

## AGREEMENT WITH SMALL SCALE POWER PRODUCER

THIS AGREEMENT MADE AS OF THIS \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**BETWEEN:**

**INDEPENDENT SYSTEM OPERATOR, operating as the ALBERTA ELECTRIC SYSTEM OPERATOR**, a statutory corporation established under the *Electric Utilities Act* (Alberta), having offices at Calgary, Alberta (the "AESO")

- AND -

\_\_\_\_\_, a  
[corporation, partnership, other] established under the laws of \_\_\_\_\_, having offices at \_\_\_\_\_  
("Producer")

**WHEREAS** the Producer is a small scale power producer that owns an electric energy generating unit or units that is or are qualified under the *Small Scale Generation Regulation* (Alberta) (the "**Regulation**") as a small scale generating unit or units, as more particularly described in Schedule A hereto (individually or collectively, the "**Unit**");

**AND WHEREAS** in accordance with Section 7(1) of the Regulation, the AESO acts on behalf of the Producer in respect of electric energy supplied by the Unit to the interconnected electric system (or, if applicable, to the distribution system within an isolated community) and the AESO further is responsible for exchanging through the power pool the electric energy produced by the Unit that enters such electric system;

**NOW THEREFORE** in consideration for carrying out its obligations in respect of the electric energy produced by the Unit pursuant to the Regulation and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

1. **Services.** The parties hereby acknowledge, agree and confirm that during the Term of this Agreement (as defined below):
  - (a) the AESO shall act on behalf of the Producer in regard to the electric energy supplied by the Unit to the interconnected electricity system (or, if applicable, the distribution system within an isolated community) and will exchange through the power pool such electric energy in accordance with the Regulation and all other applicable laws, regulations, directives and orders of applicable governmental and regulatory agencies and departments;
  - (b) each settlement period, the AESO shall pay an amount to the Producer for the electricity supplied from the Unit in accordance with ISO Rule 103.4 (Power Pool Financial Settlement). The Producer acknowledges and agrees that the AESO shall be entitled to deduct from each such payment to the Producer any fee (and any taxes arising thereon) payable in respect of pool participation or related fees for the applicable settlement period. Any taxes arising on payments made to the Producer pursuant to this Section 1(b) shall be borne by the Producer. For clarity, the AESO will have no obligation to compensate a Producer for electric energy supplied out of a Unit for a settlement period in which the AESO has already compensated the Producer indirectly through the Balancing Pool; and
  - (c) if the Producer intends to make any changes to the Unit, it shall provide to the AESO and the applicable distribution owner a notice in writing to that effect in such format as the Alberta Utilities Commission (the "**AUC**") shall determine, including such information

sufficient to enable the recipients of the notice to determine that the Unit continues to qualify under the Regulation. The Producer, if invoiced by the AESO, shall promptly pay the AESO the amount of any costs incurred by the AESO or its Dispatch Services Provider as a result of the changes (including the costs incurred from updating or applying for any regulatory approvals). If a Unit fails to qualify under the Regulation as a result of such change or otherwise as determined by the AUC pursuant to the Regulation, then upon receiving such information as to such disqualification, the AESO shall have the right to terminate this Agreement forthwith in respect of such disqualifying Unit upon written notice to the Producer and concurrent notice to the AUC. In such event, neither party hereto shall be further liable to the other party in regard to such disqualifying Unit, except for obligations accrued and owing under this Agreement as of the effective date of termination.

2. **Standard of Service.** The AESO shall comply with its obligations under Section 7 of the Regulation. In carrying out the obligations in respect of the electric energy supplied by the Unit and to exchange such energy pursuant to Section 7(1) of the Regulation, the AESO shall act in a professional, efficient, and workmanlike manner and shall utilize the services of its personnel having the requisite knowledge and skills.
3. **Compliance with Applicable Laws.** The Producer shall ensure that it complies with all applicable laws, regulations, rules, directives, and orders of relevant governmental and regulatory agencies and departments. Without limiting the generality of the foregoing, the Producer acknowledges that it is solely responsible for ensuring compliance with any applicable ISO Tariff, ISO Rules, AUC Rules, and Alberta Reliability Standards, and that it is solely responsible for any fines or penalties that may be issued as a result of any non-compliance.
4. **Dispatch Services Provider.**
  - (a) The Producer authorizes the AESO, at the sole option of the AESO from time to time during the Term of this Agreement, to retain the services of a third party having the necessary expertise, knowledge, and skills to carry out the dispatch services when required (such third party being referred to herein as the "**Dispatch Services Provider**") upon such terms as the AESO may determine, provided that in carrying out such dispatch services the Dispatch Services Provider shall report to the AESO.
  - (b) The Producer acknowledges that the Dispatch Services Provider is being retained by the AESO on behalf of the Producer and that acts and omissions of the Dispatch Services Provider in carrying out the dispatch services functions shall be the responsibility of the Producer (except to the extent any such acts or omissions arise from instructions provided directly by the AESO to the Dispatch Services Provider without the involvement of the Producer). In the event that such acts and omissions are a result of the negligence of the Dispatch Services Provider or the breach by the Dispatch Services Provider of the AESO's agreement with the Dispatch Services Provider, the AESO shall reasonably cooperate with the Producer in obtaining any indemnification that may be available to the Producer from the Dispatch Services Provider under the AESO's agreement with the Dispatch Services Provider.
5. **Cooperation and Documentation.**
  - (a) The Producer shall cooperate with the AESO and the Dispatch Services Provider, as applicable, to enable the AESO and the Dispatch Services Provider to carry out the functions contemplated by Section 7(1) of the Regulation and shall provide to the AESO and the Dispatch Services Provider such documentation and information as the AESO, acting reasonably, shall request from time to time during the Term of this Agreement.
  - (b) The Producer acknowledges that, upon the request of the AESO, it promptly shall enter into a preferential sharing agreement with the AESO and the Dispatch Services Provider,

as applicable, in such form as the AESO shall determine, acting reasonably, in respect of the sharing of non-public records relating to price and quantity offers and such other matters as required under section 3(1) of the *Fair, Efficient and Open Competition Regulation* (Alberta). The Producer further shall provide forthwith to the AESO, upon the reasonable request of the AESO, such information as shall enable an order to be obtained from the AUC by the AESO permitting the sharing of preferential records among the Producer, the AESO and the Dispatch Services Provider.

- (c) The Producer acknowledges that the AESO or the Dispatch Services Provider shall submit to the AESO an "agent appointment request form" and such other documentation on behalf of the Producer as may be required by ISO Rule 201.2 (Appointment of Agent) or otherwise by law or regulation from time to time in order for the AESO and/or the Dispatch Services Provider to carry out their respective responsibilities under the Regulation and pursuant to this Agreement. The Producer acknowledges and authorizes the submission of the "agent appointment request form" and such other documentation on its behalf.

6. **Confidentiality.** The Producer agrees to keep confidential any non-public information that it receives from the AESO or the Dispatch Services Provider in relation to this Agreement and the services provided hereunder ("**Confidential Information**"). The Producer shall not disclose such Confidential Information, except: (i) to its employees and professional advisors who have a need to know in order to carry out the Producer's obligations under this Agreement and the Regulation and who are bound by confidentiality obligations no less restrictive than those in this Agreement, or (ii) as required by law or court order. Upon expiry or termination of this Agreement, all such confidential or proprietary information and all copies thereof in the custody or control of the Producer shall be returned to the AESO or the Dispatch Service Provider, as the case may be.

7. **Indemnity and Limitation of Liability.**

- (a) The AESO hereby indemnifies and saves harmless the Producer, its directors, officers, employees, partners, agents, consultants and contractors (collectively, the "**Producer Indemnitees**") from and against any and all claims, demands, losses, liabilities, actions, causes of action, fines, penalties, costs and expenses (collectively, "**Losses**") arising from or related to:

- (i) a breach of this Agreement by the AESO; and/or
- (ii) negligence hereunder by or through the AESO;

except to the extent arising from or caused by the negligence or wilful default of any Producer Indemnitee. For clarity, the indemnity in this Section 7(a) does not apply to any Losses arising from or related to acts or omissions of the Dispatch Services Provider.

- (b) The Producer hereby indemnifies and saves harmless the AESO, its directors, officers, employees, agents, consultants and contractors (including without limitation, the Dispatch Services Provider and its personnel) (collectively, the "**AESO Indemnitees**") from and against any and all Losses arising from or related to:

- (i) a breach of this Agreement by the Producer; and/or
- (ii) negligence hereunder by or through the Producer;

except to the extent arising from or caused by the negligence or wilful default of any AESO Indemnitee.

- (c) Except for a breach of Section 6, in no event shall either party be liable under this Agreement, including pursuant to this Section 8, for any indirect, consequential, punitive or special Losses. This Section 8 survives the expiry or termination of this Agreement.

8. **Waiver of Fiduciary Duty.** To the fullest extent permitted by applicable law and equity, this Agreement is not intended to, and does not, create or impose any fiduciary duty on the AESO. Further, to the fullest extent permitted by applicable law and equity, the Producer hereby waives any and all fiduciary duties that, absent such waiver, may be implied by applicable law or in equity, and in doing so, recognizes, acknowledges and agrees that the duties and obligations of the AESO are only as expressly set forth in the Regulation and this Agreement. Additionally, the Producer acknowledges that the AESO has a statutory mandate under the *Electric Utilities Act* (Alberta). Without any accountability to the Producer by virtue of this Agreement, the AESO shall be entitled to take all such actions as it determines necessary, from time to time, to fulfill its statutory mandate under the *Electric Utilities Act* (Alberta), including but not limited to operating the power pool in a fair, efficient, and openly competitive manner and monitoring and reporting instances of non-compliance with the ISO Tariff, ISO Rules, AUC Rules, and Alberta Reliability Standards to the Market Surveillance Administrator and the AUC, even if such actions may be adverse in interest to the Producer. The Producer acknowledges and consents to such actions.

9. **Termination.** The Term of this Agreement shall commence as of the date first above written and shall continue thereafter from year to year, subject to early termination:

- (a) by either party for convenience upon no less than thirty (30) days prior written notice to the other party;
- (b) by a party upon written notice if the other party shall be in breach of its obligations herein and shall fail to correct the breach within a period of fifteen (15) days of the date of such written notice detailing the breach;
- (c) upon the repeal of the Regulation or expiry (without renewal) or termination of any required preferential sharing agreement required to be in place to which the parties (together with or without the Dispatch Services Provider) are signatories;
- (d) by the AESO upon written notice to the Producer in respect only of: (i) a Unit that the Producer ceases to own and operate, or (ii) a disqualified Unit pursuant to Section 1(c) above; or
- (e) by a party upon written notice if the other party shall cease to carry on business or shall wind up or if proceedings in bankruptcy or insolvency shall be filed against the other party.

10. **Force Majeure.** Neither party shall be liable hereunder for any delay or failure to fulfill its obligations herein arising from an event beyond its reasonable control, including without limitation, acts of God or the public enemy, fires, floods, pandemics, strikes, lockouts or work stoppages (but shall not include lack of funds), provided that if such event shall continue for more than thirty (30) consecutive days, then either party, at its sole option, may terminate this Agreement upon written notice.

11. **Notices.**

- (a) Any notice, demand or other communication (in this Section 7, a "**Notice**") required or permitted to be given or made under this Agreement shall be in writing and shall be sufficiently given or made if:
  - (iii) sent by prepaid courier service to the applicable address set forth in Schedule B; or

- (iv) sent by electronic mail to the applicable electronic mail address set forth in Schedule B.
  - (b) Any Notice sent in accordance with Section 6(a) shall be deemed to have been received:
    - (i) if delivered prior to or during normal business hours on a Business Day, on the date of delivery; or
    - (ii) if sent by electronic mail during normal business hours on a Business Day, on the same day that it is transmitted and, if not transmitted during normal business hours on a Business Day, on the next following Business Day.
  - (c) Either Party may change its address for notice by giving Notice under this Section 6 to the other Party.
8. **Assignment.** This Agreement is not assignable by the Producer without the prior written consent of the AESO, such consent not to be unreasonably withheld. The AESO may assign this Agreement on written notice to the Producer. This Agreement shall be binding upon and enure to the benefit of each of the AESO and the Producer and their respective successors and permitted assigns.
9. **Waiver.** Neither party shall be deemed to have waived the exercise of any right that it holds under this Agreement unless such waiver is made in writing and signed by the party. No waiver made with respect to any instance involving the exercise of any such right shall be deemed to be a waiver with respect to any other instance involving the exercise of that right or with respect to any other right.
10. **Governing Law.** This Agreement shall be governed by and interpreted in accordance with the laws of the Province of Alberta and the laws of Canada applicable therein, excluding any conflict of laws rules that may apply therein. The Parties hereby attorn to the non-exclusive jurisdiction of the courts of the Province of Alberta.
11. **Amendments.** This Agreement constitutes the entire agreement of the Parties concerning its subject matter and no other representations, warranties or agreements, either oral or written, shall be binding upon the AESO or the Producer. This Agreement supersedes and invalidates all prior agreements, understandings, negotiations, whether oral or written, with respect to the subject matter hereof. The AESO may amend the terms and conditions of this Agreement at any time upon sixty (60) days' written notice to the Producer. If the AESO agrees to amend this Agreement, the amendment is effective only if such amendment is in writing and signed by the AESO.
12. **Counterparts.** The parties may execute this Agreement by electronic mail (pdf) in separate counterparts, each of which when so executed and sent by electronic mail shall be an original, and all such counterparts taken together shall constitute one and the same instrument.

[Signature Page Follows]

**IN WITNESS WHEREOF** the Parties have executed this Agreement effective as of the date first above written.

**INDEPENDENT SYSTEM OPERATOR, operating  
as the ALBERTA ELECTRIC SYSTEM  
OPERATOR**

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

**[PRODUCER]**

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

**SCHEDULE A**

**UNITS**

**Date: [●]**

**Unit: [●]**

**Location: [●]**

**Technology: [●]**

**Capacity: [●]**

**SCHEDULE B**  
**CONTACT INFORMATION**

**AESO Contact Information**

Alberta Electric System Operator 2500, 330-5<sup>th</sup> Avenue SW  
Calgary, Alberta  
T2P 0L4  
Facsimile: 403-539-2461  
Email: SSG@aeso.ca  
Attention: Manager, Commercial Management

with a copy to:

Alberta Electric System Operator 2500, 330-5<sup>th</sup> Avenue SW  
Calgary, Alberta  
T2P 0L4  
Facsimile: 403-539-2461  
Email: general.counsel@aeso.ca  
Attention: Vice-President, Law, General Counsel & Corporate Secretary

**Producer Contact Information**

**[Producer Name]** Suite 301, 1117 – 1<sup>st</sup> Street S.W.  
Calgary, AB T2R 0T9  
Facsimile: **[FAX NUMBER]**  
Email: **[EMAIL ADDRESS]**  
Attention: **[TITLE OF OFFICER TO RECEIVE NOTICES]**