
LONG-TERM RELIABILITY SERVICES 1 (LT1) CONTRACT

Between



– and –

INDEPENDENT ELECTRICITY SYSTEM OPERATOR

CONTRACT ID #: A yellow square containing a blue circle, used as a redacted placeholder for a contract ID.

DATED as of the {{execution-date}} day of {{execution-month}}, {{execution-year}}.

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LONG-TERM RELIABILITY SERVICES 1 (LT1) CONTRACT

This Long-Term Reliability Services 1 (LT1) Contract is dated as of the {{execution-date}} day of {{execution-month}} {{execution-year}} (the “**Contract Date**”) between [●] (the “**Supplier**”), and the Independent Electricity System Operator (the “**Buyer**”). The Supplier and the Buyer are each referred to herein as a “**Party**” and collectively as the “**Parties**”. *[Note to Finalization: To be updated prior to execution.]*

WHEREAS on October 6, 2022, the Minister of Energy issued a directive to the Buyer pursuant to subsection 25.32 of the Electricity Act to procure contracts for capacity resources (the “**Ministerial Directive**”); *[Note to Finalization: To be updated prior to execution.]*

AND WHEREAS the Buyer, issued a request for proposals dated {{RFP-date}} *[Note to Finalization: To be updated prior to execution.]*, as amended, to solicit capacity services from New Build and Eligible Expansion facilities in Ontario (the “**LT1 RFP**”);

AND WHEREAS the Supplier submitted a proposal to provide Capacity Products from the Facility under the LT1 RFP;

AND WHEREAS the Supplier’s proposal was selected by the Buyer and accordingly the Supplier and the Buyer wish to execute this Agreement in order to formalize the long-term contractual arrangements for the Supplier to develop, construct, operate and maintain the Facility during the Term on the terms and conditions set out herein in order to provide Capacity Products from the Facility;

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

ARTICLE 1 DEFINITIONS

1.1 Definitions

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

“**Additional Term**” has the meaning ascribed to it in Exhibit C.

“**Adjusted Monthly Contract Capacity**” has the meaning ascribed to it in Exhibit E-1 or Exhibit E-2, as applicable.

“**Affiliate**” means any Person that: (i) Controls a Party; (ii) is Controlled by a Party; or (iii) is Controlled by the same Person that Controls a Party.

“**Agreement**” means this LT1 Contract as it may be amended, restated or replaced from time to time.

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

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

“**Apparent Monthly Round Trip Efficiency**” or “**AMRTE**” has the meaning ascribed to it in Exhibit R.

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

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

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

“**Associated Relationship**” means the relationship between a meter at a Delivery Point and a Market Participant (where such Market Participant is not the Metered Market Participant), as established by certain processes in the Meter Data Distribution or MDD.

“**Availability Non-Performance Charge**” or “**ANPC**” has the meaning ascribed to it in Exhibit F.

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

“**Blanket Municipal Support Resolution**” means a resolution or other instrument signed by or on behalf of the Local Municipality in which the Facility is proposed to be located that expresses the support of the Local Municipality for the development, construction and operation of multiple Electricity generation or storage facilities, which support may or may not be solely for purposes of the requirements of the LT1 RFP or the requirements of this Agreement or other procurement initiatives of the Buyer and subject to all Laws and Regulations.

“**Business Day**” means a day, other than a Saturday or Sunday or 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 System Operator for purposes of the IESO Market Rules, from time to time, but excluding from such statutory holidays Easter Monday, Remembrance Day and National Day for Truth and Reconciliation.

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

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

“**Buyer Statement**” has the meaning ascribed to it in Section 12.2(g).

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“Buyer’s Website” means the website of the Buyer located at uniform resource locator (URL) <https://www.ieso.ca/> or such other URL, or other electronic or non-electronic format, as the Buyer may provide to the Supplier from time to time.

“Capacity Auction” has the meaning ascribed to it in the IESO Market Rules.

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

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

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

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

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

“Capacity Reduction Factor” or **“CRF”** shall be an amount equivalent to 1.0 until, and to the extent, determined otherwise pursuant to Sections 15.6(f) and 15.6(g).

“CCT Duration” has the meaning ascribed to it in Section 15.6(c).

“CES Decommissioning” has the meaning ascribed to it in Section 2.15(d).

“CES Election” has the meaning ascribed to it in Section 2.15(d).

“CES MAE” has the meaning ascribed to it in Section 2.15(b).

“CES MAE Confirmation” has the meaning ascribed to it in Section 2.15(b).

“CES MAE Notice” has the meaning ascribed to it in Section 2.15(b).

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

“COD Bonus End Date” means April 30, 2028. **[NTD: Subject to Government direction.]**

“Commercial Operation Date” or **“COD”** means the date on which Commercial Operation is first attained.

“Commercial Operation” has the meaning ascribed to it in Section 2.5.

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

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

“Completion and Performance Security” has the meaning ascribed to it in Section 6.1(a).

“Confidential Information” means:

- (a) all information which is furnished or disclosed by the Disclosing Party and its Representatives to the Receiving Party and its Representatives in connection with this Agreement, whether before or after its execution, that has been identified as confidential at the time it was furnished or disclosed, and including all new information derived at any time from any such confidential information, but excluding:
 - (i) publicly-available information, unless made public by the Receiving Party or its Representatives in a manner not permitted by this Agreement;
 - (ii) information already known to the Receiving Party prior to being furnished by the Disclosing Party;
 - (iii) 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
 - (iv) information that is independently developed by the Receiving Party; and
- (b) Mutually Confidential Information.

“Confidentiality Undertaking” has the meaning ascribed to it in Section 8.1(c).

“Connection Agreement” means the agreement or agreements required to be entered into by the applicable LDC or Transmitter and the Supplier with respect to the connection of the Facility to a Distribution System or Transmission System in accordance with the Distribution System Code or Transmission System Code, as applicable and governing the terms and conditions of such connection, and including the payment of all costs that are the responsibility of the Supplier thereunder.

“Connection Line” means the electrical connection line that connects the Facility to the Connection Point.

“Connection Point” means, (i) where the Facility is connected to the IESO-Controlled Grid, the electrical point or points of connection, as defined in the IESO Market Rules, between the Facility and the IESO-Controlled Grid; and (ii) where the Facility is connected to a Distribution System, the embedded connection point(s), as defined in the IESO Market Rules, between the Facility and the Distribution System, in either case as specified in Exhibit A. For greater certainty, the Connection Point is defined by reference to electrical connection points.

“Contract Capacity” means the Winter Contract Capacity or the Summer Contract Capacity, as set out in Exhibit B, subject to adjustment as expressly provided in this Agreement.

“Contract Date” has the meaning ascribed to that term in the first paragraph of this Agreement.

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

“**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.

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

“**Credit Rating**” means, with respect to any Person, its long-term senior unsecured debt rating or its deposit rating as provided by Moody’s, S&P, DBRS Morningstar, or, if such Person is a financial institution, Fitch IBCA, or DBRS Morningstar or any other established and reputable rating agency, as agreed to by the Parties, acting reasonably, from time to time.

“**DACP**” means the “Day Ahead Commitment Process” as set out in the IESO Market Rules.

“**Day-Ahead Market**” or “**DAM**” means, as of the Contract Date, the DACP, as such program may be amended or replaced from time to time, including with a forward market, established under the IESO Market Rules or otherwise, for Electricity or for Electricity and Related Products for each hour of a given day, that clears the day before based upon submitted hourly bids to buy and offers to sell, and shall include, for purposes of this Agreement, such other mechanisms or amendments to the IESO Market Rules to enhance pre-dispatch scheduling and unit commitment of generators on a day-ahead basis (as currently contemplated in the System Operator’s proposed “market renewal” program), at which time “**Day-Ahead Market**” or “**DAM**” shall have the meaning ascribed to such terms in the IESO Market Rules. Until such time as the DACP is replaced with a forward energy market under the IESO Market Rules as contemplated in this definition, “**Day-Ahead Market**” or “**DAM**” shall mean the DACP plus the real-time energy market under the IESO Market Rules corresponding with any scheduled or committed generation established under the DACP.

“**DBRS Morningstar**” means DBRS Limited or its successor.

“**Delay Liquidated Damages**” has the meaning ascribed to it in Section 2.3(c).

“**Delivered**” means, in relation to Electricity, delivered to the Delivery Point net of any Station Service Loads in accordance with the Metering Plan, and “**Deliver**” and “**Delivery**” have corresponding meaning.

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“Delivery Points” means (i) uniquely identified reference points determined in accordance with the IESO Market Rules and used for settlement purposes in the real-time markets and (ii) the point(s) at which revenue-quality metering records the net Electricity delivered to an End-User, as set out in Exhibit A.

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

“Discriminatory Action” has the meaning ascribed to it in Section 13.1.

“Discriminatory Action Compensation” has the meaning ascribed to it in Section 13.2.

“Discriminatory Action Compensation Amount” has the meaning ascribed to it in Section 13.3(e)(i).

“Discriminatory Action Compensation Notice” has the meaning ascribed to it in Section 13.3(e)(i).

“Distribution System” has the meaning ascribed to it in the IESO Market Rules.

“Distribution System Code” means the code approved by the OEB, as amended from time to time, 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 of distribution systems.

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

“DTC Assessment Letter” has the meaning ascribed to it in the Indigenous Consultation Information Package.

“DTC Sufficiency Letter” has the meaning ascribed to it in the Indigenous Consultation Information Package.

“Duration Capability” means the number of hours during which the Facility has the ability, under normal operating conditions, to Deliver a sustained amount of Electricity, as indicated in Exhibit A.

“Early COD Payment Multiplier” has the meaning ascribed to it in Section 2.3(b).

“Economic Interest” means, with respect to any Person other than a natural Person, the right to receive or the opportunity to participate in any payments arising out of or return from, and an exposure to a loss or a risk of loss by, the business activities of such Person, by means, directly or indirectly, of an equity interest in a corporation, limited partnership interest in a limited partnership, partnership interest in a partnership, units or interests in a trust, membership in a co-op, or, in the sole and absolute discretion of the Buyer, other similar ownership interest.

“Electricity” means electric energy.

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

“Electricity Storage Facility” has the meaning ascribed to it in the IESO Market Rules.

“Eligible Existing Facility” means an existing, licensed, operating Electricity generation or storage facility that is registered or is able to become registered in the IESO-Administered Markets; and that, at any time since January 1, 2020, has been the subject of a contract with the Buyer or the Ontario Electricity Financing Corporation, or a commitment under the Capacity Auction, for the delivery of Electricity, Capacity Product or Ancillary Services.

“Eligible Expansion” means the development and construction by an Eligible Expansion Counterparty of one or more additional Electricity generation or storage units to an Eligible Existing Facility that utilize the same Electricity generation or storage technology as the Eligible Existing Facility:

- (a) whose Connection Point is the same actual, physical interconnection to the IESO-Controlled Grid or the Distribution System (as applicable) as that of the Eligible Existing Facility and that is separately metered from the Eligible Existing Facility; or
- (b) if the Connection Point is different than that of the Eligible Existing Facility, the additional Electricity generation or storage units are located within or adjacent to the boundaries of the Property(ies) on which the Eligible Existing Facility is located.

“Eligible Expansion Counterparty” means the owner of an Eligible Existing Facility or an Affiliate of such owner.

“Emission Reduction Credits” means the credits associated with the amount of emissions to the air avoided by reducing the emissions below the lower of actual historical emissions or regulatory limits, including “emission reduction credits” as may be defined in any regulation as may be promulgated under the *Environmental Protection Act* (Ontario).

“End-User Load” means a load facility which utilizes Electricity supplied through a direct connection to the Transmission System, a Distribution System or the Facility.

“End-User” means a Person who owns or operates an End-User Load.

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

- (a) rights to any fungible or non-fungible attributes, whether arising from the generating or storage facility itself, from the interaction of the generating or storage facility with the IESO-Controlled Grid, a Distribution System or an End-User or because of applicable legislation or voluntary programs established by Governmental Authorities;

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- (b) any and all rights relating to the nature of the energy source as may be defined and awarded through applicable legislation or voluntary programs. Specific environmental attributes include ownership rights to Emission Reduction Credits or entitlements resulting from interaction of the generating facility with the IESO-Controlled Grid, the Distribution System or an End-User or as specified by applicable legislation or voluntary programs, and the right to qualify and register these with competent authorities; and
- (c) all revenues, entitlements, benefits and other proceeds arising from or related to the foregoing.

“Environmental Incident” means any happening or occurrence (which without limiting the generality thereof includes any release, discharge, leak or spill of a substance contrary to Laws and Regulations) which could give rise to an environmental claim as against the Buyer. Without limiting the generality thereof, environmental claim means any notice of violation or offence, action, claim, lien, demand, proceeding, loss, penalty, fine, cost obligation or liability and any order or directive by a Governmental Authority under Laws and Regulations.

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

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

“Existing Facility Capacity” means the greater of (i) the IESO-registered maximum continuous rating of the Eligible Existing Facility (annual or seasonal, as applicable), (ii) the capacity of the Eligible Existing Facility that is stated in and the subject of a current contract with the Buyer or the Ontario Electricity Financing Corporation for the delivery of Electricity, Capacity Products or Ancillary Services; or (iii) the capacity of the Eligible Existing Facility that has been the subject of a capacity obligation in a capacity auction administered under the IESO Market Rules.

“Expiry Date” means (i) for any Facility that does not utilize natural gas to generate Electricity, **[April 30, 2048]**, which date shall be automatically extended for any number of days for which the Milestone Date for Commercial Operation or the Longstop Date has been extended by an event of Force Majeure as set out in Section 11.1(a), or (ii) for any Facility that utilizes natural gas to generate Electricity, April 30, 2040.

“Facility” means the facility described in Exhibit A.

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

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

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

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

“Fixed Capacity Payment” or **“FCP_{dy}”** means the daily amount expressed in \$/MW-Business Day, calculated for any given Settlement Month “*m*” in Contract Year “*y*”, as set out in Exhibit J as being applicable for such Settlement Month.

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

“**Force Majeure Outage Hour**” or “**FMOH**” has the meaning ascribed to it in Exhibit J.

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

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

“**Future Capacity Related Products**” means all Capacity Products that relate to the Contract Capacity and that were not capable of being traded by the Supplier in the IESO-Administered Markets or other markets on or before the Contract Date.

“**Future Government Support Program**” means any program, facility or offering administered or made available by a Governmental Authority that provides cash subsidies, grants or payments on account of capital costs for the development and construction of the Facility or based on the output or performance of the Facility, pursuant to documented guidelines, program rules, prescribed forms of contracts or standardized commercial terms that are published or first publicly announced by the applicable Governmental Authority after the Proposal Submission Deadline. **INTD: Under consideration by the IESO** For certainty, Future Government Support Program excludes the measures referred to as the “Clean Technology Investment Tax Credit” or the “Clean Electricity Investment Tax Credit” in the Government of Canada’s Budget 2023: A Made-in-Canada Plan released and tabled in the Parliament of Canada on March 28, 2023.

“**GA Amount**” has the meaning ascribed to such term in Exhibit R.

“**GHG Abatement Plan**” has the meaning ascribed to it in Section 2.15(b).

“**Global Adjustment**” means that adjustment made by the System Operator pursuant to section 25.33 of the Electricity Act, or its successor.

“**Good Engineering and Operating Practices**” means any of the practices, methods and activities adopted by a significant portion of the North American electric utility industry as good practices applicable to the design, building, and operation of generation facilities of similar type, size and capacity or any of the practices, methods or activities which, in the exercise of skill, diligence, prudence, foresight and reasonable judgement by a prudent generator in light of the facts known at the time the decision was made, could reasonably have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety, expedition and Laws and Regulations. Good Engineering and Operating Practices are not intended to be limited to the optimum practices, methods or acts to the exclusion of all others, but rather are intended to delineate acceptable practices, methods, or acts generally accepted in the North American electric utility industry or Electricity infrastructure. Without limiting the generality of the foregoing and in respect of the operation of the Facility, Good Engineering and Operating Practices include taking Commercially Reasonable Efforts to ensure that:

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

“Government of Canada” means His Majesty the King in right of Canada.

“Government of Ontario” means His Majesty the King in right of Ontario.

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

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

“Gross Reimbursable Energy Adder” or **“GREA”** has the meaning ascribed to it in Exhibit R.

“HOEP” or **“Hourly Ontario Energy Price”** has the meaning provided to it in the IESO Market Rules, and expressed in Dollars per MWh, and includes any applicable successor price, including any applicable successor locational marginal price applicable to the Connection Point.

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

“ICI” has the meaning ascribed to such term in Exhibit R.

“ICI Successor Program” has the meaning ascribed to such term in Exhibit R.

“IE Certificate” means a certificate in the form set out in Exhibit N addressed to the Buyer from an Independent Engineer, procured at the expense of the Supplier.

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“IESO Market Rules” means the rules governing the IESO-Controlled Grid and establishing and governing the IESO-Administered Markets, together with all market manuals, policies, and guidelines issued by the System Operator, all as amended or replaced from time to time.

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

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

“including” means “including, without limitation”.

“Indemnifiable Loss” has the meaning ascribed to it in Section 14.3.

“Indemnitees” has the meaning ascribed to it in Section 14.3.

“Independent Engineer” means an engineer that is:

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

“Index Factor” or **“IF”** has the meaning ascribed to such term in Exhibit J.

“Indigenous Community” means, for the purposes of this LT1 Contract,

- (a) a First Nation in Ontario that is a “band” as defined in the *Indian Act*, RSC 1985, c I-5;
- (b) a Person, other than a natural Person, that has been determined by the Government of Ontario (for purposes of this LT1 Contract or otherwise) to represent the collective interests of a community that is composed of indigenous natural Persons in Ontario; or
- (c) a Métis Community.

“Indigenous Consultation Information Package” means the document titled Indigenous Consultation Information Package issued by the Ministry of Energy on [insert date] and published on the Buyer’s Website.

“Indigenous Participation Level” means the percentage of the total Economic Interest in the Supplier that is held by one or more Indigenous Communities that each hold at least ten percent (10%) of the Supplier’s total Economic Interest as of the Contract Date, provided that if a Supplier is itself an Indigenous Community, the applicable Indigenous Participation Level shall be 100%.

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“Indigenous Participation Supplier” means a Supplier in respect of which the Indigenous Participation Level is greater than or equal to ten percent (10%). ~~[NTD: Under consideration by the IESO.]~~

“Initial IPL” means the Indigenous Participation Level as of the Contract Date as set out in Exhibit B.

“Insolvency Legislation” means the *Bankruptcy and Insolvency Act* (Canada), the *Winding Up and Restructuring Act* (Canada), the *Companies’ Creditors Arrangement Act* (Canada), each as now and hereafter in effect, any successors to such statutes and any other applicable bankruptcy, insolvency, liquidation, winding-up, administration, receivership, arrangement or other similar law of any jurisdiction (regardless of the jurisdiction of such application or competence of such law), including any law of any jurisdiction permitting a debtor to obtain a stay or a compromise of the claims of its creditors against it and any law of any jurisdiction relating to receivership, reorganization, liquidation, conservatorship, moratorium, rearrangement or corporate or other arrangement affecting the rights of creditors generally.

“Interest Rate” means the annual rate of interest established by the Royal Bank of Canada or its successor, from time to time, as the interest rate it will charge for demand loans in Dollars to its commercial customers in Canada and which it designates as its **“prime rate”** based on a year of 365 or 366 days, as applicable. Any change in such prime rate shall be effective automatically on the date such change is announced by the Royal Bank of Canada.

“IPPI” means the Industrial Product Price Index in relation to Canada published by Statistics Canada (or any successor thereof) from time to time (the series number of which as of the Contract Date is Table: 18-10-0265-01).

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

“kV” means kilovolt.

“Late Report Administrative Charge” has the meaning ascribed to it in Section 2.4(b).

“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; and

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- (e) the IESO Market Rules, as well as any manuals or interpretation bulletins issued by the System Operator from time to time that are binding on the Supplier.

“Letter of Credit” means one or more irrevocable and unconditional standby letters of credit issued by a financial institution listed in either Schedule I or II of the *Bank Act* (Canada) or such other financial institution having a minimum Credit Rating of (i) A- with S&P, (ii) A3 with Moody’s, (iii) A (low) with DBRS Morningstar, or (iv) A- with Fitch IBCA, in substantially the form attached as Exhibit C or in a form acceptable to the Buyer, acting reasonably, and otherwise conforming to the provisions of Section 6.2.

“LiCP” means the Lithium Carbonate Price index published by the Shanghai Metals Market Online Index.

“Liquidated Damages Rate” means an amount, expressed in Dollars per MW, which shall be \$150 per MW.

“Local Distribution Company” or “LDC” means a Person licensed by the OEB as a “Distributor” in connection with a Distribution System.

“Local Municipality” means any corporation that is a “local municipality” as defined in and for the purposes of the *Municipal Act, 2001*, SO 2001, c 25 or the *City of Toronto Act, 2006*, SO 2006, c 11, Sched A.

“Longstop Date” means the date that is eighteen (18) months after the Milestone Date for Commercial Operation.

“LT1 RFP” has the meaning ascribed to it in the recitals to this Agreement.

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

“Market Settlement Charges” means all market settlement amounts and charges described in the IESO Market Rules.

“Material Adverse Effect” means any change (or changes taken together) in, or effect on, the affected Party that materially and adversely affects the ability of such Party to perform its obligations hereunder.

“Materials Cost Index Adjustment” has the meaning ascribed to it in Section 2.13.

“Maximum Contract Capacity” means the higher of the Winter Contract Capacity and the Summer Contract Capacity.

“MCIA_{li}” means the formula for the Materials Cost Index Adjustment that incorporates price indexing for lithium carbonate, as set out in Section 2.13(a)(i).

“MCIA_{nli}” means the formula for the Materials Cost Index Adjustment that does not incorporate price indexing for lithium carbonate, as set out in Section 2.13(a)(ii).

“MCIA Effective Date” has the meaning ascribed to it in Section 2.13(b).

“**MCIA Notice**” has the meaning ascribed to it in Section 2.13(b).

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

“**Metering Plan**” means a document that is provided by the Supplier to be approved by the Buyer and that (a) verifies that the revenue-quality interval meters used to measure Electricity conform with Measurement Canada Regulations, (b) provides technical specifications for meters, instrument transformers and relevant instruments for main and backup metering, and (c) provides all required information, and equipment specifications needed to permit the Buyer to remotely access, verify, estimate and edit for calculation purposes, and/or total Revenue Meter readings in order to accurately determine the generator output at the Delivery Point net of any Station Service Loads, and which is updated promptly, and, in any event, within ten (10) Business Days after any change to the metering installation occurs.

“**Métis Community**” means:

- (a) the Métis Nation of Ontario or any of its regions or active Chartered Community Councils; or
- (b) a Person, other than a natural Person, that has been determined by the Government of Ontario (for purposes of this LT1 Contract or otherwise) to represent the collective interests of a community that is composed of Métis natural Persons in Ontario.

“**Milestone Date for Commercial Operation**” means the date identified as such in Exhibit P.

“**Ministerial Directive**” has the meaning ascribed to it in the recitals to this Agreement.

“**Monthly Average Offered Quantity**” or “**MAOQ**” means the quantity (in MW) determined by summing the MW quantity of all hourly price-quantity pairs (or future equivalent) offered by the Facility into the Day-Ahead Market for dispatch during Qualifying Hours in the Settlement Month, divided by the number of Qualifying Hours in such Settlement Month.

“**Monthly Capacity Payment**” or “**MCP**” has the meaning ascribed to it in Exhibit F.

“**Monthly Contract Capacity**” or “**MCC**” means either the Winter Contract Capacity or the Summer Contract Capacity designated for each calendar month as set out in Exhibit B.

“**Monthly Payment**” has the meaning ascribed to it in Section 4.1.

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

“**Municipality**” means any corporation that is a “local municipality” or an “upper-tier municipality” as defined in and for the purposes of the *Municipal Act, 2001*, SO 2001, c 25 or the *City of Toronto Act, 2006*, SO 2006, c 11, Sched A.

“**Municipal Lands**” means the portion of the Project Site that is located on lands subject to the authority of one or more Municipalities.

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“Municipal Support Resolution” means a resolution or other instrument signed by or on behalf of the Local Municipality in which the Facility is proposed to be located substantially in accordance with Exhibit A of the Prescribed Form: Municipal Support Resolution published under the LT1 RFP which indicates that the council of such Local Municipality supports the development, construction and operation of the Facility, which support may be solely for purposes of the requirements of the LT1 RFP or the requirements of this Agreement and subject to all Laws and Regulations.

“Must-Offer Obligation” has the meaning ascribed to it in Section 3.1(a).

“Mutually Confidential Information” means the Fixed Capacity Payment and the Facility Spread Adjustment Factor set out in Exhibit B and any information identified by the Parties as Confidential Information of both the Buyer and the Supplier.

“MW” means megawatt.

“MWh” means megawatt hour.

“Nameplate Capacity” means the rated, continuous load-carrying capability ~~net of parasitic or Station Service Loads~~, expressed in MW in Exhibit B, of the Facility to generate or store (as applicable) and Deliver Electricity at a given time, and which includes the Contract Capacity.

“Network Upgrade Costs” means those costs that are payable by the Supplier, which may include design, engineering, procurement, construction, installation and commissioning costs, related to the Network Upgrades. For greater certainty, Network Upgrade Costs shall not include Connection Costs.

“Network Upgrades” means all additions, improvements and upgrades to the network facilities, as defined by the Transmission System Code, for the connection of the Facility, as more particularly specified pursuant to the System Impact Assessment, Customer Impact Assessment and Transmission System Code for generator or storage connections.

“New Agreement” means a new agreement substantially in the form of this Agreement, which is to be entered into with a Secured Lender that is at Arm’s Length with the Supplier or a Person identified by such Secured Lender following termination of this Agreement, as set out in Section 12.2(g).

“New Build” means the development and construction of a new generating or storage facility that is not an upgrade or redevelopment of an existing generating or storage facility.

“Non-Electricity Storage Facility” means a Facility that is not an Electricity Storage Facility.

“Non-Performance Factor” or **“NPF”** means the monthly non-performance factor set out in Exhibit F.

“Notice of Discriminatory Action” has the meaning ascribed to it in Section 13.3(a).

“Notice of Dispute” has the meaning ascribed to it in Section 13.3(b).

“NZ Effective Date” has the meaning ascribed to it in Section 2.15(b).

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

“Other Suppliers” means all of the other suppliers that have entered into a contract with the Buyer that is similar in nature to this Agreement as contemplated by the Ministerial Directive.

“Outage” means the removal of equipment from service, unavailability for connection of equipment or temporary de-rating, restriction of use or reduction in performance of equipment for any reason, including to permit the performance of inspections, tests, repairs or maintenance on equipment, which results in a partial or total interruption in the ability of the Facility to make the Contract Capacity available and Deliver the Electricity from the Facility. Notwithstanding the foregoing, where a Facility is an Electricity Storage Facility, the submission of an Outage slip by the Supplier to the System Operator as a result of the Facility being State-of-Charge Limited for the purpose of withdrawing or amending an offer within the period during which offers are not otherwise permitted by the IESO Market Rules to be amended or withdrawn shall be deemed for the purposes of this Agreement not to result in an Outage and instead be treated as a withdrawal or amendment of the corresponding offer.

“Party” means each of the Supplier and the Buyer, and the Supplier and the Buyer are collectively referred to as the **“Parties”**.

“Payment Date” has the meaning ascribed to it in Section 5.3.

“Performance Test” means a performance test equivalent to the requirements of a Capacity Check Test conducted for the purpose of achieving Commercial Operation witnessed by the Independent Engineer delivering the IE Certificate pursuant to Section 2.5(a)(i).

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

“Planned Outage” means an Outage which is planned and intentional, has been scheduled with the System Operator in accordance with the IESO Market Rules and has been disclosed to the Buyer pursuant to Section 15.3.

“Planned Outage Capacity Reduction Factor” or **“POCRF”** has the meaning ascribed to it in Exhibit E-1 or Exhibit E-2, as applicable.

“Planned Outage Hour” or **“POH”** has the meaning ascribed to it in Exhibit E-1 or Exhibit E-2, as applicable.

“Preliminary Notice” has the meaning ascribed to it in Section 13.3(a).

“Prevailing Party” has the meaning ascribed to it in Section 13.3(e)(ii).

“Project Site” means all Properties on which the Facility is located, excluding any Connection Line.

“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.

“Property Identification Number” or **“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).

“Proposal” has the meaning ascribed to such term in the LT1 RFP.

“Proposal Submission Deadline” means December 12, 2023.

“Proposed Clean Electricity Standard” has the meaning ascribed to it in Section 2.15(a).

“Qualifying Hours” means all hours from 07:00 to 23:00 EST on Business Days, or such other continuous 16-hour period over a maximum of five (5) days in any calendar week as may be prescribed by the Buyer from time to time, provided that the Buyer shall be entitled to exercise the right to prescribe a revised continuous 16-hour period on designated days to constitute Qualifying Hours upon ninety (90) days’ prior written notice up to two times in each Contract Year.

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

“Reference Products” has the meaning ascribed to it in Section 2.13.

“Regulatory Charge Credit” or **“RCCA”** has the meaning ascribed to it in Exhibit R.

“Regulatory Energy Charges” means all charges imposed by Laws and Regulations from time to time (other than Taxes and HST) on the Supplier based on the quantity of Withdrawn Electricity, including, hourly, daily and monthly uplifts, fees to participate in the IESO-Administered Markets, “Rural Rate Protection”, and “Debt Retirement Charge”, but excluding Global Adjustment. For greater certainty, Regulatory Energy Charges (i) do not include HOEP for purposes of determining Regulatory Charge Credit pursuant to Exhibit R, and (ii) do not include demand-based charges such as “Transmission Service Charge”, the “Peak Demand Charge” or fixed charges.

“Reimbursement Adjustment Factor” or **“RAF”** has the meaning ascribed to it in Exhibit R.

“Reimbursement Reference Efficiency” or **“RRE”** has the meaning ascribed to it in Exhibit R.

“Related Products” means all Capacity Products, Ancillary Services, transmission rights and any other products or services that may be associated with the Facility from time to time (but excluding Environmental Attributes produced by the Facility) that may be traded in the IESO-Administered Markets or other markets, or otherwise sold, and which shall be deemed to

include products and services for which no market may exist, such as capacity reserves, but which shall be deemed to exclude steam, water, and compressed air produced by the Facility.

“**Replacement Provision(s)**” has the meaning ascribed to it in Section 1.7(b).

“**Reportable Events**” means the following:

- (a) obtaining environmental, land-use and other required approvals and permitting for the Facility;
- (b) completion of any system impact assessment, connection impact assessment or customer impact assessment, including receipt of approvals from the System Operator, Transmitter or LDC, as applicable;
- (c) ordering of major equipment for the Facility;
- (d) delivery of major equipment for the Facility;
- (e) status of construction of the Facility;
- (f) commencement or performance of any clearing, grading or material alteration of the Project Site by or on behalf of the Supplier;
- (fg) completion of construction of the Facility;
- (gh) connection of the Facility to the Transmission System or a Distribution System, as applicable; ~~and~~
- (hi) Commercial Operation; and
- (j) application for or receipt of any Additional Source of Funding by the Supplier.

“**Representatives**” means a Party’s directors, officers, employees, auditors, consultants, advisors (including economic and legal advisors), contractors and agents and those of its Affiliates or owners of Economic interest in such Party, and the agents and advisors of such Persons. While the Buyer is the Independent Electricity System Operator, this definition shall also include the Government of Ontario, the System Operator, and their respective directors, officers, employees, auditors, consultants (including economic and legal advisors), contractors and agents.

“**Revenue Meter**” means the equipment located at the “Registered Wholesale Meter” location (as such term is defined in the IESO Market Rules), and used for settlement purposes.

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

“**Safe Standby State**” has the meaning ascribed to it in Section 2.15(d).

“**Season**” means Summer or Winter, as applicable, and “**Seasons**” means collectively Summer and Winter seasons.

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

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

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

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

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

“**Shanghai Metals Market Online Index**” means the reported prices for lithium carbonate (99.5% battery grade) in the Shanghai metals trading markets available online at <https://www.metal.com/Chemical-Compound/201102250059>, or any substantially equivalent future website or index as determined by the Buyer, acting reasonably.

“**Sole Annual Planned Maintenance Month**” has the meaning ascribed to it in Section 15.3(b).

“**Special Purpose Entity**” means a Person other than a natural Person whose special or sole purpose is ownership, direct or indirect, of the Facility. The special purpose of a Person shall not be considered to be the ownership, direct or indirect, of the Facility where, at such time, the total capacity of the Facility (existing or proposed) owned, directly or indirectly, by such Person multiplied by the per cent equity interest that such Person holds in the Facility, is less than 50% of the total nameplate capacity of, all Electricity generating or storage facilities that have reached commercial operation and continue in operation owned, directly or indirectly, by such Person, multiplied by the per cent equity interest that such Person holds in each such Electricity generating or storage facility.

“**Split Annual Planned Maintenance Month**” has the meaning ascribed to it in Section 15.3(b).

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

“**State-of-Charge**” means, with respect to the Electricity Storage Facility at any time, the percentage of the total energy storage capability that is being used to store energy. A State-of-Charge of one hundred percent (100%) shall mean that the total Storage Capacity is being used to store energy, while a State-of-Charge of zero percent (0%) shall mean that the total Storage Capacity is available to store energy.

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“State-of-Charge Limited” means where an Electricity Storage Facility is State-of-Charge limited in Qualifying Hours as a result of having expended energy in an amount not less than ninety-eight percent (98%) of the Storage Capacity in the applicable Qualifying Hours of the current day or since the conclusion of the last Qualifying Hour in the previous day.

“State-of-Charge Limited Reduction Factor” or **“SOCRF”** has the meaning ascribed to it in Exhibit E-2.

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

“Storage Capacity” means the Contract Capacity multiplied by the Duration Capability.

“Storage Disincentive Lost Net Revenue” has the meaning given to it in Section 1.6(c)(ii).

“Storage Market Rule Disincentive” has the meaning given to it in Section 1.6(c)(ii).

“Summer” means the season commencing on May 1 and ending on October 31 for any given calendar year.

“Summer Contract Capacity” means the value in MW set out in Exhibit B.

“Supplier” has the meaning ascribed to it in the first paragraph of this Agreement and includes such Person’s successors and permitted assigns.

“Supplier Cost Effective Date” has the meaning ascribed to it in Section 2.13(b).

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

“Supplier Non-acceptance Notice” has the meaning ascribed to it in Section 13.3(e).

“Supplier’s Certificate” means a certificate in the form set out in Exhibit O addressed to the Buyer from the Supplier.

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

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

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

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

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

“Test Capacity” means, in respect of a Capacity Check Test, the Electricity output of the Facility for the hour of the CCT Duration with the lowest Electricity output, divided by one hour.

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

“Transmission System Code” means the “Transmission System Code” approved by the OEB and in effect from time to time, which, among other things, sets the standards for a Transmitter’s existing Transmission System and for expanding the Transmitter’s transmission facilities in order to connect new customers to it or accommodate increase in capacity or load of existing customers.

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

“Winter” means the season commencing on November 1 of a calendar year and ending on April 30 of the subsequent calendar year.

“Winter Contract Capacity” means the value in MW set out in Exhibit B.

“Withdraw” means, in relation to Electricity, to withdraw from the IESO-Controlled Grid at the Delivery Point, subject to adjustments in accordance with the Metering Plan.

“Withdrawn” means, in relation to Electricity, withdrawn from the Delivery Point adjusted in accordance with the Metering Plan and includes all Electricity withdrawn for purposes of Station Service Load and charging the Electricity Storage Facility.

1.2 Exhibits

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

Exhibit A	Facility Description
Exhibit B	Contract Capacity, Fixed Capacity Payment, and Other Stated Variables
Exhibit C	Form of Irrevocable Standby Letter of Credit
Exhibit D	Form of Company Representative Notice
Exhibit E-1	Calculation of Adjusted Monthly Contract Capacity for a Non-Electricity Storage Facility
Exhibit E-2	Calculation of Adjusted Monthly Contract Capacity for an Electricity Storage Facility
Exhibit F	Availability Non-Performance Charges

Exhibit G	Form of Secured Lender Consent and Acknowledgement Agreement
Exhibit H	Form of Force Majeure Notice
Exhibit I	Form of Confidentiality Undertaking
Exhibit J	Calculation of Monthly Payment
Exhibit K	Arbitration Procedures Applicable to Section 1.6 and 1.7
Exhibit L	Form of Annual Operating Plan
Exhibit M	Form of Supplier Cost Effective Date Certificate
Exhibit N	Form of Independent Engineer Certificate
Exhibit O	Form of Supplier's Certificate
Exhibit P	Milestone Dates
Exhibit Q	Form of Quarterly Progress Report
Exhibit R	Determination of Regulatory Charge Credit for an Electricity Storage Facility
Exhibit S	Form of Outage Report

- (b) Exhibits D, H, I, L, M, N, O, Q, and S in the forms attached to this Agreement substantially reflect corresponding forms appearing on the Buyer's Website as at the date of this Agreement. However, the Supplier acknowledges and agrees that the Buyer may, at any time and from time to time after the date of this Agreement, acting reasonably, without notice to the Supplier, amend or replace each such form of certificate, notice or report, and post such amended or replacement form on the Buyer's Website, and thereafter such amended or replaced form as it appears on the Buyer's Website shall replace and shall be used by the Supplier or the Buyer, as the case may be, in the stead of the then current form. Accordingly, it is the responsibility of the Supplier to ensure that the latest draft version of the relevant form, as posted on the Buyer's Website, is used.
- (c) If there is more than one version of an Exhibit identified above, the Parties acknowledge that only one version of such Exhibit type shall apply to the Facility and this Agreement and the Parties acknowledge that Exhibit A specifies the specific version of any such Exhibit applicable hereunder.

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1.3 Headings and Table of Contents

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

1.4 Gender and Number

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

1.5 Currency

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

1.6 IESO Market Rules and Statutes

- (a) Unless otherwise expressly stipulated, any reference in this Agreement to the IESO Market Rules or to a statute or to a regulation or rule promulgated under a statute or to any provision of a statute, regulation or rule shall be a reference to the IESO Market Rules, statute, regulation, rule or provision as amended, re-enacted or replaced from time to time. In the event of any conflict or inconsistency with the IESO Market Rules and the terms of this Agreement, the IESO Market Rules shall govern to the extent of such conflict or inconsistency.
- (b) To the extent that the board of directors of the System Operator has given final approval to an amendment or addition to the IESO Market Rules following the Contract Date, unless such amendment or addition is stayed by the OEB, and as a result of such amendment or addition, the Supplier is or would be unable to comply with the Must-Offer Obligation without incurring material costs, where the Supplier would not reasonably incur such material costs if the Facility were operating in the IESO-Administered Markets without this Agreement being in place, then:
 - (i) the Supplier shall notify the Buyer promptly and, in any event, within ten (10) Business Days upon becoming aware of the consequences of such change;
 - (ii) the Parties and, at the Buyer's discretion, those Other Suppliers who are required by the Buyer to participate, shall engage in good faith negotiations to amend the affected Must-Offer Obligation in this Agreement and the respective agreements of those Other Suppliers on the basis that such amendments shall alter or reduce the applicable Must-Offer Obligation only to the extent necessary to eliminate the need to incur such material costs as set out above, where such altered or reduced Must-Offer Obligation is as close as possible to the Must-Offer Obligation prior to such alteration or reduction; and

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- (iii) if the Parties agree that amendments to this Agreement are required pursuant to Section 1.6(b)(ii) but fail to reach agreement on such amendments within sixty (60) days after the change in the IESO Market Rules became effective, the matter shall be determined by mandatory and binding arbitration, from which there shall be no appeal, with such arbitration(s) to be conducted in accordance with the procedures set out in Exhibit K. However, if the Supplier fails to participate in such arbitration, the Supplier acknowledges that it waives its right to participate in such arbitration, which shall nevertheless proceed, and the Supplier shall be bound by the award of the Arbitration Panel and the subsequent amendments to this Agreement (if any) made by the Buyer to implement such award of the Arbitration Panel set out in Section 1.6(d)(iii).

For greater certainty, the amendments contemplated in this Section 1.6(b) shall not involve an increase in the Fixed Capacity Payment, unless otherwise agreed by the Parties.

- (c) Without duplication to the circumstances set out in Section 1.6(b), to the extent that the board of directors of the System Operator has given final approval to an amendment or addition to the IESO Market Rules following the Contract Date, unless such amendment or addition is stayed by the OEB, and as a result of such amendment or addition, the Supplier in respect of an Electricity Storage Facility is unable on an ongoing basis, despite its use of Commercially Reasonable Efforts and operating in accordance with Good Engineering and Operating Practices, to Withdraw Electricity outside of Qualifying Hours and to Deliver Electricity during Qualifying Hours such that the revenues available to be earned in the IESO-Administered Markets are not reasonably anticipated to be sufficient to cover the cost borne by the Supplier for such Withdrawn Electricity and any incremental operating expense in respect of such Withdrawn Electricity (including a reasonable allocation of regulatory charges that are not Regulated Energy Charges, but, for certainty, excluding any fixed costs or allocation of capital costs) (such circumstances, a “**Storage Market Rule Disincentive**”) then:

- (i) the Supplier shall notify the Buyer promptly and, in any event, within ten (10) Business Days upon becoming aware of the consequences of such Storage Market Rule Disincentive;
- (ii) the Parties and, at the Buyer’s discretion, those Other Suppliers who are required by the Buyer to participate, shall engage in good faith negotiations to quantify the reasonably determinable impact of a Storage Market Rule Disincentive in the form of loss of net operating revenues reasonably forecasted to be attained by the Supplier over the remainder of the Term, taking into consideration the application of the Market Price Spread Adjustment Factor (such quantity, the “**Storage Disincentive Lost Net Revenue**”) and, where so quantified, the Fixed Capacity Payment will be increased by an amount necessary to recover the Storage Disincentive Lost Net Revenue, up to a maximum increase of fifteen percent 15% of

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the Fixed Capacity Payment, which increase shall apply from the first Settlement Month following the determination of any Storage Disincentive Lost Net Revenue until the earlier of (A) the time at which the Storage Market Rule Disincentive is removed from the IESO Market Rules and (B) the Expiry Date; and

- (iii) if the Parties agree that a Storage Market Rule Disincentive has arisen but fail to reach agreement on the Storage Disincentive Lost Net Revenue or the resulting determination of the increase to the Fixed Capacity Payment set out in Section 1.6(c)(ii), within sixty (60) days after the later of (A) the change in the IESO Market Rules became effective or (B) the date the Supplier provides notice to the Buyer pursuant to Section 1.6(c)(i), the matter shall be determined by mandatory and binding arbitration, from which there shall be no appeal, with such arbitration(s) to be conducted in accordance with the procedures set out in Exhibit K. However, if the Supplier fails to participate in such arbitration, the Supplier acknowledges that it waives its right to participate in such arbitration, which shall nevertheless proceed, and the Supplier shall be bound by the award of the Arbitration Panel and the subsequent amendments to this Agreement (if any) made by the Buyer to implement such award of the Arbitration Panel set out in Section 1.6(d)(iii).

(d) The terms of this Agreement shall be amended either:

- (i) by the agreement of the Parties, where no award of an Arbitration Panel has been made pursuant to Section 1.6(b)(iii) or 1.6(c)(iii);
- (ii) by the agreement of the Parties made pursuant to and to implement an award of the Arbitration Panel made pursuant to Section 1.6(b)(iii) or 1.6(c)(iii); or
- (iii) by an amendment prepared by the Buyer made pursuant to and to implement an award of the Arbitration Panel made pursuant to Section 1.6(b)(iii) or 1.6(c)(iii), where the Supplier failed to participate in such arbitration,

with such agreement or amendment, as the case may be, having effect from and after the date that the change in the IESO Market Rules became effective.

This Section 1.6 shall not apply to the circumstances addressed in Section 1.7.

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

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

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- (a) if a provision is considered to be invalid, inapplicable or unenforceable, then the Party considering such provision to be invalid, inapplicable or unenforceable may propose, by notice in writing to the other Party, a replacement provision and the Buyer and the Supplier and, at the Buyer's discretion, those Other Suppliers who are required by the Buyer to participate, shall then engage in good faith negotiations to replace such provision with a valid, enforceable, and applicable provision, the economic effect of which substantially reflects that of the invalid, unenforceable, or inapplicable provision which it replaces;
- (b) if any index or price quotation referred to in this Agreement, ceases to be published, or if the basis therefor is changed materially, then the Buyer and the Supplier shall engage in good faith negotiations to substitute an available replacement index or price quotation that most nearly, of those then publicly available, approximates the intent and purpose of the index or price quotation that has so ceased or changed and this Agreement shall be amended as necessary to accommodate such replacement index or price quotation;
- (c) if the Parties agree that amendments to this Agreement are required pursuant to this Section 1.7 and the negotiations set out in Sections 1.7(a) are not successful, then if the Parties are unable to agree on all such issues and any amendments required to this Agreement (the "**Replacement Provision(s)**") within thirty (30) days after the receipt of the notice under Section 1.7(a), then the Replacement Provision(s) shall be determined by mandatory and binding arbitration from which there shall be no appeal, with such arbitration to be conducted in accordance with the procedures set out in Exhibit K. However, if the Supplier fails to participate in such arbitration, the Supplier acknowledges that it waives its right to participate in such arbitration, which shall nevertheless proceed, and the Supplier shall be bound by the award of the Arbitration Panel and the subsequent amendments to this Agreement made by the Buyer to implement such award of the Arbitration Panel set out in Section 1.7(d)(iii); and
- (d) the terms of this Agreement shall be amended either:
- (i) by the agreement of the Parties, where no award of an Arbitration Panel has been made pursuant to Section 1.7(c);
 - (ii) by the agreement of the Parties made pursuant to and in implementation of an award of the Arbitration Panel made pursuant to Section 1.7(c); or
 - (iii) by an amendment prepared by the Buyer made pursuant to and to implement an award of the Arbitration Panel made pursuant to Section 1.7(c), where the Supplier failed to participate in such arbitration,

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

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1.8 Entire Agreement

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

1.9 Waiver, Amendment

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

1.10 Governing Law

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

1.11 Preparation of Agreement

Notwithstanding the fact that this Agreement was drafted by the Buyer's legal and other professional advisors, the Parties acknowledge and agree that any doubt or ambiguity in the meaning, application or enforceability of any term or provision of this Agreement shall not be construed or interpreted against the Buyer or in favour of the Supplier when interpreting such term or provision, by virtue of such fact.

1.12 Time

Where the time for performance of an obligation under this Agreement expires on a day which is not a Business Day, the deadline for performance of such obligation shall be the next day that is a Business Day.

ARTICLE 2 DESIGN AND OPERATION

2.1 Design and Construction of the Facility

- (a) The Supplier agrees to design and build the Facility using Good Engineering and Operating Practices and meeting all relevant requirements of the IESO Market Rules, Transmission System Code, Distribution System Code, the Connection Agreement, in each case, as applicable, and all other Laws and Regulations. The

Supplier shall ensure that the Facility is designed, engineered and constructed to operate in accordance with the requirements of this Agreement.

- (b) Subject to Section 4.3, the Supplier shall at no time after the Contract Date modify, vary, or amend in any material respect any of the features or specifications of the Facility outlined in Exhibit A, including, for greater certainty any material change to the Duration Capability, (the “**Facility Amendment**”) without first notifying the Buyer in writing and obtaining the Buyer’s consent in writing, which consent shall not be unreasonably withheld, provided that it shall not be unreasonable for the Buyer to withhold its consent to any modification, variation or amendment which would, or would be likely to, materially adversely affect the ability of the Supplier to comply with its obligations under this Agreement. Any Facility Amendment that has not been consented to by the Buyer (other than in instances where such consent has been unreasonably withheld) shall, if not removed within ten (10) Business Days after such Facility Amendment occurred, constitute a Supplier Event of Default. Notwithstanding the foregoing, the Buyer’s consent to a Facility Amendment that results in an increase or a decrease to the Contract Capacity shall be subject to the Buyer’s sole and absolute discretion. Notwithstanding anything to the contrary in this Section 2.1(b), for an Electricity Storage Facility, the replacement of battery cells, inverters or any other equipment of the Facility listed in Exhibit A on a like-for-like or substantially similar basis for the purpose of maintaining, preserving or restoring the capability of the Facility shall not be considered a Facility Amendment.
- (c) If the Buyer’s consent in writing has been given in relation to a reduction in the Contract Capacity pursuant to Section 2.1(b), the Contract Capacity shall be deemed to be reduced to the lower amount, effective at the time stated in such notice. If the Buyer’s consent has been given in relation to an increase in the Contract Capacity pursuant to Section 2.1(b) the Contract Capacity shall be increased to the higher amount, effective as of the time stated in such notice, provided that:
- (i) such increase shall not be effective until the Supplier performs a Capacity Check Test confirming the increased amount of the Monthly Contract Capacity; and
 - (ii) the Supplier has delivered to the Buyer an amount of Completion and Performance Security corresponding to the increased amount of the Maximum Contract Capacity as calculated in accordance with Section 6.1.

2.2 Additional Development and Construction Covenants

- (a) The Supplier agrees that the Facility shall be located in the Province of Ontario. The Supplier agrees that the Facility shall have a Connection Point as set out in Exhibit A and shall affect supply or demand in the IESO-Administered Markets.

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- (b) The Supplier agrees to arrange for all Facility connection requirements in accordance with the Connection Agreement to permit the delivery of Electricity to the IESO-Controlled Grid. The Supplier agrees that the responsibility for all costs that are allocated to or are otherwise the responsibility of the Supplier in accordance with the Connection Agreement, the Transmission System Code and the Distribution System Code, as applicable, and as each may be interpreted or administered in accordance with any applicable interpretation bulletins issued by the OEB, shall rest with the Supplier.
- (c) The Supplier shall provide, at its expense, all power system components on the Supplier's side of the Connection Point, including all transformation, switching and auxiliary equipment, such as synchronizing and protection and control equipment, pursuant to Laws and Regulations and any requirements deemed necessary by the System Operator, the Transmitter or the LDC, as applicable from time to time, to protect the safety and security of the IESO-Controlled Grid, the Transmission System, the Distribution System and each of their customers, each as the case may be.
- (d) The Supplier agrees to install protective equipment to protect its own personnel, property, and equipment from variations in frequency and voltage or from temporary delivery of other than three-phase power, whether caused by the Facility, the IESO-Controlled Grid, the Transmission System or the Distribution System.
- (e) Where the Facility is an Electricity Storage Facility, the Supplier shall not, from and after the Contract Date, commence or conduct any clearing, grading or material alteration of the Project Site (or cause any of the foregoing to be commenced or conducted) unless the Supplier has provided to the Buyer a copy of a DTC Assessment Letter indicating that the Government of Ontario is not requiring further engagement with the Indigenous Communities in respect of the Facility or a DTC Sufficiency Letter, as applicable, each as contemplated in the Indigenous Consultation Information Package. [NTD: This section 2.2(e) is under consideration by the IESO.]

2.3 Milestone Date for Commercial Operation

[NTD: This section 2.3 is under consideration by the IESO.]

- (a) The Supplier acknowledges that time is of the essence to the Buyer with respect to attaining Commercial Operation of the Facility. The Supplier shall use Commercially Reasonable Efforts to achieve COD as soon as possible following the Contract Date and, in any case, COD must be achieved no later than the Longstop Date.
- (b) If Commercial Operation of the Facility is achieved before the COD Bonus End Date, the Supplier shall be entitled to apply a fixed payment multiplier to the Fixed Capacity Payment, which will be determined based on the time period in

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which the COD was achieved, as set out below (each an “**Early COD Payment Multiplier**”) and which Early COD Payment Multiplier shall apply for the period starting on the COD until the COD Bonus End Date. The COD Bonus End Date shall be fixed and not subject to change for any reason, including an event of Force Majeure.

Commercial Operation Date	Early COD Payment Multiplier
Prior to and until May 31, 2027	1.5
From June 1, 2027 to December 31, 2027	1.4
From January 1, 2028 to April 30, 2028	1.2

[NTD: The dates above are subject to Government direction.]

- (c) The Parties agree that if Commercial Operation of the Facility is not achieved by Milestone Date for Commercial Operation, the Supplier shall pay to the Buyer, within ten (10) Business Days after receipt of an invoice from the Buyer, as liquidated damages and not as a penalty, a sum of money equal to the amount of (i) the Liquidated Damages Rate multiplied by (ii) the Maximum Contract Capacity for each Business Day that is more than Milestone Date for Commercial Operation until Commercial Operation has been achieved (such amounts, “**Delay Liquidated Damages**”). The Buyer may issue an invoice in respect of Delay Liquidated Damages at any time that Delay Liquidated Damages are owing from the Supplier to the Buyer, but no more frequently than once per calendar month. If the Supplier fails to pay to the Buyer the amount of the Delay Liquidated Damages within ten (10) Business Days after receipt of an invoice from the Buyer, the Buyer shall be entitled to draw and retain from the Completion and Performance Security the amount of such Delay Liquidated Damages.
- (d) The maximum time period that liquidated damages shall be calculated and payable under Section 2.3(c) shall be **[five hundred and forty-eight (548)]** days.
- (e) The Supplier acknowledges that even if the Facility has not achieved Commercial Operation by the Milestone Date for Commercial Operation, the Term shall nevertheless expire as set out on Section 9.1(b).
- (f) The Supplier agrees that if the Facility fails to achieve Commercial Operation on or before the Longstop Date, it shall constitute a Supplier Event of Default.

2.4 Buyer Information During Design and Construction

Prior to COD, the Supplier shall provide the Buyer with progress reports as follows:

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- (a) By the fifteenth (15th) day of each calendar quarter following the Contract Date and continuing until COD, the Supplier shall provide the Buyer with a quarterly progress report in the form of Exhibit Q, describing the status of efforts made by the Supplier to achieve Commercial Operation and the progress of the design and construction work and the status of Governmental Approvals relating to the Facility. Such quarterly progress reports shall report on the progress of all applicable Reportable Events. At the Buyer's request, the Supplier shall provide an opportunity for the Buyer to meet with appropriate personnel of the Supplier to discuss and assess the contents of any such quarterly progress report. The Supplier acknowledges that the quarterly progress reports and photographs of the Facility may be posted or printed by the Buyer on the Buyer's Website or in publications.
- (b) The Supplier acknowledges that time is of the essence to the Buyer with respect to providing quarterly progress reports pursuant to Section 2.4(a). Where the Supplier fails to satisfy the requirements of Section 2.4(a), the Supplier shall pay to the Buyer, within ten (10) Business Days after receipt of an invoice from the Buyer, as liquidated damages and not as a penalty, a sum of five thousand Dollars (\$5,000) (the "**Late Report Administrative Charge**"). The Late Report Administrative Charge shall not limit other remedies the Buyer may have under this Agreement in respect of ongoing failure to deliver the quarterly progress reports within the time period set out in this Section 2.4. If the Supplier fails to pay to the Buyer the amount of the Late Report Administrative Charge within ten (10) Business Days after receipt of an invoice from the Buyer, the Buyer shall be entitled to draw and retain from the Completion and Performance Security the amount of such Late Report Administrative Charge.
- (c) In addition to the quarterly progress reports it is required to provide pursuant to Section 2.4(a), the Supplier shall also provide the Buyer with notice of any material incident, loss, casualty, event or concern which may occur or arise during the course of the development, construction or commissioning of the Facility, promptly and, in any event, within ten (10) Business Days following the later of: (i) the Supplier becoming aware of any such incident, loss, casualty, event or concern occurring or arising; and (ii) the Supplier becoming aware of the materiality of same, with such timing in each case based upon the Supplier having acted in accordance with Good Engineering and Operating Practices. Without limiting the generality of the foregoing, if there occurs or arises any incident, event or circumstance which results, or is likely to result, in a delay in the aggregate of thirty (30) days or more in the achievement of Commercial Operation following the Milestone Date for Commercial Operation, including delays arising from events of Force Majeure, the Supplier shall promptly (and, in any event, within ten (10) Business Days of the date that such delay was first reasonably known or should reasonably have been known by the Supplier) notify the Buyer and the Parties shall meet to discuss strategies for eliminating or reducing, to the extent possible and practicable to do so, the impact of such delay on the development, construction and/or commissioning of the Facility.

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2.5 Requirements for Commercial Operation The Facility has achieved “Commercial Operation” pursuant to this Agreement at the point in time when, as subsequently confirmed by the Buyer in a written notice to the Supplier as described in Section 2.5(b), the Buyer has received:

- (i) directly from an Independent Engineer, an IE Certificate, in the form set out in Exhibit N, stating that:
 - (A) the Facility has been completed in all material respects, excepting punch list items that do not materially and adversely affect the ability of the Facility to operate in accordance with this Agreement;
 - (B) the Connection Point of the Facility is at the location specified in Exhibit A;
 - (C) the Facility is able, under normal operating conditions, to Deliver a sustained amount of Electricity for a period at least equal to the Duration Capability;
 - (D) the Facility has been constructed, connected, commissioned and synchronized to the IESO-Controlled Grid or a Distribution System, such that 100% of the Contract Capacity (based on the Season during which Commercial Operation occurs) and, if applicable, the Storage Capacity, is available to generate, Withdraw, store and Deliver Electricity (as applicable) in accordance with the requirements of all applicable Laws and Regulations;
 - (E) if the Facility is an Eligible Expansion, the Eligible Expansion has not resulted in a reduction in the Existing Facility Capacity;
 - (F) the Facility has passed a Performance Test; and
 - (G) the Facility or the Supplier (as applicable) has all permits and approvals issued by Governmental Authorities which are required to construct, operate and maintain the Facility in accordance with Laws and Regulations, including the final Registration Approval Notification (RAN) issued by the System Operator.
- (ii) a Supplier’s Certificate, together with such documentation required to be provided under such form to the Buyer;
- (iii) an updated Metering Plan that has been approved by the Buyer pursuant to Section 2.7;

~~(iv) an updated Company Representative contact information form in accordance with Exhibit D; and~~

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- (iv) ~~(v)~~ a single line electrical drawing that identifies the as-built Connection Point sealed by a professional engineer licensed in Ontario, clearly showing area transmission and distribution facilities, including the transformer station that is electrically closest to the Facility;
 - (v) a copy of the final Registration Approval Notification (RAN) issued by the System Operator; and
 - (vi) a copy of the generation or storage license (as applicable) issued by OEB.
- (b) The Buyer shall notify the Supplier in writing within ten (10) Business Days following receipt of the IE Certificate and the Supplier's Certificate as to whether the IE Certificate, Supplier's Certificate, and the documentation provided by the Supplier under the Supplier's Certificate are acceptable to the Buyer, acting reasonably. If the Buyer determines that the IE Certificate, Supplier's Certificate, or such documentation provided by the Supplier under the Supplier's Certificate are not acceptable to the Buyer, acting reasonably, the Buyer shall at the time of such notification provide to the Supplier reasonable particulars in respect of the deficiencies in the IE Certificate, Supplier's Certificate, or such other documentation.

2.6 Operational Covenants

- (a) From the COD until the expiry of the Term, the Supplier shall operate and maintain the Facility in accordance with Good Engineering and Operating Practices and meeting all applicable requirements of the IESO Market Rules, the Transmission System Code, the Distribution System Code and any Connection Agreements.
- (b) From and after the beginning of the hour ending 01:00 hours (EST) of the Commercial Operation Date, the Supplier agrees to operate the Facility in accordance with the Must-Offer Obligation, and the Monthly Payments shall begin to accrue and be payable in accordance with Section 4.1 and Article 5. For certainty, the Parties acknowledge that the Buyer is not purchasing from the Supplier, nor is the Supplier selling to the Buyer, any Electricity or Related Products hereunder.
- (c) The Supplier agrees to assume all risk, liability and obligation and to indemnify, defend and hold harmless the Indemnitees in respect of all actions, causes of action, suits, proceedings, claims, demands, losses, damages, penalties, fines, costs, obligations and liabilities arising out of a discharge of any contaminant into the natural environment, at or related to, the Facility and any fines or orders of any kind that may be levied or made in connection therewith pursuant to the *Environmental Protection Act* (Ontario), the *Ontario Water Resources Act* (Ontario), the *Dangerous Goods Transportation Act* (Ontario) or other similar legislation, whether federal or provincial and all as amended from time to time, except to the degree that such discharge shall have been due to the negligence or wilful misconduct of the Indemnitees.

- (d) A Facility which is also a load facility under the IESO Market Rules or a consumer under the Distribution System Code, as applicable, shall be solely responsible for all charges in relation to Electricity consumed by it in order to operate the Facility in accordance with this Agreement.
- (e) Supplier shall use Commercially Reasonable Efforts to procure and maintain sufficient fuel supply (as applicable) to be utilized by the Facility necessary for meeting its Must-Offer Obligation.

2.7 Metering and Dispatch Capabilities

- (a) The Supplier shall have a Metering Plan approved by the Buyer and shall deliver a copy to the Buyer for its approval no later than ninety (90) days prior to the earlier of the Milestone Date for Commercial Operation and the anticipated Commercial Operation Date. The Buyer shall review the Metering Plan submitted by the Supplier and either approve the Metering Plan or provide the Supplier with its comments within forty-five (45) days after receipt. The Buyer shall, when considering whether to approve the Metering Plan, have regard to those Electricity matters in the Metering Plan that have received System Operator approval. If, within fifteen (15) days after the Buyer has delivered its comments on the Metering Plan to the Supplier, the Parties are not able to agree on the final terms of the Metering Plan, the Parties shall submit the matter for determination by an Independent Engineer agreed upon by the Parties, acting reasonably, whose determination on the terms of the Metering Plan shall be final and binding on the Parties (and from whose determination there shall be no recourse to the dispute resolution provisions of this Agreement).
- (b) The Supplier covenants and agrees to provide, at its expense, individual meters and ancillary metering and monitoring equipment for the Facility as required by the IESO Market Rules and sufficient to calculate the output of Electricity from the Facility net of any Station Service Loads and inclusive of any loss adjustment factors. The Buyer may obtain access internally to the revenue-quality interval meter data of the Facility provided to the Buyer under the IESO Market Rules to calculate the output of Electricity from the Facility net of any Station Service Loads and inclusive of any loss adjustment factors, or, if required, the Supplier shall provide the Buyer, for the purposes of this Agreement, the right to view, download and request such revenue-quality interval meter data of the Facility by establishing an Associated Relationship with the Buyer at the Delivery Point of the Facility within the Buyer's "Meter Data Management" or "MDM" or "Meter Data Distribution" or "MDD" systems or their successors, at no cost to the Buyer.
- (c) The Supplier will provide the Buyer with a commissioning report for all Revenue Meter(s) referenced in the Metering Plan prior to any use of metering data for the purposes contemplated by this Agreement. The Buyer retains the right to audit, at any time during the Term, on reasonable notice to the Supplier and during normal business hours, the metering equipment to confirm the accuracy of the Metering Plan and the meter data of the Facility to confirm the accuracy of such data. The

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Supplier shall not make any material changes to the Metering Plan following approval by the Buyer or determination by the Independent Engineer contemplated in Section 2.7(a) (as applicable) without the prior written approval of the Buyer, which will not be unreasonably withheld or delayed. The Supplier shall promptly, and, in any event, within ten (10) Business Days after any change to the metering installation reflected in the Metering Plan occurs, provide an update to the Metering Plan for approval by the Buyer.

2.8 Insurance Covenants

- (a) The Supplier shall put in effect and maintain, or cause its contractors, where appropriate, to maintain, from the commencement of the construction of the Facility to the expiry of the Term, at its own cost and expense, all the necessary and appropriate insurance that a prudent Person in the business of developing, constructing, financing and operating the Facility would maintain including policies for “all-risk” property insurance covering not less than the full replacement value of the Facility, “all-risk” equipment breakdown insurance, “wrap-up” liability insurance and “commercial general liability” insurance with a rider to extend coverage to include Environmental Incidents.
- (b) Any policies described in this Section 2.8 must (i) for any property insurance, contain a waiver of subrogation in favour of the Indemnitees; and (ii) for any liability insurance, include the Indemnitees as additional insureds with respect to liability arising in the course of performance of the obligations under, or otherwise in connection with, this Agreement, in which case the policy shall be non-contributing and primary with respect to coverage in favour of the Indemnitees. The limit for liability policies described in this Section 2.8 shall be for an amount appropriate for the size and scope of the Facility.
- (c) Within ten (10) Business Days of any request therefore by the Buyer, the Supplier shall provide the Buyer, via electronic submission, with an electronic certificate of each insurance policy required in this Section 2.8 which confirms the relevant coverage, including endorsements, and that is issued in the name of, or otherwise confirms coverage of, the Supplier and the Facility, as applicable.
- (d) If the Supplier is subject to the *Workplace Safety and Insurance Act* (Ontario), it shall submit a valid clearance certificate of Workplace Safety and Insurance Act coverage to the Buyer on or prior to the commencement of construction of the Facility. In addition, the Supplier shall, from time to time at the request of the Buyer, provide additional *Workplace Safety and Insurance Act* clearance certificates. The Supplier agrees to pay when due, and to ensure that each of its contractors and subcontractors pays when due, all amounts required to be paid by it and its contractors and subcontractors, from time to time from the commencement of construction of the Facility, under the *Workplace Safety and Insurance Act* (Ontario), failing which the Buyer shall have the right, in addition to and not in substitution for any other right it may have pursuant to this Agreement or otherwise at law or in equity, to pay to the Workplace Safety and

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

2.9 Compliance with Laws and Regulations

- (a) The Buyer and the Supplier shall each comply, in all material respects, with all Laws and Regulations required to perform or comply with their respective obligations under this Agreement.
- (b) The Buyer and the Supplier shall each furnish, in a timely manner, information to Governmental Authorities and shall each obtain and maintain in good standing any license, permit, certificate, registration, authorization, consent or approval of any Governmental Authority required to perform or comply with their respective obligations under this Agreement, including such licensing as is required by the OEB. Without limiting the generality of the foregoing, the Supplier agrees to meet all applicable Facility registration requirements as specified in the IESO Market Rules.
- (c) The Supplier shall apply to the System Operator to become authorized as a “Market Participant”, as a “Generator” or “Electricity Storage Participant” (as applicable) and designated as a “Metered Market Participant” pursuant to the IESO Market Rules. The settlement of Market Settlement Charges shall take place directly between the Supplier as the “Metered Market Participant” and the System Operator, and any costs incurred by the Supplier acting as the “Market Participant” pursuant to the IESO Market Rules in respect of this Agreement shall be charged to and be the sole responsibility of the Supplier, unless otherwise expressly set out herein.

2.10 Environmental Attributes

- (a) The Buyer shall have no interest hereunder in any Environmental Attributes arising from the operation of the Facility or, except in respect of any Future Capacity Related Products, other products or services associated with the generation of Electricity by the Facility.
- (b) The Supplier shall, at its sole expense, be responsible for complying with any Laws and Regulations relating to environmental matters that may require the use or procurement of Environmental Attributes, including any costs associated with obtaining, qualifying and registering Environmental Attributes for the operation of the Facility or otherwise.

2.11 Future Capacity Related Products

- (a) The Supplier will provide the Buyer with prior written notice of the development by the Supplier of any Future Capacity Related Products, from time to time.

- (b) The Supplier shall not, without the Buyer's prior written consent, which consent shall be subject to the Buyer's sole and absolute discretion, develop, register or monetize any Future Capacity Related Products during the Term.

2.12 Other Commitment of Contract Capacity

The Supplier shall ensure that the Contract Capacity is exclusively committed to the Buyer hereunder and that no part of the Facility is subject to any physical or contractual arrangement that conflicts with the Supplier's ability to satisfy the Must-Offer Obligation during the Term.

2.13 Materials Cost Index Adjustment

Where the Proposal elected to have the Materials Cost Index Adjustment apply to the Fixed Capacity Payment, in the form of either the $MCIA_{li}$ (available only to Electricity Storage Facilities) or the $MCIA_{nli}$ (available to all Proposals), the entitlement to the adjustment set out in this Section 2.13, in the form of either the $MCIA_{li}$ or the $MCIA_{nli}$, will be indicated as such in Exhibit B.

- (a) The “**Materials Cost Index Adjustment**”, which shall be a one-time adjustment to the Fixed Capacity Payment set out in Exhibit B as at the Contract Date in accordance with this Section 2.13, based on either the $MCIA_{li}$ or the $MCIA_{nli}$, that may, for greater certainty, be a positive or negative adjustment, shall be calculated as follows:

- (i) for an Electricity Storage Facility that has elected to apply the $MCIA_{li}$,

$MCIA_{li} = [0.45 (MCP_m / MCP_b) + 0.3 (CPI_m / CPI_b) + 0.25 (LiCP_m / LiCP_b)] \times FCP$	
where:	
$MCIA_{li}$	is the Materials Cost Index Adjustment incorporating lithium carbonate price indexing (in \$/MW-Business Day).
MCP_m	is the market major product group price for primary ferrous metal products (identified as subcategory P61) plus the market major product group price for primary non-ferrous metal products (identified as subcategory P62), each as set out in the IPPI (collectively “ Reference Products ”) averaged over the three consecutive calendar months ending with the calendar month during which the MCIA Effective Date occurs.
MCP_b	is the baseline market major product group price for the Reference Products, each as set out in the IPPI for the calendar month immediately prior to the Proposal Submission Deadline, which value is set out in Exhibit B.
CPI_m	is the CPI averaged over the three consecutive calendar months

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	ending with the calendar month during which the MCIA Effective Date occurs.
CPI_b	is the baseline CPI applicable to the calendar month immediately prior to the Proposal Submission Deadline, which value is set out in Exhibit B.
$LiCP_m$	is the market lithium carbonate (99.5% battery grade) price, reported in US dollars per the Shanghai Metals Market Online Index, averaged over each day in the three consecutive calendar months ending with the calendar month during which the MCIA Effective Date occurs, converted from US dollars into Dollars using the end-of-day closing spot rate published by the Bank of Canada for the MCIA Effective Date or, where the MCIA Effective Date is not a Business Day, the first Business Day thereafter.
$LiCP_b$	is the lithium carbonate (99.5% battery grade) price, reported in US dollars per the Shanghai Metals Market Online Index for the last day of the calendar month immediately prior to the Proposal Submission Deadline, converted from US dollars into Dollars using the end-of-day closing spot rate published by the Bank of Canada for such date, which value is set out in Exhibit B.
FCP	is the Fixed Capacity Payment as set out in Exhibit B as at the Contract Date.

- (ii) for a Non-Electricity Storage Facility or an Electricity Storage Facility, where either has elected to apply the $MCIA_{nli}$:

$MCIA_{nli} = [0.7 (MCP_m / MCP_b) + 0.3 (CPI_m / CPI_b)] \times FCP$	
where:	
$MCIA_{nli}$	is the non-lithium-based Materials Cost Index Adjustment (in \$/MW-Business Day).
MCP_m	is the market major product group price for primary ferrous metal products (identified as subcategory [P61]) plus the market major product group price for primary non-ferrous metal products (identified as subcategory [P62]), each as set out in the IPPI (collectively “ Reference Products ”) averaged over the three consecutive calendar months ending with the calendar month during which the MCIA Effective Date occurs.
MCP_b	is the baseline market major product group price for the Reference

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	Products, each as set out in the IPPI for the calendar month immediately prior to the Proposal Submission Deadline, which value is set out in Exhibit B.
CPI _m	is the CPI averaged over the three consecutive calendar months ending with the calendar month during which the MCIA Effective Date occurs.
CPI _b	is the baseline CPI applicable to the calendar month immediately prior to the Proposal Submission Deadline, which value is set out in Exhibit B.
FCP	is the Fixed Capacity Payment as set out in Exhibit B as at the Contract Date.

- (b) Where Exhibit B indicates that either the MCIA_{li} or the MCIA_{nli} applies, the Materials Cost Index Adjustment shall be calculated by the Buyer. Provided that the ~~Supplier~~Supplier has entered into and paid a non-refundable deposit under one or more binding agreements for the purchase or supply of generating or storage equipment in respect of the Facility prior to the eighteen (18) month anniversary of the Contract Date, the Supplier shall, by written notice to the Buyer, provide evidence of the effective date of any such agreement(s) (the earliest such date, the “**Supplier Cost Effective Date**”), together with a certificate of an officer of the Supplier in substantially the form as set forth in Exhibit M, certifying the information in respect of the Supplier Cost Effective Date. The evidence provided to confirm the Supplier Cost Effective Date will be deemed to constitute Confidential Information. The “**MCIA Effective Date**” shall be the earlier of (i) the Supplier Cost Effective Date and (ii) the eighteen (18) month anniversary of the Contract Date. No later than sixty (60) days after the MCIA Effective Date, the Buyer shall provide the Supplier with a written notice setting out its calculation of the Materials Cost Index Adjustment (the “**MCIA Notice**”).
- (c) The Supplier shall respond to the MCIA Notice within thirty (30) days after receipt of the MCIA Notice if the Supplier identifies any perceived errors in the Buyer’s calculation of the Materials Cost Index Adjustment and the corresponding adjustment (positive or negative) to the Fixed Capacity Payment to replace the value set out as such in Exhibit B. If the Supplier does not respond to the MCIA Notice within thirty (30) days after its receipt, the adjusted Fixed Capacity Payment to replace the value set out as such in Exhibit B and the value set out in the MCIA Notice shall apply for purposes of the calculations set out in Exhibit J throughout the Term.

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2.14 Municipal Support Confirmation

- (a) Where the Project Site is located in whole or in part on lands subject to the authority of a Local Municipality and where the Proposal did not include a Municipal Support Resolution or a Blanket Municipal Support Resolution at the time of its submission under the LT1 RFP, the requirements of this Section 2.14(a) shall apply as indicated in Exhibit B and the Supplier shall, by no later than sixty (60) days after the ~~eighteen (18)~~ month anniversary of the Contract Date, provide the Buyer with a written notice including a ~~Municipal Support Resolution or a Blanket~~ Municipal Support Resolution dated after the Proposal Submission Deadline.
- (b) If the Supplier fails to meet the requirements set out in Section 2.14(a), such failure shall constitute a Supplier Event of Default. If the Buyer elects to terminate this Agreement as a result of a Supplier Event of Default arising under this Section 2.14(b), this Agreement shall be terminated without any costs or payments of any kind to either Party and all Completion and Performance Security shall be returned to the Supplier within twenty (20) Business Days of the Buyer's written notice of termination.

2.15 GHG Abatement Plans

- (a) The Parties acknowledge that on ~~[July 26]~~August 10, 2023 the Government of Canada published ~~a framework entitled: Proposed Frame for draft~~ “Clean Electricity Regulations” under the Canadian Environmental Protection Act, 1999 which, among other things, ~~proposes to~~would implement Laws and Regulations that would require natural gas-fired facilities, ~~by~~ with commissioning dates after 20325 and which do not utilize eligible carbon capture and storage systems, to ~~achieve net-zero~~meet the emissions ~~of standards for~~ Greenhouse Gas ~~by utilizing carbon capture, utilization and storage technologies, blending natural gas fuel with hydrogen derived from non-emitting sources or other means and measures to be prescribed and set out in future Laws and Regulations]~~ [NTD: Subject to further updates based on Government of Canada's further publications or draft regulations, set out therein by 2035] (such proposal, or any substantially equivalent proposed Laws and Regulations, the “Proposed Clean Electricity Standard”). If the Proposed Clean Electricity Standard or another proposal restricting actual Greenhouse Gas emissions from the Facility is implemented via provincial legislation, the Parties agree that the provisions of Article 13 shall not apply to any Laws and Regulations of the Government of Ontario which implement the Proposed Clean Electricity Standard or other restrictions on actual Greenhouse Gas emissions from the Facility (provided they do not otherwise constitute a Discriminatory Action on account of provisions beyond those implementing the Proposed Clean Electricity Standard or other restriction on actual Greenhouse Gas emissions). If the Proposed Clean Electricity Standard or other restriction on actual Greenhouse Gas emissions is implemented through Laws and Regulations, regardless of whether solely via federal Laws and Regulations or with a combination of both

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federal and provincial Laws and Regulations, the provisions of this Section 2.15 shall be the sole remedy for the Supplier hereunder as it relates to impacts of such Laws and Regulations.

- (b) If Laws and Regulations come into force that implement the Proposed Clean Electricity Standard or other restrictions on actual Greenhouse Gas emissions from the Facility that apply to the operations of the Facility by a designated specific date, which date, for clarity, may be later than the date such Laws and Regulations come into force (the “**NZ Effective Date**”), the Supplier shall, no later than sixty (60) days after the date on which such Laws and Regulations come into force, provide the Buyer with a written summary detailing the Supplier’s strategy to achieve compliance with such Laws and Regulations from the NZ Effective Date until the expiry of the Term (such plan, a “**GHG Abatement Plan**”) and shall
- (i) provide the Buyer with such additional information regarding the GHG Abatement Plan as may be reasonably requested by the Buyer;
 - (ii) update the GHG Abatement Plan upon the coming into force of new Laws and Regulations, or material amendments to existing Laws and Regulations restricting actual Greenhouse Gas emissions from the Facility; and
 - (iii) provide a written update to the Buyer of any material change to the GHG Abatement Plan previously delivered to the Buyer, whether attributable to technology changes, changes to economic conditions or otherwise.
- (c) Where Laws and Regulations implementing the Proposed Clean Electricity Standard or other restrictions on actual Greenhouse Gas emissions from the Facility will require the Supplier to incur costs that would have a Material Adverse Effect on the Supplier, despite the Supplier’s use of Commercially Reasonable Efforts to mitigate or avoid such costs, in order for the Supplier to continue meeting its Must-Offer Obligation (such circumstance, a “**CES MAE**”), then the Supplier may, by written notice to the Buyer, delivered no later than one (1) year prior to the NZ Effective Date, describe such costs, the CES MAE and the Commercially Reasonable Efforts taken or planned to be taken by the Supplier to mitigate or avoid such costs in a manner that would enable its continued compliance with the Must-Offer Obligation, in each case with applicable supporting documentation (such notice, the “**CES MAE Notice**”). The Buyer shall respond to the CES MAE Notice within sixty (60) days of its receipt thereof, identifying any objection or supplemental information it may require to verify that a CES MAE has occurred or any of the information or statements in the CES MAE Notice. The Supplier shall provide the Buyer with such additional information in support of the CES MAE Notice as the Buyer may reasonably request, from time to time. The Buyer shall, once it has determined whether a CES MAE has occurred (whether in its initial response to the CES MAE Notice, or otherwise), provide a written notice to the Supplier of such determination (the “**CES MAE Confirmation**”).

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- (d) If the Buyer has determined that a CES MAE has occurred, the Supplier may, no later than sixty (60) days following the CES MAE Confirmation, provide a written notice to the Buyer (such notice, a “CES Election”) in which the Supplier may elect, on a one-time basis, to either: ~~(i)~~
- (i) maintain the Facility for the remainder of the Term in all other respects as required under this Agreement, except that it will be relieved of its requirement to meet the Must-Offer Obligation for the remaining portion of the Term during which the CES MAE applies (such operating status, “Safe Standby State”); ~~or (ii)~~
 - (ii) permanently decommission the Facility in accordance with applicable Laws and Regulations from the time that the CES MAE applies (such status, “CES Decommissioning”).

If the Supplier elects in the CES Election to place the Facility in Safe Standby State, Monthly Payments will continue unchanged for the remainder of the Term and Availability Non-Performance Charges will not be applicable starting in the first Settlement Month following the Buyer’s receipt of the CES Election. For greater certainty, such Facility may continue to operate in accordance with permitted operating parameters under the Proposed Clean Electricity Standard. Where the Facility has been placed in Safe Standby State in accordance with this Section 2.15(d) and the Proposed Clean Electricity Standard ceases to apply to the Facility during any remaining portion of the Term, the Must-Offer Obligation and Availability Non-Performance Charges will re-apply to the Supplier and Monthly Payments will be calculated on that basis starting in the second Settlement Month after the Proposed Clean Electricity Standard ceases to apply to the Facility.

If the Supplier elects CES Decommissioning in the CES Election, the Fixed Capacity Payment will be reduced by twenty five percent (25%) and Monthly Payments will be calculated on that basis for the remainder of the Term starting in the first Settlement Month following the Buyer’s receipt of the CES Election. For greater certainty, any such CES Election electing CES Decommissioning shall be permanent.

Where a CES Election is implemented pursuant to this Section 2.15(d), the Buyer’s audit rights hereunder shall continue to apply and the Supplier shall provide the Buyer with such information and documentation as the Supplier may reasonably request from time to time to confirm that the Facility is in Safe Standby State or has implemented CES Decommissioning, as applicable. ~~Where the Facility has been placed in Safe Standby State in accordance with this Section 2.15(d) and the Proposed Clean Electricity Standard ceases to apply to the Facility during any remaining portion of the Term, the Must Offer Obligation and Availability Non-Performance Charges will re-apply to the Supplier and Monthly Payments will be calculated on that basis starting in the second Settlement Month after the Proposed Clean Electricity Standard ceases to apply to the Facility.~~

- (e) For greater certainty, where Laws and Regulations implementing the Proposed Clean Electricity Standard or other restrictions on actual Greenhouse Gas emissions from the Facility do not result in a CES MAE as contemplated in this Section 2.15, the Supplier's performance obligations and Monthly Payments hereunder will remain unaffected.

2.16 Additional Sources of Government Support

- (a) In the event the Supplier is awarded any direct financial funding during the Term pursuant to any Future Government Support Program (any such funds, an "**Additional Source of Funding**"), the Supplier shall provide written notice to the Buyer within thirty (30) days of receiving any such funding, and together with such notice, the Supplier shall make a payment to the Buyer equal to fifty percent (50%) multiplied by the total amount of the Additional Source of Funding. For clarity, no payment from the Supplier to the Buyer shall be required in relation to the remaining fifty percent (50%) of any Additional Source of Funding. Notwithstanding the foregoing, the treatment of any such Additional Source of Funding under this Agreement shall in no event contravene the requirements of the relevant governmental program and in the case of any such possible contravention, the Supplier shall not participate in the applicable Future Government Support Program without the Buyer's prior written consent, which may be granted in the Buyer's sole and absolute discretion.

ARTICLE 3 PERFORMANCE OBLIGATIONS

3.1 Must-Offer Obligation

- (a) In each Settlement Month, the Supplier must offer Electricity output from the Facility into the Day-Ahead Market from the Facility's capacity that is not subject to an Outage, such that the Monthly Average Offered Quantity for the Settlement Month is equal to or greater than the Adjusted Monthly Contract Capacity (the "**Must-Offer Obligation**").
- (b) If at the end of a Settlement Month, the Facility's Monthly Average Offered Quantity is less than the Adjusted Monthly Contract Capacity, an "**Availability Non-Performance Charge**" shall be assessed in accordance with Exhibit F and charged to the Supplier for the applicable Settlement Month as liquidated damages and not as a penalty, being a genuine pre-estimate of the damages suffered by the Buyer as a result of such shortfall in performance. Except for the Supplier Event of Default set out in Section 10.1(k), and subject to Supplier's compliance with the other requirements set out in this Agreement, the Availability Non-Performance Charge shall be the sole and exclusive remedy for the Supplier's failure to satisfy the Must-Offer Obligation.

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ARTICLE 4 CALCULATION OF MONTHLY PAYMENT

4.1 Calculation of Monthly Payment

The “**Monthly Payment**” shall be an amount, based on the Fixed Capacity Payment and calculated in accordance with Exhibit J. If the Monthly Payment is a positive amount, it shall be payable from the Buyer to the Supplier. If the Monthly Payment is a negative amount, the absolute value of the Monthly Payment shall be payable from the Supplier to the Buyer.

4.2 Supplier’s Responsibility for Taxes

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

4.3 Electricity Storage Facility Option to Reduce Contract Capacity

At any time after the completion of the third (3rd) Contract Year, the Supplier in respect of an Electricity Storage Facility may, on no more than three (3) occasions during the Term, elect to reduce the Summer Contract Capacity and/or the Winter Contract Capacity by an amount that is not more than seven percent (7%) of the value of the Summer Contract Capacity and/or the Winter Contract Capacity (as applicable) set out in Exhibit B as of the Contract Date. Any reduction in Contract Capacity set out in this Section 4.3 shall require written notice thereof to the Buyer at least twelve (12) months prior to the effective date of such reduction and any such reduction in the Contract Capacity may only take effect on first (1st) day of the first (1st) Settlement Month of a Contract Year. The Supplier acknowledges that any such reductions in the Contract Capacity shall not reduce any obligations of the Supplier in existence prior to the effective date of such reduction and that, notwithstanding anything in Section 2.1, such reduction shall be permanent and the Contract Capacity, as reduced, cannot be increased at any point during the balance of the Term. For greater certainty, the Supplier acknowledges that a reduction in the Contract Capacity will reduce the Monthly Payment. Upon any reduction in Contract Capacity set out in this Section 4.3 the Buyer will issue a confirmation of the adjusted Contract Capacity for the Parties’ records.

4.4 Buyer’s Responsibility for Taxes

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

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4.5 Non-Residency

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

ARTICLE 5 STATEMENTS AND PAYMENTS

5.1 Meter and Other Data

The Supplier agrees to provide to the Buyer access to the meters in the Metering Plan to accommodate remote interrogation of the metered data (including State-of-Charge data, if applicable) on a daily basis. The Supplier agrees to provide to the Buyer, at all times, access to any other information relating to the Facility that the Supplier has provided or received pursuant to the IESO Market Rules or that the Supplier has provided to or received from the LDC, as applicable, from time to time. The Buyer agrees to provide to the Supplier, upon the Supplier's request, any documentation with respect to the IESO-Administered Markets and any other information that the Buyer will be utilizing in preparing any Statement that is not otherwise available directly to the Supplier. Without limiting the generality of the foregoing, the Supplier shall provide to the Buyer promptly upon request all offer quantities data for the last lamination for all hours (i.e. the quantity information of "p-q pairs") provided to the System Operator evidencing the Supplier's compliance with the Must-Offer Obligation from time to time. Upon a Party becoming aware of any errors or omissions in any data or information provided in accordance with this Section 5.1, such Party shall notify the other Party thereof on a timely basis.

5.2 Statements

The Buyer shall prepare and deliver a settlement statement (the "**Statement**") to the Supplier, within twenty (20) Business Days after the end of each calendar month in the Term that is the subject of the Statement (the "**Settlement Month**"), setting out the basis for the Monthly Payment with respect to the Settlement Month, as well as the basis for any other payments owing under this Agreement by either Party to the other in the Settlement Month. A Statement may be delivered by the Buyer to the Supplier by electronic means and shall include the reference number assigned to this Agreement by the Buyer and a description of the components of the Monthly Payment and other payments, as described in this Agreement, including Section 4.1 as applicable, owing to the Supplier for the Settlement Month.

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5.3 Payment

The Party owing the Monthly Payment shall remit to the other Party full payment in respect of the Statement no later than the final Business Day of the month immediately after the end of the Settlement Month to which the Statement relates (the “**Payment Date**”). Any and all payments required to be made by either Party under any provision of this Agreement shall be made by electronic funds transfer (EFT) to the applicable account designated in Section 5.5, or as otherwise agreed by the Parties.

5.4 Interest

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

5.5 Payment Account Information

[Note to Finalization: To be updated prior to execution.]

(a) Account for Payments to Supplier:

Account Name: [●]
Swift Code: [●]
Bank Number: [●]
Transit: [●]
Account: [●]

Supplier’s HST Registration Number: [●]

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

(b) Account for payments to Buyer:

Account Number: [●]
Transit Number: [●]

Buyer’s HST Registration Number: [●]

Either Party may change its account information from time to time by written notice to the other in accordance with Section 15.7.

5.6 Adjustment to Statement

- (a) Each Statement shall be subject to adjustment for errors in arithmetic, computation, or other errors, raised by a Party during the period of one (1) year

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following the end of the calendar year in which such Statement was issued. If there are no complaints raised, or if any complaints raised in the time period have been resolved, such Statement shall be final and subject to no further adjustment after the expiration of such period.

- (b) Notwithstanding the foregoing, the determination by the System Operator of any information shall be final and binding on the Parties in accordance with the IESO Market Rules, and without limiting the generality of the foregoing, if a Statement contains an error in the data or information issued by the System Operator which the System Operator has requested be corrected, then the one (1) year limit set forth in Section 5.6(a) shall not apply to the correction of such error or the Buyer's ability to readjust the Statement.
- (c) Subject to Section 5.7, any adjustment to a Statement made pursuant to this Section 5.6 shall be made in the next subsequent Statement.

5.7 Disputed Statement

If the Supplier disputes a Statement or any portion thereof, the Party owing any amount set forth in the Statement shall, notwithstanding such dispute, pay the entire amount set forth in the Statement to the other Party. The Supplier shall provide written notice to the Buyer setting out the portions of the Statement that are in dispute with a brief explanation of the dispute. If it is subsequently determined or agreed that an adjustment to the Statement is appropriate, the Buyer will promptly prepare a revised Statement. Any overpayment or underpayment of any amount due under a Statement shall bear interest at the Interest Rate, calculated daily, from and including the time of such overpayment or underpayment to the date of the refund or payment thereof. Payment pursuant to the revised Statement shall be made on the tenth (10th) Business Day following the date on which the revised Statement is delivered to the Supplier. If a Statement dispute has not been resolved between the Parties within five (5) Business Days after receipt of written notice of such dispute by the Buyer, the dispute may be submitted by either Party to a Senior Conference pursuant to the terms of Section 16.1.

5.8 Statements and Payment Records

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

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ARTICLE 6 CREDIT AND SECURITY REQUIREMENTS

6.1 Completion and Performance Security

- (a) The Parties acknowledge that the Supplier has, as of the Contract Date, provided to the Buyer security in the form described in Section 6.2(a) for the performance of the Supplier's obligations under this Agreement (the "Completion and Performance Security") in an amount equal to \$[●] ~~MW of Maximum Contract~~

~~Capacity.~~ **[NTD: This is based on the Proposal Security amount set out in the LT1 RFP.] [Note to Finalization: To be updated prior to execution.]**

- (b) From and after the Contract Date and until the end of the Term, the Supplier shall maintain the Completion and Performance Security in the amount and for the period specified below:
 - (i) from the Contract Date until COD, in an amount equal to \$~~[●]/MW of Maximum Contract Capacity~~ (which, for clarity, has been provided to the Buyer as set out in 6.1(a)); and **[NTD: This is based on the Proposal Security amount set out in the LT1 RFP.] [Note to Finalization: To be updated prior to execution.]**
 - (ii) from COD until the end of the Term, in an amount equal to \$25,000/MW of Maximum Contract Capacity.
- (c) Notwithstanding any other provision of this Agreement, no delay, including a delay resulting from an event of Force Majeure, shall extend the date by which any component of the Completion and Performance Security is required to be provided by the Supplier.
- (d) In the event that the Buyer, in accordance with this Agreement, has recovered monies that were due to it using all or part of the Completion and Performance Security, the Supplier shall forthwith provide replacement security to cover an amount equal to that recovered or paid out of the Completion and Performance Security.

6.2 Composition of Security

- (a) The Completion and Performance Security shall be in the form of a Letter of Credit, for the full amount of the Completion and Performance Security.
- (b) A Letter of Credit delivered hereunder shall be subject to the following provisions:
 - (i) The Supplier shall (i) renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit, (ii) if the financial institution that issued an outstanding Letter of Credit has indicated its intent not to renew such Letter of Credit, provide a substitute Letter of Credit or other equivalent form of security satisfactory to the Buyer at least ten (10) Business Days prior to the expiration of the outstanding Letter of Credit, and (iii) if a financial institution issuing a Letter of Credit fails to honour the Buyer's properly documented request to draw on an outstanding Letter of Credit (other than a failure to honour as a result of a request to draw that does not conform to the requirements of such Letter of Credit), provide for the benefit of the Buyer (A) a substitute Letter of Credit that is issued by another financial institution, or

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(B) other security satisfactory to the Buyer in an amount equal to such outstanding Letter of Credit, in either case within five (5) Business Days after the Supplier receives notice of such refusal.

- (ii) A Letter of Credit shall provide that the Buyer may draw upon the Letter of Credit in an amount (up to the face amount or part thereof remaining available to be drawn thereunder for which the Letter of Credit has been issued) that is equal to all amounts that are due and owing from the Supplier but that have not been paid to the Buyer within the time allowed for such payments under this Agreement (including any related notice or grace period or both). A Letter of Credit shall provide that a drawing may be made on the Letter of Credit upon submission to the financial institution issuing the Letter of Credit of one or more certificates specifying the amounts due and owing to the Buyer in accordance with the specific requirements of the Letter of Credit. The location where the drawing may be made must be Toronto, Ontario.
- (iii) If the Supplier shall fail to renew, substitute, or sufficiently increase the amount of an outstanding Letter of Credit (as the case may be), or establish one or more additional Letters of Credit or other equivalent form of security satisfactory to the Buyer when required hereunder, then without limiting other remedies the Buyer may have under this Agreement, the Buyer (i) may draw on the undrawn portion of any outstanding Letter of Credit and retain for its own account, as liquidated damages and not as a penalty, the amount equal to one (1%) percent of the face value of such outstanding Letter of Credit and/or (ii) prior to the expiry of such Letter of Credit, may draw on the entire, undrawn portion of any outstanding Letter of Credit, upon submission to the financial institution issuing such Letter of Credit of a certificate specifying the entire amount of the Letter of Credit is owing to the Buyer in accordance with the specific requirements of the Letter of Credit. Any amount then due and owing to the Buyer shall be received by the Buyer as liquidated damages and not as a penalty. If the amounts then due and owing are less than the amount drawn under such Letter of Credit, then such excess amount shall be held as Completion and Performance Security. The Supplier shall remain liable for any amounts due and owing to the Buyer and remaining unpaid after the application of the amounts so drawn by the Buyer. If the Supplier subsequently delivers a Letter of Credit or other security or other collateral permitted pursuant hereto, in each case satisfactory to the Buyer in its sole and absolute discretion as to form, substance and amount, then upon acceptance by the Buyer thereof, the Buyer shall remit to the Supplier all amounts held by the Buyer as Completion and Performance Security pursuant to this Section 6.2(b)(iii).
- (c) The costs and expenses of establishing, renewing, substituting, cancelling, increasing and reducing the amount of (as the case may be) one or more Letters of Credit shall be borne by the Supplier.

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- (d) The Buyer shall return a Letter of Credit held by the Buyer to the Supplier, if the Supplier is substituting a Letter of Credit of a greater or lesser amount pursuant to Section 6.2(b)(i), within ten (10) Business Days from the Buyer's receipt of such substituted Letter of Credit.

ARTICLE 7 REPRESENTATIONS

7.1 Representations of the Supplier

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

- (a) The Supplier is a [●] [formed/incorporated] under the laws of [●], is registered or otherwise qualified to carry on business in the Province of Ontario, and has the requisite power to enter into this Agreement and to perform its obligations hereunder. *[Note to Finalization: To be updated prior to execution.]*
- (b) This Agreement has been duly authorized, executed, and delivered by the Supplier and is a valid and binding obligation of the Supplier enforceable in accordance with its terms except as such enforcement may be limited by bankruptcy, insolvency and other laws affecting the rights of creditors generally and except that equitable remedies may only be granted in the discretion of a court of competent jurisdiction.
- (c) The execution and delivery of this Agreement by the Supplier and the consummation of the transactions contemplated by this Agreement will not result in the breach or violation of any of the provisions of, or constitute a default under, or conflict with or cause the termination, cancellation or acceleration of any material obligation of the Supplier under:
- (i) any contract or obligation to which the Supplier is a party or by which it or its assets may be bound, except for such defaults or conflicts as to which requisite waivers or consents have been obtained;
 - (ii) the articles, by-laws or other constating documents, or resolutions of the directors or shareholders of the Supplier;
 - (iii) any judgment, decree, order or award of any Governmental Authority or arbitrator;
 - (iv) any licence, permit, approval, consent or authorization held by the Supplier; or
 - (v) any Laws and Regulations,
- that could have a Material Adverse Effect on the Supplier.

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- (d) There are no bankruptcy, insolvency, reorganization, receivership, seizure, realization, arrangement or other similar proceedings pending against or being contemplated by the Supplier or, to the knowledge of the Supplier, threatened against the Supplier.
- (e) There is no proceeding under any Insolvency Legislation pending against or being contemplated by the Supplier or, to the knowledge of the Supplier, threatened against the Supplier or any of its property, nor has the Supplier consented to an order for a proceeding under Insolvency Legislation under the terms of a forbearance agreement or otherwise, or otherwise taken any steps to commence a proceeding under Insolvency Legislation.
- (f) All requirements for the Supplier to make any filing, declaration or registration with, give any notice to or obtain any licence, permit, certificate, registration, authorization, consent or approval of, any Governmental Authority as a condition to entering into this Agreement have been satisfied.
- (g) The Supplier is not a non-resident of Canada for the purposes of the ITA, unless it has notified the Buyer of such non-resident status as per Section 4.5.
- (h) The Supplier is in compliance with all Laws and Regulations, other than acts of non-compliance which, individually or in the aggregate, would not have a Material Adverse Effect on the Supplier or on its obligations under this Agreement.
- (i) The Supplier is the owner of the Facility.
- (j) The Contract Capacity is exclusively committed to the Buyer hereunder and no part of the Contract Capacity is subject to any physical or contractual arrangement that conflicts with the Supplier's ability to satisfy the Must-Offer Obligation hereunder.
- (k) The Facility is capable of Delivering the Monthly Contract Capacity while operating in accordance with Good Engineering and Operating Practices, under normal operating conditions and with ambient temperature conditions, as reported at the Environment Canada weather station that is physically nearest to the Facility, not exceeding +35 degrees Celsius in the Summer and not below -20 degrees Celsius in the Winter.
- (l) The Maximum Contract Capacity is not more than ninety-five percent (95%) of the Nameplate Capacity.
- (m) The statements and information contained in the Proposal in respect of the Facility are true and correct in all material respects, except to the extent consented to by the Buyer in a Facility Amendment or to the extent alteration of the Facility is otherwise permitted hereunder, and the statements and information contained in the Proposal in respect of the Supplier were true and correct in all material respects as of the Proposal Submission Deadline.

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- (n) There are no actions, suits, proceedings, judgments, rulings or orders by or before any Governmental Authority or arbitrator, or, to the knowledge of the Supplier, threatened against the Supplier that could have a Material Adverse Effect on the Supplier.
- (o) If the Facility is an Eligible Expansion, the development of the Eligible Existing Facility has not resulted in and will not result in a reduction in the Existing Facility Capacity.

In addition, the Supplier shall, upon delivery of each of the quarterly progress reports required to be provided to the Buyer pursuant to Section 2.4(a), represent in writing that each of the foregoing statements set out in Sections 7.1(a) to 7.1(n) inclusive continues to be true or, if any of such statements are no longer true, then the Supplier shall provide to the Buyer a qualified representation with respect to such statement. Such qualified representation provided by the Supplier to the Buyer shall be subject, however, to the rights of the Buyer in Section 10.1(d) to require the Supplier to cure or remove any such qualification with respect to such statement.

7.2 Representations of the Buyer

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

- (a) The Buyer is a corporation without share capital created under the laws of Ontario, and has the requisite power to enter into this Agreement and to perform its obligations hereunder.
- (b) This Agreement has been duly authorized, executed, and delivered by the Buyer and is a valid and binding obligation of the Buyer enforceable in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency and other laws affecting the rights of creditors generally and except that equitable remedies may be granted solely in the discretion of a court of competent jurisdiction.
- (c) The execution and delivery of this Agreement by the Buyer and the consummation of the transactions contemplated by this Agreement will not result in the breach or violation of any of the provisions of, or constitute a default under, or conflict with or cause the termination, cancellation or acceleration of any material obligation of the Buyer under:
 - (i) any contract or obligation to which the Buyer is a party or by which it or its assets may be bound, except for such defaults or conflicts as to which requisite waivers or consents have been obtained;
 - (ii) the by-laws or resolutions of the directors (or any committee thereof) or shareholder of the Buyer;

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- (iii) any judgment, decree, order or award of any Governmental Authority or arbitrator;
- (iv) any licence, permit, approval, consent or authorization held by the Buyer;
or
- (v) any Laws and Regulations,

that could have a Material Adverse Effect on the Buyer.

- (d) There is no proceeding under any Insolvency Legislation pending against or being contemplated by the Buyer or, to the knowledge of the Buyer, threatened against the Buyer or any of its property, nor has the Buyer consented to an order for a proceeding under Insolvency Legislation under the terms of a forbearance agreement or otherwise, or otherwise taken any steps to commence a proceeding under Insolvency Legislation.
- (e) There are no actions, suits, proceedings, judgments, rulings or orders by or before any Governmental Authority or arbitrator, or, to the knowledge of the Buyer, threatened against the Buyer, that could have a Material Adverse Effect on the Buyer.
- (f) All requirements for the Buyer to make any declaration, filing or registration with, give any notice to or obtain any licence, permit, certificate, registration, authorization, consent or approval of, any Governmental Authority as a condition to entering into this Agreement have been satisfied.
- (g) The Buyer is in compliance with all Laws and Regulations other than acts of non-compliance which, individually or in the aggregate, would not have a Material Adverse Effect on the Buyer or on its obligations under this Agreement.

ARTICLE 8 CONFIDENTIALITY AND FIPPA

8.1 Confidential Information

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

- (a) The Receiving Party may disclose Confidential Information to its Representatives who need to know Confidential Information for the purpose of assisting the Receiving Party in complying with its obligations under this Agreement. On each copy made by the Receiving Party, the Receiving Party must reproduce all notices which appear on the original. The Receiving Party shall inform its Representatives of the confidentiality of Confidential Information and shall be responsible for any breach of this Article 8 by any of its Representatives.

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- (b) If the Receiving Party or any of its Representatives are requested or required (by oral question, interrogatories, requests for information or documents, court order, civil investigative demand, or similar process) to disclose any Confidential Information in connection with litigation or any regulatory proceeding or investigation, or pursuant to any Laws and Regulations, order, regulation or ruling, the Receiving Party shall promptly notify the Disclosing Party. Unless the Disclosing Party obtains a protective order, the Receiving Party and its Representatives may disclose such portion of the Confidential Information to the Party seeking disclosure as is required by law or regulation in accordance with Section 8.2.
- (c) Where the Supplier is the Receiving Party, the Supplier may disclose Confidential Information to any Secured Lender or prospective lender or investor and its advisors, to the extent necessary, for securing financing for the Facility, provided that any such Secured Lender or prospective lender or investor has been informed of the Supplier's confidentiality obligations hereunder and such Secured Lender or prospective lender or investor has completed and executed a confidentiality undertaking (the "**Confidentiality Undertaking**") in the form referenced as Exhibit I, covenanting in favour of the Buyer to hold such Confidential Information confidential on terms substantially similar to this Article 8.
- (d) Notwithstanding the foregoing, the Supplier consents to the disclosure of: (i) its name and contact particulars (including its address for service and the name of its Company Representative) by the Buyer to all Other Suppliers for the purposes of Sections 1.6 and 1.7; (ii) any information the Buyer or the System Operator is required to publish under the IESO Market Rules and the LT1 RFP; and (iii) this Agreement in its entirety, except for any Mutually Confidential Information and the Supplier's account information in Section 5.5.

8.2 Notice Preceding Compelled Disclosure

If the Receiving Party or any of its Representatives are requested or required to disclose any Confidential Information, the Receiving Party shall promptly notify the Disclosing Party of such request or requirement so that the Disclosing Party may seek an appropriate protective order or waive compliance with this Agreement. If, in the absence of a protective order or the receipt of a waiver hereunder, the Receiving Party or its Representatives are compelled to disclose the Confidential Information, the Receiving Party and its Representatives may disclose only such of the Confidential Information to the Party compelling disclosure as is required by Laws and Regulations only to such Person or Persons to which the Receiving Party is legally compelled to disclose and, in connection with such compelled disclosure, the Receiving Party and its Representatives shall provide notice to each such recipient (in co-operation with legal counsel for the Disclosing Party) that such Confidential Information is confidential and subject to non-disclosure on terms and conditions equal to those contained in this Agreement and, if possible, shall obtain each recipient's written agreement to receive and use such Confidential Information subject to those terms and conditions.

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8.3 Return of Information

Upon written request by the Disclosing Party, Confidential Information provided by the Disclosing Party in printed paper format or electronic format will be returned to the Disclosing Party and Confidential Information transmitted by the Disclosing Party in electronic format will be deleted from the emails and directories of the Receiving Party's and its Representatives' computers; provided, however, any Confidential Information (i) found in drafts, notes, studies and other documents prepared by or for the Receiving Party or its Representatives, (ii) found in electronic format as part of the Receiving Party's off-site or on-site data storage/archival process system, or (iii) which is Mutually Confidential Information, will be held by the Receiving Party and kept subject to the terms of this Agreement or destroyed at the Receiving Party's option. Notwithstanding the foregoing, a Receiving Party shall be entitled to make at its own expense and retain one copy of any Confidential Information materials it receives for the limited purpose of discharging any obligation it may have under Laws and Regulations, and shall keep such retained copy subject to the terms of this Article 8.

8.4 Injunctive and Other Relief

The Receiving Party acknowledges that breach of any provisions of this Article may cause irreparable harm to the Disclosing Party or to any third-party to whom the Disclosing Party owes a duty of confidence, and that the injury to the Disclosing Party or to any third-party may be difficult to calculate and inadequately compensable in damages. The Receiving Party agrees that the Disclosing Party is entitled to obtain injunctive relief (without proving any damage sustained by it or by any third-party) or any other remedy against any actual or potential breach of the provisions of this Article 8.

8.5 FIPPA Records and Compliance

The Parties acknowledge and agree that the Buyer is subject to FIPPA and that FIPPA applies to and governs all Confidential Information in the custody or control of the Buyer ("**FIPPA Records**") and may, subject to FIPPA, require the disclosure of such FIPPA Records to third parties. The Supplier agrees to provide a copy of any FIPPA Records that it previously provided to the Buyer if the Supplier continues to possess such FIPPA Records in a deliverable form at the time of the Buyer's request. If the Supplier does possess such FIPPA Records in a deliverable form, it shall provide the same within a reasonable time after being directed to do so by the Buyer. The provisions of this Section 8.5 shall survive any termination or expiry of this Agreement and shall prevail over any inconsistent provisions in this Agreement.

ARTICLE 9 TERM

9.1 Term

- (a) This Agreement shall be effective from the Contract Date to and until the end of the Term.
- (b) The "**Term**" means that period of time commencing at the beginning of the hour ending 01:00 hours (EST) on the Commercial Operation Date of the Facility, and

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ending at 24:00 hours (EST) on the Expiry Date, subject to an earlier termination in accordance with the provisions hereof.

- (c) Notwithstanding the foregoing, for any Facility that does not utilize natural gas to generate Electricity, where the Commercial Operation Date occurs after the Milestone Date for Commercial Operation, the Buyer shall have the right, by providing notice to the Supplier no later than one hundred and eighty (180) days prior to the expiration of the Term, to extend the Term such that the Term will expire at 24:00 hours (EST) on the day before the twenty first (21st) anniversary of the Commercial Operation Date.

ARTICLE 10 TERMINATION AND DEFAULT

10.1 Events of Default by the Supplier

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

- (a) The Supplier fails to make any payment when due or deliver and/or maintain the Completion and Performance Security as required under this Agreement, if such failure is not remedied within ten (10) Business Days after written notice of such failure from the Buyer.
- (b) The Supplier fails to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Supplier Event of Default) if such failure is not remedied within fifteen (15) Business Days after written notice of such failure from the Buyer, provided that such cure period shall be extended by a further fifteen (15) Business Days if the Supplier is diligently remedying such failure and such failure is capable of being cured during such extended cure period.
- (c) The Supplier fails or ceases to hold a valid licence, permit, certificate, registration, authorization, consent or approval issued by a Governmental Authority where such failure or cessation results in, or could be reasonably expected to result in, a Material Adverse Effect on the Supplier and is not remedied within thirty (30) Business Days after receipt by the Supplier of written notice of such failure or cessation from the Buyer, provided that such cure period shall be extended by a further thirty (30) Business Days if the Supplier is diligently remedying such failure or cessation and such failure or cessation is capable of being corrected during such extended cure period.
- (d) Any representation made by the Supplier in this Agreement is not true or correct in any material respect when made and is not made true or correct in all material respects within thirty (30) Business Days after receipt by the Supplier of written notice of such fact from the Buyer, provided that such cure period (i) shall be extended for a further period of thirty (30) Business Days and (ii) may be

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extended by such further period of time as the Buyer in its sole and absolute discretion determines is reasonable, if, in each case, the Supplier is diligently correcting such breach and such breach is capable of being corrected during such extended cure period.

- (e) An effective resolution is passed or documents are filed in an office of public record in respect of, or a judgment or order is issued by a court of competent jurisdiction ordering, the dissolution, termination of existence, liquidation or winding up of the Supplier, unless such filed documents are immediately revoked or otherwise rendered inapplicable, or unless, in the case of the Supplier, there has been a permitted and valid assignment of this Agreement by the Supplier under this Agreement to a Person which is not dissolving, terminating its existence, liquidating or winding up and such Person has assumed all of the Supplier's obligations under this Agreement.
- (f) The Supplier amalgamates with, or merges with or into, or transfers the Facility or all or substantially all of its assets to, another Person unless, at the time of such amalgamation, merger or transfer, there has been a permitted and valid assignment hereof by the Supplier under this Agreement to the resulting, surviving or transferee Person and such Person has assumed all of the Supplier's obligations under this Agreement.
- (g) Any receiver, interim receiver, manager, receiver and manager, liquidator, monitor, custodian, sequestrator, or trustee in bankruptcy or other Person with similar powers shall be appointed in respect of the Supplier, or all or any part of the Supplier's property, or any filing is made or proceeding is commenced in respect of the Supplier on application of a creditor or with consent of or by the Supplier seeking the entry of an order for the appointment or relief in respect of any of the foregoing; provided that, with respect to any such involuntary appointment, filing or proceeding, such appointment, filing or proceeding shall not have been revoked, withdrawn or dismissed within thirty (30) days of the filing or commencement of the proceeding or such other time as the Parties may agree to or pursuant to court order.
- (h) The Supplier makes an assignment for the benefit of its creditors, commits an act of bankruptcy under any Insolvency Legislation, acknowledges its insolvency or is declared or deemed bankrupt or insolvent under any Insolvency Legislation, or makes a voluntary assignment into bankruptcy. Any filing is made or a proceeding is commenced in respect of the Supplier seeking any stay of proceedings, declaration of bankruptcy or insolvency, protection from creditors, moratorium, reorganization, arrangement, composition, re-adjustment or any other relief, under any Insolvency Legislation, including any filing of a proposal or notice of intention to make a proposal; provided that, with respect to any such involuntary filing or proceeding, such filing or proceeding shall not have been revoked, withdrawn or dismissed within thirty (30) days of the filing or commencement of the proceeding or such other time as the Parties may agree to or pursuant to court order.

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- (i) Either of the defaults described in Sections 15.6(e)(ii) or 15.6(g)(i) has occurred.
- (j) The Supplier fails to achieve Commercial Operation on or before the Longstop Date pursuant to Section 2.3(f).
- (k) Commencing after the completion of the third Contract Year, if the average of the Monthly Average Offered Quantity for each Settlement Month in any rolling twenty-four (24)-month period during the Term is less than seventy-five percent (75%) of the average of the Adjusted Monthly Contract Capacity for such Settlement Months. For the purposes of this Section 10.1(k), the calculation of the average of the Monthly Average Offered Quantity for each Settlement Month in any rolling twenty-four (24)-month period will restart at the conclusion of each Settlement Month during the Term commencing after the completion of the third Contract Year.
- (l) The Supplier has made, or caused or allowed to have been made, a Facility Amendment that has not first been consented to by the Buyer and that has not been removed within ten (10) Business Days after such Facility Amendment occurred.
- (m) The Supplier assigns this Agreement without first obtaining the consent of the Buyer, if required pursuant to this Agreement.
- (n) The Supplier undergoes a change in Control without first obtaining the written approval of the Buyer if required pursuant to Sections 16.6 or 16.7.
- (o) Where the Supplier is an Indigenous Participation Supplier, the default described in Section 16.7(b) has occurred. ~~[NTD: Under consideration by the IESO.]~~
- (p) The default described in Section 2.14(b) has occurred.
- (q) The Supplier commences activities relating to clearing, grading or material alteration of the Project Site without fulfilling the requirements set out in Section 2.2(e). ~~[NTD: Under consideration by the IESO.]~~

10.2 Remedies of the Buyer

- (a) If any Supplier Event of Default (other than a Supplier Event of Default referred to in Sections 10.1(e), 10.1(g) and 10.1(h)) occurs and is continuing, upon written notice to the Supplier, the Buyer may, subject to Article 12, terminate this Agreement.
- (b) If a Supplier Event of Default (other than a Supplier Event of Default referred to in Section 10.1(p)) occurs and is continuing, the Buyer may, in addition to the remedies set out in Section 10.2(a):
 - (i) set off any payments due to the Supplier against any amounts payable by the Supplier to the Buyer including, at the Buyer's option, the amount of

any Completion and Performance Security provided to the Buyer pursuant to Article 6; and

- (ii) draw on the Completion and Performance Security, or any part thereof and, if the remedy in Section 10.2(a) has not been exercised, require the Supplier to replace such drawn security with new security.
- (c) Notwithstanding Sections 10.2(a), and 10.2(b), upon the occurrence of a Supplier Event of Default referred to in Sections 10.1(e), 10.1(g) or 10.1(h), this Agreement shall automatically terminate without notice, act or formality, effective immediately before the occurrence of such Supplier Event of Default, in which case, for certainty, the Secured Lender shall have the rights available to it under Section 12.2(g).
- (d) If the Buyer terminates this Agreement pursuant to Section 10.2(a) or this Agreement is terminated pursuant to Section 10.2(c),
 - (i) if the Termination Date precedes the Commercial Operation Date, the Buyer may, in its sole and absolute discretion, require the Supplier to pay to the Buyer, as liquidated damages and not as a penalty, a sum equal to the Dollar amount of all Completion and Performance Security required to be provided by the Supplier as of the Termination Date), and the Buyer shall be entitled to pursue a Claim for damages with respect to the amount of any portion of the Completion and Performance Security that the Supplier was required to provide to the Buyer as of the Termination Date pursuant to Section 6.1 and, in such circumstances, notwithstanding Section 10.5, the Buyer's remedies against the Supplier in respect of the termination of the Agreement shall be limited to the amount of liquidated damages payable by the Supplier pursuant to this Section 10.2(d)(i); and
 - (ii) if the Termination Date is on or after the Commercial Operation Date the Buyer shall have the option, exercisable in the sole and absolute discretion of the Buyer, to retain all Completion and Performance Security provided by or on behalf of the Supplier and exercise all other remedies available to the Buyer including pursuing a claim for damages, as contemplated in Section 10.5.
- (e) Termination shall not relieve the Supplier or the Buyer of their respective responsibilities relating to the availability of the Contract Capacity, or amounts payable under this Agreement, up to and including the Termination Date. The Buyer shall be responsible only for the payment of amounts accruing under this Agreement up to and including the Termination Date. In addition to its other rights of set off available to it pursuant to this Agreement and at law, the Buyer may hold back payment or set off its obligation to make such payment against any payments owed to it if the Supplier fails to comply with its obligations on termination.

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10.3 Events of Default by the Buyer

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

- (a) The Buyer fails to make any payment under this Agreement when due, if such failure is not remedied within ten (10) Business Days after written notice of such failure from the Supplier.
- (b) The Buyer fails to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Buyer Event of Default), if such failure is not remedied within fifteen (15) Business Days after written notice of such failure from the Supplier, provided that such cure period shall be extended by a further fifteen (15) Business Days if the Buyer is diligently remedying such failure and such failure is capable of being cured during such extended cure period.
- (c) The Buyer fails or ceases to hold a valid licence, permit, certificate, registration, authorization, consent or approval issued by a Governmental Authority where such failure or cessation results in, or could be reasonably expected to result in, a Material Adverse Effect on the Buyer and is not remedied within thirty (30) Business Days after receipt by the Buyer of written notice of such failure or cessation from the Supplier, provided that such cure period shall be extended by a further thirty (30) Business Days if the Buyer is diligently remedying such failure or cessation and such failure or cessation is capable of being corrected during such extended cure period.
- (d) Any representation made by the Buyer in this Agreement is not materially true or correct in any material respect when made and is not made materially true or correct within thirty (30) Business Days after receipt by the Buyer of written notice of such fact from the Supplier, provided that such cure period shall be extended by a further thirty (30) Business Days if the Buyer is diligently correcting such breach and such breach is capable of being corrected during such extended cure period.
- (e) An effective resolution is passed or documents are filed in an office of public record in respect of, or a judgment or order is issued by a court of competent jurisdiction ordering the dissolution, termination of existence, liquidation or winding up of the Buyer unless such filed documents are immediately revoked or otherwise rendered inapplicable, or unless there has been a permitted and valid assignment of this Agreement by the Buyer under this Agreement to a Person which is not dissolving, terminating its existence, liquidating or winding up and such Person has assumed all of the Buyer’s obligations under this Agreement.
- (f) Any receiver, interim receiver, manager, receiver and manager, liquidator, monitor, custodian, sequestrator, or trustee in bankruptcy or other Person with similar powers shall be appointed in respect of the Buyer, or all or any part of the Buyer’s property, or any filing is made or proceeding is commenced in respect of

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the Buyer on application of a creditor or with consent of or by the Buyer seeking the entry of an order for the appointment or relief in respect of any of the foregoing; provided that, with respect to any such involuntary appointment, filing or proceeding, such appointment, filing or proceeding shall not have been revoked, withdrawn or dismissed within thirty (30) days of the filing or commencement of the proceeding or such other time as the Parties may agree to or pursuant to court order.

- (g) The Buyer makes an assignment for the benefit of its creditors, commits an act of bankruptcy under any Insolvency Legislation, acknowledges its insolvency or is declared or deemed bankrupt or insolvent under any Insolvency Legislation, or makes a voluntary assignment into bankruptcy. Any filing is made or a proceeding is commenced in respect of the Buyer seeking any stay of proceedings, declaration of bankruptcy or insolvency, protection from creditors, moratorium, reorganization, arrangement, composition, re-adjustment or any other relief, under any Insolvency Legislation, including any filing of a proposal or notice of intention to make a proposal; provided that, with respect to any such involuntary filing or proceeding, such filing or proceeding shall not have been revoked, withdrawn or dismissed within thirty (30) days of the filing or commencement of the proceeding or such other time as the Parties may agree to or pursuant to court order.
- (h) The Buyer assigns this Agreement without first obtaining the consent of the Supplier, if required pursuant to this Agreement.

10.4 Termination by the Supplier

- (a) If any Buyer Event of Default occurs and is continuing, then upon written notice to the Buyer, the Supplier may: (i) terminate this Agreement, and (ii) set off any payments due to the Buyer against any amounts payable by the Buyer to the Supplier and, in such circumstances, the Buyer shall return to the Supplier any remaining Completion and Performance Security that has been provided by the Supplier hereunder.
- (b) Notwithstanding the foregoing, if applicable, the Buyer shall be responsible for payment of amounts accruing under this Agreement only up to and including the Termination Date. The Supplier may hold back payment or set off against any payments owed by it if the Buyer fails to comply with its obligations on termination.

10.5 Remedies for Termination Non-Exclusive

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

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ARTICLE 11 FORCE MAJEURE

11.1 Effect of Invoking Force Majeure

- (a) If, by reason of any act, event, cause or condition that constitutes Force Majeure hereunder:
- (i) the Supplier is unable to make available all or any part of the Monthly Contract Capacity during the Term or is unable to deliver Electricity from the Facility during the Term; or
 - (ii) either Party is unable, wholly or partially, to perform or comply with its other obligations (other than payment obligations) hereunder, or the Supplier is unable to achieve Commercial Operation by the Milestone Date for Commercial Operation or the Longstop Date;

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

If an event of Force Majeure causes the Supplier to not achieve Commercial Operation by the Milestone Date for Commercial Operation, then the Milestone Date for Commercial Operation shall be extended for such reasonable period of delay directly resulting from such Force Majeure event. If an event of Force Majeure causes the Supplier to not achieve Commercial Operation by the Longstop Date and did not previously extend the Milestone Date for Commercial Operation as contemplated in the preceding sentence, then the Longstop Date shall be extended for such reasonable period of delay directly resulting from such Force Majeure event. Following the Commercial Operation Date, an event of Force Majeure shall not extend the Term. Additionally, notwithstanding the prior paragraph of this Section 11.1(a), following the Commercial Operation Date, during such time as the Supplier is so unable to perform or comply with its obligations as a result of a Force Majeure, then adjustments to the Monthly Payment with respect to the portion of the Monthly Contract Capacity affected by Force Majeure will be calculated in accordance with Exhibit J.

- (b) A Party shall be deemed to have invoked Force Majeure with effect from the commencement of the event or circumstances constituting Force Majeure when that Party gives to the other Party prompt notice in writing of the effect of the Force Majeure and reasonably full particulars of the cause thereof, in substantially the form as set forth in Exhibit H, provided that such notice shall be given within

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ten (10) Business Days of: (i) the commencement of the event or circumstances constituting Force Majeure; or (ii) the date that the Party invoking Force Majeure knew or ought to have known that the event or circumstances constituting Force Majeure could have a Material Adverse Effect on the development or operation of the Facility. Where a Party fails to provide notice of the commencement of the event or circumstances constituting Force Majeure within ten (10) Business Days of the commencement of such event or circumstances, such Party shall be deemed to have invoked Force Majeure with effect from the date when that Party gives to the other Party written notice in substantially the form as set forth in Exhibit H, of the event or circumstances constituting Force Majeure. If the effect of the Force Majeure and full particulars of the cause thereof cannot be reasonably determined within such ten (10) Business Day period, the Party invoking Force Majeure shall be allowed a further ten (10) Business Days (or such longer period as the Parties may agree in writing) to provide such full particulars, in substantially the form set forth as Exhibit H, to the other Party.

- (c) The Party invoking Force Majeure shall use Commercially Reasonable Efforts to remedy the situation and remove, so far as possible and with reasonable dispatch, the Force Majeure, but settlement of strikes, lockouts and other labour disturbances shall be wholly within the discretion of the Party involved. Where the Supplier invokes Force Majeure, the Supplier shall: (i) provide to the Buyer information and documentation confirming to the satisfaction of the Buyer, acting reasonably, that such Commercially Reasonable Efforts were used, and (ii) represent and warrant that such information and documentation are true, complete and accurate in all material respects and that no material information is omitted that would make such information or documentation misleading or inaccurate.
- (d) The Party invoking Force Majeure shall give prompt written notice of the termination of the event of Force Majeure, provided that such notice shall be given within ten (10) Business Days of the termination of the event or circumstances constituting Force Majeure.
- (e) Nothing in this Section 11.1 shall relieve a Party of its obligations to make payments of any amounts that were due and owing before the occurrence of the Force Majeure or that otherwise may become due and payable during any period of Force Majeure.
- (f) If, by reason of Force Majeure, the Supplier is unable to perform or comply with its obligations (other than payment obligations) hereunder for more than an aggregate of thirty-six (36) months in any sixty (60) month period during the Term, then either Party may terminate this Agreement upon notice to the other Party without any costs or payments of any kind to either Party, except for any amounts that were due or payable by a Party hereunder up to the date of termination, and all security shall be returned forthwith.

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11.2 Exclusions

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

- (a) if and to the extent the Party seeking to invoke Force Majeure has caused the applicable event of Force Majeure by its fault or negligence, including the Supplier's failure to procure or maintain fuel supply or delivery services to be utilized by the Facility;
- (b) if and to the extent the Party seeking to invoke Force Majeure has failed to use Commercially Reasonable Efforts to prevent or remedy the event of Force Majeure and remove, so far as possible and within a reasonable time period, the Force Majeure (except in the case of strikes, lockouts and other labour disturbances, the settlement of which shall be wholly within the discretion of the Party involved);
- (c) if and to the extent that the Party seeking to invoke Force Majeure because of arrest or restraint by a Governmental Authority, such arrest or restraint was the result of a breach by such Party of Laws and Regulations;
- (d) if the Force Majeure was caused by a lack of funds or other financial cause;
- (e) if the System Operator amends the schedule of Planned Outages for the Facility as set out in the Annual Operating Plan;
- (f) if the Party invoking Force Majeure fails to comply with the notice provisions in Sections 11.1(b) or 11.1(d);
- (g) in respect of any impacts of the COVID-19 pandemic or the Russo-Ukrainian military conflict that were known or ought reasonably to be known by the Supplier, in each case, based on their magnitude, scope and geographic scale as of the Contract Date;
- (h) if the demand for Electricity or Capacity Products in the Province of Ontario is reduced in any material respect;
- (i) if and to the extent the Party is seeking to invoke Force Majeure as a result of the failure of performance of any other third party (including contractors or subcontractors) that is or was a direct or indirect vendor, materials supplier, service provider, transportation carrier, or other supplier, or customer, to or of such Party, unless such failure of performance of such third party was itself directly caused by an event that would be considered an event of Force Majeure under this Agreement, mutatis mutandis; or
- (j) if and to the extent the Party is seeking to invoke Force Majeure because of its inability to obtain any consent, amendment or other approval of the Buyer pursuant to the terms of this Agreement.

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For greater certainty, actions of the Buyer that are not actions of the System Operator shall not constitute Force Majeure.

11.3 Definition of Force Majeure

For the purposes of this Agreement, the term “**Force Majeure**” means any act, event, cause or condition that prevents a Party from performing its obligations (other than payment obligations) hereunder or prevents the Supplier from achieving Commercial Operation by the Milestone Date for Commercial Operation, but only if and to the extent the impact of such act, event, cause or condition on the affected Party could not reasonably have been anticipated as at the Contract Date and is beyond the affected Party’s reasonable control, including:

- (a) acts of God, including extreme wind, ice, lightning or other storms, earthquakes, tornadoes, hurricanes, cyclones, landslides, drought, floods and washouts;
- (b) fires or explosions;
- (c) local, regional or national states of emergency;
- (d) strikes and other labour disputes, other than legal strikes or labour disputes by employees or personnel of (i) such Party, or (ii) a third party contractor of such Party, unless, in either such case, such strikes or other labour disputes are the result or part of a general industry strike or labour dispute;
- (e) delays or disruptions (including those arising from other events of Force Majeure referred to in this Section 11.3) in the construction of any Transmission System or Distribution System assets that are required for the Facility to Deliver Electricity;
- (f) delays or disruptions (including those arising from other events of Force Majeure referred to in this Section 11.3) in fuel supply (whether such Force Majeure event is in respect of a Party or a third party);
- (g) civil disobedience or disturbances, war (whether declared or not), acts of sabotage, blockades, insurrections, terrorism, revolution, riots or epidemics;
- (h) an order, judgment, legislation, ruling or direction by Governmental Authorities restraining a Party, provided that the affected Party has not applied for or assisted in the application for and has used Commercially Reasonable Efforts to oppose said order, judgment, legislation, ruling or direction;
- (i) any inability, despite the use of Commercially Reasonable Efforts, to obtain, or to secure the renewal or amendment of, any permit, certificate, impact assessment, licence or approval of any Governmental Authority, Transmitter or LDC required to perform or comply with any obligation under this Agreement, excluding, for certainty, inability to obtain a Municipal Support Resolution or a Blanket Municipal Support Resolution in accordance with Section 2.14, unless the revocation or modification of any such necessary permit, certificate, impact assessment, licence or approval was caused by the violation of the terms thereof or consented to by the Party invoking Force Majeure;

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- (j) following the Commercial Operation Date, any unanticipated maintenance or Outage affecting the Facility:
- (i) which is not identified in the Supplier's then current schedule of Planned Outages submitted to the Buyer in advance of the occurrence of an event of Force Majeure referred to in any other subsection of this Section 11.3, and
 - (ii) which results directly from, or is scheduled or planned directly as a consequence of, an event of Force Majeure referred to in any other subsection of this Section 11.3, or which results from a failure of equipment that prevents the Facility from producing Electricity, provided that:
 - (A) notice of the unanticipated maintenance or Outage is provided to the Buyer by the Supplier concurrently, or as soon as reasonably possible thereafter, with the notice in respect thereof provided to the System Operator under the IESO Market Rules but, in any event, within ten (10) Business Days thereof;
 - (B) the Supplier provides notice to the Buyer immediately, or as soon as reasonably possible thereafter, upon receipt from the System Operator of advance acceptance or other proposed scheduling or approval of such maintenance or outage, if such approval is required to be obtained from the System Operator;
 - (C) the Supplier provides timely updates to the Buyer of the commencement date of the maintenance or outage and, where possible, provides seven (7) days advance notice of such date;
 - (D) the unanticipated maintenance or Outage is commenced within one hundred and twenty (120) days of the commencement of the occurrence of the relevant event of Force Majeure; and
 - (E) the Supplier schedules the unanticipated maintenance or outage in accordance with Good Engineering and Operating Practices.

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

ARTICLE 12 LENDER'S RIGHTS

12.1 Lender Security

Notwithstanding Section 16.5, the Supplier, from time to time on or after the date of execution of this Agreement shall have the right, at its cost, to enter into a Secured Lender's Security

Agreement. For the avoidance of doubt, in the case of a deed of trust or similar instrument securing bonds or debentures where the trustee holds security on behalf of, or for the benefit of, other lenders, only the trustee shall be entitled to exercise the rights and remedies under the Secured Lender's Security Agreement as the Secured Lender on behalf of the lenders. A Secured Lender's Security Agreement shall be based upon and subject to the following conditions:

- (a) A Secured Lender's Security Agreement may be made in respect of obligations for any amounts and subject to any terms (including terms of applicable loans, interest rates, payment terms and prepayment privileges or restrictions) as desired by the Supplier, except as otherwise provided in this Agreement. A Secured Lender's Security Agreement may secure any indebtedness, liability or obligation of the Supplier, whether exclusively related to the Facility or otherwise, and may cover any real or personal property in addition to the Supplier's Interest. For greater certainty, a Secured Lender's Security Agreement may cover shares or partnership interests in the capital of the Supplier.
- (b) The Buyer shall have no liability whatsoever for payment of the principal sum secured by any Secured Lender's Security Agreement, or any interest accrued thereon or any other sum secured thereby or accruing thereunder; and the Secured Lender shall not be entitled to seek any damages against the Buyer for any or all of the same.
- (c) No Secured Lender's Security Agreement shall be recognized by the Buyer or give rise to any rights hereunder in the enforcement of the Buyer's rights and remedies provided in this Agreement or by Laws and Regulations, unless and until an electronic copy thereof and the registration details, if applicable, together with written notice of the address of the Secured Lender to which notices may be sent have been delivered to the Buyer by the Supplier or the Secured Lender; and in the event of an assignment of such Secured Lender's Security Agreement, such assignment shall not be recognized by the Buyer or establish any rights hereunder in favour of such assignee unless and until a copy thereof and the registration details, if applicable, together with written notice of the address of the assignee thereof to which notices may be sent, have been delivered to the Buyer by the Supplier or the Secured Lender.
- (d) If the Supplier is in default under or pursuant to the Secured Lender's Security Agreement and the Secured Lender intends to exercise any rights afforded to the Secured Lender under this Agreement, then the Secured Lender shall give written notice of such default to the Buyer at least ten (10) Business Days prior to exercising any such rights.
- (e) Any Secured Lender's Security Agreement permitted hereunder may secure two (2) or more separate debts, liabilities or obligations in favour of two (2) or more separate Secured Lenders, provided that such Secured Lender's Security Agreement complies with the provisions of this Article 12.

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- (f) Any number of permitted Secured Lender's Security Agreements may be outstanding at any one time, provided that each such Secured Lender's Security Agreement complies with the provisions of this Article 12.
- (g) All rights acquired by a Secured Lender under any Secured Lender's Security Agreement shall be subject to all of the provisions of this Agreement, including the restrictions on assignment contained herein. While any Secured Lender's Security Agreement is outstanding, the Buyer and the Supplier shall not amend or supplement this Agreement or agree to a termination of this Agreement without the consent of the Secured Lender, which consent shall not be unreasonably withheld, conditioned, or delayed. A Secured Lender must respond within a reasonable period of time to any request to amend or supplement this Agreement.
- (h) Despite any enforcement of any Secured Lender's Security Agreement, the Supplier shall remain liable to the Buyer for the payment of all sums owing to the Buyer under this Agreement and for the performance of all of the Supplier's obligations under this Agreement.

12.2 Rights and Obligations of Secured Lenders

While any Secured Lender's Security Agreement remains outstanding, and if the Buyer has received the notice referred to in Section 12.1(c) and the contents thereof are embodied in the agreement entered into by the Buyer in accordance with Section 12.3, the following provisions shall apply:

- (a) No Supplier Event of Default (other than those referenced in Section 10.2(c)) shall be grounds for the termination by the Buyer of this Agreement until:
 - (i) any notice required to be given under Section 10.1 and Section 10.2(a) has been given to the Supplier and to the Secured Lender; and
 - (ii) the cure period set out in Section 12.2(b) has expired without a cure having been completed and without the Secured Lender having taken the actions therein contemplated.
- (b) In the event the Buyer has given any notice required to be given under Section 10.1, the Secured Lender shall, within the applicable cure period (including any extensions), if any, have the right (but not the obligation) to cure such default, and the Buyer shall accept such performance by such Secured Lender as if the same had been performed by the Supplier.
- (c) Any payment to be made or action to be taken by a Secured Lender hereunder as a prerequisite to keeping this Agreement in effect shall be deemed properly to have been made or taken by the Secured Lender if such payment is made or action is taken by a nominee or agent of the Secured Lender or a receiver or receiver and manager appointed by or on the application of the Secured Lender.

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- (d) A Secured Lender shall be entitled to the Supplier's rights and benefits contained in this Agreement and shall become liable for the Supplier's obligations solely as provided in Section 12.2(e). A Secured Lender may, subject to the provisions of this Agreement, enforce any Secured Lender's Security Agreement and acquire the Supplier's Interest in any lawful way and, without limitation, a Secured Lender or its nominee or agent or a receiver or receiver and manager appointed by or on the application of the Secured Lender, may take possession of and manage the Facility and, upon foreclosure, or without foreclosure upon exercise of any contractual or statutory power of sale under such Secured Lender's Security Agreement, may sell or assign the Supplier's Interest with the consent of the Buyer as required under Section 12.2(f).
- (e) Until a Secured Lender (i) forecloses or has otherwise taken ownership of the Supplier's Interest or (ii) has taken possession or control of the Supplier's Interest, whether directly or by an agent as a mortgagee in possession, or a receiver or receiver and manager has taken possession or control of the Supplier's Interest by reference to the Secured Lender's Security Agreement, the Secured Lender shall not be liable for any of the Supplier's obligations or be entitled to any of the Supplier's rights and benefits contained in this Agreement, except by way of security. If the Secured Lender itself or by a nominee or agent, or a receiver or a receiver and manager appointed by or on the application of the Secured Lender, is the owner or is in control or possession of the Supplier's Interest, then the entity that is the owner or is in control or possession of the Supplier's Interest shall be bound by all of the Supplier's obligations. Once the Secured Lender or such other Person goes out of possession or control of the Supplier's Interest or transfers the Supplier's Interest in accordance with this Agreement to another Person, the Secured Lender shall cease to be liable for any of the Supplier's obligations and shall cease to be entitled to any of the Supplier's rights and benefits contained in this Agreement, except, if the Secured Lender's Security Agreement remains outstanding, by way of security.
- (f) Despite anything else contained in this Agreement, the Secured Lender shall not transfer, sell or dispose of the Supplier's Interest or any other interest in the Facility or shares or partnership interests in the capital of the Supplier (or that of its general partner(s) in the case of a Supplier that is a partnership) to any Person unless such transferee takes the Supplier Interest or other applicable interest subject to the Supplier's obligations pursuant to this Agreement. No transfer shall be effective unless the Buyer:
- (i) acting reasonably, if such transferee is at Arm's Length with the Secured Lender; or
 - (ii) acting in its sole and subjective discretion, if such transferee is not at Arm's Length with the Secured Lender,

has approved of the transferee and the transferee has entered into an agreement with the Buyer in form and substance satisfactory to the Buyer, acting reasonably,

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wherein the transferee agrees to assume and to perform the obligations of the Supplier in respect of the Supplier's Interest, whether arising before or after the transfer, and including the posting of the Completion and Performance Security required under Article 6, and in the case of a transfer 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), be subject to Section 16.6.

- (g) In the event of the termination of this Agreement prior to the end of the Term due to a Supplier Event of Default, the Buyer shall, within twenty (20) Business Days after the date of such termination, deliver to each Secured Lender which is at Arm's Length with the Supplier a statement of all sums then known to the Buyer that would at that time be due under this Agreement but for the termination and a notice to each such Secured Lender stating that the Buyer is willing to enter into a New Agreement (the "**Buyer Statement**"). Subject to the provisions of this Article 12, each such Secured Lender or its transferee approved by the Buyer pursuant to Section 12.2(f) hereof shall thereupon have the option to obtain from the Buyer a New Agreement in accordance with the following terms:
- (i) Upon receipt of the written request of the Secured Lender within thirty (30) days after the date on which it received the Buyer Statement, the Buyer shall enter into a New Agreement.
- (ii) Such New Agreement shall be effective as of the Termination Date and shall be for the remainder of the Term at the time this Agreement was terminated and otherwise upon the terms contained in this Agreement. The Buyer's obligation to enter into a New Agreement is conditional upon the Secured Lender (A) paying all sums that would, at the time of the execution and delivery thereof, be due under this Agreement but for such termination, (B) otherwise fully curing any defaults under this Agreement existing immediately prior to termination of this Agreement that are capable of being cured, and (C) paying all reasonable costs and expenses, including legal fees, so as to provide a full indemnity (and not only substantial indemnity), incurred by the Buyer in connection with such default and termination, and the preparation, execution and delivery of such New Agreement and related agreements and documents, provided, however, that with respect to any default that could not be cured by such Secured Lender until it obtains possession, such Secured Lender or its transferee approved by the Buyer pursuant to Section 12.2(f) hereof, as the case may be, shall have the applicable cure period commencing on the date that it obtains possession to cure such default.

When the Secured Lender has appointed an agent, a receiver or a receiver and manager or has obtained a court-appointed receiver or receiver and manager for the purpose of enforcing the Secured Lender's security, that Person may exercise any of the Secured Lender's rights under this Section 12.2(g).

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- (h) Despite anything to the contrary contained in this Agreement, the provisions of this Article 12 shall enure only to the benefit of the holders of a Secured Lender's Security Agreement. If the holders of more than one such Secured Lender's Security Agreement who are at Arm's Length with the Supplier make written requests to the Buyer in accordance with this Section 12.2 to obtain a New Agreement, the Buyer shall accept the request of the holder whose Secured Lender's Security Agreement had priority pursuant to Laws and Regulations immediately prior to the termination of this Agreement over the Secured Lender's Security Agreements of the other Secured Lenders making such requests and thereupon the written request of each other Secured Lender shall be deemed to be void. In the event of any dispute or disagreement as to the respective priorities of any such Secured Lender's Security Agreement, the Buyer may rely upon the opinion as to such priorities of any law firm qualified to practice law in the Province of Ontario retained by the Buyer in its unqualified subjective discretion or may apply to a court of competent jurisdiction for a declaration as to such priorities, which opinion or declaration shall be conclusively binding upon all parties concerned.

12.3 Cooperation

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

ARTICLE 13 DISCRIMINATORY ACTION

13.1 Discriminatory Action

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

- (a) the Legislative Assembly of Ontario:
 - (i) causes to come into force any statute that was introduced as a bill in the Legislative Assembly of Ontario or the Government of Ontario causes to come into force or makes any order-in-council or regulation first having legal effect on or after the Contract Date; or
 - (ii) directly or indirectly amends this Agreement without the agreement of the Supplier;

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- (b) the effect of the action referred to in Section 13.1(a):
 - (i) is borne principally by the Supplier; or
 - (ii) is borne principally by the Supplier and one or more Other Suppliers; and
- (c) the action referred to in Section 13.1(a) directly reduces or precludes payments otherwise due to the Supplier hereunder or has the effect of increasing the costs that the Supplier would reasonably be expected to incur in respect of the development, construction, operation and maintenance of the Facility hereunder, including costs related to satisfy the Must-Offer Obligation, except where such action is in response to any act or omission on the part of the Supplier that is contrary to Laws and Regulations (other than an act or omission rendered illegal by virtue of such action) or such action is permitted under this Agreement. Despite the preceding sentence, none of the following shall be a Discriminatory Action:
 - (i) Laws and Regulations of general application, including an increase of Taxes of general application, or any action of the Government of Ontario pursuant thereto;
 - (ii) any such statute that prior to five (5) Business Days prior to the Contract Date:
 - (A) has been introduced as a bill in the Legislative Assembly of Ontario in a similar form as such statute takes when it has legal effect, provided that any amendments made to such bill in becoming such statute do not have a Material Adverse Effect on the Supplier; or
 - (B) has been made public in a discussion or consultation paper, press release or announcement issued by the Buyer, the Government of Ontario, and/or the Ministry of Energy that appeared on the Buyer's Website or the website of the Government of Ontario and/or the Ministry of Energy, provided that any amendments made to such public form, in becoming such statute, do not have a Material Adverse Effect on the Supplier; and
 - (iii) any of such regulations that prior to five (5) Business Days prior to the Contract Date:
 - (A) have been published in the Ontario Gazette but by the terms of such regulations come into force on or after five (5) Business Days prior to the Contract Date, or
 - (B) have been referred to in a press release issued by the Buyer, the Government of Ontario and/or the Ministry of Energy that

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appeared on the website of the Government of Ontario or the Ministry of Energy, provided that any amendments made to such regulations in coming into force do not have a Material Adverse Effect on the Supplier.

13.2 Consequences of Discriminatory Action

If a Discriminatory Action occurs, the Supplier shall have the right to obtain, without duplication, compensation (the “**Discriminatory Action Compensation**”) from the Buyer for the amount of the payments otherwise due to the Supplier hereunder that are reduced or precluded as a result of the Discriminatory Action or the increase in the costs that the Supplier would reasonably be expected to incur to satisfy the Must-Offer Obligation as a result of the occurrence of such Discriminatory Action, commencing on the first day of the first calendar month following the date of the Discriminatory Action and ending at the expiry of the Term, but excluding the portion of any costs charged by a Person who does not deal at Arm’s Length with the Supplier that is in excess of the costs that would have been charged had such Person been at Arm’s Length with the Supplier.

13.3 Notice of Discriminatory Action

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

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

- (b) If the Buyer wishes to dispute the occurrence of a Discriminatory Action, the Buyer shall give a notice of dispute (the “**Notice of Dispute**”) to the Supplier,

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stating the grounds for such dispute, within thirty (30) days after the date of receipt of the Notice of Discriminatory Action or within thirty (30) days after the date of receipt of the further supporting particulars, as applicable.

- (c) If neither the Notice of Discriminatory Action nor the Notice of Dispute has been withdrawn within thirty (30) days after the date of receipt of the Notice of Dispute by the Supplier, the dispute of the occurrence of a Discriminatory Action shall be submitted to mandatory and binding arbitration in accordance with Section 16.2 without first having to comply with Section 16.1.
- (d) If the Buyer does not dispute the occurrence of a Discriminatory Action or the amount of Discriminatory Action Compensation claimed in the Notice of Discriminatory Action, the Buyer shall pay to the Supplier the amount of Discriminatory Action Compensation claimed within sixty (60) days after the date of receipt of the Notice of Discriminatory Action. If a Notice of Dispute has been given, the Buyer shall pay to the Supplier the Discriminatory Action Compensation Amount determined in accordance with Section 13.3(e) not later than sixty (60) days after the later of the date on which the dispute with respect to the occurrence of a Discriminatory Action is resolved and the date on which the Discriminatory Action Compensation Amount is determined.
- (e) Discriminatory Action Compensation Notice
 - (i) If the Buyer wishes to dispute the amount of the Discriminatory Action Compensation, the Buyer shall give to the Supplier a notice (the “**Discriminatory Action Compensation Notice**”) setting out an amount that the Buyer proposes as the Discriminatory Action Compensation (the “**Discriminatory Action Compensation Amount**”), if any, together with details of the computation. If the Supplier does not give notice (the “**Supplier Non-acceptance Notice**”) to the Buyer stating that it does not accept the Discriminatory Action Compensation Amount proposed within thirty (30) days after the date of receipt of the Discriminatory Action Compensation Notice, the Supplier shall be deemed to have accepted the Discriminatory Action Compensation Amount so proposed. If the Supplier Non-acceptance Notice is given, the Buyer and the Supplier shall attempt to determine the Discriminatory Action Compensation Amount through negotiation, and any amount so agreed in writing shall be the Discriminatory Action Compensation Amount. If the Buyer and the Supplier do not agree in writing upon the Discriminatory Action Compensation Amount within sixty (60) days after the date of receipt of the Supplier Non-acceptance Notice, the Discriminatory Action Compensation Amount shall be determined in accordance with the procedure set forth in Section 13.3(e)(ii) and Sections 16.1 and 16.2 shall not apply to such determination.
 - (ii) If the negotiation described in Section 13.3(e)(i) does not result in an agreement in writing on the Discriminatory Action Compensation

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Amount, either the Buyer or the Supplier may, after the later of (A) the date on which a dispute with respect to the occurrence of a Discriminatory Action is resolved and (B) the date of the expiry of a period of thirty (30) days after the date of receipt of the Supplier Non-acceptance Notice, by notice to the other require the dispute to be resolved by arbitration as set out below. The Buyer and the Supplier shall, within thirty (30) days after the date of receipt of such notice of arbitration, jointly appoint a valuator to determine the Discriminatory Action Compensation Amount. The valuator so appointed shall be a duly qualified business valuator where the individual responsible for the valuation has not less than ten (10) years' experience in the field of business valuation. If the Buyer and the Supplier are unable to agree upon a valuator within such period, the Buyer and the Supplier shall jointly make application (provided that if a Party does not participate in such application, the other Party may make application alone) under the *Arbitration Act, 1991* (Ontario) to a judge of the Superior Court of Justice to appoint a valuator, and the provisions of the *Arbitration Act, 1991* (Ontario) shall govern such appointment. The valuator shall determine the Discriminatory Action Compensation Amount within sixty (60) Business Days after the date of his or her appointment. Pending a decision by the valuator, the Buyer and the Supplier shall share equally, and be responsible for their respective shares of, all fees and expenses of the valuator. The fees and expenses of the valuator shall be paid by the non-prevailing party. "Prevailing Party" means the Party whose determination of the Discriminatory Action Compensation Amount is most nearly equal to that of the valuator's determination. The Supplier's and the Buyer's respective determinations of the Discriminatory Action Compensation Amount shall be based upon the Notice of Discriminatory Action and the Discriminatory Action Compensation Notice, as applicable.

- (iii) In order to facilitate the determination of the Discriminatory Action Compensation Amount by the valuator, each of the Buyer and the Supplier shall provide to the valuator such information as may be requested by the valuator, acting reasonably, and the Supplier shall permit the valuator and the valuator's representatives to have reasonable access during normal business hours to such information and to take extracts therefrom and to make copies thereof.
- (iv) The Discriminatory Action Compensation Amount as determined by the valuator shall be final and conclusive and not subject to any appeal.
- (f) Any amount to be paid under Section 13.3(d) shall bear interest at a variable nominal rate per annum equal on each day to the Interest Rate then in effect from the date of receipt of the Notice of Discriminatory Action to the date of payment.
- (g) Payment of the Discriminatory Action Compensation and interest thereon by the Buyer to the Supplier shall constitute full and final satisfaction of all amounts that

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may be claimed by the Supplier for and in respect of the occurrence of the Discriminatory Action and, upon such payment, the Buyer shall be released and forever discharged by the Supplier from any and all liability in respect of such Discriminatory Action.

13.4 Right of the Buyer to Remedy or Cause to be Remedied a Discriminatory Action

If the Buyer wishes to remedy or cause to be remedied the occurrence of a Discriminatory Action, the Buyer must give notice to the Supplier within thirty (30) days after the later of the date of receipt of the Notice of Discriminatory Action and the date of the receipt by the Buyer of the further supporting particulars referred to in Section 13.3(a). If the Buyer gives such notice, the Buyer must remedy or cause to be remedied the Discriminatory Action within one hundred and eighty (180) days after the date of receipt of the Notice of Discriminatory Action or, if a Notice of Dispute has been given, within one hundred and eighty (180) days after the date of the final award pursuant to Section 16.2 to the effect that a Discriminatory Action occurred. If the Buyer remedies or causes to be remedied the Discriminatory Action in accordance with the preceding sentence, the Supplier shall have the right to obtain, without duplication, the amount that the Supplier would have the right to claim in respect of that Discriminatory Action pursuant to Section 13.2, adjusted to apply only to the period commencing on the first day of the first calendar month following the date of the Discriminatory Action and expiring on the day preceding the day on which the Discriminatory Action was remedied.

ARTICLE 14 LIABILITY AND INDEMNIFICATION

14.1 Exclusion of Consequential Damages

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

14.2 Liquidated Damages

Nothing in this Article shall reduce a Party's claim for liquidated damages pursuant to Sections 2.3(c), 2.4(b), 3.1(b), or 6.2(b)(iii). The Supplier acknowledges and agrees with the Buyer that the actual damages incurred by the Buyer and Electricity consumers as a result of a failure by the Supplier to meet its obligations under this Agreement are impossible to definitively quantify and the Supplier further agrees that the payment of the liquidated damages set forth in this Agreement constitutes a fair and reasonable means of compensating the Buyer for damages likely to be incurred as a result of such delays and does not constitute a penalty.

14.3 Buyer Indemnification

In addition to the indemnity provided by the Supplier in Section 2.6(c), the Supplier shall indemnify, defend and hold the Buyer, the System Operator, the Government of Ontario, the

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members of the Government of Ontario's Executive Council, and their respective Affiliates, and each of the foregoing Persons' respective directors, officers, employees, shareholders, advisors, and agents (including contractors and their employees) (collectively, the "**Indemnitees**") harmless from and against any and all claims, demands, suits, losses, damages, liabilities, penalties, obligations, payments, costs and expenses and accrued interest thereon (including the costs and expenses of, and accrued interest on, any and all actions, suits, proceedings for personal injury (including death) or property damage, assessments, judgments, settlements and compromises relating thereto and reasonable lawyers' fees and reasonable disbursements in connection therewith) (each, an "**Indemnifiable Loss**"), asserted against or suffered by the Indemnitees relating to, in connection with, resulting from, or arising out of:

- (a) any occurrence or event relating to the Facility, except to the extent that any injury or damage is attributable to the negligence or wilful misconduct of the Indemnitees or the failure of the Indemnitees to comply with Laws and Regulations; or
- (b) any breach by the Supplier of any representations, warranties, and covenants contained in this Agreement, except to the extent that any injury or damage is attributable to the negligence or wilful misconduct of the Indemnitees.

For greater certainty, in the event of contributory negligence or other fault of the Indemnitees, then such Indemnitees shall not be indemnified hereunder in the proportion that the Indemnitees' negligence or other fault contributed to any Indemnifiable Loss.

14.4 Defence of Claims

- (a) Promptly after receipt by the Indemnitees of any Claim or notice of the commencement of any action, administrative or legal proceeding, or investigation as to which the indemnity provided for in Section 14.3 may apply, the Buyer shall notify the Supplier in writing of such fact. The Supplier shall assume the defence thereof with counsel designated by the Supplier and satisfactory to the affected Indemnitees, acting reasonably; provided, however, that if the defendants in any such action include both the Indemnitees and the Supplier and the Indemnitees shall have reasonably concluded that there may be legal defences available to them which are different from or additional to, or inconsistent with, those available to the Supplier, the Indemnitees shall have the right to select separate counsel satisfactory to the Supplier acting reasonably (at no additional cost to the Indemnitees) to participate in the defence of such action on behalf of the Indemnitees. The Supplier shall promptly confirm that it is assuming the defence of the Indemnitees by providing written notice to the Indemnitees. Such notice shall be provided no later than five (5) days prior to the deadline for responding to any Claim relating to any Indemnifiable Loss.
- (b) Should any of the Indemnitees be entitled to indemnification under Section 14.3 as a result of a Claim by a third party, and the Supplier fails to assume the defence of such Claim (which failure shall be assumed if the Supplier fails to provide the notice prescribed by Section 14.4(a)), the Indemnitees shall, at the expense of the

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

ARTICLE 15

CONTRACT OPERATION AND ADMINISTRATION

15.1 Company Representative

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

15.2 Record Retention; Audit Rights and Obligations

- (a) The Supplier and the Buyer shall both keep complete and accurate records and all other data required by either of them for the purpose of proper administration of this Agreement and related to the Facility in Ontario, Canada. All such records shall be maintained as required by Laws and Regulations but for no less than for seven (7) years after the creation of the record or data.
- (b) The Supplier and the Buyer, on a confidential basis as provided for in Article 8 of this Agreement, shall provide reasonable access to the relevant and appropriate financial and operating records and data kept by it relating to this Agreement reasonably required for the other Party to comply with its obligations to Governmental Authorities or to verify or audit billings or to verify or audit information provided in accordance with this Agreement. A Party may use its own employees for purposes of any such review of records provided that those employees are bound by the confidentiality requirements provided for in Article 8. Alternatively, a Party may at its own expense appoint an auditor to conduct its audit. The Party seeking access to such records in this manner shall pay the fees and expenses associated with use of the third party auditor.

15.3 Reports to the Buyer

- (a) The Supplier shall deliver to the Buyer a copy of all reports, plans and notices that the Supplier is required to provide under the IESO Market Rules with respect to

Outages, at the same time or within one (1) Business Day after such reports, plans and notices are delivered by the Supplier under the IESO Market Rules.

- (b) In addition to the documentation provided in Section 15.3(a):
- (i) where the Facility is a Non-Electricity Storage Facility, the Supplier may, as part of its delivery of the Annual Operating Plan as set out in Section 15.3(b)(ii) designate either:
 - (A) one (1) of the calendar months of April, May, October or November in the subsequent Contract Year (unless otherwise directed or requested by the System Operator in accordance with the IESO Market Rules) in which it will conduct a Planned Outage for the purposes of annual planned maintenance with a duration of at least ten (10) consecutive Business Days (any such designated single calendar month, a “**Sole Annual Planned Maintenance Month**”); or
 - (B) two (2) of the calendar months of April, May, October or November in the subsequent Contract Year (unless otherwise directed or requested by the System Operator in accordance with the IESO Market Rules) in which it will conduct a Planned Outage for the purposes of annual planned maintenance with a duration of at least five (5) consecutive Business Days (any of such two (2) designated calendar months, a “**Split Annual Planned Maintenance Month**”);
 - (ii) the Supplier shall, no later than sixty (60) days prior to Commercial Operation Date, and thereafter prior the commencement of any subsequent Contract Year, provide to the Buyer an annual operating plan for the Facility for the succeeding Contract Year, in the form set out in Exhibit L (the “**Annual Operating Plan**”). The Annual Operating Plan shall include a schedule of Planned Outages for that twelve (12) month period (together with the Supplier’s estimate of the expected duration of each Planned Outage) which shall be consistent with Good Engineering and Operating Practices and, to the extent the Supplier is required to do so by the IESO Market Rules, coordinated with and approved by the System Operator. The Supplier may, on not less than ten (10) Business Days’ prior notice to the Buyer, amend the Annual Operating Plan and its schedule of Planned Outages, provided that where the System Operator directs the Supplier to amend its schedule of Planned Outages on less than ten (10) Business Days’ prior notice, the Supplier shall make the corresponding amendments to its Annual Operating Plan and shall provide the Buyer with notice of such amendment within two (2) Business Days of receipt of any such direction from the System Operator; and

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- (iii) the Supplier shall provide prompt notice to the Buyer of (A) any Outage, (B) Planned Outage (in accordance with the Annual Operating Plan), or (C) any anticipated Outage other than a Planned Outage, in each case utilizing the form attached as Exhibit S, followed thereafter by a subsequent notice, to be delivered as soon as reasonably practicable, which subsequent notice shall include a statement of the cause of such Outage, the proposed corrective action and the Supplier's estimate of the expected duration of such Outage. The Supplier shall use Commercially Reasonable Efforts to promptly end or reduce the length of such Outage.
- (c) All Outages shall take place in accordance with the notices of Outages provided by the Supplier to the Buyer under this Section 15.3, provided that where the System Operator directs the Supplier to amend its schedule of Planned Outages on less than ten (10) Business Days' prior notice, the Supplier shall follow such direction and provide notice of any changes to the Buyer within two (2) Business Days of receipt of such direction from the System Operator.

15.4 Inspection of Facility

- (a) The Buyer's representatives shall, at all times upon two (2) Business Days' prior notice, at any time after the Contract Date, have access to the Facility and every part thereof during regular business hours and the Supplier shall, and shall cause all personnel operating and managing the Facility, to furnish the Buyer with all reasonable assistance in inspecting the Facility for the purpose of ascertaining compliance with this Agreement; provided that such access and assistance shall be carried out in accordance with and subject to the reasonable safety and security requirements of the Supplier and all personnel operating and managing the Facility, as applicable, and shall not interfere with the operation of the Facility.
- (b) The inspection of the Facility by or on behalf of the Buyer shall not relieve the Supplier of any of its obligations to comply with the terms of this Agreement. No Supplier Event of Default will be waived or deemed to have been waived by any inspection by or on behalf of the Buyer. In no event will any inspection by the Buyer hereunder be a representation that there has been or will be compliance with this Agreement and Laws and Regulations.

15.5 Inspection Not Waiver

- (a) Failure by the Buyer to inspect the Facility or any part thereof under Section 15.4, or to exercise its audit rights under Section 15.2, shall not constitute a waiver of any of the rights of the Buyer hereunder. An inspection or audit not followed by a notice of a Supplier Event of Default shall not constitute or be deemed to constitute a waiver of any Supplier Event of Default, nor shall it constitute or be deemed to constitute an acknowledgement that there has been or will be compliance by the Supplier with this Agreement.

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

15.6 Capacity Check Tests

(a) Right to Request Capacity Check Test.

- (i) The Buyer shall have the option, exercisable on no more than one (1) occasion per Season, upon providing written notice to the Supplier (a **“Capacity Check Test Notice”**), to require the Supplier in respect of any Facility, provided it is not during an Outage, to conduct a test at any time during Qualifying Hours within the Capacity Check Test Window, at the Supplier’s sole cost and expense, that may be witnessed by the Buyer or its Representative, to confirm the ability of the Facility to Deliver Electricity from one hundred percent (100%) of the Monthly Contract Capacity, as described below (the **“Capacity Check Test”**).
- (ii) The test window for the Capacity Check Test shall be any time during Qualifying Hours in the ten (10) consecutive Business Day period following the delivery of the Capacity Check Test Notice, provided that ambient temperature conditions, as reported at the Environment Canada weather station that is physically nearest to the Facility, do not to exceed +35 degrees Celsius in the Summer or fall below -20 degrees Celsius in the Winter for more than fifty percent (50%) of Qualifying Hours (the **“Capacity Check Test Window”**). In the event that ambient temperature conditions, as reported at the Environment Canada weather station that is physically nearest to the Facility, exceed +35 degrees Celsius in the Summer or fall below -20 degrees Celsius in the Winter for more than fifty percent (50%) of Qualifying Hours in the ten (10) consecutive Business Days following the Capacity Check Test Notice, the Capacity Check Test Window shall be automatically extended until such time as there have been ten (10) Business Days (in aggregate) since the delivery of the Capacity Check Test Notice where ambient temperature conditions, as reported at the Environment Canada weather station that is physically nearest to the Facility, did not exceed +35 degrees Celsius in the Summer or fall below -20 degrees Celsius in the Winter for more than fifty percent (50%) of Qualifying Hours.
- (iii) The measurements of the Capacity Check Test shall be made using high accuracy calibrated instruments and recording systems or Facility instrumentation, including tariff meters for Electricity acceptable to the Buyer, acting reasonably and in accordance with the Metering Plan. Each Capacity Check Test consists of the Facility Delivering Electricity for at

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least the number of contiguous five (5) minute intervals during Qualifying Hours that is equal to the lesser of (A) the Duration Capability, and (B) such shorter period as the Buyer may determine, in its discretion and which is set out by the Buyer in the Capacity Check Test Notice (the “CCT Duration”) during a period designated by the Supplier on prior written notice to the Buyer in advance as a test period, subject to coordination and scheduling under the IESO Market Rules, and shall be evaluated based on a calculation of the generator Electricity output at the Delivery Points net of any Station Service Loads in accordance with the Metering Plan. The Supplier acknowledges and agrees that the Monthly Contract Capacity, the Electricity output of the Facility and the Station Service Loads, as may be measured by the Capacity Check Test, shall not be adjusted for ambient weather conditions.

(b) **Optional Re-Performance of a Capacity Check Test as a result of Force Majeure.**

If a Capacity Check Test is interrupted by an event of Force Majeure, then the Supplier may, at the Supplier’s sole cost and expense, re-perform the Capacity Check Test within ten (10) Business Days after the receipt by the Supplier of the Capacity Confirmation relating to such Capacity Check Test from the Buyer. Notwithstanding the foregoing, where a Capacity Check Test is interrupted by an event of Force Majeure, and the effect of such event of Force Majeure is capable of being remedied within twelve (12) hours, the Buyer shall have the right to require the Supplier to re-perform the Capacity Check Test immediately upon the remedying of the effect of such event of Force Majeure.

(c) **Capacity Check Test Report.**

The Supplier shall at the Supplier’s sole cost and expense and within two (2) Business Days after completion of the Capacity Check Test prepare and submit to the Buyer a written Capacity Check Test report that includes the following:

- (i) date and time (hh:mm) of the start and completion of the Capacity Check Test;
- (ii) list of individuals and their roles who witnessed and conducted the Capacity Check Test;
- (iii) data collection including a period of ten minutes prior to the scheduled start of the Capacity Check Test and a period of ten additional minutes following the Capacity Check Test completion. Data collection, prior to and after the CCT Duration will be used for information and reference only. The raw data is to be provided in .xls format for all meters and include the meter IDs (primary and alternate or secondary meters in accordance with the Metering Plan);
- (iv) meter/instrument calibration certificates; and

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- (v) a summary of conclusions, including an assessment of whether the results of the Capacity Check Test satisfy the requirements set out in Section 15.6(d).

The Buyer shall provide to the Supplier within ten (10) Business Days after receipt of the Capacity Check Test report from the Supplier, written confirmation of the Electricity output for the CCT Duration during the Capacity Check Test (the “**Capacity Confirmation**”).

(d) **Requirements to Pass a Capacity Check Test.**

To pass the Capacity Check Test, the Test Capacity must be equal to or greater than one hundred percent (100%) of the Monthly Contract Capacity, in which case the Capacity Reduction Factor shall, for the purposes of Exhibit J, be an amount equal to 1.0, effective from the date of the Capacity Confirmation in relation to the Capacity Check Test.

(e) **Further Capacity Check Test.**

- (i) If the Supplier has not passed the Capacity Check Test, then the Supplier shall, at the Supplier’s cost and expense, perform a further Capacity Check Test (the “**Further Capacity Check Test**”) within ten (10) Business Days after the receipt by the Supplier of the Capacity Confirmation from the Buyer, on the same terms and conditions as the Capacity Check Test described in Section 15.6(a).
- (ii) For clarity, any Further Capacity Check Test shall not count towards the Buyer’s option to require one (1) Capacity Check Test per Season. If the Test Capacity for each of the Capacity Check Test and the Further Capacity Check Test, as stated in their respective Capacity Confirmations, are both less than eighty-five percent (85%) of the Monthly Contract Capacity, then this shall be considered a Supplier Event of Default.

(f) **Result of Further Capacity Check Test.**

- (i) If the Further Capacity Check Test shows that the Test Capacity was less than one hundred percent (100%) of the Monthly Contract Capacity, then the Capacity Reduction Factor for purposes of Exhibit J shall be reduced as set out below, effective on the date of the Capacity Confirmation in relation to the Further Capacity Check Test.
- (ii) The Capacity Reduction Factor shall be an amount equal to a fraction, the numerator of which is the greater of the Test Capacities resulting from the Capacity Check Test and the Further Capacity Check Test, and the denominator of which is one hundred percent (100%) of the Monthly Contract Capacity applicable to the Capacity Check Test or Further Capacity Check Test, as applicable.

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(g) **Final Capacity Check Test.**

If Section 15.6(f) is applicable, then the Supplier shall perform a further Capacity Check Test (the “**Final Capacity Check Test**”) at the Supplier’s cost and expense within ten (10) Business Days after written notice has been delivered by the Supplier to the Buyer, no earlier than one month and no later than six (6) months after the date of the Capacity Confirmation with respect to the Further Capacity Check Test, failing which this shall be considered to be a Supplier Event of Default. The Final Capacity Check Test shall take place on the same terms and conditions as the Capacity Check Test described in Section 15.6(a) and including the delivery of the Capacity Confirmation in relation to the Final Capacity Check Test. For clarity, any Final Capacity Check Test shall not count towards the Buyer’s option to require one (1) Capacity Check Test per Season. If the Test Capacity of the Final Capacity Check Test, as stated in the Capacity Confirmation with respect to the Final Capacity Check Test:

- (i) is less than eighty-five percent (85%) of the Monthly Contract Capacity, then this shall be considered a Supplier Event of Default;
- (ii) is equal or greater to eighty-five percent (85%) and less than one hundred percent (100%) of the Monthly Contract Capacity which relates to the Final Capacity Check Test, then the Capacity Reduction Factor shall, for the purposes of Exhibit J, be an amount equal to a fraction, the numerator of which is (a) the Test Capacity in relation to the Final Capacity Check Test, and the denominator of which is (b) one hundred percent (100%) of the Monthly Contract Capacity which relates to the Final Capacity Check Test; or
- (iii) is equal to one hundred percent (100%) of the Monthly Contract Capacity which relates to the Final Capacity Check Test, then the Capacity Reduction Factor shall, for the purposes of Exhibit J, be an amount equal to 1.0, effective from the date of the Capacity Confirmation in relation to the Final Capacity Check Test.

15.7 Notices

- (a) All notices pertaining to this Agreement not explicitly permitted to be in a form other than writing shall be in writing and shall be addressed to the other Party as follows: ***[Note to Finalization: To be updated prior to execution.]***

If to the Supplier: [●]

Attention: [●]

E-mail: [●]

If to the Buyer: IESO
120 Adelaide Street West

Suite
Toronto,
M5H 1T1

1600
Ontario

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

Supplier may, by written notice to the Buyer, change its respective Company Representative in accordance with Exhibit D or the address to which notices are to be sent.

- (b) Notice delivered or transmitted as provided above shall be deemed to have been given and received on the day it is received or transmitted, provided that it is received or transmitted on a Business Day prior to 5:00 p.m. local time in the place of receipt. Otherwise such notice shall be deemed to have been given and received on the next following Business Day.
- (c) Any notices of an Event of Default and termination of this Agreement shall be given electronically and then followed by hand or courier delivery.
- (d) No Notice delivered pursuant to this Agreement shall be deemed to be notice for any other purpose, including any obligation to provide notice to the System Operator pursuant to the IESO Market Rules. No Notice to the Buyer shall be deemed delivered unless the addressee of such notice is identified in such notice as “Contract Management”. No notice from the Buyer shall be binding on the Buyer pursuant to this Agreement unless the sender of such notice is identified in such notice as “Contract Management”.

ARTICLE 16 MISCELLANEOUS

16.1 Informal Dispute Resolution

If either Party considers that a dispute has arisen under or in connection with this Agreement that the Parties cannot resolve, then such Party may deliver a notice to the other Party describing the nature and the particulars of such dispute. Within ten (10) Business Days following delivery of such notice to the other Party, a senior executive (Vice-President or higher) from each Party shall meet, either in person or by telephone (the “**Senior Conference**”), to attempt to resolve the dispute. The Parties shall use Commercially Reasonable Efforts to cause their respective senior executives attending a Senior Conference to be informed with all relevant background information in respect of the dispute and to be prepared to propose a resolution to the dispute. If, following the Senior Conference, the dispute is not resolved, the dispute may be settled by arbitration pursuant to Section 16.2, if agreed to by both Parties.

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16.2 Arbitration

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

16.3 Business Relationship

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

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16.4 Binding Agreement

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

16.5 Assignment

- (a) Except as set out below and as provided in Article 12, neither this Agreement nor any of the rights, interests or obligations under this Agreement may be assigned by either Party, including by operation of Laws and Regulations, without the prior written consent of the other Party, which consent shall not be unreasonably withheld.
- (b) The Supplier may, subject to compliance with Laws and Regulations and provided that there is not a Supplier Event of Default that has not been remedied, assign this Agreement without the consent of the Buyer to an Affiliate acquiring the Facility; provided, however, that no such assignment by the Supplier or any of its successors or permitted assigns hereunder shall be valid or effective unless and until such Affiliate agrees with the Buyer in writing to assume all of the Supplier's obligations and be bound by the terms of this Agreement, and the arrangements and obligations of the Supplier set forth in Article 6 have been met in accordance with the terms of Article 6. If a valid assignment of this Agreement is made by the Supplier in accordance with this Section 16.5, the Buyer acknowledges and agrees that, upon such assignment and assumption and notice thereof by the assignor to the Buyer, the assignor shall be relieved of all its duties, obligations and liabilities hereunder.
- (c) If the Supplier assigns this Agreement to a non-resident of Canada (the "**Assignee**"), as that term is defined in the ITA, and the Buyer incurs any additional Taxes, at any time thereafter, solely as the result of such assignment, then payments under this Agreement by the Buyer shall be reduced by the amount of such additional or withholding Taxes and the Buyer shall remit such additional or withholding Taxes to the applicable taxing authorities. The Buyer shall within sixty (60) days after remitting such Taxes, notify the Assignee in writing, providing reasonable detail of such payment so that the Assignee may claim any applicable rebates, refunds or credits from the applicable taxing authorities. If after the Buyer has paid such amounts, the Buyer receives a refund, rebate or credit on account of such Taxes, then the Buyer shall promptly remit such refund, rebate or credit amount to the Assignee.
- (d) The Buyer shall have the right to assign this Agreement and all benefits and obligations hereunder for the balance of the Term without the consent of the Supplier to an assignee with a Credit Rating equal to or higher than that of the Buyer at the time of the assignment, which such assignee shall assume the obligations and liability of the Buyer under this Agreement and be novated into

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

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

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- (iii) the Buyer shall be relieved of all obligations and liability arising pursuant to this Agreement; notwithstanding the foregoing, the Buyer shall remain liable to the Supplier for remedying any payment defaults under Section 10.3(a) before any such payment default becomes a Buyer Event of Default, and shall remain liable to the Supplier for any obligations and liabilities of the assignee arising from any Buyer Event of Default. Any notice required to be given under Sections 10.3 and 10.4(a) shall be given to the assignee and to the Buyer. The time periods in Section 10.3 shall not begin to run until both the assignee and the Buyer have been so notified; and
- (iv) upon the expiry of the Assignment Period:
 - (A) this Agreement, without requiring the execution of any assignment, consent or other documentation of any nature, shall automatically revert and be assigned back to the Buyer;
 - (B) the assignee shall remain responsible to the Supplier for all obligations and liabilities incurred or accrued by the assignee during the Assignment Period; and
 - (C) the Independent Electricity System Operator, as Buyer pursuant to the automatic assignment back to it, shall be deemed to be in good standing under this Agreement, provided that such good standing shall not relieve the Independent Electricity System Operator from any obligation to the Supplier pursuant to Section 16.5(e)(iii) that arose prior to the expiry of the Assignment Period.

16.6 No Change of Control

- (a) Except as provided in this Section 16.6(b), the Supplier shall not permit or allow a change of Control of the Supplier, except with the prior written consent of the Buyer, which consent may not be unreasonably withheld. It shall not be unreasonable to withhold such consent if the change of Control will have or is likely to have, as determined by the Buyer acting reasonably, a Material Adverse Effect on the Supplier's ability to perform its obligations under this Agreement, in which case such consent may be withheld by the Buyer.
- (b) The restriction on change of Control in Sections 16.6(a) and 16.7(a)(ii), and the restriction on transfer of Economic Interest in the Supplier in Section 16.7(a)(iii) shall not apply to a change of Control or a transfer of Economic Interest in the Supplier where:
 - (i) the Person that is the direct subject of the transaction giving rise to the change of Control of the Supplier or transfer of Economic Interest in the Supplier is not a Special Purpose Entity; or

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- (ii) each Person Controlling the Supplier following such change of Control is an Affiliate of one or more of the Persons Controlling the Supplier prior to such change of Control

provided that, in either case, the Supplier provides the Buyer, within ten (10) Business Days following such change of Control or transfer of Economic Interest, with notice of such change of Control or transfer of Economic Interest and such additional information as the Buyer may reasonably require regarding the names of the Persons who Control or hold Economic Interests in the Supplier, following such transaction(s). For greater certainty, and the purposes of Sections 16.6(a) and 16.7(a)(ii), a change of Control shall include a change from no Person having Control of the Supplier to any Person having Control of the Supplier, as well as a change from any Person having Control of the Supplier to no Person having Control of the Supplier.

16.7 No Assignment or Change of Control for Specified Period; Other Rights and Restrictions

- (a) Notwithstanding the provisions of Sections 16.5(a), 16.5(b), 16.5(c) and 16.6(a) to the contrary, and except as provided in Article 12, under no circumstances shall:
 - (i) any assignment of this Agreement by the Supplier, other than an assignment made pursuant to Section 16.5(b) be permitted;
 - (ii) any change of Control in respect of the Supplier be permitted; and
 - (iii) fifty percent (50%) or more of the Economic Interest in the Supplier be held, directly or indirectly, whether as owner or other beneficiary and other than solely as the beneficiary of an unrealized security interest, individually or collectively by any Person or Persons who, as of the Contract Date, did not directly or indirectly hold any of such Economic Interest in the Supplier, other than solely as the beneficiary of an unrealized security interest,

until the COD. For clarity, the foregoing transfer restrictions shall not apply in respect of a *bona fide* enforcement of a Secured Lender Security Agreement under Article 12 of this Agreement.

- (b) If the Supplier was awarded rated criteria points as an Indigenous Participation Supplier, as specified in Exhibit B, then the Supplier shall, within twenty (20) Business Days of a request by the Buyer, provide written evidence documenting the Economic Interest in the Supplier that is held by the applicable Indigenous Community(ies) that is to the satisfaction of the Buyer, acting reasonably. Until the fifth (5th) anniversary of the Commercial Operation Date, if the Indigenous Participation Level falls below the Initial IPL, the Supplier shall provide written notice thereof to the Buyer within twenty (20) days of such decrease, which notice shall include the revised Indigenous Participation Level and the effective date

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thereof. If the Indigenous Participation Level is not restored to a level of at least the Initial IPL within six (6) months after such written notice, then such failure to maintain an Indigenous Participation Level of at least the Initial IPL until at least the fifth (5th) anniversary of the Commercial Operation Date shall constitute a Supplier Event of Default. Notwithstanding the foregoing, where an individual Indigenous Community that held more than ten percent (10%) Economic Interest in the Supplier as of the Contract Date provides a written notice to the Buyer, signed by one or more individuals with authority to bind the applicable Indigenous Community, requesting a reduction in the Indigenous Participation Level relative to the Initial IPL prior to the fifth (5th) anniversary of the Commercial Operation Date, to a level that may not be less than ten percent (10%), such reduced Indigenous Participation Level shall be deemed to constitute the Initial IPL for purposes of this Section 16.7(b). The provisions of this Section 16.7(b) shall not apply to any New Contract resulting from a *bona fide* enforcement of a Secured Lender Security Agreement under Article 12 of this Agreement. **[NTD: Under consideration by the IESO.]**

- (c) Except as otherwise provided for in Sections 16.6(a), 16.7(a) and 16.7(b), nothing in this Agreement restricts the transfer of ownership interests in the Supplier among the owners of such interests in the Supplier.

16.8 Survival

The provisions of Sections 2.6(c), 2.7, 4.2, 4.5, Article 5, Section 6.2(b)(iii), Article 8, Sections 10.2, 10.4, 10.5, and 12.2(g), Article 14, Sections 15.2, 16.1, 16.2, and 16.5(c) shall survive the expiration of the Term or earlier termination of this Agreement. The expiration of the Term or a termination of this Agreement shall not affect or prejudice any rights or obligations that have accrued or arisen under this Agreement prior to the time of expiration or termination and such rights and obligations shall survive the expiration of the Term or the termination of this Agreement for a period of time equal to the applicable statute of limitations.

16.9 Counterparts

This Agreement may be executed in two or more counterparts, and all such counterparts shall together constitute one and the same Agreement. It shall not be necessary in making proof of the contents of this Agreement to produce or account for more than one such counterpart. This Agreement may be executed by printing, signing and scanning, or by electronic signature in a format approved by the Buyer. Delivery by electronic mail or similar electronic transmission of an executed signature page to this Agreement shall be as effective as delivery of a manually executed copy of this Agreement by such Party.

16.10 Additional Rights of Set-Off

In addition to the other rights of set-off under this Agreement or otherwise arising in law or equity, either Party may set off any amounts owing to such Party under this Agreement against any amounts owed to the other Party under this Agreement.

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16.11 Rights and Remedies Not Limited to Contract

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

16.12 Time of Essence

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

16.13 Further Assurances

Each of the Parties shall, from time to time on written request of the other Party, do all such further acts and execute and deliver or cause to be done, executed or delivered all such further acts, deeds, documents, assurances and things as may be required, acting reasonably, in order to fully perform and to more effectively implement and carry out the terms of this Agreement. Without limiting the generality of the foregoing, upon request of the Buyer, the Supplier shall enroll in or utilize an internet-based or software program utilized by the Buyer for the administration of this Agreement, and shall communicate with the Buyer through such website or software program for purposes of administering this Agreement, as requested by the Buyer. The Parties agree to promptly execute and deliver any documentation required by any Governmental Authority in connection with any termination of this Agreement.

[Remainder of Page Intentionally Blank]

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

[●]

[Note to Finalization: To be updated prior to execution.]

**INDEPENDENT ELECTRICITY
SYSTEM OPERATOR**

By: _____
Name:
Title:

By: _____
Name:
Title:

By: _____
Name:
Title:

By: _____
Name:
Title:

We have authority to bind the
corporation.

We have authority to bind the
corporation.

Draft

EXHIBIT A FACILITY DESCRIPTION

[Note to Finalization: To be updated prior to execution.]

Name of Facility:	[●]
Municipal Address [or description of Indigenous Lands (as defined in the LT1 RFP), if applicable]:	[●]
Connection Point and Circuit Designation:	[●]
Feeder Name or Upstream Transmission Station:	[●]
Description of Generation or Storage Technology:	[●]
Technology specific Exhibits applicable to the Facility:	[Exhibit E-1 / Exhibit E-2]
Indigenous Participation	The Supplier [is/is not] an Indigenous Participation Supplier as of the Contract Date.
Duration Capability	The Duration Capability is [four (4) / eight (8)] hours. [NTD: The Duration Capability will be four (4) hours for an Electricity Storage Facility and eight (8) hours for a Non-Electricity Storage Facility.]
Eligible Expansion Status	The Facility [is/is not] an Eligible Expansion. [where the Facility is an Eligible Expansion, the Eligible Existing Facility's nameplate capacity is ____ MW.]

Detailed Description of Facility:

1.0 Overview

[●]

1.1 Site Description

[●]

- 1.2 Facility Design and Major Equipment (including preliminary design diagram of the Facility showing all major components), and Nameplate MVA Rating

[●]

- 1.3 List of Environmental Approvals and Permits, and Status (including a description of the Facility's treatment under the Ontario Ministry of the Environment's "Guide to Environmental Assessment Requirements for Electricity Projects").

[●]

- 1.4 Fuel Supply (including, where applicable, fuel provider and description of the infrastructure)

[●]

- 1.5 Electrical Interconnection (including description of work required to connect Facility)

[●].

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EXHIBIT B
CONTRACT CAPACITY, FIXED CAPACITY PAYMENT, AND OTHER STATED VARIABLES

[Note to Finalization: To be updated prior to execution.]

Fixed Capacity Payment	\$[●]/MW-Business Day																									
Nameplate Capacity	[●]MW																									
Winter Contract Capacity	[●]MW																									
Summer Contract Capacity	[●]MW																									
Monthly Contract Capacity	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr><td>January</td><td>Winter Contract Capacity</td></tr> <tr><td>February</td><td>Winter Contract Capacity</td></tr> <tr><td>March</td><td>Winter Contract Capacity</td></tr> <tr><td>April</td><td>Winter Contract Capacity</td></tr> <tr><td>May</td><td>Summer Contract Capacity</td></tr> <tr><td>June</td><td>Summer Contract Capacity</td></tr> <tr><td>July</td><td>Summer Contract Capacity</td></tr> <tr><td>August</td><td>Summer Contract Capacity</td></tr> <tr><td>September</td><td>Summer Contract Capacity</td></tr> <tr><td>October</td><td>Summer Contract Capacity</td></tr> <tr><td>November</td><td>Winter Contract Capacity</td></tr> <tr><td>December</td><td>Winter Contract Capacity</td></tr> </table>		January	Winter Contract Capacity	February	Winter Contract Capacity	March	Winter Contract Capacity	April	Winter Contract Capacity	May	Summer Contract Capacity	June	Summer Contract Capacity	July	Summer Contract Capacity	August	Summer Contract Capacity	September	Summer Contract Capacity	October	Summer Contract Capacity	November	Winter Contract Capacity	December	Winter Contract Capacity
January	Winter Contract Capacity																									
February	Winter Contract Capacity																									
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April	Winter Contract Capacity																									
May	Summer Contract Capacity																									
June	Summer Contract Capacity																									
July	Summer Contract Capacity																									
August	Summer Contract Capacity																									
September	Summer Contract Capacity																									
October	Summer Contract Capacity																									
November	Winter Contract Capacity																									
December	Winter Contract Capacity																									
Materials Cost Index Adjustment	The Materials Cost Index Adjustment [does/does not] apply [using the {MCIA_{li}/ MCIA_{nli}} and the following shall be used in calculating the {MCIA_{li}/ MCIA_{nli}}: MCP_b = _____																									

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	$CPI_b = \underline{\hspace{2cm}}$ $LiCP_b = \underline{\hspace{2cm}}]$ <i>[Note to Finalization: insert and complete as applicable with election from the Proposal.]</i>
Municipal Support Status	A Municipal Support Resolution or Blanket Municipal Support Resolution [is/is not] required pursuant to Section 2.14(a).
Indigenous Participation Level	The Supplier [is/is not] an Indigenous Participation Supplier as of the Contract Date. [The Initial IPL is $\underline{\hspace{2cm}}$% which is held, directly or indirectly, by $\underline{\hspace{2cm}}$.] <i>[NTD: insert Indigenous Community(ies) and %(s) from Proposal, if applicable.]</i><i>[NTD: Under consideration by the IESO.]</i>

Draft

EXHIBIT C
FORM OF IRREVOCABLE STANDBY LETTER OF CREDIT

DATE OF ISSUE: [●]
APPLICANT: [●]
BENEFICIARY: Independent Electricity System Operator and its permitted assigns
(the “**Beneficiary**”)
120 Adelaide Street West, Suite 1600
Toronto, ON M5H 1T1
AMOUNT: [●]
EXPIRY DATE: [●]
EXPIRY PLACE: Counters of the issuing financial institution in Toronto, Ontario
CREDIT RATING: **[Insert credit rating only if the issuer is not a financial institution listed in either Schedule I or II of the *Bank Act*]**
TYPE: Irrevocable and Unconditional Standby Letter of Credit Number:
[●] (the “**Credit**”)

The Credit is issued in connection with the **[Contract type]** (**[abbreviated Contract type]**) Contract (the “**Contract**”) dated **[Insert Date of Contract]**, as amended from time to time, between the Beneficiary and the “Supplier”, as such term is defined under the Contract.

We hereby authorize the Beneficiary to draw on **[Issuing Bank Name/Address]**, in respect of the Credit, for the account of the Applicant, up to an aggregate amount of \$● (● Canadian Dollars) available by the Beneficiary’s draft at sight accompanied by the Beneficiary’s signed certificate stating that:

“The Supplier is in breach of, or default under, the Contract, and therefore the Beneficiary is entitled to draw upon the Credit in the amount of the draft attached hereto.”

Drafts drawn hereunder must bear the clause “Drawn under irrevocable and unconditional Standby Letter of Credit No. [●] issued by **[Issuing Bank Name]** dated **[Issue Date]**.”

Partial drawings are permitted.

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

We engage with you that all drafts drawn under and in compliance with the terms of the Credit will be duly honoured, if presented at the counters of **[Issuing Bank Name/Address]** at or before **[Expiry Time]** (EST) on or before **[Expiry Date]**, as extended.

The Credit is subject to the International Standby Practices ISP 98, International Chamber of Commerce Publication No. 590, and as to matters not addressed by ISP 98, shall be governed by the laws of the Province of Ontario and applicable Canadian federal law, and the parties hereby

irrevocably agree to attorn to the non-exclusive jurisdiction of the courts of the Province of Ontario.

This Credit is transferable at the written request of the Beneficiary, without the consent of the Applicant, but subject to consent of the issuing financial institution, acting reasonably. All fees incurred by the issuing financial institution in relation to such transfer shall be at the Applicant's expense, but failure of the Applicant to pay such fees shall not restrict the ability of the Beneficiary to transfer the Credit.

In the event of a transfer of this Credit as provided for above, the above name of the Beneficiary will be amended to another entity by way of an amendment hereto, without the consent of the Applicant, and upon receipt by **[Issuing Bank Name]** of the Beneficiary's dated and signed letter addressed to **[Issuing Bank Name]** and completed as follows:

“We, the undersigned Beneficiary to **[Issuing Bank Name]** Letter of Credit No. [●], hereby waive all our rights under the Letter of Credit and request that the current name and address of the Beneficiary thereunder be amended to read **[insert name and address of new Beneficiary]**. We have enclosed the original Letter of Credit and all amendments (if any) thereto. Please forward the original Letter of Credit and all amendments (if any), including the current amendment to the **[new Beneficiary]**, care of the Applicant.”

[Issuing Bank Name]

By: _____

By: _____

Draft

EXHIBIT D FORM OF COMPANY REPRESENTATIVE NOTICE

SUBMIT BY E-MAIL (PDF WITH SIGNATURE) TO CONTRACT MANAGEMENT:

contract.management@ieso.ca

Capitalized terms not defined herein have the meanings ascribed thereto in the Contract. This Exhibit reflects the corresponding form appearing on the Buyer's Website as at the date of the Contract. In accordance with Section 1.2 of the Contract, the Buyer may, without notice to the Supplier, amend or replace this form. It is the responsibility of the Supplier to ensure that the latest draft of this form, as posted on the Buyer's Website, is used.

Pursuant to Section 15.1 of the Contract, the Supplier is hereby submitting this completed Prescribed Form – Form of Company Representative Notice to the Buyer.

ESTABLISHING OR REPLACING THE COMPANY REPRESENTATIVE

- ☐ The Authorized Signatory below is either a signatory of the Contract, a person authorized to receive Notices, or the Company Representative. No other forms are required.
- ☐ The Authorized Signatory below is neither a signatory of the Contract, a person authorized to receive Notices, nor the Company Representative. A Prescribed Form - Certificate of Incumbency must also be submitted with this form.

Date	insert date
Legal Name of Supplier	insert legal name of Supplier (the "Supplier")
Name of Facility	insert name of Facility
Contract Title	insert contract title or Contract ID as appropriate (the "Contract")
Contract Date	insert Contract Date

NOTE: The current Company Representative will be removed when a new Company Representative is appointed.

Name of Company Representative	insert name of new Company Representative
Title	insert title of new Company Representative
Mailing Address Including Postal Code	insert mailing address of new Company Representative
Telephone	insert telephone number of new Company Representative
E-Mail Address	insert email address of new Company Representative

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AUTHORIZED SIGNATORY
Supplier: insert legal name of Supplier
Signature:
Name: insert name
Title: insert title
I have the authority to bind the Supplier and, if applicable, by signing this form using electronic signature, I agree to the content, terms and conditions set out in the document on behalf of the Supplier.
Dated this <u>insert day</u> day of <u>insert month</u> , <u>insert year</u>

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EXHIBIT E-1 **CALCULATION OF ADJUSTED MONTHLY CONTRACT CAPACITY FOR A** **NON-ELECTRICITY STORAGE FACILITY**

The Adjusted Monthly Contract Capacity for a Non-Electricity Storage Facility for Settlement Month “*m*” (or $AMCC_m$) shall be calculated as follows:

$AMCC_m = MCC \times FMCRF_m \times POCRF_m$	
where:	
MCC	is the Monthly Contract Capacity for Settlement Month “ <i>m</i> ”.
FMCRF _{<i>m</i>}	is the Force Majeure Capacity Reduction Factor for Settlement Month “ <i>m</i> ” calculated in accordance with Exhibit J.
POCRF _{<i>m</i>}	is the Planned Outage Capacity Reduction Factor for Settlement Month “<i>m</i>”, which: (i) shall be equal to 1.0 if there are no Planned Outages affecting any Qualifying Hours in the Settlement Month; and (ii) in a Sole Annual Planned Maintenance Month shall be the value calculated as follows: $1 - \frac{POH_m}{NQH_m}$ (which, for certainty, may be as low as 0.0); and (iii) in all other Settlement Months shall be the greater of: (a) the value calculated as follows: $1 - \frac{POH_m}{NQH_m}$; and (b) 0.95 in all months other than a Sole Annual Planned Maintenance Month or a Split Annual Planned Maintenance Month, and 0.50 during a Split Annual Planned Maintenance Month. For clarity, in no circumstances will POCRF_{<i>m</i>} be less than (i) 0.95 in all months other than a Sole Annual Planned Maintenance Month or a Split Annual Planned Maintenance Month, even if Planned Outages are scheduled for more than five percent (5%) of Qualifying Hours in such Settlement Month, or (ii) 0.50 during a Split Annual Planned Maintenance Month, even if Planned Outages are scheduled for more than fifty percent (50%) of Qualifying Hours in such Settlement Month.
POH	is a Planned Outage Hour, which is a Qualifying Hour in Settlement Month “ <i>m</i> ” for which the Facility is the subject of a Planned Outage.

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POH _m	is the total number of Planned Outage Hours in Settlement Month “<i>m</i>”. In determining Planned Outage Hours occurring during a Settlement Month, an hour may be a partial Planned Outage Hour as a result of an inability of the Facility to produce at the full Monthly Contract Capacity or as a result of a Planned Outage lasting for a part but not all of an hour. An hour in which either such partial Planned Outage occurs (or both of them) will be counted as a fractional Planned Outage Hour by subtracting from one the quotient obtained by dividing: (i) the maximum output of the Facility in that hour that could have been achieved given the partial Planned Outage or derate (in MWh) by (ii) the Monthly Contract Capacity multiplied by one (1) hour (in MWh). This fraction will be the contribution of that hour to the POH in the given Settlement Month.
NQH _m	is the total number of Qualifying Hours in Settlement Month “<i>m</i>”.

Draft

EXHIBIT E-2

CALCULATION OF ADJUSTED MONTHLY CONTRACT CAPACITY FOR AN ELECTRICITY STORAGE FACILITY

The Adjusted Monthly Contract Capacity for a Facility which is an Electricity Storage Facility for Settlement Month “*m*” (or AMCC_{*m*}) shall be calculated as follows:

AMCC_{<i>m</i>} = MCC × FMCRF_{<i>m</i>} × POCRF_{<i>m</i>} × SOCRF_{<i>m</i>}	
where:	
SOCRF _{<i>m</i>}	is the State-of-Charge Limited Reduction Factor for Settlement Month “<i>m</i>”, which shall be the value calculated as follows: $1 - \frac{SOCLH_m}{NQH_m},$ unless (i) the Facility is not State-of-Charge Limited in the Settlement Month; or (ii) the DACP is replaced with a forward energy market under the IESO Market Rules as contemplated in the definition of “DAM” in Section 1.1 of the Agreement, where, in either such case, SOCRF_{<i>m</i>} shall be equal to 1.0.
SOCLH _{<i>m</i>}	is the total number of hours in which the Facility is State-of-Charge Limited in Settlement Month “ <i>m</i> ”.
MCC	is the Monthly Contract Capacity for Settlement Month “ <i>m</i> ”.
FMCRF _{<i>m</i>}	is the Force Majeure Capacity Reduction Factor for Settlement Month “ <i>m</i> ” calculated in accordance with Exhibit J.
POCRF _{<i>m</i>}	is the Planned Outage Capacity Reduction Factor for Settlement Month “<i>m</i>”, which (i) shall be equal to 1.0 if there are no Planned Outages affecting any Qualifying Hours in the Settlement Month; and (ii) in all other Settlement Months shall be the greater of: (a) the value calculated as follows: $1 - \frac{POH_m}{NQH_m}$; and (b) 0.95. For clarity, in no circumstances will POCRF_{<i>m</i>} be less than 0.95 even if Planned Outages are scheduled for more than five percent (5%) of Qualifying Hours in such Settlement Month.

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POH	is a Planned Outage Hour, which is a Qualifying Hour in Settlement Month “ <i>m</i> ” for which the Facility is the subject of a Planned Outage.
POH _m	is the total number of Planned Outage Hours in Settlement Month “<i>m</i>”. In determining Planned Outage Hours occurring during a Settlement Month, an hour may be a partial Planned Outage Hour as a result of an inability of the Facility to produce at the full Monthly Contract Capacity or as a result of a Planned Outage lasting for a part but not all of an hour. An hour in which either such partial Planned Outage occurs (or both of them) will be counted as a fractional Planned Outage Hour by subtracting from one the quotient obtained by dividing: (i) the maximum output of the Facility in that hour that could have been achieved given the partial Planned Outage or derate (in MWh) by (ii) the Monthly Contract Capacity multiplied by one (1) hour (in MWh). This fraction will be the contribution of that hour to the POH in the given Settlement Month.
NQH _m	is the total number of Qualifying Hours in Settlement Month “ <i>m</i> ”.

Draft

EXHIBIT F AVAILABILITY NON-PERFORMANCE CHARGES

I. Calculation of the Availability Non-Performance Charges

$ANPC_m = MCP_m \times SF_m \times NPF$	
where:	
$ANPC_m$	means the Availability Non-Performance Charge calculated for the Settlement Month “ m ”.
MCP_m	means the Monthly Capacity Payment (in \$ for the Settlement Month “m”), calculated as follows: $MCP_m = FCP_d \times SMD_m \times MCC_m \times FMCRF_m$ Where, FCP_d, SMD_m, MCC_m and $FMCRF_m$ shall each have the meaning and be calculated in accordance with Exhibit J.
SF_m	means the shortfall of the Monthly Average Offered Quantity below the Adjusted Monthly Contract Capacity for the Settlement Month “m” (expressed as a decimal), calculated as follows: $SF_m = ((AMCC_m - MAOQ_m)/AMCC_m),$ provided that SF_m may not be a negative value and shall be deemed to be zero in any circumstance where (i) the Monthly Average Offered Quantity is equal to or greater than the Adjusted Monthly Contract Capacity or (ii) the Adjusted Monthly Contract Capacity is zero.
$AMCC_m$	means the Adjusted Monthly Contract Capacity, in MW, for Settlement Month “ m ” and calculated in accordance with Exhibit E-1 or E-2 (as applicable).
$MAOQ_m$	means a Monthly Average Offered Quantity, in MW, in the Settlement Month “ m ”.
NPF	means the Non-Performance Factor set out in Section II of this Exhibit F for the applicable Settlement Month.

II. Monthly Non-Performance Factors

The Non-Performance Factors to be used for the purposes of calculation of the Availability Non-Performance Charges, for each calendar month shall be as follows:

<u>Month</u>	<u>Factor</u>	<u>Month</u>	<u>Factor</u>
January	2.0	July	2.0
February	2.0	August	2.0
March	1.5	September	2.0
April	1.0	October	1.0
May	1.0	November	1.0
June	1.5	December	1.5

Draft

**EXHIBIT G
FORM OF SECURED LENDER CONSENT AND ACKNOWLEDGEMENT
AGREEMENT**

THIS AGREEMENT made as of this ____ day of ____, 20__,

[Note to Finalization: IESO to insert date when executed by the IESO – Supplier to leave the date blank]

BETWEEN:

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

(the “**Supplier**”),

- and -

[insert Security Agent name],
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 “**IESO**”),

RECITALS:

Draft

- A. The Supplier and the IESO, entered into a LT1 Contract dated as of **[insert date]** (as amended, supplemented, restated or replaced from time to time in accordance with its terms and this agreement, the “**Contract**”);
- B. *[Note to finalization: describe structure of 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];* and
- C. 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” (collectively, as amended, supplemented, restated or replaced from time to time, the “**Security Agreements**”), as security for its present and future indebtedness, liabilities and obligations under and in respect of the *[Note to finalization: describe underlying debt instrument(s)]* (the “**Secured Debt**”);

THEREFORE, the parties agree as follows:

1. Defined Terms

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

2. Acknowledgement and Confirmation of Rights of Security Agent

- (a) The IESO, the Security Agent and the Supplier each acknowledge and confirm that:
- (i) the Supplier has delivered to the IESO copies of the Security Agreements listed on Schedule “A”;
 - (ii) the Security Agreements listed on Schedule “A” are acknowledged to be Security Agreements to which the provisions of Article 12 of the Contract apply; and
 - (iii) the Security Agent constitutes the Secured Lender for purposes of the Contract and, without limiting the generality of the foregoing, is entitled to the benefit of the provisions of Article 12 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 IESO has received notice from the Security Agent that the Security Agreements have been terminated.
- (b) The Security Agent acknowledges, confirms and agrees that:
- (i) it has read and understood the requirements and restrictions pertaining to a Secured Lender Security Agreement in Section 12.1 of the Contract; and

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- (ii) it has complied with Section 12.1 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 12 of the Contract, unless and until the IESO has received a copy thereof (as provided for in Section 12.1 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 2 that the representations and warranties contained in Sections 3 and 4 hereof are true and accurate.

3. Covenants of the Security Agent

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

- (a) 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 12.2 of the Contract as they relate to the Security Agent’s security interests in the Contract during such enforcement.
- (b) The Security Agent agrees that it will comply with Section 12.2(f) of the Contract if ever applicable.
- (c) The Security Agent is and will be at Arm’s Length from the Supplier.
- (d) 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.
- (e) Except for the Security Agreements and any other security that is delivered by the Security Agent to the IESO in accordance with Section 12.1(c) 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 IESO pursuant to the Contract.
- (f) 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”.

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- (g) 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 IESO at least ten (10) Business Days prior to exercising any such rights under the Contract.
- (h) 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.
- (i) 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 12.2(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 12.2(g) of the Contract.
- (j) The address of the Security Agent to which notices may be sent pursuant to Section 12.1(c) of the Contract is set forth in Section 6 of this agreement.
- (k) The Security Agent will provide the IESO with written notice of any change in the identity or address of the Security Agent, and the Security Agent agrees to promptly notify IESO in writing of any discharge or termination of all or any of the Security Agreements listed on Schedule "A".
- (l) The recitals to this agreement are true and accurate.
- (m) 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 12.2(f) of the Contract.
- (n) 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 IESO 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 12 of the Contract.

4. Covenants of the Supplier

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

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- (a) The Security Agreements are subject to the terms and conditions applicable to a Secured Lender's Security Agreement that are contained in Article 12 of the Contract, and comply therewith.
- (b) The Supplier has provided to the IESO 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.
- (c) 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".
- (d) The recitals to this agreement are true and accurate.
- (e) The Supplier will provide the IESO with true and complete copies of any new agreements relating to, or amendments to, any Secured Lender's Security Agreement.
- (f) There is no existing unremedied Supplier Event(s) of Default.
- (g) 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 IESO 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.

5. Notice of Default by Security Agent

The parties hereto agree that the IESO 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 IESO by the Security Agent pursuant to Section 12.1(d) of the Contract, which may be accepted by the IESO as conclusive evidence of the Supplier's default thereunder. Following receipt by the IESO of a Default Notice, the IESO may at all times, subject to transfer of such interest or entry into a New Agreement in accordance with Article 12 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 12.2(d) until the Default Notice is withdrawn by the Security Agent by written notice to the IESO. The IESO 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 IESO and hold it harmless in respect of any losses or claims incurred or suffered by the IESO due to or arising out of IESO 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 IESO of a Default Notice, the IESO may at all

times rely on the instructions of the Supplier (the “**Supplier’s Instructions**”). The IESO shall have no liability to the Security Agent for complying with any Supplier’s Instructions prior to such receipt.

6. 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 IESO:

Independent Electricity System Operator
120 Adelaide Street West
Suite 1600
Toronto, Ontario
M5H 1T1

Attention: Director, Contract Management

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.

7. Successors and Assigns

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Subject to complying with Section 12.1 and sections 16.5, 16.6 and 16.7 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 12.1 and Section 16.5 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 IESO, acting reasonably.

8. 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 IESO under the Contract. Without limiting the forgoing, this agreement shall not constitute or be deemed to constitute:

- (a) a waiver of any Supplier Event of Default or other default of the Supplier;
- (b) waiver of any prohibition or restriction on, or the IESO's consent to, any assignment of the Contract or change of Control under the Contract; or
- (c) 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 IESO pursuant to the IESO Market Rules.

9. 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.

10. 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/

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

[insert Supplier name]

[insert Security Agent name]

By: _____

Name: [insert name]

Title: [insert position title]

By: _____

Name: [insert name]

Title: [insert position title]

I/We have authority to bind the corporation.

By: _____

Name: [insert name]

Title: [insert position title]

By: _____

Name: [insert name]

Title: [insert position title]

I/We have authority to bind the corporation.

**INDEPENDENT ELECTRICITY SYSTEM
OPERATOR**

By: _____

Name:

Title:

I/We have authority to bind the corporation.

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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]

(b) ...

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

(a) ●

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EXHIBIT H FORM OF FORCE MAJEURE NOTICE

SUBMIT BY E-MAIL (PDF WITH SIGNATURE) TO CONTRACT MANAGEMENT:

contract.management@ieso.ca

This Exhibit reflects the corresponding forms appearing on the Buyer's Website as at the date of this Contract. In accordance with Section 1.2 of the Contract, the Buyer may, without notice to the Supplier, amend or replace this form. It is the responsibility of the Supplier to ensure that the latest draft of this form, as posted on the Buyer's Website, is used. Capitalized terms not defined herein have the meanings ascribed thereto in the Contract.

Pursuant to Article 11 of the Contract, the Supplier is hereby submitting this completed Prescribed Form – Form of Force Majeure Notice to the Buyer.

- ☐ This is a new Force Majeure event, start date: insert date, if applicable
- ☐ This is an update to an existing Force Majeure No.: insert the Force Majeure #
- ☐ This is a termination Notice, termination date: insert date, if applicable

Date	insert date
Legal Name of Supplier	insert legal name of Supplier (the "Supplier")
Name of Facility	insert name of Facility
Contract Title	insert contract title or Contract ID, as applicable (the "Contract")
Contract Date	insert Contract Date
Force Majeure No.	insert force majeure number
Title of Force Majeure	insert title of force majeure
Type of Force Majeure	☐ ACTS OF GOD / EXTREME WEATHER ☐ DELAYS / DISRUPTIONS TO FUEL SUPPLY ☐ LABOUR DISPUTES ☐ LICENCES / PERMITTING ☐ LEGAL ORDER / LEGISLATION ☐ OTHER (SPECIFY):

The Supplier represents and warrants that all of the information in this Prescribed Form – Form of Force Majeure Notice, including all documentation provided herewith, is complete, true and accurate, and there is no material information omitted from this Prescribed Form – Form of Force Majeure Notice that makes the information contained herein misleading or inaccurate.

The Supplier acknowledges and agrees that this Prescribed Form – Form of Force Majeure Notice is being delivered to the IESO solely for the purposes of the Contract. It does not constitute a notice for any other purpose, including, without limitation, to meet an obligation to provide notice to the System Operator pursuant to the IESO Market Rules.

Supplier: insert legal name of Supplier
Signature:
Name:
Title:
I have the authority to bind the Supplier and, if applicable, by signing this form using electronic signature, I agree to the content, terms and conditions set out in the document on behalf of the Supplier.
Dated this <u>insert day</u> day of <u>insert month</u> , <u>insert year</u>
The signatory must be either a signatory of the Contract, a person authorized to receive Notices, or the Company Representative.

1. Description of the events leading to Force Majeure

Provide reasonably full particulars of the cause and timing of the events relating to the invoked Force Majeure. Also provide documentary evidence of the same, including without limitation, the following: newspaper articles, correspondence, emails, notes, reports, memoranda and any other documentation relevant to establishing Force Majeure.

insert description of the events leading to the invoked Force Majeure

2. Effect of Force Majeure

Provide reasonably full particulars of the effect of the Force Majeure on the Supplier's ability to fulfill its obligations under the Contract. Also provide documentary evidence of the same, including without limitation, the following: reports, policy documents, correspondence, emails, notes, memoranda and any other documentation relevant to establishing the effect of Force Majeure.

insert description of the effect of the invoked Force Majeure

3. Cost of alternatives available to remedy or remove the Force Majeure

Provide reasonably full particulars of the alternatives available to the Supplier to remedy or remove the Force Majeure, together with an estimation of the related costs with respect to each alternative. Also provide documentary evidence of the same, including without limitation, the following: written cost estimates, legal or professional opinions and reports, municipal or other government policy documentation, and any other documentation relevant to establishing the cost.

insert description of available alternatives and the associated costs

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4. Commercially Reasonable Efforts

Provide reasonably full particulars of efforts, if any, undertaken or contemplated by the Supplier to remedy or remove the Force Majeure. Also provide documentary evidence of the Commercially Reasonable Efforts listed, including, without limitation, the following, as applicable: meeting requests with municipal officials, notes from meetings or telephone calls, minutes of meetings, letter or email correspondence with third parties, copies of reports, policies, proposals, newspaper articles, and any other documentation relevant to establishing the Commercially Reasonable Efforts.

insert description of the effect of commercially reasonable efforts

(Use separate attachments or extra pages, as necessary)

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EXHIBIT I FORM OF CONFIDENTIALITY UNDERTAKING

SUBMIT BY EMAIL (PDF WITH SIGNATURE) TO CONTRACT MANAGEMENT:

contract.management@ieso.ca

This Exhibit reflects the corresponding forms appearing on the Buyer's Website as at the date of this Contract. In accordance with Section 1.2 of the Contract, the Buyer may, without notice to the Supplier, amend or replace this form. It is the responsibility of the Supplier to ensure that the latest draft of this form, as posted on the Buyer's Website, is used. Capitalized terms not defined herein have the meanings ascribed thereto in the Contract.

Pursuant to Section 8.1(c) of the Contract, the Supplier is hereby submitting this completed Prescribed Form – Form of Confidentiality Undertaking.

Date	insert date
Legal Name of Supplier	insert legal name of Supplier (the "Supplier")
Name of Facility	insert name of Facility
Contract Title	insert contract title or Contract ID, as applicable (the "Contract")
Contract Date	insert Contract Date

WHEREAS the Supplier is a party to the Contract;

WHEREAS the undersigned is a prospective direct or indirect investor in or financier to the Supplier (the "**Transaction Party**");

AND WHEREAS the Transaction Party is a prospective transaction party for the purposes of prospective direct or indirect investment in the Supplier (including through a direct or indirect acquisition of an interest in Supplier) or purchasing the Facility or for the provision of debt or other financing to the Supplier in respect of the Facility (the "**Purpose**");

AND WHEREAS the Supplier wishes to disclose Confidential Information to the Transaction Party for the Purpose, and such disclosure is prohibited without the provision to the IESO of this Confidentiality Undertaking;

AND WHEREAS the Buyer is prepared to provide written consent to the Supplier in respect of the disclosure of Confidential Information to the Transaction Party for the Purpose;

NOW THEREFORE:

1. The Supplier acknowledges and agrees that:
 - a. the Transaction Party has been informed of the Supplier's confidentiality obligations under the Contract; and
 - b. prior to disclosing Confidential Information to the Transaction Party, it will provide a copy of this executed Confidentiality Undertaking to the Buyer.
2. The Transaction Party acknowledges and agrees that:
 - a. it is a prospective transaction party for the Purpose;

- b. it has been informed of the Supplier's confidentiality obligations under the Contract;
- c. it will hold any and all Confidential Information confidential on the terms set out herein and in accordance with Article 8 of the Contract as applicable to the Supplier, *mutatis mutandis*; and
- d. it will use the Confidential Information only for the Purpose.

Supplier: insert legal name of Supplier
Signature:
Name:
Title:
I have the authority to bind the Supplier and, if applicable, by signing this form using electronic signature, I agree to the content, terms and conditions set out in the document on behalf of the Supplier.
Dated this ___ day of ___, 20

Purchaser: insert legal name of Transaction Party
Signature:
Name:
Title:
I have the authority to bind the Transaction Party and, if applicable, by signing this form using electronic signature, I agree to the content, terms and conditions set out in the document on behalf of the Transaction Party.
Dated this ___ day of ___, 20

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EXHIBIT J CALCULATION OF MONTHLY PAYMENT

This Exhibit J sets out the calculation of the Monthly Payment. Except as expressly set forth below, all references to Sections are to Sections of the Agreement.

For Settlement Months, or partial Settlement Months, commencing on the Commercial Operation Date, the Monthly Payment is calculated as follows:

MP_m = [FCP _{dy} × SMD _m × MCC _m × CRF _m × FMCRF _m] – ANPC _m + RCC _m	
where:	
MP _m	is the Monthly Payment (in \$ for the Settlement Month “m”)
FCP _{dy}	is the daily Fixed Capacity Payment (in \$/MW for each Business Day “d”) in the Settlement Month “m” for Contract Year “y”. For the first Contract Year, the Fixed Capacity Payment shall be equal to the amount set out as such in Exhibit B, as adjusted by Section 2.13, (the “FCP_{dB}”) multiplied by ECODPM_m. For the second and each succeeding Contract Year, twenty percent (20%) of the Fixed Capacity Payment shall be adjusted on the first day of such Contract Year to the percentage increase or decrease (if any) between the CPI effective as of the first day of such Contract Year compared with the CPI effective as the first day of the first Contract Year, such that FCP_{dy} shall be calculated as follows: FCP_{dy} = ECODPM_m × [(FCP_{dB} × 0.2 × IF_y) + (FCP_{dB} × 0.8)]
ECODPM _m	is the Early COD Payment Multiplier set out Section 2.3(b) as applicable to the Settlement Month “m” prior to the COD Bonus End Date, and from and after the COD Bonus End Date, shall be equal to 1.0.
IF _y	is the Index Factor for Contract Year “y” and shall be calculated as follows: IF_y = CPI_y / CPI_B
CPI _y	is the CPI applicable to the calendar month immediately prior to the first day of Contract Year “y”.
CPI _B	is the CPI applicable to the calendar month immediately prior to the Commercial Operation Date.
SMD _m	is the number of Business Days in the Settlement Month “m”, provided

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	that if the Settlement Month is the first or last Settlement Month of the Term, the SMD_m will be only the number of Business Days of the Term in such Settlement Month.
MCC_m	is the Monthly Contract Capacity (in MW) for the Settlement Month “ m ”.
CRF_m	is the Capacity Reduction Factor for Settlement Month “ m ” as defined in Section 15.6, and expressed as a fraction. The Capacity Reduction Factor shall be 1.0 unless and to the extent the circumstances set out in Section 15.6(f) and Section 15.6(g) apply. If the Capacity Reduction Factor changes during the Settlement Month, then CRF will be calculated as a weighted average based on the number of days of the Settlement Month during which the different values of CRF apply.
$FMCRF_m$	is the Force Majeure Capacity Reduction Factor for Settlement Month “ m ” which shall be equal to 1.0 if there are no Outages affecting any Qualifying Hours in the Settlement Month resulting from an event of Force Majeure, otherwise it shall be calculated as follows: $FMCRF_m = 1 - \frac{FMOH_m}{NQH_m}$
NQH_m	is the total number of Qualifying Hours in Settlement Month “ m ”.
FMOH	is a Force Majeure Outage Hour, which is a Qualifying Hour in Settlement Month “ m ” for which the Facility is the subject of an event of Force Majeure.
$FMOH_m$	is the total number of Force Majeure Outage Hours in Settlement Month “ m ”. In determining Force Majeure Outage Hours occurring during a Settlement Month, an hour may be a partial Force Majeure Outage Hour as a result of an inability of the Facility to produce at the full Contract Capacity or as a result of an event of Force Majeure lasting for a part but not all of an hour. An hour in which either such partial Force Majeure occurs (or both of them) will be counted as a fractional Force Majeure Outage Hour by subtracting from one the quotient obtained by dividing: (i) the maximum output of the Facility in that hour that could have been achieved given the partial Force Majeure or derate (in MWh) by (ii) the Contract Capacity multiplied by one (1) hour (in MWh). This fraction will be the contribution of that hour to the FMOH in the given Settlement Month.
$ANPC_m$	is Availability Non-Performance Charge for Settlement Month “ m ”, as calculated in accordance with Exhibit F.

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RCC _m	Is the Regulatory Charge Credit for an Electricity Storage Facility calculated in accordance with Exhibit R. For greater certainty, if the Facility is not an Electricity Storage Facility RCC _m shall be zero.
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EXHIBIT K
ARBITRATION PROCEDURES APPLICABLE TO SECTIONS 1.6 AND 1.7

The following rules and procedures (the “**Rules**”) shall govern, exclusively, any matter or matters to be arbitrated between the Parties under Sections 1.6 and 1.7 of this Agreement.

1. **Commencement of Arbitration** – If the Parties and, at the Buyer’s option, all Other Suppliers required by the Buyer to participate, have been unable to reach agreement as contemplated in Sections 1.6 and 1.7 of this Agreement, as applicable, then the Buyer shall commence arbitration by delivering a written notice (the “**Request**”) to the Supplier and such Other Suppliers required by the Buyer to participate (collectively the “**Suppliers**”). If the Buyer has not already done so, the Buyer shall then deliver to the Suppliers the names of such Other Suppliers. Within twenty (20) days of the delivery of the Request, the Buyer shall deliver to the Suppliers a written notice nominating an arbitrator who shall be familiar with commercial law matters and has no financial or personal interest in the business affairs of any of the parties. Within twenty (20) days of the receipt of the Buyer’s notice nominating its arbitrator, the Suppliers shall by written notice to the Buyer nominate an arbitrator who shall be familiar with commercial law matters and has no financial or personal interest in the business affairs of any of the parties. The two (2) arbitrators nominated shall then select a chairperson of the arbitration panel (the “**Arbitration Panel**”) who shall be a former judge of a Superior Court or appellate court in Canada.
2. **Application to Court** - If the Suppliers are unable to agree on the nomination of an arbitrator within twenty (20) days of the receipt of the Buyer’s notice nominating its arbitrator, any of the Suppliers or the Buyer may apply to a judge of the Superior Court of Justice of Ontario to appoint the arbitrator. If the two (2) arbitrators are unable to agree on a chair person within thirty (30) days of the nomination or appointment of the Supplier’s arbitrator, any of the Suppliers or the Buyer may apply to a judge of the Superior Court of Justice of Ontario to appoint the chair person.
3. **General** - The **Arbitration Panel**, once appointed, shall proceed immediately to determine the Replacement Price and/or the Replacement Provision, as the case may be, in accordance with the *Ontario Arbitration Act, 1991* and, where applicable, the *Ontario International Commercial Arbitration Act*, it being the intention of the Buyer and the Supplier that there be, to the extent possible, one arbitration proceeding and hearing to determine the Replacement Price and/or the Replacement Provision. Unless otherwise agreed by the Parties, the Arbitration Panel shall determine the conduct of the arbitral proceedings, including the exchange of statements of claim and defence, the need for documentary and oral discovery and whether to hold oral hearings with a presentation of evidence or oral argument so that the award may be made within the time period set out below. Each of the Suppliers shall have a right to participate in the arbitration proceeding.
4. **Consolidation** – The Parties agree that should the Arbitration Panel determine that the Replacement Price and/or the Replacement Provision needs to be determined through more than one (1) arbitration proceeding, then the Parties agree that the Arbitration Panel

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shall determine whether the arbitration proceedings shall be consolidated, conducted simultaneously or consecutively or whether any of the arbitration proceedings should be stayed until any of the others are completed.

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

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EXHIBIT L FORM OF ANNUAL OPERATING PLAN

SUBMIT BY E-MAIL (PDF WITH SIGNATURE) TO CONTRACT MANAGEMENT:

contract.management@ieso.ca

This Exhibit reflects the corresponding forms appearing on the Buyer's Website as at the date of this Contract. In accordance with Section 1.2 of the Contract, the Buyer may, without notice to the Supplier, amend or replace this form. It is the responsibility of the Supplier to ensure that the latest draft of this form, as posted on the Buyer's Website, is used. Capitalized terms not defined herein have the meanings ascribed thereto in the Contract.

Pursuant to Section 15.3(b)(i)(ii) of the Contract, the Supplier is hereby submitting this completed Prescribed Form – Form of Annual Operating Plan to the Buyer.

Date	insert date
Legal Name of Supplier	insert legal name of Supplier (the "Supplier")
Name of Facility	insert name of Facility
Contract Title	insert contract title or Contract ID as appropriate (the "Contract")
Contract Date	insert Contract Date
Contract Year No.	insert contract year number
Time Period	From: insert date To: insert date

1. Contract Capacity

Contract Capacity (MW)					
MONTHLY CONTRACT CAPACITY FOR THE CONTRACT YEAR					
As Applicable		As Applicable		As Applicable	
May		Summer		Year	
June					
July					
August					
September					
October		Winter			
January					
February					
March					
April					

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November					
December					

2. Unit Outages

2.1 Planned Outages

Assumptions: include any/all assumptions

Contract Month	Month/Year	Unit 1	Unit 2	Unit 3	Unit 4	Unit 5	Unit 6
		Planned Outages (From / To and Number of Days)					
1							
2							
3							
4							
5							
6							
7							
8							
9							
10							
11							
12							

2.2 Unplanned Outages

Assumptions: include any/all assumptions

Contract	Month/Year	Unit 1	Unit 2	Unit 3	Unit 4	Unit 5	Unit 6
----------	------------	--------	--------	--------	--------	--------	--------

Month		Unplanned Outages (%)					
1							
2							
3							
4							
5							
6							
7							
8							
9							
10							
11							
12							

3. Overall Availability

Assumptions: include any/all assumptions

Contract Month	Month/Year	Unit 1	Unit 2	Unit 3	Unit 4	Unit 5	Unit 6
		Availability Outages (%)					
1							
2							
3							
4							
5							
6							
7							
8							
9							
10							
11							
12							

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4. Non-Storage Facility Optional Designation of Sole Annual Planned Maintenance Month or Split Annual Planned Maintenance Months

The Supplier designates:	☐ NO SOLE ANNUAL PLANNED MAINTENANCE MONTH OR SPLIT ANNUAL PLANNED MAINTENANCE MONTHS FOR THE TIME PERIOD. ☐ _____ AS THE SOLE ANNUAL PLANNED MAINTENANCE MONTH FOR THE TIME PERIOD. <i>(MAY ONLY BE APRIL, MAY, OCTOBER OR NOVEMBER).</i> ☐ _____ AND _____ AS THE SPLIT ANNUAL PLANNED MAINTENANCE MONTHS FOR THE TIME PERIOD. <i>(MAY ONLY BE APRIL, MAY, OCTOBER OR NOVEMBER).</i>
---------------------------------	--

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EXHIBIT M
FORM OF SUPPLIER COST EFFECTIVE DATE CERTIFICATE

SUBMIT BY EMAIL (PDF WITH SIGNATURE) TO CONTRACT MANAGEMENT:

contract.management@ieso.ca

This Exhibit reflects the corresponding forms appearing on the Buyer's Website as at the date of this Contract. In accordance with Section 1.2 of the Contract, the Buyer may, without notice to the Supplier, amend or replace this form. It is the responsibility of the Supplier to ensure that the latest draft of this form, as posted on the Buyer's Website, is used. Capitalized terms not defined herein have the meanings ascribed thereto in the Contract.

Date	insert date
Legal Name of Supplier	insert legal name of Supplier (the "Supplier")
Name of Facility	insert name of Facility
Contract Title	insert contract title or Contract ID as appropriate (the "Contract")
Contract Date	insert date

This Supplier Cost Effective Date certificate is delivered pursuant to section 2.13 of the Contract. Capitalized terms used in this certificate not otherwise defined herein have the meaning given to such terms in the Contract.

I _____, am an authorized signing officer or director of the Supplier and I hereby certify, for and on behalf of the Supplier, and not personally, that:

1. All of the information in this Prescribed Form – Supplier Cost Effective Date Certificate is complete, true and accurate, and there is no material information omitted from this Prescribed Form – Supplier Cost Effective Date Certificate that makes the information contained herein misleading or inaccurate.
2. The Supplier has entered into and paid a non-refundable deposit under one or more binding agreements for the purchase or supply of generating or storage equipment in respect of the Facility as of _____, which date constitutes the Supplier Cost Effective Date.
3. Attached as Appendix A to this certificate is genuine copy of the agreement(s) and evidence of the non-refundable deposit(s) paid thereunder referenced in item 2 above.

Name:

Signature:

Title:

Draft

Appendix A

[Attach evidence of binding agreement(s) and non-refundable deposit(s) paid as of the specified Supplier Cost Effective Date.]

Draft

EXHIBIT N FORM OF INDEPENDENT ENGINEER CERTIFICATE

SUBMIT BY EMAIL (PDF WITH SIGNATURE) TO CONTRACT MANAGEMENT:

contract.management@ieso.ca

This Exhibit reflects the corresponding forms appearing on the Buyer's Website as at the date of this Contract. In accordance with Section 1.2 of the Contract, the Buyer may, without notice to the Supplier, amend or replace this form. It is the responsibility of the Supplier to ensure that the latest draft of this form, as posted on the Buyer's Website, is used. Capitalized terms not defined herein have the meanings ascribed thereto in the Contract.

Date	insert date
Legal Name of Supplier	insert legal name of Supplier (the "Supplier")
Name of Facility	insert name of Facility
Contract Title	insert contract title or Contract ID as appropriate (the "Contract")
Contract Date	insert Contract Date
Milestone Date for Commercial Operation	insert Milestone Date for Commercial Operation
Maximum Contract Capacity (MW)	insert Maximum Contract Capacity
Type of Facility	☐ Electricity Storage Facility ☐ Non-Electricity Storage Facility

WHEREAS Section 2.5(a)(i) of the Contract provides that the Facility will be deemed to have achieved Commercial Operation at the point in time when, *inter alia*, the Buyer has received a certificate directly from an Independent Engineer containing certain statements with respect to the Facility (this "Certificate");

AND WHEREAS, insert name of Independent Engineer (the "Undersigned") acts as the Independent Engineer for the purposes of providing this Certificate;

NOW THEREFORE, THE UNDERSIGNED CERTIFIES to the Buyer, and acknowledges that the Buyer is relying on this Certificate, that:

- a) the Undersigned is:
- (i) a professional engineer duly qualified and licensed to practice engineering in the Province of Ontario; and
 - (ii) employed by an independent engineering firm which holds a certificate of authorization from Professional Engineers Ontario that is not affiliated with the Supplier nor directly or indirectly Controlled by the Supplier and that does not have a vested interest in the design, engineering, procurement, construction, metering and/or testing of the Facility.
- b) the Facility has been completed in all material respects, excepting punch list items that do not materially and adversely affect the ability of the Facility to operate in accordance with the Contract;

- The Independent Engineer represents and warrants that all of the information in this Certificate is complete, true and accurate, and there is no material information omitted from this Certificate that makes the information contained herein misleading or inaccurate.

Independent Engineer: insert name of Independent Engineer

Signature and Professional Engineer Stamp of Signing Engineer:

Name:

Title:

Dated this ____ day of ____, 20__

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EXHIBIT O FORM OF SUPPLIER'S CERTIFICATE

SUBMIT BY EMAIL (PDF WITH SIGNATURE) TO CONTRACT MANAGEMENT:

contract.management@ieso.ca

This Exhibit reflects the corresponding forms appearing on the Buyer's Website as at the date of this Contract. In accordance with Section 1.2 of the Contract, the Buyer may, without notice to the Supplier, amend or replace this form. It is the responsibility of the Supplier to ensure that the latest draft of this form, as posted on the Buyer's Website, is used. Capitalized terms not defined herein have the meanings ascribed thereto in the Contract.

Date	insert date
Legal Name of Supplier	insert legal name of Supplier (the "Supplier")
Name of Facility	insert name of Facility
Contract Title	insert contract title or Contract ID as appropriate (the "Contract")
Contract Date	insert Contract Date
Milestone Date for Commercial Operation (MCOD)	insert Milestone Date for Commercial Operation
Commercial Operation Date Requested	insert date

Pursuant to section 2.5(a)(ii) of the Contract, the Supplier is hereby submitting this completed Prescribed Form – Form of Supplier's Certificate (the "Certificate") and all relevant supporting documentation as listed below to the Buyer.

WHEREAS Section 2.5(a) of the Contract provides that the Facility will be deemed to have achieved Commercial Operation when the Buyer notifies the Supplier that all of the documentation required by the Buyer has been provided and accepted by the Buyer;

NOW THEREFORE, insert legal name of Supplier

CERTIFIES to the Buyer that:

- a) insert name of Independent Engineer is a professional engineer that is:
- (i) duly qualified and licensed to practice engineering in the Province of Ontario; and,
 - (ii) employed by an independent engineering firm which holds a certificate of authorization issued by Professional Engineers Ontario that is not affiliated with or directly or indirectly Controlled by the Supplier, and that does not have a vested interest in the design, engineering, procurement, construction, metering and/or testing of the Facility.
- b) insert legal name of Supplier has provided, or in the case of section (b)(iviii) of this Certificate, has caused the Independent Engineer referenced in section (a) of this Certificate to provide, to the Buyer the following:

(i) the Metering Plan that has been approved by the Buyer, pursuant to Section 2.7 of the Contract;

~~(ii) updated Company Representative contact information in the form set out in Exhibit D of the Contract;~~

(ii) ~~(iii)~~ A single line electrical drawing that identifies the as-built Connection Point sealed by a professional engineer licensed in Ontario, clearly showing area transmission and distribution facilities, including the transformer station(s) that is electrically closest to the Facility, pursuant to Section 2.5(a)(v) of the Contract; ~~and,~~

(iii) ~~(iv)~~ The IE Certificate in the Prescribed Form, pursuant to Section 2.5(a)(i) of the Contract; ~~;~~

~~c) Where the Supplier is an Indigenous Participation Supplier at the Commercial Operation Date, the Supplier has submitted the Indigenous Participation Declaration, either prior to the date hereof or attached hereto~~

(iv) a copy of the final Registration Approval Notice (RAN) issued by the System Operator; and

(v) a copy of the generation or storage license (as applicable) issued by OEB.

The Supplier represents and warrants that all of the information in this Certificate is complete, true and accurate, and there is no material information omitted from this Certificate that makes the information contained herein misleading or inaccurate.

The Supplier acknowledges and agrees that this Certificate is being delivered to the Buyer solely for the purposes of the LT1 Contract. It does not constitute a notice for any other purpose, including, without limitation, to meet an obligation to provide notice to the System Operator pursuant to the IESO Market Rules.

Supplier: insert legal name of Supplier

Signature:

Name:

Title:

I have the authority to bind the Supplier and, if applicable, by signing this form using electronic signature, I agree to the content, terms and conditions set out in the document on behalf of the Supplier.

Dated this ___ day of ___, 20

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**EXHIBIT P
MILESTONE DATES**

	MILESTONE EVENT	MILESTONE DATE (Month/Day/Year)
1.	Milestone Date for Commercial Operation	[May 1, 2028] [NTD: Subject to Government direction.]

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EXHIBIT Q FORM OF QUARTERLY PROGRESS REPORT

SUBMIT BY EMAIL (PDF WITH SIGNATURE) TO CONTRACT MANAGEMENT:

contract.management@ieso.ca

This Exhibit reflects the corresponding forms appearing on the Buyer's Website as at the date of this Contract. In accordance with Section 1.2 of the Contract, the Buyer may, without notice to the Supplier, amend or replace this form. It is the responsibility of the Supplier to ensure that the latest draft of this form, as posted on the Buyer's Website, is used. Capitalized terms not defined herein have the meanings ascribed thereto in the Contract.

Date	insert date
Legal Name of Supplier	insert legal name of Supplier (the "Supplier")
Name of Facility	insert name of Facility
Contract Title	insert contract title or Contract ID as appropriate (the "Contract")
Contract Date	insert date
Milestone Date for Commercial Operation	insert Milestone Date for Commercial Operation
Reporting Period	☐ Q1 ☐ Q2 ☐ Q3 ☐ Q4 Reporting Year: <u>insert year</u>

Pursuant to section 2.4(a) of the Contract, the Supplier is hereby submitting this completed Prescribed Form – Quarterly Progress Report and all relevant supporting documentation as listed below to the Buyer. Information provided by the Supplier may be disclosed by the Buyer in accordance with the provisions of the Contract.

The Supplier represents and warrants that all of the information in this Prescribed Form – Quarterly Progress Report is complete, true and accurate, and there is no material information omitted from this Prescribed Form – Quarterly Progress Report that makes the information contained herein misleading or inaccurate.

The Supplier acknowledges and agrees that this Notice is being delivered to the Buyer solely for the purposes of the Contract. It does not constitute a notice for any other purpose, including, without limitation, to meet an obligation to provide notice to the System Operator pursuant to the IESO Market Rules.

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Supplier: <u>insert legal name of Supplier</u>
Signature:
Name:
Title:
I have the authority to bind the Supplier and, if applicable, by signing this form using electronic signature, I agree to the content, terms and conditions set out in the document on behalf of the Supplier.
Dated this ___ day of ___, 20__

SUBMISSION CHECKLIST



- ☐ 1. This completed Prescribed Form – Form of Quarterly Progress Report
- ☐ 2. If the Facility is under construction, 5-10 photos in .JPEG format as set out in this Prescribed Form – Form of Quarterly Progress Report

1. Progress Status Check List: Please check the box(es) that best describe the status of the items listed below	
Environmental, land-use and other approval(s), as applicable	☐ Not Started ☐ In Progress ☐ Complete ☐ Not Applicable
Impact Assessment(s)	☐ Not Started ☐ In Progress ☐ Complete
Ordering major equipment	☐ Not Started ☐ In Progress ☐ Complete
Delivery of major equipment	☐ Not Started ☐ In Progress ☐ Complete
Financial Close	☐ Not Started ☐ In Progress ☐ Complete ☐ Not Applicable
Construction	☐ Not Started ☐ In Progress ☐ Complete
Connection	☐ Not Started ☐ In Progress ☐ Complete
2. Executive Summary of Quarterly Activities: In 6-8 bullet points, please provide a brief overview of major work accomplished, any significant safety, environmental or other events that have occurred in the reporting period, and any issues that could have potential schedule impacts.	
• • • • • • •	

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3. Assignment and Change of Control RE: Sections 16.5 and 16.6 of the LT1 Contract: Report the status of assignment of the Contract and/or change of Control of the Supplier, if any. This section is to report status only, the Supplier is required to give the Buyer prompt notice or seek consent, as applicable, before this occurs as per Section 16.5 and 16.6 of the Contract. If yes to either, please provide details below.

Assignment: ☐ Yes ☐ No

Change of Control: ☐ Yes ☐ No

•

4. Ownership Interest of the Supplier: Is ownership interest of the Supplier held by a publically traded company?

If “Yes”, please provide the name of the publically traded company and any relevant details below.

☐ Yes ☐ No

•

5. Force Majeure RE: Article 11 of the LT1 Contract: Report the status of Force Majeure events, if any. This section is to report status only. The Supplier is required to give the Buyer notice of Force Majeure as per Section 11.1(b) of the LT1 Contract.

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6. Secured Lender's Security Agreement RE: Article 12 of the LT1 Contract: If a Secured Lender's Security Agreement has been entered into by the Supplier, please provide details below. This section is to report status only. The Supplier shall provide the Buyer prompt notice if it intends to enter into an agreement with a Secured Lender under Article 12 of the LT1 Contract.

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☐ Yes ☐ No

•

7. Company Representative: Confirm contact information for the individual who, pursuant to Section 15.1 of the LT1 Contract, is authorized to act on behalf of the Supplier. If there has been a change since the previous report, an updated *Prescribed Form – Notice of Company Representative* must also be provided.

Name of Company Representative

Title

Mailing Address

Email Address

Telephone

8. Contact for Public Information: Provide contact information for the individual who is designated to provide information to the media or the public about the Facility. This information will be listed on the Website.

Name of Contact for Public Information

Title

Company

E-Mail Address

Telephone

Toll-Free Telephone (if applicable)

9. Representations of the Supplier RE: Section 7.1 of the LT1 Contract: Please restate that the representations of the Supplier stipulated in Section 7.1 of the LT1 Contract are still true or provide a qualified representation.

Section

Still True

If No, details of how qualified

7.1(a)

	☐ Yes ☐ No	
7.1(b)	☐ Yes ☐ No	
7.1(c)	☐ Yes ☐ No	
7.1(d)	☐ Yes ☐ No	
7.1(e)	☐ Yes ☐ No	
7.1(f)	☐ Yes ☐ No	
7.1(g)	☐ Yes ☐ No	
7.1(h)	☐ Yes ☐ No	
7.1(i)	☐ Yes ☐ No	
7.1(j)	☐ Yes ☐ No	
7.1(k)	☐ Yes ☐ No	
7.1(l)	☐ Yes ☐ No	
7.1(m)	☐ Yes ☐ No	
7.1(n)	☐ Yes ☐ No	

10. Development, Design and Construction Progress: Report the status of each Reportable Event as listed below, if applicable.

Item	Reportable Events	Status of Efforts / Progress Description	% Complete	Date (YYYY/MM/DD)		
				Contractual	Forecast	Actual
1	Obtaining environmental, Facility and Project Site approvals and applicable permitting for the Facility	Progress: Issues:				
2	Completion of Impact Assessment(s), including receipt of approvals from the System Operator, Transmitter or LDC, as applicable	Progress: Issues:				
3	Execution of an EPC or	Progress:				

	balance-of plant construction contract in respect of the Project	Issues:				
4	Financial Close	Progress: Issues:				
5	Ordering of major equipment	Progress: Issues:				
6	Delivery of major equipment	Progress: Issues:				
7	Status of construction	Progress: Issues:				
8	Completion of construction	Progress: Issues:				
9	Status of the construction of the connection of the Facility to the Transmission System or Distribution System, as applicable	Progress: Issues:				

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10	Connection of the Facility to the Transmission System or Distribution System, as applicable	Progress: Issues:				
11	Commercial Operation	Progress: Issues:				

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11. Supplier Submittals Prior to Commercial Operation Date: Please confirm the completeness of necessary submissions and related section numbers.					
Item	Section	Description of Submittals	Submission Date (YYYY/MM/DD)		
			Contractual	Forecast	Actual
1		Metering Plan			
2		<i>Workplace Safety and Insurance Act (Ontario)</i> clearance certificate			
3		Requirements for Commercial Operation under Section 2.5 of the LT1 Contract with supporting documentation			
12. Progress Photos: if the Facility is under construction, provide 5-10 photos that best represent the progress of construction work during the quarter as described in the Executive Summary above.					
• Photos should not be inserted into this section of the Prescribed Form – Form of Quarterly Progress Report • Photos should be sent as JPEG attachments in a separate email (the email must not exceed 10MB) • Use descriptive filenames to reflect or explain the content of each photo (e.g. “Turbine installation in progress.jpg” and not “Photo 1.jpg”)					

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EXHIBIT R

DETERMINATION OF REGULATORY CHARGE CREDIT FOR AN ELECTRICITY STORAGE FACILITY

1. Regulatory Charge Credit

This Exhibit R sets out the calculation of the Regulatory Charge Credit for a Facility that is an Electricity Storage Facility for a given Settlement Month “*m*” which shall be calculated as follows:

$RCC_m = GREA_m \times RAF_m$	
where:	
RCC_m	is the Regulatory Charge Credit for an Electricity Storage Facility for Settlement Month “ <i>m</i> ” (in \$).
$GREA_m$	is the Gross Reimbursable Energy Adder for Settlement Month “ <i>m</i> ” (in \$), and is calculated as the sum of all Regulatory Energy Charges incurred by the Supplier in respect of Withdrawn Electricity by the Contract Capacity during Settlement Month “ <i>m</i> ”, plus the GA Amount determined in accordance with Section 2 of this Exhibit R.
RAF_m	is the Reimbursement Adjustment Factor in respect of Settlement Month “ <i>m</i> ”, and is calculated as $AMRTE_m$ divided by RRE, provided that the RAF_m shall not be greater than 1.0.
$AMRTE_m$	is the Apparent Monthly Round Trip Efficiency for Settlement Month “ <i>m</i> ” and is calculated as the total Delivered Electricity by the Facility during the most recent three (3) month period which ends on the last day of Settlement Month “ <i>m</i> ” divided by the total Withdrawn Electricity by the Facility during the most recent three (3) month period which ends on the last day of Settlement Month “ <i>m</i> ”.
RRE	is the Reimbursement Reference Efficiency and is equal to 0.75.

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2. GA Reimbursement

The amount of Global Adjustment included in the Gross Reimbursable Energy Adder (the “**GA Amount**”) shall be determined as follows:

2.1 The GA Amount shall be calculated as the amount of Global Adjustment incurred by the Supplier (net of any credits on account of Global Adjustment) in respect of the Contract Capacity, until such time as the Facility is eligible to begin participation in the Industrial Conservation Initiative (“**ICI**”) program or any successor or replacement program designed to reduce or eliminate the Facility’s Global Adjustment cost (each, an “**ICI Successor Program**”).

2.2 If at any time there is: (A) a change in the basis upon which Global Adjustment is allocated to the Facility, or (B) a change to the ICI or any ICI Successor Program, then subject to Section 2.3 of this Exhibit R, the GA Amount shall be calculated as the amount of any Global Adjustment incurred (net of any credits on account of Global Adjustment) in respect of the Contract Capacity, other than any amount of Global Adjustment that the Supplier would have avoided had the Facility not been drawing power from the IESO-Controlled Grid during any peak demand periods (“**Peak Demand Periods**”) prescribed at the applicable time for the purposes of the allocation of Global Adjustment to a prescribed class of electricity consumers to which the Facility or the Supplier is eligible to belong.

2.3 At any time the Supplier is entitled to a reimbursement of Global Adjustment under this Agreement, the Supplier shall use Commercially Reasonable Efforts to cause the Facility to participate in the ICI program or any ICI Successor Program.

2.4 For greater certainty, and provided that the Supplier has complied with Section 2.3 of this Exhibit R, but without limiting Section 2.1 of this Exhibit R in any way, so long as the Facility has not drawn power from the IESO-Controlled Grid during any Peak Demand Periods, the GA Amount shall be equal to the Global Adjustment incurred in respect of the Contract Capacity, if any.

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EXHIBIT S FORM OF OUTAGE REPORT

SUBMIT BY EMAIL (PDF WITH SIGNATURE) TO CONTRACT MANAGEMENT:

outage.notice@ieso.ca

with a cc to contract.management@ieso.ca

This Exhibit reflects the corresponding forms appearing on the Buyer's Website as at the date of this Contract. In accordance with Section 1.2 of the Contract, the Buyer may, without notice to the Supplier, amend or replace this form. It is the responsibility of the Supplier to ensure that the latest draft of this form, as posted on the Buyer's Website, is used. Capitalized terms not defined herein have the meanings ascribed thereto in the Contract.

Date	insert date
Legal Name of Supplier	insert legal name of Supplier (the "Supplier")
Name of Facility	insert name of Facility
Contract Title	insert contract title or Contract ID, as appropriate (the "Contract")
Contract Date	insert date

Pursuant to Section 15.3(b)(ii) of the Contract, the Supplier is hereby submitting this Prescribed Form – Outage Notice to the Buyer.

Supplier Outage Notice Contact Details

Supplier Contact Name	insert Supplier contact name
Supplier Contact Telephone	insert Supplier contact telephone
Supplier Contact E-Mail	insert Supplier Contact email address

Outage Equipment Details

Equipment Name	Equipment Type	Nameplate Capacity (MW)
insert equipment name	insert equipment type	insert Nameplate Capacity in megawatts

Draft

Outage Details

Request Type (New/Change/C ancel)	Outag e Type (Derat e/ Outag e)	Equipm ent Name	Descripti on of Outage	Derat ed to (MW)	Duration Type (Daily/Continu ous)	Start Date (mm/dd/y yyy)	Start Time (EST) ¹ (hh/m m)	End Date (mm/dd/y yyy)	End Time (EST) ² (hh/m m)

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¹ Time in EST, including switching time.
² Time in EST, including switching time.