
[Service Provider]

-and-

**INDEPENDENT SYSTEM OPERATOR, operating
as AESO**

[●], 2022

**TRANSMISSION MUST RUN SERVICE
AGREEMENT**

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TRANSMISSION MUST RUN SERVICE AGREEMENT

This Agreement is made as of the [●] day of [●], 2022

BETWEEN:

[Insert name], a [insert type of entity] formed under the laws of the Province of [●] (the "Service Provider"),

- and -

INDEPENDENT SYSTEM OPERATOR, operating as the **ALBERTA ELECTRIC SYSTEM OPERATOR**, a statutory corporation, under the laws of the Province of Alberta (the "AESO").

RECITALS

- A. The AESO is required, *inter alia*, pursuant to Section 17 of the EUA to manage and recover the costs for the provision of Ancillary Services.
- B. Such Ancillary Services include acquiring and maintaining TMR Services.
- C. The Service Provider desires to provide TMR Services and the AESO desires to purchase TMR Services, upon and subject to the terms and conditions set forth in this Agreement.

AGREEMENT

For good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the Parties agree as follows:

ARTICLE 1 INTERPRETATION

1.1 Definitions

In this Agreement, including the recitals and the Schedules, unless the context otherwise requires, the following terms will have the meanings set out below:

- (a) "**AESO Event of Default**" has the meaning assigned to it in Section 7.3.
- (b) "**AESO's Website**" means the website of the AESO located at www.aeso.ca or any replacement website.
- (c) "**Affiliate**" means "affiliate", as defined in the ISO Glossary.
- (d) "**Agreement**" means this document, together with the Schedules attached hereto and made a part hereof, all as amended, supplemented or modified from time to time in accordance with the provisions hereof.

- (e) **"Agreement Default"** means any misrepresentation or breach of warranty made by a Party, or the failure by a Party to perform or observe any of the covenants or agreements to be performed by such Party under this Agreement, except for the covenants contained in Section 7.1 of this Agreement, or any other agreement delivered in connection herewith.
- (f) **"Alberta Interconnected Electric System", "AIES" or "System"** means the "interconnected electric system" as defined in the EUA.
- (g) **"Alberta Reliability Standards"** means "reliability standards" as defined in the ISO Glossary.
- (h) **"Allowable Dispatch Variance"** means a variance below the minimum MW level specified in a Valid Dispatch Instruction to an amount equal to the minimum MW level specified in such Valid Dispatch Instruction minus five (5) MW.
- (i) **"Ancillary Services"** means "ancillary services" as such term is defined in the EUA.
- (j) **"Applicable Law"** means in relation to any Person: (i) any applicable principles of common law and equity and any applicable federal, state, provincial, municipal and local law including any statute, subordinate legislation or treaty; and (ii) any applicable guideline, protocol, permit, directive, direction, rule, standard, requirement, program, policy, order, judgment, injunction, award or decree of an Authorized Authority having the force of law.
- (j) **"Approved Outage"** has the meaning assigned to it in Article 6
- (k) **"Arbitration Act"** means the *Arbitration Act* (Alberta), R.S.A. 2000, c. A-43.
- (l) **"Arbitration Notice"** has the meaning assigned to it in Section 10.4.
- (m) **"Arbitration Procedure"** has the meaning assigned to it in Section 10.2(b).
- (n) **"AUC"** means the Alberta Utilities Commission, and any successor thereof.
- (o) **"Authorized Authority"** means, in relation to any Person, transaction or event, any: (a) federal, provincial, municipal or local governmental body (whether administrative, legislative, executive or otherwise), both domestic and foreign; (b) agency, authority, commission, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government; (c) court, arbitrator, commission or body exercising judicial, quasi-judicial, administrative or similar functions; and (d) other body or entity created under the authority of or otherwise subject to the jurisdiction of any of the foregoing, including any stock or other securities, exchange, in each case having jurisdiction over such Person, transaction or event.
- (p) **"Available Capability"** means "available capability", as defined in the ISO Glossary.
- (q) **"Business Day"** means a day on which banks are generally open for the transaction of commercial business in Calgary, Alberta but does not in any event include a Saturday or a Sunday or statutory holiday under Applicable Law.

- (r) **"Business Hours"** means the normal business hours of the AESO at its head office in Calgary, Alberta.
- (s) **"Continuous Operating Capability Range"** means with respect to a Unit(s), its ability to operate continuously between the ranges of the Minimum Continuous Operating Capability and Maximum Continuous Operating Capability.
- (t) **"Contract Volume"** means the contract volume for the Unit(s), as specified in Schedule "A" hereto.
- (u) **"Derate"** means a circumstance due to physical or operational constraints that results in reduced Available Capability of the Unit(s) which without such reduction could reasonably be expected to affect the safety of the Unit(s), the environment, personnel working at the Unit or the public.
- (v) **"Directive"** means "directive" as defined in the ISO Glossary.
- (w) **"Disclosing Party"** has the meaning assigned to it in Section 13.1.
- (x) **"Dispatch"** means "dispatch", as defined in the ISO Glossary.
- (y) **"Dispatched"** means that the Service Provider has caused a Unit or Units to deliver electric energy in accordance with a Valid Dispatch Instruction.
- (z) **"Dispute Resolution Procedure"** has the meaning assigned to it in Section 10.1.
- (aa) **"Effective Date"** means 12:00 a.m. on July 1, 2022.
- (bb) **"Emergency"** means "Emergency", as defined in the ISO Glossary.
- (cc) **"EUA"** means the *Electric Utilities Act* (Alberta).
- (dd) **"Failure to Supply"** has the meaning assigned to it in Section 7.1.
- (ee) **"Financial Security"** has the meaning assigned to it in the ISO Rules.
- (ff) **"Financial Security Requirements"** means Section 103.3 (Financial Security Requirements) and Section 103.7 (Financial Default and Remedies) of the ISO Rules, as amended, supplemented, replaced or otherwise modified from time to time.
- (gg) **"Force Majeure"** means any occurrence (and the effects thereof):
 - (i) which is beyond the reasonable control of the Party claiming relief of its obligations under this Agreement and which could not have been avoided through the use of Good Electric Industry Practice and which prevents such Party from satisfying its obligations under this Agreement including, but not limited to: act of God, war, invasion, armed conflict, blockade, act of public enemy, riot, revolution, insurrection, act of terrorism, sabotage, act of vandalism, fire, lightning, explosion, earthquake, flood, pandemic, epidemic, or a requirement to comply with any Applicable Law or any order, direction or ruling of any Authorized Authority (so long

as the Party claiming relief has not applied for or assisted in the application for such action or restraint by such authority); and

- (ii) which the Party claiming relief of its obligations under this Agreement could not have reasonably foreseen or taken reasonable measures to prevent, but which shall not include any lack of finances, any occurrence which can be overcome by incurring reasonable additional expenses, any Forced Outage that is not caused by an event of Force Majeure, any strike, lock-out or any other form of labour dispute, or any other form of delay caused by contractual or labour relations between such Party and any of its personnel.
- (hh) **"Forced Outage"** means "forced outage", as defined in the ISO Glossary.
- (ii) **"Good Electric Industry Practice"** means "good electric industry practice", as such term is defined in the ISO Glossary.
- (jj) **"GST"** has the meaning assigned to it in Section 3.3.
- (kk) **"Guarantee"** has the meaning ascribed to it in ISO Rule Section 103.3 (Financial Security Requirements) as amended, supplemented or otherwise replaced from time to time.
- (ll) **"Guarantor"** has the meaning provided in the definition of **"Guarantee"**.
- (mm) **"Including"** and **"includes"** means "including, without limitation" and "includes, without limitation", respectively.
- (nn) **"Indemnified Losses"** means, in relation to any Person, any and all liabilities, indebtedness, obligations, losses, damages, claims, assessments, fines, penalties, costs, fees and expenses of every kind, nature or description suffered or incurred by such Person, whether fixed or contingent, known or unknown, suspected or unsuspected, or foreseen or unforeseen, and whether based on contract, tort, statute or other legal or equitable theory of recovery, including interest which may be imposed in connection therewith, court costs, costs resulting from any judgments, orders, awards, decrees or equitable relief, and Professional Fees.
- (oo) **"Indemnifier"** means, in relation to the indemnity pursuant to Section 8.1, the Service Provider, and in relation to the indemnity pursuant to Section 8.2, the AESO.
- (pp) **"Indemnified"** means any Person indemnified pursuant to Section 8.1 or 8.2, as applicable.
- (qq) **"Insolvency Event"** means, in relation to any Person, the occurrence of one or more of the following:
 - (i) an order is made or an effective resolution passed for the winding-up, liquidation or dissolution of such Person;
 - (ii) such Person institutes proceedings for its winding up, liquidation or dissolution, or take action to become a voluntary bankrupt, or consents to the filing of a bankruptcy proceeding against it, or files a proposal, a notice of intention to make a proposal, a petition or answer or consent seeking reorganization, readjustment, arrangement, composition or similar relief under any bankruptcy law or any other

similar Applicable Law or consents to the filing of any such petition, or consents to the appointment of a receiver, liquidator, trustee or assignee in bankruptcy or insolvency of all or a substantial part of the property of such Person or makes an assignment for the benefit of creditors, or admits in writing its inability to pay its debts generally as they come due or commits any other act of bankruptcy, or suspends or threatens to suspend transaction of its usual business, or any action is taken by such Person in furtherance of any of the aforesaid;

- (iii) a court having jurisdiction enters a decree or order adjudging such Person a bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, readjustment, arrangement, composition or similar relief under any bankruptcy law or any other similar Applicable Law, or a decree or order of a court having jurisdiction for the appointment of a receiver, liquidator, trustee or assignee in bankruptcy or insolvency of all or a substantial part of the undertaking or property of such Person, or for the winding up, dissolution or liquidation of its affairs, is entered and such decree, order or petition is not contested and the effect thereof stayed, or any material part of the property of such Person is sequestered or attached and is not returned to the possession of such Person or released from such attachment within twenty (20) days thereafter; or
- (iv) any proceedings, voluntary or involuntary, is commenced, or an order or petition is issued, respecting such Person pursuant to any Applicable Law relating to bankruptcy, insolvency, reorganization of debts, liquidation, winding-up or dissolution;
- (v) such Person causes or institutes any proceeding for its dissolution or termination;
- (vi) such Person is generally not paying its debts as they become due, or such Person makes a general assignment for the benefit of creditors.
- (rr) **"ISO Glossary"** means the ISO Authoritative Document Consolidated Glossary, as amended from time to time.
- (ss) **"ISO Rules"** means the "ISO rules" as such term is defined in Section 1(2)(d) of the EUA.
- (tt) **"ISO Tariff"** means the "tariff" as such term is defined in Section 1(2)(e) of the EUA.
- (uu) **"Letter of Credit"** has the meaning ascribed to it in ISO Rule Section 103.3 (Financial Security Requirements) as amended, supplemented, replaced or otherwise modified from time to time.
- (vv) **"LPR"** means the *Liability Protection Regulation* (Alberta).
- (ww) **"Market Surveillance Administrator"** means "Market Surveillance Administrator" as such term is defined in the EUA.
- (xx) **"Maximum Continuous Operating Capability"** means the continuous operating capability of the Unit taking into account Good Electric Industry Practice, to the maximum specified in Schedule "A" hereto, which maximum shall be equal to the Contract Volume.

- (yy) **"Minimum Continuous Operating Capability"** means the minimum continuous operating capability of the Unit, as specified in Schedule "A" hereto.
- (zz) **"Month"** means "month", as defined in the ISO Glossary.
- (aaa) **"MW"** means "MW", as defined in the ISO Glossary.
- (bbb) **"MWh"** means "MWh", as defined in the ISO Glossary.
- (ccc) **"Notice of Claim"** means a notice by the Service Provider or the AESO, as applicable, on behalf of itself or one or more additional indemnities (if applicable) of a claim for Indemnified Losses pursuant to Section 8.1 or 8.2, as applicable, together with detailed particulars as to the nature and amount of the claim and the basis which it is sought.
- (ddd) **"Officer's Procedure"** has the meaning assigned to it in Section 10.2.
- (eee) **"Officer's Notice"** has the meaning assigned to it in Section 10.4.
- (fff) **"Operating Permit"** means that certain approval for construction, operation, and reclamation of the Unit(s), including any amendments, modifications, extensions, or subsequent versions thereof.
- (ggg) **"Overdue Interest Rate"** means an annual rate of interest equal to the Prime Rate plus six percent (6.0%).
- (hhh) **"Party"** means the Service Provider or the AESO, as the context requires, and **"Parties"** means both the Service Provider and the AESO.
- (iii) **"Permitted Unavailability"** means an occurrence of an Approved Outage or a Forced Outage which results in the Unit(s) being rendered unavailable to supply the TMR Services.
- (jjj) **"Person"** includes a natural person, corporation, limited partnership, general partnership, joint stock company, joint venture, association, company, limited liability company, trust, bank, trust company, land trust, business trust or other organization, whether or not a legal entity, or government or any agency or political subdivision thereof.
- (kkk) **"Pool Participant"** means a "pool participant", as defined in the ISO Glossary.
- (lll) **"Power Pool"** means "power pool", as defined in the EUA.
- (mmm) **"Prime Rate"** means the annual rate of interest designated by the main branch in Calgary of the Bank of Montreal as its reference rate for Canadian dollar commercial loans made in Canada and which is announced by such bank as its prime rate.
- (nnn) **"Professional Fees"** means reasonable fees and disbursements of legal counsel, consultants and expert witnesses and other reasonable out-of-pocket expenses incurred in connection therewith.
- (ooo) **"Proprietary Information"** has the meaning assigned to it in Section 13.1.

- (ppp) **"Purchase Price"** has the meaning assigned to it in Schedule "B".
- (qqq) **"Ramping"** means "ramping", as defined in the ISO Glossary.
- (rrr) **"Reactive Power"** means "reactive power", as defined in the ISO Glossary.
- (sss) **"Recipient"** has the meaning assigned to it in Section 13.1.
- (ttt) **"Representative"** has the meaning assigned to it in Section 13.2.
- (uuu) **"Retained Documents"** has the meaning assigned to it in Section 13.3.
- (vvv) **"Service Provider Event of Default"** has the meaning assigned to it in Section 7.4.
- (www) **"Survival Period"** means the period of time following the expiration or termination of this Agreement equal to the applicable statute of limitations.
- (xxx) **"System Controller"** means the "system controller", as defined in the ISO Glossary.
- (yyy) **"System Security"** means "system security", as defined in the ISO Glossary.
- (zzz) **"TIER"** means the *Technology Innovation and Emissions Reduction Regulation (Alberta)*.
- (aaaa) **"Term"** has the meaning assigned to it in Section 2.1.
- (bbbb) **"Transmission Must Run"** or **"TMR"** means "transmission must-run", as defined in the ISO Glossary.
- (cccc) **"Transmission Must Run Services"** or **"TMR Services"** means the operation of the Unit(s), each within the Continuous Operating Capability Range as set out in Schedule "A", in order to deliver electric energy and Reactive Power support on to the AIES, which is required to maintain System Security, on the terms provided herein.
- (dddd) **"Unit(s)"** means the generating unit(s) specified in Schedule "A".
- (eeee) **"Valid Dispatch Instruction"** means a Dispatch instruction sent to the Service Provider from the AESO requiring the Service Provider to supply Transmission Must Run Services from the Unit(s) for a quantity (in MW) within the Continuous Operating Capability Range of each Unit(s).
- (ffff) **"WECC"** means the Western Electricity Coordinating Council.

1.2 Schedules

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

- (a) Schedule "A" - Transmission Must Run Service Parameters
- (b) Schedule "B" - Purchase Price
- (c) Schedule "C" - Initial Financial Security

1.3 **References and Headings**

The expressions "herein", "hereto", "hereof", "hereby", "hereunder" and similar expressions in this Agreement shall refer to the provisions of this Agreement in their entirety and not to any particular section, subsection or other subdivision hereof. References to Articles, Sections and Schedules herein refer to articles, sections and schedules of or to this Agreement, unless the context otherwise requires. Any reference to time shall refer to Mountain Standard Time or Mountain Daylight Saving Time during the respective intervals in which each is in force in the Province of Alberta. The headings of the Articles, Sections, Schedules and any other headings, captions or indices herein are inserted for convenience of reference only and shall not in any way affect the construction or interpretation of this Agreement or any provision hereof.

1.4 **Singular/Plural; Derivatives**

Whenever the singular or masculine or neuter is used in this Agreement it shall be interpreted as meaning the plural or feminine or body politic or corporate, and vice versa, as the context requires. Where a term is defined herein, a capitalized derivative of such term shall have a corresponding meaning unless the context otherwise requires.

1.5 **Statutory References**

Any reference to a statute shall include and shall be deemed to be a reference to such statute and to the regulations made pursuant thereto, and all amendments made thereto and in force from time to time, and to any statute or regulation that may be passed which has the effect of supplementing the statute so referred to or to the regulations made pursuant thereto. Any reference to a regulation shall be deemed to be a reference to such regulation and all amendments made thereto and in force from time to time, and to any regulation that may be passed which has the effect of supplementing the regulation so referred to. For greater clarity, if any Applicable Law is modified pursuant to this Section 1.5 and such change results in a material disadvantage to either Party hereto, it shall be subject to Section 14.2 hereof.

1.6 **Computation of Time Periods**

Except as expressly set out in this Agreement, the computation of time referred to in this Agreement shall exclude the first day and include the last day of such period. If the time required for payment by the AESO for amounts owed under this Agreement falls on a day that is not a Business Day, the time required for such payment shall extend to the next following Business Day. To the extent that interest is calculated for a period ending on a day that is not a Business Day, the last day of such period, for the purposes of calculating interest, shall extend to the next following Business Day.

1.7 **Conflicts**

If there is any conflict or inconsistency between a provision of the body of this Agreement and that of a Schedule, the provision of the body of this Agreement shall prevail.

1.8 **Currency**

All dollar amounts referred to herein are expressed in Canadian dollars.

1.9 No Drafting Presumption

The Parties acknowledge that their respective legal counsel have reviewed and participated in settling the terms of this Agreement and the Parties hereby agree that any rule of construction to the effect that any ambiguity is to be resolved against the drafting Party shall not be applicable in the interpretation of this Agreement.

ARTICLE 2 TERM

2.1 Term

This Agreement will be in effect as and from the Effective Date and will continue in full force and effect until the earlier of:

- (a) 23:59:59 hours on June 30, 2025, or
- (b) any earlier termination pursuant to Section 2.2;

(the "Term").

2.2 Termination Events

This Agreement shall terminate on the occurrence of any of the following events:

- (a) delivery of a termination notice by the AESO pursuant to Section 2.3;
- (b) delivery of a termination notice by the Service Provider pursuant to Section 7.5(a);
- (c) delivery of a termination notice by the AESO pursuant to Section 7.5(b);
- (d) delivery of a termination notice by either Party pursuant to Section 9.1(e);
- (e) by mutual written agreement of the Parties; or
- (f) expiry of the Term.

2.3 Termination for Convenience

The AESO may, at any time, elect to terminate this Agreement by providing a notice of termination to the Service Provider at least sixty (60) days in advance of such termination.

2.4 Survival

The termination or expiry of this Agreement shall not release any Party from any liability which arose or accrued hereunder prior to or on such termination. Notwithstanding the expiration or termination of this Agreement, the provisions of Section 1.1, Section 2.5, Article 4, Article 7, Article 8, Article 10, Article 11, Article 12 and Article 13 shall survive for such period as necessary to give effect thereto.

2.5 Post-Termination

In the event of a termination or expiry of this Agreement, the AESO shall pay all amounts due and accruing due to the Service Provider to the date of termination or expiry, and the Parties shall take all steps as may be reasonably required to complete any final accounting between them with respect to any fees, expenses or liquidated damages hereunder. For greater clarity, this provision shall not be interpreted to limit the Parties' obligations with respect to any matters contemplated by Section 2.4.

ARTICLE 3 SUPPLY AND PURCHASE OF SERVICES

3.1 Supply and Purchase of Transmission Must Run Service

The Service Provider shall supply Transmission Must Run Service to or for the account of the AESO and the AESO shall purchase Transmission Must Run Service from the Service Provider, all in accordance with the terms and conditions contained in this Agreement.

3.2 Purchase Price

In consideration of the supply by the Service Provider of Transmission Must Run Service to or for the account of the AESO in accordance with the terms hereof, the AESO agrees each Month to pay to the Service Provider the Purchase Price applicable to such Month. The Purchase Price shall be calculated by the Service Provider in accordance with Schedule "B".

3.3 GST

All amounts payable under this Agreement are exclusive of goods and services tax ("GST") imposed by Part IX of the *Excise Tax Act* (Canada). In addition to such amounts, the Party owing such amount shall also pay the other Party an amount equal to the GST applicable to such amount. The Party to whom such payments are made shall be responsible for remitting the GST as required by Applicable Law.

ARTICLE 4 REPRESENTATIONS AND WARRANTIES

4.1 Representations of Service Provider

The Service Provider represents, warrants and covenants to and in favour of the AESO that as of the date of this Agreement and continuing throughout the Term:

- (a) Standing: The Service Provider is a corporation, duly organized, validly existing under the laws of its jurisdiction of formation, and duly registered and authorized to carry on business in the Province of Alberta.
- (b) Requisite Authority: The Service Provider has the requisite corporate capacity, power and authority to execute this Agreement and any other agreements and documents required to be delivered hereunder and to perform all obligations to which it thereby becomes subject. This Agreement is binding and enforceable against the Service Provider in accordance with its terms.

- (c) Execution and Enforceability: The Service Provider has taken all necessary corporate actions to authorize the execution, delivery and performance of this Agreement, including the transactions contemplated herein in accordance with the provisions of this Agreement. This Agreement has been duly executed and delivered by the Service Provider, and this Agreement constitutes, and all other documents executed and delivered on behalf of the Service Provider hereunder shall, when executed and delivered constitute, valid and binding obligations of the Service Provider enforceable in accordance with their respective terms and conditions.
- (d) No Conflict: The execution and delivery of this Agreement and the performance of the transactions contemplated herein by the Service Provider in accordance with the terms of this Agreement are not and will not be in violation or breach of, or be in conflict with or require any consent, authorization or approval under:
 - (i) any term or provision of the constating documents of the Service Provider;
 - (ii) any contract, permit or authority to which the Service Provider is a party or by which the Service Provider is bound; or
 - (iii) Applicable Law.
- (e) Litigation: There are no actions, suits or proceedings pending or, to the knowledge of the Service Provider, threatened against the Service Provider or any of its Affiliates seeking relief which would prevent or materially hinder the consummation of the transactions contemplated by this Agreement.
- (f) Continuous Operating Capability Range: The Continuous Operating Capability Range of the Unit(s) is not and, for the duration of the Term, shall not be contracted to, or otherwise committed to a third Person in a manner which limits or interferes with the rights of AESO hereunder or otherwise results in a breach by the Service Provider of its obligations.
- (g) Interconnection Requirements: There are and, for the duration of the Term, shall be executed and effective interconnection agreements, pursuant to the ISO Tariff, in place for the delivery of the Continuous Operating Capability Range of the Unit to the System, which interconnection agreements are held in the name of the Service Provider.
- (h) Pool Participant: The Service Provider is a Pool Participant and shall remain a Pool Participant during the Term.
- (i) Rights to Supply: The Service Provider has the right to provide the Transmission Must Run Services in an amount within the Continuous Operating Capability Range, up to the Maximum Continuous Operating Capability, and to provide the Transmission Must Run Services to AESO in accordance with the terms of this Agreement. Service Provider shall use commercially reasonable efforts to obtain any authorizations required under Applicable Law to provide the Transmission Must Run Services during the Term.

4.2 AESO Representations and Warranties

The AESO represents, warrants and covenants to and in favour of the Service Provider that as of the date of this Agreement and continuing throughout the Term:

- (a) Standing: The AESO is a statutory corporation, validly existing under the laws of its jurisdiction of formation, and duly registered and authorized to carry on business in the Province of Alberta.
- (b) Requisite Authority: The AESO has the requisite corporate capacity, power and authority to execute this Agreement and any other agreements and documents required to be delivered hereunder and to perform all obligations to which it thereby becomes subject.
- (c) Execution and Enforceability: The AESO has taken all necessary corporate or other actions to authorize the execution, delivery and performance of this Agreement, including the transactions contemplated herein in accordance with the provisions of this Agreement. This Agreement has been duly executed and delivered by the AESO, and this Agreement constitutes, and all other documents executed and delivered on behalf of the AESO hereunder shall, when executed and delivered constitute, valid and binding obligations of the AESO enforceable in accordance with their respective terms and conditions.
- (d) No Conflict: The execution and delivery of this Agreement and the performance of the transactions contemplated herein by the AESO in accordance with the terms of this Agreement are not and will not be in violation or breach of, or be in conflict with or require any consent, authorization or approval under:
 - (i) any term or provision of the constating documents of the AESO;
 - (ii) any permit or authority to which the AESO is a party or by which the AESO is bound; or
 - (iii) Applicable Law.
- (e) Litigation: There are no actions, suits or proceedings pending or, to the knowledge of the AESO, threatened against the AESO or any of its Affiliates seeking relief which would prevent or materially hinder the consummation of the transactions contemplated by this Agreement.

4.3 Survival of Warranties

The representations and warranties made during the Term contained in Sections 4.1 and 4.2 shall survive the expiration of the Term or termination of this Agreement and shall continue in full force and effect for the benefit of the other Party such that if any representation, warranty, or covenant was untrue on the date it was made, or deemed repeated, it shall survive for the Survival Period after the expiration or termination of this Agreement.

**ARTICLE 5
SERVICE PROVIDER COVENANTS**

5.1 Terms of Supply and Availability

- (a) **Basic Requirements:** Subject to Permitted Unavailability, the Service Provider shall:
- (i) throughout the Term, make or cause TMR Services, in a quantity (expressed in MW) within the combined Continuous Operating Capability Range to be made available to or for the account of the AESO from the Unit(s) in accordance with the terms of this Agreement;
 - (ii) throughout the Term, ensure that the Unit(s) is able to respond to a Dispatch for the provision of TMR Services through live operators or remote controls on a twenty-four (24) hour basis whenever Dispatched or directed by the AESO and to the amount specified in a Valid Dispatch Instruction or Directive;
 - (iii) throughout the Term,
 - (A) acknowledge receipt within 10 minutes of the AESO's issuance of a Valid Dispatch Instruction and comply with each Valid Dispatch Instruction provided by the AESO,
 - (B) cause the Transmission Must Run Services, directed to be Dispatched from time to time pursuant to a Valid Dispatch Instruction, to begin Ramping in accordance with the ISO Rules, and to reach the MW output, subject to an Allowable Dispatch Variance, within thirty (30) minutes of the effective time specified in such Valid Dispatch Instruction or such shorter period of time as required by the ISO Rules, and
 - (C) cause the Transmission Must Run Services, directed to be Dispatched from time to time pursuant to a Valid Dispatch Instruction, to be and remain Dispatched in strict accordance with the terms of a Valid Dispatch Instruction, provided that the Service Provider shall only be required to maintain the MW output level of the Unit(s) Dispatched pursuant to a Valid Dispatch Instruction at or above the minimum MW level specified in such Valid Dispatch Instruction, subject to an Allowable Dispatch Variance or Derate, and such MW output level must not be below the Allowable Dispatch Variance or Derate on average in any ten (10) minute clock period; and
 - (iv) throughout the Term, maintain and operate the Unit(s) so as to ensure that the Transmission Must Run Services may be Dispatched and supplied in accordance with the terms of this Agreement.
- (b) **Operating and Regulatory Requirements:** The Service Provider shall, as it relates to the operation and maintenance of the Unit(s) and the provision of TMR Services therefrom, comply with Good Electric Industry Practice, the reliability management system requirements of the WECC and all relevant ISO Rules and Alberta Reliability Standards.

- (c) Compliance with Law: Notwithstanding anything herein to the contrary, a Party shall not be obligated to perform any obligation hereunder that would violate any Applicable Law.
- (d) Ancillary Services and Power Pool: The Service Provider is permitted to sell the electricity generated by the Unit(s) in excess of either a Dispatch or a Valid Dispatch Instruction, to either the Power Pool or for the provision of additional Ancillary Services; provided, however, that such other sales of the electricity generated by the Unit(s) does not conflict, or otherwise interfere, with the provision of TMR Services.
- (e) Reporting: The Service Provider shall, as it relates to the Unit(s) and the provision of TMR Services therefrom, report to the AESO in accordance with the ISO Tariff and, without limiting the generality of the foregoing, provide, at any time and from time to time at the request of the AESO, all information, data and reports required to enable the AESO to calculate the Purchase Price. All such information shall be Proprietary Information that is subject to the protections set forth in Article 13.
- (f) Financial Security: The Service Provider shall throughout the Term continuously comply with the Financial Security Requirements in respect of Financial Security, set forth in Section 11.1.
- (g) Notice: The Service Provider shall provide written notification to the AESO forthwith upon becoming aware of any Force Majeure that causes unavailability or interruption to the Unit(s)' ability to provide TMR Services.

5.2 Communication

For the duration of the Term, the Service Provider shall maintain the communication requirements as set forth in all applicable ISO Rules and standards, and any successors thereto, including but not limited to the AESO SCADA standard, in accordance with ISO Rule Section 502.4 (Automated Dispatch and Messaging System and Voice Communication System Requirements).

ARTICLE 6 APPROVED OUTAGES

6.1 Approved Outages

- (a) All planned maintenance outages for the Unit(s), required in accordance with the Good Electric Industry Practice, shall, throughout the Term, be reported in the AESO Energy Trading System by the Service Provider to the AESO in accordance with ISO Rule Section 306.5 (Generation Outage Reporting and Coordination) as soon as practical after the Service Provider becomes aware of any such outages or, where applicable, becomes aware of any changes in or addition to any planned maintenance outages. A planned maintenance outage, required in accordance with Good Electric Industry Practice, and any such change or addition to such planned maintenance outages, is referred to herein as "**Approved Outage**".
- (b) In addition to and without limiting any other rights of the AESO under Applicable Law, (i) in the event the Service Provider requests a change to the timing of an Approved Outage within ninety (90) days of when the Approved Outage is scheduled, the AESO may, in its sole discretion, accept or reject the Service Provider's request without any cost or liability to the AESO, and (ii) AESO may, in its sole discretion, request changes to the timing of an

Approved Outage if the AESO determines that the reliability of the System will be materially affected if the Service provider undertakes or utilizes an Approved Outage in respect thereof. The Service Provider shall accommodate such changes to the timing of any Approved Outage, unless such changes present risk of danger to the Service Provider's equipment, personnel, the public or the environment, or which would cause the Service Provider to be in non-compliance with Applicable Law or the Operating Permit.

- (c) If the Service Provider accommodates a change to the timing of any Approved Outage pursuant to Section 6.1(b)(ii), the AESO shall indemnify the Service Provider against any direct, incremental, out-of-pocket costs and expenses reasonably incurred by the Service Provider as the result of such change, provided it has used all reasonable efforts to mitigate such costs and expenses. Without limiting the generality of the foregoing, direct incremental costs shall not include any loss of profit, loss of revenue, loss of production, loss of earnings, loss of contract or any other indirect cost or expense whatsoever.

ARTICLE 7 DEFAULT AND REMEDIES

7.1 Failure to Supply

If at any time, other than during Permitted Unavailability or a Force Majeure event, there is a failure by the Service Provider to perform or observe any one of the covenants set out in Section 5.1(a)(iii) and, in the case of Section 5.1(a)(iii)(C), such failure results in the AESO replacing all or a portion of the TMR Services ("**Failure to Supply**") the AESO shall have the right to deduct from the Purchase Price for the applicable Month any payment applicable to such Failure to Supply in accordance with Schedule "B", together with the incremental cost of replacing all or that portion of the TMR Services that the Service Provider failed to supply, provided that the AESO shall have no claim for such deduction with respect to TMR Services that have been curtailed in the entirety by the AESO (pursuant to the ISO Rules) during any portion of the hour specified in the relevant Valid Dispatch Instruction for reasons of System Security or transmission congestion management, as determined by the AESO in its sole discretion; provided, for clarity, that in the event that less than the entirety of the TMR Services are so curtailed the AESO shall be entitled to claim deduction from the Service Provider for the portion of the TMR Services which was not actually supplied in compliance with the terms of a Valid Dispatch Instruction for the entire hour specified in such Valid Dispatch Instruction; and the AESO may net and set-off pursuant to Section 2.3 in Schedule "B" and realize on the Financial Security in accordance with ISO Rule Section 103.7 (Financial Default and Remedies).

If in a Month the AESO incurs incremental costs of replacing all or that portion of the TMR Services as a result of one or more Failures to Supply, the AESO shall not deduct for such Month an amount of incremental costs greater than the amount of the Capacity Payment (as defined in Schedule "B"). And if the incremental costs resulting from a single Failure to Supply extend in duration to the following Month(s), the aggregate deductions of incremental costs related to such Failure to Supply shall not exceed an amount equal to one (1) Capacity Payment (as defined in Schedule "B"), provided such Failure to Supply is determined by the AESO, acting reasonably, to be one (1) Failure to Supply and not separate or consecutive Failures to Supply.

7.2 Recovery Plan

- (a) If at any time, other than during Permitted Unavailability or a Force Majeure event, there is a failure by the Service Provider to perform or observe any one of the covenants set out in

Section 5.1(a)(iii), the AESO may, on notice to the Service Provider, require the Service Provider to prepare and deliver within thirty (30) days, at the Service Provider's sole cost and expense, a recovery plan which sets forth the underlying cause and the work that the Service Provider will undertake to remedy the underlying cause. Upon the AESO's review and written approval of such recovery plan, the Service Provider shall forthwith undertake and implement the remedial work set forth and described in such recovery plan. The Service Provider shall notify the AESO upon completion of the remedial work.

- (b) In the event the Service Provider fails to provide an acceptable recovery plan or to undertake and implement the remedial work of an approved recovery in accordance with Section 7.2(a), the AESO may suspend the Service Provider from providing the TMR Services and all related payments under this Agreement until such time as the Service Provider provides an acceptable recovery plan or undertakes and implements the remedial work of an approved recovery plan, as determined by the AESO in its sole and absolute discretion.
- (c) The rights in this Section 7.2 are in addition to any other rights or remedies the AESO may have.

7.3 **Event of Default by the AESO**

The AESO shall be in default under this Agreement upon the happening or occurrence of any of the following events, each of which shall be deemed to be an event of default with respect to the AESO for the purposes of this Agreement (an "**AESO Event of Default**"):

- (a) an Insolvency Event by or in relation to the AESO; or
- (b) an Agreement Default by or in relation to the AESO and such default has not been cured (or, to the extent such breach is incapable of being cured retrospectively, then cured prospectively) within thirty (30) days following notice thereof from the Service Provider.

7.4 **Events of Default by the Service Provider**

The Service Provider shall be in default under this Agreement upon the happening or occurrence of any of the following events, each of which shall be deemed to be an event of default with respect to the Service Provider for the purposes of this Agreement (a "**Service Provider Event of Default**"):

- (a) an Insolvency Event by or in relation to the Service Provider;
- (b) an Insolvency Event by or in relation to the Guarantor, if any, identified in any Guarantee delivered pursuant to the provisions hereof;
- (c) an Agreement Default by or in relation to the Service Provider and such default has not been cured (or, to the extent such breach is incapable of being cured retrospectively, then cured prospectively) within thirty (30) days following notice thereof from the AESO;
- (d) the Service Provider fails to deliver an acceptable recovery plan within thirty (30) days in accordance with Section 7.2(a); or

- (e) if at any time, other than during Permitted Unavailability or a Force Majeure event, there are three (3) or more Failures to Supply by the Service Provider during any twelve (12) month rolling period.

7.5 Remedies Upon Event of Default

- (a) AESO Event of Default. Upon the occurrence of an AESO Event of Default, the Service Provider may terminate this Agreement by delivery of a notice of termination to the AESO and, effective as of the date of such termination.
- (b) Service Provider Event of Default. Upon the occurrence of a Service Provider Event of Default, the AESO may terminate this Agreement by delivery of a notice of termination to the Service Provider, and (i) declare an amount equal to One Hundred Thousand Dollars (\$100,000.00) as immediately due and payable on account of liquidated damages, (ii) exercise its rights hereunder to net and set-off pursuant to Section 2.3 in Schedule "B" or (iii) realize on the Financial Security for the amount of such liquidated damages and for other amounts, if any, accruing due under this Agreement, in accordance with ISO Rule Section 103.7 (Financial Default and Remedies).
- (c) Reasonable Pre-Estimate. The Parties agree that the liquidated damages specified above, if any, are a reasonable pre-estimate of such damages on account of negative market perception, lost business opportunities, general and administrative expenses, direct damages and similar damages, and does not constitute a penalty.

**ARTICLE 8
LIABILITY AND INDEMNIFICATION**

8.1 Responsibility of the Service Provider

Subject to the limitations set forth herein, the Service Provider shall be liable to, indemnify and save harmless the AESO and its parents, subsidiaries, affiliates, divisions, directors, officers, employees, managers, agents, representatives, independent contractors, consultants, attorneys, accountants, trustees, insurers, predecessors, successors and assigns (collectively, the "Indemnifieds") for all Indemnified Losses which may be brought against or be suffered by any one or more of them or which any one or more of them may sustain, pay or incur as a direct result of any act, omission, circumstance or other matter arising out of, resulting from attributable to or connected with any Agreement Default made by the Service Provider or the negligence or willful misconduct of the Service Provider in the performance of its obligations under this Agreement; provided, however, that the Service Provider shall not be liable to indemnify and save harmless the AESO for any Indemnified Losses that arise out of the negligence or willful misconduct of AESO or of the Indemnifieds.

8.2 Responsibility of the AESO

Except for the AESO's obligation to pay to the Service Provider the Purchase Price hereunder, the AESO shall not be liable to or indemnify the Service Provider for any liabilities, indebtedness, obligations, losses, damages, claims, assessments, fines, penalties, costs, fees, or expenses which may be incurred by it relating in any way to this Agreement and howsoever arising, whether in contract, tort, or otherwise.

8.3 Limit on Each Party's Responsibility

The obligations and liability of the Parties under this Agreement shall be subject to the following limitations:

- (a) The total aggregate amount of the liabilities and indemnities of the Indemnifier under this Agreement shall not exceed one million dollars (\$1,000,000.00), excluding, however, (i) any liquidated damages payable pursuant to Section 7.5(b), (ii) any damages arising from the negligence or wilful misconduct of the Service Provider in the performance of its obligations under this Agreement, (iii) any damages arising from a breach of Article 13 by the Service Provider, and (iv) any damages arising from a breach of Applicable Law by the Service Provider.
- (b) The Indemnifier shall have no liability in connection with Indemnified Losses unless the Indemnified shall, prior to the expiry of the Survival Period, have provided the Indemnifier with a Notice of Claim.
- (c) The Indemnifier shall have no liability in connection with any Indemnified Losses to the extent that such Indemnified Losses are reimbursed to the Indemnified or its additional Indemnities by insurance.
- (d) Except for the liquidated damages, if any, payable under Section 7.5(b), and damages arising from a breach of Article 13 by the Service Provider, the Indemnifier shall have no liability for claims of loss of profits, loss of revenue, loss of production, loss of earnings, loss of contract or any other indirect, special or consequential loss or damage whatsoever of a Party, any Indemnifieds or any third Person arising from any act or omission carried out or purportedly carried out by a Party in carrying out its duties, responsibilities and functions under this Agreement.
- (e) Nothing herein shall be construed as limiting the application or protection of the EUA or LPR.

8.4 Responsibility Extends to Legal Costs and Settlements

Notwithstanding any provision to the contrary contained in this Article 8, references to costs in the liability and indemnification obligations prescribed by Sections 8.1 and 8.2 shall be deemed to include Professional Fees, and shall extend to settlements, satisfactions or other compromises with respect to claims by third Persons for Indemnified Losses; provided, however, that Indemnifier shall not be liable for any such Indemnified Losses unless they have agreed in writing, such agreement not to be unreasonable withheld, prior to the AESO or its Indemnifieds agreeing to such settlement, satisfaction or compromise.

8.5 Procedure - Indemnities

An Indemnified seeking indemnification shall give reasonably prompt Notice of Claim thereof to the Indemnifier from whom indemnification is sought, provided that if the Party seeking indemnification fails to provide notice to the Indemnifier prior to the expiry of the Survival Period the party seeking indemnification shall be deemed to have forfeited its right to indemnification with respect to such Indemnified Losses. The Indemnifier shall have the right to conduct, settle or otherwise dispose of any legal action in respect of which indemnification is sought in consultation with and with the consent of the Indemnified, acting reasonably, if and only if it has agreed that the matters in the

action are indemnified pursuant to Sections 8.1 or 8.2, as applicable, and has provided security to the Indemnified in the form of a Letter of Credit in the full amount claimed in connection with such action, unless the amount claimed in connection with such action is in excess of the amount determined pursuant to Section 8.3(a) in which event the Indemnifier shall have provided security to the Indemnified in the form of a Letter of Credit in the amount determined pursuant to Section 8.3(a). The Letter of Credit shall be issued on terms satisfactory to the Indemnified, acting reasonably, including that the Indemnified shall be entitled to present the Letter of Credit for payment to satisfy any claim finally determined in such action or if the Indemnifier does not renew or provide a renewal Letter of Credit at least thirty (30) days prior to the expiry of any subsisting Letter of Credit.

ARTICLE 9 FORCE MAJEURE

9.1 Relief from Force Majeure

- (a) Where by reason of Force Majeure, a Party is prevented or delayed from performing any of its obligations under this Agreement, the Party whose performance is thereby prevented or delayed shall, unless otherwise provided herein, be relieved from any obligation to or liability under this Agreement related thereto (other than the obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure); provided that such relief shall be of no greater scope and no longer duration than is dictated by the Force Majeure event. For clarity, an event of Force Majeure shall not extend the Term.
- (b) The Party seeking to invoke the benefit of this Section 9.1 shall provide prompt written notice to the other Party without delay upon, but in no event later than two (2) Business Days after, the occurrence of the Force Majeure event, specifying the causes of and expected duration of the Force Majeure event and the probable impact on the performance of or compliance with its obligations hereunder.
- (c) The Party not seeking to invoke the benefit of this Section 9.1 shall not be required to perform or resume performance of its obligations to the other Party corresponding to the obligations of the Party excused by Force Majeure, including payment obligations.
- (d) The Party claiming Force Majeure shall provide prompt written notice to the other Party without delay upon, but in no event later than two (2) Business Days following, cessation of the event of Force Majeure. Upon cessation of the event of Force Majeure, performance hereunder shall be resumed.
- (e) Notwithstanding anything to the contrary in this Section 9.1, either Party may elect to terminate this Agreement by providing a notice of termination to the other Party if any event or events of Force Majeure, in aggregate, last longer than sixty (60) days in duration in any twelve (12) month rolling period during the Term.

9.2 No Relief

No Party shall be entitled to the benefits of the provisions of this Section 9.1:

- (a) unless it has complied with and was in continual compliance with its obligations provided for in Section 9.1;

- (b) if the failure to observe or perform any of the covenants or obligations herein imposed upon it was due to causes arising out of its own Agreement Default, negligence or willful act or was caused by arrest or restraint by any Authorized Authority and such arrest, restraint or order was the result of wilful misconduct or a breach by the Party claiming Force Majeure of the terms of a consent, permit or other approval or of any Applicable Law;
- (c) if the failure to observe or perform any of the covenants or obligations herein imposed upon it was caused by the Party claiming Force Majeure having failed to remedy the conditions and to resume the performance of such covenants or obligations with reasonable dispatch at reasonable cost; or
- (d) if and to the extent the Party is seeking to invoke Force Majeure because it is unable to procure or maintain any fuel supply to be utilized by any Units unless due to bona fide force majeure being invoked by the Party's fuel supplier.

9.3 **Audit Rights**

The validity of any claim of Force Majeure by a Party, the reasonableness of the duration of the event of Force Majeure and the diligence of the efforts made to overcome, terminate, or mitigate the effects of the event of Force Majeure shall be subject to audit by the non-claiming Party.

9.4 **No Extension**

Notwithstanding anything in this Agreement to the contrary, no Force Majeure occurrence shall extend this Agreement beyond the Term.

ARTICLE 10 DISPUTE RESOLUTION

10.1 **Dispute Resolution Procedure**

The Parties agree to submit for resolution pursuant to this Article 10 (the "**Dispute Resolution Procedure**") any and all disputes between the Parties that in any way arises out of or in connection with this Agreement, including disputes as to or in connection with the existence, terms, validity, breach or termination of this Agreement (for the purposes of this Article, a "**dispute**").

10.2 **Purpose and Sequence of Dispute Resolution**

The purpose of the Dispute Resolution Procedure is to set forth the procedure pursuant to which each Party agrees to use reasonable efforts to resolve disputes prior to resorting to litigation. The Parties agree that the Dispute Resolution Procedure shall consist of a two-step process, which process shall be undertaken in the following order:

- (a) first, by way of discussions between the senior officers of the AESO and the Service Provider pursuant to the procedure set forth in Section 10.4 (the "**Officer's Procedure**"); and
- (b) second, by way of arbitration pursuant to the arbitration procedure set forth in Section 10.5 (the "**Arbitration Procedure**").

10.3 Confidentiality

All Proprietary Information disclosed by a Party pursuant to the Officer's Procedure or the Arbitration Procedure shall be treated as privileged, confidential, and without prejudice, and neither the delivery nor disclosure of such Proprietary Information shall represent any waiver of privilege by a Party disclosing the same. Each Party agrees not to disclose Proprietary Information provided by any other Party for the purposes hereof to any other Person for any other purpose without first obtaining the prior written consent of the Party that disclosed such Proprietary Information. Further, such Proprietary Information shall not be used in any subsequent proceedings without the prior written consent of the Party who has made disclosure of the same.

10.4 Officer's Procedure

Except for interlocutory injunctive proceedings for the immediate performance or cessation of conduct, for all disputes that have not been resolved, any Party may, by notice in writing to the other Party (the "**Officer's Notice**") refer the dispute to their senior officers. If any Party delivers an Officer's Notice to the other, the Parties shall cause one (1) or more of their senior officers to employ such methods of resolution as they may agree to, and shall cause to be made, all commercially reasonable efforts to, resolve the dispute within thirty (30) Business Days of delivery of an Officers Notice. If the dispute is not resolved within thirty (30) Business Days of delivery of an Officer's Notice, then any Party may, by notice in writing to the other Party (the "**Arbitration Notice**") refer the dispute to arbitration pursuant to the Arbitration Procedure. If no Party provides the other with an Arbitration Notice within thirty (30) Business Days following the issuance of an Officers Notice, then the Parties shall be entitled to pursue any other process or remedies otherwise available to them at law or in equity.

10.5 Arbitration Procedure

If any Party delivers an Arbitration Notice to the other, then the dispute shall be forwarded to and resolved by arbitration in accordance with the Arbitration Act, by a board of arbitrators in accordance with the following provisions:

- (a) the AESO shall appoint one (1) arbitrator and the Service Provider shall appoint one (1) arbitrator, each such being qualified by education and training and having appropriate technical and/or legal expertise with respect to the matter in dispute, within fifteen (15) days after delivery of an Arbitration Notice from one Party to the others or such longer period agreed to by the Parties. If any of the Parties shall fail to appoint an arbitrator within such fifteen (15) day period, then upon application by a Party that has appointed an arbitrator, the second (2nd) arbitrator shall be appointed by any Justice of the Court of Queen's Bench of Alberta. The two (2) arbitrators thus appointed shall appoint a third (3rd) arbitrator, who shall be qualified by education and training and have appropriate technical and/or legal expertise with respect to the matter in dispute, within fifteen (15) days of the appointment of the second (2nd) arbitrator. If the two (2) arbitrators shall fail to appoint the third (3rd) arbitrator within such fifteen (15) day period, then upon application by either Party, the (3rd) third arbitrator shall be appointed by any Justice of the Court of Queen's Bench of Alberta;
- (b) the board of arbitrators shall proceed promptly to determine the matters in issue and shall render its decision within thirty (30) days from the date of final submissions of the Parties to the board of arbitrators, except where the Parties agree to a different period of time;

- (c) the Parties consent to the arbitration being conducted in Calgary, Alberta, or any other place mutually agreed upon, and the initial meeting with the arbitrators shall commence no later than twenty (20) days following the appointment of the third (3rd) arbitrator, unless the Party's mutually agree, or the arbitrators' determine that good cause has been shown, for a longer time period, at which time the Parties shall present such evidence and witnesses as they may choose, with or without counsel;
- (d) the board of arbitrators shall have the discretion to shorten or lengthen time frames for actions to be taken by a Party pursuant to this Agreement with respect to any matter which is the subject of arbitration before such board of arbitrators;
- (e) each Party shall be responsible for its own costs and shall share the costs associated with the arbitration equally; provided that the board of arbitrators shall have the discretion to allocate costs in a different manner for good cause shown;
- (f) any determination or award of the board of arbitrators made in relation to the dispute shall be final, binding and non-appealable (whether on a question of law, a question of fact, or a question of mixed fact and law);
- (g) it shall be a condition of the appointment of any arbitrator that such arbitrator shall maintain in strict confidence all documents, the transcripts of the proceedings and other materials and all information disclosed by or on behalf of the Parties and shall not use the same or allow the same to be used for any purpose not collateral to such arbitration and, at the request of a Party that provided any documents or other printed materials, shall return all originals and any copies of such documents and printed materials to such Party. Each arbitrator shall be responsible for ensuring that its officers, employees, representatives and consultants comply with the obligation of confidentiality set forth in Section 10.3; and
- (h) the board of arbitrators may make rulings with respect to the production of documents, the ability of the Parties to call witnesses or any other procedural matter.

Save as otherwise expressly provided in this Agreement, the provisions of the Arbitration Act shall apply to any arbitration undertaken hereunder. Pending resolution of any dispute, the Service Provider and the AESO shall continue to perform their respective obligations under this Agreement.

ARTICLE 11 FINANCIAL SECURITY

11.1 Furnishing Financial Security

Concurrently with the execution of this Agreement, the Service Provider shall, with respect to its obligations hereunder, provide the AESO with the Financial Security described in Schedule "C", the form of which Financial Security shall be subject to the AESO's approval in accordance with the Financial Security Requirements. The Service Provider acknowledges and agrees to maintain such Financial Security for the term of this Agreement plus ninety (90) days after the expiry of this Agreement, and to provide new, additional, or replacement Financial Security to the AESO from time to time, if and to the extent required by the AESO, all in accordance with the Financial Security Requirements.

11.2 Survival

Notwithstanding any termination of this Agreement by a Party as permitted under the provisions hereof, the provisions of this Article 11 shall survive such termination for so long as there remains outstanding any Indemnified Losses, interest and any other amounts (including liquidated damages) which have been claimed by the AESO or which is owed to the AESO pursuant to the provisions hereof.

ARTICLE 12 AUDIT AND REPORTING

12.1 Audit and Records Retention

- (a) The AESO shall have the right, exercisable upon reasonable prior notice to the Service Provider to audit or examine the books and records of the Service Provider as they relate to the Unit(s) at the AESO's sole cost and expense, to verify the accuracy of any invoice, information, data, notice, claim, demand, charge, payment, cost, expense or computation reported, gathered, collected, made or incurred by the Service Provider, or the performance of the covenants and obligations by the Service Provider under and pursuant to this Agreement.
- (b) The Service Provider shall retain, for a period of two (2) years from their creation, all relevant books, records, information and data relating to the Unit(s) necessary to permit the AESO to exercise and fulfill its rights under this Section 12.1 and Section 9.3.
- (c) Notwithstanding the termination of this Agreement by a Party as permitted under the provisions hereof, all provisions respecting audit rights shall survive such termination for the relevant time periods specified herein.

ARTICLE 13 CONFIDENTIALITY

13.1 Proprietary Information

Subject to Sections 13.2 and 13.4, all information supplied or disclosed by a Party (the "**Disclosing Party**") under this Agreement regardless of the form of the information, or the method by which the information is transmitted, will be considered proprietary information (the "**Proprietary Information**") and the Party receiving the information (the "**Recipient**") will treat as confidential all Proprietary Information and will not at any time disclose any of the Proprietary Information to any other Person without the prior written consent of the Disclosing Party.

13.2 Need to Know

The Recipient will make its best efforts to keep confidential and protect the Proprietary Information as it would its own confidential and proprietary information. The Recipient will disclose the Proprietary Information only to those of its members, directors, officers, employees (including employees of such Party's affiliates) and representatives, consultants and agents (collectively, the "**Representatives**") who (i) have a need to know the information for the purposes of carrying out the Recipient's obligations under the Agreement, providing advice in respect thereto or as required by Applicable Law, and (ii) are informed of the confidential and proprietary nature of the Proprietary Information.

13.3 Exclusive Property

All Proprietary Information, unless otherwise specified in writing by the Disclosing Party, will remain the exclusive property of the Disclosing Party, including any and all reproductions of any of the Proprietary Information and will be returned or destroyed at the request of the Disclosing Party; provided, however, that the Recipient (i) shall not be obligated to return or destroy computer archival or back-up files and (ii) may retain Proprietary Information as necessary to comply with its document retention policies (collectively, (i) and (ii) the “**Retained Documents**”); provided further, that all such Retained Documents shall be kept confidential and protected in accordance with this Article 13. Proprietary Information will not be used by the Recipient for any reason or purpose other than for the purposes of this Agreement.

13.4 Exclusions

- (a) Proprietary Information will not include any information provided which:
 - (i) is generally available to the electricity industry or the public at the time of disclosure;
 - (ii) subsequent to receipt by the Recipient, becomes generally available to the electrical industry or the public as a result of a disclosure by the Disclosing Party or its Representatives;
 - (iii) subsequent to receipt by the Recipient, the Recipient can establish, by satisfactory evidence, that the Proprietary Information became available to the Recipient on a non-confidential basis from a source other than the Disclosing Party or its Representatives without the breach of this Agreement; or
 - (iv) the Recipient can establish by competent evidence, that the Proprietary Information was available to the Recipient on a non-confidential basis prior to its disclosure to the Recipient.
- (b) Either Party shall be permitted to disclose Proprietary Information which:
 - (i) must be disclosed by Applicable Law to an Authorized Authority (including the AUC, the Market Surveillance Administrator, or any other Person that Recipient is directed to disclose such Proprietary Information to by an Authorized Authority);
 - (ii) must be disclosed by the AESO for the purposes of implementing this Agreement; or
 - (iii) must be disclosed by the AESO to WECC as a consequence of its membership in WECC.

13.5 Notice of Demands

In the event that Proprietary Information must be disclosed pursuant to Subsection 13.4(b) herein, the Recipient will provide notice to the Disclosing Party prior to disclosing or furnishing the Proprietary Information so as to afford the Disclosing Party an opportunity to seek injunctive relief or protections from the need to disclose.

13.6 Survival

All obligations of confidentiality in this Article 13 shall survive until such time as the information that is subject to such obligations no longer comprises Proprietary Information under one of the exceptions set forth in Section 13.4.

ARTICLE 14 MISCELLANEOUS

14.1 Waiver

With respect to the failure of a Party to perform or observe in any respect any of the covenants or agreements or covenants to be performed by such Party under this Agreement:

- (a) no waiver by a Party of any provision, or the breach of any provision, of this Agreement will be effective unless it is contained in a written instrument duly executed by the authorized officers or representatives of such Party, and such written waiver will affect only the matter specifically identified in the instrument granting the waiver and will not extend to any other matter, provision or breach;
- (b) the failure of a Party to give notice to any other Party or to take any other steps in exercising any right, or in respect of the breach or non-fulfillment of any provision of this Agreement, will not operate as a waiver of that right, breach or provision nor will any single or partial exercise of any right preclude any other or future exercise of that right or the exercise of any other right, whether in law or in equity or otherwise; and
- (c) acceptance of payment by a Party after the breach or non-fulfillment of any provision of this Agreement by another Person will not constitute a waiver of the provisions of this Agreement, other than the breach cured by such payment.

14.2 Change of Applicable Law

- (a) If, during the Term, a situation or occurrence arises due to the introduction of, or any change in any Applicable Law, the consequences and the effect of which are claimed to result in a material disadvantage greater than fifty thousand (\$50,000) to a Party under this Agreement, then said Party may provide a written notice to the other Party, and which notice shall provide details of such claimed material disadvantage (including sufficient information to enable the Party receiving the notice to determine if the aforesaid situation or occurrence has in fact arisen), and shall set forth the requesting Party's request to amend this Agreement to account for such claimed material disadvantage; provided, however, that a change in any Applicable Law shall not extend the Term.
- (b) The Party receiving the notice under Section 14.2(a) shall, no later than twenty (20) Business Days after its receipt of such notice, determine, based on the information provided to it in such notice whether the aforesaid situation or occurrence has arisen. In the event the Party receiving the notice determines, acting reasonably, that such situation or occurrence has in fact arisen then the Parties acknowledge and agree that they will endeavour in good faith to renegotiate the terms of this Agreement which were affected by the change in Applicable Law.

- (c) Any dispute arising from the interpretation or application of this Section 14.2 shall be settled pursuant to the Dispute Resolution Procedure.

14.3 Amendments

- (a) Except as otherwise provided in this Agreement (including Section 14.3(b)), no amendment or variation of the provisions of this Agreement shall be binding upon the Parties unless evidenced in writing and executed by both Parties.
- (b) The Service Provider agrees and acknowledges that the terms and conditions of the ISO Rules, Alberta Reliability Standards and AESO's technical requirements, as may be revised, amended or supplemented from time to time by the AESO if the AESO determines, acting reasonably, that such revisions are necessary (i) in connection with the fulfillment by the AESO of its duties under the EUA, (ii) to comply with Applicable Law (including the order, direction or ruling of the AUC or other Authorized Authority), (iii) to fulfill its duties and obligations as a control area manager or member of the WECC, or (iv) to manage, enhance, maintain or respond to System Security. It shall be the Service Provider's responsibility to ascertain the full text of such changes as they are published and made available by the AESO on the AESO's Website.
- (c) Any dispute arising from the interpretation or application of this Section 14.3 shall be settled pursuant to the Dispute Resolution Procedure.

14.4 Governing Law

This Agreement shall be interpreted in accordance with the laws of the Province of Alberta and the federal laws of Canada applicable therein.

14.5 Attornment

- (a) The Parties irrevocably:
 - (i) submit and attorn to the non-exclusive jurisdiction of the courts of the Province of Alberta for all matters arising out of or relating to this Agreement or any of the transactions contemplated hereby;
 - (ii) waive all right to object to jurisdiction of such courts in any legal action or proceeding relative to this Agreement or the transactions contemplated hereby or execution of any judgment, order or decree issued in or as a result of any such action, suit or proceeding which they may now or hereafter have by reason of domicile or otherwise;
 - (iii) waive any objection to the laying of venue in such courts of any of the aforesaid actions, suits or proceedings arising out of or in connection with this Agreement or the transactions contemplated hereby;
 - (iv) waive and agree not to plead or claim that any action, suit or proceeding in such courts has been brought in an inconvenient forum; and

- (v) waive any right they may have to, or to apply for, trial by jury in connection with any matter, action, proceeding, claim or counterclaim arising out of or relating to this Agreement or any of the transactions contemplated hereby.
- (b) If a Party is incorporated or formed in a jurisdiction outside of Alberta, such Party shall appoint and maintain an attorney in Alberta for service of process in respect of actions, suits or proceedings arising out of or in connection with this Agreement or the transactions contemplated hereby and advise the other Party from time to time of the name and address of such attorney, provided that it shall not change the attorney so appointed or terminate the appointment unless (and no change or termination shall be effective until) they have previously given written advice to the other Party of a new attorney in Alberta for such purpose, in which case this proviso shall again apply in respect of the new attorney so appointed.

14.6 **Notice**

Subject to Section 14.7 and any other provision dealing specifically with a form of notice, any notice, approval, direction or request required or permitted to be given pursuant to this Agreement shall be in writing and shall be delivered personally, by courier, email correspondence or by facsimile to the address, email address or facsimile number designated below or to such other address, email address or facsimile number as may be substituted therefor from time to time by proper notice hereunder. Other than the notices and directives referred to in Section 14.7 (which shall be deemed received by the Service Provider and System Controller, as the case may be, in accordance with the terms of the ISO Rules):

- (a) notice by email correspondence or facsimile, shall be deemed to have been received at the time noted on the email correspondence or facsimile transmission equipment of the Party receiving such notice; unless such receipt is after 5:00 p.m. or on a non-Business Day, in which case, the notice shall be deemed to have been received on the next Business Day; and
- (b) notice by hand delivery or courier shall be deemed to have been received upon actual receipt by the receiving Party, unless such receipt occurs after 5:00 p.m. or on a non-Business Day, in which case, the notice shall be deemed to have been received on the next Business Day.

The Service Provider:

[Service Provider]

[Service Provider's Address]

Attention:
Telephone:
Cellphone:
Email:

with copies to:

[Service Provider]

[Service Provider's Address]

Attention:
Telephone:
Cellphone:
Email:

The AESO:

Independent System Operator, operating as AESO
2500, 330 - 5th Avenue S.W.
Calgary, AB T2P 0L4

Attention: Commercial Manager
Facsimile: 403-539-2509
Email for Notices: commerical.services@aeso.ca
Email for Invoices: aspayables@aeso.ca

with a copy to:

Independent System Operator, operating as AESO
2500, 330 - 5th Avenue S.W.
Calgary, AB T2P 0L4

Attention: General Counsel
Facsimile: 403-539-2949
Email: General.Counsel@aeso.ca

A Party may change its address, email address and facsimile or telephone numbers by written notice made in accordance with the terms hereof.

14.7 Operational Notices

As it relates to the TMR Services, the delivery of Dispatches and Directives to the Service Provider shall be made in accordance with the procedures established in accordance with the ISO Rules.

14.8 Press Releases

The Service Provider shall not issue or make any public announcement, press release or statement regarding this Agreement unless, prior to the release of the public announcement, press release or statement, the Service Provider furnishes the AESO with a copy of such announcement, press release or statement, and obtains the approval of the AESO, such approval not to be unreasonably withheld, conditioned or delayed; provided that, notwithstanding any failure to obtain such approval, the Service Provider shall not be prohibited from issuing or making any such public announcement, press release or statement if it is necessary to do so in order to comply with Applicable Law, legal proceedings or the rules and regulations of any stock exchange having jurisdiction over the Service Provider.

14.9 Time of the Essence

Time shall be of the essence in all matters arising pursuant to this Agreement.

14.10 Severability

Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under Applicable Law, however, each provision of this Agreement is intended to be severable and if any provision is determined by a court of competent jurisdiction to be illegal, invalid or unenforceable for any reason whatsoever, such provision shall be severed from this Agreement and will not affect the legality, validity or enforceability of the remainder of this Agreement or any other provision hereof.

14.11 Further Assurances

The Parties agree to undertake such further acts and execute such further documents as are reasonably required in order to implement this Agreement.

14.12 Assignment

The Service Provider may not assign, sell or otherwise dispose of its interest in this Agreement or any portion thereof, except with the prior written consent of the AESO, which may not be unreasonably withheld, conditioned, or delayed.

14.13 Supersedes Earlier Agreements

This Agreement constitutes the entire agreement between the Parties relating to the subject matter hereof and there are no collateral or other statements, understandings, covenants, agreements, representations or warranties, written or oral, relating to the subject matter hereof. This Agreement supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, between the Parties or their predecessors relating to the subject matter of this Agreement.

14.14 Enurement

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

14.15 Counterpart Execution

This Agreement may be executed by facsimile or other electronic means and in separate counterparts, each of which when so executed and delivered shall be an original, and all such counterparts taken together shall constitute one agreement.

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

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

[SERVICE PROVIDER]

Per: _____
Name: Michael G. Law _____

Per: _____
Name: _____



[longname]

Transmission Must Run Service Agreement

[Start and End Dates of TMR]

Title: President and CEO

Title: _____

Per: _____

Per: _____

Name: Miranda Keating Erickson

Name: _____

Title: Vice-President, Markets

Title: _____

DRAFT

THIS IS SCHEDULE "A" TO THE TRANSMISSION MUST RUN SERVICE AGREEMENT DATED THIS [] DAY OF [], 2022 BETWEEN [SERVICE PROVIDER] AND INDEPENDENT SYSTEM OPERATOR, OPERATING AS THE ALBERTA ELECTRIC SYSTEM OPERATOR

TRANSMISSION MUST RUN SERVICE PARAMETERS

Contract Volume: [] MW

Generating Unit:

Minimum Continuous Operating Capability: is an amount equal to [] MW

Maximum Continuous Operating Capability: is an amount equal to the Contract Volume

Minimum Must-run time per Valid Dispatch Instruction: 2 hours

Service Provider Control Center Contact Name: []

Service Provider Control Center Telephone: []

Service Provider Control Center Backup Telephone: []

Service Provider E-mail: []

AESO Telephone: (403) 233-7476
(403) 233-7477

AESO Fax: (403) 261-7864

THIS IS SCHEDULE "B" TO THE TRANSMISSION MUST RUN SERVICE AGREEMENT DATED THIS [●] DAY OF [●], 2022 BETWEEN [SERVICE PROVIDER] AND INDEPENDENT SYSTEM OPERATOR, OPERATING AS THE ALBERTA ELECTRIC SYSTEM OPERATOR

PURCHASE PRICE

1.1 Definitions

- (a) **"Availability Payment"** means the payment described in Section 1.2(b) of this Schedule "B".
- (b) **"Available Hours"** is the sum of full clock hours for which the Unit(s) is either Dispatched or available to be Dispatched in a given calendar Month.
- (c) **"Average Hourly AC"** is the hourly average of the maximum MW that the Unit(s) is physically capable of providing TMR Services in a given calendar Month.
- (d) **"Benchmark"** is the high-performance benchmark of 0.3700 tCO₂e/MWh or such other benchmark applicable to the Unit(s) as may be established from time to time pursuant to Section 6(2)(b) or Section 7(1) of the TIER and expressed as tCO₂e/MWh.
- (e) **"Capacity Payment"** shall equal \$[●] per Month.
- (f) **"Carbon Cost"** means that portion of the Energy Price, calculated as described in Section 1.2(c)(ii) of this Schedule "B".
- (g) **"Carbon Price"** is the carbon price of \$50 per tonne of CO₂ or such other price as may be established from time to time pursuant to Section 21(2) of TIER and expressed as \$/tCO₂e;
- (h) **"Energy Price"** means that portion of the Variable Cost Payment, calculated as described in Section 1.2(c)(i).
- (i) **"Gas Price"** means the NGX AB-NIT Same Day (5A) (\$/G) gas price applicable in that hour as reported by NGX in the report titled, "Index Prices", under the column titled, "Index Price", as amended, supplemented, replaced or otherwise modified from time to time.
- (j) **"Heat Rate"** shall equal the Heat Rate value in Table 1 for the corresponding Valid Dispatch Instruction, in MW, rounded to the nearest whole number.
- (k) **"Loss Factor"** means "loss factor" as defined in the ISO Glossary.
- (l) **"NGEI"** is the natural gas emissions intensity which is deemed to be 0.050999 tCO₂e/GJ.
- (m) **"Pool Price"** has the meaning assigned to it in the ISO Glossary.
- (n) **"t"** shall represent metric tonnes (i.e. 1000 kilograms).
- (o) **"TMR Output"** shall be the lesser of the Unit Output or the output level identified in the Valid Dispatch Instruction (such Valid Dispatch Instruction to be converted for each hour

to a MWh) for a TMR Dispatch.

- (p) **“Total Hours”** is the number of hours in a given calendar Month.
- (q) **“Trading Charge”** shall be the prevailing rate as defined in the ISO Rules.
- (r) **“Unit Output”** shall be the hourly output of the Unit(s), in MWh.
- (s) **“Variable Cost Payment”** means the payment described in Section 1.2(c) of this Schedule "B".
- (t) **“Variable Operating and Maintenance”** or **“VOM”** shall be set at \$4.00/MWh.

1.2 Calculation of Purchase Price

- (a) The Purchase Price, to be paid by AESO to the Service Provider for the provision of TMR Services under the Agreement shall be calculated on a Monthly basis as the sum of:
 - (i) Availability Payment; and
 - (ii) Variable Cost Payment.

- (b) The Availability Payment shall be calculated as follows:

$$\text{Capacity Payment} \times (\text{Available Hours} / \text{Total Hours})$$

If the Average Hourly AC is less than the Contract Volume, the Availability Payment shall be further multiplied by a factor equal to the Average Hourly AC divided by the Contract Volume.

- (c) The Variable Cost Payment shall be calculated hourly as the difference between the Energy Price and the Pool Price, which shall not be less than zero, multiplied by the corresponding TMR Output and then summed for the Month.

Where:

- (i) **“Energy Price”** shall be calculated as follows:

$$(\text{Heat Rate} \times \text{Gas Price}) + (\text{Pool Price} \times \text{Loss Factor}) + \text{VOM} + \text{Trading Charge} + \text{Carbon Cost}$$
- (ii) **“Carbon Cost”** shall be calculated as follows:

$$((\text{Heat Rate} \times \text{NGEI}) - \text{Benchmark}) \times \text{Carbon Price}$$

If less than zero, it shall be deemed to be zero. This calculation shall be amended in accordance with Section 14.2 in the event that a change in Applicable Law occurs that affects this calculation.

- (iii) Notwithstanding the foregoing, the Variable Cost Payment shall be zero during those hours when the Unit Output is greater than the Valid Dispatch Instruction, in MW, by more than five (5) MW.
- (d) If, during the Term, a situation or occurrence arises due to the introduction of, or any change in any Applicable Law, the consequences and the effect of which result in reduced costs to the Service Provider under this Agreement or the Service Provider, the Parties shall amend the Purchase Price to reflect such reduced costs upon written notice by a Party in accordance with Sections 14.2(b) and (c).

2. BILLING

2.1 Service Provider to Prepare Invoice

No later than ten (10) Business Days after the end of a Month, the Service Provider shall be responsible for and shall prepare and submit to AESO a fully documented invoice in a form prescribed by the AESO, showing the values and calculations for the Purchase Price payable by AESO in accordance with the terms hereof for the provision of Transmission Must Run Services in the preceding Month.

2.2 Payment by AESO

Subject to Sections 2.3 and 2.4 of this Schedule "B", AESO shall remit the Purchase Price for the preceding Month, on behalf of Service Provider, no later than twenty (20) Business Days after the end of the Month for which the invoice under Section 2.1 of this Schedule "B" was delivered to AESO. Payment shall be by direct transfer or electronic funds transfer to the bank account designated by written notice to AESO, on behalf of Service Provider.

2.3 Billing Disputes; Netting of Payments; Rights to Offset

- (a) Disputes and Adjustments to Invoices.
 - (i) The AESO shall review the Service Provider invoice and supporting information and verify same by reference to the data obtained by the AESO and other relevant sources.
 - (ii) In the event that the data provided by the Service Provider is inconsistent with that obtained by AESO, then, for the purposes of this Agreement and to the extent of such inconsistency, the AESO shall pay the Service Provider based on the data obtained by the AESO. To the extent such inconsistent amounts are not netted off the applicable invoice submitted by the Service Provider, the

AESO shall have the right to offset such amounts against subsequent invoices or to invoice the Service Provider for the amount neither netted nor offset and the Service Provider shall pay such invoice within thirty (30) days of receipt, by direct transfer or electronic funds transfer to the bank account as may from time to time be designated by AESO

- (iii) If the Service Provider disagrees in good faith with the data obtained by the AESO, such dispute will be resolved in accordance with the dispute resolution procedure set out in Article 10 of the main body of the Agreement. Following the final resolution of such dispute, the AESO or the Service Provider, as the case may be, shall pay the amount of any adjustment, if applicable, within thirty (30) days of the final resolution of such dispute, by direct transfer or electronic funds transfer to the bank account as may from time to time be designated by the recipient.
- (iv) Any other disputes will be resolved in accordance with the dispute resolution procedure set out in Article 10 of the main body of the Agreement, and pending resolution AESO will pay the amount of the invoice not subject to dispute, if any, in accordance with the provisions of this Agreement. Following the final resolution of such dispute, the AESO or the Service Provider, as the case may be, shall pay the amount of any adjustment, if applicable, within thirty (30) days of the final resolution of such dispute, by direct transfer or electronic funds transfer to the bank account as may from time to time be designated by the recipient.

(b) Netting Prior to a Notice of Default or Termination. Prior to the delivery by the AESO of a notice of Default under Section 7.5(b) of the main body of the Agreement or a notice of termination under Section 2.2 of the main body of the Agreement or prior to the occurrence of a Default under Section 7.4(a) of the main body of the Agreement, the AESO shall be entitled, at its option and in its discretion, to net and set off against the Purchase Price:

- (i) any interest then due and owing to AESO under Section 2.4 of this Schedule "B"; and
- (ii) any other amounts then due and owing to AESO under this Agreement.

The remedy provided for in this paragraph shall be without prejudice and in addition to the rights of AESO with regard to any Financial Security or any other rights to which AESO is at any time otherwise entitled under the Agreement.

(c) Netting by AESO After Notice of Default or Termination. After the delivery by AESO of a notice of default under Section 7.5(b) of the main body of the Agreement or a notice of termination under Section 2.2 of the main body of the Agreement or after the occurrence of a Service Provider Event Default under Section 7.4(a) of the main body of the Agreement, and until Service Provider is no longer in default under the Agreement, the AESO shall be entitled, at its option and in its discretion, to:

- (i) withhold any payments due to Service Provider under this Agreement up to a reasonable pre-estimate of any amounts owing under this Agreement to AESO

(as if such notice of termination had been issued; provided that such amount withheld shall not exceed the liquidated damages amount, after having regard to any Financial Security held by AESO at such time, plus a reasonable pre-estimate of any other amounts owing under this Agreement to AESO) until such time as all interest hereunder, and any other amounts (including liquidated damages) due and owing to AESO under this Agreement have been satisfied; and

- (ii) net and set off against any amounts owed by AESO to Service Provider under this Agreement:
 - (A) any interest owing to AESO under Section 2.4 of this Schedule "B"; and
 - (B) any other amounts (including liquidated damages) then due and owing to AESO under this Agreement.

The remedy provided for in this paragraph shall be without prejudice and in addition to the rights of AESO with regard to any Financial Security or any other rights to which AESO is at any time otherwise entitled under the Agreement.

2.4 Interest

Any amount owing to a Party by the other Party pursuant to the provisions of this Agreement and remaining uncredited or unpaid in accordance herewith shall bear interest calculated daily and not compounded at the Overdue Interest Rate on the uncredited or unpaid portion from and including the date such credit or payment was due up to and excluding the actual date of credit or payment.

Table 1

[INSERT SERVICE PROVIDER HEAT RATE TABLE]

DRAFT

THIS IS SCHEDULE "C" TO THE TRANSMISSION MUST RUN SERVICE AGREEMENT DATED THIS [●] DAY OF [●], 2022 BETWEEN [SERVICE PROVIDER] AND INDEPENDENT SYSTEM OPERATOR, OPERATING AS THE ALBERTA ELECTRIC SYSTEM OPERATOR

INITIAL FINANCIAL SECURITY

Pursuant to Section 11.2 the Service Provider shall provide to the AESO initial Financial Security in the amount of One Hundred Thousand Dollars (\$100,000.00) in a form and substance acceptable to the AESO in accordance with ISO Rule Section 103.3 (Financial Security Requirements) for liquidated damages (as determined in Section 7.5(b)). The Service Provider shall maintain such Financial Security for the duration of the Agreement plus ninety (90) days after the expiry of the Agreement.

DRAFT