



HYDROELECTRIC CONTRACT INITIATIVE – STANDARD FORM CONTRACT

(HCI CONTRACT)

1. **CONTRACT IDENTIFICATION #:** HCI-
2. **CONTRACT DATE:**
3. **TERM COMMENCEMENT DATE:**
4. **SPONSOR:** Independent Electricity System Operator
5. **SUPPLIER:**
6. **SUPPLIER'S ADDRESS:** _____ Fax: _____
Phone: _____
Contact Person: _____ Email: _____
7. **SUPPLIER INFORMATION:** OEB License Number: EG- _____
HST #: _____ Not a Non-Resident of Canada
 Non-Resident of Canada
8. **FACILITY NAME:**
9. **NAMEPLATE CAPACITY:** _____ MW
10. **CONTRACT CAPACITY:** _____ MW
11. **CONTRACT PRICE:** _____ \$/MWh

12. **ESCALATION PERCENTAGE:** 20%
13. **BASE DATE:**
14. **LOCATION:** Municipal Address: _____

Legal Description: _____

15. **CONNECTION POINT:** IESO-Controlled Grid (directly connected to the Transmission System)
 Host Facility (behind-the-meter)
Technical Description of Connection Point: _____

16. **HOST FACILITY: (IF APPLICABLE)** None
Name: _____
System Operator Registered Facility #: _____
Municipal Address: _____

Legal Description: _____

-
17. **EXHIBIT M FACTORS:** 0. ____ e (MW/cms)
18. **INCORPORATED SCHEDULES, APPENDICES AND EXHIBITS:** Schedule 1 – General Terms and Conditions, version ____
Appendix 1 – Standard Definitions, version ____
Exhibit A – Description of Facility
Exhibit B – Metering and Settlement, Type ____
Exhibit C – Form of Irrevocable Standby Letter of Credit
Exhibit D – Determination of Availability
Exhibit E – Arbitration Provisions Applicable to Sections 1.5, 1.6, 1.7, 2.11 & 12.2
Exhibit F – Metering Plan
Exhibit G – Long Term Operating Plan
Exhibit H – Annual Operating Plan
Exhibit I – Form of Secured Lender Consent and Acknowledgement
Exhibit J – Upgrades or Other Modifications of the Facility
Exhibit K – Special Provisions
Exhibit L – Webpage Information
Exhibit M – Determination of Hourly Delivered Electricity Foregone

For valuable consideration, the Sponsor and the Supplier hereby mutually agree to be bound by the terms and conditions set out in this HCI Contract and the Schedules, Appendices and Exhibits attached hereto as noted in item 18 above (the “**Agreement**”). Each of the Sponsor and the Supplier confirms that it has received a copy of and has reviewed this Agreement, and that its representations and warranties set out herein are true and correct.

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.

INSERT NAME OF SUPPLIER

INDEPENDENT ELECTRICITY SYSTEM OPERATOR

By: _____
Name:
Title:

By: _____
Name: JoAnne Butler
Title: Vice President, Market and Resource Development
I have authority to bind the corporation.

By: _____
Name:
Title:
I/We have authority to bind the Corporation.



**HYDROELECTRIC CONTRACT INITIATIVE – STANDARD FORM
CONTRACT (HCI CONTRACT)**

SCHEDULE 1

GENERAL TERMS AND CONDITIONS

VERSION 1.1

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HCI CONTRACT

GENERAL TERMS AND CONDITIONS

ARTICLE 1 DEFINITIONS

1.1 Definitions

In addition to the terms defined elsewhere in this Agreement, capitalized terms shall have the meanings given to them in the attached Appendix 1 – Standard Definitions.

1.2 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. Unless otherwise indicated, references to Articles, Sections, Schedules, Appendices and Exhibits are references to Articles, Sections, Schedules, Appendices and Exhibits in this Agreement.

1.3 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.

1.4 Currency

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

1.5 IESO Market Rules

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. To the extent that there is a change in the IESO Market Rules following the date that is thirty (30) days prior to the Contract Date, which such change has the effect of materially affecting the Supplier's Economics, then:

- (a) either Party upon becoming aware of the consequences of such change, which, for greater certainty may not have been determinable at the time of such change, shall promptly notify the other Party;
- (b) the Sponsor shall, within thirty (30) days of the date any such notice, propose Amendments to this Agreement and the respective agreements of any Other Suppliers that are so affected, on the basis that such Amendments together with the change in the IESO Market Rules will substantially reflect the Supplier's Economics as contemplated hereunder and, at the Sponsor's discretion, that of such Other Suppliers, prior to the introduction of such change in the IESO Market Rules;
- (c) if the Parties do not agree to the Amendments proposed pursuant to Subsection 1.5(b), then the Parties and, at the Sponsor's discretion, such Other Suppliers who are so affected, that are required by the Sponsor to participate, shall engage in good faith negotiations to reach agreement on the Amendments described in Subsection 1.5(b);

- (d) if ninety (90) days following the date of the notice sent pursuant to Subsection 1.5(a) the Parties fail to reach agreement on the Amendments described in Subsection 1.5(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 E. 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; and
- (e) this Section 1.5 shall not apply to the circumstances addressed in Section 2.11 or in respect of the establishment of any Future Contract Related Products.

1.6 Lakes and Rivers Improvement and Endangered Species

To the extent that a regulation, order or approval is enacted or issued under the *Lakes and Rivers Improvement Act* or a regulation, permit or agreement is issued or entered into under the *Endangered Species Act, 2007* following the date that is thirty (30) days prior to the Contract Date, which regulation, order, approval, permit or agreement (an “**Instrument**”) has the effect of requiring the Supplier to make material capital investments in the Facility during the Term in order to be in compliance with such Instrument, then:

- (a) the Supplier shall promptly notify the Sponsor of such Instrument and full particulars of the impact of such Instrument on the Facility. If full particulars of the impact cannot be determined within a reasonable period of time the Supplier shall, within such longer period as the Parties may agree, provide such full particulars;
- (b) the Supplier shall provide, within a reasonable period of time a written report to the Sponsor setting out in detail the design, construction work, timetable and costs of bringing the Facility into compliance with the Instrument;
- (c) the Sponsor shall within a reasonable period of time after receipt of the Supplier’s written report engage in good faith negotiations with the Supplier in accordance with the provisions of Section 1.7 and Exhibit J to address the material capital investments necessary for the Facility to be in compliance with the Instrument and any change in the Contract Price;
- (d) if the Parties are unable to agree on Amendments to the Agreement within ninety (90) days following the commencement of good faith negotiations, the matter shall be determined by mandatory and binding arbitration from which there shall be no appeal with such arbitration to be conducted in accordance with the procedures set out in Exhibit E but excluding any Other Suppliers; and
- (e) notwithstanding Subsection 1.6(d), changes in the Contract Price shall be subject to the following additional limitations:
 - (i) the change in the Contract Price shall only take effect after the Supplier can reasonably demonstrate to the Sponsor that the material capital investments necessary for the Facility to be in compliance with the Instrument have been completed;

- (ii) the Contract Price shall in no event exceed the corresponding Feed-in-Tariff contract price then in effect for a similar facility; and
- (iii) the change in the Contract Price shall in no event result in the Supplier earning more on a projected basis than seven per cent (7%) pre-tax return on seventy-five per cent (75%) of the capital investment when accounted for over the expected useful life of the capital investment, which expected useful life may exceed the Term.

For greater certainty, a Supplier shall not be entitled to any change in the Contract Price under this Section 1.6, where in the sole opinion of the Sponsor acting reasonably, any of the material capital investments necessary for the Facility to be in compliance with the Instrument: (i) were known or ought to have been known by the owner or operator of the Facility or the Supplier thirty (30) days prior to the Contract Date; or (ii) were due to the failure of the owner or operator of the Facility or the Supplier to comply with Laws and Regulations or applicable guidelines; or (iii) should have been made by the owner or operator of the Facility or the Supplier prior to the issuance of the Instrument in accordance with Good Engineering and Operating Practices or accepted industry practices; or (iv) the Instrument was issued or entered into to address a requirement that was identified thirty (30) days prior to the Contract Date.

1.7 Invalidity, Unenforceability or Inapplicability of Provisions

In the event that a court of competent jurisdiction determines that any provision of this Agreement is invalid, inapplicable or unenforceable, then either Party may propose, by notice to the other Party, a replacement provision, and the Sponsor and the Supplier and, at the Sponsor's discretion those Other Suppliers that are required by the Sponsor to participate, shall 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 (the "**Replacement Provision(s)**"). If the Parties are unable to agree on the Replacement Provision(s) within thirty (30) days after the commencement of negotiations under this Section 1.7 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 E. 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 Replacement Provision(s) to this Agreement made by the Sponsor to implement such award of the Arbitration Panel. This Section 1.7 shall not apply to the circumstances addressed in Section 2.11.

1.8 Entire Agreement

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

1.9 Waiver

Except as expressly provided in this Agreement, no waiver of any provision of this Agreement shall be binding unless executed in writing by the Party to be bound thereby. No waiver of any provision of this

Agreement shall constitute a waiver of any other provision nor shall any waiver of any provision of this Agreement constitute a continuing waiver or operate as a waiver of, or estoppel with respect to, any subsequent failure to comply, unless otherwise expressly provided. In the case of a waiver issued by the Sponsor, such waiver shall not be binding on the Sponsor unless it has been executed by an individual identified in such waiver as Vice President, Market and Resource Development or the individual acting in that capacity.

1.10 Governing Law

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

1.11 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.

1.12 Schedules, Appendices and Exhibits

Each of the Schedules, Appendices and Exhibits set out in item 18 on the HCI Contract Cover Page are referenced in and form part of this Agreement.

ARTICLE 2 OPERATION OF THE FACILITY

2.1 Operation and Maintenance of the Facility

The Supplier shall operate and maintain or cause the Facility to be operated and maintained using Good Engineering and Operating Practices and meeting all relevant requirements of the IESO Market Rules, Distribution System Code, Transmission System Code, the Connection Agreement, in each case, as applicable, all other Laws and Regulations and this Agreement. For greater certainty, the Parties acknowledge that the Sponsor is not purchasing from the Supplier, nor is the Supplier selling to the Sponsor any Electricity.

2.2 Metering

- (a) The Supplier shall satisfy the requirements of the Metering Plan and in particular shall ensure that:
 - (i) its separate meter(s), ancillary metering and monitoring equipment continues to meet the specific requirements as set out in the applicable type of Exhibit B identified as the metering and settlement exhibit in respect of the Facility on the HCI Contract Cover Page;
 - (ii) any revenue-quality interval meter(s) included in the Metering Plan conform with Laws and Regulations administered by Measurement Canada with respect to such meter(s); and

- (iii) its metering and monitoring equipment provide all required information and equipment specifications needed to permit the Sponsor to access, verify, estimate and edit for calculation purposes and/or total revenue meter readings in order to accurately determine the output of the Facility at the Connection Point net of any Station Service Loads and auxiliary loads and which is updated promptly, and, in any event, within ten (10) Business Days after any change to the metering installation occurs.
- (b) 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 and monitoring equipment to confirm the accuracy of the Metering Plan and the meter data of the Facility to confirm the accuracy of such data.
- (c) The Supplier shall not make any material changes to the Metering Plan without the prior written approval of the Sponsor, acting reasonably.
- (d) The Supplier acknowledges that the Sponsor may provide interim approval to the Supplier of its Metering Plan and that such interim approval may be subject to the Supplier satisfying additional conditions specified by the Sponsor including the timing by which the Supplier must satisfy such conditions. The Supplier acknowledges and agrees that any failure to meet the conditions specified in Exhibit F constitutes a Supplier Event of Default within the meaning of Subsection 9.1(b).

2.3 Supplier Equipment

- (a) The Supplier shall be responsible, at its expense, for all power system components on the Supplier's side of the Connection Point, including all transformation, switching and auxiliary equipment, such as synchronizing and protection and control equipment, pursuant to Laws and Regulations and any requirements deemed necessary by the System Operator, the Transmitter, the LDC or the Host Facility, as applicable, from time to time to protect the safety and security of the IESO-Controlled Grid, the Distribution System, each of their customers and the Host Facility, each as the case may be.
- (b) The Supplier shall be responsible, at its expense, for any protective equipment which may be required at the Facility, from time to time, to protect its own personnel, property, and equipment from variations in frequency and voltage or from the temporary delivery of other than three-phase power, whether caused by the Facility or otherwise.

2.4 Connection of the Facility

- (a) The Supplier shall ensure that the Facility continues to be connected exclusively to the Connection Point and that all Delivered Electricity is delivered through the Connection Point.
- (b) The Supplier shall be responsible, at its expense, for all Facility connection requirements pursuant to Laws and Regulations, from time to time to permit the delivery of Delivered Electricity to the Connection Point.

2.5 Waterpower Rights

- (a) The Supplier shall ensure that any Waterpower Rights that are required for the operation of the Facility remain in effect throughout the Term. In the event that any Waterpower Rights that are required for the operation of the Facility expire while a renewal or replacement of such Waterpower Rights are pending finalization or execution such that the renewal or replacement is intended to be effective as of the expiry of the Waterpower Rights, then such Waterpower Rights shall not be deemed to have expired or been terminated.
- (b) Intentionally Deleted.

2.6 Facility Amendment

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 or the Facility as outlined in the HCI Contract Cover Page or Exhibit A (a “**Facility Amendment**”) without first notifying the Sponsor in writing and obtaining the Sponsor’s consent in writing, which consent shall not be unreasonably withheld.

For the purpose of this Section 2.6, it shall not be unreasonable for the Sponsor to withhold its consent to any modification, variation or Amendment which would, or would be likely to,

- (a) have a Material Adverse Effect on the ability of the Supplier to comply with its obligations under this Agreement; or
- (b) increase or decrease the Nameplate Capacity of the Facility; or
- (c) increase or decrease the Contract Capacity of the Facility; or
- (d) cause Electricity generated by another facility to affect the Facility’s meter reading, until such time as the Supplier and the Sponsor agree, acting reasonably, on any changes to the metering configuration or Exhibit B that are necessary to ensure that payments under this Agreement reflect only Delivered Electricity from the Facility prior to any such Facility Amendment.

For the purpose of this Section 2.6, it shall be unreasonable for the Sponsor to withhold its consent to any modification, variation or Amendment which the Supplier is undertaking in order to comply with any order issued by the Minister of Natural Resources and Forestry provided such order was not issued as a result of an application by the Supplier.

2.7 Upgrades or Other Modifications of the Facility

From and after the Contract Date, the Parties agree that any upgrades or other modifications of the Facility shall be subject to and based upon the provisions specified in Exhibit J.

2.8 Additional Covenants in respect of the Facility

- (a) The Supplier shall be required to own, lease or otherwise control the Facility during the Term.
- (b) Except for Station Service, the Supplier covenants and agrees that the Facility shall not utilize any sources or fuels other than waterpower to produce Electricity under this Agreement.

- (c) At any time and from time to time the Supplier shall, if the Facility has a Nameplate Capacity of more than 5 MW, within thirty (30) days of receiving a written request from the Sponsor provide to the Sponsor all resource data relating to the availability of the waterpower that is otherwise available to the Supplier using Commercially Reasonable Efforts.

2.9 Insurance Covenants

- (a) The Supplier shall put in effect and maintain, or cause its contractors, where appropriate, to maintain, from the Term Commencement Date to the expiry of the Term, at its own cost and expense, all the necessary and appropriate insurance that a prudent Person in the business of operating the Facility would maintain including policies for “all-risk” property insurance, equipment breakdown insurance, commercial general liability insurance and environmental impairment liability insurance. Any such policies 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 in which case the policy shall be non-contributing and primary with respect to coverage in favour of the Indemnitees.
- (b) Upon the request of the Sponsor, the Supplier will provide the Sponsor with a copy of each insurance policy, to be furnished within ten (10) Business Days of such request being made by the Sponsor.
- (c) If the Supplier is subject to the *Workplace Safety and Insurance Act, 1997* (Ontario), it shall submit a valid clearance certificate of Workplace Safety and Insurance Act coverage to the Sponsor prior to the Term Commencement Date. In addition, the Supplier shall, from time to time at the request of the Sponsor, provide additional Workplace Safety and Insurance Act clearance certificates. The Supplier shall pay when due, and shall ensure that each of its contractors and subcontractors pays when due, all amounts required to be paid by it and its contractors and subcontractors, from time to time, under the *Workplace Safety and Insurance Act, 1997* (Ontario), failing which the Sponsor has the right, in addition to and not in substitution for any other right it may have pursuant to this Agreement or otherwise at law or in equity, to pay to the Workplace Safety and Insurance Board any amount due pursuant to the *Workplace Safety and Insurance Act, 1997* (Ontario) and unpaid by the Supplier or its contractors and subcontractors and to deduct such amount from any amount due and owing from time to time to the Supplier pursuant to this Agreement together with all costs incurred by the Sponsor in connection therewith.

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

- (a) The Sponsor and the Supplier shall each comply with their respective obligations under this Agreement and shall 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 any Governmental Authority 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 licencing as is required by the OEB.

- (c) The Supplier covenants to forthwith provide the Sponsor with copies of all actions, suits, proceedings, judgments, rulings or orders by or before any Governmental Authority or arbitrator that could have a Material Adverse Effect on the Supplier or the Facility.
- (d) The Supplier shall ensure that, at all times, that it remains a Market Participant and that the Facility is registered with the System Operator so that:
 - (i) the settlement of Market Settlement Charges shall take place directly between the “Metered Market Participant” and the System Operator, and any costs incurred by the Supplier pursuant to the IESO Market Rules in respect of this Agreement shall be the sole responsibility of the Supplier; and
 - (ii) the Supplier shall meet all applicable Facility registration requirements as specified in the IESO Market Rules.

2.11 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, subject to Subsection 2.11(d), retain, all rights, title, and interest in all Environmental Attributes associated with the Facility.
- (b) The Supplier shall from time to time during the Term of this Agreement, 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 Subsection 2.11(a).
- (c) The Supplier shall from time to time during the Term of this Agreement, 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 Subsection 2.11(a). The Supplier shall be entitled to reimbursement of the cost of complying with a direction under this Subsection 2.11(c), provided that the Sponsor, acting reasonably, approved such cost in writing prior to the cost being incurred by the Supplier.
- (d) To the extent that Laws and Regulations requires the Facility to utilize, consume or obtain Regulatory Environmental Attributes in connection with Delivering 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 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 sixty (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 E. 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 Replacement Provision(s) to this Agreement made by the Sponsor to implement such award of the Arbitration Panel.

2.12 Intentionally Deleted

ARTICLE 3 ELECTRICITY, RELATED PRODUCTS DELIVERY AND PAYMENT OBLIGATIONS

3.1 Contract Payment and Settlement

The Contract Payments shall be made, and all details relating to the settlement of Contract Payments under this Agreement shall be handled in accordance with, the version of Exhibit B applicable to the Facility as specified on the HCI Contract Cover Page.

3.2 Exclusivity and Resale of Electricity

Except (i) under an agreement with the Sponsor; (ii) under an agreement with a Behind-the-Meter Facility for the Contract Capacity; (iii) in the case of Related Products; or (iv) in the case of Future Contract Related Products, such agreement or undertaking as may be required solely in order to comply with the provisions of Section 3.3:

- (a) the Supplier shall not sell or permit another Person to sell, deliver or convey any part of the Electricity from the Facility, Environmental Attributes to which the Sponsor is entitled hereunder, or Future Contract Related Products, or enter into or allow any Person to enter into any agreement or undertaking for the sale, delivery or conveyance thereof; and
- (b) the Supplier shall not enter into or allow or enable another Person to enter into a contract in respect of Electricity, Environmental Attributes to which the Sponsor is entitled hereunder, or Future Contract Related Products.

3.3 Future Contract Related Products

- (a) All Related Products, other than Future Contract Related Products and any benefits associated therewith, shall belong to the Supplier.
- (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 shall sell, supply or deliver all Future Contract Related Products as requested, directed or approved by the Sponsor.
- (d) The Supplier covenants not to sell, supply or deliver any Future Contract Related Products unless such sale, supply or delivery has been requested, directed or approved by the Sponsor.
- (e) The Supplier will notify the Sponsor of any revenue received by the Supplier in connection with the sale, supply or delivery of any Future Contract Related Products.

- (f) Any revenue received by the Supplier in connection with the sale, supply or delivery of any Future Contract Related Products shall be shared in accordance with the provisions set out in the applicable type of Exhibit B identified in respect of the Facility on the HCI Contract Cover Page.
- (g) The Sponsor may, in its sole and absolute discretion, deem any Ancillary Service or other Related Product that is a Future Contract Related Product not to be a Future Contract Related Product.

3.4 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 the Delivered Electricity and Future Contract Related Products sold hereunder which may be imposed up to the Connection Point and in respect of which a credit, rebate, or refund has not and may not be obtained by the Sponsor. In the event that the Sponsor is required to remit such Taxes and the Sponsor is not entitled to a credit, rebate, or refund in respect of such payment of Taxes, the amount thereof shall be deducted from any sums becoming due to the Supplier hereunder.

3.5 **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 any Taxes applicable to the Delivered Electricity and Future Contract Related Products sold hereunder which may be imposed at and from the Connection Point and Taxes applicable to or associated with the transfer or assignment of Environmental Attributes from the Supplier to the Sponsor. The Contract Price does not include any Sales Tax payable by the Sponsor in respect of the Electricity and Future Contract Related Products purchased hereunder. If any Sales Tax is payable in connection with the Delivered Electricity and Future Contract Related Products purchased hereunder, such Sales Tax shall be paid by the Sponsor. In the event that the Supplier is required to pay or remit such Taxes and no credit, rebate, or refund is available (or, in the event that the Supplier has assigned this Agreement, that no credit, rebate, or rebate would have been available to the Supplier had it not assigned this Agreement) in respect of such payment or remittance of Taxes, the amount thereof shall be deducted from any sums becoming due to the Sponsor hereunder.

3.6 Non-residency

- (a) If the Supplier is a non-resident of Canada, as that term is defined in the ITA, and 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.
- (b) 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 all such information reasonably required by the Sponsor to comply with any withholding tax or other tax obligations to which the Sponsor is or may become subject as a result of thereof.

ARTICLE 4
STATEMENTS AND PAYMENTS

4.1 Meter and Other Data

The Supplier shall provide to the Sponsor (which for clarity, is in addition to any obligations under the IESO Market Rules) access to the metering data and information in accordance with the Metering Plan. Without limiting the generality of the foregoing, the Supplier shall provide to the Sponsor access at all times to any data or information relating to the Facility (including information related to Outages), that would have been provided to the System Operator pursuant to the IESO Market Rules if the Supplier were governed by the IESO Market Rules, forthwith upon request by the Sponsor. The Supplier shall notify the Sponsor of any errors and omissions in any such data or information on a timely basis so as to permit the Sponsor, within a reasonable time to correct such errors and omissions pursuant to the IESO Market Rules. Upon a Party becoming aware of any errors or omissions in any data or information provided in accordance with this Section 4.1, such Party shall notify the other Party and, if applicable, the System Operator in accordance with the IESO Market Rules, on a timely basis.

4.2 Settlement

- (a) This Section 4.2 shall apply only to a Facility that:
 - (i) is directly connected to the IESO-Controlled Grid;
 - (ii) is a Behind-the-Meter Facility and has one or more Registered Facilities connected between it and the IESO-Controlled Grid; or
 - (iii) is otherwise a Registered Facility.
- (b) The Sponsor shall prepare and deliver a settlement statement (the “**Statement**”) to the Supplier, within twenty (20) Business Days after the end of each calendar month in the Term that is the subject of the Statement (the “**Settlement Period**”), setting out the basis for the Contract Payment with respect to the Settlement Period, as well as the basis for any other payments owing under this Agreement by either Party to the other Party in the Settlement Period. If the Term begins on a day other than the first day of the Settlement Period, the initial Contract Payment may be deferred and incorporated with that of the first full Settlement Period following the Term Commencement Date. A Statement may be delivered by the Sponsor to the Supplier by facsimile, e-mail or other electronic means and shall include the reference number assigned to this Agreement by the Sponsor and a description of the components of the Contract Payment and other payments owing to the Supplier for the Settlement Period.
- (c) The Party owing the Contract Payment shall remit to the other Party full payment in respect of the Statement no later than the last Business Day of the month following the end of the Settlement Period to which the Statement relates, provided that where the Supplier owes the Contract Payment, the Supplier shall not be required to make such payment earlier than five (5) Business Days following the delivery of the Statement (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 agreed to by the Parties. The account information and HST registration numbers of the Supplier and the Sponsor constitute Supplier’s Confidential Information and Sponsor’s Confidential Information, respectively, and are subject to the obligations as set out in

Article 7. Either Party may change its account information from time to time by notice to the other in accordance with Section 14.6.

- (d) 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 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 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 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 15.1.

4.3 Intentionally Deleted

4.4 General Settlement Provisions

The Sponsor shall have the right to designate an alternative settlement agent or implement such alternative settlement mechanisms other than as set out in Section 4.2, as it may in its discretion determine, provided that such alternative arrangement does not have a Material Adverse Effect on the Supplier. The Sponsor shall provide thirty (30) days' prior notice to the Supplier of any such designation or change.

4.5 Interest

The Party owing the Contract 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.

4.6 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, then the one (1) year limit set forth in Subsection 4.6(a) shall not apply to the correction of such error or the Sponsor's ability to readjust the Statement.

- (c) Subject to Subsection 4.2(d), any adjustment to a Statement made pursuant to this Section 4.6 shall be made in the subsequent Statement.

4.7 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 Contract Payment made hereunder in accordance with Section 14.2.

ARTICLE 5 SECURITY REQUIREMENTS

5.1 Performance Security

- (a) If at any time during the Term the average of HOEP over a contiguous six (6) month period is greater than seventy-five per cent (75%) of the Contract Price and provided that the Contract Capacity is greater than or equal to 1 MW, the Sponsor may at any time, by providing notice to the Supplier, require the Supplier to provide to and maintain with the Sponsor Performance Security within thirty (30) days of such notice.
- (b) The Sponsor shall return or refund (as applicable) any Performance Security that has been provided by the Supplier within ten (10) Business Days following the determination and any netting at the end of the Term of any amounts owing by the Supplier to the Sponsor.

5.2 Composition of Performance Security

- (a) The obligation of the Supplier to post and maintain Performance Security as required by Section 5.1 must be satisfied by the Supplier providing such security in the form of a certified cheque, bank draft or an irrevocable and unconditional standby letter of credit in substantially the form referenced as Exhibit C 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. Notwithstanding the foregoing, where the amount of any component of the Performance Security exceeds \$200,000, the Supplier must provide the Performance Security in the form of a letter of credit as described in this Subsection 5.2(a).
- (b) Where the Supplier has provided Performance Security to the Sponsor in the form of a certified cheque or bank draft, the Supplier acknowledges that such amounts shall be deemed to have been paid by the Supplier to the Sponsor and the Sponsor shall have the right to invest, use, commingle or otherwise dispose of any such amounts, free from any claim or right of any nature whatsoever of the Supplier, including any equity or right of redemption by Supplier.

5.3 Adequacy of Security; Replacement Security

- (a) The Supplier shall ensure that, at all times, the aggregate value of all Performance Security provided to the Sponsor is at least equal to the then currently required amount of Performance Security and that the Performance Security is current, valid, enforceable and in an acceptable form, including:

- (i) following realization by the Sponsor of any amount of Performance Security, increasing the amount of Performance Security, by an amount equal to that realized by the Sponsor;
 - (ii) providing replacement security for any letter of credit (A) which expires, terminates or fails, or ceases to be in full force and effect for the purposes hereof, (B) which is disaffirmed, disclaimed, dishonoured, repudiated or rejected in whole or in part by the provider thereof, or (C) the validity of which is challenged by the provider thereof.
- (b) All costs associated with the requirement to provide and maintain Performance Security shall be borne by the Supplier.
- (c) If existing Performance Security in the form of a letter of credit is replaced with new Performance Security, the Sponsor shall return the existing Performance Security held by the Sponsor to the Supplier, within five (5) Business Days after the Sponsor's receipt of such new Performance Security. If existing Performance Security in the form of a certified cheque or bank draft has been paid to the Sponsor and provided that the Sponsor has received from the Supplier a new Performance Security in the form of a letter of credit, then the Sponsor shall pay to the Supplier within five (5) Business Days after receipt of the letter of credit, the amount of Performance Security that had been previously paid to the Sponsor in the form of a certified cheque or bank draft. A Supplier may from time to time consolidate any separate amounts of Performance Security held by the Sponsor by providing to the Sponsor replacement Performance Security in the cumulative amount of Performance Security outstanding, in which case the Sponsor shall return or refund (as applicable) the existing Performance Security in accordance with this Subsection 5.3(c).
- (d) Notwithstanding any other provision of this Agreement, no delay, including a delay resulting from an event of Force Majeure shall extend the date by which any component of the Performance Security is required to be provided by the Supplier or returned or refunded (as applicable) by the Sponsor.

5.4 Interest on Performance Security

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

ARTICLE 6 REPRESENTATIONS

6.1 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 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) All statements, specifications, data, confirmations, and information that have been set out in the HCI Contract Cover Page and Exhibit A are complete and accurate in all material respects and there is no material information omitted from the HCI Contract Cover Page and Exhibit A which makes the information in the HCI Contract Cover Page and Exhibit A misleading or inaccurate.
- (f) The Facility is available to generate Electricity and meet all of the requirements of this Agreement in accordance with applicable Laws and Regulations.
- (g) Unless the Supplier has indicated that it is a non-resident of Canada on the HCI Contract Cover Page or has otherwise notified the Sponsor pursuant to Subsection 3.6(b), the Supplier is not a non-resident of Canada for the purposes of the ITA.
- (h) The Facility is located in the Province of Ontario and affects supply or demand on the IESO-Controlled Grid, a Distribution System or a Host Facility, as applicable.
- (i) As of the date hereof, 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.

- (j) As of the date hereof, 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.
- (k) As of the date hereof, the Supplier is in compliance with all of the provisions of this Agreement.

The Supplier covenants that all of the foregoing representations and warranties set out in Subsections 6.1(a) to (h) will continue to be true and correct throughout the Term. At any time and from time to time the Supplier shall, within thirty (30) days of receiving a written request from the Sponsor, represent in writing that each of the foregoing statements set out in Subsections 6.1(a) to (h), inclusive, continues to be true or, if any 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 Subsection 9.1(d) to require the Supplier to cure or remove any qualification with respect to such statement.

6.2 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 shareholders 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) 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.

ARTICLE 7 CONFIDENTIALITY AND FIPPA

7.1 Confidential Information

From the date of this Agreement 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 7 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 Law and Regulations, 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 Laws and Regulations in accordance with Section 7.2.
- (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 or prospective purchaser, provided that any such Secured Lender or prospective lender or investor or prospective purchaser has been informed of the Supplier's confidentiality obligations hereunder and such Secured Lender or prospective lender or investor or prospective purchaser 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 7.

- (d) Notwithstanding the foregoing, the Supplier consents to the disclosure: (i) of any information contained in Exhibit L on the Website or otherwise publically disclosed, (ii) of its address for service and the name of its Company Representative to all Other Suppliers who have entered into a HCI Contract, for the purposes of Sections 1.5, 1.7, 2.11 and 12.2, (iii) on a confidential basis, of any information received by the Sponsor in respect of this Agreement for such internal purposes as the Sponsor may reasonably determine from time to time to the Sponsor's Representatives, and (iv) of aggregated data relating to the HCI Contracts.

7.2 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 portion of the Confidential Information to the party compelling disclosure as is required by law and only to such Person or Persons to which the Receiving Party is legally compelled to disclose, and in connection with such compelled disclosure, the Receiving Party and its Representatives shall provide notice to each such recipient (in co-operation with legal counsel for the Disclosing Party) that such Confidential Information is confidential and subject to non-disclosure on terms and conditions equal to those contained in this Agreement and, if possible, shall obtain each recipient's written agreement to receive and use such Confidential Information subject to those terms and conditions.

7.3 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, temporary backup or storage devices and from 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 or (ii) found in electronic format as part of the Receiving Party's off-site or on-site data storage/archival process system, 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 (1) 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 7.

7.4 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 7.

7.5 FIPPA Records and Compliance

The Parties acknowledge and agree that the Sponsor is subject to FIPPA and that FIPPA applies to and governs all Confidential Information in the custody or control of the Sponsor (“**FIPPA Records**”) and may, subject to FIPPA, require the disclosure of such FIPPA Records to third parties. The Supplier shall provide a copy of any FIPPA Records that it previously provided to the Sponsor if the Supplier continues to possess such FIPPA Records in a deliverable form at the time of the Sponsor’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 Sponsor. The provisions of this Section 7.5 shall survive any termination or expiry of this Agreement and shall prevail over any inconsistent provisions in this Agreement.

ARTICLE 8 TERM

8.1 Term

- (a) This Agreement shall become effective upon the Contract Date.
- (b) The “**Term**” means that period of time commencing at the Term Commencement Date and ending at 24:00 hours (EST) on the twentieth (20th) anniversary of the Term Commencement Date subject to earlier termination in accordance with the provisions hereof.
- (c) The Supplier shall have the right, at its option, to terminate this Agreement at any time during the eighth (8th) Contract Year or the fifteenth (15th) Contract Year by providing no less than ninety (90) days written notice to the Sponsor of its intention to terminate this Agreement, whereupon this Agreement shall terminate with the Termination Date being the last day of that Contract Year. For greater certainty, the provisions of Subsection 9.2(e) and Section 15.11 shall apply to such termination. The Supplier acknowledges that upon exercising its option to terminate in accordance with this Subsection 8.1(c), it shall be precluded from entering into any contract with the Sponsor relating to the Facility for the period remaining on the original Term of the Agreement had the Supplier elected not to exercise its option to terminate.
- (d) Neither Party shall have any right to extend or renew the Term except as agreed in writing by the Parties.

ARTICLE 9 TERMINATION AND DEFAULT

9.1 Events of Default by the Supplier

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

- (a) The Supplier fails to make any payment when due or deliver, and/or maintain, the 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 remediating 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 or the Facility 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 remediating 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 shall be extended by a further thirty (30) Business Days if the Supplier, in the reasonable opinion of 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 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 made a Facility Amendment that has not first been consented to by the Sponsor (other than in instances where such consent has been unreasonably withheld).
- (j) The Supplier undergoes a change in Control without first obtaining the written approval of the Sponsor if required pursuant to this Agreement.
- (k) The Availability of any Facility with a Nameplate Capacity of more than 5 MW as determined in Exhibit D is less than eighty per cent (80%).
- (l) The Supplier assigns this Agreement without first obtaining the consent of the Sponsor, if required pursuant to this Agreement.

Notwithstanding Subsections 9.1 (b), (c) and (d), the Sponsor shall have the right to reduce the cure period from fifteen (15) Business Days to five (5) Business Days in Subsection 9.1(b) and from thirty (30) Business Days to ten (10) Business Days in Subsection 9.1(c) or (d) where it can be reasonably established that the Supplier intentionally committed the Supplier Event of Default specified in Subsection 9.1 (b), (c) or (d).

9.2 Remedies of the **Sponsor**

- (a) If any Supplier Event of Default (other than a Supplier Event of Default relating to the Supplier referred to in Subsections 9.1(e), (g) and (h)) occurs and is continuing, upon written notice to the Supplier, the Sponsor may terminate this Agreement.
- (b) If a Supplier Event of Default occurs and is continuing, the Sponsor may, in addition to the remedy set out in Subsection 9.2(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 Performance Security provided to the Sponsor pursuant to Article 5; and
 - (ii) draw on all or part of the Performance Security, and if the remedy in Subsection 9.2(a) has not been exercised, require the Supplier to replace such drawn security with new security.
- (c) Notwithstanding Subsections 9.2(a) and (b), upon the occurrence of a Supplier Event of Default relating to the Supplier referred to in Subsection 9.1(e), (g) or (h), this Agreement shall automatically terminate without notice, act or formality, effective immediately before the occurrence of such Supplier Event of Default, in which case, for certainty, the Secured Lender shall have the rights available to it under Subsection 11.2(g).
- (d) If the Sponsor terminates this Agreement pursuant to Subsection 9.2(a) or the Agreement is terminated pursuant to Subsection 9.2(c), the Sponsor shall be entitled to retain all Performance Security provided by the Supplier and exercise all such other remedies

available to the Sponsor, including pursuing a Claim for damages, as contemplated under Section 9.5.

- (e) Termination shall not relieve the Supplier or the Sponsor of their respective responsibilities relating to the availability of the Facility and delivery of the Delivered Electricity and Environmental Attributes from the Facility that relate to the Delivered Electricity, and Future Contract Related Products from the Facility, 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.

9.3 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 Subsection 15.6(f)) without first obtaining the consent of the Supplier, if required pursuant to this Agreement.

9.4 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) 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.

9.5 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.

ARTICLE 10 FORCE MAJEURE

10.1 Effect of Invoking Force Majeure

- (a) If, by reason of Force Majeure:
- (i) the Supplier is unable to make available all or any part of the Contract Capacity or is unable to generate at the Facility, or is unable to deliver from the Facility to the Connection Point, all or any part of the Delivered Electricity or Future Contract Related Products;
 - (ii) all or any part of the Delivered Electricity cannot be received at or transmitted or distributed from the Connection Point; or
 - (iii) either Party is unable, wholly or partially, to perform or comply with its other obligations (other than payment obligations) hereunder,

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 in substantially the Prescribed Form, provided that such notice shall be given within ten (10) Business Days of the later of (i) the commencement of the event or circumstances constituting Force Majeure or (ii) the date that the Party invoking Force Majeure knew or ought to have known that the event or circumstances constituting Force Majeure could have a Material Adverse Effect on the development or operation of the Facility. If the effect of the Force Majeure and full particulars of the cause thereof cannot be reasonably determined within such ten (10) Business Day period, the Party invoking Force Majeure shall be allowed a further ten (10) Business Days (or such longer period as the Parties may agree in writing) to provide such full particulars in substantially the Prescribed Form to the other Party.
- (c) The Party invoking Force Majeure shall use Commercially Reasonable Efforts to remedy the situation and remove, so far as possible and with reasonable dispatch, the Force Majeure, but settlement of strikes, lockouts and other labour disturbances shall be wholly within the discretion of the Party involved.
- (d) The Party invoking Force Majeure shall give prompt written notice of the termination of the event of Force Majeure, provided that such notice shall be given within ten (10) Business Days of the termination of the event or circumstances constituting Force Majeure.
- (e) Nothing in this Section 10.1 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) In no circumstance shall an event of Force Majeure extend the Term.

- (g) If, by reason of Force Majeure, the Supplier is unable to perform or comply with its obligations (other than payment obligations) hereunder for more than an aggregate of thirty-six (36) months in any sixty (60) month period during the Term, then either Party may terminate this Agreement upon notice to the other Party without any costs or payments of any kind to either Party, except for any amounts that were due or payable by a Party hereunder up to the date of termination, and all security shall be returned or refunded (as applicable) forthwith.

10.2 Exclusions

A Party shall not be entitled to invoke Force Majeure under this Article 10, 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 is seeking to invoke Force Majeure because it is unable to procure or maintain any Waterpower Rights to be utilized by the Facility;
- (c) 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);
- (d) if and to the extent that the Supplier is seeking to invoke Force Majeure because it is able to sell any of the Delivered Electricity on more advantageous terms to a third party buyer;
- (e) 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 of or failure to comply with Laws and Regulations by such Party;
- (f) if the Force Majeure was caused by a lack of funds or other financial cause; or
- (g) if the Party invoking Force Majeure fails to comply with the notice provisions in Subsection 10.1(b) or (d).

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

10.3 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, 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 (i) such Party, or (ii) a third party contractor of such Party, unless, in either such case, such strikes or other labour disputes are the result or part of a general industry strike or labour dispute);
- (e) civil disobedience or disturbances, war (whether declared or not), acts of sabotage, blockades, insurrections, terrorism, revolution, riots or epidemics;
- (f) 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;
- (g) any inability to obtain, or to secure the renewal or amendment of, any permit, certificate, licence or approval of any Governmental Authority, Transmitter or LDC required to perform or comply with any obligation under this Agreement, unless the revocation or modification of any such necessary permit, certificate, licence or approval was caused by the violation of the terms thereof or consented to by the Party invoking Force Majeure; and
- (h) 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.

ARTICLE 11 LENDER'S RIGHTS

11.1 Lender Security

Notwithstanding Section 15.6, the Supplier, from time to time on or after the Contract Date shall have the right, at its cost, to enter into a Secured Lender's Security Agreement. For greater certainty, 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 not be binding upon the Sponsor unless it is based upon and subject to the following conditions or as otherwise agreed under Section 11.3:

- (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) For greater certainty, a Secured Lender's Security Agreement may cover shares or partnership interests in the capital of the Supplier.
- (c) 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 a copy of the original thereof and the registration details, if applicable, together with written notice of the address of the Secured Lender to which notices may be sent have been delivered to the Sponsor by the Supplier or the Secured Lender; and in the event of an assignment of such Secured Lender's Security Agreement, such assignment shall not be 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 written 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 11.
- (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 11.
- (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.

11.2 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 Subsection 11.1(d) or the contents thereof are embodied in the agreement entered into by the Sponsor in accordance with Section 11.3, the following provisions shall apply:

- (a) No Supplier Event of Default (other than those referred to in Subsection 9.2(c)) shall be grounds for the termination by the Sponsor of this Agreement until:
 - (i) any notice required to be given under Sections 9.1 and 9.2(a) has been given to the Supplier and to the Secured Lender; and

- (ii) the cure period set out in Subsection 11.2(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 9.1, 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 this Section 11.2. 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 Subsection 11.2(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, the Secured Lender agrees that it shall not transfer, sell or dispose of the Supplier's Interest or any other interest in the Facility to any Person unless such transferee or purchaser takes the Supplier's Interest or other applicable interest subject to the Supplier's obligations pursuant to this Agreement. 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 or purchaser and the transferee or purchaser has entered into an agreement with the Sponsor in form and substance satisfactory to the Sponsor, acting reasonably, wherein the transferee or purchaser agrees to assume and to perform the obligations of the Supplier in respect of the Supplier's Interest or the other applicable interest, whether arising before or after the transfer, sale or disposition and including the posting of the Performance Security, if any, required under Article 5.

- (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 11, each such Secured Lender or its transferee approved by the Sponsor pursuant to Subsection 11.2(f) 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 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 Subsection 11.2(g).

- (h) Despite anything to the contrary contained in this Agreement, the provisions of this Article 11 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 11.2 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.

11.3 Co-operation

The Sponsor and the Supplier shall enter into an agreement with any Secured Lender substantially in the form of Exhibit I 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 12 DISCRIMINATORY ACTION

12.1 Discriminatory Action

- (a) A "**Discriminatory Action**" shall occur if:
- (i) either (A) the Legislative Assembly of Ontario causes to come into force any statute that was introduced as a government bill in the Legislative Assembly of Ontario or causes to come into force or makes any order-in-council or regulation first having legal effect on or after the date of the Contract Date; or (B) the Legislative Assembly of Ontario directly or indirectly amends this Agreement without the consent of the Supplier;
 - (ii) the effect of the action referred to in Subsection 12.1(a)(i) is either (A) borne principally by the Supplier; or (B) borne principally by the Supplier and one or more Other Suppliers; and
 - (iii) such action increases the costs that the Supplier would reasonably be expected to incur under this Agreement in respect of Delivering Electricity, 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.
- (b) Notwithstanding the foregoing, none of the following shall be a Discriminatory Action:

- (i) Laws and Regulations of general application, including an increase of Taxes of general application, or any action of the Government of Ontario pursuant thereto;
- (ii) any such statute that prior to five (5) Business Days prior to the Contract Date:
 - (A) has been introduced as a bill in the Legislative Assembly of Ontario in a similar form as such statute takes when it has legal effect, provided that any amendments made to such bill in becoming such statute do not have a Material Adverse Effect on the Supplier; or
 - (B) has been made public in a discussion or consultation paper, press release or announcement issued by the Sponsor, the Government of Ontario, and/or the Ministry of Energy that appeared on the Website, the website of the Sponsor, 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;
- (iii) any of such regulations that prior to five (5) Business Days prior to the Contract Date:
 - (A) have been published in the Ontario Gazette but by the terms of such regulations come into force on or after five (5) Business Days prior to the Contract Date; or
 - (B) have been referred to in a press release issued by the Sponsor, the Government of Ontario and/or the Ministry of Energy that appeared on the website of the Government of Ontario or the Ministry of Energy, provided that any amendments made to such regulations in coming into force do not have a Material Adverse Effect on the Supplier; and
- (iv) any new orders-in-council or regulations, the authority for the promulgation of which was created by the *Green Energy Act, 2009*, or the first amendment to any existing regulation, where the authority for such amendment was created by the *Green Energy Act, 2009*.

12.2 Consequences of Discriminatory Action

To the extent that there is a Discriminatory Action, then:

- (a) the Supplier, upon becoming aware of the consequences of such Discriminatory Action, shall promptly notify the Sponsor;
- (b) the Parties and, at the Sponsor's discretion, those Other Suppliers that are required by the Sponsor to participate, shall engage in good faith negotiations to Amend this Agreement and the respective agreements of those Other Suppliers on the basis that such Amendments together with the Discriminatory Action will substantially reflect the Supplier's Economics and, at the Sponsor's discretion, those Other Suppliers, prior to the Discriminatory Action; and

- (c) if the Parties fail to reach agreement on the Amendments described in Subsection 12.2(b), 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 E. 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.

12.3 Right of the **Sponsor** to Remedy or Cause to Be Remedied 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 date of receipt of notice of the Discriminatory Action. 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 the Discriminatory Action. 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, compensation for any detrimental effect the Discriminatory Action had on the Supplier's Economics, adjusted to apply only to the period during which the Discriminatory Action detrimentally affected the Supplier's Economics.

ARTICLE 13 LIABILITY AND INDEMNIFICATION

13.1 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 Sections 1.5, 1.6, 1.7, 2.11 and 12.2), loss of use of any property or claims of customers or contractors of the Parties for any such damages.

13.2 Liquidated Damages

The Supplier acknowledges and agrees that it would be extremely difficult and impracticable to determine precisely the amount of actual damages that would be suffered by the Sponsor and the Ontario ratepayer as result of a failure by the Supplier to meet its obligations under this Agreement. The Supplier further acknowledges and agrees that the liquidated damages set forth in this Agreement are a fair and reasonable approximation of the amount of actual damages that would be suffered by the Sponsor and the Ontario ratepayer as a result of a failure by the Supplier to meet its obligations under this Agreement, and does not constitute a penalty.

13.3 **Sponsor** Indemnification

The Supplier shall indemnify, defend and hold 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 (i) 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, (ii) 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, and (iii) 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 Laws and Regulations, except to the degree that such discharge shall have been due 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.

13.4 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 13.3 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 13.3 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 Subsection 13.4(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 13.3), 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 13.3, 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.

13.5 Joint and Several Liability

Other than in the case of an Ontario limited partnership, if the Supplier is not a single legal entity, then all such entities that constitute the Supplier shall be jointly and severally liable to the Sponsor for all representations, warranties, obligations, covenants and liabilities of the Supplier hereunder.

ARTICLE 14 CONTRACT OPERATION AND ADMINISTRATION

14.1 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.

14.2 Record Retention; Audit Rights

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 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 7 of this Agreement, shall provide reasonable access to the relevant and appropriate financial and operating records and data kept by such Party relating to this Agreement reasonably required for the other Party to comply with its obligations to any Governmental Authority or to verify or audit information provided in accordance with this Agreement. Moreover, the Supplier agrees and consents to the System Operator, an LDC or any other 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 amount of Delivered 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 7. Alternatively, and at the election of the auditing Party, access shall be through the use of a mutually agreed upon third party auditor. The Party seeking access to such records in this manner shall pay the fees and expenses associated with use of the third party auditor.

14.3 Reports to the **Sponsor**

- (a) If the Supplier is required to report Outages directly to the System Operator or an LDC, the Supplier shall deliver to the Sponsor pursuant to this Agreement in the Prescribed Form, a copy of all reports, plans and notices that the Supplier is required to provide to the System Operator pursuant to the IESO Market Rules or such LDC with respect to Outages, at the same time or within one (1) Business Day after such reports, plans and notices are delivered by the Supplier to the System Operator pursuant to the IESO Market Rules or the LDC, as applicable.
- (b) If the Facility has a Nameplate Capacity of more than 10 MW the Supplier shall:
 - (i) comply, in all material respects, with its operating plan for the Facility for the Term, including a long term major maintenance schedule, as set out in Exhibit G

(the “**Long Term Operating Plan**”). The Supplier shall provide the Sponsor with copies of any Amendments or modifications to the Long Term Operating Plan within ten (10) Business Days of such Amendments or modifications being made. The Long Term Operating Plan shall be consistent with Good Engineering and Operating Practices and is not a guarantee of the timing of planned Outages;

- (ii) comply, in all material respects, with its operating plan for the Facility for the succeeding Contract Year, as set out in Exhibit H (the “**Annual Operating Plan**”). The Supplier may, on not less than ten (10) Business Days’ prior notice to the Sponsor, request approval of the Sponsor to Amend the Annual Operating Plan. In respect of the second Contract Year and each Contract Year thereafter, sixty (60) days prior to each Contract Year, the Supplier shall provide the Annual Operating Plan for the Facility for the succeeding Contract Year for approval by the Sponsor;
- (iii) provide prompt notice to the Sponsor of any Outage other than a planned Outage or any anticipated Outage other than a planned Outage. Any notice under this subsection shall include a statement of the cause of such Outage, the proposed corrective action and the Supplier’s estimate of the expected duration of the Outage. The Supplier shall use Commercially Reasonable Efforts to promptly end or reduce the length of such Outage; and
- (iv) thirty (30) days prior written notice (or such less number of days as is possible in the circumstances) to the Sponsor of any planned Outage of the Facility.

All Outages for the Facility that has a Nameplate Capacity of more than 10 MW shall take place in accordance with the notices of Outages provided by the Supplier to the Sponsor under this Subsection 14.3(b).

- (c) The Supplier acknowledges that the Sponsor may provide interim approval to the Supplier of its Long Term Operating Plan or its Annual Operating Plan and that such interim approval may be subject to the Supplier satisfying additional conditions specified by the Sponsor including the timing by which the Supplier must satisfy such conditions. The Supplier acknowledges and agrees that any failure to meet the conditions specified in Exhibit G or Exhibit H constitutes a Supplier Event of Default within the meaning of Subsection 9.1(b).

14.4 Inspection of Facility

- (a) The Sponsor and its 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.

14.5 Inspection Not Waiver

- (a) Failure by the Sponsor to inspect the Facility or any part thereof under Section 14.4, 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 14.2 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.

14.6 Notices

- (a) All notices, consents, approvals, requests, reports and other information pertaining to this Agreement or required pursuant 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, all contact details shall be as set out in the HCI Contract Cover Page.

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) Notice delivered or transmitted as provided above shall be deemed to have been given and received on the day it is received or transmitted, provided that it is received or transmitted on a Business Day prior to 5:00 p.m. local time in the place of receipt. Otherwise such Notice shall be deemed to have been given and received on the next following Business Day.
- (c) Any Notices of an Event of Default and termination of this Agreement shall only be given by hand or courier delivery.

- (d) No Notice delivered pursuant to this Agreement shall be deemed to be notice for any other purpose, including any obligation to provide notice to the System Operator pursuant to the IESO Market Rules. No Notice to the 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”

ARTICLE 15| MISCELLANEOUS

15.1 Informal Dispute Resolution

If either Party considers that any dispute has arisen under or in connection with this Agreement that the Parties cannot resolve, then such Party may deliver a notice to the other Party describing the nature and the particulars of such dispute. Within ten (10) Business Days following delivery of such notice to the other Party, a senior executive (Vice President or higher) from each Party shall meet, either in person or by telephone (the “**Senior Conference**”), to attempt to resolve the dispute. 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 15.2, if agreed to by both Parties.

15.2 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 15.1. 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.

15.3 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.

15.4 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.

15.5 Amendments

This Agreement may be amended only by mutual written agreement of the Parties, and no such Amendment shall be binding on the Sponsor unless it has been executed by the Vice President, Market and Resource Development or the individual acting in that capacity. Notwithstanding the foregoing the Sponsor, shall have the right to Amend the Agreement without the written agreement of the Supplier in order to implement an award of the Arbitration Panel in accordance with Exhibit E and otherwise as permitted herein.

15.6 Assignment

- (a) Subject to Section 15.8, 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, except as set out below and as provided in Article 11.
- (b) For the purposes of Subsection 15.6(a) it shall not be unreasonable for the Sponsor to withhold its consent if the proposed assignment would (i) cause a Supplier to breach the obligation to own, lease or otherwise control Facility as set out in Subsection 2.8(a), or (ii) 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.
- (c) 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 under this Agreement and be bound by the terms of this Agreement, and the arrangements and obligations of the Supplier set forth in Article 5 have been met in accordance with the terms of Article 5.
- (d) If the Supplier assigns this Agreement to a non-resident of Canada 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 Taxes and the Sponsor shall remit such

additional 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.

- (e) If a valid assignment of this Agreement is made by the Supplier in accordance with this Section 15.6, 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.
- (f) The Sponsor shall have the right to assign this Agreement from time to time and all benefits and obligations hereunder for the balance of the Term without the consent of the Supplier to an assignee which shall assume the obligations and liability of the Sponsor under this Agreement and be novated into this Agreement in the place and stead of the Sponsor (except for the Sponsor's obligation in Subsection 15.6(f)(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 not to make any material amendments to or terminate this Agreement after such assignment without the prior written consent of the Sponsor, whereupon:
 - (i) the representation set forth in Subsection 6.2(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 representations set forth in Section 6.2 shall be deemed to be made by the assignee to the Supplier at the time of such assignment and assumption; and
 - (iii) the Sponsor shall be relieved of all obligations and liability arising pursuant to this Agreement; notwithstanding the foregoing, the Sponsor shall remain liable to the Supplier for remedying any payment defaults under Subsection 9.3(a) and shall remain liable for any obligations and liabilities of the assignee arising from any Sponsor Event of Default, provided that any notice required to be given under Sections 9.3 and 9.4(a) is given on the same day to the assignee and to the Sponsor. The time periods in Section 9.3 shall not begin to run until both the assignee and the Sponsor have been so notified.

15.7 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.
- (b) For the purposes of Subsection 15.7(a), it shall not be unreasonable for the Sponsor to withhold its consent if the proposed change of Control would 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.
- (c) For the purposes of Subsections 15.7(a) and 15.8(b), a change of Control shall exclude a change in ownership of any shares or units of ownership that are listed on a recognized

stock exchange and shall include a change of Control resulting from a change in ownership in any shares or units of ownership in any entity that directly owns the Facility or the Facility and other generation facilities.

15.8 No Assignment or Change of Control for Specified Period

Notwithstanding the provisions of Subsections 15.6(a) and 15.7(a) to the contrary, and except as provided in Article 11 and in this Section 15.8, prior to the third (3rd) anniversary of the Term Commencement Date, the Supplier:

- (a) may not undergo any assignment of this Agreement; and
- (b) may not undergo a change of Control

without the prior written consent of the Sponsor, provided that the Sponsor may in its sole discretion withhold its consent.

For greater certainty, a change of Control in respect of the Supplier referenced in Subsections 15.7(a) and 15.8(b) shall include a change from no Person having Control of the Supplier to any Person having Control of the Supplier.

15.9 Intentionally Deleted

15.10 Intentionally Deleted

15.11 Survival

The provisions of Sections 2.11, 3.4, 3.5, 3.6, Article 4, Article 7, Subsection 11.2(g), Article 13, Sections 14.2, 15.1, and 15.2 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.

15.12 Counterparts

This Agreement may be executed in two (2) 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.

15.13 Additional Rights of Set-Off

- (a) In addition to its other rights of set-off under this Agreement or otherwise arising in law or equity, the Sponsor may set off any amounts owing by the Supplier to the Sponsor in connection with Sections 2.9, 3.1, 3.4, 3.6(a), 4.2(c), 4.5, 9.2(d) and 15.6(d) against any monies owed by the Sponsor to the Supplier in connection with Sections 2.9, 2.11(c), 3.1, 3.5, 3.6(a), 4.2(c), 4.5, 9.4, and 15.6(d).

- (b) In addition to its other rights of set-off under this Agreement or otherwise arising in law or equity, the Supplier may set-off any amounts owing by the Sponsor to the Supplier in connection with Sections 2.9, 2.11(c), 3.1, 3.5, 3.6(a), 4.2(c), 4.5, 9.4, and 15.6(d) against any monies owed by the Supplier to the Sponsor in connection with Sections 2.9, 3.1, 3.4, 3.6(a), 4.2(c), 4.5, 9.2(d) and 15.6(d).

15.14 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.

15.15 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.

[END OF STANDARD TERMS AND CONDITIONS]

APPENDIX 1 – STANDARD DEFINITIONS

VERSION 1.1

EXHIBIT A – DESCRIPTION OF FACILITY

Detailed Description of Facility:

1. Overview (including original in service date, estimated annual generation (MWh))

[insert details]

1.1 Location of the Facility (including the longitude and latitude coordinates for the Facility, the nearest population centre, river name)

[insert details]

1.2 Site Description

[insert details]

1.3 Major Equipment (including number of generating units, turbine types or models, turbine manufacturers, runner types)

[insert details]

1.4 Environmental Features (including a description of features that mitigate environmental concerns, such as air quality, noise, water, sewage discharge, etc. and a list of environmental approvals and permits and their status)

[insert details]

1.5 Electrical Interconnection (including Single Line Diagram, Connection Agreement, circuit designation, name of substation)

[insert details]

1.6 Plant General Arrangement (including information on headworks, intake, powerhouse, tailrace, normal operating head, penstocks (number, length, diameter, materials) storage capabilities and limitations)

[insert details]

1.7 List of all Licences, Permits, Certificates, Registrations, Authorizations, Consents and Approvals issued by a Governmental Authority (which are required to operate and maintain the Facility)

[insert details]

1.8 Public Contact Information for the Supplier (including Supplier website link, public relations contacts, if any)

[insert details]

**EXHIBIT B – METERING AND SETTLEMENT
TYPE 1: FACILITIES REGISTERED IN THE IESO-ADMINISTERED MARKETS (NOT
BEHIND-THE-METER)**

1.1 Application of Exhibit

This version of Exhibit B shall apply to a Facility that:

- (a) is the whole of a Registered Facility; and
- (b) is not a Behind-the-Meter Facility.

1.2 Metering Requirements

The Supplier shall provide, at its expense, separate meter(s) and ancillary metering and monitoring equipment as required by the IESO Market Rules for Registered Facilities. The Supplier shall provide the Sponsor viewing access rights only to the revenue-quality interval meter data of the Facility to calculate the output of Electricity from the Facility net of any Station Service Loads and inclusive for any loss adjustment factors by establishing an Associated Relationship between the Sponsor and the Connection Point of the Facility within the MVPortal application tool or equivalent, at no cost to the Sponsor. For greater certainty, the Sponsor shall maintain in confidence in accordance with this Agreement and shall not access or use for any purpose (other than for the purposes of administering this Agreement) any information related to the Electricity usage of the Host Facility (if applicable).

1.3 Indexation

The “**Indexed Contract Price**” shall be determined as follows:

- (a) The Indexed Contract Price in any year “y” shall be the greater of the Indexed Contract Price in the preceding year, “y-1”, and the following calculation:

$CP_y = (1 - EP) \times TCP_{BD} + EP \times TCP_{BD} \times \frac{CPI_y}{CPI_{BD}}$	
Where:	
CP_y	is the Indexed Contract Price applicable in calendar year “y” during the Term;
TCP_{BD}	is the Total Contract Price;
CPI_{BD}	is the CPI applicable for the month of December immediately preceding the commencement of the calendar year “BD” in which the Base Date occurs;
CPI_y	is the CPI for the month of December immediately preceding the commencement of calendar year “y”; and

EP	is the Escalation Percentage that has a value of 1.000.
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1.4 Calculation of Contract Payment

(a) For each hour in a Settlement Period, the Contract Payment shall be an amount expressed in Dollars and equal to:

(i) the Hourly Delivered Electricity multiplied by (A) the Indexed Contract Price applicable during the corresponding calendar year, and (B) the Peak Performance Factor applicable during the corresponding hour;

minus

(ii) the Hourly Delivered Electricity multiplied by the greater of (A) HOEP for such hour, and (B) zero;

provided that, if in any hour the Hourly Delivered Electricity exceeds the Contract Capacity times one (1) hour, then for the purposes of the calculation set out in this Subsection 1.4(a) of Exhibit B, the Contract Capacity times one (1) hour shall be used instead of the Hourly Delivered Electricity.

(b) The Contract Payment in respect of a Settlement Period shall be:

(i) the sum of the Contract Payments in respect of each hour in such Settlement Period;

minus

(ii) in relation to the sale, supply or delivery of any Future Contract Related Products, an amount equal to eighty per cent (80%) of the difference, if positive, of the total revenues received by the Supplier from the sale of such Future Contract Related Products for that Settlement Period, less the Approved Incremental Costs. For the purposes of this Subsection 1.4(b) of Exhibit B, "**Approved Incremental Costs**" means the incremental costs incurred by the Supplier for that Settlement Period in excess of the cost of production of the Delivered Electricity, relating to the sale, supply or delivery of such Future Contract Related Products, and which costs are reasonable and have first been verified and approved by the Sponsor.

(c) Where the Contract Payment in respect of a Settlement Period is a positive number, such amount shall be owed by the Sponsor to the Supplier. Where such amount is a negative number, the absolute value of such amount shall be owed by the Supplier to the Sponsor.

1.5 System Operator Instructions

(a) Insofar as the System Operator issues instructions to reduce all or part of the output of the Facility on an economic basis in order to mitigate over generation on the IESO-Controlled Grid or any substantial portion thereof, then the calculation set out in Section 1.4 of this Exhibit B shall provide for an additional Contract Payment (the "**Additional Contract Payment**") for any hour, "h", in which:

- (i) either (A) the Pre-Dispatch Price for such hour “h”, as published in the immediately preceding hour “h-1” is less than \$5.00/MWh or (B) the System Operator has published an over generation advisory or equivalent notice in respect of such hour “h” for the IESO-Controlled Grid or a substantial portion thereof;
 - (ii) the dispatch data for the Facility includes energy offered at a price less than or equal to \$1.00/MWh;
 - (iii) the System Operator has issued a dispatch instruction or other instruction on an economic basis to reduce the output of the Facility to a level below that offered at a price less than or equal to \$1.00/MWh; and
 - (iv) the Supplier has complied with such dispatch instruction or other instruction and as a consequence and within the same calendar day has had to either spill water or utilize that water at lower incremental efficiency.
- (b) The Additional Contract Payment for any such hour shall be the Hourly Delivered Electricity foregone as a result of compliance with the System Operator’s instruction multiplied by (A) the Indexed Contract Price applicable during the corresponding calendar year, and (B) the Peak Performance Factor applicable during the corresponding hour, provided that such amount of foregone Hourly Delivered Electricity shall not in any case exceed the Contract Capacity times one (1) hour.
- (c) The Hourly Delivered Electricity foregone as a result of compliance with an instruction from the System Operator pursuant to Subsection 1.5(a) of this Exhibit B shall be determined in accordance with the methodology specified in Exhibit M.
- (d) The implementation of this Section 1.5 of Exhibit B shall not trigger the amending provisions of Section 1.5 of the Agreement, except to the extent that any IESO Market Rule change has the effect of materially affecting the Supplier’s Economics notwithstanding the implementation of this Section 1.5 of Exhibit B.

**EXHIBIT B – METERING AND SETTLEMENT
TYPE 2: FACILITIES REGISTERED IN THE IESO-ADMINISTERED MARKETS (BEHIND
THE-METER)**

1.1 Application of Exhibit

This version of Exhibit B shall apply to a Facility that:

- (a) is a part of (but not the whole of) a Registered Facility; and
- (b) is a Behind-the-Meter Facility.

1.2 Metering

- (a) Where the Facility has a Nameplate Capacity equal to or greater than 20 MW, the Supplier shall provide, at its expense, separate meter(s) and ancillary metering and monitoring equipment as required by the IESO Market Rules for Registered Facilities. The Supplier shall provide the Sponsor viewing access rights only to the revenue-quality interval meter data of the Facility to calculate the output of Electricity from the Facility net of any Station Service Loads and inclusive for any loss adjustment factors by establishing an Associated Relationship between the Sponsor and the Connection Point of the Facility within the MVPortal application tool or equivalent, at no cost to the Sponsor. The Supplier shall also take all such actions and do all such things necessary to provide the Sponsor with equivalent access to the Host Facility’s meter data if applicable. For greater certainty, the Sponsor shall maintain in confidence in accordance with this Agreement and shall not access or use for any purpose (other than for the purposes of administering this Agreement) any information related to the Electricity usage of the Host Facility (if applicable).
- (b) Where the Facility has a Nameplate Capacity equal to or greater than 1 MW but less than 20 MW, the Supplier shall provide, at its expense, separate meter(s) and ancillary metering and monitoring equipment as set out in Chapter 6, Section 4.5 of the IESO Market Rules.
- (c) Where the Facility has a Nameplate Capacity less than 1 MW the Supplier shall provide, at its expense, separate meter(s) and ancillary metering and monitoring equipment as set out in .

1.3 Indexation

The “**Indexed Contract Price**” shall be determined as follows:

- (a) The Indexed Contract Price in any year “y” shall be the greater of the Indexed Contract Price in the preceding year, “y-1”, and the following calculation:

$CP_y = (1 - EP) \times TCP_{BD} + EP \times TCP_{BD} \times \frac{CPI_y}{CPI_{BD}}$
--

Where:	
CP_y	is the Indexed Contract Price applicable in calendar year “y” during the Term;
TCP_{BD}	is the Total Contract Price;
CPI_{BD}	is the CPI applicable for the month of December immediately preceding the commencement of the calendar year “BD” in which the Base Date occurs;
CPI_y	is the CPI for the month of December immediately preceding the commencement of calendar year “y”; and
EP	is the Escalation Percentage that has a value of 1.000.

1.4 Calculation of Contract Payment

(a) For each hour in a Settlement Period, the Contract Payment shall be an amount expressed in Dollars and equal to:

(i) the Hourly Delivered Electricity multiplied by (A) the Indexed Contract Price applicable during the corresponding calendar year, and (B) the Peak Performance Factor applicable during the corresponding hour;

minus

(ii) the Hourly Delivered Electricity multiplied by the greater of (A) HOEP for such hour, and (B) zero;

provided that, if in any hour the Hourly Delivered Electricity exceeds the Contract Capacity times one (1) hour, then for the purposes of the calculation set out in this Subsection 1.4(a) of Exhibit B, the Contract Capacity times one (1) hour shall be used instead of the Hourly Delivered Electricity.

(b) The Contract Payment in respect of a Settlement Period shall be:

(i) the sum of the Contract Payments in respect of each hour in such Settlement Period;

minus

(ii) in relation to the sale, supply or delivery of any Future Contract Related Products, an amount equal to eighty per cent (80%) of the difference, if positive, of the total revenues received by the Supplier from the sale of such Future Contract Related Products for that Settlement Period, less the Approved Incremental Costs. For the purposes of this Subsection 1.4(b) of Exhibit B, “**Approved Incremental Costs**” means the incremental costs incurred by the Supplier for that Settlement Period in excess of the cost of production of the Delivered Electricity, relating to the sale, supply or delivery of such Future Contract Related Products, and which costs are reasonable and have first been verified and approved by the Sponsor.

- (c) Where the Contract Payment in respect of a Settlement Period is a positive number, such amount shall be owed by the Sponsor to the Supplier. Where such amount is a negative number, the absolute value of such amount shall be owed by the Supplier to the Sponsor.

1.5 System Operator Instructions

- (a) Insofar as the System Operator issues instructions to reduce all or part of the output of the Facility on an economic basis in order to mitigate over generation on the IESO-Controlled Grid or any substantial portion thereof, then the calculation set out in Section 1.4 of this Exhibit B shall provide for an additional Contract Payment (the “**Additional Contract Payment**”) for any hour, “h”, in which:
 - (i) either (A) the Pre-Dispatch Price for such hour “h”, as published in the immediately preceding hour “h-1” is less than \$5.00/MWh or (B) the System Operator has published an over generation advisory or equivalent notice in respect of such hour “h” for the IESO-Controlled Grid or a substantial portion thereof;
 - (ii) the dispatch data for the Facility includes energy offered at a price less than or equal to \$1.00/MWh;
 - (iii) the System Operator has issued an dispatch instruction or other instruction on an economic basis to reduce the output of the Facility to a level below that offered at a price less than or equal to \$1.00/MWh; and
 - (iv) the Supplier has complied with such dispatch instruction or other instruction and as a consequence and within the same calendar day has had to either spill water or utilize that water at a lower incremental efficiency.
- (b) The Additional Contract Payment for any such hour shall be the Hourly Delivered Electricity foregone as a result of compliance with the System Operator’s instruction multiplied by (A) the Indexed Contract Price applicable during the corresponding calendar year, and (B) the Peak Performance Factor applicable during the corresponding hour, provided that such amount of foregone Hourly Delivered Electricity shall not in any case exceed the Contract Capacity times one (1) hour.
- (c) The Hourly Delivered Electricity foregone as a result of compliance with an instruction from the System Operator pursuant to Subsection 1.5(a) of this Exhibit B shall be determined in accordance with the methodology specified in Exhibit M.
- (d) The implementation of this Section 1.5 of Exhibit B shall not trigger the amending provisions of Section 1.5 of the Agreement, except to the extent that any IESO Market Rule change has the effect of materially affecting the Supplier’s Economics notwithstanding the implementation of this Section 1.5 of Exhibit B.

EXHIBIT C
FORM OF IRREVOCABLE STANDBY LETTER OF CREDIT

DATE OF ISSUE:	[●]
APPLICANT:	[●]
BENEFICIARY:	Independent Electricity System Operator and its permitted assigns
AMOUNT:	[●]
EXPIRY DATE:	[●]
EXPIRY PLACE:	Counters of the issuing financial institution in Toronto, Ontario
CREDIT RATING:	[Insert credit rating only if the issuer is not a financial institution listed in either Schedule I or II of the <i>Bank Act</i>]
TYPE:	Irrevocable and Unconditional Standby Letter of Credit Number●] (the “ Credit ”)

The Credit is issued in connection with the Hydroelectric Contract Initiative – Standard Form Contract (the “**HCI Contract**”) dated **[Insert Date of HCI Contract]** between the Beneficiary and the Applicant.

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

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

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

Partial drawings are permitted.

This Letter of Credit will automatically extend for additional, successive terms of one (1) year each (each an “**Additional Term**”), unless the undersigned provides the Beneficiary with written notice, at least sixty (60) days prior to the expiration date of the then current term, that it does not wish to extend this Letter of Credit for an Additional Term.

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

The Credit is subject to the International Standby Practices ISP 98, International Chamber of Commerce publication No. 590 and, as to matters not addressed by the ISP 98, shall be governed by the laws of the Province of Ontario and applicable Canadian federal law, and the parties hereby irrevocably agree to attorn to the non-exclusive jurisdiction of the courts of the Province of Ontario.

It is a term of the Credit that the above name of the Beneficiary will be amended to another entity by way of an amendment hereto, without the consent of the Applicant, and upon receipt by **[Issuing Bank Name]** of the Beneficiary’s dated and signed letter addressed to **[Issuing Bank Name]** and completed as follows:

“We, the undersigned Beneficiary to **[Issuing Bank Name]** Letter of Credit No. [●], hereby waive all our rights under the said Letter of Credit and request that the current

name and address of the Beneficiary thereunder be amended to read **[insert name and address of new Beneficiary]**. Please forward the original amendment to the **[new Beneficiary]**, care of the Applicant to whom we have delivered the original of the Letter of Credit along with its amendment(s) (if any).”

The Beneficiary may transfer this Letter of Credit without the consent of the Applicant or the issuing financial institution provided that the transferee name is not identified on the following: the list of names subject to the Regulations Establishing a List of Entities Made Under Section 83.05(1) of the Criminal Code, and/or the Regulations Implementing the United Nations Resolutions on the Suppression of Terrorism (RIUNRST) and/or United Nations Al-Qaida and Taliban Regulations (UNAQTR).

[Issuing Bank Name]

By: _____

By: _____

**EXHIBIT D
DETERMINATION OF AVAILABILITY**

The availability of the Facility, that has a Nameplate Capacity of more than 5 MW, in respect of a given Settlement Period (the “**Availability**”) shall be calculated as set out below:

$AV = (THM - OH - FMH - REH) / (THM - FMH - REH) \times 100$	
where:	
AV is the Availability of the Facility (expressed as a percentage figure).	
OH	<p>is the total number of Outage Hours in the most recent thirty-six (36) month period which ends on the last day of the Settlement Period, subject to the following:</p> <ul style="list-style-type: none"> (a) in determining Outage Hours, an hour may be a partial Outage Hour as a result of an Outage, including an inability of the Facility to produce at the full Nameplate Capacity or as a result of an Outage lasting for a part but not all of an hour. An hour in which a partial Outage occurs will be counted as a fractional Outage Hour by subtracting from one the quotient obtained by dividing: (i) the maximum production in that hour that could have been achieved given the partial Outage (in MWh) by (ii) the Nameplate Capacity multiplied by one (1) hour (in MWh). This fraction will be the contribution of that hour to the Outage Hours in the given Settlement Period; (b) Outage Hours shall not include the hours of any Outage where and to the extent that the Outage is caused by an event of Force Majeure; (c) Outage Hours shall not include any hours where the Facility is removed from service for the purposes of redevelopment or expansion in accordance with Exhibit J, or for the purposes of runner upgrades or other major refurbishment; and this removal from service is in accordance with the Long Term Operating Plan; (if applicable); and (d) Outage Hours shall not include hydrological impacts other than those hydrological impacts which may be in the control of the Supplier. For certainty, Outage Hours shall not include any hours solely related to meeting any order issued by the Minister of Natural Resources and Forestry provided such order was not issued as a result of an application by the Supplier.
THM	is the total number of hours in the most recent thirty-six (36) month period which ends on the last day of the Settlement Period.
FMH	is the total number of hours in the most recent thirty-six (36) month period which ends on the last day of the Settlement Period during which the Supplier was subject to an event of Force Majeure.
REH	is the total number of hours in the most recent thirty-six (36) month period which ends on the last day of the Settlement Period during which the Facility was out of service for the purposes of implementing any redevelopment or expansion to which Exhibit J provisions apply.

EXHIBIT E

ARBITRATION PROVISIONS APPLICABLE TO SECTIONS 1.5, 1.6, 1.7, 2.11 AND 12.2

The following rules and procedures (the “**Rules**”) shall govern, exclusively, any matter or matters to be arbitrated between the Parties under Sections 1.5, 1.6, 1.7, 2.11 and 12.2 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 1.5, 1.6, 1.7, 2.11 or 12.2, as applicable, then the Sponsor shall commence arbitration by delivering a written notice (“**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 all 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 Supplier 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 Suppliers’ arbitrator, any supplier 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 Provision, as the case may be, in accordance with the *Arbitration Act, 1991* (Ontario) and, where applicable, the *International Commercial Arbitration Act* (Ontario), 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 Provision(s). 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 Provision needs to be determined through more than one 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 Provision(s), 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 (2) events, those days shall be counted by excluding the day on which the first event happens and including the day on which the second event happens, even if they are described as clear days or the words “**at least**” are used;
 - (b) statutory holidays shall not be counted;
 - (c) where the time for doing any act or any order or direction given by the Arbitration Panel expires on a day which is not a Business Day, the act may be done on the next day that is a Business Day; and
 - (d) service of a document or notice or any order or direction given by the Arbitration Panel made after 4:00 p.m. (Toronto time), or at any time on a day which is not a Business Day, shall be deemed to have been made on the next Business Day.
9. **Place of Arbitration** – The arbitration, including the rendering of the award, shall take place in Toronto, Ontario, which shall be the seat of the proceedings. The language to be used in the arbitration shall be English.

**EXHIBIT F
METERING PLAN**

Pursuant to Section 2.2 of the HCI Contract, the Supplier is hereby submitting this completed Metering Plan – Electrical (Transmission Connected) form to the Sponsor.
Capitalized terms not defined herein have the meanings ascribed thereto in the HCI Contract.

Date				
Legal Name of Supplier				
Name of Facility				
Location of Facility (municipal Address)				
Contract Title				
Contract Date				
1. Nameplate Capacity				
Nameplate Capacity (MW)				
2. Meter Service Provider				
MSP Contact Person (Name, Phone and Email)				
3. Market Participant				
Meter Service Participant (MMP) (Name and Address)				
Registered Market Participant (RMP) (Name and Address)				
4. Metering				
Metering Point Name	Metering Point ID	Details	Main Meter	Alternate Meter
		Manufacturer		
		Model		

Single Line Diagram Submission Form (Appropriate IESO forms)	Hard copy <input type="checkbox"/>
Site-Specific Loss Adjustment Register (Appropriate IESO forms)	Hard copy <input type="checkbox"/>
Measurement Error Correction Register (Appropriate IESO forms)	Hard copy <input type="checkbox"/>
Declaration of Compliance of Metering Installation (Appropriate IESO forms)	Hard copy <input type="checkbox"/>
Assigning a Registered Market Participant and Metered Market Participant for an Energy Market Resource (Appropriate IESO forms)	Hard copy <input type="checkbox"/>
Assigning a Metering Service Provider and a Distributor for an Energy Market Delivery Point (Appropriate IESO forms)	Hard copy <input type="checkbox"/>
Totalization Table Form (Appropriate IESO forms)	Hard copy <input type="checkbox"/>
Meter Commissioning Report	Hard copy <input type="checkbox"/>
MV90 Master Files or MIRT Files	Electronic <input type="checkbox"/>

COMPANY REPRESENTATIVE OR AUTHORIZED SIGNATORY*

*The Authorized Signatory must be either a signatory of the Contract, a person authorized to receive Notices, or the Company Representative.

If not, a Form of Certificate of Incumbency (IESOCM-FORM-18A/Corporation or IESOCM-FORM-18B/General Partner) must be submitted with this form.

By:			Date:	
	[Name]			
	[Title]			
	[Legal Name of Supplier]			

EXHIBIT G

**LONG TERM OPERATING PLAN
[FOR A FACILITY WITH A NAMEPLATE CAPACITY OF MORE THAN 10 MW]**

[Long Term Operating Plan to be included in executed Agreement.] Capitalized terms not defined herein have the meanings ascribed thereto in the HCI Contract.

Date	
Legal Name of Supplier	
Name of Facility	
Contract Title	(the "HCI Contract")
Contract Date	

1. Nameplate Capacity

Nameplate Capacity (MW – electrical)					
As Applicable		As Applicable		As Applicable	
Season 1		Summer		Year	
Season 2					
Season 3		Winter			
Season 4					
Annual Average Nameplate Capacity					

2. Unit Outages

2.1 Planned Outages

Assumptions:

Contract Year	Year	Unit 1	Unit 2	Unit 3	Unit 4	Unit 5	Unit 6
		Planned Outages (Days)					
1							
2							
3							
4							
5							
6							

7							
8							
9							
10							
11							
12							
13							
14							
15							
16							
17							
18							
19							
20							
21							

2.2 Unplanned Outages

Assumptions:

Contract Year	Year	Unit 1	Unit 2	Unit 3	Unit 4	Unit 5	Unit 6
		Planned Outages (%)					
1							
2							
3							
4							
5							
6							
7							
8							

9							
10							
11							
12							
13							
14							
15							
16							
17							
18							
19							
20							

3. Overall Availability

Assumptions:

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

12							
13							
14							
15							
16							
17							
18							
19							
20							

EXHIBIT H

**ANNUAL OPERATING PLAN
[FOR A FACILITY WITH A NAMEPLATE CAPACITY OF MORE THAN 10 MW]**

[First Annual Operating Plan to be included with executed Agreement.]

**SUBMIT BY E-MAIL TO
contract.management@ieso.ca**

Pursuant to Section 14.3 of the HCI Contract, the Supplier is hereby submitting this Annual Operating Plan to the Sponsor.

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

Date	
Legal Name of Supplier	
Name of Facility	
Contract Title	
Contract Date	(the "HCI Contract")
Contract Year No.	
From Month / Year to Month / Year	

1. Nameplate Capacity

Nameplate Capacity (MW – electrical)					
NEW AND CLEAN CONDITION					
As Applicable		As Applicable		As Applicable	
Season 1		Summer		Year	
Season 2					
Season 3					
Season 4		Winter			
Annual Average Nameplate Capacity					
Nameplate Capacity (MW)					
NAMEPLATE CAPACITY FOR THE CONTRACT YEAR					
As Applicable		As Applicable		As Applicable	
Season 1		Summer		Year	
Season 2					
Season 3					
Season 4		Winter			
Annual Average Nameplate Capacity					

2. Unit Outages

2.1 Planned Outages

Assumptions:

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

2.1 Unplanned Outages

Assumptions:

Contract Year	Month / Year	Unit 1	Unit 2	Unit 3	Unit 4	Unit 5	Unit 6
		Unplanned Outages (%)					
1							
2							
3							
4							
5							
6							

7							
8							
9							
10							
11							
12							

3. Overall Availability

Assumptions:

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

EXHIBIT I
FORM OF SECURED LENDER CONSENT AND ACKNOWLEDGEMENT

[Note to Draft: Form of Secured Lender Consent and Acknowledgement will be provided by the Sponsor upon request by the Supplier.]

EXHIBIT J-__

UPGRADES OR OTHER MODIFICATIONS OF THE FACILITY

Application of this Exhibit

This Exhibit has application to:

- any Upgrade of the Facility that will require the Sponsor's consent under Section 2.6; and
- any material capital investment in the Facility in order to be in compliance with any regulation, order or approval enacted or issued under the *Lakes and Rivers Improvement Act* or regulation, permit or agreement issued or entered into under the *Endangered Species Act, 2007* as provided for under Section 1.6.

Upon agreement of the Parties, the final form of the specific implementation agreement for an Upgrade ("Upgrade Implementation Agreement") will be added as part of the Agreement and designated as a subset of Exhibit J as follows: Exhibit J - Upgrade Implementation Agreement of the _____ [insert name of Facility].

Parts of the Exhibit J

Exhibit J is comprised of the following:

Part 1	Principles for determining Upgrades
Part 2	Principles for determining Upgraded Contract Price
Part 3	Form of Upgrade Implementation Agreement

Part 1 Principles for determining Upgrades

1.1 The Sponsor acting reasonably will assess and determine whether a proposed project is an Expansion project or a Redevelopment project in accordance with this Exhibit J.

1.2 The Sponsor acting reasonably will assess and determine whether a proposed project is a Regulatory Compliance Upgrade project in accordance with the criteria set out in Section 1.6 of the Agreement.

1.3 An Upgrade may be any one of the following:

- (a) Expansion
- (b) Redevelopment
- (c) Regulatory Compliance Upgrade

An Upgrade may also consist of a combination of an Expansion and Redevelopment.

Part 2 Principles for determining Upgraded Contract Price

The amendment to Contract Price provisions will be determined in accordance with the HCI Guidelines in effect at the time of the proposed Upgrade and otherwise with reference to the framework set out in Section 1.6 of the Agreement.

A preliminary determination of the Upgraded Contract Price will be based upon the information provided by the Supplier including the Original Capacity prior to the Upgrade, estimated capacity after the Upgrade, milestone dates, estimated Upgrade costs and any other relevant information available at the time of making such preliminary determination. The final determination of the Upgraded Contract Price will be completed following PCOD taking into account the Final Capacity of the Upgraded Facility and if applicable the actual costs incurred by the Supplier in completing the Upgrade.

The Supplier acknowledges that the Sponsor has the right in accordance with Section 14.2 of the Agreement to conduct an audit for the purposes of verifying any of the inputs used to determine the Upgraded Contract Price.

Part 3 Form of Upgrade Implementation Agreement

EXHIBIT J-__

UPGRADE IMPLEMENTATION AGREEMENT OF THE _____ FACILITY

WHEREAS the Supplier has requested the Sponsor's consent under Section 2.6 of the Agreement to undertake an Upgrade of the _____ Facility;

AND WHEREAS the Sponsor has agreed to provide such consent under the following terms and conditions;

AND WHEREAS the Supplier and the Sponsor have agreed to Amend the Agreement by adding this Exhibit J-__ to the Agreement;

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

1.1 Definitions

In addition to the terms defined elsewhere in this Agreement, the following capitalized terms shall have the meaning stated below when used in this Exhibit J-__:

Aboriginal Consultation Requirements has the meaning ascribed to it in Paragraph 1.3 of this Exhibit J-__.

Construction Contract means an engineering, procurement and construction contract or other form of construction contract for the Upgrades to the Facility entered into by the Supplier and the Construction Contractor.

Construction Contractor means the principal contractor(s) engaged by the Supplier to perform the design, engineering, procurement, building or construction of the Upgrades to the Facility.

Engineer's Certificate means a certificate addressed to the Sponsor from an Independent Engineer, procured at the expense of the Supplier and approved by the Sponsor.

Expansion means a project for the Upgrade to a Facility in accordance with this Agreement, including with this Exhibit J-__, whereby the actual generating capacity of the Facility is increased by more than five per cent (5%).

Expected Average Annual Generation means the energy (in MWh) expected to be generated in one calendar year after the Upgrades to the Facility as determined in accordance with the performance testing conducted under Paragraph 1.4 of this Exhibit J-__ following PCOD.

Facility means in the context of this Exhibit J-__ the _____ Facility.

Final Capacity means the final capacity of the Upgraded Facility as determined in accordance with the performance testing conducted under Paragraph 1.4 of this Exhibit J-__ following PCOD.

Financial Model has the meaning ascribed to it in Appendix 2 of this Exhibit J-__.

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, or if required to use the International Financial Reporting Standards adopted by the International Accounting Standards Board, then such standards or replacement standards that may be similarly mandated applied on a consistent basis.

IFRS means the International Financial Reporting Standards.

Independent Engineer or **IE** is an engineer that is (i) a professional engineer duly qualified and licensed to practice engineering in the Province of Ontario; (ii) employed by an independent engineering firm which holds a certificate of authorization issued by the Professional Engineers Ontario that is not affiliated with or directly or indirectly Controlled by the Supplier and that does not have a vested interest in the design, engineering, procurement, construction, metering and/or outcome of any performance testing of the Upgrades to the Facility; and (iii) proposed by the Supplier and approved by the Sponsor.

Initial Security means Performance Security in the amount of \$20,000 per MW based upon the estimated Final Capacity after the Upgrade to the Facility.

Network Upgrade Costs means those costs related to 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 modified 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.

Original Capacity means the capacity of the Facility as determined in accordance with the performance testing conducted under Paragraph 1.4 of this Exhibit J-__ prior to undertaking the Upgrade to the Facility.

Project Commercial Operation Date or **PCOD** in respect of a Qualifying Upgrade has the meaning ascribed to it in Paragraph 1.11 of this Exhibit J-__.

Project Status Report has the meaning ascribed to it in Paragraph 1.9 of this Exhibit J-__.

Qualifying Expansion Project means a project for the Upgrade to a Facility, in all material respects in accordance with this Agreement including with this Exhibit J-__, whereby the Final Capacity of the Facility is not less than 105% of the Original Capacity.

Qualifying Joint Project means a project for an Upgrade to a Facility that is both a Qualifying Expansion Project and a Qualifying Redevelopment Project.

Qualifying Project means a Qualifying Expansion Project, Qualifying Redevelopment Project, a Qualifying Regulatory Compliance Project, or a Qualifying Joint Project.

Qualifying Redevelopment Project means an Upgrade to the Facility in all material respects in accordance with this Agreement, including with this Exhibit J-__, which in the reasonable judgment of the Sponsor satisfies the following criteria:

- (a) absent redevelopment, the existing Facility must be near to the end of its useful life;

- (b) the redeveloped Facility must have an in service date after May 7, 2009;
- (c) the powerhouse and the physical infrastructure for the conveyance and utilization of water must be substantially replaced; and
- (d) following redevelopment, the expected life of the modified Facility must be comparable with that of a new hydroelectric facility.

Qualifying Regulatory Compliance Project means an Upgrade to the Facility in accordance with Section 1.6 of this Agreement.

Reportable Events means any or all of the following as may be applicable:

- (a) obtaining environmental and project and site approvals and permitting for the Upgrades to the Facility;
- (b) completion of connection assessments, including receipt of approvals from the System Operator, the Transmitter, the LDC or the Host Facility as applicable;
- (c) execution of a Construction Contract(s) for the Upgrade to the Facility;
- (d) financing related to the Upgrades to the Facility;
- (e) ordering of major equipment for the Upgrades to the Facility;
- (f) delivery of major equipment;
- (g) start of construction on the Upgrades to the Facility;
- (h) completion of construction on the Upgrades to the Facility;
- (i) status of any modifications required to connect the Upgraded Facility to the Transmission System, Distribution System or Host Facility;
- (j) connection of the Upgraded Facility to the Transmission System, Distribution System or Host Facility; and
- (k) PCOD.

Upgrade has the meaning ascribed to it in the HCI Guidelines.

Upgraded Contract Price has the meaning ascribed to it in the HCI Guidelines.

1.2 Designation as a Qualifying Project

The Sponsor agrees that the project specified in Appendix 1 of this Exhibit J- constitutes a Qualifying Project of the following type: Qualifying Expansion Project

1.3 Aboriginal Consultation Requirements

The Supplier shall for any proposed Upgrade:

- (a) provide the Ministry of Energy with details, in writing, of the proposed Upgrade and in particular whether the proposed Upgrade will have a physical or material effect on the environment or land tenure;
- (b) request that the Ministry of Energy determine what, if any, Aboriginal consultation requirements the Supplier must meet in order to carry out the Upgrade (“**Aboriginal Consultation Requirements**”); and
- (c) enter into an agreement with the Ministry of Energy, if requested by the Ministry of Energy, to set out the terms and conditions of the Supplier carrying out the Aboriginal Consultation Requirements.

The Supplier shall not be able to proceed with the proposed Upgrade until it has satisfied the Aboriginal Consultation Requirements.

The Supplier shall be expected to provide the Sponsor with any documentation or correspondence relating to the Supplier meeting its commitments under this Paragraph 1.3. Any approval by the Sponsor for a proposed Upgrade will be conditioned upon the Supplier meeting the requirements of this Paragraph 1.3.

1.4 Performance Testing Prior to the Upgrade and Following PCOD

Prior to commencing an Upgrade and following PCOD the Supplier shall arrange, at its expense, for performance testing of the Facility to determine the Original Capacity of the Facility and the Final Capacity of the Facility in accordance with the following provisions:

- (a) the Supplier shall at its expense appoint an IE for the purposes of assisting in the preparation of, review or acceptance of a testing protocol and for witnessing and reporting upon any performance testing conducted pursuant to such protocol. To the extent practicable, the Supplier shall appoint the same IE for performance testing to determine the Original Capacity, the Final Capacity and the Expected Average Annual Generation of the Facility;
- (b) the Supplier shall in advance of any performance testing provide to the Sponsor for its approval the proposed protocol under which the performance testing shall take place. The proposed protocol shall:
 - (i) be designed to provide information on the maximum gate capacity over the normal range of head to a level of accuracy commensurate with the size of the Facility and the operating conditions present in the relevant seasons for conducting such performance testing;
 - (ii) include relevant information on performance testing duration and conditions, station service loads, metering and adjustment to a specified nominal head or heads at which each of the Original Capacity and Final Capacity shall be stated;
 - (iii) include relevant information on any adjustments which may be necessary to determine Original Capacity and Final Capacity at the Connection Point;
 - (iv) incorporate by reference any appropriate performance testing standards;

- (v) allow for the use of historic data to supplement performance testing results, when determining the Original Capacity, where the condition of the existing Facility at the time of testing is limited or degraded;
- (vi) allow for, when determining the Final Capacity, coordination with any testing conducted under the Construction Contract or equipment supply contracts, provided that the extent of such testing is acceptable to the Sponsor; and
- (vii) include models and/or methodology to calculate the Expected Average Annual Generation where the individual weekly energy generated in each week of the calendar year is the average of the weekly energy generated in each calendar year and using the following data:
 - (A) weekly flow records, for at least the last thirty (30) consecutive years (or in circumstances where thirty (30) years of weekly flow records are not available, a different time period approved by the Sponsor may be used for the calculations);
 - (B) the net head available, deducting for losses in water conveyance facilities, up to the turbine and downstream of the turbine; and
 - (C) the expected or measured efficiencies of the turbine-generator-transformer packages in the Facility;
- (c) the Sponsor shall notify the Supplier in writing within twenty (20) Business Days following receipt of the testing protocol as to whether the testing protocol is acceptable to the Sponsor, acting reasonably. If the Sponsor determines that such testing protocol is not acceptable, the Sponsor shall provide to the Supplier reasonable particulars in respect of the deficiencies in such testing protocol;
- (d) the Supplier shall provide the Sponsor with no less than ten (10) days advance notice of when the performance testing will be conducted under the approved protocol and will confirm such date by notice at least three (3) days prior to the date of such performance testing; and
- (e) the Sponsor and its Representatives shall be entitled at the Sponsor's option to attend and witness any performance testing conducted in accordance with the provision of this Paragraph 1.4.

After completion of the testing, the Supplier shall provide the Sponsor with the test report prepared by the Supplier or the IE and certified by the IE for the Sponsor's review and concurrence. The test report shall include all calculations specified in the testing protocol including those used to determine the Original Capacity or Final Capacity, as applicable, at the specified nominal head or heads and the Expected Average Annual Generation. The Supplier shall provide the Sponsor with access to all data resulting from such performance testing. In the case of the test report for Final Capacity, the Sponsor shall notify the Supplier in writing within thirty (30) Business Days following receipt of such test report as to whether such test report is acceptable to the Sponsor, acting reasonably. If the Sponsor determines that such test report is not acceptable, the Sponsor shall provide to the Supplier reasonable particulars in respect of the deficiencies and the Supplier shall address or cause to be addressed such deficiencies. Once such deficiencies have been addressed by the Supplier, the Supplier shall provide to the Sponsor a revised test report for its consideration. The Sponsor shall, within ten (10) Business Days of receipt of such revised

test report, advise the Supplier as to whether or not the revised test report addresses the deficiencies, in the opinion of the Sponsor acting reasonably. The Supplier and the Sponsor shall repeat the foregoing process until the deficiencies have been addressed.

1.5 Design and Construction

The Supplier agrees to design and build the Upgrades to the Facility in accordance with Appendix 1 of this Exhibit J_ using Good Engineering and Operating Practices and meeting all relevant requirements of the IESO Market Rules, Distribution System Code, Transmission System Code, the Connection Agreement, in each case, as applicable, and all other Laws and Regulations. The Supplier shall ensure that the Upgraded Facility is designed, engineered and constructed to operate in accordance with the requirements of this Agreement.

1.6 Additional Development and Construction Covenants

The Supplier shall:

- (a) arrange, at its sole expense, for all Facility connection requirements in accordance with Laws and Regulations to permit the delivery of Delivered Electricity from the Upgraded Facility to the Connection Point;
- (b) provide, at its expense, any additional or modified metering, ancillary metering or monitoring equipment as more specifically set out in the applicable type of Exhibit B identified as the metering and settlement Exhibit in respect of the Facility on the HCI Contract Cover Page;
- (c) where applicable, have a new or amended Metering Plan for the Facility approved by the Sponsor, acting reasonably and shall deliver a copy to the Sponsor for its approval no later than sixty (60) days prior to PCOD. 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 thirty (30) days after its receipt. If, within fifteen (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. The Parties agree that the Independent Engineer's determination on the terms of the Metering Plan shall be final and binding on the Parties (and that neither Party shall be entitled to invoke Section 15.1 or Section 15.2 of the Agreement). All costs of any final determination made by the Independent Engineer in accordance with this Paragraph shall be at the Supplier's expense; and
- (d) provide the Sponsor with a commissioning report for any additional or modified revenue meter(s) referenced in the new or amended Metering Plan prior to any use of metered data.

1.7 Allocation and Treatment of Connection Costs and Network Upgrade Costs

The Supplier acknowledges that:

- (a) all Connection Costs shall be for the account of the Supplier and, as applicable, the Transmitter and/or LDC with which the Supplier has arranged connection of the

Upgraded Facility pursuant to the Connection Agreement, the Distribution System Code and the Transmission System Code, as applicable; and

- (b) the responsibility for any Network Upgrade Costs associated with the connection of the Upgraded Facility shall be allocated as set forth in the Distribution System Code and Transmission System Code.

1.8 Pre-PCOD Performance Security

At any time prior to PCOD, the Sponsor may request and the Supplier shall provide to the Sponsor Performance Security in the amount of the Initial Security to the Sponsor. The Supplier shall be required to maintain the Initial Security pursuant to this Paragraph 1.8. The Sponsor shall return or refund (as applicable) the full amount of the Initial Security within ten (10) Business Days following PCOD, net of any amounts owing by the Supplier to the Sponsor.

1.9 Sponsor Information During Design and Construction

- (a) Prior to the Upgraded Facility achieving PCOD, the Sponsor may request up to four (4) times per calendar year that, within thirty (30) days of any such request, the Supplier provide the Sponsor with a Project Status Report: (i) setting out the progress of the design and construction work and the status of permitting and approvals related to the Upgrades to the Facility, and (ii) containing photographs showing the status of the Upgrades to the Facility or the construction work. At the Sponsor's request, the Supplier shall provide an opportunity for the Sponsor to meet with personnel of the Supplier familiar with the information presented in such Project Status Report. The Supplier consents to the disclosure of the information contained in the Project Status Report and further consents to photographs of the Facility being posted or printed by the Sponsor on the Website or in publications.
- (b) In addition to the Project Status Reports which the Supplier may be required to provide pursuant to Paragraph 1.9(a), the Supplier shall also provide the Sponsor with notice of any:
 - (i) Reportable Events; and
 - (ii) material incident, event or concern which may occur or arise during the course of the development, construction or commissioning of the Upgrades to the Facility, promptly and, in any event, within ten (10) Business Days following the later of the Supplier becoming aware of any such incident, event or concern occurring or arising; and 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.
- (c) The Supplier shall provide to the Sponsor a list of all licences, permits, certificates, registrations, authorizations, consents and approvals issued by a Governmental Authority which are required to design and construct the Upgrades to the Facility.

1.10 Insurance Covenants

Prior to commencing the Upgrades to the Facility, the Supplier agrees to propose to the Sponsor for its approval modifications to its existing insurance under Section 2.9 of the Agreement to provide for such

additional insurance that a prudent person in the business of designing, developing and constructing such Upgrades would put in effect and maintain. Upon approval by the Sponsor, the Supplier will provide the Sponsor with a copy of the modified insurance policies. The Supplier shall not proceed with the proposed Upgrade until it has received the approval of the Sponsor and provided the Sponsor with a copy of the modified insurance policies.

1.11 Conditions Precedents to achieving PCOD

- (a) The Upgraded Facility will be deemed to have achieved PCOD at the point in time when, as subsequently confirmed by the Sponsor in a written notice to the Supplier as described in Paragraph 1.11(c):
 - (i) the Upgraded Facility meets the requirements and criteria specified for the type of Qualifying Project specified in Paragraph 1.2 of this Exhibit J-;
 - (ii) the Sponsor has received an officer's certificate from the Supplier stating that the Upgraded Facility has been constructed in all material respects in accordance with this Agreement and in particular in accordance with Appendix 1 of this Exhibit J-;
 - (iii) the Supplier has satisfied the Aboriginal Consultation Requirements, if any specified by the Ministry of Energy under Paragraph 1.3;
 - (iv) if applicable, the Sponsor has received the new or amended Metering Plan in the Prescribed Form, and such Metering Plan has been approved by the Sponsor pursuant to Paragraph 1.6;
 - (v) if applicable, the System Operator accepts modified registration of the Upgraded Facility;
 - (vi) if applicable, the Sponsor has received a single line electrical drawing which identifies the new or amended as-built Connection Point, clearly showing area transmission and distribution facilities including the transformer station(s) that is electrically closest to the Upgraded Facility;
 - (vii) the Sponsor has received an Engineer's Certificate from the IE, stating that:
 - (A) the Upgraded Facility has been completed in all material respects, excepting punch list items that do not materially and adversely affect the ability of the Upgraded Facility to operate in accordance with the Agreement;
 - (B) the Connection Point of the Upgraded Facility is that as set out in the HCI Contract Cover Page; and
 - (C) the Upgraded Facility has been constructed, connected, commissioned and synchronized to the IESO-Controlled Grid, a Distribution System or a Host Facility, as applicable, and is substantially available to Deliver Electricity in compliance with Good Engineering and Operating Practices and Laws and Regulations; and

- (viii) the Sponsor has received a certificate addressed to it from the Supplier with respect to PCOD of the Upgraded Facility, stating that PCOD has occurred and attaching the documents contemplated by the foregoing Paragraphs 1.11(a)(ii) to (vii) inclusive.
- (b) The Sponsor shall notify the Supplier in writing within ten (10) Business Days following receipt of all documentation required by Paragraph 1.11(a) as to whether such documentation is acceptable to the Sponsor, acting reasonably. If the Sponsor determines that such documentation is not acceptable, the Sponsor shall provide to the Supplier reasonable particulars in respect of the deficiencies in such documentation and the Supplier shall address such deficiencies.

1.12 Requirements at PCOD

- (a) If the Upgraded Facility has achieved PCOD, the Supplier shall, on or before the date which is one (1) year after PCOD, provide the Sponsor with an Engineer's Certificate:
 - (i) stating that the Upgraded Facility has been constructed in all material respects in accordance with this Agreement and in particular in accordance with Appendix 1 of Exhibit J-__;
 - (ii) stating that the Upgraded Facility meets the requirements and criteria for the type of Qualifying Project specified in Paragraph 1.2 of this Exhibit J-__;
 - (iii) stating that, in the case of a Qualifying Regulatory Compliance Project that the Upgraded Facility is in compliance with the regulation, order or approval enacted or issued under the *Lakes and Rivers Improvement Act* or regulation, permit or agreement issued or entered into under the *Endangered Species Act, 2007* giving rise to the requirement to undertake the Qualifying Regulatory Compliance Project; and
 - (iv) confirming the Final Capacity and Expected Average Annual Generation of the Upgraded Facility.
- (b) Except in respect of a Qualifying Expansion Project that is not also a Qualifying Joint Project, the Supplier shall provide to the Sponsor, at the same time as providing the Engineer's Certificate in Paragraph 1.12(a), an accounting of the actual costs incurred by the Supplier in completing the Upgrade including certification that such actual costs reflect Canadian GAAP or IFRS as normally applied by the Supplier. The Sponsor may require that such certification be provided by the Supplier's auditor.
- (c) Upon receipt of such Engineer's Certificate and an accounting of the actual costs (if applicable) and provided that the Supplier is not otherwise in default of any provision of this Agreement, the Parties agree:
 - (i) to determine for the modified Facility the Upgraded Contract Price in accordance with Appendix 2 of Exhibit J-__;
 - (ii) to apply such Upgraded Contract Price retrospectively to PCOD;
 - (iii) that the Sponsor shall adjust normal monthly contract payments to reflect the

Upgraded Contract Price with effect, from the start of the month following such determination of the Upgraded Contract Price, and

- (iv) the Sponsor at the end of the first month following determination of the Upgraded Contract Price shall include in the Statement any amount which reflects the application of the Upgrade Contract Price retrospectively to PCOD, without accrual or payment of interest on any such payments amounts; and
 - (v) after determination of the Upgraded Contract Price and Escalation Percentage, the Sponsor shall provide to the Supplier the final Upgraded Contract Price and Escalation Percentage that will be used for the HCI Contract.
- (d) The Supplier shall provide to the Sponsor, at the same time as providing the Engineer's Certificate in Paragraph 1.12(a), the proposed revision to Exhibit A for the Upgraded Facility. The Sponsor shall notify the Supplier in writing as to whether such revision is acceptable to the Sponsor, acting reasonably. If the Sponsor determines that such documentation is not acceptable, the Sponsor shall provide to the Supplier reasonable particulars in respect of the deficiencies in such proposed revision and the Supplier shall address such deficiencies. If the proposed revision is acceptable, the Sponsor shall provide to the Supplier the final Upgraded Contract Price to be made retrospective to the PCOD for the Upgrade, and the Escalation Percentage based on the proposed revision to be used for the HCI Contract. The revised Exhibit A, the final Upgraded Contract Price and Escalation Percentage shall form part of the Agreement.

1.13 Acknowledgement

The Supplier acknowledges that:

- (a) a failure to achieve PCOD within two (2) years of the milestone for PCOD specified in Appendix 1 of this Exhibit J-__ will disqualify the Supplier from being eligible for the Upgraded Contract Price with respect to such Qualifying Project;
- (b) a failure of the modified Facility to meet the requirements of Paragraph 1.12(a) or (b) of this Exhibit J-__ will disqualify the Supplier from being eligible for the Upgraded Contract Price with respect to such Qualifying Project; and
- (c) in no circumstance will Upgrades to a Facility result in any extension of the Term of this Agreement.

1.14 Inconsistency or Conflict

In the event of any inconsistency or conflict between the provisions of Exhibit J and the provisions of Exhibit J-__, any inconsistency or conflict shall be resolved in favour of the provisions of Exhibit J-__.

1.15 Binding Agreement

All other terms and conditions of the Agreement shall remain unamended. All terms and conditions of the Agreement, as modified by this Exhibit J-__, shall continue to be binding upon the Parties.

1.16 Assignment

Except as otherwise set out in this Exhibit J-__, this Exhibit J-__ 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 Exhibit J-__. This Exhibit J-__ and all of the provisions of this Exhibit J-__ shall be binding upon and shall enure to the benefit of the Parties and their respective successors and permitted assigns.

1.17 Governing Law

This Exhibit J-__ shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

1.18 Representations of Supplier

- (a) The Supplier repeats the representations and warranties in Subsection 6.1(a) to Section 6.1(k) of the Agreement, inclusive, with effect on the date hereof and as if the word “Agreement” as used therein was replaced with the words “Exhibit J-__”. The Supplier acknowledges that the Sponsor is relying on such representations and warranties, as modified by the previous sentence, along with the representation and warranty in Appendix 1 to this Exhibit J-__ in entering into this Exhibit J-__.
- (b) The Sponsor repeats the representations and warranties in Subsection 6.2(a) to Section 6.2(f) of the Agreement, inclusive, with effect on the date hereof and as if the word “Agreement” as used therein was replaced with “Exhibit J-__”. The Sponsor acknowledges that the Supplier is relying on the foregoing representations and warranties in entering into this Exhibit J-__.

1.20 Counterparts

This Exhibit J-__ may be executed in two (2) 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 Exhibit J-__ to produce or account for more than one such counterpart. Any Party may deliver an executed copy of this Exhibit J-__ by facsimile but such Party shall promptly deliver to the other Party an originally executed copy of this Exhibit J-__.

[REMAINDER OF THE PAGE INTENTIONALLY LEFT BLANK]

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.

INSERT NAME OF SUPPLIER

**INDEPENDENT ELECTRICITY
SYSTEM OPERATOR**

By: _____

Name:

Title:

By: _____

Name: JoAnne Butler

Title: Vice President, Market and
Resource Development

I have authority to bind the
Corporation.

By: _____

Name:

Title:

I/We have authority to bind the
Corporation

Appendix 1 of Exhibit J-__

Description of Upgrades to the Facility

- (a) Type of Upgrade:
- (b) Estimate of Original Capacity of the Facility:
- (c) Estimate of the Final Capacity after the Upgrade:
- (d) Actual average baseline energy generation of the Facility:
- (e) Estimate of the expected average baseline energy generation after the Upgrade:
- (f) A narrative description of the proposed Upgrade:
- (g) Proposed project schedule and milestone dates, including PCOD:
- (h) Environmental and project and site approvals and permitting for the proposed Upgrade:
- (i) Connection assessments and approvals required from the System Operator, Transmitter, Distributor or Host Facility, as applicable:
- (j) The estimate Upgrade costs:
- (k) Major equipment to be used in the proposed Upgrade:
- (l) Description of any financing, if any, required for the proposed Upgrade:
- (m) Other relevant information pertaining to the Upgrade:
- (n) Any other information which may be reasonably required by the Sponsor:

The Supplier represents to the Sponsor that all statements, specifications, data and information set out Appendix 1 to this Exhibit J-__ are complete and accurate in all material respects and there is no material information omitted from Appendix 1 to this Exhibit J-__ which makes the information in Appendix 1 to this Exhibit J-__ misleading or inaccurate. The Supplier acknowledges that the Sponsor is relying on such representations in entering into this Exhibit J-__.

Appendix 2 of Exhibit J-__

Financial Model

The Parties agree that:

- (a) the Financial Model attached herein or contained within the CD-ROM is incorporated and forms part of the Agreement;
- (b) the Financial Model will be used to calculate the various items contained within Exhibit J-__ and the HCI Guidelines and in particular the Upgraded Contract Price and Escalation Percentage;
- (c) each Party will retain 1 copy of the CD-ROM containing the Financial Model if requested by the Supplier and provided by the Sponsor;
- (d) the Financial Model constitutes Confidential Information of the Supplier and the Sponsor;
- (e) the inputs and outputs specified are based upon preliminary information and represent the estimated Upgraded Contract Price and Escalation Percentage; and
- (f) the estimated Upgraded Contract Price and Escalation Percentage specified in Appendix 3 of this Exhibit J-__ will be used for the purposes of determining Upgraded Contract Price and Escalation Percentage as provided for in this Exhibit J-__.

The Sponsor grants to Supplier an irrevocable, royalty free perpetual, non-exclusive licence to use the Financial Model for any purpose in connection with the Agreement. The Parties agree that neither Party shall be liable for and neither Party shall seek to recover from the other Party or its Representatives any underpayments, overpayments, damages, losses, costs, liabilities or expenses which may arise or result (whether in contract, tort or otherwise) as a result of any errors in the Financial Model or its application.

Appendix 3 of Exhibit J-__

EXHIBIT K
SPECIAL PROVISIONS

[Note to Draft: If it becomes necessary to amend the General Terms and Conditions and Standard Definitions then any such written amendments will be attached to the Agreement as Exhibit K. It is expected that for most Agreements no amendments will be necessary. Pricing provisions will not be amended.]

EXHIBIT L
SPONSOR WEBPAGE INFORMATION

The Supplier agrees to provide to the Sponsor any information specified herein and agrees that the information may be disclosed by the Sponsor on its Website or otherwise publically disclosed in accordance with Subsection 7.1(d) of the Agreement:

- Legal Name of Supplier
- Facility Name
- Nameplate Capacity (MW)
- Contract Capacity (MW)
- Location of Facility or Nearest Population Centre
- River Name
- Number of Generating Units
- Turbine Type or Model
- Turbine Manufacturer
- Runner Type
- Normal Operating Head
- Penstocks (number, length, diameter and materials)
- Connection Point (circuit designation and/or name of substation)
- Estimated Annual Generation (MWh)
- Original In Service Date
- Term Commencement Date
- Supplier Website Link
- Supplier Public Relations Contact
- Description of the Facility (information on headworks, intake, powerhouse, tailrace etc.)
- Photos of the Facility (interior and exterior)

EXHIBIT M
DETERMINATION OF HOURLY DELIVERED ELECTRICITY FOREGONE

This Exhibit sets out the methodology for determination of the quantity of Hourly Delivered Electricity foregone as a result of any spill that meets the requirements set out in Subsection 1.5(c) of Exhibit B Type 1 and Type 2.

- 1: The following information is required to substantiate any determination of Hourly Delivered Electricity foregone and will be retained by Supplier and provided on request to the Sponsor:
 - (a) in order to determine the quantity of Hourly Delivered Electricity foregone, for each qualifying hour:
 - (i) either (A) the Pre-Dispatch Price for such hour “h”, as published in the immediately preceding hour “h-1” or (B) the identification of the over generation advisory or equivalent notice published by the System Operator in respect of such hour “h” for the IESO-Controlled Grid or a substantial portion thereof;
 - (ii) the dispatch data for the Facility;
 - (iii) a record of the System Operator’s dispatch instruction or other instruction on an economic basis to reduce the output of the Facility to a level below that offered at a price less than or equal to \$1.00/MWh; and
 - (iv) the metered output of the Facility.
 - (b) in order to determine that the Supplier’s foregoing of Hourly Delivered Electricity in any hour has resulted in a qualifying spill, the Facility spill record for the day.
- 2: The quantity of Hourly Delivered Electricity foregone shall be the lesser of:
 - (a) the quantity offered at less than \$1.00/MWh minus the net metered output for the same hour, and
 - (b) the MWh determined by converting the qualifying spill to MWh using the factor for the relevant Facility as set out in item 17 on the HCI Contract Cover Page.
- 3: Absent any apparent errors, the Sponsor shall be entitled to rely on the Supplier’s calculation for the monthly settlement calculations without prejudice to any corrections made following further review of information or audit of the Supplier processes by the Sponsor.