**SECURED LENDER CONSENT & ACKNOWLEDGEMENT
(STREAM 2)**

**THIS AGREEMENT** (the “**Agreement**”) made as of this [Contract Date][[1]](#footnote-1),

BETWEEN:

**[SUPPLIER]**, **[**insert legal form of the Supplier and jurisdiction of organization**]**

(the “**Supplier**”),

- and -

**[SECURED LENDER]**, in its capacity as **[{**Secured Lender under the Contract**}** or **{**insert form of Secured Lender representation, e.g., security trustee, collateral agent and trustee, etc. for and on behalf of the Secured Lenders (as defined below)**}]**

(the “**Security Agent**”),

- and -

**INDEPENDENT ELECTRICITY SYSTEM OPERATOR**, a statutory corporation without share capital amalgamated under the laws of the Province of Ontario

(the “**Sponsor**”),

RECITALS:

1. The Supplier and the Sponsor entered into a ***[Note to finalization: describe prior contract]*** **[NTD: Populate from application form.]** (the “**Prior Contract**”).
2. The Supplier previously granted security against, *inter alia*, all of their right, title, entitlement and interest in and to the Prior Contract in favour of the Security Agent pursuant to certain security agreements and the Supplier, the Sponsor and the Security Agent entered into a form of secured lender consent and acknowledgement agreement dated ● (the “**Original SLCA**”), in connection with such security interest granted in the Prior Contract in favour of the Security Agent.
3. Concurrently with this Agreement, the Supplier and the Sponsor entered into a SHP-AR Contract (as amended, supplemented, restated or replaced from time to time in accordance with its terms, the “**Contract**”), which shall amend and restate the Prior Contract effective as of the Effective Time, a draft copy of which has been provided to the Security Agent;
4. The Parties desire to terminate the Original SCLA effective as of the Effective Time;
5. ***[Note to finalization: describe structure of current collateral arrangements; describe any bond issuance and related trust indentures; identify underlying security and debt documents; identify the “Secured Lenders” if they are anyone other than the Security Agent; identify any intercreditor or collateral agency arrangements]***;
6. The Supplier has granted security against, *inter alia*, all of their right, title, entitlement and interest in and to the Contract in favour of the Security Agent pursuant to the security agreements identified in Schedule “A” (as each may be amended, supplemented, restated or replaced from time to time, collectively the “**Security Agreements**”), as security for its present and future indebtedness, liabilities and obligations under and in respect of the ***[Note to finalization: describe current underlying debt instrument(s)]*** (the “**Secured Debt**”);

**THEREFORE**, the parties agree as follows:

# Defined Terms

Unless otherwise provided in this Agreement or the context otherwise requires, capitalized terms not defined in this Agreement have the respective meanings given to them in the Contract, and “including” shall mean “including without limitation”.

# Effectiveness of this Agreement

## This Agreement shall be effective as of the Effective Time, which effectiveness shall be automatic with without further act or formality by the parties hereto and conditional upon the following:

### The Sponsor has executed this Agreement and provided a fully executed copy to the Supplier and Security Agent; and

### The Sponsor has executed the Contract and provided a fully executed copy to the Supplier.

## The parties hereby confirm that, as of the Effective Time, the Original SLCA is terminated and of no force and effect and execution of this Agreement by the Parties shall be sufficient evidence of termination of the Original SLCA by the Parties.

# Acknowledgement and Confirmation of Rights of Security Agent

## The Sponsor, the Security Agent and the Supplier each acknowledge and confirm that:

### the Supplier has delivered to the Sponsor copies of the Security Agreements listed on Schedule “A”; **[NOTE: IESO please note document requirements and confirm. These are not required under the Application Form currently. The IESO would need to get these ahead of issuing an Amending Offer to the Eligible Participant, since the IESO would have to be comfortable with the Security Agreements prior to issuing the Amending Offer.]**

### the Security Agreements listed on Schedule “A” are acknowledged to be Security Agreements to which the provisions of Article 11 of the Contract apply; and

### [the Security Agent constitutes the Secured Lender for the purposes of the Contract and, without limiting the generality of the foregoing, is entitled to the benefit of the provisions of Article 11 of the Contract in favour of a Secured Lender and is entitled to enforce the same as if the Security Agent were a party to the Contract, until such time as Sponsor has received notice from the Security Agent that the Security Agreements have been terminated.]**[NOTE: As drafted, the Secured Lender is signatory to the SHP-AR Contract. BLG recommends removing the Secured Lender from the SHP-AR Contract and the SHP Contract to avoid confusion as to which entities are party to the agreement. The rights ascribed to the Secured Lender in this Agreement are sufficient and no signature on the Contract is required.]**

## The Security Agent acknowledges, confirms and agrees that:

### it has read and understood the requirements and restrictions pertaining to a Secured Lender Security Agreement in Section 11.1 of the Contract; and

### it has complied with Section 11.1 of the Contract in entering into financing and security documents with the Supplier, including but not limited to the Secured Lender Security Agreement(s), in respect of the Contract.

Notwithstanding any other provision of this agreement, no Secured Lender Security Agreements other than the Security Agreements listed on Schedule “A” shall be entitled to the benefit of the provisions of Article 11 of the Contract, unless and until the Sponsor has received a copy thereof (as provided for in Section 11.1 of the Contract) and each of the parties has acknowledged such additional Security Agreement by fully executing an amendment to Schedule “A” to include such additional Security Agreement. It is a condition precedent to the acknowledgement and confirmation provided in this Section 3 that the representations and warranties contained in Sections 4 and 5 hereof are true and accurate.

# Covenants of the Security Agent

The Security Agent covenants and agrees with the Sponsor (and in the case of paragraphs (a) (c), (d), (f), (g), (h), (i), (j), (k), (l), (n) and (o) below, covenants, agrees, represents and warrants to the Sponsor) as follows:

## Should the Security Agent enforce the Security Agreements with respect to the Contract, it will comply with the terms, conditions and obligations applicable to a Secured Lender under Section 11.2 of the Contract as they relate to the Security Agent’s security interests in the Contract during such enforcement.

## The Security Agent agrees that it will comply with Section 11.2(f) of the Contract if ever applicable.

## The Security Agent is and will be at Arm’s Length from the Supplier.

## The Security Agreements listed on Schedule “A” constitute all of the security granted by the Supplier in favour of the Security Agent as at the date first written above

## Except for the Security Agreements and any other security that is delivered by the Security Agent to the Sponsor in accordance with Section 11.1(d) of the Contract, the Security Agent acknowledges that any other security granted in favour of the Security Agent will not impose any obligations upon the Sponsor pursuant to the Contract.

## All of the security registrations made pursuant to the *Personal Property Security Act* (Ontario) or similar registrations made in respect of a security interest in personal property (or its equivalent) in any other jurisdiction(s) in respect of the Security Agreements are set out in Schedule “A”.

## If the Supplier is in default under or pursuant to any Security Agreement and the Security Agent intends to exercise any rights afforded to it with respect to the Contract, then the Security Agent will give notice of such default to the Sponsor at least ten (10) Business Days prior to exercising any such rights under the Contract.

## The Security Agent has entered into this agreement and holds the security granted pursuant to the Security Agreements on behalf of all parties having any right, title or interest in the Security Agreements.

## Only the Security Agent will be entitled to exercise the rights and remedies under the Security Agreements as the Secured Lender except that in accordance with Section 11.2(g) of the Contract, when the Security Agent has appointed an agent, a receiver or a receiver and manager, or has obtained a court-appointed receiver or receiver and manager for the purpose of enforcing the Security Agent’s security, that Person may exercise any of the Security Agent’s rights under Section 11.2(g) of the Contract.

## The address of the Security Agent to which notices may be sent pursuant to Section 11.1(d) of the Contract is set forth in Section 7 of this agreement.

## The Security Agent will provide the Sponsor with written notice of any change in the identity or address of the Security Agent, and the Security Agent agrees to promptly notify Sponsor in writing of any discharge or termination of all or any of the Security Agreements listed on Schedule “A”.

## The recitals to this agreement are true and accurate.

## The sale, assignment or other transfer of any rights in shares, partnership interests or similar rights in the capital of the Supplier with respect to all or any part of the securities of the Supplier (or that of its general partner(s) in the case of a Supplier that is a partnership) in respect of which the Security Agent holds a security interest granted pursuant to the Security Agreements shall be subject to Section 11.2(f) of the Contract.

## The Security Agreements have been and shall be entered into, and any security thereunder has been and shall be held and assigned, solely by way of security and not for any other purpose. The Security Agent acknowledges that any acknowledgement, agreement or confirmation of the Sponsor hereunder is not and shall not be construed as a consent to any assignment of the Contract or to any change of Control of the Supplier other than for the *bona fide* enforcement of a security interest duly granted under a Security Agreement as provided for in Article 11 of the Contract.

## Subject to the conditions of Section 2(a) being satisfied, as of the Effective Time the Original SLCA has been terminated and is of no force and effect.

# Covenants of the Supplier

The Supplier covenants, agrees, represents and warrants to the Sponsor as follows:

## The Security Agreements are subject to the terms and conditions applicable to a Secured Lender’s Security Agreement that are contained in Article 11 of the Contract, and comply therewith.

## The Supplier has provided to the Sponsor true and complete copies of the Security Agreements listed on Schedule “A”, and such Security Agreements constitute Secured Lender’s Security Agreements and the Security Agent constitutes a Secured Lender for purposes of the Contract.

## All of the security registrations made pursuant to the *Personal Property Security Act* (Ontario) or similar registrations made in respect of a security interest in personal property (or its equivalent) in any other jurisdiction(s) in respect of the Security Agreements are set out in Schedule “A”.

## The recitals to this agreement are true and accurate.

## The Supplier will provide the Sponsor with true and complete copies of any new agreements relating to, or amendments to, any Secured Lender’s Security Agreement.

## There is no existing unremedied Supplier Event(s) of Default.

## The Security Agreements have been and shall be entered into, and any security thereunder has been and shall be held and assigned, solely by way of security and not for any other purpose. The Supplier acknowledges that any acknowledgement, agreement or confirmation of the Sponsor hereunder is not and shall not be construed as a consent to any assignment of the Contract or to any change of Control of the Supplier other than for the *bona fide* enforcement of a security interest duly granted under a Security Agreement.

## Subject to the conditions of Section 2(a) being satisfied, as of the Effective Time the Original SLCA has been terminated and is of no force and effect.

# Notice of Default by Security Agent

The parties hereto agree that the Sponsor shall not be bound or have any obligation to make any inquiry regarding the status of the Supplier’s account with the Security Agent or regarding any breach or default under or pursuant to the Security Agreements other than the written notice (a “**Default Notice**”) to be given to the Sponsor by the Security Agent pursuant to Section 11.1(e) of the Contract, which may be accepted by the Sponsor as conclusive evidence of the Supplier’s default thereunder. Following receipt by the Sponsor of a Default Notice, the Sponsor may at all times, subject to transfer of such interest or entry into a New Agreement in accordance with Article 11 of the Contract, rely on the instructions (the “**Security Agent’s** **Instructions**”) of the Security Agent or its nominee or agent or a receiver or receiver and manager appointed in accordance with Section 11.2(d) of the Contract until the Default Notice is withdrawn by the Security Agent by written notice to the Sponsor. The Sponsor shall have no liability to the Supplier for honouring a Default Notice or any Security Agent’s Instructions and the Supplier hereby agrees to indemnify the Sponsor and hold it harmless in respect of any losses or claims incurred or suffered by the Sponsor due to or arising out of Sponsor honouring any Default Notice or complying with any Security Agent’s Instructions, and the sole remedy of the Supplier in any such circumstances shall be against the Security Agent. Prior to receipt by the Sponsor of a Default Notice, the Sponsor may at all times rely on the instructions of the Supplier (the “**Supplier’s Instructions**”). The Sponsor shall have no liability to the Security Agent for complying with any Supplier’s Instructions prior to such receipt.

# Notice

All notices pertaining to this agreement not explicitly permitted to be in a form other than writing will be in writing and will be given by means of electronic transmission or by hand or courier delivery. Any notice will be addressed to the parties as follows:

If to the Supplier:

[insert Supplier’s mailing address]

Attention: [insert name of contact person or position title]

Email: 

If to the Sponsor:

Independent Electricity System Operator

120 Adelaide Street West

Suite 1600

Toronto, Ontario

M5H 1T1

Attention: Director, Contract Man

agement

Email: contract.management@ieso.ca

If to the Security Agent:

[insert Security Agent’s mailing address]

Attention: [insert name of contact person or position title]

Email: 

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

# Successors and Assigns

Subject to complying with Section 11.1 and sections 15.6 and 15.7 of the Contract, the benefits under this agreement accruing to each of the parties to this agreement will extend to all their respective successors and permitted assigns, only if they agree, according to their interests, to be bound by all the provisions of this agreement (it being the responsibility of each party to give notice to each other party of such assignment and to require its successors and permitted assigns to expressly acknowledge and agree in favour of each other party to be bound by this agreement). Subject to complying with Section 11.1 and Section 15.6 of the Contract, upon the acquisition by any such successor or permitted assign of such an interest, such successor or permitted assign will be joined, as a party benefiting and bound by this agreement, by an appropriate further agreement supplementary to this agreement in form and substance acceptable to the Sponsor, acting reasonably.

# No Waiver

The parties hereto confirm that the Contract remains in full force and effect in accordance with its terms and that this agreement shall not be deemed to waive or modify in any respect any rights of the Sponsor under the Contract. Without limiting the forgoing, this agreement shall not constitute or be deemed to constitute:

## a waiver of any Supplier Event of Default or other default of the Supplier;

## waiver of any prohibition or restriction on, or the Sponsor’s consent to, any assignment of the Contract or change of Control under the Contract; or

## an acknowledgement that there has been or will be compliance by the Supplier with the Contract, except to the extent of the acknowledgement of the rights of the Security Agent as expressly provided herein.

The parties hereto acknowledge and agree that this agreement is being entered into pursuant to, and with respect to, the Contract only and shall not be construed as an amendment or waiver of any other agreement. This agreement, and any notice delivered pursuant to this agreement, shall not be deemed to be notice for any other purpose, including any obligation to provide notice to the Sponsor pursuant to the Sponsor Market Rules.

# Execution and Delivery

This agreement may be executed by the parties hereto in counterparts and may be executed and delivered by electronic mail and all such counterparts and electronic mail will together constitute one and the same agreement.

# Governing Law

This agreement will be governed by and interpreted in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable in the Province of Ontario.

***[EXECUTION PAGE IMMEDIATELY FOLLOWS]***

**IN WITNESS OF WHICH,** the parties have duly executed this agreement as of the date first written above.

[**[insert supplier name]**

Per: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 [Name]

 [Title]

Per: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 [Name]

 [Title]

[**[insert security agent name]**

Per: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 [Name]

 [Title]

Per: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 [Name]

 [Title]

**[INDEPENDENT ELECTRICITY SYSTEM OPERATOR]**

Per: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 [Name]

 [Title]

I/We have the authority to bind the corporation

**SCHEDULE “A”**

**LIST OF SECURITY AGREEMENTS AND REGISTRATION DETAILS**

**The following Security Agreements were granted in favour of the Security Agent (each of which was dated \_\_\_\_\_\_\_ \_\_\_\_, 20\_\_\_):**

[insert description of Security Agreements]

**The following registrations were made in favour of the Security Agent under the Personal Property Security Act (Ontario):**

(a) [insert description of PPSA registrations, if applicable]

**The following registrations were made in the following jurisdictions against the Supplier in favour of the Security Agent:**

(a) •

1. NOTE: This Agreement will be executed simultaneously with the SHP-AR Contract and will be dated the Contract Date. [↑](#footnote-ref-1)