EXPEDITED LONG-TERM RELIABILITY SERVICES (E-LT 1) CONTRACT

COMMENT TABLE

<u>**Section Reference**</u>	<u>**Comment**</u>
Fatal Flaw Comments	
New provision within section 11 required to address interconnection risks	We believe that the RFP process will ultimately fail if the interconnection risk as inherent in the current contract draft is not adequately addressed and revised. Given the current global supply chain challenges, demand constraints from battery suppliers, and HV substation lead times, the battery supply agreement and EPC agreement would need to be executed within 1-2 months following PPA signing in order to maintain project schedule. At this time, proponents would need to commit a material amount of security under the agreements to lock in manufacturing slots/schedules, pricing, and so forth despite no Hydro One/LDC or IESO SIA to determine interconnection capacity, schedule or costs. If it is determined in the future that interconnection capacity is unavailable or that the cost is so prohibitive as to make executing the interconnection agreement unreasonable, then the proponent would forfeit all security placed under the battery supply and EPC agreement. Therefore, there is a fundamental mismatch between the security that will be at risk for proponents relative to the interconnection risk being borne by developers and we believe this will manifest itself in the form of a lack of shareholder approval to submit into the RFP. Our recommendation would be to: a) make the execution of an interconnection agreement a Condition Precedent to the PPA; b) create a mutual termination right provision exercisable from the date the PPA is signed to the date the Condition Precedent associated with the execution of an interconnection agreement is achieved; and c) include a provision whereby the MCOD is adjusted to the later of (i) the in-service date per the interconnection agreement, or (ii) 3 years from the effective date of the PPA which would allow for adequate procurement and construction durations once the binary interconnection risk has been mitigated.

Section Reference	**Comment**
	Making the execution of an interconnection agreement a Condition Precedent will allow proponents to maintain schedule from a procurement perspective, while the mutual termination provision would provide an adequate offramp for both parties in the event required.
Section 2.13 – Material Cost Adjustment	If the IESO wishes to maintain the Materials Cost Index concept, we would recommend a change to an index specific to battery-based storage projects since IPPI does not include lithium (which is one of the major inputs of concern to proponents). We would recommend that IESO consider the use of the S&P Global Core Battery Metals Index in place of IPPI or some other observable and public indices that materially includes the input components of concern. Secondly, the exposure period as denoted in the MCPm and MCPb variables is also not appropriate – it should be adjusted to reflect an exposure period from the proposal submission date to the date of battery supply notice-to-proceed since that will be the period in which lithium is exposed to price fluctuations. After notice-to-proceed, the proponents are locked in the supply agreement costs and have no ability to adjust capital costs. An alternative construct to consider that addresses this risk would be for IESO to utilize actual cost indexing for certain costs/inputs. Proponents would submit their true estimate of these costs (e.g. lithium) with their proposals as the proposal submission deadline. At such time that these costs become fully crystallized and fixed at supply agreements notice-to-proceed milestone, the proponent would then submit an officer's certificate stating the final value. The FCP would then be adjusted based on this change and could even be subject to a lack of change if the movement does not exceed a certain % threshold so that proponents maintain a reasonable degree of risk/exposure. The IESO should be able to corroborate any changes claimed by proponents through observable indices or other market metrics or events. The volatility of ocean freight transportation costs given ongoing supply chain disruptions also presents a material risk to developers and could be adequately addressed through the use of the actual cost indexing approach as noted above. Ultimately, a failure to allow for reasonable adjustments to the capacity price for material movements in key cost components like lithium and marine transportation that cannot be

Section Reference	**Comment**
	managed by Proponents will result in Proponents overstating risk and contingency – leading to higher capacity price submissions and counter to the interest of the Ontario ratepayers.
Section 2.13 – Material Cost Adjustment – Interconnection Cost Adjustment	The lack of visibility around interconnection costs poses severe challenges for proponents to address adequately. We would recommend that the IESO include a mechanism in the contract to allow for the parties to renegotiate in good faith in the event that interconnection costs are materially higher than initially anticipated and both parties have a mutual termination right in the event interconnection costs are too cost prohibitive to both parties. Similar to the above proposal for lithium and transportation, a construct to consider that addresses this risk would be for IESO to utilize actual cost adjustments. Proponents would submit their estimated HONE/LDC costs provided by a knowledgeable third-party engineer in the Province of Ontario to estimate Hydro One Interconnection costs and submit this cost within their proposals at the proposal submission deadline. At such time that these costs become fully crystallized and known at interconnection agreement execution, the proponent would then submit an officer's certificate stating the final value. The FCP would then be adjusted based on this change, and could even be subject to a lack of change if the movement does not exceed a certain % threshold so that proponents maintain a reasonable degree of risk/exposure. The IESO should be able to corroborate any changes claimed by proponents through the comparison of the proposal submission interconnection costs and the Hydro One / LDC interconnection agreement costs. Ultimately, a failure to allow for reasonable adjustments to the capacity price for material movements in interconnection cost that cannot be managed by proponents will result in proponents overstating risk and contingency – leading to higher capacity price submissions and counter to the interest of the Ontario ratepayers.
Section 11.3	The definition of Force Majeure should expressly include any delays in obtaining interconnection approvals, supply chain delays, or delays by Hydro One / LDC in performing any required interconnection facility work. The inability to obtain relief for interconnection delays that are truly outside the Supplier's control, resulting in forfeiture of a sizable security deposit, is a difficult risk for proponents to accept and it may materially impair the IESO's ability to achieve its 1,000 MW procurement target. We recommend providing a form of relief to extend the COD without LD's or a

<u>Section Reference</u>	**<u>Comment</u>**
	commercial offramp in the event significant costs interconnection facility costs are required or interconnection timelines cannot be expedited. We would also note that Hydro One / LDC's are reluctant to commit resources to carry out connection impact assessments (CIAs) unless the proponent has been awarded a contract with the IESO. This creates a "chicken-and-egg" problem for proponents; the proposed procurement process requires developers to have a reasonable degree of certainty around interconnection timing and costs, whereas the Hydro One / LDCs do not want to commit scarce resources to uncontracted (and therefore less certain) projects.
Regulatory / Government Approvals	We believe it is highly likely that the requisite regulatory and governmental agencies will become overwhelmed by the volume of project applications and proponents, which could ultimately impair their ability to act within the timeline required by proponents to meet the Contract COD. We are requesting that IESO consider a mechanism in the contract that allows for a day-for-day extension of the COD in the event of material delay caused by regulatory and governmental agencies.
Section 10.1(k) - Event of Default	The current Event of Default provision (k) is calculated based on a 75% Adjusted Monthly Contract Capacity (i.e., availability) during a rolling 24-month period. We recommend changing this provision to as failure to achieve 75% Adjusted Monthly Contract Capacity in three consecutive Contract Years. For clarity, Event of Default would only occur if the proponent failed to achieve 75% of Adjustment Monthly Contract Capacity <u>in each</u> of the Contract Year 2, 3 <u>and</u> 4. For further clarity, if a proponent failed only in Contract Year 3 of the above example, this would not trigger an Event of Default. We believe the use of a rolling month concept is flawed given that an equipment failure that took >6 months to remediate would not enable a proponent to cure the event of default. This is an extremely short timeframe given how specialized the equipment is, length of procurement timelines, etc. We also believe that the current framework would be extremely challenging for financiers to accept.

Section Reference	**Comment**
Substantive Comments	
"**Liquidated Damages Rate**"	We suggest that a fixed number be used as opposed to referencing the latest capacity auction clearing price which will occur in the future. The Supplier and its lenders will want to quantify in advance the maximum dollar exposure to the Supplier of missing the Milestone Date for Commercial Operation.
Exhibit M - "**Low Spread Adjustment Factor**" (LSAF), "**High Spread Adjustment Factor**" (HSAF), and "**Market Price Spread Adjustment Factor" (**MPSAF)	The existing structure provides limited benefit to the proponent and does not maximize incentives for market participation as there is no incentive beyond market prices to provide energy. If the spread is not sufficient to cover charging costs, demand charges, parasitic loss costs during idle periods at 100% SOC, and substantial capital cost increases due to increased battery cycling (i.e., incremental augmentation impacts), there is no incentive to provide energy and increase market participation. MPSAF is also not proportional; If AMPS is $1/MWh or $100/MWh above the [$50/MWh] threshold, then the claw back is the same which adds risk to the Proponents and is subsequently negative for the Ontario ratepayers. We suggest a structure of a minimum $/MWh energy spread included in the Proponents proposal submission, and for market energy prices greater than the $/MWh proposed energy spread from the Proponents, that there is a 50-50 incremental revenue sharing between IESO and the Proponents to ensure adequate market participation and incentive to provide energy.
Exhibit E-1/E-2 – POCRF	Planned Outage Capacity Reduction Factor can be no less than 0.95 in calculating the Adjusted Monthly Contract Capacity. We believe this is unrealistic as it effectively equates to 1 business day per month, which is wholly insufficient to conduct planned maintenance activities to ensure the safe and reliable operation of the facility. We suggest lower the POCRF to 0.8 and allowing Proponents to nominate two periods within the year to conduct Planned Outages without penalties.
"State-of-Charge Limited"	We suggest changing the SOC discharge % to 50%. This will allow proponents to better manage market participation and allowing bids and dispatch instructions to operate in 2-hour windows.

Section Reference	**Comment**
Section 1.2(b)	The IESO should not be able to unilaterally amend these forms without the Supplier's consent, other than perhaps to make immaterial, non-substantive administrative updates (such as updating website links, contact names, etc.). In the past, the IESO and its legal counsel have used this to add substantive terms to the forms, in effect amending the Agreement in a substantive way without the Supplier's permission.
Section 1.6	We recommend including a provision for IESO Market Rule protection for the Supplier's Economics or similar mechanism, considering that MRP will launch in May 2025.
Section 2.3(c)	Liquidated damages should be paid once the Facility achieves COD (or if the Agreement is terminated as a result of the failure to achieve COD by the Longstop Date). It is administratively burdensome to pay LDs at multiple times within 10 Business Days of the IESO submitting an invoice. It also adds an additional cash-flow drag during construction, which increases delivery costs.
Section 2.3(g)	The requirement to notify the IESO of any event that will delay COD by 30 days or more seems unnecessary in light of the quarterly reports required by Section 2.4. Consider removing this notification requirement.
Section 2.4(b)	The administrative late charge of $5,000 for filing a late quarterly report seems excessive.
Section 2.7(a)	The Metering Plan should be delivered at COD, consistent with FIT and LRP contracts. It seems odd to have to deliver a Metering Plan on the Milestone Date for Commercial Operation if Commercial Operation could be delayed by up to 18 months.
Section 6.1	The IESO's sole and exclusive remedy for failure to achieve COD by the Longstop Date should be a draw of the performance security. There should not be a need to replenish any portion of the security that is drawn during construction. This makes sense during the operational period but not during construction period. Paragraph (c) is confusing because the performance security is not due until COD, which is already a moving target.

Section Reference	Comment
Section 7.1(k)	We query the need for this representation, which is more of an operating covenant than a representation in any event.
Section 7.1(l)	We recommend removing the requirement for Maximum Contract Capacity not to exceed 95% of Nameplate capacity. There already exists non-performance charges for proponents to manage their capacity and Capacity Check Tests to ensure proponents meet their capacity & energy obligations. Adding a 5% overbuild concept is costly to Ontario ratepayers.
Article 8	The confidentiality provisions are onerous and unnecessary given that the form of contract is publicly available. The only truly confidential information is in Exhibit B and this is really confidential information of the Supplier, not the IESO. Suppliers would have no incentive to make this information public. In Section 8.1(a), the words "who need to know Confidential Information for the purpose of assisting the Receiving Party in complying with its obligations under this Agreement" should be deleted. There are many reasons why the Supplier needs to disclose Confidential Information to its Representatives that have nothing to do with compliance with the Agreement (i.e., financing assistance, enforcing the Supplier's rights under the Agreement, in connection with the sale of the Supplier or an investment in the Supplier, etc.). We would urge the IESO to reconsider the need for a Confidentiality Undertaking. It is particularly difficult to get third-party trust companies to sign these. It should be sufficient to require the Supplier to enter into a confidentiality agreement with the person to whom disclosure will be made, without having to provide an undertaking to the IESO. At a minimum, exceptions should be made for direct and indirect equity holders of the Supplier.
Section 9.1(b)	The contract term should commence on COD. In other words, the Supplier should have the right to maintain the full term by paying the required liquidated damages.
Section 10.2(b)	This Section should only apply if the IESO elects not to terminate the Agreement pursuant to 10.2(a) and if the Agreement is not automatically terminated pursuant to 10.2(c). In this case, it may set-off amounts owing to the Supplier against amounts owing to the IESO or draw on the performance security for the payment thereof. Once the amounts have been

Section Reference	Comment
	set-off or drawn, the relevant default should be deemed to have been cured and cannot be used as a basis for terminating the Agreement. If the IESO elects to terminate the Agreement or if the Agreement is automatically terminated, then Section 10.2(d) is the operative paragraph.
Section 10.4(a)	Consistent with prior IESO contracts, there should be an obligation on the part of the IESO to return any excess construction-period performance security at COD.
Section 11.1(a)	An event of Force Majeure that delays COD should result in a day-for-day extension to the Term, without the requirement to pay any liquidated damages.
Section 11.2	The list of exclusions from Force Majeure should be expanded to include “changes in the supply of, or demand for, electricity in the Province of Ontario”.
Section 13.1(b)(ii)	This should be expanded beyond “Other Suppliers”. It should include other generators who have similar bilateral arrangements with the IESO (i.e., other capacity-type contracts).
Sections 13.1(c), 13.2 and 13.3(a)(iii)	This only captures Discriminatory Action that increases the costs that the Supplier would reasonably be expected to incur in connection with the development, construction, operation and maintenance of the Facility. It should also include anything that reduces the benefits of the contract to the Supplier, including any reduction of the Monthly Capacity Payment. To give an extreme example, if the Ontario Legislature passes a law that deems the Monthly Capacity Payment to be zero, this should clearly be a Discriminatory Action.
Section 14.1	The exclusion for “loss of profits” should be deleted. If the IESO improperly terminates the Agreement, the Supplier should be able to claim for the loss of expected revenue from the capacity payment (but, for the avoidance of doubt, from the sale of merchant power) that it would have received through to the end of the Term if the Agreement had not been improperly terminated.
Section 15.6	Capacity Check Tests should be performed annually, not once per Season.

Section Reference	Comment
Section 16.5(e)	The rationale for the IESO's ability to assign the Agreement for less than the remainder of the Term is unclear.
Sections 16.6 and 16.7	The restrictions on changes of Control should be eliminated. Many projects are developed by specialized developers who then sell the assets to financial investors within a short period of time following COD to recoup their development costs and redeploy their capital into further development projects. At a minimum, there should be a concept of "Qualified Owner" who meets (or who is owned by a person who meets) a certain minimum net worth/assets under management/tangible net worth test and certain experience criteria.
Exhibit G, Section 3(o)	This Section requires that none of the Security Agreements shall secure any indebtedness, liability or obligation of the Supplier that is not related to the Facility or cover any real or personal property of the Supplier not related to the Facility. This would prohibit the cross-collateralization of the Facility with another generation facility and is inconsistent with the rest of the secured lender provisions in the Agreement. This should be deleted.
Drafting Comments	
"**Credit Rating**"	This term is not used in the Agreement in relation to the Supplier, so clause (i) should be deleted and the words "any other Person" in clause (ii) should be changed to "any Person".
"**Economic Interest**"	Consider expanding this to include trusts, as some indigenous groups have been structuring their investments through the use of trusts.
"**Government of Ontario**"	This should be updated to "His Majesty the King" in right of Ontario.
"**Indigenous Participation Level**"	The words ", as the case may be," should be deleted.
"**Land Use Planner**"	The word "Means" should not be capitalized.
"**Network Upgrade Costs**" and "**Network Upgrades**"	These defined terms are not used anywhere in the Agreement and should be deleted.
"**Representatives**"	This should include direct and indirect equity holders of the Supplier.

Section Reference	**Comment**
Section 2.10	The words ", except in respect of the Supplier's performance requirements under this Agreement," should be deleted as they are confusing.
Section 3.1(b)	The reference to Section "10.1(l)" should be changed to "10.1(k)".
Section 9.1(c)	This section is missing a period.
Section 10.1(i)	The reference to Section "15.6(e)" should be to "15.6(e)(ii)".
Section 12.1(c)	The words "a copy of the original thereof" should be revised to "an electronic copy thereof". This suggests that the IESO requires a copy of an original "wet ink" signature on the Secured Lender Security Agreements. Wet ink signatures are becoming increasingly painful to obtain. Electronic copies should be sufficient.
Section 12.2(a)	The words "(other than those set out in Section 10.2(c))" should be replaced with "(other than those set out in Sections 10.1(e), (g) and (h))".
Section 12.2(d)	The reference to "Section 12.2" in the third line should be revised to "Section 12.2(e)".
Section 12.2(e)	The words "to another Person who is at Arm's Length with the Secured Lender" should be deleted. The IESO has a consent right (in its absolute discretion) over any such assignment. If it grants its consent, then the Secured Lender should be cease to be liable for the obligations of the Supplier following the assignment.
Section 12.2(f)	The first sentence should be revised to include the following underlined language: "Despite anything else contained in this Agreement, any Person to whom the Supplier's Interest is transferred <u>upon the enforcement by the Secured Lender of its rights under the Secured Lender's Security Agreement</u> shall take the Supplier's Interest …"

Section Reference	**Comment**
Section 12.2(h)	Consider clarifying that the term "priority" as used in this paragraph means the priority of a Secured Lender's security interest as determined in accordance with the *Personal Property Security Act* (Ontario). We believe this is what is intended but as drafted "priority" could be read to mean the first Secured Lender to provide a copy of its Secured Lender Security Agreement to the IESO in accordance with Section 12.2 (or the first Secured Lender to enter into a Secured Lender Consent and Acknowledgement Agreement with the IESO).
Exhibit A, Section 1.4	There is a missing ")" at the end of this heading.
Exhibit I	The third recital containing the definition of "Purpose" may not be true in all cases. The confidentiality provisions in Article 8 are quite restrictive and the Confidentiality Undertaking may be required in connection with prospective financings, for example, and not only in connection with the purchase of the Facility. We suggest that this be made more generic. The same comment applies in Section 2(a). It is not clear what amendment to the E-LT1 Contract is contemplated by Section 1(c).