

ADDENDUM NO. 2
dated July 31, 2015, to the
LARGE RENEWABLE PROCUREMENT I CONTRACT

ASSOCIATED WITH THE
REQUEST FOR PROPOSALS
FOR THE PROCUREMENT OF UP TO 565 MW OF NEW
LARGE RENEWABLE ENERGY PROJECTS

and referenced as LRP I RFP-2015

In accordance with Section 2.3 of the LRP I RFP, this Addendum No. 2 contains amendments to the LRP I Contract posted on the LRP Website. Addendum No. 2 also involves amendments to the LRP I RFP and certain Prescribed Forms, each of which will be posted on the LRP Website.

This Addendum No. 2 contains the “clean” version of the amended LRP I Contract. A “blackline” copy is also provided on the LRP Website for the ease of reference of Qualified Applicants.

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Reference: ●

[Insert Supplier's name]

and

INDEPENDENT ELECTRICITY SYSTEM OPERATOR

LARGE RENEWABLE PROCUREMENT I CONTRACT

DATED as of the ● day of ●, 201[●]

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LARGE RENEWABLE PROCUREMENT I CONTRACT

This Large Renewable Procurement I Contract is dated as of the [●] day of [●], 201[●] (the “**Contract Date**”) between [●] (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 the Minister of Energy issued a directive to the Buyer on November 7, 2014 to undertake a request for proposals, to solicit the supply of Projects for up to 300 MW of On-Shore Wind, 140 MW of Solar, 50 MW of Bioenergy and 75 MW of Waterpower (the “**LRP I RFP**”);

AND WHEREAS the Supplier submitted a Proposal to plan, design, finance, construct, operate, and maintain the Project in response to the LRP I RFP and the Proposal was selected by the Buyer;

AND WHEREAS the Supplier and Buyer wish to execute this Agreement in order to formalize the long-term contractual arrangements for the Supplier to develop and operate the Project, and to supply Electricity from the Project to the IESO-Controlled Grid or a Distribution System, all 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 AND RULES OF INTERPRETATION

Section 1.1 Definitions

In addition to the terms defined elsewhere in this Agreement, the capitalized terms shall have the meaning given to them in Exhibit A.

Section 1.2 Exhibits

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

Exhibit A	Definitions
Exhibit B	Description of the Project
Exhibit C	Form of Irrevocable and Unconditional Standby Letter of Credit
Exhibit D	Buyer Webpage Information
Exhibit E	Metering and Settlement
Exhibit F	Arbitration Provisions Applicable to Section 1.8, Section 1.9, Section 1.10, Section 2.11 and Section 12.2
Exhibit G	Rate Regulated Utilities
Exhibit H	Tax Gross-up Provisions Applicable to Section 9.6

Section 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. Unless otherwise indicated, references to Articles, Sections and Exhibits are references to Articles, Sections and Exhibits in this Agreement.

Section 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.

Section 1.5 Currency

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

Section 1.6 Time Periods

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

Section 1.7 Statutory References

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

Section 1.8 IESO Market Rules

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. To the extent that there is a change in the IESO Market Rules that was not published by the System Operator in its System Operator Board approved form thirty (30) days prior to the Contract Date, which such change has the effect of materially affecting the Supplier's Economics, then:

- (a) either Party may, within fifteen (15) Business Days following the date such amendment is published by the System Operator in its approved form, notify the other Party that such change materially affects the Supplier's Economics (a "**Material IESO Market Rule Amendment**"). For greater certainty, if a Party does not provide notice within fifteen (15) Business Days following the date such amendment is published by the System Operator in its approved form, then such Party shall not be entitled to any amendments to this Agreement as a result of such IESO Market Rule amendment;
- (b) the Supplier shall, within sixty (60) days following the date of any notice sent pursuant to Section 1.8(a), provide the Buyer all such information as may be required or otherwise requested by the Buyer to assess the impact of such Material IESO Market Rule Amendment on the Supplier's Economics;

- (c) the Buyer shall, within sixty (60) days following receipt of all information required to be provided by the Supplier and those Other Suppliers that are required to provide information pursuant to Section 1.8(b), but in any event no later than one hundred and twenty (120) days following receipt of all information required to be provided by the Supplier, either:
 - (i) advise the Supplier that the applicable IESO Market Rule amendment is not a Material IESO Market Rule Amendment; or
 - (ii) propose amendments to this Agreement and the respective agreements of any Other Suppliers that are so affected, on the basis that such amendments together with the change in the IESO Market Rules will substantially reflect the Supplier's Economics as contemplated hereunder and, at the Buyer's discretion, that of such Other Suppliers, prior to the introduction of such change in the IESO Market Rules;
- (d) if by the date that is sixty (60) days following the date that the Buyer makes a determination or proposes amendments in accordance with Section 1.8(c), the Parties do not agree to the amendments proposed pursuant to Section 1.8(c), or do not agree as to whether an IESO Market Rule amendment is a Material IESO Market Rule Amendment, as applicable, then the Parties and, at the Buyer's discretion, such Other Suppliers who are so affected and that are required by the Buyer to participate, shall engage in good faith negotiations to reach agreement;
- (e) if by the date that is one hundred and twenty (120) days following the date that the Buyer makes a determination or proposes amendments in accordance with Section 1.8(c), as applicable, the Parties fail to reach agreement on the amendments described in Section 1.8(c) or do not agree as to whether an IESO Market Rule amendment is a Material IESO Market Rule Amendment, as applicable, 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 F. 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
- (f) this Section 1.8 shall not apply to the circumstances addressed in Section 1.9, Section 2.11, in respect of the establishment of any Future Contract Related Product, or in respect of any changes arising as a result of the IESO floor price review for variable generation that commenced on June 25, 2015.

Section 1.9 Evolution of the IESO-Administered Markets

- (a) If the IESO Market Rules change such that HOEP or MCP, as applicable, is no longer provided for, and is replaced by another market-based price signal(s), (the "**Price Evolution Event**"), then:
 - (i) each of HOEP and MCP, as applicable, will be replaced with the Ontario Electricity market price that most closely emulates the price actually paid by the Ontario market for Electricity output from the Contract Facility (each, a "**Replacement Price**"); and
 - (ii) it is expected that all other features of Exhibit E will be applicable.
- (b) If the Buyer has determined that a Price Evolution Event is likely to occur within the succeeding twelve (12) calendar months, the Buyer shall propose a Replacement Price based on Section 1.9(a) to the Supplier or, at the Buyer's discretion, to all of the 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 the Other Suppliers, as the case may be, within thirty (30) days after 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 F. 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.

- (c) The terms of this Agreement shall be deemed to be amended by the agreement of the Parties or the award of the Arbitration Panel, as the case may be, from and after the date the Price Evolution Event occurred.
- (d) Until such time as this Agreement is amended in accordance with Section 1.9(b), Exhibit E will continue to apply to calculate the Contract Payments using the Buyer's proposal submitted under Section 1.9(b), 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(b), and any Party owing monies to the other pursuant to such recalculation shall promptly 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 the payment thereof.

Section 1.10 Invalidity or Unenforceability of Provisions or Indices

If any provision of this Agreement is invalid or unenforceable, or in the event that any index or price quotation referred to in this Agreement ceases to be published, or if the basis therefor is changed materially, then:

- (a) if a provision is considered to be invalid or unenforceable, then the Party considering such provision to be invalid 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 that are required by the Buyer to participate, shall engage in good faith negotiations to replace such provision with a valid and enforceable provision, the economic effect of which substantially reflects that of the invalid or unenforceable provision which it replaces;
- (b) if any index or price quotation referred to in this Agreement ceases to be published, or if the basis therefor is changed materially, then the Buyer and the Supplier and, at the Buyer's discretion, all of those Other Suppliers that 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 a Party does not believe that a provision is invalid or unenforceable, or that the basis for an index or price quotation has changed materially, or ceases to be published, or if the negotiations set out in Section 1.10(a) or Section 1.10(b) are not successful, or 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), 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 F. 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(d)(iii); and

- (d) The terms of this Agreement shall be amended either:
- (i) by the agreement of the Parties, where no award of an Arbitration Panel has been made pursuant to Section 1.10(c);
 - (ii) by the agreement of the Parties made pursuant to and in implementation of an award of the Arbitration Panel made pursuant to Section 1.10(c); or
 - (iii) by an amendment prepared by the Buyer made pursuant to and to implement an award of the Arbitration Panel made pursuant to Section 1.10(c), where the Supplier failed to participate in such arbitration,

with such agreement or amendment, as applicable, having effect as of the date of the invalidity 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.

- (e) This Section 1.10 shall not apply to the circumstances addressed in Section 1.8 or Section 1.9.

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

Section 1.12 Waiver, Amendment

Except as expressly provided in this Agreement, no waiver of any provision of this Agreement shall be binding unless executed in writing by the Party to be bound thereby and no amendment of any provision of this Agreement shall be binding unless executed in writing by both Parties to this Agreement, and in the case of a waiver or amendment issued by the Buyer, such waiver or amendment shall not be binding on the Buyer unless it has been executed by an individual identified in such waiver or amendment as "Contract Management". 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.

Section 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 in the Province of Ontario.

Section 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

Section 2.1 Design and Construction of the Contract Facility

- (a) The Supplier shall design and build the Contract Facility using Good Engineering and Operating Practices and meeting all relevant requirements of the IESO Market Rules, Distribution System Code, Transmission System Code, the Connection Agreement, the Renewable Energy Approval and any other equivalent environmental approval applicable to such Facility, in each case, as applicable, and all other Laws and Regulations, and subject to Section 9.6, the Supplier shall be responsible for all costs, expenses, liabilities and other obligations associated therewith. The Supplier shall ensure that the Facility is designed and built to operate in accordance with the requirements of this Agreement.
- (b) 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 Project or the Facility as set out in Exhibit B (including for greater certainty, the Site) or make a change as to the Facility's status as a Registered Facility (a "**Contract Facility Amendment**"), without first notifying the Buyer in writing and obtaining the Buyer's consent in writing. Such consent may be withheld by the Buyer in its sole and absolute discretion. For purposes of this paragraph, the failure of the Project or Facility to have a Connection Point as described in Exhibit B shall be deemed to be a Contract Facility Amendment.
- (c) Notwithstanding Section 2.1(b), and prior to the Supplier procuring and delivering its IE Certificate pursuant to Section 2.7(a)(iv), the Supplier may elect to reduce the Contract Capacity by giving notice to the Buyer, provided that the lower Contract Capacity is no less than 80% of the original Contract Capacity (for clarity, as set out on the original unamended Exhibit B as of the Contract Date). If the Supplier provides such notice, the Contract Capacity shall be reduced to the lower amount. The Buyer shall have no obligation to consent to a request to alter the Contract Capacity other than as set out in this Section 2.1(c). Subject to Sections 1.4 and 1.5 of Exhibit E for Type 1 Facilities and Section 1.3 of Exhibit E for Type 2 and Type 3 Facilities, any such reduction in Contract Capacity shall only affect the amount of Completion and Performance Security that is required to be provided to the Buyer after the date of the request for such reduction and, for clarity, shall not result in any change to the Contract Price.
- (d) If, on or prior to the Contract Date, the Supplier has provided an Aboriginal Participation Project Declaration confirming that the Aboriginal Participation Level in respect of the Facility is greater than or equal to 50%, and the Supplier is subsequently denied financing for the Facility requested from the Aboriginal Loan Guarantee Program after having taken Commercially Reasonable Efforts to secure such financing, and such denial is reasonably anticipated to have a Material Adverse Effect, then the Supplier may, prior to providing the Buyer with evidence of completion of each of the Key Development Milestones and within sixty (60) days of receiving any such denial, submit a written request to the Buyer to terminate this Agreement, along with such evidence as the Buyer may reasonably require.

- (e) Where the Buyer receives a request from a Supplier pursuant to Section 2.1(d), the Buyer shall, acting reasonably, within twenty (20) Business Days of any such request, either:
 - (i) approve the request, in which case this Agreement shall be terminated without any costs or payments of any kind to either Party, and all Completion and Performance Security shall be returned to the Supplier, within twenty (20) Business Days following receipt by the Buyer of a written request for the return of such Completion and Performance Security; or
 - (ii) deny the request, in which case the Supplier may continue under this Agreement or request a Senior Conference pursuant to the terms of Section 15.1.

Section 2.2 Additional Development and Construction Covenants

- (a) The Supplier agrees that the Facility shall be located in the Province of Ontario. The Supplier agrees that the Facility shall be located at the Site, have a Connection Point as set out in Exhibit B, shall affect supply on the IESO-Controlled Grid, or on a Distribution System, as applicable, and shall otherwise be built in accordance with the features and specifications as outlined in Exhibit B unless the Buyer has approved a Contract Facility Amendment.
- (b) The Supplier shall not commence construction of the Facility unless and until the Buyer confirms in writing that all of the Key Development Milestones have been met, failing which the Buyer may, in its sole and absolute discretion, issue a Stop Work Direction pursuant to which the Supplier shall permanently cease development and construction of the Facility.
- (c) No later than three (3) months prior to the Milestone Date for Commercial Operation, the Supplier must provide the Buyer with evidence in the Prescribed Form of completion of each of the following key milestones in the development of the Project (each, a “**Key Development Milestone**”):
 - (i) documentation of the time and date of application for, and the completion of, any Impact Assessment(s) and the execution of any applicable Connection Cost Agreement(s) or Connection Costs Recovery Agreement(s) which is/are required under Laws and Regulations;
 - (ii) documentation of the Renewable Energy Approval, if applicable, and any other equivalent environmental assessments, approvals, permits or registrations, including registering with the Environmental Activity Sector Registry, applicable to the Project necessary for the construction of the Facility to commence; and
 - (iii) a statutory declaration from an officer of the Supplier confirming that the Supplier has secured financing sufficient to complete the development, construction and commissioning of the Facility, and including a copy of the Financial Model.

In the event that this Agreement is terminated in accordance with Section 9.2 as a result of the Supplier’s failure to comply with the material covenant set out in this Section 2.2(c), the sole and exclusive remedy of the Buyer in such circumstance shall be its entitlement to retain the Completion and Performance Security pursuant to Section 9.2(d)(i).

- (d) The Buyer shall notify the Supplier in writing within thirty (30) Business Days of the Buyer’s receipt of all of the documentation required by Section 2.2(c) as to whether such documentation is

acceptable to the Buyer, acting reasonably. If the Buyer determines that such documentation is acceptable, the Buyer will confirm in writing that all of the Key Development Milestones have been met. If the Buyer determines that such documentation is not acceptable, the Buyer shall provide the Supplier with reasonable particulars in respect of the deficiencies in such documentation.

- (e) The Supplier shall advise the Buyer of:
 - (i) any notice of Appeal in respect of any Renewable Energy Approval, if applicable, or notice of appeal in respect of any equivalent environmental assessment, approval or permit, if applicable within ten (10) Business Days after learning that such a notice has been filed; and
 - (ii) the outcome of any appeal in respect of any Renewable Energy Approval or equivalent environmental assessments, approvals or permits within ten (10) Business Days after receiving a decision.

Section 2.3 Connection Requirements

- (a) The Supplier shall arrange, at its sole expense, for all Facility connection requirements in accordance with Laws and Regulations to permit the delivery of Delivered Electricity to the Connection Point.
- (b) All Connection Costs shall be for the account of the Supplier and, as applicable, the Transmitter and/or LDC with which the Supplier has arranged connection of the Facility pursuant to the Connection Agreement, the Distribution System Code and the Transmission System Code, as applicable. The Supplier acknowledges that the responsibility for any Network Upgrade Costs associated with the connection of the Facility shall be allocated as set forth in the Distribution System Code and Transmission System Code.
- (c) The Supplier shall provide, at its expense, all power system components on the Supplier's side of the Connection Point, including all transformation, switching and auxiliary equipment, such as synchronizing and protection and control equipment, pursuant to Laws and Regulations and any requirements deemed necessary by the System Operator, the Transmitter or the LDC, as applicable from time to time, to protect the safety and security of the IESO-Controlled Grid, the Transmission System, the Distribution System and each of their customers, each as the case may be.
- (d) The Supplier agrees to install protective equipment to protect its own personnel, property, and equipment from variations in frequency and voltage or from temporary delivery of other than three-phase power, whether caused by the Facility, the IESO-Controlled Grid, the Transmission System or the Distribution System.

Section 2.4 Metering

- (a) If the Supplier becomes the Metered Market Participant with respect to the Facility, the Supplier covenants and agrees to provide, at its expense, separate meters and ancillary metering and monitoring equipment as required by the IESO Market Rules. The Supplier agrees to allow the Buyer to have viewing access rights only to the revenue-quality interval meter data of the Facility to calculate the output of Electricity from the Facility net of any Station Service Loads and inclusive for any loss adjustment factors by establishing an Associated Relationship between the

Buyer and the Delivery Point of the Facility within the MV-Web Portal application tool or equivalent, at no cost to the Buyer.

- (b) In the event that the Supplier ceases to be a Market Participant with respect to the Facility, then the Buyer and the Supplier agree to discuss, develop and implement alternative arrangements and procedures as soon as possible to ensure that the Buyer receives or is given access to the revenue-quality interval meter data referred to in Section 2.4(a) with respect to the Facility on a timely and verifiable basis.
- (c) If the Supplier does not become a Market Participant or ceases to be a Metered Market Participant with respect to the Facility, the Supplier agrees to provide access to the LDC Portal or the System Operator's MV-Web Portal, or equivalent. In the event that the LDC Portal or the System Operator's MV-Web Portal or equivalent is not available, the Supplier must supply validated metering data in one of the following formats: .XML or .CSV at an interval of no more than every thirty (30) days, in accordance with Section 2.4(d) hereof or such other electronic format that is acceptable to the Buyer.
- (d) If the Supplier does not become a Market Participant or ceases to be a Market Participant with respect to the Facility, the Supplier agrees to ensure that revenue-quality interval meters will be operated and maintained, at its expense, to calculate the output of Electricity from the Facility at the Delivery Points net of any Station Service Loads and inclusive for any loss adjustment factors. Revenue quality meters registered with the System Operator or provided by an LDC can be used to fulfil this obligation, in whole or in part, so long as the Metering Plan specifies: (i) how the metered quantities from those meters will be adjusted, if necessary, to account for any electrical losses that may occur due to differences between the physical locations of the Delivery Point and the Connection Point, and (ii) how the metered quantities from those meters will be totalled, if necessary, with other revenue-quality metered data to accurately calculate the output of the Facility at the Delivery Points net of any Station Service Loads and inclusive of any loss adjustment factors. Furthermore, the Supplier agrees that the Buyer may retain a metering service provider for such revenue-quality interval meters and the Supplier shall reimburse the Buyer for the costs of such metering service provider. Such amounts may be netted from any amounts that the Buyer owes to the Supplier.
- (e) The Buyer retains the right to audit, at any time during the Term, on reasonable notice to the Supplier and during normal business hours, the metering equipment to confirm the accuracy of the Metering Plan, and the meter data of the Facility to confirm the accuracy of such data.
- (f) The Supplier shall have the Metering Plan approved by the Buyer. The Supplier shall deliver a copy to the Buyer for its approval no later than sixty (60) days prior to the Commercial Operation Date, failing which the Commercial Operation Date shall be delayed on a day for day basis until such time as a copy of the Metering Plan is submitted to the Buyer for its approval no later than sixty (60) days prior to the Commercial Operation Date. The Buyer agrees to review the Metering Plan submitted by the Supplier and to either approve the Metering Plan or provide the Supplier with its comments within thirty (30) days after receipt. The Buyer shall, when considering whether to approve the Metering Plan, have regard to those Electricity matters in the Metering Plan that have received System Operator or LDC approval. If, within fifteen (15) days after the Buyer has delivered its comments on the Metering Plan to the Supplier, the Parties are not able to agree on the final terms of the Metering Plan, the Parties shall submit the matter for determination by an Independent Engineer agreed upon by the Parties, acting reasonably, whose determination on the terms of the Metering Plan shall be final and binding on the Parties (and

from whose determination there shall be no recourse to the dispute resolution provisions of this Agreement).

- (g) The Supplier shall not make any material changes to the Metering Plan following approval by the Buyer or determination by the Independent Engineer as set out in Section 2.4(f) without the prior written approval of the Buyer, acting reasonably.
- (h) “**Metering Plan**” means a report that is provided by the Supplier to the Buyer and that (i) verifies that the revenue-quality interval meter(s) conform with Laws and Regulations administered by Measurement Canada with respect to such meter(s), and (ii) 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 Facility output at the Delivery Point net of any Station Service Loads and inclusive for any loss adjustment factors, and which is updated promptly, and, in any event, within ten (10) Business Days after any change to the metering installation occurs.

Section 2.5 Milestone Date for Commercial Operation

- (a) The Supplier acknowledges that time is of the essence to the Buyer with respect to attaining Commercial Operation of the Contract Facility by its MCOB.
- (b) If the Project utilizes a Renewable Fuel other than Waterpower and the Site is located, in whole or in part, on lands within the meaning of paragraphs (a), (b) or (c) of the definition of First Nation Lands then the Supplier may, prior to providing the Buyer with evidence of completion of each of the Key Development Milestones, submit a written request in the Prescribed Form to the Buyer to extend MCOB to a date that is five (5) years after the Contract Date, along with such evidence as the Buyer may reasonably require.
- (c) Where the Buyer receives a complete request from a Supplier pursuant to Section 2.5(b), the Buyer shall, acting reasonably, within sixty (60) days of any such complete request, either:
 - (i) approve the request by issuing a written notice in the Prescribed Form confirming the Buyer’s willingness to extend MCOB to a date that is five (5) years after the Contract Date, and if the Supplier signs and delivers to Buyer such Prescribed Form within twenty (20) Business Days of such written notice being issued the MCOB in Exhibit B shall be replaced with the date that is five (5) years after the Contract Date (references to the original Milestone Date for Commercial Operation shall refer to the MCOB prior such amendment) in accordance with the terms of the Prescribed Form; or
 - (ii) deny the request, in which case the Supplier may continue under this Agreement or request a Senior Conference pursuant to the terms of Section 15.1.
- (d) The Supplier acknowledges that even if the Project has not achieved Commercial Operation by the MCOB and this Agreement is not terminated in accordance with Article 9, the Term shall nevertheless expire pursuant to Section 8.1 on:
 - (i) the twentieth (20th) anniversary of the MCOB in the case of Facilities utilizing Renewable Fuels other than Waterpower; or
 - (ii) the fortieth (40th) anniversary of the MCOB in the case of Facilities utilizing Waterpower for their Renewable Fuel;

unless the Term is extended by the Buyer in accordance with Section 8.1(c).

Section 2.6 Buyer Information During Design and Construction

- (a) By the fifteenth (15th) day of each calendar quarter following the date of this Agreement and continuing until the Commercial Operation Date, the Supplier shall provide the Buyer with, (i) Quarterly Progress Reports (the “**Quarterly Progress Reports**”) substantially in the form of the Prescribed Form describing the status of efforts made by the Supplier to meet the Milestone Date for Commercial Operation and the progress of the design and construction work and the status of Governmental Approvals relating to the Project, and (ii) within five (5) Business Days of submission to the System Operator, a copy of the project status report (the “**Project Status Report**”) in the form of IESO-FORM 1399. The 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 the Quarterly Progress Report and the Project Status Report. The Supplier acknowledges that photographs of the Project, Facility or construction work may be posted or printed by the Buyer on its website or in publications.
- (b) In addition to the Quarterly Progress Reports and the Project Status Reports which the Supplier is required to provide pursuant to Section 2.6(a), the Supplier shall also provide the Buyer with notice of any incident, event or concern that could have a Material Adverse Effect on the Supplier or the Project, 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.

Section 2.7 Requirements for Commercial Operation

- (a) The Contract Facility will be deemed to have achieved “**Commercial Operation**” by the Buyer, at the point in time when, as subsequently confirmed by the Buyer in a written notice to the Supplier as described in Section 2.7(c):
 - (i) the Buyer has received the Metering Plan in the Prescribed Form, and has approved it, acting reasonably;
 - (ii) the Buyer has received a single line electrical drawing that identifies the as-built Connection Point, clearly showing area transmission and distribution facilities, including the Transformer Station(s) that is electrically closest to the Facility;
 - (iii) the Buyer has received copies of all Governmental Approvals issued by the applicable Governmental Authorities which are required to construct, operate and maintain the Facility;
 - (iv) the Buyer has received an IE Certificate in the Prescribed Form directly from the Independent Engineer, stating that:
 - (A) the Contract Facility has been completed in all material respects, excepting punch list items that do not materially and adversely affect the ability of the Contract Facility to operate in accordance with this Agreement;
 - (B) the Connection Point of the Contract Facility is that set out in Exhibit B;

- (C) the Contract Facility has been constructed, connected, commissioned and synchronized to the IESO-Controlled Grid or a Distribution System, as applicable, such that at least 90% of the Contract Capacity is available to Deliver Electricity in compliance with Good Engineering and Operating Practices and Laws and Regulations; and
- (D) in the case of a Solar Facility:
 - (1) where the installed solar modules are composed of monocrystalline panels, that the rated efficiency of such panels were no less than 16%; or
 - (2) where the installed solar modules are composed of polycrystalline panels, that the rated efficiency of such panels were no less than 15.3%;based upon module specification sheets or other standard related documentation that confirmed that the stated efficiency ratings for such panels were obtained under Standard Testing Conditions; and
- (v) the Buyer has received a certificate addressed to it from the Supplier in the Prescribed Form with respect to the Commercial Operation of the Contract Facility, together with such documentation required to be provided under such form to the Buyer.
- (b) The Buyer or its Representative shall be entitled, at the Buyer's option, to attend any performance and generation test(s) for purposes of Section 2.7(a)(iv)(C) and the Supplier shall provide to the Buyer a reasonable period in advance thereof confirmation in writing of the timing of such test(s).
- (c) The Buyer shall notify the Supplier in writing using the Prescribed Form within twenty (20) Business Days following receipt of all of the documentation required by Section 2.7(a) as to whether such documentation is acceptable to the Buyer, acting reasonably. If the Buyer determines that such documentation is not acceptable, the Buyer shall provide to the Supplier reasonable particulars in respect of the deficiencies in such documentation.
- (d) If the Contract Facility has achieved Commercial Operation under Section 2.7(a) where less than 100% of the Contract Capacity is available to Deliver Electricity, the Supplier shall, on or before the date which is one year after the Commercial Operation Date (the "**Full Operation Date**"), provide the Buyer with an IE Certificate stating that 100% of the Contract Capacity is available to Deliver Electricity in compliance with Good Engineering and Operating Practices and Laws and Regulations, failing which the Contract Capacity shall be reduced to the highest amount of capacity, which for greater certainty shall not exceed the Contract Capacity, that has been demonstrated to be available as of such date.

Section 2.8 Operation Covenants

- (a) The Supplier shall own or lease the Facility during the Term. The Supplier shall operate and maintain the Facility during the Term using Good Engineering and Operating Practices, and meeting all applicable requirements of the IESO Market Rules, the Distribution System Code, the Transmission System Code, the Connection Agreement, and the Renewable Energy Approval and any other equivalent environmental approval applicable to such Facility, and all other Laws and Regulations.

- (b) The Supplier shall connect the Facility exclusively to the Connection Point. For certainty, the Supplier shall deliver all Electricity through the Connection Point.
- (c) The Supplier shall be solely responsible for operating and maintaining the Facility, including obtaining and maintaining in good standing all Governmental Approvals required under Laws and Regulations, and for all costs, expenses, liabilities and other obligations associated therewith.
- (d) The Supplier covenants to provide the Buyer within five (5) Business Days of its receipt, copies of all notices of violation or pending proceedings, complaints made to any Governmental Authority, actions, suits, proceedings, demands, judgments, directives or orders delivered or issued by any Person or Governmental Authority to or in respect of the Supplier or the Facility or any Environmental Incident and, where the Supplier knows or has reason to know, to or in respect of the operator (if applicable) or any Person responsible for the overall operation, maintenance, repair or management of the Facility, or for any substantial component of such operation, maintenance, repair or management.
- (e) The Supplier covenants and agrees that the Facility shall not utilize any sources or fuels other than the Renewable Fuel identified in Exhibit B. Notwithstanding the foregoing, the Supplier may use any waste heat captured as a result of producing Electricity at the Facility for the purposes of producing additional Electricity at the Facility in accordance with the description provided in Exhibit B.
- (f) The Supplier agrees to use Commercially Reasonable Efforts to maintain or enter into any fuel supply contracts that are necessary, if any, for the proper operation of the Facility during the Term.
- (g) The Supplier shall ensure that any Waterpower Rights that are required for the operation of the Facility remain in effect throughout the Term. In the event that any Waterpower Rights that are required for the operation of the Facility expire while a renewal or replacement of such Waterpower Rights are pending finalization or execution such that the renewal or replacement is intended to be effective as of the expiry of the Waterpower Rights, then such Waterpower Rights shall not be deemed to have expired or been terminated.

Section 2.9 Insurance Covenants

- (a) The Supplier shall put in effect and maintain, or cause its Subcontractors, where appropriate, to maintain, with insurers licensed in Ontario, from the commencement of construction of the Contract Facility to the Commercial Operation Date, at its own cost and expense, all the necessary and appropriate insurance required under all applicable Laws and Regulations as well as those that a prudent Person in the business of developing and operating the Contract Facility would maintain including policies for "all-risk" property insurance covering not less than the probable maximum loss of the Contract Facility, "all-risk" equipment breakdown insurance, "wrap-up" liability insurance and "commercial general liability" insurance with a rider to extend coverage to include Environmental Incidents.
- (b) The Supplier shall put in effect and maintain, or cause its Subcontractors, where appropriate, to maintain, with insurers licensed in Ontario, from the Commercial Operation Date to the expiry of the Term, at its own cost and expense, all the necessary and appropriate insurance required under all applicable Laws and Regulations as well as those that a prudent Person in the business of developing and operating the Facility would maintain including policies for "all-risk" property insurance covering not less than the full replacement value of the Facility, "boiler and machinery"

insurance and "commercial general liability" insurance with a rider to extend coverage to include Environmental Incidents.

- (c) Any policies described in this Section 2.9 must (i) for any property insurance, contain a waiver of subrogation in favour of the Indemnitees; and (ii) for any liability insurance, include the Indemnitees as additional insureds with respect to liability arising in the course of performance of the obligations under, or otherwise in connection with, this Agreement, in which case the policy shall be non-contributing and primary with respect to coverage in favour of the Indemnitees. The limit for liability policies described in this Section 2.9 shall be for an amount appropriate for the size and scope of the Facility.
- (d) The Supplier shall provide the Buyer with a certified true copy of the insurance policies required in this Section 2.9 which confirms the relevant coverage, including endorsements on or before the commencement of the construction of the Contract Facility, and renewals or replacements on or before the expiry of any such insurance.
- (e) If the Supplier is subject to the WSIA, it shall submit a valid clearance certificate of WSIA coverage to the Buyer prior to the commencement of construction of the Contract Facility. In addition, the Supplier shall, from time to time at the request of the Buyer, provide additional WSIA clearance certificates. The Supplier shall pay when due, and shall ensure that each of its Subcontractors pays when due, all amounts required to be paid by it and its Subcontractors, from time to time from the commencement of construction of the Contract Facility, under the WSIA, failing which the Buyer shall have the right, in addition to and not in substitution for any other right it may have pursuant to this Agreement or otherwise at law or in equity, to pay to the WSIB any amount due pursuant to the WSIA and unpaid by the Supplier or its 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.

Section 2.10 Compliance with Laws and Regulations and Registration with the System Operator

- (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 Governmental Approval 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 Project registration requirements as specified in the IESO Market Rules as of the Commercial Operation Date.
- (c) Unless required by Laws and Regulations, participation by the Supplier as a Market Participant and registration of the Facility with the System Operator is optional. If Laws and Regulations require or the Supplier chooses such participation and/or registration:
 - (i) the settlement of Market Settlement Charges shall take place directly between the Metered Market Participant and the System Operator, and any costs incurred by the Supplier pursuant to the IESO Market Rules in respect of this Agreement shall be the sole responsibility of the Supplier; and

- (ii) the Supplier shall meet all applicable Facility registration requirements as specified in the IESO Market Rules.
- (d) The Supplier is, not and shall not be, a transmitter or distributor of electricity with rates regulated pursuant to Section 78 of the *Ontario Energy Board Act, 1998* or a generator prescribed by regulation to receive payments from the System Operator pursuant to Section 78.1 of the *Ontario Energy Board Act, 1998* (each, a “**Rate Regulated Utility**”). If an Affiliate of the Supplier is a Rate Regulated Utility, the Supplier must ensure compliance with Exhibit G and must, once per calendar year during the Term, provide to the Buyer in the Prescribed Form:
 - (i) a statutory declaration signed by an officer of the Supplier certifying compliance with the terms of Exhibit G; and
 - (ii) a statutory declaration signed by an officer of the Rate Regulated Utility certifying compliance with the terms of Exhibit G.

Section 2.11 Environmental Attributes

- (a) The Supplier hereby transfers and assigns to, or to the extent transfer or assignment is not permitted, holds in trust for, the Buyer who thereafter shall, subject to Section 2.11(d), retain, all rights, title, and interest in all Environmental Attributes associated with the Contract Facility during the Term of this Agreement.
- (b) The Supplier shall from time to time, upon written direction of the Buyer, take all such actions and do all such things necessary to effect the transfer and assignment to, or holding in trust for, the Buyer, all rights, title, and interest in all Environmental Attributes as set out in Section 2.11(a).
- (c) The Supplier shall from time to time, upon written direction of the Buyer, take all such actions and do all such things necessary to certify, obtain, qualify, and register with the relevant authorities or agencies Environmental Attributes that are created and allocated or credited with respect to the Contract Facility pursuant to Laws and Regulations from time to time (collectively, the “**Regulatory Environmental Attributes**”) for the purposes of transferring such Regulatory Environmental Attributes to the Buyer in accordance with Section 2.11(a). The Supplier shall be entitled to reimbursement of the cost of complying with a direction under this Section 2.11(c), provided that the Buyer, acting reasonably, approved such cost in writing prior to the cost being incurred by the Supplier.
- (d) To the extent that Laws and Regulations require the Contract Facility to utilize, consume or obtain Regulatory Environmental Attributes in connection with Delivering Electricity, then the Buyer shall propose such amendments to this Agreement to the Supplier and, at the Buyer’s discretion, to all of the Other Suppliers who are required by the Buyer to participate, based on the principle that the Buyer will permit the Supplier to retain any Regulatory Environmental Attributes that may be created and allocated or credited with respect to the Contract Facility and that are required by such Laws and Regulations in order for the Contract Facility to Deliver Electricity. 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 delivery or communication of the Buyer’s proposal for such amendments, then such amendments shall be determined by mandatory and binding arbitration, from which there shall be no appeal, with such arbitration(s) to be conducted in accordance with the procedures set out in Exhibit F. 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.

ARTICLE 3 ELECTRICITY, RELATED PRODUCTS, DELIVERY AND PAYMENT OBLIGATIONS

Section 3.1 Contract Payment and Settlement

The Contract Payments shall be made, and all details relating to the settlement of Contract Payments under this Agreement shall be handled, in accordance with the version of Exhibit E applicable to the Contract Facility.

Section 3.2 Future Contract Related Products

- (a) All Related Products, other than Future Contract Related Products and any benefits associated therewith, shall belong to the Supplier.
- (b) The Supplier will provide the Buyer with prior written notice of the development by the Supplier of any Future Contract Related Products from time to time.
- (c) The Supplier shall sell, supply or deliver all Future Contract Related Products as requested, directed or approved by the Buyer, provided that the Buyer shall not require the Supplier to sell, supply or deliver any Future Contract Related Product where the Approved Incremental Costs in relation to such Future Contract Related Product are reasonably expected to exceed the total revenues received by the Supplier from the sale, supply or delivery of such Future Contract Related Product.
- (d) The Supplier covenants not to sell, supply or deliver any Future Contract Related Products unless such sale, supply or delivery has been requested, directed or approved by the Buyer.
- (e) The Supplier will promptly notify the Buyer of any revenue received by the Supplier in connection with the sale, supply or delivery of any Future Contract Related Products.
- (f) The Buyer may, in its sole and absolute discretion, deem any Ancillary Service or other Related Product that is a Future Contract Related Product not to be a Future Contract Related Product.

Section 3.3 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 the Delivered Electricity and Future Contract Related Products sold hereunder which may be imposed up to the Connection Point and in respect of which a credit, rebate, or refund has not and may not be obtained by the Buyer. In the event that the Buyer is required to remit such Taxes and the Buyer is not entitled to a credit, rebate, or refund in respect of such payment of Taxes, the amount thereof shall be deducted from any sums becoming due to the Supplier hereunder.

Section 3.4 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 any Taxes applicable to the Delivered Electricity and Future Contract Related Products sold hereunder which may be imposed at and from the Connection Point, and Taxes applicable to or associated

with the transfer or assignment of Environmental Attributes from the Supplier to the Buyer. The Contract Price does not include any Sales Tax in respect of the Electricity and Future Contract Related Products purchased hereunder. If any Sales Tax is payable in connection with the Delivered Electricity and Future Contract Related Products purchased hereunder, such Sales Tax shall be paid as specified hereunder. In the event that the Supplier is required to pay or remit such Taxes and no credit, rebate, or refund is available (or, in the event that the Supplier has assigned this Agreement, that no credit, rebate or refund would have been available to the Supplier had it not assigned this Agreement) in respect of such payment or remittance of Taxes, the amount thereof shall be deducted from any sums becoming due to the Buyer hereunder.

Section 3.5 Non-residency

- (a) If the Supplier is a non-resident of Canada, as that term is defined in the ITA, then payments under this Agreement by the Buyer shall be reduced by the amount of any applicable withholding or other similar Taxes and the Buyer shall remit such withholding or other similar 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.
- (b) If the Supplier is or becomes a non-resident of Canada, as that term is defined in the ITA, the Supplier shall notify the Buyer forthwith of such status and shall provide the Buyer with all such information reasonably required by the Buyer to comply with any withholding tax or other tax obligations to which the Buyer is or may become subject as a result of thereof.

Section 3.6 Funding from Governmental Authorities

The Supplier shall provide written notice to the Buyer of the commencement of any application process it makes relating to any program, funding or incentives that may be provided by any Governmental Authority in relation to the Facility and thereafter shall provide copies to the Buyer of all correspondence and related materials respecting such application. Where such program, funding or incentives constitutes an Incentive Program, and such Incentive Program does not constitute an Environmental Attribute or a Future Contract Related Product, the Supplier shall within thirty (30) days of receipt of payment pursuant to such Incentive Program, pay to Buyer 50% of the amount of such payment failing which Buyer may set off any such payment due to Buyer against any amount payable by Buyer to Supplier.

ARTICLE 4 STATEMENTS AND PAYMENTS

Section 4.1 Meter and Other Data

The Supplier agrees to provide to the Buyer for the purposes of this Agreement (which, for greater clarity, is in addition to any obligations to provide access under the IESO Market Rules) access to the meter(s) in the Metering Plan to accommodate remote interrogation of the metered data on a daily basis at all times. The Supplier shall notify the Buyer of any errors and omissions in any such data or information on a timely basis so as to permit the Buyer, within a reasonable time, to correct such errors and omissions pursuant to the IESO Market Rules and this Agreement. Upon a Party becoming aware of any errors or omissions in any data or information provided in accordance with this Section 4.1, such Party shall notify

the other Party, and if applicable, the System Operator in accordance with the IESO Market Rules, on a timely basis.

Section 4.2 Settlement for IESO Market Participants

- (a) This Section 4.2 shall apply only to a Facility that:
 - (i) is directly connected to the IESO-Controlled Grid; or
 - (ii) is otherwise a Registered Facility.
- (b) The Buyer shall prepare and deliver a settlement statement (the “**Statement**”) to the Supplier, within twenty (20) Business Days after the end of each calendar month in the Term that is the subject of the Statement (the “**Settlement Period**”), setting out the basis for the Contract Payment with respect to the Settlement Period, as well as the basis for any other payments owing under this Agreement by either Party to the other Party in the Settlement Period. If the Term begins on a day other than the first day of the Settlement Period, the initial Contract Payment may be deferred and incorporated with that of the first full Settlement Period following the commencement of the Term. A Statement may be delivered by the Buyer to the Supplier by e-mail or other electronic means and shall include the reference number assigned to this Agreement by the Buyer and a description of the components of the Contract Payment and other payments owing to the Supplier for the Settlement Period.
- (c) The Party owing the Contract Payment shall remit to the other Party full payment in respect of the Statement no later than the last Business Day of the month following the end of the Settlement Period to which the Statement relates, provided that where the Supplier owes the Contract Payment, the Supplier shall not be required to make such payment earlier than five (5) Business Days following delivery of the Statement (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 either the account designated by the Supplier in the Prescribed Form, or to the account designated by the Buyer, as applicable. The account information and HST registration numbers of the Supplier and the Buyer constitute Supplier’s Confidential Information and Buyer’s Confidential Information, respectively, and are subject to the obligations as set out in Article 7. The Supplier shall provide its account information and HST number to the Buyer in the Prescribed Form prior to achieving Commercial Operation. Either Party may change its account information from time to time by notice to the other in accordance with Section 14.6.
- (d) 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 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 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 15.1.

Section 4.3 Settlement for Non-IESO Market Participants

- (a) This Section 4.3 shall apply only to a Facility that is not a Facility described in Section 4.2(a).
- (b) The Parties agree that all Contract Payments shall be settled in accordance with the Retail Settlement Code by the LDC to which the Facility is connected.
- (c) The Contract Payments shall be settled periodically and on a schedule consistent with the monthly, bimonthly, quarterly or other periodic billing cycle of the applicable LDC (the “**Settlement Period**”), provided that if the Term begins on a day other than the first day of the Settlement Period, the initial Contract Payment may be deferred and incorporated with that of the first full Settlement Period following the commencement of the Term. All settlement documentation, requirements and details, including the date that any Contract Payment is due (the “**Payment Date**”) and the statement of amounts owing (the “**Statement**”) shall be governed by the applicable LDC. The Supplier shall provide its account information and HST number to the LDC responsible for settling Contract Payments, in the form and manner specified by such LDC, prior to achieving Commercial Operation.
- (d) If the Supplier disputes a Statement or any portion thereof, the Party (or, in the case of the Buyer, the applicable LDC) owing any amount set forth in the Statement shall, notwithstanding such dispute, pay the entire amount set forth in the Statement. Prior to engaging the Buyer in a dispute, the Supplier shall make all reasonable efforts to resolve the dispute directly with the applicable LDC, failing which the Supplier shall provide notice to the Buyer setting out the portions of the Statement that are in dispute with a brief explanation of the dispute and the steps taken towards resolving such dispute directly with the applicable LDC. If it is subsequently determined or agreed that an adjustment to the Statement is appropriate, the Buyer will work the applicable LDC to 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 next Payment Date 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 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 15.1.

Section 4.4 General Settlement Provisions

The Buyer shall have the right to designate a settlement agent or implement such alternative settlement mechanisms other than set out in Section 4.2 and Section 4.3, as it may in its sole and absolute discretion determine, provided that such alternative arrangement does not have a Material Adverse Effect on the Supplier. The Buyer shall provide thirty (30) days’ prior notice to the Supplier of any such designation or change.

Section 4.5 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.

Section 4.6 Payment Account Information

Account for payments to Supplier:

Bank: ●
Bank address: ●

Account Name: ●
Account Number: ●
Transit Number: ●

HST Registration Number of Supplier:

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

Accounts for payments to Buyer:

TD Bank
TD Centre Branch
55 King Street West
Toronto, ON M5K 1A2

Account Number: ●
Bank Number: 0004
Transit Number: 10202

Buyer's HST Registration Number: 87051 3959 RT0001

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

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

Section 4.7 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, if the Supplier is a Market Participant, the determination by the System Operator acting pursuant to the IESO Market Rules of any information shall be final and binding on the Parties in accordance with the IESO Market Rules, and without limiting the generality of the foregoing, if a Statement contains an error in the data or information issued by the System Operator which the System Operator has corrected pursuant to the IESO Market Rules, then the one (1) year limit set forth in Section 4.7(a) shall not apply to the correction of such error or the Buyer's ability to readjust the Statement.

- (c) Subject to Section 4.2(d) and Section 4.3(d), any adjustment to a Statement made pursuant to this Section 4.7 shall be made in the next subsequent Statement.

Section 4.8 Statements and Payment Records

The Parties shall keep all books and records necessary to support the information contained in and with respect to each Statement and Monthly Payment made thereunder as well as all settlement statements and records of Monthly Payments issued by applicable LDCs in accordance with Section 14.2.

Section 4.9 System Operator Information and Data

- (a) For the purposes of calculation and verification of Annual Forgone Energy, CMSC Constrained-Off Payment, Dispatch Interval Excluded Delivered Electricity Payment, Non-Compliant Forgone Energy, Forgone Energy, Monthly Excluded Delivered Electricity Payment, Monthly Forgone Energy Payment, Total Accrued Exposure and Total Forgone Energy, or any other calculations and verifications that are based on information from the System Operator acting pursuant to the IESO Market Rules, the Buyer shall rely on data and information from the System Operator that is available to both the Buyer and the Supplier.
- (b) In the event that such data and information from the System Operator acting pursuant to the IESO Market Rules is unavailable to make such calculation and verification, such calculation and verification shall be performed using the best alternative methodology using the highest quality data that is available to approximate the data that would otherwise have been received from the System Operator (“**Data Approximation**”).
- (c) If:
 - (i) either Party is able to reasonably demonstrate that the System Operator acting pursuant to the IESO Market Rules:
 - (A) is regularly failing to provide information; or
 - (B) is providing or had provided materially inaccurate information;such that the Buyer is, acting reasonably, unable to accurately calculate any Excluded Delivered Electricity, Excluded Forgone Electricity, Forgone Energy and Non-Compliant Forgone Energy; and
 - (ii) either:
 - (A) an alternate method, in the case of paragraph (c)(i)(A); or
 - (B) more accurate method, in the case of paragraph (c)(i)(B);

to calculate such amount is available, as agreed by the Parties acting reasonably, then either Party may notify the other Party and notwithstanding Section 4.7(b), the Parties will meet forthwith and negotiate in good faith to determine an alternative and more accurate method to calculate such inaccurately calculated amounts. If no alternative and more accurate method to calculate such inaccurately calculated amounts can be agreed by the Parties, notwithstanding Section 15.1, any remaining dispute related thereto shall be determined by arbitration using the procedures set out

in Section 15.2, using an arbitrator or arbitrators having expertise in the remaining areas of dispute.

ARTICLE 5 SECURITY REQUIREMENTS

Section 5.1 Completion and Performance Security Amount

- (a) From the Contract Date to the Commercial Operation Date, the Supplier must post and maintain with the Buyer security for the performance of the Supplier's obligations under this Agreement in an amount equal to \$50,000 per MW of Contract Capacity (the "**Pre-COD Completion and Performance Security**").
- (b) If at any time after the Commercial Operation Date, the average of HOEP over a contiguous six (6) month period is greater than 75% of the Contract Price, the Buyer may by providing notice to the Supplier, require the Supplier to post and maintain as Completion and Performance Security, security in an amount equal to \$25,000 per MW of Contract Capacity (the "**Post-COD Completion and Performance Security**"), and collectively with the Pre-COD Completion and Performance Security referred to as the "**Completion and Performance Security**").
- (c) After the Commercial Operation Date, the Buyer shall return any Pre-COD Completion and Performance Security that has been provided by the Supplier within twenty (20) Business Days following receipt of a written request from the Supplier, net of any amounts owing by the Supplier to the Buyer. After the end of the Term, the Buyer shall return any Post-COD Completion and Performance Security that has been provided by the Supplier within twenty (20) Business Days following receipt of a written request from the Supplier, net of any amounts owing by the Supplier to the Buyer.
- (d) Notwithstanding any other provision of this Agreement, no delay, including a delay resulting from an event of Force Majeure, shall extend the date by which any component of the Completion and Performance Security is required to be provided by the Supplier or returned or refunded (as applicable) by the Buyer.

Section 5.2 Composition of Completion and Performance Security

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

Section 5.3 Adequacy of Security; Replacement Security

- (a) The Supplier shall ensure that, at all times, the aggregate value of all Completion and Performance Security provided to the Buyer is at least equal to the then currently required amount

of Completion and Performance Security and that the Completion and Performance Security is current, valid, enforceable and in an acceptable form, including:

- (i) following realization by the Buyer of any amount of Completion and Performance Security, increasing the amount of Completion and Performance Security, by an amount equal to that realized by the Buyer; and
 - (ii) forthwith providing replacement security for any letter of credit (A) where the provider thereof has given notice that it does not wish to extend the letter of credit for an additional term, (B) which expires, terminates or fails, or ceases to be in full force and effect for the purposes hereof, (C) which is disaffirmed, disclaimed, dishonoured, repudiated or rejected in whole or in part by the provider thereof, or (D) the validity of which is challenged by the provider thereof.
- (b) All costs associated with the requirement to provide and maintain Completion and Performance Security shall be borne by the Supplier.
- (c) If existing Completion and Performance Security is replaced with new Completion and Performance Security, the Buyer shall return the existing Completion and Performance Security held by the Buyer for cancellation, within fifteen (15) Business Days of the Buyer's receipt of such new Completion and Performance Security. A Supplier may from time to time consolidate any separate amounts of Completion and Performance Security held by the Buyer by providing to the Buyer replacement Completion and Performance Security in the cumulative amount of Completion and Performance Security outstanding, in which case the Buyer shall return the existing Completion and Performance Security in accordance with this Section 5.3.

Section 5.4 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 6 REPRESENTATIONS

Section 6.1 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 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, 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 statements, specifications, data, confirmations, representations and information that have been set out in the Proposal and supporting evidence and documentation are complete and accurate in all material respects and are hereby restated and reaffirmed by the Supplier as representations made to the Buyer hereunder and there is no material information omitted from the Proposal or supporting evidence or documentation which would make the information in the Proposal or supporting evidence or documentation misleading or inaccurate.
- (g) 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.
- (h) The Supplier has no reason to believe, acting reasonably, that MCOB may not be achieved by the date specified in Exhibit B.
- (i) 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.
- (j) Unless the Supplier has otherwise notified the Buyer pursuant to Section 3.5(b), the Supplier is not a non-resident of Canada for the purposes of the ITA.
- (k) The Supplier and the Facility comply with the eligibility requirements applicable to a Registered Proponent and a Project as set out in Section 3 of the LRP I RFP.

- (l) The Supplier has not applied for an Impact Assessment for the Project or the Contract Facility prior to the Contract Date.
- (m) The Supplier:
 - (i) has made all due inquiry into requirements to obtain any Renewable Energy Approval and other equivalent environmental approvals or registrations, including registering with the Environmental Activity Sector Registry, and has, in respect of any applicable Renewable Energy Approval and other equivalent environmental approvals or registrations, read and understood the requirements and has attended at the Site; and
 - (ii) is aware that it shall only be entitled to Force Majeure relief in respect of failure to fulfill any such requirements that were reasonably unforeseeable after taking the actions set out in paragraph (i) of this Section 6.1(m).
- (n) The Supplier had not, from the date of registration to the Contract Date undertaken any activity that would constitute a Conflict of Interest.

In addition, the Supplier shall, upon delivery of each of the Quarterly Progress Reports required to be provided to the Buyer pursuant to Section 2.6(a), represent in writing that each of the foregoing statements set out in Section 6.1(a) to (k), inclusive, continues to be true or, if any 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 9.1(e) to require the Supplier to cure or remove any such qualification with respect to such statement.

Section 6.2 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 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 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 shareholders 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) As at the date hereof, 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) As at the date hereof, 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.

ARTICLE 7 CONFIDENTIALITY AND FIPPA

Section 7.1 Confidential Information

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

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

Information to the party seeking disclosure as is required by Laws and Regulation in accordance with Section 7.2.

- (c) Where the Supplier is the Receiving Party, the Supplier may disclose Confidential Information to any Secured Lender, prospective lender, investor (if not an Affiliate of the Supplier), or prospective investor, and in each case its advisors, to the extent necessary, for securing investment in or financing for the Facility, provided that any such Secured Lender, prospective lender, investor (if not an Affiliate of the Supplier), or prospective investor has been informed of the Supplier's confidentiality obligations hereunder and such Secured Lender, prospective lender, investor (if not an Affiliate of the Supplier), or prospective investor has completed and executed a confidentiality undertaking (the "**Confidentiality Undertaking**") in the Prescribed Form, covenanting in favour of the Buyer to hold such Confidential Information confidential on terms substantially similar to this Article 7.
- (d) Notwithstanding the foregoing, the Supplier consents to the disclosure, (i) of its name and contact particulars and any other information listed in Exhibit D, on the Buyer's website or otherwise, (ii) of the Site, Contract Capacity, Renewable Fuel(s) and Connection Point on the Buyer's website or otherwise, (iii) of its address for service and the name of its Company Representative to all Other Suppliers who have entered into a LRP I Contract, for the purposes of Section 1.8, Section 1.9(d), Section 2.11, and Section 12.2; (iv) on a confidential basis, of any information received by the Buyer in respect of this Agreement for such internal purposes as the Buyer may reasonably determine from time to time to the Buyer's Representatives; (v) of aggregated data relating to the Project or the LRP I Contract; and (vi) in the case of an Aboriginal Participation Project, the names of and existence of an Economic Interest held by the applicable Aboriginal Community.
- (e) The Supplier hereby irrevocably authorizes and consents to the LDC releasing, disclosing, providing, delivering and otherwise making available to the Buyer or to its agents, successors and assigns, and to the Buyer releasing, disclosing, providing, delivering and otherwise making available to the LDC, a copy of this Agreement and any and all such information relating to the connections, proposed connections, meters, meter data, testing data pertaining to commercial operation, billing data and LDC account or Metered Market Participant account (as applicable) of the Supplier or the Generating Facility as the Buyer, its agents, successors or assigns may advise is required in connection with this Agreement or the administration of a contract issued under the LRP.
- (f) For greater clarity, the Supplier hereby irrevocably authorizes and consents to any Representative of the Buyer releasing, disclosing, providing, delivering and otherwise making available to another Representative of the Buyer, a copy of this Agreement and any and all such information relating to the connections, proposed connections, meters, meter data, testing data pertaining to commercial operation, billing data and LDC account or Metered Market Participant account (as applicable) of the Supplier or the Generating Facility as the Buyer or its agents may advise is required in connection with this Agreement or the administration of a contract issued under the LRP.

Section 7.2 Notice Preceding Compelled Disclosure

If the Receiving Party or any of its Representatives are requested or required to disclose any Confidential Information, the Receiving Party shall promptly notify the Disclosing Party of such request or requirement so that the Disclosing Party may seek an appropriate protective order or waive compliance with this Agreement. If, in the absence of a protective order or the receipt of a waiver hereunder, the

Receiving Party or its Representatives are compelled to disclose the Confidential Information, the Receiving Party and its Representatives may disclose only such of the Confidential Information to the Party compelling disclosure as is required by law and 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.

Section 7.3 Return of Information

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

Section 7.4 Injunctive and Other Relief

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

Section 7.5 FIPPA Records and Compliance

The Parties acknowledge and agree that the Buyer is subject to FIPPA and that FIPPA applies to and governs all Confidential Information in the custody or control of the Buyer ("**FIPPA Records**") and may, subject to FIPPA, require the disclosure of such FIPPA Records to third parties. The Supplier shall provide a copy of any FIPPA Records that it previously provided to the Buyer if the Supplier continues to possess such FIPPA Records in a deliverable form at the time of the Buyer's request. If the Supplier does possess such FIPPA Records in a deliverable form, it shall provide the same within a reasonable time after being directed to do so by the Buyer. The provisions of this Section 7.5 shall survive any termination or expiry of this Agreement and shall prevail over any inconsistent provisions in this Agreement.

ARTICLE 8 TERM

Section 8.1 Term

(a) This Agreement shall become effective upon the Contract Date.

- (b) The “**Term**” means that period of time commencing at the beginning of the hour ending 01:00 am (EST) of the date that is the Commercial Operation Date, and ending at 24:00 hours (EST) on the day before:
- (i) in the case of Facilities utilizing Renewable Fuels other than Waterpower, the twentieth (20th) anniversary of the date that is the earlier (A) the Milestone Date for Commercial Operation Date and (B) the Commercial Operation Date; or
 - (ii) in the case of Facilities utilizing Waterpower for their Renewable Fuel, the fortieth (40th) anniversary of the date that is the earlier of (A) the Milestone Date for Commercial Operation and (B) the Commercial Operation Date;
- subject to earlier termination in accordance with the provisions hereof. Subject to Section 8.1(c), neither Party shall have any right to extend or renew the Term except as agreed in writing by the Parties.
- (c) Where the Commercial Operation Date occurs after the MCOB, the Buyer shall have the right, by providing notice to the Supplier no later than one hundred and eighty (180) days prior to the expiration of the Term, to extend the Term such that the Term will expire at 24:00 hours (EST) on the day before (i) the twentieth (20th) anniversary of the Commercial Operation Date in the case of Facilities utilizing Renewable Fuels other than Waterpower, or (ii) the fortieth (40th) anniversary of the Commercial Operation Date in the case of Facilities utilizing Waterpower for their Renewable Fuel.

ARTICLE 9 TERMINATION AND DEFAULT

Section 9.1 Events of Default by the Supplier

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

- (a) The Supplier fails to make any payment when due and/or maintain the Completion and Performance Security as required under this Agreement, if such failure is not remedied within fifteen (15) Business Days after written notice of such failure from the Buyer.
- (b) The Supplier fails to comply with any Stop Work Direction or Stop Work Notice, if such failure is not remedied within three (3) Business Days after written notice of such failure from the Buyer.
- (c) The Supplier fails to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Supplier Event of Default) if such failure is not remedied within fifteen (15) Business Days after written notice of such failure from the Buyer, provided that such cure period shall be extended by a further fifteen (15) Business Days if the Supplier is diligently remedying such failure and such failure is capable of being cured during such extended cure period.
- (d) The Supplier fails or ceases to hold a valid licence, permit, certificate, registration, authorization, consent or approval issued by a Governmental Authority where such failure or cessation results in, or could be reasonably expected to result in, a Material Adverse Effect on the Supplier or the Facility and is not remedied within thirty (30) Business Days after receipt by the Supplier of written notice of such failure or cessation from the Buyer, provided that such cure period shall be

extended by a further thirty (30) Business Days if the Supplier is diligently remedying such failure or cessation and such failure or cessation is capable of being corrected during such extended cure period.

- (e) Any representation made by the Supplier in this Agreement, excepting only the representation made in Section 6.1(m) and Section 6.1(n), 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 shall be extended by a further thirty (30) Business Days if the Supplier, in the reasonable opinion of the Buyer, is diligently correcting such breach and such breach is capable of being corrected during such extended cure period.
- (f) An effective resolution is passed or documents are filed in an office of public record in respect of, or a judgment or order is issued by a court of competent jurisdiction ordering, the dissolution, termination of existence, liquidation or winding up of the Supplier, unless such filed documents are immediately revoked or otherwise rendered inapplicable, or unless there has been a permitted and valid assignment of this Agreement by the Supplier under this Agreement to a Person which is not dissolving, terminating its existence, liquidating or winding up and such Person has assumed all of the Supplier's obligations under this Agreement.
- (g) The Supplier amalgamates with, or merges with or into, or transfers the Facility or all or substantially all of its assets to, another Person unless, at the time of such amalgamation, merger or transfer, there has been a permitted and valid assignment hereof by the Supplier under this Agreement to the resulting, surviving or transferee Person and such Person has assumed all of the Supplier's obligations under this Agreement.
- (h) 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.
- (i) 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.
- (j) The Supplier fails to own or lease the Facility during the Term.
- (k) The Supplier has made a Contract Facility Amendment that has not first been consented to by the Buyer pursuant to this Agreement.
- (l) The Commercial Operation Date has not occurred on or before the date which is eighteen (18) months after the Milestone Date for Commercial Operation.

- (m) The Supplier has not disclosed each actual or potential Conflict of Interest in the Proposal and, if any such actual or potential Conflict of Interest is capable of being remedied, it has not been remedied within fifteen (15) Business Days after written notice of such nondisclosure from the Buyer.
- (n) The Supplier undergoes a change in Control without first obtaining the written approval of the Buyer if required pursuant to this Agreement.
- (o) The Supplier assigns this Agreement without first obtaining the consent of the Buyer, if required pursuant to this Agreement.
- (p) The Supplier fails to provide a complete statutory declaration in the Prescribed Form if required pursuant to Section 2.10(d), if such failure is not remedied within fifteen (15) Business Days after written notice of such failure from the Buyer.

Section 9.2 Remedies of the Buyer

- (a) If any Supplier Event of Default (other than a Supplier Event of Default relating to the Supplier referred to in Section 9.1(f), Section 9.1(h), and Section 9.1(i)) occurs and is continuing, upon written notice to the Supplier, the Buyer may terminate this Agreement.
- (b) If a Supplier Event of Default occurs and is continuing, the Buyer may, in addition to the remedy set out in Section 9.2(a):
 - (i) set off any payments due to the Supplier against any amounts payable by the Supplier to the Buyer including, at the Buyer's option, the amount of any Completion and Performance Security provided to the Buyer pursuant to Article 5; and
 - (ii) draw on all or part of the Completion and Performance Security and if the remedy in Section 9.2(a) has not been exercised, require the Supplier to replace such drawn security with new security.
- (c) Notwithstanding Section 9.2(a) and Section 9.2(b), upon the occurrence of a Supplier Event of Default relating to the Supplier referred to in Section 9.1(f), Section 9.1(h), Section 9.1(i) or Section 9.1(l) this Agreement shall automatically terminate without notice, act or formality, effective immediately before the occurrence of such Supplier Event of Default, in which case, for certainty, the Secured Lender shall have the rights available to it under Section 11.2(g).
- (d) If the Buyer terminates this Agreement pursuant to Section 9.2(a) or this Agreement is terminated pursuant to Section 9.2(c),
 - (i) if the Termination Date precedes the Commercial Operation Date, the Buyer may, in its sole and absolute discretion, require the Supplier to pay to the Buyer, as liquidated damages and not as a penalty, a sum equal to the Dollar amount of all Completion and Performance Security required to be provided by the Supplier as of the Termination Date), and the Buyer shall be entitled to pursue a Claim for damages with respect to the amount of any portion of the Completion and Performance Security that the Supplier was required to provide to the Buyer as of the Termination Date pursuant to Section 5.1; in such circumstances, notwithstanding Section 9.5, the Buyer's remedies against the Supplier in respect of the termination of the Agreement shall be limited to the amount of liquidated damages payable by the Supplier pursuant to this Section 9.2(d)(i); and

- (ii) if the Termination Date is on or after the Commercial Operation Date, the Buyer shall be entitled to retain all Completion and Performance Security required to be provided by the Supplier and exercise all such other remedies available to the Buyer including pursuing a Claim for damages, as contemplated under Section 9.5.
- (e) Termination shall not relieve the Supplier or the Buyer of their respective responsibilities relating to the availability of the Facility and delivery of the Delivered Electricity and Environmental Attributes from the Facility that relate to the Delivered Electricity, and Future Contract Related Products from the Facility, or amounts payable under this Agreement, up to and including the Termination Date. The Buyer shall be responsible only for the payment of amounts accruing under this Agreement up to and including the Termination Date. In addition to its other rights of set off available to it pursuant to this Agreement and at law, the Buyer may hold back payment or set off its obligation to make such payment against any payments owed to it if the Supplier fails to comply with its obligations on termination.

Section 9.3 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 fifteen (15) 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 Section 16.1(g) without first obtaining the consent of the Supplier, if such consent is required pursuant to this Agreement.

Section 9.4 Termination by the Supplier

- (a) If any Buyer Event of Default occurs and is continuing, then upon written notice to the Buyer, the Supplier may: (i) terminate this Agreement, and (ii) set off any payments due to the Buyer against any amounts payable by the Buyer to the Supplier. Where the Supplier has so terminated this Agreement, the Buyer shall return any Completion and Performance Security it holds within twenty (20) Business Days following receipt of a written request from 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.

Section 9.5 Remedies for Termination Non-Exclusive

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

Section 9.6 Optional Termination

- (a) Notwithstanding any other provision of this Agreement, prior to the Commercial Operation Date the Buyer may terminate this Agreement in its sole and absolute discretion and for any reason

whatsoever (a “**Optional Termination**”) by providing one hundred and eighty (180) days’ written notice to the Supplier. In the event of notice being given by the Buyer in accordance with this Section 9.6(a), the Buyer shall be entitled, in its sole and absolute discretion, at any time before the expiration of such notice, to issue a Stop Work Notice whereupon the Supplier shall forthwith permanently refrain from commencing and shall cease development, construction and operation of the Project. A Stop Work Notice may further require the Decommissioning of the Project or Facility and Site.

- (b) If a Optional Termination occurs after the Buyer has notified the Supplier in writing that all Key Development Milestones for the Project have been met pursuant to Section 2.2(d), the Buyer shall (subject to and in accordance with this Section 9.6) pay to the Supplier the Optional Termination Sum. Subject to Section 9.6(c), the “**Optional Termination Sum**” shall be an amount equal to the aggregate of:
- (i) any amounts accruing due and payable by the Buyer to the Supplier under this Agreement up to and including the Termination Date which have not yet been paid;
 - (ii) the Senior Debt Amount and the Senior Debt Makewhole as at the Termination Date;
 - (iii) the Junior Debt Amount and the Junior Debt Makewhole as at the Termination Date;
 - (iv) the Employee Termination Payments, Subcontractor Losses and Landowner Losses, each as at the Termination Date;
 - (v) the Equity Capital invested in the Project as at the Termination Date (to the extent that such Equity Capital has been applied by the Supplier for the purposes of the Project), together with an amount which, if paid on the Termination Date and taken together with all dividends and other Distributions paid on or made in respect of the Equity Capital on or before the Termination Date and taking account of the actual timing of all such investments and payments but, in any event, excluding all amounts (whether for costs, overhead, profit or otherwise) after the Termination Date, gives a nominal after-tax internal average annual rate of return to the Termination Date equal to the Equity IRR on the amount paid for such Equity Capital;
 - (vi) subject to Section 9.6(e), all Decommissioning Costs; and
 - (vii) any reasonable costs properly incurred by Supplier to wind up its operations solely in connection with the Project;

LESS the aggregate of the following, to the extent it is a positive amount, without double counting:

- (viii) to the extent that any of the following amounts relate to the Project or to the carrying out by the Supplier of its obligations under this Agreement, all credit balances in any bank accounts held by or on behalf of the Supplier on the Termination Date and the value of any insurance proceeds due on the Termination Date to the Supplier or to which the Supplier would have been entitled had insurance been maintained in accordance with the requirements of this Agreement (except where such insurance proceeds are to be applied in reinstatement, restoration or replacement or, in the case of third party legal liability, in satisfaction of the claim, demand, proceeding or liability) and any sums due and payable to the Supplier from third parties as at the Termination Date other than sums wholly

unrelated to the Project but excluding any claims under any subcontracts or claims against other third parties which have not been determined or have been determined but not yet paid, provided that, in such case, the Supplier shall assign any such rights and claims under the applicable subcontracts or claims against other third parties (other than claims against third parties that are wholly unrelated to the Project and this Agreement) to the Buyer and, at no additional cost to the Supplier, provide the Buyer with reasonable assistance in prosecuting such claims;

- (ix) the Fair Market Value as at the Termination Date of any other rights and assets of the Supplier in respect of the Project or used principally for the purposes of carrying out its obligations under this Agreement less liabilities of the Supplier properly incurred in relation to the Project or in carrying out its obligations under this Agreement as at the Termination Date, provided that no account shall be taken of any liabilities and obligations of the Supplier arising out of:
 - (A) agreements or arrangements entered into by the Supplier to the extent that such agreements or arrangements were not entered into in connection with the Supplier's obligations in relation to the Project or in carrying out its obligations under this Agreement; or
 - (B) agreements or arrangements entered into by the Supplier other than in the ordinary course of business and on commercial Arm's Length terms, save to the extent that liabilities and obligations would have arisen if such agreements or arrangements had been entered into in the ordinary course of business and on commercial Arm's Length terms; and
- (x) amounts which the Buyer is entitled to set off pursuant to Section 18.5 or otherwise pursuant to the Buyer's rights of set off under this Agreement,

provided that the Optional Termination Sum (y) shall, notwithstanding any other provision of this Agreement, never be less than the aggregate of the Senior Debt Amount, the Senior Debt Makewhole, the Junior Debt Amount and the Junior Debt Makewhole, and (z) shall be grossed up for any Taxes payable on the Optional Termination Sum paid to the Supplier in accordance with Section 9.6(f) and Exhibit H.

- (c) The Optional Termination Sum and other amounts payable to Supplier under this Section 9.6 shall be calculated without duplication or double counting of amounts. The Supplier shall have a duty to take reasonable steps to mitigate any losses, liabilities, costs, expenses and damages incurred as a result of the Optional Termination or payment of the Optional Termination Sum, and the Optional Termination Sum and other amounts payable to Supplier under this Section 9.6 will not include compensation or payment for amounts which are attributable to a failure by the Supplier to take such reasonable steps to mitigate. The duty to take reasonable steps to mitigate shall include a requirement that the Senior Debt Makewhole and Junior Debt Makewhole amounts payable if a Optional Termination occurs shall be calculated or determined on terms no more onerous to the Supplier or its Affiliate than would apply if any other event of default or termination event occurs under the applicable Lending Agreement(s). Subject only to the preceding sentence, the duty to take reasonable steps to mitigate shall not otherwise cause the Optional Termination Sum to be less than the aggregate of the Senior Debt Amount, Senior Debt Makewhole, Junior Debt Amount and Junior Debt Makewhole or limit the obligations of the Buyer under this Agreement to pay these sums as provided for in this Agreement.

- (d) As soon as practicable and in any event within thirty (30) days after the Termination Date the Supplier shall give to the Buyer an invoice for the Optional Termination Sum and sufficient supporting evidence, reasonably satisfactory to the Buyer, justifying the amount of the Optional Termination Sum claimed by the Supplier including a detailed breakdown of each of the individual amounts or items comprising such sum and demonstrating to the satisfaction of the Buyer, acting reasonably, that all such amounts and items pertain directly to, or were incurred directly in connection with, the Project. Subject to Section 9.6(g) the Buyer shall pay to the Supplier within sixty (60) days of the Invoice Date (the “**Optional Termination Sum Payment Date**”).
- (i) on account of the Optional Termination Sum, an amount equal to the greater of
 - (A) 90% of the Optional Termination Sum; and
 - (B) the aggregate of the Senior Debt Amount, the Senior Debt Makewhole, the Junior Debt Amount and Junior Debt Makewhole;
 - (ii) to the extent substantiated and verified to the satisfaction of the Buyer, acting reasonably,
 - (A) any amounts on account of interest, fees, costs and expenses provided for in the definitions of Senior Debt Amount, Senior Debt Makewhole, Junior Debt Amount and Junior Debt Makewhole accrued or incurred during the period from (but excluding) the Termination Date to (and including) the Optional Termination Sum Payment Date; and
 - (B) interest at a rate per annum equal to the Equity IRR on the portion, if any, of the Optional Termination Sum which exceeds the aggregate of the Senior Debt Amount, the Senior Debt Makewhole, the Junior Debt Amount and Junior Debt Makewhole to the extent attributable to the Equity Capital and Equity IRR amounts included in the calculation of the Optional Termination Sum pursuant to Section 9.6(b)(v), from (but excluding) the Termination Date to (and including) the Optional Termination Sum Payment Date; and
 - (iii) interest at the No Default Interest Rate on the balance, if any, of the Optional Termination Sum from (but excluding) the Termination Date to (and including) the Optional Termination Sum Payment Date.

If any undisputed element of the Optional Termination Sum payable on the Optional Termination Sum Payment Date or any such element which is disputed by the Buyer but subsequently determined pursuant to Section 9.6(g) to be properly payable as part of the Optional Termination Sum payable on the Optional Termination Sum Payment Date is not paid by the Optional Termination Sum Payment Date, the Buyer shall pay to the Supplier additional sums referenced in Sections 9.6(d)(ii) and (iii) applicable to such disputed or undisputed element which accrue or are incurred (or which would have accrued or been incurred had it not been paid from another source) during the period from (but excluding) the Optional Termination Sum Payment Date to (and including) the actual date on which such element is paid. Payment of the remaining balance of the Optional Termination Sum (the “**Optional Termination Sum Holdback Amount**”), if any, shall be subject to and made in accordance with Section 9.6(f). Interest shall accrue at a rate per annum equal to the Equity IRR on the Optional Termination Sum Holdback Amount from (but excluding) the Optional Termination Sum Payment Date to (and including) the Optional Termination Sum True Up Payment Date to the extent that the Optional Termination Sum

Holdback Amount is determined to be payable to the Supplier pursuant to Section 9.6(f). Whether or not any Optional Termination Sum is payable by the Buyer to the Supplier, the Buyer shall return any Completion and Performance Security held by the Buyer to the Supplier within twenty (20) Business Days following receipt of a written request therefor made by the Supplier following the Termination Date, net of any amounts owing by the Supplier to the Buyer.

- (e) The inclusion of amounts for Decommissioning Costs in Section 9.6(b)(vi) or Section 9.6(f)(vi) in the calculation or recalculation of Optional Termination Sum shall be conditional upon delivery prior to the Termination Date or Optional Termination Sum True-Up Date, as applicable, of a certificate of an Independent Engineer in the Prescribed Form acceptable to the IESO and confirming that Decommissioning is complete.
- (f) No later than thirty (30) days following the date that is eighteen (18) months after the Optional Termination Sum Payment Date (eighteen (18) months after the Optional Termination Sum Payment Date being, the “**Optional Termination Sum True Up Date**”), the Supplier shall provide verification and sufficient supporting evidence, reasonably satisfactory to the Buyer, confirming the following:
 - (i) amounts paid for Decommissioning Costs determined as at the Optional Termination Sum True Up Date;
 - (ii) any reasonable costs properly incurred by Supplier to wind up its operations solely in connection with the Project determined as at the Optional Termination Sum True Up Date;
 - (iii) gross up amounts for any Taxes payable on the Optional Termination Sum and other amounts paid by the Buyer to the Supplier under this Section 9.6 determined in accordance with Exhibit H as at the Optional Termination Sum True Up Date; and
 - (iv) any Equity Capital invested in the Project after the Termination Date up to the Optional Termination Sum True Up Date required for payment of Decommissioning Costs or Taxes payable on the Optional Termination Sum and other amounts paid by the Buyer to the Supplier under this Section 9.6;

including a detailed breakdown of such amounts and demonstrating to the satisfaction of the Buyer, acting reasonably, that such amounts were validly and properly incurred and have been paid. Subject to Section 9.6(g), the Optional Termination Sum will be recalculated on the same basis as determined following the Termination Date (including following resolution of any dispute pursuant to Section 9.6(g)) except that:

- (v) the Equity Capital amount referred in clause (iv) of this subsection (f) together with interest at a rate per annum equal to the Equity IRR on such Equity Capital from (but excluding) the date invested to (and including) the Optional Termination Sum True Up Payment Date shall be included in the calculation in Section 9.6(b)(v);
- (vi) subject to Section 9.6(e), the Decommissioning Cost amount referred to in clause (i) of this subsection (f) shall be included in Section 9.6(b)(vi);
- (vii) any reasonable costs properly incurred by Supplier to wind up its operations solely in connection with the Project referred to in clause (ii) of this subsection (f) shall be included in the calculation of Section 9.6(b)(vii); and

- (viii) the gross up amount for Taxes referred to in clause (iii) of this subsection (f) shall be added before the deductions in Sections 9.6(b)(viii), (ix) and (x).

Following such recalculation of the Optional Termination Sum, there shall be a true up of sums payable under this Section 9.6, including payments of the Optional Termination Sum Holdback Amount and accrued interest thereon, and the net sum owing or payable by the Buyer or Supplier to the Supplier or Buyer, as applicable (the “**Optional Termination Sum True Up Payment**”) shall, subject to Section 9.6(g) and any set offs provided for in Section 18.5, be paid within sixty (60) days following the date the Buyer confirms acceptance of the information and supporting evidence referenced above (the “**Optional Termination Sum True Up Payment Date**”). If any undisputed element of the Optional Termination Sum True Up Payment or any such element which is disputed but subsequently determined pursuant to Section 9.6(g) to be properly payable as part of the Optional Termination Sum True Up Payment, the Buyer or Supplier, as applicable, shall pay interest on such element at the No Default Interest Rate from (but excluding the Optional Termination Sum True Up Payment Date) to (and including) the actual date on which the element is paid. Except as provided in this Section 9.6(f), the Buyer shall not be required to make any payments in respect of Decommissioning Costs or gross up amounts for Taxes following the Optional Termination Sum True Up Date.

- (g) Any dispute with respect to the calculation or determination of the Optional Termination Sum (including, without limitation, the validity or amount of the sum claimed or of any items which the Supplier claims should be included in such sum) and any other amount payable to Supplier under this Section 9.6 shall be determined in accordance with the procedures set out in Section 15.1 and Section 15.2. For greater certainty, if the Parties cannot reach a settlement following the Senior Conference, the dispute will proceed to mandatory and binding arbitration pursuant Section 15; provided however that, if the Supplier fails to participate in such arbitration, the Supplier shall be deemed to have waived its right to participate in such arbitration, which shall nevertheless proceed, and the Supplier shall be bound by the award of the Arbitration Panel.
- (h) Except as otherwise provided in Section 9.6(i), any Optional Termination Sum and other sums paid pursuant to this Section 9.6, or any amount paid by the Buyer pursuant to Section 9.6(j), shall be in full and final settlement of any claims, demands and proceedings of the Supplier and the Buyer (including, without limitation, any claims, demands or proceedings with respect to any anticipated profits arising from the operation of the Facility after the Termination Date), and each shall be released from all liability to the other in relation to any breaches or other events leading to such termination of this Agreement, and the circumstances leading to such breach or termination, and the Supplier and the Buyer shall be precluded from exercising all other rights and remedies in respect of any such breach or termination whether in contract, tort, restitution, statute, at common law or otherwise.
- (i) Section 9.6(h) shall be without prejudice to:
 - (i) any liability of either Party to the other, including under the indemnities contained in this Agreement, that arose prior to the Termination Date (but not from the Optional Termination itself or the events leading to such Optional Termination) to the extent such liability has not already been set off pursuant to Section 18.5 (or otherwise pursuant to the Buyer’s rights of set off under the Agreement) or taken into account in determining or agreeing upon the Optional Termination Sum or other sums payable under this Section 9.6; or

- (ii) any liabilities arising under or in respect of any breach by either Party of their obligations under Section 18.3 of this Agreement, or the Sections referred to therein, which did not lead to such Optional Termination and which arise or continue after the Termination Date.

- (j) If a Optional Termination occurs prior to the date the Buyer notifies the Supplier in writing that all Key Development Milestones for the Project have been met pursuant to Section 2.2(d), the Supplier shall provide to the Buyer a written statement documenting the Pre-Construction Development Costs incurred prior to the Termination Date. The Buyer shall thereafter pay to the Supplier as the sole and exclusive remedy for terminating this Agreement in accordance with this Section 9.6(j), an amount equal to the Pre-Construction Development Costs set out in such statement, as confirmed by the Buyer, acting reasonably, and in any case the amount shall not exceed the Pre Construction Liability Limit. For greater certainty, the Supplier acknowledges that any costs it may incur in excess of the Pre Construction Liability Limit prior to the date the Buyer notifies the Supplier in writing that all Key Development Milestones for the Project have been met pursuant to Section 2.2(d) are the exclusive responsibility of the Supplier and shall not be included in any such payment.

- (k) Notwithstanding anything to the contrary in this Section 9.6, the Buyer may, in accordance with Section 14.2, request additional information or documentation relating to any Optional Termination, the Optional Termination Sum, or the Optional Termination Sum True-up Payment. Where the Supplier fails to provide such information or documentation to the satisfaction of the Buyer, acting reasonably, the Buyer may impose such assumptions as the Buyer deems appropriate in the circumstances.

- (l) **“Invoice Date”** means the date that is the later of:
 - (i) the date on which the Buyer receives an invoice from the Supplier for the Optional Termination Sum pursuant to Section 9.6(d); and
 - (ii) the date on which the Buyer receives reasonably satisfactory supporting evidence as required pursuant to Section 9.6(d).

ARTICLE 10 FORCE MAJEURE

Section 10.1 Effect of Invoking Force Majeure

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

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.

- (b) A Party shall be deemed to have invoked Force Majeure with effect from the commencement of the event or circumstances constituting Force Majeure when that Party gives to the other Party prompt written notice in substantially the Prescribed Form, provided that such notice shall be given within twenty (20) Business Days of the later of (i) the commencement of the event or circumstances constituting Force Majeure or (ii) the date that the Party invoking Force Majeure knew or ought to have known that the event or circumstances constituting Force Majeure could have a Material Adverse Effect on the development or operation of the Contract Facility. If the effect of the Force Majeure and full particulars of the cause thereof cannot be reasonably determined within such twenty (20) 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 Prescribed Form to the other Party.
- (c) The Party invoking Force Majeure shall use Commercially Reasonable Efforts to remedy the situation and remove, so far as possible and with reasonable dispatch, the Force Majeure, but settlement of strikes, lockouts and other labour disturbances shall be wholly within the discretion of the Party involved. Upon the request of the Buyer, the Supplier shall: (i) provide to the Buyer information and documentation confirming to the satisfaction of the Buyer, acting reasonably, that such Commercially Reasonable Efforts were used, and (ii) represent and warrant that such information and documentation are true, complete and accurate in all material respects and that no material information is omitted that would make such information or documentation misleading or inaccurate.
- (d) The Party invoking Force Majeure shall give prompt written notice of the termination of the event of Force Majeure, provided that such notice shall be given within twenty (20) Business Days of the termination of the event or circumstances constituting Force Majeure.
- (e) Nothing in this Section 10.1 shall relieve a Party of its obligations to make payments of any amounts that were due and owing before the occurrence of the Force Majeure or that otherwise may become due and payable during any period of Force Majeure.
- (f) If an event of Force Majeure causes the Supplier to not achieve Commercial Operation by the Milestone Date for Commercial Operation, then the Milestone Date for Commercial Operation shall be extended for such reasonable period of delay directly resulting from such Force Majeure event. After the Commercial Operation Date, an event of Force Majeure shall not extend the Term.
- (g) Where a Supplier has invoked Force Majeure as provided in Section 10.1(b) and where such period or periods of Force Majeure (as determined with respect to each such period from the date the Force Majeure was deemed to be invoked under Section 10.1(b) until the termination of the event or circumstances constituting Force Majeure as provided in Section 10.1(d)) were in effect (whether prior to or during the Term) for:
 - (i) where Exhibit B provides that the original Milestone Date for Commercial Operation is the date that is three (3) years following the Contract Date, eighteen (18) months in the

case of a single such period, and for an aggregate of more than twenty-four (24) months in the case of more than one such period;

- (ii) where Exhibit B provides that the original Milestone Date for Commercial Operation is the date that is four (4) years following the Contract Date, twenty-four (24) months in the case of a single such period, and for an aggregate of more than thirty-six (36) months in the case of more than one such period;
- (iii) where Exhibit B provides that the original Milestone Date for Commercial Operation is the date that is eight (8) years following the Contract Date, thirty-six (36) months in the case of a single such period, and for an aggregate of more than forty-eight (48) months in the case of more than one such period;

then notwithstanding anything in this Agreement to the contrary, either Party may terminate this Agreement upon notice to the other Party and without any costs or payments of any kind to either Party, and all Completion and Performance Security shall be returned or refunded (as applicable) to the Supplier forthwith or in the case of security in the form of a letter of credit, returned for cancellation.

Section 10.2 Exclusions

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

- (a) if and to the extent the Party seeking to invoke Force Majeure or its Affiliate has caused the applicable event of Force Majeure by its fault or negligence;
- (b) if and to the extent the relevant act, event, cause or condition was within the reasonable control of the Party seeking to invoke Force Majeure;
- (c) if and to the extent the Party is seeking to invoke Force Majeure as a result of the failure of performance of any other third party that is or was a direct or indirect vendor, materials supplier, service provider or other supplier, or customer, to or of such Party, unless such failure of performance of such third party was itself caused by an event that would be considered an event of Force Majeure under this Agreement, *mutatis mutandis*;
- (d) if and to the extent the Party is seeking to invoke Force Majeure because it is unable to procure or maintain any fuel supply to be utilized by the Facility;
- (e) 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);
- (f) if and to the extent that the Supplier is seeking to invoke Force Majeure because it is able to sell any of the Delivered Electricity on more advantageous terms to a third-party buyer;
- (g) if and to the extent that the Party seeking to invoke Force Majeure because of arrest or restraint by a Governmental Authority, such arrest or restraint was the result of a breach of or failure to comply with Laws and Regulations by such Party;

- (h) if the Force Majeure was caused by a lack of funds or other financial cause including the inability of the Supplier to secure financing;
- (i) if the Party invoking Force Majeure fails to comply with the notice provisions in Section 10.1(b) or Section 10.1(d);
- (j) if a notice has been served upon the Director and the Tribunal (as those terms are defined in the Environmental Protection Act) under Section 142.1 of the Environmental Protection Act to require a hearing by the Tribunal in respect of a decision made by the Director to issue a Renewable Energy Approval in respect of the Project (an “**Appeal**”), unless the Supplier is ordered by the Tribunal to cease construction of the Facility for the duration of the Appeal; or
- (k) if and to the extent the Party is seeking to invoke Force Majeure because of its inability to obtain any consent, amendment or other approval of the Buyer pursuant to the terms of this Agreement.

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

Section 10.3 Definition of Force Majeure

For the purposes of this Agreement, the term “**Force Majeure**” means any act, event, cause or condition that prevents a Party from performing its obligations (other than payment obligations) hereunder, but only if and to the extent such event or circumstance could not reasonably have been anticipated as at the Contract Date and is beyond the affected Party’s reasonable control and not caused, directly or indirectly, by fault or negligence of the Party seeking to have its performance obligation excused thereby, and shall include:

- (a) acts of God, including extreme wind, ice, lightning or other storms, earthquakes, tornadoes, hurricanes, cyclones, landslides, drought, floods and washouts;
- (b) fires or explosions;
- (c) local, regional or national states of emergency;
- (d) strikes and other labour disputes (other than legal strikes or labour disputes by employees of (i) such Party, or (ii) a third party contractor of such Party, unless, in either such case, such strikes or other labour disputes are the result or part of a general industry strike or labour dispute);
- (e) delays or disruptions (including those arising from events of Force Majeure referred to in this Section 10.3) in the construction of any Transmission System or Distribution System assets that are required for the Facility to Deliver Electricity;
- (f) civil disobedience or disturbances, war (whether declared or not), acts of sabotage, blockades, insurrections, terrorism, revolution, riots or epidemics;
- (g) subject to Section 10.2(g), an order, judgment, legislation, ruling or direction by Governmental Authorities restraining a Party, provided that the affected Party has not applied for or assisted in the application for and has used Commercially Reasonable Efforts to oppose said order, judgment, legislation, ruling or direction; and

- (h) an inability to obtain, or to secure the renewal or amendment of, any permit, certificate, Impact Assessment, licence or approval of any Governmental Authority, Transmitter or LDC required to perform or comply with any obligation under this Agreement, unless the revocation or modification of any such necessary permit, certificate, Connection Impact Assessment, licence or approval was caused by the action or inaction of the Party invoking Force Majeure.

ARTICLE 11 LENDER'S RIGHTS

Section 11.1 Lender Security

Notwithstanding Section 16.1, the Supplier, from time to time on or after the date of this Agreement shall have the right, at its cost, to enter into a Secured Lender's Security Agreement. For greater certainty, in the case of a deed of trust or similar instrument securing bonds or debentures where the trustee holds security on behalf of, or for the benefit of, other lenders, only the trustee shall be entitled to exercise the rights and remedies under the Secured Lender's Security Agreement as the Secured Lender on behalf of the lenders. A Secured Lender's Security Agreement shall be based upon and subject to the following conditions:

- (a) A Secured Lender's Security Agreement may be made for any amounts and upon any terms (including terms of the loans, interest rates, payment terms and prepayment privileges or restrictions) as desired by the Supplier, except as otherwise provided in this Agreement.
- (b) A Secured Lender's Security Agreement may not secure any indebtedness, liability or obligations 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, except in relation to one or more renewable generating facilities (excluding any such facility that is the subject to of a contract under the microFIT Program) in Ontario that are the subject of a contract with the Buyer and that are owned by the Supplier or an Affiliate thereof. For greater certainty, a Secured Lender's Security Agreement may cover shares or partnership interests in the capital of the Supplier.
- (c) 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 recognized by the Buyer nor have status as such hereunder 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 recognized by the Buyer nor shall the assignee thereunder have the status of a Secured Lender hereunder 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 written notice of such default to the Buyer at least ten (10) 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 11.
- (g) Any number of permitted Secured Lender's Security Agreements may be outstanding at any one time, provided that each such Secured Lender's Security Agreement complies with the provisions of this Article 11.
- (h) All rights acquired by a Secured Lender under any Secured Lender's Security Agreement shall be subject to all of the provisions of this Agreement, including the restrictions on assignment contained herein. While any Secured Lender's Security Agreement is outstanding, the Buyer and the Supplier shall not amend or supplement this Agreement or agree to a termination of this Agreement without the consent of the Secured Lender, which consent shall not be unreasonably withheld, conditioned, or delayed. Prior to any such amendment, supplement or termination, the Supplier shall provide to the Buyer such Secured Lender's consent in writing. A Secured Lender must respond within a reasonable period of time to any request to amend or supplement this Agreement.
- (i) Despite any enforcement of any Secured Lender's Security Agreement, the Supplier shall remain liable to the 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.

Section 11.2 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 11.1(d) and the contents thereof are embodied in the agreement entered into by the Buyer in accordance with Section 11.3, the following provisions shall apply:

- (a) No Supplier Event of Default (other than those referred to in Section 9.2(c)) shall be grounds for the termination by the Buyer of this Agreement until:
 - (i) any notice required to be given under Section 9.1 and Section 9.2(a) has been given to the Supplier and to the Secured Lender; and
 - (ii) the cure period set out in Section 11.2(b) has expired without a cure having been completed and without the Secured Lender having taken the actions therein contemplated.
- (b) In the event the Buyer has given any notice required to be given under Section 9.1, the Secured Lender shall, within the applicable cure period (including any extensions), if any, have the right (but not the obligation) to cure such default, and the 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 this Section 11.2. A Secured Lender may, subject to the provisions of this Agreement, enforce any Secured Lender's Security Agreement and acquire the Supplier's Interest in any lawful way and, without limitation, a Secured Lender or its nominee or agent or a receiver or receiver and manager appointed by or on the application of the Secured Lender, may take possession of and manage the Facility and, upon foreclosure, or without foreclosure upon exercise of any contractual or statutory power of sale under such Secured Lender's Security Agreement, may sell or assign the Supplier's Interest with the consent of the Buyer as required under Section 11.2(f).
- (e) Until a Secured Lender (i) forecloses or has otherwise taken ownership of the Supplier's Interest or (ii) has taken possession or control of the Supplier's Interest, whether directly or by an agent as a mortgagee in possession, or a receiver or a 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 receiver and manager appointed by or on the application of the Secured Lender, is the owner or is in control or possession of the Supplier's Interest, then the entity that is the owner or is in control or possession of the Supplier's Interest shall be bound by all of the Supplier's obligations. Once the Secured Lender or such other Person goes out of possession or control of the Supplier's Interest or transfers the Supplier's Interest in accordance with this Agreement to another Person who is at Arm's Length with the Secured Lender, the Secured Lender shall cease to be liable for any of the Supplier's obligations and shall cease to be entitled to any of the Supplier's rights and benefits contained in this Agreement, except, if the Secured Lender's Security Agreement remains outstanding, by way of security.
- (f) Despite anything else contained in this Agreement, the Secured Lender agrees that it shall not transfer, sell or dispose of the Supplier's Interest or any other interest in the Contract Facility or shares or partnership interests in the capital of the Supplier to any Person unless such transferee or purchaser takes the Supplier's Interest or other applicable interest subject to the Supplier's obligations pursuant to this Agreement. No transfer shall be effective unless the 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, in the case of a transfer, sale or disposal of the Supplier's Interest or any other interest in the Facility, approved of the transferee or purchaser and the transferee or purchaser has entered into an agreement with the Buyer in form and substance satisfactory to the Buyer, acting reasonably, wherein the transferee or purchaser agrees to assume and to perform the obligations of the Supplier in respect of the Supplier's Interest or the other applicable interest, whether arising before or after the transfer, sale or disposition and including the posting of the Completion and Performance Security, if any, required under Article 5, and in the case of a transfer, sale or disposal of shares or partnership interests in the capital of the Supplier, such a transfer, sale or disposal shall, other than in the circumstances described in Section 11.2(g), be subject to Section 16.2.

- (g) In the event of the termination of this Agreement prior to the end of the Term due to a Supplier Event of Default, the Buyer shall, within twenty (20) Business Days after the date of such

termination, deliver to each Secured Lender that 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 11, each such Secured Lender or its transferee approved by the Buyer pursuant to Section 11.2(f) 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 shall have the applicable cure period commencing on the date that it obtains possession to cure such default.

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

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

Section 11.3 Cooperation

The Buyer and the Supplier shall enter into an agreement with any Secured Lender substantially in the Prescribed Form for the purpose of implementing the Secured Lender's Security Agreement protection

provisions contained in this Agreement. A Secured Lender will have no rights under this Agreement unless and until it enters into the Prescribed Form with the Buyer and the Supplier 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 12 DISCRIMINATORY ACTION

Section 12.1 Discriminatory Action

A "**Discriminatory Action**" shall occur if:

- (a) 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 the Government of Ontario causes to come into force or makes any order-in-council or regulation first having legal effect on or after the date of the submission of the Proposal; or
- (b) the Legislative Assembly of Ontario directly or indirectly amends this Agreement without the agreement of the Supplier;
- (c) the effect of the action referred to in Section 12.1(a) is either:
 - (i) borne principally by the Supplier; or
 - (ii) borne principally by the Supplier and one or more Other Suppliers who have a LRP I Contract or another bilateral arrangement with the Buyer similar in nature to this Agreement; and
- (d) such action increases the costs that the Supplier would reasonably be expected to incur under this Agreement in respect of Delivering Electricity, except where such action is in response to any act or omission on the part of the Supplier that is contrary to Laws and Regulations (other than an act or omission rendered illegal by virtue of such action) or such action is permitted under this Agreement.
- (e) Notwithstanding the foregoing, none of the following shall be a Discriminatory Action:
 - (i) Laws and Regulations of general application, including an increase of Taxes of general application, or any action of the Government of Ontario pursuant thereto;
 - (ii) any such statute that prior to five (5) Business Days prior to the Contract Date:
 - (A) has been introduced as a government 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 government bill in becoming such statute do not have a Material Adverse Effect on the Supplier; or

- (B) has been made public in a discussion or consultation paper, press release or announcement issued by the Buyer, the Government of Ontario and/or the Ministry of Energy that appeared on the website of the Buyer, the Government of Ontario and/or the Ministry of Energy, provided that any amendments made to such public form, in becoming such statute, do not have a Material Adverse Effect on the Supplier;
- (iii) any of such regulations that prior to five (5) Business Days prior to the Contract Date:
 - (A) have been published in the Ontario Gazette but by the terms of such regulations come into force on or after five (5) Business Days prior to Contract Date; or
 - (B) have been referred to in a press release issued by the Buyer, the Government of Ontario and/or the Ministry of Energy that appeared on the website of the Buyer, the Government of Ontario or the Ministry of Energy provided that any amendments made to such regulations in coming into force do not have a Material Adverse Effect on the Supplier;
- (iv) any new orders-in-council or regulations, the authority for the promulgation of which was created by the *Green Energy and Green Economy Act, 2009* (Ontario), or the first amendment to any existing regulation, where the authority for such amendment was created by the *Green Energy and Green Economy Act, 2009* (Ontario); and
- (v) the coming into force of any aspect of Bill 14 or any new orders-in-council or regulations, the authority for the promulgation of which was created by Bill 14, or the first amendment to any existing regulation, where the authority for such amendment was created by Bill 14.

Section 12.2 Consequences of Discriminatory Action

To the extent that there is a Discriminatory Action following the date hereof, which Discriminatory Action has the effect of materially affecting the Supplier's Economics, then:

- (a) the Supplier may, within sixty (60) days following the date of the Discriminatory Action, notify the Buyer that such Discriminatory Action materially affects the Supplier's Economics. For greater certainty, if a Supplier does not provide notice within sixty (60) days following the date of the Discriminatory Action, then the Supplier shall not be entitled to any amendments to this Agreement as a result of such Discriminatory Action;
- (b) the Supplier shall, with sixty (60) days following the date of any notice sent pursuant to Section 12.2(a), provide the Buyer all such information as may be required or otherwise requested by the Buyer to assess the impact of such Discriminatory Action on the Supplier's Economics;
- (c) the Buyer shall, within sixty (60) days following receipt of all information required to be provided by the Supplier and those Other Suppliers that are required to provide information pursuant to Section 12.2(b), but in any event no later than one hundred and twenty (120) days following receipt of all information required to be provided by the Supplier, either:
 - (i) advise the Supplier that the applicable Discriminatory Action does not have the effect of materially affecting the Supplier's Economics; or

- (ii) propose amendments to this Agreement and the respective agreements of any Other Suppliers that are so affected, on the basis that such amendments together with the Discriminatory Action will substantially reflect the Supplier's Economics as contemplated hereunder and, at the Buyer's discretion, that of such Other Suppliers, prior to the Discriminatory Action;
- (d) if by the date that is sixty (60) days following the date that the Buyer proposes amendments to this Agreement in accordance with Section 12.2(c)(ii), the Parties do not agree to the amendments proposed, or do not agree as to whether a Discriminatory Action has the effect of materially affecting the Supplier's Economics, as applicable, then the Parties and, at the Buyer's discretion, such Other Suppliers who are so affected, that are required by the Buyer to participate, shall engage in good faith negotiations to reach agreement;
- (e) if by the date that is one hundred and twenty (120) days following the date that the Buyer makes a determination or proposes amendments in accordance with Section 12.2(c)(ii), as applicable, the Parties fail to reach agreements on any amendments described in Section 12.2(d) or do not agree as to whether a Discriminatory Action has the effect of materially affecting the Supplier's Economics, as applicable, 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 F. 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.

Section 12.3 Right of the Buyer to Remedy 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 date of receipt of the notice of the Discriminatory Action. 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 the Discriminatory Action. 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, compensation for any detrimental effect the Discriminatory Action had on the Supplier's Economics, adjusted to apply only to the period during which the Discriminatory Action detrimentally affected the Supplier's Economics.

ARTICLE 13 LIABILITY AND INDEMNIFICATION

Section 13.1 Exclusion of Consequential Damages

Notwithstanding anything contained herein to the contrary, neither Party will be liable under this Agreement or under any cause of action relating to the subject matter of this Agreement for any special, indirect, incidental, punitive, exemplary or consequential damages, including loss of profits (save and except as provided in Section 1.8, Section 1.9(d), Section 2.11, and Section 12.2), loss of use of any property or claims of customers or contractors of the Parties for any such damages.

Section 13.2 Liquidated Damages

Nothing in this Article 13 shall reduce a Party's claim for liquidated damages pursuant to Section 9.2(d). The Supplier acknowledges and agrees that it would be extremely difficult and impracticable to determine precisely the amount of actual damages that would be suffered by the Buyer and the Ontario ratepayer as result of a failure by the Supplier to meet its obligations under this Agreement. The Supplier further acknowledges and agrees that the liquidated damages set forth in this Agreement are a fair and reasonable approximation of the amount of actual damages that would be suffered by the Buyer and the Ontario ratepayer as a result of a failure by the Supplier to meet its obligations under this Agreement, and does not constitute a penalty.

Section 13.3 Buyer Indemnification

The Supplier shall indemnify, defend and hold 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, losses, damages, liabilities, penalties, obligations, payments, costs and expenses and accrued interest thereon (including the costs and expenses of, and accrued interest on, any and all actions, suits, proceedings for personal injury (including death) or property damage, assessments, judgments, settlements and compromises relating thereto and reasonable lawyers' fees and reasonable disbursements in connection therewith) (each, an "**Indemnifiable Loss**"), asserted against or suffered by the Indemnitees relating to, in connection with, resulting from, or arising out of (i) any occurrence or event relating to the Facility, except to the extent that any injury or damage is attributable to the negligence or wilful misconduct of the Indemnitees or the failure of the Indemnitees to comply with Laws and Regulations, (ii) any breach by the Supplier of any representations, warranties and covenants contained in this Agreement, except to the extent that any injury or damage is attributable to the negligence or wilful misconduct of the Indemnitees, and (iii) a discharge of any contaminant into the natural environment, at or related to, the Facility and any fines or orders of any kind that may be levied or made in connection therewith pursuant to Laws and Regulations, except to the degree that such discharge shall have been due to the negligence or wilful misconduct of the Indemnitees. For greater certainty, in the event of contributory negligence or other fault of the Indemnitees, then such Indemnitees shall not be indemnified hereunder in the proportion that the Indemnitees' negligence or other fault contributed to any Indemnifiable Loss.

Section 13.4 Defence of Claims

- (a) Promptly after receipt by the Indemnitees of any Claim or notice of the commencement of any action, administrative or legal proceeding, or investigation as to which the indemnity provided for in Section 13.3 may apply, the 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) Business Days prior to the deadline for responding to any Claim relating to any Indemnifiable Loss.

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

ARTICLE 14 CONTRACT OPERATION AND ADMINISTRATION

Section 14.1 Company Representative

The Supplier and the Buyer shall, by notice substantially in the Prescribed Form, 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 Representative shall not have the power or authority to amend this Agreement solely by virtue of his or her position as Company Representative.

Section 14.2 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 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 7 of this Agreement, shall provide reasonable access to the relevant and appropriate financial and operating records and data kept by such Party relating to this Agreement reasonably required for the other Party to comply with its obligations to Governmental Authorities or to verify or audit information provided in accordance with this Agreement including, the provision of copies of documents and all other information reasonably required by the Buyer or its Representatives, which shall be delivered to the premises of the Buyer or its Representatives as directed by the Buyer. Moreover, the Supplier agrees and consents to the System Operator, an LDC or any relevant third party providing to the Buyer all relevant meter and invoice data regarding the Facility required by the Buyer in order to (i) verify the amount of Annual Forgone Energy, CMSC Constrained-Off Payment, Dispatch Interval Excluded Delivered Electricity Payment, Non-Compliant Forgone Energy, Forgone Energy, Monthly Excluded Delivered Electricity Payment, Monthly Forgone Energy Payment, Total Accrued Exposure and Total Forgone Energy; and (ii) confirm the details of Curtailment, Dispatch Instruction, Dispatch Instruction Rate, Grid Incapability, Ramping Dispatch Interval and (iii) substantiate the Buyer's calculations of Annual Forgone Energy, CMSC Constrained-Off Payment, Dispatch Interval Excluded Delivered Electricity Payment, Non-Compliant Forgone Energy, Forgone Energy, Monthly Excluded Delivered Electricity Payment, Monthly Forgone Energy Payment, Total Accrued Exposure and Total Forgone Energy and any other calculations and verifications that are based on information from the System Operator. A Party may use its own employees or Representatives for purposes of any such review of records, provided that those employees or Representatives are bound by the confidentiality requirements provided for in Article 7 in which case no further confidentiality agreements or arrangements need to be entered into. The Supplier

shall ensure that any confidentiality agreements or arrangements between it and any third party (including a Subcontractor, supplier or other supplier of goods or services to the Supplier) shall not have the effect of preventing, impairing or delaying any disclosure or access to or by the Buyer or any of its Representatives as contemplated in this Section 14.2.

Section 14.3 Reports to the Buyer

- (a) If the Supplier is required to report Outages directly to the System Operator or an LDC, the Supplier shall deliver to the Buyer pursuant to this Agreement a copy of all reports, plans and notices that the Supplier is required to provide to the System Operator pursuant to the IESO Market Rules or such LDC with respect to Outages, at the same time or within one (1) Business Day after such reports, plans and notices are delivered by the Supplier to the System Operator pursuant to the IESO Market Rules or the LDC, as applicable.
- (b) All Outages for the Facility that has a total Contract Capacity of more than 10 MW shall take place in accordance with the notices of Outages provided by the Supplier to the Buyer under this Section 14.3.

Section 14.4 Inspection of Project

- (a) The Buyer and its Representatives shall, at all times upon two (2) Business Days' prior notice, at any time after the Contract Date, have access to the Facility and every part thereof, and all relevant records 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 (including the right to be provided with copies of any and all written records and downloads of any and all electronic records as reasonably required) 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. The Supplier shall ensure that any confidentiality agreements or arrangements between it and any third party (including any Subcontractor, supplier or other supplier of goods or services to the Supplier) shall not have the effect of preventing, impairing or delaying any disclosure or access to or by the Buyer or any of its Representatives as contemplated in this Section 14.4.
- (b) The inspection of the Facility by or on behalf of the Buyer shall not relieve the Supplier of any of its obligations to comply with the terms of this Agreement. No Supplier Event of Default will be waived or deemed to have been waived by any inspection by or on behalf of the Buyer. In no event will any inspection by the Buyer hereunder be a representation that there has been or will be compliance with this Agreement and Laws and Regulations.

Section 14.5 Inspection Not Waiver

- (a) Failure by the Buyer to inspect the Facility or any part thereof under Section 14.4, or to exercise its audit rights under Section 14.2, shall not constitute a waiver of any of the rights of the 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 14.2 shall not constitute or be deemed to constitute a waiver of any of the rights of the Supplier hereunder. An audit not followed by a notice of a 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.

Section 14.6 Notices

- (a) All notices, consents, approvals, requests, reports and other information pertaining to this Agreement or required pursuant to this Agreement not explicitly permitted to be in a form other than writing shall be in writing and shall addressed to the other Party as follows (each, a “**Notice**”):

If to the Supplier: ●

Attention: ●
Facsimile: ●
Email: ●

and to: ●

Attention: ●
Facsimile: ●
Email: ●

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

Attention: Director, Contract Management
Facsimile: 416-969-6071
E-mail: contract.management@ieso.ca

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

- (b) Notice delivered or transmitted as provided above shall be deemed to have been given and received on the day it is received or transmitted, provided that it is received or transmitted on a Business Day prior to 5:00 p.m. local time in the place of receipt. Otherwise such Notice shall be deemed to have been given and received on the next following Business Day.
- (c) Any Notices of an Event of Default and termination of this Agreement shall only be given by hand or courier delivery.
- (d) No Notice delivered pursuant to this Agreement shall be deemed to be notice for any other purpose, including any obligation to provide notice to the System Operator pursuant to the IESO Market Rules. No Notice to the Buyer shall be deemed delivered unless the addressee of such Notice is identified in such Notice as “Contract Management”. Not Notice from the Buyer shall

be binding on the Buyer pursuant to this Agreement unless the sender of such Notice is identified in such Notice as “Contract Management”.

ARTICLE 15 DISPUTE RESOLUTION

Section 15.1 Informal Dispute Resolution

If either Party considers that any dispute has arisen under or in connection with this Agreement that the Parties cannot resolve, then such Party may deliver a notice to the other Party describing the nature and the particulars of such dispute. Within twenty (20) Business Days following delivery of such notice to the other Party, a senior executive of the Supplier shall meet with a manager of the Buyer, either in person or by telephone (the “**Senior Conference**”), to attempt to resolve the dispute. Each Party shall be prepared to propose a solution to the dispute. If, following the Senior Conference, the dispute is not resolved, the dispute may be settled by arbitration pursuant to Section 15.2, if agreed to by both Parties.

Section 15.2 Arbitration

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

ARTICLE 16 ASSIGNMENT AND CHANGE OF CONTROL

Section 16.1 Assignment

- (a) Following the Commercial Operation Date, this Agreement along with all of the rights, interests or obligations under this Agreement (including for greater certainty those rights, interests and obligations relating to Environmental Attributes) may be assigned by either Party, with the prior written consent of the other Party, which consent shall not be unreasonably withheld, except as

set out in Section 16.1(b) below and as provided in Article 11. Prior to the Commercial Operation Date, neither this Agreement nor any of the rights, interests or obligations under this Agreement may be assigned by the Supplier.

- (b) For the purposes of Section 16.1(a), it shall not be unreasonable for the Buyer to withhold its consent if the proposed assignment would (i) cause a Supplier to breach the obligation to own or lease the Facility as set out in Section 2.8(a); (ii) 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; or (iii) cause a Supplier to breach any of the obligations set out in Section 2.10(d).
- (c) Notwithstanding Section 16.1(a), other than where the subject of this Agreement is an Aboriginal Participation Project, 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 under this Agreement and be bound by the terms of this Agreement, and the arrangement and obligations of the Supplier set forth in Article 5 have been met in accordance with the terms of Article 5.
- (d) Notwithstanding Section 16.1(a), where the Facility is a Rooftop Solar Facility (for clarity, including in respect of an Aboriginal Participation Project), the Supplier may, prior to the Commercial Operation Date, assign this Agreement with the prior written consent of the Buyer, which may not be unreasonably withheld, in circumstances where the building or structure to which the Facility is affixed is being sold, transferred or otherwise conveyed to the proposed assignee of this Agreement.
- (e) If the Supplier assigns this Agreement to a non-resident of Canada 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 Taxes and the Buyer shall remit such additional 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.
- (f) If a valid assignment of this Agreement is made by the Supplier in accordance with Section 16.1, 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 of its duties, obligations and liabilities hereunder.
- (g) The Buyer shall have the right to assign this Agreement from time to time and all benefits and obligations hereunder for the balance of the Term without the consent of the Supplier to an assignee which shall assume the obligations and liability of the Buyer under this Agreement and be novated into this Agreement in the place and stead of the Buyer (except for the Buyer's obligation in Section 16.1(g)(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 not to make any material amendments to or terminate this Agreement after such assignment without the prior written consent of the Buyer, whereupon:

- (i) the representation set forth in Section 6.2(a) shall apply to the assignee with all necessary amendments to reflect the form and the manner in which the assignee was established;
 - (ii) all of the representations set forth in Section 6.2 shall be deemed to be made by the assignee to the Supplier at the time of such assignment and assumption; and
 - (iii) the Buyer shall be relieved of all obligations and liability arising pursuant to this Agreement; notwithstanding the foregoing, the Buyer shall remain liable to the Supplier for remedying any payment defaults under Section 9.3(a) and shall remain liable for any obligations and liabilities of the assignee arising from any Buyer Event of Default, provided that any notice required to be given under Section 9.3 and Section 9.4(a) is given on the same day to the assignee and to the Buyer. The time periods in Section 9.3 shall not begin to run until both the assignee and the Buyer have been so notified.
- (h) The Buyer shall have the right to assign this Agreement and all benefits and obligations hereunder from time to time throughout the Term for a period less than the balance of the Term without the consent of the Supplier to an assignee which shall assume the obligations of the Buyer under this Agreement and be novated into this Agreement in the place and stead of the Buyer (except for the Buyer's obligations in Section 16.1(g)(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 not to make any material amendments to or terminate this Agreement during such assignment period without the prior written consent of the Buyer, whereupon:
- (i) the representation set forth in Section 6.2(a) shall apply to the assignee with all necessary amendments to reflect the form and the manner in which the assignee was established;
 - (ii) all of the representations set forth in Section 6.2 shall be deemed to be made by the assignee to the Supplier at the time of such assignment and assumption;
 - (iii) the Buyer shall be relieved of all obligations and liability arising pursuant to this Agreement; notwithstanding the foregoing, the Buyer shall remain liable to the Supplier for remedying any payment defaults under Section 9.3(a) and shall remain liable to the Supplier for any obligations and liabilities of the assignee arising from any Buyer Event of Default, provided that any notice required to be given under Section 9.3 and Section 9.4(a) is given on the same day to the assignee and to the Buyer. The time periods in Section 9.3 shall not begin to run until both the assignee and the Buyer have been so notified; and
 - (iv) upon the expiry of the assignment period:
 - (A) this Agreement, without requiring the execution of any assignment, consent or other documentation of any nature, shall automatically revert and be assigned back to the Buyer;
 - (B) the assignee shall remain responsible to the Supplier for all obligations and liabilities incurred or accrued by the assignee during the assignment period; and
 - (C) the Buyer, 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 Buyer from any obligation to the Supplier pursuant to Section 16.1(g)(iii) that arose prior to the expiry of the assignment period.

Section 16.2 Change of Control

- (a) Other than in accordance with Section 16.2(b), no change of Control of the Supplier shall be permitted prior to Commercial Operation, except with the prior written consent of the Buyer, which consent may be withheld in the Buyer's sole and absolute discretion. Following Commercial Operation, a change of Control of the Supplier shall be permitted providing that the Supplier, within ten (10) Business Days following such change of Control having effect, provides the Buyer with notice of such change of Control and such additional information as the Buyer may reasonably require regarding the names of the Persons who Control or otherwise indirectly or directly have an ownership interest in the Supplier, following such change of Control.
- (b) Provided there is not a Supplier Event of Default that has not been remedied, a change of Control of the Supplier prior to Commercial Operation, under one or more of the following circumstances, is permitted without the consent of the Buyer, namely:
 - (i) the Person that is the direct subject of the transaction giving rise to the change of Control of the Supplier, is not a Special Purpose Entity;
 - (ii) each Person Controlling the Supplier following such change of Control is an Affiliate of one or more of the Persons Controlling the Supplier prior to such change of Control; or
 - (iii) the Economic Interest of the Person(s) that Control the Supplier as of the date hereof is not less than 25% following such change of Control;

the Supplier, shall, within ten (10) Business Days following such change of Control having effect, provide the Buyer with notice of such change of Control and such additional information as the Buyer may reasonably require regarding the names of the Persons who Control or other indirectly or directly have an ownership interest in the Supplier, following such change of Control.

- (c) For the purposes of Section 16.2(a) and Section 16.2(b), 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 change from any Person having Control of the Supplier to no Person having Control of the Supplier.
- (d) Without limiting the generality of Section 16.2(b)(i) and by way of example only, if entity A owns entity B, and A is sold to a third party, A is the direct subject of the transaction giving rise to the change of Control; therefore if B is the Supplier, then this change of Control may be permitted pursuant to Section 16.2(b)(i) so long as A is not a Special Purpose Entity.

ARTICLE 17 ABORIGINAL PARTICIPATION PROJECTS

Section 17.1 Provisions for Aboriginal Participation Projects

- (a) The Aboriginal Price Adder shall only apply to a Facility (i) that is not a Rooftop Solar Facility, (ii) that is an Aboriginal Participation Project as at the Commercial Operation Date, and (iii) for which the Supplier submits an Aboriginal Participation Project Declaration confirming such status prior to the Commercial Operation Date.

- (b) Where a Project or a Facility is not an Aboriginal Participation Project as of the Commercial Operation Date, or where the Supplier fails to provide an Aboriginal Participation Project Declaration confirming such status, the Aboriginal Price Adder shall not apply to such Facility at any time, regardless of any change in the Aboriginal Participation Level.
- (c) Where the Aboriginal Participation Level has increased since the last Aboriginal Participation Project Declaration, the Supplier may submit a revised Aboriginal Participation Project Declaration to the Buyer at any time up to the date on which it submits the other documentation required to be provided to the Buyer for the purpose of achieving Commercial Operation pursuant to Section 2.7.
- (d) A Supplier in respect of an Aboriginal Participation Project shall, within twenty (20) Business Days of a request by the Buyer, provide written evidence documenting the Aboriginal Participation Level that is to the satisfaction of the Buyer, acting reasonably. If the evidence provided by the Supplier does not demonstrate to the satisfaction of the Buyer, acting reasonably, that the actual Aboriginal Participation Level is at least equal to the Aboriginal Participation Level being used to determine the Aboriginal Price Adder, then, the Aboriginal Price Adder shall be recalculated in accordance with the documented Aboriginal Participation Level and applied retroactively to the latest date for which the Supplier can demonstrate that the Aboriginal Participation Level used to determine the Aboriginal Price Adder was accurate. Any overpayment that resulted from an inaccurate Aboriginal Participation Level shall be paid by the Supplier to the Buyer forthwith, failing which the Buyer may set off any such amounts from any future payments owing to the Supplier.

Section 17.2 Decreases in Aboriginal Participation Level

- (a) Where, in the case of an Aboriginal Participation Project, the applicable Aboriginal Participation Level decreases from the Aboriginal Participation Level in effect as at the later of:
 - (i) the date of the applicable Supporting Documentation; and
 - (ii) the effective date of any such decrease as set out in the most recent Notice of Decrease;the Supplier shall provide written notice (“**Notice of Decrease**”) to the Buyer within twenty (20) days of such decrease, which notice shall include the revised Aboriginal Participation Level and the effective date thereof.
- (b) If the Project was awarded rated criteria points as an Aboriginal Participation Project, as specified in Exhibit B, and during the period from the Commercial Operation Date until the fifth (5th) anniversary of the Commercial Operation Date, the Aboriginal Participation Level falls below ten per cent (10%) such failure shall constitute a Supplier Event of Default if such failure is not remedied within six (6) months after written notice of such failure from the Buyer.
- (c) Where, in the case of an Aboriginal Participation Project that was otherwise eligible to receive an Aboriginal Price Adder:
 - (i) the Aboriginal Participation Level was greater than 50% as at the Commercial Operation Date; and
 - (ii) at any time during the Term the Aboriginal Participation Level is below or equal to 50%, but greater than or equal to 10%;

then, as at such time, the Supplier shall no longer be entitled to receive the Aboriginal Price Adder (Over 50%), but shall thereafter subject to this Agreement be entitled to receive the Aboriginal Price Adder (10%-50%), until such time as the Supplier restores the Aboriginal Participation Level to greater than 50% and provides the Buyer with a revised Aboriginal Participation Project Declaration confirming this.

- (d) Without prejudice to Section 17.2(b), where, in the case of an Aboriginal Participation Project that was otherwise eligible to receive an Aboriginal Price Adder, at any time during the Term the Aboriginal Participation Level is below 10% then, as at such time, the Supplier shall no longer be entitled to receive the Aboriginal Price Adder until such time as the Supplier restores the Aboriginal Participation Level to greater than 10% and provides the Buyer with a revised Aboriginal Participation Project Declaration confirming this.
- (e) A Supplier may remedy a failure that would otherwise result in a Supplier Event of Default as described Section 17.2(b), by requalifying the Aboriginal Participation Project as an Aboriginal Participation Project.
- (f) For clarity, nothing in this Section 17.2 shall affect the interpretation of or limit the Buyer's rights under Section 16.2.

ARTICLE 18 MISCELLANEOUS

Section 18.1 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 ventures, fiduciary, principal and agent or any other relationship between the Parties.

Section 18.2 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.

Section 18.3 Survival

The provisions of Section 1.1, Section 2.8(c), Section 2.11, Section 3.3, Section 3.4, Section 3.5, Section 3.6, Article 4, Article 7, Section 9.2, Section 9.4, Section 9.5, Section 11.2(g), Article 13, Section 14.2, Article 15, Section 16.1(e) and Section 16.1(h) 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.

Section 18.4 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.

Section 18.5 Additional Rights of Set-Off

- (a) In addition to its other rights of set-off under this Agreement or otherwise arising in law or equity, the Buyer may set off any amounts owing by the Supplier to the Buyer in connection with this Agreement, including, without limitation, Section 2.4, Section 2.9, Section 3.1, Section 3.3, Section 4.2(c), Section 4.3(c), Section 4.5, Section 9.2, Section 9.5, Section 13.3, and Section 16.1(e) against any monies owed by the Buyer to the Supplier in connection with this Agreement, including, without limitation, Section 2.11(c), Section 3.1, Section 3.4, Section 3.5(a), Section 4.2(c), Section 4.3(c), Section 4.5, Section 5.1(c), Section 9.4, Section 9.5, Section 12.3, and Section 16.1(e).
- (b) In addition to its other rights of set-off under this Agreement or otherwise arising in law or equity, the Supplier may set-off any amounts owing by the Buyer to the Supplier in connection with this Agreement, including, without limitation, Section 2.11(c), Section 3.1, Section 3.4, Section 3.5(a), Section 4.2(c), Section 4.3(c), Section 4.5, Section 5.1(c), Section 9.4, Section 9.5, Section 12.3, and Section 16.1(e) against any monies owed by the Supplier to the Buyer in connection with this Agreement, including, without limitation, Section 2.4, Section 2.9, Section 3.1, Section 3.3, Section 4.2(c), Section 4.3(c), Section 4.5, Section 9.2, Section 9.5, Section 13.3, and Section 16.1(e).

Section 18.6 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.

Section 18.7 Time of Essence

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

Section 18.8 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 OF WHICH, and intending to be legally bound, the Parties have executed this Agreement by the undersigned duly authorized representatives as of the date first stated above.

INDEPENDENT ELECTRICITY SYSTEM OPERATOR

By: _____
Name:
Title:

I have authority to bind the corporation.

NOTE: If the Supplier is a Corporation, use the following signature block and delete the non-applicable signature blocks.

[Insert name of SUPPLIER]

By: _____
Name:
Title:

I have authority to bind the corporation.

NOTE: If the Supplier is a Limited Partnership, use the following signature block and delete the non-applicable signature blocks.

[Insert name of SUPPLIER], by its general partner [GENERAL PARTNER]

By: _____
Name:
Title:

I have authority to bind the corporation.

NOTE: If the Supplier is a Partnership, use the following signature block and delete the non-applicable signature blocks. Include sufficient and applicable signature lines for all partners required to sign the contract on behalf of the Partnership.

[Insert name of SUPPLIER], by its partner [PARTNER]

By: _____
Name:
Title:

NOTE: If the Supplier is a Natural Person, use the following signature block and delete the non-applicable signature blocks.

Witness: _____

[Insert name of Supplier]

NOTE: If the Supplier is a Municipality, University or College, or School with independent legal personality, use the following signature block and delete the non-applicable signature blocks.

[Insert name of SUPPLIER]

By: _____

Name:

Title:

I/We have authority to bind the
Municipality/University/College/School

NOTE: Delete non-applicable terms.

NOTE: If the Supplier is a School without independent legal personality, the applicable school board must sign on behalf of the School and use the following signature block, with non-applicable signature blocks deleted.

[Insert name of SUPPLIER]

By: _____

Name:

Title:

School/School Board

NOTE: Delete non-applicable terms.

NOTE: If the Supplier is a “band” within the meaning of the Indian Act (Canada), use the following signature block and delete the non-applicable signature blocks.

**[Insert name of SUPPLIER], as authorized
by band council resolution**

By: _____

Name:

Title:

By: _____

Name:

Title:

EXHIBIT A DEFINITIONS

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

“Aboriginal Loan Guarantee Program” means the “Aboriginal Loan Guarantee Program” as administered by the Ontario Financing Authority.

“Aboriginal Participation Level” means the percentage of the total Economic Interest in a Supplier that is held by one or more Aboriginal Communities, provided that and so long as a Supplier, as the case may be, is itself an Aboriginal Community, the applicable Aboriginal Participation Level shall be 100%.

“Aboriginal Participation Project” means a Project or a Facility, as the case may be, in respect of which:

- (a) the Aboriginal Participation Level is greater than or equal to 10%; or
- (b) the Supplier, as the case may be, is an Aboriginal Community.

“Aboriginal Participation Project Declaration” means, with respect to a Project or a Facility, (i) a statutory declaration in the Prescribed Form setting out the Aboriginal Participation Level of such Project or Facility, together with (ii) written evidence documenting such Aboriginal Participation Level that is to the satisfaction of the Buyer.

“Aboriginal Price Adder” means an Aboriginal Price Adder (10%-50%) or an Aboriginal Price Adder (Over 50%), as applicable.

“Aboriginal Price Adder (10%-50%)” means the amount in Dollars and Cents/MWh paid to Aboriginal Participation Projects having an Aboriginal Participation Level greater than or equal to 10% and less than or equal to 50% as set out in Exhibit B.

“Aboriginal Price Adder (Over 50%)” means the amount in Dollars and Cents/MWh paid to Aboriginal Participation Projects having an Aboriginal Participation Level greater than 50% as set out in Exhibit B.

“Access Right” has the meaning given to it in Section 3.2.8(a) of the LRP I RFP.

“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 Large Renewable Procurement I Contract, including the Exhibits attached hereto, as it may be amended, restated or replaced from time to time.

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

“Annual Cap” means, for a calendar year during the Term, a notional amount of Electricity, measured in MWh, equal to the Contract Capacity multiplied by 100 hours, provided that:

- (a) for the period commencing on the Commercial Operation Date and ending at 24:00 on December 31 of the calendar year in which the Commercial Operation Date falls, the Annual Cap shall be equal to a notional amount of Electricity, measured in MWh, equal to the Contract Capacity

multiplied by 100 hours, multiplied by the number of days in such period, and divided by 365 (or 366 if such calendar year is a leap year); and

- (b) for the period that begins on the start of the hour ending at 01:00 on January 1 of the final calendar year in which the Term ends and that terminates at 24:00 on the date that is the last day of the Term, the Annual Cap shall be equal to a notional amount of Electricity, measured in MWh, equal to the Contract Capacity multiplied by 100 hours, multiplied by the number of days in such period, and divided by 365 (or 366 if such calendar year is a leap year). For clarity, the Term as referred to herein shall be the Term prior to any permitted extensions thereof.

“**Annual Forgone Energy**” means the cumulative total amount of Forgone Energy determined at a specific time in a calendar year from the beginning of such calendar year. For greater certainty, the Annual Forgone Energy as at the beginning of January 1 of a particular calendar year shall be equal to zero MWh, and the Annual Forgone Energy at any time on a particular date in a calendar year shall be equal to all of the Forgone Energy in such calendar year up to and until such time on such date. “**Annual Forgone Energy_m**” means the Annual Forgone Energy in a particular calendar month determined to the end of such calendar month “m” from the beginning of such calendar year, and “**Annual Forgone Energy_{m-1}**” means the Annual Forgone Energy in the calendar month immediately preceding such particular calendar month “m” and determined from the beginning of such calendar year to the end of such calendar month “m-1”.

“**Appeal**” has the meaning given to it in Section 10.2(j).

“**Approved Incremental Costs**” has the meaning given to it in Exhibit E.

“**Arbitration Act**” means the *Arbitration Act*, 1991, S.O. 1991 c.17, as amended or supplemented from time to time.

“**Arbitration Panel**” has the meaning given to it in Exhibit F.

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

“**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 MV-Web Portal.

“**Bank Act**” means the *Bank Act*, SC 1991, c 46 (Canada), as amended from time to time.

“**Bill 14**” means *Building Opportunity and Securing Our Future Act (Budget Measures)*, 2014.

“**Bioenergy**” means Renewable Biomass, Biogas or Landfill Gas.

“**Biogas**” has the meaning given to it in O. Reg. 160/99, made under the Electricity Act, which for clarity does not include Landfill Gas.

“**Business Day**” means any day that is not a Saturday, a Sunday or a holiday as defined in Section 88 of the *Legislation Act, 2006*, SO 2006, c. 21, Schedule F.

“**Buyer**” means the Independent Electricity System Operator of Ontario established under Part II of the Electricity Act, being the Party described in the opening paragraph of this Agreement, and includes its successors and assigns.

“**Buyer Event of Default**” has the meaning given to it in Section 9.3.

“**Buyer Statement**” has the meaning given to it in Section 11.2(g).

“**Capacity Products**” means any products related to the capacity of a Facility to generate and deliver Electricity at a given time.

“**Cents**” mean hundredths of a Dollar.

“**Circuit**” means the set of three conductors, one for each electrical phase, that transmit Electricity from one power system station to another.

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

“**CMSC Constrained-Off Payment**” means, for a Registered Facility in respect of a calendar month, a payment in the amount equal to:

- (a) when the Annual Forgone Energy is less than the Annual Cap and the Total Accrued Exposure is less than the Total Cap, in each case for the entirety of such calendar month, zero dollars; and
- (b) the CMSC in respect of Curtailment of the Registered Facility, resulting in Forgone Energy, payable in respect of the part or entirety, as the case may be, of such calendar month during which:
 - (i) the Annual Forgone Energy is greater than the Annual Cap; or
 - (ii) the Total Accrued Exposure is equal to the Total Cap.

“**Commercial Operation**” has the meaning given to it in Section 2.7.

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

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

“**Company Representative**” has the meaning given to it in Section 14.1.

“**Completion and Performance Security**” has the meaning given to it in Section 5.1(b).

“**Confidential Information**” means

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

(b) Mutually Confidential Information.

“**Confidentiality Undertaking**” has the meaning given to it in Section 7.1(c).

“**Conflict of Interest**” means, but is not limited to, any situation or circumstance where:

- (a) the Supplier has an unfair advantage or engages in conduct, directly or indirectly, that may give it an unfair advantage, including but not limited to (i) having or having access to information that is confidential to the Buyer or the Government of Ontario and not available to Other Suppliers; (ii) communicating with any Person with a view to influencing preferred treatment; or (iii) engaging in conduct that compromises or could be seen to compromise the integrity of the open and competitive LRP I RFP process and render such process non-competitive and unfair; or
- (b) in relation to the performance of its contractual obligations in this Agreement, the Supplier’s other commitments, relationships or financial interests (i) could or could be seen to exercise an improper influence over the objective, unbiased and impartial exercise of its independent judgement; or (ii) could or could be seen to compromise, impair or be incompatible with the effective performance of such contractual obligations.

“**Congestion Management Settlement Credits**” or “**CMSC**” means, for a calendar month and for a Registered Facility, the “settlement credit” described in Section 3.5.1 of Chapter 9 of the IESO Market Rules, subject to the calculation of such “settlement credit” in the IESO Market Rules, including Section 3.5 of Chapter 9 of the IESO Market Rules in respect of such calendar month and Registered Facility and duly paid by the System Operator, but shall not include such “settlement credit” to the extent that it is in respect of “dispatchable load” as such terms are defined in the IESO Market Rules.

“**Connection Agreement**” means the agreement or agreements required to be entered into by the applicable LDC or Transmitter and the Supplier with respect to the connection of the Project and Facility to a Distribution System or Transmission System in accordance with the Distribution System Code or Transmission System Code, as applicable and governing the terms and conditions of such connection, and including the payment of Connection Costs.

“**Connection Costs**” means those costs which may include design, engineering, procurement, construction, installation and commissioning costs related to the reliable connection of the Project and Facility to a Distribution System or Transmission System, as more particularly specified pursuant to the Impact Assessment.

“**Connection Cost Agreement**” has the meaning given to it in the Distribution System Code.

“**Connection Costs Recovery Agreement**” means with respect to the Project, the design and build connection cost recovery agreement to be entered into between the Supplier and the applicable Transmitter.

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

“**Connection Line**” means the electrical connection line running to the Connection Point from the Site.

“**Connection Point**” means the point(s) of connection between the Facility and a Distribution System or the IESO-Controlled Grid as set out in Exhibit B. For greater certainty, the Connection Point is defined by reference to electrical connection points.

“**Consumer Price Index**” or “**CPI**” means the twelve (12) month consumer price index for “All Items” published or established by Statistics Canada (or its successors) in relation to the Province of Ontario.

“**Contract Capacity**” means the capacity of the Contract Facility expressed in MW as set out in Exhibit B.

“**Contract Date**” has the meaning given to it in the opening paragraph of this Agreement.

“**Contract Energy**” means a quantity of Electricity expressed in MWh as recorded by the Project’s meter.

“**Contract Facility**” means the Renewable Generating Facility described in Exhibit B, which for the purposes of an Expansion or Redevelopment includes the additional Generating Equipment which is included in the Expansion or Redevelopment together with all other equipment and facilities of the Existing Renewable Generating Facility which are necessary to deliver the Contract Capacity of the Expansion or Redevelopment to the Delivery Point.

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

“**Contract Payment**” means all payments to or from a Supplier under a LRP I Contract including payments on account of the Indexed Contract Price multiplied by Dispatch Interval Delivered Electricity, determined for each Settlement Period in accordance with Exhibit E of the LRP I Contract.

“**Contract Price**” or “**CP_v**” means the On-Peak Price and the Off-Peak Price, expressed in Dollars and Cents per MWh, for each MWh of Contract Energy delivered to the Delivery Point during the Term, as calculated and adjusted in accordance with Exhibit E.

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

“**Co-op**” means a co-operative corporation, as defined in the *Co-operative Corporations Act*, RSO 1990, c C.35, with its head office located in Ontario.

“**Corresponding First Nation Community**” has the meaning given to it in the definition of First Nation Lands.

“**Credit Rating**” means, (i) with respect to the Supplier its long-term senior unsecured debt rating (not supported by third party credit enhancement) or its corporate credit rating (as applicable) as 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, Fitch IBCA, or DBRS or any other established and reputable rating agency, as reasonably agreed to by the Parties from time to time.

"Curtailement" means any Dispatch Instruction requiring the Registered Facility to Deliver Electricity in a quantity (which may be nil) less than the quantity that would otherwise have been generated by the Registered Facility as a result of available Renewable Fuel, as such quantity and availability may be determined by the System Operator, in accordance with the IESO Market Rules. **Curtail** and **Curtailed** shall have corresponding meanings.

"Customer Impact Assessment" means a study conducted by a Transmitter to assess the impact of the connection of the Project on the transmission customers in the area.

"Data Approximation" has the meaning given to it in Section 4.9(b).

"DBRS" means DBRS Limited or its successors.

"Decommissioning" means, in respect of a Project or Facility, the decommissioning of a Site including the treatment or removal of contaminated soil, deconstruction of equipment, buildings and storage tanks in order to restore a Site to substantially the state in which it had been prior to the execution of this Agreement in respect of such Project or Facility.

"Decommissioning Costs" means all costs reasonably and properly incurred in Decommissioning in accordance with Laws and Regulations or if no such Laws and Regulations are applicable then in accordance with Good Engineering and Operating Practices.

"Delivered" means, in relation to Electricity and certain Related Products, delivered to the Connection Point and successfully directly injected into a Distribution System or the IESO-Controlled Grid (which for greater certainty, is net of Site-Specific Losses), and **"Deliver"** and **"Delivering"** have the corresponding meanings.

"Delivery Point" means (i) if the Supplier is a Market Participant, a uniquely identified reference point determined in accordance with the IESO Market Rules and used for settlement purposes in the real-time markets and (ii) if the Supplier is not a Market Participant, the point at which the Facility revenue-quality meter records the net Electricity delivered by the Facility. **"Delivery Points"** has a corresponding meaning, where the Supplier has more than one Delivery Point.

"Disclosing Party" means with respect to Confidential Information, 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 given to it in Section 12.1.

"Dispatch Instruction" means a "dispatch instruction" by the System Operator as that term is defined in the IESO Market Rules.

"Dispatch Instruction Rate" means the rate at which energy is to be injected into the IESO-Controlled Grid (in MW) at the end of a Dispatch Interval, as stated in a Dispatch Instruction.

“Dispatch Interval” means a “dispatch interval” as defined in the IESO Market Rules.

“Dispatch Interval Delivered Electricity” means the amount of Contract Energy, expressed in MWh, actually Delivered (net of Station Service Loads) by the Registered Facility during any Dispatch Interval.

“Dispatch Interval Excluded Delivered Electricity Payment” means, in respect of a Dispatch Interval that is not a Ramping Dispatch Interval in a calendar month in which the Registered Facility generates Electricity that is Excluded Delivered Electricity, a payment equal to:

- (a) an amount expressed in Dollars and equal to the Excluded Delivered Electricity in respect of such Dispatch Interval multiplied by the Indexed Contract Price, which for greater certainty shall include the Aboriginal Price Adder, if any, without double counting;

minus

- (b) the Excluded Delivered Electricity in respect of such Dispatch Interval multiplied by the greater of (A) MCP for such Dispatch Interval, and (B) zero;

provided that, if in any such Dispatch Interval the Excluded Delivered Electricity exceeds the Contract Capacity multiplied by the Dispatch Interval Period, the Contract Capacity times Dispatch Interval Period shall be used instead of the Excluded Delivered Electricity.

“Dispatch Interval Period” means the period in fractions of an hour of a Dispatch Interval as defined in the IESO Market Rules.

“Distribution” means, whether in cash or in kind, any:

- (a) dividend, payment, repayment, or other distribution or return in respect of the Equity Capital;
- (b) reduction of capital, redemption or purchase of Equity Capital or any other reorganization or variation to the Equity Capital;
- (c) payment, loan, contractual arrangement or transfer of assets or rights to the extent (in each case) it was put in place after Financial Close and was neither in the ordinary course of business nor on reasonable commercial terms; or
- (d) the receipt of any other benefit which is not received in the ordinary course of business nor on reasonable commercial terms,

and where any such Distribution is not in cash, the equivalent cash value of such Distribution shall be calculated.

“Distribution System” means a system connected to the IESO-Controlled Grid for distributing Electricity at voltages of 50 kilovolts or less, and includes any structures, equipment or other things used for that purpose, provided that a Distribution System shall be deemed not to include any equipment controlled by the System Operator pursuant to the Distribution System Code.

“Distribution System Code” means the “Distribution System Code” established and approved by the OEB, which, among other things, establishes the obligations of an LDC with respect to the services and terms of service to be offered to customers and retailers and provides minimum technical operating standards for Distribution Systems.

“**Dollars**”, or “**\$**” means Canadian dollars and Cents, unless otherwise specifically set out to the contrary.

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

“**Electrical Safety Authority**” means the person or body designated as the “Authority” pursuant to Part VIII of the Electricity Act, or its successor.

“**Electricity**” means electric energy, measured in MWh.

“**Electricity Act**” means the *Electricity Act, 1998 S.O. 1998, c.15, Sch. A*, as amended or replaced from time to time.

“**Emission Reduction Credits**” means the credits associated with the amount of emissions to the air avoided by reducing the emissions below the lower of actual historical emissions or regulatory limits, including “emission reduction credits” as defined in O. Reg. 397/01 made under the Environmental Protection Act, as amended from time to time, or such other regulation as may be promulgated under the Environmental Protection Act.

“**Employee Termination Payments**” means (without double counting) termination payments which are required under (i) contracts of employment or other agreements or arrangements entered into by the Supplier or a Person which is an Affiliate of the Supplier or a Sponsor, or (ii) applicable Laws and Regulations to be made to employees of the Supplier or a Person which is an Affiliate of the Supplier or a Sponsor as a direct result of terminating this Agreement (provided that the Supplier or such other Person shall take commercially reasonable steps to mitigate its loss) and provided that, in calculating such amount, no account shall be taken of any liabilities and obligations of the Supplier or of a Person which is an Affiliate of the Supplier or a Sponsor arising out of:

- (a) contracts of employment or other agreements or arrangements entered into by the Supplier or a Person which is an Affiliate of the Supplier or a Sponsor to the extent that such contracts of employment, agreements or arrangements were not entered into in connection with the Project; or
- (b) contracts of employment or other agreements or arrangements entered into by the Supplier or a Person which is an Affiliate of the Supplier or a Sponsor other than in the ordinary course of business and on commercial Arm’s Length terms, save to the extent that amounts would have arisen if such contracts or other agreements or arrangements had been entered into in the ordinary course of business and on commercial Arm’s Length terms.

“**Environmental Activity Sector Registry**” means the registry established under subsection 20.20(1) of the *Environmental Protection Act*.

“**Environmental Attributes**” means environmental attributes, whether existing as at the date of the LRP I RFP or coming into existence in the future, associated with a Facility having decreased environmental impacts, and includes:

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

but which excludes,
 - (d) the Government of Canada's ecoENERGY Program (or any predecessor program thereto) which may be available in connection with a Facility; and
 - (e) any tax or other benefit under the Government of Canada's Canadian Renewable and Conservation Expenses (CRCE) or successor program which may be available in connection with a Facility.

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

“Environmental Protection Act” means the *Environmental Protection Act*, R.S.O. 1990 c. E19, as amended or supplemented from time to time.

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

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

“EPT” shall mean Eastern Prevailing Time applicable in the IESO – Administered Markets, as set forth in the IESO Market Rules.

“Equity Capital” means the aggregate (without double counting) of all subscribed capital for shares or units of ownership interest in the Supplier, Sponsor loans and other contributed capital or equity funding of the Supplier that, in each case, was directly and exclusively subscribed, loaned or contributed to or utilized by the Supplier for the purpose of financing the Project and, for greater certainty, including Connection Costs but excluding any amounts advanced to the Supplier or its Affiliate under the Lending Agreements (or proceeds thereof).

“Equity IRR” means the projected after-tax internal average annual rate of return to the Sponsors shown in the Financial Model in connection with the Project over the full term of this Agreement, taking into account the aggregate of all the Sponsors' investments and of all Distributions made and projected to be made.

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

“**Excluded Delivered Electricity**” means, for any Dispatch Interval that is not a Ramping Dispatch Interval during which the Registered Facility was Curtailed and Electricity was Delivered at a rate that was greater than the Payment Deadband (High), an amount of Electricity (in MWh) equal to the difference between (i) the Dispatch Interval Delivered Electricity for such Dispatch Interval and (ii) the Payment Deadband (High) for such Dispatch Interval multiplied by the Dispatch Interval Period, except where the Dispatch Instruction in respect of such Dispatch Interval was not complied with because compliance with such Dispatch Instruction would have endangered the safety of any natural person, damaged equipment or violated any “applicable law” as that term is defined in the IESO Market Rules, in which case the Excluded Delivered Electricity in respect of such Dispatch Interval shall be equal to zero MWh.

“**Excluded Forgone Electricity**” is Electricity that would have been Delivered by the Registered Facility but was not so Delivered solely due to Grid Incapability.

“**Exhibit**” or “**Exhibits**” mean the Exhibit or Exhibits that form part of this LRP I Contract.

“**Existing Renewable Generating Facility**” means a Renewable Generating Facility, whose Generating Equipment is commercially operational and is connected to the IESO-Controlled Grid, Distribution System or end user prior to March 31, 2014. For greater certainty, a Renewable Generating Facility is considered to be commercially operational if it has received market revenues and has operated for more than 500 hours per year in any of the past three (3) years.

“**Expansion**” means an addition of Generating Equipment to an Existing Renewable Generation Facility which:

- (a) is not intended to replace any Generating Equipment that operates, or had operated within twelve (12) months of the date of submission of the Proposal, at the Existing Renewable Generation Facility;
- (b) generates Electricity output in addition to the Electricity output of other Generating Equipment that operates or operated at the Existing Renewable Generation Facility;
- (c) has separate revenue grade meters that conform with the requirements of this Agreement and are dedicated to measuring the electrical output of the added Generating Equipment and that are accessible to the Buyer; and
- (d) does not include any of the Electricity generating capacity available from the Existing Renewable Generation Facility.

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

“**Facility**” means the Renewable Generating Facility to be designed, constructed and operated by the Supplier, as described in Exhibit B hereto, which is comprised either partially or completely by the Contract Facility.

“**Fair Market Value**” means the fair market value of rights or assets as mutually agreed by the Parties, each acting reasonably; provided however, that if the Parties fail to agree as to such value within ten (10) Business Days of the date of the Invoice Date, the fair market value shall be determined by a Senior

Conference, failing which, ten (10) Business Days following the date of such Senior Conference, the Parties shall refer the matter to a nationally recognized valuator mutually appointed by the Parties, 50% of the valuator's reasonable fees shall be paid by the Buyer, and 50% of the valuator's reasonable fees shall be paid by the Supplier.

“Financial Close” means the first date following the Supplier's receipt of the Buyer's confirmation in writing that all Key Development Milestones have been met in accordance with Section 2.2(d) that a borrowing is unconditionally available under any of the Lending Agreements in respect of the Project (subject only to typical and customary draw or advance conditions).

“Financial Model” means the audited computer spreadsheet model in respect of the Project incorporating statements of Supplier's cashflows including all expenditure, revenues, financing (including Senior Debt, Junior Debt, Equity Capital and Equity IRR) and taxation of the Project operations (including construction) together with the profit and loss accounts and balance sheets for the Project throughout the Term accompanied by details of all assumptions, calculations and methodology used in their completion and any other documentation necessary or desirable to operate the model or to substantiate the inputs to the model, and prepared in accordance with accepted industry methodologies and based on reasonable assumptions, all as determined by the Buyer acting reasonably. If the Project is being financed pursuant to Lending Agreement(s) then the Financial Model must be the same model as is provided to any or all of the Senior Lenders or the Junior Lenders. If the Financial Model delivered pursuant to Section 2.2(c)(iii) is delivered prior to Financial Close, it may be updated on Financial Close by delivery to Buyer within ten (10) Business Days following Financial Close of an updated Financial Model with only such changes as required to reflect final debt amounts and debt pricing under the Lending Agreement(s).

“FIPPA” means the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F31 as amended or supplemented from time to time.

“FIPPA Records” has the meaning given to it in Section 7.5.

“First Nation Community” means:

- (a) a First Nation in Ontario that is a “band” as defined in the *Indian Act*, RSC 1985, c I-5;
- (b) a Person, other than a Natural Person, that has previously been determined by the Government of Ontario to represent the collective interests of a community that is composed of Aboriginal Natural Persons in Ontario, excluding Persons who form a Métis Community; or
- (c) a Person, other than a Natural Person, that is determined by the Government of Ontario for the purposes of this LRP I Contract to represent the collective interests of a community that is composed of Aboriginal Natural Persons in Ontario, excluding Persons who form a Métis Community.

“First Nation Lands” means in respect of a particular First Nation within the meaning of paragraph (a) of the definition of First Nation Community (the **“Corresponding First Nation Community”**), the following:

- (a) “reserve land” as set out in the *Indian Act*, RSC 1985, c I-5;
- (b) “designated lands” as set out in the *Indian Act*, RSC 1985, c I-5;
- (c) “special reserves” as set out in s. 36 of the *Indian Act*, RSC 1985, c I-5;

- (d) fee simple lands that are held in trust for the benefit of a First Nation in Ontario that is a “band” as defined in the *Indian Act*, RSC 1985, c I-5, provided that those lands are the subject of an application by such First Nation to have Canada set the lands apart as reserve lands pursuant to Canada’s “Additions to Reserve Policy”;
- (e) Crown lands or other lands that Canada has agreed to recommend be set apart as reserve for a First Nation in Ontario that is a “band” as defined in the *Indian Act*, RSC 1985, c I-5 in settlement of such First Nation’s land claim; or
- (f) lands acquired and held by a First Nation in Ontario that is a “band” as defined in the *Indian Act*, RSC 1985, c I-5 in the exercise of its powers under paragraph 18(2)(a) of the *First Nations Land Management Act*, SC 1999, c 24, provided that such lands are the subject of an application by such First Nation to have Canada set the lands apart as reserve pursuant to Canada’s “Additions to Reserve Policy”.

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

“**Force Majeure**” has the meaning given to it in Section 10.3.

“**Forgone Energy**” means, during any relevant period, a notional amount of Electricity (in MWh), that would have been Delivered by a Registered Facility as a result of there being available Renewable Fuel as such notional amount and such available Renewable Fuel is determined by the “forecasting entity” (as that term is used in the IESO Market Rules) or otherwise by the System Operator, excluding during, and to the extent of, an Outage of the Registered Facility (but only excluded in this determination to the extent where such notional amount of Electricity was already excluded from the determination of the amount of Electricity that would have been delivered), and that was not Delivered by the Registered Facility, and shall exclude (A) Non-Compliant Forgone Energy; and (B) Excluded Forgone Electricity, and provided that, for each discrete time interval, Forgone Energy shall not exceed the Contract Capacity multiplied by the appropriate time interval.

“**Full Operation Date**” has the meaning given to it in Section 2.7(d).

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

“**Generating Equipment**” means equipment used by a Project or a Facility in the generation of Electricity, such as wind turbines, solar (PV) modules, hydroelectric turbines, biomass-fired boilers and generating sets for the combustion of landfill gas, but does not include transformers or other equipment used to transform or transmit such Electricity.

“**Generating Facility**” means a non-renewable or renewable generating facility.

“**Good Engineering and Operating Practices**” means any of the practices, methods and activities adopted by a significant portion of the North American electric utility industry as good practices applicable to the design, building, and operation of generating facilities of similar type, size and capacity or any of the practices, methods or activities which, in the exercise of skill, diligence, prudence, foresight and reasonable judgement by a prudent generator 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 Project, Good Engineering and Operating Practices include taking reasonable steps to ensure that:

- (a) adequate materials, resources and supplies, including fuel, are available to meet the Project'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 Project 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 Ontario" means Her Majesty the Queen in right of Ontario.

"Governmental Approvals" means approvals, authorizations, consents, permits, grants, licences, privileges, rights, certificates of approval, environmental compliance approvals, orders, judgments, rulings, directives, ordinances, decrees, registrations and filings issued or granted by law or by any Governmental Authority.

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

"GPS" means a global positioning system of coordinates based on information from satellites.

"Grid Cell" means an area of Ontario bounded by lines of geographic latitudes and longitudes based on the NAD 83 (CSRS98) datum using increments of 30 seconds of the series 50 degrees 00' 00", 50 degrees 00' 30", 50 degrees 01' 00", and which is referred to by the latitude and longitude of its northeast corner, as determined or modified from time to time by the MNRF.

"Grid Incapability" means that no Electricity from the Registered Facility can physically be received at or transmitted or distributed from any Connection Point.

"Hedge Providers" means the counterparties to the Supplier or its Affiliate under the Hedging Agreements.

"Hedging Agreements" means interest rate hedging agreements intended to protect or mitigate against interest rate fluctuations in relation to Senior Debt or Junior Debt and currency hedging agreements

intended to protect or mitigate against currency exchange fluctuations in relation to contracts for the supply of goods or services required for the Project in a currency other than Canadian currency.

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

“**Hourly Delivered Electricity**” means the amount of Contract Energy, expressed in MWh, actually Delivered (net of Station Service Loads) by the Facility during any hour, provided such Electricity is delivered to the Connection Point and successfully injected into a Distribution System.

“**HST**” means all taxes payable under Part IX of the *Excise Tax Act* RSC 1985, c E-15, (Canada) (including where applicable both the federal and provincial portion of those taxes) or under any provincial legislation imposing a similar value added or multi-staged tax.

“**IEC**” means the International Electrotechnical Commission or its successors.

“**IE Certificate**” means a certificate addressed to the Buyer from an Independent Engineer, procured by the Supplier and at the Supplier’s sole expense, that complies with the requirements of Section 2.7.

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

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

“**IESO Market Rules**” means the rules made under Section 32 of the Electricity Act, together with all market manuals, policies, and guidelines issued by the System Operator, as may be amended from time to time.

“**Impact Assessment**” means a Connection Impact Assessment, a System Impact Assessment or a Customer Impact Assessment, as applicable.

“**Incentive Program**” means a program administered by a Governmental Authority and that is paid or provided based on kW, kWh, MW, or MWh.

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

“**Indemnifiable Loss**” has the meaning given to it in Section 13.3.

“**Indemnitees**” has the meaning given to it in Section 13.3.

“**Independent Engineer**” is an engineer that is (i) a Professional Engineer duly qualified and licensed to practice engineering in the Province of Ontario; and (ii) employed by an independent engineering firm which holds a certificate of authorization issued by the Professional Engineers Ontario that is not affiliated with or directly or indirectly Controlled by the Supplier and that does not have a vested interest in the design, engineering, procurement, construction, metering and/or testing of the Project.

“**Indexed Contract Price**” means the Contract Price adjusted for increases in CPI pursuant to Exhibit E of the LRP I Contract, plus any Aboriginal Price Adder, as applicable.

“**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.

“**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.

“**Invoice Date**” has the meaning given to it in Section 9.6(l).

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

“**Junior Debt**” means, at any time, junior indebtedness funded under the Lending Agreements by the Junior Lenders which is (i) used or provided for use directly and exclusively for purposes of financing the Project, (ii) subordinated and postponed to the Senior Debt, (iii) has a fixed return without equity participation, step-up rights or rights to share in the Supplier's excess cash flow, and (iv) has a coupon equal to or less than 150% of the coupon payable to the Senior Lenders and excludes the Junior Debt Makewhole (provided, however, that if the coupon exceeds such threshold it shall be deemed to be equal to such threshold for purposes of calculating the Junior Debt Amount and any Junior Debt Makewhole).

“**Junior Debt Amount**” means, at any time, the then outstanding principal amount of Junior Debt, together with all interest accrued thereon at that time, provided that at any time where any portion of the interest payable to the Junior Lenders is subject to Hedging Agreement(s), accrued interest in respect of such portion of the interest payable to the Junior Lenders shall be calculated based on the fixed rate payable by Supplier or its Affiliate under the Hedging Agreement(s) without regard to whether such fixed rate is payable directly to a Junior Lender or to the Hedge Provider(s) under the Hedging Agreement(s) and all references to interest payable to the Junior Lenders under this Agreement shall be construed accordingly. For greater certainty, the Junior Debt Amount excludes the Junior Debt Makewhole.

“**Junior Debt Makewhole**” means, at any time, any amount (other than the Junior Debt Amount) then due and payable to the Junior Lenders under the Lending Agreements, including any “make whole” payments, Hedging Agreements or interest rate termination or breakage payments (less any applicable termination or breakage benefits) and all other fees, costs and expenses reasonably and properly incurred which the Supplier or its Affiliate is obligated to pay to the Junior Lenders pursuant to the Lending Agreements.

“**Junior Lenders**” means the lenders and Hedge Providers (and any administrative agent, collateral agent, trustee or person in a similar capacity for such lenders or Hedge Providers) named or otherwise identified as the junior lenders or Hedge Providers in the Lending Agreements and excludes any Affiliate of Supplier or Sponsor and other Persons not at Arm's Length to Supplier or Sponsor..

“**Key Development Milestone**” has the meaning given to it in Section 2.2(c).

“**kW**” means kilowatt.

“**kWh**” means kilowatt hour.

“**Landfill Gas**” means the Renewable Fuel used by a Landfill Gas Facility.

“Landfill Gas Facility” means a Facility that utilizes gas collected from the decomposition of organic materials in a landfilling site and which is located at the same landfilling site.

“Landowner Losses” means any amount reasonably and properly payable by the Supplier to a landowner under the terms of the relevant lease or licence agreement entered into between the Supplier and a landowner in respect of the Project as a direct result of a Optional Termination (including any reasonable commercial breakage fee), provided that such amount shall be reduced to the extent that the Supplier or a landowner fails to take commercially reasonable steps to mitigate such amount; provided that no account shall be taken of any liabilities and obligations of the Supplier to any landowner arising out of:

- (a) any loss of overhead or profit of such landowner relating to any period or costs after the Termination Date (save to the extent the same are properly included in any reasonable commercial breakage fee);
- (b) agreements or arrangements entered into by the Supplier or any landowner to the extent that such agreements or arrangements were not entered into in connection with those parties' obligations in relation to the Project; or
- (c) agreements or arrangements entered into by the Supplier or any landowner other than in the ordinary course of business and on commercial Arm's Length terms, save to the extent that amounts would have arisen if such agreements or arrangements had been entered into in the ordinary course of business and on commercial Arm's Length terms.

“Laws and Regulations” means:

- (a) any applicable domestic (federal, provincial or municipal) or foreign laws, orders-in-council, by-laws, codes, rules, policies, regulations and statutes;
- (b) any applicable orders, decisions, codes, judgments, injunctions, decrees, awards and writs of any court, tribunal, arbitrator, Governmental Authority or other Person having jurisdiction;
- (c) any applicable rulings and conditions of any Governmental Approval;
- (d) any requirements under or prescribed by applicable common law;
- (e) the Distribution System Code, the Transmission System Code and any other codes issued by the OEB; and
- (f) the IESO Market Rules, as well as any manuals or interpretation bulletins issued by the System Operator from time to time that are binding on the Supplier.

“LDC” means the owner or operator of a Distribution System who is licensed by the OEB as an “electricity distributor”.

“LDC Portal” means a secure web site maintained by an LDC, either directly or indirectly, that provides a point-of-access for specific authorized users to a facility’s or site’s specific data, such as meter data, or such similar processes and/or application that may be implemented in conjunction with the “Smart Meter Initiative” for the presentment of meter data; and includes any systems or applications that may replace, supplement or succeed any such existing systems or applications.

“Lending Agreements” means any or all of the agreements or instruments to be entered into by Supplier or any of its Affiliates relating to the debt financing of the Project, including, for greater certainty, loan or credit agreements, trust or note indentures, the Secured Lender’s Security Agreements and any Hedging Agreements, if any, and any agreements or instruments to be entered into by Supplier or any of its Affiliates relating to the rescheduling of their indebtedness in respect of the financing of the Project or the refinancing of the Project.

“LRP” means the large renewable procurements established by the Buyer from time-to-time, including the procurement established pursuant to the LRP I RFP.

“LRP I Contract” means a contract entered into by the Buyer pursuant to the LRP I RFP.

“LRP I RFP” has the meaning given to it in the recitals to this Agreement and, for greater certainty, shall include all addenda in respect of the LRP I RFP provided in writing by or on behalf of the Buyer from time to time prior to the date of this Agreement.

“Market Clearing Price” or **“MCP”** means, in respect of a Dispatch Interval, the “market price” of “energy” as defined in Chapter 11 of the IESO Market Rules in respect of such Dispatch Interval.

“Market Participant” has the meaning given to it by 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.

“Material IESO Market Rule Amendment” has the meaning given to it in Section 1.8(a).

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

“Metering Plan” has the meaning given to it in Section 2.4(h).

“Métis Community” means:

- (a) the Métis Nation of Ontario or any of its active Chartered Community Councils;
- (b) a Person, other than a Natural Person, that has previously been determined by the Government of Ontario to represent the collective interests of a community that is composed of Métis Natural Persons in Ontario; or
- (c) a Person, other than a Natural Person, that is determined by the Government of Ontario for the purposes of the LRP I Contract to represent the collective interests of a community that is composed of Métis Natural Persons in Ontario.

“Milestone Date for Commercial Operation” or **“MCO”** means the date set out in Exhibit B by which the Project is required to attain Commercial Operation.

“Minister of Energy” means the Minister of Energy of the Province of Ontario.

“Ministry of Energy” or **“MOE”** means the Ministry of Energy of the Province of Ontario, or its successor.

“**Ministry of the Environment and Climate Change**” or “**MOECC**” means the Ministry of the Environment and Climate Change of the Province of Ontario, or its successor.

“**Ministry of Natural Resources and Forestry**” or “**MNR**” means the Ministry of Natural Resources and Forestry of the Province of Ontario, or its successor.

“**Monthly Excluded Delivered Electricity Payment**” means, in respect of a Settlement Period, an amount expressed in Dollars equal to the sum of all Dispatch Interval Excluded Delivered Electricity Payments in respect of such Settlement Period.

“**Monthly Forgone Energy Payment**” means, in respect of a Settlement Period, a payment equal to the sum of:

- (a) the Monthly Payable Forgone Energy in such Settlement Period, if any, multiplied by the Indexed Contract Price applicable during the corresponding calendar year which for greater certainty shall include the Aboriginal Price Adder, if any, without double counting; and
- (b) 20% of the total revenues that would have been received by the Supplier, but for Curtailment, from the sale of Future Contract Related Products related to Monthly Payable Forgone Energy in such Settlement Period.

“**Monthly Payable Forgone Energy**” means a notional amount of Electricity, measured in MWh, equal to the greatest of:

- (a) a notional amount of Electricity equal to zero MWh;
- (b) for each calendar month of January and for the calendar month in which the Commercial Operation Date falls, an amount of Electricity measured in MWh equal to the difference between the Annual Forgone Energy in that calendar month and the Annual Cap;
- (c) for each calendar month that is neither January nor the calendar month in which the Commercial Operation Date falls,
 - (i) if the Annual Forgone Energy_m is greater than the Annual Cap and the Annual Forgone Energy_{m-1} is less than the Annual Cap, an amount of Electricity measured in MWh calculated by the following formula:
$$(\text{Annual Forgone Energy}_m) - (\text{Annual Cap}); \text{ or}$$
 - (ii) if the Annual Forgone Energy_{m-1} is greater than or equal to the Annual Cap, an amount of Electricity measured in MWh calculated by the following formula:
$$(\text{Annual Forgone Energy}_m) - (\text{Annual Forgone Energy}_{m-1});$$
- (d) for any calendar month an amount of Electricity measured in MWh equal to the following formula:
 - (i) for a calendar month when the Total Accrued Exposure_m is equal to the Total Cap and the Total Accrued Exposure_{m-1} is less than the Total Cap, an amount of Electricity measured in MWh calculated by the following formula:

$(\text{Total Forgone Energy}_m - \text{Total Forgone Energy}_{m-1}) - (\text{Total Cap} - \text{Total Accrued Exposure}_{m-1})$

- (ii) if the Total Accrued Exposure_m is equal to the Total Cap and the Total Accrued Exposure_{m-1} is equal to the Total Cap, an amount of Electricity, measured in MWh, calculated by the following formula:

$(\text{Total Forgone Energy}_m) - (\text{Total Forgone Energy}_{m-1})$.

“**Monthly Payment**” means a Contract Payment in respect of a Settlement Period.

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

“**Municipality**” means any corporation that is a "local municipality" or an “upper-tier municipality” as defined in and for the purposes of the *Municipal Act, 2001*, SO 2001, c 25 or the *City of Toronto Act, 2006*, SO 2006, c 11, Sched A..

“**Mutually Confidential Information**” means information contained in the Prescribed Form, which information shall be deemed to be Confidential Information of both the Buyer and the Supplier.

“**MV-Web Portal**” means the internet based communications interface application for Market Participants supplied by the System Operator that allows “Market Participants” to access physical and financial data for the IESO-Administered Markets, and includes any systems or applications that may replace, supplement or succeed the MV-Web Portal.

“**MW**” means megawatt.

“**MWh**” means megawatt hour.

“**Natural Person**” means a natural person, but does not include a natural person in his or her capacity as trustee, executor, administrator or other legal representative.

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

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

“**New Agreement**” means a new agreement substantially in the form of this Agreement, which is to be entered into with a Secured Lender who is at Arm’s Length with the Supplier or a Person identified by such Secured Lender following termination of this Agreement, as set out in Section 11.2.

“**New Build**” means construction of a Renewable Generating Facility that is not a Redevelopment or Expansion of an Existing Renewable Generation Facility.

“**No Default Interest Rate**” means the rate of interest per annum quoted by the Royal Bank of Canada from time to time as its reference rate for Dollar demand loans made to its commercial customers in Canada and which it refers to as its “prime rate”, as such rate may be changed by it from time to time.

“**Non-Compliant Forgone Energy**” means:

- (a) during a Dispatch Interval that is not a Ramping Dispatch Interval during which the Registered Facility was Curtailed and Electricity was Delivered by the Registered Facility during such Dispatch Interval at an average rate (in MW) that was less than the Payment Deadband (Low), a notional amount of Electricity (in MWh) equal to the positive difference between:
- (i) the Payment Deadband (Low) multiplied by the Dispatch Interval Period in respect of such Dispatch Interval; and
 - (ii) the Dispatch Interval Delivered Electricity in respect of such Dispatch Interval;
- excluding (1) during and to the extent of an Outage of the Registered Facility (but excluded in this determination to the extent such notional amount of Electricity was already excluded from the determination of the amount of Electricity that would have been delivered); (2) Excluded Forgone Electricity; and (3) where the Dispatch Instruction in respect of such Dispatch Interval was not complied with as compliance with such Dispatch Instruction would have endangered the safety of any person, damaged equipment or violated any “applicable law” as that term is defined in the IESO Market Rules, and, without duplication; and
- (b) in respect of any Dispatch Interval, a notional amount of Electricity that would otherwise have constituted Forgone Energy in respect of such Dispatch Interval but where the Supplier’s energy offer to the System Operator in respect of such Dispatch Interval was at a price greater than the greater of (A) \$0/MWh and (B) the minimum price at which the Supplier may provide energy offers to the System Operator pursuant to the IESO Market Rules.

“**Non-Rooftop Solar**” means the Renewable Fuel used by a Non-Rooftop Solar Facility.

“**Non-Rooftop Solar Facility**” means a solar (PV) Facility that is not a Rooftop Solar Facility.

“**Notice**” shall have the meaning given to it in Section 14.6.

“**Notice of Decrease**” shall have the meaning given to it in Section 17.2

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

“**Off-Peak Hour**” means any hour that is not an On-Peak Hour.

“**Off-Peak Price**” means the price for each Off-Peak Hour as specified in Exhibit B.

“**On-Peak Hour**” means all hours between and including 7:00:00 and 21:59:59 (in EST) on a Business Day.

“**On-Peak Price**” means the price for each On-Peak Hour as specified in Exhibit B.

“**On-Shore Wind**” means the Renewable Fuel used by an On-Shore Wind Facility.

“**On-Shore Wind Facility**” means a Facility utilizing wind power where no part of any wind turbine forming part of the Facility’s Generating Equipment is located in direct contact with surface water other than in a wetland. For clarity, an On-Shore Wind Facility may not be a Class 5 wind facility within the meaning of O. Reg. 359/09, Renewable Energy Approvals under Part V.0.1 of the Environmental Protection Act.

“**Ontario Electricity Financial Corporation**” or “**OEFC**” means the Ontario Electricity Financial Corporation established by the Electricity Act.

“**Optional Termination**” has the meaning given to it in Section 9.6.

“**Optional Termination Sum**” has the meaning given to it in Section 9.6(b).

“**Optional Termination Sum Holdback Amount**” has the meaning given to it in Section 9.6(d).

“**Optional Termination Sum Payment Date**” has the meaning given to it in Section 9.6(d).

“**Optional Termination Sum True Up Date**” has the meaning given to it in Section 9.6(f).

“**Optional Termination Sum True Up Payment**” has the meaning given to it in Section 9.6(f).

“**Optional Termination Sum True Up Payment Date**” has the meaning given to it in Section 9.6(f).

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

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

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

“**Payment Date**” has the meaning given to it in Section 4.2 and Section 4.3.

“**Payment Deadband**” means, in respect of a Dispatch Instruction at any time, a rate in MW equal to the “compliance dead band” or “compliance deadband” (or equivalent) described in the IESO Market Rules in respect of the Registered Facility, as amended from time to time by the System Operator, including without limitation as set out in the IESO Market Rule Interpretation Bulletin IMO_MKRI_001 Version 6.1 or its successor provision.

For clarity, a rate of ± 15 MW (or any other number of MW) shall be equal to a rate of 15MW (or such other number of MW).

“**Payment Deadband (High)**” means, in respect of a Dispatch Instruction at any time, a rate equal to the sum of the Dispatch Instruction Rate as stated in such Dispatch Instruction and the Payment Deadband.

“**Payment Deadband (Low)**” means, in respect of a Dispatch Instruction at any time, a rate equal to the difference between the Dispatch Instruction Rate as stated in such Dispatch Instruction and the Payment Deadband.

“**Percentage Escalated**” means the percentage of the Contract Price that escalates on the basis of increases in CPI, as set out in Exhibit B for the applicable Renewable Fuel.

“**Person**” means a Natural Person, First Nation that is a “band” as defined in the Indian Act, RSC 1985, c I-5, Co-op, 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.

“**Post-COD Completion and Performance Security**” has the meaning given to it in SubsectionSection 5.1(b).

“**Pre-COD Completion and Performance Security**” has the meaning given to it in Subsection Section 5.1(a).

“**Pre-Construction Development Costs**” means those reasonable costs incurred after March 31, 2014 for the development of the Facility, excluding (i) the costs of Generating Equipment, (ii) that 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 (iii) profits, less any grants received pursuant to any government or Buyer programs that the Supplier is not obligated to repay. For greater certainty, Pre-Construction Development Costs may include reasonable costs incurred for feasibility studies; obtaining Access Rights; obtaining a Renewable Energy Approval (if applicable); development of business and financial plans; negotiation of contracts relating to equipment procurement, construction and financing; reasonable non-refundable deposits on Generating Equipment, on transformers or other equipment used to transform or transmit Electricity, and in connection with the Connection Costs; resource assessments; obtaining permits and approvals necessary to commence construction and reasonable overhead expenses allocated to the foregoing.

“**Pre-Construction Liability Limit**” means the amount specified in Exhibit B to this Agreement, expressed in Dollars, representing the maximum amount of Pre-Construction Development Costs for which the Buyer will indemnify the Supplier in the event that the Buyer terminates this Agreement pursuant to Subsection 9.6(j) of this Agreement.

“**Prescribed Form**” means in relation to a form, the latest version of the corresponding form appearing on the Website, as may be amended or replaced by the Buyer from time to time and without notice to the Supplier.

“**Price Evolution Event**” has the meaning given to it in Section 1.9(a).

“**Professional Engineer**” means a “professional engineer” as defined in the *Professional Engineers Act*, RSO 1990, c P.28.

“**Project**” means the proposed Contract Facility to be designed, constructed, owned (or leased) and operated by the Supplier, as described in Exhibit B hereto.

“**Project Status Report**” has the meaning given to it in Section 2.6(a).

“**Property**” means a parcel or lot of real property as identified by a Property Identification Number or, in the absence thereof, by another legal description by lot and/or parcel number or similar legal description or by other appropriate description using metes and bounds or GPS coordinates. In the case of provincial Crown lands, Property means a Grid Cell, or, for Waterpower Projects, a Waterpower Site Number or in the absence thereof, GPS co-ordinates of the Property, as applicable.

“**Property Identification Number**” or “**PIN**” means the property identifier assigned to a property in accordance with the *Registry Act*, RSO 1990, c R.20, s 21(2) or in accordance with the *Land Titles Act*, RSO 1990, c L.5, s 141(2).

“Proposal” means the proposal submission made by the Supplier in response to the LRP I RFP in respect of developing, constructing, operating and maintaining the Project which was selected by the Buyer, and all clarifications in respect of such Proposal provided by the Supplier in writing as requested by or on behalf of, and accepted by, the Buyer from time to time in accordance with the LRP I RFP prior to the Contract Date.

“PV” means a photovoltaic solar system.

“Quarterly Progress Reports” means the Quarterly Progress Reports prepared by the Supplier for the Buyer in accordance with Section 2.6 and which are substantially in the form of the Prescribed Form.

“Rate Regulated Utility” has the meaning given to it in Section 2.10(d).

“Ramping Dispatch Interval” means a Dispatch Interval (the **“Current Dispatch Interval”**) where:

- (a) the Dispatch Instruction Rate in respect of the Current Dispatch Interval is different than the Dispatch Instruction Rate for the Dispatch Interval immediately prior to the Current Dispatch Interval; or
- (b) the Current Dispatch Interval is subject to a mandatory Dispatch Instruction and there is no mandatory Dispatch Instruction for the Dispatch Interval immediately prior to the Current Dispatch Interval.

“Receiving Party”, means, with respect to Confidential Information, the Party receiving 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 Receiving Party.

“Redevelopment” means the modification of an Existing Renewable Generation Facility which does not constitute an Expansion but which in the reasonable judgement of the Buyer satisfies the following criteria: (a) absent redevelopment, the Existing Renewable Generation Facility must be near to the end of its useful life; (b) the physical infrastructure constituting the Existing Renewable Generation Facility must be substantially replaced; and (c) following redevelopment the expected life of the redeveloped Existing Renewable Generation Facility must be comparable with that of a New Build; and (d) the Existing Renewable Generation Facility is not the subject of an existing contract with the Buyer or OEFC.

“Registered Facility” has the meaning given thereto in the IESO Market Rules, provided that:

- (a) where the Contract Facility is comprised in whole or in part of more than one Registered Facility, “Registered Facility” shall refer to any such Registered Facility; and
- (b) where the Contract Facility is comprised of one Registered Facility, “Registered Facility” shall refer to the Contract Facility.

“Registered Proponent” has the meaning given to it in the LRP I RFP.

“Regulatory Environmental Attributes” has the meaning given to it in Section 2.11(c).

“Related Products” means all Ancillary Services, and transmission rights and any other products or services that may be provided by the Facility from time to time, excluding Capacity Products, Environmental Attributes produced by the Facility and any payments under the ecoENERGY for

Renewable Power Program and any Federal Government Incentive Program for Renewable Power, that may be traded or sold in the IESO-Administered Markets or other markets, or otherwise sold, and which shall be deemed to include products and services for which no market may exist.

“**Renewable Biomass**” has the meaning given to “biomass” in O Reg. 160/99, made under the Electricity Act, but may also include supplementary non-renewable fuels other than coal used for start-up, combustion, stabilization and low combustion zone temperatures.

“**Renewable Energy Approval**” means an approval issued by the Ontario Ministry of the Environment and Climate Change under Section 47.3 of the Environmental Protection Act.

“**Renewable Fuel**” means On-Shore Wind, Rooftop Solar, Non-Rooftop Solar, Renewable Biomass, Biogas, Landfill Gas or Waterpower.

“**Renewable Generating Facility**” means an Electricity generating facility which generates Electricity exclusively from a single Renewable Fuel and delivers that Electricity through its own meter (for clarity, “its own meter” means a meter not used by any other facility) in accordance with all Laws and Regulations to the IESO-Controlled Grid or a Distribution System.

“**Replacement Price**” has the meaning given to it in Section 1.9(a)(i).

“**Replacement Provision(s)**” has the meaning given to it in Section 1.10(c).

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

- (a) obtaining environmental and project and site approvals and permitting for the Project;
- (b) completion of Impact Assessments, including receipt of approvals from the System Operator, Transmitter or LDC, as applicable;
- (c) execution of an EPC Contract in respect of the Project;
- (d) Financial Close in respect of the Project;
- (e) ordering of major equipment for the Project;
- (f) delivery of major equipment for the Project;
- (g) status of construction of the Project;
- (h) completion of construction of the Project;
- (i) status of construction of the connection of the Project to the Transmission System or Distribution System, as applicable;
- (j) connection of the Project to the Transmission System or Distribution System, as applicable; and
- (k) Commercial Operation.

“**Representatives**” means a Party’s directors, officers, employees, auditors, consultants, advisors (including economic and legal advisors), contractors and agents and those of its Affiliates and the agents and advisors of such Persons, and in respect of the Buyer, includes the Connecting Authority. Prior to

any assignment by the Buyer, this definition shall also include the Government of Ontario, and its respective directors, officers, employees, auditors, consultants, advisors (including economic and legal advisors), contractors and agents.

“**Retail Settlement Code**” means the code established and approved by the OEB, governing the determination of financial settlement costs for Electricity retailers, consumers, distributors and generators.

“**Rooftop Solar**” means the Renewable Fuel used by a Rooftop Solar Facility.

“**Rooftop Solar Facility**” means a solar (PV) Facility that is integrated into or forms part of the wall facing, roof, cover, or other architectural element that forms part of a permanent building.

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

“**Sales Tax**” means the HST.

“**Schedule**”, “**Scheduled**” and “**Scheduling**” means all acts necessary for the Supplier to schedule, or cause to be scheduled, including the submission of dispatch data, the Electricity at the Delivery Point throughout the Term.

“**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 bonds or debentures, containing a charge, mortgage, pledge, security interest, assignment, sublease, deed of trust or similar instrument with respect to all or any part of the Supplier’s Interest granted by the Supplier that is security for any indebtedness, liability or obligation of the Supplier, together with any amendment, change, supplement, restatement, extension, renewal or modification thereof.

“**Senior Conference**” has the meaning given to it in Section 15.1.

“**Senior Debt**” means senior indebtedness funded under the Lending Agreements by the Senior Lenders which is used or provided for use directly and exclusively for purposes of financing the Project.

“**Senior Debt Amount**” means, at any time, the then outstanding principal amount of the Senior Debt, together with all interest accrued thereon at that time, provided that at any time where any portion of the interest payable to the Senior Lenders is subject to Hedging Agreement(s), accrued interest in respect of such portion of the interest payable to the Senior Lenders shall be calculated based on the fixed rate payable by Supplier or its Affiliate under the Hedging Agreement(s) without regard to whether such fixed rate is payable directly to a Senior Lender or to the Hedge Provider(s) under the Hedging Agreement(s) and all references to interest payable to the Senior Lenders under this Agreement shall be construed accordingly. For greater certainty, the Senior Debt Amount excludes the Senior Debt Makewhole.

“**Senior Debt Makewhole**” means, at any time, any amount (other than the Senior Debt Amount) then due and payable to the Senior Lenders under the Lending Agreements, including any “make whole” payments, or Hedging Agreements or interest rate termination or breakage payments (less any applicable termination or breakage benefits) and all other fees, costs and expenses reasonably and properly incurred which the Supplier or its Affiliate is obligated to pay to the Senior Lenders pursuant to the Lending Agreements.

“**Senior Lenders**” means the lenders and Hedge Providers (and any administrative agent, collateral agent, trustee or person in a similar capacity for such lenders or Hedge Providers) named or otherwise identified as the senior lenders or Hedge Providers in the Lending Agreements and excludes any Affiliate of Supplier or Sponsor and other Persons not at Arm’s Length to Supplier or Sponsor.

“**Settlement Period**” has the meaning given to it in Section 4.2 and Section 4.3.

“**Site**” means the Property on, over, in or under which the Facility is, or is to be, situated as such Property is identified in Exhibit B.

“**Site-Specific Losses**” means Electricity losses due to line resistance, the operation of transformers and switches, and other associated losses of Electricity generated by the Facility which may occur as a result of the difference between the location of the meter and the Connection Point, as determined pursuant to loss factors applied in accordance with the Retail Settlement Code and other applicable regulatory instruments.

“**Solar**” means Rooftop Solar and Non-Rooftop Solar.

“**Solar Facility**” means a Rooftop Solar Facility or a Non-Rooftop Solar Facility.

“**Special Purpose Entity**” means a Person other than a Natural Person whose special or sole purpose is ownership, direct or indirect, of one or more Project(s). The special purpose of a Person shall not be considered to be the ownership, direct or indirect, of one or more Project(s) where, at such time, the total capacity of,

- (a) all Project(s) owned, directly or indirectly, by such Person multiplied by the per cent equity interest that such Person holds in each such Project(s),

is less than 50% of the total nameplate capacity of,

- (b) all Electricity generating facilities that have reached commercial operation and continue in operation owned, directly or indirectly, by such Person, multiplied by the per cent equity interest that such Person holds in each such Electricity generating facility.

“**Sponsor**” means a direct or indirect owner, beneficially or of record, of any shares or units of ownership interest in a Supplier.

“**Standard Testing Conditions**” means test conditions specified in the IEC standards for solar (PV) modules and which correspond to: 1,000 W/m², 25°C cell temperature, and a reference solar spectral irradiance called air mass (AM) of 1.5.

“**Statement**” has the meaning given to it in Section 4.2 and Section 4.3.

“**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 Project.

“**Stop Work Direction**” means a direction from the Buyer to the Supplier to refrain from commencing, or allowing any third party to commence, and to cease, or cause any third party to cease the construction of the Project or any part thereof.

“**Stop Work Notice**” means a direction from the Buyer to the Supplier to refrain from commencing, or allowing any third party to commence, and to cease, or cause any third party to cease, the development, construction and operation of the Project or any part thereof.

“**Subcontractor**” means a third party that has been retained by the Supplier, or another Subcontractor, through a written contract to provide goods or services directly that are directly related to the development or construction of the Project, and for clarity includes the EPC Contractor.

“**Subcontractor Losses**” means the amount reasonably and properly payable by the Supplier to a Subcontractor under the terms of the relevant subcontract as a direct result of a Optional Termination (including any reasonable commercial breakage fee), provided that such amount shall be reduced to the extent that the Supplier or any Subcontractor fails to take commercially reasonable steps to mitigate such amount; provided that no account shall be taken of any liabilities and obligations of the Supplier to any Subcontractor arising out of:

- (a) any loss of overhead or profit of such Subcontractor relating to any period or costs after the Termination Date (save to the extent the same are properly included in any reasonable commercial breakage fee);
- (b) agreements or arrangements entered into by the Supplier or any Subcontractor to the extent that such agreements or arrangements were not entered into in connection with those parties' obligations in relation to the Project; or
- (c) agreements or arrangements entered into by the Supplier or any Subcontractor other than in the ordinary course of business and on commercial Arm's Length terms, save to the extent that amounts would have arisen if such agreements or arrangements had been entered into in the ordinary course of business and on commercial Arm's Length terms.

“**Supplier**” means the Person identified as the Supplier in the opening paragraph of this Agreement, and includes, as applicable, any successor thereto resulting from any merger, arrangement or other reorganization or any continuance under the laws of another jurisdiction or permitted assignee.

“**Supplier Event of Default**” has the meaning given to it in Section 9.1.

“**Supplier's Economics**” means the net present value of the revenues from the Dispatch Interval Delivered Electricity and Related Products in respect of the Project that are reasonably forecast to be earned by a Supplier, net of any costs that such Supplier would be reasonably expected to incur in respect of the Project, and taking into account any Commercially Reasonable Efforts the Supplier is reasonably expected to take to mitigate the effect of any IESO Market Rule amendments or Discriminatory Actions, such as by mitigating operating expenses and normal capital expenditures of the business of the generation and delivery of the Dispatch Interval Delivered Electricity and Related Products in respect of the Project.

“**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.

“**Supporting Documentation**” means in respect of a Project for an Aboriginal Community, an Aboriginal Participation Project Declaration.

“**System Impact Assessment**” means a study conducted by the System Operator pursuant to Section 6.1.5 of Chapter 4 of the IESO Market Rules, to assess the impact of a new connection of the

Project to the IESO-Controlled Grid, or of the modification of an existing connection of the Facility to the IESO-Controlled Grid, as applicable, 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.

“**Taxes**” means all ad valorem, property, occupation, severance, production, governmental charges, utility, gross production, gross receipts, HST, value-added, sales, stamp, use, excise, levies, countervailing, anti-dumping and special import measures, imposts, duties including customs' duties, fees, withholdings, assessments, premiums, deductions, taxes based on profits, net income or net worth and any other taxes or charges whatsoever, whether directly or indirectly imposed, assessed, levied or collected by any Governmental Authority, together with interest thereon and penalties with respect thereto.

“**Term**” has the meaning given to it in Section 8.1.

“**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.

“**Total Accrued Exposure**” means a cumulative total amount of Forgone Energy calculated as at the end of a particular calendar month as follows:

- (a) during the first calendar month in which the Commercial Operation Date falls (the “**First Month**”), Total Accrued Exposure_m shall be equal to the least of: (A) the Annual Forgone Energy; (B) the Annual Cap; and (C) the Total Cap;
- (b) for every calendar month in the Term that is in the same calendar year as the First Month (unless it is the First Month, in which case subsection (i), above, applies), the Total Accrued Exposure_m shall be equal to the least of: (A) the Annual Cap; (B) the Annual Forgone Energy_m; and (C) the Total Cap;
- (c) For every calendar month of the Term that is January (unless it is the First Month, in which case subsection (i), above, applies), Total Accrued Exposure_m shall be equal to the least of: (A) the sum of the Annual Cap and the Total Accrued Exposure_{y-1}; (B) the sum of the Annual Forgone Energy in that calendar month and the Total Accrued Exposure_{y-1}; and (C) the Total Cap; and
- (d) for a calendar month that is after the end of the calendar year in which the First Month falls, and that is not a calendar month that is January, Total Accrued Exposure_m shall be equal to the least of: (A) the sum of the Total Accrued Exposure_{m-1} and the difference between the Annual Forgone Energy_m and Annual Forgone Energy_{m-1}; (B) the sum of the Total Accrued Exposure_{y-1} and the Annual Cap; and (C) the Total Cap,

where “**Total Accrued Exposure_m**” means the Total Accrued Exposure in a particular calendar month “m”, “**Total Accrued Exposure_{m-1}**” means the Total Accrued Exposure in the calendar month immediately preceding calendar month “m”, and “**Total Accrued Exposure_{y-1}**” means the Total Accrued Exposure as at December 31 of the calendar year immediately preceding the calendar year in which the Total Accrued Exposure_m is being determined.

“**Total Cap**” means a notional amount of Electricity equal to the Contract Capacity multiplied by 2000 hours.

“**Total Forgone Energy**” means, for the Term, the cumulative total amount of Forgone Energy determined at a specific time in the Term from the beginning of the Term. For greater certainty, the Total Forgone Energy as at the beginning the Term shall be equal to zero MWh. Total Forgone Energy at any time on a particular date in the Term shall be equal to all of the Forgone Energy in the Term from the beginning of the Term up to and until such time on such date. “**Total Forgone Energy_m**” means the Total Forgone Energy in a particular calendar month “m” from the beginning of the Term to the end of such calendar month, and “**Total Forgone Energy_{m-1}**” means the Total Forgone Energy in the calendar month immediately preceding such particular calendar month “m” from the beginning of the Term to the end of the calendar month “m-1”.

“**Transformer Station**” or “**TS**” means a facility where voltage is reduced from a higher value to a lower value (e.g. 230 kV to 44 kV) or increased from a lower value to a higher value (e.g. 44 kV to 230 kV) and includes any structures, equipment or other things associated therewith.

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

“**Transmission System Code**” means the code established and 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 an 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.

“**Variable Generation**” has the meaning given to it in the IESO Market Rules.

“**Waterpower**” means in the context of Renewable Fuel the usage and movement of water through hydroelectric turbines, which for clarity expressly excludes steam driven turbines.

“**Waterpower Rights**” means, with respect to a Facility utilizing Waterpower for its Renewable Fuel: (i) any “Waterpower Lease” or “Licence of Occupation” entered into with Her Majesty the Queen in right of Ontario, as represented by the MNRF; (ii) any “Federal Licence” entered into with Her Majesty the Queen in right of Canada, as represented by the Minister of the Environment for the purposes of the Parks Canada Agency; or (iii) any substantially equivalent Governmental Approval.

“**Waterpower Site Number**” Means the five character MNRF identifier of a Project or Renewable Generating Facility as set by the MNRF and as noted on its “Renewable Energy Atlas” website located at <http://www.giscoeapp.lrc.gov.on.ca/web/MNR/Integration/Renewable/Viewer/Viewer.html>.

“**Website**” means the System Operator’s Large Renewable Procurement website at www.ieso.ca/lrp or such other website as the System Operator shall designate from time to time.

“**WSIA**” means the *Workplace Safety and Insurance Act, 1997*, SO 1997, c 16, Sch A (Ontario), as amended.

“**WSIB**” means the Workplace Safety and Insurance Board of Ontario.

EXHIBIT B

DESCRIPTION OF THE PROJECT

Supplier Information & Address

Supplier's Address: Fax:
Phone:
Email:

Company Representative:

Supplier Information: Not a Non-Resident of Canada
 Non-Resident of Canada

Material Information

Contract Capacity: ____ MW

Contract Price:

On-Peak Price _____ Dollars and Cents/MWh

Off-Peak Price _____ Dollars and Cents/MWh

Percentage Escalated: Biogas – **20%**
Landfill Gas – **20%**
Renewable Biomass – **20%**
Rooftop Solar – **0%**
Non-Rooftop Solar – **0%**
Waterpower – **20%**
On-Shore Wind – **20%**

Aboriginal Participation Level: _____%

Aboriginal Price Adder (Over 50%): [9.00] Dollars and Cents/MWh

Aboriginal Price Adder (10% - 50%): [1.50] Dollars and Cents/MWh

- Project was awarded rated criteria points as an Aboriginal Participation Project; or
 Project was not awarded rated criteria points as an Aboriginal Participation Project.

MCOD:

Renewable Fuel: Biogas
 Landfill Gas

Renewable Biomass

Rooftop Solar

Non-Rooftop Solar

Waterpower

On-Shore Wind

Project

Expansion

Redevelopment

New Build

Name of Project

Pre-Construction Liability Limit

Biogas: \$400,000 plus \$2.00/kW of Contract Capacity

Landfill Gas: \$400,000 plus \$2.00/kW of Contract Capacity

Renewable Biomass: \$400,000 plus \$2.00/kW of Contract Capacity

Rooftop Solar: \$250,000 plus \$10.00/kW of Contract Capacity

Non-Rooftop Solar: \$250,000 plus \$10.00/kW of Contract Capacity

Waterpower: \$500,000 plus \$20.00/kW of Contract Capacity

On-Shore Wind: \$400,000 plus \$2.00/kW of Contract Capacity

Connection Point

Transformer Station:

Distribution System feeder:

Connection Line where the Connection Point is proposed:

Circuit

GPS coordinates and Grid Cells (where applicable)
for Connection Point, TS (or associated feeder) or
the Circuit

Description of additional Generating Equipment that is the subject of an Expansion or Redevelopment
along with a description of equipment and Facilities of the Existing Renewable Generating Facility which
are necessary to deliver the Contract Capacity

[insert details]

Site

Municipal Address:

Legal Description (including PIN(s)):

PIN(s) (if applicable):

Grid Cells (for Projects on Crown Lands):

Waterpower Site Number (if applicable):

GPS coordinates for Site:

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

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

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

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

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

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

Partial drawings are permitted.

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

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

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

The Beneficiary may transfer this Credit without the consent of the Applicant or the issuing financial institution, provided the transferee name is not identified on the following: the list of names subject to Regulations Establishing a List of Entities Made Under Section 83.05(1) of the Criminal Code, and/or Regulations Implementing the United Nations Resolutions on the Suppression of Terrorism (RIUNRST) and/or the United Nations Al-Qaida and Taliban Regulations (UNAQTR). All fees incurred by the issuing financial institution in relation to such transfer shall be at the Applicant's expense, but failure of the Applicant to pay such fees shall not restrict the ability of the Beneficiary to transfer the Credit.

[Issuing Bank Name]

By: _____

By: _____

EXHIBIT D

BUYER WEBPAGE INFORMATION

- Legal name of Supplier
- Facility name
- Contract Capacity (MW) of the Facility
- Location of Facility or Nearest Population Centre
- Renewable Fuel
- Connection Point (circuit designation and/or name of substation)
- Estimated Annual Generation (MWh)
- Description of the Facility (information on number of generating units, manufacturer, type and/or model of generating unit, etc.)
- Photos of the Facility (interior and exterior) or the construction work
- Commercial Operation Date
- Supplier Website Link
- Supplier public relations contact
- Project Status Reports

EXHIBIT E
METERING AND SETTLEMENT

TYPE 1: FACILITY REGISTERED IN THE IESO-ADMINISTERED MARKETS

1.1 Application of Exhibit

This version of Exhibit E shall apply to a Facility that is the whole of a Registered Facility.

1.2 Dispatch

The Supplier shall meet the requirements of the IESO Market Rules including the provision of dispatch data for Contract Energy and Related Products, and, unless the Facility is a self-scheduling generation facility (as defined in the IESO Market Rules), the Supplier is required to include these services in the IESO-Administered Markets at no more than the Supplier's variable cost for generating same. For greater certainty, in such case, the Supplier's variable cost shall be determined on an actual cost basis incurred by the Supplier without mark-up, as first confirmed by the Buyer and the Supplier, and which shall be subject to verification by the Buyer from time to time.

1.3 Indexation

The "**Indexed Contract Price**" shall be determined as follows:

- (a) Where Exhibit B indicates that the Percentage Escalated is 0%, the Indexed Contract Price shall be equal to the Contract Price for all years.
- (b) Where Exhibit B provides for a Percentage Escalated, commencing on January 1 of the calendar year following Commercial Operation, the Indexed Contract Price (On-Peak Price) in any year "y" shall be the greater of the Indexed Contract Price (On-Peak Price) in the preceding year, "y-1", and the following calculation:

$ICP_y^{Peak} = (1 - PE) \times CP_{BD}^{Peak} + PE \times \left(CP_{BD}^{Peak} \times \frac{CPI_y}{CPI_{COD}} \right) + APA$	
where:	
ICP_y^{Peak}	is the Indexed Contract Price (On-Peak Price) applicable in calendar year "y" during the Term;
CP_{BD}^{Peak}	is the Contract Price (On-Peak Price)
CPI_{COD}	is: <ul style="list-style-type: none"> (a) for a Facility in respect of which the Commercial Operation Date falls between January 1 and September 30 (inclusive) in a calendar year, the CPI applicable to the month of January in such calendar year; and (b) for a Facility in respect of which the Commercial Operation Date falls on or

	after October 1 in a calendar year, the CPI applicable to the month of January in the next following calendar year;
CPI _y	is the CPI for the month of December immediately preceding the commencement of calendar year “y”;
PE	is the Percentage Escalated expressed as a decimal figure; and
APA	is the Aboriginal Price Adder, if applicable.

- (c) Where Exhibit B provides for a Percentage Escalated, commencing on January 1 of the calendar year following Commercial Operation, the Indexed Contract Price (Off-Peak Price) in any year “y” shall be the greater of the Indexed Contract Price (Off-Peak Price) in the preceding year, “y-1”, and the following calculation:

$ICP_y^{Off-Peak} = (1 - PE) \times CP_{BD}^{Off-Peak} + PE \times \left(CP_{BD}^{Off-Peak} \times \frac{CPI_y}{CPI_{COD}} \right) + APA$	
where:	
ICP _y ^{Off-Peak}	is the Indexed Contract Price (Off-Peak Price) applicable in calendar year “y” during the Term;
CP _{BD} ^{Off-Peak}	is the Contract Price (Off-Peak Price)
CPI _{COD}	is: (a) for a Facility in respect of which the Commercial Operation Date falls between January 1 and September 30 (inclusive) in a calendar year, the CPI applicable to the month of January in such calendar year; and (b) for a Facility in respect of which the Commercial Operation Date falls on or after October 1 in a calendar year, the CPI applicable to the month of January in the next following calendar year;
CPI _y	is the CPI for the month of December immediately preceding the commencement of calendar year “y”;
PE	is the Percentage Escalated expressed as a decimal figure; and
APA	is the Aboriginal Price Adder, if applicable.

1.4 Calculation of Contract Payment

- (a) For each Dispatch Interval in a Settlement Period, the Contract Payment shall be an amount expressed in Dollars and equal to:
- (i) the Dispatch Interval Delivered Electricity multiplied by the Indexed Contract Price applicable during the corresponding calendar year;

minus

 - (ii) the Dispatch Interval Delivered Electricity multiplied by the greater of (A) MCP for such Dispatch Interval, and (B) zero;

provided that, if in any Dispatch Interval the Dispatch Interval Delivered Electricity exceeds the Contract Capacity times one Dispatch Interval Period, then for the purposes of the calculation set out in this Section 1.4(a) of Exhibit E, the Contract Capacity times one Dispatch Interval Period shall be used instead of the Dispatch Interval Delivered Electricity.

- (b) The Contract Payment in respect of a Settlement Period shall be:
- (i) the sum of the Contract Payments in respect of each Dispatch Interval in such Settlement Period;

minus

 - (ii) in relation to the sale, supply or delivery of any Future Contract Related Products, an amount equal to 80% of the difference, if positive, of the total revenues received by the Supplier from the sale of such Future Contract Related Products for that Settlement Period, less the Approved Incremental Costs. For the purposes of this Section 1.4(b) of Exhibit E, “**Approved Incremental Costs**” means the incremental costs incurred by the Supplier for that Settlement Period in excess of the cost of production of the Delivered Electricity, relating to the sale, supply or delivery of such Future Contract Related Products, and which costs are reasonable and have first been verified and approved by the Buyer.
- (c) Where the Contract Payment in respect of a Settlement Period is a positive number, such amount shall be owed by the Buyer to the Supplier. Where such amount is a negative number, the absolute value of such amount shall be owed by the Supplier to the Buyer.

1.5 Compensation for Forgone Energy for Variable Generation

- (a) If the Facility is classified as Variable Generation, the Buyer or the Supplier, as the case may be, shall pay to the other Party a payment equal to:
- (i) the Monthly Forgone Energy Payment;

minus the sum of:

 - (ii) the Monthly Excluded Delivered Electricity Payment; and
 - (iii) the CMSC Constrained-Off Payment.

- (b) If the amount of the payment under Section 1.5(a) is negative, then the Supplier shall be obligated to pay the absolute value of such amount to the Buyer. If the amount of the payment under Section 1.5(a) is positive, the Buyer shall be obligated to pay such amount to the Supplier.
- (c) In respect of the payments to be made under Section 1.5(a) of this Exhibit E, the Buyer shall prepare and deliver a report (the "**Curtailment Payment Report**") to the Supplier, within forty (40) Business Days after the end of each calendar month in the Term, for such calendar month (the "**Curtailment Payment Settlement Period**"), but not later than the last Business Day of the month occurring two (2) calendar months following the Curtailment Payment Settlement Period, setting out the basis for the payments made under Section 1.5(a) of this Exhibit E with respect to the Curtailment Payment Settlement Period. The payment in respect of the Curtailment Payment Settlement Period shall be paid (i) if payable by the Buyer, by no later than the last Business Day of the same calendar month in which the Curtailment Payment Report is issued, or (ii) if payable by the Supplier, by no later than fifteen (15) Business Days following the receipt of the Curtailment Payment Report. A Curtailment Payment Report may be delivered by the Buyer to the Supplier by e-mail or other electronic means and shall include a calculation of the payment for the Curtailment Payment Settlement Period, for clarity, even if such payment is equal to zero (0) dollars.
- (d) Except as provided in Section 1.5(a) of this Exhibit E, the provisions of Section 4.2(c) and Section 4.2(d) of the body of the Agreement shall apply to payments made under Section 1.5(a) of this Exhibit E, *mutatis mutandis*. Reference to the term "Statement" in the aforesaid Section of this Agreement shall be construed to include the Curtailment Payment Report.

**EXHIBIT E
METERING AND SETTLEMENT**

**TYPE 2: FACILITY GREATER THAN 5 MW NOT REGISTERED IN THE IESO-
ADMINISTERED MARKETS**

1.1 Application of Exhibit

This version of Exhibit E shall apply to a Facility with a Contract Capacity greater than 5 MW that is connected to a Distribution System and is not a Registered Facility.

1.2 Indexation

The “**Indexed Contract Price**” shall be determined as follows:

- (a) Where Exhibit B indicates that the Percentage Escalated is 0%, the Indexed Contract Price shall be equal to the Contract Price for all years.
- (b) Where Exhibit B provides for a Percentage Escalated, commencing on January 1 of the calendar year following Commercial Operation, the Indexed Contract Price (On-Peak Price) in any year “y” shall be the greater of the Indexed Contract Price (On-Peak Price) in the preceding year, “y-1”, and the following calculation:

$ICP_y^{Peak} = (1 - PE) \times CP_{BD}^{Peak} + PE \times \left(CP_{BD}^{Peak} \times \frac{CPI_y}{CPI_{COD}} \right) + APA$	
where:	
ICP_y^{Peak}	is the Indexed Contract Price (On-Peak Price) applicable in calendar year “y” during the Term;
CP_{BD}^{Peak}	is the Contract Price (On-Peak Price)
CPI_{COD}	is: <ul style="list-style-type: none"> (a) for a Facility in respect of which the Commercial Operation Date falls between January 1 and September 30 (inclusive) in a calendar year, the CPI applicable to the month of January in such calendar year; and (b) for a Facility in respect of which the Commercial Operation Date falls on or after October 1 in a calendar year, the CPI applicable to the month of January in the next following calendar year;
CPI_y	is the CPI for the month of December immediately preceding the commencement of calendar year “y”;
PE	is the Percentage Escalated expressed as a decimal figure; and

APA	is the Aboriginal Price Adder, if applicable.
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- (c) Where Exhibit B provides for a Percentage Escalated, commencing on January 1 of the calendar year following Commercial Operation, the Indexed Contract Price (Off-Peak Price) in any year “y” shall be the greater of the Indexed Contract Price (Off-Peak Price) in the preceding year, “y-1”, and the following calculation:

$ICP_y^{Off-Peak} = (1 - PE) \times CP_{BD}^{Off-Peak} + PE \times \left(CP_{BD}^{Off-Peak} \times \frac{CPI_y}{CPI_{COD}} \right) + APA$	
where:	
$ICP_y^{Off-Peak}$	is the Indexed Contract Price (Off-Peak Price) applicable in calendar year “y” during the Term;
$CP_{BD}^{Off-Peak}$	is the Contract Price (Off-Peak Price)
CPI_{COD}	is: <p>(a) for a Facility in respect of which the Commercial Operation Date falls between January 1 and September 30 (inclusive) in a calendar year, the CPI applicable to the month of January in such calendar year; and</p> <p>(b) for a Facility in respect of which the Commercial Operation Date falls on or after October 1 in a calendar year, the CPI applicable to the month of January in the next following calendar year;</p>
CPI_y	is the CPI for the month of December immediately preceding the commencement of calendar year “y”;
PE	is the Percentage Escalated expressed as a decimal figure; and
APA	is the Aboriginal Price Adder, if applicable.

1.3 Calculation of Contract Payment

- (a) For each hour in a Settlement Period, the Contract Payment shall be an amount expressed in Dollars and equal to the Hourly Delivered Electricity multiplied by the Indexed Contract Price applicable during the corresponding calendar year; provided that, if in any hour the Hourly Delivered Electricity exceeds the Contract Capacity times one hour, then for the purposes of the foregoing calculation, the Contract Capacity times one hour shall be used instead of the Hourly Delivered Electricity, and the Contract Payment for such hour shall include an additional amount equal to (i) the MCP for such hour multiplied by (ii) the Hourly Delivered Electricity minus the Contract Capacity times one hour.
- (b) The Contract Payment in respect of a Settlement Period shall be:

- (i) the sum of the Contract Payments in respect of each Dispatch Interval in such Settlement Period;

minus
 - (ii) in relation to the sale, supply or delivery of any Future Contract Related Products, an amount equal to 80% of the difference, if positive, of the total revenues received by the Supplier from the sale of such Future Contract Related Products for that Settlement Period, less the Approved Incremental Costs. For the purposes of this Section 1.3(a) of Exhibit E, “**Approved Incremental Costs**” means the incremental costs incurred by the Supplier for that Settlement Period in excess of the cost of production of the Delivered Electricity, relating to the sale, supply or delivery of such Future Contract Related Products, and which costs are reasonable and have first been verified and approved by the Buyer.
- (c) Where the Contract Payment in respect of a Settlement Period is a positive number, such amount shall be owed by the applicable LDC to the Supplier. Where such amount is a negative number, the absolute value of such amount shall be owed by the Supplier to the applicable LDC.

**EXHIBIT E
METERING AND SETTLEMENT**

**TYPE 3: FACILITY LESS THAN OR EQUAL TO 5 MW NOT REGISTERED IN THE IESO-
ADMINISTERED MARKETS**

1.1 Application of Exhibit

This version of Exhibit E shall apply to a Facility with a Contract Capacity less than or equal to 5 MW connected to a Distribution System that is not a Registered Facility.

1.2 Indexation

The “**Indexed Contract Price**” shall be determined as follows:

- (a) Where Exhibit B indicates that the Percentage Escalated is 0%, the Indexed Contract Price shall be equal to the Contract Price for all years.
- (b) Where Exhibit B provides for a Percentage Escalated, commencing on January 1 of the calendar year following Commercial Operation, the Indexed Contract Price (On-Peak Price) in any year “y” shall be the greater of the Indexed Contract Price (On-Peak Price) in the preceding year, “y-1”, and the following calculation:

$ICP_y^{Peak} = (1 - PE) \times CP_{BD}^{Peak} + PE \times \left(CP_{BD}^{Peak} \times \frac{CPI_y}{CPI_{COD}} \right) + APA$	
where:	
ICP_y^{Peak}	is the Indexed Contract Price (On-Peak Price) applicable in calendar year “y” during the Term;
CP_{BD}^{Peak}	is the Contract Price (On-Peak Price)
CPI_{COD}	is: <ul style="list-style-type: none"> (a) for a Facility in respect of which the Commercial Operation Date falls between January 1 and September 30 (inclusive) in a calendar year, the CPI applicable to the month of January in such calendar year; and (b) for a Facility in respect of which the Commercial Operation Date falls on or after October 1 in a calendar year, the CPI applicable to the month of January in the next following calendar year;
CPI_y	is the CPI for the month of December immediately preceding the commencement of calendar year “y”;
PE	is the Percentage Escalated expressed as a decimal figure; and

APA	is the Aboriginal Price Adder, if applicable.
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- (c) Where Exhibit B provides for a Percentage Escalated, commencing on January 1 of the calendar year following Commercial Operation, the Indexed Contract Price (Off-Peak Price) in any year “y” shall be the greater of the Indexed Contract Price (Off-Peak Price) in the preceding year, “y-1”, and the following calculation:

$ICP_y^{Off-Peak} = (1 - PE) \times CP_{BD}^{Off-Peak} + PE \times \left(CP_{BD}^{Off-Peak} \times \frac{CPI_y}{CPI_{COD}} \right) + APA$	
where:	
$ICP_y^{Off-Peak}$	is the Indexed Contract Price (Off-Peak Price) applicable in calendar year “y” during the Term;
$CP_{BD}^{Off-Peak}$	is the Contract Price (Off-Peak Price)
CPI_{COD}	is: (a) for a Facility in respect of which the Commercial Operation Date falls between January 1 and September 30 (inclusive) in a calendar year, the CPI applicable to the month of January in such calendar year; and (b) for a Facility in respect of which the Commercial Operation Date falls on or after October 1 in a calendar year, the CPI applicable to the month of January in the next following calendar year;
CPI_y	is the CPI for the month of December immediately preceding the commencement of calendar year “y”;
PE	is the Percentage Escalated expressed as a decimal figure; and
APA	is the Aboriginal Price Adder, if applicable.

1.3 Calculation of Contract Payment

- (a) For each hour in a Settlement Period, the Contract Payment shall be an amount expressed in Dollars and equal to the Hourly Delivered Electricity multiplied by the Indexed Contract Price applicable during the corresponding calendar year; provided that, if in any hour the Hourly Delivered Electricity exceeds the Contract Capacity times one hour, then for the purposes of the foregoing calculation, the Contract Capacity times one hour shall be used instead of the Hourly Delivered Electricity, and the Contract Payment for such hour shall include an additional amount equal to (i) the MCP for such hour multiplied by (ii) the Hourly Delivered Electricity minus the Contract Capacity times one hour.
- (b) The Contract Payment in respect of a Settlement Period shall be:

- (i) the sum of the Contract Payments in respect of each hour in such Settlement Period;

minus
 - (ii) in relation to the sale, supply or delivery of any Future Contract Related Products, an amount equal to 80% of the difference, if positive, of the total revenues received by the Supplier from the sale of such Future Contract Related Products for that Settlement Period, less the Approved Incremental Costs. For the purposes of this Section 1.3(a) of Exhibit B, “**Approved Incremental Costs**” means the incremental costs incurred by the Supplier for that Settlement Period in excess of the cost of production of the Delivered Electricity, relating to the sale, supply or delivery of such Future Contract Related Products, and which costs are reasonable and have first been verified and approved by the Buyer.
- (c) Where the Contract Payment in respect of a Settlement Period is a positive number, such amount shall be owed by the applicable LDC to the Supplier. Where such amount is a negative number, the absolute value of such amount shall be owed by the Supplier to the applicable LDC.

EXHIBIT F

ARBITRATION PROVISIONS APPLICABLE TO SECTIONS SECTION 1.8, SECTION 1.9, SECTION 1.10, SECTION 2.11 AND SECTION 12.2

The following rules and procedures (the “**Rules**”) shall govern, exclusively, any matter or matters to be arbitrated between the Parties under Section 1.8, Section 1.9, Section 1.10, Section 2.11 and Section 12.2 of this Agreement.

- 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 Section 1.8, Section 1.9, Section 1.10, Section 2.11 and Section 12.2, as applicable, then the Buyer shall commence arbitration by delivering a written notice (“**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 all 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 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.
- 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 Supplier 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 Suppliers’ arbitrator, any supplier or the Buyer may apply to a judge of the Superior Court of Justice of Ontario to appoint the chair person.
- General** - The Arbitration Panel, once appointed, shall proceed immediately to determine the Replacement Provision, as the case may be, in accordance with the Arbitration Act and, where applicable, the *International Commercial Arbitration Act*, R.S.O. 1990, c.I.9 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 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.
- Consolidation** – The Parties agree that should the Arbitration Panel determine that the Replacement Provision needs to be determined through more than one arbitration proceeding, then the Parties agree that the Arbitration Panel shall determine whether the arbitration proceedings shall be consolidated, conducted simultaneously or consecutively or whether any of the arbitration proceedings should be stayed until any of the others are completed.
- Award** - The award of the Arbitration Panel, which shall include the Replacement Provision, shall be made within six (6) months after the appointment of the Arbitration Panel, subject to any

extended date to be agreed by the Parties or any reasonable delay due to unforeseen circumstances.

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

EXHIBIT G

RATE REGULATED UTILITIES

1. Definitions

In this Exhibit, the following terms have the following meanings and any capitalized terms that are not defined in this Exhibit have the meaning attributed to them in the Agreement:

“Act” means the *Ontario Energy Board Act, 1998*.

“Affiliate Contract” means any contract between a Rate Regulated Utility and its Affiliate and includes a Services Agreement.

“CICA Handbook” means the Canadian Institute of Chartered Accountants Handbook-Accounting.

“Confidential Information” means information the Rate Regulated Utility has obtained relating to a Smart Sub-metering Provider, wholesaler, consumer, retailer or generator in the process of providing current or prospective RRU Service or any other information that may give rise to a Conflict of Interest.

“Direct Costs” means costs that can reasonably be identified with a specific unit of product or service or with a specific operation or cost centre.

“Energy Service Provider” means a person, other than a Rate Regulated Utility or a shareholder of a Rate Regulated Utility that is a municipal corporation or the provincial government, involved in the supply of electricity or gas or related activities, including: retailing of electricity; marketing of natural gas; generation of electricity; energy management services; conservation or demand management programs; street lighting services; sentinel lighting services; metering (including smart sub-metering that is the subject of the Smart Sub-Metering Code and wholesale metering); billing other than solely for the delivery and supply of electricity or natural gas or for sewer or water services; and appliance (including water heater) sales, service and rentals.

“Fully-allocated Cost” means the sum of Direct Costs plus a proportional share of Indirect Costs.

“Indirect Costs” means costs that cannot be identified with a specific unit of product or service or with a specific operation or cost centre, and include but are not limited to overhead costs, administrative and general expenses, and taxes.

“Information Services” means computer systems, services, databases and persons knowledgeable about the Rate Regulated Utility’s information technology systems.

“Market Price” means the price reached in an open and unrestricted market between informed and prudent parties, acting at arm’s length and under no compulsion to act.

“Rate” means a rate, charge or other consideration and includes a penalty for late payment.

“Rate Order” means an order of the OEB that is in force at the relevant time which, among other things, regulates distribution and transmission rates to be charged by a Rate Regulated Utility.

“RRU Asset” means tangible or intangible property included in the Rate Regulated Utility’s Rate base.

“RRU Revenue” means, in relation to a LDC, its distribution revenue, in relation to a Transmitter, its transmission revenue, and in relation to a generator prescribed by regulation to receive payments from the Buyer, revenue received pursuant to Section 78.1 of the Act.

“RRU Service” means the services provided by a Rate Regulated Utility for which a Rate or charge has been approved by the OEB, and includes a LDC’s obligation to sell electricity pursuant to Section 29 of the Electricity Act.

“Services Agreement” means an agreement between a Rate Regulated Utility and its Affiliate for the purpose of Subsection 2.2 of this Exhibit G.

“Shared Corporate Services” means business functions that provide shared strategic management and policy support to the corporate group of which the Rate Regulated Utility is a member, relating to legal, regulatory, procurement services, building or real estate support services, information management services, information technology services, corporate administration, finance, tax, treasury, pensions, risk management, audit services, corporate planning, human resources, health and safety, communications, investor relations, trustee, or public affairs.

“Smart Sub-metering Provider” has the meaning given to it in the Smart Sub-metering Code.

“Smart Sub-metering Code” means the “Smart Sub-Metering Code” issued by the OEB on July 24, 2008.

“System Planning Information” means information pertaining to (i) the planning of a Distribution System, including Distribution System development or reinforcement plans, equipment acquisitions and work management plans, or (ii) the planning of systems involved in work management or of systems involved in the provision of customer service, including billing systems and call centre operations.

2. General Affiliate Relations and Transfer Pricing

2.1 A Rate Regulated Utility shall ensure accounting and financial separation from all Affiliates and shall maintain separate financial records and books of accounts.

2.2 Where a Rate Regulated Utility provides a service, resource, product or use of asset to an Affiliate or receives a service, resource, product or use of asset from an Affiliate, it shall do so in accordance with a Services Agreement, the terms of which may be reviewed by the Buyer to ensure compliance with this Exhibit G. The Services Agreement shall include:

- a) the type, quantity and quality of service;
- b) pricing mechanisms;
- c) cost allocation mechanisms;
- d) confidentiality arrangements;
- e) the apportionment of risks (including risks related to under or over provision of service); and
- f) a dispute resolution process for any disagreement arising over the terms or implementation of the Services Agreement.

- 2.3** In the event of an emergency situation a Rate Regulated Utility may, without a Services Agreement, provide a service, resource, product or use of asset to, or receive a service, resource, product or use of asset from, an Affiliate which is also a Rate Regulated Utility.
- 2.4** The transfer pricing rules set out in sections 2.6 through 2.9 of this Exhibit do not apply when a Rate Regulated Utility provides a service, resource, product or use of asset to, or receives a service, resources, product or use of asset from, an Affiliate in an emergency situation; a reasonable Fully-allocated Cost related price shall be determined afterwards by the parties.
- 2.5** The term of an Affiliate Contract between a Rate Regulated Utility and an Affiliate shall not exceed five (5) years, unless otherwise approved by the Buyer in writing.
- 2.6 Where a Market Exists**
- 2.6.1** Where a reasonably competitive market exists for a service, product, resource or use of asset, a Rate Regulated Utility shall pay no more than the Market Price when acquiring that service, product, resource or use of asset from an Affiliate.
- 2.6.2** A fair and open competitive bidding process shall be used to establish the Market Price before a Rate Regulated Utility enters into or renews an Affiliate Contract under which the Rate Regulated Utility is acquiring a service, product, resource or use of asset from an Affiliate.
- 2.6.3** Despite section 2.6.2, where satisfactory benchmarking or other evidence of Market Price is available, a competitive tendering or bidding process is not required to establish the Market Price for a contract with an annual value of less than \$100,000 or 0.1% of the Rate Regulated Utility's RRU Revenue, whichever is greater. Where an Affiliate Contract has a term of more than one year, the annual value of the Affiliate Contract shall be determined by dividing the total value of the Affiliate Contract by the number of years in the term.
- 2.6.4** Where the value of a proposed contract over its term exceeds \$500,000 or 0.5% of the Rate Regulated Utility's RRU Revenue, whichever is greater, a Rate Regulated Utility shall not award the contract to an Affiliate before an independent evaluator retained by the Rate Regulated Utility has reported to the Rate Regulated Utility on how the competing bids meet the criteria established by the Rate Regulated Utility for the competitive bidding process.
- 2.6.5** The Buyer may, for the purposes of sections 2.6.3 and 2.6.4, consider more than one Affiliate Contract to be a single Affiliate Contract where they have been entered into for the purpose of setting the contract values at levels below the threshold level set out in section 2.6.3 or 2.6.4.
- 2.6.6** Where a reasonably competitive market exists for a service, product, resource or use of asset, a Rate Regulated Utility shall charge no less than the greater of (i) the Market Price of the service, product, resource or use of asset and (ii) the Rate Regulated Utility's fully allocated cost to provide service, product, resource or use of asset, when selling that service, product, resource or use of asset to an Affiliate.

2.7 Where No Market Exists

- 2.7.1** Where it can be established that a reasonably competitive market does not exist for a service, product, resource or use of asset that a Rate Regulated Utility acquires from an Affiliate, the Rate Regulated Utility shall pay no more than the Affiliate's Fully-allocated Cost to provide that service, product, resource or use of asset. The Fully-allocated Cost may include a return on the Affiliate's invested capital. The return on invested capital shall be no higher than the Rate Regulated Utility's approved weighted average cost of capital.
- 2.7.2** Where a reasonably competitive market does not exist for a service, product, resource or use of asset that a Rate Regulated Utility sells to an Affiliate, the Rate Regulated Utility shall charge no less than its Fully-allocated Cost to provide that service, product, resource or use of asset. The Fully-allocated Cost shall include a return on the Rate Regulated Utility's invested capital. The return on invested capital shall be no less than the Rate Regulated Utility's approved weighted average cost of capital.
- 2.7.3** Where a Rate Regulated Utility pays a cost-based price for a service, resource, product or use of asset that is obtained from an Affiliate, the Rate Regulated Utility shall obtain from the Affiliate, from time to time as required to keep the information current, a detailed breakdown of the Affiliate's Fully-allocated Cost of providing the service, resource, product or use of asset.

2.8 Shared Corporate Services

- 2.8.1** For Shared Corporate Services, Fully-allocated Cost-based pricing (as calculated in accordance with sections 2.7.1 and 2.7.2) may be applied between a Rate Regulated Utility and an Affiliate in lieu of applying the transfer pricing provisions of section 2.6.1 or section 2.6.6, provided that the Rate Regulated Utility complies with section 2.7.3.

2.9 Transfer of Assets

- 2.9.1** If a Rate Regulated Utility sells or transfers to an Affiliate a RRU Asset, the price shall be the greater of the Market Price and the net book value of the asset.
- 2.9.2** Before selling or transferring to an Affiliate a RRU Asset with a net book value that exceeds \$100,000 or 0.1% of the Rate Regulated Utility's RRU Revenue, whichever is greater, the Rate Regulated Utility shall obtain an independent assessment of its Market Price.
- 2.9.3** If a Rate Regulated Utility purchases or obtains the transfer of an asset from an Affiliate, the price shall be no more than the Market Price.
- 2.9.4** Before a Rate Regulated Utility purchases or obtains the transfer of an asset from an Affiliate with a net book value that exceeds \$100,000 or 0.1% of the Rate Regulated Utility's RRU Revenue, whichever is greater, the Rate Regulated Utility shall obtain an independent assessment of its Market Price.
- 2.9.5** The Buyer may, for the purposes of sections 2.9.2 and 2.9.4, consider more than one asset transaction to be a single transaction where the transactions have been entered into for the

purpose of setting the transfer prices at levels below the threshold level set out in section 2.9.2 or 2.9.4.

2.10 Transfer Price Established by Laws or Regulations

2.10.1 Where any Laws or Regulations prescribes the amount to be charged by or to a Rate Regulated Utility in relation to the provision or receipt of a service, product, resource or use of asset, that Laws or Regulations shall prevail over the requirements of sections 2.6 to 2.8 to the extent of any inconsistency.

3. Equal Access to Services

3.1 A Rate Regulated Utility shall apply all Rate Orders and rate schedules to an Affiliate in the same manner as would be applied to similarly situated non-affiliated parties.

3.2 Requests by an Affiliate or an Affiliate's customers for access to a Rate Regulated Utility's transmission or distribution network or for RRU Services shall be processed and provided by the Rate Regulated Utility in the same manner as would be processed or provided for similarly situated non-affiliated parties.

4. Confidential Information

4.1 Where a Rate Regulated Utility shares Information Services with an Affiliate, all Confidential Information must be protected from access by the Affiliate. Access to a Rate Regulated Utility's Information Services shall include appropriate computer data management and data access protocols as well as contractual provisions regarding the breach of any access protocols. A Supplier shall, if required to do so by the Buyer, conduct a review of the adequacy, implementation or operating effectiveness of the access protocols and associated contractual provisions which complies with the provisions of section 5970 of the CICA Handbook. A Rate Regulated Utility shall also conduct such a review when the Rate Regulated Utility considers that there may have been a breach of the access protocols or associated contractual provisions and that such review is required to identify any corrective action that may be required to address the matter. The Supplier shall comply with such directions as may be given by the Buyer in relation to the terms of the section 5970 review. The results of any such review shall be made available to the Buyer.

4.2 A Rate Regulated Utility shall not share with an Affiliate that is an Energy Service Provider employees that are directly involved in collecting, or have access to, Confidential Information.

4.3 Confidentiality of Confidential Information and Restriction on Provision of System Planning Information

4.3.1 A Rate Regulated Utility shall not release to an Affiliate Confidential Information relating to a Smart Sub-metering Provider, wholesaler, consumer, retailer or generator without the consent of that Smart Sub-metering Provider, wholesaler, consumer, retailer or generator.

4.3.2 A Rate Regulated Utility shall not disclose Confidential Information to an Affiliate without the consent in writing of the Smart Sub-metering Provider, wholesaler, consumer, retailer or generator, as the case may be, except to the extent permitted by the

Rate Regulated Utility's OEB licence or where Confidential Information is required to be disclosed:

- a) for billing, settlement or market operation purposes;
- b) for law enforcement purposes;
- c) for the purpose of complying with any legislative or regulatory requirement; or
- d) for the processing of past due accounts of the Smart Sub-metering Provider, wholesaler, consumer, retailer or generator, as the case may be, which have been passed to a debt collection agency.

4.3.3 Confidential Information may be disclosed where the information has been sufficiently aggregated such that information pertaining to any individual Smart Sub-metering Provider, wholesaler, consumer, retailer, or generator cannot reasonably be identified. If such information is aggregated it must be disclosed on a non-discriminatory basis to any party requesting the information.

4.3.4 Subject to section 4.3.5, a Rate Regulated Utility shall not provide System Planning Information to an Affiliate that is an Energy Service Provider.

4.3.5 A Rate Regulated Utility may provide System Planning Information to an Affiliate that is an Energy Service Provider:

- a) if the System Planning Information is made available to non-affiliated third parties at the same time, or has previously been made available to non-affiliated third parties, on a non-confidential basis in substantially the same form and on the same terms and conditions as it is made available to the Affiliate;
- b) if the System Planning Information is, at the time of provision to the Affiliate, publicly available in substantially the same form as it is made available to the Affiliate; or
- c) for the purposes of complying with any legislative or regulatory requirement.

EXHIBIT H

TAX GROSS-UP PROVISIONS APPLICABLE TO SECTION 9.6

The gross up amounts for any Taxes payable (the “**Grossed-up Taxes**”) on the Optional Termination Sum and on the Optional Termination Payment True-up Sum, each as to be determined under Section 9.6 of the Agreement, shall be calculated based on the following principles:

1. The payment of the Optional Termination Sum and the Optional Termination Payment True-up Sum, inclusive of the Grossed-up Taxes, is to compensate the Supplier for the occurrence of a Optional Termination and the destruction of its entire business activity and functions that would have been achieved through the operation of the Project
2. The objective for the payment of the Grossed-up Taxes is to enable the Supplier to be in the same position after paying Taxes on the receipt of the Optional Termination Sum plus (or less, as applicable) any Optional Termination Sum True-up Payment received hereunder, including any Taxes payable on the Grossed-up Taxes, as the Supplier would have been in had such no payment had arisen.
3. For purposes of calculating the Grossed-up Taxes, only those taxes imposed under Part I of the ITA and similar taxes imposed pursuant to any taxation statute of a province (but only to the extent that the Supplier is subject to taxation under that provincial taxation statute) shall be considered. For purposes of Exhibit H, the ITA and similar taxation statutes of a province shall be referenced as the “**Tax Acts**”.
4. If a Supplier is formed as a partnership, then the Grossed-up Taxes shall be determined after the Supplier has made the proportionate allocations of partnership income and expenses to each partner. The provisions of this Exhibit H apply with necessary modification to each such partner, and for greater certainty shall take into account any Taxes payable by each partner arising from the distribution of the proportionate share of the Optional Termination Sum and the Optional Termination True-up Sum (as applicable) to each Partner.
5. If a Supplier or its partner is exempt from taxation under both the ITA and any applicable provincial statute imposing taxation on the Supplier or partner, as applicable, then no Grossed-up Taxes shall be payable to that Supplier or partner, as applicable.
6. If a Supplier is formed as a partnership and a trust is a partner in the Supplier, and further if that trust has allocated some or all of its taxable income to its beneficiaries in such a fashion that the beneficiaries would recognize that taxable income that had otherwise been recognized or allocated by the Supplier to the trust, the Grossed-up Taxes shall be determined after the trust has made the relevant allocations to each beneficiary and the provisions of this Exhibit H will apply with necessary modification to each such beneficiary of the trust.
7. To the maximum extent permitted pursuant to the Tax Acts, the Supplier shall be obligated to claim all tax deductions attributable to the Optional Termination and to the receipt of the Optional Termination Sum and the Optional Termination Payment True-up Sum.
8. The Supplier shall utilize all non-capital losses, net capital losses, and tax credit amounts, to the maximum extent permitted under the Tax Acts, in order to minimize the quantum of the Grossed-up Taxes that would otherwise be payable. In particular, if the Supplier has non-capital loss carryforward balances or net capital loss carryforward balances as provided under the Tax Acts or

has any other unutilized tax credit balances, which are attributable from any source, then such loss balances and tax credits shall be applied to the maximum extent permitted pursuant to the Tax Acts as is applicable to the calculation of the Grossed-up Taxes. Similarly, the Supplier shall, to the maximum extent permitted under the Tax Acts, carry-back all future non-capital loss balances and net capital loss balances and utilize future tax credit balances, each of which are attributable to the Project or to the Optional Termination thereof, as is applicable to the calculation of the amount of the Grossed-up Taxes.

9. The Supplier shall provide its calculation of the Grossed-up Taxes, including all assumptions, calculations and methodologies used in the calculation, together with all tax returns (including any applicable tax information reporting returns) required pursuant to Part I of the ITA and similar filings required by provincial taxation statutes, where these returns have been filed by the Supplier since the Termination Date.

The Grossed-up Taxes amount shall be re-calculated and adjusted as appropriate to reflect any adjustment arising pursuant to the Optional Termination Payment True-up Sum.