

Request for Proposals

FOR THE **TRANSMISSION MUST-RUN SERVICE** PROCUREMENT COMPETITION
GRANDE PRAIRIE PLANNING AREA

April 4, 2022



Classification: Public

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REQUEST FOR PROPOSALS

PART A: TERMS & CONDITIONS

1.0 RFP INTRODUCTION AND OVERVIEW

Unless otherwise indicated, capitalized terms and acronyms used in this Request for Proposals (RFP) have the meanings given such capitalized terms and acronyms in the Glossary of Terms contained in Part B, Appendix A of this RFP.

1.1 **AESO CORPORATE OVERVIEW**

The AESO's mandate is derived from the *Electric Utilities Act* ("EUA") and related regulations. The AESO's mandate can be briefly described as follows:

The AESO is responsible for a broad range of duties, responsibilities and functions with respect to the electricity industry, including:

- Being responsible for the safe, reliable and economic operation of the System.
- Facilitating the operation of a fair, efficient and openly competitive electricity market, including financial settlement.
- Assessing the current and future needs of market participants (individuals and entities that supply, generate, transmit, distribute, trade, exchange, purchase or sell electricity) and planning the transmission system to meet those needs.
- Providing open and non-discriminatory access to the transmission system for market participants, including generation and distribution entities and large industrial consumers of electricity.
- Procuring ancillary services to ensure the reliable operation of the AES.

Further information on the AESO and its legislative mandate is available at www.aeso.ca.

The AESO has a corporate credit rating of AA-/Stable from Standard and Poor's Ratings Services, a leading global provider of independent credit risk research and benchmarks. To access Standard and Poor's rating summary analysis for the AESO, visit www.standardandpoors.com.

Freedom of Information and Protection of Privacy Act

The AESO is a public body subject to the provisions of the Alberta *Freedom of Information and Protection of Privacy Act* (the "FOIP Act"). The FOIP Act provides broad access to information rights to the public, however, it does include required exceptions that prohibit the disclosure of certain third-party information supplied explicitly or implicitly in confidence, when disclosure could reasonably be expected to, among other things, significantly harm the business interests of a third party or when disclosure would unreasonably invade individual privacy (FOIP Act, sections 16 and 17 respectively).

If an access request under the FOIP Act includes consideration of third-party information, as identified under section 16, or personal information that may unreasonably invade privacy, as contemplated under section 17, the AESO is required to notify the affected party for representations regarding disclosure.

1.2 PURPOSE

The AESO is opening the second stage of the Transmission Must-Run Competition (TMR Competition) to procure Transmission Must-Run Service (“TMR Service”) for the AESO’s Grande Prairie planning area with service to commence July 1, 2022. The second stage of the TMR Competition is a Request for Proposals. The purpose of this RFP is to:

- Provide Proponents with information and instructions relating to the RFP stage of this TMR Competition.
- Obtain information regarding the Proponent’s TMR Facility.
- Provide the Proponents with information pertaining to how the Fixed Price Cap shall be established and for the AESO to obtain the Fixed Costs for a TMR Facility.
- Obtain the Fixed Costs associated with a TMR Facility and provide the Proponents with feedback as necessary on their Fixed Costs which shall form the basis for establishing the Fixed Price Cap in accordance with the ISO Tariff and as further described in this RFP.
- Request a Bid from each Proponent which will include a Contract Volume Bid (MW) and a Fixed Price Bid.
- Provide the Draft TMR Agreement to Proponents for review and to solicit feedback.

1.3 RFP BACKGROUND & SCOPE

- (1) On March 7, 2022, the AESO released a Request for Expressions of Interest (“REOI”) for TMR Services in the Grande Prairie planning area. All information issued during the REOI stage is available on the TMR procurement page of the AESO’s website (<https://www.aeso.ca/market/ancillary-services/transmission-must-run-service/>).
- (2) The AESO is targeting a Procurement Target Volume Range at or above 35 MW and up to 45 MW of TMR Service through the TMR Competition. However, the AESO may, in its sole discretion procure an amount equal to, lesser than, or greater than, the identified Procurement Target Volume Range.
- (3) The AESO is issuing this RFP to retain one or more Service Provider(s) to provide all or a portion of the Procurement Target Volume Range of TMR Service for the Service Term.
- (4) In order to be successful in this RFP, Proponents and their TMR Facility must be able to meet the Eligibility Criteria.
- (5) The AESO intends to award one or more Final TMR Agreement(s) for the provision of TMR Service through a fair, open, and transparent RFP Process. The TMR Agreement(s), if any, awarded and executed pursuant to this RFP shall be in substantially the same form as the Draft TMR Agreement that can be found in Part B, Appendix K.
- (6) The RFP Process commences with the issuance of these RFP Documents in the Bonfire Site and will terminate on the earlier occurrence of:
 - (a) the execution of the TMR Agreement by the Successful Proponent(s) and the AESO;
 - (b) the election by the AESO not to proceed with the RFP or otherwise cancel this RFP in accordance with the terms hereof; or

- (c) The election by the AESO to proceed with a Bilateral Negotiation if this RFP Process is not determined to be contestable in accordance with Appendix B of the ISO Tariff.
- (7) The AESO will evaluate the Proponents' Proposal(s) in accordance with the terms of this RFP.

2.0 PROPONENT INSTRUCTIONS

2.1 RFP DOCUMENTS

- (1) The Request for Proposal documents (the "RFP Documents") comprise:
 - (a) the main body of the RFP;
 - (b) all Appendices hereto; and
 - (c) all Addenda to the RFP Documents, if any are issued by the AESO.
- (2) The RFP Documents shall be read as a whole. The Appendices and the Addenda, if any, constitute an integral part of this RFP and are incorporated by reference.

2.2 DISTRIBUTION OF DOCUMENTS – ELECTRONIC DISTRIBUTION

The RFP stage of the TMR Competition will be run through an online procurement site called the Bonfire Site. The AESO will utilize the Bonfire Site to distribute all RFP Documents. The Proponent is solely responsible for making appropriate arrangements to receive and access the RFP Documents through the Bonfire Site.

2.3 COMMUNICATIONS AND INFORMATION

2.3.1 COMMUNICATIONS, ENQUIRIES AND REQUESTS FOR CLARIFICATION

Except as otherwise set out in this RFP, communications, clarifications and Enquiries from the Proponent related to this RFP should be submitted to the AESO through the Bonfire Site.

- (1) Enquiries
 - (a) All Enquiries in respect of this RFP must be submitted to the AESO by the Deadline for Enquiries.
 - (b) The AESO may, but will not be obligated to, respond to any communications or Enquiries but if it does so, it may respond at such time as it determines.
 - (c) Should the AESO choose to respond, the AESO will provide all Proponents with written responses to Enquiries that are submitted in accordance with this Section 2.3.1 by the date set out in the Timetable. The AESO will post the responses to Enquiries on the Bonfire Site for all Proponents to view, except for those that have been determined to be commercial in confidence. Responses to Enquiries do not form part of the RFP Documents and do not amend the RFP Documents.
 - (d) The AESO will not attribute Enquiries to any Proponent, and the AESO may, in its sole discretion:

- (i) provide a single response to similar Enquiries submitted by various Proponents;
 - (ii) edit the language of any Enquiry for the purpose of clarity;
 - (iii) exclude any submitted Enquiry if, in the AESO's opinion, it is ambiguous or incomprehensible;
 - (iv) exclude any submitted question if the AESO views the question itself as disclosing confidential information (and for this reason, it is recommended that Proponents submit confidential information as set out in Section 2.3.1(2) below); or
 - (v) exclude any submitted Enquiry if the response to such Enquiry would require the AESO to disclose information that is subject to confidentiality restrictions or that would be disadvantageous to the RFP Process.
- (e) The AESO may, at its option, hold question and answer ("Q&A") sessions at which time the Proponent may seek additional clarification of the RFP. Notice of any such Q&A sessions will be provided through an Addenda to this RFP document.
 - (f) The AESO may request a conference call with the Proponent at any time during the RFP stage, or the Proponent, upon submission of an Enquiry, may then also request a conference call with the AESO as set out in Part A, Section 3.0.
 - (g) It is the Proponent's responsibility to seek clarification from the AESO of any matter regarding the RFP that the Proponent considers to be unclear in accordance with the process set out in this Section 2.3.1.
 - (h) The AESO shall not be responsible for any misunderstanding of the RFP Documents, responses to Enquiries or the RFP Process on the part of any Proponent, including the Successful Proponent, nor shall any Proponent be released in respect of any obligation pursuant to its Proposal or the TMR Agreement resulting from any such misunderstanding.
- (2) Commercial in Confidence Enquiries
- (a) A Proponent may, if it believes that its Enquiry relates to commercially sensitive matters, request the Enquiry be kept confidential by setting out such request in the Enquiry and by clearly marking the Enquiry as "commercial in confidence."
 - (b) The AESO may, in its discretion, respond to the Enquiry submitted as "commercial in confidence" or not as it determines in its discretion. If the AESO concludes, in its discretion and including for purposes of fairness, that the AESO should not respond to an Enquiry on a confidential basis, the AESO will endeavour to notify the Proponent who submitted the Enquiry marked "commercial in confidence" within three (3) business days of such Enquiry being submitted to the AESO, and the Proponent may withdraw its Enquiry at any time through the Bonfire Site. If the Proponent does not withdraw its Enquiry within two (2) business days of the AESO's notice, then the Enquiry will be deemed withdrawn.
 - (c) Despite any other part of this RFP, and despite any matter being identified by a Proponent as "commercial in confidence," the AESO may issue one or more communications, Addenda or other responses to all Proponents if the AESO, in its discretion, considers the matter to be a matter of substance that should be brought

to the attention of all Proponents for purposes of fairness in, or maintaining the integrity of, the TMR Competition.

(3) Submission via the Bonfire Site

The following provisions will apply to any communication with the AESO, or the delivery of documents to the AESO through the Bonfire Site where such communications or deliveries are permitted by the terms of this RFP:

- (a) the AESO does not assume any risk or responsibility or liability whatsoever to any Proponent for ensuring that the Bonfire Site is in good working order, able to receive transmissions, or not engaged in receiving other transmissions such that a Proponent's transmission cannot be received, or if a permitted communication or delivery is not received by the AESO or is received in less than its entirety, within any time limit specified by this RFP, or that a Proponent's transmission is not subject to being intercepted or that the confidentiality of such transmission will not be otherwise comprised during transit; and
- (b) all permitted communications with, or delivery of documents to, the AESO will be deemed as having been received by the AESO on the dates and times indicated on the Bonfire Site.

(4) The AESO has posted a link to the TMR Competition on Alberta Purchasing Connection but will not accept Submissions or Proposals through that platform.

2.3.2 CLARIFICATION RELATED TO THE PROPONENT'S SUBMISSION OR PROPOSAL

(1) Clarification

- (a) The AESO may, within such timeframe as it determines appropriate:
 - (i) require a Proponent to clarify the contents of any Submission or Proposal;
 - (ii) require a Proponent to submit supplementary documentation clarifying any matters contained in any Submission or Proposal;
 - (iii) require the Proponent to provide data additional to that required as part of this RFP in order to complete any calculations performed during the review of a Submission or the evaluation; and
 - (iv) seek a Proponent's acknowledgement of an interpretation by the AESO of the Proponent's Submissions or Proposal.
- (b) The AESO is not obliged to seek clarification of any aspect of a Submission or Proposal.
- (c) A Proponent must submit the additional information or clarifications to the Bonfire Site, or as otherwise stipulated by the AESO, within the time limit specified by the AESO.

(2) Verification

- (a) The AESO may, in its sole discretion, verify any statement or claim contained in any Submission or Proposal or made subsequently by a Proponent. That verification may be made by whatever means the AESO deems appropriate and may include contacting persons identified in the contact information provided by

the Proponent or by contacting persons other than those identified by any Proponent.

- (b) In submitting a Submission or Proposal, a Proponent is deemed to consent to the AESO verifying any information from third parties and receiving additional information regarding the Proponent, and any other person associated with the Proponent as the AESO may require.
- (c) For purposes of any verification pursuant to Sections 2.3.2(2)(a) and 2.3.2(2)(b), the information described may be collected from and disclosed to government and non-government organizations in accordance with applicable law.

2.3.3 CONTACT PERSON AND PROHIBITED CONTACTS

- (1) Proponents should address all requests for clarification with respect to this RFP Process to the AESO in accordance with Section 2.3.1 and should not submit questions in any other manner.
- (2) No Proponent should contact or make any attempt to contact:
 - (a) any AESO Representative directly, other than via the Bonfire Site, or through TMR@aesoc.ca if the Bonfire Site is unavailable; or
 - (b) any other Proponent with respect to any Submissions, its Proposal, any other Proposal, the RFP Documents or the RFP Process.
- (3) Information offered or otherwise obtained from any source other than through the Bonfire Site is not official, may be inaccurate, should not be relied on or used in any way by a Proponent, its Personnel or any other person for any purpose, and will not be binding on the AESO.

2.4 SUBMISSION AND PROPOSAL FORMAT AND CONTENT

- (1) Each Submission and Proposal should be submitted in accordance with the requirements set out in the RFP Documents.
- (2) Each Proponent should:
 - (a) examine all instructions, terms and conditions, forms, Prescribed Forms, Appendices and information in the RFP Documents; and
 - (b) in a clear, concise and legible manner, complete and submit all documentation and information required pursuant to the requirements set out in the RFP Documents.

2.5 SUBMISSION AND PROPOSAL COMPLIANCE

- (1) For purposes of this RFP:
 - (a) "comply" and "compliance" mean that the Submission or Proposal conforms to the requirements or terms of the RFP without material deviation;
 - (b) "must," when used in connection with a Submission requirement or Proposal requirement, means a requirement that must be met for the Submission or Proposal to receive further consideration, and the failure to satisfy same will result in the Submission not being considered or disqualification of such Proposal; and

- (c) "should," when used in connection with a Submission requirement or Proposal requirement, means a requirement that has a significant degree of importance to the objective of the RFP, and failure to satisfy same may result in the Submission not being considered or disqualification of the Proposal.

2.6 CHANGES TO THE RFP

- (1) At any time during the RFP Process the AESO may, without liability, cost or penalty, amend or supplement the RFP Documents in accordance with this Section 2.6.
- (2) The AESO will issue amendments to the RFP Documents by Addenda only. All Addenda will be clearly identified as such by the AESO. All Addenda shall be disseminated via the Bonfire Site.
- (3) Other than Addenda, no other statement, whether oral or written, made by the AESO or any AESO Representative, shall amend the RFP Documents and accordingly, the Proponents shall not be entitled to rely on any other statement from the AESO or any AESO Representative except as set forth in the RFP Documents and Addenda issued pursuant to this Section 2.6.
- (4) Each Proponent is solely responsible to ensure that it has received all Addenda issued by the AESO. Proponents may seek confirmation of the number of Addenda issued under this RFP Process by submitting an Enquiry in accordance with Section 2.3.1.

2.7 PROPOSAL VALIDITY PERIOD AND WITHDRAWAL

- (1) Subject to the Proponent's right to withdraw or amend its Proposal before the Proposal Deadline, the Proponent's Proposal shall be irrevocable and shall remain in effect, unamended, and open for acceptance by the AESO from and after the Proposal Deadline until:
 - (a) the AESO elects not to proceed with the RFP Process or otherwise cancels the RFP Process in accordance with the terms hereof; or
 - (b) the AESO issues a notice to such Proponent pursuant to Section 5.3 (the "Proposal Validity Period"); provided that in no event shall the Proposal Validity Period extend beyond July 31, 2022.

2.8 PROPOSAL SUBMISSION

- (1) The AESO has elected to utilize the Bonfire Site for the submission of electronic copies of Proposals. Proponents are required to register to utilize this tool.
- (2) Each Proponent must submit an electronic copy of its Proposal, before the Proposal Deadline of May 16, 2022, 3:30 p.m. Mountain Daylight Time ("MDT"). The calendar and clock on the Bonfire Site will establish the time of delivery.
- (3) Proponents must submit electronic copies of their Proposals by uploading them via the Bonfire Site or through TMR@aeso.ca in the event that the Bonfire Site is unavailable. Proposals should be in the same form as prescribed in Part B unless otherwise requested in the instructions contained in this RFP.
- (4) Each electronic copy of the Proposal will be considered received when a complete Proposal has been uploaded to the Bonfire Site. Only complete Proposals received before the Proposal Deadline will be considered to have been received on time. Each Proponent

acknowledges that it is solely responsible for the delivery of its Proposal to the AESO and assumes all risk associated with the late delivery of a Proposal.

- (5) The Proposal must be received by the AESO before the Proposal Deadline. In respect of Proposals submitted prior to the Proposal Deadline, the Bonfire Site may send a confirmation of receipt of such submission to the Proponent. Such confirmation is not part of the RFP evaluation and does not signal the AESO's acceptance of a Proponent's Proposal.

2.9 AMENDING OR WITHDRAWING PROPOSALS

- (1) At any time prior to the Proposal Deadline, a Proponent may amend a submitted Proposal using the functionality on the Bonfire Site. Proponents will not be permitted to amend a Proposal after the Proposal Deadline has passed.
- (2) A Proponent may withdraw a Proposal at any time prior to the Proposal Deadline by using the functionality on the Bonfire Site to remove a previously uploaded Proposal.

2.10 DISCLOSURE ISSUES

- (1) The AESO may make the identity of the Successful Proponent(s) public, and each Proponent, by submitting its Proposal, agrees that if it is a Successful Proponent, the AESO may publish or otherwise disclose its identity, procured volume, number of awarded agreements, and term of the executed TMR Agreement as part of the AESO's business practices.
- (2) Each Proponent further agrees that the AESO may provide any Submissions and/or its Proposal, on a confidential basis, to any person involved in the review of Submissions and evaluation of Proposals on behalf of the AESO and the AESO may:
 - (a) make copies of any Submissions and/or Proposal; and
 - (b) retain such Submissions and Proposal.
- (3) All Submissions and Proposals will be considered confidential and will be received and treated in confidence by the AESO.

The AESO may disclose any information with respect to the Proponents and their Submissions and Proposals as required by applicable law, including for the purposes of facilitating engagement with the Market Surveillance Administrator ("MSA") pursuant to the process set out in Appendix B of the ISO Tariff.

2.11 TIMETABLE

- (1) The timetable for the RFP Process (the "Timetable") is set out in this Section 2.11 of this RFP.
- (2) The AESO may, without liability, cost or penalty and in its sole discretion, and at any time prior to or following the Proposal Deadline, amend the Timetable.
- (3) If the AESO extends any date, deadline or the Proposal Deadline, all obligations of Proponents will thereafter be subject to the extended date or deadline.
- (4) Should the AESO choose to hold any RFP Q&A sessions, or any conference calls with a Proponent as set out in Part A, Section 3.0, any such sessions or conference calls will be held no later than the Proposal Deadline.

Issuance of RFP Documents	April 4, 2022
Deadline for Draft TMR Agreement Comments Initial Fixed Cost Submission Date	3:30 p.m. MDT April 19, 2022
Final TMR Agreement posted	May 2, 2022
Deadline for Enquiries	3:30 p.m. MDT May 11, 2022
Proposal Deadline	3:30 p.m. MDT May 16, 2022
Successful Proponent selection and notification	By June 21, 2022
Notification to unsuccessful Proponents	No later than June 30, 2022
Commencement of Service Term	July 1, 2022

3.0 REVIEW PROCESS OF FIXED COST SUBMISSIONS

(1) The review of the Fixed Cost Submissions by the AESO is intended to ensure that a Final Fixed Cost Submission complies with the definitions and instructions set out in Part B, Appendix F prior to the Proposal Deadline and to ensure that both the AESO and the Proponent have confirmed the Fixed Price Cap associated with the TMR Facility. The review of the Fixed Cost Submissions will be conducted as follows:

- **Stage 1 – Initial Fixed Cost Submission:** The Proponent should submit an Initial Fixed Cost Submission on or before the Initial Fixed Cost Submission Date using the Q&A functionality on the Bonfire Site. The AESO will assess whether the Initial Fixed Cost Submission complies with the RFP, including whether the Fixed Costs appear to be reasonable based on the definitions and instructions set out in the RFP including Part B, Appendix A and Part B, Appendix F. For clarity, the Initial Fixed Cost Submission should include Appendix F Prescribed Form – TMR Facility Fixed Costs and a Fixed Cost Narrative as described in Part B, Appendix G. The AESO will advise through the Bonfire Site whether the Initial Fixed Cost Submission is acceptable to the AESO, in its sole discretion. An Initial Fixed Cost Submission that is accepted by the AESO shall be the Final Fixed Cost Submission and shall form part of the Proponent’s Proposal.
- **Stage 2 – Revised Fixed Cost Submission (if applicable):** If the AESO advises the Proponent that the Initial Fixed Cost Submission is not accepted and provides associated rationale through the Bonfire Site, then the Proponent should submit a Revised Fixed Cost Submission that addresses the AESO’s questions or concerns using the Q&A functionality on the Bonfire Site.

The Proponent may request clarification or additional information from the AESO with respect to feedback on their Fixed Cost Submission by submitting an Enquiry through the Bonfire Site using the Q&A functionality. The AESO may request a conference call with the Proponent in accordance with Part A, Section 2.3.1(f), or the Proponent, upon submission of an Enquiry, may then also request a conference call with the AESO to discuss the Fixed Cost Submission and this process may be repeated until a Revised Fixed Cost Submission

is accepted by the AESO in writing through the Bonfire Site. The Proponent should promptly reply to the AESO's Enquiries or request for a conference call, until the AESO confirms in writing that it has accepted the Fixed Cost Submission from the Proponent. All Revised Fixed Cost Submission(s) as required should be submitted through the Q&A functionality on the Bonfire Site.

A Revised Fixed Cost Submission that is accepted by the AESO shall be the Final Fixed Cost Submission which shall form part of the Proposal. A Fixed Cost Submission from the Proponent should be received prior to the Deadline for Enquiries set out in the Timetable.

- (2) Failure by a Proponent to submit a Fixed Cost Submission that has been accepted by the AESO as the Final Fixed Cost Submission, prior to the Proposal Deadline may result in disqualification of the Proposal. The Proponent is responsible for ensuring the completion of the Fixed Cost Submission process and is encouraged to allow sufficient time to complete the process.

4.0 EVALUATION OF PROPOSALS

4.1 ELIGIBILITY CRITERIA

- (1) The TMR Facility must meet the following criteria in order to be eligible to provide the TMR Service (the "Eligibility Criteria"):
- a) Must be a single Source Asset.
 - b) Must be located within the Balancing Authority Area and be connected to the System via one of the following seven (7) substations located in the Grande Prairie planning area (area 20):
 - o Poplar Hill 790S
 - o Goodfare 815S
 - o Elmworth 731S
 - o Lowe Lake 944S
 - o Updike 886S
 - o Saddle Hills 865S
 - o Wapiti 823S
 - c) Must, in response to a Dispatch for TMR Service, be capable of Ramping in accordance with the ISO Rules and maintaining a minimum of 35 MW of Real Power, except when a Permitted Unavailability, Derate or a Force Majeure event is in effect for the TMR Facility.
 - d) Must be able to maintain the Real Power at the TMR Service dispatched volume, subject to the Allowable Dispatch Variance, for the full duration that a Dispatch for TMR Service is in effect.
 - e) Must be able to provide the TMR Service by the commencement of the Service Term.

4.2 EVALUATION PROCESS OF PROPOSALS

- (1) The evaluation of the Proposals and award of a Final TMR Agreement(s) will be conducted by the AESO as follows:
- **Stage 1 – Proposal Completeness and Eligibility Confirmation:** The AESO will assess, on a pass/fail basis, whether the Proposal complies with this RFP, including whether the Proposal contains or includes the required content for a Proposal in accordance with Part

B, Table 1 – Content for Proposal and whether the TMR Facility meets the Eligibility Criteria.

In assessing compliance in relation to completeness, the AESO will also consider, *inter alia*, whether the Proposal complies with the instructions contained in this RFP or within an Appendix or Prescribed Form, as applicable, and includes a content submission for each applicable component of each Appendix or Prescribed Form that is required and includes in or attaches, as applicable, any substantiating evidence or documents specified in the RFP, Appendix or Prescribed Form and methodology or items otherwise required by this RFP.

In assessing compliance in relation to the Eligibility Criteria, the AESO will consider, *inter alia*, whether the TMR Facility set out in Part B, Appendix E meets the Eligibility Criteria and whether the Proponent has executed the Proponent Declaration at Part B, Appendix D.

Proposals that are assessed by the AESO to be incomplete or that do not meet the Eligibility Criteria will be disqualified.

- **Stage 2 – Proposal Evaluation:** If a Proponent's Proposal has passed the completeness and eligibility stage of evaluation, then the Proposal will be further evaluated by the AESO to rank the Proposal based on the Evaluation Criteria set forth in Part B, Appendix B to determine the Fixed Price Bid ranking.

Each Proponent must Bid a Fixed Price Bid between zero dollars (\$0) and up to the Fixed Price Cap. In completing the Fixed Price Bid ranking, the AESO will consider the Fixed Price Cap, the information provided in Part B, Appendix H and the Final Fixed Cost Submission as submitted in Appendix F Prescribed Form - TMR Facility Fixed Costs and a Fixed Cost Narrative as described in Appendix G. Such ranking shall be from lowest Fixed Price Bid to the highest Fixed Price Bid, with those Proposals having the lowest Fixed Price Bid having the highest priority.

- **Stage 3 – Selection of Successful Proponent(s):** The AESO will make a determination as to the Successful Proponent(s) by selecting Proposals based on the highest priority in the Fixed Price Bid ranking in order to satisfy its need for TMR Service and taking into consideration the Procurement Target Volume Range.

The Contract Volume Bid must be at or above the Minimum Continuous Operating Capability for the TMR Facility and up to 45 MW.

The AESO reserves the right to award a Final TMR Agreement in respect of Proposals with Fixed Price Bids higher than the Fixed Price Bids of unsuccessful Proposals if such unsuccessful Proposals are ineligible, disqualified, or are otherwise rejected pursuant to the terms of this RFP.

5.0 **FINAL CONTRACT AWARD**

5.1 **SUCCESSFUL PROPONENT(S)**

- (1) The AESO shall determine the Successful Proponent(s) in accordance with the terms of this RFP. Notwithstanding anything else contained herein, the AESO has the sole and final discretion to determine the Successful Proponent(s) based on its assessment of which Proponent's Proposal best meets such Evaluation Criteria outlined in Part B, Appendix B, and the needs of the AESO.
- (2) The AESO is not obliged pursuant to this RFP to deal exclusively with a single Proponent. The AESO may, in its sole and absolute discretion, deal with one or more Successful

Proponents and by submitting a Proposal, a Proponent will be deemed to have acknowledged that the AESO may contract with others in relation to this RFP.

5.2 PROPONENT COMMENTS ON DRAFT TMR AGREEMENT

- (1) The AESO has provided the Draft TMR Agreement at Part B, Appendix K for Proponent review and comment.
- (2) Proponents may submit any comments regarding the Draft TMR Agreement using the Prescribed Form - Draft TMR Agreement Comments included as Part B, Appendix J of this RFP. If required due to the number of comments, Proponents may submit multiple copies of the Prescribed Form – Draft TMR Agreement Comments. Proponents also have the option to provide feedback on the Draft TMR Agreement by tracking proposed changes, along with including the rationale for the proposed change, directly in the Draft TMR Agreement. The AESO will initiate a message through the Q&A functionality on the Bonfire Site with the subject line: TMR Comments– Draft TMR Agreement. Comments, whether in the Prescribed Form - Draft TMR Agreement Comments or included directly in the Draft TMR Agreement should be uploaded using the attachment feature in the AESO-initiated message with the Prescribed Form and /or Draft TMR Agreement attached, as applicable, and no later than the Deadline for Draft TMR Agreement Comments.
- (3) The AESO may, in its sole discretion, request further clarification of the Draft TMR Agreement Comments from any one, all, or no Proponents.
- (4) The determination of whether or not to accept any requested amendments, additions and deletions to the Draft TMR Agreement is entirely within the AESO's discretion.
- (5) The AESO will issue the Final TMR Agreement by the date set out in the Timetable.

5.3 EXECUTION OF FINAL TMR AGREEMENT

- (1) Once the AESO selects and notifies a Proponent, if any, that they are the Successful Proponent, the Successful Proponent shall sign the Final TMR Agreement in the same form and substance as was issued by the AESO.
- (2) The Successful Proponent(s) should, no later than five (5) business days after receipt of notice of award to the Successful Proponent(s), or such later date as may be specified in written notice given by the AESO, enter into and execute the Final TMR Agreement.
- (3) If the Successful Proponent fails or refuses to enter into and execute the Final TMR Agreement as set out in this Section 5.3, the AESO may, in its sole discretion, take any one or more of the following actions:
 - (a) terminate all discussions to enter into the Final TMR Agreement with that Successful Proponent and cancel its identification of such Proponent as the Successful Proponent, whereupon such Proponent acknowledges and agrees that it shall not be entitled to any costs, expenses or damages of any nature from the AESO or the AESO Representatives incurred or suffered by such Proponent as a result of such termination and cancellation;
 - (b) select another Proponent as the Successful Proponent to enter into the Final TMR Agreement;
 - (c) take any of the actions set out in Section 6.8.4; and
 - (d) pursue any other remedy available to the AESO under applicable law.

- (4) The AESO may, in its sole discretion, determine not to procure the TMR Service from a Successful Proponent if:
- (a) the AESO elects to exercise its sole discretion pursuant to Section 6.8.3, Section 6.8.4 or Section 5.3(3);
 - (b) any other material change has occurred with respect to the Successful Proponent or Successful Proponent's Proposal; and

and each Proponent acknowledges and agrees that it shall not be entitled to any costs, expenses or damages of any nature from the AESO or the AESO Representatives incurred or suffered by such Proponent or as a result of such determination.

5.4 NOTIFICATION IF NOT SUCCESSFUL

The unsuccessful Proponents shall be notified by the AESO in writing no later than the date set out in the Timetable.

If requested by any unsuccessful Proponent within 30 business days of the AESO issuing notice, the AESO will hold a debriefing. The sole purpose of the debriefing session is to assist the Proponent in presenting a better Proposal in subsequent procurements by the AESO and may not be relied upon to challenge the AESO's evaluations or this TMR Competition.

6.0 RFP TERMS AND CONDITIONS

6.1 GOVERNANCE

- (1) This RFP shall be governed and construed in accordance with the Governing Law.
- (2) Each Proponent agrees that:
 - (a) any action or proceeding relating to this RFP Process shall be brought in any court of competent jurisdiction in the City of Calgary in the Province of Alberta and for that purpose, each Proponent irrevocably and unconditionally attorns and submits to the jurisdiction of that Alberta court;
 - (b) it irrevocably waives any right to, and will not, oppose any Calgary, Alberta action or proceeding relating to this RFP Process on any jurisdictional basis, including an inconvenient forum; and
 - (c) it will not oppose the enforcement against it, in any other jurisdiction, of any judgement or order duly obtained from an Alberta court as contemplated by this Section 6.1(2).

6.2 PROPONENT'S EXPENSES

Each Proponent shall bear all costs and expenses incurred by it relating to any aspect of its participation in this RFP Process, including all costs and expenses related to its involvement in:

- (a) the preparation, presentation and submission of any Submissions and its Proposal;
- (b) due diligence and information gathering processes;
- (c) preparation of responses to questions or requests for clarification from the AESO;

- (d) preparation of the Proponent's own questions during the clarification process; and
- (e) providing comments on the Draft TMR Agreement.

6.3 INVESTIGATION BY PROPONENT AND INFORMATION PROVIDED BY THE AESO

- (1) Each Proponent is solely responsible for conducting its own independent research, due diligence, and any other work or investigations and seeking any other independent advice necessary for the preparation of any Submissions, its Proposal, review of the Draft TMR Agreement, and, in the case of the Successful Proponent(s), the execution of the Final TMR Agreement and the subsequent delivery of the TMR Service (the "Proponent Responsibilities"). Nothing in the RFP Documents is intended to relieve the Proponents from forming their own opinions and conclusions with respect to the matters addressed in this RFP.
- (2) No Proponent shall claim at any time after submission of its Proposal that there was any misunderstanding with respect to the conditions imposed by the RFP Documents or claim any reliance or collateral agreement with respect to any information given or statement made with respect to the Proponent Responsibilities or the conditions thereof except as specifically provided in the RFP Documents.
- (3) No guarantee, representation or warranty, express or implied, is made and no responsibility of any kind is accepted by the AESO or any AESO Representatives for the completeness or accuracy of any information presented in the RFP Documents, during the RFP Process or during the Service Term of the TMR Agreement. Neither the AESO nor any of the AESO Representatives shall be liable to any Proponent or other person as a result of the use of any information contained in the RFP Documents provided during the RFP Process or during the Service Term of the TMR Agreement.

6.4 GENERAL INTERPRETATION

In this RFP:

- (a) references to "Sections" and "Appendices" herein refer to sections and appendices, respectively, of or to this RFP, unless the context otherwise requires;
- (b) any reference to time shall refer to mountain time (being either Mountain Standard Time or Mountain Daylight Saving Time during the respective intervals in which each is in force in the Province of Alberta);
- (c) the headings of the Sections, Appendices and any other headings and captions herein are inserted for convenience of reference only and shall not in any way affect the construction or interpretation of this RFP or any provision hereof;
- (d) whenever the singular or masculine or neuter is used it shall be interpreted as meaning the plural or feminine or body politic or corporate, and vice versa, as the context requires;
- (e) references to "including" means including without limitation, and "includes" or other derivatives thereof shall have corresponding meanings; and
- (f) where a term is defined herein, a capitalized derivative of such term shall have a corresponding meaning unless the context otherwise requires.

6.5 CONFIDENTIALITY AND INFORMATION SECURITY

The Proponents acknowledge and agree that all RFP information that the Proponents acquired during the RFP Process from the AESO:

- (a) shall remain the sole property of the AESO and Proponents shall treat it as confidential;
- (b) shall not be used by the Proponents for any purpose other than submitting any Submission or a Proposal in response to this RFP;
- (c) shall not be disclosed by the Proponents to any person who is not involved in the Proponent's preparation of any Submission or its Proposal without prior written authorization from the AESO; and
- (d) if requested by the AESO, shall, in accordance with the AESO request, either be destroyed or returned to the AESO no later than ten (10) calendar days after the request by the AESO to return the RFP information.

6.6 CONFLICT OF INTEREST

Proponents must declare any actual or potential conflicts of interest on the Prescribed Form - Proposal Submission at Part B, Appendix C.

6.7 PROPONENT'S CONSENT TO USE OF PERSONAL INFORMATION

Each Proponent consents, and has obtained the written consent from any individuals identified in its Proposal, to:

- (a) the inclusion of relevant personally identifiable information in any Submission or in its Proposal regarding individuals identified in a Submission or the Proposal; and
- (b) the AESO's use of such personally identifiable information as required to enable the AESO review of such Submissions or to evaluate such Proposal and for the purposes of communication with such Proponent.

6.8 PRIVILEGE AND DISCRETION CLAUSES

6.8.1 NO OBLIGATION TO PROCEED

This RFP does not constitute an offer of any kind, including an offer to enter into any contract with any person, including any Proponent. No contract of any kind is formed under, or arises from this RFP, including as a result of any Submission or Proposal. No contract is entered into in connection with this RFP save, and except pursuant to, an executed TMR Agreement. This RFP does not commit or make the AESO responsible in any way, whether in contract, tort or otherwise, to do anything whatsoever, including to proceed with any RFP stage or any other part of the RFP Process or TMR Competition.

6.8.2 AESO DISCRETION IN DETERMINING COMPLIANCE AND RANKING AND EVALUATION

- (1) The AESO shall determine, in its sole discretion:
 - (a) whether to recommend to the MSA that the RFP Process is contestable, and therefore whether to proceed with entering into a TMR Agreement with a Successful Proponent(s);

- (b) whether a Submission and/or Proposal is in compliance with the RFP Documents;
 - (c) the Evaluation Criteria and the relative weightings thereof;
 - (d) the rankings of Proposals; and
 - (e) whether a Proposal or a Proponent:
 - (i) is disqualified; or
 - (ii) will cease to be considered in the evaluation process.
- (2) The AESO may, in its sole discretion in reviewing any Submission or evaluating a Proposal and conducting related activities:
- (a) rely on, consider, or disregard any relevant information and documentation, including any clarifications, more complete, supplementary and additional information or documentation, as the case may be, obtained from any source the AESO considers appropriate in its sole discretion;
 - (b) consider any additional documents and information submitted pursuant to this RFP; and
 - (c) conduct inquiries, reviews and checks, and in confidence obtain and rely on technical, financial, legal, and other input, advice and direction from its advisors.
- (3) If, at any time during the RFP Process, the AESO determines, in its sole discretion, that a Proposal does not comply with the requirements set out in the RFP Documents, the AESO shall be entitled, but not obligated, to disqualify the Proposal without liability, cost or penalty, in which case the Proposal shall not be given any further consideration.
- (4) Each Proponent acknowledges and agrees that the AESO's evaluation of compliance with the RFP Documents is not an evaluation of absolute compliance and that the AESO may waive failures to comply that, in the AESO's sole discretion, do not constitute material non-compliance.

6.8.3 DISQUALIFICATION

- (1) The AESO may, in its sole discretion, disqualify any Proposal or cancel its decision to make an award under this RFP, at any time prior to the execution of the Final TMR Agreement by the AESO, if:
- (a) the Proposal is determined by the AESO to be non-compliant pursuant to Section 6.8.2;
 - (b) the Proponent fails to cooperate in any attempt by the AESO to verify any information provided by the Proponent in any Submission or its Proposal;
 - (c) the Proponent contravenes Section 2.3.3, Section 6.13 or Section 6.14;
 - (d) the Proponent fails to comply with Governing Law;
 - (e) the Proposal contains false or misleading information;

- (f) the Proposal, in the opinion of the AESO, reveals a material conflict of interest as described in the Prescribed Form - Proposal Submission;
- (g) the Proponent misrepresents any information provided in any Submission or in its Proposal; or
- (h) there is evidence that the Proponent or any of its Personnel colluded with one or more other Proponents or any of its or their respective Personnel in the preparation of any Submission or submission of any Proposal.

6.8.4 RIGHTS OF THE AESO

- (1) The AESO may, in its sole discretion and without further notice:
 - (a) conduct reference, credit and other checks;
 - (b) independently verify any information regarding a Proponent, including directors and officers and Personnel, whether or not contained in any Proposal; and
 - (c) conduct any background investigations that it considers necessary or desirable in the course of the RFP Process.
- (2) Notwithstanding anything else in this RFP, the AESO may, in its sole discretion, without providing reasons, and at any time during the RFP Process:
 - (a) reject any or all of the Proposals;
 - (b) accept any Proposal;
 - (c) if only one (1) Proposal is received, elect to accept or reject it;
 - (d) elect not to proceed with the RFP;
 - (e) alter the Timetable, the RFP Process or any other aspect of this RFP;
 - (f) request an original copy of any Prescribed Form or Submission;
 - (g) cancel this RFP and subsequently advertise or call for new proposals for the subject matter of this RFP;
 - (h) cancel this RFP and subsequently enter into a Bilateral Negotiation in accordance with Appendix B of the ISO Tariff;
 - (i) cancel this RFP for any reason; and
 - (j) procure more than, less than, or none of the Procurement Target Volume Range of, at or above 35 MW and up to 45 MW of TMR Service.

Without limiting the generality of the foregoing, in submitting a Proposal, each Proponent acknowledges that:

- (k) the AESO may elect to exercise its rights under this Section 6.8.4 if the AESO determines, in its sole discretion, that there was insufficient competition amongst the Proponents to produce an effective RFP Process; and

- (l) the AESO is not necessarily issuing this RFP to obtain TMR Service at the best possible price, but rather to obtain the TMR Service (in a competitive environment as set out in the ISO Tariff) that best meets the needs of the AESO, as determined by the AESO, in its sole and absolute discretion, and, as such, the AESO may elect to accept a Proposal which (having regard to all of the Evaluation Criteria) may not have the lowest price.
- (3) If the AESO determines that all or a significant portion of Proposals submitted are non-compliant or not competitive, the AESO may, in its sole discretion:
 - (a) take any action in accordance with this Section 6.8.4; or
 - (b) carry out a process whereby Proponents are directed to correct the deficiencies in their Proposals for re-submission.
- (4) Subject to any requirements of the Governing Law to the contrary, the AESO will not be obligated to release any information relating to the review of any Submission or the evaluation of Proposals.

6.9 DOCUMENT OWNERSHIP AND USE

All Submissions and Proposals submitted to the AESO that are not replaced, superseded or withdrawn by the Proposal Deadline will become the property of the AESO. The AESO may use the concepts, ideas, suggestions or any other materials contained within any Submission or the Proposals (other than for information regarding prices) for any purposes related to the provision of the TMR Service, whether or not provided by the applicable Proponent.

6.10 NO COST RECOVERY

The AESO shall not be liable, in any way, to the Proponents for any delays, or costs associated with delays, in the RFP Process and the AESO shall not be liable for any costs, fees or expenses incurred by the Proponents resulting from their participation in the RFP Process.

6.11 LIMITATION OF LIABILITY

- (1) The AESO does not, by issuing this RFP or by any communication or documentation made or provided in connection with this RFP, incur any duty of care or contractual obligation to anyone including Proponents, Personnel of any Proponent or any other persons, and the AESO expressly disclaims any liability or obligation to anyone including all of the foregoing in connection with this RFP. Statements in this RFP of the AESO's expectations and the RFP Process are relied upon or acted upon by all persons including Proponents and their respective Personnel solely at their own risk.
- (2) Notwithstanding any other provision of the RFP Documents, the AESO shall not be liable to any Proponent, nor shall any Proponent be liable to the AESO, for any indirect, economic, consequential, incidental, special, punitive or exemplary damages, including for loss of profits, loss of contract, loss of opportunity or loss of business, which may be suffered or incurred by the other arising out of or connected with the RFP Documents or the RFP Process. Further, the AESO shall not be liable for any expense, cost, loss or damage occurred or suffered by any Proponent, or any person connected with any Proponent, as a result of any action referred to in this Section 6.11.
- (3) This is a "Request for Proposals" and not an "Invitation to Tender." This procurement process is not intended to create and shall not create a formal legally binding bidding process, and shall instead be governed by the law applicable to direct commercial negotiations. For greater certainty and without limitation no Proponent shall have the right

to make any claims against the AESO with respect to the award of a contract, failure to award a contract or failure to honour a response to the RFP. No legal relationship or obligation shall be created between any Proponent and the AESO until the successful conclusion and execution of a TMR Agreement.

- (4) The AESO reserves the right to:
- (a) accept or reject a Proposal;
 - (b) amend, suspend, postpone, cancel, or extend the closing of this RFP or any future stage of the procurement process;

in each case without incurring liability to any person, including Proponents and their respective Personnel.

6.12 PRIORITY OF DOCUMENTS

If there is a conflict between the main body of the RFP and the Timetable, the information in the Timetable shall prevail over the main body of the RFP. If there is a conflict between the RFP Documents and the Draft TMR Agreement or Final TMR Agreement, the terms and conditions and provisions of the Draft TMR Agreement or Final TMR Agreement shall prevail over the other RFP Documents, including the Timetable. The Final TMR Agreement shall prevail over the Draft TMR Agreement.

6.13 PUBLIC STATEMENTS

Each Proponent, including the Successful Proponent, shall instruct its Personnel not to issue any public statement or news release pertaining to this RFP Process without the prior written consent of the AESO.

6.14 NO LOBBYING

Proponents and their respective Personnel are strictly prohibited from engaging in any form of lobbying whatsoever in relation to the procurement for the TMR Service or with a view to influencing the outcome of this RFP Process. Failure to comply with this provision by a Proponent, or any of its Personnel may result in disqualification of such Proponent from the RFP Process.

REQUEST FOR PROPOSALS

PART B: PROPOSAL INSTRUCTIONS & REQUIREMENTS

The Proposal:

1. Must include an electronic copy of all required Prescribed Forms, forms and documentation as set out in “Table 1 – Content for Proposal” below;
2. Must be delivered through the Bonfire Site or through TMR@aeso.ca in the event that the Bonfire Site is unavailable, on or before the Proposal Deadline. A Proposal submitted after the Proposal Deadline will not be considered. The electronic copy delivered through the Bonfire Site must be fully transmitted and fully received by the AESO prior to the Proposal Deadline;
3. Should be in English;
4. Should include original or PDF format signature pages on any and all Prescribed Forms, forms and Submissions requiring the signature of an individual whether in his or her own capacity or on behalf of an entity;
5. Should be clearly subject-titled as noted in each Submission, Prescribed Form or form, as applicable;
6. Should include only those Prescribed Forms, forms, Submissions and documents or other information to be provided by the Proponent as stipulated in each Prescribed Form, form and RFP Documents as applicable and in “Table 1 – Content for Proposal” following, and as otherwise set out in this Part B;
7. Should use Canadian Dollars when providing financial information and if converting from another currency, identify the method and date of conversion where applicable;
8. Should include page numbers on each page except where the format of such document precludes the use of page numbers;
9. Should ensure that Submissions, Prescribed Forms and forms are submitted in the required format, either Word format or as PDF documents created from Word, Excel, or other document formats;
10. Should be prepared having regard to the RFP, including the definitions set out in Part B, Appendix A and Part B, Appendix F of this RFP; and
11. Should be organized as follows:

Table 1 – Content for Proposal

Proposal content
Appendix C – Prescribed Form - Proposal Submission
Appendix D – Prescribed Form - Proponent Declaration
Appendix E – Prescribed Form - Proposed TMR Facility Information
Final Fixed Cost Submission (Appendix F – Prescribed Form - TMR Facility Fixed Costs and a Fixed Cost Narrative as described in Appendix G) as submitted by a Proponent and as accepted by the AESO in writing in accordance with Part A, Section 3.0.
Appendix H – Prescribed Form - Bid Price and Volume
Appendix I – Heat Rate Table for TMR Facility

**APPENDIX A
GLOSSARY OF TERMS**

TERM OR ACRONYM	MEANING
Addenda	Means all documents issued by the AESO which amend this RFP and “Addendum” means any one of them.
AESO and “ISO”	Has the meaning given the term independent system operator in the <i>Electric Utilities Act</i> (EUA).
AESO Representative	Means an officer, employee, subcontractor, agent, consultant or other representative of the AESO.
Allowable Dispatch Variance	Means allowable dispatch variance as defined in the Draft TMR Agreement.
Appendix or Appendices	Means each Appendix and all Appendices that form part of this RFP and includes each and all of them as submitted in a Proposal.
Balancing Authority	Means balancing authority as defined in the ISO Glossary.
Bid(s)	Means the Contract Volume Bid (MW) and the Fixed Price Bid (\$/MW) that a Proponent provides in the form of a Proposal.
Bilateral Negotiation	Means the process as described in Appendix B of the ISO Tariff.
Bonfire Site	Has the meaning assigned to it in Part A, Section 2.2.
Contract Volume Bid	Means the contract volume as Bid by a Proponent as a whole MW value in the Prescribed Form – Bid Price and Volume and included as Part B, Appendix H.
Deadline for Enquiries	Means the deadline for Enquiries as set out in the Timetable.
Derate	Means derate as defined in the Draft TMR Agreement.
Dispatch	Means dispatch as defined in the ISO Glossary.
Draft TMR Agreement	Means the form of TMR Agreement attached hereto at Part B, Appendix K.
Draft TMR Agreement Comments	Means the contractual terms and conditions, if any, proposed by the Proponent to form part of the Final TMR Agreement pursuant to Part B, Appendix J.
Eligibility Criteria	Means the criteria set out in Part A, Section 4.1.

TERM OR ACRONYM	MEANING
Enquiry	Means a request by a Proponent to the AESO for information or clarification.
EUA	Means the <i>Electric Utilities Act (Alberta)</i> .
Evaluation Criteria	Means the evaluation criteria as described in Part B, Appendix B.
Final Fixed Cost Submission	Means a final fixed cost submission in the form set out in Part B, Appendix F and the Fixed Cost Narrative materially as described in Part B, Appendix G, both as accepted in writing by the AESO.
Final TMR Agreement	Means the form of the TMR Agreement as amended by the AESO, in its sole discretion, following receipt of Draft TMR Agreement Comments and which the Successful Proponent will be required to execute.
Fixed Cost(s)	Refers to the actual fixed costs or fixed charges incurred in connection with a TMR Facility.
Fixed Cost Submission	Means collectively or individually the Initial Fixed Cost Submission, Revised Fixed Cost Submission, or Final Fixed Cost Submission.
Fixed Price Bid	Means the fixed price that is Bid by a Proponent in the Prescribed Form – Bid Price and Volume as Part B, Appendix H.
Fixed Price Cap	Means the calculated fixed price cap as a dollar per megawatt (\$/MW) for the TMR Facility as submitted in a Final Fixed Cost Submission.
Force Majeure	Means an event of force majeure as defined in the Draft TMR Agreement.
Governing Law	Means the laws of the Province of Alberta and the laws of Canada.
Heat Rate Table	Means the current heat rate table for the TMR Facility that measures the thermal efficiency of the TMR Facility in the conversion of fuel into electricity and includes the output measured in MW and the corresponding heat rate measured in GJ/MWh.
Initial Fixed Cost Submission	Means the initial Fixed Costs in the Prescribed Form – TMR Facility Fixed Costs and the Fixed Cost Narrative as submitted by the Proponent in accordance with the process set out Part A, Section 3.0.

TERM OR ACRONYM	MEANING
Initial Fixed Cost Submission Date	Means the date for a Proponent to submit their Initial Fixed Cost Submission as defined in the Timetable and in accordance with the process set out in Part A, Section 3.0.
ISO Glossary	Means the ISO Consolidated Authoritative Document Glossary as amended, supplemented, replaced or otherwise modified from time to time.
ISO Tariff	Means the tariff prepared by the Independent System Operator under section 30 of the EUA that has been approved by the Alberta Utilities Commission.
Market Surveillance Administrator (MSA)	Means the corporation as defined in the EUA.
Maximum Generating Capability	Means the maximum generating capability that the TMR Facility can generate at under optimal conditions as represented as a whole MW value and as specified by a Proponent in Part B, Appendix E.
Minimum Continuous Operating Capability	Means the minimum continuous operating capability as represented as a whole MW value and as defined in the Draft TMR Agreement.
Permitted Unavailability	Means permitted unavailability as defined in the Draft TMR Agreement.
Person(s)	Means and includes any natural person, corporation, limited partnership, general partnership, limited liability partnership, joint venture, association, company, limited liability company, trust, bank, or other organization, whether or not a legal entity.
Personnel	Means with respect to a Proponent or any other Person, its partners, members, directors, officers, employees, agents, subcontractors or other representatives.
Power Purchase Arrangement	Means the power purchase arrangement as defined in the ISO Glossary.
Prescribed Form	Means each form described herein as a prescribed form and attached hereto as an appendix.
Procurement Target Volume Range	Means the volume (MW) of TMR Service that the AESO is targeting to procure through the TMR Competition and as defined in Part A, Section 1.3(2).

TERM OR ACRONYM	MEANING
Proponent	Means a person that submits, or participates in this RFP and does not submit, a Proposal for the provision of TMR Service.
Proponent Representative	Means the natural person who is identified as fully and duly authorized to represent, and is the duly authorized signatory to legally bind, the Proponent in any and all matters related to this RFP and a Proponent's Proposal.
Proponent Responsibilities	Has the meaning assigned to it in Part A, Section 6.3(1).
Proposal	Means any offer to provide the TMR Service in connection with this RFP as submitted by a Proponent for the AESO's consideration.
Proposal Deadline	Means the deadline for submission of Proposals as set out in the Timetable.
Proposal Documents	Means those documents required to be included as outlined in Part B of this RFP and listed in Table 1 – Content for Proposal.
Proposal Submission	Means the Prescribed Form - Proposal Submission attached hereto as Part B, Appendix C.
Proposal Validity Period	Has the meaning assigned to it in Part A, Section 2.7.
Ramping	Means ramping as defined in the ISO Glossary.
Real Power	Means real power as defined in the ISO Glossary.
Request for Proposals or RFP	Means this request for proposals, including all RFP Documents, issued by the AESO to retain a TMR Service Provider.
Revised Fixed Cost Submission	Means a revised Fixed Cost submission in the Prescribed Form – TMR Facility Fixed Costs and the Fixed Cost Narrative as submitted by the Proponent in accordance with the process set out in Part A, Section 3.0.
RFP Documents	Has the meaning assigned to it in Part A, Section 2.1.
RFP Process	Means this request for proposals process to select a Service Provider.
Service Provider	Means the Person with an obligation to provide the TMR Service to the AESO pursuant to a TMR Agreement

TERM OR ACRONYM	MEANING
Service Term	Means the term of provision of TMR Service, as defined in the Draft TMR Agreement.
Source Asset	Means source asset as defined in the ISO Glossary.
Submission	Means any documents required to be submitted or submitted by a Proponent in connection with the Request for Proposal.
Successful Proponent(s)	Means the Proponent(s), if any, that are selected to be awarded a TMR Agreement for the Service Term.
System	Means the "interconnected electric system" as such term is defined in the EUA.
Timetable	Has the meaning assigned to it in Part A, Section 2.11.
TMR Agreement	Means the written TMR agreement resulting from this RFP Process and as executed by the AESO and the Successful Proponent.
TMR Competition	Has the meaning assigned to it in Part A, Section 1.2.
TMR Facility	Means all TMR and associated equipment from which the Service Provider intends to provide the TMR Service, located at the facility or facilities as described in Appendix E – Prescribed Form Proposed TMR Facility Information.
TMR Generation	Means the generation proposed to provide the TMR Service from the TMR Facility.
TMR Requirements	Means the requirements set out in Section 5.1(a) of the Final TMR Agreement.
Transmission Must-Run or TMR	Means transmission must-run as defined in the ISO Glossary.
Transmission Must-Run Service or TMR Service	Means the "Transmission Must-Run" service that is being procured through the TMR Competition and as defined in Part A, Section 1.2.

APPENDIX B EVALUATION CRITERIA

Stage 1: Proposal Completeness and Eligibility Confirmation

The Proponent's TMR Facility must meet the Eligibility Criteria. This is a pass/fail requirement that will be evaluated as set out in Stage 1 of Part A, Section 4.2(1).

Stage 2: Evaluation

The Proposals that passed Stage 1 of the evaluation will be ranked by Fixed Price Bid in stage 2 of the evaluation process as further described in Part A, Section 4.2(1).

The **Fixed Price Bid ranking** will take place as follows:

- The AESO will rank Proposals based on the Fixed Price Bid submitted in the Proposal (Appendix H Prescribed Form – Bid Price and Volume). The ranking shall be from the lowest Fixed Price Bid to the highest Fixed Price Bid, with those Proposals with the lowest Fixed Price Bid having the highest priority.
- If a Fixed Price Bid is not provided to two decimal places, then any required—but not provided—Fixed Price Bid digit will be deemed to be zero. If the Fixed Price Bid is provided to three or more decimal places, then all such decimal places—other than the first two decimal places—will be deemed to be zero.
- Proposals with identical Fixed Price Bids (to two decimal places) will be deemed to be tied in such ranking order with each of the other Proposals with identical Fixed Price Bids. The AESO will break such ties and determine the ranking order of such tied Proposals by way of a coin flip (in the case of two tied Proposals) or the drawing of straws (in the case of three or more tied Proposals). Such tie-breaking process will be overseen by the AESO's Director, Commercial and witnessed and monitored by the fairness advisor, with such oversight and/or witnessing either in-person or by virtual means.

**APPENDIX C
PRESCRIBED FORM – PROPOSAL SUBMISSION**

Instructions Applicable to Prescribed Form – Proposal Submission

- a) This instruction page is not required to be submitted with the Prescribed Form.
- b) Where the Prescribed Form has multiple pages, the pages of the Prescribed Form should be kept together in sequential order.
- c) This Prescribed Form should be completed in its entirety.
- d) Apart from the completion of any blanks, checkboxes, or similar uncompleted information, no amendments should be made to the wording of this Prescribed Form.
- e) Information provided in this Prescribed Form should be consistent with the information otherwise provided in the Proposal.
- f) PROPONENTS SHALL EXECUTE THIS PRESCRIBED FORM - PROPOSAL SUBMISSION AS FOLLOWS:
 - (1) in the case of a corporation, company or other body corporate, an authorized signing officer shall sign this Prescribed Form - Proposal Submission; and
 - (2) in the case of a partnership, limited partnership or limited liability partnership, a duly authorized partner shall sign this Prescribed Form - Proposal Submission.
- g) EACH PROPONENT SHALL DISCLOSE IN THIS PRESCRIBED FORM - PROPOSAL SUBMISSION ANY DIRECT OR INDIRECT POTENTIAL OR ACTUAL CONFLICTS OF INTEREST THAT IT HAS OR MAY HAVE AS A SERVICE PROVIDER UNDER THE TERMS AND CONDITIONS OF THE FINAL TMR AGREEMENT OR AS A PROPONENT PURSUANT TO THE RFP.

PRESCRIBED FORM - PROPOSAL SUBMISSION

TO: Independent System Operator, operating as the AESO

RE: Request for Proposals for TMR Service issued by the AESO on April 4, 2022 (the “RFP”)

1. Proponent Information

(a) Proponent’s registered legal business name and any other name under which it carries on business:

(b) Proponent’s address and telephone numbers:

(c) Name, address, telephone, and e-mail of the contact person(s) for the Proponent:

(d) Names of the persons who are substantially connected to the preparation of the Proposal:

(e) Whether the Proponent is an individual, a sole proprietorship, a corporation, a partnership, a joint venture, a consortium (and if so, the structure of the consortium) or other legally recognized entity:

2. Offer

With respect to the above-noted RFP, we confirm as follows:

(a) capitalized terms used in this Prescribed Form - Proposal Submission shall have the meanings given thereto in the RFP;

(b) we have examined the RFP Documents and confirm that we have received all pages of the RFP Documents;

(c) we have made any necessary inquiries with respect to Addenda issued by the AESO and have ensured that we have received and examined all Addenda to the RFP Documents;

- (d) by the submission of our Proposal, we submit a binding offer to provide TMR Service in accordance with the terms and conditions of the Final TMR Agreement, and in accordance with the RFP Documents;
- (e) our Proposal is based on the terms and conditions of the RFP Documents;
- (f) the Fixed Price Bid and Contract Volume Bid contained in Part B Appendix H are based on the terms and conditions of the RFP Documents;
- (g) the Fixed Cost Submission that was accepted by the AESO and deemed to be the Final Fixed Cost Submission forms part of the Proposal; and
- (h) we agree to hold our Proposal open for acceptance until the expiration of the Proposal Validity Period set out in the RFP Documents.

We affirm and declare that we have sufficiently informed ourselves in all matters affecting the cost of the TMR Service, that we have checked our Proposal for errors and omissions and that the Fixed Price Bid and Contract Volume Bid stated in this Proposal are each correct and as intended. It is further understood that if we are the Successful Proponent and if the Final TMR Agreement is executed by the AESO as contemplated in the RFP, we will be compensated for the TMR Service as provided in accordance with the TMR Agreement.

3. Conflict of Interest and Confidential Information

- (a) We confirm that we do not have any direct or indirect actual or perceived conflict of interest or any other type of unfair advantage in submitting our Proposal or performing or observing the Final TMR Agreement, except to the extent that such conflict of interest or potential conflict of interest is disclosed in this Prescribed Form - Proposal Submission.
- (b) We confirm that we have not colluded with any other Proponent nor have we engaged in any political or other lobbying activity with a view of influencing the outcome of this RFP Process.
- (c) We confirm that we have not had access to the AESO’s confidential information, other than the RFP Documents themselves, with respect to this RFP Process, except as disclosed in this Prescribed Form - Proposal Submission.

Conflict of Interest

The following are existing or potential conflicts of interest:

[Proponent to list existing or potential conflicts of interest, if applicable.]

OR

- We confirm that we do not have any existing or potential conflicts of interest.

Confidential Information

We have access to the following confidential information relating to the RFP Process:

<p>[Proponent to list confidential information related to the RFP Process that they had access to, if applicable.]</p>

OR

We confirm that we do not have access to any confidential information relating to the RFP Process other than the RFP Documents.

Signed by person or persons
authorized to bind the Proponent
in accordance with the
Instructions Applicable to
Prescribed Form - *Proposal
Submission*

Signed by person or persons
authorized to bind the Proponent
in accordance with the
Instructions Applicable to
Prescribed Form - *Proposal
Submission*

Signed by person or persons
authorized to bind the Proponent
in accordance with the
Instructions Applicable to
Prescribed Form - *Proposal
Submission*

Print Name and Title of Person
Signing

Print Name and Title of Person
Signing

Print Name and Title of Person
Signing

**APPENDIX D
PRESCRIBED FORM – PROPONENT DECLARATION**

All capitalized terms and acronyms used in these instructions and the Prescribed Form – Proponent Declaration, unless otherwise stated, have the meanings ascribed to them in the RFP.

Instructions Applicable to Prescribed Form – Proponent Declaration

- a) This instruction page is not required to be submitted with the Prescribed Form.
- b) Where the Prescribed Form has multiple pages, the pages of the Prescribed Form should be kept together in sequential order.
- c) This Prescribed Form should be completed in its entirety.
- d) Apart from the completion of any blanks, checkboxes or similar uncompleted information, no amendments should be made to the wording of this Prescribed Form.
- e) Information provided in this Prescribed Form should be consistent with the information otherwise provided in the Proposal.
- f) The signature required for the declarant for this Prescribed Form must be that of the Proponent Representative.

Prescribed Form – Proponent Declaration

STATUTORY DECLARATION IN THE MATTER OF the AESO and [insert name of Proponent] under the RFP.

Capitalized terms not defined herein have the meanings ascribed to them in the RFP.

I, [insert name of Proponent's Representative], of the [insert City/Town] [insert name of Province or State/Country] DO SOLEMNLY DECLARE, on behalf of the Proponent, without personal liability, the following:

- a) I am the / an [insert office held, e.g. president, director, etc.] of the Proponent and have knowledge of the matters herein declared.
- b) To the best of its knowledge, the Proponent is not aware of any facts or circumstances that would prevent it from executing—or complying with the terms and conditions of—the Final TMR Agreement.
- c) The TMR Facility meets the Eligibility Criteria including that it:
 - (i) is a single Source Asset;
 - (ii) is located within the Balancing Authority Area and be connected to the System via one of the following seven (7) substations located in the Grande Prairie planning area (area 20):
 - Poplar Hill 790S
 - Goodfare 815S
 - Elmworth 731S
 - Lowe Lake 944S
 - Updike 886S
 - Saddle Hills 865S
 - Wapiti 823S;
 - (iii) is, in response to a Dispatch for TMR Service, capable of Ramping in accordance with the ISO Rules and maintaining a minimum of 35 MW of Real Power, except when a Permitted Unavailability, Derate or a Force Majeure event is in effect for the TMR Facility;
 - (iv) is able to maintain the Real Power at the TMR Service dispatched volume, subject to the Allowable Dispatch Variance, for the full duration that a Dispatch for TMR Service is in effect; and
 - (v) is able to provide the TMR Service by the commencement of the Service Term.
- d) The Proponent reasonably expects the TMR Facility to be capable of complying with the TMR Requirements as set out in the Final TMR Agreement.
- e) The Proponent reasonably expects the TMR Facility to be capable of providing the TMR Service throughout the Service Term at a volume equal to the Contract Volume Bid provided by the Proponent in Appendix H – Prescribed Form - Bid Price and Volume.
- f) The Proponent reasonably expects the TMR Facility to be capable of maintaining the Minimum Continuous Operating Capability at the MW level specified in Appendix E – Prescribed Form – Proposed TMR Facility Information, during the Service Term.

- g) For any TMR Generation identified in the Proposal and as a part of the TMR Facility of which the Proponent is not the legal owner, the Proponent has an agreement with the legal owner(s) of each such facility to provide the TMR Service, with the term of such agreement being in effect for the full duration of the Service Term.
- h) The Proponent has not—nor has any Proponent team member engaged in— any activity or communication that would constitute a conflict of interest or engaged in any activity or communication that results in collusion or a violation of any of the civil or criminal code provisions of the *Competition Act* (Canada).
- i) The Heat Rate Table included in the Proposal, to the best of the Proponent's knowledge, accurately reflects the thermal efficiency of the TMR Facility in the conversion of fuel into electricity.
- j) I have directed that the Proponent determine the true, actual and verifiable values for the calculation of the Fixed Costs and Fixed Price Cap for the TMR Facility as follows:
 - (a) That the initial cost of the TMR Facility is consistent with the values found in the Proponent's audited financial statements and are:
 - (i) The gross book value of the property, plant and equipment of the TMR Facility at the time it entered commercial operation; or
 - (ii) The gross book value of the property, plant and equipment of the TMR Facility at the time it entered commercial operation, adjusted for cogeneration infrastructure not utilized for generation purposes; or
 - (iii) The initial Power Purchase Arrangement acquisition cost;
 - (b) That the yearly depreciation values:
 - (i) Are based on the initial cost of the TMR Facility as determined in j(a) above;
 - (ii) Are for all years to the end of life of the TMR Facility;
 - (iii) Have been used to determine the cumulative depreciation up to the end of the 2021 calendar year; and
 - (iv) The values are indicative of what may be found in the Proponent's audited financial statements for the TMR Facility;
 - (c) That the fixed operations and maintenance costs provided are the actual costs incurred during each of the 2018, 2019, 2020 and 2021 calendar years and are net of any variable operations and maintenance costs (which includes, but is not limited to, major and minor turbine overhauls);
 - (d) That the fixed fuel costs provided are the actual costs incurred during each of the 2018, 2019, 2020 and 2021 calendar years; and
 - (e) That the fixed charges for any applicable Power Purchase Arrangements are the actual costs incurred during each of the 2018, 2019, 2020 and 2021 calendar years and are associated with the TMR Facility.
- k) I have reviewed the information included by the Proponent in the Final Fixed Cost Submission (which for clarity includes a Prescribed Form - TMR Facility Fixed Costs and the Fixed Cost Narrative as described in Appendix G, both of which have been accepted in writing by the AESO) to determine the Fixed Price Cap for the TMR Facility; and

Select either (i), (ii) or (iii), as applicable.

- l) To the best of my knowledge and information, based on the foregoing review, the amounts used by the Proponent to determine the Fixed Cost and the Fixed Price Cap represent the true, actual and verifiable values of the TMR Facility.

AND I MAKE THIS SOLEMN DECLARATION conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath by virtue of the *Canada Evidence Act*.

Name of Declarant <u>[insert name of Declarant]</u>	Declared before me at <u>[insert City, Town]</u> in the Province/State of <u>[insert name of Province/State]</u> this ____ day of _____, 2022
Signature of Declarant	Name of Commissioner of Oaths/Notary Public <u>[insert name of Commissioner of Oaths/Notary Public]</u>
Statutory declarations must be solemnly declared and signed before a commissioner of oaths or notary public if declared in Alberta and declared before a Notary Public if declared outside Alberta.	Signature of Commissioner of Oaths/Notary Public

**APPENDIX E
PRESCRIBED FORM – PROPOSED TMR FACILITY INFORMATION**

Instructions Applicable to Prescribed Form – Proposed TMR Facility Information

- a) This instruction page is not required to be submitted with the Prescribed Form.
- b) This Prescribed Form should be completed in its entirety.
- c) Apart from the completion of any blanks, checkboxes or similar uncompleted information, no amendments should be made to the wording of this Prescribed Form.
- d) Information provided in this Prescribed Form should be consistent with the information otherwise provided in the Proposal.
- e) The MW volumes provided in this Prescribed Form should be a whole number. If the Maximum Generating Capability is submitted as a value other than a whole number, then it will be rounded down to the nearest whole number. If the Minimum Continuous Operating Capability is submitted as a value other than a whole number, then it will be rounded up to the nearest whole number.

PRESCRIBED FORM – PROPOSED TMR FACILITY INFORMATION

1. Proposed TMR Facility and TMR Facility information

TMR Facility information	
TMR Facility name	[insert]
AESO asset ID for TMR Facility	[insert]
Owner of TMR Facility	[insert]
Operator of TMR Facility	[insert]
Physical address of TMR Facility	[insert]
Substation identifier (number, name) of connection of TMR Facility to the System	[insert]
Capability of TMR Facility	
Minimum Continuous Operating Capability (MW)	[insert MW as a whole number]
Maximum Generating Capability (MW)	[insert MW as a whole number]

APPENDIX F PRESCRIBED FORM – TMR FACILITY FIXED COSTS

This page sets out the instructions for completing the Prescribed Form – TMR Facility Fixed Costs.

All capitalized terms used in these instructions and the Prescribed Form – TMR Facility Fixed Costs, unless otherwise stated, have the meanings ascribed to them in Part B, Appendix A.

INSTRUCTIONS APPLICABLE TO THIS PRESCRIBED FORM – TMR FACILITY FIXED COSTS:

- (a) This instruction page is not required to be submitted with the Prescribed Form.
- (b) Where the Prescribed Form has multiple pages, the pages of the Prescribed Form should be kept together in sequential order.
- (c) Apart from the completion of any blanks, drop-down lists, checkboxes or similar uncompleted information in a Prescribed Form, no amendments may be made to the wording of a Prescribed Form.
- (d) This Prescribed Form should be completed in its entirety.
- (e) Proponents shall submit this Prescribed Form through the Bonfire Site by the dates and deadlines set out in the Timetable.

Additional Instructions

- (a) The Prescribed Form - TMR Facility Fixed Costs should be submitted in the original Excel native format as originally posted by the AESO on the Bonfire Site and shall not be altered in any way by the Proponent other than entering the requested information.
- (b) All costs in the Prescribed Form - TMR Facility Fixed Costs should be in Canadian dollars (CAD) and rounded to the nearest whole dollar.
- (c) In the Prescribed Form - TMR Facility Fixed Costs, a Proponent should enter a value, in accordance with the instructions in this Appendix F, into each input cell which is shaded blue. Cells that are not shaded blue have either a fixed value or will calculate once values have been entered into the input cells and therefore are locked and do not require or enable a value to be entered by a Proponent.
- (d) The Prescribed Form - TMR Facility Fixed Costs should be completed and submitted as the Initial Fixed Cost Submission (which for clarity the Initial Fixed Cost Submission includes the Prescribed Form in this Appendix F and a Fixed Cost Narrative as described in Part B, Appendix G) by the Initial Fixed Cost Submission Date and in accordance with procedures set out in Part A, Section 3.0. The AESO will initiate a message through the Q&A functionality on the Bonfire Site with the subject line: Initial Fixed Cost Submission. The Initial Fixed Cost Submission should be uploaded using the attachment feature in the AESO initiated message.
- (e) If a Revised Fixed Cost Submission is required, the Prescribed Form - TMR Facility Fixed Costs shall be resubmitted (including the Fixed Cost Narrative as described in Part B, Appendix G) in accordance with the procedures set out in Part A, Section 3.0. The AESO will initiate a message through the Q&A functionality on the Bonfire Site with the subject line: Revised Fixed Cost Submission. The Revised Fixed Cost Submission should be uploaded using the attachment feature in the AESO-initiated message.
- (f) A Revised Fixed Cost Submission should be submitted promptly to enable the AESO to review and for a Revised Fixed Cost Submission that is acceptable to the AESO to be submitted by the Proponent prior to the Deadline for Enquires.

- (a) The Proponent must submit a Fixed Cost Submission that is accepted by the AESO in writing before the Proposal Deadline. Failure by a Proponent to submit a Fixed Cost Submission that is accepted as the Final Fixed Cost Submission before the Proposal Deadline may result in the disqualification of the Proposal.

Additional Instructions to complete the Prescribed Form - TMR Facility Fixed Costs

1. Enter the name of the Proponent and the TMR Facility in cells B5 and B6 respectively.
2. Select the fuel type from the drop-down menu for the TMR Facility in cell B7.
3. Enter the Maximum Generating Capability of the TMR Facility and the Proposed Contract Volume as a whole number in cells B8 and B9 respectively. If a Proponent enters a MW value that is not represented as a whole number, then the MW value will be rounded down to the nearest whole number.
4. The Fixed Price Cap for TMR is equal to the average monthly Fixed Cost multiplied by the assumed 50% minimum must run ratio multiplied by the ratio of Proposed Contract Volume (MW) to Maximum Generating Capability (MW) of the TMR Facility and then divided by the Proposed Contract Volume, where the average monthly Fixed Cost is equal to one-twelfth of the sum of the annual costs in items (A) through (G) on the Prescribed Form - TMR Facility Fixed Costs. Once all input cells in items (A) through (G) have a value entered in column G ("2021"), the Fixed Price Cap for the TMR Facility will then calculate.

Enter the applicable, actual, annual Fixed Costs for the TMR Facility for the 2021 calendar year into each blue input cell in column G ("2021") of the Prescribed Form - TMR Facility Fixed Costs for the following items:

- (A) Annual depreciation provision
 - Annual depreciation provision (cell G16)
- (B) Unamortized or undepreciated capital investment
 - Property plant and equipment (cell G18)
 - Accumulated depreciation/amortization (cell G19)
- (E) Annual directed fixed operations and maintenance costs
 - Labour costs (cell G43)
 - Routine maintenance costs (cell G44)
 - Property taxes (cell G45)
 - Insurance costs (cell G46)
 - Other (cell G47)
- (F) Annual direct fixed fuel costs
 - Firm fuel transportation delivery (cell G50)
 - Other (cell G51)
- (G) Fixed charges from applicable Power Purchase Arrangement
 - Total annual fixed Power Purchase Arrangement charges (G53)

The average monthly Fixed Cost is equal to one-twelfth of the sum of the annual costs for each item (A) through (G) as follows:

- (A) annual amortization and depreciation amounts for the Proponent's investment or for the Power Purchase Arrangement acquisition cost related to the TMR Facility, consistent with amounts reported in the Proponent's audited financial statements and adjusted for cogeneration infrastructure not utilized for generation purposes. The annual depreciation provision value entered into input cell G16 should come from the depreciation schedule detail for the 2021 calendar year. The annual depreciation shall be based on the initial investment at the

commercial operation date of the TMR Facility and all subsequent years based on the estimated useful life of the TMR Facility until the TMR Facility is fully depreciated.

- (B) the product of the unamortized or undepreciated capital investment multiplied by a deemed debt percentage of 70% and multiplied by a debt interest rate that is equal to the 2021 calendar year monthly average, 10-year Government of Canada bond interest rate plus 0.5% and where the unamortized or undepreciated capital investment is the greater of:
1. the Proponent's initial cost of property, plant and equipment for the TMR Facility or the Proponent's initial Power Purchase Arrangement acquisition cost related to the TMR Facility, less accumulated depreciation or amortization for the 2021 calendar year, as the case may be, related to the TMR Facility; or
 2. 25% of the Proponent's initial cost of property, plant and equipment for the TMR Facility or the Proponent's initial Power Purchase Arrangement acquisition cost related to the specific Power Purchase Arrangement.

The 10-year Government of Canada bond interest rate is set based on the average, annual Government of Canada benchmark bond yields for the applicable year plus 0.5%. The 10-year Government of Canada benchmark bond yields have been prepopulated using the 10 year, monthly, CANSIM series V122543 at the following website: <https://www.bankofcanada.ca/rates/interest-rates/lookup-bond-yields/>

The property plant and equipment value entered into input cell G18 is the initial capital cost of the TMR Facility at the commercial operation date and is the total of the TMR Facility's identifiable assets plus an allocation of shared facility infrastructure costs, if applicable.

The accumulated depreciation/amortization value entered into input cell G19 should come from the depreciation schedule detail for the 2021 calendar year.

- (C) the product of unamortized or undepreciated capital investment, as described in (B) above, multiplied by a deemed 30% common equity percentage of capital structure multiplied by a deemed 12% rate of return on equity for the 2021 calendar year.
- (D) the product of the tax rates multiplied by the rate of return on equity amount determined in (C), where income tax costs reflect the marginal income tax rates for both federal and provincial portions of income tax for the 2021 calendar year.
- (E) total annual direct fixed operation and maintenance costs associated with the TMR Facility for the 2021 calendar year, which may include:
- Labour costs (staff related costs such as salaries, benefits and subcontracted labour)
 - Routine maintenance costs (preventative and emergency maintenance, spare parts and equipment not part of the initial property plant & equipment)
 - Property taxes
 - Insurance costs
 - Other
- (F) total annual direct fixed fuel costs associated with the TMR Facility for the 2021 calendar year which may include firm fuel transportation delivery and other related costs as entered into input cells G50 and G51 respectively.
- (G) fixed charges from applicable Power Purchase Arrangements associated with the TMR Facility for the 2021 calendar year as entered into input cell G53.

5. Enter the actual, annual Fixed Costs for the TMR Facility into the input cells in columns C, D and E as applicable for calendar years 2018, 2019 and 2020 using the methodology outlined in step 4 above.
6. The Fixed Price Cap for the TMR Facility, based on the Fixed Costs entered by the Proponent, is calculated in cell G65.

A sample of a completed TMR Fixed Cost Form has been provided for illustrative purposes only as part of this Appendix F.

Prescribed Form - TMR Facility Fixed Costs – Sample

A		B	C	D	E	F	G
1	Alberta Electric System Operator						
2	Prescribed Form - TMR Facility Fixed Costs						
3							
4							
5	Respondent:	ABC Generation Limited					
6	TMR Facility	ABC Facility					
7	TMR Facility fuel type	Gas					
8	Maximum Generating Capability (MW):	120					
9	Proposed Contract Volume (MW):	35					
10							
11							
12							
13	Description		Calendar Year				
			2018	2019	2020	2021	
14	Average monthly Fixed Cost						
15	(A) - Annual depreciation provision						
16		Annual depreciation provision (\$)	2,500,000	2,500,000	2,500,000	2,500,000	
17	(B) - Unamortized or undepreciated capital investment						
18		Property plant and equipment (\$)	100,000,000	100,000,000	100,000,000	100,000,000	
19		Accumulated depreciation/amortization (\$)	52,500,000	55,000,000	57,500,000	60,000,000	
20		Cost less accumulated depreciation (\$)	47,500,000	45,000,000	42,500,000	40,000,000	
21		25% of initial cost (\$)	25,000,000	25,000,000	25,000,000	25,000,000	
22		Undepreciated capital investment	47,500,000	45,000,000	42,500,000	40,000,000	
23	Capital structure (deemed 70% debt: 30% equity)						
24		Deemed debt (%)	70%	70%	70%	70%	
25		Deemed equity (%)	30%	30%	30%	30%	
26	Debt Cost						
27		Debt capital	33,250,000	31,500,000	29,750,000	28,000,000	
28		10-yr Gov't of Canada bond interest rate (%)	2.26%	1.55%	0.72%	1.40%	
29		0.5% addition (%)	0.50%	0.50%	0.50%	0.50%	
30		Debt rate (%)	2.76%	2.05%	1.22%	1.90%	
31		Annual debt cost	917,977	647,063	364,190	532,000	
32	(C) - Equity return (deemed 12%)						
33		Equity capital	14,250,000	13,500,000	12,750,000	12,000,000	
34		Deemed rate of return on equity (%)	12%	12%	12%	12%	
35		Annual return on equity	1,710,000	1,620,000	1,530,000	1,440,000	
36	(D) - Income tax						
37		Federal income tax rate (%)	15%	15%	15%	15%	
38		Provincial income tax rate (%)	8%	8%	8%	8%	
39		Income tax rates (%)	23%	23%	23%	23%	
40		Annual income tax cost	393,300	372,600	351,900	331,200	
41	(E) - Annual direct fixed operations & maintenance costs						
42		Total annual fixed operations & maintenance costs	5,670,000	5,466,000	5,760,000	5,877,000	
43		Labour costs	2,100,000	2,019,000	2,133,000	2,177,000	
44		Routine maintenance costs	3,401,000	3,280,000	3,456,000	3,527,000	
45		Property taxes	69,000	66,000	70,000	71,000	
46		Insurance costs	100,000	101,000	101,000	102,000	
47		Other	0	0	0	0	
48	(F) - Annual direct fixed fuel costs						
49		Total annual fixed fuel costs	1,200,000	1,320,000	1,090,000	1,275,000	
50		Arm fuel transportation delivery	720,000	792,000	654,000	765,000	
51		Other	480,000	528,000	436,000	510,000	
52	(G) - Fixed charges from applicable Power Purchase Arrangement						
53		Total annual fixed Power Purchase Arrangement charges	0	0	0	0	
54							
55	Calculation of average monthly fixed cost:						
56		Total annual fixed costs	12,391,277	11,925,663	11,596,090	11,955,200	
57		Average monthly fixed cost	1,032,606	993,805	966,341	996,267	
58							
59	Minimum must run ratio						
60		Minimum must run ratio					50%
61							
62	Portion of TMR Facility						
63		Ratio of Proposed Contract Volume (MW) to Maximum Generating Capability (MW) of the TMR Facility					29%
64							
65	Fixed Price Cap (\$/MW)						\$ 4,151

APPENDIX G FIXED COST NARRATIVE

This page sets out the instructions for completing the Fixed Cost Narrative.

GENERAL INSTRUCTIONS APPLICABLE TO THE FIXED COST NARRATIVE:

- (b) This instruction page is not required to be submitted with the Fixed Cost Narrative.
- (c) The Fixed Cost Narrative should not exceed five (5) pages.
- (d) Where the Fixed Cost Narrative has multiple pages, the pages of the Fixed Cost Narrative should be kept together in sequential order.
- (e) The Fixed Cost Narrative should be submitted in Word format (or PDF documents created from Word documents), and formatted for 8.5" x 11" paper, having text with 1.5 line spacing and minimum 11-point font size.
- (f) The Fixed Cost Narrative should fully consider the specific information applicable to the Fixed Cost Narrative as set out below.
- (g) All costs shall be in Canadian dollars (CAD) and rounded to the nearest whole dollar.
- (h) If costs were incurred in a currency other than CAD and then converted into CAD, identify the method and date of conversion where applicable.
- (i) The Fixed Cost Narrative should be completed and submitted as part of the Initial Fixed Cost Submission (which for clarity includes this Appendix G and a Prescribed Form - TMR Facility Fixed Costs) by the Initial Fixed Cost Submission Date and in accordance with procedures set out in Part A, Section 3.0. The AESO will initiate a message through the Q&A functionality on the Bonfire Site with the subject line: Initial Fixed Cost Submission. The Initial Fixed Cost Submission should be uploaded using the attachment feature in the AESO initiated message.
- (j) If a Revised Fixed Cost Submission is required, a Fixed Cost Narrative, regardless of whether it was changed as part of the Revised Fixed Cost Submission, should be submitted (including the Prescribed Form – TMR Facility Fixed Costs) in accordance with the procedures set out in Part A, Section 3.0. The AESO will initiate a message through the Q&A functionality on the Bonfire Site with the subject line: Revised Fixed Cost Submission. The Revised Fixed Cost Submission should be uploaded using the attachment feature in the AESO initiated message.
- (k) The Fixed Cost Narrative, together with the Prescribed Form – TMR Facility Fixed Costs, that were accepted by the AESO as the Final Fixed Cost Submission shall form part of the Proposal. A Revised Fixed Cost Submission should be submitted prior to the Deadline for Enquiries. Failure by a Proponent to submit a Fixed Cost Submission that is accepted as the Final Fixed Cost Submission before the Proposal Deadline may result in the disqualification of the Proposal.

SPECIFIC INFORMATION FOR INCLUSION IN THE FIXED COST NARRATIVE:

The Fixed Cost Narrative should consider the following key information with respect to the Fixed Costs incurred by the TMR Facility during the 2021 calendar year.

a) Annual direct fixed operating and maintenance costs

- An overview of the annual operations and maintenance strategy for the TMR Facility
- An overview of the operations and maintenance personnel required to operate and maintain the TMR Facility, including an organizational chart and associated costs
- An overview of the annual routine maintenance activities and associated costs, with additional details provided for the five (5) most significant activities in terms of cost
- An overview of other fixed operating and maintenance costs

b) Annual fixed fuel costs

- An overview of the fuel procurement strategy for the TMR Facility, including associated annual Fixed Costs with appropriate break down

c) Annual fixed charges from applicable Power Purchase Arrangements

- An overview of any Power Purchase Arrangements applicable to the TMR Facility, including associated annual fixed charges

Should any annual Fixed Costs or fixed charges provided in the Prescribed Form - TMR Facility Fixed Costs have a variance year-over-year of plus or minus ten percent (10%) or greater, please provide an explanation as to the key drivers for the variance.

**APPENDIX H
PRESCRIBED FORM – BID PRICE AND VOLUME**

Instructions Applicable to Prescribed Form – Bid Price and Volume

- a) This instruction page is not required to be submitted with the Prescribed Form.
- b) This Prescribed Form should be completed in its entirety.
- c) Apart from the completion of any blanks, no amendments should be made to the wording of this Prescribed Form.
- d) Information provided in this Prescribed Form should be consistent with the information otherwise provided in the Proposal.
- e) The Fixed Price Bid should be provided to two decimal places. If the Fixed Price Bid is not provided to two decimal places, then any required—but not provided—Fixed Price Bid digits will be deemed to be zero. If the Fixed Price Bid is provided to three or more decimal places, then all such decimal places, other than the first two decimal places, will be deemed to be zero.
- f) The Contract Volume Bid should be for a whole MW value at or greater than the Minimum Continuous Operating Capability of the TMR Facility and up to, and including, 45 MW.
- g) If the Contract Volume Bid is provided with any decimal places, then all such decimal places will be deleted.

PRESCRIBED FORM – BID PRICE AND VOLUME

The Fixed Price Bid submitted below will be used to determine the Fixed Price Bid ranking.

Fixed Price Bid = \$ _____ . _____ / MW CAD to two decimal points

Contract Volume Bid = _____ MW as a whole number

**APPENDIX I
HEAT RATE TABLE FOR TMR FACILITY**

This page sets out the instructions for submitting the Heat Rate Table for the TMR Facility.

GENERAL INSTRUCTIONS APPLICABLE TO THE HEAT RATE TABLE:

- (a) This instruction page is not required to be submitted with the Heat Rate Table.
- (b) Where the Heat Rate Table has multiple pages, the pages of the Heat Rate Table should be kept together in sequential order.
- (c) The Heat Rate Table should be submitted in Word format (or PDF documents created from Word documents), and formatted for 8.5" x 11" paper.
- (d) The Heat Rate Table should to the best of the Proponent's knowledge be the heat rate table that most accurately reflects the thermal efficiency of the TMR Facility in the conversion of fuel into electricity.
- (e) The Heat Rate Table should, at a minimum, include an output measured in MW for each whole MW from 0 MW to the Maximum Generating Capability of the TMR Facility. Each MW output should clearly reference the corresponding heat rate of the TMR Facility as measured in GJ/MWh and to a minimum of two decimal points.

**APPENDIX J
PRESCRIBED FORM – DRAFT TMR AGREEMENT COMMENTS**

Instructions Applicable to Prescribed Form – Draft TMR Agreement Comments

- a) This instruction page is not required to be submitted with the Prescribed Form.
- b) Apart from the completion of any blanks, no amendments should be made to the wording of this Prescribed Form.
- c) Each Proponent may summarize comments on or suggested revisions (if any) to the Draft TMR Agreement in the table format provided in this Appendix J. These responses will be considered as described in Part A, Section 5.2 of this RFP. Proponents are encouraged to focus on significant issues or concerns rather than non-substantive wording changes.
- d) A Proponent should describe any suggested revisions in column B and then provide a comment or rationale for such revisions in column C, as indicated in the table included in this Appendix J.
- e) A Proponent may also provide a marked-up copy of the Draft TMR Agreement in accordance with Part A, Section 5.2. The AESO may, in its sole discretion, request additional clarification of any proposed revision, comment, or rationale.

PRESCRIBED FORM – DRAFT TMR AGREEMENT COMMENTS

(A) Schedule or Section of Draft TMR Agreement.	(B) Describe proposed revision in the Draft TMR Agreement.	(C) Provide comment or rationale for proposed revision or resolution.

**APPENDIX K
DRAFT TMR AGREEMENT**

[Service Provider]

-and-

**INDEPENDENT SYSTEM OPERATOR, operating
as AESO**

[●], 2022

**TRANSMISSION MUST RUN SERVICE
AGREEMENT**

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DRAFT

TRANSMISSION MUST RUN SERVICE AGREEMENT

This Agreement is made as of the [●] day of [●], 2022

BETWEEN:

[Insert name], a [insert type of entity] formed under the laws of the Province of [●] (the "Service Provider"),

- and -

INDEPENDENT SYSTEM OPERATOR, operating as the **ALBERTA ELECTRIC SYSTEM OPERATOR**, a statutory corporation, under the laws of the Province of Alberta (the "AESO").

RECITALS

- A. The AESO is required, *inter alia*, pursuant to Section 17 of the EUA to manage and recover the costs for the provision of Ancillary Services.
- B. Such Ancillary Services include acquiring and maintaining TMR Services.
- C. The Service Provider desires to provide TMR Services and the AESO desires to purchase TMR Services, upon and subject to the terms and conditions set forth in this Agreement.

AGREEMENT

For good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the Parties agree as follows:

ARTICLE 1 INTERPRETATION

1.1 Definitions

In this Agreement, including the recitals and the Schedules, unless the context otherwise requires, the following terms will have the meanings set out below:

- (a) "**AESO Event of Default**" has the meaning assigned to it in Section 7.3.
- (b) "**AESO's Website**" means the website of the AESO located at www.aeso.ca or any replacement website.
- (c) "**Affiliate**" means "affiliate", as defined in the ISO Glossary.
- (d) "**Agreement**" means this document, together with the Schedules attached hereto and made a part hereof, all as amended, supplemented or modified from time to time in accordance with the provisions hereof.

- (e) **"Agreement Default"** means any misrepresentation or breach of warranty made by a Party, or the failure by a Party to perform or observe any of the covenants or agreements to be performed by such Party under this Agreement, except for the covenants contained in Section 7.1 of this Agreement, or any other agreement delivered in connection herewith.
- (f) **"Alberta Interconnected Electric System", "AIES" or "System"** means the "interconnected electric system" as defined in the EUA.
- (g) **"Alberta Reliability Standards"** means "reliability standards" as defined in the ISO Glossary.
- (h) **"Allowable Dispatch Variance"** means a variance below the minimum MW level specified in a Valid Dispatch Instruction to an amount equal to the minimum MW level specified in such Valid Dispatch Instruction minus five (5) MW.
- (i) **"Ancillary Services"** means "ancillary services" as such term is defined in the EUA.
- (j) **"Applicable Law"** means in relation to any Person: (i) any applicable principles of common law and equity and any applicable federal, state, provincial, municipal and local law including any statute, subordinate legislation or treaty; and (ii) any applicable guideline, protocol, permit, directive, direction, rule, standard, requirement, program, policy, order, judgment, injunction, award or decree of an Authorized Authority having the force of law.
- (j) **"Approved Outage"** has the meaning assigned to it in Article 6
- (k) **"Arbitration Act"** means the *Arbitration Act* (Alberta), R.S.A. 2000, c. A-43.
- (l) **"Arbitration Notice"** has the meaning assigned to it in Section 10.4.
- (m) **"Arbitration Procedure"** has the meaning assigned to it in Section 10.2(b).
- (n) **"AUC"** means the Alberta Utilities Commission, and any successor thereof.
- (o) **"Authorized Authority"** means, in relation to any Person, transaction or event, any: (a) federal, provincial, municipal or local governmental body (whether administrative, legislative, executive or otherwise), both domestic and foreign; (b) agency, authority, commission, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government; (c) court, arbitrator, commission or body exercising judicial, quasi-judicial, administrative or similar functions; and (d) other body or entity created under the authority of or otherwise subject to the jurisdiction of any of the foregoing, including any stock or other securities, exchange, in each case having jurisdiction over such Person, transaction or event.
- (p) **"Available Capability"** means "available capability", as defined in the ISO Glossary.
- (q) **"Business Day"** means a day on which banks are generally open for the transaction of commercial business in Calgary, Alberta but does not in any event include a Saturday or a Sunday or statutory holiday under Applicable Law.

- (r) **"Business Hours"** means the normal business hours of the AESO at its head office in Calgary, Alberta.
- (s) **"Continuous Operating Capability Range"** means with respect to a Unit(s), its ability to operate continuously between the ranges of the Minimum Continuous Operating Capability and Maximum Continuous Operating Capability.
- (t) **"Contract Volume"** means the contract volume for the Unit(s), as specified in Schedule "A" hereto.
- (u) **"Credit Rating"** means, in respect of any Person at any time:
 - (i) the rating assigned to the Person's unsecured, senior long-term debt obligations; or
 - (ii) if the Person does not have an unsecured, senior long-term debt rating, the rating then assigned to it as an issuer rating by Standard & Poor's or an equivalent rating by a major reputable corporate rating service satisfactory to the AESO.
- (v) **"Derate"** means a circumstance due to physical or operational constraints that results in reduced Available Capability of the Unit(s) which without such reduction could reasonably be expected to affect the safety of the Unit(s), the environment, personnel working at the Unit or the public.
- (w) **"Directive"** means "directive" as defined in the ISO Glossary.
- (x) **"Disclosing Party"** has the meaning assigned to it in Section 13.1.
- (y) **"Dispatch"** means "dispatch", as defined in the ISO Glossary.
- (z) **"Dispatched"** means that the Service Provider has caused a Unit or Units to deliver electric energy in accordance with a Valid Dispatch Instruction.
- (aa) **"Dispute Resolution Procedure"** has the meaning assigned to it in Section 10.1.
- (bb) **"Effective Date"** means 12:00 a.m. on July 1, 2022.
- (cc) **"Emergency"** means "Emergency", as defined in the ISO Glossary.
- (dd) **"EUA"** means the *Electric Utilities Act* (Alberta).
- (ee) **"Failure to Supply"** has the meaning assigned to it in Section 7.1.
- (ff) **"Financial Security"** has the meaning assigned to it in the ISO Rules.
- (gg) **"Financial Security Requirements"** means Section 103.3 (Financial Security Requirements) and Section 103.7 (Financial Default and Remedies) of the ISO Rules, as amended, supplemented, replaced or otherwise modified from time to time.
- (hh) **"First Option Term"** has the meaning assigned to it in Section 2.4.

- (ii) **"Force Majeure"** means any occurrence (and the effects thereof):
 - (i) which is beyond the reasonable control of the Party claiming relief of its obligations under this Agreement and which could not have been avoided through the use of Good Electric Industry Practice and which prevents such Party from satisfying its obligations under this Agreement including, but not limited to: act of God, war, invasion, armed conflict, blockade, act of public enemy, riot, revolution, insurrection, act of terrorism, sabotage, act of vandalism, fire, lightning, explosion, earthquake, flood, pandemic, epidemic, or a requirement to comply with any Applicable Law or any order, direction or ruling of any Authorized Authority (so long as the Party claiming relief has not applied for or assisted in the application for such action or restraint by such authority); and
 - (ii) which the Party claiming relief of its obligations under this Agreement could not have reasonably foreseen or taken reasonable measures to prevent, but which shall not include any lack of finances, any occurrence which can be overcome by incurring reasonable additional expenses, any Forced Outage that is not caused by an event of Force Majeure, any strike, lock-out or any other form of labour dispute, or any other form of delay caused by contractual or labour relations between such Party and any of its personnel.
- (jj) **"Forced Outage"** means "forced outage", as defined in the ISO Glossary.
- (kk) **"Good Electric Industry Practice"** means "good electric industry practice", as such term is defined in the ISO Glossary.
- (ll) **"GST"** has the meaning assigned to it in Section 3.3.
- (mm) **"Guarantee"** has the meaning ascribed to it in ISO Rule Section 103.3 (Financial Security Requirements) as amended, supplemented or otherwise replaced from time to time.
- (nn) **"Guarantor"** has the meaning provided in the definition of **"Guarantee"**.
- (oo) **"Including"** and **"includes"** means "including, without limitation" and "includes, without limitation", respectively.
- (pp) **"Indemnified Losses"** means, in relation to any Person, any and all liabilities, indebtedness, obligations, losses, damages, claims, assessments, fines, penalties, costs, fees and expenses of every kind, nature or description suffered or incurred by such Person, whether fixed or contingent, known or unknown, suspected or unsuspected, or foreseen or unforeseen, and whether based on contract, tort, statute or other legal or equitable theory of recovery, including interest which may be imposed in connection therewith, court costs, costs resulting from any judgments, orders, awards, decrees or equitable relief, and Professional Fees.
- (qq) **"Indemnifier"** means, in relation to the indemnity pursuant to Section 8.1, the Service Provider, and in relation to the indemnity pursuant to Section 8.2, the AESO.
- (rr) **"Indemnified"** means any Person indemnified pursuant to Section 8.1 or 8.2, as applicable.

- (ss) **"Insolvency Event"** means, in relation to any Person, the occurrence of one or more of the following:
- (i) an order is made or an effective resolution passed for the winding-up, liquidation or dissolution of such Person;
 - (ii) such Person institutes proceedings for its winding up, liquidation or dissolution, or take action to become a voluntary bankrupt, or consents to the filing of a bankruptcy proceeding against it, or files a proposal, a notice of intention to make a proposal, a petition or answer or consent seeking reorganization, readjustment, arrangement, composition or similar relief under any bankruptcy law or any other similar Applicable Law or consents to the filing of any such petition, or consents to the appointment of a receiver, liquidator, trustee or assignee in bankruptcy or insolvency of all or a substantial part of the property of such Person or makes an assignment for the benefit of creditors, or admits in writing its inability to pay its debts generally as they come due or commits any other act of bankruptcy, or suspends or threatens to suspend transaction of its usual business, or any action is taken by such Person in furtherance of any of the aforesaid;
 - (iii) a court having jurisdiction enters a decree or order adjudging such Person a bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, readjustment, arrangement, composition or similar relief under any bankruptcy law or any other similar Applicable Law, or a decree or order of a court having jurisdiction for the appointment of a receiver, liquidator, trustee or assignee in bankruptcy or insolvency of all or a substantial part of the undertaking or property of such Person, or for the winding up, dissolution or liquidation of its affairs, is entered and such decree, order or petition is not contested and the effect thereof stayed, or any material part of the property of such Person is sequestered or attached and is not returned to the possession of such Person or released from such attachment within twenty (20) days thereafter; or
 - (iv) any proceedings, voluntary or involuntary, is commenced, or an order or petition is issued, respecting such Person pursuant to any Applicable Law relating to bankruptcy, insolvency, reorganization of debts, liquidation, winding-up or dissolution;
 - (v) such Person causes or institutes any proceeding for its dissolution or termination;
 - (vi) such Person is generally not paying its debts as they become due, or such Person makes a general assignment for the benefit of creditors.
- (tt) **"ISO Glossary"** means the ISO Authoritative Document Consolidated Glossary, as amended from time to time.
- (uu) **"ISO Rules"** means the "ISO rules" as such term is defined in Section 1(2)(d) of the EUA.
- (vv) **"ISO Tariff"** means the "tariff" as such term is defined in Section 1(2)(e) of the EUA.
- (ww) **"Letter of Credit"** has the meaning ascribed to it in ISO Rule Section 103.3 (Financial Security Requirements) as amended, supplemented, replaced or otherwise modified from time to time.

- (xx) **"LPR"** means the *Liability Protection Regulation* (Alberta).
- (yy) **"Market Surveillance Administrator"** means "Market Surveillance Administrator" as such term is defined in the EUA.
- (zz) **"Material Adverse Change"** means:
 - (i) a downgrade in the Credit Rating of the Service Provider or any Guarantor by any credit rating agency; or
 - (ii) any event, circumstance or change which results, or would reasonably be expected to result, in a material adverse change in:
 - (A) the financial condition of the Service Provider or any Guarantor;
 - (B) the ability of the Service Provider to perform its obligations under this Agreement; or
 - (C) the assets or business of the Service Provider or any Guarantor.
- (aaa) **"Maximum Continuous Operating Capability"** means the continuous operating capability of the Unit taking into account Good Electric Industry Practice, to the maximum specified in Schedule "A" hereto, which maximum shall be equal to the Contract Volume.
- (bbb) **"Minimum Continuous Operating Capability"** means the minimum continuous operating capability of the Unit, as specified in Schedule "A" hereto.
- (ccc) **"Month"** means "month", as defined in the ISO Glossary.
- (ddd) **"MW"** means "MW", as defined in the ISO Glossary.
- (eee) **"MWh"** means "MWh", as defined in the ISO Glossary
- (fff) **"Notice of Claim"** means a notice by the Service Provider or the AESO, as applicable, on behalf of itself or one or more additional indemnities (if applicable) of a claim for Indemnified Losses pursuant to Section 8.1 or 8.2, as applicable, together with detailed particulars as to the nature and amount of the claim and the basis which it is sought.
- (ggg) **"Officer's Procedure"** has the meaning assigned to it in Section 10.2.
- (hhh) **"Officer's Notice"** has the meaning assigned to it in Section 10.4.
- (iii) **"Operating Permit"** means that certain approval for construction, operation, and reclamation of the Unit(s), including any amendments, modifications, extensions, or subsequent versions thereof.
- (jjj) **"Option Term"** has the meaning assigned to it in Section 2.4.
- (kkk) **"Overdue Interest Rate"** means an annual rate of interest equal to the Prime Rate plus six percent (6.0%).

- (lll) **"Party"** means the Service Provider or the AESO, as the context requires, and **"Parties"** means both the Service Provider and the AESO.
- (mmm) **"Permitted Unavailability"** means an occurrence of an Approved Outage or a Forced Outage which results in the Unit(s) being rendered unavailable to supply the TMR Services.
- (nnn) **"Person"** includes a natural person, corporation, limited partnership, general partnership, joint stock company, joint venture, association, company, limited liability company, trust, bank, trust company, land trust, business trust or other organization, whether or not a legal entity, or government or any agency or political subdivision thereof.
- (ooo) **"Pool Participant"** means a "pool participant", as defined in the ISO Glossary.
- (ppp) **"Power Pool"** means "power pool", as defined in the EUA.
- (qqq) **"Prime Rate"** means the annual rate of interest designated by the main branch in Calgary of the Bank of Montreal as its reference rate for Canadian dollar commercial loans made in Canada and which is announced by such bank as its prime rate.
- (rrr) **"Professional Fees"** means reasonable fees and disbursements of legal counsel, consultants and expert witnesses and other reasonable out-of-pocket expenses incurred in connection therewith.
- (sss) **"Proprietary Information"** has the meaning assigned to it in Section 13.1.
- (ttt) **"Purchase Price"** has the meaning assigned to it in Schedule "B".
- (uuu) **"Ramping"** means "ramping", as defined in the ISO Glossary.
- (vvv) **"Reactive Power"** means "reactive power", as defined in the ISO Glossary.
- (www) **"Recipient"** has the meaning assigned to it in Section 13.1.
- (xxx) **"Representative"** has the meaning assigned to it in Section 13.2.
- (yyy) **"Retained Documents"** has the meaning assigned to it in Section 13.3.
- (zzz) **"Second Option Term"** has the meaning assigned to it in Section 2.4.
- (aaaa) **"Service Provider Event of Default"** has the meaning assigned to it in Section 7.4.
- (bbbb) **"Survival Period"** means the period ending ten (10) years after the expiry or termination of this Agreement.
- (cccc) **"System Controller"** means the "system controller", as defined in the ISO Glossary.
- (dddd) **"System Security"** means "system security", as defined in the ISO Glossary.
- (eeee) **"TIER"** means the *Technology Innovation and Emissions Reduction Regulation (Alberta)*.

- (ffff) **"Term"** has the meaning assigned to it in Section 2.1.
- (gggg) **"Transmission Must Run"** or **"TMR"** means "transmission must-run", as defined in the ISO Glossary.
- (hhhh) **"Transmission Must Run Services"** or **"TMR Services"** means the operation of the Unit(s), each within the Continuous Operating Capability Range as set out in Schedule "A", in order to deliver electric energy and Reactive Power support on to the AIES, which is required to maintain System Security, on the terms provided herein.
- (iiii) **"Unit(s)"** means the generating unit(s) specified in Schedule "A".
- (jjjj) **"Valid Dispatch Instruction"** means a Dispatch instruction sent to the Service Provider from the AESO requiring the Service Provider to supply Transmission Must Run Services from the Unit(s) for a quantity (in MW) within the Continuous Operating Capability Range of each Unit(s).
- (kkkk) **"WECC"** means the Western Electricity Coordinating Council.

1.2 Schedules

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

- (a) Schedule "A" - Transmission Must Run Service Parameters
- (b) Schedule "B" - Purchase Price
- (c) Schedule "C" - Initial Financial Security

1.3 References and Headings

The expressions **"herein"**, **"hereto"**, **"hereof"**, **"hereby"**, **"hereunder"** and similar expressions in this Agreement shall refer to the provisions of this Agreement in their entirety and not to any particular section, subsection or other subdivision hereof. References to Articles, Sections and Schedules herein refer to articles, sections and schedules of or to this Agreement, unless the context otherwise requires. Any reference to time shall refer to Mountain Standard Time or Mountain Daylight Saving Time during the respective intervals in which each is in force in the Province of Alberta. The headings of the Articles, Sections, Schedules and any other headings, captions or indices herein are inserted for convenience of reference only and shall not in any way affect the construction or interpretation of this Agreement or any provision hereof.

1.4 Singular/Plural; Derivatives

Whenever the singular or masculine or neuter is used in this Agreement it shall be interpreted as meaning the plural or feminine or body politic or corporate, and vice versa, as the context requires. Where a term is defined herein, a capitalized derivative of such term shall have a corresponding meaning unless the context otherwise requires.

1.5 Statutory References

Any reference to a statute shall include and shall be deemed to be a reference to such statute and to the regulations made pursuant thereto, and all amendments made thereto and in force from time to time, and to any statute or regulation that may be passed which has the effect of supplementing the statute so referred or to the regulations made pursuant thereto. Any reference to a regulation shall be deemed to be a reference to such regulation and all amendments made thereto and in force from time to time, and to any regulation that may be passed which has the effect of supplementing the regulation so referred. For greater clarity, if any Applicable Law is modified pursuant to this Section 1.5 and such change results in a material disadvantage to either Party hereto, it shall be subject to Section 14.2 hereof.

1.6 Computation of Time Periods

Except as expressly set out in this Agreement, the computation of time referred to in this Agreement shall exclude the first day and include the last day of such period. If the time required for payment by the AESO for amounts owed under this Agreement falls on a day that is not a Business Day, the time required for such payment shall extend to the next following Business Day. To the extent that interest is calculated for a period ending on a day that is not a Business Day, the last day of such period, for the purposes of calculating interest, shall extend to the next following Business Day.

1.7 Conflicts

If there is any conflict or inconsistency between a provision of the body of this Agreement and that of a Schedule, the provision of the body of this Agreement shall prevail.

1.8 Currency

All dollar amounts referred to herein are expressed in Canadian dollars.

1.9 No Drafting Presumption

The Parties acknowledge that their respective legal counsel have reviewed and participated in settling the terms of this Agreement and the Parties hereby agree that any rule of construction to the effect that any ambiguity is to be resolved against the drafting Party shall not be applicable in the interpretation of this Agreement.

ARTICLE 2 TERM

2.1 Term

This Agreement will be in effect as and from the Effective Date and will continue in full force and effect until the earlier of:

- (a) 23:59:59 hours on June 30, 2024, subject to any renewal pursuant to Section 2.4, or
- (b) any earlier termination pursuant to Section 2.2;

(the "Term").

2.2 Termination Events

This Agreement shall terminate on the occurrence of any of the following events:

- (a) delivery of a termination notice by the AESO pursuant to Section 2.3;
- (b) delivery of a termination notice by the Service Provider pursuant to Section 7.5(a);
- (c) delivery of a termination notice by the AESO pursuant to Section 7.5(b);
- (d) delivery of a termination notice by either Party pursuant to Section 9.1(e);
- (e) delivery of a termination notice by the AESO pursuant to Section 14.2(b);
- (f) by mutual written agreement of the Parties; or
- (g) expiry of the Term.

2.3 Termination for Convenience

The AESO may, at any time, elect to terminate this Agreement by providing a notice of termination to the Service Provider at least thirty (30) days in advance of such termination.

2.4 Renewal

Unless the AESO provides written notice to the Service Provider at least ten (10) Business Days prior to the expiry of the initial Term, this Agreement shall automatically be extended for a six (6) month period (the "**First Option Term**") following the initial Term, on the same terms and conditions as contained in this Agreement. Unless the AESO provides written notice to the Service Provider at least ten (10) Business Days prior to the expiry of the First Option Term, this Agreement shall automatically be extended for an additional six (6) month period (the "**Second Option Term**" and together with the First Option Term, each an "**Option Term**") following the First Option Term, on the same terms and conditions as contained in this Agreement. Notwithstanding anything to the contrary, the Term shall never extend beyond 23:59:59 hours on June 30, 2025.

2.5 Survival

The termination or expiry of this Agreement shall not release any Party from any liability which arose or accrued hereunder prior to or on such termination. Notwithstanding the expiration or termination of this Agreement, the provisions of Section 1.1, Section 2.6, Article 4, Article 7, Article 8, Article 10, Article 11, Article 12 and Article 13 shall survive for such period as necessary to give effect thereto.

2.6 Post-Termination

In the event of a termination or expiry of this Agreement, the AESO shall pay all amounts due and accruing due to the Service Provider to the date of termination or expiry, and the Parties shall take all steps as may be reasonably required to complete any final accounting between them with respect to any fees, expenses or liquidated damages hereunder. For greater clarity, this provision

shall not be interpreted to limit the Parties' obligations with respect to any matters contemplated by Section 2.5.

ARTICLE 3 SUPPLY AND PURCHASE OF SERVICES

3.1 Supply and Purchase of Transmission Must Run Service

The Service Provider shall supply Transmission Must Run Service to or for the account of the AESO and the AESO shall purchase Transmission Must Run Service from the Service Provider, all in accordance with the terms and conditions contained in this Agreement.

3.2 Purchase Price

In consideration of the supply by the Service Provider of Transmission Must Run Service to or for the account of the AESO in accordance with the terms hereof, the AESO agrees each Month to pay to the Service Provider the Purchase Price applicable to such Month. The Purchase Price shall be calculated by the Service Provider in accordance with Schedule "B".

3.3 GST

All amounts payable under this Agreement are exclusive of goods and services tax ("**GST**") imposed by Part IX of the *Excise Tax Act* (Canada). In addition to such amounts, the Party owing such amount shall also pay the other Party an amount equal to the GST applicable to such amount. The Party to whom such payments are made shall be responsible for remitting the GST as required by Applicable Law.

ARTICLE 4 REPRESENTATIONS AND WARRANTIES

4.1 Representations of Service Provider

The Service Provider represents, warrants and covenants to and in favour of the AESO that as of the date of this Agreement and continuing throughout the Term:

- (a) Standing: The Service Provider is a corporation, duly organized, validly existing under the laws of its jurisdiction of formation, and duly registered and authorized to carry on business in the Province of Alberta.
- (b) Requisite Authority: The Service Provider has the requisite corporate capacity, power and authority to execute this Agreement and any other agreements and documents required to be delivered hereunder and to perform all obligations to which it thereby becomes subject. This Agreement is binding and enforceable against the Service Provider in accordance with its terms.
- (c) Execution and Enforceability: The Service Provider has taken all necessary corporate actions to authorize the execution, delivery and performance of this Agreement, including the transactions contemplated herein in accordance with the provisions of this Agreement. This Agreement has been duly executed and delivered by the Service Provider, and this Agreement constitutes, and all other documents executed and delivered on behalf of the

Service Provider hereunder shall, when executed and delivered constitute, valid and binding obligations of the Service Provider enforceable in accordance with their respective terms and conditions.

- (d) **No Conflict:** The execution and delivery of this Agreement and the performance of the transactions contemplated herein by the Service Provider in accordance with the terms of this Agreement are not and will not be in violation or breach of, or be in conflict with or require any consent, authorization or approval under:
 - (i) any term or provision of the constating documents of the Service Provider;
 - (ii) any contract, permit or authority to which the Service Provider is a party or by which the Service Provider is bound; or
 - (iii) Applicable Law.
- (e) **Litigation:** There are no actions, suits or proceedings pending or, to the knowledge of the Service Provider, threatened against the Service Provider or any of its Affiliates seeking relief which would prevent or materially hinder the consummation of the transactions contemplated by this Agreement.
- (f) **Continuous Operating Capability Range:** The Continuous Operating Capability Range of the Unit(s) is not and, for the duration of the Term, shall not be contracted to, or otherwise committed to a third Person in a manner which limits or interferes with the rights of AESO hereunder or otherwise results in a breach by the Service Provider of its obligations.
- (g) **Interconnection Requirements:** There are and, for the duration of the Term, shall be executed and effective interconnection agreements, pursuant to the ISO Tariff, in place for the delivery of the Continuous Operating Capability Range of the Unit to the System, which interconnection agreements are held in the name of the Service Provider.
- (h) **Pool Participant:** The Service Provider is a Pool Participant and shall remain a Pool Participant during the Term.
- (i) **Rights to Supply:** The Service Provider has the right to provide the Transmission Must Run Services in an amount within the Continuous Operating Capability Range, up to the Maximum Continuous Operating Capability, and to provide the Transmission Must Run Services to AESO in accordance with the terms of this Agreement. Service Provider shall use commercially reasonable efforts to obtain any authorizations required under Applicable Law to provide the Transmission Must Run Services during the Term.

4.2 **AESO Representations and Warranties**

The AESO represents, warrants and covenants to and in favour of the Service Provider that as of the date of this Agreement and continuing throughout the Term:

- (a) **Standing:** The AESO is a statutory corporation, validly existing under the laws of its jurisdiction of formation, and duly registered and authorized to carry on business in the Province of Alberta.

- (b) Requisite Authority: The AESO has the requisite corporate capacity, power and authority to execute this Agreement and any other agreements and documents required to be delivered hereunder and to perform all obligations to which it thereby becomes subject.
- (c) Execution and Enforceability: The AESO has taken all necessary corporate or other actions to authorize the execution, delivery and performance of this Agreement, including the transactions contemplated herein in accordance with the provisions of this Agreement. This Agreement has been duly executed and delivered by the AESO, and this Agreement constitutes, and all other documents executed and delivered on behalf of the AESO hereunder shall, when executed and delivered constitute, valid and binding obligations of the AESO enforceable in accordance with their respective terms and conditions.
- (d) No Conflict: The execution and delivery of this Agreement and the performance of the transactions contemplated herein by the AESO in accordance with the terms of this Agreement are not and will not be in violation or breach of, or be in conflict with or require any consent, authorization or approval under:
 - (i) any term or provision of the constating documents of the AESO;
 - (ii) any permit or authority to which the AESO is a party or by which the AESO is bound; or
 - (iii) Applicable Law.
- (e) Litigation: There are no actions, suits or proceedings pending or, to the knowledge of the AESO, threatened against the AESO or any of its Affiliates seeking relief which would prevent or materially hinder the consummation of the transactions contemplated by this Agreement.

4.3 Survival of Warranties

The representations and warranties made during the Term contained in Sections 4.1 and 4.2 shall survive the expiration of the Term or termination of this Agreement and shall continue in full force and effect for the benefit of the other Party such that if any representation, warranty, or covenant was untrue on the date it was made, or deemed repeated, it shall survive for the Survival Period after the expiration or termination of this Agreement.

ARTICLE 5 SERVICE PROVIDER COVENANTS

5.1 Terms of Supply and Availability

- (a) Basic Requirements: Subject to Permitted Unavailability, the Service Provider shall:
 - (i) throughout the Term, make or cause TMR Services, in a quantity (expressed in MW) within the combined Continuous Operating Capability Range to be made available to or for the account of the AESO from the Unit(s) in accordance with the terms of this Agreement;

- (ii) throughout the Term, ensure that the Unit(s) is able to respond to a Dispatch for the provision of TMR Services through live operators or remote controls on a twenty-four (24) hour basis whenever Dispatched or directed by the AESO and to the amount specified in a Valid Dispatch Instruction or Directive;
- (iii) throughout the Term,
 - (A) acknowledge receipt within 10 minutes of the AESO's issuance of a Valid Dispatch Instruction and comply with each Valid Dispatch Instruction provided by the AESO,
 - (B) cause the Transmission Must Run Services, directed to be Dispatched from time to time pursuant to a Valid Dispatch Instruction, to begin Ramping in accordance with the ISO Rules, and to reach the MW output, subject to an Allowable Dispatch Variance, within thirty (30) minutes of the effective time specified in such Valid Dispatch Instruction or such shorter period of time as required by the ISO Rules, and
 - (C) cause the Transmission Must Run Services, directed to be Dispatched from time to time pursuant to a Valid Dispatch Instruction, to be and remain Dispatched in strict accordance with the terms of a Valid Dispatch Instruction, provided that the Service Provider shall only be required to maintain the MW output level of the Unit(s) Dispatched pursuant to a Valid Dispatch Instruction at or above the minimum MW level specified in such Valid Dispatch Instruction, subject to an Allowable Dispatch Variance or Derate, and such MW output level must not be below the Allowable Dispatch Variance or Derate on average in any ten (10) minute clock period; and
- (iv) throughout the Term, maintain and operate the Unit(s) so as to ensure that the Transmission Must Run Services may be Dispatched and supplied in accordance with the terms of this Agreement.
- (b) Operating and Regulatory Requirements: The Service Provider shall, as it relates to the operation and maintenance of the Unit(s) and the provision of TMR Services therefrom, comply with Good Electric Industry Practice, the reliability management system requirements of the WECC and all relevant ISO Rules and Alberta Reliability Standards.
- (c) Compliance with Law: Notwithstanding anything herein to the contrary, a Party shall not be obligated to perform any obligation hereunder that would violate any Applicable Law.
- (d) Ancillary Services and Power Pool: The Service Provider is permitted to sell the electricity generated by the Unit(s) in excess of either a Dispatch or a Valid Dispatch Instruction, to either the Power Pool or for the provision of additional Ancillary Services; provided, however, that such other sales of the electricity generated by the Unit(s) does not conflict, or otherwise interfere, with the provision of TMR Services.
- (e) Reporting: The Service Provider shall, as it relates to the Unit(s) and the provision of TMR Services therefrom, report to the AESO in accordance with the ISO Tariff and, without limiting the generality of the foregoing, provide, at any time and from time to time at the request of the AESO, all information, data and reports required to enable the AESO to

calculate the Purchase Price. All such information shall be Proprietary Information that is subject to the protections set forth in Article 13.

- (f) Financial Security: The Service Provider shall throughout the Term continuously comply with the Financial Security Requirements in respect of Financial Security, set forth in Section 11.1.
- (g) Notice: The Service Provider shall provide written notification to the AESO forthwith upon becoming aware of any Force Majeure that causes unavailability or interruption to the Unit(s)' ability to provide TMR Services.

5.2 Communication

For the duration of the Term, the Service Provider shall maintain the communication requirements as set forth in all applicable ISO Rules and standards, and any successors thereto, including but not limited to the AESO SCADA standard, in accordance with ISO Rule Section 502.4 (Automated Dispatch and Messaging System and Voice Communication System Requirements).

ARTICLE 6 APPROVED OUTAGES

6.1 Approved Outages

- (a) All planned maintenance outages for the Unit(s), required in accordance with the Good Electric Industry Practice, shall, throughout the Term, be reported in the AESO Energy Trading System by the Service Provider to the AESO in accordance with ISO Rule Section 306.5 (Generation Outage Reporting and Coordination) as soon as practical after the Service Provider becomes aware of any such outages or, where applicable, becomes aware of any changes in or addition to any planned maintenance outages. A planned maintenance outage, required in accordance with Good Electric Industry Practice, and any such change or addition to such planned maintenance outages, is referred to herein as "**Approved Outage**".
- (b) In addition to and without limiting any other rights of the AESO under Applicable Law, (i) in the event the Service Provider requests a change to the timing of an Approved Outage within ninety (90) days of when the Approved Outage is scheduled, the AESO may, in its sole discretion, accept or reject the Service Provider's request without any cost or liability to the AESO, and (ii) AESO may, in its sole discretion, request changes to the timing of an Approved Outage if the AESO determines that the reliability of the System will be materially affected if the Service provider undertakes or utilizes an Approved Outage in respect thereof. The Service Provider shall accommodate such changes to the timing of any Approved Outage, unless such changes present risk of danger to the Service Provider's equipment, personnel, the public or the environment, or which would cause the Service Provider to be in non-compliance with Applicable Law or the Operating Permit.
- (c) If the Service Provider accommodates a change to the timing of any Approved Outage pursuant to Section 6.1(b)(ii), the AESO shall indemnify the Service Provider against any direct, incremental, out-of-pocket costs and expenses reasonably incurred by the Service Provider as the result of such change, provided it has used all reasonable efforts to mitigate such costs and expenses. Without limiting the generality of the foregoing, direct

incremental costs shall not include any loss of profit, loss of revenue, loss of production, loss of earnings, loss of contract or any other indirect cost or expense whatsoever.

ARTICLE 7 DEFAULT AND REMEDIES

7.1 Failure to Supply

If at any time, other than during Permitted Unavailability or a Force Majeure event, there is a failure by the Service Provider to perform or observe any one of the covenants set out in Section 5.1(a)(iii) and, in the case of Section 5.1(a)(iii)(C), such failure results in the AESO replacing all or a portion of the TMR Services (“**Failure to Supply**”) the AESO shall have the right to deduct from the Purchase Price for the applicable Month any payment applicable to such Failure to Supply in accordance with Schedule “B”, together with the incremental cost of replacing all or that portion of the TMR Services that the Service Provider failed to supply, provided that the AESO shall have no claim for such deduction with respect to TMR Services that have been curtailed in the entirety by the AESO (pursuant to the ISO Rules) during any portion of the hour specified in the relevant Valid Dispatch Instruction for reasons of System Security or transmission congestion management, as determined by the AESO in its sole discretion; provided, for clarity, that in the event that less than the entirety of the TMR Services are so curtailed the AESO shall be entitled to claim deduction from the Service Provider for the portion of the TMR Services which was not actually supplied in compliance with the terms of a Valid Dispatch Instruction for the entire hour specified in such Valid Dispatch Instruction; and the AESO may net and set-off pursuant to Section 2.3 in Schedule “B” and realize on the Financial Security in accordance with ISO Rule Section 103.7 (Financial Default and Remedies).

7.2 Recovery Plan

- (a) The AESO may, on notice to the Service Provider, require the Service Provider to prepare and deliver within thirty (30) days, at the Service Provider’s sole cost and expense, a recovery plan which sets forth the underlying cause and the work that the Service Provider will undertake to remedy the underlying cause. Upon the AESO’s review and written approval of such recovery plan, the Service Provider shall forthwith undertake and implement the remedial work set forth and described in such recovery plan. The Service Provider shall notify the AESO upon completion of the remedial work.
- (b) In the event the Service Provider fails to provide an acceptable recovery plan or to undertake and implement the remedial work of an approved recovery in accordance with Section 7.2(a), the AESO may suspend the Service Provider from providing the TMR Services and all related payments under this Agreement until such time as the Service Provider provides an acceptable recovery plan or undertakes and implements the remedial work of an approved recovery plan, as determined by the AESO in its sole and absolute discretion.
- (c) The rights in this Section 7.2 are in addition to any other rights or remedies the AESO may have.

7.3 **Event of Default by the AESO**

The AESO shall be in default under this Agreement upon the happening or occurrence of any of the following events, each of which shall be deemed to be an event of default with respect to the AESO for the purposes of this Agreement (an "**AESO Event of Default**"):

- (a) an Insolvency Event by or in relation to the AESO; or
- (b) an Agreement Default by or in relation to the AESO and such default has not been cured (or, to the extent such breach is incapable of being cured retrospectively, then cured prospectively) within thirty (30) days following notice thereof from the Service Provider.

7.4 **Events of Default by the Service Provider**

The Service Provider shall be in default under this Agreement upon the happening or occurrence of any of the following events, each of which shall be deemed to be an event of default with respect to the Service Provider for the purposes of this Agreement (a "**Service Provider Event of Default**"):

- (a) an Insolvency Event by or in relation to the Service Provider;
- (b) an Insolvency Event by or in relation to the Guarantor, if any, identified in any Guarantee delivered pursuant to the provisions hereof;
- (c) an Agreement Default by or in relation to the Service Provider and such default has not been cured (or, to the extent such breach is incapable of being cured retrospectively, then cured prospectively) within thirty (30) days following notice thereof from the AESO;
- (d) the Service Provider fails to deliver an acceptable recovery plan within thirty (30) days in accordance with Section 7.2(a); or
- (e) if at any time, other than during Permitted Unavailability or a Force Majeure event, there are three (3) or more Failures to Supply by the Service Provider during any twelve (12) month rolling period.

7.5 **Remedies Upon Event of Default**

- (a) AESO Event of Default. Upon the occurrence of an AESO Event of Default, the Service Provider may terminate this Agreement by delivery of a notice of termination to the AESO and, effective as of the date of such termination.
- (b) Service Provider Event of Default. Upon the occurrence of a Service Provider Event of Default, the AESO may terminate this Agreement by delivery of a notice of termination to the Service Provider, and (i) declare an amount equal to One Hundred Thousand Dollars (\$100,000.00) as immediately due and payable on account of liquidated damages, (ii) exercise its rights hereunder to net and set-off pursuant to Section 2.3 in Schedule "B" or (iii) realize on the Financial Security for the amount of such liquidated damages and for other amounts, if any, accruing due under this Agreement, in accordance with ISO Rule Section 103.7 (Financial Default and Remedies).

- (c) Reasonable Pre-Estimate. The Parties agree that the liquidated damages specified above, if any, are a reasonable pre-estimate of such damages on account of negative market perception, lost business opportunities, general and administrative expenses, direct damages and similar damages, and does not constitute a penalty.

ARTICLE 8 LIABILITY AND INDEMNIFICATION

8.1 Responsibility of the Service Provider

Subject to the limitations set forth herein, the Service Provider shall be liable to, indemnify and save harmless the AESO and its parents, subsidiaries, affiliates, divisions, directors, officers, employees, managers, agents, representatives, independent contractors, consultants, attorneys, accountants, trustees, insurers, predecessors, successors and assigns (collectively, the “**Indemnifieds**”) for all Indemnified Losses which may be brought against or be suffered by any one or more of them or which any one or more of them may sustain, pay or incur as a direct result of any act, omission, circumstance or other matter arising out of, resulting from attributable to or connected with any Agreement Default made by the Service Provider or the negligence or wilful misconduct of the Service Provider in the performance of its obligations under this Agreement; provided, however, that the Service Provider shall not be liable to indemnify and save harmless the AESO for any Indemnified Losses that arise out of the negligence or wilful misconduct of AESO or of the Indemnifieds.

8.2 Responsibility of the AESO

Except for the AESO’s obligation to pay to the Service Provider the Purchase Price hereunder, the AESO shall not be liable to or indemnify the Service Provider for any liabilities, indebtedness, obligations, losses, damages, claims, assessments, fines, penalties, costs, fees, or expenses which may be incurred by it relating in any way to this Agreement and howsoever arising, whether in contract, tort, or otherwise.

8.3 Limit on Each Party’s Responsibility

The obligations and liability of the Parties under this Agreement shall be subject to the following limitations:

- (a) The total aggregate amount of the liabilities and indemnities of the Indemnifier under this Agreement shall not exceed one million dollars (\$1,000,000.00), excluding, however, (i) any liquidated damages payable pursuant to Section 7.5(b), (ii) any damages arising from the negligence or wilful misconduct of the Service Provider in the performance of its obligations under this Agreement, (iii) any damages arising from a breach of Article 13 by the Service Provider, and (iv) any damages arising from a breach of Applicable Law by the Service Provider.
- (b) The Indemnifier shall have no liability in connection with Indemnified Losses unless the Indemnified shall, prior to the expiry of the Survival Period, have provided the Indemnifier with a Notice of Claim.

- (c) The Indemnifier shall have no liability in connection with any Indemnified Losses to the extent that such Indemnified Losses are reimbursed to the Indemnified or its additional Indemnities by insurance.
- (d) Except for the liquidated damages, if any, payable under Section 7.5(b), and damages arising from a breach of Article 13 by the Service Provider, the Indemnifier shall have no liability for claims of loss of profits, loss of revenue, loss of production, loss of earnings, loss of contract or any other indirect, special or consequential loss or damage whatsoever of a Party, any Indemnifieds or any third Person arising from any act or omission carried out or purportedly carried out by a Party in carrying out its duties, responsibilities and functions under this Agreement.
- (e) Nothing herein shall be construed as limiting the application or protection of the EUA or LPR.

8.4 Responsibility Extends to Legal Costs and Settlements

Notwithstanding any provision to the contrary contained in this Article 8, references to costs in the liability and indemnification obligations prescribed by Sections 8.1 and 8.2 shall be deemed to include Professional Fees, and shall extend to settlements, satisfactions or other compromises with respect to claims by third Persons for Indemnified Losses; provided, however, that Indemnifier shall not be liable for any such Indemnified Losses unless they have agreed in writing, such agreement not to be unreasonable withheld, prior to the AESO or its Indemnifieds agreeing to such settlement, satisfaction or compromise.

8.5 Procedure - Indemnities

An Indemnified seeking indemnification shall give reasonably prompt Notice of Claim thereof to the Indemnifier from whom indemnification is sought, provided that if the Party seeking indemnification fails to provide notice to the Indemnifier prior to the expiry of the Survival Period the party seeking indemnification shall be deemed to have forfeited its right to indemnification with respect to such Indemnified Losses. The Indemnifier shall have the right to conduct, settle or otherwise dispose of any legal action in respect of which indemnification is sought in consultation with and with the consent of the Indemnified, acting reasonably, if and only if it has agreed that the matters in the action are indemnified pursuant to Sections 8.1 or 8.2, as applicable, and has provided security to the Indemnified in the form of a Letter of Credit in the full amount claimed in connection with such action, unless the amount claimed in connection with such action is in excess of the amount determined pursuant to Section 8.3(a) in which event the Indemnifier shall have provided security to the Indemnified in the form of a Letter of Credit in the amount determined pursuant to Section 8.3(a). The Letter of Credit shall be issued on terms satisfactory to the Indemnified, acting reasonably, including that the Indemnified shall be entitled to present the Letter of Credit for payment to satisfy any claim finally determined in such action or if the Indemnifier does not renew or provide a renewal Letter of Credit at least thirty (30) days prior to the expiry of any subsisting Letter of Credit.

ARTICLE 9 FORCE MAJEURE

9.1 Relief from Force Majeure

- (a) Where by reason of Force Majeure, a Party is prevented or delayed from performing any of its obligations under this Agreement, the Party whose performance is thereby prevented or delayed shall, unless otherwise provided herein, be relieved from any obligation to or liability under this Agreement related thereto (other than the obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure); provided that such relief shall be of no greater scope and no longer duration than is dictated by the Force Majeure event. For clarity, an event of Force Majeure shall not extend the Term or any Option Term.
- (b) The Party seeking to invoke the benefit of this Section 9.1 shall provide prompt written notice to the other Party without delay upon, but in no event later than two (2) Business Days after, the occurrence of the Force Majeure event, specifying the causes of and expected duration of the Force Majeure event and the probable impact on the performance of or compliance with its obligations hereunder.
- (c) The Party not seeking to invoke the benefit of this Section 9.1 shall not be required to perform or resume performance of its obligations to the other Party corresponding to the obligations of the Party excused by Force Majeure, including payment obligations.
- (d) The Party claiming Force Majeure shall provide prompt written notice to the other Party without delay upon, but in no event later than two (2) Business Days following, cessation of the event of Force Majeure. Upon cessation of the event of Force Majeure, performance hereunder shall be resumed.
- (e) Notwithstanding anything to the contrary in this Section 9.1, either Party may elect to terminate this Agreement by providing a notice of termination to the other Party if any event or events of Force Majeure, in aggregate, last longer than thirty (30) days in duration in any twelve (12) month rolling period during the Term or any Option Term.

9.2 No Relief

No Party shall be entitled to the benefits of the provisions of this Section 9.1:

- (a) unless it has complied with and was in continual compliance with its obligations provided for in Section 9.1;
- (b) if the failure to observe or perform any of the covenants or obligations herein imposed upon it was due to causes arising out of its own Agreement Default, negligence or willful act or was caused by arrest or restraint by any Authorized Authority and such arrest, restraint or order was the result of wilful misconduct or a breach by the Party claiming Force Majeure of the terms of a consent, permit or other approval or of any Applicable Law;
- (c) if the failure to observe or perform any of the covenants or obligations herein imposed upon it was caused by the Party claiming Force Majeure having failed to remedy the conditions and to resume the performance of such covenants or obligations with reasonable dispatch at reasonable cost; or

- (d) if and to the extent the Party is seeking to invoke Force Majeure because it is unable to procure or maintain any fuel supply to be utilized by any Units.

9.3 Audit Rights

The validity of any claim of Force Majeure by a Party, the reasonableness of the duration of the event of Force Majeure and the diligence of the efforts made to overcome, terminate, or mitigate the effects of the event of Force Majeure shall be subject to audit by the non-claiming Party.

9.4 No Extension

Notwithstanding anything in this Agreement to the contrary, no Force Majeure occurrence shall extend this Agreement beyond the Term.

**ARTICLE 10
DISPUTE RESOLUTION**

10.1 Dispute Resolution Procedure

The Parties agree to submit for resolution pursuant to this Article 10 (the "**Dispute Resolution Procedure**") any and all disputes between the Parties that in any way arises out of or in connection with this Agreement, including disputes as to or in connection with the existence, terms, validity, breach or termination of this Agreement (for the purposes of this Article, a "**dispute**").

10.2 Purpose and Sequence of Dispute Resolution

The purpose of the Dispute Resolution Procedure is to set forth the procedure pursuant to which each Party agrees to use reasonable efforts to resolve disputes prior to resorting to litigation. The Parties agree that the Dispute Resolution Procedure shall consist of a two-step process, which process shall be undertaken in the following order:

- (a) first, by way of discussions between the senior officers of the AESO and the Service Provider pursuant to the procedure set forth in Section 10.4 (the "**Officer's Procedure**"); and
- (b) second, by way of arbitration pursuant to the arbitration procedure set forth in Section 10.5 (the "**Arbitration Procedure**").

10.3 Confidentiality

All Proprietary Information disclosed by a Party pursuant to the Officer's Procedure or the Arbitration Procedure shall be treated as privileged, confidential, and without prejudice, and neither the delivery nor disclosure of such Proprietary Information shall represent any waiver of privilege by a Party disclosing the same. Each Party agrees not to disclose Proprietary Information provided by any other Party for the purposes hereof to any other Person for any other purpose without first obtaining the prior written consent of the Party that disclosed such Proprietary Information. Further, such Proprietary Information shall not be used in any subsequent proceedings without the prior written consent of the Party who has made disclosure of the same.

10.4 Officer's Procedure

Except for interlocutory injunctive proceedings for the immediate performance or cessation of conduct, for all disputes that have not been resolved, any Party may, by notice in writing to the other Party (the "**Officer's Notice**") refer the dispute to their senior officers. If any Party delivers an Officer's Notice to the other, the Parties shall cause one (1) or more of their senior officers to employ such methods of resolution as they may agree to, and shall cause to be made, all commercially reasonable efforts to, resolve the dispute within thirty (30) Business Days of delivery of an Officers Notice. If the dispute is not resolved within thirty (30) Business Days of delivery of an Officer's Notice, then any Party may, by notice in writing to the other Party (the "**Arbitration Notice**") refer the dispute to arbitration pursuant to the Arbitration Procedure. If no Party provides the other with an Arbitration Notice within thirty (30) Business Days following the issuance of an Officers Notice, then the Parties shall be entitled to pursue any other process or remedies otherwise available to them at law or in equity.

10.5 Arbitration Procedure

If any Party delivers an Arbitration Notice to the other, then the dispute shall be forwarded to and resolved by arbitration in accordance with the Arbitration Act, by a board of arbitrators in accordance with the following provisions:

- (a) the AESO shall appoint one (1) arbitrator and the Service Provider shall appoint one (1) arbitrator, each such being qualified by education and training and having appropriate technical and/or legal expertise with respect to the matter in dispute, within fifteen (15) days after delivery of an Arbitration Notice from one Party to the others or such longer period agreed to by the Parties. If any of the Parties shall fail to appoint an arbitrator within such fifteen (15) day period, then upon application by a Party that has appointed an arbitrator, the second (2nd) arbitrator shall be appointed by any Justice of the Court of Queen's Bench of Alberta. The two (2) arbitrators thus appointed shall appoint a third (3rd) arbitrator, who shall be qualified by education and training and have appropriate technical and/or legal expertise with respect to the matter in dispute, within fifteen (15) days of the appointment of the second (2nd) arbitrator. If the two (2) arbitrators shall fail to appoint the third (3rd) arbitrator within such fifteen (15) day period, then upon application by either Party, the (3rd) third arbitrator shall be appointed by any Justice of the Court of Queen's Bench of Alberta;
- (b) the board of arbitrators shall proceed promptly to determine the matters in issue and shall render its decision within thirty (30) days from the date of final submissions of the Parties to the board of arbitrators, except where the Parties agree to a different period of time;
- (c) the Parties consent to the arbitration being conducted in Calgary, Alberta, or any other place mutually agreed upon, and the initial meeting with the arbitrators shall commence no later than twenty (20) days following the appointment of the third (3rd) arbitrator, unless the Party's mutually agree, or the arbitrators' determine that good cause has been shown, for a longer time period, at which time the Parties shall present such evidence and witnesses as they may choose, with or without counsel;
- (d) the board of arbitrators shall have the discretion to shorten or lengthen time frames for actions to be taken by a Party pursuant to this Agreement with respect to any matter which is the subject of arbitration before such board of arbitrators;

- (e) each Party shall be responsible for its own costs and shall share the costs associated with the arbitration equally; provided that the board of arbitrators shall have the discretion to allocate costs in a different manner for good cause shown;
- (f) any determination or award of the board of arbitrators made in relation to the dispute shall be final, binding and non-appealable (whether on a question of law, a question of fact, or a question of mixed fact and law);
- (g) it shall be a condition of the appointment of any arbitrator that such arbitrator shall maintain in strict confidence all documents, the transcripts of the proceedings and other materials and all information disclosed by or on behalf of the Parties and shall not use the same or allow the same to be used for any purpose not collateral to such arbitration and, at the request of a Party that provided any documents or other printed materials, shall return all originals and any copies of such documents and printed materials to such Party. Each arbitrator shall be responsible for ensuring that its officers, employees, representatives and consultants comply with the obligation of confidentiality set forth in Section 10.3; and
- (h) the board of arbitrators may make rulings with respect to the production of documents, the ability of the Parties to call witnesses or any other procedural matter.

Save as otherwise expressly provided in this Agreement, the provisions of the Arbitration Act shall apply to any arbitration undertaken hereunder. Pending resolution of any dispute, the Service Provider and the AESO shall continue to perform their respective obligations under this Agreement.

**ARTICLE 11
FINANCIAL SECURITY**

11.1 Furnishing Financial Security

Concurrently with the execution of this Agreement, the Service Provider shall, with respect to its obligations hereunder, provide the AESO with the Financial Security described in Schedule "C", the form of which Financial Security shall be subject to the AESO's approval in accordance with the Financial Security Requirements. The Service Provider acknowledges and agrees to maintain such Financial Security for the term of this Agreement plus ninety (90) days after the expiry of this Agreement, and to provide new, additional, or replacement Financial Security to the AESO from time to time, if and to the extent required by the AESO, all in accordance with the Financial Security Requirements.

11.2 Survival

Notwithstanding any termination of this Agreement by a Party as permitted under the provisions hereof, the provisions of this Article 11 shall survive such termination for so long as there remains outstanding any Indemnified Losses, interest and any other amounts (including liquidated damages) which have been claimed by the AESO or which is owed to the AESO pursuant to the provisions hereof.

**ARTICLE 12
AUDIT AND REPORTING**

12.1 Audit and Records Retention

- (a) The AESO shall have the right, exercisable upon reasonable prior notice to the Service Provider to audit or examine the books and records of the Service Provider as they relate to the Unit(s) at the AESO's sole cost and expense, to verify the accuracy of any invoice, information, data, notice, claim, demand, charge, payment, cost, expense or computation reported, gathered, collected, made or incurred by the Service Provider, or the performance of the covenants and obligations by the Service Provider under and pursuant to this Agreement.
- (b) The Service Provider shall retain, for a period of six (6) years from their creation, all relevant books, records, information and data relating to the Unit(s) necessary to permit the AESO to exercise and fulfill its rights under this Section 12.1 and Section 9.3. It is expressly agreed that the six (6) year time period set out above shall be effective to vary the time period provided for under Paragraph 3(1)(a) of the *Limitations Act* (Alberta) R.S.A. 2000, c. L-12.
- (c) Notwithstanding the termination of this Agreement by a Party as permitted under the provisions hereof, all provisions respecting audit rights shall survive such termination for the relevant time periods specified herein.

**ARTICLE 13
CONFIDENTIALITY**

13.1 Proprietary Information

Subject to Sections 13.2 and 13.4, all information supplied or disclosed by a Party (the "**Disclosing Party**") under this Agreement regardless of the form of the information, or the method by which the information is transmitted, will be considered proprietary information (the "**Proprietary Information**") and the Party receiving the information (the "**Recipient**") will treat as confidential all Proprietary Information and will not at any time disclose any of the Proprietary Information to any other Person without the prior written consent of the Disclosing Party.

13.2 Need to Know

The Recipient will make its best efforts to keep confidential and protect the Proprietary Information as it would its own confidential and proprietary information. The Recipient will disclose the Proprietary Information only to those of its members, directors, officers, employees (including employees of such Party's affiliates) and representatives, consultants and agents (collectively, the "**Representatives**") who (i) have a need to know the information for the purposes of carrying out the Recipient's obligations under the Agreement, providing advice in respect thereto or as required by Applicable Law, and (ii) are informed of the confidential and proprietary nature of the Proprietary Information.

13.3 Exclusive Property

All Proprietary Information, unless otherwise specified in writing by the Disclosing Party, will remain the exclusive property of the Disclosing Party, including any and all reproductions of any of the

Proprietary Information and will be returned or destroyed at the request of the Disclosing Party; provided, however, that the Recipient (i) shall not be obligated to return or destroy computer archival or back-up files and (ii) may retain Proprietary Information as necessary to comply with its document retention policies (collectively, (i) and (ii) the “**Retained Documents**”); provided further, that all such Retained Documents shall be kept confidential and protected in accordance with this Article 13. Proprietary Information will not be used by the Recipient for any reason or purpose other than for the purposes of this Agreement.

13.4 **Exclusions**

- (a) Proprietary Information will not include any information provided which:
 - (i) is generally available to the electricity industry or the public at the time of disclosure;
 - (ii) subsequent to receipt by the Recipient, becomes generally available to the electrical industry or the public as a result of a disclosure by the Disclosing Party or its Representatives;
 - (iii) subsequent to receipt by the Recipient, the Recipient can establish, by satisfactory evidence, that the Proprietary Information became available to the Recipient on a non-confidential basis from a source other than the Disclosing Party or its Representatives without the breach of this Agreement; or
 - (iv) the Recipient can establish by competent evidence, that the Proprietary Information was available to the Recipient on a non-confidential basis prior to its disclosure to the Recipient.
- (b) Either Party shall be permitted to disclose Proprietary Information which:
 - (i) must be disclosed by Applicable Law to an Authorized Authority (including the AUC, the Market Surveillance Administrator, or any other Person that Recipient is directed to disclose such Proprietary Information to by an Authorized Authority);
 - (ii) must be disclosed by the AESO for the purposes of implementing this Agreement; or
 - (iii) must be disclosed by the AESO to WECC as a consequence of its membership in WECC.

13.5 **Notice of Demands**

In the event that Proprietary Information must be disclosed pursuant to Subsection 13.4(b) herein, the Recipient will provide notice to the Disclosing Party prior to disclosing or furnishing the Proprietary Information so as to afford the Disclosing Party an opportunity to seek injunctive relief or protections from the need to disclose.

13.6 **Survival**

This Article 13 shall survive for the Survival Period.

**ARTICLE 14
MISCELLANEOUS**

14.1 Waiver

With respect to the failure of a Party to perform or observe in any respect any of the covenants or agreements or covenants to be performed by such Party under this Agreement:

- (a) no waiver by a Party of any provision, or the breach of any provision, of this Agreement will be effective unless it is contained in a written instrument duly executed by the authorized officers or representatives of such Party, and such written waiver will affect only the matter specifically identified in the instrument granting the waiver and will not extend to any other matter, provision or breach;
- (b) the failure of a Party to give notice to any other Party or to take any other steps in exercising any right, or in respect of the breach or non-fulfillment of any provision of this Agreement, will not operate as a waiver of that right, breach or provision nor will any single or partial exercise of any right preclude any other or future exercise of that right or the exercise of any other right, whether in law or in equity or otherwise; and
- (c) acceptance of payment by a Party after the breach or non-fulfillment of any provision of this Agreement by another Person will not constitute a waiver of the provisions of this Agreement, other than the breach cured by such payment.

14.2 Change of Applicable Law

- (a) If, during the Term, a situation or occurrence arises due to the introduction of, or any change in any Applicable Law, the consequences and the effect of which are claimed to result in a material disadvantage greater than fifty thousand (\$50,000) to a Party under this Agreement, then said Party shall provide a written notice to the other Party, which notice shall provide details of such claimed material disadvantage (including sufficient information to enable the Party receiving the notice to determine if the aforesaid situation or occurrence has in fact arisen), and shall set forth the requesting Party's request to amend this Agreement to account for such claimed material disadvantage; provided, however, that a change in any Applicable Law shall not extend the Term or any Option Term.
- (b) The Party receiving the notice under Section 14.2(a) shall, no later than twenty (20) Business Days after its receipt of such notice, determine, based on the information provided to it in such notice whether the aforesaid situation or occurrence has arisen. In the event the Party receiving the notice determines, acting reasonably, that such situation or occurrence has in fact arisen then the Parties acknowledge and agree that they will endeavour in good faith to renegotiate the terms of this Agreement which were affected by the change in Applicable Law. Notwithstanding the foregoing, where the requesting Party is the Service Provider, the AESO may elect to terminate this Agreement upon written notice to the Service Provider instead of renegotiating the terms of this Agreement.
- (c) Any dispute arising from the interpretation or application of this Section 14.2 shall be settled pursuant to the Dispute Resolution Procedure.

14.3 Amendments

- (a) Except as otherwise provided in this Agreement (including Section 14.3(b)), no amendment or variation of the provisions of this Agreement shall be binding upon the Parties unless evidenced in writing and executed by both Parties.
- (b) The Service Provider agrees and acknowledges that the terms and conditions of the ISO Rules, Alberta Reliability Standards and AESO's technical requirements, as may be revised, amended or supplemented from time to time by the AESO if the AESO determines, acting reasonably, that such revisions are necessary (i) in connection with the fulfillment by the AESO of its duties under the EUA, (ii) to comply with Applicable Law (including the order, direction or ruling of the AUC or other Authorized Authority), (iii) to fulfill its duties and obligations as a control area manager or member of the WECC, or (iv) to manage, enhance, maintain or respond to System Security. It shall be the Service Provider's responsibility to ascertain the full text of such changes as they are published and made available by the AESO on the AESO's Website.
- (c) Any dispute arising from the interpretation or application of this Section 14.3 shall be settled pursuant to the Dispute Resolution Procedure.

14.4 Governing Law

This Agreement shall be interpreted in accordance with the laws of the Province of Alberta and the federal laws of Canada applicable therein.

14.5 Attornment

- (a) The Parties irrevocably:
 - (i) submit and attorn to the non-exclusive jurisdiction of the courts of the Province of Alberta for all matters arising out of or relating to this Agreement or any of the transactions contemplated hereby;
 - (ii) waive all right to object to jurisdiction of such courts in any legal action or proceeding relative to this Agreement or the transactions contemplated hereby or execution of any judgment, order or decree issued in or as a result of any such action, suit or proceeding which they may now or hereafter have by reason of domicile or otherwise;
 - (iii) waive any objection to the laying of venue in such courts of any of the aforesaid actions, suits or proceedings arising out of or in connection with this Agreement or the transactions contemplated hereby;
 - (iv) waive and agree not to plead or claim that any action, suit or proceeding in such courts has been brought in an inconvenient forum; and
 - (v) waive any right they may have to, or to apply for, trial by jury in connection with any matter, action, proceeding, claim or counterclaim arising out of or relating to this Agreement or any of the transactions contemplated hereby.

- (b) If a Party is incorporated or formed in a jurisdiction outside of Alberta, such Party shall appoint and maintain an attorney in Alberta for service of process in respect of actions, suits or proceedings arising out of or in connection with this Agreement or the transactions contemplated hereby and advise the other Party from time to time of the name and address of such attorney, provided that it shall not change the attorney so appointed or terminate the appointment unless (and no change or termination shall be effective until) they have previously given written advice to the other Party of a new attorney in Alberta for such purpose, in which case this proviso shall again apply in respect of the new attorney so appointed.

14.6 **Notice**

Subject to Section 14.7 and any other provision dealing specifically with a form of notice, any notice, approval, direction or request required or permitted to be given pursuant to this Agreement shall be in writing and shall be delivered personally, by courier, email correspondence or by facsimile to the address, email address or facsimile number designated below or to such other address, email address or facsimile number as may be substituted therefor from time to time by proper notice hereunder. Other than the notices and directives referred to in Section 14.7 (which shall be deemed received by the Service Provider and System Controller, as the case may be, in accordance with the terms of the ISO Rules):

- (a) notice by email correspondence or facsimile, shall be deemed to have been received at the time noted on the email correspondence or facsimile transmission equipment of the Party receiving such notice; unless such receipt is after 5:00 p.m. or on a non-Business Day, in which case, the notice shall be deemed to have been received on the next Business Day; and
- (b) notice by hand delivery or courier shall be deemed to have been received upon actual receipt by the receiving Party, unless such receipt occurs after 5:00 p.m. or on a non-Business Day, in which case, the notice shall be deemed to have been received on the next Business Day.

The Service Provider:

[Service Provider]

[Service Provider's Address]

Attention:
Telephone:
Cellphone:
Email:

with copies to:

[Service Provider]

[Service Provider's Address]

Attention:
Telephone:
Cellphone:
Email:

The AESO:

Independent System Operator, operating as AESO
2500, 330 - 5th Avenue S.W.
Calgary, AB T2P 0L4

Attention: Commercial Manager
Facsimile: 403-539-2509
Email for Notices: commerical.services@aeso.ca
Email for Invoices: aspayables@aeso.ca

with a copy to:

Independent System Operator, operating as AESO
2500, 330 - 5th Avenue S.W.
Calgary, AB T2P 0L4

Attention: General Counsel
Facsimile: 403-539-2949
Email: General.Counsel@aeso.ca

A Party may change its address, email address and facsimile or telephone numbers by written notice made in accordance with the terms hereof.

14.7 Operational Notices

As it relates to the TMR Services, the delivery of Dispatches and Directives to the Service Provider shall be made in accordance with the procedures established in accordance with the ISO Rules.

14.8 Press Releases

The Service Provider shall not issue or make any public announcement, press release or statement regarding this Agreement unless, prior to the release of the public announcement, press release or statement, the Service Provider furnishes the AESO with a copy of such announcement, press release or statement, and obtains the approval of the AESO, such approval not to be unreasonably withheld, conditioned or delayed; provided that, notwithstanding any failure to obtain such approval, the Service Provider shall not be prohibited from issuing or making any such public announcement, press release or statement if it is necessary to do so in order to comply with Applicable Law, legal proceedings or the rules and regulations of any stock exchange having jurisdiction over the Service Provider.

14.9 Time of the Essence

Time shall be of the essence in all matters arising pursuant to this Agreement.

14.10 Severability

Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under Applicable Law, however, each provision of this Agreement is intended to be severable and if any provision is determined by a court of competent jurisdiction to be illegal, invalid or unenforceable for any reason whatsoever, such provision shall be severed from this Agreement and will not affect the legality, validity or enforceability of the remainder of this Agreement or any other provision hereof.

14.11 Further Assurances

The Parties agree to undertake such further acts and execute such further documents as are reasonably required in order to implement this Agreement.

14.12 Assignment

The Service Provider may not assign, sell or otherwise dispose of its interest in this Agreement or any portion thereof, except with the prior written consent of the AESO, which may not be unreasonably withheld, conditioned, or delayed.

14.13 Supersedes Earlier Agreements

This Agreement constitutes the entire agreement between the Parties relating to the subject matter hereof and there are no collateral or other statements, understandings, covenants, agreements, representations or warranties, written or oral, relating to the subject matter hereof. This Agreement supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, between the Parties or their predecessors relating to the subject matter of this Agreement.

14.14 Enurement

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

14.15 Counterpart Execution

This Agreement may be executed by facsimile or other electronic means and in separate counterparts, each of which when so executed and delivered shall be an original, and all such counterparts taken together shall constitute one agreement.

IN WITNESS WHEREOF the Parties have duly executed this Agreement as of the date first written above.

INDEPENDENT SYSTEM OPERATOR, operating
as the **ALBERTA ELECTRIC SYSTEM
OPERATOR**

[SERVICE PROVIDER]

Per: _____
Name: Michael G. Law

Per: _____
Name: _____



[longname]

Transmission Must Run Service Agreement

[Start and End Dates of TMR]

Title: President and CEO

Title: _____

Per: _____

Per: _____

Name: Miranda Keating Erickson

Name: _____

Title: Vice-President, Markets

Title: _____

DRAFT

THIS IS SCHEDULE "A" TO THE TRANSMISSION MUST RUN SERVICE AGREEMENT DATED THIS [●] DAY OF [●], 2022 BETWEEN [SERVICE PROVIDER] AND INDEPENDENT SYSTEM OPERATOR, OPERATING AS THE ALBERTA ELECTRIC SYSTEM OPERATOR

TRANSMISSION MUST RUN SERVICE PARAMETERS

Contract Volume: [●] MW

Generating Unit:

Minimum Continuous Operating Capability: is an amount equal to [●] MW

Maximum Continuous Operating Capability: is an amount equal to the Contract Volume

Minimum Must-run time per Valid Dispatch Instruction: 2 hours

Service Provider Control Center Contact Name: [●]

Service Provider Control Center Telephone: [●]

Service Provider Control Center Backup Telephone: [●]

Service Provider E-mail: [●]

AESO Telephone: (403) 233-7476
(403) 233-7477

AESO Fax: (403) 261-7864

THIS IS SCHEDULE "B" TO THE TRANSMISSION MUST RUN SERVICE AGREEMENT DATED THIS [●] DAY OF [●], 2022 BETWEEN [SERVICE PROVIDER] AND INDEPENDENT SYSTEM OPERATOR, OPERATING AS THE ALBERTA ELECTRIC SYSTEM OPERATOR

PURCHASE PRICE

1.1 Definitions

- (a) **"Availability Payment"** means the payment described in Section 1.2(b) of this Schedule "B".
- (b) **"Available Hours"** is the sum of full clock hours for which the Unit(s) is either Dispatched or available to be Dispatched in a given calendar Month.
- (c) **"Average Hourly AC"** is the hourly average of the maximum MW that the Unit(s) is physically capable of providing TMR Services in a given calendar Month.
- (d) **"Benchmark"** is the high-performance benchmark of 0.3700 tCO₂e/MWh or such other benchmark applicable to the Unit(s) as may be established from time to time pursuant to Section 6(2)(b) or Section 7(1) of the TIER and expressed as tCO₂e/MWh.
- (e) **"Capacity Payment"** shall equal \$[●] per Month.
- (f) **"Carbon Cost"** means that portion of the Energy Price, calculated as described in Section 1.2(c)(ii) of this Schedule "B".
- (g) **"Carbon Price"** is the carbon price of \$50 per tonne of CO₂ or such other price as may be established from time to time pursuant to Section 21(2) of TIER and expressed as \$/tCO₂e;
- (h) **"Energy Price"** means that portion of the Variable Cost Payment, calculated as described in Section 1.2(c)(i).
- (i) **"Gas Price"** means the NGX AB-NIT Same Day (5A) (\$/G) gas price applicable in that hour as reported by NGX in the report titled, "Index Prices", under the column titled, "Index Price", as amended, supplemented, replaced or otherwise modified from time to time.
- (j) **"Heat Rate"** shall equal the Heat Rate value in Table 1 for the corresponding Valid Dispatch Instruction, in MW, rounded to the nearest whole number.
- (k) **"Loss Factor"** means "loss factor" as defined in the ISO Glossary.
- (l) **"NGEI"** is the natural gas emissions intensity which is deemed to be 0.050999 tCO₂e/GJ.
- (m) **"Pool Price"** has the meaning assigned to it in the ISO Glossary.
- (n) **"t"** shall represent metric tonnes (i.e. 1000 kilograms).
- (o) **"TMR Output"** shall be the lesser of the Unit Output or the output level identified in the Valid Dispatch Instruction (such Valid Dispatch Instruction to be converted for each hour

to a MWh) for a TMR Dispatch.

- (p) **“Total Hours”** is the number of hours in a given calendar Month.
- (q) **“Trading Charge”** shall be the prevailing rate as defined in the ISO Rules.
- (r) **“Unit Output”** shall be the hourly output of the Unit(s), in MWh.
- (s) **“Variable Cost Payment”** means the payment described in Section 1.2(c) of this Schedule "B".
- (t) **“Variable Operating and Maintenance”** or **“VOM”** shall be set at \$4.00/MWh.

1.2 Calculation of Purchase Price

- (a) The Purchase Price, to be paid by AESO to the Service Provider for the provision of TMR Services under the Agreement shall be calculated on a Monthly basis as the sum of:
 - (i) Availability Payment; and
 - (ii) Variable Cost Payment.
- (b) The Availability Payment shall be calculated as follows:

Capacity Payment × (Available Hours / Total Hours)

If the Average Hourly AC is less than the Contract Volume, the Availability Payment shall be further multiplied by a factor equal to the Average Hourly AC divided by the Contract Volume.

- (c) The Variable Cost Payment shall be calculated hourly as the difference between the Energy Price and the Pool Price, which shall not be less than zero, multiplied by the corresponding TMR Output and then summed for the Month.

Where:

- (i) **“Energy Price”** shall be calculated as follows:
(Heat Rate × Gas Price) + (Pool Price × Loss Factor) + VOM + Trading Charge + Carbon Cost
- (ii) **“Carbon Cost”** shall be calculated as follows:
((Heat Rate × NGEI) – Benchmark) × Carbon Price

If less than zero, it shall be deemed to be zero. This calculation shall be amended in accordance with Section 14.2 in the event that a change in Applicable Law occurs that affects this calculation.

- (iii) Notwithstanding the foregoing, the Variable Cost Payment shall be zero during those hours when the Unit Output is greater than the Valid Dispatch Instruction, in MW, by more than five (5) MW.
- (d) If, during the Term, a situation or occurrence arises due to the introduction of, or any change in any Applicable Law, the consequences and the effect of which result in reduced costs to the Service Provider under this Agreement or the Service Provider, the Parties shall amend the Purchase Price to reflect such reduced costs upon written notice by a Party in accordance with Sections 14.2(b) and (c).

2. BILLING

2.1 Service Provider to Prepare Invoice

No later than ten (10) Business Days after the end of a Month, the Service Provider shall be responsible for and shall prepare and submit to AESO a fully documented invoice in a form prescribed by the AESO, showing the values and calculations for the Purchase Price payable by AESO in accordance with the terms hereof for the provision of Transmission Must Run Services in the preceding Month.

2.2 Payment by AESO

Subject to Sections 2.3 and 2.4 of this Schedule "B", AESO shall remit the Purchase Price for the preceding Month, on behalf of Service Provider, no later than twenty (20) Business Days after the end of the Month for which the invoice under Section 2.1 of this Schedule "B" was delivered to AESO. Payment shall be by direct transfer or electronic funds transfer to the bank account designated by written notice to AESO, on behalf of Service Provider.

2.3 Billing Disputes; Netting of Payments; Rights to Offset

- (a) Disputes and Adjustments to Invoices. The AESO shall review the Service Provider invoice and supporting information and verify same by reference to the data obtained by the AESO and other relevant sources. In the event that the data provided by the Service Provider is inconsistent with that obtained by AESO, then, for the purposes of this Agreement and to the extent of such inconsistency, the data obtained by the AESO shall take precedence. To the extent such inconsistent amounts are not netted off the applicable invoice submitted by the Service Provider, the AESO shall have the right to offset such amounts against subsequent invoices or to invoice the Service Provider for the amount neither netted nor offset and the Service Provider shall pay such invoice within thirty (30) days of receipt, by direct transfer or electronic funds transfer to the bank account as may from time to time be designated by AESO. Any disputes will be resolved

in accordance with the dispute resolution procedure set out in Article 10 of the main body of the Agreement, and pending resolution AESO will pay the amount of the invoice not subject to dispute, if any, in accordance with the provisions of this Agreement.

- (b) Netting Prior to a Notice of Default or Termination. Prior to the delivery by the AESO of a notice of Default under Section 7.5(b) of the main body of the Agreement or a notice of termination under Section 2.2 of the main body of the Agreement or prior to the occurrence of a Default under Section 7.4(a) of the main body of the Agreement, the AESO shall be entitled, at its option and in its discretion, to net and set off against the Purchase Price for a Month:
- (iv) any interest then due and owing to AESO under Section 2.4 of this Schedule "B"; and
 - (v) any other amounts then due and owing to AESO under this Agreement.

The remedy provided for in this paragraph shall be without prejudice and in addition to the rights of AESO with regard to any Financial Security or any other rights to which AESO is at any time otherwise entitled under the Agreement.

- (c) Netting by AESO After Notice of Default or Termination. After the delivery by AESO of a notice of default under Section 7.5(b) of the main body of the Agreement or a notice of termination under Section 2.2 of the main body of the Agreement or after the occurrence of a Service Provider Event Default under Section 7.4(a) of the main body of the Agreement, and until Service Provider is no longer in default under the Agreement, the AESO shall be entitled, at its option and in its discretion, to:
- (i) withhold any payments due to Service Provider under this Agreement up to a reasonable pre-estimate of any amounts owing under this Agreement to AESO (as if such notice of termination had been issued; provided that such amount withheld shall not exceed the liquidated damages amount, after having regard to any Financial Security held by AESO at such time, plus a reasonable pre-estimate of any other amounts owing under this Agreement to AESO) until such time as all interest hereunder, and any other amounts (including liquidated damages) due and owing to AESO under this Agreement have been satisfied; and
 - (ii) net and set off against any amounts owed by AESO to Service Provider under this Agreement:
 - (A) any interest owing to AESO under Section 2.4 of this Schedule "B"; and
 - (B) any other amounts (including liquidated damages) then due and owing to AESO under this Agreement.

The remedy provided for in this paragraph shall be without prejudice and in addition to the rights of AESO with regard to any Financial Security or any other rights to which

AESO is at any time otherwise entitled under the Agreement.

2.4 Interest

Any amount owing to a Party by the other Party pursuant to the provisions of this Agreement and remaining uncredited or unpaid in accordance herewith shall bear interest calculated daily and not compounded at the Overdue Interest Rate on the uncredited or unpaid portion from and including the date such credit or payment was due up to and excluding the actual date of credit or payment.

DRAFT

Table 1

[INSERT SERVICE PROVIDER HEAT RATE TABLE]

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THIS IS SCHEDULE "C" TO THE TRANSMISSION MUST RUN SERVICE AGREEMENT DATED THIS [●] DAY OF [●], 2022 BETWEEN [SERVICE PROVIDER] AND INDEPENDENT SYSTEM OPERATOR, OPERATING AS THE ALBERTA ELECTRIC SYSTEM OPERATOR

INITIAL FINANCIAL SECURITY

Pursuant to Section 11.2 the Service Provider shall provide to the AESO initial Financial Security in the amount of One Hundred Thousand Dollars (\$100,000.00) in a form and substance acceptable to the AESO in accordance with ISO Rule Section 103.3 (Financial Security Requirements) for liquidated damages (as determined in Section 7.5(b)). The Service Provider shall maintain such Financial Security for the duration of the Agreement plus ninety (90) days after the expiry of the Agreement.

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