

STRICTLY PRIVATE AND CONFIDENTIAL

BRUCE POWER REFURBISHMENT IMPLEMENTATION AGREEMENT

Between

BRUCE POWER L.P.

- and -

BRUCE POWER A L.P.

- and -

ONTARIO POWER AUTHORITY

DATED as of the 17th day of October, 2005

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BRUCE POWER REFURBISHMENT IMPLEMENTATION AGREEMENT

This Bruce Power Refurbishment Implementation Agreement is dated as of the 17th day of October, 2005 between Bruce Power L.P., a limited partnership created under the laws of Ontario and as represented by its general partner, Bruce Power Inc., Bruce Power A L.P., a limited partnership created under the laws of Ontario and as represented by one of its general partners, Bruce Power A Inc., and the Ontario Power Authority, a corporation without share capital existing under the *Electricity Act*.

WHEREAS the Government of Ontario, through the Minister of Energy, wishes to increase the long-term supply of generating capacity within the Province of Ontario;

AND WHEREAS BPLP currently leases the Facility and operates and maintains Bruce B and the Common Facilities, and supplies Electricity from Bruce B to the IESO-Administered Markets;

AND WHEREAS BALP on and after the Commencement Date shall sublease Bruce A and supply Electricity from Bruce A to the IESO-Administered Markets and shall have arranged for BPLP to operate and maintain Bruce A;

AND WHEREAS BALP plans to refurbish and restart Units 1 and 2, refurbish Unit 3, replace the steam generators of Unit 4, and supply Electricity from Bruce A to the IESO-Administered Markets, all on the terms and conditions set out herein;

AND WHEREAS each of the Generators and the Counterparty wish to execute this Agreement to formalize, among other things, the financial transactions contemplated hereunder on the terms and conditions set out herein;

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

ARTICLE 1 INTERPRETATION

1.1 Definitions

In addition to the terms defined elsewhere herein, the following capitalized terms shall have the meanings stated below when used in this Agreement:

“**Acknowledgement and Consent**” has the meaning ascribed to it in Section [11.3](#).

“**Actual Hourly Energy Payment**” means the average hourly price in \$/MWh, determined on a sales weighted average basis by reference to the price that a Generator actually receives for the sale of the Electricity from Bruce A or Bruce B, as applicable, in an hour, including, in the case

of BALP, sales pursuant to Physical Delivery Contracts and Financial Contracts permitted pursuant to Section 1.10(a).

“**Actual per MWh Operating Costs**” has the meaning ascribed to it in Exhibit 3.5.

“**Administrative Price**” means the price established by the IESO for Bruce A and for Bruce B, as applicable, in the circumstances referred to, and in accordance with, the IESO Market Rules, or the equivalent price made available by the IESO if the IESO does not establish such price, which price is a substitute for HOEP during any period of time during which HOEP is temporarily unavailable or cannot otherwise be determined by the IESO on an interim basis.

“**Affiliate**” means any Person that: (i) Controls a Party; (ii) is Controlled by a Party; or (iii) is Controlled by the same Person that Controls a Party.

“**Agreement**” means this Bruce Power Refurbishment Implementation Agreement, including all recitals, Exhibits and Schedules to Exhibits attached hereto and the Technical Schedule, as it or they may be amended, amended and restated or replaced from time to time.

“**Ancillary Services**” has the meaning ascribed to it in the IESO Market Rules, and shall, in any event, include frequency control, voltage control, reactive power and operating reserve.

“**Approved Procurement Strategy**” has the meaning ascribed to it in Section 2.14(a).

“**Arm’s Length**” means, with respect to two or more Persons, that such Persons are not related to each other within the meaning of subsections 251(2)(b), 251(2)(c), (3), (3.1), (3.2), (4) and (5) of the *Income Tax Act* (Canada) or that such Persons, as a matter of fact, deal with each other at a particular time at arm’s length.

“**Arbitral Tribunal**” has the meaning ascribed to it in Exhibit 15.2.

“**Assignee**” has the meaning ascribed to it in Section 15.6(d).

“**Assignor**” has the meaning ascribed to it in Section 15.6(d).

“**BAAR**” means, for any given Month during the Term, the revenue from Bruce A Energy actually receivable by BALP in respect of such Month as calculated in accordance with Exhibit 3.2.

“**BACR**” means, for any given Month during the Term, the Bruce A contract revenue as calculated in accordance with Exhibit 3.2.

“**BALP**” means Bruce Power A L.P., and its successors and permitted assigns.

“**BALP Sublease**” means the sublease agreement dated the date hereof, together with any amendment, change, supplement, restatement, extension, renewal or modification thereof, between BALP and BPLP, and pursuant to which BALP subleases Bruce A from BPLP.

“**Base Case per MWh Operating Costs**” has the meaning ascribed to it in Exhibit 3.5.

“**BBAR**” means, for any given Month during the Term, the revenue from Bruce B Energy actually receivable by BPLP in respect of such Month as calculated in accordance with Exhibit 3.2.

“**BBCR**” means, for any given Month during the Term, the Bruce B contract revenue as calculated in accordance with Exhibit 3.2.

“**BPLP**” means Bruce Power L.P., and its successors and permitted assigns.

“**Bruce A**” means Units 1, 2, 3 and 4 and the electrical generating units paired with such Units and designated as “unit generator 1” to “unit generator 4”, inclusive.

“**Bruce A Energy**” means, in any hour, the net amount of Electricity generated by BALP from Bruce A as measured at the Point of Delivery, and any Deemed Electricity as provided in Section 5.1 attributable to Bruce A.

“**Bruce A Fuel Costs**” means, for any given Month during the Term, the total all-in costs and expenses incurred by BALP in respect of the delivered fuel used for the production of Bruce A Energy for such Month, including in respect of fuel procurement, supply, processing, enrichment, conversion, fabrication, scrap processing, administration, permitting, interest, transportation and licensing, and all other costs and expenses incurred pursuant to and in accordance with the Specified Fuel Supply Arrangements, including Taxes (other than the amount of Commodity Taxes recovered by the Generator) applicable to the foregoing.

“**Bruce A Price**” means \$57.37 per MWh, as adjusted from time to time in accordance with Section 3.5 and as may be adjusted pursuant to Section 2.8.

“**Bruce B**” means Units 5, 6, 7 and 8 and the electrical generating units paired with such Units and designated as “unit generator 5” to “unit generator 8”, inclusive.

“**Bruce B Energy**” means, in any hour, the net amount of Electricity generated by BPLP from Bruce B as measured at the Point of Delivery, and any Deemed Electricity as provided in Section 5.1 attributable to Bruce B but excluding any Electricity generated by the electrical generating unit paired with (i) Unit 5 after December 31, 2016, (ii) Unit 6 after December 31, 2015, (iii) Unit 7 after December 31, 2017, and (iv) Unit 8 after December 31, 2019.

“**Bruce B Floor Price**” means \$45.00 per MWh, as adjusted from time to time in accordance with Section 3.6.

“**Bruce Energy Congestion Revenue**” has the meaning ascribed to it in Section 5.1(b).

“**Business Day**” means a day, other than a Saturday or Sunday or statutory holiday in the Province of Ontario or any other day on which banking institutions in Toronto, Ontario are not open for the transaction of business.

“**Capacity Products**” means any products related to the rated continuous load-carrying capability, expressed in MW, of an electrical generating unit to generate and deliver Electricity at a given time.

“**Change of Law**” means (i) any change of any Ontario Laws and Regulations by a Governmental Authority of the Province of Ontario or (ii) any change in the interpretation, implementation or administration by a Governmental Authority of the Province of Ontario of any Ontario Laws and Regulations.

“**Clawback Determination Date**” has the meaning ascribed to it in Section 8.2(f).

“**Clawback Payment**” has the meaning ascribed to it in Section 8.2(f).

“**CNSC**” means the Canadian Nuclear Safety Commission, or its successor.

“**Commencement Date**” has the meaning ascribed to it in Section 8.3.

“**Commercial Operation**” has the meaning ascribed to it in Section 2.3.

“**Commercial Operation Date**” means, in respect of a Unit, the date on which Commercial Operation of such Unit is first attained.

“**Commercially Reasonable Efforts**” means efforts which are designed to enable a Party, directly or indirectly, to perform its obligations under this Agreement and which do not require the performing Party to expend any funds or assume liabilities other than expenditures and liabilities which are reasonable in nature and amount in the context of the obligations to be performed.

“**Commodity Taxes**” means all applicable federal, provincial, territorial, state and municipal taxes and any other taxes, duties, special import measures, fees, levies, premiums or other charges imposed by any Governmental Authority, whether direct or indirect, in respect of a property or service, including those levied on or measured by, or referred to as, sales, use, consumption, GST, HST, PST, ad valorem, value added, excise, stamp, surtaxes and gross receipt taxes.

“**Common Facilities**” means the lands described as OPG-Huron Common Facilities Inc. lands in Schedule 2.1 of the OPG Lease, together with all premises, equipment and improvements located thereon and any easements appurtenant thereto.

“**Confidential Information**” means all information in whatever form (whether written, oral, electronic or documentary) of the Counterparty or a Generator, as applicable, that is of a confidential or proprietary nature or otherwise not generally available to the public, including terms or information redacted from the form of this Agreement made public as agreed to by the Parties, the Technical Schedule, all information provided or obtained pursuant to the provisions of this Agreement, and all confidential information in the custody or control of the Counterparty or a Generator, as applicable, whether recorded or not and however fixed, stored, expressed or

embodied, which comes into the knowledge, possession or control of the other Party in connection with this Agreement. For greater certainty, Confidential Information shall:

- (a) include: (i) any document, electronic record, correspondence, note, extract or analysis containing, recalling or recording Confidential Information and all new information which is derived at any time from or reflects the review of any such Confidential Information described above, whether created by a Party or any third party at the request or direction of a Party and all copies and extracts thereof whether created by a Party or a third party at the request or direction of a Party; and (ii) all information that a Party is obliged, or has the discretion, not to disclose under applicable Laws and Regulations; and
- (b) not include information that: (i) is or becomes generally available to the public without fault or breach on the part of a Party of any duty of confidentiality owed by a Party to another Party or to any third party; (ii) a Party can demonstrate to have been rightfully obtained by it, without any obligation of confidence, from a third party who, to the knowledge of such Party, had the right to transfer or disclose it to the Party free of any obligation of confidence; (iii) a Party can demonstrate to have been rightfully known to or in the possession of such Party at the time of disclosure, free of any obligation of confidence when disclosed; or (iv) is independently developed by a Party.

“Connection Agreements” means the transmission connection agreements with the Transmitter, as such agreements may be amended, restated or replaced from time to time, with respect to the connection of Bruce A to the Transmission System in accordance with the Transmission System Code and governing the terms and conditions of such connection.

“Connection Costs” means the Refurbishment Costs attributable to connecting Bruce A to the IESO-Controlled Grid at the Point of Delivery, excluding any System Upgrade Costs, as determined in accordance with the Transmitter’s policies and procedures, as applicable, and by the OEB, if necessary.

“Contingent Support Payment (Bruce A)” is a payment calculated pursuant to Exhibit 3.2 and to be made by the Counterparty to BALP pursuant to Section 3.2(a).

“Contingent Support Payment (Bruce B)” is a payment calculated pursuant to Exhibit 3.2 and to be made by the Counterparty to BPLP pursuant to Section 3.2(c).

“Contract Year” means a consecutive twelve (12) Month period during the Term which begins at the beginning of the hour ending 01:00 (EST) on January 1, and ends at 24:00 (EST) on December 31, except that the first Contract Year shall commence at the beginning of the hour ending 01:00 (EST) on the Commencement Date and end at 24:00 (EST) on December 31 of the first Contract Year and the last Contract Year shall end at 24:00 (EST) on the last day of the Term.

“**Control**” means, with respect to any Person or Party at any time, (i) holding, as owner or other beneficiary, other than solely as the beneficiary of an unrealized security interest, directly or indirectly, securities, ownership or similar interests of that Person or Party carrying votes or ownership interests sufficient to elect or appoint the majority of individuals who are responsible for the supervision or management of that Person or Party, (ii) the exercise of de facto control of that Person or Party, whether direct or indirect and whether through the ownership of securities, ownership or similar interests, by contract or trust or otherwise, or (iii) in the case of the Counterparty, includes any Person that otherwise directs the supervision and management of the Counterparty and includes the Government of Ontario.

“**Costs**” means all costs and expenses reasonably incurred by a Party in terminating any arrangements relating to the transactions provided for under this Agreement and all reasonable legal fees and out of pocket expenses incurred in connection with enforcing its rights under this Agreement.

“**Counterparty**” means the Ontario Power Authority, and its successors and permitted assigns.

“**Counterparty Cure Period**” has the meaning ascribed to it in Section 9.4(a)(ii).

“**Counterparty Event of Default**” has the meaning ascribed to it in Section 9.3.

“**Counterparty Indemnitees**” has the meaning ascribed to it in Section 13.3.

“**Counterparty Suspended Payments**” has the meaning ascribed to it in Section 9.4(a)(ii).

“**Counterparty Statement**” has the meaning ascribed to it in Section 11.2(g).

“**Counterparty’s Proposed Discriminatory Action Compensation Amount**” has the meaning ascribed to it in Section 12.3(d).

“**Counterproposal**” has the meaning ascribed to it in Section 2.14(c).

“**CPI**” means the ratio of the cost of a fixed set of commodities purchased by consumers in the Province of Ontario in a particular time period to the cost of such commodities in a base period as reflected by the Consumer Price Index for Ontario (all items) published by Statistics Canada (or by any successor thereof) from time to time. The current series number for CPI is 326-0002.

“**CPI Adjustment Factor**” has the meaning ascribed to it in Section 3.5(b).

“**CSP(BB)**” means a Contingent Support Payment (Bruce B) as calculated pursuant to Exhibit 3.2.

“**Daily LD Amount**” has the meaning ascribed to it in Section 2.7(a).

“**Day-Ahead Energy Forward Market**” means a forward market, established under the IESO Market Rules or otherwise, for Electricity or for Electricity and Related Products for each hour of a given day, that clears the day before based upon submitted bids to buy and offers to sell.

“**Deemed Electricity**” has the meaning ascribed to it in Section 5.1(a).

“**Defaulting Party**” has the meaning ascribed to it in Section 9.5(a).

“**Discriminatory Action**” has the meaning ascribed to it in Section 12.1.

“**Discriminatory Action Compensation**” has the meaning ascribed to it in Section 12.2.

“**Discriminatory Action Compensation Dispute Notice**” has the meaning ascribed to it in Section 12.3(d).

“**Discriminatory Action Set Date**” has the meaning ascribed to it in Section 12.1.

“**Discriminatory Action Taxes**” means all Taxes and all taxes based on profits, net income or net worth.

“**Disruption Event**” has the meaning ascribed to it in Section 5.1(a).

“**Early Termination Damages**” means the damages of the Terminating Party that are or would be incurred under then prevailing circumstances in replacing, or in providing the Terminating Party the economic equivalent of, the provisions of Article 3 of this Agreement, including the Monthly Payments that would, but for the occurrence of the relevant Early Termination Date, have been received or made pursuant to Article 3 after that date.

“**Early Termination Date**” has the meaning ascribed to it in Section 9.5(a).

“**Early Termination Payment**” has the meaning ascribed to it in Section 9.5(b).

“**Effectively Decommissioned**” means that a Unit has been laid up or shut down such that it will be out of service for an indefinite period of time without reasonable expectation of restart.

“**Eighth Unit**” has the meaning ascribed to it in Section 5.1(g).

“**Electricity**” means electric energy.

“**Electricity Act**” means the *Electricity Act, 1998* (Ontario).

“**Emission Reduction Credits**” means the credits associated with the amount of emissions to the air avoided by reducing the emissions below the lower of actual historical emissions or regulatory limits, including “emission reduction credits” as defined in O. Reg. 397/01 made under the *Environmental Protection Act* (Ontario), or such other regulation as may be promulgated under the *Environmental Protection Act* (Ontario).

“**Encumbrance**” means any mortgage, charge, hypothec, pledge, security interest, assignment by way of security, lien, trust and encumbrance of any nature whatsoever, howsoever arising, and “**Encumber**” has a corresponding meaning.

“**Environmental Attributes**” means environmental attributes associated with Bruce A having low environmental impact, and includes:

- (a) rights to any fungible or non-fungible attributes, whether arising from the generating facility itself, from the interaction of the generating facility with the IESO-Controlled Grid or the Local Distribution System or because of applicable legislation or voluntary programs established by Governmental Authorities;
- (b) any and all rights relating to the nature of the energy source as may be defined and awarded through applicable legislation or voluntary programs. Specific environmental attributes include ownership rights to Emission Reduction Credits or entitlements resulting from interaction of the generating facility with the IESO-Controlled Grid or the Local Distribution System or as specified by applicable legislation or voluntary programs, and the right to quantify and register these with competent authorities; and
- (c) all revenues, entitlements, benefits and other proceeds arising from or related to the foregoing, including tax credits.

“**EST**” means Eastern Standard Time.

“**ETA**” means Part IX of the *Excise Tax Act* (Canada).

“**Event of Default**” means a Counterparty Event of Default or a Generator Event of Default.

“**Expected Unit 3 Refurbishment Costs**” has the meaning ascribed to it in Section 8.2(g).

“**Facility**” means the Bruce nuclear power generation facilities leased by BPLP located near Tiverton, Ontario which comprises Bruce A, Bruce B and the Common Facilities.

“**Final Completion**” has the meaning ascribed to it in Exhibit 3.5.

“**Financial Contracts**” has the meaning ascribed to it in Section 2.12(a).

“**FIPPA**” means the *Freedom of Information and Protection of Privacy Act* (Ontario).

“**First Special Allocation Mechanism**” has the meaning ascribed to it in Section 10.1(g).

“**First Unit**” has the meaning ascribed to it in Exhibit 3.5.

“**Force Majeure**” means any of Type 1 Force Majeure, Type 2 Force Majeure or Type 3 Force Majeure.

“**Forfeited Counterparty Suspended Payments**” has the meaning ascribed to it in Section 9.4(a)(ii).

“**Forfeited Generator Suspended Payments**” has the meaning ascribed to it in Section 9.2(a)(ii).

“**Fuel Amendment Notice**” has the meaning ascribed to it in Section 2.14(b).

“**Fuel Supply Variations**” has the meaning ascribed to it in Section 2.14(a).

“**GAAP**” means generally accepted accounting principles approved or recommended from time to time by the Canadian Institute of Chartered Accountants, or its successor, applied on a consistent basis.

“**Generating Stations**” means collectively, Bruce A and Bruce B, and “**Generating Station**” means either of them as the context may require.

“**Generator Cure Period**” has the meaning ascribed to it in Section 9.2(a)(ii).

“**Generator Event of Default**” has the meaning ascribed to it in Section 9.1.

“**Generator Indemnities**” has the meaning ascribed to it in Section 2.6(c).

“**Generator Non-acceptance Notice**” has the meaning ascribed to it in Section 12.3(d).

“**Generator Suspended Payments**” has the meaning ascribed to it in Section 9.2(a)(ii).

“**Generators**” means, collectively, BALP and BPLP, and “**Generator**” means either of them as the context may require.

“**Generator’s Interest**” means the right, title and interest of a Generator in or to the Facility, the OPG Lease or the BALP Sublease, and this Agreement, in whole or in part, or any proceeds, benefit or advantage of any of the foregoing.

“**Good Engineering Practices**” means any of the practices, methods and activities adopted by a significant portion of the North American electric generating industry as good practices applicable to, as the context in this Agreement requires, the refurbishment and/or operation of nuclear generating facilities of similar design, size and capacity or any of the practices, methods or activities which, in the exercise of skill, diligence, prudence and judgment by a prudent nuclear electric generator in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety, expedition and Laws and Regulations. Good Engineering Practices are not intended to be limited to the optimum practices, methods or acts to the exclusion of all others, but rather are intended to delineate practices, methods or acts generally accepted in the North American electric generating industry. Without limiting the generality of the foregoing, and in respect of the operation of the Facility and/or, as applicable, the Refurbishment of any Unit, Good Engineering Practices include taking steps to reasonably ensure that:

- (d) adequate materials, resources and supplies, including fuel, are available to meet the needs of the Facility under reasonable conditions and reasonably anticipated abnormal conditions;
- (e) sufficient operating personnel are available and are adequately experienced and trained to operate the Facility properly, efficiently and taking into account manufacturers' guidelines and specifications and are capable of responding to reasonably anticipated abnormal conditions;
- (f) preventative, routine and non-routine maintenance and repairs are performed on a basis that promotes reliable long-term and safe operation and taking into account manufacturers' recommendations and are performed by knowledgeable, trained and experienced personnel utilizing proper equipment, tools and procedures; and
- (g) appropriate monitoring and testing is done to ensure equipment is functioning as designed and to provide reasonable confidence that equipment will function properly under both normal and reasonably anticipated abnormal conditions.

“**Government of Ontario**” means Her Majesty the Queen in right of Ontario.

“**Governmental Authority**” means any federal, provincial, municipal or local government, parliament or legislature, or any regulatory authority, agency, tribunal, commission, board or department of any such government, parliament or legislature, or any court or other law, regulation or rule-making entity, having jurisdiction in the relevant circumstances, including, for greater certainty, the CNSC, the IESO, the OEB, the Electrical Safety Authority, and any Person acting under the authority of any Governmental Authority.

“**GST**” means the goods and services tax levied under the ETA.

“**Guarantees**” means the guarantees dated the date hereof issued by each of TransCanada Energy Investments Ltd. and BPC Generation Infrastructure Trust (and their respective successors and permitted assigns pursuant to the terms of such guarantees), as guarantors, to the Counterparty, as they may be amended, amended and restated or replaced (including by a replacement guarantor) from time to time.

“**HOEP**” or the “**Hourly Ontario Energy Price**” means the arithmetic average of the uniform Ontario energy prices determined for each of the twelve five-minute dispatch intervals in a particular hour and determined by the IESO using the variables, data and formulae set forth in the IESO Market Rules in effect as of the date hereof. For the purposes of this Agreement, HOEP is expressed in dollars per MWh.

“**HST**” means the harmonized sales tax levied under the ETA.

“**IESO**” means the Independent Electricity System Operator established under Part II of the *Electricity Act*, or its successor.

“**IESO-Administered Markets**” means the markets established by the IESO Market Rules, or their successor markets.

“**IESO-Controlled Grid**” has the meaning ascribed to it in the IESO Market Rules.

“**IESO Market Rules**” means the rules governing the IESO-Controlled Grid and establishing and governing the IESO-Administered Markets, together with all market manuals, policies, interpretation bulletins and guidelines issued by the IESO, as the same may be amended, restated, supplemented or superceded from time to time.

“**including**” means “including, without limitation”.

“**Incremental Bruce A Energy**” has the meaning ascribed to it in Section 2.8.

“**Incremental Bruce A Price**” has the meaning ascribed to it in 2.8.

“**Indemnifiable Loss**” has the meaning ascribed to in Section 13.3.

“**Indemnifying Party**” has the meaning ascribed to it in Section 13.4(a).

“**Indemnitees**” means the Counterparty Indemnitees or the Generator Indemnitees, as applicable.

“**Index Change Event**” has the meaning ascribed to it in Section 1.11(b).

“**Insolvency Legislation**” means the *Bankruptcy and Insolvency Act* (Canada), the *Winding Up and Restructuring Act* (Canada) and the *Companies’ Creditors Arrangement Act* (Canada) and any other bankruptcy, insolvency, moratorium, reorganization or other similar laws affecting creditors rights and the bankruptcy, insolvency, moratorium, reorganization, creditor protection or similar laws of any other applicable jurisdiction, as they may be amended from time to time.

“**Interest Rate**” means the annual rate of interest established by The Bank of Nova Scotia or its successor (or the bank with which a Generator conducts day-to-day banking if The Bank of Nova Scotia and, if applicable, its successor, no longer exists) from time to time, as the interest rate it will charge for demand loans in dollars to its commercial customers in Canada and which it designates as its “prime rate” based on a year of 365 or 366 days, as applicable. Any change in such prime rate shall be effective automatically on the date such change is announced by The Bank of Nova Scotia or such successor or replacement bank.

“**ITA**” means the *Income Tax Act* (Canada).

“**Laws and Regulations**” means:

- (h) applicable federal, provincial or municipal laws, orders-in-council, by-laws, ordinances, codes, rules, policies, directions, guidelines, regulations and statutes;

- (i) applicable orders, decisions, codes, judgments, injunctions, decrees, awards and writs of any Governmental Authority, arbitrator or other Person having jurisdiction;
- (j) applicable rulings and conditions of any licence, permit, certificate, registration, authorization, consent and approval issued by a Governmental Authority;
- (k) any requirements under or prescribed by applicable common law; and
- (l) applicable IESO Market Rules.

“**LD Month**” has the meaning ascribed to it in Section 2.7(a).

“**Limited Partners**” means the limited partners, from time to time, of either Generator or as the context may require.

“**Local Distribution System**” means a system for conveying Electricity at voltages of 50 kilovolts or less and includes any structures, equipment or other things used for that purpose.

“**Locational Marginal Pricing**” or “**LMP**” means the form of pricing of Electricity, as determined and modified by the IESO from time to time, to be considered and implemented by the IESO, if at all, based upon a non-uniform, real-time, price of Electricity at each point, node, zone or other price reference location on the IESO-Controlled Grid and having the effect that such real-time prices reflect the costs of transmission congestion.

“**Material Adverse Effect**” means any change (or related changes taken together) in, or effect on, the affected Party that materially and adversely affects the ability of such Party to perform its obligations hereunder.

“**Milestone Date**” means, for each Unit to be Refurbished, the date set forth or described under the heading “Milestone Date” in the third column of Exhibit 2.7 of the Technical Schedule in respect of each such Unit as same may be extended in accordance with Section 10.1(f).

“**Milestone Date +3**” has the meaning ascribed to it in Section 2.7(a).

“**Milestone Date +9**” has the meaning ascribed to it in Section 2.7(a).

“**Milestone Date +15**” has the meaning ascribed to it in Section 2.7(a).

“**Month**” means a calendar month, except in respect of the first Month of the Term (which shall run from the Commencement Date to and including the last day of the calendar month in which the Commencement Date occurs) and the last Month of the Term (which shall run from the first day of the calendar month in which the last day of the Term occurs to and including the last day of the Term).

“**Monthly Payment**” means the total payment required to be made by one Party to another Party pursuant to Section 3.2, as applicable, in respect of each Month of the Term.

“**MW**” means megawatt.

“**MWh**” means megawatt hour, being a unit of electrical energy equivalent to one megawatt of energy delivered continuously for one hour.

“**Net Related Products Revenues**” means the aggregate difference, if any, between (i) the revenues actually received by BALP from the holding, existence, sale, trade or exploitation of Related Products and the dollar value of benefits actually enjoyed, used or received by BALP from Related Products including Tax credits obtained by BALP (in each of the foregoing cases excluding Related Products used or consumed by BALP or required by BALP in order to comply with Laws and Regulations) and (ii) BALP’s fully-burdened incremental costs, fees and expenses reasonably incurred in connection with monetizing Related Products, including in connection with obtaining, qualifying and registering such Related Products and otherwise performing its obligations under Section 3.1(b).

“**New Agreement**” means a new agreement substantially in the form of this Agreement and that is to be entered into with a Secured Lender with the Generators, or either of them, or with a Person identified by such Secured Lender following termination of this Agreement, as contemplated by Section 11.2(g).

“**Notice of Discriminatory Action**” has the meaning ascribed to it in Section 12.3(a).

“**Notice of Dispute**” has the meaning ascribed to it in Section 12.3(b).

“**O&M Efficiency Payment**” has the meaning ascribed to it in Exhibit 3.5.

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

“**Ontario Laws and Regulations**” has the meaning ascribed to it in Section 12.1.

“**Operating Cost per MWh Table**” has the meaning ascribed to it in Exhibit 3.5.

“**OPG**” means Ontario Power Generation Inc., and its successors and permitted assigns as party to the OPG Lease.

“**OPG Lease**” means the Amended and Restated Lease Agreement dated as of May 12, 2001 and amended as of January 1, 2002, February 14, 2003, October 17, 2005 and October 17, 2005, together with any amendment, change, supplement, restatement, extension, renewal or modification thereof, between, *inter alia*, BPLP and OPG.

“**Original Financial Model**” has the meaning ascribed to it in Exhibit 3.5.

“**Original Milestone Date**” means, for each Refurbished Unit, the date set forth or described under the heading “Milestone Date” in the third column of Exhibit 2.7 of the Technical Schedule in respect of each Refurbished Unit, prior to any extension for Force Majeure.

“**Original Party**” has the meaning ascribed to it in Section 15.6(d).

“Outage” means the removal of equipment from service, unavailability for connection of equipment or temporary derating, restriction of use or reduction in performance of equipment of either Generator for any reason including to permit the performance of inspections, tests, maintenance or repairs on equipment, which results in a partial or total interruption in the ability of such Generator to generate Electricity or to deliver Electricity from any electrical generating unit associated with a Unit at the Facility. An Outage may be further characterized as planned, forced or automatic.

“Parties” means the Generators and the Counterparty, and **“Party”** means any one of them.

“Payment Date” has the meaning ascribed to it in Section 4.3.

“Permanently Decommissioned” means that a Unit has been defueled and dewatered for purposes of permanent shutdown of such Unit.

“Person” means a natural person, firm, trust, partnership, limited partnership, company or corporation (with or without share capital), joint venture, sole proprietorship, Governmental Authority or other entity of any kind.

“Physical Delivery Contracts” has the meaning ascribed to it in Section 2.12(a).

“Point of Delivery” means, in relation to Bruce A and Bruce B, the point at which Electricity is delivered to the IESO-Controlled Grid from Bruce A and Bruce B, respectively, described as follows:

- (m) for Bruce A, the Point of Delivery is the transmitter side of each disconnect switch, 21T1-H, 21T2-H, 21T3-H and 21T4-H, for Units 1, 2, 3 and 4, respectively; and
- (n) for Bruce B, the primary point of delivery is the transmitter side of each synchronizing breaker, T5H5, T6H6, T7H7 and T8H8, for Units 5, 6, 7 and 8, respectively. Bruce B Units have a secondary delivery point through the synch by-pass. Therefore, an alternate point of delivery is the transmitter side of each synch by-pass disconnect switch, T5H5-S, T7H7-S and T8H8-S, for Units 5, 7 and 8, respectively. Unit 6 does not have a synch by-pass disconnect switch installed.

“Pre-COD Net Payment” has the meaning ascribed to it in Section 3.3(a).

“Pre-COD Net Payment Cap” has the meaning ascribed to it in Section 3.3(a).

“Preliminary Notice” has the meaning ascribed to it in Section 12.3(a).

“Price Evolution Event” has the meaning ascribed to it in Section 1.8(a).

“Price Indicator Unavailability Event” has the meaning ascribed to it in Section 1.10(a).

“**Procurement Strategy**” has the meaning ascribed to it in Section 2.14(a).

“**PST**” means the Ontario provincial sales tax exigible under the *Retail Sales Tax Act* (Ontario).

“**Recapture Payment (Bruce B)**” is a payment calculated pursuant to Exhibit 3.2 and to be made by BPLP to the Counterparty pursuant to Section 3.7.

“**Receivable Price**” means the actual price that a Generator would have received from the sale of Electricity from Bruce A or Bruce B, as applicable, expressed in \$ per MWh, had such Electricity been sold into the IESO-Administered Markets, or any replacement thereof. On the date hereof, the “Receivable Price” is equal to HOEP.

“**Refurbished Units**” and “**Refurbished Unit**” have the meaning ascribed to them in Section 2.1.

“**Refurbishment**”, in connection with any of Units 1, 2, 3 and 4, means the refurbishment and restart of each of Units 1 and 2, the refurbishment of Unit 3 and the replacement of the steam generators of Unit 4 with new steam generators, each as described in greater detail in Exhibit 2.1 in respect of each such Unit, and “**Refurbished**” and “**Refurbish**” have the corresponding meanings.

“**Refurbishment Costs**” has the meaning ascribed to it in Exhibit 3.5.

“**Refurbishment Costs Tables**” has the meaning ascribed to it in Exhibit 3.5.

“**Refurbishment Projects**” means, collectively, (i) the Refurbishment in connection with Units 1 and 2, (ii) the Refurbishment in connection with Unit 3 and (iii) the Refurbishment in connection with Unit 4, and “Refurbishment Project” shall mean any one of the foregoing projects.

“**Related Products**” means any physical elements, intangible rights, products or services, revenues, credits or payments, directly related to the production of Electricity from Bruce A and/or Bruce A’s electrical generating capacity at a given time, however produced or arising, including any Capacity Products, Ancillary Services, Environmental Attributes, transmission rights and any similar rights or payments, that may be sold, traded, received or otherwise exploited by BALP, and which shall be deemed to include elements, rights, products and services for which no market may exist, such as capacity reserves. For certainty, Related Products shall not include congestion payments that are credited to the Counterparty pursuant to Section 5.1(b), intellectual property, goodwill, radioactive isotopes, including Cobalt 60, steam, hot water, or any benefits (other than Environmental Attributes) or deductions (including capital cost allowances and accelerated depreciation rates) in respect of Taxes and in respect of all taxes based on profits, net income or net worth.

“**Replacement Price**” has the meaning ascribed to it in Section 1.8(a).

“**Replacement Provision(s)**” has the meaning ascribed to it in Sections 1.10(b) or 1.11(c), as applicable.

“**Revenue Sharing Payment (Bruce A)**” is a payment calculated pursuant to Exhibit 3.2 and to be made by BALP to the Counterparty pursuant to Section 3.2(b).

“**Second Notice**” has the meaning ascribed to it in Section 9.2(a)(i) and Section 9.4(a)(i).

“**Second Special Allocation Mechanism**” has the meaning ascribed to it in Section 10.1(h).

“**Secured Lender**” means an Arm’s Length lender, or an agent or agents acting on behalf of an Arm’s Length lender or lenders, under a Secured Lender’s Security Agreement.

“**Secured Lender’s Security Agreement**” means an agreement or instrument, including a deed of trust or similar instrument securing bonds or debentures, containing a charge, mortgage, pledge, security interest, assignment, sublease, deed of trust or similar instrument with respect to all or any part of a Generator’s Interest granted by such Generator that is security for any indebtedness, liability or obligation of such Generator, together with any amendment, change, supplement, restatement, extension, renewal or modification thereof.

“**Senior Conference**” has the meaning ascribed to it in Section 15.1.

“**Settlement Month**” has the meaning ascribed to it in Section 4.2.

“**Sharing in Transfers and Refinancings Agreement**” means the agreement dated the date hereof among BALP, Ontario Municipal Employees Retirement Board, TransCanada Corporation and the Counterparty relating to restrictions and covenants with respect to, among other things, the transfer of interests in or of BALP and financings and refinancings and amendments thereto by BALP, certain Limited Partners of BALP and certain of such Persons’ Affiliates, as it may be amended, amended and restated or replaced from time to time.

“**Specified Fuel Supply Arrangements**” means the memoranda of agreement, agreements, letters and term sheets specified in Exhibit 1.1 of the Technical Schedule to the extent that they relate to Bruce A, together with all other agreements and commitments that may be entered into by the Generator after the date hereof which (i) relate to fuel supply arrangements for, *inter alia*, Bruce A and (ii) are in accordance with the Approved Procurement Strategy then in effect.

“**Statement**” has the meaning ascribed to it in Section 4.2.

“**Station Containment Outage**” means an Outage conducted at the Facility on a periodic basis for the primary purpose of confirming the integrity between a reactor building and a vacuum building.

“**System Upgrade Costs**” means all costs incurred by Transmitters or any other Person in relation to System Upgrades, including design, engineering, procurement, construction, installation and commissioning costs, as determined in accordance with the Transmitters’ or such other Persons’ respective policies and procedures and by the OEB, if necessary.

“**System Upgrades**” means all additions, improvements and upgrades to the Transmission System, including connections from the Transmission System to the Point of Delivery, to be built

by a Transmitter or any other Person that are (or will be) determined to be required to ensure the reliable delivery of Electricity from the Facility.

“**Tax Ruling**” means an advance income tax ruling from the Canada Revenue Agency in form and substance satisfactory to each of the Generators and their respective Limited Partners, acting reasonably, in respect of the proposed transactions described in the Tax Ruling Application.

“**Tax Ruling Application**” means the amended and restated advance income tax ruling request submitted on behalf of BPLP and its partners and attached as Schedule B to the letter dated October 10, 2005 of McCarthy Tétrault LLP to the Income Tax Rulings Directorate of the Canada Revenue Agency.

“**Tax Ruling Conditions**” has the meaning ascribed to it in Section 8.3.

“**Taxes**” means all Commodity Taxes and ad valorem, property, occupation, severance, production, transmission, utility, gross production, gross receipts, transfer and other taxes, governmental charges, governmental license fees, governmental permit fees, governmental duties, withholdings, withholding taxes, surtaxes and governmental assessments, other than taxes based on profits, net income or net worth.

“**Technical Schedule**” means that certain schedule of technical information dated the date of this Agreement and delivered by the Generators to the Counterparty.

“**Term**” has the meaning ascribed to it in Section 8.1(a).

“**Terminating Party**” has the meaning ascribed to it in Section 9.5(a).

“**Termination Date**” means the date on which this Agreement terminates as a result of an early termination of this Agreement in accordance with this Agreement.

“**TOBCSP (BB)**” means, at any given date, the aggregate amount of Contingent Support Payments (Bruce B) paid by the Counterparty to BPLP up to and including such date, less the aggregate amount of Recapture Payments (Bruce B) paid by BPLP to the Counterparty up to and including such date, as calculated pursuant to Exhibit 3.2.

“**Transfer**” means any sale, exchange, transfer, assignment, gift, alienation or other transaction, whether voluntary, involuntary or by operation of law, whereby the legal or beneficial ownership of, or other direct interest in, the property in question or part thereof, passes directly from one Person to another, or to the same Person in a different capacity, whether or not for value, but excludes an Encumbrance of an interest in the property in question or part thereof.

“**Transmission System**” means a system for conveying Electricity at voltages of more than 50 kilovolts and includes any structures, equipment or other things used for that purpose.

“**Transmission System Code**” means the Transmission System Code approved and issued by the OEB and in effect from time to time.

“**Transmission System Inadequacy**” means the inability of the Transmission System, other than by reasons of force majeure affecting the Transmitter, to transmit Electricity from the electricity generating units associated with all Units that are in operation or that are available to operate, at a particular time. For greater certainty, Transmission System Inadequacy does not include (i) an inability to transmit due to equipment breakages or failures of structures, equipment or works comprising the Transmission System or repairs or maintenance scheduled by the Transmitter; or (ii) any outages, in either case other than persistent or repeated breakage, failure, repairs, maintenance or outages related to Transmission System capacity that is inadequate, due to inadequate planning, design or capital expenditure, to permit the transmission of Electricity from the electricity generating units associated with all Units that are in operation (or that are available to operate) after the earlier to occur of the Commercial Operation Date of the First Unit and January 1, 2010.

“**Transmitter**” means a Person licensed as a “transmitter” by the OEB in accordance with the *Ontario Energy Board Act, 1998* (Ontario).

“**Type 1 Force Majeure**” has the meaning ascribed to it in Section 10.3(b).

“**Type 2 Force Majeure**” has the meaning ascribed to it in Section 10.3(c).

“**Type 3 Force Majeure**” has the meaning ascribed to it in Section 10.3(d).

“**Unit 1/2 Refurbishment Period**” means the period commencing on the Commencement Date and ending on the later of the Commercial Operation Date of Unit 1 and the Commercial Operation Date of Unit 2 (or if this Agreement is terminated in respect of either such Unit without such Unit having achieved Commercial Operation, the Commercial Operation Date of the remaining Unit).

“**Unit 3 Refurbishment Notice**” has the meaning ascribed to it in Section 8.2(g).

“**Unit 3 Termination Notice**” has the meaning ascribed to it in Section 8.2(g).

“**Unit 3 Threshold**” has the meaning ascribed to it in Section 8.2(g).

“**Units**” means the eight nuclear reactor units located at the Facility and designated as “Unit 1” to “Unit 8”, inclusive, and “**Unit**” means any one such Unit. Units 1 to 4, inclusive, are sometimes referred to collectively herein as the “**Bruce A Units**” and Units 5 to 8, inclusive, are sometimes referred to collectively herein as the “**Bruce B Units**”.

“**Unpaid Amounts**” means the net of all amounts owed but not yet paid by one Party to another Party, whether or not such amounts are then due pursuant to this Agreement.

“**Vacuum Building Outage**” means an Outage conducted on a periodic basis for the primary purpose of confirming the integrity of the equipment and infrastructure of the vacuum buildings at the Facility.

“**WSIA**” has the meaning ascribed to it in Section 2.10(c).

1.2 Exhibits

The following Exhibits are attached to this Agreement:

Exhibit 2.1 Refurbishment – Scope of Work

Exhibit 2.4 Refurbishment – Reports

Exhibit 3.2 Monthly Payments

Exhibit 3.2(e) Determination of Bruce A Fuel Costs for any Settlement Month

Exhibit 3.5 Adjustments to the Bruce A Price and O&M Efficiency Payments

Exhibit 12.3 Provincial Statutes

Exhibit 15.2 Arbitration Rules

1.3 Headings and Table of Contents

The inclusion of headings and a table of contents in this Agreement is for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

1.4 Gender and Number

In this Agreement, unless the context otherwise requires, words importing the singular include the plural and vice versa and words importing gender include all genders. The words “hereof”, “hereto”, “hereunder” and similar expressions mean and refer to this Agreement and not any particular section; and the expression “Exhibit”, “Section” or “Article” followed by a letter or a number means and refers to the specified exhibit, section or article of this Agreement.

1.5 Currency

All currency amounts in this Agreement are stated and shall be paid in Canadian dollars, unless otherwise specified. All references to “dollar”, “dollars” or “\$”, are references to the lawful money of Canada, unless otherwise specified.

1.6 IESO Market Rules and Other Laws and Regulations

Unless otherwise specified, any reference in this Agreement to the IESO Market Rules, or any other Law and Regulation, shall be a reference to the IESO Market Rules, or such other Law and Regulation, as amended, re-enacted or replaced from time to time.

1.7 Introduction of LMP

If LMP is implemented by the IESO, this Agreement will be modified so that all references to HOEP (or the Replacement Price if LMP is implemented after a Price Evolution Event as

provided in Section 1.8) will be replaced as a reference index at and after LMP comes into effect, and the substitute reference index for each MWh will be the Receivable Price. For purposes of Article 3 and Exhibit 3.2, each reference to HOEP shall be deemed to be a reference to such Receivable Price.

1.8 Evolution of the IESO-Administered Markets

- (a) If the IESO Market Rules change such that HOEP, or the replacement value for HOEP under LMP as determined through the application of Section 1.7, is no longer provided for, and is replaced by another market-based price signal(s), including a day-ahead hourly Electricity price under a Day-Ahead Energy Forward Market, or another market has replaced or succeeded the IESO-Administered Markets in relation to such change (any of the foregoing events referred to as a “**Price Evolution Event**”), then HOEP or, if applicable, LMP, as the case may be, will be replaced with the market price indicator that represents the Receivable Price for Bruce A and for Bruce B, as applicable (the “**Replacement Price**”). For purposes of Article 3 and Exhibit 3.2, each reference to HOEP or, if applicable, LMP, as the case may be, shall be deemed to be a reference to the applicable Replacement Price, and each reference to IESO-Administered Markets will be deemed to be a reference to such other market, if applicable.
- (b) If any Party learns that a Price Evolution Event has occurred, or is likely to occur within the succeeding twelve (12) months, such Party shall provide prompt written notice of same, as well as the Replacement Price, if known, to each other Party within seven (7) days after learning that a Price Evolution Event has occurred, or is likely to occur. The Party providing such notice, or the relevant recipient, may make a proposal regarding an alternative price to be the Replacement Price and the relevant Parties shall promptly meet to discuss such proposal. If the relevant Parties agree on an alternative price, such price shall be the Replacement Price for purposes of this Section 1.8 effective as of the Price Evolution Event. If such notice does not include the Replacement Price, or if the relevant Parties are unable to agree on an alternative price to be the Replacement Price within thirty (30) days after receipt of a notice containing an alternative price proposal referred to above, the Replacement Price for the applicable Generating Station shall be determined by the relevant Generator, acting reasonably and in good faith, who shall provide the Counterparty with reasonable back-up information in respect of such determination. If the Counterparty, acting in good faith, disputes such determination, such dispute shall be determined by mandatory and binding arbitration, from which there shall be no appeal, with such arbitration to be conducted in accordance with the procedures set out in Exhibit 15.2 and with the arbitrator to determine a Replacement Price that is a Receivable Price in respect of the relevant Generator. The Replacement Price determined by the Arbitral Tribunal shall be the Replacement Price for purposes of this Agreement.

- (c) Until such time as the Replacement Price is finally determined, Monthly Payments shall be made effective as of the Price Evolution Event based on the Replacement Price determined by the relevant Generator, provided that all such payments shall be subject to recalculation and readjustment once the Replacement Price is finally determined, and any Party owing monies to the other pursuant to such recalculation shall promptly pay such monies owing together with interest at the Interest Rate plus 2%, calculated daily and compounded monthly, from and including the time such payments were due to the date of the payment thereof.
- (d) This Section 1.8 shall not apply in the circumstances addressed in Section 1.7.
- (e) This Section 1.8 shall be implemented each time a Price Evolution Event occurs and reference in Section 1.8(a) to HOEP and LMP shall also include a then existing Replacement Price if a subsequent Price Evolution Event occurs.

1.9 Temporary Price Indicator Unavailability Event

If the IESO fails to publish HOEP (or the replacement value for HOEP under LMP as determined through the application of Section 1.7, or the Replacement Price referred to in Section 1.8, as the case may be) on a temporary basis for any period of time where a Price Indicator Unavailability Event has not occurred, the Parties agree to use the Administrative Price published by the IESO as a substitute reference index for HOEP (or the replacement value for HOEP under LMP as determined through the application of Section 1.7, or the Replacement Price referred to in Section 1.8, as the case may be) and for purposes of Article 3 and Exhibit 3.2, each reference to HOEP (or the replacement value for HOEP under LMP as determined through the application of Section 1.7, or the Replacement Price referred to in Section 1.8, as the case may be) shall be deemed to be a reference to the applicable Administrative Price during the time such Administrative Price is in effect. If the IESO fails to publish the Administrative Price, or if, notwithstanding the previous sentence, the Administrative Price is not a Receivable Price for the applicable Generating Station, the provisions of Section 1.10(a) shall be applicable for any such period of time.

1.10 Prolonged Price Indicator Unavailability Event

- (a) If HOEP, or the replacement value for HOEP under LMP as determined through the application of Section 1.7, or the Replacement Price referred to in Section 1.8, is no longer available, or if the IESO fails to publish the Administrative Price, or if any of the foregoing prices is not or ceases to be a Receivable Price for the applicable Generating Station, (any of the foregoing events referred to as a “**Price Indicator Unavailability Event**”), then HOEP, or the replacement value for HOEP under LMP as determined through the application of Section 1.7, or the Replacement Price referred to in Section 1.8, as the case may be, will be replaced with the Actual Hourly Energy Payment for Bruce A and for Bruce B, as applicable, as agreed to by the relevant Parties. If the relevant Parties cannot agree on the Actual Hourly Energy Payment for the applicable Generating Station within thirty (30) days of a Price Indicator Unavailability Event, the Actual

Hourly Energy Payment shall be determined by the relevant Generator, acting reasonably and in good faith, who shall provide the Counterparty with reasonable back-up information supporting such determination. If the Counterparty, acting in good faith, disputes such determination, such dispute shall be determined by mandatory and binding arbitration, from which there shall be no appeal, with such arbitration to be conducted in accordance with the procedures set out in Exhibit 15.2 and with the arbitrator to determine an Actual Hourly Energy Payment that is applicable for the Generating Station. The Actual Hourly Energy Payment for the applicable Generating Station determined by the Arbitral Tribunal shall be the Actual Hourly Energy Payment for purposes of this Agreement in respect of the relevant Generator. For purposes of Article 3 and Exhibit 3.2, each reference to HOEP (or the replacement value for HOEP under LMP as determined through the application of Section 1.7, or the Replacement Price referred to in Section 1.8, as the case may be) shall be deemed to be a reference to the applicable Actual Hourly Energy Payment.

On the occurrence of a Price Indicator Unavailability Event in connection with which electricity generators are only able to sell all or a portion of the Electricity generated by such generators through bilateral contracts, notwithstanding Section 2.12 and to the extent permitted by Laws and Regulations, BALP shall be permitted to enter into Physical Delivery Contracts and Financial Contracts in respect of Bruce A Energy which BALP is only able to sell through bilateral contracts, so long as such contracts are commercially reasonable, as determined by BALP acting in good faith. BALP shall as soon as practicable following such Price Indicator Unavailability Event advise the Counterparty of its Electricity trading strategy in respect of Bruce A Energy and shall update and consult with the Counterparty in respect of such strategy every six (6) months during the continuance of the Price Indicator Unavailability Event. Any determination of the Actual Hourly Energy Payment for Bruce A referred to in the previous paragraph shall include consideration of the prices provided for in such contracts to the extent applicable to sales of Bruce A Energy.

- (b) If any Party learns that a Price Indicator Unavailability Event has occurred, or is likely to occur within the succeeding twelve (12) months, such Party shall provide prompt written notice of same to each other Party and shall propose amendments to this Agreement to the extent necessary to ensure each relevant Generator will participate in any revised processes applicable to generators generally to facilitate Unit commitment, Unit dispatch and/or planned Outage scheduling (such amendments in this Section 1.10 referred to as the “**Replacement Provision(s)**”) to the other Party within thirty (30) days after learning that a Price Indicator Unavailability Event has occurred, or is likely to occur, or as soon as reasonably possible thereafter, failing which each other relevant Party may propose a Replacement Provision(s). If the relevant Parties are unable to agree on the proposal or counter-proposal in response to a proposal, as the case may be, within thirty (30) days after the occurrence of the Price Indicator Unavailability Event,

then the Replacement Provision(s) shall be determined by mandatory and binding arbitration, from which there shall be no appeal, with such arbitration to be conducted in accordance with the procedures set out in Exhibit 15.2.

- (c) The terms of this Agreement applicable to the relevant Parties shall be deemed to be amended by the agreement of the relevant Parties or the final decision resulting from an implementation of the procedures described in Exhibit 15.2 or Section 15.2, as the case may be, from and after the date that the Price Indicator Unavailability Event occurred.
- (d) Until such time as this Agreement is amended in accordance with Section 1.10(c), Monthly Payments shall continue to be made using the Actual Hourly Energy Payment determined by the relevant Generator, provided that all such payments shall be subject to recalculation and readjustment as a result of the agreement or result set out in Section 1.10(c), and any Party owing monies to another pursuant to such recalculation shall promptly pay such monies owing together with interest at the Interest Rate plus 2%, calculated daily and compounded monthly, from and including the time such payments were due to the date of the payment thereof.
- (e) This Section 1.10 shall not apply to the circumstances addressed in Sections 1.7, 1.8 and 1.9.

1.11 Invalidity, Unenforceability or Inapplicability of Provisions

In the event that any relevant Party, acting reasonably and in good faith, considers that any provision of this Agreement pursuant to which it has rights, interests, obligations or remedies has become invalid, inapplicable or unenforceable (other than Article 3, Article 5, Article 9, Article 12, Exhibit 3.2 and Exhibit 3.5) or an index quotation referred to in this Agreement and applicable to it (including, for greater certainty, CPI) ceases to be published, or if the basis therefor is changed materially, then without affecting the validity, applicability or enforceability of any other provision of this Agreement:

- (a) if such provision is invalid, inapplicable or unenforceable, then the Party considering such provision to be invalid, inapplicable or unenforceable may propose, by notice in writing to each other relevant Party, a replacement provision and the relevant Parties shall then engage in good faith negotiations to replace such provision with a valid, enforceable and applicable provision, the economic effect of which comes as close as possible to that of the invalid, unenforceable or inapplicable provision which it replaces;
- (b) if any index quotation referred to in this Agreement ceases to be published, or if the basis therefor is changed materially (an “**Index Change Event**”), then any relevant Party, if an index quotation referred to in this Agreement ceases to be published, or such Party that believes that the basis for any index quotation has changed materially, may propose, by notice in writing to each other relevant Party, a replacement index and the relevant Parties shall then engage in good faith

negotiations to substitute an available replacement index quotation that most nearly, of those then publicly available, approximates the intent and purpose of the index quotation that has so ceased or changed and this Agreement shall be amended as necessary to accommodate such replacement index quotation. The Parties agree that the addition, deletion or change in relative weighting of commodities in the basket of commodities measured by CPI from time to time by Statistics Canada (or any successor thereto) shall not constitute an Index Change Event. For example, changes similar to those made by Statistics Canada to various Consumer Price Indices in May 2001 (new series index calculated excluding the most volatile product categories), January 2003 (Canadian Consumer Price Index basket updated to reflect changes in consumer expenditure patterns, replacing those used in 1996), October 2003 (rebates no longer reflected in the Consumer Price Index if they are paid on the basis of past consumption and were not known to consumers at the time of consumption) and July 2004 (weight of mortgage interest cost reduced and weights of all other commodities increased proportionally) shall not constitute Index Change Events;

- (c) if a relevant Party does not believe that such provision is invalid, inapplicable or unenforceable, or that the basis of an index quotation has changed materially, or if the negotiations set out in Section 1.11(a) or Section 1.11(b) are not successful, then if the relevant Parties are unable to agree on all such issues and any amendments required to this Agreement (in this Section 1.11(c) the “**Replacement Provision(s)**”) within thirty (30) days after the giving of the notice under Section 1.11(a) or Section 1.11(b), as applicable, then the Replacement Provision(s) shall be determined in accordance with the formal dispute resolution procedures set out in Section 15.2;
- (d) the terms of this Agreement applicable to the relevant Parties shall be deemed to be amended by the agreement of the relevant Parties, the judgment of a court of competent jurisdiction or the award of the Arbitral Tribunal, as the case may be, from and after the date of the invalidity, inapplicability or unenforceability or from and after the date that the relevant index or quotation ceased to be published or the basis therefor has changed materially; and
- (e) this Section 1.11 shall not apply to the circumstances addressed in Sections 1.7, 1.8, 1.9 and 1.10.

1.12 Entire Agreement

This Agreement, together with any agreements and other documents required to be delivered pursuant to this Agreement, constitute the entire agreement between the Parties pertaining to the subject matter of this Agreement. There are no warranties, conditions or representations (including any that may be implied by statute) and there are no agreements in connection with the subject matter of this Agreement except as specifically set forth or referred to in this Agreement. No reliance is placed on any warranty, representation, opinion, advice or assertion of fact made, prior to the date hereof, by a Party to this Agreement, or its directors, officers,

employees or agents, to any other Party to this Agreement or its directors, officers, employees or agents, except to the extent that the same has been reduced to writing and included as a term of this Agreement.

1.13 Waiver, Amendment

Except as expressly provided in this Agreement, no amendment or waiver of any provision of this Agreement shall be binding unless executed in writing by the relevant Parties to be bound thereby. No waiver of any provision of this Agreement shall constitute a waiver of any other provision nor shall any waiver of any provision of this Agreement constitute a continuing waiver or operate as a waiver of, or estoppel with respect to, any subsequent failure to comply, unless otherwise expressly provided. For certainty, either Generator may agree with the Counterparty to an amendment or waiver without the consent of the other Generator, provided that such amendment or waiver is with respect to a provision pursuant to which such other Generator has no rights, interests, obligations or remedies.

1.14 Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

1.15 Preparation of Agreement

The terms and conditions of this Agreement are the result of negotiations between the Parties who acknowledge and agree that any doubt or ambiguity in the meaning, application or enforceability of any term or provision of this Agreement shall not be construed or interpreted against or in favour of any Party when interpreting such term or provision by reason of the extent that a Party or its legal and other professional advisors participated in the preparation of the Agreement.

1.16 Relevant Parties

The Parties acknowledge the provisions of Section 15.4 and agree that, without prior written consent or as expressly provided herein, a Generator may not enter into any agreement, settlement or commitment with the Counterparty on behalf of the other Generator or that seeks to bind such other Generator's Generating Station. The term "**relevant**" as used in this Agreement in the context of a matter for determination, negotiation or dispute resolution refers to only those Parties involved in such determination, negotiation or dispute because such matter has arisen under a provision of this Agreement pursuant to which such Party has rights, interests, obligations or remedies. The use of the word "applicable" in this Agreement in reference to a Generator or a Generating Facility, shall generally refer to BALP in respect of matters pertaining to Bruce A, Bruce A Energy, the Common Facilities and the Refurbishment Projects only, and BPLP in respect of matters pertaining to Bruce B, Bruce B Energy and the Common Facilities only.

1.17 Prudence Standard

In the determination of whether a Generator has acted in accordance with Good Engineering Practices or has not imprudently incurred costs, such determination shall be based on the following principles:

- (a) decisions made by such Generator should generally be presumed to be in accordance with Good Engineering Practices or not imprudent unless challenged by the Counterparty on reasonable grounds;
- (b) to be in accordance with Good Engineering Practices or not imprudent, a decision must have been reasonable under the circumstances that were known or ought to have been known to such Generator at the time the decision was made;
- (c) hindsight should not be used in determining Good Engineering Practices or prudence, although consideration of the outcome of the decision may legitimately be used to overcome the presumption of Good Engineering Practices or prudence; and
- (d) Good Engineering Practices and prudence must be determined in a retrospective, factual inquiry, in that the evidence must be concerned with the time the decision was made and must be based on facts about the elements that could or did enter into the decision at the time.

ARTICLE 2 REFURBISHMENT AND OPERATION

2.1 Refurbishment of Units

- (a) Subject to the terms and conditions of this Agreement, BALP covenants, at its expense, to Refurbish Units 1, 2, 3 and 4 in accordance with the scope of work described in Exhibit 2.1 (following their respective Refurbishment, collectively, the “**Refurbished Units**” and each a “**Refurbished Unit**”). BALP shall carry out each Refurbishment using Good Engineering Practices and meeting, in all material respects, all relevant requirements of the Connection Agreements.
- (b) The applicable Generator agrees to provide a single line electrical drawing which identifies the Point of Delivery of Bruce A and Bruce B, clearly showing area transmission and distribution facilities, including the transmission station(s) that is electrically closest to Bruce A and Bruce B.

2.2 Development Covenants

- (a) BALP agrees to arrange on the Generator’s side of the Point of Delivery of Bruce A, at its expense and in accordance with the Connection Agreements, all connection requirements for Bruce A that may be required to permit the delivery

of Electricity from Bruce A to the Point of Delivery, and to pay all Connection Costs relating thereto.

- (b) The applicable Generator agrees to provide, operate and maintain, at its expense, separate meters to meter the output of Electricity from each unit generator of Bruce A and Bruce B, as well as any ancillary metering and monitoring equipment required for Bruce A and Bruce B by the IESO Market Rules.
- (c) BALP agrees to provide, at its expense, all power system components on the Generator's side of the Point of Delivery of Bruce A (including all transformation, switching and auxiliary equipment such as synchronizing and protection and control equipment, pursuant to requirements reasonably deemed necessary by the IESO and the Transmitter, as applicable), to protect the safety and security of the IESO-Controlled Grid and each of the respective customers of the IESO and the Transmitter, as the case may be. The equipment to be so provided by BALP shall include such electrical equipment on BALP's side of the Point of Delivery of Bruce A as the IESO and the Transmitter reasonably deem necessary, from time to time, for the safe and secure operation of the IESO-Controlled Grid, as required by the IESO Market Rules and the Transmission System Code, as applicable.
- (d) Each Generator agrees, at its expense, to install protective equipment to protect its own personnel, property and equipment from variations in frequency and voltage or from temporary delivery of other than three-phase power, whether caused by its Generating Station or the IESO-Controlled Grid, as the case may be.
- (e) Each Generator agrees to cooperate with and to assist the Transmitter and Governmental Authorities by providing technical information pertaining to, and by supporting regulatory processes, applications or hearings in respect of any System Upgrades that may be required to permit the delivery of Electricity and Related Products from its Generating Station to the IESO-Controlled Grid; provided that no Generator shall be required to pay for any System Upgrade Costs associated therewith.

2.3 Requirements for Commercial Operation

A Refurbished Unit will achieve "**Commercial Operation**" at the point in time when the following conditions have been satisfied:

- (a) The Counterparty has received a certificate addressed to it from the Vice President, Operations, Bruce A stating that:
 - (i) BALP has received the CNSC's approval to release such Refurbished Unit's reactor shutdown guarantee(s);

- (ii) the Vice President, Operations, Bruce A has approved raising such Refurbished Unit's reactor power above 75% of rated capacity and has declared such Refurbished Unit "in service";
 - (iii) such Refurbished Unit has operated at a net Electricity output greater than 600 MW for 48 consecutive hours; and
 - (iv) there are no conditions in respect of such Refurbished Unit that are reasonably expected to require an Outage in respect of such Refurbished Unit within the next thirty (30) consecutive days; and
- (b) Such Refurbished Unit has:
- (i) successfully completed the commission test plans for such Unit as a "commissioning generation facility" in accordance with Chapter 7, section 2.2A.5 of the IESO Market Rules, and
 - (ii) been declared by the IESO (x) to be a "dispatchable generator" or (y) to no longer be a "commissioning generation facility" as defined in the IESO Market Rules.

BALP agrees to provide to the Counterparty, forthwith after receipt thereof, a copy of the declaration from the IESO referred to in Section 2.3(b)(ii) above (or other certificate or confirmation letter from the IESO confirming such declaration). Notwithstanding Section 2.3(b), provided that the condition in Section 2.3(a) has been satisfied, the date on which a Refurbished Unit is deemed to achieve "**Commercial Operation**" shall be the date which is the later of:

- (x) the date on which the condition in Section 2.3(a) was satisfied, and
- (y) the date which the IESO specifies as the date that the conditions in Section 2.3(b)(i) and (ii) was satisfied, even if the date of the declaration from the IESO (or other certificate or confirmation letter from the IESO confirming the declaration contemplated by Section 2.3(b)(ii)) is dated or delivered on a later date.

If the Commercial Operation Date of a Refurbished Unit has not occurred because of a delay in the delivery of the declaration of the IESO contemplated by Section 2.3(b)(ii) and BALP has paid liquidated damages under Section 2.7 as a result, such liquidated damages shall be reimbursed to BALP, together with interest at the Interest Rate calculated daily and compounded monthly, to the extent paid in respect of any period of time after the date that the applicable Refurbished Unit has been deemed to achieve Commercial Operation.

2.4 Counterparty Reports and Information During and After Refurbishment

- (a) During the period from the commencement of Refurbishment of a Unit until the Commercial Operation Date of such Unit, BALP shall provide the Counterparty with the reports provided to its Limited Partners describing the progress of the

Refurbishment of such Unit and describing the status of efforts made by BALP to meet the applicable Milestone Date and the progress of the design and construction work. Each report shall include the information specified in Exhibit 2.4 and shall be delivered to the Counterparty concurrently with the delivery of such report to such Limited Partners. BALP acknowledges that such reports may be provided by the Counterparty to the Ministry of Energy and the Ontario Financing Authority, subject to compliance with the provisions of Article 7.

- (b) The Counterparty may appoint a representative to attend and observe, either in person or by conference call, project meetings held during and in respect of the Refurbishment Projects by the management committee (or its successors) to be known as the “Project Standing Committee”, the terms of reference and mandate of which are to, *inter alia*, direct, control, manage and provide oversight for each Refurbishment Project and to support and assist the Chief Executive Officer in his accountability for each Refurbishment Project. Such meetings are currently anticipated to be held weekly until the final completion of each Refurbishment Project. BALP agrees to provide the Counterparty, as soon as practicable after the preparation thereof, with copies of all reports presented or delivered at such project meetings and minutes of such meetings (if available), whether or not a representative of the Counterparty was present at such meetings. BALP acknowledges that such reports may be provided by the Counterparty to the Ministry of Energy and the Ontario Financing Authority, subject to compliance with the provisions of Article 7.
- (c) BALP agrees to provide promptly such other historical information directly relating to the Refurbishment or operation of the Bruce A Units, including Refurbishment work completed and costs, metering data, material licences and permits and Outages as requested by the Counterparty from time to time, acting reasonably.
- (d) Each Generator agrees to promptly provide to the Counterparty in respect of itself only written notice of:
 - (i) with the exception of payment obligation defaults, the failure of such Generator to perform any material covenant or obligation set forth in this Agreement;
 - (ii) such Generator (or a Person on its behalf) failing or ceasing to hold a valid licence, permit, certificate, registration, authorization, consent or approval issued by a Governmental Authority which is required at such time having regard to the then current stage of Refurbishment or operation of its Generating Station and where such failure or cessation results in, or could be reasonably expected to result in, a Material Adverse Effect on such Generator;

- (iii) any representation by such Generator in this Agreement not being true or correct in any material respect when made;
 - (iv) default by such Generator in the observance or performance of one or more obligations in respect of indebtedness to other Persons, resulting in obligations for indebtedness in an aggregate principal amount of more than \$125 million becoming immediately due and payable; and
 - (v) any Transfer (as such term is defined in the Sharing in Transfers and Refinancings Agreement) of which it has actual knowledge.
- (e) The Counterparty agrees to promptly provide each Generator with written notice of:
- (i) with the exception of payment obligation defaults, the failure of the Counterparty to perform any material covenant or obligation set forth in this Agreement;
 - (ii) the Counterparty failing or ceasing to hold a valid licence, permit, certificate, registration, authorization, consent or approval issued by a Governmental Authority where such failure or cessation results in, or could be reasonably expected to result in, a Material Adverse Effect on the Counterparty;
 - (iii) any representation by the Counterparty in this Agreement not being true or correct in any material respect when made; and
 - (iv) the Counterparty no longer having the ability pursuant to Laws and Regulations, or failing to take action in the normal course of its business, to recover all amounts paid or payable to each Generator pursuant to this Agreement directly or indirectly from Electricity consumers in the Province of Ontario.

2.5 Recordkeeping and Audit

- (a) **General Recordkeeping Requirements and Audit Rights.** Each Generator and the Counterparty shall keep complete and accurate records and all other data required by any of them for the purpose of proper administration of this Agreement. All such records shall be maintained as required by Laws and Regulations but for no less than for seven (7) years after the creation of the record or data. Each Generator and the Counterparty, on a confidential basis as provided for in [Article 7](#) of this Agreement, shall provide on reasonable prior notice reasonable access during normal business hours to the relevant and appropriate technical, design, financial, cost and operating records and data kept by it relating to this Agreement reasonably required for any other Party to comply with its obligations to Governmental Authorities or to verify billings or to verify

information provided in accordance with this Agreement. A Party may use its own employees for purposes of any such review of records, provided that those employees are bound by the confidentiality requirements provided for in [Article 7](#). Alternatively, and at the election of the auditing Party, access shall be through the use of a mutually agreed upon third party auditor, provided that such auditor is bound by the confidentiality requirements provided for in [Article 7](#). The Party seeking access to such records in this manner shall pay the fees and expenses associated with use of the third party auditor.

- (b) **Audit by Counterparty during Refurbishment.** From time to time during the Refurbishment of each Unit, upon reasonable notice from the Counterparty, BALP shall, and shall use Commercially Reasonable Efforts to arrange with its contractors to, provide to the Counterparty and its representatives (provided that those representatives are bound by the confidentiality requirements provided for in [Article 7](#)) at the Refurbishment Project site during normal business hours access to all technical, design, construction and cost records pertaining to the applicable Refurbishment Project as reasonably requested by the Counterparty. The Counterparty acknowledges that access to such contractors' records is governed by BALP's agreements with such contractors and consent to such access to a contractor may be at the discretion of the contractor.
- (c) **Third Party Audit of Refurbishment Projects, Fuel and Operating Costs.** The Parties agree that the Chairman of the OEB (acting only in the capacity of a third party auditor under this Section [2.5\(c\)](#)) or some other third party agreed to by each of BALP and the Counterparty, acting reasonably, may be engaged by the Counterparty at the expense of the Counterparty, (provided that such Person is bound by the confidentiality requirements provided for in [Article 7](#)) to provide: (i) a one-time audit review of Refurbishment Costs, within two (2) years after Final Completion of each Refurbished Unit, including review of Refurbishment contracts and improper allocation of costs pertaining to Bruce B in Refurbishment Costs and, if the Bruce A Price is adjusted after such two (2) year period, an audit review of such adjustment within two (2) years after such adjustment is made; (ii) an audit review from time to time, but not more frequently than annually, of Bruce A Fuel Costs; and (iii) starting January 1, 2011, an audit review from time to time, but not more frequently than annually, of Actual per MWh Operating Costs. BALP agrees to provide reasonable access during normal business hours to the Counterparty and such third party to all necessary information and copies of all books and records relating to the Refurbishment Projects, Bruce A Fuel Costs and Actual per MWh Operating Costs for purposes of completing such audit reviews. In the event that the audit review of Refurbishment Costs or adjustment to the Bruce A Price establishes that there was improper allocation of costs pertaining to Bruce B, then the Bruce A Price shall be adjusted accordingly. In the event that the audit review shows that any Bruce A Fuel Costs incurred by BALP: (i) were paid in error by BALP, (ii) were incorrectly billed to the Counterparty, or (iii) to the extent such Bruce A Fuel Costs were incurred

pursuant to a fuel supply arrangement other than a Specified Fuel Supply Arrangement, that such costs were imprudently incurred, then the payments by the Counterparty to BALP in respect of Bruce A Fuel Costs pursuant to Section 3.2(e) shall be adjusted accordingly and BALP shall pay back to the Counterparty amounts that are agreed by the Parties or determined by arbitration pursuant to Section 15.2 to have been overpaid by the Counterparty, together with interest at the Interest Rate plus 2% per annum calculated daily and compounded monthly from the date that the amount was first paid by the Counterparty. Subject to Section 4.7(a), if the audit review shows that a Statement incorrectly stated Bruce A Fuel Costs, the provisions of Section 4.8 shall apply, mutatis mutandis.

- (d) The Counterparty acknowledges and agrees that:
 - (i) no aspect of the Specified Fuel Supply Arrangements is imprudent, except as may be determined by an Arbitral Tribunal pursuant to Section 2.14; and
 - (ii) all costs correctly and properly incurred by the Generator pursuant to and in accordance with the terms of the Specified Fuel Supply Arrangements shall be deemed to be prudently incurred.

2.6 Inspection

- (a) At any time and from time to time during the Refurbishment of each Unit, upon no less than two (2) Business Days' prior written notice to BALP and at the Counterparty's expense, the Counterparty and its authorized agents and representatives (provided that such agents and representatives are bound by the confidentiality requirements provided for in Article 7) shall have access to the Refurbishment Project site to inspect the Refurbishment work and BALP shall, and shall cause its contractors and subcontractors to, provide such access during regular business hours.
- (b) At any time after execution of this Agreement and in connection with and for the purposes of verifying information received pursuant to the audit review under Section 2.5(c), the Counterparty and its authorized agents and representatives (provided that such agents and representatives are bound by the confidentiality requirements provided for in Article 7) shall, once per Contract Year upon no less than two (2) Business Days' prior written notice and at the Counterparty's expense have access to the Facility during regular business hours.
- (c) All rights of access granted to the Counterparty's agents and representatives to the Facility under this Section 2.6 are subject (i) to the grantees observing all Laws and Regulations and all safety requirements of the applicable Generator and its contractors that are applicable to the Refurbishment Project site and the Facility and (ii) such access rights not, in the reasonable opinion of the applicable Generator, unduly interfering with any Refurbishment Project or operation of the

Facility at such time. The Counterparty acknowledges that its exercise of its rights of access is at its own cost and risk. The Counterparty shall indemnify, defend and hold each Generator, its Limited Partners, advisors and agents (including contractors and subcontractors (of any tier) and their respective employees) and its general partner's directors, officers, employees (collectively, the "**Generator Indemnitees**") harmless from and against any and all Indemnifiable Losses asserted against or suffered by any of the Generator Indemnitees relating to, in connection with, resulting from, or arising out of the exercise of the Counterparty's rights of access under this Section 2.6, except to the extent that any injury or damage is attributable to the gross negligence or wilful misconduct of any of the Generator Indemnitees. For greater certainty, in the event of contributory gross negligence or wilful misconduct of any of the Generator Indemnitees, then such Generator Indemnitee shall not be indemnified hereunder in the proportion that the Generator Indemnitee's gross negligence or wilful misconduct contributed to any Indemnifiable Loss.

- (d) The inspection of a Refurbishment Project site under Section 2.6(a) or the Facility under Section 2.6(b) by or on behalf of the Counterparty shall not relieve either Generator of any of its obligations to comply with the terms of this Agreement. In no event will any inspection by the Counterparty hereunder be an acknowledgement by the Counterparty that there has been or will be compliance with this Agreement and Laws and Regulations.

2.7 Milestone Dates and Liquidated Damages

BALP acknowledges that time is of the essence to the Counterparty with respect to attaining Commercial Operation of each of Units 1, 2, 3 and 4 by its respective Milestone Date. If any such Unit does not achieve Commercial Operation on or before its Milestone Date, the following provisions shall apply:

- (a) In each Month in which a Milestone Date of a Unit to be Refurbished occurs and the Commercial Operation Date of such Unit has not occurred and for each Month of the Term thereafter until such Commercial Operation Date has occurred (each such Month or part thereof, including the Month in which such Commercial Operation Date occurs, being an "**LD Month**"), BALP shall pay to the Counterparty for an LD Month, as liquidated damages and not as a penalty, an amount equal to the sum of the Daily LD Amount for each calendar day for which Commercial Operation has not been achieved in such LD Month (but for certainty, the first LD Month for such Unit shall only include the calendar days after the applicable Milestone Date). The "**Daily LD Amount**" shall be:
 - (i) for each calendar day after the date three (3) Months after such Unit's Milestone Date ("**Milestone Date +3**") up to and including the earlier of the Commercial Operation Date and the date which is nine (9) months after such Unit's Milestone Date ("**Milestone Date +9**"), \$25,000;

- (ii) for each calendar day after such Unit's Milestone Date +9 and up to and including the earlier of such Unit's Commercial Operation Date and the date which is fifteen (15) Months after such Unit's Milestone Date ("**Milestone Date +15**"), \$50,000; or
 - (iii) for each calendar day after such Unit's Milestone Date +15 up to and including such Unit's Commercial Operation Date (or, if this Agreement is terminated in respect of such Unit without such Unit having achieved Commercial Operation, up to and including the date of termination in respect of that Unit), \$100,000.
- (b) Notwithstanding the foregoing, in respect of the Refurbishment of Unit 4, the Daily LD Amounts "\$25,000", "\$50,000" and "\$100,000" in Sections 2.7(a)(i), (ii) and (iii) shall be replaced with the Daily LD Amounts "\$8,333.33", "\$16,666.67" and "\$33,333.33", respectively.
- (c) For greater certainty, if the Commercial Operation Date of a Unit to be Refurbished occurs after its Milestone Date but on or before its Milestone Date +3, no amounts shall be payable by the Generator pursuant to this Section 2.7 in respect of such Unit.
- (d) Notwithstanding anything contained herein to the contrary:
- (i) the maximum amount of liquidated damages payable by BALP pursuant to this Section 2.7 in respect of a particular Unit to be Refurbished shall be as follows:
 - (A) Unit 1: \$125,000,000,
 - (B) Unit 2: \$125,000,000,
 - (C) Unit 3: \$100,000,000, and
 - (D) Unit 4: \$30,000,000; and
 - (ii) except for the Counterparty's rights as set forth under Section 8.2 to terminate this Agreement (with respect to a Unit or in its entirety), receive a Clawback Payment, if any, for such Unit (if it is either Unit 1 or Unit 2 or both), enforce the covenant by the Generators not to complete the Refurbishment of a Unit, if applicable, and receive liquidated damages pursuant to Section 8.2(e), if applicable, the liquidated damages pursuant to Sections 2.7(a) and (b) up to the maximum amounts set forth in Section 2.7(d)(i) shall represent the Counterparty's sole and exclusive remedy for the delay or failure of any Unit to be Refurbished to achieve Commercial Operation.

- (e) All liquidated damages in respect of a Unit to be Refurbished received by a Generator from contractors, sub-contractors or suppliers shall first be used by BALP to pay any amounts payable to the Counterparty pursuant to this Section 2.7 in respect of such Unit, and any excess received by a Generator shall be dealt with in accordance with Exhibit 3.5.
- (f) If an amount is payable by BALP to the Counterparty pursuant to Section 2.7(a) or (b) in respect of a Unit, such amount shall be included by BALP in the Statement in accordance with Section 4.2 and payable monthly by BALP. The provisions of Sections 4.7, 4.8 and 4.9 shall apply to Statements in respect of payments made pursuant to this Section 2.7.

2.8 Uprating of Bruce A Units

If at any time, BALP proposes to make physical plant upgrade(s) to a Bruce A Unit beyond the scope of the Refurbishments described in Exhibit 2.1, or proposes to perform safety analyses which are ultimately accepted by the CNSC, for the purposes of allowing BALP to operate such Unit at reactor power above 92.5% (but excluding, for greater certainty, upgrade(s) to achieve output of 750 MWh per Unit or to repair or refurbish the Unit to the state contemplated by the Refurbishment Projects) in order to generate incremental Electricity then, prior to undertaking such upgrade(s), BALP and the Counterparty shall use reasonable good faith efforts to agree upon a price for incremental Electricity having regard to, inter alia, (a) the capital costs of such upgrade(s), (b) the cost of generating such incremental Electricity, (c) providing BALP with a reasonable return on such incremental investment, and (d) the then current price of Electricity. In the absence of an agreement, the amount of Electricity that is generated by Bruce A as a result of such upgrade(s) over and beyond the Electricity that would have been generated by Bruce A in the absence of such upgrade(s) (the “**Incremental Bruce A Energy**”) and the price of Incremental Bruce A Energy (the “**Incremental Bruce A Price**”) may be determined by either BALP or the Counterparty submitting the matter to arbitration, from which there shall be no appeal, with such arbitration to be conducted in accordance with the procedures set out in Exhibit 15.2. If the amount of Incremental Bruce A Energy and Incremental Bruce A Price are determined by the agreement of such Parties or arbitration, BALP may in its sole discretion, undertake such upgrade(s). Prior to commencing such upgrade(s), the Parties shall amend the definitions of Bruce A Energy and Bruce A Price and Sections 1.1, 2.12, 3.2(a), 3.2(b), 3.3, 3.4, 3.5, 4.2, 5.1 and Exhibits 3.2 and 3.5, to the extent necessary, to incorporate Incremental Bruce A Energy and the Incremental Bruce A Price into the terms and conditions of this Agreement.

2.9 Operation Covenants

- (a) BALP agrees to operate and maintain each of the Bruce A Units using Good Engineering Practices such that the requirements of the Transmission System Code, the Connection Agreements and all other Laws and Regulations are met in all material respects. BALP’s obligations with respect to a Bruce A Unit under this Section 2.9 shall commence on the Commencement Date for each of Unit 3 and Unit 4 (but without in any way limiting the right and obligation of BALP to Refurbish each of Unit 3 and Unit 4), and from the Commercial Operation Date

for each of Unit 1 and Unit 2, and shall end upon the termination of this Agreement or at the time such Unit is Permanently Decommissioned or Effectively Decommissioned, whichever shall occur first.

- (b) Each Generator agrees to indemnify, defend and hold harmless the Counterparty Indemnitees in respect of all actions, causes of action, suits, proceedings, claims, demands, losses, damages, penalties, fines, costs, obligations and liabilities arising out of a discharge of any contaminant into the natural environment, at or related to Bruce A or for which a Generator is culpable, and any fines or orders of any kind that may be levied or made in connection therewith pursuant to the *Environmental Protection Act* (Ontario), the *Ontario Water Resources Act* or the *Dangerous Goods Transportation Act* (Ontario) or other similar legislation, whether federal or provincial, except to the degree that such discharge shall have been due to the negligence or wilful misconduct of the Counterparty Indemnitees.
- (c) Subject to Section 2.11(c), the applicable Generator agrees to coordinate with the IESO with respect to the scheduling of planned Outages relating to the applicable Generating Station.
- (d) Subject to Section 2.11(c) and provided same is in accordance with Good Engineering Practices, the Refurbished Units will be subject to the special protection scheme to the extent currently in place or as amended from time to time in accordance with the IESO Market Rules.

2.10 Insurance Covenants

- (a) BALP agrees to put in effect and maintain, from the date of this Agreement to the expiry of the Term, whether through contractors or directly at their or its own cost and expense, as applicable, insurance with respect to Bruce A with reputable insurance companies against such risks and up to such limits as a prudent owner or tenant of premises such as Bruce A would procure, including appropriate coverage of construction risks during each Refurbishment Project and, as appropriate, nuclear liability insurance and re-insurance; provided that in no event shall such insurance coverage be less than that required by Laws and Regulations.
- (b) BALP shall provide the Counterparty with proof of the insurance required by this Agreement in the form of valid certificates of insurance that confirm the required coverage, on or before the commencement of each Refurbishment Project, and thereafter at the reasonable request of the Counterparty. Upon the request of the Counterparty, a copy of each insurance policy shall be made available to it.
- (c) If BALP is subject to the *Workplace Safety and Insurance Act* (Ontario) (the “WSIA”), it shall submit a valid clearance certificate of WSIA coverage to the Counterparty prior to the Commencement Date. In addition, BALP shall, from time to time at the request of the Counterparty, provide additional WSIA clearance certificates. BALP agrees to pay when due, all amounts required to be

paid by it in respect of a Refurbishment Project, from time to time from the Commencement Date, under the WSIA. BALP agrees, in accordance with its obligations under the WSIA, to cause each of its subcontractors to comply with their respective obligations under the WSIA in respect of each Refurbishment Project. The Counterparty shall have the right, in addition to and not in substitution for any other right it may have pursuant to this Agreement or otherwise at law or in equity, to pay to the Workplace Safety and Insurance Board any amount due pursuant to the WSIA and unpaid by BALP or its subcontractors in respect of a Refurbishment Project and to deduct such amount from any amount due and owing from time to time to BALP pursuant to this Agreement.

2.11 Compliance with Laws and Regulations and Governing Documentation

- (a) The Counterparty and each Generator shall each comply, in all material respects, with all Laws and Regulations required to perform or comply with their respective obligations under this Agreement.
- (b) The Counterparty and each Generator shall each obtain and maintain in good standing, or cause to be obtained and maintained in good standing, on its behalf, any material licence, permit, certificate, registration, authorization, consent or approval of any Governmental Authority required to perform or comply with their respective obligations under this Agreement, including such licensing as is required by the OEB and the CNSC.
- (c) The Counterparty acknowledges that in the event of any inconsistency between any order, direction or licensing requirement of the CNSC applicable to either Generator and any IESO Market Rules, each Generator has determined to treat such CNSC order, direction or licensing requirement as governing to the extent of the inconsistency and the Counterparty agrees that such determination shall not constitute a breach of any provision of this Agreement.

2.12 Supply to the IESO-Administered Markets

- (a) From and after the Commencement Date and during the Term of this Agreement, BALP shall supply, if and when generated, all Bruce A Energy to the IESO-Administered Markets. Unless a Price Indicator Unavailability Event has occurred and is continuing, BALP shall not enter into any bilateral contracts with respect to Bruce A Energy. BALP shall be entitled to enter into bilateral contracts (which, for certainty, shall include “physical bilateral contracts” as such term is defined in the IESO Market Rules) (“**Physical Delivery Contracts**”) for the physical delivery of Bruce B Energy as well as contracts for differences and similar derivatives and financial contracts (collectively, “**Financial Contracts**”) relating to Bruce B Energy, provided that the total of:
 - (i) Electricity required to be delivered at any point in time pursuant to Physical Delivery Contracts, and

- (ii) the notional quantity of Electricity which is the subject of Financial Contracts,

shall not at any point in time exceed 750 MW times the number of Bruce B Units that have not been Effectively Decommissioned or Permanently Decommissioned.

- (b) Notwithstanding the provisions of Section 2.12(a), BPLP shall, on written notice to the Counterparty, be permitted, at its sole option, to use Bruce A Energy in respect of the bilateral contracts referred to above at such time as Bruce B is subject to a Vacuum Building Outage or a Station Containment Outage. In such event, and only during the tenure of such Vacuum Building Outage or Station Containment Outage, the Bruce A Energy which is identified in such written notice shall not be part of, and shall be excluded from, the calculations referred to in Section 3.2(a) and (b) and Part 1 of Exhibit 3.2. In consideration thereof, BPLP shall indemnify the Counterparty for any direct losses it suffers under this Agreement as a consequence of such exclusion of Bruce A Energy, including any Revenue Sharing Payments (Bruce A) which the Counterparty would have received pursuant to Section 3.2(b) and Part 1 of Exhibit 3.2 but for such exclusion and BPLP shall include the amount of such losses in the Statement for the Month in which such Vacuum Building Outage or Station Containment Outage ended.
- (c) All Physical Delivery Contracts in existence on the date hereof, all of which are identified in Exhibit 6.1(k), shall be deemed to be Physical Delivery Contracts in respect of Bruce B Energy.

2.13 Discriminatory Action Consultation

Without prejudice to its ability to assert a claim for Discriminatory Action pursuant to Article 12 or to any right or remedy of either Generator thereunder, each Generator shall notify the Counterparty of any Change of Law or proposed Change of Law of which it becomes aware and that could reasonably be expected to result in a Discriminatory Action; provided that any failure to so notify shall not constitute a Generator Event of Default.

2.14 Fuel Covenants

- (a) Within one (1) month of the Commencement Date and at least three (3) months prior to every fifth anniversary of the date hereof thereafter, BALP shall propose a procurement strategy (the “**Procurement Strategy**”) to the Counterparty with respect to Bruce A Fuel Costs. The Procurement Strategy shall, among other things, provide guidelines pursuant to which BALP shall, in good faith and acting reasonably, solicit proposals from potential counterparties in respect of proposed amendments to the Specified Fuel Supply Arrangements and proposed new fuel supply arrangements for Bruce A (such proposed amendments and proposed new fuel supply arrangements being “**Fuel Supply Variations**”). The Counterparty and BALP agree to consult with each other concerning such Procurement Strategy

with a view to finalizing same. If the Counterparty approves such Procurement Strategy (an “**Approved Procurement Strategy**”), such Approved Procurement Strategy shall remain in effect until a subsequent Approved Procurement Strategy is approved by the Counterparty. The Counterparty agrees that if the initial Procurement Strategy has not been approved by the Counterparty on or before December 31, 2005, such initial Procurement Strategy shall be deemed to have been approved and shall be the initial Approved Procurement Strategy.

- (b) BALP shall give the Counterparty written notice (the “**Fuel Amendment Notice**”) of each Fuel Supply Variation. BALP shall provide in its notice, to the extent available to BALP, the identity of the counterparty to the Fuel Supply Variation selected by BALP, a copy of the document(s) implementing the Fuel Supply Variation, and a reasonably detailed description of how the Fuel Supply Variation is expected to affect the then current Bruce A Fuel Costs, if at all, and whether, in its reasonable opinion, such Fuel Supply Variation is in accordance with the Approved Procurement Strategy then in effect and prudently incurred. The Counterparty shall, acting reasonably and without unreasonable delay or conditions, provide BALP with its consent to enter into such Fuel Supply Variation. If the Counterparty provides such consent, the Counterparty shall be deemed to have approved of the Fuel Supply Variation and such Fuel Supply Variation shall be deemed to be Specified Fuel Supply Arrangements for the purposes of this Agreement. If the Counterparty has not provided its consent to enter into, or disapproval of, such the Fuel Supply Variation within sixty (60) days of receipt of the Fuel Amendment Notice, the Counterparty shall be deemed to have consented to same.
- (c) If the Counterparty does not wish to provide such consent: (i) it shall notify BALP of the grounds upon which it believes, acting reasonably, that the Fuel Supply Variation is not in accordance with the Approved Procurement Strategy; and (ii) it may in such notice advise BALP of the amount of the increase in Bruce A Fuel Costs that it believes, acting reasonably, is prudently incurred (collectively, a “**Counterproposal**”).
- (d) In the absence of the Counterparty’s consent, BALP may:
 - (i) take such steps as are necessary to bring the Fuel Supply Variation into accordance with the Approved Procurement Strategy as set forth in the Counterproposal, in which case such Fuel Supply Variation shall be deemed to be Specified Fuel Supply Arrangements for the purposes of this Agreement; or
 - (ii) nonetheless proceed with such Fuel Supply Variation and the issues of whether (A) such Fuel Supply Variation is in accordance with the Approved Procurement Strategy then in effect and, if not, (B) the amount by which the Bruce A Fuel Costs may be increased as a result of being prudently incurred, shall be determined by mandatory and binding

arbitration, from which there shall be no appeal, with such arbitration to be conducted in accordance with the procedures set out in Exhibit 15.2.

Until such time as such arbitration is concluded, Monthly Payments shall be made effective as of the date that such Fuel Supply Variation takes effect and shall be based on the existing Bruce A Fuel Costs as increased by the amount of the increase, if any, that the Counterparty has notified BALP in the Counterproposal as being prudently incurred. If the Counterparty has not provided such notice within sixty (60) days of its receipt of the Fuel Amendment Notice, the Monthly Payments shall be based on the new Bruce A Fuel Costs determined by BALP pursuant to such Fuel Supply Variation. All such Monthly Payments shall be subject to recalculation and readjustment once the issue of whether the Fuel Supply Variation is in accordance with the Approved Procurement Strategy then in effect or the increase in the Bruce A Fuel Costs is prudent is finally determined by arbitration, and any Party owing monies to the other pursuant to such recalculation shall promptly pay such monies owing together with interest at the Interest Rate plus 2%, calculated daily and compounded monthly, from and including the time such payments were due to the date of the payment thereof. Upon such determination, such Fuel Supply Variation (including the amount of the permitted increase in the Bruce A Fuel Costs, if any) shall be deemed to be Specified Fuel Supply Arrangements for the purposes of this Agreement.

- (e) The Fuel Supply Variations and the Monthly Payments contemplated by this Section shall be subject to the audit rights of the Counterparty set out in Section 2.5(c)(ii).

ARTICLE 3 PAYMENT OBLIGATIONS

3.1 Payment Obligations

- (a) The Parties acknowledge that the Counterparty is not purchasing, assuming or otherwise receiving from either Generator, nor is either Generator selling, transferring, assigning or otherwise conveying to the Counterparty, any Electricity or Related Products.
- (b) The Net Related Products Revenues received by BALP shall be paid to the Counterparty. The Net Related Products Revenues receivable by BALP shall accrue to the benefit of the Counterparty and shall be paid to the Counterparty after receipt thereof. BALP shall from time to time during the Term of this Agreement obtain, quantify and register with the relevant authorities or agencies all Related Products related to Bruce A that are required pursuant to applicable legislation. BALP shall not participate in any voluntary programs with respect to any Related Products associated with Bruce A without the prior written consent of the Counterparty, which consent may be unreasonably withheld. BALP shall include in the Statement for each Settlement Month a line item setting forth the

Net Related Products Revenues, and such Net Related Products Revenues, if positive, shall be paid by BALP to the Counterparty (or set-off against amounts owed by the Counterparty to BALP for such Settlement Month) in accordance with Section 4.3 and, if negative, shall be carried forward to subsequent Statements until there is a positive amount in a Settlement Month. For certainty, negative amounts shall not be netted against any amount other than subsequently arising positive Net Related Products Revenues.

3.2 Monthly Payments.

The Parties agree that, commencing on the Commencement Date for the Term, and subject to Sections 9.2(a)(ii) and 9.4(a)(ii), the relevant Party shall have the following payment obligations:

- (a) **Contingent Support Payment (Bruce A):** Subject to Section 3.3, for each Month of the Term in which BACR is greater than BAAR, the Counterparty shall pay BALP a Contingent Support Payment (Bruce A), as calculated pursuant to Exhibit 3.2.
- (b) **Revenue Sharing Payment (Bruce A):** For each Month of the Term in which BAAR is greater than BACR, BALP shall pay to the Counterparty a Revenue Sharing Payment (Bruce A), as calculated pursuant to Exhibit 3.2.
- (c) **Contingent Support Payment (Bruce B):** For each Month of the Term prior to January 1, 2020 in which BBCR is greater than BBAR, the Counterparty shall pay BPLP a Contingent Support Payment (Bruce B), as calculated pursuant to Exhibit 3.2.
- (d) **No Payment Obligation:** For greater certainty:
 - (i) if BAAR in a Month of the Term is equal to BACR in such Month, no payment shall be made by either BALP or the Counterparty to the other pursuant to Section 3.2(a) or 3.2(b); and
 - (ii) if BBAR in a Month of the Term is equal to or greater than BBCR in such Month, no payment shall be made by the Counterparty to BPLP pursuant to Section 3.2(c).
- (e) **Payments for Bruce A Fuel Costs:** Subject to Sections 2.5(c) and 2.14, for each Month of the Term, the Counterparty shall pay BALP the Bruce A Fuel Costs as determined pursuant to Exhibit 3.2(e). BALP shall include the Bruce A Fuel Costs in each Statement to be provided to the Counterparty pursuant to Section 4.2. The Counterparty acknowledges that the plans for the Refurbishment Projects include the use of low void reactivity fuel and the costs of low void reactivity fuel will be included in the Bruce A Fuel Costs.

3.3 Limitation on Net Monthly Payments during Refurbishment of Units 1 and 2

- (a) The positive difference of the aggregate of all Contingent Support Payments (Bruce A) made during the Unit 1/2 Refurbishment Period less the aggregate of all Revenue Sharing Payments (Bruce A) made during the Unit 1/2 Refurbishment Period (such positive difference, if any, being the “**Pre-COD Net Payment**”), shall not at any time exceed \$575,000,000 (the “**Pre-COD Net Payment Cap**”).
- (b) If on the last day of any Month in the Unit 1/2 Refurbishment Period the Pre-COD Net Payment (including such Contingent Support Payment (Bruce A) calculated as at such time in respect of such Month) is equal to or greater than the Pre-COD Net Payment Cap, the Contingent Support Payment (Bruce A) for such Month shall be reduced by the positive difference of such Pre-COD Net Payment less the Pre-COD Net Payment Cap and the Counterparty shall have no obligation to make any further Contingent Support Payments (Bruce A) unless and until BALP has reduced the Pre-COD Net Payment to below the Pre-COD Net Payment Cap by making a Revenue Sharing Payment (Bruce A). In such event, the Counterparty shall again make Contingent Support Payments (Bruce A) up to the Pre-COD Net Payment Cap.
- (c) For greater certainty:
 - (i) payments by the Counterparty to BALP in respect of Bruce A Fuel Costs pursuant to Section 3.2(e) will not be subject to or counted towards the Pre-COD Net Payment Cap or used to calculate the Pre-COD Net Payment;
 - (ii) BALP shall have no right to be paid, at any time, any Contingent Support Payment (Bruce A) or portion thereof which BALP would have been paid during the Unit 1/2 Refurbishment Period but which, as a result of the Pre-COD Net Payment Cap, was not paid;
 - (iii) the Pre-COD Net Payment Cap shall not apply to any Contingent Support Payments (Bruce A) that are payable by the Counterparty after the expiry of the Unit 1/2 Refurbishment Period; and
 - (iv) the Pre-COD Net Payment Cap shall not apply to Bruce B Energy.

3.4 Payments for Operational Efficiencies

BALP and the Counterparty agree that the Counterparty shall share in improvements in operational performance beyond the Base Case per MWh Operating Costs set forth in Exhibit 3.5 in respect of the Bruce A Units. At the end of each Contract Year following December 31, 2010, if the Actual per MWh Operating Costs in the Contract Year ended December 31, 2010 and each Contract Year thereafter are less than the Base Case per MWh Operating Costs for the particular

Contract Year, then BALP shall pay the Counterparty such difference multiplied by the sharing factor set forth in Exhibit 3.5 in twelve equal monthly instalments commencing on April 1 of the next following Contract Year. Such Actual per MWh Operating Costs shall be subject to audit review pursuant to Section 2.5(c). Amounts under this Section 3.4 in respect of a particular Contract Year shall be payable as at the end of the particular Contract Year (to be paid in the following Contract Year as set out above), and shall be treated as a refund of Contingent Support Payments (Bruce A) for the particular Contract Year or additional Revenue Sharing Payments (Bruce A) for the particular Contract Year, but for greater certainty, without affecting the amount of, or the requirement of BALP to make, such payments.

3.5 Adjustments to Bruce A Price

- (a) Adjustment for Refurbishment Cost overruns: The Bruce A Price shall be adjusted in the manner set forth in Exhibit 3.5 to reflect the agreed sharing between the Counterparty and BALP of Refurbishment Costs (including Refurbishment Cost overruns attributable to Type 1 Force Majeure, Type 2 Force Majeure and Type 3 Force Majeure).
- (b) Adjustment for Inflation: For the second and each succeeding Contract Year, the Bruce A Price shall be adjusted at the beginning of the first hour on April 1 of such Contract Year by a factor (“**CPI Adjustment Factor**”) based on the percentage change in the annual average CPI for the twelve-month period ending on December 31 of the Contract Year that just ended, over the annual average CPI for the immediately preceding twelve-month period ending on December 31, such factor to be calculated as follows:

$$\text{If } \frac{\text{CPI}_{y-1}}{\text{CPI}_{y-2}} < 1.0 \text{ then: } \text{BAP}_y = \text{BAP}_{y-1} - (\text{BAP}_{y-1} \times 0.60 \times \left[1 - \frac{\text{CPI}_{y-1}}{\text{CPI}_{y-2}} \right])$$

$$\text{If } 1.0 \leq \frac{\text{CPI}_{y-1}}{\text{CPI}_{y-2}} \leq 1.025 \text{ then: } \text{BAP}_y = \text{BAP}_{y-1} \times \frac{\text{CPI}_{y-1}}{\text{CPI}_{y-2}}$$

$$\text{If } \frac{\text{CPI}_{y-1}}{\text{CPI}_{y-2}} > 1.025 \text{ then: } \text{BAP}_y = \text{BAP}_{y-1} \times (1.025 + 0.6 \times \left[\frac{\text{CPI}_{y-1}}{\text{CPI}_{y-2}} - 1.025 \right])$$

where:

BAP_y is the Bruce A Price in Contract Year “y”

BAP_{y-1} is the Bruce A Price for the Contract Year immediately preceding Contract Year “y” and, if such price changed during such Contract Year, the price which was in effect on March 31 of such Contract Year

CPI _{y-1}	is the annual average CPI calculated for the twelve-month period ending on December 31 of the Contract Year immediately preceding Contract Year “y”
CPI _{y-2}	is the annual average CPI calculated for the twelve-month period ending on December 31 of the Contract Year immediately preceding Contract Year “y-1”
annual average CPI	is the simple average of the twelve monthly CPIs in a specified twelve-month period ending on December 31, as calculated and published by Statistics Canada (or, if no longer so published, as calculated by the Parties) and rounded to the first decimal place.

For purposes of this calculation, the quotient of CPI_{y-1} divided by CPI_{y-2} shall be rounded to the third decimal place.

- (c) Adjustment for Bruce B Staffing Budget: The Bruce A Price shall be adjusted to account for any differences in actual and budgeted staffing costs for the Bruce A Units upon the decommissioning of the Bruce B Units. At such time as the last of the Bruce B Units to operate is Permanently Decommissioned or Effectively Decommissioned, the Generators shall prepare a budget for the staffing at Bruce B and the Common Facilities allocated to Bruce B and for maintaining the Permanently Decommissioned or Effectively Decommissioned Bruce B Units for the balance of the Term. To the extent such costs differ from those provided in the baseline budgeted staffing costs set forth in Exhibit 3.5(c) of the Technical Schedule (in 2005 dollars), the Bruce A Price and the Base Case per MWh Operating Costs, First Adjusters and Second Adjusters in the Operating Cost per MWh Table will all be adjusted from the date that the last of the Bruce B Units is Permanently Decommissioned or Effectively Decommissioned to reflect the resulting difference in staffing costs for the balance of the Term and based upon the methodology set out in Exhibit 3.5(c) of the Technical Schedule. The Counterparty may review and audit such budget. If BALP and the Counterparty are unable to agree on the adjustment, either such Party may refer the matter to mandatory and binding arbitration from which there shall be no appeal, with such arbitration to be conducted in accordance with the procedures set out in Exhibit 15.2.

3.6 Adjustment of Bruce B Floor Price

For the second and each succeeding Contract Year, for as long as Contingent Support Payments (Bruce B) are to be made under this Agreement, the Bruce B Floor Price shall be adjusted at the beginning of the first hour on April 1 of each Contract Year by the CPI Adjustment Factor in the manner set forth in Section 3.5(b), *mutatis mutandis*, except with all references to “Bruce A Price” replaced with references to “Bruce B Floor Price”.

3.7 Annual Recapture of Contingent Support Payments (Bruce B)

In any Contract Year ending no later than December 31, 2019 in which TOBCSP (BB) is greater than zero and BBAR plus CSP(BB) exceeds BBCR (in each of the foregoing cases in the aggregate for such Contract Year), BPLP shall pay the Counterparty a Recapture Payment (Bruce B), as calculated pursuant to Exhibit 3.2. On the earlier of termination of this Agreement for any reason and December 31, 2020, if TOBCSP (BB) is equal to or greater than zero, BPLP shall have no payment obligation to the Counterparty in respect thereto, except for any Recapture Payments (Bruce B) that are payable in respect of the period up to the date of termination. Notwithstanding Section 4.3, any Recapture Payment (Bruce B) owed to the Counterparty shall be paid by BPLP by the last Business Day of January in the Contract Year immediately following the Contract Year for which such Recapture Payment (Bruce B) has been determined.

3.8 Commodity Taxes

The Counterparty is liable for and shall pay, or cause to be paid, or reimburse the applicable Generator if such Generator has paid, all Commodity Taxes (or any new Taxes) applicable to any Monthly Payment due to such Generator. The applicable Generator is liable for and shall pay, or cause to be paid, or reimburse the Counterparty if the Counterparty has paid, all Commodity Taxes (or any new Taxes) applicable to any Monthly Payment due to the Counterparty.

ARTICLE 4 STATEMENTS AND PAYMENTS

4.1 Meter and Other Data

The applicable Generator agrees to provide to the Counterparty, upon request, any meter data and any other information that such Generator has provided to, or received from, the IESO from time to time relating to the delivery of Electricity from Bruce A or Bruce B, as applicable and the calculation of Deemed Electricity, if any. Upon a Party becoming aware of any errors in any data or information provided in accordance with this Section, such Party shall notify the other Party, and if applicable, the IESO in accordance with the IESO Market Rules, on a timely basis.

4.2 Statements

Each Generator shall prepare and deliver a settlement statement (the “**Statement**”) to the Counterparty within twelve (12) Business Days after the end of each Month of the Term, commencing with the Month in which the Commencement Date occurs. The Statement shall set out for the Month that is the subject of the Statement (the “**Settlement Month**”) the following amounts, if any and as applicable to each Generator: (i) the aggregate Bruce A Energy, (ii) the Deemed Electricity determined by such Generator, (iii) the aggregate Bruce B Energy, (iv) the Bruce A Fuel Costs, (v) the Bruce Energy Congestion Revenues received by such Generator, (vi) the liquidated damages owing to the Counterparty by BALP pursuant to Section 2.7(f), (vii) the Net Related Products Revenues received by BALP, (viii) any payment required to be made by BALP pursuant to Section 3.4 in respect of operational efficiencies, (ix) the Monthly Payment required to be paid by a Party to another, (x) any payment required to be made by BPLP pursuant

to Section 2.12(b), (xi) any other payments required to be paid by one Party to another Party with respect to the Settlement Month, and (xii) any Commodity Taxes (or other Taxes) applicable to such amounts. Each Statement shall include reasonably detailed back-up data and information to support or establish the amounts set forth therein, which shall form part of such Statement, and if a Generator fails to provide such back-up information and data in the Statement, the Counterparty may send a written notice to such Generator requesting same and such Generator shall, subject to the following sentence, promptly and in any event within ten (10) Business Days thereafter, provide same to the Counterparty. Where practicable, each Generator shall render its Statements based upon verified information. If a Generator renders a Statement on an estimated basis, the Statement shall include the basis of such estimate. Any adjustments based on verified information, including information verified by the IESO or its verification processes, shall be made in the Statement following receipt of such verified information. A Statement shall include all information required by each Party to claim any input tax credits, refund, rebate, remission or other return of Commodity Taxes potentially available from a Governmental Authority. A Statement may be delivered by each Generator to the Counterparty by facsimile or electronic means, and shall include the reference numbers assigned to this Agreement by the Counterparty and such Generator, respectively. Amounts payable by a Party pursuant to a Statement shall be netted against amounts payable by the other Party pursuant to the Statement.

4.3 Payment

If an amount is payable to one Party by the other pursuant to a Statement, such Party shall remit to the other Party full payment in respect of the Statement no later than twenty (20) Business Days after the end of the Settlement Month to which the Statement relates (the “**Payment Date**”). Any and all payments required to be made by a Party under this Article 4 and any other provision of this Agreement shall be made by wire transfer to the applicable account designated in Section 4.6 of the Technical Schedule or as otherwise agreed by the applicable Parties.

4.4 Interest

The Party owing a Monthly Payment shall pay interest on any late payment to the other Party from the Payment Date to the date of payment thereof. The interest rate applicable to such late payment shall be the Interest Rate plus 2%, calculated daily and compounded monthly. Under no circumstances shall any payment of interest pursuant to any provision of this Agreement result in a receipt by a Party of interest at a criminal rate as construed by the *Criminal Code* (Canada) and any such payment of interest shall be redetermined using the highest rate of interest which is not prohibited by the *Criminal Code* (Canada).

4.5 Interest Rate Equivalency

For the purposes of disclosure pursuant to the *Interest Act* (Canada), the yearly rate of interest to which any rate of interest payable under this Agreement (which is to be calculated on any basis other than a full calendar year) is equivalent may be determined by multiplying such rate by a fraction, where the numerator is the actual number of days in the calendar year during the period the yearly rate of interest is to be ascertained and the denominator is the number of days interest is to be paid.

4.6 Payment Account Information

Any Party may change its account information listed in Section 4.6 of the Technical Schedule from time to time by written notice to the other Parties in accordance with Section 14.1.

4.7 Adjustment to Statement

- (a) Each Statement shall be subject to adjustment for errors in arithmetic, computation or other errors raised by a Party during the period of two (2) years following the end of the Contract Year in which such Statement was issued. If there are no complaints raised, or if any complaints raised in the time period have been resolved, such Statement shall be final and subject to no further adjustment after the expiration of such two (2) year period.
- (b) Notwithstanding the foregoing, absent manifest error, the determination by the IESO of any information pertaining to a Statement shall be final and binding on the relevant Parties in accordance with the IESO Market Rules, and without limiting the generality of the foregoing, if a Statement contains an error in the data or information issued by the IESO which the IESO has requested be corrected, then the two (2) year limit set forth in Section 4.7(a) shall not apply to the correction of such error or a Party's ability to readjust the Statement.
- (c) Subject to Section 4.8, any adjustment to a Statement made pursuant to this Section 4.7 shall be made in the next subsequent Statement.

4.8 Disputed Statement

If the Counterparty disputes a Statement or any portion thereof in good faith, the Party owing any amount set forth in the Statement shall, notwithstanding such dispute, pay any amount not in dispute to the other applicable Party. The Counterparty shall provide written notice to the applicable Generator setting out the portions of the Statement that are in dispute with a brief explanation of the dispute. If it is subsequently determined or agreed that an adjustment to the Statement is appropriate, the applicable Generator will promptly (and, in any event, within ten (10) Business Days) prepare and deliver a revised Statement to the Counterparty. Any overpayment or underpayment of a Statement shall bear interest at the Interest Rate plus 2%, calculated daily and compounded monthly, from and including the time of such overpayment or underpayment to the date of the refund or payment thereof. Payment pursuant to the revised Statement shall be made on or before the tenth (10th) Business Day following the date on which the revised Statement is delivered to the Counterparty. If a Statement dispute has not been resolved between the relevant Parties within five (5) Business Days after receipt of written notice of such dispute by the relevant Generator, the dispute may be submitted by either Party to a Senior Conference pursuant to the terms of Section 15.1 and thereafter to formal dispute resolution in accordance with the terms of Section 15.2.

4.9 Statements and Payment Records

The Parties shall keep all books and records necessary to support the information contained in and with respect to each Statement and Monthly Payment made thereunder, in accordance with Section 2.5.

ARTICLE 5 DEEMED GENERATION

5.1 Deemed Generation

- (a) If at any time on or after the earlier to occur of the Commercial Operation Date of the First Unit and January 1, 2010, provided that each Generator has complied with its obligations under Sections 2.9(c) and 2.9(d), (i) the Generators, or either of them, are wholly or partially unable to generate Electricity from any electrical generating unit associated with the applicable Generating Station, or (ii) delivery of any amount of Electricity from the Facility cannot be made to the Point of Delivery, in either of the foregoing cases (i) or (ii) because transmission from the Point of Delivery is unavailable because of a Transmission System Inadequacy or (iii) any amount of Electricity from any electrical generating unit associated with a Unit is constrained off by the order of the IESO by reason of a curtailment or de-rating due to unutilized baseload generation (each of the foregoing cases (i), (ii) and (iii) being a “**Disruption Event**”), then, for purposes of this Agreement, Bruce A Energy and/or Bruce B Energy, as applicable, in any hour or part thereof in which a Disruption Event has occurred or is continuing shall be deemed to include all Electricity that could have been delivered from the Facility to the Point of Delivery in such hour but for such Disruption Event. The quantity of such Electricity that could have been delivered (including the Deemed Electricity contemplated by Section 5.1(c)) shall be determined by each relevant Generator, acting reasonably and having regard to the relevant Unit’s(s’) historic planned and forced Outage rates and seasonal variations in ratings, and is referred to herein as “**Deemed Electricity**”.
- (b) The Counterparty shall pay each applicable Generator for all Deemed Electricity at a price per MWh equal to HOEP (or the replacement value for HOEP under LMP pursuant to the application of Section 1.7, or the Replacement Price pursuant to the application of Section 1.8 or the Administrative Price pursuant to Section 1.9, or a reasonable good faith estimate of the Actual Hourly Energy Payment pursuant to the application of Section 1.10) for each corresponding hour for which Deemed Electricity has been determined, provided that any congestion payments received by such Generator from the IESO in respect of such Disruption Event (and, for certainty, including the period referred to in Section 5.1(c)) (in respect of the applicable Generating Station, the “**Bruce Energy Congestion Revenue**”) shall be included in the relevant Statement and credited against such payment obligations of the Counterparty or, if applicable, paid by the applicable Generator(s) to the Counterparty.

- (c) For greater certainty, Deemed Electricity shall include any Electricity that each applicable Generator is not able to generate or deliver following a Disruption Event due to the time required to bring a Unit of the applicable Generating Station back on line or the ramping up of such a Unit even though such Disruption Event is no longer in effect, to the extent that such Generator has brought such Unit back on line as soon as reasonably practicable and in a manner consistent with Good Engineering Practices.
- (d) Deemed Electricity shall be included in the calculation of Monthly Payments in accordance with Section 3.2 and shall be attributed in whole first to Bruce B Energy, and any excess Deemed Electricity shall then be attributed to Bruce A Energy.
- (e) All payments required to be made by the Counterparty under this Section 5.1 shall be set forth in Statements delivered in accordance with and shall be payable in accordance with Article 4, subject to the rights of the Counterparty to dispute Statements in accordance with Article 4.
- (f) The Parties agree that there shall be no Deemed Electricity with respect to Bruce B (i) Unit 5 after December 31, 2016, (ii) Unit 6 after December 31, 2015, (iii) Unit 7 after December 31, 2017 and (iv) Unit 8 after December 31, 2019.
- (g) Notwithstanding any other provision of this Section 5.1, the Parties agree that at any time prior to January 1, 2012, there shall be no Deemed Electricity in respect of a Unit (the “**Eighth Unit**”) in circumstances where seven (7) Units are already synchronized to the IESO-Controlled Grid and the Eighth Unit is unable to synchronize or deliver Electricity (at full rated capacity or less than full rated capacity) to the IESO-Controlled Grid.

ARTICLE 6 REPRESENTATIONS

6.1 Representations of the Generators

Each Generator represents as of the Commencement Date to the Counterparty in respect of itself only as follows (except that only BPLP makes the representation in Section 6.1(k) and only BALP makes the representation in Section 6.1(l)), and acknowledges that the Counterparty is relying on such representations in entering into this Agreement:

- (a) The Generator is a limited partnership existing under the laws of the Province of Ontario, is registered or otherwise qualified to carry on business in the Province of Ontario, and has the requisite power to enter into this Agreement and to perform its obligations hereunder.
- (b) This Agreement has been duly authorized, executed and delivered by the Generator and is a valid and binding obligation of the Generator enforceable in

accordance with its terms, except as such enforcement may be limited by bankruptcy, insolvency and other laws affecting the rights of creditors generally and except that equitable remedies may only be granted solely in the discretion of a court of competent jurisdiction.

- (c) The execution and delivery of this Agreement by the Generator and the consummation of the transactions contemplated by this Agreement will not result in the breach or violation of any of the provisions of, or constitute a default under, or conflict with or cause the termination, cancellation or acceleration of any material obligation of the Generator under:
 - (i) any contract or obligation to which the Generator is a party or by which it or its assets may be bound, except for such defaults or conflicts as to which requisite waivers or consents have been obtained;
 - (ii) the limited partnership agreement or other constating documents of the Generator, or the resolutions of the directors or shareholders of Bruce Power Inc. or Bruce Power A Inc. (in their respective capacities as a general partner of the Generator) or of the Limited Partners of the Generator;
 - (iii) any judgment, decree, order or award of any Governmental Authority or arbitrator;
 - (iv) any licence, permit, approval, consent or authorization held by the Generator; or
 - (v) any Laws and Regulations, subject to (in connection with the consummation of the transactions contemplated by this Agreement) receipt of licences, permits, approvals, consents and authorizations to be obtained following the Commencement Date;

that could have a Material Adverse Effect on the Generator.

- (d) There are no bankruptcy, insolvency, reorganization, receivership, seizure, realization, arrangement or other similar proceedings pending against or being contemplated by the Generator or, to the knowledge of the Generator, threatened against the Generator.
- (e) There are no actions, suits, proceedings, judgments, rulings or orders by or before any Governmental Authority or arbitrator, or, to the knowledge of the Generator, threatened against the Generator, that could have a Material Adverse Effect on the Generator.
- (f) All requirements for the Generator to make any filing, declaration or registration with, give any notice to or obtain any licence, permit, certificate, registration,

authorization, consent or approval of, any Governmental Authority as a condition to entering into this Agreement have been satisfied.

- (g) The Generator has no knowledge of an existing event, cause or condition that is reasonably expected to prevent any of the Bruce A Units achieving their respective Milestone Dates.
- (h) Each of the partners of the Generator is not a non-resident of Canada for the purposes of the ITA.
- (i) BPLP is registered for GST purposes under the ETA and its GST registration number is 86482 9635. BALP is registered for GST purposes under the ETA and its GST registration number is 82297 2543.
- (j) The Generator is a Canadian partnership as provided for under the ITA.
- (k) Neither BPLP nor any Affiliate of BPLP has entered into or agreed to enter into any unit-specific Physical Delivery Contracts or Financial Contracts in respect of Electricity pertaining to Bruce A. Except for this Agreement and as described in Exhibit 6.1(k) of the Technical Schedule, neither BPLP nor any Affiliate of BPLP has entered into or agreed to enter into any Physical Delivery Contracts or Financial Contracts in respect of Electricity pertaining to the Generating Stations, or either of them.
- (l) Neither BALP nor any Affiliate of BALP has entered into or agreed to enter into any unit-specific Physical Delivery Contracts or Financial Contracts in respect of Electricity pertaining to Bruce A. Except for this Agreement, neither BALP nor any Affiliate of BALP has entered into or agreed to enter into any Physical Delivery Contracts or Financial Contracts in respect of Electricity pertaining to the Generating Stations, or either of them.

6.2 Representations of the Counterparty

The Counterparty represents as of the date hereof to each Generator as follows, and acknowledges that each Generator is relying on such representations in entering into this Agreement:

- (a) The Counterparty is a corporation without share capital existing under the *Electricity Act* and has the requisite power to enter into this Agreement and to perform its obligations hereunder.
- (b) This Agreement has been duly authorized, executed and delivered by the Counterparty and is a valid and binding obligation of the Counterparty enforceable in accordance with its terms, except as such enforcement may be limited by bankruptcy, insolvency and other laws affecting the rights of creditors

generally and except that equitable remedies may be granted solely in the discretion of a court of competent jurisdiction.

- (c) The execution and delivery of this Agreement by the Counterparty and the consummation of the transactions contemplated by this Agreement will not result in the breach or violation of any of the provisions of, or constitute a default under, or conflict with or cause the termination, cancellation or acceleration of any material obligation of the Counterparty under:
- (i) any contract or obligation to which the Counterparty is a party or by which it or its assets may be bound, except for such defaults or conflicts as to which requisite waivers or consents have been obtained;
 - (ii) the constating documents, by-laws or resolutions of the directors (or any committee thereof) of the Counterparty;
 - (iii) any judgment, decree, order or award of any Governmental Authority or arbitrator;
 - (iv) any licence, permit, approval, consent or authorization held by the Counterparty; or
 - (v) any Laws and Regulations;

that could have a Material Adverse Effect on the Counterparty.

- (d) There are no bankruptcy, insolvency, reorganization, receivership, seizure, realization, arrangement or other similar proceedings pending against, or being contemplated by the Counterparty or, to the knowledge of the Counterparty, threatened against the Counterparty.
- (e) There are no actions, suits, proceedings, judgments, rulings or orders by or before any Governmental Authority or arbitrator, or, to the knowledge of the Counterparty, threatened against the Counterparty, that could have a Material Adverse Effect on the Counterparty.
- (f) All requirements for the Counterparty to make any declaration, filing or registration with, give any notice to or obtain any licence, permit, certificate, registration, authorization, consent or approval of, any Governmental Authority as a condition to entering into this Agreement have been satisfied, including without limiting the generality of the foregoing, the receipt by the Counterparty of a direction from the Minister of Energy contemplated by subsections 25.32(4) and (7) of the *Electricity Act* directing the Counterparty to execute and deliver this Agreement in respect of the initiative to increase long-term Electricity supply initiated by the Ministry of Energy, on behalf of the Government of Ontario.

- (g) The Counterparty is registered for GST purposes under the ETA and its GST registration number is 854195039RT.
- (h) The Counterparty is not a non-resident of Canada as provided for under the ITA.
- (i) This Agreement is a “procurement contract” for purposes of section 25.32 of the *Electricity Act* and subsection 78.4(1) of the *Ontario Energy Board Act, 1998* (Ontario) and is a contract prescribed by Ontario Regulation 537/05 for the purpose of subsection 78.4(1) of such Act and is not a contract with respect to output generated by units at generation facilities, a contract for ancillary services or a contract for both as contemplated by subsection 1(2) of Ontario Regulation 537/05.
- (j) This Agreement complies with the regulations made pursuant to the *Electricity Act*.

6.3 Effective Date of Representations

The representations of each Generator and the Counterparty contained in Sections 6.1 and 6.2 are made with effect only on the respective dates specified in the preamble to such Sections.

ARTICLE 7 CONFIDENTIALITY AND FIPPA

7.1 Counterparty Confidential Information

From the date of this Agreement to and following the expiry of the Term:

- (a) each Generator shall keep all Confidential Information of the Counterparty confidential and secure; provided, however, each Generator may disclose Confidential Information of the Counterparty in confidence to:
 - (i) those employees, directors, officers, agents, representatives or advisors of the Generator, of any Affiliate of the Generator, of its general partner, of any Limited Partner or, of the direct and indirect shareholders that Control any Limited Partner;
 - (ii) the respective lenders of the Generator, of any Limited Partner or, of the direct and indirect shareholders that Control any Limited Partner and their respective employees, directors, officers, agents, representatives and advisors; and
 - (iii) any bona fide potential investors in the Generator and their respective employees, directors, officers, agents, representatives or advisors;

who in each of the foregoing cases have a need to know it, have acknowledged that the Confidential Information of the Counterparty is confidential and have

agreed to non-disclosure of such Confidential Information on terms substantially similar to those contained in this Agreement; and

- (iv) to any Governmental Authority, stock exchange or other Person if legally compelled by such Governmental Authority or stock exchange under any Laws and Regulations or the requirements of any stock exchange; and
- (b) except as necessary for the purpose of complying with its obligations under this Agreement, the Generator shall not directly or indirectly exploit or use any Confidential Information of the Counterparty.

7.2 Generator Confidential Information

From the date of this Agreement to and following the expiry of the Term:

- (a) the Counterparty shall keep all Confidential Information of each Generator confidential and secure; provided, however, that the Counterparty may disclose Confidential Information of each Generator in confidence to:
 - (i) those employees, directors, officers, agents, representatives or advisors of the Counterparty and its respective Affiliates; and
 - (ii) the Ministry of Energy and the Ontario Financing Authority as contemplated by Sections 2.4(a) and (b) and the representatives, agents and auditors contemplated by Sections 2.5 and 2.6;

who in each case have a need to know it, have acknowledged being advised that the Confidential Information of the Generator is confidential or highly confidential pursuant to subsection 25.13(3) of the *Electricity Act*, and have agreed to non-disclosure of such Confidential Information on terms substantially similar to those contained in this Agreement and, specifically in the cases of the Ministry of Energy and the Ontario Financing Authority, have acknowledged and agreed to the provisions of Section 7.5 insofar as that section relates to FIPPA and to advise the Counterparty, if either of them are legally compelled to disclose any Confidential Information of either Generator; and
- (iii) any Governmental Authority if legally compelled by such Governmental Authority under any Laws and Regulations; and
- (b) except as necessary for the purpose of complying with its obligations under this Agreement, the Counterparty shall not directly or indirectly exploit or use any Confidential Information of either Generator, or both of them.

7.3 Injunctive and Other Relief

Each Party acknowledges that breach of any provisions of this [Article 7](#) will cause irreparable harm to another Party or to any third party to whom such Party owes a duty of confidence and in

respect of each Generator, may also prejudice significantly such Generator's competitive position, interfere significantly with such Generator's contractual or other negotiations, or otherwise result in undue loss to such Generator, and that the injury to the Party or to any third party may be difficult to calculate and inadequately compensable in damages. To the extent applicable to the Counterparty and for each Generator, each Party agrees that each other Party is entitled to obtain injunctive relief (without proving any damage sustained by it or by any third party) or any other remedy against any actual or potential breach of the provisions of this Article.

7.4 Notice and Protective Order

- (a) If either Generator, or both of them, any Affiliate of such Generator, its general partner(s), its Limited Partners and the shareholders that directly or indirectly Control any Limited Partner, or any of their respective directors, officers, employees, agents, representatives or advisors, become legally compelled to disclose any Confidential Information of the Counterparty, such Generator will provide the Counterparty with prompt notice to that effect in order to allow the Counterparty to seek one or more protective orders or other appropriate remedies to prevent or limit such disclosure, and it shall co-operate with the Counterparty and its legal counsel to the fullest extent at the Counterparty's cost and expense. If such protective orders or other remedies are not obtained, such Generator will disclose or cause such other Person to disclose, only that portion of the Confidential Information of the Counterparty which such Generator or such Person is legally compelled to disclose, only to such Person or Persons to which such Generator or such Person is legally compelled to disclose, and such Generator shall provide notice to each such recipient (in co-operation with legal counsel for the Counterparty) that such Confidential Information of the Counterparty is confidential and subject to non-disclosure on terms and conditions equal to those contained in this Agreement and, if practicable, shall obtain each recipient's written agreement to receive and use such Confidential Information of the Counterparty subject to those terms and conditions.
- (b) If the Counterparty, any Affiliate of the Counterparty, or any of their respective directors, officers, employees, agents, representatives or advisors or, to the knowledge of the Counterparty, the Ministry of Energy or the Ontario Financing Authority, become legally compelled to disclose any Confidential Information of either Generator (or both of them), the Counterparty will provide such Generator with prompt notice to that effect in order to allow such Generator to seek one or more protective orders or other appropriate remedies to prevent or limit such disclosure, and it shall co-operate with such Generator and its legal counsel to the fullest extent at such Generator's cost and expense. If such protective orders or other remedies are not obtained, the Counterparty will disclose, or cause such Person to disclose (or, in the case of the Ministry of Energy and the Ontario Financing Authority, request that such Persons disclose), only that portion of Confidential Information of such Generator which the Counterparty or such Person is legally compelled to disclose, only to such Person or Persons to which

the Counterparty or such Person is legally compelled to disclose, and the Counterparty shall provide notice to each such recipient (in co-operation with legal counsel for such Generator) that such Confidential Information of such Generator is confidential and subject to non-disclosure on terms and conditions equal to those contained in this Agreement and, if practicable, shall obtain each recipient's written agreement to receive and use such Confidential Information of such Generator subject to those terms and conditions.

7.5 FIPPA Records

The Parties acknowledge that the Counterparty is subject to FIPPA. The Counterparty has reviewed the Confidential Information of each Generator contained in the Technical Schedule and has considered such Confidential Information to be disclosed to the Counterparty in connection herewith. The Parties agree that such Confidential Information is highly confidential commercial, financial, scientific, technical, and/or labour relations information, and/or contains trade secrets and is supplied in confidence by each Generator to the Counterparty on that basis and, for greater certainty, for the purposes of subsection 25.13(3) of the Electricity Act, the Counterparty hereby designates as confidential or highly confidential the Confidential Information of the Generators provided to the Counterparty up to and including the date of this Agreement and acknowledges that the Generators have advised it that all Confidential Information to be provided to the Counterparty after the date of this Agreement is considered by the Generators to be confidential or highly confidential. The Parties agree that the disclosure of the Confidential Information contained in the Technical Schedule, and the Counterparty acknowledges that the Generator has advised it that disclosure of the Confidential Information provided to the Counterparty pursuant to this Agreement, could reasonably be expected to cause irreparable harm and material financial loss to each Generator and significant prejudice to each Generator's competitive position and to interfere with each Generator's contractual arrangements and the negotiations in which the Parties are engaged. Accordingly, the Counterparty acknowledges that each Generator is disclosing its Confidential Information to the Counterparty on the basis that all such Confidential Information is exempt from access by and disclosure to others pursuant to section 17(1) of FIPPA and the Counterparty agrees it will treat all Confidential Information contained in the Technical Schedule as being so exempt from the disclosure requirements under FIPPA; provided, however, that the Parties acknowledge and agree that the refusal of the Chief Executive Officer of the Counterparty to disclose any Confidential Information in accordance with section 17(1) of FIPPA may be the subject of an appeal to the Information and Privacy Commissioner as set forth under FIPPA. In the event that the Counterparty is requested to disclose, and the Counterparty is planning to disclose, to others pursuant to FIPPA all or any part of the Confidential Information disclosed to the Counterparty by either Generator, the Counterparty will promptly advise such Generator of such request, so that such Generator will have the opportunity to make detailed representations to the appropriate authority about the nature of the information. The Counterparty agrees to comply with Section 7.4(b) of this Agreement in respect of any request for disclosure of either Generator's Confidential Information pursuant to FIPPA. This Section 7.5 is in addition to, and without limitation of, the obligations of the Counterparty set out in Section 7.2.

7.6 Disclosure of this Agreement

Notwithstanding this [Article 7](#), the Parties acknowledge and agree that this Agreement, other than the Technical Schedule, does not contain Confidential Information and may be disclosed by a Party without the consent of the other Parties and without the application of [Section 7.4](#). Notwithstanding any other term of this Agreement, any Affiliate of either Generator, its general partner(s) or any Limited Partner or any direct or indirect shareholder that Controls any Limited Partner may, if required by any Laws and Regulations or the requirements of any stock exchange, disclose the Technical Schedule without the consent of the Counterparty and without the application of the provisions of [Section 7.4](#). Notwithstanding any other terms of this Agreement, the Counterparty and the Government of Ontario may, if required by any Laws and Regulations, but without limiting the application of [Section 7.5](#) to the Counterparty or the acknowledgements in [Section 7.2\(a\)\(ii\)](#), disclose the Technical Schedule without the consent of either Generator and without the application of the provisions of [Section 7.4](#).

ARTICLE 8 TERM

8.1 Term

- (a) This Agreement shall become effective at the beginning of the hour ending 01:00 hours (EST) on the Commencement Date. “**Term**” means that period of time commencing upon the Commencement Date and ending at 24:00 hours (EST) on the earliest of:
- (i) the date on which the OPG Lease expires or is otherwise terminated unless a new lease agreement in respect of the Facility is entered into or the OPG Lease is assumed by BALP within fifty-five (55) Business Days of such termination;
 - (ii) the date on which the BALP Sublease expires or is otherwise terminated unless a new sublease agreement in respect of Bruce A is entered into, a new lease in respect of the Facility is entered into, or the OPG Lease is assumed by, BALP, in each of the foregoing cases within fifty-five (55) Business Days of such termination;
 - (iii) December 31, 2036, plus any extensions pursuant to [Section 10.1\(f\)](#) to the Milestone Date of the latest Unit to achieve Commercial Operation beyond its Original Milestone Date; and
 - (iv) the date on which this Agreement is terminated in accordance with [Sections 8.2\(b\), 8.2\(d\), 8.2\(e\), 9.2 or 9.4](#).
- (b) No Party shall have any right to extend or renew the Term except as agreed in writing by the Parties and, after December 31, 2019, by the Counterparty and BALP.

- (c) If this Agreement is terminated prior to December 31, 2036 pursuant to section 8.1(a)(ii) as a result of the expiry or termination of the BALP Sublease in circumstances where the OPG Lease remains in full force and effect, (i) the date of such expiry or termination shall be deemed to be an Early Termination Date for the purposes of Section 9.5(a) and (ii) the Counterparty shall be entitled to calculate its Early Termination Damages, and each Generator shall pay to the Counterparty an Early Termination Payment, if any, in accordance with Section 9.5 in connection with such termination.
- (d) Subject to Section 15.9, upon the expiration of the Term, the Parties' respective obligations hereunder shall terminate and be of no further force and effect.

8.2 Termination of Agreement in Part or in Whole

- (a) If the Commercial Operation Date of either Unit 1 or Unit 2 has not occurred on or before the date which is thirty-three (33) months after the applicable Milestone Date for such Unit, then (i) either BALP or the Counterparty may terminate this Agreement with respect to such Unit effective upon written notice to each other Party and (ii) upon such termination by BALP or the Counterparty, the Counterparty may demand the Clawback Payment from BALP, if any, for such Unit.
- (b) If the Commercial Operation Dates of both Units 1 and Unit 2 have not occurred on or before the date which is thirty-three (33) months after the applicable Milestone Dates for such Units, then (i) either BALP or the Counterparty may terminate this Agreement in its entirety effective upon written notice to each other Party and (ii) upon such termination by BALP or the Counterparty, the Counterparty may demand the Clawback Payment from BALP, if any, for such Units.
- (c) If the Commercial Operation Date of any of Units 1, 2, 3 or 4 has not occurred on or before the date which is four (4) years after its Original Milestone Date, whether or not the delay in achieving Commercial Operation includes delays attributable to Force Majeure, then (i) either BALP or the Counterparty may terminate this Agreement with respect to such Unit(s) upon written notice to each other Party and (ii) upon such termination by BALP or the Counterparty, the Counterparty may demand the Clawback Payment from BALP, if any, for such Unit if the termination is in respect of Unit 1 or Unit 2.
- (d) If the Commercial Operation Dates of both Units 1 and 2 have not occurred on or before the date which is four (4) years after the applicable Original Milestone Dates for such Units, whether or not the delay in achieving Commercial Operation includes delays attributable to Force Majeure, then (i) either BALP or the Counterparty may terminate this Agreement in its entirety effective upon written notice to each other Party and (ii) upon such termination by BALP or the

Counterparty, the Counterparty may demand the Clawback Payment from BALP, if any, for such Units.

- (e) If BALP reasonably and in good faith determines that Refurbishment of a Unit cannot be completed using Commercially Reasonable Efforts by such Unit's Original Milestone Date and within such Unit's Refurbishment budget as set forth in cell C2 of the applicable Refurbishment Costs Table and:
- (i) in the case of Unit 1, at least twelve (12) months have elapsed since the commencement of Refurbishment of Unit 1 and BALP has spent or irrevocably committed to spend at least \$500,000,000 on such Refurbishment;
 - (ii) in the case of Unit 2, at least twelve (12) months have elapsed since the commencement of Refurbishment of Unit 2 and BALP has spent or irrevocably committed to spend at least \$500,000,000 on such Refurbishment;
 - (iii) in the case of Unit 3, at least six (6) months have elapsed since the commencement of Refurbishment of Unit 3 and BALP has spent or irrevocably committed to spend at least \$400,000,000 on such Refurbishment; or
 - (iv) in the case of Unit 4, at least three (3) months have elapsed since the commencement of Refurbishment of Unit 4 and BALP has spent or irrevocably committed to spend at least \$100,000,000 on such Refurbishment,

then,

- A. BALP may terminate this Agreement with respect to such Unit effective upon written notice to the Counterparty, together with reasonably detailed information supporting the basis for BALP's determination;
- B. upon such termination, BALP shall (x) pay liquidated damages to the Counterparty in accordance with Section 2.7 as if the Commercial Operation Date of the terminated Unit occurred on the date which is thirty-three (33) months after its Milestone Date and (y) the Counterparty may demand a Clawback Payment from BALP, if any, for such Unit if the termination is in respect of Unit 1 or 2, provided that, if the Generator terminates this Agreement with respect to both Units 1 and 2 pursuant to this Section 8.2(e) then BALP shall pay the liquidated damages for both such Units and a Clawback Payment, if any, to the Counterparty as set forth in

the previous sentence and this Agreement shall be terminated in its entirety; and

- C. if this Agreement is terminated in respect of a Unit or in its entirety pursuant to this Section 8.2(e), the Generators covenant and agree that they will not directly or indirectly cause such Unit, or either of Units 1 and 2 if this Agreement is terminated in its entirety pursuant to this Section 8.2(e), to be refurbished for a period of ten (10) years after the date of termination.
- (f) In the event that BALP or the Counterparty terminates this Agreement with respect to Unit 1 or Unit 2 pursuant to Section 8.2(a), (c) or (e) or terminates this Agreement in its entirety pursuant to Section 8.2(b), (d) or (e), the Counterparty may demand a clawback from BALP (the “**Clawback Payment**”) of a specified portion of the amounts paid by the Counterparty to BALP up to the effective date of any such termination (any such effective date being a “**Clawback Determination Date**”). For each of Units 1 and 2, the Clawback Payment will be payable by BALP to the Counterparty as follows:

$$\text{Clawback Payment} = A - B/10$$

where

- A = 50% of the amount, if any, by which (i) the aggregate of all Contingent Support Payments (Bruce A) made up to the Clawback Determination Date exceeds (ii) the aggregate of all Revenue Sharing Payments (Bruce A) made up to the Clawback Determination Date; and
- B = 50% of the aggregate amount of Refurbishment Costs spent or irrevocably committed by BALP on the Refurbishment of Units 1 and 2 up to the Clawback Determination Date,

provided that the Clawback Payment shall be deemed to be zero if the quantity $(A - B/10)$ is a negative number or if B equals or exceeds the amount set out in Section 8.2(f) of the Technical Schedule.

- (g) Without limiting Section 8.2(e) in respect of Unit 3, at least thirty (30) days prior to the time of commencement of the Refurbishment of Unit 3, BALP shall provide the Counterparty with written notification (the “**Unit 3 Refurbishment Notice**”) containing detailed information concerning BALP’s reasonably expected costs of Refurbishing Unit 3 (the “**Expected Unit 3 Refurbishment Costs**”). BALP shall promptly provide to the Counterparty such additional information relating to such Refurbishment as may be requested by the Counterparty, acting reasonably; provided that such request by the Counterparty is made within ten

(10) days of the receipt by the Counterparty of the Unit 3 Refurbishment Notice. If the Expected Unit 3 Refurbishment Costs exceed the “**Unit 3 Threshold**” as defined in Section 8.2(g) of the Technical Schedule, either BALP or the Counterparty may terminate this Agreement with respect to such Unit effective upon written notice (the “**Unit 3 Termination Notice**”) to the other Party. In the case of BALP, the Unit 3 Termination Notice must be given by BALP to the Counterparty as part of the Unit 3 Refurbishment Notice. In the case of the Counterparty, the Unit 3 Termination Notice must be given by the Counterparty to BALP on or before the later of (i) the date which is twenty (20) days after the date the Unit 3 Refurbishment Notice was given by BALP to the Counterparty; and (ii) the date which is ten (10) days after the date BALP provides the Counterparty with the additional information requested by the Counterparty concerning the Unit 3 Refurbishment. Following such termination, the Generators covenant and agree that they will not directly or indirectly cause Unit 3 to be Refurbished prior to the date that is three (3) years after the date that the Unit 3 Termination Notice was delivered.

Notwithstanding the foregoing, if it is the Counterparty that provides the Unit 3 Termination Notice, BALP shall be entitled to proceed with such Unit 3 Refurbishment by providing written notice to the Counterparty not later than ten (10) days following its receipt of such Unit 3 Termination Notice. BALP’s notice shall state BALP’s commitment to complete the Unit 3 Refurbishment and shall confirm that BALP will be solely responsible for all Unit 3 Refurbishment Costs in excess of the Unit 3 Threshold, other than those relating to Force Majeure, which will be dealt with in accordance with Exhibit 3.5 hereof. Upon the delivery of such notice, the Counterparty’s Unit 3 Termination Notice shall be void ab initio and this Agreement shall continue in full force and effect in respect of Unit 3 but as amended in respect of Refurbishment Costs as provided in the immediately preceding sentence.

- (h) For greater certainty, if this Agreement is terminated with respect to a particular Unit under this Section 8.2: (i) the Electricity output from the electrical generating unit paired with such Unit shall not be the subject of any Monthly Payments, nor shall it be included in Bruce A Energy; (ii) the Bruce A Price shall not be adjusted as a result of such termination; and (iii) any Refurbishment Cost overruns associated with Refurbishing such Unit, whether attributable to Force Majeure or not, shall not be recoverable by BALP from the Counterparty under an adjustment to the Bruce A Price or otherwise under this Agreement.
- (i) If BALP owes the Counterparty a Clawback Payment pursuant to this Section 8.2, BALP shall include the Clawback Payment in the next Statement.
- (j) If this Agreement is terminated with respect to a particular Unit pursuant to any of Sections 8.2(a), (c), (e) or (g), then and subject to the Counterparty’s right to receive the Clawback Payment, if any, for such Unit if the termination is in respect of Unit 1 or 2, and liquidated damages up to the date of termination (or to

the date specified in Section 8.2(e)B if such termination is pursuant to Section 8.2(e)) and the covenant not to refurbish the Unit for the periods set out in Section 8.2(e) and (g), such right of termination shall represent that terminating Party's sole and exclusive right in respect of such termination.

- (k) If this Agreement is terminated in its entirety pursuant to any of Sections 8.2(b), (d) or (e), then and subject to the Counterparty's right to receive the Clawback Payment, if any, for Units 1 and 2, liquidated damages up to the date of termination (or to the date specified in Section 8.2(e)B if such termination is pursuant to Section 8.2(e)), each Party's right to be paid all of the amounts then due and owing to it, and the covenant not to refurbish the Unit for the period set out in Section 8.2(e), such termination shall represent that terminating Party's sole and exclusive right in respect of such termination and the provisions of Article 9 shall be inapplicable, but shall not affect any rights that the Counterparty Indemnitees or the Generator Indemnitees may have pursuant to any indemnity hereunder and, subject to Section 15.3, without limitation to any claim by, or rights of, each Generator pursuant to Article 12 with respect to any Discriminatory Action which occurred prior to or on the effective date of termination.

8.3 Conditions Subsequent

For purposes of this Section 8.3, the "Tax Ruling Conditions" mean that:

- (a) the Generators shall have received the Tax Ruling from the Canada Revenue Agency;
- (b) all of the conditions to and terms of the Tax Ruling, including the reorganization involving BPLP and BALP and their respective partners, shall have been satisfied and the Tax Ruling shall be in full force and effect; and
- (c) all of the transactions contemplated by the Tax Ruling shall have occurred.

BALP shall provide notice to the Counterparty as soon as practicable following occurrence of the Tax Ruling Conditions and the date of such notice shall be the commencement date for the purposes of this Agreement (the "Commencement Date"); provided, however, that if on or before 5:00 p.m. (Toronto time), November 8, 2005, the Tax Ruling Conditions have not been met, this Agreement shall immediately terminate and be of no force and effect and none of the Parties shall have any rights, obligations, liabilities under or pursuant to this Agreement to any other Party and it shall be for all purposes be, and be deemed to be, null and void *ab initio*.

**ARTICLE 9
EVENTS OF DEFAULT AND REMEDIES**

9.1 Events of Default by a Generator

Each of the following will constitute an event of default by a Generator (each, a “**Generator Event of Default**”); provided, however, none of the following will constitute a Generator Event of Default in respect of BPLP after December 31, 2019:

- (a) The Generator fails to make any particular payment or deliver a Statement under this Agreement when due if such failure is not remedied (without regard for the original date by which payment was to be made or the Statement was to be delivered) in the case of a failure to make payment, within five (5) Business Days or, in the case of a failure to deliver a Statement, within ten (10) Business Days, after written notice of such failure from the Counterparty to both Generators.
- (b) The Generator fails to perform any other material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Generator Event of Default of such Generator) and the Generator has not begun correction of the failure (without regard for the original time by which performance was to occur, if any) within forty-five (45) days after written notice of such failure from the Counterparty to both Generators and thereafter does not diligently pursue correction of such failure until completion.
- (c) The Generator (or any Person acting on behalf of such Generator) fails or ceases to hold a valid licence, permit, certificate, registration, authorization, consent or approval issued by a Governmental Authority which is required at such time having regard to the then current stage of Refurbishment or operation of its Generating Station, and in the case of BPLP (or BALP if it assumes the OPG Lease or enters into a new lease in respect of the Facility) the Common Facilities, and where such failure or cessation results in, or could be reasonably expected to result in, a Material Adverse Effect on the Generator, and the Generator has not begun correction of the failure (without regard for the original time by which such licence, permit, certificate, registration, authorization, consent or approval was to be held, if any) within forty-five (45) days after written notice of such failure from the Counterparty to both Generators and thereafter does not diligently pursue correction of such failure until completion.
- (d) Any representation made by the Generator in Section 6.1 is not true or correct in any material respect when made and the Generator has not begun to make such representation true and correct (without regard for the original effective date of such representation) within forty-five (45) days after written notice of such fact from the Counterparty to both Generators and thereafter does not diligently pursue making such representation true and correct until completion.

- (e) An effective resolution is passed or documents are filed in an office of public record in respect of, or a judgment or order is issued by a court of competent jurisdiction ordering, the dissolution, termination of existence, liquidation or winding up of the Generator unless such resolution, filed documents, judgment or order is revoked or otherwise rendered inapplicable within ten (10) days of its or their passage, filing or declaration, or unless there has been a permitted and valid assignment of this Agreement in accordance with Section 11.2 or 15.6 by the Generator to a Person which is not dissolving, terminating its existence, liquidating or winding up.
- (f) The Generator amalgamates with, or merges with or into, or transfers its Generating Station (and in the case of BPLP, or BALP if it assumes the OPG Lease or enters into a new lease in respect of the Facility, the Common Facilities) or all or substantially all of its assets to, another Person unless, at the time of such amalgamation, merger or transfer, there has been a permitted and valid assignment of this Agreement in accordance with Section 11.2 or 15.6 by the Generator under this Agreement to the resulting, surviving or transferee Person.
- (g) Any one of the following events occurs:
 - (i) a receiver, interim receiver, manager, receiver-manager, liquidator, monitor, trustee in bankruptcy, custodian, sequestrator or other Person with similar powers is appointed in respect of the Generator or of any of the Generator's property and such receiver, interim receiver, manager, receiver-manager, liquidator, monitor, trustee in bankruptcy, custodian, sequestrator or other Person is not discharged or such appointment is not revoked or withdrawn within ninety (90) days after the appointment;
 - (ii) by decree, judgment or order of a court of competent jurisdiction, the Generator is adjudicated bankrupt or insolvent or any substantial part of the Generator's property is sequestered, and such decree, judgment or order continues undischarged and unstayed for a period of ninety (90) days after the entry thereof; or
 - (iii) a petition, proceeding or application is made against the Generator seeking to have the Generator declared bankrupt or insolvent, or seeking relief under the provisions of any Insolvency Legislation, and such petition, proceeding or application is not stayed, dismissed or withdrawn within ninety (90) days.
- (h) The Generator makes an assignment for the benefit of its creditors generally under any Insolvency Legislation, or consents to the appointment of a receiver, interim manager, receiver-manager, monitor, trustee in bankruptcy, liquidator, custodian, sequestrator or other Person with similar powers for all or a substantial part of its property or seeks relief under the provisions of any Insolvency Legislation.

- (i) The Generator has defaulted in the observance or performance of one or more obligations in respect of indebtedness to other Persons, with the result that obligations for indebtedness in an aggregate principal amount of more than \$125 million becoming immediately due and payable, unless: (A) such default is remedied within ninety (90) days after written notice of such default from the Counterparty to both Generators, or (B) the Generator has satisfied the Counterparty that such default does not have a Material Adverse Effect on the Generator's ability to perform its obligations under this Agreement.
- (j) The Generator assigns this Agreement or any of its rights, interests or obligations under this Agreement other than in accordance with Sections 11.1, 11.2 or 15.6.
- (k) There is a Transfer that is not an Inter-Investor Transfer or a Permitted Transfer (as such terms are defined in the Sharing in Transfers and Refinancings Agreement) prior to January 1, 2012 without first obtaining the written approval of the Counterparty if required pursuant to the terms of the Sharing in Transfers and Refinancings Agreement or such Transfer is otherwise completed in breach of the terms of Section 2.1 of the Sharing in Transfers and Refinancings Agreement, and such breach is not corrected or remedied within five (5) Business Days after such Transfer.
- (l) A Guarantee is disclaimed, withdrawn or terminated by the guarantor or otherwise ceases to have full force and effect without the prior written consent of the Counterparty and, at the option of the Generator, replacement security or a replacement guarantee, in either case satisfactory to the Counterparty, acting reasonably, and in the case of a replacement guarantee, together with an opinion from counsel to the guarantor as to the enforceability of such replacement guarantee, has not been provided to the Counterparty within ninety (90) days after the written notice from the Counterparty to the guarantor and each Generator that such Guarantee has been disclaimed, withdrawn or terminated by the guarantor or has ceased to have full force and effect.
- (m) A guarantor breaches or defaults under a Guarantee and within ninety (90) days after written notice of such default from the Counterparty to such guarantor and each Generator (i) such breach or default is not remedied or (ii) the Counterparty has not been provided with replacement security or a replacement guarantee, in either case satisfactory to the Counterparty, acting reasonably and in the case of a replacement guarantee, together with an opinion from counsel to the guarantor as to the enforceability of such replacement guarantee.

9.2 Remedies of the Counterparty

- (a) Without limiting any rights the Counterparty may have at law, equity, under this Agreement or otherwise in respect of a Generator Event of Default, including the right to seek damages or equitable relief:

- (i) If a Generator Event of Default under Section 9.1(a) occurs and is continuing and the Counterparty gives each Generator a further written notice (the “**Second Notice**”) of such Generator Event of Default, if such Generator Event of Default is still continuing thirty (30) days after the Second Notice has been given, notwithstanding Section 9.2(a)(ii), the Counterparty may terminate this Agreement and demand the Early Termination Payment in accordance with Section 9.5.
- (ii) If a Generator Event of Default under any of Sections 9.1(a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l) or (m) occurs and is continuing, the Counterparty shall be entitled to suspend payments in respect of all Contingent Support Payments (Bruce A), Contingent Support Payments (Bruce B), Bruce A Fuel Costs pursuant to Section 3.2(e), payments of Indemnifiable Losses and Deemed Generation pursuant to Section 5.1 (the “**Generator Suspended Payments**”) from (x) in the case of Sections 9.1(a), (b), (c), (d), (i) and (m) the date notice of such Generator Event of Default was given by the Counterparty to the Generators and, in the case of Sections 9.1(e), (f), (g), (h), (j), (k) and (l) the date on which the Generator Event of Default occurred to (y) the date that the Generator Event of Default is corrected or remedied. If the Generator Event of Default is corrected or remedied within a period of nine (9) months from the date of notice of such Generator Event of Default (in the case of Sections 9.1(a), (b), (c), (d), (i) and (m)) or the date of occurrence of such Generator Event of Default (in the case of Sections 9.1(e), (f), (g), (h), (j), (k) and (l)) (in each case, the “**Generator Cure Period**”), the aggregate amount of the Generator Suspended Payments (without interest) shall be included in the next Statement and shall be paid to each applicable Generator without interest or netted in accordance with Sections 4.2 and 4.3.

If such Generator Event of Default is not corrected or remedied within the Generator Cure Period, the Generator Suspended Payments to the end of the Generator Cure Period (the “**Forfeited Generator Suspended Payments**”) shall be forever forfeited and the Counterparty may terminate this Agreement and demand the Early Termination Payment in accordance with Section 9.5.

If after the expiry of the Generator Cure Period, such Generator Event of Default has not been corrected or remedied and the Counterparty has not terminated this Agreement, the Generator Suspended Payments occurring thereafter (which for greater certainty, shall not include the Forfeited Generator Suspended Payments, which shall have been forever forfeited) shall be suspended until the earlier to occur of (x) the correction or remedy of such Generator Event of Default, in which case such Generator Suspended Payments shall be included (without interest) in the next

Statement or netted in accordance with Sections 4.2 and 4.3 and (y) the termination of this Agreement, in which case such Generator Suspended Payments shall be forever forfeited.

- (iii) If a Generator Event of Default under any of Sections 9.1(e), (f), (g), (h), (j), (k) or (l) occurs and is continuing, notwithstanding Section 9.2(a)(ii), the Counterparty may terminate this Agreement and demand the Early Termination Payment in accordance with Section 9.5.
- (b) Except as provided in Section 9.2(a)(ii), termination shall not relieve either Generator or the Counterparty of their respective responsibilities relating to amounts payable under this Agreement up to and including the Termination Date. In addition to its rights of set off available to it at law, if a Generator Event of Default has occurred and is continuing, the Counterparty may set off its obligation to make a payment to a Generator hereunder against any payments owed to it by such Generator, though not in respect of any Commodity Taxes payable by the Counterparty to such Generator.
- (c) The Counterparty agrees that each Generator shall have the right (but not the obligation) to cure any event of default in respect of the other Generator.

9.3 Events of Default by the Counterparty

Each of the following will constitute an event of default by the Counterparty (each, a “**Counterparty Event of Default**”):

- (a) The Counterparty fails to make any particular payment under this Agreement when due if such failure is not remedied (without regard for the original date by which payment was to be made) within five (5) Business Days after written notice of such failure from the applicable Generator.
- (b) The Counterparty fails to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Counterparty Event of Default) and the Counterparty has not begun correction of the failure (without regard for the original time by which performance was to occur, if any) within forty-five (45) days after written notice of such failure from either Generator and thereafter does not diligently pursue correction of such failure until completion.
- (c) The Counterparty fails or ceases to hold a valid licence, permit, certificate, registration, authorization, consent or approval issued by a Governmental Authority where such failure or cessation results in, or could be reasonably expected to result in, a Material Adverse Effect on the Counterparty and the Counterparty has not begun correction of the failure (without regard for the original time by which such licence, permit, certificate, registration, authorization, consent or approval was to be held, if any) within forty-five (45) days after

written notice of such failure from either Generator and thereafter does not diligently pursue correction of such failure until completion.

- (d) Any representation made by the Counterparty in Section 6.2 is not true or correct in any material respect when made and the Counterparty has not begun to make such representation true and correct (without regard for the original effective date of such representation) within forty-five (45) days after written notice of such fact from either Generator and thereafter does not diligently pursue making such representation true and correct until completion.
- (e) An effective resolution is passed or documents are filed in an office of public record in respect of, a judgment or order is issued by a court of competent jurisdiction ordering, or a statute is passed in the Legislative Assembly of Ontario, or an order-in-council of the Governor in Council is passed, in any of the foregoing events mandating, the dissolution, termination of existence, liquidation or winding up of the Counterparty unless such resolution, filed documents, judgment, order, statute or order-in-council is revoked or otherwise rendered inapplicable within ten (10) days of its or their passage, filing or declaration, or unless there has been a permitted and valid assignment of this Agreement in accordance with Section 15.6 by the Counterparty to a Person which is not dissolving, terminating its existence, liquidating or winding up.
- (f) The Counterparty amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another Person unless, at the time of such amalgamation, merger or transfer, there has been a permitted and valid assignment of this Agreement in accordance with Section 15.6 by the Counterparty to the resulting, surviving or transferee Person.
- (g) Any one of the following events occurs:
 - (i) a receiver, interim receiver, manager, receiver-manager, liquidator, monitor, trustee in bankruptcy, custodian, sequestrator or other Person with similar powers is appointed in respect of the Counterparty or of any of the Counterparty's property and such receiver, interim receiver, manager, receiver-manager, liquidator, monitor, trustee in bankruptcy, custodian, sequestrator or other Person is not discharged or such appointment is not revoked or withdrawn within ninety (90) days after the appointment;
 - (ii) by decree, judgment or order of a court of competent jurisdiction, the Counterparty is adjudicated bankrupt or insolvent or any substantial part of the Counterparty's property is sequestered, and such decree, judgment or order continues undischarged and unstayed for a period of ninety (90) days after the entry thereof; or

- (iii) a petition, proceeding or application is made against the Counterparty seeking to have the Counterparty declared bankrupt or insolvent, or seeking relief under the provisions of any Insolvency Legislation, and such petition, proceeding or application is not stayed, dismissed or withdrawn within ninety (90) days.
- (h) The Counterparty makes an assignment for the benefit of its creditors generally under any Insolvency Legislation, or consents to the appointment of a receiver, interim manager, receiver-manager, monitor, trustee in bankruptcy, liquidator, custodian, sequestrator or other Person with similar powers for all or a substantial part of its property or seeks relief under the provisions of any Insolvency Legislation.
- (i) The Counterparty assigns this Agreement or any of its rights, interests or obligations under this Agreement other than in accordance with Section 15.6.
- (j) The Counterparty fails to take action in the normal course of its business to recover all amounts paid or payable to each Generator pursuant to this Agreement directly or indirectly from Electricity consumers in the Province of Ontario and the Counterparty has not begun correction of such failure within forty-five (45) days after written notice thereof from either Generator and thereafter does not diligently pursue correction thereof until completion.
- (k) The Counterparty does not have, or no longer has, the ability pursuant to Laws and Regulations to recover all amounts paid or payable to each Generator pursuant to this Agreement directly or indirectly from Electricity consumers in the Province of Ontario.

9.4 Remedies of the Generator

- (a) Without limiting any rights each Generator may have at law, equity, under this Agreement or otherwise in respect of a Counterparty Event of Default, including the right to seek damages or equitable relief:
 - (i) If a Counterparty Event of Default under Section 9.3(a) occurs and is continuing and the applicable Generator gives the Counterparty a further written notice (the “**Second Notice**”) of such Counterparty Event of Default, if such Counterparty Event of Default is still continuing thirty (30) days after the Second Notice has been given, notwithstanding Section 9.4(a)(ii), BALP may terminate this Agreement and each Generator may demand their respective Early Termination Payment in accordance with Section 9.5.
 - (ii) If a Counterparty Event of Default under any of Sections 9.3(a), (b), (c), (d), (e), (f), (g), (h), (i), (j) or (k) occurs and is continuing, each Generator shall be entitled to suspend payments in respect of all Revenue Sharing

Payments (Bruce A), Recapture Payments (Bruce B), liquidated damages pursuant to Section 2.7, payments for operational efficiencies pursuant to Section 3.4, Net Related Products Revenues, payments pursuant to Section 2.12(b), payments of Indemnifiable Losses and Clawback Payments (the “**Counterparty Suspended Payments**”) from (x) in the case of Sections 9.3(a), (b), (c), (d) and (j), the date notice of the Counterparty Event of Default was given by a Generator to the Counterparty and, in the case of Sections 9.3(e), (f), (g), (h), (i) and (k), the date on which the Counterparty Event of Default occurred to (y) the date that the Counterparty Event of Default is corrected or remedied. If the Counterparty Event of Default is corrected or remedied within a period of nine (9) months from the date of the Counterparty Event of Default (in the case of Sections 9.3(a), (b), (c), (d) and (j)) or the date of occurrence of such Counterparty Event of Default (in the case of Sections 9.3(e), (f), (g), (h), (i) and (k)) (in each case, the “**Counterparty Cure Period**”), the aggregate amount of the Counterparty Suspended Payments (without interest and as allocated, as applicable, between the Generators) shall be included in the next Statement of each Generator and shall be paid to the Counterparty without interest or netted in accordance with Sections 4.2 and 4.3.

If such Counterparty Event of Default is not corrected or remedied within the Counterparty Cure Period, the Counterparty Suspended Payments to the end of the Counterparty Cure Period (the “**Forfeited Counterparty Suspended Payments**”) shall be forever forfeited and BALP may terminate this Agreement and demand the Early Termination Payment in accordance with Section 9.5.

If after the expiry of the Counterparty Cure Period, such Counterparty Event of Default has not been corrected or remedied and BALP has not terminated this Agreement, the Counterparty Suspended Payments occurring thereafter (which for greater certainty, shall not include the Forfeited Counterparty Suspended Payments, which shall have been forever forfeited) shall be suspended until the earlier to occur of (x) the correction or remedy of such Counterparty Event of Default, in which case such Counterparty Suspended Payments shall be included (without interest and allocated, as applicable, between the Generators) in the next Statement of each Generator or netted in accordance with Sections 4.2 and 4.3 and (y) the termination of this Agreement, in which case such Counterparty Suspended Payments shall be forever forfeited.

- (iii) If a Counterparty Event of Default under any of Sections 9.3(e), (f), (g), (h), (i) or (k) occurs and is continuing, BALP may terminate this Agreement and each Generator may demand their respective Early Termination Payment in accordance with Section 9.5.

- (b) Except as provided in Section 9.4(a)(ii), termination shall not relieve either Generator or the Counterparty of their respective responsibilities relating to amounts payable under this Agreement up to and including the Termination Date. In addition to its rights of set off available to it at law, if a Counterparty Event of Default has occurred and is continuing, each Generator may set off its obligations to make a payment to the Counterparty hereunder against any payments owed to it, though not in respect of any Commodity Taxes payable by such Generator to the Counterparty.

9.5 Payments for Early Termination

- (a) If an Event of Default occurs and is continuing with respect to a Party (the “**Defaulting Party**”, which, for greater certainty, includes both Generators where the Event of Default relates to only one of them) at any time during the Term which, pursuant to Section 9.2 or 9.4 entitles another Party (referred to herein as the “**Terminating Party**” in respect of the Counterparty, individually, and in respect of the Generators, collectively) to terminate this Agreement, then the Terminating Party may, upon two (2) Business Days’ written notice to the Defaulting Party and each other Party, which notice shall be given no later than two (2) years after the discovery of the occurrence of the Event of Default, establish a date on which this Agreement may be terminated, which date shall not be earlier than the date such notice is received nor more than thirty (30) days following the date that such notice is received (the “**Early Termination Date**”). For certainty, only BALP may provide a notice of termination in respect of either Generator, or both of them, under this Section 9.5(a). In the event that this Agreement is terminated pursuant to section 8.1(c), the Counterparty shall be deemed to be the Terminating Party and the Early Termination Date shall be deemed to be the date that this Agreement was so terminated.
- (b) If an Early Termination Date is established, the Terminating Party (for certainty, being each Generator in the case of the Generators) shall in good faith calculate its Early Termination Damages as at the Early Termination Date, and its Costs, resulting from the termination of this Agreement (in aggregate, the “**Early Termination Payment**”, which, for certainty, shall be the sum of their respective Early Termination Payments in the Generators’ case). Early Termination Damages shall be calculated in good faith and using commercially reasonable procedures in order to produce a commercially reasonable result. In determining Early Termination Damages, the Terminating Party may consider any relevant information. There shall be added to the Early Termination Payment an amount equal to the difference (whether positive or negative) between (i) all amounts owed but not yet paid by the Defaulting Party to the Terminating Party, whether or not such amounts are then due pursuant to this Agreement and (ii) all amounts owed but not yet paid by the Terminating Party to the Defaulting Party, whether or not such amounts are then due pursuant to this Agreement.

- (c) The Parties agree that the Terminating Party shall not be required to enter into any replacement contract or transaction in order to determine or be entitled to the Early Termination Payment.
- (d) The Terminating Party shall give the Defaulting Party written notice of the amount of the Early Termination Payment, together with a statement showing its determination of the amount thereof and reasonably detailed information supporting the basis for such determination. The Terminating Party shall promptly provide the Defaulting Party with such additional information relating to such Early Termination Payment as may be requested by the Defaulting Party (or in the case of a termination pursuant to section 8.1(c), either Generator), acting reasonably. The Defaulting Party shall, subject to Section 9.5(e), pay the Early Termination Payment to the Terminating Party (and, in respect of the Generators, their respective Early Termination Payment, if any) within fifteen (15) Business Days of receipt of such notice, together with interest at the Interest Rate calculated daily and compounded monthly on the unpaid balance of the Early Termination Payment, from and including the Early Termination Date until and including the date the Early Termination Payment is paid in full.
- (e) If the Defaulting Party disputes the Terminating Party's calculation of the Early Termination Payment, in whole or in part, the Defaulting Party shall, within fifteen (15) Business Days of receipt of the Terminating Party's calculation of the Early Termination Payment, provide to the Terminating Party a reasonably detailed written explanation of the basis for such dispute; provided, however, that if the Early Termination Payment is due from the Defaulting Party, the Defaulting Party shall first pay the undisputed portion of the Early Termination Payment to the Terminating Party and then pay into court or deliver security to the Terminating Party in a form acceptable to the Terminating Party, acting reasonably, in an amount equal to the balance of the Early Termination Payment. If such dispute has not been resolved between the Parties within five (5) Business Days after receipt of written notice of such dispute by the Terminating Party, the Parties may, by mutual consent, submit the dispute to a Senior Conference pursuant to the terms of Section 15.1. If the Parties have not agreed to submit the dispute to a Senior Conference within seven (7) Business Days after receipt of written notice of such dispute by the Terminating Party, formal dispute resolution in accordance with the terms of Section 15.2 shall apply but without having first completed a Senior Conference pursuant to Section 15.1. Once the Early Termination Payment is finally determined by arbitration or litigation pursuant to Section 15.2, any Party owing monies to the other pursuant to such determination shall promptly, and in any event within five (5) Business Days, pay such monies owing, together with interest at the Interest Rate from and including the Early Termination Date to and including the date of payment thereof.

9.6 Sole Remedies

If this Agreement is terminated pursuant to Section 9.2 or Section 9.4, then and subject to the Terminating Party's right to receive the Early Termination Payment and to be paid for all other amounts then due and owing to the Terminating Party (to the extent not included in the Early Termination Payment), such right of termination shall represent that Terminating Party's sole and exclusive remedy for the Defaulting Party's default that gave rise to the termination, but, subject to Section 15.3:

- (a) shall not affect any rights that the Counterparty Indemnitees may have arising from an Indemnifiable Loss asserted by a Person other than a Counterparty Indemnitee against any Counterparty Indemnitee or the Generator Indemnitees may have arising from an Indemnifiable Loss asserted by a Person other than a Generator Indemnitee against any Generator Indemnitee, in either of the foregoing cases pursuant to any indemnity hereunder; and
- (b) shall be without limitation to any claim by, or rights of, each Generator pursuant to Article 12 with respect to any Discriminatory Action which occurred prior to or on the Termination Date.

ARTICLE 10 FORCE MAJEURE

10.1 Effect of Invoking Force Majeure

- (a) If, by reason of Force Majeure, any Party is unable, wholly or partially, to perform or comply with its obligations (other than payment obligations) hereunder (including BALP being unable to achieve Commercial Operation of a Unit by the relevant Milestone Date), then the Party so affected by Force Majeure shall be excused and relieved from performing or complying with such obligations (other than payment obligations) and shall not be liable for any liabilities, damages, losses, payments, costs, expenses (or Indemnifiable Losses, in the case of the Generator affected by Force Majeure) to, or incurred by, any other Party in respect of or relating to such Force Majeure and such Party's failure to so perform or comply during the continuance and to the extent of the inability so caused from and after the invocation of Force Majeure.
- (b) A Party shall be deemed to have invoked Force Majeure with effect from the commencement of the event or circumstances constituting Force Majeure when that Party gives to each other Party prompt notice, written or oral (but if oral, promptly confirmed in writing) of the effect of the Force Majeure and reasonably full particulars of the cause thereof.
- (c) The Party invoking Force Majeure shall use Commercially Reasonable Efforts to prevent or remedy the situation and remove, so far as possible and with reasonable dispatch, the Force Majeure (but settlement of strikes, lockouts and

other labour disturbances shall be wholly within the discretion of the Party involved).

- (d) The Party invoking Force Majeure shall give prompt notice, written or oral (but if oral, promptly confirmed in writing) of the termination of the event of Force Majeure.
- (e) Nothing in this Section 10.1 shall relieve a Party of its obligations to make payments of any amounts that were due and owing by such Party to the other Party before the occurrence of the Force Majeure or that otherwise may become due and payable during any period of Force Majeure.
- (f) If an event of Force Majeure causes BALP to not achieve Commercial Operation of a Unit by the relevant Milestone Date, then such Milestone Date shall be extended for such period of delay resulting from such Force Majeure event.
- (g) Refurbishment Costs that are directly attributable to Type 1 Force Majeure events shall be allocated as to 75% to the Counterparty and as to 25% to BALP (the “**First Special Allocation Mechanism**”) and the Bruce A Price shall be adjusted for such Refurbishment Costs as set forth in Exhibit 3.5.
- (h) Refurbishment Costs that are directly attributable to Type 2 Force Majeure events shall be allocated as to 50% to the Counterparty and as to 50% to BALP (the “**Second Special Allocation Mechanism**”) and the Bruce A Price shall be adjusted for such Refurbishment Costs as set forth in Exhibit 3.5.
- (i) Refurbishment Costs that are directly attributable to Type 3 Force Majeure events shall be allocated between the Counterparty and BALP as set forth in Exhibit 3.5 and the Bruce A Price shall be adjusted for such Refurbishment Costs as set forth in Exhibit 3.5.

10.2 Exclusions

A Party shall not be entitled to invoke Force Majeure under this Article 10 in any of the following circumstances:

- (a) if and to the extent the Party seeking to invoke Force Majeure (and, in the case of a Generator, including the other Generator) has caused by its wilful misconduct or negligence the applicable event of Force Majeure;
- (b) if and to the extent the Party seeking to invoke Force Majeure has failed (or, in the case of a Generator, if either Generator has failed) to use Commercially Reasonable Efforts to prevent or remedy the event of Force Majeure and remove, so far as possible and within a reasonable time period, Force Majeure (except in the case of strikes, lockouts and other labour disputes, the settlement of which shall be wholly within the discretion of the Party involved);

- (c) if and to the extent that a Party seeks to invoke Force Majeure because of arrest or restraint by a Governmental Authority, such arrest or restraint was the result of a breach by the Party (or, in the case of a Generator, a breach by either Generator) of Laws and Regulations; or
- (d) if the Force Majeure was caused by a lack of funds or other financial cause of the Party seeking to invoke Force Majeure (or, in the case of a Generator, caused by a lack of funds or other financial cause of either Generator).

Additionally, the Counterparty is not entitled to invoke Force Majeure in relation to a Disruption Event. Neither Generator shall be entitled to invoke Force Majeure in respect of any adverse effect from the failure to obtain the Tax Ruling in the form requested in the Tax Ruling Application, as may be amended or amended and restated.

10.3 Definition of Force Majeure

- (a) For the purposes of this Agreement, Type 1 Force Majeure, Type 2 Force Majeure and Type 3 Force Majeure are referred to collectively as “**Force Majeure**” and are treated as a hierarchy of Force Majeure with Type 1 Force Majeure being the “highest” and Type 3 Force Majeure being the “lowest”.
- (b) “**Type 1 Force Majeure**” means any of the following acts, events, causes or conditions that prevents a Party from performing its obligations (other than payment obligations) under this Agreement that is beyond the affected Party’s reasonable control:
 - (i) acts of God, including lightning, earthquakes, tornadoes, hurricanes, cyclones, severe storms (being wind, rain, snow, ice, temperature or other natural phenomena not of a reasonably expected intensity or duration for the location of the Facility), landslides, drought, floods and washouts;
 - (ii) fires or explosions;
 - (iii) local, regional or national states of emergency;
 - (iv) civil disobedience or disturbances, war (whether declared or not), acts of sabotage, blockades, insurrections, terrorism, revolution, riots or epidemics;
 - (v) any order, judgment, legislation, ruling, direction or other intervention by a Governmental Authority restraining a Party, provided that the affected Party has not applied for or assisted in the application for and has used Commercially Reasonable Efforts to oppose said order, judgment, legislation, ruling, direction or other intervention. For certainty, any order, judgment, legislation, ruling or direction by a Governmental Authority

that results in a circumstance contemplated by Section 10.3(c) is a Type 1 Force Majeure; and

- (vi) other than as provided for in Section 10.3(d)(ii), the coming into force of any Laws and Regulations or a change in Laws and Regulations, provided that any such coming into force or change was not known, and could not have reasonably been known, by the affected Party at the date hereof.
- (c) **“Type 2 Force Majeure”** means any of the following acts, events, causes or conditions that prevents a Party from performing its obligations (other than payment obligations) under this Agreement that is beyond the affected Party’s reasonable control:
- (i) any inability to obtain or to secure, or any delay in obtaining or securing, the issuance, renewal or amendment of any permit, certificate, impact assessment, licence or approval of any Governmental Authority, Transmitter or local distribution company required to perform or comply with any obligation under this Agreement when same is required, unless the failure to issue, delay in issuing, or revocation or modification of any such necessary permit, certificate, impact assessment, licence or approval was caused by the violation of the terms thereof or was consented to by the Party invoking Force Majeure.
- (d) **“Type 3 Force Majeure”** means any act, event, cause or condition that prevents a Party from performing its obligations (other than payment obligations) under this Agreement that is beyond the affected Party’s reasonable control and that has not been claimed as Type 1 Force Majeure or Type 2 Force Majeure by the affected Party, and shall include:
- (i) strikes and other labour disputes (other than legal strikes or labour disputes by the employees of the Party invoking Force Majeure (which in the case of a Generator, shall include the other Generator) unless the result of or part of a general labour dispute);
 - (ii) the issuance of terms or conditions of any permit, certificate, impact assessment, licence, registration, authorization, consent or approval held or necessary to be held by or on behalf of a Generator) that results in a change in the scope of, or an increase of the costs that BALP would reasonably be expected to incur in, the Refurbishment of any of Units 1, 2, 3 and 4, provided any such coming into force, change or issuance was not known, and could not have reasonably been known, by BALP at the date hereof; and
 - (iii) any event of force majeure to the extent successfully claimed by a contractor, subcontractor (of any tier) or supplier participating in the Refurbishment of any Unit.

For greater certainty:

- (e) nothing in this Section 10.3 shall be construed as limiting the duration of an event of Force Majeure;
- (f) if a lower Force Majeure event may also be characterized as a higher Force Majeure event, it shall be treated for the purposes of this Agreement as the higher Force Majeure Event. For example, if a Type 1 Force Majeure event such as an order contemplated by Section 10.3(b)(v) is the cause of a Type 2 Force Majeure event, it shall be treated as a Type 1 Force Majeure event; and
- (g) if a Party claims any event as a higher Force Majeure event, a determination that such event is not a higher Force Majeure event shall not preclude such event from being determined to be a lower Force Majeure event.

The affected Party shall resume its obligations as soon as the event of Force Majeure has been overcome. Other than in respect of the First Special Allocation Mechanism and the Second Special Allocation Mechanism, Type 1 Force Majeure, Type 2 Force Majeure and Type 3 Force Majeure shall have the same effects and treatment in this Agreement.

ARTICLE 11 LENDER'S RIGHTS

11.1 Lender Security

Notwithstanding Section 15.6, each Generator, from time to time after the date of this Agreement shall have the right, at its cost, to enter into one or more Secured Lender's Security Agreements. For the avoidance of doubt, in the case of a Secured Lender's Security Agreement that is a deed of trust or similar instrument securing bonds or debentures, the term "**Secured Lender**" as used herein shall refer only to the trustee in respect thereof. A Secured Lender's Security Agreement in respect of a Generator shall be upon and subject to the following conditions:

- (a) A Secured Lender's Security Agreement may be made for any amounts and upon any terms (including terms of the loans, interest rates, payment terms and prepayment privileges or restrictions) as desired by a Generator, except as otherwise provided in this Agreement.
- (b) A Secured Lender's Security Agreement may not secure any indebtedness, liability or obligation of a Generator that is not related to its interest in the Facility, or any part thereof, or cover any real or personal property of a Generator not related to its interest in the Facility, or any part thereof, except in relation to any one or more other generating facilities owned or leased by a Generator. For greater certainty, a Secured Lender's Security Agreement may cover equity interests (including partnership interests) in a Generator and equity interests in the general partner of a Generator.

- (c) The Counterparty shall have no liability whatsoever for payment of the principal sum secured by any Secured Lender's Security Agreement, or any interest accrued thereon or any other sum secured thereby or accruing thereunder; and the Secured Lender shall not be entitled to seek any damages against the Counterparty for any or all of the same.
- (d) No Secured Lender's Security Agreement shall be binding upon the Counterparty in the enforcement of the Counterparty's rights and remedies provided in this Agreement or by Laws and Regulations, unless and until a copy of the original thereof and the registration details, if applicable, together with written notice of the address of the Secured Lender to which notices may be sent have been delivered to the Counterparty by the relevant Generator or the Secured Lender.
- (e) A Secured Lender shall provide reasonable notice to the Counterparty of a default of the relevant Generator under a Secured Lender's Security Agreement between the relevant Generator and such Secured Lender, prior to the Secured Lender exercising any rights afforded to it under this Agreement or an Acknowledgment and Consent, but failure to provide such notice shall not restrict or delay any such exercise.
- (f) Any Secured Lender's Security Agreement permitted hereunder may secure two (2) or more separate debts, liabilities or obligations in favour of two (2) or more separate Secured Lenders.
- (g) Any number of permitted Secured Lender's Security Agreements may be outstanding at any one time.
- (h) Except as otherwise provided in an Acknowledgment and Consent, all rights acquired by a Secured Lender under any Secured Lender's Security Agreement shall be subject to all of the provisions of this Agreement, including the restrictions on assignment contained herein. If a Secured Lender's Security Agreement so provides, while any Secured Lender's Security Agreement is outstanding, the Counterparty and each Generator shall not amend or supplement this Agreement or agree to a termination of this Agreement without the consent of the Secured Lender, which consent shall not be unreasonably withheld.
- (i) Despite any enforcement of any Secured Lender's Security Agreement, the relevant Generator shall remain liable to the Counterparty for the payment of all sums owing to the Counterparty under this Agreement and for the performance of all of the relevant Generator's obligations under this Agreement.

11.2 Rights and Obligations of Secured Lenders

While any Secured Lender's Security Agreement remains outstanding, and if the Counterparty has received the notice referred to in Section 11.1(d) or the contents thereof are embodied in the Acknowledgement and Consent, the following provisions shall apply:

- (a) No Generator Event of Default shall be grounds for the termination by the Counterparty of this Agreement until:
 - (i) any notice required to be given under Sections 9.1 and 9.2(a) has been given concurrently to each Generator and to the Secured Lender; and
 - (ii) the cure period set out in Section 11.2(b) has expired without a cure having been completed and without the Secured Lender having taken the actions therein contemplated.
- (b) In the event the Counterparty has given the notice required to be given under Sections 9.1 and 9.2(a), the Secured Lender shall, within the applicable cure period (including any extensions pursuant to the Acknowledgement and Consent or otherwise agreed in writing by the Parties or the Counterparty and the Secured Lender (which, in any event, shall be a minimum of thirty (30) days in the case of a monetary default and ninety (90) days in the case of a non-monetary default)), if any, have the right (but not the obligation) to cure such default, and the Counterparty shall accept such performance by such Secured Lender as if the same had been performed by the relevant Generator.
- (c) Any payment to be made or action to be taken by a Secured Lender under this Article 11, such Secured Lender's Security Agreement or an Acknowledgment and Consent, shall be deemed properly to have been made or taken by the Secured Lender if such payment is made or action is taken by a nominee or agent of the Secured Lender or a receiver or receiver and manager appointed by or on the application of the Secured Lender.
- (d) A Secured Lender shall be entitled to the relevant Generator's rights and benefits contained in this Agreement and shall become liable for the relevant Generator's obligations solely as provided in this Section 11.2. A Secured Lender may, subject to the provisions of this Agreement, enforce any Secured Lender's Security Agreement and acquire the relevant Generator's Interest in any lawful way and, without limitation, a Secured Lender or its nominee or agent or a receiver or receiver and manager appointed by or on the application of the Secured Lender, may take possession of and manage the Facility, or any part thereof, and, upon foreclosure, or without foreclosure upon exercise of any contractual or statutory power of sale under such Secured Lender's Security Agreement, may sell or assign the relevant Generator's Interest in whole or in part with the consent of the Counterparty as required under Section 11.2(f).
- (e) Until a Secured Lender or other Person that is its nominee or agent or a receiver or receiver and manager has assumed in writing the relevant Generator's obligations hereunder by reference to the Secured Lender's Security Agreement, the Secured Lender or such other Person shall not be liable for any of the relevant Generator's obligations contained in this Agreement or be entitled to any of the relevant Generator's rights and benefits contained in this Agreement except by

way of security. After such express assumption and once the Secured Lender or such other Person transfers this Agreement in accordance with the terms hereof to another Person, the Secured Lender or such other Person, as the case may be, shall cease to be liable for any of the relevant Generator's obligations and shall cease to be entitled to any of the relevant Generator's rights and benefits contained in this Agreement, except, if the Secured Lender's Security Agreement remains outstanding, by way of security.

- (f) Despite anything else contained in this Agreement, any Person who is a permitted transferee and to whom this Agreement is transferred shall take this Agreement subject to the relevant Generator's obligations contained in this Agreement. No transfer shall be effective unless the Counterparty has approved of the transferee (such approval not to be unreasonably withheld, conditioned or delayed) and the transferee has agreed in writing to assume and perform the obligations of the relevant Generator in respect of this Agreement, whether arising before or after the transfer. Provided: (i) the proposed transferee has all consents, licences, permits and other approvals of a Governmental Authority (including the CNSC) necessary to effect such transfer; and (ii) the proposed transferee or its ultimate parent is then rated at least one notch above Investment Grade (as defined in, and determined in accordance with, the Sharing in Transfers and Refinancings Agreement) by two then recognized rating agencies, or is otherwise acceptable to the Counterparty, acting reasonably, the Counterparty shall approve such transferee.
- (g) In the event of the termination of this Agreement prior to the end of the Term due to a Generator Event of Default, the Counterparty shall, within ten (10) days after the date of such termination, deliver to each Secured Lender who is at Arm's Length to the relevant Generator a statement of all sums then known to the Counterparty that would at that time be due under this Agreement but for the termination and a notice to each such Secured Lender stating that the Counterparty is willing to enter into a New Agreement (the "**Counterparty Statement**"). Subject to the provisions of this [Article 11](#), each such Secured Lender shall thereupon have the option to obtain from the Counterparty a New Agreement in accordance with the following terms:
 - (i) Upon receipt of the written request of the Secured Lender within fifteen (15) Business Days after the date on which it received the Counterparty Statement, the Counterparty shall enter into a New Agreement.
 - (ii) Such New Agreement shall be effective as of the date of termination of this Agreement and shall be for the remainder of the Term at the time this Agreement was terminated and otherwise upon the terms contained in this Agreement. The Counterparty's obligation to enter into a New Agreement is conditional upon the Secured Lender (A) paying all sums that would, at the time of the execution and delivery thereof, be due under this Agreement but for such termination, (B) otherwise fully curing any

defaults under this Agreement existing immediately prior to termination of this Agreement that are capable of being cured and (C) paying all reasonable costs and expenses, including legal fees, so as to provide a full indemnity (and not only substantial indemnity), incurred by the Counterparty in connection with such default and termination, and the preparation, execution and delivery of such New Agreement and related agreements and documents, provided, however, that with respect to any default that could not be cured by such Secured Lender until it obtains possession, such Secured Lender shall have the applicable cure period commencing on the date that it obtains possession to cure such default.

- (h) Despite anything to the contrary contained in this Agreement, the provisions of this [Article 11](#) shall enure only to the benefit of the Counterparty, the relevant Generator and holders of a Secured Lender's Security Agreement. If the holders of more than one such Secured Lender's Security Agreement make written requests to the Counterparty in accordance with this [Section 11.2](#) to obtain a New Agreement, the Counterparty shall accept the request of the holder whose Secured Lender's Security Agreement had, in the absence of an agreement between such holders, priority as evidenced by registration of such Secured Lender Security Agreements in the applicable public registries immediately prior to the termination of this Agreement over the Secured Lender's Security Agreements of the other Secured Lenders making such requests and thereupon the written request of each other Secured Lender shall be deemed to be void. In the event of any dispute or disagreement as to the respective priorities of any such Secured Lender's Security Agreement, the Counterparty may rely upon the opinion as to such priorities of any nationally recognized law firm qualified to practise law in the Province of Ontario retained by the Counterparty in its unqualified subjective discretion or may apply to a court of competent jurisdiction for a declaration as to such priorities, which opinion or declaration shall be conclusively binding upon all parties concerned.

11.3 Cooperation

The Counterparty and the relevant Generator shall enter into an agreement with any Secured Lender for the purpose of implementing the Secured Lender's Security Agreement protection provisions contained in this Agreement (an "**Acknowledgement and Consent**"). The Counterparty, acting reasonably, shall consider any request made by the relevant Generator and/or a Secured Lender or proposed Secured Lender to enter into an Acknowledgement and Consent or to otherwise facilitate, acknowledge and give effect to any provision of a Secured Lender's Security Agreement or proposed Secured Lender's Security Agreement. The Counterparty, acting reasonably, shall consider any request made by a Secured Lender or proposed Secured Lender to enter into an Acknowledgement and Consent or to otherwise evidence an amendment to this Agreement, provided that the rights of the Counterparty are not materially adversely affected thereby, the obligations of the relevant Generator to the Counterparty are not altered thereby and the consent of any other Secured Lender to such

amendment has been obtained by the relevant Generator or the Secured Lender making the request for the amendment.

ARTICLE 12 DISCRIMINATORY ACTION

12.1 Discriminatory Action

A “**Discriminatory Action**” means, at any time after March 21, 2005 (being referred to herein as the “**Discriminatory Action Set Date**”) a Change of Law that has the effect of:

- (a) amending this Agreement without the agreement of each Generator;
- (b) terminating this Agreement;
- (c) adversely affecting the ability of the Counterparty to recover all amounts paid or to be paid pursuant to this Agreement directly or indirectly from Electricity consumers in the Province of Ontario;
- (d) prohibiting the Counterparty from paying any amounts pursuant to and in accordance with this Agreement to either Generator, or both of them, or prohibiting either Generator, or both of them, from receiving any such amounts; or
- (e) (i) increasing the costs that either Generator reasonably expects to incur in respect of this Agreement, including costs in connection with the Refurbishment of any of Units 1, 2, 3 or 4, (ii) increasing the costs of operating or maintaining the Facility or any part thereof, including costs related to the generation, sale or delivery of Electricity and Related Products from the Facility, (iii) adversely affecting the revenues of either Generator from the Facility or any part thereof, in any of the foregoing cases except where, and to the extent, such Change of Law is directed specifically at either Generator, or both of them, in response to, or is implemented specifically to address, an act or omission on the part of either Generator, or both of them, that is contrary to Ontario Laws and Regulations (as such Ontario Laws and Regulations existed prior to such change).

Notwithstanding the foregoing, none of the following shall be a Discriminatory Action:

- (f) a Change of Law of general application. For the purposes hereof, a Change of Law of general application does not include:
 - (i) a Change of Law, other than with respect to increasing Discriminatory Action Taxes or creating new Discriminatory Action Taxes, the effect or effects of which: (A) are principally directed at or principally borne by the operators of nuclear reactors or operators of nuclear reactors and other electricity generators in Ontario or any subset thereof that includes either Generator, or both of them; or (B) result in a change in any of the IESO-

Administered Markets (including a Price Evolution Event as provided in Section 1.8 and a Price Indicator Unavailability Event as provided in Section 1.10), the IESO Market Rules or the basis or approach on which the price for Electricity is determined in the Province of Ontario unless otherwise excluded from constituting a Discriminatory Action pursuant to the provisions of Section 12.1(g) below; and

- (ii) a Change of Law increasing Discriminatory Action Taxes or creating new Discriminatory Action Taxes, the effect or effects of which are principally directed at or principally borne by operators of nuclear reactors, operators of nuclear reactors and other electricity generators in Ontario or any subset thereof that includes either Generator, or both of them; provided that Discriminatory Action shall not include any effect on BPLP to the extent that it relates to Bruce B of any Change of Law increasing Discriminatory Action Taxes or creating new Discriminatory Action Taxes that is principally directed at or principally borne by electricity generators in Ontario generally and not principally directed at or principally borne by operators of nuclear reactors if BPLP and any price setting, non-base load, rate-regulated electricity generator is not then prohibited by Ontario Laws and Regulations from increasing the price at which it sells Electricity or Related Products and any electricity generator controlling price setting, non-base load generating capacity owned or under the Control of the Government of Ontario is not acting under or pursuant to a statute, regulation, shareholder declaration or shareholder direction prohibiting it from passing through such Discriminatory Action Taxes with respect to that price setting, non-base load generating capacity;
- (g) any Change of Law made by any regulatory authority, agency, tribunal, commission, board, institution or municipal or local government or any other law, regulation or rule-making entity of the Province of Ontario, including the IESO, the OEB, the Electrical Safety Authority and any court unless, in respect of a particular Change in Law, such Governmental Authority is acting under or pursuant to a direction, order, decision, decree, rule, policy or guideline or the control or guidance, of the legislature, cabinet, a Minister or a Ministry of the Government of Ontario. For greater certainty, any changes or introductions to the IESO Market Rules by the IESO (including the introduction of LMP as provided in Section 1.7, a Price Evolution Event as provided in Section 1.8, a Price Indicator Unavailability Event as provided in Section 1.10, or any change in the methodology in the determination of HOEP, to the extent that any of the foregoing result from a change or introduction to the IESO Market Rules by the IESO) shall not be Discriminatory Action unless in respect of such Change of Law the IESO is acting under or pursuant to a direction, order, decision, decree, rule, policy or guideline, or the control or guidance of, the legislature, cabinet, a Minister or a Ministry of the Government of Ontario, in which case it shall be a Discriminatory Action;

- (h) the passage into law of any statute that, prior to the Discriminatory Action Set Date (x) has been introduced as a bill in the Legislative Assembly of Ontario, provided that any amendments made to such bill in becoming such statute do not have a material adverse effect on either Generator, or both of them, or (y) has been described publicly in a (A) press release or announcement (that in each case specifically and directly references electricity generators) or (B) a discussion or consultation paper issued by the Government of Ontario (including the Ministry of Energy) that appeared on the website of the Government of Ontario (including the Ministry of Energy) prior to the Discriminatory Action Set Date, provided that any variations from the public description of such statute in becoming law do not have a material adverse effect on either Generator, or both of them;
- (i) the making of any regulation in the Province of Ontario prior to the Discriminatory Action Set Date (x) has been published but by the terms of such regulation come into force on or after the Discriminatory Action Set Date, provided that any amendments made to such published regulation on or before coming into force do not have a material adverse effect on either Generator, or both of them, or (y) has been made public in (A) a press release or announcement (that in each case specifically and directly references electricity generators) or (B) discussion or consultation paper issued by the Government of Ontario (including the Ministry of Energy) that appeared on the website of the Government of Ontario (including the Ministry of Energy) prior to the Discriminatory Action Set Date, provided that any variations from the public description of such proposed regulation in coming into force do not have a material adverse effect on either Generator, or both of them;
- (j) any action of the Government of Ontario (including the Ministry of Energy) directly relating to the decommissioning of any or all of the Atikokan, Lambton, Nanticoke or Thunder Bay generating stations or the removal of coal-fired generating capacity associated with such facilities from production;
- (k) any action by a Governmental Authority to procure, increase or secure additional Electricity supply or to decrease Electricity demand, including through demand management and conservation initiatives, in each case, in the Province of Ontario; or
- (l) notwithstanding any other provision of this Section 12.1, any action by the Government of Ontario in respect of the application of any revenues of an electricity generator owned by or under the Control of the Government of Ontario provided same is not applied in a manner which will subsidize other electricity generators in the Province of Ontario (other than a consumer of Electricity who generates Electricity for its own consumption and from time to time for supply to the IESO-Controlled Grid and who receives such payment as a consumer of Electricity).

For the purposes of this [Article 12](#):

“**Ontario Laws and Regulations**” means the Laws and Regulations of the Province of Ontario, including any Governmental Authority thereof; and

“**material adverse effect on the Generator**” means a change or effect on the assets, the business, results of operations, financial condition or prospects of the relevant Generator the cost of which to the relevant Generator, exceeds \$5,000,000.

12.2 Consequences of Discriminatory Action

- (a) Each time a Discriminatory Action occurs, then without limiting the rights of each Generator pursuant to [Article 9](#), but subject to Section [15.3](#), each Generator shall have the right to obtain compensation (the “**Discriminatory Action Compensation**”) from the Counterparty for:
- (i) the amount of the increase in the costs that the relevant Generator would reasonably be expected to incur under this Agreement, including in respect of the Refurbishment of any of the Bruce A Units or in the operation or maintenance of Bruce A, Bruce B or the Common Facilities, as applicable, or the generation, sale or delivery of the Electricity and Related Products from Bruce A, Bruce B or the Common Facilities, as applicable, in any of the foregoing cases as a result of the occurrence of such Discriminatory Action, commencing on the first day of the Discriminatory Action and ending at the expiry of the Term, but excluding the portion of any costs charged by a Person who does not deal at Arm’s Length with the relevant Generator that is in excess of the costs that would have been charged had such Person been at Arm’s Length with the relevant Generator;
 - (ii) the amount by which (A) the net present value of the net revenues from Bruce A, Bruce B or the Common Facilities, as applicable, or part thereof, (inclusive of amounts receivable by the relevant Generator pursuant to [Article 3](#) or, if applicable, Section [9.5](#)) that are forecast to be earned by the relevant Generator during the period of time commencing on the first day of the Discriminatory Action and ending at the expiry of the Term had no Discriminatory Action occurred, exceeds (B) the net present value of the net revenues from Bruce A, Bruce B or the Common Facilities, as applicable, or part thereof, (inclusive of amounts receivable by the relevant Generator pursuant to [Article 3](#) or, if applicable, Section [9.5](#)) that are forecast to be earned by the relevant Generator during the period of time commencing on the first day of the Discriminatory Action and ending on the expiry of the Term, taking into account the occurrence of the Discriminatory Action and any actions that the relevant Generator should reasonably be expected to take to mitigate the effect of the Discriminatory Action, such as by mitigating operating expenses and normal capital expenditures of the business of the generation and delivery of the Electricity and Related Products by Bruce A, Bruce B or the Common Facilities, as applicable, or part thereof; and

- (iii) all reasonable legal fees and out of pocket expenses incurred by the relevant Generator in connection with enforcing its rights under this [Article 12](#).

Without limiting the generality of the foregoing, for purposes of determining Discriminatory Action Compensation, the losses, revenues and costs of each Generator will be determined by each such Generator acting in good faith and using commercially reasonable procedures in order to produce a commercially reasonable result with the intention of compensating each such Generator for the economic loss resulting from such Discriminatory Action. In determining Discriminatory Action Compensation, each Generator may consider any relevant information.

- (b) Notwithstanding any other provision in this Agreement, neither Generator shall be entitled to receive compensation for any losses due to a Discriminatory Action to the extent such losses relate to Bruce B Unit 5 incurred after December 31, 2016, Unit 6 incurred after December 31, 2015, Unit 7 incurred after December 31, 2017 or Unit 8 incurred after December 31, 2019, with the exception of losses relating to increased shut down and pre-hand back costs relating to any such Unit due to a Discriminatory Action.

12.3 Notice of Discriminatory Action

- (a) In order to exercise its rights in the event of the occurrence of a Discriminatory Action, the relevant Generator must give a notice (the “**Preliminary Notice**”) to the Counterparty stating that a Discriminatory Action has occurred. If the Discriminatory Action arises from any change in the interpretation, implementation or administration of Ontario Laws and Regulations by a Governmental Authority of the Province of Ontario manifested by the issuance to such Generator of an order, decision, judgment, injunction, decree, award, writ, ruling, licence, permit or certificate, such Preliminary Notice shall be delivered within ninety (90) days after the date on which such issuance occurs. If the Discriminatory Action arises from any change in any of the statutes of the Province of Ontario listed in Exhibit 12.3, or any of the regulations promulgated thereunder, as manifested by the enactment, amendment, re-enactment or replacement thereof, such Preliminary Notice shall be delivered within one (1) year after the date on which such enactment, amendment, re-enactment or replacement occurs and is made public. In respect of all other Discriminatory Actions, such Preliminary Notice shall be delivered within six (6) months after the date on which an officer of the general partner of such Generator first became aware of the Discriminatory Action. Within sixty (60) days after the date of receipt of the Preliminary Notice, the relevant Generator must give another notice (the “**Notice of Discriminatory Action**”). A Notice of Discriminatory Action must include:
 - (i) a statement of the Discriminatory Action that has occurred;

- (ii) details of the effect of the said occurrence that is borne by the relevant Generator;
- (iii) details of the manner in which the Discriminatory Action increases the costs that the relevant Generator would reasonably be expected to incur in the delivery of the Electricity and Related Products from Bruce A, Bruce B or the Common Facilities, as applicable, or adversely affects the revenues of the relevant Generator; and
- (iv) the amount claimed as Discriminatory Action Compensation and details of the computation thereof.

The Counterparty shall, after receipt of a Notice of Discriminatory Action, be entitled, by notice given within thirty (30) days after the date of receipt of the Notice of Discriminatory Action, to require the relevant Generator to provide such further supporting particulars as the Counterparty considers necessary, acting reasonably.

- (b) If the Counterparty wishes to dispute the occurrence of a Discriminatory Action, the Counterparty shall give a notice of dispute (the “**Notice of Dispute**”) to the relevant Generator, stating the grounds for such dispute, within thirty (30) days after the date of receipt of the Notice of Discriminatory Action or within thirty (30) days after the date of receipt of the further supporting particulars, as applicable, failing which the Counterparty shall be deemed to have accepted the relevant Generator’s assertion that a Discriminatory Action has occurred.
- (c) If neither the Notice of Discriminatory Action nor the Notice of Dispute has been withdrawn within thirty (30) days after the date of receipt of the Notice of Dispute by the relevant Generator, the dispute of the occurrence of a Discriminatory Action shall be determined by either the Counterparty or the relevant Generator commencing a claim in the Ontario courts.
- (d) If the Counterparty wishes to dispute the amount of the Discriminatory Action Compensation claimed by the relevant Generator in the Notice of Discriminatory Action, the Counterparty shall within thirty (30) days after the date of receipt of the Notice of Dispute by the relevant Generator, give to the relevant Generator a notice (the “**Discriminatory Action Compensation Dispute Notice**”) setting out an amount that the Counterparty proposes as the Discriminatory Action Compensation (the “**Counterparty’s Proposed Discriminatory Action Compensation Amount**”), if any, together with details of the computation, failing which the Counterparty shall be deemed to have accepted the Discriminatory Action Compensation claimed in the Notice of Discriminatory Action. If the relevant Generator does not give notice (the “**Generator Non-acceptance Notice**”) to the Counterparty stating that it does not accept the Counterparty’s Proposed Discriminatory Action Compensation Amount within thirty (30) days after the date of receipt of the Discriminatory Action

Compensation Dispute Notice, the relevant Generator shall be deemed to have accepted the Counterparty's Proposed Discriminatory Action Compensation Amount. If the Generator Non-acceptance Notice is given, the Counterparty and the relevant Generator shall attempt to determine the Discriminatory Action Compensation through negotiation, and any amount so agreed in writing shall be the Discriminatory Action Compensation. If the Counterparty and the relevant Generator do not agree in writing upon the Discriminatory Action Compensation within sixty (60) days after the date of receipt by the Counterparty of the relevant Generator Non-acceptance Notice, the Discriminatory Action Compensation shall be determined by either the Counterparty or the relevant Generator commencing a claim in the Ontario courts. If an action has been commenced pursuant to Section 12.3(c) the relevant Parties shall use Commercially Reasonable Efforts to join the determination of such claim with such action.

- (e) If the Counterparty does not dispute the occurrence of a Discriminatory Action or the amount of Discriminatory Action Compensation claimed by the relevant Generator in the Notice of Discriminatory Action, the Counterparty shall pay to the relevant Generator the amount of Discriminatory Action Compensation claimed by the relevant Generator within sixty (60) days after the date of receipt of the Notice of Discriminatory Action. If a Notice of Dispute has been given, the Counterparty shall pay to the relevant Generator the Discriminatory Action Compensation determined in accordance with Section 12.3(d) not later than sixty (60) days after the later of the date on which the dispute with respect to the occurrence of a Discriminatory Action is resolved pursuant to Section 12.3(c) and the date on which the Discriminatory Action Compensation is determined pursuant to Section 12.3(d).
- (f) Any amount to be paid under Sections 12.3(c), (d) or (e) shall be paid together with interest at the Interest Rate calculated daily and compounded monthly from the date of receipt of the Notice of Discriminatory Action to the date of payment in full of the Discriminatory Action Compensation.
- (g) Payment of the Discriminatory Action Compensation and interest thereon by the Counterparty to the relevant Generator shall constitute full and final satisfaction of all amounts that may be claimed by the relevant Generator for and in respect of the occurrence of the Discriminatory Action and, upon such payment, the Counterparty shall be released and forever discharged by the relevant Generator from any and all liability in respect of such Discriminatory Action.

12.4 Right of the Counterparty to Remedy or Cause to be Remedied a Discriminatory Action

If the Counterparty wishes to remedy or cause to be remedied the occurrence of a Discriminatory Action, the Counterparty must give notice to each Generator, setting out details of the remedy proposed, within thirty (30) days after the later of the date of receipt of the Notice of Discriminatory Action and the date of the receipt by the Counterparty of the further supporting

particulars referred to in Section 12.3(a). If the Counterparty gives such notice, the Counterparty must remedy or cause to be remedied the Discriminatory Action within one hundred and eighty (180) days after such notice to each Generator. If the Counterparty remedies or causes to be remedied the Discriminatory Action in accordance with the preceding sentence, each Generator shall have the right to obtain, without duplication, the amount that such Generator would have the right to claim in respect of that Discriminatory Action pursuant to Section 12.2, adjusted to apply only to the period commencing on the first day following the date of the Discriminatory Action and expiring on the day preceding the day on which the Discriminatory Action was remedied.

12.5 Scope of Remedy for Discriminatory Action

It is understood, for greater certainty, that the rights of each Generator under this Article 12 may be exercised each time a Discriminatory Action occurs.

ARTICLE 13 LIABILITY

13.1 Exclusion of Consequential Damages

Notwithstanding anything contained herein to the contrary, no Party will be liable under this Agreement or under any cause of action relating to the subject matter of this Agreement for any special, indirect, incidental, punitive, exemplary or consequential damages, including loss of profits (save and except as provided in Sections 9.5 and 12.2, in each case, with respect to loss of profits only), loss of use of any property or claims of customers or contractors of the Parties for any such damages or the cost of the Counterparty or the Province of Ontario procuring alternative or replacement Electricity.

13.2 Liquidated Damages

Nothing in this Article shall reduce a Party's right to claim liquidated damages pursuant to Sections 2.7 or 8.2(e), a Clawback Payment pursuant to Section 8.2, an Early Termination Payment pursuant to Sections 9.2, 9.4 or 9.5, or Discriminatory Action Compensation pursuant to Sections 12.2 or 12.3. The Parties agree that the payment of liquidated damages pursuant to Sections 2.7 or 8.2(e), a Clawback Payment pursuant to Section 8.2, the Early Termination Payment pursuant to Sections 9.2, 9.4 or 9.5, or Discriminatory Action Compensation pursuant to Sections 12.2 or 12.3, constitutes a fair and reasonable means of compensation, and a genuine attempt to pre-estimate damages in circumstances where damages are otherwise incapable of being determined or difficult to determine, as a consequence of failure to achieve Commercial Operation by a Milestone Date, a Clawback Determination Date or an Early Termination Date, or as a consequence of Discriminatory Action, as applicable, and does not constitute a penalty.

13.3 Indemnification

In addition to the indemnity provided by each Generator in Section 2.9(b) and BPLP in Section 2.12(b), each Generator shall indemnify, defend and hold the Counterparty and its directors,

officers, employees, members, advisors and agents (including contractors and their employees) (collectively, the “**Counterparty Indemnitees**”) harmless from and against any and all claims, demands, suits, losses, damages, liabilities, penalties, obligations, payments, costs and expenses and accrued interest thereon (including the costs and expenses of, and accrued interest on, any and all actions, suits, proceedings, assessments, judgments, settlements and compromises relating thereto and reasonable lawyers’ fees and reasonable disbursements in connection therewith) (each, an “**Indemnifiable Loss**”), asserted against or suffered by the Counterparty Indemnitees in respect of such assertion and relating to, in connection with, resulting from, or arising out of any breach by such Generator of any representations contained in Section 6.1 and covenants contained in this Agreement, except to the extent that any injury or damage is attributable to the negligence or wilful misconduct of any of the Counterparty Indemnitees. For greater certainty, in the event of contributory negligence or other fault of any of the Counterparty Indemnitees, then such Counterparty Indemnitee shall not be indemnified hereunder in the proportion that the Counterparty Indemnitee’s negligence or other fault contributed to any Indemnifiable Loss.

13.4 Defence of Claims

- (a) Promptly after receipt by a Counterparty Indemnitee of any claim or notice of the commencement of any action, administrative or legal proceeding, or investigation by a Person other than a Counterparty Indemnitee as to which indemnity provided for in Sections 2.9(b) or 13.3 may apply, and promptly after receipt by a Generator Indemnitee of any claim or notice of the commencement of any action, administrative or legal proceeding, or investigation by a Person other than a Generator Indemnitee as to which an indemnity provided for in Section 2.6 may apply, the Counterparty, in the case of a Counterparty Indemnitee, or the applicable Generator, in the case of a Generator Indemnitee, shall notify the Party (the “**Indemnifying Party**”) that has provided an indemnity hereunder to such Indemnitee in writing of such fact, but in any event such notice shall not be given later than twenty days (20) after such Indemnitee’s receipt of such claim or notice unless provision of such notice later after such twenty (20) days does not prejudice the defence of the claim. Such notice shall describe the nature of the action, proceeding or investigation in reasonable detail and shall indicate the amount or, if the amount is not then determinable, an appropriate and reasonable estimate of the potential amount of the Indemnifiable Loss that has been or may be sustained by the Indemnitees. The Indemnifying Party shall assume the defence thereof with counsel designated by the Indemnifying Party and satisfactory to the affected Indemnitees, acting reasonably; provided, however, that if the defendants (including any added third or impleaded party) in any such action include both the Indemnitees (or any of them) and the Indemnifying Party and the Indemnitees shall have reasonably concluded that there may be legal defences available to them which are different from or additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnitees shall have the right to select separate counsel satisfactory to the Indemnifying Party, acting reasonably, to participate in the defence of such action on behalf of the

Indemnitees and the Indemnifying Party shall be liable to pay the reasonable fees and disbursements of such separate counsel. If not represented by separate counsel, the Indemnitees shall cooperate in good faith with the Indemnifying Party in defence of any action, proceeding or investigation at the expense of the Indemnifying Party, but without charging the Indemnifying Party for the time incurred by such Indemnitees attributable to such cooperation.

- (b) The Indemnifying Party shall promptly confirm whether or not it is assuming the defence of the Indemnitees under Section 13.4(a) by providing written notice to the Indemnitees. Such notice shall be provided no later than five days prior to the deadline for responding to any claim relating to any Indemnifiable Loss. Upon providing notice that it has assumed such defence, the Indemnifying Party will not be liable for any legal expenses subsequently incurred by the Indemnitees in connection with the defence of such action, proceeding or investigation, unless the Indemnifying Party does not promptly assume the defence of the claim (in which case the provisions of Section 13.4(c) shall apply), the Indemnitees and the Indemnifying Party shall have mutually agreed to the retention of separate counsel or the Indemnitees have retained separate counsel pursuant to Section 13.4(a), in each of which cases the Indemnifying Party shall not be obligated to assume the defence of such claim on behalf of the Indemnitees. If not represented by separate counsel, the Counterparty and each Generator shall cooperate fully with each other with respect to any action, proceeding or investigation pursuant to which an Indemnitee is entitled to indemnification hereunder and shall keep each other fully advised with respect thereto.
- (c) Should any of the Indemnitees be entitled to indemnification under Sections 2.6, 2.9(b) or 13.3 as a result of a claim by a third party, and the Indemnifying Party fails to promptly assume the defence of such claim (which failure shall be assumed if the Indemnifying Party fails to provide the notice prescribed by Section 13.4(b)), the Indemnitees shall, at the expense of the Indemnifying Party, contest (or, with the prior written consent of the Indemnifying Party, settle) such claim, provided that no such contest need be made and settlement or full payment of any such claim may be made without consent of the Indemnifying Party (with the Indemnifying Party remaining obligated to indemnify the Indemnitees for any Indemnifiable Loss arising from a third party claim under Sections 2.6, 2.9(b) or 13.3, as applicable), if, in the written opinion of an independent third party counsel chosen by the relevant Parties, such claim is meritorious. If the Indemnifying Party is obligated to indemnify any Indemnitees for any Indemnifiable Loss arising from a third party claim under Sections 2.6, 2.9(b) or 13.3, the amount owing to the Indemnitees will be the amount of such Indemnitees' actual out-of-pocket loss net of any insurance proceeds received or other recovery.

ARTICLE 14 NOTICES

14.1 Notices

All notices pertaining to this Agreement not explicitly permitted to be in a form other than writing shall be in writing and shall be given by facsimile or other means of electronic transmission or by hand or courier delivery. Notwithstanding the foregoing, any notices of a Generator Event of Default, a Counterparty Event of Default and termination of this Agreement shall only be given by hand or courier delivery. Any notice shall be addressed to the applicable Party as follows:

If to either Generator: Bruce Power L.P. and/or Bruce Power A L.P.
Building B06
177 Tie Road
Municipality of Kincardine
R.R. #2
Tiverton, Ontario N0G 2T0

Attention: Vice President, Power Marketing
Facsimile: (519) 361-1845

and a mandatory copy to: Bruce Power L.P. and/or Bruce Power A L.P., as applicable
Building B06
177 Tie Road
Municipality of Kincardine
R.R. #2
Tiverton, Ontario N0G 2T0

Attention: General Counsel & Corporate Secretary
Facsimile: (519) 361-4333

If to the Counterparty: Ontario Power Authority
175 Bloor Street East
North Tower, Suite 606
Toronto, Ontario M4W 3R8

Attention: Chief Executive Officer
Facsimile: (416) 967-1947

and a mandatory copy to: Ontario Power Authority

175 Bloor Street East
North Tower, Suite 606
Toronto, Ontario M4W 3R8

Attention: General Counsel
Facsimile: (416) 967-1947

and to:

Ministry of Energy
4th Floor, Hearst Block
900 Bay Street
Toronto, Ontario M7A 2E1

Attention: Deputy Minister
Facsimile: (416) 327-6755

(which shall not be required to constitute notice)

Notice delivered or transmitted as provided above shall be deemed to have been given and received on the day it is delivered or transmitted, provided that it is delivered or transmitted on a Business Day prior to 2:00 p.m. local time in the place of delivery or receipt. However, if a notice is delivered or transmitted after 2:00 p.m. local time or if such day is not a Business Day, then such notice shall be deemed to have been given and received on the next Business Day. Any Party may, by written notice to the others, change its respective address to which or persons to whom notices are to be sent.

ARTICLE 15 MISCELLANEOUS

15.1 Informal Dispute Resolution

If any dispute arises under or in connection with this Agreement that the relevant Parties cannot resolve, each of the relevant Parties shall promptly advise its senior management, in writing, of such dispute and notify each other that their respective senior management has been so advised. Within five (5) Business Days following delivery of any such notice, a senior executive (Senior Vice-President or higher) from each relevant Party shall meet, either in person or by telephone (the “**Senior Conference**”), to attempt to resolve the dispute. Each senior executive shall be prepared to propose a solution to the dispute. If, following the Senior Conference, the dispute is not resolved, any Party may require the dispute to be settled pursuant to Section 15.2.

15.2 Formal Dispute Resolution

Except as otherwise specifically provided for in this Agreement, any matter in issue between the Parties as to their rights under this Agreement shall be decided by arbitration pursuant to Section 15.2(a) or as otherwise expressly required under this Agreement or by public

proceedings pursuant to Section 15.2(b); provided, however, that unless expressly provided otherwise in this Agreement, the relevant Parties have first completed a Senior Conference pursuant to Section 15.1 before commencing public proceedings pursuant to Section 15.2(b).

- (a) Any matter in issue between the Parties, or any of them, arising in respect of this Agreement may, if the relevant Parties agree in writing, be determined in accordance with Exhibit 15.2, which sets out the sole and exclusive procedure for the resolution of any matter in issue arising in respect of this Agreement where the relevant Parties have so agreed. The resolution of disputes pursuant to the terms of Exhibit 15.2 shall be final and binding upon the relevant Parties and there shall be no appeal therefrom, including any appeal to a court on a question of law, a question of fact or a question of mixed fact and law.
- (b) A proceeding for adjudication of any matter in issue, other than matter in issue which the relevant Parties have agreed in writing to resolve by arbitration under Section 15.2(a), or as otherwise expressly required under this Agreement, may be commenced by the relevant Party in the Ontario courts.
- (c) Each of the Parties acknowledges that a breach or threatened breach by any of them of any provision of this Agreement may result in the other Party suffering irreparable harm which cannot be calculated or fully or adequately compensated by recovery of damages alone. Accordingly, each of the Parties is entitled to equitable relief, including interim, interlocutory and permanent injunctive relief, specific performance and other equitable remedies, in the event of any breach or threatened breach of the provisions of this Agreement, in addition to any other remedies available to the Parties and nothing in this Section 15.2 shall delay or prevent any Party from seeking such relief.

15.3 No Double Recovery

Where events, occurrences or matters may be characterized as being one or more of a Disruption Event, a Discriminatory Action, a Refurbishment, Force Majeure, a Price Evolution Event, an Indemnifiable Loss or an event entitling a Party to receive an Early Termination Payment:

- (a) if LMP is implemented by the IESO, or a Price Evolution Event or a Price Indicator Unavailability Event occurs, for purposes of the determination of Discriminatory Action Compensation, if applicable, any determination of a decrease of net revenues pursuant to Section 12.2(a)(ii) shall be made after inclusion of all amounts forecast to be paid under Article 3, as adjusted by Section 1.7, 1.8, 1.9 or 1.10, as applicable;
- (b) to the extent an event, occurrence or matter may be characterized as a Discriminatory Action and may also be characterized as a Refurbishment or Force Majeure, the intention of the Parties is that the same event, occurrence or matter may be characterized as a Discriminatory Action, Refurbishment or Force

Majeure or any combination thereof and the applicable compensation may be claimed without duplication of recovery under such heads of compensation;

- (c) to the extent that an event, occurrence or matter may entitle the Counterparty to an Early Termination Payment and a right of indemnification from an Indemnifiable Loss under Section 13.3, the intention of the Parties is that the Counterparty shall not claim a right of indemnification under Section 13.3 and in no event shall the Counterparty seek recovery of an Indemnifiable Loss under Section 13.3 arising from a breach of covenant or representation by a Generator for which the Counterparty has sought or received an Early Termination Payment;
- (d) to the extent that an event, occurrence or matter may entitle the Counterparty to make a claim for an Early Termination Payment or a right of indemnification from an Indemnifiable Loss under Section 13.3, in either case, against both Generators, the intention of the Parties is that the Counterparty may, subject to Section 15.3(c), claim the Early Termination Payment and/or Indemnifiable Loss from both Generators severally, and not jointly or jointly and severally, and without duplication of recovery under such heads of damage for such event, occurrence or matter;
- (e) to the extent an event, occurrence or matter may be characterized as more than one of the following: a Type 1 Force Majeure, Type 2 Force Majeure, Type 3 Force Majeure or a Refurbishment, such event, occurrence or matter shall be characterized in order of the following priority for purposes of adjustments to the Bruce A Price pursuant to Exhibit 3.5: a Type 1 Force Majeure, Type 2 Force Majeure, Type 3 Force Majeure or a Refurbishment, the intention of the Parties being that the same event, occurrence or matter cannot be claimed twice for purposes of such adjustments; and
- (f) to the extent that an event, occurrence or a matter may be characterized as evidence entitling either Generator, or both of them, to an Early Termination Payment and Discriminatory Action Compensation, the intention of the Parties is that such Generator may claim the Early Termination Payment and any Discriminatory Action Compensation without duplication of recovery under such heads of damage for such event, occurrence or matter.

15.4 Business Relationship

Nothing in this Agreement shall create or be deemed to create a relationship of partners, joint venturers, fiduciary, principal and agent or any other relationship between any of the Parties.

15.5 Binding Agreement

Except as otherwise set out in this Agreement, this Agreement shall not confer upon any other Person, except the Parties and their respective successors and permitted assigns, any rights, interests, obligations or remedies under this Agreement. This Agreement and all of the

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

15.6 Assignment

- (a) Except as contemplated in [Article 11](#) and set out in this Section 15.6, neither this Agreement nor any of the rights, interests or obligations under this Agreement may be assigned by a Party, including by operation of Laws and Regulations, without the prior written consent of each other Party, which consent may not be unreasonably withheld, delayed or conditioned. The Parties acknowledge that it shall not be unreasonable for either Generator to withhold its consent if the Counterparty's proposed assignee does not have the ability pursuant to Laws and Regulations to recover all amounts paid or payable to each Generator pursuant to this Agreement directly or indirectly from Electricity consumers in the Province of Ontario or such proposed assignee does not have the full faith and credit of the Government of Ontario supporting it. The Parties acknowledge that it shall not be unreasonable for the Counterparty to withhold its consent if either Generator's proposed assignee has not provided the Counterparty with evidence that all consents, licences, permits and other approvals of a Governmental Authority necessary to effect such transfer have been obtained (including from the CNSC) and the assignee or its ultimate parent is then rated at least one notch above Investment Grade (as defined in, and determined in accordance with, the Sharing in Transfers and Refinancings Agreement) by two then recognized rating agencies, or is otherwise acceptable to Counterparty, acting reasonably.
- (b) A Generator may, subject to compliance with Laws and Regulations and provided that there is not a Generator Event of Default that has not been remedied, assign this Agreement without the consent of the Counterparty to a Limited Partner of BALP which is a Limited Partner holding more than a 15% limited partnership interest in BALP at the date hereof.
- (c) No assignment by a Party or any of its successors or permitted assigns hereunder shall be valid or effective unless and until the assignee agrees with each other Party in writing to assume all of the assigning Party's obligations and be bound by the terms of this Agreement. If a valid assignment of this Agreement is made by a Party in accordance with this Section 15.6, each other Party acknowledges and agrees that, upon such assignment and assumption and notice thereof by the assigning Party to each other Party, the assigning Party shall be relieved of and released from all its duties, obligations and liabilities hereunder.
- (d) If either Generator or the Counterparty (the "**Assignor**", as applicable) assigns this Agreement to a non-resident of Canada (the "**Assignee**"), as that term is defined in the ITA, and the other Party that is not the Assignor (the "**Original Party**") incurs any additional Taxes, including withholding Taxes, at any time thereafter, solely as the result of such assignment, then the amount of such additional Taxes shall be deducted by the Original Party from payments made to

the Assignee under this Agreement and the Original Party shall remit such additional Taxes to the applicable taxing authorities. The Original Party shall within sixty (60) days after remitting such Taxes, notify the Assignee in writing, providing reasonable detail of such payment so that the Assignee may claim any applicable rebates, refunds or credits from the applicable taxing authorities. If after the Original Party has paid such amounts, the Original Party receives a refund, rebate or credit on account of such Taxes, then the Original Party shall promptly remit such refund, rebate or credit amount to the Assignee.

- (e) Notwithstanding Section 15.6(a), this Agreement and any of the rights, interests or obligations under this Agreement may not be assigned by either Generator prior to January 1, 2012, other than (i) as contemplated in Article 11 and/or (ii) to a Person who is a Limited Partner of BALP holding more than a 15% limited partnership interest in BALP on the date hereof, subject to and in accordance with Section 15.6(c).

15.7 Sharing in Transfers and Refinancings Agreement

BALP and the Counterparty acknowledge that they have concurrently entered into the Sharing in Transfers and Refinancings Agreement with TransCanada Corporation and Ontario Municipal Employees Retirement Board.

15.8 Opinion of Party's Counsel

Concurrently with the execution and delivery hereof, each Party shall deliver to each other Party (i) a legal opinion from a law firm acceptable to each other Party, acting reasonably, and in form and substance acceptable to each other Party, acting reasonably, that this Agreement is enforceable against the first Party in accordance with its terms; and (ii) an officer's certificate addressed to such law firm and each other Party setting out the factual matters upon which such law firm is relying in order to deliver such opinion.

15.9 Survival

The provisions of Sections 1.14, 1.16, 2.7(d)(i), 3.8, 4.7, 4.8, 8.1(c), 8.2(e), 8.2(f), 8.2(g), 8.2(k), Article 9, Sections 11.2, 13.1, 14.1, 15.1, 15.2, 15.3, 15.6(b), 15.9 and 15.14 shall survive the expiration of the Term or earlier termination of this Agreement. The provisions of Article 7 shall survive the expiration of the Term or earlier termination of this Agreement for a period of two (2) years. The expiration of the Term or a termination of this Agreement shall not affect or prejudice any rights or obligations that have accrued or arisen under this Agreement prior to the time of expiration or termination and such rights and obligations shall survive the expiration of the Term or the termination of this Agreement for a period of time equal to the applicable statute of limitations.

15.10 Guarantees

The Parties acknowledge that TransCanada Energy Investments Ltd. and BPC Generation Infrastructure Trust have delivered Guarantees on the date hereof.

15.11 References to HOEP

The Parties acknowledge that BALP and BPLP, at the date hereof, are paid the 5-minute market clearing price for Electricity delivered to the IESO-Controlled Grid from Bruce A and Bruce B for each 5-minute dispatch interval during which Electricity is so delivered. To the extent that BALP and BPLP continue to be paid such market clearing price based upon 5-minute dispatch intervals, the Parties agree that (i) references in this Agreement (including in the formulae in Exhibit 3.2) to HOEP shall be deemed to be references to such 5-minute market clearing price and (ii) references to an hour corresponding to an HOEP shall be deemed to be references to 5-minute dispatch intervals corresponding to the relevant 5-minute market clearing price, (iii) calculations of Monthly Payments and Deemed Electricity shall be made on the basis of such 5-minute market clearing prices and 5-minute dispatch intervals and (iv) references to price signals or revenues calculated on an hourly basis on the assumption that they correspond to HOEP (including the definition of Actual Hourly Energy Payment and the day-ahead hourly Electricity price contemplated by the definition of Day Ahead Energy Forward Market) shall be deemed to be calculated on the basis of the relevant 5-minute market clearing price or 5-minute dispatch interval.

15.12 Counterparts

This Agreement may be executed in three or more counterparts, and all such counterparts shall together constitute one and the same Agreement. It shall not be necessary in making proof of the contents of this Agreement to produce or account for more than one such counterpart. Any Party may deliver an executed copy of this Agreement by facsimile but such Party shall promptly deliver to each other Party an originally executed copy of this Agreement.

15.13 Use of Insignia

No Generator shall use any insignia, trade-mark or logo of the Government of Ontario or the Counterparty except where required in order to comply with its obligations hereunder, and only if it has received the prior written permission of the Government of Ontario, for use of insignia, trade-marks or logos of the Government of Ontario, or the Counterparty, for use of insignia, trade-marks or logos of the Counterparty, to do so.

15.14 Rights and Remedies Not Limited to Contract

Unless expressly provided in this Agreement, the express rights and remedies of any Party set out in this Agreement are in addition to and shall not limit any other rights and remedies available to any Party, at law or in equity.

15.15 Further Assurances

Each of the Parties shall, from time to time on written request of any other Party, do all such further acts and execute and deliver or cause to be done, executed or delivered all such further acts, deeds, documents, assurances and things as may be reasonably required in order to fully perform and to more effectively implement and carry out the terms of this Agreement. The Parties agree to promptly execute and deliver any documentation required by any Governmental Authority in connection with any termination of this Agreement.

15.16 Time of Essence

Other than for all matters relating to the Refurbishment Projects, time is of the essence in the performance of the Parties' respective obligations under this Agreement; provided, however, that any remedies in respect of a Generator's failure to act on a timely basis shall be governed by Sections 9.2(a)(i) and (ii) and provided, however, that any remedies in respect of the Counterparty's failure to act on a timely basis shall be governed by Section 9.4(a)(i) and (ii).

15.17 Third Party Beneficiaries

Each of the Parties hereby acknowledges and agrees that the Indemnitees are third party beneficiaries of the rights of indemnification provided for under this Agreement. It is further acknowledged and agreed that the Counterparty is acting as agent and trustee for the Counterparty Indemnitees as regards the covenants of each Generator under this Agreement with respect to indemnification of the Counterparty Indemnitees, and each Generator is acting as agent and trustee for its respective Generator Indemnitees as regards the covenants of the Counterparty under this Agreement with respect to indemnification of the Generator Indemnitees.

15.18 Additional Covenants of BALP

Following the occurrence of a Generator Event of Default by BPLP, BALP hereby agrees to provide timely payment to the Counterparty when due of any amounts which BPLP is obligated to pay, or that are payable and remain unpaid, under this Agreement up to and including the end of the Term. Any amounts payable by the BALP under this Section 15.18 which are not paid within five (5) Business Days of demand therefor by the Counterparty will bear interest from the date of such demand at the rate of interest applicable to such obligation pursuant to this Agreement. BALP covenants that it shall not Transfer, prior to January 1, 2020, a material portion of its interest in Bruce A to any Person unless BALP first (i) obtains the written consent of the Counterparty, acting reasonably, (ii) causes the delivery to the Counterparty of such security or other payment assurance in substance similar to BALP's covenants under this Section 15.18 or (iii) causes the delivery to the Counterparty of a guarantee in form and substance similar to the Guarantees, together with an opinion of counsel to such guarantor as to the enforceability of such guarantee, subject to customary qualifications. For the purposes hereof, a "material portion" means any portion having a value of \$100 million or more.

IN WITNESS WHEREOF, and intending to be legally bound, the Parties have executed this Agreement by the undersigned duly authorized representatives as of the date first stated above.

BRUCE POWER L.P., by its general partner, BRUCE POWER INC.

ONTARIO POWER AUTHORITY

By: _____
Name: Duncan Hawthorne
Title: Chief Executive Officer

By: _____
Name: Jan Carr
Title: Chief Executive Officer

By: _____
Name: Brian Armstrong
Title: General Counsel and
Corporate Secretary

BRUCE POWER A L.P., by one of its general partners, BRUCE POWER A INC.

By: _____
Name: Duncan Hawthorne
Title: Chief Executive Officer

By: _____
Name: Brian Armstrong
Title: General Counsel and
Corporate Secretary

EXHIBIT 2.1

REFURBISHMENT – SCOPE OF WORK

The following items 1 to 7, inclusive, pertain to the Refurbishment Projects for Units 1, 2 and 3. The following item 2 is the only item pertaining the Refurbishment Project for Unit 4; provided, however, the Parties acknowledge that components of items 6 and 7 will, to a lesser degree than the Refurbishment Projects for Units 1, 2 and 3, be included in the scope of the Refurbishment Project for Unit 4.

1. Fuel Channel Replacement

All 480 pressure and calandria tubes, along with their associated end fittings, shield plugs, inserts and closure plugs will be replaced in each Unit. In addition, a section of the feeder tubes from the pressure tubes up to the periphery of the vessel will be replaced for all channels in each Unit.

2. Steam Generator Replacement

All eight steam generators in each Unit will be removed and replaced with new steam generators of essentially the same design.

3. Turbines

A major overhaul of the turbine associated with each Unit will be completed. In addition to the overhaul work, a new excitation and electro-hydraulic governing system will be installed to replace the existing systems.

4. Balance of Plant

Work on “balance of plant” items encompasses an extensive list of activities including: construction of a secondary control area, fire protection upgrades, improvements to the plant emergency shutdown systems, replacement of power conversion equipment and environmental qualification of critical systems.

5. Maintenance

The maintenance scope of work includes the completion of all open work orders to repair damaged or malfunctioning equipment. In addition, maintenance activities will be completed on plant systems to ensure that they will run reliably once returned to service.

6. Infrastructure

In order to support the Refurbishment Project, a number of infrastructure projects will be executed. These include the establishment of a construction island, construction of offices and support facilities for Refurbishment Project staff, and other Refurbishment Project related

infrastructure projects, including scaffolding, waste management and insulation removal and replacement.

7. Project Management

In addition to the project activities detailed above, the Refurbishment Project includes carrying out all project management services required to support and oversee each contractor performing the Refurbishment Project work. This will be carried out by a project management contractor (PMC). In support of the Refurbishment Project, BALP will carry out all restart support activities that cannot be delegated to the PMC including liaison with the CNSC, certification training of staff, and management of the PMC contract.

The following items pertain to the Refurbishment Projects for Units 1 and 2.

Scope Title

Fuel Channels Replacement
Feeder Replacement
U1 Feeder Inspection
Remove Old/Install New Steam Generator Cartridges
Turbine Overhauls
Unit 2 Isolation Bulkhead Preinstallation Analysis
Bulkhead Installation and Removal
Project Management Function
Airlock Reliability Upgrades
Units 1 and 2 Environmental Qualification modifications
Replace intake water trash rack (bar) screens
Rehab Condenser Circulating Water (CCW) pumps
Unit 1 and 2 Removal of sandbar at screen intake
Inspections of buried piping on all water systems
Seismic Margin plant modifications
Re-route underflow lines between the CCW screen wash pump discharge and the pump suction inlet
CCW Expansion Joint Replacement
Remove the accumulated debris in pump wells
Re-route Reheater Sump Line to remove temporary jumper
Low Pressure Service Water (LPSW) - Pump Overhauls
LPSW Flow Element/Flow Transmitter replacement.
Condenser steam discharge valves (CSDV's) replacement
Poison Prevent piping relocation
Unit 2 Replace Boiler Level Control Valves
Main Steam Piping upgrades to meet code requirements

Unit 2 Boiler Feed Pump Rebuilds
Unit 2 Deareator Outlet Nozzle Modifications
Unit 2 Condensate Makeup to Shutdown Cooling to enable filling using the discharge pressure of the condensate pumps
Construct Hydrazine Treatment Facility for Turbine Building Area Sumps
Fire Protection – Fire Safe Shutdown Assessment, Fire Hazard Analysis and Fire Code Compliance Analyses
Installation of Turbine Generator Sprinkler Upgrades
Fire Protection - Oil dykes installation
Fire Protection - Cable shield installation
Fire Protection - Smoke detection upgrades
Rewind Spare Westinghouse Motor
Moderator Auxiliaries DC Motors Replacement
Heat Transport (HT) Pump Motor Assessment
Main Output Transformer assessment and overhaul
Main Output Transformer Protective Relaying recalibration
Unit Service Transformer overhaul
Unit Service Transformer Protective Relaying recalibration
System Service Transformer Overhaul
System Service Transformer Protective Relaying recalibration
Isolated Phase Bus Clean Up
Generator Protective Relaying Recalibration
Primary Heat Transport (PHT) Autotransformer Replacement
600V Class III and IV Transformer Replacement
13.8kV Westinghouse Switchgear overhaul
Westinghouse 15kV DHP750 Breakers overhaul
Westinghouse 5kV DHP250 Breakers overhaul
4.16 and 13.8kV Class 3 and 4 Protective Relaying recalibration
Units 1 and 2 Main Output Revenue Metering installation
250VDC Battery Replacements
600V Class II, III and IV Switchgear Rehabilitation
4.16kV Switchgear Rehabilitation
600VAC ITE Breakers. overhauls
600VAC Class II, III and IV Protective Relaying recalibration
250VDC Switchgear Rehabilitation
120VAC Class II Inverters replacement
600VAC Class II Inverters replacement
48VDC Converter Replacement
250VDC Rectifiers replacement
Power Conversion Equipment Room Enclosures installation
Qualified Power Supply (QPS) 250VDC Batteries and Rectifiers installation

10MVA Transformer Overhauls
10MVA Transformer Protective Relay Calibrations
120VAC Class II Fuse Panel Checks
48VDC Panel Maintenance and Fuse Replacements.
48VDC Capacitor Replacements
Standby Generator Controls Replacement
Main Output Transformer Monitoring installation
Unit 2 Supply to QPS installation
Install heaters in the 13.8kV and 4.16kV switchgear
Preheater Internals Cleaning
Rehabilitate Preheaters
Inspect Steam Drum Internals
Moderator Valve Replacement
Unit 2 Moderator Sampling Upgrades
Moderator Cover Gas Over Pressure Protection
Tie-in O2 Addition to Moderator Cover Gas System
Unit 2 Install Moderator Cover Gas Control Valve (CV52)
Replace Moderator Cover Gas Heat Exchangers (HX1, HX2)
Install High Pressure Recirculating Water (HPRW) pump discharge Relief Valves (RVs)
Cleanout HPRW concrete coolers to Primary Heat Transport (PHT) pumps
Air Conditioning Refurbishment & Replacement.
Shield Tank Extension Containment Seal inspection
Moderator purification valves V1 and V10 replacement
Reversal of Unit 2 HT Lay-up
Flow Injection Valve (MV23/24/25/26) Upgrade
HT Pump Journal & Rotating Element Inspection
Replace Transfer System V17, V19, V87
Replace End Shield Cooling (ESC) Isolators
Pressurizer & Bleed Cooler N2 Purge Lines Containment Boundary replacement
H2 Addition Tie In to Heat Transport System
ESC Contaminated Water Holding Tank inspection
ESC Remote Temperature Device replacement
RV Modification on Emergency Cooling Injection (ECI) Bottle Charging Facility
Maintenance Cooling System Orifice Modifications
Back-up Heat Sink tie in to water storage tank
Replace Liquid Zone Control compressors
Install Oxygen addition to liquid zone control
Closed Loop Demineralized Water Heat Exchanger HX501 plate cleaning
Install Design Change Package (DCP) 1651 on ECI D2O (Heavy Water) Valve Interspace

Modification to Main Moderator Pump Bearings
Non-Retube Annulus Gas Modifications
Main Condensers replacement
Feedwater Heaters replacement
Unit 2 Boiler Balance Line tie in
Replace electrical termination blocks (WIBAs)
Gas Chromatograph (GC) replacement Unit 2
Install Carbon 14 monitor for Unit 1
Jacking Oil Pump refurbishment
Speed Probe & Stall Protection repair
Shutdown System (SDS1) and Shutdown System (SDS2) trip setpoint change project
Ion chamber amplifier upgrade for SDS1
Barringer D20 in H2O equipment replacement
Relay Panel Modifications
Replace Liquid Injection Shutdown System (LISS) nozzle conductivity meters
Replace obsolete chart recorders on safety systems
Replace obsolete Fischer & Porter Controllers
Mercury Wetted Relays Replacement SDS2 & ECI
Inspect Liquid Zone Control assemblies
Upgrade Digital Control Computer (DCC) Display System/Replace Monitors
Replace Safety System Monitoring Computer (SSMC) MP200 & MP100s
Computer Distribution Frame (CDF) assessment/replacement
SDS1 Neutron Overpower (NOP) Amplifier Replacement
Replace 90Vdc clutch power supp. & 45Vdc loop sup
Replacement of Gulf SDS2 ion chamber amps
Transmitter replacement program
Reactor Regulating System (RRS) NOP amplifier noise reduction modifications
Unit 1 and 2 Contact Scanner Replacement
Implement DCC Quality Assurance Program
Barringer D20 in H2O equipment replacement (QIA2)
Upgrade Vault Communications
Replace Main Vault Coolers Coils
Refurbishment of Vault Air Conditioning Units
Hydrogen Igniters refurbishment
Replace Control Valve CV3 on HT Feed and Bleed system on Unit 2
Reactor Inlet Header Temperature Modifications
Install Ultrasonic Flow metering for feeder flow
Relocate motorized valve MV27 on HT system
Replace PHT Feed and Bleed Relief Valves RV17 & 18

PHT Sample Cooler Connections change to Swagelock fittings
PHT Pressure Reducing Coils change to Swagelock fittings
Pressure Vessel Recertification Program
LPSW & HPRW Piping condition assessment
Period Inspection Program (PIP) completion
Unit 2 Bleed Cooler and Piping Inspections
Inspect Maintenance Cooling System Heat Exchanger (HX1)
Flow Accelerated Corrosion Inspection
SDS2 flux monitoring enhancement
Replace SDS2 NOP amplifiers
Install Programmable Logic Controller (PLC) for HT press control
Boiler Feed system control loops refurbishment
Install Secondary Control Area for Units 1,2
Roof Repairs on Units 1,2 & 0
D2O Injection Timing installation
Motor Control Centre Overhauls
Restore PHT, Moderator Upgraders and D2O Cleanup
Modernize PHT and Moderator Upgrader controls
Ancillary Services Building (ASB) – Heating, Ventilation and Air Conditioning (HVAC) System Maintenance
Flush, Drain and Purge Dry Unit 1 and 2 Moderator
Resolve Units 1 and 2 System Registration Issues
Install New Fibre-optic Penetration in Vault
Drain Flush & Dry Unit 1 HT System
ECI Header Insulation installation
Rehabilitate Vault Vapor Recovery Driers
Calcium Silicate Removal
Asbestos - Pre-project Asbestos Survey
On Line Wiring Baselineing
Disposal of Radwaste from Retube/Restart project
Waste Management of Restart Waste
Construction Retube Building (CRB) - Active Drainage and ALW System Upgrades
CRB - Decontamination Facility Modifications
Unit 1 & 2 Master Equipment List Update in Passport
Unit 1 & 2 PMID Update per Maintenance Optimization
Unit 2 Boiler Feedpump Suction RV's replacement
Negative Pressure Containment (NPC) for PHT System tie in
Temporary Breathing Air System installation
Retube Radioactive Waste container design and waste removal
Common service water (CSW) Restart Jumper Capacity Increase

Temporary Calandria Drying and NPC Control System installation
Restart Required Modifications to Vault Vapour Recovery (VVR) Inlet Ducting
Reactor Face and Feeder Cabinet Insulation Removal
Resolve Legacy Engineering Change Notice (ECN) design issues
Temporary Vault Cooling Contingency installation
Repair/re-route Common Service Water (CSW) line to ASB
Install Unit 3 to Unit 0 Instrument Air Backup Supply
Install a Temporary Service Air system for restart
Replace Unit 1 & Unit 2 Vault Cranes
Re-route the seal leak off collection lines for D2O Transfer Pumps
Unit 1 & 2 Facilities installation
Rehabilitate CCW Screens
Re-furbishment of CCW pump discharge valves
Rehabilitate LPSW Screens
Water Systems Restoration Maintenance
HPRW pump overhauls and impeller replacement
Flushing of the LPSW and HPRW system piping
LPSW and HPRW Piping Post Assessment Modifications
Replace HPRW Control valve station
DCC Power Supply Refurbishments
DCC Predefineds completion
Unit 1 and 2 Storage Tank Liner Inspections
HT Recovery tank and Sump Inspections
Support Systems Restoration Maintenance
Rehabilitate 1, 2-71910-P1 (Emergency Boiler Cooling Diesel Pumper)
Replace/Repair Pressurizer Heaters, Cables & Connections
Unit 2 Pressurizer Supports inspection of welds
Misc SDS1 Maintenance excluding shutoff rods
Perform shutter, and SDS1 rod maintenance
Replace the End Shield Cooling (ESC) Heat Exchanger Tube Bundle
Conduct Fixed Area Gamma Monitoring maintenance
Return non contaminated stack monitors to service
Complete maintenance predefineds on all beetles
Perform maintenance on Control absorbers
Perform General System Maintenance for SDS2.
Liquid Zone Control general maintenance
Perform maintenance on Control absorbers
Install DCP1218 stepback "seal in" modification
Install DCP 1270 PHT pump stepback

Install flux tilt setback limits
Replace 4 non nuclear RVs for Liquid Zone Control (LZC)
Off-gas Condenser Cleaning
Boiler Blowdown Valve Replacements
Perform GC system maintenance
Valve Maintenance program
Relief Valve Program
Check Valve Program
Replace Reheater Drain Valve PV1 & Piping
Restorative Maintenance of Secondary Systems
Reversal of Lay-up and Restorative Maintenance
Horizontal Flux Detector NFM1 Unit 1 Leak Repair
Horizontal Ion Chamber Unit 2 Leak Repair
Bus Duct Purge Air Supply Installation
Transfer Bus Reinsulation and Testing
SDS 2 Flux Monitoring Enhancement
Grid Issues resolution
Electrical Distribution System Analysis
Grid Reconnection
Upgrade simulators to match new design
Perform Independent Audit
Environmental Assessment completion
MOE Certificates of Approval
Safety Analysis completion
Reactor Physics analysis
Safe Operating Envelope analysis
Systematic Review of Safety – PSR analysis
Systematic Review of Safety - Licensing Basis
Seismic Margin Assessment
CNSC Fees For Project Activities
Up front work to isolate U1/2 systems
Add an Additional Simulator
Project Insurance
Costs for Recruitment & Training of Unit 1 & 2 staff
Bruce Power Project Support Staffing Costs
Operator Training Information Technology Costs
Operator Training on Plant Modification
Powerhouse Emergency Venting (PEVs) upgrades for Units 1,2
Unit 2 and 3 Control Equipment Room PEV panels completion

Machine guarding program for Units 1 and 2.
Horizontal Flux Monitor Replacement
Booster Instrumentation and Control removal
Reactivity mechanisms deck grating upgrade
Units 1 and 2 Welding Socket Upgrades
Convert South Extension Trolley to Fuelling Mode
Outage Trailer Complex Power Supplies installation
Fuelling Machine Head #2 and #3 Rebuild
Replace/Relocate/Install Fuel Handling Relief Valves
Install Core Discharge Monitors (CDM) in Unit 2

EXHIBIT 2.4

REFURBISHMENT – REPORTS

Each report contemplated by Section 2.4 will be a monthly progress report issued by the twentieth (20th) Business Day of the Month immediately following the Month that is the subject matter of the report and containing the following:

- (i) A brief overview of major work accomplished and any significant safety or environmental events that have occurred
- (ii) A summary of schedule progress in comparison to a baseline schedule (containing key critical path milestones) issued when Refurbishment commenced on each Unit. Schedule reporting will include:
 - a statement of the actual progress versus the baseline schedule in relation to the next key milestone for each Refurbished Unit (expressed in terms of on schedule, “x” days ahead or “x” days behind schedule)
 - a statement of the most likely date of Commercial Operation and major reasons for variance from the baseline schedule
- (iii) A summary of Refurbishment Costs by Refurbishment Project as follows:
 - actual Refurbishment Costs to date and a statement of the percentage by which such costs are over or under budget
 - updated projection of completion cost
 - major reasons for variances
- (iv) A table updating the status of major project risks that may significantly affect schedule or cost
- (v) A summary of any emerging issues (e.g. labour, regulatory, material delivery, authorized staff complement) that may significantly affect schedule or cost
- (vi) Copies of press releases of BALP issued in respect of the applicable Refurbishment Project during the currency of the report
- (vii) Other information related to the applicable Refurbishment Project requested by the Counterparty, acting reasonably

EXHIBIT 3.2
MONTHLY PAYMENTS

1. IN RESPECT OF BRUCE A

The Contingent Support Payment (Bruce A) (“CSP (BA)_m”) in Month “m” is calculated as follows:

If: $BACR_m - BAAR_m > 0$
Then: $CSP (BA)_m = BACR_m - BAAR_m$

The Revenue Sharing Payment (Bruce A) (“RSP_m”) in Month “m” is calculated as follows:

If: $BAAR_m - BACR_m > 0$
Then: $RSP_m = BAAR_m - BACR_m$

Where, in respect to both the foregoing calculations	
BACR_m	is the Bruce A contract revenue for Month “m” calculated as follows: $BACR_m = \sum_{H=1}^{H=n_m} BAE_H \times BAP_H$
BAP_H	is the Bruce A Price (in \$/MWh) for hour “H” in Month “m”
BAAR_m	is the Bruce A revenue for Month “m” actually receivable by the Generator in respect of such Month, calculated as follows: $BAAR_m = \sum_{H=1}^{H=n_m} BAE_H \times HOEP_H$
H	is an integer number representing a specific hour in any Month “m”. H will be a series H = 1,2,3...n_m For example, H = 1 represents the hour which begins at the beginning of the hour ending 01:00 (EST) on the first day of each Month H = 2 represents the hour which begins at the beginning of the hour ending 02:00 (EST) on the first day of each Month ... H = n_m represents the hour which begins at the beginning of the hour ending 24:00 (EST) on the last day of Month “m”
HOEP_H	is HOEP for hour “H” in Month “m”
BAE_H	is the Bruce A Energy for hour “H” in Month “m”
H_m	is the total number of hours in Month “m”

2. IN RESPECT OF BRUCE B

The Contingent Support Payment (Bruce B) (“**CSP (BB)_m**”) in Month “m” is calculated as follows:

If: $BBCR_m - BBAR_m > 0$
Then: $CSP (BB)_m = BBCR_m - BBAR_m$

Where	
$BBCR_m$	is the Bruce B contract revenue for Month “m” calculated as follows: $BBCR_m = BBP_m \times BBE_m$
BBP_m	is the Bruce B Floor Price (in \$/MWh) for Month “m”
$BBAR_m$	is the Bruce B revenue for Month “m” actually receivable by the Generator in respect of such Month, calculated as follows: $H = n_m$ $BBAR_m = \sum_{H=1} BBE_H \times HOEP_H$
H	H has the meaning set out in section 1 above
$HOEP_H$	$HOEP_H$ has the meaning set out in section 1 above
BBE_m	is the Bruce B Energy (in MWh) for Month “m”, calculated as follows: $H = n_m$ $BBE_m = \sum_{H=1} BBE_H$
BBE_H	is the Bruce B Energy for hour “H” in Month “m”
H_m	H_m has the meaning set out in section 1 above

The Recapture Payment (Bruce B) (“**RP(BB)_{y_n}**”) in Contract Year “y_n” is calculated as follows:

If: $TOBCSP (BB) > 0$ and $BBAR_{y_n} + CSP(BB)_{y_n} - BBCR_{y_n} > 0$
Then: $RP(BB)_{y_n} = BBAR_{y_n} + CSP(BB)_{y_n} - BBCR_{y_n}$; provided that $RP(BB)_{y_n}$ shall not exceed the amount of $TOBCSP (BB)$ outstanding immediately prior to the determination of such $RP(BB)_{y_n}$

If: $TOBCSP (BB) \leq 0$ or $BBAR_{y_n} - BBCR_{y_n} \leq 0$
Then: $RP(BB)_{y_n} = 0$

Where	
TOBCSP (BB)	<p>is the aggregate amount of all CSP(BB)_y paid by the Counterparty to the Generator up to and including Contract Year y_n less the aggregate amount of all RP(BB)_y paid by the Generator to the Counterparty up to and including Contract Year y_n:</p> $\text{TOBCSP(BB)} = \sum_{y=1}^{y=y_n} \text{CSP(BB)}_m - \sum_{y=1}^{y=y_n} \text{RP(BB)}_y$
BBAR_y	<p>is the Bruce B actual revenue for Contract Year “y” calculated as follows:</p> $\text{BBAR}_y = \sum_{m=1}^{m=12} \text{BBAR}_m$
BBCR_y	<p>is the Bruce B contract revenue for Contract Year “y_n” calculated as follows:</p> $\text{BBCR}_y = \sum_{m=1}^{m=12} \text{BBCR}_m$
m	is an integer representing a specific Month in any Contract Year “y _n ”. m will be a series m = 1,2,3...12
y	is an integer representing a specific Contract Year. y will be a series y = 1,2,3...n
y_n	is an integer representing the Contract Year for which RP(BB)_{y_n} is being determined

EXHIBIT 3.2(e)

DETERMINATION OF BRUCE A FUEL COSTS FOR ANY SETTLEMENT MONTH

The Bruce A Fuel Costs for any Settlement Month shall be determined in the following manner:

1. The aggregate of all Bruce A Fuel Costs incurred by BALP shall be allocated among the individual fuel bundles produced for use in Bruce A to determine the cost of each individual fuel bundle and the cost of each individual fuel bundle will be charged to the Counterparty for the Month in which such fuel bundle is loaded (“**Loaded**”) into a Bruce A Unit. BALP shall act reasonably and in good faith in allocating fuel costs that are shared between Bruce A and Bruce B to Bruce A and Bruce B, as applicable.
2. The Parties recognize that it may not be possible to determine the full actual cost of each fuel bundle as of the date such bundle is Loaded. Accordingly, the cost for each individual fuel bundle will be determined for the Month in which such fuel bundle was Loaded on an interim basis based on the Bruce A Fuel Costs paid by BALP and allocable to such individual fuel bundle as of the end of the Settlement Month in which such fuel bundle is Loaded (the “**Interim Fuel Bundle Cost**”) and any adjustments to such Interim Fuel Bundle Cost will be passed through to the Counterparty as such adjustments occur.
3. To the extent it is not possible to determine the final cost of any individual fuel bundle as of the end of the Month (the “**Loading Month**”) in which such fuel bundle is Loaded, then all costs (the “**Additional Fuel Bundle Cost**”) allocable to such loaded fuel bundle which are incurred by BALP subsequent to the Loading Month shall be added to the Bruce A Fuel Costs for the Settlement Month during which such costs are incurred by BALP.
4. In the event that any of the Interim Fuel Bundle Costs or Additional Fuel Bundle Costs are adjusted for any reason (the “**Retroactive Costs Adjustments**”) then such Retroactive Costs Adjustments shall be passed through to the Counterparty through an appropriate adjustment to the Bruce A Fuel Costs for the Settlement Month in which such Retroactive Costs Adjustments are identified. Examples of Retroactive Costs Adjustments include price adjustments payable by or credited to BALP under the Specified Fuel Supply Arrangements as a result of changes in raw product pricing, scrap conversion reimbursement, foreign exchange rates and volume of production. The Parties acknowledge that under the current Specified Fuel Supply Arrangements several Retroactive Costs Adjustments occur on or about April of the year immediately following the Contract Year in which the fuel bundles that are the subject matter of such Retroactive Costs Adjustments are delivered to BALP.
5. Accordingly, the Bruce A Fuel Costs for any Settlement Month shall be the sum of:
 - (a) The aggregate of the Interim Fuel Bundle Cost for each fuel bundle Loaded during such Settlement Month;

- (b) The aggregate of the Additional Fuel Bundle Cost incurred by BALP during such Settlement Month for each fuel bundle Loaded at any time prior to such Settlement Month; and
 - (c) The aggregate of the Retroactive Costs Adjustments for each fuel bundle Loaded at any time prior to such Settlement Month.
6. For purposes of determining the Interim Fuel Bundle Cost and the Additional Fuel Bundle Cost of low void reactivity fuel bundles, there shall be added to the Interim Fuel Bundle Cost and the Additional Fuel Bundle Cost of each low void reactivity fuel bundle an amount representing interest on all costs that were included in the Interim Fuel Bundle Cost and the Additional Fuel Bundle Cost for such fuel bundle which were incurred by BALP prior to the date that such fuel bundle is Loaded, such interest to be calculated at the rate equal to BALP's cost of working capital (as paid by BALP pursuant to a working capital credit facility or otherwise determined by BALP, acting reasonably) from the date such costs were incurred by BALP until the date that such fuel bundle is Loaded.
 7. For the purpose of determining Bruce A Fuel Costs which are paid by BALP in U.S. dollars, all such amounts shall be converted to Canadian dollars effective as of the date that BALP actually pays such costs.

EXHIBIT 3.5
ADJUSTMENTS TO BRUCE A PRICE
AND O&M EFFICIENCY PAYMENTS

1. Interpretation

- (a) Capitalized terms used herein and not otherwise defined shall have the meaning ascribed thereto in the Agreement. The following capitalized terms shall have the meaning stated below when used in this Exhibit:

“**Actual per MWh Operating Costs**” has the meaning ascribed to it in section 8 of this Exhibit.

“**Adjustment**” means an adjustment to the Bruce A Price as calculated pursuant to the formulae in sections 3 to 7 of this Exhibit.

“**Adjustment Date**” means any First Adjustment Date and any Final Adjustment Date.

“**Adjustment Event**” means either or both of (a) any positive or negative change in Refurbishment Costs referred to in this Exhibit and (b) any delays in Refurbishment whether or not associated with a change in Refurbishment Costs, determined as of the applicable Adjustment Date.

“**Agreement**” means the Bruce Power Refurbishment Implementation Agreement of which this Exhibit forms part.

“**Base Case per MWh Operating Costs**” has the meaning ascribed to it in section 8 of this Exhibit.

“**Final Adjustment Date**” has the meaning ascribed to it in section 4 of this Exhibit.

“**First Adjustment Date**” has the meaning ascribed to it in section 3 of this Exhibit.

“**Final Completion**” means final completion of a Refurbished Unit, being the earlier of (i) the date that is 18 months after the Commercial Operation Date of such Refurbished Unit and (ii) the date of completion of all punchlist items in respect of Refurbishment of such Refurbished Unit.

“**Financial Model**” means the Original Financial Model as the same may change from time to time in response to a Financial Model Adjustment.

“**Financial Model Adjustment**” means any adjustment from time to time to the Financial Model applicable immediately prior to the Financial Model Adjustment resulting from an Adjustment Event as determined by BALP and the Counterparty, to reflect the impact of such Adjustment Event.

“**First Adjuster**” has the meaning ascribed to it in section 8(b) of this Exhibit.

“**First Unit**” means the Unit which is the first of Units 1 and 2 to achieve Commercial Operation following Refurbishment.

“**Gross Adjustment Factor**” or “**GAF**” means the amount determined by BALP and the Counterparty in respect of each Bruce A Unit in dollars per MWh by which the Bruce A Price must be changed to ensure that in connection with a Financial Model Adjustment, BALP would be in a No Better or Worse Position than under the Original Financial Model over the Term of the Agreement.

“**Net Adjustment Factor**” means that percentage of the Gross Adjustment Factor set forth in Column D of Schedule A to this Exhibit.

“**No Better or Worse Position**” means that BALP is left in a position which is no better or worse in relation to NPV of the Bruce A Units determined by reference to the Original Financial Model.

“**NPV of the Bruce A Units**” means a net present value of the cash flows set out in the Original Financial Model discounted at the rate set forth in Section 1(a) of Exhibit 3.5 in the Technical Schedule.

“**O&M Efficiency Payment**” has the meaning ascribed to it in section 8 of this Exhibit.

“**Operating Cost per MWh Table**” means the table set forth in Schedule B to Exhibit 3.5 of the Technical Schedule.

“**Original Financial Model**” means the first Refurbishment Adjuster Financial Model dated as of the date hereof attached as Schedule E to Exhibit 3.5 of the Technical Schedule in connection with the Bruce A Units, which is based on an after tax, nominal, unlevered project return as set out in Section 1(a) of Exhibit 3.5 of the Technical Schedule.

“**Refurbishment Costs**” means, in respect of each Refurbished Unit, all costs and expenses of BALP, whether direct or indirect, of any nature or kind, incurred in connection with, arising from, or related to the Refurbishment of such Unit, as determined in accordance with GAAP and including design, engineering, procurement, construction, installation and commissioning costs and expenses, whether capitalized or expensed by BALP.

“**Refurbishment Costs Tables**” means the tables set forth in Schedule A to Exhibit 3.5 of the Technical Schedule.

“**Second Adjuster**” has the meaning ascribed to it in section 8(c) of this Exhibit.

“**Second Unit**” means the Unit which was not the first of Units 1 and 2 to achieve Commercial Operation following Refurbishment.

“**Unit 3 Cost Revision**” has the meaning ascribed to it in section 7 of this Exhibit.

- (b) The expression “section” or “Schedule” followed by a letter or a number means and refers to the specified section of, or schedule attached to, this Exhibit unless otherwise specified.

2. **Estimates of Refurbishment Costs**

Refurbishment Costs in respect of a Refurbished Unit shall be calculated when it achieves Commercial Operation subject to the following adjustments, as applicable, each of which shall be estimated as of the applicable Commercial Operation Date by BALP acting reasonably and in good faith:

- (a) All liquidated damages received or estimated by BALP to be receivable by BALP from contractors, subcontractors or suppliers in excess of liquidated damages payable by BALP to the Counterparty pursuant to Section 2.7 of the Agreement, and all insurance proceeds received or receivable by BALP from BALP’s insurers in respect of an insurable claim for property damage or delay relating to a Refurbishment Project and not paid or required to be paid to any contractors or subcontractors of any tier in accordance with any applicable construction agreement with such contractor or subcontractor of any tier, in each case in connection with such Refurbished Unit, shall be subtracted from the Refurbishment Costs otherwise determined as at such date.
- (b) The cost of completing all punchlist items relating to Refurbishment of a Refurbished Unit, and all similar Refurbishment Costs which are likely to be incurred by BALP in connection with such Refurbished Unit after its Commercial Operation Date, shall be added to the Refurbishment Costs otherwise determined as at such date.
- (c) Any Refurbishment Costs resulting from events of Type 1 Force Majeure or Type 2 Force Majeure (but, for greater certainty, not events of Type 3 Force Majeure) shall be subtracted from the Refurbishment Costs otherwise determined as at such date and shall be dealt with in accordance with section 6 below.
- (d) On Commercial Operation of the First Unit, a portion of the combined Refurbishment Costs of Units 1 and 2 actually incurred in respect of the First Unit shall be reasonably allocated to the First Unit (to which shall be added the amount set forth in Section 2(d) of Exhibit 3.5 of the Technical Schedule), subject to other adjustments in this section 2 (it being understood that such adjustments shall only be in relation to the First Unit). On Commercial Operation of the Second Unit, the remaining portion of the combined Refurbishment Costs of Units 1 and 2 actually incurred shall be allocated to the Second Unit, subject to other adjustments in this section 2 (it being understood that such adjustments shall be in relation to both the First Unit and the Second Unit). For greater certainty, the amount set forth in Section 2(d) of Exhibit 3.5 of the Technical Schedule is added to the Refurbishment Costs of the First Unit only with regard to calculating a Net Adjustment Factor, if applicable, in respect of the First Unit and should not be considered to comprise part of the actual Refurbishment Cost of the First Unit. Any Net Adjustment Factor in respect of the Second Unit, if applicable, shall be made with reference to adjusting for the difference between the Refurbishment Cost of the Second Unit and the

amount estimate in respect of the Second Unit set forth in Section 2(d) of Exhibit 3.5 of the Technical Schedule.

3. Initial Adjustments for Refurbishment Costs on Commercial Operation

When a Refurbished Unit achieves Commercial Operation, BALP shall determine the total Refurbishment Costs of such Refurbished Unit as of its Commercial Operation Date, subject to the adjustments in section 2, and determine the Net Adjustment Factor, if applicable, as soon thereafter as reasonably possible. Starting on the date of the determination of such Net Adjustment Factor (the “**First Adjustment Date**”), the Bruce A Price shall be increased or decreased, as applicable, by such Net Adjustment Factor for the period up to December 31, 2036.

4. Adjustments for Refurbishment Costs on Final Completion

On Final Completion of a Refurbished Unit, BALP shall re-determine the total Refurbishment Costs of such Refurbished Unit with particular regard to reviewing the costs initially estimated in accordance with section 2. Starting on the date of the determination of such Net Adjustment Factor (the “**Final Adjustment Date**”), the Bruce A Price shall once again be increased or decreased, as applicable, by such Net Adjustment Factor.

5. Re Termination of Second Unit

Nothing in this Exhibit in any way limits the rights of BALP or the Counterparty pursuant to Sections 8.2(a), 8.2(c), 8.2(e)(i) or 8.2(e)(ii) of the Agreement to terminate the Agreement in relation to the Second Unit in accordance with the terms thereof. In such event, (i) the adjustments contemplated by sections 3 and 4 of this Exhibit shall be made using the amounts in Columns B and C of the Units 1 and 2 Refurbishment Costs Table and (ii) a portion of the total Refurbishment Costs of Units 1 and 2 actually incurred in respect of the First Unit shall be reasonably allocated to the First Unit and to which shall be added the amount set forth in Section 5 of Exhibit 3.5 of the Technical Schedule, for purposes of determining the Net Adjustment Factor, if applicable. If, at the time of termination, a Net Adjustment Factor has already been determined in relation to the First Unit pursuant to either section 3 or 4, such Net Adjustment Factor shall be redetermined by BALP in accordance with the preceding sentence.

6. Additional Adjustments for Type 1 or Type 2 Force Majeure

If Type 1 Force Majeure or Type 2 Force Majeure results in an increase in the cost of the Refurbishment of any Refurbished Unit, the Bruce A Price will be increased on a pro rata basis by 75% of the Gross Adjustment Factor in respect of Type 1 Force Majeure, and by 50% of the Gross Adjustment Factor in respect of Type 2 Force Majeure. Such adjustments will be determined as of, and given effect on each applicable Adjustment Date.

7. Adjustments in Respect of Unit 3

With respect to the Unit 3 Refurbishment in Schedule A to Exhibit 3.5 of the Technical Schedule, the values in columns B and C are provisional and subject to adjustment by up to the amount set

forth in Section 7(a) of Exhibit 3.5 of the Technical Schedule upwards or downwards (the amount of the adjustment being the same for all such values) by BALP in due course as the costs of Refurbishment for Unit 3 are more accurately assessed by BALP prior to commencement of Refurbishment of Unit 3. The Counterparty shall be entitled to do a due diligence review and audit of the costs of Refurbishment determined by BALP.

BALP agrees to act in good faith and in a commercially reasonable manner in order to determine the adjustments referred to in the previous paragraph using methodology consistent with that used for purposes of determining the values in columns B and C in relation to the Refurbishment of Units 1 and 2.

For greater certainty, it is understood that the size of each band in respect of the Refurbishment of Unit 3 is constant and does not change.

The values in column D in respect of Unit 3 shall remain the same.

In addition to the foregoing, the amount of the following Adjustment shall be added to (if a positive amount), or subtracted from (if a negative amount), the Bruce A Price on the Commercial Operation Date of Unit 3:

Adjustment = 100% of GAF associated with the Unit 3 Cost Revision.

where “**Unit 3 Cost Revision**” is defined in Section 7(b) of Exhibit 3.5 of the Technical Schedule. For purposes of determining GAF, the Unit 3 Cost Revision shall be treated as an Adjustment Event.

8. **Payments for Operating and Maintenance Cost Efficiencies**

Commencing in the Contract Year ending December 31, 2010, and in each Contract Year thereafter until the earlier of December 31, 2036 and the date that all of Units 1, 2, 3 and 4 have been Permanently Decommissioned or Effectively Decommissioned, the total cash operating and maintenance costs described in Schedule C of this Exhibit for Units 1, 2, 3 and 4 combined shall be determined on a per MWh basis (the “**Actual per MWh Operating Costs**”) and compared to the base case cash operating costs on a per MWh basis indicated for such Contract Year (“ y ”) in the Operating Cost per MWh Table (the “**Base Case per MWh Operating Costs**”). A payment (the “**O&M Efficiency Payment**”) shall be determined in accordance with sections 8(a) to (e) below, and shall be paid by Generator to Counterparty in twelve equal monthly instalments, the first such monthly instalment commencing on the first day of April of the next following Contract Year (“ $y+1$ ”), and each subsequent instalment payable on the first of each month thereafter, with the first such payment, if any, due on April 1, 2011.

- (a) If the Actual per MWh Operating Costs for Contract Year y are equal to or greater than the Base Case per MWh Operating Costs for such Contract Year, no O&M Efficiency Payment shall be payable for Contract Year $y+1$.

- (b) If the Actual per MWh Operating Costs for Contract Year y are less than the Base Case per MWh Operating Costs for such Contract Year but greater than the “First Adjuster” for such Contract Year as indicated in the Operating Costs Table, the O&M Efficiency Payment for Contract Year $y+1$ shall be determined as follows:

$$\text{O\&M Efficiency Payment}_{y+1} = ((B_y - P_y) \times 50\%) \times \text{BAE}_y$$

Where:

$$P_y = \text{Actual per MWh Operating Costs for Contract Year } y$$

$$B_y = \text{Base Case per MWh Operating Costs for Contract Year } y$$

$$\text{BAE}_y = \text{Bruce A Energy for Contract Year } y$$

- (c) If the Actual per MWh Operating Costs for Contract Year y are less than or equal to the First Adjuster for such Contract Year but greater than the “Second Adjuster” for such Contract Year as indicated in the Operating Costs Table, the O&M Efficiency Payment for Contract Year $y+1$ shall be determined as follows:

$$\text{O\&M Efficiency Payment}_{y+1} = (((B_y - F_y) \times 50\%) + ((F_y - P_y) \times 25\%)) \times \text{BAE}_y$$

Where:

$$P_y = \text{Actual Operating Cost for Contract Year } y$$

$$B_y = \text{Base Case per MWh Operating Costs for Contract Year } y$$

$$F_y = \text{First Adjuster for Contract Year } y$$

$$\text{BAE}_y = \text{Bruce A Energy for Contract Year } y$$

- (d) If the Actual per MWh Operating Costs for Contract Year y are less than the Second Adjuster for such Contract Year, the O&M Efficiency Payment for Contract Year $y+1$ shall be determined as follows:

$$\text{O\&M Efficiency Payment}_{y+1} = (((B_y - F_y) \times 50\%) + ((F_y - S_y) \times 25\%)) \times \text{BAE}_y$$

Where:

$$B_y = \text{Base Case per MWh Operating Costs for Contract Year } y$$

$$F_y = \text{First Adjuster for Contract Year } y$$

$$S_y = \text{Second Adjuster for Contract Year } y$$

$$\text{BAE}_y = \text{Bruce A Energy for Contract Year } y$$

- (e) BALP shall act reasonably and in good faith in allocating cash operating and maintenance costs that are shared between Units 1, 2, 3 and 4 on the one hand, and Units 5, 6, 7 and 8 on the other, to Units 1, 2, 3 and 4.
- (f) If the Agreement is terminated in respect of any Unit, there shall be no change to the Base Case per MWh Operating Costs. However, if such Unit is subsequently brought into Commercial Operation, the operating and maintenance costs and generating capacity for such Unit shall be included in the determination of Actual per MWh Operating Costs but, for greater certainty, BAE_y shall not include Electricity generated by such Unit.

9. **Adjustments for CPI**

In addition to the adjustments for CPI referred to in Section 3.5 of the Agreement, the following CPI related adjustments will also be made:

- (a) The dollar amounts shown in the Refurbishment Costs Table for Unit 3 under columns B and C are in 2005 dollars. For purposes of this Exhibit and, in particular, the adjustments referred to in section 3 and section 4, the actual Refurbishment Costs incurred in each Contract Year in respect of Unit 3 will be discounted by the change in CPI as determined pursuant to Schedule D to this Exhibit for each prior year back to and including 2005.
- (b) The dollar amounts shown in the Operating Cost per MWh Table in Schedule B are in 2005 dollars and shall be subject to adjustment in accordance with Schedule D to this Exhibit on the first hour of each Contract Year thereafter.
- (c) Each of (i) the current Refurbishment Cost assumption for Unit 3 set forth in Section 9(c)(i) of Exhibit 3.5 of the Technical Schedule and (ii) the amount referred to in Section 7(a) of Exhibit 3.5 of the Technical Schedule is in 2005 dollars and shall be subject to adjustment for CPI in accordance with Schedule D to this Exhibit on the first hour of each Contract Year thereafter.

10. **Disputes**

Any disputes hereunder shall be resolved in accordance with Section 15.1 and 15.2 of the Agreement.

Schedule C to Exhibit 3.5

Operating and Maintenance Costs

The total cash operating cost for the Bruce A Units, including a reasonable and good faith allocation to Bruce A of the Common Facilities and the facilities and equipment owned or leased by BPLP and used in respect of Bruce A, but excluding all Bruce A Fuel Costs, are comprised of:

1. Staff Costs:

Staff costs include salary, overtime, gain share, management bonus and all other employment benefits and post employment benefits on a cash basis.

2. Other Materials and Services Costs:

Other materials and services costs include the total cost of all consumables, services and contracted staff, and any other costs attributable to operating and maintaining Bruce A (and a reasonable and good faith allocation to Bruce A of such costs attributable to the Common Facilities and the facilities and equipment owned or leased by BPLP and used in respect of Bruce A) on a day to day basis, such as the cost of base operations, Outages, and non-capital projects.

3. Rent:

Rent payable in respect of Bruce A and a reasonable and good faith allocation to Bruce A of the rent payable in respect of the Common Facilities and the facilities owned or leased by BPLP and used in respect of Bruce A.

4. Licence Fees:

Licence fees include the total cost of obtaining and maintaining all necessary permits, certificates, licences and approvals in respect of Bruce A, and include a reasonable and good faith allocation to Bruce A of such costs attributable to the Common Facilities and the facilities and equipment owned or leased by BPLP and used in respect of Bruce A.

5. Insurance Costs:

Insurance costs are the total insurance costs associated with Bruce A and a reasonable and good faith allocation to Bruce A of such costs attributable to the Common Facilities and the facilities and equipment owned or leased by BPLP and used in respect of Bruce A.

6. Severance Costs:

Severance costs are the total costs associated with severing Bruce A staff upon the closure of each of Units 1, 2, 3 and 4.

7. Capital Expenditures:

Capital expenditures include the total project costs for Bruce A specific projects plus a reasonable good faith allocation to Bruce A of capital expenditures related to the Common Facilities and the facilities and equipment owned or leased by BPLP and used in respect of Bruce A, but, for greater certainty, not including any Refurbishment Costs.

Following December 31, 2018, unless any Bruce B Unit is being refurbished, all costs and expenses of maintaining the Bruce B Units in a laid up state after their respective Effective Decommissioning and all of the costs in the foregoing sections 1 to 7, inclusive, related to Bruce B and the Common Facilities, shall be included in the total cash operating costs for the Bruce A Units. For greater certainty, all direct and indirect costs associated with dewatering, defueling and bringing to a state of Effectively Decommissioned the Effectively Decommissioned Bruce B Units shall not be included in the total cash operating costs for the Bruce A Units.

Schedule D to Exhibit 3.5

Adjustment for Inflation

CPI Adjustment Factor = $\frac{CPI_y}{CPI_{y-1}}$

Where:

- CPI_y is the annual average CPI calculated for the twelve-month period ending on December 31 of the Contract Year “y”
- CPI_{y-1} is the annual average CPI calculated for the twelve-month period ending on December 31 of the Contract Year immediately preceding Contract Year “y-1”
- annual average CPI is the simple average of the twelve monthly CPIs in a specified twelve-month period ending December 31 (rounded to the first decimal place)
For the purposes of this calculation, the quotient of CPI_y divided by CPI_{y-1} shall be rounded to the third decimal place

EXHIBIT 12.3
ONTARIO PROVINCIAL STATUTES

Business Corporations Act

Corporations Tax Act

Dangerous Goods Transportation Act

Electricity Act, 1998

Employment Standards Act, 2000

Environmental Bill of Rights, 1993

Environmental Protection Act

Fire Protection and Prevention Act, 1997

Freedom of Information and Protection of Privacy Act

Income Tax Act

Labour Relations Act, 1995

Limited Partnerships Act

Occupational Health and Safety Act

Ontario Energy Board Act, 1998

Ontario Water Resources Act

Retail Sales Tax Act

Safe Drinking Water Act, 2002

Technical Standards and Safety Act, 2000

Workplace Safety and Insurance Act, 1997

In addition to the foregoing, any statutes introduced after the date hereof that are not included in this Exhibit 12.3 by operation of Section 1.6 of this Agreement but that have substantially similar subject matter to the foregoing or are principally directed at or principally borne by operators of nuclear reactors, operators of nuclear reactors and other electricity generators in Ontario or any subset thereof that includes the Generator shall be deemed to be included in this Exhibit 12.3.

EXHIBIT 15.2
ARBITRATION RULES

Final and Binding Arbitration

1. The Arbitral Tribunal (as defined below) appointed under these arbitration rules (the “Rules”) will apply the rules and procedures of the *Arbitration Act, 1991* (Ontario) to any arbitration conducted hereunder (“Arbitration”) except to the extent they are modified by the express provisions of these Rules.
2. Each Party acknowledges that after it has agreed in writing to arbitrate a dispute in accordance with Section 15.2(a) of the Agreement, it will not apply to the courts of Ontario or any other jurisdiction to attempt to enjoin, delay, impede or otherwise interfere with or limit the scope of the Arbitration or the powers of the Arbitral Tribunal (as defined herein).
3. Each Party further acknowledges that the decision of the Arbitral Tribunal will be final and conclusive and there will be no appeal therefrom whatsoever to any court, tribunal or other authority.

Jurisdiction of Arbitral Tribunal

4. The Arbitral Tribunal shall have the jurisdiction to deal with all matters relating to a dispute arising under Section 15.2(a) (a “Dispute”) including, without limitation, the jurisdiction:
 - (b) to determine any question of law, including equity;
 - (c) to determine any question of fact, including questions of good faith, dishonesty or fraud;
 - (d) to determine any question as to the Arbitral Tribunal’s jurisdiction;
 - (e) to order any Party to furnish further details, whether factual or legal, of that Party’s case;
 - (f) to proceed with the Arbitration notwithstanding the failure or refusal of any Party to comply with these Rules or with the Arbitral Tribunal’s orders or directions or to attend any meeting or hearing, but only after giving that Party written notice that the Arbitral Tribunal intends to do so;
 - (g) to request, receive and take into account such written or oral evidence tendered by the Parties or by qualified experts or any other Person as the Arbitral Tribunal determines is relevant, whether or not admissible in law;
 - (h) to make one or more interim decisions, including orders to secure any amount relating to the Dispute;

- (i) to order the parties to produce to the Arbitral Tribunal and to each other for inspection and to supply copies of any documents or classes of documents in their possession, power or control that the Arbitral Tribunal determines to be relevant;
- (j) to order the parties to make available specified individuals in their employ to give evidence to the Arbitral Tribunal; and
- (k) to express its decisions in any currency or currencies.

Place of Arbitration

- 5. The Arbitration will be conducted in the City of Toronto in the Province of Ontario at the location determined from time to time by the Arbitral Tribunal.

Appointment of Arbitral Tribunal

- 6. As used in these Rules, the term “Arbitral Tribunal” means the Arbitral Tribunal appointed pursuant to section 7 of these Rules.
- 7. The Arbitration will be commenced by delivery of a written complaint (the “Complaint”) by the “Applicant” to the “Respondent”. The Complaint must describe the nature of the Dispute. The Applicant and the Respondent may agree in writing upon the appointment of a three member Arbitral Tribunal. If within fifteen (15) days of the giving of the Complaint, the Applicant and the Respondent do not reach agreement on the appointment of the Arbitral Tribunal, then each of the Applicant and the Respondent may appoint one Arbitrator and provide the other Party with written notice of such appointment. Within fifteen (15) days of the appointment of such Arbitrators, the Arbitrators so appointed will agree on the appointment of an additional Arbitrator as chair (the “Chair”) and give notice to the Applicant and the Respondent of such appointment, failing which the Chair may be appointed by a Judge of the Ontario Court (General Division) on the application of either the Applicant or the Respondent, on notice to the other. Upon the giving of notice by the Arbitrators of the appointment of the Chair, or the appointment by a Judge of the Chair, as the case may be, the Chair and the other Arbitrators previously appointed will constitute the Arbitral Tribunal. The Arbitral Tribunal shall be composed of Persons having appropriate qualifications to address the Dispute.

Decision of Arbitral Tribunal

- 8. Any decision of the Arbitral Tribunal (including its final decision) made with respect to a Dispute or with respect to any aspect of, or any matter related to, the Arbitration (including the procedures of the Arbitration) will be made by a majority of the Arbitral Tribunal. All decisions of the Arbitral Tribunal with respect to a Dispute, except procedural decisions, will be rendered in writing and contain a recital of the facts upon which the decision is made and the reasons therefor.

Pleadings

9. (i) Within thirty (30) days of the constitution of the Arbitral Tribunal, the Applicant must deliver to the Respondent and the Arbitral Tribunal a written statement (the “Claim”) concerning the Dispute setting forth, with particularity, its position with respect to the Dispute and the material facts upon which it intends to rely.
- (ii) If the Applicant fails to deliver a Claim within the time limit referred to in section 9(i) above, the Arbitral Tribunal must terminate the proceedings.
- (iii) Within thirty (30) days after the delivery of the Claim, the Respondent may deliver to the Applicant and the Arbitral Tribunal a written response (the “Defence”) setting forth, with particularity, its position on the Dispute and the material facts upon which it intends to rely setting forth, with particularity, any additional Dispute for the Arbitral Tribunal to decide.
- (iv) If the Respondent fails to deliver within the time limit referred to in (iii) above, the Arbitral Tribunal will continue the proceedings without treating such failure in itself as an admission of the Applicant’s allegations.
- (v) Within ten (10) days after delivery of the Defence, the Applicant may deliver to the Respondent and the Arbitral Tribunal a written reply (the “Reply”) to the Defence, setting forth, with particularity, its response, if any, to the Defence.

Meetings and Hearings

10. The Chair will determine the time, date and location of meetings or hearings for the Arbitration and will give all the parties fifteen (15) days’ prior written notice of such meetings or hearings.
11. All proceedings and the making of the award will be in private and the parties will ensure that the conduct of the Arbitration and the terms of the decision will be kept confidential, unless the parties otherwise agree; provided, however, that such obligation to maintain confidentiality will not prohibit any Party from complying with applicable law.
12. The parties may be represented or assisted by any Person during the Arbitration. Where a Party is represented by another Person, such Party will provide notice in writing of such representation to the other Party and to the Arbitral Tribunal at least five (5) days prior to any Arbitration proceeding.
13. The first Arbitration meeting must be held within thirty (30) days of the expiry of the pleadings procedure set forth in section 9 of these Rules. The award of the Arbitral Tribunal must be made within ninety (90) days of the first Arbitration meeting.

Disclosure/Confidentiality

14. All information disclosed, including all statements made and documents produced, in the course of the Arbitration will be held in confidence and no Party will rely on, or introduce as evidence in any subsequent proceeding, any admission, view, suggestion, notice, response, discussion or position of either the Applicant or the Respondent or any acceptance of a settlement proposal or recommendation for settlement made during the course of the Arbitration, except (i) as required by law or (ii) to the extent that disclosure is reasonably necessary for the establishment or protection of a Party's legal rights against a third party or to enforce the award of the Arbitral Tribunal or to otherwise protect a Party's rights under these Rules.

Costs

15. In determining the allocation between the Parties of the costs of the Arbitration, including the compensation of the Arbitral Tribunal and the costs associated with the Arbitration, the Arbitral Tribunal may invite submissions as to costs and may consider, among other things, an offer of settlement made by a Party to the other Party prior to or during the course of an Arbitration. Unless otherwise directed by the Arbitral Tribunal, all costs of the Arbitral Tribunal will be paid equally by the Applicant and the Respondent.

Miscellaneous

16. The parties may modify any period of time provided for in these Rules by written agreement.
17. The language of the Arbitration will be English.
18. All awards shall be in writing and copies of all awards shall be provided to each Party in a timely manner.

Nothing contained in these Rules prohibits a Party hereto from making an offer or offers of settlement relating to a Dispute during the course of an Arbitration.