
AMENDED AND RESTATED LENNOX ENERGY SUPPLY AGREEMENT

Between

ONTARIO POWER GENERATION INC.

– and –

INDEPENDENT ELECTRICITY SYSTEM OPERATOR

DATED as of the 8th day of December, 2021

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AMENDED AND RESTATED LENNOX ENERGY SUPPLY AGREEMENT (“LESA”)

This Amended and Restated Lennox Energy Supply Agreement (“LESA”) is effective as of the 8th day of December, 2021 between Ontario Power Generation Inc. (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 Supplier owns and operates a 2,160 MW 4-Unit dual-Fuel natural gas and residual fuel oil burning generating station in the Village of Bath, Ontario and which represents approximately 1657 MW of unforced capacity from a power system planning perspective;

AND WHEREAS on January 6, 2010, the Minister of Energy and Infrastructure issued a directive to the Buyer to assume responsibility for the Ministry of Energy and Infrastructure’s initiative of seeking a new contract with the Supplier for the Facility in order to help support the general adequacy of the electricity system in Ontario;

AND WHEREAS the Supplier and the Ontario Power Authority (which amalgamated with and continued as the Buyer as of January 1, 2015) entered into the Lennox Energy Supply Agreement as of December 12, 2012 (the “**Existing Contract**”), in respect of the Facility in order to ensure that the Supplier continued to operate the Facility and that the Facility continued to participate in Ontario’s electricity markets in a commercial manner;

AND WHEREAS the Supplier and the Buyer now wish to amend and restate the Existing Contract in order to formalize contractual arrangements for the continued operation of the Facility in Ontario’s electricity markets after the expiration of the term of the Existing Contract, on the terms and conditions set out herein;

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

ARTICLE 1 DEFINITIONS

1.1 Definitions

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

“**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 Lennox Energy Supply Agreement (LESA) as it may be amended, restated or replaced from time to time.

“**ALLOP UCAP**” has the meaning ascribed to it in Exhibit E.

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

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

“**Approved FD&M Services**” has the meaning ascribed to it in Exhibit L.

“**Approved Fuel Services Trading**” has the meaning ascribed to it in Exhibit L.

“**Approved Fuel Services Trading Margin**” has the meaning ascribed to it in Exhibit L.

“**Approved Test**” means (i) a Regulatory Check Test, or (ii) a Capacity Check Test or a Unit Check Test that is passed, excluding any Capacity Check Test or Unit Check Test that is performed as a result of a previously failed Capacity Check Test or Unit Check Test, as applicable.

“**Approved Test Losses**” or “**ATL**” has the meaning given to it in Exhibit J.

“**Approved Test Monthly Cost of Generation Fuel**” or “**ATMCGF**” has the meaning given to it in Exhibit J.

“**Approved Test Monthly Delivered Electricity**” or “**ATMDE**” has the meaning given to it in Exhibit J.

“**Approved Test Monthly Gross Market Revenue**” or “**ATMGMR**” has the meaning given to it in Exhibit J.

“**Approved Test Monthly Incremental Maintenance and Consumables Adder**” or “**ATMIMCA**” has the meaning given to it in Exhibit J.

“**Approved Test Monthly Non-Fuel Start Cost Adder**” or “**ATMNSCA**” has the meaning given to it in Exhibit J.

“**Approved Test Monthly Starts**” or “**ATMS**” has the meaning given to it in Exhibit J.

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

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

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

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

“**Average Book Value of RFO**” or “**ABVRFO**” has the meaning ascribed to it in Exhibit J.

“**Average RFO Level**” or “**ARFOL**” has the meaning ascribed to it in Exhibit J.

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

“**Average Unit Capacity Reduction Factor**” or “**AUCRF**” has the meaning ascribed to it in Exhibit J.

“**Average Unit Test Capacity**” has the meaning ascribed to it in Section 15.7(d).

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

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

“**Buyer**” has the meaning given to it in the first paragraph to this Agreement and includes such Person’s successors and any permitted assigns.

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

“**Buyer Statement**” has the meaning ascribed to it in Section 13.2(g).

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

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

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

“**Capacity Reduction Factor**” or “**CRF**” shall be an amount equal to 1.0 for each of CRF(GAS) and CRF(RFO), until, and to the extent, determined otherwise pursuant to Sections 15.6(e), 15.6(f), 15.7(e) and 15.7(f).

“**CES Contract**” means any clean energy supply contract entered into by the Ontario Power Authority in accordance with a directive issued by the Ontario Minister of Energy to the Ontario Power Authority.

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

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

“**Common Service Loads**” means that portion of the Station Service Loads that are not directly attributable to the operation of any one Unit.

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

“**Confidential Information**” means this Agreement and all information that has been identified as confidential and which is furnished or disclosed by the Disclosing Party or its Representatives to the Receiving Party or its Representatives as required by or in fulfillment of this Agreement,

whether before or after its execution, including all new information derived at any time from any such confidential information, but excluding: (i) publicly-available information, unless made public by the Receiving Party or its Representatives in a manner not permitted by this Agreement; (ii) information already known to the Receiving Party prior to being furnished by the Disclosing Party; and (iii) information disclosed to the Receiving Party from a source other than the Disclosing Party or its Representatives, 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. Notwithstanding the foregoing, information which is furnished or disclosed by the Disclosing Party or its Representatives to the Receiving Party or its Representatives in connection with this Agreement which is: (a) relating to or furnished to support the calculation of the Monthly Payment or the FFCP, (b) financial or commercial information related to the Facility or the Disclosing Party; (c) relating to the operational characteristics or activities of the Facility, including bidding practices and policies; and (d) relating to any facilities other than the Facility, in each case which is not publicly-available, shall be deemed to be Confidential Information regardless of whether such information is identified as confidential.

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

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

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

“Contract Capacity” or **“CC”** means that amount of electrical generating capacity net of Station Service Loads, expressed in MW, set out in Exhibit B, subject to adjustment as expressly provided for pursuant to this Agreement.

“Contract Date” means the date written in the first paragraph of this Agreement.

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

“Contracted Facility Operation” means the operation of the Facility to produce Electricity, Related Products, and Environmental Attributes, which relate to the Contract Capacity.

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

ownership interests, by contract or trust or otherwise, and “**Controlled by**” has a corresponding meaning.

“**Cost of Debt**” or “**CD**” has the meaning ascribed to it in Exhibit J.

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

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

“**DACP**” has the meaning given to such term in Section 1(a)(i) of Exhibit G.

“**Daily ONR Triggering Event**” has the meaning ascribed to it in Section 1.7(e).

“**Daily Operational Net Loss**” or “**DONL**” means the daily operational net loss, and is determined, from and after the occurrence of a Daily ONR Triggering Event, in accordance with Section 1.7(b).

“**Daily Operational Net Revenue**” or “**DONR**” means the daily operational net revenue, and is determined, from and after the occurrence of a Daily ONR Triggering Event, in accordance with Section 1.7(b).

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

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

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

“**Discriminatory Action**” has the meaning ascribed to it in Section 12.1.

“**Discriminatory Action Compensation**” has the meaning ascribed to it in Section 12.2.

“**Discriminatory Action Compensation Amount**” has the meaning ascribed to it in Section 12.3(e)(i).

“**Discriminatory Action Compensation Notice**” has the meaning ascribed to it in Section 12.3(e)(i).

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

“**EFOR(OP)**” has the meaning ascribed to it in Exhibit E.

“**Electricity**” means electric energy.

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

“**Electricity Metering Plan**” means a report that is provided by the Supplier to the Buyer and that (a) verifies that the revenue-quality interval meters conform with Measurement Canada Regulations, and (b) provides all required information, and equipment specifications needed to permit the Buyer to remotely access, verify, estimate and edit for calculation purposes, and/or total revenue meter readings in order to accurately determine: (i) the generator output at the Delivery Point net of any Station Service Loads; (ii) each Unit’s output at the applicable Unit’s revenue meters net of any Unit Service Loads and the applicable share of the Common Service Loads, provided that the meters used for calculating a Unit’s share of the Common Service Loads shall not be required to be revenue-quality.

“**Emission Credits**” means all permits, credits, allowances, offsets, or similar instruments acquired by the Supplier or remittances required to be made by the Supplier pursuant to GHG Laws and Regulations for the Facility in connection with the emission of greenhouse gases due to the operation of the Facility on RFO or Gas.

“**Enbridge**” means Enbridge Gas Inc (EGI).

“**Enbridge Distribution Pipeline**” has the meaning given to it in Exhibit A.

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

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

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

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

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

“**Excess Lands**” has the meaning ascribed to it in Section 2.1(h).

“**Existing Contract**” has the meaning ascribed to it in the recitals to this Agreement.

“**Facility**” means the generation facility described in Exhibit A hereto, with any modifications thereto approved by the Buyer.

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

“**FD&M Cost Adjustment**” has the meaning ascribed to it in Exhibit L.

“**FD&M Plan**” means the Initial FD&M Plan and any subsequent FD&M Plans made in accordance with this Agreement, including any revisions made thereto in accordance with this Agreement.

“**FD&M Requirements**” has the meaning ascribed to it in Exhibit L.

“**FD&M Services Incentive**” has the meaning ascribed to it in Exhibit L.

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

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

“**Final Unit Check Test**” has the meaning ascribed to it in Section 15.7(f).

“**Final Stub Payment**” or “**FSP**” has the meaning ascribed to it in Exhibit J.

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

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

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

“**First Nation**” means (i) a “band” as defined under the *Indian Act*, R.S.C. 1985, C. I-5 (as amended) including the Moose Cree First Nation and the Métis, (ii) any Person under the Control of a First Nation or First Nations, (iii) any individual who is a registered member of a First Nation or (iv) any Person under the Control of an individual or individuals who is/are registered member(s) of a First Nation or First Nations, provided that in respect of items (iii) and (iv) such individual or Person is reasonably considered to represent the collective interests of a First Nation or First Nations.

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

“**Fixed Costs of Approved FD&M Services**” has the meaning ascribed to it in Exhibit L.

“**Fixed Facility Capacity Payment**” or “**FFCP**” has the meaning ascribed to it in Exhibit B.

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

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

“Force Majeure Hours” or **“FMH”** has the meaning ascribed to it in Exhibit J.

“Fuel” means Gas, RFO and ignition oil, individually or collectively, as the context requires.

“Fuel Delivery and Management Services” or **“FD&M Services”** means collectively: (i) those transportation and distribution services in respect of Gas, RFO and ignition oil that are necessary for the operation of the Facility; and (ii) those Gas balancing and storage services that are necessary for the operation of the Facility.

“Fuel Management Protocol” has the meaning ascribed to it in Exhibit L.

“Fuel Metering Plan” means a report that is provided by the Supplier to the Buyer and that provides all required information, and equipment specifications needed to permit the Buyer to verify, estimate and edit for calculation purposes, and/or total meter readings in order to accurately determine the quantity of RFO, Gas and ignition oil that has been purchased, put into storage, removed from storage, and consumed, as applicable, for the purposes of calculating the Monthly Payment.

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

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

“Further Unit Check Test” has the meaning ascribed to it in Section 15.7(d).

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

“Gas” means natural gas as supplied by pipeline.

“GHG Laws and Regulations” has the meaning given to it in Section 2.7(b).

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

“Good Engineering and Operating Practices” means any of the practices, methods and activities adopted by a significant portion of the North American electric utility industry as good practices applicable to the design, building, and operation of generation facilities of similar type, size, age, location and capacity or any of the practices, methods or activities which, in the exercise of skill, diligence, prudence, foresight and reasonable judgement by a prudent generator in light of the facts known at the time the decision was made, could reasonably have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety, expedition and Laws and Regulations. Good Engineering and Operating Practices are not intended to be limited to the optimum practices, methods or acts to the exclusion of all others, but rather are

intended to delineate acceptable practices, methods, or acts generally accepted in the North American electric utility industry. Without limiting the generality of the foregoing and in respect of the operation of the Facility, Good Engineering and Operating Practices include taking Commercial Reasonable Efforts to ensure that:

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

“Government of Canada” means Her Majesty the Queen in right of Canada.

“Government of Ontario” means Her Majesty the Queen in right of Ontario.

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

“Greenhouse Gas” means carbon dioxide (or carbon dioxide equivalent), methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

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

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

“HESA” means a hydroelectric energy supply agreement entered into between the IESO and OPG or its Affiliates.

“Hourly Capacity Payment” has the meaning ascribed to it in Section 3 of Exhibit G.

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

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

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

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

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

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

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

“**Incremental Maintenance and Consumables Adder**” or “**IMCA**” has the meaning ascribed to it in Exhibit B.

“**Indemnifiable Loss**” has the meaning ascribed to it in Section 14.2.

“**Indemnitees**” has the meaning ascribed to it in Section 14.2.

“**Independent Engineer**” means an engineer that is:

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

“**Indexing Factor**” or “**IF**” has the meaning ascribed to it in Exhibit J.

“**Initial FD&M Plan**” means the Fuel delivery and management plan attached as Exhibit M.

“**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.

“**Interested Party**” has the meaning ascribed to it in Section 8.1(d).

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

“**Investor**” has the meaning ascribed to it in Section 8.1(d).

“**kV**” means kilovolts.

“**kW**” means kilowatt.

“**kWh**” means kilowatt hour.

“**Laws and Regulations**” means:

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

For greater certainty, Laws and Regulations do not include actions, directions, or instructions by the Government of Ontario in its capacity as shareholder of the Supplier.

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

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

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

“**Maximum Continuous Rating**” or “**MCR**” has the meaning ascribed to it in the IESO Market Rules.

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

“**MGMR IESO Accounts**” has the meaning ascribed to it in Attachment 1 of Exhibit J.

“**Monthly Cost of Generation Fuel**” or “**MCGF**” has the meaning ascribed to it in Exhibit J.

“**Monthly Delivered Electricity**” or “**MDE**” has the meaning ascribed to it in Exhibit J.

“**Monthly FD&M Payment**” or “**MFD&MP**” has the meaning ascribed to it in Exhibit L.

“**Monthly Gross Market Revenue**” or “**MGMR**” has the meaning ascribed to it in Exhibit J.

“**Monthly Incremental Maintenance and Consumables Adder**” or “**MIMCA**” has the meaning ascribed to it in Exhibit J.

“**Monthly Market Costs for Operations**” or “**MMCO**” has the meaning ascribed to it in Exhibit J.

“**Monthly Net Revenue Sharing Payment**” or “**MNRSP**” has the meaning ascribed to it in Exhibit J.

“**Monthly Non-fuel Start Cost Adder**” or “**MNSCA**” has the meaning ascribed to it in Exhibit J.

“**Monthly Operating Net Loss**” or “**MONL**” has the meaning given to it in Exhibit J.

“**Monthly Operating Net Revenue**” or “**MONR**” has the meaning given to it in Exhibit J.

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

“**Monthly Starts**” or “**MS**” has the meaning ascribed to it in Exhibit J.

“**Monthly Unit Input Value**” has the meaning ascribed to it in Exhibit L.

“**Monthly Unit Value**” has the meaning ascribed to it in Exhibit L.

“**Monthly Variable Operating Cost**” or “**MVOC**” has the meaning given to it in Exhibit J.

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

“**Must-Offer Deficiency Quantity**” has the meaning ascribed to it in Section 3 of Exhibit G.

“**Must-Offer Non-Performance Day**” means any calendar day during which one or more Must-Offer Non-Performance Events occurs.

“**Must-Offer Non-Performance Charge**” or “**MONPC**” has the meaning ascribed to it in Section 3 of Exhibit G.

“**Must-Offer Non-Performance Event**” means any instance where the Supplier fails to satisfy the Must-Offer Obligations.

“**Must-Offer Obligations**” means, collectively, those obligations of the Supplier set out in Exhibit G with respect to the offering of Electricity into the IESO-Administered Markets from time to time during the Term of this Agreement.

“**Must-Offer Quantity**” has the meaning ascribed to it in Section 3 of Exhibit G.

“**Mutually Confidential Information**” means Confidential Information which has been identified by the Parties as Confidential Information of both the Buyer and the Supplier, being that information identified as such in Exhibit B and such further information as may be agreed by the Parties from time to time.

“**MW**” means megawatt.

“**MWh**” means megawatt hour.

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

“**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 13.2(g).

“**Non-fuel Start Cost Adder**” or “**NSCA**” has the meaning ascribed to it in Exhibit B.

“**Non-Performance Factor**” has the meaning ascribed to it in Section 3 of Exhibit G.

“**Notice of Discriminatory Action**” has the meaning ascribed to it in Section 12.3(a).

“**Notice of Dispute**” has the meaning ascribed to it in Section 12.3(b).

“**Overall Capacity Reduction Factor**” or “**OCRF**” has the meaning ascribed to it in Exhibit J.

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

“**OPG**” means Ontario Power Generation Inc., or its successor.

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

“**Party**” and “**Parties**” have the meaning given to those terms in the recitals.

“**Performance Security**” has the meaning ascribed to it in Section 6.2.

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

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

“**Planned Shutdown Date**” has the meaning ascribed to it in Exhibit L.

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

“**Regulatory Check Test(s)**” has the meaning ascribed to it in Section 15.8.

“**Related Products**” means all Capacity Products, Ancillary Services, transmission rights and any other products or services that may be associated with the Facility from time to time (but excluding Environmental Attributes produced by the Facility) that may be traded in the IESO-Administered Markets or other markets, or otherwise sold, and which shall be deemed to include products and services for which no market may exist, such as capacity reserves, but excluding mineral rights located on or under the real property on which the Facility is located and all surrounding lands in which the Supplier has an interest.

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

“**Replacement Provision(s)**” has the meaning ascribed to it in Sections 1.7(b) and 1.8(c).

“**Representatives**” means, with respect to a Person, a Person’s directors, officers, employees, auditors, partners, representatives, consultants (including financial and legal advisors), contractors and agents and those of its Affiliates and the agents and advisors of such Persons. While the Buyer is under the Control of the Government of Ontario, “Representatives” with respect to the Buyer shall also include the Government of Ontario and its employees, auditors, consultants (including financial and legal advisors), contractors and agents. While the Supplier is (i) under the Control of the Government of Ontario or (ii) an Affiliate of OPG which has been assigned this Agreement under Section 16.5 and OPG is under the Control of the Government of Ontario, “Representatives” with respect to the Supplier shall also include the Government of Ontario and its employees, auditors, consultants (including financial and legal advisors), contractors and agents.

“**RFO**” means residual fuel oil.

“**RFO Inventory Financing Cost**” or “**RFOIFC**” has the meaning ascribed to it in Exhibit J.

“**RFO Inventory Level**” means the quantity of RFO in storage at the Facility.

“**RFO Salvage Plan Trigger**” has the meaning ascribed to it in Exhibit L.

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

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

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

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

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

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

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

“**Specified RFO Level**” or “**SRFOL**” has the meaning ascribed to it in Exhibit J.

“**Start**” means the synchronization of a generator to the IESO-Controlled Grid and delivery of at least one (1) MWh of Electricity to the Delivery Point, but does not include any unsuccessful attempts to synchronize a generator or any repeated synchronization events following a failure of a Unit to ramp to minimum load, and “**Started**” has a corresponding meaning.

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

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

“**Supplier**” has the meaning given to it in the first paragraph to this Agreement, and includes any successor to Ontario Power Generation Inc. resulting from any merger, arrangement or other reorganization of or including Ontario Power Generation Inc. or any continuance under the laws of another jurisdiction or permitted assignee.

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

“**Supplier Non-acceptance Notice**” has the meaning ascribed to it in Section 12.3(e).

“**Supplier Proprietary Information**” means the Supplier’s market schedules from the System Operator, dispatch instructions, real-time unit status updates, day ahead and real-time offers to the IESO-Administered Markets, “Notices of Disagreement”, data provided in response to compliance investigations, utilization of or strategy for energy limited fuel as discussed with the System

Operator, and any other data or information from time to time provided to the System Operator which the Parties agree to treat as Supplier Proprietary Information.

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

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

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

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

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

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

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

“**Test Protocol**” means the written procedure and specifications setting out the manner and format in which a Capacity Check Test and a Unit Check Test will be performed and reported.

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

“**Transmission System Code**” means the “Transmission System Code” approved by the OEB and in effect from time to time.

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

“**Tube Failure Condition 1**” has the meaning ascribed to it in Section 2.9.

“**Tube Failure Condition 2**” has the meaning ascribed to it in Section 2.9.

“**TWh**” means terawatt hour.

“**Unit**” means a single boiler and turbine-generator set comprising part of the Facility.

“**Unit Capacity Reduction Factor**” or “**UCRF**” means an amount, in respect of each Unit, for each of UCRF(GAS) and UCRF(RFO), which shall be equal to 1.0 until, and to the extent, determined otherwise pursuant to Section 15.7.

“**Unit Check Test**” has the meaning ascribed to it in Section 15.7(a).

“**Unit Contract Capacity**” has the meaning ascribed to it in Exhibit B.

“**Unit Capacity Confirmation**” has the meaning ascribed to it in Section 15.7(c).

“**Unit Service Loads**” means, with respect to a Unit, that portion of the Station Service Loads that are directly attributable to the operation of such Unit, and excludes any Common Service Loads.

“**Weighted Average Cost of Capital**” or “**WACC**” has the meaning ascribed to it in Exhibit J.

“**Year-To-Date Actual Net Revenue**” or “**YTDANR**” has the meaning given to it in Exhibit J.

“**Year-To-Date Buyer’s Share of Actual Net Revenue**” or “**YTDBSANR**” has the meaning given to it in Exhibit J.

1.2 Exhibits

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

Exhibit A	Facility Description
Exhibit B	Contract Capacity, Fixed Facility Capacity Payment, Unit Contract Capacity, and Other Stated Variables
Exhibit C	Form of Irrevocable Standby Letter of Credit
Exhibit D	Form of Guarantee
Exhibit E	Determination of EFOR(OP)
Exhibit F	Intentionally deleted
Exhibit G	Must-Offer Obligations
Exhibit H	Intentionally deleted
Exhibit I	Form of Force Majeure Notice
Exhibit J	Calculation of Monthly Payment
Exhibit K	Arbitration Procedures Applicable to Sections 1.7, 1.8, 2.1(h), 2.7 and 16.5(f)
Exhibit L	Fuel Management Protocol
Exhibit M	Initial FD&M Plan
Exhibit N	Form of Acknowledgement of Secured Lender’s Rights
Exhibit O	Annual Operating Plan
Exhibit P	Form of Company Representative Notice
Exhibit Q	Form of Confidentiality Undertaking

The Buyer may, at any time and from time to time after the date hereof, upon written notice to the Supplier, reasonably amend or replace the forms included as Exhibits I, N and P.

1.3 Headings and Table of Contents

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

1.4 Gender and Number

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

1.5 Currency

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

1.6 IESO Market Rules and Statutes

Unless otherwise expressly stipulated, any reference in this Agreement to the IESO Market Rules or to a statute or to a regulation or rule promulgated under a statute or to any provision of a statute, regulation or rule shall be a reference to the IESO Market Rules, statute, regulation, rule or provision as amended, re-enacted or replaced from time to time. In the event of any conflict or inconsistency with the IESO Market Rules and the terms of this Agreement, the IESO Market Rules shall govern to the extent of such conflict or inconsistency. For greater certainty, any defined terms that are defined in this Agreement by reference to their definitions within the IESO Market Rules shall also refer to any substantially equivalent terminology utilized in the IESO Market Rules as amended, re-enacted or replaced from time to time.

1.7 Transition to Daily Operational Net Revenue Calculation

- (a) If a Daily ONR Triggering Event occurs, the Buyer shall provide written notice to the Supplier of such Daily ONR Triggering Event, along with the particulars thereof. Within sixty (60) days after receiving any such notice, the Supplier shall propose Replacement Provision(s) to the Buyer, based on Section 1.7(b). If the Parties are unable to agree on the Supplier's proposal within sixty (60) days after the date the Supplier proposes such provisions, then the Replacement Provision(s) shall be determined by mandatory and binding arbitration, from which there shall be no appeal, with such arbitration(s) to be conducted in accordance with the procedures set out in Exhibit K.
- (b) For purposes of Section 1.7(a), the "**Replacement Provision(s)**" will be based on the following principles, with such modifications to take effect from and after the date set out in Section 1.7(c):
 - (i) the MONR and MONL shall be calculated as the sum over the applicable Settlement Month of the Daily Operating Net Revenue and Daily Operating Net Loss for each day in such Settlement Month;
 - (ii) the DONR and DONL shall be determined substantially in the same manner as the MONR and MONL, except that (A) they are to be calculated on a daily basis, (B) RFO prices used for each day shall be the daily index value

for RFO, plus a unit price allowance for variable transaction and transportation-related costs, and (C) the requirement that MONR and MONL shall not be less than zero set out in Section 2.1 of Exhibit J shall apply to the DONR and DONL on a daily basis; and

- (iii) the calculation of YTDANR shall include a monthly RFO inventory true-up amount that reflects the value of RFO consumed on the basis of daily index plus unit price allowance (as set out in Section 1.7(b)(ii)), and the value of RFO used at the weighted average cost for the month.
- (c) The terms of this Agreement shall be amended either by the agreement of the Parties where no award of an Arbitration Panel has been made pursuant to Section 1.7(a), or pursuant to and to implement an award of the Arbitration Panel made pursuant to Section 1.7(a), with such agreement or amendment, as the case may be, having effect from and after the first day of the first Contract Year after the date of the occurrence of the Daily ONR Triggering Event.
- (d) Until such time as this Agreement is amended in accordance with Section 1.7(c), Exhibit J will continue to apply to calculate the Monthly Payment, provided that all such payments shall be subject to recalculation and readjustment, if applicable, as a result of the agreement or award set out in Section 1.7(c), and any Party owing monies to the other pursuant to such recalculation shall pay, within ten (10) Business Days after receipt of an invoice from the other Party, such monies owing together with interest at the Interest Rate, calculated daily, from and including the time such payments were due to the date of payment thereof.
- (e) Each of the following shall constitute a “**Daily ONR Triggering Event**”:
 - (i) the Facility generates and delivers to the Delivery Point, more than 4.0 TWh in any Contract Year;
 - (ii) the Facility’s production is reasonably expected by the Buyer to exceed 4.0 TWh in any Contract Year, and the Buyer provides documentation to that effect to the Supplier; or
 - (iii) in addition to owning the Facility, (A) the Supplier owns and operates one or more other Gas-fired generators or (B) one or more units of Lambton GS or Nanticoke GS are converted to Gas and are owned and operated by the Supplier or an Affiliate of the Supplier.

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

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

- (a) if a provision is considered to be invalid, inapplicable or unenforceable, then the Party considering such provision to be invalid, inapplicable or unenforceable may

propose, by notice in writing to the other Party, a replacement provision and the Buyer and the Supplier shall engage in good faith negotiations to replace such provision with a valid, enforceable, and applicable provision, the economic effect of which substantially reflects that of the invalid, unenforceable, or inapplicable provision which it replaces;

- (b) if any index or price quotation referred to in this Agreement ceases to be published, or if the basis therefor is changed materially, then the Buyer and the Supplier shall engage in good faith negotiations to substitute an available replacement index or price quotation that most nearly, of those then publicly available, approximates the intent and purpose of the index or price quotation that has so ceased or changed and this Agreement shall be amended as necessary to accommodate such replacement index or price quotation;
- (c) if a Party does not believe that a provision is invalid, inapplicable or unenforceable, or that the basis for any index or price quotation is changed materially, or if the negotiations set out in Sections 1.8(a) or 1.8(b) are not successful, then if the Parties are unable to agree on all such issues and any amendments required to this Agreement (the “**Replacement Provision(s)**”) within thirty (30) days after either the giving of the notice under Section 1.8(a) or the occurrence of the event in Section 1.8(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 K. However, if the Supplier fails to participate in such arbitration, the Supplier acknowledges that it waives its right to participate in such arbitration, which shall nevertheless proceed, and the Supplier shall be bound by the award of the Arbitration Panel and the subsequent amendments to this Agreement made by the Buyer to implement such award of the Arbitration Panel set out in Section 1.8(d)(iii); 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 1.8(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 1.8(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 1.8(c), where the Supplier failed to participate in such arbitration,

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

1.9 Entire Agreement

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

1.10 Waiver, Amendment

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

1.11 Governing Law

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

1.12 Preparation of Agreement

Notwithstanding the fact that certain terms and provisions of this Agreement have been drafted by the Buyer's legal and other professional advisors and certain provisions of this Agreement have been drafted by the Supplier'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 or in favour of either Party when interpreting such term or provision, by virtue of such fact.

ARTICLE 2 OPERATION OF THE FACILITY

2.1 Operation Covenants

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

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

- (c) If the Supplier is also a load facility under the IESO Market Rules, the Supplier shall be solely responsible for all charges (net of any applicable credits) in relation to Electricity consumed by it in order to operate the Facility in accordance with this Agreement.
- (d) Except where and to the extent that an event or circumstance arises whereby the Supplier reasonably believes that there is a risk of damage to a Facility's equipment or associated structures or a risk to public, employee or environmental safety, and except as required by Laws and Regulations, the Supplier shall at no time after the date of this Agreement modify, vary, or amend in any material respect any of the features or specifications of the Facility outlined in Exhibit A (a "**Facility Amendment**") without first notifying the Buyer in writing and obtaining the Buyer's consent in writing, which consent shall not be unreasonably withheld, provided that it shall not be unreasonable for the Buyer to withhold its consent to any modification, variation or amendment which would, or would be likely to, have a Material Adverse Effect or alter the Contract Capacity. Any Facility Amendment that has not been consented to by the Buyer (other than in instances where such consent has been unreasonably withheld or is not required) shall, if not removed within ten (10) Business Days after such Facility Amendment occurred, constitute a Supplier Event of Default. Without limiting the generality of the foregoing, and for purposes of this paragraph, the failure of the Facility to have a Connection Point as described in Exhibit A shall be deemed to be a Facility Amendment.
- (e) If the Buyer's consent in writing has been given in relation to a reduction in the Contract Capacity pursuant to Section 2.1(d), the Contract Capacity shall be deemed to be reduced to the lower amount, effective at the time stated in such notice. If the Buyer's consent has been given in relation to an increase in the Contract Capacity pursuant to Section 2.1(d) the Contract Capacity shall be increased to the higher amount, effective as of the time stated in such notice, provided that:
 - (i) such increase shall not be effective until the Supplier performs a Unit Check Test confirming the increased amount of the Contract Capacity; and
 - (ii) if applicable, the Supplier has delivered to the Buyer an amount of Performance Security corresponding to the increased amount of the Contract Capacity as calculated in accordance with Section 6.1.

- (f) The Supplier agrees that the Facility shall be located in the Province of Ontario. The Supplier agrees that the Facility shall have a Connection Point as set out in Exhibit A and shall affect supply or demand in the IESO-Administered Markets.
- (g) The Parties acknowledge that the Test Protocol was prepared and submitted by the Supplier and approved by the Buyer under the Existing Agreement.
- (h) The Supplier shall have absolute discretion with respect to the lands not required to operate and maintain the Facility in accordance with this Agreement (“**Excess Lands**”), provided that if in exchange for consideration the Supplier sells, leases or otherwise grants an interest in any Excess Lands, the Supplier shall provide prompt written notice to the Buyer and the Parties shall negotiate in good faith the necessary amendments to this Agreement such that one hundred percent (100%) of the savings in the fixed operations and maintenance costs, including payments in lieu of property taxes and reduced allocations of corporate support costs, shall be returned to the Buyer by a corresponding reduction in the FFCP, as set forth in Exhibit J. If the Parties are unable to agree on such amendments within 60 days after the delivery of the foregoing notice, 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 K. However, if the Supplier fails to participate in such arbitration, the Supplier acknowledges that it waives its right to participate in such arbitration, which shall nevertheless proceed, and the Supplier shall be bound by the award of the Arbitration Panel and the subsequent amendments to this Agreement made by the Buyer to implement such award of the Arbitration Panel.
- (i) The Supplier acknowledges that the ability of the Facility to operate on both RFO and Gas is a material feature of the Facility and the Supplier shall maintain this capability during the Term in accordance with Good Engineering and Operating Practices. If at any time the Facility is not capable of operating on both RFO and Gas other than due to an unavailability of Gas at the Facility despite adherence to the FD&M Plan, and the Facility is not on an Outage, the Supplier shall promptly notify the Buyer.

2.2 Metering and Dispatch Capabilities

- (a) The Supplier covenants and agrees to provide, at its expense, individual meters and ancillary metering and monitoring equipment for the Facility as required by the IESO Market Rules and sufficient to calculate the output of Electricity from the Facility net of any Station Service Loads and inclusive for any loss adjustment factors. The Buyer may obtain access internally to the revenue-quality interval meter data of the Facility provided to the Buyer under the IESO Market Rules to calculate the output of Electricity from the Facility net of any Station Service Loads and inclusive for any loss, adjustment factors.
- (b) The Buyer retains the right to audit, at any time during the Term, on reasonable notice to the Supplier and during normal business hours, the metering equipment to confirm the accuracy of the Electricity Metering Plan, and the meter data of Facility to confirm the accuracy of such data. The Parties acknowledge that the Electricity

Metering Plan was submitted by the Supplier and approved by the Buyer under the Existing Agreement and that the Supplier has provided the Buyer with a commissioning report for all meters referenced in the Electricity Metering Plan.

- (c) 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 Fuel Metering Plan, and the meter data of Facility to confirm the accuracy of such data. The Parties acknowledge that the Fuel Metering Plan was submitted by the Supplier and approved by the Buyer under the Existing Agreement and that the Supplier has provided the Buyer with a commissioning report for all meters referenced in the Fuel Metering Plan.
- (d) The Supplier shall update the Electricity Metering Plan and the Fuel Metering Plan, promptly, and, in any event, within ten (10) Business Days after any change to the applicable metering installation occurs.

2.3 Must-Offer Obligations

From and after the Term Commencement Date, the Supplier agrees to comply with the Must-Offer Obligations except as otherwise expressly set out herein.

2.4 FD&M Services

The Supplier agrees to comply with the terms of Exhibit L and the FD&M Plan, as amended from time to time.

2.5 Insurance Covenants

- (a) The Supplier hereby agrees to put in effect and maintain from the Term Commencement Date to the expiry of the Term, with insurers having an overall A.M. Best rating of at least A- or equivalent and financial size of category VIII or such other rating and financial size as may be agreed to by the Parties and permitted to provide insurance in the Province of Ontario (in the case of the “all-risk” property insurance under clause (i) below) or licensed to underwrite insurance in the Province of Ontario (in the case of the commercial general liability and environmental/pollution liability under clauses (ii) and (iii) below), all the necessary and appropriate insurance that a prudent Person in the business of the Supplier operating the Facility would maintain including the following:
 - (i) “all-risk” property and equipment breakdown insurance covering property of every description, in the name of the Supplier insuring not less than the full replacement value of the Facility with a deductible in an amount not to exceed \$500,000 property damage for all losses except (A) \$3,000,000 deductible with respect to property damage for major machinery such as turbine generator units and transformer units and (B) three percent (3%), minimum \$500,000 deductible with respect to property damage for each of flood and earthquake. These policies shall contain a waiver of subrogation in favour of the Indemnitees.

In the event that such insurance coverage is not available to the Supplier on commercially reasonable terms, the insurance requirements may be modified provided that the Supplier provides to the Buyer evidence confirming the unavailability of such insurance coverage on commercially reasonable terms. Any modification to such insurance coverage shall be subject to the approval of the Buyer acting reasonably. Notwithstanding the foregoing, while the Supplier is OPG or where OPG Controls the Supplier such insurance coverage may be put in effect and maintained pursuant to OPG's corporate insurance program provided that such coverage contains a waiver of subrogation in favour of the Indemnitees, and the Buyer acknowledges that the deductible for such coverage under OPG's corporate insurance program may be higher than that set out herein and the "all-risk" property insurance and equipment breakdown insurance may be covered under separate policies.

- (ii) commercial general liability insurance on an occurrence basis for death, bodily injury and property damage that may be caused to third parties as a result of the Supplier's activities in connection with the Facility or performance of its obligations under this Agreement, to an inclusive limit of not less than \$10,000,000 per occurrence and in the aggregate, with a deductible not exceeding \$100,000. Notwithstanding the foregoing, while the Supplier is OPG or where OPG Controls the Supplier, such insurance coverage may be put in effect and maintained pursuant to OPG's corporate insurance program, with limits and deductibles determined in accordance with OPG's corporate insurance program. The coverage shall not be less than the insurance required by IBC Forms 2100 and 2320, or their equivalent replacement. The policy shall include the following clauses:
 - (A) the Buyer and its directors, officers and employees shall be additional insureds with respect to liability arising in the course of performance of the obligations under, or otherwise in connection with, this Agreement;
 - (B) cross-liability and severability of interest endorsements;
 - (C) coverage for non-owned automobile liability with blanket contractual coverage for hired automobiles;
 - (D) coverage for contingent employer's liability;
 - (E) coverage for tenant's legal liability (if applicable and with applicable sub-limits);
 - (F) coverage for broad form property damage;
 - (G) coverage for contractual liability of the Supplier under this Agreement; and

- (H) coverage for liability on the part of the Supplier resulting from activities or work performed by its contractors and subcontractors; and
- (iii) environmental/pollution liability insurance, providing coverage for first party property damage and site clean-up and any third party claims for bodily injury, property damage and clean-up for pollution and environmental incidents arising out of the operation or maintenance of the Facility, with a limit of not less than \$5,000,000 per occurrence and in the aggregate, with a deductible not exceeding \$100,000. The policy shall include as additional insureds the Buyer and its directors, officers and employees with respect to liability arising in the course of performance of the obligations under, or otherwise in connection with, this Agreement. Notwithstanding the foregoing, the Supplier shall not be required to carry such environmental/pollution liability insurance while the Supplier is OPG or where OPG Controls the Supplier.
- (b) The Supplier shall cause any Person responsible for transporting RFO to or from the Facility, to have in effect and maintain insurance for the risk of transporting RFO, in such amounts as a prudent transporter of RFO would maintain. The Buyer and its directors, officers and employees shall be additional insureds for any such insurance.
- (c) The Supplier may procure the policies required by this Agreement for a term longer than twelve (12) consecutive months (annual policy period), but the limits of insurance and aggregate limits described in this Agreement shall be annual limits and annual aggregates and not the policy term limit and aggregate.
- (d) The Parties acknowledge that the Supplier has provided the Buyer with proof that the insurance required by this Agreement in the form of valid certificates of insurance that reference this Agreement, and confirm the required coverage is in place. In the case of renewals or replacements of such insurance, the Supplier shall provide to the Buyer valid certificates of insurance, on or before the expiry of any such insurance. Upon the request of the Buyer, a copy of each insurance policy shall be made available to it. The policies for the insurance coverage under Sections 2.5(a)(i), (ii), and (iii) shall be endorsed to provide the Buyer with not less than thirty (30) days' notice in writing in advance of any cancellation, and of any change or amendment restricting coverage.
- (e) The Parties acknowledge that the Supplier has submitted a valid clearance certificate of *Workplace Safety and Insurance Act* coverage to the Buyer under the Existing Agreement. In addition, the Supplier shall, from time to time at the request of the Buyer, provide additional *Workplace Safety and Insurance Act* clearance certificates. The Supplier agrees to pay when due, and to ensure that each of its contractors and subcontractors pays when due, all amounts required to be paid by it and its contractors and subcontractors, from time to time after the execution of this Agreement, under the *Workplace Safety and Insurance Act*, failing which the Buyer shall have the right, in addition to and not in substitution for any other right it may have pursuant to this Agreement or otherwise at law or in equity, to pay to

the Workplace Safety and Insurance Board any amount due pursuant to the *Workplace Safety and Insurance Act* and unpaid by the Supplier or its contractors and subcontractors and to deduct such amount from any amount due and owing from time to time to the Supplier pursuant to this Agreement together with all costs incurred by the Buyer in connection therewith.

2.6 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 licence, permit, certificate, registration, authorization, consent or approval of any Governmental Authority required to perform or comply with their respective obligations under this Agreement, including such licensing as is required by the OEB. Without limiting the generality of the foregoing, the Supplier agrees to meet all applicable Facility registration requirements as specified in the IESO Market Rules.
- (c) The Supplier shall register with the System Operator as a “**Metered Market Participant**” and as a “**Generator**” pursuant to the IESO Market Rules. The settlement of Market Settlement Charges shall take place directly between the Supplier as the “Metered Market Participant” and the System Operator. Any costs incurred by the Supplier pursuant to the IESO Market Rules or any charges collected from the Supplier by the System Operator shall be charged to and be the sole responsibility of the Supplier.

2.7 Environmental Attributes

- (a) Except as provided for in Exhibit J, the Buyer shall have no interest in any Environmental Attributes attributable to the Facility. For greater certainty, the Supplier shall, at its sole expense, be responsible for complying with any Laws and Regulations relating to Environmental Attributes, including any costs associated with obtaining, qualifying and registering Environmental Attributes for the operation of the Facility.
- (b) The Parties acknowledge that the Government of Canada and the Government of Ontario have, prior to the Contract Date, and may, along with other Governmental Authorities, from time to time during the Term of this Agreement, implement Laws and Regulations covering Greenhouse Gas emissions (the “**GHG Laws and Regulations**”) that may be applicable to the Facility and that may contain provisions requiring the Facility to pay a charge, tax, penalty or fee on the Greenhouse Gas content of Gas or RFO or to have, obtain and/or retire Emission Credits or other compliance mechanisms in connection with the emission of Greenhouse Gases due to the operation of the Facility or prescribe other compliance mechanisms.

- (c) If additional GHG Laws and Regulations are enacted or promulgated, or if existing GHG Laws and Regulations are amended after the Contract Date and the effect of such GHG Laws and Regulations is to increase the Supplier's variable cost to Deliver Electricity from the Facility (including, for clarity, where the effect is to increase such costs retroactively), and such cost is not generally reflected in an increase in the Monthly Cost of Generation Fuel or the Monthly FD&M Payment, as determined by the Buyer acting reasonably, then the Buyer shall propose amendments to the provisions of Exhibit L and the Fuel Management Plan to take into account, without duplication, the cost of complying with GHG Laws and Regulations to the Supplier, and, at the Buyer's discretion, to all of the Other Suppliers who are required by the Buyer to participate. The Supplier may also propose amendments to Exhibit L and the Fuel Management Plan, to the Buyer for this purpose. If the Parties are unable to agree on the Buyer's proposal or that of the Supplier or any of those Other Suppliers, as the case may be, within sixty (60) days after the applicable details of the GHG Laws and Regulations, have been published in final form, then the amendments to Exhibit L and the Fuel Management Plan shall be determined by mandatory and binding arbitration, from which there shall be no appeal, with such arbitration(s) to be conducted in accordance with the procedures set out in Exhibit K. However, if the Supplier fails to participate in such arbitration, the Supplier acknowledges that it waives its right to participate in such arbitration, which shall nevertheless proceed, and the Supplier shall be bound by the award of the Arbitration Panel and the subsequent amendments to this Agreement made by the Buyer to implement such award of the Arbitration Panel.

2.8 O. Reg. 419/05

The Parties acknowledge that the Supplier has applied to the Ontario Ministry of the Environment, Conservation and Parks for a "Site Specific Standard" pursuant to Ontario Regulation 419/05: Air Pollution – Local Air Quality under the *Environmental Protection Act*, which would be necessary in order to enable the Facility to operate all four of its units on RFO. In the event that (a) the Supplier is unable to secure such "Site Specific Standard" or (b) such "Site Specific Standard" contains such restrictions, limitations or other conditions on the operations of the Facility that has a Material Adverse Effect on the Supplier, the Parties will negotiate in good faith to agree on mutually acceptable amendments to this Agreement that seek to preserve as nearly as possible the capacity and operability of the Facility and the economic position of the Buyer and the Supplier reflected in the existing FFCP and FD&M Services prior to the amendment, while removing the use of RFO as a fuel source to the extent necessary to enable compliance with O. Reg. 419/05. Anticipated modifications for this scenario may include an amendment to the Contract Capacity, revision to FFCP (to reflect reduction of costs associated with operation on RFO and any project related work that may be eliminated), revision of the FD&M Services and possible revision to the Must-Offer Obligations in Exhibit G based on the resulting changes to the configuration or operability of the Facility.

2.9 Condenser Tube Replacement Adjustment

- (a) The Parties acknowledge that retubing of the main condenser tubes for two (2) of the Facility's four (4) units during the Term was not included in the Supplier's cost assumptions reflected in the FFCP and that retubing of the main condenser tubes

for two (2) of the Facility's four (4) units during the Term was included in the Supplier's cost assumptions reflected in the FFCP. Provided that retubing of the main condenser tubes for two (2) units of the Facility has been completed and that the condition of the main condenser tubes or condenser shell expansion joints for the units whose tubes were replaced were equally or more deficient than that of the remaining units of the Facility at the time of such replacement, starting in the third Contract Year and until the end of the fifth Contract Year, in the event that failures of the main condenser tubes for the remaining two (2) units of the Facility occur other than as a result of any failure of the Supplier to operate and maintain the Facility in accordance with Good Engineering and Operating Practices, such that either Tube Failure Condition 1 or Tube Failure Condition 2 (each defined below) occurs and the Supplier undertakes retubing of the main condenser tubes for either or both of the remaining units of the Facility and provided any such retubing is completed prior to the end of the sixth Contract Year, the Parties agree that the FFCP will be adjusted according to the table reflected below.

<i>Timing of <u>completion</u> of retubing</i>	<i>FFCP addition per each unit retubing from the first date of the Contract Year following the Contract Year in which retubed unit is in-service</i>
during the 4 th Contract Year	\$263,089-month
during the 5 th Contract Year	\$419,180-month
during the 6 th Contract Year	\$1,111,595-month

- (b) **“Tube Failure Condition 1”** for purposes of this Section 2.9 shall mean that an Independent Engineer has delivered a certificate to the Buyer in a form satisfactory to the Buyer, acting reasonably, confirming that inspection results (based on representative sampling) indicate more than 30% of the condenser tubes in either or both of the remaining units of the Facility have more than 80% through wall loss. **“Tube Failure Condition 2”** for purposes of this Section 2.9 shall mean that an Independent Engineer has delivered a certificate to the Buyer in a form satisfactory to the Buyer, acting reasonably, confirming that the condenser shell expansion joint for either or both of the remaining units cannot seal against the vacuum required for full load operation of the turbine generator without being replaced.
- (c) Starting in the third Contract Year and for the remainder of the Term, provided that retubing of the main condenser tubes for two (2) units of the Facility has been completed and that the condition of the main condenser tubes or condenser shell expansion joints for the units whose condenser tubes were replaced were equally or more deficient than that of the remaining units of the Facility at the time of such replacement, any forced Outage of the Facility arising from repair or replacement of the main condenser tubes for the remaining units of the Facility whose condenser tubes had not been replaced shall be excluded from the calculation of EFOR(OP)

by removing such forced Outages from both the equation numerator (EFOR_N_States) and the equation denominator (EFOR_D_States). Any scheduled Outage of the Facility for replacement of the main condenser tubes for one (1) or two (2) units of the Facility as contemplated in this Section 2.9 will be treated as a Planned Outage for purposes of the calculation of EFOR(OP). For greater certainty, there shall be no automatic adjustment to the FFCP for any replacement of the main condenser tubes for any unit of the Facility that commences after the end of the fifth Contract Year or that is completed after the sixth Contract Year and the Parties shall negotiate in good faith any amendments to this Agreement that may be necessary to address failures of such tubes or condenser shell expansion joints in the sixth or seventh Contract Year of the Term or where completion of retubing is not (or cannot be) completed before the end of the sixth Contract Year. Such amendments may include a reduction of the Contract Capacity, a decrease to FFCP and a reduction of the Must-Offer Obligations in Exhibit G based on the resulting changes to the configuration or operability of the Facility.

ARTICLE 3 INTENTIONALLY DELETED

ARTICLE 4 OPERATION OF FACILITY AND PAYMENT OBLIGATIONS

4.1 Operation of Facility During the Term

- (a) From and after the beginning of the hour ending 01:00 (EST) of the Term Commencement Date, the Supplier agrees to operate the Facility in accordance with the terms of this Agreement, and the Monthly Payments shall begin to accrue and be payable in accordance with Section 4.2 and Article 5.
- (b) The Supplier will provide the Buyer with prior written notice of the potential for commercialization by the Supplier of any Future Contract Related Products from time to time.

4.2 Payment Amounts

- (a) The “**Monthly Payment**” shall be the amount owed by the Buyer to the Supplier for each Settlement Month, calculated in accordance with Exhibit J, provided that in the event the Monthly Payment is a negative amount, such amount shall be owed by the Supplier to the Buyer and shall be carried forward (except in respect of the final Monthly Payment) and set off the next following Monthly Payment.
- (b) [*intentionally deleted*]
- (c) After the end of the Term, the Supplier shall be entitled to receive a one-time payment equal to the Final Stub Payment, calculated in accordance with Exhibit J.

4.3 Buyer's Responsibility for Taxes

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

4.4 Non-Residency

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

ARTICLE 5 STATEMENTS AND PAYMENTS

5.1 Meter and Other Data

The Supplier agrees to provide to the Buyer access to the meters in the Electricity Metering Plan and to provide the Buyer data on a monthly basis for all meters referenced in the Fuel Metering Plan. The Supplier agrees to provide to the Buyer, upon request, access to any other information relating to the Facility that the Supplier has provided to, or received from, the System Operator from time to time, other than Supplier Proprietary Information. Upon a Party becoming aware of any errors or omissions in any data or information provided in accordance with this Section 5.1, such Party shall notify the other Party, and if applicable, the System Operator in accordance with the IESO Market Rules, on a timely basis.

5.2 Statements

- (a) The Supplier shall prepare and deliver a settlement statement (the "**Statement**") to the Buyer, setting out the basis for the Monthly Payment with respect to each calendar month during the Term (a "**Settlement Month**"), as well as the basis for any other payments owing under this Agreement by either Party to the other in respect of the applicable Settlement Month. If the Statement is received by the Buyer on or before the tenth (10th) Business Day after the end of the Settlement Month to which it relates, the Monthly Payment will be paid on or before the twentieth (20th) Business Day of the month in which the Statement was received. If the Statement is received after the tenth (10th) Business Day after the end of the

Settlement Month to which it relates, the Monthly Payment will be paid on or before the twentieth (20th) Business Day of the month following the month during which such Statement was received by the Buyer.

- (b) After the end of the Term, the Supplier shall deliver a Statement to the Buyer setting out the amount owing for the Final Stub Payment. The Final Stub Payment shall be paid by the Party owing such amount on or before the twentieth (20th) Business Day of the month following the month during which such Statement was received by the Buyer.
- (c) A Statement may be delivered by the Supplier to the Buyer by electronic means and shall include the reference number assigned to this Agreement by the Buyer and a description of the components of the Monthly Payment and other payments, as described in this Agreement, owing to the Supplier for the Settlement Month, along with detailed reports supporting the calculation of each component included on the Statement. These reports will be sent electronically at the same time as the Statement and will contain the same level of detail of data as used by the Supplier in preparation of each component included on the Statement.
- (d) Any and all payments required to be made under any provision of this Agreement shall be made by wire transfer to the applicable account designated in Section 5.5, or as otherwise agreed by the Parties.

5.3 Not Used.

5.4 Interest

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

5.5 Supplier's Payment Account Information

Bank: XXXX
XXXX
Bank address: XXXX
Account Name: XXXX
Account Number: XXXXX-XXXXXX
Transit Number: XXXXX
Bank Number: XXX

Supplier's HST Registration Number: XXXXX XXXX XXXXXX

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

The Supplier may change its account information from time to time by written notice to the Buyer in accordance with Section 15.9.

5.6 Adjustment to Statement

- (a) Each Statement shall be subject to adjustment for errors in arithmetic, computation, or other errors, raised by a Party during the period of one (1) year following the end of the calendar year in which such Statement was issued. If there are no complaints raised, or if any complaints raised in the time period have been resolved, such Statement shall be final and subject to no further adjustment after the expiration of such period.
- (b) Subject to Section 5.7, any adjustment to a Statement made pursuant to this Section 5.6 shall be made in the next subsequent Statement.

5.7 Disputed Statement

If the Buyer 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 Buyer shall provide written notice to the Supplier 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 Supplier 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 Buyer. If a Statement dispute has not been resolved between the Parties within five (5) Business Days after receipt of written notice of such dispute by the Supplier, the dispute may be submitted by either Party to a Senior Conference pursuant to the terms of Section 16.1.

5.8 Statements and Payment Records

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

ARTICLE 6 CREDIT AND SECURITY REQUIREMENTS

6.1 Performance Security

- (a) The Parties acknowledge that provided that OPG Controls the Supplier or is the sole entity constituting the Supplier and provided that OPG is Controlled by the Province of Ontario, the Buyer will not require any Performance Security as security for the performance of the Supplier's obligations under this Agreement.
- (b) If (i) OPG no longer is the sole entity constituting the Supplier or OPG no longer Controls the Supplier or (iii) OPG is the sole entity constituting the Supplier or

OPG Controls the Supplier, but OPG is no longer Controlled by the Government of Ontario, then the Buyer may require, acting reasonably, on thirty (30) days written notice, that such Supplier, or any Affiliate of such Supplier, deliver Performance Security provided in the forms set out in Section 6.2, in an amount equal to \$10,000 per MW of Contract Capacity, at the Supplier's sole cost and expense. In the event that the Buyer, in accordance with this Agreement, has recovered monies that were due to it using all or part of the Performance Security, the Supplier shall forthwith provide replacement security to cover an amount equal to that recovered or paid out of the Performance Security.

6.2 Composition of Security

- (a) If Performance Security is required by the Buyer, the “**Performance Security**” shall be provided as set out in Section 6.2(a)(i) or (ii) below:
 - (i) a Letter of Credit for the full amount of the Performance Security; or
 - (ii) subject to Section 6.2(c), a Guarantee, up to a maximum amount determined pursuant to Section 6.4, but not to exceed ninety percent (90%) of the amount of the Performance Security, together with a Letter of Credit for the balance of the amount of the Performance Security.

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

- (b) If the aggregate of the Supplier's Creditworthiness Value determined pursuant to Section 6.4(b) and the principal amount of the Letter of Credit is equal to or greater than the amount of the Performance Security, then no Guarantee is required.
- (c) If a Guarantee forms part of the Performance Security and:
 - (i) the Creditworthiness Value of the Supplier determined pursuant to Section 6.4(b) is equal to or greater than the Creditworthiness Value of the Guarantor determined pursuant to Section 6.4(b), or
 - (ii) the aggregate of the Supplier's Creditworthiness Value and the principal amount of the Letter of Credit is equal to or greater than the amount of the Performance Security,

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

6.3 Letter of Credit Provisions

Any Letter of Credit delivered hereunder shall be subject to the following provisions:

- (a) The Supplier shall (i) renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit, (ii) if the financial institution that issued an outstanding Letter of Credit has indicated its intent not to renew such Letter of Credit, provide a substitute Letter of Credit or other equivalent form of surety instrument satisfactory to the Buyer at least ten (10) Business Days prior to the expiration of the outstanding Letter of Credit, and (iii) if a financial institution issuing a Letter of Credit fails to honour the Buyer's properly documented request to draw on an outstanding Letter of Credit (other than a failure to honour as a result of a request to draw that does not conform to the requirements of such Letter of Credit), provide for the benefit of the Buyer (A) a substitute Letter of Credit that is issued by another financial institution, or (B) other surety instrument satisfactory to the Buyer in an amount equal to such outstanding Letter of Credit, in either case within five (5) Business Days after the Supplier receives notice of such refusal.
- (b) A Letter of Credit shall provide that the Buyer may draw upon the Letter of Credit in an amount (up to the face amount or part thereof remaining available to be drawn thereunder for which the Letter of Credit has been issued) that is equal to all amounts that are due and owing from the Supplier but that have not been paid to the Buyer within the time allowed for such payments under this Agreement (including any related notice or grace period or both). A Letter of Credit shall provide that a drawing may be made on the Letter of Credit upon submission to the financial institution issuing the Letter of Credit of one or more certificates specifying the amounts due and owing to the Buyer in accordance with the specific requirements of the Letter of Credit.
- (c) If the Supplier shall fail to renew, substitute or sufficiently increase the amount of an outstanding Letter of Credit (as the case may be), or establish one or more additional Letters of Credit or other equivalent form of surety instrument satisfactory to the Buyer when required hereunder, then without limiting any other remedies the Buyer may have under this Agreement, the Buyer (i) may draw on the undrawn portion of any outstanding Letter of Credit and retain for its own account as liquidated damages and not as a penalty, the amount equal to one (1%) percent of the face value of such outstanding Letter of Credit and/or (ii) prior to the expiry of such Letter of Credit, may draw on the entire, undrawn portion of any outstanding Letter of Credit, upon submission to the financial institution issuing such Letter of Credit of a certificate specifying the entire amount of the Letter of Credit is owing to the Buyer in accordance with the specific requirements of the Letter of Credit. Any amount then due and owing to the Buyer shall be received by the Buyer as liquidated damages and not as a penalty. If the amounts then due and owing are less than the amount drawn under such Letter of Credit, then such excess amount shall be held as Performance Security. The Supplier shall remain liable for any amounts due and owing to the Buyer and remaining unpaid after the application of the amounts so drawn by the Buyer. If the Supplier subsequently delivers a Letter of Credit or other surety instrument or other collateral permitted pursuant hereto, in each case satisfactory to the Buyer in its sole and absolute discretion as to form, substance and amount, then upon acceptance by the Buyer

thereof, the Buyer shall remit to the Supplier all amounts held by the Buyer as Performance Security pursuant to this Section 6.3(c).

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

6.4 Guarantee Provisions

- (a) The Buyer shall accept a guarantee in the form attached hereto as Exhibit D (the "**Guarantee**") from a guarantor of the Supplier (with the applicable party providing the Guarantee being referred to as the "**Guarantor**"), provided however that the Guarantor shall have a Credit Rating as listed in any of the four rows contained in the table below. Notwithstanding the foregoing, in the event the Guarantor has a Negative Outlook, then its Credit Rating, for purposes of calculating the Creditworthiness Value of the Guarantor in Section 6.4(b)(i), will be automatically demoted by one (1) row in the table in Section 6.4(b)(i). For greater certainty, a Guarantor with a Credit Rating in the fourth (4th) level set forth below without a Negative Outlook will no longer be able to provide a Guarantee if it subsequently receives a Negative Outlook. Subject to Section 6.2, the amount of the Guarantee shall be equal to or less than the Creditworthiness Value of the Guarantor, failing which the Supplier shall be required to provide alternative acceptable security as provided in Section 6.2(a) so as to remain in compliance with the Performance Security requirements set out in Section 6.1.
- (b)
 - (i) A Person's Creditworthiness Value (the "**Creditworthiness Value**") shall be determined by the following formula:

$$S \times T$$

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

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

- (ii) In the event that any Person has a Negative Outlook, then its Credit Rating will automatically be demoted by one (1) row in the table in Section 6.4(b)(i).
- (c) Upon the consent of the Buyer, which consent shall not be unreasonably withheld, the Guarantor may substitute its Guarantee with a guarantee from an Affiliate or from any other Person who would qualify as a guarantor for an amount equivalent to the amount of the Guarantee (the “**Replacement Guarantee**”). The Replacement Guarantee shall be in the form of the Guarantee. Upon delivery of the Replacement Guarantee, (i) such Replacement Guarantee shall be deemed to be the “**Guarantee**” and such Affiliate or other Person providing such guarantee, as the case may be, shall be deemed to be the “**Guarantor**” for all purposes of this Agreement and (ii) the Buyer shall return the original Guarantee to the original Guarantor within five (5) Business Days of such delivery.
- (d) For greater clarity, all provisions of this Agreement that refer to the Guarantor or similar references, or to the Creditworthiness Value of the Guarantor or similar references, shall:
- (i) only apply in respect of the Guarantor if that Guarantor has, at the applicable time, issued a Guarantee in favour of the Buyer and that Guarantee remains in effect at that time (otherwise, the reference to Guarantor shall be excluded when interpreting the provision until such time as a Guarantee is provided); and
- (ii) only refer to the Creditworthiness Value of the Supplier (and not the Creditworthiness Value of its Guarantor) when and for so long as its Guarantor has not provided a Guarantee that remains in effect at the applicable time.

6.5 Financial Statements

If there is a Guarantor, the Supplier shall, on a quarterly basis, provide to the Buyer (i) as soon as available and in no event later than sixty (60) days after the end of each fiscal quarter of the Guarantor, unaudited consolidated financial statements of the Guarantor, for such fiscal quarter prepared in accordance with IFRS or GAAP, and (ii) as soon as possible and in no event later than one hundred and twenty (120) days after the end of each fiscal year, audited consolidated financial statements of the Guarantor for such fiscal year prepared in accordance with IFRS or GAAP. Notwithstanding the foregoing, if any such financial statements are not available in a timely

manner due to a delay in preparation or auditing, such delay shall not be considered a breach of this Section 6.4 so long as the Guarantor is diligently pursuing the preparation, audit and delivery of such financial statements. Quarterly financial statements may be delivered electronically to the Buyer in PDF form. Upon each delivery of the Guarantor's financial statements to the Buyer, the Guarantor providing such financial statements shall be deemed to represent to the Buyer that its financial statements were prepared in accordance with IFRS or GAAP and present fairly the financial position of the Guarantor for the relevant period then ended. In the event that the Guarantor does not publish financial statements on a quarterly basis, then unaudited consolidated financial statements shall be provided by the Guarantor, at a minimum, on a semi-annual basis. To the extent that the Supplier's Creditworthiness Value is such that the Guarantee is not required or it is returned to the Guarantor and cancelled pursuant to Section 6.2(c), then the obligations to provide financial statements under this Section 6.5 shall cease to apply.

6.6 Notice of Deterioration in Financial Indicators

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

6.7 Interest on Performance Security

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

ARTICLE 7 REPRESENTATIONS

7.1 Representations of the Supplier

The Supplier represents to the Buyer as at the execution of this Agreement 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 or, to the knowledge of the Supplier, threatened against the Supplier.
- (e) There are no actions, suits, proceedings, judgments, rulings or orders by or before any Governmental Authority or arbitrator, or, to the knowledge of the Supplier, threatened against the Supplier, that could have a Material Adverse Effect on the Supplier.
- (f) All requirements for the Supplier to make any filing, declaration or registration with, give any notice to or obtain any licence, permit, certificate, registration, authorization, consent or approval of, any Governmental Authority as a condition to entering into this Agreement have been satisfied.
- (g) The Supplier is not a non-resident of Canada for the purposes of the ITA.
- (h) The Supplier owns the Facility.

In addition, the Supplier shall, upon completion of any assignment of this Agreement pursuant to Section 16.5 represent in writing that each of the foregoing statements set out in Sections 7.1(a) to 7.1(h) inclusive continues to be true or, if any of such statements are no longer true, then the Supplier shall provide to the Buyer a qualified representation with respect to such statement. Such qualified representation provided by the Supplier to the Buyer shall be subject, however, to the rights of the Buyer in Section 10.1(d) to require the Supplier to cure or remove any such qualification with respect to such statement.

7.2 Representations of the Buyer

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

- (a) The Buyer that was the original counterparty to this Agreement is a corporation without share capital created under the laws of Ontario, and has the requisite power to enter into this Agreement and to perform its obligations hereunder.
- (b) This Agreement has been duly authorized, executed and delivered by the Buyer and is a valid and binding obligation of the Buyer enforceable in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency and other laws affecting the rights of creditors generally and except that equitable remedies may be granted solely in the discretion of a court of competent jurisdiction.
- (c) The execution and delivery of this Agreement by the Buyer and the consummation of the transactions contemplated by this Agreement will not result in the breach or violation of any of the provisions of, or constitute a default under, or conflict with or cause the termination, cancellation or acceleration of any material obligation of the Buyer under:
 - (i) any contract or obligation to which the Buyer is a party or by which it or its assets may be bound, except for such defaults or conflicts as to which requisite waivers or consents have been obtained;
 - (ii) the by-laws or resolutions of the directors (or any committee thereof) or shareholder of the Buyer;
 - (iii) any judgment, decree, order or award of any Governmental Authority or arbitrator;
 - (iv) any licence, permit, approval, consent or authorization held by the Buyer; or
 - (v) any Laws and Regulations,that could have a Material Adverse Effect on the Buyer.
- (d) There are no bankruptcy, insolvency, reorganization, receivership, seizure, realization, arrangement or other similar proceedings pending against, or being contemplated by the Buyer or, to the knowledge of the Buyer, threatened against the Buyer.
- (e) There are no actions, suits, proceedings, judgments, rulings or orders by or before any Governmental Authority or arbitrator, or, to the knowledge of the Buyer, threatened against the Buyer, that could have a Material Adverse Effect on the Buyer.
- (f) All requirements for the Buyer to make any declaration, filing or registration with, give any notice to or obtain any licence, permit, certificate, registration, authorization, consent or approval of, any Governmental Authority as a condition to entering into this Agreement have been satisfied.

ARTICLE 8 CONFIDENTIALITY AND FIPPA

8.1 Confidential Information

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

- (a) All Confidential Information remains, at all times, the exclusive property of the Disclosing Party. Except as expressly set out in this Section 8.1, neither the Receiving Party nor any of its Representatives has any licence or other right to use or disclose any Confidential Information for any purpose whatsoever.
- (b) The Receiving Party may disclose Confidential Information to its Representatives who need to know Confidential Information for the purpose of assisting the Receiving Party in complying with its obligations under this Agreement. On each copy made by the Receiving Party, the Receiving Party must reproduce all notices which appear on the original. The Receiving Party shall inform its Representatives of the confidentiality of Confidential Information and shall be responsible for any breach of this Article 8 by any of its Representatives.
- (c) If the Receiving Party or any of its Representatives are required or requested in any judicial or regulatory proceeding or by any Governmental Authority (whether by oral question, interrogatories, requests for information or documents, court order, civil investigative demand, or similar process) to disclose any Confidential Information in connection with litigation or any regulatory proceeding or investigation, or pursuant to any applicable 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 or Regulations in accordance with Section 8.2.
- (d) Where the Supplier is the Receiving Party, the Supplier may disclose Confidential Information to any actual or prospective: (i) unsecured lender or person holding a loan, note, bond, debenture, indebtedness, liabilities or obligations in respect of the Facility, (ii) investor in the Facility, including any investor in the Supplier (or in any Person comprising the Supplier) whether as a partner, limited partner, shareholder, shareholder of a partner or limited partner, or acquiror of any other interest in the Supplier (or in any Person comprising the Supplier), any partner in the entity comprising the Supplier if the Supplier is a partnership (in each case, an “**Investor**”), (iii) lender to any Investor, (iv) Representatives of any of the foregoing, or (v) credit rating agency, (in each case, an “**Interested Party**”), to the extent necessary for arranging unsecured financing or any other investment in, directly or indirectly, the Facility, provided that any such Interested Party has been informed of the Supplier’s confidentiality obligations hereunder and such Interested Party has covenanted in favour of the Buyer to hold such Confidential Information confidential on terms substantially similar to this Article 8. Any such confidentiality covenant shall permit the Interested Party to rely on a written

acknowledgement from the Supplier that a specified disclosure of Confidential Information would be permitted under this Article 8.

- (e) Where the Supplier is the Receiving Party, the Supplier may also disclose Confidential Information to any First Nation and its Affiliates and to their respective Chief, Band Council, members, directors, officers, employees, auditors, consultants (including financial and legal advisors) and agents, as applicable, to the extent necessary for the purposes of the First Nation: (i) evaluating and negotiating an agreement with OPG with respect to the Facility; and (ii) monitoring and administering its direct or indirect investment in the Facility, provided that the Supplier advises such recipients of the confidentiality of such Confidential Information.
- (f) The Receiving Party shall use the same means to protect the confidentiality of the Confidential Information that the Receiving Party uses to protect its own confidential and proprietary information, but in any event the Receiving Party will use not less than reasonable means.
- (g) Notwithstanding the foregoing:
 - (i) either Party may use or disclose any of the wording, formulas, mechanics or terms and conditions of this Agreement without restriction where such information is not identified (or apparent on its face) as being from or in relation to this Agreement;
 - (ii) except as required by Laws and Regulations, neither Party shall be permitted to make any public statement or announcement regarding the existence or contents of the Agreement without the prior written consent of the other Party, which consent may be arbitrarily withheld;
 - (iii) Either Party shall have the right to disclose the Agreement publicly and any other Confidential Information to the Government of Ontario;
 - (iv) the Government of Ontario shall be permitted to release the Agreement, and make any statements or announcements regarding the existence or contents of the Agreement, in its sole and absolute discretion; and
 - (v) Either Party shall have the right to publicly disclose this Agreement in its entirety, except for the Mutually Confidential Information.

8.2 Notice Preceding Compelled Disclosure

If the Receiving Party or any of its Representatives are required by Laws and Regulations to disclose any Confidential Information, except as contemplated by Section 8.1(g)(iii), the Receiving Party shall, or shall cause its Representatives to, promptly notify the Disclosing Party of the existence, terms and circumstances of such request or requirement so that the Disclosing Party may seek an appropriate protective order or waive compliance with the terms of this Agreement. If, in the absence of a protective order or the receipt of a waiver hereunder, the Receiving Party or its Representatives are compelled to disclose the Confidential Information, the

Receiving Party and its Representatives may disclose only such of the Confidential Information to the party compelling disclosure as is required by Laws and Regulations 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 and shall use reasonable efforts to obtain an order or other reliable assurance that confidential treatment will be accorded to such portion of the Confidential Information as is disclosed.

8.3 Return of Information

Upon written request by the Disclosing Party, Confidential Information provided by the Disclosing Party in printed paper format, together with all copies or other reproductions in whole or in part of such Confidential Information held by the Receiving Party, will be returned to the Disclosing Party and Confidential Information transmitted by the Disclosing Party in electronic format will be deleted from the computers and data systems of the Receiving Party; provided, however, any Confidential Information (i) found in drafts, notes, studies and other documents prepared by or for the Receiving Party, or (ii) found in electronic format as part of the Receiving Party's off-site or on-site data storage or archival process system, which cannot through reasonable efforts be returned to the Disclosing Party or deleted from the computers and data systems of the Receiving Party will be held by the Receiving Party and kept subject to the terms of this Article 8 or destroyed at the Receiving Party's option. Notwithstanding the foregoing, a Receiving Party shall be entitled to make at its own expense and retain one copy of any Confidential Information materials it receives for the limited purpose of discharging any obligation it may have under Laws and Regulations, and shall keep such retained copy subject to the terms of this Article 8.

8.4 Injunctive and Other Relief

The Receiving Party acknowledges that a breach of any provisions of this Article 8 may prejudice the economic or competitive interests of, and may result in undue loss to, the Disclosing Party or to any third party to whom the Disclosing Party owes a duty of confidence, and that the prejudice or 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 specific performance and injunctive relief (without proving any damage sustained by it or by any third party) or any other remedy against any actual or potential breach of the provisions of this Article 8.

8.5 FIPPA Records and Compliance

The Parties acknowledge and agree that the IESO and OPG are subject to FIPPA and that FIPPA applies to and governs all Confidential Information in the custody or control of the IESO and OPG ("**FIPPA Records**") and may, subject to FIPPA, require the disclosure of such FIPPA Records to third parties. The Supplier agrees to provide a copy of any FIPPA Records that it previously provided to the IESO as required by or in fulfillment of this Agreement, other than any information that the Supplier has requested be returned to it pursuant to Section 8.3 hereof and that the Buyer does not retain a copy of for purposes of its compliance with Laws and Regulations, if the Supplier continues to possess such FIPPA Records in a deliverable form at the time of the IESO's request. If the Supplier does possess such FIPPA Records in a deliverable form, having conducted a reasonable search therefor, it shall provide the same within a reasonable time after being directed

to do so by the IESO. The provisions of this Section 8.5 shall prevail over, and apply in lieu of, any other applicable provisions in this Agreement.

ARTICLE 9 TERM

9.1 Term

- (a) This Agreement shall become effective upon the Contract Date.
- (b) The “**Term**” means that period of time commencing at the beginning of the hour ending 01:00 hours (EST) on October 1st, 2022 (the “**Term Commencement Date**”), and ending at 24:00 hours (EST) on April 30th, 2029, subject to earlier termination in accordance with the provisions hereof. Neither Party shall have any right to extend or renew the Term except as agreed in writing by the Parties.

ARTICLE 10 TERMINATION AND DEFAULT

10.1 Events of Default by the Supplier

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

- (a) The Supplier or the Guarantor fails to make any payment when due or deliver and/or maintain the Performance Security if required under this Agreement, if such failure is not remedied within five (5) Business Days after written notice of such failure from the Buyer.
- (b) The Supplier fails to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Supplier Event of Default) if such failure is not remedied within fifteen (15) Business Days after written notice of such failure from the Buyer, provided that such cure period shall be extended by a further fifteen (15) Business Days if the Supplier is diligently remedying such failure and such failure is capable of being cured during such extended cure period or such other period as the Parties may agree in their discretion.
- (c) The Supplier fails or ceases to hold a valid licence, permit, certificate, registration, authorization, consent or approval issued by a Governmental Authority where such failure or cessation results in, or could be reasonably expected to result in, a Material Adverse Effect on the Supplier and is not remedied within thirty (30) Business Days after receipt by the Supplier of written notice of such failure or cessation from the Buyer, provided that such cure period shall be extended by a further thirty (30) Business Days or such reasonable period of time as the Parties agree may be required in the circumstances to remedy the default 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 or such other period as the Parties may agree in their discretion.

- (d) Any representation made by the Supplier in this Agreement is not true or correct in any material respect when made and is not made true or correct in all material respects within thirty (30) Business Days after receipt by the Supplier of written notice of such fact from the Buyer, provided that such cure period (i) shall be extended for a further period of thirty (30) Business Days and (ii) may be extended by such further period of time as the Buyer in its sole and absolute discretion determines is reasonable, if, in each case, the Supplier is diligently correcting such breach and such breach is capable of being corrected during such extended cure period or such other period as the Parties may agree in their discretion. For certainty, notwithstanding the receipt by the Buyer of a qualified representation by the Supplier with respect to any statement referred to in Sections 7.1(a) to 7.1(h) inclusive, the Buyer may, in its sole and absolute discretion, require the Supplier, within the time limits set out in this Section 10.1(d), to cure or remove any such qualification to such statement.
- (e) An effective resolution is passed or documents are filed in an office of public record in respect of, or a judgment or order is issued by a court of competent jurisdiction ordering, the dissolution, termination of existence, liquidation or winding up of the Supplier, unless such filed documents are immediately revoked or otherwise rendered inapplicable, or unless, in the case of the Supplier, there has been a permitted and valid assignment of this Agreement by the Supplier under this Agreement to a Person which is not dissolving, terminating its existence, liquidating or winding up and such Person has assumed all of the Supplier's obligations under this Agreement.
- (f) The Supplier amalgamates with, or merges with or into, or transfers the Facility or all or substantially all of its assets to, another Person unless, at the time of such amalgamation, merger or transfer, there has been a permitted and valid assignment hereof by the Supplier under this Agreement to the resulting, surviving or transferee Person and such Person has assumed all of the Supplier's obligations under this Agreement.
- (g) A receiver, manager, receiver-manager, liquidator, monitor or trustee in bankruptcy of the Supplier or of any of the Supplier's property is appointed by a Governmental Authority or pursuant to the terms of a debenture or a similar instrument, and such receiver, manager, receiver-manager, liquidator, monitor or trustee in bankruptcy is not discharged or such appointment is not revoked or withdrawn within thirty (30) days of the appointment. By decree, judgment or order of a Governmental Authority, the Supplier is adjudicated bankrupt or insolvent or any substantial part of the Supplier's property is sequestered, and such decree, judgment or order continues undischarged and unstayed for a period of thirty (30) days after the entry thereof. A petition, proceeding or filing is made against the Supplier seeking to have the Supplier declared bankrupt or insolvent, or seeking adjustment or composition of any of its debts pursuant to the provisions of any Insolvency Legislation, and such petition, proceeding or filing is not dismissed or withdrawn within thirty (30) days.
- (h) The Supplier makes an assignment for the benefit of its creditors generally under any Insolvency Legislation, or consents to the appointment of a receiver, manager,

receiver-manager, monitor, trustee in bankruptcy or liquidator for all or part of its property or files a petition or proposal to declare bankruptcy or to reorganize pursuant to the provisions of any Insolvency Legislation.

- (i) *[intentionally deleted]*
- (j) The Supplier has made a Facility Amendment that has not first been consented to by the Buyer and that has not been removed within ten (10) Business Days after such Facility Amendment occurred.
- (k) Any of the defaults described in Sections 15.6(d), 15.6(f)(i) or 15.7(d).
- (l) If at any time the OCRF is less than 0.95.
- (m) The ALLOP UCAP is less than 1750 MW in respect of any Settlement Month during the Term.
- (n) The Supplier undergoes a change in Control (except as contemplated pursuant to Sections 16.6).
- (o) The Supplier assigns this Agreement except in accordance with Section 16.5.
- (p) More than ten (10) Must-Offer Non-Performance Days occur cumulatively during the Term.

10.2 Remedies of the Buyer

- (a) If any Supplier Event of Default (other than a Supplier Event of Default referred to in Sections 10.1(e), 10.1(g), and 10.1(h)) occurs and is continuing, upon written notice to the Supplier, the Buyer may, subject to Article 13 terminate this Agreement.
- (b) If a Supplier Event of Default referred to in Sections 10.1(b), 10.1(k), 10.1(l), or 10.1(m) occurs and is continuing, in addition to the remedy set out in Section 10.2(a), at the discretion of the Buyer, either:
 - (i) the Supplier will forfeit an amount equivalent to the Monthly Payment that would be payable to the Supplier, if any, for the Settlement Month in which such Supplier Event of Default occurs, as liquidated damages and not as a penalty; or
 - (ii) the Buyer may levy a performance assessment set-off, as liquidated damages and not as a penalty, equal to three (3) times the average Monthly Payment that would be payable to the Supplier, if any, for the most recent twelve (12) Settlement Months (or the number of Settlement Months that have elapsed from the Term Commencement Date if less than twelve (12) Settlement Months have elapsed), in the event that three (3) or more Supplier Events of Default referred to in Sections 10.1(b), 10.1(k), 10.1(l), or 10.1(m) have occurred within a Contract Year, regardless of whether such Supplier Events of Default have been subsequently cured,

and which may be satisfied by the Buyer setting off any payments due to the Supplier against any amounts payable by the Supplier to the Buyer including, at the Buyer's option, the amount of any Performance Security provided to the Buyer pursuant to Article 6, and by drawing on the Performance Security, or any part thereof, and if the remedy in Section 10.2(a) has not been exercised, requiring the Supplier to replace such drawn security with new security, if applicable.

- (c) If a Supplier Event of Default occurs and is continuing, the Buyer may, in addition to the remedies set out in Section 10.2(a):
 - (i) set off any payments due to the Supplier against any amounts payable by the Supplier to the Buyer including, at the Buyer's option, the amount of any Performance Security provided to the Buyer pursuant to Article 6; and
 - (ii) draw on the Performance Security, or any part thereof and, if the remedy in Section 10.2(a) has not been exercised, require the Supplier to replace such drawn security with new security, if applicable.
- (d) Notwithstanding Sections 10.2(a), 10.2(b), and 10.2(c), upon the occurrence of a Supplier Event of Default referred to in Sections 10.1(e), 10.1(g) or 10.1(h), this Agreement shall automatically terminate without notice, act or formality, effective immediately before the occurrence of such Supplier Event of Default.
- (e) If the Buyer terminates this Agreement pursuant to Section 10.2(a) or this Agreement is terminated pursuant to Section 10.2(d), the Buyer shall have the option, exercisable in the sole and absolute discretion of the Buyer to retain all Performance Security provided by or on behalf of the Supplier and exercise all other remedies available to the Buyer including pursuing a claim for damages, as contemplated in Section 10.5.
- (f) Termination shall not relieve the Supplier or the Buyer of their respective responsibilities relating to the availability of the Contract Capacity and delivery of the Electricity, Related Products, and Environmental Attributes from the Facility that relate to the Contract Capacity, or amounts payable under this Agreement, up to and including the Termination Date. The Buyer shall be responsible only for the payment of amounts accruing under this Agreement up to and including the Termination Date. In addition to its other rights of set off available to it pursuant to this Agreement and at law, the Buyer may hold back payment or set off its obligation to make such payment against any payments owed to it if the Supplier fails to comply with its obligations on termination.

10.3 Events of Default by the Buyer

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

- (a) The Buyer fails to make any payment under this Agreement when due, if such failure is not remedied within five (5) Business Days after written notice of such failure from the Supplier.

- (b) The Buyer fails to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Buyer Event of Default), if such failure is not remedied within fifteen (15) Business Days after written notice of such failure from the Supplier, provided that such cure period shall be extended by a further fifteen (15) Business Days if the Buyer is diligently remedying such failure and such failure is capable of being cured during such extended cure period or such other period as the Parties may agree in their discretion.
- (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 or such other period as the Parties may agree in their discretion.
- (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 or such other period as the Parties may agree in their discretion.
- (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 provisions of any Insolvency Legislation.
- (h) The Buyer assigns this Agreement (other than an assignment made pursuant to Sections 16.5(d) or 16.5(e)) without first obtaining the consent of the Supplier, if required pursuant to this Agreement.

10.4 Termination by the Supplier

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

10.5 Remedies for Termination Non-Exclusive

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

ARTICLE 11 FORCE MAJEURE

11.1 Effect of Invoking Force Majeure

- (a) If, by reason of Force Majeure:
 - (i) the Supplier is unable to make available all or any part of the Contract Capacity or is unable to deliver Electricity from the Facility using either or both of RFO and Gas; or
 - (ii) either Party is unable, wholly or partially, to perform or comply with its other obligations (other than payment obligations) hereunder;

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

extent of the inability so caused from and after the invocation of Force Majeure. Notwithstanding the foregoing, during such time as the Supplier is so unable to perform or comply with its obligations as a result of a Force Majeure, to the extent that the Supplier is able to deliver a portion of the Contract Capacity and Electricity from the Facility despite an event of Force Majeure, then the calculation of payment will be made with respect to such portion of the Contract Capacity and Electricity delivered in accordance with Exhibit J.

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

11.2 Exclusions

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

- (a) if and to the extent the Party seeking to invoke Force Majeure has caused the applicable event of Force Majeure by its fault or negligence;
- (b) if and to the extent the Party seeking to invoke Force Majeure has failed to use Commercially Reasonable Efforts to prevent or remedy the event of Force Majeure and remove, so far as possible and within a reasonable time period, the Force Majeure (except in the case of strikes, lockouts and other labour disturbances, the settlement of which shall be wholly within the discretion of the Party involved);
- (c) if and to the extent that the Party seeking to invoke Force Majeure because of arrest or restraint by a Governmental Authority, such arrest or restraint was the result of a breach by such Party of Laws and Regulations;
- (d) if the Force Majeure was caused by a lack of funds or other financial cause;
- (e) if the System Operator amends the schedule of Planned Outages for the Facility as set out in the Annual Operating Plan; or
- (f) if the Party invoking Force Majeure fails to comply with the notice provisions in Sections 11.1(b) or 11.1(d).

11.3 Definition of Force Majeure

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

- (a) acts of God, including extreme wind, ice, lightning or other storms, earthquakes, tornadoes, hurricanes, cyclones, landslides, drought, floods and washouts;
- (b) fires or explosions;
- (c) local, regional or national states of emergency;
- (d) general industry strikes and general industry labour disputes (including, for greater certainty, sector-wide strikes or labour disputes);
- (e) delays or disruptions in Fuel supply resulting from a Force Majeure event (whether such event is in respect of a Party or a third party);
- (f) civil disobedience or disturbances, war (whether declared or not), acts of sabotage, blockades, insurrections, terrorism, revolution, riots or epidemics;
- (g) an order, judgment, legislation, ruling or direction by Governmental Authorities restraining a Party, provided that the affected Party has not applied for or assisted

in the application for and has used Commercially Reasonable Efforts to oppose said order, judgment, legislation, ruling or direction;

- (h) any inability to obtain, or to secure the renewal or amendment of, any permit, certificate, impact assessment, licence or approval of any Governmental Authority or Transmitter required to perform or comply with any obligation under this Agreement, unless the revocation or modification of any such necessary permit, certificate, impact assessment, licence or approval was caused by the violation of the terms thereof or consented to by the Party invoking Force Majeure; and
- (i) any unanticipated maintenance or outage affecting the Facility:
 - (i) which is not identified in the Supplier's then current schedule of Planned Outages submitted to the System Operator or the Buyer, as the case may be, in advance of the occurrence of an event of Force Majeure referred to in this Section 11.3, and
 - (ii) which results directly from, or is scheduled or planned directly as a consequence of, an event of Force Majeure referred to in this Section 11.3, or which results from a failure of equipment that prevents the Facility from producing Electricity, provided that:
 - (A) notice of the unanticipated maintenance or outage is provided to the Buyer by the Supplier concurrently, or as soon as reasonably possible thereafter, with the notice in respect thereof provided to the System Operator but, in any event, within ten (10) Business Days thereof;
 - (B) the Supplier provides notice to the Buyer immediately, or as soon as reasonably possible thereafter, upon receipt from the System Operator of advance acceptance or other proposed scheduling or approval of such maintenance or outage, if such approval is required to be obtained from the System Operator;
 - (C) the Supplier provides timely updates to the Buyer of the commencement date of the maintenance or outage and, where possible, provides seven (7) days advance notice of such date;
 - (D) the unanticipated maintenance or outage is commenced within one hundred twenty (120) days of the commencement of the occurrence of the relevant event of Force Majeure; and
 - (E) the Supplier schedules the unanticipated maintenance or outage in accordance with Good Engineering and Operating Practices.

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

Furthermore, for the purposes of determining whether an event of Force Majeure has occurred under this Agreement, the Buyer acknowledges that an agreement or business relationship between the Supplier and a First Nation (other than this Agreement, if such First Nation is a Party hereto) shall not, by virtue of such fact alone, be construed as providing the Supplier with reasonable control over the actions of such First Nation.

ARTICLE 12 DISCRIMINATORY ACTION

12.1 Discriminatory Action

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

- (a)
 - (i) the Legislative Assembly of Ontario causes to come into force any statute that was introduced as a bill in the Legislative Assembly of Ontario or causes to come into force or makes any order-in-council or regulation first having legal effect on or after the Contract Date; or
 - (ii) the Legislative Assembly of Ontario directly or indirectly amends this Agreement without the agreement of the Supplier;
- (b) the effect of the action referred to in Section 12.1(a) is borne principally by the Supplier; and
- (c) such action increases the costs that the Supplier would reasonably be expected to incur under this Agreement in respect of Contracted Facility Operation, or adversely affects the revenues of the Supplier from Electricity and Related Products in respect of Contracted Facility Operation, except where such action is in response to any act or omission on the part of the Supplier that is contrary to Laws and Regulations (other than an act or omission rendered illegal by virtue of such action) or such action is permitted under this Agreement. Despite the preceding sentence, none of the following shall be a Discriminatory Action:
 - (i) Laws and Regulations of general application, including an increase of Taxes of general application, or any action of the Government of Ontario pursuant thereto;
 - (ii) any such statute that at least five (5) Business Days prior to the Contract Date:
 - (A) has been introduced as a bill in the Legislative Assembly of Ontario in a similar form as such statute takes when it has legal effect, provided that any amendments made to such bill in becoming such statute do not have a Material Adverse Effect on the Supplier; or
 - (B) has been made public in a discussion or consultation paper, press release or announcement issued by the IESO, the Government of Ontario, and/or the Ministry of Energy that appeared on the website of the IESO, 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; and

- (iii) any of such regulations that at least five (5) Business Days prior to the Contract Date:
 - (A) have been published in the Ontario Gazette but by the terms of such regulations come into force on or after five (5) Business Days prior to the date of execution of this Agreement, or
 - (B) have been referred to in a press release issued by the IESO, the Government of Ontario and/or the Ministry of Energy that appeared on the website of 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.

12.2 Consequences of Discriminatory Action

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

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

12.3 Notice of Discriminatory Action

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

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

- (b) If the Buyer wishes to dispute the occurrence of a Discriminatory Action, the Buyer shall give a notice of dispute (the “**Notice of Dispute**”) to the Supplier, stating the grounds for such dispute, within thirty (30) days after the date of receipt of the Notice of Discriminatory Action or within thirty (30) days after the date of receipt of the further supporting particulars, as applicable.
- (c) If neither the Notice of Discriminatory Action nor the Notice of Dispute has been withdrawn within thirty (30) days after the date of receipt of the Notice of Dispute by the Supplier, the dispute of the occurrence of a Discriminatory Action shall be submitted to mandatory and binding arbitration in accordance with Section 16.2 without first having to comply with Section 16.1.
- (d) If the Buyer does not dispute the occurrence of a Discriminatory Action or the amount of Discriminatory Action Compensation claimed in the Notice of Discriminatory Action, the Buyer shall adjust the Fixed Facility Capacity Payment for any remaining months in the Term to include an amount to account for the Discriminatory Action Compensation, such increase to be effective the first Settlement Month after the occurrence of the Discriminatory Action, with retroactive adjustment, if necessary.

- (e) (i) If the Buyer wishes to dispute the amount of the Discriminatory Action Compensation, the Buyer shall give to the Supplier a notice (the “**Discriminatory Action Compensation Notice**”) setting out an amount that the Buyer proposes as the Discriminatory Action Compensation (the “**Discriminatory Action Compensation Amount**”), if any, together with details of the computation. If the Supplier does not give notice (the “**Supplier Non-acceptance Notice**”) to the Buyer stating that it does not accept the Discriminatory Action Compensation Amount proposed within thirty (30) days after the date of receipt of the Discriminatory Action Compensation Notice, the Supplier shall be deemed to have accepted the Discriminatory Action Compensation Amount so proposed. If the Supplier Non-acceptance Notice is given, the Buyer and the Supplier shall attempt to determine the Discriminatory Action Compensation Amount through negotiation, and any amount so agreed in writing shall be the Discriminatory Action Compensation Amount. If the Buyer and the Supplier do not agree in writing upon the Discriminatory Action Compensation Amount within sixty (60) days after the date of receipt of the Supplier Non-acceptance Notice, the Discriminatory Action Compensation Amount shall be determined in accordance with the procedure set forth in Section 12.3(e)(ii) and Sections 16.1 and 16.2 shall not apply to such determination.
- (ii) If the negotiation described in Section 12.3(e)(i) does not result in an agreement in writing on the Discriminatory Action Compensation Amount, either the Buyer or the Supplier may, after the later of (A) the date on which a dispute with respect to the occurrence of a Discriminatory Action is resolved and (B) the date of the expiry of a period of thirty (30) days after the date of receipt of the Supplier Non-acceptance Notice, by notice to the other require the dispute to be resolved by arbitration as set out below. The Buyer and the Supplier shall, within thirty (30) days after the date of receipt of such notice of arbitration, jointly appoint a valuator to determine the Discriminatory Action Compensation Amount. The valuator so appointed shall be a duly qualified business valuator where the individual responsible for the valuation has not less than ten (10) years’ experience in the field of business valuation. If the Buyer and the Supplier are unable to agree upon a valuator within such period, the Buyer and the Supplier shall jointly make application (provided that if a party does not participate in such application, the other party may make application alone) under the *Arbitration Act, 1991* (Ontario) to a judge of the Superior Court of Justice to appoint a valuator, and the provisions of the *Arbitration Act, 1991* (Ontario) shall govern such appointment. The valuator shall determine the Discriminatory Action Compensation Amount within sixty (60) Business Days after the date of his or her appointment. Pending a decision by the valuator, the Buyer and the Supplier shall share equally, and be responsible for their respective shares of, all fees and expenses of the valuator. The fees and expenses of the valuator shall be paid by the non-prevailing party. “**Prevailing party**” means the Party whose determination of the Discriminatory Action Compensation Amount is most nearly equal to that of the valuator’s

determination. The Supplier's and the Buyer's respective determinations of the Discriminatory Action Compensation Amount shall be based upon the Notice of Discriminatory Action and the Discriminatory Action Compensation Notice, as applicable.

- (iii) In order to facilitate the determination of the Discriminatory Action Compensation Amount by the valuator, each of the Buyer and the Supplier shall provide to the valuator such information as may be requested by the valuator, acting reasonably, and the Supplier shall permit the valuator and the valuator's representatives to have reasonable access during normal business hours to such information and to take extracts therefrom and to make copies thereof.
- (iv) The Discriminatory Action Compensation Amount as determined by the valuator shall be final and conclusive and not subject to any appeal.
- (f) The adjustment of the Fixed Facility Capacity Payment shall constitute full and final satisfaction of all amounts that may be claimed by the Supplier for and in respect of the occurrence of the Discriminatory Action and, upon such payment, the Buyer shall be released and forever discharged by the Supplier from any and all liability in respect of such Discriminatory Action.

12.4 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 later of the date of receipt of the Notice of Discriminatory Action and the date of the receipt by the Buyer of the further supporting particulars referred to in Section 12.3(b). If the Buyer gives such notice, the Buyer must remedy or cause to be remedied the Discriminatory Action within one hundred and eighty (180) days after the date of receipt of the Notice of Discriminatory Action or, if a Notice of Dispute has been given, within one hundred and eighty (180) days after the date of the final award pursuant to Section 16.2 to the effect that a Discriminatory Action occurred. If the Buyer remedies or causes to be remedied the Discriminatory Action in accordance with the preceding sentence, the Supplier shall have the right to obtain, without duplication, the amount that the Supplier would have the right to claim in respect of that Discriminatory Action pursuant to Section 12.2, adjusted to apply only to the period commencing on the first day of the first calendar month following the date of the Discriminatory Action and expiring on the day preceding the day on which the Discriminatory Action was remedied.

ARTICLE 13 SECURED LENDERS

13.1 Lender Security

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

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

- (a) A Secured Lender's Security Agreement may be made for any amounts and upon any terms (including terms of the loans, interest rates, payment terms and prepayment privileges or restrictions) as desired by the Supplier, except as otherwise provided in this Agreement.
- (b) A Secured Lender's Security Agreement may not secure any indebtedness, liability or obligation of the Supplier that is not related to the Facility or cover any real or personal property of the Supplier not related to the Facility. For greater certainty, a Secured Lender's Security Agreement may cover shares or partnership interests in the capital of the Supplier.
- (c) No Secured Lender's Security Agreement shall affect or encumber in any manner the Buyer's title to any government-owned premises. The Buyer shall have no liability whatsoever for payment of the principal sum secured by any Secured Lender's Security Agreement, or any interest accrued thereon or any other sum secured thereby or accruing thereunder; and the Secured Lender shall not be entitled to seek any damages against the Buyer for any or all of the same.
- (d) No Secured Lender's Security Agreement shall be binding upon the Buyer in the enforcement of the Buyer's rights and remedies provided in this Agreement or by Laws and Regulations, unless and until a copy of the original thereof and the registration details, if applicable, together with written notice of the address of the Secured Lender to which notices may be sent have been delivered to the Buyer by the Supplier or the Secured Lender; and in the event of an assignment of such Secured Lender's Security Agreement, such assignment shall not be binding upon the Buyer unless and until a copy thereof and the registration details, if applicable, together with written notice of the address of the assignee thereof to which notices may be sent, have been delivered to the Buyer by the Supplier or the Secured Lender.
- (e) If the Supplier is in default under or pursuant to the Secured Lender's Security Agreement and the Secured Lender intends to exercise any rights afforded to the Secured Lender under this Agreement, then the Secured Lender shall give notice of such default to the Buyer at least five (5) Business Days prior to exercising any such rights.
- (f) Any Secured Lender's Security Agreement permitted hereunder may secure two (2) or more separate debts, liabilities or obligations in favour of two (2) or more separate Secured Lenders, provided that such Secured Lender's Security Agreement complies with the provisions of this Article 13.
- (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 13.

- (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. 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.

13.2 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 13.1(d) or the contents thereof are embodied in the agreement entered into by the Buyer in accordance with Section 13.3, the following provisions shall apply:

- (a) No Supplier Event of Default (other than those set out in Section 11.2(d)) shall be grounds for the termination by the Buyer of this Agreement until:
 - (i) any notice required to be given under Section 11.1 and 11.2(a) has been given to the Supplier and to the Secured Lender; and
 - (ii) the cure period set out in Section 13.2(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 11.1, the Secured Lender shall, within the applicable cure period (including any extensions), if any, have the right (but not the obligation) to cure such default, and the Buyer shall accept such performance by such Secured Lender as if the same had been performed by the Supplier.
- (c) Any payment to be made or action to be taken by a Secured Lender hereunder as a prerequisite to keeping this Agreement in effect shall be deemed properly to have been made or taken by the Secured Lender if such payment is made or action is taken by a nominee or agent of the Secured Lender or a receiver or receiver and manager appointed by or on the application of the Secured Lender.
- (d) A Secured Lender shall be entitled to the Supplier's rights and benefits contained in this Agreement and shall become liable for the Supplier's obligations solely as provided in Section 13.2. 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 13.2(f).

- (e) Until a Secured Lender (i) forecloses or has otherwise taken ownership of the Supplier's Interest or (ii) has taken possession or control of the Supplier's Interest, whether directly or by an agent as a mortgagee in possession, or a receiver or receiver and manager has taken possession or control of the Supplier's Interest by reference to the Secured Lender's Security Agreement, the Secured Lender shall not be liable for any of the Supplier's obligations or be entitled to any of the Supplier's rights and benefits contained in this Agreement, except by way of security. If the Secured Lender itself or by a nominee or agent, or a receiver or a receiver and manager appointed by or on the application of the Secured Lender, is the owner or is in control or possession of the Supplier's Interest, then the entity that is the owner or is in control or possession of the Supplier's Interest shall be bound by all of the Supplier's obligations. Once the Secured Lender or such other Person goes out of possession or control of the Supplier's Interest or transfers the Supplier's Interest in accordance with this Agreement to another Person who is at Arm's Length with the Secured Lender, the Secured Lender shall cease to be liable for any of the Supplier's obligations and shall cease to be entitled to any of the Supplier's rights and benefits contained in this Agreement, except, if the Secured Lender's Security Agreement remains outstanding, by way of security.
- (f) Despite anything else contained in this Agreement, any Person to whom the Supplier's Interest is transferred shall take the Supplier's Interest subject to the Supplier's obligations. No transfer shall be effective unless the Buyer:
 - (i) acting reasonably, if such transferee is at Arm's Length with the Secured Lender; or
 - (ii) acting in its sole and subjective discretion, if such transferee is not at Arm's Length with the Secured Lender,has approved of the transferee and the transferee has entered into an agreement with the Buyer in form and substance satisfactory to the Buyer, acting reasonably, wherein the transferee agrees to assume and to perform the obligations of the Supplier in respect of the Supplier's Interest, whether arising before or after the transfer, and including the posting of the Performance Security required under Article 6.
- (g) In the event of the termination of this Agreement prior to the end of the Term due to a Supplier Event of Default, the Buyer shall, within ten (10) days after the date of such termination, deliver to each Secured Lender which is at Arm's Length with the Supplier a statement of all sums then known to the Buyer that would at that time be due under this Agreement but for the termination and a notice to each such Secured Lender stating that the Buyer is willing to enter into a New Agreement (the "**Buyer Statement**"). Subject to the provisions of this Article 13, each such

Secured Lender or its transferee approved by the Buyer pursuant to Section 13.2(f) hereof shall thereupon have the option to obtain from the Buyer a New Agreement in accordance with the following terms:

- (i) Upon receipt of the written request of the Secured Lender within thirty (30) days after the date on which it received the Buyer Statement, the Buyer shall enter into a New Agreement.
- (ii) Such New Agreement shall be effective as of the Termination Date and shall be for the remainder of the Term at the time this Agreement was terminated and otherwise upon the terms contained in this Agreement. The Buyer's obligation to enter into a New Agreement is conditional upon the Secured Lender (A) paying all sums that would, at the time of the execution and delivery thereof, be due under this Agreement but for such termination, (B) otherwise fully curing any defaults under this Agreement existing immediately prior to termination of this Agreement that are capable of being cured, and (C) paying all reasonable costs and expenses, including legal fees, so as to provide a full indemnity (and not only substantial indemnity), incurred by the Buyer in connection with such default and termination, and the preparation, execution and delivery of such New Agreement and related agreements and documents, provided, however, that with respect to any default that could not be cured by such Secured Lender until it obtains possession, such Secured Lender or its transferee approved by the Buyer pursuant to Section 13.2(f) hereof, as the case may be, shall have the applicable cure period commencing on the date that it obtains possession to cure such default.

When the Secured Lender has appointed an agent, a receiver or a receiver and manager or has obtained a court-appointed receiver or receiver and manager for the purpose of enforcing the Secured Lender's security, that Person may exercise any of the Secured Lender's rights under this Section 13.2(g).

- (h) Despite anything to the contrary contained in this Agreement, the provisions of this Article 13 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 13.2(h) to obtain a New Agreement, the Buyer shall accept the request of the holder whose Secured Lender's Security Agreement had priority immediately prior to the termination of this Agreement over the Secured Lender's Security Agreements of the other Secured Lenders making such requests and thereupon the written request of each other Secured Lender shall be deemed to be void. In the event of any dispute or disagreement as to the respective priorities of any such Secured Lender's Security Agreement, the Buyer may rely upon the opinion as to such priorities of any law firm qualified to practise law in the Province of Ontario retained by the Buyer in its unqualified subjective discretion or may apply to a court of competent jurisdiction for a declaration as to such priorities, which opinion or declaration shall be conclusively binding upon all parties concerned.

13.3 Cooperation

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

ARTICLE 14 LIABILITY AND INDEMNIFICATION

14.1 Exclusion of Consequential Damages

Notwithstanding anything contained herein to the contrary, neither Party will be liable under this Agreement or under any cause of action relating to the subject matter of this Agreement for any special, indirect, incidental, punitive, exemplary or consequential damages, including loss of profits (save and except as provided in Article 12), loss of use of any property or claims of customers or contractors of the Parties for any such damages.

14.2 Buyer Indemnification

- (a) In addition to the indemnity provided by the Supplier in Section 2.1(b), the Supplier shall indemnify, defend and hold the Buyer, the IESO (to the extent that it is no longer the Buyer), the Government of Ontario, the members of the Government of Ontario's Executive Council, and their respective Affiliates, and each of the foregoing Persons' respective directors, officers, employees, shareholders, advisors, and agents (including contractors and their employees) (collectively, the "**Indemnitees**") harmless from and against any and all claims, demands, suits, losses, damages, liabilities, penalties, obligations, payments, costs and expenses and accrued interest thereon (including the costs and expenses of, and accrued interest on, any and all actions, suits, proceedings for personal injury (including death) or property damage, assessments, judgments, settlements and compromises relating thereto and reasonable lawyers' fees and reasonable disbursements in connection therewith) (each, an "**Indemnifiable Loss**"), asserted against or suffered by the Indemnitees relating to, in connection with, resulting from, or arising out of (i) any occurrence or event relating to the Facility, except to the extent that any injury or damage is attributable to the negligence or wilful misconduct of the Indemnitees or the failure of the Indemnitees to comply with Laws and Regulations and (ii) any breach by the Supplier of any representations, warranties and covenants contained in this Agreement, except to the extent that any injury or damage is attributable to the negligence or wilful misconduct of the Indemnitees. For greater certainty, in the event of contributory negligence or other fault of the Indemnitees, then such Indemnitees shall not be indemnified hereunder in the proportion that the Indemnitees' negligence or other fault contributed to any Indemnifiable Loss.

- (b) Notwithstanding the foregoing in this Section 14.2, in the event of a third party claim for death, bodily injury, or property damage against any of the Indemnitees attributable to or arising in the course of performance of the obligations under, or otherwise in connection with this Agreement, and which claim is in excess of \$100,000, the Supplier shall indemnify such Indemnitee(s) for any liability for such claim:
 - (i) in respect of the portion of such claim that exceeds \$100,000; and
 - (ii) that would have been covered under the commercial general liability insurance policy required to be maintained under Section 2.5(a)(ii) if the deductible had been specified as not exceeding \$100,000,

provided that the Supplier's obligations in respect of such indemnity shall not exceed the amount of the Supplier's deductible on its corporate insurance program, on an occurrence basis.

- (c) Notwithstanding the foregoing in this Section 14.2, in the event of a claim for an amount which would have been covered by the insurance policy specified in Section 2.5(a)(i), but for the fact that the Supplier has implemented such insurance pursuant to OPG's corporate insurance program rather than as specified in Section 2.5(a)(i), the Supplier shall indemnify such Indemnitee(s) for any liability for such claim in respect of the portion of such claim that exceeds the applicable deductible set out in Section 2.5(a)(i), provided that the Supplier's obligations in respect of such indemnity shall not exceed the amount of the Supplier's deductible on its corporate insurance program for the applicable policy, on an occurrence basis.

14.3 Defence of Claims

- (a) Promptly after receipt by the Indemnitees of any Claim or notice of the commencement of any action, administrative or legal proceeding, or investigation as to which the indemnity provided for in Section 14.2 may apply, the Buyer shall notify the Supplier in writing of such fact. The Supplier shall assume the defence thereof with counsel designated by the Supplier and satisfactory to the affected Indemnitees, acting reasonably; provided, however, that if the defendants in any such action include both the Indemnitees and the Supplier and the Indemnitees shall have reasonably concluded that there may be legal defences available to them which are different from or additional to, or inconsistent with, those available to the Supplier, the Indemnitees shall have the right to select separate counsel satisfactory to the Supplier acting reasonably (at no additional cost to the Indemnitees) to participate in the defence of such action on behalf of the Indemnitees. The Supplier shall promptly confirm that it is assuming the defence of the Indemnitees by providing written notice to the Indemnitees. Such notice shall be provided no later than five (5) days prior to the deadline for responding to any Claim relating to any Indemnifiable Loss.
- (b) Should any of the Indemnitees be entitled to indemnification under Section 14.2 as a result of a Claim by a third party, and the Supplier fails to assume the defence of

such Claim (which failure shall be assumed if the Supplier fails to provide the notice prescribed by Section 14.3(a)), the Indemnitees shall, at the expense of the Supplier, contest (or, with the prior written consent of the Supplier, settle) such Claim, provided that no such contest need be made and settlement or full payment of any such Claim may be made without consent of the Supplier (with the Supplier remaining obligated to indemnify the Indemnitees under Section 14.2), if, in the written opinion of an independent third party counsel chosen by the Company Representatives, such Claim is meritorious. If the Supplier is obligated to indemnify any Indemnitees under Section 14.2, the amount owing to the Indemnitees will be the amount of such Indemnitees' actual out-of-pocket loss net of any insurance proceeds received or other recovery.

14.4 Joint and Several Liability

Other than in the case where the Supplier is a single Ontario limited partnership, if the Supplier is not a single legal entity, such as an unincorporated joint venture (including a joint venture among Ontario limited partnerships), then all such entities that constitute the Supplier shall be jointly and severally liable to the Buyer for all representations, warranties, obligations, covenants and liabilities of the Supplier hereunder.

ARTICLE 15 CONTRACT OPERATION AND ADMINISTRATION

15.1 Company Representative

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

15.2 Record Retention; Audit Rights

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

fees and expenses associated with use of the third party auditor. For greater certainty, the Buyer shall not be permitted to audit the cost build-up of the Fixed Facility Capacity Payment.

15.3 Reports to the Buyer

- (a) The Supplier shall deliver to the Buyer a copy of all reports, plans and notices for the Facility that the Supplier is required to provide to the System Operator with respect to Outages, within ten (10) Business Days after the end of each Settlement Month in a “.CSV” file format or other substantially equivalent file format specified by the Buyer.
- (b) In addition to the documentation provided in Section 15.3(a), the Supplier shall deliver at the times specified below the following documents, reports, plans and notices to the Buyer for the Facility as submitted to the System Operator:
 - (i) within ten (10) Business Days after each time that it is updated, electronic copies of the following reports, or in the event the report is subsequently renamed, replaced, or changed, its equivalent:
 - (A) 18 Month Outlook Plans for New or Modified Facilities Information Submittal Form (1484),
 - (B) 18 Month Outlook Generator Information Submittal Form (1230),
 - (C) Reliability Assessment, Plans for Retired, New or Modified Facilities Information Submittal Form (1494), and
 - (D) Reliability Assessment, Generator Information Submittal Form (1223);
 - (ii) no later than sixty (60) days prior to each Contract Year, the Supplier shall provide to the Buyer an operating plan for the Facility for the succeeding Contract Year, in the form set out in Exhibit O (the “**Annual Operating Plan**”). The Annual Operating Plan shall include a schedule of Planned Outages for that twelve (12) month period (together with the Supplier’s estimate of the expected duration of each Planned Outage) which shall be consistent with Good Engineering and Operating Practices and, to the extent the Supplier is required to do so by the IESO Market Rules, coordinated with and approved by the System Operator. The Supplier may amend the Annual Operating Plan, provided that within ten (10) Business Days after each time it is amended, the Supplier shall provide notice of such amendment to the Buyer;
 - (iii) prompt notice to the Buyer of any Outage other than a Planned Outage, or any anticipated Outage other than a Planned Outage, where such Outage is reasonably expected to have a duration longer than seven days. Any notice under this subsection shall include a statement of the cause of such Outage, the proposed corrective action and the Supplier’s estimate of the expected duration of such Outage;

- (iv) within sixty (60) days after the end of each Contract Year, a certification of its compliance with the Must-Offer Obligations, in accordance with Exhibit G, which certificate of compliance will be accompanied by an annual report of the applicable “q” (quantity) from the “p-q” pairs offered into the IESO-Administered Markets and, within ten (10) days after the Supplier becomes aware or ought reasonably to have become aware of any Must-Offer Non-Performance Event, the Supplier will provide notification of such Must-Offer Non-Performance Event to the Buyer with reasonable particulars thereof (such notice a “**Notice of Must-Offer Non-Performance Event**”);
- (v) monthly reports to be delivered no later than the tenth (10th) Business Day of each Settlement Month reporting on any instances in the immediately preceding Settlement Month where offers were withdrawn pursuant to Section 1(a)(v) of Exhibit G, including the basis for withdrawing such offers; and
- (vi) monthly reports to be delivered no later than the tenth (10th) Business Day of each Settlement Month reporting on all operating states for the calculation of EFOR(OP) for all hours in the immediately preceding Settlement Month.

15.4 Inspection of Facility

- (a) The Buyer’s Representatives shall, at all times upon five (5) Business Days’ prior notice, at any time after the execution of this Agreement, have access to the Facility and every part thereof during regular business hours and the Supplier shall, and shall cause all personnel operating and managing the Facility, to furnish the Buyer with all reasonable assistance in inspecting the Facility for the purpose of ascertaining compliance with this Agreement; provided that such access and assistance shall be carried out in accordance with and subject to the reasonable safety and security requirements of the Supplier and all personnel operating and managing the Facility, as applicable, and shall not interfere with the operation of the Facility.
- (b) The inspection of the Facility by or on behalf of the Buyer shall not relieve the Supplier of any of its obligations to comply with the terms of this Agreement. No Supplier Event of Default by the Supplier will be waived or deemed to have been waived by any inspection by or on behalf of the Buyer. In no event will any inspection by the Buyer hereunder be a representation that there has been or will be compliance with this Agreement and Laws and Regulations.

15.5 Inspection Not Waiver

- (a) Failure by the Buyer to inspect the Facility or any part thereof under Section 15.4, or to exercise its audit rights under Section 15.2, shall not constitute a waiver of any of the rights of the Buyer hereunder. An inspection or audit not followed by a notice of a Supplier Event of Default shall not constitute or be deemed to constitute a waiver of any Supplier Event of Default, nor shall it constitute or be deemed to

constitute an acknowledgement that there has been or will be compliance by the Supplier with this Agreement.

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

15.6 Capacity Check Tests

- (a) **Right to Request Capacity Check Test.** If the Buyer has a reasonable basis to believe that the Facility may not be capable of sustaining the Contract Capacity using either RFO or Gas and gives the Supplier written notice setting out such reasonable basis, the Buyer shall have the right, exercisable on no more than two (2) occasions in any 24-month period during the Term, to require the Supplier, within twenty (20) Business Days after such written notice has been delivered to the Supplier (or twenty-five (25) Business Days in the case where the Buyer specifies that Gas shall be the sole Fuel for the test), provided it is not during an Outage, to conduct a test (the “**Capacity Check Test**”), at the Supplier’s sole cost and expense (except to the extent that the Capacity Check Test is an Approved Test), that may be witnessed by the Buyer or its Representative, to confirm the ability of the Facility to produce the Contract Capacity, as described below. If the Supplier does not agree that the Buyer has a reasonable basis for requiring the Supplier to perform a Capacity Check Test, as set out above, the Supplier may refer the dispute for resolution pursuant to the terms of Sections 16.1 and 16.2. The Capacity Check Test will be carried out in accordance with the Test Protocol. The measurements of the Capacity Check Test shall be made using high accuracy calibrated instruments and recording systems or Facility instrumentation, including tariff meters for Electricity acceptable to the Buyer, acting reasonably. Each Capacity Check Test consists of the Facility generating Electricity for four (4) continuous hours during a period designated by the Supplier on prior written notice to the Buyer in advance as a test period, subject to coordination and approval of the System Operator, and shall be evaluated based on calculation of the generator output at the Delivery Point net of any Station Service Loads in accordance with the Electricity Metering Plan. The Supplier acknowledges and agrees that the Contract Capacity, the Electricity output of the Facility and the Station Service Loads, as may be measured by the Capacity Check Test, shall not be adjusted for ambient weather conditions. The Buyer shall have the right to specify whether the Supplier shall utilize RFO or Gas as the sole Fuel for a Capacity Check Test. If the Buyer so specifies a Fuel, no Fuels other than the specified Fuel may be utilized during the applicable Capacity Check Test. If the Buyer specifies the Fuel for a Capacity Check Test to be Gas, and
 - (i) the Supplier is unable to secure Gas delivered on a firm basis to the Facility for the test despite making Commercially Reasonable Efforts to do so, the Supplier shall promptly notify the Buyer and the Buyer shall either withdraw the requirement that the Capacity Check Test be performed using

exclusively Gas or the Buyer shall agree to extend the time for the Supplier to perform the test by such period as is reasonably required for the Supplier to secure such Gas on a firm basis; or

- (ii) due to capacity restrictions on the Enbridge Distribution Pipeline resulting from the operation of other Gas loads connected to the Enbridge Distribution Pipeline the Supplier is required to schedule the Capacity Check Test at a time when revenues from the IESO-Administered Markets are reasonably expected by the Supplier to be lower than at the time the Supplier would have otherwise scheduled the Capacity Check Test, the Supplier shall promptly notify the Buyer and the Buyer shall either withdraw the requirement that the Capacity Check Test be performed using exclusively Gas or, following the successful completion of the Capacity Check Test, the Buyer shall pay the Supplier an amount equal to 25% of the amount, if any, that the revenues from the IESO-Administered Markets were less than what they would have been, had the Supplier been able to schedule the Capacity Check Test without there being capacity restrictions on the Enbridge Distribution Pipeline.

Notwithstanding the foregoing, if the Supplier provides evidence to the Buyer's satisfaction, acting reasonably, that the performance of a Capacity Check Test cannot be performed without the Supplier reasonably being required to spill water at any of its hydroelectric generating facilities, the Supplier shall be permitted to delay the performance of such Capacity Check Test for such reasonable period of time as is necessary for the Supplier to avoid being required to spill water at any of its hydroelectric generating facilities, provided that such delay shall be for a period of no more than sixty (60) days.

- (b) **Optional Re-Performance of Capacity Check Test as a result of Force Majeure.** If the Capacity Check Test is interrupted by an event of Force Majeure, then the Supplier may, at the Supplier's sole cost and expense (except to the extent that the Capacity Check Test is an Approved Test), re-perform the Capacity Check Test within ten (10) Business Days after the receipt by the Supplier of the Capacity Confirmation relating to such Capacity Check Test from the Buyer.
- (c) **Capacity Check Test Report.** The Supplier shall at the Supplier's sole cost and expense and within ten (10) Business Days, or as provided in the Test Protocol, after completion of the Capacity Check Test prepare and submit to the Buyer a written Capacity Check Test report that includes the data collected during the test period, computation of test data and the test results. The Buyer shall provide to the Supplier within ten (10) Business Days after receipt of the Capacity Check Test report from the Supplier, written confirmation of the Electricity output for each hour during the Capacity Check Test (the "**Capacity Confirmation**").
- (d) **Requirements to Pass a Capacity Check Test.** To pass the Capacity Check Test, the Electricity output (in MWh) for each hour of the Capacity Check Test, divided by one hour, must be equal to or greater than the Contract Capacity, in which case the Capacity Reduction Factor for the Fuel used for the test shall, for the purposes of Exhibit J, be an amount equal to 1.0, effective from the date of the Capacity

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

- (e) **Result of Further Capacity Check Test.** If the Further Capacity Check Test shows that the Average Test Capacity was less than 100% of the Contract Capacity, then the Capacity Reduction Factor for the Fuel used during the test for purposes of Exhibit J shall be reduced as set out below, effective on the date of the Capacity Confirmation in relation to the Further Capacity Check Test. The Capacity Reduction Factor for the Fuel used during the test shall be an amount equal to a fraction, the numerator of which is (i) the greater of the Average Test Capacities resulting from the Capacity Check Test and the Further Capacity Check Test, and the denominator of which is (ii) the Contract Capacity.
- (f) **Final Capacity Check Test.** If Section 15.6(e) is applicable, then the Supplier shall perform a further Capacity Check Test (the "**Final Capacity Check Test**") at the Supplier's cost and expense within twenty (20) Business Days after written notice has been delivered by the Supplier to the Buyer, no earlier than one month and no later than one year after the date of the Capacity Confirmation with respect to the Further Capacity Check Test, failing which this shall be considered to be a Supplier Event of Default. The Final Capacity Check Test shall take place on the same terms and conditions as the Capacity Check Test described in Section 15.6(a) and including the delivery of the Capacity Confirmation in relation to the Final Capacity Check Test. If the total Electricity output of the Facility for the four (4) continuous hours of the Final Capacity Check Test, as stated in the Capacity Confirmation with respect to the Final Capacity Check Test, divided by the number of hours in such check test (which result shall also be an "**Average Test Capacity**") as calculated pursuant to Section 15.6(d)):
 - (i) is less than ninety-five percent (95%) of the Contract Capacity, then this shall be considered a Supplier Event of Default;
 - (ii) is equal or greater to ninety-five percent (95%) and less than one hundred percent (100%) of the Contract Capacity, then the Capacity Reduction Factor for the Fuel used during the test shall, for the purposes of Exhibit J, be an amount equal to a fraction, the numerator of which is (i) the Average Test Capacity in relation to the Final Capacity Check Test, and the denominator of which is (ii) the Contract Capacity; and

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

15.7 Unit Check Tests

- (a) **Right to Request Unit Check Test.** The Buyer shall have the option, exercisable on no more than two (2) occasions per Unit in any 24-month period during the Term, to require the Supplier, within ten (10) Business Days after written notice has been delivered to the Supplier, provided it is not during an Outage, to conduct a test (the “**Unit Check Test**”), at the Supplier’s sole cost and expense (except to the extent that the Unit Check Test is an Approved Test), that may be witnessed by the Buyer or its Representative, to confirm the ability of any Unit specified by the Buyer to produce the Unit Contract Capacity, as described below. The Buyer shall have the right to specify whether the Supplier shall utilize RFO or Gas as the sole Fuel for a Unit Check Test. If the Buyer so specifies a Fuel, no Fuels other than the specified Fuel may be utilized during the applicable Unit Check Test. The Unit Check Test will be carried out in accordance with the Test Protocol. The measurements of the Unit Check Test shall be made using high accuracy calibrated instruments and recording systems or Facility instrumentation, including tariff meters for Electricity acceptable to the Buyer, acting reasonably. Each Unit Check Test consists of the specified Unit generating Electricity for four (4) continuous hours during a period designated by the Supplier on prior written notice to the Buyer in advance as a test period, subject to coordination and approval of the System Operator, and shall be evaluated based on calculation of the Unit output at the applicable generator’s revenue meters net of any Unit Service Loads and Common Station Loads for the applicable Unit, in accordance with the Electricity Metering Plan. The Supplier acknowledges and agrees that the Unit Contract Capacity, the Electricity output of the Unit and the Unit Service Loads, and Common Station Loads, as may be measured by the Unit Check Test, shall not be adjusted for ambient weather conditions. Notwithstanding the foregoing, where, during any 24-month period, the Supplier performs and passes a Regulatory Check Test, as set forth in Section 15.8, of a Unit after providing the Buyer with notice of such Regulatory Check Test and the opportunity to observe such Regulatory Check Test, the Buyer shall only have the right to test such Unit one additional time during such 24-month period.
- (b) **Optional Re-Performance of Unit Check Test as a result of Force Majeure.** If the Unit Check Test is interrupted by an event of Force Majeure, then the Supplier may, at the Supplier’s sole cost and expense (except to the extent that the Unit Check Test is an Approved Test), re-perform the Unit Check Test within ten (10) Business Days after the receipt by the Supplier of the Unit Capacity Confirmation relating to such Unit Check Test from the Buyer.
- (c) **Unit Check Test Report.** The Supplier shall at the Supplier’s sole cost and expense and within ten (10) Business Days, or as provided in the Test Protocol, after completion of the Unit Check Test prepare and submit to the Buyer a written Unit Check Test report that includes the data collected during the test period,

computation of test data and the test results. The Buyer shall provide to the Supplier within ten (10) Business Days after receipt of the Unit Check Test report from the Supplier, written confirmation of the Electricity output for each hour during the Unit Check Test (the “**Unit Capacity Confirmation**”).

- (d) **Requirements to Pass a Unit Check Test.** To pass the Unit Check Test, the Electricity output (in MWh) for each hour of the Unit Check Test for the applicable Unit, divided by one hour, must be equal to or greater than the Unit Contract Capacity, in which case the Unit Capacity Reduction Factor for the Fuel used during the test for the applicable Unit shall, for the purposes of Exhibit J, be an amount equal to 1.0, effective from the date of the Unit Capacity Confirmation in relation to the Unit Check Test. If the Supplier has not passed the Unit Check Test for each one of the four (4) continuous hours, then the Supplier shall, at the Supplier’s cost and expense, perform a further Unit Check Test (the “**Further Unit Check Test**”) within thirty (30) Business Days after the receipt by the Supplier of the Unit Capacity Confirmation from the Buyer, on the same terms and conditions as the Unit Check Test described in Section 15.7(a). If the total Electricity output of the Unit for the four (4) continuous hours of each of the hours of the Unit Check Test and the Further Unit Check Test, as stated in their respective Unit Capacity Confirmations, divided by the number of hours in each of the respective check tests (each an “Average Unit Test Capacity”), are both less than eighty percent (80%) of the Unit Contract Capacity, then this shall be considered a Supplier Event of Default. For purposes of calculating the Average Unit Test Capacity in this Section 15.7, the Electricity output from each hour shall not exceed a maximum amount equal to the Unit Contract Capacity multiplied by one hour.
- (e) **Result of Further Unit Check Test.** If the Further Unit Check Test shows that the Average Unit Test Capacity was less than 100% of the Unit Contract Capacity, then the Unit Capacity Reduction Factor for the Fuel used during the test for the applicable Unit shall be reduced as set out below, effective on the date of the Unit Capacity Confirmation in relation to the Further Unit Check Test. The Capacity Reduction Factor for the Fuel used during the test for the applicable Unit shall be an amount equal to a fraction, the numerator of which is (i) the greater of the Average Unit Test Capacities resulting from the Unit Check Test and the Further Unit Check Test, and the denominator of which is (ii) the applicable Unit Contract Capacity.
- (f) **Final Unit Check Test.** If Section 15.7(e) is applicable, then the Supplier shall perform a further Unit Check Test (the “**Final Unit Check Test**”) at the Supplier’s cost and expense within ten (10) Business Days after written notice has been delivered by the Supplier to the Buyer, no earlier than one month and no later than one year after the date of the Unit Capacity Confirmation with respect to the Further Unit Check Test, failing which this shall be considered to be a Supplier Event of Default. The Final Unit Check Test shall take place on the same terms and conditions as the Unit Check Test described in Section 15.7(a) and including the delivery of the Unit Capacity Confirmation in relation to the Final Unit Check Test. If the total Electricity output of the Unit for the four (4) continuous hours of the Final Unit Check Test, as stated in the Unit Capacity Confirmation with respect to

the Final Unit Check Test, divided by the number of hours in such check test (which result shall also be an “Average Unit Test Capacity” as calculated pursuant to Section 15.7(d)):

- (i) is less than one hundred percent (100%) of the Unit Contract Capacity, then the Unit Capacity Reduction Factor for the Fuel used during the test for the applicable Unit shall be an amount equal to a fraction, the numerator of which is (i) the Average Unit Test Capacity in relation to the Final Unit Check Test, and the denominator of which is (ii) the Unit Contract Capacity for the applicable Unit; and
 - (ii) is equal to one hundred percent (100%) of the Unit Contract Capacity, then the Unit Capacity Reduction Factor for the Fuel used during the test shall, for the applicable Unit, for the purposes of Exhibit J, be an amount equal to 1.0, effective from the date of the Unit Capacity Confirmation in relation to the Final Unit Check Test.
- (g) **Reallocation of Unit Contract Capacity.** If, following a Final Unit Check Test, a Unit Capacity Reduction Factor in respect of a Unit is equal to a value that is less than 1.0, the Supplier may request the Buyer’s consent to amend this Agreement, such consent not to be unreasonably withheld, to (i) reduce the Unit Contract Capacity for such Unit to the amount of capacity demonstrated by such Unit during such Final Unit Check Test and (ii) increase the Unit Contract Capacities of one or more other Units by an amount equal to the reduction, such that that sum of the four Unit Contract Capacities is equal to the Contract Capacity. Prior to making any such request, the Supplier shall demonstrate, by performing a Unit Capacity Check Test on the applicable Unit(s) at its sole cost and expense, that any Unit for which the Unit Contract Capacity is to be increased, is capable of achieving such increased Unit Contract Capacity. Following any such amendment, the Unit Capacity Reduction Factor for the applicable Fuel for the Unit for which the Unit Contract Capacity was reduced shall be recalculated based on the results of the preceding Final Unit Check Test for such Unit, along with the new Unit Contract Capacity.

15.8 Regulatory Check Tests

- (a) The Supplier shall perform regulatory tests (each a “**Regulatory Check Test**” and collectively, the “**Regulatory Check Tests**”) of each Unit and of the Facility as required by Laws and Regulations and Good Engineering and Operating Practices, including:
 - (i) testing required pursuant to Ontario Regulation 127/01 and Ontario Regulation 397/01, both made under the *Environmental Protection Act, 1990*;
 - (ii) testing required pursuant to Ontario Regulation 220/01 made under the *Boiler and Pressure Vessels Act, 1990* and the Boilers and Pressure Vessels Code Adoption Document adopted as part of Ontario Regulation 220/01 made under Ontario Regulation 223/01 as regulated by the *Technical Standards and Safety Act, 2000*;

- (iii) testing required by the North American Electric Reliability Corporation to re-verify the generator controls (governor response, automatic voltage regulator settings and power system stabilizer settings) on each Unit for reliability compliance purposes;
- (iv) testing to verify the balancing of the turbine-generators sets performed after any work has been completed on the turbine-generators;
- (v) Unit testing prior to an Outage to confirm what maintenance or repairs are required in anticipation of such Outage;
- (vi) return to service testing upon the conclusion of the refilling of any boiler in order to achieve proper boiler water chemistry;
- (vii) return to service testing of a Unit which has been on Outage to confirm that the Unit is available prior to releasing the Unit to service;
- (viii) specific problem testing of the turbine-generator sets to be completed in order to assess machine vibration response and conduct balancing weight adjustments;
- (ix) annual regulation diagnostic test to demonstrate that the “regulation capacity” required at the Facility by the System Operator is being met; and
- (x) regulation certification required by the System Operator to certify “regulation capacity” following equipment outage or installation of new equipment.

15.9 Notices

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

If to the Supplier: Ontario Power Generation Inc.
700 University Avenue, H9F18
Toronto, Ontario
M5G 1X6

Attention: Director, Energy Markets
E-mail: kim.lauritsen@opg.com

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

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

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

- (b) Notices shall be delivered or transmitted as set out below, and shall be considered to have been received by the other Party:
- (i) on the date of delivery if delivered by hand or by courier prior to 5:00 p.m. (local time of the recipient) on a Business Day and otherwise on the next following Business Day, it being agreed that the onus of establishing delivery shall fall on the Party delivering the notice;
 - (ii) in those circumstances where electronic transmission is expressly permitted under this Agreement, on the date of delivery if delivered prior to 5:00 p.m. (local time of the recipient) on a Business Day and otherwise on the next following Business Day, provided that a copy of such notice is also delivered by regular post within a reasonable time thereafter; and
 - (iii) on the fifth (5th) Business Day following the date of mailing by registered post.
- (c) Notwithstanding Section 15.9(b):
- (i) any notices of an Event of Default and termination of this Agreement shall only be given by hand or courier delivery; and
 - (ii) if regular post service or other form of electronic communication is interrupted by strike, slowdown, a Force Majeure event or other cause, a notice, direction or other instrument sent by the impaired means of communication will not be deemed to be received until actually received, and the Party sending the notice shall utilize any other such service which has not been so interrupted to deliver such notice.
- (d) No Notice to the Buyer shall be deemed delivered unless the addressee of such Notice is identified in such Notice as “Contract Management”. No Notice from the Buyer shall be binding on the Buyer pursuant to this Agreement unless the sender of such Notice is identified in such Notice as “Contract Management”. 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.

ARTICLE 16 MISCELLANEOUS

16.1 Informal Dispute Resolution

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

16.2 Arbitration

Except as otherwise specifically provided for in this Agreement, any matter in issue between the Parties as to their rights under this Agreement may, if agreed to by both Parties, be decided by arbitration provided, however, that the Parties have first completed a Senior Conference pursuant to Section 16.1. Any dispute to be decided by arbitration will be decided by a single arbitrator appointed by the Parties or, if such Parties fail to appoint an arbitrator within fifteen (15) days following the agreement to refer the dispute to arbitration, upon the application of either of the Parties, the arbitrator shall be appointed by a Judge of the Superior Court of Justice (Ontario) sitting in the Judicial District of Toronto Region. The arbitrator shall not have any current or past business or financial relationships with any Party (except prior arbitration). The arbitrator shall provide each of the Parties an opportunity to be heard and shall conduct the arbitration hearing in accordance with the provisions of the *Arbitration Act, 1991* (Ontario). Unless otherwise agreed by the Parties, the arbitrator shall render a decision within ninety (90) days after the end of the arbitration hearing and shall notify the Parties in writing of such decision and the reasons therefor. The arbitrator shall be authorized only to interpret and apply the provisions of this Agreement and shall have no power to modify or change this Agreement in any manner. The decision of the arbitrator shall be conclusive, final and binding upon the Parties. The decision of the arbitrator may be appealed solely on the grounds that the conduct of the arbitrator, or the decision itself, violated the provisions of the *Arbitration Act, 1991* (Ontario) or solely on a question of law as provided for in the *Arbitration Act, 1991* (Ontario). The *Arbitration Act, 1991* (Ontario) shall govern the procedures to apply in the enforcement of any award made. If it is necessary to enforce such award, all costs of enforcement shall be payable and paid by the Party against whom such award is enforced. Unless otherwise provided in the arbitral award to the contrary, each Party shall bear (and be solely responsible for) its own costs incurred during the arbitration process, and each Party shall bear (and be solely responsible for) its equal share of the costs of the arbitrator. Each Party shall be otherwise responsible for its own costs incurred during the arbitration process.

16.3 Business Relationship

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

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

16.4 Binding Agreement

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

16.5 Assignment

- (a) Except as set out below and as provided in Article 13, neither this Agreement nor any of the rights, interests or obligations under this Agreement may be assigned by either Party, including by operation of Laws and Regulations, without the prior written consent of the other Party, which consent shall not be unreasonably withheld.
- (b) The Supplier may, subject to compliance with Laws and Regulations and provided that there is not a Supplier Event of Default that has not been remedied, assign this Agreement without the consent of the Buyer to an Affiliate acquiring the Facility; provided, however, that no such assignment by the Supplier or any of its successors or permitted assigns hereunder shall be valid or effective unless and until such Affiliate agrees with the Buyer in writing to assume all of the Supplier's obligations and be bound by the terms of this Agreement, and the arrangements and obligations of the Supplier set forth in Article 6 have been met in accordance with the terms of Article 6. If a valid assignment of this Agreement is made by the Supplier in accordance with this Section 16.5, the Buyer acknowledges and agrees that, upon such assignment and assumption and notice thereof by the assignor to the Buyer, the assignor shall be relieved of all its duties, obligations and liabilities hereunder.
- (c) If the Supplier assigns this Agreement to a non-resident of Canada (the "Assignee"), as that term is defined in the ITA, and the Buyer incurs any additional or withholding Taxes, at any time thereafter, as the result of such assignment, then payments under this Agreement by the Buyer shall be reduced by the amount of such additional or withholding Taxes and the Buyer shall remit such additional or withholding Taxes to the applicable taxing authorities. The Buyer shall within sixty (60) days after remitting such Taxes, notify the Assignee in writing, providing reasonable detail of such payment so that the Assignee may claim any applicable rebates, refunds or credits from the applicable taxing authorities. If after the Buyer has paid such amounts, the Buyer receives a refund, rebate or credit on account of such Taxes, then the Buyer shall promptly remit such refund, rebate or credit amount to the Assignee.
- (d) The Buyer shall have the right to assign this Agreement and all benefits and obligations hereunder for the balance of the Term without the consent of the Supplier to an assignee with a Credit Rating no lower than that set forth in the fourth (4th) row of the table in Section 6.4(b)(i), which such assignee shall assume the

obligations and liability of the Buyer under this Agreement and be novated into this Agreement in the place and stead of the Buyer (except for the Buyer's obligation in Section 16.5(d)(iii) which will remain in force), provided that the assignee agrees in writing to assume and be bound by the terms and conditions of this Agreement, and further agrees to provide the Secured Lender with a written acknowledgement of the Secured Lender's rights in relation to this Agreement in the form set out in Exhibit N, whereupon:

- (i) the representation set forth in Section 7.2(a) shall apply to the assignee with all necessary amendments to reflect the form and the manner in which the assignee was established;
 - (ii) all of the other representations set forth in Section 7.2 shall be deemed to be made by the assignee to the Supplier at the time of such assignment and assumption; and
 - (iii) the Buyer shall be relieved of all obligations and liability arising pursuant to this Agreement; notwithstanding the foregoing, the Buyer shall remain liable to the Supplier for remedying any payment defaults under Section 10.3(a) before any such payment default becomes a Buyer Event of Default, and shall remain liable for any obligations and liabilities of the assignee arising from any Buyer Event of Default. Any notice required to be given under Sections 10.3 and 10.4(a) shall be given to the assignee and to the Buyer. The time periods in Section 10.3 shall not begin to run until both the assignee and the Buyer have been so notified.
- (e) The Buyer shall have the right to assign this Agreement and all benefits and obligations hereunder from time to time throughout the Term for a period less than the balance of the Term (the "**Assignment Period**") without the consent of the Supplier to an assignee with a Credit Rating no lower than that set forth in the fourth (4th) row of the table in Section 6.4(b)(i), which such assignee shall assume the obligations of the Buyer under this Agreement and be novated into this Agreement in the place and stead of the Buyer (except for the Buyer's obligation in Section 16.5(e)(iii) which will remain in force), provided that the assignee agrees in writing to assume and be bound by the terms and conditions of this Agreement, and further agrees to provide the Secured Lender with a written acknowledgement of the Secured Lender's rights in relation to this Agreement in the form set out in Exhibit N, whereupon:
- (i) the representation set forth in Section 7.2(a) shall apply to the assignee with all necessary amendments to reflect the form and the manner in which the assignee was established;
 - (ii) all of the other representations set forth in Section 7.2 shall be deemed to be made by the assignee to the Supplier at the time of such assignment and assumption;
 - (iii) the Buyer shall be relieved of all obligations and liability arising pursuant to this Agreement; notwithstanding the foregoing, the Buyer shall remain

liable to the Supplier for remedying any payment defaults under Section 10.3(a) before any such payment default becomes a Buyer Event of Default, and shall remain liable to the Supplier for any obligations and liabilities of the assignee arising from any Buyer Event of Default. Any notice required to be given under Sections 10.3 and 10.4(a) shall be given to the assignee and to the Buyer. The time periods in Section 10.3 shall not begin to run until both the assignee and the Buyer have been so notified; and

- (iv) upon the expiry of the Assignment Period:
 - (A) this Agreement, without requiring the execution of any assignment, consent or other documentation of any nature, shall automatically revert and be assigned back to the Buyer;
 - (B) the assignee shall remain responsible to the Supplier for all obligations and liabilities incurred or accrued by the assignee during the Assignment Period; and
 - (C) the 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 16.5(e)(iii) that arose prior to the expiry of the Assignment Period.

- (f) In the event that the Buyer seeks to assign this Agreement pursuant to Sections 16.5(d) or (e), the Buyer shall provide written notice to the Supplier of the identity of the proposed assignee (the “**Buyer Assignee**”) no later than thirty (30) days prior to such assignment. If the Supplier determines, acting reasonably, that the Buyer Assignee is a competitor of OPG, or that the disclosure of Confidential Information to the Buyer Assignee pursuant to this Agreement could reasonably be expected to:
 - (i) prejudice the economic interests of the Supplier;
 - (ii) prejudice the competitive position of the Supplier; or
 - (iii) result in undue loss to the Supplier or benefit to another Person,

then the Buyer and the Supplier shall engage in good faith negotiations to develop and implement measures and/or amendments to this Agreement designed to limit or prevent the disclosure of Confidential Information to the Buyer Assignee. Such measures or amendments may include the creation of information barriers or other separation between the Disclosing Party and the Buyer Assignee or the engagement of an independent, third party consultant to receive, review and report on the Confidential Information, such consultant to have relevant industry experience and be bound by a confidentiality agreement with terms substantially similar to the confidentiality provisions hereunder. If the Parties are unable to agree on such measures or amendments within thirty (30) days of the Supplier’s receipt of the Buyer’s written notice of intended assignment, then such measures or amendments

shall be determined by mandatory and binding arbitration carried out in accordance with the procedures set out in Exhibit K. However, if the Supplier fails to participate in such arbitration, the Supplier acknowledges that it waives its right to participate in such arbitration, which shall nevertheless proceed, and the Supplier shall be bound by the award of the Arbitration Panel and the subsequent amendments to this Agreement, if any, as may be necessary to implement such award of the Arbitration Panel.

16.6 No Change of Control

- (a) The Supplier shall either be OPG or shall be Controlled by OPG at all times during the Term and the Supplier shall ensure that there is no change of Control of the Supplier at any time during the Term.
- (b) For the purposes of Sections 16.6(a), a change of Control shall exclude a change in ownership of any shares or units of ownership that are listed on a recognized stock exchange, provided that such shares or units of ownership are not those of an entity that directly owns the Facility whose special or sole purpose is the ownership of the Facility or the Facility and other generation facilities under a CES Contract, a HESA, or other bilateral arrangements with the Buyer similar in nature to this Agreement. For greater certainty, and the purposes of Sections 16.6(a), a change of Control shall include a change from no Person having Control of the Supplier to any Person having Control of the Supplier, as well as a change from any Person having Control of the Supplier to no Person having Control of the Supplier.

16.7 Survival

The provisions of Sections 2.1(b), 2.7, 4.2, 4.4, Article 5, Section 6.3(c), Article 8, Sections 10.2, 10.4, 10.5, 13.2(g), Article 14, Sections 15.2, 16.1, 16.2, and 16.5(c) to 16.5(e) shall survive the expiration of the Term or earlier termination of this Agreement. The expiration of the Term or a termination of this Agreement shall not affect or prejudice any rights or obligations that have accrued or arisen under this Agreement prior to the time of expiration or termination and such rights and obligations shall survive the expiration of the Term or the termination of this Agreement for a period of time equal to the applicable statute of limitations.

16.8 Counterparts

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

16.9 Additional Rights of Set-Off

The Buyer may set off any amounts owing under this Agreement to the Supplier against any amounts owed by the Supplier to the Buyer under this Agreement. The Supplier may set off any

amounts owing under this Agreement to the Buyer against any amounts owed by the Buyer to the Supplier under this Agreement.

16.10 Rights and Remedies Not Limited to Contract

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

16.11 Time of Essence

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

16.12 Further Assurances

Each of the Parties shall, from time to time on written request of the other Party, do all such further acts and execute and deliver or cause to be done, executed or delivered all such further acts, deeds, documents, assurances and things as may be required, acting reasonably, in order to fully perform and to more effectively implement and carry out the terms of this Agreement. The Parties agree to promptly execute and deliver any documentation required by any Governmental Authority in connection with any termination of this Agreement.

[Signature page to follow]

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

ONTARIO POWER GENERATION INC.

**INDEPENDENT ELECTRICITY
SYSTEM OPERATOR**

By: _____

Name:

Title:

I have authority to bind the corporation.

By: _____

Name:

Title:

I have authority to bind the corporation.

**EXHIBIT A
FACILITY DESCRIPTION**

Name of Facility:	Lennox Generating Station
Municipal Location and Address:	Lennox is located on the north shore of Lake Ontario 7 km west of the Village of Bath, on Hwy 33. The station is 25 km west of the City of Kingston. The mailing address is 7263 Hwy 33, P.O. Box 1000, Bath, Ont. K0H 1G0.
Connection Point and Circuit Designation:	Unit 1 – NK12-A Unit 2 – NK12-D Unit 3 – NK12-X3 Unit 4 – NK12-X4
Description of Generation Technology:	The station was originally built and went into service in 1976/77 as a four Unit 2000 MW facility fuelled by #6 Residual Fuel Oil. The facility was converted to burn Gas in addition to RFO between 1998 and 2000. All four units are of nearly identical design.
Brief Description of Facility:	A four Unit station, rated at approximately 2000 MW net of Station Service Loads, consisting of Fuel receiving and storage, boiler, turbine/generator/main transformer, cooling water circuit, electrostatic precipitators, powerhouse, and distributed controls.

Detailed Description of Facility

Lennox GS comprises the following:

a) Fuel Handling

RFO - Capable of receiving Residual Fuel Oil by GATX Tank Train and storing in two storage tanks (833,000 bbl capacity each).

Natural Gas – Delivered to site via a 17km long 24 inch pipeline owned by Enbridge (the “**Enbridge Distribution Pipeline**”) connected to the TransCanada mainline west of Kingston (22,000,000 scf/hr capacity).

b) Boilers

Manufacturer	Combustion Engineering – Superheater Ltd
Type	Divided furnace, radiant, two-stage superheater, reheater Forced circulation
Rating	453.6 kg/s (3,600,000 lb/h)
Main Steam	17.4 Mpa/538.6 degrees C (2,500 psig/1,000 degrees)
Reheat Steam	4.0 Mpa/538.6 degrees C (583 psig/1,000 degrees F)
Fuel Flow	XXXXXXXXXX
Heat Input	XXXXXXXXXX
Number of Burners	32
Furnace Volume	1354.72 m3 (156,960 cu ft)
Furnace Heating Surface	2417.3 m2 (26,020 sq ft)

c) Turbine/Generators

Manufacturer	Canadian General Electric
Type	Four cylinder, tandem compound, single flow HP, double flow IP, two double flow LP cylinders, seven point extraction
Rating	513 850 kW
Main Steam	16.2 Mpa/538 degrees C (2,350 psig/1,000 degrees F)
Reheat Steam	3.76 Mpa/538 degrees C (545 psig/1,000 degrees F)
Exhaust Pressure	5.08 kPa (1.5 in Hg)
Speed	60 r/s (3,600 rpm)
Generator	Hydrogen-cooled rotor, water cooled stator, three phase, 60 Hz
Rating	675 000 kVA at 0.85 pf
Voltage	20 000 V
Current	19 486 A

d) Transformers

230kV (Units 1&2)

Manufacturer	Canadian General Electric
Number	Two
Type	Oil immersed, outdoor, forced oil, water cooled, type OFWN, three phase, 60Hz
Rating	580 MVA
Connections	19 kV delta/247 kV grounded wye

500kV (Units 3&4)

Manufacturer	Canadian ASEA Ltd
Number	Six
Type	Single phased, oil immersed, outdoor, forced oil, water

	cooled, type OFWN, 60 Hz
Rating	194 MVA
Connections	19 kV delta/525 kV grounded wye

e) Boiler Environmental Controls

Particulate control is from electrostatic precipitators. Each precipitator contains three fields with automatic voltage controls and sequential rapping. Discharge from the units is to two 653 ft high concrete shell, steel lined stacks.

f) Cooling Water Circuit

Cooling water is taken from Lake Ontario via 900 ft long 20 ft diameter tunnel with an intake structure on the lake bottom at a depth of approximately 60 ft. Once through condenser cooling water is discharged back to the lake via a surface water channel. The temperature of the discharge water is tempered with cool intake water pumped from the intake. With all pumps in operation, the station water consumption is approximately 1,000,000 usgal/min.

g) Controls

Boiler and Burner Management Systems are controlled with a Distributed Control System (DCS). Controls for other discrete systems are generally done through hard wired relay logic.

h) Electrical Interconnect

Each unit at Lennox GS is registered with the IESO as a dispatchable generator. It is directly connected to the IESO-controlled grid via Hydro One's Lennox switchyard. The IESO delivery points are within 20 m of the defined meter points where connections are made to the revenue meters. The revenue meters are connected to the units on the high voltage side of the transformers and are housed in building within the Lennox switchyard inside secured cabinets.

**EXHIBIT B
CONTRACT CAPACITY, UNIT CONTRACT CAPACITY, FIXED FACILITY
CAPACITY PAYMENT AND OTHER STATED VARIABLES**

CONFIDENTIAL

Fixed Facility Capacity Payment (FFCP)	\$9,000,000/month
Contract Capacity	2160 MW Gross Nameplate Capacity 2000 MW Contract Capacity
Unit Contract Capacity	Unit Contract Capacity for Unit 1: 500 MW; Unit Contract Capacity for Unit 2: 500 MW; Unit Contract Capacity for Unit 3: 500 MW; and Unit Contract Capacity for Unit 4: 500 MW.
Incremental Maintenance and Consumables Adder	XX / MWh
Non-fuel Start Cost Adder	XX / Start / Unit
Mutually Confidential Information	<ul style="list-style-type: none"> • the account and payment information set out in Section 5.5; • the Incremental Maintenance and Consumables Adder and the Non-fuel Start Cost Adder set out in this Exhibit B; • the FD&M Plan set out in Exhibit M; • the “Fuel Flow” and “Heat Input” specifications of the Facility’s boilers listed in section B of Exhibit A; and • the values for $SRFOL_m$ and WACC set out in Exhibit J.

EXHIBIT C
FORM OF IRREVOCABLE STANDBY LETTER OF CREDIT

DATE OF ISSUE:	●
APPLICANT:	[Insert Name of Applicant]
BENEFICIARY:	Independent Electricity System Operator and its permitted assigns
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:	●

We hereby authorize you to draw on **[insert name of financial institution and financial institution's address in Toronto, Ontario]** in respect of irrevocable standby letter of credit No. _____ (the “**Credit**”), for the account of the Applicant up to an aggregate amount of \$● (● Canadian dollars) available by your draft at sight, accompanied by the Beneficiary’s signed certificate stating that:

“**[Insert name of Supplier]** (the “**Supplier**”) is in breach of, or default under, the Lennox Energy Supply Agreement between the Beneficiary and the Supplier, 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. **[insert number]** issued by **[the financial institution]** dated **[insert date]**”.

Partial drawings are permitted.

This Credit is issued in connection with the Lennox Energy Supply Agreement dated as of the ● day of December, 2012 between the Beneficiary and **[insert name of Supplier]** (the “**LESA**”).

This Letter of Credit will automatically extend for additional, successive terms of one (1) year each, unless the undersigned provides the Beneficiary with written notice, at least sixty (60) days prior to the expiration date, that it does not wish to extend this Letter of Credit for an additional term.

We agree with you that all drafts drawn under, and in compliance with the terms of this Credit will be duly honoured, if presented at the counters of **[insert the financial institution and financial institution's address, located in Toronto, Ontario]** at or before 5:00 pm (EST) on **[insert the expiry date]**.

This irrevocable standby letter of 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.

It is a term of this letter of credit that the above name of the Beneficiary will be amended to another entity by way of an amendment hereto, without the consent of the Applicant, and upon receipt by **[the financial institution]** of the above Beneficiary's dated and signed letter addressed to **[the financial institution]** and completed as follows: "We, the undersigned Beneficiary to **[the financial institution]**'s letter of credit no. ●, hereby waive all our rights under the said letter of credit and request that the current name and address of the Beneficiary thereunder be amended to read **[insert name and address of new Beneficiary]**. Please forward the original amendment to the **[new Beneficiary]**, care of the Applicant to whom we have delivered the original of the letter of credit along with its amendment(s) (if any)."

The Beneficiary may transfer this Letter of Credit without the consent of the Applicant or the issuing financial institution provided that the transferee name is not identified on the following: the list of names subject to the Regulations Establishing a List of Entities Made Under Section 83.05(1) of the Criminal Code, and/or the Regulations Implementing the United Nations Resolutions on the Suppression of Terrorism (RIUNRST) and/or United Nations Al-Qaida and Taliban Regulations (UNAQTR).

- END -

[Insert name of Financial Institution]

By: _____
Authorized Signatory

EXHIBIT D
FORM OF GUARANTEE

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

RECITALS:

- A. The Buyer and [insert name of Supplier], a ●, ● under the laws of ● (“**Supplier**”), have entered into the Lennox Energy Supply Agreement dated as of the ● day of December, 2012 (as extended, amended, replaced and supplemented, collectively, the “**Agreement**”);
- B. The Guarantor will directly or indirectly benefit from the Agreement;
- C. Pursuant to the terms of the Agreement, the Buyer has required that the Guarantor shall deliver a guarantee of all payment obligations of the Supplier under the Agreement to the Buyer; and
- D. Capitalized terms used in this Guarantee but not otherwise defined herein have the meanings ascribed to them in the Agreement.

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

1. Guarantee

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

2. Demand

The Guarantor’s obligation to make payment under this Guarantee shall arise forthwith after demand for payment has been received by the Guarantor from the Buyer in writing in accordance

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

3. Waivers

- (a) The Guarantor waives any right to require as a condition to its obligations hereunder that:
 - (i) collateral be applied to the Guaranteed Obligations;
 - (ii) an action be brought against the Supplier or any Person other than the Guarantor should the Buyer seek to enforce the obligations of the Guarantor;
 - (iii) a judgment be rendered against the Supplier or any Person other than the Guarantor;
 - (iv) the Supplier or any other Person be joined in any action against the Guarantor;
 - (v) an action separate from one against the Guarantor be brought against the Supplier or any other Person or under any other security or guarantee held by the Buyer; and
 - (vi) any Supplier Event of Default under the Agreement has occurred.
- (b) The Guarantor further waives:
 - (i) all defences, set-offs, counterclaims, estoppels or privileges which might but for this provision exonerate or discharge it from its obligations hereunder; and
 - (ii) notice of acceptance of this Guarantee, notice of any liability to which it may apply, presentment, demand, protest and notice of dishonour, non-payment or non-performance and marshalling of assets.
- (c) The obligations of the Guarantor hereunder shall in no way be affected or impaired by reason, and the Guarantor waives its right to prior notice, of the happening from time to time of any of the following:

- (i) any invalidity or unenforceability of all or any part of the Guaranteed Obligations or any agreement or instrument relating to or securing the Guaranteed Obligations;
- (ii) any insolvency, bankruptcy, reorganization, or dissolution, or any proceeding of the Supplier or any other guarantor, including without limitation, rejection of the Guaranteed Obligations in such bankruptcy;
- (iii) extensions (whether or not material) of the time for payment or performance of all or any portion of the Guaranteed Obligations;
- (iv) the modification or amendment in any manner (whether or not material) of the Agreement or the Guaranteed Obligations;
- (v) subject to applicable statutes of limitations, any failure, delay or lack of diligence on the part of the Buyer or any other Person to enforce, assert or exercise any right, privilege, power or remedy conferred on the Buyer or any Person in the Agreement or at law, or any action on the part of the Buyer or such other Person granting an indulgence or extension of any kind;
- (vi) the settlement or compromise of any Guaranteed Obligations;
- (vii) the change of status, composition, structure or name of the Supplier, including by reason of merger, amalgamation, continuance, dissolution, reorganization or consolidation with or into another legal entity;
- (viii) the release or waiver, by operation of law or otherwise, of the performance or observance by the Supplier of any express or implied covenant, term or condition in the Agreement or the enforceability of any covenant, term or condition thereof;
- (ix) the release or waiver, by operation of law or otherwise, of the performance or observance by any co-guarantor, surety, endorser or other obligor of any express or implied covenant, term or condition to be performed or observed by it under the Agreement or any related document;
- (x) the failure to acquire, perfect or maintain perfection of any lien on, or security interest in, any collateral provided by the Supplier to the Buyer or the release of any such collateral or the release, modification or waiver of, or failure to enforce, any pledge, security, guarantee, surety or other indemnity agreement in respect of such collateral;
- (xi) the assignment of the Agreement and/or any rights thereunder from or by the Supplier to any other Person; and
- (xii) any other circumstance similar, or having a similar effect, as those set out in subsections 3(c)(i) through (xi) inclusive, which might constitute in whole or in part a defence available to the release and discharge of this Guarantee.

4. Limitation of Liability

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

5. Indemnity

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

6. Release of Guarantee

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

7. Defences

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

8. Subrogation

The Guarantor shall not be or claim to be subrogated, in whole or in part, to the rights of the Buyer against the Supplier under the Agreement or otherwise, until (a) the Buyer shall have received full and indefeasible payment of all Guaranteed Obligations; and (b) either the Agreement has been terminated or this Guarantee has been terminated pursuant to the terms hereof and the terms and conditions of the Agreement as applicable. Except as set out in this Section 8, nothing contained in this Guarantee shall limit the rights at law and in equity of the Guarantor to subrogation.

9. Representations

The Guarantor represents that:

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

10. No Waiver by the Buyer

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

11. Notices

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

- (a) if to the Buyer, to:

-

Attention: ●
E-mail: ●

- (b) if to the Guarantor, to:

-

Attention: ●
E-mail: ●

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

12. Governing Law

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

13. Severability

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

14. Entire Agreement

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

15. Binding and Assignment

- (a) This Guarantee and all of the provisions hereof shall be binding upon and enure to the benefit of the parties and their respective successors and permitted assigns. This Guarantee is not intended to confer upon any other Person, except the parties and their respective successors and permitted assigns, any rights, interests, obligations or remedies under this Guarantee.
- (b) Neither this Guarantee nor any of the rights, interests or obligations under this Guarantee shall be assigned by either party without the prior written consent of the other party. Notwithstanding the foregoing, if the Buyer assigns the Agreement to

an assignee pursuant to Sections 16.5(d) or 16.5(e) thereof, then the Buyer may assign this Guarantee to such assignee without the consent of the Guarantor or the Supplier.

16. Electronic Mail and Counterparts

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

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

[GUARANTOR]

[BUYER]

By: _____
Name: ●
Title: ●

By: _____
Name: ●
Title: ●

By: _____
Name: ●
Title: ●

I have the authority to bind the Corporation.

I/We have the authority to bind the Guarantor.

EXHIBIT E
DETERMINATION OF EFOR(OP) AND ALLOP UCAP

1. The EFOR(OP)_m during any given Settlement Month, “m”, shall be calculated as the EFOR(OP) measured for the thirty-six (36) calendar months immediately preceding Settlement Month “m” (which, for greater certainty, may include months prior to the Term Commencement Date), where EFOR(OP) and ALLOP UCAP for the applicable period is calculated as follows:

$$EFOR(OP) = \frac{\sum EFOR_N_States}{\sum EFOR_D_States}$$

ALLOP UCAP = Contract Capacity x (1-EFOR(OP))

Where:

EFOR_N_States is the total number of hours attributable to the following state codes described in Table 1 below:

FO1, FO2, FO3, FOT,
SO, SOT,
FEMO, FEPO,
EO_FD, ESCC_FD,
EABNO_FD, EABNS_FD;
ABNF_N,

and

EFOR_D_States is the total number of hours attributable to the following state codes described in Table 1 below:

O, O_FD, O_SD, O_GD,
SCC, SCC_FD, SCC_SD, SCC_GD,
FO1, FO2, FO3, FOT,
GI
SO, SOT,
FEMO, FEPO,
ABNO, ABNO_FD, ABNO_SD, ABNO_GD,
ABNS, ABNS_FD, ABNS_SD, ABNS_GD
ABNF_G, ABNF_N

Provided that (i) any hours where the Supplier has declared Force Majeure in accordance with Article 11 shall be excluded from all EFOR_N_States and EFOR_D_States, and (ii) to the extent that a Fuel-related forced outage or forced derating on either RFO or Gas coincides with a scheduled outage or derating of systems related to the other Fuel, this shall be classified as a forced outage or force derating rather than a scheduled outage or derating of systems, as applicable.

Table 1 – EFOR(OP) State Codes

State Code	Full Name	Description	N_State	D_State
ABNF_G	Available but Not Fuelled – Despite Adherence to the FD&M Plan	The Facility would be available to produce the MCR, but for a lack of Gas and RFO that was not caused by a failure of the Supplier to adhere to the FD&M Plan.		√
ABNF_N	Available but Not Fuelled – Failure to adhere to the FD&M Plan	The Facility would be available to produce the MCR, but for a lack of Gas and RFO, and where ABNF_G does not apply.	√	√
ABNO	Available but Not Operating	The Facility is not synchronized to the grid, yet is capable of delivering full MCR.		√
ABNO_FD	Available but Not Operating-Forced Derated	The Facility is not synchronized to the grid, and is incapable of providing 100% of its MCR to the system, due to an unscheduled reduction of its capability		√
ABNO_GD	Available but Not Operating-Grid Derated	The Facility is not synchronized to the grid, yet is capable of delivering more power than the grid has the capability of accepting. This is due to equipment, personnel or conditions outside the station's control.		√

State Code	Full Name	Description	N_State	D_State
ABNO_SD	Available but Not Operating- Scheduled Derated	The Facility is not synchronized to the grid and is incapable of providing 100% of its MCR to the system due to a scheduled derating whose starting time could not be postponed from one season to another. This derating could; however, be postponed beyond the end of the weekend immediately following the occurrence or discovery of the initiating cause.		√
ABNS	Available but Not Staffed	The Facility is physically capable of delivering energy, but does not do so because the Facility is not staffed, although staff are available upon reasonable notice to operate the Facility.		√
ABNS_FD	Available but Not Staffed - Forced Derated	The Facility is physically capable of delivering energy, but does not do so because the Facility is not staffed, although staff are available upon reasonable notice to operate the Facility. The Facility is incapable of providing 100% of its MCR to the system, due to an unscheduled reduction of its capability.		√
ABNS_GD	Available but Not Staffed - Grid Derated	The Facility is physically capable of delivering energy, but does not do so because the Facility is not staffed, although staff are available upon reasonable notice to operate the Facility. The Facility is capable of delivering more power than the grid has the capability of accepting. This is due to equipment, personnel or conditions outside the station's control.		√

State Code	Full Name	Description	N_State	D_State
ABNS_SD	Available but Not Staffed - Scheduled Derated	The Facility is physically capable of delivering energy, but does not do so because the Facility is not staffed, although staff are available upon reasonable notice to operate the Facility. The Facility is incapable of providing 100% of its MCR to the system due to a scheduled derating whose starting time could not be postponed from one season to another. This derating could; however, be postponed beyond the end of the weekend immediately following the occurrence or discovery of the initiating cause.		√
EO_FD	Equiv. Operating Forced Derated	The Facility is synchronized to the grid, yet is incapable of providing 100% of its MCR to the system, due to an unscheduled reduction of its capability. Unit deratings are adjusted/pro-rated to allow for the calculation and reporting of outage hours.	√	
ESCC_FD	Equiv. Synch. Condenser Forced Derated	The Facility is in operation as a Synchronous Condenser and has its generator and turbine coupled normally, but is incapable of providing 100% of its MCR due to an unscheduled reduction of its capability. Unit deratings are adjusted/pro-rated to allow for the calculation and reporting of outage hours.	√	

State Code	Full Name	Description	N_State	D_State
EABNO_FD	Equiv. ABNO Force Derated	The Facility is not synchronized to the grid, is incapable of providing 100% of its MCR due to an unscheduled reduction of its capability, and unit deratings are adjusted/pro-rated to allow for the calculation and reporting of hours.	√	
EABNS_FD	Equiv. ABNS Force Derated	The Facility is physically capable of delivering energy, but does not do so because the Facility is not staffed, although staff are available upon reasonable notice to operate the Facility. It is incapable of providing 100% of its MCR due to an unscheduled reduction of its capability, and unit deratings are adjusted/pro-rated to allow for the calculation and reporting of hours.	√	
FEMO	Forced Extension of Maintenance Outage	Outage resulting from a condition discovered during a MO (Maintenance Outage) that has forced the extension of the MO beyond its approved end time.	√	√
FEPO	Forced Extension of Planned Outage	Outage resulting from a condition discovered during a PO (Planned Outage) that has forced the extension of the PO beyond its approved end time.	√	√
FO1	Forced Outage class 1 < 10 min notice	Unscheduled reduction of unit capability with a starting time that could not be postponed beyond 10 minutes following the occurrence of its initiating cause.	√	√

State Code	Full Name	Description	N_State	D_State
FO2	Forced Outage class 2 > 10 min <6 hour notice	Unscheduled reduction of unit capability with a starting time that could be postponed beyond 10 minutes, but not beyond 6 hours, following the occurrence of its initiating cause.	√	√
FO3	Forced Outage class 3 >6 hour notice	Unscheduled reduction of unit capability with a starting time that could be postponed beyond 6 hours, but not beyond the end of the following weekend.	√	√
FOT	Forced Outage Trip	Reported if the initiating cause of a forced outage results in a trip of the generator from the load at which it occurred. This event must occur while the generator is loaded below 25% of its MCR.	√	√
GI	Grid Incapability	A unit is considered to be in the Grid Incapability (GI) state when it is unavailable to the system due to an outage of a component outside of the unit boundary, effectively outside of station control. Instances of GI may involve problems pertaining to the transmission lines or switchyard, among other things.		√
O	Operating	The Facility is synchronized to the grid and is capable of delivering its full Maximum Continuous Rating (MCR).		√
O_FD	Operating Forced Derated	The unit is in operation, but cannot attain 100% of its MCR due to an unscheduled reduction of its capability.		√

State Code	Full Name	Description	N_State	D_State
O_GD	Operating Grid Derated	The Facility is in operation and is physically capable of delivering more power than the grid has the capability of accepting. This is due to equipment, personnel or conditions outside the station's control.		√
O_SD	Operating Scheduled Derated	The Facility is in operation, but is incapable of providing 100% of its MCR to the system due to a scheduled derating whose starting time could not be postponed from one season to another.		√
SCC	Synchronous Condenser Operation	The Facility is in fully capable operation as a Synchronous Condenser and has its generator and turbine coupled normally.		√
SCC_FD	Synchronous Condenser Operation - Forced	The Facility is in fully capable operation as a Synchronous Condenser and has its generator and turbine coupled normally, but cannot reach 100% of its MCR.		√
SCC_GD	Synchronous Condenser Operation - Grid Derated	The Facility is in fully capable operation as a Synchronous Condenser and has its generator and turbine coupled normally, but cannot deliver more power than the grid has the capability of accepting. This is due to equipment, personnel or conditions outside the station's control.		√

State Code	Full Name	Description	N_State	D_State
SCC_SD	Synchronous Condenser Operation – Scheduled Derated	The Facility is in fully capable operation as a Synchronous Condenser and has its generator and turbine coupled normally, but is incapable of providing 100% of its MCR to the system due to a scheduled derating whose starting time could not be postponed from one season to another.		√
SO	Sudden Outage (>25% unit MCR)	The Facility is unavailable to the system due to an unscheduled outage. This outage is initiated from within the generating unit boundary and must take place when the generator is loaded above 25% of its MCR.	√	√
SOT	Sudden Outage (> 25% unit MCR) – Tripped	The unit has been tripped and, as a result, is unavailable to the system. This outage is initiated from within the generating unit boundary and must take place when the generator is loaded above 25% of its MCR.	√	√

For the purposes of reporting EFOR(OP) states, the Supplier may, with the Buyer’s prior written consent, consolidate multiple states, provided that the consolidation of such states does not affect the calculation of EFOR(OP).

EXHIBIT F
INTENTIONALLY DELETED

EXHIBIT G
MUST-OFFER OBLIGATIONS

1. Definition of Must-Offer Obligations

The “**Must-Offer Obligations**” mean the obligations set out in subsections (a) and (b) below:

(a) Electricity

The Supplier shall offer the Electricity output of the Facility into the IESO-Administered Markets on the following basis:

- (i) the Supplier shall offer in the day-ahead commitment process (or future equivalent) (“DACP”) the available capacity (i.e. the amount of Contract Capacity not on an Outage) of (A) two Units in all hours including weekends, nights and statutory holidays and (B) all available remaining Units Monday to Friday for twelve (12) hours per day;
- (ii) the Supplier shall offer into the real time process all Units scheduled in the DACP as per the Day Ahead Commitment Report published by the IESO (or future equivalent) and no fewer than two (2) unscheduled Units, subject to the limits set out in Sections 1(a)(i)(A) and (B) of this Exhibit G;
- (iii) the Supplier shall offer additional available Units if requested at least 24 hours ahead by the IESO, if such Units can be staffed using Commercially Reasonable Efforts;
- (iv) in respect of Units not scheduled to Start, the Supplier may withdraw offers for those proximate hours for which there is no longer sufficient time remaining to Start;
- (v) in respect of Units scheduled in the DACP, the Supplier may withdraw offers if the Supplier determines, acting reasonably, that the DACP dispatch schedule for the applicable Unit is not viable;
- (vi) the Supplier may withdraw offers for unscheduled Units that are only required in accordance with Section 1(a)(i)(B) above to be offered twelve (12) hours per day, to the extent that if they were dispatched, the minimum run time applicable to the condition of the relevant Unit together with the de-synchronization time could not be satisfied prior to the end of the twelve (12) hour block;
- (vii) the Supplier shall offer for real time dispatch the available capacity of each synchronized Unit; and
- (viii) these obligations shall not apply to the extent that Units are on an Outage.

For greater certainty, the Parties acknowledge that the provisions of this Agreement do not restrict or constrain the price at which the Supplier may offer Electricity from the Facility into the IESO-Controlled Grid.

(b) General Obligations

Without limiting the generality of Section 5.1 of the Agreement, the Supplier shall provide to the Buyer promptly upon request all offer quantities data for the last lamination for all hours (i.e. the quantity information of “p-q pairs”) provided to the IESO evidencing the Supplier’s compliance with the Must-Offer Obligations from time to time, including without limitation such particulars as the Buyer considers necessary to support any exception(s) to the quantity of Electricity offered as set out above.

2. Amendments to Must-Offer Obligations

- (a) At any time either Party may propose for the consideration of the other Party that the Must-Offer Obligations be revised in order to comply with regulatory or changes to the IESO Market Rules or to effect operational savings, including those that would reduce the cost of Approved FD&M Services. The other Party shall reasonably consider such amendments and indicate its agreement or disagreement with such amendments within a period of ninety (90) days. Such amendment shall only be effective following the written agreement of the Parties.
- (b) Any amendment to relax the Must-Offer Obligations shall include provision for the revocation by the Buyer of such relaxation, on reasonable written notice to the Supplier.
- (c) In evaluating any proposed revision to the Must-Offer Obligations, the Parties shall take due account of all commitments made by the Supplier in accordance with the FD&M Plan, the operational history of the Facility and the Parties’ expectations of future requirements, and any prior modifications to the Must-Offer Obligations.
- (d) The Parties acknowledge that revisions to the Must-Offer Obligations shall not result in any change to the FFCP, except as may be agreed in writing by the Parties.
- (e) A Party that proposes changes to the Must-Offer Obligations in accordance with (a) that materially reduce or increase the cost of Approved FD&M Services shall simultaneously propose changes to the Fuel Management Protocol or FD&M Plan, as applicable.

3. Must-Offer Non-Compliance

- (a) In the event that the Supplier fails to comply with the Must-Offer Obligations in any hour in a Settlement Month, the Must-Offer Non-Performance Charge shall apply. The “**Must-Offer Non-Performance Charge**” (“**MONPC**”) in any hour “h” is calculated as follows:

MONPC_h = MODQ_h x HCP_h x NPF																													
where:																													
MODQ _h	is the Must-Offer Deficiency Quantity in hour “h”, in MWhs, being the amount by which the Must Offer Quantity exceeds the total actual quantity of Electricity offered by the Supplier in respect of the Contract Facility into the IESO-Administered Markets in hour "h" and capable of acceptance.																												
Must-Offer Quantity	means, for any hour “h”, the amount of Electricity that the Supplier is required to offer into the IESO Administered Markets pursuant to the Must-Offer Obligations (including, for certainty, both offers into the DACP and IESO real-time market offers in such hour), being: (i) 2000 MWhs on Business Days for 12 hours and no less than 1000 MWhs in all other hours required to be offered into the DACP and (ii) all Electricity scheduled in the DACP, and the lower of (A) all available remaining unscheduled Electricity and (B) 1000 MWhs of unscheduled Electricity required to be offered into the IESO real-time market, in each case, subject to reduction for applicable reported Outages.																												
HCP _h	is the Hourly Capacity Payment in hour “h” for any Settlement Month and is equal to the FFCP _y divided by 1,680,000 MWh.																												
NPF	is the “Non-Performance Factor” for the applicable calendar month as follows: <table border="1" data-bbox="435 1121 1414 1465"> <thead> <tr> <th>Month</th> <th>Non-Performance Factor</th> <th>Month</th> <th>Non-Performance Factor</th> </tr> </thead> <tbody> <tr> <td>January</td> <td>2.0</td> <td>July</td> <td>2.0</td> </tr> <tr> <td>February</td> <td>2.0</td> <td>August</td> <td>2.0</td> </tr> <tr> <td>March</td> <td>1.5</td> <td>September</td> <td>2.0</td> </tr> <tr> <td>April</td> <td>1.0</td> <td>October</td> <td>1.0</td> </tr> <tr> <td>May</td> <td>1.0</td> <td>November</td> <td>1.0</td> </tr> <tr> <td>June</td> <td>1.5</td> <td>December</td> <td>1.5</td> </tr> </tbody> </table> <p>provided that, (i) if in any Contract Year there have been three (3) or more prior Must-Offer Non-Performance Days, the Non-Performance Factor for further Must-Offer Non-Performance Events in such Contract Year shall be two (2) times the value shown in the table above, and (ii) if there have been seven (7) or more prior Must-Offer Non-Performance Days cumulatively during the Term, the Non-Performance Factor for further Must-Offer Non-Performance Events during the Term shall be two (2) times the value shown in the table above.</p>	Month	Non-Performance Factor	Month	Non-Performance Factor	January	2.0	July	2.0	February	2.0	August	2.0	March	1.5	September	2.0	April	1.0	October	1.0	May	1.0	November	1.0	June	1.5	December	1.5
Month	Non-Performance Factor	Month	Non-Performance Factor																										
January	2.0	July	2.0																										
February	2.0	August	2.0																										
March	1.5	September	2.0																										
April	1.0	October	1.0																										
May	1.0	November	1.0																										
June	1.5	December	1.5																										

- (b) The MONPC for Settlement Month "*m*" (or MONPC_m) is the sum of MONPC_h for each hour in such month "*m*" and will be applied to the Monthly Payment in the month following the month that is the earlier of (A) when the Supplier provides Notice of Must-Offer Non-Performance Event; or (B) when the Buyer becomes aware that a Must-Offer Non-Performance Event occurred. For greater certainty, the MONPC_m is independent of any charges that may be assessed in accordance with the IESO Market Rules.

EXHIBIT H
INTENTIONALLY DELETED

**EXHIBIT I
FORM OF FORCE MAJEURE NOTICE**

TO: **[insert name of Buyer or Supplier, as applicable]**

DATE: _____

RE:

Supplier:	Name of Facility:
1. Description of events leading to Force Majeure (Provide reasonably full particulars of the cause and timing of events relating to the invoked Force Majeure)	
2. Effect of Force Majeure (Provide reasonably full particulars of the effect of the Force Majeure on the [Buyer or Supplier] 's ability to fulfill its obligations under the Agreement)	
3. Cost of Alternatives available to remedy or remove the Force Majeure (Provide reasonably full particulars of alternatives available to the [Buyer or Supplier] to remedy or remove the Force Majeure, together with an estimation of related costs with respect to each alternative)	
4. Commercially Reasonable Efforts – Reasonably full particulars of efforts, if any, undertaken or contemplated by the [Buyer or Supplier] to remedy or remove the Force Majeure.	

EXHIBIT J
CALCULATION OF MONTHLY PAYMENT

This Exhibit J sets out the calculation of the Monthly Payment for a given Settlement Month “m” in Contract Year “y”.

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

1.0 The Monthly Payment is calculated as follows:

MP_m = $FFCP_y \times (OCRf_m \times FMCrf_m) + MFD\&MP_{m-1} + RFOIFC_{m-1} - MNRSP_{m-2} - MONPC_m + MMCO_{m-2}$	
where:	
MP _m	is the Monthly Payment (in \$ for the Settlement Month).
FFCP _y	is the Indexed Fixed Facility Capacity Payment in respect of Contract Year “y” calculated in accordance with Section 1.1 of this Exhibit J.
OCRf _m	is the Overall Capacity Reduction Factor for Settlement Month “m”, and is calculated in accordance with Section 1.3 of this Exhibit J. If the Overall Capacity Reduction Factor changes during the Settlement Month, then OCRf will be calculated as a weighted average based on the number of days of the Settlement Month during which the different values of OCRf apply.
FMCrf _m	is the Force Majeure Capacity Reduction Factor for Settlement Month “m” which shall be equal to 1.0 if there are no Outages in the Settlement Month resulting from an event of Force Majeure, otherwise it shall be calculated as follows: FMCrf_m = 1 – (FMH_m/SMH_m)
FMH _m	is the total number of Force Majeure Hours in Settlement Month “m”. In determining Force Majeure Hours, an hour may be subject to a partial Force Majeure if due to an event of Force Majeure the Facility is able to produce part of but not the full Contract Capacity or as a result of an event of Force Majeure lasting for part but not all of an hour. An hour which is subject to a partial Force Majeure shall be counted as a fractional Force Majeure Hour by subtracting from one the quotient obtained by dividing: (i) the maximum production in that hour that could have been achieved given the partial Force Majeure (in MWh) by (ii) the Contract Capacity multiplied by one hour (in MWh). This fraction will be the contribution of that hour to the Force Majeure Hours in the given Settlement Month.
SMH _m	is the total number of hours in Settlement Month “m”.

MFD&MP _{m-1}	is the Monthly FD&M Payment (in \$) for Settlement Month “m-1”, calculated in accordance with Exhibit L.
RFOIFC _{m-1}	is the RFO Inventory Financing Cost (in \$) in respect of Settlement Month “m-1”, calculated in accordance with Section 1.2 of this Exhibit J.
MNRSP _{m-2}	is the Monthly Net Revenue Sharing Payment (in \$) applicable to Settlement Month “m-2”, and is calculated in accordance with Section 2.0 of this Exhibit J.
MONPC _m	is the Must-Offer Non-Performance Charge in respect of any prior Must-Offer Non-Performance Event that has not previously been subtracted from a prior Monthly Payment (regardless of the Settlement Month for which the Must-Offer Non-Performance Event occurred).
MMCO _{m-2}	is the Monthly Market Costs for Operations relating to Electricity withdrawals from the grid (AQEW) solely for the purposes of operating the Facility in accordance with this agreement for the Settlement Month “m” in Contract Year “y”, and is calculated as the sum of the MMCO IESO Accounts for the applicable Settlement Month shown in Attachment 2 to this Exhibit J.

1.1 The Indexed Fixed Facility Capacity Payment is calculated as follows:

FFCP_y = FFCP_B × IF_y	
where:	
FFCP _y	is the Indexed Fixed Facility Capacity Payment (in \$/month) for the Contract Year “y”. For the first Contract Year, the Fixed Facility Capacity Payment shall be equal to the amount set out in Exhibit B.
FFCP _B	is the Fixed Facility Capacity Payment (in \$/month) as set out in Exhibit B.
IF _y	is the Indexing Factor for Contract Year “y” and shall be calculated as follows: IF_y = CPI_y / CPI_B
CPI _y	is the average of CPI for the final three months of the Contract Year immediately preceding Contract Year “y”.
CPI _B	is the average of CPI for the three months immediately preceding the Term Commencement Date.

1.2 The RFO Inventory Financing Cost is calculated as follows:

$\text{RFOIFC}_m = [\min[\text{ARFOL}_m, \text{SRFOL}_m] \times \text{ABVRFO}_m \times \text{WACC} / \text{ARFOL}_m + \max[(\text{ARFOL}_m - \text{SRFOL}_m), 0] \times \text{ABVRFO}_m \times \text{CD}_m / \text{ARFOL}_m] / 12$	
<p>where:</p>	
RFOIFC_m	<p>is the RFO Inventory Financing Cost (in \$) applicable to Settlement Month “m”.</p>
ARFOL_m	<p>is the Average RFO Level for Settlement Month “m” (in barrels), and is calculated as the average of the RFO Inventory Level at the end of the last day of Settlement Month “m-1” and at the end of the last day of the Settlement Month “m”, determined in accordance with the Fuel Metering Plan, provided that in respect of the first Settlement Month, the RFO Inventory Level at the start of the first day of such Settlement Month shall be used instead of the end of the last day of Settlement Month “m-1”.</p>
SRFOL_m	<p>is the Specified RFO Level applicable to Settlement Month “m” (in barrels), and, unless otherwise agreed by the Parties in the FD&M Plan, shall be equal to:</p> <ul style="list-style-type: none"> (i) XXXX barrels for Settlement Months 1 through 60, (ii) XXXX barrels for Settlement Months 61 through 72, and (iii) XXXX barrels for the remaining Settlement Months in the Term.
ABVRFO_m	<p>is the Average Book Value of RFO for Settlement Month “m” (in \$), and is calculated as the average of the Supplier’s net book value for the RFO Inventory Level at the end of the last day of Settlement Month “m-1” and the end of the last day of the Settlement Month “m”, determined in accordance with GAAP, provided that in respect of the first Settlement Month, the Supplier’s net book value of the RFO Inventory Level at the start of the first day of such Settlement Month shall be used instead of the end of the last day of Settlement Month “m-1”.</p>
WACC	<p>is the deemed Weighted Average Cost of Capital, and shall be equal to X% for all Settlement Months in the Term.</p>
CD_m	<p>is the Cost of Debt applicable to Settlement Month “m”, and shall be equal to the Interest Rate applicable during Settlement Month “m” plus 2.00%. If the Interest Rate changes during the Settlement Month, then the Interest Rate will be calculated as a weighted average based on the number of days of the Settlement Month during which the different values of the Interest Rate apply.</p>

1.3 The Overall Capacity Reduction Factor is calculated as follows:

OCR_F = min(CRF(GAS), CRF(RFO), AUCRF)	
where:	
OCR _F	is, at any time, the Overall Capacity Reduction Factor.
CRF(GAS)	is the Capacity Reduction Factor resulting from a Capacity Check Test performed using Gas. The Capacity Reduction Factor (Gas) shall be 1.0 unless and to the extent the circumstances set out in Sections 15.6(e) and (f) apply.
CRF(RFO)	is the Capacity Reduction Factor resulting from a Capacity Check Test performed using RFO. The Capacity Reduction Factor (RFO) shall be 1.0 unless and to the extent the circumstances set out in Sections 15.6(e) and (f) apply.
AUCRF	is the Average Unit Capacity Reduction Factor and is calculated as the simple average of the lesser of the UCRF(GAS) and UCRF(RFO) for each Unit, as defined in Section 15.7.

2.0 The Monthly Net Revenue Sharing Payment is calculated as follows:

MNRSP_{m,y} = YTDBSANR _{m,y} – YTDBSANR _{m-1,y} – (ATL _{m,y} × 0.75) – (MONL _{m,y} × 0.25)	
where:	
MNRSP _{m,y}	is the Monthly Net Revenue Sharing Payment for Settlement Month “m” in Contract Year “y”, provided that if the Settlement Month is the first Settlement Month of a Contract Year, the Monthly Payment for the Settlement Month shall be calculated as follows: MNRSP_{m,y} = YTDBSANR _{m,y} – (ATL _{m,y} × 0.75) – (MONL _{m,y} × 0.25)
YTDBSANR _{m,y}	is the Year-To-Date Buyer’s Share of Actual Net Revenue for Settlement Month “m” in Contract Year “y”, and is calculated in accordance with Section 2.1 of this Exhibit J.
YTDBSANR _{m-1,y}	is the Year-To-Date Buyer’s Share of Actual Net Revenue for Settlement Month “m-1” in Contract Year “y”, and is calculated in accordance with Section 2.1 of this Exhibit J.
ATL _{m,y}	is the Approved Test Losses for Settlement Month “m” in Contract Year “y”, and is calculated in accordance with Section 2.4 of this Exhibit J.
MONL _{m,y}	is the Monthly Operating Net Loss for Settlement Month “m”, and is calculated in accordance with Section 2.1 of this Exhibit J.

2.1 The Year-To-Date Buyer’s Share of Actual Net Revenue is calculated as follows:

<p>If $YTDANR_{m,y}$ is less than \$1,000,000.00, then:</p> $YTDBSANR_{m,y} = YTDANR_{m,y} \times 0.25.$ <p>If $YTDANR_{m,y}$ is greater than or equal to \$1,000,000.00 and less than \$2,000,000.00, then:</p> $YTDBSANR_{m,y} = YTDANR_{m,y} \times 0.50 - \$250,000.00.$ <p>If $YTDANR_{m,y}$ is greater than or equal to \$2,000,000, then:</p> $YTDBSANR_{m,y} = YTDANR_{m,y} \times 0.75 - \$750,000.00.$	
<p>where:</p>	
$YTDBSANR_{m,y}$	<p>is the Year-To-Date Buyer’s Share of Actual Net Revenue for Settlement Month “m-1” in Contract Year “y” (in \$).</p>
$YTDANR_{m,y}$	<p>is the Year-To-Date Actual Net Revenue for Settlement Month “m” in Contract Year “y”, and is equal to the sum of the MONR (as defined below) for Settlement Month “m” and all preceding Settlement Months (if any) for Contract Year “y”.</p>
$MONR_{m,y}$	<p>is the Monthly Operating Net Revenue for Settlement Month “m” in Contract Year “y”, and is calculated as follows:</p> $MONR_m = MGMR_{m,y} - MVOC_{m,y} + ATL_{m,y},$ <p>provided that $MONR_{m,y}$ shall not be less than zero.</p>
$MONL_{m,y}$	<p>is the Monthly Operating Net Loss for Settlement Month “m” in Contract Year “y”, and is calculated as follows:</p> $MONL_{m,y} = MVOC_{m,y} - MGMR_{m,y} - ATL_{m,y},$ <p>provided that $MONL_{m,y}$ shall not be less than zero.</p>
$MGMR_{m,y}$	<p>is the Monthly Gross Market Revenue for the Settlement Month “m” in Contract Year “y”, and is calculated as the sum of the MGMR IESO Accounts for the applicable Settlement Month shown in Attachment 1 to this Exhibit J.</p>
$MVOC_{m,y}$	<p>is the Monthly Variable Operating Cost for the Settlement Month “m” in Contract Year “y”, and is calculated as follows, provided that any costs that were not reasonably and prudently incurred by the Supplier in accordance with Good Engineering and Operating Practices shall be excluded from the calculation of MVOC:</p> $MVOC_{m,y} = MCGF_{m,y} + MIMCA_{m,y} + MNSCA_{m,y}$
$MCGF_{m,y}$	<p>is the Monthly Cost of Generation Fuel for the Settlement Month “m” in Contract Year “y”, and is determined in accordance with Exhibit L.</p>

MIMCA _{m,y}	is the Monthly Incremental Maintenance and Consumables Adder for Settlement Month “m” in Contract Year “y”, and is calculated as follows: MIMCA_{m,y} = IMCA_y × MDE_{m,y}
IMCA _y	is the Incremental Maintenance and Consumables Adder applicable to Contract Year “y”, and is calculated in accordance with Section 2.2 of this Exhibit J.
MDE _{m,y}	is the Monthly Delivered Electricity for Settlement Month “m” in Contract Year “y”, and is calculated as the total quantity of Electricity (in MWh) that is delivered to the Delivery Point in Settlement Month “m”.
MNSCA _{m,y}	is the Monthly Non-fuel Start Cost Adder for Settlement Month “m” in Contract Year “y”, and is calculated as follows: MNSCA_{m,y} = NSCA_y × MS_{m,y}
NSCA _y	is the Non-fuel Start Cost Adder applicable to Contract Year “y”, and is calculated in accordance with Section 2.3 of this Exhibit J.
MS _{m,y}	is the Monthly Starts applicable to Settlement Month “m” in Contract Year “y”, and is calculated as the sum of the number of times each Unit was Started during Settlement Month “m”.

2.2 The Incremental Maintenance and Consumables Adder is calculated as follows:

IMCA_y = IMCA_B × IF_y	
where:	
IMCA _y	is the Incremental Maintenance and Consumables Adder (in \$/MWh) for the Contract Year “y”. For the first Contract Year, the Incremental Maintenance and Consumables Adder shall be equal to the amount set out in Exhibit B.
IMCA _B	is the Incremental Maintenance and Consumables Adder (in \$/MWh) as set out in Exhibit B.
IF _y	is the Index Factor for Contract Year “y” and shall be calculated in accordance with Section 1.1 of this Exhibit J.

2.3 The Non-fuel Start Cost Adder is calculated as follows:

NSCA_y = NSCA_B × IF_y	
where:	

NSCA _y	is the Non-fuel Start Cost Adder (in \$/start/Unit) for the Contract Year “y”. For the first Contract Year, the Non-fuel Start Cost Adder shall be equal to the amount set out in Exhibit B.
NSCA _B	is the Non-fuel Start Cost Adder (in \$/start/Unit) as set out in Exhibit B.
IF _y	is the Index Factor for Contract Year “y” and shall be calculated in accordance with Section 1.1 of this Exhibit J.

2.4 Approved Test Losses are calculated as follows:

$ATL_m = \max[(ATMCGF_m + ATMIMCA_m + ATMNSCA_m - ATMGMR_m), 0]$	
where:	
ATL _m	is the Approved Test Losses (in \$) applicable to Settlement Month “m”, which, for greater certainty, shall not be less than zero.
ATMCGF _m	is the Approved Test Monthly Cost of Generation Fuel for the Settlement Month “m”, and is determined in accordance with Exhibit L.
ATMIMCA _m	is the Approved Test Monthly Incremental Maintenance and Consumables Adder for Settlement Month “m”, and is calculated as follows: $ATMIMCA_m = IMCA_y \times ATMDE_m$
IMCA _y	is the Incremental Maintenance and Consumables Adder applicable to Contract Year “y”, and is calculated in accordance with Section 2.2 of this Exhibit J.
ATMDE _m	is the Approved Test Monthly Delivered Electricity for Settlement Month “m”, and is calculated as the total quantity of Electricity (in MWh) that is delivered to the Delivery Point in Settlement Month “m” attributable to one or more Units during the performance of an Approved Test on such Unit(s).
ATMNSCA _m	is the Approved Test Monthly Non-fuel Start Cost Adder for Settlement Month “m”, and is calculated as follows: $ATMNSCA_m = NSCA_y \times ATMS_m$
NSCA _y	is the Non-fuel Start Cost Adder applicable to Contract Year “y”, and is calculated in accordance with Section 2.3 of this Exhibit J.
ATMS _m	is the Approved Test Monthly Starts applicable to Settlement Month “m”, and is calculated as the sum of the number of times each Unit was Started during Settlement Month “m” during the performance of an Approved Test on such Unit(s).
ATMGMR _m	is the Approved Test Monthly Gross Market Revenue (in \$) for the Settlement Month “m”, and is calculated as the sum of the MGMR IESO Accounts for

	the applicable Settlement Month attributable to one or more Units during the performance of an Approved Test on such Unit(s).
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3.0 The Final Stub Payment is calculated as follows:

$FSP = MFD\&MP_x + RFOIFC_x - MNRSP_x - MNRSP_y + MMCO_x + MMCO_y - MONPC_m$	
where:	
FSP	is the Final Stub Payment (in \$).
$MFD\&MP_x$	is the Monthly FD&M Payment (in \$) for Settlement Month “x”, calculated in accordance with Exhibit L.
$RFOIFC_x$	is the RFO Inventory Financing Cost (in \$) in respect of Settlement Month “x”, calculated in accordance with Section 1.2 of this Exhibit J.
$MNRSP_x$	is the Monthly Net Revenue Sharing Payment (in \$) applicable to Settlement Month “x”, and is calculated in accordance with Section 2.0 of this Exhibit J.
$MNRSP_y$	is the Monthly Net Revenue Sharing Payment (in \$) applicable to Settlement Month “Y”, and is calculated in accordance with Section 2.0 of this Exhibit J.
$MMCO_x$	is the Monthly Market Cost of Operation applicable to Settlement Month “x”, and is calculated in accordance with Section 1.0 of this Exhibit J.
$MMCO_y$	is the Monthly Market Cost of Operation applicable to Settlement Month “Y”, and is calculated in accordance with Section 1.0 of this Exhibit J.
$MONPC_m$	is the Must-Offer Non-Performance Charge in respect of any prior Must-Offer Non-Performance Event that has not previously been subtracted from a prior Monthly Payment (regardless of the Settlement Month for which the Must-Offer Non-Performance Event occurred).
x	is the last Settlement Month of the Term.
Y	is the second last Settlement Month of the Term.

ATTACHMENT 1 – MGMR IESO ACCOUNTS

The list below shall be updated from time to time by written agreement of the Parties (without requiring a formal amendment to this Agreement) to reflect any changes to the IESO Market Rules, on the basis that the MGMR IESO Accounts should capture all revenues from the sale of Electricity and Related Products (including Future Contract Related Products).

The following accounts constitute the “**MGMR IESO Accounts**” as of the Term Commencement Date:

Revenues	Name	CC	Description	
	Energy Metered Injections	100	Net Energy Market Settlement for Generators and Dispatchable Load/AQEI	
	Transmission Rights Market	102	TR Clearing Account Credit	
	Congestion Management	105	Congestion Management Settlement Credit for Energy	
		122	Ramp-Down Settlement Amount	
		1051	Ramp-Down CMSC Claw Back	
	Reserve	106	Congestion Management Settlement Credit for 10 Minute Spinning Reserve	
		107	Congestion Management Settlement Credit for 10 Minute Non-spinning Reserve	
		108	Congestion Management Settlement Credit for 30 Minute Operating Reserve	
		120	Local Market Power Debit	
		200	10 Minute Spinning Reserve Market Settlement Credit	
		201	10 Minute Spinning Reserve Market Shortfall Rebate	
		202	10 Minute Non-spinning Reserve Market Settlement Credit	
		203	10 Minute Non-spinning Reserve Market Shortfall Rebate	
		204	30 Minute Operating Reserve Market Settlement Credit	
		205	30 Minute Operating Reserve Market Shortfall Rebate	
		Settlement Credit	404	Regulation Service Settlement Credit (AGC)
			1401	Incremental Loss Settlement Credit
	1402		Hourly Condense System Constraints Settlement Credit	
	1403		Speed-no-load Settlement Credit	
	1404		Condense Unit Start-up and OM&A Settlement Credit	
	1405		Hourly Condense Energy Costs Settlement Credit	
	1406		Monthly Condense Energy Costs Settlement Credit	
	1407		Condense Transmission Tariff Reimbursement Settlement Credit	
	1408		Condense Availability Cost Settlement Credit	
	1409		Monthly Condense System Constraints Settlement Credit	
	1417	Daily Condense Energy Costs Settlement Credit		
	Miscellaneous Revenue	113	Additional Compensation for Administrative Pricing Credit	
		114	Outage Cancellation/Deferral Settlement Credit	
		115	Unrecoverable Testing Costs Credit	
		133	Generation Cost Guarantee Payment	
		9920	Adjustment Account Credit	
		1500	Day Ahead Production Cost Guarantee Payment – Component 1 and Component 1 Clawback	
		1501	Day Ahead Production Cost Guarantee Payment – Component 2	
		1502	Day Ahead Production Cost Guarantee Payment – Component 3 and Component 3 Clawback	

		1503	Day Ahead Production Cost Guarantee Payment – Component 4
		1504	Day Ahead Production Cost Guarantee Payment – Component 5
		1505	Day Ahead Production Cost Guarantee Reversal
		1510	Day-Ahead Generator Withdrawal Charge

ATTACHMENT 2 – MMCO IESO ACCOUNTS

The list below shall be updated from time to time by written agreement of the Parties (without requiring a formal amendment to this Agreement) to reflect any changes to the IESO Market Rules, on the basis that the MMCO IESO Accounts should capture all IESO market costs relating to withdrawals from the grid associated with the operations of the Facility).

The following accounts constitute the “**MMCO IESO Accounts**” as of the Term Commencement Date:

Charge Type	Descriptions
148	Global Adjustment
150	Net Energy Market Settlement Uplift
155	Constrained Management Settlement Uplift
169	Station Service Reimbursement Debit
170	Local Market Power Rebate
183	Generation Cost Guarantee Debit
186	Intertie Failure Charge rebate
250	10 Minute Spinning Market Reserve Hourly Uplift
252	10 Minute Non-spinning Market Reserve Hourly Uplift
254	30 Minute Operating Reserve Market Hourly Uplift
450	Black Start Capability Debit
451	Hourly Reactive Support and Voltage Control Settlement Debit
452	Reactive Support and Voltage Control Debit
454	Regulation Service Debit
650	Network Pool Service Charge
651	Network Pool Service Charge
652	Network Pool Service Charge
653	Network Pool Service Charge
753	Rural Rate Assistance Debit
1351	CAPACITY BASED DEMAND RESPONSE PROGRAM RECOVERY AMOUNT FOR CLASS B LOADS
1463	Renewable Generation Connection - Monthly Compensation Amount Settlement Debit
1550	Day Ahead Production Cost Guarantee Recovery Debit
1650	Forecasting Service Balancing Amount
2148	Forecasting Service Balancing Amount
6148	Forecasting Service Balancing Amount
9990	IMO Energy Market Administration Charge

EXHIBIT K
ARBITRATION PROCEDURES APPLICABLE TO SECTIONS 1.7, 1.8, 2.1(H), 2.7 AND 16.5(F)

The following rules and procedures (the “**Rules**”) shall govern, exclusively, any matter or matters to be arbitrated between the Parties under Sections 1.7, 1.8, 2.1(h), 2.7 and 16.5(f) of this Agreement.

1. **Commencement of Arbitration** – If the Parties have been unable to reach agreement as contemplated in Sections 1.7, 1.8, 2.1(h), 2.7 and 16.5(f) of this Agreement, as applicable, then the Buyer shall commence arbitration by delivering a written notice (the “**Request**”) to the Supplier. Within twenty (20) days of the delivery of the Request, the Buyer shall deliver to the Supplier 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 Supplier shall by written notice to the Buyer nominate an arbitrator who shall be familiar with commercial law matters and has no financial or personal interest in the business affairs of any of the parties. The two (2) arbitrators nominated shall then select a chair person of the arbitration panel (the “**Arbitration Panel**”) who shall be a former judge of a Superior Court or appellate court in Canada.
2. **Application to Court** - If the two (2) arbitrators are unable to agree on a chair person within thirty (30) days of the nomination or appointment of the Supplier’s arbitrator, the Supplier or the Buyer may apply to a judge of the Superior Court of Justice of Ontario to appoint the chair person.
3. **General** - The Arbitration Panel, once appointed, shall proceed immediately to determine the Replacement Provision in accordance with the Ontario *Arbitration Act, 1991* and, where applicable, the Ontario *International Commercial Arbitration Act*, it being the intention of the Buyer and the Supplier that there be, to the extent possible, one arbitration proceeding and hearing to determine the Replacement 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.
4. **Consolidation** – The Parties agree that should the Arbitration Panel determine that the Replacement Provision needs to be determined through more than one (1) arbitration proceeding, then the Parties agree that the Arbitration Panel shall determine whether the arbitration proceedings shall be consolidated, conducted simultaneously or consecutively or whether any of the arbitration proceedings should be stayed until any of the others are completed.
5. **Award** - The award of the Arbitration Panel, which shall include the Replacement Provision, shall be made within six months after the appointment of the Arbitration Panel, subject to any extended date to be agreed by the Parties or any reasonable delay due to unforeseen circumstances.

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

EXHIBIT L
FUEL MANAGEMENT PROTOCOL

1. Purpose

The purposes of this Fuel Management Protocol are:

- (a) To define the FD&M Requirements and provide for their review and, if applicable, revision;
- (b) To establish the Fuel Management Committee;
- (c) To define the process for the review and, if applicable, the revision of the FD&M Plan;
- (d) To describe the treatment of costs and revenues arising from Approved FD&M Services and Approved Fuel Services Trading;
- (e) To set out the method for determining the Monthly Cost of Generation Fuel and the Approved Test Monthly Cost of Generation Fuel, both as referenced in Exhibit J; and
- (f) To define the basis of calculation of the Monthly FD&M Payment, as referenced in Exhibit J.

2. FD&M Requirements

2.1 Definition of FD&M Requirements

The Fuel delivery and management requirements (the “**FD&M Requirements**”) are the following:

- (a) the Supplier shall comply with the Must-Offer Obligations set out in Exhibit G;
- (b) the Supplier shall maintain the dual Fuel capability of the Facility in accordance with Section 2.1(i) of the Agreement;
- (c) the Supplier shall be capable of fulfilling its Capacity Check Test and Unit Check Test obligations in accordance with Sections 15.6 and 15.7 of the Agreement; and
- (d) the Approved FD&M Services will support the operation of the Facility in accordance with IESO Market Rules.

The Buyer acknowledges that the scope and flexibility of Approved FD&M Services may at times limit the operation of the Facility. Should the Supplier become aware of any such circumstances, the Supplier shall convene the Fuel Management Committee to discuss

whether any revisions to the FD&M Plan are required in order to address such limitations.

2.2 Review and Revision of FD&M Requirements

- (a) The Fuel Management Committee shall, at a minimum, review the FD&M Requirements in conjunction with any review of the FD&M Plan.
- (b) At any time, either Party may propose revisions to the FD&M Requirements to the Fuel Management Committee.
- (c) In reviewing the FD&M Requirements or considering a Party's proposal for revising the FD&M Requirements, the Fuel Management Committee shall give consideration to the historical operational history of the Facility, expected future operations, and to any benefits to the IESO-Controlled Grid of any potential revision.
- (d) If the Fuel Management Committee reaches agreement to revise the FD&M Requirements, the Fuel Management Committee shall recommend such revision to the Parties. Such revision to the FD&M Requirements shall only be effective following an amendment to this Exhibit L made in accordance with Section 1.10 of this Agreement.
- (e) Any revision to relax the FD&M Requirements shall include provision for the revocation by the Buyer of such relaxation, on reasonable written notice to the Supplier.
- (f) No change to the FD&M Requirements shall result in the revocation of approval of Approved FD&M Service commitments previously entered into by the Supplier in accordance with the FD&M Plan.
- (g) If the Fuel Management Committee is unable to reach agreement within ten (10) Business Days after receiving a proposal to revise the FD&M Requirements, either Party may submit the proposed revisions to the FD&M Requirements to a Senior Conference pursuant to the terms of Section 16.1 of the Agreement.

3. Fuel Management Committee

- (a) By no later than February 1, 2013, the Supplier and the Buyer shall each designate, by written notice to the other Party, two (2) nominees that shall be members of the Fuel Management Committee.
- (b) By no later than February 8, 2013, the Supplier and the Buyer shall form a Fuel Management Committee which will comprise the individuals nominated pursuant to Section 3(a) of this Exhibit L.
- (c) Either Party may change its representatives on the Fuel Management Committee from time to time by prior written notice to the other Party.
- (d) Quorum for the Fuel Management Committee shall be at least one (1) representative of each Party.

(e) All decisions of the Fuel Management Committee shall be unanimous.

4. Fuel Delivery and Management Plan (FD&M Plan)

(a) The Initial FD&M Plan is set out in Exhibit M to the Agreement.

(b) Any subsequent FD&M Plans, and any revisions to any FD&M Plan shall be based upon the following principles:

(i) the FD&M Plan shall be based on commercially reasonable assumptions;

(ii) the Supplier shall adhere to Good Engineering and Operating Practices;

(iii) the FD&M Plan shall be based on the reasonably forecasted operations of the Facility for the period to be covered by the FD&M Plan;

(iv) costs and risks to Supplier and Buyer shall be minimized; and

(v) the Supplier shall maintain the ability to operate the Facility in accordance with this Agreement and in a manner that satisfies the FD&M Requirements using the Approved FD&M Services.

(c) All FD&M Plans shall include the following:

(i) the Supplier's strategy for the procurement of Approved FD&M Services;

(ii) the identification and description of the Approved FD&M Services;

(iii) the Supplier's strategy for managing Fuel inventories;

(iv) a description of the Supplier's practices for managing risks related to the Approved FD&M Services and Approved Fuel Services Trading;

(v) the methodology for monitoring the Supplier's compliance with the FD&M Plan from time to time;

(vi) classification of the costs of Approved FD&M Services as required to calculate Monthly FD&M Payments in accordance with this Fuel Management Protocol; and

(vii) identification of revenues and costs from the release, sale or trading of Approved FD&M Services and their classification as required to calculate Monthly FD&M Payments in accordance with this Fuel Management Protocol.

(d) No later than January 1, 2024, and every two years thereafter during the Term, the Fuel Management Committee shall review the FD&M Plan to determine whether any modifications are required to the FD&M Plan based on the operational history

of the Facility or expectations of future operational requirements, and to maintain continued compliance with the requirements of paragraph 4(b) of this Exhibit L.

- (e) Either Party may at any time (i) request that the Fuel Management Committee be convened to review the FD&M Plan and its implementation, or (ii) submit a proposal to the Fuel Management Committee for a revision to the FD&M Plan.
- (f) Following the receipt of a request for a review of or a proposed revision to the FD&M Plan, the Fuel Management Committee shall undertake the requested review within ten (10) Business Days after receipt of such request. The Fuel Management Committee may approve or reject the revisions to the FD&M Plan in accordance with the provisions of this Fuel Management Protocol, provided that such revisions shall only be implemented by written agreement of the Parties. Until such time as any revisions to the FD&M Plan have been agreed in writing by the Parties, the FD&M Plan in place prior to such revisions shall continue to be the effective FD&M Plan. If the revision of the Fuel Management Plan also requires amendment to any provision of the Agreement, including to Exhibit G, Exhibit J or this Fuel Management Protocol, the Fuel Management Committee shall make such recommendation to the Parties, and the revision to the FD&M Plan shall be conditional on the Parties agreeing to such amendment in accordance with Section 1.10 of this Agreement.
- (g) If the Fuel Management Committee is unable to reach agreement within ten (10) Business Days after receipt of proposed revisions to the FD&M Plan, either Party may submit the proposed revisions to the FD&M Plan to a Senior Conference pursuant to the terms of Section 16.1 of the Agreement.

5. Procurement of FD&M Services

- (a) The Supplier shall be restricted to procuring those FD&M Services from time to time that are required to operate the Facility during the Term in accordance with the FD&M Plan (collectively, the “**Approved FD&M Services**”). For greater certainty, with respect to FD&M Services, any portion of FD&M Services not used by the Facility and not paid for by the Buyer as Fixed Costs of Approved FD&M Services or included in the Monthly Cost of Generation Fuel is not part of the Approved FD&M Services.
- (b) The Supplier shall enter into and maintain contracts for the Approved FD&M Services during the Term. The Supplier shall be responsible for obtaining any financial assurances or other guarantees related to such contracts.
- (c) The Supplier shall not engage in the direct or indirect release, sale or trading of Approved FD&M Services, except as authorized by the FD&M Plan or otherwise approved in writing by the Buyer (“**Approved Fuel Services Trading**”).
- (d) The Supplier shall maintain detailed and segregated accounts and records in respect of the costs of the Approved FD&M Services and all transactions relating to Approved Fuel Services Trading. These accounts and records (including any

agreements with providers of Approved FD&M Services) may be inspected or audited at any time by the Buyer in accordance with Section 15.2 of the Agreement, provided that with respect to the Supplier's existing agreements with Union, the Supplier shall use Commercially Reasonable Efforts to provide the Buyer with access to such agreements.

6. Monthly Cost of Generation Fuel and Approved Test Monthly Cost of Generation Fuel

The treatment of costs and revenues arising from Approved FD&M Services and Approved Fuel Services Trading is defined here for the purposes of settlement set out in Exhibit J:

- (a) For each Fuel, the Supplier shall provide a monthly reconciliation between the quantities of starting inventory, purchases, generation Fuel use, non-generation Fuel use, and sales.
- (b) The value of the inventory of each Fuel at the start of the first Settlement Month shall be the net book value of the inventory level of such Fuel at the Term Commencement Date, as determined in accordance with U.S. GAAP.
- (c) Non-generation Fuel use comprises Fuel used as auxiliary boiler Fuel, in unit boiler only starts for building heat, and for the back-up generator including testing thereof.
- (d) For Gas, the monthly unit input value (the "**Monthly Unit Input Value**") in respect of a Settlement Month is determined as the cost of all Gas commodity purchases during such Settlement Month plus all variable costs of Approved FD&M Services for Gas in respect of such Settlement Month, all divided by the quantity of Gas commodity purchases during such Settlement Month, excluding any compressor Gas quantities.
- (e) For each Fuel, the monthly unit value (the "**Monthly Unit Value**") in respect of a Settlement Month for such Fuel is determined as:
 - (i) the total variable cost comprising the value of the inventory of such Fuel at the start of the applicable Settlement Month, plus the cost of commodity purchases and all variable costs of Approved FD&M Services for such Fuel during such Settlement Month; divided by
 - (ii) the total quantity of inventory of such Fuel at the start of the applicable Settlement Month plus the quantity of commodity purchases of such Fuel during such Settlement Month, excluding any compressor Gas quantities.

Notwithstanding the foregoing, if (A) the value of the inventory of Gas at the start of the applicable Settlement Month or the quantity of inventory of Gas at the start of the applicable Settlement Month is less than zero, and (B) the Monthly Unit Value for Gas in respect of a Settlement Month is less than 0.5 times the corresponding Monthly Unit Input Value or is greater than 1.5 times the corresponding Monthly Unit Input Value, then the Monthly Unit Value for Gas in

respect of such Settlement Month shall be equal to the Monthly Unit Input Value for such Settlement Month.

- (f) For each Fuel, the Approved Fuel Services Trading margin (the “**Approved Fuel Services Trading Margin**”) shall be the total of revenues in respect of Approved Fuel Services Trading minus the cost of sales. The cost of sales is the applicable Monthly Unit Value multiplied by the quantity of Fuel sales, and excludes any costs included in the Fixed Costs of Approved FD&M Services.
- (g) For each Fuel, the value of Fuel attributed to generation Fuel use (including Approved Tests), non-generation Fuel use and cost of sales shall be the applicable quantity multiplied by the Monthly Unit Value of the applicable Fuel.
- (h) For each Fuel, the quantity of the inventory of such Fuel at the end of a Settlement Month shall be (i) the quantity of the inventory of such Fuel at the beginning of such Settlement Month plus the quantity of Fuel commodity purchases of the applicable Fuel (excluding, in the case of Gas, any compressor Gas quantities), minus (ii) the quantity of the applicable Fuel attributed to generation Fuel use, non-generation Fuel use and sales for the applicable Settlement Month. With respect to RFO, if during a Settlement Month the Supplier adjusts the RFO Inventory Level as a result of a true-up based on a physical measurement of the RFO Inventory Level, such adjustment shall be applied to the RFO Inventory Level effective the end of such Settlement Month.
- (i) For each Fuel, the value of the inventory of such Fuel at the end of a Settlement Month shall be (i) the value of the inventory of such Fuel at the beginning of such Settlement Month plus the cost of the Fuel commodity purchases of the applicable Fuel and all variable costs of Approved FD&M Services for the applicable Fuel in respect of the applicable Settlement Month, minus (ii) the value of the applicable Fuel attributed to generation Fuel use, non-generation Fuel use and cost of sales for the applicable Settlement Month.
- (j) For each Fuel, the Approved Fuel Services Trading Margin shall be allocated between the generation Fuel and non-generation Fuel in proportion to the quantity of each used in the applicable month, or, where a Fuel is not used for generation in a month, the entire Approved Fuel Services Trading Margin for such Fuel shall be allocated as non-generation Fuel.
- (k) The Monthly Cost of Generation Fuel is the total of the values for each of the Fuels attributed to generation Fuel use minus the attributed share of the Approved Fuel Services Trading Margin. The Monthly Cost of Generation Fuel with respect to both RFO and Gas includes the third party costs reasonably and prudently incurred or accrued in accordance with the FD&M Plan by the Supplier in accordance with Good Engineering and Operating Practices to procure emissions allowances or submit remittances to Governmental Authorities in respect of the Greenhouse Gas emissions resulting from the actual combustion of RFO and Gas for the operation of the Facility in the applicable month, in order to comply with GHG Laws and

Regulations. For greater certainty, the Monthly Cost of Generation Fuel excludes any management fees, overhead, administration, or staffing costs of the Supplier in connection with complying with GHG Laws and Regulations, including the procurement and management of emissions allowances and any costs of capital or financing in respect of the cost of emissions allowances or remittances.

- (l) The Approved Test Monthly Cost of Generation Fuel is the total of the values for each of the Fuels attributed to use in the performance of Approved Tests, minus the attributed share of the Approved Fuel Services Trading Margin, and is included in the Monthly Cost of Generation Fuel. For greater certainty, the Approved Test Monthly Cost of Generation Fuel includes those costs referred to in the second sentence of Section 6(k) of this Exhibit L

7. Monthly FD&M Payment

7.1 Monthly FD&M Payment

The Monthly FD&M Payment comprises:

- (a) Fixed Costs of the Approved FD&M Services;
- (b) The monthly cost of non-generation Fuel, which is the total for the three Fuels of the value of Fuel attributed to non-generation Fuel use minus the attributed share of the Approved Fuel Services Trading Margin, and includes the third party costs reasonably and prudently incurred or accrued in accordance with the FD&M Plan by the Supplier in accordance with Good Engineering and Operating Practices to procure emissions allowances or submit remittances to Governmental Authorities in respect of the Greenhouse Gas emissions resulting from the actual combustion of non-generation fuel in the applicable month, in order to comply with GHG Laws and Regulations ; and
- (c) The FD&M Services Incentive.

7.2 Fixed Costs of Approved FD&M Services

The “**Fixed Costs of Approved FD&M Services**” comprise:

- (a) rail car lease;
- (b) customer fees, account fees and contract-demand charges related to Gas transportation, delivery, balancing and storage services; and
- (c) third-party costs for credit support or guarantees required for the procurement of Fuel or Approved FD&M Services.

7.3 The FD&M Services Incentive

To the extent that the Supplier achieves a reduction in Fixed Costs of Approved FD&M Services through the Approved Fuel Services Trading, the Supplier shall be entitled to retain 10% of such reduction as an incentive payment, which shall be included in the Monthly FD&M Payment (the “**FD&M Services Incentive**”). For greater certainty, this reduction does not include offsetting revenues that may be realised from Approved Fuel Services Trading. For example, the assignment of firm Gas transportation to a third party would be treated as an offsetting revenue realized from Approved Fuel Services Trading, while the turn-back of firm Gas transportation back to the transportation service provider would qualify for the FD&M Services Incentive.

8. Variable costs of Approved FD&M Services

Variable costs of Approved FD&M Services comprise:

- (a) transaction and actual delivery costs of RFO and ignition oil purchase delivery;
- (b) usage-based charges and fuel-gas costs for Gas transportation and delivery;
- (c) usage-based charges and fuel-gas costs for Gas balancing, and storage injection and withdrawal;
- (d) balancing fees in respect of Gas; and
- (e) emissions allowances or remittances to Governmental Authorities in respect of the Greenhouse Gas emissions resulting from the actual combustion of RFO and Gas for the operation of the Facility in the applicable month, in order to comply with GHG Laws and Regulations.

9. Exclusions

The costs of Approved FD&M Services exclude:

- (a) any costs associated with Approved FD&M Services incurred prior to the Term Commencement Date, paid for by the IESO pursuant to the Existing Contract, or in respect of FD&M Services to be utilized after the Term unless the Facility is then shut down or otherwise unable to derive any material benefit from such FD&M Services in which case such costs (net of any salvage value) shall be included in the costs of Approved FD&M Services; and
- (b) any management fees, overhead or staffing costs of the Supplier, including, without limitation, such costs and fees associated with the procurement of Fuel, the preparation and administration of the FD&M Plan or participation on the Fuel Management Committee.

10. Treatment of Adjustments in Respect of Prior Periods

- (a) If (i) any suppliers of Approved FD&M Services invoice for a period longer than one month, or (ii) any suppliers of Approved FD&M Services perform periodic

adjustments to the cost of Approved FD&M Services where the adjustment occurs after the applicable cost has been settled in accordance with Exhibit J (in each case, an “**FD&M Cost Adjustment**”), the FD&M Cost Adjustment (whether positive or negative) shall be added or subtracted, as applicable, to the same cost category to which the underlying charge relates, in the Settlement Month following receipt of the FD&M Cost Adjustment.

- (b) Notwithstanding Section 10(a) of this Exhibit L, if an FD&M Cost Adjustment includes costs that are excluded pursuant to Section 9(a) of this Exhibit L, such FD&M Cost Adjustment shall be prorated by the proportion of such FD&M Cost Adjustment that is eligible to be included in the costs of Approved FD&M Services.

11. **RFO Salvage Plan**

- (a) If the Supplier determines that it will shut down the Facility on a date (the “**Planned Shutdown Date**”) that is no later than May 1, 2031 (an “**RFO Salvage Plan Trigger**”), the Supplier shall notify the Buyer within five (5) Business Days after it has announced the Planned Shutdown Date and it shall then become an FD&M Requirement that the RFO Inventory Level be reduced to zero by the Planned Shutdown Date. In such case, the Supplier shall promptly convene a meeting of the Fuel Management Committee to update the FD&M Plan to reflect this additional FD&M Requirement.
- (b) From and after the first day of the Settlement Month in which the FD&M Plan updated pursuant to Section 11(a) of this Exhibit L is approved by the Parties, the co-efficient applied to the $MONL_{m,y}$ variable in Section 2.0 of Exhibit J shall be changed from 0.25 to 0.75 for all remaining Settlement Months, subject to Section 11(c) of this Exhibit L.
- (c) If the Planned Shutdown Date changes, the Supplier shall promptly notify the Buyer and shall convene a meeting of the Fuel Management Committee, as necessary, to update the FD&M Plan accordingly. If at any time after an RFO Salvage Plan Trigger the Supplier determines that it is no longer going to shut down the Facility by no later than May 1, 2031 (a “**Shutdown Revocation**”), then (i) the Supplier shall promptly notify the Buyer, (ii) the FD&M Requirement introduced in Section 11(a) of this Exhibit L shall be rescinded, (iii) the Fuel Management Committee shall promptly be convened to update the FD&M Plan to reflect the Shutdown Revocation, and (iv) from and after the first day of the Settlement Month in which the Shutdown Revocation occurred, the co-efficient applied to the $MONL_{m,y}$ variable in Section 2.0 of Exhibit J shall revert to 0.25 for all remaining Settlement Months.

EXHIBIT M
INITIAL FUEL DELIVERY AND MANAGEMENT PLAN (FD&M PLAN)

CONFIDENTIAL

CONFIDENTIAL

EXHIBIT N
FORM OF ACKNOWLEDGEMENT OF SECURED LENDER'S RIGHTS

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

RECITALS:

A. The Independent Electricity System Operator has exercised its right to assign the Amended and Restated Lennox Energy Supply Agreement (the "LESA") dated ● between the Ontario Power Generation (the "Supplier") and the Independent Electricity System Operator pursuant to Section 16.5(d) or (e) thereof to **[insert name of assignee]** (the "Assignee").

B. The Supplier has delivered to the Independent Electricity System Operator a copy of the **[Credit Agreement and the Security, the registration details of the Credit Agreement and the Security]**, together with written notice of the address of the Agent to which notices may be sent pursuant to Section 13.1(d) of the LESA.

The Assignee acknowledges and confirms that:

- (a) the provisions of Section 16.5(d) or (e) of the LESA have been complied with by the Independent Electricity System Operator and the Assignee;
- (b) all of the representations, as amended below, set forth in Section 7.2 of the LESA are deemed to be made by the Assignee to the Supplier, and subject to Article 13 of the LESA, by the Assignee to the Agent, as of the date of the assignment;
- (c) the representation set forth in Section 7.1(a) of the LESA is amended as follows:

“(a) The Assignee is a **[corporation/partnership/unlimited liability company]** created under the laws of **[Province/Canada]**, and has the requisite power to enter into this Agreement and to perform its obligations hereunder.”
- (d) the **[Credit Agreement and the Security]**, collectively, constitutes a Secured Lender's Security Agreement under the LESA and that the Agent constitutes a Secured Lender thereunder; and
- (e) subject to the provisions of Article 13 of the LESA and compliance therewith by the Agent and the Supplier, as applicable, the Agent shall be entitled to the benefit of the provisions of Article 13 of the LESA in favour of a Secured Lender and the Agent shall be entitled to enforce the same as if the Agent were a party to the LESA.

Dated this [●] day of [●]

[Insert name of Assignee]

By: _____
Name: ●
Title: ●

**EXHIBIT O
ANNUAL OPERATING PLAN**

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

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

Date	
Legal Name of Supplier	
Name of Contract Facility	
Contract Title	(the "Contract")
Contract Date	
Contract Year No.	
From Month / Year to Month / Year	

1. Contract Capacity

Contract Capacity (MW): 2000.0

2. Unit Outages

2.1 Planned Outages

Assumptions:

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

7		
8		
9		
10		
11		
12		

2.2 Expected EFOR(OP)

Assumptions:

Contract Year	Expected EFOR(OP) in respect of the applicable Contract Year

**EXHIBIT P
FORM OF COMPANY REPRESENTATIVE NOTICE**

IESOCM – Form 005 (2008-10)
SUBMIT BY E-MAIL TO
contract.management@ieso.ca

Pursuant to Section [No.] of the Agreement, the Supplier is hereby submitting this Form of Company Representative Notice to the Buyer.

Date	
Legal Name of Supplier	
Facility	
Contract Title	
Contract Date	

Name of Company Representative	
Title	
Mailing Address	
Telephone	()
Fax	()
E-Mail Address	

Authorized Signatory:	
By: _____	Date: _____
[Name]	
[Title]	
[Supplier Legal Name]	

**EXHIBIT Q
FORM OF CONFIDENTIALITY UNDERTAKING**

IESOCM – Form 006 (2008-10)
SUBMIT FORM BY E-MAIL TO
contract.management@ieso.ca

Pursuant to Section [No.] of the Agreement, the Supplier is hereby submitting this Form of Confidentiality Undertaking to the Buyer.

Date	
Legal Name of Supplier	
Facility	
Contract Title	
Contract Date	

WHEREAS the Supplier is a party to the Agreement;

AND WHEREAS the undersigned is a Secured Lender or prospective Secured Lender;

AND WHEREAS the Supplier wishes to disclose Confidential Information contained in the Agreement to the undersigned with respect to the financing of the Facility such disclosure is prohibited without the provision to the Buyer of this Confidentiality Undertaking;

NOW THEREFORE the undersigned covenants and agrees in favour of the Buyer to hold any and all Confidential Information confidential on the terms set out in Article 8 of the Agreement as applicable to the Supplier, mutatis mutandis.

All capitalized terms used in this Confidentiality Undertaking and not defined herein shall have the respective meanings ascribed thereto in the Agreement.

Signed this	[Day]	day of	[Month, Year]	.	
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[Supplier Legal Name]

By:

Name: [Name]

Title: [Title]

[Name of Secured Lender]

By:

Name: [Name]

Title: [Title]