

Draft: April 28, 2017

Reference: ●

**DRAFT RENEWABLE ELECTRICITY SUPPORT AGREEMENT**

**RENEWABLE ELECTRICITY PROGRAM  
ROUND 1**

**INDEPENDENT SYSTEM OPERATOR  
(operating as the Alberta Electric System Operator)**

and

**[INSERT GENERATOR'S NAME]**

[December ●, 2017]

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**DRAFT RENEWABLE ELECTRICITY SUPPORT AGREEMENT**

**RENEWABLE ELECTRICITY PROGRAM  
ROUND 1**

made this ● day of ●, 2017

BETWEEN:

**INDEPENDENT SYSTEM OPERATOR**, operating as the  
Alberta Electric System Operator, a statutory corporation formed  
under the laws of the Province of Alberta  
(the "AESO")

AND:

**[INSERT GENERATOR'S NAME]**, a **[insert type of entity]**,  
formed under the laws of the  
**[Province of ●]**  
(the "**Generator**")

**RECITALS:**

**WHEREAS** the Generator submitted a Proposal with respect to the Project in response to the REP Round 1 RFP and the Proposal was selected by the AESO;

**AND WHEREAS** the Generator and the AESO wish to execute this Agreement in order to formalize the long-term contractual arrangements pursuant to which the Generator will develop, finance, build, own, operate, and maintain the Project, sell Renewable Electricity into the Power Pool, and transfer and assign all Renewable Attributes from the Project to the AESO, all on the terms and conditions set out herein;

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

## ARTICLE 1 INTERPRETATION

### 1.1 Defined Terms

Except as otherwise set forth herein, the capitalized terms used in this Agreement, including in the recitals hereto, shall have the following meanings:

"**Act**" means the *Renewable Electricity Act* (Alberta);

"**Acknowledgment and Consent**" means one or more acknowledgments and consents in the Prescribed Form, whereby the contracting party under an agreement, right, franchise, licence or permit between such contracting party and the Generator (or to which the Generator has the benefit) acknowledges and consents to such agreement, right, franchise, licence or permit being subject to the Fixed and Floating Charge Debenture;

"**Administration Fee**" has the meaning given to it in Section 6.1(b);

"**AESO**" means the Independent System Operator, operating as the Alberta Electric System Operator, established under the EUA, being the Party described in the opening paragraph of this Agreement, and includes its successors and assigns;

"**AESO Event of Default**" has the meaning given to it in Section 16.3;

"**AESO Operating Policies and Procedures**" means the operating policies and procedures of the AESO which establish the technical standards and operating policies and procedures for the safe, reliable and economic operation of the Alberta Interconnected Electric System;

"**AESO Recognized Lender**" means any Secured Lender which has executed a Lender Consent with the Generator and the AESO and which is in compliance with Section 17.1(d);

"**AESO Related Party**" means the AESO and each of its members, officers, directors, employees, contractors (other than Generator), subcontractors (other than Subcontractors), consultants, auditors, advisors (including financial and legal advisors), agents and representatives, and the advisors, agents and representatives of such Persons; and the Government of Alberta and its respective officials, employees, contractors, consultants, auditors, advisors (including financial and legal advisors), agents and representatives;

"**AESO Security**" means, collectively, the Fixed and Floating Charge Debenture, and any other security granted in favour of the AESO with respect to all or any part of the Generator's Interest or the Assets which is created pursuant to the AESO Security Documents;

"**AESO Security Documents**" means, collectively: (a) the Fixed and Floating Charge Debenture, (b) the Acknowledgment and Consent, and (c) any other agreement or instrument containing a charge, mortgage, pledge, security interest, assignment, sublease, deed of trust or similar instrument with respect to all or any part of the Generator's Interest; which is provided by the Generator to the AESO from time to time pursuant to Section 10.2 as security for any

indebtedness, liability or obligation of the Generator, together with any amendment, change, supplement, restatement, extension, renewal or modification thereof, and including any documents incidental thereto or necessary to effect to the registration thereof;

"**AESO Statement**" has the meaning given to it in Section 17.2(g);

"**AESO Website**" means [www.aeso.ca](http://www.aeso.ca);

"**Affiliate**" means, with respect to any Person, any other Person, directly or indirectly, controlling or controlled by, or under direct or indirect common control with, such Person, and for purposes of this definition, "control" (including with correlative meanings, the terms "controlling", "controlled by" and "under common control with"), as applied to any Person, means the possession, directly or indirectly, of the power to either (i) elect or appoint a majority of the directors of that Person, or (ii) direct or cause the direction of the management or policies of that Person, whether through the ownership of securities or partnership or other ownership interests, by contract or otherwise;

"**Agreement**" means this Renewable Electricity Support Agreement, including the Schedules attached hereto, as it may be amended, restated or replaced from time to time;

"**AIES**" means Alberta's "Interconnected Electric System" as defined in the EUA;

"**Alberta Governmental Authority**" means: (i) the Government of Alberta; (ii) the Legislative Assembly of Alberta; (iii) any organization, commission, board, tribunal, or agency of the Government of Alberta (including the AESO); or (iv) any Alberta Court;

"**Ancillary Services**" means "ancillary services" as defined in the EUA;

"**Annual Forgone TC Energy**" means the cumulative total amount of Forgone TC Energy determined at a specific time in a calendar year from the beginning of such calendar year to such specific time; and for greater certainty, the "Annual Forgone TC Energy" as at January 1 of a particular calendar year shall be equal to 0 MWh, and the "Annual Forgone TC Energy" at any time on a particular date in a calendar year shall be equal to all of the Forgone TC Energy in such calendar year up to and including such time on such date;

"**Annual Forgone TC Energy<sub>m</sub>**" means for any calendar month "m", the Annual Forgone TC Energy for such calendar month "m", determined from the beginning of the calendar year until the end of such calendar month "m";

"**Annual Forgone TC Energy<sub>m-1</sub>**" means for any calendar month immediately preceding calendar month "m", the Annual Forgone TC Energy for the calendar month "m-1", determined from the beginning of the calendar year to the end of the calendar month "m-1";

"**Annual Forgone TC Energy Threshold**" has the meaning given to it in Section 7.1;

"**Appeal**" has the meaning given to it in Section 11.2(f);

**"Applicable Law"** means all federal, provincial, local and municipal statutes, laws, by-laws, ordinances, rules, orders, regulations, codes, orders in council, policies and other instruments having the effect of imposing a legal requirement, in effect from time to time and made or issued by any Governmental Authority having jurisdiction over the Parties, the obligations of the Parties hereunder, the Project or any of them; and specifically including:

- (a) any applicable orders, decisions, codes, judgments, injunctions, decrees, awards and writs of any Court, tribunal, arbitrator, Governmental Authority or other Person having jurisdiction;
- (b) any applicable rulings and conditions of any Governmental Approval; and
- (c) the Authoritative Documents, the TFO Tariff, and the DFO Tariff;

**"Approved Connection Proposal"** means a Connection Proposal which has been approved by the AESO or the applicable DFO, as the case may be;

**"Arbitration"** has the meaning given such term in Section 19.4(a);

**"Arbitrators"** has the meaning given such term in Section 19.4(a);

**"Arm's Length"** means, with respect to two or more Persons, that such Persons are not related to each other within the meaning of subsections 251(2), (3), (3.1), (3.2), (4), (5) and (6) of the ITA or that such Persons, as a matter of fact, deal with each other at a particular time at arm's length;

**"Assets"** means all of the assets in respect of the Facility and/or the Project, whether real or personal and whether tangible or intangible, including without limitation all contracts and agreements, this Agreement, all Governmental Approvals, the Permit and Licence (Power Plant), the Generator's interest in the Site, all interests in land under option agreements, utility rights of way, leases and other instruments and such other assets as are further set forth and described in the Fixed and Floating Charge Debenture;

**"Authoritative Documents"** means the ISO Rules (including the AESO Operating Policies and Procedures, applicable reliability and technical standards, the Functional Specification relating to the Project, as well as any manuals or interpretive bulletins issued by the System Operator from time to time that are binding on the Generator) and the ISO Tariff;

**"Available Capability"** has the meaning given the term "available capability" in the ISO Glossary;

**"Available Capacity"** means, at any time, the capacity of the Facility, expressed in MW, which is available to Deliver Electricity in compliance with Good Electric Industry Practice and Applicable Law;

**"Bank Act"** means the Bank Act, SC 1991, c 46 (Canada), as amended from time to time;

**"Biomass Facility"** means a Facility that generates Renewable Electricity from Sustainable Biomass;

"**Business Day**" has the meaning given the term "business day" in the ISO Glossary;

"**Capacity Products**" means any products related to the capacity of a Facility to generate and deliver Electricity at a given time;

"**Change in Law Constraint**" means any restriction or limitation on the operation of the Facility which is imposed by or which results from any occurrence of a Designated Change in Law which results in less Renewable Electricity being generated and delivered by the Facility than would otherwise be generated and delivered absent such restriction or limitation;

"**Change in Law Constraint Limit**" means, for any period during which there is a Change in Law Constraint, the Generation Limit for the Facility which applies during such period;

"**Claim**" means a claim or cause of action in contract, in tort, under any Applicable Law or otherwise;

"**COD Longstop Date**" means June 1, 2021, which date shall not be subject to adjustment except pursuant to Sections 11.1(g) and 12.1(b);

"**Commencement of Construction**" has the meaning given to it in Section 2.2(d);

"**Commencement of Construction Longstop Date**" means December 1, 2019, which date shall not be subject to adjustment except pursuant to Sections 11.1(g) and 12.1(b);

"**Commercial Operation**" has the meaning given to it in Section 2.6(a);

"**Commercial Operation Date**" means the date on which Commercial Operation is first attained;

"**Commercially Reasonable Efforts**" when used in connection with an obligation of a Party under this Agreement, means taking, in good faith and with due diligence and in accordance with prudent industry practices, reasonable steps to enable such Party to achieve the objective and fulfill the obligation at the earliest reasonable time, including doing all that a reasonable and prudent generator or independent system operator, as the case may be, would do in comparable circumstances and expending funds and assuming liabilities which are reasonable in nature and amount in the context of the obligation being performed, in each case, having regard to the importance of the obligation to the successful performance of this Agreement;

"**Commission**" has the meaning given such term in the EUA;

"**Completion and Performance Security**" has the meaning given to it in Section 10.1(a);

"**Confidential Information**" means:

- (a) all information that has been identified as confidential and which is furnished or disclosed by the Disclosing Party and its Related Parties to the Receiving Party and its Related Parties in connection with this Agreement, whether before or after

its execution, including all new information derived at any time from any such confidential information, but excluding:

- (i) publicly-available information, unless made public by the Receiving Party or its Related Parties in a manner not permitted by this Agreement;
  - (ii) information already known to the Receiving Party prior to being furnished by the Disclosing Party;
  - (iii) information disclosed to the Receiving Party from a source other than the Disclosing Party or its Related Parties, if such source is not subject to any agreement with the Disclosing Party prohibiting such disclosure to the Receiving Party; and
  - (iv) information that is independently developed by the Receiving Party; and
- (b) Mutually Confidential Information;

"**Confidentiality Undertaking**" has the meaning given to it in Section 18.3(c);

"**Connection Agreement**" means the agreement or agreements required to be entered into by the applicable DFO or TFO and the Generator with respect to the interconnection of the Facility to a Distribution Facility or Transmission Facility in accordance with the DFO Tariff or TFO Tariff, as applicable, and which governs the terms and conditions of such interconnection, including the payment of Connection Costs;

"**Connection Costs**" means all costs relating to the design, engineering, procurement, construction, installation, modification, and commissioning of any Connection Facilities;

"**Connection Facilities**" means any Transmission Facility or Distribution Facility assets which are required to be designed, engineered, procured, constructed, installed, modified, or commissioned for purposes of connecting the existing AIES to the Connection Point for the Project, all as contemplated in the Approved Connection Proposal;

"**Connection Point**" means for any Facility which is connected to a Transmission Facility, the "point of connection" (as such term is defined in the ISO Glossary) for the Facility and for any Facility which is connected to a Distribution Facility, the point at which Electricity is transferred from the high voltage side of the Facility to such Distribution Facility;

"**Connection Proposal**" means a Transmission Connection Proposal or Distribution Connection Proposal, as applicable;

"**Construction Commitment Agreement**" means any "customer contribution agreement" or other agreements which the Generator enters into with the DFO or TFO, as the case may be, with respect to the Generator's obligation to contribute all or any portion of the Connection Costs incurred by the DFO or TFO, as the case may be;

"**Consumer Price Index**" or "**CPI**" means, for any period, the Consumer Price Index for Alberta, all items (not seasonally adjusted, 2002=100) as published in Statistics Canada Catalogue No. 62-001-X, which is applicable to such period;

"**Contract Capacity**" means the nameplate capacity of the Facility, expressed in MW, as set out in Schedule 1, and subject to amendment pursuant to Section 2.1(c);

"**Contract Date**" means the date first set forth above;

"**Contract Representative**" has the meaning given to it in Section 18.8;

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

"**Cost Recovery Period**" means that period of time commencing at 00:00 hours on the Commercial Operation Date, and ending at 24:00 hours on the day before the third (3rd) anniversary of the Commercial Operation Date;

"**Court**" means a court of law of competent jurisdiction;

"**Critical Path Item**" means any development or construction activity in respect of the Project which is scheduled to be performed at a particular time, the performance of which cannot reasonably be rescheduled by Generator to a later date without having a material impact on the project schedule and without, in all likelihood, delaying the occurrence of Commercial Operation of the Facility;

"**DBRS**" means DBRS Limited or its successors;

"**Decommissioning**" means, in respect of a Project or Facility, the decommissioning of the Site, including the treatment or removal of contaminated soil, deconstruction of equipment, buildings and storage tanks in order to restore the Site to substantially the state in which it had been prior to the execution of this Agreement in respect of such Project or Facility;

"**Decommissioning Costs**" means all costs reasonably and properly incurred in Decommissioning in accordance with Applicable Law or if no such laws are applicable then in accordance with Good Electric Industry Practice;

"**Delivered**" means delivered to the Connection Point and successfully transferred from the Facility to the AIES, and "**Deliver**" and "**Delivering**" have the corresponding meanings;

"**Designated Change in Law**" means the adoption, enactment, promulgation, modification, amendment, or revocation of any of the following:

- (a) any Applicable Law made or issued by any Alberta Governmental Authority and directed specifically at any of the following:
  - (i) REP Round 1, or any REP in general;
  - (ii) the Generator or Other Generators;
  - (iii) the rules, regulations, terms or conditions which specifically govern Electricity generating facilities (whether or not renewable);
  - (iv) this Agreement, any "renewable electricity support agreement" (as such term is defined in the Act), or the subject matter of any such agreement;
  - (v) occupational health and safety, or the environment, and which is applicable to the development, construction or operation of the Facility;
- (b) any ISO Rule;
- (c) any interpretation, reinterpretation or administrative position relating to any of the Applicable Laws referred to in paragraphs (a) and (b) above of any Alberta Governmental Authority; or
- (d) any provincial sales tax, or any other tax, levy, duty, charge or other similar amount made or issued by any Alberta Governmental Authority, other than taxes on income or capital, which is applied to any good or service consumed, used or supplied, or to be consumed, used or supplied, exclusively by Generator or Subcontractors in the course of carrying out the Project, to the extent that Generator is unable to recover or be credited with input tax credits, refunds, rebates or exemptions for taxes payable by Generator under such sales tax;

provided that none of the following shall, in any event, constitute a Designated Change in Law:

- (e) any adoption, enactment, promulgation, modification, amendment, or revocation of any Applicable Law (including Generator's Governmental Approvals) made or issued by an Alberta Governmental Authority which in any way relates to: greenhouse gas emissions (and restrictions and reporting thereon), emission performance credits, emission offsets, carbon offsets, carbon-pricing, or carbon-related taxes, levies or fees, or other carbon-related charges or payments, including without limitation the *Climate Change and Emissions Management Act* (Alberta) and its regulations, the *Climate Leadership Implementation Act* (Alberta) and its regulations, the *Oil Sands Emissions Limit Act* (Alberta) and its regulations, and the *Environment and Sustainable Resource Development Grant Regulation* (Alberta);

- (f) any adoption, enactment, promulgation, modification, amendment, or revocation of any Applicable Law made or issued by an Alberta Governmental Authority that was reasonably anticipated by a substantial portion of Electricity generation or construction industry participants in Alberta as of the Proposal Date (as evidenced by the public availability, in advance of the Proposal Date, of any related documents issued by any Alberta Governmental Authority or the AESO that clearly proposes such adoption, enactment, promulgation, modification, amendment or revocation, along with details which are reasonably sufficient to enable the Generator to assess the impact thereof) including any of the Proposed ISO Rules; or
- (g) any adoption, enactment, promulgation, modification, amendment, or revocation of any Applicable Law made or issued by an Alberta Governmental Authority that is in response to any act or omission on the part of the Generator that is contrary to Applicable Law (other than an act or omission rendered illegal by virtue of such action or an action that is expressly permitted under this Agreement);

"**DFO**" means the owner or operator of a Distribution Facility;

"**DFO Tariff**" means, with respect to any DFO, the tariff approved by the Commission pursuant to the EUA in relation to such DFO's Distribution Facility;

"**Difference Payment**" means, for any Settlement Interval, an amount payable from the AESO to the Generator, or from the Generator to the AESO, as the case may be, on account of the difference between the Strike Price and the Pool Price, determined in accordance with Section 6.2;

"**Disclosing Party**" means with respect to Confidential Information, the Party and/or its Related Parties providing or disclosing such Confidential Information and may be the AESO or the Generator, as applicable; provided, however, that where such Confidential Information is Mutually Confidential Information, both the AESO and the Generator shall be deemed to be the Disclosing Party;

"**Dispute**" has the meaning given such term in Section 19.1;

"**Distribution**" means, whether in cash or in kind, any:

- (a) dividend, payment, repayment, or other distribution or return in respect of the Equity Capital;
- (b) reduction of capital, redemption or purchase of Equity Capital or any other reorganization or variation to the Equity Capital;
- (c) payment, loan, contractual arrangement or transfer of assets or rights to the extent (in each case) it was put in place after Financial Close and was neither in the ordinary course of business nor on reasonable commercial terms; or

- (d) the provision of any other benefit which is not made in the ordinary course of business nor on reasonable commercial terms,

and where any such Distribution is not in cash, the equivalent cash value of such Distribution shall be calculated;

**"Distribution Connection Proposal"** means any application, request or proposal by the Generator to a DFO for connecting the Facility to a Distribution Facility, including all facility design documents, detailed studies, transmission studies, technical studies, land and environmental impact assessments, and other documents, reports, studies or assessments which may be required;

**"Distribution Facility"** has the meaning given to the term "electric distribution system" in the EUA;

**"Earliest Support Payment Date"** means April 1, 2018;

**"Economic Interest"** means, with respect to any Person other than a Natural Person, the right to receive or the opportunity to participate in any payments arising out of or return from, and an exposure to a loss or a risk of loss by, the business activities of such Person, by means, directly or indirectly, of an equity interest in a corporation, limited partnership interest in a limited partnership, partnership interest in a partnership, or, in the sole and absolute discretion of the AESO, other similar ownership interest;

**"Electricity"** means electric energy, measured in MWh;

**"Eligibility Criteria"** has the meaning given such term in the REP Round 1 RFQ;

**"Employee Termination Payments"** means (without double counting) termination payments which are required under (i) contracts of employment or other agreements or arrangements entered into by the Generator or a Person which is an Affiliate of the Generator or a Sponsor, or (ii) Applicable Law to be made to employees of the Generator or a Person which is an Affiliate of the Generator or a Sponsor as a direct result of terminating this Agreement (provided that the Generator or such other Person shall take commercially reasonable steps to mitigate its loss) and provided that, in calculating such amount, no account shall be taken of any liabilities and obligations of the Generator or of a Person which is an Affiliate of the Generator or a Sponsor arising out of:

- (a) contracts of employment or other agreements or arrangements entered into by the Generator or a Person which is an Affiliate of the Generator or a Sponsor to the extent that such contracts of employment, agreements or arrangements were not specifically entered into in connection with the Project; or
- (b) contracts of employment or other agreements or arrangements entered into by the Generator or a Person which is an Affiliate of the Generator or a Sponsor other than in the ordinary course of business and on commercial Arm's Length terms, except to the extent that amounts would have arisen if such contracts or other

agreements or arrangements had been entered into in the ordinary course of business and on commercial Arm's Length terms;

**"Environmental Incident"** means any happening or occurrence (which without limiting the generality thereof includes any release, discharge, leak or spill of a substance contrary to Applicable Law);

**"Equity Capital"** means the aggregate (without double counting) of all subscribed or contributed capital for shares or units of ownership interest in the Generator, Sponsor loans and other contributed capital or equity funding of the Generator that, in each case, was directly and exclusively paid, loaned or contributed to, or received or utilized by, the Generator for the purpose of financing the Project and, for greater certainty, including Connection Costs, but excluding any amounts advanced to the Generator or its Affiliate under the Lending Agreements (or proceeds thereof);

**"Equity IRR"** means the projected after-tax internal average annual rate of return on Equity Capital as shown in the Financial Model in connection with the Project over the full term of this Agreement, taking into account the aggregate of all the Sponsors' investments and of all Distributions made and projected to be made;

**"EUA"** means the *Electric Utilities Act* (Alberta);

**"Event of Default"** means a Generator Event of Default or a AESO Event of Default;

**"Existing Renewable Facility"** means a Renewable Facility with commercially operational Generating Equipment which is connected to the AIES or to facilities owned by an industrial customer, and for greater certainty a Renewable Facility will be deemed to have commercially operational Generating Equipment if, at any time, it has generated Renewable Electricity and received Power Pool revenues in the previous one hundred eighty (180) days;

**"Expansion"** means the addition of Generating Equipment to an Existing Renewable Facility which:

- (a) is not intended to replace any Generating Equipment that operates at the Existing Renewable Facility or has operated at the Existing Renewable Facility at any time since September 1, 2016;
- (b) generates Electricity output in addition to the Electricity output of other Generating Equipment that operates or operated at the Existing Renewable Facility;
- (c) does not include any of the Electricity generating capacity available from the Existing Renewable Facility;
- (d) has separate revenue class meters that conform with the requirements of this Agreement (including Section 2.4) and are dedicated to measuring the electrical output of the added Generating Equipment and that are accessible to the AESO; and

- (e) has a design life equal to or greater than the Term;

"**Facility**" means the Renewable Facility to be developed, financed, built, owned, operated and maintained by the Generator, as described in Schedule 1, which includes:

- (a) in the case of a New Build, all Generating Equipment, together with all other equipment and facilities which are necessary to Deliver all Electricity relating to the Contract Capacity to the Connection Point; and
- (b) in the case of an Expansion, the additional Generating Equipment which is included in the Expansion, together with all other equipment and facilities of the Existing Renewable Facility which are necessary to Deliver all Electricity relating to the Contract Capacity of the Expansion to the Connection Point;

"**Facility Amendment**" has the meaning given to it in Section 2.1(b);

"**Fair Market Value**" means the fair market value of rights or assets as mutually agreed by the Parties, each acting reasonably; provided however, that if the Parties fail to agree as to such value within ten (10) Business Days of the date of the Optional Termination Invoice Date, the fair market value shall be determined by a Senior Conference, failing which, ten (10) Business Days following the date of such Senior Conference, the Parties shall refer the matter to a nationally recognized valuator mutually appointed by the Parties and 50% of the valuator's reasonable fees shall be paid by each of the AESO and the Generator;

"**Financial Close**" means the first date, following the Generator's receipt of the AESO's confirmation in writing that all Key Development Milestones have been met in accordance with Section 2.2(d), that a borrowing is unconditionally available under any of the Lending Agreements in respect of the Project (subject only to typical and customary draw or advance conditions);

"**Financial Model**" means the audited computer spreadsheet model in respect of the Project incorporating statements of Generator's cashflows including all expenditures, revenues, financing (including Senior Debt, Junior Debt, Equity Capital and Equity IRR) and taxation of the Project operations (including construction) together with the profit and loss accounts and balance sheets for the Project throughout the Term accompanied by details of all assumptions, calculations and methodology used in their completion and any other documentation necessary or desirable to operate the model or to substantiate the inputs to the model, and prepared in accordance with accepted industry methodologies and based on reasonable assumptions, all as determined by the AESO acting reasonably; which model: (a) must, if the Project is being financed pursuant to Lending Agreement(s), be the same model as is provided to any or all of the Senior Lenders or the Junior Lenders; and (b) may, if the Financial Model delivered pursuant to Section 2.2(c) is delivered prior to Financial Close, be updated on Financial Close by delivery to AESO by the end of the Business Day following Financial Close of an updated Financial Model with only such changes as required to reflect final debt amounts and debt pricing under the Lending Agreement(s);

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

**"Fixed and Floating Charge Debenture"** means one or more fixed and floating charge demand debentures, in the form set forth in Schedule 3 in all material respects, pursuant to which the Generator grants, assigns, mortgages and charges all of the registered, legal and beneficial right, title and interest in and to the Assets in favour of the AESO;

**"FMS Information"** has the meaning given to such term in Schedule 5;

**"FMS Procedures"** has the meaning given to it in Schedule 5;

**"FOIP"** means the *Freedom of Information and Protection of Privacy Act (Alberta)*;

**"Force Majeure"** has the meaning given to it in Section 11.3;

**"Forgone CIL Energy"** means the notional amount of Renewable Electricity, expressed in MWhs, that would have been generated and Delivered by the Facility when it is synchronized to the AIES but for the existence of a Change in Law Constraint; which amount shall be determined in accordance with Section 7.2;

**"Forgone Energy"** means any Forgone CIL Energy or any Forgone TC Energy;

**"Forgone Energy Settlement Interval"** means any Settlement Interval in respect of which:

- (a) a Transmission Constraint Directive or Change in Law Constraint Limit is in effect for all or any portion of such Settlement Interval; and
- (b) the Potential Energy (Adjusted) for such Settlement Interval exceeds the Generation Limit Energy for such Settlement Interval;

**"Forgone TC Energy"** means the notional amount of Renewable Electricity, expressed in MWhs, that would have been generated and Delivered by the Facility when it is synchronized to the AIES but for the issuance of a Transmission Constraint Directive; which amount shall be determined in accordance with Section 7.2;

**"Functional Specification"** means the functional specification issued by the AESO with respect to the functional requirements for connecting the Facility to the AIES, including in respect of the Connection Facilities in relation to the Project;

**"Generating Equipment"** means equipment used by a Facility in the generation of Electricity, such as wind turbines, solar (PV) modules, hydroelectric turbines, biomass-fired boilers and generating sets for the combustion of landfill gas, but does not include transformers or other equipment used to transform or transmit such Electricity;

**"Generation Limit"** means, for any period, the maximum level at which the Facility is permitted to generate, expressed in MWs, which is established for such period: (a) in the case of any transmission constraint, pursuant to a Transmission Constraint Directive, and (b) in the case of any Change in Law Constraint, pursuant to Applicable Law; provided, that if there is both a Transmission Constraint Directive and a Change in Law Constraint at the same time, the "Generation Limit" shall be the lower of the applicable maximum levels;

**"Generation Limit Energy"** means, for any Settlement Interval during which one or more Generation Limits are in effect, the amount of Renewable Electricity, expressed in MWhs, which the Facility is permitted to generate during such Settlement Interval, which amount shall be equal to the sum of:

- (a) for each Generation Limit in effect during such Settlement Interval, the Generation Limit multiplied by the number of minutes in such Settlement Interval during which such Generation Limit is in effect and divided by the number of minutes in a Settlement Interval; and
- (b) for that portion of such Settlement Interval during which no Generation Limit is in effect, the Potential Energy (Adjusted) for such Settlement Interval multiplied by the number of minutes in such portion of such Settlement Interval and divided by the number of minutes in a Settlement Interval;

**"Generator"** means the Person identified as the Generator in the opening paragraph of this Agreement, and includes, as applicable, any successor thereto resulting from any merger, arrangement or other reorganization or any continuance under the laws of another jurisdiction or permitted assignee;

**"Generator Event of Default"** has the meaning given to it in Section 16.1;

**"Generator Related Party"** means Generator, each Sponsor, each Affiliate of Generator, each Subcontractor and each of its and their officers, directors, employees, contractors, Subcontractors, auditors, consultants, advisors (including economic and legal advisors), agents and representatives; and the advisors, agents and representatives of such Persons;

**"Generator's Interest"** means the right, title and interest of the Generator in or to the Facility and this Agreement, or any benefit or advantage of any of the foregoing;

**"Geothermal Facility"** means a Facility that generates Renewable Electricity from heat from the earth;

**"Good Electric Industry Practice"** has the meaning given the term "good electric industry practice" in the ISO Glossary;

**"Government of Alberta"** means Her Majesty the Queen in right of Alberta;

**"Governmental Approvals"** means approvals, authorizations, consents, permits, grants, licences, privileges, waivers, decisions, statements, concessions, franchises, rights, certificates of approval, environmental compliance approvals, orders, judgments, rulings, directives, ordinances, decrees, registrations, filings or similar instruments or endorsements issued or granted by law or by any Governmental Authority or other Person, including the Permit and Licence (Power Plant);

**"Governmental Authority"** means any federal, provincial, regional, municipal or local government, parliament or legislature, or any regulatory authority, agency, organization, tribunal, commission, board, department or political or other subdivision of any such government,

parliament or legislature, or any Court or other law, regulation or rule-making entity, having jurisdiction in the relevant circumstances, including the Commission, the System Operator; and any Person acting under the authority of any Governmental Authority;

"**GST**" means the goods and services tax provided for in Part IX of the *Excise Tax Act* (Canada);

"**Hedge Providers**" means the counterparties to the Generator or its Affiliate under the Hedging Agreements;

"**Hedging Agreements**" means interest rate hedging agreements intended to protect or mitigate against interest rate fluctuations in relation to Senior Debt or Junior Debt and currency hedging agreements intended to protect or mitigate against currency exchange fluctuations in relation to contracts for the supply of goods or services required for the Project in a currency other than Canadian currency;

"**Hydro Facility**" means a Facility that generates Renewable Electricity from Moving Water;

"**IE Certificate**" means a certificate addressed to the AESO from an Independent Engineer, retained by the Generator and at the Generator's sole expense, that complies with the requirements of Section 2.6(a)(iii);

"**Implementation Fee**" has the meaning given to it in Section 6.1(a);

"**Incentive Program**" means a program administered by a Governmental Authority in respect of which the payments or funding are provided based on kW, kWh, MW, or MWh, but are not provided in exchange for the transfer of title to Renewable Attributes;

"**Indemnifiable Loss**" has the meaning given to it in Section 14.3;

"**Indemnitees**" has the meaning given to it in Section 14.3;

"**Independent Engineer**" is an engineer that is: (i) a Professional Engineer duly qualified and licenced to practice engineering in the Province of Alberta; and (ii) employed by an independent engineering firm which: holds a Permit to Practice issued by the Association of Professional Engineers and Geoscientists of Alberta, is not an Affiliate of the Generator, and does not have a vested interest in the design, engineering, procurement, construction, metering and/or testing of the Project;

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

"**ISO Glossary**" means the AESO's *Consolidated Authoritative Document Glossary*, which contains the defined terms and related definitions which are used within the ISO Rules, the ISO Tariff, and certain other AESO documents;

"**ISO Rules**" has the meaning given the term "ISO rules" in Section 1(2)(d) of the EUA;

"**ISO Tariff**" has the meaning given the term "ISO tariff" in the ISO Glossary;

"**ITA**" means the *Income Tax Act* (Canada) and all regulations promulgated thereunder, each as amended from time to time;

"**Joint Arbitration Panel**" has the meaning given such term in Section 2.1(e) of Schedule 6;

"**Junior Debt**" means, at any time, junior indebtedness funded under the Lending Agreements by the Junior Lenders which: (i) is used or provided for use directly and exclusively for purposes of financing the Project; (ii) is subordinated and postponed to the Senior Debt; (iii) has a fixed return without equity participation, step-up rights or rights to share in the Generator's excess cash flow; and (iv) has a coupon equal to or less than 150% of the coupon payable to the Senior Lenders; provided, however, that any junior indebtedness with a coupon which exceeds such threshold may be included, but the coupon for such junior indebtedness shall be deemed to be equal to such threshold for purposes of calculating the Junior Debt Amount and any Junior Debt Makewhole;

"**Junior Debt Amount**" means, at any time, the then outstanding principal amount of Junior Debt, together with all interest accrued thereon and unpaid at that time, provided that at any time where any portion of the interest payable to the Junior Lenders is subject to one or more Hedging Agreements, accrued interest in respect of such portion of the interest payable to the Junior Lenders shall be calculated based on the fixed rate payable by Generator or its Affiliate under the Hedging Agreements without regard to whether such fixed rate is payable directly to a Junior Lender or to the Hedge Providers under such Hedging Agreements and all references to interest payable to the Junior Lenders under this Agreement shall be construed accordingly; and for greater certainty, the Junior Debt Amount excludes the Junior Debt Makewhole;

"**Junior Debt Makewhole**" means, at any time, any amount (other than the Junior Debt Amount) then due and payable to the Junior Lenders under the Lending Agreements, including any "make whole" payments, or Hedging Agreement (or interest rate) termination or breakage payments (less any applicable termination or breakage benefits) and all other fees, costs and expenses reasonably and properly incurred which the Generator or its Affiliate is obligated to pay to the Junior Lenders pursuant to the Lending Agreements, but excluding any prepayment premiums, bonuses or penalties;

"**Junior Lenders**" means the lenders and Hedge Providers (and any administrative agent, collateral agent, trustee or person in a similar capacity for such lenders or Hedge Providers) named or otherwise identified as the junior lenders or Hedge Providers in the Lending Agreements and excludes any Affiliate of Generator or Sponsor and other Persons not at Arm's Length to Generator or any Sponsor;

"**Key Development Milestone**" has the meaning given to it in Section 2.2(b);

"**kW**" means kilowatt;

"**kWh**" means kilowatt hour;

**"Landowner Losses"** means any amount reasonably and properly payable by the Generator to a landowner under the terms of the relevant lease, licence, or other land agreement entered into between the Generator and a landowner in respect of the Project as a direct result of an Optional Termination (including any reasonable commercial breakage fee), provided that such amount shall be reduced to the extent that the Generator or any landowner fails to take commercially reasonable steps to mitigate such amount; and provided further that no account shall be taken of any liabilities and obligations of the Generator to any landowner arising out of:

- (a) any loss of overhead or profit of such landowner relating to any period after, or costs incurred after, the Termination Date (save to the extent the same are properly included in any reasonable commercial breakage fee);
- (b) agreements or arrangements entered into by the Generator or any landowner to the extent that such agreements or arrangements were not specifically entered into in connection with those parties' obligations in relation to the Project; or
- (c) agreements or arrangements entered into by the Generator or any landowner other than in the ordinary course of business and on commercial Arm's Length terms, except to the extent of any amounts that would have arisen if such agreements or arrangements had been entered into in the ordinary course of business and on commercial Arm's Length terms;

**"Lender"** means each and all Persons which are counterparties to the Generator under Lending Agreements;

**"Lender Consent"** means a Secured Lender consent and acknowledgement agreement in the form set forth in Schedule 4 in all material respects;

**"Lending Agreements"** means any or all of the agreements or instruments to be entered into by Generator or any of its Affiliates relating to the debt financing of the Project, including, for greater certainty, loan or credit agreements, trust or note indentures, the Secured Lender's Security Agreements and any Hedging Agreements, if any, and any agreements or instruments to be entered into by Generator or any of its Affiliates relating to the rescheduling of their indebtedness in respect of the financing of the Project or the refinancing of the Project;

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

**"Metered Energy"** means, for any Settlement Interval, the quantity of "metered energy" (as such term is defined in the ISO Glossary in respect of the ISO Rules) for the Facility, as set forth in the relevant Power Pool Statement for such Settlement Interval;

**"Minister"** has the meaning given such term in the Act;

**"Ministry of Energy"** or **"MOE"** means the Ministry of Energy of the Province of Alberta, or its successor;

"**Monthly Forgone CIL Energy Payment**" has the meaning given to it in Section 7.4(b);

"**Monthly Forgone TC Energy**" has the meaning given to it in Section 7.3(a);

"**Monthly Forgone TC Energy Payment**" has the meaning given to it in Section 7.3(b);

"**Monthly Support Payment**" means, for any Settlement Period during the Term, the amount payable from the AESO to the Generator, or from the Generator to the AESO, as the case may be, in respect of the performance of each Party's respective obligations hereunder, which amount shall be determined in accordance with Section 6.2;

"**Moody's**" means Moody's Investors Service, Inc. or its successor;

"**Moving Water**" means moving water, which for clarity expressly excludes steam;

"**Mutually Confidential Information**" means information contained in any Prescribed Form, which information shall be deemed to be Confidential Information of both the AESO and the Generator;

"**MW**" means megawatt;

"**MWh**" means megawatt hour;

"**Natural Person**" means a natural person, but does not include a natural person in his or her capacity as trustee, executor, administrator or other legal representative;

"**New Agreement**" means a new agreement substantially in the form of this Agreement, which is to be entered into with a Secured Lender who is at Arm's Length with the Generator or a Person identified by such Secured Lender following termination of this Agreement, as set out in Section 17.2(g);

"**New Build**" means the construction of a new Renewable Facility that is not an Expansion, which may include the construction of a Renewable Facility on the site of a previously operating renewable or non-renewable generating facility if: (a) no Electricity has been generated on such site with the use of any Renewable Fuel at any time since September 1, 2016, (b) all Generating Equipment is new, (c) all other equipment, facilities and physical infrastructure is new or substantially new, except transmission facilities and site infrastructure such as roads and utilities services, and (d) such Renewable Facility has a design life equal to or greater than the Term;

"**Optional Termination**" has the meaning given to it in Section 16.6;

"**Optional Termination Amount**" has the meaning given to it in Section 16.6(b);

"**Optional Termination Amount Holdback Amount**" has the meaning given to it in Section 16.6(d);

"**Optional Termination Amount Payment Date**" has the meaning given to it in Section 16.6(d);

"**Optional Termination Amount True Up Date**" has the meaning given to it in Section 16.6(f);

"**Optional Termination Amount True Up Payment**" has the meaning given to it in Section 16.6(f);

"**Optional Termination Amount True Up Payment Date**" has the meaning given to it in Section 16.6(f);

"**Optional Termination Invoice Date**" has the meaning given to it in Section 16.6(l);

"**Other Generators**" means all of the other Generators that have a REP Round 1 Contract, a "renewable electricity support agreement" (as such term is defined in the Act) or any other REP contracts with the AESO which are similar in nature to this Agreement;

"**Owner**" means "*owner*" was defined in the EUA;

"**Party**" means either AESO or Generator, as the context may require, and "**Parties**" means both AESO and Generator;

"**Permit and Licence (Power Plant)**" means a permit and licence to construct and operate the Facility which is issued pursuant to Section 11 of the *Hydro and Electric Energy Act* (Alberta);

"**Permit and Licence (Transmission)**" means the permit and licence to construct and operate the Connection Facilities which is required pursuant to Sections 14 and 15 of the *Hydro and Electric Energy Act* (Alberta);

"**Person**" means and includes any Natural Person, corporation, limited partnership, general partnership, joint venture, association, company, limited liability company, trust, bank, or other organization of any kind, whether or not a legal entity, and any Governmental Authority;

"**Personal Information**" means information defined as "*personal information*" in the *Personal Information Protection Act* (Alberta);

"**Point of Supply**" means the "point of supply", as such term is defined in the ISO Glossary, for the Facility, and for any Facility, which is connected to a Distribution Facility;

"**Pool Price**" has the meaning given the term "pool price" in the ISO Glossary;

"**Pool Price Event**" has the meaning given to it in Section 6.11(a);

"**Potential Capability**" means, at any time, the generation level, expressed in MWs, that the Facility would have been operating at in the absence of any Transmission Constraint Directive or Change in Law Constraint, which:

- (a) in the case of any Wind Facility, is based on the real time meteorological conditions at each available wind turbine generator at the Facility and is equal to the "potential real power capability" reported by the Generator to the System

Controller at such time pursuant to ISO Rule 502.8 (SCADA Technical and Operating Requirements);

- (b) in the case of any Solar Facility, is based on the real time solar irradiance and other weather conditions at the Facility and is equal to the "potential real power capability" reported by the Generator to the System Controller at such time pursuant to ISO Rule 502.8 (SCADA Technical and Operating Requirements); and *[Note to Draft: Solar Facilities will be required to report Potential Capability pursuant to the Proposed ISO Rules in respect of ISO Rule 502.8.]*
- (c) in the case of any Biomass Facility, Geothermal Facility, or Hydro Facility, is equal to the Available Capability reported by the Generator to the System Controller at such time pursuant to ISO Rules;

provided that: (i) "Potential Capability" shall not in any event exceed Contract Capacity, and (ii) for purposes of calculating "Potential Energy", shall be deemed to be zero (0) for any period during which such generation level is not available to the System Controller in accordance with (a), (b), or (c) above;

**"Potential Energy"** means, for any Settlement Interval, the amount of Renewable Electricity expressed in MWhs, which the Facility would have generated during such Settlement Interval in the absence of any Transmission Constraint Directive or Change in Law Constraint, calculated based on the time-weighted average of the Potential Capability data for such Settlement Interval;

**"Potential Energy (Adjusted)"** means, for any Settlement Interval, the Potential Energy for such Settlement Interval multiplied by the Potential Energy Factor for such Settlement Interval;

**"Potential Energy Factor"** means, for any Settlement Interval, the lesser of 1.0 and the quotient of the Metered Energy for the Prior Settlement Interval divided by the Potential Energy for the Prior Settlement Interval; provided that if any Potential Capability data is missing or otherwise unavailable for such Prior Settlement Period, then notwithstanding the proviso in the definition of "Potential Capability", the AESO may extrapolate such data for purposes of calculating the Potential Energy for such Prior Settlement Interval, or may instead calculate the "Potential Energy Factor" by: (a) using Metered Energy and Potential Energy data for an earlier Prior Settlement Interval; or (b) by using such other methodology as the AESO may reasonably determine;

**"Power Pool"** means "power pool" as defined in the EUA;

**"Power Pool Statements"** has the meaning given to in in Section 6.4(a);

**"Pre-Construction Development Costs"** means those reasonable costs incurred during the Term for the development of the Facility, which costs:

- (a) shall exclude: (i) the costs of Generating Equipment; (ii) that portion of any costs charged by a Person who does not deal at Arm's Length with the Generator that is in excess of the costs that would have been charged had such Person been at Arm's Length with the Generator; and (iii) profits, less any grants received

pursuant to any government or AESO programs that the Generator is not obligated to repay; and

- (b) may include reasonable costs incurred for or in respect of: feasibility studies; obtaining Site Control; obtaining a Permit and Licence (Power Plant); development of business and financial plans; negotiation of contracts relating to equipment procurement, construction and financing; reasonable non-refundable deposits on Generating Equipment, transformers or other equipment used to transform or transmit Electricity; Connection Costs; resource assessments; obtaining permits and approvals necessary to commence construction; arranging for the Senior Debt, the Junior Debt, and the negotiation of Lending Agreements; and any reasonable overhead expenses allocated to the foregoing;

**"Pre-Construction Liability Limit"** means eight million dollars (\$8,000,000), which represents the maximum amount of Pre-Construction Development Costs for which the AESO will indemnify the Generator pursuant to Section 16.6(j) of the Agreement in the event of any Optional Termination by the AESO;

**"Pre-Support Period"** means, if the Commercial Operation Date occurs after the Earliest Support Payment Date, that period commencing on the Earliest Support Payment Date and ending at 24:00 hours on the day before the Commercial Operation Date;

**"Prescribed Form"** means in relation to any form referenced herein, the latest version of such form which is published on the AESO Website, as such form may be amended or replaced by the AESO from time to time and without notice to the Generator;

**"Prime Rate"** means the annual rate of interest from time to time declared by the Bank of Montreal (or its successor, in the event of a merger or amalgamation) as its "prime rate" for Canadian dollar commercial loans in Canada;

**"Prior Settlement Interval"** means, for any Settlement Interval, the last Settlement Interval prior to such Settlement Interval: (a) in respect of which there was Metered Energy in excess of zero (0); and (b) during which no RAS, Generation Limit, or other directive issued by the System Operator which places a limit on the level at which the Facility is permitted to Generate, was in effect;

**"Professional Engineer"** means a "professional engineer" as defined in the *Engineering and Geoscience Professions Act* (Alberta);

**"Project"** means the Generator's project to design, build, finance, own (or lease), operate and maintain the Facility, as further described in Schedule 1;

**"Proposal"** means the proposal submission made by the Generator in response to the REP Round 1 RFP in respect of the Project which was selected by the AESO; including all clarifications in respect of such Proposal provided by the Generator in writing as requested by or on behalf of, and accepted by, the AESO from time to time in accordance with the REP Round 1 RFP prior to the Contract Date;

**"Proposal Date"** means the date on which the Proposal was received by the AESO pursuant to the REP Round 1 RFP;

**"Proposed ISO Rules"** means any of the following proposed new and amended ISO Rules:

- (a) proposed amended Section 202.5, *Supply Surplus*;
- (b) proposed amended Section 202.6, *Adequacy of Supply*;
- (c) proposed amended Section 304.3, *Wind and Solar Power Ramp Up Management*;
- (d) proposed new Section 304.9, *Wind and Solar Aggregated Generating Facility Forecasting*;
- (e) proposed amended Section 502.1, *Aggregated Generating Facilities Technical Requirements*;
- (f) proposed amended Section 502.3, *Interconnected Electric System Protection Requirements*;
- (g) proposed amended Section 502.8, *SCADA Technical and Operating Requirements*; and
- (h) proposed new section 502.16, *Aggregated Generating Facilities Operating Requirements*.

**"PV"** means a photovoltaic solar system;

**"Quarterly Progress Reports"** has the meaning given to it in Section 4.3(a)(i);

**"RAS"** means any "remedial action scheme" (as such term is defined in the ISO Glossary);

**"Receiving Party"**, means, with respect to Confidential Information, the Party receiving Confidential Information and may be the AESO or the Generator, as applicable; provided, however, that where such Confidential Information is Mutually Confidential Information, both the AESO and the Generator shall be deemed to be the Receiving Party;

**"Related Party"** means AESO Related Party or Generator Related Party, as the context requires, and **"Related Parties"** shall have a corresponding meaning;

**"Related Products"** means all Capacity Products, all Ancillary Services, and any other products or services that, whether or not existing on or before the Contract Date: (a) may be provided by the Facility from time to time and (b) may be traded or sold in the Alberta markets (including the Power Pool and the Alberta Watt Exchange) or other markets, or otherwise sold, and (c) which shall be deemed to include products and services for which no market may exist; excluding Renewable Attributes;

**"Renewable Attributes"** means those attributes, whether existing as at the Contract Date or coming into existence in the future, associated with the Facility having decreased environmental impacts due to or through the generation of Renewable Electricity, and includes:

- (a) rights to any fungible or non-fungible attributes, whether arising from the Facility itself, from the interaction of the Facility with the AIES or because of applicable legislation or voluntary programs established by Governmental Authorities or agencies thereof;
- (b) any and all rights relating to the nature of the energy source as may be defined and awarded through applicable legislation or voluntary programs, including ownership rights to any emission reduction credits or entitlements resulting from interaction of the Facility with the AIES or as specified by applicable legislation or voluntary programs, and the right to quantify and register such credits with competent authorities; and
- (c) all revenues, entitlements, benefits, and other proceeds arising from or related to the foregoing,

but which excludes,

- (d) any tax or other benefit under the Government of Canada's Canadian Renewable and Conservation Expenses (CRCE) or successor program which may be available in connection with a Facility;

**"Renewable Electricity"** means "renewable electricity" as defined in the Act;

**"Renewable Facility"** means a facility which generates Renewable Electricity only from one or more Renewable Fuels (except in the case of any Biomass Facility) and delivers that Renewable Electricity to the AIES through a revenue class meter, used exclusively by such facility, all in accordance with Applicable Law;

**"Renewable Fuel"** means Moving Water, wind, heat from the earth, sunlight, or Sustainable Biomass;

**"REP"** means any "renewable electricity program" established by the AESO and approved by the Minister pursuant to the Act;

**"REP Round 1"** means the first REP, entitled "*Renewable Electricity Program – Round 1*", pursuant to which the AESO intends to promote the development of up to 400 MW of Renewable Electricity generating capacity in Alberta by providing support payments to generators in exchange for Renewable Attributes;

**"REP Round 1 Contract"** means a contract entered into by the AESO pursuant to the REP Round 1 RFQ and REP Round 1 RFP;

**"REP Round 1 RFP"** means the "*Request for Proposals for Renewable Electricity Program – Round 1*" issued by the AESO as of [*insert date*] with respect to REP Round 1, including all

addenda provided in writing by or on behalf of the AESO from time to time prior to the date of this Agreement;

"**REP Round 1 RFQ**" means the "Request for Qualifications for *Renewable Electricity Program – Round 1*" issued by the AESO as of *[insert date]* with respect to REP Round 1, including all addenda provided in writing by or on behalf of the AESO from time to time prior to [●];

"**Replacement Price**" has the meaning given to it in Section 6.11(a);

"**Replacement Provision**" has the meaning given to it in Section 1.11(c);

"**Reportable Events**" means the following:

- (a) obtaining environmental and project and site approvals and permitting for the Project;
- (b) completion of the Connection Proposal, including receipt of approvals from the AESO or DFO, as the case may be;
- (c) execution of an engineering, procurement and construction contract or engineering, procurement and construction management contract in respect of the Project (or other similar contract in respect of the Project);
- (d) Financial Close in respect of the Project;
- (e) ordering of major equipment for the Project;
- (f) delivery of major equipment for the Project;
- (g) status of construction of the Project;
- (h) completion of construction of the Project;
- (i) status of construction of the Connection Facilities;
- (j) connection of the Project to the Transmission Facility or Distribution Facility, as applicable; and
- (k) Commercial Operation;

"**RESA Settlement Date**" has the meaning given to it in Section 6.4(a);

"**RESA Statement**" has the meaning given to it in Section 6.4(a);

"**S&P**" means Standard and Poor's;

"**Secured Lender**" means a lender under a Secured Lender's Security Agreement;

**"Secured Lender's Security Agreement"** means an agreement or instrument, including a deed of trust or similar instrument securing bonds or debentures, containing a charge, mortgage, pledge, security interest, assignment, sublease, deed of trust or similar instrument with respect to all or any part of the Generator's Interest granted by the Generator that is security for any indebtedness, liability or obligation of the Generator, together with any amendment, change, supplement, restatement, extension, renewal or modification thereof but in no event shall include any such agreement or instrument under which a Sponsor(s) is a Lender;

**"Senior Conference"** has the meaning given to it in Section 19.1;

**"Senior Debt"** means, at any time, senior indebtedness funded under the Lending Agreements by the Senior Lenders which is used or provided for use directly and exclusively for purposes of financing the Project;

**"Senior Debt Amount"** means, at any time, the then outstanding principal amount of the Senior Debt, together with all interest accrued thereon and unpaid at that time, provided that at any time where any portion of the interest payable to the Senior Lenders is subject to one or more Hedging Agreements, accrued interest in respect of such portion of the interest payable to the Senior Lenders shall be calculated based on the fixed rate payable by the Generator or its Affiliate under such Hedging Agreements without regard to whether such fixed rate is payable directly to a Senior Lender or to the Hedge Providers under the Hedging Agreements and all references to interest payable to the Senior Lenders under this Agreement shall be construed accordingly; and for greater certainty, the Senior Debt Amount excludes the Senior Debt Makewhole;

**"Senior Debt Makewhole"** means, at any time, any amount (other than the Senior Debt Amount) then due and payable to the Senior Lenders under the Lending Agreements, including any "make whole" payments, or Hedging Agreement (or interest rate) termination or breakage payments (less any applicable termination or breakage benefits) and all other fees, costs and expenses reasonably and properly incurred which the Generator or its Affiliate is obligated to pay to the Senior Lenders pursuant to the Lending Agreements, but excluding any prepayment premiums, bonuses or penalties;

**"Senior Lenders"** means the lenders and Hedge Providers (and any administrative agent, collateral agent, trustee or person in a similar capacity for such lenders or Hedge Providers) named or otherwise identified as the senior lenders or Hedge Providers in the Lending Agreements and excludes any Affiliate of Generator or any Sponsor and other Persons not at Arm's Length to Generator or any Sponsor;

**"Settlement Interval"** means a "settlement interval" as defined in the ISO Glossary;

**"Settlement Period"** means a "settlement period" as defined in the ISO Glossary;

**"Site"** means the lands and/or other physical location on, over, in, under or in respect of which the Facility is, or is to be, situated as such location is identified in Schedule 1;

**"Site Control"** has the meaning given such term in the REP Round 1 RFQ;

"**Solar Facility**" means a Facility that generates Renewable Electricity from sunlight using a photovoltaic solar system;

"**Special Purpose Vehicle**" means a Person other than a Natural Person whose special or sole purpose is the direct ownership of a Renewable Facility and who was created for the purpose of entering into this Agreement;

"**Sponsor**" means a direct or indirect owner, beneficially or of record, of any shares or units of ownership interest in a Generator;

"**Stop Work Notice**" means a direction from the AESO to the Generator to refrain from commencing, or allowing any third party to commence, and to cease, or cause any third party to cease, the development, construction and operation of the Project or any part thereof;

"**Strike Price**" means the price which the Generator requires for each MWh of Renewable Electricity which is Delivered during the Term, expressed in dollars per MWh, which price is specified in Schedule 1 and is subject to adjustment pursuant to Sections 6.3, and 12.1(d)(iii)(B) and (C);

"**Subcontractor**" means a third party that has been retained by the Generator, or another Subcontractor, through a written contract to provide goods or services that are directly related to the development or construction of the Project, and for clarity includes the contractors engaged to engineer, procure and construct the Facility;

"**Subcontractor Losses**" means any amount reasonably and properly payable by the Generator to a Subcontractor under the terms of the relevant subcontract as a direct result of an Optional Termination (including any reasonable commercial breakage fee), provided that such amount shall be reduced to the extent that the Generator or any Subcontractor fails to take commercially reasonable steps to mitigate such amount; and provided further that no account shall be taken of any liabilities and obligations of the Generator to any Subcontractor arising out of:

- (a) any loss of overhead or profit of such Subcontractor relating to any period after, or costs incurred after, the Termination Date (save to the extent the same are properly included in any reasonable commercial breakage fee);
- (b) agreements or arrangements entered into by the Generator or any Subcontractor to the extent that such agreements or arrangements were not specifically entered into in connection with those parties' obligations in relation to the Project; or
- (c) agreements or arrangements entered into by the Generator or any Subcontractor other than in the ordinary course of business and on commercial Arm's Length terms, except to the extent of any amounts that would have arisen if such agreements or arrangements had been entered into in the ordinary course of business and on commercial Arm's Length terms;

"**Substation**" means a facility where voltage is reduced from a higher value to a lower value (e.g. 240 kV to 138 kV) or increased from a lower value to a higher value (e.g. 138 kV to 240 kV), or

a facility which contains switching devices; and in either case includes any structures, equipment or other things associated therewith;

"**Support Period**" means that period of time commencing at 00:00 hours on the Commercial Operation Date, and ending at 24:00 hours on the day before the twentieth (20th) anniversary of the date that is the earlier of: (i) Target COD and (ii) the Commercial Operation Date;

"**Sustainable Biomass**" has the meaning given to it in Schedule 5;

"**System Operator**" means the AESO, acting pursuant to its authority to make, administer and enforce the ISO Rules;

"**Target COD**" means December 1, 2019, which is the target date for attaining Commercial Operation, which date shall not be subject to adjustment except pursuant to Sections 11.1(g) and 12.1(b);

"**Taxes**" means all income, capital, *ad valorem*, property, occupation, severance, production, governmental charges, utility, gross production, gross receipts, GST, sales, stamp, use, excise, levies, countervailing, anti-dumping and special import measures, imposts, duties including customs' duties, fees, withholdings, assessments, premiums, deductions, taxes based on profits, net income or net worth and any other taxes or charges whatsoever, whether directly or indirectly imposed, assessed, levied or collected by any Governmental Authority, together with interest thereon and penalties with respect thereto;

"**Term**" has the meaning given to it in Section 15.1(b);

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

"**TFO**" means the Owner of a Transmission Facility;

"**TFO Tariff**" means, with respect to any TFO, the tariff approved by the Commission pursuant to the EUA in relation to such TFO's Transmission Facility;

"**Transmission Connection Proposal**" means the "connection proposal", prepared by the Generator and provided to the AESO in accordance with Section 4 (System Access Service Requests) of the ISO Tariff, for connecting the Facility to the AIES, including all facility design documents, technical studies, land and environmental impact assessments, and other documents, reports, studies or assessments which may be required;

"**Transmission Constraint Directive**" means any directive issued by the System Operator in accordance with the ISO Rules for the purpose of mitigating a transmission constraint on the AIES which sets a Generation Limit for the Facility which continues to apply until a new directive is received which removes such limit;

"**Transmission Facility**" has the meaning given the term "transmission facility" in the EUA;

**"Waterpower Rights"** means, with respect to a Hydro Facility, any lease or licence from any Governmental Authority with respect to the use of Moving Water to generate Renewable Electricity; and

**"Wind Facility"** means a Facility which generates Renewable Electricity from wind.

## **1.2 Interpretation of Agreement**

In this Agreement, unless otherwise expressly stated:

- (a) references to "herein", "hereto", "hereby", "hereunder", "hereof", and similar expressions are references to this Agreement and not to any particular section, sub-section, or schedule;
- (b) references to "including" means including without limitation, and "includes" or other derivatives thereof shall have corresponding meanings;
- (c) references to an "Article" "Section", "sub-section" or "clause" are to the correspondingly numbered provisions of this Agreement;
- (d) references to "Schedules" are to the correspondingly numbered Schedules listed in Section 1.4;
- (e) words importing the singular shall include the plural and vice versa, words importing gender shall include the masculine, feminine and neuter genders, all as may be applicable in the context;
- (f) words and phrases which are not defined herein but which have a generally accepted meaning in the custom and usage of the power generation or engineering and construction industries as at the date hereof shall be given such generally accepted meaning;
- (g) the use of headings is for convenience of reference only and shall not affect the construction or interpretation hereof;
- (h) any reference to any agreement, document, instrument, published data, or published information, including this Agreement, is a reference to it as varied, amended, modified, supplemented or replaced from time to time; and
- (i) any reference to any Applicable Law is a reference to it as re-enacted, varied, amended, modified, supplemented or replaced from time to time.

## **1.3 No Contra Proferentum Rule**

No provision in this Agreement shall be interpreted for or against any Party because that Party or its legal counsel drafted such provision, and the *contra proferentum* rule of construction shall

have no application to the construction of, interpretation of, or adjudication respecting, this Agreement.

#### **1.4 Schedules**

The following Schedules delivered with this Agreement at the time of execution of this Agreement are for every purpose to be considered as part of this Agreement (and provisions of the Schedules are to be considered as provisions of this Agreement):

Schedule 1	Description of the Project
Schedule 2	Form of Irrevocable and Unconditional Standby Letter of Credit
Schedule 3	Fixed and Floating Charge Debenture
Schedule 4	Secured Lender Consent and Acknowledgement Agreement
Schedule 5	Biomass Sustainability Requirements
Schedule 6	Arbitration Provisions Applicable to Sections 1.11 and 6.11

#### **1.5 Order of Precedence and Obligations at Law**

In the case of any conflict, ambiguity or inconsistency between or among any of the provisions in this Agreement, the following principles will apply:

- (a) the provisions of any subsequent amendments in writing to this Agreement signed by the Parties will govern and take precedence only over those specific provisions of this Agreement expressly amended or superseded thereby; and
- (b) in the case of any conflict, ambiguity or inconsistency between the provisions in the main body of this Agreement and the provisions of any Schedule, the provisions in the main body of this Agreement will prevail, unless otherwise expressly provided in the main body of this Agreement or in such Schedule;

In addition, nothing in this Agreement modifies, alters, reduces or affects Generator's obligations, liabilities or accountability under Applicable Laws (including, for emphasis, the Authoritative Documents). In the case of any conflict, ambiguity or inconsistency between or among any of the provisions of this Agreement and the provisions of any Applicable Law (including, for emphasis, the Authoritative Documents), the more restrictive provisions will prevail.

#### **1.6 Entire Agreement**

This Agreement is the entire agreement between the AESO and Generator regarding the subject matter of this Agreement, and supersedes any previous agreements, discussions and understandings. There are no agreements, representations (including any representations that may be implied by statute or common law), warranties, terms, conditions or commitments

regarding the subject matter of this Agreement except as specifically expressed in this Agreement. No reliance is placed on any warranty, representation, opinion, advice or assertion of fact made by a Party to this Agreement, or its Related Parties, to the other Party to this Agreement or its Related Parties, except to the extent that the same has been reduced to writing and included as a term of this Agreement.

### **1.7 Currency**

In this Agreement, all references to dollar amounts are in Canadian dollars.

### **1.8 No Agency, Joint Venture, Partnership, Lease or Loan**

This Agreement is not intended to and does not:

- (a) constitute either Party as the agent of the other for any purpose, or otherwise create any relationship of agency;
- (b) constitute or create any joint venture;
- (c) constitute or create any partnership;
- (d) constitute the relationship of landlord and tenant;
- (e) constitute the relationship of lender and borrower; or
- (f) create a fiduciary relationship;

and neither Party shall allege or assert for any purpose that this Agreement constitutes or creates a relationship of agency, joint venture, partnership, landlord and tenant, or lender and borrower.

### **1.9 Generator's Knowledge**

Where any provision of this Agreement refers to the knowledge of or matters known to Generator, then knowledge on the part of any Person having direct involvement in the preparation of the Proposal or management personnel of Generator or any Sponsor, shall be deemed to be knowledge of Generator, even if Generator had not yet been incorporated or created.

### **1.10 Time Periods**

Unless otherwise specified, time periods within or following which any payment is to be made or act is to be done, shall be calculated by excluding the day on which the period commences and including the day on which the period ends and by extending the period to the next Business Day following if the last day of the period is not a Business Day.

### 1.11 Invalidity or Unenforceability of Provisions or Indices

If any provision of this Agreement is invalid or unenforceable, or in the event that any index or price quotation referred to in this Agreement ceases to be published, or if the basis therefor is changed materially, then:

- (a) if a provision is considered to be invalid or unenforceable, then the Party considering such provision to be invalid or unenforceable may propose, by notice in writing to the other Party, a Replacement Provision and the AESO and the Generator and, at the AESO's discretion, those Other Generators that are required by the AESO to participate, shall engage in good faith negotiations to replace such provision with a valid and enforceable provision, the economic effect of which substantially reflects that of the invalid or unenforceable provision which it replaces;
- (b) if any index or price quotation referred to in this Agreement ceases to be published, or if the basis therefor is changed materially, then the AESO and the Generator and, at the AESO's discretion, all of those Other Generators that are required by the AESO to participate, shall engage in good faith negotiations to substitute an available replacement index or price quotation that most nearly, of those then publicly available, approximates the intent and purpose of the index or price quotation that has so ceased or changed and this Agreement shall be amended as necessary to accommodate such replacement index or price quotation;
- (c) if a Party does not believe that a provision is invalid or unenforceable, or that the basis for an index or price quotation has changed materially, or ceases to be published, or if the negotiations set out in Section 1.11(a) or Section 1.11(b) are not successful, or if the Parties are unable to agree on all such issues and any amendments required to this Agreement (each a "**Replacement Provision**") within thirty (30) days after either the giving of the notice under Section 1.11(a) or the occurrence of the event in Section 1.11(b), then the Replacement Provision(s) shall be determined by mandatory and binding arbitration from which there shall be no appeal, with such arbitration to be conducted in accordance with the procedures set out in Schedule 6; however, if the Generator fails to participate in such arbitration, the Generator acknowledges that it waives its right to participate in such arbitration, which shall nevertheless proceed, and the Generator shall be bound by the award of the Joint Arbitration Panel and the subsequent amendments to this Agreement made by the AESO to implement such award of the Joint Arbitration Panel set out in Section 1.11(d)(iii); and
- (d) The terms of this Agreement shall be amended either:
  - (i) by the agreement of the Parties, where no award of the Joint Arbitration Panel has been made pursuant to Section 1.11(c);

- (ii) by the agreement of the Parties made pursuant to and in implementation of an award of the Joint Arbitration Panel made pursuant to Section 1.11(c); or
  - (iii) by an amendment prepared by the AESO made pursuant to and to implement an award of the Joint Arbitration Panel made pursuant to Section 1.11(c), where the Generator failed to participate in such arbitration, with such agreement or amendment, as applicable, having effect as of the date of such invalidity or unenforceability or from and after the date that the relevant index or quotation ceased to be published or the basis therefor is changed materially, as the case may be.
- (e) This Section 1.11 shall not apply to the circumstances addressed in Section 6.11 and Article 12.

### **1.12 Waiver, Amendment**

No amendment of this Agreement is effective unless made in writing and signed by a duly authorized representative of each of the AESO and Generator. No waiver of any provision of this Agreement is effective unless made in writing, and any such waiver has effect only in respect of the particular provision or circumstance stated in the waiver. No representation by either of the Parties with respect to the performance of any obligation under this Agreement is capable of giving rise to an estoppel unless the representation is made in writing.

### **1.13 Governing Law**

This Agreement shall be governed by the laws in force in Alberta, including the federal laws of Canada applicable therein. Alberta Courts shall have exclusive jurisdiction over all matters arising in relation to this Agreement, and each Party accepts the jurisdiction of Alberta Courts.

## **ARTICLE 2 DEVELOPMENT OF THE FACILITY**

### **2.1 Design and Construction of the Facility**

- (a) The Generator shall design and build the Facility using Good Electric Industry Practice and meet all relevant requirements of the Authoritative Documents, the Connection Agreement, this Agreement, the Permit and Licence (Power Plant), any other Governmental Approvals, and all Applicable Laws, and subject to Section 16.6, the Generator shall be responsible for all costs, expenses, liabilities and other obligations associated therewith. The Generator shall ensure that the Facility is designed and built to operate in accordance with the requirements of this Agreement.

- (b) The Generator shall at no time during the Term modify, vary or amend in any material respect any of the location, features or specifications of the Project or the Facility: (i) as set out in Schedule 1, or (ii) in any manner which could reasonably be expected to result in a material increase in the capacity factor which the Facility is able to achieve (in either case a "**Facility Amendment**"), without first notifying the AESO in writing and obtaining the AESO's consent in writing. Such consent may be withheld by the AESO in its sole and absolute discretion.
- (c) Notwithstanding Section 2.1(b), and prior to the Generator procuring and delivering its IE Certificate pursuant to Section 2.6(a)(iii), the Generator may make a one-time election to reduce the Contract Capacity by giving notice to the AESO, provided that the lower Contract Capacity is: (i) no less than eighty percent (80%) of the original Contract Capacity (for clarity, as set out on the original, non-amended Schedule 1 as of the Contract Date), and (ii) greater than or equal to five (5) MW. If the Generator provides a notice which conforms with such restrictions, the Contract Capacity shall, upon receipt by the AESO, be reduced to the amount set forth in such notice, and the actual, nameplate capacity of the Facility being developed shall not in any event exceed such reduced amount. The AESO shall have no obligation to consent to a request to alter the Contract Capacity other than as set out in this Section 2.1(c). Subject to Section 6.2, any such reduction in Contract Capacity shall only affect the amount of Completion and Performance Security that is required to be provided to the AESO after the date of the request for such reduction and, for clarity, shall not result in any change to the Strike Price.

## 2.2 Additional Development and Construction Covenants

- (a) The Generator shall ensure that the Facility will: (i) be located in the Province of Alberta; (ii) be located at the Site; (iii) affect supply on the AIES or on a Distribution Facility, as applicable; and (iv) otherwise be built in accordance with the features and specifications as outlined in Schedule 1 unless the AESO has approved a Facility Amendment (or unless the Generator has elected to reduce the Contract Capacity in accordance with Section 2.1(c)).
- (b) The Generator shall use commercially reasonable efforts to achieve the following key milestones in the development of the Project (each, a "**Key Development Milestone**") in a timely manner such that it will be able to attain Commercial Operation of the Facility by Target COD:
  - (i) obtain an Approved Connection Proposal;
  - (ii) execute the Connection Agreement, if any, which is required under Applicable Law;
  - (iii) obtain the Permit and Licence (Power Plant) and any other Governmental Approvals applicable to the Project which are necessary for the

- construction of the Facility to commence (including any required environmental assessments, permits, licences and approvals);
- (iv) secure financing sufficient to complete development, construction and commissioning of the Facility;
  - (v) procure or enter into arrangements for long-lead equipment and materials which are necessary for the construction of the Facility;
  - (vi) commence construction activities at the Site;
  - (vii) in the case of any Biomass Facility, has agreed to FMS Procedures with the AESO; and
  - (viii) execute and deliver the AESO Security Documents.
- (c) The Generator shall provide the AESO with evidence in the Prescribed Form of completion of each of the Key Development Milestones by the Commencement of Construction Longstop Date which shall include: (i) for the milestones in Sections 2.2(b)(i), (ii), and (iii), reasonable documentation; (ii) for the milestone in Sections 2.2(b)(iv), (v), and (vi) a statutory declaration from an officer of the Generator confirming that such milestones have been met, along with a copy of the Financial Model; and (iii) for the milestone in Section 2(b)(viii) a copy of such executed security documents.
- (d) The AESO shall notify the Generator in writing within thirty (30) Business Days of the AESO's receipt of all of the documentation required by Section 2.2(c) as to whether such documentation is acceptable to the AESO, acting reasonably. If the AESO determines that such documentation is acceptable, the AESO will confirm in writing that all of the Key Development Milestones have been met as of the date the AESO received such acceptable documentation, and the Generator will be deemed to have achieved commencement of construction of the Facility ("**Commencement of Construction**") on such date. If the AESO determines that such documentation is not acceptable, the AESO shall provide the Generator with reasonable particulars in respect of any deficiencies in the achievement of any of the Key Development Milestones, in which case the Generator's obligations set forth in Sections 2.2(b) and (c) shall continue to apply *mutatis mutandis*.
- (e) The Generator shall advise the AESO of:
- (i) any notice of Appeal in respect of the Permit and Licence (Power Plant), the Permit and Licence (Transmission), or any other Governmental Approval, within ten (10) Business Days after learning that such a notice has been filed; and
  - (ii) the outcome of any such Appeal within ten (10) Business Days after receiving a decision.

### **2.3 Connection Requirements**

- (a) The Generator shall arrange, at its sole expense, for all Facility connection requirements in accordance with Applicable Law to permit the Delivery of Renewable Electricity to the Connection Point.
- (b) All Connection Costs shall be for the account of the Generator and, as applicable, the TFO and/or DFO with which the Generator has arranged connection of the Facility pursuant to the Connection Agreement, any Construction Commitment Agreement, the DFO Tariff, and the TFO Tariff, as applicable. Notwithstanding the foregoing, the Generator shall notify the AESO from time to time during the Term of any amounts which become refundable or payable, or are refunded or paid, to it under the Construction Commitment Agreement, and Generator shall assign or pay, as the case may be, all such amounts to the AESO.
- (c) The Generator shall provide, at its expense, all power system components on the Generator's side of the Connection Point, including all transformation, switching and auxiliary equipment, such as synchronizing and protection and control equipment required, pursuant to Applicable Law and any requirements deemed necessary by the System Operator, the TFO or the DFO, as applicable from time to time, to protect the safety and security of the AIES, the Transmission Facility, the Distribution Facility and each of their customers, each as the case may be.
- (d) The Generator agrees to install protective equipment to protect its own personnel, property, and equipment from variations in frequency and voltage or from temporary delivery of other than three-phase power, whether caused by the Facility, the AIES, the Transmission Facility or the Distribution Facility.

### **2.4 Metering**

The Generator covenants and agrees to provide, at its expense, separate revenue quality meters and ancillary metering and monitoring equipment as required by the Authoritative Documents; and shall ensure that the Generating Equipment at the Facility is metered separate and apart from any and all other generating equipment or facilities which are not part of the Facility.

### **2.5 Target COD**

- (a) The Generator shall use commercially reasonable efforts to attain Commercial Operation of the Facility by Target COD.
- (b) The Generator acknowledges and agrees that if Commercial Operation has not been attained by Target COD, the Support Period shall not in any event be extended.

## 2.6 Requirements for Commercial Operation

- (a) The Generator will be deemed to have achieved commercial operation in respect of the Facility ("**Commercial Operation**") at the point in time when, as subsequently confirmed by the AESO in a written notice to the Generator as described in Section 2.6(c) and subject to the provisos set forth below:
- (i) the Generator has received a "Non-Zero Dollar Offer Letter" from the AESO, which letter is issued by the AESO to a generator after the relevant facility's "energization checklist" is completed and such generator notifies the AESO that it has completed its commissioning of the Facility, with the exception of model variation testing; (which letter allows the Generator to commence Commercial Operation with the conditions that it will submit the required model variation testing and remedy any outstanding deficiencies by specified dates);
  - (ii) the AESO has received from the Generator copies of all Governmental Approvals issued by the applicable Governmental Authorities which are required to construct, operate and maintain the Facility;
  - (iii) the AESO has received an IE Certificate in the Prescribed Form directly from the Independent Engineer, which confirms that:
    - (A) the Facility and the Connection Facilities have been completed in all material respects, excepting punch list items that do not materially and adversely affect the ability of the Facility to operate in accordance with this Agreement, Good Electric Industry Practice, and all Applicable Laws;
    - (B) the installed, nameplate capacity of the Facility is equal to the Contract Capacity; and
    - (C) the Facility has been constructed, connected, commissioned and synchronized to the AIES or a Distribution Facility, as applicable, such that the Available Capacity is not less than ninety percent (90%) of the Contract Capacity; and
  - (iv) the AESO has received a certificate addressed to it from the Generator in the Prescribed Form with respect to the Commercial Operation of the Facility, together with such supporting documentation required to be provided to the AESO, as referenced in such form.

provided that Commercial Operation shall not in any event occur prior to the Earliest Support Payment Date; and provided further that, in the case of any Facility which is an Expansion, the Generator shall only be deemed to have achieved Commercial Operation at such point in time if the Existing Renewable Facility is still commercially operational (as defined in the definition of "Existing Renewable Facility") at such time.

- (b) The AESO or its Related Parties shall be entitled, at the AESO's option, to attend any performance and generation test(s) for purposes of Section 2.6(a)(iii)(C) and the Generator shall provide to the AESO a reasonable period in advance thereof confirmation in writing of the timing of such test(s).
- (c) The AESO shall notify the Generator in writing within twenty (20) Business Days following receipt of all of the documentation required by Section 2.6(a) as to whether such documentation is acceptable to the AESO, acting reasonably. If the AESO determines that such documentation is not acceptable, the AESO shall provide to the Generator reasonable particulars in respect of any deficiencies in the achievement of Commercial Operation, in which case the Generator's obligations set forth in Sections 2.5(a), and the provisions of this Section 2.6, shall continue to apply *mutatis mutandis*.

## **2.7 Generation Prior to Commercial Operation**

If any Electricity is generated by the Facility and Delivered prior to the Commercial Operation Date, the Generator shall:

- (a) with respect to any such Electricity which is generated and Delivered prior to the Earliest Support Payment Date, be entitled to retain all Power Pool revenues; and
- (b) for any Settlement Interval in the Pre-Support Period for which the Pool Price exceeds the Strike Price, be entitled to retain all Power Pool revenues up to the Metered Energy multiplied by the Strike Price, and shall pay the AESO an amount equal to the Metered Energy multiplied by the difference between the Pool Price and the Strike Price.

## **ARTICLE 3 OPERATION OF THE FACILITY**

### **3.1 Operation Covenants**

- (a) The Generator shall own or lease the Facility during the Term.
- (b) The Generator shall operate and maintain the Facility during the Support Period such that the Available Capacity of the Facility, is maintained at not less than ninety percent (90%) of the Contract Capacity; except during periods of planned maintenance of the Facility (which do not exceed a reasonable length) and unplanned maintenance of the Facility (which shall in no event exceed thirty (30) days).
- (c) The Generator shall operate and maintain the Facility during the Support Period using Good Electric Industry Practice and meeting all applicable requirements of the Authoritative Documents, the applicable DFO Tariff, or TFO Tariff (as the case may be), the Connection Agreement, and the Permit and Licence (Power

Plant) and any other Governmental Approvals applicable to such Facility, and all other Applicable Laws.

- (d) The Generator shall connect the Facility exclusively to the Connection Point, and shall Deliver all Electricity through the Connection Point.
- (e) The Generator shall be solely responsible for operating and maintaining the Facility, including obtaining and maintaining in good standing all Governmental Approvals required under Applicable Law, and for all costs, expenses, liabilities and other obligations associated therewith.
- (f) The Generator covenants to provide the AESO within five (5) Business Days of its receipt, copies of all: notices of violation or pending proceedings; complaints made to any Governmental Authority; and actions, suits, proceedings, demands, judgments, directives or orders delivered or issued by any Person or Governmental Authority to or in respect of: (i) the Generator, (ii) the Facility, or (iii) the operator (if applicable) or any Person responsible for the overall operation, maintenance, repair or management of the Facility, or for any substantial component of such operation, maintenance, repair or management.
- (g) The Generator covenants and agrees that the Facility shall not utilize any source of fuel other than the Renewable Fuels identified in Schedule 1; except that any Biomass Facility may use fossil fuels for certain limited purposes as set forth in Schedule 5, and the Generator of any Biomass Facility covenants and agrees that it shall be subject to, and shall operate such Biomass Facility in accordance with Schedule 5.
- (h) The Generator agrees to use Commercially Reasonable Efforts to maintain or enter into any fuel supply contracts that are necessary, if any, for the proper operation of the Facility during the Term.
- (i) The Generator shall obtain and maintain any Waterpower Rights or other resource rights that are required for the operation of the Facility throughout the Term.

### **3.2 Insurance Covenants**

- (a) The Generator shall put in effect and maintain, or cause its Subcontractors, where appropriate, to maintain, with insurers licenced in Alberta, from the commencement of construction of the Facility to the Commercial Operation Date, at its own cost and expense, all the necessary and appropriate insurance required under all Applicable Law (including workers' compensation insurance coverage for all personnel of Generator and any Subcontractor of any tier) as well as those that a prudent Person in the business of developing and operating the Facility would maintain including policies for "all-risk" property insurance covering not less than the probable maximum loss of the Facility, "all-risk" equipment breakdown insurance, "wrap-up" liability insurance and "commercial general

liability" insurance with a rider to extend coverage to include Environmental Incidents.

- (b) The Generator shall put in effect and maintain, or cause its Subcontractors, where appropriate, to maintain, with insurers licenced in Alberta, from the Commercial Operation Date to the expiry of the Term, at its own cost and expense, all the necessary and appropriate insurance required under Applicable Law (including workers' compensation insurance coverage for all personnel of Generator and any Subcontractor tier) as well as those that a prudent Person in the business of developing and operating the Facility would maintain.
- (c) Any policies described in this Section 3.2 must (i) for any property insurance, contain a waiver of subrogation in favour of the Indemnitees; and (ii) for any liability insurance, include the Indemnitees as additional insureds with respect to liability arising in the course of performance of the obligations under, or otherwise in connection with, this Agreement, in which case the policy shall be non-contributing and primary with respect to coverage in favour of the Indemnitees. The limit for liability policies described in this Section 3.2 shall be for an amount appropriate for the size and scope of the Facility.
- (d) The Generator shall provide the AESO with a certified true copy of the insurance policies required in this Section 3.2 which confirms the relevant coverage, including endorsements on or before the commencement of the construction of the Facility, and renewals or replacements on or before the expiry of any such insurance.

#### **ARTICLE 4 ADDITIONAL COVENANTS OF GENERATOR**

##### **4.1 Compliance with Applicable Laws**

- (a) The AESO and the Generator shall each comply, in all material respects, with all Applicable Laws required to perform or comply with their respective obligations under this Agreement.
- (b) The AESO and the Generator shall each furnish, in a timely manner, information to Governmental Authorities. Generator shall obtain and maintain in good standing the Permit and Licence (Power Plant) and any Governmental Approval required to perform or comply with their respective obligations under this Agreement.

##### **4.2 Meter and Other Data**

The Generator agrees to provide to the AESO for the purposes of this Agreement (which, for greater clarity, is in addition to any obligations to provide access under the ISO Rules) access to the meter(s) at the Facility to accommodate remote interrogation of the metered data on a daily

basis at all times. The Generator shall notify the AESO of any errors and omissions in any such data or information on a timely basis so as to permit the AESO, within a reasonable time, to correct such errors and omissions pursuant to the ISO Rules and this Agreement. Upon a Party becoming aware of any errors or omissions in any such data or information, such Party shall notify the other Party, and if applicable, the System Operator in accordance with the ISO Rules, on a timely basis.

### 4.3 Reporting Requirements

- (a) By the tenth (10th) Business Day of each calendar quarter following the date of this Agreement and continuing until the Commercial Operation Date, the Generator shall provide the AESO with:
  - (i) Quarterly progress reports substantially in the form of the applicable Prescribed Form describing: the status of efforts made by the Generator to meet the Target COD; the progress of the design and construction work; the status of Governmental Approvals relating to the Project; and the progress of all applicable Reportable Events (the "**Quarterly Progress Reports**"). At the AESO's request, the Generator shall provide an opportunity for the AESO to meet with appropriate personnel of the Generator to discuss and assess the contents of the Quarterly Progress Reports. The Generator acknowledges that photographs of the Project, Facility or construction work may be posted or printed by the AESO on its website or in publications; and
  - (ii) a report as soon as it becomes aware: (A) of any material adverse change in respect of the credit quality or financial position of any Designated Equity Provider (as such term is defined in REP Round RFQ) since the date of the last financial statements delivered prior to the execution of this Agreement; or (B) the occurrence of any events, or the existence of any facts or circumstances, which would materially impact Generator's ability to perform any of its obligations under this Agreement;
- (b) In addition to the Quarterly Progress Reports which the Generator is required to provide pursuant to Section 4.3(a), the Generator shall, throughout the Term of this Agreement, provide the AESO with:
  - (i) notice of any incident, event or concern that could have a Material Adverse Effect on the Generator or a material adverse effect on the Project, promptly and, in any event, within ten (10) Business Days following the later of:
    - (A) the Generator becoming aware of any such incident, event or concern occurring or arising; and

- (B) the Generator becoming aware of the materiality of same, with such timing in each case based upon the Generator having acted in accordance with Good Electric Industry Practice;
- (ii) any other reports which the AESO, acting reasonably, may from time to time request regarding the performance of Generator's obligations under this Agreement; and
- (iii) a response delivered in a timely manner to any reasonable inquiry made by the AESO in relation to any aspect of the Project or this Agreement.
- (c) The Generator shall, within one hundred eighty (180) days of Commercial Operation, provide the AESO with a break-down of all costs it has incurred in respect of the Project utilizing the North American Product Classification System (NAPCS) at the level of detail required by the AESO.

#### **4.4 Limited Business**

Generator covenants and agrees:

- (a) not to undertake any business other than the business of developing, financing, building, owning, operating and maintaining the Facility; and
- (b) other than as required in respect of its business (as described in (a) above), not to incur indebtedness, including indebtedness on behalf of, or to guarantee the obligations of, any other Person.

### **ARTICLE 5 RENEWABLE ATTRIBUTES AND RELATED PRODUCTS**

#### **5.1 Renewable Attributes**

- (a) The Generator hereby transfers and assigns to, or to the extent transfer or assignment is not permitted, holds in trust for, the AESO which shall thereafter retain, all rights, title, and interest in all Renewable Attributes generated by or associated with the Facility during the Term of this Agreement.
- (b) The Generator shall from time to time, upon written direction of the AESO, take all such actions and do all such things necessary to effect the transfer and assignment to, or holding in trust for, the AESO, all rights, title, and interest in all Renewable Attributes as set out in Section 5.1(a).
- (c) The Generator shall from time to time, upon written direction of the AESO, take all such actions and do all such things necessary to certify, obtain, qualify, and register with the relevant authorities or agencies Renewable Attributes (including for certainty, "renewable energy certificates" or similar certificates or instruments

issued by the Western Renewable Energy Generation Information System) that are created and allocated or credited with respect to the Facility pursuant to Applicable Law or other requirements from time to time for the purposes of transferring such Renewable Attributes (and the associated certificate or instrument) to the AESO in accordance with Section 5.1(a). The Generator shall be entitled to reimbursement of the cost of complying with a direction under this Section 5.1(c), provided that the AESO, acting reasonably, approved such cost in writing prior to the cost being incurred by the Generator.

## 5.2 Electricity and Related Products

- (a) All Electricity generated at or by the Facility shall belong to the Generator.
- (b) Generator shall exchange all Electricity generated at or by the Facility through the Power Pool for the Pool Price, and covenants not to sell, supply or deliver any such Electricity to any third party pursuant to a "net settlement instruction" (as set forth in the ISO Glossary) or any other bilateral agreement for the physical delivery of Electricity.
- (c) The Generator covenants not to sell, supply or deliver any Related Products.

## ARTICLE 6 PAYMENTS AND SETTLEMENT

### 6.1 AESO Fees

- (a) For each Settlement Interval during the Cost Recovery Period, the Generator shall pay the AESO a fixed fee of seventy-five cents (\$0.75) (the "**Implementation Fee**") for each MWh of Metered Energy, provided that if the Metered Energy for such Settlement Interval exceeds the Contract Capacity multiplied by one Settlement Interval, then the Contract Capacity multiplied by one Settlement Interval shall be used instead of the Metered Energy for such Settlement Interval for purposes of the calculation set out in this Section 6.1(a).
- (b) For each Settlement Interval during the Support Period, the Generator shall pay the AESO a fixed fee of thirty cents (\$0.30) (the "**Administration Fee**") for each MWh of Metered Energy, provided that if the Metered Energy for such Settlement Interval exceeds the Contract Capacity multiplied by one Settlement Interval, then the Contract Capacity multiplied by one Settlement Interval shall be used instead of the Metered Energy for such Settlement Interval for purposes of the calculation set out in this Section 6.1(b).
- (c) For each Settlement Period during the Cost Recovery Period, the Generator shall pay the AESO the Implementation Fee for each MWh of Monthly TC Forgone Energy and Monthly CIL Forgone Energy in respect of such Settlement Period.

- (d) For each Settlement Period during the Support Period, the Generator shall pay the AESO the Administration Fee for each MWh of Monthly TC Forgone Energy and Monthly CIL Forgone Energy in respect of such Settlement Period.

## 6.2 Monthly Support Payments

- (a) The Parties shall, in consideration of the performance of each other's respective obligations hereunder, including the AESO's obligation to promote the development of the Project by making support payments as contemplated hereunder, and the Generator's obligation to develop, finance, build, own, operate and maintain the Project and to transfer the Renewable Attributes to the AESO, calculate a Difference Payment for each Settlement Interval and a Monthly Support Payment for each Settlement Period, all in accordance with sub-sections 6.2(b) and (c).
- (b) For each Settlement Interval in a Settlement Period during the Support Period, the Difference Payment shall be an amount equal to:
- (i) the Metered Energy multiplied by the Strike Price applicable during the corresponding calendar year;
- minus
- (ii) the Metered Energy multiplied by the Pool Price for such Settlement Interval;
- provided that, if in any Settlement Interval the Metered Energy exceeds the Contract Capacity multiplied by one Settlement Interval, then the Contract Capacity multiplied by one Settlement Interval shall be used instead of the Metered Energy for purposes of the calculation set out in this Section 6.2(b).
- (c) The Monthly Support Payment for each Settlement Period during the Support Period shall be an amount equal to the sum of the Difference Payments in respect of each Settlement Interval in such Settlement Period.
- (d) Where the Monthly Support Payment in respect of a Settlement Period is a positive number, such amount shall be owed by the AESO to the Generator. Where such Monthly Support Payment is a negative number, the absolute value of such amount shall be owed by the Generator to the AESO.
- (e) Monthly Support Payments calculated in accordance with this Section 6.2 shall, for any Biomass Facility, be subject to adjustment in accordance with Section 3 of Schedule 5.

### 6.3 Indexed Strike Price

Commencing on January 1 of the calendar year following Commercial Operation, the Strike Price in any year "y" shall be adjusted to account for increases or decreases in CPI in accordance with the following calculation:

$SP_y = 0.8 \times SP_{Bid} + 0.2 \times \left( SP_{Bid} \times \frac{CPI_y}{CPI_{COD}} \right)$	
where:	
SP <sub>y</sub>	is the Strike Price applicable in calendar year "y" during the Support Period;
SP <sub>Bid</sub>	is the Strike Price specified in <u>Schedule 1</u> , prior to any adjustment for increases or decreases in CPI;
CPI <sub>COD</sub>	is: <ul style="list-style-type: none"> <li>(a) for a Facility in respect of which the Commercial Operation Date falls between January 1 and June 30 (inclusive) in a calendar year, the CPI applicable to the month of December in the immediately preceding calendar year; and</li> <li>(b) for a Facility in respect of which the Commercial Operation Date falls on or after July 1 in a calendar year, the CPI applicable to the month of December in such calendar year;</li> </ul>
CPI <sub>y</sub>	is the CPI for the month of December immediately preceding the commencement of calendar year "y";

### 6.4 RESA Statements

- (a) For each Settlement Period during the Support Period, the AESO shall prepare and deliver to the Generator both preliminary and final settlement statements in respect of such Settlement Period (each a "**RESA Statement**"). Such RESA Statements shall be provided to Generator at the same time that the AESO makes preliminary and final power pool statements available to the Generator pursuant to the ISO Rules with respect to its exchange of Electricity generated at or by the Facility through the Power Pool (the "**Power Pool Statements**"). Any amount owing by one Party to the other under the final RESA Statement shall be due and payable on the same date as the power pool settlement date under the ISO Rules (the "**RESA Settlement Date**"). As of the date hereof, the preliminary and final power pool statements are issued and made available by the AESO on the fifth (5<sup>th</sup>) and fifteenth (15<sup>th</sup>) Business Day, respectively, following the end of a Settlement Period, and the power pool settlement date is the twentieth (20<sup>th</sup>) Business Day following the end of a Settlement Period.

- (b) Each RESA Statement for a Settlement Period shall set forth the amount of, and basis for:
- (i) any fees payable to the AESO pursuant to Section 6.1 in respect of such Settlement Period;
  - (ii) the Monthly Support Payment to be paid by the AESO to the Generator, or by the Generator to the AESO, as the case may be, in respect of such Settlement Period;
  - (iii) the Monthly Forgone TC Energy Payment, if any, to be paid by the AESO to the Generator in respect of the immediately preceding Settlement Period;
  - (iv) the Monthly Forgone CIL Energy Payment, if any, to be paid by the AESO to the Generator in respect of the immediately preceding Settlement Period;
  - (v) any adjustments to the Metered Energy in respect of prior Settlement Periods and the corresponding adjustments to the above-referenced fees and payments;
  - (vi) any other payments owing under this Agreement by either Party to the other;
  - (vii) any applicable GST;
  - (viii) the total amount owing by the AESO to the Generator, or by the Generator to the AESO, as the case may be (in either case, the "**Monthly RESA Payment**"); and
  - (ix) the amount of any deductions made pursuant to Section 6.5(a).

Each RESA Statement may be delivered or made available by the AESO to the Generator by e-mail or other electronic means, and shall include the reference number assigned to this Agreement by the AESO and such supporting information as may be determined by the AESO, acting reasonably.

## **6.5 Payments and Set-off Against Power Pool Settlement**

- (a) The Party owing the Monthly RESA Payment for any Settlement Period shall remit to the other Party full payment in respect of the final RESA Statement on the RESA Settlement Date; provided that where the Generator owes the Monthly RESA Payment to the AESO, the Generator hereby acknowledges and agrees that the AESO may, and authorizes and directs the AESO to, deduct any such Monthly RESA Payment owing to the AESO from any amount (set forth in the final Power Pool Statement) which is payable by the AESO to the Generator pursuant to

Section 103.4 (Power Pool Financial Settlement) of the ISO Rules with respect to such Settlement Period.

- (b) Any and all payments required to be made by the AESO to the Generator under any provision of this Agreement shall be made by wire transfer to the same account designated by the Generator to the AESO from time to time for purposes of Power Pool financial settlement. Any payments required to be made by the Generator to the AESO under any provision of this Agreement which are not deducted from amounts payable by the AESO to the Generator in accordance with Section 6.5(a) shall be made by wire transfer to the account designated by the AESO from time to time pursuant to Section 6.10.

## **6.6 Disputed RESA Statements**

- (a) If the Generator disputes a final RESA Statement or any portion thereof, the Party owing any amount set forth in such RESA Statement shall, notwithstanding such dispute, pay the entire amount set forth therein to the other Party (and where the Generator owes the Monthly RESA Payment to the AESO, the AESO shall deduct the entire amount set forth in the final RESA Statement from any amounts payable by the AESO to the Generator in respect of Power Pool financial settlement in accordance with Section 6.5(a) above). The Generator shall provide notice to the AESO setting out the portions of the final RESA Statement that are in dispute with a brief explanation of the dispute. If it is subsequently determined or agreed that an adjustment to such RESA Statement is appropriate, such adjustments will be accounted for as prior period adjustments in the RESA Statements which AESO subsequently issues or makes available to Generator for the Settlement Period during which such determination or agreement was made.
- (b) If a final RESA Statement dispute has not been resolved between the Parties within ten (10) Business Days after receipt of notice of such dispute by the AESO, the dispute may be submitted by either Party to a Senior Conference pursuant to the terms of Section 19.1.
- (c) Notwithstanding anything else set forth in this Article 6, Generator acknowledges and agrees that: (i) any and all adjustments or disputes with respect to the amount of Metered Energy set forth in any Power Pool Statement may only be resolved in accordance with the relevant adjustment provision or dispute resolution processes, as the case may be, set forth in the ISO Rules; and (ii) if the amount of Metered Energy set forth in any Power Pool Statement is adjusted as a result of any such provisions or dispute resolution processes, corresponding adjustments will be made to all payments hereunder which are calculated on the basis of such Metered Energy.

## **6.7 Adjustment to Final RESA Statements**

- (a) Each final RESA Statement shall, except as set forth in Sections 6.6(c) and 6.7(b), be subject to adjustment for errors in arithmetic, computation, or other errors, raised by a Party during the period of six (6) months following the end of the calendar year in which such RESA Statement was issued. If no complaints are raised within such time period, or if any complaints raised in such time period have been resolved, such RESA Statement shall be final and subject to no further adjustment after the expiration of such period.
- (b) Notwithstanding the foregoing, the determination of any information by AESO acting pursuant to the ISO Rules shall be final and binding on the Parties in accordance with the ISO Rules, and without limiting the generality of the foregoing, if a final RESA Statement contains an error in the data or information issued by the AESO which the AESO has corrected pursuant to the ISO Rules, then the six (6) months limit set forth in Section 6.7(a) shall not apply to the correction of such error or the AESO's ability to readjust such RESA Statement.
- (c) Any adjustment to a RESA Statement made pursuant to this Section 6.7 shall be made in the next subsequent RESA Statement.

## **6.8 Funding from Governmental Authorities**

The Generator shall provide written notice to the AESO of the commencement of any application process it makes relating to any program, funding or incentives that may be provided by any Governmental Authority in relation to the Facility, and shall thereafter provide the AESO with copies of all correspondence and related materials respecting such application. Where such program, funding or incentives constitute an Incentive Program, the Generator shall within thirty (30) days of receipt of any payment pursuant to such Incentive Program, pay to AESO fifty percent (50%) of the amount of such payment, failing which AESO may set off any such payment due to AESO against any amount payable by AESO to Generator. Except as provided under this Agreement, the Generator may not seek or obtain other funding or incentives in respect of the Facility that are provided or offered by the Government of Alberta with respect to Renewable Electricity generation or the reduction of emissions.

## **6.9 Interest**

The Party owing the Monthly RESA Payment shall pay interest on any late payment to the other Party, at the Prime Rate, calculated daily, from the RESA Settlement Date to the date of payment, unless such late payment was due to the fault of the other Party.

## 6.10 Payment Account Information

### Accounts for payments to AESO:

Bank: ●  
 Bank address: ●  
 Account Name: ●  
 Account Number: ●  
 Transit Number: ●

**AESO's GST Registration Number:** 88691 4357 RT0001

The Generator acknowledges that the account information of the AESO above constitutes AESO's Confidential Information and is subject to the obligations of the Generator as set out in Article 18. The AESO may change its account information from time to time by written notice to the Generator in accordance with Section 18.1.

## 6.11 Pool Price

- (a) In the event that: (i) the Pool Price ceases to be published by the AESO or is otherwise unavailable; or (ii) the Pool Price no longer represents a reasonable indication of the price actually paid by the market in Alberta for Electricity Delivered by the Facility (each of the foregoing, a "**Pool Price Event**"), the Pool Price shall be replaced by a substitute price, agreed upon by the Parties or determined pursuant to arbitration in accordance with Section 6.11(b), that most closely represents the price actually paid by the market in Alberta for Electricity Delivered by the Facility (the "**Replacement Price**").
- (b) If the AESO has determined (or if it has been determined in accordance with provisions of Article 19) that a Pool Price Event is likely to occur within the succeeding twelve (12) calendar months, the AESO shall propose a Replacement Price to the Generator and, at the AESO's discretion, to all of the Other Generators who are required by the AESO to participate. If the Parties are unable to agree on the AESO's proposal or that of the Generator or any of the Other Generators, as the case may be, within thirty (30) days after the Pool Price Event occurs, then the Replacement Price shall be determined by mandatory and binding arbitration, from which there shall be no appeal, with such arbitration to be conducted in accordance with the procedures set out in Schedule 6. If, the Generator fails to participate in such arbitration, the Generator acknowledges and agrees that such arbitration, may nevertheless proceed with the AESO and the Other Generators, and the Generator shall be bound by the award of the Joint Arbitration Panel.
- (c) Any Replacement Price agreed upon by the Parties or determined pursuant to arbitration shall be deemed to be in effect (and the Agreement shall be deemed to be amended by the agreement of the Parties or the decision of the Joint

Arbitration Panel, as the case may be) from and after the date the Pool Price Event occurred.

- (d) If the Pool Price Event occurs before a Replacement Price is agreed upon or determined, the Monthly Support Payments shall be calculated using the Replacement Price proposed by the AESO pursuant to Section 6.11(b), provided that all such payments shall be subject to recalculation and readjustment as a result of any agreement of the Parties or award of the Joint Arbitration Panel, and any such adjustment shall, as provided in Section 6.7(c), be accounted for in the next subsequent RESA Statement, along with interest at the Prime Rate, calculated daily, from and including the time such payments were due to the date of the payment thereof.

## **ARTICLE 7 CURTAILMENT AND FORGONE ENERGY**

### **7.1 Responsibility for Forgone Energy**

- (a) The amount of Renewable Electricity which the Facility is able to generate and Deliver may be reduced from time to time during the Support Period due to transmission constraints. The Generator shall bear the risk of any resulting Forgone TC Energy in an amount equal to two hundred (200) hours multiplied by the Contract Capacity on an annual basis (the "**Annual Forgone TC Energy Threshold**") and shall not be entitled to any payment from the AESO with respect thereto. The AESO shall, however, pay the Generator, in accordance with Section 7.3, for any Forgone TC Energy in any calendar year which is in excess of the Annual Forgone TC Energy Threshold. The Annual Forgone TC Energy Threshold shall, for the calendar year during which Commercial Operation occurs, be equal to the product of: (i) such threshold multiplied by (ii) the number of days from and after the Commercial Operation Date to the end of such calendar year divided by 365 days.
- (b) The amount of Renewable Electricity which the Facility is able to generate and Deliver may also be reduced from time to time during the Support Period due to Designated Changes in Law. The AESO shall pay the Generator, in accordance with Section 7.4, for any resulting Forgone CIL Energy.

### **7.2 Forgone Energy Calculation**

- (a) For each Settlement Period during the Support Period, the AESO will calculate the Forgone Energy for any Forgone Energy Settlement Interval which occurs during such Settlement Period in accordance with Section 7.2(b). Notwithstanding the foregoing sentence, if any Forgone Energy Settlement Interval relates to a Change in Law Constraint, the AESO shall only include such Settlement Interval in its Forgone Energy calculations if and to the extent that the Generator has delivered a notice and proposal to AESO in respect of the

applicable Designated Change in Law pursuant to Section 12.2(f) which has been accepted by the AESO pursuant to Section 12.2(g) or in respect of which there has been a final determination in accordance with the dispute resolution procedures set forth in Article 19, and has provided the AESO with the relevant Generation Limit information and supporting documentation.

- (b) For any Forgone Energy Settlement Interval in respect of which there is:
  - (i) a Transmission Constraint Directive, the amount of Forgone TC Energy for such Settlement Interval shall, subject to Section 7.2(b)(iii), be equal to the Potential Energy (Adjusted) for such Settlement Interval less the greater of: (A) the Metered Energy for such Settlement Interval; and (B) the Generation Limit Energy for such Settlement Interval;
  - (ii) a Change in Law Constraint, the amount of Forgone CIL Energy for such Settlement Interval shall, subject to Section 7.2(b)(iii) and unless the Parties have otherwise agreed to deal with such Forgone CIL Energy in an alternative manner pursuant to Section 12.2(g), be equal to the Potential Energy (Adjusted) for such Settlement Interval less the greater of: (A) the Metered Energy for such Settlement Interval; and (B) the Generation Limit Energy for such Settlement Interval ; and
  - (iii) both a Transmission Constraint Directive and a Change in Law Constraint, the total amount of Forgone Energy for such Settlement Interval shall equal to the Potential Energy (Adjusted) for such Settlement Interval less the greater of: (A) the Metered Energy for such Settlement Interval; and (B) the Generation Limit Energy for such Settlement Interval; and the AESO, acting reasonably, shall determine how much of such Forgone Energy is Forgone TC Energy and Forgone CIL Energy, respectively, based on the Generation Limits established pursuant to the Transmission Constraint Directive and the Change in Law Constraint, as the case may be.

### 7.3 Forgone TC Energy Payment

- (a) For each Settlement Period during the Support Period, the amount of Forgone TC Energy, if any, for which the AESO shall pay the Generator in respect of such Settlement Period (the "**Monthly TC Forgone Energy**") shall be equal to:
  - (i) if such Settlement Period is for the calendar month of January, an amount equal to the greater of: (A) the difference between the Annual Forgone TC Energy (to the end of January) and the Annual Forgone TC Energy Threshold; and (B) 0 MWh; and

- (ii) if such Settlement Period is for a calendar month other than January:
- (A) if the Annual Forgone TC Energy<sub>m</sub> is greater than the Annual Forgone TC Energy Threshold, and the Annual Forgone TC Energy<sub>m-1</sub> is less than the Annual Forgone TC Energy Threshold, an amount equal to the:
- $$\text{Annual Forgone TC Energy}_m - \text{Annual Forgone TC Energy Threshold};$$
- or
- (B) if the Annual Forgone TC Energy<sub>m-1</sub> is greater than or equal to the Annual Forgone TC Energy Threshold, an amount equal to the:
- $$\text{Annual Forgone TC Energy}_m - \text{the Annual Forgone TC Energy}_{m-1};$$
- or
- (C) 0 MWh.
- (b) For each Settlement Period during the Support Period, the AESO shall pay the Generator an amount equal to the Monthly Forgone TC Energy multiplied by the Strike Price (the "**Monthly Forgone TC Energy Payment**").

#### 7.4 Forgone CIL Energy Payment

- (a) The AESO shall pay the Generator the Strike Price for all Forgone CIL Energy; provided that no payments will be made in respect of Forgone CIL Energy resulting from a Designated Change in Law unless and to the extent that the value of the Forgone CIL Energy related to such Designated Change in Law, calculated at the Strike Price, exceeds fifty thousand dollars (\$50,000).
- (b) Subject to Section 7.4(a), for each Settlement Period during the Support Period, the AESO shall pay the Generator an amount equal to the aggregate Forgone CIL Energy for such Settlement Period multiplied by the Strike Price (the "**Monthly Forgone CIL Energy Payment**").

#### 7.5 Forgone Energy Restrictions

Notwithstanding anything else set forth herein, the Forgone Energy calculated hereunder shall not in any event include generation which is not generated and Delivered as a result of: facility outages or derates; transmission or connection outages which result in the Facility not being synchronized with the AIES; or the application of the supply surplus rules set forth in ISO Rule 202.5, the wind power management ramp up rules set forth in ISO Rule 304.3, or any RAS.

## **7.6 Potential Capability Calculations**

The Generator acknowledges and agrees that the basis on which it calculates and reports Potential Capability to the AESO shall be consistent during Forgone Energy Settlement Intervals and non-Forgone Energy Settlement Intervals.

## **ARTICLE 8 TAXES**

### **8.1 Generator's Responsibility for Taxes**

The Generator is liable for and shall pay, or cause to be paid, or reimburse the AESO if the AESO has paid, all Taxes applicable to the Renewable Attributes transferred hereunder and in respect of which a credit, rebate, or refund has not and may not be obtained by the AESO. In the event that the AESO is required to remit such Taxes and the AESO is not entitled to a credit, rebate, or refund in respect of such payment of Taxes, the amount thereof shall be deducted from any sums becoming due to the Generator hereunder.

### **8.2 Responsibility for GST**

- (a) The AESO is liable for and shall pay, or cause to be paid, or reimburse the Generator if the Generator has paid, any GST applicable to or associated with the transfer or assignment of Renewable Attributes from the Generator to the AESO. The Strike Price does not include any GST in respect of the Renewable Attributes transferred to the AESO hereunder. If any GST is payable in connection with the transfer of such Renewable Attributes hereunder, such GST shall be paid as specified hereunder.
- (b) The Monthly Support Payments contemplated by Article 6 are exclusive of any applicable GST. To the extent GST is exigible on the Monthly Support Payment, the party receiving the Monthly Support Payment shall be entitled to collect GST on such Monthly Support Payment and the party paying the Monthly Support Payment shall pay such GST. Any GST so collected shall be remitted to the Receiver General for Canada in accordance with the *Excise Tax Act* (Canada). Any applicable GST shall be set forth in the RESA Statement prepared by the AESO.

### **8.3 Non-residency**

- (a) If the Generator is a non-resident of Canada, for purposes of the ITA or is a partnership that is not a Canadian partnership as defined in the ITA, then payments under this Agreement by the AESO shall be reduced by the amount of any applicable withholding or other similar Taxes and the AESO shall remit such withholding or other similar Taxes to the applicable taxing authorities. The AESO shall, within sixty (60) days after remitting such Taxes, notify the Generator in

writing, providing reasonable detail of such payment so that the Generator may claim any applicable rebates, refunds or credits from the applicable taxing authorities. If, after the AESO has paid such amounts, the AESO receives a refund, rebate or credit on account of such Taxes, then the AESO shall promptly remit such refund, rebate or credit amount to the Generator.

- (b) If the Generator is or becomes a non-resident of Canada, for purposes of the ITA or ceases to be a Canadian partnership as defined in the ITA, the Generator shall notify the AESO forthwith of such status and shall provide the AESO with all such information reasonably required by the AESO to comply with any withholding tax or other tax obligations to which the AESO is or may become subject as a result of thereof.

#### **8.4 GST Adjustments**

Notwithstanding any other provision of this Agreement, in the event that, as a result of a breach, modification or termination of this Agreement at any time, an amount is to be paid or forfeited (otherwise than as consideration for a supply under this Agreement) by a Party, or a debt or other obligation is to be reduced or extinguished without payment by the Party on account of the debt or obligation and section 182 of the *Excise Tax Act* (Canada), or any applicable provincial legislation applies to the amount to be paid, forfeited, reduced or extinguished, as the case may be, the amount shall be increased by an amount equal to the product of the aggregate of the GST percentage rate plus the amount of any applicable provincial rate multiplied by the amount otherwise payable and the payor shall pay the increased amount.

### **ARTICLE 9 RECORDS, AUDIT AND INSPECTION**

#### **9.1 Records and Audit**

Following the execution and delivery of this Agreement, and at any time up to two (2) years following expiry of the Term, the AESO may, upon reasonable notice to Generator, audit matters relating to Generator's compliance with this Agreement or payments by or to the AESO within the seven (7) year period prior to the date of such notice. Generator shall, during any such seven (7) year period: (i) maintain in an appropriate form, full accounting and other records in respect of performance by it of its obligations under this Agreement, as well as all books and records necessary to support and verify the information contained in, or with respect to, each RESA Statement, Monthly Support Payment or other payment by or to the AESO; and (ii) keep those records available to be audited, copied or inspected by the AESO and its authorized representatives at all reasonable times upon reasonable notice; in either case for the purpose of determining Generator's compliance with this Agreement, verifying any RESA Statement, Monthly Support Payment, FMS Information or other payment by or to the AESO, or auditing any invoice or written demand for payment rendered hereunder. Generator shall, within twenty (20) Business Days of receiving notice from the AESO of an error or discrepancy with respect to the amount of any such RESA Statement, Monthly Support Payment, FMS Information, other payment, invoice or written demand, either pay the AESO the amount claimed in such notice, or

dispute the amount of such claim in good faith and in writing to the AESO, which dispute shall be resolved in accordance with the provisions of Article 19. Failure of Generator to respond to any such notice of an error or discrepancy in the foregoing manner within such twenty (20) Business Day period shall be deemed to be an acceptance by Generator of the amount claimed in such notice, and the amount claimed shall immediately be due and payable from Generator to the AESO.

## 9.2 Inspection

- (a) The AESO and its Representatives shall, at all times upon two (2) Business Days' prior notice, at any time after the Contract Date, have access to the Facility and every part thereof, and all relevant records during regular business hours and the Generator shall, and shall cause all personnel operating and managing the Facility, to furnish the AESO with all reasonable assistance in inspecting the Facility (including the right to be provided with copies of any and all written records and downloads of any and all electronic records as reasonably required) for the purpose of ascertaining compliance with this Agreement; provided that such access and assistance shall be carried out in accordance with and subject to the reasonable safety and security requirements of the Generator and all personnel operating and managing the Facility, as applicable, and shall not interfere with the operation of the Facility. The Generator shall ensure that any confidentiality agreements or arrangements between it and any third party (including any Subcontractor or other supplier of goods or services to the Generator) shall not have the effect of preventing, impairing or delaying any disclosure or access to or by the AESO or any of its representatives as contemplated in this Section 9.2.
- (b) For purposes of any such inspection referenced in Section 9.2(a), the AESO may at all reasonable times perform any measurement, test or investigation it deems necessary to determine compliance with this Agreement. Generator shall obtain from all Subcontractors, third parties or manufacturers any permission or consent which is necessary to enable the AESO's representatives to perform such measurement, test or investigation. Generator shall provide reasonable cooperation (but without obligation to incur material expense) to facilitate any such measurements, tests or other investigations. The AESO shall conduct all such measurements, tests and investigations in a manner that will not materially disturb, interfere with or disrupt the Project or the construction or operation of the Facility.
- (c) The inspection of the Facility by or on behalf of the AESO shall not relieve the Generator of any of its obligations to comply with the terms of this Agreement. No Generator Event of Default will be waived or be deemed to have been waived by any inspection by or on behalf of the AESO. In no event will any inspection by the AESO hereunder be a representation that there has been or will be compliance with this Agreement and Applicable Laws.

### 9.3 No Waiver

Failure by the AESO to inspect the Facility or any part thereof under Section 9.2, or to exercise its audit rights under Section 9.1, shall not constitute a waiver of any of the rights of the AESO hereunder. An inspection or audit not followed by a notice of a Generator Event of Default shall not constitute or be deemed to constitute a waiver of any Generator Event of Default, nor shall it constitute or be deemed to constitute an acknowledgement that there has been or will be compliance by the Generator with this Agreement.

## ARTICLE 10 SECURITY REQUIREMENTS

### 10.1 Completion and Performance Security

- (a) From the Contract Date to the Commercial Operation Date, the Generator must post and maintain with the AESO security for the performance of the Generator's obligations under this Agreement in an amount equal to fifty thousand dollars (\$50,000) per MW of Contract Capacity (the "**Completion and Performance Security**").
- (b) After the Commercial Operation Date, the AESO shall return any Completion and Performance Security that has been provided by the Generator within twenty (20) Business Days following receipt of a written request from the Generator, net of any amounts owing by the Generator to the AESO.
- (c) Notwithstanding any other provision of this Agreement, no delay, including a delay resulting from an event of Force Majeure, shall extend the date by which any component of the Completion and Performance Security is required to be provided by the Generator or returned or refunded (as applicable) by the AESO.
- (d) The obligation of the Generator to post and maintain Completion and Performance Security as required by Section 10.1(a) must be satisfied in accordance with this Section 10.1(d) by the Generator providing such security in the form of an irrevocable and unconditional standby letter of credit in substantially the form set out in Schedule 2 and issued by a financial institution listed in either Schedule I or II of the Bank Act, or any other financial institution having a minimum credit rating of: (i) A- with S&P, (ii) A3 with Moody's, (iii) A low with DBRS, or (iv) A with Fitch IBCA.
- (e) The Generator shall ensure that, at all times, the aggregate value of all Completion and Performance Security provided to the AESO is at least equal to the required amount of Completion and Performance Security and that the Completion and Performance Security is current, valid, enforceable and in an acceptable form, including:
  - (i) following realization by the AESO of any amount of Completion and Performance Security, by increasing the amount of Completion and

Performance Security, in an amount equal to that realized by the AESO;  
and

- (ii) by forthwith providing replacement security for any letter of credit: (A) where the provider thereof has given notice that it does not wish to extend the letter of credit for an additional term, (B) which expires, terminates or fails, or ceases to be in full force and effect for the purposes hereof, (C) which is disaffirmed, disclaimed, dishonoured, repudiated or rejected in whole or in part by the provider thereof, or (D) the validity of which is challenged by the provider thereof.
- (f) All costs associated with the requirement to provide and maintain Completion and Performance Security shall be borne by the Generator.
- (g) The Generator shall, from time to time for so long as the Generator is obligated to post and maintain Completion and Performance Security as required by Section 10.1(a), replace or renew any letter of credit at least sixty (60) days prior to the expiration or termination, for any reason of such Completion and Performance Security.
- (h) If existing Completion and Performance Security is replaced with new Completion and Performance Security, the AESO shall return the existing Completion and Performance Security held by the AESO for cancellation, within fifteen (15) Business Days of the AESO's receipt of such new Completion and Performance Security. A Generator may from time to time consolidate any separate amounts of Completion and Performance Security held by the AESO by providing to the AESO replacement Completion and Performance Security in the cumulative amount of Completion and Performance Security outstanding, in which case the AESO shall return the existing Completion and Performance Security in accordance with this Section 10.1(h).
- (i) Any interest earned by the AESO on any Completion and Performance Security provided to the AESO shall be for the account of the AESO and the Generator shall not have any right to such interest.

## **10.2 Obligation to Provide AESO Security**

- (a) Promptly after any request from the AESO, and in any event prior to Financial Close and thereafter upon the Generator acquiring additional Assets, the Generator agrees to grant, or cause its Sponsors to grant security over the Assets of the Generator to secure the performance of the Generator's obligations hereunder. The Generator shall grant such security to the AESO by executing and delivering to the AESO (or arranging for the execution and delivery to the AESO) the AESO Security Documents, together with such resolutions, officer's certificates, solicitor's opinions and other documentation which the AESO may reasonably require in connection therewith, which resolutions, officer's

certificates, solicitor's opinions and other documentation shall be in a form satisfactory to the AESO acting reasonably.

- (b) Such AESO Security Documents shall, following execution and delivery to the AESO, be maintained for the duration of the Term of this Agreement.

### **10.3 Conditions Precedent to AESO's Monthly Support Payment Obligations**

Notwithstanding anything to the contrary contained herein, AESO's obligations to make Monthly Support Payments to the Generator hereunder shall be subject to the Generator's satisfaction of and ongoing compliance with the following conditions precedent:

- (a) the Generator shall exclusively hold all right, title and interest in and to the Assets, free and clear of all encumbrances or security interests other than encumbrances permitted pursuant to the Secured Lender's Security Agreements and the AESO Security Documents;
- (b) the Generator and the Sponsors, as applicable, shall have executed and delivered to the AESO the AESO Security Documents;
- (c) the Generator shall not have alienated or disposed of its interest in the Assets except in accordance with the procedures and conditions set forth in the AESO Security Documents; and
- (d) the Generator shall at all times during the Term be in compliance with the AESO Security Documents.

## **ARTICLE 11 FORCE MAJEURE**

### **11.1 Effect of Invoking Force Majeure**

- (a) If, by reason of Force Majeure:
  - (i) the Generator is wholly or substantially prevented from operating or maintaining the Facility in accordance with any of its obligations set forth in Section 3.1; or
  - (ii) either Party is wholly or partially prevented from commencing or continuing performance of, or from complying with, any of its other obligations (other than payment obligations) hereunder, including the Generator being unable to achieve Commercial Operation by the Target COD;

then the Party so affected by Force Majeure shall be excused and relieved from performing or complying with such obligations (other than payment obligations)

and shall not be liable for any liabilities, damages, losses (including Indemnifiable Losses in the case of any Force Majeure affecting or invoked by the Generator), payments, costs, expenses to, or incurred by, the other Party in respect of or relating to such Force Majeure and such Party's failure to so perform or comply during the continuance and to the extent of the inability so caused from and after the invocation of Force Majeure.

- (b) A Party shall be deemed to have invoked Force Majeure with effect from the commencement of the event or circumstances constituting Force Majeure when that Party gives to the other Party prompt written notice in substantially the Prescribed Form, provided that such notice shall in all events be given within twenty (20) Business Days of the later of (i) the commencement of the event or circumstances constituting Force Majeure, or (ii) the date that the Party invoking Force Majeure knew or ought to have known that the event or circumstances constituting Force Majeure could have a material adverse effect on the development or operation of the Facility. If the effect of the Force Majeure and full particulars of the cause thereof cannot be reasonably determined within such twenty (20) Business Day period, the Party invoking Force Majeure shall be allowed a further ten (10) Business Days (or such longer period as the Parties may agree in writing) to provide such full particulars in substantially the Prescribed Form to the other Party. The Party invoking Force Majeure shall in all cases have the burden of proof to establish both the existence and the effect of the event of Force Majeure.
- (c) The Party invoking Force Majeure shall use Commercially Reasonable Efforts to remedy the situation and remove, so far as possible and with reasonable dispatch, the Force Majeure, but settlement of strikes, lockouts and other labour disturbances shall be wholly within the discretion of the Party involved. Upon the request of the AESO, the Generator shall: (i) provide to the AESO information and documentation confirming to the satisfaction of the AESO, acting reasonably, that such Commercially Reasonable Efforts were used, and (ii) represent and warrant that such information and documentation are true, complete and accurate in all material respects and that no material information is omitted that would make such information or documentation misleading or inaccurate.
- (d) The Party invoking Force Majeure shall provide the other Party with any new information or other documentation that is receives or becomes aware of from time to time with respect to the event of Force Majeure (including any information or documentation that renders previously provided information materially inaccurate or misleading). In particular, the Party invoking Force Majeure shall give prompt written notice to the other Party as soon as the event of Force Majeure has ceased or terminated, and of the time when performance of its affected obligations can be resumed.
- (e) A Party may make multiple but not duplicative claims in respect of the occurrence of an event of Force Majeure, and both Parties may make claims in respect of the same event of Force Majeure.

- (f) Nothing in this Section 11.1 shall relieve a Party of its obligations to make payments of any amounts that were due and owing before the occurrence of the Force Majeure or that otherwise may become due and payable during any period of Force Majeure.
- (g) If an event of Force Majeure causes the Generator to: (i) delay achieving or completing any of the Key Development Milestones, or (ii) to not achieve Commercial Operation by Target COD, then each of the Commencement of Construction Longstop Date, Target COD, and the COD Longstop Date shall be extended for such reasonable period of delay directly resulting from such Force Majeure event. After the Commercial Operation Date, an event of Force Majeure shall not extend the Term.
- (h) Where a Generator has invoked Force Majeure as provided in Section 11.1(b) and where such period or periods of Force Majeure (as determined with respect to each such period from the date the Force Majeure was deemed to be invoked under Section 11.1(b) until the termination of the event or circumstances constituting Force Majeure as provided in Section 11.1(d)) were in effect (whether prior to or during the Support Period) for not less than:
  - (i) eighteen (18) months in the case of a single Force Majeure; or
  - (ii) an aggregate of twenty-four (24) months in the case of more than one such period;

then notwithstanding anything in this Agreement to the contrary, either Party may terminate this Agreement upon notice to the other Party and without any costs or payments of any kind to either Party, and all Completion and Performance Security shall be returned or refunded (as applicable) to the Generator forthwith or in the case of security in the form of a letter of credit, returned for cancellation.

## 11.2 Exclusions

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

- (a) if and to the extent the Party seeking to invoke Force Majeure or its Affiliate has caused the applicable event of Force Majeure by its fault or negligence, or in connection with its breach of, or failure to comply with, this Agreement or any Applicable Law;
- (b) if and to the extent the Party is seeking to invoke Force Majeure as a result of the failure of performance of any other third party that is or was a direct or indirect vendor, materials supplier, service provider or other supplier, or customer, to or of such Party, unless such failure of performance of such third party was itself caused by an event that would be considered an event of Force Majeure under this

Agreement, in which case the provisions of this Article 11 shall apply to such event *mutatis mutandis*;

- (c) 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 the Facility;
- (d) if the Force Majeure was caused by a lack of funds or other financial cause including the inability of the Generator to secure financing;
- (e) if the Party invoking Force Majeure fails to comply with the notice provisions in Section 11.1(b) or Section 11.1(d);
- (f) if any proceeding is brought before any Court or the Commission by a third party seeking to repeal, cancel, revoke or terminate the Permit and Licence (Power Plant) or any other Governmental Approval issued in connection with the Project (an "**Appeal**"), unless such proceeding does not relate to any wrongful or negligent act on the part of the Generator or Generator Related Party, and the Generator is ordered by the Court or the Commission to cease construction of the Facility for the duration of the proceeding; or
- (g) if and to the extent the Generator is seeking to invoke Force Majeure because of its inability to obtain any consent, amendment or other approval of the AESO pursuant to the terms of this Agreement.

### **11.3 Definition of Force Majeure**

For the purposes of this Agreement, the term "**Force Majeure**" means any act, event, cause or condition that prevents a Party from performing its obligations (other than payment obligations) hereunder, but only if and to the extent such event or circumstance could not reasonably have been anticipated as at the Contract Date and is beyond the affected Party's reasonable control and was not caused, directly or indirectly, by the fault or negligence of the Party seeking to have its performance obligation excused thereby, and shall include:

- (a) acts of God, including extreme wind, ice, lightning or other storms, earthquakes, tornadoes, hurricanes, cyclones, landslides, drought, floods and washouts;
- (b) fires or explosions;
- (c) local, regional or national states of emergency;
- (d) strikes and other labour disputes (other than legal strikes or labour disputes by employees of (i) such Party, or (ii) a third party contractor of such Party, unless, in either such case, such strikes or other labour disputes are the result or part of a general industry strike or labour dispute);

- (e) delays or disruptions (including those arising from events of Force Majeure referred to in this Section 11.3) in the construction of any Connection Facilities that are required for the Facility to Deliver Electricity;
- (f) civil disobedience or disturbances, war (whether declared or not), acts of sabotage, blockades, insurrections, terrorism, revolution, riots or epidemics;
- (g) subject to Section 11.2(a), an order, judgment, legislation, ruling or direction by Governmental Authorities restraining a Party, provided that the affected Party has not applied for or assisted in the application for and has used Commercially Reasonable Efforts to oppose said order, judgment, legislation, ruling or direction;
- (h) an inability to obtain any permit, certificate, Approved Connection Proposal, licence or approval of any Governmental Authority, TFO or DFO required to perform or comply with any obligation under this Agreement (except where due to the failure to meet a requirement which was reasonably foreseeable), unless caused by the action or inaction of the Party invoking Force Majeure; and
- (i) an inability to secure the renewal or amendment of, any permit, certificate, licence or approval of any Governmental Authority, TFO or DFO required to perform or comply with any obligation under this Agreement, unless caused by the action or inaction of the Party invoking Force Majeure.

## **ARTICLE 12 CHANGE IN LAW**

### **12.1 Designated Change in Law**

If a Designated Change in Law occurs during the Term, then notwithstanding any other provision of this Agreement other than in this Section 12.1:

- (a) to the extent that and for so long as the Generator is prevented by such Designated Change in Law from performing any of its obligations under this Agreement, it is relieved from any liability or consequence hereunder arising from its inability to perform or delay in performing that obligation; provided that Generator undertakes its mitigation obligations in respect of such Designated Change in Law pursuant to Section 12.1(c);
- (b) if such Designated Change in Law wholly or substantially prevents Generator from commencing or continuing performance of any Critical Path Item in respect of the Project when required for an uninterrupted period of at least ten (10) days, then each of the Commencement of Construction Longstop Date, Target COD, and the COD Longstop Date shall, provided that such Designated Change in Law occurred prior to such date, be extended by the number of days that such Designated Change in Law is reasonably determined to have wholly or substantially prevented Generator from proceeding with such Critical Path Item;

- (c) Generator shall use all reasonable efforts and take all reasonable steps to mitigate the effect and consequences of any Designated Change in Law which prevents its performance to the fullest extent, and as soon as is reasonably possible, all in consultation with the AESO pursuant to Section 12.2 below;
- (d) if such Designated Change in Law results in a net change in the costs Generator would reasonably be expected to incur in respect of the development, construction or operation of the Facility during the Term or in a Change in Law Constraint, then notwithstanding any other provision hereunder:
  - (i) Generator shall use all reasonable efforts and take all reasonable steps to:
    - (A) in the case of a Designated Change in Law which affects Generator's costs, minimize any increase or maximize any decrease, as the case may be, to the fullest reasonable extent, in such costs; and
    - (B) in the case of a Designated Change in Law which result in a Change in Law Constraint, minimize the effects of such Change in Law Constraint;
  - all in consultation with the AESO pursuant to Section 12.2;
  - (ii) provided the applicable threshold (if any) in paragraph (iii) below or Section 7.4(a) is satisfied, payments under this Agreement shall be made or adjusted as necessary to keep the Generator in the same financial position in respect of this Agreement, after giving effect to such Designated Change in Law, as it would have been in had such Designated Change in Law not occurred, and such payments shall be determined, calculated and payable in accordance with paragraph (iii) below and Section 12.2;
  - (iii) in the case of:
    - (A) a Designated Change in Law which results in a net increase in Generator's reasonable capital costs which is determined to be at least fifty thousand dollars (\$50,000), the AESO shall, without duplication, pay the Generator the amount of such reasonable costs as a lump sum payment; provided that: (1) Generator undertakes its obligations in respect of such Designated Change in Law pursuant to Sections 12.1(c) and 12.1(d)(i); (2) such increased costs are not otherwise adjusted or provided for hereunder; (3) recovery of such increased costs is not specifically disallowed hereunder; (4) such increased costs shall exclude any claim by Generator for loss of profits, economic loss, or indirect or consequential losses; and (5) Generator provides appropriate documentation to the AESO establishing the amount of such increased costs;

- (B) a Designated Change in Law which results in a net increase in Generator's reasonable operating costs which is determined to be at least fifty thousand dollars (\$50,000), the AESO shall, without duplication, increase the Strike Price to reasonably account for such increased costs; provided that: (1) Generator undertakes its obligations in respect of such Designated Change in Law pursuant to Sections 12.1(c) and 12.1(d)(i); (2) such increased costs are not otherwise adjusted or provided for hereunder; (3) recovery of such increased costs is not specifically disallowed hereunder; (4) such increased costs shall exclude any claim by Generator for loss of profits, economic loss, or indirect or consequential losses; and (5) Generator provides appropriate documentation to the AESO establishing the amount of such increased costs;
- (C) a Designated Change in Law which results in a net decrease in Generator's costs, the AESO shall, without duplication, reduce the Strike Price on account of any decreased costs, which adjustments shall be calculated on the basis that: (1) Generator undertakes its obligations in respect of such Designated Change in Law pursuant to Sections 12.1(c) and 12.1(d)(i); (2) such decreased costs are not otherwise adjusted or provided for hereunder; and (3) Generator provides appropriate documentation to the AESO establishing the amount of such decreased costs; and
- (D) a Designated Change in Law which results in a Change in Law Constraint, the AESO shall, on a monthly basis and in accordance with and subject to the provisions of Section 7.4, pay the Generator for the Forgone CIL Energy that the Generator establishes, to the reasonable satisfaction of the AESO, resulted from such Change in Law Constraint; provided that: (1) Generator undertakes its obligations in respect of such Designated Change in Law pursuant to Sections 12.1(c) and 12.1(d)(i); (2) such Forgone CIL Energy is not otherwise provided for or accounted for hereunder; (3) recovery in respect of such Forgone CIL Energy is not specifically disallowed hereunder; and (4) Generator provides appropriate documentation to the AESO establishing the Change in Law Constraint Limit; and provided further that if the effects of such Change in Law Constraint can be mitigated, remedied or reduced by a capital improvement to the Facility, the AESO shall have the option (but not the obligation) to provide written notice to the Generator requiring it make such capital improvement to the Facility, in which case, the reasonable costs of such capital improvement shall be for the account of AESO.

## 12.2 Procedure on Designated Change in Law

- (a) Generator may, within twenty (20) Business Days following the date of a Designated Change in Law which it concludes may or is likely to result in the circumstances described Sections 12.1(a), (b) or (d), give the AESO notice of the occurrence of such Designated Change in Law, which notice shall contain: (i) reasonably detailed information and supporting documentation in respect of such Designated Change in Law, (ii) reasonable details of the anticipated effect of such Designated Change in Law upon performance of its obligations hereunder, the expected increase or decrease in the reasonable costs incurred by it or the expected Forgone Energy that will result from such Designated Change in Law, as the case may be; and (iii) the mitigation steps which it anticipates undertaking in respect of such event pursuant to its obligations in Sections 12.1(c) and 12.1(d)(i) provided that if Generator fails to provide notice to the AESO of any Designated Change in Law in accordance with this Section 12.2(a), Generator shall be disqualified from and shall not be entitled to any of the relief, extensions or payments described in Section 12.1. Provided further that the Generator must provide, within the period specified in this Section 12.2(a), such a notice to the AESO in respect of any Designated Change in Law which the Generator concludes may or is likely to result in the circumstances described in Section 12.1(d)(iii)(C). The Generator shall also provide such a notice to the AESO in respect of any Designated Change in Law designated by the AESO in a written notice to the Generator.
- (b) The Generator shall have the burden of proof to establish the existence and the effect of the Designated Change in Law pursuant to this Section 12.2.
- (c) After giving notice pursuant to Section 12.2(a), Generator shall provide the AESO with any new information or other documentation that it receives or becomes aware of from time to time in respect of such Designated Change in Law (including any information or documentation that renders previously provided information or documentation materially inaccurate or misleading). In particular, if a Designated Change in Law has prevented it from wholly or substantially performing any of its obligations under this Agreement, Generator will notify the AESO as soon as performance of its affected obligations can be resumed.
- (d) Generator and the AESO may make multiple but not duplicative claims in respect of a Designated Change in Law.
- (e) Following Generator's delivery of a Designated Change in Law notice pursuant to Section 12.2(a), the Parties shall, on an ongoing basis, consult with each other relative to Generator's monitoring, remedying, mitigating or otherwise addressing of the effect and consequences of the Designated Change in Law. Generator shall, for such purposes, provide AESO with reasonable access on a timely basis to all documentation, reports, Persons, the Site, or other sites or other assets which in any way relate to, or are affected by or involved with, such Designated Change in Law.

- (f) Within thirty (30) Business Days following Generator's delivery of a Designated Change in Law notice pursuant to Section 12.2(a), Generator shall deliver a notice and proposal to the AESO which describes how it has met or is meeting its mitigation obligations pursuant to Sections 12.1(c) and 12.1(d)(i) in respect of such Designated Change in Law and which sets forth its proposal with respect to the extent and nature of any relief it is entitled to and the determination of net changes in costs, if any, pursuant to Section 12.1 based on the information it has in relation to such Designated Change in Law. If applicable, such notice shall also provide Generator's determination on the nature and extent of any Designated Change in Law Constraint resulting from such Designated Change in Law as well as Generator's reasonable estimate of the Forgone Energy which is expected to result from such Change in Law Constraint, recognizing that the onus shall be on the Generator to establish the existence of any Change in Law Constraints, Change in Law Constraint Limits and Forgone Energy Periods that result from the Designated Change in Law. A revised notice and proposal hereunder may be provided within twenty (20) Business Days following Generator receiving any additional information in relation to such Designated Change in Law which was not previously available and which has a material effect on the original proposal.
- (g) Whether such Designated Change in Law does or does not result in or is or is not expected to result in, a net change in the reasonable costs incurred by Generator in performing its obligations in respect of the Project pursuant to this Agreement or in any Change in Law Constraint, the AESO, acting reasonably and within twenty (20) Business Days of receiving the notice and proposal referenced in Section 12.2(f), shall provide Generator with notice of its acceptance or rejection of same, with reasonably detailed information with respect to the rationale for any rejection. If such notice and proposal is accepted, Generator shall be entitled to relief of its obligations to the extent claimed therein, the net change in reasonable costs set forth therein and payments for Forgone Energy (as set out in Section 12.1(d)(iii)(D)) in respect of any Change in Law Constraint set forth therein (calculated either in accordance with Section 7.2(b)(ii) or in accordance with any alternative methodology set forth in such notice and proposal and agreed to by the AESO). If, however, such notice and proposal is rejected:
- (i) Generator may deliver an alternate notice and proposal pursuant to Section 12.2(f), which provision shall apply *mutatis mutandis*;
  - (ii) AESO may propose amendments to such notice and proposal; and
  - (iii) either Party may (regardless of whether Generator delivers an alternate notice and proposal as contemplated in sub-section (i) above) refer any dispute between the Parties in respect of such notice and proposal for resolution in accordance with the dispute resolution procedures set forth in Article 19, including any dispute as to:
    - (A) the occurrence of any Designated Change in Law;

- (B) whether Generator has complied with (or is complying with) its mitigation obligations pursuant to Sections 12.1(c) and 12.1(d)(i) and the effect thereof;
- (C) the extent and nature of the relief Generator is entitled to pursuant to Section 12.1;
- (D) whether the Designated Change in Law results or is expected to result in a net change in the reasonable costs incurred by Generator in performing its obligations pursuant to this Agreement; and
- (E) whether the Designated Change in Law results in a Change in Law Constraint.

### **ARTICLE 13 REPRESENTATIONS AND WARRANTIES**

#### **13.1 Representations of the Generator**

*[Note to Draft: Update (a) and (b) following selection of Generator to reflect proper corporate entity.]*

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

- (a) the Generator is a [●] and Generator is duly formed and validly existing under the laws of the jurisdiction of its formation or incorporation; and if Generator is a limited partnership, Generator's general partner is duly organized, validly existing, in good standing, and registered and otherwise lawfully authorized to do business under the laws of Alberta; and if Generator is a partnership, Generator's partners are duly organized, validly existing, in good standing, and registered and otherwise lawfully authorized to do business under the laws of Alberta;
- (b) the Generator is registered or otherwise qualified to carry on business in the Province of Alberta and has the requisite power to enter into this Agreement and to perform its obligations hereunder and is a Special Purpose Vehicle that has not carried on business other than directly in relation to, in anticipation of, and for the purposes of this Agreement; and if Generator is a limited partnership, Generator's general partner has the capacity, power and authority as the general partner of Generator to enter into this Agreement for and on behalf of Generator and to perform its obligations hereunder; and if Generator is a partnership, Generator's partner executing this Agreement has the capacity, power and authority as a partner of Generator to enter into this Agreement for and on behalf of Generator and to perform its obligations hereunder;
- (c) this Agreement has been duly authorized, executed, and delivered by the Generator and is a valid and binding obligation of the Generator enforceable in

accordance with its terms except as such enforcement may be limited by bankruptcy, insolvency and other laws affecting the rights of creditors generally and except that equitable remedies may only be granted in the discretion of a Court;

- (d) the execution and delivery of this Agreement by or on behalf of the Generator, and the consummation of the transactions contemplated by this Agreement will not result in the breach or violation of any of the provisions of, or constitute a default under, or conflict with or cause the termination, cancellation or acceleration of any material obligation of the Generator under:
  - (i) any contract or obligation to which the Generator is a party or by which it or its assets may be bound, except for such defaults or conflicts as to which requisite waivers or consents have been obtained;
  - (ii) the articles, by-laws or other constating documents, or resolutions of the directors or shareholders of the Generator;
  - (iii) any judgment, decree, order or award of any Governmental Authority or arbitrator;
  - (iv) any licence, permit, approval, consent or authorization held by the Generator; or
  - (v) any Applicable Law;
- (e) there are no bankruptcy, insolvency, reorganization, receivership, seizure, realization, arrangement or other similar proceedings pending against or being contemplated by the Generator, to the knowledge of the Generator, threatened against the Generator;
- (f) there are no actions, suits, proceedings, judgments, rulings or orders by or before any Governmental Authority or arbitrator, or, to the knowledge of the Generator, threatened against the Generator, that could have a Material Adverse Effect on the Generator;
- (g) all statements, specifications, data, confirmations, representations and information that have been set out in the Proposal and supporting evidence and documentation are complete and accurate in all material respects and are hereby restated and reaffirmed by the Generator as representations made to the AESO hereunder and there is no material information omitted from the Proposal or supporting evidence or documentation which would make the information in the Proposal or supporting evidence or documentation misleading or inaccurate;
- (h) the Generator has, to the best of its knowledge after due investigation and inquiry, either in the Proposal or in formal communications with the AESO under the REP Round 1 RFQ or REP Round 1 RFP, made plain and true disclosure to the AESO of all facts and circumstances regarding the Generator, its intended

Subcontractors, and the financing of the Project that might reasonably be material to the willingness of the AESO to enter into this Agreement with the Generator having regard to the information requested by the AESO in the REP Round 1 RFQ or REP Round 1 RFP;

- (i) all requirements for the Generator to make any filing, declaration or registration with, give any notice to or obtain any licence, permit, certificate, registration, authorization, consent or approval of, any Governmental Authority as a condition to entering into this Agreement have been satisfied;
- (j) the Generator has no reason to believe, acting reasonably, that Commercial Operation may not be achieved by the Target COD;
- (k) the Generator is in compliance with all Applicable Laws, other than acts of non-compliance which, individually or in the aggregate, would not have a Material Adverse Effect on the Generator or the Project;
- (l) unless the Generator has otherwise notified the AESO pursuant to Section 8.3(b), the Generator is not a non-resident of Canada for the purposes of the ITA;
- (m) the Generator and the Facility comply with the Eligibility Criteria;
- (n) the Generator:
  - (i) has made all due inquiry into the requirements for obtaining the Permit and Licence (Power Plant) and any other applicable Governmental Approvals, including any applicable environmental approvals or registrations; and
  - (ii) is aware, acknowledges and agrees that it shall only be entitled to Force Majeure relief in respect of failure to fulfill any such requirements that were reasonably unforeseeable;
- (o) the Generator has not, in respect of the Facility, received any funding, incentive or other support payments under any environmental program;
- (p) in respect of the REP Round 1 RFQ process and REP Round 1 RFP process, the Generator has not had an unfair advantage or engaged in conduct, directly or indirectly, that may have given it an unfair advantage, including but not limited to
  - (i) having or having access to information that is confidential to the AESO or the Government of Alberta and not available to other participants in such processes;
  - (ii) communicating with any Person with a view to influencing preferred treatment; or
  - (iii) engaging in conduct that compromises or could be seen to compromise the integrity of the open and competitive REP Round 1 RFQ process or REP Round 1 RFP process or which could render such processes non-competitive or unfair;

- (q) all direct and indirect equity interests in Generator at the time of execution and delivery of this Agreement have been disclosed to the AESO;
- (r) the Generator is relying only on its own investigation and due diligence in relation to the risks assumed by it under the provisions of this Agreement, and is not relying on any information received from or representation made by the AESO, with the exception only of the AESO's representations in Section 13.2;
- (s) in the last five (5) years, neither Generator nor any Generator Related Party has, directly or indirectly:
  - (i) made, or offered or promised to make, any payment;
  - (ii) lent or given money or anything of value, or offered or promised to lend or give money or anything of value; or
  - (iii) authorized any such actions, offers or promises;

to the AESO, any AESO Related Party, or any other Person, for the use or benefit of such party as consideration for any act or omission of such party or for influencing the decision of such party, in either case with respect to the performance of its duties relating to the evaluation of the Proposal, the selection of Generator or the Project, or otherwise in violation of Applicable Law; and
- (t) throughout the term of this Agreement, neither Generator nor any Generator Related Party shall undertake, do or make any of the actions, offers, promises or authorizations of the type referenced in sub-section (s) above and Generator and all Generator Related Parties shall comply with Generator's anti-corruption policy, or the anti-corruption policy of a Sponsor that is applicable to Generator.

In addition, the Generator shall, upon delivery of each of the Quarterly Progress Reports required to be provided to the AESO pursuant to Section 4.3(a), represent in writing that each of the foregoing statements set out in Section 13.1(a) to (m), inclusive, and Sections 13.1(o), (p), (s) and (t), continues to be true or, if any such statements are no longer true, then the Generator shall provide to the AESO a qualified representation with respect to such statement. Such qualified representation provided by the Generator to the AESO shall be subject, however, to the rights of the AESO in Section 16.1(e) to require the Generator to cure or remove any such qualification with respect to such statement.

### **13.2 Representations of the AESO**

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

- (a) the AESO is a statutory corporation under the EUA, and is validly existing, and otherwise lawfully authorized to do business under the laws of Alberta and has all

requisite capacity, power and authority to enter into and perform its obligations under this Agreement; and

- (b) this Agreement has been duly authorized on behalf of the AESO, and upon execution and delivery constitutes a legal, valid and binding obligation of the AESO.

## **ARTICLE 14 LIABILITY AND INDEMNIFICATION**

### **14.1 Exclusion of Consequential Damages**

Notwithstanding anything contained herein to the contrary, neither Party will be liable under this Agreement or under any cause of action relating to the subject matter of this Agreement for any special, indirect, incidental, punitive, exemplary or consequential damages, including loss of profits (save and except as provided in Sections 5.1(c), 6.11 and 12.1(d) and Article 7), loss of use of any property or claims of customers or contractors of the Parties for any such damages.

### **14.2 Liquidated Damages**

Nothing in this Article 14 shall reduce a Party's claim for liquidated damages pursuant to Section 16.2. The Generator acknowledges and agrees that it would be extremely difficult and impracticable to determine precisely the amount of actual damages that would be suffered by the AESO and the Government of Alberta as result of a failure by the Generator to meet its obligations under this Agreement. The Generator further acknowledges and agrees that the liquidated damages set forth in this Agreement are a fair and reasonable approximation of the amount of actual damages that would be suffered by the AESO and the Government of Alberta as a result of a failure by the Generator to meet its obligations under this Agreement, and does not constitute a penalty.

### **14.3 AESO Indemnification**

The Generator shall indemnify, defend and hold the AESO, the Government of Alberta, the members of the Government of Alberta's Executive Council and their respective Affiliates, and each of the foregoing Persons' respective officers, directors, members, employees, shareholders, consultants, advisors, contractors (and their employees and Subcontractors), agents and representatives (collectively, the "**Indemnitees**") harmless from and against any and all Claims, losses, damages, liabilities, penalties, obligations, payments, costs and expenses and accrued interest thereon (including the costs and expenses of, and accrued interest on, any and all actions, suits, proceedings for personal injury (including death) or property damage, assessments, judgments, settlements and compromises relating thereto and reasonable lawyers' fees and reasonable disbursements in connection therewith) (each, an "**Indemnifiable Loss**"), asserted against or suffered by the Indemnitees relating to, in connection with, resulting from, or arising out of: (a) any occurrence or event relating to the Facility, except to the extent that any injury or damage is attributable to the negligence or wilful misconduct of the Indemnitees or the failure of

the Indemnitees to comply with Applicable Law; (b) any breach by the Generator of any representations, warranties and covenants contained in this Agreement, except to the extent that any injury or damage is attributable to the negligence or wilful misconduct of the Indemnitees, and (c) a discharge of any contaminant into the natural environment, at or related to, the Facility and any fines or orders of any kind that may be levied or made in connection therewith pursuant to Applicable Law, except to the degree that such discharge shall have been due to the negligence or wilful misconduct of the Indemnitees. For greater certainty, in the event of contributory negligence or other fault of the Indemnitees, then such Indemnitees shall not be indemnified hereunder in the proportion that the Indemnitees' negligence or other fault contributed to any Indemnifiable Loss.

#### **14.4 Defence of Claims**

- (a) Promptly after receipt by the Indemnitees of any Claim or notice of the commencement of any action, administrative or legal proceeding, or investigation as to which the indemnity provided for in Section 14.3 may apply, the AESO shall notify the Generator in writing of such fact. The Generator shall assume the defence thereof with counsel designated by the Generator and satisfactory to the affected Indemnitees, acting reasonably; provided, however, that if the defendants in any such action include both the Indemnitees and the Generator and the Indemnitees shall have reasonably concluded that there may be legal defences available to them which are different from or additional to, or inconsistent with, those available to the Generator, the Indemnitees shall have the right to select separate counsel satisfactory to the Generator acting reasonably (at no additional cost to the Indemnitees) to participate in the defence of such action on behalf of the Indemnitees. The Generator shall promptly confirm that it is assuming the defence of the Indemnitees by providing written notice to the Indemnitees. Such notice shall be provided no later than five (5) Business Days prior to the deadline for responding to any Claim relating to any Indemnifiable Loss.
- (b) Should any of the Indemnitees be entitled to indemnification under Section 14.3 as a result of a Claim by a third-party, and the Generator fails to assume the defence of such Claim (which failure shall be assumed if the Generator fails to provide the notice prescribed by Section 14.4(a)), the Indemnitees shall, at the expense of the Generator, contest (or, with the prior written consent of the Generator, settle) such Claim, provided that no such contest need be made and settlement or full payment of any such Claim may be made without consent of the Generator (with the Generator remaining obligated to indemnify the Indemnitees under Section 14.3), if, in the written opinion of an independent third-party counsel chosen by the Contract Representatives, such Claim is meritorious. If the Generator is obligated to indemnify any Indemnitees under Section 14.3, the amount owing to the Indemnitees will be the amount of such Indemnitees' actual out-of-pocket loss net of any insurance proceeds received or other recovery.

## **ARTICLE 15 TERM**

### **15.1 Term**

- (a) This Agreement shall become effective upon the Contract Date.
- (b) The term of this Agreement (the "**Term**") means that period of time which commences upon execution of this Agreement and continues until the end of the Support Period, subject to any early termination in accordance with the provisions hereof.

## **ARTICLE 16 TERMINATION AND DEFAULT**

### **16.1 Events of Default by the Generator**

Each of the following will constitute an event of default by the Generator (each, a "**Generator Event of Default**"):

- (a) the Generator fails to make any payment when due (except to the extent that such amount is disputed in good faith through the dispute resolution procedure set out in Article 19) and/or maintain the Completion and Performance Security as required under this Agreement, if such failure is not remedied within fifteen (15) Business Days after written notice of such failure from the AESO;
- (b) the Generator fails to comply with any Stop Work Notice, if such failure is not remedied within three (3) Business Days after written notice of such failure from the AESO;
- (c) The Generator fails to perform or is in default of any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Generator Event of Default) if such failure is not remedied within fifteen (15) Business Days after written notice of such failure from the AESO; provided that such cure period shall be extended by a further fifteen (15) Business Days if the Generator is diligently remedying such failure and such failure is capable of being cured during such extended cure period;
- (d) the Generator fails or ceases to hold a valid Governmental Approval where such failure or cessation results in, or could be reasonably expected to result in, a Material Adverse Effect on the Generator or a material adverse effect on the Facility and is not remedied within thirty (30) Business Days after receipt by the Generator of written notice of such failure or cessation from the AESO; provided that such cure period shall be extended by a further thirty (30) Business Days if the Generator is diligently remedying such failure or cessation and such failure or cessation is capable of being corrected during such extended cure period;

- (e) any representation made by the Generator in this Agreement, excepting only the representations made in Sections 13.1(n), 13.1(p), 13.1(s) and 13.1(t), is not true or correct in any material respect when made and is not made true or correct in all material respects within thirty (30) Business Days after receipt by the Generator of written notice of such fact from the AESO; provided that such cure period shall be extended by a further thirty (30) Business Days if the Generator, in the reasonable opinion of the AESO, is diligently correcting such breach and such breach is capable of being corrected during such extended cure period;
- (f) an effective resolution is passed or documents are filed in an office of public record in respect of, or a judgment or order is issued by a Court ordering, the dissolution, termination of existence, liquidation or winding up of the Generator, unless such filed documents are immediately revoked or otherwise rendered inapplicable, or unless there has been a permitted and valid assignment of this Agreement by the Generator under this Agreement to a Person which is not dissolving, terminating its existence, liquidating or winding up and such Person has assumed all of the Generator's obligations under this Agreement;
- (g) the Generator amalgamates with, or merges with or into, or transfers the Facility or all or substantially all of its assets to, another Person unless, at the time of such amalgamation, merger or transfer, there has been a permitted and valid assignment hereof by the Generator under this Agreement to the resulting, surviving or transferee Person and such Person has assumed all of the Generator's obligations under this Agreement;
- (h) a receiver, manager, receiver-manager, liquidator, monitor or trustee in bankruptcy of the Generator or of any of the Generator's property is appointed by a Governmental Authority or pursuant to the terms of a debenture or a similar instrument, and such receiver, manager, receiver-manager, liquidator, monitor or trustee in bankruptcy is not discharged or such appointment is not revoked or withdrawn within thirty (30) Business Days of the appointment; by decree, judgment or order of a Governmental Authority, the Generator is adjudicated bankrupt or insolvent, and such decree, judgment or order continues undischarged and unstayed for a period of thirty (30) Business Days after the entry thereof; or if any material part of the property of Generator is seized, attached, or sequestered, and such seizure, attachment, or sequestering is not successfully contested by Generator within thirty (30) Business Days; or a petition, proceeding or filing is made against the Generator seeking to have the Generator declared bankrupt or insolvent, or seeking adjustment or composition of any of its debts pursuant to the provisions of any Insolvency Legislation, and such petition, proceeding or filing is not dismissed or withdrawn within thirty (30) Business Days;
- (i) the Generator makes an assignment for the benefit of its creditors generally under any Insolvency Legislation, or consents to the appointment of a receiver, manager, receiver-manager, monitor, trustee in bankruptcy, or liquidator for all or part of its property, or files a petition or proposal to declare bankruptcy or to reorganize pursuant to the provisions of any Insolvency Legislation;

- (j) the Generator fails to own or lease the Facility during the Term;
- (k) the actual, installed, nameplate capacity of the Facility, as confirmed by the Independent Engineer, exceeds the Contract Capacity;
- (l) the Generator has permitted, undertaken, contracted for, or otherwise made a Facility Amendment that has not first been consented to by the AESO pursuant to this Agreement;
- (m) the Generator fails to achieve Commencement of Construction on or before the Commencement of Construction Longstop Date;
- (n) the Generator fails to achieve Commercial Operation on or before the COD Longstop Date;
- (o) the representation in Section 13.1(p) is not true and correct in all material respects;
- (p) if at any time the conduct of Generator or any Generator Related Party in relation to the Proposal, Generator's obligations under this Agreement, or otherwise in relation to the Project results in any criminal conviction, in the representation in Section 13.1(s) being untrue or incorrect in any material respect, or in any breach of the representation, warranty or obligation set forth in Section 13.1(t);
- (q) the Generator undergoes a change of Control in violation of Section 20.2;
- (r) the Generator assigns this Agreement or any rights, interests or obligations under this Agreement in violation of Section 20.1; and
- (s) the Generator carries on any business in violation of Section 4.4(a) or incurs indebtedness in violation of Section 4.4(b) and does not cease to carry on such business or remedy such violation within two (2) Business Days of receiving notice to do so from the AESO.

## **16.2 Remedies of the AESO**

- (a) If any Generator Event of Default (other than a Generator Event of Default relating to the Generator referred to in Section 16.1(f), Section 16.1(h), and Section 16.1(i)) occurs and is continuing, the AESO may elect to terminate this Agreement by providing written notice of termination to the Generator upon or within a reasonable time of the AESO becoming aware of the occurrence of such Generator Event of Default.

- (b) If a Generator Event of Default occurs and is continuing, the AESO may, in addition to the remedy set out in Section 16.2(a):
  - (i) set off any payments due to the Generator against any amounts payable by the Generator to the AESO including, at the AESO's option, the amount of any Completion and Performance Security to be provided to the AESO pursuant to Section 10.1;
  - (ii) draw on all or part of the Completion and Performance Security with respect to any amount payable by the Generator to the AESO, and if the remedy in Section 16.2(a) has not been exercised, require the Generator to replace such drawn security with new security; and
  - (iii) implement or avail itself of any remedy available to it under the AESO Security Documents.
- (c) Notwithstanding Section 16.2(a) and Section 16.2(b), upon the occurrence of a Generator Event of Default relating to the Generator referred to in Section 16.1(f), Section 16.1(h), or Section 16.1(i), this Agreement shall automatically terminate without notice, act or formality, effective immediately before the occurrence of such Generator Event of Default, in which case, for certainty, the Secured Lender shall have the rights available to it under Section 17.2(g).
- (d) If the AESO terminates this Agreement pursuant to Section 16.2(a) or this Agreement is terminated pursuant to Section 16.2(c),
  - (i) if the Termination Date precedes the Commercial Operation Date, the AESO may, in its sole and absolute discretion, require the Generator to pay to the AESO, as liquidated damages and not as a penalty, a sum equal to the dollar amount of all Completion and Performance Security required to be provided by the Generator as of the Termination Date pursuant to Section 10.1, and the AESO shall be entitled to draw upon any portion of such Completion and Performance Security which is held by it, and pursue a Claim for damages with respect to any portion of such Completion and Performance Security that the Generator was required to (but did not) provide to the AESO as of the Termination Date pursuant to Section 10.1; and in such circumstances, notwithstanding Section 16.5, the AESO's remedies against the Generator in respect of the termination of the Agreement shall be limited to the amount of liquidated damages payable by the Generator pursuant to this Section 16.2(d)(i); and
  - (ii) if the Termination Date is on or after the Commercial Operation Date, the AESO shall be entitled to exercise all remedies available to it, at law or in equity, and a Market Termination Payment shall become payable from one Party to another, all as contemplated under Section 16.5.
- (e) Termination shall not relieve the Generator or the AESO of their respective responsibilities relating to the Delivered Electricity, Renewable Attributes, or

amounts payable under this Agreement, up to and including the Termination Date. The AESO shall be responsible only for the payment of amounts accruing under this Agreement up to and including the Termination Date. In addition to its other rights of set off available to it pursuant to this Agreement and at law, the AESO may hold back payment or set off its obligation to make such payment against any payments owed to it if the Generator fails to comply with its obligations on termination.

### **16.3 Events of Default by the AESO**

Each of the following will constitute an event of default by the AESO (each an "**AESO Event of Default**"):

- (a) the AESO fails to make any payment under this Agreement when due (except to the extent that such amount is disputed in good faith through the dispute resolution procedure set out in Article 19), if such failure is not remedied within fifteen (15) Business Days after written notice of such failure from the Generator.
- (b) The AESO assigns this Agreement (other than an assignment made pursuant to Section 20.1(g)) without first obtaining the consent of the Generator, if such consent is required pursuant to this Agreement.

### **16.4 Termination by the Generator**

- (a) If any AESO Event of Default occurs and is continuing, then the Generator may elect to terminate this Agreement by providing written notice of termination to the AESO upon or within a reasonable time of the Generator becoming aware of the occurrence of the AESO Event of Default, and may set off any payments due to the AESO against any amounts payable by the AESO to the Generator. Where the Generator has so terminated this Agreement, the AESO shall return any Completion and Performance Security it holds within twenty (20) Business Days following receipt of a written request from the Generator.
- (b) If the Generator terminates this Agreement pursuant to Section 16.4(a):
  - (i) At any time prior to the Commercial Operation Date, such termination shall be deemed to be an Optional Termination, and the provisions of Section 16.6 shall apply, *mutatis mutandis*; and
  - (ii) at any time, on or after the Commercial Operation Date, the Generator shall be entitled to exercise all remedies available to it at law or in equity, and a Market Termination Payment shall become payable from one Party to the other, all as contemplated under Section 16.5

## 16.5 Remedies for Termination Non-Exclusive

- (a) The termination of this Agreement by either Party and the payment of all amounts then due and owing to the other Party as expressly provided in this Agreement shall not limit, waive or extinguish in any way the recourse of either Party to any other remedies available to it in relation to such termination at law, in equity or otherwise, nor shall such termination affect any rights that the Indemnitees may have pursuant to any indemnity given under this Agreement.
- (b) The Market Termination Payment referenced in Section 16.2(d)(ii) and 16.4(b)(ii), and definitions required with respect thereto, are set forth below:
  - (i) "**Remaining Quantity**" means that amount of Renewable Attributes that the Parties would have exchanged during the Remaining Support Period (assuming that termination hereunder had not occurred), which amount shall be deemed to be equal to the average quantity of Metered Energy for each pre-termination Settlement Period during the Support Period multiplied by the number of Settlement Periods in the Remaining Support Period (assuming that termination hereunder had not occurred).
  - (ii) "**Market Value**" means, with respect to the Transaction, the net present value (applying the [insert discount rate]) of the product of: (A) the Remaining Quantity multiplied by (B) the Market Price for a similar transaction taking into consideration the nature of the obligations and the Remaining Support Period (assuming that termination hereunder had not occurred), and assuming that such similar transaction is settled based on the exchange of Electricity through the Power Pool for the Pool Price.
  - (iii) "**Market Price**" means, with respect to the Transaction, an amount established for a replacement transaction, as determined in the reasonable discretion of the Non-Defaulting Party, which shall determine the Market Price by considering any or all of the following:
    - (A) quotations (either firm or indicative) for replacement contracts or transactions supplied by one or more third parties that may take into account the credit worthiness of the Non-Defaulting Party at the time the quotation is provided and the terms of any relevant documentation, including credit support documentation, between the Non-Defaulting Party and the third party providing the quotation;
    - (B) information consisting of relevant market data in respect of the Power Pool and the Pool Price supplied by one or more third parties, including, without limitation, relevant prices, correlations, or other relevant market data in respect of the Power Pool; or
    - (C) information of the types described in subsection (A) or subsection (B) above from internal sources if such information is of the type

used by the Non-Defaulting Party in the regular course of its business.

The Non-Defaulting Party will consider the quotations referenced in subsection (A) above or the relevant market data referenced in subsection (B) above, unless the Non-Defaulting Party reasonably believes in good faith that such quotations or relevant market data are not readily available or would not produce a commercially reasonable result. The Non-Defaulting Party shall not be required to enter into a replacement transaction in order to determine the Market Price.

- (iv) "**Contract Value**" means, with respect to the Transaction, the net present value (applying the [**insert discount rate**] ) of the product of: (A) the Remaining Quantity multiplied by (B) the Strike Price.
- (v) "**Market Termination Payment**" means the difference between the Market Value of the Transaction and the Contract Value of the Transaction as of the Termination Date. If the Market Value is greater than the Contract Value, then the Generator shall owe the AESO a Market Termination Payment in respect of such amount. If, however, the Market Value is less than the Contract Value, then the AESO shall owe the Generator a Market Termination Payment which is in equal to the absolute value of such amount.
- (vi) "**Non-Defaulting Party**" means the AESO, in the case of any termination of this Agreement pursuant to Section 16.2(a) or Section 16.2(c), or the Generator, in the case of any termination of this Agreement pursuant to Section 16.4(a).
- (vii) "**Remaining Support Period**" means the period commencing on the date of termination of this Agreement and ending upon the end of the Support Period.
- (viii) "**Transaction**" means the exchange of the Remaining Quantity of Renewable Attributes over the Remaining Support Period (assuming that termination hereunder had not occurred) on the terms set forth in this Agreement.

## 16.6 Optional Termination

- (a) Notwithstanding any other provision of this Agreement, at any time prior to the Commercial Operation Date and in the absolute and unfettered discretion of the AESO and for any reason whatsoever or for no reason at all, and at the convenience of the AESO, the AESO may elect to terminate this Agreement (an "**Optional Termination**") by providing thirty (30) days' written notice to the Generator. In the event of notice being given by the AESO in accordance with this Section 16.6(a), the AESO shall be entitled, in its sole and absolute

discretion, at any time before the expiration of such notice, to issue a Stop Work Notice whereupon the Generator shall forthwith permanently refrain from commencing and shall cease development, construction and operation of the Project. A Stop Work Notice may further require the Decommissioning of the Project or Facility and Site.

- (b) If an Optional Termination occurs after Commencement of Construction, the AESO shall (subject to and in accordance with this Section 16.6) pay to the Generator the Optional Termination Amount. Subject to Section 16.6(c), the "**Optional Termination Amount**" shall be an amount equal to the aggregate of:
- (i) any amounts accruing due and payable by the AESO to the Generator under this Agreement up to and including the Termination Date which have not yet been paid;
  - (ii) the Senior Debt Amount and the Senior Debt Makewhole as at the Termination Date;
  - (iii) the Junior Debt Amount and the Junior Debt Makewhole as at the Termination Date;
  - (iv) the Employee Termination Payments, Subcontractor Losses and Landowner Losses, each as at the Termination Date;
  - (v) the Equity Capital invested in the Project as at the Termination Date (to the extent that such Equity Capital has been applied by the Generator for the purposes of the Project), together with an amount which, if paid on the Termination Date and taken together with all dividends and other Distributions paid on or made in respect of the Equity Capital on or before the Termination Date and taking account of the actual timing of all such investments and payments (but excluding all amounts paid or payable, whether for costs, overhead, profit or otherwise, after the Termination Date), gives a nominal after-tax internal average annual rate of return to the Termination Date equal to the Equity IRR on such amount of Equity Capital;
  - (vi) subject to Section 16.6(e), all Decommissioning Costs; and
  - (vii) any reasonable costs properly incurred by Generator to wind up its operations solely in connection with the Project;

LESS the aggregate of the following, to the extent it is a positive amount, without double counting:

- (viii) to the extent that any of the following amounts relate to the Project or to the carrying out by the Generator of its obligations under this Agreement, all credit balances in any bank accounts held by or on behalf of the Generator on the Termination Date and the value of any insurance

proceeds due on the Termination Date to the Generator or to which the Generator would have been entitled had insurance been maintained in accordance with the requirements of this Agreement (except where such insurance proceeds are to be applied in reinstatement, restoration or replacement or, in the case of third-party legal liability, in satisfaction of the claim, demand, proceeding or liability) and any sums due and payable to the Generator from third parties as at the Termination Date other than sums wholly unrelated to the Project but excluding any claims under any subcontracts or claims against other third parties which have not been determined or have been determined but not yet paid, provided that, in such case, the Generator shall assign any such rights and claims under the applicable subcontracts or claims against other third parties (other than claims against third parties that are wholly unrelated to the Project and this Agreement) to the AESO and, at no additional cost to the Generator, provide the AESO with reasonable assistance in prosecuting such claims;

- (ix) the Fair Market Value as at the Termination Date of any other rights and assets of the Generator in respect of the Project or used principally for the purposes of carrying out its obligations under this Agreement less liabilities of the Generator properly incurred in relation to the Project or in carrying out its obligations under this Agreement as at the Termination Date, provided that no account shall be taken of any liabilities and obligations of the Generator arising out of:
  - (A) agreements or arrangements entered into by the Generator to the extent that such agreements or arrangements were not entered into in connection with the Generator's obligations in relation to the Project or in carrying out its obligations under this Agreement; or
  - (B) agreements or arrangements entered into by the Generator other than in the ordinary course of business and on commercial Arm's Length terms, save to the extent that liabilities and obligations would have arisen if such agreements or arrangements had been entered into in the ordinary course of business and on commercial Arm's Length terms; and
- (x) amounts which the AESO is entitled to set off pursuant to Section 21.5 or otherwise pursuant to the AESO's rights of set off under this Agreement,

provided that the Optional Termination Amount shall, notwithstanding any other provision of this Agreement, never be less than the aggregate of the Senior Debt Amount, the Senior Debt Makewhole, the Junior Debt Amount and the Junior Debt Makewhole.

- (c) The Optional Termination Amount and other amounts payable to Generator under this Section 16.6 shall be calculated without duplication or double counting of amounts. The Generator shall have a duty to take reasonable steps to mitigate any losses, liabilities, costs, expenses and damages incurred as a result of the Optional

Termination or payment of the Optional Termination Amount, and the Optional Termination Amount and other amounts payable to Generator under this Section 16.6 will not include compensation or payment for amounts which are attributable to a failure by the Generator to take such reasonable steps to mitigate. The duty to take reasonable steps to mitigate shall include a requirement that the Senior Debt Makewhole and Junior Debt Makewhole amounts payable if an Optional Termination occurs shall be calculated or determined on terms no more onerous to the Generator or its Affiliate than would apply if any other event of default or termination event occurs under the applicable Lending Agreement(s). Subject only to the preceding sentence, the duty to take reasonable steps to mitigate shall not otherwise cause the Optional Termination Amount to be less than the aggregate of the Senior Debt Amount, Senior Debt Makewhole, Junior Debt Amount and Junior Debt Makewhole or limit the obligations of the AESO under this Agreement to pay these sums as provided for in this Agreement.

- (d) As soon as practicable and in any event within thirty (30) days after the Termination Date the Generator shall give to the AESO an invoice for the Optional Termination Amount and sufficient supporting evidence, reasonably satisfactory to the AESO, justifying the amount of the Optional Termination Amount claimed by the Generator including a detailed breakdown of each of the individual amounts or items comprising such sum and demonstrating to the satisfaction of the AESO, acting reasonably, that all such amounts and items pertain directly to, or were incurred directly in connection with, the Project. Subject to Section 16.6(g), the AESO shall pay to the Generator within sixty (60) days of the Optional Termination Invoice Date (the "**Optional Termination Amount Payment Date**").
- (i) on account of the Optional Termination Amount, an amount equal to the greater of
- (A) 90% of the Optional Termination Amount; and
  - (B) the aggregate of the Senior Debt Amount, the Senior Debt Makewhole, the Junior Debt Amount and Junior Debt Makewhole;
- (ii) to the extent substantiated and verified to the satisfaction of the AESO, acting reasonably,
- (A) any amounts on account of interest, fees, costs and expenses provided for in the definitions of Senior Debt Amount, Senior Debt Makewhole, Junior Debt Amount and Junior Debt Makewhole accrued or incurred during the period from (but excluding) the Termination Date to (and including) the Optional Termination Amount Payment Date; and
  - (B) interest at a rate per annum equal to the Equity IRR on the portion, if any, of the Optional Termination Amount which exceeds the

aggregate of the Senior Debt Amount, the Senior Debt Makewhole, the Junior Debt Amount and Junior Debt Makewhole to the extent attributable to the Equity Capital and Equity IRR amounts included in the calculation of the Optional Termination Amount pursuant to Section 16.6(b)(v), from (but excluding) the Termination Date to (and including) the Optional Termination Amount Payment Date; and

- (iii) interest at the Prime Rate on the balance, if any, of the Optional Termination Amount from (but excluding) the Termination Date to (and including) the Optional Termination Amount Payment Date.

If any undisputed element of the Optional Termination Amount payable on the Optional Termination Amount Payment Date (or any such element which is disputed by the AESO but subsequently determined pursuant to Section 16.6(g) to be properly payable as part of the Optional Termination Amount payable on the Optional Termination Amount Payment Date) is not paid by the Optional Termination Amount Payment Date, the AESO shall pay to the Generator additional sums referenced in Sections 16.6(d)(ii) and (iii) applicable to such disputed or undisputed element which accrue or are incurred (or which would have accrued or been incurred had it not been paid from another source) during the period from (but excluding) the Optional Termination Amount Payment Date to (and including) the actual date on which such element is paid. Payment of the remaining balance of the Optional Termination Amount (the "**Optional Termination Amount Holdback Amount**"), if any, shall be subject to and made in accordance with Section 16.6(f). Interest shall accrue at a rate per annum equal to the Equity IRR on the Optional Termination Amount Holdback Amount from (but excluding) the Optional Termination Amount Payment Date to (and including) the Optional Termination Amount True Up Payment Date to the extent that the Optional Termination Amount Holdback is determined to be payable to the Generator pursuant to Section 16.6(f). Whether or not any Optional Termination Amount is payable by the AESO to the Generator, the AESO shall return any Completion and Performance Security held by the AESO to the Generator within twenty (20) Business Days following receipt of a written request therefor made by the Generator following the Termination Date, net of any amounts owing by the Generator to the AESO.

- (e) The inclusion of amounts for Decommissioning Costs in Section 16.6(b)(vi) or Section 16.6(f)(v) in the calculation or recalculation of Optional Termination Amount shall be conditional upon delivery prior to the Termination Date or Optional Termination Amount True-Up Date, as applicable, of a certificate of an Independent Engineer in the Prescribed Form acceptable to the AESO and confirming that Decommissioning is complete.
- (f) No later than thirty (30) days following the date that is eighteen (18) months after the Optional Termination Amount Payment Date (eighteen (18) months after the Optional Termination Amount Payment Date being, the "**Optional Termination**

**Amount True Up Date**"), the Generator shall provide verification and sufficient supporting evidence, reasonably satisfactory to the AESO, confirming the following:

- (i) amounts paid for Decommissioning Costs determined as at the Optional Termination Amount True Up Date;
- (ii) any reasonable costs properly incurred by Generator to wind up its operations solely in connection with the Project determined as at the Optional Termination Amount True Up Date; and
- (iii) any Equity Capital invested in the Project after the Termination Date up to the Optional Termination Amount True Up Date required for payment of Decommissioning Costs;

including a detailed breakdown of such amounts and demonstrating to the satisfaction of the AESO, acting reasonably, that such amounts were validly and properly incurred and have been paid. Subject to Section 16.6(g), the Optional Termination Amount will be recalculated on the same basis as determined following the Termination Date (including following resolution of any dispute pursuant to Section 16.6(g)) except that:

- (iv) the Equity Capital amount referred in clause (iii) of this subsection (f) together with interest at a rate per annum equal to the Equity IRR on such Equity Capital from (but excluding) the date invested to (and including) the Optional Termination Amount True Up Payment Date shall be included in the calculation in Section 16.6(b)(v);
- (v) subject to Section 16.6(e), the Decommissioning Cost amount referred to in clause (i) of this subsection (f) shall be included in Section 16.6(b)(vi); and
- (vi) any reasonable costs properly incurred by Generator to wind up its operations solely in connection with the Project referred to in clause (ii) of this subsection (f) shall be included in the calculation of Section 16.6(b)(vii).

Following such recalculation of the Optional Termination Amount, there shall be a true up of sums payable under this Section 16.6, including payments of the Optional Termination Amount Holdback Amount and accrued interest thereon, and the net sum owing or payable by the AESO or Generator to the Generator or AESO, as applicable (the "**Optional Termination Amount True Up Payment**") shall, subject to Section 16.6(g) and any set offs provided for in Section 21.5, be paid within sixty (60) days following the date the AESO confirms acceptance of the information and supporting evidence referenced above (the "**Optional Termination Amount True Up Payment Date**"). If any undisputed element of the Optional Termination Amount True Up Payment or any such element which is disputed but subsequently determined pursuant to Section 16.6(g) to be properly

payable as part of the Optional Termination Amount True Up Payment, the AESO or Generator, as applicable, shall pay interest on such element at the Prime Rate from (but excluding the Optional Termination Amount True Up Payment Date) to (and including) the actual date on which the element is paid. Except as provided in this Section 16.6(f), the AESO shall not be required to make any payments in respect of Decommissioning Costs following the Optional Termination Amount True Up Date.

- (g) Any dispute with respect to the calculation or determination of the Optional Termination Amount (including, without limitation, the validity or amount of the sum claimed or of any items which the Generator claims should be included in such sum) and any other amount payable to Generator under this Section 16.6 shall be determined in accordance with the procedures set out in Section 19.1 and Section 19.3. For greater certainty, if the Parties cannot reach a settlement following the Senior Conference, the dispute will proceed to mandatory and binding arbitration pursuant to Section 19.3;
- (h) Except as otherwise provided in Section 16.6(i), any Optional Termination Amount and other sums paid pursuant to this Section 16.6, or any amount paid by the AESO pursuant to Section 16.6(j), shall be in full and final settlement of any claims, demands and proceedings of the Generator and the AESO (including, without limitation, any claims, demands or proceedings with respect to any anticipated profits arising from the operation of the Facility after the Termination Date), and each shall be released from all liability to the other in relation to any breaches or other events leading to such termination of this Agreement, and the circumstances leading to such breach or termination, and the Generator and the AESO shall be precluded from exercising all other rights and remedies in respect of any such breach or termination whether in contract, tort, restitution, statute, at common law or otherwise.
- (i) Section 16.6(h) shall be without prejudice to:
  - (i) any liability of either Party to the other, including under the indemnities contained in this Agreement, that arose prior to the Termination Date (but not from the Optional Termination itself or the events leading to such Optional Termination) to the extent such liability has not already been set off pursuant to Section 21.5 (or otherwise pursuant to the AESO's rights of set off under the Agreement) or taken into account in determining or agreeing upon the Optional Termination Amount or other sums payable under this Section 16.6; or
  - (ii) any liabilities arising under or in respect of any breach by either Party of their obligations under Section 21.3 of this Agreement, or the Sections referred to therein, which did not lead to such Optional Termination and which arise or continue after the Termination Date.

- (j) If an Optional Termination occurs prior to Commencement of Construction, the Generator shall provide to the AESO a written statement documenting the Pre-Construction Development Costs incurred prior to the Termination Date. The AESO shall thereafter pay to the Generator as the sole and exclusive remedy for terminating this Agreement in accordance with this Section 16.6(j), an amount equal to the Pre-Construction Development Costs set out in such statement (less the fair market value of any Assets wholly or partially purchased or obtained with such Pre-Construction Development Costs; provided that such fair market value shall not in any event exceed the amount included in the Pre-Construction Development Costs in respect of such Assets), as confirmed by the AESO, acting reasonably, and in any case the amount shall not exceed the Pre Construction Liability Limit. For greater certainty, the Generator acknowledges that any costs it may incur in excess of the Pre-Construction Liability Limit prior to the date the AESO notifies the Generator in writing that all Key Development Milestones for the Project have been met pursuant to Section 2.2(d) are the exclusive responsibility of the Generator and shall not be included in any such payment.
- (k) Notwithstanding anything to the contrary in this Section 16.6, the AESO may, in accordance with Article 9, request additional information or documentation relating to any Optional Termination, the Optional Termination Amount, or the Optional Termination Amount True Up Payment. Where the Generator fails to provide such information or documentation to the satisfaction of the AESO, acting reasonably, the AESO may impose such assumptions as the AESO deems appropriate in the circumstances.
- (l) **"Optional Termination Invoice Date"** means the date that is the later of:
- (i) the date on which the AESO receives an invoice from the Generator for the Optional Termination Amount pursuant to Section 16.6(d); and
  - (ii) the date on which the AESO receives reasonably satisfactory supporting evidence as required pursuant to Section 16.6(d).

## **ARTICLE 17 LENDER'S RIGHTS**

### **17.1 Lender Security**

The Generator shall not, at any time, enter into a Lending Agreement which has a Sponsor as a counterparty thereto and which but for the participation of the Sponsor would be a Secured Lender's Security Agreement. Notwithstanding Section 20.1, the Generator, from time to time on or after the date of this Agreement shall have the right, at its cost, to enter into a Secured Lender's Security Agreement. For greater certainty, in the case of a deed of trust or similar instrument securing bonds or debentures where the trustee holds security on behalf of, or for the benefit of, other Lenders, only the trustee shall be entitled to exercise the rights and remedies under the Secured Lender's Security Agreement as the Secured Lender on behalf of the Lenders.

A Secured Lender's Security Agreement shall be based upon and subject to the following conditions:

- (a) A Secured Lender's Security Agreement may be made for any amounts and upon any terms (including terms of the loans, interest rates, payment terms and prepayment privileges or restrictions) as desired by the Generator, except as otherwise provided in this Agreement and the Lender Consent.
- (b) A Secured Lender's Security Agreement may not secure any indebtedness, liability or obligation of the Generator that is not related to the Facility or cover any real or personal property of the Generator not related to the Facility. For greater certainty, a Secured Lender's Security Agreement may cover shares or partnership interests in the capital of the Generator.
- (c) The AESO shall have no liability whatsoever for payment of the principal sum secured by any Secured Lender's Security Agreement, or any interest accrued thereon or any other sum secured thereby or accruing thereunder; and the Secured Lender shall not be entitled to seek any damages against the AESO for any or all of the same.
- (d) No Secured Lender's Security Agreement shall be recognized by the AESO nor have status as such hereunder in the enforcement of the AESO's rights and remedies provided in this Agreement or by Applicable Law, unless and until: (i) a copy of the original thereof and the registration details, if applicable, together with written notice of the address of the Secured Lender to which notices may be sent have been delivered to the AESO by the Generator or the Secured Lender, and (ii) such Secured Lender has entered into the Lender Consent as set forth in Section 17.3; and in the event of an assignment of such Secured Lender's Security Agreement, such assignment shall not be recognized by the AESO nor shall the assignee thereunder have the status of a Secured Lender hereunder unless and until: (iii) a copy thereof and the registration details, if applicable, together with written notice of the address of the assignee thereof to which notices may be sent, have been delivered to the AESO by the Generator or the Secured Lender, and (iv) such assignee has entered into the Lender Consent as set forth in Section 17.3. For certainty, each Secured Lender who has entered into the Lender Consent and has complied with this Section 17.1(d) is referred to as an "**AESO Recognized Lender**".
- (e) If the Generator is in default under or pursuant to the Secured Lender's Security Agreement and the Secured Lender intends to exercise any rights afforded to the Secured Lender under this Agreement, then the Secured Lender shall give written notice of such default to the AESO at least ten (10) Business Days prior to exercising any such rights.
- (f) Any Secured Lender's Security Agreement permitted hereunder may secure two (2) or more separate debts, liabilities or obligations in favour of two (2) or more separate Secured Lenders, provided that such Secured Lender's Security

Agreement complies with the provisions of this Article 17 and the Lender Consent.

- (g) Any number of permitted Secured Lender's Security Agreements may be outstanding at any one time, provided that each such Secured Lender's Security Agreement complies with the provisions of this Article 17 and the Lender Consent.
- (h) All rights acquired by a Secured Lender under any Secured Lender's Security Agreement shall be subject to all of the provisions of this Agreement and the Lender Consent, including the restrictions on assignment contained herein. While any Secured Lender's Security Agreement is outstanding, the AESO and the Generator shall not amend or supplement this Agreement or agree to a termination of this Agreement without the consent of the Secured Lender, which consent shall not be unreasonably withheld, conditioned, or delayed. Prior to any such amendment, supplement or termination, the Generator shall provide to the AESO such Secured Lender's consent in writing. A Secured Lender must respond within a reasonable period of time to any request to amend or supplement this Agreement.
- (i) Despite any enforcement of any Secured Lender's Security Agreement, the Generator shall remain liable to the AESO for the payment of all sums owing to the AESO under this Agreement and for the performance of all of the Generator's obligations under this Agreement.

## **17.2 Rights and Obligations of Secured Lenders**

While any Secured Lender's Security Agreement remains outstanding, the following provisions shall apply:

- (a) No Generator Event of Default (other than those referred to in Section 16.2(c)) shall be grounds for the termination by the AESO of this Agreement until:
  - (i) any notice required to be given under Section 16.1 and Section 16.2(a) has been given to the Generator and to each AESO Recognized Lender; and
  - (ii) the cure period set out in Section 17.2(b) has expired without a cure having been completed and without each AESO Recognized Lender having taken the actions therein contemplated.
- (b) In the event the AESO has given any notice contemplated under Section 16.1, each AESO Recognized Lender shall, within the applicable cure period (including any extensions), if any, have the right (but not the obligation) to cure the default, and the AESO shall accept such performance by such AESO Recognized Lender as if the same had been performed by the Generator.

- (c) Any payment to be made or action to be taken by an AESO Recognized Lender hereunder as a prerequisite to keeping this Agreement in effect shall be deemed properly to have been made or taken by such AESO Recognized Lender if such payment is made or action is taken by a nominee or agent of the AESO Recognized Lender or a receiver or receiver and manager appointed by or on the application of such AESO Recognized Lender.
- (d) An AESO Recognized Lender shall be entitled to the Generator's rights and benefits contained in this Agreement and shall become liable for the Generator's obligations solely as provided in this Section 17.2. An AESO Recognized Lender may, subject to the provisions of this Agreement and the Lender Consent, enforce any Secured Lender's Security Agreement and acquire the Generator's Interest in any lawful way and, without limitation, an AESO Recognized Lender or its nominee or agent or a receiver or receiver and manager appointed by or on the application of such AESO Recognized Lender, may take possession of and manage the Facility and, upon foreclosure, or without foreclosure upon exercise of any contractual or statutory power of sale under such Secured Lender's Security Agreement, may sell or assign the Generator's Interest with the consent of the AESO as required under Section 17.2(f).
- (e) Until an AESO Recognized Lender (i) forecloses or has otherwise taken ownership of the Generator's Interest or (ii) has taken possession or control of the Generator's Interest, whether directly or by an agent as a mortgagee in possession, or a receiver or a receiver and manager has taken possession or control of the Generator's Interest by reference to the Secured Lender's Security Agreement, such AESO Recognized Lender shall not be liable for any of the Generator's obligations or be entitled to any of the Generator's rights and benefits contained in this Agreement except by way of security. If such AESO Recognized Lender itself or by a nominee or agent, or a receiver or receiver and manager appointed by or on the application of the AESO Recognized Lender, is the owner or is in control or possession of the Generator's Interest, then such Person as is the owner or is in control or possession of the Generator's Interest shall be bound by all of the Generator's obligations. Once such AESO Recognized Lender or such other Person goes out of possession or control of the Generator's Interest or transfers the Generator's Interest in accordance with this Agreement to another Person who is at Arm's Length with such AESO Recognized Lender, the AESO Recognized Lender shall cease to be liable for any of the Generator's obligations and shall cease to be entitled to any of the Generator's rights and benefits contained in this Agreement, except if the Secured Lender's Security Agreement remains outstanding, by way of security.
- (f) Despite anything else contained in this Agreement, the AESO Recognized Secured Lender agrees that it shall not transfer, sell or dispose of the Generator's Interest or any other interest in the Facility or shares or partnership interests in the capital of the Generator to any Person unless such transferee or purchaser takes the Generator's Interest or other applicable interest subject to the Generator's

obligations pursuant to this Agreement and the Lender Consent. No transfer shall be effective unless the AESO:

- (i) acting reasonably, if such transferee is at Arm's Length with the Secured Lender; or
- (ii) acting in its sole and subjective discretion, if such transferee is not at Arm's Length with the Secured Lender,

has, in the case of a transfer, sale or disposal of the Generator's Interest or any other interest in the Facility, approved of the transferee or purchaser and the transferee or purchaser has entered into an agreement with the AESO in form and substance satisfactory to the AESO, acting reasonably, wherein the transferee or purchaser agrees to assume and to perform the obligations of the Generator in respect of the Generator's Interest or the other applicable interest, whether arising before or after the transfer, sale or disposition and including the posting of the Completion and Performance Security, if required, under Section 10.1 and the granting of the AESO Security, if required, under Section 10.2, and in the case of a transfer, sale or disposal of shares or partnership interests in the capital of the Generator, such a transfer, sale or disposal shall, other than in the circumstances described in Section 17.2(g), be subject to Section 20.2.

- (g) In the event of the termination of this Agreement prior to the end of the Support Period due to a Generator Event of Default, the AESO shall, within twenty (20) Business Days after the date of such termination, deliver to each AESO Recognized Lender that is at Arm's Length with the Generator, a statement of all sums then known to the AESO that would at that time be due under this Agreement but for the termination and a notice to each such AESO Recognized Lender stating that the AESO is willing to enter into a New Agreement (the "**AESO Statement**"). Subject to the provisions of this Article 17, each such AESO Recognized Lender or its transferee approved by the AESO pursuant to Section 17.2(f) shall thereupon have the option to obtain from the AESO a New Agreement in accordance with the following terms:
  - (i) Upon receipt of the written request of an AESO Recognized Lender within thirty (30) days after the date on which it received the AESO Statement, the AESO shall enter into a New Agreement.
  - (ii) Such New Agreement shall be effective as of the Termination Date and shall be for the remainder of the Support Period at the time this Agreement was terminated and otherwise upon the terms contained in this Agreement. The AESO's obligation to enter into a New Agreement is conditional upon such AESO Recognized Lender: (A) paying all sums that would, at the time of the execution and delivery thereof, be due under this Agreement but for such termination; (B) otherwise fully curing any defaults under this Agreement existing immediately prior to termination of this Agreement that are capable of being cured; and (C) paying all reasonable costs and

expenses, including legal fees so as to provide a full indemnity (and not only substantial indemnity), incurred by the AESO in connection with such default and termination, and the preparation, execution and delivery of such New Agreement and related agreements and documents, provided, however, that with respect to any default that could not be cured by such AESO Recognized Lender until it obtains possession, such AESO Recognized Lender shall have the applicable cure period commencing on the date that it obtains possession to cure such default.

When the Secured Lender has appointed an agent, a receiver or a receiver and manager or has obtained a court-appointed receiver or receiver and manager for the purpose of enforcing such AESO Recognized Lender's security, that Person may exercise any of such AESO Recognized Lender's rights under this Section 17.2(g).

- (h) Despite anything to the contrary contained in this Agreement, the provisions of this Article 17 shall enure only to the benefit of the holders of a Secured Lender's Security Agreement. If the holders of more than one such Secured Lender's Security Agreement who are at Arm's Length with the Generator make written requests to the AESO in accordance with this Section 17.2 to obtain a New Agreement or otherwise to exercise any rights in this Article 17 or pursuant to the Lender's Consent applicable to it, then the AESO shall accept the request of the AESO Recognized Lender whose Secured Lender's Security Agreement had priority immediately prior to the termination of this Agreement over the Secured Lender's Security Agreements of the other AESO Recognized Lenders making such requests and thereupon the written request of each other AESO Recognized Lender shall be deemed to be void. In the event of any dispute or disagreement as to the respective priorities of any such Secured Lender's Security Agreement, the AESO may rely upon the opinion as to such priorities of any law firm qualified to practice law in the Province of Alberta retained by the AESO in its unqualified subjective discretion or may apply to a court of competent jurisdiction for a declaration as to such priorities, which opinion or declaration shall be conclusively binding upon all parties concerned.

### **17.3 Cooperation**

The AESO and the Generator shall enter into an agreement with any Secured Lender in the form of the Secured Lender Consent and Acknowledgement Agreement attached hereto as Schedule 4, in all material respects, for the purpose of implementing the Secured Lender's Security Agreement protection provisions contained in this Agreement. A Secured Lender will have no rights under this Agreement unless and until it enters into the such an agreement with the AESO and the Generator for the purpose of implementing the Secured Lender's Security Agreement protection provisions contained in this Agreement. The AESO, acting reasonably, shall consider any request jointly made by the Generator and a Secured Lender or proposed Secured Lender to facilitate a provision of a Secured Lender's Security Agreement or proposed Secured Lender's Security Agreement that may require an amendment to this Agreement, provided that the rights

of the AESO are not adversely affected thereby, the obligations of the Generator to the AESO are not altered thereby and the consent of any other Secured Lender to such amendment has been obtained by the Generator or the Secured Lender making the request for the amendment.

## **ARTICLE 18 COMMUNICATIONS AND CONFIDENTIALITY**

### **18.1 Notices**

- (a) Any notice, consent, approval or other communication under any provision of this Agreement must be in writing to be effective, and is effective when delivered by any means, including fax transmission or e-mail, to the following respective addresses:

- (i) if to the AESO:

Alberta Electric System Operator  
2500 Calgary Place  
330 - 5th Avenue SW  
Calgary, AB T2P 0L4  
Attention: [●]

Facsimile: (403) 539-2949  
E-mail: [●]

with a copy to:

Alberta Electric System Operator  
2500 Calgary Place  
330 - 5th Avenue SW  
Calgary, AB T2P 0L4  
Attention: General Counsel

Facsimile: (403) 539-2949  
E-mail: General.Counsel@aeso.ca

- (ii) if to the Generator:

**[Insert Generator name and address]**  
Attention: [●]

Facsimile: [●]  
E-mail: [●]

with a copy to:

**[Insert 2nd Generator name and address]**

Attention: [●]

Facsimile: [●]

E-mail: [●]

Either Party may change its address information by giving notice to the other in the above manner.

- (b) For purposes of this Agreement:
- (i) a notice delivered by hand to the address of a Party as set out above shall be deemed to be received the date it was delivered, if delivered on a Business Day, or on the next Business Day, if delivered on a day which is not a Business Day;
  - (ii) a notices which is sent by mail is deemed to be received by the Party to whom the notice is addressed on the fifth (5th) day after the date of mailing; and
  - (iii) a notice sent by fax transmission or e-mail which is transmitted prior to 4:00 p.m. on a Business Day, shall be deemed to have been received by that Party on that day, or on the next Business Day, if delivered after 4:00 p.m. or on a day which is not a Business Day; provided that the sender of the notice is able to produce the transmission report or a printout of a transmission log generated by the sender's fax machine (or other transmission device) or internet service provider showing successful uninterrupted fax transmission of all pages of the relevant notice or successful e-mail transmission of the relevant notice to the fax number or e-mail address, as the case may be, of the addressee.
- (c) Any notices of an Event of Default or termination of this Agreement shall only be given by hand or courier delivery.
- (d) No notice delivered pursuant to this Agreement shall be deemed to be notice for any other purpose, including any obligation to provide notice to the System Operator pursuant to the ISO Rules.

## 18.2 Public Announcements

Generator shall not make, and shall not cause or permit any Person not at arm's length with Generator to make, any public announcement relating to this Agreement except as approved in advance by the AESO, acting reasonably.

### 18.3 Disclosure of Confidential Information

The Party receiving Confidential Information shall maintain (and shall ensure that its officers, employees, consultants, advisors and contractors maintain) the confidentiality of such Confidential Information, and neither Party shall disclose Confidential Information delivered by the other except as follows:

- (a) The Receiving Party may disclose Confidential Information to its Related Parties who need to know Confidential Information for the purpose of assisting the Receiving Party in complying with its obligations or exercising its rights under this Agreement and in the case where the AESO is the Receiving Party, for the purpose of administration of a contract under the REP. On each copy made by the Receiving Party, the Receiving Party must reproduce all notices which appear on the original. The Receiving Party shall inform its Related Parties of the confidentiality of Confidential Information and shall be responsible for any breach of this Article 18 by any of its Related Parties.
- (b) If the Receiving Party or any of its Related Parties are requested or required (by oral question, interrogatories, requests for information or documents, court order, civil investigative demand, or similar process) to disclose any Confidential Information in connection with litigation or any regulatory proceeding or investigation, or pursuant to any Applicable Laws, the Receiving Party shall promptly notify the Disclosing Party. Unless the Disclosing Party obtains a protective order, the Receiving Party and its Related Parties may disclose such portion of the Confidential Information to the party seeking disclosure as is required by Applicable Laws in accordance with Section 18.4.
- (c) Where the Generator is the Receiving Party, the Generator may disclose Confidential Information to any Secured Lender, prospective lender, investor (if not an Affiliate of the Generator), or prospective investor, and in each case its advisors, to the extent necessary, for securing investment in or financing for the Facility, provided that any such Secured Lender, prospective lender, investor (if not an Affiliate of the Generator), or prospective investor has been informed of the Generator's confidentiality obligations hereunder and such Secured Lender, prospective lender, investor (if not an Affiliate of the Generator), or prospective investor has completed and executed a confidentiality undertaking (the "**Confidentiality Undertaking**") in the Prescribed Form, covenanting in favour of the AESO to hold such Confidential Information confidential on terms substantially similar to this Article 18.
- (d) As otherwise required by Applicable Law or where the disclosure is consented to by the other.
- (e) Notwithstanding the foregoing, the Generator consents to the disclosure: (i) of its name and contact particulars and any other information listed in Schedule 1, on the AESO's website or otherwise, (ii) of the Site, Contract Capacity, Renewable Fuel(s) and location of the Connection Facilities on the AESO's website or

otherwise, (iii) of its address for service and the name of its Contract Representative to all Other Generators; (iv) on a confidential basis, of any information received by the AESO in respect of this Agreement for such internal purposes as the AESO may reasonably determine from time to time to the AESO Related Parties; and (v) of aggregated data relating to the Project or this Agreement.

- (f) For greater clarity, the Generator hereby irrevocably authorizes and consents to any AESO Related Party releasing, disclosing, providing, delivering and otherwise making available to another AESO Related Party, a copy of this Agreement and any and all such information relating to the connections, proposed connections, meters, meter data, testing data pertaining to commercial operation, billing data of the Generator or the Facility as the AESO or its agents may advise is required in connection with this Agreement or the administration of a contract issued under the REP.

#### **18.4 Notice Preceding Compelled Disclosure**

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

#### **18.5 Return of Information**

Upon written request by the Disclosing Party, Confidential Information provided by the Disclosing Party in printed paper format or electronic format will be returned to the Disclosing Party and Confidential Information transmitted by the Disclosing Party in electronic format will be deleted from the emails and directories of the Receiving Party's and its Related Parties' computers; provided, however, any Confidential Information: (a) found in drafts, notes, studies and other documents prepared by or for the Receiving Party or its Related Parties, (b) found in electronic format as part of the Receiving Party's off-site or on-site data storage/archival process system or (c) which is Mutually Confidential Information, will be held by the Receiving Party and kept subject to the terms of this Agreement or destroyed at the Receiving Party's option. Notwithstanding the foregoing, a Receiving Party shall be entitled to make at its own expense

and retain one copy of any Confidential Information materials it receives for the limited purpose of discharging any obligation it may have under Applicable Law, and shall keep such retained copy subject to the terms of this Article 18.

### **18.6 Injunctive and Other Relief**

The Receiving Party acknowledges that breach of any provisions of this Article 18 may cause irreparable harm to the Disclosing Party or to any third-party to whom the Disclosing Party owes a duty of confidence, and that the injury to the Disclosing Party or to any third party may be difficult to calculate and inadequately compensable in damages. The Receiving Party agrees that the Disclosing Party is entitled to obtain injunctive relief (without proving any damage sustained by it or by any third party) or any other remedy against any actual or potential breach of the provisions of this Article 18.

### **18.7 Collection, Use and Disclosure of Personal Information**

- (a) Generator warrants and represents to the AESO that it has obtained or will obtain as the case may be, the prior consent of each and every individual whose Personal Information it has disclosed or will disclose to the AESO, in accordance with the *Personal Information Protection Act* (Alberta) and with all other Applicable Laws pertaining to the protection of Personal Information, including the *Personal Information Protection and Electronic Documents Act* (Canada), whether such disclosure is set forth in the this Agreement or in the Proposal, or has occurred or will occur during the performance of any of its obligations hereunder during the Term.
- (b) Generator acknowledges and agrees that: (i) all Personal Information disclosed to the AESO (whether before or after the date hereof) may be used by the AESO and disclosed to and used by the AESO and its Related Parties for the following purposes: (A) to permit the AESO to evaluate the Proposal, and to evaluate the educational and professional qualifications and experience of Generator's personnel; (B) to allow the AESO to review and audit Generator's performance in respect of its obligations hereunder; and (C) as otherwise required for the performance of the AESO's obligations or the exercise of the AESO's rights under this Agreement; and (ii) the consents obtained under Section 18.7(a) shall reflect the foregoing purposes. The AESO shall protect Personal Information by taking reasonable security precautions against such risks as unauthorized access, collection, use, disclosure or disposal.
- (c) Generator shall comply with the *Personal Information Protection Act* (Alberta) and with all other Applicable Laws pertaining to the protection of Personal Information, including the *Personal Information Protection and Electronic Documents Act* (Canada), with respect to all Personal Information it collects, uses or discloses pursuant to its obligations hereunder or otherwise in relation to this Agreement, including all Personal Information provided to it by the AESO or any AESO Related Party. Generator shall not transfer any Personal Information

provided to it by the AESO or any of AESO Related Party to any other Person without the written consent of the AESO. Generator shall notify its employees, Subcontractors and agents of the legal provisions, duties and obligations of the foregoing laws and of this Section 18.7 and shall instruct them to act accordingly.

### **18.8 Contract Administration Representatives**

The Generator and the AESO shall, by notice substantially in the Prescribed Form, each appoint, from time to time, a representative (a "**Contract Representative**") who shall be duly authorized to act on behalf of the Party that has made the appointment, and with whom the other Party may consult at all reasonable times, and whose communications (including all instructions, notices, requests, approvals, consents, and decisions), provided the same are in writing signed by the respective Contract Representative, shall be binding on the appointing Party as to all matters pertaining to this Agreement. The Contract Representative shall not have the power or authority to amend this Agreement solely by virtue of his or her position as Contract Representative, and shall continue to be the representative of the Party which appointed it until replaced pursuant to a subsequent notice under this Section 18.8.

### **18.9 FOIP**

For the purposes of this Section 18.9, "personal information" has the same definition as that which is found in FOIP. The Generator acknowledges that FOIP applies to information obtained, related, generated, collected or provided for the AESO under this Agreement and agrees to adhere to FOIP. The Generator shall not collect, use or disclose any personal information under this Agreement except that which is reasonably required to fulfil its obligations under this Agreement, or as otherwise authorized by the AESO. The Generator shall protect the personal information it collects under this Agreement and shall make reasonable security arrangements against such risks as unauthorized access, collection, use, disclosure or destruction. Upon request, the Generator shall provide to the AESO, within seven (7) days, any records that are requested under the access provisions of FOIP that are in the custody or under the control of the Generator. Should the Generator receive an access request under FOIP, the Generator shall not respond to it, but shall immediately forward the access request to the AESO for further handling. The Generator shall ensure that its employees, agents, and subcontractors comply with this Section 18.9.

## **ARTICLE 19 DISPUTE RESOLUTION**

### **19.1 Informal Dispute Resolution**

If either Party considers that any dispute (other than a dispute contemplated in Section 1.11 or Section 6.11) has arisen under or in connection with this Agreement that the Parties cannot resolve (a "**Dispute**"), then such Party may deliver a notice to the other Party describing the nature and the particulars of such Dispute. Within ten (10) Business Days following delivery of such notice to the other Party, a senior executive of the Generator shall meet with an executive of

the AESO, either in person or by telephone (the "**Senior Conference**"), to attempt to resolve the Dispute. Each Party shall be prepared to propose a solution to the Dispute. If, following the Senior Conference, the dispute is not resolved, then the Parties shall resolve such Dispute in accordance with the remaining provisions of this Article 19.

## **19.2 Litigation**

At any time following ten (10) Business Days after referral of the Dispute to a Senior Conference or such longer time as agreed to by the Parties pursuant to Section 19.1, either Party may, within the limitation periods set out in the *Limitations Act* (Alberta) and any successor or replacement legislation, commence litigation with respect to any Dispute not settled by a Senior Conference pursuant to Section 19.1.

## **19.3 Arbitration**

Notwithstanding Section 19.2, any Dispute between the Parties of a technical or valuation matter that is not resolved in accordance with Section 19.1, or in the case of any Dispute between the Parties that is not resolved in accordance with Section 19.1 and is required to be referred to arbitration pursuant to the terms of this Agreement (excluding Sections 1.11 and 6.11), shall not be resolved through litigation pursuant to Section 19.2 and either Party may, by notice to the other Party, submit such Dispute to binding arbitration, in accordance with the rules set out in Section 19.4.

## **19.4 Arbitration Rules**

- (a) A Dispute referred to arbitration pursuant to Section 19.3 shall be subject to binding arbitration (the "**Arbitration**") by a panel of three (3) arbitrators (the "**Arbitrators**") and otherwise in accordance with the *Arbitration Act* (Alberta).
- (b) The "National Arbitration Rules" of the ADR Institute of Canada, Inc. will apply to the Arbitration, as modified by this Section 19.4.
- (c) Each Party shall appoint its own Arbitrator within ten (10) days after the delivery of the notice referenced above in Section 19.3 or such longer period as may be agreed to by the Parties. If either Party fails to appoint an Arbitrator within such ten (10) day period, then upon application by the Party that has appointed an Arbitrator, the second Arbitrator shall be appointed by the ADR Institute of Canada. The two Arbitrators thus appointed shall appoint a third Arbitrator within ten (10) days of the appointment of the second Arbitrator. If the two Arbitrators shall fail to appoint the third Arbitrator within such ten (10) day period, then upon application by either Party, the third Arbitrator shall be appointed by the ADR Institute of Canada. The Parties will use their best efforts to appoint Arbitrators who are qualified by a profession or occupation to decide the matter in Dispute and have at least ten (10) years' related experience. The seat of the Arbitration shall be Calgary, Alberta.

- (d) Meetings and hearings of the Arbitrators will take place in Calgary. Subject to the foregoing, the Arbitrators may fix the date, time and place of meetings and hearings in the Arbitration and will give all Parties adequate notice of same. Subject to any adjournments which the Arbitrators allow, the final hearing will be continued on successive business days until it is concluded. All meetings and hearings will be in private unless the Parties agree otherwise and both Parties are entitled to be represented at any meetings or hearings by legal counsel. Either Party may examine and re-examine all its own witnesses at the Arbitration and may cross-examine all of the other Party's witnesses.
- (e) The Arbitrators will make and deliver their binding decision in writing not later than fifteen (15) Business Days after the conclusion of the final hearing and will set out reasons for the decision; provided that such period may, upon the recommendation of the Arbitrators, be extended to up to sixty (60) days after the conclusion of the final hearing if the Arbitrators are of the opinion that the fifteen (15) Business Day period is too short given the nature of the dispute. Such reasons for decision shall not be confidential and shall not be deemed to be "Confidential Information" for purposes of this Agreement. Costs will be awarded in accordance with the *Arbitration Act* (Alberta) unless the Parties have previously agreed on the basis for the apportionment of costs.
- (f) The decision of the Arbitrators is binding on the Parties. The decision of the Arbitrators may be appealed solely on the grounds that the conduct of the Arbitrators, or the decision itself, violated the provisions of the *Arbitration Act* (Alberta) or solely on a question of law as provided for in the *Arbitration Act* (Alberta).

## **19.5 Performance and Payments**

All performance required hereunder by the Parties and payment therefor under this Agreement shall continue during the dispute resolution proceedings contemplated by this Article 19, provided that in the case of any such proceedings pertaining to amounts payable under this Agreement, any payments or reimbursements required as a result of such proceedings shall be payable as of a date to be determined in such proceedings, and interest shall be paid, from such date until the date of payment, by the Party required to make any such payment or reimbursement on the amount thereof at the Prime Rate.

## **ARTICLE 20 ASSIGNMENT AND CHANGE OF CONTROL**

### **20.1 Assignment**

- (a) Prior to the Commercial Operation Date neither this Agreement nor any of the rights, interests or obligations under this Agreement may be assigned by the Generator without the consent of the AESO, which consent may be withheld in the AESO's sole discretion.

- (b) Following the Commercial Operation Date, this Agreement along with all of the rights, interests or obligations under this Agreement may be assigned by either Party, with the prior written consent of the other Party, which consent shall not be unreasonably withheld, except as set out in Section 20.1(c) below and as provided in Article 17.
- (c) For the purposes of Section 20.1(b), it shall not be unreasonable for the AESO to withhold its consent if the proposed assignment would (i) cause a Generator to breach the obligation to own or lease the Facility as set out in Section 3.1(a); (ii) have or is likely to have, as determined by the AESO acting reasonably, a Material Adverse Effect on the Generator's ability to perform its obligations under this Agreement; or (iii) have an adverse effect, as determined by the AESO acting reasonably, on the security the Guarantor is required to grant to the AESO pursuant to Section 10.2.
- (d) Notwithstanding Sections 20.1(a) and (b), the Generator may, subject to compliance with Applicable Laws and provided that there is not a Generator Event of Default that has not been remedied, assign this Agreement without the consent of the AESO to an Affiliate of Generator acquiring the Facility; provided, however, that no such assignment by the Generator or any of its successors or permitted assigns hereunder shall be valid or effective unless and until such Affiliate agrees with the AESO in writing to assume all of the Generator's obligations under this Agreement and be bound by the terms of this Agreement, and the arrangement and obligations of the Generator set forth in Article 10 have been met and satisfied by such Affiliate in accordance with the terms of Article 10.
- (e) If the Generator assigns this Agreement to a non-resident of Canada for purposes of the ITA or a partnership that is not a Canadian partnership as defined in the ITA, and the AESO incurs any additional Taxes, at any time thereafter, solely as the result of such assignment, then payments under this Agreement by the AESO shall be reduced by the amount of such additional Taxes and the AESO shall remit such additional Taxes to the applicable taxing authorities. The AESO shall within sixty (60) days after remitting such Taxes, notify the assignee in writing, providing reasonable detail of such payment so that the assignee may claim any applicable rebates, refunds or credits from the applicable taxing authorities. If after the AESO has paid such amounts, the AESO receives a refund, rebate or credit on account of such Taxes, then the AESO shall promptly remit such refund, rebate or credit amount to the assignee.
- (f) If a valid assignment of this Agreement is made by the Generator in accordance with Section 20.1, the AESO acknowledges and agrees that, upon such assignment and assumption and notice thereof by the assignor to the AESO, the assignor shall be relieved of all of its duties, obligations and liabilities hereunder.
- (g) The AESO shall have the right to assign this Agreement from time to time and all benefits and obligations hereunder for the balance of the Term without the

consent of the Generator to an assignee which shall assume the obligations and liability of the AESO under this Agreement and be novated into this Agreement in the place and stead of the AESO (except for the AESO's obligation in Section 20.1(g)(iii) which will remain in force), provided that the assignee agrees in writing to assume and be bound by the terms and conditions of this Agreement, and further agrees not to make any material amendments to or terminate this Agreement after such assignment without the prior written consent of the AESO, whereupon:

- (i) the representation set forth in Section 13.2(a) shall apply to the assignee with all necessary amendments to reflect the form and the manner in which the assignee was established;
  - (ii) all of the representations set forth in Section 13.2 shall be deemed to be made by the assignee to the Generator at the time of such assignment and assumption; and
  - (iii) the AESO shall be relieved of all obligations and liability arising pursuant to this Agreement; notwithstanding the foregoing, the AESO shall remain liable to the Generator for remedying any payment defaults under Section 16.3(a) and shall remain liable for any obligations and liabilities of the assignee arising from any AESO Event of Default, provided that any notice required to be given under Section 16.3 and Section 16.4 is given on the same day to the assignee and to the AESO. The time periods in Section 16.3 shall not begin to run until both the assignee and the AESO have been so notified.
- (h) The AESO shall have the right to assign this Agreement and all benefits and obligations hereunder from time to time throughout the Term for a period less than the balance of the Term without the consent of the Generator to an assignee which shall assume the obligations of the AESO under this Agreement and be novated into this Agreement in the place and stead of the AESO (except for the AESO's obligations in Section 20.1(h)(iii) which will remain in force), provided that the assignee agrees in writing to assume and be bound by the terms and conditions of this Agreement and further agrees not to make any material amendments to or terminate this Agreement during such assignment period without the prior written consent of the AESO, whereupon:
- (i) the representation set forth in Section 13.2(a) shall apply to the assignee with all necessary amendments to reflect the form and the manner in which the assignee was established;
  - (ii) all of the representations set forth in Section 13.2 shall be deemed to be made by the assignee to the Generator at the time of such assignment and assumption;

- (iii) the AESO shall be relieved of all obligations and liability arising pursuant to this Agreement; notwithstanding the foregoing, the AESO shall remain liable to the Generator for remedying any payment defaults under Section 16.3(a) and shall remain liable to the Generator for any obligations and liabilities of the assignee arising from any AESO Event of Default, provided that any notice required to be given under Section 16.3 and Section 16.4 is given on the same day to the assignee and to the AESO. The time periods in Section 16.3 shall not begin to run until both the assignee and the AESO have been so notified; and
- (iv) upon the expiry of the assignment period:
  - (A) this Agreement, without requiring the execution of any assignment, consent or other documentation of any nature, shall automatically revert and be assigned back to the AESO;
  - (B) the assignee shall remain responsible to the Generator for all obligations and liabilities incurred or accrued by the assignee during the assignment period; and
  - (C) the AESO, as AESO pursuant to the automatic assignment back to it, shall be deemed to be in good standing under this Agreement, provided that such good standing shall not relieve the AESO from any obligation to the Generator pursuant to Section 20.1(h)(iii) that arose prior to the expiry of the assignment period.

## 20.2 Change of Control

- (a) Other than in accordance with Section 20.2(b), no change of Control of the Generator shall be permitted prior to Commercial Operation, except with the prior written consent of the AESO, which consent may be withheld in the AESO's sole and absolute discretion. Following Commercial Operation, a change of Control of the Generator shall be permitted providing that the Generator, within ten (10) Business Days following such change of Control having effect, provides the AESO with notice of such change of Control and such additional information as the AESO may reasonably require regarding the names of the Persons who Control or otherwise indirectly or directly have an ownership interest in the Generator following such change of Control.
- (b) Provided there is not a Generator Event of Default that has not been remedied, a change of Control of the Generator prior to Commercial Operation under one or more of the following circumstances is permitted without the consent of the AESO, namely:
  - (i) each Person Controlling the Generator following such change of Control is an Affiliate of one or more of the Persons Controlling the Generator prior to such change of Control; and

- (ii) the Economic Interest of the Person(s) that Control the Generator as of the date hereof is not less than twenty-five percent (25%) following such change of Control;
- (c) The Generator, shall, within ten (10) Business Days following any change of Control having effect, provide the AESO with notice of such change of Control and such additional information as the AESO may reasonably require regarding the names of the Persons who Control or other indirectly or directly have an ownership interest in the Generator, following such change of Control.
- (d) For the purposes of Section 20.2(a) and Section 20.2(b), a change of Control shall include a change from no Person having Control of the Generator to any Person having Control of the Generator, as well as change from any Person having Control of the Generator to no Person having Control of the Generator.

## **ARTICLE 21 MISCELLANEOUS**

### **21.1 Business Relationship**

Each Party shall be solely liable for the payment of all wages, Taxes and other costs related to the employment by such Party of Persons who perform this Agreement, including all federal, provincial and local income, social insurance, health, payroll and employment taxes and statutorily-mandated workers' compensation coverage. None of the Persons employed by either Party shall be considered employees of the other Party for any purpose.

### **21.2 Binding Agreement**

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

### **21.3 Survival**

The provisions of Section 1.1, Section 3.1(e), Section 5.1, Article 6, Article 8, Section 9.1, Article 14, Section 16.2, Section 16.4, Section 16.5, Section 16.6, Section 17.2(g), Article 18, Article 19, Section 20.1(e) and Section 20.1(h) shall survive the expiration of the Term or earlier termination of this Agreement. The expiration of the Term or a termination of this Agreement shall not affect or prejudice any rights or obligations that have accrued or arisen under this Agreement prior to the time of expiration or termination and such rights and obligations shall survive the expiration of the Term or the termination of this Agreement for a period of time equal to the applicable statute of limitations.

#### **21.4 Counterparts**

This Agreement may be executed in two or more counterparts, and all such counterparts shall together constitute one and the same Agreement. It shall not be necessary in making proof of the contents of this Agreement to produce or account for more than one such counterpart. Any Party may deliver an executed copy of this Agreement by electronic mail but such Party shall, within ten (10) Business Days of such delivery by electronic mail, promptly deliver to the other Party an originally executed copy of this Agreement.

#### **21.5 Additional Rights of Set-Off**

- (a) In addition to its other rights of set-off under this Agreement or otherwise arising in law or equity, the AESO may set-off any amounts owing by the Generator to the AESO in connection with this Agreement against any monies owed by the AESO to the Generator in connection with this Agreement.
- (b) In addition to its other rights of set-off under this Agreement or otherwise arising in law or equity, the Generator may set-off any amounts owing by the AESO to the Generator in connection with this Agreement against any monies owed by the Generator to the AESO in connection with this Agreement.

#### **21.6 Rights and Remedies Not Limited to Contract**

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

#### **21.7 Time of Essence**

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

#### **21.8 Further Assurances**

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

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

**INDEPENDENT SYSTEM OPERATOR  
operating as the Alberta Electric System  
Operator**

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

I have authority to bind the corporation.

***NOTE: If the Generator is a Corporation, use the following signature block and delete the non-applicable signature blocks.***

**[Insert name of GENERATOR]**

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

I have authority to bind the corporation.

***NOTE: If the Generator is a Limited Partnership, use the following signature block and delete the non-applicable signature blocks.***

***[Insert name of Generator], by its general  
partner [GENERAL PARTNER]***

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

I have authority to bind the corporation.

***NOTE: If the Generator is a Partnership, use the following signature block and delete the non-applicable signature blocks. Include sufficient and applicable signature lines for all partners required to sign the contract on behalf of the Partnership.***

**[Insert name of GENERATOR], by its  
partner [PARTNER]**

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

Name:

Title:

I have authority to bind the corporation.

## SCHEDULE 1 PROJECT INFORMATION

### 1. GENERAL

#### 1.1 Capitalized Terms and Section References

Capitalized terms used in this Schedule shall, unless expressly defined herein, have the meaning given such terms in Section 1.1 of the Renewable Electricity Support Agreement between the AESO and the Generator to which this Schedule is attached (the "RESA"). Unless otherwise provided, references herein to Section numbers are references to Sections of this Schedule.

#### 1.2 Agreement References

This Schedule is referenced in Sections 1.1, 1.4, 2.1(b), 2.1(c), 2.2(a), 3.1(g), 6.3, and 18.4(e) of the RESA.

### 2. GENERATOR AND PROJECT INFORMATION

#### 2.1 Generator Information & Address

Generator's Address:

Fax:

Phone:

Email:

Contract Representative:

Not a Non-Resident of Canada

Non-Resident of Canada

#### 2.2 Material Information

Contract Capacity:

\_\_\_\_\_MW

Strike Price:

\_\_\_\_\_ \$/MWh

Renewable Fuel:

\_\_\_\_\_ Sunlight

\_\_\_\_\_ Sustainable Biomass:

Sch 1-1

**SCHEDULE 1 – DRAFT RENEWABLE ELECTRICITY SUPPORT AGREEMENT**

**April 28, 2017**

- Advanced Fuels
- Biogas
- Solid Biomass
- Solid Landfill Waste
- Wind
- Moving Water
- Heat from the Earth

**Project:**

- New Build
- Expansion

**Name of Project:**

**Proposed Location of Connection on Existing AIES:** *[Insert name of proposed sub-station, transmission line or distribution line.]*

**Connection Point:** *[Insert from Approved Connection Proposal.]*

**If a New Build:** Description of Generating Equipment and other equipment and facilities which are necessary to generate and deliver Electricity in respect of the Contract Capacity.

*[Insert details]*

**If an Expansion:** Description of additional Generating Equipment that is the subject of an Expansion, along with a description of equipment and Facilities of the Existing Renewable Facility which are necessary to generate and deliver Electricity in respect of the Contract Capacity

*[insert details]*

**Site**

Municipal Address:

Legal Description:

**SCHEDULE 2**  
**FORM OF IRREVOCABLE AND UNCONDITIONAL**  
**STANDBY LETTER OF CREDIT**

**1. GENERAL**

**1.1 Capitalized Terms and Section References**

Capitalized terms used in this Schedule shall, unless expressly defined herein, have the meanings given to such terms in Section 1.1 of the Renewable Electricity Support Agreement between the AESO and Generator to which this Schedule is attached (the "**RESA**"). Unless otherwise provided, references herein to Section numbers are references to Sections of this Schedule.

**1.2 Agreement References**

This Schedule and the Irrevocable and Unconditional Standby Letter of Credit are referenced in Sections 1.4, and 10.1(d) of the RESA.

**2. IRREVOCABLE AND UNCONDITIONAL STANDBY LETTER OF CREDIT**

The prescribed form of the irrevocable and unconditional standby letter of credit contemplated by Section 10.1(d) of the RESA is attached hereto as Appendix 1.

## Appendix 1

### FORM OF IRREVOCABLE AND UNCONDITIONAL STANDBY LETTER OF CREDIT

#### Letter of Credit Reference No.

**Beneficiary:**

Independent System Operator  
2500, 330 - 5 Avenue S.W.  
Calgary, AB  
T2P 0L4  
Attention: Vice President Finance

**Applicant:**

[Insert Corporation's full legal name,  
address and contact person]

**Amount:** CAD\$[Insert Amount]

**Date of Expiry:** [Insert Date]

At the request of [Insert Applicant's Name] (the "Applicant"), we, [Insert Name of Issuing Canadian Bank] (the "Bank") hereby issue in favour of Independent System Operator (the "Beneficiary") our irrevocable standby Letter of Credit No. [Insert Reference Number], effective [Insert Effective Date], in the amount of CAD\$[Insert Amount].

This Letter of Credit is issued in connection with the Renewable Electricity Support Agreement dated [Insert Date of Agreement] between the Applicant and the Beneficiary.

This Letter of Credit shall remain in effect until [Insert Expiry Date] (the "Expiry Date") or any future Expiry Date in accordance with the terms of this Letter of Credit.

A payment under this Letter of Credit shall be made payable to the Independent System Operator forthwith upon the Beneficiary presenting to the Bank on or before the Expiry Date, or any future Expiry Date, demand, in writing, for payment in the amount set out in a certificate signed by the Beneficiary, stating that such amount is payable by the Applicant to the Independent System Operator. Presentation of such certificate shall be made at [Insert Bank Branch in Canada] (a) by physical delivery of such certificate to such branch, or (b) by facsimile transmission of such certificate to such branch at facsimile number [Insert Facsimile Number] with immediate oral confirmation by the Beneficiary (such presentation to be effective upon such oral confirmation) followed by physical delivery of such certificate by overnight courier.

Upon receipt by the Bank on or before the Expiry Date, or any future Expiry Date, of your demand and certificate as aforesaid, the Bank shall pay to the Independent System Operator the amount stated in such certificate without inquiring whether you have a right to such amount as

**SCHEDULE 2 – DRAFT RENEWABLE ELECTRICITY SUPPORT AGREEMENT**  
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between yourself and the Applicant, provided that such amount does not exceed the amount of this Letter of Credit.

Partial and multiple drawings are permitted.

This Letter of Credit shall be deemed automatically extended, with no consents or notices required and no amendments, for additional periods of one (1) year from its Expiry Date or from any future Expiry Date, unless the Bank notifies the Beneficiary in writing sixty (60) days prior to any such Expiry Date that it is not extending the term in which case this Letter of Credit will expire on such Expiry Date.

Except as otherwise expressly stated, this Letter of Credit is subject to the International Standby Practices 1998 (ISP 98).

**[Issuing Canadian Bank]**

By:

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

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

**SCHEDULE 3**  
**FIXED AND FLOATING CHARGE DEBENTURE**

**1. GENERAL**

**1.1 Capitalized Terms and Section References**

Capitalized terms used in this Schedule shall, unless expressly defined herein, have the meanings given to such terms in Section 1.1 of the Renewable Electricity Support Agreement between the AESO and Generator to which this Schedule is attached (the "**RESA**"). Unless otherwise provided, references herein to Section numbers are references to Sections of this Schedule.

**1.2 Agreement References**

This Schedule and the Fixed and Floating Charge Debenture are referenced in Sections 1.1, 1.4 and 10.2 of the RESA.

**2. FIXED AND FLOATING CHARGE DEBENTURE**

The prescribed form of the Fixed and Floating Charge Debenture contemplated by Sections 1.1 and 10.2(a) of the RESA is attached hereto as Appendix 1.

## Appendix 1

### FIXED AND FLOATING CHARGE DEMAND DEBENTURE ([Insert Generator's Name])

Principal Sum:           \$● Canadian Dollars

Interest Rate:           20% per annum       (the "**Interest Rate**")

Date:                     [●]

#### ARTICLE 1 - PROMISE TO PAY

##### Promise to Pay

1.1 For value received, the undersigned (the "**Debtor**") hereby acknowledges itself indebted and promises to pay ON DEMAND to or to the order of Independent System Operator, operating as the Alberta Electric System Operator (the "**Secured Party**"), the principal sum herein stipulated on presentation and surrender of this debenture at the Secured Party's offices at 2500 Calgary Place, 330 – 5<sup>th</sup> Avenue SW, Calgary, AB T2P 0L4, or at such other place as the Secured Party may designate by notice in writing to the Debtor, and to pay interest thereon from the date hereof at the rate per annum herein stipulated in like money at the same place monthly on the last day of each month; and, if the Debtor should at any time make default in the payment of any principal or interest to pay interest on the amount in default both before and after demand, default and judgment at the same rate in lawful money of Canada at the same place.

The Secured Party is the person entitled to receive the principal of and interest on this debenture and all other amounts payable hereunder.

#### ARTICLE 2 - CHARGE

##### Charge

2.1 As security for the due payment of all money payable hereunder and all other Obligations, the Debtor hereby:

- (a) grants, assigns, mortgages and charges, as and by way of a fixed and specific mortgage, assignment and charge to and in favour of the Secured Party and its successors and assigns:
  - (i) all of the fee simple right, title, interest and estate of the Debtor (both present and future) in and to the lands and premises described in Exhibit A attached hereto and every structure, building, improvement and fixture which now or hereafter may be erected by or on behalf of the Debtor on

## SCHEDULE 3 – DRAFT RENEWABLE ELECTRICITY SUPPORT AGREEMENT

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such lands and all interests in any of the foregoing and all proceeds thereof;

- (ii) all of the right, title, interest and estate of the Debtor (both present and future), as grantee, under the utility rights of way described in Exhibit B attached hereto (the "**Utility Rights of Way**"), including, without limitation, the right, title, interest and estate under the Utility Rights of Way in and to each and every building, structure, improvement and fixture which now or hereafter may be erected by or on behalf of the Debtor on the lands subject to the Utility Rights of Way (the "**URW Improvements**") and all interests in any of the foregoing and all proceeds thereof; and
  - (iii) all of the right, title, interest and estate of the Debtor (both present and future), as the owner of a leasehold estate as tenant, under the leases described in Exhibit C attached hereto (the "**Leases**"), including, without limitation, the right, title, interest and estate under the Leases in and to each and every building, structure, improvement and fixture which now or hereafter may be erected by or on behalf of the Debtor on the lands subject to the Leases (the "**Leasehold Improvements**") and all interests in any of the foregoing and all proceeds thereof;
- (b) charges, as and by way of a first priority security interest and a first floating charge to and in favour of the Secured Party and its successors and assigns, for the benefit of the Secured Party and its successors and permitted assigns, all of the undertaking, property and assets of the Debtor, both present and future, of every nature and kind and wherever situate including, without limitation, all of its present and future personal and real property, goodwill, trade-marks, inventions, processes, patents and patent rights, materials, supplies, inventories, motor vehicles, trucks, trailers, machinery, implements, equipment and apparatus of every kind, furniture, rent, revenues, income, money, rights, powers, privileges, franchises, benefits, amenities, contracts, agreements, leases of real and personal property, licenses, permits, book debts, accounts receivable, negotiable and non-negotiable instruments, judgments, securities, choses in action, unpaid capital, the Renewable Electricity Support Agreement, all engineering, procurement or construction contracts and similar agreements, all Governmental Approvals, the Permit and Licence (Power Plant), all interests in land under option agreements and all other property and things of value of every kind and nature, tangible and intangible, legal or equitable, which the Debtor now has, may be possessed of, entitled to, or acquire, by way of amalgamation or otherwise, now or hereafter and any and all proceeds of any of the foregoing, except only such property and assets as are validly and effectively subject to any fixed and specific mortgages, assignments and charges created hereunder.

In this debenture, the mortgages, assignments and charges created and provided for are collectively called the "**Charge**" and the subject matter of the Charge is called the "**Charged**

## SCHEDULE 3 – DRAFT RENEWABLE ELECTRICITY SUPPORT AGREEMENT

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**Premises**". **"Renewable Electricity Support Agreement"** means the renewable electricity support agreement dated [●] between the Debtor and the Secured Party, as amended, modified, supplemented or restated from time to time. **"Obligations"** means the payment and performance of all present and future obligations, liabilities, indebtedness (absolute or contingent, matured or otherwise) of the Debtor to the Secured Party under, pursuant to, or relating to this debenture, the Renewable Electricity Support Agreement or any other agreement entered into in connection therewith or pursuant thereto, in each case whether the same are from time to time reduced and thereafter increased or entirely extinguished and thereafter incurred again. Unless otherwise defined herein all initially capitalized words used in this debenture shall have the meaning ascribed thereto in the Renewable Electricity Support Agreement.

### **Dealings in the Ordinary Course**

2.2 Subject to Section 3.1 hereof and to the Renewable Electricity Support Agreement, until the Charge becomes enforceable, the Debtor may dispose of or deal with the property and assets subjected to the floating charge and security interest created under Section 2.1(b) hereof in the ordinary course of business and for the purpose of carrying on the same, so that purchasers thereof or parties dealing with the Debtor take title thereto free and clear of such charge and security interest.

### **Last Day**

2.3 The Charge shall not extend, include or apply to the last day of the term of any lease or agreement to lease but upon the enforcement of the Charge the Debtor shall stand possessed of such last day in trust for the Secured Party to assign the same to any person acquiring such term in the course of enforcement of the Charge.

### **Exception for Certain Contractual Rights**

2.4 The Charge does not and shall not extend to, and the Charged Premises shall not include, any agreement, right, franchise, licence or permit (the **"Contractual Rights"**) to which the Debtor is a party or of which the Debtor has the benefit, to the extent that the creation of the Charge herein would constitute a breach of the terms of or permit any person to terminate the Contractual Rights, but the Debtor shall hold its interest therein in trust for the Secured Party and shall assign such Contractual Rights to the Secured Party forthwith upon obtaining the consent of all other parties thereto. The Debtor agrees that it shall, upon the request of the Secured Party, use all commercially reasonable efforts to obtain any consent required to permit any Contractual Rights to be subjected to the Charge herein.

### **Crystallization Against Real Property**

2.5 In respect of real property (and interests therein) subject to the floating charge created by Section 2.1(b), such floating charge shall become a fixed charge against such property and interests upon the earlier of (a) the Charge becoming enforceable in accordance with Section 4.1 and the Secured Party giving written notice to the Debtor that the indebtedness secured thereby is forthwith due and payable and that all or any part of the floating charge has become a fixed charge on the real property and interests therein charged thereby, and (b) the occurrence of any

## SCHEDULE 3 – DRAFT RENEWABLE ELECTRICITY SUPPORT AGREEMENT

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other event which by operation of law would result in the floating charge becoming a fixed charge on the real property and interests therein of the Debtor charged thereby.

### ARTICLE 3 - NEGATIVE PLEDGE

#### Negative Pledge

3.1 Except as in accordance with the Renewable Electricity Support Agreement, including, without limitation, Article 17 thereof, the Debtor shall not create, assume, have outstanding or permit to exist, except in favour of the Secured Party, any mortgage, charge, pledge, lien, assignment by way of security, security interest or other encumbrance on any part of the Charged Premises.

### ARTICLE 4 - DEFAULT AND REMEDIES

#### Default

4.1 If the Debtor defaults in the payment of principal, interest or any other amount payable hereunder or in the due performance of the terms and conditions of Section 3.1 hereof or upon the occurrence of a Generator Event of Default the Charge shall immediately become enforceable.

#### Remedies

4.2 (1) Whenever the Charge has become enforceable, the Secured Party may realize upon the Charged Premises and shall have the rights and remedies set forth in sub-sections (a) through (p) below, which rights and remedies may be exercised from time to time separately or in combination and are in addition to and not in substitution for any other rights or remedies the Secured Party may have.

- (a) The Secured Party may by appointment in writing appoint a receiver or receiver and manager (each herein referred to as the "**Receiver**") of the Charged Premises and may remove or replace such Receiver from time to time or may institute proceedings in any court of competent jurisdiction for the appointment of a Receiver of the Charged Premises or any part thereof; and the term "**Secured Party**" when used in this Section 4.2 shall include any Receiver so appointed and the agents, officers and employees of such Receiver.
- (b) The Receiver may exercise any remedies in connection therewith in accordance with the provisions of Section 16.2 of the Renewable Electricity Support Agreement.
- (c) The Secured Party may take possession of the Charged Premises and require the Debtor to make the Charged Premises available to the Secured Party.
- (d) The Secured Party may take such steps as it considers desirable to maintain, preserve or protect the Charged Premises.

### SCHEDULE 3 – DRAFT RENEWABLE ELECTRICITY SUPPORT AGREEMENT

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- (e) The Secured Party may carry on or concur in the carrying on of all or any part of the business of the Debtor relating to the Charged Premises.
- (f) The Secured Party may enforce any rights of the Debtor in respect of the Charged Premises by any manner permitted by law.
- (g) The Secured Party may, on giving the minimum notice, if any, according to applicable law, enter on and lease the Charged Premises and the Secured Party may collect the rents and profits and lease as aforesaid without entering into possession of the Charged Premises.
- (h) The Secured Party shall be entitled forthwith to take such proceedings to obtain repayment of the moneys and interest payable to the Secured Party hereunder and to realize on its security under this debenture by foreclosing the same or by whatever other action it may by law be entitled to do. The Secured Party shall be entitled, without notice (except such as may be required by law and which notice may run concurrent with the notice period required pursuant to the *Land Titles Act* in respect of notice of intention to file a certificate in respect of the power of attorney) to sell and dispose of the Charged Premises (by public auction and/or private contract) with or without entering into possession of the same; and all remedies competent may be resorted to; and all the rights, powers and privileges granted to or conferred upon the Secured Party under and by virtue of any statute or by this debenture may be exercised; and no want of notice or publication or any other defect, impropriety or irregularity shall invalidate any sale made or purporting to be made of the Charged Premises hereunder, and the Secured Party may sell, transfer and convey any part of the Charged Premises on such terms of credit, or part cash and part credit, secured by contract or agreement for sale or mortgage, or otherwise, as shall in the opinion of the Secured Party be most advantageous, and for such price as can reasonably be obtained therefor; and in the event of a sale on credit, or part cash and part credit, whether by way of contract for sale or by conveyance or transfer and mortgage, the Secured Party is not to be accountable for or charged with any moneys until the same shall be actually received in cash; and sales may be made from time to time of any portion or portions of the Charged Premises to satisfy the payment of any amount owing by the Debtor to the Secured Party in such order as the Secured Party may see fit; and the Secured Party may make stipulations as to the title or evidences or commencement of title or otherwise as the Secured Party shall deem proper; and the Secured Party may rescind or vary any contract for sale of the Charged Premises and any resale thereof; and on any sale or release, the Secured Party shall not be answerable for loss occasioned thereby; and for any of such purposes the Secured Party may make and execute all agreements and assurances that the Secured Party shall deem advisable or necessary; and in case any sale held by the Secured Party under and by virtue of the laws of the Province of Alberta under the power of sale herein contained should prove abortive the Secured Party may take foreclosure proceedings in respect of the Charged Premises in accordance with the provisions of the laws of the Province of Alberta in that behalf; and in the

### SCHEDULE 3 – DRAFT RENEWABLE ELECTRICITY SUPPORT AGREEMENT

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event of any deficiency on account of the moneys secured by this debenture remaining due to the Secured Party after realizing all the Charged Premises, then the Debtor will pay to the Secured Party on demand the amount of such deficiency with interest at the Interest Rate both before and after judgment; and the proceeds of any sale hereunder shall be applied as above provided for in payment of moneys payable under this debenture and costs incurred by the Secured Party on a solicitor and his own client basis, and the balance, if any, shall be paid to the Debtor; (any notice required to be given may be delivered to either the Charged Premises, the Debtor's residence or place of business, or the last known address of the Debtor).

- (i) The Secured Party may use the services of any real estate or other agent in connection with any sale, lease or disposition (including any agent affiliated with the Secured Party). Any purchaser or lessee from the Secured Party or a Receiver will not be required to see to the validity, legality, regularity or propriety of such sale, lease or disposition, or that a default has happened on account of which the sale, lease or disposition is being made. Each purchaser or lessee will receive good title to or a valid lease of that part of the Charged Premises sold or leased. The Debtor will not make any claims concerning the validity, legality, regularity or propriety of the sale, lease or disposition against the purchaser or lessee or their successors in title.
- (j) The Secured Party may accept the Charged Premises in satisfaction or partial satisfaction of the Charge upon notice to the Debtor of its intention to do so in the manner required by law.
- (k) The Secured Party may borrow money on the security of the Charged Premises for the purpose of the carrying on of the business of the Debtor or for the maintenance, preservation, protection or realization of the Charged Premises in priority to the Charge.
- (l) The Secured Party may perform any obligation or covenant under the Renewable Electricity Support Agreement or any other agreement entered into in connection therewith, and the entire costs thereof are a charge on the Charged Premises and shall be added to the amounts due hereunder and shall be secured by the Charge.
- (m) The Secured Party may exercise any other right or remedy permitted by law or equity, including, without limitation, all rights and remedies of a secured party under the *Personal Property Security Act* (Alberta) or any similar personal property legislation of any jurisdiction in which any of the Charged Premises is located or which, by operation of law, governs or is deemed to govern the Charged Premises
- (n) The Secured Party may send or employ an inspector or agent to inspect and report upon the value, state and condition of the Charged Premises, and a solicitor to examine and report upon the title to the same.

**SCHEDULE 3 – DRAFT RENEWABLE ELECTRICITY SUPPORT AGREEMENT**  
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- (o) The Secured Party may exercise any rights or remedies in accordance with the provisions of the Renewable Electricity Support Agreement.
- (p) It shall and may be lawful for and the Debtor does hereby grant full power, right and license to the Secured Party to enter, seize and distrain upon the Charged Premises, or any part thereof, and by distress warrant to recover by way of rent reserved as in the case of demise of the Charged Premises or any part thereof, as much of the mortgage moneys as shall from time to time be or remain in arrears and unpaid, together with costs, charges and expenses attending such levy or distress, as in like cases of distress for rent. As part of the consideration for any advance or creation of the Obligations the Debtor agrees to waive, and hereby waives, on the exercise of any such right of distress all rights to exemptions from seizure and distress under any statute of the Province of Alberta.
- (2) The Debtor further agrees with the Secured Party that:
  - (a) the Secured Party shall not be liable or responsible for any failure to seize, collect, realize, sell or obtain payment of the Charged Premises and shall not be bound to institute proceedings or to take other steps for the purpose of seizing, collecting, realizing or obtaining possession or payment of the Charged Premises or for the purpose of preserving any rights of the Secured Party, the Debtor or any other person, firm or corporation in respect of the Charged Premises;
  - (b) the Secured Party may grant extensions of time, take, abstain from taking and perfecting and give up securities, accept compositions, grant releases and discharges, release any part of the Charged Premises and otherwise deal with the Debtor, debtors of the Debtor, sureties and others and with the Charged Premises and other securities as the Secured Party may see fit without prejudice to the liability of the Debtor to the Secured Party or the Secured Party's rights hereunder;
  - (c) to facilitate the realization of the Charged Premises, the Secured Party may enter upon, occupy and use all or any of the premises, buildings and plant comprising the Charged Premises and use all or any of the equipment and other personal property of the Debtor for such time as the Secured Party requires to facilitate such realization, free of charge (as between the Debtor and the Secured Party), and the Secured Party shall not be liable to the Debtor for any neglect in so doing (other than gross negligence or wilful misconduct on the part thereof) or in respect of any rent, charges or depreciation in connection with such actions;
  - (d) the Secured Party may charge on its own behalf and pay to others all reasonable amounts for expenses incurred and for services rendered in connection with the exercise of the rights and remedies of the Secured Party hereunder, including, without limiting the generality of the foregoing, reasonable legal, Receiver and accounting fees and expenses, and in every such case the amounts so paid together with all costs, charges and expenses incurred in connection therewith shall be added to the amounts due hereunder and shall be secured by the Charge;

## **SCHEDULE 3 – DRAFT RENEWABLE ELECTRICITY SUPPORT AGREEMENT**

**April 28, 2017**

- (e) the Secured Party may discharge any claim, lien, mortgage, charge, security interest, encumbrance or any rights of others that may exist or be threatened against the Charged Premises, and in every such case the amounts so paid together with costs, charges and expenses incurred in connection therewith shall be added to the amounts due hereunder and shall be secured by the Charge; and
- (f) any proceeds of realization of the Charged Premises may be applied by the Secured Party in accordance with Section 4.2(1)(h) of this debenture; if there is any surplus remaining, it may be paid to any person having a claim thereto in priority to the Debtor of whom the Secured Party has knowledge and may be applied or retained as reserves against potential claims that the Secured Party or the Receiver in good faith believes should be maintained and the balance remaining, if any, shall (subject to applicable law) be paid to the Debtor.

(3) Any Receiver shall be entitled to exercise all rights and powers of the Secured Party hereunder. To the extent permitted by law, any Receiver shall for all purposes be deemed to be the agent of the Debtor and not of the Secured Party and the Debtor shall be solely responsible for the Receiver's acts or defaults and remuneration.

(4) The Debtor hereby irrevocably appoints the Secured Party attorney on its behalf to sell, transfer, lease, mortgage, otherwise dispose of or encumber the Charged Premises or any part thereof, or to execute all instruments, and do all acts, matters and things that may be necessary for carrying out the powers hereby given and for the recovery of all rents and sums of money that may become or are now due or owing to the Debtor in respect of the Charged Premises and for the enforcement of all contracts, covenants or conditions binding on any lessee or occupier of the Charged Premises or on any person in respect of it and this appointment shall take effect if the Charge has become enforceable. This appointment includes, but is not limited to, the Secured Party acting as attorney for recovering all rents and sums of money that may become or are due or owing to the Secured Party in respect of the Charged Premises and for enforcing all agreements binding on any lessee or occupier of the Charged Premises or on any other person in respect of it and for taking and maintaining possession of the Charged Premises and for executing all instruments, deeds and documents pertaining thereto and for doing all acts, matters and things that may be necessary for carrying out the powers hereby given.

(5) The Secured Party as attorney in fact shall not be responsible for ensuring no waste, trespass or entry, and shall not be liable for such occurrences.

### **ARTICLE 5 - GENERAL**

#### **Expenses**

5.1 The Debtor shall pay to the Secured Party forthwith on demand all reasonable costs, charges and expenses, including all reasonable legal fees, incurred by the Secured Party in connection with the recovery or enforcement of payment of any moneys owing hereunder whether by realization or otherwise. All such sums, together with interest thereon at the rate set forth in this debenture, shall be added to the amount payable hereunder and shall be secured by the Charge.

**Pledge of Debenture**

5.2 This debenture may be pledged by the Debtor as security for its indebtedness and liabilities. While this debenture is so pledged, no payment by the Debtor of the whole or any part of any indebtedness secured by this debenture shall reduce the amount owing under this debenture unless specifically appropriated to and noted on this debenture by the Secured Party at the time of payment.

**Not Negotiable**

5.3 This debenture is not a negotiable instrument and the rights created hereunder which are exercisable by any holder hereof other than the Secured Party are no greater than the rights of the Secured Party, and any holder hereof is subject to the same obligations, duties, liabilities and defences as the Secured Party would have been subject to.

**No Waiver, Remedies**

5.4 No failure on the part of the Secured Party to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

**Notices**

5.5 Any demand, notice or communication to be made or given hereunder shall be in writing and may be made or given by personal delivery, by transmittal, by facsimile transmission or other electronic means of communication addressed to the Debtor as follows:

**[Insert Generator name and address]**

Facsimile No.: [●]  
Attention: [●]

or to such other address or electronic communication number as the Debtor may from time to time notify the Secured Party in writing. Any demand, notice or communication made or given by personal delivery or by facsimile transmission or other electronic means of communication shall be conclusively deemed to have been made or given on the day of actual delivery or transmittal thereof.

**Additional Security**

5.6 This debenture and the Charge shall be and shall be deemed to have been given in addition to and not in place of any other security now or hereafter held or acquired by the Secured Party.

**Headings; References to Debenture**

5.7 The division of this debenture into Articles and Sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this debenture. The terms "this debenture", "hereof", "hereunder" and similar expressions refer to this debenture and not to any particular Article, Section or other portion hereof and include any agreement supplemental hereto. Unless something in the subject matter or context is inconsistent therewith, reference herein to "Articles" and "Sections" are to Articles and Sections of this debenture.

**Number; Gender; Persons**

5.8 In this debenture words importing the singular number only shall include the plural and vice versa, words importing any gender shall include all genders and words importing persons shall include individuals, partnerships, associations, trusts, unincorporated organizations and corporations.

**Governing Law**

5.9 This debenture shall be governed by and construed in accordance with the laws of the Province of Alberta and the federal laws of Canada applicable therein.

**Attornment**

5.10 The Debtor hereby attorns and submits to the non-exclusive jurisdiction of the courts of the Province of Alberta. For the purpose of all legal proceedings, this debenture shall be deemed to have been performed in the Province of Alberta and the courts of the Province of Alberta shall have jurisdiction to entertain any action arising under this debenture. Notwithstanding the foregoing, nothing herein shall be construed nor operate to limit the right of the Debtor or the Secured Party to commence any action relating hereto in any other jurisdiction, nor to limit the right of the courts of any other jurisdiction to take jurisdiction over any action or matter relating hereto.

**Benefit of the Debenture**

5.11 This debenture shall be binding upon the successors and permitted assigns of the Debtor (including, without limitation, any corporation resulting from an amalgamation with the Debtor) except that the Debtor may not assign its obligations under this debenture without the prior written consent of the Secured Party. This debenture shall benefit the successors and assigns of the Secured Party.

**Time of the Essence**

5.12 Time shall be of the essence with regard to this debenture.

**Discharge**

5.13 The Debtor shall not be discharged from the Charge, this debenture or any of its obligations hereunder except by a release or discharge in writing signed by the Secured Party upon the expiry of the Term or the earlier termination of the Renewable Electricity Support Agreement.

**Waiver of Financing Statement, Etc.**

5.14 The Debtor hereby waives the right to receive from the Secured Party a copy of any financing statement, financing change statement or other statement or document filed or registered at any time in respect of this debenture or any verification statement or other statement or document issued by any registry that confirms or evidences registration of or relates to this debenture.

**No Merger**

5.15 No item or part of this debenture shall be merged or be deemed to have been merged in or by any documents, instruments or acknowledgements delivered in connection with this debenture, the Renewable Electricity Support Agreement, or any simple contract debt or any judgment, and any realization of or steps taken under or pursuant to any security, instrument or agreement shall be independent of and not create a merger with any other right available to the Secured Party under any security, instruments or agreements held by it or at law or in equity. No obligation of the Debtor hereunder shall merge in any judgment relating to any such obligation.

**Obligations; Interest Rate**

5.16 Notwithstanding the form and terms of this debenture, (a) the Secured Party shall not claim or realize an amount under or in respect of Debenture in excess of the aggregate Obligations, from time to time, of the Debtor to the Secured Party, and (b) notwithstanding the interest rate per annum stated hereunder, payment to the Secured Party of the relevant interest, fees and other amounts owing under the Renewable Electricity Support Agreement for any period in respect of the Obligations at the current rate at which the Obligations bear interest for such period pursuant to the Renewable Electricity Support Agreement shall be deemed to be payment in satisfaction of the interest payment for the same period under the debenture.

**Paramountcy**

5.17 The provisions of the this debenture, in particular, but without limitation, Sections 2.2 and 3.1 hereof, are subject to the provisions of the Renewable Electricity Support Agreement relating to the subject matter thereof. If there are any express conflicts or inconsistencies between the terms of the Renewable Electricity Support Agreement and this debenture, then the

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terms of the Renewable Electricity Support Agreement shall govern in all respects to the extent necessary to eliminate such express conflicts or inconsistencies.

*[Remainder of Page Intentionally Left Blank]*

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**April 28, 2017**

**IN WITNESS WHEREOF** the Debtor has executed this debenture.

**[Insert Generator's Name]**

Per: \_\_\_\_\_  
Name:  
Title:

**EXHIBIT A**

**Fee Simple Lands**

**EXHIBIT B**

**Utility Rights of Way**

**EXHIBIT C**

**Leasehold Lands**

**SCHEDULE 4**  
**SECURED LENDER CONSENT AND ACKNOWLEDGEMENT**  
**AGREEMENT**

**1. GENERAL**

**1.1 Capitalized Terms and Section References**

Capitalized terms used in this Schedule, unless expressly defined herein, have the meanings given to such terms in Section 1.1 of the Renewable Electricity Support Agreement between the AESO and Generator to which this Schedule is attached (the "**RESA**"). Unless otherwise provided, references herein to Article numbers and Section numbers are references to Articles and Sections of Appendix 1 to this Schedule.

**1.2 Agreement References**

This Schedule and the Lender Consent is referenced in Sections 1.1 and 1.4 and Article 17 of the RESA.

**2. SECURED LENDER CONSENT AND ACKNOWLEDGMENT AGREEMENT**

The prescribed form of the Secured Lender Consent and Acknowledgment Agreement, contemplated by Section 17.3 of the RESA, is attached hereto as Appendix 2.

**3. TRUSTEE FOR OR REPRESENTATIVE OF AESO RECOGNIZED LENDERS**

Where, as contemplated by Section 17.1 of the RESA, the Lender under the Secured Lender's Security Agreement is a collective of Lenders represented by a trustee, the form prescribed by this Schedule 4 in Appendix 1 hereto shall be adapted as necessary to reflect such representative capacity but such adaptation shall include only modifications as to form and shall not introduce substantive changes in the rights or remedies available to or exercisable on behalf of such Lenders or the rights and remedies exercisable by the AESO.

**Appendix 1**

**SECURED LENDER CONSENT AND ACKNOWLEDGEMENT  
AGREEMENT**

THIS AGREEMENT made as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,

BETWEEN:

[●],

*[insert name of the Generator and jurisdiction of organization]*

(the **Generator**)

- and -

[●],

*[insert name of Secured Lender and jurisdiction of organization]*

(the **Secured Lender**)

- and -

**INDEPENDENT SYSTEM OPERATOR**  
**(operating as the Alberta Electric System Operator),**  
a statutory corporation formed  
under the laws of the Province of Alberta

(the **AESO**)

**RECITALS:**

- (A) The Generator and the AESO entered into and are parties to a Renewable Electricity Support Agreement dated as of [●], contract identification # [●] (as amended, supplemented, restated or replaced from time to time in accordance with its terms and this agreement, the "**RESA**") to formalize their contractual arrangements pursuant to which the Generator will develop, finance, build, own, operate, and maintain the Project, sell Renewable Electricity into the Power Pool, and transfer and assign all Renewable Attributes from the Project to the AESO;
- (B) The Generator has granted security against the Facility and the Assets to the AESO as security for its present and future indebtedness, liabilities and obligations under the RESA pursuant to the Fixed and Floating Charge Debenture (the "**AESO Secured Debt**");

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- (C) The Generator has entered into Lending Agreements with the Secured Lender which are identified in Schedule “A” (the "**Lending Agreements**"), and has granted security against some or all of the Facility, Assets and Equity Capital in favour of the Secured Lender pursuant to the Secured Lender’s Security Agreement identified in Schedule “A” (as amended, supplemented, restated or replaced from time to time, the "**Security Agreement**"), as security for its present and future indebtedness, liabilities and obligations under and in respect of the Lending Agreement (the "**Lender Secured Debt**");
- (D) The Generator has agreed and the Secured Lender acknowledges that the Lender Secured Debt secured by the Security Agreement is only for the purposes of financing the Generator’s development, construction, ownership, operation and maintenance of the Facility and any refinancing of any such debt, and for no other purpose.

THEREFORE, the parties agree as follows:

**ARTICLE 1**  
**DEFINED TERMS**

**1.1 Definitions**

In addition to defined terms and expressions otherwise set out in this agreement, the following terms and expressions used in this agreement, mean as follows:

- (a) "**AESO Recovery Amount**" has the meaning ascribed to it in Section 3.3(a);
- (b) "**AESO Secured Debt**" has the meaning ascribed to it in the recitals hereto;
- (c) "**AESO Security**" has the meaning ascribed to in in Section 3.1(b)
- (d) "**BIA**" means the *Bankruptcy and Insolvency Act* (Canada), as it may be amended from time to time;
- (e) "**CCAA**" means the *Companies’ Creditors Arrangement Act* (Canada), as it may be amended from time to time;
- (f) "**Default Notice**" has the meaning ascribed to it in Section 7.1;
- (g) "**Generator's Instructions**" has the meaning ascribed to it in Section 7.1;
- (h) "**Lender Secured Debt**" has the meaning ascribed to it in the recitals hereto;
- (i) "**Lender Security**" has the meaning ascribed to it in Section 3.2(b).
- (j) "**Lender's Instructions**" has the meaning ascribed to it in Section 7.1;
- (k) "**PPSA**" means the *Personal Property Security Act* (Alberta), as it may be amended from time to time;

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- (l) "RESA" has the meaning ascribed to it in the recitals.
- (m) "Secured Parties" means AESO and the Secured Lender, and Secured Party means any one of them.
- (n) "Security" means the AESO Security and the Lender Security.
- (o) "Security Agreement" has the meaning ascribed to it in the recitals hereto;

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

**ARTICLE 2**  
**ACKNOWLEDGEMENT AND CONFIRMATION**

**2.1 General Acknowledgements**

The AESO, the Secured Lender and the Generator each acknowledge and confirm that:

- (a) the Generator has delivered to the AESO copies of the Security Agreement; and
- (b) the Security Agreement is acknowledged to be a Secured Lender's Security Agreement to which the provisions of Section 17 of the RESA apply.

**2.2 Secured Lender Acknowledgements**

The Secured Lender acknowledges, confirms and agrees that:

- (a) it has read and understands the requirements and restrictions and provisions and agrees to be bound by and comply with all such requirements, restrictions and provisions pertaining to the Secured Lender's Security Agreement and the Secured Lender in Section 17 of the RESA;
- (b) it has complied with Section 17.1 of the RESA in entering into financing and security documents with the Generator, including the Security Agreement, in respect of the Facility and the RESA;
- (c) the AESO's recognition of the Secured Lender's rights under this agreement does not extend to security for indebtedness or liability other than indebtedness or liability relating to the Facility, nor does it extend to security over assets unrelated thereto, and the Secured Lender is only entitled to the protections of this agreement to the extent that the indebtedness being enforced and giving rise to the exercise of security is indebtedness relating only to the financing of the Facility; and

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- (d) it shall not exercise its rights under the Security Agreement to acquire or dispose of the Facility except in respect of liability or indebtedness of the Generator relating to the Facility.

Notwithstanding any other provision of this agreement, no security agreement other than the Security Agreement shall be entitled to the benefit of the provisions of Section 17 of the RESA, unless and until the AESO has received a copy thereof (as provided for in Section 17.1(d) of the RESA) and each of the parties has acknowledged such additional security agreement by fully executing an amendment to Schedule "A" to include such additional security agreement. It is a condition precedent to the acknowledgement and confirmation provided in this Section 2.2 that the representations and warranties contained in Article 5 and Article 6 hereof are true and accurate.

**ARTICLE 3**  
**CONSENT TO SECURITY AND PRIORITY**

**3.1 Consent to AESO Security**

The Secured Lender acknowledges and consents to:

- (a) any Monthly RESA Payments and all applicable interest and fees owing by the Generator to AESO as provided for under the RESA; and
- (b) the granting by the Generator of the security interests pursuant to the Fixed and Floating Change Debenture (the "**AESO Security**").

**3.2 Consent to Lender Security**

The AESO acknowledges and consents to:

- (a) the borrowings under the Lending Agreements; and
- (b) the granting by the Generator of the security interests pursuant to the Security Agreement (the "**Lender Security**").

**3.3 Priority**

Notwithstanding the dates of execution and delivery of the AESO Security or the Lender Security, the dates of filing or perfecting thereof, the giving of notice in respect thereof, the nature of the security interests granted therein, the date of default by the Generator under the RESA or the Lending Agreements, or the AESO Security or the Lender Security, the time of crystallization thereof, the dates of any advances or the institution of any proceedings thereunder, any priority granted by any principle of law or any statute, including, without limitation, the PPSA, the BIA, the CCAA and any similar or other statutes in Alberta or any other jurisdiction, but subject in all events to the terms and conditions of this agreement:

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- (a) the AESO Security shall rank senior to the Lender Security to the extent it charges any Monthly RESA Payments (and all applicable interest and fees) owing by the Generator to the AESO prior to any effective Termination Date (the "**AESO Recovery Amount**"); and
- (b) except as expressly set out in Section 3.3(a), the AESO Security is hereby subordinated to the Lender Security for all purposes and in all events to the extent of prior, indefeasible payment and satisfaction in full of the Lender Secured Debt.

### **3.4 Application of Proceeds**

Any and all proceeds of realization from or relating to the enforcement of any of the AESO Security or the Lender Security shall be applied in the following order:

- (a) first, to the payment of costs, charges, expenses and liabilities incurred in connection with the enforcement of the AESO Security;
- (b) second, to the AESO for payment and satisfaction in full of the AESO Recovery Amount;
- (c) third, to the payment of costs, expenses, charges, expenses and liabilities incurred in connection with the enforcement of the Lender Security;
- (d) fourth, to the payment and satisfaction in full of the Lender Secured Debt; and
- (e) fifth, to the Generator or such other Persons as may be entitled thereto under Applicable Law.

### **3.5 Continuing Agreement**

The rights and priorities as set out in this Agreement and the postponements and subordinations provided for herein shall apply in all events and circumstances, notwithstanding any other priorities which may become available to the Secured Lender or to AESO for any reason whatsoever including, without limitation:

- (a) the time, sequence or order of creating, granting, executing, delivering, registering or failing to register any security document or security notice, caveat, financing statement or other similar document under the AESO Security or the Lender Security;
- (b) the date of any advance of funds made by a Secured Party;
- (c) the time or order of giving any notice or the making of any demand under the RESA or the Lending Agreements or the attachment, perfection or crystallization of any security interest constituted by the AESO Security or the Lender Security;
- (d) the date of appointment of any receiver or receiver-manager of the Generator, or the exercise of any other collection, enforcement or realization rights or remedies,

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or the taking of any collection, enforcement or realization proceedings pursuant to the AESO Security or the Lender Security;

- (e) the date of obtaining any judgment or the order of any bankruptcy court or any court administering bankruptcy, insolvency or similar proceedings as to any money or property of the Generator or any Affiliate of the Generator;
- (f) the giving or the failure to give any notice, or the order of giving any notice, to the Generator or any Affiliate of the Generator, or any other Person including, without limitation, any Person indebted to the Generator or any Affiliate of the Generator;
- (g) the failure to exercise any power or remedy reserved to either Secured Party under the RESA or AESO Security or any Lending Agreement or Lender Security or to insist upon a strict compliance with any of the terms thereof;
- (h) any other factor of legal relevance including any priority granted to any Secured Party by any applicable principle of law or equity; or
- (i) any amendments or other actions permitted hereunder.

### **3.6 Financing Statements**

Upon the request of a Secured Party, the other Secured Party shall file financing change statements at all applicable personal property registries, and in any other registry or office, in order to reflect the priorities set out in Section 3.3 hereof.

## **ARTICLE 4 PAYMENTS TO BE HELD IN TRUST; SET-OFF**

### **4.1 Consent to Set-Off**

The Secured Lender agrees and consents to the discharging of the Generator's Monthly Payment obligations owing to the AESO by way of set-off pursuant to Section 6.5(a) of the RESA. The Secured Lender further agrees and consents to such set-off applicable to all amounts owing for the period following the issuance of any default notice by the Secured Lender up to and including the Termination Date.

### **4.2 Payments to be Held in Trust**

Subject to Section 4.1 above, AESO agrees that if any money or proceeds or any payment or distribution of any property, assets or effects of the Generator is received by it in contravention or in a manner which is inconsistent with the provisions set forth herein, then the AESO shall receive and hold same in trust for the benefit of the Secured Lender on behalf of the Secured Lender and shall forthwith pay and transfer such money, proceeds, property, assets and effects to the Secured Lender.

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The Secured Lender agrees that if any money or proceeds or any payment or distribution of any property, assets or effects of the Generator is received by it in contravention or in a manner which is inconsistent with the provisions set forth herein, then the Secured Lender shall receive and hold same in trust for the benefit of AESO and shall forthwith pay and transfer such money, proceeds, property, assets and effects to AESO.

**ARTICLE 5**  
**COVENANTS OF THE SECURED LENDER**

**5.1 Secured Lender Covenants**

The Secured Lender acknowledges, covenants and agrees with the AESO (and in the case of (b), (c), (d), (f), (h), (j), (l) and (n) below, covenants, agrees, represents and warrants to the AESO) as follows:

- (a) Should the Secured Lender enforce the Lender Security with respect to the RESA and otherwise, it will comply with the terms, conditions and obligations applicable to secured lenders under Section 17 of the RESA and hereunder as they relate to the Secured Lender's security interests in the RESA during such enforcement.
- (b) That it is in compliance, as at the date hereof, and will continue to comply with Section 17.2(f) of the RESA.
- (c) The Secured Lender is at Arm's Length from the Generator.
- (d) The Security Agreement constitutes all of the security granted by the Generator in favour of the Secured Lender as at the date first written above.
- (e) That the AESO shall have no liability whatsoever for payment of the principal sum secured by the Security Agreement, or any interest accrued thereon or any other sum secured thereby or accruing thereunder; and the Secured Lender shall not be entitled to seek any damages against the AESO for any or all of the same.
- (f) All of the security registrations made pursuant to the PPSA in respect of the Security Agreement as of the date hereof are set out in Schedule "A".
- (g) If the Generator is in default under or pursuant to the Security Agreement or Lending Agreements and the Secured Lender intends to exercise any rights afforded to it with respect to the RESA, the Security Agreement or Lending Agreements, then the Secured Lender will give notice of such default to the AESO at least 10 Business Days prior to exercising any such rights under the RESA, such Security Agreement or the Lending Agreements.
- (h) The Secured Lender has duly authorized, executed and delivered this agreement and holds the security granted pursuant to the Security Agreement on behalf of all parties having any right, title or interest in the Security Agreement.

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- (i) Only the Secured Lender will be entitled to exercise the rights and remedies under the Security Agreement and the RESA as Secured Lender, except that in accordance with Section 17.2(d) of the RESA, when the Secured Lender has appointed an agent, a receiver or a receiver and manager, or has obtained a court-appointed receiver or receiver and manager for the purpose of enforcing the Lender Security, that Person may exercise any of the Secured Lender's rights under Section 17.2 of the RESA.
- (j) The address of the Secured Lender to which notices may be sent pursuant to Section 17.1(d) of the RESA is set forth in Section 8.3 of this agreement.
- (k) The Secured Lender will provide the AESO with written notice of any change in address of the Secured Lender, and the Secured Lender agrees to promptly notify AESO in writing of any discharge or termination of the Security Agreement.
- (l) The recitals to this agreement are true and accurate.
- (m) The sale, assignment or other transfer of any rights in shares, partnership interests or similar rights in the capital of the Generator in respect of which the Secured Lender holds a security interest granted pursuant to the Security Agreement shall be subject to Section 17.2(f) of the RESA.
- (n) The Security Agreement has been and shall be entered into, and any security thereunder has been and shall be held and assigned, solely by way of security and not for any other purpose. The Secured Lender acknowledges that any acknowledgement, agreement or confirmation of the AESO hereunder is not and shall not be construed as a consent to any assignment of the RESA or to any change of Control of the Generator other than for the bona fide enforcement of a security interest duly granted under a Security Agreement as provided for in Section 17 of the RESA.

### **ARTICLE 6 COVENANTS OF THE GENERATOR**

**6.1** The Generator covenants, agrees, represents and warrants to the AESO as follows:

- (a) The Secured Lender's Security Agreement is subject to the terms and conditions applicable to a Secured Lender's Security Agreement that are contained in Section 17 of the RESA, and comply therewith.
- (b) The Generator has provided to AESO true and complete copies of the Lending Agreements and the Security Agreement, and such Security Agreement constitutes a Secured Lender's Security Agreement and the Secured Lender constitutes a "Secured Lender" for purposes of the RESA.
- (c) All of the security registrations made pursuant to the PPSA in respect of the Security Agreement are set out in Schedule "A".

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- (d) The recitals to this agreement are true and accurate and the Generator agrees that all Lender Secured Debt will have been incurred only in connection with the development, construction, ownership, operation and maintenance of the Facility.
- (e) The Generator will provide the AESO with true and complete copies of any new agreements relating to, or amendments to, the Security Agreement.
- (f) The Security Agreement does not and will not secure any indebtedness, liability or obligation of the Generator that is not related to the Facility or cover any real or personal property of the Generator not related to the Facility.
- (g) As of the date hereof, there is no existing unremedied Generator Event(s) of Default.
- (h) The Security Agreement has been and shall be entered into, and any security thereunder has been and shall be held and assigned, solely by way of security and not for any other purpose. The Generator acknowledges that any acknowledgement, agreement or confirmation of the AESO hereunder is not and shall not be construed as a consent to any assignment of the RESA or to any change of Control of the Generator other than for the bona fide enforcement of a security interest duly granted under the Security Agreement.

### ARTICLE 7

#### NOTICE OF DEFAULT BY SECURED LENDER

##### 7.1 Notice of Default by Secured Lender

The parties hereto agree that the AESO shall not be bound or have any obligation to make any inquiry regarding the status of the Generator's account with the Secured Lender or regarding any breach or default under or pursuant to the Security Agreement other than the written notice (a "**Default Notice**") to be given to the AESO by the Secured Lender pursuant to Section 17.1(e) of the RESA, which may be accepted by the AESO as conclusive evidence of the Generator's default under the Security Agreement. Following receipt by the AESO of a Default Notice, the AESO may at all times, subject to any transfer of such interest or entry into a New Agreement in accordance with the RESA and this Agreement, rely on the instructions (the "**Lender's Instructions**") of the Secured Lender or its nominee or agent or a receiver or receiver and manager appointed in accordance with Section 17.2(d) of the RESA until the Default Notice is withdrawn by the Secured Lender by written notice to the AESO. The AESO shall have no liability to the Generator for honouring a Default Notice or any Lender's Instructions and the Generator hereby agrees to indemnify the AESO and hold it harmless in respect of any losses or claims incurred or suffered by the AESO due to or arising out of AESO honouring any Default Notice or complying with any Lender's Instructions, and the sole remedy of the Generator in any such circumstances shall be against the Secured Lender. Prior to receipt by the AESO of a Default Notice, the AESO may at all times rely on the instructions of the Generator (the "**Generator's Instructions**"). The AESO shall have no

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liability to the Secured Lender for complying with any Generator's Instructions prior to such receipt.

**ARTICLE 8**  
**GENERAL**

**8.1 No Challenge of Security**

Each of the AESO, the Generator and the Secured Lender agrees that it shall not take steps (directly or indirectly) to challenge or contest the legality, protection, enforceability, effectiveness or validity of any Security or the priority of any Security in a manner inconsistent with this Agreement.

**8.2 Term of Agreement**

This agreement shall terminate and shall be of no further force and effect upon the earliest to occur of:

- (a) all Lender Secured Debt and AESO Secured Debt being repaid and satisfied in full; and
- (b) the termination of the RESA.

**8.3 Notices**

All notices pertaining to this agreement not explicitly permitted to be in a form other than writing will be in writing and will be given by facsimile or other means of electronic transmission or by hand or courier delivery. Any notice will be addressed to the parties as follows:

If to the Generator:

[•]

Attention: [•]

Facsimile: [•]

Email: [•]

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If to the AESO:

Alberta Electric System Operator

2500 Calgary Place  
330 – 5<sup>th</sup> Avenue SW  
Calgary, Alberta T2P 0L4

Attention: [●]

Facsimile: (403) 539-2949

Email: [●]

If to the Secured Lender:

[●]

Attention: [●]

Facsimile: [●]

Email: [●]

Notice delivered or transmitted as provided above will be deemed to have been given and received on the day it is delivered or transmitted, provided that it is delivered or transmitted on a Business Day prior to 5:00 p.m. local time in the place of delivery or receipt. However, if a notice is delivered or transmitted after 5:00 p.m. local time or such day is not a Business Day, then such notice will be deemed to have been given and received on the next Business Day. Any party may, by written notice to the other parties, change its respective representative or the address to which notices are to be sent.

**8.4 Successors and Assigns**

Subject to complying with Section 17.1(d) and Article 20 of the RESA, the benefits under this agreement accruing to each of the parties to this agreement will extend to all their respective successors and permitted assigns, only if they agree, according to their interests, to be bound by all the provisions of this agreement (it being the responsibility of each party to give notice to each other party of such assignment and to require its successors and permitted assigns to expressly acknowledge and agree in favour of each other party to be bound by this agreement). Subject to complying with Section 17.1(d) and Section 20.1 of the RESA, upon the acquisition by any such successor or permitted assign of such an interest, such successor or permitted assign will be joined, as a party benefiting and bound by this agreement, by an appropriate further agreement supplementary to this agreement in form and substance acceptable to the AESO, acting reasonably.

**8.5 No Waiver**

The parties hereto confirm that the RESA remains in full force and effect in accordance with its terms, and that this agreement shall not be deemed to waive or modify in any respect any rights of the AESO under the RESA or the REP. Without limiting the foregoing, this agreement shall not constitute or be deemed to constitute:

- (a) a waiver of any Generator Event of Default or other default of the Generator;
- (b) waiver of any prohibition or restriction on, or be AESO's consent to, any assignment of the RESA or change of Control under the RESA; or
- (c) an acknowledgement that there has been or will be compliance by the Generator with the RESA, except to the extent of the acknowledgement of the rights of the Secured Lender as expressly provided herein.

The parties hereto acknowledge and agree that this agreement is being entered into pursuant to, and with respect to, the RESA only and shall not be construed as an amendment or waiver of any other agreement. This agreement, and any notice delivered pursuant to this agreement, shall not be deemed to be notice for any other purpose.

**8.6 Conflicting Provisions**

In the event of any conflict or inconsistency between the provisions of this Agreement and the provisions of the RESA, the provisions of the RESA, to the extent of the conflict or inconsistency, shall govern and prevail.

**8.7 Execution and Delivery**

This agreement may be executed by the parties hereto in counterparts and may be executed and delivered by facsimile and all such counterparts and facsimiles will together constitute one and the same agreement.

**8.8 Governing Law**

This agreement will be governed by and interpreted in accordance with the laws of the Province of Alberta and the federal laws of Canada applicable in the Province of Alberta.

***[EXECUTION PAGE IMMEDIATELY FOLLOWS]***

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

**ALBERTA ELECTRICITY SYSTEM  
OPERATOR**

Per: \_\_\_\_\_  
Name: [●]  
Title: [●]

**[●], as Secured Lender**

Per: \_\_\_\_\_  
Name: [●]  
Title: [●]

Per: \_\_\_\_\_  
Name: [●]  
Title: [●]

**[●], as Generator**

Per: \_\_\_\_\_  
Name: [●]  
Title: [●]

Per: \_\_\_\_\_  
Name: [●]  
Title: [●]

**SCHEDULE A**

**LIST OF LENDER AGREEMENTS, SECURED LENDER SECURITY AGREEMENT AND REGISTRATION DETAILS**

The following Lending Agreements were entered into between the Generator and the Secured Lender:

- (a) ● (date)
- (b) ● (date)

The following Secured Lender's Security Agreement was granted by the Generator in favour of the Secured Lender:

- (a) [●] date

The following registrations were made against the Generator in favour of the Secured Lender under the *Personal Property Security Act* (Alberta):

- [●]

## SCHEDULE 5

### BIOMASS SUSTAINABILITY REQUIREMENTS

#### 1. GENERAL

##### 1.1 Capitalized Terms and Section References

Capitalized terms used in this Schedule shall, unless expressly defined herein, have the meaning given such terms in Section 1.1 of the Renewable Electricity Support Agreement between the AESO and the Generator to which this Schedule is attached (the "RESA"). Unless otherwise provided, references herein to Section numbers are references to Sections of this Schedule.

##### 1.2 Agreement References

This Schedule is referenced in Sections 1.1, 3.2(g) and 6.2 (e) of the RESA.

##### 1.3 Definitions

In this Schedule, the following expressions have the following meanings:

"**Advanced Fuels**" means any liquid fuels produced directly or indirectly from the Gasification or the Pyrolysis of Biogas, Solid Biomass, and Solid Landfill Waste;

"**Biogas**" means sewage gas, landfill gas, and other gas formed from the anaerobic digestion of biomass or other organic matter other than any such gas;

"**Certified Forest Resources**" means forest resources sourced from outside of Canada which are certified to be in compliance with forest certification standards approved by the Minister from time to time, which may include standards endorsed by the PEFC;

"**Emissions Offset**" has the meaning given to such term "emissions offset" in SGER;

"**FMS Information**" has the meaning given to such term in Section 2.4(c) of this Schedule 5;

"**FMS Procedures**" means procedures for measuring and sampling the fuels used at the Facility for purposes of determining, for each Settlement Period:

- (a) the quantity of fuel used during such Settlement Period which is Sustainable Biomass, and the quantity which is not Sustainable Biomass;
- (b) the energy content of such fuels; and
- (c) the level of any contamination;

"**Gasification**" means the substoichiometric oxidation or steam reformation of a substance to

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produce a gaseous mixture and that mixture contains at least two of the following: (i) the oxides of carbon; (ii) methane; and (iii) hydrogen;

"**PEFC**" means the Programme for the Endorsement of Forest Certification, an international non-profit, non-governmental organization dedicated to promoting sustainable forest management through independent third-party certification;

"**Permitted Ancillary Activities**" means, with respect to the use of fossil fuels, any of the following activities:

- (a) heating the Facility's combustion system to its normal operating temperature, or the maintenance of that temperature;
- (b) the ignition of fuels of low or variable calorific value;
- (c) emissions control;
- (d) standby generation or the testing of standby generation capacity;
- (e) corrosion control;
- (f) fouling reduction; or
- (g) any other activity approved by the Minister from time to time;

"**Pyrolysis**" means the thermal degradation of a substance in the absence of any oxidising agent (other than that which forms part of the substance itself) to produce: (a) char; and (b) a gas or a liquid (or both);

"**Renewable Multiplier**" or "**RM**" has the meaning given to it in Section 3.1(a) of this Schedule 5;

"**RM Infraction**" has the meaning given to it in Section 3.1(b) of this Schedule 5;

"**SGER**" means the Specified Gas Emitters Regulation (Alberta);

"**Solid Biomass**" means naturally occurring organic matter, which specifically includes: crops grown or harvested for the purpose of being used to generate Electricity; waste from harvesting or processing agricultural products or waste from processing forestry products, including spent pulping liquor; agricultural waste (including manure); organic waste materials from a greenhouse, nursery, garden centre or flower shop; pulp and paper biosolids; waste from food processing, distribution and preparation operations; sewage biosolids (i.e. residue from a sewage treatment works following treatment of sewage and removal of effluent) and hauled sewage; waste from the operation of a sewage works; uncontaminated woodwaste (e.g. tree trunks, tree branches, leaves and brush); or Sustainable Forest Resources; provided that "Solid Biomass" shall not include: (i) peat or peat derivatives or (ii) woodwaste contaminated with chromated copper arsenate, ammoniacal copper arsenate, pentachlorophenol, creosote, or any other substance designated by the Minister from time to time;

"**Solid Landfill Waste**" means municipal solid waste;

"**Solid Landfill Waste Facility**" means any Biomass Facility which, uses Solid Landfill Waste or Advanced Fuels produced, directly or indirectly, from Solid Landfill Waste as its source of fuel;

"**Sustainable Biomass**" means Advanced Fuels, Biogas, Solid Biomass and Solid Landfill Waste;

"**Sustainable Forest Resources**" means forest resources which are sourced from within Canada, or which are Certified Forest Resources; and

"**Unsustainable Forest Resource**" means any forest resource sourced from outside of Canada which is not a Certified Forest Resource.

## **2. SUSTAINABLE BIOMASS REQUIREMENTS**

### **2.1 Biomass Facilities (except any Solid Landfill Waste Facility)**

- (a) The Generator shall operate the Biomass Facility such that:
  - (i) ninety-five percent (95%) or more of the energy content of all the fuel used at the Facility comes from Sustainable Biomass, and
  - (ii) not more than five percent (5%) of the energy content of all the fuel used at the Facility comes from fossil fuels (including any fossil fuels utilized for the purpose of Permitted Ancillary Activities) or other fuels which do not constitute Sustainable Biomass.
- (b) The Monthly Support Payment which the Generator is entitled to for any Settlement Period pursuant to Section 6.2 of the RESA will be adjusted as set forth in Section 3.1 of this Schedule 5 if the Generator fails to comply with subsection (a) above; and for greater certainty will not be adjusted if the energy content of the Sustainable Biomass used at the Facility during such Settlement Period meets or exceeds such ninety-five percent (95%) threshold.

### **2.2 Solid Landfill Waste Facilities**

- (a) The Generator shall operate the Biomass Facility such that:
  - (i) fifty percent (50%) or more of the energy content of the Solid Landfill Waste used at the Facility is organic; and
  - (ii) not more than fifty percent (50%) of the energy content of all the fuel used at the Facility, calculated by mass on a bone dry basis, comes from fossil fuels (including any fossil fuels utilized for the purpose of Permitted Ancillary Activities) or other fuels which do not constitute Sustainable Biomass.

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- (b) The Monthly Support Payment which the Generator is entitled to for any Settlement Period pursuant to Section 6.2 of the RESA will be adjusted as set forth in Section 3.2 of this Schedule 5 both:
  - (i) if the Generator fails to comply with subsection (a) above; and
  - (ii) if the Generator complies with subsection (a) above, to reflect the proportion that the energy content of the Sustainable Biomass used at the Facility during such Settlement Period bears to the energy content of all fuels used at the Facility during such Settlement Period.

### 2.3 General

No fossil fuels may be used at the Facility for the express purpose of being used as a fuel; provided that fossil fuels may be used: (i) to undertake Permitted Ancillary Activities; (ii) to the extent they form part of the landfill or waste from which the fuel is produced or are present in any Solid Landfill Waste.

### 2.4 Fuel Measurement and Sampling Procedures

- (a) The AESO and Generator will need to agree to FMS Procedures prior to the Commencement of Construction.
- (b) FMS Procedures agreed to pursuant to subsection (a) above must be transparent and must provide for: (i) an ongoing dialogue between the AESO and the Generator; (ii) monthly reporting; (iii) annual independent auditor certifications at Generator's sole cost and expense; (iv) AESO audit rights, and (v) self-reporting by Generator of any known use of feedstock which does not constitute Sustainable Biomass.
- (c) The information to be provided to the AESO for such Settlement Period pursuant to the agreed FMS Procedures (the "**FMS Information**") shall include: the mass (on a bone dry basis) or volume of all fuels used; the gross calorific value of each type of fuel used; the percentage of fossil fuel contamination (by energy content) which is present within any Solid Biomass or Solid Landfill Waste; the Renewable Multiplier for such month, information with respect to the source of all forest resources; and certifications establishing that forest resources sourced from outside Canada are Certified Forest Resources.

## 3. ADJUSTMENTS TO MONTHLY SUPPORT PAYMENTS

### 3.1 Renewable Multiplier

- (a) A "**Renewable Multiplier**" or "**RM**" will be calculated for each Settlement Period to account for situations where: (i) the Generator uses fuel at the Facility which is not Sustainable Biomass (such as contaminated woodwaste, Unsustainable Forest Resources, or fossil fuels which form part of Generator's

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feedstock); (ii) the Generator uses fossil fuels for Permitted Ancillary Activities; or (iii) the Generator fails to provide the FMS Information. The RM is the proportion that the energy content of the Sustainable Biomass used at the Facility during any Settlement Period bears to the energy content of all fuels used at the Facility during such Settlement Period, and will be used to determine the adjustments to be made to the Monthly Support Payment for such Settlement Period. The RM for any Settlement Period shall be calculated as follows:

$$RM = \frac{A}{B}$$

Where:

"A" is the aggregate energy content of all fuels used in the Facility's gross output of Electricity during the relevant Settlement Period, less the energy content of: (i) any fossil fuel from which those fuels are in part composed (which will be deemed to be zero for any Biogas); (ii) any fossil fuels used for Permitted Ancillary Activities, (iii) any Unsustainable Forest Resources; (iv) any other fuels which do not constitute Sustainable Biomass; and (v) any fuels for which the AESO has not received the FMS Information; and

"B" is the energy content of all fuels used in the Facility's gross output of Electricity during the relevant Settlement Period.

- (b) If for any Settlement Period, the Facility does not use fossil fuels for any Permitted Ancillary Activities, and the Biomass Facility utilizes Biogas as its fuel source, then the Renewable Multiplier shall be deemed to be "1" for such Settlement Period.

**3.2 Biomass Facilities (except any Solid Landfill Waste Facility)**

- (a) If the RM for any Settlement Period is 0.95 or greater, the RM will be deemed to be "1" and no adjustment shall be made to the Monthly Support Payment.
- (b) If the RM for any Settlement Period is less than 0.95, (an "**RM Infraction**") then a series of progressive payment adjustments will apply, on a rolling 12 month basis, as follows:
  - (i) If it is the first RM Infraction in the prior 12 month period, the RM for such Settlement Period will be multiplied by 0.9 for purposes of calculating an adjusted RM for such Settlement Period; and the Monthly Support Payment for such Settlement Period shall be reduced by multiplying it by the adjusted RM.

**Example (first RM Infraction):** If the RM for such Settlement Period is 0.83 and the Monthly Support Payment for such Settlement Period is \$100, the Monthly Support Payment will be reduced to \$74.70 (i.e.  $\$100 \times 0.83 \times 0.9$ ).

- (ii) If it is the second RM Infraction in the prior 12 month period, the RM for such Settlement period will be multiplied by 0.8 for purposes of calculating an adjusted RM for such Settlement Period; and the Monthly Support Payment for such Settlement Period shall be reduced by multiplying it by the adjusted RM.

**Example (second RM Infraction):** If the RM for such Settlement Period is 0.92 and the Monthly Support Payment for such Settlement Period is \$100, the Monthly Support Payment will be reduced to \$73.60 (i.e.  $\$100 \times 0.92 \times 0.8$ ).

- (iii) If it is the third or any successive RM Infraction in the prior 12 month period, the Monthly Support Payment for such Settlement Period shall be reduced to zero dollars (\$0).

**3.3 Solid Landfill Waste Facilities**

- (a) If the RM for any Settlement Period is 0.5 or greater, the Monthly Support Payment for such Settlement Period shall be reduced by multiplying it by the RM for such Settlement Period.

**Example:** If the RM for such Settlement Period is 0.52 and the Monthly Support Payment for such Settlement Period is \$100, the Monthly Support Payment will be reduced to \$52 (i.e.  $\$100 \times 0.52$ ).

- (b) If the RM for any Settlement Period is less than 0.50, an ("**RM Infraction**") then a series of progressive payment adjustments will apply, on a rolling 12 month basis, as follows:

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- (i) If it is the first RM Infraction in the prior 12 month period, the RM for such Settlement Period will be multiplied by 0.9 for purposes of calculating an adjusted RM for such Settlement Period; and the Monthly Support Payment for such Settlement Period shall be reduced by multiplying it by the adjusted RM.

**Example (first RM Infraction):** If the RM for such Settlement Period is 0.48 and the Monthly Support Payment for such Settlement Period is \$100, the Monthly Support Payment will be reduced to \$43.20 (i.e.  $\$100 \times 0.48 \times 0.9$ ).

- (ii) If it is the second RM Infraction in the prior 12 month period, the RM for such Settlement Period will be multiplied by 0.8 for purposes of calculating an adjusted RM for such Settlement Period; and the Monthly Support Payment for such Settlement Period shall be reduced by multiplying it by the adjusted RM.

**Example (second RM Infraction):** If the RM for such Settlement Period is 0.43 and the Monthly Support Payment for such Settlement Period is \$100, the Monthly Support Payment will be reduced to \$34.40 (i.e.  $\$100 \times 0.43 \times 0.8$ ).

- (iii) If it is the third or any successive RM Infraction in the prior 12 month period, the Monthly Support Payment for such Settlement Period shall be reduced to zero dollars (\$0).

#### 4. DELIVERY OF FMS INFORMATION AND SETTLEMENT

- (a) For each Settlement Period during the Support Period, the Generator shall deliver the FMS information to the AESO on or prior to the fifth (5<sup>th</sup>) Business Day following the end of such Settlement Period.
- (b) The preliminary RESA Statement issued by the AESO for any Settlement Period shall be based upon the Renewable Multiplier for the previous Settlement Period. The final RESA Statement issued by the AESO to the Generator for any Settlement Period shall be based upon the Renewable Multiplier calculated for such Settlement Period (as opposed to the prior Settlement Period); provided that the information required in respect of such calculation has been delivered to the AESO. The Renewable Multiplier, and any adjustment to Monthly Support Payments, will be determined by the AESO in accordance with Section 3.1 of this Schedule 5, and shall be based upon the FMS Information provided by the Generator pursuant to subsection (a) above. For the first Settlement Period during the Support Period, the Renewable Multiplier used in the preliminary RESA Statement shall be 1.0.
- (c) The final RESA Statement may be subject to adjustment pursuant to Section 6.7(a) of the RESA. The Renewable Multiplier for any Settlement Period may be adjusted within the time period set forth therein, to reflect any errors in

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the calculation of the Renewable Multiplier, and to reflect any changes in the FMS Information. For greater certainty, the Renewable Multiplier for any Settlement Period may be recalculated to reflect FMS Information which had not previously been provided to the AESO or to reflect any changes in such FMS Information. If any such adjustment results in a change to a Renewable Multiplier for a Settlement Period or results in a change as to whether or not there was an RM Infraction for such Settlement Period, adjustments shall be made in respect of such Settlement Period or any other Settlement Period as reasonably required to reflect the adjusted RM.

### **5. STRIKE PRICE BELOW POOL PRICE**

If in any Settlement Period, the Strike Price is lower than the Pool Price in any one or more Settlement Intervals during such Settlement Period and there is an RM Infraction for such Settlement Period, then:

- (a) the AESO may, at its election, deem the Renewable Multiplier to be one (1); and
- (b) if an election is made by the AESO pursuant to subsection (a) above, the AESO may, at its election, apply such deemed Renewable Multiplier either to:
  - (i) each Settlement Interval in respect of which the Strike Price is lower than the Pool Price and use the Renewable Multiplier calculated pursuant to Section 3 above (as adjusted pursuant to Section 3.2 or 3.3, as the case may be) for all other Settlement Intervals; or
  - (ii) all of the Settlement Intervals in such Settlement Period.

### **6. OFFSETS AND OTHER INCENTIVES.**

Notwithstanding Section 6.8 of the RESA, the Generator shall, with respect to any Biomass Facility, be entitled to seek, generate and obtain, wholly for Generator's account, Emissions Offsets generated pursuant to and in compliance with SGER or any successor legislation, except Emissions Offsets related to carbon dioxide.

**SCHEDULE 6**  
**ARBITRATION PROVISIONS APPLICABLE TO SECTIONS**  
**1.11 AND 6.11**

**1. GENERAL**

**1.1 Capitalized Terms and Section References**

Capitalized terms used in this Schedule shall, unless expressly defined herein, have the meanings given to such terms in Section 1.1 of the Renewable Electricity Support Agreement between the AESO and Generator to which this Schedule is attached (the "**RESA**"). Unless otherwise provided, references herein to Section numbers are references to Sections of this Schedule.

**1.2 Agreement References**

This Schedule is referenced in Sections 1.4, 1.11 and 6.11 of the RESA.

**2. ARBITRATION PROCEDURES APPLICABLE TO SECTION 1.11 AND 6.11**

The following rules and procedures (the "**Rules**") shall govern, exclusively, any matter or matters to be arbitrated between the Parties under Section 1.11 and Section 6.11 of the RESA.

**2.1 Commencement of Arbitration**

- (a) If the Parties and, at the AESO's option, all Other Generators required by the AESO to participate, have been unable to reach agreement as contemplated in Section 1.11 or Section 6.11, as applicable, then the AESO shall commence arbitration by delivering a written notice ("**Request**") to the Generator and such Other Generators required by the AESO to participate (collectively the "**Disputing Generators**").
- (b) If the AESO has not already done so, the AESO shall then deliver to each Disputing Generator the names of all of the other Disputing Generators.
- (c) Within twenty (20) days of the delivery of the Request, the AESO shall deliver to the Disputing Generators a written notice nominating an arbitrator who shall be familiar with commercial law matters, is qualified by a profession or occupation to decide the matter in dispute and has no financial or personal interest in the business affairs of any of the parties.
- (d) Within twenty (20) days of the receipt of the AESO's notice nominating its arbitrator, the Disputing Generators shall by written notice to the AESO nominate an arbitrator who shall be familiar with commercial law matters, is qualified by a profession or occupation to decide the matter in dispute and has no financial or personal interest in the business affairs of any of the Parties.

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- (e) The two arbitrators nominated shall then select a chairperson of the arbitration panel (the "**Joint Arbitration Panel**").

**2.2 Application to ADR Institute**

If the Disputing Generators are unable to agree on the nomination of an arbitrator within twenty (20) days of the receipt of the AESO's notice nominating its arbitrator, then upon application of any Disputing Generator or the AESO, the second arbitrator shall be appointed by the ADR Institute of Canada. If the two arbitrators shall fail to appoint the third arbitrator within such ten (10) day period, then upon application by any Disputing Generator or the AESO, the third arbitrator shall be appointed by the ADR Institute of Canada.

**2.3 General**

- (a) The "National Arbitration Rules" of the ADR Institute of Canada, Inc. will apply to the Arbitration, as modified by this Schedule 6.
- (b) The Joint Arbitration Panel, once appointed, shall proceed immediately to determine the Replacement Provision or Replacement Price, as the case may be, it being the intention of the AESO and the Generator that there be, to the extent possible, one arbitration proceeding and hearing to determine the Replacement Provision or Replacement Price, as the case may be.
- (c) Unless otherwise agreed by the Parties, the Joint Arbitration Panel shall determine the conduct of the arbitral proceedings, including the exchange of statements of claim and defence, the need for documentary and oral discovery and whether to hold oral hearings with a presentation of evidence or oral argument so that the award may be made within the time period set out below. Each of the Disputing Generators shall have a right to participate in the arbitration proceeding.

**2.4 Consolidation**

The Parties agree that should the Joint Arbitration Panel determine that the Replacement Provision or Replacement Price, as the case may be, needs to be determined through more than one arbitration proceeding, then the Parties agree that the Joint Arbitration Panel shall determine whether the arbitration proceedings shall be consolidated, conducted simultaneously or consecutively or whether any of the arbitration proceedings should be stayed until any of the others are completed.

**2.5 Award**

The award of the Joint Arbitration Panel, which shall include the Replacement Provision or Replacement Price, as the case may be, shall be made within six (6) months after the appointment of the Joint Arbitration Panel, subject to any extended date to be agreed by the Parties or any reasonable delay due to unforeseen circumstances. Such award shall set out the reasons for the decision and such reasons for decision shall not be confidential and shall,

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notwithstanding anything to the contrary in the RESA, not be deemed to be "Confidential Information" for purposes of the RESA.

**2.6 Costs**

The AESO and each of the Disputing Generators shall pay their own costs of participating in the arbitration proceedings.

**2.7 Place of Arbitration**

The arbitration, including the rendering of the award, shall take place in Calgary, Alberta, which shall be the seat of the proceedings. The language to be used in the arbitration shall be English.