

## SCHEDULE 1

### DEFINITIONS AND INTERPRETATION

#### 1. DEFINITIONS

In this Agreement:

**“Actual Coverage Amount”** has the meaning set out in Schedule 5 [Insurance Requirements];

**“Adjusted Estimated Market Value”** has the meaning set out in Schedule 9 [Compensation on Termination];

**“Adjusted Highest Compliant Bid Price”** has the meaning set out in Schedule 9 [Compensation on Termination];

**“Affiliate”** in respect of a Person means any other Person that, directly or indirectly, through one or more intermediaries, Controls, is Controlled by, or is under common Control with, such first Person;

**“Agreement”** means this agreement, including any recitals, schedules, appendices and attachments hereto, as amended or restated from time to time;

**“AMI”** has the meaning set out in Section 4.2(c).

**“Applicant”** has the meaning set out in Section 8.1 (Supervening Events);

**“Available”** means that the UDM System, as measured at the relevant UDM Location(s) demarcation point(s), is:

- (a) capable of offering the services set out in Schedule 3 [Design and Construction Specifications] in accordance with the Output Specifications; and
- (b) performing in compliance with the specifications set out in Schedule 3 [Design and Construction Specifications], as applicable;

**[PUC Note: To be considered further to provision of Schedule 3.]**

**“Availability”** means **[NTD: To be defined with reference to operation period];**

**“Avoidable Costs”**, when used in relation to an event or circumstance, means all costs and expenditures which:

- (a) are saved or avoided as a result of the event or circumstance or its effects; or
- (b) if Project Co acted reasonably and in accordance with this Agreement, would have been saved or avoided as a result of the event or circumstance or its effects;

**“Base Case Project IRR”** means [●] [NTD: to be confirmed.]% being the Nominal internal rate of return for the Project calculated on an after tax basis at the level of Project Co in accordance with the Financial Model as shown in Cell [●] of the Outputs Summary Sheet; [PUC Note: Subject to further review; it is not clear where this is used.]

**“Base Date”** means [●] [NTD: to be confirmed.];

**“Beneficiary”** has the meaning set out in Section 9.3 (Conduct of Third Person Claims);

**“Business Day”** means a day other than a Saturday, Sunday or statutory holiday in the Province of Ontario;

**“Capital Expenditure”** means an expenditure related to the Project which is treated as a capital expenditure in accordance with IFRS;

**“Certificate of Service Commencement”** has the meaning set out in Schedule 2 [Design and Construction Protocols];

**“Change”** has the meaning set out in Schedule 6 [Changes, Minor Works and Innovation Proposals];

**“Change Certificate”** has the meaning set out in Schedule 6 [Changes, Minor Works and Innovation Proposals];

**“Change Directive”** has the meaning set out in Schedule 6 [Changes, Minor Works and Innovation Proposals];

**“Change in Control”** means with respect to a relevant Person any direct or indirect change in the ownership or control of any legal, beneficial or equitable interest in any or all of the shares, units or equity in the relevant Person (including the control over the exercise of voting rights conferred on equity share capital, unit interests or equity interests or the control over the right to appoint or remove directors, a general partner or other managers), including changes arising from assignment or transfer of existing shares, units or equity, issuance of new shares, units or equity or amalgamation, merger consolidation, amendment of a limited partnership certificate or other reorganization, or any other direct or indirect change which results in a Person or group of Persons, other than the equity holders of the relevant Person immediately prior to the change, directly or indirectly:

- (a) controlling the composition of the majority of the board of directors of the relevant Person or of a general partner or manager of the relevant Person;
- (b) controlling the decisions made by or on behalf of the relevant Person, including by controlling the voting power of the board of directors or by controlling the voting power of any class of shareholders or equity holders of the relevant Person, a general partner of the relevant Person or a manager of the relevant Person or otherwise;
- (c) holding equity (either beneficially or otherwise) of the relevant Person with a subscribed value (taking into account contributions to be made in the case of a limited partnership) of more than one half of the subscribed value (taking into account contributions to be made

in the case of a limited partnership) or equity (either beneficially or otherwise) of the relevant Person with more than one half of the voting rights; or

- (d) having the ability to direct or cause the direction of the management, actions or policies of the relevant Person;

**“Change in Law”** means the coming into effect in Canada after the Effective Date:

- (a) any new Law; or
- (b) any modification (including repeal) of any Law existing on such date,

which is binding on Project Co or PUC, but excluding in each such case:

- (c) any lawful requirements of any Governmental Authority (unless resulting from a Change in Law);
- (d) any change in the interpretation of any legislation other than a judgment of a relevant Court which changes binding precedent in the Province of Ontario;
- (e) any new Law or modification arising from or having substantially the same effect as any Law which as of the Effective Date:
  - (1) had been introduced as a Bill in the Legislative Assembly of the Province of Ontario or the Parliament of Canada; or
  - (2) had been published in the Canada Gazette or in a draft bill as part of a Governmental Authority discussion or consultation paper;

**“Change Mark-Up”** has the meaning set out in Schedule 6 [Changes, Minor Works and Innovation Proposals];

**“Change Report”** has the meaning set out in Schedule 6 [Changes, Minor Works and Innovation Proposals];

**“Change Report Costs”** has the meaning set out in Schedule 6 [Changes, Minor Works and Innovation Proposals];

**“Change Request”** has the meaning set out in Schedule 6 [Changes, Minor Works and Innovation Proposals];

**“Charge”** has the meaning set out in Schedule 7 [Lands];

**“Commission”, “Commissioning” and “Commissioned”** have the meanings set out in Schedule 2 [Design and Construction Protocols];

**[“Commencement Date” means the date on which the last of the conditions set out in Section 2.1(a) have been satisfied or waived by PUC.]**

**“Commissioning Plan”** has the meaning set out in Schedule 2 [Design and Construction Protocols];

**“Compensation Event”** means any of the following events or circumstances, occurring prior to the Service Commencement Date, if and to the extent that it interferes adversely with, or causes a failure of, the carrying out of the Design, Construction, Provisioning, System Expansion or Services or causes Direct Losses to Project Co or any Project Co Person:

- (a) breach by PUC of any of its obligations under this Agreement, including failure of PUC to obtain or maintain a PUC Permit in accordance with the Project Schedule and/or failure of PUC to provide Project Co the License to those parts of the Lands necessary to perform Construction in accordance with the dates specified in Schedule 7;
  - (b) breach of any representation or warranty by PUC under this Agreement;
  - (c) the existence of Undisclosed Environmental Liabilities;
  - (d) a PUC Permit is:
    - (1) suspended;
    - (2) declared invalid or defective by a court of competent jurisdiction; or
    - (3) amended or altered such that it has a material adverse impact on Project Co's ability to perform the Design and Construction;
  - (e) a material change to the terms of any Encumbrance, or the addition or existence of, any other encumbrances after the Effective Date affecting the Lands that has a material adverse effect on Project Co's ability to perform the Design and Construction;
- [Note: Provision deleted is covered completely by provision above?]**
- (f) the discovery of any human remains, relics or other articles or structures of historical, antiquarian or archaeological interest on or adjacent to the Lands;
  - (g) a Protest Action;
  - (h) a lawful or unlawful strike, lockout, work-to-rule or other labour dispute by employees of PUC or any contractor (other than Project Co, any Project Contractor, or any Sub-contractors) engaged by PUC;
  - (i) the existence of environmental and/or geotechnical conditions on or under the Lands, as applicable, that:
    - (1) are not described in or properly inferable from; or
    - (2) materially differ from those conditions described in or properly inferable from,

the Disclosed Data made available to Project Co prior to the execution of this Agreement and of which PUC Has Knowledge or should have Had Knowledge prior to the execution of this Agreement;

- (j) a material change in the environmental and/or geotechnical conditions of the Lands;
- (k) a First Nation, Métis or Inuit claim asserting infringement of Aboriginal rights or Aboriginal title in relation to the Project;
- (l) during the Construction Period, a weather event during which Construction on an active part of the Construction of the UDM System would or could be contrary to the *Occupational Health and Safety Act* (Ontario) or any regulations promulgated thereunder;
- (m) the actions referred to in Section 11.5 (Allocation of Costs for PUC Actions) as constituting a Compensation Event;
- (n) the event referred to in Section 8.4(e)(2) (Project Co's Entitlements Upon Occurrence of a Relief Event);
- (o) the event referred to in Section 8.5(d)(2) (Parties' Entitlements Upon Occurrence of a Force Majeure Event);
- (p) [the event referred to in Sections [7.11(a) or (c)] of Schedule 2 [Design and Construction Protocols];
- (q) Project Co's compliance with a direction from PUC under Section 3.3 of Schedule 13 [Dispute Resolution Procedure] when the matter in dispute is subsequently resolved, or settled, in Project Co's favour;
- (r) the execution of works by PUC or any person permitted to execute such works by PUC or any PUC Person involving any relocation of the UDM System or which has a material adverse effect on Project Co's ability to perform Design or Construction; or
- (s) any other event which is expressly stated in this Agreement to constitute a Compensation Event,

except to the extent that any of such events arise or are contributed to, directly or indirectly, as a result of any act or omission or non-compliance with the terms of this Agreement by Project Co or any Project Co Person;

**"Compliant Bid"** has the meaning set out in Schedule 9 [Compensation on Termination];

**"Confidential Information"** means

- (a) Personal Information;
- (b) information obtained in the course of performing any obligation pursuant to the Agreement; and

- (c) information of a Party that the Party has designated as confidential at the time of disclosure and which is supplied, or to which access is granted, to or on behalf of the other Party (whether before or after the Effective Date), either in writing, or in any other form, directly or indirectly pursuant to discussions with the other Party and includes all analyses, compilations, studies and other documents whether prepared by or on behalf of a party which contain or otherwise reflect or are derived from such designated information;

**“Consumer Price Index”** means [●]. [NTD: To be discussed/agreed.]

**“Construction”** means everything (other than Design and Project Co's obligations with respect to the financing of the Project) required to achieve Service Commencement, including the construction of the UDM System (excluding the completion of certain sub-station upgrades and new and rebuilt sub-stations), temporary works and the procurement and supply of all labour and materials, construction equipment, management, supervision and support of any kind or nature whatsoever required for the construction of the UDM System and the supply, installation, inspection, testing and commissioning of all equipment forming part of the UDM System.

**“Construction Period”** means the period commencing on the Effective Date and ending on the Service Commencement Date;

**[“Contingent Funding Liabilities” means direct or indirect liabilities or contingent liabilities, if any, of the Partners in respect of financial obligations owed to Project Co, to the General Partner, to any party under the Junior Debt or the Senior Lenders under the Senior Financing Agreements, such as, for example, the amount a Partner has agreed to contribute to Project Co, promissory notes, obligations to fund reserve accounts, guarantees, letters of credit in respect of deferred equity, subordinated debt or equity bridge loans;]**

**“Contract Year”** means each of:

- (a) the period from the Effective Date to the next **[December 31]**;
- (b) each subsequent period of 12 calendar months commencing on **[January 1]**; and
- (c) the period from the **[January 1]** immediately prior to the Termination Date to and including the Termination Date;

**“Control”** means, with respect to the relationship between or among two or more Persons, the possession, directly or indirectly or as trustee, personal representative or executor, of the power to direct or cause the direction of the affairs or management of a Person, whether through the ownership of voting securities, as trustee, personal representative or executor, by statute, contract, credit arrangement or otherwise, including the ownership, directly or indirectly, of securities having the power to elect a majority of the board of directors or similar body governing the affairs of such Person;

**“Controlling Party”** with respect to a Person, means a Person, or a group of Persons acting jointly or in concert, who Control such first mentioned Person;

**“CSA”** means the Canadian Standards Association;

**“DA”** has the meaning set out in Section 4.2(b).

**“Debt”** of any Person at any date means, without duplication:

- (a) all obligations of such Person for borrowed money;
- (b) all obligations of such person evidenced by bonds, debentures, notes or other similar instruments;
- (c) all obligations of such person to pay the deferred purchase price of property or services, except trade accounts payable arising in the ordinary course of business;
- (d) all obligations of such person under leases which are or should be, in accordance with IFRS, recorded as capital leases in respect of which such person is liable, except leases arising in the ordinary course of business;
- (e) all obligations of such Person to purchase securities (or other property) which arise out of or in connection with the sale of the same or substantially similar securities (or property);
- (f) all deferred obligations of such Person to reimburse any bank or other Person in respect of amounts paid or advanced under a letter of credit or other similar instrument;
- (g) all Debt (as otherwise defined in this definition) of others secured by a Charge on any asset of such Person, provided such Debt (as otherwise defined in this definition) is assumed by such Person; and
- (h) all Debt (as otherwise defined in this definition) of others guaranteed directly or indirectly by such Person or as to which such Person has an obligation substantially the economic equivalent of a guarantee;

**“Deduction”** has the meaning set out in Schedule 8 [Payments];

**“Default Rate”** on any day means 2% per annum over the Prime Rate;

**“Defect”** has the meaning set out in Schedule 2 [Design and Construction Protocols];

**“Deficiency”** has the meaning set out in Schedule 2 [Design and Construction Protocols];

**“Deficiency Deadline”** has the meaning set out in Schedule 2 [Design and Construction Protocols];

**“Design”** means everything required for the design of the UDM System except for any design that is expressly excluded from Project Co’s responsibility under this Agreement, as more particularly described in Schedule 2 [Design and Construction Protocols] and Schedule 3 [Design and Construction Specifications];

**“Design and Construction Plan”** has the meaning set out in Schedule 2 [Design and Construction Protocols];

**“Design and Construction Protocols”** means the provisions of Schedule 2 [Design and Construction Protocols];

**“Design and Construction Representative”** has the meaning set out in Schedule 2 [Design and Construction Protocols];

**“Design and Construction Specifications”** mean the provisions of Schedule 3 [Design and Construction Specifications];

**“Design-Build Agreement”** means the design and construction agreement between Project Co and the Design-Builder, a certified copy of which has been delivered by Project Co to PUC, as amended or replaced from time to time in accordance with this Agreement;

**“Design-Builder”** means ● or any assignee or replacement permitted under this Agreement;

**“Development Changes”** has the meaning set out in Schedule 6 [Changes, Minor Works and Innovation Proposals];

**“Development Change Record”** has the meaning set out in Schedule 6 [Changes, Minor Works and Innovation Proposals];

**“Development Change Record Confirmation”** has the meaning set out in Schedule 6 [Changes, Minor Works and Innovation Proposals];

**“Development Change Register”** has the meaning set out in Schedule 6 [Changes, Minor Works and Innovation Proposals];

**“Direct Losses”** means in respect of a condition, event or omission, without duplication, all damages, losses, liabilities, penalties, fines, assessments, claims (including by third parties), actions, costs (including increased Capital Expenditures), expenses (including the reasonable cost of legal or professional services), proceedings, demands and charges, whether arising under statute, contract or at common law, which result directly from such condition, event or omission:

- (a) net of related Insurance Proceeds and Insurance Receivables and any amount which the relevant party would have recovered (in respect of such condition, event or omission) if it had complied with the requirements of this Agreement or any policy of insurance maintained or required to be maintained under this Agreement;
- (b) excluding any Indirect Losses provided always that any liability of a party to a third party for which indemnification or recovery is sought from the other party shall not be considered Indirect Losses including where such third party claim includes a claim for Indirect Losses; and



(c) in the case of Project Co, without limiting the foregoing (except where any of the following are in accordance with this Agreement to be expressly excluded in calculating the amount of Direct Losses or compensation payable hereunder):

- (1) including the full amount of the related loss or reduction of any Monthly Payments; and
- (2) net of Avoidable Costs related to such condition, event or omission,

and in calculating any amount of any additional Capital Expenditure, labour or similar cost claimed by Project Co under this definition of "Direct Losses", Project Co will be entitled to add to such amounts the mark-ups referred to in Section 2.10 of Schedule 6 [Changes, Minor Works and Innovation Proposals];

**"Disclosed Data"** means any information, data and documents made available or issued to Project Co or any Project Contractor or Sub-Contractor in connection with the Project by or on behalf of PUC, including any information relating to the Lands or the requirements of any Governmental Authority, whether before or after the execution of this Agreement;

**"Dispute"** means any disagreement, failure to agree or other dispute between PUC and Project Co arising out of or in connection with this Agreement, including in respect of the interpretation, breach, performance, validity or termination of this Agreement, whether in the law of contract or any other area of law;

**"Dispute Notice"** has the meaning set out in Schedule 13 [Dispute Resolution Procedure];

**"Dispute Resolution Procedure"** has the meaning set out in Schedule 13 [Dispute Resolution Procedure];

**"Distribution"** means, without duplication or double counting:

- (a) whether in cash or in kind, any:
  - (1) distribution to Partners or other distribution in respect of equity interests in Project Co;
  - (2) redemption or purchase of any equity interest in Project Co or reduction of partnership capital or the amount of a Partner's contribution stated in the limited partnership certificate or any other reorganization or variation to partnership capital;
  - (3) any payment in respect of Junior Debt (whether of fees, principal, interest including capitalized interest and interest on overdue interest, breakage costs, or otherwise and whether or not such items are included or excluded from the definition of Junior Debt);
  - (4) payment, loan, contractual arrangement, including any management agreement or payment in respect thereof, or transfer of assets or rights, in each case to the

extent made or entered into after the Effective Date and not in the ordinary course of business or not on commercially reasonable terms including to any current or former Partner, or any current or former Affiliate of any current or former Partner;

- (5) conferral of any other benefit (directly or indirectly) which is not conferred and received in the ordinary course of business or is not conferred or received on commercially reasonable terms, including to any current or former Partner, any current or former Affiliate of any current or former Partner or Project Co; and
- (6) other payment (directly or indirectly) to any current or former Partner, any current or former Affiliate of any current or former Partner or Project Co howsoever arising and whether made pursuant to the terms of an agreement or otherwise or by way of gift or in respect of any equity interest in Project Co or other securities of or interests in Project Co if, in any such case, such payment would not have been made were it not for the occurrence of any financing, refinancing or Change in Control;

(b) the early release of any reserves or any Contingent Funding Liabilities; or

(c) any of the foregoing in respect of the General Partner of Project Co,

and where any such Distribution is not in cash, the equivalent cash value of such Distribution will be calculated. A Distribution will be calculated in a manner that is consistent with the calculation of the Threshold Equity IRR in the Financial Model;

**“Distribution System Code”** means the Ontario Energy Board Distribution System Code as amended from time to time;

**“Draft Reinstatement Plan”** has the meaning set out in Section 6.4(a) (Project Co’s Obligations – Material Damage or Destruction);

**“Early Works Contract”** means [●];

**“Effective Date”** means the date of this Agreement;

**“Eligible Change in Law Event”** means the occurrence of:

- (a) a Relevant Change in Law; or
- (b) a Relevant Works Change in Law;

**“Employee Information”** has the meaning set out in Schedule 9 [Compensation on Termination];

**“Employee Payments”** means any severance, vacation and sick pay accrued from the Commencement Date (or commencement of employment if later) up to termination liability that has been reasonably incurred by Project Co and arising as a result of termination of this Agreement under collective

agreements, employment agreements or under any other agreements with employees of Project Co engaged exclusively in connection with the Project.

**“Encumbrances”** has the meaning set out in Schedule 7 [Lands];

**“Environmental Laws”** means all Laws relating to the protection of human health and all plant, animal, land, water and air resources that may be affected by the Project;

**“Equipment only Availability”** means the Availability of the UDM System, excluding the [substations] and associated outside plant equipment and installations being performed directly by PUC;

**“Equipment Only Outage”** means an Outage of any element or sub system of the UDM System;

**“Equipment Only Outage Deduction”** has the meaning set out in Schedule 8 [Payments];

**[PUC Note: Reinstated definitions subject to final determination of nature of Services.]**

**“Equity IRR”** means Project Co’s Nominal blended equity internal rate of return calculated on an after tax basis at the level of Project Co in accordance with the Financial Model as shown in Cell [●] of the Outputs Summary Sheet, having regard to Distributions made and projected to be made;

**“Estimated Market Value”** has the meaning set out in Schedule 9 [Compensation on Termination];

**“Event”** has the meaning set out in Schedule 8 [Payments];

**“Expiry Date”** means the date that is 25 years from the [Payment] Commencement Date;

**“Fair Market Value”** means the amount at which an asset or a liability would be exchanged in an arm’s length transaction between informed and willing parties, other than in a forced or liquidation sale;

**“Financial Model”** means Project Co’s financial model for the Project attached as Schedule 15 [Financial Model], a copy of which is attached to this Agreement in electronic format, as updated or amended from time to time in accordance with the terms of this Agreement;

**“Force Majeure Event”** means the occurrence after the Effective Date of:

- (a) war, civil war, armed conflict or terrorism;
- (b) nuclear, radioactive, chemical or biological contamination, except to the extent that such contamination arises or is contributed to, directly or indirectly, as a result of any wilful misconduct, negligent act or omission or non-compliance with the terms of this Agreement by Project Co or a Project Co Person;
- (c) earthquake or tidal wave;
- (d) flood, except to the extent that such contamination arises or is contributed to, directly or indirectly, as a result of any wilful misconduct, negligent act or omission or non-compliance with the terms of this Agreement by Project Co or a Project Co Person,

which directly or indirectly causes a party to be unable to comply with all or a material part of its obligations under this Agreement;

**“GAAP”** means generally accepted accounting principles in effect in Canada including the accounting recommendations published in the Handbook of the Canadian Institute of Chartered Accountants;

**“General Partner”** means [●] and/or such other person that from time to time is the general partner of Project Co;

**“Good Industry Practice”** means using standards, practices, methods and procedures to a good commercial standard, conforming to Law and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a qualified, skilled and experienced person engaged in a similar type of undertaking under the same or similar circumstances;

**“Governmental Activities”** means the provision of all governmental services and the conduct of all activities provided in connection or otherwise associated with the Lands and/or the UDM System by any Governmental Authority;

**“Governmental Authority”** means any federal, provincial, territorial, regional, municipal or local governmental authority, quasi-governmental authority, court, government or self-regulatory organization, commission, board, tribunal, organization, or any regulatory, administrative or other agency, or any political or other subdivision, department or branch of any of the foregoing, having jurisdiction in any way over or in respect of any aspect of the performance of this Agreement or the Project;

**“GST”** means the goods and services tax imposed pursuant to Section IX of the *Excise Tax Act* (Canada);

**“H & S Conviction”** has the meaning set out in Section 12.1(g) (Project Co Events of Default);

**“Handback Amount”** has the meaning set out in Appendix 4B [Handback Requirements];

**“Handback Certificate”** has the meaning set out in Appendix 4B [Handback Requirements];

**“Handback Holdback”** has the meaning set out in Appendix 4B [Handback Requirements];

**“Handback Requirements”** means the requirements set out in Appendix 4B [Handback Requirements];

**“Handback Survey”** has the meaning set out in Appendix 4B [Handback Requirements];

**“Handback Works”** has the meaning set out in Appendix 4B [Handback Requirements];

**“Handback Works Plan”** has the meaning set out in Appendix 4B [Handback Requirements];

**[PUC Note: Reinstated pending provision of Schedule 4B.]**

**“Has Knowledge”, “Have Knowledge”, “Had Knowledge” or “Having Knowledge”** means:

- (a) for an individual, when information is acquired by the individual;

- (b) for a corporation, when information has come to the attention of:
  - (1) a director or officer of the corporation; or
  - (2) a senior employee of the corporation with responsibility for matters to which the information relates,
- (c) for a partnership other than a limited partnership, when any partner Has Knowledge under the other Sections of this definition or under this Section (c) or Section (d) below for any partner that is itself a partnership or when any member of a director-level or officer-level or similar position of the partnerships or a senior employee of the partnership with responsibility for matters to which the information relates; or
- (d) for a limited partnership, when any general partner Has Knowledge under the other Sections of this definition or under this Section (d) or Section (c) above for any partner that is itself a partnership or when any member of a director-level or officer-level or similar position of the partnerships or a senior employee of the partnership with responsibility for matters to which the information relates;
- (e) for PUC, when information has come to the attention of:
  - (1) a director or officer of PUC; or
  - (2) a senior employee of PUC with responsibility for matters to which the information relates.

in each case under circumstances in which a reasonable person would take cognizance of it;

**“Hazardous Substance”** means any hazardous waste, hazardous product, contaminant, toxic substance, deleterious substance, dangerous good, pollutant, waste, reportable substance, and any other substance, in respect of which the storage, manufacture, handling, disposal, treatment, generation, use, transport, remediation or release into or presence in the environment is prohibited, controlled or regulated under Environmental Laws;

**“Highest Compliant Bid Price”** has the meaning set out in Schedule 9 [Compensation on Termination];

**“Holding Company”** means, with respect to a corporation, another corporation of which the first corporation is a “holding body corporate” as defined in the *Business Corporations Act* (Ontario) as at the date of this Agreement;

**“IFRS”** means International Financial Reporting Standards;

**“Income Tax”** means any tax imposed on the income of a Person by any Canadian (whether federal, territorial or otherwise) Governmental Authority;

**“Indemnifier”** has the meaning set out in Section 9.2 (Conduct of Third Party Claims);

**[“Independent Certifier” has the meaning set out in Schedule 2 [Design and Construction Protocols];] [NTD: Will there be an IC? To be discussed.]**

**“Index Linked”**, with respect to an amount at any time, means that the amount is adjusted as at each January 1<sup>st</sup> commencing as of the January 1<sup>st</sup> following the Effective Date by:

- (a) multiplying it by the Consumer Price Index as at the immediately preceding January 1<sup>st</sup>; and
- (b) dividing it by the Consumer Price Index as at the base date.

**“Indirect Losses”** means any loss of revenue, loss of profits, loss of use, loss of contract, loss of goodwill, loss of production, loss of business, loss of business opportunity or any exemplary, punitive or special damages or any consequential or indirect loss or damages of any nature claimed, suffered or allegedly suffered by:

- (a) Project Co or any Project Co Person (other than a Person who is a Project Co Person solely by virtue of being an invitee of Project Co or any Project Co Person); or
- (b) PUC or any PUC Person (other than a Person who is a PUC Person solely by virtue of being an invitee of PUC or any of PUC Persons) or a PUC Indemnified Person;

and shall be deemed not to include any loss of Monthly Payments or other amounts expressly payable by PUC to Project Co under this Agreement;

**“Inflation Index”** means the Consumer Price Index, as published by the Bank of Canada or, if such index in its present form becomes unavailable, such similar index as may be agreed by the parties, acting reasonably, or failing agreement as determined by the Dispute Resolution Procedure;

**“Initiating Party”** has the meaning set out in Schedule 13 [Dispute Resolution Procedure];

**“Innovation Proposal”** has the meaning set out in Schedule 6 [Changes, Minor Works and Innovation Proposals];

**“Insurance Account”** has the meaning set out in Schedule 10 [Lenders’ Remedies Agreement]; **[NTD: Defined term, and related provisions, may be revised based on Project Co’s financing and security arrangements.]**

**“Insurance Proceeds”** means the amount of any insurance proceeds received by a Person in respect of a claim made under any policy of insurance required to be maintained under this Agreement other than:

- (a) any policy of insurance maintained by PUC solely for the benefit of PUC;
- (b) for the purposes of Sections 6.7, 6.10 and 6.11, insurance proceeds received by Project Co or the Senior Lenders from:
  - (i) the delay in start-up insurance described in Section 1 of Schedule 5 [Insurance Requirements]; or

- (ii) the business interruption insurance described in Section 2 of Schedule 5 [Insurance Requirements];

**“Insurance Receivables”** means the amount of any insurance proceeds which a Person is entitled to receive pursuant to policies of insurance required to be maintained under this Agreement other than:

- (a) any policy of insurance maintained by PUC solely for the benefit of PUC;
- (b) for the purposes of Sections 6.7, 6.10 and 6.11, insurance proceeds received by Project Co or the Senior Lenders from:
  - (i) the delay in start-up insurance described in Section 1 of Schedule 5 [Insurance Requirements]; or
  - (ii) the business interruption insurance described in Section 2 of Schedule 5 [Insurance Requirements];

**“Intellectual Property”** means any or all of the following and all rights, arising out of or associated therewith:

- (a) national, international and foreign patents, utility models, mask works, and applications therefor and all reissues, divisions, renewals, extensions, provisionals, continuations and continuations-in-part thereof;
- (b) inventions (whether patentable or not), invention disclosures, improvements, trade secrets, proprietary information, know-how, technology, technical data and customer lists, product formulations and specifications, and all documentation relating to any of the foregoing throughout the world;
- (c) copyrights, copyright registrations and applications therefor, and all other rights corresponding thereto throughout the world;
- (d) industrial designs and any registrations and applications therefor throughout the world;
- (e) rights in any internet uniform resource locators (URLs), domain names, trade names, logos, slogans, designs, common law trade-marks and service marks, trade-mark and service mark registrations and applications therefor throughout the world;
- (f) data bases and data collections and all rights therein throughout the world;
- (g) moral and economic rights of authors and inventors, however denominated, throughout the world; and
- (h) any similar or equivalent rights to any of the foregoing anywhere in the world;

**“Intended Uses”** has the meaning set out in Schedule 2 [Design and Construction Protocols];

**“Junior Debt”** means indebtedness issued by Project Co to any of its Partners or Affiliates of Partners which ranks subordinate in all respects to the Senior Debt, excluding:

- (a) all amounts not actually paid to Project Co by cash advance, rights entitling Project Co to a cash advance, or other consideration;
- (b) all fees, including commitment fees, standby fees or other fees, paid or to be paid by Project Co, other than to any Partner or any Affiliate of a Partner; and
- (c) capitalized interest, and interest on overdue interest;

**“Key Individuals”** has the meaning set out in Section 2.8 (Key Individuals);

**“Lands”** has the meaning set out in Schedule 7 [Lands];

**“Laws”** means all laws (including the common law), statutes, regulations, treaties, judgments and decrees and all official directives, by-laws, rules, consents, approvals, authorizations, **[guidelines, orders and policies of any Governmental Authority]** **[NTD: Language is very broad and will be assessed once remaining schedules have been received.]** having the force of law from time to time, including, for greater certainty, those related to the issuance of Permits, and any building codes;

**“Lender Endorsements”** has the meaning set out in Schedule 5 [Insurance Requirements];

**“Lenders’ Remedies Agreement”** means the agreement between PUC, the Senior Lenders and Project Co in the form set out in Schedule 10 [Lenders’ Remedies Agreement], as amended, supplemented or replaced from time to time in accordance with this Agreement;

**“Liability Payment”** has the meaning set out in Section 9.3 (General Obligation to Pursue Third Person Recovery);

**“Licence”** has the meaning set out in Schedule 7 [Lands];

**“Liquid Market”** has the meaning set out in Schedule 9 [Compensation on Termination];

**“Local Governmental Authority”** means any regional, municipal or local, Governmental Authority, quasi-Governmental Authority, court, government or self-regulatory organization, commission, board, tribunal, organization, or any regulatory, administrative or other agency, or any political or other subdivision, department or branch of any of the foregoing, having jurisdiction in any way over or in respect of the Province of Ontario;

**“Longstop Date”** means the date that is 12 months after the Target Service Commencement Date, as adjusted in accordance with this Agreement;

**“Material Contract Party”** means a party to a Material Contract, other than Project Co;

**“Material Contracts”** means:

- (a) the Project Contracts; and



- (b) any agreement for products, services or management to Project Co between Project Co and a current or former Affiliate of Project Co or a current or former Partner of Project Co;

**“Material Project Contractor Collateral Agreement”** means the agreement to be entered into between PUC, a Material Contract Party and Project Co in the form set out in Schedule 11 [Material Project Contractor Collateral Agreement], as amended, supplemented or replaced from time to time in accordance with this Agreement;

**“Minor Works”** has the meaning set out in Schedule 6 [Changes, Minor Works and Innovation Proposals];

**“Minor Works Rates”** has the meaning set out in Schedule 6 [Changes, Minor Works and Innovation Proposals];

**“Monthly Payment”** has the meaning set out in Schedule 8 [Payments];

**“Net Change Value”** has the meaning set out in Schedule 6 [Changes, Minor Works and Innovation Proposals];

**“Net Present Value”** means the aggregate of the discounted values, calculated as of [●], of each of the relevant projected Distributions, in each case discounted using the Threshold Equity IRR; **[NTD: Net Present Value calculation/definition to be confirmed.]**

**“New Project Agreement”** means an agreement on substantially the same terms and conditions as this Agreement (including any agreements entered into pursuant to this Agreement as at the Termination Date) but with the following amendments:

- (a) if this Agreement is terminated prior to the Service Commencement Date, the extension of the Target Service Commencement Date and the Longstop Date by such reasonable period as is agreed by PUC and the New Project Co to meet such extended Target Service Commencement Date and Longstop Date;
- (b) the term of such agreement will be equal in length to the term from the Termination Date until the date on which the Operating Period would otherwise have expired;
- (c) PUC may not terminate such agreement for reasons which arose prior to the Termination Date so long as the New Project Co is using all reasonable efforts to remedy any breach of this Agreement that arose prior to the Termination Date and which is capable of being remedied; and
- (d) any other amendments as may be specified by PUC that do not adversely affect any compensation which would otherwise be payable to Project Co pursuant to Schedule 9 [Compensation on Termination];

**“New Project Co”** means the Person who has entered into or who will enter into the New Project Agreement with PUC;

**“Nominal”** means calculated in nominal terms at current prices recognizing adjustment for indexation in respect of forecast inflation;

**“Notice of Intention to Arbitrate”** has the meaning set out in Schedule 13 [Dispute Resolution Procedure];

**“Notice of Objection to Arbitration”** has the meaning set out in Schedule 13 [Dispute Resolution Procedure];

**“Notifying Party”** has the meaning set out in Schedule 5 [Insurance Requirements];

**“OEB”** has the meaning set out in Section 3.4;

**“Operating and Maintenance Plan”** has the meaning set out in Schedule 4 [Services Protocols and Specifications];

**“Operating Failure”** has the meaning set out in Schedule 8 [Payments];

**“Operating Failure Deduction”** has the meaning set out in Schedule 8 [Payments];

**[PUC Note: Reinstated pending finalization of nature of Services.]**

**“Operating Period”** means the period between the Service Commencement Date and the Termination Date;

**“Operating Period Representative”** has the meaning set out in Schedule 4 [Services];

**“Outage”** means the UDM System not being Available, as a result of an Equipment-Only Outage or System Outage;

**“Outage Deduction”** has the meaning set out in Schedule 8 [Payments];

**“Output Specifications”** means the Design and Construction Specifications and the Services Specifications;

**“Outputs Summary Sheet”** means the sheet labeled **[“Model Summary”]** in the Financial Model;

**“Partner Loan”** means **[•] [NTD: To be defined.] [MT NTD: Is this used anywhere other than the definition of Permitted Debt? What is the intention here? Dentons to clarify.]**

**“Paying Party”** has the meaning set out in Section 9.4 (General Obligation to Pursue Third Person Recovery);

**“Payment Adjustment Report”** has the meaning set out in Schedule 8 [Payments];

**“Payment Commencement Date”** has the meaning set out in Schedule 8 [Payments];

**“Payment Period”** has the meaning set out in Schedule 8 [Payments];

**“Performance Monitoring Program”** has the meaning set out in Schedule 4 [Services Protocols and Specifications];

**“Performance Monitoring Report”** has the meaning set out in Appendix 4A [Services Specifications];

**[PUC Note: Reinstated pending finalization of nature of Services.]**

**“Permits”** means all permissions, consents, approvals, certificates, permits, licences, statutory agreements, zoning and by-law amendments and variances, and authorizations required from any Governmental Authority, and all necessary consents and agreements from any third parties, needed to carry out the Project in accordance with this Agreement;

**“Permitted Debt”** means:

- (a) trade or other similar indebtedness incurred in the ordinary course of business (unless being contested in good faith and with appropriate proceedings with an adequate reserve therefor in accordance with IFRS having been placed on the Project Co's books and records);
- (b) Taxes and governmental charges, salaries, related employee payments and trade payables;
- (c) contingent liabilities relating to the endorsement of negotiable instruments received in the normal course of business or incurred with respect to any Permit, Project Contract or this Agreement; and
- (d) Debt incurred by way of **[Partner Loans]**,

but does not include any Senior Debt;

**“Persistent Breach”** means a breach or series of breaches by Project Co of any term, covenant or undertaking to PUC which, due to the fact that such breach has:

- (a) continued for 60 days or more after notice thereof from PUC to Project Co; or
- (b) occurred 5 or more times in the previous 12 months,

the consequence of which is:

- (c) a risk to the safety of any Person;
- (d) a risk of liability of PUC to any Person; or
- (e) an adverse effect on the performance of the Design, Construction, Provisioning, System Expansion or Services;

**“Person”** means an individual, legal personal representative, corporation, body corporate, firm, partnership, trust, trustee, syndicate, joint venture, limited liability company, association, unincorporated organization, union or Governmental Authority;

**“Personal Information”** means ‘personal information’ as defined in the *Access to Information and Protection of Privacy Act* (Ontario), which is collected, acquired, obtained by Project Co or PUC in relation to or in the course of providing the Design, Construction, Provisioning, System Expansion or Services under this Agreement, and includes any information about an identifiable individual other than contact information, which is the name, position name or title, business telephone number, business address, business email or business fax number of the individual, or as otherwise defined in the *Access to Information and Protection of Privacy Act* (Ontario); **[NTD: Parties to confirm relevance of “Personal Information” to this Project, particularly given elimination of operational phase.]**

**“Plans”** has the meaning set out in Schedule 4 [Services Protocols and Specifications];

**“Planned Maintenance”** means maintenance on the UDM System that is set out in or scheduled pursuant to the Operations and Maintenance Plan and is in full compliance with all manufacturers’ recommendations;

**[PUC Note: Reinstated pending finalization of nature of Services.]**

**“Pre-Commencement Date Engineering Work”** means the work to be carried out by Project Co pursuant to the terms of this Agreement from the Effective Date as more particularly set out in Schedule [●].

**“Preliminary Change Instruction”** has the meaning set out in Schedule 6 [Changes, Minor Works and Innovation Proposals];

**“Preliminary Estimate”** has the meaning set out in Schedule 6 [Changes, Minor Works and Innovation Proposals];

**“Prime Rate”** means the annual rate of interest announced by [●] (or its successor), or any other Canadian chartered bank agreed to by the parties, from time to time as its “prime” rate then in effect for determining interest rates on Canadian dollar commercial loans made by it in Canada;

**“Principal Insured Risk”** means a risk that would be insured against by policies for the insurance referred to in any of Sections 1 and 2 of Schedule 5 [Insurance Requirements];

**“Project”** means the design, construction, financing, testing, commissioning, provisioning, expansion, maintenance and life cycle rehabilitation in relation to the UDM System and all other works and ancillary services in accordance with this Agreement;

**“Project Co”** has the meaning given in the preamble;

**“Project Co Event of Default”** has the meaning set out in Section 12.1 (Project Co Events of Default);

**“Project Co Hazardous Substances”** means those Hazardous Substances for which Project Co is responsible pursuant to Schedule 7 [Lands];

**“Project Co Indemnified Person”** means any Affiliate, subcontractor, representative, agent, advisor (including legal and financial advisors) of Project Co and any director, officer, employee of Project Co and each of the foregoing in each case acting in such capacity.

**“Project Co Insolvency Event”** means any of the following events:

- (a) a receiver, receiver manager or other encumbrance holder taking possession of or being appointed over, or any distress, execution or other process being levied or enforced upon, the whole or any material part of the assets of Project Co; or
- (b) any proceedings with respect to Project Co being commenced under the *Companies’ Creditors Arrangement Act* (Canada) and if such proceedings are commenced against Project Co and are disputed by Project Co, such proceedings are not discontinued, withdrawn, dismissed or otherwise remedied within 30 Business Days; or
- (c) Project Co making an assignment for the benefit of its creditors, being declared bankrupt or committing an act of bankruptcy, becoming insolvent, making a proposal or otherwise taking advantage of provisions for relief under the *Bankruptcy and Insolvency Act* (Canada) or similar legislation in any jurisdiction, or any other type of insolvency proceedings being commenced by or against Project Co under the *Bankruptcy and Insolvency Act* (Canada) or similar legislation in any jurisdiction and, if proceedings are commenced against Project Co and are disputed by Project Co, such proceedings are not stayed, dismissed or otherwise remedied within 30 Business Days; or
- (d) Project Co ceasing to carry on business;

**“Project Co Material Breach”** means:

- (a) a failure by Project Co to pay any amount due and owing to PUC under this Agreement on the due date (which amount is not being disputed in good faith) and Project Co has not remedied such failure to pay within 10 Business Days following notice from PUC;
- (b) a breach by Project Co of a material obligation under this Agreement (other than as a consequence of a breach by PUC of its obligations under this Agreement or which arises due to a breach by PUC Services Inc. of its obligations under the Services Contract) and, in the case of a breach that is capable of being remedied, Project Co has not remedied such breach within 10 Business Days following notice from PUC;
- (c) a failure by Project Co to:
  - (1) maintain the policies of insurance required to be maintained by Project Co under this Agreement;
  - (2) maintain such policies on the terms required under this Agreement (including a failure to comply with its obligation under Schedule 5 [Insurance Requirements] to name PUC as an insured party); or

- (3) provide evidence to PUC as required by the terms of this Agreement that such policies have been taken out, maintained, paid for and renewed in accordance with the terms of this Agreement;
- (d) a Persistent Breach;
- (e) except as provided for in (a) through (d) above, a breach, or series of breaches, by Project Co of any agreement, covenant or undertaking made to PUC, or any representation or warranty made by Project Co to PUC in this Agreement (or any ancillary certificate, statement or notice issued hereto) being incorrect when made, the consequence of which is:
  - (1) a risk to the safety of the public;
  - (2) a risk of material liability of PUC to third Persons;
  - (3) an adverse effect on the performance of the Design, Construction, Provisioning, System Expansion or Services and as a result thereof that PUC is reasonably likely to be materially deprived of the benefit of this Agreement; or
  - (4) any material provision of this Agreement being unenforceable against Project Co; or
- (f) a breach by Project Co of Section 5 (Financing of the Project), other than a breach described in Section 12.1(i); or
- (g) any other fact or circumstance designated as a "Project Co Material Breach" under this Agreement;

**"Project Co Materials"** has the meaning set out in Section 14.5;

**"Project Co Permits"** has the meaning set out in Schedule 2 [Design and Construction Protocols];

**"Project Co Person"** means:

- (a) any director, officer, employee or agent of Project Co in each case acting as such;
- (b) any Project Contractor, any Sub-Contractor and any representative, advisor (including any legal and financial advisor) or contractor of Project Co, in any such Person's capacity as a provider of services, work or materials, directly or indirectly to Project Co in connection with the Project; or
- (c) any invitee of Project Co or any of the Project Co Persons referred to in (a) or (b) above who enters upon the Lands;

**"Project Co's Rights"** has the meaning set out in Section 8.13 (Equivalent Project Relief);

**“Project Contractor”** means the Design-Builder or any Service Provider and **“Project Contractors”** means any 2 or more of them;

**“Project Contractor Breakage Costs”** means the amount payable by Project Co to a Project Contractor under the terms of a Project Contract as a direct result of the termination of such Project Contract as a consequence of the termination of this Agreement but reduced (without duplication) to the extent that:

- (a) Project Co, the Project Contractors and any Sub-Contractors fail to take all reasonable steps to mitigate such amount provided that Project Co, the Project Contractors and any Sub-Contractors shall not have any obligations to incur any unreasonable costs or expenses to effect any such mitigation;
- (b) such amount relates to any agreements or arrangements entered into by Project Co, the Project Contractors or the Sub-Contractors other than in the ordinary course of business and on commercial arm's length terms;
- (c) such amount is a Distribution; and
- (d) such amount includes any loss of overhead or profit of the Service Providers or their Sub-Contractors relating to any period or costs after the Termination Date (except to the extent they are properly included in any reasonable commercial breakage fee set out in the applicable Project Contract or Sub-Contract);

**“Project Contracts”** means the Design-Build Agreement and the Services Contract;

**“Project Intellectual Property”** means the Intellectual Property which is created, brought into existence, acquired, licensed or used by Project Co, any Project Contractor, any Sub-Contractor or any other third party, directly or indirectly, for the purposes of the Design, Construction, Provisioning or System Expansion of the UDM System, the maintenance, improvement or testing of the UDM System, or otherwise for the purposes of this Agreement but does not include the Financial Model; **[B&V Note: Technical and commercial teams to review and comment on this definition.]**

**“Project Risk Premium”** has the meaning set out in Schedule 9 [Compensation on Termination];

**“Project Schedule”** has the meaning set out in Schedule 2 [Design and Construction Protocols];

**“Proposal Extracts (Design and Construction)”** has the meaning set out in Schedule 2 [Design and Construction Protocols];

**“Protest Action”** means any civil disobedience, protest action, riot, civil commotion, blockade or embargo, including any action taken or threatened to be taken, by any Person or Persons protesting or demonstrating against:

- (a) the carrying out of any part of the Project (including the construction of the UDM System);  
or
- (b) the construction or operation of the UDM System in general, occurring after the Effective Date,

but excluding any of the foregoing caused by Project Co's or any Project Co Person's failure to perform its obligations in accordance with the terms of this Agreement or any lawful or unlawful strike, lockout, go-slow or labour or other industrial relations dispute or job action;

**[“Provisioning” means increasing the capacity of the UDM System, but for clarity does not include System Expansion;]**

**[PUC Note: To be discussed if applicable.]**

**“Prudent Coverage Amount”** has the meaning set out in Schedule 5 [Insurance Requirements];

**“PUC”** means PUC Distribution Inc., an indirect subsidiary of the Corporation of the City of Sault Ste. Marie and the local distribution company licensed by the Ontario Energy Board to distribute electricity within the boundaries of the City of Sault Ste. Marie and certain nearby townships.

**“PUC Activities”** means any activities carried on or to be carried on by PUC, or other Persons permitted by PUC, on or connected to the UDM System, related to the Project;

**“PUC Event of Default”** has the meaning set out in Section 13.1 (PUC Events of Default);

**“PUC Indemnified Person”** means any Affiliate, representative, agent, advisor (including legal and financial advisors) of PUC and any director, officer, employee of PUC and each of the foregoing in each case acting in such capacity;

**“PUC Insolvency Event”** means any of the following events:

- (a) a receiver, receiver manager or other encumbrance holder taking possession of or being appointed over, or any distress, execution or other process being levied or enforced upon, the whole or any material part of the assets of PUC; or
- (b) any proceedings with respect to PUC being commenced under the *Companies' Creditors Arrangement Act* (Canada) and if such proceedings are commenced against PUC and are disputed by PUC, such proceedings are not discontinued, withdrawn, dismissed or otherwise remedied within 30 Business Days; or
- (c) PUC making an assignment for the benefit of its creditors, being declared bankrupt or committing an act of bankruptcy, becoming insolvent, making a proposal or otherwise taking advantage of provisions for relief under the *Bankruptcy and Insolvency Act* (Canada) or similar legislation in any jurisdiction, or any other type of insolvency proceedings being commenced by or against PUC under the *Bankruptcy and Insolvency Act* (Canada) or similar legislation in any jurisdiction and, if proceedings are commenced against PUC and are disputed by PUC, such proceedings are not stayed, dismissed or otherwise remedied within 30 Business Days; or
- (d) PUC ceasing to carry on business;

**“PUC Permits”** has the meaning set out in Schedule 2 [Design and Construction Protocols];



**“PUC Person”** means:

- (a) any Affiliate, director, officer, employee or agent of PUC;
- (b) any representative, advisor (including any legal, financial and technical advisor), contractor or subcontractor (of any tier) of PUC in any such Person’s capacity as a provider of services directly or indirectly to PUC in connection with the Project, other than Project Co, Project Contractors or Sub-Contractors; or
- (c) any invitee of PUC or any of PUC Persons referred to in (a) or (b) above who enters upon the Lands;

**“Qualified Insurers”** means reputable insurers of good standing in Canada, the United States, the United Kingdom, Europe or Australia having a credit rating of (1) A- VIII or better with AM Best or (2) A- or better with Standard & Poors;

**“Qualified Person”** means PUC or any successor local distribution company in Sault Ste. Marie, Ontario having the legal capacity, power, authority and ability to become a party to and to perform the obligations of PUC under this Agreement;

**“Quality Assurance Plan”** has the meaning set out in Schedule 2 [Design and Construction Protocols];

**“Quality Assurance Program”** has the meaning set out in Schedule 2 [Design and Construction Protocols];

**“Re-Bidding Costs”** has the meaning set out in Schedule 9 [Compensation on Termination];

**“Re-Bidding Process”** has the meaning set out in Schedule 9 [Compensation on Termination];

**“Re-Bidding Process Monitor”** has the meaning set out in Schedule 9 [Compensation on Termination];

**“Receiving Party”** has the meaning set out in Section 9.4 (General Obligation to Pursue Third Person Recovery);

**“Reinstatement Plan”** has the meaning set out in Section 6.4(c) (Project Co’s Obligations – Material Damage or Destruction);

**“Reinstatement Works”** has the meaning set out in Section 6.4(a) (Project Co’s Obligations – Material Damage or Destruction);

**“Relevant Change in Law”** means a Change in Law during the Operating Period (other than a Discriminatory Change in Tax Law) which specifically applies to:

- (a) the Project or smart grid projects whose design, construction, financing, maintenance and service provision are procured on a public-private partnership basis similar to that of the Project;
- (b) Project Co, its Partners or Project Contractors; or

- (c) Persons holding shares or other evidences of ownership in Persons whose principal business is contracting on other similar smart grid projects procured and contracted on a public-private partnership basis similar to the Project and no other Persons,

and compliance with which would require a variation (as applicable) in the design, quality, scope, methodology or cost of the Design, Construction, Provisioning, System Expansion or Services;

**“Relevant Works Change in Law”** means a Change in Law during the Operating Period (other than a Relevant Change in Law or a Discriminatory Change in Tax Law) which requires Project Co to incur Capital Expenditures to perform works affecting the UDM System (being any work of alteration, addition, demolition or extension or variation in the quality or function of the UDM System) which is not work which Project Co would otherwise be required to perform under this Agreement;

**“Relief Event”** means any of the following events or circumstances, occurring prior to the Service Commencement Date, if and to the extent it interferes adversely with, or causes a failure of, the carrying out of the Design, Construction, Provisioning, System Expansion or Services or causes an Outage:

- (a) explosion, lightning, flood, bursting or overflowing of water tanks, apparatus or pipes, ionising radiation, earthquake or any act of God similar to the foregoing, in each case to the extent it does not constitute a Force Majeure Event;
- (b) during the Construction Period, without limiting Project Co's obligation to provide stand-by power facilities for the UDM System in accordance with the Design and Construction Specifications, failure by any utility company or other like body or PUC to perform works or provide services required to be provided by them in a reasonably timely manner pursuant to the Distribution System Code, or any unreasonable interference with the Construction by any such body as a result of maintenance and other work;
- (c) lawful or unlawful strike, lockout, work-to-rule, job action or other labour dispute generally affecting the construction, electric utility maintenance or management industry or a significant sector thereof in the Province of Ontario;
- (d) any delay of more than 3 days in respect or any critical path matter in the Project Schedule caused by compliance by Project Co with an order or direction by police, fire officials, medical health officer or any comparable public authority having the legal authority to make such order or give such direction;
- (e) an Eligible Change in Law;
- (f) unreasonable delay in the payment of any Insurance Receivables;
- (g) accidental loss or damage to the UDM System;
- (h) blockade or embargo to the extent it does not constitute a Force Majeure Event; and
- (i) any other event which is stated in this Agreement to constitute a Relief Event,

except to the extent that any of such events arise or are contributed to, directly or indirectly, as a result of any act or omission or non-compliance with the terms of this Agreement by Project Co or any Project Co Person;

**“Repair”** means a repair to the UDM System undertaken at any time after the Service Commencement Date except for the completion of Deficiencies;

**“Representative”** means, as the case may be, a Design and Construction Representative or an Operating Period Representative;

**“Responding Party”** has the meaning set out in Schedule 13 [Dispute Resolution Procedure];

**“Restricted Person”** means (i) any Person who, or (ii) any member of a group of Persons acting together, any one of whom:

- (a) has, directly or indirectly, its/his/her principal or controlling office in a country or state that is a Restricted State;
- (b) has as any part of its business the illegal manufacture, sale, distribution or promotion of narcotic substances or arms, or is or has been involved in the promotion, support or carrying out of terrorism;
- (c) in the case of an individual, he or she (or in the case of a legal entity, any of the members of the board of directors or its senior executive managers) has been sentenced to imprisonment or otherwise given a custodial sentence (other than a suspended sentence) for any criminal offence (other than minor traffic offences or misdemeanours) less than 5 years prior to the date at which the determination of whether the Person falls within this definition is being made;
- (d) has as its primary business the acquisition of distressed assets or investments in companies or organizations which are or are believed to be insolvent or in a financial standstill situation or potentially insolvent or are in financial distress;
- (e) is subject to any claim of PUC in any proceedings (including regulatory proceedings) which have been concluded or are pending at the time at which the determination of whether the Person falls within this definition is being made and which (in respect of any such pending claim, if it were to be successful) would, in PUC's view, in either case, be reasonably likely to materially affect the ability of Project Co to perform its obligations under this Agreement;
- (f) has made, within the last 5 years, any material claim against PUC, whether contractual or in any proceedings (including regulatory proceedings);
- (g) has been convicted of an offence under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (Canada), or has been convicted of the commission of a money laundering offence or a terrorist activity financing offence under the *Criminal Code* (Canada); or

- (h) whose standing or activities are inconsistent with or may compromise the reputation or integrity of PUC or the distribution of electricity in the Province of Ontario so as to affect public confidence in those services; and

includes the Controlling Party of, and any Person Controlled by, a Person described in this definition.

**“Restricted State”** means any country or state subject to any economic or political sanctions imposed by Canada for reasons other than its trade or economic policies:

- (a) which is not a member state of NATO; or
- (b) which is not Australia, New Zealand, South Korea or Japan;

**“Senior Debt”** means:

- (a) all amounts of principal and interest outstanding, including interest and default interest accrued, from Project Co to the Senior Lenders under the Senior Financing Agreements, provided that default interest will not include any increased interest, fees or penalty amounts payable by Project Co for any reason other than a failure by Project Co to pay any amount when due;
- (b) cost of early termination of interest rate or currency hedging arrangements and other breakage costs or make-whole amounts payable by Project Co to the Senior Lenders as a result of a prepayment under the Senior Financing Agreements; and
- (c) all other fees, costs and expenses for which Project Co is responsible under the Senior Financing Agreements;

**“Senior Debt Service Amount”** means, for any period, the principal and interest payable by Project Co to the Senior Lenders in the normal course (which, for greater certainty, does not include breach or default circumstances) under the Senior Financing Agreements;

**“Senior Financing Agreements”** means:

- (a) the credit agreement dated as of the date hereof;
- (b) the security agreements entered into pursuant to the credit agreement described in (a); and
- (c) ●, [NTD: Any other agreements to be added as financing structure is finalized.]

certified copies of each of which have been delivered by Project Co to PUC, and as amended from time to time in accordance with the terms of this Agreement;

**“Senior Lenders”** means lenders to whom Senior Debt is owed;

**“Services”** means everything other than Design, Construction, Provisioning and System Expansion that Project Co is required to do to satisfy its obligations under this Agreement, including those services set out in Schedule 4 [Services Protocols and Specifications] and Appendix 4A [Services Specifications];

**“Service Commencement”** means that all of the following have been achieved in relation to the UDM System:

- (a) the Independent Certifier has issued a Certificate of Service Commencement with respect to the UDM System;
- (b) all necessary Permits have been issued for the use and operation of the UDM System; and
- (c) Project Co has delivered to PUC a report from the commissioning agent retained by Project Co in accordance with Schedule 2 [Design and Construction Protocols] confirming completion of all commissioning activities scheduled in the Commissioning Plan to be completed before Service Commencement;

**[PUC Note: To be considered further following receipt of Schedule 3 and review with Schedule 2.]**

**“Service Commencement Date”** means the date when all criteria for Service Commencement that have not been waived have been satisfied as certified by the Independent Certifier in accordance with Schedule 2 [Design and Construction Protocols];

**“Service Commencement Deficiency”** has the meaning set out in Schedule 2 [Design and Construction Protocols];

**“Service Commencement Payment”** has the meaning set out in Schedule 8 [Payments];

**“Service Payment”** has the meaning set out in Schedule 8 [Payments];

**“Service Provider”** means PUC Services Inc., a corporation incorporated under the provincial laws of Ontario and wholly owned by the Corporation of the City of Sault Ste. Marie. or any assignee or replacement permitted under this Agreement;

**“Services Contract”** means the agreement between Project Co and the Service Provider with respect to the Services, a copy of which has been delivered by Project Co to PUC, as amended or replaced from time to time in accordance with this Agreement;

**“Service Commencement Payment”** has the meaning set out in Schedule 8 [Payments];

**“Service Payment”** has the meaning set out in Schedule 8 [Payments];

**“Sub-Contract”** means any contract entered into by a Project Contractor (except Project Contracts), or a sub-contractor of a Project Contractor of any tier, with one or more Persons in connection with the carrying out of Project Co’s obligations under this Agreement, as amended or replaced from time to time;

**“Sub-Contractor”** means any Person that enters into a Sub-Contract;

**“Suitable Substitute Project Co”** has the meaning given to it in the Lenders’ Remedies Agreement;

**“Supervening Event”** means any of a Compensation Event, Relief Event, Force Majeure Event or Eligible Change in Law Event;

**“Supervening Event Notice”** has the meaning set out in Section 8.2(a) (Procedures Upon the Occurrence of a Supervening Event);

**“System Expansion”** means an expansion of the UDM System infrastructure, but for clarity does not include Provisioning;

**“System Outage”** means an Outage that is not an Equipment-Only Outage;

**“System Outage Deduction”** has the meaning set out in Schedule 8 [Payments];

**“Target Service Commencement Date”** means the date, as set out in the Project Schedule (as updated from time to time in accordance with Schedule 2 [Design and Construction Protocols]), that Project Co estimates Service Commencement will occur;

**“Tax”** or **“Taxes”** means, from time to time, all taxes, surtaxes, duties, levies, imposts, rates, payments, assessments, withholdings, dues and other charges of any nature imposed by any Governmental Authority (including income, capital (including large corporations), withholding, consumption, sales, use, transfer, goods and services or other value-added, excise, customs, anti-dumping, countervail, net worth, stamp, registration, franchise, payroll, employment, health, education, business, school, property, local improvement, development, education development and occupation taxes, surtaxes, duties, levies, imposts, rates, payments, assessments, withholdings, dues and charges) together with all fines, interest, penalties on or in respect of, or in lieu of or for non-collection of, those taxes, surtaxes, duties, levies, imposts, rates, payments, assessments, withholdings, dues and other charges;

**“Term”** has the meaning set out in Section 2.1 (Term and Termination);

**“Termination Date”** means the earlier of the Expiry Date or the date of earlier termination referred to in Section 2.1 (Term and Termination);

**“Termination Date Benchmark Canada Bond Yield”** has the meaning set out in Schedule 9 [Compensation on Termination];

**“Termination Date Discount Rate”** has the meaning set out in Schedule 9 [Compensation on Termination];

**“Termination Payment”** means the amount owing by PUC to Project Co pursuant to Schedule 9 [Compensation on Termination];

**“Termination Payment Date”** means the date on which PUC must make the Termination Payment as provided for in Schedule 9 [Compensation on Termination];

**“Threshold Equity IRR”** means **[●]**%, being the Equity IRR as set out in the Financial Model;

**“UDM System”** means all of the electronic equipment, building facilities, interface equipment, network services and services required to provide a fully functional and operating utility distribution microgrid as required by this Agreement as more particularly described in Schedule 3 [Design and Construction Specifications]; **[B&V Note: Technical teams to review and comment on this definition.]**

**“UDM System Change”** has the meaning set out in Schedule 6 [Changes, Minor Works and Innovation Proposals];

**“Undisclosed Environmental Liabilities”** means all Hazardous Substances located in, on, below or (provided the same are owned by PUC) adjacent to the Lands, other than Project Co Hazardous Substances;

**“Uninsurable”** means, in relation to a risk:

- (a) insurance as required under this Agreement is not available in respect of the Project with Qualified Insurers; or
- (b) the insurance premium payable or the terms and conditions for insuring that risk at the levels and on the terms required by this Agreement are such that contractors, concessionaires, owners or others having a substantially similar interest in a project such as the Project in Canada are not generally insuring against such risk with Qualified Insurers;

**“Uninsurable Risk”** has the meaning set out in Section 6.15 (Consequences of Risks Becoming Uninsurable);

**“Units”** means units or other equity interests of any class in the capital of Project Co;

**“Unplanned Maintenance”** means maintenance on the UDM System that is not Planned Maintenance;

**“Updated Project Schedule”** has the meaning set out in Schedule 2 [Design and Construction Protocols];

**“Valuator”** means a firm of chartered accountants as represented by a fully qualified member of the Canadian Institute of Chartered Business Valuators;

**“VVM”** has the meaning set out in Section 4.2(b).

## **2. INTERPRETATION**

This Agreement will be interpreted according to the following provisions, except to the extent the context or the express provisions of this Agreement otherwise require:

- (a) the Parties waive the application of any rule of law which otherwise would be applicable in connection with the construction of this Agreement that ambiguous or conflicting terms or provisions should be construed against the Party who (or whose counsel) prepared the executed agreement or any earlier draft of the same;

- (b) the table of contents, headings and sub-headings, marginal notes and references to them in this Agreement are for convenience of reference only, do not constitute a part of this Agreement, and will not be taken into consideration in the interpretation or construction of, or affect the meaning of, this Agreement;
- (c) each reference to a Section, Schedule, Appendix or Attachment is a reference to a Section of, Schedule to, Appendix to a Schedule to this Agreement; or each Attachment to an Appendix, and each Appendix is uniquely designated by using the number of the Schedule to which the Appendix is attached following by an alphabetical designator in sequence (for example, Appendix 2B [Design Review] means the second Appendix attached to Schedule 2 [Design and Construction Protocols]). A Schedule includes all of the Appendices attached to that Schedule. An Appendix includes all the Attachments attached to that Appendix;
- (d) each reference to an agreement, document, standard, principle or other instrument includes (subject to all relevant approvals and any other provision of this Agreement expressly concerning such agreement, document, standard, principle or other instrument) a reference to that agreement, document, standard, principle or instrument as amended, replaced, novated or assigned, and a reference to an “amendment” and similar terms (including “amend” and “amended”) include a reference to supplement, alteration, substitute, variation, change and any other modification and similar terms;
- (e) each reference to a statute or statutory provision (including any subordinate legislation) includes any statute or statutory provision which amends, extends, consolidates or replaces the statute or statutory provision or which has been amended, extended, consolidated or replaced by the statute or statutory provision and includes any orders, regulations, by-laws, ordinances, orders, codes of practice, instruments or other subordinate legislation made under the relevant statute;
- (f) each reference to time of day is a reference to Eastern Standard time or Eastern Daylight Saving time, as the case may be;
- (g) words importing the singular include the plural and vice versa;
- (h) words importing a particular gender include all genders;
- (i) each reference to a public organization is deemed to include a reference to any successor(s) to such public organization or any organization or entity or organizations or entities which has or have taken over the functions or responsibilities of such public organization;
- (j) all monetary amounts are expressed in Canadian Dollars;
- (k) whenever this Agreement obliges a party (the “**Payor**”) to pay any amount to the other party (the “**Payee**”) in respect of any costs, expenses, fees, charges, liabilities, losses, claims or other sums incurred by the Payee:



- (1) such obligation will be construed as applying only to so much of such sums as have been properly incurred on an arm's length commercial basis or, where not incurred on an arm's length commercial basis (including when the payment is made to an Affiliate of the Payee), so much of them as are proper and reasonable; and
  - (2) the Payee will, when requested by the Payor, provide supporting evidence of such costs, expenses, fees, charges, liabilities, losses, claims or other sums;
- (l) each requirement for a thing or action to be "in accordance with" or "in compliance with" any standard, code or specification or other requirement or stipulation means that such thing or action is to exceed or at least equal that standard, code, specification or other requirement or stipulation;
- (m) the words "include", "includes" and "including" are to be construed as meaning "include without limitation", "includes without limitation" and "including without limitation", respectively;
- (n) when a Party has "discretion", it means that party has the sole, absolute and unfettered discretion, with no requirement to act reasonably or provide reasons unless specifically required under the provisions of this Agreement;
- (o) any consent contemplated to be given under this Agreement must be in writing;
- (p) general words are not given a restrictive meaning:
  - (1) if they are introduced by the word "other", by reason of the fact that they are preceded by words indicating a particular class of act, matter or thing; or
  - (2) by reason of the fact that they are followed by particular examples intended to be embraced by those general words;
- (q) words or abbreviations which have well-known trade meanings are used in accordance with those meanings;
- (r) the expression "all reasonable efforts" and expressions of like import, when used in connection with an obligation of either party, means taking in good faith and with due diligence all commercially reasonable steps to achieve the objective and to perform the obligation, including doing all that can reasonably be done in the circumstances taking into account each Party's obligations hereunder to mitigate delays and additional costs to the other Party, and in any event taking no less steps and efforts than those that would be taken by a commercially reasonable and prudent Person in comparable circumstances but where the whole of the benefit of the obligation and where all the results of taking such steps and efforts accrued solely to that Person's own benefit, provided that the foregoing will not require PUC to:

- (1) take any action which is contrary to the public interest, as determined by PUC in its discretion; or
- (2) undertake any mitigation measure that might be available arising out of its status as an electricity distribution company that would not normally be available to a private commercial party;
- (s) the expressions “by Project Co” and “by or through Project Co” and expressions of like import are synonymous and mean by Project Co or by anyone employed by or through Project Co, including Project Co and all contractors, sub-contractors and suppliers of any tier and their respective officers, employees, consultants and agents;
- (t) all accounting and financial terms used herein are, unless otherwise indicated, to be interpreted and applied in accordance with IFRS, consistently applied;
- (u) where this Agreement requires the calculation of something that is calculated in the Financial Model, including Net Present Value of Distributions and Equity IRR but not including Monthly Payments and Deductions, the calculation will be done in a manner consistent with the calculation methodology in the Financial Model;
- (v) if the time for doing an act falls or expires on a day that is not a Business Day, the time for doing such act will be extended to the next Business Day;
- (w) each provision of this Agreement will be valid and enforceable to the fullest extent permitted by law. If any provision of this Agreement is held to be invalid, unenforceable or illegal to any extent, such provision may be severed and such invalidity, unenforceability or illegality will not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Agreement. If any such provision of this Agreement is held to be invalid, unenforceable or illegal, the Parties will promptly endeavour in good faith to negotiate new provisions to eliminate such invalidity, unenforceability or illegality and to restore this Agreement as nearly as possible to its original intent and effect; and
- (x) each release, waiver of liability and indemnity in this Agreement expressed to be given in favour of a Party is and will be interpreted as having been given in favour of and may be enforced by that Party and, in the case of PUC, by the PUC Indemnified Persons, and, in the case of Project Co, by Project Co Persons.

### **3. PRIORITY OF AGREEMENTS AND SCHEDULES**

In the event of ambiguities, conflicts or inconsistencies between or among any of the provisions of this Agreement, the provisions will prevail in the following order of precedence with each taking precedence over those listed subsequently:

- (a) the provisions establishing the higher quality, manner or method of performing the Design, Construction, Provisioning, System Expansion or Services, using the more stringent standards, will prevail, with the intent that the provisions which produce the

higher quality with the higher levels of safety, reliability, durability, performance and service will prevail;

- (b) the provisions of the main body of this Agreement will prevail over any of the Schedules hereto other than Schedule 11 [Material Project Contractor Collateral Agreement] or Schedule 10 [Lenders' Remedies Agreement];
- (c) the provisions of the Lenders' Remedies Agreement will prevail over the Material Project Contractor Collateral Agreement;
- (d) the provisions of this Agreement (other than the provisions of Appendix 2C [Proposal Extracts (Design and Construction)]) will prevail over the provisions of Appendix 2C [Proposal Extracts (Design and Construction)]; provided however that in determining whether an ambiguity, conflict or inconsistency exists between Appendix 2C [Proposal Extracts (Design and Construction)] and any other provisions in this Agreement, to the extent that Appendix 2C [Proposal Extracts (Design and Construction)] includes additional requirements for higher standards of quality or performance or additional requirements for more extensive scope of design, work or services than otherwise required, no such ambiguity, conflict or inconsistency will be deemed to exist and Project Co's obligations hereunder will include compliance with all such additional requirements; and
- (e) if the ambiguity, conflict or inconsistency is between a provision of general application and a provision that applies only to a specific part of the Design, Construction, Provisioning, System Expansion or Services, the provision that applies to the specific part of the Design, Construction, Provisioning, System Expansion or Services shall prevail for that specific part of the Design, Construction, Provisioning, System Expansion or Services.

#### **4. FINANCIAL MODEL**

Except where expressly referred to, the Financial Model and its contents will not be used to interpret, and will not affect the meaning of, this Agreement.