THIS IS **EXHIBIT "A"** TO THE AFFIDAVIT OF GORDON P. ACTON
SWORN BEFORE ME THIS 6TH DAY OF OCTOBER, 2011

ST. MARYS COMBINED HEAT AND POWER (CHP III)

POWER PURCHASE AGREEMENT

Between

ST. MARYS RENEWABLE ENERGY LP

- and -

ONTARIO POWER AUTHORITY

DATED as of November 5, 2010

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ST. MARYS COMBINED HEAT AND POWER (CHP III)

POWER PURCHASE AGREEMENT

This power purchase agreement is dated as of the 5th day of November, 2010 between St. Marys Renewable Energy LP, a limited partnership existing under the laws of Ontario (the "**Supplier**"), and the Ontario Power Authority (the "**Buyer**"). The Supplier and the Buyer are each referred to herein as a "**Party**" and together as the "**Parties**".

WHEREAS the Buyer, pursuant to a directive dated April 10, 2008 which is further to a directive dated June 15, 2005 issued by the Ontario Minister of Energy to the Buyer, wishes to solicit the supply of high-efficiency combined heat and power ("**CHP**") generation facilities in Ontario that are fuelled by renewable energy sources, are greater than 10 MW in size, affect supply or demand in the interconnected grid in Ontario by delivering electricity to the IESO-Controlled Grid, a Local Distribution System, or an End-User, and deliver Useful Heat Output to a Host Facility;

AND WHEREAS the Supplier submitted a Proposal to plan, design, finance, construct, operate, and maintain the Facility, and the Proposal was selected by the Buyer;

AND WHEREAS the Supplier and the Buyer wish to execute this Agreement in order to formalize the long-term contractual arrangements for the Supplier to develop and operate the Facility, and to supply Electricity and Related Products from the Facility, directly or indirectly, to the IESO-Controlled Grid, an LDC, or an End-User, and deliver Useful Heat Output from the Facility to a Host Facility, 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
DEFINITIONS

1.1 Definitions

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

"**Aboriginal peoples**" means the Indian, Inuit and Métis peoples of Canada as referred to in s. 35 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act, 1982* (U.K.), 1982, c.11.

"**Acceptable Credit Rating**" has the meaning ascribed to it in Section 6.5(a).

"**Acceptable Security**" means a Letter of Credit or cash or any other form of security instrument acceptable to the Buyer in its sole and absolute discretion; provided, however, that where cash is provided as security, it shall be delivered to the Buyer in the form of a certified cheque or bank draft or by wire transfer.

"**Actual Fuel Percentage**" or "**AFP**" has the meaning ascribed to it in Section 2.7(d)(i).

"**Actual Useful Heat Output Percentage**" has the meaning ascribed to it in Section 15.7(a).

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

"**Agreement**" means, subject to Section 1.11, this St. Marys CHP III PPA including the Exhibits referenced hereto, collectively, as the same may be amended, restated or replaced from time to time. Unless otherwise indicated, references to Articles, Sections, and Exhibits are references to Articles, Sections and Exhibits in this St. Marys CHP III PPA.

"**A.M. Best**" means A.M. Best Company or its successors.

"**A.M. Best's Ratings**" means the ratings provided by A.M. Best including the rating of an insurer's financial strength and ability to meet ongoing obligations to policy holders.

"**Amendment**" has the meaning ascribed to it in Section 2.1(c).

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

"**Annual Average Contract Capacity**" means the simple average of the Average Seasonal Contract Capacity for Season 1, Season 2, Season 3, and Season 4 as set out in Exhibit B.

"**Annual Fuel Adjustment Amount**" has the meaning ascribed to it in Section 4.2(a).

"**Annual Operating Plan**" has the meaning ascribed to it in Section 15.3(c)(ii).

"**Annual Price Ratio**" means, for a Contract Year, an amount calculated by dividing the Annual Production-Weighted Average Price by the Annual Submitted Profile-Weighted Average Price for such Contract Year.

"**Annual Production-Weighted Average Price**" or "**APWAP**" means, for a Contract Year, an amount, expressed in Dollars per MWh, calculated by dividing:

(i) the aggregate sum, over each Contract Price Hour in such Contract Year, of (a) the Hourly Contract Price Delivered Electricity for such Contract Price Hour multiplied by (b) the corresponding HOEP for such Contract Price Hour, by

(ii) the total Contract Price Delivered Electricity for such Contract Year.

"**Annual Profile Adjustment Amount**" has the meaning ascribed to it in Section 4.1(a).

"**Annual Submitted Profile Electricity**" means, for a Contract Year, the aggregate sum, over each Contract Price Hour in such Contract Year, of the amount of Electricity (expressed in MWh) to be delivered in such Contract Price Hour according to the Submitted Hourly Electricity Output Profile.

"**Annual Submitted Profile-Weighted Average Price**" or "**ASPWAP**" means, for a Contract Year, an amount expressed in Dollars per MWh and calculated by dividing:

(i) the aggregate sum, over each Contract Price Hour in such Contract Year, of (a) the amount of Electricity to be delivered in such Contract Price Hour according to the Submitted Hourly Electricity Output Profile multiplied by (b) the corresponding HOEP for such Contract Price Hour, by

(ii) the Annual Submitted Profile Electricity for such Contract Year.

"**Approved Incremental Costs**" has the meaning ascribed to it in Section 3.4(c).

"**Arbitration Panel**" has the meaning ascribed to it in Exhibit H.

"**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.

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

"**Assignment Period**" has the meaning ascribed to it in Section 16.5(f).

"**Associated Relationship**" means the relationship between a meter at a Delivery Point and a Market Participant (where such Market Participant is not the Metered Market Participant), as established by certain processes in the MV-Web.

"**Auxiliary Loads**" means the electrical load(s) of facilities and other equipment used in Contracted Facility Operation that are not served by electricity generated by the Facility.

"**Availability**" or "**AV**" has the meaning ascribed to it in Exhibit I.

"**Average Seasonal Contract Capacity**" means, with respect to a given Season and set out in Exhibit B in MW, the average, over all On-Peak Hours (including On-Peak Hours where the Contract Capacity is zero), of the Contract Capacity in the Submitted Hourly Electricity Output Profile.

"**Average Seasonal Useful Heat Output**" means, with respect to a given Season and set out in Exhibit B in MW-thermal, the average, over all hours in that Season (including hours where the Useful Heat Output is zero), of the amount of Useful Heat Output to be delivered by the Facility to the Host Facility.

"**Average Seasonal Useful Heat Output Percentage**" means, with respect to a given Season, the ratio obtained by dividing:

(i) the Average Seasonal Useful Heat Output by;

(ii) the sum of (a) the average, over all hours in that Season (including hours where the Contract Capacity is zero), of the Contract Capacity in the Submitted Hourly Electricity Output Profile, and (b) the Average Seasonal Useful Heat Output. For purposes of the foregoing sentence, MW and MW-thermal shall be treated as the same unit of measure when summed together.

"**Average Test Capacity**" has the meaning ascribed to it in Section 15.6(f)(i).

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

"**Biodiesel**" means the mono-alkyl esters of fatty acids derived from vegetable oils or animal fats.

"**Biofuel**" means a liquid fuel or product made solely from Renewable Biomass and includes ethanol, Biodiesel, and Bio-oil, as well as the direct utilization of vegetable oils or animal fats.

"**Biogas**" means a gaseous fuel or product made solely from Renewable Biomass and, for greater certainty, includes gaseous output from Anaerobic Digestion of Source Separated Organics, livestock manure, energy crops, livestock feed ingredients, food and feed processing by-products, off-specification food and feed materials and organic by-products from Biofuel production.

"**Business Day**" means a day, other than a Saturday or Sunday or statutory holiday in the Province of Ontario or any other day on which banking institutions in Toronto, Ontario are not open for the transaction of business.

"**Buyer**" means the Ontario Power Authority and its successors and permitted assigns.

"**Buyer Event of Default**" has the meaning ascribed to it in Section 10.3.

"**Buyer Statement**" has the meaning ascribed to it in Section 12.2(g).

"**Buyer's Website**" means the website of the Buyer located at uniform resource locator (URL) www.powerauthority.on.ca/gp or such other URL, or other electronic or non-electronic format, as the Buyer may provide to the Supplier from time to time.

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

"**Capacity Confirmation**" has the meaning ascribed to it in Section 15.6(d).

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

"**CCT Price Reduction Factor**" has the meaning ascribed to it in Section 15.6(g)(ii).

"**CHP**" means combined heat and power.

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

"**Commercial Operation**" has the meaning ascribed to it in Section 2.5.

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

"**Commercially Reasonable Efforts**" means efforts which are designed: (i) to enable a Party, directly or indirectly, to satisfy a condition to, or otherwise assist in the consummation of, the transactions contemplated by this Agreement and which do not require the performing Party to expend any funds or assume liabilities, other than expenditures and liabilities which are reasonable in nature and amount in the context of the transactions contemplated by this Agreement, or (ii) in the case of a Host Facility Force Majeure, to enable the Host to satisfy a condition to, or otherwise assist in the consummation of, the transactions contemplated by the Off-Take Agreement, and which do not require the Host to expend any funds or assume liabilities, other than expenditures and liabilities which are reasonable in nature and amount in the context of the transactions contemplated by the Off-Take Agreement.

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

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

"**Confidential Information**" means:

(i) all information that has been identified as confidential and which is furnished or disclosed by the Disclosing Party and its Representatives to the Receiving Party and its Representatives in connection with this Agreement, whether before or after its execution, including all new information derived at any time from any such confidential information, but excluding (a) publicly-available information, unless made public by the Receiving Party or its Representatives in a manner not permitted by this Agreement; (b) information already known to the Receiving Party prior to being furnished by the Disclosing Party; (c) information disclosed to the Receiving Party from a source other than the Disclosing Party or its Representative, if such source is not subject to any agreement with the Disclosing Party prohibiting such disclosure to the Receiving Party; and (d) information that is independently developed by the Receiving Party; and

(ii) Mutually Confidential Information.

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

"**Connection Agreement**" means the agreement or agreements required to be entered into by a Transmitter, an LDC or an End-User, as the case may be, with the Supplier with respect to the connection of the Facility to a Transmission System, a Local Distribution System or an End-User Load, respectively, in accordance with the Transmission System Code, the Distribution System Code or the specifications of the End-User, as applicable, and governing the terms and conditions of such connection, and including the payment of Connection Costs.

"**Connection Costs**" means those costs, which may include design, engineering, procurement, construction, installation and commissioning costs, related to the reliable connection of the Facility to the Transmission System, Local Distribution System, or End-User Load as applicable, as more particularly specified pursuant to the System Impact Assessment, Customer Impact Assessment and Connection Impact Assessment, as applicable. For greater certainty, Connection Costs do not include Network Upgrade Costs.

"**Connection Impact Assessment**" means an assessment conducted by an LDC to determine the impact on the Local Distribution System of connecting the Facility to its Local Distribution System, a Transmission System or an End-User Load, as applicable.

"**Connection Point**" means: (i) the electrical point or points of connection, as defined in the IESO Market Rules, between the Facility and the IESO-Controlled Grid; (ii) where the Facility is connected to a Local Distribution System, the embedded connection point or points, as defined in the IESO Market Rules, between the Facility and the Local Distribution System; and (iii) where the Facility is connected to an End-User Load, the point or points where the End-User Load is connected to either a Transmission System or a Local Distribution System or, where not so connected, the Delivery Point. The Connection Point is specified in Exhibit A and, for certainty, is defined by reference to electrical connection points.

"**Consultation Information Request**" means the letter sent by the Supplier to the Ministry of Energy (Ontario) requesting (i) a determination of whether the Supplier must enter into an agreement with the Crown in relation to consultation on the Facility; and, if so, (ii) the Crown's identification of which Aboriginal communities to consult.

"**Consumer Price Index**" or "**CPI**" means the consumer price index for "All Items" published or established by Statistics Canada (or its successor) for any relevant calendar month in relation to the Province of Ontario.

"**Contract Capacity**" means the capacity, expressed in MW, for a given hour in Season 1, Season 2, Season 3 or Season 4, as applicable, as set out in the Submitted Hourly Electricity Output Profile in Exhibit B.

"**Contracted Facility Operation**" means the operation of the Facility for producing Contract Price Delivered Electricity, and Useful Heat Output up to the Minimum UHO Requirement, as well as Related Products and Environmental Attributes that relate to Contract Price Delivered Electricity and Useful Heat Output up to the Minimum UHO Requirement, all pursuant to this Agreement. For greater certainty, Contracted Facility Operation does not include the operation of the Host Facility.

"**Contract Price**" or "**CP_m**" means the price, expressed in Dollars per MWh, set forth in Exhibit B for Contract Price Delivered Electricity during the Term, subject to:

(i) adjustment on a monthly basis in accordance with Section 3.5;

(ii) reduction by the CCT Price Reduction Factor if Section 15.6(g)(ii) is applicable;

(iii) reduction by the UHO Price Reduction Factor, if Section 15.7(b) is applicable;

(iv) restatement on and after the Restatement Date, if any, with the restated Contract Price being the Contract Price plus the Incremental Contract Price, in accordance with Sections 2.11(b)(v) or 2.11(c)(v), as applicable; and

(v) any other adjustment as expressly contemplated in this Agreement.

"**Contract Price Delivered Electricity**" means that amount of Delivered Electricity, expressed in MWh, for which the Buyer, in accordance with Section 3.4, pays the Supplier the Contract Price.

"**Contract Price Hour**" means any hour for which the Supplier receives the Contract Price for Contract Price Delivered Electricity in such hour, up to and including the hour in which the Contract Price Delivered Electricity equals 125% of the Proposed Monthly Delivered Electricity.

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

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

"**CP_y**" means, with respect to a Contract Year, the simple average of CP_m for all twelve months in that Contract Year.

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

"**Creditworthiness Value**" has the meaning ascribed to it in Section 6.5(b).

"**Crown**" means Her Majesty the Queen in right of Ontario.

"**Crown Agreement**" means, if required pursuant to this Agreement, the agreement in the form set out in Exhibit W entered into by the Minister of Energy (Ontario), on behalf of the Crown, and the Supplier respecting the delegation to the Supplier of procedural aspects of the Crown's duty to consult Aboriginal peoples in relation to the Facility.

"Crown Letter" means the letter sent by the Minister of Energy (Ontario), on behalf of the Crown, responding to the Supplier's request for information regarding the duty to consult Aboriginal peoples in relation to the Facility.

"Customer Impact Assessment" means a study conducted by a Transmitter to assess the impact of the connection of the Facility on the transmission customers in the area and a Local Distribution System, if applicable.

"CV Credit Rating" has the meaning ascribed to it in Section 6.5(c).

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

"DBRS" means DBRS Limited or its successors.

"Delivered Electricity" means the net quantity of Electricity, as recorded by the Facility's revenue-quality meter(s) and expressed in MWh, actually delivered by the Facility to the Delivery Point pursuant to this Agreement.

"Delivery Point" means (i) if the Supplier is a Market Participant, a uniquely identified reference point determined in accordance with the IESO Market Rules and used for settlement purposes in the real-time markets and (ii) if the Supplier is not a Market Participant, the point at which the Facility's revenue-quality meter(s) records the net Electricity delivered by the Facility to the End-User.

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

"Discriminatory Action" has the meaning ascribed to it in Section 13.1.

"Discriminatory Action Compensation" has the meaning ascribed to it in Section 13.2.

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

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

"Distribution System Code" means the "Distribution System Code" approved by the OEB, as amended from time to time, which, among other things, establishes the obligations of an LDC with respect to the services and terms of service to be offered to customers and retailers and provides minimum technical operating standards of Local Distribution Systems.

"**District Energy Facility**" means a co-generation project that generates Electricity while simultaneously producing Useful Heat Output, either directly or indirectly, for industrial, commercial and/or residential facilities for which more than 70% of the thermal energy provided by the co-generation project would be used for space conditioning purposes (either space heating or cooling, or a combination of both). For greater certainty, "industrial, commercial and/or residential facilities" includes greenhouses.

"**Dollar**" or "**$**" means Canadian dollars and cents, unless otherwise specifically set out to the contrary.

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

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

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

"**End-User**" means a Person who owns or operates an End-User Load.

"**End-User Load**" means a load facility which utilizes Electricity supplied through a direct connection to the Transmission System, the Local Distribution System, or the Facility.

"**Energy From Nameplate Capacity**" means the entire quantity of Electricity, expressed in MWh, generated by the Nameplate Capacity and supplied to the Delivery Point.

"**Environmental and Site Plan Milestone Events**" means (i) the filing of the statement of completion with respect to the environmental assessment for the Facility as well as the receipt of site plan approval for the Facility, and (ii) the receipt of all other approvals and permits necessary for construction of the Facility to commence.

"**Environmental Attributes**" means the interests or rights arising out of attributes or characteristics relating to the environmental impacts associated with a renewable generating facility or the output of a renewable generating facility, now or in the future, and the right to quantify and register these with competent authorities, including:

(i) all right, title, interest and benefit in and to any renewable energy certificate, credit, reduction right, offset, allocated pollution right, emission reduction allowance or other proprietary or contractual right, whether or not tradable, resulting from the actual or assumed displacement of emissions by the production of Electricity from the Facility as a result of the utilization of renewable energy technology;

(ii) rights to any fungible or non-fungible attributes or entitlements relating to environmental impacts, whether arising from the Facility itself, from the interaction of the Facility with the IESO-Controlled Grid, a Distribution System or an End-User, or because of Laws and Regulations or voluntary programs established by Governmental Authorities;

(iii) any and all rights, title and interest relating to the nature of an energy source (including a Renewable Fuel) as may be defined and awarded through Laws and Regulations or voluntary programs, including all Emission Reduction Credits; and

(iv) all revenues, entitlements, benefits, and other proceeds arising from or related to the foregoing which may be available in connection with the Facility,

but excluding:

(v) payments under the Government of Canada's ecoENERGY for Renewable Power Program (or any predecessor program thereto) which may be available in connection with a renewable generating facility;

(vi) 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 renewable generating facility; and

(vii) such other items as the Buyer may determine in its sole discretion at any time and from time to time, such excluded items to be posted on the Buyer's Website and revised periodically.

For greater certainty, in the event that any governmental or non-governmental agency, whether provincial, federal, national or international in scope or authority, creates or sanctions a registry, trading system, credit, offset or other program relating to Environmental Attributes or their equivalent, the term "Environmental Attributes" as used in this Agreement shall include the rights or benefits created or sanctioned under any such program or programs to the extent available as a result of, or arising from, the production of Contract Price Delivered Electricity, and Useful Heat Output up to the Minimum UHO Requirement, from Contracted Facility Operation.

"**EPC Contract**" means the engineering, procurement and construction contract for the Facility entered into by the Supplier and the EPC Contractor.

"**EPC Contractor**" means, if applicable, the contractor engaged by the Supplier to perform the engineering, procurement and construction of the Facility.

"**Equipment**" has the meaning ascribed to it in Section 2.8(b)(ii).

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

"**Event of Default**" means an event of default of the Supplier of the Buyer, as the case may be.

"Facility" means all equipment, property, and facilities comprising the co-generation plant as described in Exhibit A hereto and the Proposal, with any modifications thereto approved by the Buyer, and for greater certainty does not include the Host Facility.

"Final Capacity Check Test" has the meaning ascribed to it in Section 15.6(f)(ii).

"Financial Closing" means the first date on which drawdown is permissible under the credit facility for the financing of the Facility or, in the event that financing of the Facility does not include a credit facility, the first date on which funding is otherwise available and dedicated for the financing of the Facility.

"Financial Closing Milestone Date" means the Milestone Date in respect of Financial Closing.

"Financial Indicators" means the Tangible Net Worth and the Credit Rating.

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

"FIPPA Records" has the meaning ascribed to it in Section 8.5.

"First Period Amount" has the meaning ascribed to it in Section 6.1(a)(i).

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

"Force Majeure" has the meaning ascribed to it in Section 11.3.

"Fuel Plan" means the Supplier's five-year plan for the supply and consumption of Primary Fuel and Secondary Fuel, and each subsequent plan, all as approved by the Buyer in accordance with this St. Marys CHP III PPA. For greater certainty, the Fuel Plan shall include details regarding the Primary Fuel and Secondary Fuel(s) to be used by the Facility including the fuel type, fuel heating value, annual fuel quantities required for Facility operation, fuel suppliers, sourcing strategies demonstrating that the Supplies has contracted for, or is reasonably assured of, fuel supply and availability and, if applicable, fuel delivery (transportation) and storage options.

"Further Capacity Check Test" has the meaning ascribed to it in Section 15.6(e).

"Future Contract Related Products" means all Related Products that relate to Contracted Facility Operation and that were not capable of being traded by the Supplier in the IESO-Administered Markets or other markets on or before the date of this Agreement, but shall not include Useful Heat Output produced by the Facility.

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

"Good Engineering and Operating Practices" means any of the practices, methods and activities adopted by a significant portion of the North American electric utility industry as good practices applicable to the design, building and operation of generation facilities of similar type, size and capacity or any of the practices, methods or activities which, in the exercise of skill, diligence, prudence, foresight and reasonable judgment by a prudent generator in light of the facts known at the time the decision was made, could reasonably have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety, expedition and Laws and Regulations. Good Engineering and Operating Practices are not intended to be limited to the optimum practices, methods or acts to the exclusion of all others, but rather are intended to delineate acceptable practices, methods or acts generally accepted in the North American electric utility industry. Without limiting the generality of the foregoing and in respect of the operation of the Facility, Good Engineering and Operating Practices include taking reasonable steps to ensure that:

(i) adequate materials, resources and supplies, including fuel, are available to meet the Facility's needs under reasonable conditions and reasonably anticipated abnormal conditions;

(ii) sufficient operating personnel are available and are adequately experienced and trained to operate the Facility properly, efficiently and taking into account manufacturers' guidelines and specifications and are capable of responding to reasonably anticipated abnormal conditions;

(iii) preventative, routine and non-routine maintenance and repairs are performed on a basis that ensures reliable long-term and safe operation and taking into account manufacturers' recommendations and are performed by knowledgeable, trained and experienced personnel utilizing proper equipment, tools and procedures; and

(iv) appropriate monitoring and testing is done to ensure equipment is functioning as designed and to provide assurance that equipment will function properly under both normal and reasonably anticipated abnormal conditions.

"Government of Canada" means Her Majesty the Queen in right of Canada.

"Government of Ontario" means Her Majesty the Queen in right of Ontario.

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

"Guarantee" means a guarantee in the form referenced as Exhibit D.

"Guarantor" means a Person who provides a Guarantee.

"HHV" means higher heating value.

"**HOEP**" or the "**Hourly Ontario Energy Price**" means the arithmetic average of the uniform Ontario energy prices as defined in the IESO Market Rules, and expressed in Dollars per MWh.

"**Host**" means St. Marys Paper Corp. or, pursuant to Section 2.12(b), such other Person(s) from time to time that have entered into an Off-Take Agreement with the Supplier.

"**Host Developed Facility**" means a Facility in which:

(i) the legal entity that is the Host (or if a District Energy Facility, the district energy business) is the same legal entity as the Supplier; or

(ii) the legal entity that is the Host (or if a District Energy Facility, the district energy business), or the legal entity that Controls the Host or district energy business, as the case may be, owns 30% or more, either directly or indirectly, of the Supplier.

"**Host Facility**" means the facility or facilities owned or operated by the Host that utilize(s) the Useful Heat Output generated by the Facility.

"**Host Facility Force Majeure**" means: (a) any act, event, cause or condition that (i) is beyond the Host's reasonable control, (ii) causes an unplanned outage of the Host Facility that completely prevents the Host Facility from receiving any Useful Heat Output generated by the Facility, (iii) results from an equipment failure or other Host Facility shutdown that could not reasonably have been anticipated by the Host, and (iv) was not caused by the Host and could not have been prevented by the Host exercising Commercially Reasonable Efforts to prevent, and (b) prior to the Proposed Earliest Restatement Date, those conditions or requirements set out in Sections 2.11(b)(i)(A), (B) and (C) or 2.11(c)(i)(A), (B) and (C), as the case may be, have been satisfied, as demonstrated to the Buyer's reasonable satisfaction.

"**Host Facility Force Majeure Period**" has the meaning ascribed to it in Section 11.1(j).

"**Host Facility Outage**" an outage of the Host Facility, whether planned or unplanned, that is not a Host Facility Force Majeure.

"**Hourly Contract Price Delivered Electricity**" means the amount of Contract Price Delivered Electricity expressed in MWh in any hour.

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

"**IBC**" means the Insurance Bureau of Canada or its successors.

"**IE Certificate**" means a certificate addressed to the Buyer from an Independent Engineer, procured at the expense of the Supplier and approved by the Buyer, and complying with the requirements set out in Section 2.5(a)(iii).

"**IESO**" means the Independent Electricity System Operator established under Part II of the *Electricity Act, 1998*, or its successor.

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

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

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

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

"**include**" or "**including**" means "including, without limitation".

"**Incremental Contract Price**" means the adjustment to the Contract Price pursuant to a Restatement, as set forth in Exhibit B.

"**Indefinite Restatement**" means a Restatement pursuant to Section 2.11(a).

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

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

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

"**Indexed Portions**" or "**IP**" has the meaning ascribed to it in Section 3.5.

"**Initial Completion and Performance Security**" means the First Period Amount.

"**Initial Contract Price**" is an amount equal to the Contract Price as set out in Exhibit B as of the date of this Agreement.

"**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.

"**Insurance Costs**" has the meaning ascribed to it in Section 2.8(f)(i).

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

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

"**Landfill Gas**" means the mixture of gases, primarily methane, that are produced by the decomposition of organic waste in a Landfill Site.

"**Landfill Site**" means a site or facility situated in Ontario, for which a permit or licence is issued pursuant to the environmental laws of the Province of Ontario.

"**Laws and Regulations**" means:

(i) any applicable domestic or foreign laws, orders-in-council, by-laws, codes, rules, policies, regulations and statutes;

(ii) any applicable orders, decisions, codes, judgments, injunctions, decrees, awards and writs of any court, tribunal, arbitrator, Governmental Authority or other Person having jurisdiction;

(iii) any applicable rulings and conditions of any licence, permit, certificate, registration, authorization, consent and approval issued by a Governmental Authority;

(iv) any requirements under or prescribed by applicable common law; and

(v) the IESO Market Rules, as well as any manuals or interpretation bulletins issued by the IESO from time to time that are binding on the Supplier.

"**LDC**" means a Person licensed by the OEB as a "distributor" in connection with a Local Distribution System.

"**LDC Portal**" means a secure web site maintained by an LDC, either directly or indirectly, that provides a point-of-access for specific authorized users to a facility's or site's specific data, such as meter data, or such similar processes and/or application that may be implemented in conjunction with the "Smart Meter Initiative" for the presentment of meter data; and includes any systems or applications that may replace, supplement or succeed any such existing systems or applications.

"**Letter of Credit**" means one or more irrevocable and unconditional standby letters of credit issued by a financial institution listed in either Schedule I or II of the Bank Act (Canada) or such other financial institution having a minimum Credit Rating of (i) A- with S&P, (ii) A3 with Moody's, (iii) A low with DBRS, or (iv) A with Fitch IBCA, in substantially the form referenced as Exhibit C or in a form acceptable to the Buyer, acting reasonably, and otherwise conforming to the provisions of Article 6.

"Life-to-Date Actual Useful Heat Output Percentage" or **"$UHOP_{LTD}$"** has the meaning ascribed to it in Section 15.7(b)(i).

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

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

"Long Term Operating Plan" has the meaning ascribed to it in Section 15.3(c)(i).

"Market Participant" has the meaning ascribed to it by the IESO Market Rules.

"Market Price" means the spot price per MWh for Electricity in the IESO-Administered Markets applicable to the class of generator to which the Supplier belongs in accordance with the IESO Market Rules.

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

"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.

"Measured Electricity" means, with respect to a given hour of a test referred to in Sections 2.5(a)(vi) and 15.6, as the case may be, the generator output of the Facility in MWh-electrical at the Delivery Point:

(a) as measured in accordance with the Metering Plan and Test Protocol, as applicable, net of any Station Service Loads, Auxiliary Loads, and transformer losses, and up to a maximum of the Average Seasonal Contract Capacity for the Season in which such test was conducted, multiplied by one hour; and

(b) as adjusted in accordance with and for purposes of Section 15.6(b), as applicable.

"Measured UHO" means, with respect to a given hour of a test referred to in Sections 2.5(a)(iii) and 15.6, as the case may be, the amount of Useful Heat Output of the Facility in MWh-thermal at its delivery point to the Host Facility, measured in accordance with the Metering Plan and net of any thermal energy returned to or imported by the Facility.

"Metered Market Participant" has the meaning ascribed to that term by the IESO Market Rules.

"Metering Plan" has the meaning ascribed to it in Section 2.2(j).

"Milestone Dates" means those dates set forth in the second column of the table contained in Exhibit G, with respect to the attainment of the corresponding Milestone Events set out in the first column of the table contained in Exhibit G.

"Milestone Events" means those events set forth in the first column of the table contained in Exhibit G which are considered critical by the Parties for the timely design, construction, financing, completion and operation of the Facility, and which are to be completed by the corresponding Milestone Dates.

"Minimum Required Fuel Percentage" means 90% (or 0.90 when expressed as a ratio).

"Minimum UHO Requirement" means, for the purposes of each of the tests set out in Sections 2.5(a)(iii) or 15.6, as the case may be, that the Measured UHO for a given hour, expressed in MWh-thermal, exceeds the Average Seasonal Useful Heat Output Percentage applicable in the Season in which such test takes place or fifteen percent (15%), whichever is lower, multiplied by the sum, for such hour, of the Measured UHO and the Measured Electricity under such test. For purposes of the previous sentence, MWh-thermal and MWh-electrical, respectively, shall be treated as the same unit of measure when summed together.

"Monthly Contract Price Delivered Electricity" means the Contract Price Delivered Electricity for a specified Settlement Month within the Term, expressed in MWh, up to a maximum of 125% of the Proposed Monthly Delivered Electricity (such maximum in any Settlement Month being reached at the point in time during such month that the Contract Price Delivered Electricity equals 125% of the Proposed Monthly Delivered Electricity).

"Monthly Payment" has the meaning ascribed to it in Section 3.4.

"Moody's" shall mean Moody's Investors Service, Inc. or its successor.

"Municipal Solid Waste" means:

(a) any waste, whether or not it is owned, controlled or managed by a municipality; and

(b) solid fuel, whether or not it is waste, that is derived in whole or in part from the waste included in clause (a) of this definition,

but which, for greater certainty, shall not include hazardous waste, liquid industrial waste, gaseous waste, and Renewable Biomass.

"Mutually Confidential Information" means information contained in Exhibit B of this Agreement and the economic bid statement submitted to the Buyer by the Supplier in its Proposal, which information shall be deemed to be Confidential Information of both the Buyer and the Supplier.

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

"**MW**" or "**MW-electrical**" means megawatt electrical.

"**MWh**" or "**MWh-electrical**" means megawatt hour electrical.

"**MW-thermal**" means megawatt thermal.

"**MWh-thermal**" means megawatt hour thermal.

"**Nameplate Capacity**" means the rated, continuous load-carrying capability net of Station Service Loads, expressed in MW and set out in Exhibit B, of the Facility to generate and deliver Electricity at a given time, and which includes the Contract Capacity.

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

"**Network Upgrade Costs**" means those costs related to Network Upgrades. For greater certainty, Network Upgrade Costs shall not include Connection Costs.

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

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

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

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

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

"**Off-Take Agreement**" means an agreement between the Supplier and a Host to purchase Useful Heat Output generated by the Facility or, where the Supplier and the Host are the same legal entity, then "**Off-Take Agreement**" means the obligation or commitment on the part of the Host Facility to take Useful Heat Output from the Facility in a quantity sufficient for the Supplier to meet its minimum obligations under this Agreement to supply Useful Heat Output to the Host Facility.

"**On-Peak Hour**" means a weekday hour between and including hour ending 8:00 (EST) and hour ending 23:00 (EST). Weekdays are considered to be Monday through Friday inclusive, but excluding statutory holidays.

"**Operating Cost Index**" means CPI.

"**Operating Cost Index Factor**" means that percentage of the Initial Contract Price, between 0% and 20%, set out by the Supplier in Exhibit B, to be indexed to the Operating Cost Index in accordance with Section 3.5.

"**Other Suppliers**" means all of the other suppliers that have a CHP III PPA or other bilateral arrangements with the Buyer similar in nature to this Agreement.

"**Outage**" means the removal of equipment from service, unavailability for connection of equipment or temporary de-rating, restriction of use or reduction in performance of equipment for any reason, including to permit the performance of inspections, tests, repairs or maintenance on equipment, which results in a partial or total interruption in the ability of the Facility to make the Contract Capacity available and deliver the Electricity from the Facility. For greater certainty, in the event that the capacity of the Facility is de-rated, the amount by which such capacity is reduced shall be deemed to first reduce the Supplier's Capacity, with any excess of the reduction of the capacity over the Supplier's Capacity then being deemed to reduce the Contract Capacity.

"**Outage Hours**" means the duration, expressed in hours, of any Outages.

"**Outage Notice**" means the notice issued by the Supplier to the Buyer as specified in the form set out as Exhibit L.

"**Party**" means each of the Supplier and the Buyer, and the Supplier and the Buyer are collectively referred to as the "**Parties**".

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

"**Permanent Restatement**" means a Restatement pursuant to Section 2.11(a).

"**Person**" means a natural person, firm, trust, partnership, limited partnership, company or corporation (with or without share capital), joint venture, sole proprietorship, Governmental Authority or other entity of any kind.

"**Planned Outage**" means an Outage which is planned and intentional and has been disclosed to the Buyer pursuant to Section 15.3(a)(i) or Section 15.3(c).

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

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

"**Price Evolution Event**" has the meaning ascribed to it in Section 1.8(a).

"**Price Unavailability Event**" has the meaning ascribed to it in Section 1.9(a).

"**Primary Fuel**" means Renewable Fuel that represents no less than 90% of the total fuel heat input (oven-dry) on a HHV basis in any Contract Year. For greater certainty, non-Renewable

Fuel used as Secondary Fuel for start-up, combustion, stabilization and low combustion zone temperatures shall be no more than 10% of the total fuel heat input (oven-dry) on a HHV basis in any Contract Year.

"Proposal" means the proposal attached hereto in respect of planning, designing, financing, constructing, operating and maintaining the Facility and which was selected by the Ontario Power Authority, and all clarifications in respect of such Proposal provided by the Supplier in writing as requested by or on behalf of, and accepted by, the Ontario Power Authority from time to time prior to the date of this Agreement. A copy of the Proposal is referenced as Exhibit F and is incorporated herein.

"Proposed Earliest Restatement Date" has the meaning ascribed to it in Section 2.11(a)(i).

"Proposed Monthly Delivered Electricity" means the aggregate number of MWh proposed to be delivered by the Facility in the Settlement Month in question during a Contract Year, if the Facility operated in accordance with the Submitted Hourly Electricity Output Profile.

"Quarterly Progress Reports" means the quarterly progress reports prepared by the Supplier for the Buyer in substantially the form referenced as Exhibit M.

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

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

"Related Products" means all Capacity Products, Ancillary Services, transmission rights and any other products or services that may be provided by the Facility as a result of Contracted Facility Operation, excluding Environmental Attributes and Useful Heat Output produced by the Facility, that may be traded in the IESO-Administered Markets or other markets, or otherwise sold, and which shall be deemed to include products and services for which no market may exist, such as capacity reserves.

"Renewable Biomass" means organic matter that is derived from a plant and available on a renewable basis, including organic matter derived from dedicated energy crops, dedicated trees, agricultural food and feed crops and waste organic material from harvesting or processing agricultural products, forestry products (including Spent Pulping Liquor) and sewage including manure, provided that:

(a) such organic matter is not Municipal Solid Waste;

(b) such organic matter is not peat or a peat derivative; and

(c) waste organic material shall not contain any treated byproducts of manufacturing processes (e.g., chipwood, plywood, painted or varnished wood, pressure treated lumber or wood contaminated with plastics or metals).

"Renewable Fuel" means one or more of the following fuels used for the purposes of generating heat and power: Renewable Biomass, Biogas, Biofuel, or Landfill Gas.

"Replacement Guarantee" has the meaning ascribed to it in Section 6.4(d).

"Replacement Price" has the meaning ascribed to it in Sections 1.7(a) and 1.8(a), as applicable.

"Replacement Provision(s)" has the meaning ascribed to it in Sections 1.9(a), 1.10(c) and 2.10(c), as applicable.

"Reportable Events" means any one or more of the following:

(i) obtaining environmental and project and site approvals and permitting for the Facility;

(ii) completion of connection assessments, including receipt of approvals from the IESO, the Transmitter, the LDC and the End-User, as applicable;

(iii) execution of engineering, equipment procurement and construction contract(s) in respect of the Facility;

(iv) Financial Closing in respect of the Facility;

(v) ordering of major equipment for the Facility;

(vi) delivery of major equipment for the Facility;

(vii) status of construction of the Facility;

(viii) completion of construction of the Facility;

(ix) status of construction of connection of the Facility to the Transmission System, LDC or End-User, as applicable;

(x) connection of the Facility to the Transmission System, LDC or End-User, as applicable; and

(xi) Commercial Operation.

"Representatives" means a Party's directors, officers, shareholders, employees, auditors, consultants, advisors (including economic and legal advisors), contractors and agents and those of its Affiliates and the agents and advisors of such Persons. While the Buyer is the Ontario Power Authority, this definition shall also include the Government of Ontario, the IESO and their respective directors, officers, shareholders, employees, auditors, consultants, advisors (including economic and legal advisors), contractors and agents.

"Restated Average Seasonal Contract Capacity" means the restated Average Seasonal Contract Capacity, if any, for each Season set forth in the column "Restated Average Seasonal Contract Capacity" in Exhibit B.

"**Restated Submitted Hourly Electricity Output Profile**" means the restated Submitted Hourly Electricity Output Profile, if any, set forth in Exhibit B.

"**Restatement**" means a restatement, subject to Section 2.11, in accordance with the restatement submitted in the Proposal and of the Nameplate Capacity, Contract Price, Average Seasonal Contract Capacity, Annual Average Contract Capacity and/or the Submitted Hourly Electricity Output Profile on or after the Restatement Date, and for certainty, consisting of either a Permanent Restatement or an Indefinite Restatement, and "**Restate**" has a corresponding meaning.

"**Restatement Capacity Check Test**" has the meaning ascribed to it in Section 2.11(b)(v)(B)(2).

"**Restatement CCT Price Reduction Factor**" has the meaning ascribed to it in Section 2.11(b)(v)(B)(4).

"**Restatement Date**" has the meaning ascribed to it in Section 2.11(a)(ii).

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

"**Schedule**" means all acts necessary for the Supplier to schedule, or cause to be scheduled, including the submission of dispatch data, the Delivered Electricity at the Delivery Point throughout the Term.

"**Season**" means, as applicable, Season 1, Season 2, Season 3 or Season 4.

"**Season 1**" means that portion of each Contract Year that begins at the beginning of the hour ending 01:00 (EST) on December 1 and ending at 24:00 (EST) on February 28 or February 29, as the case may be, of each Contract Year.

"**Season 2**" means that portion of each Contract Year that begins at the beginning of the hour ending 01:00 (EST) on March 1 and ending at 24:00 (EST) on May 31 of each Contract Year.

"**Season 3**" means that portion of each Contract Year that begins at the beginning of the hour ending 01:00 (EST) on June 1 and ending at 24:00 (EST) on August 31 of each Contract Year.

"**Season 4**" means that portion of each Contract Year that begins at the beginning of the hour ending 01:00 (EST) on September 1 and ending at 24:00 (EST) on November 30 of each Contract Year.

"**Second Period Amount**" has the meaning ascribed to it in Section 6.1(a)(ii).

"**Secondary Fuel**" means, if applicable, fuel used by the Facility that is not Primary Fuel.

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

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

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

"**Settlement Month**" has the meaning ascribed to it in Section 5.2, provided that if the remaining Term is less than one calendar month, the Settlement Month shall be the remaining Term of this Agreement.

"**Spent Pulping Liquor**" means the by-product of the chemical process of transforming wood into pulp, consisting of wood residue and pulping agents.

"**St. Marys CHP III PPA**" means this power purchase agreement, including the Exhibits referenced thereto.

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

"**Station Service Loads**" means energy consumed to power the on-site maintenance and operation of co-generation facilities, but excludes energy consumed in association with activities which could be ceased or moved to other locations without impeding the normal and safe operation of the Facility.

"**Submitted Hourly Electricity Output Profile**" means the annual hourly electricity output profile for the Facility as set out in Exhibit B, which profile was submitted by the Supplier in its Proposal. For purposes of determining the Annual Submitted Profile Electricity and the Annual Submitted Profile-Weighted Average Price, the Facility will be notionally considered to have produced Electricity according to the Submitted Hourly Electricity Output Profile in each Contract Year.

"**Supplier**" means St. Marys Renewable Energy LP, and includes any successor to St. Marys Renewable Energy LP resulting from any merger, arrangement or other reorganization of or including St. Marys Renewable Energy LP or any continuance under the laws of another jurisdiction or permitted assignee.

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

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

"**Supplier's Capacity**" means the Nameplate Capacity less the Contract Capacity.

"**Supplier's Electricity**" means that quantity of Electricity, expressed in MWh, calculated as the Delivered Electricity minus the Contract Price Delivered Electricity.

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

"Supplier's IR Notice" has the meaning ascribed to it in Section 2.11(c)(ii).

"System Impact Assessment" means a study conducted by the IESO pursuant to section 6.1.5 of Chapter 4 of the IESO Market Rules to assess the impact of a new connection of the Facility to the IESO-Controlled Grid, or of the modification of an existing connection of the Facility to the IESO-Controlled Grid, on the reliability of the integrated power system.

"Tangible Net Worth" means, in respect of the Supplier or a Guarantor, at any time and without duplication, an amount determined in accordance with GAAP (or IFRS, if the Supplier or Guarantor has adopted such standard), and calculated as (a) the sum of capital stock, preferred stock, paid-in capital, contributed surplus, retained earnings, capital reserves and cumulative translation adjustment (whether positive or negative), minus (b) the sum of any amounts shown on account of any common stock reacquired by the Supplier or the Guarantor, as applicable, patents, patent applications, service marks, industrial designs, copyrights, trade marks and trade names and licenses, prepaid assets, goodwill and all other intangibles.

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

"Term" has the meaning ascribed to it in Section 9.1(b).

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

"Test Protocol" has the meaning ascribed to it in Section 15.6(a).

"Third Period Amount" has the meaning ascribed to it in Section 6.1(a)(iii).

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

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

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

"Transport and Handling Index" means the Ontario Diesel Fuel Price Index published or established by Statistics Canada (or its successor) and referenced, as of the date of this Agreement, as number v1575889 under the table and heading "*Industrial product price indexes, by commodity and commodity aggregations — Petroleum and coal products, Diesel fuel, Ontario*" and accessible through the uniform resource locator (URL) http://www.statcan.gc.ca/pub/62-011-x/2008008/5206968-eng.htm or such other URL, or other electronic or non-electronic format, as the Buyer may provide to the Supplier from time to time.

"**Transport and Handling Index Factor**" means that percentage of the Initial Contract Price, between 0% and 20%, set out by the Supplier in Exhibit B, to be indexed to the Transport and Handling Index in accordance with Section 3.5.

"**UHO Price Reduction Factor**" has the meaning ascribed to it in Section 15.7(b).

"**Unindexed Portion**" or "**UIP**" has the meaning ascribed to it in Section 3.5.

"**Useful Heat Output**" or "**UHO**" means thermal energy (expressed in MWh-thermal) produced by the Facility and used for a gainful commercial or industrial purpose such as district energy, manufacturing, mining, chemical or other industrial process as approved by the Buyer, where such use (a) avoids or reduces the use of fuel to produce thermal energy in an alternate process; and (b) is not a use within the Facility combined heat and power cycle for gas turbine injection, inlet conditioning, fuel heating, or other similar purpose; and (c) is not a use outside the Facility combined heat and power cycle for applications such as heating rivers, lakes or the atmosphere. For greater certainty, gainful commercial or industrial purpose does not include the use of the thermal energy primarily for generating Electricity.

1.2 Exhibits

The following Exhibits are referenced in and form part of this Agreement:

Exhibit A	Description of Facility
Exhibit B	Contract Price, Capacity, Useful Heat Output, and Submitted Hourly Electricity Output Profile
Exhibit C	Form of Irrevocable Standby Letter of Credit
Exhibit D	Form of Guarantee
Exhibit E	Intentionally Deleted
Exhibit F	Proposal
Exhibit G	Milestone Events and Milestone Dates for the Facility
Exhibit H	Arbitration Provisions Applicable to Sections 1.6, 1.7, 1.8, 1.9, 1.10 and 2.10
Exhibit I	Determination of Availability
Exhibit J	Form of Statutory Declaration
Exhibit K	Form of Force Majeure Notice
Exhibit L	Form of Outage Notice
Exhibit M	Form of Quarterly Report
Exhibit N	Form of Annual Report

Exhibit O	Form of Restatement Report
Exhibit P	Form of Guarantee for Host Developed Facility
Exhibit Q	Form of Company Representative Notice
Exhibit R	Form of Confidentiality Undertaking
Exhibit S	Matters Required to be Addressed in Test Protocol
Exhibit T	Adjustment of Electricity Output in Capacity Check Test as a Result of Failure to Meet Useful Heat Output Requirement
Exhibit U	Actual Useful Heat Output Percentage Calculation and Reports
Exhibit V	Metering Plan
Exhibit W	Form of Agreement with the Crown
Exhibit X	Form of Supplier Certificate re: Commercial Operation
Exhibit Y	Form of Long Term Operating Plan
Exhibit Z	Form of Annual Operating Plan
Exhibit AA	Form of Independent Engineer's Certificate re: Commercial Operation

Exhibits K, L, M, N, O, Q, R, S, T, X, Y, Z, and AA, in the forms attached to this Agreement, reflect the corresponding forms appearing on the Buyer's Website as at the date of this Agreement. However, the Supplier acknowledges and agrees that the Buyer may, at any time and from time to time after the date of this Agreement, acting reasonably, without notice to the Supplier, amend or replace each such form of certificate, notice or report, and post such amended or replacement form on the Buyer's Website, and thereafter such amended or replaced form as it appears on the Buyer's Website shall replace and shall be used by the Supplier or the Buyer, as the case may be, instead of the then current form. Accordingly, it is the responsibility of the Supplier to ensure that the latest draft of the relevant form, as posted on the Buyer's Website, is used.

1.3 Headings and Table of Contents

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

1.4 Gender and Number

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

1.5 Currency

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

1.6 IESO Market Rules and Statutes

Unless otherwise expressly stipulated, any reference in this Agreement to the IESO Market Rules or to a statute or to a regulation or rule promulgated under a statute or to any provision of a statute, regulation or rule shall be a reference to the IESO Market Rules, statute, regulation, rule or provision as amended, re-enacted or replaced from time to time. If the Supplier is a Market Participant, in the event of any conflict or inconsistency with the IESO Market Rules and the terms of this Agreement, the IESO Market Rules shall govern to the extent of such conflict or inconsistency. If the Supplier is a Market Participant, to the extent that there is a change in the IESO Market Rules following the date of this Agreement, which such change has the effect of materially affecting the Supplier's economics as contemplated hereunder prior to the introduction of such change, then:

(a) either Party upon becoming aware of the consequences of such change shall promptly notify the other Party;

(b) the Parties and, at the Buyer's discretion, those Other Suppliers that are required by the Buyer to participate, shall engage in good faith negotiations to amend this Agreement and the respective agreements of those Other Suppliers on the basis that such amendments together with the change in the IESO Market Rules will substantially reflect the economics as contemplated hereunder of the Supplier and, at the Buyer's discretion, those Other Suppliers, prior to the introduction of such change in the IESO Market Rules;

(c) if the Parties fail to reach agreement on the amendments described in Section 1.6(b), the matter shall be determined by mandatory and binding arbitration, from which there shall be no appeal, with such arbitration(s) to be conducted in accordance with the procedures set out in Exhibit H. However, if the Supplier fails to participate in such arbitration, the Supplier acknowledges that it waives its right to participate in such arbitration, which shall nevertheless proceed, and the Supplier shall be bound by the award of the Arbitration Panel and the subsequent amendments to this Agreement made by the Buyer to implement such award of the Arbitration Panel set out in Section 1.6(d)(iii);

(d) the terms of this Agreement shall be amended either:

   (i) by the agreement of the Parties, where no award of an Arbitration Panel has been made pursuant to Section 1.6(c);

   (ii) by the agreement of the Parties made pursuant to and to implement an award of the Arbitration Panel made pursuant to Section 1.6(c); or

   (iii) by an amendment prepared by the Buyer made pursuant to and to implement an award of the Arbitration Panel made pursuant to Section 1.6(c), where the Supplier failed to participate in such arbitration, with such agreement or amendment, as the case may be, having effect from and after the date that the change in the IESO Market Rules became effective; and

(e) this Section 1.6 shall not apply to the circumstances addressed in Sections 1.7, 1.8, 1.9, 1.10 and 2.10.

1.7 Introduction of the Day-Ahead Energy Forward Market

(a) If a Day-Ahead Energy Forward Market is opened for operation in Ontario, then this Agreement will be modified such that all references to HOEP will be replaced with an hourly Electricity price established under the Day-Ahead Energy Forward Market (the "**Replacement Price**").

(b) If (i) the IESO has made an announcement that the Day-Ahead Energy Forward Market is likely to be opened within the succeeding twelve (12) calendar months, and (ii) the amendments to the IESO Market Rules for the Day-Ahead Energy Forward Market have been substantially developed by the IESO, the Buyer shall propose a Replacement Price, based on Sections 1.7(a) and 1.7(c), to the Supplier and, at the Buyer's discretion, those Other Suppliers that are required by the Buyer to participate. If the Parties are unable to agree on the Buyer's proposal or that of the Supplier or any of those Other Suppliers, as the case may be, within thirty (30) days after the Day-Ahead Energy Forward Market is opened for operation in Ontario, then the Replacement Price shall be determined by mandatory and binding arbitration, from which there shall be no appeal, with such arbitration(s) to be conducted in accordance with the procedures set out in Exhibit H. However, if the Supplier fails to participate in such arbitration, the Supplier acknowledges that it waives its right to participate in such arbitration, which shall nevertheless proceed, and the Supplier shall be bound by the award of the Arbitration Panel and the subsequent amendments to this Agreement made by the Buyer to implement such award of the Arbitration Panel set out in Section 1.7(c)(iii).

(c) The terms of this Agreement shall be amended either:

(i) by the agreement of the Parties, where no award of an Arbitration Panel has been made pursuant to Section 1.7(b);

(ii) by the agreement of the Parties made pursuant to and to implement an award of the Arbitration Panel, made pursuant to Section 1.7(b); or

(iii) by an amendment prepared by the Buyer made pursuant to and to implement an award of the Arbitration Panel made pursuant to Section 1.7(b), where the Supplier failed to participate in such arbitration,

with such agreement or amendment, as the case may be, having effect from and after the date the Day-Ahead Energy Forward Market was opened for operation in Ontario.

(d) Until such time as this Agreement is amended in accordance with Section 1.7(c), all references to HOEP shall continue and payments hereunder shall continue to be made until such time, provided that all such payments shall be subject to recalculation and readjustment as a result of the agreement or award set out in Section 1.7(c), and any Party owing monies to the other pursuant to such recalculation shall pay, within ten (10) Business Days after receipt of an invoice from the other Party, such monies owing together with interest at the Interest Rate, calculated daily, from and including the time such payments were due to the date of payment thereof.

1.8 Evolution of the IESO-Administered Markets

(a) For the purposes of Section 1.8(b), a "**Price Evolution Event**" means that the IESO Market Rules have changed (including the implementation of LMP by the IESO) such that HOEP, or the replacement value for HOEP under a Day-Ahead Energy Forward Market as determined through the application of Section 1.7, is no longer provided for, and is replaced by another market-based price signal(s), then HOEP, or its replacement value under a Day-Ahead Energy Forward Market, if applicable, will be replaced with the Ontario Electricity Market Price that most closely emulates the price actually paid by the Ontario Electricity market for Electricity output from the Facility (the "**Replacement Price**").

(b) If (i) the IESO or the Government of Ontario have made an announcement with the effect that a Price Evolution Event is likely to occur within the succeeding twelve (12) calendar months, and (ii) the replacement rules and regulations pertaining to the Price Evolution Event have been approved by the applicable authority, the Buyer shall propose a Replacement Price, based on Section 1.8(a), to the Supplier and, at the Buyer's discretion, those Other Suppliers that are required by the Buyer to participate. If the Parties are unable to agree on the Buyer's proposal or that of the Supplier or those Other Suppliers, as the case may be, within thirty (30) days after the Price Evolution Event occurs, then the Replacement Price shall be determined by mandatory and binding arbitration, from which there shall be no appeal, with such arbitration(s) to be conducted in accordance with the procedures set out in Exhibit H. However, if the Supplier fails to participate in such arbitration, the Supplier acknowledges that it waives its right to participate in such arbitration, which shall nevertheless proceed, and the Supplier shall be bound by the award of the Arbitration Panel and the subsequent amendments to this Agreement made by the Buyer to implement such award of the Arbitration Panel set out in Section 1.8(d)(iii).

(c) If the IESO Market Rules are amended to provide for an installed capacity market, then either Party may propose, by notice in writing to the other Party, amendments to this Agreement, and the Buyer and the Supplier and, at the Buyer's discretion, those Other Suppliers that are required by the Buyer to participate shall then engage in good faith negotiations to amend this Agreement and the respective agreements of those Other Suppliers so as to facilitate the Supplier's participation in such installed capacity market, on the basis that the economic effect of such amendments substantially reflect the Supplier's economics as contemplated hereunder prior to the introduction of the installed capacity market. If the Parties are unable to agree on such amendments, the matter shall be determined by mandatory and binding arbitration, from which there shall be no appeal, with such arbitration to be conducted in accordance with the procedures set out in Exhibit H. However, if the Supplier fails to participate in such arbitration, the Supplier acknowledges that it waives its right to participate in such arbitration, which shall nevertheless proceed, and the Supplier shall be bound by the award of the Arbitration Panel and the subsequent amendments to this Agreement made by the Buyer to implement such award of the Arbitration Panel set out in Section 1.8(d)(iii).

(d) In respect of the matters set forth in Section 1.8(b) and 1.8(c), the terms of this Agreement shall be amended either:

(i) by the agreement of the Parties, where no award of an Arbitration Panel has been made pursuant to Section 1.8(b) or 1.8(c), as the case may be;

(ii) by the agreement of the Parties made pursuant to and to implement an award of the Arbitration Panel, made pursuant to Section 1.8(b) or 1.8(c), as the case may be; or

(iii) by an amendment prepared by the Buyer made pursuant to and to implement an award of the Arbitration Panel made pursuant to Section 1.8(b) or 1.8(c), as the case may be, where the Supplier failed to participate in such arbitration,

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

(e) Until such time as this Agreement is amended in accordance with Section 1.8(d), calculations required hereunder shall be made using the Buyer's proposal submitted under Section 1.8(d), provided that all such payments shall be subject to recalculation and readjustment as a result of the agreement or award set out in Section 1.8(d), and any Party owing monies to the other pursuant to such recalculation shall, within ten (10) Business Days after receipt of an invoice from the other Party, pay such monies owing together with interest at the Interest Rate, calculated daily, from and including the time such payments were due to the date of payment thereof.

(f) This Section 1.8 shall not apply in the circumstances addressed in Section 1.7 or 2.10.

1.9 Price Unavailability Events

(a) For the purposes of Section 1.9(b), a "**Price Unavailability Event**" means that HOEP, or the replacement value for HOEP under a Day-Ahead Energy Forward Market as determined through the application of Section 1.7, or the replacement market-based price signals referred to in Section 1.8, is no longer available. In such a case, this Agreement will be modified on the basis that the economic effect of such amendments comes as close as possible to reflecting the Parties' economics hereunder prior to such occurrence, and the modifications and amendments described in this Section 1.9(a) are collectively referred to as the "**Replacement Provision(s)**", with such modifications to take effect from and after the date set out in Section 1.9(c).

(b) If (i) the IESO or the Government of Ontario has made an announcement to the effect that a Price Unavailability Event is likely to occur within the succeeding twelve (12) calendar months, and (ii) the replacement rules and regulations pertaining to the Replacement Provision(s) have been approved by the applicable authority, the Buyer shall propose Replacement Provision(s), based on Section 1.9(a) to the Supplier and, at the Buyer's discretion, those Other Suppliers that are required by the Buyer to participate. If the Parties are unable to agree on the Buyer's proposal or that of the Supplier or any of those Other Suppliers, as the case may be, within thirty (30) days after the occurrence of the Price Unavailability Event, then the Replacement Provision(s) shall be determined by mandatory and binding arbitration, from which there shall be no appeal, with such arbitration(s) to be conducted in accordance with the procedures set out in Exhibit H. However, if the Supplier fails to participate in such arbitration, the Supplier acknowledges that it waives its right to participate in such arbitration, which shall nevertheless proceed, and the Supplier shall be bound by the award of the Arbitration Panel and the subsequent amendments to this Agreement made by the Buyer to implement such award of the Arbitration Panel set out in Section 1.9(c)(iii).

(c) The terms of this Agreement shall be amended either:

(i) by the agreement of the Parties, where no award of an Arbitration Panel has been made pursuant to Section 1.9(b);

(ii) by the agreement of the Parties made pursuant to and to implement an award of the Arbitration Panel, made pursuant to Section 1.9(b); or

(iii) by an amendment prepared by the Buyer made pursuant to and to implement an award of the Arbitration Panel made pursuant to Section 1.9(b), where the Supplier failed to participate in such arbitration,

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

(d) Until such time as this Agreement is amended in accordance with Section 1.9(c), calculations required hereunder shall continue to be made using the Buyer's proposal submitted under Section 1.9(b), provided that all such payments shall be subject to recalculation and readjustment as a result of the agreement or award set out in Section 1.9(c), and any Party owing monies to the other pursuant to such recalculation shall pay, within ten (10) Business Days after receiving an invoice from the other Party, such monies owing together with interest at the Interest Rate, calculated daily, from and including the time such payments were due to the date of payment thereof.

(e) This Section 1.9 shall not apply to the circumstances addressed in Sections 1.7, 1.8, or 2.10.

1.10 Invalidity, Unenforceability or Inapplicability of Indices and Other Provisions

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

(a) if a provision is considered to be invalid, inapplicable or unenforceable, then the Party considering such provision to be invalid, inapplicable or unenforceable may propose, by notice in writing to the other Party, a replacement provision and the Buyer and the Supplier and, at the Buyer's discretion, those Other Suppliers that are required by the Buyer to participate, shall engage in good faith negotiations to replace such provision with a valid, enforceable and applicable provision, the economic effect of which substantially reflects that of the invalid, unenforceable or inapplicable provision which it replaces;

(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 Buyer and the Supplier and, at the Buyer's discretion, all of those Other Suppliers that are required by the Buyer 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, inapplicable or unenforceable, or that the basis for any index or price quotation is changed materially, or the negotiations set out in Sections 1.10(a) or 1.10(b) are not successful, then if the Parties are unable to agree on all such issues and any amendments required to this Agreement (the "**Replacement Provision(s)**") within thirty (30) days after either the giving of the notice under Section 1.10(a) or the occurrence of the event in Section 1.10(b), then the Replacement Provision(s) shall be determined by mandatory and binding arbitration from which there shall be no appeal, with such arbitration(s) to be conducted in accordance with the procedures set out in Exhibit H. However, if the Supplier fails to participate in such arbitration, the Supplier acknowledges that it waives its right to participate in such arbitration, which shall nevertheless proceed, and the Supplier shall be bound by the award of the Arbitration Panel and the subsequent amendments to this Agreement made by the Buyer to implement such award of the Arbitration Panel set out in Section 1.10(d)(iii); and

(d) the terms of this Agreement shall be amended either:

(i) by the agreement of the Parties, where no award of an Arbitration Panel has been made pursuant to Section 1.10(c);

(ii) by the agreement of the Parties made pursuant to and in implementation of an award of the Arbitration Panel made pursuant to Section 1.10(c); or

(iii) by an amendment prepared by the Buyer made pursuant to and to implement an award of the Arbitration Panel made pursuant to Section 1.10(c), where the Supplier failed to participate in such arbitration,

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

This Section 1.10 shall not apply to the circumstances addressed in Sections 1.7, 1.8, 1.9, or 2.10.

1.11 Entire Agreement

This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter of this Agreement. There are no warranties, conditions or representations (including any that may be implied by statute) and there are no agreements in connection with the subject matter of this Agreement, except as specifically set forth or referred to in this Agreement. No reliance is placed on any warranty, representation, opinion, advice or assertion of fact made prior to the date of this Agreement by a Party to this Agreement, or its Representatives, to the other Party to this Agreement, or its Representatives, except to the extent that the same has been reduced to writing and included as a term of this Agreement. Any conflict or inconsistency between this Agreement and the Proposal shall be resolved by interpreting such documents in the following order, from highest to lowest priority, namely:

- this Agreement; and
- the Proposal,

where a document of a higher priority shall govern over a document of a lower priority to the extent of any conflict or inconsistency.

1.12 Waiver, Amendment

Except as expressly provided in this Agreement, no amendment or waiver of any provision of this Agreement shall be binding unless executed in writing by the Party to be bound thereby. No waiver of any provision of this Agreement shall constitute a waiver of any other provision nor shall any waiver of any provision of this Agreement constitute a continuing waiver or operate as a waiver of, or estoppel with respect to, any subsequent failure to comply, unless otherwise expressly provided.

1.13 Governing Law

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

1.14 Preparation of Agreement

Notwithstanding the fact that this Agreement was drafted by the Buyer's legal and other professional advisors, the Parties acknowledge and agree that any doubt or ambiguity in the meaning, application or enforceability of any term or provision of this Agreement shall not be construed or interpreted against the Buyer or in favour of the Supplier when interpreting such term or provision, by virtue of such fact.

ARTICLE 2
DEVELOPMENT AND OPERATION OF THE FACILITY

2.1 Design and Construction of the Facility

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

(b) The Supplier agrees to provide a single line electrical drawing which identifies the as-built Connection Point(s), clearly showing area transmission and distribution facilities, including the transmission station(s) that is electrically closest to the Facility.

(c) The Supplier shall at no time after the date of this Agreement modify, vary or amend in any material respect any of the features or specifications outlined in Exhibit A or Exhibit B (an "**Amendment**") without first notifying the Buyer in writing and obtaining the Buyer's consent in writing, which consent shall not be unreasonably withheld, provided that it shall not be unreasonable for the Buyer to withhold its consent to any modification, variation or amendment which would, or would be likely to, materially adversely affect the ability of the Supplier to comply with its obligations under this Agreement. For purposes of this paragraph, the failure of the Facility to have a Connection Point as described in Exhibit A shall be deemed to be an Amendment.

(d) If the Buyer's consent in writing has been given in relation to a reduction in the Contract Capacity pursuant to Section 2.1(c), the Contract Capacity shall be deemed to be reduced to the lower amount, effective at the time stated in such notice. If the Buyer's consent has been given in relation to an increase in the Contract Capacity, the Contract Capacity shall be increased to the higher amount, effective as of the time stated in such notice, and provided that such increase shall not be effective until: (i) the Supplier performs a Capacity Check Test confirming the increased amount of the Contract Capacity, and (ii) the Supplier has delivered to the Buyer the amount of Completion and Performance Security corresponding to the revised amount of Annual Average Contract Capacity, as calculated in accordance with Section 6.1.

(e) For purposes of Section 2.1(c), in the event that the Nameplate Capacity of the Facility will be reduced as a result of a term, condition or restriction imposed by, or contained in a permit, certificate, licence or other approval issued by, a Governmental Authority in respect of the Facility, then the amount by which such Nameplate Capacity is reduced shall be deemed to first reduce the Supplier's Capacity, with any excess of the reduction of the Nameplate Capacity over the Supplier's Capacity then being deemed to reduce the Contract Capacity.

2.2 Additional Development and Construction Covenants

(a) The Supplier agrees that the Facility shall be located in the Province of Ontario. The Supplier agrees that the Facility shall have a Connection Point as set out in Exhibit A and shall affect supply in the IESO-Administered Markets.

(b) The Supplier agrees to arrange, at its expense, for all Facility connection requirements in accordance with the Connection Agreement to permit the delivery of Delivered Electricity to the Delivery Point.

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

(d) If the Supplier does not become a Market Participant or ceases to be a Metered Market Participant with respect to the Facility, the Supplier agrees to provide access to LDC Portal or the IESO's MVPortlet, or equivalent. In the event that the LDC Portal, the IESO's MVPortlet or equivalent is not available, the Supplier must supply validated metering data in one of the following formats: .XML or .CSV at an interval of no more than every thirty (30) days.

(e) If the Supplier does not become a Market Participant or ceases to be a Metered Market Participant with respect to the Facility, the Supplier agrees to ensure that revenue-quality interval meter(s) will be operated and maintained, at its expense, to calculate the Delivered Electricity from the Facility at the Delivery Point, net of any Station Service Loads and inclusive for any loss adjustment factors. Revenue meter(s) registered with the IESO or provided by an LDC can be used to fulfil this obligation, in whole or in part, so long as the Metering Plan specifies: (i) how the metered quantities from those meter(s) will be adjusted, if necessary, to account for any electrical losses that may occur due to differences between the physical locations of the meter(s) and the Delivery Point, and (ii) how the metered quantities from those meter(s) will be totalled, if necessary, with other revenue-quality metered data to accurately calculate the output of the Facility at the Delivery Point net of any Station Service Loads and inclusive of any loss adjustment factors. Furthermore, the Supplier agrees that the Buyer may retain a metering service provider for such revenue-quality interval meter(s) and the Supplier shall reimburse the Buyer for the costs of such metering service provider. Such costs may be netted from any Monthly Payment that the Buyer owes to the Supplier.

(f) The Supplier also covenants and agrees to provide, at its expense, separate meter(s) and ancillary metering and monitoring equipment in order to calculate energy attributable to Useful Heat Output generated by the Facility, net of any thermal energy returned to or imported by the Facility, providing a level of accuracy acceptable to the Buyer, acting reasonably. The Supplier will provide such data at an interval of no more than every thirty (30) days. The data provided shall represent the hourly flows of Useful Heat Output at a minimum frequency of every hour.

(g) The Buyer retains the right to audit, at any time during the Term, on reasonable notice to the Supplier and during normal business hours, the metering equipment to confirm the accuracy of the Metering Plan, and the meter data of the Facility to confirm the accuracy of such data.

(h) The Supplier shall have the Metering Plan approved by the Buyer and shall deliver a copy to the Buyer for its approval no later than one hundred and twenty (120) days prior to the Milestone Date for Commercial Operation. The Buyer agrees to review the Metering Plan submitted by the Supplier and to either approve the Metering Plan or provide the Supplier with its comments within thirty (30) days after receipt. The Buyer shall, when considering whether to approve the Metering Plan, have regard to those Electricity matters in the Metering Plan that have received IESO approval. If, within fifteen (15) days after the Buyer has delivered its comments on the Metering Plan to the Supplier, the Parties are not able to agree on the final terms of the Metering Plan, the Parties shall submit the matter for determination by an Independent Engineer agreed upon by the Parties, acting reasonably, whose determination on the terms of the Metering Plan shall be final and binding on the Parties (and from whose determination there shall be no recourse to the dispute resolution provisions of this Agreement). The Supplier will provide the Buyer with a commissioning report for all revenue meter(s) referenced in the Metering Plan prior to any use of metered data for the purposes expressed in Section 2.5.

(i) The Supplier shall not make any material changes to the Metering Plan following approval by the Buyer or determination by the Independent Engineer as set out in Section 2.2(h) without the prior written approval of the Buyer, acting reasonably.

(j) "**Metering Plan**" means a document that is provided by the Supplier to the Buyer, addressing at a minimum the matters set out in and substantially in the form of Exhibit V and that (a) verifies that the revenue-quality interval meter(s) conform with Laws and Regulations administered by Measurement Canada with respect to such meter(s), and (b) provides all required information and equipment specifications needed to permit the Buyer to remotely access, verify, estimate and edit for calculation purposes and/or total revenue meter readings in order to accurately determine the generator output at the Delivery Point net of any Station Service Loads and Auxiliary Loads and to calculate energy attributable to Useful Heat Output generated by the Facility and received by the Host Facility, and which is updated promptly, and, in any event, within ten (10) Business Days after any change to the metering installation occurs.

(k) The Supplier agrees to provide, at its expense, all power system components on the Supplier's side of the Connection Point, including all transformation, switching and auxiliary equipment, such as synchronizing and protection and control equipment, pursuant to requirements deemed necessary by the IESO, the Transmitter, the LDC (and as specified in the System Impact Assessment, the Customer Impact Assessment and the Connection Impact Assessment, as applicable) and the End-User, as applicable, to protect the safety and security of the IESO-Controlled Grid, the Local Distribution System, each of their customers and the End-User Load, as the case may be. The equipment to be so provided by the Supplier shall include such electrical equipment as the IESO, the Transmitter, the LDC and the End-User, as applicable, deem necessary, from time to time, for the safe and secure operation of the IESO-Controlled Grid, the Local Distribution System and the End-User Load, as required by the IESO Market Rules, the Transmission System Code, the Distribution System Code and the End-User, as applicable.

(l) The Supplier 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 or the IESO-Controlled Grid.

2.3 Allocation and Treatment of Connection Costs and Network Upgrade Costs

(a) The Supplier agrees to arrange for all Network Upgrades that may be required to permit the delivery of Electricity and Related Products from the Facility to the IESO-Controlled Grid. The Supplier acknowledges that the responsibility for Network Upgrade Costs shall be allocated as set forth in the Transmission System Code and Distribution System Code.

(b) All Connection Costs shall be for the account of the Supplier and, as applicable, the Transmitter and/or LDC with which the Supplier has arranged connection of the Facility.

(c) If the OEB issues an order or directive resulting in a Transmitter or an LDC, instead of the Supplier as a generator, being responsible for the payment of any Connection Costs, then the Supplier shall provide written notice to the Buyer of the issuance of such order or directive within ten (10) Business Days of its issuance, and the Supplier shall cooperate in good faith with the Buyer and/or the Transmitter and/or the LDC as required by the Buyer to assess the amount of Connection Costs for which the Supplier is no longer responsible. Notwithstanding anything in this Agreement to the contrary, the Contract Price applicable from and after the effective date of such order or directive shall be reduced, by mutual agreement, by an amount commensurate with such reduction in Connection Costs as a result of such OEB order or directive, amortized on a straight-line basis over the balance of the Term.

2.4 Milestone Dates

(a) The Supplier acknowledges that time is of the essence to the Buyer with respect to attaining Financial Closing and Commercial Operation of the Facility by their corresponding Milestone Dates set out by the Supplier in Exhibit G, and the Parties agree:

(i) that each of the Milestone Events corresponding to:

(A) Financial Closing; and

(B) attaining Commercial Operation,

shall be achieved in a timely manner and by its corresponding Milestone Date, failing which the Supplier shall pay to the Buyer within five (5) Business Days after receipt of an invoice from the Buyer, as liquidated damages and not as a penalty, a sum of money equal to (A) 50 Dollars per MW multiplied by the Annual Average Contract Capacity for each calendar day after the Milestone Date in respect of Financial Closing; and

(B) 150 Dollars per MW multiplied by the Annual Average Contract Capacity for each calendar day after the Milestone Date in respect of Commercial Operation, until the corresponding Milestone Event has been achieved. However, if Commercial Operation is achieved on or before its corresponding Milestone Date, then all liquidated damages for delay in achieving Financial Closing paid by the Supplier under this Section 2.4(a)(i) shall be refunded to the Supplier, without interest, two weeks following the Commercial Operation Date; and

(ii) that the maximum time period that liquidated damages shall be calculated and payable under Section 2.4(a)(i) by the Supplier (A) for failure to meet the Milestone Date in respect of Financial Closing shall be ninety (90) days and (B) for failure to meet the Milestone Date in respect of Commercial Operation shall be five hundred and forty-five (545) days.

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

(c) If there occurs or arises any incident, event or circumstance which results, or is likely to result, in a delay in the aggregate of thirty (30) days or more in achieving the Environmental and Site Plan Milestone Events as described in Exhibit G following the respective Milestone Date therefor (for greater certainty including delays arising from events of Force Majeure), the Party first becoming aware of such delay or likely delay shall promptly (and, in any event, within ten (10) Business Days) notify the other Party and the Parties shall meet to discuss strategies for eliminating or reducing, to the extent possible and practicable to do so, the impact of such delay on the development, construction and/or commissioning of the Facility in order to achieve Commercial Operation by the Milestone Date therefor.

2.5 Requirements for Commercial Operation

(a) The Facility will be deemed to have achieved "**Commercial Operation**" at the point in time when, as confirmed by the Buyer in a written notice to the Supplier as described in Section 2.5(b):

(i) the Buyer has received and approved the Metering Plan as set out in Section 2.2;

(ii) the Supplier has submitted a performance test plan to the Buyer for approval ninety (90) days prior to the performance test;

(iii) the Buyer has received an IE Certificate in the form referenced as Exhibit AA from the Independent Engineer, stating that:

(A) the Facility has been completed in all material respects, excepting punch list items that do not materially and adversely affect the ability of the Facility to operate in accordance with this Agreement;

(B) the Connection Point of the Facility is that set out in Exhibit A;

(C) the Facility has been constructed, connected, commissioned and synchronized to the IESO-Controlled Grid, a Local Distribution System or an End-User Load, such that at least 100% of the Average Seasonal Contract Capacity is available to generate Electricity in compliance with Good Engineering and Operating Practices;

(D) the Facility has successfully undertaken a performance test in accordance with recognized standards demonstrating the maximum capacity of the Facility and that the Facility has met the Average Seasonal Contract Capacity and the Minimum UHO Requirement for the Season in which the performance test took place. A copy of the performance test report is to be attached to the IE Certificate;

(E) the Independent Engineer reviewed the Metering Plan approved by the Buyer and all calculations have been performed in accordance therewith; and

(F) the Facility has, for four (4) continuous hours, using Primary Fuel and in compliance with all Laws and Regulations:

(1) generated Measured Electricity at an uninterrupted rate, in each of such hours, of not less than 100% of the Average Seasonal Contract Capacity for the Season in which such generation took place multiplied by one hour; and

(2) generated and delivered Measured UHO to the Host Facility at an uninterrupted rate, in each of such hours during which Measured Electricity was generated in Section 2.5(a)(iii)(F)(1), that satisfies the Minimum UHO Requirement. For greater certainty: (i) if the Measured UHO does not satisfy the Minimum UHO Requirement, the Measured Electricity will not be adjusted with respect to such shortfall and the Facility will not satisfy the Minimum

UHO Requirement, and (ii) the Host Facility must accept the UHO; and

(iv) the Buyer has received a Supplier's Certificate re: Commercial Operation in the form referenced as Exhibit X, together with such documentation required to be provided under such form to the Buyer.

The Buyer or its Representative shall be entitled, at the Buyer's option, to attend the performance and generation tests for purposes of Sections 2.5(a)(iii)(D) and (F), and the Supplier shall provide to the Buyer confirmation in writing of the timing of such tests at least seven (7) days in advance.

(b) The Buyer shall notify the Supplier in writing within ten (10) Business Days following receipt of the IE Certificate and the Supplier's Certificate re: Commercial Operation as to whether the IE Certificate, Supplier's Certificate, and the documentation provided by the Supplier under the Supplier's Certificate are acceptable to the Buyer, acting reasonably. If the Buyer determines that the IE Certificate, Supplier's Certificate, or such documentation provided by the Supplier under the Supplier's Certificate are not acceptable to the Buyer, the Buyer shall at the time of such notification provide to the Supplier reasonable particulars in respect of the deficiencies in the IE Certificate, Supplier's Certificate, or such documentation.

2.6 Buyer Information During Design and Construction

Prior to the Commercial Operation Date:

(a) the Supplier shall provide the Buyer with progress reports as follows:

(i) By the fifteenth (15th) day of each calendar quarter following the date of this Agreement and continuing until the Commercial Operation Date, the Supplier shall provide the Buyer with quarterly progress reports substantially in the form of Exhibit M (the "**Quarterly Progress Reports**"), describing the status of efforts made by the Supplier to meet each Milestone Date and the progress of the design and construction work and the status of permits and approvals relating to the Facility. Such Quarterly Progress Reports shall report on the progress of all applicable Reportable Events. At the Buyer's request, the Supplier shall provide an opportunity for the Buyer to meet with appropriate personnel of the Supplier to discuss and assess the contents of any such Quarterly Progress Report. The Supplier acknowledges that the Quarterly Progress Reports and photographs of the Facility may be posted or printed by the Buyer on its website or in publications.

(ii) In addition to the Quarterly Progress Reports which the Supplier is required to provide pursuant to Section 2.6(a)(i), the Supplier shall also provide the Buyer with notice of any material incident, event or concern which may occur or arise during the course of the development, construction or commissioning of the Facility, promptly and, in any event, within ten (10) Business Days following the later of (i) the Supplier becoming aware of any such incident, event or concern occurring or arising; and (ii) the Supplier becoming aware of the materiality of same, with such timing in each case based upon the Supplier having acted in accordance with Good Engineering and Operating Practices.

(b) At the Buyer's request, the Supplier shall provide an opportunity for the Buyer to participate as an observer in the Supplier's regular project meetings with its EPC Contractor or main project management contractor. A copy of the minutes of the project meeting shall be provided to the Buyer if the Buyer participates as an observer at any meeting of the Supplier.

(c) The Supplier shall provide to the Buyer a list of all licences, permits, certificates, registrations, authorizations, consents and approvals issued by a Governmental Authority which are required to construct, operate and maintain the Facility.

2.7 Operation Covenants

(a) The Supplier agrees to own or lease the Facility during the Term and to operate and maintain the Facility during the Term using Good Engineering and Operating Practices, and meeting all applicable requirements of the IESO Market Rules (if the Supplier becomes a Market Participant with the IESO), the Transmission System Code, the Distribution System Code, the Connection Agreement and all other Laws and Regulations.

(b) The Supplier agrees to assume all risk, liability and obligation and to indemnify, defend and hold harmless the Indemnitees in respect of all actions, causes of action, suits, proceedings, claims, demands, losses, damages, penalties, fines, costs, obligations and liabilities arising out of a discharge of any contaminant into the natural environment, at or related to, the Facility and any fines or orders of any kind that may be levied or made in connection therewith pursuant to the *Environmental Protection Act* (Ontario), the *Ontario Water Resources Act* (Ontario), the *Dangerous Goods Transportation Act* (Ontario) or other similar legislation, whether federal or provincial and all as amended from time to time, except to the degree that such discharge shall have been due to the negligence or wilful misconduct of the Indemnitees.

(c) The Supplier agrees to connect the Facility exclusively to the Connection Point. For greater certainty, the Supplier shall deliver all Delivered Electricity through the Connection Point.

(d) The Supplier 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, and the Supplier shall provide a Fuel Plan containing the information required pursuant to Section 15.3. In addition, the

Supplier shall provide to the Buyer a written report within sixty (60) days of the end of each Contract Year setting out:

(i) a description of the type(s) of and percentage of Renewable Fuel(s) (the **"Actual Fuel Percentage"** or **"AFP"**) utilized by the Facility (as compared to all fuels so utilized) to generate Delivered Electricity during such prior Contract Year;

(ii) the calculations and assumptions used to determine the total fuel heat input of the Renewable Fuel(s) burned by the Facility, including the assumptions regarding the heat content of the Renewable Fuel and the basis for these assumptions; and

(iii) a report on all material variances in that Contract Year between the Fuel Plan and the Supplier's actual procurement and consumption of Renewable Fuel,

together with such additional information as the Buyer may reasonably require. If the Actual Fuel Percentage in a Contract Year is less than 90, then the Supplier shall pay the Buyer an Annual Fuel Adjustment Amount for such Contract Year, calculated in accordance with Section 4.2(a).

(e) The Supplier further covenants and agrees that the Facility shall not utilize any sources or fuels as a Primary Fuel other than Renewable Fuel.

(f) Without limiting the generality of the foregoing, a Supplier who is also a load facility under the IESO Market Rules shall be solely responsible for all charges (net of any applicable credits) in relation to Electricity consumed by it in order to operate the Facility in accordance with this Agreement.

2.8 Insurance Covenants

(a) The Supplier hereby agrees to put in effect and maintain, or cause its contractors, where appropriate, to maintain, from the commencement of the construction of the Facility to the expiry of the Term, at its own cost and expense, all the necessary and appropriate insurance that a prudent Person in the business of developing and operating the Facility would maintain including the policies set out in this Section 2.8. All insurance policies to be effected and maintained as required hereunder shall:

(i) be placed with insurers licensed to underwrite insurance in the Province of Ontario and having an overall A.M. Best's Rating of at least A- (except in the case of automobile liability insurance where the minimum rating of the insurer shall be B+); and

(ii) be capable of being reviewed and altered during the term of the policy to account for any changes in Laws and Regulations which affect coverage of the risk insured.

(b) The Supplier shall put in effect and maintain, or cause its contractors, where appropriate, to maintain, at a minimum, the following insurance policies:

(i) "All-risk" property insurance covering property of every description insuring not less than the full replacement value of the Facility, which:

(A) for the period prior to the Commercial Operation Date:

(1) shall be in the joint names of at least the Supplier and its principal contractors, with no co-insurance restriction; the policy shall include as additional insureds all subcontractors and the coverage shall not be less than the insurance required by IBC Forms 4042 and 4047, extended to include testing and commissioning, or their equivalent replacement; and

(2) shall provide delayed start-up coverage on a fixed expense basis with an indemnity period of not less than twelve (12) months and a deductible waiting period of not more than ninety (90) days; and

(B) for the period from and after the Commercial Operation Date:

(1) shall be in the name of the Supplier; and

(2) shall provide for business interruption coverage on an actual loss sustained basis with a waiting period of not more than ninety (90) days.

These policies shall contain a waiver of subrogation in favour of the Indemnitees. Deductibles for these policies shall not exceed $500,000 for all losses (other than damage to Equipment (as defined below) which will be subject to the deductibles set forth in Section 2.8(b)(ii)), except for 3% of full replacement value of damage to property (with a minimum deductible of $500,000) for damage to property arising from or relating to each of flood and earthquake.

(ii) Equipment breakdown insurance, in the joint names of the Supplier and, for the period prior to the Commercial Operation Date, its principal contractors, insuring not less than the full replacement value of the boilers, machinery, pressure vessels, electrical and mechanical machines, air conditioning and refrigeration systems, computers, communications and electronic systems, service supply objects, heat recovery steam generator units, steam turbine generator units, generator step-up transformer units and combustion gas turbine generator units and all other equipment forming part of the Facility (the "**Equipment**"). The coverage shall not be less than the insurance provided by the forms known and referred to in the insurance industry as "Comprehensive Boiler and Machinery Form" or "Equipment Breakdown Insurance". This policy shall contain a waiver of subrogation in favour of the Indemnitees. Deductibles in respect of this policy or the portion of the "all risk" property insurance relating to the Equipment (as described in Section 2.8(b)(i)) shall not exceed:

(A) $3,000,000 for property damage arising from and relating to testing and commissioning of Equipment prior to the Commercial Operation Date; and

(B) $3,000,000 for property damage arising from and after the Commercial Operation Date.

Equipment breakdown insurance coverage may be obtained as part of the "all risk" property insurance.

(iii) Commercial general liability insurance on an occurrence basis for death, bodily injury and property damage and other types of damage that may be caused to third parties as a result of the Supplier's activities in connection with the Facility or performance of its obligations under this Agreement, to an inclusive limit of not less than $10,000,000 per occurrence and in aggregate and with a deductible not exceeding $100,000. This policy shall include the Indemnitees as additional insureds and shall be non-contributing and primary with respect to coverage in favour of the Indemnitees. The coverage provided shall not be less than the insurance required by IBC Form 2100-2, 4-1998 (or its equivalent replacement) and IBC Form 2320 (version in effect as at the date of this Agreement or its equivalent replacement). The policy shall include the following coverage:

(A) broad form products, premises and completed operations liability for a period of not less than twenty-four (24) months after the Commercial Operation Date;

(B) cross-liability and severability of interests clause;

(C) contingent employer's liability;

(D) tenant's legal liability (if applicable and with applicable sublimits);

(E) blanket contractual liability of the Supplier under this Agreement;

(F) damage arising from shoring, blasting, excavating, underpinning, demolition pile driving and caisson work, work below ground surface, tunnelling, and grading (if applicable);

(G) non-owned automobile liability with blanket contractual coverage for hired automobiles;

(H) liability on the part of the Supplier resulting from activities or work performed by its contractors and subcontractors; and

(I) coverage shall be on an occurrence basis (and not a claims made basis).

(iv) Automobile liability insurance, providing coverage for owned, non-owned or hired automobiles with a combined single liability limit of not less than $2,000,000 per occurrence.

(v) Environmental impairment liability insurance, providing coverage for first party property damage and site clean-up and any third party claims for bodily injury, property damage and clean-up for any environmental incidents arising out of the construction, operation or maintenance of the Facility, with a limit of not less than $5,000,000 per occurrence and in aggregate and with a deductible not exceeding $200,000. This policy shall include the Indemnitees as additional insureds and shall be non-contributing and primary with respect to coverage in favour of the Indemnitees. The policy shall contain a cross-liability and severability of interests clause.

(vi) Any additional insurance required to be provided under all Laws and Regulations.

(c) For purposes of the insurance coverage under Sections 2.8(b)(i) and (ii), the Supplier may procure and maintain separate insurance policies to cover the period prior to the Commercial Operation Date and the period from and after the Commercial Operation Date.

(d) The Supplier shall provide the Buyer with proof of the insurance required by this Agreement in the form of valid certificates of insurance that reference this Agreement and confirm the required coverage on or before the commencement of the construction of the Facility, and renewals or replacements on or before the expiry of any such insurance. The policies for the insurance coverage under Sections 2.8(b)(i), (ii), (iii) and (v) shall be endorsed to provide the Buyer with:

(i) not less than sixty (60) days' notice in writing in advance of any termination, cancellation or non-renewal thereof, and the Supplier shall ensure that the Buyer receives such notice prior to the commencement of such sixty (60) day period; and

(ii) notice in writing at the time of any material change or amendment thereto (including any reduction in limits, increase in deductibles, exhaustion of aggregate limits, and change in named insured), and the Supplier shall ensure that the Buyer receives such notice at such time.

Upon the request of the Buyer, the Supplier will provide the Buyer with a copy of each insurance policy to be furnished within ten (10) Business Days of the request being made by the Buyer. The provision to the Buyer of any certificate of insurance, insurance policy or other evidence of compliance with this Section 2.8 shall not imply acceptance by the Buyer that the extent of insurance coverage is sufficient and otherwise complies with this Section 2.8.

(e) If the Supplier is subject to the *Workplace Safety and Insurance Act* (Ontario), it shall submit a valid clearance certificate of Workplace Safety and Insurance Act coverage to the Buyer prior to the commencement of construction of the Facility. In addition, the Supplier shall, from time to time at the request of the Buyer, provide additional Workplace Safety and Insurance Act clearance certificates. The Supplier agrees to pay when due, and to ensure that each of its contractors and subcontractors pays when due, all amounts required to be paid by it and its contractors and subcontractors, from time to time from the commencement of construction of the Facility, under the *Workplace Safety and Insurance Act* (Ontario), failing which the Buyer shall have the right, in addition to and not in substitution for any other right it may have pursuant to this Agreement or otherwise at law or in equity, to pay to the Workplace Safety and Insurance Board any amount due pursuant to the *Workplace Safety and Insurance Act* (Ontario) and unpaid by the Supplier or its contractors and subcontractors and to deduct such amount from any amount due and owing from time to time to the Supplier pursuant to this Agreement together with all costs incurred by the Buyer in connection therewith.

(f) In addition to all other rights and remedies available to the Buyer in this Agreement, if the Supplier fails to comply with this Section 2.8, the Buyer shall have the right (but not the obligation) to:

(i) obtain any and all insurance policies that the Supplier has failed to obtain and maintain or in respect of which the Supplier has failed to notify the Buyer in the manner contemplated herein. The Buyer shall have the right to deliver an invoice to the Supplier containing a statement of the reasonable costs of obtaining such insurance policies, together with any associated administrative and legal and other reasonable costs (collectively, the "**Insurance Costs**") and the Supplier shall within ten (10) days of the date of receiving such invoice pay to the Buyer an amount equal to the Insurance Costs, irrespective of whether or not the Buyer proceeds to obtain or has in fact obtained any such insurance policy or policies. The Parties agree that the Insurance Costs are a liquidated and reasonable pre-estimate of damages and not a penalty. If the Supplier fails to pay to the Buyer the amount of the Insurance Costs, the Buyer shall be entitled to draw and retain from the Completion and Performance Security the amount of the Insurance Costs; or

(ii) withhold any Monthly Payment until such time as the Supplier provides the certificates of insurance or copies of insurance policies as required under this Section 2.8.

(g) Where the Supplier is made up of more than one legal entity (whether in the form of partnership, joint venture or otherwise), the Supplier shall provide to the Buyer an irrevocable direction designating one such legal entity as responsible for all insurance matters under this Section 2.8, and for the provision of information in relation thereto to the Buyer as contemplated in this Agreement, and such entity shall be so responsible. The Supplier agrees that such designate shall be authorized to bind the Supplier and all legal entities constituting the Supplier in respect of all matters relating to this Section 2.8.

2.9 Compliance with Laws and Regulations and Registration with the IESO

(a) The Buyer and the Supplier shall each comply, in all material respects, with all Laws and Regulations required to perform or comply with their respective obligations under this Agreement.

(b) The Buyer and the Supplier shall each furnish, in a timely manner, information to Governmental Authorities and shall each obtain and maintain in good standing any licence, permit, certificate, registration, authorization, consent or approval of any Governmental Authority required to perform or comply with their respective obligations under this Agreement, including such licencing as is required by the OEB.

(c) Unless required by the IESO, registration by the Supplier with the IESO as a "Metered Market Participant" and as a "Generator" pursuant to the IESO Market Rules will be optional. If the IESO requires or the Supplier chooses such registration:

(i) the settlement of Market Settlement Charges shall take place directly between the Supplier as the "Metered Market Participant" and the IESO, and any costs incurred by the Supplier acting as the "Metered Market Participant" pursuant to the IESO Market Rules in respect of this Agreement shall be charged to and be the sole responsibility of the Supplier; and

(ii) the Supplier agrees to meet all applicable Facility registration requirements as specified in the IESO Market Rules.

2.10 Environmental Attributes

(a) The Supplier agrees to transfer and assign to, or to the extent transfer or assignment is not permitted, hold in trust for, the Buyer who thereafter shall, subject to Section 2.10(c), retain, all rights, title, and interest in all Environmental Attributes associated with Contracted Facility Operation. For greater certainty, where the Facility is an expansion and Environmental Attributes are created and allocated or credited with respect to the Facility together with other equipment or components not used for Contracted Facility Operation, then the requirements of this Section 2.10 shall apply only to that portion of such Environmental Attributes corresponding only to the Facility and not such other equipment or components not used for Contracted Facility Operation, as determined by the Buyer acting reasonably.

(b) The Supplier shall from time to time during the Term of this Agreement, upon written direction of the Buyer, take all such actions and do all such things necessary to certify, obtain, qualify, and register with the relevant authorities or agencies Environmental Attributes that are created and allocated or credited with respect to Contracted Facility Operation pursuant to Laws and Regulations from time to time (collectively, the "**Regulatory Environmental Attributes**") for the purposes of transferring such Regulatory Environmental Attributes to the Buyer in accordance with Section 2.10(a). The Supplier shall be entitled to reimbursement of the cost of complying with a direction under this Section 2.10(b), provided that the Buyer, acting reasonably, approved such cost in writing prior to the cost being incurred by the Supplier.

(c) To the extent that Laws and Regulations requires the Facility to utilize, consume or obtain Regulatory Environmental Attributes in connection with Contracted Facility Operation, then the Buyer agrees to propose such amendments to this Agreement (the "**Replacement Provision(s)**") to the Supplier and, at the Buyer's discretion, to all of the Other Suppliers who are required by the Buyer to participate, based on the principle that the Buyer will permit the Supplier to retain any Regulatory Environmental Attributes that may be created and allocated or credited with respect to Contracted Facility Operation and that are required by such Laws and Regulations. If the Parties are unable to agree on the Buyer's proposal or that of the Supplier or any of those Other Suppliers, as the case may be, within sixty (60) days after the delivery or communication of the Buyer's proposal for such amendments, then the Replacement Provision(s) shall be determined by mandatory and binding arbitration, from which there shall be no appeal, with such arbitration(s) to be conducted in accordance with the procedures set out in Exhibit H. However, if the Supplier fails to participate in such arbitration, the Supplier acknowledges that it waives its right to participate in such arbitration, which shall nevertheless proceed, and the Supplier shall be bound by the award of the Arbitration Panel and the subsequent amendments to this Agreement made by the Buyer to implement such award of the Arbitration Panel.

2.11 Restatement

(a) If permitted in accordance with its Proposal, the Supplier may restate the Contract Price and/or the Submitted Hourly Electricity Output Profile, pursuant to either Section 2.11(b) ("**Permanent Restatement**") or 2.11(c) ("**Indefinite Restatement**") below. A Permanent Restatement and an Indefinite Restatement shall, in addition to the provisions in Sections 2.11(b) and 2.11(c) respectively, be subject to the following:

(i) a Restatement shall not be permitted if the Proposal does not specify an Incremental Contract Price expressed in the same format (expressed in Dollars per MWh) as the Contract Price, a Restated Submitted Hourly Electricity Output Profile expressed in the same format as the Submitted Hourly Electricity Output Profile and a proposed earliest Restatement Date as set out in Exhibit B (the "**Proposed Earliest Restatement Date**"), and subject to Section 2.11(a)(iv).

(ii) the "**Restatement Date**" shall be the date determined in accordance with Section 2.11(b)(iv) or 2.11(c)(iv), which in any event shall be a date which is not earlier than the later of:

(A) three (3) years from the Commercial Operation Date; and

(B) the Proposed Earliest Restatement Date.

(iii) following implementation of a Restatement (other than pursuant to Section 2.11(c)(vi)), the Useful Heat Output that was previously supplied to the Host Facility pursuant to an Off-Take Agreement may not, without the consent of the Buyer, which consent may not be unreasonably withheld, be used for any purpose other than to generate additional Electricity at the Facility for the purpose of meeting the Supplier's obligations arising from the Restated Submitted Hourly Electricity Output Profile.

(iv) unless the Buyer agrees otherwise, the Supplier shall (A) implement, on or before the Restatement Date, or as soon as practicable thereafter, the reconfiguration of the Facility equipment as set forth in the Proposal to occur on a Restatement, or (B) if the Restatement is discontinued pursuant to Section 2.11(c)(vi), return the Facility to the configuration and the Contract Price and/or the Submitted Hourly Electricity Output Profile to those set out in the Proposal, on or before the date on which the Parties agree that such discontinuance is to take effect.

(b) Where a Supplier seeks a Permanent Restatement under this Section 2.11(b), the following shall apply:

(i) the following circumstances, as demonstrated to the Buyer's reasonable satisfaction, have occurred:

(A) the Host Facility has permanently ceased to use any of the Facility's Useful Heat Output; and

(B) to the knowledge of the Supplier, the Host Facility has not acquired, nor does it intend to acquire during the remainder of the Term, any thermal energy from any source other than the Facility, where such acquired thermal energy could reasonably be considered a replacement, in whole or in part, of the Useful Heat Output provided by the Facility; and

(C) if the Supplier and the Host are not the same legal entity, the Supplier has:

1. used Commercially Reasonable Efforts but has exhausted legal recourse to enforce continuation or reinstatement of the purchase of Useful Heat Output by the Host Facility; and

2. failing such continuation or reinstatement, used Commercially Reasonable Efforts but has exhausted legal recourse to obtain financial compensation from the Host Facility and use the net proceeds of any compensation so received to defer the Restatement Date by the same amount of time that the Restatement Date would otherwise have been deferred if the compensation so received had instead been revenue received from continued Useful Heat Output sales to the Host Facility; and

(D) if the Supplier and the Host are the same legal entity, the Supplier has used Commercially Reasonable Efforts but has not been successful in finding another use of the Useful Heat Output.

(ii) the Supplier shall be considered to have satisfied the requirements of Section 2.11(b)(i) if it delivers a statutory declaration, in the form referenced as Exhibit J;

(iii) the Supplier shall deliver a written notice to the Buyer requesting a Permanent Restatement;

(iv) subject to Section 2.11(a)(iv), the Permanent Restatement shall take effect on the date specified in the written notice requesting a Permanent Restatement, which date shall be a minimum of ninety (90) days after the Supplier delivers such written notice to the Buyer; and

(v) upon a Permanent Restatement in accordance with this Section 2.11(b):

(A) where, immediately prior to the Permanent Restatement, the Contract Price is not subject to a CCT Price Reduction Factor, the Contract Price on and after the Restatement Date shall be replaced by the Contract Price plus the Incremental Contract Price (duly indexed to the Restatement Date in the same manner as the Initial Contract Price in accordance with this Agreement), and the Nameplate Capacity, the Annual Average Contract Capacity, the Average Seasonal Contract Capacity and the Submitted Hourly Electricity Output Profile shall be replaced by the Restated Nameplate Capacity, Restated Average Seasonal Contract Capacity, Restated Annual Average Contract Capacity, and the Restated Submitted Hourly Electricity Output Profile;

(B) where, immediately prior to the Permanent Restatement, the Contract Price is subject to a CCT Price Reduction Factor:

1. on and after the Restatement Date, the Submitted Hourly Electricity Output Profile shall be replaced by the Restated Submitted Hourly Electricity Output Profile;

2. the Supplier shall conduct a Capacity Check Test (the "**Restatement Capacity Check Test**") not later than 10 Business Days after the date of the Permanent Restatement. Such Capacity Check Test shall be conducted in accordance with Section 15.6 except that Useful Heat Output shall not be required to be measured and no adjustment in accordance with Exhibit T shall be applied to the Electricity output;

3. until the completion of the Restatement Capacity Check Test, the Contract Price shall be replaced by the Contract Price (without the application of the CCT Price Reduction Factor) plus the Incremental Contract Price; and

4. following completion of the Restatement Capacity Check Test: (1) if the Capacity Confirmation from the Restated Capacity Check Test shows an Average Test Capacity equal to 100% of the Restated Average Seasonal Contract Capacity for the relevant Season, the Contract Price shall be equal to the Contract Price (without the application of the CCT Price Reduction Factor) plus the Incremental Contract Price and (2) if the Capacity Confirmation from the Restated Capacity Check Test shows an Average Test Capacity less than 100% of the Restated Average Seasonal Contract Capacity for the relevant Season, the Contract Price shall be equal to the Restatement CCT Price Reduction Factor multiplied by the sum of the Contract

Price (without the application of the CCT Price Reduction Factor) and the Incremental Contract Price. For the purposes of this paragraph, the "**Restatement CCT Price Reduction Factor**" is a fraction, the numerator of which is the Average Test Capacity from the Restatement Capacity Check Test and the denominator of which is the Restated Average Seasonal Contract Capacity for the relevant Season.

(c) Where a Supplier seeks an Indefinite Restatement under this Section 2.11(c), the following shall apply:

(i) the following circumstances, as demonstrated to the Buyer's reasonable satisfaction, have occurred:

(A) the Host Facility has ceased to use the Facility's Useful Heat Output (other than minimal amounts which may be required for heating, lighting or other maintenance purposes); and has ceased to use thermal energy for production of any products, services or processes at the Host Facility; and

1. the Host Facility has announced publicly or advised its employees, customers or suppliers, or has confirmed in writing to the Supplier that the Host Facility is discontinuing production of the products, services or the processes for which the Useful Heat Output was utilized; or

2. the Host Facility has (i) implemented a significant reduction in its workforce, or has announced such reduction publicly or to its employees, or generally to its customers or suppliers, or (ii) has confirmed such reduction in writing to the Supplier;

(B) to the knowledge of the Supplier, the Host Facility has not acquired, nor does it intend to acquire during the remainder of the Term, any thermal energy from any source other than the Facility, where such acquired thermal energy could reasonably be considered a replacement, in whole or in part, of the Useful Heat Output provided by the Facility; and

(C) if the Supplier and the Host are not the same legal entity, the Supplier has:

1. used Commercially Reasonable Efforts but has exhausted legal recourse to enforce continuation or reinstatement of the purchase of Useful Heat Output by the Host Facility; and

2. failing such continuation or reinstatement, used Commercially Reasonable Efforts but has exhausted legal recourse to obtain financial compensation from the Host Facility and use the net proceeds of any compensation so received to defer the Restatement Date by the same amount of time that the Restatement Date would otherwise have been deferred if the compensation so received had instead been revenue received from continued Useful Heat Output sales to the Host Facility.

(D) if the Supplier and the Host are the same legal entity, the Supplier has used Commercially Reasonable Efforts but has not been successful in finding another use of the Useful Heat Output.

(ii) the Supplier shall deliver a written notice to the Buyer requesting an Indefinite Restatement and the reasons therefor (the "**Supplier's IR Notice**") within 90 days after the Supplier knew or ought to have known that the circumstances in Section 2.11(c)(i) occurred, otherwise the Supplier will no longer be eligible for an Indefinite Restatement;

(iii) the Buyer shall notify the Supplier within 30 days after receipt of the Supplier's IR Notice whether or not the conditions for Indefinite Restatement as set out in Section 2.11(c)(i) have been satisfied and providing reasons for the Buyer's determination. If the Buyer does not agree that such conditions have been satisfied, then the Buyer's determination shall prevail, subject to an arbitrator deciding pursuant to Section 16.2 that the Buyer did not act reasonably in determining that such conditions had not been satisfied. In considering whether the Buyer acted reasonably, the arbitrator shall consider all information known to the Buyer;

(iv) subject to Section 2.11(a)(iv), the Indefinite Restatement shall take place on the first Business Day after the day on which the Supplier delivers the Supplier's IR Notice. For certainty, where the Buyer has considered the request for an Indefinite Restatement for up to 30 days pursuant to Section 2.11(c)(iii), the Indefinite Restatement shall take place retroactively to the first Business Day after the day on which the Supplier delivers the Supplier's IR Notice;

(v) upon an Indefinite Restatement in accordance with this Section 2.11(c), on and after the Restatement Date, the Contract Price on and after the Restatement Date shall be replaced by the Contract Price plus the Incremental Contract Price (duly indexed to the Restatement Date in the same manner as the Initial Contract Price in accordance with this Agreement), and the Nameplate Capacity, the Average Seasonal Contract Capacity, the Annual Average Contract Capacity and the Submitted Hourly Electricity Output Profile shall be replaced by the Restated

Nameplate Capacity, Restated Average Seasonal Contract Capacity, Restated Annual Average Contract Capacity and the Restated Submitted Hourly Electricity Output Profile;

(vi) at any time after the date that is six months following an Indefinite Restatement, the Supplier may apply to the Buyer to discontinue the Incremental Contract Price and to restate the Restated Submitted Hourly Electricity Output Profile to the Submitted Hourly Electricity Output Profile (and correspondingly restate the Restated Nameplate Capacity, Restated Average Seasonal Contract Capacity and Restated Annual Average Contract Capacity), provided that the Supplier can demonstrate to the Buyer's satisfaction, acting reasonably, that the circumstances set out in Section 2.11(c)(i) no longer exist, and provided that the Buyer agrees, acting reasonably, that it is not likely that those circumstances would recommence within 12 months from the date of the Indefinite Restatement; and

(vii) a Supplier will not be eligible for a second or subsequent Restatement prior to the third anniversary of the date on which the Supplier has reinstated the Contract Price and the Submitted Hourly Electricity Output Profile pursuant to Section 2.11(c)(vi), which additional Restatement will be subject to the provisions of this Section 2.11.

2.12 Covenants in respect of Host Facility

(a) If the Host Facility is a Host Developed Facility and the Supplier is not the same legal entity as the Host, the Supplier shall have caused the delivery prior to the date of this Agreement, or shall cause the delivery concurrently with the execution of this Agreement, of the guarantee in the form of Exhibit P.

(b) Except with the prior written consent of the Buyer, which consent may not be unreasonably withheld, the Supplier shall not change, replace or substitute the Host or Host Facility during the Term. Notwithstanding the foregoing, the prior written consent of the Buyer shall not be required (i) for the sale of the Host Facility, provided that the Supplier has provided prompt written notice of such sale to the Buyer and the new owner of the Host Facility has agreed in writing to assume the Off-Take Agreement and the Host related obligations under this Agreement, including, if applicable, the provision of a guarantee in the form of Exhibit P or (ii) with respect to a take-over bid made for the voting securities of the Host or an amalgamation, merger, arrangement or similar statutory procedure by which the Host combines with another entity, provided that the Supplier has provided prompt written notice of such take-over bid, amalgamation, merger, arrangement or other statutory procedure to the Buyer.

(c) The Supplier shall not, during the Term, enter into an Off-Take Agreement with a Host whose primary business is the generation of Electricity.

ARTICLE 3
ELECTRICITY AND RELATED PRODUCTS, DELIVERY OF ELECTRICITY AND PAYMENT OBLIGATIONS

3.1 Future Contract Related Products

(a) All Related Products other than Future Contract Related Products shall belong to the Supplier.

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

(c) The Supplier agrees to sell, supply or deliver all Future Contract Related Products as requested, directed or approved by the Buyer.

(d) The Supplier covenants not to sell, supply or deliver any Future Contract Related Products unless such sale, supply or delivery has been requested, directed or approved by the Buyer.

(e) The Supplier will notify the Buyer of any revenue received by the Supplier in connection with the sale, supply or delivery of any Future Contract Related Products.

3.2 Delivered Electricity and Related Products

If the Supplier is a Market Participant, the Supplier shall meet the requirements of the IESO Market Rules, including the provision of dispatch data for Delivered Electricity and Related Products, and the Supplier is required to include these services in the IESO-Administered Markets at no less than minus $1.00 per MWh and no more than the Supplier's variable cost for generating same. For greater certainty, in such case, the Supplier's variable cost shall be determined on an actual cost basis incurred by the Supplier without mark-up, as first confirmed by the Buyer and the Supplier, and which shall be subject to verification by the Buyer from time to time.

3.3 Risk and Responsibility for Delivered Electricity and Related Products

As between the Buyer and the Supplier, the Supplier shall be responsible for, and shall indemnify, defend and hold harmless the Indemnitees against, any loss, damage, action, cost and expense (including Market Settlement Charges, if applicable, and reasonable legal costs and expenses) or injury to any Person or property, caused by the generation, sale and delivery of the Delivered Electricity, Useful Heat Output, and Related Products hereunder, except to the extent that any loss, damage, action, cost, expense or injury is attributable to the negligence or wilful misconduct of the Indemnitees.

3.4 Monthly Payment

The "**Monthly Payment**" shall be an amount expressed in Dollars and equal to:

(a) the Contract Price multiplied by the Monthly Contract Price Delivered Electricity;

plus

(b) HOEP or such other Market Price as may be applicable in each hour multiplied by the quantity of the Supplier's Electricity delivered in such hour;

minus

(c) in relation to the sale, supply or delivery of any Future Contract Related Products, an amount equal to 80% of the difference, if positive, of the total revenues received by the Supplier from the sale of such Future Contract Related Products for that month less the Approved Incremental Costs. For the purposes of this Section 3.4(c), **"Approved Incremental Costs"** means the incremental costs incurred by the Supplier for that month in excess of the cost of production of the Delivered Electricity, relating to the sale, supply or delivery of such Future Contract Related Products, and which costs are reasonable and have first been verified and approved by the Buyer;

minus

(d) HOEP or such other Market Price as may be applicable in each hour multiplied by the quantity of the Monthly Contract Price Delivered Electricity or the Supplier's Electricity delivered in such hour.

Where such amount is a positive number, such amount shall be owed by the Buyer to the Supplier.

Where such amount is a negative number, the absolute value of such amount shall be owed by the Supplier to the Buyer.

3.5 Indexation of Portion of Contract Price

The Parties agree that the portion(s), if any, of the Initial Contract Price (and the Incremental Contract Price, if a Restatement is applicable) corresponding to the Transport and Handling Factor and the Operating Cost Factor in Exhibit B (each an **"Indexed Portion"** or together, the **"Indexed Portions"**) shall be indexed to the percentage increase or decrease (if any) between the Transport and Handling Index on a monthly basis and the CPI on an annual basis, respectively, except that:

(a) for the Transport and Handling Factor, for the first month of the Term, the percentage increase or decrease (if any) as calculated below shall then be prorated by the ratio of the number of days from the Commercial Operation Date to and including the last day of the month in which the Commercial Operation Date falls, divided by the number of days in such month; and

(b) for the Operating Cost Factor, for the first year of the Term, the percentage increase or decrease (if any) as calculated below shall then be prorated by the ratio of the number of days from the Commercial Operation Date to and including December 31 of that year in which the Commercial Operation Date falls, divided by 365 (or 366 as the case may be).

The remaining percentage of the Initial Contract Price (the "**Unindexed Portion**" or "**UIP**") shall not be subject to any indexation whatsoever.

The Contract Price for a given calendar month "m" in calendar year "y" during the Term is the sum of the Unindexed Portion and the Indexed Portions, and is calculated as follows:

CP_m = UIP + IP_m (Transport and Handling) + IP_y (Operating Cost)	
Where:	
CP_m	is the Contract Price applicable in calendar month "m" during the Term, expressed in \$/MWh.
UIP	is the Unindexed Portion, expressed in \$/MWh, and calculated as follows: UIP = CP_1 x (1 - Transport and Handling Index Factor - Operating Cost Index Factor)
CP_1	is the Initial Contract Price set out in Exhibit B.
IP_m (Transport and Handling)	is the Indexed Portion, expressed in \$/MWh, that is subject to indexation to the Transport and Handling Index on a monthly basis during the Term, and adjusted for indexation on a monthly basis.
IP_y (Operating Cost)	is the Indexed Portion, expressed in \$/MWh, that is subject to indexation to the Operating Cost Index on an annual basis during the Term, and adjusted for indexation for calendar year "y" as set out above on January 1 of such year.

All calculations involving the Transport and Handling Index, CPI, and the calculation of IP_m (Transport and Handling) and IP_y (Operating Cost) are to be rounded to three (3) decimal places, while the entire calculation of CP_m is to be rounded to two (2) decimal places.

3.6 Supplier's Responsibility for Taxes

The Supplier is liable for and shall pay, or cause to be paid, or reimburse the Buyer if the Buyer has paid, all Taxes applicable to the Delivered Electricity and Future Contract Related Products sold hereunder which may be imposed up to the Delivery Point. In the event that the Buyer is required to remit such Taxes, the amount thereof shall be deducted from any sums becoming due to the Supplier hereunder.

3.7 Buyer's Responsibility for Taxes

The Buyer is liable for and shall pay, or cause to be paid, or reimburse the Supplier if the Supplier has paid all Taxes applicable to the Contract Price Delivered Electricity and Future Contract Related Products sold hereunder which may be imposed at and from the Delivery Points. The Contract Price does not include any HST payable by the Buyer in respect of the Electricity and Future Contract Related Products purchased hereunder. If any HST is payable in connection with the Electricity and Future Contract Related Products purchased hereunder, such HST shall be paid by the Buyer. In the event that the Supplier is required to remit such Taxes, the amount thereof shall be deducted from any sums becoming due to the Buyer hereunder.

3.8 Non-residency

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

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

ARTICLE 4
ANNUAL ADJUSTMENT AMOUNTS

4.1 Annual Profile Adjustment Amount

(a) Within sixty (60) days after the end of each Contract Year, the Buyer shall determine the Annual Price Ratio for the Contract Year just ended. If the Annual Price Ratio for such Contract Year is greater than 1.05 or less than 0.95, the Buyer or the Supplier shall pay, respectively, an amount (the "**Annual Profile Adjustment Amount**") calculated in accordance with Section 4.1(b) or 4.1(c), as applicable.

(b) If the Annual Price Ratio for such Contract Year is greater than 1.05 the Buyer shall pay the Supplier an Annual Profile Adjustment Amount for such Contract Year, determined in accordance with the following formula:

Payment to Supplier = [APWAP – (1.05) x (ASPWAP)] x Q	
where:	
APWAP	is the Annual Production-Weighted Average Price, expressed in \$/MWh, for such Contract Year;
ASPWAP	is the Annual Submitted Profile-Weighted Average Price, expressed in \$/MWh, for such Contract Year; and
Q	is the Contract Price Delivered Electricity, expressed in MWh, for such Contract Year.

(c) If the Annual Price Ratio for such Contract Year is less than 0.95, the Supplier shall pay the Buyer an Annual Profile Adjustment Amount for such Contract Year, determined in accordance with the following formula:

Payment to Buyer = [(0.95) x (ASPWAP) – APWAP] x Q

where ASPWAP, APWAP and Q have the same meanings as set out in Section 4.1(b) above.

(d) If the Annual Price Ratio for a Contract Year is equal to or greater than 0.95 and less than or equal to 1.05, neither Party shall owe the other Party a payment in respect of an Annual Profile Adjustment Amount for such Contract Year.

(e) The amount of the Annual Profile Adjustment Amount shall be included in the Statement for the Settlement Month following the date of determination and shall be paid in accordance with Article 5.

4.2 Annual Fuel Adjustment Amount

(a) In the event that the Actual Fuel Percentage for a Contract Year, as determined in accordance with Section 2.7(d), is less than 90, the Supplier shall pay to the Buyer an amount (the "**Annual Fuel Adjustment Amount**") for such Contract Year, determined in accordance with the following formula:

Payment to Buyer = CP_y x [1 – (AFP / MRFP)] x Q	
where:	
CP_y	is the simple average of the Contract Price, expressed in \$/MWh, over all twelve months in the Contract Year for which the Actual Fuel Percentage was determined;
AFP	is the Actual Fuel Percentage, expressed as a ratio, for such Contract Year;

MRFP	is the Minimum Required Fuel Percentage applicable for the Facility; and
Q	is the Contract Price Delivered Electricity, expressed in MWh, for such Contract Year.

(b) If the Actual Fuel Percentage is equal to or greater than 0.90, the Supplier shall not owe the Buyer an Annual Fuel Adjustment Amount for such Contract Year.

(c) The amount of the Annual Fuel Adjustment Amount shall be included in the Statement for the Settlement Month following the date of determination and shall be paid in accordance with Article 5.

ARTICLE 5
STATEMENTS AND PAYMENTS

5.1 Meter and Other Data

The Supplier agrees to provide to the Buyer access to the meter(s) in the Metering Plan to accommodate remote interrogation of the metered data on a daily basis at all times. If the Supplier is not a Market Participant, the Supplier shall provide to the Buyer access at all times to any data or information relating to the Facility (including information related to Outages), that would have been provided to the IESO if the Supplier were governed by the IESO Market Rules, forthwith upon request by the Buyer. The Supplier shall notify the Buyer of any errors and omissions in any such data or information on a timely basis so as to permit the Buyer, within a reasonable time, to require the IESO, if applicable, to correct such errors and omissions pursuant to the IESO Market Rules. Upon a Party becoming aware of any errors or omissions in any data or information provided in accordance with this Section 5.1, such Party shall notify the other Party, and if applicable, the IESO in accordance with the IESO Market Rules, on a timely basis.

5.2 Statements

The Buyer shall prepare and deliver a settlement statement (the "**Statement**") to the Supplier, within twenty (20) Business Days after the end of each calendar month in the Term that is the subject of the Statement (the "**Settlement Month**"), setting out the basis for the Monthly Payment with respect to the Settlement Month, as well as the basis for any other payments owing under this Agreement by either Party to the other in the Settlement Month (including, if applicable, any costs of a metering service provider retained by the Buyer to be reimbursed by the Supplier pursuant to Section 2.2(e)). A Statement may be delivered by the Buyer to the Supplier by facsimile or electronic means and shall include the reference number assigned to this Agreement by the Buyer and a description of the components of the Monthly Payment and other payments owing to the Supplier for the Settlement Month.

5.3 Payment

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

5.4 Interest

The Party owing the Monthly Payment shall pay interest on any late payment to the other Party, from the Payment Date to the date of payment, unless such late payment was through the fault of the other Party. The interest rate applicable to such late payment shall be the Interest Rate in effect on the date that the payment went into arrears, calculated daily, but shall not, under any circumstances, exceed the maximum interest rate permitted by Laws and Regulations.

5.5 Payment Account Information

Account for payments to Supplier:
Royal Bank of Canada
602 Queen Street East
Sault Ste. Marie, Ontario

Account Name: St. Marys Renewable Energy Corp.
Account Number: 102-360-5
Transit Number: 04362

HST Registration Number of Supplier:

82507 3356 RT0001

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

Account for payments to Buyer:

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

Account Number: 104–439–5
Transit Number: 00002

HST Registration Number of Buyer:

85419 5039 RT0001

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

Either Party may change its account information from time to time by written notice to the other in accordance with Section 15.8.

5.6 Adjustment to Statement

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

(b) Notwithstanding the foregoing, if the Supplier is a Market Participant, the determination by the IESO of any information shall be final and binding on the Parties in accordance with the IESO Market Rules, and without limiting the generality of the foregoing, if a Statement contains an error in the data or information issued by the IESO which the IESO has requested be corrected, then the one (1) year limit set forth in Section 5.6(a) shall not apply to the correction of such error or the Buyer's ability to readjust the Statement.

(c) Subject to Section 5.7, any adjustment to a Statement made pursuant to this Section 5.6 shall be made in the next subsequent Statement.

5.7 Disputed Statement

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

5.8 Statements and Payment Records

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

ARTICLE 6
CREDIT AND SECURITY REQUIREMENTS

6.1 Completion and Performance Security Amount

(a) The Supplier must post and maintain security for the performance of the Supplier's obligations under this Agreement (the "**Completion and Performance Security**") in the amount and for the period specified below:

(i) from the date of this Agreement to the first date specified in Section 6.1(a)(ii), an amount (the "**First Period Amount**") equal to the lesser of (A) $10,000 per MW of Annual Average Contract Capacity, and (B) $400,000. The Parties acknowledge that the Supplier has, as of the date of this Agreement, provided to the Buyer Completion and Performance Security in the First Period Amount;

(ii) from the date that is ninety (90) days after the date of this Agreement to the first date specified in Section 6.1(a)(iii), an amount (the "**Second Period Amount**") equal to the lesser of (A) $25,000 per MW of Annual Average Contract Capacity, and (B) $1,000,000;

(iii) from the earlier of the Financial Closing Milestone Date and the date that is three hundred and sixty-five (365) days after the date of this Agreement until such time as the amount of the Completion and Performance Security is reduced to the amounts specified in Section 6.1(a)(iv), an amount (the "**Third Period Amount**") equal to the lesser of (A) $30,000 per MW of Annual Average Contract Capacity, and (B) $1,200,000;

(iv) effective upon the date of receipt by the Supplier of the written notification of the Buyer described in Section 2.5(b) that the Supplier has attained Commercial Operation (provided that any liquidated damages payable by the Supplier to the Buyer under Section 2.4 have been paid by the Supplier to the Buyer) to the first date specified in Section 6.1(a)(v), the lesser of (A) $20,000 per MW of Annual Average Contract Capacity and (B) $800,000;

(v) from the date that is the fifth anniversary of the Commercial Operation Date to the end of the Term, the lesser of (A) $10,000 per MW of Annual Average Contract Capacity and (B) $400,000.

(b) 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 Supplier.

6.2 Composition of Security Prior to Commercial Operation Date

Prior to the Commercial Operation Date, the obligation of the Supplier to post and maintain Completion and Performance Security as required by Sections 6.1(a)(i), (ii), and (iii) must be satisfied by the Supplier providing to the Buyer Acceptable Security for the full amount, but, for certainty, shall not include guarantees.

6.3 Composition of Security After Commercial Operation Date

From and after the date of receipt by the Supplier of the written notification of the Buyer described in Section 2.5(b) that the Supplier has attained Commercial Operation, the obligation of the Supplier to post and maintain Completion and Performance Security as required by Section 6.1(a)(iv) and (v) may be satisfied by the Supplier by one of the methods set out below:

(a) Acceptable Security in an amount equal to the full amount of the Completion and Performance Security; or

(b) at any time that the Supplier has an Acceptable Credit Rating, Acceptable Security in an amount determined as follows:

$$ASA = CPS - CVS$$

Where:

ASA = the required amount of Acceptable Security

CPS = the full amount of the Completion and Performance Security

CVS = the Creditworthiness Value of the Supplier; or

(c) a Guarantee provided by a Guarantor with an Acceptable Credit Rating, of a maximum amount equal to, or less than, the Creditworthiness Value of the Guarantor, and in no event exceeding ninety percent (90%) of the amount of the Completion and Performance Security, together with Acceptable Security in an amount equal to the balance of the amount of the Completion and Performance Security.

6.4 Adequacy of Security; Replacement Security

(a) The Supplier shall ensure that, at all times, the aggregate value of all posted Completion and Performance Security is at least equal to the then currently 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) increasing the amount of posted Completion and Performance Security, if the Buyer has agreed to an increase in the Annual Average Contract Capacity pursuant to Section 2.1(c);

(ii) following realization by the Buyer of any amount of Completion and Performance Security, increasing the amount of posted Completion and Performance Security, by an amount equal to that realized by the Buyer;

(iii) if security has been provided pursuant to Section 6.3(b), posting replacement Completion and Performance Security if the Supplier ceases to have an Acceptable Credit Rating;

(iv) if security has been provided pursuant to Section 6.3(c), posting replacement Completion and Performance Security if the Guarantor ceases to have an Acceptable Credit Rating;

(v) where security has been provided pursuant to Section 6.3(b) or 6.3(c), to the extent the Creditworthiness Value of the Supplier or Guarantor changes, increasing or decreasing the amount of posted Acceptable Security, as applicable; and

(vi) providing replacement security for any Letter of Credit or other Acceptable Security or Guarantee (A) which expires, terminates or fails, or ceases to be in full force and effect for the purposes hereof, (B) which is disaffirmed, disclaimed, dishonoured, repudiated or rejected in whole or in part by the provider thereof, or (C) the validity of which is challenged by the provider thereof.

(b) All costs associated with the posting of Completion and Performance Security shall be borne by the Supplier.

(c) If existing Completion and Performance Security is replaced with new Completion and Performance Security, the Buyer shall return the existing Completion and Performance Security held by the Buyer to the Supplier, within five (5) Business Days of the Buyer's receipt of such new Completion and Performance Security.

(d) Upon the consent of the Buyer, which consent shall not be unreasonably withheld, the Guarantor may substitute its Guarantee with a guarantee from an Affiliate or from any other Person who would qualify as a Guarantor for an amount equivalent to the amount of the Guarantee (the "**Replacement Guarantee**"). The Replacement Guarantee shall be in the form of the Guarantee. Upon delivery of the Replacement Guarantee, (i) such Replacement Guarantee shall be deemed to be the "**Guarantee**" and such Affiliate or other Person providing such guarantee, as the case may be, shall be deemed to be the **"Guarantor"** for all purposes of this Agreement and (ii) the Buyer shall return the original Guarantee to the original Guarantor within five (5) Business Days of such delivery.

6.5 Acceptable Credit Rating and Creditworthiness Value

(a) **"Acceptable Credit Rating"** means, with respect to any Person, a Credit Rating listed in any of the four (4) levels contained in the table below (the **"Credit Rating Table"**); provided, however, that:

(i) where the Person has Credit Ratings from more than one rating agency set out in the Credit Rating Table, then the lowest of such Credit Ratings shall be used to determine whether such Person has an Acceptable Credit Rating; and

(ii) where the Person's Credit Rating, or lowest Credit Rating, is listed in the 4^{th} level of the Credit Rating Table and a Negative Outlook has been issued with respect to such Credit Rating, such Credit Rating will not constitute an Acceptable Credit Rating.

CREDIT RATING OF PERSON				
Level	S&P	DBRS	Moody's	Value of T
1.	At least A-	At least A low	At least A3	0.10
2.	At least BBB+	At least BBB high	At least Baa1	0.08
3.	At least BBB	At least BBB	At least Baa2	0.06
4.	At least BBB-	At least BBB low	At least Baa3	0.05

(b) The creditworthiness value of a Person who has an Acceptable Credit Rating (the **"Creditworthiness Value"**) shall be determined by the following formula:

$$CV = TNW \times VoT$$

Where:

CV = the Person's Creditworthiness Value

TNW = the Tangible Net Worth of the Person, expressed in Dollars

VoT = is a figure in the Credit Rating Table in the column entitled "Value of T" in the row corresponding to the Person's CV Credit Rating

(c) **"CV Credit Rating"** means, for any Person, its Credit Rating determined and adjusted as follows:

(i) In the event that any Person has a Negative Outlook, then its Credit Rating will automatically be demoted by one row in Credit Rating Table.

(ii) Where the Person has Credit Ratings from more than one rating agency set out in the Credit Rating Table, then the lowest of such Credit Ratings, as adjusted by any Negative Outlook in accordance with Section 6.5(c)(i), shall be used.

6.6 Financial Statements

If there is a Guarantor, the Supplier shall, on a quarterly basis, provide to the Buyer (i) as soon as available and in no event later than sixty (60) days after the end of each fiscal quarter of the Guarantor, unaudited consolidated financial statements of the Guarantor for such fiscal quarter prepared in accordance with GAAP (or IFRS, if the Guarantor has adopted such standard), and (ii) as soon as possible and in no event later than one hundred and twenty (120) days after the end of each fiscal year, audited consolidated financial statements of the Guarantor for such fiscal year prepared in accordance with GAAP (or IFRS, if the Guarantor has adopted such standard). Notwithstanding the foregoing, if any such financial statements are not available in a timely manner due to a delay in preparation or auditing, such delay shall not be considered a breach of this Section 6.6 so long as the Guarantor is diligently pursuing the preparation, audit and delivery of such financial statements. Quarterly financial statements may be delivered electronically to the Buyer in PDF form. Upon each delivery of the Guarantor's financial statements to the Buyer, the Guarantor providing such financial statements shall be deemed to represent to the Buyer that its financial statements were prepared in accordance with GAAP (or IFRS, if the Guarantor has adopted such standard) and present fairly the financial position of the Guarantor for the relevant period then ended. In the event that the Guarantor does not publish financial statements on a quarterly basis, then unaudited consolidated financial statements shall be provided by the Guarantor, at a minimum, on a semi-annual basis. To the extent that the Supplier's Creditworthiness Value is such that the Guarantee is not required then the obligations to provide financial statements under this Section 6.6 shall apply in full to the Supplier instead of the Guarantor.

6.7 Notice of Deterioration in Financial Indicators

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

6.8 Interest on Completion and Performance Security

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

ARTICLE 7
REPRESENTATIONS

7.1 Representations of the Supplier

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

(a) The Supplier is a limited partnership existing under the laws of Ontario, and has the requisite power to enter into this Agreement and to perform its obligations hereunder.

(b) This Agreement has been duly authorized, executed, and delivered by the Supplier and is a valid and binding obligation of the Supplier enforceable in accordance with its terms, except as such enforcement may be limited by bankruptcy, insolvency and other laws affecting the rights of creditors' generally and except that equitable remedies may only be granted in the discretion of a court of competent jurisdiction.

(c) The execution and delivery of this Agreement by the Supplier and the consummation of the transactions contemplated by this Agreement will not result in the breach or violation of any of the provisions of, or constitute a default under, or conflict with or cause the termination, cancellation or acceleration of any material obligation of the Supplier under:

   (i) any contract or obligation to which the Supplier is a party or by which it or its assets may be bound, except for such defaults or conflicts as to which requisite waivers or consents have been obtained;

   (ii) the articles, by-laws or other constating documents or resolutions of the directors or shareholders of the Supplier;

   (iii) any judgment, decree, order or award of any Governmental Authority or arbitrator;

   (iv) any licence, permit, approval, consent or authorization held by the Supplier; or

   (v) any Laws and Regulations,

   that could have a Material Adverse Effect on the Supplier.

(d) There are no bankruptcy, insolvency, reorganization, receivership, seizure, realization, arrangement or other similar proceedings pending against or being contemplated by the Supplier or, to the knowledge of the Supplier, threatened against the Supplier.

(e) There are no actions, suits, proceedings, judgments, rulings or orders by or before any Governmental Authority or arbitrator, or, to the knowledge of the Supplier, threatened against the Supplier, that could have a Material Adverse Effect on the Supplier.

(f) All requirements for the Supplier to make any filing, declaration or registration with, give any notice to or obtain any licence, permit, certificate, registration, authorization, consent or approval of, any Governmental Authority as a condition to entering into this Agreement have been satisfied.

(g) All statements, specifications, data, confirmations, and information that have been set out in the Proposal are complete and accurate in all material respects and are hereby restated and reaffirmed by the Supplier as representations made to the Buyer hereunder and there is no material information omitted from the Proposal which makes the information in the Proposal misleading or inaccurate.

(h) The Supplier is in compliance with all Laws and Regulations, other than acts of non-compliance which, individually or in the aggregate, would not have a Material Adverse Effect on the Supplier.

(i) Unless the Supplier has otherwise notified the Buyer pursuant to Section 3.8(b), the Supplier is not a non-resident of Canada for the purposes of the ITA.

(j) The Supplier has sent a Consultation Information Request to the Ontario Ministry of Energy.

(k) As of the date of this Agreement, the Supplier has no reason to believe, acting reasonably, that any one or more of the Milestone Events may not be achieved by the corresponding Milestone Dates.

In addition, the Supplier shall, upon delivery of each of the Quarterly Progress Reports required to be provided to the Buyer pursuant to Section 2.6(a), represent in writing that each of the foregoing statements set out in Sections 7.1(a) to 7.1(j) inclusive continues to be true or, if any such statements are no longer true, then the Supplier shall provide to the Buyer a qualified representation with respect to such statement. Such qualified representation provided by the Supplier to the Buyer shall be subject, however, to the rights of the Buyer in Section 10.1(d) to require the Supplier to cure or remove any such qualification with respect to such statement.

7.2 Representations of the Buyer

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

(a) The Buyer that was the original counterparty to this Agreement is a corporation without share capital created under the laws of Ontario and has the requisite power to enter into this Agreement and to perform its obligations hereunder.

(b) This Agreement has been duly authorized, executed and delivered by the Buyer and is a valid and binding obligation of the Buyer enforceable in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency and other laws affecting the rights of creditors' generally and except that equitable remedies may be granted solely in the discretion of a court of competent jurisdiction.

(c) The execution and delivery of this Agreement by the Buyer 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 Buyer under:

(i) any contract or obligation to which the Buyer is a party or by which it or its assets may be bound, except for such defaults or conflicts as to which requisite waivers or consents have been obtained;

(ii) the by-laws or resolutions of the directors (or any committee thereof) or shareholders of the Buyer;

(iii) any judgment, decree, order or award of any Governmental Authority or arbitrator;

(iv) any licence, permit, approval, consent or authorization held by the Buyer; or

(v) any Laws and Regulations,

that could have a Material Adverse Effect on the Buyer.

(d) There are no bankruptcy, insolvency, reorganization, receivership, seizure, realization, arrangement or other similar proceedings pending against, or being contemplated by the Buyer or, to the knowledge of the Buyer, threatened against the Buyer.

(e) There are no actions, suits, proceedings, judgments, rulings or orders by or before any Governmental Authority or arbitrator, or, to the knowledge of the Buyer, threatened against the Buyer, that could have a Material Adverse Effect on the Buyer.

(f) All requirements for the Buyer to make any declaration, filing or registration with, give any notice to or obtain any licence, permit, certificate, registration, authorization, consent or approval of, any Governmental Authority as a condition to entering into this Agreement have been satisfied.

(g) The Buyer is in compliance with all Laws and Regulations, other than acts of non-compliance which, individually or in the aggregate, would not have a Material Adverse Effect on the Buyer.

ARTICLE 8
CONFIDENTIALITY AND FIPPA

8.1 Confidential Information

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

(a) The Receiving Party may disclose Confidential Information to its Representatives who need to know Confidential Information for the purpose of assisting the Receiving Party in complying with its obligations under this Agreement. On each copy made by the Receiving Party, the Receiving Party must reproduce all notices which appear on the original. The Receiving Party shall inform its Representatives of the confidentiality of Confidential Information and shall be responsible for any breach of this Article 8 by any of its Representatives.

(b) If the Receiving Party or any of its Representatives are requested or required (by oral question, interrogatories, requests for information or documents, court order, civil investigative demand or similar process) to disclose any Confidential Information in connection with litigation or any regulatory proceeding or investigation, or pursuant to any applicable law, order, regulation or ruling, the Receiving Party shall promptly notify the Disclosing Party. Unless the Disclosing Party obtains a protective order, the Receiving Party and its Representatives may disclose such portion of the Confidential Information to the Party seeking disclosure as is required by Laws and Regulations in accordance with Section 8.2.

(c) Where the Supplier is the Receiving Party, the Supplier may disclose Confidential Information to any Secured Lender or prospective lender or investor and its advisors, to the extent necessary, for securing financing for the Facility, provided that any such Secured Lender or prospective lender or investor has been informed of the Supplier's confidentiality obligations hereunder and such Secured Lender or prospective lender or investor has completed and executed a confidentiality undertaking (the "**Confidentiality Undertaking**") in the form referenced as Exhibit R, covenanting in favour of the Buyer to hold such Confidential Information confidential on terms substantially similar to this Article 8.

(d) Notwithstanding the foregoing, the Supplier consents to the disclosure: (i) of its name and contact particulars (including its address for service and the name of its Company Representative) by the Buyer to all Other Suppliers, for the purposes of Sections 1.7, 1.8, 1.9 and 1.10, and 2.10, (ii) on a confidential basis, of any information received by the Buyer in respect of this Agreement for such internal purposes as the Buyer may reasonably determine from time to time to the Buyer's Representatives, and (iii) of aggregated data relating to this Agreement and the agreements with the Other Suppliers.

8.2 Notice Preceding Compelled Disclosure

If the Receiving Party or any of its Representatives are requested or required to disclose any Confidential Information, the Receiving Party shall promptly notify the Disclosing Party of such request or requirement so that the Disclosing Party may seek an appropriate protective order or waive compliance with this Agreement. If, in the absence of a protective order or the receipt of a waiver hereunder, the Receiving Party or its Representatives are compelled to disclose the Confidential Information, the Receiving Party and its Representatives may disclose only such of the Confidential Information to the party compelling disclosure as is required by law only to such Person or Persons to which the Receiving Party is legally compelled to disclose and, in connection with such compelled disclosure, the Receiving Party and its Representatives shall provide notice to each such recipient (in 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.

8.3 Return of Information

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

8.4 Injunctive and Other Relief

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

8.5 FIPPA Records and Compliance

The Parties acknowledge and agree that the Ontario Power Authority is subject to FIPPA and that FIPPA applies to and governs all Confidential Information in the custody or control of the

Ontario Power Authority ("**FIPPA Records**") and may, subject to FIPPA, require the disclosure of such FIPPA Records to third parties. The Supplier agrees to provide a copy of any FIPPA Records that it previously provided to the Ontario Power Authority if the Supplier continues to possess such FIPPA Records in a deliverable form at the time of the Ontario Power Authority's request. If the Supplier does possess such FIPPA Records in a deliverable form, it shall provide the same within a reasonable time after being directed to do so by the Ontario Power Authority. The provisions of this Section 8.5 shall survive any termination or expiry of this Agreement and shall prevail over any inconsistent provisions in this Agreement.

ARTICLE 9
TERM

9.1 Term

(a) This Agreement shall become effective upon the date of this Agreement.

(b) The "**Term**" means that period of time commencing at the beginning of the hour ending 01:00 hours (EST) of the Commercial Operation Date and ending at 24:00 hours (EST) on the day before the 10th anniversary date thereafter, subject to earlier termination in accordance with the provisions hereof.

(c) Neither Party shall have any right to extend or renew the Term except as agreed in writing by the Parties.

9.2 Conditions Subsequent

(a) As a condition subsequent to this Agreement, the Supplier must:

(i) within 45 days of the date of this Agreement, or such other date to be mutually agreed upon by the Buyer and Supplier acting reasonably, provide the Buyer with a copy of the applicable Crown Letter received by the Supplier regarding consultation of Aboriginal peoples with respect to the Facility; and

(ii) within 90 days of this Agreement, or such other date to be mutually agreed upon by the Buyer and Supplier acting reasonably, and only if the Supplier receives Crown Letter "B", provide the Buyer with an executed copy of the Crown Agreement between the Crown and the Supplier regarding consultation of Aboriginal peoples.

(b) The conditions subsequent set out in the foregoing Section 9.2(a) must be satisfied by the Supplier prior to commencing construction of the Facility. For greater certainty, "construction of the Facility" includes:

(i) preparation of the site upon which the Facility is to be constructed including digging, excavating, clearing, resurfacing and any other activity directed toward making the site ready for construction of the Facility;

(ii) building or assembly by the Supplier of components of the Facility on the site upon which the Facility is to be built;

(iii) assembly or storage of equipment and construction materials on the site upon which the Facility is to be built; and

(iv) any other activity in the nature of construction that is carried out in relation to the Facility.

ARTICLE 10
TERMINATION AND DEFAULT

10.1 Events of Default by the Supplier

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

(a) The Supplier or the Guarantor fails to make any payment when due or deliver, and/or maintain, the Completion and Performance Security as required under this Agreement, if such failure is not remedied within five (5) Business Days after written notice of such failure from the Buyer.

(b) The Supplier fails to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Supplier Event of Default) if such failure is not remedied within fifteen (15) Business Days after written notice of such failure from the Buyer, provided that such cure period shall be extended by a further fifteen (15) Business Days if the Supplier is diligently remedying such failure and such failure is capable of being cured during such extended cure period.

(c) The Supplier fails or ceases to hold a valid licence, permit, certificate, registration, authorization, consent or approval issued by a Governmental Authority where such failure or cessation results in, or could be reasonably expected to result in, a Material Adverse Effect on the Supplier or the Facility and is not remedied within thirty (30) Business Days after receipt by the Supplier of written notice of such failure or cessation from the Buyer, provided that such cure period shall be extended by a further thirty (30) Business Days if the Supplier is diligently remedying such failure or cessation and such failure or cessation is capable of being corrected during such extended cure period.

(d) Any representation made by the Supplier in this Agreement is not true or correct in any material respect when made and is not made true or correct in all material respects within thirty (30) Business Days after receipt by the Supplier of written notice of such fact from the Buyer, provided that such cure period shall be extended by a further thirty (30) Business Days if the Supplier, in the reasonable opinion of the Buyer, is diligently correcting such breach and such breach is capable of being corrected during such extended cure period.

(e) An effective resolution is passed or documents are filed in an office of public record in respect of, or a judgment or order is issued by a court of competent jurisdiction ordering, the dissolution, termination of existence, liquidation or winding up of the Supplier, unless such filed documents are immediately revoked or otherwise rendered inapplicable, or unless there has been a permitted and valid assignment of this Agreement by the Supplier under this Agreement to a Person which is not dissolving, terminating its existence, liquidating or winding up and such Person has assumed all of the Supplier's obligations under this Agreement.

(f) The Supplier amalgamates with, or merges with or into, or transfers the Facility or all or substantially all of its assets to, another Person unless, at the time of such amalgamation, merger or transfer, there has been a permitted and valid assignment hereof by the Supplier under this Agreement to the resulting, surviving or transferee Person and such Person has assumed all of the Supplier's obligations under this Agreement.

(g) A receiver, manager, receiver-manager, liquidator, monitor or trustee in bankruptcy of the Supplier or of any of the Supplier's property is appointed by a Governmental Authority or pursuant to the terms of a debenture or a similar instrument, and such receiver, manager, receiver-manager, liquidator, monitor or trustee in bankruptcy is not discharged or such appointment is not revoked or withdrawn within thirty (30) days of the appointment. By decree, judgment or order of a Governmental Authority, the Supplier is adjudicated bankrupt or insolvent or any substantial part of the Supplier's property is sequestered, and such decree, judgment or order continues undischarged and unstayed for a period of thirty (30) days after the entry thereof. A petition, proceeding or filing is made against the Supplier seeking to have the Supplier declared bankrupt or insolvent, or seeking adjustment or composition of any of its debts pursuant to the provisions of any Insolvency Legislation, and such petition, proceeding or filing is not dismissed or withdrawn within thirty (30) days.

(h) The Supplier makes an assignment for the benefit of its creditors generally under any Insolvency Legislation, or consents to the appointment of a receiver, manager, receiver-manager, monitor, trustee in bankruptcy or liquidator for all or part of its property or files a petition or proposal to declare bankruptcy or to reorganize pursuant to the provisions of any Insolvency Legislation.

(i) The Supplier has defaulted under one or more obligations for indebtedness to other Persons, resulting in obligations for indebtedness in an aggregate amount of more than the greatest of: (1) five percent (5%) of its Tangible Net Worth, (2) $50,000/MW times the Nameplate Capacity and (3) $2,000,000 becoming immediately due and payable, unless: (A) such default is remedied within fifteen (15) Business Days after written notice of such failure from the Buyer, provided that such cure period shall be extended by a further fifteen (15) Business Days if the Supplier is diligently remedying such default and such default is capable of being cured during such extended cure period; or (B) the Supplier has satisfied the

Buyer that such default does not have a Material Adverse Effect on the Supplier's ability to perform its obligations under this Agreement.

(j) The Supplier has made an Amendment that has not first been consented to by the Buyer (other than in instances where such consent has been unreasonably withheld).

(k) The Commercial Operation Date has not occurred on or before the date which is one (1) year after the Milestone Date for Commercial Operation, unless the Supplier has, on or prior to such one year date, paid all liquidated damages accruing to such one year date pursuant to Section 2.4 and the full amount of the required Completion and Performance Security is being held by the Buyer in accordance with Section 6.1.

(l) The Commercial Operation Date has not occurred on or before the date which is eighteen (18) months after the Milestone Date for Commercial Operation.

(m) Intentionally Deleted.

(n) The Availability is less than: (i) seventy percent (70%) during the second Contract Year, (ii) seventy-five percent (75%) during the third Contract Year, or (iii) eighty percent (80%) during the fourth and each succeeding Contract Year.

(o) The Supplier undergoes a change in Control without first obtaining the written approval of the Buyer if required pursuant to Sections 16.6 or 16.7.

(p) If the Facility is a Host Developed Facility, the Host or Person who Controls the Host fails to hold the minimum specified ownership in the Supplier as required by Section 16.6 without first obtaining the written approval of the Buyer.

(q) The Supplier assigns this Agreement without first obtaining the consent of the Buyer, if required pursuant to this Agreement.

(r) The default described in Section 15.6(f)(i) or 15.6(g)(i) has occurred.

10.2 Remedies of the Buyer

(a) If any Supplier Event of Default (other than a Supplier Event of Default relating to the Supplier referred to in Sections 10.1(e), 10.1(g) and 10.1(h)) occurs and is continuing, upon written notice to the Supplier, the Buyer may terminate this Agreement.

(b) If a Supplier Event of Default occurs and is continuing, the Buyer may, in addition to the remedy set out in Section 10.2(a):

(i) set off any payments due to the Supplier against any amounts payable by the Supplier to the Buyer including, at the Buyer's option, the amount of any Completion and Performance Security provided to the Buyer pursuant to Article 6; and

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

(c) Notwithstanding Sections 10.2(a) and 10.2(b), upon the occurrence of a Supplier Event of Default relating to the Supplier referred to in Sections 10.1(e), 10.1(g) or 10.1(h) that occurs on or after the date of this Agreement, this Agreement shall automatically terminate without notice, act or formality, effective immediately before the occurrence of such Supplier Event of Default, in which case, for certainty, the Secured Lender shall have the rights available to it under Section 12.2(g).

(d) If the Buyer terminates this Agreement pursuant to Section 10.2(a) or the Agreement is terminated pursuant to Section 10.2(c), the Buyer shall have the following option, exercisable in the sole and absolute discretion of the Buyer:

(i) if the Termination Date precedes the Commercial Operation Date, the Supplier shall pay as liquidated damages and not as a penalty, a sum equivalent to the amount of all Completion and Performance Security provided by or on behalf of the Supplier (together with the amount of any portion of the Completion and Performance Security that the Supplier was required under Section 6.1 to provide to the Buyer as of the Termination Date), and the Buyer shall be entitled to retain all Completion and Performance Security provided by or on behalf of the Supplier and exercise all other remedies available to the Buyer including pursuing a Claim for damages with respect to the amount of any portion of the Completion and Performance Security that the Supplier was required under Section 6.1 to provide to the Buyer as of the Termination Date, as contemplated in Section 10.5; or

(ii) if the Termination Date is on or after the Commercial Operation Date, the Buyer shall be entitled to retain all Completion and Performance Security provided by or on behalf of the Supplier and exercise all such other remedies available to the Buyer, including pursuing a Claim for damages, as contemplated under Section 10.5.

(e) Termination shall not relieve the Supplier or the Buyer of their respective responsibilities relating to the availability of the Facility and delivery of the Delivered Electricity, Useful Heat Output, Environmental Attributes from the Facility that relate to the Delivered Electricity, and Future Contract Related Products from the Facility, or amounts payable under this Agreement, up to and including the Termination Date. The Buyer 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 Buyer may hold back payment or set off its obligation to make such payment against any payments owed to it if the Supplier fails to comply with its obligations on termination.

10.3 Events of Default by the Buyer

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

(a) The Buyer fails to make any payment under this Agreement when due, if such failure is not remedied within five (5) Business Days after written notice of such failure from the Supplier.

(b) The Buyer fails to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Buyer Event of Default), if such failure is not remedied within fifteen (15) Business Days after written notice of such failure from the Supplier, provided that such cure period shall be extended by a further fifteen (15) Business Days if the Buyer is diligently remedying such failure and such failure is capable of being cured during such extended cure period.

(c) The Buyer fails or ceases to hold a valid licence, permit, certificate, registration, authorization, consent or approval issued by a Governmental Authority where such failure or cessation results in, or could be reasonably expected to result in, a Material Adverse Effect on the Buyer and is not remedied within thirty (30) Business Days after receipt by the Buyer of written notice of such failure or cessation from the Supplier, provided that such cure period shall be extended by a further thirty (30) Business Days if the Buyer is diligently remedying such failure or cessation and such failure or cessation is capable of being corrected during such extended cure period.

(d) Any representation made by the Buyer in this Agreement is not materially true or correct in any material respect when made and is not made materially true or correct within thirty (30) Business Days after receipt by the Buyer of written notice of such fact from the Supplier, provided that such cure period shall be extended by a further thirty (30) Business Days if the Buyer is diligently correcting such breach and such breach is capable of being corrected during such extended cure period.

(e) An effective resolution is passed or documents are filed in an office of public record in respect of, or a judgment or order is issued by a court of competent jurisdiction ordering the dissolution, termination of existence, liquidation or winding up of the Buyer 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 Buyer 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 Buyer's obligations under this Agreement.

(f) A receiver, manager, receiver-manager, liquidator, monitor or trustee in bankruptcy of the Buyer or of any of the Buyer's property is appointed by a Governmental Authority or pursuant to the terms of a debenture or a similar instrument, and such receiver, manager, receiver-manager, liquidator, monitor or trustee in bankruptcy is not discharged or such appointment is not revoked or withdrawn within thirty (30) days of the appointment. By decree, judgment or order of Governmental Authority, the Buyer is adjudicated bankrupt or insolvent or any substantial part of the Buyer's property is sequestered, and such decree, judgment or order continues undischarged and unstayed for a period of thirty (30) days after the entry thereof. A petition, proceeding or filing is made against the Buyer seeking to have it declared bankrupt or insolvent, or seeking adjustment or composition of any of its debts pursuant to the provisions of any Insolvency Legislation, and such petition, proceeding or filing is not dismissed or withdrawn within thirty (30) days.

(g) The Buyer makes an assignment for the benefit of its creditors generally under any Insolvency Legislation, or consents to the appointment of a receiver, manager, receiver-manager, monitor, trustee in bankruptcy or liquidator, of it or of all or part of its property or files a petition or proposal to declare bankruptcy or to reorganize pursuant to the provision of any Insolvency Legislation.

(h) The Buyer assigns this Agreement (other than an assignment made pursuant to Sections 16.5(e) or 16.5(f)) without first obtaining the consent of the Supplier, if required pursuant to this Agreement.

10.4 Termination by the Supplier

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

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

10.5 Remedies for Termination Non-Exclusive

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

ARTICLE 11
FORCE MAJEURE

11.1 Effect of Invoking Force Majeure

(a) If, by reason of Force Majeure:

(i) the Supplier is unable to make available all or any part of the Contract Capacity or is unable to generate at the Facility, or is unable to deliver from the Facility to the Delivery Point, all or any part of the Delivered Electricity or Future Contract Related Products (and notwithstanding whether the Supplier may be able to Schedule any part of the Energy From Nameplate Capacity);

(ii) all or any part of the Delivered Electricity cannot be received at or transmitted or distributed from the Delivery Point (and notwithstanding whether the Buyer may be able to otherwise cause all or any part of the Delivered Electricity to be received at the Delivery Point or to be transmitted or distributed from the Delivery Point); or

(iii) either Party is unable, wholly or partially, to perform or comply with its other obligations (other than payment obligations) hereunder, including the Supplier being unable to achieve a Milestone Event by the relevant Milestone Date, or the Supplier not achieving Commercial Operation on or before the date which is one (1) year or eighteen (18) months after the Milestone Date for Commercial Operation, as applicable,

then the Party so affected by Force Majeure shall be excused and relieved from performing or complying with such obligations (other than payment obligations) and shall not be liable for any liabilities, damages, losses, payments, costs, expenses (or Indemnifiable Losses, in the case of the Supplier affected by Force Majeure) to, or incurred by, the other Party in respect of or relating to such Force Majeure and such Party's failure to so perform or comply during the continuance and to the extent of the inability so caused from and after the invocation of Force Majeure. Notwithstanding the foregoing, except where the Supplier has elected not to operate as a result of a Host Facility Force Majeure, during such time as the Supplier is unable to perform or comply with its obligations as a result of a Force Majeure, to the extent the Supplier is able to deliver a portion of the Contract Capacity and Delivered Electricity therefrom despite the event of Force Majeure, then the Supplier may continue to deliver any such Delivered Electricity and receive payment therefor for the purposes of calculating the relevant Monthly Payment(s) hereunder.

(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 notice, written or oral (but if oral, promptly confirmed in writing) of the effect of the Force Majeure and reasonably full particulars of the cause thereof, in substantially the form as set forth in Exhibit K, provided that such notice shall be given as follows: (i) within ten (10) Business Days of the date that the Party invoking Force Majeure knew or ought to have known that the event or circumstances constituting Force Majeure could have a Material Adverse Effect on the critical path of the project schedule for the development and construction of the Facility where the event or circumstances constituting Force Majeure occur prior to Commercial Operation; or (ii) within ten (10) Business Days of the commencement of the event or circumstances constituting Force Majeure where the event or circumstances constituting Force Majeure occur on or after Commercial Operation. If the effect of the Force Majeure and full particulars of the cause thereof cannot be reasonably determined within such ten (10) Business Day period, the Party invoking Force Majeure shall be allowed a further ten (10) Business Days (or such longer period as the Parties may agree in writing) to provide such full particulars in substantially the form as set forth in Exhibit K to the other Party. For greater certainty, the reporting or discussion of a Force Majeure event provided in a periodic report from the Supplier to the Buyer pursuant to Section 2.6 shall not constitute sufficient notice of the occurrence of a Force Majeure event.

(c) The Party invoking Force Majeure shall use Commercially Reasonable Efforts to remedy the situation and remove, so far as possible and with reasonable dispatch, the Force Majeure, but settlement of strikes, lockouts and other labour disturbances shall be wholly within the discretion of the Party involved.

(d) The Party invoking Force Majeure shall give prompt written notice of the termination of the event of Force Majeure, provided that such notice shall be given within ten (10) Business Days of the termination of the event or circumstances constituting Force Majeure.

(e) Nothing in this Section 11.1 shall relieve a Party of its obligations to make payments of any amounts that were due and owing before the occurrence of the Force Majeure or that otherwise may become due and payable during any period of Force Majeure.

(f) If an event of Force Majeure causes the Supplier to not achieve a Milestone Event by the relevant Milestone Date, or to not achieve Commercial Operation on or before the date which is one (1) year after the Milestone Date for Commercial Operation, as applicable, then such Milestone 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.

(g) If an event of Force Majeure described in Section 11.3(h) has delayed the Commercial Operation Date by more than 365 days after the original Milestone Date (prior to any extension pursuant to Section 11.1(f)) set out for attaining Commercial Operation of the Facility, then notwithstanding anything in this Agreement to the contrary, while the delay that is a result of the event of Force Majeure is continuing, the Supplier at its sole option may terminate this Agreement upon notice to the Buyer and without any costs or payments of any kind to either Party, and all security shall be returned forthwith.

(h) If, by reason of Force Majeure, the Commercial Operation Date is delayed by more than twenty-four (24) months after the original Milestone Date for Commercial Operation, prior to any extension pursuant to Section 11.1(f), then notwithstanding anything in this Agreement to the contrary, either Party may terminate this Agreement upon notice to the other Party and without any costs or payments of any kind to either Party, and all security shall be returned forthwith.

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

(j) If the Host Facility is subject to a Host Facility Force Majeure, the Supplier shall provide prompt notice to the Buyer, written or oral (but if oral, promptly confirmed in writing) and, in any event, within ten (10) Business Days, of the effect of the Host Facility Force Majeure and reasonably full particulars of the cause thereof (including an explanation of why the event claimed as a Host Facility Force Majeure is not a Host Facility Outage), in substantially the form set forth as Exhibit K, together with an election by the Supplier of whether or not it shall operate the Facility to produce Electricity during the period of the Host Facility Force Majeure (the "**Host Facility Force Majeure Period**").

(k) If the Supplier has invoked Force Majeure by reason of a Host Facility Force Majeure and elects to operate the Facility during the Host Facility Force Majeure Period,

  (i) the Supplier shall be paid for Delivered Electricity during the Host Facility Force Majeure Period in accordance with Section 3.4;

  (ii) the operational data for the Facility during the Host Facility Force Majeure Period shall not be included in the calculation of Availability or the determination, pursuant to Section 15.7, of the percentage of energy generated by the Facility attributable to Useful Heat Output sold by the Supplier to the Host Facility; and

(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 in fuel supply resulting from a Force Majeure event (whether such event is in respect of a Party or a third party);

(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(e), an order, judgment, legislation, ruling or direction by Governmental Authorities restraining a Party, provided that the affected Party has not applied for or assisted in the application for and has used Commercially Reasonable Efforts to oppose said order, judgment, legislation, ruling or direction;

(h) any inability to obtain, or to secure the renewal or amendment of, any permit, certificate, impact assessment, licence or approval of any Governmental Authority, Transmitter or LDC required to perform or comply with any obligation under this Agreement, unless the revocation or modification of any such necessary permit, certificate, impact assessment, licence or approval was caused by the violation of the terms thereof or consented to by the Party invoking Force Majeure;

(i) any unanticipated maintenance or outage affecting the Facility:

  (i) which is not identified in the Supplier's then current schedule of planned outages submitted to the IESO, the LDC or the Buyer, as the case may be, in advance of the occurrence of an event of Force Majeure referred to in this Section 11.3, and

  (ii) which results directly from, or is scheduled or planned directly as a consequence of, an event of Force Majeure referred to in this Section 11.3, or which results from a failure of equipment that prevents the Facility from producing Electricity, provided that:

    (A) notice of the unanticipated maintenance or outage is provided to the Buyer by the Supplier as soon as reasonably possible (or, if applicable, concurrently with the notice in respect thereof provided to the IESO or as soon as reasonably possible thereafter) but, in any event, within ten (10) Business Days thereof;

(c) The Buyer 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 Buyer for any or all of the same.

(d) No Secured Lender's Security Agreement shall be binding upon the Buyer in the enforcement of the Buyer's rights and remedies provided in this Agreement or by Laws and Regulations, unless and until a copy of the original thereof and the registration details, if applicable, together with written notice of the address of the Secured Lender to which notices may be sent have been delivered to the Buyer by the Supplier or the Secured Lender; and in the event of an assignment of such Secured Lender's Security Agreement, such assignment shall not be binding upon the Buyer unless and until a copy thereof and the registration details, if applicable, together with written notice of the address of the assignee thereof to which notices may be sent, have been delivered to the Buyer by the Supplier or the Secured Lender.

(e) If the Supplier is in default under or pursuant to the Secured Lender's Security Agreement and the Secured Lender intends to exercise any rights afforded to the Secured Lender under this Agreement, then the Secured Lender shall give written notice of such default to the Buyer at least five (5) Business Days prior to exercising any such rights.

(f) Any Secured Lender's Security Agreement permitted hereunder may secure two (2) or more separate debts, liabilities or obligations in favour of two (2) or more separate Secured Lenders, provided that such Secured Lender's Security Agreement complies with the provisions of this Article 12.

(g) Any number of permitted Secured Lender's Security Agreements may be outstanding at any one time, provided that each such Secured Lender's Security Agreement complies with the provisions of this Article 12.

(h) All rights acquired by a Secured Lender under any Secured Lender's Security Agreement shall be subject to all of the provisions of this Agreement, including the restrictions on assignment contained herein. While any Secured Lender's Security Agreement is outstanding, the Buyer and the Supplier shall not amend or supplement this Agreement or agree to a termination of this Agreement without the consent of the Secured Lender, which consent shall not be unreasonably withheld, conditioned or delayed. A Secured Lender must respond within a reasonable period of time to any request to amend or supplement this Agreement.

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

any of the Supplier's rights and benefits contained in this Agreement, except by way of security. If the Secured Lender itself or by a nominee or agent, or a receiver or a receiver and manager appointed by or on the application of the Secured Lender, is the owner or is in control or possession of the Supplier's Interest, then the entity that is the owner or is in control or possession of the Supplier's Interest shall be bound by all of the Supplier's obligations. Once the Secured Lender or such other Person goes out of possession or control of the Supplier's Interest or transfers the Supplier's Interest in accordance with this Agreement to another Person who is at Arm's Length with the Secured Lender, the Secured Lender shall cease to be liable for any of the Supplier's obligations and shall cease to be entitled to any of the Supplier's rights and benefits contained in this Agreement, except, if the Secured Lender's Security Agreement remains outstanding, by way of security.

(f) Despite anything else contained in this Agreement, any Person to whom the Supplier's Interest is transferred shall take the Supplier's Interest subject to the Supplier's obligations. No transfer shall be effective unless the Buyer:

(i) acting reasonably, if such transferee is at Arm's Length with the Secured Lender; or

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

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

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

(i) Upon receipt of the written request of the Secured Lender within thirty (30) days after the date on which it received the Buyer Statement, the Buyer shall enter into a New Agreement.

that may require an amendment to this Agreement, provided that the rights of the Buyer are not adversely affected thereby, the obligations of the Supplier to the Buyer are not altered thereby and the consent of any other Secured Lender to such amendment has been obtained by the Supplier or the Secured Lender making the request for the amendment.

ARTICLE 13
DISCRIMINATORY ACTION

13.1 Discriminatory Action

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

(a)

(i) the Legislative Assembly of Ontario causes to come into force any statute that was introduced as a government bill in the Legislative Assembly of Ontario or causes to come into force or makes any order-in-council or regulation first having legal effect on or after the date of the submission of the Proposal; or

(ii) the Legislative Assembly of Ontario directly or indirectly amends this Agreement without the agreement of the Supplier;

(b) the effect of the action referred to in Section 13.1(a):

(i) is borne principally by the Supplier; or

(ii) is borne principally by the Supplier and one or more Other Suppliers who have a CHP III PPA or another bilateral arrangement with the Buyer similar in nature to this Agreement; and

(c) such action increases the costs that the Supplier would reasonably be expected to incur under this Agreement in respect of Contracted Facility Operation, or adversely affects the revenues of the Supplier from the Contract Price Delivered Electricity and Related Products in respect of Contracted Facility Operation, except where such action is in response to any act or omission on the part of the Supplier that is contrary to Laws and Regulations (other than an act or omission rendered illegal by virtue of such action) or such action is permitted under this Agreement. Despite the preceding sentence, none of the following shall be a Discriminatory Action:

(i) Laws and Regulations of general application, including an increase of Taxes of general application, or any action of the Government of Ontario pursuant thereto;

(ii) any such statute that prior to five (5) Business Days prior to the date of this Agreement:

of time commencing on the first day of the first calendar month following the date of the Discriminatory Action and ending at the expiry of the Term, exceeds (ii) the net present value of the net revenues from the Contract Price Delivered Electricity and Related Products in respect of Contracted Facility Operation that are forecast to be earned by the Supplier during the period of time commencing on the first day of the first calendar month following the date of the Discriminatory Action and ending on the expiry of the Term, taking into account the occurrence of the Discriminatory Action and any actions that the Supplier should reasonably be expected to take to mitigate the effect of the Discriminatory Action, such as by mitigating operating expenses and normal capital expenditures of the business of the generation and delivery of the Contract Price Delivered Electricity and Related Products in respect of Contracted Facility Operation.

13.3 Notice of Discriminatory Action

(a) In order to exercise its rights in the event of the occurrence of a Discriminatory Action, the Supplier must give a notice (the "**Preliminary Notice**") to the Buyer within sixty (60) days after the date on which the Supplier first became aware (or should have been aware, using reasonable due diligence) of the Discriminatory Action stating that a Discriminatory Action has occurred. Within sixty (60) days after the date of receipt of the Preliminary Notice, the Supplier must give another notice (the "**Notice of Discriminatory Action**"). A Notice of Discriminatory Action must include:

(i) a statement of the Discriminatory Action that has occurred;

(ii) details of the effect of the said occurrence that is borne by the Supplier;

(iii) details of the manner in which the Discriminatory Action increases the costs that the Supplier would reasonably be expected to incur in respect of Contracted Facility Operation or adversely affects the net revenues of the Supplier from the Contract Price Delivered Electricity and Related Products in respect of Contracted Facility Operation; and

(iv) the amount claimed as Discriminatory Action Compensation and details of the computation thereof.

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

(b) If the Buyer wishes to dispute the occurrence of a Discriminatory Action, the Buyer shall give a notice of dispute (the "**Notice of Dispute**") to the Supplier, stating the grounds for such dispute, within thirty (30) days after the date of receipt of the Notice of Discriminatory Action or within thirty (30) days after the date of receipt of the further supporting particulars, as applicable.

notice to the other require the dispute to be resolved by arbitration as set out below. The Buyer and the Supplier shall, within thirty (30) days after the date of receipt of such notice of arbitration, jointly appoint a valuator to determine the Discriminatory Action Compensation Amount. The valuator so appointed shall be a duly qualified business valuator where the individual responsible for the valuation has not less than ten (10) years' experience in the field of business valuation. If the Buyer and the Supplier are unable to agree upon a valuator within such period, the Buyer and the Supplier shall jointly make application (provided that if a Party does not participate in such application, the other Party may make application alone) under the *Arbitration Act, 1991* (Ontario) to a judge of the Superior Court of Justice to appoint a valuator, and the provisions of the *Arbitration Act, 1991* (Ontario) shall govern such appointment. The valuator shall determine the Discriminatory Action Compensation Amount within sixty (60) Business Days after the date of his or her appointment. Pending a decision by the valuator, the Buyer and the Supplier shall share equally, and be responsible for their respective shares of, all fees and expenses of the valuator. The fees and expenses of the valuator shall be paid by the non-prevailing Party. **"Prevailing Party"** means the Party whose determination of the Discriminatory Action Compensation Amount is most nearly equal to that of the valuator's determination. The Supplier's and the Buyer's respective determinations of the Discriminatory Action Compensation Amount shall be based upon the Notice of Discriminatory Action and the Discriminatory Action Compensation Notice, as applicable.

(iii) In order to facilitate the determination of the Discriminatory Action Compensation Amount by the valuator, each of the Buyer and the Supplier shall provide to the valuator such information as may be requested by the valuator, acting reasonably, and the Supplier shall permit the valuator and the valuator's representatives to have reasonable access during normal business hours to such information and to take extracts therefrom and to make copies thereof.

(iv) The Discriminatory Action Compensation Amount as determined by the valuator shall be final and conclusive and not subject to any appeal.

(f) Any amount to be paid under Section 13.3(d) shall bear interest at a variable nominal rate per annum equal on each day to the Interest Rate then in effect from the date of receipt of the Notice of Discriminatory Action to the date of payment.

(g) Payment of the Discriminatory Action Compensation and interest thereon by the Buyer to the Supplier shall constitute full and final satisfaction of all amounts that may be claimed by the Supplier for and in respect of the occurrence of the Discriminatory Action and, upon such payment, the Buyer shall be released and forever discharged by the Supplier from any and all liability in respect of such Discriminatory Action.

demands, suits, losses, damages, liabilities, penalties, obligations, payments, costs and expenses and accrued interest thereon (including the costs and expenses of, and accrued interest on, any and all actions, suits, proceedings for personal injury (including death) or property damage, assessments, judgments, settlements and compromises relating thereto and reasonable lawyers' fees and reasonable disbursements in connection therewith) (each, an "**Indemnifiable Loss**"), asserted against or suffered by the Indemnitees relating to, in connection with, resulting from, or arising out of (i) any occurrence or event relating to the Facility, except to the extent that any injury or damage is attributable to the negligence or wilful misconduct of the Indemnitees or the failure of the Indemnitees to comply with Laws and Regulations and (ii) any breach by the Supplier of any representations, warranties and covenants contained in this Agreement, except to the extent that any injury or damage is attributable to the negligence or wilful misconduct of the Indemnitees. 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 Buyer shall notify the Supplier in writing of such fact. The Supplier shall assume the defence thereof with counsel designated by the Supplier and satisfactory to the affected Indemnitees, acting reasonably; provided, however, that if the defendants in any such action include both the Indemnitees and the Supplier and the Indemnitees shall have reasonably concluded that there may be legal defences available to them which are different from or additional to, or inconsistent with, those available to the Supplier, the Indemnitees shall have the right to select separate counsel satisfactory to the Supplier acting reasonably (at no additional cost to the Indemnitees) to participate in the defence of such action on behalf of the Indemnitees. The Supplier shall promptly confirm that it is assuming the defence of the Indemnitees by providing written notice to the Indemnitees. Such notice shall be provided no later than five (5) days prior to the deadline for responding to any Claim relating to any Indemnifiable Loss.

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

15.3 Reports to the Buyer

(a) If the Supplier is not required to report Outages directly to the IESO, the Supplier shall deliver to the Buyer the following documentation with respect to each calendar month:

(i) no later than seven (7) Business Days prior to the beginning of each calendar month, an Outage Notice providing advance notice of all Planned Outages for such calendar month; and

(ii) no later than one (1) Business Day following the end of each calendar month, an Outage Notice confirming the occurrence and duration of all Outages for such calendar month.

(b) If the Supplier is required to report Outages directly to the IESO, the Supplier shall deliver to the Buyer a copy of all reports, plans and notices that the Supplier is required to provide to the IESO with respect to Outages, at the same time or within one (1) Business Day after such reports, plans and notices are delivered by the Supplier to the IESO.

(c) In addition to the documentation provided in Sections 15.3(a) or 15.3(b), as applicable, the Supplier shall deliver at the times specified below the following documents, reports, plans and notices to the Buyer:

(i) no later than the date which is sixty (60) days prior to the Commercial Operation Date, the Supplier shall provide to the Buyer an operating plan for the Facility for the Term commencing no later than the date of execution of this Agreement, including a long term major maintenance schedule in the form referenced as Exhibit Y (the "**Long Term Operating Plan**"). The Supplier shall provide the Buyer with copies of any amendments or modifications to the Long Term Operating Plan within ten (10) Business Days of such amendments or modifications being made. The Long Term Operating Plan shall be consistent with Good Engineering and Operating Practices and is not a guarantee of the timing of Planned Outages;

(ii) no later than:

(A) the date that the Long Term Operating Plan is to be provided to the Buyer in accordance with Section 15.3(c)(i), and

(B) in respect of the second Contract Year and each Contract Year thereafter, sixty (60) days prior to each Contract Year,

the Supplier shall provide to the Buyer an operating plan for the Facility for the succeeding Contract Year in the form referenced as Exhibit Z (the "**Annual Operating Plan**"). The Annual Operating Plan shall include a

(ii) a Restatement report in the form and covering the matters specified in Exhibit O, if the Supplier is entitled under this Agreement to a Restatement and, upon such Restatement, how the Supplier proposes to reconfigure the equipment at the Facility.

15.4 Inspection of Facility

(a) The Buyer and its Representatives shall, at all times upon two (2) Business Days' prior notice, at any time after the execution of this Agreement, have access to the Facility and every part thereof during regular business hours and the Supplier shall, and shall cause all personnel operating and managing the Facility, to furnish the Buyer with all reasonable assistance in inspecting the Facility for the purpose of ascertaining compliance with this Agreement; provided that such access and assistance shall be carried out in accordance with and subject to the reasonable safety and security requirements of the Supplier and all personnel operating and managing the Facility, as applicable, and shall not interfere with the operation of the Facility.

(b) The inspection of the Facility by or on behalf of the Buyer shall not relieve the Supplier of any of its obligations to comply with the terms of this Agreement. No Supplier Event of Default by the Supplier will be waived or deemed to have been waived by any inspection by or on behalf of the Buyer. In no event will any inspection by the Buyer hereunder be a representation that there has been or will be compliance with this Agreement and Laws and Regulations.

15.5 Inspection Not Waiver

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

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

15.6 Capacity Check Tests

(a) **Right to Request Capacity Check Test and Test Protocol.** The Buyer shall have the option, exercisable on no more than two (2) occasions per Contract Year, to require the Supplier, within ten (10) Business Days after written notice has

(iv) in respect of a Capacity Check Test conducted during Season 4, 24.0 degrees Celsius,

then the Supplier may, at the Supplier's sole cost and expense, re-perform the Capacity Check Test within ten (10) Business Days after the receipt by the Supplier of the Capacity Confirmation relating to such Capacity Check Test from the Buyer.

(d) **Capacity Check Test Report.** The Supplier shall at the Supplier's sole cost and expense and within ten (10) Business Days, or as provided in the Test Protocol, after completion of the Capacity Check Test prepare and submit to the Buyer a written Capacity Check Test report that includes, at a minimum, the matters set forth in Exhibit S, the data collected during the test period, computation of test data, any adjustment to the Measured Electricity in accordance with Section 15.6(b), and the test results. The Buyer shall provide to the Supplier within ten (10) Business Days after receipt of the Capacity Check Test report from the Supplier, written confirmation of the Measured Electricity and the Measured UHO for each hour during the Capacity Check Test (the "**Capacity Confirmation**").

(e) **Requirements to Pass a Capacity Check Test.** To pass the Capacity Check Test, the Facility has, for four (4) continuous hours, using Primary Fuel and in compliance with all Laws and Regulations:

(i) generated Measured Electricity at an uninterrupted rate, in each of such hours, of not less than 100% of the Average Seasonal Contract Capacity for the Season in which such generation took place multiplied by one hour; and

(ii) generated and delivered Measured UHO to the Host Facility at an uninterrupted rate, in each of such hours during which the Measured Electricity was generated in Section 15.6(e)(i), that satisfies the Minimum UHO Requirement.

If the Supplier has not passed the Capacity Check Test as described above, then the Supplier shall, at the Supplier's cost and expense, perform a further Capacity Check Test (the "**Further Capacity Check Test**") within thirty (30) Business Days after the receipt by the Supplier of the Capacity Confirmation from the Buyer, on the same terms and conditions as the Capacity Check Test described in Sections 15.6(a) and 15.6(b).

(f) Following completion of the Further Capacity Check Test, if:

(i) the Measured Electricity for the four (4) continuous hours of each of the Capacity Check Test and the Further Capacity Check Test, as stated in their respective Capacity Confirmations, divided by the number of hours in their respective check test (each an "**Average Test Capacity**"), are both

15.7 Useful Heat Output

(a) The Supplier shall provide to the Buyer a written report within thirty (30) days of the end of each Contract Year setting out the percentage (the "**Actual Useful Heat Output Percentage**") of Useful Heat Output generated by the Facility during all hours and that was sold by the Supplier to the Host in respect of the Host Facility, compared with the sum of such Useful Heat Output and the Delivered Electricity during all hours for such Contract Year. The Actual Useful Heat Output Percentage shall be calculated in accordance with, and such report shall, at a minimum, address the matters and include the information specified in Exhibit U.

(b) If the Actual Useful Heat Output Percentage for any Contract Year is less than fifteen (15), then:

(i) commencing on the second month in the Settlement Month immediately following the Contract Year in which the Actual Useful Heat Output Percentage is less than fifteen (15) until the end of the Contract Year in which the Actual Useful Heat Output Percentage is equal to or greater than fifteen (15), the Contract Price shall be subject to and multiplied by a reduction factor (the "**UHO Price Reduction Factor**") equal to the applicable amount, as follows:

If $UHOP_{LTD} < 0.15$, then

$$\text{UHO Price Reduction Factor} = 1 - \left[1 - \left(\frac{UHOP_{LTD}}{0.15}\right)\right]^2$$

<u>OR</u>

if $UHOP_{LTD} >= 0.15$, then

UHO Price Reduction Factor = 1.0

where:

$UHOP_{LTD}$	is the Life-to-Date Actual Useful Heat Output Percentage, expressed as a percentage or a fraction, and calculated as the simple average of the Actual Useful Heat Output Percentage for all completed Contract Year(s) from the commencement of the Term to the date in question.

and

(b) Notices shall be delivered or transmitted as set out below, and shall be considered to have been received by the other Party:

(i) on the date of delivery if delivered by hand or by courier prior to 5:00 p.m. (local time of the recipient) on a Business Day and otherwise on the next following Business Day (it being agreed that the burden of establishing delivery shall be on the Party delivering the notice);

(ii) in those circumstances where electronic transmission (other than transmission by facsimile) is expressly permitted under this Agreement, on the date of delivery if delivered prior to 5:00 p.m. (local time of the recipient) on a Business Day and otherwise on the next following Business Day, provided that a copy of such notice is also delivered by regular post within a reasonable time thereafter;

(iii) on the third (3rd) Business Day following the date of transmission by facsimile, if transmitted prior to 5:00 p.m. (local time of the recipient) on a Business Day and otherwise on the fourth (4th) following Business Day, provided that a copy of such notice is also delivered by regular post within a reasonable time thereafter; and

(iv) on the fifth (5th) Business Day following the date of mailing by registered post.

(c) Notwithstanding Section 15.8(b):

(i) any notices of an Event of Default and termination of this Agreement shall only be given by hand or courier delivery; and

(ii) if regular post service, facsimile or other form of electronic communication is interrupted by strike, slowdown, a Force Majeure event or other cause, a notice, direction or other instrument sent by the impaired means of communication will not be deemed to be received until actually received, and the Party sending the notice shall utilize any other such service which has not been so interrupted to deliver such notice.

ARTICLE 16
MISCELLANEOUS

16.1 Informal Dispute Resolution

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

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

16.5 Assignment

(a) Subject to Section 16.7, except as set out below and as provided in Article 12, neither this Agreement nor any of the rights, interests or obligations under this Agreement may be assigned by either Party, including by operation of Laws and Regulations, without the prior written consent of the other Party, which consent shall not be unreasonably withheld.

(b) Subject to Section 16.7, the Supplier may, subject to compliance with Laws and Regulations and provided that there is not a Supplier Event of Default that has not been remedied, assign this Agreement without the consent of the Buyer to an Affiliate acquiring the Facility; provided, however, that no such assignment by the Supplier or any of its successors or permitted assigns hereunder shall be valid or effective unless and until such Affiliate agrees with the Buyer in writing to assume all of the Supplier's obligations and be bound by the terms of this Agreement, and the arrangements and obligations of the Supplier set forth in Article 6 have been met in accordance with the terms of Article 6. If a valid assignment of this Agreement is made by the Supplier in accordance with this Section 16.5(b), the Buyer acknowledges and agrees that, upon such assignment and assumption and notice thereof by the assignor to the Buyer, the assignor shall be relieved of all its duties, obligations and liabilities hereunder.

(c) If the Supplier assigns this Agreement to a non-resident of Canada (the "**Assignee**"), as that term is defined in the ITA, and the Buyer incurs any additional Taxes, at any time thereafter, solely as the result of such assignment, then payments under this Agreement by the Buyer shall be reduced by the amount of such additional or withholding taxes and the Buyer shall remit such additional or withholding taxes to the applicable taxing authorities. The Buyer 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 Buyer has paid such amounts, the Buyer receives a refund, rebate or credit on account of such Taxes, then the Buyer shall promptly remit such refund, rebate or credit amount to the Assignee.

(d) The Supplier may, subject to compliance with Laws and Regulations and provided that there is not a Supplier Event of Default that has not been remedied, assign this Agreement without the consent of the Buyer to a third party assignee acquiring ownership of both the Facility and the Host Facility and at the same time provided, however, that no such assignment by the Supplier or any of its successors or permitted assigns hereunder shall be valid or effective unless and until such third party assignee agrees with the Buyer in writing to assume all of the Supplier's obligations and be bound by the terms of this Agreement, and the arrangements and obligations of the Supplier set forth in Article 6 have been met

Period without the prior written consent of the Ontario Power Authority, whereupon:

(i) the representation set forth in Section 7.2(a) shall apply to the assignee with all necessary amendments to reflect the form and the manner in which the assignee was established;

(ii) all of the representations set forth in Section 7.2 shall be deemed to be made by the assignee to the Supplier at the time of such assignment and assumption;

(iii) the Ontario Power Authority shall be relieved of all obligations and liability arising pursuant to this Agreement; notwithstanding the foregoing, the Ontario Power Authority shall remain liable to the Supplier for remedying any payment defaults under Section 10.3(a) and shall remain liable to the Supplier for any obligations and liabilities of the assignee arising from any Buyer Event of Default, provided that any notice required to be given under Sections 10.3 and 10.4(a) is given on the same day to the assignee and to the Ontario Power Authority. The time periods in Section 10.3 shall not begin to run until both the assignee and the Ontario Power Authority 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 Ontario Power Authority;

(B) the assignee shall remain responsible to the Supplier for all obligations and liabilities incurred or accrued by the assignee during the Assignment Period; and

(C) the Ontario Power Authority, as Buyer 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 Ontario Power Authority from any obligation to the Supplier pursuant to Section 16.5(f)(iii) that arose prior to the expiry of the Assignment Period.

16.6 No Change of Control; Minimum Ownership

(a) The Supplier shall not permit or allow a change of Control of the Supplier, except with the prior written consent of the Buyer, which consent may not be unreasonably withheld.

(b) If the Facility is a Host Developed Facility and the Buyer has not been provided a guarantee in the form of Exhibit P, the ownership in the Supplier by the Host (or,

16.9 Counterparts

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

16.10 Additional Rights of Set-Off

(a) In addition to its other rights of set-off under this Agreement or otherwise arising in law or equity, the Buyer may set off any amounts owing by the Supplier to the Buyer in connection with Sections 1.7(d), 1.8(e), 1.9(d), 2.2(e), 2.4, 2.7(b), 2.8, 3.3, 3.4, 3.6, 3.8(a), 4.1, 4.2(a), 5.3, 5.4, 10.2, 10.5, 14.3 and 16.5(c) against any monies owed by the Buyer to the Supplier in connection with Sections 1.7(d), 1.8(e), 1.9(d), 3.4, 3.7, 3.8(a), 4.1, 5.3, 5.4, 10.4, 10.5, 13.3(d) and 16.5(c).

(b) In addition to its other rights of set-off under this Agreement or otherwise arising in law or equity, the Supplier may set-off any amounts owing by the Buyer to the Supplier in connection with Sections 1.7(d), 1.8(e), 1.9(d), 3.4, 3.7, 3.8(a), 4.1, 5.3, 5.4, 10.4, 10.5, 13.3(d) and 16.5(c). against any monies owed by the Supplier to the Buyer in connection with Sections 1.7(d), 1.8(e), 1.9(d), 2.2(e), 2.4, 2.7(b), 2.8, 3.3, 3.4, 3.6, 3.8(a), 4.1, 4.2(a), 5.3, 5.4, 10.2, 10.5, 14.3 and 16.5(c).

16.11 Rights and Remedies Not Limited to Contract

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

16.12 Time of Essence

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

16.13 Further Assurances

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

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

ST. MARYS RENEWABLE ENERGY LP by its general partner ST. MARYS RENEWABLE ENERGY CORP.

By: ______________________

Name: Gordon Acton

Title: President

By: ______________________

Name: Marc Dube

Title: Director

I/We have authority to bind the Corporation.

ONTARIO POWER AUTHORITY

By: ______________________

Name: JoAnne Butler

Title: Vice President – Electricity Resources

I have authority to bind the corporation.

EXHIBIT A
DESCRIPTION OF FACILITY

DESCRIPTION OF FACILITY

Name of Facility:	St. Marys Renewable Energy Centre
Municipal Location:	75 Huron St., Sault Ste. Marie, Ontario, P6A 5P4
Connection Point:	The Connection Point is St. Marys Paper Corp.'s internal distribution system, which in turn is connected to the IESO-Controlled Grid at Great Lakes Power's Clergue TS 12 kV busses via Paper Co. No. 1 through 4
Description of Generation:	Renewable Biomass-Fuelled Cogeneration Project

Detailed Description of Facility:

1.0 Overview

The St. Marys Renewable Energy Centre is a Host-Developed Project using Renewable Biomass as its Primary Fuel, with an Average Annual Contract Capacity of 30 MWe, and connected to St. Marys Paper Corp.'s internal distribution system which in turn is connected to the IESO-Controlled Grid at Great Lakes Power's Clergue TS. The Facility supplies Useful Heat Output to the adjacent existing pulp and paper mill owned and operated by St. Marys Paper Corp.

1.1 Site Description

The St. Marys Renewable Energy Centre will be located at 75 Huron St., Sault Ste. Marie, Ontario, which is contained within the footprint of the existing pulp and paper mill owned and operated by St. Marys Paper Corp.

1.2 Project Design and Major Equipment, including the steam generators and boilers to the extent that they are or may be used to generate steam used by a turbine generator, and also including gas or steam turbine generators, as applicable, condensers, transformers, and switchgear equipment. Also, where other equipment may generate steam that may be commingled with the steam used by a turbine generator, describe such other equipment including fuel sources.

The Facility will include the following key equipment:

- *a field-erected bubbling fluidized bed boiler designed to burn 1,100 tonnes/day of renewable biomass as the Primary Fuel;*
- *a single casing condensing type steam turbine with steam extraction and a rating of 35*

MW nominal capacity;

- *a condenser/cooling tower;*
- *a wood waste handling system, with on-site processing equipment including a hogger, reclaimer, belt conveyors and stack-out conveyors; and*
- *balance of plant equipment including a water treatment plant designed to deliver boiler quality water using ion-exchange technology.*

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

The site is already permitted for biomass burning and for taking and discharging river water.

According to the Guide to Environmental Assessment Requirements for Electricity Projects published by the Environmental Assessment and Approvals Branch of the Ontario Ministry of the Environment in March 2001, the St. Marys Renewable Energy Centre is classified as Category B, and will be subject to the necessary regulatory requirements including preparation of an Environmental Screening Report and a Public Consultation process.

Please refer to the Environmental Review Report attached as Exhibit J1. St. Mary Renewable Energy Centre has decided to undertake an Environmental Review rather than a simple screening to ensure that all technically and economically feasible mitigation measures have been identified and that the Project does not have significant adverse effects.

The Facility will be housed in a new building which minimizes noise emissions to the nearest receptor. The Facility will have a baghouse for the treatment of exhaust gas. In addition, silencers will be used for building openings and vents to control noise levels.

1.4 Fuel Supply (including description of work required to obtain fuel supply)

The boiler will be fired with Renewable Biomass as the Primary Fuel. Natural Gas is used as Secondary Fuel will be mainly used for plant start up and stabilization.

The Renewable Biomass will be supplied from area sustainable forests. The Supplier has negotiated a secure biomass commitment of up to 400,000 tonnes per year from the Algoma and Northshore Crown Forests for the life of the project. The Supplier has also entered into long term biomass purchase commitments from private lands in Ontario and Michigan.

1.5 Electrical Interconnection (including description of work required to connect Facility and attach Single Line Diagram)

Interconnection to the IESO-Controlled grid is via the existing St. Marys Paper Corp. 12 kV distribution system (end user). The existing system requires modifications and/or upgrades to facilitate injection behind the St. Marys Paper revenue accuracy class meters, which are to be *relocated from Great Lakes Power Clergue Transformer Station to St. Marys Paper.*

The electric generator will be connected through a 12 kV generator circuit breaker to the existing 12 kV Switchgear. Four incoming breakers in the Switchgear in St. Marys Paper substations #1 and #2 connect to the 12 kV system bus at the Great Lakes Power Clergue Transformer Station.

The four 12 kV 1200 amp feeder connections at the Great Lakes Power Clergue Transformer Station are used to supply the mill's power. Transfer of electrical power from the new project to the IESO-Controlled grid will be through these 12 kV circuits.

Attached is the Single Line Diagram for the Project.

1.6 Plant General Arrangement

The power plant will be embedded within the existing footprint of the pulp and paper mill by placing it adjacent to the existing mill. The power plant will be built in an area North West of the existing boiler house and in the vicinity of a portion of the present fuel storage yard and will occupy less than 2.0 hectares.

The site plan of the power plant is included at Exhibit C4 of the Proposal.

1.7 Network Upgrades (as specified in connection assessment studies):

Refer to the System Impact Assessment (Part One) Report dated April 24, 2009 included at Exhibit I1 of the Proposal, plus any other impacts from the Customer Impact Assessment from Great Lakes Power.

EXHIBIT B
CONTRACT PRICE, CAPACITY, USEFUL HEAT OUTPUT, AND SUBMITTED HOURLY ELECTRICITY OUTPUT PROFILE

Initial Contract Price (Dollars and Cents/MWh at COD)	Nameplate Capacity (MW electrical)	Average Seasonal Contract Capacity (MW electrical)	Annual Average Contract Capacity (MW electrical)	Average Seasonal Useful Heat Output (MW thermal)
$ 189.40/MWh	36 MW	Season 1: 30 MW Season 2: 30 MW Season 3: 30 MW Season 4: 30 MW	30 MW	Season 1: 6.8 MW-thermal Season 2: 6.8 MW-thermal Season 3: 6.8 MW-thermal Season 4: 6.8 MW-thermal

Operating Cost Index Factor is 20% of CPI.

Transport and Handling Index Factor is 20%.

Submitted Hourly Electricity Output Profile:

Day Type	Hour Ending (EST)	Season			
		1	2	3	4
Weekday, other than a statutory holiday *Note*: **Weekday Hours Ending between and including 8 to 23 (EST) are On-Peak Hours**	1	30 MW	30 MW	30 MW	30 MW
	2	30 MW	30 MW	30 MW	30 MW
	3	30 MW	30 MW	30 MW	30 MW
	4	30 MW	30 MW	30 MW	30 MW
	5	30 MW	30 MW	30 MW	30 MW
	6	30 MW	30 MW	30 MW	30 MW
	7	30 MW	30 MW	30 MW	30 MW
	8	30 MW	30 MW	30 MW	30 MW
	9	30 MW	30 MW	30 MW	30 MW
	10	30 MW	30 MW	30 MW	30 MW
	11	30 MW	30 MW	30 MW	30 MW
	12	30 MW	30 MW	30 MW	30 MW
	13	30 MW	30 MW	30 MW	30 MW
	14	30 MW	30 MW	30 MW	30 MW
	15	30 MW	30 MW	30 MW	30 MW
	16	30 MW	30 MW	30 MW	30 MW
	17	30 MW	30 MW	30 MW	30 MW
	18	30 MW	30 MW	30 MW	30 MW
	19	30 MW	30 MW	30 MW	30 MW
	20	30 MW	30 MW	30 MW	30 MW
	21	30 MW	30 MW	30 MW	30 MW
	22	30 MW	30 MW	30 MW	30 MW
	23	30 MW	30 MW	30 MW	30 MW
	24	30 MW	30 MW	30 MW	30 MW
Weekends and statutory holidays	1	30 MW	30 MW	30 MW	30 MW
	2	30 MW	30 MW	30 MW	30 MW
	3	30 MW	30 MW	30 MW	30 MW
	4	30 MW	30 MW	30 MW	30 MW
	5	30 MW	30 MW	30 MW	30 MW
	6	30 MW	30 MW	30 MW	30 MW
	7	30 MW	30 MW	30 MW	30 MW
	8	30 MW	30 MW	30 MW	30 MW
	9	30 MW	30 MW	30 MW	30 MW
	10	30 MW	30 MW	30 MW	30 MW
	11	30 MW	30 MW	30 MW	30 MW
	12	30 MW	30 MW	30 MW	30 MW
	13	30 MW	30 MW	30 MW	30 MW
	14	30 MW	30 MW	30 MW	30 MW
	15	30 MW	30 MW	30 MW	30 MW
	16	30 MW	30 MW	30 MW	30 MW
	17	30 MW	30 MW	30 MW	30 MW
	18	30 MW	30 MW	30 MW	30 MW
	19	30 MW	30 MW	30 MW	30 MW
	20	30 MW	30 MW	30 MW	30 MW
	21	30 MW	30 MW	30 MW	30 MW
	22	30 MW	30 MW	30 MW	30 MW
	23	30 MW	30 MW	30 MW	30 MW
	24	30 MW	30 MW	30 MW	30 MW

EXHIBIT C
FORM OF IRREVOCABLE STANDBY LETTER OF CREDIT

DATE OF ISSUE:	[•]
APPLICANT:	[•]
BENEFICIARY:	Ontario Power Authority and its permitted assigns (the "**Beneficiary**")
AMOUNT:	[•]
EXPIRY DATE:	[•]
EXPIRY PLACE:	Counters of the issuing financial institution in Toronto, Ontario
CREDIT RATING:	**[Insert credit rating only if the issuer is not a financial institution listed in either Schedule I or II of the *Bank Act*]**
TYPE:	Irrevocable and Unconditional Standby Letter of Credit Number: [•] (the "**Credit**")

The Credit is issued in connection with the St. Marys Combined Heat and Power (CHP III) Power Purchase Agreement (the "Contract") and the Indemnity Agreement, each dated November 5, 2010 between the Beneficiary and the Applicant.

We hereby authorize the Beneficiary to draw on **[Issuing Bank Name/Address]**, in respect of the Credit, for the account of the Applicant, up to an aggregate amount of $300,000 (Three Hundred Thousand Canadian Dollars) available by the Beneficiary's draft at sight accompanied by the Beneficiary's signed certificate stating that:

> "The Supplier is in breach of, or default under, the Contract and/or the Indemnity Agreement, and therefore the Beneficiary is entitled to draw upon the Credit in the amount of the draft attached hereto."

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

Partial drawings are permitted.

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

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

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

This Credit is transferable at the written request of the Beneficiary, without the consent of the Applicant, but subject to consent of the issuing financial institution, acting reasonably. All fees incurred by the issuing financial institution in relation to such transfer shall be at the Applicant's expense, but failure of the Applicant to pay such fees shall not restrict the ability of the Beneficiary to transfer the Credit.

In the event of a transfer of this Credit as provided for above, the above name of the Beneficiary will be amended to another entity by way of an amendment hereto, without the consent of the Applicant, and upon receipt by [**Issuing Bank Name**] of the Beneficiary's dated and signed letter addressed to [**Issuing Bank Name**] and completed as follows:

> "We, the undersigned Beneficiary to [**Issuing Bank Name**] Letter of Credit No. [•], hereby waive all our rights under the Letter of Credit and request that the current name and address of the Beneficiary thereunder be amended to read [**insert name and address of new Beneficiary**]. We have enclosed the original Letter of Credit and all amendments (if any) thereto. Please forward the original Letter of Credit and all amendments (if any), including the current amendment to the [**new Beneficiary**], care of the Applicant."

[Issuing Bank Name]
By: ____________________

By: ____________________

EXHIBIT D

FORM OF GUARANTEE

THIS GUARANTEE dated as of [•] is made and entered into between [•], a corporation incorporated under the laws of [•] (the "**Guarantor**"), and the Ontario Power Authority (the "**Buyer**").

RECITALS:

A. The Buyer and **[insert name of supplier]**, a [•],[•] under the laws of [•] ("**Supplier**"), have entered into a St. Marys Combined Heat and Power (CHP III) Power Purchase Agreement dated as of November 5, 2010, (as extended, amended, replaced and supplemented, collectively, the "**Agreement**");

B. The Guarantor will directly or indirectly benefit from the Agreement;

C. Pursuant to the terms of the Agreement, the Buyer has required that the Guarantor shall deliver a guarantee of all payment obligations of the Supplier under the Agreement to the Buyer; and

D. Capitalized terms used in this Guarantee but not otherwise defined herein have the meanings ascribed to them in the Agreement.

NOW THEREFORE for good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged) the Guarantor hereby agrees as follows:

1. **Guarantee**

Subject to the terms and conditions hereof, the Guarantor absolutely, irrevocably and unconditionally guarantees to the Buyer the full and timely payment when due, whether at stated maturity, by acceleration or otherwise, of the payment or indemnity obligations of the Supplier: (i) under the Agreement or (ii) under any award or order under any binding arbitration or by a court of competent jurisdiction in respect of the Agreement, and interest thereon accrued as provided in the Agreement, irrespective of when such obligations were incurred (the "**Guaranteed Obligations**"); provided, however, that the applicable rate of interest shall never exceed the maximum rate permitted by law. The aggregate amount of the Guarantor's liability under this Guarantee shall not exceed [•] CANADIAN DOLLARS (Cdn. $[•]) (the "**Maximum Guarantee Amount**"), plus reasonable legal fees and expenses payable by the Guarantor as provided herein. To the extent that Supplier fails to pay any Guaranteed Obligation, the Guarantor shall pay to the Buyer the amount due within ten (10) Business Days after demand for payment has been received by the Guarantor from the Buyer in writing in accordance with Section 11 hereof. The Guarantor shall also be liable for all reasonable out-of-pocket expenses (including the legal fees and expenses of the Buyer) incurred to collect or enforce any of the Guaranteed Obligations; provided however, that such legal fees and expenses shall be payable by the Guarantor only to the extent that the Buyer is successful in enforcing the Guaranteed Obligations. This Guarantee shall be a continuing guarantee effective during the term of the Agreement and until fulfillment of, including payment in full of, the Guaranteed Obligations.

2. Demand

The Guarantor's obligation to make payment under this Guarantee shall arise forthwith after demand for payment has been received by the Guarantor from the Buyer in writing in accordance with Section 11 hereof and the Guarantor's liability for the Guaranteed Obligations shall bear interest in accordance with the terms and conditions set forth in the Agreement. The only condition (and no other document or proof or action other than as specifically provided in this Guarantee is necessary as a condition) of the Guarantor honouring its obligations under this Guarantee shall be such demand for payment. No notice of the Guaranteed Obligations need be given in any form to the Guarantor at any time and the Guarantor waives any such notice and the right to consent to the Guaranteed Obligations. In the event that any payment to the Buyer in respect of any Guaranteed Obligation is rescinded or must otherwise be returned for any reason whatsoever, including the insolvency or bankruptcy of the Supplier or otherwise, the Guarantor shall remain liable hereunder in respect of such Guaranteed Obligation as if such payment had not been made.

3. Waivers

(a) The Guarantor waives any right to require as a condition to its obligations hereunder that:

(i) collateral be applied to the Guaranteed Obligations;

(ii) an action be brought against the Supplier or any Person other than the Guarantor should the Buyer seek to enforce the obligations of the Guarantor;

(iii) a judgment be rendered against the Supplier or any Person other than the Guarantor;

(iv) the Supplier or any other Person be joined in any action against the Guarantor;

(v) an action separate from one against the Guarantor be brought against the Supplier or any other Person or under any other security or guarantee held by the Buyer; and

(vi) any Supplier Event of Default under the Agreement has occurred.

(b) The Guarantor further waives:

(i) all defences, set-offs, counterclaims, estoppels or privileges which might but for this provision exonerate or discharge it from its obligations hereunder; and

(ii) notice of acceptance of this Guarantee, notice of any liability to which it may apply, presentment, demand, protest and notice of dishonour, non-payment or non-performance and marshalling of assets.

(c) The obligations of the Guarantor hereunder shall in no way be affected or impaired by reason, and the Guarantor waives its right to prior notice, of the happening from time to time of any of the following:

(i) any invalidity or unenforceability of all or any part of the Guaranteed Obligations or any agreement or instrument relating to or securing the Guaranteed Obligations;

(ii) any insolvency, bankruptcy, reorganization or dissolution, or any proceeding of the Supplier or any other guarantor, including without limitation, rejection of the Guaranteed Obligations in such bankruptcy;

(iii) extensions (whether or not material) of the time for payment or performance of all or any portion of the Guaranteed Obligations;

(iv) the modification or amendment in any manner (whether or not material) of the Agreement or the Guaranteed Obligations;

(v) subject to applicable statutes of limitations, any failure, delay or lack of diligence on the part of the Buyer or any other Person to enforce, assert or exercise any right, privilege, power or remedy conferred on the Buyer or any Person in the Agreement or at law, or any action on the part of the Buyer or such other Person granting an indulgence or extension of any kind;

(vi) the settlement or compromise of any Guaranteed Obligations;

(vii) the change of status, composition, structure or name of the Supplier, including by reason of merger, amalgamation, continuance, dissolution, reorganization or consolidation with or into another legal entity;

(viii) the release or waiver, by operation of law or otherwise, of the performance or observance by the Supplier of any express or implied covenant, term or condition in the Agreement or the enforceability of any covenant, term or condition thereof;

(ix) the release or waiver, by operation of law or otherwise, of the performance or observance by any co-guarantor, surety, endorser or other obligor of any express or implied covenant, term or condition to be performed or observed by it under the Agreement or any related document;

(x) the failure to acquire, perfect or maintain perfection of any lien on, or security interest in, any collateral provided by the Supplier to the Buyer or the release of any such collateral or the release, modification or waiver of, or failure to enforce, any pledge, security, guarantee, surety or other indemnity agreement in respect of such collateral;

(xi) the assignment of the Agreement and/or any rights thereunder from or by the Supplier to any other Person; and

(xii) any other circumstance similar, or having a similar effect, as those set out in subsections 3(c)(i) through (xi) inclusive, which might constitute in whole or in part a defence available to the release and discharge of this Guarantee.

4. **Limitation of Liability**

The Guarantor shall not be liable hereunder for any special, consequential, incidental, punitive, exemplary or indirect damages, including loss of use of any property or claims of customers of the Supplier or the Buyer, except to the extent specifically provided in the Agreement to be due from the Supplier.

5. **Indemnity**

The Guarantor hereby indemnifies and saves the Buyer harmless from and against any and all damages, losses, costs and expenses of any nature whatsoever resulting from or in consequence of any default or non-payment by the Supplier of its payment or indemnity obligations: (i) under the Agreement or (ii) under any award or order under any binding arbitration or by a court of competent jurisdiction in respect of the Agreement, irrespective of when such obligations were incurred, including its obligations to pay interest as provided in the Agreement and all reasonable out-of-pocket expenses (including legal fees and expenses incurred to collect or enforce the Agreement); provided, however, that the maximum amount recoverable under the foregoing indemnity and otherwise under this Guarantee shall be an amount equal to the Maximum Guarantee Amount. In addition, the Guarantor shall also be liable to the Buyer for all reasonable out-of-pocket expenses (including legal fees and expenses of the Buyer) incurred to collect or enforce this indemnity; provided however, that such legal fees and expenses shall be payable by the Guarantor only to the extent that the Buyer is successful in enforcing the indemnity provided herein. Any payment made pursuant to this Section 5 shall be reduced by any amount that is fully and indefeasibly paid by the Guarantor to the Buyer pursuant to its obligations under Section 1 hereof.

6. **Release of Guarantee**

If Section 6.4(c) of the Agreement is applicable, then upon request by the Supplier, the Buyer shall promptly return this Guarantee to the Guarantor and the Guarantor shall be released and discharged of its obligations hereunder with respect to any Guaranteed Obligations existing or arising after the date that Section 6.4(c) of the Agreement is applicable.

7. **Defences**

The Guarantor reserves the right to assert all rights, setoffs, counterclaims and other defences of the Supplier relating to the Guaranteed Obligations, other than defences arising out of the bankruptcy, insolvency, dissolution or liquidation of the Supplier.

8. Subrogation

The Guarantor shall not be or claim to be subrogated, in whole or in part, to the rights of the Buyer against the Supplier under the Agreement or otherwise, until (a) the Buyer shall have received full and indefeasible payment of all Guaranteed Obligations; and (b) either the Agreement has been terminated or this Guarantee has been terminated pursuant to the terms hereof and the terms and conditions of the Agreement as applicable. Except as set out in this Section 8, nothing contained in this Guarantee shall limit the rights at law and in equity of the Guarantor to subrogation.

9. Representations

The Guarantor represents that:

(a) it is a **[corporation duly incorporated]** and existing under the laws of the Province of **[●]** and has the corporate power and capacity to enter into this Guarantee and to perform its obligations hereunder;

(b) this Guarantee has been duly authorized, executed and delivered by the Guarantor and is a valid and binding obligation of the Guarantor enforceable in accordance with its terms;

(c) no declaration, filing or registration with, or notice to, or licence, permit, certificate, registration, authorization, consent or approval of or from, any Governmental Authority is necessary or required for the consummation by the Guarantor of the transactions contemplated by this Guarantee; and

(d) the execution and delivery of this Guarantee and performance of its obligations hereunder do not conflict with or result in a breach of its constating documents or by-laws, any applicable law, rule or regulation, any judgment, order, contractual restriction or agreement binding on it or affecting its properties.

10. No Waiver by the Buyer

No failure on the part of the Buyer to exercise, and no delay in exercising, any right, remedy or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise by the Buyer of any right, remedy or power hereby granted to the Buyer or allowed it by law or other agreement be a waiver of any other right, remedy or power and each such right, remedy or power shall be cumulative and not exclusive of any other, and may be exercised by the Buyer from time to time. No term, condition or provision hereof or any right hereunder or in respect hereof shall be, or shall be deemed to have been, waived by the Buyer except by express written waiver signed by the Buyer, all such waivers to extend only to the particular circumstances therein specified.

11. Notices

Any notice or other communication required or permitted to be given hereunder shall be in writing and shall be sufficiently given if transmitted by facsimile or delivered by hand or courier delivery:

(a) if to the Buyer, to:

[•]

Attention: [•]
Facsimile: [•]

if to the Guarantor, to:

[•]

Attention: [•]
Facsimile: [•]

Notice delivered or transmitted as provided above shall 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 shall be deemed to have been given and received on the next Business Day. Either party may, by written notice to the other, change its address to which notices are to be sent.

12. **Governing Law**

This Guarantee shall be governed by the laws of the Province of Ontario and the laws of Canada applicable therein. The Guarantor agrees that any suit, action or proceeding against the Guarantor arising out of or relating to this Guarantee against it may be brought in any court in the Province of Ontario and the Guarantor irrevocably and unconditionally attorns and submits to the non-exclusive jurisdiction of such courts. The Guarantor irrevocably waives and agrees not to raise any objection it might now or hereafter have to the bringing of any such suit, action or proceeding in any such court, including any objection that the place where such court is located is an inconvenient forum or that there is any other suit, action or proceeding in any other place relating in whole or in part to the same subject matter. The Guarantor agrees that any judgment or order in any such suit, action or proceeding brought in such a court shall be conclusive and binding upon it and consents to any such judgment or order being recognized and enforced in the courts of its jurisdiction of incorporation or any other courts, by registration of such judgment or order, by a suit, action or proceeding upon such judgment or order, or any other means available for enforcement of judgments or orders, at the option of the Buyer, provided that service of any required process is effected upon it as permitted by applicable law. Nothing in this section shall restrict the bringing of any such suit, action or proceeding in the courts of any other jurisdiction.

13. Severability

Each of the provisions contained in this Guarantee is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction shall not affect the validity or enforceability of any other provision of this Guarantee.

14. Entire Agreement

This Guarantee constitutes the entire agreement between the parties pertaining to the subject matter of this Guarantee. There are no warranties, conditions, representations or agreements in connection with such subject matter except as specifically set forth or referred to in this Guarantee.

15. Binding and Assignment

(a) This Guarantee and all of the provisions hereof shall be binding upon and enure to the benefit of the parties and their respective successors and permitted assigns. This Guarantee is not intended to confer upon any other Person, except the parties and their respective successors and permitted assigns, any rights, interests, obligations or remedies under this Guarantee.

(b) Neither this Guarantee nor any of the rights, interests or obligations under this Guarantee shall be assigned by either party without the prior written consent of the other party. Notwithstanding the foregoing, if the Buyer assigns the Agreement to an assignee pursuant to Sections 16.5(e) or 16.5(f) thereof, then the Buyer may assign this Guarantee to such assignee without the consent of the Guarantor or the Supplier.

16. Limitation Period

The limitation period applicable to any claim hereunder shall not begin to run until actual demand is made by the Buyer pursuant to Section 2 of this Guarantee. The Buyer and the Guarantor of this Guarantee agree to extend such limitation period to six (6) years from the date of such actual demand.

17. Facsimile and Counterparts

The parties may deliver an executed copy of this Guarantee by facsimile and this Guarantee may be executed and delivered by the parties in counterparts. All such facsimiles and counterparts shall together constitute one and the same agreement.

IN WITNESS WHEREOF, the parties hereto have duly executed this Guarantee as of the day and year first above written.

[GUARANTOR]

By: ____________________________

Name: [•]

Title: [•]

By: ____________________________

Name: [•]

Title: [•]

I/We have the authority to bind the Guarantor.

[BUYER]

By: ____________________________

Name: [•]

Title: [•]

I have the authority to bind the corporation.

EXHIBIT E

INTENTIONALLY DELETED

EXHIBIT F

PROPOSAL

Proposal dated October 5, 2010 attached.

EXHIBIT G

MILESTONE EVENTS AND MILESTONE DATES FOR THE FACILITY

	MILESTONE EVENT	MILESTONE DATE (Month/Day/Year)
1.	Financial Closing	October 31, 2011
2.	Environmental and Site Plan Milestone Events	June 1, 2012
3.	Commercial Operation	April 30, 2014

EXHIBIT H

ARBITRATION PROVISIONS APPLICABLE TO SECTIONS 1.6, 1.7, 1.8, 1.9, 1.10 AND 2.10

The following rules and procedures (the "**Rules**") shall govern, exclusively, any matter or matters to be arbitrated between the Parties under Sections 1.6, 1.7, 1.8, 1.9, 1.10 and 2.10 of this Agreement.

1. **Commencement of Arbitration** – If the Parties and, at the Buyer's option, all Other Suppliers required by the Buyer to participate, have been unable to reach agreement as contemplated in Sections 1.6, 1.7, 1.8, 1.9, 1.10 or 2.10, as applicable, then the Buyer shall commence arbitration by delivering a written notice ("**Request**") to the Supplier and such Other Suppliers required by the Buyer to participate (collectively the "**Suppliers**"). If the Buyer has not already done so, the Buyer shall then deliver to the Suppliers the names of all Suppliers. Within twenty (20) days of the delivery of the Request, the Buyer shall deliver to the Suppliers a written notice nominating an arbitrator who shall be familiar with commercial law matters and has no financial or personal interest in the business affairs of any of the parties. Within twenty (20) days of the receipt of the Buyer's notice nominating its arbitrator, the Suppliers shall by written notice to the Buyer nominate an arbitrator who shall be familiar with commercial law matters and has no financial or personal interest in the business affairs of any of the parties. The two arbitrators nominated shall then select a chair person of the arbitration panel (the "**Arbitration Panel**") who shall be a former judge of a Superior Court or appellate court in Canada.

2. **Application to Court** - If the Suppliers are unable to agree on the nomination of an arbitrator within twenty (20) days of the receipt of the Buyer's notice nominating its arbitrator, any Supplier or the Buyer may apply to a judge of the Superior Court of Justice of Ontario to appoint the arbitrator. If the two (2) arbitrators are unable to agree on a chair person within thirty (30) days of the nomination or appointment of the Suppliers' arbitrator, any supplier or the Buyer may apply to a judge of the Superior Court of Justice of Ontario to appoint the chair person.

3. **General** - The Arbitration Panel, once appointed, shall proceed immediately to determine the Replacement Price or the Replacement Provision, as the case may be, in accordance with the Ontario *Arbitration Act, 1991* and, where applicable, the Ontario International Commercial Arbitration Act, it being the intention of the Buyer and the Supplier that there be, to the extent possible, one arbitration proceeding and hearing to determine the Replacement Price or the Replacement Provision. Unless otherwise agreed by the Parties, the Arbitration Panel shall determine the conduct of the arbitral proceedings, including the exchange of statements of claim and defence, the need for documentary and oral discovery and whether to hold oral hearings with a presentation of evidence or oral argument so that the award may be made within the time period set out below. Each of the Suppliers shall have a right to participate in the arbitration proceeding.

4. **Consolidation** – The Parties agree that should the Arbitration Panel determine that the Replacement Price or the Replacement Provision needs to be determined through more than one arbitration proceeding, then the Parties agree that the Arbitration Panel shall determine whether the arbitration proceedings shall be consolidated, conducted simultaneously or consecutively or whether any of the arbitration proceedings should be stayed until any of the others are completed.

5. **Award** - The award of the Arbitration Panel, which shall include the Replacement Price or Replacement Provision, shall be made within six months after the appointment of the Arbitration Panel, subject to any extended date to be agreed by the Parties or any reasonable delay due to unforeseen circumstances.

6. **Costs** – The Parties shall pay their own costs of participating in the arbitration proceedings.

7. **Fees** - Each of the arbitrators on the Arbitration Panel shall be paid their normal professional fees for their time and attendances, which fees together with any hearing room fees, shall be paid by the Buyer.

8. **Computation of Time** - In the computation of time under these Rules or an order or direction given by the Arbitration Panel, except where a contrary intention appears, or the parties otherwise agree:

   (a) where there is a reference to a number of days between two events, those days shall be counted by excluding the day on which the first event happens and including the day on which the second event happens, even if they are described as clear days or the words **"at least"** are used;

   (b) statutory holidays shall not be counted;

   (c) where the time for doing any act or any order or direction given by the Arbitration Panel expires on a day which is not a Business Day, the act may be done on the next day that is a Business Day; and

   (d) service of a document or notice or any order or direction given by the Arbitration Panel made after 4:00 p.m. (Toronto time), or at any time on a day which is not a Business Day, shall be deemed to have been made on the next Business Day.

9. **Place of Arbitration** - The arbitration, including the rendering of the award, shall take place in Toronto, Ontario, which shall be the seat of the proceedings. The language to be used in the arbitration shall be English.

EXHIBIT I

DETERMINATION OF AVAILABILITY

1. The availability of the Facility in respect of a given Settlement Month (the "**Availability**" or "**AV**") shall be calculated as set out below.

   (a) First Contract Year

   For each Settlement Month in the first Contract Year, the Availability of the Facility will not be tested for the purposes of Section 10.1(n).

   (b) Second and Third Contract Years

   For the purposes of the formula to calculate Availability set out below, the Availability of the Facility for each Settlement Month in the second and third Contract Years shall be calculated as follows:

AV = (THM – OH – FMH) / (THM – FMH) x 100	
where:	
AV	is the Availability of the Facility (expressed as a percentage figure);
OH	is the total number of Outage Hours in the period between the Commercial Operation Date and the last day of the applicable Settlement Month, subject to the following: (a) in determining Outage Hours, an hour may be a partial Outage Hour as a result of an Outage, including an inability of the Facility to produce Electricity at the applicable Contract Capacity as set out in the Submitted Hourly Electricity Output Profile or as a result of an Outage lasting for a part but not all of an hour. An hour in which a partial Outage occurs will be counted as a fractional Outage Hour by subtracting from one the quotient obtained by dividing: (i) the maximum production in that hour that could have been achieved given the partial Outage (in MWh) by (ii) the applicable Contract Capacity as set out in the Submitted Hourly Electricity Output Profile multiplied by one hour (in MWh). This fraction will be the contribution of that hour to the Outage Hours in the given Settlement Month; and (b) Outage Hours shall not include the hours of any Outage where and to the extent that the Outage is caused by an event of Force Majeure (including a Host Facility Force Majeure where the Supplier has elected not to run).
THM	is the total number of hours in the period between the Commercial Operation Date and the last day of the applicable Settlement Month.

FMH	is the total number of hours in the period between the Commercial Operation Date and the last day of the applicable Settlement Month during which the Supplier was subject to an event of Force Majeure (including a Host Facility Force Majeure where the Supplier has elected not to run).

(c) Fourth Contract Year and Balance of Term

The Availability of the Facility for each Settlement Month in the fourth Contract Year and for the balance of the Term shall be calculated as follows:

AV = (THM – OH –FMH) / (THM – FMH) x 100	
where:	
AV	is the Availability of the Facility (expressed as a percentage figure).
OH	is the total number of Outage Hours in the most recent 36 month period which ends on the last day of the Settlement Month, subject to the following: (a) in determining Outage Hours, an hour may be a partial Outage Hour as a result of an Outage, including an inability of the Facility to produce Electricity at the applicable Contract Capacity as set out in the Submitted Hourly Electricity Output Profile or as a result of an Outage lasting for a part but not all of an hour. An hour in which a partial Outage occurs will be counted as a fractional Outage Hour by subtracting from one the quotient obtained by dividing: (i) the maximum production in that hour that could have been achieved given the partial Outage (in MWh) by (ii) the applicable Contract Capacity as set out in the Submitted Hourly Electricity Output Profile multiplied by one hour (in MWh). This fraction will be the contribution of that hour to the Outage Hours in the given Settlement Month; and (b) Outage Hours shall not include the hours of any Outage where and to the extent that the Outage is caused by an event of Force Majeure (including a Host Facility Force Majeure where the Supplier has elected not to run).
THM	is the total number of hours in the most recent 36 month period which ends on the last day of the Settlement Month.

FMH	is the total number of hours in the most recent 36 month period which ends on the last day of the Settlement Month during which the Supplier was subject to an event of Force Majeure (including a Host Facility Force Majeure where the Supplier has elected not to run).

EXHIBIT J

FORM OF STATUTORY DECLARATION

PROVINCE OF ONTARIO

TO WIT

IN THE MATTER OF a St. Marys Combined Heat and Power (CHP III) Power Purchase Agreement dated November 5, 2010 (the "**Agreement**") between the Ontario Power Authority and **[insert name of Supplier]** (the "**Supplier**")

I, [•]

OF THE [•]

IN THE [•]

SOLEMNLY DECLARE THAT

(1) I am the • of the Supplier and as such, have knowledge of the matters declared below, and am duly authorized by the Supplier to execute this declaration. All capitalized terms used in this declaration, unless otherwise stated, have the meanings ascribed to them in the Agreement.

(2) The Supplier entered into an Off-Take Agreement dated [•]with [**insert Host name**] (or, where the Supplier and the Host are the same legal entity, there was an obligation or commitment representing an Off-Take Agreement) pursuant to which the Supplier supplied Useful Heat Output from the Facility to the Host Facility.

(3) The Host Facility has permanently ceased to purchase the Facility's Useful Heat Output as a direct result of [a permanent closure of the operations of the Host Facility / a permanent cessation of the Host Facility's requirements for any of the Useful Heat Output of the Facility as a result of a change in the Host Facility's industrial processes], the details of which are described below:

____

____

____

____

(4) To the knowledge of the Supplier, the Host Facility has not acquired, nor does it intend to acquire during the remainder of the Term, any thermal energy from any source other than the Facility, where such acquired thermal energy could reasonably be considered a replacement, in whole or in part, of the Useful Heat Output provided by the Facility.

(5) If the Supplier and the Host are not the same legal entity, the Supplier has (i) used Commercially Reasonable Efforts but has exhausted legal recourse to enforce continuation or reinstatement of the purchase of Useful Heat Output by the Host Facility; and (ii) failing such continuation or reinstatement, used Commercially Reasonable Efforts but has exhausted legal recourse to obtain financial compensation from the Host Facility and use the net proceeds of any compensation so received to defer the Restatement Date by the same amount of time that the Restatement Date would otherwise have been deferred if the compensation so received had instead been revenue received from continued Useful Heat Output sales to the Host Facility.

(6) If the Supplier and the Host are the same legal entity, the Supplier has used Commercially Reasonable Efforts but has not been successful in finding another use of the Useful Heat Output.

AND I make this solemn declaration conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath.

DECLARED BEFORE ME at the [•] of [•], in the **[County/Region]** of [•], on [•], 20[•][•]. ______________________________ Commissioner for taking affidavits	 ______________________________ Name

EXHIBIT K

FORM OF FORCE MAJEURE NOTICE
OPACM – Form 002 (2008-10)

SUBMIT BY E-MAIL TO
contract.management@powerauthority.on.ca

Pursuant to Section [No.] of the Agreement, the Supplier is hereby submitting this Force Majeure Notice to the Buyer.

☐ This is a new Force Majeure event, start date:	
☐ This is an update to existing Force Majeure No.:	
☐ This is a termination notice, termination date:	

Date		
Force Majeure No.		
Title of Force Majeure		
Legal Name of Supplier		
Facility		
Contract Title		
Contract Date		
Contractual COD		
OPA Approved Revised COD		
Type of Force Majeure	☐ENVIRONMENTAL PERMITTING ☐First Nations Consultations ☐Municipal Zoning Bylaw/Permits	☐ACTS OF GOD / EXTREME WEATHER ☐LABOUR DISPUTES ☐OTHER (SPECIFY):

1. Description of events leading to Force Majeure (Provide reasonably full particulars of the cause and timing events relating to the invoked Force Majeure. Please also provide documentary evidence of the same, including, without limitation, the following: newspaper articles, correspondence, emails, notes, reports, memoranda and any other documentation relevant to establishing the description.)

2. Effect of Force Majeure (Provide reasonably full particulars of the effect of the Force Majeure on the Supplier's ability to fulfil its obligations under the Agreement. Please also provide documentary evidence of the same, including, without limitation, the following: reports, policy documents, correspondence, notes, memoranda and any other documentation relevant to establishing the effect.)

3. Cost of Alternatives available to remedy or remove the Force Majeure (Provide reasonably full particulars of alternatives available to the Supplier to remedy or remove the Force Majeure, together with an estimation of related costs with respect to each alternative. Please also provide documentary evidence of the same, including, without limitation, the following: written cost estimates, legal or professional opinions and reports, municipal or other government policy documentation and any other documentation relevant to establishing the cost.)
4. Commercially Reasonable Efforts (Reasonably full particulars of efforts, if any, undertaken or contemplated by the Supplier to remedy or remove Force Majeure. Please also provide documentary evidence of the commercially reasonable efforts listed, including, without limitation, the following as applicable: meeting requests with municipal officials, notes from meetings or telephone calls, minutes of meetings, letter or email correspondence with third parties, copies of reports, policies, proposals, newspaper articles and any other documentation relevant to establishing the commercially reasonable efforts.)

EXHIBIT L
FORM OF OUTAGE NOTICE

Ontario Power Authority

Facility [insert]
Contact Name [insert]
Telephone Number [insert]
Email [insert]
Submission Date [insert]

Request Type	Description	Derated To (MW)	Duration	Start Date	Start Time	End Date	End Time
New			Daily				
Change			Continuous				
Cancel							

All Times in Eastern Standard Time (EST) - Including Switching Time.

EXHIBIT M

FORM OF QUARTERLY REPORT
OPACM – Form 001 (2008-10)

SUBMIT FORM BY E-MAIL TO
contract.management@powerauthority.on.ca

Pursuant to Section 2.6 of the Agreement, the Supplier is hereby submitting this Quarterly Progress Report to the Buyer

Date	
Legal Name of Supplier	
Facility	
Contract Title	
Contract Date	
Reporting Period	
Contractual COD	
OPA Approved Revised COD	

1. Executive Summary (of Quarterly Activities in 4-6 Bullet Points)

-
-
-
-

2. Assignment and Change of Control (Sections [No.] and [No.] of the Agreement)

-

3. Force Majeure (Section [No.] of the Agreement)

-

4. Secured Lender's Security Agreement (Section [No.] of the Agreement) If a Secured Lender's Security Agreement has been entered into by the Supplier, the Supplier needs to provide details.

-

5. Company Representative (If there has been a change, pursuant to Section [No.] of the Agreement, the Supplier is required to submit a new Form of Company Representative Notice [OPACM-Form-005])

Name of Company Representative	[Name]
Title	[Title]
Mailing Address	[Mailing Address incl Postal Code]
Telephone	( ) [No.]
Fax	( ) [No.]
E-Mail Address	[Email Address]

6. Project Contact for Public Information (Provide contact information for the individual who is designated to provide information to the media or the public about the project or facility. This information will be listed on the Buyer's Website.)

Name of Project Contact for Public Information	[Name]
Title	[Title]
Company	[Title]
Telephone	( ) [No.]
Toll-Free Telephone (if applicable)	[No.]
E-Mail Address	[Email Address]

7. Representations of the Supplier (Section [No.] of the Agreement)

Section	Still Valid (Yes or No)	If No, details of exception

8. Development, Design and Construction Progress						
Item	Reportable Events	Status of Efforts / Progress Description	% Complete	Date Contractual	Date Forecast	Date Actual
1	Required regulatory approvals including municipal site plan approvals and environmental permitting to allow construction to commence	Progress: ▪ Issues: ▪				
2	Completion of IESO connection assessment and approval processes including issuance of impact assessment reports by the IESO, the Transmitter, and LDC, as applicable	Progress: ▪ Issues: ▪				
3	Execution of EPC Contract or main construction contract	Progress: ▪ Issues: ▪				
4	Financial closing	Progress: ▪ Issues: ▪				
5	Major equipment or long lead time equipment ordered	Progress: ▪ Issues: ▪				
6	Major equipment or long lead time equipment delivered	Progress: ▪ Issues: ▪				

7	Commencement of construction	**Progress:** ▪ **Issues:** ▪				
8	Connection of the Facility to the IESO controlled grid, Local Distribution System, or End User, with availability of back feed power	**Progress:** ▪ **Issues:** ▪				
9	Testing and commissioning	**Progress:** ▪ **Issues:** ▪				
10	Commercial Operation Date	**Progress:** ▪ **Issues:** ▪				

9. Supplier Submittals Prior to Term Commencement Date (Required to confirm the section numbers and their completeness of submissions)

Item	Section	Description of Submittals	Submission Date		
			Contractual	Forecast	Actual
1		Single Line Diagram			
2		Independent professional engineer certificate			
3		Metering Plan			
4		Valid certificates of insurance for "all risk"			
5		Valid certificates of insurance for commercial general liability			
6		Valid certificates of insurance for environmental/ pollution liability			
7		Clearance certificate of *Workplace Safety and Insurance Act (Ontario)*			
8		Evidence on Supplier registered with the IESO as a "Metered Market Participant" and as a "Generator"			
9		Completion and Performance Security before Term Commencement Date			
10		Completion and Performance Security upon Term Commencement Date			
11		Long Term Operating Plan			

10. Progress Photos

Provide five to ten photos that best represent the progress of construction work during the quarter.

- Photos should not be inserted into this section of the quarterly report
- However, they should be sent as JPEG attachments in a separate email (the email must not exceed 10MB)
- Use descriptive filenames to reflect or explain the content of each photo ("Turbine installation in progress.jpg" and not "Photo 1.jpg")

Quarterly progress reports shall be submitted, electronically only and without covering letter, to the Director of Contract Management of the Buyer by the fifteenth (15th) day of each calendar quarter following the date of the Agreement (i.e., January 15, April 15, July 15, October 15, as the case may be) and continuing until the Term Commencement Date. The reports shall be prepared in bullet form, and shall contain the following:

1. Executive Summary – A brief overview of major work accomplished, any significant safety or environmental events that have occurred in the reporting period, and any issues that could have potential schedule impacts or invoking Force Majeure.

2. Assignment and Change of Control – Report the status of Assignment and/or Change of Control, if any (this section is to report status only, the Supplier is required to give the Buyer prompt notice before this occurs as per Section [No.]).

3. Force Majeure – Report the status of Force Majeure events, if any (this section is to report status only, the Supplier is required to give the Buyer prompt notice when Force Majeure is invoked as per Section [No.]).

4. Secured Lender's Security Agreement – Report the status of the Secured Lender's Security Agreement (this section is to report status only. The Supplier is required to give the Buyer promptly the details of the Secured Lender's Security Agreement as per Section [No.]).

5. Company Representative – Report the details of the current Supplier Company Representative. (The Supplier is required to give the Buyer promptly the details of the Supplier Company Representative as per Section [No.]).

6. Project Contact for Public Information – Provide contact information for the individual who is designated to provide information to the media or the public about the project or facility. This information will be listed on the Buyer's Website.

7. Representations of the Supplier – Report that the representations of the Supplier stipulated in Section [No.] of the Agreement are still valid or provide a statement of the exceptions.

8. Development, Design and Construction Progress – Report the status of each Reportable Event as shown on the quarterly progress report form; if the Reportable Event is also a Milestone Event, then enter the contractual Milestone Date as per Exhibit [No.].

9. Supplier Submittals Prior to Term Commencement Date – Report the status of the submittals as shown on the quarterly progress report form.

10. Progress Photos – Provide photos that best represent the progress of construction work during the quarter. The photos should not be inserted into the quarterly report, but sent in a separate email as JPEG attachments with descriptive filenames.

Ontario Power Authority
120 Adelaide Street West
Suite 1600
Toronto, Ontario M5H 1T1
T 416-967-7474
F 416-967-1947
www.powerauthority.on.ca

EXHIBIT N
FORM OF ANNUAL REPORT

SUBMIT FORM BY E-MAIL TO
contract.management@powerauthority.on.ca

Pursuant to Section [No.] of the Contract, the Supplier is hereby submitting this Annual Report to the Buyer. Capitalized terms not defined herein have the meanings ascribed thereto in the Contract.

This report provides updated information on the Off-Take Agreement, which includes:

1. Expiry date of the original Off-Take Agreement
2. Status of the original Off-Take Agreement
3. Status of new Host Facility Off-Take Agreement negotiations
4. New Host Facility name (if it has changed)

Date	
Legal Name of Supplier	
Name of Facility	
Contract Title	(the "Contract")
Contract Date	
Original Useful Heat Output	
Revised Useful Heat Output (if applicable)	

1. Expiry Date of Original Off-Take Agreement

2. Status of Original Off-Take Agreement

- ☐ In force
- ☐ Not in force

3. Status of any new Host Facility Off-Take Agreement negotiations indicating:

(a) Status of Revisions

(b) Term of new Off-Take Agreement

4. Name of new Host Facility (if it has changed)

Ontario Power Authority
120 Adelaide Street West
Suite 1600
Toronto, Ontario M5H 1T1
T 416-967-7474
F 416-967-1947
www.powerauthority.on.ca

EXHIBIT O
FORM OF RESTATEMENT REPORT

SUBMIT FORM BY E-MAIL TO
contract.management@powerauthority.on.ca

Pursuant to Section [No.] of the Contract, the Supplier is hereby submitting this Restatement Report to the Buyer. Capitalized terms not defined herein have the meanings ascribed thereto in the Contract.

If the Restatement involves reconfiguration, modifications, etc, construction progress reports are required for the construction reconfiguration. The frequency of the report depends on the forecasted duration of the work.

If the period of construction upon Restatement is:

- less than 6 months in duration: the Supplier is required to submit a monthly report to the OPA.
- greater than 6 months and less than 12 months: the Supplier is required to submit a bi-monthly report to the OPA.
- greater than 12 months: the Supplier is required to submit a quarterly report to the OPA.

Date			
Legal Name of Supplier			
Name of Facility			
Contract Title	(the "Contract")		
Contract Date			
Revised Contract Capacity (if applicable)			
Revised Useful Heat Output			
Reporting Period	From (YYYY/MM/DD)		To (YYYY/MM/DD)

1. Description of Restatement (In bullet form, provide description of Restatement.)

2. Executive Summary (In bullet form, provide status of Restatement.)

3. Development, Design and Construction Progress Related to Restatement

Item	Reportable Events	Status of Efforts / Progress Description	% Complete	Date (YYYY/MM/DD) Contractual	Forecast	Actual
1.	Regulatory Permitting	Progress: ▪ Issues: ▪				

2	Outage Application, Execution and Grid Re-Connection	**Progress:** ▪ **Issues:** ▪				
3	Equipment Ordered	**Progress:** ▪ **Issues:** ▪				
4	Equipment Delivered	**Progress:** ▪ **Issues:** ▪				
5	Commencement of Restatement	**Progress:** ▪ **Issues:** ▪				
6	Completion of Restatement	**Progress:** ▪ **Issues:** ▪				
7	Restatement Date	**Progress:** ▪ **Issues:** ▪				

4. Proof of Construction Insurance Coverage

Please send certificates or other statements in PDF format by email to contract.management@powerauthority.on.ca.

5. Progress Photos

Provide five to ten photos that best represent the progress of construction work.

- Photos should not be inserted into the report
- They should be sent as JPEG attachments in a separate email (the email must not exceed 10MB)
- Use descriptive filenames to reflect or explain the content of each photo ("Turbine installation in progress.jpg" and not "Photo 1.jpg")

EXHIBIT P

FORM OF GUARANTEE FOR HOST DEVELOPED FACILITY

THIS GUARANTEE dated as of [•] is made and entered into between [•], a corporation incorporated under the laws of [•] (the "Guarantor"), and [•] (the "Buyer").

RECITALS:

A. The Buyer and**[insert name of Supplier]**, a [•],[•] under the laws of [•] ("Supplier"), have entered into a St. Marys Combined Heat and Power (CHP III) Power Purchase Agreement dated as of [•], (as extended, amended, replaced and supplemented, collectively, the "Agreement");

B. The Guarantor is developing the Facility through the Supplier and owns and/or operates the Host Facility that will receive Useful Heat Output from the Facility;

C. The Guarantor will directly or indirectly benefit from the Agreement;

D. Pursuant to the terms of the Agreement, the Buyer has required that the Guarantor shall deliver a guarantee of all obligations of the Supplier under the Agreement to the Buyer; and

E. Capitalized terms used in this Guarantee but not otherwise defined herein have the meanings ascribed to them in the Agreement.

NOW THEREFORE for good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged) the Guarantor hereby agrees as follows:

1. Guarantee

Subject to the terms and conditions hereof, the Guarantor absolutely, irrevocably and unconditionally guarantees to the Buyer the full and timely payment and performance when due, of all obligations and liabilities of all kinds of the Supplier to the Buyer, whether due or to become due, absolute or contingent, set forth in the Agreement from time to time (including, in respect of payment obligations, interest thereon accrued as provided in the Agreement), irrespective of when such obligations were incurred (the "Guaranteed Obligations"). To the extent that Supplier fails to pay or perform any Guaranteed Obligation, the Guarantor shall promptly pay to the Buyer the amount due or perform or cause the performance of such Guaranteed Obligation. The Guarantor shall also be liable for all reasonable out-of-pocket expenses (including the legal fees and expenses of the Buyer) incurred to collect or enforce any of the Guaranteed Obligations; provided however, that such legal fees and expenses shall be payable by the Guarantor only to the extent that the Buyer is successful in enforcing the Guaranteed Obligations. This Guarantee shall be a continuing guarantee effective during the term of the Agreement and until fulfillment of, including payment in full and performance of, the Guaranteed Obligations.

2. Demand

The Guarantor's obligation to make payment and/or to perform or cause performance under this Guarantee shall arise forthwith after demand therefor has been received by the Guarantor from the Buyer in writing in accordance with Section 10 hereof and the Guarantor's liability for the Guaranteed Obligations which are payment obligations shall bear interest in accordance with the terms and conditions set forth in the Agreement. The only condition (and no other document or proof or action other than as specifically provided in this Guarantee is necessary as a condition) of the Guarantor honouring its obligations under this Guarantee shall be such demand for payment and/or performance. No notice of the Guaranteed Obligations need be given in any form to the Guarantor at any time and the Guarantor waives any such notice and the right to consent to the Guaranteed Obligations. In the event that any payment to the Buyer in respect of any Guaranteed Obligation is rescinded or must otherwise be returned for any reason whatsoever, including the insolvency or bankruptcy of the Supplier or otherwise, the Guarantor shall remain liable hereunder in respect of such Guaranteed Obligation as if such payment had not been made.

3. Waivers

(a) The Guarantor waives any right to require as a condition to its obligations hereunder that:

(i) collateral be applied to the Guaranteed Obligations;

(ii) an action be brought against the Supplier or any Person other than the Guarantor should the Buyer seek to enforce the obligations of the Guarantor;

(iii) a judgment be rendered against the Supplier or any Person other than the Guarantor;

(iv) the Supplier or any other Person be joined in any action against the Guarantor;

(v) an action separate from one against the Guarantor be brought against the Supplier or any other Person or under any other security or guarantee held by the Buyer; and

(vi) any Supplier Event of Default under the Agreement has occurred.

(b) The Guarantor further waives:

(i) all defences, set-offs, counterclaims, estoppels or privileges which might but for this provision exonerate or discharge it from its obligations hereunder; and

(ii) notice of acceptance of this Guarantee, notice of any liability to which it may apply, presentment, demand, protest and notice of dishonour, non-payment or non-performance and marshalling of assets.

(c) The obligations of the Guarantor hereunder shall in no way be affected or impaired by reason, and the Guarantor waives its right to prior notice, of the happening from time to time of any of the following:

(i) any invalidity or unenforceability of all or any part of the Guaranteed Obligations or any agreement or instrument relating to or securing the Guaranteed Obligations;

(ii) any insolvency, bankruptcy, reorganization or dissolution, or any proceeding of the Supplier or any other guarantor, including without limitation, rejection of the Guaranteed Obligations in such bankruptcy;

(iii) extensions (whether or not material) of the time for payment or performance of all or any portion of the Guaranteed Obligations;

(iv) the modification or amendment in any manner (whether or not material) of the Agreement or the Guaranteed Obligations;

(v) subject to applicable statutes of limitations, any failure, delay or lack of diligence on the part of the Buyer or any other Person to enforce, assert or exercise any right, privilege, power or remedy conferred on the Buyer or any Person in the Agreement or at law, or any action on the part of the Buyer or such other Person granting an indulgence or extension of any kind;

(vi) the settlement or compromise of any Guaranteed Obligations;

(vii) the change of status, composition, structure or name of the Supplier, including by reason of merger, amalgamation, continuance, dissolution, reorganization or consolidation with or into another legal entity;

(viii) the release or waiver, by operation of law or otherwise, of the performance or observance by the Supplier of any express or implied covenant, term or condition in the Agreement or the enforceability of any covenant, term or condition thereof;

(ix) the release or waiver, by operation of law or otherwise, of the performance or observance by any co-guarantor, surety, endorser or other obligor of any express or implied covenant, term or condition to be performed or observed by it under the Agreement or any related document;

(x) the failure to acquire, perfect or maintain perfection of any lien on, or security interest in, any collateral provided by the Supplier to the Buyer or the release of any such collateral or the release, modification or waiver of, or failure to enforce, any pledge, security, guarantee, surety or other indemnity agreement in respect of such collateral;

(xi) the assignment of the Agreement and/or any rights thereunder from or by the Supplier to any other Person; and

(xii) any other circumstance similar, or having a similar effect, as those set out in subsections 3(c)(i) through (xi) inclusive, which might constitute in whole or in part a defence available to the release and discharge of this Guarantee.

4. Limitation of Liability

The Guarantor shall not be liable hereunder for any special, consequential, incidental, punitive, exemplary or indirect damages, including loss of use of any property or claims of customers of the Supplier or the Buyer, except to the extent specifically provided in the Agreement to be due from the Supplier.

5. Indemnity

The Guarantor hereby indemnifies and saves the Buyer harmless from and against any and all damages, losses, costs and expenses of any nature whatsoever resulting from or in consequence of any default, non-payment or non-performance by the Supplier of its obligations under the Agreement, irrespective of when such obligations were incurred, including its obligations to pay interest as provided in the Agreement and all reasonable out-of-pocket expenses (including legal fees and expenses incurred to collect or enforce the Agreement). In addition, the Guarantor shall also be liable to the Buyer for all reasonable out-of-pocket expenses (including legal fees and expenses of the Buyer) incurred to collect or enforce this indemnity; provided however, that such legal fees and expenses shall be payable by the Guarantor only to the extent that the Buyer is successful in enforcing the indemnity provided herein. Any payment made pursuant to this Section 5 shall be reduced by any amount that is fully and indefeasibly paid by the Guarantor to the Buyer pursuant to its obligations under Section 1 hereof.

6. Defences

The Guarantor reserves the right to assert all rights, setoffs, counterclaims and other defences of the Supplier relating to the Guaranteed Obligations, other than defences arising out of the bankruptcy, insolvency, dissolution or liquidation of the Supplier.

7. Subrogation

The Guarantor shall not be or claim to be subrogated, in whole or in part, to the rights of the Buyer against the Supplier under the Agreement or otherwise, until (a) the Buyer shall have received full and indefeasible payment of all Guaranteed Obligations; and (b) either the Agreement has been terminated or this Guarantee has been terminated pursuant to the terms hereof and the terms and conditions of the Agreement as applicable. Except as set out in this Section 7, nothing contained in this Guarantee shall limit the rights at law and in equity of the Guarantor to subrogation.

8. Representations

The Guarantor represents that:

(a) it is a **[corporation duly incorporated]** and existing under the laws of the Province of [•] and has the corporate power and capacity to enter into this Guarantee and to perform its obligations hereunder;

(b) this Guarantee has been duly authorized, executed and delivered by the Guarantor and is a valid and binding obligation of the Guarantor enforceable in accordance with its terms;

(c) no declaration, filing or registration with, or notice to, or licence, permit, certificate, registration, authorization, consent or approval of or from, any Governmental Authority is necessary or required for the consummation by the Guarantor of the transactions contemplated by this Guarantee; and

(d) the execution and delivery of this Guarantee and performance of its obligations hereunder do not conflict with or result in a breach of its constating documents or by-laws, any applicable law, rule or regulation, any judgment, order, contractual restriction or agreement binding on it or affecting its properties.

9. No Waiver by the Buyer

No failure on the part of the Buyer to exercise, and no delay in exercising, any right, remedy or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise by the Buyer of any right, remedy or power hereby granted to the Buyer or allowed it by law or other agreement be a waiver of any other right, remedy or power and each such right, remedy or power shall be cumulative and not exclusive of any other, and may be exercised by the Buyer from time to time. No term, condition or provision hereof or any right hereunder or in respect hereof shall be, or shall be deemed to have been, waived by the Buyer except by express written waiver signed by the Buyer, all such waivers to extend only to the particular circumstances therein specified.

10. Notices

Any notice or other communication required or permitted to be given hereunder shall be in writing and shall be sufficiently given if transmitted by facsimile or delivered by hand or courier delivery:

(a) if to the Buyer, to:

[•]

Attention: [•]
Facsimile: [•]

if to the Guarantor, to:

[•]

Attention: [•]
Facsimile: [•]

Notice delivered or transmitted as provided above shall 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 shall be deemed to have been given and received on the next Business Day. Either party may, by written notice to the other, change its address to which notices are to be sent.

11. Governing Law

This Guarantee shall be governed by the laws of the Province of Ontario and the laws of Canada applicable therein. The Guarantor agrees that any suit, action or proceeding against the Guarantor arising out of or relating to this Guarantee against it may be brought in any court in the Province of Ontario and the Guarantor irrevocably and unconditionally attorns and submits to the non-exclusive jurisdiction of such courts. The Guarantor irrevocably waives and agrees not to raise any objection it might now or hereafter have to the bringing of any such suit, action or proceeding in any such court, including any objection that the place where such court is located is an inconvenient forum or that there is any other suit, action or proceeding in any other place relating in whole or in part to the same subject matter. The Guarantor agrees that any judgment or order in any such suit, action or proceeding brought in such a court shall be conclusive and binding upon it and consents to any such judgment or order being recognized and enforced in the courts of its jurisdiction of incorporation or any other courts, by registration of such judgment or order, by a suit, action or proceeding upon such judgment or order, or any other means available for enforcement of judgments or orders, at the option of the Buyer, provided that service of any required process is effected upon it as permitted by applicable law. Nothing in this section shall restrict the bringing of any such suit, action or proceeding in the courts of any other jurisdiction.

12. Severability

Each of the provisions contained in this Guarantee is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction shall not affect the validity or enforceability of any other provision of this Guarantee.

13. Entire Agreement

This Guarantee constitutes the entire agreement between the parties pertaining to the subject matter of this Guarantee. There are no warranties, conditions, representations or agreements in connection with such subject matter except as specifically set forth or referred to in this Guarantee.

14. Binding and Assignment

(a) This Guarantee and all of the provisions hereof shall be binding upon and enure to the benefit of the parties and their respective successors and permitted assigns. This Guarantee is not intended to confer upon any other Person, except the parties and their respective successors and permitted assigns, any rights, interests, obligations or remedies under this Guarantee.

(b) Neither this Guarantee nor any of the rights, interests or obligations under this Guarantee shall be assigned by either party without the prior written consent of the other party. Notwithstanding the foregoing, if the Buyer assigns the Agreement to an assignee pursuant to Sections 16.5(e) or 16.5(f) thereof, then the Buyer may assign this Guarantee to such assignee without the consent of the Guarantor or the Supplier.

15. Limitation Period

The limitation period applicable to any claim hereunder shall not begin to run until actual demand is made by the Buyer pursuant to Section 2 of this Guarantee. The Buyer and the Guarantor of this Guarantee agree to extend such limitation period to six (6) years from the date of such actual demand.

16. Facsimile and Counterparts

The parties may deliver an executed copy of this Guarantee by facsimile and this Guarantee may be executed and delivered by the parties in counterparts. All such facsimiles and counterparts shall together constitute one and the same agreement.

IN WITNESS WHEREOF, the parties hereto have duly executed this Guarantee as of the day and year first above written.

[GUARANTOR]	[BUYER]
By: ____________________	By: ____________________
Name: [•]	Name: [•]
Title: [•]	Title: [•]
	I have the authority to bind the corporation.
By: ____________________	
Name: [•]	
Title: [•]	
I/We have the authority to bind the Guarantor.	

EXHIBIT Q

FORM OF COMPANY REPRESENTATIVE NOTICE
OPACM – Form 005 (2008-10)

SUBMIT BY E-MAIL TO
contract.management@powerauthority.on.ca

Pursuant to Section [No.] of the Agreement, the Supplier is hereby submitting this Form of Company Representative Notice to the Buyer.

Date	
Legal Name of Supplier	
Facility	
Contract Title	
Contract Date	

Name of Company Representative	
Title	
Mailing Address	
Telephone	( )
Fax	( )
E-Mail Address	

Authorized Signatory:

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

EXHIBIT R

FORM OF CONFIDENTIALITY UNDERTAKING
OPACM – Form 006 (2008-10)

SUBMIT FORM BY E-MAIL TO
contract.management@powerauthority.on.ca

Pursuant to Section [No.] of the Agreement, the Supplier is hereby submitting this Form of Confidentiality Undertaking to the Buyer.

Date:	
Legal Name of Supplier	
Facility	
Contract Title	
Contract Date	

WHEREAS the Supplier is a party to the Agreement;

AND WHEREAS the undersigned is a Secured Lender or prospective Secured Lender;

AND WHEREAS the Supplier wishes to disclose Confidential Information contained in the Agreement to the undersigned with respect to the financing of the Facility such disclosure is prohibited without the provision to the Buyer of this Confidentiality Undertaking;

NOW THEREFORE the undersigned covenants and agrees in favour of the Buyer to hold any and all Confidential Information confidential on the terms set out in Article 8 of the Agreement as applicable to the Supplier, mutatis mutandis.

All capitalized terms used in this Confidentiality Undertaking and not defined herein shall have the respective meanings ascribed thereto in the Agreement.

Signed this [Day] day of [Month, Year] .

[Supplier Legal Name]
By:

____

Name: [Name]
Title: [Title]

[Name of Secured Lender]
By:

____

Name: [Name]
Title: [Title]

EXHIBIT S

MATTERS REQUIRED TO BE ADDRESSED IN TEST PROTOCOL

This Exhibit sets forth matters to be addressed by the Supplier in the Test Protocol for Capacity Check Tests, submitted by the Supplier to the Buyer for review and approval pursuant to Section 15.6 of the Agreement.

Introduction

The Capacity Check Test will be a test to demonstrate maximum continuous simultaneous production of Electricity and Useful Heat Output of the Facility, while operating within all applicable Laws and Regulations and equipment limits.

Each test will be a minimum of four (4) continuous hours at stable conditions. The Facility will be started up and brought up to the test load point and stabilized for a minimum of thirty (30) minutes operating within all applicable Laws and Regulations and equipment limits.

Upon the start of each test and during each hour during the test, data will be recorded. Fuel supplied, Electricity output, and Useful Heat Output will be recorded from revenue grade metering. If revenue grade metering is unavailable, alternatives will be proposed for approval by the Buyer in advance of the Capacity Check Test.

The Measured Electricity shall be net of Station Service Loads and Auxiliary Loads. The Station Service Load and Auxiliary Loads shall include all equipment, including lighting, pumping, ventilation and other ancillary equipment that would be operational during normal plant operation. If any equipment contributing to Station Service Load is supplied from a source outside the Facility or otherwise not reflected in the Measured Electricity, then the Electricity consumption of such equipment shall be submetered during the test and subtracted from the Measured Electricity. Use of engineering estimates for such equipment may also be acceptable provided that the estimation methodology is approved in advance by the Buyer as part of the Test Protocol.

The Useful Heat Output shall be measured using revenue grade metering capable of measuring the thermal energy accurately to within +/- 1% and shall be net of all thermal energy returned to or imported by the Facility that cannot be shut off during the test. The metering for Measured UHO delivered to the Host Facility shall be located at a point as close to the delivery point to the Host Facility as practical. The thermal energy returned from the Host Facility and any other sources of thermal energy supplied to the Facility shall be measured using revenue grade metering capable of measuring thermal energy accurately to within +/- 1%.

The fuel supply shall be measured by revenue grade metering.

The Test Protocol submitted by the Supplier in respect of Capacity Check Tests for the Facility shall include, at a minimum, the following elements.

General

This section must state the Facility name and operator, location, and a brief comment on the objectives of the test.

Facility Description

A description of the Facility must be provided including all major equipment and all equipment comprising the Station Service Load and Auxiliary Loads. The description will also include expected operating ranges, and any operating limitations.

The description shall include:

A single line diagram of the electrical layout of the Facility, including Auxiliary Loads, Station Service Load, and all Electricity metering locations.

A layout diagram for the supply of Useful Heat Output to the Host Facility, return of thermal energy to the Facility and any other sources of thermal energy supplied to the Facility and all thermal metering locations.

A fuel supply diagram showing all fuel sources for the Facility and all fuel metering locations.

Demonstration Test Plan Description

A description of the test plan shall include provision, as appropriate, for submetering or estimation of Auxiliary Loads and Station Service Loads, and measurement of thermal energy returned to the Facility from the Host Facility and any other thermal energy supplied from outside the Facility.

Testing Contractor

Identify the testing contractor, if applicable, including the name, address, and phone number of the project manager, and discuss prior project experience.

Test Program Organization

An organizational chart must be included showing general organization, delegation of authority, names and duties of all personnel involved. A discussion must be provided to include the qualifications of all personnel involved in relation to the duties assigned to them.

Test Program Objectives

The objectives of the test program must be discussed in detail and shall include (as a minimum) the following information:

- applicable rules, permits, permit limits, conditions or agreements;
- the operating load points (percent of design capacity) at which the equipment will operate during the testing;
- Auxiliary Loads and Station Service Loads and proposed methodology for estimating these loads;
- the thermal energy expected at the operating load points at which the equipment will operate during the testing;
- provision for measurement of thermal energy returned to the Facility from the Host Facility and any other thermal energy supplied from outside the Facility;
- discussion of how the proposed test program will fulfill the requirements of Capacity Check Test and all applicable rules, permit conditions, and agreements;
- proposed test date(s); and
- expected date of test report submittal. The source test report is required to be submitted to the department within sixty (60) days of test completion, unless otherwise specified.

Test Procedures

Instrumentation and Equipment Description

This section must provide descriptions and diagrams showing and listing all instrumentation to be used during the test and latest calibration test results.

Test Procedures

This section must provide description of proposed test procedures that satisfy the general requirements of this Test Protocol.

Capacity Check Test Report

The Test Protocol shall also contain a proposed outline for the Capacity Check Test report that will set out the results of the Capacity Check Test.

The report shall have a cover page with signatures of an officer of the Supplier and the project manager for the Capacity Check Test.

The Capacity Check Test report shall also include all information set forth above in this Test Protocol.

In addition, the Capacity Check Test report shall include test data, sample calculations, and test calculations in appendices, including any adjustment to the Measured Electricity output pursuant to Exhibit T of the Agreement.

A sample of test report contents is shown in the box below:

Sample Capacity Check Test Report Outline

1. Cover
   a. Company name
   b. Name of the consulting company performing the source test (if applicable)
   c. Name of Facility
   d. Date of test

2. Signature Page or Cover Letter
   a. Endorsement by project manager
   b. Endorsement by authorized representative of the Supplier
   c. Written approval by the Buyer of the Test Protocol

3. Introduction
   a. Project description and location
   b. Test purpose
   c. Description of equipment, number of years in service
   d. Test dates
   e. Names of observers: industry, Buyer and consultant (include titles)

4. Summary of Results
   a. Electricity output (net of Station Service Load and Auxiliary Loads)
      (1)Average measured output for each hour of the test
      (2) Any adjustment to Electricity output pursuant to Exhibit T
      (3)Test run average for each determination

   b. Useful Heat Output (net of thermal energy returned to or imported by the Facility)
      (1)Average measured output for each hour of the test
      (2)Test run average for each determination

   c. Fuel Supply
      (1)Average measured output for each hour of the test
      (2)Test run average for each determination

   Discussion of errors, both real and apparent

5. Methods and Calculations
   a. Use equations described in the applicable test methods
   b. Show a step-by-step complete calculation of one test run
   c. Include any deviations from applicable calculations or test methods
   d. Include methods, descriptions and equations

6. Appendices
   a. Raw field data
   b. Source test log documenting times of source test events
   c. Sample calculation (including any adjustment to Measured Electricity pursuant to Exhibit T)
   d. All project participants and titles
   e. Related correspondence

EXHIBIT T

ADJUSTMENT TO ELECTRICITY OUTPUT IN CAPACITY CHECK TEST AS A RESULT OF FAILURE TO MEET USEFUL HEAT OUTPUT REQUIREMENT

If the Measured UHO during a Capacity Check Test does not satisfy the Minimum UHO Requirement, then the Measured Electricity will be adjusted as follows:

Measured Electricity as adjusted = Measured Electricity during the Capacity Check Test x Adjustment Factor

where

Adjustment Factor =

1 – [1 – (Measured UHO during the Capacity Check Test / Minimum UHO Requirement)] ^{2}

Notwithstanding the foregoing, no adjustment pursuant to this Exhibit will be applied if the effect of the calculations set out above would be that the Measured Electricity, as adjusted, would be greater than the Measured Electricity without such adjustment.

EXHIBIT U

ACTUAL USEFUL HEAT OUTPUT PERCENTAGE CALCULATION AND REPORTS

For any years in which the Facility is not subject to a Permanent Restatement or an Indefinite Restatement, the Actual Monthly Useful Heat Output, the Delivered Electricity in all hours for each Settlement Month, and calculation of the Actual Useful Heat Output Percentage for each Contract Year shall be calculated and reported by the Supplier on an annual basis as follows:

The "**Actual Useful Heat Output**" in any hour shall be the Useful Heat Output delivered to the Host Facility as measured at the delivery point to the Host Facility net of any thermal energy returned from the Host Facility and net of any thermal energy imported to the Facility.

The "**Actual Monthly Useful Heat Output**" in any Settlement Month shall be sum of the "Actual Useful Heat Output" for all hours in such month.

The Actual Monthly Useful Heat Output, Delivered Electricity, and Actual Useful Heat Output Percentage for the Contract Year shall be presented in a table as follows:

Month	A Actual Monthly Useful Heat Output (MWh-thermal)	B Delivered Electricity (MWh)	C Actual Useful Heat Output Percentage for the Contract Year [A/ (A+B)]
January			
February			
March			
April			
May			
June			
July			
August			
September			
October			
November			
December			
Total			

In addition, the Supplier shall provide to the Buyer all of the raw data used in the calculation of the Actual Monthly Useful Heat Output.

EXHIBIT V

METERING PLAN

Metering Plan

Supplier: St. Marys Renewable Energy LP

in respect of:

Facility: St. Marys Renewable Energy Centre

to:

Buyer: Ontario Power Authority
(the "OPA")

Prepared by

[State Name of Preparer]

Date

Revision 1.0

Representations

The Supplier represents and warrants that:

(i) the Supplier is, as of the date hereof, in compliance with the applicable requirements of Section 2.7 of the St. Marys Combined Heat and Power (CHP III) Power Purchase Agreement between the Supplier and the Buyer dated as of the 5th day of November, 2010 (the "St. Marys Combined Heat and Power (CHP III) PPA");

(ii) all of the representations and warranties set out in Section 7.1 of the St. Marys Combined Heat and Power (CHP III) PPA continue to be true and correct in all material respects as of the date hereof;

(iii) to the best of the Supplier's knowledge, the Supplier is not in breach or default of any obligation of the Supplier contained in the St. Marys Combined Heat and Power (CHP III) PPA; and

(iv) all statements, information, technical specification sheets, drawings, metering data, formulae, calculations, meter models, instrument models and all other relevant information contained herein are complete and accurate in all material respects and no material information required to fulfill the objectives to be derived from this Metering Plan is omitted.

Acknowledgements and Agreements

The Supplier acknowledges and agrees that:

(i) the Buyer's approval of this Metering Plan, if granted, is based on the Buyer's reliance on the above representations being true and correct;

(ii) this Metering Plan is a binding obligation of the Supplier enforceable by the Buyer in accordance with the terms of the St. Marys Combined Heat and Power (CHP III) PPA;

(iii) it shall not make any material changes to this Metering Plan and the metering installation described herein in whole or in part without the Buyer's prior written approval;

(iv) in approving this Metering Plan, the Buyer is not approving the design safety and suitability of the metering installation. The Buyer, and its consultant (if any), have reviewed the Metering Plan only to the extent required in the St. Marys Combined Heat and Power (CHP III) PPA. Review of design safety and suitability is not required in the St. Marys Combined Heat and Power (CHP III) PPA as the responsibility for this lies solely with the Supplier;

(v) the Buyer's approval of the Metering Plan, if provided, does not constitute a warranty or guarantee that the Facility's metering installation is properly designed and meets all applicable laws in Canada. The responsibility for this lies solely with the Supplier;

(vi) the Buyer's approval of the Metering Plan, if provided, shall not be used for any purpose other than that stipulated in the St. Marys Combined Heat and Power (CHP III) PPA. The Supplier shall not use or rely upon the Buyer's approval to represent to a third party in any manner that the Buyer has approved the design, safety and integrity of the Facility's metering installation;

(vii) the Metering Plan is a project-specific document. Plan approval for one project does not make the method of data collection, validation, adjustment and calculation, in whole or in part, approved for one project acceptable for another project.

Covenants

The Supplier covenants that:

(i) it shall implement the Metering Plan in all respects and without material deviation;

(ii) it shall provide the Buyer with a commissioning report for all revenue meter(s) referenced in the Metering Plan prior to any use of metered data for the purpose of test for Commercial Operation pursuant to Section 2.5 of the St. Marys Combined Heat and Power (CHP III) PPA; and

(iii) it shall at all times comply with its obligations contained in the St. Marys Combined Heat and Power (CHP III) PPA.

Revision Block

Revision	Reason for Issue / Description Date	Date
1.0	First approved issue of the Metering Plan	

Approvals

Supplier's Signature	Buyer's Signature
Name: Title: Date:	Name: Title: Date:

1. INTRODUCTION

Required **1.1. Purpose of the Plan**

- To identify all instruments used for the measurement of the Facility's Net Power Output & Net Useful Heat Output. Such instruments must comply with the requirements of the St. Marys Combined Heat and Power (CHP III) PPA;
- To clearly show the method of how Net Power Output & Net Useful Heat Output for the Facility will be measured, validated, adjusted and calculated for the purpose of the St. Marys Combined Heat and Power (CHP III) PPA. Such method will be used for the purpose of Capacity Check Test and reporting to the Buyer as required in the St. Marys Combined Heat and Power (CHP III) PPA;
- To determine compliance of the 15% criteria which is based on calculating the annual percentage of net useful heat output to the total net output as stipulated in the St. Marys Combined Heat and Power (CHP III) PPA. The Facility's total net output and net useful heat output are established using the Buyer's approved method;
- To specify the technical requirements to enable Buyer to have remote real time meter readings access as stipulated in the St. Marys Combined Heat and Power (CHP III) PPA;
- To satisfy the requirements for achieving commercial operation as stipulated in the St. Marys Combined Heat and Power (CHP III) PPA.
- To confirm that steam generators and boilers that provide steam for the generation of electricity are considered to be part of the Facility to the extent of the underutilized capacity of such steam generators and boilers, and to specify methodologies to ensure that the steam created relates solely to such underutilized capacity.

Required **1.2. IESO Market Participation**

Required **1.3. Remote Meter Readings – Access by the Buyer**

2. ELECTRICAL POWER METERING

Required **2.1.System Description**

2.2.Sections (as required)

2.2.1. Subsections (as required)

Required **2.3. List of Meters/Instruments**

Required **2.4. Net Power Output – Before Restatement**

2.4.1. Measurement (Explain how data is measured)

2.4.2. Validation (Explain how data is validated)

2.4.3. Adjustment (Explain how data is adjusted/edited, if applicable)

2.4.4. Calculations (Primary & Backup)

$MWh_{electrical}$ = Gross Electricity Output – Auxiliary Loads – Station Service Load – Other adjustments

Required **2.5. Net Power Output – After Restatement**

2.5.1. Measurement (Explain how data is measured)

2.5.2. Validation (Explain how data is validated)

2.5.3. Adjustment (Explain how data is adjusted/edited, if applicable)

2.5.4. Calculations (Primary & Backup)

$MWh_{electrical}$ = Gross Electricity Output – Auxiliary Loads – Station Service Load – Other adjustments

Required **2.6. Maintenance & Calibration**

2.6.1. Regular Maintenance (Explain who/how meters are maintained)

2.6.2. Frequency of Calibration

2.6.3. Updating the Buyer's Calibration Records

3. METERING OF THERMAL HEAT

Required **3.1. System Description**

3.2. Sections (as required)

3.2.1. Subsections (as required)

Required **3.3. List of Meters/Instruments**

Required **3.4. Net Thermal Output**

3.4.1. Measurement (Explain how data is measured)

3.4.2. Validation (Explain how data is validated)

3.4.3. Adjustment (Explain how data is adjusted/edited, if applicable)

3.4.4. Calculations (Primary & Backup)

$$\text{MWh thermal} = \sum M_e \times H_e - \sum M_r \times H_r - \sum M_i \times H_i$$

Where:

Me is the mass flow of heat exported from the CHP cycle

He is the enthalpy of heat exported from the CHP cycle

Mr is the mass flow of heat returned to the CHP cycle

Hr is the enthalpy of heat returned to the CHP cycle

Mi is the mass flow of heat externally added to CHP cycle

Hi is the enthalpy of heat externally added to the CHP cycle

e, r, i denote respectively the number of export, return and import processes in the combined heat and power cycle.

Required 3.5.Maintenance & Calibration

3.5.1. Regular Maintenance (Explain who/how meters are maintained)

3.5.2. Frequency of Calibration

3.5.3. Updating the Buyer's Calibration Records

4. FUEL METERING

Required 4.1.System Description

4.2.Sections (as required)

4.2.1. Subsections (as required)

Required 4.3.List of Meters/Instruments

Required 4.4.Primary Fuel

4.4.1. Measurement (Explain how data is measured)

4.4.2. Validation (Explain how data is validated)

4.4.3. Adjustment (Explain how data is adjusted/edited, if applicable)

4.4.4. Calculations (Primary & Backup Meters)

Required 4.5.Secondary Fuel

4.5.1. Measurement (Explain how data is measured)

4.5.2. Validation (Explain how data is validated)

4.5.3. Adjustment (Explain how data is adjusted/edited, if applicable)

4.5.4. Calculations (Primary & Backup Meters)

5. EXHIBITS

5.1. Exhibit 1: Single Line Diagrams

Drawing Number	Drawing Title	Revision	Date

5.2. Exhibit 2: Three Line Diagrams

Drawing Number	Drawing Title	Revision	Date

5.3. Exhibit 3: Flow/Process Diagrams & Other Drawings

Drawing Number	Drawing Title	Revision	Date

5.4. Exhibit 4: Electrical Metering Technical Data

5.4.1. Main Metering

Meter Number	Model Number	Description	Quality/ Accuracy
M-011-02	XYX-6000	See attached meter vendor data	+/- 0.3%

5.4.2. Backup Metering

Meter Number	Model Number	Description	Quality/ Accuracy

5.5.Exhibit 5: Mechanical Metering Technical Data

5.5.1. Main Metering

Instrument Number	Model Number	Description	Quality/ Accuracy

5.5.2. Backup Metering

Instrument Number	Model Number	Description	Quality/ Accuracy

EXHIBIT W

FORM OF AGREEMENT WITH THE CROWN

AGREEMENT

DATED [month][day][year]

Between HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO
AS REPRESENTED BY
THE MINISTER OF ENERGY
(the "Crown")

And

[NAME OF DEVELOPER CONTRACTING WITH ONTARIO POWER AUTHORITY]
(the "Supplier")

WHEREAS the consultations on the Integrated Power System Plan indicated that certain Aboriginal Communities wish to be consulted in the planning and development of electricity projects;

AND WHEREAS the Minister of Energy issued a Directive dated April 10, 2008, further to a Directive dated June 15, 2005, instructing the Ontario Power Authority ("OPA") to acquire up to approximately 100 MW of high-efficiency combined heat and power ("CHP") generation facilities in Ontario that are fuelled by renewable energy sources and are greater than 10 MW in size (together, the "Directive");

AND WHEREAS the OPA has taken steps to facilitate appropriate Aboriginal consultation, including a requirement in the St. Marys Combined Heat and Power (CHP III) Power Purchase Agreement ("**St. Marys CHP III PPA**") that Suppliers enter into an Agreement with the Crown relating to Aboriginal consultation;

AND WHEREAS the OPA has selected the Supplier to supply renewable energy and the OPA and the Supplier have entered into a St. Marys Combined Heat and Power (CHP III) Power Purchase Agreement dated November 5, 2010:

NOW THEREFORE, in consideration of the mutual agreements set forth herein, and other good and valuable consideration, the above-noted parties (collectively the "**Parties**" and individually a "**Party**") hereby agree as follows:

1.0 Definitions

Unless otherwise defined herein the following terms shall have the following meanings for the purposes of this Agreement:

(1) "Aboriginal Communities" means First Nation and Métis communities, organizations or interests that are identified by the Minister to be consulted in relation to the Project including [names to be added], and such others as may be identified following the date hereof;

(2) "Aboriginal Rights" means Aboriginal rights as referred to in Section 35 of the *Constitution Act, 1982* that are either established or credibly asserted;

(3) "Agreement" means this agreement between the Crown and the Supplier dated the date first above written, as such agreement may be amended from time to time by written instruments signed by the Parties;

(4) "Business Day" means a day other than a Saturday or Sunday or statutory holiday in the Province of Ontario or any other day on which banking institutions in Toronto, Ontario are not open for the transaction of business;

(5) "Crown" means Her Majesty the Queen in Right of Ontario;

(6) "ESP" means the Environmental Screening Process under Ontario Regulation 116/01 under the *Environmental Assessment Act*, R.S.O 1990, as amended;

(7) "Minister" means the Minister of Energy, and includes any official acting under his authority;

(8) "Ministry" means the Ministry of Energy;

(9) "Plan" means the Plan to consult Aboriginal Communities made pursuant to this Agreement and attached hereto as Schedule "A";

(10) "Project" means the renewable energy supply project to be developed by the Supplier in respect of which the Supplier and the OPA have entered into the St. Marys CHP III PPA;

(11) "S. 35 Duty" means any duty the Crown may have to consult and, where appropriate, accommodate Aboriginal Communities in relation to the Project flowing from Section 35 of the *Constitution Act, 1982*;

(12) "Supplier's Request" means a written request from the Supplier to the Ministry requesting that the Crown confirm in writing that, as of a date set out in such request, which shall not be less than 15 Business Days from the date of such request, the Supplier is not in breach or default of its obligations contained in this Agreement;

(13) "Treaty Rights" means Treaty rights as referred to in Section 35 of the *Constitution Act, 1982* that are either established or credibly asserted.

2.0 Purpose

The Purpose of this Agreement is to set out the responsibilities of the Crown and the Supplier in relation to consultation with Aboriginal Communities on the Project, and to delegate certain aspects of consultation from the Crown to the Supplier.

3.0 Responsibilities of the Crown

3.1 The Crown is responsible for:

(i) determining the Aboriginal Communities to be consulted in relation to the Project, if any, and advising the Supplier of same;

(ii) the preliminary and ongoing assessment of the depth of consultation required with the Aboriginal Communities;

(iii) at its discretion, delegating procedural aspects of consultation to the Supplier pursuant to this Agreement;

(iv) satisfying itself, where it is necessary to do so, that the consultation process in relation to the Project has been adequate and the Supplier is in compliance with this Agreement; and

(v) satisfying itself, where accommodation is required, that appropriate accommodation of any Aboriginal and Treaty Rights of Aboriginal Communities in relation to the Project has occurred or will occur.

3.2 As of the date of this Agreement the Ministry may act as the single representative of the Crown in relation to the Crown's responsibility under Section 3.1(i).

3.3 Upon receipt of a Supplier's Request from time to time, the Ministry shall deliver written confirmation to the Supplier and to any third party so indicated in the Supplier's request of whether or not the Minister is of the view that the Supplier is as of such date in breach or default of its obligations contained in this Agreement.

3.4 The Ministry may share information received from the Supplier with other Ontario ministries and regulatory agencies, as appropriate.

4.0 Responsibilities of the Supplier

4.1 The Supplier is responsible for:

(i) having developed the Plan for review and approval by the Ministry, and updating the Plan as reasonably required by the Ministry throughout the consultation process;

(ii) implementing the Plan;

(iii) in a manner consistent with the Plan:

a) giving notice to the Aboriginal Communities regarding the Project, if such notice has not already been given by the Supplier or the Crown;

b) informing the Aboriginal Communities about the Project;

c) informing the Aboriginal Communities of the regulatory and approval processes that apply to the Project of which the Supplier is aware after reasonable inquiry;

d) making all reasonable efforts to build a positive relationship with the Aboriginal Communities in relation to the Project;

e) if appropriate, providing financial assistance to Aboriginal Communities to permit effective participation in consultation processes for the Project;

f) meeting with Aboriginal Communities to discuss the Project;

g) considering comments provided by Aboriginal Communities regarding the potential impacts of the Project on Aboriginal Rights or Treaty Rights or on other associated interests, or any other concerns or issues regarding the Project;

h) subject to the following section i), where appropriate, discuss with the Aboriginal Communities potential accommodation, including mitigation of potential impacts on Aboriginal or Treaty Rights or associated interests regarding the Project; and

i) consult with the Crown during the discussions with Aboriginal Communities and present to the Crown for the purposes of Section 3.1(v) hereof, the results of such discussions prior to implementing accommodation measures.

4.2 The Supplier hereby acknowledges that, notwithstanding Section 4.1 above, the Ministry, any Ontario government ministry having an approval role in relation to the Project, or any responsible regulatory body, official, or Crown decision-maker, may participate in the matters enumerated therein as they deem necessary.

4.3 The Supplier hereby acknowledges that, for the purposes of any S. 35 Duty borne by the Crown, the Supplier is the Crown's delegate and in this capacity is responsible for carrying out aspects of consultation delegated to it by the Crown pursuant to this Agreement.

4.4 The Supplier will carry out the following functions in relation to record keeping, information sharing and reporting to the Crown:

(i) provide to the Ministry, upon request, complete and accurate copies of all documents provided to the Aboriginal Communities in relation to the Project;

(ii) keep reasonable business records of all its activities in implementing the Plan and provide the Ministry with complete and accurate copies of such records upon request;

(iii) provide the Ministry with timely notice of any Supplier mailings to, or Supplier meetings with, the representatives of any Aboriginal Community that fall within the scope of the Parties' responsibilities set out in this Agreement;

(iv) advise the Ministry in a timely manner of any potential adverse impact of the Project on Aboriginal or Treaty Rights of which it becomes aware;

(v) provide the Ministry with summary reports or briefings on all of its activities in relation to implementing the Plan, as may be requested by the Minister;

(vi) provide the Ministry, upon request, with summary reports or briefings setting out the position it proposes to take before judicial, quasi-judicial or regulatory tribunals or boards, or at meetings with officials with capacity to make regulatory decisions relating to the Project, where such position relates to Aboriginal consultation on the Project; and

(vii) if applicable, advise the Ministry if the Supplier and an Aboriginal Community propose to enter into an agreement directed at mitigating or compensating for any impacts of the Project on Aboriginal or Treaty Rights.

4.5 The Supplier shall, upon request:

(i) lend assistance to the Ministry by filing records and other appropriate evidence of the activities undertaken both by the Crown and by the Supplier in consulting with Aboriginal Communities in relation to the Project, attending any regulatory or other hearings, and making both written and oral submissions, as appropriate, regarding the fulfillment of Aboriginal consultation responsibilities by the Crown and by the Supplier, to the relevant regulatory or judicial decision-makers; or

(ii) provided however that the Ministry may elect to engage legal counsel to assist in or undertake activities referred to in Section 4.5(i) hereof on behalf of the Crown in connection with the Project, the costs of which shall be for the account of the Supplier and shall be paid by the Supplier to the Crown within 30 days of delivery of invoice therefor.

5.0 Consultation Plan

5.1 The Plan shall be prepared by the Supplier for review and approval by the Ministry.

5.2 The Plan shall:

(i) set out in detail the manner in which the Supplier proposes to consult with Aboriginal Communities from the date of this Agreement forward, including all significant steps, and the relevant timetable;

(ii) focus on the responsibilities of the Supplier under Section 4.1(iii);

(iii) focus on fulfilling the said responsibilities in the course of an ESP, as much as possible; and

(iv) be implemented in a manner consistent with any other statutory or regulatory process applicable to the Project and with the jurisdiction, procedures and decisions of all responsible ministries, boards, agencies or other regulatory decision-makers.

5.3 The Plan shall be updated from time to time as reasonably required by the Ministry.

6.0 Notices

All notices pertaining to this Agreement shall be in writing and shall be given by facsimile or other means of electronic transmission or by hand or courier delivery. Any notice shall be addressed to the other Party as follows:

If to the Crown:
●

Attention: ●
Facsimile: ●
Email: ●
and to:●
Attention: ●
Facsimile: ●
Email: ●

If to the Supplier:
Attention: ●
Facsimile: ●
Email: ●

and to:
Attention: ●
Facsimile: ●
Email: ●

Notice delivered or transmitted as provided above shall be deemed to have been given and received on the day it is delivered or transmitted, provided that if it is delivered or transmitted on a Business Day prior to 3:00 p.m. local time in the place of delivery or receipt. However, if a notice is delivered or transmitted after 3:00 p.m. local time or such day is not a Business Day, then such notice shall be deemed to have been given and received on the next Business Day. Either Party may, by written notice to the other, change its respective address to which notices are to be sent.

7.0 No Implicit Acknowledgement

7.1 Neither the Crown nor the Supplier shall be taken as having agreed, or conceded, that a S. 35 Duty applies in relation to the Project, nor that any responsibility set out herein is, under the Constitution of Canada, necessarily a mandatory aspect or requirement of any S. 35 Duty, nor that a particular aspect of consultation referred to in Section 3.1 hereof is an aspect of the S. 35 Duty that could not have lawfully been delegated to the Supplier had the Parties so agreed.

8.0 Remedies

8.1 The Supplier acknowledges that, except where an amount is expressly payable hereunder by the Supplier, money damages will not be a sufficient remedy for a breach of the terms of this Agreement and accordingly, in addition to any rights that the Crown may have at law or in equity, the Crown shall be entitled to specific performance and injunctive relief as remedies for a breach of this Agreement.

8.2 The Crown acknowledges that, except where an amount is expressly payable hereunder by the Supplier to the Crown, a remedy in monetary damages is inappropriate and agrees that in such circumstances in place thereof it will seek recourse pursuant to Section 8.1 hereof and or termination of this Agreement.

9.0 General

9.1 This Agreement does not substitute for, and shall not be construed inconsistently with, any requirements or procedures in relation to Aboriginal consultation or the S. 35 Duty that may be imposed by a ministry, board, agency or other regulatory decision-maker acting pursuant to laws and regulations. Such decision-makers may have additional requirements. Nonetheless, the intent of the Minister is to promote coordination among Ontario ministries, boards and agencies with roles in consulting with Aboriginal Communities so that the responsibilities outlined in this Agreement may be fulfilled efficiently and in a manner that avoids, to the extent possible, duplication of effort by Aboriginal Communities, the Supplier, the Ministry, and provincial ministries, boards, agencies and other regulatory decision-makers.

9.2 This Agreement will not confer upon any other person, except the Parties and their respective successors and permitted assigns, any rights, interests, obligations or remedies hereunder. This Agreement and all of its provisions will be binding upon and will enure to the benefit of the Parties and their respective successors and permitted assigns.

9.3 Neither this Agreement nor any of the rights, interests, or obligations under this Agreement may be assigned by any Party, without the prior written consent of the other Party, which consent will not be unreasonably withheld.

9.4 Neither Party may assign its obligations hereunder, or any portion thereof, without the prior written consent of the other Party hereto, provided that the Supplier may engage consultants to assist it in fulfilling its responsibilities under this Agreement without in any manner relieving the Supplier of the obligation and liability therefor.

9.5 Nothing in this Agreement will create or be deemed to create a relationship of partners, joint venturers, fiduciary, principal and agent or any other relationship between the Crown and the Supplier.

9.6 This Agreement does not confer on either Party the authority to bind the other or to assume or create any obligation or responsibility expressed or implied on the other's part, or in its name, nor will it represent to anyone that it has such power or authority, except as expressly provided in this Agreement.

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

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

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

9.10 Each of the Parties shall, from time to time on written request of another Party, do all such further acts, deeds, documents, assurances and things as may be reasonably required in order to fully perform and to more effectively implement and carry out the terms of this Agreement.

9.11 This Agreement may be terminated at any time by the Minister, or upon the agreement of the Parties. This Agreement shall terminate upon the later of (i) the completion of all regulatory approvals, permits and other authorizations and the exhaustion of any appeals or judicial proceedings in relation to the Project, unless these are considered by both Parties not to be material, and (ii) the completion of construction and entry into Commercial Operation (as defined in the St. Marys CHP III PPA) of the Project.

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

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, as represented by the Minister of Energy

Per: ______________________________

Name: ●

Title: ●

XYZ CORPORATION

Per: ______________________________

Name: ●

Title: ●

I have authority to bind the Corporation.

EXHIBIT X

FORM OF SUPPLIER'S CERTIFICATE RE COMMERCIAL OPERATION

SUBMIT BY E-MAIL (PDF WITH SIGNATURE) TO contract.management@powerauthority.on.ca

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

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

WHEREAS Section 2.5(a)(iv) of the St. Marys CHP III PPA (the "Agreement") between [Supplier Short Name]. and the Buyer dated as of [Contract Date] provides that the Facility will be deemed to have achieved Commercial Operation at the point in time when, *inter alia*, the Buyer has received a certificate (this "Certificate") addressed to it from the Supplier containing certain statements with respect to the Facility, in addition to a separate IE Certificate referenced in Exhibit AA of the Agreement;

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

a) [Independent Engineering Company Legal Name] is:

(i) duly qualified and licensed to practice engineering in the province of Ontario and which holds a certificate of authorization issued by Professional Engineers Ontario;

(ii) does not have a vested interest in the design, engineering, procurement, construction, metering and/or testing of the facility; and

(iii) not an affiliate of [Supplier Short Name] nor directly or indirectly Controlled by [Supplier Short Name].

b) [Supplier Short Name] has provided to the Buyer the following documentation required to be so provided at or prior to Commercial Operation:

i) Certificate of an independent professional engineer using OPA's "Form of Independent Engineer Certificate" (OPACM-Form-016) in accordance with Section [No.] of Agreement;

ii) As-built single line diagram in accordance with Section [No.] of the Agreement;

iii) Insurance certificates required pursuant to Section [No.] of the Agreement, including without limitation, certificates in respect of:

1) All-risk property insurance;

2) Equipment breakdown insurance (if applicable);

3) Commercial general liability insurance; and

4) Environmental/pollution liability insurance;

iv) Workplace Safety and Insurance Act (Ontario) clearance certificate pursuant to Section [No.];

v) Metering Plan that has been approved by the Buyer; pursuant to Section [No.];

vi) Performance Test Plan that has been approved by the Buyer pursuant to Section [No.];

vii) Long Term Operating Plan pursuant to Section [No.];

viii) Annual Operating Plan pursuant to Section [No.]; and

ix) Ontario Energy Board Generator License pursuant to Section 2.9(b).

Signed this [Day] day of [Month, Year] .

[Legal Name of Supplier]

Per: ______________________________

Name: [Name]
Title: [Title]

OPA
Ontario Power Authority

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Suite 1600
Toronto, Ontario M5H 1T1
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F 416-967-1947
www.powerauthority.on.ca

EXHIBIT Y

FORM OF LONG TERM OPERATING PLAN

SUBMIT BY E-MAIL TO
contract.management@powerauthority.on.ca

Pursuant to Section [No.] of the Contract, the Supplier is hereby submitting this Long Term Operating Plan to the Buyer. Capitalized terms not defined herein have the meanings ascribed thereto in the Contract.

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

1. Contract Capacity

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

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2. Unit Outages

2.1 Planned Outages

Assumptions:

Contract Year	Year	Unit 1	Unit 2	Unit 3	Unit 4	Unit 5	Unit 6
		Planned Outages (Days)					
1							
2							
3							
4							
5							
6							
7							
8							
9							
10							

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2.2 Unplanned Outages

Assumptions:

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

3. Overall Availability

Assumptions:

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

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EXHIBIT Z

FORM OF ANNUAL OPERATING PLAN

SUBMIT BY E-MAIL TO
contract.management@powerauthority.on.ca

Pursuant to Section [No.] of the Contract, the Supplier is hereby submitting this Annual Operating Plan to the Buyer. Capitalized terms not defined herein have the meanings ascribed thereto in the Contract.

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

1. Contract Capacity

Contract Capacity (MW-electrical)					
NEW AND CLEAN CONDITION					
As Applicable		As Applicable		As Applicable	
Season 1		Summer		Year	
Season 2					
Season 3		Winter			
Season 4					
Annual Average Contract Capacity					

Contract Capacity (MW)					
CONTRACT CAPACITY FOR THE CONTRACT YEAR					
As Applicable		As Applicable		As Applicable	
Season 1		Summer		Year	
Season 2					
Season 3		Winter			
Season 4					
Annual Average Contract Capacity					

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2. Unit Outages

2.1 Planned Outages

Assumptions:

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

2.2 Unplanned Outages

Assumptions:

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

3. Overall Availability

Assumptions:

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

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FORM OF INDEPENDENT ENGINEER CERTIFICATE
(COMBINED HEAT AND POWER)
contract.management@powerauthority.on.ca

OPACM-FORM-016C(2009-01)

EXHIBIT AA

FORM OF INDEPENDENT ENGINEER'S CERTIFICATE RE COMMERCIAL OPERATION

SUBMIT BY E-MAIL (PDF WITH SIGNATURE) TO contract.management@powerauthority.on.ca

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

Date	
Legal Name of Supplier	
Name of Facility	
Agreement Title	(the "Agreement")
Agreement Date	
Legal Name of Independent Engineer	

WHEREAS subsection [No.] of the Agreement between the Supplier and the Buyer dated as of [Contract Date] provides that the Facility will be deemed to have achieved Commercial Operation at the point in time when, *inter alia*, the Buyer has received a certificate (this "Certificate") addressed to it from an Independent Engineer containing certain statements with respect to the Facility;

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

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

(i) the Undersigned is duly qualified and licensed to practice engineering in the province of Ontario;

(ii) the Undersigned is neither an employee nor a consultant of the Supplier such that the majority of either the time or billings of the Undersigned during the 18 month period prior to the date hereof were devoted to the Facility;

(iii) the Undersigned is not an affiliate of the Supplier nor directly or indirectly Controlled by the Supplier;

(iv) the Facility has been completed in all material respects, excepting punch list items that do not materially and adversely affect the ability of the Facility to operate in accordance with the Agreement;

(v) the Connection Point of the Facility is at the location specified in Exhibit A of the Agreement;

(vi) the Facility has been constructed, connected, commissioned and synchronized to the IESO-Controlled Grid, a Local Distribution System or an End-User Load such that at least 100% of the Average Seasonal Contract Capacity for the Facility is available to generate Electricity in compliance with Good Engineering and Operating Practices;

(vii) the Facility has successfully undertaken a performance test in accordance with recognized standards demonstrating the maximum capacity of the Facility and that the Facility has met the Average Seasonal Contract Capacity and the Minimum UHO Requirement for the Season in which the performance test took place. A copy of the performance test report is to be attached to the IE Certificate;

(viii) the Independent Engineer reviewed the Metering Plan approved by the Buyer and all calculations have been performed in accordance therewith; and

(ix) the Facility has, for four (4) continuous hours, using Primary Fuel and in compliance with all Laws and Regulations:

> (A) generated Measured Electricity at an uninterrupted rate, in each of such hours, of not less than 100% of the Average Seasonal Contract Capacity for the Season in which such generation took place multiplied by one hour; and
>
> (B) generated and delivered Measured UHO to the Host Facility at an uninterrupted rate, in each of such hours during which Measured Electricity was generated in subsection (ix)(A) above of this Certificate, that satisfies the Minimum UHO Requirement. For greater certainty: (i) if the Measured UHO does not satisfy the Minimum UHO Requirement, the Measured Electricity will not be adjusted with respect to such shortfall and `the Facility will not satisfy the Minimum UHO Requirement, and (ii) the Host Facility must accept the UHO.

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FORM OF INDEPENDENT ENGINEER CERTIFICATE
(COMBINED HEAT AND POWER)

contract.management@powerauthority.on.ca

Signed this	[Day]	day of	[Month, Year]	.

			[Legal Name of Independent Engineer]	
			Per:	
				Name: [Name, P.Eng.]
				Title: [Title]

			Professional Engineer Stamp of Signing Engineer

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APPENDIX A

To Independent Engineer Certificate

PERFORMANCE TEST REPORT