

**NEW BRUNSWICK ENERGY AND UTILITIES BOARD**

**AFFIDAVIT**

I, **JUSTIN URQUHART**, of the Town of Hampton, in the County of Kings and Province of New Brunswick, **MAKE OATH AND SAY AS FOLLOWS:**

1. I am the Vice-President, Finance for New Brunswick Power Corporation ("NB Power"), and I am a Chartered Accountant and Chartered Professional Accountant. As such I have personal knowledge of the facts herein deposed unless stated to be based upon information and belief.
2. I am authorized by NB Power to make this affidavit in support of its Motion to the New Brunswick Energy and Utilities Board (the "NBEUB" or the "Board") dated July 23<sup>rd</sup>, 2025 seeking an Order declaring that a certain Tolling Agreement entered between NB Power and RIGS Energy Atlantic Limited Partnership, as represented by its general Partner 1542987 B.C. Ltd. (the "Owner"), dated and effective July 2, 2025 (the "Tolling Agreement"), is not a capital project within the meaning of that term as used in subsection 107(1) of the *Electricity Act*, and that the Board does not possess jurisdiction with respect to the Tolling Agreement under section 107 of the *Act*.

3. I have reviewed NB Power's Notice of Motion, and to the best of my knowledge and information the contents of paragraphs 1 through 14 of the Motion are true and accurate.
4. A true copy of the Tolling Agreement is attached hereto as Exhibit "A".
5. A true copy of the Ground Lease between NB Power and the Owner, dated and effective July 2, 2025, is attached hereto as Exhibit "B".

SWORN TO BEFORE ME at the )  
 City of Fredericton, in the County )  
 of Kings and Province of New )  
 Brunswick, this 23rd day of )  
 July, 2025. )

  
 \_\_\_\_\_  
 JOHN G. FUREY  
 A COMMISSIONER OF OATHS )  
 BEING A SOLICITOR )

  
 \_\_\_\_\_  
 JUSTIN URQUHART

This is Exhibit "A" referred to in the Affidavit  
of JUSTIN VROUHART  
SWORN TO before me at the City of  
Fredericton, York County, New Brunswick  
the 23<sup>rd</sup> day of JULY, 2025.

Execution Version

John B. Fyfe  
A Commissioner of Oaths Being a Solicitor

## TOLLING AGREEMENT

**THIS TOLLING AGREEMENT** dated as of July 2<sup>nd</sup>, 2025 (the "Effective Date") is by and between RIGS Energy Atlantic Limited Partnership, a limited partnership formed under the laws of New Brunswick, as represented by its general partner 1542987 B.C. Ltd., ("Seller") and New Brunswick Power Corporation, a New Brunswick Crown corporation, in its own right and as agent of His Majesty the King in Right of the Province of New Brunswick ("Buyer"). Each of Seller and Buyer may be referred to herein as a "Party" or, collectively, as the "Parties".

### WITNESSETH:

**WHEREAS**, Buyer is a Crown corporation electric utility company that owns and operates facilities for the generation, transmission and distribution of energy, and serves customers at retail in the Province of New Brunswick, Canada;

**WHEREAS**, Seller will develop, own and operate a Natural Gas-fired electric generation facility (with the ability to also fire on Fuel Oil), with a maximum nameplate capacity of four hundred (400) MW and with an intended Designated Capacity equal to the Contracted Capacity in the Summer Season and the Winter Season, respectively, located in Centre Village, New Brunswick, on lands of Buyer leased to Seller, together with all auxiliary equipment, ancillary and associated facilities and equipment, as further described in Appendix A to this Agreement (the "Facility");

**WHEREAS**, during the commissioning and testing of the Facility and upon the commercial operation of the Facility, Buyer has agreed to supply the fuel requirements of the Facility to Seller, Seller has agreed to sell the capacity from the Facility to Buyer, and Buyer has agreed to purchase such capacity, all in accordance with this Agreement;

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

### ARTICLE 1 DEFINITIONS; INTERPRETATION

Section 1.1 Definitions. Unless the context requires otherwise, capitalized terms in this Agreement shall have the respective meanings set forth below:

"Affiliate" means, with respect to any Person, any Person that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with the Person specified. For purposes of this definition, control of a Person means the power, direct or indirect, to direct or cause the direction of the management and policies of such Person whether through ownership of voting securities or ownership interests, by contract or otherwise, and specifically with respect to a corporation, partnership or limited liability company, means direct or indirect ownership of more than fifty percent (50%) of the voting securities in such corporation or of the voting interest in a partnership or limited liability company, or control of the general partner or manager thereof.

“Agreement” or “Tolling Agreement” means this agreement, including all Appendices, as it may be modified, amended, supplemented or restated by written agreement between the Parties.

“Agreement Operating Committee” has the meaning set forth in Appendix M.

“Annual MWh” has the meaning set forth in Appendix C.

“Annual Period” means as applicable: (a) with respect to the initial Annual Period, the period commencing on the Commercial Operation Date (or the Early Commercial Operation Date or Provisional COD, as applicable) and ending December 31 of such calendar year; and (b) with respect to each subsequent Annual Period, the twelve (12) Month period commencing January 1 and ending December 31 of the applicable calendar year (or, as applicable, the date on which this Agreement otherwise terminates pursuant to its terms or the mutual written agreement of the Parties).

“Arbitrator” has the meaning set forth in Section 19.1(b).

“Availability Percentage” or “AP” has the meaning set forth in Appendix C.

“Available” means all times following the Commercial Operation Date (or the Early Commercial Operation Date or Provisional COD, as applicable) when the Units are not Unavailable.

“Average Monthly Capacity” means the calculated capacity, in MW, that results from dividing the total Scheduled Energy delivered by the Facility for a given month during the Delivery Period by the number of Hours (or partial Hours) that Buyer has Scheduled Energy for such month, provided that in the calculation of the Average Monthly Capacity, Scheduled Energy over a given period that is in excess of the Designated Capacity multiplied by such duration shall only be included where Seller has provided Buyer with day-ahead notice of such excess capacity being available due to forecasted ambient conditions.

“Board” means the New Brunswick Energy and Utilities Board, or any successor thereto.

“Business Day” means any Day excluding Saturday, Sunday, NERC-defined holidays and statutory holidays in the Province of New Brunswick.

“Buyer” has the meaning set forth in the introductory paragraph of this Agreement.

[REDACTED]

[REDACTED]

“Buyer FC CPs” has the meaning set forth in Section 3.5(b).

“Buyer Fuel Quantity” means, for a given Scheduling Period, the quantity of Fuel, based on the Prevailing Heat Rate, required to enable Seller to convert such Fuel into Energy in



accordance with Buyer's Scheduling Instructions, including appropriate start-up and shut-down Fuel.

"Buyer Post FC CPs" means each of the Buyer's Conditions Precedent other than the Buyer FC CPs.

[REDACTED]

[REDACTED]

"Buyer's Conditions Precedent" has the meaning set forth in Section 3.1(a).

"Change in Law" means a change in a Legal Requirement constituting a new law or regulation, a repeal of an existing law or regulation, or a new interpretation of any such law or regulation, which change is enacted after the Effective Date and which generally affects, directly or indirectly, the ability of a Party to perform its obligations under this Agreement, including with respect to the costs of such performance.

"Change in Law Notice" has the meaning set forth in Section 8.1(a).

"Climate Protection Costs" means

[REDACTED]

"Commercial Operation" means that the following conditions have been satisfied by Seller or waived by Buyer: (a) the Initial Designated Capacity of the Facility is equal to or greater than ninety-five percent (95%) of the Contracted Capacity; (b) the Facility systems, including the Electric Interconnection and the Gas Interconnection, have been energized and synchronized with the Transmission System, and are capable of accepting Natural Gas at the Gas Delivery Point and Fuel Oil at the Fuel Oil Delivery Point and delivering Energy to the Interconnection Point, all in accordance with Prudent Industry Practices; (c) all Permits required to perform Seller's obligations under this Agreement have been obtained and, where applicable, transferred to Seller; and (d) Buyer has accepted in writing Seller's Notice of Commercial Operation within ten (10) Business Days following Seller's issuance of the Notice of Commercial Operation, or, failing an acceptance in writing by Buyer within ten (10) Business Days, an independent qualified engineer approved by the Parties, has determined criteria (a) to (c) hereof have been achieved in relation to the Facility and provided written notice thereof to both Parties.

"Commercial Operation Date" or "COD" means the Day as of which Commercial Operation has occurred.

"Commissioning and Testing" means operation of the Facility for testing or equipment commissioning purposes prior to the Commercial Operation Date (or the Early Commercial Operation Date or Provisional COD, as applicable).

“Confidential Information” has the meaning set forth in Section 20.15(a).

“Contracted Capacity” means [REDACTED] of installed electric capacity during the Summer Season, as determined under ambient conditions of [REDACTED] and [REDACTED] of installed electric capacity during the Winter Season, as determined under ambient conditions of [REDACTED] and [REDACTED]

“Corrected Heat Rate Value” has the meaning set forth in Appendix C.

“Costs” means [REDACTED]

“Credit Event” means, [REDACTED]

“Crown” means His Majesty the King in Right of the Province of New Brunswick.

“Day” means a calendar day and, unless otherwise specified, runs from 12:00 a.m. through 11:59 p.m.

“Defaulting Party” has the meaning set forth in Section 18.3(a).

“Delay Damages” has the meaning set forth in Section 3.2.

“Delivered Energy” has the meaning set forth in Appendix C.

“Delivery Period” means the period from and including the Commercial Operation Date through the end of the Term and, in the event that an Early Commercial Operation Date or a Provisional COD occurs, the period from and including the Early Commercial Operation Date or the Provisional COD (as applicable) through the Commercial Operation Date.

“Demand for Arbitration” has the meaning set forth in Section 19.1(b).

“Designated Capacity” means, for a Summer Season or a Winter Season, the net capability of the Units (or, prior to the Commercial Operation Date, the Units with respect to which an Early Commercial Operation Date or Provisional COD has occurred) to produce Energy in a given Hour of such Summer Season or Winter Season (expressed in whole kW), determined in accordance with Appendix C.

“Designated Capacity Performance Curves” has the meaning set forth in Appendix C.

“Disclosing Party” has the meaning set forth in Section 20.15(a).

“Downgrade Event” has the meaning set forth in Section 7.2(c).

“Early Commercial Operation” means, with respect to one (1) or more Units, that (i) conditions (a) through (c) in the definition of “Commercial Operation” have been satisfied or waived by the Parties prior to the occurrence of the Commercial Operation Date, and (ii) either (A) Buyer, acting reasonably, has accepted in writing Seller’s Notice of Early Commercial Operation or (B) three (3) Business Days have passed since Seller’s issuance of the Notice of Early Commercial Operation.

“Early Commercial Operation Date” means the Day as of which Early Commercial Operation has occurred with respect to one (1) or more Units.

[REDACTED]

[REDACTED]

“Effective Date” has meaning set forth in the introductory paragraph to this Agreement.

“Electric Interconnection” means the facilities and equipment necessary to interconnect the Facility with the Buyer’s Transmission System.

“Electricity Act” means the *Electricity Act*, SNB 2013 c. E-7, as amended,

“Emissions Credits” means [REDACTED]

[REDACTED]

“Energy” means electrical energy (expressed in MWh) discharged by the Facility, inclusive of output associated with ancillary services, reactive power, and any other electrical energy products available from the Facility that may be developed or evolve from time to time.

“Environment” means soil, surface waters, groundwaters, land, stream sediments, surface or subsurface strata, ambient air, and any environmental medium.

“Environmental Law” means any environmental or health and safety related Legal Requirement, whether existing as of the date hereof, previously enforced as of the Effective Date, or subsequently enacted, assessed or imposed.

“Event of Default” has the meaning set forth in Article 18.

“Extension Term” has the meaning set forth in Section 2.1.

“Expropriate” has the meaning set forth in the Site Lease. For clarity, the capitalized terms within this definition in the Site Lease shall have the meanings set forth for those capitalized terms in the Site Lease.

“Facility” has the meaning set forth in the introductory paragraph of this Agreement.

“Facility Gas Meter” means the Natural Gas flow meter supplied, owned, operated and maintained by or on behalf of Buyer and located at the Site, and depicted on Appendix A.

“Facility Gas Meter Adjustment Period” has the meaning set forth in Section 9.3(c)(ii).

“Financial Closing” means the closing of the transactions between Seller and Financing Entities relating to the Financing.

“Financing” means development, bridge, construction and/or permanent equity or debt financing or refinancing for Seller or any of its Affiliates with respect to the Facility, whether such financing or refinancing takes the form of private debt or equity, public debt or equity, or any other form.

“Financing Entities” means lenders, security, note or bond holders, lien holders and other Persons providing Financing for Seller or any of its Affiliates with respect to the Facility, including their successors and assigns and any trustees or agents acting on their behalf.

“Force Majeure Event” has the meaning set forth in Section 17.1.

“Forced Derate” means a time during which a Unit is not capable of providing the full Designated Capacity with respect to such Unit for reasons other than a Force Majeure Event.

“Forced Outage” means a time during which the Unit(s) is not capable of normal operations for reasons other than a Force Majeure Event, and which is not a Scheduled Outage or a Maintenance Outage.

“Fuel” means either Natural Gas or Fuel Oil or both, as applicable in context.

“Fuel Oil” means low-sulfur No. 2 fuel oil that meets or exceeds the specifications set forth in Appendix F.

“Fuel Oil Delivery Point” means, the inlet flange of the Fuel Oil Storage Tank.

“Fuel Oil Storage Tank” means the storage tank to be installed on the Site by Seller for the purpose of storing Fuel Oil to be used by the Facility as Fuel, including an unloading station and other appurtenant facilities, in accordance with the technical specifications set out in Appendix A.

“Fuel Oil Supply Event” means any inability or failure of Buyer, for whatever reason, to (a) obtain Fuel Oil supply for delivery to the Fuel Oil Delivery Point or (b) successfully arrange for the transportation of Fuel Oil to the Fuel Oil Storage Tank, in each case in quantities sufficient to permit Seller to meet the Scheduling Instructions delivered by Buyer to Seller, provided that such inability or failure is not caused by Seller’s actions or inactions.

“Gains” means an amount equal to the economic benefit determined on a mark to market basis (exclusive of Costs) to it resulting from [REDACTED]

“Gas Day” means a period of twenty-four (24) consecutive Hours beginning and ending at 10:00 a.m. Local Time or such other 24-hour period as from time to time generally recognized in the gas industry by the NAESB and set forth in the applicable NAESB Wholesale Gas Quadrant Standard as the standard period for measuring Natural Gas deliveries and pricing.

“Gas Delivery Point” means the outlet flange according to Appendix A downstream of the Facility Gas Meter.

“Gas Index” has the meaning set forth in Appendix C.

“Gas Interconnection” means the facilities and equipment necessary to interconnect the Facility with M&NP’s natural gas transportation system.

“Gas Interconnection Agreement” means the agreement entered into by and between Buyer and M&NP that governs the Gas Interconnection, on terms and conditions reasonably acceptable to Seller, which will be assigned to Seller.

“Gas Supply Event” means any inability or failure of Buyer, for whatever reason, to (a) obtain Natural Gas supply for delivery to the Gas Delivery Point or (b) successfully arrange Natural Gas transportation to the Gas Delivery Point, in each case in quantities sufficient to permit Seller to meet the Scheduling Instructions delivered by Buyer to Seller, provided that such inability or failure is not caused by Seller’s actions or inactions.

“Generation Connection Agreement” means the Generation Connection Agreement, the form of which is set out in Attachment J to the Open Access Transmission Tariff, to be entered into by and between Seller and Transmission and System Operator that governs the interconnection of the Facility with the Transmission System.

“Governmental Authority” means with respect to any Person any court, tribunal, arbitrator, arbitration authority, authority, agency, commission, official or other instrumentality of Canada, the United States or any other country, or any province, state, city or other political subdivision or similar governing entity to the extent applicable to such Person, and any non-governmental body administering, regulating or having oversight over, electricity, power or other markets.

“Guaranteed COD” means [REDACTED] from the Targeted COD, as the Targeted COD may be extended in accordance with Section 3.1(b).

“Guaranteed Heat Rate” has the meaning set forth in Appendix C.

“Guaranteed Summer Heat Rate” has the meaning set forth in Appendix C.

“Guaranteed Winter Heat Rate” has the meaning set forth in Appendix C.

“Hour” means any of the twenty-four (24) clock hours in a Day.

“Imbalance Charges” has the meaning set forth in Section 12.4.

“Indemnified Party” has the meaning set forth in Section 16.1(a).

“Indemnifying Party” has the meaning set forth in Section 16.1(a).

“Initial Designated Capacity” means the nameplate capacity of the Facility as of the Commercial Operation Date (or the Early Commercial Operation Date or Provisional COD, as applicable), as determined under Section 10.1.

“Interconnection Point” means the receptors at the top of the 138 kV dead-end structure located on the Site related to the 138 kV electric transmission line that traverses the Site, each to be owned and operated by Buyer in its capacity as Transmission and System Operator, as further described in Appendix A.

“Interest Rate” means the lower of (i) an interest rate per annum equal to the prime rate (as announced from time to time by *The Wall Street Journal*) [REDACTED] per annum; and (ii) the maximum interest rate permitted by Legal Requirements.

“Intra-Day Natural Gas Delivered Fuel Price” shall mean, with respect to Natural Gas required for Commissioning and Testing, the Gas Index.

“Investment Grade Credit Rating” means that the credit rating of a Person’s long-term senior unsecured debt, or if such entity does not have a rating for its senior, unsecured long-term debt, then the rating assigned to such entity as an issuer rating, is as follows: (a) “Baa3” or higher by Moody’s or (b) “BBB-” or higher by S&P.

“kV” means kilovolt(s).

“kW” means kilowatt(s).

“Land Rights” has the meaning set forth in Section 2.3.

“Legal Requirement” means any constitution, law, code, statute, regulation, rule, ordinance, criterion, mandate, judgment, injunction, order, Permit or other requirement of a Governmental Authority having jurisdiction over the matter in question that is valid and applicable to the matter in question on the Effective Date or any time thereafter during the Term, including, for greater certainty the Electricity Business Rules established under the Electricity Act and published by the Transmission and System Operator or the Board.

[REDACTED]

“LNTTP Work” has the meaning set forth in Appendix E.

“Local Time” means the local prevailing time at the Facility.

“Losses” means an amount equal to the economic loss determined on a mark to market basis (exclusive of Costs) to it resulting from [REDACTED]

“M&NP” means Maritimes & Northeast Pipeline, or any successor thereto.

“Maintenance Outage” means a planned interruption of a portion or all of the Facility’s generation capability that: (i) has been coordinated in advance with Buyer as to a mutually agreed start date, time and duration pursuant to Section 11.4(c); and (ii) is for the purpose of performing work on specific components of the Facility that may limit the power output of the Facility but should not, in the reasonable judgment of Seller, be postponed until the next Scheduled Outage, provided that any Maintenance Outage shall be subject to an aggregate maximum of three hundred thirty-six (336) hours per Unit in any Annual Period and any portion of a Maintenance Outage lasting longer than such aggregate period shall be deemed to constitute a Forced Outage for purposes hereof.

“Material Adverse Effect” means, with respect to a Party, an effect that is reasonably likely, in light of the overall facts and circumstances, to deprive such Party of one or more of the material benefits of this Agreement.

“Metering System” means, in the case of meters, metering devices and related instruments used to measure and record Energy and to determine the amount of such Energy that is being made available or delivered to the Transmission and System Operator at the Interconnection Point, the Transmission and System Operator Meter and, in the case of the meters, metering devices and related instruments used to measure and record Natural Gas delivered by Buyer to the Gas Delivery Point, the Facility Gas Meter and Transmission and System Operator’s unit flow meters for each Unit.

“Milestone Schedule” means a milestone schedule substantially in the form set forth in Appendix G.

“MMBtu” means one million British thermal units; one (1) MMBtu is equivalent to one (1) Dekatherm.

“Month” means a calendar month, commencing at the beginning of the first Day of such calendar month; and “Monthly” has a correlative meaning.

“Monthly Availability Adjustment” has the meaning set forth in Appendix C.

“Monthly Capacity Charge” has the meaning set forth in Appendix C.

“Monthly Capacity Payment” means the amount to be paid by Buyer to Seller for Buyer’s purchase of the Designated Capacity for a particular Month, as provided in Appendix C.

“Monthly Invoice” has the meaning set forth in Section 6.1(a).

“Monthly MWh” has the meaning set forth in Appendix C.

“Monthly Variable O&M Payment” has the meaning set forth in Appendix D.

“Moody’s” means Moody’s Investors Service, Inc.

“MW” means megawatt(s).

“MWh” means megawatt-hour(s).

“MWh Available” has the meaning set forth in Appendix C.

“NAESB” means the North American Energy Standards Board, including any successor thereto and subdivisions thereof.

“Natural Gas” means a pipeline-quality mixture of hydrocarbon gasses that occurs with petroleum deposits, principally methane, together with varying quantities of ethane, propane, butane, and other gases, that meets the requirements of the Pipeline.

“NERC” means the North American Electric Reliability Corporation, including any subdivisions thereof.

“Non-Defaulting Party” has the meaning set forth in Section 18.3(a).

“Notice of Commercial Operation” means written notice provided by Seller to Buyer stating that the conditions in clauses (a) through (c) of the definition of “Commercial Operation” have been satisfied or waived by the Parties and stating the Initial Designated Capacity as of the Commercial Operation Date, along with reasonable substantiating documentation.

“Notice of Early Commercial Operation” means written notice provided by Seller to Buyer stating that the conditions in clauses (a) through (c) of the definition of “Commercial Operation” have been satisfied or waived by the Parties with respect to one (1) or more Units prior to the occurrence of the Commercial Operation Date and stating the number of Units that have achieved Early Commercial Operation and the Initial Designated Capacity of such Units as of the Early Commercial Operation Date, along with reasonable substantiating documentation.



“NTP Permits” means any of the Permits that are required to be secured pursuant to Section 3.1(a)(i) and Section 3.1(a)(v), which NTP Permits are set forth in Appendix B.

“Open Access Transmission Tariff” means the document dated January 1, 2023 and approved by the Board in Board Matter No. 513, as may be amended or replaced from time to time.

“Party” or “Parties” has the meaning set forth in the introductory paragraph of this Agreement.

[REDACTED]

“Performance Test” or “Performance Testing” means a test or testing of the Units in accordance with the Performance Testing Procedures.

“Performance Testing Procedures” means the procedures for conducting a Performance Test or Performance Testing, as set forth in Appendix H.

“Permit” means any permit, license, approval, certificate, entitlement or other authorization issued by a Governmental Authority required for the construction, ownership or operation of the Facility or occupancy of the Site.

“Permit Costs” means all costs incurred or assessed in connection with obtaining and maintaining either NTP Permits or Seller’s Permits, as applicable, and all fees, penalties, and other costs associated with the issuance, transfer, maintenance, or amendment of, security for, and compliance or non-compliance with, any such Permits, in any case other than [REDACTED]

“Permitted Extension” means a delay in achieving Commercial Operation due to (i) a delay in completion of necessary network upgrades or interconnection facilities, which delay is not caused by an act or omission of Seller; (ii) a delay in receipt of one or more Permits necessary for the construction and operation of the Facility and the sale of Designated Capacity therefrom, but only to the extent that Seller has used commercially reasonable efforts and Prudent Industry Practices to obtain such Permits or cooperate with Buyer’s efforts to obtain such Permits, as applicable; (iii) a delay in the delivery of equipment required for the Facility due to an event outside the control of Seller; and/or (iv) a delay due to: (A) a Change in Law; (B) the discovery of underground obstructions or Regulated Material, which delay is not caused by an act or omission of Seller; (C) the discovery of geotechnical conditions in relation to the Site, for which Prudent Industry Practices require changes to the design of the foundation and other civil works from what is contemplated in Appendix A; (D) the discovery of test water well purity conditions, for which Prudent Industry Practices require changes to the design of the water treatment system from what is contemplated in Appendix A; (E) the discovery of effluent discharge restrictions, for which Prudent Industry Practices require changes in the design of the Facility in relation to the effluent outflow, from what is contemplated in Appendix A or in any associated Legal Requirements in relation to effluent outflow; and/or (F) any Buyer-requested change to the Facility from what is

contemplated in Appendix A, which Seller can demonstrate to the satisfaction of Buyer, acting reasonably, results in a material impact to the project schedule critical path, provided that, in the case of each of items (A) – (F) of item (iv), only to the extent Seller has not been able to avoid or mitigate such delay through the use of commercially reasonable efforts and Prudent Industry Practices.

“Person” means any natural person, corporation, general partnership, limited partnership, limited liability company, proprietorship, other business organization, trust, union, association, Governmental Authority, or the Crown or any department or agency thereof.

“Pipeline” means the trunking transmission natural gas pipeline known as “Maritimes & Northeast Pipeline”.

“Posting Party” has the meaning set forth in Section 7.3.

“Prevailing Heat Rate” means Buyer’s good faith, commercially reasonable estimate of the heat rate of the Facility or a Unit, as applicable in context, on a Day for which Buyer desires to Schedule the production of Energy by the Facility under Article 13 and Appendix I.

“Provisional COD” has the meaning set forth in Section 3.5(c).

“Prudent Industry Practices” means those practices, methods, codes and standards of performance (including those required by Legal Requirements), as the same may be changed from time to time, as are commonly used in connection with the design, construction, commissioning, operation and maintenance of gas-fired electric power generation facilities similar in size, and in the same approximate geographic location, to the Facility, which, in the exercise of the reasonable judgment of a prudent operator and in light of the facts known at the time the decision was made, would be considered, good, safe and prudent practice in connection with the operation and maintenance of gas-fired electric generating facilities similar to the Facility; provided, however, the Parties acknowledge and agree that “Prudent Industry Practices” does not necessarily mean one particular practice, method, standard or design but is instead intended to encompass practices, methods, standards and designs generally accepted in the North American electric utility industry.

“Qualified Institution” means any commercial bank organized under (i) the laws of the United States, any state thereof, or the District of Columbia, or (ii) the laws of Canada or any province thereof, in either case having assets of at least 10,000,000,000 United States Dollars (or the equivalent in Canadian Dollars) and having Credit Ratings of at least “A-” (or its equivalent) by S&P or “A3” (or its equivalent) by Moody’s.

“Receiving Party” has the meaning set forth in Section 20.15(a).

“Regulated Material” means any chemical, substance, material or waste that is now or becomes listed, defined or regulated in any manner by any applicable federal, provincial or local Legal Requirement based upon, directly or indirectly, such chemicals, substances, materials or wastes being hazardous, harmful or potentially harmful to human health or the Environment, including, asbestos, PCBs and petroleum or petroleum containing substances.

“Release” means any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing or dumping into the Environment.

“Rules” has the meaning set forth in Section 19.1(b).

“S&P” means S&P Global Ratings, a division of S&P Global Inc.

“Schedule,” “Scheduling” and “Scheduling Instructions” means instructions issued by Buyer from the Scheduling Center to Seller with respect to the scheduling of the production of Energy by the Facility in accordance with Article 13 and Appendix I.

“Scheduled Outage” means the outages scheduled by Seller and included in any Seasonal Maintenance Schedule in accordance with Section 11.4(b), which outages shall not exceed a total of 1,152 hours per year for all units of the Facility.

“Scheduling Center” means the scheduling center designated by Buyer from time to time in writing as being the primary control point for Scheduling Instructions and other notifications provided pursuant to Article 13 and Appendix I. There may only be one Scheduling Center designated at any one time.

“Scheduling Limitations” means the operational limits and constraints described in this Agreement, including in Appendix I.

“Scheduling Period” has the meaning set forth in Appendix I.

“Season” means either the Summer Season or the Winter Season, as applicable.

“Seasonal Maintenance Schedule” has the meaning set forth in Section 11.4(a).

“Secured Party” has the meaning set forth in Section 7.3.

“Seller” has the meaning set forth in the introductory paragraph of this Agreement.

[REDACTED]

“Seller’s Permits” means subject to Section 4.1, any Permit other than the NTP Permits.

[REDACTED]

[REDACTED]

[REDACTED]

“Site” means the real property on which the Facility is located.

“Site Lease” means a long-term lease of the Site, including required easements and other access arrangements, between Buyer, as lessor, and Seller, as lessee, at a total rent of [REDACTED] otherwise on terms and conditions reasonably acceptable to Seller.

“Start” means the action of bringing a Unit to Synchronous Condenser Mode or its minimum load and the unconditional release of such Unit for ramping to the full capability of such Unit pursuant to a Schedule in accordance with Article 13 and Appendix I.

“Summer Month” means a calendar month in a Summer Season.

“Summer Season” means a period during the Delivery Period from May 1 of a given calendar year through October 31 of such calendar year.

“Synchronous Condenser Mode” means, with respect to a Unit in an hour during the Delivery Period, the operation of the synchronous condenser appurtenant to such Unit for the purpose of generating reactive power without generating Energy.

“System Emergency” means that the Transmission and System Operator has determined pursuant to its prevailing practices that conditions are expected to occur or have occurred that could jeopardize the ability to meet projected loads.

“Targeted COD” means August 1, 2028, subject to extension in accordance with Section 3.1(b).

“Taxes” means all taxes, fees, levies, licenses or charges imposed by any Governmental Authority, [REDACTED]

“Term” has the meaning set forth in Section 2.1.

[REDACTED]

“Test Energy” means Energy generated by the Facility during Commissioning and Testing.

“Test Energy Rate” means the Variable O&M Rate as set out in Appendix D (and applied as the starting rate for the first Annual Period in the case of Test Energy prior to COD).

“Tested Reliable Capacity” means the demonstrated capability of the Units, in whole kW, to produce Energy in a given Hour pursuant to a Performance Test corrected for test conditions in accordance with Appendix H.

“Transmission and System Operator” means New Brunswick Power Corporation, in its capacity as transmission and system operator for the Province of New Brunswick, or any successor thereto.

“Transmission and System Operator Meter” means the electric meter owned by the Transmission and System Operator and located at or near the Interconnection Point.

“Transmission and System Operator Meter Adjustment Period” has the meaning set forth in Section 9.3(c)(i).

“Transmission Event” means any inability or failure of Buyer, for whatever reason, including System Emergencies, to receive Energy at the Interconnection Point, provided that such inability or failure is not caused by Seller’s actions or inactions.

“Transmission System” means the electric transmission facilities of Transmission and System Operator, as modified or expanded from time-to-time, and any successor in function thereto.

“Unavailable” or “Unavailability” means the extent to which at all times following the Commercial Operation Date, Early Commercial Operation Date or Provisional COD, a Unit is (or Units are, as the case may be) unable to deliver Energy pursuant to a Schedule due to, without duplication, a Scheduled Outage, Maintenance Outage, Forced Outage, Forced Derate, Force Majeure Event, Gas Supply Event, Fuel Oil Supply Event, Transmission Event or a Unit Trip.

“Unavailability Event” means any single, continuous period during which a Unit is (or the Units are, as the case may be) Unavailable to serve Buyer’s Schedules.

“Unit” means a simple-cycle gas turbine generator at the Facility.

“Unit Trip” means a time during which a Unit, after a successful Start, has cycled completely offline and is not capable of generating electric power without another Start, other than the Unit being offline for reasons of a Force Majeure Event, Scheduled Outage or Maintenance Outage.

“Winter Month” means a calendar month in a Winter Season.

“Winter Season” means a period during the Delivery Period from November 1 of a given calendar year through April 30 of the immediately following calendar year.

Section 1.2 Interpretation. The following interpretations and rules of construction shall apply to this Agreement: (a) titles and headings are for convenience only and will not be deemed part of this Agreement for purposes of interpretation; (b) unless otherwise stated, references in this Agreement to “Articles”, “Sections” or “Appendices” refer, respectively, to Articles and Sections of and Appendices to this Agreement; (c) the word “including” means “including, but not limited to”, and the words “include “ or “includes” means “include, without limitation” or “includes, without limitation”; (d) the words “hereunder”, “herein”, “hereto” and “hereof”, when used in this Agreement, refer to this Agreement as a whole and not to a particular Article, Section or clause of this Agreement; (e) in the case of defined terms, the singular includes the plural and vice versa; (f) unless otherwise indicated, all accounting terms not specifically defined shall be construed in accordance with generally accepted accounting practices in Canada and/or the United States; (g) each reference to a particular law is a reference to such law as it may be amended, modified, extended, restated or supplemented from time to time, as well as to any successor law thereto; (h) references to agreements shall be deemed to include all subsequent amendments, supplements and other modifications thereto; (i) each reference to any Person shall include such Person’s successors and permitted assigns; (j) unless otherwise specified, each reference to “dollars” or “\$” shall mean

the lawful currency of the United States; and (k) each reference to a specific time shall refer to Local Time.

## **ARTICLE 2**

### **TERM OF AGREEMENT**

Section 2.1 Term. This Agreement shall remain in full force and effect beginning on the Effective Date through the twenty-fifth (25<sup>th</sup>) anniversary of the later of (i) Commercial Operation Date or (ii) Targeted COD, unless terminated earlier pursuant to the terms of this Agreement (the “Term”). At least two (2) years prior to the expiration of the Term, Buyer shall provide written notice to Seller of its desire to (i) extend the Term, (ii) negotiate mutually agreeable terms by which Buyer would acquire the Facility at the expiration of the Term and engage Seller or one of its Affiliates to operate and maintain the Facility for a period following expiration of the Term or (iii) allow this Agreement to expire without invoking clause (i) or (ii). If Buyer elects clause (i) or (ii), then promptly after Seller’s receipt of such notice, the Parties shall enter into good faith negotiations for a period of no less than ninety (90) days from receipt of such written notice to agree upon mutually acceptable terms and conditions relating to any such extension (“Extension Term”) or Facility purchase by Buyer, whereupon they shall execute and deliver such documents (including any amendments to this Agreement) necessary to effectuate such terms and conditions. Unless otherwise provided in such documents, (a) the Extension Term shall be effective on the day after the expiration of the Term and (b) all references to the “Term” in this Agreement (other than in this Section 2.1) shall be deemed to include the Extension Term from and after such effective date. If Buyer elects (iii) or if the Parties are unable to reach agreement regarding (i) or (ii) within six (6) months following Buyer’s notice, then Seller shall have the option to provide written notice to Buyer of its desire to purchase the Site and any related equipment and Land Rights in order for Seller to continue operating the Facility independently of Buyer. Promptly after Buyer’s receipt of such notice, the Parties shall enter into good faith negotiations for a period of no less than one hundred and eighty (180) days from receipt of such written notice to agree upon mutually acceptable terms and conditions relating to any such purchase.

Section 2.2 Survival. Subject to the limitations and other provisions of this Agreement, any provision that, in order to give proper effect to its intent, should survive such expiration or termination, will survive the expiration or early termination of this Agreement. For the avoidance of doubt, termination or expiry of this Agreement shall not affect each Party’s financial obligations pursuant to this Agreement that are attributable to periods prior to such termination or expiry; or any other obligations of either Party which by their nature are to be performed after termination or expiry of this Agreement.

Section 2.3 Land Rights. The Site shall be leased to Seller by Buyer pursuant to the Site Lease, the form of which is set forth in Appendix “N”, and Buyer shall grant Seller access or easement rights over additional lands owned by Buyer and lands that Buyer is in the process of acquiring from [REDACTED] (as shown in detail in the Site Lease), that are contiguous to or adjacent to the Site reasonably required by Seller for purposes of this Tolling Agreement as further provided in the Site Lease (such real property interests or rights, collectively, the “**Land Rights**”).

Section 2.4 Design, Construction, Operation and Maintenance of the Facility. Seller shall design, engineer, develop, build, own, manage, commission, operate and maintain the Facility at the Site in accordance with Prudent Industry Practices. Seller will provide a summary monthly project update that summarizes status of the overall project and addresses progress on major project milestones including physical points of interface such as the Electric Interconnection and the Gas Interconnection.

### **ARTICLE 3 COMMERCIAL OPERATION**

Section 3.1 Conditions Precedent; Commercial Operation Date; Early Commercial Operation Date.

(a) Buyer's completion of each of the following items shall be a condition precedent to Seller's obligation under Section 3.1(b) to achieve the Commercial Operation Date with respect to the Facility and under Section 3.2 to pay Delay Damages, subject to written waiver by Seller in its sole discretion (each, a "Buyer's Conditions Precedent"):

(i) Each of the NTP Permits set forth in Appendix B, Section I has been obtained on terms and conditions reasonably acceptable to Seller and each of such NTP Permits remains in full force and effect;

(ii) Execution and delivery of the Site Lease and all other Land Rights as further provided for in the Site Lease and herein as well as Subdivision Approval(s) being obtained and the Subdivision Plan(s) being registered as provided for in the Site Lease;

(iii) Execution and delivery of the Gas Interconnection Agreement with M&NP;

(iv) Execution and delivery of the Generation Connection Agreement;

(v) Each of the NTP Permits set forth in Appendix B, Section II has been obtained on terms and conditions reasonably acceptable to Seller and each of such NTP Permits remains in full force and effect;

(vi) Completion of the construction and commissioning of facilities required with respect to the Gas Interconnection (including by M&NP), and the assignment of the Gas Interconnection Agreement to Seller;

(vii) Completion of the construction and commissioning of the portion of the Electric Interconnection facilities that are the responsibility of the Transmission and System Operator under the Generation Connection Agreement; and

(viii) Approval has been issued from the Board of Buyer's entry into this Agreement under section 107 of the Electricity Act or Buyer has obtained a determination by the Board that the Board does not possess jurisdiction with respect to this Agreement under section 107 of the Electricity Act.

Seller and Buyer shall each use commercially reasonable efforts, and cooperate in good faith, taking such actions within their respective control, to satisfy, or enable the satisfaction of, Buyer's Conditions Precedent. If Seller provides notice pursuant to Section 3.1(c) that Seller wishes to achieve an Early Commercial Operation Date, Buyer and Seller shall each use commercially reasonable efforts, and cooperate in good faith, taking such actions within their respective control, to satisfy or enable the satisfaction of Buyer's Conditions Precedent as necessary to permit the Early Commercial Operation Date by the proposed Early Commercial Operation Date set forth in Seller's notice.

(b) Seller shall use commercially reasonable efforts to achieve Commercial Operation on or before the Targeted COD. The Targeted COD shall be extended: (i) on a day-for-day basis to the extent that Commercial Operation is delayed, without duplication, by a Force Majeure Event or a Permitted Extension, in each case up to a maximum of three hundred sixty-five (365) Days; (ii) as provided in Section 3.5(b), if applicable; and (iii) on a day-for-day basis to the extent that one or more of the Buyer's Conditions Precedent is not satisfied as of the later of (A) May 1, 2027 or (B) the date by which such failure to satisfy the Buyer's Conditions Precedent has a direct impact on Seller's documented critical path schedule to achieve Commercial Operation by the Targeted COD, which extension shall not be subject to a maximum limit. Seller shall notify Buyer once the Facility achieves Commercial Operation by issuing the Notice of Commercial Operation. Seller may declare the occurrence of the Commercial Operation Date and issue the Notice of Commercial Operation on a date that is earlier than the Targeted COD, provided that the conditions of the definition of "Commercial Operation" have been satisfied or waived by the Parties.

(c) At Seller's election, Seller may achieve an Early Commercial Operation Date with respect to one (1) or more Units no earlier than [REDACTED]. If Seller elects to achieve an Early Commercial Operation Date with respect to one (1) or more Units, Seller shall notify Buyer no later than [REDACTED] prior to the proposed Early Commercial Operation Date that it desires to achieve an Early Commercial Operation Date, together with the proposed Early Commercial Operation Date and the applicable number of Units that will achieve Early Commercial Operation on such Day. Following such notice, the Parties shall cooperate in good faith to achieve the Early Commercial Operation Date, and Seller shall notify Buyer once the applicable Units achieve Early Commercial Operation by issuing the Notice of Early Commercial Operation. Upon the occurrence of an Early Commercial Operation Date, the Delivery Period, and the obligations of the Parties in respect thereof, will commence with respect to the applicable Units.

**Section 3.2 Delay Damages.** If the Commercial Operation Date is not achieved by the date that is thirty (30) Days after the Targeted COD, which thirty (30) Days shall be extended on a day-for-day basis to the extent that the Effective Date is later than [REDACTED], 2025, and Seller has not achieved an Early Commercial Operation Date or a Provisional COD, Seller shall pay to Buyer liquidated damages ("Delay Damages") for each day thereafter until the Commercial Operation Date, in an amount equal to \$[REDACTED] per day per MW of the excess of the Contracted Capacity (applicable during either the Winter Season or Summer Season, as applicable at such time) over the aggregate capacity of the Units that have achieved an Early Commercial Operation Date as of such day. Delay Damages shall not exceed the amount of the Seller Pre-COD Performance Assurance to be provided by Seller hereunder. Buyer shall issue the relevant invoice for such



Delay Damages within ten (10) Days after the end of the calendar month in which the damages accrued, and Seller shall pay such Delay Damages within thirty (30) Days after Buyer renders such invoice.

### Section 3.3 Status Reports.

(a) Within thirty (30) days of the Effective Date and every thirty (30) days thereafter until Financial Closing, Seller shall give Buyer a written update on Seller's progress in achieving Financial Closing.

(b) Within thirty (30) days after Financial Closing, Seller shall send Buyer a Milestone Schedule in substantially the same form as shown in Appendix G.

(c) Every month after sending Buyer the Milestone Schedule, Seller shall provide Buyer a written report describing Seller's progress toward meeting the Milestone Schedule dates. The monthly report will be in a form reasonably acceptable to Buyer. Notwithstanding the foregoing, Seller shall promptly inform Buyer of any material issues that could impact Seller's ability to meet milestones contained in the Milestone Schedule and mitigation actions.

(d) Any information, report or data provided by Seller pursuant to this Section 3.3 is for informational purposes only and therefore nothing in this Agreement shall be construed and interpreted as if any failure to meet any such estimated date would constitute an Event of Default with respect to Seller or a termination event or a breach under this Agreement.

### Section 3.4 Intentionally deleted.

### Section 3.5 Failure to Complete.

(a) In the event that the Commercial Operation Date has not occurred on or before the Guaranteed COD other than as a result of Buyer's failure to satisfy the Buyer's Conditions Precedent, then Buyer shall have the right to terminate this Agreement by written notice to Seller. Notwithstanding the foregoing, the termination right set forth in the foregoing sentence shall expire (and shall no longer apply) upon the earlier of (A) thirty (30) Days after the Guaranteed COD or (B) the Commercial Operation Date. If Buyer fails to exercise such termination right within thirty (30) Days after the Guaranteed COD and the Commercial Operation Date has not occurred, then Seller shall have the right to terminate this Agreement by written notice to Buyer. In the event that either of Buyer or Seller exercises its termination right pursuant to this Section 3.5(a), neither Party shall have any financial or other liability to the other Party arising out of such termination; except that, as Buyer's exclusive remedy for either such termination, unless the Buyer's right to terminate is a result of a Force Majeure Event or a Permitted Extension longer than three hundred and sixty-five (365) Days prior to the Commercial Operation Date in which case Seller shall have no financial or other liability, Seller shall pay to Buyer within thirty (30) Days of such termination liquidated damages in the amount of the Seller Pre-COD Performance Assurance less any Delay Damages paid by Seller in respect of the period prior to such termination ("Seller Early Termination Damages").

(b) The Parties acknowledge that upon the Effective Date, Buyer [REDACTED]

[REDACTED] In the event that any of the Buyer's Conditions Precedent set forth in Section 3.1(a)(i), Section 3.1(a)(ii), Section 3.1(a)(iii), Section 3.1(a)(iv), and Section 3.1(a)(viii) (such Buyer's Conditions Precedent, the "Buyer FC CPs") have not been satisfied by the date that is six (6) months following the Effective Date, then Buyer shall have the option [REDACTED]

[REDACTED] the Targeted COD shall be extended on a day-for-day basis until the Buyer FC CPs have been satisfied. If (i) [REDACTED] or (ii) following [REDACTED], the Buyer FC CPs have not been satisfied by the date that is nine (9) months following the Effective Date, which date may be extended, subject to Seller's determination, acting reasonably (including consideration of any cost implication to Seller of such further time extension), up to a maximum of an additional thirty (30) days in the event that both Parties agree, acting reasonably, that satisfaction of the Buyer FC CPs is reasonably expected to occur within such additional thirty (30) day period, Seller shall have the right to elect to provide written notice to Buyer of its termination of this Agreement and Seller shall have the right [REDACTED]

(c) In the event that Buyer has not satisfied all of the Buyer Post FC CPs or has claimed a Buyer Force Majeure Event, and Seller is otherwise ready to issue a notice of the Commercial Operation Date (but for anything that cannot be completed or achieved by Seller as a result of, directly or indirectly, the Buyer Conditions Precedent not being satisfied or Buyer claiming a Force Majeure Event), as determined by Seller, Seller shall be entitled to declare a provisional commercial operation date ("Provisional COD"). From and after such Provisional COD, Buyer shall be obligated to make a full Monthly Capacity Payment and Monthly Variable O&M Payment for each Month through the end of the Delivery Period, unless this Agreement is earlier terminated, and if the Buyer has not satisfied the Buyer Post FC CP described in Section 3.1(a)(vi), the Parties shall seek to commission the Facility using only Fuel Oil, to the extent reasonably practicable. If the circumstances justifying Seller declaring Provisional COD continue to exist six (6) months following the declaration by Seller of Provisional COD, Commercial Operation shall be deemed to have occurred and that date shall be deemed to be the Commercial Operation Date.

**Section 3.6 Liquidated Damages.** The Parties acknowledge and agree that the terms, conditions and amounts determined according to this Article 3 for Delay Damages and Early Termination Damages are reasonable considering the damages that a Party would sustain if any failure described in the foregoing provisions occurs. Except in the case where a Party exercises its termination right pursuant to Section 3.5, Delay Damages shall be Buyer's exclusive remedy for a Seller delay in the Commercial Operation Date. The Parties have agreed upon and established the amounts of such damages because of the difficulty of ascertaining the exact amount of damages that a Party would sustain in such event and because otherwise obtaining an adequate remedy would be difficult or inconvenient. These damages are not penalties and shall be paid regardless of the amount of damages that a Party actually sustains.

## ARTICLE 4

### APPROVALS; TAXES; CLIMATE PROTECTION COSTS

Section 4.1 Permits. Seller and Buyer shall each use commercially reasonable efforts to obtain, maintain, pursue, or cause to be pursued, comply with and, as necessary, renew and modify from time to time any and all NTP Permits and Seller's Permits, each in a manner that is reasonably expected to enable the performance of the applicable obligations under this Agreement. Each Party agrees to assist and support the other Party, in a timely manner and to the extent reasonably requested by either Party, in obtaining such Permits. Seller shall be responsible for all Permit Costs with respect to the Seller's Permits, and Buyer shall be responsible for all Permit Costs with respect to NTP Permits. To the extent that a Permit is not designated on Appendix B as an NTP Permit, and such Permit is necessary to achieve the Commercial Operation Date (or an Early Commercial Operation Date or Provisional COD, as applicable), the Parties shall negotiate in good faith to determine the Party that is responsible for obtaining such Permit and the allocation of Permit Costs related to such Permit.

#### Section 4.2 Taxes.

(a) Seller shall pay, or cause to be paid, all Taxes on or with respect to the ownership, operation and maintenance of the Facility other than any single end use franchise fee or other levy or charge under the *Gas Distribution Act, 1999* which shall be paid by Buyer.

(b) Buyer shall pay or cause to be paid all Taxes on or with respect to: (i) Fuel used to produce Energy at the Facility when such Energy is delivered by Seller to Buyer at the Interconnection Point, (ii) Energy received by Buyer arising at and after the time such Energy is delivered by Seller to the Interconnection Point, (iii) property taxes in respect of the Site pursuant to the Site Lease and (iv) [REDACTED]. For the avoidance of doubt, it is the intent of the Parties that (A) to the extent any Taxes on Fuel delivered by Buyer to the Gas Delivery Point or the Fuel Oil Delivery Point, as applicable, for the production of Energy at the Facility pursuant to Buyer's Scheduling Instructions become due and payable under law, Buyer shall pay such Taxes, whether calculated solely on the value of the commodity so delivered or on the commodity value and the value of the transportation to deliver it thereto, such Taxes may lawfully be due and owing from the Seller to the relevant taxing authority, and (B) to the extent any Taxes are exigible on any payments from either Party under this Agreement on the wholesale sale to Buyer and purchase from Seller for resale of Designated Capacity pursuant to Buyer's Scheduling Instructions associated with the conversion services described in this Agreement become due and payable under law (such as Taxes payable under Part IX of the *Excise Tax Act* (Canada)), the applicable Party shall include such amount in the applicable invoice.

(c) Each Party shall use reasonable efforts to implement and administer the provisions of this Agreement in accordance with the intent of the Parties to minimize Taxes so long as neither Party is materially adversely affected by such efforts. The Parties shall cooperate with each other and provide information and other assistance to the other as may be reasonably required in order for a Party to calculate, pay or seek a refund of Taxes that may be due from a Party to or from a taxing authority. In the event that Seller must remit Taxes for Fuel use to any local, provincial or federal taxing authority, and thereafter receive reimbursement therefor from Buyer in accordance with Section 4.2(b), Buyer shall, upon Seller's request, timely provide to

Seller all information necessary for Seller to accurately compute the amount of Taxes to be remitted that is attributable to Buyer pursuant to this Agreement, including pricing information about the volumes of fuel for which Taxes are being remitted, and Seller shall use same to compute Taxes to be remitted; provided, however, if Buyer does not timely provide the requested information, Seller shall be permitted to calculate Taxes to be remitted on the basis of other information available to it, including from whatever price indices for Fuel that Seller in its reasonable discretion may select, and Buyer shall reimburse Seller for the amount of Taxes remitted on the basis of Seller's calculation irrespective of any lesser price for fuel that Buyer may actually have paid. Each Party shall bear its own expenses in providing such assistance.

(d) If Seller is obligated by any Legal Requirement to remit or pay Taxes that are Buyer's responsibility hereunder (such as Taxes payable under Part IX of the *Excise Tax Act* (Canada) in respect of payments made hereunder), Seller shall include such Taxes in the next Monthly Invoice and Buyer shall remit payment thereof in accordance with Article 6. If Buyer is obligated by any Legal Requirement to remit or pay Taxes that are Seller's responsibility hereunder, Buyer may deduct the amount of any such Taxes from the sums otherwise due to Seller under this Agreement. Any refunds associated with such Taxes shall be addressed in the same manner. Nothing herein shall obligate or cause a Party to pay or be liable to pay any Taxes from which it is exempt under Legal Requirements.

Section 4.3 Climate Protection Costs.

(a)



(b)



(c)



**ARTICLE 5**  
**SALE OF CAPACITY AND DELIVERY OF ENERGY**

**Section 5.1    Agreement to Sell and Purchase.**

(a) From and after the commencement of the Delivery Period, but subject to the terms of this Agreement, Buyer shall have the right, but not the obligation, to Schedule the delivery of Energy from the Units (or, prior to the Commercial Operation Date, the Units with respect to which an Early Commercial Operation Date or Provisional COD has occurred) in amounts not exceeding the amount of Designated Capacity that is Available for each applicable Hour during the Delivery Period, subject to the Scheduling Limitations. When Buyer Schedules such Energy in accordance with Article 13 and Appendix I and provides Fuel in accordance with Section 12.1, Seller agrees to deliver and transfer title, and Buyer agrees to receive and take title, to the Energy that is Scheduled by Buyer pursuant to this Agreement and generated by the Designated Capacity.

(b) Seller shall deliver Designated Capacity and Energy from the Units (or, prior to the Commercial Operation Date, the Units with respect to which an Early Commercial Operation Date or Provisional COD has occurred) to Buyer at the Interconnection Point.

(c) Title and risk of loss of Energy shall pass from Seller to Buyer at the Interconnection Point in accordance with Section 12.5.

(d) The Parties acknowledge and agree that Seller may not sell to any Person other than Buyer the Designated Capacity that is not Scheduled by Buyer.

**Section 5.2    Calculation of Monthly Capacity Payments.** Subject to the terms of this Agreement, Buyer shall pay Seller a Monthly Capacity Payment calculated in accordance with Appendix C for each Month during the Delivery Period (including, as applicable, with respect to the Units for which an Early Commercial Operation Date or Provisional COD has occurred).

**Section 5.3    Calculation of Monthly Variable O&M Payments.** Subject to the terms of this Agreement, Buyer shall pay Seller a Monthly Variable O&M Payment calculated in accordance with Appendix D for each Month during the Delivery Period (including, as applicable, with respect to the Units for which an Early Commercial Operation Date or Provisional COD has occurred).

**Section 5.4    Fuel Supply Event and Transmission Event.** Buyer is obligated to make a full Monthly Capacity Payment for each Month of the Delivery Period irrespective of any Gas Supply Event, Fuel Oil Supply Event or Transmission Event. For the avoidance of doubt, no failure of Seller to deliver Designated Capacity and Energy in accordance with Scheduling Instructions from Buyer, where such failure is due to a Gas Supply Event, Fuel Oil Supply Event

or Transmission Event, shall relieve Buyer of its obligation to make such Monthly Capacity Payment as would otherwise be due and payable and as calculated under Appendix C.

Section 5.5 Commissioning and Testing. Buyer and Seller shall cooperate in good faith with respect to the nomination of Natural Gas and the scheduling of Test Energy during Commissioning and Testing. Buyer shall supply the required Natural Gas for Commissioning and Testing and purchase the Test Energy generated by the Facility during Commissioning and Testing. Seller shall pay Buyer for all quantities of Natural Gas nominated by Seller for Commissioning and Testing at the Intra-Day Natural Gas Delivered Fuel Cost. Buyer shall purchase all quantities of Test Energy delivered by Seller at the Interconnection Point during Testing and Commissioning at the Test Energy Rate.

## **ARTICLE 6 BILLING AND PAYMENT**

### **Section 6.1 Billing and Payment.**

(a) Upon the commencement of the Delivery Period, subject to the provisions of Section 6.2, no later than the tenth (10th) Day of each Month following the Month in which service has been rendered, Seller shall send Buyer an invoice stating the Monthly Capacity Payment, Monthly Variable O&M Payment and, if applicable, any Monthly Availability Adjustment for the immediately preceding Month (or cumulative Months of a Season) (each, a “Monthly Invoice”). The Monthly Invoice shall contain the full set of charges as set forth in Appendix C and Appendix D, together with any other amounts owing from one Party to the other under this Agreement, and a statement in reasonable detail reflecting all applicable calculations. With respect to any payments to be paid to Buyer by Seller pursuant to this Agreement, such payments shall be netted against payments due to Seller by Buyer.

(b) Each Monthly Invoice shall be due and payable by Buyer on or before the tenth (10th) Day after the date of the Buyer’s receipt of such Monthly Invoice. If such Day is not a Business Day, then payment shall be due on the next succeeding Business Day. Subject to the provisions of Section 6.2, Buyer shall make payment to Seller in accordance with such invoices on or before the date due in immediately available funds, through wire transfer of funds to an account designated by Seller, or by other means acceptable to Seller if Seller identifies such means in writing to Buyer by notice in accordance with Section 20.6. Interest on unpaid amounts shall accrue from the date such payments were due at a rate equal to the Interest Rate.

### **Section 6.2 Billing Disputes and Final Accounting.**

(a) If Buyer questions or contests the amount or propriety of any payment or charge claimed by Seller to be due pursuant to this Agreement, in accordance with this Section 6.2, Buyer shall nonetheless make payment of the full amount claimed by Seller to be due.

(b) In the event Buyer questions or contests the correctness of any payment or charge claimed to be due by Seller, pursuant to Section 6.2(a), Buyer shall provide Seller with written notice of such amount and the basis for Buyer’s question or contest. Seller shall promptly review the applicable payment or charge, shall notify Buyer of any error in Seller’s determination

of amounts owed by Buyer and issue an amended invoice in the amount of any payment that Buyer is required to make in respect of such re-determination. To the extent Seller disagrees with Buyer's basis for withholding payment under or questioning the original invoice, Seller shall provide a written explanation of its position. If Buyer disputes in good faith Seller's amended invoice amount, then the matter shall be resolved pursuant to the provisions of Article 19.

(c) Seller shall have until the end of sixty (60) Days after the date of delivery of Energy under this Agreement to correct any invoice for payment due for such Energy and associated Designated Capacity and deliver a corrected invoice to Buyer. Buyer shall have until the end of sixty (60) Days after its receipt of any such invoice to question or contest the correctness of any charge or credit made to Buyer on such invoice. If within such sixty (60) Day period, Buyer has made payment under an invoice and thereafter questions or contests the correctness thereof, Seller shall not be required to refund any payment received from Buyer until such time as it is finally determined that Seller's invoice was in error.

Section 6.3 Interest. If either Party does not make a payment required by this Agreement when due, then interest at the Interest Rate from the date such overdue payment was due until such overdue payment, together with interest, is paid shall be added to the due payment. If either Party makes an overpayment in accordance with an invoice that is later determined to have been incorrect, then interest at the Interest Rate from the date such overpayment was made shall be added to the overpayment until such overpayment, together with interest, is refunded to such Party; provided, however, that interest payable with respect to any such overpayment shall be limited to the interest that accrues in the sixty (60) Days beginning with and including the Day on which the overpayment was made. Remittance received by mail, if mail is a means of payment acceptable to a Party owed such payment, will be accepted without interest charges if such payment is postmarked on or before the due date. If the due date of any payment falls on a Day other than a Business Day, the next succeeding Business Day shall be the last Day on which payment can be postmarked without interest charges being assessed. Notwithstanding this Section 6.3, no interest shall be paid with respect to any Monthly Availability Adjustment except to the extent that such Monthly Availability Adjustment was not correctly calculated and/or invoiced in accordance with this Agreement.

Section 6.4 Billing and Payment Records. Each Party will, until the end of one (1) year after its receipt of any invoice, make available to the other Party, and each Party may audit, such books and records of the other Party as are necessary for such Party to verify the calculation of the Monthly Capacity Payments, Monthly Variable O&M Payments, any Monthly Availability Adjustment, and any other invoice, charge or payment demand made in connection with this Agreement.

Section 6.5 Address for Invoices and Payments. Invoices and payments to each Party shall be sent to the addresses or accounts set forth in a notice to be sent by each Party to the other Party pursuant to Section 20.6. Each Party may change its respective address or account for receipt of invoices and payments by sending notice of such change to the other Party to the address for notices set forth in Section 20.6.

ARTICLE 7

Section 7.1

[REDACTED]

[REDACTED]

Section 7.2

[REDACTED]

[REDACTED]

(c)

[REDACTED]

Section 7.3

[REDACTED]



[REDACTED]

Section 7.4

[REDACTED]

Section 7.5

[REDACTED]

Section 7.6

[REDACTED]

[REDACTED]

Section 7.7 [REDACTED]

**ARTICLE 8**  
**CHANGE IN LAW**

Section 8.1 Determining the Effects of Change in Law.

(a) Upon Seller's determination that a Change in Law has occurred following the Effective Date which will result in Seller's out-of-pocket costs of carrying out its obligations under this Agreement, including as a result of import tariffs or duties imposed or removed on materials or equipment, to demonstrably increase or decrease by an amount exceeding [REDACTED] in any calendar year or [REDACTED] in the aggregate before end of the Delivery Period, or which would otherwise render Seller's performance of its obligations under this Agreement illegal or impossible in whole or in part, Seller shall promptly provide written notice to Buyer, which notice shall include: (i) a description of such Change in Law and its demonstrable financial impact on Seller, (ii) Seller's plan to address such Change in Law, including, if applicable, any additions or modifications proposed to be made to the Facility and the basis for such additions or modifications, and (iii) the resulting effects of such Change in Law on the Monthly Capacity Payment, the Monthly Variable O&M Payment, or any other terms and conditions of this Agreement (a "Change in Law Notice"). Notwithstanding the definition of Change in Law, the Parties acknowledge that no amount on account of any import tariff or duty imposed or removed after [REDACTED] has been included in either the Monthly Capacity Payment or the Monthly Variable O&M Payment and the Parties agree that any such import tariff or duty that, after [REDACTED], is imposed, or removed after having been

incorporated as a Change in Law, may be identified by Buyer as well as Seller and shall, subject to satisfying the requirements set out in this Section 8.1(a) *mutatis mutandis*, be deemed to be a Change in Law for the purposes of this Section 8.1(a).

(b) The effects of a Change in Law described in Section 8.1(a), shall be passed through to Buyer pursuant to an adjustment of the Monthly Capacity Payment or the Monthly Variable O&M Payment, as applicable. The effects of any such Change in Law that requires capital expenditures, or that the Parties agree to mitigate by making capital expenditures or alternate supply arrangements to avoid or reduce an increase in recurring costs, shall be passed through to Buyer pursuant to an adjustment of the Monthly Capacity Payment. For purposes of calculating the annual cost increase or decrease associated with capitalized additions or modifications to the Facility (determined in accordance with generally accepted accounting principles and Prudent Industry Practices), the Parties will reasonably cooperate to establish an applicable fixed charge rate for application to the original capital cost of such additions or modifications. This calculation will represent the total cost or savings associated with the identified addition or modification, including depreciation, carrying costs, and any other cost or expense item related to capital investments. These costs or savings will be amortized over the remaining useful life of the Facility, as determined by an independent qualified engineer approved by the Parties, and Buyer shall pay only the portion thereof which relates to the remainder of the Term.

(c) Upon receipt of a Change in Law Notice, the receiving Party will, within thirty (30) Days, notify the Party that issued the Change in Law Notice, whether it agrees with the proposed addition or modification to the Facility, if applicable, and with the proposed change to the Monthly Capacity Payment, and/or Monthly Variable O&M Payment, or any other proposed changes to the terms and conditions of this Agreement. In making such determination, the receiving Party shall have the right to weigh the potential impacts of all Changes in Law and the applicable Party's proposals relating thereto against potential alternatives for responding to such Changes in Law, including making capital improvements or additions to the Facility or other proposed changes to the terms and conditions of this Agreement; provided, however, if an independent qualified engineer determines that Seller's proposed additions or modifications to the Facility or changes to the terms and conditions of this Agreement are consistent with Prudent Industry Practices, Buyer's objections shall be limited to the effect on the Monthly Capacity Payments or Monthly Variable O&M Payments.

(i) If the Party receiving the Change in Law Notice accepts the other Party's proposed addition or modification to the Facility, proposed modifications to the Monthly Capacity Payment or Monthly Variable O&M Payment, and/or proposed changes to the terms and conditions of this Agreement, then the proposed rate changes reflected in the Change in Law Notice will take effect consistent with the timing of the additional cost incurrence or savings (but in no event earlier than the end of the thirty (30) Day period).

(ii) If the Party receiving the Change in Law Notice disagrees in good faith with all or any portion of the other Party's determination set forth in the Change in Law Notice, then: (i) if applicable, any non-disputed changes to the Monthly Capacity Payment or Monthly Variable O&M Payment, and any non-disputed changes to the terms and conditions of this Agreement, will take effect consistent with the timing of the

additional cost incurrence or savings (but in no event earlier than the end of the thirty (30) Day period) and (ii) such disagreement shall be resolved pursuant to the provisions of Article 19. The results of any such dispute resolution procedures shall be retroactively applied consistent with the timing of the additional cost incurrence or reduction, but in no event earlier than the end of the thirty (30) Day period (including payment of interest to be calculated on the disputed amounts at the Interest Rate from the date due until paid) to reflect any such change in Seller's costs.

Section 8.2 No Default. Under no circumstances will Buyer's determination regarding the applicability of the Change in Law provision constitute an Event of Default under this Agreement. Except as set forth in Section 8.1(c)(i) and (ii) above, Seller shall have no obligation to modify the Facility or incur additional costs in accordance with any such modification, and Seller's failure to do so (or to perform any obligation hereunder resulting therefrom) shall under no circumstances constitute an Event of Default under this Agreement.

## **ARTICLE 9 INTERCONNECTION AND METERING**

Section 9.0 Coordination. Without derogating in any way from the Parties' obligations set out in Section 9.1 and Section 9.2, with respect to the Electric Interconnection and the Gas Interconnection, the Parties shall (i) coordinate with the respective utilities for planning and carrying out of outages required for completing the Electric Interconnection and the Gas Interconnection; (ii) follow industry standards, guidelines and protocols with respect to the planning, execution of work and commissioning into service of the Gas Interconnection and Electric Interconnection; and (iii) cooperate in the completion of testing and inspection in accordance with applicable testing and inspection checklists and procedures, prior to the anticipated in-service dates of the Gas Interconnection and Electric Interconnection.

### **Section 9.1 Electric Interconnection.**

Buyer shall comply in all material respects, , with any rules, practices and policies related to the Electric Interconnection that arise pursuant to Legal Requirements.

Section 9.2 Gas Interconnection. Buyer shall, , develop and construct the Gas Interconnection in accordance with the Legal Requirements. Following the completion of all facilities required for the Gas Interconnection, Buyer shall promptly (and in any event prior to the Commercial Operation Date), assign the Gas Interconnection Agreement to Seller. Following such assignment, Seller shall maintain the Gas Interconnection Agreement in full force and effect from the commencement of the Delivery Period through the expiration of the Term. Seller shall comply in all material respects, , with any rules, practices and policies related to the Gas Interconnection that arise pursuant to Legal Requirements.

### Section 9.3 Meters.

(a) Buyer shall use data from the Metering System in order to measure, record or calculate (i) with respect to Energy deliveries by Seller to the Interconnection Point, the amount of Energy delivered from the Facility, the Unit(s)' capacity, the availability of the Unit(s) in meeting Schedules to Buyer, (ii) with respect to Natural Gas deliveries by Buyer to the Gas Delivery Point, the amount of Natural Gas delivered by Buyer to meet Buyer's Schedules, and (iii) in the case of both (i) and (ii), for the purpose of determining charges, credits or other rights and duties that may be due to or from either Party under this Agreement. The Parties expressly agree that the Metering System shall be used for such purposes and that Seller is not obligated to design, locate, construct, install, own or operate and maintain any other meters or metering devices. Notwithstanding the foregoing, upon request and to the extent permitted by the Generation Connection Agreement and Gas Interconnection Agreement, Buyer shall provide Seller with copies of or access to the Metering System data and to the electric meter data and gas flow meter data associated with the Units, and a written accounting of the amount of Fuel Oil in the Fuel Oil Storage Tank as of the date thereof. Seller may, [REDACTED], and based on it making whatever arrangements are necessary with the Transmission and System Operator and M&NP in order to be permitted to do so, install additional meters or other such facilities, equipment or devices on Seller's side of the Interconnection Point or the Gas Delivery Point as Seller deems necessary or appropriate to monitor the measurements of the Metering System; provided, however, Seller shall be entitled to calculate its invoiced amounts based on data from the Metering System. The Parties shall mutually agree on the telemetering equipment that is necessary to coordinate the Facility with the Scheduling Center and Seller shall, [REDACTED], install or cause the installation of such telemetering equipment. The telemetered data shall be delivered by Buyer to the electrical switchyard of the Facility.

(b) To the extent it has the authority directly to do so, or to the extent that it may compel the Transmission and System Operator and M&NP to do so, in either case as permitted under the Generation Connection Agreement and Gas Interconnection Agreement, respectively, and only to such extent, Buyer shall inspect and test, or cause the Transmission and System Operator and M&NP to inspect and test, all meters at such times as will conform to Prudent Industry Practices. In the case of the Transmission and System Operator Meter, Seller commits that it will inspect and test, or cause the Transmission and System Operator Meter to be inspected and tested at least once biennially. Seller shall not be responsible for any portion of costs and expenses incurred in connection with such inspection or test done once on a biennial basis. However, any meter inspection or testing undertaken by Seller more frequently than once on a biennial basis shall be at Seller's sole cost and expense.

#### (c) Adjustments for Meter Inaccuracies.

(i) If the Transmission and System Operator Meter fails to register, or if, upon testing as permitted or required under the Generation Connection Agreement, the measurement made by the Transmission and System Operator Meter is found to vary by more than one percent (1.0%) from the measurement made by the standard meter used in the test, then as between Seller and Buyer for purposes of billing and payments, and for such other purposes as such metered data are used under this Agreement, an adjustment shall be made correcting all measurements of Energy made by the Transmission and

System Operator Meter during: (i) the actual period when inaccurate measurements were made by the Transmission and System Operator Meter, if that period can be determined to the mutual satisfaction of the Parties; or (ii) if such actual period cannot be determined to the mutual satisfaction of the Parties, the second half of the period from the date of the last test of the Transmission and System Operator Meter to the date such failure is discovered or such test is made (“Transmission and System Operator Meter Adjustment Period”). If the Parties are unable to agree on the amount of the adjustment to be applied to the Transmission and System Operator Meter Adjustment Period, the amount of the adjustment shall be determined: (a) by correcting the error if the percentage of error is ascertainable by calibration, tests or mathematical calculation; or (b) if not so ascertainable, by estimating on the basis of deliveries made under similar conditions during the period since the last test. Within thirty (30) Days after the determination of the amount of any adjustment, Buyer shall pay Seller any additional amounts then due for deliveries of Energy or Designated Capacity during the Transmission and System Operator Meter Adjustment Period or Buyer shall be entitled to a credit against any subsequent payments for Energy or Designated Capacity, as the case may be.

(ii) If the Facility Gas Meter is found to be inoperative or inaccurate it shall be adjusted to register correctly and the amount of error, as well as the period of time for which such adjustment shall apply (“Facility Gas Meter Adjustment Period”), shall be determined and accounted for in accordance with the procedures and practices contained in M&NP’s applicable gas tariff, as such tariff provisions may be amended from time to time. Within thirty (30) days after the determination of the amount of any adjustment as may be required by M&NP’s applicable gas tariff, Buyer shall pay Seller any additional amounts then due for deliveries of Energy or Designated Capacity during the Facility Gas Meter Adjustment Period or Buyer shall be entitled to a credit against any subsequent payments for Energy or Designated Capacity, as the case may be.

(d) To the extent permitted by the Generation Connection Agreement and the Gas Interconnection Agreement, as applicable, Seller will use reasonable efforts to give Buyer notice of, and permit Buyer (or its representative) to be present at any test, inspection, maintenance, adjustments and replacement of any part of the Metering System relating to obligations under this Agreement.

Section 9.4 Transmission System or Gas Transportation Capability - Testing. If the Transmission System is not capable of providing or receiving Energy to reasonably accommodate Seller’s Performance Test activities for the Units or the Natural Gas transportation provider is unable to supply the requisite Natural Gas to reasonably accommodate Seller’s Performance Test activities for the Units, the Designated Capacity shall be deemed to be the most recent Tested Reliable Capacity, and as soon as reasonably practical, Seller shall complete a new Performance Test, and the new Designated Capacity shall become effective on the date of such Performance Test.

Section 9.5 Loss Factor Adjustment. If, and to the extent, the Metering System is not measuring deliveries of Energy physically at the Interconnection Point (*i.e.*, the point of delivery), the metered amount of Energy shall be adjusted for losses to or from the Interconnection Point by a loss factor determined by Seller, acting reasonably and in accordance with Prudent Industry

Practices. Buyer will be provided with a copy of any study or analysis prepared by Seller in determining such loss factor.

## **ARTICLE 10**

### **ESTABLISHMENT OF DESIGNATED CAPACITY**

Section 10.1 Initial Designated Capacity. Seller shall determine the Initial Designated Capacity (including, the initial Designated Capacity with respect to the applicable Units upon the occurrence of an Early Commercial Operation Date or Provisional COD, if any) in accordance with Appendix C. In each case, such Initial Designated Capacity, for the Summer Season or Winter Season, as applicable, shall be stated in whole kW and shall not exceed the Contracted Capacity without Buyer's prior written consent.

#### Section 10.2 Capacity Examination.

(a) Performance Tests and re-tests of Performance Tests shall be conducted in accordance with Appendix C and Appendix H.

(b) If the results of a Performance Test show that the Tested Reliable Capacity is less than the then-current Designated Capacity, the Designated Capacity shall be reduced to such demonstrated level as provided in Appendix C.

(c) If the results of a Performance Test show that the Tested Reliable Capacity is more than the then-current Designated Capacity, the Designated Capacity shall be increased to such demonstrated level as provided in Appendix C.

(d) If the results of a Performance test show that the Corrected Heat Rate Value is greater than the Guaranteed Heat Rate, the Capacity Payment shall be adjusted as set forth in Appendix C.

Section 10.3 Disputes Concerning Capacity Tests. In the event the Parties disagree with respect to the Performance Test results, representatives of each Party shall meet and use good faith efforts to resolve the dispute promptly following the written request of either Party. If the representatives are unable to resolve the dispute within five (5) Business Days of their initial meeting, the dispute shall be resolved pursuant to the provisions of Article 19. If such dispute is not resolved by the first Day of any Month, the Designated Capacity for such Month (and for each subsequent Month until the dispute is resolved) shall be determined as follows: (i) if the immediately prior Month occurred during the same Summer Season or Winter Season (as applicable) as the Month in question, the Designated Capacity shall equal the Designated Capacity for the Month immediately prior to the Month in question, or (ii) if the immediately prior Month did not occur within the same Summer Season or Winter Season (as applicable) as the Month in question, the Designated Capacity shall equal the Designated Capacity for the final Month of the prior Summer Season (if the Month in question occurs during a Summer Season) or the final Month of the prior Winter Season (if the Month in question occurs during a Winter Season), subject to the outcome of this dispute resolution process. Following the resolution of the dispute, an adjustment shall be made to all Monthly Capacity Payments made with respect to such Month to account for any difference between the new Designated Capacity and the preceding Designated

Capacity, including interest calculated at the Interest Rate from and including the beginning of the period subject to dispute through but not including the date on which such adjustment is paid.

## **ARTICLE 11**

### **OPERATION AND MAINTENANCE**

Section 11.1 Operation and Maintenance. Seller shall operate and maintain the Facility in a manner consistent with Prudent Industry Practices, in accordance with applicable planning standards and operating policies of the NERC; provided, however, Seller shall give due regard to Buyer's Scheduling rights under this Agreement as it determines the specific actions it takes (or refrains from taking) to operate and maintain the Facility in accordance with such standards, practices, policies and principles. In furtherance of the foregoing, the Parties agree to form an Agreement Operating Committee to jointly coordinate such planning and oversight in accordance with the Agreement Operating Committee terms of reference as provided in Appendix M.

Section 11.2 Fuel Tank. Seller shall install the Fuel Oil Storage Tank at the Site and shall own, operate and maintain the Fuel Oil Storage Tank in a manner consistent with Prudent Industry Practices.

Section 11.3 Water Treatment Costs. Seller shall provide for sufficient volumes of well water at the Site, as described in Appendix A, to enable the Facility's water treatment systems to produce such quantities of demineralized water as are required for the generation of Energy pursuant to this Agreement; provided, however, that to the extent that, due to the quality and/or volume of the well water available at the Site in any Month of the Delivery Period, the production of such demineralized water results in a water treatment rejection rate equal to or greater than [REDACTED] or insufficient raw water volume is available to meet the required operational hours dispatched by Buyer, [REDACTED]

#### Section 11.4 Maintenance Scheduling.

(a) At least ninety (90) days prior to each Summer Season or Winter Season, Seller shall submit to Buyer a maintenance schedule for such Summer Season or Winter Season, including the outage plans for the Facility which Seller shall prepare in accordance with Prudent Industry Practices and in substantially the form set forth in Appendix J (the "Seasonal Maintenance Schedule").

(b) Buyer shall have thirty (30) Days to review a proposed Seasonal Maintenance Schedule and request modification thereof to Seller. Seller agrees to use commercially reasonable efforts to address and accommodate Buyer's concerns or requests with respect to such Seasonal Maintenance Schedule so as to provide a final Seasonal Maintenance Schedule that is mutually acceptable to the Parties, but is not obligated to accommodate such concerns or requests if: (a) in the good faith judgment of Seller, doing so would result in operation or maintenance of the Facility not in compliance with Prudent Industry Practices or applicable



equipment manufacturer's recommendations or (b) with respect to a Winter Season, it would result in any Scheduled Outage occurring during the period of December 1 through March 31 of any calendar year. Buyer shall not Schedule the Designated Capacity that is scheduled to be Unavailable during the Scheduled Outages.

(c) In addition to Scheduled Outages, Seller may request Maintenance Outages during any Annual Period in accordance with Prudent Industry Practices. Seller shall request each Maintenance Outage by no later than 07:00 (Atlantic Standard Time) on the Business Day prior to the time of any requested Maintenance Outage. Such request shall identify the equipment and Designated Capacity that will not be available for Scheduling and the proposed start time and duration of the Maintenance Outage. Buyer shall respond to Seller's request as soon as reasonably practicable. Seller shall not take a Maintenance Outage without Buyer's prior written, telephonic or electronic consent, and such consent shall not be unreasonably withheld, conditioned or delayed; provided, however, that the Parties acknowledge that it shall be reasonable for Buyer to deny any request for a Maintenance Outage if Buyer reasonably believes that it may Schedule the Units to a level that would require the availability of the equipment that is proposed to be Unavailable during the Maintenance Outage; provided further, that Buyer shall give due regard to Prudent Industry Practices and manufacturers' recommended maintenance when it determines whether to approve a Maintenance Outage request from Seller. If Buyer reasonably requests Seller to return all or part of that portion of the Units that is affected by the Maintenance Outage to full availability status, Seller shall use commercially reasonable efforts, consistent with Prudent Industry Practices, to comply as soon as reasonably practical.

(d) If Seller has a Scheduled Outage, and such Scheduled Outage occurs or would occur coincident with a System Emergency, Buyer shall notify Seller of the System Emergency. Due to the System Emergency, Buyer may request Seller to reschedule the Scheduled Outage or, if the Scheduled Outage has begun, to expedite the completion thereof, and Seller shall use commercially reasonable efforts, consistent with Prudent Industry Practices, to comply with such request as soon as and to the extent reasonably practical.

Section 11.5 Access to the Site and the Facility. Buyer and its designated employees and agents shall have the right to enter the Site with reasonable prior notice to Seller to: (i) inspect, maintain, and test Buyer equipment (including meters) that Buyer has installed pursuant to Article 9; (ii) witness inspections or tests of the Metering System as permitted under Article 9; (iii) monitor Performance Tests; and (iv) deliver Fuel Oil to the Fuel Oil Storage Tank. All activities of Buyer and its designated employees and agents at the Site shall be subject to the reasonable rules and procedures of Seller.

Section 11.6 Records. Seller shall keep accurate records and all other data necessary for the purposes of proper administration of this Agreement in accordance with the following guidelines:

(a) All such records shall be maintained for a minimum of two (2) years after the creation of such record or data and for any additional period of time required by Legal Requirements; provided, however, that such records will be kept for as long as is necessary to complete any audit that began or was announced during such two-year period.

(b) An accurate and up-to-date operating log shall be maintained with records of: (i) real and reactive power production for each Hour; (ii) changes in operating status; (iii) Scheduled Outages, Maintenance Outages, Forced Outages, Forced Derates, Force Majeure Events, Gas Supply Events, Fuel Oil Supply Events, Transmission Events and Unit Trips; (iv) any unusual conditions found during inspections; and (v) any significant events related to the operation of the Facility.

(c) Buyer shall have the right from time to time, upon not less than seven (7) Days written notice to Seller and during normal business Hours, to examine at the Facility or at a location mutually agreed to by the Parties, the records and data relating to this Agreement.

## **ARTICLE 12**

### **FUEL SUPPLY AND ENERGY CONVERSION ARRANGEMENTS**

#### **Section 12.1 Buyer Fuel Obligations.**

(a) General. At all times during the Delivery Period in which the Units are Available, the Facility shall be capable of utilizing Natural Gas or Fuel Oil in order to produce the Energy Scheduled by Buyer pursuant to this Agreement. Except as expressly set forth in Section 12.3, Buyer shall have the responsibility for procuring and making available at the Gas Delivery Point or the Fuel Oil Delivery Point, as applicable, quantities of Fuel needed to accommodate Buyer's Scheduling Instructions based on the Prevailing Heat Rate, including all related transportation, nomination, confirmation, scheduling, balancing, and imbalance services, and arrangement of billing services with suppliers and transporters for all charges and notices.

Buyer shall pay or cause to be paid all commodity, transportation, parking, imbalances, fees, taxes, levies, penalties, governmental charges and other costs associated with the scheduling, supply, transportation and management of Fuel delivered to the Gas Delivery Point or the Fuel Oil Delivery Point, as applicable, and any Fuel that is procured, scheduled, nominated or otherwise managed by or on behalf of Buyer pursuant to this Agreement but is not, for any reason, delivered to the Gas Delivery Point or Fuel Oil Delivery Point, as applicable (regardless of when levied or assessed), including applicable sales, use or consumption taxes on or with respect to such Fuel. Buyer shall ensure that the amount of Fuel it delivers to the Gas Delivery Point or Fuel Oil Delivery Point, as applicable, is the Buyer Fuel Quantity. For the avoidance of doubt, Buyer also shall be responsible for selling, or causing to be disposed, Gas that has been nominated for delivery to the Gas Delivery Point but is not consumed in operation of the Facility. Buyer further warrants that it has title to the Fuel that it delivers to the Gas Delivery Point or Fuel Oil Delivery Point, as applicable, free and clear of any liens or encumbrances, for conversion into Energy by Seller under this Agreement.

#### **Section 12.2 Seller Energy Conversion Obligations.**

(a) Fuel Facilities. At Buyer's expense, Buyer shall own, operate and maintain, or arrange for the Facility to have adequate access to, all facilities, infrastructures and property interests that are necessary for Seller to receive, measure and use Natural Gas delivered by Buyer at the Gas Delivery Point at an appropriate delivery pressure (such pressure not to exceed the maximum allowable operating pressure of the Pipeline at the Gas Delivery Point), so as to enable

the Units to produce Energy as committed to Buyer under this Agreement, including access to the gas pipeline lateral(s) necessary to connect the Facility to M&NP's natural gas transportation system.


(b) Delivery and Receipt of Fuel. Buyer shall deliver or cause to be delivered the Buyer Fuel Quantity to the Gas Delivery Point or the Fuel Oil Delivery Point, as applicable. Seller agrees to accept, as necessary to comply with a Schedule provided by Buyer in accordance with Article 13 and Appendix I, deliveries of (i) Natural Gas at the Gas Delivery Point that meets or exceeds the gas quality standards for delivered Natural Gas under M&NP's applicable gas tariff and the applicable transportation agreement(s) or (ii) Fuel Oil at the Fuel Oil Delivery Point that meets or exceeds the specifications set forth in Appendix F. Seller is obligated to accept delivery of such conforming Fuel at the Gas Delivery Point or the Fuel Oil Delivery Point, as applicable, for a given Scheduling Period in a quantity required to enable Seller to convert such Fuel into Energy but not to exceed the Buyer Fuel Quantity for such Scheduling Period. Seller shall not accept deliveries from Buyer at the Gas Delivery Point or the Fuel Oil Delivery Point of any quantity in excess of the Buyer Fuel Quantity for a given Scheduling Period. Notwithstanding anything herein to the contrary, Seller shall not be required to operate the Facility and generate Energy to the extent that Buyer does not provide or cause to be provided all of the Buyer Fuel Quantity necessary therefor, and failure by Buyer to procure and deliver, or cause to be procured and delivered, any or all of the Buyer Fuel Quantity shall not relieve Buyer of the obligation to make the Monthly Capacity Payment for any period affected by such failure.

(c) Production and Delivery of Electric Power. Seller is obligated to produce Energy, and deliver it to the Interconnection Point, in an amount equal to that which, based on the Prevailing Heat Rate, would be produced by the Units using a quantity of Fuel that is actually delivered by Buyer to the Gas Delivery Point or the Fuel Oil Delivery Point, as applicable, and that Seller is obligated to accept; provided, however, Seller shall have no obligation to generate Energy at any level unless Buyer delivers to the Gas Delivery Point or the Fuel Delivery Point, as applicable, an amount of Fuel equal to at least the amount necessary, at the applicable Prevailing Heat Rate, to generate Energy; provided further, Seller is not obligated to produce Energy at a level above the Tested Reliability Capacity and, in the event that Seller fails to meet the obligation stated in this Section 12.2(c), Buyer's express and sole remedy for such failure shall be the Monthly Availability Adjustment provided for in Appendix C. For the avoidance of doubt, subject to Seller's obligation in Section 11.2 to operate and maintain the Fuel Oil Storage Tank in accordance with Prudent Industry Practice and its obligation in Section 11.5 to provide Buyer with access to the Site as necessary to permit deliveries of Fuel Oil to the Fuel Oil Storage Tank, Buyer shall be solely responsible for delivering Fuel Oil to the Fuel Oil Storage Tank, and Seller shall have no obligation to operate the Facility or any Unit using Fuel Oil to the extent that sufficient Fuel Oil is not available in the Fuel Oil Storage Tank at the applicable time.

Section 12.3 Unit Trips and Forced Derates. In the event that Seller is unable to fulfill Buyer's Schedule due to a Unit Trip or Forced Derate, Seller shall give Buyer telephonic or electronic notice thereof as soon as reasonably practicable to be followed thereafter by written confirmation of the telephonic notice. Upon receipt by Buyer of telephonic or electronic notice, Buyer shall make commercially reasonable efforts to cut its nomination or confirmation of Fuel to be delivered to the Gas Delivery Point or the Fuel Oil Delivery Point to serve Buyer's Schedule. If after such efforts Buyer has not been able to cut such nomination or confirmation, Seller and

Buyer shall work together on a commercially reasonable basis to use such Fuel in conjunction with Seller meeting Buyer's Schedule as further permitted in this Section 12.3. Under any circumstance in this Section 12.3 where Buyer provides Fuel and Seller provides Energy to meet Buyer's Schedule, Seller shall allocate the quantity of Fuel necessary to produce the amount of Energy provided by Seller, at the Prevailing Heat Rate, to the applicable gas transportation contract(s). Seller is not obligated to allocate any quantity of Natural Gas to Buyer's gas transportation contract(s) which exceeds Buyer's delivery to Seller. In the event of a Unit Trip or a Forced Derate where Buyer was unable to cut its nomination or confirmation, and where Seller was unable (or elected not) to fulfill the Buyer's Schedule as permitted by this Section 12.3, any Natural Gas delivered to the Gas Delivery Point to serve Buyer's Schedule shall remain Fuel owned by Buyer, and Buyer shall be responsible for any Imbalance Charges as provided in Section 12.4.

Section 12.4 Imbalance Charges; Natural Gas Pipeline Transporter Flow Orders. The Parties shall exercise commercially reasonable efforts to minimize any imbalances or other penalties or charges from transporters of Natural Gas delivered to the Units ("Imbalance Charges").



Section 12.5 Title to Fuel; Risk of Loss of Fuel and Electric Power. All Natural Gas supplied by Buyer pursuant to this Agreement shall be measured by the Facility Gas Meter at the Gas Delivery Point. Buyer shall retain title and ownership to Fuel provided by Buyer to meet Buyer's Schedules. The title to all Energy generated by the Units as a result of the conversion of such Fuel to Energy in the Units, shall vest in Buyer immediately upon generation thereof and, subject to this Agreement, Seller shall make the Units available to Buyer to convert Buyer's Fuel to Buyer's Energy. Notwithstanding the foregoing, risk of loss of Natural Gas supplied by Buyer pursuant to this Agreement shall transfer from Buyer to Seller at the Gas Delivery Point, risk of loss of Fuel Oil supplied by Buyer pursuant to this Agreement shall transfer from Buyer to Seller at the Fuel Oil Delivery Point, and Seller shall bear the risk of loss of Energy generated at the Units until it is transferred from Seller to Buyer at the Interconnection Point.

## **ARTICLE 13**

### **ENERGY SCHEDULING**

#### **Section 13.1 Energy Scheduling.**

(a) During the Delivery Period, except to the extent that Seller's obligations are otherwise excused under this Agreement, Buyer may direct the Scheduling and output of the Facility as set forth herein, in all cases subject to Prudent Industry Practice and the Scheduling Limitations. Buyer may Schedule an amount of Energy in each hour during the Delivery Period equal to the Energy capable of being generated in such hour by a specified number of Units at the Facility, from one (1) Unit up to a maximum number of Units equal to the lesser of (i) the number of Units that are Available during such hour, and (ii) eight (8) Units (or, if an Early Commercial Operation Date or Provisional COD is achieved, the number of Units subject to such Early Commercial Operation Date or Provisional COD, respectively). Buyer may not direct the operation of particular Units, partial Units or combinations of Units; Seller shall determine in its sole discretion the Units or combination of Units necessary to generate the Energy that Buyer has Scheduled in accordance herewith for a given hour during the Delivery Period. Buyer agrees to submit and Seller agrees to receive Scheduling Instruction in accordance with Prudent Industry Practices and the procedures set forth in this Article 13 and Appendix I. Seller is not obligated to deliver Energy in response to those portions of Scheduling Instructions that deviate from such procedures, except with respect to immaterial deviations.

(b) Buyer is not entitled to Schedule Energy, and Seller is not obligated to deliver such Energy, to the extent that such Energy cannot be delivered due to (a) Buyer's failure to deliver to the Facility a sufficient quantity of Fuel to generate such Energy at the Prevailing Heat Rate, (b) Buyer's inability to receive such Energy at the Interconnection Point or (c) the Unit being Unavailable.

(c) Buyer covenants that determinations to submit Scheduling Instructions to Seller shall be based solely on considerations of reliability, economics, and contractual commitments, and not on the availability status of the Units or any impact that the determination may have on Monthly Capacity Payments.

(d) Immediately following the occurrence of an Unavailability Event, Seller shall notify Buyer of such event. If notice is provided orally, Seller shall promptly provide a written notice to Buyer of an estimate of the time and degree to which the generation levels will be reduced. During an Unavailability Event, Seller shall inform Buyer regularly as to the projected schedule of the return to service of the Unit(s) at the full Designated Capacity level(s). Seller shall also provide Buyer with written notice that the affected Unit(s) have been returned to service. Subject to Buyer's obligations set forth in this Article 13, for each Day following the declaration of an Unavailability Event until the return to service of the Unit(s), Buyer shall have the right to continue to submit Schedules in accordance with the Scheduling Limitations and Procedures in Appendix I.

(e) Buyer shall prepare and timely submit, or cause to be prepared and timely submitted, all tags needed for Scheduling, generation and delivery of Energy from the Facility.

Buyer and Seller shall maintain written records of the quantities of Energy to be delivered each Hour during the Term.

## **ARTICLE 14**

### **REPRESENTATIONS AND WARRANTIES**

Section 14.1 Representations and Warranties of Seller. Seller hereby makes the following representations and warranties to Buyer as of the Effective Date:

(a) Seller is a limited partnership, duly organized, validly existing and in good standing under the laws of New Brunswick that is qualified to do business in the Province of New Brunswick, Canada, and that has the legal power and authority to own its properties, to carry on its business as now being conducted and to enter into this Agreement and to otherwise carry out the transactions contemplated hereby and perform and fulfill all covenants and obligations on Seller's part to be performed under and pursuant to this Agreement.

(b) The execution, delivery and performance by Seller of this Agreement have been duly authorized by all necessary corporate action, and do not and will not require any consents or approvals other than those which have already been properly obtained.

(c) The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby and the fulfillment of and compliance with the provisions hereof, do not and will not conflict with any of the terms, conditions or provisions of any Legal Requirements applicable to Seller, of any partnership agreement, deed of trust, mortgage, loan agreement, other evidence of indebtedness or any other agreement or instrument to which Seller is a party or by which it or any of its property is bound, or result in a material breach of or a default under any of the foregoing.

(d) This Agreement constitutes the legal, valid and binding obligations of Seller that are enforceable in accordance with their terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws relating to or affecting the enforcement of creditors' rights generally or by general equitable principles, regardless of whether such enforceability is considered in a proceeding in equity or at law.

Section 14.2 Representations and Warranties of Buyer. Buyer hereby makes the following representations and warranties to Seller as of the Effective Date:

(a) Buyer is a Crown corporation and an agent of the Crown for all purposes, duly organized, validly existing and in good standing under the laws of the Province of New Brunswick, that is qualified to do business in the Province of New Brunswick and has the legal power and authority to own its properties, to carry on its business as now being conducted and to enter into this Agreement and carry out the transactions contemplated hereby and perform and fulfill all covenants and obligations on its part to be performed under and pursuant to this Agreement.

(b) The execution, delivery and performance by Buyer of this Agreement have been duly authorized by all necessary corporate action, and do not and will not require any consent or approval other than those which have already been properly obtained.

(c) The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby and the fulfillment of and compliance with the provisions of this Agreement do not and will not conflict with any of the terms, conditions or provisions of any Legal Requirements applicable to Buyer, or of any partnership agreement, deed of trust, mortgage, loan agreement, other evidence of indebtedness or any other agreement or instrument to which Buyer is a party or by which it or any of its property is bound, or result in a material breach of or a default under any of the foregoing.

(d) This Agreement constitutes the legal, valid and binding obligation of Buyer in its own right and as agent of the Crown that is enforceable against both the Buyer and the Crown in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws relating to or affecting the enforcement of creditors' rights generally or by general equitable principles, regardless of whether such enforceability is considered in a proceeding in equity or at law.

## **ARTICLE 15 INSURANCE**

### **Section 15.1 Insurance Required.**

(a) Seller shall acquire and maintain at its sole cost and expense, the types and amounts of insurance coverage as are consistent with Prudent Industry Practices but in no event less than the types and amounts described in Appendix K and this Article 15.

(b) Buyer shall acquire and maintain at its sole cost and expense, the types and amounts of insurance coverage as are consistent with Prudent Industry Practices but in no event less than the types and amounts described in Appendix K and this Article 15.

(c) Notwithstanding this Agreement's insurance requirements, each Party may self-insure all or any part of the insurance coverage required by this Agreement, subject to the other Party's prior written consent, such consent not to be unreasonably withheld, conditioned or delayed. All self-insurance coverage shall be treated as if it were an insurance policy. Without limiting the generality of the foregoing, Seller agrees that Buyer may self-insure and will be deemed to satisfy the requirements set out in Section 15.1(b), provided that Buyer remains a Crown corporation and agent of the Crown for all purposes.


**Section 15.2 Certificates of Insurance.** Within ten (10) Business Days of the execution of this Agreement, each Party will provide the other Party with certificates of insurance evidencing the required coverage set forth above and in Appendix K. Such certificates shall provide for a minimum of thirty (30) Days advance notice to Buyer of cancellation. Each Party shall also provide advance copies of, and obtain prior written approval from the other Party, such approval not to be unreasonably withheld, delayed or conditioned, for, any policy endorsements that could modify or restrict the other Party's rights as an additional insured or under the contractual liability provisions of the subject policies. Failure by a Party to cause the procurement of the insurance coverage or the delivery of certificates of insurance required by this Article 15 or Appendix K shall not relieve a Party of the insurance requirements set forth herein or therein or in any way relieve or limit a Party's obligations and liabilities under any other provision of this Agreement.

## ARTICLE 16 INDEMNIFICATION

### Section 16.1 Scope of Indemnity.

(a) Subject to Section 16.1(b), each Party (the “Indemnifying Party”) expressly agrees to indemnify, hold harmless and defend the other Party and its Affiliates, trustees, agents, officers, directors, employees, members and permitted assigns (each, an “Indemnified Party” and collectively, the “Indemnified Parties”) for, from and against all liabilities, debts, obligations, judgments, losses, fines, costs, expenses, royalties, proceedings, deficiencies or damages, including out-of-pocket expenses and reasonable attorneys’ and accountants’ fees incurred in the investigation or defense of any of the same or in asserting any of its respective rights hereunder, arising in each case out of any claim by a third party (including a Governmental Authority) alleging any bodily injury, death of any person, or damage to real or personal property, but only to the extent such claim arises out of, results from or is in connection with: (i) the Indemnifying Party’s negligent acts and omissions in connection with the performance, or failure thereof, of obligations under this Agreement; or (ii) any other acts or omissions to the extent that they involve the negligence or willful misconduct of the Indemnifying Party.

(b) Without limiting the generality of the foregoing, the Parties agree and acknowledge that Buyer is solely responsible for the safe and reliable operation of its Transmission System



(c) Each Indemnifying Party expressly agrees to indemnify, hold harmless and defend the Indemnified Parties for, from and against all liabilities, debts, obligations, judgments, losses, fines, costs, expenses, royalties, proceedings, deficiencies or damages, including out of pocket expenses and reasonable attorneys’ and accountants’ fees incurred in the investigation or defense of any of the same or in asserting any of its respective rights hereunder, and reasonable expenses for accounting, consulting, engineering, investigation, cleanup, response, removal and/or disposal and other remedial costs, directly or indirectly imposed upon, incurred by or asserted against any Indemnified Party arising in each case out of any claim by a third party (including a Governmental Authority) arising out of, resulting from or is in connection with: (i) the use, generation, refining, manufacture, transportation, transfer, production, processing, storage, handling, or treatment of any Regulated Materials by the Indemnifying Party on, under or from the Facility or the Site (for the avoidance of doubt, including the Fuel Oil Storage Tank); (ii) the Release, or threatened Release, of any Regulated Materials by the Indemnifying Party on, under or from the Facility or the Site (for the avoidance of doubt, including the Fuel Oil Storage Tank);



(iii) the cleanup, removal, and/or disposal of any Regulated Materials on, under or from the Facility or the Site (for the avoidance of doubt, including the Fuel Oil Storage Tank) required by any Environmental Law or any Governmental Authority as a result of the acts or omissions of the Indemnifying Party; (iv) any damage arising out of any cleanup required by a Governmental Authority or Environmental Laws as a result of the acts or omissions of the Indemnifying Party; or (v) any violation of Legal Requirements or Permits by the Indemnifying Party, including Permits under Environmental Laws, that are based upon or in any way related to such Regulated Materials.

(d) In no case set forth in the foregoing Sections 16.1(a) or 16.1(c) shall the Indemnifying Party be responsible for any liabilities, debts, obligations, judgments, losses, fines, costs, expenses, royalties, proceedings, deficiencies or damages, out-of-pocket expenses or attorneys' and accountants' fees to the extent arising out of or resulting from the negligence, gross negligence or willful misconduct of an Indemnified Party.

**Section 16.2 Notice of Proceedings.** An Indemnified Party that becomes entitled to indemnification under this Agreement shall promptly notify the other Party of any claim or proceeding in respect of which it is to be indemnified. Such notice shall be given as soon as reasonably practicable after the Indemnified Party obligated to give such notice becomes aware of such claim or proceeding. Failure to give such notice shall not excuse an indemnification obligation except to the extent failure to provide notice adversely affects the Indemnifying Party's interests. The Indemnifying Party shall assume the defense thereof with counsel designated by the Indemnifying Party; provided, however, that if the defendants in any such action include both the Indemnified Party and the Indemnifying Party and the Indemnified Party reasonably concludes that there may be legal defenses available to it that are different from or additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party shall have the right to select and be represented by separate counsel, at the expense of the Indemnifying Party. If the Indemnifying Party fails to assume the defense of a claim, the indemnification of which is required under this Agreement, the Indemnified Party may, at the expense of the Indemnifying Party, contest, settle, or pay such claim; provided, however, that settlement or full payment of any such claim may be made only with the Indemnifying Party's consent or, absent such consent, written opinion of the Indemnified Party's counsel that such claim is meritorious or warrants settlement.

## **ARTICLE 17**

### **FORCE MAJEURE**

**Section 17.1 Definition of Force Majeure Event.** For the purposes of this Agreement, a "Force Majeure Event" as to a Party means an event or circumstance that prevents such Party from performing its obligations under this Agreement, which event or circumstance, (a) to the actual knowledge of such Party, did not exist as of the Effective Date, (b) is beyond the reasonable control of such Party, (c) is not the result of such Party's negligence or failure to act, and (d) which by the exercise of due diligence in accordance with Prudent Industry Practices, such Party is unable to overcome or avoid or cause to be avoided. Force Majeure Events shall include, provided the criteria in the foregoing sentence are met: natural disaster, tornado, hurricane, tsunami, flood, earthquake and other acts of God; fire (including forest fire); explosion; riot, insurrection, war, labor dispute, strike, walkout, vandalism, terrorism, or sabotage (including cyberattack); and

pandemic or epidemic. The term Force Majeure Event shall not include: (i) the inability to meet a Legal Requirement, unless such inability is caused by an event which would otherwise constitute a Force Majeure Event hereunder, if experienced by a Party; (ii) a Change in Law; (iii) equipment failure, unless, in the case of the Facility only, such equipment failure results directly from an event that would otherwise constitute a Force Majeure Event hereunder, if experienced by a Party; (iv) changes in market conditions that affect the cost or availability of equipment, materials, supplies or services, including the Facility's Fuel supply or the cost of Energy from resources other than the Facility; (v) a Gas Supply Event, Fuel Oil Supply Event, or Transmission Event; (vi) failures of contractors, suppliers or vendors, unless such failures are caused by an event which would otherwise constitute a Force Majeure Event hereunder, if experienced by a Party; and (vii) climatic temperature and humidity conditions.

Section 17.2 No Breach or Liability. To the extent that either Party is prevented by a Force Majeure Event from performing its obligations hereunder, such Party shall be excused from the performance of its obligations hereunder (subject to Section 17.3, other than payment obligations) and shall not be construed to be in default in respect of such obligations to the extent that and for so long as failure to perform such obligations is due to a Force Majeure Event. The Party other than the Party so prevented from performing its obligations shall not be required to perform or resume performance of its obligations corresponding to the obligations that are excused by a Force Majeure Event.

Section 17.3 Capacity and O&M Payments. Buyer's obligation to make Monthly Capacity Payments and Monthly Variable O&M Payments shall be excused pro rata, based on the number of Days of the Month with respect to which Seller has claimed a Force Majeure Event and to the extent that Seller's obligations to honour Scheduling Instructions from Buyer are excused as a result of the Force Majeure Event claimed by Seller. For greater certainty, Buyer's obligation to make Monthly Capacity Payments and Monthly Variable O&M Payments shall not be excused as a result of any Force Majeure Event that is claimed by Buyer.

Section 17.4 Declaration and Mitigation. Following the occurrence of a Force Majeure Event, the affected Party shall:

- (a) give the other Party written notice of the declaration of such event and intent to invoke the provisions of this Article 17, describing the particulars of such Force Majeure Event;
- (b) remedy its inability to perform as soon as reasonably practicable; provided, however, this Section 17.4 shall not require the settlement of any strike, walkout, lockout or other general labour dispute on terms which, in the sole judgment of the Party involved in the dispute, are contrary to its interest; and
- (c) when the affected Party is able to resume performance of its obligations under this Agreement, provide the other Party with a written certification reasonably acceptable to such other Party that the Force Majeure Event has been cured.

Section 17.5 Suspension of Performance. The suspension of performance due to a Force Majeure Event shall be of no greater scope and of no longer duration than is required by such

Force Majeure Event. No Force Majeure Event shall extend this Agreement beyond its stated Term.

Section 17.6 Extended Force Majeure Events. The Party not prevented from performing its obligations due to the Force Majeure Event may at any time terminate this Agreement effective upon ten (10) Days' prior written notice to the other Party if the affected Party remains unable to perform its obligations hereunder for a period of three hundred sixty-five (365) consecutive Days following the initial suspension of performance resulting from the Force Majeure Event ("Extended Force Majeure Cure Period"). Notwithstanding the foregoing provisions of this Section 17.6, to the extent that Seller is able to meet Scheduling Instructions with respect to an amount of Energy equal to or greater than the minimum amount of Energy that a single Unit is able to generate during the applicable season, Buyer shall not have the right to terminate this Agreement as a result of a Force Majeure Event in accordance with this Section 17.6; provided that after the Extended Force Majeure Cure Period has expired and Seller has not completely cured the Force Majeure and restored the Tested Reliable Capacity of the Units to the level that existed prior to the Force Majeure Event that gave rise to the applicable Force Majeure Event, Buyer shall be obligated to make a Monthly Capacity Payment for only that amount of Designated Capacity that Seller demonstrates pursuant to a Performance Test the Units will produce; provided further that if Seller is able to restore such Designated Capacity after the Extended Force Majeure Cure Period has expired, Buyer must resume the purchase of such restored Designated Capacity no later than sixty (60) Days from the date on which Seller provides written notice to Buyer that the Designated Capacity has been restored. Upon termination of this Agreement as provided in Section 17.6, the Parties shall have no further liability or obligation to each other except for any obligation arising prior to the date of such termination. For the avoidance of doubt, no payment arising solely due to a termination shall be required to be paid if this Agreement is terminated in accordance with this Section 17.6.

## **ARTICLE 18 DEFAULT AND REMEDIES**

Section 18.1 Default by Seller. The occurrence of any of the following events shall constitute an "Event of Default" with respect to Seller:

(a) Any representation or warranty made by Seller herein or in any certificate or other document delivered to Buyer pursuant hereto shall prove to be incorrect in any material respect when made, unless Seller shall promptly commence and diligently pursue action to cause such representation or warranty to become true in all material respects and does so within thirty (30) Days after notice thereof has been given to Seller by Buyer (unless such cure is not capable of being effected within such thirty (30) Day period in which case Seller shall have an additional thirty (30) Day period in which to perform such cure) and such cure removes any Material Adverse Effect on Buyer of such representation or warranty having been incorrect;

(b) A court having jurisdiction shall enter: (i) a decree or order for relief in respect of Seller in an involuntary case or proceeding under any applicable Federal, state or provincial bankruptcy, insolvency, reorganization or other similar law; or (ii) a decree or order, the entry of which was sought by an entity other than Seller, adjudicating Seller bankrupt, in receivership, or insolvent, or approving as properly filed a petition seeking reorganization,

arrangement, adjustment or composition of or in respect of Seller under any applicable federal, state or provincial law, or appointing a custodian, receiver, interim receiver, liquidator, assignee, trustee, monitor, sequestrator or other similar official of Seller or of any substantial part of its property and/or affairs;

(c) Seller: (i) commences a voluntary case or proceeding under any applicable Federal, state or provincial bankruptcy, insolvency, reorganization or other similar law or any other case or proceeding to be adjudicated a bankrupt or insolvent; (ii) consents to the entry of a decree or order for relief in respect of Seller in any involuntary case or proceeding under any applicable Federal, state or provincial bankruptcy, receivership, insolvency, reorganization or other similar law or to the commencement of any bankruptcy, receivership, or insolvency case or proceeding against it; (iii) files any petition, answer or consent seeking reorganization or similar relief under any applicable Federal, state or provincial law, which, if granted would have the effect of relieving Seller of any of its obligations; (iv) consents to the filing of any petition or to the appointment of or taking possession by a custodian, receiver, interim receiver, liquidator, assignee, trustee, monitor or similar official of Seller or of any substantial part of its property and/or affairs; (v) makes an assignment for the benefit of creditors; (vi) admits in writing its inability to generally pay its debts as they become due; or (vii) takes any action in furtherance of any of the foregoing;

(d) Seller fails to comply or cause compliance with the Performance Security requirements of Section 7.1, unless the foregoing is cured by the end of the seventh (7<sup>th</sup>) Business Day following receipt of a written notice from Buyer of a failure under this Section 18.1(d);

(e) Seller assigns or transfers this Agreement in violation of the requirements of Section 20.1;

(f) Seller fails to perform or observe any material obligation of Seller under this Agreement, other than those events specifically addressed in this Section 18.1, which failure materially and adversely affects the ability of Seller or Buyer to perform their respective obligations under this Agreement and continues for a period of thirty (30) Days after written notice thereof from Buyer unless such cure is not capable of being effected within such thirty (30) Day period, in which case Seller shall have an additional thirty (30) Day period in which to perform such cure;

(g) Seller fails to pay Buyer any undisputed amount payable by Seller to Buyer pursuant to this Agreement for fifteen (15) Days after the same shall have become due and payable and Seller fails to cure such failure to pay within fifteen (15) Days after receipt of written demand therefor from Buyer;

(h) Seller violates any Legal Requirement and such violation materially and adversely affects Seller's ability to perform under this Agreement and such violation is not cured within thirty (30) days after written notice from Buyer unless such cure is not capable of being effected within such thirty (30) Day period, in which case Seller shall have an additional thirty (30) Day period in which to commence such cure and thereafter diligently pursues such cure and completes such cure within sixty (60) Days and such cure removes any Material Adverse Effect on Buyer of Seller's violation of such Legal Requirement; provided, however, Seller shall be deemed not to have committed an Event of Default hereunder if Seller has validly contested the

alleged violation, such matter remains pending before the applicable Governmental Authorities, and any cease and desist order or other enforcement action due to an alleged violation of the Legal Requirements has been stayed.

Section 18.2 Default by Buyer. The occurrence of any of the following events shall constitute an “Event of Default” with respect to Buyer:

(a) Buyer fails to pay any undisputed amount payable by Buyer to Seller pursuant to this Agreement for fifteen (15) Days after the same shall have become due and payable and Buyer fails to cure such failure to pay within fifteen (15) Days after receipt of written demand therefore from Seller;

(b) Buyer fails to perform or observe any material obligation of Buyer under this Agreement, other than those events specifically addressed in this Section 18.2, which failure materially and adversely affects the ability of Seller or Buyer to perform their respective obligations under this Agreement and continues for a period of thirty (30) Days after written notice thereof from Seller unless such cure is not capable of being effected within such thirty (30) Day period, in which case Buyer shall have an additional thirty (30) Day period in which to perform such cure;

(c) Any representation or warranty made by Buyer herein or in any certificate or other document delivered to Seller pursuant hereto shall prove to be incorrect in any material respect when made, unless Buyer shall promptly commence and diligently pursue action to cause such representation or warranty to become true in all material respects and does so within thirty (30) Days after notice thereof has been given to Buyer by Seller (unless such cure is not capable of being effected within such thirty (30) Day period in which case Buyer shall have an additional thirty (30) Day period in which to perform such cure) and such cure removes any Material Adverse Effect on Seller of such representation or warranty having been incorrect;

(d) A court having jurisdiction shall enter: (i) a decree or order for relief in respect of Buyer in an involuntary case or proceeding under any applicable Federal, state or provincial bankruptcy, insolvency, reorganization or other similar law; or (ii) a decree or order, the entry of which was sought by an entity other than Buyer, adjudicating Buyer bankrupt, in receivership, or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of Buyer under any applicable Federal, state or provincial law, or appointing a custodian, receiver, interim receiver, liquidator, assignee, trustee, monitor, sequestrator or other similar official of Buyer or of any substantial part of its property and/or affairs;

(e) Buyer: (i) commences a voluntary case or proceeding under any applicable Federal, state or provincial bankruptcy, insolvency, reorganization or other similar law or any other case or proceeding to be adjudicated a bankrupt or insolvent; (ii) consents to the entry of a decree or order for relief in respect of Buyer in any involuntary case or proceeding under any applicable federal, state or provincial bankruptcy, receivership, insolvency, reorganization or other similar law or to the commencement of any bankruptcy, receivership or insolvency case or proceeding against it; (iii) files any petition, answer or consent seeking reorganization or similar relief under any applicable federal, state or provincial law, which, granted would have the effect of relieving

Buyer of any of its obligations; (iv) consents to the filing of any petition or to the appointment of or taking possession by a custodian, receiver, interim receiver, liquidator, assignee, trustee, monitor, sequestrator or similar official of Buyer or of any substantial part of its property and/or affairs; (v) makes an assignment for the benefit of creditors; (vi) admits in writing its inability to generally pay its debts as they become due; or (vii) takes any action in furtherance of any of the foregoing;

(f) Buyer fails to comply or cause compliance with the Performance Security requirements of Section 7.2, unless the foregoing is cured by the end of the third (3<sup>rd</sup>) Business Day following receipt of a written notice from Seller of a failure under this Section 18.2(f);

(g) Buyer assigns or transfers this Agreement in violation of the requirements of Section 20.1;

(h) Buyer violates any Legal Requirement and such violation materially and adversely affects Buyer's or Seller's ability to perform under this Agreement and such violation is not cured within thirty (30) days after written notice from Seller unless such cure is not capable of being effected within such thirty (30) Day period, in which case Buyer shall have an additional thirty (30) Day period in which to commence such cure and thereafter diligently pursues such cure and completes such cure within sixty (60) Days and such cure removes any Material Adverse Effect on Seller of Buyer's violation of such Legal Requirement; provided, however, Buyer shall be deemed not to have committed an Event of Default hereunder if Buyer has validly contested the alleged violation, such matter remains pending before the applicable Governmental Authorities, and any cease and desist order or other enforcement action due to an alleged violation of the Legal Requirement has been stayed; or

(i) Any of the Lands Rights are terminated, removed, Expropriated, suspended, or such similar action is taken, in each case denying Seller the benefit of the then-current Lands Rights in any material respect, as determined by Seller acting reasonably.

### Section 18.3 Remedies.

(a) If an Event of Default occurs at any time during the Term

[REDACTED]

(b)

[REDACTED]

[REDACTED]

(c)

[REDACTED]

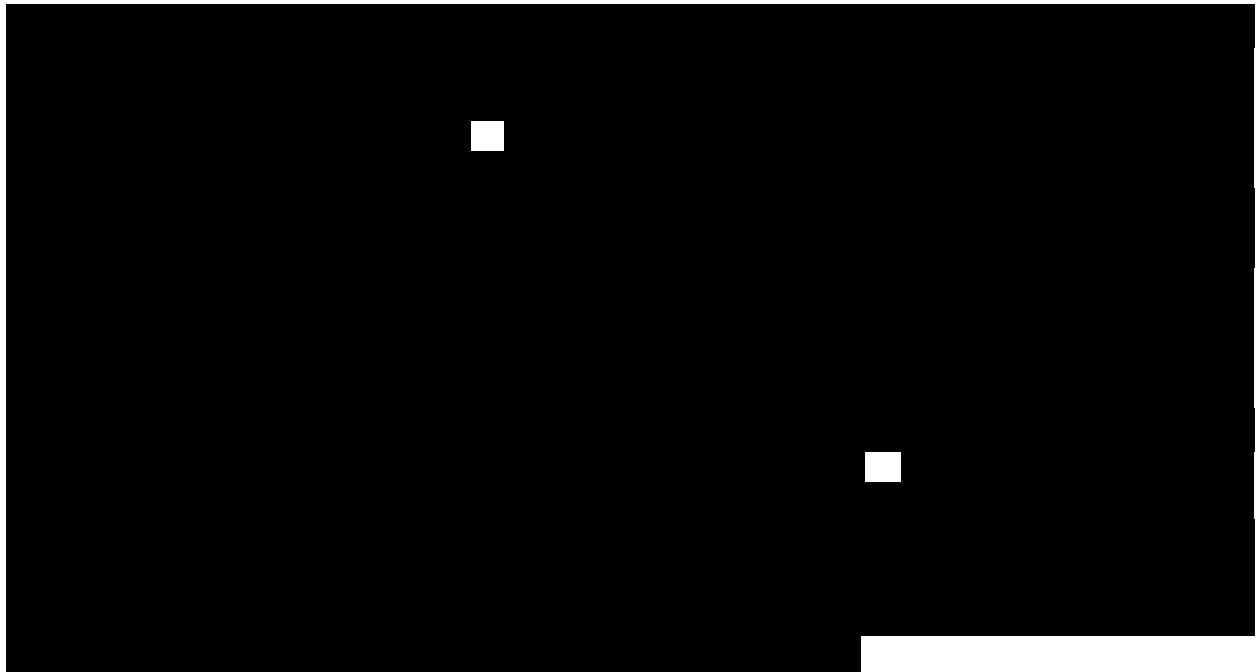
(d)

[REDACTED]

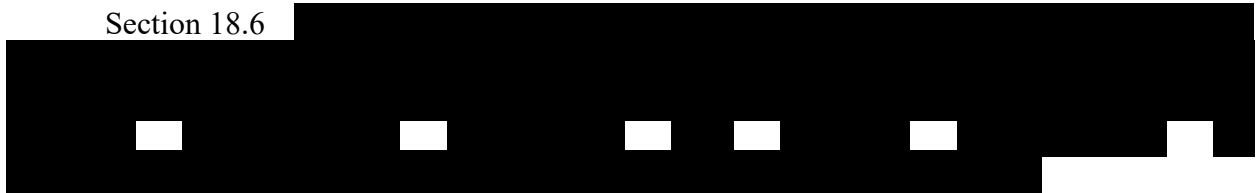
Section 18.4 Intentionally deleted.

Section 18.5 Limitation of Remedies, Liability and Damages.

[REDACTED]



Section 18.6



Section 18.7 No Interruption. Except as otherwise provided in this Agreement, unless and until this Agreement has been terminated, neither Party shall, as a result of any breach or alleged breach by the other Party, refuse to deliver, or suspend or delay any delivery of, Designated Capacity or associated Energy to be provided under this Agreement; refuse to take Energy to the extent required under this Agreement; suspend, delay or refuse to make, any of the payments required under this Agreement.

Section 18.8 Duty to Mitigate. Notwithstanding any other provision of this Agreement, each Party has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to mitigate any Costs, Losses or other damages it may incur as a result of the other Party's performance or non-performance.

## **ARTICLE 19**

### **GOVERNING LAW; DISPUTE RESOLUTION**

Section 19.1 Governing Law; Arbitration; Venue; and Jurisdiction.

(a) This Agreement, the rights and duties of the Parties and all claims or causes of action (whether in contract, tort or statute) that may be based upon, arise out of or relate to this Agreement or the negotiation, execution or performance of this Agreement (including any claim or cause of action based upon, arising out of or related to any representation or warranty made in or in connection or as an inducement to enter this contract) shall be governed by and construed,



enforced and performed in accordance with the laws of the Province of New Brunswick, Canada, including its statutes of limitations, without giving effect to any principles of conflicts of laws that would cause the application of the laws of any jurisdiction other than the Province of New Brunswick.

(b) Arbitration. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration administered by the International Centre for Dispute Resolution under its Canadian Arbitration Rules (the “Rules”) to take place in the City of Toronto, Province of Ontario, Canada, and any written demand by a party for arbitration in accordance with the terms of this Section 19.1(b) shall be referred to herein as a “Demand for Arbitration.” Judgment on the award rendered by the Arbitrator(s) (as defined below) may be entered in any court having jurisdiction thereof. Notwithstanding the foregoing to the contrary, either Party may seek an injunction in the Court of Kings Bench of New Brunswick if such action is necessary to prevent irreparable harm, in which case both Parties nonetheless will continue to pursue resolution of all other aspects of the dispute by means of arbitration as provided for in this Section. Each Party hereby irrevocably waives the defense of an inconvenient forum to the maintenance of any such action or proceeding. Each Party further agrees to accept service of process out of any of the before mentioned courts in any such dispute by registered or certified mail addressed to the Party at the address set forth in Section 20.6.

If the amount in dispute does not exceed \$13,000,000, there shall be one arbitrator to be agreed to by the Parties within twenty (20) Days of receipt by respondent of the Demand for Arbitration. If the amount in dispute exceeds \$13,000,000, there shall be three arbitrators. In such event, each Party shall appoint one arbitrator within twenty (20) days of receipt by respondent of the Demand for Arbitration, and the third presiding arbitrator shall be appointed by agreement of the two party-appointed arbitrators within fourteen (14) days of the appointment of the second arbitrator. Each such arbitrator, unless otherwise agreed by the Parties, acting reasonably, must not be a current or former employee of either Party, not acting or has not acted as a consultant or under any professional service contract to either Party in the five (5) years prior to the Demand for Arbitration, have experience with respect to natural gas fired electric generation facilities in Canada and/or the United States and be impartial, experienced and qualified by profession or occupation to examine and decide such disputes as would typically arise under agreements involving the construction and operation of such facilities, and shall have no financial or proprietary interest in this Agreement, in any Party or in any subcontractor to any Party (each such arbitrator appointed pursuant to this Section 19.1(b) and meeting the requirements set forth immediately above, an “Arbitrator”).

(c) EACH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ITS RIGHT TO TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT AND WITH RESPECT TO ANY COUNTERCLAIM THEREIN, INCLUDING THE RIGHT TO CONSOLIDATE ANY SUCH LEGAL ACTION, PROCEEDING OR COUNTERCLAIM WITH ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT IN WHICH A JURY TRIAL HAS NOT OR CANNOT BE WAIVED.

(d) In the event that a dispute arises between the Parties with respect to the performance of a Party’s obligations under this Agreement, a senior officer of each Party shall

meet and use good faith efforts to resolve the dispute within ten (10) Business Days after the written request of either Party. If the senior officers are unable to resolve the dispute within thirty (30) Days after their initial meeting, either Party may exercise all remedies available at law or in equity or as permitted under this Agreement.

Section 19.2 Waiver of Immunities. Buyer hereby irrevocably waives, to the extent permitted by Legal Requirements, with respect to itself and its revenues and assets (irrespective of their use or intended use), all immunity on the grounds of sovereignty or other similar grounds from (i) suit, (ii) jurisdiction of any court, (iii) relief by way of injunction or order for specific performance or recovery of property, (iv) attachment of its assets (whether before or after judgment) and (v) execution or enforcement of any judgment to which it or its revenues or assets might otherwise be entitled in any action, suit or proceeding in the courts of any jurisdiction and irrevocably agrees, to the extent permitted by Legal Requirements, that it will not claim any such immunity in any such action, suit or proceeding.

## **ARTICLE 20 MISCELLANEOUS PROVISIONS**

Section 20.1 Assignment. Without the prior written consent of the non-assigning Party, neither Party shall be entitled to assign or transfer this Agreement or its rights and obligations under this Agreement, and any such assignment or transfer without such consent is void. Notwithstanding the foregoing, a Party may make the following assignments without the prior written consent of the other Party, but shall provide prior written notice of such assignments:

(a) Seller may:

(i)(A) collaterally assign this Agreement to a Financing Party relating to Seller's development, construction or long-term financing for the Facility, and (B) issue or sell equity interests in Seller to a Financing Party pursuant to any equity financing. In no case shall any such rights and terms of a collateral assignment consent agreement described in this Section 20.1 materially adversely affect any of Buyer's commercial rights or obligations under this Agreement and Seller shall remain liable for its liabilities and obligations under this Agreement;

(ii) transfer or assign all of its rights and obligations under this Agreement to an Affiliate, provided (A) such Affiliate agrees to be bound by the terms of this Agreement and assume all of the rights and obligations of the assigning Party under this Agreement; and (B) such Affiliate has qualifications to perform the assigning Party's obligations under this Agreement that are equal to or better than the qualifications of such assigning Party; and

(iii) transfer or assign all of its rights and obligations under this Agreement to any Person succeeding to all or substantially all of its assets, provided the assignee agrees to be bound by the terms of this Agreement and assume all of the rights and obligations of the assigning Party under this Agreement.

(b) Buyer may assign this Agreement or its rights and obligations under this Agreement to: (i) the Crown, provided the Crown agrees to be bound by the terms of this

Agreement and assume all rights and obligations of Buyer under this Agreement; or (ii) subject to the prior written consent of Seller, which consent may not be unreasonably withheld, to any other Person that is an agent of the Crown for all purposes and is directly or indirectly wholly owned by the Crown. For certainty, except as permitted in this Section 20.1(b), Buyer shall not assign this Agreement or its rights and obligations under this Agreement without the prior written consent of Seller which consent may be arbitrarily withheld. A change in the direct or indirect shareholders of Buyer that would result in Buyer no longer being a Crown corporation and an agent of the Crown for all purposes will be deemed to be an assignment requiring the prior written consent of Seller, which consent may be arbitrarily withheld. Any assignment in contravention of this Section 20.1(b) is void.

Section 20.2 Waiver. The failure of either Party to enforce at any time any of the provisions of this Agreement, or to require at any time performance by the other Party of any of the provisions hereof, shall in no way be construed to be a waiver of such provisions, or in any way to affect the validity of this Agreement or any part hereof or the right of such Party hereafter to enforce every such provision. No modification or waiver of all or any part of this Agreement shall be valid unless it is reduced to a writing, signed by both Parties, that expressly states that the Parties agree to a waiver or modification, as applicable.


Section 20.3 Amendments. This Agreement may be amended only by a written instrument duly executed by authorized representatives of Buyer and Seller.

Section 20.4 Binding Effect. This Agreement and any extension shall inure to the benefit of and shall be binding upon the Parties and their respective permitted successors and assigns.

Section 20.5 Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute a single instrument.

Section 20.6 Notices. Unless otherwise specified, where notice is required by this Agreement, such notice shall be in writing and shall be deemed given: (i) upon receipt, when mailed by United States or Canada Post registered or certified mail, postage prepaid, return receipt requested; (ii) upon the next Business Day, when sent by overnight delivery, postage prepaid using a recognized courier service; or (iii) upon transmission by electronic mail (if a Business Day and, if not, on the next following Business Day) if transmitted before 16:00 (according to the local time of the recipient), and if transmitted by electronic mail after that time, on the following Business Day, provided that Notices transmitted by electronic mail must be followed up by Notice by other means as provided for in this Section 20.6 to be effective. In all instances, notice to the respective Parties shall be directed as follows:

To Seller:

c/o ProEnergy Holding Company, Inc.  
2001 ProEnergy Blvd.  
Sedalia, MO 65301  
Attn: President  


with a copy to:

c/o ProEnergy Holding Company, Inc.  
2001 ProEnergy Blvd.  
Sedalia, MO 65301  
Attn: General Counsel  
Email: sblair@proenergyservices.com

To Buyer:

New Brunswick Power Corporation  
P.O. Box 2000  
515 King Street  
Fredericton, NB E3B 4X1  
Attention: Chief Legal Officer  
Fax: (506) 458-4319  
Email: NBPowerLegal@nbpower.com

Or, with respect to a Party, notice shall be directed to such other address as may be designated in writing from time to time by such Party to the other Party.

Section 20.7 Cooperation with Financing Efforts. Buyer shall reasonably cooperate with Seller's efforts to finance or refinance the Facility. Without limiting the generality of the foregoing, Buyer agrees to: (a) execute and deliver a consent to collateral assignment substantially in the form of Appendix L, with such revisions, modifications and amendments requested by Financing Entities that are on terms and conditions substantially consistent with those regularly provided by off-takers under non-recourse project financing of electricity infrastructure in Canada and execute and deliver such other customary documents as Seller or its Financing Entities may reasonably request in connection with such financing or refinancing, and (b) provide such information (including financial information) as the Financing Entities may reasonably request.

Section 20.8 Entire Agreement. This Agreement (including the attached exhibits, schedules and appendices) constitutes the entire understanding between the Parties and supersedes any previous agreements related to the subject matter hereof between the Parties. The Parties have entered into this Agreement in reliance upon the representations and mutual undertakings contained herein and not in reliance upon any oral or written representations or information provided by one Party to the other Party not contained or incorporated herein.

Section 20.9 Headings. The headings contained in this Agreement are used solely for convenience and do not constitute a part of this Agreement between the Parties, nor should they be used to aid in any manner in the construction of this Agreement.

Section 20.10 Third Parties. Except as otherwise set forth herein, this Agreement is intended solely for the benefit of the Parties hereto. Nothing in this Agreement shall be construed to create any duty, standard of care or liability to any Person that is not a Party to this Agreement.

Section 20.11 No Partnership or Agency. This Agreement shall not be interpreted or construed to create an association, joint venture, or partnership between the Parties or to impose any partnership obligation or liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

Section 20.12 Relationship Between Parties. Each Party agrees and acknowledges that:

(a) it is acting for its own account, and it has made its own independent decisions to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgement and upon advice from such advisers as it has deemed necessary;

(b) it is not relying on any communication (written or oral) of the other Party as investment advice or as a recommendation to enter into this Agreement; it being understood that information and explanations related to the terms and conditions of this Agreement shall not be considered investment advice or a recommendation to enter into this Agreement; no communication (written or oral) received from the other Party shall be deemed to be an assurance or guarantee as to the expected results of this Agreement; and

(c) it is capable of assessing the merits of and understanding (on its own behalf or through independent professional advice), and understands and accepts, the terms, conditions and risks of this Agreement; it also is capable of assuming, and assumes, the risks of this Agreement.

Section 20.13 Severability. If any term or provision of this Agreement or the application thereof to any person, entity, or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons, entities or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

Section 20.14 Negotiated Agreement. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution or other event of negotiation, drafting or execution hereof.

Section 20.15 Confidentiality.

(a) “Confidential Information” means information designated in writing as confidential by the Party supplying such information (the “Disclosing Party”) to the other Party (the “Receiving Party”); provided, however, Confidential Information does not include information that: (a) is or becomes publicly available other than as a result of a breach of this Agreement; (b) was, at the time of the disclosure, already in the Receiving Party’s possession; (c) is disclosed to the Receiving Party by a third Party who, to the Receiving Party’s knowledge, is not prohibited from disclosing the information pursuant to any agreement with the Disclosing Party; (d) the Receiving Party develops or derives without the aid, application or use of the

privileged or proprietary information; or (e) the Receiving Party is required to disclose pursuant to Legal Requirements.

(b) The Parties acknowledge that portions of this Agreement contain Confidential Information and may require the Parties to disclose additional Confidential Information to one another. Each Party agrees that, for a period of two (2) years from the date of disclosure, it will not, and will ensure that all of its Affiliates, consultants or advisors do not, without the prior written consent of the other Party, such consent not to be unreasonably withheld, conditioned or delayed, or as otherwise provided herein, disclose to any third party (other than to consultants or advisors to the Party or to Affiliates of the Party or consultants and advisors to such Affiliates, in each case who need to know such information in connection with the performance of their duties or services for the Party or its Affiliates), such portions of this Agreement, or the terms or provisions hereof, or any additional Confidential Information disclosed pursuant to such Party's performance of this Agreement and identified as Confidential Information at the time of such disclosure, except: (a) to the extent that disclosure to a third party is required by Legal Requirements, including reporting regulations, or by any Governmental Authority having jurisdiction over the Party or the transactions contemplated herein; and (b) Seller may disclose this Agreement and the contents thereof, including Confidential Information to investors or lenders (or potential investors or lenders) in the Seller, its Affiliates or the Facility.

(c) Any public statement or other announcement by a Party hereto concerning the transaction described herein shall be reviewed and agreed upon by the Parties before release, which agreement shall not be unreasonably withheld, conditioned or delayed.

Section 20.16 Preservation of Terms. Each Party agrees that, subject to Section 4.1, except with the prior written consent of the other Party, it will not, and will use reasonable efforts to assure that its Affiliates will not, institute or voluntarily cooperate in the institution or conduct of any claim, action or proceeding before any Governmental Authority under any provision of federal law or provincial law or any other Legal Requirement which claim, action or proceeding is intended for the purpose of, or could reasonably be expected to have the effect of, changing the terms of this Agreement then in effect. Without limiting the foregoing, but subject to the terms of this Agreement, the Parties agree that the rates for service specified herein shall remain in effect for the Term and shall not be subject to change through application to any Governmental Authority under any provision of federal or provincial law or other applicable Legal Requirement, absent written agreement of the Parties.

Section 20.17 Replacement Index. Should any index or tariff referenced in this Agreement be discontinued, no longer published or deemed unrepresentative, the Parties will cooperate in establishing substitute benchmarks through reference to equivalent indices or tariffs.

Section 20.18 Further Assurances. The Parties agree to provide such reasonable cooperation to each other as necessary to give effect to the terms of this Agreement.

Section 20.19 Counterparts; Electronic Signatures. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and any of which may be introduced into writing or used for any purpose without the production of the other counterparts.

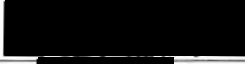
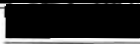
Each Party agrees to the use of electronic signatures and the delivery of counterpart signatures by electronic mail.

Section 20.20 Capacity. Buyer is executing and delivering this Agreement in its own right and as agent of His Majesty the King in Right of the Province of New Brunswick. Both Parties intend that the Crown be directly bound by this Agreement.

[SIGNATURE PAGE FOLLOWS]

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed by their duly authorized representatives, as of the date first written above.

**RIGS Energy Atlantic Limited Partnership**, as represented by its general partner, **1542987 B.C. Ltd.**

By:   
Name:   
Title: Director

**New Brunswick Power Corporation**

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

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



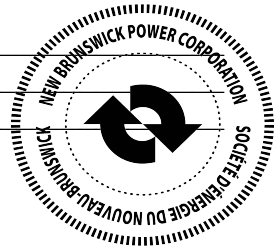
**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed by their duly authorized representatives, as of the date first written above.

**RIGS Energy Atlantic Limited Partnership**, as represented by its general partner, **1542987 B.C. Ltd.**

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

**New Brunswick Power Corporation**

By: Lori Clark  
Name: Lori Clark  
Title: President & CEO



By: James Petrie  
Name: James Petrie  
Title: Chief Legal Officer

## APPENDIX A DESCRIPTION OF FACILITY

### 1. Appendix A – Description of Facility and Interconnection Facilities



*image depicting similar facility for reference only*

PROENERGY (the selected Contractor of Seller) will provide to New Brunswick Power Corporation (NB Power, or Buyer):

1. A complete, turnkey PowerFLX facility and Switchyard, as per the scope summary table below.
2. Site-specific detailed engineering of all equipment and BOP components, complete with civil, mechanical, I&C and electrical design.
  - PROENERGY will partner with a domestic Canadian engineering subcontractor to ensure compliance with applicable codes, standards, and regulations.
  - Design and equipment Standard shall be IEEE/ULc/CSA, as applicable.
  - Compliance with the technical requirements of NBP OATT Generation Connection Agreement.
3. All necessary civil and structural scope including, foundations (based on the baseline assumptions included herein), structural steel, fencing, gates, support steel.
4. All required transportation and logistics.
5. All required site construction work requirements, including labor, tools, consumables, equipment rentals.
  - PROENERGY will partner with local subcontractors who will perform the site civil, mechanical and electrical works under PROENERGY management and supervision.
6. Commissioning and start-up of the facility.

PROENERGY-Supplied Items	Descriptions
Combustion Turbine Generator (CTG)	<ul style="list-style-type: none"> <li>• 8 x [REDACTED] combustion turbines</li> <li>• 8 x BRUSH 71.2MVA brushless generators including excitation power system stabilizers</li> <li>• Dual-fuel operational capability <ul style="list-style-type: none"> <li>◦ Natural gas, Ultra-Low Sulfur Diesel (ULSD)</li> <li>◦ Hydrogen capability up to 35% by volume</li> </ul> </li> <li>• 8 x Turbine and generator enclosures</li> <li>• 8 x CTG auxiliary systems, including lube oil coolers, water spray power augmentation (WSPA), NOx water injection</li> <li>• 8 x Inlet air filter systems with associated ladders and platforms <ul style="list-style-type: none"> <li>◦ MERV 13 rated air filters</li> </ul> </li> <li>• 8 x Package air recirculating inlet heating systems</li> <li>• 8 x Inlet air fogging systems</li> <li>• 8 x Generator breakers and protection panels</li> <li>• 8 x SSS Clutch synchronous condensing systems complete</li> </ul>
Balance-of-Plant (BOP) Equipment	<ul style="list-style-type: none"> <li>• 8 x 65-ft exhaust stack with required testing and CEMS ports</li> <li>• 8 x SCR/CO emissions control systems, with <ul style="list-style-type: none"> <li>◦ Ducting assemblies</li> <li>◦ Ammonia flow control unit (AFCU) with exhaust recirc. Vaporization</li> <li>◦ 1 x 15,000-gal 19% aqueous ammonia storage tank</li> <li>◦ 8 x Continuous emissions monitoring system (CEMS)</li> </ul> </li> <li>• 2 x 100% air compressor system</li> <li>• 1 x Diesel-fired Black start generator system</li> <li>• 1 x Raw water carbon filtration and chlorination system</li> <li>• 1 x 2600 lpm RO/EDI demineralized water treatment system</li> <li>• 1 x 1,200,000-gal demineralized water tank</li> <li>• 1 x 300,000-gal raw water tank (shared with fire water)</li> <li>• 4 x 1,000-gal wastewater tanks</li> </ul>
ULSD Fuel System	<ul style="list-style-type: none"> <li>• 1 x Unloading, loading and forwarding station</li> <li>• 1 x ULSD filter skid</li> <li>• 1 x ULSD storage tank (5-days of storage**) <ul style="list-style-type: none"> <li>◦ With option to expand to 10-days of storage through contract Change Request.</li> </ul> </li> <li>• 1 x ULSD related civil works including containment walls</li> <li>• 1 x Foam fire protection system for ULSD (if required)</li> <li>• 1 x ULSD inline heaters</li> </ul>
Fire Protection System	<ul style="list-style-type: none"> <li>• Fire loop around the perimeter of the project with hydrants</li> <li>• Main electric fire pump, diesel fire water pump with electric jockey pump</li> <li>• Winterized pump house</li> <li>• 1 x 300,000-gal fire water tank (shared with raw water)</li> <li>• CO2 based fire suppression on turbine and generator enclosures</li> </ul>
Power Distribution Center (PDC)	<ul style="list-style-type: none"> <li>• 4 x PDC enclosures <ul style="list-style-type: none"> <li>◦ One per two (2) installed packages</li> </ul> </li> <li>• 4 x Operator workstations with HMI</li> <li>• Allen Bradley Control Logix CTG and BOP control systems</li> <li>• 125- and 24-VDC battery and chargers</li> </ul>

	<ul style="list-style-type: none"> <li>• UPS system</li> </ul>
Buildings and Enclosures	<ul style="list-style-type: none"> <li>• 1 x Administration and Operations Building</li> <li>• 1 x Substation control enclosure</li> <li>• 1 x BOP control enclosure</li> <li>• 1 x Water treatment and air compressor enclosure</li> <li>• 4 x CEMS enclosures <ul style="list-style-type: none"> <li>◦ 2 CEMS shared in one enclosure between a pair of units</li> </ul> </li> <li>• Skid enclosures for winterization</li> <li>• Snow covers (as required)</li> </ul>
480-V Low-Voltage Supply System	<ul style="list-style-type: none"> <li>• 8 x 13.8kV/480V auxiliary transformers</li> <li>• 4 x LV switch gear (with required MCCs)</li> <li>• Interconnecting cabling, wiring, supports, and termination</li> </ul>
High-Voltage (HV) System (Powerblock gen bus)	<ul style="list-style-type: none"> <li>• Refer to <b>Attachment 2</b> for more information</li> <li>• 8 x 45/60/75 MVA 138kV generator step-up transformers (GSU)</li> <li>• 2 x 138kV collector buses with a single HICO breaker each and supporting 4x CTGs each</li> <li>• 10x manual disconnects (1x per GSU, 1x per collector bus)</li> <li>• 2x Dead end towers</li> </ul>
High-Voltage (HV) System (138kV Switchyard)	<ul style="list-style-type: none"> <li>• Refer to <b>Attachment 3</b> for more information</li> <li>• 2 x slack leads supplying connecting the powerblock to the switchyard</li> <li>• 12-breaker (HICO) 138kV switching station (see attached one-line)</li> </ul>
Site Systems	<ul style="list-style-type: none"> <li>• Clearing, grubbing, and mass Site leveling</li> <li>• Design and construction of the access road to the Site as shown on Attachment 1</li> <li>• 20 acre-foot Storm Water Pond with automatic pumping lift station feeding on Site tributary</li> <li>• Effluent discharge to on site tributary</li> <li>• 3 x 10" drilled water wells at a 490 ft depth capable of producing the volume listed herein to support continuous operation</li> <li>• Continuous concrete pad foundation below all eight (8) units</li> <li>• Asphalt loop road enclosing space for 8-units</li> <li>• Plant winterization, including insulation, electric heat tracing, heaters, and enclosures</li> </ul>

\*\*Storage description accounts for eight (8) units operating at maximum load.

## SCOPE ASSUMPTIONS & CLARIFICATIONS

*PROENERGY (EPC subcontractor to Seller) assumes:*

- Excavated soils will be stockpiled or spread on site.
- Contractor's generation electrical scope terminates at the 138kV switching station at terminal points T3 and T4 on Attachment A1.
- Stormwater conveyance will be via sloped drainage or buried pipe, as required, to the Contractor-supplied stormwater pond.
- Water treatment wastewater reject will terminate within a buried pipe at the site boundary. No provision has been made for evaporation ponds for waste-water.
- No provision has been made for ULSD treatment systems for any cleaning or filtering. ULSD is assumed to meet PROENERGY fuel specifications.
- No provision has been made for delays longer than one (1) week during Canadian customs processing.
- Contractor to construct access road up to a maximum distance of one thousand, nine hundred and seventy and seventy-three (1,973) meters from the site boundary. Road shall be suitable for transporting the major equipment.
- Civil foundation design is based on shallow concrete foundations with assumed 3,000-psf soil-bearing capacity. No provisions have been included for pilings, expansive soils, or engineered fill.
  - No provision has been made for dewatering during construction, and overall site drainage shall be by final sloped grading.
  - No provision has been made for the removal of subterranean obstacles.
- Contractor is the OEM of the equipment. All performance guarantees and warranties will be provided by Contractor.
- Limits on SO<sub>2</sub> and Particulate Matter (PM) to be confirmed with final environmental permit requirements.
- In the case of deviations in the technical requirements of the OATT Generation Connection Agreement and the scope as described in this Appendix A and its attachments, the Appendix A and its attachments shall take precedence and the Parties may adjust the scope via mutual agreement on a Buyer-requested change.

### *Seller (WattBridge) Requirements*

- Seller to provide site surveys.
- Seller to provide construction water.
- Seller will be responsible for site security, if required.
- Seller will, cooperate in good faith and use commercially reasonable efforts, in taking actions within its control to enable Buyer to finalize all local permits required to build the power plant and associated pipeline connections.
- Seller to provide underground wastewater conveyance up to a maximum distance of four hundred (400) meters from the site boundary to Site tributary.
- Seller will provide sufficient volume of well water, consistent with the purity analysis contained herein, suitable for supply to the water treatment systems, at the site.

- Seller is responsible for all final geotechnical investigations for the powerblock and switchyard to inform the civil/foundation design including grounding design assumptions.

#### *Buyer (NB Power) Requirements*

- Buyer is responsible for obtaining the permits required to build the power plant and associated pipeline connections (such permits are set out in Appendix B) (Seller and Buyer to use commercially reasonable efforts, and cooperate in good faith, taking such actions within their respective control, to satisfy, or enable the satisfaction of Buyer obtaining permits.
- Buyer's responsibility to obtain legal rights for access road from public highway to the Site.
- Buyer to provide construction power.
- Buyer is responsible for the removal/disposal of contaminated or hazardous waste discovered on-site.
- Buyer to provide at least 40 acres for the development of the complete generating facility, Switchyard, storm water pond, parking, laydown, staging, and material loading.
- Buyer to provide an adequate supply of natural gas fuel at a minimum pressure of 700 psig and delivered to a location no further away than the plant battery limit.
- Buyer to provide an adequate supply of liquid fuel which meets the OEM specifications.

### ESTIMATED PERFORMANCE

The following tables outline the estimated performance of your facility based on the assumed conditions.

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[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

\*The thermal performance values in the performance tables are estimates only. Firm guarantees to be provided upon finalization of all EPC contract terms. [REDACTED]



## DESIGN CONDITIONS

The following table outlines the design condition of the facility will adhere to

Site Elevation	40 m. ASL
Design Air Temperature Range	-32°C minimum to 40°C maximum
Relative Humidity	0 - 100%
Fuel	In accordance with PROENERGY Fuel Specification
Maximum Wind Velocity	150 km/h
Seismic Category	A
Raw water purity	Assumed well water quality based on the analysis below



Assumed Raw Water Purity Analysis Contract Basis with a continuous volume of 4500 lpm available to support continuous operation:

Minimum Raw Water Criteria	
Parameter	Value
pH	
TDS	
Total Hardness	
Iron	
Silica	
Turbidity	
TSS	
Temperature	
Barium	
Strontium	
Free Chlorine	
SDI	

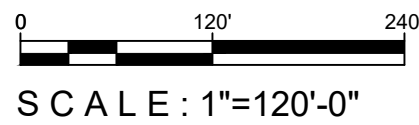
## EXPECTED ACOUSTIC PERFORMANCE

The A-weighted sound pressure level resulting from steady-state operation of each individual equipment package included in the Contractor's scope of supply shall not exceed a spatial average of 85 dBA along the equipment rectangle encompassing the equipment package at a distance of 1 meter from the face and at a height of 1.5 meters above the ground and personnel platforms.

At 400 feet from a single [REDACTED], the far-field noise propagation is estimated to be 62 dBA. This noise level is equivalent to a typical face-to-face conversation.

## Appendix A – Attachment 1 – Facility General Arrangement





REV	NCR/ECRN#	REV DESCRIPTION	DRAFTER	ENGINEER	QA/QC	PROJ. ENGINEER	REV DATE
-	-	ISSUED FOR APPLICATION	H. RUSSELL	-	-	J.VALENZUELA	02/07/2025
REVISION HISTORY							

**PROENERGY**

2001 ProEnergy Blvd | Sedalia, Missouri 65301  
660.829.5100 phone | 660.829.1160 fax  
www.proenergyservices.com

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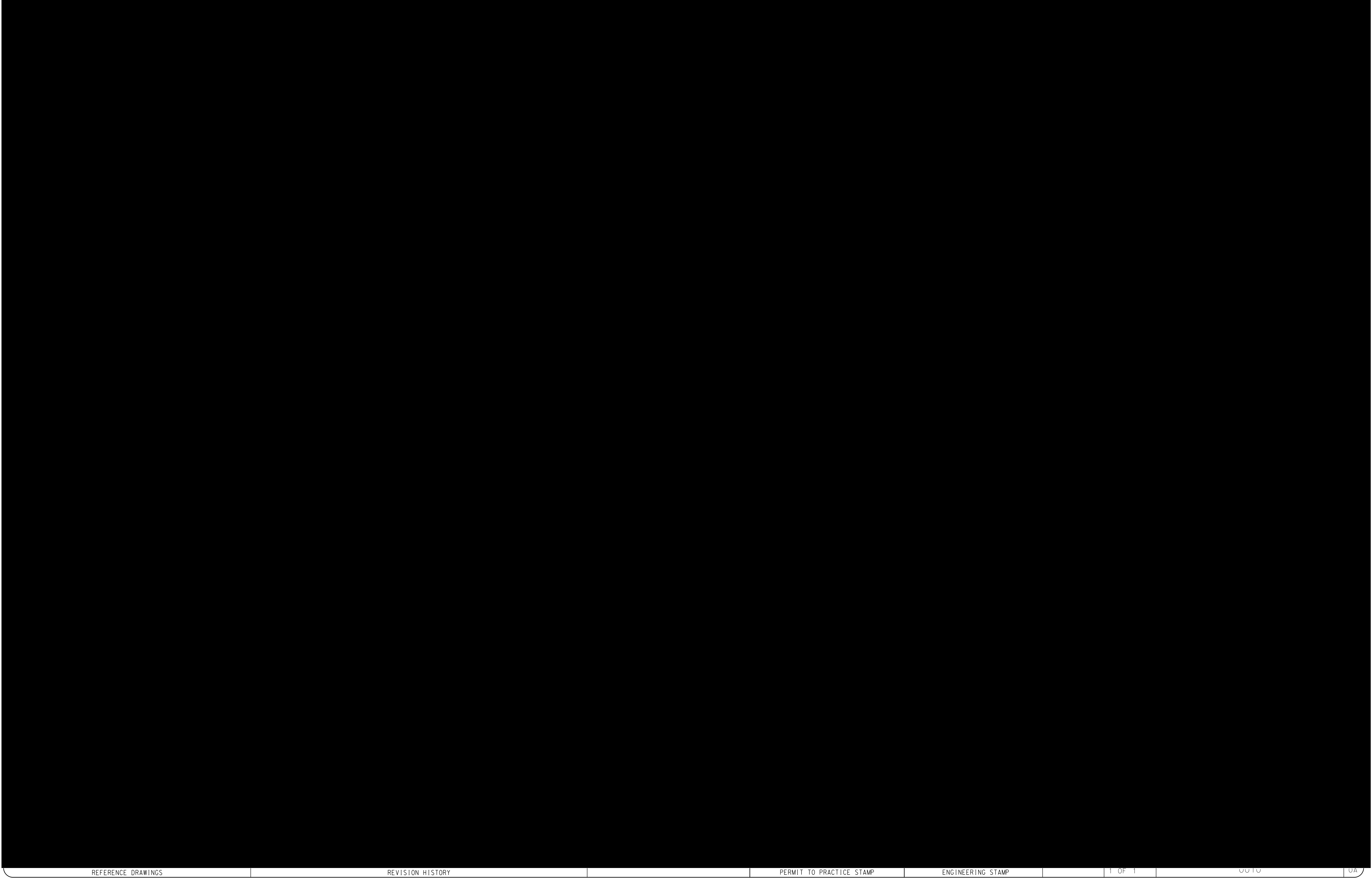
TITLE			
ELMAX GENERATION STATION SITE PLAN			
DRAFTER	ENGINEER	QA/QC	PROJ. ENGINEER
H. RUSSELL	-	-	J. VALENZUELA
PROJECT NAME			CREATE DATE
ELMAX GENERATION STATION			01/14/2025
SIZE	DWG. NO.	SHEET NO.	
D	SKE-GA-001	1 of 1	

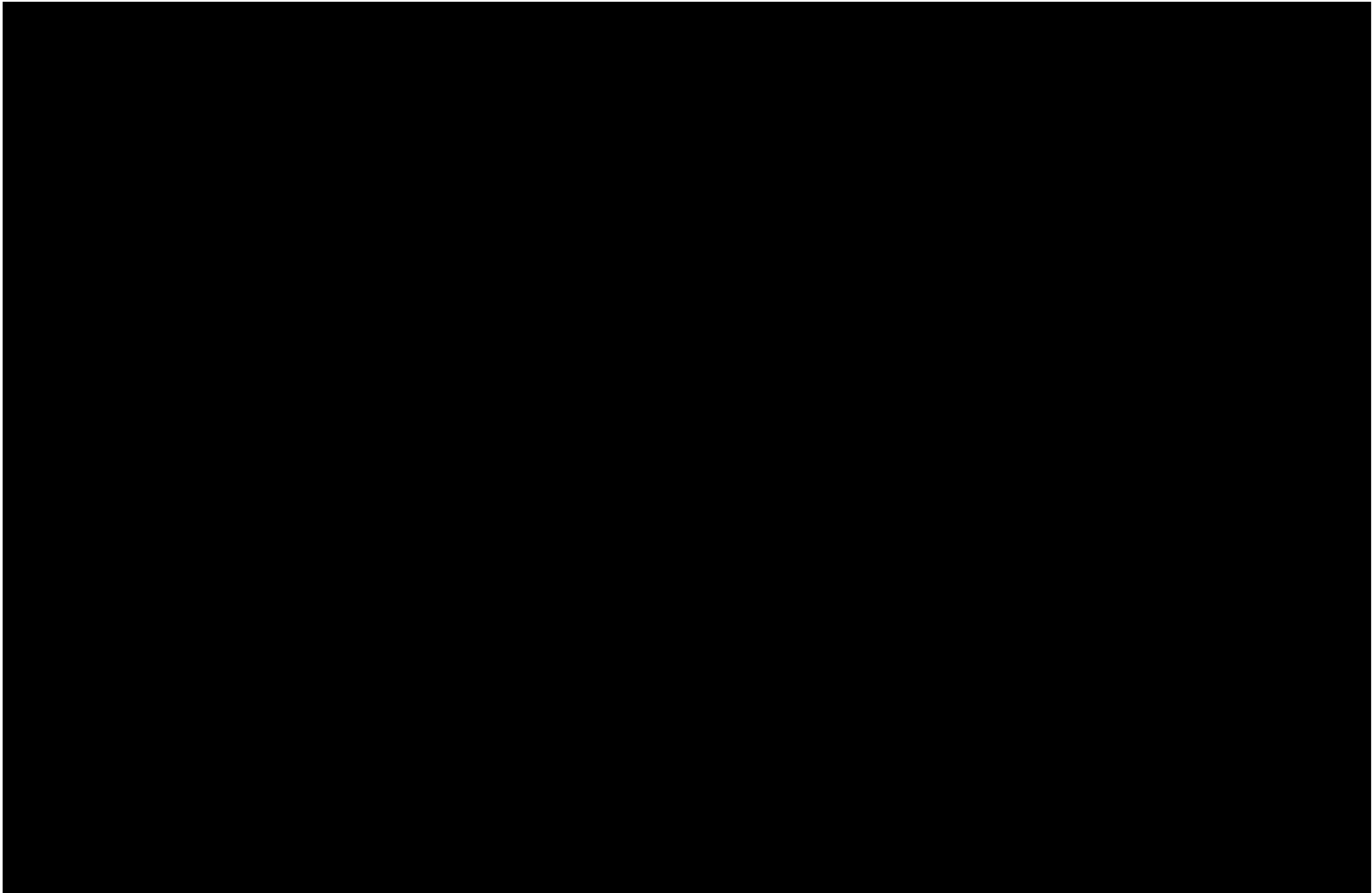




Appendix A – Attachment 2A – Simplified Facility One-Line

Appendix A – Attachment 2B – One-Line Powerblock





## SWITCHYARD SCOPE ASSUMPTIONS & CLARIFICATIONS

### *General*

- The new 138 kV switchyard located at Centre Village shall be interconnected with the present NB Power 138 kV Transmission System and the new generation facility (PowerFLX).
- As defined in the Electricity Act, the new 138 kV Centre Village switchyard is deemed to be a transmission facility. The Act prohibits transmission facility ownership other than NB Power. Prior to placing the Centre Village switchyard into operation, either whole or in part, Seller is to transfer ownership of the switchyard and associated transmission infrastructure to Buyer in a process defined in Buyer's transmission provider Facilities Study.
- Seller is responsible for the engineering, construction and commissioning of the 138 kV switchyard with coordination and oversight by NB Power transmission provider as described in Facilities Study.
- 
- Switchyard civil design basis is 4177 psf.
- The six transmission lines entering the switchyard to be connected by Buyer.
- Utility telecom and line remote end upgrades have not been considered in this scope.
- Switchyard revenue metering is excluded from the scope
- Supply and installation of a Microwave tower and associated tower mounted apparatus are excluded from the scope
- Cable ways are based on a PROENERGY / Rising Edge standard design.
  - The extensive use of cable trenches with cover is not currently included.
- Buyer's standards for switchyard apparatus and equipment have not been provided. This scope is based on Rising Edge's standard design as presented in Attachment 3.
- Generator leads will have redundant line differential protection relays.

The following electrical studies are included in the Switchyard design:

- Short Circuit study – ETAP
- TOV Study – PSCADD
- Insulation Coordination Study – Utilizing the IEEE calculation method
- Lightning Study – Rolling Sphere methodology
- Lighting Study – DIALux
- AC and DC load study including SST, battery and charger sizing
- Ampacity
- Rigid Bus Study
- Arc Flash – AC components, LV, using ETAP
- Protection Coordination – ETAP



- Grounding study - CDEGS

Additional electrical and non-electrical studies to be conducted as necessary to meet Prudent Industry Practices.

All design specifications to be reviewed and approved by Buyer. Scope adjustments after the Effective Date shall be eligible for a change in Seller's price and/or schedule as described herein. Design and specifications review process shall be further defined in the Facilities Study.

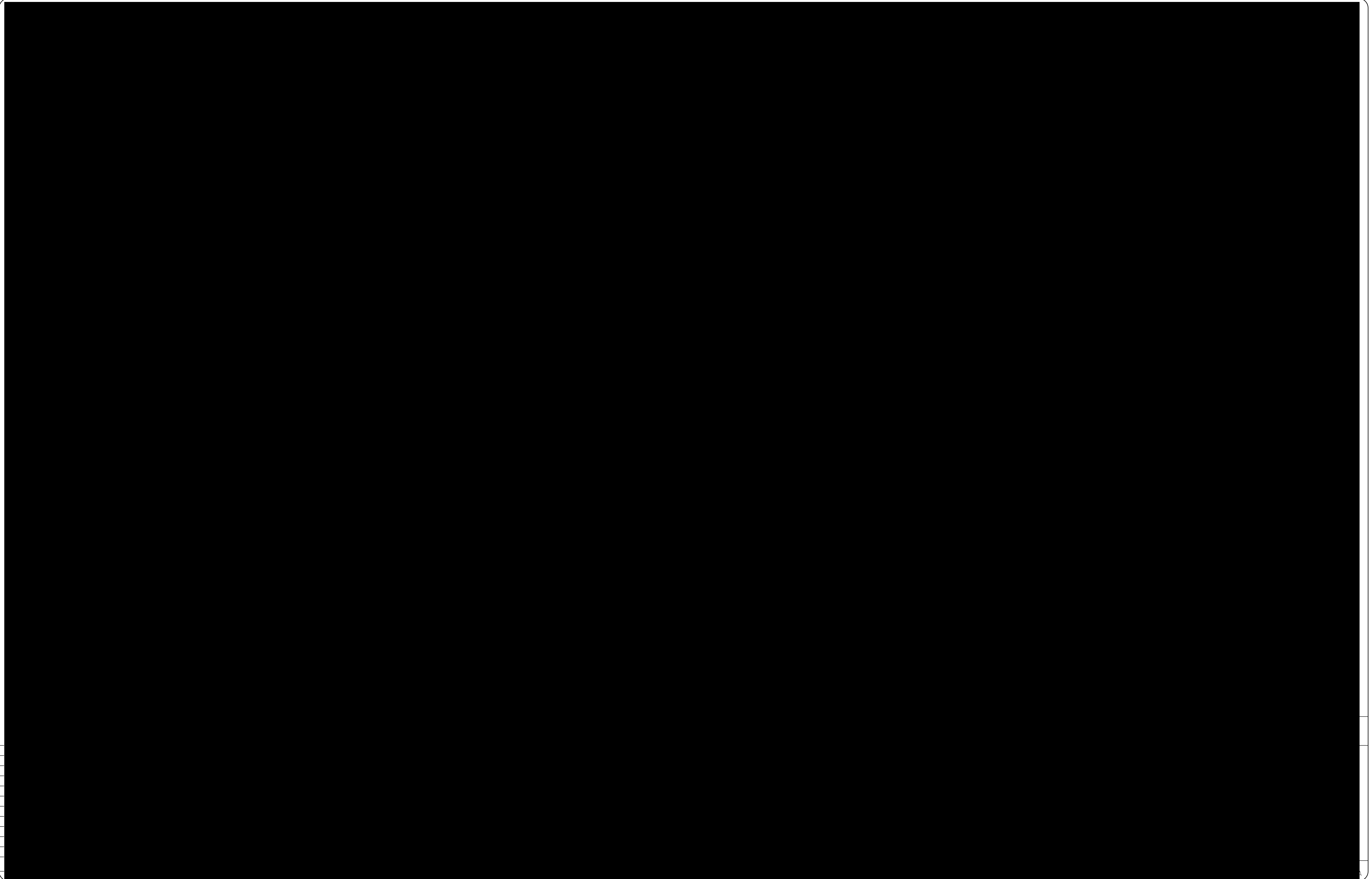
The parties acknowledge the following aspects of the design will be addressed during a workshop, and subsequent reviews, following the Effective Date. Seller will use commercially reasonable efforts to define potential costs (increases or decreases as the case may be), provide a timely response as to any potential cost and schedule impacts to accommodate the following changes and any other reasonable requests by Buyer:

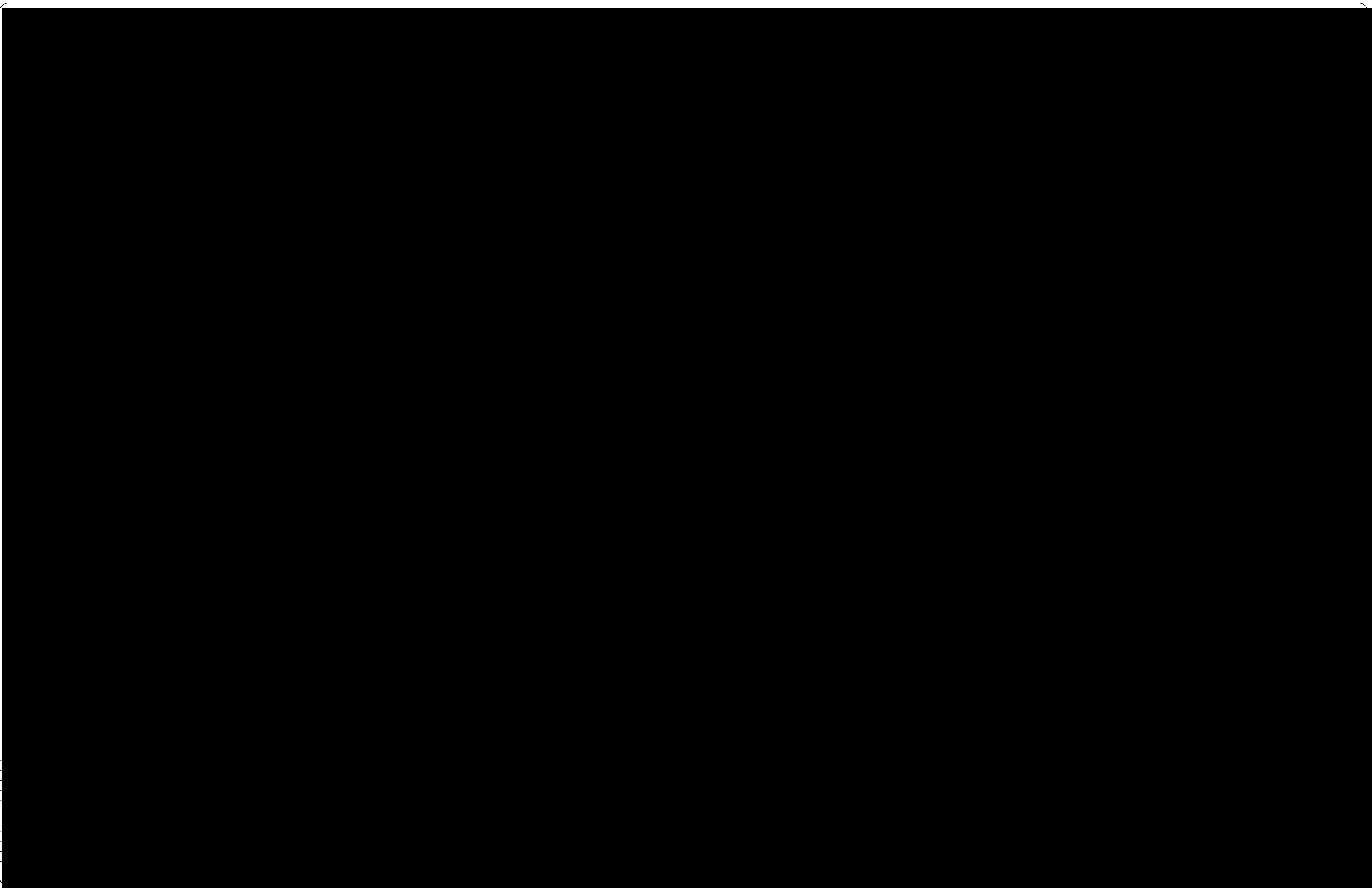
- Installation of switchyard Utility telecom equipment (where equipment is supplied by NBP)
- Installation of Switchyard located Generation revenue metering (where NBP will supply metering equipment and associated communications).
- Buried cable raceways, with additional trench and covers (beyond what's shown in Attachment 3) to optimize NB Power's vehicle accessibility.
- Adjustments to the protection and controls scheme from the preliminary baseline shown in Attachment 3.
- Remedial action schemes impacting switchyard protection.
- Selection of Apparatus/material.
- Any resulting impacts of the Facilities Study which deviates from the scope and schedule requirements defined in this Agreement.
  - Jointly establish a Switchyard turnover process including engineering oversight, quality assurance, testing, and documentation. The Buyer must use commercially reasonable efforts to prioritize and expedite the process, ensuring timely transfer of ownership and responsibility.

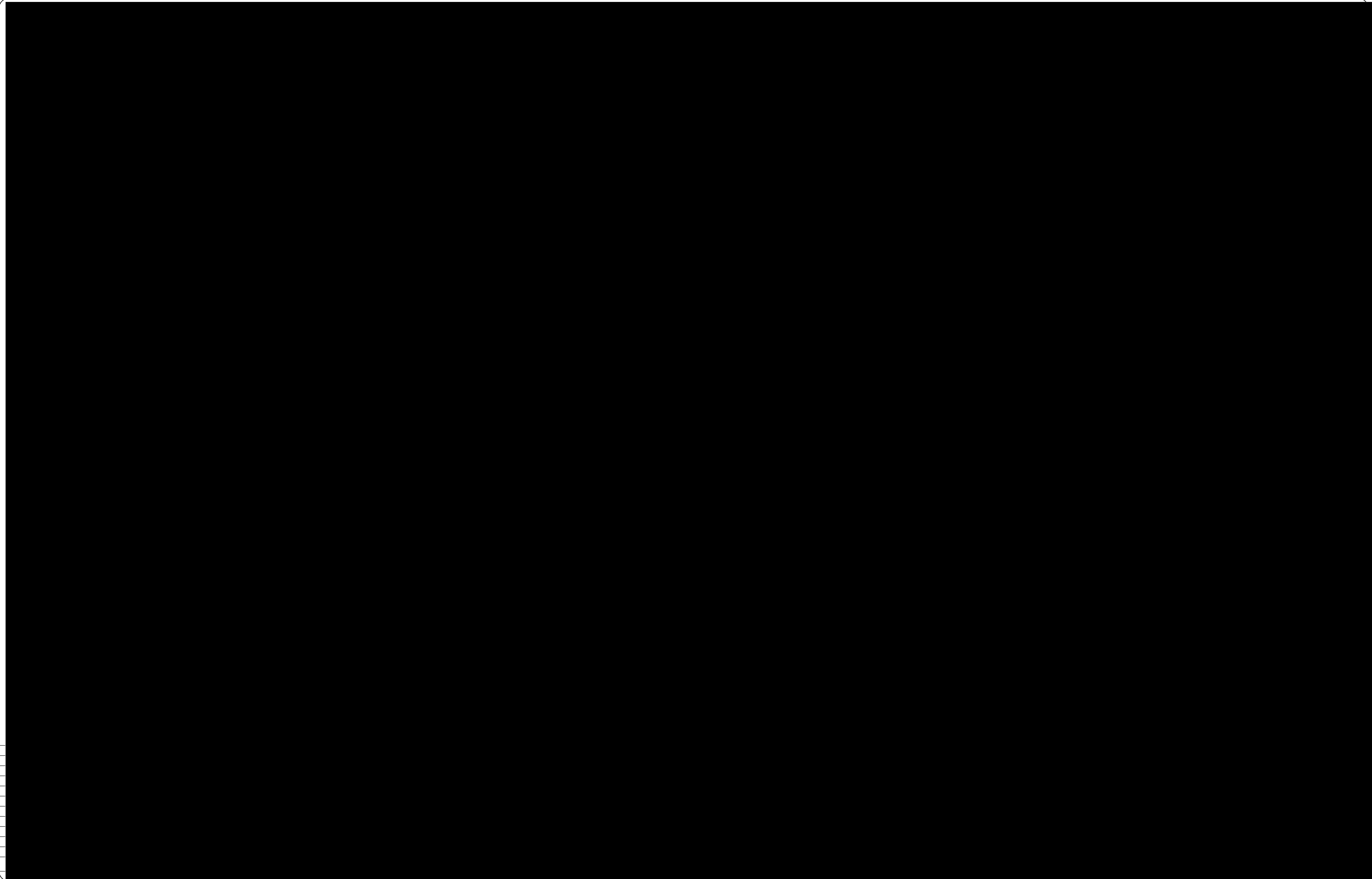
#### Appendix A – Attachment 3 – Switchyard Drawings and Details

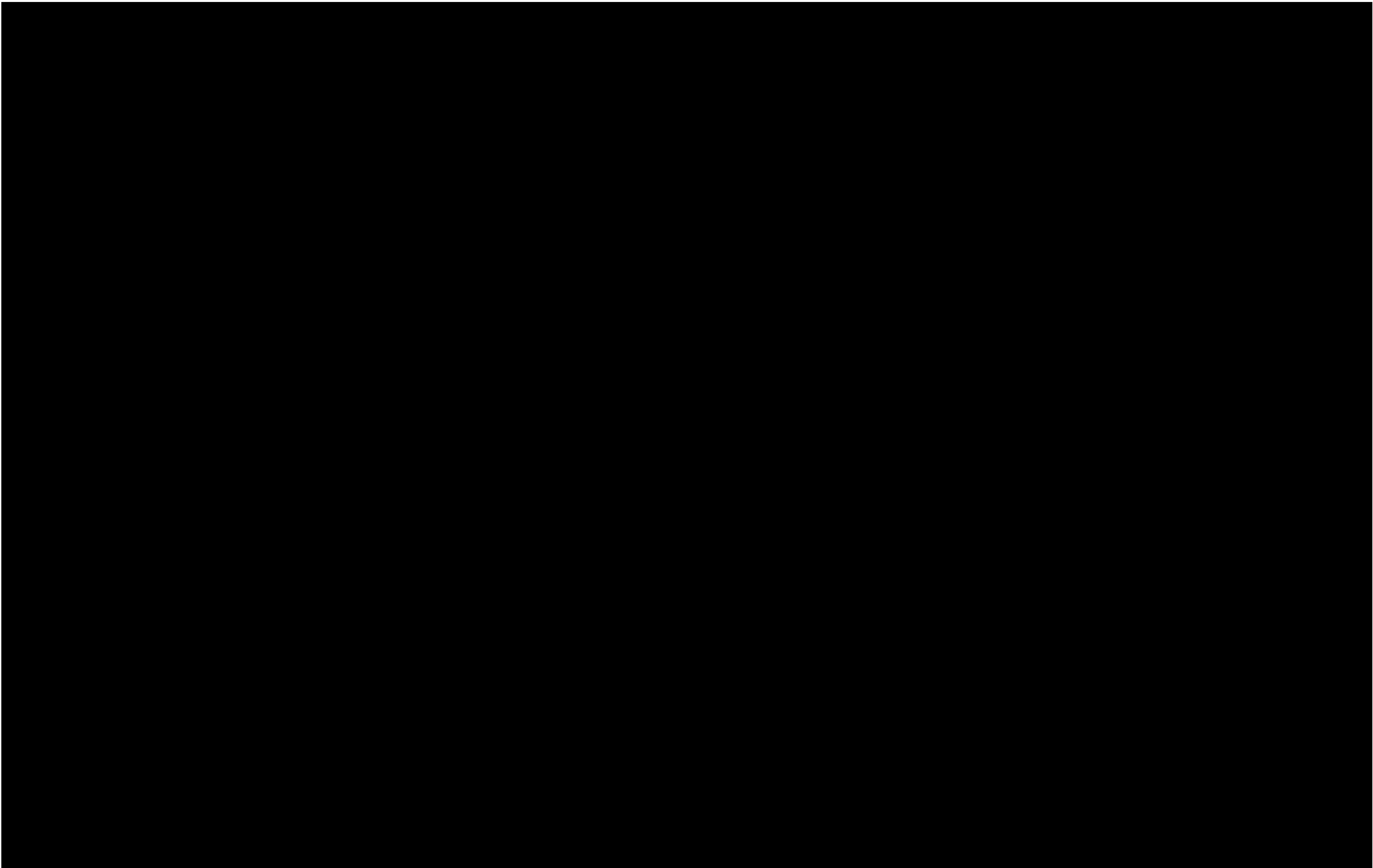
Attachment 3 includes:

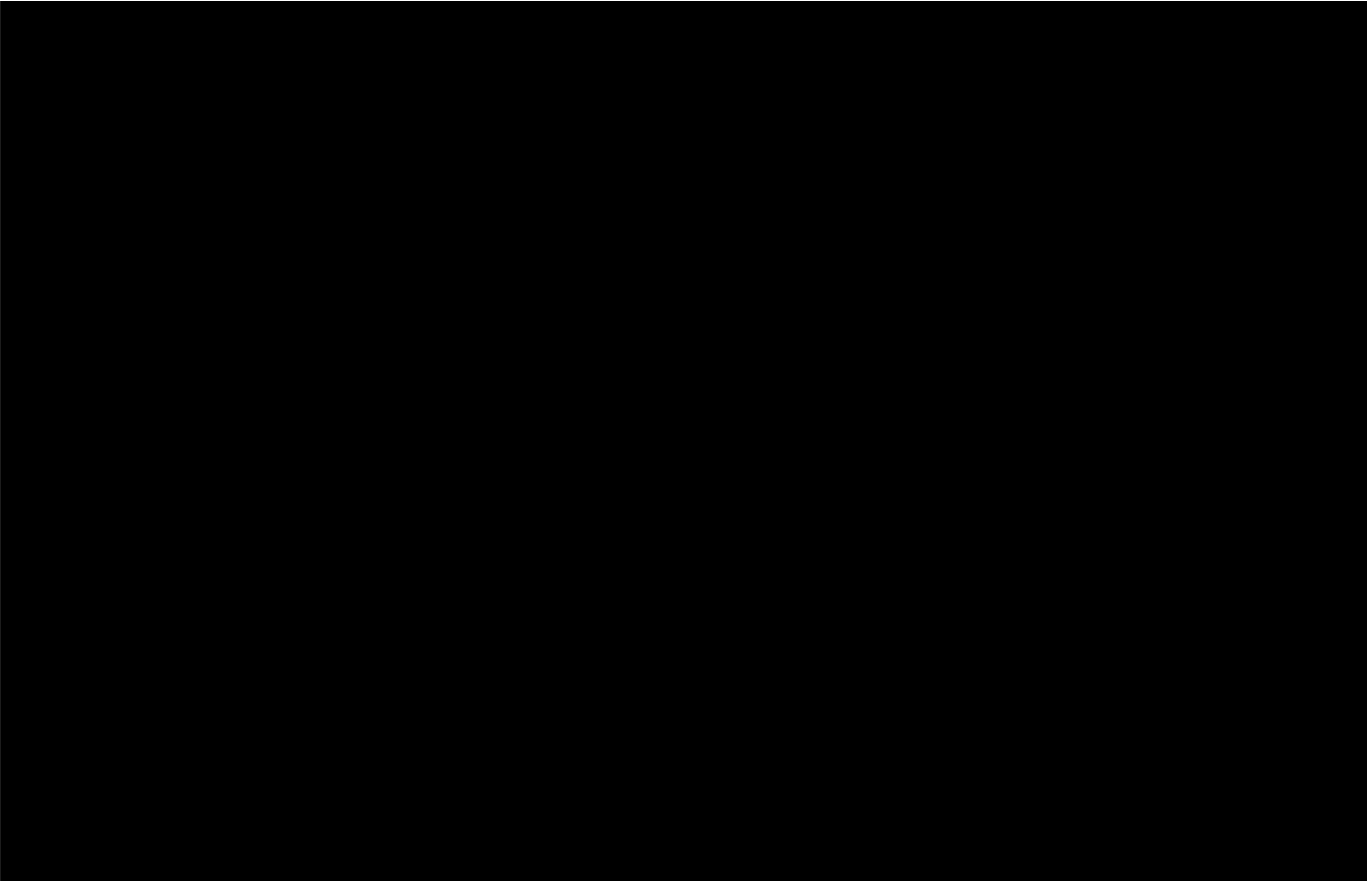
- 138kV Switching Station Single Line
- Station Service single line concept
- 138kV Switching Station General Arrangement
- Typical Profile View
- Preliminary Single line Protection Diagram (2 pages)
- Preliminary E-house Hardware Scope
- Typical E-House Images (2 pages)
- Typical cable tray image
- Trench vs Tray Sketch

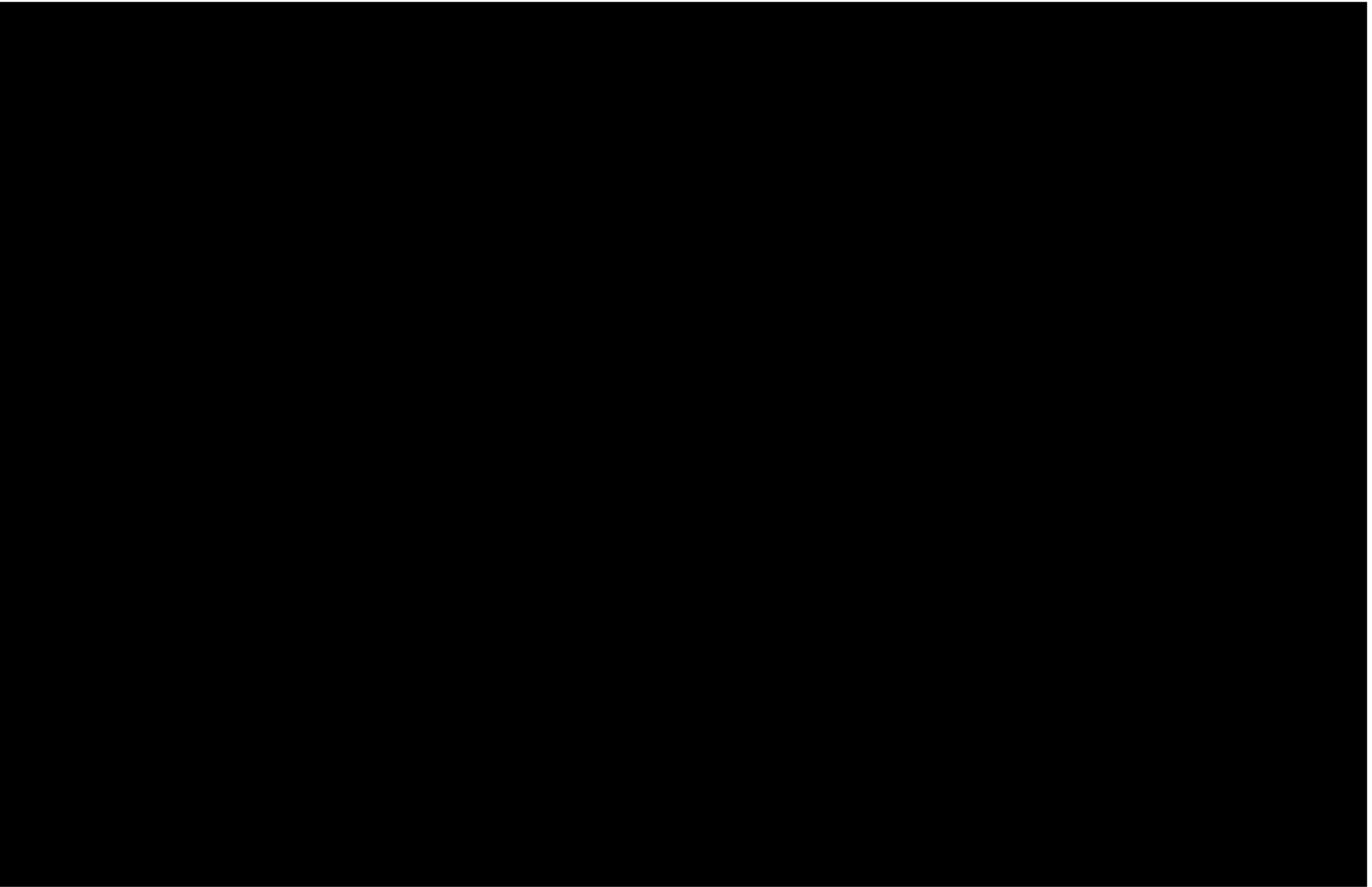


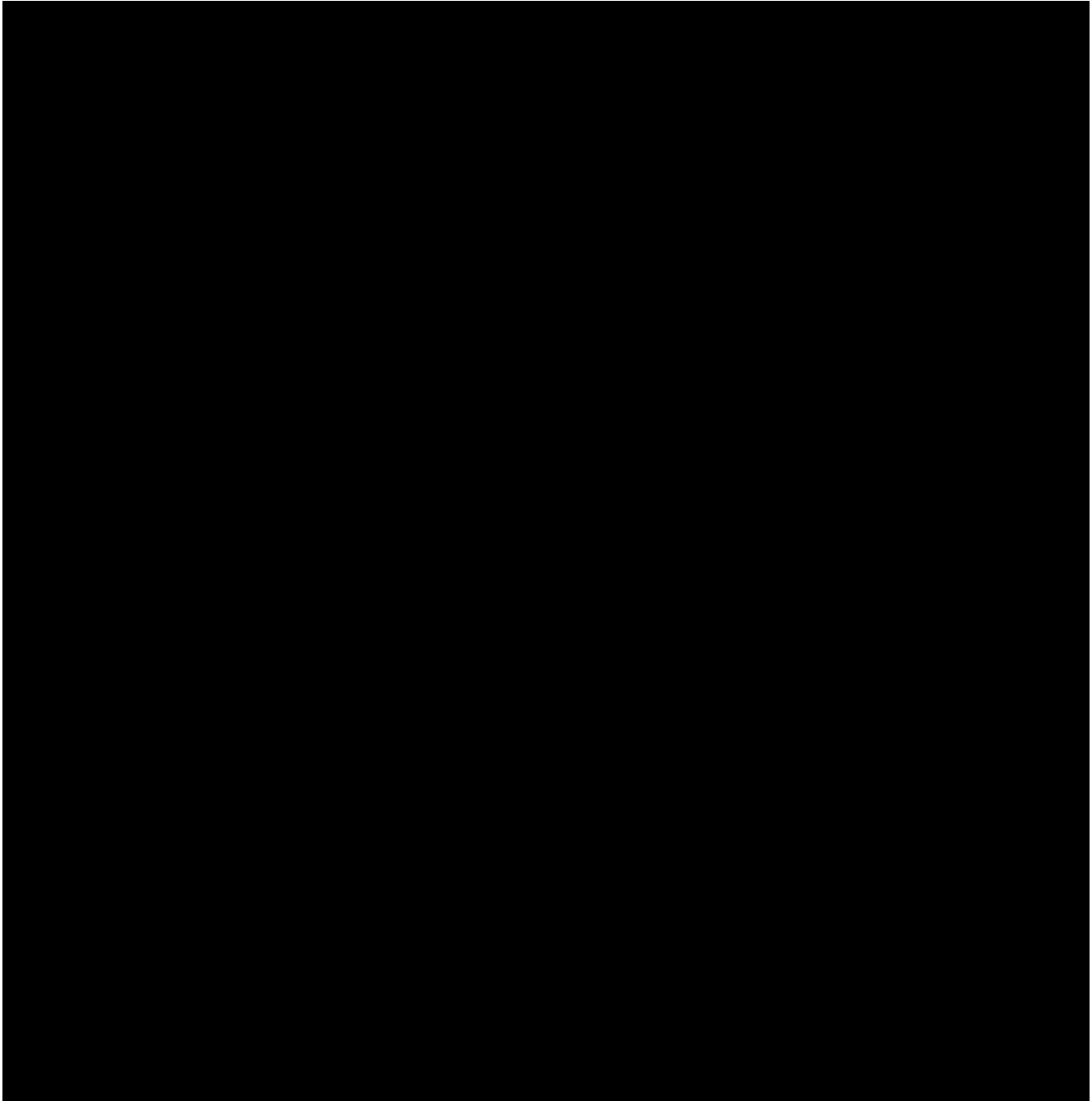












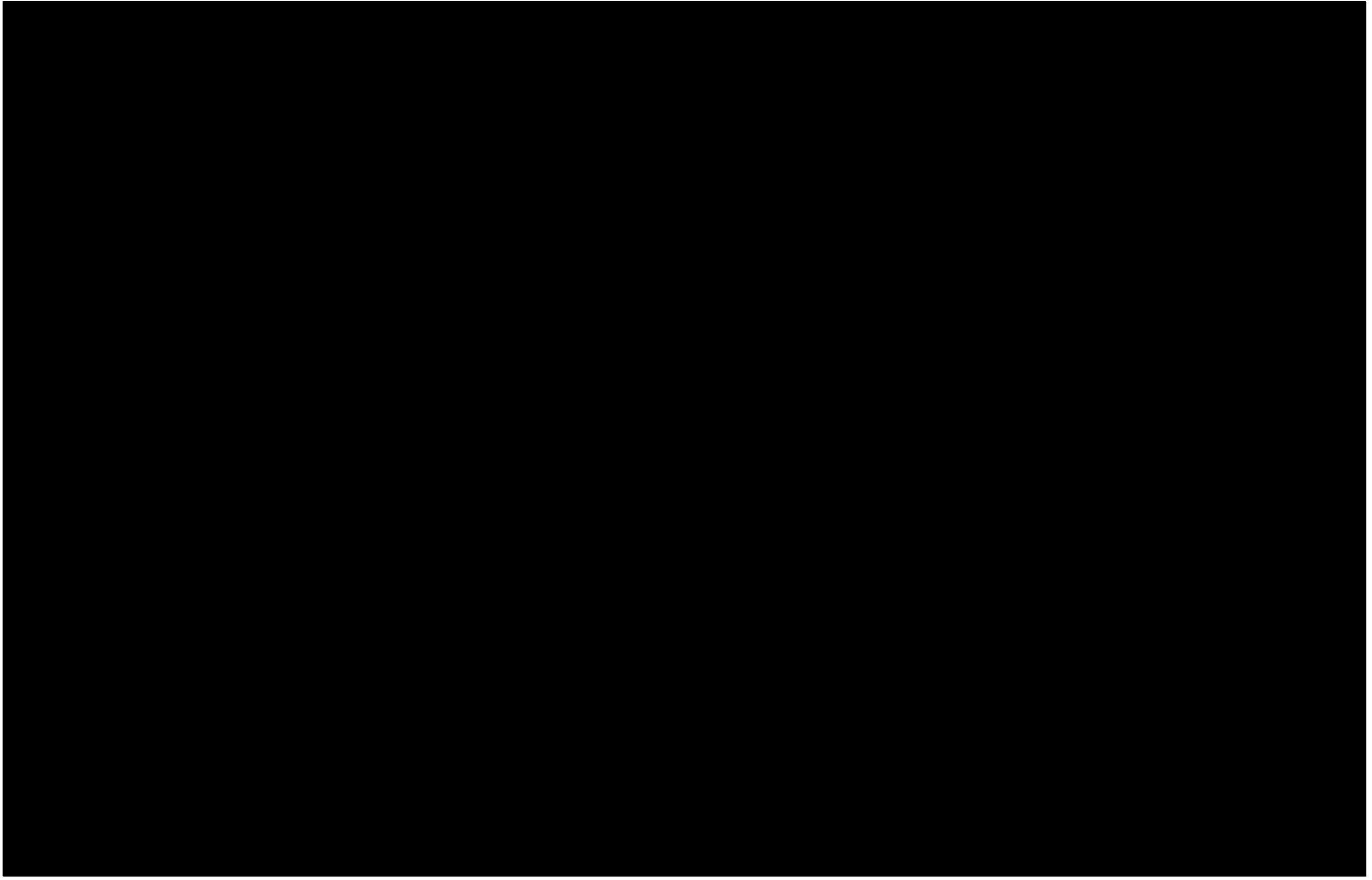














## APPENDIX B PERMITS

### NTP Permits

#### Section I

Under Section I of this Appendix B, NTP Permits shall include the following:

<u><i>Timing Deadline</i></u>	<u><i>Applicant</i></u>	<u><i>Permitee</i></u>	<u><i>Jurisdiction</i></u>	<u><i>Permit</i></u>
Financial Close	Seller	Seller	Federal	Impact Assessment Agency of Canada (IAAC) Screening Decision
Financial Close	Seller	Seller	Federal	Fisheries Act authorization
Financial Close	Seller	Seller	Federal	Land Use Approval (NAV Canada)
Financial Close	Seller	Seller	Provincial	EIA Decision (Certificate of Determination, complete with conditions)
Financial Close	Seller	Seller	Provincial	Watercourse and Wetland Alteration (WAWA) Permit
Financial Close	Seller	Seller	Provincial	Air Quality Permit (approval to construct)
Financial Close	Seller	Seller	Provincial	Water Quality Permit (approval to construct)
Financial Close	Seller	Seller	Provincial	Water Supply Approval (required if exceeding 50cubic meters/day)
Financial Close	Buyer	Seller	Provincial	Single End Use Franchise
Financial Close	Buyer	Seller	Provincial	Access Permit ( <i>Highway Act</i> )
Financial Close	Seller	Seller	Provincial	Archaeological Research Permit
Financial Close	-Buyer	N/A	Municipal	Rezoning

#### Section II

Under Section II of Appendix B, NTP Permits shall include the following:

<u><i>Timing Deadline</i></u>	<u><i>Applicant</i></u>	<u><i>Permitee</i></u>	<u><i>Jurisdiction</i></u>	<u><i>Permit</i></u>
Pre Commercial Operation Date	Seller	Seller	Provincial	Topsoil permit
Pre Commercial Operation Date	Seller	Seller	Provincial	Petroleum Storage Site Licence
Pre Commercial Operation Date	Buyer	Buyer	Provincial	Permit to Construct / Permit to Operate Pipeline
Pre Commercial Operation Date	Seller	Seller	Provincial	Damage and Danger Permit under Migratory Birds Convention Act for pileated or SARA bird species nest removals
Pre Commercial Operation Date	Seller	Seller	Provincial	Building Permit (Civil, Stormwater, Site Layout)

Pre Commercial Operation Date	Seller	Seller	Provincial	Air Quality Permit (approval to operate)
Pre Commercial Operation Date	Seller	Seller	Provincial	Water Quality Permit (approval to operate)
Pre Commercial Operation Date	Seller	Seller	Municipal	Development Permit

## APPENDIX C CAPACITY PAYMENT CALCULATION

**1. Initial Designated Capacity.** The Initial Designated Capacity shall be established by Seller through either: (a) conducting an initial Performance Test which shall be corrected for test conditions in accordance with Appendix H based on the then current Season or (b) providing Buyer with Unit performance records and data sufficient to demonstrate, to Buyer's reasonable satisfaction, that the Units are capable of producing such Designated Capacity on a consistent, reliable basis (e.g., historical Hourly generation data for each Unit in accordance with the requirements of a Performance Test). The Parties shall equally share the cost of such initial Performance Test. Seller may, at its own cost and expense including Fuel costs, re-test the Facility prior to the Commercial Operation Date in accordance with Appendix H. Notwithstanding the foregoing, in the case of Provisional COD where a Performance Test cannot be completed using Natural Gas as the only fuel, the Initial Designated Capacity shall be the Contracted Capacity. The Initial Designated Capacity, based on the then current Season, shall be confirmed by Seller via notice to Buyer in writing prior to the Commercial Operation Date (or any Early Commercial Operation Date or Provisional COD, as applicable), and that Initial Designated Capacity shall form the basis for the Designated Capacity and Tested Reliable Capacity of that Season.

**2. Tested Reliable Capacity and Designated Capacity.**

(a) In subsequent Seasons throughout the Delivery Period, a Performance Test may be requested by either Party, once for each Summer Season and once for each Winter Season on a Day that is mutually agreed by Seller and Buyer. Upon written notice to the other Party, either Party may request no more than one (1) re-test following each such Performance Test. No Performance Test may be scheduled during any period of a Scheduled Outage, Maintenance Outage, Force Majeure Event, Forced Outage, Forced Derate, Gas Supply Event, Fuel Oil Supply Event or Transmission Event.

(b) The Tested Reliable Capacity determined as a result of a Performance Test (or a re-test of a Performance Test, as applicable) in accordance with Appendix H shall become the then-current Tested Reliable Capacity, and the Designated Capacity shall be adjusted accordingly at the beginning of the next Summer Season during the Delivery Period, if such Performance Test was conducted during a Summer Season, or the next Winter Season during the Delivery Period, if such Performance Test was conducted during a Winter Season. Upon establishing a new Designated Capacity, Seller shall provide the associated and anticipated net output and net heat rate for various ambient conditions for the applicable Season (the "Designated Capacity Performance Curves").

(c) The Parties shall equally share the cost of the first seasonal Performance Test conducted during a Summer Season or Winter Season following the Commercial Operation Date (or an Early Commercial Operation Date or Provisional COD, as applicable). The Party requesting a re-test of a Performance Test shall bear the costs and expenses (including any Fuel costs and losses resulting from the sale of Test Energy at prices that are below the costs of production) of such Performance Test; provided, however, Seller shall bear such costs and expenses (including Fuel costs and any losses resulting from the sale of Test Energy at prices that are below the costs of production) for any re-test of a Performance Test requested by Buyer if the Tested Reliable Capacity (as a result of such Performance Test) is determined to be less than the Designated

Capacity in effect immediately prior to such Performance Test; provided, further, that if the Performance Test is conducted during one or more hours for which Buyer Scheduled the production of Energy pursuant to the Agreement, then Buyer shall be responsible for any Fuel costs and losses resulting from such Performance Test, and title and risk of loss to any Energy produced during such Performance Test shall transfer to Buyer in accordance with Section 12.5.

(d) If despite Seller's commercially reasonable efforts, a Performance Test cannot be completed during a Summer Season or Winter Season, as applicable, to determine the Tested Reliable Capacity for the next Summer Season or Winter Season pursuant to the foregoing, such Performance Test shall be completed as soon as reasonably practicable after such Summer Season or Winter Season, with the Tested Reliable Capacity to be temperature corrected to determine the Designated Capacity for such next Summer Season or Winter Season.

### **3. Capacity Pricing; Monthly Capacity Payment.**

(a) Subject to section 3(b) of this Appendix C, the "Monthly Capacity Charge" for each Month of the Delivery Period:

(i) [REDACTED]

(ii) [REDACTED]

(iii) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

The Monthly Capacity Charge set out in paragraph 3(a)(i) above shall be escalated by [REDACTED] beginning on the first anniversary of the Commercial Operation Date (or Provisional COD) and on each subsequent anniversary of the Commercial Operation Date.



(b)

(c) For each Month of the Delivery Period following the Commercial Operation Date (or any Early Commercial Operation Date or Provision COD, as applicable), subject to the provisions of the Agreement including any adjustment pursuant to this Appendix C, the monthly capacity payment shall equal the product of the Designated Capacity multiplied by the Monthly Capacity Charge (“Monthly Capacity Payment”), except for a Month where the Average Monthly Capacity exceeds the Designated Capacity, and for such Month, the Monthly Capacity Payment shall be calculated as follows:  $[(\text{Average Monthly Capacity} + \text{Designated Capacity}) / 2]$  multiplied by the Monthly Capacity Charge. In the event that Buyer’s obligation to purchase Designated Capacity begins on a Day other than the first Day of a Month or ends on a Day other than the last Day of a Month, the calculation of the Monthly Capacity Payment, Monthly Availability Adjustment, and Monthly Heat Rate Adjustment, as appropriate, shall be determined on a *pro rata* basis. In the event that the Monthly Capacity Payment for a Month during the Delivery Period, as adjusted pursuant to this Appendix C, is a negative number, the Monthly Capacity Payment for such Month shall be deemed to equal [REDACTED]

4. *[intentionally deleted]*

**5. Availability Percentage.**

Seller guarantees a minimum Availability Percentage (“AP”) of [REDACTED] (the “Guaranteed Availability Percentage”).

The AP shall be computed as follows based on the number of Hours scheduled by Buyer (and shall not include any hours in which Buyer elects not to or fails to schedule Energy for any reason, including as a result of permitting limitations related to the Facility or any expansion thereof), rounded to the nearest one-tenth of one percent on a twelve (12) Month rolling basis; provided, however, until twelve (12) Months have elapsed since the Commercial Operation Date (or Provisional COD), the Parties shall assume that, with respect to each Month that has not yet occurred, MWh Available equals Annual MWh:

$$\text{AP} = \text{MWh Available} / \text{Annual MWh}$$

Where:

“MWh Available” = the sum, with respect to the applicable twelve (12)-Month period, of (A) all net Energy delivered to Buyer from the Facility in accordance with the Agreement during the Hours that Buyer has Scheduled such Energy, plus (B) all other MWh that were Available from

the Units but that Seller was not required to deliver Energy. The amount in (B) shall be based on the Designated Capacity (adjusted seasonally).

“Annual MWh” = the sum of the Monthly MWh for each Month during such twelve (12)-Month period.

“Monthly MWh” = for a Month during the applicable twelve (12)-Month period, the product of (A) the Designated Capacity for such Month (adjusted seasonally), multiplied by (B) the total number of Hours in such Month excluding Hours in such Month during which Seller could not deliver Energy or was not required to deliver Energy, whether due to, without duplication, any Scheduled Outage, Maintenance Outage, Force Majeure Event, Gas Supply Event, Fuel Oil Supply Event, or Transmission Event, or insufficient volume of raw water as per Section 11.3.

## **6. Procedure for Determining Monthly Availability Adjustment.**

At the conclusion of each Month, the AP shall be calculated in accordance with paragraph 5 above. If applicable, the Monthly Capacity Charge shall be adjusted pursuant to this paragraph 6 (the “Monthly Availability Adjustment”).

If the AP is determined to be less than the Guaranteed Availability Percentage, the Parties agree to recalculate the AP for the month using an adjustment for the calculation of the MWh Available based on real time ambient conditions in accordance with the Designated Capacity Performance Curves provided upon establishment of the latest Designated Capacity. Following such adjustment, if the AP for the month remains less than the Guaranteed Availability Percentage, then the Monthly Capacity Charge shall be reduced for the subsequent Month by [REDACTED] for each percentage (or partial percentage) that results from subtracting the AP (as recalculated in accordance with this paragraph) from the Guaranteed Availability Percentage, rounded to the nearest two (2) decimal places. For example, where the AP (as recalculated in accordance with this paragraph) is [REDACTED], the Monthly Capacity Charge will be reduced by [REDACTED].

## **7. Heat Rate Adjustment**

If the Corrected Heat Rate Value of the Facility, determined during any Performance Test, is higher than the Guaranteed Summer Heat Rate or Guaranteed Winter Heat Rate, as applicable, by more than the Guaranteed Heat Rate Dead Band of [REDACTED], then for each day during the Delivery Period until Performance Testing pursuant to Appendix H demonstrates a Corrected Heat Rate Value equal to or lower than the Guaranteed Heat Rate, a “Daily Heat Rate Adjustment” shall be computed as follows:

Daily Heat Rate Adjustment = (((Corrected Heat Rate Value) - (Guaranteed Heat Rate \* [REDACTED])) \* (Delivered Energy for the applicable day) \*(Gas Index)) / 1,000.

For the sake of establishing a Corrected Heat Rate Value, Seller may conduct more than one re-test per Season, at Seller’s cost, and results of the Corrected Heat Rate Value shall come into effect immediately upon Buyer’s acceptance of the test result.

Where:

“Corrected Heat Rate Value” shall mean the heat rate (in MMBtu/kWh) determined by a Performance Test pursuant to the Performance Testing Procedures, which heat rate shall be determined based on fully loaded operation using Natural Gas as the only Fuel.

“Guaranteed Summer Heat Rate” means [REDACTED] MMBtu/MWh.

“Guaranteed Winter Heat Rate” means [REDACTED] MMBtu/MWh.

“Delivered Energy” means Energy from the Facility that has been delivered to the Interconnection Point in accordance with the Agreement.

“Gas Index” means the Portland Natural Gas Transmission System (PNGTS), delivered next day natural gas index (IGBZZ21) published by the S&P Global Platts.

The Monthly Heat Rate Adjustment for a given Month during the Delivery Period shall be the sum of the Daily Heat Rate Adjustment for each day during such Month.

## **8. Procedure for Determining Heat Rate Adjustment**

At the conclusion of each Month, a Monthly Heat Rate Adjustment shall be calculated in accordance with paragraph 7 above. If the Monthly Heat Rate Adjustment is greater than \$ [REDACTED] for such Month, the Monthly Capacity Charge shall be reduced by the Monthly Heat Rate Adjustment. If the Monthly Heat Rate Adjustment is less than \$ [REDACTED], the Monthly Heat Rate Adjustment shall be deemed to be \$ [REDACTED].

## APPENDIX D

### VARIABLE O&M PAYMENT CALCULATION

The “Variable O&M Rate” shall be (1) \$ [REDACTED] per fired hour for each Unit online during all hours in which Buyer dispatched one or more Units to generate Energy (irrespective of the Fuel used to generate such Energy) plus an additional \$ [REDACTED] per fired hour for each Unit online during all hours in which Buyer dispatched one or more Units to generate Energy using Fuel Oil, or (2) \$ [REDACTED] per Unit per hour per applicable Unit for all hours in which Buyer directed one or more Units to operate in Synchronous Condenser Mode without generating Energy and in which such Unit(s) so operated in Synchronous Condenser Mode; and in each of the foregoing cases (1) and (2), the Variable O&M Rate shall escalate on January 1<sup>st</sup> of each Annual Period starting on January 1, [REDACTED] by [REDACTED] % per annum.

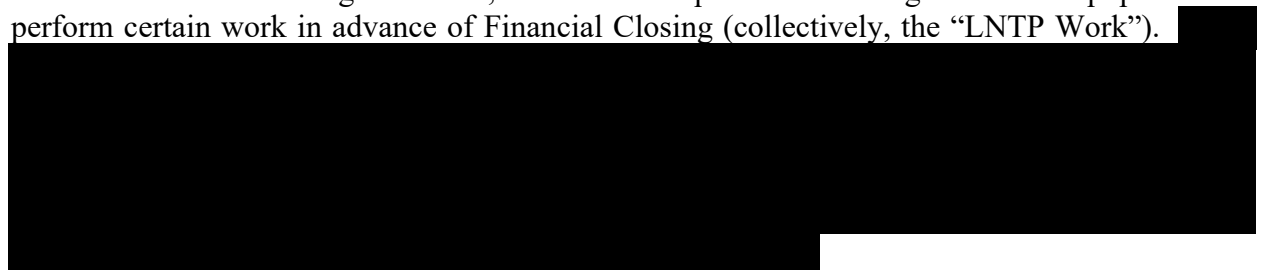
The “Hourly Variable O&M Payment” shall be as follows for each hour during a Month: (1) if Buyer dispatched one or more Units to generate Energy during such hour, the Variable O&M Rate multiplied by the number of fired hours (including partial fired hours) by the applicable number of units generating Energy; (2) if Buyer directed one or more Units to operate in Synchronous Condenser Mode, the Variable O&M Rate multiplied by the applicable number of Units that operated in Synchronous Condenser Mode multiplied by the number of hours; and (3) for all other hours, [REDACTED]. For greater certainty, in the event that Buyer directed one or more Units to operate in Synchronous Condenser Mode and no such Unit was available to operate in Synchronous Condenser Mode, an available Unit that was not otherwise dispatched by Buyer to generate Energy during such hour may operate for the purposes of providing voltage support to the System Operator and in such case the Variable O&M Rate in respect of such Unit shall be \$ [REDACTED] for such hour(s).

The “Monthly Variable O&M Payment” for each Month shall be calculated as the sum of the Hourly Variable O&M Payment for each hour of such Month during the Delivery Period. In the event that Buyer’s obligation to purchase Designated Capacity begins on a Day other than the first Day of a Month, the calculation of the Variable O&M Payment shall be determined on a *pro rata* basis.

## **APPENDIX E**

### **LNTP**

In order to meet the Targeted COD, Seller will acquire certain long-lead-time equipment and perform certain work in advance of Financial Closing (collectively, the “LNTP Work”).



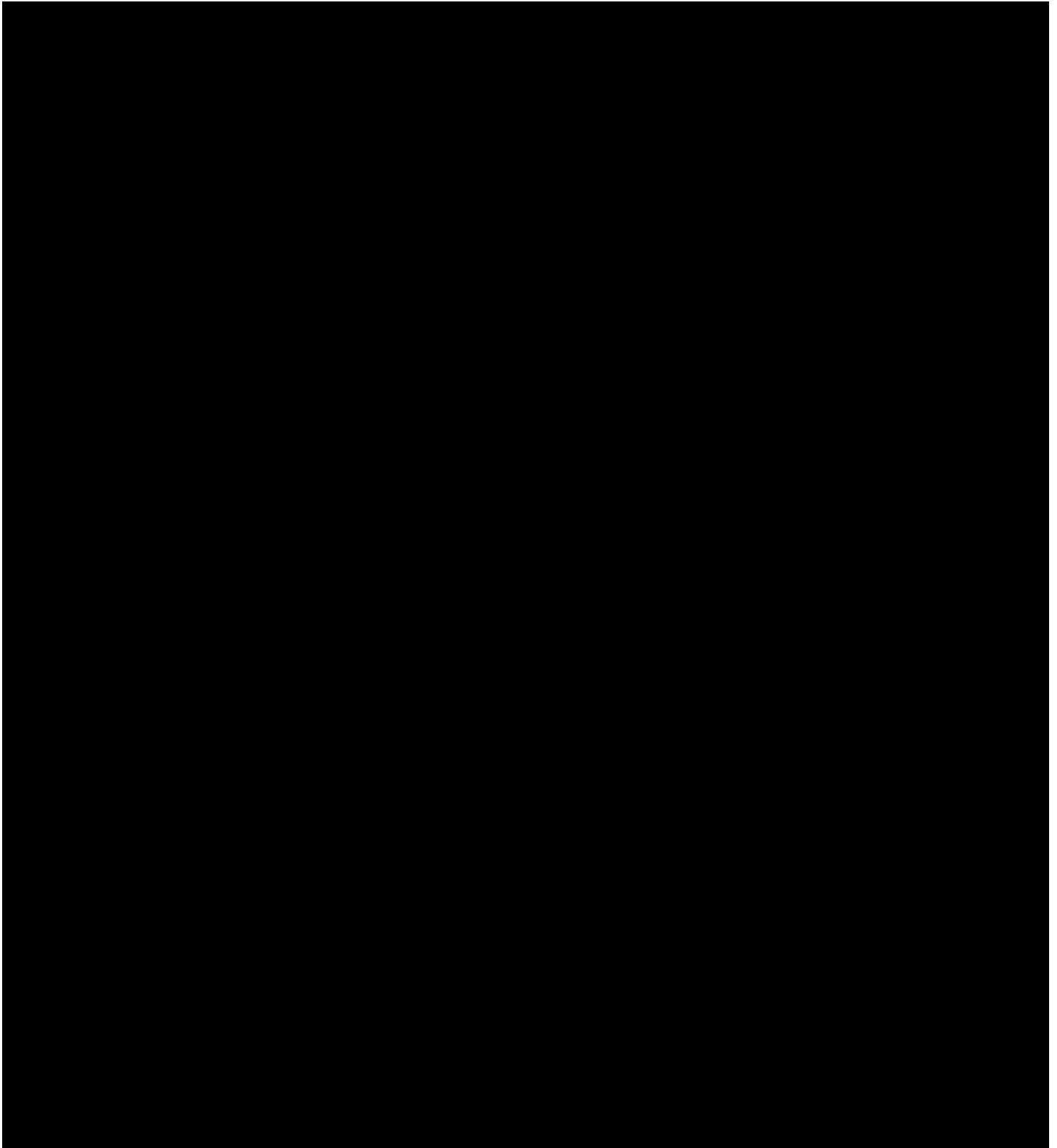
Seller shall notify Buyer prior to terminating any contracts or subcontracts in respect of the LNTP Work. Following Seller’s notification of its intent to terminate any such contracts or subcontracts, Buyer shall have the option, in Buyer’s sole and absolute discretion, to take assignment of such contracts or subcontracts on the same terms and conditions in lieu of termination of any or all such contracts or subcontracts, and in the event that a contract or subcontract is not assignable, Seller shall transfer title upon the conclusion of that contract or subcontract. For clarity, Buyer has no obligation to take the assignment of any or all such contracts or subcontracts in respect of the LNTP Work, but for certainty, Buyer not taking assignment of any or all such contracts or

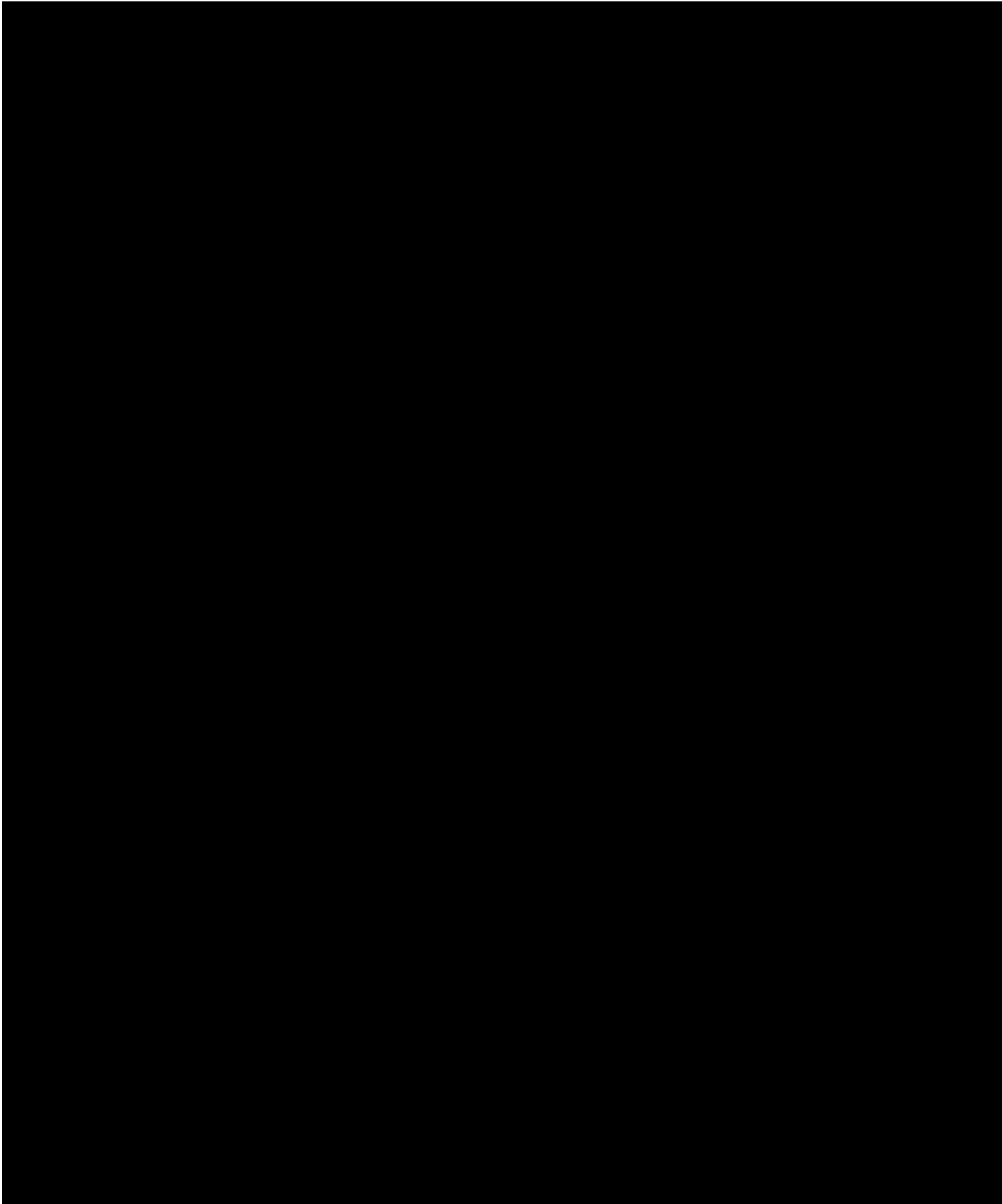
subcontracts [REDACTED]  
[REDACTED]

Buy-back options:

[REDACTED] Where indicated, Buyer will have title, free and clear of all liens, security interests, hypothecs, and other encumbrances, to each piece of equipment as indicated, ExWorks, upon their ready to ship date. In the event of an early termination of the Agreement, Seller shall use commercially reasonable efforts to assign the equipment to another project and if successful, and upon mutual agreement between the Parties, Seller may buy back the equipment from Buyer for the amount listed in Table 1 under the “Buyback Amount” column, or such other amount as the Parties may agree.

Table 1 - [REDACTED]










## APPENDIX F FUEL OIL SPECIFICATIONS

	Engineering Specification	
	Document Title:  Liquid Fuel Specification for Aero derivative Engines	
Document No: ENG-ES-00003	Revision: 00	Date: 16 July 2019

### Table of Contents

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## 1 SCOPE

This engineering specification lists requirements and guidelines for liquid fuels that may be used in aeroderivative gas turbine engines. Complete analyses of all liquid fuels proposed for a site shall be reviewed by ProEnergy prior to use.

## 2 FUEL SPECIFICATIONS

Fuels conforming to the following military and industry specifications are acceptable for use in [REDACTED] in industrial and shipboard applications, except as noted below, and provided they also meet the additional criteria described in 2.0. However, their use should be reviewed against applicable safety and regulatory requirements.

**D50TF2** - GEAE Aviation Fuel Specification

**ISO 8217** - ISO-F-DMA (MGO)

**MIL-DTL-5624** - Grades JP-41, JP-5 (NATO F-40, 44)

**MIL-DTL-83133** - Grade JP-8 (NATO F34/F35)

**ASTM D975** - Diesel Fuel Oil, Grades 1-D, 2-D, 1-D Low Sulfur, and 2-D Low Sulfur

**ASTM D1655** - Aviation Turbine Fuels (Jet-A, Jet-A1, and Jet –B1)

**MIL-F-16884** - Fuel Oil - Diesel Marine (NATO F-75, F-76)

**VV-F-800** - Fuel Oil - Diesel, Grades DF-A, DF-1, and DF-2 (NATO F-54)

**ASTM D396** - Grades No. 1, 2, 4, and 4 (Light)

**ASTM D2880** - Gas Turbine Fuel Oils, Grades No. 0-GT1,2, No. 1-GT, No. 2-GT

Other:

Light distillate fuels, such as Naphtha (C10 down to C4 hydrocarbons), gasoline (C7 to C5 hydrocarbons) and D2880 Grade No. 0-GT, are acceptable as fuels in aeroderivative gas turbines provided fuel manifold pressures are sufficient to maintain fuel as a liquid, especially in hot climates. Propane (C<sub>2</sub>H<sub>8</sub>) and butane (C<sub>4</sub>H<sub>10</sub>), both normal and iso, are acceptable either alone or in mixtures with other liquid fuels, if fuel manifold pressures are high enough to maintain the fuel in the liquid state. Various alcohols, such as methanol (CH<sub>3</sub>OH) and ethanol (C<sub>2</sub>H<sub>5</sub>OH), can fuel aeroderivative gas turbines. Note that liquified gas fuels, very light distillates and alcohols have inadequate lubricity and require a special fuel system to deal with these types of fuel. They may also require alternative fuels for starting the engine and low power operation. Contact ProEnergy for specific applications.

## 3 ADDITIONAL REQUIREMENTS

The following requirements supplement the specifications listed above. Wherever there is a conflict between the specification and these supplemental requirements the more restrictive requirement applies.

## 4 3.1 Composition

The fuel shall consist of hydrocarbon compounds only and must be consistent between brands and batches.

There is no specific requirement or limit on the amount of Fuel Bound Nitrogen (FBN) in a liquid fuel, it is recommended the amount be monitored for applications that are sensitive to levels of NO<sub>x</sub> in the gas turbine exhaust. The combustion process converts part of the FBN to NO<sub>x</sub> in the exhaust, adding to the total emissions of NO<sub>x</sub>. Experience suggests a reasonable limit for FBN is 0.015 percent by weight.

## **5 3.2 Additives**

Additives such as dyes and stabilizers used in the fuels already qualified to the standards above or included in MIL-S-53021 are acceptable for use in aeroderivative gas turbines. Any additives not already qualified as above must be approved by ProEnergy.

## **6 3.3 Viscosity**

The fuel viscosity must be within the range of 0.5 to 6.0 centistokes for starting the gas turbine. The range expands to 0.5 to 12 centistokes for operation. Heating the fuel to meet this requirement is permitted. The minimum viscosity is required for adequate fuel pump lubrication.

## **3.4 Wax**

Wax may be present in fuel oil, particularly fuels with higher pour points. It is necessary to keep the wax fully dissolved in the fuel – heating the fuel is permitted to achieve that.

## **7 3.5 Fuel Temperature Requirements**

The minimum temperature of liquid fuel supplied to the gas turbine shall be the greater of:

- (a) 20°F (11°C) above the wax point temperature of the fuel.
- or
- (b) The temperature required to remain within maximum fuel viscosity requirements.
- or
- (c) 35°F (2°C).

The maximum temperature of liquid fuel supplied to the gas turbine should not exceed 150°F (65.6°C). For liquid fuels with high vapor pressure constituents (naphtha, NGL, etc.) the fuel temperature in the manifold should be at least 100°F (55.6°C) below the bubble point temperature of the lightest component at high pressure compressor discharge static pressure (PS3).

## 8 FUEL PROPERTY REQUIREMENTS

The following table lists the liquid fuel property requirements for use in aeroderivative gas turbines. These limits apply at the inlet of the fuel manifold on the engine. The refinery may supply fuel to these specifications and it is the responsibility of the gas turbine operator to ensure the fuel meets these requirements as it is delivered to the gas turbine.

**Table 1**

Property, units	Limit	ASTM Test Method
Ash, %	0.01 maximum	ASTM D482
Sulfur, %	1.0 <sup>note 1</sup> maximum	ASTM D129 <sup>note 2</sup>
Vanadium, ppm	0.2 maximum	ASTM D3605
Sodium, Potassium, and Lithium, ppm	0.1 <sup>note 3</sup> maximum	ASTM D3605 <sup>note 4</sup>
Lead, ppm	1.0 maximum	ASTM D3605
Calcium, ppm	2.0 maximum	ASTM D3605
Hydrogen, %	12.7 <sup>note 5</sup> minimum	ASTM D1018, D3701
Demulsification, minutes	20 maximum	ASTM D1401 note 3
Carbon residue, % (100% sample)	1.0 maximum	ASTM D524
Carbon residue, % (10% Ramsbottoms)	0.25	ASTM D524
Particulates, mg/gal	10 <sup>note 6</sup>	ASTM D2276
Water and sediment, volume %	0.1 maximum	ASTM D2709
Flash point, degrees F	200°F maximum <sup>note 7</sup>	ASTM D93
Copper corrosion	No. 1 <sup>note 8</sup>	ASTM D130
Asphaltenes, %	None detectable	ASTM D6560

**Notes:**

1. Fuels with higher sulfur content may be used provided alkali metals are properly controlled in fuel, air and water. Consult ProEnergy for review of high sulfur fuels.
2. The following alternate standards are acceptable: ASTM D1552, ASTM D2622 and ASTM D1266.
3. This limit is the **sum** of all alkali metals in the inlet air, fuel and water/steam introduced into the gas turbine.
4. Atomic absorption spectrometer or rotating disc spectrometer are recommended to provide the sensitivity need to accurately measure alkali metals.
5. High viscosity fuels must also meet this hydrogen content.
6. Maximum particle size is 20 micrometers
7. Legal limits and applicable safety regulations for flash point of the fuel must be met.
8. Copper corrosion tests are run for 2 hours at 212°F (100°C)

## **9 FUEL HANDLING**

Distillate fuel, as refined, has low water, dirt, and trace metal contaminant levels that can be maintained with careful transportation, handling, and storage methods. Most contamination occurs during transportation of fuel therefore; auxiliary fuel cleanup equipment should be available to restore the fuel quality. Typical purification equipment includes centrifuges and electrostatic dehydrators.

No fuel should be used that contains detectable amounts of copper or zinc - those elements cause fuel degradation and additional engine maintenance.

When liquid fuel is supplied by barges or other bulk modes of transportation it has a significant risk of contamination with water – either fresh water or more likely sea water. In addition to potential hot corrosion from salt in the water, water accumulated in the bottom of a storage tank can also cause problems. Microorganisms grow at the water/fuel interface, generating both chemicals corrosive to metals in the fuel system and slime that can plug fuel filters. To mitigate those risks, fuel should be pumped first into raw fuel storage tanks for settling and must be conditioned/treated before being placed in one of two clean fuel day storage tanks from which the gas turbine will be supplied. Redundant, clean day fuel storage tanks are recommended to provide a primary settled fuel supply and to allow tank repair and/or cleaning with minimum downtime. Storage tanks must be constructed of corrosion-resistant materials or appropriately lined to minimize internally formed contaminants.

Duplex, primary strainers (150-200 microns absolute) should be located between the offloading facility and the raw fuel storage tanks. Duplex, secondary filters (50-100 microns absolute) should be located between the raw fuel storage tanks and the final fuel treatment system. All fuel storage tanks must have inlets at the bottom of the tank. All fuel day storage tanks should be provided with a floating suction. The distance between the inlet and outlet should be maximized. After filling any tank or adding fuel to it, a settling time of 24 hours should be allowed before taking fuel from that tank. Water and sludge should be drained from all storage tanks on a regular schedule.

## **10 FUEL SAMPLING**

Liquid fuel must be sampled regularly to ensure it meets the requirements of this specification. For each delivery of fuel samples should be taken at the refinery, at the port where fuel is delivered, at the inlet to the raw fuel storage tanks upon delivery, at the inlet of the fuel treatment system and the gas turbine fuel manifold. While this sounds like many samples, this will enable the plant operator to monitor the fuel quality and identify where problems with fuel quality are occurring. Good sampling protocol is to use clean plastic bottles and take at least three samples at the beginning middle and end of fuel delivery. The gas turbine operator is responsible for the quality of fuel meeting the requirements of this specification.

## APPENDIX G MILESTONE SCHEDULE

Monthly Schedule Issuance Date

	Estimated Baseline Schedule
Tolling Agreement Effective Date	6/17/2025
LNTP between WB and PES for long lead purchase	
Early mobilization for limited Site works (includes clearing, grubbing, earthworks, access road construction. No permanent construction)	
Buyer Clears All Financial Close CP's	
Financial Close	
EPC Full notice to Proceed	
Full Mobilization - Start of foundation works	
Major Foundations Poured	
Last Package RTS	
GSU arrivals	
Assembly Complete	
Substantial Completion (COD)	
Final Completion	2028



**APPENDIX H**  
**PERFORMANCE TESTING PROCEDURES**

**Typical Gas Turbine  
Test Procedure**

*The information contained within this document is intended only for the person or entity to which it is addressed and may contain confidential and/or privileged material. Any review, editing, retransmission, dissemination or other use of, or taking of any action in reliance upon this information by persons or entities other than the intended recipient, is prohibited*

PROPRIETARY AND CONFIDENTIAL

# Gas Turbine Performance Specification & Test Procedure

## Project: **NB Power**

### Revision History

Rev No.	Date	Author	Approver	Description

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## 1 Introduction

This document provides instruction on performance testing and specifies the basis of determining the Tested Reliable Capacity and Corrected Heat Rate Value for the Summer Season and Winter Season.

### 1.1 Scope

This document provides detailed instruction for performance testing the Facility. Instruction is provided for the test conduct, methodology, and calculations.

A Performance Test is conducted with the goal of determining, for each Season, the:

- Tested Reliable Capacity (8-unit test)
- Corrected Heat Rate Value (8-unit test)

Other performance tests are outside the scope of this Performance Test Procedure.

### 1.2 Performance Guarantees

The purpose of testing is to determine the performance goals outlined in the Scope at Base Reference Conditions as specified in the tolling agreement using the calculation methodology provided in Section 4.

#### Contracted Capacity and Heat Rate Guarantee

**Summer Season:**

Net Plant Contracted Capacity (Summer Season): [REDACTED]

Net Plant Guaranteed Summer Heat Rate: [REDACTED]

**Winter Season:**

Net Plant Contracted Capacity (Winter Season): [REDACTED]

Net Plant Guaranteed Winter Heat Rate Guarantee: [REDACTED]

**Emissions Limitations**

NOx ppmvd @ 15% O<sub>2</sub>: Per the permit limitations

CO ppmvd @ 15% O<sub>2</sub>: Per the permit limitations

VOC ppmvd @ 15% O<sub>2</sub>: Per the permit limitations

NH<sub>3</sub> ppmvd @ 15% O<sub>2</sub>: Per the permit limitations

PM (lb/hr): Per the permit limitations

Emissions testing may be concurrent with the Performance Test or verified during a separate demonstration, at the discretion of Seller.

### 1.3 Parties to the Performance Test

The parties to the Performance Test are Seller, its Contractor (at Seller's discretion), and Buyer (at Buyer's discretion). All other parties are considered test observers and do not have authority in agreements made at the time of performance testing.

Representatives for each Party to the Performance Test shall be designated to observe the test, confirm that it was conducted in accordance with this Performance Test Procedure, and, if necessary, shall have the authority to approve any test deviations. All test deviations will be made in writing following the Performance Test.

### 1.4 Base Reference Conditions

It may not be possible to perform testing at the conditions used to establish the Contracted Capacity and Guaranteed Heat Rate Guarantee for each Season. The measured Performance Test results will be corrected to the Base Reference Conditions listed in Table 1-1 in accordance with section 4. Testing shall be conducted at conditions as close to the Base Reference Conditions as practical. To ensure accuracy of the testing, no conditions may exceed the design limitations of the PROENERGY equipment and testing conditions must be within those values listed in Table 1-2.

**Table 1-1: Base Reference Conditions**

Parameter	Units	Reference Condition	
		Winter Season	Summer Season
Elevation / Barometric Pressure	m (ASL) / psia	40	
Site Dry Bulb Temperature	°C	-20.0	25.0
Site Relative Humidity	%	80	60
WSPA (Water Spray Power Augmentation)		OFF	ON
Fogging		OFF	ON
Generator Frequency	Hz	60	60
Power Degradation	%	0	0
Heat Rate Degradation	%	0	0

Fuel Gas Analysis		Must meet the PROENERGY Spec
-------------------	--	------------------------------

## AUXILIARY LOAD CONDITIONS

The following is a list of the auxiliary loads in service during the Performance Testing.

Table 1-1A – Auxiliary Load Conditions

Unit Number	Performance Guarantee Status	Equipment Description
Each CTG	ON	TURBINE LUBE OIL WATER SEPARATOR
Each CTG	ON	TURBINE ENCLOSURE VENT FAN "A"
Each CTG	ON	GEN ENCLOSURE VENT FAN "A"
Each CTG	ON	TURBINE LUBE OIL TANK HEATER
Each CTG	ON	SCR BLOWER
Each CTG	ON	TURBINE AIR/OIL SEPARATOR MOTOR
Each CTG	ON	TURBINE / GENERATOR LUBE OIL HEAT EXCHANGER MOTOR "A"
Each CTG	ON	WATER INJECTION PUMP MOTOR
Each CTG	ON	WSPA WATER PUMP MOTORS (AS REQUIRED)
Each CTG	ON	FOGGING SYSTEM (AS REQUIRED)
Each CTG	ON	UNIT LIGHTING PANEL
Each CTG	ON	CEMS BUILDING LIGHTING PANEL
Each CTG	ON	UNIT PANEL FOR RECEPTACLES, AFCU SKID
Each CTG	ON	AMMONIA FORWARDING PUMP
BOP	ON	DEMIN WATER PUMP #1 PWR (2 x100%)
BOP	ON	BOP AND COLLECTOR BUS BUILDING 480V PANELS (400A)
BOP	ON	AIR COMPRESSOR #1 PWR, 350HP
BOP	ON	120/208V LIGHTING PANEL 1 AND 2
BOP	ON	120/208V LIGHTING PANEL 3 AND 4
BOP	ON	[WINTER ONLY] PDC HVAC Heating Loads
BOP	ON	[WINTER ONLY] Enclosure Heating Loads, as required.
BOP	ON	[WINTER ONLY] Heat tracing loads, as required.

\*For the avoidance of doubt, water treatment system loads are not contemplated in the Contracted Capacity for either Season. There are no winterization, ambient heating, or dew point heater loads present in the Summer Contracted Capacity.

**Table 1-2: Maximum Permissible Deviations from Base Reference Conditions**

<b>Parameter</b>	<b>Unit</b>	<b>Maximum Deviation</b>
Ambient Temperature	°C	±17
Power Factor	N/A	1.0 to 0.85
Generator Frequency	Hz	±1

Note: If conditions are outside the ranges specified above, an assessment will be conducted by Contractor to determine if the modeling methods provide sufficient accuracy for testing.

### 1.5 Codes and Constants

Performance Testing, including seasonal testing, will be conducted in general accordance with PTC-22. All plant measurements may be reported using installed plant instrumentation, calibrated in accordance with Seller standard practices.



## 2.3 Equipment Cleanliness

At Seller's determination, a water wash may be conducted on all units within 72 operating hours of the Performance Test if ambient conditions permit. All units should be operated for minimum 1-2 hours at Base Load after water washing prior to the Performance Test. Any modifications to the water washing schedule shall be at the discretion of Seller representative to determine compressor cleanliness.

New and Clean condition is assessed as Recoverable and Non-Recoverable degradation:

1. Non-Recoverable Degradation: 200 EOH is considered a standard commissioning cycle. EOH greater than 200 shall have a degradation correction applied to return the corrected results to a New and Clean condition.
2. Recoverable Degradation: Seller will conduct an inspection of equipment in their scope of supply. Based on that inspection, Seller will determine the steps required to remediate any fouling or degradation.

## 2.4 Stabilization

Prior to commencement of Performance Testing the units shall be operated in accordance with the Operating Disposition in Section 2.2 for a minimum of thirty minutes. In addition to the stabilization period, the following operational parameters shall be maintained:

**Table 2-2: Stability Criteria**

Parameter	Units	Permissible Fluctuation During Any Test Run (3)
Unit Power Output (1)	%	±0.65
Barometric Pressure (1)	%	±0.16
Gas Turbine Inlet Air Temperature (2)	°C	±0.72
Fuel Flow (1)	%	±0.65
Frequency (1)	%	±0.33

1. Relative deviation of the Standard Deviation of the Population
2. Absolute deviation of the Standard Deviation of the Population
3. Stability shall be assessed in 30-minute intervals.

## 2.5 Test Runs

Testing will be conducted in accordance with the following:

Number of Test Runs: 2 (two)

Duration of one (1) Test Run: 30 minutes

Calculated performance results will be corrected in accordance with Section 4.

In the event the stability is interrupted, the test may be restarted once stability has been restored in accordance with Section 2.4. If the stability was interrupted after 15 minutes into a test run the test run may be considered valid at the discretion of Seller and a restart may not be required

In the event the corrected plant performance levels do not meet the Contracted Capacity and/or Heat Rate levels, Seller shall evaluate the equipment in their scope of supply for deficiencies and may take corrective action to resolve the performance. Testing will be conducted after any corrective action is taken to demonstrate satisfaction of the performance guarantees. Performance testing can be done by testing units individually or in any combination, as agreed upon by the Parties. The cumulative corrected capacity total will result in the final performance level. Heat rate performance test can be based off one or multiple units, as determined and agreed upon by the Parties but does not have to be all units performing this portion of the test.

## 2.6 Data Collection

Seller or Seller's Contractor is responsible for supervising all aspects of data collection. Data will be collected manually and/or electronically using the Gas Turbine HMI and/or other data acquisition systems.

- Frequency of Electronic Data Collection: minimum 1 measurement every 30 seconds.
- Manual data collection, if any, will be executed every 5 minutes. Personnel is to be provided by Buyer to assist in logging manual data.



Dead band and compression algorithms should be minimized to the extent possible for primary measurements.

## 2.7 Sampling

For the initial Facility Performance Test to establish the Initial Designated Capacity, and if mutually agreed by the Parties on future Seasonal Performance Tests, fuel sampling shall be performed.

Buyer is responsible to arrange for fuel sampling and fuel analysis. Sampling will occur as follows:

Fuel Samples:

Number of Samples at each Collection: 2 (1 for analysis, 1 for Referee)

Sample Collection Periodicity: beginning and end of each test run

Collection Starting Time: Beginning of test (Test Time= 0)

Location: On Seller fuel gas regulation skid

The sample bottles shall be marked with time, date, and gas turbine and sample numbers.

One of each samples collected will be shipped by Seller for Laboratory analysis in accordance with:

- Natural gas composition per ASTM D-1945
- LHV, HHV and specific gravity per ASTM D-3588

Referee fuel gas samples will be held by Seller for a maximum of 90 days after completion of performance testing at which time samples will be vented unless directed otherwise by the Parties to the Performance Test.

## 2.8 Test Deviations

Portions of the Performance Testing may not be able to be completed in strict accordance with this Test Procedure. In order to facilitate Performance Testing, there may be deviations noted at the time of Performance Testing. Each of the Representatives to the Parties of the Test will be responsible to work with the other Representatives to the Parties of the Performance Test to determine a prudent path forward and agree to the deviations in writing. These mutual agreements will be considered binding decisions that will supersede the direction in this Test Procedure.

# 3 Test Measurements

All measurements will utilize station and/or engine instrumentation which generally meet requirements of PTC-22. Installed Facility instruments shall be used wherever practicable.

## 3.1 Primary Measurements

Primary measurements are those measurements that are used directly in the calculations. The primary instruments list is provided below.

Measurement	Variable Name	TAG	Location
Measured Gross Output	$P_{Gen}$	CORE_MW.SEL	Power measured at the generator terminals
Measured Net Output	$P_{Meas,Net}$	NET_Power_Tag	Power measured at the Plant High Side
Generator Frequency	Generator Frequency	MB_DECESA_GEN_FRE Q	Unit frequency at the generator terminals
Site Dry Bulb Temperature	T0	TE64259.val	Filter House Air Inlet
Site Relative Humidity	RH	MT64298.val	Filter House Air Inlet
Barometric Pressure	$P_{atm}$	PT6863.val	Barometric Pressure
Gas Fuel Flow (ACFM)	ACFM	FT6246.val	Gas Line

Fuel Gas Composition	N/A	N/A	Laboratory analysis of gas samples taken at the time of testing, or previous test, if mutually agreed by the Parties.
Fuel Gas Pressure	$P_{Gas}$	PT6227.val	At Gas Meter
Fuel Gas Temperature	$T_{Gas}$	TE6232.val	At Gas Meter
Exhaust Pressure Loss	EPL	SCR_PIT201_INLET_D UCT_PRESS	At Catalyst Inlet
EOH	EOH	N/A	Contractor HMI calculation of operational activity

### 3.2 Secondary Measurements

Secondary measurements are those measurements that are not used directly in the calculations. Secondary instruments are listed in Appendix A.

### 3.3 Emissions

Emissions are considered a secondary measurement to thermal performance testing and will be verified to comply with permit requirements throughout performance testing.

### 3.4 Calibration

Calibration requirements for the purposes of the Performance Test are satisfied by the instrument manufacturer's original certification of their accuracy classes which will serve as the systematic component of uncertainty. This section takes exception to Table 4-1.2.1-1 of PTC22-14.

Calibration certificates for the primary instrumentation are available for review upon request by Buyer. Calibration of the compressor variable geometry shall be executed in preparation for the performance test.

## 4 Calculations

The calculation methodology will utilize a model-based approach to ensure the highest accuracy of the results possible. Model results will be provided by Seller and/or Contractor utilizing the Thermoflow software used to develop the basis of performance. The Calculations are carried out in

**CP\_NBPower\_6000PC Perf Test\_Date\_R1.xlsx** tool.

### 4.1 Performance Calculations

Calculation of the Corrected Gross Output

$$P_{Meas} = P_{Gen}$$

Where:

$P_{Meas}$  = Measured Electrical Output, kW

$P_{Gen}$  = Gross Power measured at the generator terminals, kW.

$$P_{Corr} = P_{Meas} * \left( \frac{P_{BR}}{P_T} \right)$$

Where:

$P_{Corr}$  = Corrected Output at Base Reference Conditions, kW.

$P_{BR}$  = Correction model predicted output at Reference Conditions, kW.

$P_T$  = Correction model predicted output at Test Conditions, kW.

Calculation of the Corrected Gross Heat Rate.

The fuel lower heating value (LHV) at standard conditions of 60 °F and 14.696 psia (Btu/scf) is determined by the laboratory selected for fuel analysis. The laboratory report will also include the fuel composition determined from the analysis of the gas fuel samples collected at the beginning and end of each test run. The average compositions obtained from the two fuel samples is entered into the AGA-8 tool to determine the representative fuel compressibility factors at standard conditions and at test conditions (corresponding to gas fuel pressure and temperature measured at the fuel meter during the test).

**Notations:**

$LHV_{0,1/0,2}$	=	Lower heating value of the two fuel samples collected at the beginning and end of each testing period, Btu/scf, from the lab.
$P_{Gas}$	=	Gas fuel pressure measured at the fuel meter, psig.
$T_{Gas}$	=	Gas fuel temperature measured at the fuel meter, °F.
$P_{atm}$	=	Barometric pressure measured during the testing period, psia.
$Z_{0,T}$	=	Gas fuel compressibility factors at standard conditions (0) and test conditions (T) calculated using AGA-8
$ACFM$	=	Actual Gas fuel flow measured during the test, CFM (cubic foot/min)
$SCFM$	=	Volumetric Gas fuel flow at standard conditions, SCFM (standard cubic foot/min)
$Q_{Meas}$	=	Heat Input to Gas Turbine, BTU/h (LHV).

$P_{Gas}$ ,  $T_{Gas}$ ,  $P_{atm}$ , and  $ACFM$  are the arithmetic averages of the measurements collected during each of the testing periods. The gas fuel lower heating value at standard condition is calculated from the two fuel samples:

$$LHV_0 = \frac{LHV_{0,1} + LHV_{0,2}}{2}$$

And the volumetric flow at standard conditions is calculated as

$$SCFM = ACFM * \frac{Z_0}{Z_T} * \frac{60 + 459.67}{T_{Gas} + 459.67} * \frac{P_{Gas} + P_{atm}}{14.696}$$

The measured heat input during testing period is

$$Q_{Meas} = 60 * SCFM * LHV_0$$

And the measured heat rate is

$$HR_{Meas} = \frac{Q_{Meas}}{P_{Meas}}$$

Where:

$HR_{Meas}$	=	Measured Heat Rate, BTU/kWh (LHV).
$Q_{Meas}$	=	Unit Heat Input to Gas Turbine, BTU/h (LHV).

The corrected heat rate is then calculated:

$$HR_{Corr} = HR_{Meas} * \left( \frac{HR_{BR}}{HR_T} \right)$$

Where:

$HR_{Corr}$	=	Corrected Heat Rate at Base Reference Conditions, BTU/kWh (LHV).
$HR_{BR}$	=	Correction model predicted heat rate at Base Reference Conditions, BTU/kWh (LHV).
$HR_T$	=	Correction model predicted heat rate at Test Conditions, BTU/kWh (LHV).

## 4.2 Equivalent Operating Hours

EOH will be calculated in accordance with the following formula

$$EOH = (HRS) + (ST) + (50 * TP)$$

EOH	=	Equivalent Operating Hours
HRS	=	Current Operating Hours
ST	=	Number of Starts
TP	=	Number of Buyer-caused Trips

A performance degradation will be assigned to Corrected Power Output and Corrected Heat Rate if EOH exceeds 200 hours.

$P_{Degr}$  = TBD (Power degradation, %. Note: power degradation is a negative number)

$HR_{Degr}$  = TBD (Heat Rate degradation, %)

Corrected performance with degradation accumulation

$$P_{Corr\_Degr} = P_{Corr} * (1 - P_{Degr})$$
$$HR_{Corr\_Degr} = HR_{Corr} * (1 - HR_{Degr})$$

## 4.3 Test Tolerance

A Test Tolerance will be applied to the corrected test results that is equivalent to the Post-Test Uncertainty.

$$P_{Final\_Gross} = P_{Corr\_Degr} * (1 + P_{Unc})$$

$P_{Final\_Gross}$  = Final Corrected Output, kW  
 $P_{Unc}$  = Test tolerance equal to Post-Test Uncertainty. Note, this value is expressed as a decimal i.e., 0.3% = 0.003.

$$HR_{Final\_Gross} = HR_{Corr\_Degr} * (1 - HR_{Unc})$$

$HR_{Final\_Gross}$  = Final Corrected Heat Rate, BTU/kWh (LHV)  
 $HR_{Unc}$  = Test tolerance equal to Post-Test Uncertainty. Note, this value is expressed as a decimal i.e., 0.5% = 0.005.

## 4.4 Net Performance

The test will be a full Facility Performance Test. The corrected performance for each gas turbine will be calculated per sections 4.1, 4.2 and 4.3 for two test runs of 30 minutes each. The average performance over the two test runs shall define the final corrected gross power and final corrected gross heat rate for each gas turbine. Performance testing can be done by testing units individually or in any combination, as agreed upon by the Parties. The cumulative corrected capacity total will result in the final performance level. Heat rate performance test can be based off one or multiple units, as determined and agreed upon by the Parties but does not have to be all units performing this portion of the test.

The Plant corrected gross power output is:

$$\text{Plant Gross Power}_{Corrected} = P_{Final\_Gross\_1} + P_{Final\_Gross\_2} + \dots + P_{Final\_Gross\_8}$$

Where

$P_{Final\_Gross\_i}$  = The final corrected gross power for each gas turbine  $i = 1, 2, \dots, 8$

The Plant corrected gross heat rate is the ratio of the plant level corrected heat input divided by the plant corrected gross power:

$$\text{Plant Gross Heat Rate}_{\text{Corrected}} = \frac{P_{\text{Final\_Gross}_1} * \text{HR}_{\text{Final\_Gross}_1} + P_{\text{Final\_Gross}_2} * \text{HR}_{\text{Final\_Gross}_2} + \dots + P_{\text{Final\_Gross}_8} * \text{HR}_{\text{Final\_Gross}_8}}{\text{Plant Gross Power}_{\text{Corrected}}}$$

Where

$\text{HR}_{\text{Final\_Gross}_i}$  = The final corrected gross heat rate for each gas turbine  $i = 1, 2, \dots, 8$

The tested net power output  $P_{\text{Plant\_Net}}$ , is measured during the two test runs of 30 minutes each (NET\_Power\_Tag). The test run plant level auxiliary loads are calculated from the measured gross power and measured net power during each test run:

$$\text{AUX\_tr}_j = P_{\text{Gen}_1,j} + P_{\text{Gen}_2,j} + \dots + P_{\text{Gen}_8,j} - P_{\text{Meas\_Net}_j}$$

Where:

$P_{\text{Gen}_i,j}$  = Gross power measured at the generator terminals, for each gas turbine  $i = 1, 2, \dots, 8$  for each test run  $j = 1, 2$

$P_{\text{Meas\_Net}_j}$  = Net power output measured at the plant high side for each test run  $j = 1, 2$

$\text{AUX\_tr}_j$  = Auxiliary load consumption for each test run,  $j = 1, 2$

Plant auxiliary load is the average of the auxiliary loads calculated for each test run:

$$\text{AUX} = \frac{\text{AUX\_tr}_1 + \text{AUX\_tr}_2}{2}$$

The corrected net power is calculated from the plant corrected gross power and plant level auxiliary loads:

$$P_{\text{Net\_Corrected}} = \text{Plant Gross Power}_{\text{Corrected}} - \text{AUX}$$

The Plant corrected net heat rate is the ratio of the plant level corrected heat input divided by the plant corrected net output:

$$\text{HR}_{\text{Net\_Corrected}} = \frac{\text{Plant Gross Heat Rate}_{\text{Corrected}} * \text{Plant Gross Power}_{\text{Corrected}}}{P_{\text{Net\_Corrected}}}$$

## Performance Margins

$$\text{Power}_{\text{Margin}} = \frac{P_{\text{Net\_Corrected}}}{P_{\text{Guar}}} - 1$$

$$\text{HR}_{\text{Margin}} = \frac{\text{HR}_{\text{Net\_Corrected}}}{\text{HR}_{\text{Guar}}} - 1$$

Where:

$P_{\text{Guar}}$  = Contracted Capacity

$\text{HR}_{\text{Guar}}$  = Guaranteed Net Heat Rate

Performance guarantees (Contracted Capacity) are passed if the power margin is positive (corrected power in excess the guaranteed level is produced) and heat rate margin is negative (corrected heat rate is lower than the guarantee value)

## **5 Test Reporting**

Following the Performance Test and once all sampling analysis has been received, the Test Report will be written which will include discussion of the following:

- Executive Summary
- Introduction
- Equipment Disposition
- Results Summary
- Instrumentation
- Conclusion

The following documentation will be attached directly to the Test Report:

- Test Procedure
- Summary of Test Data
- Detailed Calculations
- Post-Test Uncertainty Analysis
- Any Test Deviations if applicable

## Appendix A

### Secondary Measurements

Parameter	Description	Tag
Regulator	REGULATOR	CORE_ISSL.REGULATOR
T2	LPC Inlet Temperature	CORE_T2.SEL
T3	HPC Discharge Temperature	CORE_T3.SEL
T48	LPT Inlet Temperature	CORE_T48.SEL
PS3	HPC Discharge Static Pressure	CORE_PS3.SEL
NOx Water	NOx Water	FC6243.val
FOG Flow	Fog Flow	WTR_Inlet_FOG_Flow
WSPA Flow (SPRINT)	Water Spray Power Augmentation	FT62231.val
N25	HP Rotor Speed	CORE_N25.SEL
NSD	LP Rotor Speed	CORE_NSD.SEL
VSV POSITION FEEDBACK	Variable Stator Vanes	ZE6873.val
VBV POSITION FEEDBACK	Variable Bleed Valves	ZE6871.val
Gas Fuel Position	Gas Fuel Position	FCV6201.Out
CO	CEMS CO	CEMS_CO_PPM_HMI
NOx	CEMS NOx	CEMS_NoX_PPM_HMI
NH3	CEMS_NH3	CEMS_NH3_corr_HMI
O2	CEMS O2	CEMS_O2_PCT_HMI
Power Factor	PF	MB_DECSA_PF_1
FUEL GAS SCFM	GT Calculated SCFM	fuel_FC6246_SCFM

## **APPENDIX I SCHEDULING LIMITATIONS AND PROCEDURES**

### **I. SCHEDULING LIMITATIONS**

#### **A. General Requirements.**

Subject to the Scheduling Limitations set forth in the Agreement, including in this Appendix I, the Units shall be capable of meeting Buyer's Schedules at all times during the Term following the Commercial Operation Date (or the Early Commercial Operation Date or Provisional COD, as applicable), twenty-four (24) Hours per Day, seven (7) Days per week.

Seller may propose modifications or changes to the Scheduling Limitations based on specifications and recommendations, as modified from time to time, of the equipment manufacturers of the combustion turbine and combustion turbine generator, provided that (a) any such modifications or changes that in Buyer's reasonable judgment may adversely affect Buyer's Scheduling flexibility (including magnitude, duration and response time) under the Agreement shall be subject to the prior written approval of Buyer; and (b) in the event such changes limit Buyer's Scheduling flexibility more than the limits as set forth below, Seller shall make commercially reasonable efforts to minimize the effect of any such equipment manufacturer's specifications or recommendations on Seller's ability to deliver Energy in response to Buyer's Schedules.

For the avoidance of doubt, Buyer shall only be permitted to Schedule Energy output from the Facility to the extent that sufficient Units are Available to accommodate such Schedule. All Units must operate on the same Fuel during a given Schedule.

#### **B. Minimum Schedule and Minimum Down Times.**

The minimum Schedule duration for a Unit is one (1) Hour. Start-up will be accomplished prior to the Scheduled Hours. The minimum down time is one (1) Hour.

#### **C. Maximum Number of Starts.**

The maximum number of Starts is four (4) Starts per Unit per Day.

#### **D. Natural Gas Pipeline Pressure.**

Natural Gas deliveries at the Gas Delivery Point under the Agreement shall be at a pressure that is sufficient to permit Seller to operate the Units (such pressure not to exceed the maximum allowable operating pressure of the gas transportation provider's pipeline at the Gas Delivery Point).

#### **E. Maximum Fuel Oil Run Time; Other Limitations**

Buyer may at its option direct one or more Units to operate using Fuel Oil. Additional run time limitations may be necessary from time to time to comply with Legal Requirements or Permits (including environmental and emissions limitations); if a proposed Schedule would cause Seller or the Facility to violate any Legal Requirement or Permit, Seller shall provide prompt notice to



Buyer and the Parties shall use good faith, commercially reasonable efforts to agree upon a Schedule that would not result in the violation of any Legal Requirement or Permit.

## **II. SCHEDULING PROCEDURES**

This Section II of Appendix I sets forth the procedures to be followed by Buyer and Seller for notification and Scheduling the Units when it is called for by Buyer. The procedures specified may be modified upon mutual agreement of the Parties in writing.

### **A. Notification Communication.**

1. At least seven (7) Days prior to the Commercial Operation Date (or the Early Commercial Operation Date or Provisional COD, as applicable), Seller shall supply the Scheduling Center with the names of the personnel who can be called to Schedule Energy. Seller will provide Buyer a single phone number that will be answered twenty-four (24) Hours a Day and corresponding email address. Seller shall keep this information current.

2. At least seven (7) Days prior to the Commercial Operation Date (or the Early Commercial Operation Date or Provisional COD, as applicable), the Scheduling Center shall supply Seller with the names of individuals to be contacted concerning availability of the Units and Energy Schedules. The Scheduling Center will provide Seller with a single phone number that will be answered twenty-four (24) Hours per Day and corresponding email address. The Scheduling Center shall keep this information current.

3. The Parties may mutually agree upon electronic communications application to facilitate the sending and receipt of Scheduling Instructions.

### **B. Scheduling and Notification Procedures.**

1. **Day-Ahead Estimated Scheduling.** By 11:00 a.m. of each Business Day, the Scheduling Center will use reasonable efforts to provide Seller with a non-binding good faith estimate of Buyer's anticipated schedule if Buyer anticipates submitting a Schedule for the next Business Day and any subsequent Days which are not Business Days (the period covered by such Schedule being referred to as a "Scheduling Period"). For each Hour of such anticipated Scheduling Period, such estimate shall specify the number of Units that Buyer desires to dispatch, the quantity of Energy to be delivered by Seller, and whether such Units shall operate on Natural Gas or (subject to the limitations set forth in the Agreement) Fuel Oil. The Scheduling Center is not obligated to contact Seller on a given Business Day if Buyer does not anticipate submitting a Schedule for such next Business Day (or any subsequent Days that are not Business Days); provided, however, Buyer's failure to provide such nonbinding good faith Day-ahead schedule shall not affect Buyer's right to submit Scheduling Instructions pursuant to Section 13.1(a) and this Appendix I and receive Energy from the Units in accordance with such Scheduling Instructions. If Buyer does not provide Seller with a Schedule for the next Business Day (or any subsequent Days that are not Business Days) and does not Schedule Hours pursuant to Section 2 below, Hours on those Days are deemed to be zero (0) for purposes of calculating the Availability Percentage in Appendix C.

2. **Day-Of Scheduling; Intra-Day Adjustments.** Scheduling Instructions shall be submitted on the Day Energy is to be delivered pursuant to such Schedule. At least four (4) Hours prior to

the start of the Hour in which Buyer desires Seller to deliver Energy, the Scheduling Center shall submit Scheduling Instructions for such Day's dispatch of Energy on an Hour-by-Hour basis. For each Hour of such Scheduling Period, such Scheduling Instructions shall specify the number of Units Buyer desires to dispatch, the quantity of Energy to be delivered by Seller, and whether such Units shall operate on Natural Gas or (subject to the limitations set forth in the Agreement) Fuel Oil. Buyer may adjust such Scheduling Instructions during any Scheduling Period until thirty (30) minutes before the start of the Hour of delivery.

**C. Cancellation Notice.**

To cancel Scheduling Instructions, Buyer must notify Seller of such cancellation prior to Seller initiating the Start sequence for a Unit or Units, as applicable.

**D. Unavailability Event Notification.**

Immediately following the occurrence of an Unavailability Event, Seller shall notify Buyer of such event. If notice is provided orally, Seller shall promptly provide a written notice to Buyer of an estimate of the time and degree to which the generation levels will be reduced. During an Unavailability Event, Seller shall inform Buyer regularly as to the projected schedule of the return to service of the Unit(s) at the full Designated Capacity level(s). Seller shall also provide Buyer with written notice that the affected Unit(s) have been returned to service. For each Day following the declaration of an Unavailability Event until the return to service of the Unit(s), Buyer shall have the right to continue to submit Schedules.

# APPENDIX J SEASONAL MAINTENANCE SCHEDULE



Form 0296

## Unit Outage Scheduling

Revision 2018/10/09

<b>Unit Generator Name:</b>	SENB02	<b>Date of Request:</b>	2025-03-10
New Request <input checked="" type="checkbox"/> Request #:		Revised Request <input type="checkbox"/>	Old Request #:
Outage Type : Unit unavailable <input checked="" type="checkbox"/> Unit on 10 Minute notice <input type="checkbox"/> Unit online unavailable for dispatch <input type="checkbox"/>			
Adjacent units required: <input type="checkbox"/>	Unit Generator Names :		
Adjacent unit outage Type : Unit unavailable <input type="checkbox"/> Unit on 10 Minute notice <input type="checkbox"/>			
Preferred Adjacent units outage date	From: @hr.	To: @ hr. (# days: )	
Alternate Adjacent units outage date	From: @ hr.	To: @ hr. (# days: )	

### Preferred Outage Dates:

<b>From:</b> 2025-03-12 @ 13:00 hr	<b>To:</b> 2025-03-12 @ 17:00hr (# of days: 1)
<b>Why this period:</b> earliest date available	

### Alternate Outage Dates:

<b>From:</b> @ hr	<b>To:</b> @ hr. (# of days: )
<b>Why this period:</b>	

<b>Reason for Outage:</b>	
---------------------------	--

<b>Critical path item(s):</b>	1.
	2.
	3.
	4.

Contractor support required:	Yes <input type="checkbox"/> Name:	(or) No <input checked="" type="checkbox"/>
NMA support required:	Yes <input type="checkbox"/> or No <input checked="" type="checkbox"/>	Overtime being worked: Yes <input type="checkbox"/> or No <input type="checkbox"/>
Work Schedule:	Weekdays:	
	Weekends:	
Capital Project:	Yes <input type="checkbox"/> Name:	(or) No <input type="checkbox"/>
Multi-year Project:	Yes <input type="checkbox"/>	(or) No <input type="checkbox"/>
Request submitted by:	Michael Chiasson	Tel: 506 440-5108

Submit to

<b>Reviewed by:</b>		<b>Approved by:</b>	
<i>Head Office Use Only</i>	<i>Executive Director, NB Energy Marketing</i>		<i>Executive Director, Generation</i>

## **APPENDIX K INSURANCE REQUIREMENTS**

### **1.1 General**

The Parties shall cooperate with each other and provide all assistance reasonably requested with respect to insurance matters. All dollar amounts referenced in this Appendix K are specified in Canadian Dollars.

### **1.2 Insurance by Buyer**

1.2.1 Throughout the duration of the Agreement, and without limiting Buyer's obligations, liabilities and responsibilities elsewhere under the Agreement, Buyer shall procure and maintain the insurance policies described in Subsection 1.2.2 below, at its own expense. Any additional premiums, penalties or any other amounts payable with regard to such policies shall be for the sole account of Buyer.

Insurance policies should be arranged with insurance companies authorized to do business in Canada that (i) have a Best Insurance Reports rating of "A-" or better and a financial size category of "VII" or higher, (ii) an S&P financial strength rating of "A-" or higher, (iii) the equivalent rating from another recognized rating company, or (iv) are otherwise acceptable to Seller.

1.2.2 Policies to be obtained and maintained by Buyer, and applicable limits for such policies, shall be, at a minimum, as indicated below:

- (a) Workers' Compensation insurance in respect to Buyer's personnel: all workers' compensation benefits should be not less than required by Applicable Laws, and/or by any labor agreements and all other applicable collective bargaining agreements, wherever the work is being performed and wherever Buyer's contracts of employment are entered into;
- (b) Employer's Liability Insurance: employer's liability insurance or equivalent insurance for accidental injury to or death of applicable persons with policy limits not less than \$ [REDACTED] for each occurrence or accident or as required by Applicable Law, whichever is the greater;
- (c) Automobile Liability Insurance: automobile liability insurance covering, as a minimum to the extent required by all Applicable Laws, all vehicles (owned, non-owned, leased or licensed) used in the performance of the Agreement with a minimum limit of not less than \$ [REDACTED] for each occurrence or accident for bodily injury, death and property damage;
- (d) Commercial General Liability Insurance: having a limit of liability of \$ [REDACTED] each accident or occurrence and \$ [REDACTED] in the annual aggregate in respect to products and completed operations; covering all sums the insured becomes legally obligated to pay for bodily injury or property damage caused by an occurrence or accident arising out of or related to use in the performance of the Agreement (subject to the applicable policy exclusions) and endorsed to provide coverage for a severability of interests or a cross-liabilities clause and for "sudden and accidental pollution liability;" and
- (e) Excess Liability Insurance: coverage for the activities of Buyer under the Agreement of \$ [REDACTED] in the annual aggregate. Such coverage shall be on a 'follow form' and an "occurrence" basis and over and above the coverage provided by the policies described in Subsections 1.2.2(c), (d) and (e). The excess policies shall not contain endorsements which restrict coverage provided in the underlying policies.

1.2.3 Buyer shall include Seller as an additional insured on all insurance policies required to be maintained by Buyer pursuant to Subsection 1.2.2 above, with exception of (a)(b), and (c).

1.2.4 Prior to the commencement of any services (or any portion thereof to which such insurance relates) and thereafter upon request by Seller, Buyer shall furnish Seller with certificates of insurance that provide sufficient information to verify that Buyer has complied with the insurance requirements of Subsections 1.2.2 and 1.2.3 above.

1.2.5 Buyer shall give notice as soon as practicable to Seller and all other insured parties in the event of cancellation or material change affecting any insured party's interest in respect of the insurance set out in Subsection 1.2.2 above.

1.2.6 All policies of insurance required to be obtained and maintained by Buyer shall provide that they shall not be cancelled, non-renewed or materially changed without at least thirty (30) days prior written notice (sent by registered mail, with receipt acknowledged) to Seller. Buyer shall provide written notice to the Seller no later than five (5) days following receipt of any such notice. All policies shall be primary without right of contribution from any other insurance or self-insurance maintained elsewhere, to the extent covering the same risks.

1.2.7 Insurance policies required under Subsection 1.2.2. (d) and (e) must provide that the relevant underwriters or insurers shall waive any rights of subrogation against Seller and the other Seller Indemnified Parties and, in respect of the liability of one insured to another, provide that each insured shall be entitled under the third party legal liability insurance to be protected in respect of claims made by any other insured.

1.2.8 Buyer shall use reasonable efforts to cause any of its Subcontractors working at the project site to obtain and maintain commercial general liability, automobile and workers' compensation insurance comparable in form and coverage amounts to the insurance required of Buyer under this Exhibit; provided that Buyer may permit any such Subcontractor to obtain and maintain insurance coverages with lower limits to the extent that such lower limits are customary for subcontractors providing work of the type and scope to be provided and are consistent with prudent industry practice.

### **1.3 Insurance by Seller**

1.3.1 On or before the Project's Commercial Operation Date (COD), and without limiting Seller's obligations, liabilities and responsibilities elsewhere under the Agreement, Seller shall procure and maintain the insurance policies described in Subsection 1.3.2 below covering Seller's obligations under the Agreement, at its own expense; provided that Seller may provide some or all of the coverages required by this Exhibit (other than any insurance required to be maintained by law) on its own, either through self-insurance, captive insurance or similar method(s). Any additional premiums, penalties or any other amounts payable with regard to such policies shall be for the sole account of Seller. Insurance policies should be arranged with insurance companies authorized to do business in Canada that (i) have a Best Insurance Reports rating of "A-" or better and a financial size category of "VII" or higher, (ii) an S&P financial strength rating of "A-" or higher, (iii) the equivalent rating from another recognized rating company, or (iv) are otherwise acceptable to Buyer.

1.3.2 Buyer acknowledges and agrees that all insurance policies set forth below shall apply to those actions of applicable insured parties performed at or emanating from the project site in connection with Seller's obligations under the Agreement. Policies to be obtained and maintained by Seller, and applicable limits for such policies, shall be as indicated below:

(a) Operational All-Risk Property and Business Interruption Insurance: coverage shall insure all real and personal property of the Facility, whether at a fixed location (including any non-owned location for off-site repair or refurbishment), off-site storage or a warehouse location or in transit. The policy shall be on an all risks basis and include coverage for mechanical and electrical breakdown. LEG 2 or better cover including resulting, or ensuing damage arising out of design error or faulty workmanship, materials and the customary all risk perils. The policy shall be written on a full replacement cost valuation basis with sublimits and deductibles to be permitted in line with commercial reasonableness and prudent power industry practice. Business Interruption and Contingent Business Interruption insurance covering the loss of gross revenues minus non-continuing expenses (which shall not be reduced by amounts received by the Insured in relation to any revenue put or other similar hedge agreement) for a period of not less than twelve (12) months, except 120 days as respects Contingent business Interruption, as result of loss or damage to property required to be insured under this section causing a partial or complete interruption of normal business operations. Such insurance shall also insure extra expenses and expediting expenses (defined as extraordinary expenses incurred following an insured loss to continue normal operations and to reduce the business interruption loss) in an amount not less than \$ [REDACTED] and include an interim payments clause allowing for the partial payment (or payments) of a claim pending final determination of the full claim amount. The following provisions shall also be included in the policy: coinsurance provision waiver and a severability of interests clause;

(b) Commercial General Liability Insurance: having a limit of liability of \$ [REDACTED] each accident or occurrence and \$ [REDACTED] in the annual aggregate including liability coverage for premises, operations, sudden and accidental pollution (or alternatively, provide such pollution liability coverage under a separate policy), products and completed operations and blanket contractual liability; covering all sums the insured becomes legally obligated to pay for bodily injury, property damage, or personal injury caused by an occurrence or accident arising out of or related to the performance of Seller's obligations under the Agreement (subject to the applicable policy exclusions). The following provisions shall also be included in the policy: severability of interests clause and cross liability clause;

(c) Employer's Liability Insurance: employer's liability insurance or equivalent insurance for accidental injury to or death of applicable persons with policy limits \$ [REDACTED] for each occurrence or accident or as required by Applicable Law, whichever is the greater. Coverage for this may also be provided under the Commercial General Liability Insurance policy;

(d) Excess Liability Insurance: coverage for the activities of Seller under the Agreement of \$ [REDACTED] per occurrence and in the annual aggregate. Such coverage shall be on a following form "occurrence" basis and over and above the coverage provided by the policies described in Subsections 1.3.2(b), (c), and (e). The excess policies shall not contain endorsements which materially restrict coverage provided in the underlying policies;

(e) Automobile Liability Insurance: automobile liability insurance covering, as a minimum to the extent required by all Applicable Laws, all vehicles (owned, non-owned, leased or licensed, to the extent an exposure exists) used in the performance of Seller's obligations under the Agreement with a combined single limit of \$ [REDACTED] for each occurrence or accident for bodily injury, death and property damage; and

(f) Worker's Compensation: workers' compensation insurance or similar insurances as required by Applicable Laws, and/or by any labor agreements and all other applicable collective bargaining agreements, wherever Seller's obligations under the Agreement are performed and wherever Seller's contracts of employment are entered into.

1.3.3 Policies required to be maintained by Seller pursuant to Subsection 1.3.2 shall provide that the relevant underwriters or insurers shall waive any rights of subrogation against Buyer.

1.3.4 The insurance policies required to be maintained by Seller pursuant to Subsection 1.3.2 (except for (f) above) shall include Buyer as additional insured but only to the extent of the liabilities assumed under the Agreement by Seller. Coverage for Buyer as an additional insured shall be on a primary and non-contributory basis to the extent of the liabilities assumed under the Agreement by Seller.

1.3.5 Upon the inception of the Agreement, and annually thereafter, Seller shall furnish Buyer with certificates of insurance or other means of verification that provide sufficient information to verify that Seller has complied with the insurance requirements of Subsection 1.3.2, 1.3.3 and 1.3.4 above.

1.3.6 Seller shall give notice as soon as practicable to Buyer and all other insured parties in the event of cancellation or non-renewal, affecting any insured party's interest in respect of the insurance set out in Subsection 1.3 above. All policies of insurance required to be obtained and maintained by Seller shall provide that they shall provide at least thirty (30) days prior written notice (sent by registered mail, with receipt acknowledged) to Buyer.

## **1.4 Deductibles**

1.4.1 Unless and to the extent that a claim is covered by an indemnity set forth in the Agreement, payment of any deductible shall be the responsibility of the Seller, unless such claim arises as a result of breach of the Agreement or negligence by Buyer in which case Buyer shall be responsible for the payment of the deductibles .

## **1.5 Subcontractors**

1.5.1 Seller shall be responsible for ensuring that all subcontractors performing work at the project location obtain and maintain insurance coverage of the types and in the amounts as may be reasonable for such subcontractor's scope of work. Seller shall ensure that all insurance maintained by its subcontractors providing work include a waiver of

insurers' rights of recovery, contribution, subrogation, set-off or counterclaim in favor of Buyer. The failure of any subcontractor to obtain and maintain the required insurance shall not in any way impact the obligations of the Seller under the Agreement. Seller may elect to cover subcontractors under its own policies in lieu, to the extent possible.

**APPENDIX L**  
**FORM OF CONSENT**



[REDACTED]

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## **APPENDIX M**

### **AGREEMENT OPERATING COMMITTEE TERMS OF REFERENCE**

#### **I. FORMATION AND MEETINGS**

The Parties acknowledge that, for the Delivery Period, an operating committee (the “**Agreement Operating Committee**”) is formed and consists of a minimum of two (2) representatives and one (1) alternative for each Party. The Agreement Operating Committee shall meet a minimum of two (2) times per year during the Delivery Period and shall keep a written record of its meetings and determinations.

#### **II. DUTIES AND DECISIONS.**

The Agreement Operating Committee is authorized on behalf of the Parties to do all things necessary to give effect to the original intention of the Parties with respect to operations and maintenance of the Facility as reflected in the Agreement in the ongoing administration of this Agreement. For greater certainty, the Agreement Operating Committee shall not have authority to modify or amend the Agreement, such authority remaining at all times with the Parties. All decisions of the Agreement Operating Committee shall be unanimous and in writing in order to be implemented. Subject to any confidentiality obligations to third parties, the Agreement Operating Committee shall have access at all reasonable times to the pertinent and relevant records of the Parties and the Facility required to substantiate any fact pertaining to the Agreement. Specifically, the duties of the Agreement Operating Committee shall include:

- A. establishing and updating (if applicable) procedures relating to a communication protocol to allow for timely and effective transfer of information for the purpose of scheduling energy and outages within the Agreement;
- B. implementing such other mutually acceptable operational procedures as necessary to give effect to the efficient dispatch of the Facility as set forth in the Agreement;
- C. considering such other matters as may arise in carrying out the objectives of the Agreement or as may be referred to it in order to administer the Agreement;
- D. without limiting each Party’s rights and obligations under the Agreement, including Article 19, try to resolve any contractual or operational issues between the Parties and, to the extent deemed appropriate, refer any such issues to the senior management of the Parties as provided for in Section IV below.

#### **III. EXPENSES**

Each Party shall pay the expenses of the members it has appointed to the Agreement Operating Committee.

#### **IV. SENIOR MANAGEMENT CONFERENCE**

Without limiting each Party’s rights and obligations under the Agreement, including pursuant to Article 19, the Parties may, each in its sole discretion, upon recommendation of the

Agreement Operating Committee or otherwise from time to time during the Delivery Period, escalate to the Vice President of Operations, or equivalent, of Buyer and a senior officer of Seller any operational or contractual issues which the Agreement Operating Committee is unable to resolve within twenty (20) Business Days. Each such senior manager shall, in its sole discretion, attempt resolve such matter in good faith, it being understood that any such process may be terminated by either senior manager at any time in their sole discretion.



**APPENDIX N**  
**SITE LEASE**

This is Exhibit <sup>"B"</sup> referred to in the Affidavit  
of JUSTIN UCCU HART  
SWORN TO before me at the City of  
Fredericton, York County, New Brunswick  
the 23<sup>rd</sup> day of JULY, 2025

Execution Version

John B. Long  
A Commissioner of Oaths Being a Solicitor

## GROUND LEASE

This **GROUND LEASE** (the "**Ground Lease**"), is made and entered into as of July 2<sup>nd</sup>, 2025 ("**Effective Date**") by and between New Brunswick Power Corporation, a Crown corporation ("**Owner**"), and 1542987 B.C. Ltd., in its capacity as general partner of RIGS Energy Atlantic Limited Partnership ("**Tenant**"). Owner and Tenant are sometimes referred to herein individually as "**Party**" and collectively as "**Parties**".

## RECITALS

**WHEREAS** Owner is the legal and beneficial owner of the Property (as hereinafter defined); and

**WHEREAS** Tenant is a developer, owner and operator of natural gas-fired electric generation facilities and has entered into a Tolling Agreement with Owner dated as of the date hereof (such agreement, as it may be amended, the "**Tolling Agreement**") pursuant to which Tenant has agreed to design, develop, construct, install, test, operate, use, and maintain the Facility as set out therein; and

**WHEREAS** Tenant desires to lease from Owner a portion of the Property (as hereinafter defined), which will be delineated by legal survey on the Property following an initial subdivision of the Property, all as provided for herein (the Property, the initial subdivision and the survey of a portion thereof as further specified in Exhibit 1 to this Ground Lease) (the "**Leased Premises**"), for the purpose of designing, developing, constructing, installing, testing, operating, using, maintaining and decommissioning the Facility and to obtain certain ancillary rights with respect to the Property and in adjacent lands which are being acquired by the Owner from [REDACTED], a portion of which adjacent lands will be surveyed to show the location of those ancillary rights, and Owner desires to lease the Leased Premises and provide those ancillary rights to Tenant, all in accordance with the terms and conditions set forth in this Ground Lease.

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

1. Definitions. For all purposes of this Ground Lease the following terms shall have the meanings assigned to them in this Section and include the plural as well as the singular.

1.1 "**Affiliate**" means, when used with reference to a specified Person, any other Person that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with the Person specified. For purposes of the foregoing, "control", "under common control with" and "controlled by" with respect to any Person means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, partnership interests or by contract or otherwise.

1.2 "**Authority**" means, and includes without limitation, any court, any local, municipal, provincial or federal government or any department, agency, board, branch or office

thereof, or public utility, which has the authority, power and right to regulate, at law or by or under a statute.

- 1.3 “**Basic Rent**” shall have the meaning set forth in Section 4.1.
- 1.4 “**Business Day**” has the meaning set forth in the Tolling Agreement.
- 1.5 “**Commercial Operation Date**” has the meaning set forth in the Tolling Agreement.
- 1.6 “**Decommissioning Obligations**” shall have the meaning set forth in Section 7.
- 1.7 “**Decommissioning Period**” has the meaning set forth in Section 7.
- 1.8 “**Easement Approvals**” means the approval of the Subdivision Authority of Easements, as required, for registration in the Provincial Land Registry.
- 1.9 “**Easement**” and “**Easements**” shall have the meanings set forth in Section 5.1.
- 1.10 “**Easement Areas**” shall have the meaning set forth in Section 5.1.
- 1.11 “**Environmental Laws**” has the meaning set forth in the Tolling Agreement.
- 1.12 “**Environmental Liability**” means any action, lawsuit, claim or proceeding (including claims or proceedings at common law or under the *Occupational Health and Safety Act* (New Brunswick) or similar laws relating to safety of employees) arising under or related in any way to Environmental Laws or which seeks to impose liability for (a) noise; (b) pollution or contamination of the air, surface water, ground water or land or the clean-up of such pollution or contamination; (c) solid, gaseous or liquid waste generation, handling, treatment, storage, disposal or transportation; (d) exposure to or contamination by Hazardous Materials; (e) the safety or health of employees; or (f) the manufacture, processing, distribution in commerce or use of Hazardous Materials. An “Environmental Liability” includes a common law action, whether direct or indirect, as well as a proceeding to issue, modify or terminate an Environmental Permit, or to adopt or amend a regulation to the extent that such a proceeding attempts to redress violations of an applicable permit, license, or regulation as alleged by any governmental authority.
- 1.13 “**Environmental Permit**” means any permit, license, approval or other authorization under any applicable Environmental Laws.
- 1.14 “**Event of Default**” has the meaning set forth in Section 14.1.
- 1.15 “**Expropriation**” means (a) any expropriation by any Authority, or transfer, conveyance or dedication in contemplation of a threatened expropriation, in all or any portion of the Leased Premises or any Easement Area; and/or (b) a determination by any Authority that the fee simple interest in the Leased Premises or any Easement Area is invalid or ineffective for any reason, including, without limitation, by virtue of Aboriginal rights to, or Aboriginal title in, the Leased Premises or any Easement Area.

- 1.16 “**Facility**” has the meaning set forth in the Tolling Agreement.
- 1.17 “**Financing Documents**” has the meaning set forth in Section 18.1.
- 1.18 “**Financing Party**” has the meaning set forth in Section 18.1.
- 1.19 “**Financing Party Cure Period**” has the meaning set forth in Section 18.2.
- 1.20 “**Financing Party’s Lien**” has the meaning set forth in Section 18.5.
- 1.21 “**Force Majeure Event**” has the meaning set forth in the Tolling Agreement.

1.22 “**Hazardous Materials**” means any flammable, reactive, explosive, corrosive or radioactive materials or hazardous, toxic or dangerous wastes, substances or related materials or any other chemicals, materials, wastes or substances, exposure to which is prohibited, limited or regulated by a federal, provincial, county, regional or local authority, or any Environmental Laws, or which, even if not so regulated, may or could pose a hazard to the health and safety of the occupants of the Facility, the Property or the Easement Areas or of property adjacent to the Facility, the Property or the Easement Areas, including but not limited to, asbestos, PCBs, petroleum products and by-products, hazardous air pollutants, mold or any substance identified, defined or listed as a “toxic pollutant,” “hazardous waste,” “hazardous material,” “hazardous substance,” “toxic substance,” “pollutant or contaminant,” “hazardous chemical,” or any hazardous air pollutant, or similarly identified in, pursuant to, or for purposes of, any Environmental Laws.

- 1.23 “**Indemnifying Party**” has the meaning set forth in Section 13.1(a).
- 1.24 “**Leasehold Estate**” has the meaning set forth in Section 18.3.
- 1.25 “**Legal Requirement**” has the meaning set forth in the Tolling Agreement.

1.26 “**Leased Premises**” shall have the meaning set forth in the recitals of this Ground Lease and as further described in Exhibit 1-B and as also identified in Exhibit 1-C.

1.27 “**Lease Year**” means each consecutive twelve (12) month period during the Term commencing with the first day of the first full calendar month following the Effective Date (or if the Effective Date shall occur on the first day of a calendar month, commencing on the Effective Date) and ending on the last day of the calendar month completing such twelve (12) month period.

- 1.28 “**Lienholder**” has the meaning set forth in Section 19.3.
- 1.29 “**Losses**” has the meaning set forth in Section 13.1(a).
- 1.30 “**Minerals**” has the meaning set forth in Section 19.16.
- 1.31 “**Non-Disturbance Agreement**” has the meaning set forth in Section 19.3.
- 1.32 “**Notices**” has the meaning set forth in Section 23.2.

1.33 “**Official Records**” means the official records maintained by the Land Titles Office, or the equivalent, in the county in which the Property is located.

1.34 “**Owner Financing Consent Instruments**” has the meaning set forth in Section 18.1.

1.35 “**Owner’s Parties**” means Owner, its officers, directors, partners, members, Affiliates, lenders, employees, shareholders, attorneys, tenants (other than Tenant), sub-tenants, licensees, invitees, contractors, subcontractors, consultants, agents and any of their respective successors and permitted assigns.

1.36 “**Party**” means Owner or Tenant (as applicable), and “**Parties**” means, collectively, Owner and Tenant.

1.37 “**Person**” means any individual, corporation, partnership, limited liability company, unlimited liability corporation, joint venture, association, joint stock company, trust, estate, unincorporated organization or other business entity, or any governmental authority.

1.38 “**Property**” means that certain real property located in Centre Village, New Brunswick, with Parcel Identifier Number (PID) 70113592 as described in Exhibit 1-A attached hereto, consisting of approximately 199.11 hectares, which includes the Leased Premises.

1.39 “**Provincial Land Registry**” means the Westmorland County Land Titles Office under the *Land Titles Act* (New Brunswick).

1.40 “**Receiving Party**” has the meaning set forth in Section 23.7.

1.41 “**Release**” means any release, pumping, pouring, emptying, injecting, escaping, leaching, dumping, seepage, spill, leak, flow, discharge, disposal or emission of a Hazardous Material whether on, under or migrating to or from the property of any Party.

1.42 “**Requesting Party**” has the meaning set forth in Section 23.7.

1.43 “**RTIPPA**” has the meaning set forth in Section 23.1.

1.44 “**Subdivision Approval**” means the approval of the Subdivision Authority for registration in the Provincial Land Registry to subdivide the Property to create a parcel, a portion on which the boundaries of the Leased Premises will be delineated upon (leaving a remnant parcel labelled “Parcel 2025-A”, which, for clarity, such parcel to not include the Leased Premises or any lands necessary to access the Leased Premises, and which will be capable of being separately transferred pursuant to the *Community Planning Act* (New Brunswick)), all as shown at Exhibit 1-C, and the delineation of the boundaries of the Leased Premises.

1.45 “**Subdivision Authority**” means the subdivision authority of the Southeast Regional Service Commission.

1.46 “**Subdivision Plan**” means the plan of subdivision respecting the Property to subdivide the Property to create a parcel, a portion on which the boundaries of the Leased Premises will be delineated upon (leaving a remnant parcel labelled “Parcel 2025-A”) all as shown at Exhibit 1-C, which is subject to the Subdivision Approval.

1.47 “**Survey Plan**” means the plan of survey that will delineate the boundaries of the Leased Premises within the Property and be filed with the notice of this Ground Lease in the Provincial Land Registry.

1.48 “**Targeted COD**” has the meaning set forth in the Tolling Agreement.

1.49 “**Taxes and Assessments**” has the meaning set forth in Section 21.1.

1.50 “**Tenant’s Parties**” means Tenant, its officers, directors, partners, members, Affiliates, lenders, employees, shareholders, attorneys, tenants, sub-tenants, licensees, invitees, contractors, subcontractors, consultants, agents and any of their respective successors and assigns.

1.51 “**Term**” has the meaning set forth in Section 2.1.

1.52 “**Title Policies**” has the meaning set forth in Section 19.1.

1.53 “**Tolling Agreement**” shall have the meaning set forth in the recitals of this Ground Lease.

1.54 “**Utilities**” means the services and related improvements, equipment and facilities necessary for the operation of the Facility, including, but not limited to water, storm water, sanitary sewer, effluent, roads, distributive electrical power, telephone and telecommunication services, improvements, equipment and facilities.

For clarity, with respect to all definitions herein that have a corresponding meaning set forth in the Tolling Agreement, the capitalized terms within such definitions in the Tolling Agreement, shall have the meanings set forth for those capitalized terms in the Tolling Agreement.

## 2. Lease; Term; Extension Term(s).

2.1 Lease of Property; Term. Owner hereby leases the Leased Premises to Tenant, and Tenant hereby leases the Leased Premises from Owner, upon the terms and conditions hereof, for a term which shall commence on the Effective Date and expire, unless terminated earlier in accordance with the terms hereof, on the twenty-fifth (25<sup>th</sup>) anniversary of the later of (i) Commercial Operation Date, or (ii) Targeted COD, or upon any earlier termination of the Tolling Agreement in accordance with the Tolling Agreement (the “**Term**”). Notwithstanding any of the foregoing, in the event of a termination of the Tolling Agreement as a result of a Buyer’s Event of Default under the Tolling Agreement, the Term hereof shall not expire until payment of the Buyer Termination Payment as defined in the Tolling Agreement has been received in full by Tenant.

2.2 Water Rights. Owner hereby grants to Tenant the right to extract the amount of water reasonably needed by Tenant to construct, operate and maintain the Facility each Lease Year, and any Easements necessary for same shall be obtained in accordance with Section 5.

3. Severance. The Parties agree that all improvements, structures, equipment, fixtures and chattels acquired, erected, installed, constructed, or placed in at any time by or for Tenant on the Property or within any Easement Areas, including without limitation the Facility, whether prior to the Effective Date or after same, are hereby severed by agreement and intention of the Parties and shall remain severed from the Property and any Easement Area, shall be considered with respect to the interests of the Parties hereto as the personal property of Tenant or a Financing Party (as defined in Section 18.1 below) designated by Tenant, and, even though attached to or affixed to or installed upon the Property or within an Easement Area, shall not be considered to be fixtures or a part of the Property or such Easement Area and shall not be or become subject to the lien of any mortgage or deed of trust heretofore or hereafter placed on the Property or any Easement Area by Owner. Owner (i) waives, to the fullest extent permitted by applicable law, any and all rights it may have under the laws of the Province of New Brunswick arising under this Ground Lease, by statute or otherwise to any lien upon, or any right to distress or attachment upon, or any other interest in, any item constituting part of the Facility or any other equipment or improvements constructed or acquired by or for Tenant and located on the Property or within any Easement Area, and (ii) shall execute and deliver lien waivers in a form acceptable to Tenant, upon Tenant's reasonable request, to the extent required by applicable law in order to give effect to the waivers set forth in this Ground Lease, including the waiver set forth in this Section 3.

4. Rent.

4.1 Basic Rent. During the Term, Tenant shall pay to Owner rent ("**Basic Rent**") in an amount [REDACTED] per year, payable within thirty (30) days after the Effective Date and each successive anniversary thereof. If and when this Ground Lease expires or is terminated earlier as provided for by the terms of this Ground Lease on a day that is not the last day of a Lease Year, the installment of Basic Rent due for that Lease Year shall be pro-rated on a daily basis.

4.2 Payment of Basic Rent. All payments of Basic Rent and any other payments required to be made by Tenant hereunder shall be in lawful money of Canada ("**Dollars**" or "\$") and shall be paid to Owner at Owner's address set forth in Section 23.2(d) or at such other place as Owner may designate by notice in writing from time to time and may be made by check or draft payable to the order of Owner. Owner hereby acknowledges receipt of payment by Tenant in advance of the Base Rent payable in respect of each Lease Year. If this Ground Lease is terminated early for reasons other than Tenant's default hereunder, Owner shall refund to Tenant, within thirty (30) days after such termination, on a pro rata basis, all Base Rent paid by Tenant in advance in respect of the remainder of the Term following such termination.

5. Further Assurances and Easements.

5.1 Granting of Easements. Owner and Tenant each agree to execute and deliver all further instruments and documents and take any further action that may be reasonably necessary to effectuate the purposes and intent of this Ground Lease. To such end, Owner shall, in response to Tenant's request for easements in, to, over, under and across the Property and/or adjacent lands owned by Owner, as Tenant deems is necessary or desirable, acting reasonably and pursuant to Prudent Industry Practices, for access to the Leased Premises, effluent and stormwater discharge from the Leased Premises, water, distributive electrical power and/or any other Utilities serving or



relating to the Facility and for construction and operation of the Facility, grant such easements to and in favor of the Tenant and appurtenant to the Leased Premises substantially in the form of easement set out in Exhibit 3 and with such other additional or modified terms and conditions mutually acceptable to Tenant and Owner acting reasonably (collectively, the “**Easements**” and each an “**Easement**”). For certainty, and as soon as reasonably available after execution of this Ground Lease, Owner shall: (i) complete the Subdivision Plan for subdividing the Property to create a parcel, a portion on which the boundaries of the Leased Premises will be delineated upon (leaving a remnant parcel labelled “Parcel 2025-A”) all as shown at Exhibit 1-C; (ii) complete the Survey Plan identifying the Leased Premises as shown at Exhibit 1-C at the remaining Property following the subdivision; (iii) acquire the adjacent property owned by [REDACTED]; and (iv) survey the Easement on such adjacent lands for purposes of granting the Easement therein in accordance with this Section 5.1. Owner shall be responsible for all costs relating to surveying, subdivision and acquisition of such lands (each as applicable). Any such Easements shall be in locations reasonably acceptable to Owner and Tenant, as applicable (the “**Easement Areas**”) and shall be granted without additional charge to Tenant (other than maintenance or repair obligations assumed by Tenant thereunder). Obligations and responsibility for construction, development and maintenance activities of the Parties shall be described within an Easement, provided that Tenant shall be responsible for routine maintenance of an Easement Area.

5.2 Location of Easements. The Parties acknowledge and agree that the tentative locations of the Easements as of the date of this Ground Lease are as currently shown on Exhibit 4 to this Ground Lease and that the exact final locations of the Easements will be determined by mutual agreement in accordance with the legal survey process set out in Section 5.1, as soon as practicable following completion of the final technical design of the Facility.

5.3 Use of Easements by Tenant. The Easements are for the use of Tenant and Tenant’s Parties in connection with the Facility and in conjunction with locating, accessing, operating, maintaining, constructing, repairing, removing or replacing any improvements located on, over, across, under or through such Easement Areas or the Leased Premises, and shall be exclusive to Tenant and Tenant’s Parties except in respect of such permitted use of Owner and Owner’s Parties as may be mutually agreed to by the Parties in an Easement. Notwithstanding the foregoing, the Parties acknowledge that they may also allocate obligations and responsibilities in terms of maintenance and construction in an Easement Area within an Easement.

5.4 Easements in favour of Owner. Tenant acknowledges and agrees that Owner may require an easement burdening the Leased Premises in favour of Owner’s switching station for purposes of Owner constructing, maintaining and operating slacklines servicing Owner’s switching station, and for Owner accessing Owner’s switching station and other transmission assets on the Property and access to the Facility for testing and similar purposes, and Tenant shall cooperate as necessary in the creation of such easements, on terms mutually agreeable to the Parties acting reasonably.

## 6. Subdivision of the Property and Survey of the Leased Premises.

6.1 Registration of the Subdivision Plan and Plan of Survey. As soon as reasonably available after execution of this Ground Lease, Owner shall complete the Subdivision Plan to create a parcel, a portion on which the boundaries of the Leased Premises will be delineated upon



(leaving a remnant parcel labelled “Parcel 2025-A”) all as shown at Exhibit 1-C and the Survey Plan for delineating the boundaries of the Leased Premises, and execute and deliver to Tenant the Subdivision Plan and the Survey Plan and all application forms and other required documents reasonably necessary to obtain Subdivision Approval and approvals of the Provincial Land Registry in respect of the Subdivision Plan and the registration of the notice of this Ground Lease with the Survey Plan in respect of the Leased Premises, and Owner shall submit same to the Subdivision Authority for Subdivision Approval. In obtaining the Subdivision Approval, any conditions relating to Subdivision Approval shall be subject to approval by both Owner and Tenant, each acting reasonably. The satisfaction of any conditions to Subdivision Approval shall be the responsibility of Owner. Upon receipt of the Subdivision Approval and satisfaction of all conditions relating thereto, Owner shall promptly, and in any event within ten (10) Business Days, submit the Subdivision Plan and notice of this Ground Lease and Survey Plan for registration in the Provincial Land Registry.

6.2 Registration of Easements. Upon registration of the Survey Plan, the Parties shall promptly proceed to survey and complete the Easements, whereupon Owner shall promptly submit the Easements to the Subdivision Authority for Easement Approval. Upon issuance of an Easement Approval, and in any event within ten (10) Business Days after receipt of each Easement Approval, Owner shall register each Easement in the Provincial Land Registry.

6.3 Responsibility for Costs. Owner is responsible for and shall pay promptly relating to Subdivision Approval and Easement Approvals, including:

(a) all costs and expenses actually incurred in applying for, pursuing and satisfying the conditions of the Subdivision Approval and the Easement Approvals (without regard to the Party responsible for satisfying same), including all application fees and charges, registration fees and charges, survey costs, legal costs and expenses and survey consultants costs and expenses; and

(b) all registration and other Land Titles Office fees incurred with respect to registration of the Subdivision Plan, Survey Plan and Easements.

6.4 Amendment of Legal Description of Leased Premises. Upon Subdivision Approval being obtained and the Subdivision Plan and the Plan of Survey being registered in the Provincial Land Registry, the Parties shall promptly execute and deliver an amending agreement to this Ground Lease amending the legal description of the Leased Premises described in this Ground Lease so that it shall be consistent with the legal description of the Leased Premises set out in the Survey Plan, if such descriptions are not already consistent. It is expected that upon registration of the Survey Plan, a new PID will be assigned to the Leased Premises, and the parent or remnant PID will remain less the Leased Premises (and all references herein to Property shall be inclusive of such remainder of the Property following the registration of the Subdivision Plan and Plan of Survey, as applicable).

7. Surrender of Leased Premises. Upon expiration of the Term, and provided Owner shall have not agreed to acquire the Facility pursuant to Section 2.1 of the Tolling Agreement and Tenant shall have not agreed to acquire the Leased Premises and the Easement Areas pursuant to Section 2.1 of the Tolling Agreement, Tenant shall surrender the Leased Premises and the Easement Areas

as provided in this Section 7. Until the date that Tenant's Facility is removed from the Property, and such period shall not exceed sixteen (16) months from the termination or expiration of the Term (provided the options under Section 2.1 of the Tolling Agreement have not been exercised) (the "**Decommissioning Period**"), Tenant shall decommission, dismantle, and remove the Facility and all other property of Tenant located on the Leased Premises and the Easement Areas, returning the Leased Premises and the Easement Areas to substantially their condition as of the Effective Date to the extent reasonably practicable, ordinary wear and tear excepted (the "**Decommissioning Obligations**"); provided, that Tenant shall not be required to dismantle, abandon or remove any underground Utilities, concrete foundations and pads or to significantly alter the grade of the Leased Premises or the Easement Areas. Within thirty (30) days after the Decommissioning Period, Tenant shall pay to Owner a decommissioning fee equal to the Basic Rent rate applicable during the last Lease Year of the Term and such fee will be prorated as applicable to reflect the actual length of the Decommissioning Period. Owner hereby grants to Tenant and Tenant's Parties a license to enter upon the Leased Premises and the Easement Areas to perform the Decommissioning Obligations required to be performed by Tenant pursuant to this Section 7, which license shall be effective commencing upon the date of termination or expiration of the Term and shall terminate upon the date on which such Decommissioning Obligations are complete to the satisfaction of Owner, acting reasonably.

8. Non-termination. Except as specifically provided to the contrary in this Ground Lease, this Ground Lease shall not terminate, nor shall Tenant's interest in the Leased Premises, the Easements, or the Facility be extinguished, lost, conveyed or otherwise impaired, or be merged into or with any other interest or estate in the Leased Premises, the Easement Areas or any other property interest, in whole or in part, by any cause or for any reason whatsoever. This Ground Lease may only be terminated by Owner during the continuance of a Tenant Event of Default pursuant to Section 14.1 below, and provided the Tolling Agreement has been terminated in accordance with its terms; subject to the cure rights of any Financing Party (as defined in Section 18.1 below) as provided in Section 18 below.

9. Possession and Quiet Enjoyment. As long as no Tenant Event of Default under this Ground Lease has occurred, or, if it has occurred, no such Tenant Event of Default is continuing beyond any applicable cure period, subject to the provisions of this Ground Lease, Owner covenants and agrees that Tenant shall enjoy quiet possession of the Leased Premises and use of the Easements Areas without any disturbance from Owner or any person claiming by or through Owner. In no event shall Owner permit or suffer to exist any tax lien or other encumbrance on or against the Facility, the Leased Premises or the Easement Areas without Tenant's prior written consent, which may be withheld in Tenant's sole and absolute discretion. Upon either Party's discovery of any such lien, (a) such Party shall promptly give written notice thereof to the other Party, and (b) Owner shall cause the same to be discharged of record or deliver to Tenant appropriate security for payment within thirty (30) days after the date Owner receives notice of filing of same, either by payment, deposit or bond and in an amount at least equal to the amount of such lien. If Owner shall fail to discharge any such lien(s) within such period, in addition to any other rights or remedy hereunder, Tenant may, but shall not be obligated to, procure the discharge of the same either by paying the amount claimed to be due by deposit in court or bonding. Any amount so paid or deposited by Tenant, and all reasonable costs and other expenses related thereto, including reasonable legal fees, in defending any action or in procuring the discharge of such lien, with all

necessary disbursements in connection therewith, until repaid to Tenant, shall be payable by Owner to Tenant upon demand.

# 10. Use of Leased Premises; Development of Facility.

10.1 Use. During the Term, Tenant shall have exclusive use of, and access to, the Leased Premises and Easement Areas (subject to the agreed limitations to exclusivity set out in this Ground Lease and in the form of Easement), including, without limitation, all profits from the existence and operation of the Facility under the Tolling Agreement. Tenant may use the Leased Premises and the Easement Areas, and Owner hereby consents to the use of the Property, the Leased Premises, and Easement Areas for purposes related to due diligence investigations and studies, and the design, construction, installation, use, operation, repair, ownership, replacement, expansion, modification, upgrade or maintenance of the Facility and for any other purposes relating to the Tolling Agreement and any other uses incidental thereto. In connection with such use of the Property, Leased Premises, Easements, Easement Areas or the Facility, Tenant may demolish and remove any crops, vegetation or improvements (including any fences and irrigation lines) on the Property and may modify or change the contour and grade of the Leased Premises or Easement Areas.

10.2 Ownership of Facility. Owner acknowledges and agrees that (i) Tenant (or one of Tenant's Affiliates) shall be the exclusive owner and operator of the Facility, (ii) the Facility shall remain the chattels and personal property of Tenant, (iii) further to Section 3, no component of the Facility shall become a fixture notwithstanding the way in which the Facility is or may be attached to any real property and (iv) unless otherwise agreed by the Parties (including the security interest in favour of Owner contemplated in the Tolling Agreement), Owner shall have no right, title or interest in the Facility (or components thereof).

# 11. Insurance.

11.1 As to all activities hereunder, Tenant and Owner shall obtain and maintain in force during the Term such policies of insurance as provided for in the Tolling Agreement and in accordance with all requirements as provided for in the Tolling Agreement.

11.2 Owner and Tenant agree to comply with the workers' compensation legislation in the Province of New Brunswick. Either Party shall furnish to the other Party, upon request, evidence from the workers' compensation authority that it has paid all assessments and other amounts owing pursuant to the workers' compensation legislation in the Province of New Brunswick.

# 12. Intentionally Deleted.

# 13. Liabilities.

## 13.1 General Indemnity.

(a) Each Party (each an "**Indemnifying Party**") shall indemnify, defend and hold harmless the other Party from and against any claim, loss, liability, action, suit, judgment for personal injury or property damage, or expenses (including all reasonable legal fees and other

reasonable legal costs and expenses) (collectively, “**Losses**”) incurred or suffered by such Party by reason of, resulting from, whether directly or indirectly, or arising out of: (i) either (A) Tenant’s or Tenant’s Parties use of the Leased Premises and the Easement Areas (B) Owner’s or Owner’s Parties’ ownership and use of the Leased Premises, the Easement Areas and the Property, and as provided for hereunder; (ii) the nonfulfillment or non-performance of any covenant or agreement hereunder of either (A) Tenant or Tenant’s Parties where Tenant is the Indemnifying Party, or (B) Owner or Owner’s Parties where Owner is the Indemnifying Party; (iii) the negligence or willful misconduct of such Indemnifying Party in connection with the transactions contemplated by this Ground Lease; (iv) the breach of any representations and warranties of the Indemnifying Party hereunder, to the extent applicable; or (v) any Environmental Liability or Release on or affecting the Leased Premises or Easement Areas, including, without limitation, any violation or alleged violation of any Environmental Laws or any actual, threatened or alleged violation of any Environmental Laws, to the extent caused by such Indemnifying Party or otherwise arising from such Indemnifying Party’s actions or omissions.

13.2 Damages Excluded. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS GROUND LEASE, NEITHER PARTY HERETO SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES OR DAMAGES FOR LOSS OF USE OR LOSS OF PROFIT OR REVENUE, WHETHER FORESEEABLE OR NOT AND WHETHER ARISING OUT OF OR IN CONNECTION WITH THIS GROUND LEASE, BY STATUTE, IN CONTRACT, TORT, INCLUDING NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, AND ALL SUCH DAMAGES ARE EXPRESSLY DISCLAIMED. THE PARTIES FOREGOING WAIVER OF CONSEQUENTIAL DAMAGES SHALL APPLY EVEN IF THE REMEDIES FOR BREACH OF THIS SECTION 13 ARE DEEMED TO BE INVALID OR UNENFORCEABLE.

13.3 The provisions of this Section 13 shall survive the expiration or termination of the Term.

#### 14. Default.

14.1 Default. Subject to Financing Parties’ rights set out in Section 18 of this Ground Lease in the event of an Event of Default of Tenant, the following events shall be deemed to be events of default by a Party hereunder (each an “**Event of Default**”) under this Ground Lease regardless of the pendency of any bankruptcy, reorganization, receivership, insolvency or other proceeding which have or might have the effect of preventing the defaulting Party from complying with the terms of this Ground Lease:

(a) Failure to pay any payment required to be made hereunder, including taxes or any other sum to be paid hereunder, within ten (10) Business Days after the date the same is due and which shall have remained unpaid for twenty (20) Business Days after written notice of such failure has been given to the defaulting Party by the non-defaulting Party.

(b) Failure to substantially comply with any material term, provision or covenant of this Ground Lease, other than the payment of sums to be paid hereunder, without curing such failure within ninety (90) days after written notice thereof from the non-defaulting Party; or if such failure cannot reasonably be cured within the said ninety (90) days, the failure of

the defaulting Party to commence the cure of such failure within said ninety (90) day period or the failure to thereafter with reasonable diligence and good faith proceed to cure such failure.

(c) Any act or omission of Owner that in any way, directly or indirectly, impacts, affects or impairs Tenant's ability to construct, use, operate or maintain the Facility.

Notwithstanding anything to the contrary herein, the exercise of any rights of Tenant's Financing Parties pursuant to Section 18 of this Ground Lease, including, without limitation, any right to acquire title or right to assign or transfer Tenant's leasehold interest under this Ground Lease to a third party, shall not constitute an Event of Default by Tenant.

14.2 Non-Defaulting Party's Remedies. Subject to Financing Parties' rights set out in Section 18 of this Ground Lease as it pertains to an Event of Default by Tenant, upon the occurrence of any Event of Default, the applicable non-defaulting Party may, at its option, and in addition to and cumulatively of any other rights the non-defaulting Party may have at law or in equity or under this Ground Lease, (a) cure the Event of Default on behalf of the defaulting Party, in which event the defaulting Party shall reimburse the non-defaulting Party on demand for all sums so expended by the non-defaulting Party, (b) terminate this Ground Lease by notice to the defaulting Party, provided the requirements for such termination as set forth in this Ground Lease have been met, and in conformity with procedures required, or (c) enforce, by all proper and legal suits and other means, its rights hereunder, including the collection of sums due hereunder and any and all monetary damages which shall not be capped or limited in any way other than as expressly set out in this Ground Lease, in which event the non-defaulting Party shall have all remedies available at law or in equity, and should it be necessary for the non-defaulting Party to take any legal action in connection with such enforcement, the defaulting Party shall pay the non-defaulting Party all reasonable legal fees so incurred, all without prejudice to any remedies that might otherwise be used by the non-defaulting Party for recovery or arrearages of sums due hereunder, damages as herein provided, or breach of covenant. Notwithstanding anything to the contrary in this Ground Lease, any exercise of the termination remedy set forth in section 14.2(b) shall be subject to the extension of such otherwise applicable cure periods by an additional thirty (30) days.

## 15. Force Majeure.

15.1 Force Majeure. The performance of each Party's respective non-financial obligations under this Ground Lease, other than failure or delay in payment of obligations, shall be excused during such times and to such extent a Party's performance is suspended, prevented or delayed by reason of a Force Majeure Event in accordance with the Tolling Agreement.

15.2 Resumption of Performance. The Party whose performance is suspended, prevented or delayed by a Force Majeure Event shall promptly notify the other Party of such occurrence and its estimated duration. Such Force Majeure Event shall be promptly remedied by the affected Party, if and to the extent reasonably possible.

16. Expropriation. If the Leased Premises or any Easement Area is Expropriated, suspended, or such similar action is taken, in a manner or to an extent denying Seller the benefit of the Leased Premises or any Easement Area in any material respect, as determined by Seller acting reasonably, **irrespective entirely as to whether any such potential Expropriation is disclosed in Exhibit**

5, such Expropriation shall constitute an Owner's Event of Default hereunder and a Buyer's Event of Default under the Tolling Agreement.

17. Tenant's Maintenance Responsibilities. Tenant will keep and maintain the Facility in good repair in accordance with the requirements of the Tolling Agreement and in order to ensure that the Facility is operating in accordance with Prudent Industry Practices (as defined in the Tolling Agreement).

18. Mortgage of Tenant's Leasehold Interest.

18.1

18.2

18.3

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18.4 Financing Parties shall have no obligation or liability to Owner for performance of Tenant's obligations under this Ground Lease prior to the time the Financing Party acquires title to the Leasehold Estate. A Financing Party shall be required to perform the obligations of Tenant under this Ground Lease only for and during the period the Financing Party directly holds such Leasehold Estate. Any assignment pursuant to this Section 18 shall release the assignor from obligations accruing under this Ground Lease after the date the liability is assumed by the assignee.

18.5

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18.8

18.9 No assignment by either Tenant or Owner, except to a Financing Party, shall be effective unless and until the Tolling Agreement is assigned to such same assignee, in accordance with the terms of the Tolling Agreement, and such assignee executes an agreement to be bound by this Ground Lease (without the need for any other party to execute that counterpart) agreeing to be bound by the terms hereof to the same extent as if it had been an original party hereto, and such assignment is otherwise in accordance with Section 22.1 or 22.2 herein, as the case may be. For further certainty, no assignment by Owner of this Ground Lease shall be effective unless consented to in writing by Tenant.

19. Owner's Representations and Covenants.

19.1 Condition of Title. Owner represents and warrants as of the Effective Date that Owner is the legal and beneficial owner of good and marketable fee simple title to the Property (including the Leased Premises) and the Easement Areas, free and clear of any lien, interest or encumbrance, subject only to the matters and exceptions as disclosed in the Official Records. Owner has the requisite right, power and authority to lease the Leased Premises, and grant Easements to the Easement Areas, to Tenant as provided herein and to perform Owner's obligations hereunder and under such Easements. At any time on or after the Effective Date, Tenant may obtain for itself and/or any Financing Party, at Tenant's expense, a policy of title insurance in a form and with exceptions acceptable to Tenant and/or such Financing Party in its sole discretion (the "**Title Policies**"). Owner agrees to cooperate fully and promptly with Tenant in its efforts to obtain the Title Policies, and Owner shall take such actions as Tenant or any Financing Party may reasonably request in connection therewith.

19.2 Environmental. Owner represents and warrants that, to Owner's knowledge (being the actual knowledge of any of the executive officers of Owner and other facts and matters that such executive officers could reasonably be expected to discover or otherwise become aware of in the course of performing their ordinary responsibility as executive officers of Owner), as of the Effective Date (a) the Property, the Leased Premises and Easement Areas are free of known or identified Hazardous Materials, no Hazardous Materials have ever been produced or disposed upon the Property, the Leased Premises or the Easement Areas, no Release has occurred on the Property, the Leased Premises or Easement Areas and no Hazardous Materials have migrated to the Property, the Leased Premises or the Easement Areas, (b) the Property, the Leased Premises and the



Easement Areas are in compliance with all Environmental Laws, (c) neither the Property, the Leased Premises nor the Easement Areas are subject to any Environmental Liability, threatened Environmental Liability or alleged Environmental Liability, (d) Owner has not received notice of any violation of Environmental Laws affecting the Property, the Leased Premises or the Easement Areas, (e) the location and extent of wetlands and watercourses at the Property are as reflected in the mapping of the Property in purple shading at Exhibit 1-B, and (f) there are no species, or habitat thereof, as regulated under the *Species at Risk Act* (New Brunswick), *Species at Risk Act* (Canada), or *Migratory Birds Convention Act* (Canada), present at the Property .

19.3 Subordination and Non-Disturbance. Following the execution of this Ground Lease, Owner shall within ninety (90) days obtain for the benefit of Tenant, if requested by Tenant, a postponement, subordination or non-disturbance agreement (in a form and containing provisions reasonably acceptable to Tenant) (a “**Non-Disturbance Agreement**”) from each mortgagee of the Property or the Easement Areas and from each Person (each a “**Lienholder**”) that holds a lien, security interest, charge or other encumbrance that might delay, interfere with or impair the construction or operation of the Facility or the exercise of any of Tenant’s rights under this Ground Lease or any Easement. Each such Non-Disturbance Agreement shall be in registrable form and shall provide that: (a) if Tenant shall not be in default of the terms and provisions of this Ground Lease and any Easement, as applicable, then Tenant’s rights under this Ground Lease, and Easement as applicable, shall not be disturbed or affected as a result of the exercise of any remedy said Lienholder may have, and (b) if Owner fails to make any payment or perform any obligation required to be made or performed to such Lienholder, then Tenant shall be entitled (but not obligated) to make the required payment or perform the required obligation in fulfillment of Owner’s obligations to such Lienholder, whereupon Owner shall upon demand, reimburse Tenant for the amount of such payment and the cost of such performance or, at Tenant’s option, Tenant may offset the amount of such payment and/or the cost of such performance against any amounts due to Owner hereunder (provided that Tenant shall only be entitled to offset any such amounts in respect of which Owner has agreed in writing, or a court or arbitrator having jurisdiction have determined, that Tenant is entitled to reimbursement hereunder). Tenant shall reimburse Owner for all reasonable third-party costs incurred by Owner in obtaining any such Non-Disturbance Agreement if and to the extent that the nature and amount of such third-party costs are approved in advance by Tenant in writing. If Owner cannot obtain any such Non-Disturbance Agreement for an amount of third-party costs that Tenant is willing to pre-approve in writing, then Owner’s obligation to obtain it shall be suspended unless and until Tenant has negotiated a mutually satisfactory resolution of the cost issue with the Lienholder or other third party, as the case may be.

19.4 Leased Premises; Easement Areas. During the Term, each Party shall comply with any law, ordinance or regulation applicable to the Leased Premises and Easement Areas and Owner shall not, other than in respect of its arrangements for and financial responsibility for the delivery of natural gas and fuel oil to the Facility as contemplated in the Tolling Agreement, do any of the following without the prior written approval of Tenant, which approval may not be unreasonably withheld: (a) enter into any agreement affecting the survey condition of, title to, or possession of the Leased Premises or any Easement Area, (b) create any encumbrances on or against the Leased Premises or any Easement Area, (c) materially modify any existing prior encumbrance affecting the Leased Premises or any Easement Area, (d) initiate any change in the existing zoning or other land use entitlements affecting the Leased Premises or any Easement Area; (e) enter into any lease,

contract, or other agreement affecting the Leased Premises or any Easement Area; (f) amend or modify any existing lease or contract affecting the Property or any Easement Area; or (g) permit the presence of any Hazardous Materials on or under the Leased Premises or any Easement Area.

19.5 Authorization; Execution. Owner represents and warrants as of the Effective Date that the execution, delivery and performance of this Ground Lease have been duly authorized by all necessary action by Owner and do not violate any provision of any current law applicable to Owner, the Property or the Easement Areas or any order, judgment or decree of any court or other agency presently binding on Owner or conflict with or result in a breach of or constitute a default under any contractual obligation of Owner.

19.6 Enforceability. Owner represents and warrants as of the Effective Date that this Ground Lease is a legally valid and binding obligation of Owner enforceable against it in accordance with its terms except as enforcement may be limited by bankruptcy, insolvency, or reorganization, moratorium or similar laws or equitable principles relating or limiting creditors rights generally.

19.7 Conflict. Owner represents and warrants as of the Effective Date that the execution and performance of this Ground Lease by Owner does not violate any contract, agreement or instrument to which Owner is a party.

19.8 Litigation. Other than as set forth in Exhibit 5, Owner represents and warrants as of the Effective Date that there are no pending or threatened claims, actions or suits affecting the Leased Premises or Owner's interest in the Property or the Easement Areas.

19.9 Violations. Owner represents and warrants as of the Effective Date that it has neither received written notice from any governmental authority having jurisdiction over the Property, nor otherwise has knowledge, that the Property, or any condition thereon or any use thereof, is in violation or potential violation of any law, ordinance or regulation applicable to the Property.

19.10 Expropriation. Owner represents and warrants as of the Effective Date that, other than as may be disclosed in Exhibit 5, it has not received written notice, or otherwise has knowledge, of any ending or threatened Expropriation or such other similar proceedings that would affect the Property or Easement Area.

19.11 Bankruptcy. Owner represents and warrants as of the Effective Date that it has not (a) made a general assignment for the benefit of creditors, (b) filed any voluntary petition in bankruptcy or suffered the filing of any involuntary petition by its creditors, (c) suffered the appointment of a receiver to take possession of all, or substantially all, of its assets which remains pending, (d) suffered the attachment or other judicial seizure of all, or substantially all, of its assets which remains pending, (e) admitted in writing its inability to pay its debts as they come due, or (f) made an offer of settlement, extension or composition to its creditors generally.

19.12 Leases; Easements. Owner represents and warrants as of the Effective Date that there are no leases, easements or rights of occupancy or grants or claims of right, title or interest in any portion of the Property or any Easement Area not already disclosed in the Official Records,

including, without limitation, any unregistered easements or leases that affect the Property or any Easement Area.

19.13 Option. Owner represents and warrants as of the Effective Date that Owner has neither granted, nor has knowledge of, any option, right of first refusal, right of first opportunity, or other similar option or right, in favor of any person or entity to acquire any fee, leasehold or ground leasehold interest in any portion of the Property or any Easement Area.

19.14 Broker Fees. Owner agrees to indemnify and hold harmless Tenant and Tenant's Parties from and against all Losses, including, without limitation, reasonable legal fees and disbursements caused by or arising out of any claim made by any broker, consultant, finder or like agent claiming to have dealt with Owner.

19.15 Non-interference. Subject to the rights of the Owner in respect of its switching station and transmission assets located at the Property and that are necessary for the Facility's operation as set out in Section 5.4, during the Term, Owner shall not make any changes to the Property or any Easement Area or any appurtenances thereof and will not act or omit to act in any manner that could adversely affect or impair the rights granted to Tenant under this Ground Lease or any Easement without the prior express written consent of Tenant. Without limiting the generality of the foregoing, during the Term, Owner (i) shall not take any action which will in any way interfere with the transmission and/or distribution of electric, electromagnetic or other forms of energy to or from the Property; and (ii) shall not seek, in its acts, public assertions or statements, or in material submitted to governmental authorities, commercial entities or other regulatory bodies, or do any act or initiate proceedings, whether directly or indirectly, which challenges or otherwise adversely affects the Facility or which is inconsistent with its obligations under this Ground Lease. The Parties acknowledge that Owner's switching station and certain transmission system assets owned by Owner are located within the Leased Premises.

19.16 Minerals. No person or entity has claimed or staked the right to explore, produce or develop any Minerals in or under the Property or any Easement Area. Except as hereinafter provided, the Property or any Easement Area shall not be disturbed in any manner by Owner, or anyone claiming under Owner, for the purpose of conducting operations of whatsoever nature with respect to the exploration for, exploitation of, mining and producing, processing and marketing of all Minerals, with "**Minerals**" defined as any geothermal resources, oil, gas, coal, sand, gravel, rock, and all other commercially viable natural resources and natural deposits. Owner shall not hereafter execute any Mineral lease or grant any permission or consent to explore, produce or develop any Minerals in or under the Property or any Easement Area.

20. Utilities. Except for Owner's responsibility in respect of natural gas and fuel oil for the operation of the Facility as set out in the Tolling Agreement, Tenant shall pay for all Utilities consumed by Tenant during the Term.

21. Taxes.

21.1 Owner Covenant to Pay Taxes and Assessments. Commencing on the Effective Date, Owner shall pay the Taxes and Assessments, as hereinafter defined, which accrue and become due and payable during the Term. "**Taxes and Assessments**" shall mean all real property

taxes, assessments, rollback or otherwise, or other impositions, general or special, ordinary or extraordinary, which may be levied, assessed or imposed upon or with respect to the Property, the Leased Premises and any Easement Areas or any buildings, improvements, fixtures, equipment or personal property of Tenant at any time situated on the Leased Premises or any Easement Areas, including, but not limited to, any real property, ad valorem and inventory taxes on any such buildings, improvements, fixtures, equipment or personal property of Tenant situated on the Leased Premises or any Easement Area. Owner shall pay any transfer or conveyance tax arising out of this Ground Lease and any transfer or sale of the Property. Commencing on the Effective Date, Owner shall pay all Taxes and Assessments as they become due and payable during the Term and, upon request, shall provide Tenant with appropriate evidence of their payment.

## 22. Assignment.

22.1 Assignment by Owner. Owner shall not assign this Ground Lease or its interest in the Leased Premises without the simultaneous assignment of the Tolling Agreement to such assignee in accordance with the terms and requirements of the Tolling Agreement or as otherwise permitted in writing by Tenant.

22.2 Assignment by Tenant. Tenant shall not assign this Ground Lease or its interest in the Leased Premises or sublease any of its interest under this Ground Lease without the simultaneous assignment of the Tolling Agreement to such assignee in accordance with the terms of the Tolling Agreement or as otherwise permitted in writing by Owner. In the case of any permitted or approved assignment of Tenant's interest under this Ground Lease, Tenant shall thereupon be relieved of any liability arising under this Ground Lease following the assignment, so long as the assignee agrees, in writing, to assume all of the obligations of Tenant hereunder.

## 23. Miscellaneous.

23.1 Confidentiality. Owner and Tenant each agree to use commercially reasonable efforts to keep confidential, and not publicly disclose, the terms of this Ground Lease and any information provided by Owner to Tenant or by Tenant to Owner in relation to the transaction contemplated hereby; provided, however, that Tenant may disclose the existence and terms of this Ground Lease to any actual or prospective Financing Party and either Party may disclose the existence and terms of this Ground Lease to: (a) its consultants, agents, architects, independent contractors, or attorneys in connection with the execution of this Ground Lease who agree to keep such information confidential, (b) any bona fide potential purchaser or lender of the Facility who agrees to keep such information confidential, (c) any third party to whom both Parties hereto have given their prior written consent for such a disclosure, (d) governmental, administrative, regulatory or judicial authorities in the investigation of the compliance of the Leased Premises, the Facility and/or the Easement Areas with applicable Legal Requirements, or (e) in the case of Tenant, where such confidential information is required in connection with the submittal and processing of governmental applications or other applications and approvals, including permitting, required for the Facility, including applications for renewable energy credits and interconnection; and provided, further, that the non-disclosure obligations contained in this Section shall not apply to any such information that (i) is or becomes generally available to the public other than as a result of a disclosure by Tenant or Owner, or their employees, agents or representatives, or (ii) Owner or Tenant is legally compelled to disclose pursuant to any judicial, statutory or regulatory authority,

provided the receiving Party shall provide the non-disclosing Party with prompt notice of such requirement so the disclosing Party may seek an appropriate protective order or other appropriate remedy (as to which the receiving Party agrees to reasonably cooperate). For purposes of clarity, the foregoing confidentiality obligations shall not apply with respect to the registration of this Ground Lease or any Easement, as further specified in Sections 23.6 and 6.2, respectively. The provisions of this Section shall survive the expiration of the Term or earlier termination of this Ground Lease.

The Parties acknowledge that Owner is regulated by the New Brunswick Energy and Utilities Board (NBEUB) under the *Electricity Act* (New Brunswick), and that the NBEUB has the authority to compel disclosure of documentation relevant to proceedings under the *Electricity Act* (New Brunswick), which documentation may become public, subject to the NBEUB's Rules of Procedure as they relate to claims for confidentiality. Therefore, notwithstanding any other provisions of this Ground Lease, if Owner is requested in the course of any regulatory proceeding of the NBEUB to disclose or otherwise provide access to this Ground Lease or any portion thereof, or any confidential information of Tenant, then Owner shall promptly notify Tenant of such request, and may file such confidential information with the NBEUB provided that it shall request confidential treatment of such information, pursuant to the NBEUB Rules of Procedure related to claims for confidentiality. In the event of an NBEUB hearing that considers the confidentiality of confidential information under this Ground Lease, Owner shall cooperate and make such reasonable efforts as may be required to assist Tenant in protecting the confidentiality of its confidential information. Tenant further acknowledges that the confidentiality and disclosure obligations of Owner are subject to the *Right to Information and Protection of Privacy Act*, SNB 2009, c. R-10.6 ("RTIPPA"). If Owner is requested pursuant to the RTIPPA to disclose or otherwise provide access to confidential information of Tenant, Owner shall promptly notify Tenant in writing of the request and (i) use reasonable efforts to refuse such request pursuant to section 22(1) of the RTIPPA, and (ii) if such refusal is unsuccessful, reasonably cooperate with Tenant if it chooses to seek to avoid or contest such disclosure or access under the RTIPPA.

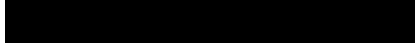
23.2 Notice. All notices, demands and/or consents provided for in this Ground Lease (collectively, the "Notices") shall be in writing and shall be deemed to have been given upon:

- (a) personal delivery;
- (b) one (1) Business Day after being deposited with FedEx or another reliable overnight courier service (with receipt acknowledgement requested);
- (c) receipt (except that, if not given on a Business Day between 9:00 a.m. and 5:00 p.m. local time where the recipient is located, then the Notice shall be deemed to have been given at 9:00 a.m. on the next Business Day for the recipient), if transmitted by facsimile or email, provided that the Notice is: (i) attached to the email or facsimile in PDF or similar format and (ii) followed within one (1) Business Day by delivery of a duplicate copy by personal delivery or mail with postage pre-paid, provided further however, that a duplicate copy shall not be required if the sending Party has received an email or facsimile (that is not an automatically generated reply e-mail or facsimile) from the Party receiving such Notice confirming their receipt; or

(d) receipt or refused delivery deposited in registered or certified mail, postage prepaid, return receipt required,

All Notices shall be addressed to Tenant or Owner at the addresses set forth below or at such other address as either Party may specify to the other in writing.

To Owner at: New Brunswick Power Corporation  
P.O. Box 2000  
515 King Street  
Fredericton, NB E3B 4X1  
Attention: Chief Legal Officer  
Fax: (506) 458-4319  
  
Email: [NBPowerLegal@nbpower.com](mailto:NBPowerLegal@nbpower.com)

To Tenant at: ProEnergy Holding Company, Inc.  
2001 ProEnergy Blvd.  
Sedalia, MO 65301  
Attention: President  
  
Email:   
  
with a copy to:  
ProEnergy Holding Company, Inc.  
2001 ProEnergy Blvd.  
Sedalia, MO 65301  
Attention: General Counsel  
Email: [sblair@proenergyservices.com](mailto:sblair@proenergyservices.com)

23.3 Governing Law and Exclusive Jurisdiction. This Ground Lease shall be governed by the laws of the Province of New Brunswick and the federal laws of Canada applicable therein (without reference to conflicts of law principles). Each of the Parties irrevocably attorns to the jurisdiction of the courts of the Province of New Brunswick located in the City of Fredericton. Owner and Tenant agree that any dispute under or in respect of this Ground Lease will be addressed in accordance with Article 19 of the Tolling Agreement, applied *mutatis mutandis* to this Ground Lease.

23.4 Time is of the Essence. Time is of the essence of this Ground Lease and each and every provision of this Ground Lease.

23.5 Entire Agreement; Amendments. This Ground Lease, including any exhibits and attachments hereto, constitutes the sole and entire agreement and understanding between Owner and Tenant relative to the matters and transactions contemplated herein and supersedes any and all prior or contemporaneous agreements, letters of intent, arrangements, discussions, undertakings, representations and commitments whatsoever (whether written or oral) with respect thereto.



Owner and Tenant agree hereby that, other than the Easements, there are no other understandings, agreements, terms or conditions or representations, whether oral or in writing, between and among themselves or their agents, including any leasing agents and representatives, relative to such matters and transactions contemplated herein that are not either set forth in or revoked by this Ground Lease. This Ground Lease shall not become effective and binding until fully executed by both Tenant and Owner. Neither this Ground Lease nor any of the terms hereof may be amended, supplemented, waived or modified orally, but only by an instrument in writing signed by the Party against which the enforcement of the amendment, supplement, waiver or modification shall be sought. For the avoidance of doubt, this Ground Lease may not be amended by the Parties through electronic email communication.

23.6 Registration of Notice of Ground Lease. Tenant and Owner shall cooperate with respect to the registration of a notice of this Ground Lease in the Provincial Land Registry at the earliest opportunity, which registration shall be at the Owner's cost and expense if being submitted by Owner together with the Survey Plan and otherwise shall be at Tenant's cost and expense. Owner and Tennant shall each execute such documents and take such actions as may be necessary for either to register a notice of this Ground Lease with the Provincial Land Registry.

23.7 Estoppel. Either Party hereto (the "**Receiving Party**"), without charge, at any time and from time to time, within five (5) Business Days after receipt of a written request by the other Party hereto (the "**Requesting Party**"), shall deliver a written statement, duly executed, certifying to such Requesting Party, or any other person, firm or corporation specified by such Requesting Party: (i) that this Ground Lease and each Easement is unmodified and in full force and effect, or if there has been any modification thereto, that the same is in full force and effect as so modified and identifying the particulars of such modification; (ii) whether or not, to the knowledge of the Receiving Party, there are then existing any offsets or defenses in favor of such Receiving Party against enforcement of any of the terms, covenants and conditions of this Ground Lease or of any Easement, and, if so, specifying the particulars of same and also whether or not, to the knowledge of such Receiving Party, the Requesting Party has observed and performed all of the terms, covenants and conditions on its part to be observed and performed, and if not, specifying the particulars of same; and (iii) such other information as may be reasonably requested by the Requesting Party. Any written instrument given hereunder may be relied upon by the recipient.

23.8 Counterparts; Electronic Copies. This Ground Lease may be executed and recorded in counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument. The Parties hereby acknowledge and agree that facsimile signatures or signatures transmitted by electronic mail in so-called "pdf" format shall be legal and binding and shall have the same full force and effect as if an original of this Ground Lease had been delivered. Owner and Tenant (a) intend to be bound by the signatures on any document sent by facsimile or electronic mail, (b) are aware that the other Party will rely on such signatures, and (c) hereby waive any defenses to the enforcement of the terms of this Ground Lease based on the foregoing forms of signature.

23.9 Partial Invalidity; Severability. If any term or provision of this Ground Lease is, to any extent, determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Ground Lease shall not be affected thereby, and each remaining term and

provision of this Ground Lease shall be valid and enforceable to the fullest extent permitted by applicable law.

23.10 Interpretation; Headings. The Parties acknowledge that this Ground Lease, as executed, is the product of negotiations between Owner and Tenant and that it shall be construed fairly, in accordance with its terms, and shall not be construed for or against either Party by reason of the drafting or preparation hereof. No inferences as to the intention of the Parties shall arise from the deletion of any language or provisions of this Ground Lease. The headings in this Ground Lease are for convenience of reference only and shall not modify, define, expand, limit or otherwise affect or be used in the construction of any terms or provisions hereof. The recitals and all exhibits attached hereto form an integral part of this Ground Lease.

23.11 Attorneys' Fees. If, in accordance with Section 23.3, either Party commences an action or proceeding against the other Party arising out of or in connection with this Ground Lease, or institutes any proceeding in a bankruptcy or similar court which has jurisdiction over the other Party or any or all of its property or assets, the prevailing Party in such action or proceeding and in any appeal in connection therewith shall be entitled to have and recover from the unsuccessful Party reasonable legal fees, court costs, expenses and other costs of investigation and preparation.

23.12 Consent and Approvals. Any consent or approval that a Party is obligated to give to the other Party shall not be unreasonably withheld or delayed, subject to any specific provision to the contrary contained in this Ground Lease.

*[Remainder of page intentionally left blank]*



IN WITNESS WHEREOF, the Parties hereto have caused this Ground Lease to be duly executed by their respective officers thereto duly authorized as of the day and year first above written.

1542987 B.C. LTD., in its capacity as  
general partner of RIGS ENERGY  
ATLANTIC LIMITED  
PARTNERSHIP

NEW BRUNSWICK POWER  
CORPORATION

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

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

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

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

**IN WITNESS WHEREOF**, the Parties hereto have caused this Ground Lease to be duly executed by their respective officers thereto duly authorized as of the day and year first above written.

**1542987 B.C. LTD.**, in its capacity as  
general partner of **RIGS ENERGY**  
**ATLANTIC LIMITED**  
**PARTNERSHIP**

**NEW BRUNSWICK POWER**  
**CORPORATION**

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

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

By: *Lori Clark*  
Name: Lori Clark  
Title: President & CEO

By: *JP*  
Name: James Petrie  
Title: Chief Legal Officer

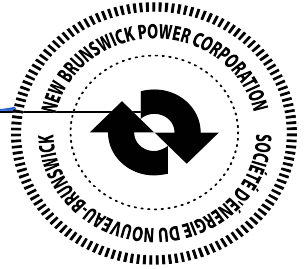


EXHIBIT 1 TO GROUND LEASE

**EXHIBIT 1-A**

**PROPERTY**

**LOCATION:** Centre Village, New Brunswick, located off of Route 940

**GPS COORDINATES:**

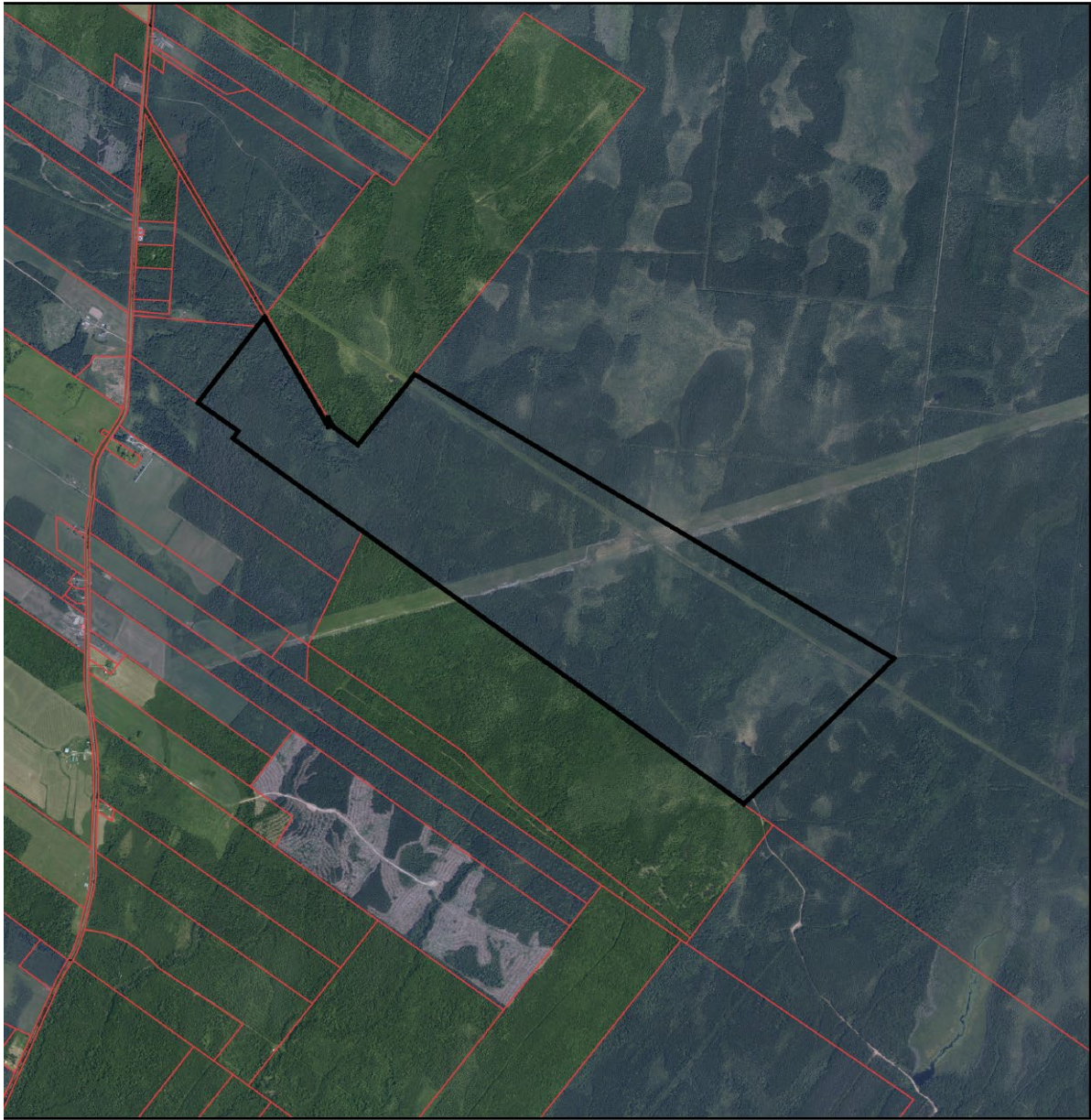
**SIZE:** Approximately 199 hectares in total

**LEGAL DESCRIPTON:** PID # 70113592

**MAP OF PROPERTY**

Service New Brunswick

Service Nouveau-Brunswick



Scale/Échelle 1:25197

Date: 2025/02/04 11:37:48



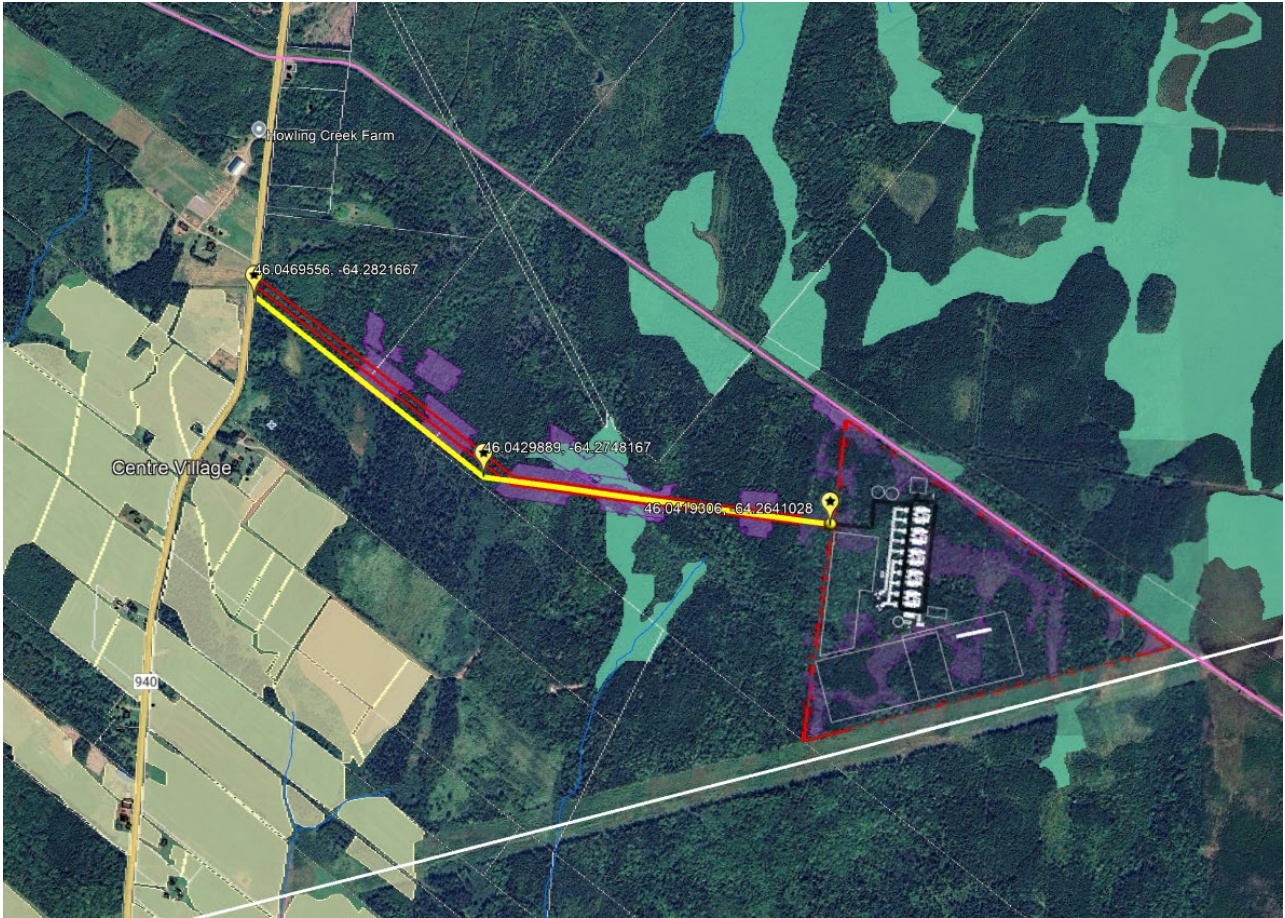


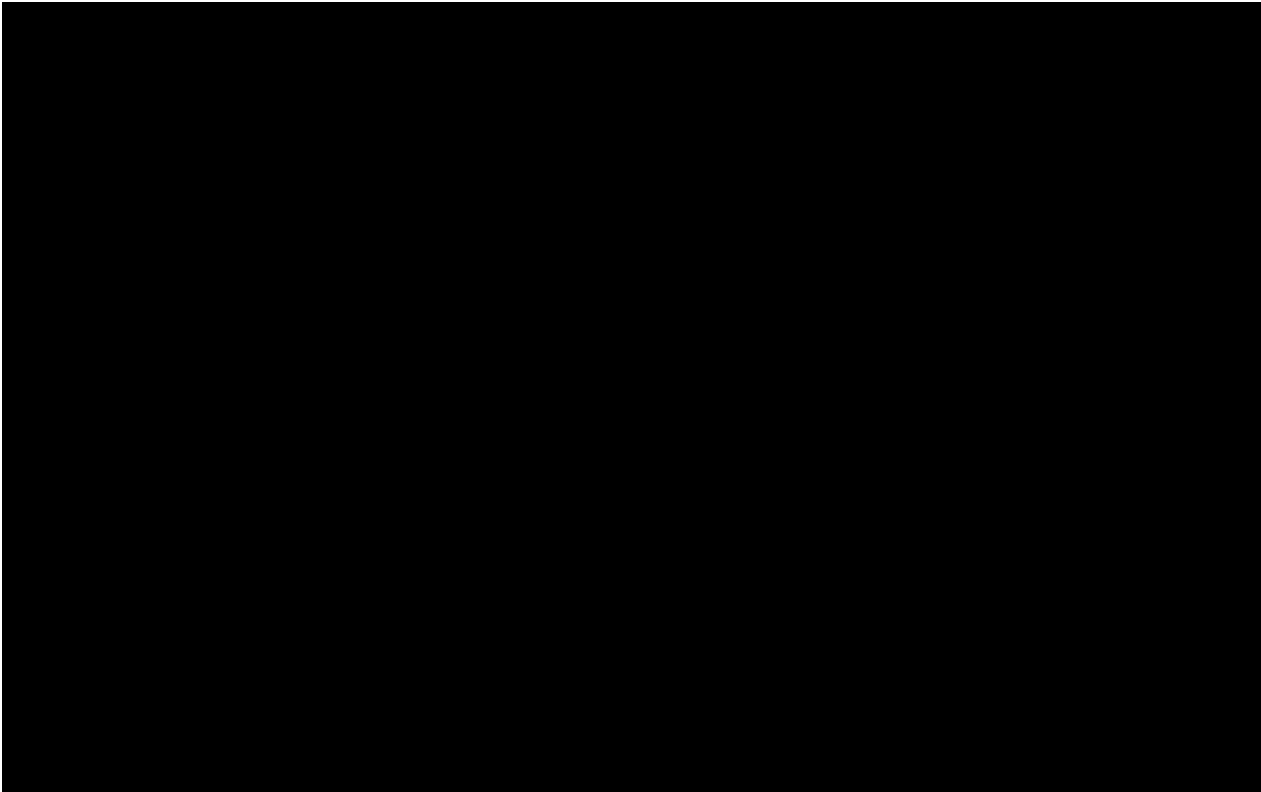
**EXHIBIT 1-B**  
**LEASED PREMISES**

**LOCATION:** Centre Village, New Brunswick, located off of Route 940 – Leased Premises shown as dashed red triangle area and Easement areas shown in yellow in satellite image below:

**GPS COORDINATES:**

	Lat / Lon	Degrees Lat/Lon
Plant Road Access off of Rt 940	46° 2'49.04"N, 64°16'55.80"W	46.0469556, -64.2821667
Dogleg in Plant Road	46° 2'34.76"N, 64°16'29.34"W	46.0429889, -64.2748167
Plant Road Site Access	46° 2'30.95"N, 64°15'50.77"W	46.0419306, -64.2641028





## UNDER THE GROUND LEASE

- LEGAL\_1:89654467.15



d) [Redacted]

i. [Redacted]

ii. [Redacted]

iii. [Redacted]

e) [Redacted]

f) [Redacted]

g) [Redacted]

[REDACTED]

h) [REDACTED]

i) [REDACTED]

4. [REDACTED]

5. [REDACTED]

6. [REDACTED]

**Exhibit 3**  
**Form of Easement**  
**Form 14**  
**EASEMENT**

*Land Titles Act, S.N.B. 1981, c.L 1.1, s.24*

Parcel Identifier  
of Parcel Burdened  
by Easement:

PID \_\_\_\_\_

Parcel Identifier of  
Parcel Benefiting from  
Easement:

PID \_\_\_\_\_

Grantor of Easement:

New Brunswick Power Corporation  
515 King Street  
Fredericton, New Brunswick  
E3B 1E7

Grantee of Easement:

1538911 B.C. Unlimited Liability Company  
[N.B. address]

Description of Easement:

See Schedule "C"

Purposes of Easement:

See Schedule "C"

(Diagram of Easement:

See Schedule "B")

Grantor grants to grantee the described easement over or in the specified parcel for the specified purposes for the benefit of the specified parcel.

Date: \_\_\_\_\_, 2025.

Grantor of Easement:

**New Brunswick Power Corporation**

By \_\_\_\_\_

Name:

Title:

By \_\_\_\_\_

Name:

Title:

Grantee of Easement:

**1542987 B.C. LTD., in its capacity as general  
partner of RIGS ENERGY ATLANTIC  
LIMITED PARTNERSHIP**

By \_\_\_\_\_

Name:

Title:

By \_\_\_\_\_

Name:

Title:

## SCHEDULE "C" [●] EASEMENT

### WHEREAS:

- (a) New Brunswick Power Corporation ("Owner") is the owner in fee simple of certain lands identified as PID [●] registered under the Land Titles Act (New Brunswick) [**Note: this assumes Property will have separate PID after Subdivision Approval**] (such lands are hereinafter referred to as the "Property");
- (b) 1542987 B.C. Ltd., in its capacity as general partner of RIGS Energy Atlantic Limited Partnership ("Tenant") is the holder of a leasehold interest in certain lands identified as PID [●] registered under the Land Titles Act (New Brunswick) (such lands are hereinafter referred to as the "Leased Premises"); and
- (c) Owner has agreed to grant to Tenant a [●] easement over a portion of the Property for the purpose of providing [●] for the benefit of the Leased Premises and to burden the Property;

**NOW, THEREFORE, THIS EASEMENT AGREEMENT WITNESSES THAT,** in consideration of the sum of \$1.00 paid by Grantee to Grantor, the receipt of which is acknowledged, and of other good and valuable consideration, Grantor and Grantee agree as follows:

### 1. Definitions

In this Easement Agreement:

- (a) "Easement Agreement" means this [●] Easement dated •, 2025 between Grantor and Grantee;
- (b) "Easement Parcel" means that portion of the Property which lies within the easement area as shown on [●] [**Note: describe plan/survey showing location of easement - attached hereto as Schedule "B"**];
- (c) "Facility" has the meaning given to such term in the Tolling Agreement;
- (d) "Grantee" means Tenant, the registered owner of a leasehold estate in the Leased Premises and the successors in interest from time to time to the Leased Premises;
- (e) "Grantor" means Owner, the registered owner of the freehold estate in the Property and the successors in title from time to time to the Property;
- (f) "Lease" means the Lease Agreement dated as of [●], 2025 between Grantor and Grantee;
- (g) "Owner's Parties" has the meaning given to such term in the Lease;
- (h) "Tenant's Parties" has the meaning given to such term in the Lease; and

- (i) “Tolling Agreement” means the Tolling Agreement [●], 2025 between Grantor and Grantee.

## 2. **Grant and Purpose**

- (a) Grantor does hereby grant to Grantee a right, licence, privilege and easement, on, through, over and across that portion of the Property lying within the Easement Parcel for the purpose of providing [●] from the date hereof until the expiration or early termination of the Lease to the extent reasonably required in connection with Grantee’s locating, accessing, constructing, operating, maintaining, repairing, replacing or removing the Facility as contemplated by the Tolling Agreement and the Lease.
- (b) The rights granted herein to Grantee:
  - (i) are exclusive save for use of the Easement Parcel by Grantor and [Owner’s Parties] for purposes of [●]; and
  - (ii) shall extend to and be able to be exercised by Tenant’s Parties, subject always to compliance with the provisions of this Easement Agreement and the Lease.

## 3. **No Obstruction by Grantor or Grantee**

Grantee shall at all times use the Easement Parcel so as to not interfere with the use of the Property by Grantor located thereon; provided, however, that Grantee’s commercially reasonable use of the Easement Parcel for the purposes contemplated by, and in accordance with, this Easement Agreement, the Lease and the Tolling Agreement shall not be deemed to interfere with the use of the Property by Grantor. During the continuance of this Easement Agreement, Grantor shall not build, erect or maintain, or suffer or permit any excavation, construction or installation on, over, under or through the Easement Parcel or do any other thing that would materially adversely affect or restrict Grantee’s use and enjoyment of the Easement Parcel. Notwithstanding the foregoing, Grantor may from time to time, and at its cost, construct, install and maintain, for use by itself or its officers, employees, agents, contractors, subcontractors, licencees and by Owner’s Parties, equipment and infrastructure on, under, over and through the Easement Parcel, including, but not limited to, pipelines, utility lines and equipment, communications lines and electrical transmission lines (collectively, the “**Infrastructure**”), provided that during the construction of the Infrastructure, Grantor shall not unduly impede [●] by Grantee. In any event, upon completion of construction of the Infrastructure, Grantee’s access to the Leased Premises shall not be materially adversely affected or restricted. Grantee may from time to time build, erect or maintain or undertake or permit the construction of any improvements or fixtures upon the Easement Parcel for the purposes contemplated by, and in accordance with, this Easement Agreement, the Lease and the Tolling Agreement, provided that Grantee shall not unduly impede Grantor’s access to the Infrastructure or interfere with the use of the Property by Grantor; provided, however, that Grantee’s commercially reasonable use of the Easement Parcel for the purposes contemplated by, and in accordance with, this Easement Agreement,

the Lease and the Tolling Agreement shall not be deemed to interfere with Grantor's access to the Infrastructure or the use of the Property by Grantor.

**4. Construction, Maintenance and Repair**

Grantor and Grantee agree that during the term of this Easement Agreement granted hereby, [●] shall be responsible for constructing, repairing and maintaining the Easement Parcel, at its cost and expense, in a good and proper state of condition and repair as reasonably required.

**5. Quiet Enjoyment**

Grantor covenants and agrees that Grantee, upon observing and performing the terms and conditions of this easement, shall and may peaceably hold and enjoy the rights and privileges granted by this easement without hindrance or interruption on the part of Grantor or any person, entity or corporation claiming by, through or under Grantor, subject to the provisions of this Easement Agreement and the Lease.

**6. Registration of Interest**

This Easement Agreement shall be registered by Grantor in the Westmorland County Land Titles Office under the *Land Titles Act* (New Brunswick).

**7. Equitable Relief**

In the event of any breach or default of this Easement Agreement by either party that is not cured by such party within ten (10) days of knowledge of such breach or default (or such longer period as may reasonably be required to effect such cure, provided such cure is commenced within such ten (10) day period and prosecuted with due diligence and continuity), the non-breaching party has the right, without the posting of a bond or other security, to equitable relief, including temporary, preliminary and permanent injunctive relief against any such breach or threatened breach, in addition to any other remedies that may be available to it at law, in equity or otherwise.

**8. Entire Agreement**

This Easement Agreement, together with the Lease, contains the entire agreement between the parties with respect to the subject matter hereof and supersedes and cancels all prior communications, understandings and agreements between the parties, whether oral or written, expressed or implied with respect to the subject matter hereof. There are no representations, warranties, collateral agreements or conditions affecting this Easement Agreement other than as expressed herein and in the Lease. The parties further acknowledge and agree that, in entering into this Easement Agreement, they have not in any way relied upon any oral or written agreements, representations, warranties, statements, promises, information, arrangements or understandings, expressed or implied, not specifically set forth in this Easement Agreement or the Lease.

**9. Severability**

If any provision of this Easement Agreement is determined by a court of competent jurisdiction to be wholly or partially invalid or unenforceable for any reason, such invalidity or unenforceability shall not affect the validity or enforceability of the balance of this Easement Agreement. If any provision of this Easement Agreement or the application thereof to any party or circumstance shall be determined by a court of competent jurisdiction to be invalid or unenforceable as an easement then such provision shall be effective, if possible, as a restrictive covenant, or otherwise as a licence only to the extent of the invalidity or the enforceability as an easement, with the intent that the entirety of this Easement Agreement shall remain valid and enforceable to the full extent permitted by law primarily as an easement, secondarily as a restrictive covenant and tertiarily as a licence. If any provision is so determined to be wholly or partially invalid or unenforceable for any reason, the parties shall negotiate in good faith a new provision to replace such invalid or unenforceable provision, which, as nearly as practically possible, has the same economic effect as the invalid or unenforceable provision.

#### **10. Notices**

Any notice, communication, payment or request to be given to either party shall be given in the manner and according to the provisions of the Lease which shall apply hereto.

#### **11. Interpretation Not Affected by Headings**

The division of this Easement Agreement into subdivisions and the insertion of headings are for the convenience of reference only and shall not affect the construction or interpretation of this Easement Agreement. The terms “this Easement Agreement”, “hereof”, “herein”, “hereby”, “hereunder” and similar expressions refer to this Easement Agreement and not to any particular subdivision hereof. All references to a given agreement, instrument or other document shall be a reference to that agreement, instrument or other document as modified, amended, supplemented and restated through the date as of which such reference is made.

#### **12. Time of the Essence**

Time shall be of the essence.

#### **13. Applicable Law and Submission to Jurisdiction**

This Easement Agreement shall be governed by and construed in accordance with the laws of the Province of New Brunswick, but excluding all choice-of-law provisions, and the Federal laws of Canada applicable therein. The parties irrevocably consent and submit to the jurisdiction of the courts of the Province of New Brunswick with respect to all matters relating to this Easement Agreement. Each party waives any objection that it may now or hereafter have to the determination of venue of any proceeding in such courts relating to this Easement Agreement or that it may now or hereafter have that such courts are an inconvenient forum.

#### **14. Enurement**



Until the termination thereof, this Easement Agreement is and shall be of the same force and effect to all intents and purposes as a covenant running with the Leased Premises and the Property and shall extend to and be binding upon and enure to the benefit of Grantor and Grantee and their respective successors, and successors in title and in interest to the Property and the Leased Premises, respectively.

**15. Term/Termination**

This Easement Agreement commences on the date hereof and its term shall be for the remainder of the term of the Lease. This Easement Agreement and the rights and obligations hereunder shall automatically terminate upon the expiration or earlier termination of the Lease, without the execution of any further instrument of termination. Notwithstanding the foregoing, Grantee agrees to execute any documents or instruments, in recordable form, Grantor may request to evidence or confirm such termination. If, pursuant to the Lease, Grantee is required to remove the Facility from the Leased Premises, or if, pursuant to the Lease, Grantee has the right to remove the Facility from the Leased Premises and chooses to do so, Grantee shall remove all improvements and property of Grantee from the Easement Parcel in accordance with the provisions of the Lease.

**16. Amendments**

No amendment or modification of this Easement Agreement shall be effective unless it is in writing and signed by both parties.

**17. No Joint Venture, Partnership, Etc.**

Nothing contained herein shall be construed as creating any joint venture, partnership, agency or joint and several liability between the parties.

**18. Conflicts with Lease**

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

**19. Further Assurances**

Each of the parties shall, from time to time, do all such acts and things and execute and deliver, from time to time, all such further documents and assurances as may be reasonably necessary to carry out and give effect to the terms of this Easement Agreement, except to the extent that doing any such acts and things and executing and delivering any such further documents would impose any liability or obligation on a party beyond the liabilities and obligations set forth in this Easement Agreement or the Lease.

**Form 45**

**AFFIDAVIT OF CORPORATE EXECUTION**

***Land Titles Act, S.N.B. 1981, c.L 1.1, s.55***

Deponent:

\_\_\_\_\_

[name]

515 King Street  
Fredericton, New Brunswick  
E3B 1E7

Office Held by Deponent:

\_\_\_\_\_

Corporation:

New Brunswick Power Corporation

Other Officer Who Executed  
The Instrument:

\_\_\_\_\_

[name]

515 King Street  
Fredericton, New Brunswick  
E3B 1E7

Office Held by Other Officer  
Who Executed the Instrument:

\_\_\_\_\_

Place of Execution:

\_\_\_\_\_

Date of Execution:

\_\_\_\_\_

I, \_\_\_\_\_, the deponent, make oath and say:

1. That I hold the office specified above in the corporation specified above, and am authorized to make this affidavit and have personal knowledge of the matters hereinafter deposed to;
2. That the attached instrument was executed by me and the other officer specified above as the officers duly authorized to execute the instrument on behalf of the corporation;
3. That the seal of the corporation was affixed to the instrument by order of the Board of Directors of the corporation;
4. That the instrument was executed at the place and on the date specified above; and
5. That the ownership of a share of the corporation does not entitle the owner thereof to occupy the parcel described in the attached instrument as a marital home.

SWORN TO at \_\_\_\_\_, )  
in the County of \_\_\_\_\_ and )  
Province of \_\_\_\_\_, on )  
the \_\_\_\_\_ day of \_\_\_\_\_, 2025. )

BEFORE ME: )  
 )  
 )  
 )  
 )

Notary Public in and for \_\_\_\_\_  
the Province of \_\_\_\_\_

**Form 45****AFFIDAVIT OF CORPORATE EXECUTION*****Land Titles Act, S.N.B. 1981, c.L 1.1, s.55***

Deponent:

\_\_\_\_\_  
[name]\_\_\_\_\_  
[address]

Office Held by Deponent:

\_\_\_\_\_

Corporation:

1538911 B.C. Unlimited Liability Company

Other Officer Who Executed  
The Instrument:\_\_\_\_\_  
[name]\_\_\_\_\_  
[address]Office Held by Other Officer  
Who Executed the Instrument:

\_\_\_\_\_

Place of Execution:

\_\_\_\_\_

Date of Execution:

\_\_\_\_\_

I, \_\_\_\_\_, the deponent, make oath and say:

1. That I hold the office specified above in the corporation specified above, and am authorized to make this affidavit and have personal knowledge of the matters hereinafter deposed to;
2. That the attached instrument was executed by me and the other officer specified above as the officers duly authorized to execute the instrument on behalf of the corporation;
3. That the seal of the corporation was affixed to the instrument by order of the Board of Directors of the corporation;
4. That the instrument was executed at the place and on the date specified above;
5. That the ownership of a share of the corporation does not entitle the owner thereof to occupy the parcel described in the attached instrument as a marital home.

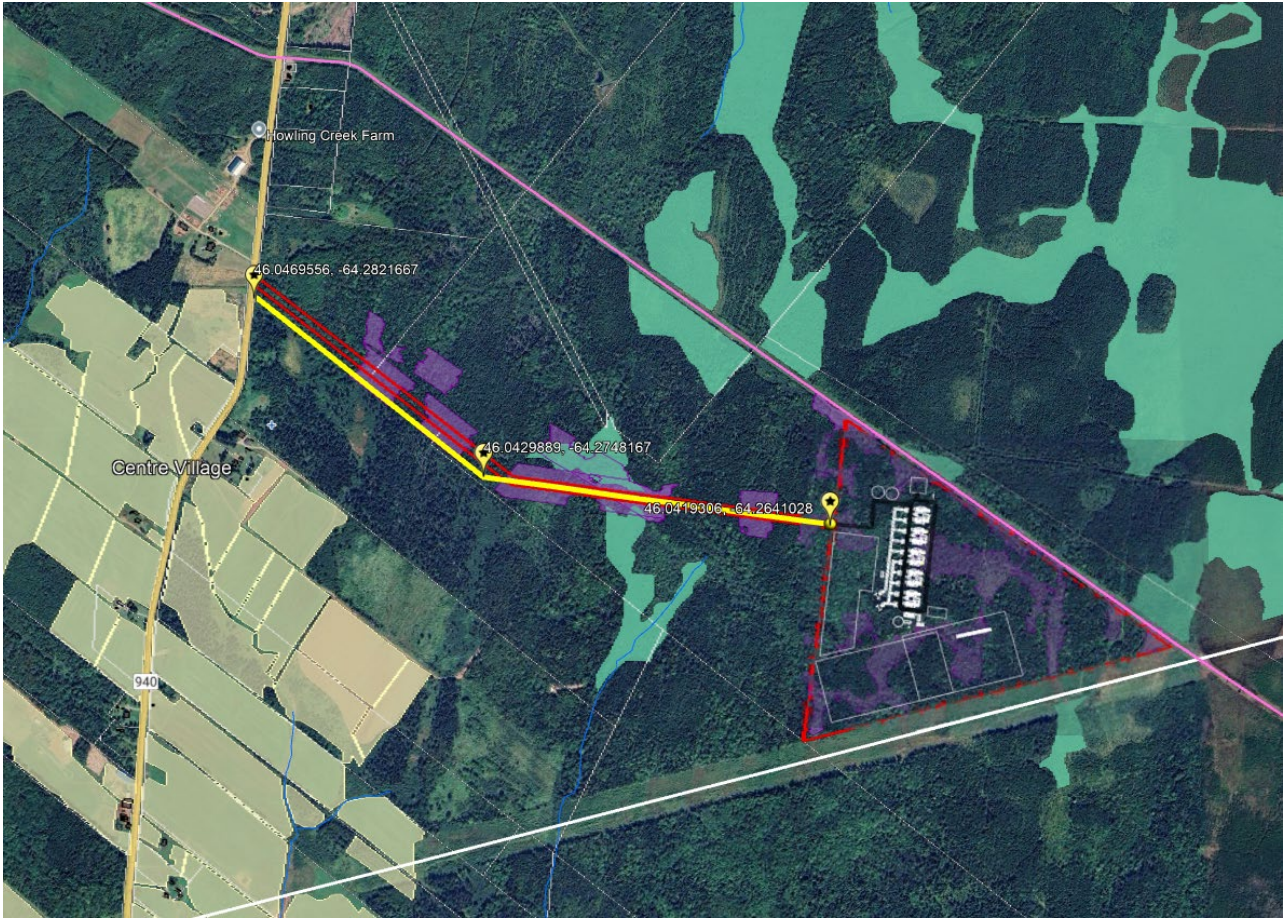
SWORN TO at \_\_\_\_\_, )  
 in the County of \_\_\_\_\_ and \_\_\_\_\_ )

Province of \_\_\_\_\_, on \_\_\_\_\_ )  
the \_\_\_\_\_ day of \_\_\_\_\_, 2025. )  
 )  
BEFORE ME: )  
 )  
 )  
 )

Notary Public in and for \_\_\_\_\_ ) \_\_\_\_\_  
the Province of \_\_\_\_\_

**Exhibit 4**

**Location of Easements**



[REDACTED]

**Claims, actions or suits affecting the Leased Premises or Owner’s interest in the Property or the Easement Areas**

1. [REDACTED]

2. [REDACTED]

3. [REDACTED]

