

**FOR THE CLEAN VERSION – RFP**

**ADDENDUM No. 1  
Dated May 7, 2009, to the  
CHP III RFP  
associated with the Ontario Power Authority's Request for Proposals  
for approximately 100 MW of Renewable Fuelled Combined Heat and Power  
Generation in Ontario (CHP III RFP)  
referenced as RFP No. CHP III - 2009**

In accordance with Section 2.11 of the CHP III RFP, this Addendum No. 1 contains amendments to the Final CHP III RFP posted on the OPA's website on March 9, 2009.

Attached as part of this Addendum No. 1 is the "clean" version of the Final CHP III RFP which incorporates these amendments.

A blackline copy showing these amendments is also provided on the CHP III RFP website for the ease of reference of prospective Proponents.



Ontario Power Authority

**REQUEST FOR PROPOSALS  
FOR APPROXIMATELY 100 MW OF RENEWABLE  
FUELLED COMBINED  
HEAT AND POWER GENERATION IN ONTARIO  
FROM PROJECTS  
GREATER THAN 10 MW IN SIZE  
("CHP III RFP")**

**Request for Proposals No.: CHP III-2009**

**RFP Issued: March 9, 2009**

**RFP Amended by Addendum No. 1 Issued: May 7, 2009**

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# **1. Introduction**

## **1.1. Purpose of CHP III RFP**

Through this request for proposals (this “CHP III RFP”), the Ontario Power Authority (the “OPA”) is seeking approximately 100 MW of high-efficiency combined heat and power (“CHP”) generation facilities in Ontario that are fuelled by renewable energy sources, are greater than 10 MW in size, affect supply or demand in the interconnected grid in Ontario by delivering electricity to the IESO-Controlled Grid, a Local Distribution System, or an End User, and deliver Useful Heat Output to a Host.

## **1.2. Ministerial Directive**

On April 10, 2008, the Ontario Minister of Energy directed the OPA to commence a procurement process to procure approximately 100 MW of power from proponents of combined heat and power generation projects that are fuelled by renewable energy sources (the “Ministerial Directive”). In response to the Ministerial Directive, the OPA issued a non-binding request for expressions of interest on June 24, 2008 (the “CHP III RFEI”) as a first step in engaging and consulting with interested parties regarding the CHP III procurement process. The OPA was pleased with both the number and quality of the Responses received. A stakeholder session was held with interested parties on August 19, 2008 to further assist the OPA in understanding the challenges faced by developers of renewable fuelled co-generation projects in designing and developing this CHP III RFP.

The Ministerial Directive noted that the OPA must be mindful of the Crown’s constitutional duty to consult First Nations and Métis peoples and ensure that, if such duty is triggered by any of the projects that may be selected by the OPA as a result of this CHP III RFP, appropriate consultation would take place in accordance with the guidelines and processes developed by the OPA pursuant to the Minister’s earlier directive to the OPA dated August 27, 2007, amended appropriately for the circumstances. These guidelines and processes are set out in Section 4.10 of this CHP III RFP and will be referenced in the CHP III PPA.

This CHP III RFP is not in any way intended to preclude, restrict or otherwise discourage any party from proceeding with the development of new generation facilities outside the scope of this CHP III RFP.

### **1.3. Eligibility for this CHP III RFP**

Neither the CHP III RFEI nor the Responses are binding on Respondents, nor is participation under the CHP III RFEI a pre-requisite to participation under this CHP III RFP. As a result, this CHP III RFP is open to any party who is now interested in becoming a Registered Participant and a Proponent, provided that all requirements set out in this CHP III RFP are satisfied.

Furthermore, and as contemplated in the Ministerial Directive, the CHP III RFP is also open to parties with proposed renewable co-generation facilities who had registered and paid the \$10,000 registration fee under the OPA's CHP II RFP or the RES III RFP competitive procurement processes but did not submit a proposal under the applicable RFP. Such participants may, in accordance with the process described in Section 2.5.1(1) below, have the prior registration fee paid under the CHP II RFP or the RES III RFP applied in full satisfaction of the Registration Fee under this CHP III RFP should they wish to become a Registered Participant under this CHP III RFP.

### **1.4. General Arrangements**

Selected Proponent(s) will execute the OPA's form of CHP III PPA. The OPA will post the form of the CHP III PPA for review on the Generation Procurement Website as indicated in the Timetable.

### **1.5. Ontario Power Authority**

The OPA is established under the *Electricity Act, 1998*, as a statutory corporation that is not a Crown agent. The OPA is authorized to call on the private sector when needed for new generating capacity and demand-side initiatives to be secured through competitive procurement processes.

Credit ratings for the OPA have been issued by Moody's and DBRS and additional information about the OPA can be obtained from the OPA's website at [www.powerauthority.on.ca](http://www.powerauthority.on.ca).

## 2. Process Overview

### 2.1. Overview of CHP III RFP Process

This CHP III RFP process is divided into the following two parts:

1.	Registration Submission to become a "Registered Participant"	Open to all interested parties regardless of participation or non-participation in the CHP III RFEI. This also includes any interested party who was a "Registered Proponent" and/or a "Registered Host" in the CHP II RFP, or a "Registered Proponent" under the RES III RFP, but did not submit a proposal under the applicable RFP.	See Section 2.5.1, "CHP III RFP Registration"
2.	Proposal Submission to become a "Proponent"	Open only to Registered Participants (or their Control Group Members)	See Section 2.7, "Proposal Preparation and Submission"

### 2.2. Timetable

The Timetable for this CHP III RFP is set out below.

Release of draft CHP III RFP	January 19, 2009
Release of draft CHP III PPA	January 26, 2009
Question and Comment Period I (public)	January 19 – February 13, 2009
Technical Information Session (public)	February 2, 2009
Question and Comment Period II (public)	February 19 – 24, 2009
Release of final CHP III RFP and CHP III PPA	March 9, 2009

Registration Form Submission Deadline	<b>March 19, 2009 at 3:00:00 p.m. Eastern Prevailing Time (EPT)</b>
Question and Comment Period III (Registered Participants only)	March 20 – April 17, 2009
Individual Information Sessions (Registered Participants only)	March 23 – 25, 2009
Deadline for Issuing Addenda to this CHP III RFP and CHP III PPA	May 7, 2009
Proposal Submission Deadline	<b>May 28, 2009 at 3:00:00 p.m. Eastern Prevailing Time (EPT)</b>
Evaluation of Proposals	June – July, 2009
Notification to all Proponents, Announcement of Selected Proponent(s), and Execution of CHP III PPA(s) with Selected Proponent(s)	June - July, 2009
Targeted Process Completion Date	July 30, 2009

As First Nations and Métis groups should be consulted early in the planning and development stages, the OPA invited representatives from First Nations and Métis groups to attend the Technical Information Session set out in the Timetable, and First Nations and Métis groups were also eligible to submit comments during Question and Comment Periods I and II.

The OPA reserves the right to accelerate or postpone any of the dates set out above and to add to, eliminate, or re-order any of the steps set out above. The acceleration or postponement of any date, or addition or elimination of any step, up to and including the Registration Form Submission Deadline shall be published on the Generation Procurement Website. The acceleration or postponement of any date, or addition or elimination of any step, after the Registration Form Submission Deadline up to and including the Proposal Submission Deadline will be made by way of notice to Registered Participants only and will also be published on the Generation Procurement Website. The acceleration or postponement of any date, or addition or elimination of any step, after the Proposal Submission Deadline shall be made by way of notice to Proponents only and shall also be published on the Generation Procurement Website.



## **2.3. Delay of the Evaluation Process**

In the event that the Targeted Process Completion Date is delayed past the last day indicated in the posted Timetable in Section 2.2, the OPA will, for each such day of the delay, correspondingly extend the milestones indicated in the Proposal(s) of the Selected Proponent(s) by one day.

## **2.4. Communications**

### **2.4.1. Review of Documentation and Questions**

This CHP III RFP, the CHP III PPA, and all Addenda relating thereto will be public and accessible via the Generation Procurement Website. CHP III Parties shall promptly examine all such documentation and

- report any errors, omissions or ambiguities, and
- send any questions they may have regarding this CHP III RFP or the CHP III PPA

through the Generation Procurement Website, in writing, on or before the end of the applicable Question and Comment Periods specified in the Timetable. The OPA may, but is not obliged to, provide responses or clarifications to each question or comment received. Responses provided by the OPA, along with the corresponding questions and comments, will be posted on the Generation Procurement Website, but the identity of any party asking any question or making any comment will not be revealed. It is the responsibility of any CHP III Party to seek clarification by submitting questions or comments on any matter that it considers to be unclear. The OPA shall not be responsible for any misunderstanding on the part of any CHP III Party concerning any aspect of this CHP III RFP or the CHP III PPA.

After the Registration Form Submission Deadline, only Registered Participants may post questions and comments on the Generation Procurement Website.

No communications are to be directed to any person or in any manner other than as prescribed in this CHP III RFP. A failure on the part of a CHP III Party to restrict its communication with the OPA to the communications channels prescribed in this CHP III RFP may lead to a disqualification of their Submission(s). Notwithstanding the foregoing, any CHP III Party may contact the staff of the Ministry

of Energy and Infrastructure for the sole purpose of seeking advice and instructions relating to the engagement of Aboriginal peoples.

## 2.4.2. Prohibited Communications

The OPA does not wish to shut down essential or appropriate communications for the purposes of electrical connection, site control, community liaison or support, engagement of Aboriginal peoples, permitting, licensing, engineering and project planning and development, regulatory compliance and compliance with the requirements of this CHP III RFP (collectively, the “Permitted Purposes”). Therefore, CHP III Parties are advised that the following communications rules apply with respect to this CHP III RFP:

- (a) Communications must be only for the Permitted Purposes and for no other purposes.
- (b) Permitted communications include communications with MPPs, mayors, municipal officials, municipal administrative staff, the media, members of the public, for the Permitted Purposes and for no other purposes.
- (c) Communications shall not be for the purposes (the “Excluded Purposes”) of:
  - (i) obtaining or attempting to obtain an unfair advantage in respect of the CHP III RFP or other stage of this procurement process;
  - (ii) influencing or attempting to influence the terms or outcome of the CHP III RFP or other stage of this procurement process;
  - (iii) influencing or attempting to influence government officials (including the Ministry of Energy and Infrastructure), regulatory officials or the management or staff of the OPA, IESO, OEB, any Transmitter, or any LDC with respect to changes to laws, regulations, rules, policies, or guidelines (including the Market Rules) directly or indirectly affecting the CHP III RFP or the CHP III PPA, but excluding applications for permits, approvals or technical arrangements;
  - (iv) making comparisons between its proposed Project and the proposed Projects of another potential Proponent;
  - (v) denying any other potential Proponent fair, open and impartial consideration; or

- (vi) impairing or attempting to impair the confidence of the public or any governmental official in the process or outcome of this CHP III RFP or any other OPA procurement process.
- (d) The onus shall be on a CHP III Party to demonstrate that any communications by it in relation to this CHP III RFP that have not been promptly and publicly disclosed (whether on the CHP III Party's website or otherwise) were not communications for Excluded Purposes.
- (e) Communication for any Excluded Purposes shall be and is hereby expressly excluded from the Permitted Purposes.
- (f) Communications with any member of the OPA's board of directors, the Evaluation Team or its advisors, other than as expressly provided in this CHP III RFP, would be considered to be communications for Excluded Purposes. Communications with IESO staff and Ministry of Energy and Infrastructure staff are permissible only for Permitted Purposes. Opportunities shall not be used for communication with IESO or Ministry of Energy and Infrastructure staff or any other person for Permitted Purposes to carry out communications for Excluded Purposes.

If a CHP III Party has any questions regarding the appropriateness of specific communications for purposes of this Section 2.4.2, they are advised to seek clarification from the OPA via the email address: [generation.procurement@powerauthority.on.ca](mailto:generation.procurement@powerauthority.on.ca).

The OPA shall have the right to request and obtain from a CHP III Party and the CHP III Party shall, if so requested, promptly provide to the OPA, information or clarification regarding the appropriateness of any communications of such CHP III Party in relation to or arising out of this CHP III RFP. The CHP III Party shall provide all information reasonably necessary or appropriate to allow the OPA to assess whether such communications are or were for Permitted Purposes or not.

In cases of breach of the foregoing communications rules, the OPA may, in its Discretion, without any liability, cost or penalty, revoke the status of a CHP III Party as such, and reject any Submission proposed to be submitted or actually submitted to which such CHP III Party is related.

The prohibited communications rules set out above shall not prohibit a CHP III Party from publishing any notice that is required in connection with obtaining any regulatory approvals required for the development of the proposed Project.

No CHP III Party shall engage in any communications that would constitute a Conflict of Interest or that would breach the Non-Collusion Requirements.

## **2.5. Registration Preparation and Submission**

### **2.5.1. CHP III RFP Registration**

The registration process is set out in either Sections 2.5.1(1) or 2.5.1(2) below, as applicable.

Section 2.5.1(1) applies only to those interested parties who were registered as a “Registered Proponent” and/or a “Registered Host” under the CHP II RFP, or as a “Registered Proponent” under the RES III RFP, but did not submit a proposal to the OPA under the applicable RFP. Section 2.5.1(2) applies to all other interested parties.

#### **(1) Registration Process for those Interested Parties Previously Registered under the CHP II RFP or RES III RFP but who did not submit a proposal to the OPA under the applicable RFP**

The interested party must have been a “Registered Proponent” and/or a “Registered Host” of a proposed “Contract Facility” under the CHP II RFP, or a “Registered Proponent” of a proposed “Contract Facility” under the RES III RFP, but did not submit a proposal to the OPA under the applicable RFP.

The interested party must submit both the Registration Form and the Confirmation of Prior Registration to the OPA on or before the Registration Form Submission Deadline under this CHP III RFP. The CHP III RFP registration form together with attachments thereto (collectively, the “Registration Form”) is found at Appendix B, and the Confirmation of Prior Registration is found at Appendix C.

A separate Registration Form and a separate Confirmation of Prior Registration is required for each prior registration under the CHP II RFP or the RES III RFP, as the case may be.

The Registered Participant's registration fee that had been paid to the OPA with respect to the CHP II RFP or RES III RFP, as the case may be, shall be accepted as payment in full of the Registration Fee under this CHP III RFP. For greater certainty, a Registered Participant shall be fully entitled to participate in this CHP III RFP process, including Question and Comment Period III and the Individual Information Session described in Section 2.6, notwithstanding that the Registered Participant may have already participated in the question and comment period(s) and/or individual information session(s) with the OPA under the CHP II RFP or the RES III RFP, as the case may be.

The completed Registration Form for this CHP III RFP must identify, among other things, the Registered Participant, the Registered Host, the Project, and the application of the Useful Heat Output. Only the names of the Registered Participant and Registered Host, and the description of the application of Useful Heat Output, as set out in the Registration Form, will be binding for Proposal submission purposes in accordance with Sections 3.2.1, 3.2.2, and 3.2.13, respectively. For greater certainty, and to the extent applicable, an interested party may be listed as both the Registered Participant and the Registered Host.

Submissions should be sent to the OPA at the address and in the manner specified in Section 2.5.2, and must be received by the OPA before the Registration Form Submission Deadline specified in Section 2.2. If the Registration Form and the Confirmation of Prior Registration are not both received before the Registration Form Submission Deadline, then the Submission will not be considered.

The proposed application of Useful Heat Output will be reviewed by the OPA and, if acceptable to the OPA in its Discretion, the OPA will, within 15 days after the Registration Form Submission Deadline, provide a Registration Form Acceptance Notification which will include the OPA's approval of the proposed application of Useful Heat Output.

## **(2) Registration Process for All Other Interested Parties**

To become registered for this CHP III RFP, an interested party must submit the Registration Form, found at Appendix B, and pay a non-refundable registration fee of \$10,000 plus GST (the "Registration Fee") to the OPA, on or before the Registration Form Submission Deadline. A

separate Registration Form and a separate Registration Fee is required for each proposed Project.

Registration Fees must be paid by certified cheque or a bank draft made out in favour of "Ontario Power Authority". The OPA's GST license number is 854195039RT0001. The Registration Fee is not refundable under any circumstances including circumstances in which a Registered Participant subsequently decides to withdraw, chooses not to submit a Proposal, is disqualified from or is not selected under the CHP III RFP process. The only circumstances in which Registration Fees will be refunded are in the event that the OPA exercises its rights reserved under subsections 4.7(j) or (k) of this CHP III RFP to cancel it.

The completed Registration Form must identify, among other things, the Registered Participant, the Registered Host, the Project, and the application of the Useful Heat Output. Only the names of the Registered Participant and Registered Host, and the description of the application of Useful Heat Output, as set out in the Registration Form, will be required for Proposal submission purposes in accordance with Sections 3.2.1, 3.2.2, and 3.2.13, respectively. For greater certainty, and to the extent applicable, an interested party may be listed as both the Registered Participant and the Registered Host.

Submissions should be sent to the OPA at the address specified in Section 2.5.2, and must be received by the OPA before the Registration Form Submission Deadline specified in Section 2.2. If the Registration Form and the Registration Fee are not both received before the Registration Form Submission Deadline, then the Submission will not be considered.

The proposed application of Useful Heat Output will be reviewed by the OPA and, if acceptable to the OPA in its Discretion, the OPA will, within 15 days after the Registration Form Submission Deadline, provide a Registration Form Acceptance Notification which will include the OPA's approval of the proposed application of Useful Heat Output.

## **2.5.2. Address for Registration Form Submissions**

Submissions for registration as a Registered Participant should be submitted to the OPA by mail, courier or in person to the following address:

**Ontario Power Authority  
Richmond-Adelaide Centre  
120 Adelaide Street West  
Suite 1600  
Toronto, Ontario  
M5H 1T1**

**Attention: CHP III RFP**

After the Registration Form Submission Deadline, a Registered Participant shall not be able to withdraw or amend its Submission, although the Evaluation Team may request further clarification, information, statements or documentation.

## **2.6. Individual Information Sessions**

Each Registered Participant will be invited to one private information session per Registration Form (each an "Individual Information Session") having a maximum duration of one hour. All Individual Information Sessions will be held at the OPA's offices during business hours in the timeframe set out in the Timetable and will be scheduled by the OPA. Failure of a Registered Participant to attend a scheduled Individual Information Session shall not give rise to any obligation of the OPA to schedule another Individual Information Session or the right of a Registered Participant to attend an Individual Information Session other than at the time originally scheduled by the OPA.

The purpose of the Individual Information Session is to provide the Registered Participant with an opportunity to meet with the OPA project team and to discuss this CHP III RFP process, the form of CHP III PPA, and, on a confidential basis, the technical elements of its proposed Project. The information sessions are being offered only to Registered Participants and only as an aid to their understanding of this CHP III RFP and the form of CHP III PPA. Registered Participants can provide input and comments, as well as ask questions and clarifications. The OPA may not be in a position to answer instantly at each session. However, the OPA will endeavour to provide answers by summarizing and posting all inquiries in a generic, anonymous manner on the Generation Procurement Website.

Registered Participants are advised that the final CHP III RFP and final CHP III PPA will supersede all discussions of any kind whatsoever between the OPA and Registered Participants.

With respect to scheduling the Individual Information Sessions, Registered Participants should indicate three timing preferences on their Registration Form. All additional scheduling requests or changes should be sent after the Registration Form Submission Deadline to [generation.procurement@powerauthority.on.ca](mailto:generation.procurement@powerauthority.on.ca) and must include a contact name, email address and phone number.

The protocol and rules for the Individual Information Sessions are as follows:

- The Fairness Advisor will monitor all Individual Information Sessions and report on the conduct of all sessions.
- The Individual Information Sessions are solely for questions and clarification purposes and are not an approval or pre-vetting activity, including but not limited to the Proposal and the proposed Project. No “sales presentations” or “pitches” will be permitted.
- The OPA will not render any opinion on any proposed Project.
- No discussion will be permitted with respect to matters dealing with the price submission for a project, in particular the Economic Bid Statement, with the exception of clarifications of terms and conditions in the CHP III PPA affecting financial considerations.
- There will be no verbatim recording of the Individual Information Sessions.
- The OPA and the Registered Participants may record notes for their own purposes; however, no distribution of any notes between the OPA and the Registered Participant will be permitted. Further, no such notes shall constitute any part of the CHP III PPA nor other legal obligation of the OPA.
- No such notes may be tendered in court as evidence in any suit or action against the OPA.
- No OPA attendees will be on the Evaluation Team.
- Any new information provided by the OPA to a Registered Participant will be made available to all Registered Participants.



- The OPA has the right to make public any changes or new information resulting from the Individual Information Sessions that affect all Registered Participants. Such changes or new information will be posted on the Generation Procurement Website in the form of generic, anonymous questions or comments, as well as via Addenda.
- Neither party is under any obligation to provide answers.
- Either party can provide hand outs or visual aids but they will be returned, upon request, to the originating party at the end of the Individual Information Session.

The protocol and rules may be varied in the Discretion of the OPA but will be applied in the same manner among all Registered Participants.

## **2.7. Proposal Preparation and Submission**

### **2.7.1. Eligible Proposal Submission Entities**

Only a Registered Participant or its Control Group Member may submit a Proposal and thereby become a Proponent.

### **2.7.2. Proposal Preparation**

Proponents should format their Proposals in accordance with the instructions in this CHP III RFP. Where information is requested in this CHP III RFP, any response made in a Proposal should reference the applicable section numbers of this CHP III RFP where such request is made.

Apart from the completion of any blanks, bullets or similar uncompleted information in the Required Forms, a Proponent should not make changes to the pre-printed wording of the Required Forms. The Required Forms will be made available on the Generation Procurement Website in a writable PDF format following the Deadline for Issuing Addenda. Any changes made to the Required Forms, whether on the face of such forms or contained elsewhere in the Proposal, may result in the disqualification of the Proposal. All Required Forms must be signed by a director, officer or other person who has the authority to bind the Proponent.

Certain Required Forms are, or contain, declarations. The onus is solely on Proponents to conduct all investigations and verifications necessary or appropriate, including any investigations required of any member(s) of the Proponent Team, necessary to confirm that each of the statements set out in the declarations can be made accurately and truthfully. If the OPA determines in its Discretion that any matter declared is not materially true and correct, then the Proposal may be invalidated and disqualified, and the OPA may, in addition to any other remedies available at law or in equity, draw upon the Proposal Security. In instances where there are discrepancies or inconsistencies between the declarations in the Required Forms populated with relevant information from the Proponent and those declarations elsewhere in the Proposal, the declarations in the Required Forms populated with relevant information from Proponent shall prevail over any of the declarations made by the Proponent elsewhere in the Proposal.

To the extent that the Proposal entails the provision of information that may already have been provided by the CHP III Party to the OPA at an earlier point in this procurement process (such as in the CHP III RFEI, or in the Registration Form, for example), the Proponent should not incorporate any such information by reference but rather should restate and provide in the Proposal all such information previously provided.

### 2.7.3. Proposal Submission Requirements

To be considered, a Proposal must be received no later than the Proposal Submission Deadline at the following address:

**BNY Trust Company of Canada  
4 King Street West  
Suite 1101  
Toronto, Ontario  
M5H 1B6**

**Attention: Ontario Power Authority - CHP III RFP**

Any Proposal arriving after the Proposal Submission Deadline will not be considered and will be returned unopened to the sender.

A Proponent may submit Proposals for more than one Project, subject to the Non-Collusion Requirements, and provided that a separate Registration Form had been properly submitted for each such Project. However, only one Proposal may be submitted by a Proponent in respect of each Project. For greater certainty, a Proponent is not permitted to submit a Proposal for a Project with a restatement and a second Proposal for that Project without a restatement.

The Proposal must meet the Proposal Completeness Requirements outlined in Section 3.1 of this CHP III RFP. The specific submission requirements applicable to the Proposal, Proposal Security, and the Economic Bid Statement are described below.

A Proponent must submit the following:

- **Proposal**

One original hard copy prominently marked "Original Copy" of its Proposal, excluding the Proposal Security and the Economic Bid Statement (the Proposal Security and Economic Bid Statement are to be submitted in separate envelopes as provided below), 10 additional hard copies of its Proposal, and one electronic version of the Proposal provided on a CD-ROM. The original hard copy of the Proposal and the electronic version on CD-ROM must contain every document in the Proposal including all supporting documentation; however, with respect to the 10 additional hard copies of the Proposal, the OPA will accept supporting documentation that is determined by the Proponent to be too voluminous for submission in paper form to be submitted in electronic form on 10 additional CD-ROMs instead. With respect to electronic versions submitted on CD-ROM, files should be electronically searchable, and Acrobat-compatible files are acceptable. In the event of a conflict between the hard copy and the electronic copy of the Proposal, the hard copy of the Proposal will prevail.

- **Proposal Security**

One original hard copy of its Proposal Security which should be contained in a separate envelope marked "Proposal Security".

- **Economic Bid Statement**

One original hard copy of its Economic Bid Statement which must be contained in a separate, opaque and sealed envelope marked "Economic Bid Statement".

The additional envelopes for the Proposal Security and Economic Bid Statement should clearly state the Proponent's name and the name of the proposed Project.

The entire Proposal (including the Proposal Security and the Economic Bid Statement) should be contained in a sealed package.

The Proposal Return Label attached as Appendix K should be affixed to the outside of the sealed package. In addition to the Proposal Return Label, the outside of the sealed package should also have the word "Proposal" prominently marked with the "CHP III RFP" title as set out on the cover page of this CHP III RFP. The full legal name of the Proponent and its return address should also appear on the outside of the sealed package.

The Proposal must be in English only, and should be typed or printed neatly in black ink on both sides of 8.5 x 11 inch paper, and all pages should be numbered sequentially. Proposals should be collated and organized in a user-friendly manner, containing detailed responses and referencing any attached substantiating documentation.

## **2.7.4. Amending or Withdrawing Proposals**

At any time prior to the Proposal Submission Deadline, a Proponent may amend or withdraw a submitted Proposal. Any withdrawal of a submitted Proposal shall not entitle the Proponent to a refund of its Registration Fee, including the Registration Fee deemed to have been paid by a Proponent who had transferred from the CHP II RFP or RES III RFP to this CHP III RFP in accordance with Section 2.5.1. The right of Proponents to amend or withdraw prior to the Proposal Submission Deadline includes amendments or withdrawals wholly initiated by Proponents and amendments or withdrawals in response to subsequent information provided by Addenda to this CHP III RFP or CHP III PPA. Any amendment to a Proposal made prior to the Proposal Submission Deadline should clearly indicate what part of the Proposal the amendment is intending to affect or replace.

After the Proposal Submission Deadline, a Proponent shall not be able to withdraw or amend its Proposal, although the Evaluation Team may request further clarification, information, statements or documentation.

### **2.7.5. Irrevocability**

Proposals shall be irrevocable in the form submitted by the Proponent for 90 days from the Proposal Submission Deadline or for such longer period as agreed pursuant to the provisions of this Section 2.7.5 (the “Period of Irrevocability”).

If the OPA wishes to extend the Period of Irrevocability, the OPA shall submit a request prior to the expiry of the Period of Irrevocability to those Proponents whose Proposals are, at the time of the request, still being considered in the evaluation process. A Proponent must notify the OPA of its refusal or consent to such extension within five (5) Business Days after such request was made. For greater certainty, a Proponent may, in its discretion, refuse to extend its Period of Irrevocability, in which case the Proponent’s Proposal shall continue to be irrevocable in accordance with its original Period of Irrevocability.

If the OPA determines in its Discretion that it will be unable to award the CHP III PPA(s) prior to the expiration of the Period of Irrevocability, it will, after the expiration of the Period of Irrevocability, cease to consider the Proposal(s) of a Proponent who has refused the OPA’s request to extend its Period of Irrevocability. The OPA will continue to evaluate Proposals of those Proponents who have consented to an extension to their Period of Irrevocability.

## **2.8. Notification of Selected Proponents and Other Proponents**

### **2.8.1. Selected Proponent(s)**

Selected Proponents who are chosen by the OPA will first be advised by the OPA orally, then in writing, of selection. The OPA will also advise the other Proponents to stand by pursuant to Section 2.8.2.

The OPA will, after the close of business in Toronto, Ontario on a day chosen by the OPA at its Discretion in accordance with the Schedule, make a public announcement of such selection, noting that such selection is subject to the successful completion and execution of the CHP III PPA and all CHP III PPA Closing Documents. The OPA will forward to each Selected Proponent a copy of the CHP III PPA and those CHP III PPA Closing Documents prepared by the OPA for completion and execution by the

Selected Proponent, and the date that the CHP III PPA and such closing documents are sent by the OPA to the Selected Proponent is referred to as the “CHP III PPA Receipt Date”.

The Selected Proponent must (i) deliver the Initial Completion and Performance Security to the OPA within six (6) Business Days of the CHP III PPA Receipt Date, and (ii) execute and deliver the CHP III PPA together with all CHP III PPA Closing Documents required by the OPA within eight (8) Business Days of the CHP III PPA Receipt Date; provided, however, that the Initial Completion and Performance Security must be delivered at least two (2) Business Days prior to the execution and delivery of the CHP III PPA.

Should the Selected Proponent fail to deliver the Initial Completion and Performance Security or fail to execute and deliver the CHP III PPA and all CHP III PPA Closing Documents required by the OPA within the required timeframes, the Selected Proponent will be in breach of this CHP III RFP and the OPA may, in its Discretion and without limiting its rights under this CHP III RFP, disqualify such Selected Proponent, draw upon the Proposal Security, and/or select another Proponent in its place.

Once the required Initial Completion and Performance Security and the executed CHP III PPA and all CHP III PPA Closing Documents have been delivered to the OPA by each Selected Proponent, the OPA will coordinate, in consultation with the Supplier(s), a second public announcement concerning the Supplier(s) and their respective Facilities.

## **2.8.2. Other Proponents**

Shortly after the Selected Proponent(s) are first notified pursuant to Section 2.8.1, the OPA will notify the other Proponent(s) of the fact that Proponent(s) have been selected by the OPA. The other Proponent(s) will be advised to stand by, in the event that the OPA disqualifies a Selected Proponent and selects another Proponent pursuant to Section 2.8.1.

Assuming that the required Initial Completion and Performance Security and the executed CHP III PPA and all CHP III PPA Closing Documents are delivered to the OPA by the Selected Proponent(s) in accordance with Section 2.8.1, the OPA will advise the other Proponent(s) in writing that the CHP III RFP process has concluded, that they were not selected by the OPA under this CHP III RFP, and that such decision is final and binding.

## 2.9. Debriefing

Any Proponent who did not become a Supplier may request a debriefing after being notified of their status. Requests must be made in writing through the [generation.procurement@powerauthority.on.ca](mailto:generation.procurement@powerauthority.on.ca) email address and must be made within 30 days of such notification. The intent of the debriefing session is to assist the Proponent in presenting a better proposal in subsequent procurement opportunities. Any debriefing provided is not offered for the purpose of providing an opportunity to challenge this CHP III RFP procurement process or result. For clarity, no information given in such debriefing may be used for the purposes of challenging this CHP III RFP process or result.

## 2.10. Confidentiality

Information provided by a CHP III Party is subject to, and may be released in accordance with, the provisions of the *Freedom of Information and Protection of Privacy Act* (Ontario). The CHP III Party will clearly indicate in a separate confidentiality statement, in a form provided by the CHP III Party, any portion of any Submission that contains proprietary or confidential information for which confidentiality is to be maintained by the OPA and its advisors. In addition, such portions of the Submission must be clearly marked "Proprietary and Confidential" by the CHP III Party. If no confidentiality statement is provided or no corresponding information identified as confidential or proprietary, the CHP III Party will automatically be deemed to have certified to the OPA that no portion of the Submission contains proprietary or confidential information for which confidentiality is to be maintained by the OPA or its advisors.

The confidentiality of any such information identified by the CHP III Party will be maintained by the OPA and its advisors, except where an order by the Information and Privacy Commissioner, a court or a tribunal requires the OPA to do otherwise. Notwithstanding the foregoing, the OPA shall not be required to maintain the confidentiality of any such information that:

- is or becomes generally available to the public without fault or breach on the part of the OPA or its advisors of any duty of confidentiality owed by the OPA to the CHP III Party or to any third party; or

- the OPA and its advisors can demonstrate that it had been rightfully obtained by the OPA, without any obligation of confidence, from a third party who had the right to transfer or disclose it to the OPA and its advisors free of any obligation of confidence; or
- the OPA and its advisors can demonstrate that it had been rightfully known by, or in the possession of, the OPA and its advisors at the time of disclosure, free of any obligation of confidence when disclosed; or
- has been independently developed by the OPA and its advisors.

Submissions will, as necessary or appropriate, be disclosed on a confidential basis to the Evaluation Team, the Government of Ontario, any Transmitter or LDC, the IESO, the Fairness Advisor, the OPA's counsel and other advisors retained in connection with this CHP III RFP and in the evaluation of the Submissions.

All information provided by or obtained from the OPA in any form in connection with this CHP III RFP, other than through the Generation Procurement Website, is the sole property of the OPA and must be treated as confidential, and:

- must not be used for any purpose other than replying to this CHP III RFP;
- must not be disclosed without the prior written authorization of the OPA; and
- shall be returned by the CHP III Party to the OPA immediately upon the request of the OPA.

## **2.11. Addenda**

This CHP III RFP and the CHP III PPA may be amended only by Addendum in accordance with this Section. If the OPA, for any reason, determines that it is necessary to provide additional information relating to this CHP III RFP, such information will be communicated by posting such Addendum on the Generation Procurement Website on or prior to the Deadline for Issuing Addenda to this CHP III RFP.

Each Addendum may contain important information, including significant changes to this CHP III RFP and the CHP III PPA, and CHP III Parties are responsible for visiting the Generation Procurement



Website as often as is necessary to ensure that they obtain all of the Addenda to this CHP III RFP and CHP III PPA and other notices issued by the OPA from time to time. Proponents must confirm their receipt of all Addenda issued by the OPA in the Proposal Completeness Requirements and Submission Form (Appendix D).

Notwithstanding the foregoing, the OPA may choose to issue an Addendum or Addenda after the Deadline for Issuing Addenda. If any Addendum is issued after the Deadline for Issuing Addenda, the OPA may in its Discretion extend the Proposal Submission Deadline for a reasonable amount of time having regard to the circumstances.

### 3. Evaluation Process

The evaluation of Proposals will be conducted by the OPA in the following five distinct Stages:

- **Stage 1 — Proposal Completeness Requirements:** In Stage 1, Proposals will pass or fail depending on whether the Proposal meets each of the Proposal Completeness Requirements set out in Section 3.1.
- **Stage 2 — Mandatory Requirements:** In Stage 2, Proposals will pass or fail depending on whether the Proposal meets each of the Mandatory Requirements set out in Section 3.2.
- **Stage 3 — Rated Criteria:** In Stage 3, Proposals will be reviewed by the Evaluation Team and evaluated against the Rated Criteria set out in Section 3.3. A maximum of 100 points may be awarded. Proposals which do not achieve the Minimum Required Total Point Score as specified in Section 3.3 will fail.
- **Stage 4 — Economic Bid Evaluation:** In Stage 4, Proposals will have their Economic Bid Statements opened and evaluated as set out in Section 3.4.
- **Stage 5 – Selection of Projects:** In Stage 5, the most competitive Proposals according to the methodology set out in Section 3.5 will be selected.

A Proposal must meet the requirements of each Stage in order to proceed to the next Stage. Those Proposals that fail any of Stages 1, 2, 3, 4 or are found to have failed to provide the information required for the Economic Bid Statement will be disqualified and will not be evaluated further.

### **3.1. Stage 1 - Proposal Completeness Requirements**

Each Proposal will pass or fail in Stage 1 depending on whether it contains all the Required Forms, is duly populated with relevant information from the Proponent, is signed (if applicable) and is submitted to the OPA (collectively, the “Proposal Completeness Requirements”). Proposals that do not satisfy each of the Proposal Completeness Requirements will not be evaluated further and will be rejected.

Completion and submission of the following forms (collectively, the “Required Forms”) is required to meet the Proposal Completeness Requirements:

#### **3.1.1. Proposal Completeness Requirements and Submission Form**

The Proposal Completeness Requirements and Submission Form must be completed in the form set out in Appendix D.

#### **3.1.2. Technical Questionnaire**

The Technical Questionnaire must be completed in the form set out in Appendix G.

#### **3.1.3. Mandatory Technical Requirements Declaration**

The Mandatory Technical Requirements Declaration must be completed in the form set out in Appendix L.

#### **3.1.4. Financial Plan including Financial Questionnaire**

The financial plan consists of the detailed financial plan description, the Proponent’s response to the Financial Questionnaire (Appendix F) and all supporting financial information that is provided by the Proponent (collectively, the “Financial Plan”).

The detailed financial plan description in the Financial Plan should specify the legal form of the entity or entities that comprise the Proponent and that are to develop, finance, own and operate the proposed Project, the relationship between all the members of the Proponent Team and all sources of current and future financing or credit support for the proposed Project, including the names of all sources of financing required, and the characterization of each source as either equity, debt or other (i.e., neither debt nor equity) and cost overrun support, if any.

The detailed Financial Plan description should also specify Total Project Costs, broken down by hard costs, soft costs, and financing costs.

### **3.1.5. Rated Criteria Information Form**

The Rated Criteria Information Form must be completed in the form set out in Appendix H.

### **3.1.6. Executive Summary**

The Proposal must include an Executive Summary. The Executive Summary should meet the requirements specified in Section 3.2.23.

### **3.1.7. Registration Form and Registration Form Acceptance Notification**

A copy of the Registration Form and the Registration Form Acceptance Notification (refer to Section 2.5) must be included.

### **3.1.8. Economic Bid Statement**

The Economic Bid Statement must be submitted in a separate, sealed, opaque envelope marked “Economic Bid Statement”, and such envelope should be identified with the name of the Proponent and the name of the proposed Project. Disclosure by the Proponent or any member of the Proponent Team of

any of the elements of the Economic Bid Statement elsewhere in the Proposal or otherwise, shall result in disqualification of the Proposal.

The values to be set out in the Economic Bid Statement must be entered precisely in numeric form using the format provided in Appendix E, without further information, condition or qualification whatsoever. Any deviation from the required format of the Economic Bid Statement whatsoever, including, but not limited to, the provision of a price range, conditional price, qualified price, or an incomplete price, a range of values, conditional values, qualified values or incomplete values, will result in the disqualification of the Proposal.

Errors contained in a Proponent's Economic Bid Statement are the sole responsibility of the Proponent and the OPA will be unable to communicate any perceived error to a Proponent.

After Stage 3, and prior to commencing the Economic Bid Evaluation, the OPA will check the Economic Bid Statement for accuracy and compliance.

### **3.1.9. Statutory Declaration regarding Proposal and Non-Collusion**

Proponents must submit the Statutory Declaration regarding the Proposal and Non-Collusion in the form set out in Appendix N.

### **3.1.10. Conflict of Interest Declaration**

Proponents must submit the Conflict of Interest Declaration in the form set out in Appendix O.

### **3.1.11. Proposal Security**

The Proposal Security must be submitted in the prescribed amount and form set out in Section 3.2.20.

## **3.2. Stage 2 - Mandatory Requirements**

Each Proposal will pass or fail depending on whether it meets the mandatory requirements set out below (the “Mandatory Requirements”), and Proposals that do not satisfy each of the Mandatory Requirements will not be evaluated further and will be rejected. The Mandatory Requirements are as follows:

### **3.2.1. Identity of Proponent**

The Proponent must be the Registered Participant or a Control Group Member of the Registered Participant. If the Proponent is a Control Group Member of the Registered Participant, the Proponent must provide a detailed description of the manner and structure by which the Proponent is a Control Group Member of the Registered Participant. For example, where the Registered Participant is a corporate parent of the Proponent, the Proponent should provide an organizational chart showing the shareholding structure, and indicate both the number of directors that the Registered Participant has the right to elect, and the total number of directors, of the Proponent.

This requirement will be satisfied by the Proponent’s statement in its response to the Technical Questionnaire in comparison with the Registration Form and Registration Form Acceptance Notification referenced in Section 3.1.7, and, if applicable, the detailed description and supporting evidence that the Proponent is a Control Group Member of the Registered Participant.

### **3.2.2. Identity of Host**

The Host must be the Registered Host or a Control Group Member of the Registered Host. If the Host is a Control Group Member of the Registered Host, the Proponent must provide a detailed description of the manner and structure by which the Host is a Control Group Member of the Registered Host. For example, where the Registered Host is a corporate parent of the Host, the Proponent should provide an organizational chart showing the shareholding structure, and indicate both the number of directors that the Registered Host has the right to elect, and the total number of directors, of the Host.

This requirement shall be satisfied by the Proponent’s completion of the Technical Questionnaire in comparison with the Registration Form and Registration Form Acceptance Notification referenced in

Section 3.1.7, and, if applicable, the detailed description and supporting evidence that the Host is a Control Group Member of the Registered Host.

### **3.2.3. Fuel Source**

The proposed Project must use one or more of the following four categories of Renewable Fuel sources as its Primary Fuel:

- Renewable Biomass;
- Biofuel;
- Biogas; or
- Landfill Gas.

This requirement shall be satisfied by the Proponent's statement in response to the Technical Questionnaire and confirmation that such fuel qualifies under the definition of Primary Fuel.

### **3.2.4. Project Development**

The proposed Project must either be:

- a Host Developed Project; or
- a Third-Party Developed Project.

This requirement shall be satisfied by the Proponent's statement in response to the Technical Questionnaire. However, if the requisite statement is not made in the Technical Questionnaire or if the information outlined in the Executive Summary (see Section 3.2.23) is not consistent with the definition of a Host Developed Project, this requirement shall be satisfied on the basis that the Project will automatically be deemed to be a Third-Party Developed Project.

### 3.2.5. Development Experience

This requirement is designed to provide the OPA with assurance that the Proponent (or its Control Group Member) and the Proponent Team have sufficient experience in planning, developing, and constructing one or more Designated Facilities, as defined below.

Where the Proponent is developing a Host Developed Project, each “Designated Facility” for purposes of subsections 3.2.5(a) and (b) below must be either (i) a generation facility, (ii) a cogeneration facility, or (iii) a substantially similar major construction project. For purposes of the previous sentence, a substantially similar major construction project is a construction project:

- with a capital expenditure of 25% or greater than the Total Project Cost of the proposed Project; and
- with a similar complexity to the planning, managing, development, construction, ownership and operation to the proposed Project; and
- that commenced operation in compliance with all laws and regulations and has been in operation for at least one year.

Subject to these three requirements above, there is no restriction on the type of construction project that the Proponent who is developing a Host Developed Project can reference for purposes of demonstrating a substantially similar major construction project.

Where the Proponent is developing a Third-Party Developed Project, each “Designated Facility” for purposes of subsections 3.2.5(a) and (b) below must be either the same or similar type of generation or cogeneration facility as the proposed Project. To be considered same or similar to the proposed Project, the Designated Facility:

- must use the same or similar type of generation technology as the proposed Project; and
- must have a nameplate capacity of at least 25% of the Nameplate Capacity of the proposed Project; and



- must have commenced operation in compliance with all laws and regulations and have been in operation for at least one year.

**(a) Company Experience**

The Proponent must evidence that the Proponent or its Control Group Member has successful experience with planning, developing and constructing one or more Designated Facilities that satisfy the applicable definition of “Designated Facility” in the introductory paragraphs in Section 3.2.5 above.

**(b) Designated Team Members’ Experience**

The Proponent must in the Proposal identify at least five individuals who are Designated Team Members, of which at least two individuals must be Designated Employees.

Each Designated Team Member must have experience with at least one Designated Facility that satisfies the applicable definition of “Designated Facility” in the introductory paragraphs in Section 3.2.5 above. For greater certainty, the experience of a Designated Team Member used for purposes of satisfying this Section 3.2.5(b) may have been gained with entities other than the Proponent or its Control Group Member on Designated Facilities that may be different from the one or more Designated Facilities used by the Proponent for purposes of satisfying Section 3.2.5(a). In addition, the Designated Facilities need not be the same for any of the Designated Team Members.

Of the five or more Designated Team Members, at least:

- one Designated Team Member must, in a Managerial Capacity, have planned and developed a Designated Facility; and
- another Designated Team Member must, in a Managerial Capacity, have overseen the construction of a Designated Facility.

This requirement shall be satisfied by the Proponent’s responses in the Technical Questionnaire and the CVs of the Designated Team Members.

### **3.2.6. Annual Average Contract Capacity**

The proposed Project must be a single generating facility with an Annual Average Contract Capacity of greater than 10 MW.

This requirement shall be satisfied by the Proponent's statement in response to the Technical Questionnaire.

### **3.2.7. Commercial Operation Date**

The proposed Project must attain Commercial Operation on or before June 1, 2014.

To satisfy this requirement, the Proponent must identify the Commercial Operation Date in its response to the Technical Questionnaire. In addition, in the Technical Questionnaire, the Proponent must state the Milestone Date for achieving Financial Closing, if applicable.

### **3.2.8. Location of Project**

The proposed Project must (i) be located in the Province of Ontario, (ii) be connected to either the IESO-Controlled Grid, a Local Distribution System, or an End User, and (iii) affect supply or demand in the interconnected electricity grid in Ontario.

To satisfy this requirement, the Proponent must submit a map or maps showing the proposed site in relation to neighbouring roads and lands. The map shall indicate key components of the proposed Project, including the proposed Connection Point required in Section 3.2.15(1). In addition, the Proponent must also provide a site plan and layout. The map(s) shall be utilized to confirm that the location of the proposed Project is consistent with the description of the lands set out in the supporting evidence for this section as well as for site control as required in Section 3.2.9.

### **3.2.9. Site Control**

The Proponent must evidence site control by having, at a minimum, an easement over, or an option to purchase, lease, license or use, the land for the site. Any such option must be exercisable by the

Proponent for at least 180 days after the Proposal Submission Deadline. The Proponent must be able to exercise site control no later than the Milestone Date for Financial Closing, if applicable, with site control expiring no sooner than the end of the Term.

To satisfy this requirement, in addition to confirming its control of the site in the Technical Questionnaire, the Proponent must provide supporting documentation of the site control in the form of either:

- a certified copy of an executed agreement entitling the Proponent to an easement over, or an option to lease, licence or purchase, the land for the Project, or
- a certified copy of either a registered title, easement, lease or licence, or
- if the Project involves Crown resources, including Crown land for transmission, distribution and ancillary structures, written confirmation from the appropriate Ministry, or Ministries, that the Proponent has been granted the opportunity to pursue development approvals for the Project. Such written confirmation may be in the form of a “Site Release” or a copy of the letter from the appropriate Ministry, or Ministries, confirming the Proponent’s land tenure (i.e. that the Proponent has been identified as the “Applicant of Record” or has been granted an “Option to Lease Agreement”), or
- if the Project involves lands that are defined as reserves or special reserves under the *Indian Act* (Canada), a certified copy of any and all relevant band council resolutions.

The Proponent is permitted to redact pricing and other proprietary information from the evidence of site control, as long as this information is not needed in order for the Evaluation Team to evaluate the evidence for purposes of this requirement.

### 3.2.10. **CHP III Class 43.1 Qualification**

The proposed Project must satisfy the CHP III Class 43.1 Qualification.

The “**CHP III Class 43.1 Qualification**” is determined based on the qualification for cogeneration or specified-waste fuelled systems required for Class 43.1 Capital Cost Allowances under the relevant regulations and schedules contained in the Income Tax Act (Canada), as detailed in section 1.4 of the

Class 43.1 Technical Guide for Energy Conservation and Renewable Energy Equipment and Technical Guide to Canadian Renewable and Conservation Expenses (CRCE), Edition 1998, as amended by “Errata” revised July 16, 2007, all of which is published by Natural Resources Canada (the “**Class 43.1 Guide**”).

In that regard, the Project must satisfy the heat rate qualification for fossil fuels in the Class 43.1 Guide using the Useful Heat Output as defined in Appendix M of this CHP III RFP. The net useful heat (H) as referred to in section 1.4 of the Class 43.1 Guide and used for the heat rate qualification should represent the Useful Heat Output from the Project. The annual consumption of fossil fuels (measured on a HHV basis, not including any of the specified-waste fuels) chargeable to the gross electricity generated from the Project must not exceed 6,000 BTU/kWh (6,330 kJ/kWh).

To satisfy this requirement, a heat and mass balance diagram and associated calculations must be submitted as supporting documents identifying the information required to confirm the proposed Project meets or exceeds the CHP III Class 43.1 Qualification.

### **3.2.11. Term of Off-Take Agreement or Commitment**

The proposed Project must provide Useful Heat Output to a Host Facility for a term of not less than three (3) years commencing on the Commercial Operation Date. For greater certainty, this requirement also applies to a District Energy Facility.

To satisfy this requirement:

- (1) If the Proponent and the Host are not the same legal entity, then the Proponent must provide a copy of the Off-Take Agreement and any supporting evidence to substantiate the term of the Useful Heat Output purchases by the Host Facility. The Proponent may redact pricing and other proprietary information from the Off-Take Agreement as long as this information is not needed in order for the Evaluation Team to evaluate the evidence for purposes of this requirement. For greater certainty, a Proponent of a Host Developed Project where the Proponent and the Host are not the same legal entity is also required to provide a copy of the Off-Take Agreement and any supporting evidence to substantiate the term of the Useful Heat Output purchases by the Host Facility.

- (2) If the Proponent and the Host are the same legal entity, then the Proponent must include in its Proposal a completed declaration from a company officer and in a form provided by the Proponent, in its capacity as the Host of the Host Facility, to confirm the utilization by the Host Facility of the Useful Heat Output from the Facility for a term of not less than three (3) years commencing on the Commercial Operation Date, together with any supporting evidence of internal arrangements to substantiate such proposed utilization. The Proponent may redact internal pricing and other proprietary information from the supporting evidence as long as this information is not needed in order for the Evaluation Team to evaluate the evidence for purposes of this requirement.

### **3.2.12. Application of Useful Heat Output**

The proposed application of Useful Heat Output must be exclusively reserved by the Host Facility, and so indicated in the Off-Take Agreement (or so indicated in the declaration required below, if the Proponent and the Host are the same legal entity), as an application for which the required Useful Heat Output will be obtained solely from the proposed Project if it is selected under this CHP III RFP and, in the event the proposed Project is not selected, will not be obtained from any other proposed Project under this CHP III RFP. If the Proponent and the Host are the same legal entity, then the Proponent must include in its Proposal a completed declaration from a company officer and in a form provided by the Proponent in its capacity as the Host of the Host Facility, confirming the requirements in the previous sentence.

A Host can commit to purchasing Useful Heat Output from more than one proposed Project submitted to the OPA in response to this CHP III RFP, provided that the application of Useful Heat Output purchased from each such proposed Project is:

- demonstrably a separate and distinct application with respect to the applications committed to any other proposed Projects; and
- covered by a separate Off-Take Agreement where the Host and the Proponent of that Project are not the same legal entity; and

- required by the Host Facility independent of every other application such that any single application will proceed in conjunction with the selection of the corresponding proposed Project under this CHP III RFP, regardless of whether or not any other proposed Project from which the Host has also committed to purchase Useful Heat Output is or is not selected under this CHP III RFP.

Where a Host commits to purchasing Useful Heat Output from more than one Project, the Proponent of each such Project must include in its Proposal a completed declaration from a company officer in a form provided by the Proponent confirming that the Host's proposed purchases and applications of Useful Heat Output comply with this requirement. Where more than one Proponent is required by this Section to submit the aforementioned declaration with respect to a common Host and any one such Proponent fails to do so, then the relevant Proposals from all such Proponents will be rejected and not considered further.

### **3.2.13. Gainful Application of Useful Heat Output**

The proposed application of Useful Heat Output produced by the Project must be an application that meets the definition of Useful Heat Output set out in Appendix A, as determined and approved by the OPA pursuant to Section 2.5.1; in order to meet this requirement, the Proponent shall provide a copy of the Registration Form Acceptance Notification from the OPA that will show approval of the application of the Useful Heat Output. The Proponent shall provide a full description of the application of Useful Heat Output and provide a declaration of a company officer that the application of the Useful Heat Output in the Proposal is the same as that approved by the OPA.

### **3.2.14. Useful Heat Output and Volume**

A proposed Project, including a District Energy Facility, must demonstrate a Useful Heat Output equal to or greater than 15% of the total energy output of the Project, calculated on an annual average basis as set forth in Appendix M. In order to comply with this requirement, the Proponent must provide:

- for each calendar month in a year, heat and mass balance diagrams and supporting calculations demonstrating that, on an annual average basis, the Useful Heat Output shall be equal to or greater than 15% of the total energy output of the Project; and

- a copy of the Off-Take Agreement demonstrating that the required amount of Useful Heat Output is contracted under the terms of the Off-Take Agreement. The Proponent may redact pricing and other proprietary information from the Off-Take Agreement as long as this information is not needed in order for the Evaluation Team to evaluate the evidence for purposes of this requirement. If the Proponent and the Host are the same legal entity, then the Proponent must include in its Proposal a completed declaration, from a company officer in a form provided by the Proponent in its capacity as the Host of the Host Facility, to confirm the supply of the required amount of Useful Heat Output from the Facility to the Host Facility, and include supporting evidence. The Proponent may redact pricing and other proprietary information from the supporting evidence as long as this information is not needed in order for the Evaluation Team to evaluate the evidence for purposes of this requirement.

CHP III Parties should note that the consequences of the failure of any proposed Project to meet a Useful Heat Output requirement equal to or greater than 15% of the total energy output of the Project, calculated on an annual average basis as set forth in the CHP III PPA, is addressed in the CHP III PPA.

### 3.2.15. Proposed Connection

#### (1) Connection Point

The Proponent must identify the proposed Connection Point of the Project by providing a electrical single line diagram showing such Connection Point. Proponents are referred to the definition of "Connection Point" in Appendix A as applicable to the proposed Project.

The Connection Point shall not be located on any of the following circuits or systems (the "Prohibited Connection Points"):

- (a) any interconnection circuits to the neighbouring utilities in Québec, Manitoba and the U.S.A;
- (b) any 500 kV circuits;
- (c) any 230 kV regional interconnection circuits between Wawa TS and Marathon TS; and

- (d) any 25 Hz system.

If the Connection Point is on a Specified Circuit (i.e. a circuit that is specified in Appendix Q) and there are one or more other Specified Circuits in the same transmission corridor, then the Proponent may, at its option, also indicate in its response to the Technical Questionnaire whether it is willing to alter its Connection Point to an alternative Specified Circuit in the same transmission corridor. However, Proponents are advised that it is the Proponent's sole responsibility to ensure that, prior to submission of a Proposal, any such alteration of its Connection Point that may be made in accordance with this CHP III RFP will be accepted by the IESO and the Transmitter.

If the proposed Project will be connected to the IESO-Controlled Grid or to an End User that is connected to the IESO-Controlled Grid, the Proponent must submit the applicable item from each of (i), (ii), and (iii) below, namely:

- (i)
  - (1) a Part One System Impact Assessment or equivalent assessment prepared and issued by the IESO, or
  - (2) a written confirmation from the IESO indicating that a Part One System Impact Assessment is not required, or
  - (3) a completed System Impact Assessment; **and**
- (ii)
  - (1) an executed copy of a System Impact Assessment Agreement between the Proponent and the IESO (where a Part One System Impact Assessment or equivalent assessment has been prepared and issued by the IESO), or
  - (2) a written confirmation from the IESO indicating that a System Impact Assessment Agreement is not required (a single written confirmation from the IESO may cover this item and item (i)(2) above), or
  - (3) no further documentation, if a completed System Impact Assessment was submitted in respect of item (i)(3) above; **and**
- (iii) an executed copy of a Customer Impact Assessment Study Agreement with the relevant Transmitter, in respect of the proposed Project, or written confirmation from the relevant Transmitter that a Customer Impact Assessment Study Agreement is not required,

in each case, in respect of the full Nameplate Capacity of the Project.



If the proposed Project is connected to a Local Distribution System or to an End User that is connected to a Local Distribution System, the Proponent must submit items (i), (ii), and (v), and the applicable item from each of items (iii) and (iv) below, namely:

- (i) an executed copy of the Connection Impact Assessment Study Agreement between the Proponent and the LDC for the proposed Project; **and**
- (ii) if applicable, an executed copy of the Connection Impact Assessment Study Agreement between the embedded LDC to which the Project is proposing to connect and the host LDC which serves the embedded LDC (i.e., where the LDC to which the Project is being connected is not transmission connected); **and**
- (iii)
  - (1) a Part One System Impact Assessment or equivalent assessment prepared and issued by the IESO, or
  - (2) a written confirmation from the IESO indicating that a Part One System Impact Assessment is not required, or
  - (3) a completed System Impact Assessment; **and**
- (iv)
  - (1) an executed copy of a System Impact Assessment Agreement between the Proponent and the IESO (where a Part One System Impact Assessment or equivalent assessment has been prepared and issued by the IESO), or
  - (2) a written confirmation from the IESO indicating that a System Impact Assessment Agreement is not required (a single written confirmation from the IESO may cover this item and item (iii)(2) above), or
  - (3) no further documentation, if a completed System Impact Assessment was submitted in respect of item (iii)(3) above; **and**
- (v) an executed copy of a Customer Impact Assessment Study Agreement with the relevant Transmitter, or written confirmation from the relevant Transmitter that a Customer Impact Assessment Study Agreement is not required,

in each case, in respect of the full Nameplate Capacity of the proposed Project.

The IESO has advised the OPA that, for purposes of the CHP III RFP procurement, the IESO will require relevant LDCs to apply for a System Impact Assessment on behalf of any Proponent proposing to connect to the LDC's distribution system. Similarly, relevant Transmitters have advised the OPA that, for

purposes of the CHP III RFP procurement, the Transmitter will require the relevant LDC to apply for a Customer Impact Agreement on behalf of any Proponent proposing to connect to the LDC's distribution system.

CHP III Parties should note that the OPA, IESO, Transmitter, LDC, or End User will not be responsible for expediting any impact assessments or study agreements that may be required for the purposes of this CHP III RFP. CHP III Parties are cautioned that the application process with the IESO, Transmitter, LDC, or End User should be started as early as possible to ensure that the required assessments and agreements are available on a timely basis to satisfy this requirement.

## **(2) Transmission Connection Point**

The Proponent must also identify the Transmission Connection Point of the Project. The Transmission Connection Point will be used for purposes of this Section 3.2.15(2) as well as the Transmission Screening in Stage 5 of this CHP III RFP.

The Transmission Connection Point is the same as the Connection Point for Projects that are connected directly to the Transmission System. For Projects that are connected to an End User or to a Local Distribution System, the Transmission Connection Point is the point on the IESO-Controlled Grid to which the Local Distribution System (or the End User and the Local Distribution System, as the case may be) are supplied from. In the event of a conflict or inconsistency between the Transmission Connection Point set out by the Proponent in its response to the Technical Questionnaire and that set out by the IESO in the Part One System Impact Assessment, System Impact Assessment, or written confirmation, if any, as the case may be, then the Transmission Connection Point set out by the IESO in the Part One System Impact Assessment, System Impact Assessment, or written confirmation, if any, will govern and be used by the OPA for purposes of this CHP III RFP.

## **3.2.16. Design, Construction and Operation**

The proposed Project must be designed, constructed and operated in compliance with all relevant requirements of the Market Rules, the Transmission System Code, the Distribution System Code and all other laws and regulations, as applicable.

This requirement will be satisfied by the submission of the Mandatory Technical Requirements Declaration.

### **3.2.17. No Acquisition of Major Equipment**

The Proponent must not have, prior to June 14, 2007:

- (a) commenced procurement for the purposes of the Project of any of the following major equipment: turbine generator sets, steam generators, condensers, transformers, switchgear equipment; and/or
- (b) issued a Notice to Proceed with respect to the construction of the Project.

For greater certainty, “commencing procurement” means the signing of a purchase order or execution of a contractual obligation to procure equipment for the purposes of the Project, and existing major equipment owned by the Proponent or options on major equipment held but not assigned nor allocated specifically to the Project prior to June 14, 2007 are considered acceptable.

This requirement will be satisfied by the submission of the Mandatory Technical Requirements Declaration.

### **3.2.18. Not an Existing Generating Facility or Upgrade**

The proposed Project must not be an Existing Generating Facility or an Upgrade. For greater certainty, a proposed Project that is an Expansion of an Existing Generating Facility is eligible under this CHP III RFP with respect to the Annual Average Contract Capacity relating to the Expansion.

This requirement will be satisfied by the submission of the Mandatory Technical Requirements Declaration.

### **3.2.19. Additional Requirement for Host Developed Project**

The Proponent of a Host Developed Project must either:

- state that the legal entity that is the Host (or if a District Energy Facility, the district energy business) is the legal entity that is the Proponent; or
- state that the legal entity that is the Host (or, if a District Energy Facility, that is the district energy business), or that Controls the Host or the district energy business, as the case may be, owns 30% or more, either directly or indirectly, of the Proponent.

This requirement will be satisfied by the submission of the Mandatory Technical Requirements Declaration. If the Proponent of a Host Developed Project confirms the statement in the second bullet above, then the Proponent will be required, if it becomes a Selected Proponent, to deliver to the OPA the Form of Guarantee for Host Developed Project executed by the Host, as part of the CHP III PPA Closing Documents.

### 3.2.20. Proposal Security

The Proposal Security must be payable to and in favour of the “Ontario Power Authority” in the amount of \$15,000 per MW of Annual Average Contract Capacity subject, however, to a maximum amount of \$600,000.

In order to satisfy this requirement, the Proposal Security must be in the form of:

- a certified cheque or a bank draft issued by a financial institution listed in either Schedule I or II of the *Bank Act* (Canada); or
- an irrevocable and unconditional standby letter 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 the form attached as Appendix I; or
- a bid bond issued by a surety with a financial strength rating of A- or higher by A.M. Best in financial size category VIII or higher, in the form attached as Appendix J.

Where the OPA becomes entitled to draw upon the Proposal Security for any reason under this CHP III RFP or at law or in equity, the OPA shall have the right to draw upon the full amount of the Proposal

Security. By submitting a Proposal, the Proponent agrees that such full amount of the Proposal Security constitutes a reasonable pre-estimate of damages that would be suffered by the OPA and that the full amount of the Proposal Security constitutes the true quantum of liquidated damages and is not a penalty.

### 3.2.21. Financing Experience

#### (a) Third-Party Developed Projects

For Third-Party Developed Projects, the Proponent must demonstrate that it or its Control Group Member has successfully financed another generation or cogeneration facility within the last 60 months (i.e., having achieved financial close) of a nameplate capacity that is at least 50% of the Annual Average Contract Capacity of the proposed Project. For greater certainty, Proponents may aggregate more than one facility (each of which must be 5 MW or greater) to satisfy this requirement.

To meet this requirement, the Proponent must outline the experience in successfully financing such other generation or cogeneration facility/ies. The Proponent must indicate the name, location, generation type (technology), nameplate capacity (in MW), corporate and financing structure, and date of financial closing for each generation or cogeneration facility that it is using to meet this requirement.

#### (b) Host Developed Projects

For Host Developed Projects, the Proponent must demonstrate that it or its Control Group Member has successfully financed (i.e., having achieved financial closing) either:

- (i) another generation or cogeneration facility; or
- (ii) a “substantially similar major construction project” using the same definition given to such term in the introductory paragraphs of Section 3.2.5;

within the last 60 months that had a capital expenditure of at least 25% of the Total Project Cost of the proposed Project. For greater certainty, Proponents may aggregate more than one generation or cogeneration facility or substantially similar major construction project to satisfy this requirement.

To meet this requirement, the Proponent must outline the experience in successfully financing such other generation or cogeneration facility or substantially similar major construction project. The Proponent must indicate the name, location, technical complexity, project cost, corporate and financing structure, and date of financial closing for each generation or cogeneration facility or substantially similar major construction project that it is using to meet this requirement.

### **3.2.22. Financial Strength**

In circumstances where equity financing (including self-financing) accounts for 20% or more of the proposed Total Project Cost, the Proponent must demonstrate that the equity provider, or if applicable, group of equity providers (each such equity provider, a “Designated Equity Provider”) has an individual Tangible Net Worth (or a collective Tangible Net Worth, in the case of a group of Designated Equity Providers) of at least \$250,000 per MW of Annual Average Contract Capacity:

- at the end of each of the last two (2) fiscal years as set out below, and
- at the end of the most recently completed fiscal quarter (if the most recently completed fiscal quarter is not already contained in the last two fiscal years set out above), as set out below.

For certainty, a Proponent shall not change a Designated Equity Provider after submission of a Proposal.

If any Designated Equity Provider is also listed as a Designated Equity Provider of more than one Proposal submitted by any Proponent under this CHP III RFP, then the Tangible Net Worth of such Designated Equity Provider should be equal to or exceed the combined (cumulative) Tangible Net Worth requirements for all such Proposals; otherwise, the OPA reserves the right to reject a Proposal based on the following principles:

- Proposals will be evaluated and ranked in accordance with Stages 3 and 4 of this CHP III RFP, subject to the following;
- in determining the Final Stack under Section 3.5.3, the OPA will commence with the highest ranked Proposal and continue down the list to lower ranked Proposals,

calculating the cumulative Tangible Net Worth requirement for any given Designated Equity Provider;

- once the OPA reaches a Proposal where the cumulative Tangible Net Worth requirement for a Designated Equity Provider exceeds its actual Tangible Net Worth, the OPA may reject such Proposal.

In addition, if a Designated Equity Provider is a Designated Equity Provider of more than one Proposal submitted by any Proponent under this CHP III RFP, then such Designated Equity Provider must use completely separate and different teams for each Proposal, and certify to such in a confirmation from an officer of such Designated Equity Provider as set out in subsection (d) entitled "*Confirmation*" below.

The Proponent will be required to confirm in its Statutory Declaration regarding Proposal and Non-Collusion (Appendix N) that, among other things, it has made due inquiries of each of its Designated Equity Providers as to whether it is a Designated Equity Provider of another Proposal submitted under this CHP III RFP and, if so, that such Designated Equity Provider has made the required confirmations with respect to meeting the Tangible Net Worth requirements and using completely separate and different teams for each Proposal of which it is a Designated Equity Provider.

To satisfy this requirement, the Proponent must submit the following:

(a) *Financial Questionnaire*

The Proponent must complete and submit the Financial Questionnaire.

(b) *Year-End Financial Statements*

The Proponent must attach audited year-end financial statements, as required by GAAP (or IFRS, if the Designated Equity Provider has adopted such standard), of the Designated Equity Provider(s) with respect to the last two (2) fiscal years for which audited statements have been issued.

Notwithstanding the foregoing, a Designated Equity Provider who is an individual shall be permitted to provide unaudited financial statements instead of audited financial statements in response to this requirement together with a statutory declaration of such person stating that such unaudited financial statements present fairly, in all material respects, the financial position of the Designated Equity Provider

in conformity with GAAP (or IFRS, if the Designated Equity Provider has adopted such standard). However, all other Designated Equity Provider(s) without audited financial statements do not satisfy the requirements of this subsection.

(c) *Most Recently Completed Quarter Financial Statements*

The Proponent must attach audited financial statements of the Designated Equity Provider(s) with respect to:

- its most recently completed fiscal quarter, or
- if the Designated Equity Provider is an issuer of securities that are publicly traded, the most recently completed fiscal quarter for which financial statements have been publicly issued.

Notwithstanding the foregoing, if audited financial statements are not available for its most recently completed fiscal quarter (or, for an issuer of publicly-traded securities, the most recent quarter for which financial statements have been publicly issued), the Proponent must submit unaudited financial statements in response to this requirement together with a statutory declaration of an officer of the Designated Equity Provider(s) (or the Designated Equity Provider if it is an individual) stating that such financial statements present fairly, in all material respects, the financial position of the Designated Equity Provider in conformity with GAAP (or IFRS, if the Designated Equity Provider has adopted such standard).

(d) *Methodology*

The Proponent must attach a summary outlining and describing the methodology and specifying the calculations used to determine the Tangible Net Worth requirements for the Designated Equity Provider(s) based on the information provided in the Financial Questionnaire and the financial statements provided in subsections (b) and (c) of this Section 3.2.22.

(e) *Confirmation*

The Proponent must attach a confirmation from an officer of the Designated Equity Provider(s) (or the Designated Equity Provider(s) itself if it is an individual) that is either:



- a certificate to the best of his or her knowledge; or
- if the Designated Equity Provider (or any equity provider that is a component thereof) is an issuer of securities that are publicly traded, a public update by the Designated Equity Provider within sixty (60) days of its most recently completed fiscal quarter as to the Designated Equity Provider's financial condition;

that since the date of the latest of the financial statements provided above, no facts or circumstances have arisen that are reasonably expected to materially adversely affect the Designated Equity Provider's financial condition as set out in the annual reports or financial statements submitted in response to this requirement.

Without limiting the generality of the foregoing and for purposes of this Section 3.2.22, facts and circumstances that, estimated reasonably and in accordance with GAAP (or IFRS, if the Designated Equity Provider has adopted such standard), result in a reduction in Tangible Net Worth below the minimum Tangible Net Worth required by this Section 3.2.22 shall be deemed to materially adversely affect the Designated Equity Provider's financial condition.

If, and to the extent that, there are facts or circumstances that would materially adversely affect the Designated Equity Provider's financial condition as set out in the annual reports or financial statements, the Proponent must also provide a statutory declaration of the Designated Equity Provider stating, in detail:

- any facts or circumstances that are reasonably expected to materially adversely affect the Designated Equity Provider's financial condition as set out in the annual reports or financial statements submitted in response to this requirement; and
- the revised value of the Designated Equity Provider's Tangible Net Worth, estimated reasonably and in accordance with GAAP (or IFRS, if the Designated Equity Provider has adopted such standard), having regard to the facts and circumstances set out above, together with the calculations supporting such revised value of the Designated Equity Provider's Tangible Net Worth.

In addition to the confirmation and related documents required above, the Proponent must also attach a confirmation from an officer of the Designated Equity Provider(s) (or the Designated Equity Provider(s) itself if it is an individual in the form of a certificate to the best of his or her knowledge that if the Designated Equity Provider is a Designated Equity Provider for more than one Proposal, the Designated Equity Provider has used (and shall continue to use) completely separate and different teams for each Proposal.

### 3.2.23. Executive Summary

The executive summary, which should not exceed six pages, should encapsulate information about (i) the proposed Project, (ii) the Host, and (iii) the Proponent Team, that is set out elsewhere in the Proposal. The executive summary should include, but is not limited to, the following information:

#### Part 1: Proposed Project

A description of the location of the proposed Project, as well as the proposed Financial Closing Date, if applicable, Commercial Operation Date, and Proposed Earliest Restatement Date (if any), of the Project.

A short description of the plant and major equipment to be used in the Project including:

- an overview of major equipment including the steam generators and boilers to the extent that they are or may be used to generate steam used by a turbine generator, and also including gas or steam turbine generators, as applicable, condensers, transformers, and switchgear equipment, together with the manufacturer(s) of the major equipment;
- the number of generating units of each technology (e.g. gas engine, steam turbine, etc.);
- a description of the type of steam turbine, if applicable, including a description of whether or not the steam turbine can be by-passed, and whether the steam turbine is a condensing or back-pressure type;
- whether or not supplementary firing will be used;
- indication if back-up boilers will be used;

- indication of any other redundancy measures that may be employed;
- the footprint (including stack heights and any additional physical features) of the proposed Project;
- details regarding the Primary Fuel and Secondary Fuel(s) to be used by the Project including the fuel type, fuel heating value, annual fuel quantities required for plant operation, fuel suppliers, sourcing strategies demonstrating that the Proponent has contracted for, or is reasonably assured of, fuel supply and availability and, if applicable, fuel delivery (transportation) and storage options;
- details regarding air and noise emissions and proposed mitigating technologies;
- a short description of the connection arrangement including voltage and connection point.

#### Part 2: Host

- A description of the Host, including:
  - a description of the Host Facility, a summary of the Host's business and the proposed application of the Useful Heat Output;
  - a description of the Useful Heat Output delivery system, including approximate distance from the Project to the Host Facility, and pressure, temperature and quantity and amount of condensate return;
  - a description of the metering arrangement which outlines how the Proponent proposes to meter both electricity and Useful Heat Output from the Project to ensure that CHP III PPA obligations are met and that verification, monitoring and settlement can be undertaken fairly and accurately.

Part 3: The Proponent Team

- a description and/or a schematic representation of the organizational structure outlining ownership and contractual links among all entities and/or individuals involved in the development, construction, financing and operation of the proposed Project;
- a summary of the business arrangements for the development, construction and operation of the proposed Project;
- a short description of the key personnel involved in the preparation of the Proposal and in the development of the proposed Project;
- an overview of the proposed operation of the proposed Project, including the expected number of employees, and any unmanned operation capabilities.

### 3.3. Stage 3 - Rated Criteria

In Stage 3, the Proposal will be reviewed and scored against the following Rated Criteria:

RATED CRITERIA		MAXIMUM POINT SCORE AWARDABLE
<b>3.3.1</b>	<b>Project Maturity</b> (1) <i>Environmental Assessment</i> (2) <i>Municipal and Regional Approvals</i> (3) <i>Status of EPC Contract</i>	 8 9 8
<b>3.3.2</b>	<b>Host Facility Risk Mitigation</b> (1) <i>Host Financial Strength</i> (2) <i>Status of Off-Take Agreement</i> (3) <i>Duration of the Off-Take Agreement</i>	 15 5 5
<b>3.3.3</b>	<b>Proponent Team Experience</b> (1) <i>Designated Facility</i> (2) <i>Designated Team Members</i>	 8 7
<b>3.3.4</b>	<b>Financial Assessment</b> (1) <i>Financing Experience</i> (2) <i>Status of Commitment</i> (3) <i>Financial Strength</i>	 10 10 15
	<b>TOTAL</b>	<b>100</b>
	<b>Minimum Required Total Point Score</b>	<b>40</b>

Information set out in the Proposal, including responses to the Technical Questionnaire, the Financial Questionnaire, and the Rated Criteria Information Form, for each Proposal, should contain sufficiently detailed information to enable the OPA to evaluate the merits of both the Proponent and the proposed Project. The onus is on the Proponent to demonstrate its technical and financial abilities to develop, construct and operate the proposed Project, as well as present the work that has already been done on the proposed Project. Proponents are encouraged, where possible, to provide additional information and supporting evidence to substantiate their statements in response to the Rated Criteria, even if this additional information is not specifically requested in this CHP III RFP. Proposals will be evaluated based on all information provided by the Proponent relevant to the Rated Criteria and not solely on the scenarios or levels of progress indicated below. Where a Proponent has not yet achieved the highest

point scenario or level of progress, it may provide details of its strategy on how it intends to complete the necessary steps to achieve that scenario or level of progress. Failure to provide sufficient detailed information or supporting statements or documentation may lead to zero points being awarded for some or all criteria.

For multiple Proposals for multiple Projects submitted by a single Proponent, the OPA reserves the right to reassess the Rated Criteria in Stage 3 on the basis of all such Proposals, taken cumulatively, proceeding and being selected. If, based on this reassessment, the Proponent achieves the Minimum Required Total Point Score for all such Proposals, then all such Proposals shall proceed to Stage 4. Otherwise, the OPA reserves the right to provisionally advance such Proposals to Stage 4 and then reject one or more Proposal(s) starting with the Proposal with the highest Adjusted Evaluated Cost, until the Proponent meets the Minimum Required Total Point Score for each of the remaining Proposal(s).

Proposals that do not achieve the Minimum Required Total Point Score will not be evaluated further and will be rejected.

### **3.3.1. Project Maturity**

The Project Maturity criterion is designed to ensure that a sufficient amount of work has gone into the proposed Project such that there is a reasonable degree of likelihood that the proposed Project will achieve Commercial Operation by the proposed Commercial Operation Date.

#### **(1) Environmental Assessment (8 points)**

Points will be allocated depending on the status of the Proponent's progress in the environmental assessment process required pursuant to the appropriate Category of the Ministry of the Environment's "Guide to Environmental Assessment Requirements for Electricity Projects" dated March 2001, as referred to in O. Reg. 116/01 to the *Environmental Assessment Act* (Ontario) entitled "Electricity Projects" (the "EA Guide").

Proponents should state the category to which the proposed Project belongs according to the EA Guide, and provide the applicable supporting information. The EA Guide describes three possible categories being Categories A, B, and C, as follows:

- **Category A** (where there is no requirement for an environmental assessment under the *Environmental Assessment Act* (Ontario)). The Proponent will satisfy this requirement in its response to the Rated Criteria Information Form confirming that the proposed Project is not subject to the *Environmental Assessment Act* (Ontario);
- **Category B** (i.e., a Project subject to an environmental screening process). If the proposed Project belongs to Category B, the Proponent should submit a copy of the published “Notice of Commencement of a Screening”, or “Notice of Commencement of an Environmental Review”, together with a statement of where and when such publication was published if it is not already set out on the notice; and
- **Category C** (i.e., a Project which requires an individual environmental assessment). If the proposed Project belongs to Category C, the Proponent should submit as part of the Proposal a copy of the “Terms of Reference” as submitted to the Ministry of the Environment in respect of such individual Environmental Assessment, together with a statement of the date of such submission if it is not already set out on the submission.

Points will be allocated from highest to lowest as between each of the following six levels of progress as numbered below:

1. The Proponent does not require permits or approvals for the proposed Project (including proposed Projects belonging to Category A); **or**

All required permits or approvals have been obtained and a “Statement of Completion” has been filed with the Ministry of the Environment; **or**

The Minister of the Environment or the Director of the Environmental Assessment and Approvals Board has made a final environmental assessment decision for the proposed Project.

2. Either a draft Screening Report or a draft Environmental Review Report has been submitted to the Ministry of the Environment and other key agencies/stakeholders for review and comment, **and** the Proponent has either:
  - (a) filed a “Notice of Completion of a Screening Report” and the final Screening Report has been made available for public and agency review; **or**

- (b) filed a “Notice of Completion of an Environmental Review Report” and the final Environmental Review Report has been made available for public and agency review.
- 3. Either a draft Screening Report or a draft Environmental Review Report has been submitted to the Ministry of the Environment and other key agencies/stakeholders for review and comment.
- 4. A Screening Report or Environmental Review Report is being drafted and the Proponent has completed all consultations, **and** the Proponent has commenced the Screening Stage or Environmental Review Stage, including having published a “Notice of Commencement of Screening” or “Notice of Commencement of an Environmental Review”.
- 5. The Proponent has commenced work internally on the environmental assessment process, such as retaining expert advice, but has not filed a Notice of Commencement.
- 6. The Proponent has not yet commenced any work on the environmental assessment process.

Proponents should submit:

- (a) evidence that the environmental assessment process has been completed, such as a Statement of Completion; or
- (b) if the environmental assessment process has not been completed, both of the following:
  - (i) a description of the work already undertaken on the Environmental Screening or Review Process along with any supporting documentation evidencing their status and progress (including Screening Reports or Environmental Review Reports), including whether any elevation requests have been received; and
  - (ii) a timeline and a description of the major milestones necessary to complete the environmental assessment process.

Proponents should note that an environmental assessment may also require consultation with interested persons that may include, depending on the Project, Aboriginal communities. If applicable, the Aboriginal consultation undertaken by the Proponent prior to and during the environmental screening process or other applicable process will be important to the Crown's fulfillment of any constitutional



duty to consult Aboriginal communities with respect to electricity projects. Proponents are referred to the EA Guide, s. A.6.2.3, which reads as follows:

*Consultation with First Nations and Other Aboriginal Communities: In consulting on their projects, Proponents should give particular consideration to the concerns of First Nations and other Aboriginal communities located in the vicinity of, or having a potential interest in, the project. First Nations and other Aboriginal communities are to be identified, notified, consulted, and involved in an appropriate manner. Proponents should identify First Nations and other Aboriginal interests that are relevant to the nature, location and effects of the proposed project.*

## **(2) Municipal and Regional Approvals (9 points)**

Points will be allocated based on the site's status regarding existing land use approvals and/or the steps taken to obtain the appropriate land use approvals or amendments such as: official plan amendment, secondary plan amendment, and zoning by-law amendment for the proposed Project with the local municipality and, where applicable, the regional municipality.

The criteria listed in subparagraphs (a) and (b) below are applicable only in the municipal or regional contexts. In the event a proposed Project is situated on federally-owned lands, First Nations lands, or unorganized lands where planning authority is under the jurisdiction of the Minister of Municipal Affairs and Housing, then the evaluation will be based on criteria that are equivalent to those set out in subparagraphs (a) and (b) below but which are applicable to federally owned lands, First Nations lands, or unorganized lands, as the case may be.

### **(a) Status of site regarding land use approvals (6 points)**

Highest points will be allocated for a proposed Project with a site that:

- conforms with all regional and/or local official plan, secondary plan (where applicable) and zoning by-law(s) that permit for the development of the proposed Project.

High points will be allocated for a proposed Project with a site that:

- has all regional and/or local official plan or secondary plan designation(s) (where applicable), but requires only minor variances to the zoning by-law to allow for the development and operation of the proposed Project.

Medium-high points will be allocated for a proposed Project with a site that:

- has all regional and/or local official plan and secondary plan (where applicable) designation(s), but requires a zoning by-law amendment to allow for the development and operation of the proposed Project.

Medium points will be allocated for a proposed Project with a site that:

- has zoning approvals, but no regional and/or local official plan or secondary plan designation(s) (where applicable) to allow for the development and operation of the proposed Project.

Lowest points will be allocated for a proposed Project with a site that:

- has neither regional and/or local official plan and secondary plan (where applicable) designation(s) or zoning approvals to allow for the development and operation of the proposed Project.

(b) Progress in obtaining applicable amendments (**3** points)

Highest points will be allocated for Proponents who:

- do not require any amendments to any official plan or zoning by-law.

Medium points will be allocated for Proponents who:

- has submitted a complete application to the required municipal approval authorities to obtain applicable amendments to the official plan(s) and/or the zoning by-law(s).

Low points will be allocated for Proponents who:

- has undertaken preliminary consultation with the required municipal approval authorities but has not submitted a complete application to the required municipal approval authorities to obtain the applicable amendments to the official plan(s) and/or the zoning by-law(s).

Zero points will be allocated for Proponents who:

- has not consulted with the required municipal approval authorities to obtain the applicable amendments to the official plan(s) and/or the zoning by-law(s).

Proponents should submit any supporting documentation, including, but not limited to:

- excerpts from the applicable regional and/or local municipal official plan, secondary plans (where applicable) and zoning by-laws and elaborate on the current official plan designation and zoning that applies to the subject lands for the Project;
- a description of the extent to which the proposed Project does not conform to the regional and/or local official plan or zoning by-law and what steps, if any, have been taken to amend the regional and/or local official plan, and zoning by-law to permit the development, construction and operation of the Project and state the expected time frame for receiving each of such approvals;
- an indication of whether any variances will be needed to accommodate the physical features of the Project, such as the stack height or foot print for example; and
- a description of the processes involving the local municipality and, where applicable, the regional municipality, to obtain appropriate regional and/or local official plan amendments, including secondary plan amendments, where applicable, zoning by-law amendments, and any minor variances required in order to ensure development of the proposed Project on the subject lands.

In addition, as supporting evidence, the Proponent should provide a letter, or letters, from each of the local municipality and, where applicable, the regional municipality, outlining conformity with the regional and/or local official plan, secondary plan (where applicable) and zoning by-laws and stating whether the proposed Project requires:

- an amendment to the regional and/or local official plan, including a secondary plan amendment (where applicable);
- a zoning by-law amendment; and/or
- any variances to accommodate any and all physical features of the proposed Project such as the stack height or foot print.

Failure to provide a letter from each applicable municipality may result in zero points being awarded.

### **(3) Status of EPC Contract (8 points)**

Points will be allocated depending on the degree to which the Proponent has made progress in obtaining firm pricing from third party contractors, or corporate commitment, as the case may be, for the engineering, procurement and construction of the proposed Project.

Highest points will be allocated for a Proponent that:

- has: (i) a firm price executed contract with an EPC contractor or firm price executed contracts with contractors responsible for engineering, procurement, and construction of the proposed Project, or (ii) corporate commitment for resources to develop the proposed Project in-house. Such contract(s) or commitment, as applicable, may be conditional upon the Proponent being awarded and entering into a CHP III PPA pursuant to this CHP III RFP.

High points will be allocated for a Proponent that:

- has a firm price executed contract or firm price executed contracts with contractors responsible for the engineering component and either: (i) the procurement, or (ii) the construction component of the proposed Project. Such executed contract(s) may be

conditional upon the Proponent being awarded and entering into a CHP III PPA pursuant to this CHP III RFP.

Medium points will be allocated for a Proponent that:

- has a firm pricing commitment, such as a binding price quotation, from the applicable contractor(s) for some components of the Project such as the procurement, engineering, or construction.

Low points will be allocated for a Proponent that:

- has a soft pricing commitment, such as a non-binding or indicative budget price quotation, from the applicable contractor(s).

Zero points will be allocated for a proposed Proponent that:

- has not identified contractor(s) or has not obtained either a firm pricing commitment or soft pricing commitment with respect to the proposed Project.

In order to evidence the Proponent's classification, the Proponent should provide a letter from the third party contractor(s) stating whether it has executed a contract with the Proponent or provided a firm or soft pricing commitment, if applicable. If no evidence is provided, it will be deemed that the Proponent has not identified a contractor or has not provided either a firm or soft pricing commitment with respect to the proposed Project and zero points will be awarded.

Proponents who will solely rely on in-house expertise and capability and will not use external contractor(s) should outline the corporate commitment of resources to the Project as well as cost and risk mitigation measures.

### **3.3.2. Host Facility Risk Mitigation**

The Host Facility Risk Mitigation criterion is designed to encourage Proponents to seek out and execute an Off-Take Agreement (or to have a commitment to supply the Host Facility, where the Proponent and the Host are the same legal entity) with the most financially viable Host and to incent arrangements that are firm and have contract durations through the end of the Term of the CHP III PPA.

Proponents should provide all information regarding commercial arrangements with the Host, including the financial strength of the Host, the status of the Off-Take Agreement (or commitment, where the Proponent and the Host are the same legal entity), the length and form of the Host Facility commitments and the Useful Heat Output volumes covered by these commitments. The Host Facility's obligations under the Off-Take Agreement (or commitment, where the Proponent and the Host are the same legal entity) may be guaranteed by a credit support commitment, in which case the Proponent should submit a copy of the credit support documentation.

### **(1) Host Financial Strength (15 points)**

Points will be awarded based on the following financial indicators:

- credit rating of the Host;
- Debt to EBITDA ratio of the Host; and
- Debt to total capitalization of the Host;.

In order to demonstrate the financial strength of the Host, Proponents should provide evidence of the credit rating, and audited financial statements of, the Host. If there is a corporate guarantee of the Host's financial commitments to the Proponent, then (i) the credit rating and/or the audited financial statements of the guarantor, and (ii) a copy of the credit support documentation should be provided.

If the Host does not have a credit rating or audited financial statements, Proponents are encouraged to provide other information which may be available, such as unaudited financial statements, in order to more completely review the Host's financial strength. While the presentation of information such as unaudited financial statements does not assure the Proponent of a higher score, this evidence will assist in more completely reviewing the financial strength of the Host.

Hosts or guarantors with better credit ratings and stronger financial indicators will be scored more highly. If no information is provided regarding the credit quality of the Host, the Proponent will receive a lower score.

**(2) Status of Off-Take Agreement or Commitment (5 points)**

Points will be allocated, based upon a review of the Off-Take Agreement (or the declaration and supporting evidence provided under Section 3.2.11, where the Proponent and the Host are the same legal entity), from highest to lowest for the following categories:

Highest points will be allocated for:

- Host Developed Projects

Medium to high points will be allocated for:

- Third-Party Developed Projects with Off-Take Agreements that are only contingent on the award of a CHP III PPA by the OPA and the completion of the proposed Project

Lowest points will be allocated for:

- Off-Take Agreements which are subject to other conditions than the award of a CHP III PPA by the OPA and the completion of the proposed Project. The conditions will be evaluated in terms of the significance to the execution of a final Off-Take Agreement.

**(3) Duration of the Off-Take Agreement (5 points)**

Points will be allocated based on the term of the Off-Take Agreement (or the term of the Host Facility's commitment to take the Useful Heat Output based on the declaration and supporting evidence provided under Section 3.2.11, where the Proponent and the Host are the same legal entity).

Highest points will be awarded for:

- Off-Take Agreements (or commitment to the Facility to take its Useful Heat Output, where the Proponent and the Host are the same legal entity) which are for the full duration of the Term of the CHP III PPA

Lowest points will be awarded for:

- Off-Take Agreements (or commitment to the Facility to take its Useful Heat Output, where the Proponent and the Host are the same legal entity) which have a term that only meets the minimum Mandatory Requirements

### **3.3.3. Proponent Team Experience**

The Proponent Team experience criterion is designed to ensure that the team that has been assembled by the Proponent has a sufficient level of experience with projects substantially similar to the proposed Project, such that there is a high degree of likelihood that the proposed Project will reach Commercial Operation by the proposed Milestone Date and will be developed in accordance with its Proposal and good engineering practices.

This criterion is divided into two sub-criteria, namely Company experience, and Designated Team Members' experience. For purposes of this Section 3.3.3(1) and (2), the definition of a Designated Facility will be the same as the applicable definition set out in the introductory paragraphs to Section 3.2.5 depending on whether the Project is a Host Developed Project or a Third-Party Developed Project.

#### **(1) Company Experience (8 points)**

Higher points will be awarded where:

- the Proponent or Control Group Member experience is in planning, developing, and constructing more Designated Facilities.

Lower points will be awarded to Proponents whose:

- the Proponent or Control Group Member experience is less relevant (e.g., significantly different generation technology, significantly less capital expenditure, or significantly smaller facility) to the proposed Project.

Proponents should indicate, provide supporting evidence, and describe the Designated Facility or Facilities. For each Designated Facility, the Proponent should provide a description of the Designated Facility sufficient to confirm that it qualifies under the definition of "Designated Facility" in the



introductory paragraphs to Section 3.2.5, including the capital cost expenditure, the Nameplate Capacity (for generation projects), and the Commercial Operation Date.

## **(2) Designated Team Members (7 points)**

Highest points will be allocated to Proposals with a Proponent Team that has:

- significantly more Designated Team Members who have extensive successful experience with the proposed type and equivalent sized (MW) combined heat and power generation facilities

Medium points will be allocated to Proposals with a Proponent Team that has:

- significantly more Designated Team Members, who have experience with combined heat and power projects or similar generation projects

Low points will be allocated to Proposals with a Proponent Team that has:

- more Designated Team Members, with extensive experience working together in the development of these Designated Facilities

Lowest points will be allocated to Proposals with a Proponent Team that has:

- additional Designated Team Members with limited experience

The Proposal should clearly identify each of the Designated Employees, or Designated Associates if applicable, and describe how they acted in a Managerial Capacity with respect to the Designated Facility or Designated Facilities. Proposals should describe the relevant experience in the form of resumes, curriculum vitae and any professional designation(s) of the Designated Employees or Designated Associates.

### **3.3.4. Financial Assessment**

The Financial Assessment is designed to ensure that the Proponent's Financial Plan is sound and that the Proponent has secured the necessary financing for the proposed Project. The Proponent shall demonstrate that it has the financial capability to finance the Project through internally generated or available funds and/or commitments from equity providers or lenders, as the case may be, and that it has a demonstrated

history of financing comparably sized generation facilities or cogeneration facilities (for a Third-Party Developed Project), or comparably sized generation facilities, cogeneration facilities, or major construction projects (for a Host Developed Project).

The Financial Assessment will be based on a detailed Financial Plan description, being the Proponent's response to the Financial Questionnaire (attached as Appendix F) and all supporting financial information that is provided by the Proponent.

Proponents that are self-financing all or part of the proposed Project are required to address all of the requirements outlined in Section 3.2.22 to establish their Tangible Net Worth.

For greater certainty, if any information in the Proposal, including any financing commitment, is conditional on amending the CHP III PPA, the OPA reserves the right to reject the Proposal or award zero points for the Financial Assessment.

Proponents that assert unconditionally that no equity will be required to finance the proposed Project should provide evidence from lenders that they are willing to provide 100% of the required financing as debt. The Proponent should provide a Firm Commitment letter from these lenders indicating that the proposed Project can be financed with 100% debt.

**(i) Financing Experience (10 points)**

For Third-Party Developed Projects, points will be allocated from highest to lowest points according to the following levels:

1. The Proponent or its Control Group Member has financed a generation or cogeneration facility within the last 24 months with a nameplate capacity that is at least 80% of the Annual Average Contract Capacity of the proposed Project.
2. The Proponent or its Control Group Member has successfully financed a generation or cogeneration facility within the last 24 months with a nameplate capacity that is at least 50% of the Annual Average Contract Capacity of the proposed Project.

3. The Proponent or its Control Group Member has financed a generation or cogeneration facility within the last 36 months with a nameplate capacity that is at least 50% of the Annual Average Contract Capacity of the proposed Project.
4. The Proponent or its Control Group Member has financed a generation or cogeneration facility within the last 48 months with a nameplate capacity that is at least 50% of the Annual Average Contract Capacity of the proposed Project.
5. The Proponent or its Control Group Member has financed a generation or cogeneration facility within the last 60 months with a nameplate capacity that is at least 50% of the Annual Average Contract Capacity of the proposed Project.
6. The Proponent or its Control Group Member has financed a generation or cogeneration facility within the last 60 months with a nameplate capacity that is at least 25% of the Annual Average Contract Capacity of the proposed Project.

For Host Developed Projects, points will be allocated from highest to lowest points according to the following levels:

1. The Proponent or its Control Group Member has financed a generation or cogeneration facility or a substantially similar major construction project within the last 24 months, and that facility or project has a total project cost of at least 40% of the Total Project Cost.
2. The Proponent or its Control Group Member has financed a generation or cogeneration facility or a substantially similar major construction project within the last 24 months, and that facility or project has a total project cost of at least 25% of the Total Project Cost.
3. The Proponent or its Control Group Member has financed a generation or cogeneration facility or a substantially similar major construction project within the last 36 months, and that facility or project has a total project cost of at least 25% of the Total Project Cost.
4. The Proponent or its Control Group Member has financed a generation or cogeneration facility or a substantially similar major construction project within the last 48 months, and that facility or project has a total project cost of at least 25% of the Total Project Cost.

5. The Proponent or its Control Group Member has financed a generation or cogeneration facility or a substantially similar major construction project within the last 60 months, and that facility or project has a total project cost of at least 25% of the Total Project Cost.

To meet this requirement, the Proponent must evidence the Proponent's or its Control Group Member's experience in successfully financing another generation or cogeneration facility or substantially similar major construction project, as the case may be. The Proponent must indicate the name, location, generation type (technology), nameplate capacity (in MW), the corporate and financing structure, and date of financial close for each generation or cogeneration facility or substantially similar major construction project.

For greater certainty, Proponents shall not aggregate more than one generation or cogeneration facility or a substantially similar major construction project, as the case may be, for purposes of this requirement.

**(ii) Status of Commitment (10 points)**

The combined status of commitment for a Proponent's Financial Plan will be based on the relative proportions of self-financing, Firm Commitments and Soft Commitments that comprise the Proponent's financial plan.

High points will be awarded for self-financing of the proposed Project.

Medium to high points will be allocated for Firm Commitments from the sources of financing listed in the financial plan.

Low to medium points will be allocated for Soft Commitments from the sources of financing listed in the Financial Plan.

**(iii) Financial Strength (15 points)**

The combined financial strength for a Proponent's Financial Plan will be based on the relative proportions of self-financing, debt and equity that comprise the Proponent's Soft Commitments and Firm Commitments.

The financial strength of the various sources of financing will be evaluated in terms of their financial resources based on the criteria outlined in the matrix below.

There is no medium financial strength for lenders.

<b>Financial Strength of Component</b>	<b>Self-Financed</b>	<b>Designated Equity Provider</b>	<b>Lenders</b>
<b>Rating</b>	<b>Tangible Net Worth (\$/MW of Annual Average Contract Capacity)</b>	<b>Tangible Net Worth (\$/MW of Annual Average Contract Capacity)</b>	<b>Category of Lender</b>
High	\$750,000/MW	\$750,000/MW	Category A Lender
Medium	\$500,000/MW	\$500,000/MW	
Low	\$250,000/MW	\$250,000/MW	Category B Lender

## 3.4. Stage 4 – Economic Bid Evaluation

All Proposals that have achieved the Minimum Required Total Point Score in Stage 3 will have their Economic Bid Statements opened, and each such Proposal will undergo the Economic Bid Evaluation to calculate its Evaluated Cost and Adjusted Evaluated Cost.

### 3.4.1. Calculating Evaluated Cost

The “Evaluated Cost” is calculated to assess the economic competitiveness of each Proposal. The Economic Bid Evaluation Model, which will be posted on the Generation Procurement Website, will be used to calculate the Evaluated Cost of each Proposal. The Economic Bid Evaluation Model will also aid Proponents in preparing their Economic Bid Statements, on the understanding, however, that the data and spreadsheets in such model are provided solely for the convenience of Proponents in preparing Proposals under this CHP III RFP. The OPA and its directors, officers, employees, advisors, and agents, as the case may be, assume no responsibility whatsoever, and expressly disclaim any liability, for the contents of such model (including the data and formula it contains and the results produced therefrom) or the manner in which this section or the contents of the documents and spreadsheets or the results produced are used by Proponents. Proponents are reminded that the calculations are determined solely for purposes of conducting the Economic Bid Evaluation and the information provided is not intended to be a forecast by the OPA or its advisors.

Evaluated Costs will be calculated as follows:

#### ***Step 1: Determination of Contract Prices throughout each Contract Year***

Where the Proponent has not submitted an Incremental Contract Price or Restated Submitted Hourly Electricity Output Profile, the Initial Contract Price provided in the Economic Bid Statement will be applied in the Economic Bid Evaluation Model, without adjustment, on the Commercial Operation Date of the Project. For each Contract Year thereafter during the Term, the Contract Price will be adjusted for transportation and handling costs and inflation to the extent specified by the Proponent in the Economic Bid Statement and set out below.

The Transport and Handling Indexing Factor is a portion of up to 20% of the Initial Contract Price stated by the Proponent in the Economic Bid Statement, and will be indexed on a monthly basis under the CHP III PPA to the monthly change in Statistics Canada's Ontario Diesel Fuel Price Index (also referred to as the Transport and Handling Index) to account for variability in transport and handling costs driven by fuel prices over the Term. For the sole purposes of the economic bid evaluation under this CHP III RFP including the Economic Bid Evaluation Model, the Transport and Handling Index is assumed to escalate at 8% annually.

The Operating Cost Indexing Factor is a portion of up to 20% of the Initial Contract Price stated by the Proponent in the Economic Bid Statement (separate from that portion of the Contract Price covered by the Transport and Handling Indexing Factor), and will be indexed on an annual basis under the CHP III PPA to the Specified Index (also referred to as the Operating Cost Index) to account for the variability of other costs over the Term.

For the sole purposes of the economic bid evaluation under this CHP III RFP including the Economic Bid Evaluation Model, the Operating Cost Index is assumed to escalate at 2% annually.

The remaining portion of the Initial Contract Price shall not be subject to any indexation whatsoever.

Where the Proponent has submitted an Incremental Contract Price and Restated Submitted Hourly Electricity Output Profile, the Incremental Contract Price for evaluation purposes will be adjusted from the Commercial Operation Date to the Proposed Earliest Restatement Date to reflect both the Transport and Handling Indexing Factor and the Operating Cost Indexing Factor.

***Step 2: Determination of Above Market Cost***

The Above Market Cost for each Contract Year of the Term is defined as the difference between:

- (a) the product of: (i) the Contract Price for that Contract Year and (ii) the total output of the Project based on the Submitted Hourly Electricity Output Profile or Restated Submitted Hourly Electricity Output Profile, as the case may be in that Contract Year; and
- (b) the Gross Energy Market Revenues earned by the Project based on the Submitted Hourly Electricity Output Profile or Restated Submitted Hourly Electricity Output Profile, as the case may be in that Contract Year.

**Step 3: Determination of Evaluated Cost**

Where the Proponent has not submitted an Incremental Contract Price or Restated Submitted Hourly Electricity Output Profile, the Evaluated Cost is calculated as (i) the sum of the present values, determined as of the mid-point of the first Contract Year, of the Above Market Cost in each Contract Year of the Term, divided by (ii) the Annual Average Contract Capacity over the Term.

Where the Proponent has submitted an Incremental Contract Price and/or Restated Submitted Hourly Electricity Output Profile, the Evaluated Cost shall be the greater of the following:

- (a) the sum of the present values, determined as of the mid-point of the first Contract Year, of the Above Market Cost in each Contract Year of the Term, divided by the Annual Average Contract Capacity over the Term, or
- (b) the result of a similar calculation as described in (a) immediately above, but with the Above Market Cost for each Contract Year including and following the Proposed Earliest Restatement Date calculated using the proposed Contract Price plus Incremental Contract Price and Restated Submitted Hourly Electricity Output Profile. In addition, the Annual Average Contract Capacity over the Term will reflect the Restated Submitted Hourly Electricity Output Profile from and after the Proposed Earliest Restatement Date and in each subsequent year of the Term thereafter.

**3.4.2. Calculating Adjusted Evaluated Costs**

The Adjusted Evaluated Cost for each Proposal will be calculated as the product of (i) one minus the Discount Factor, and (ii) the Proposal's Evaluated Cost.

The Discount Factor for the Proposal will be calculated as the product of the point score awarded in Stage 3 and a scaling factor of .0025. As a result, Proposals receiving higher point scores in Stage 3 will be given a higher Discount Factor.



## 3.5. Stage 5 – Selection of Projects

The ultimate stage of the Evaluation Process will select Proposals based on transmission limits (Section 3.5.1) and on Evaluated Cost and Adjusted Evaluated Cost (Sections 3.5.2 – 3.5.3).

### 3.5.1. Application of Transmission Screening

#### (1) General Process

All Proposals, regardless of whether they are connected to the Transmission System, Local Distribution System, or an End User, will be subject to the Circuit Screen, the Zone Screen and the Area Screen, all in accordance with this Stage 5 (the “Transmission Screening”) due to the direct and indirect effects on the Transmission System. Accordingly, for purposes of this Section 3.5.1, the Transmission Connection Point of each Project determined pursuant to Section 3.2.15(2) will be used.

The Transmission Screening recognizes the fact that the available transmission capacity on the existing Transmission Systems is limited in certain parts of the Province of Ontario, and is therefore structured to select Proposals that have the lowest Adjusted Evaluated Costs and which, in the aggregate, have Maximum Contract Capacities (as defined in the Glossary of Terms) that do not exceed the applicable transmission limits. This will ensure continued reliable system operation and provide a reasonable assurance that significant Transmission System upgrades will not be necessary.

The Transmission Screening has three separate stages: (i) the Circuit Screen, (ii) the Zone Screen and (iii) the Area Screen. The estimates of the limits, as outlined in the Transmission Constraints Matrix in Appendix Q or as described in this Section 3.5.1, are estimates developed for evaluation purposes only under this CHP III RFP. Therefore, Proponents should not rely upon the Transmission Screening and the limitations used for evaluation purposes under this CHP III RFP as definitive of the actual transmission restrictions and limits that may be applicable to any Proposal, nor does the Transmission Screening address any possible distribution or other restrictions and limits that may be applicable. Accordingly, a Proponent must check with the IESO, Transmitter, the LDC(s), and the End User(s), as applicable, to determine all transmission, distribution, and other restrictions that may affect its proposed Project.

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**(2) Application of the Circuit Screen**

All Proposals will be subject to the Circuit Screen. Each proposed Project will have a Transmission Connection Point, and an applicable limit, on one of the circuits or stations set out below:

- a) for a Specified Circuit in Appendix Q, the applicable limit will be the corresponding Specified Circuit Limit set out in Appendix Q;
- b) for a 230 kV circuit that connects two stations and that is not specified in the Transmission Constraints Matrix in Appendix Q, the applicable circuit limit will be an amount equal to the greater of (i) 100 MW, or (ii) the largest Nameplate Capacity accepted by the IESO in the Part One System Impact Assessments and System Impact Assessments for all Projects that have proposed a Transmission Connection Point at that 230 kV circuit;
- c) for a 115 kV circuit that connects two stations and that is not specified in the Transmission Constraints Matrix in Appendix Q, the applicable circuit limit will be an amount equal to the greater of (i) 50 MW, or (ii) the largest Nameplate Capacity accepted by the IESO out of all of the Part One System Impact Assessments and System Impact Assessments for those Projects that have proposed a Transmission Connection Point at that 115 kV circuit;
- d) for a radial circuit (i.e. a circuit that does not connect two stations) that is not specified in the Transmission Constraints Matrix in Appendix Q, the applicable circuit limit will be the overall capacity of that radial circuit, being the same value indicated in each of the Part One System Impact Assessments and System Impact Assessments for Projects that have proposed a Transmission Connection Point at that radial circuit; and
- e) for a Transformer Station (TS) or a Switching Station (SS), the applicable station limit will be equal to the largest Nameplate Capacity accepted by the IESO out of all of the Part One System Impact Assessments and System Impact Assessments for those Projects that have proposed a Transmission Connection Point at that TS or SS.

Proposals with Transmission Connection Points on the same circuit or station, as the case may be, will be ranked in ascending order of Adjusted Evaluated Cost. However, if, on any given Specified Circuit:

- 
- (i) there is a marginal Proposal (or marginal Proposals, where there are two or more marginal Proposals that have the identical Adjusted Evaluated Cost) that causes the cumulative Maximum Contract Capacities of all such Proposal(s), and all Proposals with lower Adjusted Evaluated Costs, to exceed the Specified Circuit Limit for that particular Specified Circuit; and
  - (ii) that Specified Circuit is in a common transmission corridor with an alternative Specified Circuit that is identified in Appendix Q; and
  - (iii) one or more Proponents of such marginal Proposal(s) has indicated, in its response to the Technical Questionnaire, a willingness to alter their proposed Connection Point to an alternative Specified Circuit within such common transmission corridor; and
  - (iv) the alternative Specified Circuit within such common corridor has sufficient capacity to accommodate the Maximum Contract Capacity of the marginal Project (or the combined Maximum Contract Capacities of two or more marginal Proposals, where there are two or more marginal Proposals that have the identical Adjusted Evaluated Cost and have all indicated a willingness to alter their proposed Connection Points to an alternative Specified Circuit within such common transmission corridor);

then the OPA will deem the Proposal of each such marginal Project to have stated a Connection Point on such alternative Specified Circuit (which shall apply for all purposes including the development of the Project under the CHP III PPA if it is ultimately selected), and the OPA will recommence steps (i) and (ii) above to determine whether or not any other marginal Project(s) will have their Connection Point altered as set out above.

After all iterations of the above process have been repeated as necessary and completed, the Proposals then with the lowest Adjusted Evaluated Costs up to, but not including, the marginal Proposal (or marginal Proposals, where there are two or more marginal Proposals that have the identical Adjusted Evaluated Cost) that cause(s) the cumulative Maximum Contract Capacities of all such Proposals to exceed the applicable Specified Circuit, circuit, or station limits will proceed to the Zone Screen. All other Proposals will be rejected. Notwithstanding the foregoing, the OPA reserves the right to pass the marginal Proposal (or marginal Proposals, where there are two or more marginal Proposals that have the identical Adjusted Evaluated Cost) that cause(s) the cumulative Maximum Contract Capacities of such

Proposals to exceed the applicable Specified Circuit, circuit, or station limit. This reserved right can be applied for one or more Specified Circuits in the OPA's Discretion.

All Proposals that have passed the Circuit Screen will proceed and be subject to the Zone Screen and the Area Screen.

### **(3) Application of the Zone Screen**

Proposals that were not eliminated by the Circuit Screen will be screened by Zone.

Proposals within each Zone will be ranked in ascending order of Adjusted Evaluated Cost, and the Proposals with the lowest Adjusted Evaluated Costs up to, but not including, the marginal Proposal (or marginal Proposals, where there are two or more marginal Proposals that have the identical Adjusted Evaluated Cost) that cause(s) the cumulative Maximum Contract Capacities of such Proposals to exceed the Zone Limit for that particular Zone will proceed to the Area Screen. All other Proposals will be rejected. Notwithstanding the foregoing, the OPA reserves the right to allow the marginal Proposal (or marginal Proposals, where there are two or more marginal Proposals that have the identical Adjusted Evaluated Cost) that cause(s) the cumulative Maximum Contract Capacities of such Proposals to exceed the Zone Limit for any Zone to continue to be evaluated. This reserved right can be applied for one or more Zones at the OPA's Discretion.

### **(4) Application of the Area Screen**

Proposals that were not eliminated by the Zone Screen will be screened by Area.

Proposals within each Area will be ranked in ascending order of Adjusted Evaluated Cost, and the Proposals with the lowest Adjusted Evaluated Costs up to, but not including, the marginal Proposal (or marginal Proposals, where there are two or more marginal Proposals that have the identical Adjusted Evaluated Cost) that cause(s) the cumulative Maximum Contract Capacities of such Proposals to exceed the Area Limit for that particular Area will continue to be evaluated. Notwithstanding the foregoing, the OPA reserves the right to allow the marginal Proposal (or marginal Proposals, where there are two or more marginal Proposals that have the identical Adjusted Evaluated Cost) that cause(s) the cumulative

Maximum Contract Capacities of such Proposals to exceed the Area Limit for any Area to continue to be evaluated. This reserved right can be applied for one or more Areas at the OPA's Discretion.

### **3.5.2. Initial Stack of Proposals**

Following completion of the Circuit Screen, the Zone Screen and the Area Screen, those Proposals that remain will be progressively selected for inclusion in the Initial Stack from the lowest to highest Adjusted Evaluated Cost up to, but not including the marginal Proposal, such that the cumulative Maximum Contract Capacity of the selected Proposals prior to any Restatement does not exceed the Target Capacity.

The OPA reserves the right at the OPA's Discretion to select the marginal Proposal that would result in cumulative Maximum Contract Capacity surpassing the Target Capacity for inclusion in the Initial Stack.

Any Proposals not selected through this process will be set aside (a "Set Aside Proposal") for consideration under Section 3.5.4.

In the event that the combined total Maximum Contract Capacity of all Proposals that have passed the Circuit Screen, Zone Screen, and Area Screen is less than the Target Capacity, all such Proposals will be selected for inclusion in the Initial Stack.

### **3.5.3. Final Stack of Proposals**

In undertaking the review described below, the OPA will initially utilize a Threshold Percentage equal to 115%. After completing this initial review, the OPA may, in its Discretion, repeat the review described in the preceding paragraph utilizing a Threshold Percentage equal to 125%.

Following creation of the Initial Stack, Proposals will be progressively reviewed for inclusion in the Final Stack. If the Proposal with the highest Adjusted Evaluated Cost in the Initial Stack is more than Threshold Percentage of the weighted average Adjusted Evaluated Cost of the other Proposals in the Initial Stack with lower Adjusted Evaluated Costs, then the OPA may reject such Proposal. If the Evaluation Team determines to reject such Proposal, then if the Adjusted Evaluated Cost of the Proposal with the highest Adjusted Evaluated Cost of the remaining Proposals in the Initial Stack is more than

Threshold Percentage of the weighted average Adjusted Evaluated Cost of the other remaining Proposals with lower Adjusted Evaluated Costs remaining in the Initial Stack, the OPA may determine to reject such Proposal, and so on in respect of the Proposal with the highest Adjusted Evaluated Cost of the remaining Proposals, until the last Proposal remaining in the Initial Stack. Other than the Proposal with the lowest Adjusted Evaluated Cost, the OPA may reject each Proposal in the Initial Stack that has an Adjusted Evaluated Cost that is more than Threshold Percentage of the weighted average Adjusted Evaluated Cost of all the other Proposals in the Initial Stack with lower Adjusted Evaluated Costs provided it has determined to reject each of the immediately preceding Proposals with higher Adjusted Evaluated Costs.

In addition, if a Designated Equity Provider is also listed as a Designated Equity Provider of more than one Proposal submitted under this CHP III RFP and the (combined) cumulative Tangible Net Worth required for such Designated Equity Provider exceeds its stated Tangible Net Worth, the OPA may reject from the Final Stack one or more Proposals in accordance with the procedure set out in Section 3.2.22.

If the OPA rejects any Proposals in this step, the stack of Proposals remaining after this process will form the Final Stack.

If the OPA does not reject any Proposals in this step, it may, in its Discretion, choose one or more of the Set Aside Proposals for inclusion in the Final Stack starting with the Proposal with the lowest Adjusted Evaluated Cost and then progressing to the proposal with the next lowest Adjusted Evaluated Cost and so on. A Set Aside Proposal cannot be selected for inclusion in the Final Stack unless all other Set Aside Proposals with lower Adjusted Evaluated Costs have been selected for inclusion in the Final Stack. The stack of Proposals remaining after this process will form the Final Stack.

### **3.5.4. Selected Proponents**

Those Proponents whose Proposals are included in the Final Stack will be the Selected Proponents.

### 3.5.5. **Potential Need to Repeat Evaluation**

If a Proposal becomes invalid, including but not limited to the following reasons:

- The Proponent fails to deliver the Initial Completion and Performance Security within six Business Days as required in Section 2.8;
- the Proponent fails to deliver the executed CHP III PPA and all CHP III PPA Closing Documents within eight Business Days as required in Section 2.8;
- the Proponent makes or has made a material misrepresentation in the Proposal; and
- the Proponent is in breach or default of this CHP III RFP,

then the OPA reserves the right to repeat the evaluation process starting with the step outlined in Section 3.5.1.

## **4. Terms and Conditions**

### **4.1. General Terms and Conditions**

- (a) Except where expressly set out to the contrary in this CHP III RFP, all Submissions shall become the property of the OPA and shall not be returned to the CHP III Party.
- (b) For the purpose of determining time of receipt of any Submission, the clock at the prescribed location for submission shall govern.
- (c) The onus remains solely with the CHP III Party to instruct courier and delivery personnel to deliver Submissions to the relevant specified location by the relevant Submission Deadline.
- (d) All Submissions must be complete in all respects at the time of submission.

### **4.2. Definitions**

Capitalized terms used in this CHP III RFP have the respective meanings ascribed to them in the Glossary of Terms set out in Appendix A. Unless otherwise indicated, references to sections and appendices are references to sections and appendices in this CHP III RFP.

### **4.3. CHP III RFP Documents**

The following materials form part of, and are incorporated into, this CHP III RFP:

- (1) the body of this CHP III RFP and all Appendices;
- (2) the CHP III PPA; and
- (3) Addenda.



Any conflict or inconsistency between this CHP III RFP, the Appendices, or any Addenda shall be resolved by interpreting the documents and information in the following order from highest priority to lowest priority:

- (1) Addenda;
- (2) this CHP III RFP; and
- (3) Appendices to this CHP III RFP.

All other information (including responses to questions or comments submitted under this CHP III RFP, information provided in Individual Information Sessions and supporting material) is provided for information purposes only, does not form part of this CHP III RFP and are not binding on the OPA.

In the event of any conflict or inconsistency between the terms of this CHP III RFP and the Proposal, this CHP III RFP shall govern over the Proposal to the extent of any conflict or inconsistency.

Once a CHP III PPA is executed, the CHP III PPA will govern over this CHP III RFP, and this CHP III RFP will govern over the Proposal, in the manner as set out in the CHP III PPA.

#### **4.4. Cancellation or Return of Proposal Security**

For each Proponent whose Proposal fails Stage 1 or Stage 2, the applicable Proposal Security will be cancelled or returned within ten (10) Business Days of the Proponent being notified of the Proposal's failure.

For each Proponent whose Proposal passes Stage 2, but is either rejected in Stage 3 or 4 or is not selected in Stage 5, the applicable Proposal Security will be returned or cancelled within ten (10) Business Days of the OPA's announcement of all of the Selected Proponents.

For each Selected Proponent, the applicable Proposal Security will be cancelled or returned upon delivery of the Initial Completion and Performance Security and the executed CHP III PPA and all CHP III PPA Closing Documents pursuant to Section 2.8.

## **4.5. CHP III Parties to Bear All Costs**

CHP III Parties will bear all costs and expenses in connection with their participation in this CHP III RFP, including any costs incurred in the review of this CHP III RFP and any expert advice required in responding to this CHP III RFP. The OPA and its advisors shall not be liable to pay any CHP III Party costs under any circumstances. The OPA will not reimburse any CHP III Party in any manner whatsoever in the event of rejection of any or all Proposals. The OPA will not reimburse any CHP III Party in the event of the cancellation of this CHP III RFP, except where the OPA exercises its rights reserved under subsections 4.7(j) or (k) of this CHP III RFP to cancel it, and only to the extent that Registration Fees will be refunded to each Registered Participant pursuant to Section 2.5.1(2). Subject to Section 4.8, by submitting any Submission in response to this CHP III RFP, the CHP III Party irrevocably and unconditionally waives any claims against the OPA and its advisors relating to the CHP III Party's costs and expenses for that Submission.

## **4.6. Verification**

All statements, information and documentation submitted as part of any Submission are subject to verification and enforcement in accordance with the terms of this CHP III RFP and the CHP III PPA. If such statements, information or documentation are determined by the OPA to be incorrect or misleading, the OPA reserves the right to re-evaluate the Submission and the CHP III Party's status, including its compliance with the Mandatory Requirements in Stage 2, and revise any point scores awarded to the Proposal in Stage 3, to revise the Adjusted Evaluated Cost for the Proposal that was determined in Stage 4, and to revise the Proposal's ranking in Stage 5.

## **4.7. Reserved Rights of the OPA**

The OPA reserves the right to:

- (a) request written clarification or the submission of supplementary written information from any CHP III Party and incorporate such CHP III Party's response to that request for clarification into the CHP III Party's Submission;

- 
- (b) meet with some or all CHP III Parties to discuss aspects of their Submissions;
  - (c) verify with any CHP III Party, or with a third party, any information set out in a Submission;
  - (d) contact any party providing financing, including obtaining information on such party whether directly from the party or a third party;
  - (e) check references other than those provided by any CHP III Party;
  - (f) disqualify any CHP III Party whose Submission contains misrepresentations or any other inaccurate or misleading information;
  - (g) waive any informality or irregularity at the OPA's Discretion;
  - (h) disqualify any CHP III Party or the Submission of any CHP III Party who has engaged in conduct prohibited by this CHP III RFP;
  - (i) make changes, including substantial changes, to this CHP III RFP provided that those changes are issued by way of Addenda in the manner set out in this CHP III RFP;
  - (j) cancel this CHP III RFP process at any time for any reason whatsoever (including, without limitation, the Adjusted Evaluated Costs of the Proposals in the Final Stack not being acceptable to the OPA in its Discretion);
  - (k) cancel this CHP III RFP process at any time for any reason whatsoever (including, without limitation, the Adjusted Evaluated Costs of the Proposals in the Final Stack not being acceptable to the OPA in its Discretion), and issue a new RFP for the same or similar deliverables;
  - (l) reject any Proposal where the Proponent, prior to execution of the CHP III PPA, has made an assignment for the benefit of its creditors generally under any Insolvency Legislation (as defined in the CHP III PPA), or consents to the appointment of a receiver, 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;

- (m) reject any or all Proposals at the OPA's Discretion;
- (n) accept only one Proposal; or
- (o) if only one Proposal is received, elect to accept or reject it,

and these reserved rights are in addition to any other express rights or any other rights which may be implied in the circumstances and the OPA shall not be liable for any expenses, costs, losses or any direct or indirect damages incurred or suffered by any Proponent or any third party resulting from the OPA exercising any of its express or implied rights under this CHP III RFP.

By submitting its Proposal, the Proponent authorizes the collection by the OPA of the information set out under (c), (d), and (e).

## **4.8. Legal Liability for Material Breach of CHP III RFP**

Each Registered Participant and Proponent agrees that if the OPA commits a material breach of this CHP III RFP, the OPA's liability to the Proponent and Registered Participants, as applicable, and the aggregate amount of damages recoverable against the OPA for any matter relating to or arising from that material breach, whether based upon an action or claim in contract, warranty, equity, negligence, intended conduct or otherwise, including any action or claim arising from the acts or omissions, negligent or otherwise, of the OPA, shall be no greater than the Submission preparation costs that the Registered Participant or Proponent seeking damages from the OPA can demonstrate, respectively. Under no circumstances whatsoever shall the OPA be liable for any indirect, punitive or consequential damages.

## **4.9. CHP III PPA**

Each Selected Proponent must sign and deliver the CHP III PPA, in the form circulated by the OPA, within eight (8) Business Days of the CHP III PPA Receipt Date, together with all CHP III PPA Closing Documents.

Note that the Selected Proponent must deliver the Initial Completion and Performance Security to the OPA as and when pursuant to Section 2.8, and must send a Consultation Information Request to the Crown as referenced in Section 4.10 below prior to having delivered the CHP III PPA to the OPA.

The complete Proposal, as submitted by the Proponent and the CHP III RFP, will be incorporated into and form part of the CHP III PPA.

## **4.10. Aboriginal Peoples**

The OPA intends that Proponents give particular consideration to the interests and concerns of Aboriginal peoples during the planning and development stage of a proposed Project.

During the process for consulting Aboriginal peoples on the Independent Power System Plan ("IPSP"), First Nations and Métis peoples indicated their desire to be consulted in the planning of electricity projects. In recognition of this desire and of the statutory and constitutional requirements to consult that may apply to a Project, the Ministerial Directive required the OPA to conduct appropriate consultation with First Nations and Métis peoples through the application of the guidelines and process developed in accordance with the Minister of Energy's earlier directive to the OPA dated August 27, 2007. The guidelines, as amended appropriately for the circumstances, are attached hereto at Appendix R, ("Best Practices, Good Business; Consulting with First Nation and Métis Communities").

The consultation process, developed by the OPA in collaboration with the Crown, is intended to enable the Crown to ensure that any necessary consultation with Aboriginal peoples takes place. It is not intended to replace existing consultation requirements or mechanisms but to facilitate compliance and to improve coordination where there are multiple consultation requirements under different regulatory regimes. Consultation that has already been undertaken prior to the submission of Proposal(s), either by the Proponent alone or in the course of approvals such as municipal land use planning approvals or Ministry of National Resources site release processes, is to be considered in developing specific consultation plans.

The central feature of the consultation process under the CHP III PPA is a requirement, where necessary, that selected Proponents enter into an agreement with the Crown in relation to consultation of Aboriginal peoples with respect to the Project.

Where the Crown determines that such an agreement with the Crown is required, such agreement will include a consultation plan to be agreed upon between the Proponent and the Crown and attached in a schedule to the CHP III PPA. It is the Crown's expectation that the plan will focus on how the Proponent will engage in consultation of Aboriginal peoples in the course of complying with existing regulatory approval processes.

The following is a more detailed description of the consultation process that applies to Projects under a CHP III PPA:

- After the award but before the Proponent enters into the CHP III PPA, the Proponent must contact the Crown by letter ("Consultation Information Request") requesting:
  - (i) a determination of whether the Proponent must enter into an agreement with the Crown in relation to consultation on the Project; and, if so,
  - (ii) the Crown's identification of the Aboriginal communities to consult.

The CHP III PPA includes a representation and warranty by the Supplier that the Supplier has made the Consultation Information Request. The Consultation Information Request must include a record of all pre-contract engagement with Aboriginal peoples. The expected record of engagement is set out in detail below.

- Within 45 days of the date of the CHP III PPA, or such reasonable further time as the OPA may provide, the Proponent must furnish the OPA with the Crown Letter responding to the Consultation Information Request. The Crown Letter will be provided in substantially the form of either Form A or B as attached hereto as Appendix S.
- If a Proponent receives Crown Form Letter B, indicating a need to enter into an agreement with the Crown, then the Proponent must enter into such an agreement regarding consultation of Aboriginal peoples. Within 90 days of the date of the CHP III PPA, or such reasonable further time as the OPA may provide, the Proponent must provide the OPA with a copy of the agreement with the Crown. The form of the agreement will be substantially the form attached hereto as Appendix T.

- The agreement provides that the Crown will, upon request from the Proponent, provide written confirmation that, as of a certain date, the Proponent is or is not in breach of or default under the agreement with the Crown.

Although the Proponent is required to provide the Crown with a Consultation Information Request on or before the date of signing the CHP III PPA, the OPA expects that Proponents will engage with Aboriginal peoples as necessary well prior to that time. To that end, the OPA provides guidance for Proponent engagement with Aboriginal peoples below.

As a means of determining whether there are First Nations' or Métis' interests affected by a proposed Project, a Proponent should consider whether there are:

- Aboriginal communities located in the vicinity of the proposed Project;
- Aboriginal communities with a potential interest in the proposed Project;
- any established or asserted First Nations or Métis rights;
- any Indian Reserves;
- any treaty rights or treaty areas;
- any other lands owned by First Nations or Métis;
- any real and potential land claims, including specific or comprehensive claims (as those terms are used by the Department of Indian and Northern Affairs Canada);
- ongoing relevant litigation; and
- any public assertions regarding potential adverse effects on Aboriginal peoples' rights and interests or treaty rights, including effects on Aboriginal hunting, fishing, trapping and/or gathering of edible plants or impacts on Aboriginal burial, archaeological or other culturally significant sites.

In the Consultation Information Request to the Crown, the Proponent should outline the methods used to identify potential Aboriginal interests in the Project and detail any and all steps taken to engage with interested First Nations or Métis communities. The Proponent should submit:

- a description of the Project including location and the nature of the project;
- copies of any and all correspondence with First Nations and Métis communities, and/or their representative bodies, with respect to the Project and copies of any minutes of meetings with First Nations and/or Métis communities;
- copies of all correspondence with government agencies regarding Aboriginal peoples and the proposed Project;
- an outline of the engagement steps taken and consultation steps proposed with any and all supporting documentation, including:
  - (a) the methods developed or used for engagement with First Nations and Métis communities;
  - (b) whether the First Nations or Métis communities have been notified of the Project and how;
  - (c) the level of engagement to date;
  - (d) the issues identified;
  - (e) the issues under discussion with First Nations or Métis communities;
  - (f) if potentially adverse impacts on asserted or proven Aboriginal rights or interests have been identified, the mechanisms in place or contemplated to minimize such potential impacts; and
  - (g) whether any agreements or contracts have been entered into with First Nations or Métis communities or are contemplated.



## **4.11. Changes to Proponent Team**

No changes in the Proponent Team or any sources identified in the Proposal with respect to financing and set forth by the Proponent in its response to this CHP III RFP shall be permitted between the Proposal Submission Deadline and the execution of the CHP III PPA, without the prior written consent of the OPA which may be withheld at OPA's Discretion. Any substitution made without the consent of the OPA will result in disqualification of the Proposal.

## **4.12. No Exclusivity of Contract**

The CHP III PPA(s) executed with Supplier(s) will not be exclusive contract(s) for the provision of CHP facilities. The OPA may contract with others for the same or similar facilities or may otherwise obtain the same or similar facilities by other means.

## **4.13. Compliance**

If, in the Discretion of the OPA, a Submission does not comply with the requirements set out in this CHP III RFP with respect to such Submission, the OPA shall, without liability, cost or penalty, disqualify the Submission and the Submission shall not be given any further consideration. For purposes of this CHP III RFP, "comply" and "compliance" mean that the Submission conforms to the requirements of this CHP III RFP without Material Deviation.

For the purpose of clarity, each CHP III Party acknowledges and agrees that the OPA's evaluation of compliance with this CHP III RFP is not an evaluation of absolute compliance and that the OPA may waive failures to comply that, in the OPA's Discretion, do not constitute a Material Deviation.

## **4.14. Governing Law of this CHP III RFP**

This CHP III RFP shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein. Each CHP III Party submits to the exclusive jurisdiction of the courts of the Province of Ontario situated in Toronto.

## APPENDIX A GLOSSARY OF TERMS

The definitions of those capitalized terms and acronyms utilized in this CHP III RFP, unless otherwise stated to be definitions contained in the CHP III PPA, are provided below.

TERM OR ACRONYM	DEFINITION
Aboriginal	Means the Indian, Inuit and Métis peoples of Canada as referred to in s. 35 of the <i>Constitution Act, 1982</i> , being Schedule B to the <i>Canada Act, 1982</i> (U.K.), 1982, c.11.
Above Market Cost	Means the difference between:  (a) the Contract Price multiplied by the total output of the proposed Project; and  (b) the Gross Energy Market Revenues earned for the total output of the proposed Project.
Addendum	Means any addendum issued by the OPA and identified as an "Addendum to CHP III RFP".
Adjusted Evaluated Cost	Means the adjusted evaluated cost of a Proposal determined pursuant to Section 3.4.2.
A.M. Best	Means A.M. Best Company.
Anaerobic Digestion	Means a biochemical process by which organic matter is decomposed by bacteria in the absence of oxygen, which produces methane and other by-products.
Annual Average Contract Capacity	Has the meaning given to it in the CHP III PPA.
Area	Means any area specified in Appendix Q.
Area Limit	Means, with respect to a particular Area, the value, expressed in MW, set out in Appendix Q.
Area Screen	Means the portion of the Transmission Screening set out in Section 3.5.1(4).
Average Seasonal Contract Capacity	Has the meaning given to it in the CHP III PPA.

TERM OR ACRONYM	DEFINITION
Average Seasonal Useful Heat Output	Has the meaning given to it in the CHP III PPA.
Biodiesel	Means the mono-alkyl esters of fatty acids derived from vegetable oils or animal fats.
Biofuel	Means a liquid fuel or product made solely from Renewable Biomass and includes ethanol, Biodiesel, and Bio-oil, as well as the direct utilization of vegetable oils or animal fats.
Biogas	Means a gaseous fuel or product made solely from Renewable Biomass and, for greater certainty, includes gaseous output from Anaerobic Digestion of Source Separated Organics, livestock manure, energy crops, livestock feed ingredients, food and feed processing by-products, off-specification food and feed materials and organic by-products from Biofuel production.
Bio-oil	Means liquid fuel that is created from wood waste or plant residues using a thermo-chemical conversion process that takes place in the absence of oxygen.
BTU	Means British thermal unit (HHV).
Business Day	Means a day other than a Saturday or Sunday or statutory holiday in the Province of Ontario or any other day on which banking institutions in Toronto, Ontario are not open for the transaction of business.
Buyer	Means the Ontario Power Authority, and its successors or permitted assigns.
Category A Lender	Means a financial institution listed in Schedule I or II of the <i>Bank Act</i> (Canada), or is such other financial institution or other entity having the minimum credit rating (i) A with S&P, (ii) A3 with Moody's, (iii) A low with DBRS, or (iv) A with Fitch IBCA. Wholly-owned subsidiaries of financial institutions that satisfy these requirements will also be considered Category A Lenders.
Category B Lender	Means a financial institution that is not a Category A Lender, but that has a Tangible Net Worth of at least \$1,750,000/MW of Annual Average Contract Capacity.
CHP	Has the meaning given to it in Section 1.1.

TERM OR ACRONYM	DEFINITION
CHP II RFP	Means the Buyer's Request for Proposals for approximately 500 MW of Combined Heat and Power Generation in Ontario (CHP II RFP) referenced as RFP No. CHP II – 2007, as amended from time to time.
CHP III Party	Means any interested party, Registered Participant, Registered Host, Host, Proponent, Selected Proponent, or Supplier, as the context requires.
CHP III PPA	Means a power purchase agreement with respect to this CHP III RFP that is to be executed between a Supplier and the Buyer.
CHP III PPA Closing Documents	Means those documents required from the Selected Proponent in the forms prepared or required by the OPA for the finalization and the execution of the CHP III PPA, including, without limitation, certificates of status, officer's certificates and opinions of counsel in relation to the Selected Proponent, and the Form of Guarantee for Host Developed Projects where applicable.
CHP III PPA Receipt Date	Has the meaning given to it in Section 2.8.1.
CHP III RFEI	Has the meaning given to it in Section 1.2.
CHP III RFP	Has the meaning given to it in Section 1.1.
CHP III Class 43.1 Qualification	Means the Class 43.1 qualification for the proposed Project determined as specified in Section 3.2.10.
Circuit Screen	Means the portion of the Transmission Screening set out in Section 3.5.1(2).
Class 43.1 Capital Cost Allowance	Means Schedule II of the <i>Income Tax Act</i> (Canada) that allows taxpayers accelerated write-off for certain capital expenditures on equipment that is designed to produce energy in a more efficient way or produce energy from alternative renewable sources.
Class 43.1 Guide	Has the meaning given to it in Section 3.2.10.
Commercial Operation	Means the new Project commences operation in compliance with all laws and regulations after the completion of construction, completion of connection and synchronization to the IESO-Controlled Grid, a Local Distribution System or directly to an End User, and completion of all commissioning tests, and the requirements for commercial operation set out in the CHP III PPA have been satisfied.

TERM OR ACRONYM	DEFINITION
Commercial Operation Date	Means the date on which Commercial Operation is first attained.
Confirmation of Prior Registration	Has the meaning given to it in Section 2.5.1(1).
Conflict of Interest	<p>Means any situation or circumstance where, in relation to this CHP III RFP process, the Proponent has an unfair advantage or engages in conduct, directly or indirectly, that may give it an unfair advantage, including:</p> <p>(i) having or having access to information in the preparation of its Proposal that is confidential to the Ontario Power Authority or the Government of Ontario and not available to other Proponents;</p> <p>(ii) communicating with any official or representative of the Ontario Power Authority or the Government of Ontario or members of the Evaluation Team with a view to influencing preferred treatment in this CHP III RFP process; or</p> <p>(iii) engaging in conduct (including breach of Non-Collusion Requirements) that compromises or could be seen to compromise the integrity of the open and competitive CHP III RFP process and render that process non-competitive and unfair.</p>
Conflict of Interest Declaration	Means the form set out in Appendix O.
Connection Point	<p>Means:</p> <p>(i) where the proposed Project is connected to the IESO-Controlled Grid, the point(s) of connection, as defined in the Market Rules, between the proposed Project and the IESO-Controlled Grid;</p> <p>(ii) where the proposed Project is connected to a Local Distribution System, the embedded connection point(s), as defined in the Market Rules, between the proposed Project and the Local Distribution System; and</p> <p>(iii) where the proposed Project is connected to an End User, the point that the End User connects to the Transmission System or Local Distribution System.</p> <p>For certainty, the Connection Point is defined by reference to electrical connection points.</p>

TERM OR ACRONYM	DEFINITION
Connection Impact Assessment Study Agreement	Means an agreement with the relevant LDC to conduct a study to determine the impact on the Local Distribution System, of connecting the Project to its Local Distribution System, a Transmission System or an End User load, as applicable.
Consultation Information Request	Means the Proponent's letter to the Ministry of Energy and Infrastructure, sent after the award of, but before the date of entering into the CHP III PPA, requesting (i) a determination of whether the Proponent must enter into an agreement with the Crown in relation to consultation on the Project; and, if so, (ii) the Crown's identification of which Aboriginal communities to consult.
Contract Capacity	Means that portion of the Nameplate Capacity, expressed in MW, applicable in Season 1, Season 2, Season 3 and Season 4, that is set out in the Submitted Hourly Electricity Output Profile and purchased pursuant to the CHP III PPA.
Contract Price	Has the meaning given to it in the CHP III PPA.
Contract Year	Means a 12-month period during the Term which begins on the Term Commencement Date or an anniversary thereof.
Control Group Member	Means in respect of any entity (the "Reference Entity") an entity (a) that Controls the Reference Entity, or (b) is Controlled by the Reference Entity.
Control, Controlled or Controls	Means, with respect to any person at any time, (i) holding, whether directly or indirectly, as owner or other beneficiary, other than solely as the beneficiary of an unrealized security interest, securities or ownership interests of that person carrying votes or ownership interests sufficient to elect or appoint 50 percent or more of 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.
Crown	Means Her Majesty the Queen in right of Ontario.
Crown Letter	Means the letter from the Crown to the Selected Proponent provided in substantially the form of either Form A or B as attached hereto as Appendix S.

<b>TERM OR ACRONYM</b>	<b>DEFINITION</b>
Customer Impact Assessment Study Agreement	Means an agreement with the relevant Transmitter to conduct a study to assess the impact of the connection of the Project on the transmission customers in the area and a Local Distribution System, if applicable.
DBRS	Means Dominion Bond Rating Service Limited and its successors.
Deadline for Issuing Addenda	Means the date on the Timetable or as amended in accordance with this CHP III RFP.
Debt	Means the funds borrowed by the developer to finance the proposed Project.
Designated Associate	Means an individual or employee of a firm that is under contract to the Proponent to assist it in either planning and developing, overseeing the construction of, or operating the proposed Project and who has, in a Managerial Capacity, either (i) planned and developed, (ii) overseen the construction of, a Designated Facility.
Designated Employee	Means an individual who is either a principal, officer or an employee (as considered by the Canada Revenue Agency, or its equivalent if not under the jurisdiction of the Canada Revenue Agency) of the Proponent or a Control Group Member of the Proponent.
Designated Equity Provider	Has the meaning given to it in Section 3.2.22.
Designated Facility	Means any facility or facilities designated by a Proponent in accordance with the requirements of this CHP III RFP to demonstrate experience and qualification with respect to the planning, development, financing or construction of the Project, as the case may be.
Designated Team Members	Means the Designated Associates and Designated Employees that are members of the Proponent Team.
Discount Factor	Means the discount factor applied in the calculation of the Adjusted Evaluated Cost.
Discretion	Means the sole and absolute discretion of the OPA.
Distribution System Code	Means the "Distribution System Code" published by the OEB.

TERM OR ACRONYM	DEFINITION
District Energy Facility	Means a cogeneration project that generates electricity while simultaneously producing Useful Heat Output, either directly or indirectly for industrial, commercial and/or residential facilities for which more than 70% of the thermal energy provided by the cogeneration project would be used for space conditioning purposes (either space heating or cooling, or a combination of both). For greater certainty, “industrial, commercial and/or residential facilities” includes greenhouses.
Dollar, dollar or \$	Means Canadian dollars and cents, unless otherwise specifically set out to the contrary.
EA Guide	Has the meaning given to it in Section 3.3.1(1).
EBITDA	Means earnings before interest, taxes, depreciation and amortization.
Economic Bid Evaluation	Means the economic evaluation set out in Section 3.4.
Economic Bid Evaluation Model	Means the economic model used for evaluation purposes under this CHP III RFP, as referenced in Section 3.4.
Economic Bid Statement	Means the form of Economic Bid Statement set out in Appendix E.
End User	Means a person who owns or operates a load facility which utilizes electricity supplied through a direct connection to the Transmission System, the Local Distribution System, Existing Generating Facility or the Project.
EPC	Means engineering, procurement and construction.
EPT or Eastern Prevailing Time	Means either Eastern Standard Time or Eastern Daylight Saving Time in effect from time to time.
EST	Means Eastern Standard Time. EST is also applicable in the IESO Administered Markets, as set forth in the IESO Market Rules.
Evaluated Cost	Means the evaluated cost of a Proposal determined pursuant to Section 3.4.
Evaluation Team	Means, collectively, the OPA’s personnel and advisors who are involved in evaluating the Proposals.
Excluded Purposes	Has the meaning given to it in Section 2.4.2.



TERM OR ACRONYM	DEFINITION
Existing Generating Facility	<p>Means an electricity generating facility, and ancillary lands required by such generating facility, that is located in Ontario, is connected to the IESO-Controlled Grid, a Local Distribution System, or an End User, and whose generating equipment was “commercially operational” prior to the Proposal Submission Deadline. For greater certainty, an electricity generating facility is considered to be “commercially operational” if it receives market revenues and has operated for more than 500 hours in either of the following periods, namely from May 29, 2007 to May 28, 2008, and from May 29, 2008 to May 28, 2009, being the last two (2) years prior to the Proposal Submission Deadline.</p>
Expansion	<p>Means an addition of generating unit(s) to an Existing Generating Facility which:</p> <ul style="list-style-type: none"> <li>(i) is not intended to replace any generating equipment that operates, or had operated within 12 months of the date of submission of the Proposal, at the Existing Generating Facility;</li> <li>(ii) generates electricity output in addition to the electricity output of other generating units that operate or operated at the Existing Generating Facility;</li> <li>(iii) has separate revenue grade meters that conform with the contract requirements and are dedicated to measuring the electrical output of the added generators and that are accessible to the Buyer, and</li> <li>(iv) does not include any of the electricity generating capacity available from the Existing Generating Facility.</li> </ul> <p>For greater certainty, an Expansion shall not include an Upgrade of an Existing Generating Facility.</p>
Fairness Advisor	<p>Means the person who is retained by the OPA to provide (i) enhanced assurance to Proponents and other stakeholders that the evaluation process is fair and transparent, and (ii) a written statement that attests that the procurement process was conducted in an objective and fair manner.</p>
Final Stack	<p>Means the final stack of Proposals determined as specified in Section 3.5.3.</p>
Financial Assessment	<p>Means the assessment outlined in Section 3.3.4.</p>

TERM OR ACRONYM	DEFINITION
Financial Closing	Has the meaning given to it in the CHP III PPA.
Financial Closing Date	Means the date on which Financial Closing is attained.
Financial Plan	Has the meaning given to it in Section 3.1.4.
Financial Questionnaire	Means the financial questionnaire, the form of which is set out in Appendix F.
Firm Commitment	Means an agreement from an equity provider, lender or source of financing other than debt or equity which states, at a minimum, that such equity provider, lender or other provider, as applicable, has reviewed this CHP III RFP, the CHP III PPA, and the financial model (including projected costs and revenues) of the proposed Project, and that it agrees to advance or provide the amount of equity, debt or other financing, as applicable, for the proposed Project specified in the commitment letter by the proposed Financial Closing Date specified by the Proponent in response to the Technical Questionnaire, subject to the satisfaction of specific objective conditions. The commitment letter should clearly describe any and all of such objective conditions. Objective conditions are those conditions which require the achievement of certain milestones or the provision of information to the financier and such conditions are informational in nature, and would not represent an impediment to securing the financing or do not provide financiers with broad discretion regarding the determination of fulfillment of the conditions. Those conditions that provide the financier broad discretion to approve the fulfillment of the condition will not be considered objective. Notwithstanding the foregoing, delivery of the agreement with the Crown by the Proponent shall be an acceptable condition to be included in such commitment letter.
First Nations	Means the Indian peoples of Canada referred to in s. 35 of the <i>Constitution Act, 1982</i> , being Schedule B to the <i>Canada Act, 1982</i> (U.K.), 1982, c.11, and includes a band, as that term is defined in the <i>Indian Act</i> (Canada), R.S.C. 1985, c-15.
Fitch IBCA	Means Fitch IBCA, Duff & Phelps, a division of Fitch Inc., or its successors.
Form of Guarantee for Host Developed Project	Means the guarantee to be given in respect of a Host Developed Project no later than the execution and delivery of the CHP III PPA to the Buyer, and in the form attached to the CHP III PPA.

TERM OR ACRONYM	DEFINITION
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.
Generation Procurement Website	Means the area within the Generation Procurement section of the OPA website located at <a href="http://www.powerauthority.on.ca/gp">www.powerauthority.on.ca/gp</a> that is dedicated to this CHP III RFP process.
Government of Ontario	Means Her Majesty the Queen in Right of Ontario.
Gross Energy Market Revenue	The Submitted Hourly Electricity Output Profile multiplied by the applicable HOEP used in the Economic Bid Evaluation Model.
GST	Means the goods and services tax.
HHV basis	Means higher heating value.
HOEP	Means the arithmetic average of the uniform Ontario energy prices as defined by the Market Rules.
Host	<p>Means the person, legal entity, group of persons or group of legal entities who is the party that is the counterparty to the Off-Take Agreement. For greater certainty, a Host must be either a Registered Host or a Control Group Member of a Registered Host.</p> <p>For a District Energy Facility, the Host may be the district energy business that represents a group of industrial, commercial and/or residential facilities.</p>
Host Developed Project	<p>Means a Project in which:</p> <p>(a) the legal entity that is the Host (or if a District Energy Facility, the district energy business) is the legal entity that is the Proponent; or</p> <p>(b) the legal entity that is the Host (or if a District Energy Facility, the district energy business), or the legal entity that Controls the Host or district energy business, as the case may be, owns 30% or more, either directly or indirectly, of the Proponent.</p>
Host Facility	Means the facility or facilities that utilizes the Useful Heat Output generated by the Project.
Hz	Means hertz.

TERM OR ACRONYM	DEFINITION
IESO	Means the Independent Electricity System Operator of Ontario, or its successor.
IESO-Administered Markets	Means the markets established by the Market Rules.
IESO-Controlled Grid	Means the IESO-Controlled Grid as defined by the Market Rules.
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.
Include or including	Means including without limitation.
Incremental Contract Price	Has the meaning given to it in the CHP III PPA.
Indian	Means a person who is registered as an Indian pursuant to the <i>Indian Act</i> (Canada) or is entitled to be registered as an Indian.
Indian Reserves	Means a reserve as defined by the <i>Indian Act</i> (Canada).
Individual Information Sessions	Has the meaning given to it in Section 2.6.
Information and Privacy Commissioner	Means the Information and Privacy Commission of Ontario.
Initial Completion and Performance Security	Has the meaning given to it in the CHP III PPA.
Initial Contract Price	Has the meaning given to it in the CHP III PPA.
Initial Stack	Means the initial stack of Proposals determined as specified in Section 3.5.
IPSP	Means the Integrated Power System Plan for the Province of Ontario.
kJ	Means kilojoule.
kV	Means kilovolt.
kW	Means kilowatt.
kWh	Means kilowatt-hour.

TERM OR ACRONYM	DEFINITION
Landfill Gas	Means the mixture of gases, primarily methane, that are produced by the decomposition of organic waste in a Landfill Site.
Landfill Site	Means a site or facility situated in Ontario, for which a permit or licence is issued pursuant to the environmental laws of the Province of Ontario.
LDC	Means a person licensed by the OEB as a “Distributor” in connection with a Local Distribution System.
Letter of Credit Form	Means the form attached as Appendix I.
Local Distribution System	Means a system for conveying electricity at voltages of 50 kV or less and includes any structures, equipment or other things used for that purpose.
Managerial Capacity	Means that the Designated Employee or Designated Associate personally, and with respect to the Designated Facility, was responsible or managed those that were responsible for these specific functions (planning, developing, overseeing the construction of the Designated Facility) and exercised discretion over the day-to-day operations of the activity or function for which the individual had authority.
Mandatory Requirements	Has the meaning given to it in Section 3.2.
Mandatory Technical Requirements Declaration	Means the form attached as Appendix L.
Market Rules	Means the rules made under section 32 of the <i>Electricity Act, 1998</i> (Ontario), as amended from time to time.
Material Deviation	Means a deviation from the Registered Participant’s or Proponent’s obligations contained in this CHP III RFP that, in the Discretion of the OPA (i) affects such party’s or the OPA’s obligations or rights in any material way; (ii) affects the obligations or rights of other Proponents or Registered Participants under this CHP III RFP; or (iii) results in a failure to satisfy a material component of any requirement set out in this CHP III RFP.
Maximum Contract Capacity	Means, with respect to a given Proposal, the maximum hourly output (in MW) in any hour as stated in the electricity profile submitted in the Economic Bid Statement, regardless of Season.

TERM OR ACRONYM	DEFINITION
Métis	Means the Métis peoples of Canada as referred to in s. 35 of the <i>Constitution Act, 1982</i> , being Schedule B to the <i>Canada Act, 1982</i> (U.K.), 1982, c.11.
Milestone Date	Means, with respect to a particular event, the date specified in the Proposal.
Minimum Required Total Point Score	Means the Minimum Required Total Point Score specified in Section 3.3.
Minister of Energy and Infrastructure	Means the Minister of Energy and Infrastructure of the Province of Ontario.
Ministerial Directive	Has the meaning set out in Section 1.2.
Ministry of Energy and Infrastructure, Ministry of Natural Resources, Ministry of the Environment, Ministry of Finance, and Ministry of Municipal Affairs and Housing	Refers to each applicable Ministry of the Province of Ontario.
Moody's	Means Moody's Investors Service, Inc. or its successor
Municipal Solid Waste	Means:  (a) any waste, whether or not it is owned, controlled or managed by a municipality; and  (b) solid fuel, whether or not it is waste, that is derived in whole or in part from the waste included in clause (a) of this definition,  but which, for greater certainty, shall not include hazardous waste, liquid industrial waste, gaseous waste, and Renewable Biomass.
MW	Means megawatt electrical.
MWh	Means megawatt-hour electrical.
Nameplate Capacity	Means the rated, continuous load-carrying capability net of parasitic or station service loads, expressed in MW, of a generating facility to generate and deliver electricity at a given time, and which includes the Contract Capacity.

TERM OR ACRONYM	DEFINITION
Non-Collusion Requirements	<p>Means requirements that a Proponent:</p> <p>(a) not be involved in determining pricing of a Proposal of another Proponent; and</p> <p>(b) not coordinate its Proposal with any other Registered Participant or Proponent; and</p> <p>(c) keep and continue to keep its Proposal confidential until the conclusion of this CHP III RFP and public announcement of the Selected Proponents, if any; and</p> <p>(d) ensure that no member of its Proponent Team has entered into any agreement or arrangement with any other member of another Proponent Team which may, directly or indirectly, affect the Proposal(s) submitted by the Proponent or another Proponent; and</p> <p>(e) not engage in any activity or communication that results in a Conflict of Interest, collusion or a violation of any of the civil or criminal provisions of the <i>Competition Act</i> (Canada) or any other non-collusion requirements contained in this CHP III RFP, including those contained in Appendix N.</p>
Notice to Proceed	Means the notice directing the contractor to begin work on a contract.
OEB	Means the Ontario Energy Board or its successor.
Off-Take Agreement	Means the sale and purchase agreement, letter of intent, or other form of commitment between the Proponent and the Host to sell and purchase Useful Heat Output from the Project.
On-Peak	Means those weekday hours between and including hour ending 8 a.m. (EST) and hour ending 11 p.m. (EST). Weekdays are considered to be Monday through Friday inclusive, but excluding statutory holidays.
OPA	Means the Ontario Power Authority and its successors and assignees.
Operating Cost Indexing Factor	Means that rate between 0% and 20% to be specified by the Proponent in the Economic Bid Statement with respect to such defined term.
Operating Cost Index	Means the Specified Index. For purposes of the economic evaluation only, the Operating Cost Index is assumed to escalate at 2% per annum.

<b>TERM OR ACRONYM</b>	<b>DEFINITION</b>
Part One System Impact Assessment	Means Part One of the IESO's system impact assessment described in IESO Market Administration Manual, Part 2.10.
Period of Irrevocability	Has the meaning given to it in Section 2.7.5.
Permitted Purposes	Has the meaning given to it in Section 2.4.2.
Primary Fuel	Means Renewable Fuel that represents no less than 90% of the total fuel heat input (oven-dry) on a HHV basis in any calendar year. For greater certainty, supplementary non-Renewable Fuel used as Secondary Fuel for start-up, combustion, stabilization and low combustion zone temperatures shall be no more than 10% of the total fuel heat input (oven-dry) on a HHV basis in any calendar year.
Prohibited Connection Points	Has the meaning given to it in Section 3.2.15.
Project	Means the particular co-generation facility or facilities to be constructed, developed, owned (or leased) and operated by a Supplier under a CHP III PPA as anticipated by this CHP III RFP, and includes gas or steam turbine generators, as applicable, condensers, transformers, switchgear equipment, and also includes all steam generators and boilers to the extent that they are or may be used to generate steam used by any turbine generator. A "proposed Project" is a version and configuration of the Project that is proposed by a Proponent.
Proponent	Means the person, legal entity, group of persons or group of legal entities, who submits a Proposal in response to this CHP III RFP and who is responsible to develop, finance, own and operate a Project.
Proponent Team	Means, collectively, a Proponent and all entities and persons (including equity providers named in the Proposal) involved in the preparation of the Proponent's Proposal(s) under this CHP III RFP and/or required by the Proponent to successfully implement its Proposal(s) for this CHP III RFP and to comply with the CHP III PPA. For greater certainty, members of the Proponent Team shall include the Proponent and the Proponent's technical, financial and legal advisors, and any other person otherwise assisting the Proponent in the preparation of its Proposal(s), but shall not include any lenders or any technical or legal advisors to such lenders.
Proposal	Means a proposal made pursuant to this CHP III RFP.
Proposal Completeness Requirements	Has the meaning given to it in Section 3.1.



<b>TERM OR ACRONYM</b>	<b>DEFINITION</b>
Proposal Completeness Requirements and Submission Form	Means the form attached as Appendix D.
Proposal Return Label	Means the form provided as Appendix K.
Proposal Security	Means the financial security submitted with the Proposal as described in Section 3.2.20.
Proposal Submission Deadline	Means the date and time indicated in the Timetable or as amended in accordance with this CHP III RFP.
Proposed Earliest Restatement Date	Has the meaning given to it in the CHP III PPA, and for greater certainty, shall not be earlier than the third (3rd) anniversary of the Commercial Operation Date.
Question and Comment Period	Means a Question and Comment Period set out in the Timetable.
Rated Criteria	Means each of Proponent Team Experience, Financial Assessment, Project Maturity, and Host Facility Risk Mitigation criteria, as described in Section 3.3.
Rated Criteria Information Form	Means the form attached as Appendix H.
Registered Host	Means the person, legal entity, group of persons or group of legal entities, identified as the Registered Host in the Registration Form.
Registered Participant	Means the person, legal entity, group of persons or group of legal entities identified as the Registered Participant in the Registration Form which has been accepted by the OPA and in respect of which the OPA has sent a Registration Form Acceptance Notification.
Registration Fee	Has the meaning given to it in Section 2.5.1.
Registration Form	Has the meaning given to it in Section 2.5.1.
Registration Form Acceptance Notification	Means a written letter by the OPA confirming the approval, if any, of the proposed application of Useful Heat Output and the acceptance of the Registration Form issued within 15 days of the Registration Form Submission Deadline.
Registration Form Submission Deadline	Means the date and time indicated in the Timetable or as amended in accordance with this CHP III RFP.

TERM OR ACRONYM	DEFINITION
Renewable Biomass	<p>Means organic matter that is derived from a plant and available on a renewable basis, including organic matter derived from dedicated energy crops, dedicated trees, agricultural food and feed crops and waste organic material from harvesting or processing agricultural products, forestry products (including Spent Pulping Liquor) and sewage including manure, provided that:</p> <p>(a) such organic matter is not Municipal Solid Waste;</p> <p>(b) such organic matter is not peat or a peat derivative; and</p> <p>(c) waste organic material shall not contain any treated byproducts of manufacturing processes (e.g., chipwood, plywood, painted or varnished wood, pressure treated lumber or wood contaminated with plastics or metals).</p>
Renewable Fuel	Means one or more of the following fuels used for the purposes of generating heat and power: Renewable Biomass, Biogas, Biofuel, or Landfill Gas.
Renewable Fuelled Cogeneration Facility	Means a cogeneration facility that burns Renewable Fuel as its Primary Fuel and generates electricity while simultaneously producing Useful Heat Output for gainful commercial or industrial purpose.
Required Form	Has the meaning given to it in Section 3.1.
RES III RFP	Means the Buyer's Request for Proposals for approximately 500 MW of Renewable Energy Supply referenced as Request for Proposals No.: RES-III-RFP-2008, as amended from time to time.
Respondent	Means the party, or one or more of the parties, identified in the "Respondent Information" section of a Response.
Response	Means a response to the CHP III RFEI, if submitted.
Restated Submitted Hourly Electricity Output Profile	Means the restated hourly electricity output profile set out in Appendix E.

TERM OR ACRONYM	DEFINITION
Restatement	Means a restatement in accordance with the restatement submitted in the Proposal of the Nameplate Capacity, Contract Price, Annual Seasonal Contract Capacity, Annual Average Contract Capacity, and/or the Submitted Hourly Electricity Output Profile on or after the Restatement Date. For purposes of the economic bid evaluation under this CHP III RFP, a Restatement is assumed to occur on the Proposed Earliest Restatement Date, if any.
Restatement Date	Has the meaning given to it in the CHP III PPA.
S&P	Means the Standard and Poor's Rating Group (a division of McGraw-Hill Inc.) or its successors.
Season 1	Means that portion of each Contract Year that begins at the beginning of the hour ending 01:00 (EST) on December 1 and ending at 24:00 (EST) on February 28 (or 29) of each Contract Year.
Season 2	Means that portion of each Contract Year that begins at the beginning of the hour ending 01:00 (EST) on March 1 and ending at 24:00 (EST) on May 31 of each Contract Year.
Season 3	Means that portion of each Contract Year that begins at the beginning of the hour ending 01:00 (EST) on June 1 and ending at 24:00 (EST) on August 31 of each Contract Year.
Season 4	Means that portion of each Contract Year that begins at the beginning of the hour ending 01:00 (EST) on September 1 and ending at 24:00 (EST) on November 30 of each Contract Year.
Secondary Fuel	Means, if applicable, fuel used by the Project that is not Primary Fuel.
Selected Proponent	Means a Proponent whose Proposal has been selected and accepted by the OPA in accordance with this CHP III RFP.
Set Aside Proposal	Has the meaning given to it in Section 3.5.2.

TERM OR ACRONYM	DEFINITION
Soft Commitment	Means a commitment term-sheet or indication of intent from an equity provider, lender or source of financing other than debt or equity to advance or provide the amount of equity, debt or other financing, as applicable, for the proposed Project specified in the commitment letter by the Financial Closing Date specified by the Proponent in response to the Technical Questionnaire, which commitment does not meet the requirements of a Firm Commitment. The Proponent should demonstrate that these equity providers, lenders or other providers, as applicable, have reviewed the CHP III PPA and have reviewed the Proponent's cost estimates and financing assumptions and resulting project financial pro formas for the proposed Project and, based on this review, have determined that the proposed Project will provide satisfactory returns.
Source Separated Organics	Means the organic portion of the Municipal Solid Waste collection stream which has been separated from potential contaminants such as metal, plastic and glass prior to collection and which does not contain any treated by-products of manufacturing processes or other materials that can adversely affect anaerobic processes or cause liquids and solids produced through anaerobic processes to become hazardous waste.
Specified Circuit	Means any circuit specified in Appendix Q.
Specified Circuit Limit	Means, with respect to a particular Specified Circuit, the value, expressed in MW, set out in Appendix Q.
Specified Index	Means the consumer price index for "All Items" published or established by Statistics Canada or its successor in relation to the Province of Ontario.
Spent Pulping Liquor	Means the by-product of the chemical process of transforming wood into pulp, consisting of wood residue and pulping agents.
SS	Means switching station.
Stages	Means Stages 1, 2, 3, 4 and 5.
Stage 1	Means the stage of the Evaluation Team's evaluation of Proposals set out in Section 3.1.
Stage 2	Means the stage of the Evaluation Team's evaluation of Proposals set out in Section 3.2.

TERM OR ACRONYM	DEFINITION
Stage 3	Means the stage of the Evaluation Team's evaluation of Proposals for purposes set out in Section 3.3.
Stage 4	Means the stage of the Evaluation Team's evaluation of Proposals set out in Section 3.4
Stage 5	Means the stage of Evaluation Team's evaluation of Proposals set out in Section 3.5.
Statutory Declaration regarding Proposal and Non-Collusion	Means the form attached as Appendix N.
Submission	Means, as the context may require, the Registration Form and related documentation required pursuant to this CHP III RFP, and the Proposal and related documentation required pursuant to this CHP III RFP.
Submission Deadline	Means the Registration Form Submission Deadline or the Proposal Submission Deadline, as the context may require.
Submitted Hourly Electricity Output Profile	Has the meaning given to it in the CHP III PPA.
Supplier	Means a Selected Proponent who has executed and delivered to the OPA a CHP III PPA.
System Impact Assessment	Means a study conducted by the IESO pursuant to Section 6.1.5 of Chapter 4 of the IESO Market Rules to assess the impact of a new connection of the proposed Project to the IESO-Controlled Grid, or the modification of an existing connection of the proposed Project to the IESO-Controlled Grid, on the reliability of the integrated power system.
System Impact Assessment Agreement	Means an agreement with the IESO to conduct a System Impact Assessment.

TERM OR ACRONYM	DEFINITION
Tangible Net Worth	Means, in respect of a Designated Equity Provider, at any time and without duplication, an amount determined in accordance with GAAP (or IFRS, if the Designated Equity Provider has adopted such standard), and calculated as (a) the sum of capital stock, preferred stock, paid-in capital, contributed surplus, retained earnings, capital reserves, and cumulative translation adjustment (whether positive or negative), minus (b) the sum of any amounts shown on account of any common stock reacquired by the Designated Equity Provider or guarantor as applicable, patents, patent applications, service marks, industrial designs, copyrights, trade marks and trade names, and licenses, prepaid assets, goodwill and all other intangibles.
Target Capacity	Means approximately 100 MW (electrical).
Targeted Process Completion Date	Means the corresponding date given to that term in the Timetable.
Technical Questionnaire	Means the technical questionnaire, the form of which is set out in Appendix G.
Technical Requirements	Means the technical requirements as described in Section 3.2.
Term	Means that period of time commencing upon the Commercial Operation Date and ending on the day before the 10 <sup>th</sup> anniversary thereafter.
Term Commencement Date	Means the first day of the Term.
Third-Party Developed Project	Means a proposed Project which does not comply with the definition of a Host Developed Project or does not meet the requirements outlined in Section 3.2.4.
Threshold Percentage	Means those percentages, as applicable, as set out in Section 3.5.3.
Timetable	Means the Timetable set forth in Section 2.2.
Total Project Cost or TPC	Means the total project cost of the Project to be raised by a combination of debt and equity, and which shall consist of hard costs, soft costs and financing costs.
Transmission Connection Point	Has the meaning given to it in Section 3.2.15(2).
Transmission Constraints	Means the limits on the various Specified Circuits, circuits, stations, Zones and Areas defined in the Transmission Constraints Matrix.

TERM OR ACRONYM	DEFINITION
Transmission Constraints Maps	Means the maps, found in Appendix P, that illustrates the Specified Circuits, Zones and Areas affected by Transmission Constraints.
Transmission Constraints Matrix	Means the matrix, found in Appendix Q, that illustrates the Specified Circuits, Zones and Areas affected by Transmission Constraints.
Transmission Screening	Means the transmission screening process described in Section 3.5.1.
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” published by the OEB.
Transmitter	Means a person licensed as a “transmitter” by the OEB in connection with a Transmission System.
Transport and Handling Index	Means Statistics Canada’s Ontario Diesel Fuel Price Index, as defined in the CHP III PPA. For purposes of the economic evaluation only, the Transport and Handling Index is assumed to escalate at 8% per annum.
Transport and Handling Indexing Factor	Means that rate between 0% and 20% to be specified by the Proponent in the Economic Bid Statement with respect to such defined term.
TS	Means transformer station.
Upgrade	Means the refurbishment or replacement of generating equipment at an Existing Generating Facility with equipment which provides better or improved performance, but which for greater certainty does not include an Expansion. For greater certainty, generating equipment is considered to consist of the prime mover (reciprocating engine, gas/steam turbine(s) etc.) and/or the associated electrical generator, but does not include boilers or other associated balance of plant.

TERM OR ACRONYM	DEFINITION
Useful Heat Output	Means thermal energy (in MWh-thermal) produced by the Project and used for a gainful commercial or industrial purpose such as district energy, manufacturing, mining, chemical or other industrial process, where such use or: (a) avoids or reduces the use of fuel to produce thermal energy in an alternate process; and (b) is not a use within the Project's combined heat and power cycle for gas turbine injection, inlet conditioning, fuel heating, or other similar purpose; and (c) is not a use outside the Project's combined heat and power cycle for applications such as heating rivers, lakes or the atmosphere. For greater certainty, gainful commercial or industrial purpose does not include the use of the thermal energy primarily for generating electricity.
Zone	Means any Zone specified in Appendix Q.
Zone Limit	Means, with respect to a particular Zone, the value, expressed in MW, set out in Appendix Q.
Zone Screen	Means the portion of the Transmission Screening set out in Section 3.5.1(3).



**APPENDIX B REGISTRATION FORM**

Any information provided in this form will be kept confidential by the OPA. All interested parties wishing to register as Registered Participants under the CHP III RFP must complete this Registration Form and submit it to the OPA by the Registration Form Submission Deadline indicated in the Timetable in Section 2.2 of the CHP III RFP. **Only the names of the Registered Participant and Registered Host and the description of the application of Useful Heat Output, as identified below, will be required for Proposal submission purposes in accordance with Sections 3.2.1, 3.2.2, and 3.2.13 of the CHP III RFP.**

Those interested parties who had been registered under the CHP II RFP or the RES III RFP must also submit a completed Confirmation of Prior Registration in the form provided at Appendix C of the CHP III RFP.

All other interested parties who are not transferring their registration fee from the CHP II RFP or the RES III RFP to register under the CHP III RFP must also submit the Registration Fee of \$10,000 (plus GST) (GST Registration Number 85419 5039 RT0001). All Registration Fees must be paid by way of certified cheque or a bank draft from an institution listed in Schedule I or II of the *Bank Act* (Canada) and made out in favour of "Ontario Power Authority".

CHP III Parties who do not submit a completed Registration Form and the Registration Fee (or the Confirmation of Prior Registration, as applicable) to the OPA on or before the Registration Form Submission Deadline will not be eligible to submit a Proposal in response to the CHP III RFP.

E-mail: [generation.procurement@powerauthority.on.ca](mailto:generation.procurement@powerauthority.on.ca) or Fax: 416-967-1947.

Project Name: \_\_\_\_\_

Project Location: \_\_\_\_\_

Project Size (i.e. Annual Average Contract Capacity in MW- electrical, >10 MW): \_\_\_\_\_

Project Type: \_\_\_\_\_

Primary Fuel: \_\_\_\_\_

Secondary Fuel (if applicable): \_\_\_\_\_

Host Facility (Description): \_\_\_\_\_

**DESCRIPTION OF APPLICATION OF USEFUL HEAT OUTPUT (USAGE):**

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Circuit, Zone and Area:

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If there are multiple Specified Circuits in a common transmission corridor, indicate if would be willing to connect to an alternate Specified Circuit:

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**NAME OF REGISTERED PARTICIPANT:**

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Primary Contact Person:

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E-mail:

---

Mailing Address:

---

Phone Number:

---

**NAME OF REGISTERED HOST:**

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Preferred Individual Information Session meeting times:

1. \_\_\_\_\_

2. \_\_\_\_\_

3. \_\_\_\_\_

#### PROJECT STRUCTURE INFORMATION

Project Structure information is described below or attached. For purposes of the previous sentence, Project Structure means (i) the legal form of the Registered Participant (e.g. a corporation or limited partnership) and (ii) the legal relationship between the Registered Participant and the Registered Host (e.g. whether or not the Registered Participant is the same as the Registered Host and if not the same, the nature of such relationship).

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Dated this \_\_\_\_\_ day of \_\_\_\_\_ 2009.

#### **[Registered Participant]**

\_\_\_\_\_

Per: (authorized signing officer)

(Print Name)

(Title)

(Phone Number)

(Fax Number)

I/we have the authority to bind the Registered Participant.

**APPENDIX C CONFIRMATION OF PRIOR REGISTRATION (IF APPLICABLE)**

The undersigned hereby certifies each of the following:

1. The undersigned was registered with the OPA (check one):

☐ as a "Registered Proponent" and/or a "Registered Host" of a proposed "Contract Facility" under the CHP II RFP; or

☐ as a "Registered Proponent" of a proposed "Contract Facility" under the RES III RFP.

2. The undersigned did not submit a proposal to the OPA under the CHP II RFP or the RES III RFP, as the case may be.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

**[Registered Participant]**

\_\_\_\_\_

Per: (authorized signing officer)

(Print Name)

(Title)

(Phone Number)

(Fax Number)

I/we have the authority to bind the Registered Participant.

**APPENDIX D PROPOSAL COMPLETENESS REQUIREMENTS AND SUBMISSION FORM****TO: ONTARIO POWER AUTHORITY**

**RE: IN THE MATTER OF** our proposal dated \_\_\_\_\_, 2009, to which this Proposal Completeness Requirements and Submission Form is an integral part (the "Proposal") prepared by \_\_\_\_\_ (the "Proponent"), and submitted in response to a request for proposals issued by the Ontario Power Authority dated March 9, 2009, as amended, regarding the supply of approximately 100 MW of Renewable Fuelled Combined Heat and Power Generation (the "CHP III RFP")\*, I am duly authorized by the Proponent, including the persons, firms, corporations and advisors joining in the submission of this Proposal, to execute this Proposal Completeness Requirements and Submission Form. I solemnly declare and promise as follows:

**A. Proposal Completeness Checklist**

I enclose herewith as part of the Proposal responses to all Proposal Completeness Requirements, as set out below:

<b>DOCUMENT</b>	<b>YES</b>	<b>PAGE</b>
Proposal Completeness Requirements and Submission Form (this Appendix D)		
Technical Questionnaire (Appendix G)		
Mandatory Technical Requirements Declaration (Appendix L)		
Rated Criteria Information Form (Appendix H)		
Executive Summary		
Copy of Registration Form		
Copy of Registration Form Acceptance Notification		
Statutory Declaration (Appendix N)		
Conflict of Interest Declaration (Appendix O)		
Financial Plan (including Financial Questionnaire in Appendix F)		
Economic Bid Statement (Appendix E)		Separate Opaque Envelope
Proposal Security (Appendix I or J)		Separate Envelope

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\*All capitalized terms used in this Proposal Completeness Requirements and Submission Form, unless otherwise stated, have the meanings ascribed to them in the CHP III RFP.

**B. Proof of Insurance**

By signing this Proposal Completeness Requirements and Submission Form, I acknowledge the Proponent's willingness, should it become a Selected Proponent, to provide proof of insurance coverage as required in the CHP III PPA.

**C. Review**

I have carefully examined the CHP III RFP documents (including all Addenda) and have a clear and comprehensive knowledge of the deliverables required under this CHP III RFP. By submitting our Proposal, the Proponent agrees and consents to the terms, conditions and provisions of the CHP III RFP.

**D. Execution of Agreement**

I understand that, in the event our Proposal is successful and is selected by the OPA, in whole or in part, the Proponent agrees to deliver the Initial Completion and Performance Security and other required documents on the terms set out in the CHP III RFP and to finalize and execute the CHP III PPA in accordance with the terms of the CHP III RFP.

**E. Proponent and Host**

Proponent (check one):

☐ The Proponent is the Registered Participant.

☐ The Proponent is a Control Group Member of the Registered Participant and I have submitted evidence to establish this fact.

Host (check one):

☐ The Host is the Registered Host.

☐ The Host is a Control Group Member of the Registered Host and I have submitted evidence to establish this fact.

<b>Signature of Witness:</b>	<b>Signature of Proponent Representative:</b>
Name of Witness:	Name and Title:
	Date of Signature:
	I have authority to bind the Proponent

## APPENDIX E ECONOMIC BID STATEMENT

This Appendix contains the Economic Bid Statement.

All elements of the Economic Bid Statement must be entered precisely in numeric form using the format provided below without further information, condition, or qualification whatsoever in the Proposal. Proponents are advised that any deviation from the required format of the Economic Bid Statement whatsoever, such as the provision of a price range, conditional price, qualified price, or an incomplete price, shall result in the disqualification of the Proposal. Moreover, the Initial Contract Price, Incremental Contract Price, Operating Cost Indexing Factor, and Transport and Handling Indexing Factor shall not be disclosed or described in any other part of the Proposal, failing which the Proposal shall be rejected. Note the Contract Prices does not include GST or PST.

Name of Proponent: \_\_\_\_\_

Name of Project: \_\_\_\_\_

### Prior to Restatement

Initial Contract Price  (Dollars and Cents/MWh at COD)	Nameplate Capacity  (MW - electrical)	Average Seasonal Contract Capacity  (MW – electrical)	Annual Average Contract Capacity  (MW – electrical, and must be <i>greater than 10 MW</i> )	Average Seasonal Useful Heat Output  (MW-thermal)
\$_____/MWh	_____ MW	Season 1:_____MW Season 2:_____MW Season 3:_____MW Season 4:_____MW	_____ MW	Season 1:_____MW Season 2:_____MW Season 3:_____MW Season 4:_____MW

Operating Cost Indexing Factor \_\_\_\_\_% (between 0% and 20% of the Initial Contract Price)

Transport and Handling Indexing Factor \_\_\_\_\_% (between 0% and 20% of the Initial Contract Price)

Submitted Hourly Electricity Output Profile:

Please provide output in each hour in MW - electrical. **Note that the Average Seasonal Contract Capacity and the Annual Average Contract Capacity are calculated directly from the Submitted Hourly Electricity Output Profile.**

Day Type	Hour Ending (EST)	Season			
		1	2	3	4
Weekday, other than statutory holidays  <b>Note: Hours Ending between and including 8 to 23 (EST) are On-Peak Hours</b>	1				
	2				
	3				
	4				
	5				
	6				
	7				
	8				
	9				
	10				
	11				
	12				
	13				
	14				
	15				
	16				
	17				
	18				
	19				
	20				
	21				
	22				
	23				
	24				
Weekends and statutory holidays	1				
	2				
	3				
	4				
	5				
	6				
	7				
	8				
	9				
	10				



	11				
	12				
	13				
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	24				

**After Restatement (if the Proposed Earliest Restatement Date, the Incremental Contract Price, the Restated Average Seasonal Contract Capacity, or the Restated Annual Average Contract Capacity are left blank, the Proponent will be automatically deemed to state that there is no Restatement during the Term)**

Proposed Earliest Restatement \_\_\_\_\_ in months and years from the Commercial Operation Date (***Note: The Proposed Earliest Restatement Date shall not be earlier than the third (3<sup>rd</sup>) anniversary of the Commercial Operation Date.***)

Incremental Contract Price  (Dollars and Cents/MWh at COD)	Restated Nameplate Capacity (MW - electrical)	Restated Average Seasonal Contract Capacity (MW – electrical)	Restated Annual Average Contract Capacity (MW - electrical)
\$_____/MWh  *Note that this is an <u>incremental</u> amount to the Contract Price prior to Restatement	_____ MW	Season 1: _____MW Season 2: _____MW Season 3: _____MW Season 4: _____MW	_____ MW

Operating Cost Indexing Factor

*Same as above given Prior to Restatement.*

Transport and Handling Indexing Factor

*Same as above given Prior to Restatement.*

Restated Submitted Hourly Electricity Output Profile:

Please provide output in each hour in MW. **Note that the Average Seasonal Contract Capacity and the Annual Average Contract Capacity, as restated, are calculated directly from the Restated Submitted Hourly Electricity Output Profile.**

Day Type	Hour Ending (EST)	Season			
		1	2	3	4
Weekday, other than statutory holidays  <b>Note: Hours Ending between and including 8 to 23 (EST) are On-Peak Hours</b>	1				
	2				
	3				
	4				
	5				
	6				
	7				
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	14				
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	18				
	19				
	20				
	21				
	22				
	23				
	24				
Weekends and statutory holidays	1				
	2				
	3				
	4				
	5				
	6				
	7				
	8				
	9				
	10				

	11				
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	13				
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	24				

The undersigned acknowledges and agrees that it has carefully reviewed all of the information provided in this Economic Bid Statement including, without limitation, all values and their corresponding units of measure, and confirm all of same to be complete and accurate.

Dated at \_\_\_\_\_ this \_\_\_\_ day of \_\_\_\_\_, 2009.

*[Insert name of Proponent]*

By:

\_\_\_\_\_  
Name: •

Title: •

By:

\_\_\_\_\_  
Name: •

Title: •

I/we have the authority to bind the Proponent.

## APPENDIX F FINANCIAL QUESTIONNAIRE

All capitalized terms used in this Financial Questionnaire, unless otherwise stated, have the meanings ascribed to them in the CHP III RFP. The Financial Questionnaire is an integral part of the Financial Plan and will be evaluated as part of the evaluation process. Proponents are advised the Initial Contract Price, Incremental Contract Price, Operating Cost Indexing Factor, and Transport and Handling Indexing Factor as applicable, shall not be disclosed or described in the Financial Questionnaire or the Financial Plan, failing which the Proposal shall be rejected.

### 3.2.21: Financing Experience

☐ Information and materials regarding the Financing Experience of the Proponent or its Control Group Member is attached.

Proposal section reference: \_\_\_\_\_

### 3.2.22: Financial Strength

Total Project Cost (\$):

20% of Total Project Cost (\$):

Expected financing structure:

Percent Debt:

Percent Self-Financed Equity:

Percent Not Self-Financed Equity:

Debt (in \$):

Self-Financed Equity (in \$):

Not Self-Financed Equity (in \$):

Based on the above figures, equity (including self-financed equity) accounts for at least 20% of the proposed Total Project Cost:

☐ Yes

☐ No

If the answer to the above question is "Yes", below are the names of those Designated Equity Provider(s) including self-financed entities, with supporting information, that individually or collectively, as required, have a Tangible Net Worth of \$250,000 per MW of Annual Average Contract Capacity at the end of each of the last two fiscal years and the end of the most recently completed fiscal quarter:

Designated Equity Provider(s)	% of the Equity Contribution to the Total Project Cost		Tangible Net Worth (\$)	
	%	\$	for Fiscal Year Ending: _____	for Fiscal Year Ending: _____

Please identify whether any Designated Equity Provider(s) listed above is an individual:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**a) Financial Plan**

☐ The Financial Plan, being this Financial Questionnaire together with all additional information and supporting materials, is hereby enclosed.

Proposal section reference: \_\_\_\_\_

**b) Year-End Financial Statements (check all that apply)**

☐ Audited year-end financial statements, of those Designated Equity Provider(s) that are not individuals, for the last two fiscal years for which audited statements have been issued are attached; and/or

☐ Unaudited year-end financial statements, of those Designated Equity Provider(s) that are individuals, for the last two fiscal years and a statutory declaration, as described in Section 3.2.22(b) of the CHP III RFP, are attached.

Proposal section reference: \_\_\_\_\_

**c) Most Recently Completed Quarter Financial Statements (check all that apply)**

☐ Audited financial statements of Designated Equity Provider(s) with respect to the most recently completed fiscal quarter (or, if the Designated Equity Provider is an issuer of securities that are publicly traded, the most recently completed fiscal quarter for which financial statements have been publicly issued) are attached; and/or

☐ Unaudited financial statements of Designated Equity Provider(s) for the most recently completed fiscal quarter (or, if the Designated Equity Provider is an issuer of securities that are publicly traded, the most recently completed fiscal quarter for which financial statements have been publicly issued), and a statutory declaration, as described in Section 3.2.22(c) of the CHP III RFP, are attached.

Proposal section reference: \_\_\_\_\_

**d) Methodology**

☐ Summary outlining and describing the methodology and specifying the calculations used to determine the Tangible Net Worth requirements for the Designated Equity Provider(s) based on the information provided in this Financial Questionnaire and financial statements in subsections (b) and (c) above, is attached.

Proposal section reference: \_\_\_\_\_

**e) Confirmation**

☐ Certificate from an officer of the Designated Equity Provider (or the Designated Equity Provider itself if it is an individual) is attached confirming that no facts or circumstances have arisen that may affect the Designated Equity Provider's financial condition as set out in the annual reports or financial statements that have been submitted in this Financial Questionnaire, and that, if the Designated Equity Provider is a Designated Equity Provider for more than one Proposal under the CHP III RFP, that the Designated Equity Provider has used (and shall continue to use) completely separate and different teams for each Proposal.

Proposal section reference: \_\_\_\_\_

☐ For each applicable Designated Equity Provider for whom any facts or circumstances have arisen that may affect the Designated Equity Provider's financial condition as set out in the annual reports or financial statements, a statutory declaration, as described in Section 3.2.22(e) of the CHP III RFP, is attached.

Proposal section reference: \_\_\_\_\_

### 3.3.4: Financial Assessment

**(i) Financing Experience**

☐ A description of another generation or cogeneration facility (for a Third-Party Developed Project) or the generation or cogeneration facility or a substantially similar major construction project (for a Host Developed Project) is attached, including the name, location, generation type (technology), size (in MW), the corporate and financing structure, capacity of that facility or project and the date of financial close of that facility or project.

Proposal section reference: \_\_\_\_\_

**(ii) Status of Commitment (check all that apply)**

☐ The Proponent will be self-financing all or a portion of the proposed Project, and if so attached are the amounts self-financed (in \$) as well as the portion of such self-financed amount of the Total Project Cost and evidence of the commitment; and/or

Proposal section reference: \_\_\_\_\_

☐ The Firm Commitments and Soft Commitments, as the case may be, from all of other sources of financing listed in the Financial Plan (i.e. an equity provider, lender, or other source of financing other than debt or equity or self-financing) are attached. If the proposed Project will be financed with 100% debt, attached are Firm Commitment(s) from such lenders willing to provide 100% of required financing as debt.

Proposal section reference: \_\_\_\_\_

**(iii) Financial Strength (check all that apply)****Self-Financed Equity:**

☐ The Proponent will be self-financing all or a portion of the proposed Project for which Firm or Soft Commitments have been provided in response to Section 3.3.4(ii) above. If the information outlined in Section 3.2.22 to establish the Proponent's Tangible Net Worth has not already been provided above, attached for purposes of this Section 3.3.4(iii) is all of the information required by Section 3.2.22 with respect to the Proponent:

Proposal section reference: \_\_\_\_\_

**Equity**

☐ The Proponent will require equity for all or a portion of the proposed Project for which Firm or Soft Commitments have been provided in response to Section 3.3.4(ii) above. If the information outlined in Section 3.2.22 to establish such equity provider(s)' Tangible Net Worth have not already been provided, then attached for purposes of this Section 3.3.4(iii) is all of the information required by Section 3.2.22 to evidence the Tangible Net Worth of each of such equity provider(s):

Proposal section reference: \_\_\_\_\_

**Lenders**

☐ The Proponent will debt finance all or a portion of the proposed Project for which Firm or Soft Commitments have been provided in response to Section 3.3.4(ii) above.

Name(s) and Category of Lender(s) (i.e. Category A or Category B):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

☐ Evidence indicating the category of the lender(s) is attached.

Proposal section reference: \_\_\_\_\_

**Additional Information**

Additional Information:

Proposal section reference: \_\_\_\_\_



## APPENDIX G TECHNICAL QUESTIONNAIRE

All capitalized terms used in this Technical Questionnaire, unless otherwise stated, have the meanings ascribed to them in the CHP III RFP. Proponents are advised that the Initial Contract Price, Incremental Contract Price, Operating Cost Indexing Factor, and Transport and Handling Indexing Factor shall not be disclosed or described in any other part of the Proposal, including the Technical Questionnaire, failing which the Proposal shall be rejected.

General Information			
Name of proposed Project:			
Proponent's registered legal business name and any other name under which it carries on business:			
State whether the Proponent is:	<input type="checkbox"/> an individual <input type="checkbox"/> a sole proprietorship <input type="checkbox"/> a corporation <input type="checkbox"/> a partnership	<input type="checkbox"/> a joint venture <input type="checkbox"/> an incorporated consortium <input type="checkbox"/> a consortium that is a partnership	<input type="checkbox"/> Other legally recognized entity: _____ _____ _____
Name(s) of: <ul style="list-style-type: none"> <li>the proprietor, where the Proponent is a sole proprietor; or</li> <li>each of the directors and officers where the Proponent is a corporation; or</li> <li>each of the partners where the Proponent is a partnership; and</li> <li>applicable combinations of these when the Proponent is a joint venture or consortium, whichever applies:</li> </ul>	_____ _____ _____ _____ _____ _____		
Proponent's Name:			
Proponent's Address:			
Telephone:		Fax:	
Email:			
Proponent's Primary Contact Name:			
Primary Contact Title:			
Primary Contact Mailing Address:			
Primary Contact Telephone:		Primary Contact Fax:	

Primary Contact Email:					
Substitute Contact Name:					
Substitute Contact Title:					
Substitute Contact Mailing Address:					
Substitute Contact Telephone:			Substitute Contact Fax:		
Substitute Contact Email:					
<b>3.2: Mandatory Requirements</b>					
3.2.3	Fuel Source	The Primary Fuel of the Project is (choose all that apply): <input type="checkbox"/> Renewable Biomass <input type="checkbox"/> Landfill Gas <input type="checkbox"/> Biogas <input type="checkbox"/> Biofuel  The Secondary Fuel(s) of the Project is: _____			
		Total annual heat input of all Primary Fuel and Secondary Fuel(s) together, on a HHV basis: _____			
		Total annual Primary Fuel heat input, on a HHV basis:		Total annual Secondary Fuel(s) heat input, on a HHV basis:	
3.2.4	Project Development	The proposed Project must either be: <input type="checkbox"/> a Host Developed Project; or <input type="checkbox"/> a Third-Party Developed Project.  Check here if the Host and the Proponent are the same legal entity: <input type="checkbox"/>			
3.2.5	Development Experience	<b>(a) Company Experience</b>  <input type="checkbox"/> The Proponent or its Control Group Member has successful experience with planning, development, and constructing one or more Designated Facilities, as defined in Section 3.2.5 depending on whether the Project is a Host Developed Project or Third-Party Developed Project.  <input type="checkbox"/> Attached are details sufficient to confirm that the Designated Facility(ies) referenced for purposes of the response above satisfy the definition of a Designated Facility in Section 3.2.5 depending on whether the Project is a Host Developed Project or Third-Party Developed Project.			

		<p><b>(b) Designated Team Members</b></p> <p>In the table below, specify at least five (5) different Designated Team Members, of which at least two individuals must be Designated Employees. Each Designated Team Member must have experience with at least one Designated Facility. Of the 5 or more Designated Team Members, at least one Designated Team Member must, in a Managerial Capacity, have planned and developed a Designated Facility and another Designated Team Member must, in a Managerial Capacity, have overseen construction of a Designated Facility.</p> <p><i>Note: The experience of a Designated Team Member used for purposes of satisfying this Section 3.2.5(b) may have been gained with entities other than the Proponent or its Control Group Member on Designated Facilities that may be different from the one or more Designated Facilities used for purposes of satisfying Section 3.2.5(a). In addition, the Designated Facilities need not be the same for any of the Designated Team Members.</i></p>				
Designated Facility name, location and type	Designated Facility capacity (MW)	Designated Team Member Name	Designated Employee (Yes/No)	Years of Experience in specified activity	Type of experience	Supporting info attached
1.					Planning & Development	<input type="checkbox"/>
2.					Construction	<input type="checkbox"/>
3.						<input type="checkbox"/>
4.						<input type="checkbox"/>
5.						<input type="checkbox"/>
						<input type="checkbox"/>
<p><input type="checkbox"/> At least two of the Designated Team Members are Designated Employees.</p> <p><input type="checkbox"/> Supporting evidence, including resumes, curriculum vitae and any professional designation(s) of the Designated Team Members (whether Designated Employees or Designated Associates) have been attached.</p> <p><input type="checkbox"/> Attached are details sufficient to confirm that the Designated Facilities referenced for Designated Team Member experience under this Section 3.2.5(b) satisfy the definition of a Designated Facility in Section 3.2.5 depending on whether the Project is a Host Developed Project or Third-Party Developed Project.</p> <p>Proposal section reference: _____</p>						

3.2.6	Annual Average Contract Capacity	Season	Average Seasonal Contract Capacity (MWe)	Annual Average Contract Capacity (MWe)	Nameplate Capacity (MWe)		
		Season 1: Dec – Feb					
		Season 2: Mar – May					
		Season 3: Jun – Aug					
		Season 4: Sep – Nov					
3.2.7	Commercial Operation Date (Day, Month, Year)	_____					
	Financial Closing Milestone Date	<input type="checkbox"/> Applicable. Milestone Date for achieving Financial Closing is _____ <input type="checkbox"/> Not applicable.					
3.2.8	Location of Project	<input type="checkbox"/> The proposed Project is located in the Province of Ontario.  Address of the Project: _____ _____  The proposed Project is connected to: <input type="checkbox"/> IESO-Controlled Grid <input type="checkbox"/> LDC <input type="checkbox"/> End User  <input type="checkbox"/> The Project affects the supply or demand in the interconnected electricity grid in Ontario.  <input type="checkbox"/> A map of the proposed Project is attached.  Proposal section reference: _____					
3.2.9	Site Control	Confirm the site control of the proposed Project: <input type="checkbox"/> Own <input type="checkbox"/> Option to purchase <input type="checkbox"/> Lease <input type="checkbox"/> Option to lease					

		<input type="checkbox"/> Licence <input type="checkbox"/> Option to licence <input type="checkbox"/> "Site Release" <input type="checkbox"/> Band council resolutions <input type="checkbox"/> Other: _____  Supporting documentation: <input type="checkbox"/> a certified copy of an executed agreement entitling the Proponent to an easement over, or an option to lease, licence or purchase the land, <input type="checkbox"/> a certified copy of registered title, lease, easement, or licence, <input type="checkbox"/> written confirmation from the appropriate Ministry, or Ministries, that the Proponent has been granted the opportunity to pursue development approvals for the Project in the form of a "Site Release" or confirmation of Proponent's land tenure, or <input type="checkbox"/> a certified copy of any and all band council resolutions Proposal section reference: _____	
3.2.10	CHP III Class 43.1 Qualification	<input type="checkbox"/> The Project satisfies the CHP III Class 43.1 Qualification as defined in Section 3.2.10. Supporting documentation: <input type="checkbox"/> Heat and mass balance diagram and associated calculations <input type="checkbox"/> Other: _____  Proposal section reference: _____	
3.2.11	Term of Off-Take Agreement or Declaration	Term of the Off-Take Agreement (from the time of Commercial Operation): _____	<input type="checkbox"/> A copy of the Off-Take Agreement is attached; or <input type="checkbox"/> The Host and the Proponent are the same legal entity and a declaration of a company officer and supporting evidence as required by Section 3.2.11 is attached. Proposal section reference: _____
3.2.12	Application of Useful Heat Output	Useful Heat Output is exclusively reserved by the Host Facility:	<input type="checkbox"/> Yes <input type="checkbox"/> No  Has the Host committed to purchasing Useful Heat Output from more than one proposed Project? <input type="checkbox"/> Yes <input type="checkbox"/> No

		<p>If yes, the application of Useful Heat Output purchased from each such proposed Project is:</p>	<p><input type="checkbox"/> used by more than one separate and distinct application with respect to any other proposed Projects; and</p> <p><input type="checkbox"/> covered by a separate Off-Take Agreement where the Host and the Proponent are not the same legal entity; and</p> <p><input type="checkbox"/> required by the Host Facility independent of every other application of Useful Heat Output such that any single Useful Heat Output Application will proceed in conjunction with the selection of the corresponding proposed Project under the CHP III RFP.</p>
3.2.13	Gainful Application of Useful Heat Output	Description of Useful Heat Output Application:	
		<p><input type="checkbox"/> Declaration from a company officer and supporting evidence confirming the Host proposed purchases and applications of Useful Heat Output have been attached.</p> <p>Proposal section reference: _____</p>	
		<p><input type="checkbox"/> A copy of the Registration Form Acceptance Notification from the OPA confirming that the application of Useful Heat Output is acceptable is attached.</p> <p>Proposal section reference: _____</p> <p><input type="checkbox"/> A declaration from a company officer is attached stating that the Useful Heat Output application described in this Technical Questionnaire has not changed from that described in the Registration Form Acceptance Notification.</p> <p>Proposal section reference: _____</p>	

3.2.14	Useful Heat Output and Volume	<p><input type="checkbox"/> The Useful Heat Output volume meets the requirements outlined in Section 3.2.14 of the CHP III RFP and is substantiated by the Off-Take Agreement, or by the declaration of a company officer of the Host and supporting documentation, as the case may be.</p> <p><input type="checkbox"/> Supporting documentation including, but not limited to, heat and mass balance diagram and supporting calculations for each calendar month for a year, and the Off-Take Agreement have been attached.</p> <p>Proposal section reference: _____</p>
3.2.15	Proposed Connection	<p><b>(1) Connection Point</b></p> <p>The Connection Point of the proposed Project is: _____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p><input type="checkbox"/> A site plan and layout has been provided</p> <p>Proposal section reference: _____</p> <p><input type="checkbox"/> Electrical single line diagram of the proposed Project has been provided.</p> <p>Proposal section reference: _____</p> <p><input type="checkbox"/> The Connection Point is not a Prohibited Connection Point.</p>

		<p>State the Specified Circuit (or circuit if not a Specified Circuit), Zone and Area of the proposed Project:</p> <p>Circuit: _____</p> <p>Zone: _____</p> <p>Area: _____</p> <p>Proposal section reference: _____</p> <p>If the Connection Point is at a Specified Circuit, and there are multiple Specified Circuits in a common corridor at the Connection Point:</p> <p><input type="checkbox"/> the Proponent is willing to connect to alternative Specified Circuit(s) within the common transmission corridor, with the choice of the Specified Circuit(s) being made in the sole and absolute discretion of the OPA. The alternative Specified Circuit(s) are:</p> <p>_____</p> <p>_____</p> <p>OR</p> <p><input type="checkbox"/> the Proponent is not willing to alter the proposed Connection Point to an alternative Specified Circuit(s) within the common transmission corridor.</p> <p>For proposed Projects that will be connecting to the IESO-Controlled Grid or an End User that connects to the IESO-Controlled Grid:</p> <p><input type="checkbox"/> attached is either (1) a Part One System Impact Assessment, (or an equivalent assessment prepared and issued by the IESO) <b>or</b> (2) written confirmation from the IESO indicating that a Part One System Impact Assessment is not required, <b>or</b> (3) a completed System Impact Assessment; <b>and</b></p> <p>Proposal section reference: _____</p> <p><input type="checkbox"/> attached is either (1) an executed copy of a System Impact Assessment Agreement between the Proponent and the IESO (where a Part one System Impact Assessment or equivalent assessment has been prepared and issued by the IESO), <b>or</b> (2) written confirmation from the IESO indicating that a System Impact Assessment Agreement is not required, (a single written confirmation from the IESO may cover this item and item (i)(2) in Section 3.2.15) <b>or</b> (3) reference to the System Impact Assessment that was attached pursuant to the previous question; <b>and</b></p> <p>Proposal section reference: _____</p> <p><input type="checkbox"/> An executed copy of a Customer Impact Assessment Study Agreement with the relevant Transmitter, in respect of the proposed Project, (or written confirmation from the Transmitter indicating that a Customer Impact Assessment Study Agreement is not required) is attached.</p> <p>Proposal section reference: _____</p>
--	--	--



		<p>If the proposed Project is connected to a Local Distribution System or an End User that connects to a Local Distribution System, the proposed Project must have and submit the following:</p> <p><input type="checkbox"/> an executed copy of the Connection Impact Assessment Study Agreement between the Proponent and the LDC for the proposed Project; <b>and</b></p> <p>Proposal section reference: _____</p> <p><input type="checkbox"/> if applicable, an executed copy of the Connection Impact Assessment Study Agreement between the embedded LDC to which the Project is proposing to connect and the host LDC which serves the embedded LDC; <b>and</b></p> <p>Proposal section reference: _____</p> <p><input type="checkbox"/> attached is either (1) a Part One System Impact Assessment or equivalent assessment prepared and issued by the IESO <b>or</b> (2) written confirmation from the IESO indicating that a Part One System Impact Assessment is not required, <b>or</b> (3) reference to the System Impact Assessment that has been attached pursuant to the previous question; <b>and</b></p> <p>Proposal section reference: _____</p> <p><input type="checkbox"/> attached is either (1) an executed copy of a System Impact Assessment Agreement between the Proponent and the IESO (where a Part One System Impact Assessment or equivalent assessment has been prepared and issued by the IESO), <b>or</b> (2) written confirmation from the IESO indicating that a System Impact Assessment Agreement is not required, (a single written confirmation from the IESO may cover this item and item (iii)(2) in Section 3.2.15) <b>or</b> (3) reference to the System Impact Assessment that was attached pursuant to the previous question; <b>and</b></p> <p>Proposal section reference: _____</p> <p><input type="checkbox"/> An executed copy of a Customer Impact Assessment Study Agreement with the relevant Transmitter (or written confirmation from the relevant Transmitter indicating that a Customer Impact Assessment Study Agreement is not required) is attached.</p> <p>Proposal section reference: _____</p>
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		<p><b>(2) Transmission Connection Point</b></p> <p><input type="checkbox"/> The proposed Project is connected to the Transmission System, and therefore the Transmission Connection Point is the same as the Connection Point; or</p> <p><input type="checkbox"/> The proposed Project is connected to an End User or Local Distribution System, and the Transmission Connection Point as set out in Part One System Impact Assessment, System Impact Assessment, or written confirmation, as the case may be, of the IESO is as follows:</p> <p>_____</p> <p>_____</p> <p>_____</p>
3.2.16	Design, Construction and Operation	<p>The proposed Project will be designed, constructed and operated in compliance with all relevant requirements of the Market Rules, the Transmission System Code, the Distribution System Code and all other applicable laws and regulations.</p> <p><input type="checkbox"/> Mandatory Technical Requirements Declaration submitted.</p>
3.2.17	No Acquisition of Major Equipment	<p>The Proponent has not, prior to June 14, 2007, commenced procurement for the purposes of the Project of any of the following major equipment: turbine generator sets, steam generator, condensers, transformers, switchgear equipment; and/or did not issue a Notice to Proceed with respect to construction of the Project prior to June 14, 2007.</p> <p>For greater certainty, "commencing procurement" means the signing of a purchase order or execution of a contractual obligation to procure equipment for the purposes of the Project, and existing major equipment owned by the Proponent or options on major equipment held but not assigned nor allocated specifically to the Project prior to June 14, 2007 are considered acceptable.</p> <p><input type="checkbox"/> Mandatory Technical Requirements Declaration submitted.</p>
3.2.18	Not an Existing Generating Facility or Upgrade	<p>The proposed Project is the generation facility or facilities to be constructed, developed, owned (or leased) and operated by the Proponent under a CHP III PPA as anticipated by this CHP III RFP, and the proposed Project includes gas or steam turbine generators, as applicable, condensers, transformers, switchgear equipment, and also includes all steam generators and boilers to the extent that they are or may be used to generate steam used by any turbine generator. In addition, the proposed Project is not an Existing Generating Facility or an Upgrade. For greater certainty, a proposed Project that is an Expansion of an Existing Generating Facility is eligible under the CHP III RFP with respect to the Annual Average Contract Capacity relating to the Expansion.</p> <p><input type="checkbox"/> Mandatory Technical Requirements Declaration submitted.</p>

3.2.19	Additional Requirement for Host Developed Projects	<input type="checkbox"/> The Proponent is not a Host Developed Project, or <input type="checkbox"/> The Proponent is a Host Developed Project, and <input type="checkbox"/> the legal entity that is the Host (or if a District Energy Facility, the district energy business) is the legal entity that is the Proponent; or <input type="checkbox"/> the legal entity that is the Host (or, if a District Energy Facility, that is the district energy business), or that Controls the Host or the district energy business, as the case may be, owns 30% or more, either directly or indirectly, of the Proponent, and the legal entity that is the Host (or if a District Energy Facility, the district energy business) must execute the Form of Guarantee for Host Developed Project as part of the CHP III PPA Closing Documents.  <input type="checkbox"/> Mandatory Technical Requirements Declaration submitted.
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☐ I acknowledge, on behalf of the Proponent, that I have read the CHP III RFP and all Addenda, if applicable.

☐ I acknowledge that I have completed this form accurately and truthfully.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 2009.

**[Proponent]**

\_\_\_\_\_  
Per: (authorized signing officer)

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Fax Number: \_\_\_\_\_

I/we have the authority to bind the Proponent.

## APPENDIX H RATED CRITERIA INFORMATION FORM

The following Rated Criteria Information Form is a mandatory form that will assist in the evaluation of the Proposal. To the extent that information inserted by the Proponent in this form modifies or supplements the Proposal Submission, it will be considered to be part of the Proposal Submission.

Please check all applicable boxes and fill out information as required. By filling out this form, you are providing the OPA with information that will assist the OPA in applying the Rated Criteria to your proposed Project.

### 3.3.1: Project Maturity

#### (1) Environmental Assessment

☐ Information and materials regarding the Environmental Assessment process is attached to the Proposal.

Proposal section reference: \_\_\_\_\_

#### (2) Municipal and Regional Approvals

☐ Information and materials regarding Municipal and Regional Approvals, including permits and status attached, is attached to the Proposal.

Proposal section reference: \_\_\_\_\_

#### (3) Status of EPC Contract

☐ Evidence of the Proponent's engineering, procurement, and construction contracting status is attached to the Proposal.

Proposal section reference: \_\_\_\_\_

### 3.3.2: Host Facility Risk Mitigation

#### (1) Host Financial Strength

☐ Evidence of the credit rating and audited financial statements of the Host; or a corporate guarantee of the Host's financial commitments to the Proponent, and the credit rating and/or the audited financial statements of the guarantor, and a copy of the credit support documentation have been provided in the Proposal.

Proposal section reference: \_\_\_\_\_

#### (2) Status of Off-Take Agreement or Commitment

☐ Evidence of the status of Off-Take Agreement (or commitment, where the Proponent and the Host are the same legal entity) is attached to the Proposal.

Proposal section reference: \_\_\_\_\_

**(3) Duration of the Off-Take Agreement or Commitment**

☐ Evidence of the duration of the Off-Take Agreement (or commitment, where the Proponent and the Host are the same legal entity) is attached to the Proposal.

Proposal section reference: \_\_\_\_\_

**3.3.3: Proponent Team Experience****(1) Proponent or its Control Group Member's Experience**

☐ Supporting evidence, and a description of the Designated Facility or Facilities is attached to the Proposal.

Proposal section reference: \_\_\_\_\_

**(2) Designated Team Members**

☐ Supporting evidence, including resumes, curriculum vitae and any professional designation(s) is attached to the Proposal.

Proposal section reference: \_\_\_\_\_

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 2009.

**[Proponent]**

\_\_\_\_\_  
Per: (authorized signing officer)

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Fax Number: \_\_\_\_\_

I/we have the authority to bind the Proponent.

**APPENDIX I PROPOSAL SECURITY (LETTER OF CREDIT FORM)**

DATE OF ISSUE:	[Insert Date]
APPLICANT:	[Insert Proponent's Name]
BENEFICIARY:	Ontario Power Authority
AMOUNT:	•
EXPIRY DATE:	[Insert Expiry Date, being a minimum of ninety (90) days after the Proposal Submission Deadline]
EXPIRY PLACE:	Toronto Counters of the issuing financial institution
CREDIT RATING:	[Insert credit rating only if the issuer is not a financial institution listed in either Schedule I or II of the <i>Bank Act (Canada)</i> ]
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:

"The Proponent, whose Proposal has been selected and accepted by the Beneficiary, **[has failed to deliver the Initial Completion and Performance Security within six (6) Business Days of the CHP III PPA Receipt Date]** or **[fails to sign the CHP III PPA within eight (8) Business Days of the CHP III PPA Receipt Date]** or **[has made a material misrepresentation in the Proposal,]** or **[is in breach or default of the CHP III RFP]** and therefore the Beneficiary is entitled to draw upon the Credit in the amount of the draft attached hereto. All capitalized terms used in this certificate that have not been defined

herein have the meanings ascribed to them in the CHP III RFP.” **[as applicable]**

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]”.

This Credit is issued in connection with the Request for Proposals for approximately 100 MW of Renewable Fuelled Combined Heat and Power Generation issued by the Ontario Power Authority dated March 9, 2009, as amended (the “CHP III RFP”) and the Proposal dated **[insert date of Proposal]** submitted by the Proponent in response thereto (the “Proposal”).

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 bank]** in Toronto, **[insert bank’s address]** at or before 5:00 p.m. (Eastern Prevailing Time) on **[insert the expiry date]**.

It is a condition of this Credit that if there should be an interruption of the issuing bank’s business upon the expiry date, arising out of any of the circumstances provided for in the International Standby Practices ISP 98, International Chamber of Commerce Publication No. 590, this Credit shall automatically be extended to the first following day on which the issuing bank resumes business.

The Credit is subject to the International Standby Practices ISP 98, International Chamber of Commerce Publication No. 590, and as to matters not addressed by ISP 98, shall be governed by the laws of the Province of Ontario and applicable Canadian federal law without regard to principles of conflict of laws, and the parties hereby irrevocably agree to attorn to the exclusive jurisdiction of the courts of the Province of Ontario.

**[BANK OR QUALIFIED FINANCIAL INSTITUTION]**

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

**AUTHORIZED SIGNATORY**

– END –

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**APPENDIX J PROPOSAL SECURITY (BID BOND FORM)****BID BOND**

Bond No.: •

Bond Amount: \$(•)

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**[Insert Proponent's name]** as Principal, hereinafter called the Principal, and **[insert Surety's name]** a corporation created and existing under the laws of **[insert originating jurisdiction]** and duly authorized to transact the business of Suretyship in the Province of Ontario as Surety, hereinafter called the Surety, are held and firmly bound unto the Ontario Power Authority as Obligee, hereinafter called the Obligee, in the amount of •/100.00 Dollars (\$(•)) of lawful money of Canada, for the payment of which sum the Principal and the Surety binds itself, its heirs, executors, administrators, successors and assigns, jointly and severally.

**WHEREAS, the Principal has submitted a written proposal to the Obligee dated the [insert date of Proposal], hereinafter called the Proposal, for the development and operation of an electrical generating facility in the Province of Ontario, in response to a Request for Proposals for approximately 100 MW of Renewable Fuelled Combined Heat and Power Generation issued by the Ontario Power Authority dated March 9, 2009, as amended, hereinafter called the Combined Heat and Power III RFP or the CHP III RFP. All capitalized terms used in this Bid Bond that have not been defined herein have the meanings ascribed to them in the CHP III RFP.**

The condition of this obligation is that the Principal has failed to deliver the Initial Completion and Performance Security within six (6) Business Days of the CHP III PPA Receipt Date, or fails to sign the CHP III PPA within eight (8) Business Days of the CHP III PPA Receipt Date, or has made a material misrepresentation in the Proposal, or is in breach or default of the CHP III RFP, in which case the Principal and the Surety will pay unto the Obligee the entire amount of the Bid Bond; otherwise, this obligation shall be null and void.

The Principal and the Surety shall not be liable for a greater sum than the Bond Amount.

Any suit under this Bond must be instituted before the expiration of twelve (12) months from the date of this Bond.

No right of action shall accrue hereunder to or for the use of any person or corporation other than the Obligee named herein, or the successors or assigns of the Obligee.

The Surety confirms that as of the date of this Bond, it has a financial strength rating of A- or higher by A.M. Best in financial size category VIII or higher.

IN WITNESS WHEREOF, the Principal and the Surety have signed and sealed this Bond this • day of •, 2009.



**[PRINCIPAL]**

By:

\_\_\_\_\_  
Name: •

Title: •

I/we have the authority to bind the Principal.

**[SURETY]**

By:

\_\_\_\_\_  
Name: •

Title: •

I/we have the authority to bind the Surety.

**APPENDIX K PROPOSAL RETURN LABEL****(Full Legal Name and Address of Proponent)****NAME****RFP No.: CHP III RFP-2009****ADDRESS****CONTACT****PHONE NO.****FAX NO.****E-MAIL ADDRESS**

**To: BNY Trust Company of Canada  
4 King Street West  
Suite 1101  
Toronto, ON M5H 1B6  
Attention: Ontario Power Authority - CHP III RFP**

**The Postal Code is to aid in identifying the building only. The onus remains solely with CHP III Parties to instruct courier/ delivery personnel to deliver Proposal submissions to the exact address and suite location specified above by the Proposal Submission Deadline. CHP III Parties assume sole responsibility for late deliveries if these instructions are not strictly adhered to. The Ontario Power Authority does not accept responsibility for Proposals directed to any location other than the one indicated on the label above.**

**Proposals must be submitted in a sealed package(s) to the address indicated on the Proposal Return Label between the hours of 9:00 a.m. and 5:00 p.m. (EPT), Monday through Friday (excluding statutory holidays in Ontario), BUT IN ANY EVENT NO LATER THAN THE PROPOSAL SUBMISSION DEADLINE FOR THE CHP III RFP.**

**Failure to affix this label to your submission envelope/ package may also result in Proposals not being recognized as a Proposal. This could result in your Proposal arriving late at the address indicated on the Proposal Return Label and will be deemed late, disqualified and returned to the sender.**

**PROPOSALS RECEIVED BY FAX OR ANY OTHER KIND OF ELECTRONIC TRANSMISSION WILL BE REJECTED**

**APPENDIX L MANDATORY TECHNICAL REQUIREMENTS DECLARATION**

PROVINCE OF ONTARIO

TO WIT

IN THE MATTER OF a proposal dated •, 2009 to which this Declaration forms an integral part (the "Proposal") prepared by • (the "Proponent"), and submitted in response to a Request for Proposals for approximately 100 MW of Combined Heat and Power issued by the Ontario Power Authority and dated March 9, 2009, as amended (the "CHP III RFP")

I, •

OF THE •

IN THE •

**SOLEMNLY DECLARE THAT**

- a) I am the • of the Proponent and, as such, have knowledge of the matters declared below, and am duly authorized by the Proponent to execute this declaration. All capitalized terms used in this declaration, unless otherwise stated, have the meanings ascribed to them in the CHP III RFP.

**COMPLIANCE WITH MANDATORY REQUIREMENTS**

- b) The Proponent has satisfied and complied with each of the Mandatory Requirements set forth in the following sections of the CHP III RFP:

- 3.2.1. Identity of Proponent
- 3.2.2. Identity of Host
- 3.2.3. Fuel Source
- 3.2.4. Project Development
- 3.2.5. Development Experience
- 3.2.6. Annual Average Contract Capacity

- 3.2.7. Commercial Operation Date
- 3.2.8. Location of Project
- 3.2.9. Site Control
- 3.2.10. CHP III Class 43.1 Qualification
- 3.2.11. Term of Off-Take Agreement
- 3.2.12. Application of Useful Heat Output
- 3.2.13. Gainful Application of Useful Heat Output
- 3.2.14. Useful Heat Output and Volume
- 3.2.15. Proposed Connection
- 3.2.16. Design, Construction and Operation
- 3.2.17. No Acquisition of Major Equipment
- 3.2.18. Not an Existing Generating Facility or Upgrade
- 3.2.19. Additional Requirement for Host Developed Project
- 3.2.20. Proposal Security
- 3.2.21. Financing Experience
- 3.2.22. Financial Strength
- 3.2.23. Executive Summary

AND I make this solemn declaration conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath.

DECLARED BEFORE ME at the • of•, in the  
[County/Region] of•, on•.

\_\_\_\_\_  
Commissioner for taking affidavits

\_\_\_\_\_  
Name

## APPENDIX M USEFUL HEAT OUTPUT

### Definition of Useful Heat Output:

Refer to the definition in **Appendix A: Glossary of Terms**.

### Determination of Minimum 15% Criterion:

The requirement that a Project has a Useful Heat Output equal to or greater than 15% of the total energy output of the Project, as set forth in Section 3.2.14, will be satisfied if the following condition is met on an annual average basis:

$$(\text{MWh}_{\text{thermal}}) \div (\text{MWh}_{\text{electrical}} + \text{MWh}_{\text{thermal}}) \geq 15\%$$

Where:

$\text{MWh}_{\text{thermal}}$  is the net annual Useful Heat Output produced by the proposed Project

$\text{MWh}_{\text{electrical}}$  is the net annual electrical energy produced by the proposed Project as measured by the Delivery Point net of any losses, Station Service Loads, and Auxiliary Loads, as such terms are defined in the CHP III PPA, arising on the Project side of such Delivery Point.

And where:

$$\text{MWh}_{\text{thermal}} = \sum M_e \times H_e - \sum M_r \times H_r - \sum M_i \times H_i$$

Where:

$M_e$  is the mass flow of heat exported from the combined heat and power cycle

$H_e$  is the enthalpy of heat exported from the combined heat and power cycle

$M_r$  is the mass flow of heat returned to the combined heat and power cycle

$H_r$  is the enthalpy of heat returned to the combined heat and power cycle

$M_i$  is the mass flow of heat externally added to the combined heat and power cycle

$H_i$  is the enthalpy of heat externally added to the combined heat and power cycle

$e, r, i$  denote respectively the number of export, return and import processes in the combined heat and power cycle.

For greater certainty, where a proposed Project is an Expansion of an Existing Generating Facility, the requirement that a Project has a Useful Heat Output equal to or greater than 15% of the total energy output of the Project shall be calculated using the same formulae shown above, except that  $MWh_{\text{thermal}}$  is the sum of the net annual useful thermal energy produced by both the Existing Generating Facility and the Expansion of the Existing Generating Facility.

**APPENDIX N STATUTORY DECLARATION**

PROVINCE OF ONTARIO

TO WIT

IN THE MATTER OF a proposal dated •, 2009 to which this Declaration forms an integral part (the "Proposal") prepared by • (the "Proponent"), and submitted in response to a Request for Proposals for approximately 100 MW of Combined Heat and Power issued by the Ontario Power Authority and dated March 9, 2009, as amended (the "CHP III RFP")

I, •

OF THE •

IN THE •

**SOLEMNLY DECLARE THAT**

- 1) I am the • of the Proponent and, as such, have knowledge of the matters declared below, and am duly authorized by the Proponent to execute this declaration. All capitalized terms used in this declaration, unless otherwise stated, have the meanings ascribed to them in the CHP III RFP.

**PROPOSAL VALIDITY AND PROPOSAL SECURITY**

- 2) All statements, specifications, data, confirmations and other information that have been set out in the Proposal, including, without limitation, the Technical and Financial Questionnaires, are complete and accurate in all material respects.
- 3) The Proposal is valid, irrevocable, and open for acceptance, until 5:00 P.M. (EPT) on the ninetieth (90th) day after the Proposal Submission Deadline.
- 4) The Proponent has consented, pursuant to subsection 17(3) of the *Freedom of Information and Protection of Privacy Act* (Ontario), to the disclosure, on a confidential basis, of the

Proposal by the OPA to the Evaluation Team and the OPA's other advisors retained for the purpose of evaluating or participating in the evaluation of the Proposal.

- 5) The Proponent has received and reviewed the final CHP III PPA issued by the OPA, together with any and all addenda thereto either posted on the Generation Procurement Website or mailed to the Proponent from time to time, up to and including the Deadline for Issuing Addenda set out in the CHP III RFP, and has agreed to be bound by the terms of the CHP III PPA including any security that may be required under the CHP III PPA.
- 6) Neither the Proponent, the proposed Project described in the Proposal, nor any member of the Proponent Team is the subject of any bona fide legal proceedings, investigation or regulatory hearings that could materially impact the financial condition of the Proponent or any of the entities involved in financing and operations for the proposed Project.
- 7) The Proponent has agreed that the OPA shall be able to draw upon the full amount of the Proposal Security if the Proponent, having become a Selected Proponent, has failed to sign and deliver the CHP III PPA and all CHP III PPA Closing Documents required, or has failed to deliver the Initial Completion and Performance Security to the OPA, within the times required as set forth in the CHP III RFP, or has made a material misrepresentation in the Proposal, or is in breach or default of the CHP III RFP.

#### DESIGNATED EQUITY PROVIDERS

- 8) The Proponent has made due inquiries of its Designated Equity Provider(s) as to whether such Designated Equity Provider(s) is a Designated Equity Provider on another Proposal submitted by any Proponent to the CHP III RFP and, if the answer to such inquiry is an affirmative, then:
  - a. the Proponent has received confirmation from its Designated Equity Provider(s) that (i) each such Designated Equity Provider has used a completely separate team for each Proposal submitted to the CHP III RFP, and (ii) the combined (cumulative) Tangible Net Worth requirements for all such Proposals by any Proponent of which such Designated Equity Provider is a part does not exceed such Designated Equity Provider's Tangible Net Worth; and



- b. the Proponent has enclosed with its Proposal the certificate of an officer of its Designated Equity Provider(s) regarding the use of completely separate and different teams for each Proposal as set forth under Section 3.2.22 of the CHP III RFP.

#### NON-COLLUSION

- 9) Neither the Proponent, nor any person, firm or corporation, nor any person representing the Proponent and/or participating in the submission of the Proposal, has directly or indirectly entered into any discussion, communication, agreement or arrangement with any other Registered Participant or any member of another Proponent Team, whereby the Proponent, in order to induce acceptance of the Proposal by the OPA, has paid or is to pay or provide to any other Registered Participant or member of another Proponent Team anything of value, and neither the Proponent, nor any person, firm or corporation, nor any person representing the Proponent and/or participating in the submission of the Proposal has, directly or indirectly entered into any discussion, communication, arrangement or agreement with any other Registered Participant or any member of another Proponent Team that could have the effect of reducing competition in respect of the subject matter of the CHP III RFP.
- 10) In preparing its Proposal(s), only the following individuals [*state names of individuals*] were involved in determining pricing of its Proposal(s) (whether as a member of its Proponent Team or otherwise), no other individuals were so involved and such individuals were not involved in determining pricing of a Proposal of another Proponent.
- 11) The Proponent:
  - a. has not coordinated its Economic Bid Statement or any other aspect of any of its Proposal(s) with another Registered Participant or Proponent; and
  - b. has kept and will continue to keep the Proposal confidential until the Selected Proponent(s) are publicly announced.

- 12) No member of its Proponent Team has entered into any agreement or arrangement with any member of another Proponent Team, which may, directly or indirectly, affect the Economic Bid Statement or any other aspect of the Proposal(s) submitted by the Proponent and/or another Proponent.
- 13) Neither the Proponent nor any member of its Proponent Team has engaged in any conduct contrary to the Non-Collusion Requirements.

AND I make this solemn declaration conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath.

DECLARED BEFORE ME at the • of •, in the  
[County/Region] of •, on •.

---

Commissioner for taking affidavits

---

Name

**APPENDIX O CONFLICT OF INTEREST DECLARATION**

PROVINCE OF ONTARIO

TO WIT

IN THE MATTER OF a proposal dated •, 2009 to which this Declaration forms an integral part (the "Proposal") prepared by • (the "Proponent"), and submitted in response to a Request for Proposals for approximately 100 MW of Combined Heat and Power issued by the Ontario Power Authority and dated March 9, 2009, as amended (the "CHP III RFP")

I, •

OF THE •

IN THE •

**SOLEMNLY DECLARE THAT**

- 1) I am the • of the Proponent and, as such, have knowledge of the matters declared below, and am duly authorized by the Proponent to execute this declaration. All capitalized terms used in this declaration, unless otherwise stated, have the meanings ascribed to them in the CHP III RFP.

- 2) By checking one of the following boxes that applies, I confirm that:

☐ "NO" - there is not, nor was there, any actual or potential Conflict of Interest relating to the preparation of the Proposal.

☐ "YES" - there is, or was, an actual or potential Conflict of Interest relating to the preparation of the Proposal.

***[Note to Proponent: If you placed a checkmark in the box marked "NO", do not complete any of paragraph 3 and proceed to paragraph 4. If you placed a checkmark in the box marked "YES" above, complete paragraph 3.]***

- 3) The following is a list of actual or potential Conflicts of Interest relating to the preparation of the Proposal or the performance of the contractual obligations contemplated in the CHP III PPA:

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- 4) In submitting the Proposal, the Proponent has /has no ***[Note to Proponent: Strike out the inapplicable portion]*** knowledge of or ability to avail itself of confidential information of the Crown in right of Ontario or the OPA (other than confidential information which may have been disclosed by the OPA to the Proponents in the normal course of the CHP III RFP) which is relevant to the CHP III RFP or the Proposal.

AND I make this solemn declaration conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath.

DECLARED BEFORE ME at the • of •, in the  
[County/Region] of •, on •, 2009.

\_\_\_\_\_  
Commissioner for taking affidavits

\_\_\_\_\_  
Name

**APPENDIX P TRANSMISSION CONSTRAINTS MAPS**

<b>Area</b>	<b>Zone</b>	<b>Definition</b>
<b>Northwest</b>		All transmission facilities between Kenora TS and Wawa TS, including Kenora TS but excluding Wawa TS.
	<b>Atikokan West</b>	All transmission facilities between Kenora TS and Mackenzie TS, including Kenora TS but excluding Mackenzie TS and the 230 kV circuit N93A.
	<b>Atikokan to Wawa</b>	All transmission facilities between Mackenzie TS and Wawa TS, including Mackenzie TS and the 230 kV circuit N93A but excluding Wawa TS.
<b>Northeast</b>		Following four zones
	<b>Wawa - Sudbury</b>	The transmission system east of Wawa TS, including Wawa TS to Hanmer TS and Martindale TS, not including Hanmer TS and Martindale TS, and excluding 115 kV circuit S2B.
	<b>Manitoulin</b>	Manitoulin TS and the 115 kV circuit S2B between Manitoulin TS and Martindale TS, but excluding Martindale TS.
	<b>Sudbury North</b>	The transmission system north of Hanmer TS and Dymond TS, but excluding these two stations
	<b>Sudbury East</b>	The transmission system East of Hanmer TS and Martindale TS (including these two stations), and south of Dymond TS (including Dymond TS), and bounded by Des Joachims TS to the east (excluding Des Joachims TS)
<b>Bruce</b>		Orange zone as previously defined.

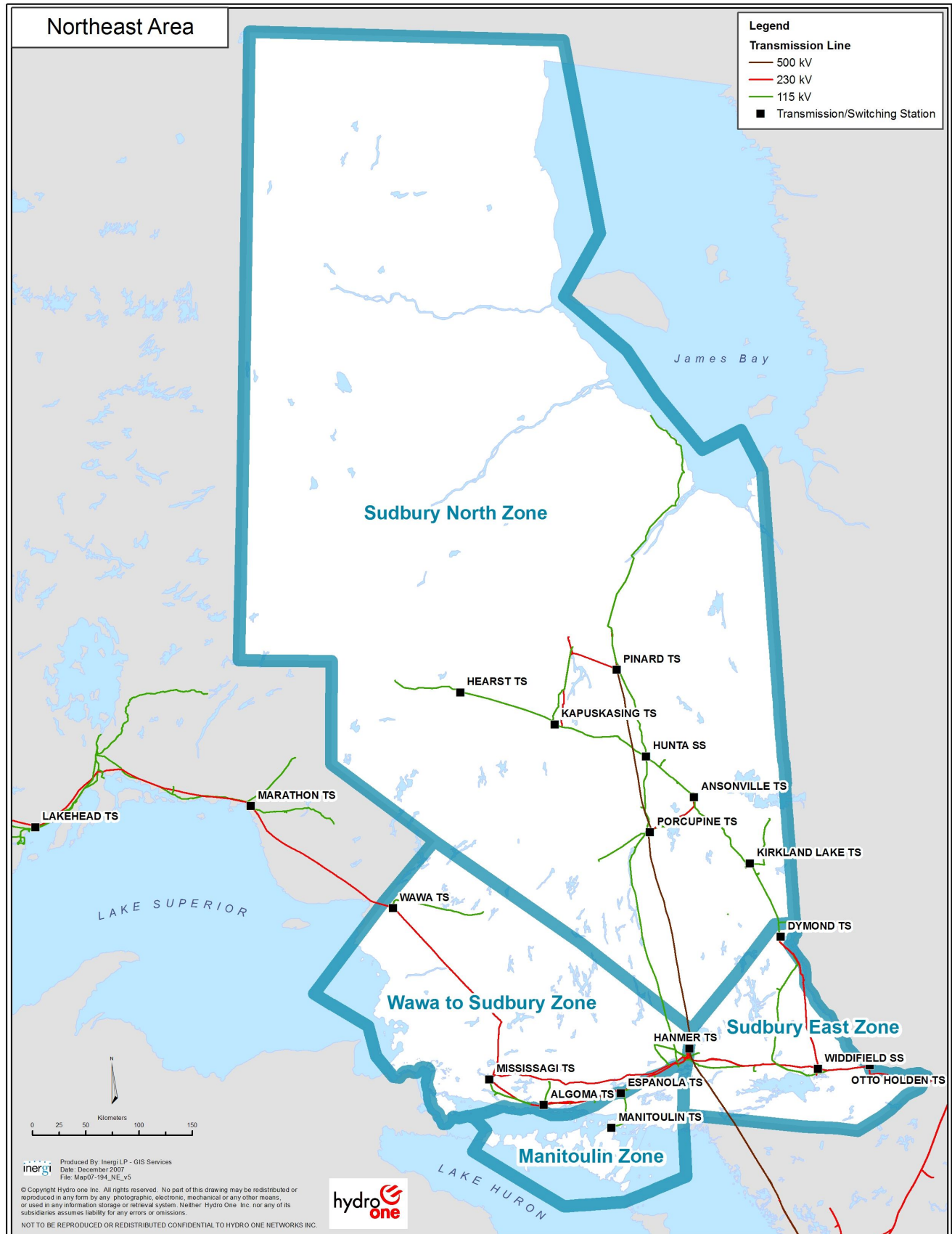
Area	Zone	Definition
<b>Niagara</b>		<p>Beck 2 TS, Beck 1 SS, Allanburg TS, Decew Falls SS</p> <p>230 kV circuits from Beck 2 TS to Beach TS up to Hannon Jct.</p> <p>230 kV circuits from Beck 2 TS to Burlington TS up to Hannon Jct.</p> <p>230 kV circuits from Beck 2 TS to Allanburg TS</p> <p>230 kV circuits from Allanburg TS to Middleport TS</p> <p>All 115 kV circuits connected from Allanburg TS, Beck 1 SS and Decew Falls SS</p>
<b>West of London</b>		<p>All transmission facilities west of Buchanan TS, including the following circuits connected to Buchanan TS:</p> <p>230 kV circuits: W42L, W43L, W44LC, W45LC, W36, W37, N21W, N22W.</p> <p>All 115 kV circuits connected to Buchanan TS, as well as circuit B8W, T11T, WT1A.</p>
	<b>Sarnia-Lambton</b>	<p>230 kV circuits:</p> <p>Scott TS to Buchanan TS</p> <p>Lambton TS to Longwood TS</p> <p>Lambton TS to Chatham SS</p> <p>Lambton TS to Greenfield SS</p> <p>N6S, N7S</p> <p>All 115 kV circuits connected to Scott TS, including N5K to Wallaceburg TS, including Wallaceburg TS and circuit S2N.</p>
<b>Greater Toronto Central West</b>		<p>All 230 kV circuits connected to the following stations:</p> <p>Trafalgar TS, Richview SS, Cooksville SS, Manby East TS and Manby West TS, Claireville TS, Parkway TS, Cherrywood TS (west of the municipality of Clarington)</p> <p>Manby 115 kV system</p>

Area	Zone	Definition
	<b>Manby 115 kV system</b>	The 115 kV systems supplied from Manby East TS and Manby West TS.
<b>Greater Toronto Central East</b>		All 230 kV circuits connected to the following stations: Parkway TS and Cherrywood TS (west of the municipality of Clarington) The Leaside 115 kV system Leaside x Cherrywood 230 kV system
	<b>Leaside 115kV system</b>	All 115 kV circuits connected to Leaside TS
	<b>Leaside x Cherrywood 230 kV system</b>	All 230 kV circuits connected to Cherrywood TS and Leaside TS including tapped stations
<b>Eastern</b>		All circuits and stations south of the normally open switch at Pembroke TS and east to the western border of the municipality of Clarington.  Excludes the 230 kV circuits connecting Des Joachims TS and Minden TS, and those running southeast from Minden TS are not included. (please refer to the Area map)
	<b>Hawthorne 115 kV system</b>	Hawthorne 115 kV TS and circuits A8RM, A3RM, A4K, A6R, A5RK, 79M1, H9A, A2

**The Transmission Constraints Maps that follow are for illustrative purposes only.** Information sources used to create these illustrative maps include, but are not limited to, Hydro One Networks Inc. The OPA makes no warranty, representation, or guarantee, and the OPA assumes no liability for any errors, omissions, or inaccuracies, in respect of these illustrative maps and other information contained herein, or for any decision made, action taken, or action not taken by the interested party in reliance upon the illustrative map or information contained herein. ***Interested parties are directed to the chart above for a definition of Areas and Zones, and are directed to the Transmission Constraints Matrix for the description of the Specified Circuit and Specified Circuit Limits.***

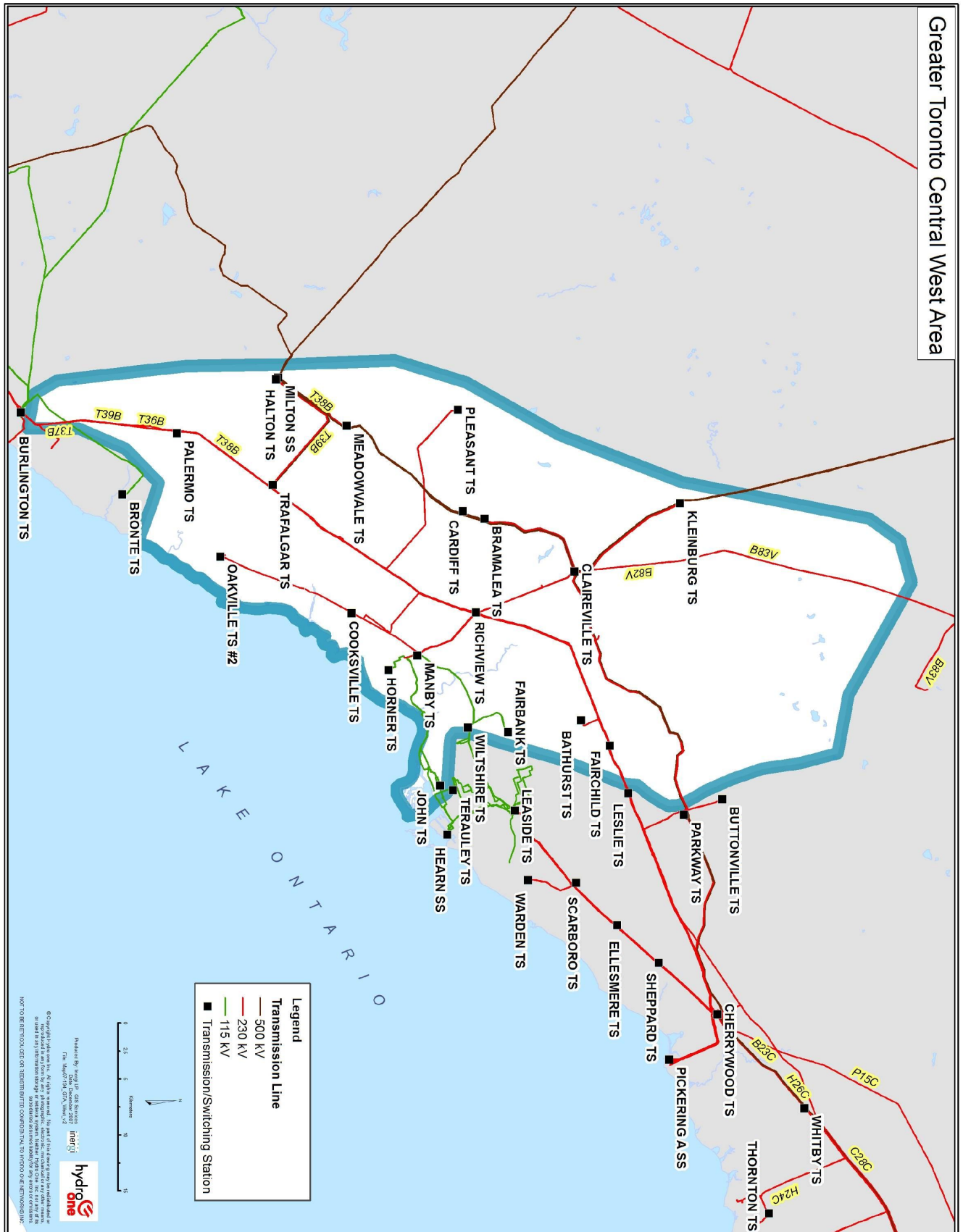




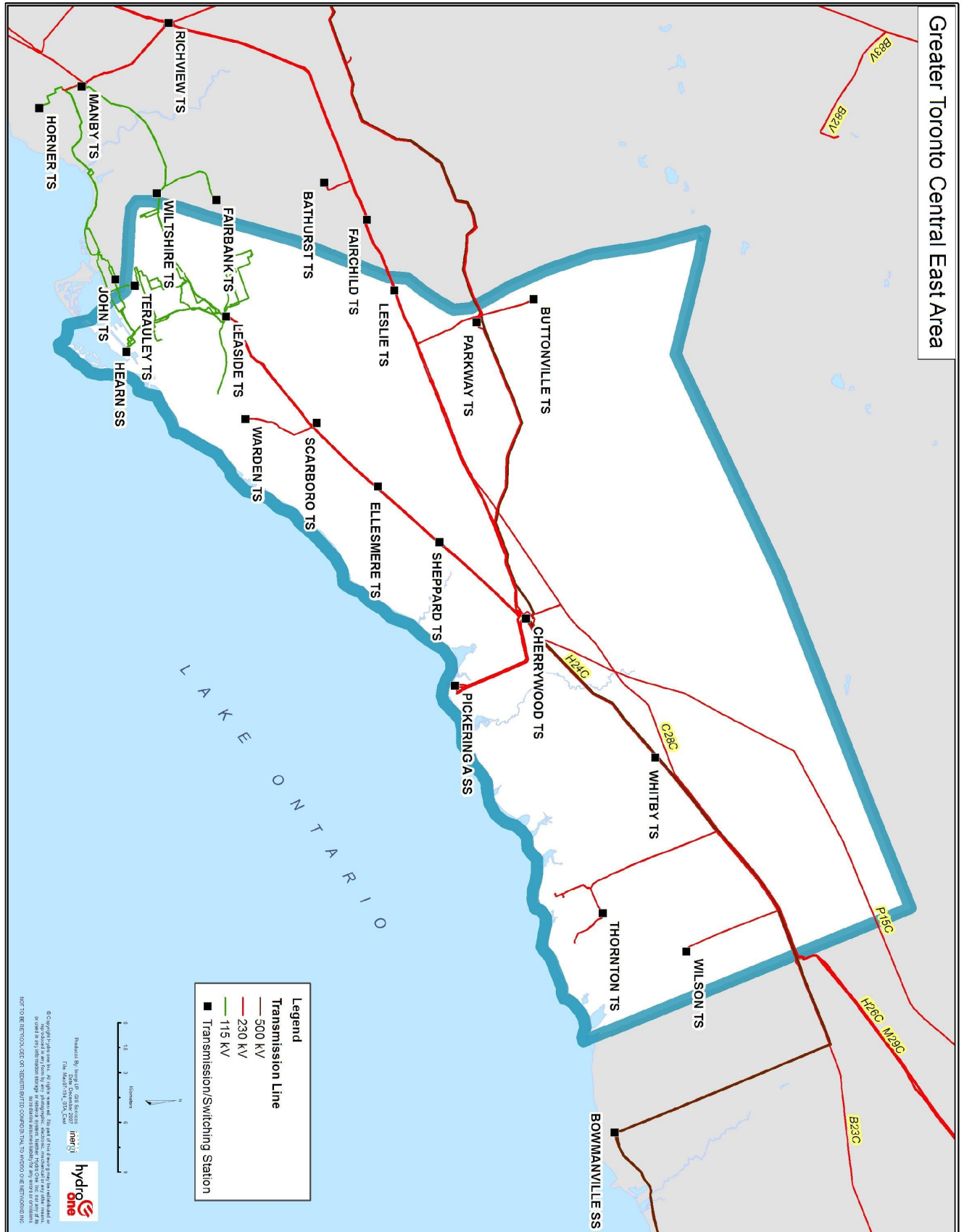


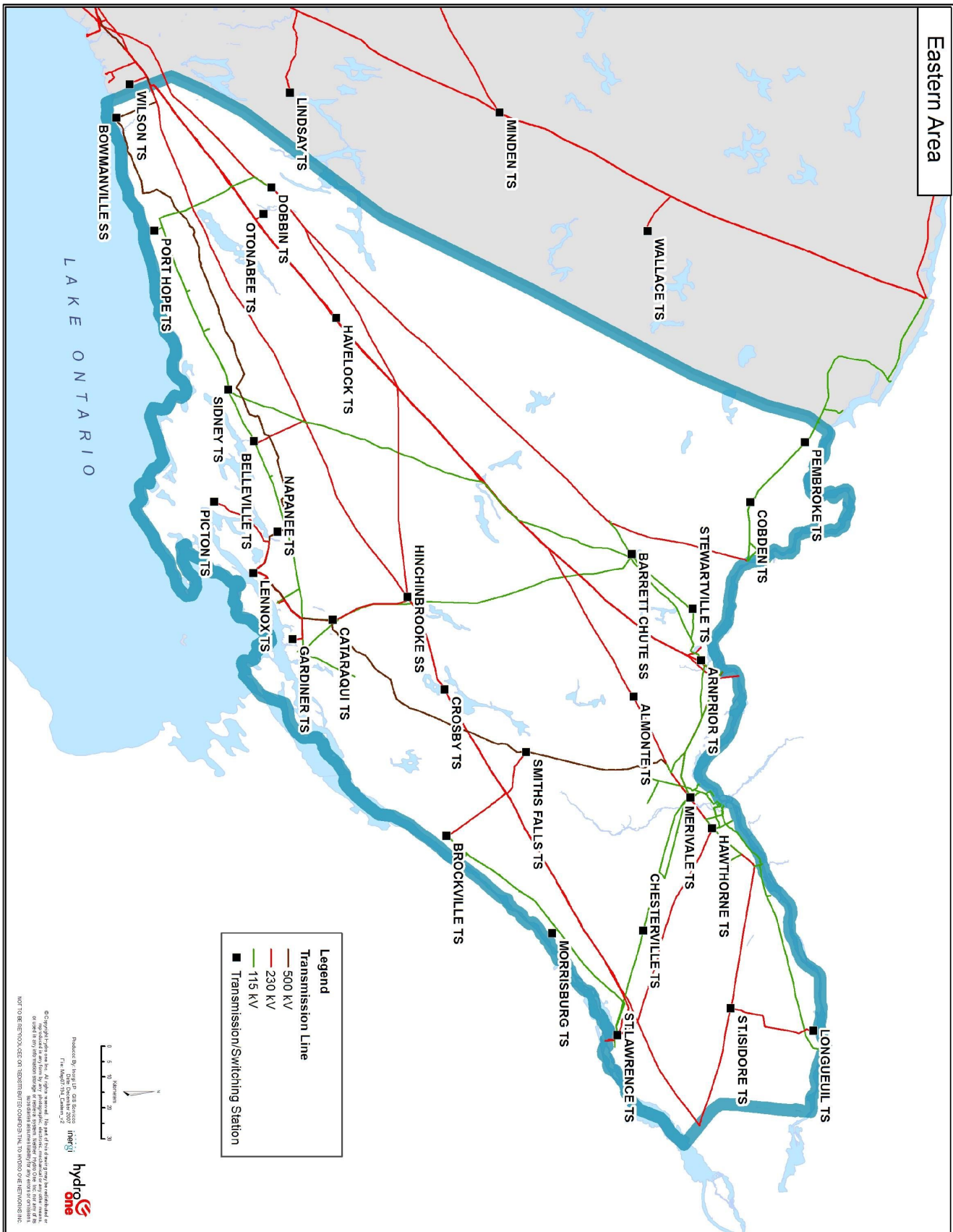












## APPENDIX Q TRANSMISSION CONSTRAINTS MATRIX

Area	Area Limit (MW)	Zone	Zone Limit (MW)	Specified Circuits	Limit per Specified Circuit (MW) Unless Indicated Otherwise	Multiple Specified Circuits in Common Transmission Corridor
Northwest	40	Atikokan West	0			
		Atikokan to Wawa	40	115kV circuits: A5A, T1M, A1B	0	
				115kV circuits: 56M1, 57M1	40 MW with additional restriction below: 40 MW for sum of specified circuits	
				115 kV circuits: A6P, A7L, A8L, A4L, R9A, 56M1, 57M1, R1LB (Lakehead TS to Pine Portage GS), R2LB (Lakehead TS to Pine Portage GS).	25 MW per circuit (except 56M1 and 57M1) and 40 MW for sum of all circuits	Yes: A7L & A8L; R1LB & R2LB
				115 kV circuits: L3P, L4P, P3B, P7B, P1T, P1P, B6M, P5M, S1C, R1LB (Lakehead Jct. to Port Arthur TS), R2LB (Lakehead Jct. to Port Arthur TS).	25 MW per circuit and 40 MW for sum of all circuits	Yes: L3P & L4P; R1LB & R2LB
				230kV circuits: W21M, W22M	0	
				230kV circuits: M23L, M24L	40	Yes
				230kV circuits: A21L, A22L	40	Yes
Northeast	100	Wawa - Sudbury	35			
		Manitoulin	0			
		Sudbury North	100	25Hz System and 115kV circuits: A8K, A9K, D3K, D4Z, K2, K4, F1E, A4H, A5H, H6T, H7T, H9K (all sections except Hunta TS to new Island Falls Jct.)	0	
				115kV circuits: H9K (Hunta TS to new Island Falls Jct.)	15	

				115kV circuits: C6R, T7M, T8M, M9K, M3K, K5A, A7V, P13T, P15T	0	
		<b>Sudbury East</b>	0			
<b>Northwest &amp; Northeast</b>				All unspecified 230 kV circuits connecting two stations	See Section 3.5.1	as applicable
				All unspecified 115 kV circuits connecting two stations	See Section 3.5.1	as applicable
<b>Bruce</b>	0					
<b>Niagara</b>	0					
<b>West of London</b>	0					
<b>Greater Toronto Central West</b>	0					
<b>Greater Toronto Central East</b>	0					
<b>Eastern</b>	0					

### Notes to Transmission Constraints Matrix:

PLEASE REFER TO THE CHP III RFP, INCLUDING SECTIONS 3.2.15 AND 3.5.1, CONTAINING NOTES AND QUALIFICATIONS REGARDING THE APPLICATION OF THE INFORMATION SET OUT IN THIS TRANSMISSION CONSTRAINTS MATRIX. ADDITIONAL PROVISIONS AND RESTRICTIONS APPLY WHERE THE TRANSMISSION CONNECTION POINT IS ON A CIRCUIT OR STATION THAT IS NOT A "SPECIFIED CIRCUIT" DESCRIBED IN THIS MATRIX.



## **APPENDIX R BEST PRACTICES, GOOD BUSINESS: CONSULTING WITH FIRST NATION AND MÉTIS COMMUNITIES**

### **INTRODUCTION**

The Crown has a legal duty to consult with First Nation and Métis communities when it has knowledge, real or constructive, of established or asserted Aboriginal or treaty rights and contemplates conduct that might adversely affect these rights. The duty is grounded in the principle of the honour of the Crown, thus requiring the Crown's honourable dealings with Aboriginal people. In addition, the Crown and industry have statutory and policy-based obligations to consult Aboriginal people.

With the objective of ensuring that the duty to consult is fulfilled, on August 27<sup>th</sup>, 2007, the Minister of Energy directed the Ontario Power Authority ("OPA") to "develop guidelines and processes to ensure that appropriate consultation with First Nation and Métis people takes place." In this directive, the Minister stated his view that First Nation and Métis people should be consulted "early in the planning and development stages for the new renewable energy projects" procured under the directive.

These guidelines were set forth as exhibits to the OPA's RES III RFP for Renewable Energy Supply dated August 22, 2008 (the "Consultation Guidelines and Processes"). This document has been developed in a collaborative effort with the Ministry of Energy and Infrastructure and with the advice of the Métis Nation of Ontario and the First Nations Energy Alliance and is meant to provide guidance and clarity on the Crown's consultation expectations.

The Ministerial Directive for the CHP III RFP dated April 10, 2008, noted that appropriate consultation will have to take place in accordance with the Consultation Guidelines and Processes, amended appropriately for the circumstances.

The OPA prepared this document to assist proponents of projects when consulting with Aboriginal communities during the planning and development stages of an energy project. It provides an overview of the potential nature and scope of consultation and the jurisprudence that informs the Crown's duty to consult Aboriginal communities. This document outlines and clarifies the respective roles of the OPA, the Crown, prospective energy proponents, and Aboriginal communities and provides practical advice for building good consultation practices.

Consulting First Nation and Métis communities at the project planning and development stage enables energy proponents to identify any concerns and issues and offers an opportunity to address them in a meaningful way. Such consultation can assist in addressing situations where the Crown may have a duty to consult with First Nation and Métis people because of a potential adverse impact of the project on Aboriginal or treaty rights. It can also fulfill requirements of the Environmental Screening Process in O. Reg. 116/01 of the *Environmental Assessment Act* and other provincial regulatory approvals.

This document is for general guidance purposes only. It is not intended to be a comprehensive or detailed statement concerning the matters addressed, or to provide legal advice. This is an evolving area of law, and readers should seek appropriate, qualified legal or other professional advice before acting or omitting to act, based on any information provided here.

## JURISPRUDENCE

Section 35 of the Canadian constitution recognizes, affirms and protects existing Aboriginal and treaty rights (“section 35 rights”). Aboriginal and treaty rights have primarily focused on traditional uses of the land such as hunting, fishing, trapping, and the harvesting and gathering of plants. Aboriginal communities also have interests in their ancestors’ burial grounds and other culturally relevant archaeological sites.

Recent case law has provided direction to the Crown and other parties in fulfilling the constitutional duty to consult Aboriginal communities. In *Haida* (2004) and *Taku River* (2004), the Supreme Court of Canada ruled that the Crown has a legal duty to consult as well as duty to accommodate, where appropriate, First Nation, Métis or Inuit communities when the Crown has knowledge, real or constructive, of an established or asserted Aboriginal right and contemplates conduct that might adversely affect it. In *Mikisew Cree* (2005), the Court recognized a similar obligation to consult when the Crown proposes to “take up” treaty lands for specific purposes. In *R. v. Powley* (2003), the Supreme Court of Canada confirmed the constitutional protection for the Aboriginal food harvesting rights of the Métis. These cases provide the legal basis and guidance for undertaking consultation with Aboriginal communities.

While the legal duty to consult rests with the Crown, energy proponents play an important role in the consultation process. The Crown may designate a proponent as its delegate in carrying out aspects of consultation, including day-to-day consultation activities. Where the Crown does so, it will nevertheless retain the legal responsibility for ensuring that the duty to consult will be satisfied. This means that the Crown will supervise proponents’ consultations activities. The Crown will carefully scrutinize these activities and their outcomes to ensure that any impacts of the project on established or asserted Aboriginal or treaty rights are appropriately addressed, mitigated and/or accommodated. The honour of the Crown is always at stake, and proponents are expected to undertake their consultation activities with the intent of addressing the impacts on rights.

Some provincial regulatory approvals require a proponent to address the concerns of interested parties. First Nation and Métis communities may fit into the category of an interested party even when an Aboriginal or treaty right is not affected by the project. It is important for proponents to recognize this distinction.

Properly consulting with First Nation and Métis communities can decrease the risk of legal and regulatory obstacles to an energy project. A failure to fulfill consultation obligations can cause project delays and increase costs. Consultation with First Nation and Métis communities simply makes good business sense. The potential benefits of consultation can include community support for the proposed project, access to a growing First Nation and Métis labour force, partnerships on future projects, and an ongoing relationship with local communities.

## THE CONSULTATION PROCESS

First Nation and Métis communities whose existing or asserted Aboriginal or treaty rights may be adversely affected by a potential project have different rights from stakeholders or interested parties. The consultation process that is undertaken should reflect the unique constitutionally protected rights and interests of the First Nation or Métis community.

The Crown's duty to consult can be triggered by a federal or provincial approval, license, permit or any other activity that could potentially adversely affect Aboriginal and treaty rights, regardless of the size of the project. Each project may have more than one Crown approval or decision, thus it is preferable to coordinate consultation efforts to create an effective and efficient process and avoid duplication of effort.

The scope of the Crown's duty to consult is proportionate to a preliminary assessment of the legal strength of the Aboriginal or treaty rights asserted, and the potential for adverse impact of the project on these rights. For example, if there is little impact on an asserted or established Aboriginal or treaty right, the level of consultation required may be a duty to give notice, disclose and share information and discuss important decisions to be taken in relation to the project. Where the adverse impact on rights is potentially greater, the consultation requirements would be more substantial. In this case, the duty may require a more extensive consultation effort, mitigation and accommodation. It is recommended that project proponents work closely with the affected First Nation and Métis communities to share information, to address concerns and to mitigate and/or accommodate any impacts of the project.

The OPA recognizes the important role that procurement processes will have on determining feasible projects for future development. There is the potential that these projects may adversely affect Aboriginal or treaty rights and as such, the OPA has included the following Aboriginal consultation process to be set out in the CHP III power purchase agreement (the "CHP III PPA"):

- the proponent will contact the Ministry of Energy and Infrastructure by letter ("Consultation Information Request") after the award, but before the signing of the CHP III PPA, to request that the Crown determine whether the proponent will be required to enter into an agreement with the Crown in relation to consultation on the project; and to request the Crown's identification of First Nation and Métis communities to consult in respect of the project;
- within 45 days of entering into the CHP III PPA, the Proponent must provide the OPA with the Crown letter responding to the Consultation Information Request. The Crown letter will be in the form of either Form A or B; and,
- if the proponent receives Crown Letter B, indicating a need to enter into an Aboriginal consultation agreement with the Crown, the proponent must enter into the agreement and provide a copy of the agreement to the OPA within 90 days of entering into the CHP III PPA.

Although the proponent is required to provide the Ministry of Energy and Infrastructure with a Consultation Information Request on or before the date of signing the CHP III PPA, the OPA expects that proponents will engage with First Nation and Métis communities during the preparation and planning of their proposal.

Some of the activities that proponents should consider are:

- providing information to the First Nation and Métis community on the proposed project;
- obtaining information on potentially affected interests or rights;
- listening to any concerns raised by the First Nation and Métis community;
- identifying ways to minimize adverse effects on Aboriginal and treaty rights; and
- reporting all activities and information to the Crown for review and consideration.

## **Roles and Responsibilities**

### **A. The Role of the Proponents of Energy Projects**

Proponents of energy projects are responsible for consulting potentially interested First Nation and Métis communities as required by the Environmental Screening Process in O. Reg. 116/01 under the *Environmental Assessment Act*, among other regulatory approvals. The proponent will also be responsible for aspects of consultation that have been delegated to it by and under the supervision of the Crown.

If a selected bidder is advised by the Ministry of Energy and Infrastructure that it is necessary to enter into a consultation agreement with the Crown, the proponent will also prepare a plan for consultation with First Nation and Métis communities. The plan will be included as a schedule to the CHP III PPA after review by the Crown. The plan will describe the manner in which the proponent will carry out its procedural consultation responsibilities and will include the identification of all significant steps, including a timetable for their completion. Proponents are encouraged to develop the consultation plan in conjunction with the relevant First Nation and Métis communities. As the consultation process continues and new information comes to light, it may be necessary to make adjustments to the plan and its timelines. Consultation plans should be flexible to adapt to unforeseen situations.

Proponents' obligations in fulfilling the Crown's duty to consult may include:

- giving notice to First Nation and Métis communities of the project;
- informing First Nation and Métis communities about the project;
- informing First Nation and Métis communities of the regulatory and approval processes that apply to the project;
- providing appropriate financial assistance to First Nation and Métis communities to participate in the consultation process and to assess various studies and reports in respect of the project;
- meeting with First Nation and Métis communities to discuss the project;
- considering comments regarding the potential adverse impacts of the project on a community's Aboriginal or treaty rights, other asserted rights or general concerns regarding the project;
- where appropriate, discussing with First Nation and Métis communities options for accommodation, including mitigation of potential adverse effects on Aboriginal or treaty rights or asserted rights, and presenting the results to the Crown prior to implementing such measures; and
- reporting to the Crown on all aspects of consultation.

### **B. The Role of the Crown**

The Crown's responsibilities will include:

- determining the First Nation and Métis communities to be consulted;
- the preliminary and ongoing assessment of the depth of consultation required with the First Nation and Métis communities identified;
- delegating procedural aspects of consultation to project proponents;
- supervise and provide oversight for the proponent's consultation with First Nation and Métis communities; and
- deciding what, if any, appropriate accommodation is necessary to mitigate adverse impacts on Aboriginal and treaty rights.

Various Crown ministries and agencies have regulatory roles in relation to energy projects that may trigger consultation obligations. Crown ministries and agencies will take appropriate steps to ensure the coordination and fulfillment of consultation obligations before granting approvals, permits or authorizations. Where appropriate, the Ministry of Energy and Infrastructure will act on behalf of the Crown to supervise the proponent consultation efforts with First Nation and Métis communities. This relationship is outlined in the agreement between the proponent and the Crown. Other Crown ministries (MNR, MOE etc.) may be involved in ensuring that the obligation is fulfilled.

Prior to bids being submitted to the OPA, the Ministry of Energy and Infrastructure will not interact formally with the bidders.

Upon request by the proponent or the Aboriginal community, representatives of the Crown may attend consultation meetings between the parties.

### **C. The Role of First Nation and Métis Communities**

Depending on the project and its potential to adversely impact their Aboriginal and treaty rights, the involvement of First Nation and Métis communities in consultation on the project will vary. First Nation and Métis communities have different histories, cultures, demographics, interests and leadership that can influence their role in consultation.

Like proponents and the Crown, First Nation and Métis communities are expected to engage in section 35 consultations in good faith and should not frustrate the consultation process. First Nation and Métis communities are required to inform proponents about their rights, and possible impacts on these rights by the projects. During the consultation process, First Nation and Métis communities have the opportunity to work with the proponent and the Crown to determine options for mitigation of any potential adverse impacts on Aboriginal or Treaty rights. First Nation and Métis communities will also play an important role in working with proponents and the Crown to arrive at accommodations, where appropriate.

### **D. The Role of the Ontario Power Authority**

The Ontario Power Authority will be the counter-party to any contract for electricity generation. As such, the OPA will require regular progress reports from the proponent during the design and construction phase of the project in accordance with the OPA's contract with the proponent. As the counter-party to the contract for electricity generation, the OPA requires that the proponent perform the duties set out in the contract with regard to Aboriginal consultation, including, where applicable, the signing of an agreement between the proponent and the Crown delegating aspects of consultation with First Nation and Métis communities.

## **OPPORTUNITIES FOR SUCCESSFUL CONSULTATION**

There are many resources available to proponents beginning a consultation process with a First Nation and Métis community on an energy project. A proponent may wish to utilize the expertise of other proponents that have had positive experiences working with First Nation and Métis communities.

The Ontario Government has produced draft guidelines on the Crown's legal duty to consult with First Nation and Métis people: *The Draft Guidelines for Ministries on Consultation with Aboriginal Peoples related to*

### *Aboriginal and Treaty Rights*

<http://www.aboriginalaffairs.gov.on.ca/english/news/DraftConsultJune2006.pdf>.

Canada and other provinces have developed draft guidelines to clarify roles to ensure that consultation obligations are met. Proponents should review draft guidelines available from Indian and Northern Affairs Canada (INAC) to enhance their understanding of federal obligations with respect to consultation. These can be found at:

- **Indian and Northern Affairs Canada**, *Aboriginal Consultation and Accommodation*: <http://www.aic-inac.gc.ca/nr/iss/acp/intgui-eng.pdf>;

Many First Nation and Métis groups and communities have produced their own consultation protocols or resources. While the Crown does not necessarily endorse all interpretations or assertions of rights made by First Nation and Métis communities, it is good practice to begin consultation by being aware of the community's expectations in regard to consultation. Proponents should contact First Nation and Métis communities directly to obtain copies of any consultation resources available. Proponents may also wish to review examples of community guidelines using available online tools. The following provides a sample of some of these resources:

- **Treaty 3**, *Manito Aki Inakonigaawin (The Great Earth Law)*: <http://www.gct3.net/grand-chiefsoffice/laws-and-policies/>
- **Métis Nation of Ontario**, *Toward a Consultation Framework for Ontario Métis*: [www.metisnation.org/consultations/index.html](http://www.metisnation.org/consultations/index.html)
- **Bkejwanong Territory** (Walpole Island First Nation), *Environmental Policies, Guidelines and Information for External Project Proponents*: [www.bkejwanong.com/guidelines/guidelines.html](http://www.bkejwanong.com/guidelines/guidelines.html)

Establishing an effective consultation process with First Nation and Métis communities can assist proponents in their project and help proponents to attain community support. The following is a list of suggestions to guide proponents in better consultation practices:

### **1. Establishing an Effective and Efficient Consultation Process**

Successful Aboriginal consultation is of benefit to proponents, First Nation and Métis communities and ultimately the Ontario electricity consumer. A number of major developers have established dedicated units responsible for interacting with First Nation and Métis communities.

Establishing the consultation process:

- ask First Nation and Métis communities what they would like to know;
- be open-minded, flexible, and expect many rounds of discussion;
- principles and messaging should remain consistent;
- be aware that translation services may be necessary; and
- identify and address the proponent's and community's gaps in capacity or knowledge.

## **2. Begin the Process Early**

Before beginning any project, whether it is large or small, speak directly with the potentially affected First Nation and Métis communities. Consulting early in the process provides First Nation and Métis communities the opportunity to have their concerns identified up front and can inform the direction that subsequent consultation will take. This can include input by First Nation and Métis communities into the consultation plan. Any disputes should be addressed as early as possible to avoid lasting conflict. Adequate lead time will build trust and allow time for a relationship to develop. Discussions and interactions should not be delayed until the awarding of the OPA contract or the signing of an agreement with the Crown.

## **3. Understand the Community**

It is important for a proponent to learn as much as it can about the community being consulted, as there is a wide diversity of culture and history among First Nation and Métis communities in Ontario. For some community members, English or French may not be their first language, or may not be spoken at all. Many First Nation and Métis communities and provincial territorial organizations have their own websites where information on their communities can be found. Indian and Northern Affairs Canada operates an Aboriginal Canada Portal that provides basic information on Aboriginal communities and other resources: <http://www.aboriginalcanada.gc.ca/>.

Ontario's Aboriginal policy may also provide useful information and tools for proponents and can be found on the Ministry of Aboriginal Affairs website: <http://www.aboriginalaffairs.gov.on.ca/english/onas.htm>.

Understanding the governance structures, approaches and aspirations of First Nation and Métis communities will be helpful for proponents in seeking a successful relationship. Again, it is wise to review all resources available from the community.

As well, the correct use of vocabulary is important to demonstrate the proponent's respect and understanding of the community. For example, section 35 of the *Constitution Act, 1982* recognizes three distinct Aboriginal people of Canada: Indians, Inuit and Métis. The term "Aboriginal" refers to all three distinct groups. The term "First Nation" is commonly used, rather than "Indian". Note that in Ontario there are recognized First Nation and Métis communities.

## **4. Talk to All the Right People**

Whether it is a First Nation or Métis community, communicate with both the formal leadership as well as others who broadly represent the interests of that community. For example, within a First Nation community, the band council is the elected governing body that acts on behalf of its membership. Elders play a key role as well. In some communities, clan mothers may have a more prominent role and there are often traditional chiefs based on heritage rather than election. Lastly, as most band councils are generally elected every two years, it is reasonable to gain information about a community's election cycle. Aboriginal and Treaty rights are held communally, thus a proponent should seek advice as to sharing information broadly across the community.

For Métis communities, the Métis Nation of Ontario ("MNO") can play an effective role in putting industry in touch with Métis leadership at the regional and local levels.

## **5. Collaborate with First Nation and Métis Communities**

It is important to keep in mind that consultation is a two-way street. Governments and project proponents need to be willing to address concerns and proposals from First Nation and Métis communities that may be affected by a project. First Nation and Métis communities need to express to proponents any concerns regarding the potential impact of the project. Together, the parties can attempt to come to a mutually beneficial solution. A collaborative approach can assist in saving time, resources and money.

## **6. Use Aboriginal Communication Tools**

Communicate directly with community members through Aboriginal-run newspapers, radio, websites or other communications tools. National and provincial Aboriginal organizations such as the Assembly of First Nations, Chiefs of Ontario, Métis National Council and the Métis Nation of Ontario maintain websites for access by their membership and the general public. As well, many First Nation communities, regional and issue-specific organizations have their own individual websites. Newspapers are also a potential method for reaching the community; for example, The Anishinabek Nation has a community newspaper called *The Anishinabek News* that reaches 42 communities, and the Métis Nation of Ontario publishes the *Métis Voyageur*.

## **7. View Engagement and Consultation as an Ongoing and Long-Term Relationship**

Experience has shown that proponents who view consultation as part of a long-term relationship-building exercise have had the most success. Long term, multi-year capacity agreements help to build partnerships and ensure the continued success of the project. As well, effective consultation builds the foundation for future partnerships. The benefits of successful consultation extend beyond the project itself.

## **CONCLUSION**

Good business is about building and maintaining relationships. Consultation can be the key to a more practical and productive relationship with First Nation and Métis communities.

The Crown has a legal duty to consult First Nation and Métis communities, based on judicial interpretation of its obligations relating to asserted and established Aboriginal and treaty rights. An energy project can face delays if the Crown's legal duty has not been fulfilled. While the legal duty of the Crown does not fall on proponents, the Crown will delegate aspects of its section 35 duty to energy project proponents and will expect proponents to carry out these aspects under Crown supervision. Consultation is also required by some provincial approvals such as those in the Environmental Screening Process. In addition, First Nation and Métis communities have identified, as a priority, the need for consultation processes that respect Aboriginal rights and treaty rights. Regardless of legal drivers, it is simply good business to involve First Nation and Métis communities which may be affected by a proposed project.

All parties are expected to participate in the consultation process in good faith. Proponents should know when the requirement for consultation will arise, what is required of them, and how to address the various outcomes and keep the Crown informed of their efforts and the issues that arise during the process. First Nation and Métis communities must make their concerns known, respond to attempts to meet their concerns and suggestions, and attempt to reach a mutually satisfactory solution.



**APPENDIX S CROWN LETTER**

**Form A**

**Ministry of Energy and  
Infrastructure**

880 Bay Street  
Toronto, ON M7A 2C1

**Ministère de l'Énergie et de  
l'Infrastructure**

880, rue Bay  
Toronto ON M7A 2C1



Date  
Generator  
Address

Dear

Re: Crown Response to Consultation Information Request, Project [insert project number]

Further to your request of [DATE of Consultation Information Request letter], and based on the information currently available, the Ministry of Energy and Infrastructure has determined that you are not presently required to enter into an Aboriginal consultation agreement with the Crown in relation to the above-referenced Project.

Sincerely,

Name, Title  
Ministry of Energy and Infrastructure

**Form B**

**Ministry of Energy and  
Infrastructure**

**Ministère de l'Énergie et de  
l'Infrastructure**



880 Bay Street  
Toronto, ON M7A 2C1

880, rue Bay  
Toronto ON M7A 2C1

Date  
Generator  
Address

Dear •

Re: Crown Response to Consultation Information Request, Project [insert project number]

Further to your request of [DATE of Consultation Information Request letter], please be advised that you are required to enter into an Aboriginal consultation agreement with the Ministry of Energy and Infrastructure in relation to the above-referenced Project, and to develop a consultation plan for approval by the Ministry and inclusion in the agreement.

The communities which it is necessary to consult are:

- [list of First Nation and/or Métis communities]

Please contact the undersigned at your earliest opportunity. Note that the deadline for concluding the agreement is [DATE 90 days from date of the CHP III PPA with the OPA].

Sincerely,

Name, Title Ministry of Energy and Infrastructure

## **APPENDIX T AGREEMENT WITH THE CROWN**

### **AGREEMENT**

**DATED [month][day][year]**

**Between HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO  
AS REPRESENTED BY  
THE MINISTER OF ENERGY AND INFRASTRUCTURE  
(the "Crown")**

**And**

**[NAME OF DEVELOPER CONTRACTING WITH ONTARIO POWER AUTHORITY]  
(the "Supplier")**

**WHEREAS** the consultations on the Integrated Power System Plan indicated that certain Aboriginal communities wish to be consulted in the planning and development of electricity projects;

**AND WHEREAS** the Minister of Energy and Infrastructure issued a Directive dated April 10, 2008 instructing the Ontario Power Authority ("OPA") to acquire up to approximately 100 MW of high-efficiency combined heat and power ("CHP") generation facilities in Ontario that are fuelled by renewable energy sources and are greater than 10 MW in size (the "Directive");

**AND WHEREAS** pursuant to the Directive, the OPA has initiated a process to procure up to approximately 100 MW of high-efficiency CHP generation facilities in Ontario that are fuelled by renewable energy sources and are greater than 10 MW in size;

**AND WHEREAS** the OPA has taken steps to facilitate appropriate Aboriginal consultation, including a requirement in the Combined Heat and Power III Power Purchase Agreement ("**CHP III PPA**") that Suppliers enter into an Agreement with the Crown relating to Aboriginal consultation;

**AND WHEREAS** the OPA has selected the Supplier to supply renewable energy and the OPA and the Supplier have entered into a CHP III PPA dated [date to be added];

**NOW THEREFORE**, in consideration of the mutual agreements set forth herein, and other good and valuable consideration, the above-noted parties (collectively the "**Parties**" and individually a "**Party**") hereby agree as follows:

#### **1.0 Definitions**

Unless otherwise defined herein the following terms shall have the following meanings for the purposes of this Agreement:

(1) "Aboriginal Communities" means First Nation and Métis communities, organizations or interests that are identified by the Minister to be consulted in relation to the Project including [names to be added], and such others as may be identified following the date hereof;

- (2) "Aboriginal Rights" means Aboriginal rights as referred to in Section 35 of the *Constitution Act, 1982* that are either established or credibly asserted;
- (3) "Agreement" means this agreement between the Crown and the Supplier dated the date first above written, as such agreement may be amended from time to time by written instruments signed by the Parties;
- (4) "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;
- (5) "Crown" means Her Majesty the Queen in Right of Ontario;
- (6) "ESP" means the Environmental Screening Process under Ontario Regulation 116/01 under the *Environmental Assessment Act*, R.S.O 1990, as amended;
- (7) "Minister" means the Minister of Energy and Infrastructure, and includes any official acting under his authority;
- (8) "Ministry" means the Ministry of Energy and Infrastructure;
- (9) "Plan" means the Plan to consult Aboriginal Communities made pursuant to this Agreement and attached hereto as Schedule "A";
- (10) "Project" means the renewable energy supply project to be developed by the Supplier in respect of which the Supplier and the OPA have entered into the CHP III PPA;
- (11) "S. 35 Duty" means any duty the Crown may have to consult and, where appropriate, accommodate Aboriginal Communities in relation to the Project flowing from Section 35 of the *Constitution Act, 1982*;
- (12) "Supplier's Request" means a written request from the Supplier to the Ministry requesting that the Crown confirm in writing that, as of a date set out in such request, which shall not be less than 15 Business Days from the date of such request, the Supplier is not in breach or default of its obligations contained in this Agreement;
- (13) "Treaty Rights" means Treaty rights as referred to in Section 35 of the *Constitution Act, 1982* that are either established or credibly asserted.

## **2.0 Purpose**

The Purpose of this Agreement is to set out the responsibilities of the Crown and the Supplier in relation to consultation with Aboriginal Communities on the Project, and to delegate certain aspects of consultation from the Crown to the Supplier.

## **3.0 Responsibilities of the Crown**

### **3.1 The Crown is responsible for:**

- (i) determining the Aboriginal Communities to be consulted in relation to the Project, if any, and advising the Supplier of same;
  - (ii) the preliminary and ongoing assessment of the depth of consultation required with the Aboriginal Communities;
  - (iii) at its discretion, delegating procedural aspects of consultation to the Supplier pursuant to this Agreement;
  - (iv) satisfying itself, where it is necessary to do so, that the consultation process in relation to the Project has been adequate and the Supplier is in compliance with this Agreement; and
  - (v) satisfying itself, where accommodation is required, that appropriate accommodation of any Aboriginal and Treaty Rights of Aboriginal Communities in relation to the Project has occurred or will occur.
- 3.2 As of the date of this Agreement the Ministry may act as the single representative of the Crown in relation to the Crown's responsibility under 3.1 (i).
- 3.3 Upon receipt of a Supplier's Request from time to time, the Ministry shall deliver written confirmation to the Supplier and to any third party so indicated in the Supplier's request of whether or not the Minister is of the view that the Supplier is as of such date in breach or default of its obligations contained in this Agreement.
- 3.4 The Ministry may share information received from the Supplier with other Ontario ministries and regulatory agencies, as appropriate.
- 4.0 **Responsibilities of the Supplier**
- 4.1 The Supplier is responsible for:
  - (i) having developed the Plan for review and approval by the Ministry, and updating the Plan as reasonably required by the Ministry throughout the consultation process;
  - (ii) implementing the Plan;
  - (iii) in a manner consistent with the Plan:
    - a) giving notice to the Aboriginal Communities regarding the Project, if such notice has not already been given by the Supplier or the Crown;
    - b) informing the Aboriginal Communities about the Project;
    - c) informing the Aboriginal Communities of the regulatory and approval processes that apply to the Project of which the Supplier is aware after reasonable inquiry;
    - d) making all reasonable efforts to build a positive relationship with the Aboriginal Communities in relation to the Project;

- e) if appropriate, providing financial assistance to Aboriginal Communities to permit effective participation in consultation processes for the Project;
- f) meeting with Aboriginal Communities to discuss the Project;
- g) considering comments provided by Aboriginal Communities regarding the potential impacts of the Project on Aboriginal or Treaty Rights or on other associated interests, or any other concerns or issues regarding the Project;
- h) subject to the following section i), where appropriate, discuss with the Aboriginal Communities potential accommodation, including mitigation of potential impacts on Aboriginal or Treaty Rights or associated interests regarding the Project; and
- i) consult with the Crown during the discussions with Aboriginal Communities and present to the Crown for the purposes of Section 3.1 (v) hereof, the results of such discussions prior to implementing accommodation measures.

4.2 The Supplier hereby acknowledges that, notwithstanding 4.1 above, the Ministry, any Ontario government ministry having an approval role in relation to the Project, or any responsible regulatory body, official, or Crown decision-maker, may participate in the matters enumerated therein as they deem necessary.

4.3 The Supplier hereby acknowledges that, for the purposes of any S. 35 Duty borne by the Crown, the Supplier is the Crown's delegate and in this capacity is responsible for carrying out aspects of consultation delegated to it by the Crown pursuant to this Agreement.

4.4 The Supplier will carry out the following functions in relation to record keeping, information sharing and reporting to the Crown:

- (i) provide to the Ministry, upon request, complete and accurate copies of all documents provided to the Aboriginal Communities in relation to the Project;
- (ii) keep reasonable business records of all its activities in implementing the Plan and provide the Ministry with complete and accurate copies of such records upon request;
- (iii) provide the Ministry with timely notice of any Supplier mailings to, or Supplier meetings with, the representatives of any Aboriginal Community that fall within the scope of the Parties' responsibilities set out in this Agreement;
- (iv) advise the Ministry in a timely manner of any potential adverse impact of the Project on Aboriginal or Treaty Rights of which it becomes aware;
- (v) provide the Ministry with summary reports or briefings on all of its activities in relation to implementing the Plan, as may be requested by the Minister;
- (vi) provide the Ministry, upon request, with summary reports or briefings setting out the position it proposes to take before judicial, quasi-judicial or regulatory tribunals or

boards, or at meetings with officials with capacity to make regulatory decisions relating to the Project, where such position relates to Aboriginal consultation on the Project; and

- (vii) if applicable, advise the Ministry if the Supplier and an Aboriginal Community propose to enter into an agreement directed at mitigating or compensating for any impacts of the Project on Aboriginal or Treaty Rights.

4.5 The Supplier shall, upon request:

- (i) lend assistance to the Ministry by filing records and other appropriate evidence of the activities undertaken both by the Crown and by the Supplier in consulting with Aboriginal Communities in relation to the Project, attending any regulatory or other hearings, and making both written and oral submissions, as appropriate, regarding the fulfillment of Aboriginal consultation responsibilities by the Crown and by the Supplier, to the relevant regulatory or judicial decision-makers; or
- (ii) provided however that the Ministry may elect to engage legal counsel to assist in or undertake activities referred to in Section 4.5(i) hereof on behalf of the Crown in connection with the Project, the costs of which shall be for the account of the Supplier and shall be paid by the Supplier to the Crown within 30 days of delivery of invoice therefor.

5.0 **Consultation Plan**

5.1 The Plan shall be prepared by the Supplier for review and approval by the Ministry.

5.2 The Plan shall:

- (i) set out in detail the manner in which the Supplier proposes to consult with Aboriginal Communities from the date of this Agreement forward, including all significant steps, and the relevant timetable;
- (ii) focus on the responsibilities of the Supplier under 4.1(iii);
- (iii) focus on fulfilling the said responsibilities in the course of an ESP, as much as possible; and
- (iv) be implemented in a manner consistent with any other statutory or regulatory process applicable to the Project and with the jurisdiction, procedures and decisions of all responsible ministries, boards, agencies or other regulatory decision-makers.

5.2 The Plan shall be updated from time to time as reasonably required by the Ministry.

6.0 **Notices**

All notices pertaining to this Agreement shall be in writing and shall be given by facsimile or other means of electronic transmission or by hand or courier delivery. Any notice shall be addressed to the other Party as follows:

If to the Crown:	If to the Supplier:
●	Attention: ● Facsimile: ● Email: ●
Attention: ● Facsimile: ● Email: ●	
and to: ●	and to:
Attention: ● Facsimile: ● Email: ●	Attention: ● Facsimile: ● Email: ●

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 if it is delivered or transmitted on a Business Day prior to 3:00 p.m. local time in the place of delivery or receipt. However, if a notice is delivered or transmitted after 3:00 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 respective address to which notices are to be sent.

#### 7.0 **No Implicit Acknowledgement**

7.1 Neither the Crown nor the Supplier shall be taken as having agreed, or conceded, that a S. 35 Duty applies in relation to the Project, nor that any responsibility set out herein is, under the Constitution of Canada, necessarily a mandatory aspect or requirement of any S. 35 Duty, nor that a particular aspect of consultation referred to in Section 3.1 hereof is an aspect of the S. 35 Duty that could not have lawfully been delegated to the Supplier had the Parties so agreed.

#### 8.0 **Remedies**

8.1 The Supplier acknowledges that, except where an amount is expressly payable hereunder by the Supplier, money damages will not be a sufficient remedy for a breach of the terms of this Agreement and accordingly, in addition to any rights that the Crown may have at law or in equity, the Crown shall be entitled to specific performance and injunctive relief as remedies for a breach of this Agreement.

8.2 The Crown acknowledges that, except where an amount is expressly payable hereunder by the Supplier to the Crown, a remedy in monetary damages is inappropriate and agrees that in such circumstances in place thereof it will seek recourse pursuant to section 8.1 hereof and or termination of this Agreement.

#### 9.0 **General**

9.1 This Agreement does not substitute for, and shall not be construed inconsistently with, any requirements or procedures in relation to Aboriginal consultation or the S. 35 Duty that may be imposed by a ministry, board, agency or other regulatory decision-maker acting pursuant to laws and regulations. Such decision-makers may have additional requirements. Nonetheless, the intent of the Minister is to promote coordination among Ontario ministries, boards and agencies



with roles in consulting with Aboriginal Communities so that the responsibilities outlined in this Agreement may be fulfilled efficiently and in a manner that avoids, to the extent possible, duplication of effort by Aboriginal Communities, the Supplier, the Ministry, and provincial ministries, boards, agencies and other regulatory decision-makers.

- 9.2 This Agreement will not confer upon any other person, except the Parties and their respective successors and permitted assigns, any rights, interests, obligations or remedies hereunder. This Agreement and all of its provisions will be binding upon and will enure to the benefit of the Parties and their respective successors and permitted assigns.
- 9.3 Neither this Agreement nor any of the rights, interests, or obligations under this Agreement may be assigned by any Party, without the prior written consent of the other Party, which consent will not be unreasonably withheld.
- 9.4 Neither Party may assign its obligations hereunder, or any portion thereof, without the prior written consent of the other Party hereto, provided that the Supplier may engage consultants to assist it in fulfilling its responsibilities under this Agreement without in any manner relieving the Supplier of the obligation and liability therefor.
- 9.5 Nothing in this Agreement will create or be deemed to create a relationship of partners, joint venturers, fiduciary, principal and agent or any other relationship between the Crown and the Supplier.
- 9.6 This Agreement does not confer on either Party the authority to bind the other or to assume or create any obligation or responsibility expressed or implied on the other's part, or in its name, nor will it represent to anyone that it has such power or authority, except as expressly provided in this Agreement.
- 9.7 Time is of the essence in the performance of the Parties' respective obligations under this Agreement.
- 9.8 This Agreement will be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.
- 9.9 This Agreement may be executed in two or more counterparts, and all such counterparts will together constitute one and the same agreement. It will 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 facsimile but such Party will promptly deliver to the other Party an originally executed copy of this Agreement.
- 9.10 Each of the Parties shall, from time to time on written request of another Party, do all such further acts, deeds, documents, assurances and things as may be reasonably required in order to fully perform and to more effectively implement and carry out the terms of this Agreement.
- 9.11 This Agreement may be terminated at any time by the Minister, or upon the agreement of the Parties. This Agreement shall terminate upon the later of (i) the completion of all regulatory approvals, permits and other authorizations and the exhaustion of any appeals or judicial proceedings in relation to the Project, unless these are considered by both Parties not to be

material, and (ii) the completion of construction and entry into Commercial Operation (as defined in the CHP III PPA) of the Project.

**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.

**HER MAJESTY THE QUEEN IN RIGHT OF  
ONTARIO, as represented by the Minister of  
Energy and Infrastructure**

Per: \_\_\_\_\_

Name: ●

Title: ●

**XYZ CORPORATION**

Per: \_\_\_\_\_

Name: ●

Title: ●

**I have authority to bind the Corporation.**