

MUST-OFFER CONDITION AGREEMENT

Between

**INDEPENDENT ELECTRICITY SYSTEM OPERATOR
("IESO")**

And

**PORTLANDS ENERGY CENTRE INC. ON BEHALF OF
PORTLANDS ENERGY CENTRE L.P.
(the "SUPPLIER")**

EFFECTIVE DATE: October 15, 2020

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RECITALS:

- WHERE: By Decision and Order (EB-2019-0258 / EB-2020-0110) dated April 9, 2020 (the “**OEB Decision**”), the OEB amended the electricity generation licences of Portlands Energy Centre Inc., on behalf of Portlands Energy Centre L.P. (EG-2004-0540), and of its affiliate Ontario Power Generation Inc. (EG-2003-0104) (each, an “**OEB Licence**”), by imposing two conditions on each of the licensees to address concerns about market power, including a Must-Offer Condition, such condition to be governed by the terms of an agreement between the IESO and each licensee;
- AND WHERE: The new licence conditions in each OEB Licence are intended to address the acquisition of gas assets by Atura (the “**Transaction**”), and to mitigate concerns about the competitiveness of Ontario’s wholesale electricity market as a result of the Transaction, where OPG and its related entities, including the Atura Power Group, will control approximately half of all generation capacity in the Province, and a significantly larger percentage of gas assets;
- AND WHERE: The Supplier owns and operates the Facilities, and such Facilities will be subject to the Must-Offer Condition;
- AND WHERE: By filing this Agreement for approval with the OEB, the Supplier fulfills a requirement of the Must-Offer Condition imposed by the OEB Decision;
- AND WHERE: The Parties have signed this Agreement to be filed with the OEB, and agree to be bound by its terms, to take effect upon the Effective Date.

FOR VALUE RECEIVED, the Parties agree as follows:

**SECTION 1
INTERPRETATION AND SCHEDULES**

- 1.1 **Incorporation of Market Rules Definitions.** Subject to section 1.2, capitalized terms used in this Agreement will have the meaning ascribed to them in Chapter 11 of the Market Rules.
- 1.2 **Supplementary Definitions.** In this Agreement, the following terms will have the meanings ascribed below:

“**Agreement**” means this Must-Offer Condition Agreement, made in furtherance of the OEB Decision, and including any recitals and schedules, as may be amended or restated from time to time.

“**Amendment**” means a written amendment agreement, which amends this Agreement and is entered by the Parties in accordance with Section 6.1.

“**Atura**” means Portlands Energy Centre L.P., a limited partnership formed under the laws of Ontario and doing business as Atura Power, and an indirect wholly-owned subsidiary of OPG, and its sole general partner, Portlands Energy Centre Inc.

“Atura Power Group” means NV LP, each of NV LP’s wholly-owned subsidiaries, including Atura, Portlands Energy Centre Inc., and Brighton Beach Power L.P., Brighton Beach Power Ltd., and each of NV LP’s and each such subsidiary’s directors, officers, employees, representatives, agents and advisors.

“Benefit Assessment” has the meaning ascribed to it in section 5.1 of this Agreement.

“Calendar Month” means one of the twelve months named in the common calendar.

“Compliance Notice” has the meaning ascribed to it in section 5.2.1.

“Confidential Information” has the meaning ascribed in the Market Rules, which is incorporated hereunder to capture information meeting the Market Rules definition that is disclosed in the performance of this Agreement.

“Day Ahead Commitment Process” or **“DACP”** means the day-ahead commitment process described in Chapter 7 of the Market Rules and Market Manual 9 under the Market Rules.

“Economic Withholding Parameters” means the economic withholding parameters set forth in Schedule 4.4.1.2.

“Economic Withholding Trigger Assessment” has the meaning ascribed to it in Section 4.2.1.2 of this Agreement.

“Effective Date” means the date on the cover page of this Agreement, which is the date the OEB approves this Agreement, by issuance of an approval notice to the Parties.

“Electricity Act” means the *Electricity Act, 1998* (Ontario), as amended or replaced from time to time.

“Facilities” means those Generation Facilities listed in Schedule 1.2A to this Agreement, and each such Generation Facility is a **“Facility”**.

“Force Majeure Event” has the meaning ascribed in the Market Rules, which is incorporated hereunder to capture an event meeting the Market Rule definition that impacts performance of this Agreement.

“IESO” means the Independent Electricity System Operator, a statutory corporation without share capital amalgamated under the laws of the Province of Ontario.

“IESO Representative” is the individual set forth in Schedule 9.1 to this Agreement.

“Initial Monitoring Process” has the meaning ascribed to it in section 4.1.1.

“Market Rules” means the market rules made under Section 32 of the *Electricity Act*, together with all market manuals, policies and guidelines issued by the IESO, all as amended from time to time.

“Must-Offer Condition” has the meaning ascribed to it in Section 3.1.1.

“Notice” means any written notice, approval, demand, direction, instruction, consent, designation, request, document, instrument, certificate or other written communication required or permitted to be given under this Agreement.

“OEB” means the Ontario Energy Board, or its successor.

“OEB Decision” has the meaning ascribed to it in the Recitals to this Agreement.

“OEB Licence” has the meaning ascribed to it in the Recitals to this Agreement.

“Offer Price Verification” has the meaning ascribed to it in Section 4.4.1.2 of this Agreement.

“Offer Quantity Verification” has the meaning ascribed to it in section 4.4.1.1 of this Agreement.

“OPG” means Ontario Power Generation Inc., a corporation existing under the laws of Ontario.

“Party” means a party to this Agreement, and **“Parties”** means both parties to this Agreement.

“Physical Withholding Parameters” means the physical withholding parameters set forth in Schedule 4.4.1.1.

“Physical Withholding Trigger Assessment” has the meaning ascribed in Section 4.2.1.1 of this Agreement.

“Response Notice” has the meaning ascribed to it in Section 5.2.2.

“Supplier Representative” it is the individual set forth in Schedule 9.1 to this Agreement.

“Term” has the meaning ascribed to it in Section 7.

“Transaction” has the meaning given to it in the Recitals, and more specifically refers to the sale by TransCanada Energy Ltd. and TransCanada Energy Pipelines Limited to wholly-owned subsidiaries of OPG, resulting in Atura’s ownership and operation the Portlands Energy Centre, the Napanee generating station, and the Halton Hills generating station, which transaction closed on April 29, 2020.

“Verification Process” has the meaning ascribed in Section 4.4 of this Agreement.

1.3 **Schedules to Agreement.** The following schedules are attached to and form part of this Agreement:

Schedule 1.2A	-	Facilities
Schedule 3.1.1	-	Must-Offer Condition
Schedule 4.2.1.1	-	Physical Withholding Initial Monitoring
Schedule 4.2.1.2	-	Economic Withholding Initial Monitoring
Schedule 4.4.1.1	-	Offer Quantity Verification
Schedule 4.4.1.2	-	Offer Price Verification
Schedule 5.1	-	Benefit Assessment
Schedule 5.2	-	Recovery/Remedies
Schedule 6.1	-	Form of Amending Agreement
Schedule 9.1	-	Representatives for Notices

SECTION 2 MARKET RULES AUTHORITIES

- 2.1 **Market Rules.** The interpretation of this Agreement will be broad and purposive, with the objective of avoiding findings of inconsistency between this Agreement and the Market Rules, to the extent reasonably possible. In the event of any conflict or inconsistency with the Market Rules and the terms of this Agreement, the Market Rules will take precedence and govern to the extent of such conflict or inconsistency.
- 2.2 **Powers of the IESO to Investigate and Enforce Compliance with the Market Rules.** Nothing in this Agreement will limit, replace or supersede the powers and authorities of the IESO to monitor and enforce compliance by the Supplier with the Market Rules.
- 2.3 **Powers of the Market Assessment Unit and Market Surveillance Panel.** Nothing in this Agreement will limit or replace the powers and authorities of the Market Assessment Unit or the Market Surveillance Panel, as set out in the Market Rules, and the by-laws of the OEB.

SECTION 3 MUST-OFFER CONDITION

- 3.1 **Must-Offer Condition.**
- 3.1.1 The Supplier will, at all times during the Term, comply with its OEB Licence relating to the must-offer condition, as such licence requirement is set out in Schedule 3.1.1 (the “**Must-Offer Condition**”).
- 3.1.2 The Supplier acknowledges that its compliance with the Must-Offer Condition is subject to *ex-post* monitoring, including verification by the IESO in accordance with Section 4 of this Agreement. The IESO will verify if the Supplier is potentially non-compliant with the Must-Offer Condition based on the criteria specified in Section 4 of this Agreement.

SECTION 4 MONITORING AND VERIFICATION

4.1 Initial Monitoring.

- 4.1.1 During the Term, at the IESO's sole cost, the IESO will conduct a monthly monitoring process (the “**Initial Monitoring Process**”) in respect of the Supplier’s offers in the IESO-Administered Markets for Energy and Operating Reserve in respect of the Facilities, for each Calendar Month. The Initial Monitoring Process will be conducted by the IESO in accordance with Section 4.2 of this Agreement.
- 4.1.2 The Initial Monitoring Process will be used by the IESO to assist in identifying whether there are areas of potential concern related to the Supplier’s compliance with the Must-Offer Condition. Meeting the triggers within the Initial Monitoring Process in itself will not be deemed to be non-compliance with the Must-Offer Condition, but will trigger the Verification Process as described more fully, and in accordance with, Section 4.4 of this Agreement. Similarly, not meeting the triggers in the Initial Monitoring Process will not preclude conducting a Verification Process, if the IESO determines that conducting a Verification Process is appropriate in the circumstances.
- 4.1.3 The Supplier will reasonably cooperate with the IESO in order to facilitate the IESO’s Initial Monitoring Process, so long as such cooperation does not unduly interfere with the ordinary course of the Supplier’s operation of the Facilities.

4.2 Initial Monitoring Process.

- 4.2.1 During the Initial Monitoring Process, the IESO will perform the following assessments:
 - 4.2.1.1 a physical withholding trigger assessment, as described more fully, and in accordance with, Schedule 4.2.1.1, to enable the IESO to evaluate the Supplier’s offer quantities relative to the physical capability of resources (a “**Physical Withholding Trigger Assessment**”); and
 - 4.2.1.2 an economic withholding trigger assessment, as described more fully, and in accordance with, Schedule 4.2.1.2, to enable the IESO to evaluate the Supplier’s prices at which capacity is offered (an “**Economic Withholding Trigger Assessment**”).
- 4.2.2 The Parties acknowledge that the Supplier will not be deemed to be non-compliant with the Must-Offer Condition simply as a result of meeting the triggers within a Physical Withholding Trigger Assessment or Economic Withholding Trigger Assessment.
- 4.2.3 The Parties acknowledge that the Supplier will not be deemed to be in breach of the Market Rules based simply on meeting the triggers within a Physical Withholding Trigger Assessment or Economic Withholding Trigger Assessment.

- 4.3 **Impact of Force Majeure Event.** The Verification Process (described in Section 4.4) will not be performed in respect of a Facility for any hour in which a Force Majeure Event applies in relation to such Facility.
- 4.4 **Verification Process.**
- 4.4.1 The IESO will forthwith perform the following verification assessments on a timely basis (the “**Verification Process**”):
- 4.4.1.1 For relevant hours that meet the triggers within a Physical Withholding Trigger Assessment, the IESO will conduct an assessment, as described more fully, and in accordance with, Schedule 4.4.1.1, to enable the IESO to verify the Supplier’s offers against reference quantities for individual Facilities (“**Offer Quantity Verification**”).
- 4.4.1.2 For relevant hours that meet the triggers within an Economic Withholding Trigger Assessment, the IESO will conduct an assessment, as described more fully, and in accordance with, Schedule 4.4.1.2, to enable the IESO to verify the Supplier’s offers against reference pricing for individual Facilities (“**Offer Price Verification**”).
- 4.4.2 The Supplier will reasonably cooperate with the IESO in order to facilitate the Verification Process, including providing any information requested by the IESO that the IESO may reasonably determine is relevant to the Verification Process.
- 4.4.3 If a Facility fails the Offer Quantity Verification or Offer Price Verification for one or more hours, based on the IESO’s discretion, the Supplier shall be subject to a Benefit Assessment, as defined below.
- 4.5 **Collaboration and Information Sharing.** The Parties will work together and share information and findings on a periodic and timely basis for the purposes of developing, modifying and implementing the monitoring and Verification Process. The IESO will reasonably consider any suggestions, inputs or clarifications provided by the Supplier, which may result in an amendment to the IESO’s internal processes in relation to the monitoring and verification conducted under this Agreement, or an Amendment to this Agreement. The IESO will keep the Supplier reasonably informed of the specifics of the processes being implemented by providing Notice. Further, where the IESO determines through the Verification Process that one or more Facilities engaged in physical or economic withholding for one or more hours, the IESO will provide Notice of such determinations of withholding to the Supplier as soon as reasonably available to the IESO.

**SECTION 5
BENEFIT ASSESSMENT; RECOVERY**

5.1 **Benefit Assessment.** If the IESO determines, pursuant to Section 4.4 of this Agreement, that the Supplier fails the Verification Process in respect of one or more Facilities for one or more hours, the IESO shall forthwith conduct an assessment (a “**Benefit Assessment**”) on a timely basis in relation to such applicable hours for the purpose of determining whether and, if so, to what extent, the Supplier and/or OPG has benefitted. The Benefit Assessment will be conducted by the IESO in accordance with Schedule 5.1 to this Agreement. The IESO shall make reasonable best efforts to complete any Benefit Assessment no later than one year from the event(s) determined by the IESO to constitute withholding in accordance with section 4.4. Notwithstanding the foregoing, where such Benefit Assessment is not completed by the IESO within four months of receipt of all representations from the Supplier in respect of the Benefit Assessment or from the date the Supplier confirms no representations will be provided, the IESO will provide Notice to the Supplier that will provide a reasonably detailed update of the status of such assessment.

5.2 **Recovery.**

5.2.1 If the IESO determines, in accordance with Schedule 5.1, that one or more events that the IESO has determined, after due consideration of rate regulation and contracts and the principles set out in Schedule 5.1, to have failed the Verification Process has resulted in a benefit to the Supplier and/or OPG, the IESO will deliver a Notice to the Supplier, subject to the ring-fence restrictions in Section 9.5 (a “**Compliance Notice**”), that will set out:

5.2.1.1 the Facility or Facilities and respective hour(s) for which the IESO has determined that the Supplier has failed the Verification Process pursuant to Section 4.4.1, and the basis for such determination(s);

5.2.1.2 for each event identified in Section 5.2.1.1, any net benefit determined by the IESO to result to the Supplier and OPG and the basis for such determination in accordance with Section 5.1 to this Agreement. For clarity, if the IESO has determined there is no net benefit to the Supplier, such Compliance Notice will state as such; and

5.2.1.3 only where the IESO has determined that a net benefit has resulted to the Supplier in accordance with Section 5.2.1.2, the proposed recovery of the benefits identified in Section 5.2.1.2, to be implemented by the IESO in accordance with Schedule 5.2 to this Agreement,

and, the IESO will deliver a Notice to OPG, subject to the ring-fence restrictions in Section 9.5, that will set out:

5.2.1.4 the respective hour(s) for which the IESO has determined that the Supplier has failed the Verification Process pursuant to Section 4.4.1;

5.2.1.5 for each hour identified in Section 5.2.1.4, any net benefit determined by the IESO to result to the Supplier and OPG and the basis for such determination in

accordance with Section 5.1 to this Agreement. For clarity, if the IESO has determined there is no net benefit to OPG, such Compliance Notice will state as such; and

- 5.2.1.6 only where the IESO has determined that a net benefit has resulted to OPG in accordance with Section 5.2.1.5, the proposed recovery of the benefits identified in Section 5.2.1.5, to be implemented by the IESO in accordance with Schedule 5.2 to the must-offer condition agreement between the IESO and OPG.
- 5.2.2 Within twenty (20) Business Days of receipt of the Compliance Notice, the Supplier will provide a Notice to the IESO (a “**Response Notice**”) if the Supplier objects to any matter or issue in a Compliance Notice and, if so, set out the basis for any such objections.
- 5.2.3 If the Supplier does not object to a Compliance Notice in accordance with Section 5.2.2, the recovery specified in the Compliance Notice will be implemented.
- 5.2.4 If the Supplier sends a Response Notice to the IESO, the Response Notice will propose two or three dates for a meeting between the Supplier and the IESO for the purpose of discussing the objections raised in the Response Notice (such meeting to occur as soon as reasonably practicable). If the Parties agree on a resolution regarding recovery (whether as originally proposed by the IESO or modified), such recovery will be implemented. If the Parties do not agree on the amount of recovery, the Parties will enter into good faith negotiations to resolve the matter and, if necessary, pursue the dispute resolution process outlined in Section 8 below.
- 5.3 The Parties acknowledge that the purpose of recovery under this Agreement is to recover net benefits received by the Supplier and OPG. This Agreement does not limit the powers and authorities of the IESO to monitor and enforce compliance with the Market Rules, including the imposition of sanctions where considered appropriate by the IESO; however, if the IESO issues a Compliance Notice under this Agreement, the IESO will not exercise its monitoring and compliance enforcement authorities under the Market Rules to recover, or seek to recover, the same benefits under the Market Rules. For greater certainty, nothing in this Agreement precludes the IESO from exercising its monitoring and compliance enforcement authorities under the Market Rules aside from seeking recovery of the same benefits sought to be recovered under this Agreement. The IESO will have the right not to issue a Compliance Notice under this Agreement in preference of other monitoring and compliance authorities under the Market Rules.

SECTION 6 AMENDMENTS

- 6.1 **Amendments.** Except as expressly provided in this Agreement, no amendment (including an Amendment), restatement or termination of this Agreement in whole or in part is binding unless it is in writing and signed by each Party, in the form appended as Schedule 6.1 to this Agreement. Accordingly, this Agreement will not be amended by any other document (even where such invoice or other document purports, directly or indirectly, to be paramount to any term of this Agreement). If the Parties execute an Amendment, the IESO will forthwith notify OPG of such Amendment and will consider whether a similar amendment is necessary to the

must-offer condition agreement between the IESO and OPG.

6.2 **Amendments due to Changes to the Market Rules.**

- 6.2.1 At any time either Party may propose for the consideration of the other Party that the Must-Offer Condition or any terms or conditions of this Agreement, including any Schedules, be revised in order to comply with regulatory changes or changes to the Market Rules or the market more generally, including market renewal, or to effect operational savings. The other Party will reasonably consider such amendments and indicate its agreement or disagreement with such amendments within a period of ninety (90) days. Such amendment will only be effective when completed in accordance with Section 9.1 of this Agreement.
- 6.2.2 To the extent that there is an amendment to the Market Rules which amendment has or is reasonably expected to have a materially adverse effect on the Supplier, the Supplier may propose certain amendments to this Agreement and the IESO will consider such amendments, acting reasonably.
- 6.2.3 Should amendments to the Market Rules include a market power mitigation framework, the Parties will reasonably consider the termination of this Agreement in its entirety.

SECTION 7 TERM & TERMINATION

- 7.1 **Term.** The Agreement will take effect on the Effective Date, and will terminate upon removal, repeal, or suspension of the Must-Offer Condition from the Supplier's OEB Licence.
- 7.2 **Survival.** Termination of this Agreement does not affect the rights of either Party against the other that arose prior to termination, and that otherwise relate to or may arise at any future time from any breach or non-performance of a requirement under this Agreement occurring prior to termination.

SECTION 8 DISPUTE RESOLUTION

- 8.1 **Good Faith Negotiations.** The Parties will make good faith efforts to negotiate and resolve any dispute between them arising pursuant to this Agreement, which will include working together and sharing information and findings on a timely basis for the purposes of reaching a resolution.
- 8.2 **Informal Dispute Resolution.** If either Party considers that a dispute has arisen under or in connection with this Agreement that the Parties cannot resolve in accordance with Section 8.1, then such Party may deliver a Notice to the other Party describing the nature and the particulars of such dispute. Within ten (10) business days following delivery of such notice to the other Party, a senior executive from each Party will meet, either in person or by telephone to attempt to resolve the dispute. Each senior executive will be prepared to propose a solution to the dispute. If the dispute is not resolved, the dispute may be referred to arbitration pursuant to

Section 8.3, if agreed to by both Parties. For clarity, a potential resolution to any dispute may be an Amendment to this Agreement.

8.3 **Arbitration.**

- 8.3.1 **Submission to Arbitration.** All disputes, disagreements, controversies, questions or claims arising out of or in connection with this Agreement, or in respect of any legal relationship associated with, or arising from or in connection with, this Agreement, including in connection with this Agreement's formation, execution, validity, application, interpretation, performance, breach, termination or enforcement, will be determined by arbitration in accordance with the *Arbitration Act, 1991* (Ontario) and this Section 8.3.
- 8.3.2 **Number of Arbitrators.** The number of arbitrators will be one.
- 8.3.3 **Place and Language of Arbitration.** The seat of the arbitration will be Toronto and the language of the arbitration will be English.
- 8.3.4 **Appointment of Sole Arbitrator.** The Party commencing the arbitration will include in its written notice the names of three individuals who are acceptable to it to serve as a sole arbitrator. Within ten days of the receipt of the notice, the other Party will give written notice that it accepts the appointment of one of the three individuals or will name three other individuals who are acceptable to it to serve as sole arbitrator. If the Parties are unable to agree upon a sole arbitrator within a further ten days, either Party may apply to the Superior Court of Justice to appoint an arbitrator.
- 8.3.5 **Determination.** The sole arbitrator will make a determination in an impartial manner based on the information and submissions obtained from the Parties through the arbitration process, which submissions will include this Agreement, the OEB Licence and the OEB Decision.
- 8.3.6 **Finality of Award.** Any award or determination of the sole arbitrator will be final and binding on the Parties and there will be no appeal on any ground, including for greater certainty, any appeal on a question of law, a question of fact, or a question of mixed fact and law.
- 8.3.7 **Costs.** The sole arbitrator may apportion costs of the arbitration, including the reasonable fees and disbursements of the Parties, between or among the Parties in such manner as the sole arbitrator considers reasonable.
- 8.3.8 **Interest.** Any award for the payment of money may include pre-award and post-award interest.
- 8.3.9 **Confidentiality.** The arbitration will be kept confidential and the existence of the proceeding and any element of it (including any proposals, pleadings, briefs or other

documents submitted or exchanged, any testimony or other oral submissions and any awards) will not be disclosed beyond the sole arbitrator, the Parties, their counsel, and any expert Person necessary to the conduct of the proceeding, except as may lawfully be required in judicial proceedings relating to the arbitration, as may be reasonably necessary for the enforcement of the arbitration award or as required by the *Freedom of Information and Protection Act (Ontario)*, the *Ontario Energy Board Act, 1998*, or the OEB Rules of Practice and Procedure, each as amended from time to time.

Notwithstanding the foregoing, the IESO may report on the outcome of an arbitration to the OEB, in which case the IESO will reasonably inform the Supplier of such reporting.

SECTION 9 MISCELLANEOUS

- 9.1 **Representatives.** Except as otherwise provided in this Agreement, any Notice will be addressed to the IESO Representative or Supplier Representative, as applicable, set forth in Schedule 9.1 to this Agreement.
- 9.2 **Provision of Information.** The Supplier will disclose or provide to the IESO such information as is required to be disclosed or provided pursuant to this Agreement. Such information will be disclosed or provided within the time and in the form and manner required by this Agreement.
- 9.3 **Protection of Confidential Information.**

The Parties agree that:

- 9.3.1 Information disclosed by the Supplier to the IESO in anticipation of or in the performance of this Agreement (including any documentation relating to the Schedules), that meets the definition of Confidential Information under the Market Rules will be treated in accordance with the confidentiality protections of chapter 3 of the Market Rules and regardless of whether such information is provided before or after the Effective Date; and
- 9.3.2 Information not expressly captured or defined as confidential information under the Market Rules, but which is non-public information (and regardless of whether marked as “confidential” by the disclosing Party) that is disclosed by the Supplier to the IESO in anticipation of or in the performance of this Agreement (including any documentation relating to the Schedules) will be treated as Confidential Information in accordance with the confidentiality protections of chapter 3 of the Market Rules and regardless of whether such information is provided before or after the Effective Date.
- 9.4 **Ownership and Treatment of Confidential Information.** All Confidential Information remains, at all times, the exclusive property of the disclosing Party. The receiving Party has no licence or other right to use or disclose any Confidential Information for any purpose whatsoever. The receiving Party may use Confidential Information only in respect of assessing the Supplier’s compliance under this Agreement and for purposes of enforcement and compliance under the

Market Rules. The receiving Party will ensure that none of its shareholders, directors, officers, partners, representatives, agents and advisors or any of its personnel or any other person for whom the receiving Party is responsible at law will use any of the Confidential Information for any purposes other than those expressly set out in this Agreement. Nothing in this Agreement shall preclude the IESO from providing Confidential Information to the OEB to report on compliance with this Agreement, provided that the IESO provides prior notice to the Supplier as to what Confidential Information of the Supplier the IESO is considering providing to the OEB.

- 9.5 **Ring-Fence Requirements.** The IESO will ensure that Confidential Information of Atura that the IESO has in its possession or control will at no time be provided to or disclosed to OPG, and *vice versa*, without the prior written consent of Atura or OPG, as applicable.
- 9.6 **Notification of Significant Events.** The Supplier will as soon as reasonably practicable in the circumstances provide Notice to the IESO of the occurrence of, or upon becoming aware of any circumstances that may give rise to any of the following events:
- 9.6.1 if it becomes unlawful for the Supplier to comply with any of the obligations under this Agreement;
 - 9.6.2 its OEB Licence becomes suspended, revoked or otherwise ceases to be in full force and effect; and
 - 9.6.3 any other event that is likely to materially affect the performance by the Supplier of its obligations under this Agreement, in relation to the Must-Offer Condition.
- 9.7 **Force Majeure.** If either Party is prevented or delayed by the occurrence of a Force Majeure Event from carrying out any of its obligations hereunder, the obligations of such Party, insofar as its obligations are affected by the Force Majeure Event, will be suspended while (but only for so long as) the Force Majeure Event continues to prevent or delay the performance of such obligations. Any Party intending to rely on the occurrence of a Force Majeure Event for the suspension of its obligations will give the other Party Notice of the Force Majeure Event within 20 Business Days, including reasonably full particulars in respect thereof.
- 9.8 **Public Disclosures.** This Agreement is a public document of the OEB and the IESO, and may be released for publication subject to redaction of commercially sensitive information reasonably identified by the Supplier.
- 9.9 **Governing Law.** This Agreement and each of the schedules contemplated by this Agreement are governed by, and are to be construed and interpreted in accordance with, the laws of Ontario and the laws of Canada applicable in Ontario.
- 9.10 **Counterparts.** This Agreement and any Amendment, restatement or termination of this Agreement in whole or in part may be signed and delivered in any number of counterparts, each of which when signed and delivered is an original but all of which taken together constitute one

and the same instrument. Any counterpart signature transmitted by sending a scanned copy by electronic mail or similar electronic transmission will be deemed to be an original signature.


[signature page follows]

The Parties have duly signed this Agreement, to be filed with the OEB for approval, and to take effect on the Effective Date.

PORTLANDS ENERGY CENTRE L.P., by its general partner,
PORTLANDS ENERGY CENTRE INC.

Print Name: Chris Fralick

Title: President

Signature: 

I have authority to bind the corporation, and the corporation has the authority to bind the limited partnership.

INDEPENDENT ELECTRICITY SYSTEM OPERATOR

Print Name: Michael Lyle

Title: VP, Legal Resources & Corporate Governance

Signature: *Michael Lyle*

I have authority to bind the corporation.

SCHEDULE 1.2A

Facilities

The following facilities, as listed in the Supplier's OEB Licence:

Natural Gas Combined Cycle - Owned and Operated

Halton Hills Generating Station
Napane Generating Station
Portlands Energy Centre

The Parties acknowledge that (i) it may be appropriate to include facilities not listed in the Supplier's OEB Licence that the Supplier has or takes control over market operations and ownership, which would occur at a future date, after completing regulatory and contractual requirements and processes, and (ii) the foregoing does not limit the powers and authorities of the IESO to monitor and enforce compliance by the Supplier with the Market Rules.

SCHEDULE 3.1.1

Must Offer Condition

The electricity generation licence of the Supplier (EG-2004-0540) contains the following conditions related to the requirement to offer into the IESO-Administered Markets.

5B.1 – Subject to any applicable regulatory or safety requirements and the Agreement described in section 5B.2, the Licensee shall at all times offer all available generating capacity into the IESO administered markets for Operating Reserve, the Day Ahead Commitment Process and for real-time Energy (the “Must-Offer Condition”).

5B.2 – The Licensee shall enter into an Agreement with the IESO for the purpose of assessing ongoing compliance with the Must-Offer Condition established in section 5B.1. The Agreement shall include any necessary detail or description of the Must-Offer Condition, the criteria that will be used to assess whether the Licensee has complied with the condition, and the right for the IESO to audit the Licensee where the IESO identifies based on the criteria that the Licensee may not have complied with the condition. The Licensee shall file the Agreement for approval of the OEB. Once the Agreement is approved, any material changes to the Agreement shall be filed with the OEB for approval.

This Agreement constitutes the “Agreement” referenced within the Supplier’s OEB Licence.

SCHEDULE 4.2.1.1

Physical Withholding Initial Monitoring

The IESO will conduct the Initial Monitoring Process regarding the Supplier's offers in the IESO-Administered Markets for Energy and Operating Reserve in respect of the Facilities, for each Calendar Month. The Initial Monitoring Process will be used by the IESO to assist in identifying whether there are areas of potential concern related to the Must-Offer Condition.

For monitoring in respect of physical withholding, the Initial Monitoring Process will be carried out across the Supplier's Facilities (i.e., not Facility-specific) to identify if there are hours for which the triggers outlined below are met. If such triggers are met, the IESO will proceed to a physical withholding verification process as described more fully, and in accordance with, Schedule 4.4.1.1 of the Agreement for such hours, on a Facility-by-Facility (i.e., Facility specific) basis ("**Offer Quantity Verification**").

Meeting the triggers outlined in this Schedule 4.2.1.1 in itself will not be deemed to be non-compliance with the Must-Offer Condition, but will trigger Offer Quantity Verification. Similarly, not meeting the triggers outlined in this Schedule will not preclude conducting Offer Quantity Verification, if the IESO determines that conducting such verification is appropriate in the circumstances.

The Initial Monitoring Process for physical withholding will involve the IESO monitoring the Supplier's offers, for Energy and Operating Reserve, for two sets of Facilities: (1) those that have a daily energy limit; and (2) all other Facilities. The monitoring will be conducted in relation to three scheduling windows: the day-ahead commitment process (DACP), Pre-dispatch and Real-time.

For hours where the IESO monitoring suggests materially lower offer quantities in certain time frames relative to others and where the prices/payments associated with those hours are high relative to average prices/payments, this may meet the IESO's Initial Monitoring Process trigger for those hours, in which case the IESO will proceed to Offer Quantity Verification in Schedule 4.4.1.1 in regard to those hours.

SCHEDULE 4.2.1.2

Economic Withholding Initial Monitoring

The IESO will conduct the Initial Monitoring Process regarding the Supplier's offers in the IESO-Administered Markets for Energy and Operating Reserve in respect of the Facilities, for each Calendar Month. The Initial Monitoring Process will be used by the IESO to assist in identifying whether there are areas of potential concern related to the Must-Offer Condition.

For monitoring in respect of economic withholding, the Initial Monitoring Process will be carried out across the Supplier's Facilities (i.e., not Facility-specific) to identify if there are hours for which the triggers outlined below are met. If such triggers are met, the IESO will proceed to an economic withholding verification process as described more fully, and in accordance with, Schedule 4.4.1.2 for such hours, on a Facility-by-Facility (i.e., Facility specific) basis ("**Offer Price Verification**").

Meeting the triggers outlined in this Schedule 4.2.1.2 in itself will not be deemed to be non-compliance with the Must-Offer Condition, but will trigger Offer Price Verification. Similarly, not meeting the triggers outlined in this Schedule will not preclude conducting Offer Price Verification, if the IESO determines that conducting such verification is appropriate in the circumstances.

The Initial Monitoring Process for economic withholding will focus on monitoring offers, for Energy and Operating Reserve, in relation to the three scheduling windows: the day-ahead commitment process (DACP), Pre-dispatch and Real-time, as well as other out-of-market commitments.

The Initial Monitoring Process triggers will be based on the residual supply index ("**RSI**"), which is an indicator of the market power of OPG and Atura in the supply of Energy and Operating Reserve. The RSI will measure the portion of total demand that can be met without any supply from OPG or Atura. Larger RSI values imply sufficient presence of competition whereas smaller values imply restricted competition.

For hours where the RSI is sufficiently low the IESO will proceed to Offer Price Verification in Schedule 4.4.1.2 in regard to those hours.

SCHEDULE 4.4.1.1

Offer Quantity Verification

If the IESO determines the Initial Monitoring Process triggers outlined in Schedule 4.2.1.1 were met for one or more hours, the IESO will proceed to Offer Quantity Verification for such hour(s) to assess whether there is physical withholding by one or more Facilities in such hour(s). Offer Quantity Verification involves verifying whether individual Facilities offered all of their Energy and Operating Reserve capability in the three scheduling windows: DACP, Pre-dispatch and Real-time.

Offer Quantity Verification will involve two steps. First, the IESO will use various Quantitative Tests (outlined below) to identify if the IESO considers that one or more Facilities may have engaged in physical withholding in one or more hours. Second, if such tests indicate instances of physical withholding, the IESO will further consider the Physical Withholding Parameters (described below) before coming to a determination of whether one or more Facilities engaged in physical withholding in one or more hours. In considering the Physical Withholding Parameters, the IESO shall give due consideration to any representations of the Supplier in respect of the Physical Withholding Parameters, or any other factors or additional parameters that the Supplier and the IESO deem relevant.

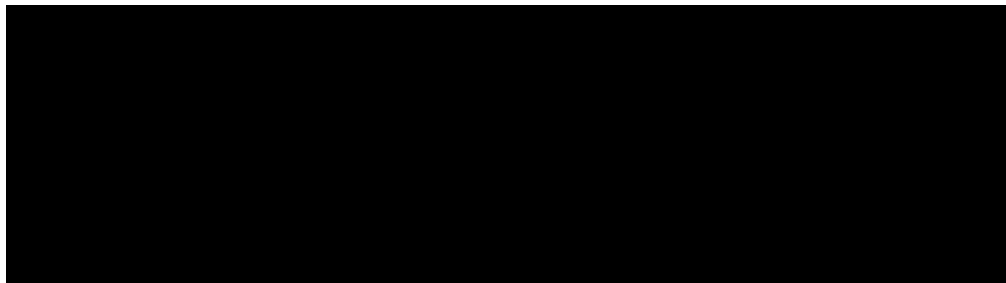
1. Quantitative Tests for Physical Withholding

These quantitative tests will use the observed market outcomes and the offered capability in the three scheduling windows (DACP, Pre-dispatch and Real-time) for individual Facilities. The tests will identify Facilities where (1) individual offered capabilities deviated significantly among the scheduling windows, (2) individual offered capabilities are significantly lower than typical historical and registered levels, and (3) the associated market prices/relevant uplift payments (such as, but not limited to, CMSCs, PCG and GCG) are materially higher than typical levels.

2. Physical Withholding Parameters

The following Physical Withholding Parameters, which may impact the ability of a Facility to offer, will be duly considered as part of any determination of physical withholding for Energy and each category of Operating Reserve in the DACP, Pre-dispatch and Real-time timeframes. The inclusion of these parameters indicates only that they may be relevant and may be considered. The extent to which any particular parameter may in fact be applicable to particular circumstances will have to be evaluated and substantiated on a case by case basis as reasonably expected or forecasted, including parameters which may not be listed.

Table: Physical Withholding Parameters



SCHEDULE 4.4.1.2

Offer Price Verification

If the IESO determines that the Initial Monitoring Process triggers outlined in Schedule 4.2.1.2 are met for one or more hours, the IESO will proceed to Offer Price Verification for such hour(s) to assess whether there is economic withholding by one or more Facilities in such hour(s). Offer Price Verification involves verifying whether individual Facilities offered their Energy and Operating Reserve at prices consistent with relevant costs (described below) in the three scheduling windows: DACP, Pre-dispatch and Real-time.

Offer Price Verification will involve two steps. First, the IESO will use various Quantitative Tests (outlined below) to identify if the IESO considers that one or more Facilities may have engaged in economic withholding in one or more hours. Second, if such tests indicate instances of economic withholding, the IESO will further consider the Economic Withholding Parameters (described below) before coming to a determination of whether one or more Facilities engaged in economic withholding in one or more hours. In considering the Economic Withholding Parameters, the IESO shall give due consideration to any representations of the Supplier in respect of the Economic Withholding Parameters, or any other factors the Supplier and the IESO deem relevant.

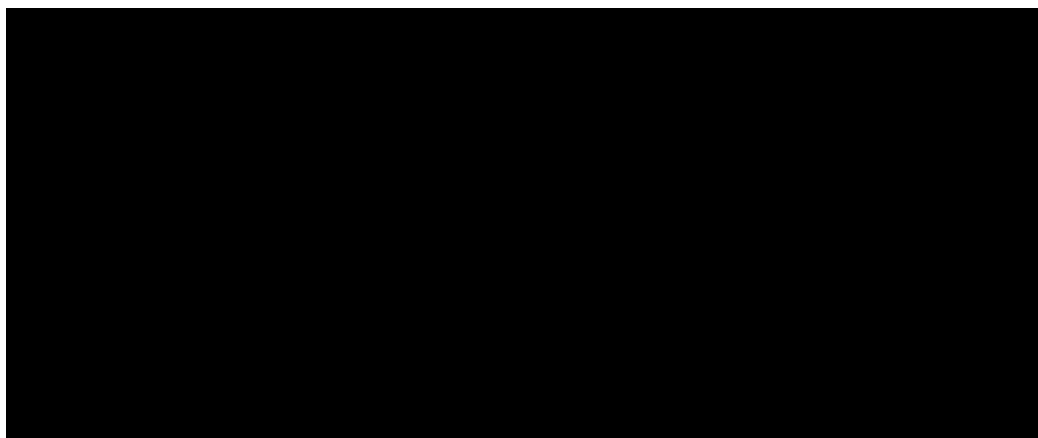
1. Quantitative Tests for Economic Withholding

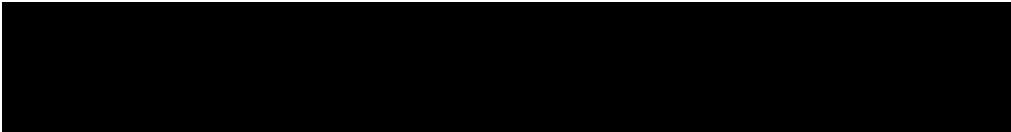
These tests will identify Facilities based on the offer prices and observed outcomes for further evaluation. If the scheduling and cost outcomes from the sequential scheduling windows diverge significantly from reasonable levels and the offer prices also deviate from typical levels, then such Facility offers will be flagged for a detailed verification based on the parameters identified below.

2. Economic Withholding Parameters

The following Economic Withholding Parameters, which may impact a Facility's offer pricing, will be duly considered as part of any determination of economic withholding for Energy and each category of Operating Reserve in the DACP, Pre-dispatch and Real-time timeframes. The inclusion of these parameters indicates only that they may be relevant and may be considered. The extent to which any particular parameter may in fact be applicable to particular circumstances will have to be evaluated and substantiated on a case by case basis as reasonably expected or forecasted, including parameters which may not be listed.

Table: Economic Withholding Parameters





SCHEDULE 5.1

Benefit Assessment

If the IESO determines, pursuant to Schedule 4.4.1.1 or Schedule 4.4.1.2, as applicable, and including reasonably considering any representations from the Supplier, that there has been physical and/or economic withholding by one or more Facilities in one or more hours, the IESO will conduct a benefit assessment to determine the net benefit to the Supplier and OPG that resulted from such withholding.

In particular, the IESO will assess by simulation what market prices/relevant uplift payments (such as, but not limited to, CMSCs, PCG and GCG) would have prevailed if available capacity had been offered (i.e., no physical withholding in accordance with Schedule 4.4.1.1) and at prices that did not exceed relevant costs (i.e., no economic withholding in accordance with Schedule 4.4.1.2).

Where such an assessment indicates no simulated impact on market prices/ relevant uplift payments (such as, but not limited to, CMSCs, PCG and GCG), the IESO will not, unless there is compelling evidence otherwise, determine that the Supplier and/or OPG benefitted from the withholding. Where the IESO determines that the Supplier and/or OPG did not benefit from the withholding, the IESO will report this finding forthwith to the Supplier and OPG.

Where such an assessment indicates a simulated increase in market prices/relevant uplift payments (such as, but not limited to, CMSCs, PCG and GCG), the IESO will, unless there is compelling evidence otherwise, investigate the net benefit to the Supplier and OPG. Any assessment of benefit will reasonably consider all of the Supplier's and OPG's relevant costs and revenues, which may include but are not limited to: cost parameters, consistent with Schedule 4.4.1.2; IESO contracts, inclusive of all elements considered in the calculation of the total payment; other contracts, if applicable; OEB rate regulation, including OEB approved variance accounts; and, any other relevant market-based revenues and costs.

The benefit will be assessed on a net basis taking into account all of these costs and revenues, as well as additional costs and benefits reasonably determined by the Parties, and will be based on the cumulative result for both the Supplier and OPG.

SCHEDULE 5.2

Recovery/Remedies

If the IESO determines, pursuant to Schedule 5.1, that there has been a benefit to Atura and OPG as a result of physical and/or economic withholding, this Schedule outlines the process that the IESO would use to recover such benefits.

No benefits shall be recovered pursuant to this Schedule unless the Supplier has received a Compliance Notice (as defined in Section 5.2.1 of this Agreement) and been afforded the opportunity to make representations and, if applicable, pursue dispute resolution as provided for in Section 5 and in accordance with Section 8 of this Agreement. For clarity, in the case of dispute resolution, no amount in dispute will be required to be paid until after completion of the dispute resolution process.

If a determination of recovery amounts to be implemented has been made in accordance with Section 5 of this Agreement, the recovery process shall be implemented in similar fashion to other payment recovery processes executed by the IESO. A charge will be added to the next available month-end settlement statement and will appear as a distinct line item.

Any recovery amount as a result of this Agreement, is expected to be, if possible, agreed by the Parties, based on discussions and good faith negotiations, acknowledging the interest of all Parties to support competition in the IESO-Administrated Markets. The recovery amount will not be in excess of the net benefit assessment, as outlined in Section 5.1. The recovery amount, to the extent reasonably achievable, will be allocated between the Supplier and OPG based on the proportional net benefit accrued. The IESO will reasonably consider input from both the Supplier and OPG as to the appropriate proportional benefit to be allocated to each of the Supplier and OPG.

Notwithstanding the foregoing, nothing in this Schedule precludes the IESO from considering representations from the Supplier regarding other remedies that may be imposed to address benefits identified in Schedule 5.1. The IESO will reasonably consider any such representations; however, the Parties acknowledge that recovery of benefits will be an appropriate remedy unless there is compelling evidence that another remedy is more appropriate in the circumstances. The Parties also acknowledge that it is not their intent to attempt to recover amounts that are in aggregate *de minimis*.

SCHEDULE 6.1

Form of Amending Agreement

AMENDING AGREEMENT NUMBER [1]

This Agreement is made as of the ____ day of _____, 20 ____, (the “Effective Date”) between

PORTLANDS ENERGY CENTRE INC. ON BEHALF OF PORTLANDS ENERGY CENTRE L.P., a limited partnership formed under the laws of Ontario and doing business as Atura Power, and an indirect wholly-owned subsidiary of OPG, (the “Supplier”),

- and -

INDEPENDENT ELECTRICITY SYSTEM OPERATOR, a statutory corporation without share capital amalgamated under the laws of the Province of Ontario (“IESO”).

RECITALS

- A. The Supplier and the IESO entered into a Must-Offer Condition Assessment Agreement dated as of [●], 2020 (the “Original Agreement”).
- B. The Supplier and the IESO have agreed to amend the Original Agreement to [●].

For value received, the Parties agree as follows.

1. Interpretation

Any defined term used in this Agreement that is not defined in this Agreement has the meaning given to that term in the Original Agreement. In this Agreement, the following terms have the respective meanings set out below.

- (a) **[Insert any definitions required in this Agreement.]**

2. Change to Section [●] (Title of Section)

Section [●] of the Original Agreement is deleted in its entirety and replaced with the following.

OR

Section [●] of the Original Agreement is deleted in its entirety.

OR

The following Section is added as a new Section [●] to the Original Agreement.

3. Change to Section [●] (Title of Section)

Section [●] of the Original Agreement is deleted in its entirety and replaced with the following.

OR

Section [●] of the Original Agreement is deleted in its entirety.

OR

The following Section is added as a new Section [●] to the Original Agreement.

Change to Schedule [●] (Title of Schedule)

Schedule [●] of the Original Agreement is deleted in its entirety and replaced with Schedule [●] attached hereto as Appendix A.

OR

The following Section is added as a new Section [●] to Schedule [●].

4. Original Agreement Remains in Full Force

Except for changes to the Original Agreement set out in this Agreement and any previous Amendment, the Original Agreement remains in full force, unamended.

The Parties have duly executed this Agreement as of the Effective Date.

PORTLANDS ENERGY CENTRE L.P., by its general partner, PORTLANDS ENERGY CENTRE INC.

By:

Name:

Title:

INDEPENDENT ELECTRICITY SYSTEM OPERATOR

By:

Name:

Title:

SCHEDULE 9.1

Representatives for Notices

IESO

Name of IESO Representative:	[REDACTED]
Title:	Director, Rule Compliance & Market Surveillance
Address:	Station A, Box 4474 Toronto, ON M5W 4E5
Email address:	[REDACTED]
Phone:	[REDACTED]

Supplier

Name of Supplier Representative:	[REDACTED]
Title:	Manager, Market Affairs
Address:	208 – 2800 High Point Drive Milton, ON L9T 6P4
Email address:	[REDACTED]
Phone:	[REDACTED]