



Ontario Power Authority

DR3 CONTRACT

between

[name of Participant]

- and -

ONTARIO POWER AUTHORITY

DATED as of the ● day of ●, 200●

Contract Reference No. ●

TABLE OF CONTENTS

| | PAGE |
|---|------|
| DR3 CONTRACT | 1 |
| SECTION 1 - DEFINITIONS AND INTERPRETATION | 1 |
| 1.1 Definitions..... | 1 |
| 1.2 Headings | 1 |
| 1.3 Gender and Number..... | 1 |
| 1.4 Currency..... | 1 |
| 1.5 Statutes, Regulations and Market Rules | 2 |
| 1.6 Entire Agreement..... | 2 |
| 1.7 Waiver, Amendment | 2 |
| 1.8 Governing Law..... | 2 |
| 1.9 Preparation of Agreement | 2 |
| 1.10 Non-Exclusivity of Contract..... | 2 |
| 1.11 Multiple Projects..... | 3 |
| 1.12 Exhibits..... | 3 |
| SECTION 2 - TERM AND TERMINATION | 3 |
| 2.1 Term | 3 |
| SECTION 3 - DEVELOPMENT AND OPERATION OF THE PROJECT | 4 |
| 3.1 Design and Implementation of the Project..... | 4 |
| 3.2 Operation Covenants..... | 5 |
| 3.3 Buy Down of Monthly Contract MW and Buy Down of Number of Daily Schedules | 7 |
| 3.4 Compliance with Laws and Regulations and Agreement | 9 |
| 3.5 Participation in Other Programs..... | 10 |
| 3.6 Breakdown of Monthly Payment for OEB | 10 |
| 3.7 Settlement Account Start Interval..... | 10 |
| SECTION 4 - SUPPLY OF CONTRACTED DEMAND REDUCTION..... | 11 |
| 4.1 Obligation to Curtail | 11 |
| 4.2 Standby Notifications and Confirmations..... | 11 |
| 4.3 Activation Notices | 12 |
| 4.4 Not Fully Available For Curtailment | 14 |
| 4.5 Methodology and No Representations Regarding Standby Notifications and Activation Notices | 16 |
| 4.6 Maximum Contract Hours..... | 17 |
| 4.7 Related Products | 18 |
| SECTION 5 - PAYMENT OBLIGATIONS AND RESPONSIBILITY FOR TAXES | 19 |
| 5.1 General..... | 19 |
| 5.2 Monthly Payments | 19 |
| 5.3 Responsibility for Sales Taxes | 19 |
| 5.4 Non-Residency of Participant..... | 19 |
| 5.5 Participant's Responsibility for Taxes..... | 20 |
| SECTION 6 - MEASUREMENT & VERIFICATION, SETTLEMENT AND PAYMENTS..... | 20 |
| 6.1 Measurement & Verification Plan..... | 20 |
| 6.2 Provision of Meter Data | 20 |
| 6.3 Settlement Statements | 20 |
| 6.4 Payment | 21 |
| 6.5 Interest..... | 21 |
| 6.6 Adjustment to Statement | 21 |
| 6.7 Disputed Statements | 22 |

| | |
|--|----|
| SECTION 7 - PERFORMANCE EXEMPTIONS, PLANNED NON-PERFORMANCE EVENTS, MATERIAL NON-PERFORMANCE EVENTS AND PERFORMANCE BREACHES..... | 22 |
| 7.1 Performance Exemptions | 22 |
| 7.2 Planned Non-Performance Events | 22 |
| 7.3 Performance Breaches | 23 |
| SECTION 8 - DR3 PRUDENTIAL SECURITY REQUIREMENTS | 25 |
| 8.1 Security Requirements | 25 |
| 8.2 Letter of Credit Provisions | 25 |
| SECTION 9 - REPRESENTATIONS..... | 26 |
| 9.1 Mutual Representations of the Parties..... | 26 |
| 9.2 Representations of the Participant..... | 27 |
| SECTION 10 - CONFIDENTIALITY AND FIPPA | 28 |
| 10.1 Confidential Information..... | 28 |
| 10.2 Return of Confidential Information | 29 |
| 10.3 Injunctive and Other Relief..... | 29 |
| 10.4 FIPPA Records and Compliance | 30 |
| SECTION 11 - EVENTS OF DEFAULT AND REMEDIES..... | 30 |
| 11.1 Events of Default by the Participant..... | 30 |
| 11.2 Remedies of the OPA..... | 32 |
| 11.3 Events of Default by the OPA..... | 32 |
| 11.4 Termination by the Participant | 33 |
| 11.5 Termination of Agreement with Aggregator..... | 33 |
| SECTION 12 - FORCE MAJEURE AND CONTRIBUTOR LOSS | 33 |
| 12.1 Events of Force Majeure | 33 |
| 12.2 Exclusions from Force Majeure..... | 33 |
| 12.3 Effect of Invoking Force Majeure | 34 |
| 12.4 Contributor Loss..... | 34 |
| 12.5 Effect of Contributor Loss..... | 35 |
| SECTION 13 - LIABILITY AND INDEMNIFICATION | 36 |
| 13.1 Exclusion of Consequential Damages | 36 |
| 13.2 Indemnification by Participant | 36 |
| 13.3 Defence of Claims..... | 36 |
| 13.4 Acknowledgement with respect to Liquidated Damages | 36 |
| SECTION 14 - OPERATION AND ADMINISTRATION OF THIS AGREEMENT | 37 |
| 14.1 Administration of the Agreement..... | 37 |
| 14.2 Company Representative..... | 37 |
| 14.3 Record Retention | 37 |
| 14.4 Notices..... | 37 |
| 14.5 Audit..... | 38 |
| SECTION 15 - dispute resolution..... | 38 |
| 15.1 Informal Dispute Resolution | 38 |
| 15.2 Arbitration | 39 |
| 15.3 Appointment and Powers of Arbitrator..... | 39 |
| 15.4 Arbitration Procedure..... | 39 |
| 15.5 Arbitrator's Decision and Appeal..... | 39 |
| 15.6 Preclusion of Actions | 39 |
| 15.7 Class Arbitration..... | 39 |

| | |
|---|----|
| SECTION 16 - MISCELLANEOUS..... | 40 |
| 16.1 Business Relationship | 40 |
| 16.2 Binding Agreement | 41 |
| 16.3 Assignment..... | 41 |
| 16.4 Counterparts | 42 |
| 16.5 Rights and Remedies Not Limited to Agreement | 42 |
| 16.6 OPA Right to Set Off..... | 42 |
| 16.7 Time of Essence | 42 |
| 16.8 Further Assurances | 42 |

EXHIBITS

| | |
|-----------|---|
| EXHIBIT A | DEFINITIONS |
| EXHIBIT B | METER DATA AND M&V BASELINE METHODOLOGY |
| EXHIBIT C | FORM OF DR3 SCHEDULE |
| EXHIBIT D | FORM OF LETTER OF CREDIT |
| EXHIBIT E | CALCULATION OF MONTHLY PAYMENT |
| EXHIBIT F | OPA'S AGGREGATOR CODE OF CONDUCT |

DR3 CONTRACT

This agreement is between ●, a ● [Note to Finalization: Set forth the name and legal form of the Participant] created under the laws of ● (the “Participant”) and the Ontario Power Authority (the “OPA”). The Participant and the OPA are each referred to herein as a “Party” and collectively as the “Parties”.

WHEREAS the OPA is implementing a contractual load reduction program for Participants who are capable of providing Curtailment in the province of Ontario (the “DR3 Program”, with the rules applicable to the DR3 Program from time to time being the “DR3 Program Rules”);

AND WHEREAS the Participant submitted an Application for a Project that was accepted by the OPA under the DR3 Program Rules, and the Parties wish to execute this Agreement in order to formalize the contractual arrangements with respect to the Participant’s participation under the DR3 Program on the terms set out in the DR3 Schedule for such Project and on the terms and conditions set out herein;

AND WHEREAS, subject to the acceptance by the OPA during the DR3 Contract Term of one or more additional Application(s) under the DR3 Program Rules by the Participant for additional Project(s), the additional DR3 Schedule(s) related to such Project(s) shall also be governed by this Agreement;

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

SECTION 1 - DEFINITIONS AND INTERPRETATION

1.1 Definitions

In addition to the terms defined in the sections of the DR3 Contract, capitalized terms used in this Agreement shall have the meanings set out in Exhibit A – Definitions, and the words “including”, “include”, or “includes” when used in this Agreement shall mean “including without limitation”, “include without limitation”, or “includes without limitation”, respectively.

1.2 Headings

The inclusion of headings in sections of the Agreement are for convenience of reference only and shall not affect the construction or interpretation of sections of the Agreement. All references to sections in the Agreement shall refer to sections of the DR3 Contract unless otherwise stated.

1.3 Gender and Number

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

1.4 Currency

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

1.5 Statutes, Regulations and Market Rules

Unless otherwise expressly stipulated, any reference in this Agreement to the Market Rules or to a statute or to a regulation, code or rule promulgated under a statute or to any provision of a statute, regulation, code or rule or to any other Laws and Regulations shall be a reference to the Market Rules, statute, regulation, code, rule, provision or Laws and Regulations as amended, re-enacted or replaced from time to time. Except as set out in Section 6.7(3), in the event of any conflict or inconsistency with the Market Rules and the terms of this Agreement, the Market Rules shall govern to the extent of such conflict or inconsistency.

1.6 Entire Agreement

The DR3 Contract and all DR3 Schedules entered into from time to time during the DR3 Contract Term, all as may be amended from time to time, together constitute the entire agreement between the Parties pertaining to the subject matter of this Agreement and set out all the covenants, promises, warranties, representations, conditions, understandings and agreements between the Parties concerning the subject matter of this Agreement and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written. There are no covenants, promises, warranties, representations, conditions, understandings or other agreements, oral or written, express, implied or collateral between the Parties in connection with the subject matter of this Agreement except as specifically set forth in this Agreement and any documents required to be delivered pursuant to this Agreement. Any conflict or inconsistency between this Agreement and the DR3 Program Rules shall be resolved in favour of this Agreement, and any conflict or inconsistency between the DR3 Contract and any DR3 Schedule shall be resolved in favour of the DR3 Contract.

1.7 Waiver, Amendment

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

1.8 Governing Law

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

1.9 Preparation of Agreement

The Parties expressly agree that any doubt or ambiguity in the meaning, application, or enforceability of any term or provision of this Agreement shall not be construed or interpreted against the OPA or in favour of the Participant when interpreting such term or provision by virtue of the fact that this Agreement was prepared by the OPA.

1.10 Non-Exclusivity of Contract

This Agreement is not an exclusive contract for the provision of the deliverables under the DR3 Program or the DR3 Contract and the OPA may contract with others on the same or similar terms and by other means and on different terms.

1.11 Multiple Projects

In this Agreement, unless the context otherwise requires, all terms that are applicable to a single Project shall be applicable to each Project of the Participant for which a DR3 Schedule has been annexed to this Agreement.

1.12 Exhibits

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

| | |
|-----------|---|
| Exhibit A | Definitions |
| Exhibit B | Meter Data and M&V Baseline Methodology |
| Exhibit C | Form of DR3 Schedule |
| Exhibit D | Form of Letter of Credit |
| Exhibit E | Calculation of Monthly Payment |
| Exhibit F | OPA's Aggregator Code of Conduct |

The OPA may, at any time and from time to time after the date hereof upon written notice to the Participant, reasonably amend or replace the forms of DR3 Schedule and Letter of Credit set out in Exhibits C and D, respectively.

SECTION 2 - TERM AND TERMINATION

2.1 Term

(1) This Agreement shall become effective upon the date hereof and shall expire at 24:00 hours (EST) on the later of:

- (a) the day before the fifth anniversary date thereafter, as such five year period may be extended on one or more occasions pursuant to Section 2.1(2); and
- (b) the last day of the last Schedule Term among all DR3 Schedule(s) forming part of this Agreement;

(with such period between and including the effective date and the expiry date being the "**DR3 Contract Term**"), subject to earlier termination in accordance with the terms of this Agreement.

(2) The five year period set out in Section 2.1(1)(a) shall, at the end of such period, automatically be extended by a successive five year period, and each extended five year period shall automatically continue to be extended by a successive five year period, unless:

- (a) the Participant is in default under the Agreement as of the end of the then-current five year period; or
- (b) the OPA has notified the Participant in writing at least one year before the end of the then-current five year period that, in its sole and absolute discretion, it has elected not to further extend the DR3 Contract Term; or

- (c) the Participant has notified the OPA in writing at least one year before the end of the then-current five year period that, in its sole and absolute discretion, it has elected not to further extend the DR3 Contract Term.

SECTION 3 - DEVELOPMENT AND OPERATION OF THE PROJECT

3.1 Design and Implementation of the Project

(1) The Participant shall design, implement and, where applicable, build or acquire the Project that is described in each DR3 Schedule using Good Engineering and Operating Practices and meeting all applicable requirements of the Market Rules, the Transmission System Code, the Distribution System Code, any Governmental Authority and all other Laws and Regulations, and where the Participant is an Aggregator, the Aggregator Code of Conduct. The Participant shall ensure that such Project is designed, engineered, constructed and installed to operate in accordance with the requirements of this Agreement during its respective Schedule Term.

(2) The Participant shall provide, operate, and maintain, at its expense, such equipment or software as is necessary (i) to measure and verify the Curtailment of the Project as a direct result of the operation of the Control Equipment or DR Measures in accordance with the terms of the Measurement & Verification Plan for the Project and with this Agreement; and (ii) to comply with Section 2.1.2(a)(ii)(4)(II) of the DR3 Program Rules where the Participant is a Behind the Meter Generator with an aggregate Nameplate Capacity (as defined in the DR3 Program Rules) that exceeds the annual peak demand of the Load.

(3) (i) The Direct Participant shall at no time modify, vary, or amend in any material respect any of the features or specifications of any Project, and (ii) an Aggregator shall not (a) consent to a Contributor modifying, varying, or amending in any material respect any of the features or specifications of any Project, or (b) add, delete or substitute any Contributor Contract (other than as a result of a Contributor Loss) to any such Project (in the case of each of those items referred to in (i), (ii)(a) and (ii)(b), a "**Project Amendment**") during its respective Schedule Term without the Direct Participant or the Aggregator first notifying the OPA in writing, providing all information and documentation required by the OPA including a proposed revised replacement M&V Plan, and obtaining the OPA's prior written approval to such Project Amendment including the replacement M&V Plan, which approval may not be unreasonably withheld.

(4) Notwithstanding Section 3.1(3), the OPA may withhold its approval to any proposed Project Amendment:

- (a) which would, or would be likely to, materially adversely affect the ability of the Participant to comply with its obligations under this Agreement to Curtail the Monthly Contracted MW, except for a Project Amendment that relates to the permanent reduction of demand from the Project arising from the implementation of conservation and demand management (CDM) measures; or
- (b) if the OPA has determined in its sole and absolute discretion that the nature of the business conducted by the proposed additional Contributor is not appropriate for purposes of the DR3 Program or otherwise.

(5) Any Project Amendment that has not received the prior written approval of the OPA shall, if not removed within ten (10) Business Days after such Project Amendment occurred, entitle the OPA, at the OPA's sole option and without limiting any other remedies it may have:

- (a) to terminate:
 - (i) the DR3 Schedule of which the Project forms a part; or
 - (ii) the entire Agreement (including, for greater certainty, all DR3 Schedules in all Settlement Accounts) and, at the OPA's further option, all other DR3 Contracts between the Participant and the OPA; and

where the Participant is an Aggregator, to require the Aggregator to assign all of its right, title and interest in and to its Contributor Contracts pursuant to Section 11.5.

- (b) at the OPA's further option, to be repaid or paid, respectively, in full, as of the effective date of such termination, for:
 - (i) all Monthly Payments that had been paid to the Participant during the Schedule Term from the date that the unapproved Project Amendment was implemented up to the effective date of such termination, with respect to those DR3 Schedule(s) that were terminated pursuant to Section 3.1(5)(a); or
 - (ii) the Early Termination Payment from the Participant with respect to those DR3 Schedule(s) that were terminated pursuant to Section 3.1(5)(a).

(6) Where the Participant is an Aggregator, the Participant agrees that its Contributor Contracts shall contain a provision requiring that all right, title and interest in and to such Contributor Contracts are assignable by the Participant to another Aggregator having a DR3 Contract with the OPA without the Contributor's consent if this Agreement is terminated for any reason; and

(7) Where the Participant is an Aggregator, such Participant shall, in its marketing practices, business practices, and other dealings with or with respect to Contributors, comply with all applicable Laws and Regulations and also comply with the terms of the OPA's Aggregator Code of Conduct.

3.2 Operation Covenants

(1) The Participant shall own (if the Participant is a Direct Participant) or have Enforceable Rights to (if the Participant is an Aggregator) the Control Equipment, including, if applicable, any Behind the Meter Generation, and shall operate and maintain the Control Equipment and implement the DR Measures for the Project during its respective Schedule Term in accordance with Good Engineering and Operating Practices such that the requirements of the Measurement & Verification Plan and the applicable Market Rules are met, and meeting all applicable requirements of the Transmission System Code, the Distribution System Code, and all other Laws and Regulations.

(2) If the OPA establishes protocols from time to time with respect to demand response that are applicable to the Participant (the "**DR Protocols**"), the Participant shall use Commercially Reasonable Efforts to comply, at its sole expense, with such DR Protocols in performing its obligations under this Agreement.

(3) The Participant shall assume all risk, liability and obligation and indemnify, defend, and hold harmless the Indemnitees in respect of all actions, causes of action, suits, proceedings, claims, demands, losses, damages, penalties, fines, costs, obligations and liabilities arising out of a discharge of any contaminant into the natural environment at or related to the Project and any fines or orders of any kind

that may be levied or made in connection therewith pursuant to the *Environmental Protection Act* (Ontario), the *Ontario Water Resources Act* (Ontario), or the *Dangerous Goods Transportation Act* (Ontario), or other similar legislation whether federal or provincial except to the degree that such discharge shall have been due to the negligence of the Indemnitees.

(4) The Participant covenants to obtain and maintain, for each Project during its Schedule Term, insurance covering such risks and in such amount as a prudent owner (if the Participant is a Direct Participant) or operator (if the Participant is an Aggregator) of a project the same as or similar to the Project would maintain; to provide evidence thereof to the OPA upon request; and to indemnify and save the OPA harmless in respect of any failure by it to do so.

(5) If the Participant is entering into a DR3 Contract in respect of a Facility that consumes electricity, the Participant shall be solely responsible for all charges (net of any applicable credits) in relation to electricity consumed by the Project and/or the Participant in accordance with this Agreement.

(6) If requested by the OPA at any time during the DR3 Contract Term, the Participant shall provide, from and after the expiry of a 12 month notice period, and at no cost to the OPA, meter data as set out below and all necessary equipment and systems required to allow the provision of such meter data, as follows:

- (a) if the Participant is a Direct Participant and has a Monthly Contracted MW greater than or equal to 5.0 MW and less than 25.0 MW in a Settlement Account in any Season, then the Participant shall provide a gateway connection to communicate the number of MW being Curtailed for each Contributor in that Settlement Account on a real-time basis. The standard protocols will be used (TCP/IP). Such Participant will be solely responsible for the standard communication cost (e.g., high speed ISP); and
- (b) if the Participant is a Direct Participant and has a Monthly Contracted MW of 25.0 MW or greater in a Settlement Account in any Season, then the Participant shall meet the same requirements that are applicable to Aggregators following the Ramping Period set out in Section 3.2(6)(c); and
- (c) if the Participant is an Aggregator, then the Participant will provide a telemetered value of the MW being Curtailed for each Contributor in that Settlement Account on a real-time basis, following the Ramping Period. Consumption data equivalent to the meter data being provided for the Settlement Account shall be made available. Such Participant will provide data measurements at the OPA communications interface less than one minute from any change in the field monitored quantity, which requirement is similar to the Market Rules for Minor Dispatchable Load Facility and Non-Dispatchable Load Facility under the Function of Data measurements available at the IESO communications interface, Chapter 4, Appendix 4.23.

Notwithstanding the foregoing, the requirements referenced in this Section 3.2(6) will not be required if the Participant is already providing the OPA with telemetry data for each Contributor in that Settlement Account on a real-time basis.

(7) The Participant shall provide to the OPA:

- (a) written notice of any Planned Outages as may be required in connection with Section 7.2 of this Agreement;
 - (b) immediate written notice of the start of any Forced Outage, whenever occurring, and immediate written notice of the end of such Forced Outage, and, to the extent that any Forced Outage occurs or continues into any portion of the applicable four hour period for determining Not Fully Available for Curtailment or into any portion of the Hours of Availability, supporting evidence of such Forced Outage at the same time as submitting the weekly meter data for the week in which such Forced Outage occurred or continued; and
 - (c) where the Participant is an Aggregator who suffers a Contributor Loss, the Contributor Loss Notice in accordance with Section 12.4.
- (8) For purposes of Exhibit E of this Agreement:
- (i) a Business Day in which a Participant either declares a Forced Outage or experiences a Forced Outage (which, for greater certainty, includes a Forced Outage caused by an event of Force Majeure) during any portion of the Hours of Availability; and
 - (ii) each Business Day where a Participant who is a Direct Participant experiences a Forced Outage (which, for greater certainty, includes a Forced Outage caused by an event of Force Majeure) during the four hours prior to receiving an Activation Notice, or during the 4 hours prior to Curtailment, as applicable, and does not recover from such Forced Outage before such applicable four hour period ends;

shall be considered a Single Day Planned Non-Performance Event, but unless otherwise expressly set out in this Agreement, the provisions of Sections 7.2(1) to (3) shall not be applicable thereto. For greater certainty, where a Participant who is an Aggregator experiences a Forced Outage (which, for greater certainty, includes a Forced Outage caused by an event of Force Majeure) during the four hours prior to Curtailment, such day shall not be considered a Single Day Planned Non-Performance Event nor eligible for Force Majeure relief under Section 12.

(9) Where the Participant's Project consists of, at any time during such Project's Schedule Term, one or more Contributors that are Behind the Meter Generators with an aggregate Nameplate Capacity (as defined in the DR3 Program Rules) that exceeds the annual peak demand of such Contributor's Load, such Behind the Meter Generators shall at no time during the Activation Period inject electricity from such Contributor into the IESO-controlled Grid or the Local Distribution System.

3.3 Buy Down of Monthly Contract MW and Buy Down of Number of Daily Schedules

- (1) Buy Down of Monthly Contracted MW
 - (a) A Participant who is a Direct Participant shall, in respect of any given DR3 Schedule, have the right on one occasion in the Schedule Term to reduce the Monthly Contracted MW of that DR3 Schedule for each Season to a lower amount, which lower amount shall either be 0.0 MW or an amount equal to or greater than 5.0 MW, by written notice to the OPA. For greater certainty, the amount, measured in MW, of the reduction in the Monthly Contracted MW in the previous sentence must be the same for all Seasons. Provided that the

requirements of Sections 3.3(1)(b) and 3.3(3) have been met and the Participant has paid to the OPA the Buy-Down Amount (Monthly Contracted MW), such reduction shall take effect from and after the date set forth in Section 3.3(3)(b). If the Monthly Contracted MW, as reduced in accordance with the foregoing provisions, is equal to 0.0 MW in any Season, then the DR3 Schedule shall be terminated for all Seasons as of the date such reduction takes effect, subject to the payment by the Participant to the OPA of the Buy-Down Amount (Monthly Contracted MW) for such terminated DR3 Schedule and the payment of all other amounts owed but not yet paid by the Participant and the OPA to each other, whether or not such amounts are then due pursuant to this Agreement.

- (b) Notwithstanding Section 3.3(1)(a), a reduction in the Monthly Contracted MW shall not be permitted unless the Participant has first demonstrated to the OPA's reasonable satisfaction that the Project to which the DR3 Schedule relates has been affected by an act, event, cause or condition that causes the Project to be unable to Curtail the Monthly Contracted MW and that:
 - (i) results in a reduction in the ability of the Project to Curtail for a period that is no less than the remainder of the Schedule Term; and
 - (ii) was not caused by the Participant and could not have been prevented by the Participant exercising Commercially Reasonable Efforts to prevent such result.

(2) Buy Down of Number of Daily Schedules

- (a) A Participant who is a Direct Participant shall, in respect of any given DR3 Schedule, have the right on one occasion in the Schedule Term to designate from one to three whole Daily Schedules per week to be excluded from the days in which the Participant is required to be available in respect of such DR3 Schedule under this Agreement. For greater certainty, specific weekday(s) must be selected, subject to the prior written approval of the OPA, and such selections shall apply to all weeks for the balance of the Schedule Term. Provided that the requirements of Sections 3.3(2)(b) and 3.3(3) have been met and the Participant has paid to the OPA the Buy-Down Amount (Hours of Availability), such reduction shall take effect from and after the date set forth in Section 3.3(3)(b). For purposes of Exhibit E of this Agreement, each such weekday(s) selected (to the extent that it falls on a Business Day) shall, on each such weekday, be considered to be a Single Day Planned Non-Performance Event but the provisions of Section 7.2(1) and 7.2(3) shall not be applicable thereto.
- (b) Notwithstanding Section 3.3(2)(a), the reduction in the number of Daily Schedules per week shall not be permitted unless the Participant has first demonstrated to the OPA's reasonable satisfaction that the Project to which the DR3 Schedule relates has been affected by an act, event, cause or condition that causes the Project to be unable to Curtail the Monthly Contracted MW during those weekday(s) and that:
 - (i) results in a reduction in the ability of the Project to Curtail for a period that is no less than the remainder of the Schedule Term; and
 - (ii) was not caused by the Participant and could not have been prevented by the Participant exercising Commercially Reasonable Efforts to prevent such result.

- (3) General Provisions Applicable to Buy Downs
- (a) The Buy Down of Monthly Contracted MW and the Buy Down of Number of Daily Schedules may be utilized by the Direct Participant either individually or together, with respect to any given DR3 Schedule.
 - (b) The reduction in the Monthly Contracted MW or the reduction in the number of Daily Schedules per week set out in Sections 3.3(1)(a) or 3.3(2)(a), as the case may be, shall take effect on a date, which date shall be the first day of a month, designated by the Participant by notice in writing and agreed to by the OPA that is no earlier than thirty (30) days following the date of such notice, and provided that there is no Participant Event of Default that has not been cured as of the effective date of the reduction. The Participant acknowledges that any such reduction in the Monthly Contracted MW or in the number of Daily Schedules per week shall not reduce any obligations of the Participant in existence prior to the effective date of such reduction, and that such reduction shall be permanent and the reduced Monthly Contracted MW or the reduced number of Daily Schedules per week, as the case may be, cannot be increased or otherwise changed at any point during the balance of that Schedule Term. Notwithstanding the foregoing, the Participant may, with the prior written consent of the OPA, change the particular weekdays selected from time to time (but not the number of weekdays selected).
 - (c) After the reduction in the Monthly Contracted MW or the reduction in the number of Daily Schedules per week set out in Section 3.3(1) or 3.3(2), as the case may be, becomes effective, the Participant shall be prohibited from entering into any other demand response contracts or schedules (including any further DR3 Contracts or DR3 Schedules) under any new or existing demand response or load shifting programs with the OPA or with any other party, with respect to such Project or DR Measures, for a period of time equal to the lesser of:
 - (i) the length of the Schedule Term remaining as of the date that the reduction in Section 3.3(1) or 3.3(2), as applicable, took effect; and
 - (ii) one (1) year from the date that the reduction in Section 3.3(1) or 3.3(2), as applicable, took effect.
 - (d) For purposes of Exhibit E of this Agreement, each weekday selected for a Buy-Down of a Daily Schedule, shall, on each such Business Day, be a Single Day Planned Non-Performance Event, but unless otherwise expressly set out in this Agreement, the provisions of Sections 7.2(1) to (3) shall not be applicable thereto.

3.4 Compliance with Laws and Regulations and Agreement

- (1) The Parties shall each comply, in all material respects, with all Laws and Regulations required to perform or comply with their respective obligations under this Agreement.
- (2) The Parties shall each obtain and maintain in good standing each licence, permit, certificate, registration, authorization, consent or approval of any Governmental Authority required to perform or comply with their respective obligations under this Agreement, including such licensing as is required by the OEB.

3.5 Participation in Other Programs

(1) The Participant shall not participate or be subject to any program, schedule, contract, or agreement referenced in Sections 9.2(1)(e) or (f).

(2) Subject to compliance with the restriction set out in Section 3.5(1), if the Participant is, intends to, or becomes involved in or bound under any other demand response or generation program or other programs or initiatives (whether or not created or administered by the OPA) that is implemented, administered, or supported by the IESO, the OPA or any branch or agency of the federal, a provincial, a municipal government, or a LDC, that provides an availability, capacity, energy, or utilization payment for the same availability, capacity, energy, or utilization provided at the same point in time as those that are being provided under this Agreement and any DR3 Schedule with respect to a given Project (including any Contributor thereto), then the Participant shall forthwith advise the OPA of such involvement and all details thereof as requested by the OPA and shall, at the OPA's option, deliver to or credit the OPA with the amount of all remuneration from such programs or initiatives while the DR3 Schedule for such Project remains in force.

3.6 Breakdown of Monthly Payment for OEB

(1) If the Participant is a LDC, such Participant shall provide to the OPA, no later than thirty (30) days after each Payment Date, a written breakdown setting out the allocation by such Participant of the Monthly Payment paid to the Participant by such Payment Date as either capital expenditures or operating costs, or on such other categorization or basis as reasonably requested by the OPA, and the Participant represents and warrants that such breakdown provided to the OPA shall be consistent with the breakdown of such Monthly Payment that the Participant shall file with the OEB in relation to this Agreement or otherwise. The Participant acknowledges and consents to the disclosure by the OPA of all such information provided by the Participant to the OPA from time to time pursuant to Section 10.1(1)(d)(iii).

(2) In addition to any other rights or remedies available to the OPA, the OPA reserves the right to withhold the payment of any Monthly Payment (or portion thereof) to the Participant unless the OPA has received the written breakdown of each of the prior Monthly Payments as pursuant to Section 3.6(1).

3.7 Settlement Account Start Interval

(1) The Participant acknowledges that it is a condition subsequent to this DR3 Contract, and each DR3 Contract Schedule that the OPA select, in its sole and absolute discretion, a starting Interval for the Settlement Account (the "**Start Interval**") that will occur between 15 minutes prior to, and 30 minutes past, the hour. Where the Participant receives an Activation Notice, the Participant shall Curtail on the Start Interval relative to the hour indicated on the Activation Notice, notwithstanding that the Activation Notice may specify the first Interval of the hour. The Start Interval may not be changed without the prior written consent of the Participant, acting reasonably. Once the Start Interval is specified for the initial DR3 Schedule in a Settlement Account, all subsequent DR3 Schedules in that same Settlement Account shall have the same Start Interval.

(2) The Hours of Availability, Activation Period, Contracted Dispatch Period and the timelines and time periods for the Not Fully Available for Curtailment evaluation and Settlement calculations will shift correspondingly with the Start Interval. For example, where a duration of time is specified (such as the Contracted Dispatch Period of four hours), then the end time shall shift in parallel with any shift in the Start Interval such that the Contracted Dispatch Period remains exactly four hours in length. The Day Ahead

Window and the Day At Hand Window and the timelines and time periods for issuing Standby Notifications, Activation Notices and Confirmation Notice shall not be shifted.

SECTION 4 - SUPPLY OF CONTRACTED DEMAND REDUCTION

4.1 Obligation to Curtail

(1) The Parties acknowledge that, prior to the Schedule Commencement Date for a given DR3 Schedule, the Participant shall have no obligation to Curtail with respect to the Project to which such DR3 Schedule relates.

(2) From and after the beginning of the hour ending 01:00 hours (EST) of the Schedule Commencement Date, the Participant shall Curtail with respect to the Project to which such DR3 Schedule relates, using the Control Equipment or DR Measures in accordance with the terms of this Agreement, and the Monthly Payments in relation to such Project shall begin to accrue and be payable in accordance with Section 5 - Payment Obligations and Responsibility for Taxes.

(3) If the Participant is an Aggregator who has a DR3 Schedule with a Schedule Term of 3 or 5 years, such Participant shall provide to the OPA a statement of the portion of the Monthly Contracted MW to be provided along with an updated M&V Plan for the Settlement Account of which the DR3 Schedule forms a part for each and every Contract Month during the Ramping Period, by no later than ten (10) Business Days prior to the commencement of each such Contract Month. At the OPA's request, such Participant shall provide an opportunity for the OPA to meet with appropriate personnel of the Participant and the Contributors to discuss and assess the status of the Project and the contents of the updated M&V Plan. For greater certainty, if Activated in any Contract Month during the Ramping Period, such Participant will be required to provide the portion of the Monthly Contracted MW to be provided for that Contract Month (subject only to a Contributor Loss), and failure to do so will result in Performance Set-Offs and any other rights or remedies of the OPA described in Section 11 - Events of Default and Remedies. After the Ramping Period expires, such Participant must provide the full Monthly Contracted MW for the remaining balance of the Schedule Term. For greater certainty, Aggregators have no Ramping Period for a DR3 Schedule with a Schedule Term of 1 year and must be capable of providing the full Monthly Contracted MW for the full Contracted Dispatch Period for such DR3 Schedule effective from the Schedule Commencement Date.

4.2 Standby Notifications and Confirmations

(1) It shall be in the OPA's sole and absolute discretion as to whether to issue a Standby Notification to the Participant.

(2) The OPA may, in the Day Ahead Window or the Day at Hand Window, issue a Standby Notification to the Participant in respect of a given Daily Schedule. If the Participant has multiple DR3 Schedules in a given Settlement Account, then the Standby Notification, if issued, will be issued based upon the aggregate Monthly Contracted MW of the Participant for that Settlement Account.

(3) The Standby Notification shall either be a Fixed Standby Notification or an Open Standby Notification.

(4) The Participant acknowledges that the Activation Hours set out in the Standby Notification shall commence on the Start Interval as noted in the DR3 Schedule.

(5) The Participant shall be deemed to have issued a Confirmation to a Fixed Standby Notification or an Open Standby Notification, as the case may be, if the Participant will be able to Curtail the Monthly Contracted MW for the Contracted Dispatch Period; provided, however, that the Participant is not required to respond to a Standby Notification if it has claimed any Performance Exemptions in accordance with this Agreement. Otherwise, the Participant will be required to respond with a Confirmation, specifying both the Confirmed MW and Confirmed Hours (even if the Confirmed MW and/or the Confirmed Hours will be zero), if:

- (a) the Participant receives a Fixed Standby Notification and will Curtail for an amount and/or period that is less than the Monthly Contracted MW or the Contracted Dispatch Period, respectively; or
- (b) the Participant receives an Open Standby Notification and will Curtail for an amount and/or period that is different from the Monthly Contracted MW and the Contracted Dispatch Period, respectively.

(6) If the OPA issues a Standby Notification during the Day Ahead Window, and if the Participant is required to issue a Confirmation to the OPA, then the Participant will issue such Confirmation by no later than one hour after the end of the Day Ahead Window or be subject to a Performance Set-Off and any other rights or remedies available to the OPA described in Section 11 - Events of Default and Remedies. A Confirmation received after one hour after the end of the Day Ahead Window, and offering to provide more than the Monthly Contracted MW and/or a duration that exceeds the Contracted Dispatch Period in response to an Open Standby Notification will be deemed to be a Confirmation received within the Day Ahead Window for an amount equal to the Monthly Contracted MW and for a period equal to the Contracted Dispatch Period.

(7) If the OPA issues a Standby Notification during the Day at Hand Window, and if the Participant is required to issue a Confirmation to the OPA, then the Participant must issue a Confirmation, if required, by no later than one hour after the end of the Day at Hand Window or be subject to a Performance Set-Off and any other rights or remedies available to the OPA described in Section 11 - Events of Default and Remedies. A Confirmation in response to an Open Standby Notification, received after one hour after the end of the Day at Hand Window, and offering to provide more than the Monthly Contracted MW and/or a duration that exceeds the Contracted Dispatch Period in response to an Open Standby Notification will be deemed to be a Confirmation received within the Day at Hand Window for an amount equal to the Monthly Contracted MW and for a period equal to the Contracted Dispatch Period.

(8) If the OPA issues a Fixed Standby Notification to the Participant during the Day Ahead Window, and the OPA also issues an Open Standby Notification to the Participant for the same Settlement Account during the Day at Hand Window, then the Participant may, at its option, issue a Confirmation in response to the Open Standby Notification or, alternatively, disregard the Open Standby Notification. However, if the Participant issues a Confirmation in response to the Open Standby Notification under the circumstances described in the previous sentence, then the Confirmation for the Open Standby Notification shall automatically be deemed to replace and supersede the Confirmation for the Fixed Standby Notification.

4.3 Activation Notices

(1) It shall be in the OPA's sole and absolute discretion as to whether to issue an Activation Notice to the Participant. Without limiting the generality of the foregoing, the OPA may:

- (a) in the case of a Fixed Standby Notification:
 - (i) not issue an Activation Notice; or
 - (ii) issue an Activation Notice for the Confirmed MW for the Confirmed Hours; or
- (b) in the case of an Open Standby Notification:
 - (i) not issue an Activation Notice; or
 - (ii) issue an Activation Notice only for the Monthly Contracted MW for the Contracted Dispatch Period; or
 - (iii) issue an Activation Notice for the Confirmed MW for the Confirmed Hours.

(2) The OPA may only issue one Activation Notice to that Participant relating to the Hours of Availability in a given Daily Schedule. All DR3 Schedules of a given Participant in the same Settlement Account shall, if Activated, be Activated at the same time under one Activation Notice.

(3) Unless prior written notice of a Planned Non-Performance Event has been given to the OPA in accordance with this Agreement, the Participant must Curtail in accordance with an Activation Notice that is received by the Participant at least 2 hours and 15 minutes in advance of the commencement of the Activation Period.

(4) If an Activation Notice is received by the Participant between 2.5 hours and 1.0 hours in advance of the commencement of the Activation Period specified in the Activation Notice, and in the absence of a Planned Non-Performance Event for which prior written notice was given to the OPA in accordance with this Agreement, the Participant at its sole option may (but will not be required to) Curtail in response to such Activation Notice. If such Participant nevertheless elects to Curtail in response to such Activation Notice, such Participant shall notify the OPA in writing of such election as well as the amount of the Curtailment no later than 30 minutes prior to the commencement of the Activation Period, and the Participant will be required to comply with the Activation Notice as if it had received that Activation Notice at least 2.5 hours in advance of the commencement of the Activation Period.

(5) If a Participant who is an Aggregator, with respect to any given Activation, has failed to send activation notices to a sufficient number of its Contributors such that the sum of the stated contributions to the Monthly Contracted MW of each such Contributor (as set out in the M&V Plan) who received an activation notice from the Participant is less than the Confirmed MW, then notwithstanding anything to the contrary in this Agreement and without limiting any other rights or remedies available to the OPA, the amount of Confirmed MW shall be automatically reduced to an amount equal to the sum of the stated contributions set out in the M&V Plan to the Monthly Contracted MW of each Contributor that did receive an activation notice from the Participant with respect to such Activation, unless such reduction will result in a lower Availability Set-Off and/or Utilization Set-Off than would result if such reduction did not occur. In addition, such failure shall also be considered a Material Non-Performance Event and the reduced amount of Confirmed MW may result in a Performance Set-Off as determined pursuant to Exhibit E.

4.4 Not Fully Available For Curtailment

(1) Prior to the time that the Participant is required to Curtail Load pursuant to any Activation Notice (unless the Participant is eligible for a Performance Exemption or otherwise excused from performance in accordance with the terms of this Contract), the Participant must not be Not Fully Available for Curtailment,

- (a) over the four hour period prior to Curtailment; or
- (b) over the four hour period prior to receiving an Activation Notice,

which period of evaluation is determined pursuant to Sections 4.4(2)(a) below. A Participant will be Not Fully Available for Curtailment in the circumstances set out in Sections 4.4(2) below. Where a Participant is Not Fully Available for Curtailment, an Availability Set-Off (Reliability) shall apply as set out in Exhibit E.

(2) The Participant, with respect to a particular Settlement Account, and subject to Section 4.4(3), shall be **“Not Fully Available for Curtailment”** under the following circumstances, as applicable:

- (a) for a Settlement Account that is composed of Contributors that are Interruptible Loads, or that is a mixture of Contributors that are Interruptible Loads and Non-Submetered Generators, if the capacity (in MW) of the Project’s Interruptible Load, or the Load in which the Non-Submetered Generator is embedded (where such generators are available for use as part of a Participant’s Curtailment), averaged over the four hour period prior to Curtailment or averaged over the four hour period prior to receiving an Activation Notice (as determined pursuant to Sections 4.4(2)(a)(i) or 4.4.(2)(a)(ii)), is less than the product of 95% and the Monthly Contracted MW in effect for that Contract Month. For purposes of the previous sentence:
 - (i) a Participant who is a Direct Participant shall be entitled to elect, in its DR3 Schedule for each Settlement Account, whether the Not Fully Available for Curtailment evaluation will be performed using the four hour period prior to Curtailment or the four hour period prior to receiving an Activation Notice; provided, however, that where the Direct Participant selects to be evaluated on the four hour period prior to Curtailment, the Participant's Interruptible Loads, or the Load in which any Non-Submetered Generator is embedded, shall not be permitted to increase its Load in any one hour of such four hour period beyond the average Load (as averaged over the 12 Intervals) for the two hours of highest Load during the preceding 10 Business Days where the Participant did not Curtail; and
 - (ii) notwithstanding Section 4.4(2)(a)(i), a Participant who is a Direct Participant and also a Wholesale Market Participant with the IESO shall be assessed for purposes of determining Not Fully Available for Curtailment using the four hour period prior to receiving an Activation Notice; and
 - (iii) a Participant who is an Aggregator shall be assessed for purposes of determining Not Fully Available for Curtailment using the four hour period prior to Curtailment; or

- (b) for a Settlement Account that is composed of Contributors that are Sub-Metered Generators, with a Baseline established as per Exhibit B, if (i) the sum of the rated output capacity for such Sub-Metered Generators less the average generated MWh from such Sub-Metered Generators over the four hour period of the Not Fully Available for Curtailment evaluation determined pursuant to Section 4.4(2)(a) (as measured in MW) is less than (ii) the product of 95% and the relevant Monthly Contracted MW; or
 - (c) for a Settlement Account that is composed of a mixture of Interruptible Loads and Non-Submetered Generators set out in Section 4.4(2)(a) as well as Sub-Metered Generators set out in Section 4.4(2)(b), if the sum of the capacity calculations set out in Sections 4.4(2)(a) and (b) (and for greater certainty, irrespective of whether the period of evaluation for purposes of Section 4.4(1)(a) was that four hour period prior to Activation or that four hour period prior to an Activation Notice) is less than the product of 95% and the Monthly Contracted MW in effect for that Contract Month for that Settlement Account.
- (3) The determination of Not Fully Available for Curtailment for the purposes of this Section 4.4 shall be subject to the following additional provisions, as applicable:
- (a) a Participant shall be excused from meeting the Not Fully Available for Curtailment requirement due to a Planned Non-Performance Event in accordance with Sections 7.2(1) to (4);
 - (b) where a Participant who is a Direct Participant experiences a Forced Outage (which, for greater certainty, includes a Forced Outage caused by an event of Force Majeure) during the four hours prior to receiving an Activation Notice, or during the 4 hours prior to Curtailment, as applicable, and does not recover from such Forced Outage before such applicable four hour period ends, then for purposes of Exhibit E of this Agreement, such day shall be treated as a Single Day Planned Non-Performance Event. Where such Direct Participant recovers prior to the end of the applicable four hour period, then the Not Fully Available for Curtailment determination shall be performed as an average of those Intervals of actual operation during such four hour period that were not affected by the Forced Outage, or on another four hour period accepted by the OPA on the same day;
 - (c) where a Participant who is an Aggregator experiences a Forced Outage (which, for greater certainty, includes a Forced Outage caused by an event of Force Majeure) during the four hours prior to Curtailment, such Forced Outage shall not relieve the Participant from the determination of Not Fully Available for Curtailment, nor shall such day be considered to be a Single Day Planned Non-Performance Event, nor eligible for Force Majeure relief under Section 12;
 - (d) where the Participant is an Aggregator who has suffered a Contributor Loss, the Baselines used for the determination of Not Fully Available for Curtailment shall be reduced by the quantity (MW) of the Contributor Loss; and
 - (e) where the Direct Participant is also a Wholesale Market Participant, and;
 - (i) for the four hour period prior to receiving an Activation Notice, is fully dispatchable by the IESO and has actually submitted bid(s) for each Interval in such four hour period into the IESO administered markets for at least the Monthly Contracted MW

at a price lower than the MMCP, then the Direct Participant shall be excused from meeting the Not Fully Available for Curtailment requirement set out in this Section 4.4; and

- (ii) for any twelve (12) or more Intervals (whether consecutive or non-consecutive) within the four hour period prior to receiving an Activation Notice, is not fully dispatchable such that one or more bids were removed from the market, or have been accepted at a price equal to the MMCP, then the Direct Participant shall be assessed for the Not Fully Available for Curtailment test as in Section 4.4.

4.5 Methodology and No Representations Regarding Standby Notifications and Activation Notices

(1) The Participant acknowledges that the OPA may use various methodologies as determined by the OPA from time to time in determining whether to issue a Standby Notification and/or an Activation Notice to the Participant, and the OPA makes no representations whatsoever as to the number or extent of any Standby Notifications or Activation Notices that may be issued to the Participant for any given Settlement Account, or within any given Season, or as to whether the Maximum Contract Hours will be attained within a calendar year.

(2) Without limiting the generality of the foregoing, the OPA shall be entitled, without the consent of the Participant, to appoint any one or more Persons from time to time throughout the DR3 Contract Term and for any stated length of time up to the balance of the DR3 Contract Term (a “**Dispatcher**”) to exercise the OPA’s rights to issue Standby Notifications and/or Activation Notices to the Participant under this Agreement or in respect of any one or more Settlement Account(s), in the place of the OPA, and on the following basis:

- (a) the OPA will provide written notice to the Participant at least five (5) Business Days prior to the exercise of the OPA’s rights by the Dispatcher, and identify those Settlement Account(s) to which the Dispatcher is entitled to the exercise of the OPA’s rights; and
- (b) the Dispatcher shall be entitled, during the term of its appointment, to exercise the OPA’s rights with respect to such Settlement Account(s) to issue Standby Notifications and Activation Notices directly to the Participant in the place of the OPA or the OPA’s Representatives appointed pursuant to Section 14.1. However, the Dispatcher shall not have the authority to act for, or in the place of, the OPA in any other respect under this Agreement and the Dispatcher shall not be directly liable to the Participant; and
- (c) Standby Notifications and Activation Notices shall be issued by the Dispatcher with respect to such Settlement Account(s) in accordance with the parameters set out in this Agreement, except that the methodology in determining whether to issue a Standby Notification and/or an Activation Notice to the Participant may not be the same or similar to the methodology used by the OPA with any other participant under DR3; and
- (d) the appointment of the Dispatcher will not relieve the OPA of its obligations to the Participant under this Agreement; and
- (e) the appointment of the Dispatcher may be revoked by the OPA at any time prior to the expiry of the term of the Dispatcher’s appointment by providing written notice to the

Participant at least one (1) Business Day prior to the revocation of the appointment of the Dispatcher. For greater certainty, the revocation of the appointment of the Dispatcher shall not affect the validity of any outstanding Standby Notifications and Activation Notices, which shall continue to be governed by the terms of this Agreement.

4.6 Maximum Contract Hours

- (1) The maximum amount of Curtailment in response to Activation Notices per calendar year in respect of a DR3 Schedule (the “**Maximum Contract Hours**”) is set out in such DR3 Schedule.
- (2) Notwithstanding Section 4.6(1):
 - (a) once a DR3 Schedule has been established for a given Settlement Account, then any subsequent DR3 Schedule for the Participant in the same Settlement Account must elect the same Option A or Option B, as the case may be, as the initial DR3 Schedule; and
 - (b) the first DR3 Schedule in respect of which a Settlement Account is opened and whose Contract Year does not coincide with the calendar year shall have assigned to it by the OPA, based on forecasts of the OPA (and not necessarily on a straight-line or pro-rated basis), a reduced number of Maximum Contract Hours for that part of the first Contract Year falling within the first calendar year, with the remaining number of Maximum Contract Hours within the first calendar year for that DR3 Schedule being allocated to the portion of the last Contract Year falling within the last calendar year of the Schedule Term; and
 - (c) all subsequent DR3 Schedules in the same Settlement Account whose Contract Years do not coincide with the calendar year shall be assigned the same number of Maximum Contract Hours remaining in that calendar year as remains under all preceding DR3 Schedule(s) in the Settlement Account in question.
- (3) Any excess hours of Curtailment beyond the Contracted Dispatch Period in response to an Open Standby Notification shall not count towards the Maximum Contract Hours.
- (4) If the Participant has selected Option A with respect to a Settlement Account, the Participant shall notify the OPA in writing, by 6:00 p.m. EST on the same day that the 90th hour has been or will be reached for the Settlement Account in a calendar year, if the Participant will participate with respect to that Settlement Account beyond the Maximum Contract Hours of Option A. Similarly, if the Participant has selected Option B with respect to a DR3 Schedule, the Participant shall notify the OPA in writing, by no later than 6:00 p.m. EST of the same day that the 190th hour has been or will be reached for the Settlement Account in a calendar year, if it will participate with respect to that Settlement Account beyond the Maximum Contract Hours of Option B.
- (5) If the Participant has advised the OPA pursuant to Section 4.6(4) that it wishes to participate beyond the 100 or 200 Maximum Contract Hours, as the case may be, then the OPA may (but shall not be obligated to) continue to send Standby Notifications and Activation Notices and the Participant shall comply with any and all subsequent Standby Notifications, until and including such time as the Settlement Account has been Activated:
 - (a) an additional 7 times within the calendar year if the DR3 Schedule’s Maximum Contract Hours for that Settlement Account is 100; or

- (b) an additional 14 times within the calendar year if the DR3 Schedule's Maximum Contract Hours for that Settlement Account is 200;

and the Participant will be considered to be entitled to certain compensation as set out in Section 5 - Payment Obligations and Responsibility for Taxes, but will also be subject to Performance Set-Offs and other rights or remedies for non-performance.

(6) If the Participant has not advised the OPA pursuant to Section 4.6(4) that it wishes to participate beyond the Maximum Contract Hours, then the Participant shall disregard any and all Standby Notifications and Activation Notices that may be received by the Participant from time to time beyond the Maximum Contract Hours, the OPA shall disregard any and all Confirmations or Curtailments that may be received by the OPA from time to time with respect to any such Standby Notifications or Activation Notices, and the Participant shall not be entitled under this Agreement to compensation (regardless of whether the Participant in fact Curtailed), nor subject to any rights or remedies of the OPA for non-performance by the Participant, with respect to such Settlement Account.

4.7 Related Products

(1) The Participant hereby transfers and assigns to the OPA, unconditionally and absolutely, all of its right, title and interest in and to all of the Related Products other than those which may be required by Laws and Regulations to be utilized for the operation of the Participant's Project(s). Upon request by the OPA, the Participant shall use Commercially Reasonable Efforts to obtain, register, certify or deliver such Related Products or any evidence of the OPA's right, title and interest thereto to the OPA, to the IESO-Administered Markets or other markets, or to any Person as the OPA may direct, on behalf, or for the benefit, of the OPA. Without limiting the generality of the foregoing, the Participant shall from time to time during and after the DR3 Contract Term, on behalf and in the name of or in trust for the OPA, use Commercially Reasonable Efforts to obtain, quantify, verify, certify and register with the applicable Governmental Authorities or other agencies all Environmental Attributes related to the Participant's Project(s), for no additional remuneration. The OPA shall retain all rights, title, and interest in and to all Related Products other than those which may be required by Laws and Regulations to be utilized for the operation of the Participant's Project(s). The OPA shall be entitled, unilaterally and without the consent of the Participant, to deal with any Related Products transferred and delivered to it by the Participant in any manner it determines, regardless of whether any consideration is being received by the OPA.

(2) The Participant covenants not to sell, supply or deliver any Related Products to the IESO-Administered Markets, other markets or any other Person, or to retire any Related Products, unless the OPA has requested and approved such sale, supply, delivery or retirement. Notwithstanding the foregoing, the Participant may sell, supply or deliver ancillary services (as defined in the Market Rules) to the IESO, provided that the Participant gives prior written notice to the OPA, and provided that, where the provision of such ancillary services can reasonably be expected to have a material effect on the Participant's ability to Curtail hereunder or to establish a Baseline in accordance with the terms hereof, the Participant obtains the OPA's prior written consent.

(3) The Participant shall not participate in any voluntary programs with respect to any Related Products associated with the Project without the prior written consent of the OPA, which consent may be withheld in the OPA's sole and absolute discretion.

(4) All Related Products required to be transferred or assigned to the OPA pursuant to this Section 4.7 shall be delivered by the Participant free and clear of all liens, claims and encumbrances other than those in favour of the OPA.

SECTION 5 - PAYMENT OBLIGATIONS AND RESPONSIBILITY FOR TAXES

5.1 General

(1) During the DR3 Contract Term, the Participant shall be entitled to receive compensation for providing Curtailment by its Project(s) in accordance with the applicable DR3 Schedule(s) and the other provisions of this Agreement.

(2) The Participant shall have no entitlement under this Agreement to receive compensation for Curtailment by any Project designated in a DR3 Schedule prior to the Schedule Commencement Date in respect of such DR3 Schedule, or, in the case of a Behind the Meter Generator described in Section 2.1.2(a)(ii)(4)(B) of the DR3 Program Rules, shall have no entitlement to receive compensation for any Curtailment by such generator in excess of the annual peak demand of the relevant Contributor Load.

(3) From and after the Schedule Commencement Date in respect of a DR3 Schedule, Monthly Payments shall begin to accrue and be payable in respect of the Project designated in such DR3 Schedule in accordance with Exhibit E of this Agreement.

(4) Any Curtailment provided by the Project(s) of the Participant pursuant to any DR3 Schedule will be exclusively compensated for under the terms of this Agreement.

5.2 Monthly Payments

(1) For each calendar month during the DR3 Contract Term, a Monthly Payment in respect of all DR3 Schedules under this Agreement shall be calculated in accordance with Exhibit E. If the Monthly Payment calculated in accordance with Exhibit E is a positive number, such amount shall be owing from the OPA to the Participant. If the Monthly Payment calculated in accordance with Exhibit E is a negative number, such amount shall be owing from the Participant to the OPA.

(2) If the Participant has multiple DR3 Schedules in a given Settlement Account, all such DR3 Schedules shall be aggregated for purposes of calculating the Monthly Payment in accordance with Exhibit E.

(3) In the event the Participant has more than one Settlement Account, the total Monthly Payment payable to the Participant in respect of a Settlement Month under this Agreement shall be the sum of the Monthly Payments calculated in accordance with Exhibit E for each such Settlement Account.

5.3 Responsibility for Sales Taxes

If any Sales Taxes are payable in connection with the Monthly Payment, such Sales Taxes shall be paid by the Party responsible for making the Monthly Payment.

5.4 Non-Residency of Participant

If Participant becomes non-resident of Canada, as that term is defined in the ITA, and the OPA is subject to an obligation to withhold any Taxes as a result of such non-residency, then payments under this

Agreement by the OPA shall be reduced by the amount of such withholding Taxes and the OPA shall remit any such withholding Taxes to the applicable taxing authorities.

5.5 Participant's Responsibility for Taxes

Except as provided in Section 5.3, the Participant is liable for and shall pay, or cause to be paid, or reimburse the OPA if the OPA has paid, all Taxes applicable to the supply of any Curtailment from the Project(s) or the performance of its obligations under this Agreement. If the OPA is required to remit such Taxes, the amount thereof may be deducted from any sums becoming due to the Participant hereunder.

SECTION 6 - MEASUREMENT & VERIFICATION, SETTLEMENT AND PAYMENTS

6.1 Measurement & Verification Plan

(1) The Participant acknowledges having provided the OPA with a copy of the Measurement & Verification Plan for each Project.

(2) The Participant shall submit a revised M&V Plan for the applicable Settlement Account in a timely manner for review and acceptance by the OPA, where (i) at any time there is a proposed Project Amendment; (ii) the Participant is an Aggregator who has suffered a Contributor Loss; (iii) a new DR3 Schedule is added to the DR3 Contract; or (iv) there are any proposed amendments or modifications to a Project's Measurement & Verification Plan. In addition, a Participant who is an Aggregator must submit a M&V Plan for all Contract Months and all DR3 Schedules in the Ramping Period. The Participant acknowledges that no such proposed amendment or modification to a Project's Measurement & Verification Plan shall be effective without the prior written acceptance of the OPA.

6.2 Provision of Meter Data

The Participant shall provide to the OPA all meter data as required by, and in accordance with, Exhibit B – Meter Data and M&V Baseline Methodology. Where a complete set of weekly data for a Settlement Account is not received by the OPA by 3:00 p.m. (EST) on the first Business Day of the following week, the Meter Data Set-Off set out in section 4.5 of Exhibit E shall apply.

6.3 Settlement Statements

(1) A preliminary settlement statement (the "**Preliminary Settlement Statement**") for each Contract Month (the "**Settlement Month**") shall be made available within ten Business Days after the last day of the month immediately following such Settlement Month to the Participant on a website (to be provided) (the "**Settlement Website**"). The Preliminary Settlement Statement will set out the Monthly Payment for that Settlement Month, as well as any other payments owing under this Agreement by either Party to the other. An invoice (the "**Invoice**") for amounts owed to or by the Participant as per the Preliminary Settlement Statement will be made available to the Participant at the same time on the Settlement Website.

(2) A final settlement statement (the "**Final Settlement Statement**") for the Settlement Month will be made available 20 Business Days after the last day of the month immediately following such Settlement Month to the Participant on the Settlement Website, which Final Settlement Statement shall contain adjustments to the Preliminary Settlement Statement (if any) for arithmetic or process errors identified at that time. Payment for those adjustments (if any) shall be included in the next Invoice. If no further Preliminary Settlement Statement and Invoice are to be issued pursuant to this Agreement at the time that

such adjustment is determined, then a supplementary Preliminary Settlement Statement and Invoice shall be prepared and made available on the Settlement Website.

(3) Notwithstanding the foregoing and notwithstanding Exhibit E, payment of all or any part of the Monthly Payment may be withheld where the OPA is not satisfied that the Curtailment in respect of which such amount is being withheld was a bona fide and verified Curtailment in accordance with the provisions of this Agreement. If the OPA so withholds payment, the OPA will deliver a written notice to the Participant together with its reasons for withholding payment. If the Participant subsequently satisfies the OPA that the Curtailment was bona fide and verified, the OPA shall pay the withheld amount to the Participant in the next Invoice.

(4) This Section 6.3 and 6.4 are subject to change by the OPA from time to time upon reasonable prior written notice to the Participant.

6.4 Payment

Where the OPA owes the Invoice amount to the Participant as per the Invoice, such amount shall be paid to the Participant within four Business Days after the Invoice date. Where the Participant owes the Invoice amount to the OPA, the Participant shall remit such amount pursuant to the instructions on the Invoice within two Business Days after the Invoice date. Each such payment due date is hereinafter referred to as the "**Payment Date**".

6.5 Interest

The Party owing the payment set out in the Invoice shall pay interest on any payments unpaid on or before the Payment Date commencing on the day following the Payment Date to the date of payment. The interest rate applicable to such late payment shall be the Interest Rate in effect on the date that the payment went into arrears, calculated daily, but shall not, under any circumstances, exceed the maximum interest rate permitted by Laws and Regulations.

6.6 Adjustment to Statement

(1) Where the Participant disagrees with a Final Settlement Statement, the Participant may deliver written notice (the "**Disagreement Notice**") to the address set out on the Website within the one year period prior to the first anniversary of the date of the Final Settlement Statement.

(2) Within 25 Business Days after receipt of the Disagreement Notice, the Settlement calculations referenced in the Disagreement Notice shall be reviewed for arithmetic or computational errors. Where the disagreement raised in the Disagreement Notice has been resolved, a correction will be included on the next Preliminary Settlement Statement and Invoice to be issued. If no further Preliminary Settlement Statement and Invoice are to be issued pursuant to this Agreement at such time, then a supplementary Preliminary Settlement Statement and Invoice shall be prepared and made available on the Settlement Website.

(3) If the Participant does not deliver a Disagreement Notice within the one-year period prior to the first anniversary of the date of the Final Settlement Statement, and other than any items referred to in a Disagreement Notice properly received prior to the first anniversary of the applicable Final Settlement Statement date and not yet resolved, the Settlement amounts in the Final Settlement Statement shall be final and binding and shall not be subject to further adjustment.

6.7 Disputed Statements

(1) Where the OPA does not agree with the Participant's position in the Disagreement Notice, and if the disagreement is not otherwise resolved, the dispute may be submitted by either Party to dispute resolution pursuant to the terms of Section 15 - Dispute Resolution.

(2) If and to the extent that the Participant is a market participant under the Market Rules, the Participant agrees that the dispute resolution mechanisms set out in Section 15 of this Agreement shall be the sole and exclusive mechanisms available to the Participant with respect to any Settlement dispute under this Agreement, and the Participant agrees not to pursue or invoke any other dispute resolution or settlement mechanisms that may be available to the Participant, whether under the Market Rules or otherwise.

SECTION 7 - PERFORMANCE EXEMPTIONS, PLANNED NON-PERFORMANCE EVENTS, MATERIAL NON-PERFORMANCE EVENTS AND PERFORMANCE BREACHES

7.1 Performance Exemptions

(1) The Participant shall reply to Standby Notifications where required pursuant to Section 4.2, and the Participant shall comply with Activation Notices received by it in respect of a Settlement Account, unless any of the Performance Exemptions are applicable.

7.2 Planned Non-Performance Events

(1) The Participant will be permitted to use Planned Non-Performance Events in accordance with the applicable criteria set out in Sections 7.2(2) and (3), provided that the Participant notifies the OPA in writing of such Planned Non-Performance Event in a form and manner acceptable to the OPA and including the MW reduction from the Baseline, no later than:

- (a) a time to be specified by the OPA on the Website with respect to a Single Day Planned Non-Performance Event; and
- (b) 12:01 a.m. (EST) on the fifth Business Day prior to the first day of an Extended Period Planned Non-Performance Event.

Such notice shall be irrevocable and may not be withdrawn by the Participant once given to the OPA. For greater certainty, a Planned Non-Performance Event must relate to an entire Settlement Account, even though that Settlement Account may in fact be composed of one or more Contributors, some of whom in fact would otherwise have been able to Curtail.

(2) The Participant, whether an Aggregator or a Direct Participant, may take one Extended Period Planned Non-Performance Event per Settlement Account per calendar year, for a period up to and including the Extended Period, if the M&V Plan includes a request for such Extended Period together with reasonable evidence in writing satisfactory to the OPA that the Extended Period Planned Non-Performance Event is for the purpose of regularly scheduled maintenance activities and at least 75% of the Participant's Monthly Contracted MW for that Settlement Account has taken such Extended Period for a Planned Outage in each of the previous two calendar years. If a Planned Non-Performance Event for an Extended Period is used by the Participant and has ended earlier than expected, the Participant shall deliver a notice in writing to the OPA confirming when such Planned Non-Performance Event has ended, but in such circumstance, the Participant shall not be entitled to use as a performance exemption at any

subsequent time in the calendar year any days that had not been used in that Extended Period Planned Non-Performance Event.

(3) The Participant may take Single Day Planned Non-Performance Events per Settlement Account in a calendar year, on the following basis:

- (a) a Participant who is an Aggregator may take one Single Day Planned Non-Performance Event per calendar year; or
- (b) a Participant who is a Direct Participant may take one or more Single Day Planned Non-Performance Event(s) per calendar year, if the M&V Plan includes a request for such Single Day Planned Non-Performance Event(s) and identifies the Project(s) that resulted in the request for the Single Day Planned Non-Performance Event(s), together with reasonable evidence in writing acceptable to the OPA that:
 - (i) the number of requested Single Day Planned Non-Performance Events are reasonable based on the number of Planned Outage days that were taken on Business Days during the previous calendar year; and
 - (ii) such maintenance days resulted in a production equipment shutdown equivalent to a minimum of 75% of the Monthly Contracted MW in that calendar month in respect of the Settlement Account, and such shutdown occurred during a portion of the period in which (A) the Hours of Availability, or (B) the applicable period assessed for purposes of Not Fully Available for Curtailment, would have occurred,

provided that the Participant may request additional Single Day Planned Non-Performance Events subject to the approval of the OPA in its sole discretion.

(4) The Participant may take one After Deadline Outage Day per week, and no more than five After Deadline Outage Days per Contract Month, where an “**After Deadline Outage Day**” is a Business Day where, after the deadline to receive a Standby Notification or an Activation Notice passes without the Participant receiving a Standby Notification or an Activation Notification, the Participant’s Interruptible Load, in whole or in part, undergoes an Outage (including, for greater certainty, a Planned Outage or a Forced Outage). The Participant must notify the OPA in writing as part of its weekly metered data submission that the Participant has claimed such Business Day to be an After Deadline Outage Day.

7.3 Performance Breaches

(1) Each Performance Breach shall be evaluated using the most up-to-date meter data (V1 or V2) aggregated from all DR3 Schedules in that Settlement Account. The number of Material Non-Performance Events for a Settlement Account is reset to zero upon the first day of each calendar year, and Performance Breaches are cumulative to each DR3 Schedule in that Settlement Account until the expiry of the last Schedule Term in that Settlement Account.

(2) In the event of the first Performance Breach for that Settlement Account, and without limiting any other rights or remedies available to the OPA and notwithstanding Exhibit E, the Availability Payment in section 1.0 of Exhibit E for all of the DR3 Schedules in that Settlement Account for the Contract Month following the month in which the Performance Breach occurred shall be deemed to be zero (unless the

Performance Breach occurs in the last month of the last Schedule Term, in which case the total Availability Payment in section 1.0 of Exhibit E for all of the DR3 Schedules in that Settlement Account for the Contract Month in which the Performance Breach occurred shall be deemed to be zero). Notwithstanding the foregoing, the Participant shall not be excused from continuing to comply with any of its obligations under all of the DR3 Schedules under that Settlement Account, as if such Performance Breach had not occurred. The Participant and OPA shall use reasonable efforts prior to the end of the M&V Review Period to agree on the necessary remedial action as a result of the Performance Breach; however, failing such agreement by the end of the M&V Review Period, all of the DR3 Schedules in that Settlement Account shall be terminated and the OPA shall be entitled, without limiting any other rights or remedies it may have, to its rights and remedies under Section 11 – Events of Default and Remedies including payment of the Early Termination Payment from the Participant in relation to all such DR3 Schedules so terminated.

(3) If there is a second Performance Breach for that Settlement Account, and without limiting any other rights or remedies available to the OPA, the Availability Payment in section 1.0 of Exhibit E for all of the DR3 Schedules in that Settlement Account for the Contract Month following the month in which the Performance Breach occurred shall be deemed to be zero (unless the Performance Breach occurs in the last month of the last Schedule Term, in which case the Availability Payment in section 1.0 of Exhibit E for the Contract Month in which the Performance Breach occurred shall be deemed to be zero), and the OPA reserves the right to pursue another M&V Review Period on the same terms as set out in Section 7.3(2) or, at its sole option and without limiting any other rights or remedies it may have, to terminate all of the DR3 Schedules in that Settlement Account, and the OPA shall be entitled to its rights and remedies under Section 11 – Events of Default and Remedies including payment of the Early Termination Payment from the Participant in relation to all such DR3 Schedules so terminated.

(4) If there is a third Performance Breach for that Settlement Account, and without limiting any other rights or remedies available to the OPA, the OPA at its sole option may:

(a) terminate:

(i) all of the DR3 Schedules in that Settlement Account; or

(ii) the entire DR3 Contract with all DR3 Schedules in all Settlement Accounts and, at the OPA's further option, all other DR3 Contracts between the Participant and the OPA, and the Availability Payment in section 1.0 of Exhibit E for all of the DR3 Schedules in that Settlement Account for the Contract Month in which the Performance Breach occurred shall be deemed to be zero; and

(b) be paid, as of the effective date of such termination, the Early Termination Payment from the Participant in relation to all such DR3 Schedules so terminated in Section 7.3(4)(a).

(5) The Participant shall be prohibited from entering into any other demand response contracts or schedules (including any further DR3 Contracts or DR3 Schedules) under any new or existing demand response or load shifting programs with the OPA for a period of two (2) years from the date of such any termination pursuant to Sections 7.3(2), (3) or (4).

SECTION 8 - DR3 PRUDENTIAL SECURITY REQUIREMENTS

8.1 Security Requirements

- (1) On or before the addition of a DR3 Schedule hereto, the Participant shall deliver a Letter of Credit, certified cheque, bank draft, or other equivalent form of surety instrument acceptable to the OPA in its sole and absolute discretion (the “**DR3 Prudential Security**”) for each DR3 Schedule in the following amounts:
 - (a) where the Participant is a Direct Participant, the DR3 Prudential Security shall be in an amount equal to the highest Monthly Contracted MW in any Season multiplied by \$10,000 per MW; and
 - (b) where the Participant is an Aggregator the DR3 Prudential Security shall be in an amount equal to the highest Monthly Contracted MW in any Season (without regard to the Ramping Period) and multiplied by \$10,000 per MW.

The total amount of the DR3 Prudential Security required from time to time pursuant to this Section 8 shall be referred to as the “**DR3 Prudential Requirement**”.

- (2) If the Participant exercises a Buy-Down of the Monthly Contracted MW, the Participant shall deliver new DR3 Prudential Security to the OPA reflecting the amount of the reduced Monthly Contracted MW prior to such Buy-Down taking effect.
- (3) If the OPA, in accordance with this Agreement, has recovered monies that were due to it using all or any part of the DR3 Prudential Security, the Participant shall, within ten (10) calendar days after notice by the OPA, provide replacement DR3 Prudential Security in the full amount of the DR3 Prudential Requirement, to replace the DR3 Prudential Security that was fully or partially drawn upon.

8.2 Letter of Credit Provisions

- (1) Any Letter of Credit delivered hereunder shall be subject to the following provisions:
 - (a) The Participant shall (i) renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit, (ii) if the financial institution that issued an outstanding Letter of Credit has indicated its intent not to renew such Letter of Credit, provide a substitute Letter of Credit or other equivalent form of surety instrument satisfactory to the OPA at least ten (10) Business Days prior to the expiration of the outstanding Letter of Credit, and (iii) if a financial institution issuing a Letter of Credit fails to honour the OPA’s properly documented request to draw on an outstanding Letter of Credit (other than a failure to honour as a result of a request to draw that does not conform to the requirements of such Letter of Credit), provide for the benefit of the OPA (A) a substitute Letter of Credit that is issued by another financial institution, or (B) other surety instrument satisfactory to the OPA in its sole and absolute discretion in an amount equal to such outstanding Letter of Credit, in either case within five (5) Business Days after the Participant receives notice of such refusal.
 - (b) A Letter of Credit shall provide that the OPA may draw upon the Letter of Credit in an amount (up to the face amount for which the Letter of Credit has been issued) that is equal to all amounts that are due and owing from the Participant but that have not been paid to the OPA within the time allowed for such payments under this Agreement (including any

related notice or grace period or both). A Letter of Credit shall provide that a drawing may be made on the Letter of Credit upon submission to the financial institution issuing the Letter of Credit of one or more certificates specifying the amounts due and owing to the OPA in accordance with the specific requirements of the Letter of Credit.

- (c) If the Participant shall fail to renew, substitute, or sufficiently increase the amount of an outstanding Letter of Credit (as the case may be), or to establish one or more additional Letters of Credit or other equivalent form of surety instrument satisfactory to the OPA when required hereunder, then the OPA may draw on the entire, undrawn portion of any outstanding Letter of Credit upon submission to the financial institution issuing such Letter of Credit of one or more certificates specifying the amounts due and owing to the OPA in accordance with the specific requirements of the Letter of Credit. If the amounts due and owing are less than the amount drawn under such Letter of Credit, then such excess amount shall be held as DR3 Prudential Security. The Participant shall remain liable for any amounts due and owing to the OPA and remaining unpaid after the application of the amounts so drawn by the OPA.
- (d) The costs and expenses of establishing, renewing, substituting, cancelling and reducing the amount of (as the case may be) one or more Letters of Credit shall be borne by the Participant, including, without limitation, all legal costs and fees of the OPA incurred in connection therewith.
- (e) The OPA shall return a Letter of Credit held by the OPA to the Participant if the Participant is substituting a Letter of Credit of a greater or lesser amount pursuant to Sections 8.1(2) or 8.1(3) within five (5) Business Days from the OPA's receipt of such substituted Letter of Credit.

SECTION 9 - REPRESENTATIONS

9.1 Mutual Representations of the Parties

- (1) Each of the Participant and the OPA represents to the other as follows, and acknowledges that the other is relying on such representations in entering into this Agreement:
 - (a) it has the requisite power, authority and capacity to enter into this Agreement and to perform its obligations hereunder; and
 - (b) this Agreement has been duly authorized, executed, and delivered by it and constitutes a valid and binding obligation enforceable against it in accordance with its terms except as such enforcement may be limited by bankruptcy, insolvency and other laws affecting the rights of creditors generally and except that equitable remedies may only be granted in the discretion of a court of competent jurisdiction; and
 - (c) the execution and delivery of this Agreement by it and the consummation of the transactions contemplated hereby will not result in the breach or violation of any of the provisions of, or constitute a default under, or conflict with or cause the termination, cancellation or acceleration of, its material obligations or any judgement, decree, order or award to which it is subject or any license permit, approval, consent or authorization held by it; and

- (d) there are no bankruptcy, insolvency, reorganization, receivership, seizure, realization, arrangement or other similar proceedings pending against, or being contemplated by the Participant or, to the knowledge of the Participant, threatened against the Participant; and
- (e) there are no actions, suits, proceedings, judgments, rulings or orders by or before any Governmental Authority or arbitrator, or, to the knowledge of the Participant, threatened against the Participant, that could have a Material Adverse Effect on the Participant; and
- (f) all requirements for the Participant to make any declaration, filing or registration with, give any notice to or obtain any licence, permit, certificate, registration, authorization, consent or approval of, any Governmental Authority as a condition to entering into this Agreement have been satisfied.

9.2 Representations of the Participant

(1) In addition to the representations set out in Section 9.1(1), the Participant represents to the OPA as follows, and acknowledges that the OPA is relying on such representations in entering into this Agreement and subsequently from time to time in entering into any additional DR3 Schedule(s) that is annexed to this Agreement or in adding, deleting, or substituting any Contributor, as the case may be:

- (a) all statements, specifications, data, confirmations and information set out in the Application are complete and accurate in all material respects and are hereby restated and reaffirmed by the Participant as representations made to the OPA as of the date of this Agreement; and
- (b) all of the information set out in this Agreement pertaining to the Participant, the Project(s), and the Contributor(s) is true and correct, or, to the extent it relates to a Project yet to be constructed, is an accurate representation of the Participant's plans and designs for the construction of the Project; and
- (c) the Participant, each Project, and each Contributor and Facility satisfies the eligibility and other requirements set out in the applicable version of the DR3 Program Rules referenced in each DR3 Schedule; and
- (d) the Participant is not a non-resident of Canada for the purposes of the ITA; and
- (e) if the Participant is a Direct Participant, the Project is not the subject of more than one DR3 Schedule either on behalf of the Participant or any other participant with a DR3 Contract, or if the Participant is an Aggregator, to the Participant's best knowledge and belief after due inquiry, the Project is not the subject of more than one DR3 Schedule either on behalf of the Participant or any other participant with a DR3 Contract; and
- (f) if the Participant is a Direct Participant, no Project or any Contributor or Facility that is a part of such Project is the subject of, or if the Participant is an Aggregator, to the Participant's best knowledge and belief after due inquiry, no Project or any Contributor or Facility that is a part of such Project is the subject of:
 - (i) a current contract arising from the Ontario Hydro Non-Utility Generation program, the Province of Ontario's or the OPA's requests for proposals for clean energy

- supply or renewable energy supply, or any OPA-administered standard offer program; or
- (ii) a current physical or financial power purchase agreement or other similar contract relating to the generation of electricity by the Project; or
 - (iii) receipt of an OPA contract, or a contract with a program manager managing a program on behalf of the OPA, for equipment that would facilitate demand reduction; and
- (g) each Project is capable of Curtailing the Monthly Contracted MW during Hours of Availability for the Contracted Dispatch Period, and that such Curtailment is not offset by, does not result in, or in any way cause an increase in electricity load elsewhere on the IESO-controlled grid or on any Local Distribution System, either directly or indirectly.

(2) Each of the representations of the Participant in Sections 9.1(1) and 9.2(1) shall be considered to be continuing representations during and throughout the DR3 Contract Term, any change in which shall immediately be communicated to the OPA by the Participant in writing, subject, however, to the rights of the OPA in Section 11 - Events of Default and Remedies to require the Participant to cure such change in the representation.

SECTION 10 - CONFIDENTIALITY AND FIPPA

10.1 Confidential Information

- (1) From the date of this Agreement and following the expiry of the DR3 Contract Term, each of the Parties shall keep confidential and secure and shall not disclose Confidential Information except as follows:
- (a) the Receiving Party may disclose Confidential Information to its Representatives who need to know Confidential Information for the purpose of assisting the Receiving Party in complying with its obligations under this Agreement. On each copy made by the Receiving Party, the Receiving Party must reproduce all notices which appear on the original. The Receiving Party shall inform its Representatives of the confidentiality of Confidential Information and shall be responsible for any breach of this Section 10 - Confidentiality and FIPPA by any of its Representatives; and
 - (b) if the Receiving Party or any of its Representatives are requested or required to disclose any Confidential Information in connection with litigation or any regulatory proceeding or investigation, or pursuant to any applicable law, order, regulation or ruling, the Receiving Party shall promptly notify the Disclosing Party, so that the Disclosing Party may seek an appropriate protective order or waive compliance with this Agreement. If, in the absence of such protective order or the receipt of such waiver hereunder, the Receiving Party or its Representatives are compelled to disclose the Confidential Information, the Receiving Party and/or its Representatives, as applicable, may disclose only such of the Confidential Information to the party compelling disclosure as is required by law and, in connection with such compelled disclosure, the Receiving Party and/or its Representatives, as applicable, shall use reasonable efforts to obtain an order or other reliable assurance that confidential treatment will be accorded to such portion of the Confidential Information as is disclosed;

- (c) where the Participant is the Receiving Party, the Participant may disclose Confidential Information to any lender, prospective lender or investor and its advisors, to the extent necessary, for securing financing for the Project(s), provided that any such lender, prospective lender or investor has been informed of the Participant's confidentiality obligations hereunder and such lender, prospective lender or investor has covenanted in favour of the OPA to hold such Confidential Information confidential on terms substantially similar to this Section 10 - Confidentiality and FIPPA; and
- (d) notwithstanding the foregoing, the Participant consents to the disclosure from time to time:
 - (i) of the name of the Participant to the public; and
 - (ii) of the name and contact particulars of the Participant (including its address for service and the name of its Company Representative) by the OPA to all members of the DR Class under Section 15.7; and
 - (iii) of any information received by the OPA in respect of this Agreement (other than information required pursuant to Section 3.6(1)) for such purposes as the OPA may determine from time to time in relation to DR3 or to assessing compliance with any other demand response or generation program or other programs or initiatives that are implemented, administered, or supported by the OPA, to the OPA's counsel, consultants, advisors, and any other representatives, and including the OEB and the Ministry of Energy (Ontario), on a confidential basis; and
 - (iv) of any information received by the OPA pursuant to Section 3.6(1) of this Agreement to the OPA's counsel, consultants, advisors, and any other representatives, and including the OEB and the Ministry of Energy (Ontario); and
 - (v) of aggregate data relating to DR3 to the public.

10.2 Return of Confidential Information

Upon written request by the Disclosing Party, Confidential Information provided by the Disclosing Party in printed paper format, together with all copies or other reproductions in whole or in part of such Confidential Information, will be returned to the Disclosing Party and Confidential Information transmitted by the Disclosing Party in electronic format will be deleted from the emails and directories of the Receiving Party's and its Representatives' computers; provided, however, any Confidential Information which cannot through reasonable efforts be returned to the Disclosing Party or deleted from the emails and directories of the Receiving Party's and its Representatives' computers, as the case may be, will be held by the Receiving Party and kept subject to the terms of this Section 10.2 or destroyed at the Receiving Party's option.

10.3 Injunctive and Other Relief

The Receiving Party acknowledges that the breach of any provisions of this Section 10 - Confidentiality and FIPPA may cause irreparable harm to the Disclosing Party or to any third party to whom the Disclosing Party owes a duty of confidence, and that the injury to the Disclosing Party or to any third party may be difficult to calculate and inadequately compensable in damages. The Receiving Party agrees

that the Disclosing Party is entitled to obtain injunctive relief (without proving any damage sustained by it or by any third party) or any other right or remedy against any actual or potential breach of the provisions of this Section 10 - Confidentiality and FIPPA.

10.4 FIPPA Records and Compliance

(1) The Participant and the OPA acknowledge and agree that the OPA and its Representatives is subject to FIPPA and that FIPPA applies to and governs all recorded information in any form or medium that is provided by the OPA or its Representatives to the Participant or provided by the Participant to the OPA or its Representatives for the purposes of this Agreement, or created by the Participant in the performance of this Agreement, and that is in the custody or control of the OPA ("**FIPPA Records**"), and may require the disclosure of such FIPPA Records to third parties. To the extent that the OPA must comply with disclosure obligations under FIPPA, the Participant agrees:

- (a) to keep FIPPA Records in its possession secure; and
- (b) to provide FIPPA Records to the OPA within seven calendar days of being directed to do so by the OPA for any reason under FIPPA, including an access request or privacy issue; and
- (c) to implement other specific security measures that in the reasonable opinion of the OPA would improve the adequacy and effectiveness of the Participant's measures to ensure, for the purposes of FIPPA, the security and integrity of FIPPA Records held in the Participant's possession.

SECTION 11 - EVENTS OF DEFAULT AND REMEDIES

11.1 Events of Default by the Participant

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

- (a) The Participant fails to make any payment, or deliver, maintain, and/or replace the DR3 Prudential Security in the amount of the DR3 Prudential Requirement under this Agreement when due, if such failure is not remedied within five (5) Business Days after written notice of such failure from the OPA.
- (b) The Participant fails to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Participant Event of Default) if such failure is not remedied within fifteen (15) Business Days after written notice of such failure from the OPA.
- (c) The Participant, any Project, or any Contributor or Facility fails to satisfy, or ceases to satisfy, the eligibility and other requirements set out in the applicable version of the DR3 Program Rules referenced in each DR3 Schedule and such failure or cessation is not remedied within fifteen (15) Business Days after written notice of such failure from the OPA.
- (d) The Participant is in breach of any of its representations, warranties or covenants set out in Section 3 - Development and Operation of the Project, including the requirement to comply

with the terms of the OPA's Aggregator Code of Conduct, unless, if such breach is curable, such breach is remedied within fifteen (15) Business Days after written notice of such failure from the OPA.

- (e) The Participant fails or ceases to hold a valid licence, permit, certificate, registration, authorization, consent or approval issued by a Governmental Authority where such failure or cessation results in a Material Adverse Effect on the Participant and is not remedied within thirty (30) Business Days after receipt by the Participant of written notice of such failure or cessation from the OPA.
- (f) The Participant commits any act of fraud in relation to its Application, the OPA, this Agreement, or the Project.
- (g) Any representation made by the Participant in this Agreement, other than those referred to in Section 11.1(1)(d), is not true or correct in any material respect when made, or any continuing representation is not true or correct, and in either case, is not made true or correct in all material respects within thirty (30) Business Days after receipt by the Participant of written notice of such fact from the OPA.
- (h) An effective resolution is passed or documents are filed in an office of public record in respect of, or a judgment or order is issued by a court of competent jurisdiction ordering, the dissolution, termination of existence, liquidation or winding up of the Participant, unless such filed documents are immediately revoked or otherwise rendered inapplicable or unless there has been a permitted and valid assignment of this Agreement by the Participant under this Agreement to a Person which is not dissolving, terminating its existence, liquidating or winding up and such Person has assumed all of the Participant's obligations under this Agreement.
- (i) The Participant amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another Person unless, within 60 days after such amalgamation, merger or transfer, the resulting, surviving or transferee Person has assumed all of the Participant's obligations under this Agreement by written instrument delivered to the OPA, and provided that such resulting, surviving or transferee Person is otherwise eligible to be a Participant pursuant to Section 2.0 of the DR3 Program Rules.
- (j) By decree, judgment or order of a Governmental Authority, the Participant is adjudicated bankrupt or insolvent or any substantial part of the Participant's property is sequestered, and such decree, judgment or order continues undischarged and unstayed for a period of thirty (30) calendar days after the entry thereof. A petition, proceeding or filing is made against the Participant seeking to have the Participant declared bankrupt or insolvent, or seeking adjustment or composition of any of their respective debts pursuant to the provisions of any Insolvency Legislation, and such petition, proceeding or filing is not dismissed or withdrawn within thirty (30) calendar days.
- (k) The Participant dissolves, winds up or liquidates, or makes an assignment for the benefit of its creditors generally under any Insolvency Legislation or consents to the appointment of a receiver, manager, receiver-manager, monitor, trustee in bankruptcy, or liquidator for all or part of its property or files a petition or proposal to declare bankruptcy or to reorganize pursuant to the provision of any Insolvency Legislation.

- (l) The Participant has made a Project Amendment that has not first been consented to by the OPA in accordance with Section 3.1(3).
- (m) The Participant undergoes a change in Control without first obtaining the written approval of the OPA if required pursuant to Section 16.3.
- (n) The Participant assigns this Agreement without first obtaining such consent of the OPA if required pursuant to this Agreement.
- (o) The Participant amends or modifies a Measurement & Verification Plan without the prior written consent of the OPA.

11.2 Remedies of the OPA

(1) In addition to all other rights and remedies it may have under this Agreement (including those set out in Sections 3.1(5) and 7.2(4)), and all other rights and remedies it may have at law and/or in equity, if any Participant Event of Default (other than a Participant Event of Default referred to in Section 11.1(1)(h), (j) or (k)) occurs and is continuing, then upon written notice to the Participant, the OPA may, but shall not be obliged to:

- (a) cure or attempt to cure such Participant Event of Default on behalf of the Participant and at the Participant's expense. Prior to doing so, the OPA will advise the Participant of its intention to take steps to cure. The Participant shall reimburse the OPA, forthwith upon written demand, for its costs, charges, and expenses (including legal fees) incurred in curing or attempting to cure such Participant Event of Default; and/or
- (b) suspend any or all Monthly Payments owing to the Participant until such Participant Event of Default has been remedied to the satisfaction of the OPA, in its sole discretion; and/or
- (c) set off any amounts payable by the Participant to the OPA against any payments due to the Participant under this Agreement, including, at the OPA's option, the amount of any DR3 Prudential Security provided to the OPA pursuant to Section 8 - DR3 Prudential Security Requirements, and by drawing on the DR3 Prudential Security, or any part thereof, and if the remedy in Section 11.2(1)(d) has not been exercised, requiring the Participant to replace such drawn security with new security; and/or
- (d) terminate the entire Agreement (including, for greater certainty, all DR3 Schedules in all Settlement Accounts), or terminate any one or more DR3 Schedule(s), and to be paid, as of the effective date of such termination, the Early Termination Payment from the Participant in relation to all such DR3 Schedule(s) so terminated.

(2) Notwithstanding Section 11.2(1), upon the occurrence of a Participant Event of Default referred to in Sections 11.1(1)(h), (j), or (k), this Agreement shall automatically terminate without notice, act or formality, effective immediately before the occurrence of such Participant Event of Default.

11.3 Events of Default by the OPA

If the OPA fails to make any payment required under this Agreement when due, and such failure is not remedied within fifteen (15) Business Days after written notice of such failure from the Participant, then such failure shall constitute an Event of Default by the OPA (an "OPA Event of Default").

11.4 Termination by the Participant

(1) If any OPA Event of Default occurs and is continuing, then, upon written notice to the OPA, the Participant may terminate this Agreement effective as of the date of such written notice (“**OPA Termination Date**”). The OPA will immediately calculate the Participant’s damages resulting from the termination of this Agreement (the “**OPA Early Termination Payment**”) as follows:

(a) the average Availability Payment paid for each DR3 Contract Schedule over its Schedule Term up to the OPA Termination Date multiplied by the lesser of (i) 12, or (ii) the number of Contract Months remaining in the Schedule Term, during which the Participant would participate;

plus

(b) any amounts accruing and unpaid under this Agreement up to the OPA Termination Date.

(2) The OPA Early Termination Payment shall be due and payable within 90 days after the OPA Termination Date, subject to the Participant’s right to dispute such amount.

(3) If the Agreement is terminated pursuant to this Section 11.4, such right of termination and the OPA Early Termination Payment shall represent the Participant’s sole and exclusive remedy for the OPA’s default that gave rise to the termination.

11.5 Termination of Agreement with Aggregator

If this Agreement is terminated for any reason, a Participant who is an Aggregator shall assign all of its right, title and interest in and to its Contributor Contracts relating to all Settlement Accounts established pursuant to this terminated Agreement to another Aggregator(s) having a DR3 Contract with the OPA within 90 days of the termination of this Agreement. Where the Aggregator has not assigned its Contributor Contracts within such 90 day period as aforesaid, the Aggregator, within three Business Days of receipt of a direction from the OPA to do so, shall assign all of its right, title and interest in and to its Contributor Contracts to another Aggregator(s) having a DR3 Contract with the OPA at the direction of the OPA.

SECTION 12 - FORCE MAJEURE AND CONTRIBUTOR LOSS

12.1 Events of Force Majeure

Subject to the exclusions described in Section 12.2, “**Force Majeure**” means any act, event, cause or condition that (i) prevents a Party from performing its obligations under this Agreement, and (ii) is beyond the affected Party’s reasonable control.

12.2 Exclusions from Force Majeure

Notwithstanding Section 12.1, no act, event, cause or condition shall be considered to be an event of Force Majeure:

(a) if and to the extent the Party seeking to invoke Force Majeure has caused or contributed to the applicable act, event, cause or condition by its fault or negligence or has failed to use Commercially Reasonable Efforts to prevent or remedy such act, event, cause or condition

and, so far as possible and within a reasonable time period, remove it (except in the case of strikes, lockouts and other labour disturbances, the settlement of which shall be wholly within the discretion of the Party involved); or

- (b) if the act, event, cause or condition is the result of a failure to obtain, or a breach, by the Party seeking to invoke Force Majeure, of a Governmental Approval or of any applicable Laws and Regulations; or
- (c) if the act, event, cause or condition was caused by a lack of funds or other financial cause; or
- (d) if the act, event, cause or condition is the result of a breach or alleged breach of contract or other obligation between the Party seeking to invoke Force Majeure and any Person (other than the other Party), regardless of whether such breach or alleged breach was caused by the Party seeking to invoke Force Majeure or was caused by such other Person; or
- (e) where the act, event, cause or condition is stated in Sections 4.4(3)(c) and 7.2(4) not to be eligible for Force Majeure relief.

12.3 Effect of Invoking Force Majeure

(1) If either Party is unable to satisfy any of its obligations hereunder due to Force Majeure (a “**Force Majeure Event**”), provided that the Party makes all reasonable efforts to avoid, or if unavoidable, to correct the reason for such delay or failure and gives the other Party prompt notice of such delay or failure, then such Party shall be excused and relieved from its obligation to satisfy such obligation and its failure to do so will not constitute an event of default, but subject however to Exhibit E that expressly sets out the consequences of any Forced Outage as a result of an event of Force Majeure occurring or continuing during the Hours of Availability. The Party that is invoking the Force Majeure Event shall resume its obligations as soon as such Force Majeure Event has been overcome or concluded.

(2) Notwithstanding any other provision of this Agreement, an event of Force Majeure shall not serve to extend the DR3 Contract Term or any Schedule Term.

12.4 Contributor Loss

(1) A **Contributor Loss** occurs where a Contributor who is at arm’s length to an Aggregator and whose contribution to the Aggregator’s Monthly Contracted MW accounts for a minimum of 20 percent of the Aggregator’s Monthly Contracted MW at a Settlement Account is permanently unable or unwilling to Curtail such Contributor’s contribution to the Monthly Contracted MW at that Settlement Account. Provided, however, a Contributor Loss shall not include an inability or unwillingness to Curtail that (i) is permitted in a Contributor Contract; (ii) arises due to circumstances that are within the Aggregator’s reasonable control; (iii) are caused by the Aggregator’s lack of funds or other financial cause; or (iv) is caused by a breach by the Aggregator of the Contributor Contract.

(2) An Aggregator with a Schedule Term of five years may receive relief in respect of a Contributor Loss a maximum of three times during such Schedule Term. An Aggregator with a Schedule Term of three years may receive relief in respect of a Contributor Loss a maximum of two times during such

Schedule Term. An Aggregator with a Schedule Term of one year may not receive relief in respect of a Contributor Loss.

(3) The Aggregator may apply to the OPA to receive relief in respect of a Contributor Loss in excess of the number of times set out in Section 12.4(2) above, provided that the conditions in Section 12.4(1) are met. The OPA will provide the Aggregator a reasonable opportunity to be heard and will consider any supporting evidence submitted. At the OPA's sole discretion, the OPA may grant the Aggregator relief in addition to the relief set out in Section 12.4(2).

(4) An Aggregator may receive relief in respect of a Contributor Loss by delivering written notice ("**Contributor Loss Notice**") to the OPA within ten Business Days after the Aggregator becomes aware or ought to have known that a Contributor Loss has occurred or will occur. The Contributor Loss Notice shall describe such Contributor Loss together with reasonable evidence thereof, and state the quantity (MW) of the Contributor Loss.

12.5 Effect of Contributor Loss

(1) Where an Aggregator delivers the Contributor Loss Notice, a period of time (the "**Contributor Loss Cure Period**") shall commence effective the date of the Contributor Loss Notice and shall run for the rest of the month in which the Contributor Loss Notice was delivered and the immediately following months up to a maximum of five months. The Contributor Loss Cure Period shall end on the last Business Day of a month. During the Contributor Loss Cure Period, (i) the Aggregator shall diligently pursue a cure (as described in Section 12.5 (2)) to the Contributor Loss, and (ii) the Monthly Contracted MW for the relevant Settlement Account and applicable DR3 Contract Schedule shall be reduced in accordance with the revised M&V Plan delivered pursuant to Section 6.1(2) by the quantity (MW) of the Contributor Loss, provided, however, that for the purposes of the Early Termination Payment and the qualification requirements for submitting an Aggregator Offer in Section 1.3.2 of the DR3 Program Rules, the Monthly Contracted MW shall not be reduced by the quantity (MW) of Contributor Loss.

(2) Where, on or before the end of the Contributor Loss Cure Period:

- (a) the Aggregator has resolved the issue with the non-Curtailing Contributor such that the Contributor is willing and able to Curtail its contribution to the Aggregator's Monthly Contracted MW, or replaced the non-Curtailing Contributor with a new Contributor, or new Contributors, contributing at least the same MW, then the Monthly Contracted MW for the relevant Settlement Account and applicable DR3 Contract Schedule shall be reinstated based on the revised or reinstated M&V Plan, and there shall be no further consequence to the Aggregator; or
- (b) the Aggregator has replaced the non-Curtailing Contributor with a new Contributor, or Contributors, at a different Settlement Account, then the OPA and the Aggregator shall amend the Monthly Contracted MW in the affected DR3 Contracts accordingly.

If the Aggregator has not, for any reason, implemented either (a) or (b) of this Section 12.5 (2) by the end of the Contributor Loss Cure Period, then the Aggregator shall be deemed to have suffered a Performance Breach, and the provisions of Section 7.3 shall apply.

SECTION 13 - LIABILITY AND INDEMNIFICATION

13.1 Exclusion of Consequential Damages

Notwithstanding anything contained herein to the contrary, neither Party will be liable under this Agreement or under any cause of action relating to the subject matter of this Agreement for any special, indirect, incidental, punitive, exemplary or consequential damages, including loss of profits, loss of use of any property or Claims of customers or contractors of the Parties for any such damages.

13.2 Indemnification by Participant

In addition to the indemnities provided by the Participant in Section 3.2, the Participant shall indemnify and defend the Indemnitees harmless from and against any and all Claims, demands, suits, losses, damages, liabilities, penalties, obligations, payments, costs and expenses and accrued interest thereon (including reasonable legal fees in connection therewith) (each, an “**Indemnifiable Loss**”) asserted against or suffered by the Indemnitees or any of them relating to, in connection with, resulting from, or arising out of (i) any occurrence or event relating to the Project, howsoever occurring, and including any occurrence or event arising in connection with the operation of the Project and any Standby Notification(s) and/or Activation Notice(s) issued by or on behalf of the OPA under this Agreement, and (ii) any breach by the Participant of any representations, warranties, or covenants contained in this Agreement.

13.3 Defence of Claims

Promptly after receipt by the Indemnitees of any Claim or notice of the commencement of any action, administrative or legal proceeding, or investigation as to which the indemnity provided for in Sections 3.2 and 13.2 may apply, the OPA shall notify the Participant in writing of such fact. The Participant shall assume the defence thereof with counsel designated by the Participant and satisfactory to the affected Indemnitees, acting reasonably; provided, however, that, if the defendants in any such action include both the Indemnitees and the Participant and the Indemnitees shall have reasonably concluded that there may be legal defences available to them which are different from or additional to, or inconsistent with, those available to the Participant, the Indemnitees shall have the right to select separate counsel satisfactory to the Participant acting reasonably (at no additional cost to the Indemnitees) to participate in the defence of such action on behalf of the Indemnitees. The Participant shall promptly confirm that it is assuming the defence of the Indemnitees by providing written notice to the Indemnitees. Such notice shall be provided no later than five (5) calendar days prior to the deadline for responding to any Claim relating to any Indemnifiable Loss.

13.4 Acknowledgement with respect to Liquidated Damages

The Participant acknowledges and agrees with the OPA that the actual damages incurred by the OPA and electricity consumers as a result of a failure by the Participant to meet its obligations under this DR3 Contract are impossible to definitively quantify and the Participant further agrees that the payment of the liquidated damages set forth in this Agreement constitutes a fair and reasonable means of compensating the OPA for damages likely to be incurred as a result of such failures and does not constitute a penalty. The OPA and the Participant agree that the OPA Early Termination Payment constitutes a fair and reasonable means of compensating the Participant for such damages likely to be incurred and does not constitute a penalty.

SECTION 14 - OPERATION AND ADMINISTRATION OF THIS AGREEMENT

14.1 Administration of the Agreement

The Participant acknowledges that the OPA may, at its sole option, request the assistance of one or more Representatives to assist the OPA from time to time in performing some of the different operational and administrative functions described in this Agreement, including those functions and duties relating to Standby Notifications and Activation, measurement and verification, and Settlement.

14.2 Company Representative

The Participant and the OPA shall each appoint, from time to time, a representative (a **"Company Representative"**), who shall be duly authorized to act on behalf of the Party that has made the appointment, and with whom the other Party may consult at all reasonable times, and whose instructions, requests, and decisions, provided the same are in writing signed by the respective Company Representative, shall be binding on the appointing Party as to all matters pertaining to this Agreement. The appointment of any representative pursuant to this Section 14.2 shall not replace the OPA's Company Representative unless and to the extent stipulated by the OPA in writing. The Company Representatives shall not have the power or authority to amend this Agreement.

14.3 Record Retention

The Participant and the OPA shall both keep complete and accurate records and all other data required by either of them for the purpose of proper administration of this Agreement, including that which is necessary to support the information contained in and with respect to each M&V Confirmation, Monthly Payment and Statement. All such records shall be maintained as required by Laws and Regulations but for no less than for seven (7) years after the creation of the record or data.

14.4 Notices

All notices pertaining to this Agreement not explicitly permitted to be in a form other than writing shall be in writing and shall be given by facsimile or other means of electronic transmission or by hand or courier delivery. Notwithstanding the foregoing, any notices of an Event of Default and termination of this Agreement shall only be given by hand or courier delivery. Any notice shall be addressed to the other Party as follows:

If to the Participant:

-
- Attention: ●
- Facsimile: ●
- Email: ●

If to the OPA:

Ontario Power Authority
120 Adelaide Street West
Suite 1600
Toronto, ON M5H 1T1

Attention: Sean Brady
Facsimile: 416-967-1947
Email: sean.brady@powerauthority.on.ca

and to:

● Ontario Power Authority
120 Adelaide Street West
Suite 1600
Toronto, ON M5H 1T1

Attention: ●
Facsimile: ●
Email: ●

Attention: General Counsel
Facsimile: 416-969-6383
Email: michael.lyle@powerauthority.on.ca

(which shall not be required to constitute notice)

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

14.5 Audit

(1) The OPA reserves the right to verify and audit all technical, financial, and operational data and systems of the Project, the Participant, any Contributor, and any other Person as required by the OPA in connection with such verification and audit, including the Load in which a Non-Submetered Generator or a Sub-Metered Generator may be embedded. Such verification and audit methodologies will be determined by the OPA and may include the verification and audit of real-time, and Baseline measurements as well as visits or inspections to the site of any Project, Participant, Contributor, or any other Person, as required by the OPA in connection with such verification and audit. In particular, where there is evidence that the Aggregator has suffered a Contributor Loss, the OPA has the right, but not the obligation to contact the Aggregator and to require an explanation.

(2) Without limiting the generality of the foregoing, a Participant who is an Aggregator shall maintain a record of activation notices sent to its Contributors specifying the start and stop times and dates of Activation as well as a record of Contributor Contracts demonstrating the eligible portion of the Monthly Contracted MW that the Contributor is providing to the Participant under DR3. This information is subject to audit at any time, and from time to time.

SECTION 15 - DISPUTE RESOLUTION

15.1 Informal Dispute Resolution

If any dispute arises under or in connection with this Agreement that the Parties cannot resolve, each of the Parties shall promptly advise its senior management, in writing, of such dispute. Within ten (10) Business Days following delivery of such notice, a Company Representative from each Party shall meet, either in person or by telephone, to attempt to resolve the dispute. Each Company Representative shall be prepared to propose a solution to the dispute. If, following such efforts, the dispute is not resolved the dispute shall be settled by arbitration pursuant to Section 15.2.

15.2 Arbitration

Subject to and in accordance with the provisions of this Section, any and all differences, disputes, claims or controversies arising out of or in any way connected with this Agreement, whether arising before or after the expiration or termination of this Agreement, (including any dispute as to whether an issue is arbitrable) shall be resolved by arbitration before a single arbitrator (the “**Arbitrator**”) pursuant to the Arbitration Act and otherwise in accordance with the laws of the Province of Ontario.

15.3 Appointment and Powers of Arbitrator

A Party desiring arbitration hereunder shall give written notice of arbitration to the other Party containing a concise description of the matter submitted for arbitration (“**Notice of Arbitration**”). If the Parties fail to jointly appoint an Arbitrator within twenty (20) days thereafter, an Arbitrator shall be designated by a judge of the Ontario Superior Court of Justice upon application by either Party. The Arbitrator may determine all questions of law, fact and jurisdiction with respect to the dispute or the arbitration (including questions as to whether a dispute is arbitrable) and all matters of procedure relating to the arbitration. The Arbitrator may grant legal and equitable relief (including injunctive relief), award costs (including legal fees and the costs of the arbitration), and award interest.

15.4 Arbitration Procedure

The arbitration shall be conducted in English in the City of Toronto at such place therein and time as the Arbitrator may fix and, failing agreement thereto by the Parties, in accordance with such procedures as the Arbitrator shall determine, in accordance with the principles of natural justice. The arbitration and all matters arising directly or indirectly therefrom shall be kept strictly confidential by the Parties and shall not be disclosed to any third party except as may be compelled by law.

15.5 Arbitrator’s Decision and Appeal

The Arbitrator’s written decision shall be delivered to each of the Parties within sixty (60) days following the conclusion of the arbitration hearing. The costs of any arbitration hereunder shall be borne by the Parties in the manner specified by the Arbitrator in his or her decision. The decision of the Arbitrator shall be final and binding upon the Parties in respect of all matters relating to the arbitration, the conduct of the Parties during the proceedings and the final determination of the issues in the arbitration. There shall be no appeal from the decision of the Arbitrator to any court, except on the grounds that the conduct of the Arbitrator, or the decision itself, violated the provisions of the Arbitration Act, or solely on a question of law as provided for in the Arbitration Act. Judgment upon any award rendered by the Arbitrator may be entered in any court having jurisdiction thereof.

15.6 Preclusion of Actions

Submission to arbitration under this Section is intended by the Parties to preclude any action in matters which may be arbitrated hereunder, save and except for enforcement of any arbitral award hereunder.

15.7 Class Arbitration

- (1) Notwithstanding anything contained in Sections 15.2 to 15.6, if in the sole opinion of the OPA, a matter which has been or is to be referred to arbitration under the Arbitration Act under:

- (a) this Agreement;
- (b) under an agreement between the OPA and any other Participant under the DR3 Program;
- (c) under any other demand response program administered, managed or operated by the OPA; or
- (d) under any other agreement for demand response between the OPA and a third party, affects all Participants or any class of Participants;

then the OPA may, by issuing a Notice of Arbitration to such Participant(s) and other persons (collectively, the “**DR Class**”), require that such Participant(s) participate by way of a mandatory multi-party arbitration in the issues set out in the said Notice of Arbitration before one Arbitrator in one arbitral hearing whose decision(s) will bind the OPA and the DR Class (including the Participant(s)) served with such notice, whether or not they participated in such arbitration. This mandatory multiparty arbitration between OPA and the DR Class (including the Participant(s)) shall be conducted in accordance with this Section 15 subject only to such changes as may be necessary to deal with the fact this is to be a multi-party arbitration or as may be directed by the Arbitrator then appointed.

- (2) If the matter in dispute relates to the alleged invalidity, inapplicability or unenforceability of any provision of this Agreement or the disappearance or inability to calculate or determine any index, price or other quantum referred to in this Agreement, then the Arbitrator shall determine a valid, applicable and enforceable replacement for such provision, the economic effect of which comes as close as possible to that of the invalid, inapplicable or unenforceable provision.
- (3) If the matter in dispute relates to the alleged disappearance or inability to calculate or determine any index, price or other quantum referred to in this Agreement, or a material change in the basis for such index, price or other quantum, then the Arbitrator shall determine a replacement index, price or quantum that most nearly, of those then publicly available, approximates the intent and purpose of the original index, price or quantum, and this Agreement shall be amended as necessary to accommodate such replacement index, price or quantum.
- (4) The terms of this Agreement shall be deemed to be amended by the award of the Arbitrator from and after such date as may be determined by the Arbitrator.

SECTION 16 - MISCELLANEOUS

16.1 Business Relationship

Each Party shall be solely liable for the payment of all wages and other costs related to the employment by such Party of Persons who perform this Agreement. None of the Persons employed by either Party shall be considered employees of the other Party for any purpose. Nothing in this Agreement shall create or be deemed to create a relationship of partners, joint venturers, fiduciary, principal and agent or any other relationship between the Parties. Without limiting the generality of the foregoing, any acceptance by the OPA of any Project, or any Contributor or Facility forming a part of such Project, for purposes of the DR3 Program and this Agreement does not constitute an endorsement, either express or implied, by or on behalf of the OPA that the nature of the business conducted by such Project or

Contributor or Facility forming a part of such Project is appropriate for purposes of the DR3 Program or otherwise.

16.2 Binding Agreement

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

16.3 Assignment

(1) Except as set out below and in Sections 4.5 and 14.1, neither this Agreement nor any of the rights, interests, or obligations under this Agreement may be assigned by either Party, including by operation of Laws and Regulations, without the prior written consent of the other Party, which consent shall not be unreasonably withheld.

(2) The Participant shall not permit or allow a change of Control of the Participant, except with the prior written consent of the OPA, which consent may not be unreasonably withheld. For the purposes of this Section 16.3(2), a change of Control shall exclude a change in ownership of any shares or units of ownership that are listed on a recognized stock exchange, but shall include a change of Control resulting from a change in ownership in any shares or units of ownership in any entity that directly owns the Project(s) whose special or sole purpose is the ownership of the Project(s) and other demand response projects which are subject to a contract under DR3 with the OPA. For greater certainty, a change in Control in respect of the Participant shall include a change from no Person having Control of the Participant to any Person having Control of the Participant.

(3) It shall not be unreasonable for the OPA to withhold its consent for purposes of Sections 16.3(1) and (2), if, in the OPA's sole and absolute discretion and notwithstanding any eligibility criteria that may be contained in the Program Rules or under this Agreement, the nature of the business conducted by the proposed assignee or any proposed Person intending to acquire an interest in the Participant is determined to not be appropriate for purposes of the DR3 Program or otherwise.

(4) The OPA may assign this Agreement without consent to any Person, provided that prior written notice of such assignment and the identity and contact information of the assignee have been provided to the Participant. Upon any such assignment, the OPA shall remain liable for any obligations of the assignee under this Agreement in the event of default by such assignee under this Agreement, provided that notice of such default by the assignee has been delivered to the OPA by the Participant and the OPA has been given a reasonable opportunity to cure such default following the receipt of such notice, if curable.

(5) No assignment of this Agreement shall be valid or effective and no change of Control shall be permitted if the assigning Party is in default at the time of the assignment or change of Control.

(6) No assignment of this Agreement by a Party shall be valid or effective as against the other Party unless and until the assignee has provided a written acknowledgement to such other Party, in form and substance satisfactory to such other Party, acting reasonably, wherein the assignee agrees to assume and to perform all of the obligations of the assignor, whether arising before or after the assignment, and to be bound by the terms of this Agreement.

16.4 Counterparts

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

16.5 Rights and Remedies Not Limited to Agreement

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

16.6 OPA Right to Set Off

In addition to its other rights to set-off under this DR3 Contract or otherwise arising at law or in equity, the OPA may set off any amounts payable by the Participant to the OPA, including without limitation the Early Termination Payment, against any payments due to the Participant under this Agreement, including, at the OPA's option, the amount of any DR3 Prudential Security provided to the OPA pursuant to Section 8 - DR3 Prudential Security Requirements, and by drawing on the DR3 Prudential Security, or any part thereof, and requiring the Participant to replace such drawn security with new security.

16.7 Time of Essence

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

16.8 Further Assurances

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

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

ONTARIO POWER AUTHORITY

By: _____

Name: ●

Title: ●

By: _____

Name: ●

Title: ●

I/We have authority to bind the Corporation

[name of Participant]

By: _____

Name: ●

Title: ●

By: _____

Name: ●

Title: ●

I/We have authority to bind the Participant.

EXHIBIT A TO THE DR3 CONTRACT

DEFINITIONS

Definitions

In addition to the terms defined elsewhere in the body of this Agreement, the following capitalized terms shall have the corresponding meanings stated below. All other capitalized terms appearing in this Agreement shall have the meaning given to them in the DR3 Contract.

- (1) **Activate, Activated or Activation** means that the Participant has received an Activation Notice from the OPA to Curtail the Activation MW for the Activation Period.
- (2) **Activation Hour** means any twelve consecutive Intervals within an Activation Period. For greater certainty, an Activation Hour shall commence on the Start Interval as set out in the DR3 Schedule.
- (3) **Activation MW** means the number of MW, if any, in respect of which the OPA issues an Activation Notice to the Participant, and shall be: (i) the Confirmed MW, where a Fixed Standby Notification has been issued to the Participant, or (ii) either the Monthly Contracted MW where the Monthly Contracted MW is less than the Confirmed MW, or the Confirmed MW, at the election of the OPA, where an Open Standby Notification has been issued to the Participant.
- (4) **Activation Notice** means a request, in a form to be determined by the OPA from time to time, from the OPA to the Participant for Curtailment of Activation MW for the Activation Period.
- (5) **Activation Period** means the period of time, if any, in respect of which the OPA issues an Activation Notice to the Participant, and shall be, at the election of the OPA: (i) the Confirmed Hours, where a Fixed Standby Notification has been issued to the Participant, or (ii) either the Contracted Dispatch Period where the Contracted Dispatch Period is less than the Confirmed Hours, or the Confirmed Hours, at the election of the OPA, where an Open Standby Notification has been issued to the Participant.
- (6) **Actual Activated Hour** means any given hour within the Confirmed Hours in which a Participant has Curtailed in response to an Activation Notice.
- (7) **Actual Activated MWh or Curtailment** means the sum, over all Intervals within an Activation Hour, of the Actual Activated MWh Per Interval, if any, that have been Curtailed by a Participant, with such number not to exceed: (i) the product of the Activation MW and the Activation Period, plus (ii) the lesser of (A) an additional 15% of the Activation MW per hour of the Activation Period, or (B) 15 MWh per hour of the Activation Period.
- (8) **Actual Activated MWh Per Interval** means the number of MWh, if any, that have been Curtailed by a Participant within a given Interval in an Activation Hour, as measured through the use of electricity meter(s) in accordance with the M&V Plan, being the difference between (i) the Project's calculated Baseline for that Activation Hour multiplied by 1/12, and (ii) the Project's measured consumption (or net production) of electricity for such Interval.
- (9) **Adjusted Availability Rate** means an amount equal to the Availability Rate, expressed in \$/MW, as increased by the Availability Rate Premium or as decreased by the Availability Rate Discount, as the case may be.

- (10) **Affiliate** means any Person that: (i) Controls a Party; (ii) is Controlled by a Party; or (iii) is Controlled by the same Person that Controls a Party.
- (11) **After Deadline Outage Day** has the meaning given to it in Section 7.2(4).
- (12) **Aggregator** means a Person who is not a Direct Participant and aggregates more than one Contributor using Enforceable Rights to provide a portion of the Aggregator's Monthly Contracted MW for the Contracted Dispatch Period as outlined in the Aggregator's DR3 Schedule. For greater certainty, a Participant who is an Aggregator under this Agreement must be an Aggregator with respect to all DR3 Schedules forming part of this Agreement, and such Participant may not be a Direct Participant for any purpose under this Agreement.
- (13) **Agreement** means the DR3 Contract to which these Definitions are attached together with all Exhibits thereto, all as amended, restated or replaced from time to time.
- (14) **Application** means an Applicant's application to be accepted into DR3 having the form and content established in the DR3 Program Rules.
- (15) **Arbitration Act** means the Arbitration Act, 1991 (Ontario), as amended from time to time.
- (16) **Availability Over-Delivery Payment** means the over-delivery payment calculated in accordance with the formula in Exhibit E.
- (17) **Availability Over-Delivery Rate** means the over-delivery rate, expressed in \$/MW, and set out in the applicable DR3 Schedule.
- (18) **Availability Payment** means the payment to the Participant calculated in accordance with the formula in Exhibit E.
- (19) **Availability Rate** means the availability rate, expressed in \$/MW, and set out in the applicable DR3 Schedule.
- (20) **Availability Rate Discount** means a discount of the Availability Rate set out in the applicable DR3 Schedule.
- (21) **Availability Rate Premium** means a premium to the Availability Rate in the amount set out in the applicable DR3 Schedule.
- (22) **Availability Set-Off** means the availability set-off calculated pursuant to Exhibit E.
- (23) **Baseline** means the profile of a Project determined using the methods set out in Exhibit B, as applicable to the Project.
- (24) **Behind the Meter Generator** means a Contributor, other than an Interruptible Load, that is either a Non-Submetered Generator or a Submetered Generator, and satisfies the eligibility criteria set out in the applicable version of the DR3 Program Rules to which such Project relates.
- (25) **Business Day** means a day other than a Saturday or Sunday or statutory holiday in the Province of Ontario.

(26) **Buy-Down** means the act by the Participant of reducing its Monthly Contracted MW and/or removing Daily Schedules from participation in the circumstances set out under Section 3.3.

(27) **Buy-Down Amount (Monthly Contracted MW)** is an amount calculated in \$, and with respect to a given DR3 Schedule, as:

(a) the reduction in the Monthly Contracted MW as set out in the notice in Section 3.3(1), expressed in MW;

multiplied by

(b) the Buy-Down Rate;

multiplied by

(c) the number of Hours of Availability that have elapsed in the Schedule Term as of the date that the reduction took effect.

(28) **Buy-Down Amount (Hours of Availability)** is an amount calculated in \$, and with respect to a given DR3 Schedule, as:

(a) (i) the Monthly Contracted MW multiplied by the number of Business Days per week from which the Hours of Availability are to be removed, divided by (ii) 5;

multiplied by

(b) the Buy-Down Rate;

multiplied by

(c) the number of Hours of Availability that have elapsed in the Schedule Term as of the date that the reduction took effect.

(29) **Buy-Down Rate** means those hourly rates set out in the DR3 Contract Schedule, which are used to calculate the amount that a Contributor must pay to the OPA to exercise either a Buy-Down of the Monthly Contracted MW, or a Buy-Down of the Daily Schedules.

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

(31) **Commercially Reasonable Efforts** means efforts which are designed to enable a Party, directly or indirectly, to satisfy a condition to, or otherwise assist in the consummation of, a transaction, activity or undertaking contemplated by this Agreement and which do not require the performing Party to expend any funds or assume liabilities other than expenditures and liabilities which are reasonable in nature and amount in the context of the transaction contemplated by this Agreement.

(32) **Company Representative** holds the meaning given to it in Section 14.2.

(33) **Confidential Information** means all information that has been identified as confidential and which is furnished or disclosed by the Disclosing Party and its Representatives to the Receiving Party and its

Representatives in connection with the Agreement including all new information derived at any time from any such confidential information, but excluding (i) publicly-available information unless made public by the Receiving Party or its Representatives in a manner not permitted by this Agreement; (ii) information already known to the Receiving Party prior to being furnished by the Disclosing Party; (iii) information disclosed to the Receiving Party from a source other than the Disclosing Party or its Representative if such source is not subject to any agreement with the Disclosing Party prohibiting such disclosure to the Receiving Party; and (iv) information that is independently developed by the Receiving Party.

(34) **Confirmation** means:

- (a) if required to be sent in writing as described in this Agreement, a response delivered to the OPA, in a form to be determined by the OPA from time to time, in response to a Standby Notification; or
- (b) if not required to be sent in writing as described in this Agreement, a deemed confirmation given by the Participant to the OPA in response to a Standby Notification;

that, in either event, defines the Confirmed MW and Confirmed Hours available for Curtailment.

(35) **Confirmed Hours** means the number of consecutive hours available for Curtailment as specified by the Participant in the Confirmation, and such number:

- (a) shall be no greater than the Contracted Dispatch Period, where the Standby Notification is a Fixed Standby Notification; and
- (b) shall be no greater than the Hours of Availability, where the Standby Notification is an Open Standby Notification.

For greater certainty, a Confirmed Hour will commence on the Start Interval set out in the DR3 Contract Schedule.

(36) **Confirmed MW** means the number of MW available for Curtailment by the Participant, and which shall be equal to the Monthly Contracted MW, unless a Confirmation to the OPA is required pursuant to the Agreement in which case the Confirmed MW will be such other amount as set out in the Confirmation delivered to the OPA.

(37) **Contract Month**, in respect of a DR3 Schedule, means any calendar month in a Contract Year.

(38) **Contract Year**, in respect of a DR3 Schedule, means a period of 12 Contract Months starting at 00:00 hours (EST) on the Schedule Commencement Date.

(39) **Contracted Dispatch Period** means four consecutive hours collectively containing 48 Intervals, with the first Interval commencing on the Start Interval. Each Contracted Dispatch Period shall occur within the Hours of Availability, and shall occur within and no more than once in accordance with the Daily Schedule.

(40) **Contributor** means an Interruptible Load or Behind the Meter Generator:

- (a) that is owned by a Direct Participant, or;

(b) with whom an Aggregator has Enforceable Rights;

and, in either case, who will provide a portion of the Monthly Contracted MW for the Contracted Dispatch Period as outlined in the DR3 Schedule.

(41) **Contributor Contract** means a contract between an Aggregator and a Contributor relating to the Contributor's participation in DR3 as a Contributor who has granted Enforceable Rights to an Aggregator.

(42) **Contributor Information** has the meaning given to it in paragraph 6.1 of Exhibit F.

(43) **Contributor Loss** has the meaning given to it in Section 12.4.

(44) **Contributor Loss Notice** has the meaning given to it in Section 12.4.

(45) **Contributor Loss Cure Period** has the meaning given to it in Section 12.5.

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

(47) **Control Equipment** means the equipment (which may include generating facilities), software and associated services of the Project that enable the Participant to provide Curtailment.

(48) **Curtail**, or **Curtailing** or **Curtailment** means the act of using the Control Equipment and DR Measures at the Project in order to deliver the Confirmed MW by reducing Interruptible Load and/or the Load, and/or by providing net electricity output from a Behind the Meter Generator where the generator's Nameplate Capacity is not greater than the annual peak demand of the Project's Load in accordance with Section 2.1.2(a)(ii)(4)(A) of the DR3 Program Rules.

(49) **Daily Schedule** means the Hours of Availability for each Business Day that the Participant is contractually bound to be available for Activation pursuant to the DR3 Contract.

(50) **Day Ahead** means the day prior to the Day at Hand.

(51) **Day Ahead Window** means 12:00 p.m. to 5:00 p.m. E.S.T. on the Day Ahead within which the OPA may issue a Standby Notice to the Participant.

(52) **Day at Hand** means the day of the proposed Curtailment within which the OPA may issue a Standby Notice to the Participant.

(53) **Day at Hand Window** means 12:00 a.m. to 7:00 a.m. E.S.T. during the Day at Hand within which the OPA may issue a Standby Notice to the Participant.

(54) **DBRS** means Dominion Bond Rating Service Limited or its successors.

(55) **Designated Settlement Areas** means specific and mutually exclusive areas of the IESO-controlled grid that are delineated by the OPA from time to time as a Designated Settlement Area by notice

on the Website. For greater certainty, any area on the IESO-controlled grid that is subject to an Availability Rate Premium, Availability Rate Discount or Non-Participation Area shall be considered to be a Designated Settlement Area.

(56) **Direct Participant** means a Participant who participates under DR3 and whose Contributors are owned by the Participant and the Facilities in which the Contributors reside are controlled by the Participant. For greater certainty, a Participant who is a Direct Participant under this Agreement must be a Direct Participant with respect to all DR3 Schedules forming part of this Agreement, and such Participant may not be an Aggregator for any purpose under this Agreement.

(57) **Disclosing Party** means, with respect to Confidential Information, the Party providing or disclosing such Confidential Information and may be the OPA or the Participant, as applicable.

(58) **Dispatcher** has the meaning ascribed to it in Section 4.5(2).

(59) **DR Class** has the meaning given to it in Section 15.7.

(60) **DR Measures** means the demand reduction measures or protocols that are implemented by the Participant as part of the Project in order to provide Curtailment.

(61) **DR Protocols** has the meaning given to it in Section 3.2(2).

(62) **DR3** means the contractual load reduction program created by the OPA under the DR3 Program Rules.

(63) **DR3 Contract** means the document entitled "DR3 Contract" entered into between the OPA and the Participant, and to which these Definitions and the other Exhibits are attached, as amended, restated or replaced from time to time.

(64) **DR3 Contract Term** has the meaning given to it in Section 2.1(1).

(65) **DR3 Program Rules** means the rules for DR3, as posted on the Website, and as may be amended from time to time by the OPA.

(66) **DR3 Prudential Requirement** means the security described in Section 8.1(1).

(67) **DR3 Prudential Security** means the security described in Section 8.1(1).

(68) **DR3 Schedule** means one or more transaction schedules to this DR3 Contract which binds the Participant and the OPA to specific terms of demand reduction including, but not limited to, the Schedule Commencement Date, Schedule Term, Monthly Contracted MW, any applicable Options, Settlement Accounts, and payment terms.

(69) **Early Termination Payment** is an amount expressed in \$ and calculated as the aggregate, for all DR3 Schedules that are being terminated, of the following amount for each DR3 Schedule that is being terminated:

- (a) the simple average, expressed in MW, of the Monthly Contracted MW for that DR3 Schedule over all months in the calendar year, multiplied by;

- (b) the Buy-Down Rate, multiplied by;
- (c) the number of Hours of Availability that have elapsed in the Schedule Term of such DR3 Schedule as of the date of the termination.

(70) **Emission Reduction Credits** means the credits associated with the avoidance or reduction of emissions below the lower of actual historical emissions or regulatory limits, including “emission reduction credits” as defined in O. Reg. 397/01 made under the *Environmental Protection Act* (Ontario) or such other regulations as may be promulgated under the *Environmental Protection Act* (Ontario) or any currently applicable or future Laws and Regulations.

(71) **Enforceable Rights** means, in respect of a Project of an Aggregator, that the Aggregator has rights enforceable by contract to cause Curtailments by its Contributors, which rights shall be subject to verification and audit from time to time.

(72) **Environmental Attributes** means environmental attributes associated with a Project having decreased environmental impacts now or in the future, and the right to quantify and register these with competent authorities, including:

- (a) all right, title, interest and benefit in and to any renewable energy certificate, credit, reduction right, offset, allocated pollution right, emission reduction allowance or other proprietary or contractual right, whether or not tradable, resulting from the actual or assumed displacement of emissions by the Curtailment from the Project as a result of the utilization of the DR Measures or Control Equipment;
- (b) rights to any fungible or non-fungible attributes or entitlements relating to environmental impacts, whether arising from the Project itself, from the interaction of the Project with the IESO-Controlled Grid, the Distribution System or the Load, or because of applicable legislation or voluntary programs established by Governmental Authorities;
- (c) any and all rights, title and interest relating to the nature of an energy source as may be defined and awarded through applicable Laws and Regulations or voluntary programs, including all Emission Reduction Credits; and
- (d) all revenues, entitlements, benefits, and other proceeds arising from or related to the foregoing which may be available in connection with the Project;

For greater certainty, in the event that any governmental or non-governmental agency, whether provincial, federal, national or international in scope or authority (including the OPA) creates or sanctions a registry, trading system, credit, offset or other program relating to Environmental Attributes or their equivalent, the term “Environmental Attributes” as used in this Agreement shall include all direct and indirect rights or benefits created or sanctioned under any such program or programs to the extent available as a result of, or arising from, the Curtailment from the Project.

(73) **EST** means Eastern Standard Time.

(74) **Extended Period Planned Non-Performance Event** means a Planned Non-Performance Event that lasts for:

- (a) two consecutive weeks, or

- (b) two weeks with one week occurring in one Season and the second week occurring in a different Season.
- (75) **Facility** means mean a building or buildings controlled by a Direct Participant at a specified street address with postal code, forming part of a Project.
- (76) **FIPPA** means the *Freedom of Information and Protection of Privacy Act* (Ontario), as amended from time to time.
- (77) **Final Settlement Statement** has the meaning given to it in Section 6.3.
- (78) **Fixed Standby Notification** means a Standby Notification, in a form to be determined by the OPA from time to time, from the OPA to the Participant to stand by, subject to the Participant's receipt of an Activation Notice, for a potential Curtailment of the Monthly Contracted MW for the Contracted Dispatch Period.
- (79) **Forced Outage** means an Outage that is not a Planned Outage.
- (80) **Generator Output** means the electricity output of a Sub-Metered Generator that will be assessed at its sub-meter for purposes of the DR3 Contract in respect of its contribution to the Monthly Contracted MW.
- (81) **Good Engineering and Operating Practices** means any of the practices, methods and activities adopted by a significant portion of the North American electric utility industry as good practices applicable to the design, building, and operation of demand response projects of similar type, size and capacity or any of the practices, methods or activities which, in the exercise of skill, diligence, prudence, foresight and reasonable judgement by a prudent person in light of the facts known at the time the decision was made, could reasonably have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety, expedition and Laws and Regulations. Good Engineering and Operating Practices are not intended to be limited to the optimum practices, methods or acts to the exclusion of all others, but rather are intended to delineate acceptable practices, methods, or acts generally accepted in the North American electric utility industry. Without limiting the generality of the foregoing and in respect of the operation of the Project, Good Engineering and Operating Practices include taking reasonable steps to ensure that:
- (a) adequate materials, resources and supplies, are available to meet the Project's needs under reasonable conditions and reasonably anticipated abnormal conditions;
 - (b) sufficient operating personnel are available and are adequately experienced and trained to operate the Project properly, efficiently and taking into account any manufacturers' guidelines and specifications and are capable of responding to abnormal conditions;
 - (c) preventative, routine and non-routine maintenance and repairs are performed on a basis that ensures reliable long-term and safe operation and taking into account manufacturers' recommendations and are performed by knowledgeable, trained and experienced personnel utilising proper equipment, tools and procedures; and
 - (d) appropriate monitoring and testing is done to ensure equipment is functioning as designed and to provide assurance that equipment will function properly under both normal and abnormal conditions.

(82) **Governmental Approvals** means approvals, authorizations, consents, permits, grants, licences, privileges, rights, orders, judgments, rulings, directives, ordinances, decrees, registrations and filings issued or granted by law or by any Governmental Authority.

(83) **Governmental Authority** means any federal, provincial, or municipal government, parliament or legislature, or any regulatory authority, agency, tribunal, commission, board or department of any such government, parliament or legislature, or any court or other law, regulation or rule-making entity, having jurisdiction in the applicable circumstances, including the IESO, the OEB, the Electrical Safety Authority, Hydro One Networks Inc., the applicable LDC, and any Person acting under the authority of any Governmental Authority, but excluding the OPA.

(84) **Hours of Availability** means 12:00 p.m. to 9:00 p.m. EST during the Summer Season and 4:00 p.m. to 9:00 p.m. EST during the Winter Season and Shoulder Seasons.

(85) **IESO** means the Independent Electricity System Operator of Ontario, or its successor.

(86) **IESO-controlled grid** means the IESO-controlled grid as defined by the Market Rules.

(87) **Indemnitees** means the OPA and its directors, officers, employees, Company Representative, advisors, and representatives from time to time (including contractors contracting with the OPA and their employees).

(88) **Insolvency Legislation** means the *Bankruptcy and Insolvency Act* (Canada), the *Winding Up and Restructuring Act* (Canada) and the *Companies' Creditors Arrangement Act* (Canada) or any successor legislation, and the bankruptcy, insolvency, creditor protection or similar laws of any other jurisdiction (regardless of the jurisdiction of such application or competence of such law).

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

(90) **Interruptible Load** means a Contributor that satisfies the criteria set out in Section 2.1.2(a)(i) of the DR3 Program Rules.

(91) **Interval** means a 5 minute period, with such 5 minute period being one of the twelve, five minute periods occurring within a clock hour.

(92) **Invoice** has the meaning given to it in Section 6.3.

(93) **kW** means kilowatt.

(94) **Laws and Regulations** means:

- (a) applicable federal, provincial or municipal laws, orders-in-council, by-laws, codes, rules, policies, regulations and statutes;
- (b) applicable orders, decisions, codes, judgments, injunctions, decrees, awards and writs of any court, tribunal, arbitrator, Governmental Authority or other Person having jurisdiction;

- (c) applicable rulings and conditions of any licence, permit, certificate, registration, authorization, consent and approval issued by a Governmental Authority;
- (d) any requirements under or prescribed by applicable common law;
- (e) any codes issued by the OEB and applicable to the Participant; and
- (f) the Market Rules, as well as any manuals or interpretation bulletins issued by the IESO from time to time that are binding on the Participant.

(95) **Letter of Credit** means one or more irrevocable and unconditional standby letters of credit issued by a financial institution listed in either Schedule I or II of the *Bank Act* (Canada) or such other financial institution having a minimum Credit Rating of (i) A- with S&P, (ii) A3 with Moody's, (iii) A (low) with DBRS, or (iv) A- with Fitch IBCA, in the form attached as Exhibit D or in such other form acceptable to the OPA in its sole and absolute discretion, and otherwise conforming to the provisions of Section 8.2.

(96) **Load** means the load or loads directly associated with an end-user's consumption of electricity which may be Curtailed by the Participant as a direct result of the operation of the Control Equipment or DR Measures.

(97) **Local Distribution Company** or **LDC** means a Person licensed by the OEB as a Distributor in connection with a Local Distribution System, but shall not include any affiliate with respect to such Person as the term affiliate is defined in the Affiliate Relationships Code for Electricity Distributors and Transmitters, as amended from time to time.

(98) **Local Distribution System** means a system for conveying electricity at voltages of 50 kilovolts or less and includes any structures, equipment or other things used for that purpose.

(99) **M&V Plan** or **Measurement & Verification Plan** means the measurement and verification plan prepared and submitted by an Applicant and approved by the OPA, in accordance with the requirements set out in the DR3 Program Rules, and outlining in detail the methodology and all activities to be undertaken to measure and verify Curtailment delivered for a Settlement Account.

(100) **M&V Review Period** means one calendar month immediately following notice by the OPA of a Performance Breach during which the OPA and Participant together shall review solutions relating to Material Non-Performance Events.

(101) **Market Rules** means the rules made under section 32 of the *Electricity Act, 1998* (Ontario), as amended from time to time.

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

(103) **Material Non-Performance Event** means, in relation to a given Settlement Account for a given Activation Period:

- (a) the average Confirmed MW over all hours in the Contracted Dispatch Period where the Participant has been Activated for that Settlement Account is less than 75% of the Monthly Contracted MW for that Settlement Account; or

- (b) the Actual Activated MWh for any hour in an Activation Period for that Settlement Account is less than 75% of the Activation MW multiplied by one hour, provided that for purposes of determining a Performance Breach under Section 7.3, no more than one Material Non-Performance Event will be counted per Activation Period. Notwithstanding the foregoing, if the Participant is an Aggregator, the reference to “75%” in subparagraph (b) of this definition shall refer to “60%” if the Aggregator’s Summer Monthly Contracted MW for the Settlement Account is under 10.0 MW; or
 - (c) a Participant who is an Aggregator, with respect to any given Activation, has failed to send Activation Notices to a sufficient number of its Contributors to permit it to meet its Confirmed MW obligations hereunder.
- (104) **Maximum Contract Hours** has the meaning given to it in Section 4.6(1).
 - (105) **Meter Data Set-Off** has the meaning given to it in section 4.5 of Exhibit E.
 - (106) **MMCP or Maximum Market Clearing Price** has the meaning given to it in the Market Rules.
 - (107) **Monthly Contracted MW** means the MW of demand reduction capacity for a specific Contract Month during the DR3 Contract Term as identified in one or more DR3 Contract Schedule(s).
 - (108) **Monthly Payments** means amounts payable to a Participant for aggregate monthly Curtailment in accordance with the DR3 Program Rules.
 - (109) **Moody’s** means Moody’s Investors Service, Inc. or its successor.
 - (110) **MW** means megawatt, being a capacity value that is independent of time.
 - (111) **MWh** means a capacity value dependent on time such that 1.0 MW consumed over one hour is 1.0 MWh. Similarly, 24.0 MW consumed over five minutes or one Interval, is equivalent to 2.0 MWh of electricity.
 - (112) **Non-Submetered Generator** is an embedded generator to a Load which produces electricity in response to an Activation and whose impact is measured through the Load meter for the purposes of DR3.
 - (113) **Not Fully Available for Curtailment** has the meaning given to it in Section 4.4.
 - (114) **OEB** means the Ontario Energy Board, or its successor.
 - (115) **OPA** means the Ontario Power Authority, or its successor.
 - (116) **OPA’s Aggregator Code of Conduct** means the code of conduct applicable to a Participant who is an Aggregator, developed by the OPA, and attached as Exhibit F.
 - (117) **Open Standby Notification** means a Standby Notification, in a form to be determined by the OPA from time to time, from the OPA delivered to the Participant, allowing the Participant to submit a Confirmation for a MW quantity that exceeds the Monthly Contracted MW and/or to Curtail for a duration that exceeds the Contracted Dispatch Period.
 - (118) **Option** means Option A or Option B.

(119) **Option A** means the Participant has a contractual obligation to Curtail the Monthly Contracted MW for the Contracted Dispatch Period in response to the first 100 hours set out in Activation Notices from the OPA for each calendar year.

(120) **Option B** means the Participant has a contractual obligation to Curtail the Monthly Contracted MW for the Contracted Dispatch Period in response to the first 200 hours set out in Activation Notices from the OPA for each calendar year.

(121) **Outage** means the removal of equipment from service, unavailability for connection of equipment or systems or temporary de-rating, restriction of use, unavailability of protocols or measures intended to provide Curtailment or reduction in performance of equipment or systems for any reason (including to permit the performance of inspections, tests or repairs on equipment), which outage results in a partial or total interruption in the ability of a Project to Curtail.

(122) **Participant** means the Party first set out above, and includes any successor to such Party resulting from any merger, arrangement or other reorganization of or including such Party or any continuance under the laws of another jurisdiction or permitted assignee.

(123) **Performance Breach** means, in relation to a given Settlement Account:

- (a) the occurrence of the third Material Non-Performance Event for that Settlement Account in a given calendar year; or
- (b) the Actual Activated MWh in the calendar year to the date of such determination divided by the sum of the Activation MW for each hour that the Participant was Activated in the calendar year to the date of such determination for that Settlement Account is less than 90%; or
- (c) the weighted average, over all Confirmed Hours in the calendar year to the date of such determination, of the Confirmed MW for the Contracted Dispatch Period divided by the Monthly Contracted MW for that Settlement Account is less than 90%; or
- (d) the failure of the Participant to provide to the OPA a complete set of weekly data for a Settlement Account by the fourth week after the deadline, as required pursuant to section 4.5 of Exhibit E; or
- (e) the failure to implement either action set out in Section 12.5 (a) or (b) after the Contributor Loss Cure Period expires.

(124) **Performance Exemptions** means any one or more of the following circumstances, as applicable:

- (a) an Activation Notice has been issued for three consecutive Business Days for that Settlement Account and Curtailment has been provided by the Participant in accordance with such Activation Notices. For greater certainty, on the third and each subsequent consecutive Business Day of Curtailment, the Participant must confirm in writing to the OPA by 6:00 p.m. (EST) its intent to participate on the fourth and each subsequent consecutive Business Day, as the case may be, failing which the Participant will be deemed to have advised the OPA that the Participant will not be available on the next Business Day. If the Participant has not provided such written notice by the deadline as set out in the previous sentence, the Participant may disregard without consequence any

Standby Notification or Activation Notice that is received with respect to Curtailment of such Settlement Account for such fourth and subsequent consecutive Business Day, as the case may be; or

- (b) the Participant has provided the OPA with prior notice, as required under Section 7.2(1), that it will be experiencing a Planned Non-Performance Event for that Settlement Account during the relevant period of time;
- (c) a Planned Non-Performance Event for that Settlement Account has occurred as contemplated in Section 7.2(4); or
- (d) the Participant has been Activated with respect to that Settlement Account for the Maximum Contract Hours and, pursuant to Section 4.6(4), does not wish to participate in respect of that Settlement Account beyond the Maximum Contract Hours.

(125) **Performance Set-Off** means the Availability Set-Off, the Planned Non-Performance Availability Set-Off, the Utilization Set-Off, or the Meter Data Set-Off.

(126) **Performance Set-Off Factors** means the amounts set out in the first column of the table in respect to the circumstances set out in the second column of the table set out below.

| Performance Set-Off Factor | Circumstances in which the Performance Set-Off Factor is to be Applied |
|----------------------------|--|
| 2.0 | <ul style="list-style-type: none"> • The Reliability Rate in any one or more Intervals is less than 95%; or • If a Confirmation is required and where the Participant is Activated, the OPA has not received such Confirmation three or more hours prior to the commencement of the Activation Period to which the Standby Notification relates. Notwithstanding the foregoing, this bullet shall not apply to a Confirmation for more than the Monthly Contracted MW in response to an Open Standby Notification; or • The Participant has advised the OPA, less than three hours prior to the commencement of the Activation Period to which the Standby Notification relates, that the Participant is Not Fully Available for Curtailment; or • The OPA has determined that the Participant was Not Fully Available for Curtailment in relation to the Activation Period to which the Standby Notification relates. |
| 1.50 | <ul style="list-style-type: none"> • If a Confirmation is required and where the Participant is Activated, the OPA has received such Confirmation more than 30 minutes late, but more than three hours prior to the commencement of the Activation Period to which the Standby Notification relates, <u>and</u> the Confirmed MW for any one or more Confirmed Hours within the Contracted Dispatch Period is less than 95% of the Monthly Contracted MW. Notwithstanding the foregoing, this bullet shall not apply to a Confirmation for more than the Monthly Contracted MW in response to an Open Standby Notification; or • The Participant has advised the OPA, three or more hours prior to the commencement of the Activation Period to which the Standby Notification relates, that the Participant is Not Fully Available for Curtailment. |

| | |
|------|---|
| 1.25 | <ul style="list-style-type: none"> • If a Confirmation is required, the OPA has received such Confirmation 30 minutes late or less. Notwithstanding the foregoing, this bullet shall not apply to a Confirmation for more than the Monthly Contracted MW in response to an Open Standby Notification; or • If a Confirmation is required, the Confirmed MW for any one or more Confirmed Hours within the Contracted Dispatch Period is less than 95% of the Monthly Contracted MW. |
|------|---|

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

(128) **Planned Non-Performance Event** means an event or events determined by the Participant in respect of which the Settlement Account is, in whole or in part, in a Planned Outage or otherwise unable to Curtail for a period of time, as described in Section 7.2.

(129) **Planned Non-Performance Availability Set-Off** has the meaning given to it in section 4.3 of Exhibit E.

(130) **Planned Outage** means an Outage that is planned and intentional, and has been disclosed to the OPA pursuant to this Agreement.

(131) **Preliminary Settlement Statement** has the meaning given to it in Section 6.3.

(132) **Project** means a Interruptible Load and/or a Behind the Meter Generator that will contribute toward Curtailment of the Monthly Contracted MW.

(133) **Project Amendment** has the meaning given to it in Section 3.1(3).

(134) **Ramping Period** means a nine month period provided to an Aggregator in respect of a DR3 Schedule with a Schedule Term of 3 or 5 years in order to increase its portion of the Monthly Contracted MW provided up to the full Monthly Contracted MW.

(135) **Receiving Party** means, with respect to Confidential Information, the Party receiving Confidential Information and may be the OPA or the Participant, as applicable.

(136) **Related Products** means all ancillary services (as defined in the Market Rules), Environmental Attributes and products related to the rated, continuous load-carrying capability of the Project to Curtail at a given time, as well as any other products or services of value that may be provided by or attributable to the Project from time to time during the Schedule Term for a Project and that may be traded in the markets established from time to time by the Market Rules or other markets, or otherwise sold or otherwise have value, and which shall be deemed to include products and services for which no market may exist.

(137) **Reliability Rate** means the amount, expressed as a percentage, as calculated pursuant to Exhibit E.

(138) **Representative** means a Party's directors, officers, employees, auditors, consultants (including economic and legal advisors), contractors and agents and those of its Affiliates, and shall include any Person from time to time appointed as the Dispatcher. While the OPA is a Party to this Agreement, this definition shall also include the Government of Ontario, the IESO, and their respective directors, officers, employees, auditors, consultants (including economic and legal advisors), contractors and agents.

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

(140) **Sales Taxes** means GST and PST.

(141) **Schedule Commencement Date** means the date that a DR3 Schedule becomes effective and shall be determined as set out in the DR3 Process Document as posted on the Website from time to time.

(142) **Schedule Term** means the 1, 3, or 5 year term of a DR3 Schedule, as the case may be, commencing at 00:01 (EST) on the Schedule Commencement Date and ending upon the expiration of such Schedule Term, subject to earlier termination in accordance with the provisions of this Agreement.

(143) **Seasons** means those seasonal months or periods of the year specified by the OPA as being Seasons on the Website from time to time and may include Summer, Winter, and Shoulder Seasons.

(144) **Settlement** means the payment settlement of the DR3 Contract.

(145) **Settlement Account** means the account number assigned to a Project or a Settlement Area, as the case may be, in accordance with the following rules:

- (a) for a Direct Participant, a Settlement Account shall refer:
 - (i) to one specific Project referred to in a DR3 Schedule, should the Direct Participant wish the Project to be considered to be a different Project from any other Project(s) located in the same Designated Settlement Area for the purposes of the DR3 Contract; or
 - (ii) more than one Project within a Designated Settlement Area; or
 - (iii) to all Projects within an entire Designated Settlement Area, should the Direct Participant wish the Project to be considered together with other Projects located in the same Designated Settlement Area for the purposes of the DR3 Contract; or
- (b) for an Aggregator, a Settlement Account shall refer:
 - (i) to a specific Project referred to in a DR3 Schedule, should the Aggregator wish to have a Project with a different Option A/Option B in the same Designated Settlement Area as an existing Project; or
 - (ii) otherwise, to an entire Designated Settlement Area.

(146) **Settlement Month** has the meaning given to it in Section 6.3.

- (147) **Single Day Planned Non-Performance Event** means a Planned Non-Performance Event that lasts for one Business Day.
- (148) **Standby Notification** means an Open Standby Notification or a Fixed Standby Notification.
- (149) **Start Interval** has the meaning given to it in Section 3.7(1).
- (150) **Sub-Metered Generator** means an embedded generator to a Load which produces electricity in response to an Activation but whose impact is measured through a separate revenue grade sub-meter located behind the Load meter for the purposes of DR3.
- (151) **Suitable Business Day** has the meaning given to it in Exhibit B.
- (152) **Taxes** means all ad valorem, property, occupation, severance, production, transmission, utility, gross production, gross receipts, sales, use, excise, taxes based on profits, net income or net worth and other taxes, governmental charges, licenses, permits and assessments.
- (153) **Utilization Payment** means the payment to the Participant as determined and calculated pursuant to Exhibit E.
- (154) **Utilization Rate** means the rate set out in the DR3 Schedule, expressed in \$/MW, and that is applicable to a given hour of Curtailment within a given Activation Period.
- (155) **Utilization Set-Off** means the set-off calculated pursuant to Exhibit E.
- (156) **Website** means the portion of the website located at www.powerauthority.on.ca that references Demand Response Programs under the OPA Initiatives tab, or such other website or portion of a website as advised by the OPA from time to time.

EXHIBIT B
METER DATA AND M&V BASELINE METHODOLOGY

1. Meter Data

The OPA will use one or more summary meter(s) as part of its settlement tools with respect to a Settlement Account. The OPA will:

- (i) map all meter point data streams to the Settlement Account such as channels 1 and 3 or equivalent channel numbers; and
- (ii) issue site registration reports (SRR) to the Participant for signature and confirmation of their acceptance of the settlement map.

Not all combinations of meter data submission will be allowed by the OPA. Direct Participants who participate in the Ontario wholesale electricity markets will be considered by the OPA to have Class 1 meter data, Aggregators will be considered by the OPA to have Class 2 meter data, and Direct Participants who participate in the Ontario retail electricity markets will be considered by the OPA to have Class 3 data, and the allowable forms and combinations of meter data submission with respect to a Settlement Account will be as follows:

- one and only one of Class 1ⁿ, Class 2, or Class 3ⁿ meter data; and
- Class 1ⁿ and Class 3ⁿ which may be aggregated meter data, where 1ⁿ means Class 1 meter data from 1 to n sources.

2. M&V Baseline Methodology

Curtailment will be calculated for each applicable hour as the difference between the Project's calculated Baseline and the Project's measured consumption (or net production) of electricity, and shall be as set out below for different types of Contributors, namely Interruptible Loads of Direct Participants, Interruptible Loads of Aggregators, and Behind the Meter Generators, as applicable, and subject to adjustment in accordance with section 3 of this Exhibit B.

(a) Direct Participant Interruptible Load

The Baseline for a Contributor that is an Interruptible Load in a Settlement Account for a Direct Participant shall be determined as follows:

- (i) The OPA shall calculate a Baseline for each and every Confirmed Hour of an Activation.
- (ii) To allow the OPA to determine the Baseline, Settlements, Performance Set-Offs, Material Non-Performance Events and Performance Breaches, the Participant must submit to the OPA retail revenue meter data for all calendar days from and including Saturday to Friday of a week ending Friday, by 3:00 p.m. (EST) on the first Business Day of the following week. Meter data shall comprise a single feed (of one or more channels as required by the OPA) of validated raw data (V0), and shall include a feed of Validated, Edited, and Estimated (VEE) data (V1) if the raw data requires edits for each retail revenue meter that contributes to a Settlement Account. The Participant shall indicate which intervals have been edited or estimated and the reasons why. Revisions to the metering data – called V2

metering data – can be submitted to the OPA after the submission of the weekly meter data, provided it is received by 3:00 p.m. (EST) on the last Business Day of the month following the month to which the data relates together with reasons for such edits. VEE shall be in accordance with the Market Rules. Meter data must be a CSV (comma separated values) file in engineering units, and the unit of measurement is kWh delivered. Where the revenue meter is bi-directional, as required for Behind the Meter Generators, the unit of measurement shall be net kWh delivered, calculated as kWh delivered less kWh received. Metering data must also be in MV90 format in setting out the date and time and use kWh, in the format of “YYYY/MM/DD, HH:MM, kWh”. As an example the format would be expressed as “2007/07/09, 11:05, 833.1”.

(iii) Baseline hour calculation:

(A) The Baseline calculation shall be based on Business Days, excluding any Business Day in respect of which:

- (1) the Interruptible Load in a Settlement Account underwent a Planned Non-Performance Event;
- (2) the Participant chose to take an After Deadline Outage Day, subject to Section 7.2(4) of the DR3 Contract;
- (3) the OPA issued an Activation Notice; or
- (4) the Participant has responded to the OPA with a Confirmation Notice for less than the Monthly Contracted MW and/or the Contracted Dispatch Period. For greater certainty, although such Business Day will be excluded for purposes of the calculation of the Baseline, the Participant will nevertheless be subject to any applicable Performance Set-Offs and other rights or remedies available to the OPA.

For greater certainty, a Business Day shall not be excluded by reason of the participation of a Project in any other demand response or generation program or other programs or initiatives (whether or not created or administered by the OPA) that is implemented, administered, or supported by the IESO, the OPA or any branch or agency of the federal, provincial, or municipal government, or a LDC that is not prohibited under this Agreement.

Any Business Day that has not been excluded in accordance with the above-noted rules will be considered a “**Suitable Business Day**”.

(B) The Baseline value for any Confirmed Hour of an Activation shall be the average of the highest fifteen (15) values for the same hour as those of the Activation, in the last twenty (20) Suitable Business Days prior to the Activation.

(C) The Baseline calculation for any Confirmed Hour of an Activation shall go back to a maximum of thirty-five (35) Business Days prior to the day of the Activation to establish twenty (20) Suitable Business Days.

- (D) If there are insufficient Suitable Business Days within the previous thirty-five (35) Business Days from which to establish a Baseline, then the OPA may elect to utilize only available Suitable Business Days within the previous thirty-five (35) Business Days. If the Baseline established in accordance with the rules set out in this section 2(a)(iii), including the rule set out in the previous sentence, is determined by the OPA to be unsuitable, then the OPA may direct the Participant to propose an alternative methodology for calculating the baseline for that Activation which shall be subject to OPA approval.

(b) Aggregator Interruptible Load

The Baseline for a Contributor that is an Interruptible Load in a Settlement Account for an Aggregator shall be calculated as set out in section 2(a) of this Exhibit B, with the exceptions that:

- (i) Meter data shall comprise a single feed (of one or more channels as required by the OPA) of Validated, Edited, and Estimated (VEE) data (V1) for all Contributors to each Settlement Account. This V1 data shall be submitted to the OPA for all calendar days Saturday to Friday of a week ending Friday, by 3:00 pm (EST) on the first Business Day of the following week. On a monthly basis, the Aggregator shall submit to the OPA all Interval (V0) data and interval meter data (VEE) for each Contributor, referencing any required Confirmation sent by the Aggregator and the associated Settlement Account, by 3:00 p.m. (EST) on the last Business Day of the month following the month to which the data relates. Meter data must be raw data and VEE data in a CSV (comma separated values) format. The Aggregator shall indicate which intervals have been edited or estimated and the reasons why. Revisions to the metering data – called V2 metering data – together with reasons for such edits, can be submitted to the OPA after the submission of the weekly meter data, provided it is received by 3:00 p.m. (EST) on the last Business Day of the month following the month to which the data relates. VEE shall be in accordance with the Market Rules; and
- (ii) The Aggregator shall submit by 3:00 p.m. (EST) on the last Business Day of the month following the month to which the data relates, a log, by Settlement Account, of each Contributor that was requested by the Aggregator to Curtail, the date and time of the request, duration of request, amount (in MW) of such request, and the Contributor's name. Failure to deliver a full and completed log as required may result in the OPA, without limiting any other rights available to it, exercising its rights under Section 6.3(3) of the DR3 Contract; and
- (iii) Section 2(a)(iii)(A)(2) of this Exhibit B does not apply.

(c) Behind the Meter Generator

The Baseline for a Contributor that is a Behind the Meter Generator shall be based on the following considerations:

- (i) where a Project consists entirely of Non-Submetered Generators, then the Baseline shall be established as per section 2(a) or section 2(b) of this Exhibit B, the term "Interruptible Load" therein is replaced by the term "Non-Submetered Generator", as applicable; or

- (ii) where a Project consists entirely of Sub-Metered Generators, then such Baseline shall be established as per section 2(a) or section 2(b) of this Exhibit B, as applicable, except that in section 2(a)(iii)(B) of this Exhibit B, the word “highest” shall be replaced with the word “lowest”, the term “Interruptible Load” therein is replaced by the term “Submetered Generator”; or
- (iii) where a Project consists of multiple installations comprised of a mixture of Interruptible Loads, Non-Submetered Generators, and/or Sub-Metered Generators, then the Baseline shall be established as in section 2(a) or section 2(b) of this Exhibit B, as applicable, using the sum of the meters involved, but respecting the exclusion of section 2(a)(iii)(A)(2) of this Exhibit B as applicable. However, when compiling the Baseline and assessing for performance, electricity used by the Interruptible Load or the Load in which the Behind the Meter Generator is embedded shall be assigned a positive value, and the Generator Output of a Sub-Metered Generator or electricity injected into the IESO-controlled grid or Local Distribution System as may occur from time to time from a Non-Submetered Generator shall be assigned a negative value.

3. Baseline Adjustment Methodology

Each of the Baseline calculations set out in sections 2(a), 2(b), 2(c)(i), and 2(c)(iii) of this Exhibit B above, as applicable, shall be adjusted automatically for any Settlement Account where the Participant can justify within their M&V Plan, the need for such adjustment due to a significant portion of the Curtailment in the Settlement Account being heavily influenced by weather, and in accordance with the following principles:

- (i) Baselines shall be adjusted using the measured demand prior to the Curtailment hour;
- (ii) The Baseline calculation shall be adjusted in accordance with the following:
 - (A) for the 15 of the 20 Suitable Business Days prior to the Curtailment Hour, apply the Baseline methodology referred to in the appropriate sections 2(a), 2(b), 2(c)(i), and 2(c)(iii) of this Exhibit B above to determine the average of the same four hours prior to the Curtailment hour (BSL1) and the measured four hours prior to the actual Curtailment hour (“Avg4”); and
 - (B) determine the difference (“Diff”), if positive, between Avg4 and the calculated unadjusted baseline (“BSL1”) (i.e., $\text{Diff} = \text{Avg4} - \text{BSL1}$). If Diff is a negative value or equal to zero, then there shall be no adjustment to the Baseline and section 3(ii)(C) below of this Exhibit B shall not be applicable; and
 - (C) add 80% of Diff to BSL1 for each Curtailment hour of the Activation (e.g., $\text{HE 14} = \text{BSL14} + 80\% \text{ of Diff}$).

EXHIBIT C

FORM OF DR3 SCHEDULE

Each DR3 Schedule will be a separate, numbered schedule to the DR3 Contract completed in the following form:

| DR3 SCHEDULE NO. _____ | |
|--|--|
| 1. GENERAL INFORMATION | |
| Type of Participant: <i>Direct Participant or Aggregator</i> | |
| Assigned Settlement Account No. | |
| Project Name | |
| Brief Project Description | |
| Designated Settlement Area | |
| Applicable Version of the DR3 Program Rules | Version |
| 2. CURTAILMENT QUANTITY AND PRICES | |
| Monthly Contracted MW for each calendar month or Season <i>[Note to Finalization: Complete as applicable]</i> | _____ MW for January _____ MW for February _____ MW for March _____ MW for April _____ MW for May _____ MW for June _____ MW for July _____ MW for August _____ MW for September _____ MW for October _____ MW for November _____ MW for December |
| Availability Rate (\$/MW) | \$ _____ MW |
| Availability Rate Discount (if applicable) | _____ % |
| Availability Rate Premium (if applicable) | _____ % |

| | |
|--|--|
| Availability Over-Delivery Rate (\$/MW) | \$ _____ MW |
| Utilization Rate (\$/MWh) | <p>\$ _____ MWh applicable in each hour up to and including the fourth (4th) consecutive hour of Curtailment in a given Activation Period</p> <p>\$ _____ MWh applicable in each hour from and after the fifth (5th) consecutive hour of Curtailment in a given Activation Period</p> |
| Buy-Down Rate (\$/MW) per hour | <p>For a DR3 Schedule with a 1 year Schedule Term, the Buy-Down Rate per hour for that DR3 Schedule is equal to:</p> <p><i>BDR = (R1 x number of months remaining in the Schedule Term)</i></p> <p>For a DR3 Schedule with a 3 year Schedule Term, the Buy-Down Rate for that DR3 Schedule is:</p> <p><i>BDR = (R2 x number of months remaining in the Schedule Term, up to 24) + (R1 x {months remaining -24}), if the number of months remaining in the Schedule Term exceeds 24.</i></p> <p>For a DR3 Schedule with a 5 year Schedule Term, the Buy-Down Rate for that DR3 Schedule is:</p> <p><i>BDR = (R2 x number of months remaining in the Schedule Term, up to 48) + (R1 x {months remaining -48}), if the number of months remaining in the Schedule Term exceeds 48.</i></p> <p>, where, for each of the three calculations above:</p> <p>R1 = _____ \$/MW; and</p> <p>R2 = _____ \$/MW.</p> |
| 3. DURATIONS | |
| Schedule Term (1, 3, or 5 yrs) | |
| Schedule Commencement Date (mm/dd/yyyy) | |
| Contracted Dispatch Period | |
| Election of Option A (100 hrs) or Option B (200 hrs) | |

| | |
|---|---|
| <p>Not Fully Available for Curtailment Election:</p> <p><i>(1) using the four hour period prior to Curtailment or</i></p> <p><i>(2) the four hour period prior to receiving an Activation Notice</i></p> | |
| <p>Start Interval</p> <p><i>[Note to Finalization: Start Interval is to be selected by the OPA]</i></p> | |
| <p>4. ACCEPTANCE</p> | |
| <p>Accepted by the Participant</p> <p>Date:</p> | <p>[insert name of Participant]</p> <p>Name:</p> <p>Title:</p> <p>Name:</p> <p>Title:</p> <p>I/We have authority to bind the Corporation</p> |
| <p>Accepted by the OPA</p> <p>Date:</p> | <p>ONTARIO POWER AUTHORITY</p> <p>Name:</p> <p>Title:</p> <p>I/We have authority to bind the Corporation</p> |

EXHIBIT D

FORM OF IRREVOCABLE STANDBY LETTER OF CREDIT

DATE OF ISSUE: ●

APPLICANT: *[insert name of Participant]*

BENEFICIARY: Ontario Power Authority and its permitted assigns

AMOUNT: ●

EXPIRY DATE: ●

EXPIRY PLACE: Counters of the issuing financial institution in Toronto, Ontario

CREDIT RATING: *[Insert credit rating only if the issuer is not a financial institution listed in either Schedule I or II of the Bank Act]*

TYPE: IRREVOCABLE AND UNCONDITIONAL STANDBY LETTER OF CREDIT

Number:

We hereby authorize you to draw on *[insert name of financial institution and financial institution's address in Toronto, Ontario]* in respect of irrevocable standby letter of credit No. _____ (the "Credit"), for the account of the Applicant up to an aggregate amount of \$● (● Canadian dollars) available by your draft at sight, accompanied by the Beneficiary's signed certificate stating that:

"*[insert name of Participant]* is in breach of, or default under, the DR3 Contract between the Beneficiary and the Applicant, and therefore the Beneficiary is entitled to draw upon the Credit in the amount of the draft attached hereto."

Drafts drawn hereunder must bear the clause "Drawn under irrevocable and unconditional Standby Letter of Credit No. *[insert number]* issued by *[the financial institution]* dated *[insert date]*".

Partial drawings are permitted.

This Credit is issued in connection with the DR3 Contract dated as of the ● day of ●, 200___ between the Beneficiary and *[insert name of Participant]* (as amended, the "DR3 Contract").

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

We agree with you that all drafts drawn under, and in compliance with the terms of this Credit will be duly honoured, if presented at the counters of *[insert the financial institution and financial institution's address, located in Toronto, Ontario]* at or before 5:00 pm (EST) on *[insert the expiry date]*.

This irrevocable standby letter of credit is subject to the International Standby Practices ISP 98, International Chamber of Commerce publication No. 590 and, as to matters not addressed by the ISP 98,

shall be governed by the laws of the Province of Ontario and applicable Canadian federal law, and the parties hereby irrevocably agree to attorn to the non-exclusive jurisdiction of the courts of the Province of Ontario.

It is a term of this letter of credit that the above name of the Beneficiary will be amended to another entity by way of an amendment hereto, without the consent of the Applicant, and upon receipt by **[the financial institution]** of the above Beneficiary's dated and signed letter addressed to **[the financial institution]** and completed as follows: "We, the undersigned Beneficiary to **[the financial institution]**'s letter of credit no. ●, hereby waive all our rights under the said letter of credit and request that the current name and address of the Beneficiary thereunder be amended to read **[insert name and address of new Beneficiary]**. Please forward the original amendment to the **[new Beneficiary]**, care of the Applicant to whom we have delivered the original of the letter of credit along with its amendment(s) (if any)."

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

– END –

[Insert name of Financial Institution]

By: _____
Authorized Signatory

EXHIBIT E

CALCULATION OF MONTHLY PAYMENTS

This Exhibit E sets out the calculation of the Monthly Payment for all DR3 Schedules in Contract Month “m” in Contract Year “y”, which is a five stage calculation which involves:

| | |
|------------------|--|
| Stage I | Determination of the Availability Payment; |
| Stage II | Determination of any Availability Over-Delivery Payment; |
| Stage III | Determination of the Utilization Payment; |
| Stage IV | Determination of Performance Set-Offs; and |
| Stage V | Determination of the Monthly Payment. |

Except as expressly set forth below, all references to Sections are to Sections of the Agreement. If a Participant has more than one DR3 Contract Schedule in a given Settlement Account, the Settlement of all DR3 Contract Schedules in that Settlement Account shall be based on (i) the total Monthly Contracted MW for all such DR3 Contract Schedules and (ii) the weighted average of each of the applicable payment and set-off rates over all such DR3 Contract Schedules, as weighted by the respective Monthly Contracted MW for each such DR3 Contract Schedule.

1.0 STAGE I: DETERMINATION OF THE AVAILABILITY PAYMENT

1.1 The Availability Payment for each DR3 Schedule for the Contract Month is calculated as follows:

| | |
|---|---|
| $AP_m = \sum_{A=1}^{A=m} \text{Monthly Contracted MW} \times \text{Adjusted Availability Rate (\$/MW)}$ | |
| "m" | represents the Contract Month. |
| Monthly Contracted MW | has the meaning set out in the Definitions. |
| Adjusted Availability Rate (\\$/MW) | is the amount equal to the Availability Rate, expressed in \\$/MW, as increased by the Availability Rate Premium or as decreased by the Availability Rate Discount, as the case may be. |
| "A" | represents each Hour of Availability in the Contract Month. |

2.0 STAGE II: DETERMINATION OF THE AVAILABILITY OVER-DELIVERY PAYMENT

2.1 The Availability Over-Delivery Payment for the Contract Month is calculated, until and including such time that the Settlement Account has been Activated an additional 7 times within the calendar year if the Maximum Contract Hours is 100, and an additional 14 times within the calendar year if the Maximum Contract Hours is 200, as follows:

| | |
|---|--|
| $AOD_m = \sum_{h=1}^{h=month} (\text{Confirmed MW} - \text{Monthly Contracted MW}) \times \text{Availability Over-Delivery Rate}$ | |
| where AOD _m may not be less than zero and where: | |
| "h" | represents each of the Hours of Availability in the Contract Month where the Confirmed MW exceeds the Monthly Contracted MW. |
| Confirmed MW | is the lesser of (A) the Monthly Contracted MW plus 15 MW and (B) 130% of the Monthly Contracted MW. |
| Monthly Contracted MW | has the meaning set out in the Definitions. |
| Availability Over-Delivery Rate | is the over-delivery rate, expressed in \$/MW set out in the DR3 Schedule. |

3.0 STAGE III: DETERMINATION OF THE UTILIZATION PAYMENT

3.1 The total Utilization Payment for the Contract Month is calculated, until and including such time as the Settlement Account has been Activated an additional 7 times if the Maximum Contract Hours is 100, and an additional 14 times if the Maximum Contract Hours is 200, as follows:

| | |
|---|--|
| $UP_m = [\text{Actual Activated MWh} \times \text{Utilization Rate}] - \text{Net Generation Recapture}$ | |
| where: | |
| AP | is each Activation Period in the Contract Month. |
| Actual Activated MWh | has the meaning set out in the Definitions. |
| Utilization Rate | Means the rate defined in the Definitions. |
| Net Generation Recapture | if and to the extent that any Contributor is a Behind the Meter Generator that is eligible pursuant to Section 2.1.2(a)(ii)(4)(A) that provides net generation during the Activation Period, then the Net Generation Recapture is an amount equal to the product of: (i) the Hourly Ontario Electricity Price up to a maximum of the Utilization Rate, and (ii) the MWh of such net electricity generated in such hour or such Interval, as the case may be. |

4.0 STAGE IV: DETERMINATION OF PERFORMANCE SET-OFFS

4.1 The amount of the Performance Set-Offs shall be calculated as:

| | |
|--|---|
| PS_m = Availability Set-Off + Planned Non-Performance Availability Set-Off + Utilization Set-Off + Meter Data Set-Off | |
| where: | |
| Availability Set-Off | is calculated in section 4.2 of this Exhibit E. |
| Planned Non-Performance Availability Set-Off | is calculated in section 4.3 of this Exhibit E. |
| Utilization Set-Off | is calculated in section 4.4 of this Exhibit E. |
| Meter Data Set-Off | is calculated in section 4.5 of this Exhibit E. |

4.2 Availability Set-Off

4.2.1 The Availability Set-off shall be the greatest of any of the Availability Set-Off (Reliability), Availability Set-Off (Timely Confirmation), and Availability Set-Off (Low Confirmation) as calculated under sections 4.2.2, 4.2.3 or 4.2.4 of this Exhibit E, respectively, for a given Activation.

4.2.2 Availability Set-Off (Reliability)

The calculation of the Reliability Rate for each Interval “i” of each Activation Hour in the Contract Month is as follows:

| | |
|---|---|
| Reliability Rate_i = $\frac{\text{Actual Activated MWh per Interval}}{\text{Activation MW} \times 1/12} \times 100$ | |
| where Reliability Rate_i may not exceed 100% and where: | |
| Activation MW | is the number of MW, if any, up to the Confirmed MW, in respect of which the OPA issues an Activation Notice. |

If the Reliability Rate_i as calculated immediately above for any Interval “i” in an Activation Hour is less than 95%, or if the Participant is Not Fully Available for Curtailment, then an Availability Set-Off (Reliability) shall be calculated as the sum of the Availability Set-Off (Reliability) for each such Activation Hour in the Activation Period, as follows:

| | |
|---|---|
| Availability Set-Off (Reliability) = | $\sum_{AH=1}^{AP=AH}$ (Performance Set-Off Factor x Adjusted Availability Rate x Monthly Contracted MW) |
| where: | |
| Performance Set-Off Factor | is the applicable factor set out in the definition of “Performance Set-Off Factor”. |

| | |
|------|--|
| "AH" | represents each Activation Hour within an Activation Period. |
| "AP" | represents the maximum Activation Hours within an Activation Period. |

The Availability Set-Off (Reliability) shall not apply where the Participant was not Activated during the Contract Month.

4.2.3 Availability Set-Off (Timely Confirmation)

If the Participant, regardless of Activation, fails to deliver, or delivers late, one or more required Confirmations in the Contract Month, then an Availability Set-Off (Timely Confirmation) shall be calculated as the sum of the Availability Set-Off (Timely Confirmation) for each of all hours of such Contracted Dispatch Period, as follows:

| | |
|---|---|
| Availability Set-Off (Timely Confirmation) = | $\sum_{CDP=1}^{CDP=CDM}$ (Performance Set-Off Factor x Adjusted Availability Rate x Monthly Contracted MW) |
| "CDP" | represents each hour of a Contracted Dispatch Period. |
| "CDM" | represents the maximum number of hours in a Contracted Dispatch Period which is 4 hours. |

4.2.4 Availability Set-Off (Low Confirmation)

If the Confirmed MW is less than 95% of the Monthly Contracted MW for any Confirmed Hour of the Contracted Dispatch Period, then an Availability Set-Off (Low Confirmation) shall be calculated as the sum of the Availability Set-Off (Low Confirmation) for all such Confirmed Hours in the Contracted Dispatch Period, as follows:

| | |
|--|--|
| Availability Set-Off (Low Confirmation) = | $\sum_{CH=1}^{CH=CDM}$ Performance Set-Off Factor x Adjusted Availability Rate x (Monthly Contracted MW – Confirmed MW) |
| "CH" | represents the Confirmed Hours. |

and for greater certainty, the Availability Set-Off (Low Confirmation) will continue to be applied in respect of Confirmed Hours notwithstanding that the Actual Activated MWh may be equal to or greater than the Monthly Contracted MW on an Interval basis for each Interval in the hour.

4.3 Planned Non-Performance Availability Set-Off

4.3.1 The Planned Non-Performance Availability Set-Off (PNPAS_m) shall be calculated as:

| |
|--|
| PNPAS_m = Non-Activation Day Non-Performance Availability Set-Off + Activation Day Non-Performance Availability Set-Off |
| where: |

| | |
|---|---|
| Non-Activation Day Non-Performance Availability Set-Off | is calculated in section 4.3.2 of this Exhibit E. |
| Activation Day Non-Performance Availability Set-Off | is calculated in section 4.3.3 of this Exhibit E. |

4.3.2 Non-Activation Day Non-Performance Availability Set-Off

For any day that is a Single Day Non-Performance Event or a part of an Extended Period Planned Non-Performance Event and during which the OPA does not send any Activation Notice(s) for a Settlement Account, then the Non-Activation Day Non-Performance Availability Set-Off shall be calculated as follows:

| | |
|--|---|
| Non-Activation Day Non-Performance Availability Set-Off = | $\sum_{NAD=1}^{NAD=NADm}$ Adjusted Availability Rate x Monthly Contracted MW x Hours of Availability_{NAD} |
| NAD | represents each such Non-Activation Day in the month. |
| Hours of Availability _{NAD} | represents the Hours of Availability in the Non-Activation Day. |

4.3.3 Activation Day Non-Performance Availability Set-Off

For any day that is a Single Day Non-Performance Event or that is part of an Extended Period Planned Non-Performance Event and during which the OPA sends an Activation Notice for a Settlement Account, then the Activation Day Non-Performance Availability Set-Off shall be calculated as follows:

| | |
|--|---|
| Activation Day Non-Performance Availability Set-Off = | $\sum_{AD=1}^{AD=ADm}$ Opportunity Hours x Adjusted Availability Rate x Monthly Contracted MW x Weighting Factor |
| Opportunity Hours | means: (a) 64, if Option A is applicable to the Settlement Account; or (b) 32, if Option B is applicable to the Settlement Account. |
| Weighting Factor | means: (a) 50%, if the Actual Activated MWh Per Interval, as averaged over all of the Intervals in the Contracted Dispatch Period for the Activation, is greater than or equal to the product of the Monthly Contracted MW and 1/12 of an hour; or (b) 100%, otherwise, |
| AD | represents each such Activation Day in the month. |

4.4 Utilization Set-Off

4.4.1 The Utilization Set-Off shall be the greatest of any of the Utilization Set-Off (Reliability), Utilization Set-Off (Timely Confirmation), and Utilization Set-Off (Low Confirmation) as calculated under sections 4.3.2, 4.3.3 and 4.3.4 of this Exhibit E, respectively, for each Activation event.

4.4.2 Utilization Set-Off (Reliability)

If the *Reliability Rate_i* as calculated in section 4.2.2 above for any Interval “i” in an Activation Hour is less than 95%, then a Utilization Set-Off (Reliability) shall be calculated as the sum of the Utilization Set-Off (Reliability) for each such Activation Hour in the Activation Period, as follows:

| | |
|--|--|
| Utilization Set-Off (Reliability) = | $\sum_{AH=1}^{AH=AP} \text{(Performance Set-Off Factor x (Utilization Rate/hour))}$ x Monthly Contracted MW) |
| Utilization Rate (\$/MWh) | Means the rate defined in Exhibit A – Definitions. |

4.4.3 Utilization Set-Off (Timely Confirmation)

If the Participant, regardless of Activation, fails to deliver, or delivers late, one or more required Confirmations in the Contract Month, then a Utilization Set-Off (Timely Confirmation) shall be calculated as the sum of the Utilization Set-Off (Timely Confirmation) for each such Contracted Dispatch Period over the Contract Month, as follows:

| | |
|--|---|
| Utilization Set-Off (Timely Confirmation) = | $\sum_{CDP=1}^{CDP=CDM} \text{(Performance Set-Off Factor x Utilization Rate x Monthly Contracted MW)}$ |
| "CDP" | represents each hour of a Contracted Dispatch Period. |
| "CDM" | represents the maximum number of hours in a Contracted Dispatch Period which is 4 hours. |

4.4.4 Utilization Set-Off (Low Confirmation)

If the Confirmed MW is less than the Monthly Contracted MW for a Confirmed Hour of the Contracted Dispatch Period, then a Utilization Set-Off (Low Confirmation) shall be calculated as the sum of the Utilization Set-Off (Low Confirmation) for all Confirmed Hours in the Contracted Dispatch Period, as follows:

| | |
|---|--|
| Utilization Set-Off (Low Confirmation) = | $\sum_{CH=1}^{CH=CDM} \text{Performance Set-Off Factor x Utilization Rate x (Monthly Contracted MW – Confirmed MW)}$ |
| "CH" | represents the Confirmed Hours. |

For greater certainty, this Utilization Set-Off (Low Confirmation) will continue to be applied in

respect of Confirmed Hours notwithstanding that the Actual Activated MWh may be equal to or greater than the Monthly Contracted MW on an Interval basis for each Interval in the hour.

4.5 Meter Data Set-Off

A “**Meter Data Set-Off**” will be applied against the Availability Payment for a Settlement Account if a complete set of weekly data and proof of any Forced Outage(s) for that Settlement Account is not received by the OPA by 3:00 p.m. (EST) on the first Business Day of the following week, and calculated as follows:

| | |
|---------------|--|
| MDSO = | MD% x Availability Payment, as pro-rated for that week in question. |
| where: | |
| MD% | is equal to 20% for the first week that the full data remains undelivered to the OPA; and |
| | is equal to 33% for the second week that the full data remains undelivered to the OPA; and |
| | is equal to 50% for the third week that the full data remains undelivered to the OPA. |
| | is equal to 100% for the fourth week that the full data remains undelivered to the OPA. |

5.0 STAGE V: DETERMINATION OF MONTHLY PAYMENT

5.1 The Monthly Payment for a Contract Month, which may be a positive or negative amount, shall be calculated as:

| | |
|--------------------------------------|---|
| Monthly Payment_m = | AP_m + AOD_m + UP_m - PS_m |
|--------------------------------------|---|

EXHIBIT F

OPA'S AGGREGATOR CODE OF CONDUCT

1. Purpose of the OPA's Aggregator Code of Conduct

- 1.1 This Exhibit F sets out the OPA's minimum standards governing all dealings between an Aggregator and a Contributor for purposes of the DR3 Contract and all DR3 Schedules. For greater certainty, this Exhibit F does not apply to a Direct Participant.

2. Obligation to ensure salespersons comply

- 2.1 An Aggregator shall ensure that its salespersons adhere to the same standards required of the Aggregator as set out below.

3. Fair Marketing Practices

- 3.1 An Aggregator or a salesperson of an Aggregator, when dealing with a Contributor or a prospective Contributor, shall:

- (a) immediately and truthfully give the name of the salesperson and the Aggregator to the Contributor or the prospective Contributor, and state that the Aggregator is offering a Contributor Contract;
- (b) state the price to be paid under the DR3 Schedule for Curtailment of the Project of which the Contributor forms a part, state the price to be paid under the Contributor Contract, and state the term of the Contributor Contract;
- (c) not exert undue pressure on a Contributor or a prospective Contributor;
- (d) allow the Contributor or the prospective Contributor sufficient opportunity to read all documents provided;
- (e) not make any offer or provide any promotional material to a Contributor or a prospective Contributor that is inconsistent with the Contributor Contract being offered to or entered into with the Contributor or the prospective Contributor; and
- (f) not make any representation or statement or give any answer or take any measure that is false or is likely to mislead a Contributor or a prospective Contributor.

4. Contributor Complaints

- 4.1 An Aggregator shall provide to its Contributors and prospective Contributors in writing all written offers, contracts and renewal forms, and the telephone number of the Aggregator's customer service centre.
- 4.2 If any Contributor makes a complaint to an Aggregator regarding subscription by the Aggregator or its salespersons, the conduct of the Aggregator's salespersons, the Contributor Contract, or any other matter related to the Aggregator, the Aggregator shall expeditiously investigate the complaint and take all appropriate and necessary steps to resolve the complaint. If the complaint is not

resolved to the satisfaction of the Contributor, the Aggregator shall provide to the Contributor the contact information of the OPA with respect to DR3.

- 4.3 In cases where a Contributor complaint has been referred to the Aggregator from the OPA and resolution of that complaint is reached, the Aggregator shall implement the resolution immediately and shall confirm this, in writing, with the OPA.

5. **Services To Be Maintained By An Aggregator**

- 5.1 An Aggregator shall have a current mailing address in Ontario and a current telephone number listed in Ontario, and shall provide them to every Contributor.

6. **Confidentiality of Contributor Information**

- 6.1 An Aggregator shall not disclose any information relating to a specific Contributor obtained by the Aggregator or its salesperson or any information obtained without the consent of the Contributor ("**Contributor Information**") to any person other than the Contributor or the OPA without the consent of the Contributor in writing, except when the Contributor Information has been sufficiently aggregated such that an individual Contributor's Information cannot be identified, or where Contributor Information is required to be disclosed:

- (a) for billing or market operation purposes;
- (b) for law enforcement purposes;
- (c) to comply with a statute or an order of a court or tribunal;
- (d) when past due accounts of the Contributor have been passed to a debt collection agency; or
- (e) for the purpose of complying with the Market Rules.

- 6.2 An Aggregator shall inform Contributors regarding the conditions described in paragraph 6.1 of this Exhibit F under which Contributor Information may be released to a third party without the Contributor's consent.

- 6.3 An Aggregator shall not use Contributor Information obtained for one purpose from a Contributor for any other purpose without the consent of the Contributor in writing.

7. **Transfer and Assignment of Contracts**

- 7.1 An Aggregator must notify the OPA of any sale, transfer or assignment of a Contributor Contract or the administration of a Contributor Contract no later than 10 calendar days after the sale, transfer or assignment.

- 7.2 No later than 60 calendar days of any sale, transfer or assignment of a Contributor Contract or the administration of a Contributor Contract to another Aggregator, the Aggregator must notify the affected Contributor(s) of the new Aggregator's address for service and telephone number.