

ENERGY STORAGE FACILITY AGREEMENT

Between

[●]

– and –

INDEPENDENT ELECTRICITY SYSTEM OPERATOR

DATED as of the [●] day of [●], 2015.

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ENERGY STORAGE FACILITY AGREEMENT

This Energy Storage Facility Agreement is dated as of the [●] day of [●], 2015, (the “**Contract Date**”) between [●] (the “**Supplier**”), and the Independent Electricity System Operator (the “**Sponsor**”). The Supplier and the Sponsor are each referred to herein as a “**Party**” and collectively as the “**Parties**”.

RECITALS:

1. On March 31, 2014, the Ontario Minister of Energy issued a directive (the “**Ministerial Direction**”) to the Ontario Power Authority, as predecessor to the Sponsor, pursuant to subsection 25.32 of the *Electricity Act, 1998* to undertake an energy storage procurement process.
2. The Ontario Power Authority, as predecessor to the Sponsor, ran a request for qualifications in October 2014, to which the Supplier responded and was prequalified to participate in a future request for proposals.
3. The Sponsor issued a request for proposals for energy storage projects in June 2015, to which the Supplier submitted the Proposal, which was selected by Sponsor, and now the Sponsor and the Supplier wish to execute this Agreement in order to formalize the long-term contractual arrangements for the Supplier to design, build, own, operate and maintain the Facility and to absorb Electricity from and re-inject Electricity directly into the IESO-Controlled Grid or the Local Distribution System during the Term on the terms and conditions set out herein;

NOW THEREFORE, the Parties agree as follows:

ARTICLE 1 DEFINITIONS

1.1 Definitions

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

“**Adjusted Contract Capacity**” or “**ACC**” has the meaning ascribed to it in Exhibit J.

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

“**Agreement**” means this Energy Storage Facility Agreement as it may be amended, restated or replaced from time to time.

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

“**Apparent Monthly RTE**” or “**AMRTE**” has the meaning ascribed to it in Exhibit E.

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

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

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

“**Assignment Period**” has the meaning ascribed to it in Section 16.5(e).

“**Associated Relationship**” means the relationship between a meter at (i) a Delivery Point and a Market Participant, as established by certain processes in the System Operator-operated MV-Web system or its equivalent, or (ii) the “Point of Supply” and a Local Distribution System customer as required under the Distribution System Code and Retail Settlement Code.

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

“**Business Day**” means any day other than a Saturday, a Sunday or a holiday as defined in section 88 of the *Legislation Act* (Ontario).

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

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

“**Capacity Reduction Factor**” has the meaning ascribed to it in Section 15.6(e).

“**CCT Capacity**” has the meaning ascribed to it in Section 15.6(d).

“**CCT Confirmation**” has the meaning ascribed to it in Section 15.6(f).

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

“**Commercial Operation**” has the meaning ascribed in 2.4(a).

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

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

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

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

“**Confidential Information**” means:

- (a) all information 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; (iii) information disclosed to the Receiving Party from a source other than the Disclosing Party or its Representative, if such source is not subject to any agreement with the Disclosing Party prohibiting such disclosure to the Receiving Party; and (iv) information that is independently developed by the Receiving Party; and
- (b) Mutually Confidential Information.

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

“**Conflict of Interest**” has the meaning ascribed to it in the RFP.

“**Connection Agreement**” means the agreement or agreements required to be entered into between the LDC or Transmitter and the Supplier with respect to the connection of the Facility to a Distribution System or the IESO-Controlled Grid, in accordance with the Distribution System Code or Transmission System Code, as applicable, and governing the terms and conditions of such connection.

“**Connection Capacity Limit**” means the maximum capacity that may be used by the Supplier in any request for an Impact Assessment, as set forth in Exhibit A.

“**Connection Cost Recovery Agreement**” means the agreement entered into by a Transmitter with the Supplier with respect to the recovery of costs with respect to the connection of the Facility to a Transmission System in accordance with the Transmission System Code.

“**Connection Costs**” mean those costs which are payable by the Supplier related to new or modified connection facilities, as defined by the Transmission System Code, for the reliable connection of the Facility to a Transmission System as more particularly specified pursuant to the System Impact Assessment, Customer Impact Assessment, and Transmission System Code for generator connections. For greater certainty, Connection Costs consist of Transmitter Connection Costs and Supplier Connection Costs, but shall not include Network Upgrade Costs.

“**Connection Impact Assessment**” means an assessment conducted by the LDC to determine the impact on the Distribution System of connecting the Facility to its Distribution System.

“**Connection Point**” means, (i) where the Facility is connected to the IESO-Controlled Grid, the electrical point of connection, as defined in the IESO Market Rules, between the Facility and the IESO-Controlled Grid; and (ii) where the Facility is connected to a Local Distribution System,

the embedded connection point, as defined in the IESO Market Rules, between the Facility and the Local Distribution System, in either case as specified in Exhibit A. For greater certainty, the Connection Point is defined by reference to electrical connection points.

“**Contingent Support Payment**” or “**CSP**” means the amount, if any, for a Settlement Month, expressed in Dollars, as calculated in accordance with Exhibit J.

“**Contract Capacity**” means that figure, expressed in MW, set out in Exhibit B as the “Contract Capacity”, subject to adjustment as expressly provided in the Agreement

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

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

“**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, by contract or trust or otherwise,

and “**Controlled**” has a corresponding meaning.

“**Core Charge Hours**” has the meaning ascribed to in Section 3.2(b).

“**Credit Rating**” means, (i) with respect to the Supplier (or the Guarantor, if a Guarantee is in place) (A) its long-term senior unsecured debt rating (not supported by third party credit enhancement) or (B) the lower of its issuer or corporate credit rating, as applicable, in either case being the lower provided by S&P, Moody’s or DBRS or any other established and reputable debt rating agency, agreed to by the Parties from time to time, each acting reasonably, and (ii) with respect to any other Person, its long-term senior unsecured debt rating or its deposit rating as provided by Moody’s, S&P, DBRS, or, if such Person is a financial institution, Fitch IBCA, or DBRS or any other established and reputable rating agency, as agreed to by the Parties, acting reasonably, from time to time.

“**Creditworthiness Value**” has the meaning ascribed to it in Section 6.4(b).

“**Customer Impact Assessment**” means a study conducted by a Transmitter to assess the impact of the connection of the Facility on other users of the IESO-Controlled Grid.

“**Cycle Deficiency**” has the meaning ascribed to it in Exhibit G.

“**Cycle Deficiency Reduction Factor**” or “**CDRF**” has the meaning ascribed to it in Exhibit G.

“**Daily Sponsor Schedule**” has the meaning ascribed to it in Section 3.2(b).

“**Day-Ahead Energy Forward Market**” means a forward market, established under the IESO Market Rules or otherwise, for Electricity or for Electricity and Related Products for each hour of a given day, that clears the day before based upon submitted bids to buy and offers to sell, and shall include, for purposes of this Agreement, such other mechanisms or amendments to the IESO Market Rules to enhance pre-dispatch scheduling and unit commitment of generators on a day-ahead basis.

“**DBRS**” means Dominion Bond Rating Service Limited or its successors.

“**Decommissioning**” means, in respect of the Facility, the decommissioning of the site of the Facility including the treatment or removal of contaminated soil, deconstruction of equipment, buildings and storage tanks in order to restore such site to substantially the state in which it had been prior to the development of the Facility.

“**Decommissioning Costs**” means all reasonable, documented, third party costs properly incurred in Decommissioning in accordance with Laws and Regulations or if no such Laws and Regulations are applicable then in accordance with Good Engineering and Operating Practices.

“**Delivered**” means, in relation to Electricity and applicable Related Products, delivered to the Delivery Point net of any Station Service Loads and other losses and adjustments in accordance with the Metering Plan and the Retail Settlement Code, as applicable, and “**Deliver**” and “**Delivery**” have corresponding meaning.

“**Delivery Point**” means a uniquely identified reference point determined as the point at which the Revenue Meter is installed in accordance with the IESO Market Rules, the Distribution System Code or Retail Settlement Code, as applicable, and used for settlement purposes.

“**Discharge Hours**” has the meaning ascribed to in Section 3.2(b).

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

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

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

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

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

“Distribution System” 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 code approved by the OEB, as amended from time to time, which, among other things, establishes the obligations of an LDC with respect to the services and terms of service to be offered to customers and retailers and provides minimum technical operating standards of distribution systems.

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

“Electricity” means electric energy.

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

“Emission Reduction Credits” means the credits associated with the amount of emissions to the air avoided by reducing the emissions below the lower of actual historical emissions or regulatory limits, including “emission reduction credits” as defined in O. Reg. 397/01 made under the *Environmental Protection Act* (Ontario), as amended from time to time, or such other regulation as may be promulgated under the *Environmental Protection Act* (Ontario).

“Energy Storage Technology Class” means the class of energy storage facility applicable to the Facility, as set forth in Exhibit A.

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

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

“Equivalent Cycle Count” has the meaning ascribed to it in Exhibit G.

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

“**Event of Default**” means a Supplier Event of Default or a Sponsor Event of Default.

“**Facility**” means the energy storage facility described in Exhibit A.

“**Facility Amendment**” has the meaning ascribed to it in Section 2.1(b).

“**Financial Indicators**” means the Tangible Net Worth and the Credit Rating.

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

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

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

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

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

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

“**Fourth Charge Hour**” has the meaning ascribed to it in Exhibit G.

“**Fourth Discharge Hour**” has the meaning ascribed to it in Exhibit G.

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

“**GAAP**” means Canadian or U.S. generally accepted accounting principles approved or recommended from time to time by the Canadian Institute of Chartered Accountants or the Financial Accounting Standards Board, as applicable, or any successor institutes, applied on a consistent basis.

“**Good Engineering and Operating Practices**” means any of the practices, methods and activities adopted by a significant portion of the North American electric utility and energy storage industry as good practices applicable to the design, building, and operation of energy storage 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 operator in light of the facts known at the time the decision was made, could reasonably have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety, expedition and Laws and Regulations. Good Engineering and Operating Practices are not intended to be limited to the optimum practices, methods or acts to the exclusion of all others, but rather are intended to delineate acceptable practices, methods,

or acts generally accepted in the North American electric utility industry and energy storage industry. Without limiting the generality of the foregoing and in respect of the operation of the Facility, Good Engineering and Operating Practices include taking Commercially Reasonable Efforts to ensure that:

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

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

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

“Guarantee” has the meaning ascribed to it in Section 6.4.

“Guarantor” has the meaning ascribed to it in Section 6.4.

“HOEP” or **“Hourly Ontario Energy Price”** has the meaning provided to it in the IESO Market Rules, and expressed in Dollars per MWh.

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

“IE Certificate” means the certificate of an Independent Engineer in the form attached as Exhibit H.

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

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

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

“**IFRS**” means the International Financial Reporting Standards, being the accounting standards and interpretations adopted or recommended from time to time by the International Accounting Standards Board (IASB) or any successor organization, applied on a consistent basis.

“**including**” means “including, without limitation”.

“**Impact Assessment**” means (i) a Connection Impact Assessment; (ii) a Customer Impact Assessment; and (iii) a System Impact Assessment, as applicable.

“**Imputed Cycle Count**” has the meaning ascribed to it in Exhibit G.

“**Imputed Cycling Day**” has the meaning ascribed to it in Exhibit G.

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

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

“**Independent Engineer**” means an engineer that is:

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

“**Initial Discharge Stage**” has the meaning ascribed to it in Section 15.6(c).

“**Insolvency Legislation**” means the *Bankruptcy and Insolvency Act* (Canada), the *Winding Up and Restructuring Act* (Canada), the *Companies’ Creditors Arrangement Act* (Canada) and analogous legislation in effect in the provinces and territories of Canada and the bankruptcy, insolvency, creditor protection or similar laws of any other jurisdiction (regardless of the jurisdiction of such application or competence of such law), as they may be amended from time to time.

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

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

“**kV**” means kilovolt.

“**kW**” means kilowatt.

“**kWh**” means kilowatt hour.

“**Laws and Regulations**” means:

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

“**LD Sum**” has the meaning ascribed to it in Section 10.2(f)(i).

“**LDC Portal**” means a secure web site maintained by an LDC, either directly or indirectly, that provides a point-of-access for specific authorized users to a facility’s or site’s specific data, such as metering or other data, or such similar processes and/or application that may be implemented for the presentment of metering data; and includes any systems or applications that may replace, supplement or succeed any such existing systems or applications.

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

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

“**Local Distribution System**” means a system for conveying Electricity at voltages of 50 kV or less and includes any structures, equipment or other things used for that purpose.

“**Locational Marginal Pricing**” or “**LMP**” means the form of pricing of Electricity, as determined and modified by the System Operator from time to time, to be considered and implemented by the System Operator, if at all, based upon a non-uniform, real-time, price of Electricity at each point, node, zone or other price reference location on the IESO-Controlled Grid and having the effect that such real-time prices reflect the costs of transmission congestion.

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

“**Market Settlement Charges**” means all market settlement amounts and charges described in Chapter 9 of the IESO Market Rules.

“**Matched Cycle Count**” has the meaning ascribed to it in Exhibit G.

“**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.

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

“**Metering Plan**” means a document that is provided by the Supplier to be approved by the Sponsor and that (a) verifies that the revenue-quality interval meters used to measure Electricity conform with Measurement Canada Regulations, (b) provides technical specifications for meters, instrument transformers and relevant instruments for main metering and, if backup metering is required by the IESO Market Rules or LDC, as applicable, backup metering as well, (c) provides all required information, and equipment specifications needed to permit the Sponsor to remotely access, verify, estimate and edit for calculation purposes, and/or total Revenue Meter readings in order to accurately determine the Delivered and Withdrawn Electricity at the Delivery Point net of any Station Service Loads (including a reasonable allocation of any Station Service Load relating to building services that is delivered through a different Revenue Meter than the Facility’s, such as in the case where such services are provided by a landlord or an adjacent facility), (d) provides the Sponsor with the State-of-Charge of the Facility at the same time intervals as the Revenue Meter readings, and (e) provides a reasonable means using Facility instrumentation to confirm compliance with the requirements of Section 15.6(c)(iii).

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

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

“**Monthly Payment**” has the meaning ascribed to it in Section 4.2.

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

“**Mutually Confidential Information**” means the Net Revenue Requirement, which information shall be deemed to be Confidential Information of both the Sponsor and the Supplier.

“**MV-Web**” or “**MVPortal**” means the internet-based communications interface application for Market Participants supplied by the System Operator that allows Market Participants to access physical and financial data for the IESO-Administered Markets, and includes any systems or applications that may replace, supplement or succeed the MV-Web or MVPortal.

“**MW**” means megawatt.

“**MWh**” means megawatt hour.

“**Negative Outlook**” means, with respect to any credit rating agency providing a Credit Rating for purposes of this Agreement, a potential or threatened downgrade to the Credit Rating of any Person.

“**Net Market Revenue Sharing Amount**” or “**NMRSA**” has the meaning ascribed to it in Exhibit J.

“**Net Revenue Requirement**” or “**NRR**” means that amount set out in Exhibit B as being the “Net Revenue Requirement”.

“**Network Upgrade Costs**” means an amount equal to those costs, which may include design, engineering, procurement, construction, installation and commissioning costs, related to the Network Upgrades. For greater certainty, Network Upgrade Costs shall not include Connection Costs.

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

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

“**Notice**” has the meaning ascribed to it in Section 15.7(a).

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

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

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

“**Operating Reference RTE**” has the meaning ascribed to it in Exhibit G.

“**Optional Termination**” has the meaning ascribed to it in Section 10.6(a).

“**Optional Termination Notice Date**” means the date the Supplier receives a notice of an Optional Termination pursuant to Section 10.6(a).

“**Optional Termination Sum**” has the meaning ascribed to it in Section 10.6(b).

“**Other Suppliers**” means all of the other suppliers that have entered into an energy storage facility agreement with the Sponsor as contemplated by the Ministerial Direction.

“**Overall Charge Hours**” has the meaning ascribed to in Section 3.2(b).

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

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

“**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.

“**Physical Operating Requirements**” has the meaning ascribed to it in Section 13.1(c).

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

“**Prescribed Form**” means, in relation to a form, the latest version of the corresponding form appearing on the Sponsor’s Website, as may be amended or replaced by the Sponsor from time to time and without notice to the Supplier.

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

“**Price Evolution Event**” has the meaning ascribed to it in Section 1.8(b).

“**Price Unavailability Event**” has the meaning ascribed to it in Section 1.9(b).

“**Procurement Submission Deadline**” has the meaning ascribed to it in the RFP.

“**Proposal**” means the proposal submission made by the Supplier in response to the RFP in respect of planning, designing, financing, constructing, operating and maintaining the Facility and which was selected by the Sponsor, and all clarifications in respect of such Proposal provided by the Supplier in writing as requested by or on behalf of the Sponsor from time to time in accordance with the RFP prior to the date of this Agreement.

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

“**Recharge Stage**” has the meaning ascribed to it in Section 15.6(c).

“**Registered Facility**” has the meaning given to such term in the IESO Market Rules.

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

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

“**Regulatory Environmental Attributes**” has the meaning ascribed to it in Section 2.10(b).

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

“**Related Products**” means all Capacity Products, Ancillary Services, transmission rights and any other products or services that may be associated with the Facility from time to time (but excluding Environmental Attributes produced by the Facility) that may be traded in the IESO-Administered Markets or other markets, or otherwise sold, and which shall be deemed to include products and services for which no market may exist, such as capacity reserves.

“**Replacement Guarantee**” has the meaning ascribed to it in Section 6.4(c).

“**Replacement Price**” has the meaning ascribed to it in Section 1.8(b)(i).

“**Replacement Provision(s)**” has the meaning ascribed to it in Sections 1.9(b) and 1.10(c) as applicable.

“**Reportable Events**” means any one or more of the following:

- (a) obtaining environmental and project and site approvals and permitting for the Facility;
- (b) completion of connection assessments, including receipt of approvals from the System Operator, Local Distribution Company or the Transmitter, as applicable;
- (c) execution of engineering, equipment procurement and construction contract(s) in respect of the Facility;
- (d) Financial closing in respect of the Facility;
- (e) ordering of major equipment for the Facility;
- (f) delivery of major equipment for the Facility;
- (g) status of construction of the Facility;
- (h) completion of construction of the Facility;
- (i) status of construction of connection of the Facility to the Transmission System or Distribution System;
- (j) connection of the Facility to the Transmission System or Distribution System; and
- (k) Commercial Operation of the Facility.

“**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 Sponsor is the Independent Electricity System Operator, this definition shall also include the Government of Ontario, and its respective directors, officers, employees, auditors, consultants (including economic and legal advisors), contractors and agents.

“**Required Outage Days**” has the meaning ascribed to it in Section 3.2(c).

“**Revenue Meter**” means either the equipment located at (i) the “Meter Installation” location (as such term is defined in the Retail Settlement Code) or (ii) the “Registered Wholesale Meter” location (as such term is defined in the IESO Market Rules), as applicable, and used for settlement purposes.

“**Revenue Sharing Payment**” or “**RSP**” means the amount, if any, for a Settlement Month, expressed in Dollars, as calculated in accordance with Exhibit J.

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

“**RFP**” means the request for proposals for energy storage facilities issued by the Sponsor on June 4, 2015 pursuant to the Ministerial Directive.

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

“**Scheduled Cycle Count**” has the meaning ascribed to it in Exhibit G.

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

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

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

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

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

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

“**Sponsor Proposed Optional Termination Sum**” has the meaning ascribed to it in Section 10.6(d)(ii).

“**Sponsor Scheduled Month**” has the meaning ascribed to it in Section 3.2(a).

“**Sponsor Scheduled Operation Payment**” or “**SSOP**” has the meaning ascribed to it in Exhibit J.

“**Sponsor Sharing Percentage**” or “**SSP**” has the meaning ascribed to it in Exhibit J.

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

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

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

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

“**Station Service Loads**” means energy consumed to power the on-site maintenance and operation of storage facilities but excludes energy consumed in association with activities which could be ceased or moved to other locations without impeding the normal and safe operation of the Facility and energy stored for future Delivery that is separately-metered by the LDC or the System Operator.

“**Stop Work Notice**” means a written notice from the Sponsor to the Supplier to permanently refrain from commencing, or allowing any third party to commence, and to cease, or cause any third party to cease, the development, construction and operation of the Facility or any part of the Facility.

“**Storage Capacity**” means the Contract Capacity, as amended from time to time in accordance with this Agreement, multiplied by four hours.

“**Storage Day**” means the 24-hour period commencing at the beginning of hour ending 24 (EST) on the day immediately preceding a Business Day, and ending at the end of hour ending 23 (EST) on such Business Day. For the purpose of any references in this Agreement to a Storage Day occurring in a particular calendar month, a Storage Day shall be deemed to occur in the month in which it ends (notwithstanding that the first hour of a Storage Day may actually occur in the preceding calendar month).

“**Subcontractor**” means a third party that has been retained by the Supplier, or another Subcontractor, through a written contract to provide goods or services directly that are directly related to the development or construction of the Facility, and for clarity includes any engineering, procurement and construction contractor.

“**Subsequent Discharge Stage**” has the meaning ascribed to it in Section 15.6(c).

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

“**Supplier Connection Costs**” means an amount equal to those Connection Costs associated with providing the required connection facilities to connect the Facility to a Transmission System (including costs associated with facilities provided or work performed by the Transmitter on a third-party basis to the Supplier) that are not Transmitter Connection Costs.

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

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

“**Supplier Proposed Optional Termination Sum**” has the meaning ascribed to it in Section 10.6(d).

“**Supplier’s Certificate**” means a certificate in the form set out in Exhibit I.

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

“**System Impact Assessment**” means a study conducted by the System Operator pursuant to Section 6.1.5 of Chapter 4 of the IESO Market Rules (or any future equivalent thereof), to assess the impact of a new connection of the Facility or of the modification of an existing connection of the Facility on the performance of the IESO-Controlled Grid and the reliability of the integrated power system.

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

“**Tangible Net Worth**” means in respect of the Supplier or a Guarantor, at any time and without duplication, an amount determined in accordance with GAAP (or IFRS, if the Supplier or Guarantor has adopted such standard), and calculated as (a) the aggregate book value of all assets, minus (b) the aggregate book value of all liabilities, minus (c) the sum of any amounts shown on account of patents, patent applications, service marks, industrial designs, copyrights, trade marks and trade names, and licenses, prepaid assets, goodwill and all other intangibles.

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

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

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

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

“**Test Protocol**” has the meaning ascribed to it in Section 15.6(b).

“**Total Monthly Fixed Capacity Payment**” or “**TMFCP_m**” means the total monthly fixed capacity payment applicable for a Settlement Month, expressed in \$, and calculated in accordance with Exhibit J.

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

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

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

“**Transmitter Connection Costs**” means those Connection Costs associated with those modifications to Transmitter-owned facilities required to connect the Facility to a Transmission System that only the Transmitter can perform, and that are payable by the Supplier to the Transmitter as required by the Transmission System Code.

“**Withdraw**” means, in relation to Electricity, to withdraw from the Transmission System or a Distribution System at the Delivery Point, subject to adjustments in accordance with the Metering Plan and the Retail Settlement Code, as applicable.

“**Withdrawn**” means, in relation to Electricity, withdrawn from the Delivery Point adjusted in accordance with the Metering Plan and the Retail Settlement Code, as applicable, and includes all electricity withdrawn for purposes of Station Service Load and charging the Facility.

“**WSIA**” means the *Workplace Safety and Insurance Act, 1997 (Ontario)*.

1.2 Exhibits

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

Exhibit A	Facility Description
Exhibit B	Storage Capacity, Net Revenue Requirement, and Other Stated Variables
Exhibit C	Not Used
Exhibit D	Not Used
Exhibit E	Determination of Regulatory Charge Credit
Exhibit F	Milestone Dates
Exhibit G	Calculation of Cycle Deficiency Reduction Factor
Exhibit H	Form of Independent Engineer Certificate
Exhibit I	Form of Supplier’s Certificate

Exhibit J	Calculation of CSP and RSP
Exhibit K	Arbitration Procedures Applicable to Sections 1.6 to 1.10 inclusive

1.3 Headings and Table of Contents

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

1.4 Gender and Number

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

1.5 Currency

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

1.6 IESO Market Rules and Statutes

Unless otherwise expressly stipulated, any reference in this Agreement to the IESO Market Rules or to a statute or to a regulation or rule promulgated under a statute or to any provision of a statute, regulation or rule shall be a reference to the IESO Market Rules, statute, regulation, rule or provision as amended, re-enacted or replaced from time to time. In the event of any conflict or inconsistency with the IESO Market Rules and the terms of this Agreement, the IESO Market Rules shall govern to the extent of such conflict or inconsistency.

1.7 Introduction of the Day-Ahead Energy Forward Market

- (a) Subject to Section 1.7(e), if (i) the System Operator has made an announcement that the Day-Ahead Energy Forward Market is likely to be opened within the succeeding twelve (12) calendar months, and (ii) the amendments to the IESO Market Rules for the Day-Ahead Energy Forward Market have been substantially developed by the System Operator, the Sponsor shall propose amendments to Exhibit G and Exhibit J based on Section 1.7(b), to the Supplier and, at the Sponsor's discretion, all Other Suppliers. The Supplier may also propose amendments to Exhibit G and Exhibit J based on Section 1.7(b) to the Sponsor and to those Other Suppliers who are required by the Sponsor to participate. If amendments to this Agreement are required pursuant to this Section 1.7 but the Parties are unable to agree on the Sponsor's proposal or that of the Supplier or any of those Other Suppliers, as the case may be, within sixty (60) days after the date the Day-Ahead Energy Forward Market is opened for operation in Ontario, then the amendments to Exhibit G and Exhibit J shall be determined by mandatory and binding arbitration, from which there shall be no appeal, with such arbitration(s) to be conducted in accordance with the procedures set out in Exhibit K. However, if the Supplier fails to participate in such arbitration, the Supplier

acknowledges that it waives its right to participate in such arbitration, which shall nevertheless proceed, and the Supplier shall be bound by the award of the Arbitration Panel and the subsequent amendments to this Agreement made by the Sponsor to implement such award of the Arbitration Panel set out in Section 1.7(c)(iii).

- (b) For purposes of Section 1.7(a), (i) the amendments to Exhibit G will be based on the principle that a Storage Day shall be an Imputed Cycling Day if each of the four lowest priced hours for electricity in the IESO-Administered Markets for such Storage Day are all priced lower than each of the four highest priced hours for electricity in the IESO-Administered Markets for such Storage Day multiplied by the Operating Reference RTE; and (ii) the amendments to Exhibit J will be based on the principle of replacing references to HOEP with the value or index that most closely emulates the price paid or payable for Withdrawn Electricity and Delivered Electricity, as applicable.
- (c) Subject to Section 1.7(e), the terms of this Agreement shall be amended either:
 - (i) by the agreement of the Parties, where no award of an Arbitration Panel has been made pursuant to Section 1.7(a);
 - (ii) by the agreement of the Parties made pursuant to and to implement an award of the Arbitration Panel, made pursuant to Section 1.7(a); or
 - (iii) by an amendment prepared by the Sponsor made pursuant to and to implement an award of the Arbitration Panel made pursuant to Section 1.7(a), where the Supplier failed to participate in such arbitration,with such agreement or amendment, as the case may be, having effect from and after the date the Day-Ahead Energy Forward Market was opened for operation in Ontario.
- (d) Until such time as this Agreement is amended in accordance with Section 1.7(c), Exhibit G and Exhibit J will continue to apply, as applicable, and all references to HOEP shall continue, and payments of CSP and RSP shall continue to be made until such time, provided that all such payments shall be subject to recalculation and readjustment as a result of the agreement, amendment or award set out in Section 1.7(c). Any Party owing monies to the other pursuant to such recalculation shall pay, within ten (10) Business Days after receipt of an invoice from the other Party, such monies owing together with interest at the Interest Rate, calculated daily, from and including the date the payment of the original CSP or RSP that was the subject of the recalculation or readjustment, as applicable, was due, to the date of payment of the adjusted amount.
- (e) This Section 1.7 only applies to (i) a Facility that is a Registered Facility, or (ii) a Facility that is not a Registered Facility but for which amounts paid or payable by

such Facility for Delivered Electricity or Withdrawn Electricity, as applicable, is the price of Electricity determined in the Day Ahead Energy Forward Market.

1.8 Price Evolution Events

- (a) If (i) the System Operator or the Government of Ontario have made an announcement with the effect that a Price Evolution Event is likely to occur within the succeeding twelve (12) calendar months, and (ii) the replacement rules and regulations pertaining to the Price Evolution Event have been approved by the applicable authority, the Sponsor shall propose a Replacement Price, based on Section 1.8(b), to the Supplier and, at the Sponsor's discretion, all of those Other Suppliers to implement the provisions of Section 1.8(b). The Supplier may also propose Replacement Prices to the Sponsor and to those Other Suppliers who are required by the Sponsor to participate. If Replacement Prices are required pursuant to this Section 1.8 but the Parties are unable to agree on the Sponsor's proposal or that of the Supplier or any of those Other Suppliers, as the case may be, within sixty (60) days after the date the Price Evolution Event occurs, then the Replacement Price shall be determined by mandatory and binding arbitration, from which there shall be no appeal, with such arbitration(s) to be conducted in accordance with the procedures set out in Exhibit K. However, if the Supplier fails to participate in such arbitration, the Supplier acknowledges that it waives its right to participate in such arbitration, which shall nevertheless proceed, and the Supplier shall be bound by the award of the Arbitration Panel and the subsequent amendments to this Agreement made by the Sponsor to implement such award of the Arbitration Panel set out in Section 1.8(d)(iii).
- (b) For purposes of Section 1.8(a), a "**Price Evolution Event**" means that the IESO Market Rules or Retail Settlement Code has changed (including the implementation of LMP by the System Operator) such that HOEP or the replacement value for HOEP under a Day-Ahead Energy Forward Market, as determined through the application of Section 1.7 is no longer provided for, and is replaced by another market-based price signal(s). In such a case, this Agreement will be modified based on the following principles, with such modifications to take effect from and after the date set out in Section 1.8(d):
- (i) in this Agreement, HOEP, or its replacement value under a Day-Ahead Energy Forward Market, if applicable, will be replaced with the Ontario Electricity market price that most closely emulates the price paid or payable for Withdrawn Electricity and Delivered Electricity, as applicable (the "**Replacement Price**"); and
- (ii) it is expected that all other features of this Agreement will be applicable.
- (c) If the IESO Market Rules are amended to provide for an installed capacity market in which the Facility is required to participate, then either Party may propose, by notice in writing to the other Party, amendments to this Agreement and the Sponsor and the Supplier and, at the Sponsor's discretion, all of those Other

Suppliers who are required by the Sponsor to participate, shall then engage in good faith negotiations to amend this Agreement and the respective agreements of those Other Suppliers so as to facilitate the Supplier's participation in such installed capacity market, on the basis that the economic effect of such amendments substantially reflect the Supplier's economics as contemplated hereunder prior to the introduction of the installed capacity market. If the Parties fail to reach agreement on the amendments described in this Section 1.8(c), the matter shall be determined by mandatory and binding arbitration, from which there shall be no appeal, with such arbitration(s) to be conducted in accordance with the procedures set out in Exhibit K. However, if the Supplier fails to participate in such arbitration, the Supplier acknowledges that it waives its right to participate in such arbitration, which shall nevertheless proceed, and the Supplier shall be bound by the award of the Arbitration Panel and the subsequent amendments to this Agreement made by the Sponsor to implement such award of the Arbitration Panel set out in Section 1.8(d)(iii).

- (d) The terms of this Agreement shall be amended either:
 - (i) by the agreement of the Parties, where no award of an Arbitration Panel has been made pursuant to Sections 1.8(a) or 1.8(c), as the case may be;
 - (ii) by the agreement of the Parties made pursuant to and in implementation of an award of the Arbitration Panel made pursuant to Sections 1.8(a) or 1.8(c), as the case may be; or
 - (iii) by an amendment prepared by the Sponsor made pursuant to and to implement an award of the Arbitration Panel made pursuant to Sections 1.8(a) or 1.8(c), as the case may be, where the Supplier failed to participate in such arbitration,

with such agreement or amendment, as applicable, having effect from and after the date that the Price Evolution Event occurred or the installed capacity market was introduced, respectively.

- (e) Until such time as this Agreement is amended in accordance with Section 1.8(d), the provisions of this Agreement will continue to apply to calculate CSP and RSP, as applicable, using the Sponsor's proposal submitted under Sections 1.8(a) or 1.8(c), as the case may be, provided that all such payments shall be subject to recalculation and readjustment as a result of the agreement or award set out in Section 1.8(d), and any Party owing monies to the other pursuant to such recalculation shall, within ten (10) Business Days after receipt of an invoice from the other Party, pay such monies owing together with interest at the Interest Rate, calculated daily, from and including the time such payments were due to the date of payment thereof.
- (f) This Section 1.8 shall not apply in the circumstances addressed in Section 1.7.

1.9 Price Unavailability Events

- (a) If (i) the System Operator or the Government of Ontario has made an announcement with the effect that a Price Unavailability Event is likely to occur within the succeeding twelve (12) calendar months, and (ii) the replacement rules and regulations pertaining to the Replacement Provision(s) have been approved by the applicable authority, the Sponsor shall propose Replacement Provision(s), based on Section 1.9(b), to the Supplier and, at the Sponsor's discretion, those Other Suppliers who are required by the Sponsor to participate. If Replacement Provision(s) are required pursuant to this Section 1.9 but the Parties are unable to agree on the Sponsor's proposal or that of the Supplier or any of those Other Suppliers, as the case may be, within sixty (60) days after the date the Price Unavailability Event occurs, then the Replacement Provision(s) shall be determined by mandatory and binding arbitration, from which there shall be no appeal, with such arbitration(s) to be conducted in accordance with the procedures set out in Exhibit K. However, if the Supplier fails to participate in such arbitration, the Supplier acknowledges that it waives its right to participate in such arbitration, which shall nevertheless proceed, and the Supplier shall be bound by the award of the Arbitration Panel and the subsequent amendments to this Agreement made by the Sponsor to implement such award of the Arbitration Panel set out in Section 1.9(c)(iii).
- (b) For purposes of Section 1.9(a), a "**Price Unavailability Event**" means that HOEP or the replacement value for HOEP under a Day-Ahead Energy Forward Market as determined through the application of Section 1.7, or the replacement market-based price signals referred to in Section 1.8 is no longer available. In such a case, this Agreement will be modified based on the following principles, with such modifications to take effect from and after the date set out in Section 1.9(c):
- (i) this Agreement will be amended as necessary to ensure the Supplier will participate in any revised processes determined by the System Operator to facilitate commitment, dispatch, and/or outage scheduling; and
 - (ii) in this Agreement, HOEP, or the replacement value for HOEP under a Day-Ahead Energy Forward Market as determined through the application of Section 1.7, or the replacement market-based price signals referred to in Section 1.8, will be replaced with the actual price paid or payable for Withdrawn Electricity and Delivered Electricity, as applicable,
- and the modifications and amendments described in Sections 1.9(b)(i), and 1.9(b)(ii) are collectively referred to as the "**Replacement Provision(s)**".
- (c) The terms of this Agreement shall be amended either:
- (i) by the agreement of the Parties, where no award of an Arbitration Panel has been made pursuant to Section 1.9(a);

- (ii) by the agreement of the Parties made pursuant to and to implement an award of the Arbitration Panel, made pursuant to Section 1.9(a); or
- (iii) by an amendment prepared by the Sponsor made pursuant to and to implement an award of the Arbitration Panel made pursuant to Section 1.9(a), where the Supplier failed to participate in such arbitration,

with such agreement or amendment, as the case may be, having effect from and after the date the Price Unavailability Event occurred.

- (d) Until such time as this Agreement is amended in accordance with Section 1.9(c), Exhibit J will continue to apply to calculate CSP and RSP, as applicable, using the Sponsor's proposal submitted under Section 1.9(a), provided that all such payments shall be subject to recalculation and readjustment as a result of the agreement or award set out in Section 1.9(c), and any Party owing monies to the other pursuant to such recalculation shall pay, within ten (10) Business Days after receipt of an invoice from the other Party, such monies owing together with interest at the Interest Rate, calculated daily, from and including the time such payments were due to the date of the payment thereof.
- (e) This Section 1.9 shall not apply to the circumstances addressed in Sections 1.7 and 1.8.

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

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

- (a) if a provision is considered to be invalid, inapplicable or unenforceable, then the Party considering such provision to be invalid, inapplicable or unenforceable may propose, by notice in writing to the other Party, a replacement provision and the Sponsor and the Supplier and, at the Sponsor's discretion, those Other Suppliers who are required by the Sponsor to participate, shall then engage in good faith negotiations to replace such provision with a valid, enforceable, and applicable provision, the economic effect of which substantially reflects that of the invalid, unenforceable, or inapplicable provision which it replaces;
- (b) if any index or price quotation referred to in this Agreement ceases to be published, or if the basis therefor is changed materially, then the Sponsor and the Supplier and, at the Sponsor's discretion, those Other Suppliers who are required by the Sponsor to participate, shall engage in good faith negotiations to substitute an available replacement index or price quotation that most nearly, of those then publicly available, approximates the intent and purpose of the index or price quotation that has so ceased or changed and this Agreement shall be amended as necessary to accommodate such replacement index or price quotation;

- (c) if the Parties agree that amendments to this Agreement are required pursuant to this Section 1.10 and the negotiations set out in Sections 1.10(a) or 1.10(b) are not successful, then if the Parties are unable to agree on all such issues and any amendments required to this Agreement (the “**Replacement Provision(s)**”) within thirty (30) days after either the giving of the notice under Section 1.10(a) or the occurrence of the event in Section 1.10(b), then the Replacement Provision(s) shall be determined by mandatory and binding arbitration from which there shall be no appeal, with such arbitration(s) to be conducted in accordance with the procedures set out in Exhibit K. However, if the Supplier fails to participate in such arbitration, the Supplier acknowledges that it waives its right to participate in such arbitration, which shall nevertheless proceed, and the Supplier shall be bound by the award of the Arbitration Panel and the subsequent amendments to this Agreement made by the Sponsor to implement such award of the Arbitration Panel set out in Section 1.10(d)(iii); and
- (d) the terms of this Agreement shall be amended either:
 - (i) by the agreement of the Parties, where no award of an Arbitration Panel has been made pursuant to Section 1.10(c);
 - (ii) by the agreement of the Parties made pursuant to and in implementation of an award of the Arbitration Panel made pursuant to Section 1.10(c); or
 - (iii) by an amendment prepared by the Sponsor made pursuant to and to implement an award of the Arbitration Panel made pursuant to Section 1.10(c), where the Supplier failed to participate in such arbitration,

with such agreement or amendment, as applicable, having effect as of the date of the invalidity, inapplicability or unenforceability or from and after the date that the relevant index or quotation ceased to be published or the basis therefor is changed materially, as the case may be.

This Section 1.10 shall not apply to the circumstances addressed in Sections 1.7, 1.8, or 1.9.

1.11 Entire Agreement

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

1.12 Waiver, Amendment

Except as expressly provided in this Agreement, no amendment or waiver of any provision of this Agreement shall be binding unless executed in writing by the Party (or Parties) to be bound thereby, and in the case of a waiver issued by the Sponsor or an amendment, such waiver or amendment, as applicable, shall not be binding on the Sponsor unless it has been executed by an individual identified in such waiver or amendment as “Contract Management”. No waiver of any provision of this Agreement shall constitute a waiver of any other provision nor shall any waiver of any provision of this Agreement constitute a continuing waiver or operate as a waiver of, or estoppel with respect to, any subsequent failure to comply unless otherwise expressly provided.

1.13 Governing Law

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

1.14 Preparation of Agreement

Notwithstanding the fact that this Agreement was drafted by the Sponsor’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 Sponsor or in favour of the Supplier when interpreting such term or provision, by virtue of such fact.

ARTICLE 2 DESIGN AND OPERATION

2.1 Design and Construction of the Facility

- (a) The Supplier agrees to design and build the Facility using Good Engineering and Operating Practices and meeting all relevant requirements of the IESO Market Rules, Transmission System Code, the Distribution System Code, the Connection Agreement, in each case, as applicable, and all other Laws and Regulations. The Supplier shall ensure that the Facility is designed, engineered and constructed to operate in accordance with the requirements of this Agreement.
- (b) The Supplier shall at no time after the Contract Date modify, vary, or amend in any material respect any of the features or specifications of the Facility outlined in Exhibit A (a “**Facility Amendment**”) without first notifying the Sponsor in writing and obtaining the Sponsor’s consent in writing. With respect to any changes to those features set out in Part A of Exhibit A, as well as with respect to the Contract Capacity, the Sponsor’s consent may be given or withheld in the Sponsor’s sole and absolute discretion. With respect to any changes to those features set out in Part B of Exhibit A, the Sponsor’s consent shall not be unreasonably withheld. It shall not be unreasonable for the Sponsor to withhold or delay its consent to any modification, variation or amendment which would, or

would be likely to, materially adversely affect the ability of the Supplier to comply with its obligations under this Agreement. Any Facility Amendment that has not been consented to by the Sponsor (other than in instances relating to Part B of Exhibit A where such consent has been unreasonably withheld) shall, if not removed within ten (10) Business Days after such Facility Amendment occurred, constitute a Supplier Event of Default. Without limiting the generality of the foregoing, and for purposes of this paragraph, the failure of the Facility to have a Connection Point as described in Exhibit A shall be deemed to be a Facility Amendment.

- (c) If the Sponsor's consent in writing has been given in relation to a reduction in the Contract Capacity pursuant to Section 2.1(b), the Contract Capacity shall be deemed to be reduced to the lower amount, effective at the time stated in such notice. If the Sponsor's consent has been given in relation to an increase in the Contract Capacity pursuant to Section 2.1(b), the Contract Capacity, as the case may be, shall be increased to the higher amount, (not to exceed the original values as of the Term Commencement Date) effective as of the time stated in such notice, provided that:
 - (i) such increase shall not be effective until the Supplier performs a Capacity Check Test confirming the increased amount of the Contract Capacity; and
 - (ii) the Supplier has delivered to the Sponsor an amount of Completion and Performance Security corresponding to the increased amount of Contract Capacity as calculated in accordance with Section 6.1.

- (d) If the Supplier receives from a Transmitter or an LDC, written estimates of the Supplier's Network Upgrade Costs, Transmitter Connection Costs or LDC Connection Costs, as applicable, that are substantially more than the costs that would have been reasonably foreseeable by a prudent Supplier taking Commercially Reasonable Efforts to estimate such costs, the Supplier may, within 20 Business Days of receiving any such written estimate, submit a written request to the Sponsor to terminate this Agreement, along with such evidence as the Sponsor may reasonably require. The Sponsor shall, acting reasonably, within 20 Business Days of any such request, either:
 - (i) approve the request, in which case this Agreement shall be terminated without any costs or payments of any kind to either Party, and all Completion and Performance Security shall be returned or refunded (as applicable) to the Supplier within 20 Business Days following receipt by the Sponsor of a written request for the return or refund (as applicable) of such Completion and Performance Security; or
 - (ii) deny the request, in which case the Supplier may continue under this Agreement or request a Senior Conference pursuant to the terms of Section 16.1.

2.2 Additional Development and Construction Covenants

- (a) The Supplier agrees that the Facility shall be located in the Province of Ontario. The Supplier agrees that the Facility shall have a Connection Point as set out in Exhibit A and shall affect supply and demand on a Distribution System or the IESO-Controlled Grid, as applicable.
- (b) The Supplier agrees to arrange, at its expense (including the payment of all Supplier Connection Costs), for all Facility connection requirements in accordance with the Connection Agreement to permit the Delivery and Withdrawal of Electricity from a Distribution System or the IESO-Controlled Grid, as applicable. If requested by the Sponsor, the Supplier agrees to provide to the Sponsor a copy of any applicable Impact Assessments, and the executed Connection Cost Recovery Agreement, within ten (10) Business Days of the Supplier's receipt of each of such documents or within ten (10) Business Days of the Sponsor's request subsequent to the Supplier's receipt of each such documents. The Supplier shall not apply in any Impact Assessment for a connection capacity with the applicable LDC or Transmitter in excess of the Connection Capacity Limit. The Supplier represents and warrants to the Sponsor that as of the Contract Date, the Supplier has not applied for any Impact Assessments in respect of the Facility, or, if in the event the Supplier has applied for or received any Impact Assessments in respect of the Facility, the Supplier has had rescinded any such Impact Assessments on or before the Contract Date.
- (c) The Supplier agrees to provide, at its expense, all power system components and associated facilities on the Supplier's side of the Connection Point, including all connection lines from the Facility to the Connection Point and all transformation, switching, synchronizing, protection and control, teleprotection, metering, and auxiliary equipment (such as grounding, monitoring and testing equipment), pursuant to requirements deemed necessary by the IESO Market Rules, and the Transmitter or Local Distribution Company, as applicable, from time to time, to protect the safety and security of the IESO-Controlled Grid, the Distribution System, and each of their customers, as applicable. The equipment to be so provided by the Supplier shall include such electrical equipment as the IESO Market Rules, Local Distribution Company or the Transmitter require, from time to time, for the safe and secure operation of the IESO-Controlled Grid as required by the IESO Market Rules and the Transmission System Code.

2.3 Milestone Date for Commercial Operation

- (a) The Supplier acknowledges that time is of the essence to the Sponsor with respect to attaining Commercial Operation of the Facility by the Milestone Date for Commercial Operation set out in Exhibit F. The Parties agree that Commercial Operation shall be achieved in a timely manner and by the Milestone Date for Commercial Operation. The Supplier acknowledges that even if the Facility has not achieved Commercial Operation by the Milestone Date for Commercial Operation, the Term shall nevertheless expire on the day before the tenth

anniversary of the Milestone Date for Commercial Operation, pursuant to Section 9.1.

- (b) If there occurs or arises any incident, event or circumstance which results, or is likely to result, in a delay in the aggregate of thirty (30) days or more in the achievement of Commercial Operation following the Milestone Date for Commercial Operation, including delays arising from events of Force Majeure, the Supplier shall promptly (and, in any event, within ten (10) Business Days) notify the Sponsor and the Parties shall meet to discuss strategies for eliminating or reducing, to the extent possible and practicable to do so, the impact of such delay on the development, construction and/or commissioning of the Facility in order to achieve Commercial Operation by the Milestone Date for Commercial Operation.

2.4 Requirements for Commercial Operation

- (a) The Facility will be deemed to have achieved “**Commercial Operation**” pursuant to this Agreement at the point in time when, as subsequently confirmed by the Sponsor in a written notice to the Supplier as described in Section 2.4(b), the Sponsor has received:
 - (i) directly from the Independent Engineer, an IE Certificate, in the form set out in Exhibit H, stating that:
 - (A) the Facility has been completed in all material respects, excepting punch list items that do not materially and adversely affect the ability of the Facility to operate in accordance with this Agreement;
 - (B) the Connection Point of the Facility is at the location specified in Exhibit A;
 - (C) the Facility has been constructed, connected, commissioned and synchronized to the Distribution System or the IESO-Controlled Grid, such that at least 100% of the Contract Capacity and the Storage Capacity for the Facility is available to Withdraw, store and Deliver Electricity in accordance with the requirements of all applicable Laws and Regulations; and
 - (D) the Facility has completed a Capacity Check Test with a demonstrated CCT Capacity equal to the Contract Capacity;
 - (ii) a Supplier’s Certificate, in the form set out in Exhibit I, together with such documentation required to be provided under such form to the Sponsor;
 - (iii) an updated Metering Plan in the Prescribed Form;

- (iv) a single line electrical drawing that identifies the as-built Connection Point, clearly showing area transmission and distribution facilities, including the transformer station that is electrically closest to the Facility; and
- (v) copies of all permits and approvals issued by Governmental Authorities which are required to construct, operate and maintain the Facility in accordance with Laws and Regulations.

The Sponsor or its Representative shall be entitled, at the Sponsor's option, to attend the Capacity Check Test performed pursuant to Section 2.4(a)(i)(D), and the Supplier shall provide to the Sponsor confirmation in writing of the timing of such tests at least ten (10) Business Days in advance.

- (b) The Sponsor shall notify the Supplier in writing within twenty (20) Business Days following receipt of the IE Certificate and the Supplier's Certificate re: Commercial Operation as to whether the IE Certificate, Supplier's Certificate, and the documentation provided by the Supplier under the Supplier's Certificate are acceptable to the Sponsor, acting reasonably. If the Sponsor determines that the IE Certificate, Supplier's Certificate, or such documentation provided by the Supplier under the Supplier's Certificate are not acceptable to the Sponsor, the Sponsor shall at the time of such notification provide to the Supplier reasonable particulars in respect of the deficiencies in the IE Certificate, Supplier's Certificate, or such documentation.

2.5 Sponsor Information During Design and Construction

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

- (a) By the fifteenth (15th) day of each calendar quarter following the date of this Agreement and continuing until COD, the Supplier shall provide the Sponsor with quarterly progress reports in the Prescribed Form, describing the status of efforts made by the Supplier to meet the Milestone Date for Commercial Operation and the progress of the design and construction work and the status of permitting and approvals relating to the Facility. Such quarterly progress reports shall report on the progress of all applicable Reportable Events. At the Sponsor's request, the Supplier shall provide an opportunity for the Sponsor to meet with appropriate personnel of the Supplier to discuss and assess the contents of any such quarterly progress report. The Supplier acknowledges that the quarterly progress reports and photographs of the Facility may be posted or printed by the Sponsor on its website or in publications.
- (b) In addition to the quarterly progress reports it is required to provide pursuant to Section 2.5(a), the Supplier shall also provide the Sponsor with notice of any material incident, event or concern which may occur or arise during the course of the development, construction or commissioning of the Facility, promptly and, in any event, within ten (10) Business Days following the later of: (i) the Supplier

becoming aware of any such incident, event or concern occurring or arising; and (ii) the Supplier becoming aware of the materiality of same, with such timing in each case based upon the Supplier having acted in accordance with Good Engineering and Operating Practices.

2.6 Operational Covenants

- (a) From and after the beginning of the hour ending 01:00 hours (EST) of the Term Commencement Date, the Supplier agrees to operate the Facility in accordance with the terms of this Agreement, and the Monthly Payments and Regulatory Charge Credits shall begin to accrue and be payable in accordance with Section 4.1 and Article 5.
- (b) The Supplier will provide the Sponsor with prior written notice of the development by the Supplier of any Future Contract Related Products, from time to time.
- (c) The Supplier agrees to own the Facility during the Term and operate and maintain the Facility in accordance with the terms of this Agreement, Good Engineering and Operating Practices, and meeting all applicable requirements of the IESO Market Rules, the Transmission System Code, the Distribution System Code, any connection agreements with the System Operator, a Transmitter, or an LDC. For certainty, the Parties acknowledge that the Sponsor is not purchasing from the Supplier, nor is the Supplier selling to the Sponsor, any Electricity or Related Products.
- (d) The Supplier agrees to assume all risk, liability and obligation and to indemnify, defend and hold harmless the Indemnitees in respect of all actions, causes of action, suits, proceedings, claims, demands, losses, damages, penalties, fines, costs, obligations and liabilities arising out of a discharge of any contaminant into the natural environment, at or related to, the Facility and any fines or orders of any kind that may be levied or made in connection therewith pursuant to the *Environmental Protection Act* (Ontario), the *Ontario Water Resources Act* (Ontario), the *Dangerous Goods Transportation Act* (Ontario) or other similar legislation, whether federal or provincial and all as amended from time to time, except to the degree that such discharge shall have been due to the negligence or wilful misconduct of the Indemnitees.
- (e) Subject to the reimbursement for Regulatory Energy Charges provided for in Exhibit E, a Supplier who is also a load facility under the IESO Market Rules or a consumer under the Distribution System Code, as applicable, shall be solely responsible for all charges (net of any applicable credits) in relation to Electricity consumed by it in order to operate the Facility in accordance with this Agreement.

2.7 Metering and Dispatch Capabilities

- (a) The Supplier shall have a Metering Plan approved by the Sponsor and shall deliver a copy in the Prescribed Form to the Sponsor for its approval no later than 90 days prior to the Milestone Date for Commercial Operation. The Sponsor shall review the Metering Plan submitted by the Supplier and either approve the Metering Plan or provide the Supplier with its comments within 45 days after receipt. The Sponsor shall, when considering whether to approve the Metering Plan, have regard to those Electricity matters in the Metering Plan that have received System Operator or LDC approval, as applicable. If, within 15 days after the Sponsor has delivered its comments on the Metering Plan to the Supplier, the Parties are not able to agree on the final terms of the Metering Plan, the Parties shall submit the matter for determination by an Independent Engineer agreed upon by the Parties, acting reasonably, whose determination on the terms of the Metering Plan shall be final and binding on the Parties (and from whose determination there shall be no recourse to the dispute resolution provisions of this Agreement). The Metering Plan shall be updated promptly, and, in any event, within ten (10) Business Days after any change to the metering installation occurs.
- (b) If the Facility is or becomes a Registered Facility in the IESO-Administered Market, the Supplier covenants and agrees to provide, at its expense, separate meter(s) and ancillary metering and monitoring equipment as required by the IESO Market Rules. The Supplier agrees to allow the Sponsor to have viewing access rights only to the revenue-quality interval metering data of the Facility to calculate on an hourly basis the Delivered Electricity net of any Station Service Loads and the Withdrawn Electricity, inclusive of any loss adjustment factors, by establishing an Associated Relationship between the Sponsor and the Connection Point of the Facility within the MVPportal application tool or equivalent, at no cost to the Sponsor.
- (c) If the Facility does not become, or ceases to be, a Registered Facility in the IESO-Administered Market, the Supplier agrees to ensure that revenue-quality interval meter(s) will be operated and maintained, at its expense, (i) to calculate on an hourly basis the Withdrawn and Delivered Electricity to and from the Facility at the Connection Point, net of any Station Service Loads and inclusive of any loss adjustment factors, (ii) if requested, to allow the Sponsor or its representative to have interrogation access rights only to the revenue-quality interval meter for the sole purpose of downloading metering data, and (iii) to provide the Sponsor with access to metering data via the LDC Portal or the System Operator's MVPportal, or equivalent. In the event that the LDC Portal, the System Operator's MVPportal or equivalent is not able to provide access to the metering data, the Supplier must supply validated metering data to the Sponsor in one of the following formats: .XML or .CSV, by no later than five (5) Business Days after the end of each Settlement Month. Revenue Meter(s) registered with the System Operator or provided by an LDC can be used to fulfil this obligation, in whole or in part, so long as the Metering Plan specifies: (i) how the metered quantities from those

meter(s) will be adjusted, if necessary, to account for any electrical losses that may occur due to differences between the physical locations of the meter(s) and the Connection Point, and (ii) how the metered quantities from those meter(s) will be totalled, if necessary, with other revenue-quality metering data to accurately calculate the Delivered Electricity net of any Station Service Loads and to accurately calculate Withdrawn Electricity. Furthermore, the Supplier agrees that the Sponsor may retain a metering service provider for such revenue-quality interval meter(s) and the Supplier shall reimburse the Sponsor for the costs of such metering service provider. Such costs may be set off from any Monthly Payment that the Sponsor owes to the Supplier.

- (d) The Supplier will provide the Sponsor with a commissioning report for all Revenue Meter(s) referenced in the Metering Plan prior to any use of metering data for the purposes contemplated by this Agreement. The Sponsor retains the right to audit, at any time during the Term, on reasonable notice to the Supplier and during normal business hours, the metering equipment to confirm the accuracy of the Metering Plan, and the metering data of the Facility to confirm the accuracy of such data. The Supplier shall not make any material changes to the Metering Plan following approval by the Sponsor or determination by the Independent Engineer (as applicable) without the prior written approval of the Sponsor, acting reasonably.

2.8 Insurance Covenants

- (a) The Supplier shall put in effect and maintain, or cause its Subcontractors, where appropriate, to maintain, with insurers licensed in Ontario, from the commencement of construction of the Facility to the Commercial Operation Date, at its own cost and expense, all the necessary and appropriate insurance required under all applicable Laws and Regulations as well as those that a prudent Person in the business of developing and operating the Facility would maintain, including policies for “all-risk” property insurance covering not less than the probable maximum loss of the Facility; “all-risk” equipment breakdown insurance; “wrap up” liability insurance or either an endorsement to the commercial general liability insurance policy to provide for coverage during construction or other evidence that the “commercial general liability” policy would respond to a third party claim during construction; and “commercial general liability” insurance in an amount (inclusive of any applicable umbrella policies) of not less than \$10 million each occurrence and in the aggregate, with either a stand-alone policy for environmental incidents or a rider to extend coverage to include environmental incidents.
- (b) The Supplier shall put in effect and maintain, or cause its Subcontractors, where appropriate, to maintain, with insurers licensed in Ontario, from the Commercial Operation Date to the expiry of the Term, at its own cost and expense, all the necessary and appropriate insurance required under all applicable Laws and Regulations as well as those that a prudent Person in the business of developing and operating the Facility would maintain including policies for “all-risk”

property insurance covering not less than the probable maximum loss of the Facility, “boiler and machinery” insurance and “commercial general liability” insurance with either a stand-alone policy for environmental incidents or a rider to extend coverage to include environmental incidents.

- (c) Any policies described in this Section 2.8 must (i) for any property insurance, contain a waiver of subrogation in favour of the Indemnitees; and (ii) for any liability insurance, include the Indemnitees as additional insureds with respect to liability arising in the course of performance of the obligations under, or otherwise in connection with, this Agreement, in which case the policy shall be non-contributing and primary with respect to coverage in favour of the Indemnitees. The limit for liability policies described in this Section 2.8 shall be for an amount appropriate for the size and scope of the Facility.
- (d) The Supplier shall provide the Sponsor with a certificate of the insurance policies required in this Section 2.8 which confirms the relevant coverage, including endorsements on or before the commencement of the construction of the Facility, and renewals or replacements on or before the expiry of any such insurance. Upon request of the Sponsor from time to time, the Supplier shall provide the Sponsor with a certified true copy of the insurance policies required in this Section 2.8 which confirms the relevant coverage, including endorsements. Any such policies may be redacted as to confidential information of the Supplier not reasonably required by the Sponsor to confirm that the insurance policy meets the requirements of this Agreement.
- (e) If the Supplier is subject to the WSIA, it shall submit a valid clearance certificate of WSIA coverage to the Sponsor prior to the commencement of construction of the Facility. In addition, the Supplier shall, from time to time at the request of the Sponsor, provide additional WSIA clearance certificates. The Supplier shall pay when due, and shall ensure that each of its Subcontractors pays when due, all amounts required to be paid by it and its Subcontractors, from time to time from the commencement of construction of the Facility, under the WSIA, failing which the Sponsor shall have the right, in addition to and not in substitution for any other right it may have pursuant to this Agreement or otherwise at law or in equity, to pay to the WSIB any amount due pursuant to the WSIA and unpaid by the Supplier or its Subcontractors and to deduct such amount from any amount due and owing from time to time to the Supplier pursuant to this Agreement together with all costs incurred by the Sponsor in connection therewith.

2.9 Compliance with Laws and Regulations and Registration with the System Operator

- (a) The Sponsor and the Supplier shall each comply, in all material respects, with all Laws and Regulations required to perform or comply with their respective obligations under this Agreement.
- (b) The Sponsor and the Supplier shall each furnish, in a timely manner, information to Governmental Authorities and shall each obtain and maintain in good standing

any licence, permit, certificate, registration, authorization, consent or approval of any Governmental Authority required to perform or comply with their respective obligations under this Agreement, including such licensing as is required by the OEB. Without limiting the generality of the foregoing, the Supplier agrees to meet all applicable Facility registration requirements as specified in the IESO Market Rules.

2.10 Environmental Attributes

- (a) The Supplier hereby transfers and assigns to, or to the extent transfer or assignment is not permitted, holds in trust for, the Sponsor who thereafter shall, retain, all rights, title, and interest in all Environmental Attributes associated with the Facility during the Term of this Agreement. The Supplier shall from time to time, upon written direction of the Sponsor, take all such actions and do all such things necessary to effect the transfer and assignment to, or holding in trust for, the Sponsor, all rights, title, and interest in all Environmental Attributes as set out in this Section 2.10(a).
- (b) The Supplier shall from time to time, upon written direction of the Sponsor, take all such actions and do all such things necessary to certify, obtain, qualify, and register with the relevant authorities or agencies Environmental Attributes that are created and allocated or credited with respect to the Facility pursuant to Laws and Regulations from time to time (collectively, the “**Regulatory Environmental Attributes**”) for the purposes of transferring such Regulatory Environmental Attributes to the Sponsor in accordance with Section 2.10(a). The Supplier shall be entitled to reimbursement of the reasonable cost of complying with a direction under this Section 2.10(b), provided that the Sponsor, acting reasonably, approved such cost in writing prior to the cost being incurred by the Supplier.
- (c) To the extent that Laws and Regulations requires the Facility to utilize, consume or obtain Regulatory Environmental Attributes in connection with the Delivery or Withdraw of Electricity, then the Sponsor shall propose such amendments to this Agreement to the Supplier and, at the Sponsor’s discretion, to all of the Other Suppliers who are required by the Sponsor to participate, based on the principle that the Sponsor will permit the Supplier to retain any Regulatory Environmental Attributes that may be created and allocated or credited with respect to the Facility and that are required by such Laws and Regulations in order for the Facility to Deliver or Withdraw Electricity. If the Parties are unable to agree on the Sponsor’s proposal or that of the Supplier or any of those Other Suppliers, as the case may be, within 60 days after the delivery or communication of the Sponsor’s proposal for such amendments, then such amendments shall be determined by mandatory and binding arbitration, from which there shall be no appeal, with such arbitration(s) to be conducted in accordance with the procedures set out in Exhibit K. However, if the Supplier fails to participate in such arbitration, the Supplier acknowledges that it waives its right to participate in such arbitration, which shall nevertheless proceed, and the Supplier shall be bound by the award of the arbitration panel and the subsequent amendments to this

Agreement made by the Sponsor to implement such award of the arbitration panel.

ARTICLE 3 FACILITY SCHEDULING

3.1 Default Facility Scheduling

- (a) Subject to Sections 2.6, 3.2 and 15.6, and Section 4 of Exhibit G, the Supplier shall manage the operation of the Facility in its discretion in accordance with Good Engineering and Operating Practices.

3.2 Sponsor Scheduled Months

- (a) The Sponsor shall have the right, in its sole discretion, starting with the 13th Settlement Month, to designate certain calendar months where the calculation of Cycle Deficiency in accordance with Exhibit G will be calculated against a schedule of cycles prescribed by the Sponsor (or the instructions of a third party dispatcher) (a “**Sponsor Scheduled Month**”). The Sponsor shall be required to provide at least 30 days of advance notice of a Sponsor Scheduled Month.
- (b) For each Storage Day during a Sponsor Scheduled Month, the Sponsor shall provide the Supplier with the schedule for such Storage Day (the “**Daily Sponsor Schedule**”) as follows:
 - (i) By no later than 3:00 pm EST on the immediately preceding calendar day, the Sponsor shall specify the Daily Sponsor Schedule for the Storage Day, failing which the Daily Sponsor Schedule shall be deemed not to require any operation on the applicable Storage Day;
 - (ii) The Daily Sponsor Schedule may specify up to four charge hours in a Storage Day (the “**Core Charge Hours**”), and the hour immediately following each Core Charge Hour shall be a “**Supplementary Charge Hour**”, unless that hour is also a Core Charge Hour or is already considered a Supplementary Charge Hour by virtue of an earlier Core Charge Hour, in which case the next following hour shall be a Supplementary Charge Hour. The Core Charge Hours and Supplementary Charge Hours shall collectively be the “**Overall Charge Hours**”. For greater certainty, there shall always be an equal number of Core Charge Hours and Supplementary Charge Hours;
 - (iii) The Daily Sponsor Schedule shall specify the same number of discharge hours (the “**Discharge Hours**”) as the number of Core Charge Hours it specifies. For greater certainty, (x) an hour that is a Core Charge Hour or a Supplementary Charge Hour shall not be specified as a Discharge Hour, and (y) the Core Charge Hours and Discharge Hours may not necessarily be contiguous;

- (iv) The Supplier shall use Commercially Reasonable Efforts to:
 - (A) Withdraw Electricity in a quantity not less than to the Contract Capacity times one hour in each Core Charge Hour,
 - (B) Withdraw the balance of the Electricity (if any) required to meet the Delivery obligation set out in Section 3.2(b)(iii)(C) within the Overall Charge Hours, and
 - (C) Deliver Electricity in a quantity not less than the Contract Capacity times one hour in each of the Discharge Hours, provided that for Daily Sponsor Schedules that specify four Discharge Hours, in one Discharge Hour, the Supplier shall not be required to discharge a quantity greater than 90% of the Contract Capacity times one hour, so long as the total Delivered Electricity during such group of Discharge Hours is not less than the Contract Capacity time four hours.
- (c) If the Sponsor designates four or more consecutive Sponsor Scheduled Months, the Supplier may specify in writing to the Sponsor with at least 10 Business Days' notice certain days where the Supplier desires to take an outage for equipment maintenance purposes ("**Required Outage Days**"), subject to the following:
 - (i) The total number of Required Outage Days in any series of contiguous Sponsor Scheduled Months shall not exceed two times the number of such contiguous Sponsor Scheduled Months;
 - (ii) The Supplier shall not be required to follow the Sponsor schedule on Required Outage Days; and
 - (iii) The Supplier shall not operate the Facility on Required Outage Days except as required for maintenance or testing purposes.
- (d) Subject to Section 3.2(b) and Good Engineering and Operating Practices, the Supplier is free to operate the Facility in its own discretion to meet the Daily Sponsor Schedule.

ARTICLE 4

CALCULATION OF MONTHLY PAYMENT

4.1 Operation of Facility During the Term

- (a) From and after the beginning of the hour ending 01:00 (EST) of the Term Commencement Date, the Supplier agrees to operate the Facility in accordance with the terms of this Agreement, and the Monthly Payments and Regulatory Charge Credits shall begin to accrue and be payable in accordance with Section 4.2 and Article 5. For certainty, the Parties acknowledge that the Sponsor is not

purchasing from the Supplier, nor is the Supplier selling to the Sponsor, any Electricity or Related Products.

- (b) The Supplier will provide the Sponsor with prior written notice of the development by the Supplier of any Future Contract Related Products from time to time.

4.2 Payment Amounts

- (a) The “**Monthly Payment**” shall be an amount equal to one of the following:
 - (i) the Contingent Support Payment, if any, which shall be owed by the Sponsor to the Supplier; or
 - (ii) the Revenue Sharing Payment, if any, which shall be owed by the Supplier to the Sponsor.
- (b) The Sponsor shall pay to the Supplier the Regulatory Charge Credit, calculated in accordance with Exhibit E, in respect of each Settlement Month during the Term.

4.3 Supplier Option to Reduce Contract Capacity

At any time within the six (6) month period immediately prior to the Milestone Date for Commercial Operation of the Facility, the Supplier shall, once during such period, have the right to reduce the Contract Capacity to a lower amount by providing written notice thereof to the Sponsor during such period, provided that any such reduction shall not be greater than 10% of the Contract Capacity prior to such reduction. The reduction in the Contract Capacity set out in this Section 4.3 shall take effect on COD, provided that there is no Supplier Event of Default as of COD. The Supplier acknowledges that any such reductions in the Contract Capacity shall not reduce any obligations of the Supplier in existence prior to the effective date of such reduction and that such reductions shall be permanent and the Contract Capacity as reduced, cannot be increased at any point during the balance of the Term.

4.4 Supplier’s Responsibility for Taxes

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

4.5 Sponsor’s Responsibility for Taxes

The Sponsor is liable for and shall pay, or cause to be paid, or reimburse the Supplier if the Supplier has paid, all Taxes applicable to any Contingent Support Payment due to the Supplier. If any HST is payable in connection with the Contingent Support Payment, such HST shall be paid by the Sponsor. In the event that the Supplier is required to remit such Taxes, the amount

thereof shall be deducted from any sums becoming due to the Sponsor hereunder, or shall be added to any sums becoming due to the Supplier hereunder.

4.6 Non-Residency

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

ARTICLE 5 STATEMENTS AND PAYMENTS

5.1 Metering and Other Data

- (a) The Supplier agrees to provide to the Sponsor access to the meters in the Metering Plan to accommodate remote interrogation of the metering data (including State-of-Charge data) on a daily basis, in addition to any obligations under the IESO Market Rules. The Supplier agrees to provide to the Sponsor, at all times, access to any other information relating to the Facility that the Supplier has provided to, or received from, the System Operator under the IESO Market Rules or that the Supplier has provided to, or received from the LDC, as applicable, from time to time. The Sponsor agrees to provide to the Supplier, upon the Supplier's request, any market price information and any other information that the Sponsor will be utilizing in preparing any Statement that is not available directly to the Supplier from the System Operator or the LDC. Upon a Party becoming aware of any errors or omissions in any data or information provided in accordance with this Section 5.1, such Party shall notify the other Party, and if applicable, the System Operator or the LDC in accordance with the IESO Market Rules or the Retail Settlement Code, as applicable, on a timely basis.
- (b) Notwithstanding the foregoing, the Parties acknowledge and agree that all Statements shall be prepared based on market price information and settlement data from the System Operator under the IESO Market Rules or the LDC and in the event of a discrepancy between market price information and settlement data from the System Operator or the LDC and information received directly from the Supplier pursuant to Section 5.1(a), then the market price information and settlement data from the System Operator or the LDC shall, subject to Section 5.7, be considered to be correct.

5.2 Statements

- (a) The Sponsor shall prepare and deliver a settlement statement (the “**Statement**”) to the Supplier, within ten (10) Business Days after the end of each calendar month in the Term that is the subject of the Statement (the “**Settlement Month**”), setting out the basis for the Monthly Payment with respect to the Settlement Month, as well as the basis for any other payments owing under this Agreement by either Party to the other in the Settlement Month. A Statement may be delivered by the Sponsor to the Supplier by facsimile or electronic means and shall include the reference number assigned to this Agreement by the Sponsor and a description of the components of the Monthly Payment and other payments, as described in this Agreement, including Section 4.2 as applicable, owing to the Supplier for the Settlement Month.
- (b) The Supplier shall, promptly following receipt from the System Operator or LDC, as applicable, of the necessary information to calculate the Regulatory Charge Credit in respect of a Settlement Month, forward such information to the Sponsor, along with a draft calculation of the Regulatory Charge Credit in the Prescribed Form.
- (c) The Sponsor’s calculation of the Regulatory Charge Credit shall be included in the Statement for the Settlement Month in which all information reasonably required by the Sponsor to calculate the Regulatory Charge Credit has been received by the Sponsor, and shall be paid on the Payment Date corresponding to such Statement. The amount of the Regulatory Charge Credit that is due on a given Payment Date shall be added to (or subtracted from, as the case may be), the applicable Monthly Payment, except in respect of the final payment(s) of the Regulatory Charge Credit, which may occur after the last Monthly Payment has been made. For greater certainty, if all information required by the Sponsor to calculate the Regulatory Charge Credit has not been received by the end of a given Settlement Month, the payment of the Regulatory Charge Credit shall not be made until the Payment Date corresponding the Settlement Month in which all such information has been received, and no interest shall accrue thereon.

5.3 Payment

The Party owing the Monthly Payment shall remit to the other Party full payment in respect of the Statement no later than twenty (20) Business Days after the end of the Settlement Month to which the Statement relates (the “**Payment Date**”). Any and all payments required to be made by either Party under any provision of this Agreement shall be made by wire transfer to the applicable account designated in Section 5.5, or as otherwise agreed by the Parties.

5.4 Interest

The Party owing the Monthly Payment shall pay interest on any late payment to the other Party, from the Payment Date to the date of payment, unless such late payment was through the fault of the other Party. The interest rate applicable to such late payment shall be the Interest Rate in

effect on the date that the payment went into arrears, calculated daily, but shall not, under any circumstances, exceed the maximum interest rate permitted by Laws and Regulations.

5.5 Payment Account Information

(a) Account for payments to Supplier:

[●]

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

Supplier's HST Registration Number: [●]

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

(b) Account for payments to Sponsor:

Royal Bank of Canada
Main Branch
200 Bay Street, Main Floor
Toronto, ON M5J 2J5

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

Sponsor's HST Registration Number: [●]

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

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

5.6 Adjustment to Statement

(a) Each Statement shall be subject to adjustment for errors in arithmetic, computation, or other errors, raised by a Party during the period of one (1) year following the end of the calendar year in which such Statement was issued. If there are no complaints raised, or if any complaints raised in the time period have

been resolved, such Statement shall be final and subject to no further adjustment after the expiration of such period.

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

5.7 Disputed Statement

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

5.8 Statements and Payment Records

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

ARTICLE 6 CREDIT AND SECURITY REQUIREMENTS

6.1 Completion and Performance Security

- (a) The Parties acknowledge that the Supplier has, concurrent with the execution of this Agreement, provided to the Sponsor security in the form described in Section 6.1(b) for the performance of the Supplier's obligations under this Agreement (the "**Completion and Performance Security**") in an amount equal to \$100,000 per MW multiplied by the Contract Capacity.

- (b) From and after the Contract Date and until the end of the Term, the Supplier shall maintain the Completion and Performance Security in the amount and for the period specified below:
 - (i) from the Contract Date until COD, of \$100,000 per MW multiplied by the Contract Capacity at the Contract Date;
 - (ii) from COD until the end of the Term, of \$50,000 per MW multiplied by the Contract Capacity at COD.

For greater certainty, the amount of Completion and Performance Security shall not be changed where the Contract Capacity is changed except when it is recalculated as contemplated by Section 6.1(b)(ii), unless otherwise agreed with the Sponsor.

- (c) In the event that the Sponsor, in accordance with this Agreement, has recovered monies that were due to it using all or part of the Completion and Performance Security, the Supplier shall forthwith provide replacement security to cover an amount equal to that recovered or paid out of the Completion and Performance Security. In exchange for the Completion and Performance Security in the amended amount, the Sponsor will return to the Supplier the original Completion and Performance Security.

6.2 Composition of Security

- (a) Prior to the COD, the obligation of the Supplier to post and maintain Completion and Performance Security as required by Section 6.1(b)(i) must be satisfied by the Supplier providing to the Sponsor a Letter of Credit, certified cheque, or bank draft, for the full amount, but, for certainty, shall not include guarantees.
- (b) From and after the date of receipt by the Supplier of the confirmation of the Sponsor described in Section 2.4(b) in respect of COD, the Completion and Performance Security shall be provided as set out in Section 6.2(b)(i) or (ii) below:
 - (i) a Letter of Credit, certified cheque, or bank draft, for the full amount of the Completion and Performance Security; or
 - (ii) subject to Section 6.2(d), a Guarantee, up to a maximum amount determined pursuant to Section 6.4, but not to exceed ninety percent (90%) of the amount of the Completion and Performance Security, together with a Letter of Credit, certified cheque, or bank draft, for the balance of the amount of the Completion and Performance Security.

To the extent that the amount of the Guarantee requirement increases or decreases from time to time in accordance with this Article 6, the amount of the Letter of Credit shall correspondingly be required to be decreased or increased,

respectively, so that the total amount of the Completion and Performance Security held by the Sponsor at all times from and after the COD remains in an aggregate amount as required pursuant to Section 6.1.

- (c) If the aggregate of the Supplier's Creditworthiness Value determined pursuant to Section 6.4(b) and the principal amount of the Letter of Credit, certified cheque, or bank draft, described in Section 6.2(b)(ii) is equal to or greater than the amount of the Completion and Performance Security, then no Guarantee is required.
- (d) If a Guarantee forms part of the Completion and Performance Security and:
 - (i) the Creditworthiness Value of the Supplier determined pursuant to Section 6.4(b) is equal to or greater than the Creditworthiness Value of the Guarantor determined pursuant to Section 6.4(b), provided the Guarantor has a Credit Rating required of a Guarantor as set out in Section 6.4, or
 - (ii) the aggregate of the Supplier's Creditworthiness Value and the principal amount of the Letter of Credit, certified cheque, or bank draft, described in Section 6.2(b)(ii) is equal to or greater than the amount of the Completion and Performance Security,

then, provided the Supplier is not then in default under this Agreement, the Sponsor shall, upon request by the Supplier, return the Guarantee to the Supplier.

- (e) Notwithstanding Section 6.2(a), if the portion of the Completion and Performance Security to be provided to the Sponsor that is not in the form of a Guarantee or based on the Supplier's Creditworthiness Value is \$100,000 or greater, such portion may only be satisfied by the Supplier providing to the Sponsor a Letter of Credit. For greater certainty, the Completion and Performance Security may not be pooled or combined with security under any other agreement with the Sponsor.

6.3 Letter of Credit Provisions

Any Letter of Credit delivered hereunder shall be subject to the following provisions:

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

outstanding Letter of Credit, in either case within five (5) Business Days after the Supplier receives notice of such refusal.

- (b) A Letter of Credit shall provide that the Sponsor may draw upon the Letter of Credit in an amount (up to the face amount or part thereof remaining available to be drawn thereunder for which the Letter of Credit has been issued) that is equal to all amounts that are due and owing from the Supplier but that have not been paid to the Sponsor within the time allowed for such payments under this Agreement (including any related notice or grace period or both). A Letter of Credit shall provide that a drawing may be made on the Letter of Credit upon submission to the financial institution issuing the Letter of Credit of one or more certificates specifying the amounts due and owing to the Sponsor in accordance with the specific requirements of the Letter of Credit. The location where the drawing may be made must be Toronto, Ontario.
- (c) If the Supplier shall fail to renew, substitute, or sufficiently increase the amount of an outstanding Letter of Credit (as the case may be), or establish one or more additional Letters of Credit or other equivalent form of security satisfactory to the Sponsor when required hereunder, then without limiting other remedies the Sponsor may have under this Agreement, the Sponsor (i) may draw on the undrawn portion of any outstanding Letter of Credit and retain for its own account, as liquidated damages and not as a penalty, the amount equal to one (1%) percent of the face value of such outstanding Letter of Credit and/or (ii) prior to the expiry of such Letter of Credit, may draw on the entire, undrawn portion of any outstanding Letter of Credit, upon submission to the financial institution issuing such Letter of Credit of a certificate specifying the entire amount of the Letter of Credit is owing to the Sponsor in accordance with the specific requirements of the Letter of Credit. Any amount then due and owing to the Sponsor shall be received by the Sponsor as liquidated damages and not as a penalty. If the amounts then due and owing are less than the amount drawn under such Letter of Credit, then such excess amount shall be held as Completion and Performance Security. The Supplier shall remain liable for any amounts due and owing to the Sponsor and remaining unpaid after the application of the amounts so drawn by the Sponsor. If the Supplier subsequently delivers a Letter of Credit or other security or other collateral permitted pursuant hereto, in each case satisfactory to the Sponsor in its sole and absolute discretion as to form, substance and amount, then upon acceptance by the Sponsor thereof, the Sponsor shall remit to the Supplier all amounts held by the Sponsor as Completion and Performance Security pursuant to this Section 6.3(c).
- (d) The costs and expenses of establishing, renewing, substituting, cancelling, increasing and reducing the amount of (as the case may be) one or more Letters of Credit shall be borne by the Supplier.
- (e) The Sponsor shall return a Letter of Credit held by the Sponsor to the Supplier, if the Supplier is substituting a Letter of Credit of a greater or lesser amount

pursuant to Section 6.3(a), within five (5) Business Days from the Sponsor’s receipt of such substituted Letter of Credit.

6.4 Guarantee Provisions

- (a) The Sponsor shall accept a guarantee in the Prescribed Form (the “**Guarantee**”) from a guarantor of the Supplier (with the applicable party providing the Guarantee being referred to as the “**Guarantor**”), provided however that the Guarantor shall have a Credit Rating as listed in any of the four rows contained in the table below. Notwithstanding the foregoing, in the event the Guarantor has a Negative Outlook, then its Credit Rating, for purposes of calculating the Creditworthiness Value of the Guarantor in Section 6.4(b)(i), will be automatically demoted by one (1) row in the table in Section 6.4(b)(i). For greater certainty, a Guarantor with a Credit Rating in the fourth (4th) level set forth below without a Negative Outlook will no longer be able to provide a Guarantee if it subsequently receives a Negative Outlook. Subject to Section 6.2(a), the amount of the Guarantee shall be equal to or less than the Creditworthiness Value of the Guarantor, failing which the Supplier shall be required to provide alternative acceptable security as provided in Section 6.2 so as to remain in compliance with the Completion and Performance Security requirements set out in Section 6.1.
- (b) (i) A Person’s Creditworthiness Value (the “**Creditworthiness Value**”) shall be determined by the following formula:

$$S \times T$$

where S represents the Tangible Net Worth of the Person, expressed in Dollars, and T is a figure, used for weighting purposes, taken from the column entitled “Value of T” in the table below of the appropriate row corresponding to the Person’s Credit Rating as adjusted by any Negative Outlook in accordance with Section 6.4(a) or 6.4(b)(ii), as applicable, provided that where the Person has Credit Ratings from more than one rating agency set out in the table below, then the lowest of such Credit Ratings, as adjusted by any Negative Outlook in accordance with Section 6.4(a) or 6.4(b)(ii), as applicable, shall be used:

Credit Rating of Person				
	S & P	DBRS	Moody’s	Value of T
1.	At least A-	At least A low	At least A3	0.10
2.	At least BBB+	At least BBB high	At least Baa1	0.08
3.	At least BBB	At least BBB	At least Baa2	0.06

4.	At least BBB-	At least BBB low	At least Baa3	0.05
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- (ii) In the event that any Person has a Negative Outlook, then its Credit Rating will automatically be demoted by one (1) row in the table in Section 6.4(b)(i).
- (c) Upon the consent of the Sponsor, which consent shall not be unreasonably withheld, the Guarantor may substitute its Guarantee with a guarantee from an Affiliate or from any other Person who would qualify as a guarantor for an amount equivalent to the amount of the Guarantee (the “**Replacement Guarantee**”). The Replacement Guarantee shall be in the form of the Guarantee. Upon delivery of the Replacement Guarantee, (i) such Replacement Guarantee shall be deemed to be the “**Guarantee**” and such Affiliate or other Person providing such guarantee, as the case may be, shall be deemed to be the “**Guarantor**” for all purposes of this Agreement and (ii) the Sponsor shall return the original Guarantee to the original Guarantor within five (5) Business Days of such delivery.
- (d) For greater clarity, all provisions of this Agreement that refer to (i) the Guarantor or similar references, or (ii) the Creditworthiness Value of the Guarantor or similar references, shall:
- (1) only apply in respect of the Guarantor if that Guarantor has, at the applicable time, issued a Guarantee in favour of the Sponsor and that Guarantee remains in effect at that time (otherwise, the reference to Guarantor shall be excluded when interpreting the provision until such time as a Guarantee is provided); and
 - (2) only refer to the Creditworthiness Value of the Supplier (and not the Creditworthiness Value of its Guarantor) when and for so long as its Guarantor has not provided a Guarantee that remains in effect at the applicable time.

6.5 Financial Statements

- (a) If there is a Guarantor, the Supplier shall, on a quarterly basis, for the first three fiscal quarters in a year, provide to the Sponsor (i) as soon as available and in no event later than sixty (60) days after the end of each fiscal quarter of the Guarantor, unaudited consolidated financial statements of the Guarantor, for such fiscal quarter prepared in accordance with GAAP, (or IFRS, if the Guarantor has adopted such standard), and (ii) as soon as possible and in no event later than one hundred and twenty (120) days after the end of each fiscal year, audited consolidated financial statements of the Guarantor for such fiscal year prepared in accordance with GAAP or IFRS, as applicable.

- (b) Notwithstanding the foregoing, if any such financial statements are not available in a timely manner due to a delay in preparation or auditing, such delay shall not be considered a breach of this Section 6.5 so long as the Guarantor is diligently pursuing the preparation, audit and delivery of such financial statements. Quarterly financial statements may be delivered electronically to the Sponsor in PDF form. Upon each delivery of the Guarantor's financial statements to the Sponsor, the Guarantor providing such financial statements shall be deemed to represent to the Sponsor that its financial statements were prepared in accordance with GAAP or IFRS, as applicable, and present fairly the financial position of the Guarantor for the relevant period then ended. In the event that the Guarantor does not publish financial statements on a quarterly basis, then unaudited consolidated financial statements shall be provided by the Guarantor, at a minimum, on a semi-annual basis. To the extent that the Supplier's Creditworthiness Value is such that the Guarantee is not required or it is returned to the Guarantor and cancelled pursuant to Section 6.2(d), then the obligations to provide financial statements under this Section 6.5 shall apply in full to the Supplier instead of the Guarantor.

6.6 Notice of Deterioration in Financial Indicators

The Supplier shall provide notice to the Sponsor of any material deterioration of any of the Financial Indicators of the Supplier or the Guarantor immediately upon the Supplier becoming aware of such deterioration.

6.7 Interest on Completion and Performance Security

Any interest earned by the Sponsor on any Completion and Performance Security provided to the Sponsor shall be for the account of the Sponsor and the Supplier shall not have any right to such interest.

ARTICLE 7 REPRESENTATIONS

7.1 Representations of the Supplier

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

- (a) The Supplier is a [●] [incorporated/formed] under the laws of [●], is registered or otherwise qualified to carry on business in the Province of Ontario, and has the requisite power to enter into this Agreement and to perform its obligations hereunder.
- (b) This Agreement has been duly authorized, executed, and delivered by the Supplier and is a valid and binding obligation of the Supplier enforceable in accordance with its terms except as such enforcement may be limited by bankruptcy, insolvency and other laws affecting the rights of creditors generally

and except that equitable remedies may only be granted in the discretion of a court of competent jurisdiction.

- (c) The execution and delivery of this Agreement by the Supplier and the consummation of the transactions contemplated by this Agreement will not result in the breach or violation of any of the provisions of, or constitute a default under, or conflict with or cause the termination, cancellation or acceleration of any material obligation of the Supplier under:
- (i) any contract or obligation to which the Supplier is a party or by which it or its assets may be bound, except for such defaults or conflicts as to which requisite waivers or consents have been obtained;
 - (ii) the articles, by-laws or other constating documents, or resolutions of the directors or shareholders of the Supplier;
 - (iii) any judgment, decree, order or award of any Governmental Authority or arbitrator;
 - (iv) any licence, permit, approval, consent or authorization held by the Supplier; or
 - (v) any Laws and Regulations,

that could have a Material Adverse Effect on the Supplier.

- (d) There are no bankruptcy, insolvency, reorganization, receivership, seizure, realization, arrangement or other similar proceedings pending against or being contemplated by the Supplier or, to the knowledge of the Supplier, threatened against the Supplier.
- (e) There are no actions, suits, proceedings, judgments, rulings or orders by or before any Governmental Authority or arbitrator, or, to the knowledge of the Supplier, threatened against the Supplier that could have a Material Adverse Effect on the Supplier.
- (f) All requirements for the Supplier to make any filing, declaration or registration with, give any notice to or obtain any licence, permit, certificate, registration, authorization, consent or approval of, any Governmental Authority as a condition to entering into this Agreement have been satisfied.
- (g) The Supplier is not a non-resident of Canada for the purposes of the ITA, unless it has notified the Sponsor of such non-resident status as per Section 4.6.
- (h) 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 Supplier as representations made to the

Sponsor hereunder and there is no material information omitted from the Proposal which makes the information in the Proposal misleading or inaccurate.

- (i) The same Persons who Controlled the “Qualified Applicant” (as such term is defined in the RFP) as of the Procurement Submission Deadline, Control the Supplier as of the Contract Date.
- (j) The Supplier is in compliance with all Laws and Regulations, other than acts of non-compliance which, individually or in the aggregate, would not have a Material Adverse Effect on the Supplier or on its obligations under this Agreement.
- (k) The Supplier is not aware of any facts or circumstances that would reasonably be expected to prevent the achievement of Commercial Operation by the Milestone Date for Commercial Operation.

In addition, the Supplier shall, upon delivery of each of the quarterly progress reports required to be provided to the Sponsor pursuant to Section 2.5, represent in writing that each of the foregoing statements set out in Sections 7.1(a) to 7.1(k) inclusive continues to be true or, if any of such statements are no longer true, then the Supplier shall provide to the Sponsor a qualified representation with respect to such statement. Such qualified representation provided by the Supplier to the Sponsor shall be subject, however, to the rights of the Sponsor in Section 10.1(d) to require the Supplier to cure or remove any such qualification with respect to such statement.

7.2 Representations of the Sponsor

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

- (a) The Sponsor is a corporation without share capital created under the laws of Ontario, and has the requisite power to enter into this Agreement and to perform its obligations hereunder.
- (b) This Agreement has been duly authorized, executed, and delivered by the Sponsor and is a valid and binding obligation of the Sponsor enforceable in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency and other laws affecting the rights of creditors generally and except that equitable remedies may be granted solely in the discretion of a court of competent jurisdiction.
- (c) The execution and delivery of this Agreement by the Sponsor 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 Sponsor under:

- (i) any contract or obligation to which the Sponsor is a party or by which it or its assets may be bound, except for such defaults or conflicts as to which requisite waivers or consents have been obtained;
- (ii) the by-laws or resolutions of the directors (or any committee thereof) or shareholder of the Sponsor;
- (iii) any judgment, decree, order or award of any Governmental Authority or arbitrator;
- (iv) any licence, permit, approval, consent or authorization held by the Sponsor; or
- (v) any Laws and Regulations,

that could have a Material Adverse Effect on the Sponsor.

- (d) There are no bankruptcy, insolvency, reorganization, receivership, seizure, realization, arrangement or other similar proceedings pending against, or being contemplated by the Sponsor or, to the knowledge of the Sponsor, threatened against the Sponsor.
- (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 Sponsor, threatened against the Sponsor, that could have a Material Adverse Effect on the Sponsor.
- (f) All requirements for the Sponsor to make any declaration, filing or registration with, give any notice to or obtain any licence, permit, certificate, registration, authorization, consent or approval of, any Governmental Authority as a condition to entering into this Agreement have been satisfied.
- (g) The Sponsor is in compliance with all Laws and Regulations other than acts of non-compliance which, individually or in the aggregate, would not have a Material Adverse Effect on the Sponsor or on its obligations under this Agreement.

ARTICLE 8 CONFIDENTIALITY AND FIPPA

8.1 Confidential Information

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

- (a) The Receiving Party may disclose Confidential Information to its Representatives who need to know Confidential Information for the purpose of assisting the Receiving Party in complying with its obligations under this Agreement. On each

copy made by the Receiving Party, the Receiving Party must reproduce all notices which appear on the original. The Receiving Party shall inform its Representatives of the confidentiality of Confidential Information and shall be responsible for any breach of this Article 8 by any of its Representatives.

- (b) If the Receiving Party or any of its Representatives are requested or required (by oral question, interrogatories, requests for information or documents, court order, civil investigative demand, or similar process) to disclose any Confidential Information in connection with litigation or any regulatory proceeding or investigation, or pursuant to any Laws and Regulations, order, regulation or ruling, the Receiving Party shall promptly notify the Disclosing Party. Unless the Disclosing Party obtains a protective order, the Receiving Party and its Representatives may disclose such portion of the Confidential Information to the Party seeking disclosure as is required by law or regulation in accordance with Section 8.2.
- (c) Where the Supplier is the Receiving Party, the Supplier may disclose Confidential Information to any Secured Lender or prospective lender or investor and its advisors, to the extent necessary, for securing financing for the Facility, provided that any such Secured Lender or prospective lender or investor has been informed of the Supplier's confidentiality obligations hereunder and such Secured Lender or prospective lender or investor has completed and executed a confidentiality undertaking (the "**Confidentiality Undertaking**") in the Prescribed Form, covenanting in favour of the Sponsor to hold such Confidential Information confidential on terms substantially similar to this Article 8.
- (d) Notwithstanding the foregoing, the Supplier consents to the disclosure of (i) its name and contact particulars (including its address for service and the name of its Company Representative) by the Sponsor to all Other Suppliers for the purposes of Sections 1.6, 1.7, 1.8, 1.9, and 1.10; (ii) on a confidential basis, any information received by the Sponsor in respect of this Agreement to the Sponsor's Representatives for such internal purposes as the Sponsor may reasonably determine from time to time; (iii) of aggregated data relating to the contracts entered into in connection with the RFP; and (iv) operational or performance data for research studies and analytics, provided that such data is disclosed on an anonymous or aggregated basis. The Supplier acknowledges that if there are no other contracts entered into in connection with the RFP of the same Energy Storage Technology Class as the Facility, aggregated or anonymous data may be identifiable as relating to the Supplier or the Facility.
- (e) The Supplier hereby irrevocably authorizes and consents to the System Operator, any Transmitter and LDC releasing, disclosing, providing, delivering and otherwise making available to the Sponsor or its agents, and to the Sponsor releasing, disclosing, providing, delivering and otherwise making available to the System Operator, a Transmitter and LDC, a copy of this Agreement and any and all such information relating to connections, proposed connections, meters, metering data, testing data pertaining to Commercial Operation, billing data, LDC

account, Transmitter account or Metered Market Participant account (as applicable), of the Supplier or Facility as the Sponsor or its agents may determine is required in connection with the administration of this Contract.

8.2 Notice Preceding Compelled Disclosure

If the Receiving Party or any of its Representatives are requested or required to disclose any Confidential Information, the Receiving Party shall promptly notify the Disclosing Party of such request or requirement so that the Disclosing Party may seek an appropriate protective order or waive compliance with this Agreement. If, in the absence of a protective order or the receipt of a waiver hereunder, the Receiving Party or its Representatives are compelled to disclose the Confidential Information, the Receiving Party and its Representatives may disclose only such of the Confidential Information to the Party compelling disclosure as is required by Laws and Regulations only to such Person or Persons to which the Receiving Party is legally compelled to disclose and, in connection with such compelled disclosure, the Receiving Party and its Representatives shall provide notice to each such recipient that such Confidential Information is confidential and subject to non-disclosure on terms and conditions equal to those contained in this Agreement. Where the recipient is not a Governmental Authority, the Receiving Party shall, if possible, obtain each recipient's written agreement to receive and use such Confidential Information subject to those terms and conditions.

8.3 Return of Information

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

8.4 Injunctive and Other Relief

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

8.5 FIPPA Records and Compliance

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

ARTICLE 9 TERM

9.1 Term

- (a) This Agreement shall be effective from the Contract Date to and until the end of the Term.
- (b) The “**Term**” means that period of time commencing at the beginning of the hour ending 01:00 hours (EST) of the date that is the Commercial Operation Date (the “**Term Commencement Date**”), and ending at 24:00 hours (EST) on the day before the 10th anniversary of the date that is the earlier of (A) the Milestone Date for Commercial Operation and (B) the Commercial Operation Date, subject to earlier termination in accordance with the provisions hereof. Subject to Sections 9.1(c) and (d), neither Party shall have any right to extend or renew the Term except as agreed in writing by the Parties.
- (c) Where the Commercial Operation Date occurs after the Milestone Date for Commercial Operation, the Supplier shall have the option to, no later than 60 days after the Commercial Operation Date, provide notice to the Sponsor along with a payment in the amount equal to the NRR divided by 50, multiplied by the Contract Capacity and multiplied by the number of calendar days that the Commercial Operation Date followed the Milestone Date for Commercial Operation. Where the Supplier exercises such option, the Term shall be extended such that the Term will expire at 24:00 hours (EST) on the day before the 10th anniversary of the Commercial Operation Date.
- (d) Where the Commercial Operation Date occurs after the Milestone Date for Commercial Operation and the Supplier does not exercise the option set out in Section 9.1(c), the Sponsor shall have the right, by providing notice to the Supplier no later than 180 days prior to the expiration of the Term, to extend the Term such that the Term will expire at 24:00 hours (EST) on the day before the 10th anniversary of the Commercial Operation Date.

**ARTICLE 10
TERMINATION AND DEFAULT**

10.1 Events of Default by the Supplier

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

- (a) The Supplier or the Guarantor fails to make any payment when due or deliver and/or maintain the Completion and Performance Security as required under this Agreement, if such failure is not remedied within five (5) Business Days after written notice of such failure from the Sponsor.
- (b) The Supplier fails to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Supplier Event of Default) if such failure is not remedied within fifteen (15) Business Days after written notice of such failure from the Sponsor, provided that such cure period shall be extended by a further fifteen (15) Business Days if the Supplier is diligently remedying such failure and such failure is capable of being cured during such extended cure period.
- (c) The Supplier fails or ceases to hold a valid licence, permit, certificate, registration, authorization, consent or approval issued by a Governmental Authority where such failure or cessation results in, or could be reasonably expected to result in, a Material Adverse Effect on the Supplier and is not remedied within thirty (30) Business Days after receipt by the Supplier of written notice of such failure or cessation from the Sponsor, provided that such cure period shall be extended by a further thirty (30) Business Days if the Supplier is diligently remedying such failure or cessation and such failure or cessation is capable of being corrected during such extended cure period.
- (d) Any representation made by the Supplier in this Agreement is not true or correct in any material respect when made and is not made true or correct in all material respects within thirty (30) Business Days after receipt by the Supplier of written notice of such fact from the Sponsor, provided that such cure period (i) shall be extended for a further period of thirty (30) Business Days and (ii) may be extended by such further period of time as the Sponsor in its sole and absolute discretion determines is reasonable, if, in each case, the Supplier is diligently correcting such breach and such breach is capable of being corrected during such extended cure period. For certainty, notwithstanding the receipt by the Sponsor of a qualified representation by the Supplier with respect to any statement referred to in Sections 7.1(a) to 7.1(k) inclusive, the Sponsor may, in its sole and absolute discretion, require the Supplier, within the time limits set out in this Section 10.1(d), to cure or remove any such qualification to such statement.
- (e) An effective resolution is passed or documents are filed in an office of public record in respect of, or a judgment or order is issued by a court of competent

jurisdiction ordering, the dissolution, termination of existence, liquidation or winding up of the Supplier, unless such filed documents are immediately revoked or otherwise rendered inapplicable, or unless there has been a permitted and valid assignment of this Agreement by the Supplier under this Agreement to a Person which is not dissolving, terminating its existence, liquidating or winding up and such Person has assumed all of the Supplier's obligations under this Agreement.

- (f) The Supplier amalgamates with, or merges with or into, or transfers the Facility or all or substantially all of its assets to, another Person unless, at the time of such amalgamation, merger or transfer, there has been a permitted and valid assignment hereof by the Supplier under this Agreement to the resulting, surviving or transferee Person and such Person has assumed all of the Supplier's obligations under this Agreement.
- (g) A receiver, manager, receiver-manager, liquidator, monitor or trustee in bankruptcy of the Supplier or of any of the Supplier's property is appointed by a Governmental Authority or pursuant to the terms of a debenture or a similar instrument, and such receiver, manager, receiver-manager, liquidator, monitor or trustee in bankruptcy is not discharged or such appointment is not revoked or withdrawn within thirty (30) days of the appointment. By decree, judgment or order of a Governmental Authority, the Supplier is adjudicated bankrupt or insolvent or any substantial part of the Supplier's property is sequestered, and such decree, judgment or order continues undischarged and unstayed for a period of thirty (30) days after the entry thereof. A petition, proceeding or filing is made against the Supplier seeking to have the Supplier declared bankrupt or insolvent, or seeking adjustment or composition of any of its debts pursuant to the provisions of any Insolvency Legislation, and such petition, proceeding or filing is not dismissed or withdrawn within thirty (30) days.
- (h) The Supplier makes an assignment for the benefit of its creditors generally under any Insolvency Legislation, or consents to the appointment of a receiver, manager, receiver-manager, monitor, trustee in bankruptcy, or liquidator for all or part of its property or files a petition or proposal to declare bankruptcy or to reorganize pursuant to the provisions of any Insolvency Legislation.
- (i) The Supplier has defaulted under one or more obligations for indebtedness to other Persons, resulting in obligations for indebtedness in an aggregate amount of more than the greater of: (1) five percent (5%) of its Tangible Net Worth and (2) \$50,000/MW multiplied by the Contract Capacity becoming immediately due and payable, unless: (A) such default is remedied within fifteen (15) Business Days after written notice of such failure from the Sponsor, provided that such cure period shall be extended by a further fifteen (15) Business Days if the Supplier is diligently remedying such default and such default is capable of being cured during such extended cure period; or (B) the Supplier has satisfied the Sponsor that such default does not have a Material Adverse Effect on the Supplier's ability to perform its obligations under this Agreement.

- (j) The Supplier has made a Facility Amendment that has not first been consented to by the Sponsor and that has not been removed within ten (10) Business Days after such Facility Amendment occurred.
- (k) The COD has not occurred on or before the date which is eighteen (18) months after the Milestone Date for Commercial Operation of the Facility.
- (l) The event of default described in Section 15.6(g) has occurred.
- (m) The event of default described in Section 4 of Exhibit G has occurred.
- (n) The Supplier undergoes a change in Control without first obtaining the written approval of the Sponsor if required pursuant to Sections 16.6 or 16.7.
- (o) The Supplier assigns this Agreement without first obtaining the consent of the Sponsor, if required pursuant to this Agreement.
- (p) The Supplier has not disclosed each actual or potential Conflict of Interest (as that term is defined in the RFP) and, if any such actual or potential Conflict of Interest is capable of being remedied, it has not been remedied within fifteen (15) Business Days after written notice of such nondisclosure from the Sponsor.

10.2 Remedies of the Sponsor

- (a) If any Supplier Event of Default (other than a Supplier Event of Default referred to in Sections 10.1(e), 10.1(g), and 10.1(h)) occurs and is continuing, upon written notice to the Supplier, the Sponsor may, subject to Article 12, terminate this Agreement.
- (b) If a Supplier Event of Default referred to in Sections 10.1(b), 10.1(l), or 10.1(m), occurs and is continuing, in addition to the remedies set out in Section 10.2(a), at the discretion of the Sponsor, either:
 - (i) the Supplier will forfeit an amount equivalent to the Net Revenue Requirement times one month, multiplied by the Contract Capacity, as liquidated damages and not as a penalty; or
 - (ii) the Sponsor may levy a performance assessment set-off, as liquidated damages and not as a penalty, equal to three (3) times the Net Revenue Requirement, multiplied by the Contract Capacity, in the event that three (3) or more Supplier Events of Default referred to in Sections 10.1(b), 10.1(l), or 10.1(m), have occurred within a Contract Year, regardless of whether such Supplier Events of Default have been subsequently cured,

and which may be satisfied by the Sponsor setting off any payments due to the Supplier against any amounts payable by the Supplier to the Sponsor including, at the Sponsor's option, the amount of any Completion and Performance Security provided to the Sponsor pursuant to Article 6, and by drawing on the Completion

and Performance Security, or any part thereof, and if the remedy in Section 10.2(a) has not been exercised, requiring the Supplier to replace such drawn security with new security.

- (c) If a Supplier Event of Default occurs and is continuing, the Sponsor may, in addition to the remedies set out in Section 10.2(a):
 - (i) set off any payments due to the Supplier against any amounts payable by the Supplier to the Sponsor including, at the Sponsor's option, the amount of any Completion and Performance Security provided to the Sponsor pursuant to Article 6; and
 - (ii) draw on the Completion and Performance Security, or any part thereof and, if the remedy in Section 10.2(a) has not been exercised, require the Supplier to replace such drawn security with new security.
- (d) Notwithstanding Sections 10.2(a), 10.2(b), and 10.2(c), upon the occurrence of a Supplier Event of Default referred to in Sections 10.1(e), 10.1(g) or 10.1(h), this Agreement shall automatically terminate without notice, act or formality, effective immediately before the occurrence of such Supplier Event of Default, in which case, for certainty, any Secured Lender that has entered into an agreement with the Sponsor as contemplated by Sections 12.1(d) and 12.3 shall have the rights available to it under Section 12.2(g).
- (e) Notwithstanding Sections 10.2(a), 10.2(b), and 10.2(c), upon the occurrence of the Supplier Event of Default referred to in Section 10.1(k), this Agreement shall automatically terminate without notice, act or formality, effective immediately upon the occurrence of such Supplier Event of Default.
- (f) If the Sponsor terminates this Agreement pursuant to Section 10.2(a) or this Agreement is terminated pursuant to Sections 10.2(d) or 10.2(e), the Sponsor shall have the following option, exercisable in the sole and absolute discretion of the Sponsor:
 - (i) if the Termination Date precedes the COD, the Supplier shall pay, as liquidated damages and not as a penalty, an amount equivalent to (1) the amount of all Completion and Performance Security provided by or on behalf of the Supplier, plus (2) the amount of any portion of the Completion and Performance Security that the Supplier was required under Section 6.1 to provide to the Sponsor as of the Termination Date (with the total amount of such liquidated damages being referred to as the "**LD Sum**"). The Sponsor shall be entitled to retain all Completion and Performance Security provided by or on behalf of the Supplier and apply it towards the Supplier's obligation to pay the LD Sum. With respect to any unpaid portion of the LD Sum, the Sponsor may exercise all remedies available to the Sponsor including pursuing a claim for damages, as contemplated in Section 10.5; or

- (ii) if the Termination Date is on or after the COD, the Sponsor shall be entitled to retain all Completion and Performance Security provided by or on behalf of the Supplier and exercise all other remedies available to the Sponsor including pursuing a claim for damages, as contemplated in Section 10.5.
- (g) Termination shall not relieve the Supplier or the Sponsor of their respective responsibilities relating to the availability of the Contract Capacity and Storage Capacity and delivery of the Electricity, Related Products, and Environmental Attributes from the Facility that relate to the Contract Capacity and the Storage Capacity, or amounts payable under this Agreement, up to and including the Termination Date. The Sponsor shall be responsible only for the payment of amounts accruing under this Agreement up to and including the Termination Date. In addition to its other rights of set off available to it pursuant to this Agreement and at law, the Sponsor may hold back payment or set off its obligation to make such payment against any payments owed to it if the Supplier fails to comply with its obligations on termination.

10.3 Events of Default by the Sponsor

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

- (a) The Sponsor fails to make any payment under this Agreement when due, if such failure is not remedied within five (5) Business Days after written notice of such failure from the Supplier.
- (b) The Sponsor fails to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Sponsor Event of Default), if such failure is not remedied within fifteen (15) Business Days after written notice of such failure from the Supplier, provided that such cure period shall be extended by a further fifteen (15) Business Days if the Sponsor is diligently remedying such failure and such failure is capable of being cured during such extended cure period.
- (c) The Sponsor fails or ceases to hold a valid licence, permit, certificate, registration, authorization, consent or approval issued by a Governmental Authority where such failure or cessation results in, or could be reasonably expected to result in, a Material Adverse Effect on the Sponsor and is not remedied within thirty (30) Business Days after receipt by the Sponsor of written notice of such failure or cessation from the Supplier, provided that such cure period shall be extended by a further thirty (30) Business Days if the Sponsor is diligently remedying such failure or cessation and such failure or cessation is capable of being corrected during such extended cure period.
- (d) Any representation made by the Sponsor in this Agreement is not materially true or correct in any material respect when made and is not made materially true or

correct within thirty (30) Business Days after receipt by the Sponsor of written notice of such fact from the Supplier, provided that such cure period shall be extended by a further thirty (30) Business Days if the Sponsor is diligently correcting such breach and such breach is capable of being corrected during such extended cure period.

- (e) An effective resolution is passed or documents are filed in an office of public record in respect of, or a judgment or order is issued by a court of competent jurisdiction ordering the dissolution, termination of existence, liquidation or winding up of the Sponsor unless such filed documents are immediately revoked or otherwise rendered inapplicable, or unless there has been a permitted and valid assignment of this Agreement by the Sponsor under this Agreement to a Person which is not dissolving, terminating its existence, liquidating or winding up and such Person has assumed all of the Sponsor's obligations under this Agreement.
- (f) A receiver, manager, receiver-manager, liquidator, monitor or trustee in bankruptcy of the Sponsor or of any of the Sponsor's property is appointed by a Governmental Authority or pursuant to the terms of a debenture or a similar instrument, and such receiver, manager, receiver-manager, liquidator, monitor or trustee in bankruptcy is not discharged or such appointment is not revoked or withdrawn within thirty (30) days of the appointment. By decree, judgment or order of Governmental Authority, the Sponsor is adjudicated bankrupt or insolvent or any substantial part of the Sponsor's property is sequestered, and such decree, judgment or order continues undischarged and unstayed for a period of thirty (30) days after the entry thereof. A petition, proceeding or filing is made against the Sponsor seeking to have it declared bankrupt or insolvent, or seeking adjustment or composition of any of its debts pursuant to the provisions of any Insolvency Legislation, and such petition, proceeding or filing is not dismissed or withdrawn within thirty (30) days.
- (g) The Sponsor makes an assignment for the benefit of its creditors generally under any Insolvency Legislation, or consents to the appointment of a receiver, manager, receiver-manager, monitor, trustee in bankruptcy or liquidator, of it or of all or part of its property or files a petition or proposal to declare bankruptcy or to reorganize pursuant to the provision of any Insolvency Legislation.
- (h) The Sponsor assigns this Agreement (other than an assignment made pursuant to Sections 16.5(d) or 16.5(e)) without first obtaining the consent of the Supplier, if required pursuant to this Agreement.

10.4 Termination by the Supplier

- (a) If any Sponsor Event of Default occurs and is continuing, then upon written notice to the Sponsor, the Supplier may: (i) subject to Sections 16.5(d)(iii) and 16.5(e)(iii), terminate this Agreement, and (ii) set off any payments due to the Sponsor against any amounts payable by the Sponsor to the Supplier.

- (b) Notwithstanding the foregoing, if applicable, the Sponsor shall be responsible for payment of amounts accruing under this Agreement only up to and including the Termination Date. The Supplier may hold back payment or set off against any payments owed by it if the Sponsor fails to comply with its obligations on termination.

10.5 Remedies for Termination Non-Exclusive

The termination of this Agreement by either Party and the payment of all amounts then due and owing to the other Party as expressly provided in this Agreement shall not limit, waive or extinguish in any way the recourse of either Party to any remedies available to it in relation to such termination at law, in equity or otherwise, nor shall such termination affect any rights that the Indemnitees may have pursuant to any indemnity given under this Agreement. Notwithstanding the foregoing, if the Sponsor has exercised the option set out in Section 10.2(f)(i), then the Sponsor's remedies against the Supplier in respect of the termination of this Agreement shall be limited to any unpaid portion of the Sum set out in Section 10.2(f)(i).

10.6 Pre-COD Optional Termination by the Sponsor

- (a) Notwithstanding any other provision of this Agreement, prior to the Sponsor notifying the Supplier pursuant to Section 2.4(b) that Commercial Operation has been achieved, the Sponsor may terminate this Agreement in its sole and absolute discretion and for any reason whatsoever (an "**Optional Termination**") by providing sixty (60) days' written notice to the Supplier. In the event of notice of an Optional Termination being given by the Sponsor in accordance with this Section 10.6, the Sponsor shall be entitled, in its sole and absolute discretion, at any time before the Termination Date, to issue a Stop Work Notice. A Stop Work Notice may further require the Decommissioning of the Facility and the applicable site. The Supplier shall comply with any Stop Work Notice.
- (b) In the event of an Optional Termination, the Supplier shall be entitled to be paid an amount calculated as follows (the "**Optional Termination Sum**"):
 - (i) the reasonable, documented, third party costs for the preparation of the Proposal and the performance of this Agreement, including the provision of Completion and Performance Security, and the development and construction of the Facility, incurred by the Supplier or that the Supplier has irrevocably committed to incur on or before the Optional Termination Notice Date, excluding that portion of any costs charged by a Person who does not deal at Arm's Length with the Supplier that is in excess of the costs that would have been charged for such products or services had such Person dealt at Arm's Length with the Supplier, net of any credits or refunds that have been paid or accrued to the benefit of the Supplier; plus
 - (ii) where a Stop Work Notice has been issued that requires Decommissioning, all Decommissioning Costs; plus

- (iii) an amount equal to 21.25 percent of the amount calculated pursuant to Section 10.6(b)(i), multiplied by a fraction, the numerator of which is the number of months (including part months) between the Contract Date and the Optional Termination Notice Date, and the denominator of which is 30; minus
 - (iv) the fair market value of any assets purchased by the Supplier in respect of the Facility or used principally for the purposes of carrying out its obligations under this Agreement.
- (c) The Supplier shall take all reasonable measures to mitigate the costs to the Sponsor arising from any Optional Termination.
- (d) Within ninety (90) days after the Termination Date, the Supplier shall give to the Sponsor a detailed invoice for the Optional Termination Sum (the “**Supplier Proposed Optional Termination Sum**”) and sufficient supporting evidence, including receipts and proof of payment, satisfactory to the Sponsor, acting reasonably, justifying the amount of the Supplier Proposed Optional Termination Sum including a detailed breakdown of each of the individual amounts or items comprising such sum and demonstrating to the satisfaction of the Sponsor, acting reasonably, that all such amounts and items pertain directly to, or were incurred by the Supplier (or the Supplier irrevocably committed to incur) directly in connection with, the Facility.
 - (i) No later than sixty (60) days after receipt of the foregoing information, the Sponsor shall provide the Supplier with written notice either agreeing with the Supplier Proposed Optional Termination Sum, or setting out a detailed request for any additional substantiating information. The Supplier shall provide any such additional information within sixty (60) days after the Sponsor’s request.
 - (ii) Within sixty (60) days after the receipt of any additional information provided pursuant to Section 10.6(d)(i), the Sponsor shall provide the Supplier with written notice either (A) agreeing with the Supplier Proposed Optional Termination Sum, or (B) containing a detailed explanation for any amounts not accepted by the Sponsor, along with the amount the Sponsor believes is the Optional Termination Sum based on the available information (the “**Sponsor Proposed Optional Termination Sum**”).
 - (iii) If the Supplier does not agree with the Sponsor Proposed Optional Termination Sum, the Supplier may refer the matter for dispute resolution pursuant to Sections 16.1 and 16.2. If, by the date that is sixty (60) days after the date the Sponsor provided the Sponsor Proposed Optional Termination Sum to the Supplier, the Supplier has not either formally accepted the Sponsor Proposed Optional Termination Sum or issued a notice of dispute pursuant to Section 16.1, the Sponsor Proposed Optional

Termination Sum shall be deemed to be the Optional Termination Sum, as agreed between the Parties. For the purpose of any litigation or arbitration to determine the Optional Termination Sum, the submission of the Supplier Proposed Optional Termination Sum and the Sponsor Proposed Optional Termination Sum shall be and shall be deemed to have been on a “without prejudice” basis and any such submissions shall not be disclosed in any arbitration or litigation.

- (e) The Sponsor shall pay to the Supplier the Optional Termination Sum within sixty (60) days after the date it is agreed by the Parties or determined pursuant to any dispute resolution process.
- (f) With respect to any Optional Termination, on or after the Termination Date, the Supplier may request the return of any Completion and Performance Security held by the Sponsor and the Sponsor shall return such Completion and Performance Security within twenty (20) Business Days following receipt of such request.
- (g) The Optional Termination Sum paid pursuant to this Section 10.6 shall be in full and final settlement of any claims, demands and proceedings of the Supplier against the Indemnitees arising out of or in connection with this Agreement or the Facility, including, without limitation, any claims, demands or proceedings with respect to any anticipated profits arising from the operation of the Facility after the Termination Date, and the Indemnitees shall be released from all liability by the Supplier arising out of or in connection with this Agreement, the Facility, and the circumstances leading to the Optional Termination.

ARTICLE 11 FORCE MAJEURE

11.1 Effect of Invoking Force Majeure

- (a) If, by reason of Force Majeure:
 - (i) the Supplier is unable to make available all of the Contract Capacity or is unable to Deliver or Withdraw Electricity, as applicable; or
 - (ii) either Party is unable, wholly or partially, to perform or comply with its other obligations (other than payment obligations) hereunder, including the Supplier being unable to achieve Commercial Operation by the Milestone Date for Commercial Operation;

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

and to the extent of the inability so caused from and after the invocation of Force Majeure.

- (b) A Party shall be deemed to have invoked Force Majeure with effect from the commencement of the event or circumstances constituting Force Majeure when that Party gives to the other Party prompt written notice of the effect of the Force Majeure and reasonably full particulars of the cause thereof, in the Prescribed Form, provided that such notice shall be given as follows:
 - (i) within twenty (20) Business Days of the date that the Party invoking Force Majeure knew or ought to have known that the event or circumstances constituting Force Majeure could have a Material Adverse Effect on the critical path of the project schedule for the development and construction of the Facility where the event or circumstances constituting Force Majeure occur prior to COD; or
 - (ii) within ten (10) Business Days of the commencement of the event or circumstances constituting Force Majeure where the event or circumstances constituting Force Majeure occur on or after COD. If the effect of the Force Majeure and full particulars of the cause thereof cannot be reasonably determined within such ten (10) Business Day period, the Party invoking Force Majeure shall be allowed a further ten (10) Business Days (or such longer period as the Parties may agree in writing) to provide such full particulars, in the Prescribed Form, to the other Party.

Where a Party providing notice of an event of Force Majeure fails to provide notice of the commencement of such event in accordance with the foregoing, such Party shall be deemed to have invoked Force Majeure with effect from the date when that Parties gives to the other Party written notice in the Prescribed Form, of the event or circumstance constituting Force Majeure. For greater certainty, the reporting or discussion of a Force Majeure event provided in a periodic report from the Supplier to the Sponsor pursuant to Section 2.5 shall not constitute sufficient notice of the occurrence of a Force Majeure event.

- (c) The Party invoking Force Majeure shall use Commercially Reasonable Efforts to remedy the situation and remove, so far as possible and with reasonable dispatch, the Force Majeure, but settlement of strikes, lockouts and other labour disturbances shall be wholly within the discretion of the Party involved.
- (d) The Party invoking Force Majeure shall give prompt written notice of the termination of the event of Force Majeure, provided that such notice shall be given within twenty (20) Business Days of the termination of the event or circumstances constituting Force Majeure.
- (e) Nothing in this Section 11.1 shall relieve a Party of its obligations to make payments of any amounts that were due and owing before the occurrence of the

Force Majeure or that otherwise may become due and payable during any period of Force Majeure.

- (f) Prior to COD, Force Majeure shall apply on the basis of whole calendar days only. On or after COD, Force Majeure shall apply on the basis of whole Storage Days only.
- (g) If an event of Force Majeure causes the Supplier to not achieve Commercial Operation by the Milestone Date for Commercial Operation, then the Milestone Date for Commercial Operation shall be extended for such reasonable period of delay directly resulting from such Force Majeure event. After the Term Commencement Date, an event of Force Majeure shall not extend the Term.
- (h) If, prior to COD, the aggregate duration of all events of Force Majeure exceeds twenty-four (24) months, or any single event of Force Majeure has a duration of greater than eighteen (18) months, then notwithstanding anything in this Agreement to the contrary, either Party may terminate this Agreement upon notice to the other Party and without any costs or payments of any kind to either Party, and all security shall be returned forthwith.
- (i) If, on or following COD, by reason of Force Majeure, the Supplier is unable to perform or comply with its obligations (other than payment obligations) hereunder for more than an aggregate of thirty-six (36) months in any sixty (60) month period during the Term, then either Party may terminate this Agreement upon notice to the other Party without any costs or payments of any kind to either Party, except for any amounts that were due or payable by a Party hereunder up to the date of termination, and all security shall be returned forthwith.

11.2 Exclusions

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

- (a) if and to the extent the Party seeking to invoke Force Majeure has caused the applicable event of Force Majeure by its fault or negligence;
- (b) if and to the extent the Party seeking to invoke Force Majeure has failed to use Commercially Reasonable Efforts to prevent or remedy the event of Force Majeure and remove, so far as possible and within a reasonable time period, the Force Majeure (except in the case of strikes, lockouts and other labour disturbances, the settlement of which shall be wholly within the discretion of the Party involved);
- (c) if and to the extent that the Party seeking to invoke Force Majeure because of arrest or restraint by a Governmental Authority, such arrest or restraint was the result of a breach by such Party of Laws and Regulations;

- (d) if the Force Majeure was caused by a lack of funds or other financial cause;
- (e) if the Party invoking Force Majeure fails to comply with the notice provisions in Sections 11.1(b) or 11.1(d).

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

11.3 Definition of Force Majeure

For the purposes of this Agreement, the term “**Force Majeure**” means any act, event, cause or condition that prevents a Party from performing its obligations (other than payment obligations) hereunder, and that is beyond the affected Party’s reasonable control, and shall include:

- (a) acts of God, including extreme wind, ice, lightning or other storms, earthquakes, tornadoes, hurricanes, cyclones, landslides, drought, floods and washouts;
- (b) fires or explosions;
- (c) local, regional or national states of emergency;
- (d) strikes and other labour disputes (other than legal strikes or labour disputes by employees of such Party or a third party invoking Force Majeure, unless such strikes or labour disputes are the result or part of a general industry strike or labour dispute);
- (e) delays or disruptions in fuel supply resulting from a Force Majeure event (whether such event is in respect of a Party or a third party), and provided that it shall be considered an event of Force Majeure if delays or disruptions in fuel supply arise as a result of the Supplier being unable to secure transportation capacity for fuel supply to the Facility after having made Commercially Reasonable Efforts to do so, but it shall not be considered an event of Force Majeure if such transportation capacity was available and the Supplier failed to secure it or failed to maintain it after having secured it;
- (f) civil disobedience or disturbances, war (whether declared or not), acts of sabotage, blockades, insurrections, terrorism, revolution, riots or epidemics;
- (g) an order, judgment, legislation, ruling or direction by Governmental Authorities restraining a Party, provided that the affected Party has not applied for or assisted in the application for and has used Commercially Reasonable Efforts to oppose said order, judgment, legislation, ruling or direction;
- (h) any inability to obtain, or to secure the renewal or amendment of, any permit, certificate, Impact Assessment, licence or approval of any Governmental Authority or Transmitter required to perform or comply with any obligation under this Agreement, unless the revocation or modification of any such necessary permit, certificate, Impact Assessment, licence or approval was caused by the

violation of the terms thereof or consented to by the Party invoking Force Majeure;

- (i) any unanticipated maintenance or outage affecting the Facility which results directly from, or is scheduled or planned directly as a consequence of, an event of Force Majeure referred to in this Section 11.3, or which results from a failure of equipment that prevents the Facility from being able to Withdraw or Deliver Electricity, provided that:
 - (A) the Supplier provides timely updates to the Sponsor of the commencement date of the maintenance or outage and, where possible, provides seven (7) days advance notice of such date;
 - (B) the unanticipated maintenance or outage is commenced within one hundred twenty (120) days of the commencement of the occurrence of the relevant event of Force Majeure; and
 - (C) the Supplier schedules the unanticipated maintenance or outage in accordance with Good Engineering and Operating Practices.

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

ARTICLE 12 LENDER'S RIGHTS

12.1 Lender Security

Notwithstanding Section 16.5, the Supplier, from time to time on or after the first anniversary of the Term Commencement Date, shall have the right, at its cost, to enter into a Secured Lender's Security Agreement. For the avoidance of doubt, in the case of a deed of trust or similar instrument securing bonds or debentures where the trustee holds security on behalf of, or for the benefit of, other lenders, only the trustee shall be entitled to exercise the rights and remedies under the Secured Lender's Security Agreement as the Secured Lender on behalf of the lenders. A Secured Lender's Security Agreement shall be based upon and subject to the following conditions:

- (a) A Secured Lender's Security Agreement may be made for any amounts and upon any terms (including terms of the loans, interest rates, payment terms and prepayment privileges or restrictions) as desired by the Supplier, except as otherwise provided in this Agreement.
- (b) A Secured Lender's Security Agreement may not secure any indebtedness, liability or obligation that is not related to the Facility or cover any real or personal property not related to the Supplier's Interest.

- (c) No Secured Lender's Security Agreement shall affect or encumber in any manner the Sponsor's title to any government-owned premises. The Sponsor shall have no liability whatsoever for payment of the principal sum secured by any Secured Lender's Security Agreement, or any interest accrued thereon or any other sum secured thereby or accruing thereunder; and the Secured Lender shall not be entitled to seek any damages against the Sponsor for any or all of the same.
- (d) No Secured Lender's Security Agreement shall be binding upon the Sponsor in the enforcement of the Sponsor's rights and remedies provided in this Agreement or by Laws and Regulations, unless and until the Sponsor and the Supplier enter into an agreement with a Secured Lender substantially in the Prescribed Form for the purpose of implementing the Secured Lender's Security Agreement protection provisions contained in this Agreement. For greater certainty, a Secured Lender will have no rights under this Agreement unless and until it enters into the Prescribed Form with the Sponsor and the Supplier for the purpose of implementing the Secured Lender's Security Agreement protection provisions contained in this Agreement as contemplated by Section 12.3. In the event of any assignment of a Secured Lender's Security Agreement, such assignment shall not be binding upon the Sponsor unless and until a copy thereof and the registration details, if applicable, together with written notice of the address of the assignee thereof to which notices may be sent, have been delivered to the Sponsor by the Supplier or the Secured Lender.
- (e) If the Supplier is in default under or pursuant to the Secured Lender's Security Agreement and the Secured Lender intends to exercise any rights afforded to the Secured Lender under this Agreement, then the Secured Lender shall give notice of such default to the Sponsor at least five (5) Business Days prior to exercising any such rights.
- (f) Any Secured Lender's Security Agreement permitted hereunder may secure two (2) or more separate debts, liabilities or obligations in favour of two (2) or more separate Secured Lenders, provided that such Secured Lender's Security Agreement complies with the provisions of this Article 12.
- (g) Any number of permitted Secured Lender's Security Agreements may be outstanding at any one time, provided that each such Secured Lender's Security Agreement complies with the provisions of this Article 12.
- (h) All rights acquired by a Secured Lender under any Secured Lender's Security Agreement shall be subject to all of the provisions of this Agreement, including the restrictions on assignment contained herein. While any Secured Lender's Security Agreement is outstanding, the Sponsor and the Supplier shall not amend or supplement this Agreement or agree to a termination of this Agreement without the consent of the Secured Lender, which consent shall not be unreasonably withheld, conditioned, or delayed. A Secured Lender must respond within a reasonable period of time to any request to amend or supplement this Agreement.

- (i) Despite any enforcement of any Secured Lender's Security Agreement, the Supplier shall remain liable to the Sponsor for the payment of all sums owing to the Sponsor under this Agreement and for the performance of all of the Supplier's obligations under this Agreement.

12.2 Rights and Obligations of Secured Lenders

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

- (a) No Supplier Event of Default (other than those set out in Sections 10.2(d) and 10.2(e)) shall be grounds for the termination by the Sponsor of this Agreement until:
 - (i) any notice required to be given under Section 10.1 and 10.2(a) has been given to the Supplier and to the Secured Lender; and
 - (ii) the cure period set out in Section 12.2(b) has expired without a cure having been completed and without the Secured Lender having taken the actions therein contemplated.
- (b) In the event the Sponsor has given any notice required to be given under Section 10.1, the Secured Lender shall, within the applicable cure period (including any extensions), if any, have the right (but not the obligation) to cure such default, and the Sponsor shall accept such performance by such Secured Lender as if the same had been performed by the Supplier.
- (c) Any payment to be made or action to be taken by a Secured Lender hereunder as a prerequisite to keeping this Agreement in effect shall be deemed properly to have been made or taken by the Secured Lender if such payment is made or action is taken by a nominee or agent of the Secured Lender or a receiver or receiver and manager appointed by or on the application of the Secured Lender.
- (d) A Secured Lender shall be entitled to the Supplier's rights and benefits contained in this Agreement and shall become liable for the Supplier's obligations solely as provided in Section 12.2. A Secured Lender may, subject to the provisions of this Agreement, enforce any Secured Lender's Security Agreement and acquire the Supplier's Interest in any lawful way and, without limitation, a Secured Lender or its nominee or agent or a receiver or receiver and manager appointed by or on the application of the Secured Lender, may take possession of and manage the Facility and, upon foreclosure, or without foreclosure upon exercise of any contractual or statutory power of sale under such Secured Lender's Security Agreement, may sell or assign the Supplier's Interest with the consent of the Sponsor as required under Section 12.2(f).

- (e) Until a Secured Lender (i) forecloses or has otherwise taken ownership of the Supplier's Interest or (ii) has taken possession or control of the Supplier's Interest, whether directly or by an agent as a mortgagee in possession, or a receiver or receiver and manager has taken possession or control of the Supplier's Interest by reference to the Secured Lender's Security Agreement, the Secured Lender shall not be liable for any of the Supplier's obligations or be entitled to any of the Supplier's rights and benefits contained in this Agreement, except by way of security. If the Secured Lender itself or by a nominee or agent, or a receiver or a receiver and manager appointed by or on the application of the Secured Lender, is the owner or is in control or possession of the Supplier's Interest, then the entity that is the owner or is in control or possession of the Supplier's Interest shall be bound by all of the Supplier's obligations. Once the Secured Lender or such other Person goes out of possession or control of the Supplier's Interest or transfers the Supplier's Interest in accordance with this Agreement to another Person who is at Arm's Length with the Secured Lender, the Secured Lender shall cease to be liable for any of the Supplier's obligations and shall cease to be entitled to any of the Supplier's rights and benefits contained in this Agreement, except, if the Secured Lender's Security Agreement remains outstanding, by way of security.
- (f) Despite anything else contained in this Agreement, any Person to whom the Supplier's Interest is transferred shall take the Supplier's Interest subject to the Supplier's obligations. No transfer shall be effective unless the Sponsor:
- (i) acting reasonably, if such transferee is at Arm's Length with the Secured Lender; or
 - (ii) acting in its sole and subjective discretion, if such transferee is not at Arm's Length with the Secured Lender,

has approved of the transferee and the transferee has entered into an agreement with the Sponsor in form and substance satisfactory to the Sponsor, acting reasonably, wherein the transferee agrees to assume and to perform the obligations of the Supplier in respect of the Supplier's Interest, whether arising before or after the transfer, and including the posting of the Completion and Performance Security required under Article 6.

- (g) In the event of the termination of this Agreement prior to the end of the Term due to a Supplier Event of Default, the Sponsor shall, within ten (10) days after the date of such termination, deliver to each Secured Lender which is at Arm's Length with the Supplier a statement of all sums then known to the Sponsor that would at that time be due under this Agreement but for the termination and a notice to each such Secured Lender stating that the Sponsor is willing to enter into a New Agreement (the "**Sponsor Statement**"). Subject to the provisions of this Article 12, each such Secured Lender or its transferee approved by the Sponsor pursuant to Section 12.2(f) hereof shall thereupon have the option to obtain from the Sponsor a New Agreement in accordance with the following terms:

- (i) Upon receipt of the written request of the Secured Lender within thirty (30) days after the date on which it received the Sponsor Statement, the Sponsor shall enter into a New Agreement.
- (ii) Such New Agreement shall be effective as of the Termination Date and shall be for the remainder of the Term at the time this Agreement was terminated and otherwise upon the terms contained in this Agreement. The Sponsor's obligation to enter into a New Agreement is conditional upon the Secured Lender (A) paying all sums that would, at the time of the execution and delivery thereof, be due under this Agreement but for such termination, (B) otherwise fully curing any defaults under this Agreement existing immediately prior to termination of this Agreement that are capable of being cured, and (C) paying all reasonable costs and expenses, including legal fees, so as to provide a full indemnity (and not only substantial indemnity), incurred by the Sponsor in connection with such default and termination, and the preparation, execution and delivery of such New Agreement and related agreements and documents, provided, however, that with respect to any default that could not be cured by such Secured Lender until it obtains possession, such Secured Lender or its transferee approved by the Sponsor pursuant to Section 12.2(f) hereof, as the case may be, shall have the applicable cure period commencing on the date that it obtains possession to cure such default.

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

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

12.3 Cooperation

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

ARTICLE 13 DISCRIMINATORY ACTION

13.1 Discriminatory Action

A "**Discriminatory Action**" shall occur if:

- (a)
 - (i) the Legislative Assembly of Ontario causes to come into force any statute that was introduced as a bill in the Legislative Assembly of Ontario or the Government of Ontario causes to come into force or makes any order-in-council or regulation first having legal effect on or after the date of the Procurement Submission Deadline; or
 - (ii) the Legislative Assembly of Ontario directly or indirectly amends this Agreement without the agreement of the Supplier;
- (b) the effect of the action referred to in Section 13.1(a):
 - (i) is borne principally by the Supplier; or
 - (ii) is borne principally by the Supplier and one or more Other Suppliers; and
- (c) such action increases the costs that the Supplier would reasonably be expected to incur under this Agreement to operate the Facility so as to maintain a Cycle Deficiency Reduction Factor of 1.0 and follow the Daily Sponsor Schedule (such obligations, the "**Physical Operating Requirements**"), except where such action is in response to any act or omission on the part of the Supplier that is contrary to Laws and Regulations (other than an act or omission rendered illegal by virtue of such action) or such action is permitted under this Agreement. Despite the preceding sentence, none of the following shall be a Discriminatory Action:

- (i) Laws and Regulations of general application, including an increase of Taxes of general application, or any action of the Government of Ontario pursuant thereto;
- (ii) any such statute that prior to five (5) Business Days prior to the Procurement Submission Deadline:
 - (A) has been introduced as a bill in the Legislative Assembly of Ontario in a similar form as such statute takes when it has legal effect, provided that any amendments made to such bill in becoming such statute do not have a Material Adverse Effect on the Supplier; or
 - (B) has been made public in a discussion or consultation paper, press release or announcement issued by the System Operator, the Government of Ontario, and/or the Ministry of Energy that appeared on the Sponsor's Website or the website of the Government of Ontario and/or the Ministry of Energy, provided that any amendments made to such public form, in becoming such statute, do not have a Material Adverse Effect on the Supplier; and
- (iii) any of such regulations that prior to five (5) Business Days prior to the Procurement Submission Deadline:
 - (A) have been published in the Ontario Gazette but by the terms of such regulations come into force on or after five (5) Business Days prior to the Contract Date, or
 - (B) have been referred to in a press release issued by the System Operator, the Government of Ontario and/or the Ministry of Energy that appeared on the Sponsor's Website or the website of the Government of Ontario or the Ministry of Energy, provided that any amendments made to such regulations in coming into force do not have a Material Adverse Effect on the Supplier.

13.2 Consequences of Discriminatory Action

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

13.3 Notice of Discriminatory Action

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

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

- (b) If the Sponsor wishes to dispute the occurrence of a Discriminatory Action, the Sponsor shall give a notice of dispute (the “**Notice of Dispute**”) to the Supplier, stating the grounds for such dispute, within thirty (30) days after the date of receipt of the Notice of Discriminatory Action or within thirty (30) days after the date of receipt of the further supporting particulars, as applicable.
- (c) If neither the Notice of Discriminatory Action nor the Notice of Dispute has been withdrawn within thirty (30) days after the date of receipt of the Notice of Dispute by the Supplier, the dispute of the occurrence of a Discriminatory Action shall be submitted to mandatory and binding arbitration in accordance with Section 16.2 without first having to comply with Section 16.1.
- (d) If the Sponsor does not dispute the occurrence of a Discriminatory Action or the amount of Discriminatory Action Compensation claimed in the Notice of Discriminatory Action, the Sponsor shall pay to the Supplier the amount of Discriminatory Action Compensation claimed within sixty (60) days after the date of receipt of the Notice of Discriminatory Action. If a Notice of Dispute has been given, the Sponsor shall pay to the Supplier the Discriminatory Action Compensation Amount determined in accordance with Section 13.3(e) not later than sixty (60) days after the later of the date on which the dispute with respect to

the occurrence of a Discriminatory Action is resolved and the date on which the Discriminatory Action Compensation Amount is determined.

- (e) (i) If the Sponsor wishes to dispute the amount of the Discriminatory Action Compensation, the Sponsor shall give to the Supplier a notice (the “**Discriminatory Action Compensation Notice**”) setting out an amount that the Sponsor proposes as the Discriminatory Action Compensation (the “**Discriminatory Action Compensation Amount**”), if any, together with details of the computation. If the Supplier does not give notice (the “**Supplier Non-acceptance Notice**”) to the Sponsor stating that it does not accept the Discriminatory Action Compensation Amount proposed within thirty (30) days after the date of receipt of the Discriminatory Action Compensation Notice, the Supplier shall be deemed to have accepted the Discriminatory Action Compensation Amount so proposed. If the Supplier Non-acceptance Notice is given, the Sponsor and the Supplier shall attempt to determine the Discriminatory Action Compensation Amount through negotiation, and any amount so agreed in writing shall be the Discriminatory Action Compensation Amount. If the Sponsor and the Supplier do not agree in writing upon the Discriminatory Action Compensation Amount within sixty (60) days after the date of receipt of the Supplier Non-acceptance Notice, the Discriminatory Action Compensation Amount shall be determined in accordance with the procedure set forth in Section 13.3(e)(ii) and Sections 16.1 and 16.2 shall not apply to such determination.
- (ii) If the negotiation described in Section 13.3(e)(i) does not result in an agreement in writing on the Discriminatory Action Compensation Amount, either the Sponsor or the Supplier may, after the later of (A) the date on which a dispute with respect to the occurrence of a Discriminatory Action is resolved and (B) the date of the expiry of a period of thirty (30) days after the date of receipt of the Supplier Non-acceptance Notice, by notice to the other require the dispute to be resolved by arbitration as set out below. The Sponsor and the Supplier shall, within thirty (30) days after the date of receipt of such notice of arbitration, jointly appoint a valuator to determine the Discriminatory Action Compensation Amount. The valuator so appointed shall be a duly qualified business valuator where the individual responsible for the valuation has not less than ten (10) years’ experience in the field of business valuation. If the Sponsor and the Supplier are unable to agree upon a valuator within such period, the Sponsor and the Supplier shall jointly make application (provided that if a Party does not participate in such application, the other Party may make application alone) under the *Arbitration Act, 1991* (Ontario) to a judge of the Superior Court of Justice to appoint a valuator, and the provisions of the *Arbitration Act, 1991* (Ontario) shall govern such appointment. The valuator shall determine the Discriminatory Action Compensation Amount within sixty (60) Business Days after the date of his or her appointment. Pending a decision by the valuator, the Sponsor and the Supplier shall share equally, and be responsible for their respective

shares of, all fees and expenses of the valuator. The fees and expenses of the valuator shall be paid by the non-prevailing party. “**Prevailing Party**” means the Party whose determination of the Discriminatory Action Compensation Amount is most nearly equal to that of the valuator’s determination. The Supplier’s and the Sponsor’s respective determinations of the Discriminatory Action Compensation Amount shall be based upon the Notice of Discriminatory Action and the Discriminatory Action Compensation Notice, as applicable.

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

13.4 Right of the Sponsor to Remedy a Discriminatory Action

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

ARTICLE 14 LIABILITY AND INDEMNIFICATION

14.1 Exclusion of Consequential Damages

Notwithstanding anything contained herein to the contrary, neither Party will be liable under this Agreement or under any cause of action relating to the subject matter of this Agreement for any special, indirect, incidental, punitive, exemplary or consequential damages, including loss of profits (save and except as provided in Section 13.2), loss of use of any property or claims of customers or contractors of the Parties for any such damages.

14.2 Liquidated Damages

Nothing in this Article shall reduce a Party's claim for liquidated damages pursuant to Sections 6.3(c), 10.2(b) or 10.2(f). The Supplier acknowledges and agrees with the Sponsor that the actual damages incurred by the Sponsor and Electricity consumers as a result of a failure by the Supplier to meet its obligations under this Agreement are impossible to definitively quantify and the Supplier further agrees that the payment of the liquidated damages set forth in this Agreement and the reduction in Term length pursuant to Article 9 constitutes a fair and reasonable means of compensating the Sponsor for damages likely to be incurred as a result of such delays and does not constitute a penalty.

14.3 Sponsor Indemnification

In addition to the indemnity provided by the Supplier in Section 2.6(d), the Supplier shall indemnify, defend and hold the Sponsor, the System Operator (to the extent that it is no longer the Sponsor), the Government of Ontario, the members of the Government of Ontario's Executive Council, and their respective Affiliates, and each of the foregoing Persons' respective directors, officers, employees, shareholders, advisors, and agents (including contractors and their employees) (collectively, the "**Indemnitees**") harmless from and against any and all claims, demands, suits, losses, damages, liabilities, penalties, obligations, payments, costs and expenses and accrued interest thereon (including the costs and expenses of, and accrued interest on, any and all actions, suits, proceedings for personal injury (including death) or property damage, assessments, judgments, settlements and compromises relating thereto and reasonable lawyers' fees and reasonable disbursements in connection therewith) (each, an "**Indemnifiable Loss**"), asserted against or suffered by the Indemnitees relating to, in connection with, resulting from, or arising out of:

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

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

14.4 Defence of Claims

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

- (b) Should any of the Indemnitees be entitled to indemnification under Section 14.3 as a result of a Claim by a third party, and the Supplier fails to assume the defence of such Claim (which failure shall be assumed if the Supplier fails to provide the notice prescribed by Section 14.4(a)), the Indemnitees shall, at the expense of the Supplier, contest (or, with the prior written consent of the Supplier, settle) such Claim, provided that no such contest need be made and settlement or full payment of any such Claim may be made without consent of the Supplier (with the Supplier remaining obligated to indemnify the Indemnitees under Section 14.3), if, in the written opinion of an independent third party counsel chosen by the Company Representatives, such Claim is meritorious. If the Supplier is obligated to indemnify any Indemnitees under Section 14.3, the amount owing to the Indemnitees will be the amount of such Indemnitees' actual out-of-pocket loss net of any insurance proceeds received or other recovery.

14.5 Joint and Several Liability

If the Supplier is not a single legal entity (for example, an unincorporated joint venture), then each of the legal entities forming the Supplier shall be jointly and severally liable to the Sponsor for all representations, warranties, obligations, covenants and liabilities of the Supplier hereunder.

ARTICLE 15
CONTRACT OPERATION AND ADMINISTRATION

15.1 Company Representative

The Supplier and the Sponsor shall by notice in the Prescribed Form, each appoint, from time to time, a representative (a “**Company Representative**”), who shall be duly authorized to act on behalf of the Party that has made the appointment, and with whom the other Party may consult at all reasonable times, and whose instructions, requests, and decisions, provided the same are in writing signed by the respective Company Representative, shall be binding on the appointing Party as to all matters pertaining to this Agreement. The Company Representatives shall not have the power or authority to amend this Agreement.

15.2 Record Retention; Audit Rights and Obligations

The Supplier and the Sponsor shall both keep complete and accurate records and all other data required by either of them for the purpose of proper administration of this Agreement. All such records shall be maintained as required by Laws and Regulations but for no less than for seven (7) years after the creation of the record or data. The Supplier and the Sponsor, on a confidential basis as provided for in Article 8 of this Agreement, shall provide reasonable access to the relevant and appropriate financial and operating records and data kept by it relating to this Agreement reasonably required for the other Party to comply with its obligations to Governmental Authorities or to verify or audit billings or to verify or audit information provided in accordance with this Agreement, including the provision of copies of documents and all other information reasonably required by the Sponsor or its Representative, which shall be delivered to the premises of the Sponsor or its Representative as directed by the Sponsor. Moreover, the Supplier agrees and consents to an LDC, the System Operator or any relevant third party providing to the Sponsor, all relevant meter and invoice data regarding the Facility required by the Sponsor in order to verify the quantity of Delivered Electricity and Withdrawn Electricity. A Party may use its own employees for purposes of any such review of records provided that those employees are bound by the confidentiality requirements provided for in Article 8. Alternatively, a Party may at its own expense appoint an auditor to conduct its audit. The Party seeking access to such records in this manner shall pay the fees and expenses associated with use of the third party auditor.

15.3 Reports to the Sponsor

- (a) No later than sixty (60) days after the end of each Contract Year, the Supplier shall provide the Sponsor with an annual report in the Prescribed Form, setting out the following information:
 - (i) details (excluding pricing) of any capital upgrades; new, upgraded or replaced equipment; control systems or software upgrades; and any other periodic or major capital or operating maintenance performed during the preceding Contract Year;

- (ii) an accounting of all outages during the preceding Contract Year, including the cause, duration, and steps taken to return the Facility to operation; and
 - (iii) any other information (other than confidential third-party pricing) as requested by the Sponsor to evaluate the Facility's operations, including, for example, the Facility's operational strategy or an assessment of the effectiveness of the Facility's operating strategy.
- (b) The Sponsor may, following receipt of any report provided pursuant to Section 15.3(a), request a meeting with the Supplier's personnel who have knowledge of the matters in such report, to discuss such matters. Such meeting shall be held in person in Toronto, Ontario, if mutually convenient, otherwise it may be convened by teleconference.

15.4 Inspection of Facility

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

15.5 Inspection Not Waiver

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

not constitute or be deemed to constitute a waiver of any Sponsor Event of Default, nor shall it constitute or be deemed to constitute an acknowledgement that there has been or will be compliance by the Sponsor with this Agreement.

15.6 Capacity Check Tests

- (a) The Sponsor shall have the option, exercisable on no more than two (2) occasions per Contract Year, to require the Supplier to conduct a test (the “**Capacity Check Test**”), at the Supplier’s sole cost and expense, that may be witnessed by the Sponsor or its Representative, to confirm the ability of the Facility to produce the Storage Capacity and the Contract Capacity, as described below. Such Capacity Check Test shall be scheduled by the Supplier within ten (10) Business Days after written notice has been delivered to the Supplier, provided that if the Facility is unavailable at such time due to a scheduled outage or Force Majeure, the Supplier shall promptly notify the Sponsor and may have an additional ten (10) Business Days (or, in the case of Force Majeure, ten (10) Business Days following the conclusion of the event or circumstance constituting Force Majeure), within which to schedule such test. The Supplier shall promptly notify the Sponsor of the timing for the test, including the schedule for the Initial Discharge Stage, the Recharge Stage and the Subsequent Discharge Stage.
- (b) The Capacity Check Test will be carried out in accordance with a test protocol (the “**Test Protocol**”) which will include test procedures, test requirements, a description of applicable data collection and calculations and the format of the report to be prepared in respect of the Capacity Check Test and which Test Protocol is to be prepared by the Supplier and submitted in writing to the Sponsor for approval no later than six month prior to the Milestone Date for Commercial Operation. The Test Protocol shall include the requirement that an Independent Engineer observe and certify the Capacity Check Test, at the Supplier’s sole expense. The measurements of the Capacity Check Test shall be made using Revenue Meters, supplemented, if necessary, with Facility instrumentation acceptable to the Sponsor, acting reasonably, as set forth in the Test Protocol.
- (c) In order to perform a Capacity Check Test, the Facility must, within a 30-hour period:
 - (i) Deliver Electricity to discharge the Facility over a period of no longer than four consecutive clock hours (the “**Initial Discharge Stage**”);
 - (ii) Withdraw Electricity to recharge the Facility over a period of no longer than eight consecutive clock hours (the “**Recharge Stage**”);
 - (iii) Store such Withdrawn Electricity for a period of at least one clock hour, during which there shall be no electrical input to the energy storage unit, provided that for greater certainty, Station Service Loads shall be permitted to operate during such clock hour so long as they do not serve to

increase or restore any degradation of the State-of-Charge of the Facility;
and

- (iv) Deliver Electricity to discharge the Facility over a period of no longer than four consecutive clock hours (the “**Subsequent Discharge Stage**”).
- (d) The result of the Capacity Check Test (the “**CCT Capacity**”) shall be measured in MW as the lowest of:
 - (i) the total Electricity Delivered during the Initial Discharge Stage divided by four hours,
 - (ii) the total quantity of Electricity Withdrawn during the four consecutive clock hours of the Recharge Stage with the greatest aggregate Withdrawal, divided by four hours,
 - (iii) the total Electricity Delivered during the four clock hours of the Subsequent Discharge Stage, divided by four hours, and
 - (iv) the minimum quantity of Electricity Delivered in any of the four clock hours in the Subsequent Discharge Stage, divided by one hour and divided by 0.9,

provided that the CCT Capacity cannot be greater than the Contract Capacity.

- (e) If the CCT Capacity is equal to the Contract Capacity, then the Capacity Check Test shall have been passed. If the CCT Capacity is less than the Contract Capacity, then the Capacity Check Test shall not have been passed and from and after the start of the first Settlement Month following the one in which such Capacity Check Test occurred, a factor shall be applied against the Net Revenue Requirement in the calculation of the Monthly Payment as provided in Exhibit J (the “**Capacity Reduction Factor**”) and which shall be calculated as the CCT Capacity divided by the Contract Capacity, until such time as the Supplier performs a new Capacity Check Test, provided that (i) in respect of the first Capacity Check Test during the Term that was not passed, the Capacity Reduction Factor cannot be increased for a minimum of three Settlement Months, (ii) in respect of the second Capacity Check Test during the Term that was not passed, the Capacity Reduction Factor cannot be increased for a minimum of six Settlement Months, (iii) in respect of the third and any subsequent Capacity Check Test during the Term that was not passed, the Capacity Reduction Factor cannot be increased for a minimum of twelve Settlement Months. If a Capacity Reduction Factor applies, the Supplier shall have the right to conduct up to two (2) Capacity Check Tests per Contract Year for the purpose of increasing the Capacity Reduction Factor, subject to all the terms set forth in this Section 15.6.
- (f) The Supplier shall at the Supplier’s sole cost and expense and within ten (10) Business Days, or as provided in the Test Protocol, after completion of the

Capacity Check Test prepare and submit to the Sponsor a written Capacity Check Test report that includes the data collected during the test period, computation of test data and the test results, including the CCT Capacity. The Sponsor shall provide to the Supplier within ten (10) Business Days after receipt of the Capacity Check Test report from the Supplier, written confirmation of the Electricity Withdrawn and Delivered for each hour during the Capacity Check Test (the “**CCT Confirmation**”).

- (g) If in any one Capacity Check Test the Capacity Reduction Factor is calculated at or below 0.70, or in two consecutive Capacity Check Tests the Capacity Reduction Factor is calculated at or below 0.85, it shall be a Supplier Event of Default.

15.7 Notices

- (a) All notices, consents, approvals, requests, reports and other information pertaining to this Agreement not explicitly permitted to be in a form other than writing shall be in writing and shall be addressed to the other Party as follows (each, a “**Notice**”):

If to the Supplier:

Attention:

Facsimile:

If to the Sponsor: Independent Electricity System Operator
120 Adelaide Street West
Suite 1600
Toronto, Ontario
M5H 1T1

Attention: Director, Contract Management

Facsimile: 416-969-6071

E-mail: contract.management@ieso.ca

Either Party may, by written Notice to the other, change its respective Company Representative or the address to which Notices are to be sent.

- (b) Notices shall be delivered or transmitted as set out below, and shall be considered to have been received by the other Party:
 - (i) on the date of delivery if delivered by hand or by courier prior to 5:00 p.m. (local time of the recipient) on a Business Day and otherwise on the next following Business Day, it being agreed that the onus of establishing delivery shall fall on the Party delivering the notice;

- (ii) in those circumstances where electronic transmission (other than transmission by facsimile) is expressly permitted under this Agreement, on the date of delivery if delivered prior to 5:00 p.m. (local time of the recipient) on a Business Day and otherwise on the next following Business Day, provided that a copy of such notice is also delivered by regular post within a reasonable time thereafter;
 - (iii) on the third (3rd) Business Day following the date of transmission by facsimile, if transmitted prior to 5:00 p.m. (local time of the recipient) on a Business Day and otherwise on the fourth (4th) following Business Day, provided that a copy of such notice is also delivered by regular post within a reasonable time thereafter; and
 - (iv) on the fifth (5th) Business Day following the date of mailing by registered post.
- (c) Notwithstanding Section 15.7(b):
- (i) any Notices of an Event of Default and termination of this Agreement shall only be given by hand or courier delivery; and
 - (ii) if regular post service, facsimile, or other form of electronic communication is interrupted by strike, slowdown, a Force Majeure event or other cause, a notice, direction or other instrument sent by the impaired means of communication will not be deemed to be received until actually received, and the Party sending the notice shall utilize any other such service which has not been so interrupted to deliver such notice.
- (d) No Notice to the Sponsor shall be deemed delivered unless the addressee of such Notice is identified in such Notice as “Contract Management”. No Notice from the Sponsor shall be binding on the Sponsor pursuant to this Agreement unless the sender of such Notice is identified in such Notice as “Contract Management”. No Notice delivered pursuant to this Agreement shall be deemed to be notice for any other purpose, including any obligation to provide notice to the System Operator pursuant to the IESO Market Rules.

ARTICLE 16 MISCELLANEOUS

16.1 Informal Dispute Resolution

If either Party considers that a dispute has arisen under or in connection with this Agreement that the Parties cannot resolve, then such Party may deliver a notice to the other Party describing the nature and the particulars of such dispute. Within twenty (20) Business Days following delivery of such notice to the other Party, an executive (vice-president or higher) from each Party shall meet, either in person or by telephone (the “**Senior Conference**”), to attempt to resolve the dispute. Each senior executive shall be prepared to propose a solution to the dispute. If,

following the Senior Conference, the dispute is not resolved, the dispute may be settled by arbitration pursuant to Section 16.2, if agreed to by both Parties.

16.2 Arbitration

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

16.3 Business Relationship

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

16.4 Binding Agreement

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

provisions of this Agreement shall be binding upon and shall enure to the benefit of the Parties and their respective successors and permitted assigns.

16.5 Assignment

- (a) Except as set out below and as provided in Article 12, neither this Agreement nor any of the rights, interests or obligations under this Agreement may be assigned by either Party, including by operation of Laws and Regulations, without the prior written consent of the other Party, which consent shall not be unreasonably withheld.
- (b) The Supplier may, subject to compliance with Laws and Regulations and provided that there is not a Supplier Event of Default that has not been remedied, assign this Agreement without the consent of the Sponsor to an Affiliate acquiring the Facility; provided, however, that no such assignment by the Supplier or any of its successors or permitted assigns hereunder shall be valid or effective unless and until such Affiliate agrees with the Sponsor in writing to assume all of the Supplier's obligations and be bound by the terms of this Agreement, and the arrangements and obligations of the Supplier set forth in Article 6 have been met in accordance with the terms of Article 6. If a valid assignment of this Agreement is made by the Supplier in accordance with this Section 16.5, the Sponsor acknowledges and agrees that, upon such assignment and assumption and notice thereof by the assignor to the Sponsor, the assignor shall be relieved of all its duties, obligations and liabilities hereunder.
- (c) If the Supplier assigns this Agreement to a non-resident of Canada (the "**Assignee**"), as that term is defined in the ITA, and the Sponsor incurs any additional Taxes, at any time thereafter, solely as the result of such assignment, then payments under this Agreement by the Sponsor shall be reduced by the amount of such additional or withholding Taxes and the Sponsor shall remit such additional or withholding Taxes to the applicable taxing authorities. The Sponsor shall within sixty (60) days after remitting such Taxes, notify the Assignee in writing, providing reasonable detail of such payment so that the Assignee may claim any applicable rebates, refunds or credits from the applicable taxing authorities. If after the Sponsor has paid such amounts, the Sponsor receives a refund, rebate or credit on account of such Taxes, then the Sponsor shall promptly remit such refund, rebate or credit amount to the Assignee.
- (d) The Independent Electricity System Operator shall have the right to assign this Agreement and all benefits and obligations hereunder for the balance of the Term without the consent of the Supplier to an assignee with a Credit Rating no lower than that set forth in the fourth (4th) row of the table in Section 6.4(b)(i), which such assignee shall assume the obligations and liability of the Independent Electricity System Operator under this Agreement and be novated into this Agreement in the place and stead of the Independent Electricity System Operator (except for the Independent Electricity System Operator's obligation in Section 16.5(d)(iii) which will remain in force), provided that the assignee agrees in

writing to assume and be bound by the terms and conditions of this Agreement, and further agrees to provide the Secured Lender with a written acknowledgement of the Secured Lender's rights in relation to this Agreement in the Prescribed Form, whereupon:

- (i) the representation set forth in Section 7.2(a) shall apply to the assignee with all necessary amendments to reflect the form and the manner in which the assignee was established;
 - (ii) all of the other representations set forth in Section 7.2 shall be deemed to be made by the assignee to the Supplier at the time of such assignment and assumption; and
 - (iii) the Independent Electricity System Operator shall be relieved of all obligations and liability arising pursuant to this Agreement; notwithstanding the foregoing, the Independent Electricity System Operator shall remain liable to the Supplier for remedying any payment defaults under Section 10.3(a) before any such payment default becomes a Sponsor Event of Default, and shall remain liable for any obligations and liabilities of the assignee arising from any Sponsor Event of Default. Any notice required to be given under Sections 10.3 and 10.4(a) shall be given to the assignee and to the Independent Electricity System Operator. The time periods in Section 10.3 shall not begin to run until both the assignee and the Independent Electricity System Operator have been so notified.
- (e) The Independent Electricity System Operator shall have the right to assign this Agreement and all benefits and obligations hereunder from time to time throughout the Term for a period less than the balance of the Term (the “**Assignment Period**”) without the consent of the Supplier to an assignee with a Credit Rating no lower than that set forth in the fourth (4th) row of the table in Section 6.4(b)(i), which such assignee shall assume the obligations of the Independent Electricity System Operator under this Agreement and be novated into this Agreement in the place and stead of the Independent Electricity System Operator (except for the Independent Electricity System Operator's obligation in Section 16.5(e)(iii) which will remain in force), provided that the assignee agrees in writing to assume and be bound by the terms and conditions of this Agreement, and further agrees to provide the Secured Lender with a written acknowledgement of the Secured Lender's rights in relation to this Agreement in the Prescribed Form, whereupon:
- (i) the representation set forth in Section 7.2(a) shall apply to the assignee with all necessary amendments to reflect the form and the manner in which the assignee was established;
 - (ii) all of the other representations set forth in Section 7.2 shall be deemed to be made by the assignee to the Supplier at the time of such assignment and assumption;

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

16.6 No Change of Control

- (a) The Supplier shall not permit or allow a change of Control of the Supplier, except with the prior written consent of the Sponsor, which consent may not be unreasonably withheld. It shall not be unreasonable to withhold such consent if the change of Control will have or is likely to have, as determined by the Sponsor acting reasonably, a Material Adverse Effect on the Supplier's ability to perform its obligations under this Agreement, in which case such consent may be withheld by the Sponsor.
- (b) For the purposes of Sections 16.6(a) and 16.7(a)(ii), a change of Control shall exclude, and for purposes of Section 16.7(a)(iii) the restriction therein shall exclude, a change in ownership of any shares or units of ownership that are listed on a recognized stock exchange, provided that such shares or units of ownership are not those of an entity that directly owns the Facility whose special or sole purpose is the ownership of the Facility or the Facility and other facilities under a

contract or other bilateral arrangements with the Sponsor that have similar change of Control restrictions. For greater certainty, and the purposes of Sections 16.6(a) and 16.7(a)(ii), a change of Control shall include a change from no Person having Control of the Supplier to any Person having Control of the Supplier, as well as a change from any Person having Control of the Supplier to no Person having Control of the Supplier.

16.7 No Assignment or Change of Control for Specified Period

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

be permitted until the first (1st) anniversary of the Term Commencement Date.

16.8 Survival

The provisions of Sections 2.6(d), 2.7(b), 2.7(c), 2.10, 4.1, 4.4, 4.5, 4.6, Article 5, Section 6.3(c), Article 8, Sections 10.2, 10.4, 10.5, and 12.2(g), Article 14, Sections 15.2, 15.3, 16.1, 16.2, and 16.5(c) to 16.5(d) shall survive the expiration of the Term or earlier termination of this Agreement. The expiration of the Term or a termination of this Agreement shall not affect or prejudice any rights or obligations that have accrued or arisen under this Agreement prior to the time of expiration or termination and such rights and obligations shall survive the expiration of the Term or the termination of this Agreement for a period of time equal to the applicable statute of limitations.

16.9 Counterparts

This Agreement may be executed in two or more counterparts, and all such counterparts shall together constitute one and the same Agreement. It shall not be necessary in making proof of the contents of this Agreement to produce or account for more than one such counterpart. Any Party may deliver an executed copy of this Agreement by facsimile or electronic mail but such Party

shall, within ten (10) Business Days of such delivery by facsimile or electronic mail, promptly deliver to the other Party an originally executed copy of this Agreement.

16.10 Additional Rights of Set-Off

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

16.11 Rights and Remedies Not Limited to Contract

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

16.12 Time of Essence

Time is of the essence in the performance of the Parties' respective obligations under this Agreement. Where the Supplier is required to provide any information or documentation to the Sponsor and no timeframe has been specified in this Agreement, the Supplier shall provide such information or documentation promptly.

16.13 Further Assurances

Each of the Parties shall, from time to time on written request of the other Party, do all such further acts and execute and deliver or cause to be done, executed or delivered all such further acts, deeds, documents, assurances and things as may be required, acting reasonably, in order to fully perform and to more effectively implement and carry out the terms of this Agreement. The Parties agree to promptly execute and deliver any documentation required by any Governmental Authority in connection with any termination of this Agreement.

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

[●]

**INDEPENDENT ELECTRICITY
SYSTEM OPERATOR**

By: _____
Name:
Title:

By: _____
Name:
Title:

By: _____
Name:
Title:

By: _____
Name:
Title:

We have authority to bind the corporation.

We have authority to bind the corporation.

**EXHIBIT A
FACILITY DESCRIPTION**

Name of Facility:	[●]
--------------------------	-----

Part A:

Energy Storage Technology Class:	[●]
Municipal Location and Address:	[●]
Connection Point and Circuit Designation:	[●]
Feeder / Transformer Station / Distribution Station (if applicable):	[●]
Connection Capacity Limit:	[●]

Part B:

Detailed Description of Facility:

1.0 Overview including Description of Technology

[●]

1.1 Site Description (including zoning)

[●]

1.2 Project Design and Major Equipment (including Single Line Diagram and manufacturer's spec sheets), and Nameplate MVA Rating

[●]

1.3 Environmental Features (including a description of features and technologies that mitigate environmental concerns in relation to air quality, noise, water, sewage discharge, etc.):

[●]

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

[●]

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

[●].

EXHIBIT B
CONTRACT CAPACITY, NET REVENUE REQUIREMENT, AND OTHER STATED
VARIABLES

Net Revenue Requirement (NRR)	<input checked="" type="checkbox"/> \$/MW-month
Contract Capacity	<input checked="" type="checkbox"/> MW

**EXHIBIT C
NOT USED**

**EXHIBIT D
NOT USED**

EXHIBIT E
DETERMINATION OF REGULATORY CHARGE CREDIT

This Exhibit E sets out the calculation of the Regulatory Charge Credit for a given Settlement Month “*m*”:

$RCC_m = GREA_m \times RAF_m$	
where:	
RCC_m	is the Regulatory Charge Credit for Settlement Month “ <i>m</i> ” (in \$).
$GREA_m$	is the Gross Reimbursable Energy Adder for Settlement Month “ <i>m</i> ” (in \$), and is calculated as the sum of all Regulatory Energy Charges incurred by the Supplier in respect of Withdrawn Electricity during Settlement Month “ <i>m</i> ”.
RAF_m	is the Reimbursement Adjustment Factor for Settlement Month “ <i>m</i> ”, and is calculated as $AMRTE_m$ divided by RRE, provided that the RAF_m shall not be greater than 1.0.
$AMRTE_m$	is the Apparent Monthly RTE for Settlement Month “ <i>m</i> ” and is calculated as the total Delivered Electricity during Settlement Month “ <i>m</i> ” divided by the total Withdrawn Electricity during Settlement Month “ <i>m</i> ”.
RRE	is the Reimbursement Reference Efficiency, and is equal to 0.80.

EXHIBIT F
MILESTONE DATES

	MILESTONE EVENT	MILESTONE DATE (Month/Day/Year)
1.	Commercial Operation	<i>[Note to finalization: Insert date that is thirty months after the Contract Date.]</i>

EXHIBIT G
CALCULATION OF CYCLE DEFICIENCY REDUCTION FACTOR

1. The Cycle Deficiency for Settlement Months that are not Sponsor Scheduled Months is calculated as follows:
 - a. For any Storage Day, the “**Fourth Charge Hour**” shall be equal to the fourth lowest (least expensive) HOEP for such Storage Day, and the “**Fourth Discharge Hour**” shall be equal to the fourth highest (most expensive) HOEP for such Storage Day.
 - b. An “**Imputed Cycling Day**” shall be any Storage Day that is not the subject of an event of Force Majeure where the Fourth Charge Hour is less than or equal to the Fourth Discharge Hour multiplied by 0.70 (the “**Operating Reference RTE**”).
 - c. The “**Imputed Cycle Count**” shall be equal to the total number of Imputed Cycling Days occurring during the applicable Settlement Month.
 - d. The “**Equivalent Cycle Count**” in respect of any Settlement Month is equal to the total Delivered Electricity during the applicable Settlement Month excluding any Storage Days that are the subject of an event of Force Majeure, divided by the Adjusted Contract Capacity for such Settlement Month and divided by four hours.
 - e. For any Settlement Month that is not a Sponsor Scheduled Month, the “**Cycle Deficiency**” is equal to the Imputed Cycle Count for the applicable Settlement Month minus the Equivalent Cycle Count for the applicable Settlement Month, which, for greater certainty, may be less than zero.
2. Calculation of Cycle Deficiency for Settlement Months that are Sponsor Scheduled Months:
 - a. The “**Scheduled Cycle Count**” in respect of any Settlement Month that is a Sponsor Scheduled Month shall be equal to the sum of the number of Core Charge Hours and Discharge Hours in such Sponsor Scheduled Month, divided by eight, in each case excluding any Core Charge Hours and Discharge Hours during Storage Days that are the subject of an event of Force Majeure or that are Required Outage Days.
 - b. The “**Matched Cycle Count**” in respect of any Settlement Month that is a Sponsor Scheduled Month is equal to one eighth of the sum of:
 - i. the sum over all Discharge Hours in the applicable Settlement Month of the lesser of (A) the Delivered Electricity in such hour divided by the Adjusted Contract Capacity times one hour, and (B) 1.0; and

- ii. the sum over all Overall Charge Hours in the applicable Settlement Month of the lesser of (A) the Withdrawn Electricity in such hour divided by the Adjusted Contract Capacity times one hour, and (B) 1.0,

in each case excluding any Delivered or Withdrawn Electricity, as applicable, during Storage Days that are the subject of an event of Force Majeure or that are Required Outage Days.

- c. For any Settlement Month that is a Sponsor Scheduled Month, the “**Cycle Deficiency**” is equal to the Scheduled Cycle Count multiplied by 0.90, for the applicable Settlement Month, minus the Matched Cycle Count for the applicable Settlement Month, provided that the Cycle Deficiency shall not be less than zero.

3. Calculation of the Cycle Deficiency Reduction Factor

- a. For the first three Settlement Months of the Term, the “**Cycle Deficiency Reduction Factor**” or “**CDRF**” shall be equal to 1.0.

- b. For any Settlement Month starting with the fourth Settlement Month of the Term that is not a Sponsor Scheduled Month, the CDRF shall be calculated as one minus:

- i. the sum of the Cycle Deficiency for the applicable Settlement Month and the two most recently preceding Settlement Months that are not Sponsor Scheduled Months, determined in accordance with Section 1(e) of this Exhibit G, but not less than zero, divided by:

- ii. the total number of Storage Days in such three Settlement Month period, excluding any Storage Days that are the subject of an event of Force Majeure.

- c. For any Settlement Month starting with the fourth Settlement Month of the Term that is a Sponsor Scheduled Month, the CDRF shall be calculated as one minus:

- i. the Cycle Deficiency for the applicable Settlement Month determined in accordance with Section 2(c) of this Exhibit G, but not less than zero, divided by:

- ii. the total number of Storage Days in such Settlement Month, excluding any Storage Days that are the subject of an event of Force Majeure or that are Required Outage Days.

- 4. If the Cycle Deficiency Reduction Factor is less than or equal to 0.75 for any two Settlement Months in a 12-Settlement Month rolling period, or is less than or equal to 0.50 in any Settlement Month, it shall be a Supplier Event of Default.

EXHIBIT H
FORM OF INDEPENDENT ENGINEER CERTIFICATE

FORM OF INDEPENDENT ENGINEER CERTIFICATE
SUBMIT BY E-MAIL (PDF WITH SIGNATURE) TO
<mailto:contract.management@ieso.ca>

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

Date	
Legal Name of Supplier	
Name of Facility	
Contract Title	(the “Contract”)
Contract Date	
Legal Name of Independent Engineer	

WHEREAS subsection 2.4(a)(i) of the Contract between the Supplier and the Sponsor dated as of [Contract Date] requires the Supplier to cause the Sponsor to have received a certificate (this “Certificate”) addressed to it from an Independent Engineer containing certain statements with respect to the Facility;

AND WHEREAS [Legal Name of Independent Engineer] (the “Undersigned”) acts as the Independent Engineer for the purposes of delivery of this Certificate;

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

- (i) the Undersigned is duly qualified and licensed to practice engineering in the province of Ontario;
- (ii) the Undersigned is neither an employee nor a consultant of the Supplier such that the majority of either the time or billings of the Undersigned during the 18 month period prior to the date hereof were devoted to the Facility;
- (iii) the Undersigned is not an affiliate of the Supplier nor directly or indirectly Controlled by the Supplier;
- (iv) that each of the required statements set out in subparagraphs (A) to (D), inclusive, of Section 2.4(a)(i) of the Contract are true, correct, and have been satisfied with respect of the Facility; and

- (v) if the Facility is connected to a Distribution System, the Facility is set up with the applicable LDC for settlement of charges and payments for the Delivery and Withdrawal of Electricity.

Signed this	[Day]	day of	[Month, Year]	.
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			[Legal Name of Independent Engineer]		
			Per:		
				Name: [Name, P.Eng.]	
				Title: [Title]	

			Professional Engineer Stamp of Signing Engineer	

**EXHIBIT I
FORM OF SUPPLIER'S CERTIFICATE**

SUBMIT BY E-MAIL (PDF WITH SIGNATURE) TO
<mailto:contract.management@powerauthority.ca> contract.management@ieso.ca

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

Date	
Legal Name of Supplier	
Name of Facility	
Contract Title	(the "Contract")
Contract Date	
Commercial Operation Date or Term Commencement Date	
Beginning of the Hour Ending	01:00 hours (EST)

WHEREAS subsection 2.4(a)(ii) of the Contract between [Supplier Short Name] and the Sponsor dated as of [Contract Date] required the Supplier to provide the Sponsor with a certificate (this "Certificate") addressed to it from the Supplier containing certain statements with respect to the Facility;

NOW THEREFORE, [SUPPLIER LEGAL NAME] CERTIFIES to the Sponsor that:

- a) [Independent Engineering Company Legal Name] is:
 - (i) duly qualified and licensed to practice engineering in the province of Ontario and which holds a certificate of authorization issued by Professional Engineers Ontario;
 - (ii) does not have a vested interest in the design, engineering, procurement, construction, metering and/or testing of the facility; and
 - (iii) not an affiliate of [Supplier Short Name] nor directly or indirectly Controlled by [Supplier Short Name].

- b) [Supplier Short Name] has provided to the Sponsor the following documentation required to be so provided:
 - i) Certificate of an independent professional engineer using IESO's "Form of Independent Engineer Certificate" in accordance with Section 2.4(a)(i) of Contract;

- ii) As-built single line diagram in respect of the Facility;
- iii) Insurance certificates required pursuant to Section 2.8 of the Contract, including without limitation, certificates in respect of:
 - 1) All-risk property insurance;
 - 2) Equipment breakdown insurance (if applicable);
 - 3) Commercial general liability insurance; and
 - 4) Environmental/pollution liability insurance;
- iv) *Workplace Safety and Insurance Act* (Ontario) clearance certificate pursuant to Section 2.8;
- v) Metering Plan that has been approved by the Sponsor; pursuant to Section 2.7;
- vi) Ontario Energy Board Generator License; and
- vii) copies of all permits and approvals issued by Governmental Authorities which are required to construct, operate and maintain the Facility in accordance with Laws and Regulations.

Signed this	[Day]	day of	[Month, Year]	.
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			[Legal Name of Supplier]		
			Per:		
				Name: [Name]	
				Title: [Title]	

**EXHIBIT J
CALCULATION OF CSP AND RSP**

This Exhibit J sets out the calculation of the Contingent Support Payment and the Revenue Sharing Payment, as applicable, for a given Settlement Month “*m*” in Contract Year “*y*”, which is a four stage calculation which involves:

Stage I	Determination of the Total Monthly Fixed Capacity Payment;
Stage II	Determination of the Sponsor Scheduled Operation Payment, if any;
Stage III	Determination of the Net Market Revenue Sharing Amount, if applicable; and
Stage IV	Determination of the Contingent Support Payment and the Revenue Sharing Payment.

Except as expressly set forth below, all references to Sections are to Sections of the Agreement.

1.0 STAGE I: DETERMINATION OF TOTAL MONTHLY FIXED CAPACITY PAYMENT

1.1 The Total Monthly Fixed Capacity Payment is calculated as follows:

TMFCP_m = ACC_m × FMCRF_m × CDRF_m × NRR	
where:	
TMFCP _m	TMFCP _m is the Total Monthly Fixed Capacity Payment (in \$ for the Settlement Month), provided that if the Settlement Month is the first or last Settlement Month of the Term, the TMFCP _m for the Settlement Month will be prorated for the number of days of the Term in the Settlement Month and the Total Monthly Fixed Capacity Payment shall be calculated as follows: TMFCP_m=(ACC_m×FMCRF_m×CDRF_m×NRR)×(SMD_m/CMD_m)
SMD _m	is the number of days in the Settlement Month “ <i>m</i> ” (i.e. the number of days of the Term in such month).
CMD _m	is the total number of days in the calendar month in which the Settlement Month “ <i>m</i> ” falls.

NRR	is the Net Revenue Requirement (in \$/MW-month), as set out in Exhibit B.
FMCRF _m	is the Force Majeure Capacity Reduction Factor for Settlement Month “m” which shall be equal to 1.0 unless there are Storage Days in the Settlement Month that are the subject of an event of Force Majeure, otherwise it shall be calculated as follows: $\mathbf{FMCRF}_m = 1 - \frac{FMOD_m}{N_m}$
ACC _m	is the Adjusted Contract Capacity (in MW) for the Settlement Month “m”, and is calculated as follows: $ACC_m = CC \times CRF_m$
CRF _m	is the Capacity Reduction Factor for Settlement Month “m” as defined in Section 15.6. The Capacity Reduction Factor shall be 1.0 unless and to the extent the circumstances set out in Section 15.6(e) apply.
CC	is the Contract Capacity (in MW).
N _m	is the total number of Storage Days in Settlement Month “m”.
FMOD	is a Force Majeure Outage Day, which is a Storage Day in Settlement Month “m” which is the subject of an event of Force Majeure.
FMOD _m	is the total number of Force Majeure Outage Days in Settlement Month “m”.
CDRF _m	is the Cycle Deficiency Reduction Factor for Settlement Month “m” determined in accordance with Exhibit G.

2.0 STAGE II: DETERMINATION OF SPONSOR SCHEDULED OPERATION PAYMENT

2.1 For any Settlement Month that is not a Sponsor Scheduled Month, the Sponsor Scheduled Operation Payment shall be equal to zero. For any Settlement Month is a Sponsor Scheduled Month, the Sponsor Scheduled Operation Payment shall be calculated as follows:

<p>If $[\sum_{OCH=1}^{OCHn} HOEP_{OCH} \times HWE_{OCH}] \geq [\sum_{DH=1}^{DHn} HOEP_{DH} \times HDE_{DH}]$,</p> $\mathbf{SSOP}_m = \sum_{OCH=1}^{OCHn} HOEP_{OCH} \times HWE_{OCH} - [\sum_{DH=1}^{DHn} HOEP_{DH} \times HDE_{DH}]$ <p>If $\sum_{OCH=1}^{OCHn} HOEP_{OCH} \times HWE_{OCH} < [\sum_{DH=1}^{DHn} HOEP_{DH} \times HDE_{DH}]$,</p> $\mathbf{SSOP}_m = 0.$	
where:	

SSOP _m	is the Sponsor Scheduled Operation Payment for Settlement Month “m” (in \$).
HOEP _{OCH}	is the Hourly Ontario Energy Price applicable to each hour that is an Overall Charge Hour in Settlement Month “m”.
HWE _{OCH}	is the total Withdrawn Electricity in each Overall Charge Hour in Settlement Month “m” that is not the subject of an event of Force Majeure, provided that for the purpose of this Section 2.0 of Exhibit J, the Hourly Withdrawn Electricity shall not exceed the Contract Capacity times one hour.
OCH	is an Overall Charge Hour.
OCH _n	is the total number of Overall Charge Hours in Settlement Month “m” that are not the subject of an event of Force Majeure.
HOEP _{DH}	is the Hourly Ontario Energy Price applicable to each hour that is a Discharge Hour in Settlement Month “m”.
HDE _{DH}	is the total Delivered Electricity in each Discharge Hour in Settlement Month “m” that is not the subject of an event of Force Majeure, provided that for the purpose of this Section 2.0 of Exhibit J, the Hourly Delivered Electricity shall not be less than the Contract Capacity times one hour.
DH	is a Discharge Hour.
DH _n	is the total number of Discharge Hours in Settlement Month “m” that are not the subject of an event of Force Majeure.

3.0 STAGE III: DETERMINATION OF NET MARKET REVENUE SHARING AMOUNT

The Net Market Revenue Sharing Amount for any Settlement Month of Contract Year “y” other than the final Settlement Month of such Contract Year is equal to zero. For the final Settlement Month of Contract Year “y”, the Net Market Revenue Sharing Amount is calculated as follows:

$\text{NMRSA}_m = [\text{ONR}_y - (\text{TNR} \times \text{CC})] \times \text{SSP},$ <p>provided that NMRSA_m shall not be less than zero.</p>	
where:	
NMRSA _m	is the Net Market Revenue Sharing Amount for Settlement Month “m” in Contract Year “y” (in \$).
ONR _y	is the Operating Net Revenue applicable to Contract Year “y”, and is calculated as follows:

	$ONR_y = [\sum_{h=1}^n HOEP_h \times HDE_h] - [\sum_{h=1}^n HOEP_h \times HWE_h] + SSOP_y + RFCRP_y$
HOEP _h	is the Hourly Ontario Energy Price applicable to hour “h” in Contract Year “y”.
HDE _h	is the total Delivered Electricity in hour “h”.
HWE _h	is the total Withdrawn Electricity in hour “h”.
SSOP _y	is equal to the sum of SSOP _m for each applicable Settlement Month in Contract Year “y”, calculated in accordance with Section 2.0 of this Exhibit J.
RFCRP _y	is 100% of the net revenue (in \$) arising from any Future Contract Related Products that are Capacity Products corresponding to Contract Year “y”, where net revenue is calculated as the revenue received from the applicable Future Contract Related Products less any reasonable costs incurred by the Supplier to receive such revenue. For greater certainty, such costs shall be determined on an actual cost basis without mark-up, as confirmed by the Sponsor and Supplier, and which shall be subject to verification by the Sponsor, from time to time.
n	is the total number of hours in Contract Year “y”.
TNR	is the Threshold Net Revenue, and is equal to \$48,000/MW-year, provided that if the final Contract Year of the Term is less than 365 days, the TNR applicable to such Contract Year shall be multiplied the total number of days in such Contract Year and divided by 365.
SSP	is the Sponsor Sharing Percentage, and is equal to 0.50.

4.0 STAGE IV: DETERMINATION OF CONTINGENT SUPPORT PAYMENT AND REVENUE SHARING PAYMENT

4.1 The Contingent Support Payment and Revenue Sharing Payment for a Settlement Month are calculated as follows:

<p>If $TMFCP_m + SSOP_m > NMRSA_m$, then: $CSP_m = TMFCP_m + SSOP_m - NMRSA_m$ and $RSP_m = 0$.</p> <p>If $TMFCP_m + SSOP_m < NMRSA_m$, then: $RSP_m = NMRSA_m - (SSOP_m + TMFCP_m)$ and $CSP_m = 0$.</p> <p>If $TMFCP_m + SSOP_m = NMRSA_m$, then: $RSP_m = 0$ and $CSP_m = 0$.</p>	
where:	
$TMFCP_m$	is the Total Monthly Fixed Capacity Payment (in \$) for Settlement Month “ <i>m</i> ”.
$SSOP_m$	is the Sponsor Scheduled Operation Payment (in \$) for Settlement Month “ <i>m</i> ”.
$NMRSA_m$	is the Net Market Revenue Sharing Amount (in \$) in Settlement Month “ <i>m</i> ”.
CSP_m	is the Contingent Support Payment (in \$), if any, for Settlement Month “ <i>m</i> ”.
RSP_m	is the Revenue Sharing Payment (in \$), if any, for Settlement Month “ <i>m</i> ”.

EXHIBIT K
ARBITRATION PROCEDURES APPLICABLE TO SECTION 1.6 TO 1.10 INCLUSIVE
AND SECTION 2.10

The following rules and procedures (the “**Rules**”) shall govern, exclusively, any matter or matters to be arbitrated between the Parties under Sections 1.6 to 1.10 inclusive and Section 2.10 of this Agreement.

1. **Commencement of Arbitration** – If the Parties and, at the Sponsor’s option, all Other Suppliers required by the Sponsor to participate, have been unable to reach agreement as contemplated in Sections 1.6 to 1.10 inclusive and Section 2.10 of this Agreement, as applicable, then the Sponsor shall commence arbitration by delivering a written notice (the “**Request**”) to the Supplier and such Other Suppliers required by the Sponsor to participate (collectively the “**Suppliers**”). If the Sponsor has not already done so, the Sponsor shall then deliver to the Suppliers the names of such Other Suppliers. Within twenty (20) days of the delivery of the Request, the Sponsor shall deliver to the Suppliers a written notice nominating an arbitrator who shall be familiar with commercial law matters and has no financial or personal interest in the business affairs of any of the parties. Within twenty (20) days of the receipt of the Sponsor’s notice nominating its arbitrator, the Suppliers shall by written notice to the Sponsor nominate an arbitrator who shall be familiar with commercial law matters and has no financial or personal interest in the business affairs of any of the parties. The two (2) arbitrators nominated shall then select a chair person of the arbitration panel (the “**Arbitration Panel**”) who shall be a former judge of a Superior Court or appellate court in Canada.
2. **Application to Court** - If the Suppliers are unable to agree on the nomination of an arbitrator within twenty (20) days of the receipt of the Sponsor’s notice nominating its arbitrator, any of the Suppliers or the Sponsor may apply to a judge of the Superior Court of Justice of Ontario to appoint the arbitrator. If the two (2) arbitrators are unable to agree on a chair person within thirty (30) days of the nomination or appointment of the Supplier’s arbitrator, any of the Suppliers or the Sponsor may apply to a judge of the Superior Court of Justice of Ontario to appoint the chair person.
3. **General** - The Arbitration Panel, once appointed, shall proceed immediately to determine the Replacement Price and/or the Replacement Provision, as the case may be, in accordance with the *Ontario Arbitration Act, 1991* and, where applicable, the *Ontario International Commercial Arbitration Act*, it being the intention of the Sponsor and the Supplier that there be, to the extent possible, one arbitration proceeding and hearing to determine the Replacement Price and/or the Replacement Provision. Unless otherwise agreed by the Parties, the Arbitration Panel shall determine the conduct of the arbitral proceedings, including the exchange of statements of claim and defence, the need for documentary and oral discovery and whether to hold oral hearings with a presentation of evidence or oral argument so that the award may be made within the time period set out below. Each of the Suppliers shall have a right to participate in the arbitration proceeding.

4. **Consolidation** – The Parties agree that should the Arbitration Panel determine that the Replacement Price and/or the Replacement Provision needs to be determined through more than one (1) arbitration proceeding, then the Parties agree that the Arbitration Panel shall determine whether the arbitration proceedings shall be consolidated, conducted simultaneously or consecutively or whether any of the arbitration proceedings should be stayed until any of the others are completed.
5. **Award** - The award of the Arbitration Panel, which shall include the Replacement Price and/or Replacement Provision, shall be made within six (6) months after the appointment of the Arbitration Panel, subject to any extended date to be agreed by the Parties or any reasonable delay due to unforeseen circumstances.
6. **Costs** – The Parties shall pay their own costs of participating in the arbitration proceedings.
7. **Fees** - Each of the arbitrators on the Arbitration Panel shall be paid their normal professional fees for their time and attendances, which fees together with any hearing room fees, shall be paid by the Sponsor.
8. **Computation of Time** - In the computation of time under these Rules or an order or direction given by the Arbitration Panel, except where a contrary intention appears, or the parties otherwise agree:
 - (a) where there is a reference to a number of days between two events, those days shall be counted by excluding the day on which the first event happens and including the day on which the second event happens, even if they are described as clear days or the words “at least” are used;
 - (b) statutory holidays shall not be counted;
 - (c) where the time for doing any act or any order or direction given by the Arbitration Panel expires on a day which is not a Business Day, the act may be done on the next day that is a Business Day; and
 - (d) service of a document or notice or any order or direction given by the Arbitration Panel made after 4:00:00 p.m. (Toronto time), or at any time on a day which is not a Business Day, shall be deemed to have been made on the next Business Day.
9. **Place of Arbitration** - The arbitration, including the rendering of the award, shall take place in Toronto, Ontario, which shall be the seat of the proceedings. The language to be used in the arbitration shall be English.