned is not an affiliate of the Supplier nor directly or indirectly Controlled by the Supplier; and
- (iv) that the following requirements with respect to achievement of the Facility Upgrade have been met:

(A) the Supplier has completed the Facility Upgrade as described in the Contract;

(B) the Supplier has completed the Facility Upgrade Performance Test, and the Upgrade Test Result is [Upgrade Test Result] at an ambient air temperature of [Ambient Air Temperature], and an Achieved Seasonal Upgrade Capacity of [Achieved Seasonal Upgrade Capacity] for Season [Season Number] has been achieved;

(C) the Facility Upgrade has been installed, connected, commissioned and synchronized to the IESO-Controlled Grid, such that the Achieved Upgrade Capacity is available to Deliver Electricity in accordance with the requirements of all applicable Laws and Regulations; and

(D) the Supplier has obtained the final Registration Approval Notification (RAN) issued by the IESO.

Signed this	[Day]	day of	[Month, Year]	.
-------------	-------	--------	---------------	---

			[Legal Name of Independent Engineer]	
			Per:	
				Name: [Name, P.Eng.]
				Title: [Title]

			Professional Engineer Stamp of Signing Engineer	

**EXHIBIT W
FORM OF FACILITY UPGRADE PERFORMANCE TEST PROTOCOL**

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

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

1. Introduction

Date	[Supplier to populate]
Legal Name of Supplier	[Supplier to populate]
Name of Facility	[Supplier to populate]
Location of Facility (municipal Address)	[Supplier to populate]
Title of Contract	[Supplier to populate]
Effective Date	[Supplier to populate]
Term Commencement Date	[Supplier to populate]
Term	[Supplier to populate]
Milestone Date for Upgrade In-Service	[Supplier to populate]
Purpose of the Test	<p>In order to achieve Upgrade In-Service, the Supplier must, among other things, complete the Facility Upgrade Performance Test (the “Test”)</p> <p>The Test results are used to determine the Achieved Upgrade Capacity and the Achieved Seasonal Upgrade Capacity, per Section 2.10 (d) of the Contract.</p>
Purpose of this Facility Upgrade Performance Test Protocol	This Facility Upgrade Performance Test Protocol (“Upgrade Test Protocol”) establishes the scope, procedures, and methods of data collection and calculations, among other things, used for conducting the Test and analysis and determination of Test results.
Description of the Test	<p>The Supplier may designate any four (4) continuous hour period to conduct the Test (the “Test Period”), provided that the Supplier: (A) provides at least three (3) Business Days’ prior written notice to the Buyer, and (B) coordinates with, and obtains the prior approval of, the System Operator, all as in accordance with applicable laws and the IESO Market Rules.</p> <p>The Test measures the delivery of Electricity at the Delivery Point net of any Station Service Loads in accordance with the approved Metering Plan (as may be amended to incorporate the Facility Upgrade). The Supplier acknowledges and agrees that the</p>

	Electricity output of the Facility and the Station Service Loads, as may be measured by the Test, will not be adjusted for any ambient weather conditions other than temperature.
Connection Point	[Supplier to populate]
Technology	Combined Cycle
Fuel	Natural Gas

2. Upgraded Capability Range

Ambient Air Temperature (°C)	Upgraded Capability (MW)
-10	629
-5	626
0	618
+5	610
+10	602
+15	591
+20	588
+25	575
+30	563

3. Test Participants

Test Director	<p>The Supplier must assign a “Test Director” who will oversee and direct the execution of the testing activities and be responsible for conducting the Test in accordance with the Upgrade Test Protocol. The Test Director will be present during the entire Test Period. The IESO’s Representative will direct questions and concerns to the Test Director.</p> <p>The Test Director will brief operating personnel on safety considerations and test procedures, and will familiarize them with the range of operation to be expected during the Test.</p>
Independent Engineer	<p>The Supplier must retain an Independent Engineer who is a licensed professional engineer with Professional Engineers Ontario to observe the Test and certify the Test results and Test Report. The Independent Engineer Certificate is provided in Exhibit V.</p>

IESO Representative	The IESO may, but is not obligated to, designate an “IESO Representative” to observe the Test and the Supplier must provide the IESO Representative with reasonable access to the Facility and the Test Director in order to observe the Test.
----------------------------	--

4. IESO, Hydro One or LDC Contacts

IESO Contact (name, phone and email)	[Name, phone and email of the IESO Contract Management contact person at the time of Test to be confirmed and communicated to all parties prior to conducting the Test.]
Hydro One or LDC Contact (name, phone and email)	[Name, phone and email of Hydro One or LDC representative at the time of Test to be confirmed and communicated to all parties prior to conducting the Test.]

5. Facility Upgrade Performance Test

<p>Detailed Test Procedure</p>	<ol style="list-style-type: none"> 1. Prior to starting the Test: The Facility must have operated in a stable manner for at least one hour, with all normally operating Facility equipment having reached normal operating temperature and normal operating state. 2. Fifteen (15) minutes prior to the Test Period: The Test Director will ensure that the Facility is currently operating in stable condition and, upon confirmation, Test data collection will start. 3. At the start of the Test Period: The Test Director will announce the start of the Test to Test Participants. 4. During the Test Period: The Facility must be operated in accordance with the plant operating procedures, with normal operating setpoints; with a normal complement of operations staff, delivering Electricity to the Transmission or Distribution System, as applicable. The Test Director must monitor the Facility operation to ensure that the plant remains in stable condition and continues to deliver Electricity as per this Upgrade Test Protocol. Facility operation should remain within the boundaries of equipment and system design. 5. At the end of the Test Period: The Test Director will announce the completion of the Test. The operators will return the Facility to regular operation or shut it down, depending on dispatch requirements. 6. Fifteen (15) minutes after the Test Period: Test data collection must continue for 15 minutes after the Test Period. 7. Following completion of the Test: The Test Director will extract the Test data and review it with the IESO or, if applicable, the IESO Representative for completeness, and to ensure that all data is being displayed and recorded in a manner that allows the Independent Engineer to certify the Test results and Test Report. A copy of all the raw Test data will be provided to the Independent Engineer, the Supplier and the IESO before they leave the Facility for the day.
<p>Data Collection Plan</p>	<p>[Supplier to describe Data Collection Plan]</p>
<p>Description of Instruments, Meters, Measurement Systems used for Test (including type, made, model, calibration date, as applicable)</p>	<p>[Supplier to insert description of Instruments, Meters, Measurement Systems used for Test]</p>
<p>Detailed Description of Equipment</p>	<p>[Supplier to insert Detailed Description of Equipment]</p>

(including type, model, capacity, etc., that actually being tested)	
Test Conditions	Steady state and stable operation

6. Analysis of Results

Definition of a Completed Test	The Test was conducted in accordance with this Test Protocol.
Statistical Techniques, as applicable	[Supplier to complete]
Calculation of Achieved Upgrade Capacity	The Achieved Seasonal Upgrade Capacity and the Achieved Upgrade Capacity are calculated per Section 2.10 (d) of the Contract.

7. Test Report

Table of Contents of Test Report	<p>The anticipated table of contents for a Test Report is generally as follows:</p> <ul style="list-style-type: none"> 1.0 Title Page (including date, signatures and affiliations) 2.0 Independent Engineer Certification of Test Results and Test Report 3.0 Executive Summary (including general Facility information, Date and Time of Test, Summary of Test Results, and Conclusions) 4.0 Introduction (including Test objectives and identification of Test Participants and IESO, Hydro One or LDC Contacts) 5.0 Test Methodology/Procedure (including any agreements between the IESO and Supplier to allow deviations from the Upgrade Test Protocol, if applicable) 6.0 Analysis and Summary of Test Data 7.0 Statement of Achieved Seasonal Upgrade Capacity <p><i>Exhibits – including test data (including raw data) and calculations</i></p>
Date of Submission to the IESO	The Test Report must be submitted to the IESO within ten (10) Business Days after completion of the Test.

COMPANY REPRESENTATIVE OR AUTHORIZED SIGNATORY*

*The Authorized Signatory must be either a signatory of the Contract, a person authorized to receive Notices, or the Company Representative

By:	Date:
[Name]	
[Title]	
[Organization]	

IESO SIGNATORY

By:	Date:
[Name]	
[Title]	
Independent Electricity System Operator("IESO")	

EXHIBIT X
GAS DELIVERY SERVICES RE PANHANDLE PROJECT

1. Purpose

The purpose of this exhibit is to address the uncertainty with respect to the ability of the Supplier to secure, and the costs associated with the Supplier securing, Gas Distribution Services incremental to those expected to be transferred to the Supplier, through the construction of new pipeline capacity created by the Panhandle Project which may be impacted by an OEB decision in the proceeding EB-2022-0157 or any successive or replacement decision by the OEB in respect of the Panhandle Project (the “**Panhandle Decision**”).

2. Payment for Gas Distribution Services

The Supplier shall be entitled to compensation from the Buyer with respect to the Gas Distribution Services on the following basis. If as a result of the Panhandle Decision:

- (a) no additional costs or expenses are payable by the Supplier above the posted tariff with respect to the Gas Distribution Services, no additional compensation will be required in accordance with this Exhibit;
- (b) either (i) a contribution in aid of construction (the “**CIAC**”) or (ii) incremental costs above the posted tariff (the “**Rate Rider**”), is payable by the Supplier in connection with the Panhandle Project, the Buyer shall reimburse the Supplier for 60% of the Supplier’s costs for the CIAC or Rate Rider, as applicable, as set forth in Section 3 of this Exhibit X; or
- (c) the Panhandle Project does not proceed, then effective as of the Term Commencement Date, the Net Revenue Requirement, as set forth in Exhibit B, shall be increased by an amount equal to one million, two hundred thousand dollars (\$1,200,000.00) divided by twelve (12) and divided by the Annual Average Contract Capacity as of the Term Commencement Date, provided that if at any time during the Term the Annual Average Contract Capacity changes, the increase to the Net Revenue Requirement as set forth in Exhibit B shall be recalculated at such time based on the new Annual Average Contract Capacity.

3. CIAC Invoice

If the Buyer is required to reimburse the Supplier for the CIAC or a Rate Rider in accordance with Section 2(b) of this Exhibit X, the Supplier shall, by the fifth (5th) Business Day of each Settlement Month, prepare and deliver a detailed monthly invoice to the Buyer setting out the

total amount paid by the Supplier as a result of the CIAC or Rate Rider in the previous Settlement Month, together with any reasonable supporting documentation.

4. Dispute Resolution

- (a) The Buyer shall review the invoice described in Section 3 of this Exhibit. If the Buyer, acting reasonably, disputes the amount of the Supplier's invoice, then the Buyer shall provide notice thereof to the Supplier within ten (10) Business Days of receipt of the invoice and supporting documentation, along with a brief explanation of the dispute. If it is subsequently determined or agreed that an adjustment to the invoice is appropriate, the Supplier shall promptly prepare a revised invoice.
- (b) Any overpayment or underpayment of an invoice shall bear interest at the Interest Rate, calculated daily from and including the time of such overpayment or underpayment to the date of the refund or payment thereof. Payment pursuant to the revised invoice shall be due at the same time as the next Monthly Payment is due for a Settlement Month. If an invoice dispute has not been resolved between the Parties within five (5) Business Days after receipt of written notice of such dispute by the Supplier, the dispute may be submitted by either Party to a Senior Conference pursuant to the terms of Section 16.1 of the Agreement; and
- (c) Subject to the Buyer's right to dispute any monthly invoice issued pursuant to Section 3 of this Exhibit, the Buyer agrees to pay to the Supplier the amount due to the Supplier under such invoice. Such payment will be due at the same time as the Monthly Payment is due for the Settlement Month to which the monthly invoice relates, provided that if the Supplier's monthly invoice and supporting documentation is not received by the Buyer within the time set out in Section 3 of this Exhibit, then following receipt thereof such payment will be due at the same time as the next Monthly Payment is due for a Settlement Month. The Buyer shall pay interest on any late payment of amounts payable pursuant to this Section 4(c) of this Exhibit at the Interest Rate, calculated daily from and including the date such payment was due to the date of payment thereof.