

**ADDENDUM NO. 1**  
**dated September 13, 2017, to the**  
**SERVICE AGREEMENT FOR THE PROVISION OF REGULATION SERVICE**

**ASSOCIATED WITH THE**  
**REQUEST FOR PROPOSALS**  
**FOR INCREMENTAL REGULATION CAPACITY**

In accordance with Section 2.11 of the RFP, this Addendum No. 1 contains amendments to the Contract posted on the Website.

This Addendum No. 1 contains the “clean” version of the amended Contract. A “blackline” copy is also provided on the Website for the ease of reference of interested parties.

This page has intentionally been left blank.

# AGREEMENT



## **Service Agreement for the Provision of Regulation Service**

---

Between

**<Service Provider's Name>**

**- and -**

**INDEPENDENT ELECTRICITY SYSTEM OPERATOR**

**<insert date>**

---

## TABLE OF CONTENTS

### ARTICLE 1 INTERPRETATION

1.1	Definitions.....	2
1.2	Schedules .....	11
1.3	Interpretation.....	12
1.4	Headings .....	12
1.5	Conflict of Documents.....	13

### ARTICLE 2 COMPLIANCE WITH APPLICABLE LAW, PERMITS AND REGISTRATION REQUIREMENTS

2.1	Compliance with Applicable Law .....	13
2.2	Permits and Registration Requirements.....	14

### ARTICLE 3 DEVELOPMENT OF THE CONTRACT FACILITY

3.1	Design and Construction of the Contract Facility Pre-Service Commencement.....	14
3.2	Requirement for Public Meeting for New Build Facilities.....	16
3.3	Service Commencement .....	17

### ARTICLE 4 OPERATION OF THE CONTRACT FACILITY

4.1	Operational Covenants.....	18
4.2	Regulation Service.....	18
4.3	Paramourncy of Safety and Law .....	19
4.4	Testing and Certification.....	19
4.5	Audits.....	20

### ARTICLE 5 REPRESENTATIONS AND WARRANTIES

5.1	Representations and Warranties of the IESO.....	20
5.2	Representations and Warranties of the ASP.....	21

### ARTICLE 6 TERM

6.1	Term.....	23
-----	-----------	----

### ARTICLE 7 DEFAULT AND TERMINATION

7.1	Events of Default by Either Party .....	23
7.2	Additional Events of Default by the ASP.....	24

7.3	Notice of Default.....	24
7.4	Remedies for Event of Default .....	25
7.5	Change in Market Rules.....	25
7.6	Effect of Termination.....	28

**ARTICLE 8  
PAYMENT**

8.1	Payment.....	28
-----	--------------	----

**ARTICLE 9  
LIABILITY, INDEMNIFICATION AND FORCE MAJEURE**

9.1	Liability, Indemnification and Force Majeure .....	28
-----	--	----

**ARTICLE 10  
CONFIDENTIALITY AND FIPPA**

10.1	Confidential Information .....	28
10.2	Notice Preceding Compelled Disclosure .....	29
10.3	Return of Information .....	30
10.4	Injunctive and Other Relief.....	30
10.5	FIPPA Records and Compliance .....	30

**ARTICLE 11  
MISCELLANEOUS**

11.1	Dispute Resolution.....	31
11.2	Amendment.....	31
11.3	Assignment by the ASP .....	31
11.4	Assignment by the IESO.....	32
11.5	Change of Control.....	32
11.6	Binding Agreement.....	32
11.7	Further Assurances.....	32
11.8	Waiver.....	32
11.9	Severability .....	33
11.10	Notices .....	33
11.11	Governing Law .....	33
11.12	Counterparts.....	33
11.13	Third Party Beneficiaries .....	33
11.14	Entire Agreement.....	34
11.15	Collaboration and Assessment.....	34
11.16	Preparation of Agreement.....	34
11.17	Currency.....	34
11.18	Survival.....	34
11.19	Business Relationship.....	34
11.20	Time of Essence.....	35

## **SCHEDULES**

Schedule 1	Form Of Officer's Certificate Re Service Commencement
Schedule 2	Procedures For Testing Regulation Service Capability
Schedule 3	Technology Specific Provisions
Schedule 4	Technical Specifications for the Contract Facility, Availability and Payment Details
Schedule 5	Form Of Confidentiality Undertaking
Schedule 6	Payment
Schedule 7	Nominated Representatives For Notifications

**THIS AGREEMENT** dated the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ ●

BETWEEN:

*[Note to Finalization: Insert name of Ancillary Service Provider, jurisdiction of formation and address of office headquarters] ●*

(the “ASP”)

- and -

**Independent Electricity System Operator**, a statutory corporation existing under the *Electricity Act*, 1998, having its registered address at #1600 - 120 Adelaide Street West, Toronto, Ontario, M5H 1T1 (the “**IESO**”)

**WHEREAS:**

- A.** The Market Rules for the Ontario electricity market set out the rights and obligations of Ancillary Service Providers to register, test and certify facilities to provide Ancillary Service, and the rights and obligations of Ancillary Service Providers and the IESO with respect to the provision and monitoring of, and payment for, Ancillary Service.
- B.** The Market Rules permit the IESO to conduct a competitive process to procure Regulation service, and accordingly, the IESO conducted the Request for Proposals.
- C.** The ASP submitted a Proposal into the Request for Proposals that was accepted by the IESO and the Parties wish to execute this Agreement to establish the terms and conditions pursuant to which the ASP will provide Regulation Service.

**NOW THEREFORE**, in consideration of the mutual covenants set forth herein and of other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties agree as follows:

## **ARTICLE 1 INTERPRETATION**

### **1.1 Definitions**

Capitalized terms used herein shall have the meaning set out below:

“**Affiliate**” means, with respect to the ASP, (i) any Person that, individually or with any other Person(s), Controls or is Controlled by the ASP, or (ii) any Person that, with the ASP, is Controlled by a third Person or Persons.

“**Agreement**” means this agreement, including the Schedules to this agreement.

“**Ancillary Service**” has the meaning set out in Chapter 11 of the Market Rules.

“**Ancillary Service Provider**” has the meaning set out in Chapter 11 of the Market Rules.

“**Annual Availability Cost**” has the meaning given to it in Table 3 of Schedule 4.

“**Annual Certification Tests**” has the meaning given to it in Section 1.3(b) of Schedule 2.

“**Applicable Law**” means:

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

“**ASP**” has the meaning set out in the preamble to this Agreement, and includes its successors and permitted assigns.

“**Available Hours**” means the number of hours the Contract Facility is available to provide Regulation Service in a given month.



“**Base-Point**” means the economic dispatch value (in MW), as determined by the System Operator, that the Contract Facility operates at while providing Regulation Service.

“**Boundary Entity**” has the meaning given to it in Chapter 11 of the Market Rules.

“**Business Day**” means any day of the year, other than a Saturday, Sunday or any day on which Canadian chartered banks are closed for business in Toronto, Ontario.

“**Certification**” means the Contract Facility has successfully completed the applicable Certification Tests as specified in Schedule 2, and “**Certified**” shall have the same meaning.

“**Certification Tests**” means, collectively, the Regulation Capability Test and the On-Line Diagnostic Test.

“**Certified Capabilities**” means, collectively, the Certified Ramp Rate and the Certified Regulation Capacity.

“**Certified Ramp Rate**” means the Ramp Rate of the Contract Facility, as Certified by the Certification Tests specified in Schedule 2, and as may be confirmed, from time to time, by the IESO delivering to the ASP a written notice in the form attached as Exhibit 1 to Schedule 2.

“**Certified Regulation Capacity**” means the Regulation Capacity of the Contract Facility, as Certified by the Certification Tests specified in Schedule 2, and as may be confirmed, from time to time, by the IESO delivering to the ASP a written notice in the form attached as Exhibit 1 to Schedule 2.

“**Charge Type**” has the meaning given to it in Chapter 11 of the Market Rules.

“**Confidential Information**” means, without amending the definition of “confidential information” as such term is defined in the Market Rules:

- (a) all information that has been identified as confidential and which is furnished or disclosed by the Disclosing Party and its Representatives to the Receiving Party and its Representatives in connection with this Agreement, whether before or after its execution, including all new information derived at any time from any such confidential information, but excluding: (i) publicly-available information, unless made public by the Receiving Party or its Representatives in a manner not permitted by this Agreement; (ii) information already known to the Receiving Party prior to being furnished by the Disclosing Party; and (iii) information disclosed to the Receiving Party from a source other than the Disclosing Party or its 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) the information set out in Schedule 4 and Schedule 7 of this Agreement.

**“Confidentiality Undertaking”** has the meaning given to it in Section 10.1(c).

**“Connection Agreement”** means the applicable connection agreement entered into between a Transmitter or LDC, as applicable, and a Market Participant, governing the terms and conditions pursuant to which Electricity is permitted to be delivered to the IESO-Controlled Grid or a Distribution System, as the case may be.

**“Connection Point”** means (i) where the Contract Facility is connected to the IESO-Controlled Grid, the connection point(s) between the Contract Facility and the IESO-Controlled Grid; and (ii) where the Contract Facility is connected to a Distribution System, the embedded connection point(s) between the Contract Facility and a Distribution System, in either case (A) as specified in Table 1 of Schedule 4, in respect of an Existing Facility; or (B) as specified in the Officer’s Certificate provided by the ASP, in respect of a New Build Facility.

**“Contract Date”** means the date of this Agreement, being the first date written above in the preamble.

**“Contract Facility”** means a Facility, as more fully described in Schedule 4, together with all other applicable equipment and facilities which are necessary to deliver Regulation Service to the Delivery Point.

**“Contract Facility Amendment”** has the meaning given to it in Section 3.1(e).

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

**“Control Centre”** has the meaning given to it in Chapter 11 of the Market Rules.

**“Defaulting Party”** has the meaning given to it in Section 7.1.

**“Delivery Point”** has the meaning given to it in Chapter 11 of the Market Rules.

**“De-rating”** means a restriction of use or reduction in performance of the Contract Facility’s equipment relative to its registered capabilities.

**“Disclosing Party”** means, with respect to Confidential Information, the Party and/or its Representatives providing or disclosing such Confidential Information and may be the ASP or the IESO, as applicable; provided, however, that where such Confidential Information is the information set out in part (b) of the definition of Confidential Information, both the ASP and the IESO shall be deemed to be the Disclosing Party.

“**Dispatch**” has the meaning given to it in Chapter 11 of the Market Rules.

“**Dispatch Day**” has the meaning given to it in Chapter 11 of the Market Rules.

“**Dispatch Instructions**” has the meaning given to it in Chapter 11 of the Market Rules.

“**Distribution System**” means a system connected to the IESO-Controlled Grid for distributing Electricity at voltages of 50 kilovolts or less, and includes any structures, equipment or other things used for that purpose, provided that a Distribution System shall be deemed not to include any equipment controlled by the System Operator pursuant to the Distribution System Code.

“**Distribution System Code**” means the “Distribution System Code” established and approved by the OEB, which, among other things, establishes the obligations of an LDC with respect to the services and terms of service to be offered to customers and retailers and provides minimum technical operating standards for Distribution Systems.

“**Duration of Service**” has the meaning given to it in Table 1 of Schedule 4.

“**Electrical Safety Authority**” means the person or body designated as the “Authority” pursuant to Part VIII of the *Electricity Act, 1998* (Ontario), or its successor.

“**Electricity**” means electric energy, measured in MWh.

“**Emergency Operating State**” has the meaning given to it in Chapter 11 of the Market Rules.

“**Energy**” has the meaning given to it in Chapter 11 of the Market Rules.

“**Energy Capacity**” means a measure of the maximum amount of Energy (in MWh) that an Energy Storage Facility can store.

“**Energy Limited Facility**” means a Facility that can at times be limited in the amount of energy that such Facility can provide during each day.

“**Energy Market**” has the meaning given to it in Chapter 11 of the Market Rules.

“**Energy Storage Facility**” means a Facility that uses a commercially available technology that is connected to the IESO-Controlled Grid or a Distribution System and is capable of (a) absorbing grid Energy (charging); (b) storing grid Energy for a period of time; and (c) injecting grid Energy (discharging) back into the IESO-Controlled Grid or a Distribution System, as applicable, or its equivalent (to reduce consumption by approximately the same amount of Energy that was absorbed).

“**Event of Default**” means, in respect of either Party, an event of default described in Section 7.1, and in respect of the ASP only, an event of default described in Section 7.2.

“**Existing Facility**” means a Facility that is connected to the IESO-Controlled Grid or a Distribution System as of June 1, 2017.

“**Facility**” means a Generation Facility, a Load Facility or a Boundary Entity.

“**Facility ID No.**” means the facility ID number per the most current System Operator registration data for the Contract Facility (refer to the Online IESO web portal).

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

“**FIPPA Records**” has the meaning given to it in Section 10.5.

“**First Nation Lands**” means in respect of a First Nation in Ontario that is a “band” as defined in the *Indian Act*, RSC 1985, c I-5, the following:

- (a) “reserve land” as set out in the *Indian Act*, RSC 1985, c I-5;
- (b) “designated lands” as set out in the *Indian Act*, RSC 1985, c I-5;
- (c) “special reserves” as set out in s. 36 of the *Indian Act*, RSC 1985, c I-5;
- (d) fee simple lands that are held in trust for the benefit of a First Nation in Ontario that is a “band” as defined in the *Indian Act*, RSC 1985, c I-5, provided that those lands are the subject of an application by such First Nation to have Canada set the lands apart as reserve lands pursuant to Canada’s “Additions to Reserve Policy”;
- (e) Crown lands or other lands that Canada has agreed to recommend be set apart as reserve for a First Nation in Ontario that is a “band” as defined in the *Indian Act*, RSC 1985, c I-5 in settlement of such First Nation’s land claim; or
- (f) lands acquired and held by a First Nation in Ontario that is a “band” as defined in the *Indian Act*, RSC 1985, c I-5 in the exercise of its powers under paragraph 18(2)(a) of the *First Nations Land Management Act*, SC 1999, c 24, provided that such lands are the subject of an application by such First Nation to have Canada set the lands apart as reserve pursuant to Canada’s “Additions to Reserve Policy”.

“**Fixed Monthly Payment**” has the meaning given to it in Section 1.2(a) of Schedule 6.

“**Forced Outage**” has the meaning given to it in Chapter 11 of the Market Rules.

“**Generation Facility**” has the meaning given to it in Chapter 11 of the Market Rules.

“**Generator**” has the meaning given to it in Chapter 11 of the Market Rules.

“**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 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 Ancillary Service Provider 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 Applicable Laws. 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.

“**Good Utility Practice**” has the meaning given to it in Chapter 11 of the Market Rules.

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

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

“**IESO**” or the “**Independent Electricity System Operator**” has the meaning set out in the preamble to this Agreement, and includes its successors and permitted assigns.

“**IESO-Administered Markets**” has the meaning given to it in Chapter 11 of the Market Rules.

“**IESO-Controlled Grid**” has the meaning set out in Chapter 11 of the Market Rules.

“**IESO Settlement Schedule & Payments Calendar**” has the meaning set out in Chapter 11 of the Market Rules.

“**Liability Cap**” has the meaning given to it in Table 3 of Schedule 4.

“**Load Facility**” has the meaning given to it in Chapter 11 of the Market Rules.

“**Local Distribution Company**” or “**LDC**” means the owner or operator of a Distribution System who is licensed by the OEB as an “electricity distributor”.

“**Local Jurisdiction**” means any Local Municipality or First Nation Lands in or on which a New Build Facility will be located in whole or in part.

“**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, Sch A.

“**Longstop Date**” means the date which is one hundred and eighty (180) days after the Target Service Commencement Date.

“**Market Participant**” has the meaning given to it in Chapter 11 of the Market Rules.

“**Market Rules**” means the rules made under Section 32 of the *Electricity Act, 1998* (Ontario), together with all market manuals, policies, and guidelines established and issued by the System Operator, as may be amended from time to time.

“**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.

“**Material Market Rule Amendment**” has the meaning given to it in Section 7.5.

“**Monthly Payment**” has the meaning given to it in Section 1.1(a) of Schedule 6.

“**Monthly Reimbursement**” has the meaning given to it in Section 1.3(b) of Schedule 6.

“**MW**” means megawatt.

“**MWh**” means megawatt hour.

“**Nameplate Capacity**” means the rated capacity, expressed in MW, of the Contract Facility.

“**New Build Facility**” means a Facility that is not an Existing Facility.

“**Non-Defaulting Party**” has the meaning given to it in Section 7.1.

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

“**Officer’s Certificate**” means (i) in respect of an Existing Facility, an officer’s certificate in the form set out in Schedule 1 - Type 1; or (ii) in respect of a New Build Facility, an officer’s certificate in the form set out in Schedule 1 - Type 2.

“**On-Line Diagnostic Test**” has the meaning given to it in Section 1.5(a)(i) of Schedule 2.

“**Operating Reserve Market**” has the meaning given to it in Chapter 11 of the Market Rules.

“**Opportunity Cost Rate**” has the meaning given to it in Table 3 of Schedule 4.

“**Outage**” has the meaning given to it in Chapter 11 of the Market Rules.

“**Party**” means a party to this Agreement and “**Parties**” means every Party.

“**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**” has the meaning given to it Chapter 11 of the Market Rules.

“**Proposal**” means the Proposal (as such term is defined in the Request for Proposals) submitted by the ASP in response to the Request for Proposals and selected by the IESO as a Selected Proposal (as such term is defined in the Request for Proposals).

“**Proposed Capabilities**” means, collectively, the Regulation Capacity and Ramp Rate set out in Table 1 of Schedule 4 of this Agreement.

“**Proposed Connection Location**” means, in respect of a New Build Facility, the proposed connection location on an Eligible TS or an Eligible Circuit (as each such term is defined in the Request for Proposals), as more specifically identified in Table 1 of Schedule 4.

“**Proposal Submission Deadline**” has the meaning given to it in the Request for Proposals.

“**Public Company**” means a company, the shares of which are listed and traded on any recognized stock exchange.

“**Ramp Rate**” means the rate, expressed in MW per minute, that a Facility changes its Energy output or consumption.

“**Receiving Party**” means, with respect to Confidential Information, the Party receiving Confidential Information and may be the ASP or the IESO, as applicable.

“**Registered Facility**” has the meaning given to it in Chapter 11 of the Market Rules.

“**Regulation**” has the meaning given to it in Chapter 11 of the Market Rules.

“**Regulation Capability Test**” has the meaning given to it in Section 1.4(a)(i) of Schedule 2.

“**Regulation Capacity**” or “**Regulation Capacities**” means the amplitude of variation of power output about a Base-Point which the Contract Facility is capable of executing when providing Regulation Service. Regulation Capacity is expressed as ( $\pm$  MW).

“**Regulation Service**” means the contracted Regulation service to be provided by the ASP to the IESO pursuant to this Agreement.

“**Reliability**” has the meaning given to it in Chapter 11 of the Market Rules.

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

“**Request for Proposals**” means the request for proposals for incremental regulation capacity issued by the IESO on or about June 29, 2017, as may be amended by the IESO from time to time by one or more Addenda in accordance with the terms therein.

“**Residual Variable Cost Rate**” has the meaning given to it in Table 3 of Schedule 4.

“**Results Notice**” has the meaning given to it in Section 1.1(d) of Schedule 2.

“**Results Notice Date**” means the day on which the ASP receives the Results Notice from the IESO.

“**Secured Lender**” means a lender under an agreement or instrument, including a deed of trust or similar instrument securing bonds or debentures, containing a charge, mortgage, pledge, security interest, assignment, sublease, deed of trust or similar instrument with respect to all or any part of the right, title and interest of the ASP in or to the Contract Facility and this Agreement, or any benefit or advantage of any of the foregoing, granted by the ASP that is security for any indebtedness, liability or obligation of the ASP.

“**Service Commencement**” means that the ASP has satisfied the conditions set out in Section 3.3(b), as confirmed by the IESO issuing a Service Commencement Notice to the ASP.

“**Service Commencement Date**” means the date specified in the Service Commencement Notice as being the day that Service Commencement was achieved; provided that the Service Commencement Date shall be no earlier than the date which is one hundred and eighty (180) days before the Target Service Commencement Date.

“**Service Commencement Notice**” has the meaning given to it in Section 3.3(c).

“**Service Completion Date**” has the meaning set out in Table 1 of Schedule 4.

“**Settlement**” has the meaning given to it in Chapter 11 of the Market Rules.

“**Settlement Amount**” has the meaning given to it in Chapter 11 of the Market Rules.

“**Settlement Hour**” has the meaning given to it in Chapter 11 of the Market Rules.

“**System Operator**” means the Independent Electricity System Operator established under Part II of the *Electricity Act, 1998* (Ontario), including its successors and permitted assigns, acting pursuant to its authority to make, administer and enforce the Market Rules.

“**Target Service Commencement Date**” has the meaning given to it in Table 1 of Schedule 4.

“**Term**” has the meaning given to it in Section 6.1.

“**Termination Date**” has the meaning given to it in Section 6.1.



“**Tested Capabilities**” means, collectively, the Regulation Capacity and Ramp Rate as measured by the results of a given Certification Test.

“**Total Available Hours**” means the total number of Available Hours in a calendar year, as set out in Table 2 of Schedule 4.

“**Trading Day**” has the meaning set out in Chapter 11 of the Market Rules.

“**Transmission System Code**” means the “Transmission System Code” established and approved by the OEB, which, among other things, establishes the obligations of a Transmitter with respect to the services and terms of service to be offered to customers and retailers and provides minimum technical operating standards for the IESO-Controlled Grid.

“**Transmitter**” has the meaning set out in Chapter 11 of the Market Rules.

“**Variable Payment**” has the meaning given to it in Section 1.3(a) of Schedule 6.

“**Wholly-owned Subsidiary**” means, in respect of the ASP, (i) a directly wholly-owned subsidiary corporation, all of the outstanding and issued securities (whether voting or non-voting) of which are held directly by the ASP; (ii) an indirectly wholly-owned subsidiary corporation, all of the outstanding and issued securities (whether voting or non-voting) of which are held directly by a “Wholly-owned Subsidiary” of the ASP within the meaning of subsection (i) of this definition; (iii) a wholly-owned subsidiary partnership, all of the outstanding and issued units of which are held directly by the ASP or directly by an entity which would constitute a “Wholly-owned Subsidiary” of the ASP within the meaning of (i) of this definition; or (iv) such other Person that is determined by the IESO to constitute a “Wholly-owned Subsidiary” of the ASP.

## 1.2 Schedules

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

Schedule 1: Form of Officer’s Certificate re Service Commencement

Schedule 2: Procedures for Testing Regulation Service Capability

Schedule 3: Technology Specific Provisions

Schedule 4: Technical Specifications for the Contract Facility, Availability and Payment Details

Schedule 5: Form of Confidentiality Undertaking

Schedule 6: Payment

Schedule 7: Nominated Representatives for Notifications

### 1.3 Interpretation

In this Agreement, unless the context otherwise requires:

- (a) a reference to an article, section, provision or schedule is to an article, section, provision or schedule of this Agreement;
- (b) a reference to any statute, regulation, proclamation, order-in-council, ordinance, by-law, resolution, rule, order or directive includes all statutes, regulations, proclamations, orders-in-council, ordinances, by-laws or resolutions, rules, orders or directives varying, consolidating, re-enacting, extending or replacing it and a reference to a statute includes all regulations, proclamations, orders-in-council, rules and by-laws of a legislative nature issued under that statute;
- (c) a reference to a document or provision of a document, including this Agreement and the Market Rules or a provision of this Agreement or the Market Rules, includes an amendment or supplement to, or replacement or novation of, that document or that provision of that document, as well as any exhibit, schedule, appendix or other annexure thereto;
- (d) a reference to a Person includes that Person's heirs, executors, administrators, successors and permitted assigns;
- (e) a reference to sections of this Agreement or of the Market Rules separated by the word "to" (*e.g.*, "Sections 1.1 to 1.3") shall be a reference to the sections inclusively;
- (f) the expression "including" means including without limitation, the expression "includes" means includes without limitation and the expression "included" means included without limitation;
- (g) the expressions "hereof", "herein", "hereto", "hereunder", "hereby" and similar expressions refer to this Agreement and not to any particular section or other portion of this Agreement; and
- (h) words importing the singular include the plural and vice versa and words importing gender include all genders.

### 1.4 Headings

The division of this Agreement into articles and sections and the insertion of headings are for convenience of reference only and shall not affect the interpretation of this Agreement, nor shall they be construed as indicating that all of the provisions of this Agreement relating to any particular topic are to be found in any particular article, section, subsection, clause, provision, part or schedule.

## **1.5 Conflict of Documents**

In the event of any ambiguities, conflicts or inconsistencies between or among the provisions of this Agreement, the Proposal, or the Market Rules, the following principles shall apply:

- (a) the interpretation of this Agreement shall be purposive and liberal so as to avoid to the extent reasonably possible findings of inconsistency between this Agreement and the Market Rules;
- (b) in the case of any ambiguity, conflict or inconsistency relating to the requirements of this Agreement, the provisions (including any part of the Proposal) establishing the more stringent requirements shall prevail and in the case of any ambiguity, conflict or inconsistency relating to the scope of the Regulation Service to be provided by the ASP under this Agreement, the provisions (including any part of the Proposal) establishing the broader scope of Regulation Service shall prevail;
- (c) subject to Section 1.5(a), in the case of any ambiguity, conflict or inconsistency between or among the Proposal and any other provision of this Agreement, the provisions of this Agreement or the relevant part or parts thereof shall prevail unless, in its discretion, the IESO confirms that the Proposal or the relevant part or parts thereof shall prevail; and
- (d) notwithstanding Sections 1.5(a), 1.5(b), and 1.5(c), the Market Rules shall prevail.

## **ARTICLE 2 COMPLIANCE WITH APPLICABLE LAW, PERMITS AND REGISTRATION REQUIREMENTS**

### **2.1 Compliance with Applicable Law**

- (a) The ASP shall comply, in all material respects, with all Applicable Laws required to perform or comply with its obligations under this Agreement. Without limiting the generality of the foregoing, the ASP agrees to be bound by and to comply with all of the provisions of the Market Rules so far as they are applicable to Regulation service providers in the same manner as if such provisions formed part of this Agreement, including the following sections of the Market Rules concerning Regulation service:
  - (i) Chapter 2, Appendix 2.2;
  - (ii) Chapter 4, Appendices 4.2, 4.8, 4.15, and 4.19;
  - (iii) Chapter 5, Sections 4.4, 4.9, 4.10, Section 12, and Appendix 5.1 Section 1.1; and
  - (iv) Chapter 7, Section 9.

- (b) For greater certainty, any specific references to Generation Facilities as providers of Regulation service in the Market Rules do not exclude any other Facilities, including the Contract Facility, as applicable, from providing Regulation service and any technical requirements associated with the provision of Regulation service from Generation Facilities in these sections of the Market Rules shall also be applied to the provision of Regulation service from other Facilities, including Energy Storage Facilities, subject to the terms of this Agreement.
- (c) The Parties acknowledge and agree that, in accordance with Market Rules Chapter 7, Section 9.5.2, when necessary in order to maintain system Reliability or when the IESO-Controlled Grid is in an Emergency Operating State, the System Operator may direct a Registered Facility to provide Regulation service even though the IESO does not have an Ancillary Service contract with that Registered Facility.

## **2.2 Permits and Registration Requirements**

The ASP shall obtain and maintain in good standing any permit, licence, certificate, registration, authorization, consent or approval of any Governmental Authority required to perform or comply with its obligations under this Agreement. Without limiting the generality of the foregoing, the ASP shall (i) obtain and maintain in good standing any such licensing as is required by the OEB; (ii) from the Service Commencement Date and at all times thereafter during the Term, obtain and maintain in good standing, all permits, licences, and other authorizations that may be necessary for the Contract Facility to provide Regulation Service on the terms set out in this Agreement and to enable the ASP to carry on the business and perform the functions and obligations of an Ancillary Service Provider as described in the Market Rules; and (iii) satisfy all applicable Market Participant authorization and Facility registration requirements as specified in the Market Rules. Within ten (10) Business Days of a request from the IESO, the ASP shall provide the IESO with copies of any such permit, licence, certificate, registration, authorization, consent or approval. For greater certainty, the ASP shall be solely responsible for obtaining all such permits, licences, certificates, registrations, authorizations, consents or approvals at its sole cost and expense.

## **ARTICLE 3 DEVELOPMENT OF THE CONTRACT FACILITY**

### **3.1 Design and Construction of the Contract Facility Pre-Service Commencement**

- (a) The ASP represents, agrees, and confirms that it participates (or will participate on or prior to the Service Commencement Date) in the IESO-Administered Markets and will continue to participate in the IESO-Administered Markets for the Term of this Agreement and that the Connection Point is (or will be on or prior to the Service Commencement Date) located on a Distribution System or the IESO-Controlled Grid.
- (b) The ASP shall design, engineer and construct the Contract Facility, or make

---

the necessary modifications to the Contract Facility, as applicable, so that the Contract Facility satisfies the description of the Contract Facility set out in Schedule 4 and can operate in accordance with the requirements of this Agreement.

- (c) The ASP shall design, engineer and construct the Contract Facility, or make necessary modifications to the Contract Facility, as applicable, using Good Engineering and Operating Practices and meeting all relevant requirements of the Market Rules, Distribution System Code, Transmission System Code, the ASP's Connection Agreement, in each case, as applicable, and all other Applicable Laws.
- (d) The ASP shall be solely responsible for ensuring the technical, regulatory and financial viabilities of the Contract Facility for the purpose of providing Regulation Service.
- (e) The ASP shall at no time after the Contract Date modify, vary, or amend in any material respect any of the features or specifications of the Contract Facility outlined in Schedule 4 (a "**Contract Facility Amendment**") without first obtaining the IESO's consent, which consent may be withheld in the IESO's sole and absolute discretion. Notwithstanding the foregoing, if the Contract Facility is a New Build Facility and the ASP wishes to change either or both of the Local Jurisdiction or the Proposed Connection Location, then provided that such Contract Facility Amendment occurs on or prior to the Service Commencement Date and, provided that the ASP provides the IESO with the information required by Section 3.2, the ASP may, with the IESO's prior written consent, which consent shall not be unreasonably withheld, on a single (1) occasion, change such Local Jurisdiction and/or Proposed Connection Location.
- (f) The ASP shall be responsible for and has arranged for, and the ASP shall maintain, at its sole cost and expense, all Contract Facility connection requirements in accordance with Applicable Laws and its Connection Agreement.
- (g) Prior to the Service Commencement Date, the IESO may request that, within ten (10) days of any such request, the ASP provide the IESO with a status report (i) describing the efforts made by the ASP to satisfy the prerequisites to the issuance of the Service Commencement Notice as described in Section 3.3(b) on or prior to the Target Service Commencement Date, (ii) setting out the progress of the design and construction work or modification work, as applicable, and the status of permitting and approvals relating to the Contract Facility, and (iii) containing photographs showing the status of the Contract Facility or the construction or modification work, as applicable. At the IESO's request, the ASP shall provide an opportunity for the IESO to meet with personnel of the ASP familiar with the information presented in such status report.

### 3.2 Requirement for Public Meeting for New Build Facilities

- (a) If the Contract Facility is a New Build Facility, and if the ASP has requested a Contract Facility Amendment, pursuant to Section 3.1(e), to change the location of the Contract Facility such that it will be located in one or more different Local Jurisdiction(s) than originally identified in Table 1 of Schedule 4, the ASP shall provide evidence of having held at least one (1) public community meeting in each new Local Jurisdiction in which the Contract Facility will be located. This requirement will be satisfied by the ASP delivering the following information to the IESO:
- (i) An officer's certificate that is duly executed by an officer or director of the ASP and that confirms:
    - (A) the public community meeting was held on or after the Contract Date;
    - (B) a public community meeting notice was published in at least one (1) newspaper with general circulation within each Local Jurisdiction, at least fifteen (15) days before the date of the public community meeting; and if no such newspaper exists, that the public community meeting notice was posted in at least six (6) conspicuous locations within each Local Jurisdiction;
    - (C) the public community meeting notice was provided to the clerk of each Local Jurisdiction, if applicable, and any other designated official prescribed by each Local Jurisdiction, acting reasonably; and
    - (D) the public community meeting notice was distributed to each property neighbouring the location of the Contract Facility.
  - (ii) A copy of the public meeting summary report(s), which must include, at least:
    - (A) a summary of feedback received, if any, from attendee(s) at the public community meeting; and
    - (B) actions, if any, to be taken by the ASP to address feedback received.
  - (iii) A copy of the page of the newspaper in which the public community meeting notice was published showing at least the public community meeting notice, the newspaper name and the date; or, if no such newspaper exists, photographic proof of the notice that posted in six (6) conspicuous locations per the requirements laid out in Section 3.2(a)(i)(B).

### 3.3 Service Commencement

- (a) The ASP acknowledges that time is of the essence to the IESO with respect to the Contract Facility achieving Service Commencement on or before the Target Service Commencement Date. The ASP agrees that it will use all commercially reasonable efforts, acting diligently, to achieve Service Commencement on or before the Target Service Commencement Date.
- (b) In order for the IESO to issue the Service Commencement Notice, the following conditions must be met:
  - (i) The ASP shall have satisfied all market registration requirements in compliance with the Market Rules.

Without limiting the generality of the foregoing,

- (A) the ASP must be authorized as a Market Participant;
  - (B) the Contract Facility must be registered as a Registered Facility;
  - (C) the Contract Facility shall be capable of complying with the Performance Standards for Ancillary Services set out in the Market Rules Chapter 5, Appendix 5.1, Section 1.1;
  - (D) communication services approved by the IESO shall be in place between the Contract Facility control interface and the System Operator's Energy Management System (EMS). If applicable, the IESO may agree to the Contract Facility meeting equivalent standards to those set forth in the Market Manual 6: Participant Technical Reference Manual so long as the IESO determines such equivalent standards are suitably applicable to the Contract Facility and do not impact the reliable operation of the IESO-Controlled Grid;
  - (E) primary and alternate voice communications services approved by the IESO shall be in place to provide voice communication between the System Operator's Control Centre and the operator controlling the Contract Facility. If the Control Centre acting as the designated Dispatch entity is located outside of Ontario, the ASP shall provide the System Operator internet access at the proposed Control Centre; and
  - (F) the participant Dispatch messaging system to the ASP shall be in place;
- (ii) The Contract Facility shall have achieved Certification in accordance with Schedule 2 of this Agreement;

- (iii) The ASP shall have received a registration approval notification (RAN) document, or equivalent, from the System Operator that authorizes the ASP to start providing Regulation Service; and
  - (iv) The ASP shall have delivered a duly executed Officer's Certificate to the IESO, and the IESO shall have accepted such Officer's Certificate, in each case in accordance with Section 3.3(c).
- (c) The ASP shall deliver to the IESO a duly executed Officer's Certificate once the ASP is satisfied the conditions set out in Sections 3.3(b)(i) through 3.3(b)(iii) have been met. Within ten (10) Business Days following the receipt of such Officer's Certificate, the IESO will notify the ASP as to whether the IESO (x) is satisfied that the conditions set out in Sections 3.3(b)(i) through 3.3(b)(iii) have been met; and (y) has determined that the Officer's Certificate is complete. If the IESO is so satisfied, then the IESO will issue a notice to the ASP confirming that the ASP has achieved Service Commencement and confirming the Service Commencement Date (the "**Service Commencement Notice**"). If the IESO is not satisfied that the ASP has met the conditions set out in Sections 3.3(b)(i) through 3.3(b)(iii), or that the Officer's Certificate is complete, the IESO shall provide to the ASP reasonable particulars of any such deficiencies. The ASP shall remedy such deficiencies and resubmit the revised Officer's Certificate to the IESO for the IESO's review on the terms and conditions set out in this Section 3.3(c). Service Commencement will be achieved once the conditions set out in Section 3.3(b) have been satisfied and the IESO has issued the Service Commencement Notice.
- (d) The ASP shall be solely responsible, at its sole cost and expense, for meeting the conditions listed in Section 3.3(b) above.

## **ARTICLE 4**

### **OPERATION OF THE CONTRACT FACILITY**

#### **4.1 Operational Covenants**

- (a) The ASP agrees to own the Contract Facility from and after the Contract Date and to operate and maintain the Contract Facility from and after the Service Commencement Date, in each case, in accordance with the terms of this Agreement, Good Engineering and Operating Practices, and meeting all relevant requirements of the Market Rules, the Distribution System Code, the Transmission System Code, the ASP's Connection Agreement, in each case, as applicable, and all other Applicable Laws.
- (b) The ASP agrees to participate in the IESO-Administered Markets for the Term of this Agreement.

#### **4.2 Regulation Service**

- (a) From and after the Service Commencement Date, the ASP shall provide



Regulation Service in accordance with the terms and conditions of the Market Rules, this Agreement, the Proposal, and all Applicable Laws.

- (b) Without limiting anything in Section 4.2(a) of this Agreement:
  - (i) the Contract Facility shall have the ability to provide the minimum amount of Regulation Capacity set out in Table 1 of Schedule 4 at any applicable hour throughout the Term of this Agreement when scheduled by the System Operator;
  - (ii) the Contract Facility shall have the ability to provide a minimum Ramp Rate as set out in Table 1 of Schedule 4;
  - (iii) the Contract Facility shall be capable of providing Regulation Service at all times when scheduled by the System Operator, except if the Contract Facility is an Energy Limited Facility, in which case, the Contract Facility shall be capable of providing, at a minimum, Regulation Service for the Duration of Service on each occasion when scheduled by the System Operator;
  - (iv) the Contract Facility shall provide hourly Regulation Capacities scheduled day-ahead by the System Operator, and confirmed or changed day at hand; and
  - (v) the Contract Facility shall deliver the hourly quantities of Regulation Service requested by the System Operator as set out in Schedule 3 and reconciled as described in Schedule 6 of this Agreement.
- (c) The ASP acknowledges that the System Operator may call on any facility with which it has a contract to provide Regulation service at any time and that there is no guarantee that the ASP will be scheduled for any minimum amount of Regulation service during the Term. In addition, the ASP acknowledges and agrees that if insufficient Regulation capacity was scheduled day-ahead or scheduled Ancillary Service Providers are unable to meet their schedule, that the System Operator may call on or activate additional capacity as required on the Dispatch Day.

### **4.3 Paramourncy of Safety and Law**

Nothing in this Agreement shall require the ASP to provide Regulation Service where to do so would endanger the safety of any Person, damage equipment, or violate any Applicable Law.

### **4.4 Testing and Certification**

- (a) The IESO shall evaluate the ASP's performance as it relates to Regulation Service through the testing specified in Schedule 2 of this Agreement.
- (b) The Contract Facility must be Certified at all times it is providing Regulation

Service. If, following a Certification Test pursuant to Schedule 2, the Contract Facility is deemed not to have maintained its Certification, the IESO:

- (i) shall have no obligation to make Monthly Payments to the ASP in respect of the period in which the Contract Facility did not maintain its Certification; and
- (ii) may exercise all rights and remedies available to it pursuant to Article 7 in connection with such failure.

#### **4.5 Audits**

In addition to the audit rights set out in Chapter 5 of the Market Rules, the IESO, at its own cost, shall have the right to audit, once every six (6) months during normal business hours and upon reasonable notice, the records and procedures of the ASP in order to verify compliance by the ASP with its obligations under this Agreement.

### **ARTICLE 5 REPRESENTATIONS AND WARRANTIES**

#### **5.1 Representations and Warranties of the IESO**

The IESO hereby represents and warrants to the ASP as follows, and acknowledges that the ASP is relying on such representations in entering into this Agreement:

- (a) The execution, delivery and performance of this Agreement by it has been duly authorized by all necessary corporate and/or governmental action.
- (b) This Agreement constitutes a legal and binding obligation on the IESO, enforceable against the IESO 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 IESO 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 IESO under:
  - (i) any contract or obligation to which the IESO 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) of the IESO;
  - (iii) any judgment, decree, order or award of any Governmental Authority or arbitrator;

- (iv) any licence, permit, approval, consent or authorization held by the IESO; or
  - (v) any Applicable Laws,
- that could have a Material Adverse Effect on the IESO.
- (d) There are no bankruptcy, insolvency, reorganization, receivership, seizure, realization, arrangement or other similar proceedings pending against or being contemplated by the IESO or, to the knowledge of the IESO, threatened against the IESO.
  - (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 IESO, threatened against the IESO, that could have a Material Adverse Effect on the IESO.
  - (f) The IESO is in compliance with all Applicable Laws, other than acts of noncompliance which, individually or in the aggregate, would not have a Material Adverse Effect on the IESO.

## **5.2 Representations and Warranties of the ASP**

The ASP hereby represents and warrants to the IESO as follows, and acknowledges that the IESO is relying on such representations in entering into this Agreement:

- (a) The ASP 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 perform its obligations hereunder.
- (b) The execution, delivery and performance of this Agreement by it has been duly authorized by all necessary corporate and/or governmental action and that this Agreement constitutes a legal and binding obligation on the ASP, enforceable against the ASP 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 ASP 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 ASP under:
  - (i) any contract or obligation to which the ASP is a party or by which it or its assets may be bound (or any contract between an Affiliate of the ASP and the IESO), 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 ASP;
  - (iii) any judgment, decree, order or award of any Governmental Authority or arbitrator;
  - (iv) any licence, permit, approval, consent or authorization held by the ASP; or
  - (v) any Applicable Laws,
- that could have a Material Adverse Effect on the ASP.
- (d) There are no bankruptcy, insolvency, reorganization, receivership, seizure, realization, arrangement or other similar proceedings pending against or being contemplated by the ASP or, to the knowledge of the ASP, threatened against the ASP.
  - (e) There are no actions, suits, proceedings, judgments, rulings or orders by or before the IESO or any Governmental Authority or arbitrator, or, to the knowledge of the ASP, threatened against the ASP, that could have a Material Adverse Effect on the ASP.
  - (f) All requirements for the ASP 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 ASP is in compliance with all Applicable Laws, other than acts of noncompliance which, individually or in the aggregate, would not have a Material Adverse Effect on the ASP.
  - (h) The ASP holds or will hold, prior to commencing to act as an Ancillary Service Provider, all permits, licences and other authorizations that may be necessary to enable it to carry on the business and perform the functions and obligations of an Ancillary Service Provider as described in the Market Rules and in this Agreement.
  - (i) All statements, specifications, data, confirmations, and information that have been set out in the Proposal are complete and accurate in all material respects and are hereby restated and reaffirmed by the ASP as representations made to the IESO hereunder and there is no material information omitted from the Proposal which makes the information in the Proposal misleading or inaccurate.
  - (j) The ASP has no reason to believe, acting reasonably, that Service Commencement may not be achieved by the Target Service Commencement Date.
-

- (k) Except for this Agreement, the Contract Facility is not under contract with the IESO to provide Regulation capacity or service as of June 1, 2017 with a term extending beyond February 1, 2018.

## **ARTICLE 6 TERM**

### **6.1 Term**

- (a) This Agreement shall come into force on the Contract Date and shall remain in full force and effect until the Service Completion Date, unless terminated earlier in accordance with Section 7.4 or 7.5 (the date of termination being the “**Termination Date**”)(the “**Term**”).
- (b) The ASP acknowledges that if Service Commencement has not been achieved by the Target Service Commencement Date, and this Agreement has not been terminated in accordance with Section 7.4 as a result of such failure, the Term shall nevertheless expire on the Service Completion Date.

## **ARTICLE 7 DEFAULT AND TERMINATION**

### **7.1 Events of Default by Either Party**

Each of the following shall constitute an Event of Default by either Party (the “**Defaulting Party**”, and the other Party being the “**Non-Defaulting Party**”):

- (a) the failure by a Party to make, settle or readjust the payments described in Schedule 6 owing to the other Party in accordance with the IESO Settlement Schedule & Payments Calendar and the Market Rules and such failure is not remedied within the timeframe provided for in the Market Rules;
- (b) if any representation or warranty made by either Party in this Agreement is not true or correct in any material respect when made, or is not made true or correct in all material respects within thirty (30) days after receipt of notice from the Non-Defaulting Party; or
- (c) if either Party fails to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default) if such failure is not remedied within thirty (30) days after the receipt of notice from the Non-Defaulting Party, provided that such cure period shall be extended by a further thirty (30) days if the Defaulting Party has submitted a rectification plan to that is satisfactory to the Non-Defaulting Party, the Defaulting Party is diligently remedying such failure in accordance with the rectification plan and the failure is capable of being corrected during such extended cure period.

## 7.2 Additional Events of Default by the ASP

With respect to the ASP only, and without limiting Section 7.1, each of the following shall constitute an Event of Default:

- (a) the occurrence of an event of default as defined in the Market Rules (for greater certainty, each event of default described in the Market Rules shall be an Event of Default hereunder, irrespective of whether the ASP is registered as a Market Participant at the time of such default) which is not cured within the cure periods specified by or in accordance with the Market Rules;
- (b) the ASP has made a Contract Facility Amendment that has not first been consented to by the IESO and that has not been removed within ten (10) Business Days after such Contract Facility Amendment occurred;
- (c) if it becomes unlawful for the ASP to comply with any of the obligations imposed on Ancillary Service Providers under the Market Rules or with any of the ASP's obligations under this Agreement;
- (d) if Service Commencement has not occurred by the Longstop Date;
- (e) if the repeated Annual Certification Tests or the On-Line Diagnostic Test pursuant to Sections 1.3(e)(ii) or 1.3(g)(ii) of Schedule 2 result in Tested Capabilities that do not meet or do not exceed the Certified Capabilities;
- (f) the ASP undergoes a change in Control without first obtaining the written approval of the IESO, if required pursuant to this Agreement;
- (g) the ASP assigns this Agreement without first obtaining the consent of the IESO, if required pursuant to this Agreement; or
- (h) if any other event occurs in respect of the ASP that is likely to materially affect the performance by the ASP of its obligations under the Market Rules or under this Agreement in relation to the provision of Regulation Service and such event is not remedied within thirty (30) days after the receipt of notice from the IESO, provided that such cure period shall be extended by a further thirty (30) days if the ASP has submitted a rectification plan to that is satisfactory to the IESO, the ASP is diligently remedying such event in accordance with the rectification plan, and such event is capable of being corrected during such extended cure period.

## 7.3 Notice of Default

The Defaulting Party shall notify the Non-Defaulting Party immediately upon the occurrence of an Event of Default or any circumstance that could give rise to an Event of Default.

#### 7.4 Remedies for Event of Default

- (a) If an Event of Default occurs and is continuing, then upon written notice to the Defaulting Party from the Non-Defaulting Party, this Agreement may be immediately terminated.
- (b) Upon the occurrence of an Event of Default by the ASP, the IESO may treat the Event of Default as an event of default under the Market Rules by the ASP and remedy such Event of Default in accordance with the terms and provisions of the Market Rules.
- (c) Except as provided for in Section 7.6(b) and Section 9.1, each of the remedies available to the Non-Defaulting Party under this Agreement (including the termination of this Agreement by either Party) shall not limit, waive or extinguish in any way the recourse of either Party to any remedies available to it under the Market Rules, at law, in equity or otherwise. The Non-Defaulting Party's rights under this Section 7.4 may be exercised from time to time separately or in combination and are in addition to, and not in substitution for, any other rights of the Non-Defaulting Party however arising or created. The Non-Defaulting Party is not bound to exercise any right or remedy, and the exercise of rights and remedies is without prejudice to the rights of the Non-Defaulting Party in respect of the Defaulting Party.

#### 7.5 Change in Market Rules

- (a) To the extent that there is an amendment to the Market Rules that was not announced or published by the System Operator, in proposed or approved form, on or prior to the Proposal Submission Deadline, which such amendment has a Material Adverse Effect on a Party (a "**Material Market Rule Amendment**"), then:
  - (A) the affected Party may, within fifteen (15) Business Days following the date such Market Rule amendment is published by the System Operator in the form approved by the Board of Directors of the System Operator, notify the other Party that such Market Rule amendment has a Material Adverse Effect on such Party. For greater certainty, if the affected Party does not provide notice within fifteen (15) Business Days following the date such Market Rule amendment is published by the System Operator in its approved form, then such Party shall not be entitled to any amendments to this Agreement as a result of such Market Rule amendment;
  - (B) if the affected Party is the ASP, the ASP shall, within sixty (60) days following the date of any notice sent pursuant to Section 7.5(a)(A), provide the IESO all such information as may be required or otherwise requested by the IESO to assess the impact of such Material Market Rule Amendment on the ASP

and the IESO shall, within sixty (60) days following receipt of all information required to be provided by the ASP and, at the IESO's discretion, those other Ancillary Service Providers under contract with the IESO that the IESO requires to participate, but in any event no later than one hundred and twenty (120) days following receipt of all information required to be provided by the ASP, either:

- (i) advise the ASP that the applicable Market Rule amendment is not a Material Market Rule Amendment; or
  - (ii) propose amendments to this Agreement and, at the IESO's discretion, the respective agreements of any other Ancillary Service Providers under contract with the IESO that are so affected, on the basis that such amendments, together with the Market Rule amendment, will reasonably reflect (i) the terms and conditions and agreements of the Parties as contemplated hereunder prior to the introduction of such Market Rule amendment (including in respect of the revenues that would reasonably be expected to be received, and the costs that would reasonably be expected to be incurred, in each case, in connection with the performance of this Agreement as contemplated hereunder, and having regard to all measures available to mitigate the effect of the Material Market Rule Amendment), and (ii) at the IESO's discretion, such terms and conditions and agreements of the contracts with such other Ancillary Service Providers prior to the introduction of such Market Rule amendment;
- (C) if the affected Party is the IESO, the IESO shall, within sixty (60) days following the date of any notice sent pursuant to Section 7.5(a)(A), provide the ASP with information detailing the impact of such Material Market Rule Amendment on the IESO and the IESO shall propose amendments to this Agreement and, at the IESO's discretion, the respective agreements of any other Ancillary Service Providers under contract with the IESO that are so affected, on the basis that such amendments, together with the Market Rule amendment, will reasonably reflect (i) the terms and conditions and agreements of the Parties as contemplated hereunder prior to the introduction of such Market Rule amendment (including in respect of the revenues that would reasonably be expected to be received, and the costs that would reasonably be expected to be



incurred, in each case, in connection with the performance of this Agreement as contemplated hereunder, and having regard to all measures available to mitigate the effect of the Material Market Rule Amendment), and (ii) at the IESO's discretion, such terms and conditions and agreements of the contracts with such other Ancillary Service Providers prior to the introduction of such Market Rule amendment;

- (D) if by the date that is sixty (60) days following the date that the IESO makes a determination or proposes amendments in accordance with Section 7.5(a)(B) or 7.5(a)(C), as applicable, the Parties do not agree to the amendments proposed pursuant to Section 7.5(a)(B) or 7.5(a)(C), as applicable, or do not agree as to whether a Market Rule amendment is a Material Market Rule Amendment, as applicable, then the Parties and, at the IESO's discretion, such other Ancillary Service Providers under contract with the IESO who are so affected and that are required by the IESO to participate, shall engage in good faith negotiations to reach agreement;
  - (E) if by the date that is one hundred and twenty (120) days following the date that the IESO makes a determination or proposes amendments in accordance with Section 7.5(a)(B) or 7.5(a)(C), as applicable, the Parties fail to reach agreement on the amendments described in Section 7.5(a)(B) or 7.5(a)(C), as applicable, or do not agree as to whether a Market Rule amendment is a Material Market Rule Amendment, as applicable, the matter shall be determined in accordance with the dispute resolution procedures set out in Section 11.1.
- (b) Without limiting the foregoing, if there is a Material Market Rule Amendment and the affected Party is the ASP, the ASP may terminate this Agreement, effective as of the date such Material Market Rule Amendment takes effect, by providing the IESO a written notice of termination, together with reasonable particulars on the impact of such Material Market Rule Amendment on the ASP. Such termination notice must be delivered to the IESO not later than fifteen (15) Business Days following the date such Material Market Rule Amendment is published by the System Operator in the form approved by the Board of Directors of the System Operator. If the ASP does not provide such notice within fifteen (15) Business Days following the date such Material Market Rule Amendment is published by the System Operator in its approved form, then the ASP shall not be entitled to terminate this Agreement as a result of such Material Market Rule Amendment. If this Agreement is terminated in accordance with this Section 7.5, then subject to Section 7.6, neither Party shall have any rights or remedies against the other Party as a result of such termination.

- (c) Notwithstanding anything to the contrary contained herein, this Section 7.5 shall not apply to any Market Rule amendment that may be effected in respect of the matters described in Schedule 3 - Type 2 of this Agreement.

## **7.6 Effect of Termination**

- (a) Notwithstanding the termination of this Agreement, the Parties shall be responsible for the payment of amounts accruing under this Agreement up to and including the Termination Date.
- (b) For greater certainty, and notwithstanding Section 7.4(c), if this Agreement is terminated for any reason, the IESO shall have no further obligation to pay the ASP the Monthly Payments, except any amounts then due and owing up to and including the Termination Date.

## **ARTICLE 8 PAYMENT**

### **8.1 Payment**

From and after the Service Commencement Date and for so long as the ASP is providing Regulation Service in accordance with this Agreement, all payments to the ASP described in Schedule 6 of this Agreement shall begin to accrue and be payable in accordance with Schedule 6 of this Agreement.

## **ARTICLE 9 LIABILITY, INDEMNIFICATION AND FORCE MAJEURE**

### **9.1 Liability, Indemnification and Force Majeure**

The Parties acknowledge and agree that the liability, indemnification, and force majeure provisions in Section 13 of Chapter 1 of the Market Rules apply to this Agreement, *mutatis mutandis*; provided, however that the force majeure provisions in the Market Rules shall apply only after Service Commencement and notwithstanding anything to the contrary in the Market Rules, the aggregate liability of the IESO to the ASP shall not exceed an amount equal to the Liability Cap.

## **ARTICLE 10 CONFIDENTIALITY AND FIPPA**

### **10.1 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 confidentiality 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 10 by any of its Representatives.

- (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 Applicable Laws, 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 10.2.
- (c) Where the ASP is the Receiving Party, the ASP may disclose Confidential Information to any lender or investor and its advisors, to the extent necessary, for securing financing for the Contract Facility, provided that any such lender or investor has been informed of the ASP's confidentiality obligations hereunder and such lender or investor has completed and executed a confidentiality undertaking (the “**Confidentiality Undertaking**”) in the form referenced as Schedule 5, covenanting in favour of the ASP to hold such Confidential Information confidential on terms substantially similar to this Article 10.
- (d) Without limiting the generality of the foregoing, the Parties agree that Confidential Information does not constitute “relevant terms and conditions of the contracts” within the meaning of Section 9.8.1.4 of Chapter 7 of the Market Rules. In addition, notwithstanding the foregoing, the ASP consents to the disclosure, whether orally or in writing (including in a press release or associated briefing documents or on the IESO's website), of (i) its name and the ASP's selection as a Selected Proponent (as such term is defined in the Request for Proposals); and (ii) the Regulation Capacity and the name, location, fuel type and technology of the Contract Facility.

## **10.2 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 Applicable Law 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 cooperation 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.

### **10.3 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 the information described in part (b) of the definition of 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 Applicable Law, and shall keep such retained copy subject to the terms of this Article 10.

### **10.4 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 10.

### **10.5 FIPPA Records and Compliance**

The Parties acknowledge and agree that the IESO is subject to FIPPA and that FIPPA applies to and governs all Confidential Information in the custody or control of the IESO ("**FIPPA Records**") and may, subject to FIPPA, require the disclosure of such FIPPA Records to third parties. The ASP agrees to provide a copy of any FIPPA Records that it previously provided to the IESO if the ASP continues to possess such FIPPA Records in a deliverable form at the time of the IESO's request. If the ASP 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 IESO. The provisions of this Section 10.5 shall survive any termination or expiry of this Agreement and shall prevail over any inconsistent provisions in this Agreement.

## **ARTICLE 11 MISCELLANEOUS**

### **11.1 Dispute Resolution**

Any dispute under this Agreement shall be dealt with in accordance with the provisions of Section 2 of Chapter 3 of the Market Rules.

### **11.2 Amendment**

No amendment of this Agreement shall be effective unless made in writing and signed by the Parties.

### **11.3 Assignment by the ASP**

- (a) Prior to the Service Commencement Date, neither this Agreement nor any of the rights, interests or obligations under this Agreement may be assigned by the ASP.
- (b) Following the Service Commencement Date, neither this Agreement nor any of the rights, interests or obligations under this Agreement may be assigned by the ASP, including by operation of Applicable Law, without the prior consent of the IESO, which consent may be withheld in the IESO's sole and absolute discretion.
- (c) Notwithstanding Sections 11.3(a) and 11.3(b), the ASP may, subject to compliance with Applicable Laws and provided that there is not an Event of Default by the ASP that has not been remedied, assign this Agreement without the consent of the IESO to a Wholly-owned Subsidiary of the ASP acquiring the Contract Facility; provided, however, that (i) no such assignment by the ASP or any of its successors or permitted assigns hereunder shall be valid or effective unless and until such Wholly-owned Subsidiary agrees with the IESO in writing to assume all of the ASP's obligations and be bound by the terms of this Agreement; and (ii) any assignee of this Agreement must be a Market Participant (or if the assignment occurs prior to the Service Commencement Date, such assignee must be capable of being authorized as a Market Participant on or prior to the Service Commencement Date). If a valid assignment of this Agreement is made by the ASP in accordance with this Section 11.3(c), the IESO acknowledges and agrees that, upon such assignment and assumption and notice thereof by the assignor to the IESO, the assignor shall be relieved of all its duties, obligations and liabilities hereunder.
- (d) Notwithstanding Sections 11.3(a) and 11.3(b), the ASP may assign its rights to this Agreement, as security to a Secured Lender without the IESO's consent, but nothing in this Section 11.3(d) shall be construed as a consent to the exercise by the Secured Lender of any right, if the exercise of that right, at the time it was acquired, would require the consent of the IESO under Section 11.3 or 11.5, and the exercise of any such right will require the further consent

of the IESO.

#### **11.4 Assignment by the IESO**

The IESO 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 ASP, and the assignee shall assume the obligations and liability of the IESO under this Agreement and be novated into this Agreement in the place and stead of the IESO, provided that the assignee agrees in writing with the ASP to assume and be bound by the terms and conditions of this Agreement.

#### **11.5 Change of Control**

The ASP shall not permit or allow a change of Control of the ASP, except with the prior written consent of the IESO, which consent may be withheld in the IESO's sole and absolute discretion. Notwithstanding the foregoing, if the ASP is, or is Controlled by, a Public Company, and there is a change of Control of the ASP as a result of the trading of the shares of such Public Company, the consent of the IESO shall not be required for such change of Control, and the ASP shall, within ten (10) Business Days following such change of Control having effect, provide the IESO with notice of such change of Control and such additional information as the IESO may reasonably require regarding the names of the Persons who Control or otherwise indirectly or directly have an ownership interest in the ASP, following such change of Control. For the purposes of this Section 11.5, a change of Control shall include a change from no Person having Control of the ASP to any Person having Control of the ASP, as well as change from any Person having Control of the ASP to no Person having Control of the ASP.

#### **11.6 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 shall enure to the benefit of, and be binding upon, the Parties and their respective successors and permitted assigns.

#### **11.7 Further Assurances**

Each Party shall, from time to time, perform, or cause to be performed, all such acts, or promptly execute and deliver, or cause to be executed and delivered, all further documents in connection with this Agreement as may reasonably be required to more fully effect or implement the terms of this Agreement.

#### **11.8 Waiver**

A waiver of any Event of Default, breach or non-compliance under this Agreement is not effective unless in writing and signed by the Party to be bound by the waiver. No waiver will be inferred or implied by any failure to act or by the delay in acting by a Party in respect of any Event of Default, breach or non-observance or by anything done or omitted to be done by the other Party. The waiver by a Party of any Event of Default, breach or non-compliance

under this Agreement shall not operate as a waiver of or an estoppel with respect to, that Party's rights under this Agreement in respect of any continuing or subsequent Event of Default, breach or non-observance (whether of the same or any other nature).

### **11.9 Severability**

If any provision of this Agreement is declared or held to be illegal, invalid or unenforceable, such provision shall be ineffective to the extent of that invalidity or unenforceability and shall be deemed severed from the remainder of this Agreement, all without affecting the validity or enforceability of the remaining provisions of this Agreement. The Parties shall negotiate in good faith to replace the severed provision with a legal, valid and enforceable provision that comes as close as possible to expressing the intention of the severed provision.

### **11.10 Notices**

Any notice, demand, consent, request or other communication required or permitted to be given or made under this Agreement shall be given or made in the manner set forth in Section 8 of Chapter 1 of the Market Rules. Either Party may change its address and representative as set forth in Schedule 7 by written notice to the other Party given as aforesaid. Such change shall not constitute an amendment to this Agreement for the purposes of the application of Section 11.2.

### **11.11 Governing Law**

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

### **11.12 Counterparts**

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument. Counterparts may be executed either in original or electronic form and the Parties shall adopt any signatures received electronically as original signatures of the Parties.

### **11.13 Third Party Beneficiaries**

In connection with this Agreement, each Party is acting on its own behalf and shall benefit from the limitations of liability and other provisions of this Agreement. The Parties shall not be acting as agent, fiduciary or trustee for any other Person or legal entity, and accordingly it is the Parties' intention that no Person or legal entity other than the Parties hereto shall have any rights or remedies under or the ability to enforce this Agreement in any manner, directly or indirectly. The Parties further agree that the foregoing provisions shall not act as a waiver of subrogation by the Parties' insurers.

#### **11.14 Entire Agreement**

This Agreement constitutes the entire agreement between the Parties with respect to the matters contemplated by this Agreement and supersedes all prior agreements, representations, undertakings, warranties, negotiations and discussions, whether oral or written, of the Parties.

#### **11.15 Collaboration and Assessment**

Both Parties agree to meet no less than once a year to review the operation of the Contract Facility, and to identify opportunities to enhance the Contract Facility's contribution to the reliable operation of the IESO-Controlled Grid during the Term of this Agreement. Both Parties agree to participate in this collaboration and assessment activity in good faith.

#### **11.16 Preparation of Agreement**

Notwithstanding the fact that this Agreement was drafted by the IESO'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 IESO or in favour of the ASP when interpreting such term or provision, by virtue of such fact.

#### **11.17 Currency**

All monetary amounts herein refer to lawful currency of Canada.

#### **11.18 Survival**

Notwithstanding any other provision of this Agreement, the provisions of this Section and Sections 1.1, 1.5, 2.1, 4.5, 5.1, 5.2, 7.4, 7.6, Article 8, Section 9.1, Article 10, Sections 11.1, 11.7, 11.8, 11.11, 11.13, 11.17, and 11.19 shall survive the expiry or earlier termination of this Agreement. For greater certainty, the termination or expiration of all or part of this Agreement for any reason does not affect any rights of either Party against the other that arose prior to the time at which such termination or expiration occurred or otherwise relate to or may arise at any future time from any breach or non-observance of obligation under this Agreement occurring prior to the termination or expiration.

#### **11.19 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.



**11.20 Time of Essence**

Time is of the essence in the performance of the ASP's obligations under this Agreement.

*[Remainder of page intentionally left blank.]*

**IN WITNESS WHEREOF** the Parties have executed this Agreement as of the Contract Date.

**[ASP’S LEGAL NAME]**

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

Name:

Title:

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

Name:

Title:

I/We have authority to bind the corporation.

**INDEPENDENT ELECTRICITY  
SYSTEM OPERATOR**

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

Name:

Title:

I have authority to bind the corporation.

**SCHEDULE 1  
FORM OF OFFICER’S CERTIFICATE RE SERVICE COMMENCEMENT**

**TYPE 1 – EXISTING FACILITY**

Pursuant to Section 3.3(b) of the Service Agreement for the Provision of Regulation Service (the “**Agreement**”) between the ASP described below and the Independent Electricity System Operator (“**IESO**”), the ASP is hereby submitting this Officer’s Certificate to the IESO. Capitalized terms not defined herein have the meanings ascribed thereto in the Agreement.

Date	
Legal Name of ASP	
Name of Contract Facility	
Contract Date	

I, \_\_\_\_\_, in my capacity as the \_\_\_\_\_ [officer/director] of the ASP and not in my personal capacity, do solemnly declare that I have knowledge of the matters herein deposed to and declare the following:

1. The ASP has satisfied the conditions set out in Sections 3.3(b)(i) through 3.3(b)(iii) of the Agreement;
2. The Connection Point of the Contract Facility is at the location specified in Table 1 of Schedule 4 of the Agreement;
3. The Contract Facility is constructed or modified in accordance with the description of the Contract Facility in Schedule 4 of the Agreement, and otherwise, in full satisfaction of the requirements of the Agreement, including the requirements of Section 3.1(b) of the Agreement;
4. There exists no continuing Event of Default by the ASP that has not been remedied as provided for under the Agreement; and
5. The representations and warranties of the ASP contained in the Agreement are true and correct as of this date with the same force and effect as if such representations and warranties had been made on and as of this date.

Signed this ● day of ●, 20●.

\_\_\_\_\_  
Signature

**SCHEDULE 1  
FORM OF OFFICER’S CERTIFICATE RE SERVICE COMMENCEMENT**

**TYPE 2 – NEW BUILD FACILITY**

Pursuant to Section 3.3(b) of the Service Agreement for the Provision of Regulation Service (the “**Agreement**”) between the ASP described below and the Independent Electricity System Operator (“**IESO**”), the ASP is hereby submitting this Officer’s Certificate to the IESO. Capitalized terms not defined herein have the meanings ascribed thereto in the Agreement.

Date	
Legal Name of ASP	
Name of Contract Facility	
Contract Date	

I, \_\_\_\_\_, in my capacity as the \_\_\_\_\_ [officer/director] of the ASP and not in my personal capacity, do solemnly declare that I have knowledge of the matters herein deposed to and declare the following:

1. The ASP has satisfied the conditions set out in Sections 3.3(b)(i) through 3.3(b)(iii) of the Agreement;
2. There has been no change to the Local Jurisdiction(s) and/or the Proposed Connection Location specified in Table 1 of Schedule 4, except subject to the IESO consenting to a Contract Facility Amendment as contemplated in Section 3.1(e) of the Agreement;
3. The Connection Point of the Contract Facility is [*Note to Finalization: Insert description of Connection Point*] \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_;
4. The Contract Facility is constructed or modified in accordance with the description of the Contract Facility in Schedule 4 of the Agreement, and otherwise, in full satisfaction of the requirements of the Agreement, including the requirements of Section 3.1(b) of the Agreement;
5. There exists no continuing Event of Default by the ASP that has not been remedied as provided for under the Agreement; and

6. The representations and warranties of the ASP contained in the Agreement are true and correct as of this date with the same force and effect as if such representations and warranties had been made on and as of this date.

Signed this ● day of ●, 20●.

\_\_\_\_\_  
Signature

---

## SCHEDULE 2

### PROCEDURES FOR TESTING REGULATION SERVICE CAPABILITY

#### 1.1 General

- (a) This Schedule 2 sets out the requirements and procedures for Certification of the Contract Facility. Section 1.1 of this Schedule 2 sets out general provisions. Section 1.2 of this Schedule 2 describes the requirements for Certification prior to Service Commencement. Section 1.3 of this Schedule 2 describes the requirements for Certification following Service Commencement. Section 1.4 of this Schedule 2 sets out the procedures for the Regulation Capability Test. Section 1.5 of this Schedule 2 sets out the procedures for the On-Line Diagnostic Test.
- (b) All Certification Tests shall be conducted in accordance with the Market Rules Chapter 5, Section 4.9.2 and Appendix 5.1 – Performance Standards for Ancillary Services or as otherwise set forth in this Schedule 2.
- (c) The tests described in this Schedule 2 assume that any necessary tuning of the Regulation controllers at the System Operator and at the Contract Facility, to match the sending characteristics with the receiving characteristics, has previously been carried out, in accordance with the Outage scheduling process established by the IESO.
- (d) The IESO shall provide the results of any Certification Test in writing to the ASP within five (5) days of such test (the “**Results Notice**”).
- (e) The ASP shall be responsible for all costs incurred by it in respect of any Certification Tests.

#### 1.2 Certification Requirements Prior to Service Commencement

- (a) The Contract Facility must achieve Certification prior to Service Commencement.
- (b) Prior to the Service Commencement Date, the ASP shall inform the IESO, by written notice, as soon as it believes the Contract Facility is capable of successfully completing the Certification Tests. The IESO and the ASP shall then schedule a date (or dates) to conduct the Certification Tests.
- (c) If the Tested Capabilities meet or exceed the Proposed Capabilities, then the Contract Facility shall be deemed to have achieved Certification and the Proposed Capabilities shall become the Certified Capabilities, as confirmed by the IESO delivering to the ASP a written notice in the form attached as Exhibit 1 to this Schedule 2.
- (d) If the Tested Capabilities do not meet or do not exceed the Proposed Capabilities, then the IESO may:

- (i) accept the Tested Capabilities in which case the Contract Facility shall be deemed to have achieved Certification and the Tested Capabilities shall become the Certified Capabilities, as confirmed by the IESO delivering to the ASP a written notice in the form attached as Exhibit 1 to this Schedule 2; or
  - (ii) reject the Tested Capabilities in which case the Contract Facility shall not have achieved Certification and the ASP may request to have the Contract Facility tested again pursuant to Section 1.4 of Schedule 2.
- (e) The IESO or its representative shall be entitled, at the IESO's option, to attend the Certification Tests for purposes of observing the testing contemplated by Section 1.2 of this Schedule 2.

### **1.3 Certification Requirements Following Service Commencement**

- (a) The Contract Facility must be Certified at all times from the Service Commencement Date until the end of the Term.
- (b) The Contract Facility shall undergo the Certification Tests once during each 12-month period following the Service Commencement Date (the “**Annual Certification Tests**”) in accordance with the Outage scheduling process established by the IESO, at a time that is mutually agreeable to the ASP and to the IESO.
- (c) If reasonably required, the IESO may carry out an On-Line Diagnostic Test to confirm Regulation Service operation from the Contract Facility, to identify a possible failed Regulation component so that a substitution can be made quickly when a failure has occurred, or to confirm that the Contract Facility is meeting or exceeding the Certified Capabilities. The IESO shall cooperate with the ASP to ensure that the test is conducted in a manner causing minimum impact on the operation of the Contract Facility.
- (d) If, following the Annual Certification Tests or the On-Line Diagnostic Test, as applicable, the Tested Capabilities meet or exceed the Certified Capabilities, then the Contract Facility shall be deemed to have maintained Certification.
- (e) If the Annual Certification Tests or the On-Line Diagnostic Test, as applicable, result in Tested Capabilities that do not meet or do not exceed the Certified Capabilities then the Contract Facility shall be deemed not to have maintained Certification and the IESO may:
  - (i) permit the ASP ninety (90) days from the Results Notice Date to repair or correct the issue which caused the Tested Capabilities to fail to meet the Certified Capabilities at which time the Contract Facility shall repeat the Annual Certification Tests or the On-Line Diagnostic Test, as applicable; or

- (ii) exercise its right of termination pursuant to Section 7.4.
- (f) If, following the repeated Annual Certification Test or On-Line Diagnostic Test, pursuant to Section 1.3(e)(i) of Schedule 2, the Tested Capabilities meet or exceed the Certified Capabilities, then the Contract Facility shall be deemed to have achieved Certification.
- (g) If the repeated Annual Certification Tests or the On-Line Diagnostic Test pursuant to Section 1.3(e)(i) of Schedule 2, again result in Tested Capabilities that do not meet or do not exceed the Certified Capabilities then the IESO may:
  - (i) accept the Tested Capabilities in which case the Contract Facility shall be deemed to have achieved Certification and the Certified Capabilities shall be amended to reflect the Tested Capabilities, as confirmed by the IESO delivering to the ASP a written notice in the form attached as Exhibit 1 to this Schedule 2; or
  - (ii) exercise its right of termination pursuant to Section 7.4.

#### **1.4 Regulation Capability Test**

- (a) Verification of Proposed Capabilities and Certified Capabilities
  - (i) The ability of the Contract Facility to provide Regulation Service shall be tested as set forth below in order to verify that the Certified Regulation Capacity and Certified Ramp Rate are accurate and reflect the true capabilities of the Contract Facility (the “**Regulation Capability Test**”); however, in connection with the initial Certification of the Contract Facility prior to Service Commencement, the Regulation Capability Test shall verify that the Proposed Capabilities are accurate and reflect the true capabilities of the Contract Facility, and all references to Certified Regulation Capacity in this Section 1.4 of Schedule 2 shall be deemed to refer to the Regulation Capacity set out in Table 1 of Schedule 4 for the purpose of such initial Certification.
  - (ii) To validate operation of voice circuits, the IESO shall confirm the date and time of the test with the ASP using both the primary and alternate voice circuits.
  - (iii) When testing a group of units or single units which may provide somewhat different test results from test to test, the IESO or the ASP with the agreement of the other Party may repeat the tests below and reject results or make use of averaged test results as mutually agreed.
- (b) Regulation Raise Test



- 
- (i) The System Operator’s Control Centre shall direct the operator at the Contract Facility to operate the Contract Facility, at an output at, or slightly below its maximum output for Regulation operation as specified by the ASP less its Certified Regulation Capacity. The System Operator shall place the Contract Facility in Test mode and wait for the Contract Facility to be stable before sending any Regulation signal to the Contract Facility. (A Load Facility or aggregated Load Facility providing Regulation would be directed to operate at its maximum load). The Contract Facility will not be required to remain at its full charge set-point longer than its state of charge allows.
- (ii) The System Operator shall manually send a raise signal to the Contract Facility at a site. Just before sending the raise signal, the System Operator will notify the ASP that the raise is about to occur so the ASP can verify the raise test. The Regulation signal shall direct the Contract Facility to increase its output as fast as it can, by the amount of the Regulation Capacity, up close to its maximum output while on Regulation control. The System Operator shall record a graph of the output of the Contract Facility against time. (A Load Facility or aggregated Load Facility providing Regulation would be sent a corresponding signal to reduce its load.) The Contract Facility will not be required to remain at its full charge set-point longer than its state of charge allows.
- (iii) If the Contract Facility increases its output by its Certified Regulation Capacity in less than six (6) minutes, the System Operator shall record the Ramp Rate  $R_{UP}$  as the Regulation Capacity (MW) divided by the time (minutes) it took for the Contract Facility to increase its output by its Regulation Capacity  $C_{UP}$ . If the Contract Facility increases its output by an amount less than or equal to its Certified Regulation Capacity in more than six (6) minutes, the System Operator shall record the Regulation Capacity  $C_{UP}$  as the output change (MW) in six (6) minutes. The System Operator shall record the Ramp Rate  $R_{UP}$  (MW per minute) as the output change in six (6) minutes divided by six (6) minutes. (For a Load Facility or aggregated Load Facility providing Regulation, the System Operator would record the load reduction, time to reduce, and calculate the corresponding rate.)
- (c) Regulation Lower Test
- (i) The System Operator’s Control Centre shall direct the operator at the Contract Facility to operate the Contract Facility, at an output at, or slightly above its minimum output for Regulation operation as specified by the ASP plus its Certified Regulation Capacity. The System Operator shall place the Contract Facility in Test mode and wait for the Contract Facility to be stable before sending any
-

Regulation signal to the Contract Facility. (A Load Facility or aggregated Load Facility providing Regulation would be directed to operate at its minimum load). The Contract Facility will not be required to remain at its full charge set-point longer than its state of charge allows.

- (ii) The System Operator’s Control Centre shall manually send a “lower” signal to the Contract Facility. Just before sending the lower signal, the System Operator will notify the ASP that the lower is about to occur so the ASP can verify the lower test. The Regulation signal shall direct the Contract Facility to decrease its output as fast as it can, by the amount of its Regulation Capacity, down close to its minimum output while under Regulation control. The System Operator shall record a graph of the output of the Contract Facility against time. (A Load Facility or aggregated Load Facility providing Regulation would be sent a corresponding signal to increase its load.) The Contract Facility will not be required to remain at its full charge set-point longer than its state of charge allows.
  - (iii) If the Contract Facility decreases its output by its Certified Regulation Capacity in less than six (6) minutes, the System Operator records the Ramp Rate  $R_{DOWN}$  as the Regulation Capacity (MW) divided by the time (minutes) it took for the Contract Facility to decrease its output by its Regulation Capacity  $C_{DOWN}$ . If the Contract Facility decreases its output by an amount less than or equal to its Certified Regulation Capacity in more than six (6) minutes, the System Operator records the Regulation Capacity  $C_{DOWN}$  as the output change (MW) in six (6) minutes. The System Operator records the Ramp Rate  $R_{DOWN}$  (in MW per minute) as the output change in six (6) minutes divided by six (6) minutes. (For a Load Facility or aggregated Load Facility providing Regulation Service, the System Operator would record the load increase, time to increase, and calculate the corresponding Rate.)
- (d) Test Results
- (i) The System Operator records the verified Regulation Capacity “C” as the lesser of  $\{C_{UP}, C_{DOWN}\}$ . The System Operator records the verified Ramp Rate “R” as the lesser of  $\{R_{UP}, R_{DOWN}\}$ .
- (e) Verification of Contract Facility Communication Systems
- (i) The communication systems of the Contract Facility shall be tested through a protocol mutually agreed upon by the Parties, in order to ensure that the System Operator can communicate with the Contract Facility. The communication systems to be tested are set forth below.

- (ii) The ASP shall carry out the following tests under direction of the IESO:
  - (A) confirmation of control communication path performance;
  - (B) confirmation of voice circuits and the Dispatch messaging system for receipt of Dispatch Instructions; and
  - (C) confirmation of control by the System Operator’s Energy Management System (EMS) over the range of Regulation specified in Schedule 4 of this Agreement.

## 1.5 On-Line Diagnostic Test

### (a) General

- (i) The IESO may occasionally, only if reasonably required, carry out an on-line diagnostic test (the “**On-Line Diagnostic Test**”) with respect to the provision of Regulation Service. Such tests will be conducted with ten (10) minutes notification, outside the normal Outage planning process. Such tests will be carried out with the intent of causing minimum impact to the ASP in its operation of the Contract Facility. At the IESO’s discretion, a subset of the tests listed in Section 1.5(b) of this Schedule 2 may be executed.

### (b) Test Procedure

- (i) The IESO shall inform the ASP of the need for an On-Line Diagnostic Test and will inform the ASP of any evidence it has that would help identify why the Contract Facility is considered deficient.
- (ii) To test the ability of the Contract Facility to provide Regulation, the following steps are taken:
  - (A) At the beginning of testing at the Contract Facility, the System Operator shall remove the Contract Facility from Regulation automatic control, and place it in Regulation Service control in test mode. The System Operator shall request the operator at the Contract Facility to operate the Contract Facility at its Base-Point.
  - (B) The System Operator shall wait for the Contract Facility output to be stable before sending any Regulation Service signal to the Contract Facility.
  - (C) The System Operator shall manually send a raise signal to the Contract Facility at the site. Just before sending the raise signal, the System Operator will notify the ASP that the raise is

about to occur so the ASP can verify the raise test. The Regulation Service test signal shall direct the Contract Facility to increase its output as fast as it can, by an amount equal to its amount of Regulation Capacity as indicated in the daily Regulation Service schedule. The System Operator will observe the response of the unit(s) under test for six (6) minutes, and will calculate the Ramp Rate  $R_{UP}$  and capacity response  $C_{UP}$  in the manner described in Section 1.4(b) of this Schedule 2.

- (D) The System Operator shall wait up to six (6) minutes for the Contract Facility to stabilize. The System Operator shall then manually send a lower signal to the Contract Facility at a site. Just before sending the lower signal, the System Operator will notify the ASP that the lower is about to occur so the ASP can verify the lower test. The Regulation test signal shall direct the Contract Facility to decrease its output, back to its Regulation Base-Point. The System Operator will observe the response of the unit(s) under test for six (6) minutes, and will calculate the Regulation Ramp Rate  $R_{DOWN}$  and capacity response  $C_{DOWN}$  in the manner described in Section 1.4(c) of this Schedule 2.
- (E) The System Operator shall record the verified Regulation Capacity “C” as the lesser of  $\{C_{UP}, C_{DOWN}\}$ . The System Operator shall record the verified Ramp Rate “R” as the lesser of  $\{R_{UP}, R_{DOWN}\}$ .

(c) Restoration of Original Ratings after Poor Test Results

- (i) After the ASP has completed corrective action to restore Regulation Capacity or Ramp Rate from the Contract Facility, which when tested was found to perform poorly, the ASP may request a re-test through the Outage scheduling process established by the IESO, or at short notice (within the next 4 hours) in order to demonstrate restored ratings. The test of Section 1.3 of this Schedule 2 would be used in such cases.
- (ii) If the Contract Facility has failed an On-Line Diagnostic Test within the previous three months, and has not successfully passed an On-Line Diagnostic Test within one month of the original failure, the IESO may schedule testing of the Regulation Service capability, in accordance with the Outage scheduling process established by the IESO. If the IESO still questions the accuracy of the Certified Capabilities data provided by the ASP for the Contract Facility, the IESO shall inform the ASP of any evidence it has that would help identify why the Contract Facility is considered deficient.

**EXHIBIT 1 TO SCHEDULE 2  
FORM OF NOTICE CONFIRMING CERTIFIED CAPABILITIES**

**TO:** *[Note to Finalization: Insert name of ASP]*(the “ASP”)

**DATE:** \_\_\_\_\_

**RE:** Service Agreement for the Provision of Regulation Service (the “**Agreement**”) between the ASP and the Independent Electricity System Operator (“**IESO**”) dated \_\_\_\_\_

Capitalized terms not defined herein have the meanings ascribed thereto in the Agreement.

Pursuant to Schedule 2 of the Agreement described above, the IESO hereby confirms that the Certified Capabilities of the Contract Facility are as follows:

<b>Date of Certification Test</b>	
<b>Certified Ramp Rate</b>	
<b>Certified Regulation Capacity</b>	

**INDEPENDENT ELECTRICITY  
SYSTEM OPERATOR**

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

Name:

Title:

**- End of Section –**

---

## **SCHEDULE 3 TECHNOLOGY SPECIFIC PROVISIONS**

### **TYPE 1 – CONVENTIONAL FACILITIES**

#### **1.1 Application of Schedule**

This version of Schedule 3 shall apply to a Contract Facility that is not an Energy Storage Facility.

#### **1.2 General Provisions**

- (a) The ASP must provide its day-ahead daily Regulation Service offer submission in a form and schedule determined by the IESO.
- (b) The IESO shall determine:
  - (i) the schedule by which the daily Regulation Service offer submission shall be provided to the System Operator and the procedure for making any corrections or adjustments thereto including an articulation of the time requirements for such submissions, corrections, and/or adjustments;
  - (ii) the change management procedures that govern all submissions and data transactions between the ASP and the System Operator; and
  - (iii) the mechanisms by which the ASP shall notify the System Operator of any Planned Outages or Forced Outages to the Contract Facility and/or any real-time communications associated with Outages or other events that impact the operation of the Contract Facility (including, scheduled maintenance, equipment faults and De-ratings that make the Contract Facility unable to supply either or both of the Certified Capabilities);and shall communicate all of the above to the ASP.
- (c) The System Operator will make an economic selection and confirm the Regulation Service schedule with the ASP.
- (d) Using commercially reasonable measures, both Parties on an ongoing basis will monitor the amount of Regulation Service provided versus Regulation Service scheduled.

#### **1.3 Procedure for Communicating Regulation Requirements**

The ASP will provide the following information in its Regulation Service schedule returned to the System Operator:

- (a) The Contract Facility that will supply Regulation; and
- (b) Regulation Capacity ( $\pm$  MW) to be supplied from the Contract Facility, including minimum and maximum limits.

#### **1.4 Day Ahead**

- (a) The System Operator publicly submits its twenty four (24) hourly quantities of total Regulation Capacity requirements ( $\pm$  MW) for the following day. The System Operator submits these Regulation Service hourly requirement quantities via the morning Day Zero Advisory Notification System, sent out at 05:30 EST.
- (b) The ASP returns a Regulation Service schedule to the System Operator of its available Regulation Service resources to help meet the total Regulation Service requirements for the following day by 09:00. The System Operator reviews the Ancillary Service Provider resource schedules of all Ancillary Service Providers for Regulation service, selects Ancillary Service Provider resources for each hour, and informs each Ancillary Service Provider of its Regulation service schedule by 10:00 EST. Each Regulation service schedule includes hourly required regulation capacity ( $\pm$  MW) and ramp rate.
- (c) The System Operator will confirm Regulation Service requirements by issuing a Dispatch message for activation of the Regulation Service contract for the relevant period. The ASP will accept the Dispatch message promptly.
- (d) Notwithstanding the above, upon mutual agreement, the Parties may modify the procedure to assign the Contract Facility to provide Regulation Service should there be a more appropriate mechanism as a result of the ASP's specific technology.

#### **1.5 Current Day**

- (a) For the Contract Facility providing Regulation Service, if the System Operator has an unexpected immediate need to change the Regulation Service requirement, and if the System Operator requests the ASP to change the amount of Regulation Service provided, consistent with Good Utility Practice, the ASP will respond as soon as possible, with a target of ten (10) minutes to provide the changed amount of Regulation Capacity.
- (b) If, in order to supply the required amount of Regulation Service, the ASP has an unexpected immediate need to change or replace a source of Regulation Service due to a Forced Outage or forced De-rating on the Contract Facility supplying Regulation Service or other such equipment limitations affecting minimum or maximum points, the ASP shall promptly inform the System Operator of the Forced Outage or forced De-rating or equipment limitation in accordance with the Outage process of Chapter 5, Sections 6.3.4 and 6.3.5 of the Market Rules.

## **1.6 Notifications**

When events such as scheduled maintenance, Planned Outages, Forced Outages, equipment faults and De-ratings make the Contract Facility unable to supply either or both of the Certified Capabilities, the ASP will inform the IESO of such restriction on the Contract Facility's supply of Regulation Service together with the reason.

## **1.7 Provisions Specific to State of Charge of Energy Limited Facilities**

The following provisions shall be applicable to Energy Limited Facilities:

- (a) The Regulation signal from the System Operator may be biased in either the positive or negative direction based on system conditions and the IESO makes no guarantee regarding the Energy neutrality of the Regulation signal over any length of time.
- (b) When the Contract Facility becomes charge limited, it is expected to only be able to respond to the Regulation signal in one direction (i.e. up or down). The ASP shall not be penalized for this limitation, subject to the Contract Facility being capable of providing, at a minimum, Regulation Service for the Duration of Service in all instances.
- (c) The Contract Facility shall provide, at a minimum, Regulation Service for the Duration of Service on each occasion when scheduled by the System Operator.

**- End of Section -**



---

**SCHEDULE 3  
TECHNOLOGY SPECIFIC PROVISIONS**

**TYPE 2 – ENERGY STORAGE FACILITIES**

**1.1 Application of Schedule**

- (a) This version of Schedule 3 shall apply to a Contract Facility that is an Energy Storage Facility.
- (b) Section 1.2 of this Schedule 3 sets out general obligations and requirements for Energy Storage Facilities.
- (c) Due to limitations with respect to the current tools available to the System Operator, the System Operator does not currently have the capability to schedule or communicate with Energy Storage Facilities in the same manner as all other Facilities. Section 1.3 of this Schedule 3 sets out specific obligations and requirements for Energy Storage Facilities that shall apply until such time as the System Operator has the capability to treat Energy Storage Facilities providing Regulation Service in the same manner as all other Facilities. The terms set out in Section 1.4 of this Schedule 3 are currently applicable to Facilities (other than Energy Storage Facilities) and may, subject to Section 1.1(d) of this Schedule 3, supplant the provisions of Section 1.3 of this Schedule 3, in whole or in part, at the time that the System Operator is capable of treating Energy Storage Facilities providing Regulation Service in the same manner as all other Facilities. Without limiting the generality of the foregoing, the procedure to assign Energy Storage Facilities to provide Regulation Service may be migrated to a new platform as new tools are developed by the System Operator.
- (d) The terms in Section 1.3 of this Schedule 3 may be separately or jointly nullified, voided, amended, modified, or replaced by the IESO at any time, and from time to time, during the Term, by the IESO providing at least 90-days' notice to the ASP. Such notice (i) shall identify which provisions of Section 1.3 of this Schedule 3 are nullified, voided, amended, modified, or replaced, as the case may be; and (ii) shall identify which of the provisions of Section 1.4 of this Schedule 3 shall take effect, if any, and/or shall describe any amendments, modifications or replacements to the terms in Section 1.3 or Section 1.4 of this Schedule 3 of this Agreement (and the respective agreements of any other Ancillary Service Providers that are Energy Storage Facilities) as may be necessary or desirable to reflect the scheduling and communications protocol, regimes, or tools established by the System Operator in respect of Energy Storage Facilities.
- (e) If any amendments, modifications or replacements are required as provided in Section 1.1(d) of this Schedule 3, but the Parties are unable to agree on such amendments, modifications or replacements within sixty (60) days after the

IESO has delivered the notice described above, then the Parties (and, at the IESO's discretion, such other Ancillary Service Providers who are Energy Storage Facilities that are required by the IESO to participate) shall have such amendments, modifications or replacements determined in accordance with the dispute resolution procedures set out in this Agreement. For greater certainty, this Section 1.1(e) does not apply to the extent the terms of this Schedule 3 are or are required to be nullified, voided, amended, modified or replaced, in whole or in part, by operation of the Market Rules or in connection with a change in the Market Rules.

- (f) Nothing in this Schedule 3 overrides any other right or obligation of the ASP in the Market Rules, or, unless expressly stated, in this Agreement. For greater clarity, an Energy Storage Facility shall comply with all applicable Market Rules.

## **1.2 General Provisions**

- (a) The ASP must provide its day-ahead daily Regulation Service offer submission in a form and schedule determined by the IESO.
- (b) The IESO shall determine:
  - (i) the schedule by which the daily Regulation Service offer submission shall be provided to the System Operator and the procedure for making any corrections or adjustments thereto including an articulation of the time requirements for such submissions, corrections, and/or adjustments;
  - (ii) the change management procedures that govern all submissions and data transactions between the ASP and the System Operator; and
  - (iii) the mechanisms by which the ASP shall notify the System Operator of any Planned Outages or Forced Outages to the Contract Facility and/or any real-time communications associated with Outages or other events that impact the operation of the Contract Facility (including, scheduled maintenance, equipment faults and De-ratings that make the Contract Facility unable to supply either or both of the Certified Capabilities);and shall communicate all of the above to the ASP.
- (c) The System Operator will make an economic selection and confirm the Regulation Service schedule with the ASP.
- (d) Using commercially reasonable measures, both Parties on an ongoing basis will monitor the amount of Regulation Service provided versus Regulation Service scheduled.
- (e) When events such as scheduled maintenance, Planned Outages, Forced Outages, equipment faults and De-ratings make the Contract Facility unable to

supply either or both of the Certified Capabilities, the ASP will inform the IESO of such restriction on the Contract Facility's supply of Regulation Service together with the reason.

- (f) The following provisions shall be applicable to Energy Limited Facilities:
  - (i) The Regulation signal from the System Operator may be biased in either the positive or negative direction based on system conditions and the IESO makes no guarantee regarding the Energy neutrality of the Regulation signal over any length of time.
  - (ii) When the Contract Facility becomes charge limited, it is expected to only be able to respond to the Regulation signal in one direction (i.e. up or down). The ASP shall not be penalized for this limitation, subject to the Contract Facility being capable of providing, at a minimum, Regulation Service for the Duration of Service in all instances.
  - (iii) The Contract Facility shall provide, at a minimum, Regulation Service for the Duration of Service on each occasion when scheduled by the System Operator.

### **1.3 Interim Provisions**

Each of the following provisions shall apply until such time as the IESO delivers notice to the ASP in accordance with Section 1.1(d) of this Schedule 3:

- (a) The Contract Facility shall participate in the IESO-Administered Markets solely as a provider of Regulation Service for the duration of the Term of this Agreement.
- (b) The Contract Facility shall not participate in the Energy Market or Operating Reserve Market. The Contract Facility may, however, provide Reactive Support and Voltage Control (RSVC) services when the Contract Facility is not scheduled to provide Regulation Service.
- (c) The IESO will determine and confirm the Contract Facility's Regulation Base-Point, from time to time, taking into account the Contract Facility's operating capabilities.
- (d) The Contract Facility shall receive a Regulation signal that takes into account its minimum and maximum capability.
- (e) The ASP shall be responsible for indicating operating characteristics, available Regulation Capacity and other technical factors in its daily bid submissions, subject to the limits set out in Schedule 4 of this Agreement.

- (f) The System Operator shall provide a Regulation signal to the Contract Facility using the operating characteristics provided by the ASP as set out in Section 1.3(e) of this Schedule 3 as guidance.
- (g) The ASP is not obligated to operate the Contract Facility outside of the operating characteristics provided to the System Operator in its daily bid submission.
- (h) The IESO shall not be responsible for, and the ASP shall assume full responsibility for, managing state of charge of the Contract Facility.

#### **1.4 Possible Future Scheduling and Notifications Provisions**

(a) **Application**

Any one or more of the following provisions may apply if the IESO delivers notice to the ASP in accordance with Section 1.1(d) of this Schedule 3. Nothing in this Section 1.4 of Schedule 3 limits the ability of the IESO to amend, modify, or replace the provisions of Section 1.3 or Section 1.4 of this Schedule 3 at any time during the Term, as contemplated by Section 1.1(d) of this Schedule 3.

(b) **Procedure for Communicating Regulation Requirements**

The ASP will provide the following information in its Regulation Service schedule returned to the System Operator:

- (i) The Contract Facility that will supply Regulation; and
- (ii) Regulation Capacity ( $\pm$  MW) to be supplied from the Contract Facility, including minimum and maximum limits.

(c) **Day Ahead**

- (i) The System Operator publicly submits its twenty four (24) hourly quantities of total Regulation Capacity requirements ( $\pm$  MW) for the following day. The System Operator submits these Regulation Service hourly requirement quantities via the morning Day Zero Advisory Notification System, sent out at 05:30 EST.
- (ii) The ASP returns a Regulation Service schedule to the System Operator of its available Regulation Service resources to help meet the total Regulation Service requirements for the following day by 09:00. The System Operator reviews the Ancillary Service Provider resource schedules of all Ancillary Service Providers for Regulation service, selects Ancillary Service Provider resources for each hour, and informs each Ancillary Service Provider of its Regulation service schedule by 10:00 EST. Each Regulation service schedule includes hourly required regulation capacity ( $\pm$  MW) and ramp rate.

- (iii) The System Operator will confirm Regulation Service requirements by issuing a Dispatch message for activation of the Regulation Service contract for the relevant period. The ASP will accept the Dispatch message promptly.
  - (iv) Notwithstanding the above, upon mutual agreement, the Parties may modify the procedure to assign the Contract Facility to provide Regulation Service should there be a more appropriate mechanism as a result of the ASP's specific technology.
- (d) **Current Day**
- (i) For the Contract Facility providing Regulation Service, if the System Operator has an unexpected immediate need to change the Regulation Service requirement, and if the System Operator requests the ASP to change the amount of Regulation Service provided, consistent with Good Utility Practice, the ASP will respond as soon as possible, with a target of ten (10) minutes to provide the changed amount of Regulation Capacity.
  - (ii) If, in order to supply the required amount of Regulation Service, the ASP has an unexpected immediate need to change or replace a source of Regulation Service due to a Forced Outage or forced De-rating on the Contract Facility supplying Regulation Service or other such equipment limitations affecting minimum or maximum points, the ASP shall promptly inform the System Operator of the Forced Outage or forced De-rating or equipment limitation in accordance with the Outage process of Chapter 5, Sections 6.3.4 and 6.3.5 of the Market Rules.

**- End of Section -**

**SCHEDULE 4**  
**TECHNICAL SPECIFICATIONS FOR THE CONTRACT FACILITY, AVAILABILITY**  
**AND PAYMENT DETAILS**

**Table 1: Technical Specifications for Contract Facility**

Description	Value
Facility Name	
Facility ID No., in respect of an Existing Facility	<i>[Note to Finalization – To be inserted for Existing Facilities only. For all other Facilities, insert “N/A”]</i>
Facility Type (Load, Generator, or Energy Storage)	
Fuel Type	
Nameplate Capacity (MW)	
Facility Status, as of Contract Date (New Build Facility or Existing Facility)	
Local Jurisdiction(s) of the Contract Facility, in respect of a New Build Facility	<i>[Note to Finalization – To be inserted for New Build Facilities only. For all other Facilities, insert “N/A”]</i>
Proposed Connection Location, in respect of a New Build Facility	<i>[Note to Finalization – To be inserted for New Build Facilities only. For all other Facilities, insert “N/A”]</i>
Location of the Contract Facility, including Connection Point, in respect of an Existing Facility	<i>[Note to Finalization – To be inserted for Existing Facilities only (based on Facility ID No.). For all other Facilities, insert “N/A”]</i>
Regulation Capacity ( $\pm$ MW)	
Ramp Rate (MW/minute)	
Energy Capacity (MWh), in respect of an Energy Limited Facility	<i>[Note to Finalization – To be inserted for Energy Limited Facilities only. For all other Facilities, insert “N/A”]</i>
Duration of Service (Minutes), in respect of an Energy Limited Facility	<i>[Note to Finalization – To be inserted for Energy Limited Facilities. For Facilities that are not Energy Limited, insert “N/A”]</i>
Target Service Commencement Date	The date which is ● (●) months from the Contract Date. <i>[Note to Finalization – Offered Months to Service Commencement to be inserted.]</i>
Service Completion Date	The date which is ● (●) years from the Target Service Commencement Date. <i>[Note to Finalization – Offered Contract Service Term to be inserted.]</i>

**Table 2: Available Hours**

<b>Month</b>	<b>Available Hours</b>
January	
February	
March	
April	
May	
June	
July	
August	
September	
October	
November	
December	
<b>Total Available Hours</b>	

**Table 3: Payment Details**

<b>Description</b>	<b>Value</b>
Liability Cap (\$)	<i>[Note to Finalization – Insert Offered Availability Cost/Year x Offered Contract Service Term]</i>
Annual Availability Cost (\$/year)	<i>[Note to Finalization – Insert Offered Availability Cost/year]</i>
Opportunity Cost Rate (\$/MWh)	<i>[Note to Finalization – Insert Offered Opportunity Cost Rate]</i>
Residual Variable Cost Rate (\$/MWh)	<i>[Note to Finalization – Insert Offered Residual Variable Cost Rate]</i>

*[Note to Finalization: Tables to be completed upon selection of Selected Proponents (as such term is defined in the Request for Proposals)]*

**- End of Section -**

**SCHEDULE 5  
FORM OF CONFIDENTIALITY UNDERTAKING**

Pursuant to Section 10.1(c) of the Service Agreement for the Provision of Regulation Service (the “**Agreement**”) between the ASP and the Independent Electricity System Operator (“**IESO**”) described below, the Undersigned is hereby submitting this completed Form of Confidentiality Undertaking to the IESO. Capitalized terms not defined herein have the meanings ascribed thereto in the Agreement.

Date	
Legal Name of ASP	
Legal Name of Secured Lender	
Name of Contract Facility	
Contract Date	

WHEREAS the undersigned is a Secured Lender, prospective lender, investor (if not an Affiliate of the ASP) or prospective investor (the “**Undersigned**”);

AND WHEREAS the ASP wishes to disclose Confidential Information to the Undersigned for the purposes of securing investment in or financing for the Contract Facility, and such disclosure is prohibited without the provision to the IESO of this Confidentiality Undertaking;

NOW THEREFORE THE UNDERSIGNED:

- (a) confirms that the Undersigned has been informed of the ASP’s confidentiality obligations under the Agreement; and
- (b) undertakes in favour of the IESO to hold any and all Confidential Information confidential on the terms set out in Article 10 of the Agreement as applicable to the APS, *mutatis mutandis*.

*[Signature Page Follows]*



Signed this     day of     , 20     .

**[NAME OF SECURED LENDER,  
PROSPECTIVE LENDER, INVESTOR OR  
PROSPECTIVE INVESTOR]**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:  
I/We have the authority to bind the  
Undersigned.

**- End of Section -**

## SCHEDULE 6 PAYMENT

### 1.1 Monthly Payment

- (a) Commencing on the Service Commencement Date and ending on the Termination Date, the IESO shall pay to the ASP a monthly amount equal to the Fixed Monthly Payment (described in Section 1.2 of this Schedule 6), plus the Variable Payment (described in Section 1.3(a) of this Schedule 6), plus the Monthly Reimbursement (described in Section 1.3(b) of this Schedule 6), if applicable, in each case, for such month (the “**Monthly Payment**”). The Monthly Payment shall be paid in accordance with the IESO Settlement Schedule & Payments Calendar and the Market Rules.
- (b) The ASP shall perform its obligations under this Agreement, including Section 4.2 of this Agreement, in consideration for the Monthly Payments and the ASP agrees to accept Monthly Payments as full payment and reimbursement for the performance of its obligations under this Agreement. The Monthly Payments are not subject to change or adjustment except as expressly provided in this Agreement or as may be mutually agreed upon by the Parties.
- (c) The IESO shall have no obligation to make Monthly Payments to the ASP in respect of the period in which the Contract Facility did not maintain its Certification.
- (d) The ASP acknowledges and agrees that the Settlement Amounts described in this Schedule 6 can be implemented through one or more Charge Types established by the IESO.
- (e) Notwithstanding anything to the contrary in this Agreement, if the Contract Facility provides Reactive Support and Voltage Control (RSVC) services, the hourly uplift charges and non-hourly uplift charges components of the Monthly Reimbursement (described in Section 1.3(b) of this Schedule 6) shall be calculated such that there will be no duplication in payment as a result of the Contract Facility providing both Reactive Support and Voltage Control and Regulation Service.

### 1.2 Fixed Monthly Payment Component

- (a) The IESO shall pay to the ASP the Annual Availability Cost, subject to annual adjustment as described in Section 1.2(b) of this Schedule 6. The Annual Availability Cost shall be split into twelve equal payments and paid to the ASP on a monthly basis as described in Section 1.1 of this Schedule 6 (the “**Fixed Monthly Payment**”).
- (b) The Annual Availability Cost shall be pro-rated and reduced by the Annual Availability Cost Shortfall Payment (as defined below) on an annual basis for

any shortfall in Settlement Hours when Regulation Service was not available, relative to the Total Available Hours indicated in Table 2 of Schedule 4. Reconciliation will take place at the end of each calendar year following the Service Commencement Date by summing the cumulative availability for each month indicated in Table 2 of Schedule 4 and comparing it with the cumulative offered capacity over the same period, all as more particularly calculated as set out below. The calendar period over which this reconciliation will take place will span all Trading Days from January to December of each year following the Service Commencement Date and ending on the Termination Date. In the year in which the Service Commencement Date occurs and in the last year of this Agreement, this may be assessed on data for less than a calendar year, per the formula description below. If there is an Annual Availability Cost Shortfall Payment (as defined below) owing as a result of this reconciliation, such Settlement Amount will be owing by the ASP to the IESO.

$$\begin{aligned} & \text{Annual Availability Cost Shortfall Payment}_{k,H}^m \\ &= \frac{(\text{Total Available Hours}_{k,H}^m - \text{Available hours}_{k,HA}^m)}{\text{Total Available Hours}_{k,H}^m} \\ & \times \text{Annual Availability Cost} \end{aligned}$$

Where:

‘Annual Availability Cost Shortfall Payment’ is the value by which the Annual Availability Cost will be reduced

‘Total Available Hours’ is the total number of Available Hours in a calendar year, as set out in Table 2 of Schedule 4

‘Available hours’ $_{k,HA}^m$ , is the total available hours of Regulation Capacity offered by the ASP at the Contract Facility’s Delivery Point during the applicable set of Settlement Hours ‘HA’ defined below

‘Annual Availability Cost’ is the value provided in Table 3 of Schedule 4

‘k’ is Market Participant ‘k’, the ASP

‘H’ is the set of all Settlement Hours ‘h’ in the applicable annual time period ending on the December 31<sup>st</sup> Trading Day of each calendar year. In the year in which the Service Commencement Date occurs and in the last year of this Agreement, this may be a period of less than one calendar year

‘HA’ is the set of all Settlement Hours ‘h’ in the applicable annual time period ending where the Contract Facility was offered by the ASP as being available for Regulation Service

‘m’ is the applicable Delivery Point

### 1.3 Variable Payment and Monthly Reimbursement Components

- (a) The calculation of the “**Variable Payment**” for each month is as follows:

$$\begin{aligned} \text{Variable Payment} &= [\text{Regulation Capacity Offered }^m_{k,H}] \\ &\times [\text{Opportunity Cost Rate} + \text{Residual Variable Cost Rate}] \end{aligned}$$

Where:

‘Regulation Capacity Offered’ is the actual amount of Regulation Capacity offered by the ASP during the Settlement Period

‘Opportunity Cost Rate’ is the value provided in Table 3 of Schedule 4

‘Residual Variable Cost Rate’ is the value provided in Table 3 of Schedule 4

‘k’ is Market Participant ‘k’, the ASP

‘H’ is the set of all Settlement Hours ‘h’ in the applicable Settlement Period. In the first and last month in which payments are due under this Agreement, this may be a period of less than one month

‘m’ is the applicable Delivery Point

- (b) The calculation of the “**Monthly Reimbursement**” of hourly uplift charges, non-hourly uplift charges and Global Adjustment charges incurred while withdrawing Energy (as indicated by revenue wholesale meters in accordance with the Market Rules) during the course of providing Regulation Service is as follows:

$$\begin{aligned} \text{Monthly reimbursement} &= \left[ \frac{(\text{AQEW }^m_{k,HR})}{\text{AQEW }^m_{k,H}} \right] \times [\text{Global Adjustment }^m_{k,H} + \text{MSA }^m_{k,H}] + \sum_{HR} \text{HUSA }^m_{k,HR} \end{aligned}$$

Where:

‘AQEW’ is the allocated quantity of energy withdrawn, as more specifically defined in Chapter 9 of the Market Rules

‘k’ is Market Participant ‘K’, the ASP

‘H’ is the set of all applicable Settlement Hours ‘h’ in the applicable Settlement Period. In the first and last month in which payments are due under this Agreement, this may be a period of less than one month

‘HR’ is the set of all Settlement Hours ‘h’ in the applicable Settlement Period where Regulation Service was provided

‘T’ is the set of all metering intervals ‘t’ in the applicable Settlement Period

‘m’ is the applicable Delivery Point

Global Adjustment  $k_{k,H}^{m,T}$  is the Global Adjustment accruing to the ASP at Delivery Point ‘m’ during the applicable Settlement Period

HUSA  $k_{k,H}^m$  is the hourly uplift Settlement Amount defined in Chapter 9, Section 3.9.1 of the Market Rules accruing to the ASP at Delivery Point ‘m’ during the applicable Settlement Period, subject to Section 1.1(e) of this Schedule 6

MSA  $k_{k,H}^{m,T}$  is the non-hourly uplift Settlement Amounts defined in Chapter 9, Section 4.8.1 of the Market Rules accruing to the ASP at Delivery Point ‘m’ during the applicable Settlement Period, subject to Section 1.1(e) of this Schedule 6

**– End of Section –**

**SCHEDULE 7  
NOMINATED REPRESENTATIVES FOR NOTIFICATIONS**

**IESO**

Name of IESO Representative:	
Title:	
Address:	
City/Province/Postal Code:	
Email address:	
Phone:	

**ASP**

Name of ASP Representative:	
Title:	
Address:	
City/Province/Postal Code:	
Email address:	
Phone:	

**- End of Section –**

**- End of Document -**