



**GREEN OPTIONS PARTNERS PROGRAM
POWER PURCHASE AGREEMENT**

MADE THE • DAY OF •

BETWEEN

SASKATCHEWAN POWER CORPORATION

and

[SUPPLIER]

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DRAFT

**GREEN OPTIONS PARTNERS PROGRAM
POWER PURCHASE AGREEMENT**

THIS AGREEMENT made the ___ day of _____, 2011

BETWEEN:

SASKATCHEWAN POWER CORPORATION, a Crown corporation incorporated under *The Power Corporation Act*, (Saskatchewan) (“SaskPower”)

- and -

•, a body corporate with its head office in the City of •, in the Province of •,
 (“Supplier”)

WHEREAS Supplier is prepared to develop, design, finance, construct, commission, own, maintain and make available facilities for the generation of electrical energy;

AND WHEREAS Supplier is desirous of selling the electrical generation capacity, associated electrical energy and any associated environmental credits available from such facilities to SaskPower;

AND WHEREAS SaskPower is prepared to enter into an agreement with Supplier for the purchase and supply of such capacity, electrical energy and environmental credits on the terms and conditions set forth in this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement the Parties agree as follows:

1. INTERPRETATION

1.1 Definitions

In this Agreement, the following words and expressions, wherever used, shall have the following meanings:

- (a) “Affected System” means an electric system other than the Distribution System or Transmission System that may be affected by the interconnection of the Facilities to the Distribution System;
- (b) “Affiliate” means, as applied to any Person, any other Person directly or indirectly controlling, controlled by, or under common control with, that Person. For the purposes of this definition, “control” (including with correlative meanings, the terms “controlling”, “controlled by” and “under common control with”), as applied to any Person, means the possession, directly or indirectly, of the power to either (i) elect a majority of the directors of that Person, or (ii) direct or cause the direction of the management or policies of that Person, whether through the ownership of securities or partnership or other ownership interests, by contract or otherwise;
- (c) “Agreement” means this instrument (c) and all schedules hereto, as amended from time to time, and the expressions “herein”, “hereto”, “hereof”, “hereby”, “hereunder”, and similar expressions referred to in

this instrument shall refer to this instrument and all schedules hereto as so defined and not to any particular article, section, subsection or other subdivision hereof;

- (d) "Ancillary Services" means those services identified in the Green Options Technical Requirements (if applicable) and services including but not limited to operating or spinning reserve, that are necessary to support the transmission of capacity and energy from resources to loads while maintaining reliable operation of the Transmission Service Provider's transmission system;
- (e) "Animal" means a non-human being with a developed nervous system;
- (f) "Applicable Reliability Standards" means the NERC standards or MRO standards adopted or amended by SaskPower or any other reliability standards that have been adopted by SaskPower;
- (g) "Auxiliary Equipment" has the meaning ascribed to that term in Section 6.1(c);
- (h) "Business Day" means any day other than a Saturday, Sunday or Statutory Holiday in the Province of Saskatchewan;
- (i) "Capacity" means the actual capacity, as measured and calculated in MW for each Hour, of the Facilities to generate and deliver Metered Energy to the Point of Change of Ownership, if the status of the Distribution System or Transmission System did not interfere with synchronization;
- (j) "Claim" or "Claims" means any claim, demand, action, proceeding, regulatory investigation or order;
- (k) "COD" or "Commercial Operation Date" means the date the Facilities have passed all of the COD Tests, provided, however, this date may not be more than three months earlier than Target COD;
- (l) "COD Tests" means the tests and requirements described in Schedule C;
- (m) "Commercial Operation" means the Facilities have passed all of the COD Tests;
- (n) "Construction Milestones" means the events described in Schedule B;
- (o) "Construction Period" means the period that commences on the date of execution hereof and terminates when the Facilities pass all of the COD Tests;
- (p) "Curtail" or "Curtailment" means to reduce the output of the Facilities;
- (q) "Curtailment Request" means a request issued, in a form specified by SaskPower to the Supplier to Curtail the Facilities;
- (r) "Derate" means the Facilities' Nameplate Capacity less the Capacity actually available to generate electricity;
- (s) "Direct Assignment Facilities" means facilities or portions of facilities that are constructed, owned and operated by SaskPower for the sole purpose of interconnecting the Facilities and ICIFs to the Distribution System. Direct Assignment Facilities shall not include Network Upgrades
- (t) "Distribution System" means the facilities owned, controlled or operated by SaskPower that are used to distribute electricity to SaskPower customers or are facilities used to collect electricity for the purpose of delivering power to the Transmission System;

- (u) “Electric Service Requirements” means SaskPower’s Electric Service Requirements document, as amended from time to time by SaskPower in its sole discretion, available in hardcopy or in PDF format on the SaskPower webpage www.saskpower.com and any revisions thereto. For the purposes of interpretation of this Agreement, the word “consumer” in the Electric Service Requirements document shall be replaced with the words “Supplier”;
- (v) “Eligible Technology” means a generating technology described in Schedule F;
- (w) “Energy Tariff” means the tariff as specified in Section 1.1 of Schedule D;
- (x) “Environmental Attributes” has the meaning given to that term in subsection 1.1(d) of Schedule E;
- (y) “Environmental Incentive” has the meaning given to that term in Section 18.3;
- (z) “Environmental Tax” has the meaning given to that term in Section 18.4;
- (aa) “Facilities” means, without limitation, all the electrical apparatus and equipment owned and operated by Supplier and used for the purpose of generating Metered Energy, as more particularly described in Schedule A. For clarity, the ICIFs form part of the Facilities;
- (bb) “Final SM Notice” has the meaning ascribed thereto in Section 5.3;
- (cc) “Force Majeure” has the meaning ascribed to that term in Section 13.2;
- (dd) “Forced Outage” means an Outage of the nature described in clause (i) of the definition of the term Outage;
- (ee) “Generator Interconnection Agreement” or “GIA” means the agreement entered into between the Supplier and the Transmission Service Provider governing the interconnection of the Supplier’s Facilities with the Distribution System or Transmission System and the interconnection standards, requirements and operating practices associated therewith;
- (ff) “Good Operating Practice” means recognized practices, methods and acts together with the exercise of that degree of skill, diligence, prudence and foresight that would be reasonably expected from operators of facilities similar to the Facilities or the Distribution System or Transmission System, as applicable, under conditions comparable to those applicable in respect of the Facilities or the Distribution System or Transmission System, as applicable in light of the known facts or facts which should reasonably have been known at the time and consistent with applicable Laws, and having regard to the need for:
 - (i) adequate materials;
 - (ii) suitable personnel;
 - (iii) appropriate operating and maintenance procedures;
 - (iv) on-going monitoring and testing of facility performance to ensure compliance with all applicable Laws and license requirements; and
 - (v) safe operating procedures;

and is not restricted to the optimum practice or course of action to the exclusion of all others, but rather

to a spectrum of recognized practices, methods and acts applicable to the circumstances;

- (gg) “Green Options Technical Requirements” means the SaskPower document, which supplements the Non-Utility Generation Interconnection Requirements, that contains additional technical requirements for interconnection of the Facilities to the Distribution System;
- (hh) “GST” means the Goods and Services Tax as provided for in the Excise Tax Act (Canada), or any successor or replacement Laws;
- (ii) “Hour” means a period beginning at 00:00:00 minutes in any hour of a day and ending at 00:00:00 minutes in the immediately following hour of that day;
- (jj) “Indemnitee” means the Indemnitee as identified and referred to in Article 16;
- (kk) “Indemnitor” means the Indemnitor as identified and referred to in Article 16;
- (ll) “Interconnection Customer’s Interconnection Facilities” or “ICIFs” means all facilities and equipment between the generating facility and the Point of Change of Ownership, including any modification, additions or upgrades that are necessary to physically and electrically interconnect the generating facility to the Distribution System. ICIFs are sole use facilities and do not include Network Upgrades;
- (mm) “Interconnection Studies” means engineering studies, which may include, but are not limited to, Interconnection Feasibility Studies, Interconnection System Impact Studies or any other studies required by SaskPower that, among other things: (i) evaluate the impact of the proposed interconnection on the safety and reliability of the Distribution System and/or Transmission System and, if applicable, an Affected System; (ii) provide technical requirements to be met by the Supplier in order to interconnect to SaskPower’s facilities; and/or (iii) provide an estimated level of costs to be incurred by the Supplier in order to interconnect;
- (nn) “Interest Rate” means the rate of interest expressed as a rate per annum, which is used by the Royal Bank of Canada or its successor as a reference rate for the purposes of determining rates of interest charged by it on Canadian dollar commercial demand loans made by it in Canada and which is quoted by such bank, from time to time as its “prime rate”;
- (oo) “ISO Conditions” means 15 degrees Celsius, 60% relative humidity, 101.325 kPa and sea level for non-wind Facilities and a standard air density of 1.225 kg/ m³ for wind Facilities;
- (pp) “Laws” means all federal, provincial, local and municipal statutes, laws, by-laws, rules, codes, ordinances, permits, regulations and any industry standards in effect from time to time and made or issued by governmental authorities, administrative tribunals, regulatory bodies, industry associations or courts having jurisdiction over the Parties, the Facilities, the Distribution System or Transmission System or any of them;
- (qq) “Liquidated Damages” means the amount which may be due to a Party from the other Party in the circumstances specifically described in subsection 4.4(e);
- (rr) “Loss” or “Losses” means injury or death, damage to or loss of property, costs, losses, damages, liabilities, fines, interest, penalties, legal fees and expenses arising from any Claim;
- (ss) “Metered Energy” means the electrical energy generated by the Facilities, net of electrical energy generated and concurrently consumed by the Facilities, metered at the Metering Equipment and

corrected for all losses to the Point of Change of Ownership, if applicable, and which shall be measured on an hourly basis in MWh;

- (tt) "Metering Equipment" means all metering equipment to measure electrical energy and capacity delivered at the Point of Change of Ownership, including but not limited to instrument transformers, MWh-meters, data acquisition equipment, transducers, and associated equipment;
- (uu) "MRO" means Midwest Reliability Organization or its successor organization;
- (vv) "MW" means megawatt;
- (ww) "MWh" means megawatt hour;
- (xx) "Nameplate Capacity" means • <to be completed> MW at ISO Conditions;
- (yy) "NERC" means North American Electric Reliability Corporation or its successor organization;
- (zz) "Network Upgrades" means additions, modifications and upgrades to the Distribution System and/or Transmission System required to accommodate the interconnection of the Facilities to the Distribution System. Network Upgrades benefit both the Interconnection Customer and other SaskPower customers;
- (aaa) "Noise" means an unwanted sound and includes, but is not limited to, sound emitted from mechanical and aerodynamic sources;
- (bbb) "Non-Eligible Technology Energy Tariff" has the meaning ascribed thereto in Section 1.4 of Schedule D;
- (ccc) "Non-Utility Generation Interconnection Requirements" means SaskPower's "Generation Interconnection Requirements at Voltages 34.5 kV and Below" document, as amended from time to time by SaskPower in its sole discretion, available in hardcopy or in PDF on the SaskPower web page at www.saskpower.com;
- (ddd) "Operating Committee" means the committee as constituted pursuant to Section 5.1;
- (eee) "Operating Practice" means an agreement of the Parties governing operating matters respecting the interconnection of the Facilities to SaskPower's Distribution System;
- (fff) "Operating Requirements" means the Non-Utility Generation Interconnection Requirements, the Electric Service Requirements, the Operating Practice, the Green Options Technical Requirements and any requirements set out in the Interconnection Studies;
- (ggg) "Operating Year" means a 12 month period commencing January 1 and ending on the following December 31 except that the first Operating Year shall commence on COD and the last Operating Year shall end at the end of the Supply Period;
- (hhh) "Outage" means any period during which the Facilities, or any material part thereof, are not operational because of:
 - (i) the occurrence of any condition, component failure, equipment breakdown or similar event that results in or requires, in accordance with Good Operating Practices, the Facilities or any material portion thereof to be removed from service or derated for inspection, repairs and/or replacements to restore normal operability; or

- (ii) a decision by Supplier to shut down (other than for a Scheduled Maintenance Period) some or all of the Facilities to effect maintenance activities that, in accordance with Good Operating Practices, should not be deferred until the next Scheduled Maintenance Period;
- (iii) "Outage Notification" means the notice to be provided by Supplier to SaskPower in the circumstances described in subsection 5.4(c);
- (jjj) "Parties" means SaskPower and Supplier;
- (kkk) "Party" means SaskPower or Supplier, as applicable;
- (lll) "Person" means and includes natural persons, corporations, limited partnerships, general partnerships, joint stock companies, joint ventures, associations, companies, limited liability companies, trusts, banks, trust companies, land trusts, business trusts or other organizations, whether or not legal entities, and governments and agencies and political subdivisions thereof;
- (mmm) "Point of Change of Ownership" means the point(s) at which the ICIFs connect with the Distribution System as shown in Schedule A;
- (nnn) "Pre-COD Energy Tariff" has the meaning ascribed thereto in Section 1.2 of Schedule D;
- (ooo) "Project Agreements" means this Agreement and the GIA;
- (ppp) "PSCAD" means the simulation tool for studying transient behaviour of electrical networks by Manitoba HVDC Research Centre or successor or replacement;
- (qqq) "PSS/E" means the software tool Power System Simulator for Engineering developed by Siemens or successor or replacement;
- (rrr) "PST" means the provincial sales tax as provided for in The Provincial Sales Tax Act (Saskatchewan) or any successor or replacements Laws;
- (sss) "SCADA" means the supervisory control and data acquisition system used by SaskPower;
- (ttt) "Scheduled Maintenance Period" means any period during which the Facilities are, pursuant to Section 5.3, shut down in whole or in part for scheduled maintenance of the Facilities and the Capacity of the Facilities is reduced by more than 1 MW;
- (uuu) "Site" means the land owned, or controlled, by the Supplier for the purposes of constructing and operating the Facilities;
- (vvv) "Station Service" means the electrical energy requirements of the Facilities to generate electrical energy as measured by the Metering Equipment;
- (www) "Statutory Holiday" means those days, that have been specifically legislated as public holidays by the Legislature of the Province of Saskatchewan which, as of the date of this Agreement and until changed by the Legislature, will include New Year's Day, Family Day, Good Friday, Victoria Day, Canada Day, Saskatchewan Day, Labour Day, Thanksgiving, Remembrance Day, and Christmas Day;
- (xxx) "Supply Period" means the period that commences on COD and terminates on the day immediately preceding the 20th anniversary <the Supplier may select the 20th, 30th or 40th anniversary for hydro based generation> thereof provided that the termination date shall be extended by the number of days,

if any, provided for in subsections 13.1(d) and 13.1(e) in respect of Force Majeure suffered and invoked in accordance with Article 13 to a maximum of 730 such days in the aggregate;

- (yyy) "Target COD" means the date for Target COD identified in Schedule B as such date is extended (without duplication) by (A) the number of days, if any, that either Party suffers and invokes Force Majeure prior to COD in accordance with Article 13; and (B) the number of days extension provided for in subsection 4.4(c);
- (zzz) "Target SaskPower Direct Assignment Facilities and Network Upgrades Completion Date" or "Target SaskPower Completion Date" means the date identified in Schedule B upon which the construction and commissioning of the Direct Assignment Facilities and Network Upgrades are to be completed;
- (aaaa) "Threshold Size" means Facilities with a Nameplate Capacity greater than 1 MW;
- (bbbb) "Transmission or Distribution Outage" has the meaning ascribed thereto in Section 6.3;
- (cccc) "Transmission Service Provider" means SaskPower's Transmission and Distribution Business Unit and any successors or assigns;
- (dddd) "Transmission System" means the facilities owned, controlled or operated by SaskPower that are used to provide transmission service to SaskPower customers (or to provide transmission service under OATT); and
- (eeee) "Turbine" means an individual wind turbine installed as part of the Facilities for the purpose of producing Metered Energy.

1.2 Schedules

The schedules of this Agreement are as follows:

Schedule A	-	Description of Facilities
Schedule B	-	Key Milestone Dates
Schedule C	-	COD Tests
Schedule D	-	Tariff and Pricing Schedule
Schedule E	-	Environmental Benefits and Compliance
Schedule F	-	Eligible Technology

1.3 Headings

The division of this Agreement into articles, sections and subsections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation hereof.

1.4 Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the Province of Saskatchewan and the federal laws of Canada applicable therein and the Parties shall attorn to the courts of the Province of Saskatchewan.

1.5 Generator Interconnection Agreement

The Supplier shall enter into a Generator Interconnection Agreement with the Transmission Service Provider, in the form provided by the Transmission Service Provider, concurrently with the execution of this Agreement or promptly after the execution of this Agreement upon SaskPower's request.

2. TERM

2.1 Effective Date and Term

This Agreement shall be effective on the date of execution hereof and shall continue until the last day of the Supply Period, provided that this Agreement may terminate earlier or be extended as expressly provided herein. The payment obligations of either Party outstanding at termination shall continue until paid, and those provisions which expressly survive termination of the Agreement shall survive as expressly stated.

3. PURPOSE OF AGREEMENT

3.1 General Statement of Intention

The central purpose of this Agreement is to record the basis upon which the Facilities will be constructed and commissioned, and upon which the electrical generation capabilities of the Facilities, and the associated electrical energy actually generated, will be provided by the Supplier to SaskPower and paid for by SaskPower. The Supplier has agreed that it will during the Supply Period reserve for the exclusive benefit of SaskPower the entire Capacity of the Facilities and all Metered Energy generated from the Facilities along with any related Ancillary Services. SaskPower has agreed to pay for such Capacity made available, and for the Metered Energy delivered and Ancillary Services provided, at the rates and on the basis provided for in this Agreement.

This Agreement recognizes that the Supplier is obligated to operate the Facilities during each Hour to achieve the maximum output of Metered Energy after considering wind conditions, if applicable, and maintenance and deliver to SaskPower all associated Metered Energy. In return, SaskPower has agreed to make certain payments to the Supplier in respect of the Metered Energy actually delivered. This agreement is not a “take and pay” agreement. SaskPower has the right to Curtail the Facilities and the right to not take energy due to a Transmission or Distribution Outage as described in Article 6.

The Parties recognize that SaskPower will take delivery of the Metered Energy on the high voltage side of the step up transformer. The Supplier acknowledges that it is obligated to generate electricity using an Eligible Technology and the Supplier recognizes that all environmental benefits that are the result of this project are to the benefit of SaskPower. Article 18 and Schedule E clarify the allocation of environmental costs and benefits.

3.2 Mutual Benefit Arrangements

It is recognized by the Parties that, from time to time throughout the term of this Agreement, it may be in their mutual best interests to enter into shorter term arrangements regarding matters collateral to, but not expressly required or governed by, this Agreement. In such event the Parties through their respective appointees to the Operating Committee may execute a separate instrument which will record such collateral arrangements and which may expressly incorporate by reference all or certain terms of this Agreement, as appropriate.

4. CONSTRUCTION AND COMMISSIONING

4.1 Generator Interconnection Agreement

- (a) Concurrently with execution or as soon as possible after the execution and delivery of this Agreement, Supplier shall execute and deliver to the Transmission Service Provider a GIA in such form as agreed to by the Transmission Service Provider. A breach or default by the Supplier under the GIA, which if not cured could result in the termination of such agreement, constitutes a default under this Agreement.
- (b) Supplier acknowledges that the Non-Utility Generation Interconnection Requirements do not allow completion of the electrical tie-in of Facilities until the GIA is executed and delivered to the Transmission Service Provider.

4.2 Construction Milestones

Supplier agrees to use all reasonable efforts to achieve its respective milestones dates as indicated in Schedule B.

4.3 Facilities

(a) Supplier shall:

- (i) complete, or cause to be completed, on the lands owned, leased or otherwise legally possessed by it identified in Schedule A, the construction and commissioning of the Facilities; and
- (ii) use all reasonable efforts to achieve Commercial Operation by the Target COD.

(b) Supplier shall design and construct the Facilities substantially in accordance with Schedule A and shall construct, commission, maintain and make available the Facilities in accordance with this Agreement, all applicable Laws and Good Operating Practice.

(c) Subject to subsection 4.3(e), Supplier shall comply with the Operating Requirements in the construction, commissioning, operation and maintenance of the Facilities.

(d) Subject to subsection 4.3(e), Supplier shall comply with the Applicable Reliability Standards in the construction and commissioning of the Facilities. Without restricting the generality of the foregoing, Supplier shall ensure that all electrical equipment forming part of the Facilities and all electrical installations comply with the Applicable Reliability Standards.

(e) If the requirements of the Applicable Reliability Standards, or the Operating Requirements are modified after the date of this Agreement, Supplier shall have a reasonable amount of time within which to comply with such modification, at the direction of SaskPower, and if such modification increases or decreases the cost to Supplier of constructing, commissioning, operating or maintaining the Facilities or otherwise creates a liability for or confers a benefit on Supplier, such increased or decreased cost or such liability or benefits shall, subject to Section 19.4, be passed on to SaskPower as a surcharge to or credit against the amounts payable by SaskPower pursuant to Schedule D or be settled as a lump sum payment from SaskPower to Supplier or from Supplier to SaskPower, as established by the Operating Committee. Supplier will use all reasonable efforts to mitigate any such cost increase or liability or take advantage of any such cost decrease or benefit.

(f) Where the requirements of a third party are incorporated by reference into the Operating Requirements or the requirements of the Applicable Reliability Standards, a modification to those requirements by the applicable third party shall be deemed for the purposes of subsection 4.3(e) to be a modification of the Operating Requirements or Applicable Reliability Standards.

(g) The Supplier shall, at its cost, provide SaskPower PSS/E power flow, short circuit and dynamic models representing the Facilities and PSCAD models for use in SaskPower's system analysis studies. PSS/E and PSCAD models shall be in versions acceptable to SaskPower. If proprietary models are being submitted, then non-proprietary models must be submitted as well. The Supplier shall, at its cost, provide updated versions of the PSS/E and PSCAD models as requested by SaskPower.

4.4 SaskPower's Direct Assignment Facilities and Network Upgrades

(a) Provided that Supplier complies with its material obligations under the GIA, SaskPower shall, in accordance with the GIA, use all reasonable efforts to design, apply for permits, obtain permits, construct and commission the Direct Assignment Facilities and the Network Upgrades by the Target

SaskPower Completion Date. It is recognized by the Supplier that SaskPower will not be in default of its obligations under this subsection if delays are experienced because of an event of Force Majeure invoked by SaskPower in accordance with Section 13 or if delays are the result of acts or omissions of the Supplier with respect to any Project Agreements or the project.

- (b) If SaskPower is ready to tie-in the Direct Assignment Facilities but is unable to do so because the Facilities are not ready or because Supplier has not executed and delivered the GIA, SaskPower shall be deemed to have completed the Direct Assignment Facilities when it was ready to tie them in and SaskPower shall actually do the tie-in when Supplier is ready or the executed GIA has been delivered, as the case may be.
- (c) If on, or after, the Target SaskPower Completion Date the Facilities are ready for commissioning but the Direct Assignment Facilities and the Network Upgrades are not complete because SaskPower has not completed the Direct Assignment Facilities and the Network Upgrades as contemplated by subsection 4.4(a), the Target COD shall be extended by the number of days that elapse after the later of (i) Target SaskPower Completion Date; or (ii) the date the Supplier's Facilities are ready for commissioning until the Direct Assignment Facilities and the Network Upgrades are complete and SaskPower has given Supplier written notice to that effect. The Target COD shall not be extended for any day of delay in the completion of the Direct Assignment Facilities and the Network Upgrades that was caused by acts or omissions of the Supplier.
- (d) Provided SaskPower uses reasonable efforts as contemplated by subsection 4.4(a), SaskPower shall not be in breach of this Agreement and Supplier shall not be entitled to any compensation of any kind whatsoever for delays beyond Target SaskPower Completion Date.
- (e) If SaskPower breaches its obligation under subsection 4.4(a) in respect of the completion of the Direct Assignment Facilities and the Network Upgrades, for the period commencing on the later of: (i) Target SaskPower Completion Date; or (ii) the date the Supplier's Facilities are ready for commissioning; and continuing until the Direct Assignment Facilities and the Network Upgrades are complete and SaskPower has given Supplier written notice to that effect, SaskPower shall pay Supplier, as Liquidated Damages and not as penalty, the amount of \$250.00 per MW per calendar day of delay (up to a maximum of 365 days) for each MW of Nameplate Capacity. In this case the Supplier shall perform the commissioning and the COD Tests as soon as possible after the Direct Assignment Facilities and Network Upgrades are completed and, if the COD Tests are not passed within the number of days between the Target SaskPower Completion Date, as initially agreed to by the Parties and the Target COD date, as initially agreed to by the Parties, Supplier shall promptly repay all amounts paid by SaskPower pursuant to this subsection 4.4(e). For clarity, SaskPower is not responsible to provide any compensation to the Supplier for days of delay that were the result of acts or omissions of the Supplier with respect to the GIA or this Agreement
- (f) Any Liquidated Damages payable by SaskPower pursuant to subsection 4.4(e) shall be paid to Supplier on a monthly basis, within 10 Business Days after receipt of an invoice from Supplier.

4.5 Exchange of Information

Each Party shall, at its own expense, deliver to the other as and when reasonably required all information within its possession or control required of it by the other for the other to comply with its obligations under this Article 4.

4.6 Monthly Construction Reports

By the seventh calendar day of each month during the Construction Period, the Supplier shall provide to SaskPower a status report on the construction and installation of the Facilities, including but not limited to, the following information:

- (i) progress to date;
- (ii) a description of the activities since the last report;
- (iii) a description of the action items for the next period;
- (iv) the delivery status of equipment ordered; and
- (v) the estimated date when the Facilities are expected to be completed.

4.7 Verification of Monthly Construction Reports

SaskPower, by or through its designated employees or agents, shall have, at any time during the Construction Period, upon reasonable prior notice to Supplier and after complying with all site safety requirements of Supplier, the right to access, at its own risk and expense, the construction site and the Facilities for the purpose of verifying the monthly reports given pursuant to Section 4.6.

4.8 Regulatory Approvals

- (a) Supplier shall procure and maintain in full force and effect all necessary permits, licenses and approvals required by Laws to construct and operate the Facilities or which are otherwise required for the performance of its obligations under this Agreement.
- (b) Supplier shall provide to SaskPower copies (in an electronic pdf format) of all approvals obtained by Supplier in respect to any permit, license or approval referred to in subsection 4.8(a), within 15 Business Days of the receiving the approval.

4.9 COD Tests

When, in the opinion of Supplier, the Facilities are ready for the COD Tests, Supplier and SaskPower shall conduct the COD Tests in accordance with the notice requirements and other procedures set forth in Schedule C. The compensation payable by SaskPower in connection with COD Tests is set forth in Section 1.2 of Schedule D. The Supplier shall issue to SaskPower the COD Certificate included as part of Schedule C when the Supplier has achieved COD.

4.10 Aboriginal Duty to Consult

The Supplier acknowledges and agrees: (i) SaskPower may not undertake First Nations or Métis people duty to consult obligations applicable to SaskPower until this Agreement is executed by both Parties; and (ii) notwithstanding any provision of Article 13, the circumstances described in subsection 4.10(i) do not preclude SaskPower from being able to claim Force Majeure under Article 13.

5. OPERATION AND MAINTENANCE

5.1 Operating Committee

- (a) The Operating Committee shall be struck within 30 days after signing this Agreement and shall consist of two regular and two alternate members, one regular and one alternate being appointed by each Party. An alternate member may act in the place of a regular member in the event that the regular member is

unable to act. Each of the Parties shall notify the other of the identity of its regular and alternate members. Each Party shall make reasonable efforts to maintain continuity of its members on the Operating Committee.

- (b) The Operating Committee shall meet at locations and times, to be agreed to, upon the request of either Party. Quorum for any Operating Committee meeting requires one Operating Committee member from each Party.
- (c) The Operating Committee shall be a forum for the Parties to discuss matters which arise in connection with this Agreement and shall be charged with attempting to resolve disputes referred to it pursuant to Section 14.1.
- (d) The decisions of the Operating Committee shall be unanimous.
- (e) Each Party shall be responsible for the expenses incurred by its members of the Operating Committee. Any and all other expenses incurred by the Operating Committee shall be shared equally by SaskPower and Supplier unless otherwise mutually agreed to in writing.
- (f) The Parties agree that nothing in this Article 5 shall be construed as authorizing the Operating Committee to amend the terms of this Agreement or the other Project Agreements or as relieving either of the Parties from performing and carrying out any of their covenants, obligations and agreements herein contained, nor shall it be construed as excluding any remedy available to either of the Parties pursuant to the Agreement, the other Project Agreements or at law regarding any matter referred to the Operating Committee hereunder.
- (g) The Parties agree to cooperate as reasonably required to provide the Operating Committee any information requested by it for the purposes of this Agreement.
- (h) Notwithstanding any other provisions of this Section 5.1 and any other provision of this Agreement dealing with the Operating Committee, a Party will not be in breach of this Agreement if its Operating Committee representative(s) take the position in respect of a matter that comes before the Operating Committee that they do not have authority to make a decision that is legally binding upon the Party they represent and in such circumstances in order for such Party to be legally bound in respect of a proposed agreement, waiver, settlement or other resolution of the applicable matter that has come before the Operating Committee such Party may only be legally bound by its properly authorized officers.

5.2 Standard of Operations and Maintenance

In order to optimize its ability to meet its obligations under this Agreement and the GIA, including its obligations to provide, recognizing the variable nature of wind and solar, a reliable source of Capacity and electrical energy for SaskPower, Supplier agrees to operate and maintain the Facilities during the Supply Period at its sole cost and expense in accordance with Good Operating Practices. Without limiting the generality of the foregoing, Supplier will use the Scheduled Maintenance Periods and any Outages only to perform maintenance and repair activities determined to be necessary in accordance with Good Operating Practices and having regard to its obligations hereunder to provide, recognizing the variable nature of wind and solar, a reliable source of Capacity and Metered Energy to SaskPower.

5.3 Scheduled Maintenance

Without restricting the generality of Section 5.2, Supplier may undertake scheduled maintenance of the Facilities. In that regard, the Parties agree that Facilities that exceed the Threshold Size shall:

- (a) By September 1 of each year commencing after COD, Supplier shall deliver to SaskPower a proposed schedule of each Scheduled Maintenance Period which specifies the commencement and duration of all Scheduled Maintenance Periods for the Facilities for the next two Operating Years. Within two months of SaskPower receiving the proposed schedule, the Parties will discuss and agree upon a schedule for the next Operating Year which is consistent with Good Operating Practice;
- (b) Not less than 60 days before the anticipated commencement date of the Scheduled Maintenance Period indicated in such initial notice, Supplier shall provide SaskPower with a further notice (the "Final SM Notice") updating all of the information contained in the initial notice and, in particular, updating the commencement date and duration of the Scheduled Maintenance Period and specifying the expected Derate of the Facilities during the Scheduled Maintenance Period. It is intended that the information in the Final SM Notice will not vary materially from the initial notice, unless reasonably necessary;
- (c) No Scheduled Maintenance Period shall be scheduled or carried out during the months of January and December without SaskPower's prior written approval;
- (d) If it is commercially reasonable to do so, and does not have a material adverse effect on the operation of the Facilities, SaskPower may request Supplier to defer (or advance) the commencement date for a Scheduled Maintenance Period and Supplier will, unless the request is withdrawn pursuant to subsection 5.3(e), use all commercially reasonable efforts to comply with SaskPower's request provided it is consistent with Good Industry Practice, in which case SaskPower will reimburse Supplier against any direct costs reasonably incurred by Supplier due to the deferral or advancement and, if applicable, the difference between expected production and Metered Energy during the period of deferral or advancement.
- (e) If SaskPower makes a request pursuant to subsection 5.3(d), it may, in the same request, require Supplier to, and Supplier shall, provide SaskPower with its best estimate of the expected direct costs attributable to what is being requested, and provided SaskPower does so promptly after receipt of such estimate, SaskPower may withdraw its request.
- (f) If it is commercially reasonable to do so, Supplier may request to defer (or advance) the commencement date for a Scheduled Maintenance Period and SaskPower will, unless the request is withdrawn pursuant to subsection 5.3(g), use commercially reasonable efforts to accommodate Supplier's request provided it is consistent with Good Industry Practice, in which case Supplier will reimburse SaskPower against any incremental costs of securing replacement electrical energy or other direct costs reasonably incurred by SaskPower due to the deferral or advancement.
- (g) If Supplier makes a request pursuant to subsection 5.3(f), it may, in the same request, require SaskPower to, and SaskPower shall, provide Supplier with its best estimate of the incremental costs and other direct costs attributable to what is being requested, and provided Supplier does so promptly after receipt of such estimate, Supplier may withdraw its request.

Subject to the foregoing, it is the intent of the Parties to co-operate in respect of optimizing the scheduling of the Scheduled Maintenance Period and sharing all relevant information in that regard in a timely manner, taking into account the maintenance needs and requirements of SaskPower and Supplier.

5.4 Other Maintenance

- (a) SaskPower recognizes that individual Turbines in wind facilities will routinely be undergoing maintenance and that Forced Outages of individual Turbines will occur. The Supplier shall report the number of Turbines, if any, unavailable to produce Metered Energy in the forecast required by subsection 6.1(e).

- (b) The Supplier shall comply with all Applicable Reliability Standards generating unit outage reporting requirements, as they may be revised from time to time, and as they apply to the Facilities.
- (c) The Supplier acknowledges that when an Outage resulting in a Derate of greater than 1 MW occurs, the Supplier shall notify SaskPower as soon as practical, but in no event later than two hours after the Outage occurs (“Outage Notification”). The notification shall identify the size and expected duration of the Derate. The Supplier shall immediately inform SaskPower of changes in the expected duration of the Derate.

5.5 Right of Inspection

SaskPower, by or through its designated employees or agents, shall have the right at any time during the Supply Period, upon reasonable prior notice to Supplier, to inspect the Facilities, at its own risk and expense, and Supplier’s operating and maintenance records, for the purpose of ascertaining that Supplier is operating the Facilities in accordance with this Agreement and the GIA.

5.6 Maintenance of Direct Assignment Facilities

- (a) SaskPower shall operate and maintain the Direct Assignment Facilities in accordance with the GIA and Good Operating Practice.
- (b) Supplier shall reimburse the Transmission Service Provider for its internal and out-of-pocket costs incurred from time to time in operating and maintaining the Direct Assignment Facilities, in accordance with the GIA.

5.7 Applicable Reliability Standards Compliance

- (a) Supplier shall ensure that the Facilities will be compliant with Applicable Reliability Standards at COD. Subsequent to COD, Supplier shall ensure that the Facilities continue to comply with Applicable Reliability Standards.
- (b) Costs related to the preparation of Applicable Reliability Standards compliance documentation, Applicable Reliability Standards compliance reporting and any preparation for Applicable Reliability Standards compliance audits or self certifications are to be paid by the Supplier as part of normal operating costs.
- (c) SaskPower may, at its discretion, register the Supplier as “Generator Owner” and “Generator Operator” of the Facilities with MRO.
- (d) Supplier shall indemnify and save harmless SaskPower from and against all Claims made or brought against and all Losses suffered by SaskPower as a result of Supplier’s failure to comply with the requirements of the Applicable Reliability Standards.

6. PURCHASE AND SALE OF ELECTRICAL ENERGY

6.1 Supplier Obligations

- (a) The Supplier is required to generate all Metered Energy using an Eligible Technology.
- (b) Supplier is required to deliver all Metered Energy produced by the Facilities to SaskPower at the Point of Change of Ownership. The Supplier may not sell Capacity, Ancillary Services or energy produced by the Facilities to any Person or external market other than SaskPower

- (c) The Supplier is responsible for any equipment necessary to address voltage regulation, reactive power requirements and any other technical requirements as identified in the GIA (“Auxiliary Equipment”). For clarity, the Facilities shall have Auxiliary Equipment that can provide rated reactive power (voltage support) without active power generation. Any cost related to the Auxiliary Equipment or the operations and maintenance of such Auxiliary Equipment is the sole responsibility of the Supplier.
- (d) Facilities that exceed the Threshold Size are responsible for installing and maintaining sufficient measuring equipment at the Facilities to collect the necessary data to reasonably determine the Facilities’ availability and the amount of any Derate. If applicable, the Supplier shall install and maintain sufficient meteorological towers around the site or shall install equivalent wind data reporting equipment on sufficient Turbines to provide the capability of measuring and recording representative wind data for all Hours in the year.
- (e) By noon Saskatchewan time on each Friday during the Supply Period, the Supplier shall provide to SaskPower the Facilities’ expected Derate, if any, by hour for the following two weeks for facilities that exceed the Threshold Size. The Supplier shall provide an update to SaskPower if the expected Derate, if any, by hour changes by more than 1 MW for any given hour.
- (f) For wind generation Facilities that exceed the Threshold Size the Supplier shall provide SaskPower with the data necessary to prepare a forecast for electrical generation from the Facilities. The Supplier is responsible for all costs related to the collection and delivery of the data to SaskPower. The Supplier is responsible for providing the data in a timely manner and in the format required by SaskPower. The data required is identified in the Operating Requirements. Applicable costs incurred by SaskPower in relation to the preparation of the generation forecast will be charged to the Supplier without mark-up.
- (g) The Supplier shall comply with applicable Laws related to: (i) Noise produced by the Facilities; and (ii) the impact the Facilities have on Animals. Any cost or Claim related to Noise management or Animal management is the sole responsibility of the Supplier and the Supplier is not entitled under Section 19.3 to pass on to SaskPower any cost increases or liabilities, related to Noise or Animals and any such cost increases or liabilities are excluded from Section 19.3.

6.2 SaskPower Obligations

- (a) SaskPower shall have the exclusive right and obligation to purchase and take delivery at the Point of Change of Ownership all Metered Energy delivered by the Supplier pursuant to Section 6.1, subject to Sections 6.3, 6.4 and Force Majeure suffered and invoked by SaskPower resulting in an extension to the Supply Period pursuant to Section 13.1, and shall pay the Energy Tariff in accordance with Section 6.5. For clarity, SaskPower is under no obligation to purchase and take delivery of Metered Energy if SaskPower is unable to take delivery of Metered Energy as a result of Force Majeure suffered and invoked by SaskPower pursuant to Article 13.
- (b) SaskPower shall be responsible for the preparation of the forecasts of electrical generation from the Facilities.

6.3 Exceptions – Transmission or Distribution Outages

SaskPower is not required to purchase and take delivery of Metered Energy and is not required to provide compensation to the Supplier for any lost production resulting from Transmission or Distribution Outages. Transmission or Distribution Outages are defined as:

- (i) maintenance completed by SaskPower (either planned or unplanned) on the Distribution System or Transmission System that results in SaskPower being unable to accept delivery of a portion or all of the Metered Energy the Facilities are capable of producing;
- (ii) system security Curtailments, system restoration events or system emergency events that result in SaskPower being unable to accept delivery of a portion or all of the Metered Energy the Facilities are capable of producing; and
- (iii) events originating in respect of the Distribution System or Transmission System that result in a Derate or SaskPower being unable to accept delivery of a portion or all of the Metered Energy the Facilities are capable of producing, including but not limited to, equipment failure or other operating disruptions or conditions impacting the Distribution System or Transmission System.

6.4 Exceptions – Curtailments

- (a) Subject to subsection 6.4(b), SaskPower may for any reason Curtail the output of the Facilities that exceed the Threshold Size to any level of production including zero provided SaskPower compensates the Supplier using the methodology described in Schedule D Section 1.3.
- (b) SaskPower shall not be obligated to compensate the Supplier in the following circumstances:
 - (i) if the Curtailment is due to a failure or limitation of the Supplier's Auxiliary Equipment;
 - (ii) if the Curtailment is due to the Supplier's failure to meet its obligations in Section 6.1;
 - (iii) if the Curtailment is the result of the negligence of the Supplier, is the result of a breach of a Project Agreement by the Supplier or the Supplier's not having operated the Facilities using Good Operating Practice;
 - (iv) if the Curtailment is due to a Force Majeure event as described in Section 13.2; or
 - (v) If the Curtailment is due to a Transmission or Distribution Outage.
- (c) The Supplier shall respond and adjust production as indicated in any Curtailment Request received from SaskPower as soon as possible but in no event later than two hours after the request was issued.
- (d) The form and method of delivery for a Curtailment Request shall be determined by SaskPower and revised as may be required by SaskPower.

6.5 Pricing

- (a) SaskPower shall pay to the Supplier in respect of each calendar month prior to COD in which the Supplier delivers Metered Energy:
 - (i) Compensation for Metered Energy subject to the terms and conditions noted in Section 1.2 of Schedule D;
- (b) Subject to Sections 6.3, 6.4, and Force Majeure invoked by SaskPower resulting in an extension to the Supply Period pursuant to Section 13.1, in consideration of the Supplier providing Capacity and Metered Energy pursuant to Section 6.2, SaskPower shall pay to Supplier in respect of each calendar month of the Supply Period:

- (i) As applicable, the Energy Tariff or Non-Eligible Technology Energy Tariff for each MWh of Metered Energy delivered to SaskPower;
- (ii) Compensation for Curtailments subject to the terms and conditions noted in Sections 6.3 and 6.4 and Schedule D.

7. REPORTING

7.1 Monthly Report

The Supplier shall, for Facilities that exceed the Threshold Size, provide SaskPower a monthly report, by no later than 30 days after the end of each calendar month in the Supply Period, with such information and in such form as SaskPower shall reasonably request in an electronic format or database regarding the operation of the Facilities. Each monthly report shall include:

- (i) The Metered Energy by Hour for the month;
- (ii) The Derates by Hour for the month.

8. END OF TERM

8.1 Decommissioning

The Supplier retains sole responsibility for the decommissioning of the Facilities to the standards required by Laws. The rights and obligations of the Parties pursuant to this Article 8 shall survive termination of this Agreement.

9. STATION SERVICE ARRANGEMENTS

9.1 Availability

- (a) If Station Service is required by Supplier, SaskPower shall deliver and sell to Supplier at the Point of Change of Ownership, Station Service in accordance with SaskPower's applicable tariffs and rules of service of general application.
- (b) The Supplier acknowledges that SaskPower does not guarantee the supply of Station Service and Station Service is subject to outages and interruptions in service. The Supplier shall arrange, at its cost, to have an alternate supply of Station Service available to protect the Facilities, operate safety aviation lights (if applicable), nacelle heating (if applicable), pinning of Turbines (if applicable) and data recording in the event of an interruption in the supply of Station Service. In the event the Supplier does not have an alternate supply of Station Service, or in the event the alternate supply fails, the Supplier shall indemnify SaskPower from any Claims or Losses resulting from or arising out of the interruption in SaskPower's supply of Station Service.
- (c) Title to, risk and control of any Station Service delivered to Supplier under this Agreement shall pass from SaskPower to Supplier at the Point of Change of Ownership.

10. METERING STATEMENT, BILLING STATEMENT AND PAYMENT

10.1 Metering Statement and Billing Statement

- (a) SaskPower and the Supplier will develop a billing model. The billing model will be developed in Microsoft Office and will use inputs from the Metering Equipment and the Facilities as required. Once

complete, Supplier will maintain the billing model and provide updates to SaskPower as required. Each month Supplier will provide updated billing data, as described in subsection 10.1(d), for SaskPower's review and verification.

- (b) Supplier shall provide SaskPower, within three Business Days after the end of each calendar month, the hourly meter data in an electronic format (Microsoft Excel is preferred) for Station Service and Metered Energy delivered during such calendar month.
- (c) Supplier shall prepare and render a monthly metering statement and billing statement regarding Metered Energy no later than ten Business Days after the end of each month.
- (d) The metering statement and billing statement shall, inter alia, contain the following information:
 - (i) regarding electrical energy:
 - A quantity of Metered Energy;
 - B if applicable, payments related to Curtailments;
 - C calculation of the amount payable by SaskPower for the month in accordance with Schedule D;
 - (ii) any amounts owing pursuant to subsection 6.1(f);
 - (iii) any adjustments required as per Section 10.3; and
 - (iv) the net amount payable by SaskPower or Supplier, as the case may be.
- (e) The Parties will develop as soon as practicable after the execution of this Agreement the form of billing statement containing all of the information required pursuant to subsection 10.1(d), to be rendered monthly pursuant to subsection 10.1(c).

10.2 Payment Date

The Parties agree that the net amount payable in each of the billing statements rendered pursuant to Section 10.1 shall be due and payable by the last Business Day of the month in which it was rendered unless the billing statement was issued late in which case the payment date will be extended by one Business Day for each Business Day the billing statement was late. In the event the net amount payable is not paid in full by that date the outstanding amount shall bear interest at the Interest Rate. Payments due and owing hereunder shall be paid by wire transfer or electronic funds transfer to a bank account designated to Supplier by SaskPower, or to SaskPower by Supplier, as the case may be.

10.3 Error in Billing Statement

- (a) In the event that an error is found in any billing statement rendered, the necessary adjustment, plus interest at the Interest Rate shall be made in the next billing statement. In the event a Party disputes, in good faith, any part of a billing statement such dispute shall be resolved in accordance with the provisions of Article 14. Any payments that result from the resolution of such disputes shall be provided for in the next billing statement following the date of such resolution. Absent manifest error in a billing statement, the Party required to make a payment shall nevertheless pay to the other the amount due as set forth in the billing statement within the time limit specified in Section 10.2.

- (b) Either Party may give written notice to the other Party of an error, omission or disputed amount on a statement within 24 months after the statement was first issued together with reasonable detail to support its claim. Except in the case of willful misstatement or concealment, a previously issued statement shall be deemed accurate 24 months after it has been issued, unless a Party has issued a written notice of dispute to the other Party in respect of such statement.

10.4 Set-Off

Either Party may withhold, set-off or deduct from any amount otherwise payable under this Agreement to the other Party, such amount as may be reasonably necessary to reimburse, indemnify or protect the first Party for any amount owing by or claimed against the other Party pursuant to this Agreement, the GIA or any other agreement collateral to this Agreement or the GIA. Any amount withheld, set-off, or deducted by one Party from any amount otherwise payable to the other Party, shall be duly paid to the other Party along with interest at the Interest Rate if the claim is eventually disproved. For clarity, this set-off provision shall only be applied to amounts that have been invoiced and have not been paid by the due date. This provision is not intended to allow netting on a monthly basis for amounts not previously invoiced.

11. METERING, DATA EQUIPMENT, WIND FARM CONTROLLER

11.1 Metering Responsibility

- (a) Supplier shall supply, install, maintain, and pay for the Metering Equipment which shall be utilized to measure and record Metered Energy supplied by Supplier to SaskPower including power quality parameters specified by SaskPower and Station Service supplied by SaskPower to Supplier. Supplier shall comply with all relevant Laws regarding the supply, installation and maintenance of the Metering Equipment and such Metering Equipment shall meet the applicable requirements established by Measurement Canada. Applicable requirements include, but are not limited to, ensuring the meters are sealed by Measurement Canada and ensuring that the re-seal/re-test of the meters is completed when the seal period expires. The Metering Equipment shall be Measurement Canada approved and the Supplier shall provide the "Notice of Approval" number to SaskPower. The Supplier shall advise SaskPower of any changes to the Metering Equipment in advance or, in the event advance notice cannot be provided, within 48 hours of the change being made.
- (b) The Metering Equipment shall be provided with dual registers to separately record the Station Service provided by SaskPower and the Metered Energy delivered to SaskPower. The Metering Equipment shall be equipped with an internal modem for connection to a dedicated public switched telephone network line to be provided by Supplier for the sole use of SaskPower, or other communication method as agreed to by the Parties. The Metering Equipment shall be capable of DNP3/RS232 communication.
- (c) If the Metering Equipment is not installed at the Point of Change of Ownership, the Metering Equipment shall be provided with internal compensation for losses between the metering point and the Point of Change of Ownership in accordance with industry practice. Such losses shall be based on factory acceptance tests used to derive transformer resistance. If internal compensation for losses is used, such compensation values shall be agreed to by the Supplier and SaskPower, and such compensation values shall be under the Measurement Canada seal.
- (d) Supplier shall provide SaskPower access to the Metering Equipment for the purposes of inspection and verification as SaskPower may reasonably request from time to time. Supplier shall provide copies of all material documentation and approvals received from Measurement Canada, or any successor organization, with respect to the Metering Equipment.

- (e) The Supplier shall submit the Measurement Canada “Notice of Approval” number and the specifications for the Metering Equipment to SaskPower for review and comment at least 180 calendar days prior to the Target COD. If applicable, this shall include the calculation for the correction of energy and capacity losses between the metering point and the Point of Change of Ownership. SaskPower shall review such specifications to ensure that the Metering Equipment meets the requirements of SaskPower and shall use reasonable efforts to comment on such specifications within 30 calendar days of the Supplier’s submission.
- (f) SaskPower shall have a non-exclusive, non-transferable, perpetual and royalty-free license and right to use any and all metering data from the Metering Equipment or other data recorded pursuant to this Agreement. SaskPower shall be entitled to share such data with third Persons for any purpose determined by SaskPower in its sole discretion, provided that SaskPower complies with the provisions of subsection 17.2(f).

11.2 SCADA Data

The Supplier shall meet the requirements for SCADA stated in the Operating Requirements.

11.3 Wind Farm Controller

If applicable, the Supplier shall meet the requirements for the Facilities’ controller stated in the Operating Requirements.

11.4 Verification

If either Party becomes aware of any deficiency in the proper operation of any Metering Equipment, it shall promptly notify the other Party. Supplier shall be obligated to attend to such remedial measures regarding the Metering Equipment including, without limitation, the repair and replacement thereof, as may be required to rectify the deficiency. In the event that the deficiency is of such a nature that the amount of electrical energy and power supplied and delivered to SaskPower is found to have been inaccurately measured or recorded, the Parties shall endeavor to reach an agreement as to the amount of electrical energy and power supplied during such period based on the reasonable estimates of each Party of the load conditions prevailing during such period. In the event that the Parties cannot reach an agreement either Party may request that the matter be resolved pursuant to the Electricity and Gas Inspection Act (Canada) which resolution shall be final and binding on the Parties.

11.5 Quality

The Metered Energy delivered to SaskPower shall meet all requirements listed in the Operating Requirements, as applicable.

11.6 Title

Title to, risk and control of Metered Energy delivered to SaskPower shall pass from Supplier to SaskPower at the Point of Change of Ownership.

12. INSURANCE

12.1 Insurance Arranged by Supplier

Supplier agrees that it shall obtain, pay for and maintain property insurance on the Facilities during the Construction Period and Supply Period in such amount and to such an extent as described in the GIA.

13. FORCE MAJEURE

13.1 Effect of Force Majeure

- (a) Subject to Section 13.3, if, by reason of Force Majeure either Party is unable, wholly or partially, to perform or comply with its covenants and obligations hereunder then the Party so affected by Force Majeure shall be relieved of its obligations or liability to the extent contemplated by this Article 13 for failing to perform or comply during the continuance and to the extent of the inability so caused from and after the happening of the event of Force Majeure, provided that the Party invoking Force Majeure gives to the other Party prompt notice, written or oral (but if oral, promptly confirmed in writing) of such inability and reasonably full particulars of the cause thereof. If notice is not promptly given, then the Party suffering the Force Majeure shall only be relieved from such performance or compliance from and after the giving of such notice.
- (b) The Party invoking Force Majeure shall use all reasonable efforts to remedy the situation and remove, so far as possible and with reasonable dispatch, the cause of its inability to perform or comply with its covenants and obligations hereunder, provided that the settlement of strikes or lock outs shall be wholly within the discretion of the Party involved. The Party invoking Force Majeure shall give prompt notice of the cessation of the event of Force Majeure.
- (c) Nothing in this Article shall relieve a Party invoking Force Majeure of its obligations to make payments of any amounts due under this Agreement regardless of whether such amounts became due before or after Force Majeure was invoked.
- (d) If Supplier invokes Force Majeure during the Supply Period in accordance with the terms of this Article 13, the Supply Period will be extended by the number of days (to an aggregate maximum of 365 days) for which Force Majeure has been invoked based on the following formula:
 - (i) percentage of the Capacity impacted by the Force Majeure event multiplied by the duration of the event measured in days.
- (e) If SaskPower invokes Force Majeure during the Supply Period in accordance with the terms of this Article 13, the Supply Period will be extended by the number of days (to an aggregate maximum of 365 days) for which Force Majeure has been invoked based on the following formula:
 - (i) percentage of the Capacity impacted by the Force Majeure event multiplied by the duration of the event measured in days.

13.2 Events of Force Majeure

For the purposes of this Agreement, "Force Majeure" means, subject to the exclusions in Article 13.3, any event or circumstance not within the control of the Party invoking Force Majeure and, to the extent not within that Party's control, includes:

- (a) lightning, storms, tornados, earthquakes, landslides, floods, washouts, and other acts of God or natural catastrophes;
- (b) fires or explosions;
- (c) strikes, lockouts or other labour disturbances;
- (d) civil disturbances, sabotage, war, blockades, insurrections, vandalism, riots, terrorism, epidemics or pandemics;

- (e) restraints by governments or governmental agencies;
- (f) the order of any court or the directive or ruling of any governmental or administrative body;
- (g) damage to engineered equipment caused in an accident during transportation of such equipment to the Supplier's Site;
- (h) inability to obtain or delay in obtaining or revocation or amendment of any permit, authorization or approval of any governmental authority required to perform or comply with any obligation under this Agreement, unless the inability, delay, revocation or modification of any such necessary permit, authorization or approval was caused by the violation of the terms thereof or consented to by the Party invoking Force Majeure; or
- (i) inability of SaskPower to accept or receive Metered Energy resulting from a Force Majeure event under this Agreement or the GIA.

13.3 Non-Availability of Force Majeure

A Party shall not be entitled to the benefits of the provisions of this Article 13 under any of the following circumstances:

- (a) low wind, hydro or solar conditions;
- (b) if and to the extent the Party seeking to invoke Force Majeure has caused the applicable event of Force Majeure in whole or in material part by its fault or negligence;
- (c) if the failure to perform or comply with any of the covenants or obligations herein imposed upon it was caused by restraint by governments or governmental agencies or the order of any court and any such restraint or order was the result of a breach by the Party claiming suspension of the term of a permit, license, certificate or other authorization granted by a governmental or regulatory body having jurisdiction or of any applicable Laws;
- (d) if the failure to perform or comply with any of the covenants or obligations herein imposed upon it was caused by the Party invoking Force Majeure having failed to use all reasonable efforts in accordance with Section 13.1 to remedy the situation and remove, so far as possible and with reasonable dispatch, the cause of its inability to perform or comply with such covenants or obligations;
- (e) if the failure to perform or comply with any of the covenants or obligations herein imposed upon it was caused by lack of funds or other financial cause for whatever reason; or
- (f) if the failure to perform or comply with any of the covenants or obligations herein imposed upon it was caused by an Outage unless the cause of such Outage was a Force Majeure event.

13.4 Extended Force Majeure

Either Party may, at its discretion, terminate this Agreement by notice to the other Party if the other Party invokes Force Majeure in accordance with this Article 13 for 365 or more days in the aggregate, provided notice is given within 90 days of the right of termination arising. Additionally, the Party that has not invoked the applicable current Force Majeure may, in its discretion, terminate this Agreement by notice to the other Party that has invoked the current Force Majeure if, in the first Party's reasonable opinion, the current event of Force Majeure will not be remedied within the remainder of the 365 days referred to above.

14. DISPUTE RESOLUTION

14.1 Amicable Resolution

- (a) Any dispute between the Parties which arises in connection with this Agreement shall be referred to the Operating Committee. In the event a decision of the Operating Committee cannot be arrived at within a reasonable time from the date the matter was referred to the Operating Committee, but in no event later than 30 days from such date, either of the Parties may refer the matter to the respective senior officers of SaskPower and the Supplier, or their respective designates, who shall endeavor to reach a decision. In the event a unanimous decision cannot be arrived at by such senior officers, or their respective designates, within a reasonable time from the date the matter was referred to them, but in no event later than 30 days from such date, either of the Parties may resort to litigation unless arbitration is required by Section 14.2.
- (b) Each Party shall designate a senior officer to address disputes as set forth above, within 30 days after executing this Agreement by notice in writing to the other Party.

14.2 Arbitration Required

The following matters, if not resolved pursuant to Section 14.1, may only be resolved by arbitration in accordance with this Article 14:

- (a) disputes relating to the COD Tests;
- (b) disputes relating to the calculation of amounts payable in accordance with Schedule D;
- (c) any other matter specifically referred to resolution by arbitration in this Agreement; and
- (d) without limiting the foregoing, disputes relating to the calculation of any amount payable under this Agreement to the extent such disputes relate to the application of the proper methodology or the mechanics of the calculation and not the rights or obligations of the Parties underlying the payment.

14.3 Notice of Arbitration and Appointment

In the event that arbitration is required to resolve a dispute, either Party may serve a notice on the other Party of its intention to formally arbitrate stating with reasonable particularity the subject matter of such dispute. Within 30 days of service of such notice the Parties shall appoint a single arbitrator. Should the Parties be unable to agree upon a single arbitrator, then either Party may select its own arbitrator and may serve notice upon the other Party to select an arbitrator. Upon receipt of such notice the other Party shall have ten days in which to appoint an arbitrator. The two arbitrators thus selected shall appoint a third arbitrator within ten days of the appointment of the second arbitrator, and the three arbitrators shall constitute a board of arbitrators which shall determine the matter. If either Party shall fail to name an arbitrator within ten days of receipt of a demand to do so, the second arbitrator shall be appointed by any Justice of the Court of Queen's Bench of Saskatchewan. If the two arbitrators shall fail to appoint the third arbitrator within the prescribed time, then upon written application by either side such third arbitrator shall be appointed by any Justice of the Court of Queen's Bench of Saskatchewan.

14.4 Qualification

Any arbitrator selected pursuant to Section 14.3 must be qualified by education, training and experience to pass upon the particular question in dispute.

14.5 Timing of Decision

The single arbitrator or the board of arbitrators selected or appointed pursuant to Section 14.3, shall proceed immediately to hear and determine the question in dispute. The decision of the single arbitrator or the majority of the board of arbitrators, as the case may be, shall be communicated to the Parties not later than 30 days after the close of argument in the arbitration, subject to any reasonable delay due to unforeseen circumstances.

14.6 References to Court

Every submission to arbitration pursuant to Section 14.3 shall contain a provision requiring the arbitrator or board of arbitrators, if so requested by either Party, to state in the form of a special case for the opinion of the Court of Queen's Bench of Saskatchewan any question of law arising in the course of the reference.

14.7 Decision

The decision of the single arbitrator or of the majority of the board of arbitrators, as the case may be, in an arbitration pursuant to Section 14.3 shall be drawn up in writing and signed and shall, notwithstanding anything to the contrary contained in *The Arbitration Act*, 1992 of the Province of Saskatchewan, as amended or replaced, be final and binding upon the Parties and all persons claiming through or under them as to any question or questions so submitted to arbitration, and the Parties shall perform and comply with the terms and conditions thereof. Judgment upon the award rendered by the single arbitrator or the majority of the board of arbitrators, as the case may be, may be entered in any court having jurisdiction and thereupon, execution or other legal process may issue thereon.

14.8 Costs

Unless otherwise agreed by the Parties, each Party shall bear the costs it incurs in connection with an arbitration pursuant to Section 14.3 and all other costs of the arbitration, including the compensation and expenses of the single arbitrator or the board of arbitrators (unless otherwise determined by the single arbitrator or the majority of the board of arbitrators), shall be borne equally by the Parties.

14.9 Applicable Law

In all respects not provided for elsewhere in this Article, the provisions of *The Arbitration Act*, 1992 of the Province of Saskatchewan, as amended or replaced, shall apply to any arbitration undertaken hereunder.

14.10 Performance and Payments

All performance required hereunder by the Parties and payment therefor under this Agreement shall continue during the dispute resolution proceedings contemplated by this Article 14, provided that in the case of any such proceedings pertaining to amounts payable under this Agreement any payments or reimbursements required as a result of the proceedings shall be effective as of a date to be determined in such proceedings, and interest shall be paid by the Party required to make any such payment or reimbursement on the amount thereof at the Interest Rate and the amount of the payment or reimbursement shall be specified by Supplier in the billing statement in accordance with Section 10.1.

15. DEFAULT AND TERMINATION

15.1 Default

If either Party is in default in respect of any of its material obligations under this Agreement, including without limitation Supplier's obligations under Article 6, the Party not in default may give the defaulting Party notice of default. If the non-defaulting Party gives such notice of default, it may discontinue performance of its obligations 30 days after giving a notice of default if the Party in default has not remedied the default if reasonably remediable within such 30 day period or, if not reasonably remediable within such 30 day period,

fails to commence within such 30 day period to take steps to remedy such default and to proceed diligently and as expeditiously as reasonably possible to do so. If performance is discontinued, it shall be resumed as soon as the default is remedied and the Party that was in default gives notice to that effect, provided this Agreement was not already terminated pursuant to Section 15.3. For the purposes of this Article 15, if the default is a failure to meet a specified deadline, the default shall be deemed to have been remedied when the required act is performed notwithstanding the failure to meet the specified deadline.

15.2 Discontinuance by Non-Defaulting Party

The discontinuance of the performance of any of its obligations by a Party not in default that is entitled to discontinue the performance of its obligations under Section 15.1 shall:

- (a) be in addition to any other remedy available;
- (b) not relieve the Party in default from the performance of the covenants, provisions and conditions contained in this Agreement;
- (c) not relieve the Party in default from the payment of any sums payable under this Agreement;
- (d) not be deemed to be an abrogation or rescission of this Agreement by the Party not in default; and
- (e) not affect the validity of the terms of this Agreement.

15.3 Termination for Cause

Except as otherwise expressly provided herein, a Party not in default of any of its material obligations under any of the Project Agreements may, at its discretion and without limitation to any other remedies it may have, immediately terminate this Agreement upon giving the other Party a notice of termination if:

- (a) The Supplier has not achieved Commercial Operation for the Facilities within 365 days of the Target COD, provided, however, for clarity only SaskPower may terminate this Agreement based on this subsection 15.3(a);
- (b) the Party in default has failed to perform any of its material obligations under such Project Agreement, including without limitation Supplier's obligations under Article 6, and does not remedy same if reasonably remediable within 30 days of having received a notice of default pursuant to Section 15.1 or, if not reasonably remediable within such 30 day period, fails to commence within 30 days to take steps to remedy such default and to proceed diligently and as expeditiously as reasonably possible to do so;
- (c) the other Party:
 - (i) is bankrupt or insolvent or has committed or suffered any act of bankruptcy or insolvency;
 - (ii) makes any general assignment for the benefit of its creditors;
 - (iii) has caused or allowed any material writ in respect of any judgment to be registered against its interests in this Agreement;
 - (iv) has liquidated itself under the direction of a court or otherwise; or
 - (v) has commenced proceedings or the passing of an effective resolution for the dissolution, liquidation or winding up of itself.

15.4 SaskPower Additional Termination Rights

- (a) Except as otherwise expressly provided herein, if SaskPower is not in default of any of its material obligations under any of the Project Agreements SaskPower may, at its discretion and without limitation to any other remedies it may have, immediately terminate this Agreement upon giving the other Party a notice of termination in the following circumstances:
 - (i) if Supplier abandons the construction or operation of the Facilities and fails to cure such failure within 90 days after the date of written notice from SaskPower; or
 - (ii) if no Metered Energy is delivered for a period of 365 consecutive days; or
 - (iii) the Metered Energy delivered was not produced by an Eligible Technology.
- (b) SaskPower may, at its discretion and without limitation to any other remedies it may have, immediately terminate this Agreement upon giving the other Party a notice of termination if the GIA has terminated or expired.

15.5 Rights and Remedies

- (a) Except as otherwise expressly provided in this Agreement, the rights and remedies of the Parties specified in this Agreement are cumulative and are not exclusive of any other rights or remedies which the Parties would otherwise have at law or in equity.
- (b) The Liquidated Damages payable pursuant to this Agreement are intended to be the exclusive remedy for the respective defaults to which they relate unless the Party not in default elects to terminate this Agreement because of any such continuing default in accordance with Section 15.3. If this Agreement is so terminated, the Party not in default shall be entitled, subject to Section 16.8, to all rights and remedies which that Party would otherwise have at law or in equity, in addition to any Liquidated Damages payable pursuant to this Agreement for the default in question prior to the effective date of such termination. The Supplier acknowledges that it will not issue a notice of default, in respect of an applicable default, under Section 15.1 or exercise its right to elect under this subsection 15.5(b) and act in accordance with subsection 15.3(b) where Liquidated Damages are payable and are being paid by SaskPower, in respect of such applicable default, in accordance with this Agreement and SaskPower is, in the Supplier's reasonable opinion, proceeding in a diligent and expeditious manner to remedy. For greater clarity, the Supplier is entitled to issue a notice of default and exercise applicable termination rights and any other remedies provided for in this Agreement in respect of a default for which Liquidated Damages have been paid if the limits on the Liquidated Damages have been exceeded.

16. INDEMNITY AND LIABILITY

16.1 Indemnity

Each of the Parties, as Indemnitor, shall defend, indemnify and save harmless the other, including the other's officers, directors, employees and agents, as Indemnitee, from and against all Claims made or brought against the Indemnitee and all Losses suffered by the Indemnitee in respect of such Claims, directly or indirectly, to the extent that such Claim or Loss arises as a result of the Indemnitor's acts or omissions arising out of or related to this Agreement or the performance of its obligations under or pursuant to any Project Agreement, except to the extent such Claim or Loss results from the Indemnitee's breach of its obligations under any Project Agreement, negligence or willful misconduct. This indemnity shall survive the termination of this Agreement.

16.2 Amount of Claim

In the event that pursuant to this Article 16 the Indemnitor is required to indemnify the Indemnitee, the amount which the Indemnitor shall be required to pay to the Indemnitee with respect to any Claim or Loss shall be the full amount of all such Claims and Losses and all costs or expenses incurred in defending or dealing with such Claims net of the present value of any tax benefits associated with such Claims or Losses.

16.3 Notice of Claim

Promptly upon the discovery by the Indemnitee of the existence of a Claim to which this Article 16 applies, the Indemnitee shall notify the Indemnitor in writing of such Claim setting out, to the extent reasonably feasible, full and detailed particulars of the Claim including, without limitation, the nature of and specific basis for such Claim and the estimated amount of such Claim (which estimate shall not be conclusive of the final amount of such Claim).

16.4 Effect of Failure to Give Notice

In the event that the Indemnitee fails to give to the Indemnitor the notice required by this Article 16 with respect to any Claim then, to the extent that the Indemnitor is materially prejudiced by such failure, the obligation of the Indemnitor to indemnify the Indemnitee pursuant to this Article 16 shall cease with respect to such Claim.

16.5 Right to Dispute

The Indemnitor shall at all times have the right, at its sole expense and with counsel of its choice, to dispute and contest (in the name of the Indemnitee, where necessary), any Claim for which the Indemnitor is liable pursuant to this Article 16. The Indemnitor shall not make any admission of liability or guilt on behalf of the Indemnitee in respect of any Claim without the prior written consent of the Indemnitee.

16.6 Right to Books and Records

In the event that the Indemnitee refuses to deliver to the Indemnitor any books, records or other documentation reasonably required by the Indemnitor in order to defend any Claim in connection with which the Indemnitee is seeking indemnification pursuant to this Article 16, then to the extent that the Indemnitor is materially prejudiced by such refusal, the obligation of the Indemnitor to indemnify the Indemnitee pursuant to this Article 16 shall cease with respect to such Claim.

16.7 Right to Cure

The Indemnitor shall have the right to cure within a reasonable time and in a manner satisfactory to the Indemnitee, acting reasonably, any matter giving rise to a Claim, provided however, that any such cure shall not relieve or reduce any such Claim arising prior to, during or because of such cure to the extent that such cure is inadequate.

16.8 Consequential or Punitive Damages

Notwithstanding any provision of this Agreement, neither Party shall be liable hereunder or under any cause of action to the other Party for such other Party's consequential damages, including, without limitation, damages for lost profits, loss of revenue, loss of anticipated business suffered or incurred by a Party or for exemplary or punitive damages; provided, however, that this limitation shall not apply in respect of any willful, wanton or intentional misconduct or the gross negligence of a Party or anyone for whose acts the Party may be liable.

17. CONFIDENTIALITY

17.1 Confidentiality

The Parties acknowledge and agree that this Agreement and any and all information emanating from the other's business in any form (the "Confidential Information"), is confidential, and that each Party agrees that it will not, during, or for a period of two years after, the term of this Agreement, permit the disclosure of any such Confidential Information to any person and/or organization (other than its own employees, agents, advisors and representatives and employees of Affiliates, who must have such information for the performance of the Party's respective obligations hereunder **or, also in respect of SaskPower, who SaskPower desires to have such information for the purposes of reviewing this Agreement and the project to which it relates in comparison with other agreements and/or projects in the course of determining SaskPower's future supply options**) unless such disclosure is specifically authorized by the other Party or unless such Confidential Information is at the time of such disclosure, through no fault of the Party, known in the public domain. Each Party shall authorize disclosure of Confidential Information to contractors, potential lenders of the other Party, or potential purchasers of the other Party or its assets provided such contractors, lenders or purchasers first enter into undertakings of confidentiality reasonably satisfactory to the Party authorizing such disclosure. The rights and obligations of the Parties pursuant to this Article 17 shall survive termination of this Agreement.

17.2 Permitted Disclosure

Notwithstanding the generality of Section 17.1, SaskPower may provide:

- (a) Supplier's name and the annual amount paid to it by SaskPower under this Agreement for the purpose of complying with directives of the Crown and Central Agencies Committee;
- (b) any Confidential Information to the Saskatchewan Provincial Auditor for the purpose of complying with *The Provincial Auditor Act* (Saskatchewan), or to SaskPower's internal or external auditors for the purpose of obtaining proper and complete audits of SaskPower's business and accounting practices;
- (c) any Confidential Information as lawfully directed by any committee or advisory body of the Saskatchewan Legislature, including the Saskatchewan Rate Review Panel ("the Panel"). Commercially sensitive information may only be provided the Panel on the condition that the Panel confirms, in writing, that all commercially sensitive information will not be made public;
- (d) any Confidential Information, including excerpts from and summaries of the Confidential Information as lawfully directed by: Crown Investments Corporation; the Executive Council of the Government of Saskatchewan (the "Cabinet"); any Ministry, Department or other body of the Government of Saskatchewan entitled to the information by Law or that has responsibility for any matter related to SaskPower's business; and any Ministry, Department or other body of the Government of Saskatchewan which a Minister or the Cabinet desires to have access to the Confidential Information for the purposes of reviewing this Agreement and the project to which it relates in comparison with other agreements and/or projects in the course of determining SaskPower's future supply options; and
- (e) Confidential Information to third Persons to enable SaskPower to obtain or realize the full benefit of the Environmental Attributes, including sales of Environmental Attributes to third Persons.
- (f) Confidential Information, as described in subsection 11.1(f), to any third Persons who agree to keep such information confidential.

Notwithstanding the generality of Section 17.2, Supplier may provide Confidential Information as required under applicable Laws including stock exchange rules and policies and securities law; provided, however, that Supplier

in such cases, as soon as reasonably practicable after providing the Confidential Information as required, shall provide SaskPower with a copy of such information and the name of the recipient thereof.

17.3 Where Supplier is a Crown Corporation

The provisions of Section 17.2 apply, with any necessary modification, to a Supplier that is a Crown corporation within the meaning of *The Crown Corporations Act, 1993*.

17.4 Compelled Disclosure

Except as otherwise permitted by Section 17.2, if a Party (the “Disclosing Party”) is requested or required (by oral question, interrogatories, requests for information or documents, court order, civil investigative demand, regulatory 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, the Disclosing Party shall promptly notify the other Party (the “Other Party”) of such request or requirements so that the Other 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 Disclosing Party is compelled to disclose the Confidential Information, the Disclosing Party may disclose such portion of the Confidential Information to the party seeking disclosure to the extent required by the Law.

18. ENVIRONMENTAL BENEFITS & COMPLIANCE

18.1 Environmental Benefits

The Supplier agrees SaskPower is entitled to all Environmental Attributes and that Supplier shall take all steps required, to transfer, assign and set over to SaskPower all right, title and interest in and to Environmental Attributes all as more particularly set forth in Schedule E.

18.2 Environmental Compliance

The Parties’ respective compliance obligations regarding environmental emissions associated with the operation of the Facilities are set forth in Schedule E.

18.3 Government Incentives

- (a) If Supplier is eligible for an environmental incentive, which is not an Environmental Attribute, offered by a Government Authority (“Environmental Incentive”) on the date of this Agreement, the Supplier shall retain ownership of such Environmental Incentive and shall bear all risks related to such Environmental Incentive. Any cost or Claim related to such Environmental Incentives are the sole responsibility of the Supplier and the Supplier is not entitled under Section 19.3 to pass on to SaskPower any cost increases, lost revenue or liabilities, related to such Environmental Incentives. The Supplier shall identify all such Environmental Incentives in Schedule D Section 1.6.
- (b) If Supplier becomes eligible for an Environmental Incentive after the date of this Agreement, subject to Section 19.4, the benefit shall be passed on to SaskPower as a credit against the amounts payable pursuant to Schedule D, or be settled as a lump sum payment from the Supplier to SaskPower. If the Parties are unable to agree on the amount of the credit or lump sum payment, it shall be resolved in accordance with Article 14. The Supplier will use all reasonable efforts to maximize any benefit resulting from an Environmental Incentive at SaskPower direction. SaskPower will compensate the Supplier for their out of pocket costs to obtain the Environmental Incentive.

18.4 Environmental Taxes

If Supplier is or becomes subject to a government imposed tax, duty or levy of an environmental nature (“Environmental Tax”), and if, after the date of this Agreement, such Environmental Tax is imposed or abolished,

the rate is increased or decreased or the basis for its calculation is changed, subject to Section 19.4 the increase or decrease in cost or the liability or benefit shall be passed on to SaskPower as a surcharge to or a credit against the amounts payable pursuant to Schedule D, or be settled as a lump sum payment from SaskPower to Supplier or Supplier to SaskPower, as applicable. If the Parties are unable to agree on the amount of the surcharge, credit or lump sum payment, it shall be resolved in accordance with Article 14. Supplier will use all reasonable efforts to mitigate any cost increase or liability resulting from an Environmental Tax.

19. TAXES AND CHANGE IN LAW

19.1 Taxes

- (a) Subject to subsections 19.1(b) and (c), Supplier is solely responsible for any sales or value added tax including, without limitation, PST and GST associated with the development, construction and operation of the Facilities.
- (b) If, after the date this Agreement is fully executed, the GST or the PST rate in effect or the basis for calculating GST or PST changes, subject to Section 19.4 the resulting increase or decrease in the cost of constructing the Facilities through to COD will be calculated and the Parties will negotiate in good faith a lump sum payment on account of that increase or decrease, payable to Supplier in the case of an increase or SaskPower in the case of a decrease. If the Parties are unable to agree on the amount of the lump sum payment, it shall be resolved in accordance with Article 14.
- (c) If any sales or value added tax, including without limitation, GST and PST, is or becomes payable in respect of any amounts payable by either Party hereunder, such tax shall be solely for the account of the Party paying such amounts payable. Supplier agrees that SaskPower shall have the full right and authority to act on behalf of Supplier in seeking an exemption from such taxes and Supplier agrees to cooperate fully in that regard. In particular, Supplier shall use all reasonable efforts to provide SaskPower, in a timely manner, any information regarding the Facilities reasonably required by SaskPower for the purposes of obtaining the exemption.
- (d) Metered Energy purchased by SaskPower hereunder is for resale.

19.2 Deregulation

If, after the date this Agreement is fully executed, any deregulation or reregulation of the electricity industry in Saskatchewan increases or decreases the cost to Supplier of constructing, commissioning, operating or maintaining the Facilities or otherwise creates a liability for or confers a benefit on Supplier, subject to Section 19.4 the increase or decrease in cost or the liability or benefit shall be passed on to SaskPower as a surcharge to or a credit against the charges payable by SaskPower pursuant to Schedule D or be settled as a lump sum payment from SaskPower to Supplier or Supplier to SaskPower, as applicable. Supplier will use all reasonable efforts to mitigate any cost increase or liability or take full advantage of any potential cost decrease or benefit.

19.3 Change in Law

Subject to the exclusions identified in subsections 6.1(g) and 18.3(a) and the threshold amount in section 19.4, if, after the date this Agreement is fully executed, as a result of the adoption, enactment, promulgation, modification, amendment or revocation of any Laws or any interpretation, reinterpretation or administrative position relating thereto of any government department or regulatory body that administers any such Laws, including the imposition of new requirements or conditions in respect of permits or any re-interpretation of administrative position relating thereto of any industry association or body that recommends or establishes reliability or interconnection standards, relating to electricity, Supplier is required to modify Facilities or operate them differently, the increase or decrease in cost or the liability or benefit shall be passed on to SaskPower as a

surcharge to or a credit against the charges payable by SaskPower pursuant to Schedule D or be settled as a lump sum payment from SaskPower to Supplier or Supplier to SaskPower, as applicable. If the Parties are unable to agree on the amount of the surcharge, credit or lump sum payment, it shall be resolved in accordance with Article 14. Supplier will use all reasonable efforts to mitigate any cost increase or liability or take full advantage of any potential cost decrease or benefit.

19.4 Threshold Amount

The total of all cost increases and liabilities referred to in Sections 4.3(e), 18.4, 19.1(b), 19.1(c) and 19.3 must equal or exceed \$25,000 in an Operating Year before the full amount may be passed on to SaskPower as a surcharge to the amounts payable by SaskPower pursuant to Schedule D or a lump sum payment. The same shall apply to all cost decreases and benefits.

20. AUDIT

20.1 Audit

- (a) Upon reasonable prior notice and during ordinary office hours, each Party shall have the right, for a period of not exceeding 24 months following the delivery of any statement, report, computation or demand made under or pursuant to this Agreement, to audit those records, charts and other technical records (in mechanical or electronic form) of the other at the other's principal offices in Saskatchewan to the extent necessary to verify the accuracy of such statement, report, computation or demand (including verification that Metered Energy was produced by an Eligible Technology). The Party being audited shall cooperate as reasonably required. Any error or discrepancy in records, charts or other technical records, or in statements prepared based on such material, discovered pursuant to such audit shall be promptly reported in writing to the Party audited, and proper adjustment thereof including interest at the Interest Rate shall be made on the next applicable statement prepared after final determination of the correct quantities or amounts involved, provided that no adjustment shall be made to correct an error or discrepancy or in respect of any other amount claimed pursuant to this Agreement, unless the adjustment is requested in writing not later than four months following the completion of the audit giving rise to the request for adjustment.
- (b) Each Party shall keep a record of all statements and charges and necessary data to support such statements and charges, made under this Agreement. All such records shall be maintained for a minimum of six years from the date of their preparation. Any such records made by a Party shall remain its property but, upon reasonable notice, the Party shall make available for review in its principal offices in Saskatchewan those records requested by the other, together with calculations therefrom.
- (c) The rights and obligations of the Parties pursuant to this Article 20 shall survive termination of this Agreement.

21. GENERAL

21.1 Representations, Warranties and Covenants

Each Party makes the following representations, warranties and covenants:

- (a) Such Party:
 - (i) is duly organized, validly existing and in good standing under the laws of the province of Saskatchewan or the province in which it was organized, formed, or incorporated, as applicable;
 - (ii) is qualified to do business;

- (iii) has the power and authority to:
 - A own its properties;
 - B carry on business as now being conducted;
 - C enter into this Agreement;
 - D carry out the transactions contemplated hereby; and
 - E perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement.
- (b) This Agreement is a legal, valid and binding obligation of such Party, enforceable against such Party in accordance with its terms, except as the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization or other similar laws affecting creditors rights generally and by general equitable principles (regardless of whether enforceability is sought in a proceeding in equity or at law)
- (c) The execution, delivery and performance of this Agreement does not violate or conflict with the organizational or formation documents, or bylaws or operating agreement, of such Party, or any judgment, license, permit, order, material agreement or instrument applicable to or binding upon such Party or any of its assets.
- (d) Such Party has sought or obtained, or, in accordance with this Agreement will seek to obtain, each consent, approval, authorization, order, or acceptance by any governmental authority in connection with the execution, delivery and performance of this Agreement, and it will provide to any governmental authority notice of any actions under this Agreement that are required by applicable Laws.

21.2 Conflicts

In the event of a conflict between the body of this Agreement and any attachment, appendices, schedules or exhibits hereto, the terms and provisions of the attachments, appendices, schedules or exhibits, as the case may be, shall prevail and be deemed the final intent of the Parties.

21.3 Notices

Any notices or statements to be delivered or given by any Party to this Agreement must, unless otherwise permitted, be in writing and shall be delivered to the address and to the individual indicated below:

To SaskPower, in respect of operational matters and metering and billing statements:

c/o NorthPoint Energy Solutions Inc.

2025 Victoria Avenue

Regina, Saskatchewan S4P 0S1

Attention: Manager, Power Contracts

To SaskPower, in respect of all other matters:

Saskatchewan Power Corporation

2025 Victoria Avenue

Regina, Saskatchewan S4P 0S1

Attention: Vice-President, Planning, Environment & Regulatory Affairs

With a copy to:

Saskatchewan Power Corporation

2025 Victoria Avenue
Regina, Saskatchewan S4P 0S1

Attention: General Counsel

To Supplier:

Address

Attention:

Either Party may give notice to the other Party hereto in the manner herein provided of a change of address or designation of individual. Any notices personally delivered shall be deemed given when so delivered; any notices faxed or sent by electronic mail shall be deemed given on the next Business Day after being sent; and any notices mailed shall be deemed to have been given on the third Business Day after being mailed by registered mail, provided if there is any disruption in postal service, they shall be deemed to have been given and received on the day of actual delivery.

21.4 Entire Agreement

Subject to Section 3.2, the Parties agree that this Agreement and all schedules and appendices contain the whole agreement between the Parties relating to the subject matter hereof and that there is no representation, warranty, collateral agreement or condition affecting this Agreement other than as expressed in the agreements referenced above.

21.5 Waiver

The Parties agree that any waiver of or non-action with respect to any breach or default of any of the terms or conditions of this Agreement shall not be construed as a waiver of any subsequent or other breach or default.

21.6 Assignment

(a) There shall be no assignment or other disposition of this Agreement by any means whatsoever (including, without limitation, by mortgage, encumbrance, subcontract, sale, merger, consolidation or substantial change in ownership of a Party's business, whether voluntary or involuntary), in whole or in part, for the duration of the Agreement except:

- (i) where the assignee agrees in writing to be bound by all obligations and liabilities of the assignor under this Agreement and the consent of the other Party is obtained, such consent not to be unreasonably withheld;
- (ii) by Supplier or SaskPower to an Affiliate; or
- (iii) by Supplier to any lender(s) providing financing for Facilities as security for such financing.

- (b) In the case of an assignment or disposition pursuant to subsection 21.6(a)(i) it will be reasonable to withhold consent until the assignor has demonstrated to the reasonable satisfaction of the Party from whom consent is required that the assignee is capable of performing and satisfying all obligations (whether financial, technical or otherwise) of the assignor under this Agreement. The determination of such capability shall be made by the Party from whom consent is requested, acting reasonably. Where the assignor disagrees with such Party's determination, the matter shall be resolved by arbitration in accordance with Article 14.
- (c) In the case of an assignment or disposition pursuant to subsection 21.6(a)(ii), the assignor shall remain liable under this Agreement unless and until it satisfies the requirements of subsection 21.6(a)(i).
- (d) In the case of an assignment pursuant to subsection 21.6(a)(iii), such assignment shall be subject to SaskPower's prior written consent to the lender security arrangements on such terms as SaskPower may reasonably require in relation to the recognition of the rights of SaskPower under this Agreement.

21.7 Amendment

No amendment or modification to this Agreement shall be effective unless it is in writing and signed by each of the Parties.

21.8 Currency

References in this Agreement to costs or dollars are to be expressed in Canadian currency.

21.9 Severability

The Parties agree that if any covenant, obligation or agreement of either Party in this Agreement or the application thereof shall, to any extent, be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and each covenant, obligation and agreement of this Agreement shall be separately valid and enforceable to the fullest extent possible.

21.10 Enurement

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

21.11 Counterpart Execution

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall constitute one agreement.

IN WITNESS WHEREOF the Parties have executed this Agreement the day and year first above written.

SASKATCHEWAN POWER CORPORATION

By: _____ Date _____
<Name of Signatory>, <Title of Signature>

BUSINESS
 APPROVED

By: _____ Date _____
 Assistant Secretary

LAW
 REVIEWED

<NAME OF SUPPLIER>

By:

Signature of Signing Authority

Date

Name of Signing Authority (please print)

Title of Signing Authority

DRAFT

SCHEDULE A - DESCRIPTION OF FACILITIES

The summary shall include, at a minimum:

- Description of the generation equipment (manufacturer, Nameplate Capacity);
- Site layout map(s);
- Legal land descriptions;
- Single line drawing of the Facilities (identifying the Point of Change of Ownership).

[TO BE COMPLETED BY SASKPOWER BASED ON THE FACILITIES DESCRIPTION PROVIDED BY THE SUPPLIER]

DRAFT

SCHEDULE B – KEY MILESTONES DATES

Construction Milestone Results Supplier Must Achieve <to be completed>

month/day/year

Supplier shall provide confirmation to SaskPower that they have executed an EPC (“Energy, Procurement and Construction”) contract, or other general contractor agreements.

month/day/year

Supplier shall provide SaskPower with a summary (excluding any confidential terms or price) of executed purchase orders/contracts for the delivery and installation of the Facilities’ turbines/generators.

month/day/year

Supplier shall provide SaskPower with documentation that all governmental permits have been obtained or will be obtained by the time needed to meet all Construction Milestones.

month/day/year

Target SaskPower Completion Date.

month/day/year

Supplier has installed and commissioned the communication system (i.e. SCADA).

month/day/year

Start-up testing of the Facility commences.

month/day/year

Target COD - the Facility shall achieve Commercial Operation (Commercial Operation Milestone).

For greater certainty, if the criteria for COD has been met the Supplier may declare COD for the Facilities prior to Target COD but, in any case, the COD may not be more than three months prior to the Target COD. Once COD is declared the Supply Period commences and the Energy Tariff for the first Operating Year is established based on the methodology described in Schedule D Section 1.1.

SCHEDULE C - COD TESTS

Requirement	Description	Submittals	Completion Criteria
Metering Equipment	Measurement Canada approved metering devices are installed and fully functional to measure electrical energy delivered by the Supplier and Station Service for internal load delivered by SaskPower at each turbine site.	Letter from the Supplier to SaskPower confirming that the revenue meters are installed, fully functional and Measurement Canada approved	Measurement Canada approved metering devices are installed, fully functional and are measuring electrical energy and Station Service for internal load.
Regulatory Approvals	The Supplier must provide a copy of their project submission to the Ministry of the Environment - Assessment Branch and a copy of all permits, licenses and certificates from regulatory agencies that are related to the Facilities including the Ministry of the Environment's "Approval to Operate Works" certificate (if applicable).	The Supplier provides SaskPower a copy of the applicable documentation.	The Supplier provides the project submission to the Ministry of the Environment - Assessment Branch and any permits, licenses and certificates from regulatory agencies that are related to the Facilities.
Technical Information	SaskPower has a set of single line drawings that identify the Point of Change of Ownership, the interconnecting facilities and the protective devices. SaskPower has a PSS/E power flow, short circuit and dynamic models representing the Facilities (including generators, turbines and auxiliary equipment) and PSCAD models for use in its system analysis studies. PSS/E and PSCAD models to be in acceptable versions for SaskPower. If proprietary models are being submitted, then non-proprietary models must be submitted as well.	Supplier to submit to SaskPower single line drawings and a copy of a PSS/E power flow and dynamic models representing the Facilities (including generators, turbines, and auxiliary equipment) and PSCAD models in hardcopy format and electronic copy format	Both Parties have copies of the necessary single line drawings and SaskPower has received the PSS/E and PSCAD models for the Supplier's Facilities.
Operating Practice	An agreement is in place between the Supplier and SaskPower that identifies how the local SaskPower operating staff and the Supplier's operating staff will interact with one another and there is agreement on operating issues of importance to each Party.	Letter from the Supplier to SaskPower confirming that the Operating Practice is in place.	An Operating Practice is in place between the Supplier and SaskPower.

SCHEDULE C-1 COD CERTIFICATE

(i) TO: SaskPower

(ii) RE: Power Purchase Agreement (“PPA”) made as of ●, 2011 between SaskPower and ● (the “Supplier”).

I, *[name of senior officer]*, in my capacity as *[title of senior officer]* of the Supplier, and not in my personal capacity, certify on behalf of the Supplier that:

1. **Defined Terms** - Words and phrases having initial capitalized letters in this certificate have the meanings given in the PPA.

2. **COD Requirements** - The Supplier has satisfied the requirements for COD Tests as set out in Schedule C of the PPA. Attached to this certificate is all evidence required to demonstrate that the Supplier has satisfied all such requirements. The Facilities’ COD is ●.

3. **No Material Default** - No event which constitutes an event of default under Section 15 of the PPA has occurred.

Dated this ____ day of _____, 20____.

[name of senior officer]

[title of senior officer]

[Note to Seller: Attach to the COD certificate, in tabbed format, all documents and evidence required by Schedule C of the PPA. Where documents have previously been provided to SaskPower, so indicate and attach a copy of the letter transmitting such documents to SaskPower.]

SCHEDULE D - TARIFF AND PRICING SCHEDULE

1. Tariffs And Pricing

The amounts payable by SaskPower during the Construction Period and the Supply Period for all electrical generation Capacity and Metered Energy received and all other Ancillary Services and benefits provided to SaskPower pursuant to this Agreement are set forth in this Article 1.

1.1 Energy Tariff

The Energy Tariff payable per MWh of Metered Energy produced by an Eligible Technology in accordance with Section 6.5 of the Agreement in the first Operating Year is the lesser of i) the value listed in Table 1 below associated with Target COD; and ii) the value listed in Table 1 associated with COD.

Table 1: Energy Tariff

Year	Energy Tariff for the first Operating Year
2011	\$96.09 per MWh
2012	\$98.02 per MWh
2013	\$99.98 per MWh
2014	\$101.98 per MWh
2015	\$104.02 per MWh
2016	\$106.10 per MWh
2017	\$108.22 per MWh
2018	\$110.38 per MWh
2019	\$112.59 per MWh

The Energy Tariff is intended to compensate Supplier for its cost of capital relating to constructing and maintaining the Facilities amortized over the Supply Period, operations and maintenance costs and for all Ancillary Services (if any) and Capacity (if any) provided from the Facilities.

1.2 Pre-COD Charges

SaskPower shall pay a Pre-COD Energy Tariff for all Metered Energy produced by an Eligible Technology delivered prior to COD. In accordance with Section 6.5 of the Agreement the Pre-COD Energy tariff is the lesser of i) the value listed in Table 2 below associated with Target COD; and ii) the value listed in Table 2 associated with the year the Metered Energy is delivered. The Supplier must give SaskPower 24 hours notice of the beginning of pre-COD energy production and the Supplier agrees, to the extent commercially reasonable, to work with SaskPower to schedule the production of pre-COD energy.

Table 2: Pre-COD Energy Tariff

Year	Pre-COD Energy Tariff
2011	\$96.09 per MWh
2012	\$98.02 per MWh
2013	\$99.98 per MWh
2014	\$101.98 per MWh
2015	\$104.02 per MWh
2016	\$106.10 per MWh

2017	\$108.22 per MWh
2018	\$110.38 per MWh
2019	\$112.59 per MWh

1.3 Curtailment Compensation

- (a) Pursuant to Section 6.4 of the Agreement, SaskPower shall compensate the Supplier for qualifying Curtailments during the Supply Period based on the methodology described in this Section 1.3.
- (b) The agreed principle is that SaskPower will be required to make such payments only to the extent that, for the periods impacted, the Facilities would be capable of delivering Metered Energy but for SaskPower's Curtailment.
- (c) SaskPower will compensate the Supplier based on the following formula:

$$\text{Curtailment compensation} = \text{Hourly Average Production} \times \text{Energy Tariff} \times \text{Hours Impacted by Curtailment}$$

Where:

"Hourly Average Production" means the average production (in MW per hour) during the calendar month for all hours that were not impacted by a Curtailment or a Transmission or Distribution Outage

"Hours Impacted by Curtailment" means the number of hours the Facilities could not produce at full load due to a Curtailment. A partial Curtailment will be pro-rated to an hourly value and the calculation will be adjusted to reflect the impact of a Derate. As examples:

If 50% of the Facilities' Nameplate Capacity was Curtailed for 3 hours and there are no Derates then the Hours Impacted by Curtailment is equal to:

$$\begin{aligned} &= 50\% \times 3 \text{ hours} \\ &= 1.5 \text{ hours} \end{aligned}$$

If 100% of the Facilities' Nameplate Capacity was Curtailed for 32 minutes and there are no Derates then the Hours Impacted by Curtailment is equal to:

$$\begin{aligned} &= 100\% \times 32/60 \\ &= 0.53 \text{ hours} \end{aligned}$$

If 100% of the Facilities' Nameplate Capacity was Curtailed for 1 hour but 40% of the Facilities' Nameplate Capacity was Derated to zero then the Hours Impacted by Curtailment is equal to:

$$\begin{aligned} &= 100\% \times (100\% - 40\%) \times 1 \text{ hour} \\ &= 0.6 \text{ hours} \end{aligned}$$

1.4 Non-Eligible Technology Energy Tariff

The Non-Eligible Technology Energy Tariff payable in accordance with Section 6.5 of the Agreement for Metered Energy not produced by an Eligible Technology is zero dollars (\$0) per MWh.

1.5 Liquidated Damages – Performance

The Agreement does not include Liquidated Damages for performance.

1.6 Environmental Incentives

The Supplier represents that on the date of this Agreement, the Supplier is eligible for the following Environmental Incentive payments: <to be completed>

- (i) • <The entity providing the incentive payment>;
- (ii) • <The amount of the incentive per MWh>;
- (iii) • <The term of the agreement>; and
- (iv) • <Any limitations or caps on the amount of Environmental Incentive Payments the Supplier may receive>.

2. Tariff Escalations

After COD, the Energy Tariff will be escalated annually on January 1st by an amount equal to 2% of the Energy Tariff in effect during the preceding Operating Year. In the case of the second Operating Year, the Energy Tariff will be escalated by an amount equal to 2% of the Energy Tariff specified in Section 1.1 above, prorated for the number of calendar days in the first Operating Year. The Energy Tariff for an Operating Year shall be rounded to two decimal places.

SCHEDULE E - ENVIRONMENTAL BENEFITS AND COMPLIANCE

In furtherance of Article 18 of the Agreement, the parties agree as provided for in this Schedule E.

1. INTERPRETATION

1.1 Definitions

In this Schedule E and in this Agreement unless expressly provided for otherwise, the following words and expressions shall have the following meanings:

- (a) “Clean Development Mechanism” means an arrangement under the Convention allowing industrialized countries with a Greenhouse Gas reduction commitment to invest in projects that reduce emissions in developing countries as an alternative to more expensive emission reductions in their own countries.
- (b) “Convention” means the United Nations Framework Convention on Climate Change or any successor or replacement Convention.
- (c) “EcoLogo™ Certification” means certification pursuant to Environment Canada’s Environmental Choice™ program confirming that the Facilities and all or part of the electrical energy generated by the Facilities complies with the certification criteria as amended from time to time and is therefore entitled to the EcoLogo™ designation.
- (d) “Environmental Attributes” means:
 - (i) all attributes directly associated with, or that may be derived from, electrical energy generated by the Facilities and /or the Facilities having decreased environmental impacts relative to certain other generation facilities or technologies, including any existing or future credit allowance, “green” tag, ticket, certificate or other “green” marketing attribute or proprietary or contractual right, whether or not tradeable;
 - (ii) any credit, reduction right, off-set, allowance, allocated pollution right, certificate or other unit of any kind whatsoever, whether or not tradeable, and any other proprietary or contractual right, whether or not tradeable, resulting from, or otherwise related to the actual or assumed reduction, displacement or off-set of emissions at any location other than the Supplier’s Facilities as a result of the generation, purchase or sale of the electrical energy generated by the Facilities;
 - (iii) On-Site Emission Reduction Rights; and
 - (iv) all revenues, entitlements, benefits and other proceeds arising from or related to the foregoing, but for certainty, not including benefits or proceeds from environmental incentive programs offered by Government Authorities that do not require a transfer of the attributes in subsections (i) to (iii) above.
- (e) “Environmental Certification” means:
 - (i) EcoLogo™ Certification; or

- (ii) Any alternative certification SaskPower requires the Supplier to obtain under subsection 3.4 of this Schedule E.
- (f) “GHG” or “Greenhouse Gas(es)” means: (i) one or more of the following gases: carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulphur hexafluoride; and (ii) any other gas that is identified as having significant global warming potential and is added, at any time during the Supply Period, to Schedule 1 to the *Canadian Environmental Protection Act*, or to any other regulation(s) governing the emission of the gases noted in (i) from the Facilities.
- (g) “Government Agency” means any national, international, federal, provincial, state, municipal, county, regional or local government, organization or authority which has jurisdiction over the Facilities, and includes:
 - (i) any department, commission, bureau, board, administrative agency or regulatory body of any government;
 - (ii) an International Agency;
 - (iii) any Person acting as a registrar in connection with a Greenhouse Gas emission reduction registry; or
 - (iv) any Person acting as an agent for a Government Agency.
- (h) “Government Authority” means any federal, provincial, local or foreign governments or any of their boards or agencies, or any regulatory authority, other than SaskPower and entities controlled by SaskPower.
- (i) “International Agency” means the Conference of the Parties to the Convention, the International Panel on Climate Change, and any other international commission, bureau, board, administrative agency or regulatory body responsible for measures to achieve objectives of the Convention.
- (j) “Offset Credits” means credits issued by a Government Agency for each tonne of verified GHG reduced or removed from the atmosphere and stored permanently by a project that qualifies for a system administered by a Government Agency, now or in the future in compliance with legislation applicable to the Facilities whereby credits are awarded for verified GHG emission reductions or removals by eligible projects and, without limitation, includes:
 - (i) credits obtained by contributing to a technology fund established by applicable legislation, whose purpose is to develop, deploy and diffuse technologies that reduce emissions of Greenhouse Gases across industry;
 - (ii) tradeable credits or performance credits resulting from actual emissions, or emissions intensity, as the case may be, being below target in a given year;
 - (iii) Offset Credits that are the result of projects that result in incremental real, verified domestic reductions or removals of Greenhouse Gas emissions in activities that are not covered by applicable Greenhouse Gas regulations, that can be used for compliance purposes;
 - (iv) certain credits arising from a qualification under what is commonly referred to as the Clean Development Mechanism as described in the Convention;

- (v) credits obtained from the Government Authority on a one-time basis resulting from a Person's verified action for any period determined pursuant to applicable legislation to reduce its Greenhouse Gas emissions under applicable rules established by federal or provincial regulations (commonly known as "credit for early action").
- (k) "On-Site Emission Reduction Rights" means any credit, reduction right, off-set, allowance, allocated pollution right, certificate or other unit of any kind whatsoever, whether or not tradeable, resulting from or otherwise related to the reduction, removal or sequestration of emissions at or from the Facilities.
- (l) "Verification Body" means a Person that has been accredited by a Government Agency, now or in the future, to audit and verify Environmental Attributes.

Other capitalized terms used in this Schedule shall have the meaning ascribed to them elsewhere in the Agreement.

2. REGISTRATION AND COMPLIANCE

2.1 Supplier's Obligations

- (a) Upon SaskPower's request, from time to time, Supplier shall undertake all such commercially reasonable acts and things and execute all such further documents and give assurances necessary for the creation, issuance and maintenance of Environmental Attributes or for compliance of the Facilities with existing or future environmental legislation in relation to Greenhouse Gases throughout the term of this Agreement. In connection with any such request by SaskPower and without limiting the generality of the Supplier's obligations in respect of such request, subject to Articles 3 and 6 below, Supplier shall, at its own expense:
 - (i) register the Facilities in any reporting program, registry system or similar arrangement which:
 - A recognizes rights, benefits, title or interest in and to, arising out of or in connection with, or resulting from, an Environmental Attribute; and/or
 - B requires Supplier to account for the Greenhouse Gas emissions attributable to the Facilities by way of acquiring Offset Credits;within the time period designated by the applicable Government Agency, and thereafter maintain such registration continuously and in good standing throughout the continuance of this Agreement;
 - (ii) make such filings and associated applications to the Government Agency according to applicable legislation in relation to the Facilities on a regular and timely basis;
 - (iii) provide SaskPower with a copy (in an electronic pdf format) of: all filings, reports and other required documents provided to the Government Agency pursuant to clauses 2.1(a)(i) and 2.1(a)(ii) above; and all reports, confirmations and related documents received by Supplier from the Government Agency that pertain, whether in whole or in part, to the Facilities;
 - (iv) direct the Government Agency or other entity responsible for the issuance of Environmental Attributes to issue and deposit any Environmental Attributes attributable to the Facilities and/or the electrical energy generated by the Facilities directly to the account of SaskPower, or if this is not possible, immediately transfer these Environmental Attributes, upon being issued, to the account of SaskPower;

- (v) within 30 days of registration of the Facilities or issuance of Environmental Attributes attributable to the Facilities pursuant to clause 2.1(a)(i) and Section 2.1(a)(ii) above, provide SaskPower with written proof thereof;
- (vi) use all commercially reasonable efforts to mitigate the fees and costs associated with registration of the Facilities and the issuance of Environmental Attributes or acquisition of Offset Credits, as the case may be, attributable to Supplier's Facilities; and
- (vii) comply with all requirements of the Government Agency and the reporting program, registry system or similar arrangement and ensure that all documents and assurances necessary for the registration of the Facilities and issuance of Environmental Attributes or acquisition of Offset Credits, as the case may be, attributable to the Facilities are prepared and submitted in a timely fashion.

3. SASKPOWER'S EXCLUSIVE RIGHT TO ENVIRONMENTAL ATTRIBUTES

3.1 Transfer of Environmental Attributes

Supplier hereby transfers, assigns and sets over to SaskPower, free and clear of all liens, claims, charges and encumbrances of any kind whatsoever, any and all right, title and interest in and to Environmental Attributes. The Supplier, upon the request of SaskPower, shall, from time to time, do, sign and deliver to SaskPower, or cause to be done or signed and delivered to SaskPower all further acts, deeds, things, documents and assurances required to give effect to this section.

3.2 Exclusivity

The Supplier shall not at any time from and after when this Agreement is effective until the end of the Supply Period transfer, assign or set over any Environmental Attributes to any Person, other than SaskPower. The Supplier shall not use or apply any Environmental Attributes for any purpose whatsoever. The Supplier acknowledges and agrees that the exclusive rights conferred by this section are of fundamental importance, and that, without prejudice to any right to claim damages, compensation or an accounting of profits, the granting of an interim interlocutory and permanent injunction is an appropriate remedy to restrain any breach or threatened breach by the Supplier of the obligation set out in this section.

3.3 EcoLogo™ Certification

If required by SaskPower, the Supplier shall use commercially reasonable efforts to obtain EcoLogo™ Certification for the Facilities and all the electrical energy generated by the Facilities, and shall use commercially reasonable efforts to maintain the EcoLogo™ Certification for such period during the Supply Period as SaskPower may require. The Supplier shall notify SaskPower forthwith if the Supplier fails to obtain EcoLogo™ Certification as required hereunder or if, at any time during the Supply Period specified by SaskPower, the Supplier does not have EcoLogo™ Certification. If SaskPower requires the Supplier to obtain EcoLogo™ Certification, SaskPower shall reimburse the Supplier for all reasonable certification, audit and licensing fees required to obtain and maintain EcoLogo™ Certification unless the Supplier fails to obtain or maintain the EcoLogo™ Certification, in which case the Supplier shall be responsible for all such costs.

3.4 Alternate Certification

The Supplier shall, at SaskPower's request use commercially reasonable efforts to apply for, and diligently pursue and maintain any certification, licensing or approval offered by any Governmental Authority or independent certification agency evidencing that the Facilities and the electrical energy

generated by the Facilities has Environmental Attributes as an addition or an alternative to the EcoLogo™ Certification. If SaskPower requires the Supplier to obtain any such certification, licensing or approval, SaskPower shall reimburse the Supplier for all reasonable certification, audit and licensing fees required to obtain and maintain such certification, licensing or approval unless the Supplier fails to obtain or maintain such certification, licensing or approval, in which case the Supplier shall be responsible for all such costs.

3.5 Inspection and Audit Rights Regarding Environmental Attributes

SaskPower, any Affiliate of SaskPower and any third Person who has entered into a contract with SaskPower or any Affiliate of SaskPower to purchase Environmental Attributes may at any time conduct or have a third Person with the necessary expertise conduct, at SaskPower's expense, an audit of the Facilities and records and logs maintained by the Supplier in respect of the Facilities including energy generation and operating logs, records of reductions in output in electrical energy, meter readings, maintenance reports, invoice support records, documentation concern compliance with applicable Laws; and all information SaskPower reasonably requires to carry out such audit.

4. REPORTS

4.1 Reporting on Environmental Certification

- (a) The Supplier shall within 10 Business Days after a request from SaskPower, provide to SaskPower:
 - (i) all information SaskPower requires to verify the quantity of electrical energy generated by the Facilities, qualification of the Facilities and all or party of the energy generated by the Facilities for the Environmental Certification, if any, the status of the Environmental Certification, if any, and the existence, nature and quantity of Environmental Attributes;
 - (ii) any information required for the purposes of any Environmental Attribute or energy tracking system as directed by SaskPower; and
 - (iii) any other information SaskPower requires to enable SaskPower to obtain or realize the full benefit of Environmental Attributes, including sales of the Environmental Attributes to third Persons.

4.2 Reporting on Environmental Impacts

- (a) The Supplier shall deliver to SaskPower not later than February 28 in each year after COD, or in accordance with any other periodic reporting requirement prescribed by Laws environmental impact reports that comply with this subsection, and any reasonable written guidelines issued by SaskPower from time to time relative to the form and content of such reports. Environmental impact reports shall provide annual data concerning the impact of the operation of the Facilities on the environment, including Greenhouse Gas emissions, and the air and water quality, land use, biota and habitat impacts.

5. ACQUISITION OF OFFSET CREDITS

5.1 Process

- (a) If, in order to satisfy the requirements of the Government Agency and applicable legislation, Supplier is required to obtain Offset Credits as a result of the operation of the Facilities, then Supplier shall take such action as may be reasonably required to obtain such Offset Credits.

- (b) Subject to subsections 5.1(c) and 5.1(d) below, SaskPower shall reimburse Supplier for the direct costs of the Offset Credits, without mark-up, acquired by Supplier pursuant to subsection 5.1(a) above.
- (c) As soon as practical prior to the first Operating Year and by September 1 of each Operating Year, the Parties will discuss and agree upon a reasonable procurement process for Supplier to follow in procuring the Offset Credits anticipated to be required by Supplier for the next Operating Year or for future Operating Years. Without limiting the generality of Section 2.1 above, the purpose of these discussions is to provide SaskPower with assurance that its average costs of reimbursing Supplier for Offset Credits is not materially inconsistent with observed market prices available to any market participant for Offset Credits to be acquired for the Operating Year in question or, if agreed to by the Parties, such longer period of time for which Offset Credits may have been purchased.
- (d) Subject to subsection 5.1(e) below, SaskPower shall reimburse Supplier for the costs of acquiring the required Offset Credits, provided that Supplier follows the process agreed to pursuant to subsection 5.1(c) above. SaskPower will have the right to audit Supplier's records pertaining to the costs so incurred in accordance with Article 20 of the Agreement.
- (e) SaskPower may provide Offset Credits to Supplier in the event that: (i) Supplier does not materially follow the process agreed to pursuant to subsection 5.1(c) above; or (ii) at the time the Supplier acquired the Offset Credits, Supplier's cost of acquiring the required Offset Credits was materially inconsistent with observed market prices available to any market participant for Offset Credits to be acquired for the Operating Year in question. For greater certainty, SaskPower will not compensate Supplier for any Offset Credits acquired by Supplier in material contravention of the approved procurement process and, as a consequence, SaskPower opts to provide Offset Credits.
- (f) Notwithstanding the foregoing, for any Operating Year, upon SaskPower providing six month's notice prior to the start of that year, SaskPower may advise Supplier that SaskPower is to be responsible for obtaining, at its own cost, on behalf of Supplier, all of the Offset Credits that the Government Agency will require, as a result of the operation of the Facilities, for the forthcoming Operating Year. Any such notice shall not limit or reduce SaskPower's obligation to reimburse the Supplier for Offset Credits which have already been contracted for in accordance with the procurement process agreed to pursuant to subsection 5.1(d) above.
- (g) Settlement on account of the cost of Offset Credits obtained by Supplier pursuant to subsection 5.1(d) above will be on a monthly basis in arrears, 30 days after SaskPower receives the invoice from Supplier, or such other frequency as the Parties may agree to from time to time. For certainty, Supplier shall provide to SaskPower in addition to the invoice, all supporting documents in relation to the quantity and price of the Offset Credits obtained.

6. Responsibility for Costs

- 6.1** Subject to subsection 6.2 below, each Party shall pay its own costs, including administrative costs, associated with the assignment and transfer of the Environmental Attributes contemplated by Article 3, reporting contemplated in Article 4, or acquisition of Offset Credits contemplated by Article 5, as applicable.
- 6.2** SaskPower shall reimburse Supplier, subject to subsection 6.3, for the actual fees paid to:
 - (i) a Government Agency for registration (including application, validation and re-registration) of the Facilities and issuance (including verification and certification) of Environmental Attributes, where the applicable actions have been requested by SaskPower under this Schedule E, or

acquisition of Offset Credits attributable to the Facilities, where the applicable Offset Credits are acquired in accordance with this Schedule E, in any reporting program, registry system or similar arrangement which, as the case may be:

- A recognizes rights, benefits, title or interest in and to, arising out of or in connection with, or resulting from, an Environmental Attribute; and/or
- B requires Supplier to offset the Greenhouse Gas emissions attributable to the Facilities by way of acquiring Offset Credits.

(ii) a Verification Body for the verification of Environmental Attributes;

6.3 SaskPower shall not be responsible to reimburse any extraneous fees or surcharges paid as a result of Supplier's delay or failure to meet any requirement of the Government Agency or reporting program, registry system or similar arrangement mentioned herein. All other costs associated with the registration of the Facilities, the issuance of Environmental Attributes or acquisition of Offset Credits attributable to the Facilities in the said reporting program, registry system or similar arrangement shall be borne by Supplier.

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SCHEDULE F – ELIGIBLE TECHNOLOGY

The following technologies are considered an Eligible Technology under the terms of this Agreement:

Hydro

Hydro electricity means electricity generated by using a mechanical method to convert the potential energy of water into electricity provided that:

- Historic water levels and flow regimes are maintained with minimal alteration to adjoining natural, upland habitat, fisheries populations and fishery habitat during the construction and operation of the facility.

Biomass (includes Biogas)

Biomass fuelled electricity means electricity generated through the combustion of biomass fuel (directly or after conversion to a synthetic fuel), provided that:

- The biomass fuel is derived from a plant and available on a renewable basis, including waste organic material from the harvesting or processing of agricultural products, forestry products and dedicated energy crops grown specifically for their fuel value and in this case for electricity generation and may include short rotation woody crops such as poplar trees and herbaceous energy crops.
- Such organic matter is not peat or a peat derivative.
- Such organic matter shall not contain any treated by-products of manufacturing processes, including chipwood, plywood, painted or varnished wood, pressure treated lumber, or wood contaminated with plastics or metals.
- Supplementary non-renewable fuels used for start up, combustion, stabilization and low combustion zone temperatures shall not be more than 5% of total fuel heat input in any calendar year.
- The addition of the biomass generating facility would not result in a net increase in greenhouse gas emissions.

Biogas fuelled electricity means electricity generated from a system in which biogases are captured for combustion and conversion to electricity, provided that:

- The bio-gas is a gaseous fuel (primarily methane and carbon dioxide) produced by the anaerobic decomposition of organic wastes such as landfill sites, sewage treatment plants and anaerobic digestion organic waste processing facilities.
- Such organic matter shall not include hazardous waste or liquid waste, nor contain any materials that can adversely affect anaerobic processes or cause liquids or solids produced through anaerobic processes to become hazardous waste.
- Supplementary non-renewable fuels used for start up, combustion, stabilization and low combustion zone temperatures shall not be more than 5% of total fuel heat input in any calendar year.
- The addition of the biogas generating facility would not result in a net increase in greenhouse gas emissions.

Flare Gas

Flare gas means solution flare gas electricity generated through the combustion of solution flare gas provided that:

- Solution flare gas in this context is a mixture of hydrocarbon gases that is a by product in the upstream production of oil and which is normally separated from the oil and flared as a means of disposal.
- The solution flare gas generating facility would neither require nor necessitate additional resource consumption to maintain or enhance the facility.

- The addition of the solution flare gas generating facility would not result in a net increase in the green house gas emissions.

Solar

Solar powered electricity means electricity generated by converting the sun's light energy and or heat energy into electricity.

Wind

Wind-power electricity means electricity generated from a system that converts the kinetic energy of the wind into electricity.

Waste Heat Recovery

Waste heat recovery electricity means electricity generated through the recovery of usable energy from a source of waste heat that was previously unutilized provided that:

- The waste heat recovery generating facility would neither require nor necessitate additional resource consumption to maintain or enhance the facility.
- The addition of the waste heat recovery generating facility would also not result in a net increase in the green house gas emissions.
- This category includes heat capture for the purpose of electricity generation at sites such as natural gas compressor stations.

For clarity, new cogeneration projects or combined cycle power plants would not comply with the definition of a waste heat recovery project.