

DRAFT November, 2023



Small Hydro Program

PROGRAM RULES
Version 1.0

Draft November 2023

© Independent Electricity System Operator, 2023

In accordance with the direction of the Minister of Energy the IESO will enter into contracts in respect of certain existing hydroelectric generating facilities. Contracts in respect of these hydroelectric generating facilities will be of a standard form. These Program Rules set out the terms for entering into such contracts.

TABLE OF CONTENTS

SECTION 1 - INTRODUCTION	1
1.1 Background to the Small Hydro Program.....	1
1.2 Defined Terms	1
1.3 Applicability and Use of these Program Rules	1
1.4 Program Documents.....	1
1.5 Program Rules Updates.....	2
1.6 Program Duration.....	2
1.7 Schedules and Prescribed Forms.....	2
SECTION 2 - PROGRAM OVERVIEW	2
2.1 Program Design	2
2.2 Two Forms of Contract.....	3
SECTION 3 - ELIGIBILITY REQUIREMENTS	4
3.1 Participation in the Program	4
3.2 Eligible Participants	4
3.3 Eligible Facilities	5
SECTION 4 - PROGRAM APPLICATION	6
4.1 Application Requirements.....	6
4.2 Delivery.....	7
4.3 Application Package	7
4.4 Application Process	9
4.5 Rejected Applications	11
SECTION 5 - CONTRACT OFFER AND EXECUTION	11
5.1 Contract Offer	11
SECTION 6 - OVERVIEW OF CONTRACT	12
6.1 Contract Form	12
6.2 Contract effective date and Term.....	13
6.3 Metering.....	13
6.4 Ownership of Facility	14
6.5 Project Site.....	14
6.6 Insurance.....	14
6.7 Contract Payment.....	14
6.8 Negative Pricing.....	14
6.9 1 MW or Below Facilities.....	14
6.10 Performance Security.....	15
6.11 Environmental Attributes.....	15

6.12	Treatment of Upgrades.....	15
SECTION 7 - CONFIDENTIALITY		16
7.1	Sponsor Information	16
7.2	Applicant Information.....	16
7.3	Proposed Facility Information	16
7.4	Disclosure of Application Package.....	17
7.5	Disclosure of Proposed Facility Data.....	17
SECTION 8 - ADDITIONAL RULES		17
8.1	Resolving Inconsistencies.....	17
8.2	Assignment or Change of Control	17
8.3	General.....	17
8.4	Interpretation.....	19
SCHEDULE A - DEFINED TERMS		1

SECTION 1 - INTRODUCTION

1.1 **Background to the Small Hydro Program**

To support the continued operation of hydroelectric resources in Ontario, the Minister of Energy instructed the Independent Electricity System Operator (the “**IESO**” or the “**Sponsor**”), through a directive dated January 27, 2022, ([Directive on Procurement of Electricity Resources](#)) to design a Small Hydro Program (the “**Program**”). Pursuant to a subsequent directive dated August 23, 2023 ([Directive on Small Hydro Program](#)), the IESO was instructed to finalize the Program design.

The goal of the Program is to deliver value for ratepayers while providing a reasonable revenue stream for small existing hydroelectric generating facilities to continue operating. Such facilities may have an existing contract or may be uncontracted. The IESO recognizes that the Program will need to provide sufficient revenues to suppliers of contracted hydroelectric generating facilities to adequately maintain such contracted facilities for continued operations.

1.2 **Defined Terms**

Capitalized terms used within these Program Rules and the applicable elements of the Application Package are defined in Schedule A of these Program Rules.

1.3 **Applicability and Use of these Program Rules**

These Program Rules are intended to provide an overview of how the Program operates and to further provide a description of the eligibility requirements and the processes to be followed for an Eligible Participant to obtain a contract under the Program for its hydroelectric generating facility. Contracts awarded under the Program constitute a contract for difference for the clean energy supplied to Ontario’s power grid by the hydroelectric generating facility. As further described below, Facilities with an existing contract with the Sponsor that expires on or before April 30, 2043 and Facilities that are uncontracted are eligible to participate. Facilities that have an OEFC Contract may participate in the Program, however the OEFC Contract must be terminated prior to the Contract Date, as further described herein.

1.4 **Program Documents**

In addition to these Program Rules, the Prescribed Forms (including the Application Form) and the Contract compose the complete set of “**Program Documents**”. All Program Documents are posted on the Sponsor’s Website ([Contracts](#) and [Forms](#)). The Prescribed Forms and the Contract are each a standard form of document and are non-negotiable.

By submitting an Application Form, each Applicant agrees to be bound by these Program Rules and without limiting the generality of the foregoing, Section 7 (Confidentiality) and Section 8 (Additional Rules) of these Program Rules constitute legally binding and enforceable agreements between the Sponsor and the Applicant.

1.5 Program Rules Updates

- (a) The Sponsor may review and amend as necessary, one or more of the Program Documents. The Sponsor may make additional amendments in response to ministerial directives, changes in Laws and Regulations, significant changes in market conditions or other circumstances as determined by the Sponsor in its discretion. The Sponsor will endeavour, but not be required, to provide advanced notice of such amendments to Applicants and other interested parties. For clarity, changes made to the Program Documents throughout the course of the Program shall not affect executed Contracts, subject to the Parties' right to amend the Contract in accordance with the terms therein.
- (b) In the event an Eligible Participant is required to submit a Prescribed Form, such Eligible Participant shall use the latest and current Prescribed Form made available on the Sponsor's Website, unless otherwise instructed in writing by the Sponsor.

1.6 Program Duration

The Program will not continue past April 30, 2043 (the "**Program Termination Date**").

1.7 Schedules and Prescribed Forms

The following Schedules are also to be considered as part of these Program Rules:

Schedule A – Defined Terms

The following Prescribed Forms are found on the Sponsor's Website ([Forms](#)) and shall be provided by the Applicant or Eligible Participant as required by these Program Rules:

- Application Form
- LDC Authorization Form
- Form of Metering Plan
- Form of Officer's Certificate re Existing Contract
- Form of Certificate (Sole Proprietorship) re Existing Contract
- Application Termination Notice
- Form of Stream 1 SLCA
- Form of Stream 2 SLCA

The Sponsor reserves the right to amend or add additional Prescribed Forms in its discretion from time to time as may be required, which Prescribed Forms shall be posted on the Sponsor's Website. The Sponsor will endeavour, but not be required, to provide notice of such amendments or additions to Applicants and other interested parties. Notwithstanding the foregoing, it is the responsibility of the Applicant or Eligible Participant to ensure that it is using the current form of Prescribed Form when submitting same.

SECTION 2 - PROGRAM OVERVIEW

2.1 Program Design

- (a) The Program is designed to accommodate Facilities that are considered Merchant Facilities and Facilities that have an OEFC Contract that is in good standing as of the Application Date (which contract will be terminated as of the Effective Time) (all such Facilities are referred to as a “**Stream 1 Facility**”) and Facilities that have an Existing Contract (a “**Stream 2 Facility**”). For clarity, Facilities that have a physical or financial power or capacity purchase contract with a Person other than the Sponsor or the OEFC relating to the generation of Electricity by such Facility, or other form of contract with the Sponsor or the OEFC relating to Electricity or Related Products relating to such Facility are not eligible to apply to the Program unless such contract has been terminated and is of no force and effect as of the Application Date, following which the Applicant may apply to the Program with such Facility under Stream 1.
- (b) For the purpose of these Program Rules:
 - (i) a “**Merchant Facility**” is a Facility that does not have a physical or financial power or capacity purchase contract with the Sponsor, OEFC or other agency of the Government of Ontario relating to the generation of Electricity by such Facility, or other form of contract with the Sponsor, OEFC or other agency of the Government of Ontario relating to Electricity or Related Products relating to such Facility, and for clarity, following the termination of the OEFC Contract, the Facility that is subject of such terminated contract will be deemed a Merchant Facility;
 - (ii) an “**Existing Contract**” is any one of the HCI Contract, the RESOP Contract, the HESOP Contract or the RES Contract as applicable and which, at the time of application to the Program, is in good standing between the Applicant and the Sponsor. For certainty, the OEFC Contract does not constitute an Existing Contract.

2.2 Two Forms of Contract

- (a) The manner in which Stream 1 Facilities and Stream 2 Facilities are contracted under the Program differs:
 - (i) Stream 1 Facilities that meet the Eligibility Requirements (described below) will be provided with an offer (a “**Contract Offer**”) to enter into a Small Hydro Program Contract (a “**SHP Contract**”), the form of which is available on the Sponsor’s Website.
 - (ii) Stream 2 Facilities that meet the Eligibility Requirements will be provided an offer to amend and restate (an “**Amending Offer**”) their Existing Contract. The Amending Offer, if accepted, will amend and restate the Existing Contract and the resulting amended and restated contract is referred to under these Program Rules as the “**SHP-AR Contract**”, the form of which is available on the Sponsor’s Website.
- (b) Notwithstanding the entering into of the SHP-AR Contract, the terms and conditions of the Existing Contract will continue to govern the Stream 2 Facility and the rights and obligations of the Sponsor and the Supplier (as defined thereunder) for all matters arising prior to the Contract Date. The terms and

conditions of the SHP-AR Contract will govern the Stream 2 Facility and the rights and obligations of the Sponsor and the Supplier (as defined thereunder) for all matters arising as of and following the Contract Date.

- (c) The terms and conditions of the SHP-AR Contract will be substantively similar to the terms and conditions of the SHP Contract with the exception of the settlement provisions. Pursuant to the SHP-AR Contract, the Eligible Facility will, subject to termination in accordance with its terms:
 - (i) as of the Contract Date and until the Expiry Date, receive compensation in accordance with the settlement terms of the Existing Contract, and
 - (ii) following the Expiry Date until the Program Termination Date, receive compensation in accordance with the settlement terms of the SHP Contract.
- (d) For the purposes of these Program Rules, the term “Contract” shall refer to the SHP Contract or the SHP-AR Contract, as applicable. Where it is necessary to distinguish between the SHP Contract and the SHP-AR Contract, such terms will be used. Details of the SHP Contract and the SHP-AR Contract are provided in Section 6.1 below.

SECTION 3 - ELIGIBILITY REQUIREMENTS

3.1 Participation in the Program

- (a) Persons who wish to participate in the Program must submit a complete Application Package to the Sponsor in accordance with Sections 4.1, 4.2 and 4.3 of these Program Rules, to establish that such Person and the Proposed Facility satisfies the Eligibility Requirements contained in Section 3.2 and Section 3.3 of these Program Rules.
- (b) A Stream 1 Facility or a Stream 2 Facility that is the subject of an Application Package submitted to the Sponsor is a “**Proposed Facility**”. A Person who submits an Application Package is an “**Applicant**”. An Applicant that satisfies the requirements of Section 3.2 is an “**Eligible Participant**” and the Proposed Facility that satisfies the requirements in Section 3.3, is an “**Eligible Facility**”, each as determined by the Sponsor in accordance with these Program Rules. The requirements in Section 3.2 and Section 3.3 are referred to collectively as the “**Eligibility Requirements**”.

3.2 Eligible Participants

- (a) To be eligible to participate in the Program, the Applicant must either:
 - (i) own the Project Site (as indicated by the Applicant through item 32 of the Application Form and checklist item 5 listed in the Application Form)
 - (ii) have the right to lease the Project Site for the Term (and for clarity, the lease expiry date is not required to be on or after the Program Termination Date at the time of application, however if the lease expires prior to the

Program Termination Date, the Supplier shall be responsible for ensuring that the lease term is extended prior to such expiry to ensure that at all times during the Term, the lease remains in good standing, failing which it shall be an event of default under the Contract) (as indicated by the Applicant through item 32 & 33 of the Application and checklist item 5 listed in the Application Form); or

- (iii) for a Project Site that is located on Crown lands, have the right to otherwise control or access the Project Site, as evidenced by documents in a form acceptable to the Sponsor acting in its sole discretion (as indicated by the Applicant through item 34 of the Application Form and checklist item 5 listed in the Application Form);
- (b) if the Applicant is submitting a Stream 2 Facility to the Program, the Applicant must be the counterparty to the Existing Contract to which the Stream 2 Facility is subject (as indicated by the Applicant in item 1 & item 11 of the Application Form, with item 11 to be cross referenced by the Sponsor against existing contract);
- (c) be a single individual, or be registered or otherwise authorized to carry on business in the Province of Ontario, provided however that an Applicant may not be a joint venture (as indicated by the Applicant in item 22 to 24 of the Application Form);
- (d) not be insolvent, bankrupt, or be subject to any reorganization, receivership, seizure, realization, arrangement or other similar proceedings pending against or being contemplated by the Applicant or, to the knowledge of the Applicant, threatened against the Applicant (as indicated by the Applicant in the acknowledgements, representations and warranties of the Application Form);
- (e) have, sufficient financial and technical capacity to perform its obligations under the Contract in accordance with Good Engineering and Operating Practices (as indicated by the Applicant in the acknowledgements, representations and warranties of the Application Form); and
- (f) where the Facility is registered in the IESO-Administered Markets, the Applicant must be the Metered Market Participant (as indicated by the Applicant in item 57-59 of the Application Form).

3.3 Eligible Facilities

To be eligible to be included in the Program, a Proposed Facility must:

- (a) be owned or otherwise controlled by the Applicant or Eligible Participant, as applicable (as indicated by the Applicant in item 30 & item 31 of the Application Form);
- (b) be either a Stream 1 Facility or a Stream 2 Facility that is wholly located in the Province of Ontario and which achieved full operational capability no later than January 27, 2022 (as indicated by the Applicant in items 46-48 & items 51-52 of the Application Form);

- (c) have a Nameplate Capacity of less than or equal to 10 MW (as indicated by the Applicant in item 2 of the Application Form and checklist item 2 listed in the Application Form);
- (d) be directly connected to a Distribution System or the IESO-Controlled Grid by one or more Connection Points, and for clarity, Facilities that are Behind-the-Meter Facilities are not eligible to participate in the Program, however a Behind-the-Meter Facility that subsequently connects directly to the Distribution System or the IESO-Controlled Grid by one or more Connection Points and otherwise meets the Eligibility Requirements (including the metering requirements in (e) below), may apply to Stream 1 of the Program following the energization of such Connection Points (as indicated by the Applicant in item 56 of the Application Form and described in items 60-64 or 65-67 of the Application Form);
- (e) have, or will have before submission of an Application Package, revenue grade metering with a minimum capability of hourly data recording, with applicable back-up metering as required, capable of transmitting such data as required and which meter(s) meets the requirements of the applicable metering and settlement exhibit of the Contract, Laws and Regulations and the requirements of the LDC, if applicable (as indicated by the Applicant in checklist item 3 listed in the Application Form and in the acknowledgements, representations and warranties of the Application Form);
- (f) meet all relevant requirements of, as applicable, the Market Rules, Distribution System Code, Transmission System Code, the Connection Agreement and all other applicable Laws and Regulations (as indicated by the Applicant in the acknowledgements, representations and warranties of the Application Form);
- (g) for a Stream 2 Facility, the Existing Contract expires on or before April 30, 2043 and is in good standing as determined by the Sponsor (as indicated by the Applicant in item 10 of the Application Form); and
- (h) for a Stream 2 Facility, not be governed by an Existing Contract that aggregates multiple Facilities under such contract (as indicated by the Applicant in item 44 of the Application Form, to be cross referenced by the Sponsor against a list of Facilities in aggregated contracts).

The application and acceptance process is structured such that, for Facilities with an OEFC Contract in effect as of the Application Date, the proposed Contract Date will be made known by the Sponsor as of the Offer Date, thereby allowing Eligible Participants with an OEFC Contract to work with the OEFC during the Offer Period to ensure the OEFC Contract is terminated immediately prior to the Effective Time.

SECTION 4 - PROGRAM APPLICATION

4.1 Application Requirements

A Person submitting an Application Package must satisfy the following requirements:

- (a) Applicants must submit a separate Application Package for each Proposed Facility; however, Applicants with multiple Proposed Facilities may use duplicated shared

supporting materials within each individual Application Package, where applicable.

- (b) Applicants are solely responsible for ensuring that an Application Package is complete and accurate in every respect and submitted in compliance with these Program Rules.
- (c) A Person is invited to submit an Application Package at any point for a Proposed Facility, and for clarity:
 - (i) Applicants with Stream 2 Facilities may apply for an SHP-AR Contract at any point prior to the Expiry Date. If the Applicant did not submit an Application Package prior to the Expiry Date, following the Expiry Date and corresponding termination of the Existing Contract, the Applicant may apply to have such Facility admitted to the Program as a Stream 1 Facility.
 - (ii) Applicants with Facilities that had an OEFC Contract that was terminated at any point prior to the Application Date may apply to have such Facility admitted to the Program under Stream 1. Evidence of termination of the OEFC Contract is not required under such circumstances.
- (d) In accordance with Section 8.3(c) of these Program Rules, the Sponsor may cease accepting Applications at any time.

4.2 Delivery

- (a) Applicants are solely responsible for ensuring an Application Package is delivered to, and received by, the Sponsor. Without limiting the generality of the foregoing, the Sponsor is not responsible for any delays in receiving an Application Package or its contents because of technical issues or electronic delivery failures, including but not limited to use of an incorrect email address, firewalls, file size, unreadable files, or partial scans of compiled documents.
- (b) Emails to smallhydro@ieso.ca **must not exceed** twenty megabytes (20 MB).
- (c) Applicants may submit an Application Package in a single or multiple emails. The email subject line must be in the following format: “Application Package – [Applicant Legal Name – Name of Proposed Facility] [Email number of total number of emails]”.

4.3 Application Package

- (a) An “**Application Package**” for a Proposed Facility consists of the following:

For Stream 1 Facilities and Stream 2 Facilities:

- (i) a completed Application Form;
- (ii) the documents and evidence as per the checklist items listed in the Application Form, including the applicable Prescribed Forms

For Stream 1 Facilities and Stream 2 Facilities, the checklist items to be included in the Application Package include:

- (iii) Checklist item 1: for Proposed Facilities that are connected to the Distribution System, the “**LDC Authorization Letter**” in the Prescribed Form. The LDC Authorization Letter is addressed jointly to the Sponsor and the applicable LDC and must be signed by an authorized representative of the Applicant. The LDC Authorization Letter authorizes the applicable LDC to provide to the Sponsor any and all information relating to the Applicant and or the Proposed Facility and each of their connections, meters, meter and billing data and all applicable accounts, including access credentials for meter data and the LDC online portal if necessary;
- (iv) Checklist item 2: evidence of the Proposed Facility’s Nameplate Capacity consisting of either:
 - (1) a photograph of the manufacturer’s actual rated nameplate capacity on each hydroelectric generator forming part of the Proposed Facility; or
 - (2) data, provided in a .csv format from the LDC for the five-year period preceding the Application Date, which data demonstrates that, for any month in such five-year period, the maximum energy (MWh) Delivered by the Proposed Facility in every hour is less than or equal to 10 MW;
- (v) Checklist item 3: a valid and accurate Metering Plan in the Prescribed Form, which will be attached as Exhibit F of the SHP Contract, including a single line diagram;
- (vi) Checklist item 4: the current ownership structure, including ownership percentages of any Person that owns, directly or indirectly, at least 25% of the Applicant;
- (vii) Checklist item 5: evidence of title to the Project Site or a copy of the lease pertaining to the Project Site (pursuant to which the Supplier shall be the leasing party), or if the Project Site is located on Crown lands, documents evidencing control or access to the Project Site by the Supplier, in a form acceptable to the Sponsor acting in its sole discretion;
- (viii) Checklist item 6: if the Proposed Facility is the subject of a Secured Lender Security Agreement, a copy of such agreement and copies of each Ancillary Security Agreement;

For Stream 1 Facilities only, the Applicant must also include the following:

- (ix) Checklist item 7: copies, each in separately attached portable document format (.pdf) files, of all licences, permits, certificates, registrations,

authorizations, water management plans, consents or approvals issued by a Governmental Authority that inform or are required to operate and maintain the Facility;

- (x) Checklist item 8: up to ten photos of the Proposed Facility (exterior and interior);

For Stream 2 Facilities only:

- (xi) Checklist item 9: An officer's certificate or, in the case of a sole proprietorship, a certificate, each in the Prescribed Form, certifying that the representations and warranties provided in the Existing Contract are true and correct in all respects as of the Application Date as if such representations and warranties were made on and as of the Application Date.
- (b) In executing the Contract, a Supplier will be required to provide a representation and warranty that any Original SLCA has been terminated and is of no force and effect as of the Effective Time. As such, any Original SLCA shall be terminated immediately prior to the Effective Time and the new SLCA Agreement shall be entered into between the Sponsor, the Secured Lender and the Supplier effective as of the Effective Time. Consequently, Applicants that are submitting a Facility that is the subject of a Secured Lender Security Agreement will be required to provide a SLCA Agreement executed by the Eligible Participant and the Secured Lender concurrently with their acceptance of the Contract Offer or Amending Offer, as applicable, as further outlined in Section 5.1(e).
- (c) In executing the Contract, a Supplier will be required to provide a representation and warranty as to the validity and accuracy of the Metering Plan.
- (d) Applicants must provide the information exactly as set out on the Application Form apart from the completion of any blanks, bullets or similar uncompleted information. On the Application Form or in any applicable Prescribed Forms, no amendments may be made to the pre-printed wording of the Application Form or Prescribed Forms.

4.4 **Application Process**

- (a) The Sponsor will accept Application Packages on an on-going basis until such time as it determines in its discretion. The Sponsor reserves the right to review Application Packages in any order and at any time.
- (b) The Sponsor will only accept one Application Package for a Proposed Facility at a time. If the Sponsor determines that it has received more than one (1) Application Package in respect of a Proposed Facility, the Sponsor will only proceed to review the first Application Package received in respect of the Proposed Facility, determined by the timestamp of the email when received by the Sponsor. All other Application Packages received in respect of a Proposed Facility will be rejected and deemed terminated without any additional review by the Sponsor.

- (c) For each Application Package received, the Sponsor will issue an Application Package ID to the corresponding Applicant.
- (d) The Sponsor will, in a timely manner:
 - (i) First, review an Application Package for completeness to determine whether the Application Package contains all the documents and information requirements set out in Section 4.3 (a “**Complete Application Package**”); and
 - (ii) Second, provided the Application Package is a Complete Application Package, carry out a review to determine whether the Applicant and Proposed Facility satisfy the Eligibility Requirements.
- (e) The Sponsor will use reasonable efforts to work with Applicants to ensure the Sponsor has the information it needs to evaluate their respective Application Package. The Sponsor reserves the right, but is not obligated to, request that an Applicant correct, update, append or amend an Application Package submitted to the Sponsor, including, with respect to Stream 2 Facilities, confirmation that the form of Metering Plan in possession of the Sponsor is accurate, valid and legible. All additional requested documentation or information requested by the Sponsor must be provided by the Applicant by way of e-mail to smallhydro@ieso.ca. The email subject line must be in the following format: “Re-submitted Application Package – [*Application Package ID*] [*Email number of total number of emails*]”. The additional documentation or information must be provided within thirty (30) Business Days of the date of the Sponsor’s request, or by any other means and within any other timeframe as requested by the Sponsor, failing which the Application Package may be rejected as being incomplete.
- (f) Notwithstanding Section 4.4(e), the Sponsor reserves the right to reject an Application Package (a “**Rejected Application**”) that is incomplete, or that does not satisfy all Eligibility Requirements or any Application Package in respect of which the included information is not satisfactory to the Sponsor or its advisers, acting reasonably, and notice shall be provided to Applicant on a timely basis.
- (g) Unless requested by the Sponsor, an Application Package cannot be amended by an Applicant once it has been received by the Sponsor. However, an Applicant may withdraw an Application Package that is not a Rejected Application by providing the Application Termination Notice in the Prescribed Form. Once the original Application Package has been terminated, the Applicant may re-submit an amended Application Package, upon which the Sponsor will issue a new Application Package ID.
- (h) The Sponsor will endeavour to communicate in a timely manner with Applicants about the status of their Application Package.
- (i) Applicants requiring clarification about any of the application requirements may, acting in a commercially reasonable manner, send their questions to the Sponsor at smallhydro@ieso.ca. The Sponsor will, acting reasonably, endeavour to provide a response to the Applicant in a timely manner.

4.5 **Rejected Applications**

- (a) In reviewing a Complete Application Package, if the Sponsor determines:
 - (i) the Applicant is not an Eligible Participant; or
 - (ii) the Proposed Facility is not an Eligible Facility;

then the Sponsor will reject the applicable Complete Application Package and notify the Applicant by e-mail of the Sponsor's determination and reasoning therefor. Such Complete Application Package is thereafter also a "**Rejected Application**" and deemed to be Terminated.

- (b) The Sponsor's determination in respect of whether an Application Package is complete or whether the Eligibility Requirements have been met is final, binding and not subject to appeal.
- (c) Following the Sponsor's determination that an Application Package or a Complete Application Package is a Rejected Application, a Person may submit a new Application Package in respect of a Proposed Facility that had been the subject of the Rejected Application.
- (d) The Sponsor shall have no liability whatsoever to an Applicant for a Rejected Application and the Sponsor shall be released from any and all obligations in respect of the Program as of the date of any such determination.

SECTION 5 - CONTRACT OFFER AND EXECUTION

5.1 **Contract Offer**

- (a) If the Sponsor determines in accordance with Article 4 that the Applicant and Proposed Facility have met the Eligibility Requirements, as applicable, the Sponsor will deliver to the Eligible Participant by email:
 - (i) For an Eligible Facility that is a Stream 1 Facility, a Contract Offer, or
 - (ii) For an Eligible Facility that is a Stream 2 Facility, an Amending Offer,

each in respect of the Eligible Facility to an Application Package, along with a copy of the Contract in its most recent standardized form, populated with the Eligible Participant's and Eligible Facility's information that is consistent with and based on the information set out in the Application Package.

- (b) If the Eligible Facility is the subject of a Secured Lender Security Agreement, the Eligible Participant will also receive an SLCA Agreement in its most recent standardized form along with the Contract Offer or Amending Offer, as applicable, populated with the information provided in the Application Package, which information shall be binding on the Eligible Participant and shall not be subject to change.

- (c) An Eligible Participant has sixty (60) Business Days from the date of delivery of the Contract Offer or Amending Offer, as applicable, to accept the offered Contract (such period referred to as the “**Offer Period**”). To accept and enter into the Contract, an Eligible Participant must email a copy of:
- (i) the fully executed Signature Page of the Contract, and
 - (ii) if applicable, a copy of the SLCA Agreement executed by the Secured Lender and the Eligible Participant,
- to the Sponsor in accordance with the instructions in the Contract Offer or Amending Offer, as applicable.
- (d) With respect to Facilities that have an OEFC Contract in effect as of the Application Date, the Contract Date will be established as the first Business Day following expiry of the Offer Period to provide the Supplier and the OEFC certainty as to the termination date of the OEFC Contract, which shall be immediately prior to the Effective Time. For all other Facilities, the Contract Date will be the date the Sponsor signs back the Contract or Amending Offer, as applicable, to the Supplier. In all circumstances, the Contract Date shall be stated on the cover page of the Contract and shall be binding on the Supplier and the Buyer.
- (e) If the Sponsor does not receive the fully executed Signature Page of the Contract from the Eligible Participant and if applicable, the executed SLCA Agreement, within sixty (60) Business Days from the date of delivery of the Contract Offer or Amending Offer, as applicable, then the Application Package is deemed to be a Rejected Application and the Sponsor’s offer of a Contract is revoked without any further act or formality.

SECTION 6 - OVERVIEW OF CONTRACT

6.1 Contract Form

- (a) As noted in Section 2.1 of these Rules, the form of Contract for Stream 1 Facilities and Stream 2 Facilities will be substantively similar except with respect to (i) provisions with respect to OEFC Contracts, and (ii) settlement:
- (i) OEFC Contracts: The SHP Contract contains a Supplier representation and warranty that the OEFC Contract was terminated and is of no force and effect immediately prior to the Effective Time. Additionally, Suppliers will be required to submit to the Sponsor a letter from the OEFC confirming that the OEFC Contract was terminated on a day that is at least one (1) Business Day prior to the Contract Date, which letter must be provided within twenty (20) Business Days of the Contract Date. Failure to have terminated the OEFC Contract prior to the Effective Time will be an automatic event of default under the SHP Contract that is not subject to cure, following which the Sponsor may elect to immediately terminate the SHP Contract in accordance with the terms therein or otherwise exercise any remedy available to it under the SHP Contract.

- (ii) Stream 1 Facilities: Stream 1 Facilities that are Eligible Facilities may only be contracted under the form of SHP Contract. The SHP Contract contains a single metering and settlement exhibit found at *Exhibit B – Metering and Settlement* (“**Exhibit B**”) in force from the Contract Date until the end of the Term.
 - (iii) Stream 2 Facilities: Stream 2 Facilities may only be contracted under the form of SHP-AR Contract applicable to the Stream 2 Facility’s Existing Contract. The SHP-AR Contract contains two metering and settlement exhibits. The settlement terms of *Exhibit B-1 – Metering and Settlement (Original Term)* (“**Exhibit B-1**”) will be in force and effect for the period beginning as of the Contract Date and ending at 11:59:59 PM on the Expiry Date (such period referred to as the “**Original Term**”). The settlement terms of *Exhibit B-2 – Metering and Settlement (Extended Term)* (“**Exhibit B-2**”) will have terms of settlement that reflect the settlement terms contained in SHP Contract Exhibit B and will be in force and effect for the period commencing at the beginning of the hour ending 01:00 hours (EST) on the day immediately after the Prior Contract Expiry Date and ending at 24:00 hours (EST) on the Program Termination Date (such period referred to as the “**Extended Term**”). In other words, during the Extended Term, Stream 2 Facilities will be compensated on the same basis as Stream 1 Facilities. The metering provisions of Exhibit B-1 will be in force and effect throughout both the Original Term and the Extended Term.
- (b) Given that there are four types of Existing Contract (HESOP, HCI, RESOP and RES), there will be four versions of Exhibit B-1, each specific to the form of Existing Contract such that, during the Original Term, a Stream 2 Facility will receive Contract Payments calculated on the same basis as contract payments would have been calculated under the respective Existing Contract. During the Extended Term, the Stream 2 Facility will receive Contract Payments calculated on the basis of the SHP Contract.

6.2 Contract effective date and Term

- (a) The Contract shall be effective as of the Contract Date.
- (b) For both Stream 1 Facilities and Stream 2 Facilities, the Term begins on the Contract Date and ends on the Program Termination Date, upon which date all Contracts will automatically terminate and be of no further force and effect (excluding any provisions that survive the Contract). For clarity, with respect to Stream 2 Facilities, the Term includes both the Original Term and the Extended Term.

6.3 Metering

The Supplier will be required to meet the metering requirements outlined in Section 2.2 of the Contract and Exhibit B (Stream 1 Facilities) and Exhibit B-1 and Exhibit B-2 (Stream 2 Facilities).

6.4 **Ownership of Facility**

The Supplier will be required to provide a representation and warranty, which shall be valid for the entirety of the Term, that the Supplier owns or otherwise controls the Contracted Facility for a term that expires on or after the Program Termination Date. Breach of such representation and warranty, subject to any applicable cure periods, shall be an automatic event of default following which the Sponsor may choose to terminate the Contract.

6.5 **Project Site**

The Supplier will be required to provide a representation and warranty, which shall be valid for the entirety of the Term, that the Supplier (i) owns or leases the Project Site, or (ii) for a Project Site that is located on Crown lands, has the right to otherwise control or access the Project Site, as evidenced by documents that are in a form acceptable to the Sponsor, acting in its sole discretion.

6.6 **Insurance**

The Supplier will be required to maintain insurance coverage with respect to the Contracted Facility in accordance with Section 2.9 of the Contract at its own cost and expense.

6.7 **Contract Payment**

- (a) An Eligible Participant will be eligible to receive Contract Payments exclusively during the Term.
- (b) For Stream 1 Facilities, the Contract Payment is defined and calculated in accordance with Exhibit B with an initial Contract Price of \$94.67/MWh in 2023. The Contract Price will be escalated annually on January 1st of each year using a factor of 60% and based on CPI.
- (c) For Stream 2 Facilities, the Contract Payment is defined and calculated in accordance with the Exhibit B-1 during the Original Term, and the Exhibit B-2 during the Extended Term. Upon commencement of the Extended Term, the Contract Price will be equal to the Contract Price of the SHP Contract, escalated for inflation since 2023.

6.8 **Negative Pricing**

For the first 438 hours of each calendar year in an hour when HOEP is \$0.00/MWh or less, the Contract Payment will be reduced to 25% of the Contract Price otherwise payable for such hour (“**Negative Pricing Reduction**”). No Negative Pricing Reduction will be applied to the Contract Price from hour 439 and for the remainder of the calendar year. For Stream 1 Facilities, the Negative Pricing Reduction shall be applicable for the entirety of the Term. For Stream 2 Facilities the Negative Pricing Reduction will only apply during the Extended Term.

6.9 **1 MW or Below Facilities**

Stream 1 Facilities that are 1 MW or Below Facilities will be eligible for the 1 MW or Below Facility Adder for the entirety of the Term. Stream 2 Facilities that are 1 MW or

Below Facilities will be eligible for the 1 MW or Below Facility Adder during the Extended Term only.

6.10 Performance Security

Performance Security requirements are as set out in Section 5.1 and 5.2 of the Contract.

6.11 Environmental Attributes

Environmental Attributes generated by the Contracted Facility will be transferred and assigned to the Sponsor in accordance with Section 2.11 of the Contract.

6.12 Treatment of Upgrades

- (a) Upgrades and Expansions are permitted under certain conditions. Contract Payment shall be extended to Upgrades and Expansions:
 - (i) Stream 1 Facilities: From and after the Contract Date, any Upgrade or Expansion of the Contracted Facility are subject to and based on the provisions specified in Exhibit H of the Contract.
 - (ii) Stream 2 Facilities: For all Stream 2 Facilities that have an Existing Contract other than an HCI Contract, an Upgrade or Expansion of the Contracted Facility will only be permitted during the Extended Term (no Upgrade or Expansion will be permitted during the Original Term) and will be subject to and based on the provisions specified in Exhibit H of the Contract. For Stream 2 Facilities that have an Existing Contract that is an HCI Contract, an Upgrade or Expansion will be permitted during the Original Term as well as the Extended Term and subject to the following compensation scheme: (i) during the Original Term, electricity generated from that portion of the Facility that comprises the Upgrade or Expansion shall be paid the Exhibit B-2 Contract Rate, while electricity generated from that portion of the Facility that comprises the original Facility shall be compensated at the Exhibit B-1 Contract Rate, resulting in an overall blended Contract Rate for the Facility during the Original Term, and (ii) during the Extended Term, the entirety of the Facility will be subject to the Exhibit B-2 Contract Rate. In addition to a blended Contract Rate during the Original Term, the Escalation Percentage shall also be blended during the Original Term in a similar manner.
- (b) Facilities shall, at all times during the Term, continue to meet the maximum Nameplate Capacity of 10 MW, or less. Upgrades or Expansions that would if installed, increase the Nameplate Capacity of the Facility beyond 10 MW shall not be permitted.
- (c) For clarity, there is no price adder for an Upgrade or Expansion made to a Contracted Facility.

SECTION 7 - CONFIDENTIALITY

7.1 Sponsor Information

All information provided by or obtained from the Sponsor in any form in connection with the Program, that is not otherwise publicly available is the sole property of the Sponsor and must be treated as confidential; and:

- (a) is not to be used for any purpose other than applying to participate in the Program and the performance of a Supplier's obligations under a Contract;
- (b) must not be disclosed without the prior written authorization of the Sponsor, other than to the Applicant's partners, advisors, Connecting Authority, OEB, contractors, and Secured Lenders, provided the Disclosing Party obtains similar confidentiality commitments from such third parties; and
- (c) must be returned by the Applicant or third party (as applicable) to the Sponsor immediately upon request of the Sponsor.

7.2 Applicant Information

- (a) Information provided by an Applicant is subject to, and may be released in accordance with, the provisions of FIPPA. Notwithstanding any confidentiality statement provided by the Applicant, the Sponsor may be required to disclose information, which is provided to the Sponsor by an Applicant and is otherwise not protected from disclosure through an exemption in FIPPA or any other applicable legislation, regulation or policy. Applicants should not assume that such an exemption is available.
- (b) Subject to applicable Laws and Regulations, the Sponsor reserves the right to publish the names of Applicants and details of their participation in the Program on the Sponsor's Website.
- (c) All information, whether oral, visual or written, submitted by an Applicant in an Application Package is deemed not to be proprietary or confidential unless, if disclosed in writing or other tangible form, such information is clearly labelled as "confidential", or, if disclosed orally, such information is identified as confidential when disclosed and confirmed thereafter in writing.

7.3 Proposed Facility Information

Subject to applicable Laws and Regulations, information provided by an Applicant in relation to a Proposed Facility, including technology, Nameplate Capacity, Location, as well as the name of the Applicant, contact name, business contact e-mail and business contact phone number and date the Application was submitted, may be disclosed by the Sponsor on the Sponsor's Website or otherwise, and such disclosure may be made on an individual basis, or as aggregated with information provided by other Applicants.

7.4 Disclosure of Application Package

Applicants are advised that their Application Packages will, as necessary, be disclosed on a confidential basis to the Sponsor's counsel, consultants, Transmitters, LDC's, the Government of Ontario and advisers retained for the purpose of administration of the Program.

7.5 Disclosure of Proposed Facility Data

Each Applicant shall be required, as part of the Application Package, to irrevocably authorize and consent to the Sponsor, Transmitter or LDC as applicable releasing, disclosing, providing, delivering and otherwise making available to the Sponsor or its agents, successors or assigns, any and all such information relating to connections, proposed connections, meters, meter data, testing data pertaining to commercial operation, billing data, load data for buildings on which a Proposed Facility is located and LDC account, Transmitter account or Metered Market Participant account (as applicable) of the Applicant and Proposed Facility as the Sponsor, its agents, successors or assigns may advise is required in connection with the evaluation, offer and administration of an Application Package or Contract under the Program.

SECTION 8 - ADDITIONAL RULES

8.1 Resolving Inconsistencies

To the extent that there is any inconsistency between these Program Rules and the Contract, the Contract prevails.

8.2 Assignment or Change of Control

(a) Following the submission of an Application Package and until the date that the Applicant is provided with a notice of rejection or an Eligible Participant has fully executed a Contract, an Applicant must not:

- (i) assign its Application Package to another Person (including by way of amalgamation or by operation of law); or
- (ii) be the subject of a change of Control (including by way of amalgamation or by operation of law).

(b) If an Applicant violates any provision of this Section 8.2, the Sponsor may reject the Application Package.

8.3 General

(a) Other than as expressly set out in these Program Rules, the Sponsor is not obligated in any manner whatsoever, or have any liability, to any Person who is an Applicant or Eligible Participant unless and until a Contract is executed with such Person, and only in accordance with the terms of such Contract.

(b) The Sponsor is not liable to pay any Applicant's or Eligible Participant's costs or expenses under any circumstances. In particular, the Sponsor will not reimburse

an Applicant or Eligible Participant in any manner whatsoever in the event of rejection of any or all Application Packages for any reason or in the event of the cancellation or suspension of the Program or any part thereof at any time. The Applicant or the Eligible Participant irrevocably and unconditionally waives any Claims against the Sponsor relating to the Applicant's and the Eligible Participant's costs and expenses, including costs in relation to satisfying the Eligibility Requirements in Section 3 and the Application Requirements described in Section 4.

- (c) The Sponsor reserves the right to cancel all or any part of the Program at any time and for any reason or to suspend the Program in whole or in part for any reason for such period of time as the Sponsor may determine in its discretion, in each case without any obligation or any reimbursement to Applicants or potential Applicants. Any such cancellation will be without prejudice to any executed Contracts.
- (d) The Sponsor may verify with any Applicant or with any third party, any information set out in an Application Package. Each Applicant consents to the Sponsor communicating with any third party to verify the information set out in an Application Package.
- (e) The Sponsor may at any time make changes to these Program Rules, the form of Contract, Application Package (including the Application Form), or the Program without any liability whatsoever to Applicants or prospective Applicants.
- (f) The Sponsor is not liable for any delays in processing, reviewing, or rejecting an Application Package or providing a Contract Offer or Amending Offer, as applicable, in respect thereof.
- (g) The Sponsor reserves the right, in its discretion, to waive any informality, irregularity or non-compliance with respect to an Application Package or an Applicant's compliance with these Program Rules, including by extending any deadline set out in these Program Rules, which for clarity may be any deadline affecting the Sponsor or an Applicant.
- (h) The acceptance by the Sponsor of an Application Package or the issuance of a Contract Offer or Amending Offer, as applicable, by the Sponsor to an Applicant is not:
 - (i) evidence that the Sponsor has accepted the authenticity or sufficiency of the Application Package; or
 - (ii) a waiver of or bar to any of the Sponsor's rights under these Program Rules or otherwise.
- (i) The rights reserved to the Sponsor in these Program Rules are in addition to any other express rights or any other rights which may be implied in the circumstances, and the Sponsor is not be liable for any Claim, losses, damages, liabilities, penalties, obligations, payments, costs and expenses, costs, losses or any direct or indirect damages incurred or suffered by any Applicant or Eligible Participant or any third party resulting from the Sponsor exercising any of its express or implied

rights under the Program, including the right to exercise its discretion hereunder. In submitting an Application Package, each Applicant agrees that it waives any rights it may have to bring a Claim or otherwise as against the Sponsor for failing to issue the Eligible Participant a Contract Offer or Amending Offer, as applicable, or issuing a Contract Offer or Amending Offer, as applicable, to another Eligible Participant. Under no circumstances whatsoever is the Sponsor liable for indirect, punitive or consequential damages associated with an Applicant's submission of an Application Package or participation in the Program.

- (j) Under no circumstances shall the Applicant, Eligible Participant or third party be entitled to recover any damages as against the Sponsor in any amount, whether such Claim arises in contract, warranty, equity, negligence, intended conduct, detrimental reliance or otherwise, including any action or Claim arising from the acts or omissions, negligent or otherwise, of the Sponsor, and including any Claim by an Applicant or an Eligible Participant that the Sponsor has failed to comply with these Program Rules.
- (k) By submitting an Application Package, the Applicant authorizes the collection by the Sponsor of the information set out in the Application Package and otherwise collected in accordance with the terms hereof, and the use of such information for the purposes set out in or incidental to these Program Rules and the Contract, and for the purpose of offering, managing and directing the Program generally.
- (l) Despite anything contained in these Program Rules or in the Contract, an Applicant is solely responsible for ensuring the technical, regulatory and financial viability of their Proposed Facility under the Program, and the Sponsor has no responsibility whatsoever to independently assess the viability of any Application Package nor any liability whatsoever in the event that a Proposed Facility turns out not to be viable in any respect.
- (m) Application Packages become the property of the Sponsor once submitted and will not be returned to the Applicants. Applicants should retain a copy of all submitted materials for their records.
- (n) The Sponsor's receipt of an Application Package does not constitute a commitment by the Sponsor to support the Application Package or create a business relationship between an Applicant or an Eligible Participant and the Sponsor.

8.4 Interpretation

- (a) **Consent.** If a provision requires an approval or consent and the approval or consent is not delivered within the applicable time limit, then, unless otherwise specified, the Party whose consent or approval is required is conclusively deemed to have withheld its approval or consent.
- (b) **Currency.** Unless otherwise specified, all references to money amounts are to the lawful currency of Canada.
- (c) **Discretion.** Where the Sponsor may take an action or make a determination under these Program Rules, the decision to take such action or make such determination is at the Sponsor's sole and absolute discretion. Any reference to the Sponsor's

discretion in these Program Rules means the Sponsor's sole and absolute discretion.

- (d) **Extensions of time.** The Sponsor may extend the time to meet the requirements of these Program Rules at its discretion. Any such extension of time will only be valid and binding on the Sponsor if provided in writing by an authorized representative of the Sponsor. Any failure to meet the revised time requirement will have the same consequences as if the original time requirement had not been met.
- (e) **Governing Law.** These Program Rules are made under, governed by, and must be construed in accordance with, the laws of the Province of Ontario and the federal laws of Canada applicable in the Province of Ontario.
- (f) **Headings.** Headings of Sections are inserted for convenience of reference only and do not affect the construction or interpretation of these Program Rules. References to Sections means Sections of these Program Rules unless otherwise specified.
- (g) **No Strict Construction.** Despite the fact that these Program Rules were drafted by the Sponsor's legal and other professional advisors, Applicants submitting Application Packages acknowledge and agree that any doubt or ambiguity in the meaning or application of any term or provision in these Program Rules must not be construed against the Sponsor in favour of the Applicant when interpreting such term or provision, by virtue of such fact.
- (h) **Notice.** No person may provide any notices or otherwise communicate with the Sponsor in respect of an Application Package other than the Designated Representative, provided that a duly authorized signatory of the Applicant may enter into a Contract that is the subject of a Contract Offer or Amending Offer, as applicable, if any, in respect to such Application Package and the Sponsor may communicate with the duly authorized signing authority in respect of the Application Package and Contract.
- (i) **Number and Gender.** Unless the context otherwise requires, words importing the singular include the plural and vice versa and words importing gender include all genders.
- (j) **Statutory References.** A reference to a statute includes all regulations and rules made pursuant to the statute and, unless otherwise specified, the provisions of any statute, regulation or rule which amends, supplements or supersedes any such statute, regulation or rule.
- (k) **Time Periods.** Unless otherwise specified, time periods within or following which any payment is to be made or act is to be done must be calculated by excluding the day on which the period commences and including the day on which the period ends and by extending the period to the next Business Day following if the last day of the period is not a Business Day.

SCHEDULE A - DEFINED TERMS

1. "1 MW or Below Facility" means a Facility that has a Nameplate Capacity that is 1.000 MW or less.
2. "1 MW or Below Facility Adder" means, (i) with respect to a Stream 1 Facility, a fixed price of \$4.73/MWh (being 5% of the 2023 Contract Price), which amount shall be escalated at 60% of CPI during the Term, and (ii) with respect to a Stream 2 Facility, \$0/MWh during the Original Term, and a fixed price equal to \$4.73/MWh (2023 dollars) escalated at 60% of CPI during the Extended Term.
3. "Affiliate" means any Person that (i) Controls a Party; (ii) is Controlled by a Party; or (iii) is Controlled by the same Person that Controls a Party.
4. "Amending Offer" has the meaning ascribed to it in Section 2.2(a)(ii).
5. "Ancillary Security Agreements" those material agreements as between the Supplier and the Secured Lender and required pursuant to the Secured Lender Security Agreement and identified in the Application.
6. "Applicant" has the meaning ascribed to it in Section 3.1(b).
7. "Application Date" means the date that the Application Package is initially received by the Sponsor, which date and time shall be time-stamped by the Sponsor.
8. "Application Form" means the Prescribed Form used by an Applicant to submit the details of a Proposed Facility for inclusion under the Program.
9. "Application Package" has the meaning ascribed to it in Section 4.3.
10. "Application Termination Notice" means a Notice in the Prescribed Form provided by the Applicant or the Eligible Participant, as the case may be, to the IESO, confirming that it is terminating its Application to the Program.
11. "Base Date" has the meaning given to it in the Contract.
12. "Behind-the-Meter Facility" means a Facility that is connected to a Host Facility such that Electricity Delivered by such Facility is recorded on the host Facility's electricity meter.
13. "Business Day" means a day, other than a Saturday or Sunday or a statutory holiday in the Province of Ontario that is listed on the "*Physical and Financial Market Holiday Schedule*" (or any substantially equivalent future schedule) published by the IESO for the purposes of the IESO Market Rules, from time to time.
14. "Claim" means a claim or cause of action in contract, in tort, under any Laws and Regulations or otherwise.
15. "Complete Application Package" has the meaning given to it in Section 4.4(d).
16. "Confidential Information" means all information that has been identified as confidential and which is furnished or disclosed by the Disclosing Party and its Representatives to the Receiving Party and its Representatives in connection with these Program Rules or a Contract, whether before or after its execution, including all new information derived at any time from any such confidential information, but excluding:

- (a) publicly-available information, unless made public by the Receiving Party or its Representatives in a manner not permitted by these Program Rules or a Contract;
 - (b) information already known to the Receiving Party prior to being furnished by the Disclosing Party;
 - (c) information disclosed to the Receiving Party from a source other than the Disclosing Party or its Representative, if such source is not subject to any agreement with the Disclosing Party prohibiting such disclosure to the Receiving Party; and
 - (d) information that is independently developed by the Receiving Party.
17. “Connecting Authority” means, with respect to a Facility, the LDC or Transmitter that is licensed to operate the Distribution System or that portion of the IESO-Controlled Grid to which the Facility is connected.
 18. “Connection Agreement” means the agreement or agreements required to be entered into between the LDC or Transmitter, as applicable and the Supplier to a Distribution System or the IESO-Controlled Grid (directly or indirectly), in accordance with the Distribution System Code or Transmission System Code, as applicable, and governing the terms and conditions of such connection.
 19. “Connection Line” means the electrical connection line that connects the Facility to the Connection Point.
 20. “Connection Point” means, the electrical connection point between the Facility and a Distribution System or the IESO-Controlled Grid where Electricity is injected into a Distribution System or the IESO-Controlled Grid (as applicable), as more particularly described in the Connection Agreement.
 21. “Contract” means the SHP Contract or the SHP-AR Contract, as the context so requires.
 22. “Contract Cover Page” means the front page of the Contract setting out specific features of the Facility, including the applicable Existing Contract, the applicability of the Peak Performance Factor (as defined in the Contract) and the applicable version of Exhibit B-1 and Exhibit B-2.
 23. "Contract Date" means the effective date of the Contract as set out on the Contract Cover Page and determined by the Sponsor, provided that for Facilities with an OEFC Contract in effect as of the Application Date, the Contract Date shall be the first Business Day following the expiry of the Offer Period.
 24. "Contract Offer" has the meaning given to it in Section 2.2(a)(i).
 25. “Contract Payment” has the meaning given to it in the Contract.
 26. "Contract Price" has the meaning given to it in the Contract.
 27. “Contracted Facility” means a Stream 1 Facility or a Stream 2 Facility, as applicable, in respect of which a Contract has been entered into between an Eligible Participant (deemed a Supplier thereunder) and the Sponsor.
 28. “Control” means, with respect to any Person at any time:

- a) holding, whether directly or indirectly, as owner or other beneficiary (other than solely as the beneficiary of an unrealized security interest) securities or ownership interests of that Person carrying votes or ownership interests sufficient to elect or appoint fifty percent (50%) or more of the individuals who are responsible for the supervision or management of that Person, or
 - b) the exercise of de facto control of that Person, whether direct or indirect and whether through the ownership of securities or ownership interests, by contract or trust or otherwise, and “Controlled” and “Controlled by” has a corresponding meaning.
29. “Consumer Price Index” or “CPI” means the consumer price index for “All Items” published or established by Statistics Canada (or its successor) for any relevant calendar month in relation to the Province of Ontario.
30. “Designated Representative” means an individual who is duly authorized to act on behalf of and make decisions that will bind the Applicant.
31. “Delivered” has the meaning given to it in the Contract.
32. “Disclosing Party” means, with respect to Confidential Information, the Party and/or its Representatives providing or disclosing such Confidential Information and may be the Sponsor or the Applicant, as applicable; provided, however, that where such Confidential Information is Mutually Confidential Information, both the Sponsor and the Applicant shall be deemed to be the Disclosing Party.
33. “Distribution System” means a system connected to the IESO-Controlled Grid for distributing Electricity at voltages of 50 kilovolts or less, and includes any structures, equipment or other things used for that purpose, provided that a Distribution System shall be deemed not to include any equipment controlled by the IESO pursuant to the Distribution System Code.
34. “Distribution System Code” means the “Distribution System Code” established and approved by the OEB, which, among other things, establishes the obligations of an LDC with respect to the services and terms of service to be offered to customers and retailers and provides minimum technical operating standards for Distribution Systems.
35. “Effective Time” means that point in time commencing at the beginning of the hour ending 01:00 hours (EST) on the Contract Date.
36. “Electricity” means electric energy, measured in MWh.
37. “Eligibility Requirements” and individually, an “Eligibility Requirement” has the meaning given to it in Section 3.1(b).
38. “Eligible Facility” has the meaning given to it in Section 3.1(b).
39. “Eligible Participant” has the meaning given to it in Section 3.1(b).
40. “Emission Reduction Credits” means the credits associated with the avoidance or reduction of emissions below the lower of actual historical emissions or regulatory limits, including “emission reduction credits” as defined in O. Reg. 397/01 made under the *Environmental Protection Act*

(Ontario) or such other regulations as may be promulgated under the *Environmental Protection Act (Ontario)* or any currently applicable or future Laws and Regulations.

41. “Environmental Attributes” means the interests or rights arising out of attributes or characteristics relating to the environmental impacts associated with the Facility or the output of the Facility, now or in the future, and the right to quantify and register these with competent authorities, including:
- a) all right, title, interest and benefit in and to any renewable energy certificate, credit, reduction right, offset, allocated pollution right, emission reduction allowance or other proprietary or contractual right, whether or not tradable, resulting from the actual or assumed displacement of emissions by the production of Electricity from the Facility as a result of the utilization of renewable energy technology;
 - b) rights to any fungible or non-fungible attributes or entitlements relating to environmental impacts, whether arising from the Facility itself, from the interaction of the Facility with the IESO-Controlled Grid, a Distribution System, or because of Laws and Regulations or voluntary programs established by any Governmental Authority;
 - c) any and all rights, title and interest, relating to the nature of an energy source (including a Renewable Fuel) as may be defined and awarded through Laws and Regulations or voluntary programs, including all Emission Reduction Credits; and
 - d) all revenues, entitlements, benefits, and other proceeds arising from or related to the foregoing which may be available in connection with the Facility,

but excluding:

- e) such other items as the Sponsor may determine in its sole discretion at any time and from time to time, such excluded items to be posted on the Sponsor’s Website and revised periodically.

For greater certainty, in the event that any governmental or non-governmental agency, whether provincial, federal, national or international in scope or authority, creates or sanctions a registry, trading system, credit, offset or other program relating to Environmental Attributes or their equivalent, the term “Environmental Attributes” as used in the Program Rules shall include the rights or benefits created or sanctioned under any such program or programs to the extent available as a result of, or arising from, the production of Electricity or Related Products from the Facility.

42. “Escalation Percentage” has the meaning given to it in the Contract.
43. “Exhibit B” has the meaning ascribed to it in Section 6.1(a)(i).
44. “Exhibit B-1” has the meaning given to it in Section 6.1(a)(ii), and a reference to Exhibit B-1 is a reference to the relevant version/type of Exhibit B-1 for the Contracted Facility in question.
45. “Exhibit B-2” has the meaning given to it in Section 6.1(a)(ii).
46. “Existing Contract” has the meaning ascribed to it in Section 2.1(b)(ii) and for clarity only, for the purposes of the Contract, the equivalent term is “Prior Contract”.
47. “Expansion” has the meaning ascribed to it in the Contract.

48. “Expiry Date” means the established date in the Existing Contract, including any amendments agreed to by the parties thereto, upon which, absent any earlier unplanned termination event, the Existing Contract will expire on its terms.
49. "Extended Term" has the meaning given to it in Section 6.1(a)(ii).
50. “Facility” means a facility that is owned or otherwise controlled by the Applicant, which generates Electricity exclusively from waterpower and delivers that Electricity through a meter in accordance with all Laws and Regulations to either the IESO-Controlled Grid or a Distribution System.
51. “FIPPA” means the *Freedom of Information and Protection of Privacy Act* (Ontario).
52. “Force Majeure” has the meaning given to it in the Contract.
53. “Framework” has the meaning given to it in Section 1.1.
54. “Good Engineering and Operating Practices” has the meaning given to it in the Contract.
55. “Governmental Authority” means any federal, provincial or municipal government, parliament or legislature, or any regulatory authority, agency, tribunal, commission, board or department of any such government, parliament or legislature, or any court or other law, regulation or rule-making entity, having jurisdiction in the relevant circumstances, including the IESO (as system operator), the OEB, the Electrical Safety Authority, and any person acting under the authority of any Governmental Authority.
56. “HCI Contract” means a contract entered into between the Sponsor and the Eligible Participant (as supplier thereunder) pursuant to the Hydroelectric Contract Initiative developed and implemented pursuant to directions of the Minister (or a predecessor thereto) issued May 7, 2009, January 21, 2013 and February 14, 2020.
57. “HESOP Contract” means a contract entered into between the Sponsor and the Eligible Participant (as supplier thereunder) pursuant to the Hydroelectric Standard Offer Program developed and implemented pursuant to directions of the Minister (or a predecessor thereto) issued January 21, 2013 and June 26, 2013.
58. “Hourly Ontario Energy Price” or “HOEP” has the meaning given to it in the Contract.
59. "Host Facility" means a facility in which:
 - a) The Facility is connected to the Connection Point; and
 - b) Is either (i) directly connected to a Distribution System or (ii) connected to the IESO-Controlled Grid directly or through one or more other facilities (which other facility is not, for greater certainty, a Distribution System).
60. “IESO” means the Independent Electricity System Operator acting in its capacity to deliver procurement and contract management activities as contemplated under Section 5(4)(b) of the *Electricity Act* and includes such Person’s successors and permitted assigns.
61. “IESO-Administered Markets” has the meaning given to it in the IESO Market Rules.

62. “IESO-Controlled Grid” has the meaning given to it in the IESO Market Rules.
63. “IESO Market Rules” means the rules made under Section 32 of the *Electricity Act*, together with all market manuals, policies, and guidelines issued by the System Operator, as amended from time to time.
64. “Independent Engineer” means an engineer that is:
- a) a professional engineer duly qualified (with a Professional Engineer’s designation) and licensed to practice engineering in the Province of Ontario; and
 - b) employed by an independent engineering firm which holds a certificate of authorization issued by Professional Engineers Ontario that is not affiliated with or directly or indirectly controlled by the Applicant and that does not have a vested interest in the Proposed Facility.
65. “Laws and Regulations” means:
- a) applicable Canadian federal, provincial or municipal laws, orders-in-council, by-laws, codes, rules, policies, regulations and statutes;
 - b) applicable orders, decisions, codes, judgments, injunctions, decrees, awards and writs of any court, tribunal, arbitrator, Governmental Authority or other Person having jurisdiction;
 - c) applicable rulings and conditions of any licence, permit, certificate, registration, authorization, consent and approval issued by a Governmental Authority;
 - d) any requirements under or prescribed by applicable common law;
 - e) the Retail Settlement Code, the Distribution System Code, the Transmission System Code and any other codes issued by the OEB; and
 - f) the IESO Market Rules, as well as any manuals or interpretation bulletins issued by the System Operator from time to time that are binding on the Supplier.
66. “LDC” means a Person licensed by the OEB as a “distributor” in connection with a Distribution System.
67. “LDC Authorization Letter” has the meaning ascribed to it in Section 4.3(a)(ii).
68. “Location” means the real property on, over, in or under which the Facility is situated, being the location identified in the Contract Cover Page.
69. “Merchant Facility” has the meaning ascribed to it in Section 2.1(b)(i).
70. “Metered Market Participant” has the meaning ascribed to that term by the IESO Market Rules.
71. “Metering Plan” means metering plan submitted by the Applicant with respect to the Proposed Facility in the form prescribed by Schedule C – Metering Plan of the Program Rules.
72. “MW” means megawatt and “MWh” means megawatt hour.

73. “Mutually Confidential Information” means any information identified by the Parties as Confidential Information of both the Sponsor and the Applicant.
74. “Nameplate Capacity” means the manufacturer’s total installed rated capacity of the Facility to generate Electricity.
75. “Negative Pricing Reduction” has the meaning given to it in Section 6.6.
76. “OEB” means the Ontario Energy Board or its successor.
77. “OEFC” means the Ontario Electricity Financial Corporation or its successor.
78. “OEFC Contract” means a physical or financial power or capacity purchase contract between a supplier and the OEFC relating to the generation of Electricity for a Hydroelectric Generating Facility.
79. “Offer Period” has the meaning given to it in Section 5.1(b).
80. “Original SLCA” means an agreement with respect to the Supplier’s Interest, which agreement was entered into prior to the Application Date between: (i) the OEFC for Stream 1 Facilities or the Sponsor for Stream 2 Facilities, (ii) the Supplier (as the supplier under the Existing Contract or OEFC Contract), and (iii) the Secured Lender.
81. “Original Term” has the meaning given to it in Section 6.1(a)(ii).
82. “Party” means, with respect to the Program Rules, any one of the Applicant or Eligible Participant, as the case may be, and the Sponsor, and the Sponsor and the Applicant or Eligible Participant, as the case may be, are collectively referred to as the Parties.
83. “Person” means a natural person, firm, trust, partnership, limited partnership, company or corporation (with or without share capital), sole proprietorship, Governmental Authority or other entity of any kind, excluding a joint venture.
84. “Prescribed Form” means, in relation to a form, the latest version of the corresponding form appearing on the Sponsor’s Website, as may be amended or replaced by the Sponsor from time to time without notice, provided however that a Prescribed Form, once submitted by an Applicant or Eligible Participant, as the case may be, shall be the version of the Prescribed Form submitted.
85. “Program” has the meaning given to it in Section 1.1.
86. “Program Documents” has the meaning given to it in Section 1.4.
87. “Program Rules” means the rules governing the Program, as may be amended in accordance with its terms from time to time.
88. “Program Termination Date” has the meaning given to it in Section 1.6.
89. “Project Site” means all Properties on which the Facility is located, excluding any Connection Line.
90. “Property” means a parcel or lot of real property as identified by a property identification number or, in the absence thereof, by another legal description by lot and/or parcel number or similar legal

description or by other appropriate description using metes and bounds or GPS coordinates. In the case of provincial Crown lands, Property means a grid cell, or a waterpower site number (as applicable) or in the absence thereof, GPS co-ordinates of the Property, as applicable.

91. "Property Identification Number (PIN)" means the property identifier assigned to a property in accordance with the Registry Act, RSO 1990, c. R.20, s. 21(2), or in accordance with the Land Titles Act, RSO 1990, c. L.5, s. 141(2).
92. "Proposed Facility" means a Stream 1 Facility or a Stream 2 Facility, as applicable, that is the subject of an Application Package as submitted to the Sponsor.
93. "Receiving Party" means, with respect to Confidential Information, the Party receiving Confidential Information and may be the Sponsor, the Applicant or Eligible Participant, as applicable.
94. "Rejected Application" has the meaning given to it in Section 4.4(d) and 4.5(a).
95. "Related Products" has the meaning given to it in the Contract.
96. "Representatives" means a Party's directors, officers, shareholders, employees, auditors, consultants, advisors (including economic and legal advisors), contractors and agents and those of its Affiliates and the agents and advisors of such Persons. In the case of the Sponsor, this definition shall also include the Government of Ontario and their respective directors, officers, shareholders, employees, auditors, consultants, advisors (including economic and legal advisors), contractors and agents.
97. "RES Contract" means a contract entered into between the Sponsor and the Eligible Participant (as supplier thereunder) pursuant to the Renewable Energy Supply competitive procurement developed and implemented by the Minister (or a predecessor thereto) including a Request for Proposal No. SSB-065230 issued June 24, 2004.
98. "RESOP Contract" means a contract entered into between the Sponsor and the Eligible Participant (as supplier thereunder) pursuant to the Renewable Energy Standard Offer Program developed and implemented pursuant to directions of the Minister (or a predecessor thereto) issued March 21, 2006.
99. "Secured Lender" means the lender(s) under a Secured Lender's Security Agreement.
100. "Secured Lender's Security Agreement" means an agreement or instrument, including a deed of trust or similar instrument securing bonds or debentures, containing a charge, mortgage, pledge, security interest, assignment, sublease, deed of trust or similar instrument with respect to all or any part of the Supplier's Interest granted by the Supplier that is security for any indebtedness, liability or obligation of the Supplier, together with any amendment, change, supplement, restatement, extension, renewal or modification thereof.
101. "Signature Page" means the page of an agreement that includes the execution signatures of the appropriately authorized individuals.
102. "SHP Contract" has the meaning ascribed to it in Section 2.2(a).
103. "SHP-AR Contract" has the meaning ascribed to it in Section 2.2(a).
104. "SLCA Agreement" means the Stream 1 SLCA or the Stream 2 SLCA, collectively or individually as the context may require.

105. "Sponsor's Website" means the website of the Sponsor located at uniform resource locator (URL) <https://www.ieso.ca/> or such other URL, or other electronic or non-electronic format, as the Sponsor may identify from time to time and includes all webpages contained on such website.
106. "Stream 1 Facility" has the meaning given to it in Section 2.1(a).
107. "Stream 1 SLCA" means the secured lender consent and acknowledgement agreement in the Prescribed Form, to be entered into between a Supplier, the Sponsor and the Secured Lender with respect to the Supplier's Interest in the Stream 1 Facility.
108. "Stream 2 Facility" has the meaning given to it in Section 2.1(a).
109. "Stream 2 SLCA" means the secured lender consent and acknowledgement agreement in the Prescribed Form, to be entered into between a Supplier, the Sponsor and the Secured Lender with respect to the Supplier's Interest in the Stream 2 Facility.
110. "Supplier" means the Person identified as the supplier on the Contract Cover Page, and, as applicable, its heirs, estate trustees, personal and legal representatives, successors and permitted assigns.
111. "Supplier's Interest" means the right, title and interest of the Supplier in or to the Facility and the Contract or any benefit or advantage of any of the foregoing.
112. "System Operator" means the Independent Electricity System Operator established under Part II of the Electricity Act, and its successors, acting pursuant to its authority to make, administer and enforce the IESO Market Rules.
113. "Term" means with respect to a Contracted Facility, the period beginning on the Contract Date and ending on the Program Termination Date, unless terminated earlier in accordance with the terms of the Contract and for clarity, with respect to Stream 2 Facilities, the Term includes the Original Term and the Extended Term.
114. "Terminate" means, with respect to an Application Package, the termination, rejection, discharge and release of the Application Package and all rights of the Applicant (if any), and all obligations of the Sponsor (if any) to the Applicant, in respect of or arising out of the Application Package.
115. "Transmission System Code" means the Transmission System Code established by the OEB, which among other things, establishes the obligations of a Transmitter with respect to the services and terms of service to be offered to customers and retailers and provides minimum technical operating standards for the IESO-Controlled Grid.
116. "Transmitter" means a Person licensed as a "transmitter" by the OEB.
117. "Upgrade" has the meaning given to it in the Contract.