

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT
OF VALIDUS POWER CORP., IROQUOIS FALLS POWER CORP., BAY POWER CORP., KAP
POWER CORP., VALIDUS HOSTING INC. AND KINGSTON COGEN GP INC., EACH BY
THEIR COURT APPOINTED RECEIVER AND MANAGER, KSV RESTRUCTURING INC.

**MOTION RECORD
(SISP Approval Order)**

October 19, 2023

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Court File No.: CV-23-00705215-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
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POWER CORP., VALIDUS HOSTING INC. AND KINGSTON COGEN GP INC., EACH BY
THEIR COURT APPOINTED RECEIVER AND MANAGER, KSV RESTRUCTURING INC.

**NOTICE OF MOTION
(SISP Approval Order)**

KSV Restructuring Inc. ("KSV"), in its capacity as the Court-appointed monitor (in such capacity, the "**Monitor**") of Validus Power Corp. ("**VPC**"), Iroquois Falls Power Corp. ("**IFPC**"), Bay Power Corp. ("**Bay**"), Kap Power Corp. ("**Kap**"), Validus Hosting Inc. ("**Hosting**"), Kingston Cogen GP Inc. ("**Kingston GP**" and collectively with each of the foregoing entities, the "**Companies**") and Kingston Cogen Limited Partnership ("**Kingston LP**" and together with the Companies, the "**Validus Entities**") will make a motion to a Judge of the Superior Court of Justice (Commercial List) on a date to be scheduled, by judicial videoconference via Zoom at Toronto, Ontario. Please advise if you intend to join the motion by emailing Katie Parent at katie.parent@nortonrosefulbright.com.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR ORDERS, among other things:

- 1 If necessary, abridging the time for service and filing of this notice of motion and motion record;
- 2 Approving a sale and investment solicitation process (the "**SISP**") for the Validus Entities;

- 3 Authorizing and empowering KSV, as court-appointed Monitor in these proceedings, to implement the SISP pursuant to the terms thereof and to perform all things reasonably necessary to carry out the SISP;
- 4 Approving the Transaction Agreement (defined below) between the Validus Entities, each by KSV, in its capacity as court-appointed Monitor in the CCAA Proceedings, and Kingston LP, and Macquarie Equipment Finance Ltd. ("**Macquarie**") and Far North Power Corp. ("**Far North**"), as the Assignee, (Macquarie and Far North jointly referred to as the "**Stalking Horse Bidder**"), solely for the purpose of constituting the "stalking horse bid" in the SISP;
- 5 Authorizing and empowering the Monitor to enter into the break fee agreement (the "**Break Fee Agreement**") dated as of October 16, 2023, between the Monitor and Macquarie, *nunc pro tunc*, and approving the Break Fee and the Expense Reimbursement (both as defined below) provided for therein;
- 6 Granting a charge (the "**Bid Protections Charge**") on the Property (defined below) in favour of Macquarie, as security for payment of the Break Fee and the Expense Reimbursement;
- 7 Approving the Unknown Contract Bar Process (defined below);
- 8 Approving the pre-filing report of the Monitor dated August 23, 2023 (the "**Pre-Filing Report**"), the First Report of the Monitor dated September 1, 2023 (the "**First Report**") and the Second Report of the Monitor dated October 19, 2023 (the "**Second Report**");
- 9 Extending the Stay Period (as defined in the Initial Order) to December 31, 2023; and
- 10 Such further and other relief as this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:Background

1 Capitalized terms used herein and not otherwise defined have the meaning given to them in the Second Report;

2 The Validus Entities are a group of entities that own and operate electricity generation facilities that provide, or are capable of providing, electricity generation capacity to Ontario's electricity grid, controlled by Ontario's Independent Electricity System Operator ("IESO");

3 The Validus Entities are indebted to Macquarie pursuant to a sale leaseback transaction entered into in April 2022 pursuant to which IFPC sold certain Leased Property to Macquarie pursuant to a Participation Agreement, which Leased Property was then leased back to IFPC pursuant to the terms of a Lease Agreement;

4 To secure the amounts owing to it, Macquarie holds:

- (a) general security (including a collateral mortgage) from IFPC;
- (b) guarantees and general security (including collateral mortgages) from Bay, Kap, Kingston LP and Kingston GP;
- (c) a guarantee and pledge of shares/units of IFPC, Bay, Kap, Kingston LP and Kingston GP from VPC; and
- (d) a limited recourse guarantee and pledge of material agreements from Hosting;

5 Pursuant to an application filed by Macquarie to appoint KSV as receiver and manager of the Validus Entities, the Ontario Superior Court of Justice (Commercial List) issued an order on August 2, 2023, adjourning Macquarie's application until August 10, 2023 and appointing KSV as

interim receiver of all the property, assets and undertaking of the Validus Entities acquired for, or used in relation to, the business carried on by Validus Entities (collectively, the “**Property**”);

6 On August 10, 2023, the Court granted an Order (the “**Receivership Order**”) appointing KSV as the receiver and manager of the properties, assets and undertakings of the Validus Entities (in such capacity the “**Receiver**”);

7 On August 29, 2023, upon application by the Companies, by the Receiver, the Court granted an Initial Order in these proceedings (the “**Initial Order**”) that, among other things, appointed KSV as the Monitor and extended the stay of proceedings to Kingston LP;

8 On September 8, 2023, the stay of proceedings in favour of the Validus Entities was extended to December 1, 2023 as additional time was required to complete negotiations of the terms of a transaction agreement and settle the terms of the proposed SISP;

Sale and Investment Solicitation Process

9 The purpose of the SISP is to market for sale, or identify investment proposals for, the Validus Entities’ businesses and assets, including certain assets of VPC which are not subject to Macquarie’s security, such as the Hut 8 litigation and the shares of Hosting;

10 The Monitor worked with the proposed Stalking Horse Bidder to settle the terms and conditions of the proposed SISP;

11 If approved, the SISP will commence on October 27, 2023 and will include the following key dates:

- (a) Bid Deadline: December 1, 2023 (the “**Bid Deadline**”);

- (b) Notification to Qualified Bidders of Auction (if any): As soon as possible after the Bid Deadline, 2023;
- (c) Auction (if applicable): on or about December 7, 2023;
- (d) Approval and RVO motion: December 15, 2023, subject to Court availability;

12 The SISP provides that the Monitor may, in its discretion, seek Court approval for the termination of the SISP and for approval of implementation of the Stalking Horse Offer (as defined below) if no potentially interested parties have executed non-disclosure agreements and commenced due diligence on or prior to November 16, 2023;

13 The Qualified Bid Deadline may be extended by the Monitor for no longer than seven days in the Monitor's discretion or by further Order of the Court. The Monitor also has the discretion to extend any other milestone dates, provided that the aggregate of all such discretionary extensions shall not exceed 14 days;

14 The Monitor has prepared marketing materials and will solicit interest from parties potentially interested in pursuing a transaction;

15 In connection with the SISP, the Monitor will:

- (a) Prepare and disseminate a teaser, process letter and form of confidentiality agreement;
- (b) Provide access to a virtual data room; and
- (c) Require binding offers by no later than the Qualified Bid Deadline.

16 In order for binding offers to be considered a “qualified bid”, they must meet certain criteria including providing for aggregate consideration of at least \$60,228,822 and a cash deposit of at least 10% of the purchase price being offered;

17 The Monitor may aggregate bids for the purposes of an Auction;

The Stalking Horse Offer

18 Macquarie and Far North have submitted an offer that consists of the following (the “**Stalking Horse Offer**”):

- (a) A binding offer letter;
- (b) A form of transaction agreement by and among the Validus Entities (by the Monitor), Macquarie and Far North (the “**Transaction Agreement**”);
- (c) A form of terms and conditions; and
- (d) The Break Fee Agreement between the Validus Entities, by the Monitor, and Macquarie;

19 The Stalking Horse Offer is contemplated to be completed pursuant to a reverse vesting order (“**RVO**”) as the Validus Entities hold numerous permits and licenses that allow it to operate in a highly regulated industry and the Stalking Horse Bidder requires that an RVO be issued due to, among other things, uncertainty related to the transferability of these licenses and permits in a commercially reasonable timeframe;

20 The Stalking Horse Offer is structured as a “sign and close” transaction due to certain tax considerations;

21 Although the offer is irrevocable by Macquarie and the Assignee, the Monitor will not sign or accept the Transaction Agreement unless and until (a) the Stalking Horse Bid is confirmed as the Successful Bid; and (b) the conditions precedent to closing in the Transaction Agreement have been satisfied;

22 The Stalking Horse Offer contemplates a transaction whereby Macquarie and Far North, if selected as the Successful Bidder in the SISP, will acquire:

- (a) VPC's shares/units of the Kap, Bay, Kingston LP and Kingston GP;
- (b) Newly issued shares of IFPC; and
- (c) Certain assets of VPC that are not subject to the Macquarie Security including, the Hut 8 litigation counterclaim by VPC, the shares of Hosting and certain contracts of VPC (the "**Purchased Validus Parent Assets**");

23 The consideration payable under the Transaction Agreement is comprised of: (a) payment by the Assignee of \$1.5 million in respect of certain estimated "priority payments" owing by VPC in respect of unremitted employee source deductions (and an indemnity for any amounts which are subsequently assessed for priority amounts to be secured by a charge); (b) payment by the Assignee of an amount to be determined by the Monitor prior to closing in respect of administrative expenses; (c) Macquarie releasing the Validus Entities from all outstanding obligations under the Participation Agreement, Lease Agreement and security; and (d) Macquarie transferring to IFPC, the Leased Property (collectively, the "**Credit Bid Consideration**");

24 In addition to the Credit Bid Consideration, the Stalking Horse Offer provides additional benefits, including:

- (a) The opportunity for ongoing employment opportunities for the Validus Entities' employees; and
- (b) Assumption of liabilities for all pre and post filing liabilities relating to Continuing Contracts liabilities for municipal taxes;

25 The Monitor has considered whether the Stalking Horse Bidder's offer warrants it being a stalking horse bid, as opposed to the Stalking Horse Bidder simply participating as a bidder in the SISP, which considerations included that the Stalking Horse Offer provides a degree of certainty to the Validus Entities' employees and other stakeholders that there is a going-concern solution for the business;

26 Among other things, the Monitor notes:

- (a) employees of the Validus Entities have communicated to the Monitor that they are encouraged by the steps taken in these proceedings to date and were encouraged to learn that a stalking horse bid was being prepared by a prospective purchaser;
- (b) the Validus Entities need to participate in an annual capacity auction conducted by IESO, which will enable it to participate in IESO's capacity market and generate standby revenues, which are currently the sole source of revenue for the Validus Entities;
- (c) the Monitor is currently taking steps on behalf of the Validus Entities, in consultation with the IESO, to participate in the upcoming auction;
- (d) the Validus Entities are more likely to be successful in the capacity auction process if there is a stalking horse bidder as it provides a degree of certainty to IESO that there will be a going concern solution for the business;

- (e) The bid deadline for participating in the IESO auction is November 29, 2023 and there are milestones that the Monitor, on behalf of the Validus Entities, is in the process of satisfying to preserve the ability of the Validus Entities or their successors to participate in the auction;
- (f) In accepting the Stalking Horse Offer for the purposes of acting as a “stalking horse”, the Monitor was mindful of the sale process conducted by Ernst & Young Corporate Finance earlier this year, which did not yield any material unconditional offer for IFPC, which is considered to be one of the two most valuable plants; and
- (g) The consideration contemplated by the Stalking Horse Offer significantly exceeds the aggregate value that VPC paid when it acquired plants in 2021/2022, being approximately \$45 million;

27 The Monitor’s counsel has considered the amount of the debt obligations claimed by Macquarie and believes such debt claim to reflect the amount owing to Macquarie under the terms of the Lease Agreement;

28 The Credit Bid Consideration includes considerable cash consideration being paid by the Assignee to the Monitor;

29 The Monitor has considered the potential value (if any) in the Purchased Validus Parent Assets, which are not subject to the Macquarie security, including the shares of Hosting and the Hut 8 litigation, and has obtained legal advice where appropriate;

30 The SISF and Transaction Agreement will result in a fair and equitable process that will canvass the market for potential buyers of, or investors in, the Validus Entities’ businesses, with the certainty of the Transaction Agreement in the event that no superior transaction is identified;

31 The 35-day bid period duration of the SISP is sufficient in the circumstances to allow interested parties to perform diligence and submit offers;

32 The SISP has been telegraphed to the market since August 11, 2023, when Hut 8 issued a press release announcing that it executed the Transaction Support Agreement;

33 The duration of the SISP reflects a balancing between ensuring that sufficient time is available to attempt to identify a superior transaction, the upcoming IESO auction timelines/requirements and the costs of conducting this proceeding for a further period of time (which excess costs would be borne by stakeholders);

34 If necessary, the Qualified Bid Deadline can be extended by the Monitor by a total of up to 14 days;

35 The Monitor is only seeking approval of the Transaction Agreement for purposes of acting as the Stalking Horse Offer. No approval of the transactions contemplated under the Stalking Horse Agreement are being sought at this time. Such approval will be sought at a subsequent motion if the Stalking Horse Agreement constitutes the Successful Bid under the SISP;

Bid Protections

36 On October 16, 2023, the Monitor entered into the Break Fee Agreement between the Monitor and Macquarie, which is subject to Court approval and which provides for a break fee of \$1.26 million (the “**Break Fee**”) and an expense reimbursement of up to \$1 million (the “**Expense Reimbursement**”) and collectively, the “**Bid Protections**”) in favour of Macquarie;

37 The Break Fee Agreement also provides for the Bid Protections Charge on the Property, also in favour of Macquarie, as security for payment of the Break Fee and the Expense

Reimbursement, however, the Bid Protections are only payable out of sale proceeds in the event of a closing of a different successful transaction;

38 The Bid Protections Charge will not exceed \$2,260,000;

39 The maximum amount of the Bid Protections (\$2.26 million) represents approximately 3.85% of the Credit Bid Consideration;

40 Based on the Monitor's analysis, the Monitor is of the view that the Bid Protections are within the range of reasonableness when compared to the bid protections approved in other Canadian restructuring proceedings;

Unknown Contract Bar Process

41 The Monitor is seeking approval of a process to identify any unknown contract counterparties for the purposes of notifying any such party of a transaction that may potentially be completed pursuant to an RVO;

42 A summary of the proposed Unknown Contract Bar Process is as follows:

- (a) the Monitor will post on the Monitor's website a list of known contracts (the "**Known Contract List**") , which will include the contract counterparty and applicable contract, with the exception of employee agreements;
- (b) counterparties appearing on the Known Contract List will receive notice of the RVO, including how their contract is going to be treated in the context of the Successful Bid;
- (c) to identify whether there are any unknown excluded contracts/liabilities (the "**Unknown Contracts**") that would be affected by an RVO, the Monitor will:

- (i) post notices in the Globe and Mail (National Edition) and other local publications; and
- (ii) require any contract counterparty contact the Monitor by no later than November 28, 2023 (the “**Unknown Contract Bar Date**”) to advise of the contract and provide an executed copy of that contract;

43 Any party who does not respond by the Unknown Contract Bar date will be deemed to be forever barred from asserting that it did not receive adequate notice of any treatment or any contractual right or claim in connection with these proceedings;

44 Any such barred parties will not be prohibited from subsequently filing a claim in these proceedings or the pending bankruptcy proceedings of a Residualco;

45 The Monitor believes the proposed Unknown Contract Bar Process provides for a fair and reasonable process to identify any unknown contract counterparties so they may be given notice of the RVO;

46 The Monitor believes the proposed process is particularly appropriate in these circumstances given the state of the Validus Entities’ books and records, including the risk that there may be unknown contracts affected by an RVO, should one be granted at the conclusion of these proceedings;

Monitor’s Activities

47 The activities of the Monitor are set out in detail in the Pre-Filing Report, the First Report and Second Report and are consistent with its mandate pursuant to the Initial Order;

Extension of the Stay Period

48 The Stay Period in these proceedings currently expires on December 1, 2023;

49 An extension of the Stay Period will provide sufficient time for the Monitor to conduct the proposed SISP, subject to the SISP Approval Order being issued by the Court;

50 Without the extension, it is likely that a further motion will be required in November for the sole purpose of extending the stay of proceedings beyond December 1, 2023, the date on which the stay presently expires;

51 The Monitor believes that it will reduce costs to address the extension of the stay of proceedings on the return of this motion

52 In discharging its duties pursuant to the Receivership Order and the Initial Order, the Receiver and the Monitor, respectively on behalf of the Validus Entities, has acted and continues to act in good faith and with due diligence;

53 Concurrently with this motion, KSV, in its capacity as Receiver, is bringing a motion seeking approval of an increase in the borrowing amount available pursuant to the Receiver's Borrowing Charge (the "**Receiver's Borrowing Motion**");

54 The revised cash flow forecast filed in connection with this motion shows that, subject to the granting of the order sought in the Receiver's Borrowing Motion, the Validus Entities are forecasted to have sufficient liquidity to fund their operations through the proposed stay extension;

General

55 The provisions of the CCAA and the inherent and equitable jurisdiction of this Court;

56 Rules 1.04, 2.03, 3.02, 16 and 37 of the *Rules of Civil Procedure*; and

57 Such further and other grounds as counsel may advise and this Honourable Court may deem just;

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- 1 The Second Report;
- 2 The First Report (without appendices); and
- 3 Such further and other evidence as counsel may advise and this Court may permit.

October 19, 2023

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Court File No.: CV-23-00705215-00CL

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**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceeding commenced at Toronto

**NOTICE OF MOTION
(SISP Approval Order)**

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**Second Report to Court of
KSV Restructuring Inc. as
Monitor of
Validus Power Corp., Iroquois Falls
Power Corp., Bay Power Corp., Kap
Power Corp., Validus Hosting Inc. and
Kingston Cogen GP Inc.**

October 19, 2023

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MANAGER, KSV RESTRUCTURING INC.

SECOND REPORT OF KSV RESTRUCTURING INC.
AS MONITOR

OCTOBER 19, 2023

1.0 Introduction

1. Pursuant to an application filed by Macquarie Equipment Finance Limited (“Macquarie”) to appoint KSV Restructuring Inc. (“KSV”) as receiver and manager of the Validus Entities (as defined below), the Ontario Superior Court of Justice (Commercial List) (the “Court”) issued an order on August 2, 2023 (the “Interim Receivership Order”) adjourning Macquarie’s application until August 10, 2023 and appointing KSV Restructuring Inc. (“KSV”) as interim receiver (the “Interim Receiver”), under section 47.1 of the *Bankruptcy and Insolvency Act* (the “BIA”), of all of the property, assets and undertaking of Validus Power Corp. (“VPC”), Iroquois Falls Power Corp. (“IFPC”), Bay Power Corp. (“Bay”), Kap Power Corp. (“Kap”), Validus Hosting Inc. (“Hosting”), Kingston Cogen GP Inc. (“Kingston GP” and collectively, the “Companies”) and Kingston Cogen Limited Partnership (“Kingston LP” and together with the Companies, the “Validus Entities”) acquired for, or used in relation to, the business carried on by the Validus Entities (collectively, the “Property”) until the earlier of:
 - a) the taking possession of the Property by a receiver, within the meaning of subsection 243 of the BIA; and
 - b) August 10, 2023.
2. On August 10, 2023, the Court issued an order (the “Receivership Order”) appointing KSV as receiver and manager of the Property (the “Receiver”). A copy of the Receivership Order is attached as Appendix “A”. On August 18, 2023, the Honourable Justice Osborne issued an endorsement in connection with the Receivership Order (the “August 18th Endorsement”), a copy of which is attached as Appendix “B”.

3. The principal purpose of the receivership proceedings was to create a stabilized environment to enable the Receiver to take possession and control of the Property, including replacing the Validus Entities' executive management team, so that the business of the Validus Entities could continue to operate in the normal course. Macquarie's application materials also indicated that it intended to submit an offer to serve as a stalking horse bid in a sale and investment solicitation process (the "SISP") and that a condition of that bid would be that the SISP and resulting transaction be implemented within proceedings under the *Companies' Creditors Arrangement Act* ("CCAA").
4. On August 11, 2023, Hut 8 Mining Corp. ("Hut 8"), a public company listed on the Nasdaq and Toronto Stock Exchange, announced that it had entered into a transaction support agreement with Macquarie in support of an opportunity to potentially acquire certain assets of the Validus Entities through a stalking horse bid that was intended to be submitted to the Receiver (the "Transaction Support Agreement"). VPC had previously contracted to supply energy to Hut 8's digital currency mining facility in North Bay, Ontario, however the Monitor has been advised by Hut 8 that this supply contract was never fulfilled by VPC in accordance with its terms.
5. On August 29, 2023, the Receiver brought a motion seeking authority to bring an application to have the Companies granted protection under the CCAA, and, if granted such authority, a concurrent application to have the Companies granted protection under the CCAA. The Receiver also sought to extend the stay of proceedings in the CCAA proceedings to Kingston LP. The Receiver's rationale for seeking CCAA protection for the Validus Entities was set out in its first report to Court dated August 23, 2023, which was also the pre-filing report of KSV as proposed monitor (the "Pre-Filing Report"). A copy of the Pre-Filing Report is provided in Appendix "C", without attachments.
6. One of the reasons for the proposed CCAA proceedings is that the stalking horse bid was contemplated to be completed pursuant to a reverse vesting order ("RVO") and that the bid would be conditional on the Court issuing the RVO in a CCAA proceeding. An RVO structure was considered the likely preferred structure in the circumstances as the Validus Entities hold various licenses and permits required to operate their businesses, and the time and cost of transferring them absent an RVO could impair the businesses of the Validus Entities and unduly complicate completion of a transaction.
7. On August 29, 2023, the Court granted an initial order under the CCAA in respect of the Validus Entities (the "Initial Order"). Copies of the Initial Order and the endorsement of Mr. Justice Osborne dated August 29, 2023 are provided in Appendices "D" and "E", respectively.
8. On September 8, 2023, the Court granted an extension of the stay of proceedings in the CCAA proceedings from September 8 to December 1, 2023.
9. This report (the "Report") is filed by KSV as Monitor.

1.1 Purposes of this Report`

1. The purposes of this Report are to provide:
 - a) background information with respect to the Validus Entities and these proceedings;
 - b) information regarding the amount of the Validus Entities' debt owing to Macquarie;
 - c) a summary of the proposed SISP and the proposed stalking horse offer (the "Stalking Horse Offer") submitted by Macquarie and Far North Power Corp. ("Far North"), an entity incorporated by Hut 8 for the purpose of this transaction (together with Macquarie, the "Stalking Horse Bidders") pursuant to:
 - an offer letter dated October 16, 2023 from the Stalking Horse Bidders (the "Offer Letter");
 - a form of transaction agreement between the Validus Entities, by the Monitor, and the Stalking Horse Bidders (the "Transaction Agreement");
 - a form of document setting out the terms and conditions of the Offer Letter, including with respect to the transaction contemplated by the Transaction Agreement (the "Terms and Conditions"); and
 - a break fee agreement dated October 16, 2023 between the Validus Entities, the Monitor, and Macquarie (the "Break Fee Agreement");
 - d) describe the proposed contract counterparty notification process (the "Unknown Contract Bar Process") to be implemented contemporaneously with the SISP in order for any known and potentially unknown contract counterparties to have notice that an RVO will be sought at the conclusion of the SISP;
 - e) summarize the Validus Entities' revised cash flow forecast for the period ending December 31, 2023 (the "Revised Cash Flow Forecast") and the need to increase the Maximum Borrowing Amount (defined below) that is secured by the Receiver's Borrowings Charge (as defined in the Receivership Order and recognized in the Initial Order) from \$1 million to \$1.5 million; and
 - f) provide the basis for the Monitor's recommendation that the Court issue an order (the "SISP Approval Order"), among other things:
 - approving the SISP in the form attached as Schedule "A" to the proposed SISP Approval Order, which is to be conducted by the Monitor;
 - authorizing and empowering the Validus Entities, by the Monitor, to accept the Offer Letter, the Terms and Conditions and the Transaction Agreement solely as a stalking horse offer in the SISP;

- approving the Break-Up Fee and Expense Reimbursement, each as defined in the Break Fee Agreement, in favour of Macquarie (together, the “Bid Protections”) and granting a charge in favour of Macquarie on the Property in the amount of \$2.26 million as security for payment of the Bid Protections (the “Bid Protections Charge”), provided that such amount is only payable from the proceeds of a superior offer on closing;
- approving the proposed Unknown Contract Bar Process;
- increasing the quantum of the Maximum Borrowing Amount (defined below) from \$1 million to \$1.5 million;
- approving the Pre-Filing Report, the first report of the Monitor dated September 1, 2023 and this Report, including the activities of the Monitor described therein; and
- extending the stay of proceedings from December 1 to December 31, 2023.

1.2 Currency

1. All currency references in this Report are to Canadian dollars.

1.3 Restrictions¹

1. In preparing this Report, KSV has relied upon unaudited financial information provided by the Validus Entities’ employees and consultants², the books and records of the Validus Entities³ and discussions with representatives of the Validus Entities, Macquarie and its legal counsel. KSV has not performed an audit or otherwise attempted to verify the accuracy or completeness of the financial information relied on in a manner that complies with Canadian Auditing Standards (“CAS”) pursuant to the Chartered Professional Accountants of Canada Handbook and, accordingly, KSV expresses no opinion or other form of assurance contemplated under the CAS in respect of such information. Any party wishing to place reliance on the financial information should perform its own diligence.
2. An examination of the Revised Cash Flow Forecast, as outlined in the Chartered Professional Accountants of Canada Handbook, has not been performed. Future oriented financial information relied upon in this Report is based upon assumptions regarding future events; actual results achieved may vary from this information and these variations may be material. KSV expresses no opinion or other form of assurance on whether the Revised Cash Flow Forecast will be achieved.
3. With the exception of the Court, KSV accepts no responsibility for any reliance placed by any third party on the Validus Entities’ financial information presented herein.

¹ In this section, references to KSV refer to its capacity as Receiver, Monitor and in its personal capacity.

² Certain individuals having executive titles were retained pursuant to consulting agreements.

³ As discussed in the Affidavit of Joshua Stevens of Macquarie dated July 31, 2023, the Validus Entities’ books and records were not kept current and otherwise appear to be significantly deficient.

2.0 Background

1. The Validus Entities are a group of privately-held companies that own and operate power generation plants and sell capacity and power to the Independent Electricity System Operator (“IESO”) as a participant in its “capacity auction” market. The Property is principally comprised of four power plants in Ontario located in North Bay, Kapuskasing, Iroquois Falls and Kingston. As at the date of this Report, the plants in Kingston and Iroquois Falls are operational; these plants are on standby and can supply power to the IESO if called upon as a participant in the capacity auction market. The Kapuskasing and North Bay plants are being maintained and secured but are not otherwise operational at this time.
2. VPC acquired the four plants in 2021/2022 in two separate transactions, as set out in the table below.

Plant	Vendor	Date of Acquisition	Amount (\$000s)
North Bay and Kapuskasing	SHS Power Corp.	May 21, 2021	4,695
Iroquois Falls and Kingston	Northland Power	April 7, 2022	40,000
Total			44,695

3. Immediately following its appointment, the Receiver engaged Ryan Forget of Complete Energy Consulting Inc. to act as a consultant to the Receiver to assist with day-to-day operational, security and asset maintenance issues. Mr. Forget is a former senior employee of the Validus Entities.
4. At the commencement of the receivership, the Receiver terminated substantially all of the individuals who did not work at the plants and who had or may have had working arrangements with the Validus Entities. It is unclear to the Monitor as to whether these individuals were employees of any of the Validus Entities. Shelley Goertz, the Validus Entities’ former CFO, continues to be retained by the Monitor, primarily to provide historical financial information. Ryan Chua, the Validus Entities’ former General Counsel, was recently engaged as a consultant to the Monitor to provide information related to the SISP, including the Validus Entities’ contracts and other legal diligence matters.
5. The receivership application materials provide additional background information about the Validus Entities, their financial position, the Validus Entities’ defaults under their lease arrangements with Macquarie and the basis for Macquarie’s application for the Receivership Order. Court materials filed in these proceedings, including the prior reports filed by KSV as Interim Receiver, Receiver and Proposed Monitor (the “Prior Reports”), are available on KSV’s website at: <https://www.ksvadvisory.com/experience/case/validus-power-corp>.

3.0 Creditors and Other Stakeholders

3.1 Secured Creditors

1. The following is a summary of the Validus Entities' known secured creditors:
 - a) Macquarie made demand against the Validus Entities, as discussed below, in the amount of \$55,598,575 as of July 24, 2023 (the "Macquarie Demand Amount"). Macquarie holds security against substantially all Property, excluding VPC's property other than the shares of its subsidiaries. As of September 22, 2023, Macquarie calculated that it is owed at least \$57,218,822, including overdue interest to that date and HST, but excluding costs and overdue interest following that date, each of which continues to accrue (the "Macquarie Claim Amount"). As set out in responding materials filed by the Validus Entities in the receivership proceedings, the Validus Entities dispute at least \$9 million of the amount demanded by Macquarie. A description of this dispute and the Monitor's view on the quantification of the Macquarie debt is provided in Section 3.2 of this Report;
 - b) Canada Revenue Agency ("CRA"), which registered a lien in the amount of approximately \$6 million against certain real property owned by IFPC. CRA's lien was registered due to IFPC's failure to remit HST collected by IFPC as part of a sale leaseback transaction between Macquarie and IFPC completed in April 2022. The Validus Entities have advised that there are input tax credits (i.e. HST paid to vendors) which may reduce the arrears owing to CRA. The Monitor has requested CRA perform an examination with respect to pre-filing GST/HST amounts. Certain issues related to HST are discussed in greater detail below;
 - c) TD Bank ("TD"), which registered a security interest against VPC pursuant to the *Personal Property Security Act* (Ontario), in respect of amounts that TD claims relate to six letters of credit issued by TD in the aggregate amount of \$1,506,445 against which TD holds guaranteed investment certificate security. The Monitor has requested that its counsel, Norton Rose Fulbright Canada LLP ("Norton Rose"), conduct a review of TD's security;
 - d) Royal Bank of Canada ("RBC"), which the Monitor understands holds cash collateral as security for obligations of VPC in respect of an outstanding letter of credit issued by RBC in the amount of \$68,561; and
 - e) Mercedes-Benz Financial and Mercedes-Benz Financial Services Canada Corporation in the amount of \$179,206 against VPC in respect of a motor vehicle (a Mercedes G-63 "G-Wagon" SUV).
2. Based on discussions with Ms. Goertz, the Monitor understands that VPC⁴ has failed to remit source deductions to CRA since approximately October 2022. Based on VPC's payroll records and CRA's statements/assessments, the Monitor's estimate of the employee portion⁵ of the source deduction obligation is approximately \$1.5 million. The Monitor has requested that CRA also perform an examination with respect to the Validus Entities' pre-filing source deduction obligations, including the amount which may be subject to a deemed trust.

⁴ It is the Monitor's understanding that all or substantially all of the Validus Entities' employees were employed by VPC, including those that worked in plants owned by VPC's subsidiaries.

⁵ Being the portion for which a deemed trust exists in favour of CRA.

3.2 Macquarie Secured Debt Amount

1. In April 2022, IFPC entered into a sale leaseback transaction (the “Lease Transaction”) with Macquarie pursuant to several transaction agreements (the “Lease Transaction Documents”), including:
 - a) a participation agreement dated April 7, 2022, as amended and restated on February 24, 2023, between Macquarie, as purchaser and lessor, IFPC, as vendor and lessee, and each of the other Validus Entities, as guarantors, pursuant to which Macquarie purchased certain property, plant and equipment located on and related to the Iroquois Falls plant (the “Leased Property”) from IFPC for an aggregate purchase price of \$45 million plus HST (the “Participation Agreement”);
 - b) a secured lease agreement dated April 7, 2022, as amended and restated on February 24, 2023, between Macquarie, as lessor, and IFPC, as lessee, pursuant to which IFPC leased the Leased Property from Macquarie for a base term of 36 months, followed by month-to-month renewal terms (the “Lease Agreement”);
 - c) guarantees provided by each of the other Validus Entities to Macquarie which were secured by substantially all of their real and personal property, assets and undertaking with the exception of VPC, which provided a pledge of its shares and limited partner units, as applicable, in IFPC, Bay, Kap, Kingston GP and Kingston LP (the “VPC Security”) and Hosting, which provided security and recourse over certain material contracts and documents (the “Hosting Security”).

A copy of the Participation Agreement and the Lease Agreement are provided as Appendices “F” and “G”, respectively.

2. Norton Rose has provided the Monitor with an opinion that, subject to the standard assumptions and qualifications contained therein, the security granted by each of the Validus Entities to Macquarie is valid and enforceable. A copy of the opinion can be provided to Court upon request.

3.2.1 The Participation Agreement and Lease Agreement

1. A detailed discussion of the Participation Agreement and the Lease Agreement is set out in the affidavit of Joshua Stevens sworn July 31, 2023 (the “Stevens Affidavit”) and is therefore not repeated herein. Certain provisions of the Participation Agreement and the Lease Agreement which are pertinent to the consideration of the quantum of the Macquarie Claim are set out below.
2. Under the Participation Agreement, the purchase price for the Leased Property was \$45 million (plus HST). On the initial closing, the Monitor understands that Macquarie paid to IFPC \$36 million of the purchase price in accordance with the agreed terms, plus \$5.85 million in respect of HST. The remaining \$9 million was agreed between the parties to be paid to IFPC in certain circumstances, failing which such amount was to be used to prepay rent under the Lease Agreement. The \$9 million was ultimately used to prepay rent under the Lease Agreement (the “Pre-Paid Rent”).
3. Under the Lease Agreement, IFPC agreed to, among other things: (i) make monthly rent payments to Macquarie of \$1.25 million (the “Base Rent”) plus HST; and (ii) pay all other amounts, liabilities and obligations that IFPC is from time to time obligated to pay under the Lease Transaction Documents.

4. The Lease Agreement also sets out various remedies to which Macquarie was entitled in the event of a default on the part of IFPC.
5. Among the remedies available to Macquarie under the Lease Agreement is the remedy provided under section 13.1(f) of the Lease Agreement, which permits Macquarie to demand payment from IFPC of liquidated damages in an amount equal to the sum of: (i) any unpaid Base Rent in arrears; (ii) the “Stipulated Loss Value” (the “SLV”) for the Leased Property; and (iii) interest on the foregoing amounts. The SLV is determined by way of Schedule 3 to the Lease Agreement. It was initially \$54 million but reduced every time IFPC made a rent payment. The SLV payable by IFPC in the event of a default was to be the SLV as of the date of written notice that Macquarie was exercising its remedies. Upon payment of these amounts, pursuant to the remedy provided in section 13.1(f) of the Lease Agreement, IFPC becomes the owner of all of the Leased Property.
6. IFPC failed to make payments under the lease that came due on May 31, 2023, June 7, 2023 and July 7, 2023.
7. On July 24, 2023, Macquarie gave notice to IFPC that it was exercising its right to terminate the Lease Agreement and demanded payment under section 13.1(f) of the Lease Agreement, which amount, as of that date was calculated to be \$55,598,575, which amount was comprised of:
 - a) \$8.5 million in respect of unpaid base rent;
 - b) \$40.5 million in respect of the SLV;
 - c) \$6,370,000 in respect of HST payable on the above amounts; and
 - d) \$228,575 in respect of interest on the base rent.

3.2.2 The Validus Entities’ Dispute and the Monitor’s Analysis

1. As noted above, at the August 10 receivership application hearing, the Validus Entities disputed the amount of the Macquarie Demand Amount and asserted that the Macquarie Demand Amount is overstated by at least \$9 million. In support of their position, the Validus Entities filed an affidavit of Todd Shortt, the Validus Entities’ former Chief Executive Officer, sworn August 10, 2023 (the “Shortt Affidavit”). The Shortt Affidavit appears to make various arguments in support of the Validus Entities’ position, including that:
 - a) Macquarie only advanced \$36 million;
 - b) Macquarie overstates the base rent arrears by \$1 million;
 - c) Macquarie double counts the arrears by demanding them but not crediting them against the SLV; and
 - d) Macquarie did not credit the Pre-Paid Rent in calculating the SLV.

2. The Monitor's counsel has independently considered the Macquarie Claim Amount, particularly in light of the objections outlined above, and in that regard makes the following observations:
 - a) **Macquarie only advanced \$36 million.** As noted above, Macquarie agreed to purchase the Leased Property for a purchase price of \$45 million plus HST under the Participation Agreement, with the proceeds of such purchase price to be applied in an agreed manner. As noted, \$9 million of that purchase price was applied as a prepayment of rent in accordance with the terms of the Lease Agreement that were agreed between the parties. The suggestion that Macquarie is only entitled to recover what it advanced is not in any event supportable on the terms of the Lease Agreement itself. The Participation Agreement and Lease Agreement were not structured as a loan, but as a sale leaseback transaction. The provisions of the Lease Agreement plainly envision Macquarie ultimately receiving more than \$36 million.
 - b) **Overstatement of Rent Arrears.** Pursuant to the amendments made to the Lease Agreement on February 24, 2023, Macquarie provided IFPC a four-month "rent holiday" by amending the rent payment schedule under the Lease Agreement. As a result of those amendments, IFPC was relieved of paying any rent from February through April, and was instead required to make a single larger rent payment in May, followed by regular monthly rent payments in June onwards. The total rent payable during this period was increased by \$1 million. This is clearly set out on the face of the Lease Agreement.
 - c) **Macquarie does not count the \$8.5 million in the calculation of the SLV.** The Lease Agreement specifies that the quantum of the SLV is determined by reference to the "Number of Base Rents paid... at the relevant time". Upon default, IFPC is required to pay the SLV "as of the date of written notice". As of the date of written notice, the arrears had not been paid, and thus were not accounted for in Macquarie's calculation of the SLV. While this means that Macquarie both collects the rental arrears and receives an SLV that does not account for those rental payments, that result is consistent with the plain language of section 13.1(f) of the Lease Agreement.
 - d) **Failure to credit the \$9 million in prepaid rent.** Pursuant to the Lease Agreement, the Pre-Paid Rent is to be applied to the last payments of the base term. The Monitor notes that the Macquarie Claim Amount gives credit for these payments when determining the quantum of the SLV.
3. Based on the legal advice it received, the Monitor believes the Macquarie Demand Amount (which has increased since the filing date as a result of further interest and costs that have been added to the Macquarie Demand Amount) complies with the language of the Lease Agreement and is supportable.
4. The Monitor's counsel and counsel for Macquarie have held various conversations with counsel for the Validus Entities since the August 10 hearing. The Monitor understands that the Validus Entities are likely to oppose the inclusion of the calculated Macquarie Claim Amount at the SISP hearing. As of the date of this Report, the Monitor is continuing to discuss a schedule for delivery of materials with counsel for the Validus Entities and counsel for Macquarie.

3.3 Unions

1. The Monitor understands that prior to VPC's acquisition of IFPC, certain of the employees working at the Iroquois Falls plant were members of The International Union of Operating Engineers Local 865 (the "OE Union") pursuant to a collective bargaining agreement for the period July 1, 2019 to June 30, 2023 (the "OE CBA"). Norton Rose has corresponded with the OE Union's counsel regarding an application filed by the OE Union to the Ontario Labour Relations Board ("OLRB") on July 3, 2023 alleging that IFPC sold its business to VPC and/or that these entities are related parties for the purposes of *Labour Relations Act* of Ontario (the "LRA"). A response was due on August 17, 2023 but has not been filed as a result of the Validus entities' insolvency proceedings. The OLRB has confirmed that the application is stayed until December 1, 2023.
2. In addition to the application, at the time of the receivership, the OE Union filed a grievance with respect to certain benefits and past amounts that had not been paid to employees. Since the filing, such amounts have been paid. On September 28, 2023, counsel for the OE Union confirmed that the issues in the grievance had been addressed.
3. The Monitor also understands that, prior to VPC's acquisition of Bay and Kap, the employees working at the North Bay and Kapuskasing plants were members of the Power Workers' Union – CUPE Local 1000 (the "PWU") pursuant to the most recent collective bargaining agreement for the period December 20, 2020 to December 19, 2021 (the "PW CBA"). Norton Rose has corresponded with PWU's counsel, Goldblatt Partners LLP ("Goldblatt"), regarding an application filed by the PWU to OLRB on December 3, 2021 alleging that Atlantic Power Services Canada LP sold its business to VPC or that these entities are related parties for the purposes of the LRA. The Monitor understands the PWU intends to remain active in following these CCAA proceedings and the SISF.

3.4 Hut 8 Litigation

1. Hut 8 is a crypto-miner who, prior to the receivership and CCAA proceedings, had been engaged in litigation with VPC and Bay relating to three agreements between Validus and Hut 8: a power purchase agreement ("PPA"), a construction agreement and a commercial lease (collectively, the "Hut 8 Agreements").
2. As set out above, the Monitor understands that Hut 8 has entered into the Transaction Support Agreement with Macquarie, which governs the basis on which the Stalking Horse Offer has been made.
3. Pursuant to the Hut 8 Agreements, VPC agreed to design, construct and install a natural-gas generating facility and an adjacent data centre in North Bay. The facility was intended to generate and deliver power to the data centre, which Hut 8 would lease from VPC and Bay. While VPC was responsible for building the data centre, Hut 8 had certain commissioning responsibilities that had to be completed for the data centre to be operational. Hut 8 intended to use the data centre to further its business as a miner of cryptocurrencies.

4. Based on the pleadings, the Monitor understands that VPC and Hut 8 agree that the facility never delivered the required levels of power to the data centre, but disagree on the reasons for that failure. In this regard:
 - a) Hut 8's claim alleges that VPC is solely responsible for the failure, and seeks mandatory orders and damages in an unspecified amount to reflect the alleged breach of the PPA; and
 - b) VPC's counterclaim alleges that the failure to deliver the required power was solely due to delays to Hut 8's commissioning obligations. VPC seeks approximately \$39.6 million for alleged breaches of the PPA and approximately \$800,000 for alleged failures to pay rent under the data centre lease.
5. The Monitor understands that the litigation is at an early stage, and document production has not occurred. However, given the inclusion of the Hut 8 litigation claim as a purchased asset in the Stalking Horse Offer (as detailed below), Norton Rose has reviewed the pleadings and spoken with counsel for the parties. Based on this review, and as summarized below, based on its independent legal advice, the Monitor believes that the better view is that the Hut 8 claim has significantly more merit than the VPC counterclaim and thus is unlikely to be considered a valuable asset of VPC.
6. While VPC's defence and counterclaim alleges that Hut 8 was delayed in completing certain commissioning tasks, the pleading indicates that all of those tasks were ultimately completed by September 2022 at the latest. As the PPA contemplated deliveries of power at the initial required levels within approximately 2.5 months of execution of the agreement, the pleadings fail to identify any justification for VPC's continued failure to supply the required power. VPC has not provided any further evidence to show there were remaining outstanding tasks on the part of Hut 8.
7. Given the content of the pleadings, it appears that VPC's counterclaim, at its highest, could only reduce the damages claimed by Hut 8, rather than serve as a full defence or the basis for a meaningful counterclaim.
8. The Monitor has considered whether it is appropriate for this litigation claim to be included in the Stalking Horse Offer. Given the lack of evidence supporting the VPC claim, and apparent strength of Hut 8's claim, the Monitor believes it is reasonable for the litigation claim to be sold as part of the Stalking Horse Offer (or other sale transaction, if one results from the SISP).

4.0 SISP and Stalking Horse Offer⁶

4.1 SISP

1. The purpose of the SISP is to market for sale, or identify investment proposals for, the Validus Entities' businesses and assets, including certain assets of VPC that are not subject to Macquarie's security, such as the Hut 8 litigation and the shares of Hosting. The Stalking Horse Offer enhances the prospect of a going-concern transaction, while also enabling the Monitor to test the market and pursue a superior transaction.

⁶ Capitalized terms in this section have the meaning provided to them in the SISP, the Transaction Agreement, the Terms and Conditions and/or the Break Fee Agreement, unless otherwise defined herein. The descriptions of these documents in this Report are for informational purposes only. Reference should be made to the relevant documents themselves in order to have a complete understanding of those documents and agreements.

2. The Monitor worked with the proposed Stalking Horse Bidders to settle the terms and conditions of the proposed SISP. Subject to Court approval, the Monitor is to carry out the SISP.
3. The key aspects of the proposed SISP are summarized below; however, interested parties are strongly encouraged to review the entirety of the SISP, which is attached as Schedule “A” to the proposed SISP Approval Order.
4. In the event that the SISP is approved on October 26, 2023, a summary of the SISP timeline is as follows:

Milestone	Deadline ⁷
Motion to approve SISP	October 26, 2023
Monitor to commence marketing process	October 27 2023
Bid Deadline	11:59 p.m. on December 1, 2023
Notification to Qualified Bidders of Auction (if any)	As soon as possible after the Bid Deadline
Auction (if any)	On or about December 7, 2023
Approval and RVO motion ⁸	December 15, 2023

5. The SISP provides that the Monitor may, in its discretion, seek Court approval for the termination of the SISP and for approval of implementation of the Stalking Horse Bid if no potentially interested parties have executed non-disclosure agreements and commenced due diligence on or prior to November 16, 2023, or if thereafter, all parties who executed non-disclosure agreements and conducted due diligence have advised the Monitor that they no longer intend to participate in the SISP.
6. The Qualified Bid Deadline may be extended by the Monitor for no longer than seven days in the Monitor’s discretion, or by further Order of the Court and, in such circumstances, the subsequent milestones listed in 4.1.4 above shall be extended by the same amount of time. The Monitor also has the discretion to extend any other milestone dates provided that the aggregate of all such discretionary extensions shall not exceed 14 days.

4.2 Solicitation of Interest

1. The Monitor has prepared marketing materials and will solicit interest from parties potentially interested in pursuing a transaction (each, a “Potential Bidder”). Potential Bidders will include:
 - a) strategic and financial prospective purchasers identified by the Monitor;
 - b) parties that participated in a pre-filing sale process for IFPC conducted by Ernst & Young Corporate Finance (Canada) Inc. (“EY”) during the period March to July 2023 (the “EY Sale Process”); and
 - c) parties that have contacted the Monitor on an unsolicited basis since the commencement of the interim receivership proceedings on August 2, 2023.

⁷ To the extent any dates would fall on a non-business day, they shall be deemed to be the first business day thereafter.

⁸ The Court dates are subject to Court availability.

2. In particular, if the SISP Approval Order is issued by the Court, the Monitor will:
 - a) prepare and disseminate marketing materials (the “Teaser”) and a process letter (the “Process Letter”) to Potential Bidders, including a form of non-disclosure agreement (an “NDA”);
 - b) provide Potential Bidders with access to a virtual data room (“VDR”) containing diligence information. Potential Bidders will be required to execute the NDA to obtain access to the data room; and
 - c) request that such parties submit a binding offer meeting at least the requirements for a Qualified Bid (as described below) by the Qualified Bid Deadline.
3. The Monitor is working with Norton Rose to prepare a vendor’s form of purchase and sale agreement (the “Template PSA”), based on the terms of the Stalking Horse Bid with certain necessary modifications for template purposes, which will be made available in the VDR. Although the Monitor is of the view that most, if not all, prospective purchasers would require the transaction be completed pursuant to an RVO because of the licenses and permits held by the Validus Entities, the SISP does not prohibit alternative transaction structures, including a more traditional Asset Purchase Agreement / Approval and Vesting Order.
4. A Potential Bidder that wishes to make a bid must deliver a written copy of its bid and other materials required by the SISP by no later than 11:59 p.m. p.m. (Eastern Time) on the Qualified Bid Deadline.

4.3 Qualified Bids

1. To be a “Qualified Bid”, a bid must, among other things, meet the following requirements:
 - a) provide aggregate consideration, payable in full on closing, in an amount that is estimated to be at least \$60,228,822, being the sum of:
 - i. the Macquarie Claim Amount (\$57,218,822 as of September 22, 2023);
 - ii. the Cash Purchase Price (being the Priority Payments Closing Amount of \$1.5 million). Potential Bidders will be provided with guidance as to the estimated total of these items over the course of the SISP;
 - iii. the Bid Protections under the Stalking Horse Offer (\$2.26 million); and
 - iv. a \$750,000 minimum bid increment (collectively, the “Consideration Value”).
 - b) provide for the purchase of Macquarie’s interest in the Receiver’s Certificates (as defined in the Receivership Order) for cash equal to the aggregate amount of all indebtedness owing under the Receiver’s Certificates, if any;
 - c) include a detailed sources and uses schedule that identifies, with specificity, the amount of cash consideration and any assumptions that could reduce the net consideration payable;
 - d) provide details of any assumption of liabilities;

- e) be reasonably capable of being consummated within 30 days of the Implementation Order if selected as a Successful Bid;
 - f) include, among other things:
 - i. duly executed and binding transaction documents, including a redline of the submitted transaction document against the Template PSA;
 - ii. the legal name and identity (including jurisdiction of existence) and contact information of the bidder, full disclosure of its direct and indirect principals, and the name(s) of its controlling equityholder(s);
 - iii. evidence of authorization and approval from the bidder's board of directors and, if necessary, the bidder's equityholders; and
 - iv. disclosure of any connections or agreements with any of the Validus Entities or their affiliates, officer, manager, director or known equity security holder of any of the Validus Entities;
 - g) include a letter stating that the bid submitted is binding and irrevocable until the earlier of (i) completion of a Successful Bid; or (ii) December 29, 2023; provided, however, that if such bid is selected as a Successful Bid, it shall remain irrevocable until the closing of the Successful Bid;
 - h) provide written evidence of a bidder's ability to fully fund and consummate the transaction, including binding equity/debt commitment letters and/or guarantees covering the full value of all cash consideration;
 - i) not be conditional upon i) approval from the bidder's board of directors or equityholders; ii) the outcome of any due diligence by the bidder; and iii) the bidder obtaining financing;
 - j) include full details of the bidder's intended treatment of the Validus Entities' employees under the proposed bid; and
 - k) be accompanied by a cash deposit equal to at least 10% of the Consideration Value provided for in the bid (the "Deposit"), which Deposit shall be retained by the Monitor in an interest-bearing trust account in accordance with the terms of the SISP.
2. The Monitor may combine bids received for individual assets of the Validus Entities for the purpose of determining if such bids, collectively, will be treated as a Qualified Bid ("Aggregated Bid"), provided that any Aggregated Bid must comply with each of the requirements of a Qualified Bid set out in the SISP (as may be modified in accordance with the SISP). The purpose of the Aggregated Bid concept is to provide flexibility under the SISP for Potential Bidders to submit offers for one or more (but less than all) of the four power plants, which the Monitor understands may be of interest to certain Potential Bidders who have contacted the Monitor to-date.
 3. In respect of paragraph 4.3.2 above, the Stalking Horse Bidders, with the consent of the Monitor, shall be permitted to modify the Stalking Horse Bid (the "Modified SHB") to exclude any asset for which an alternative bid (the "Alternative Bid" and the assets subject to such Alternative Bid, the "Excluded SHB Assets") is received if, among other things, i) the Stalking Horse Bidders each agree in writing to modify the Stalking Horse

Bid in order to accommodate such proposed Alternative Bid; ii) the Validus Entities, Macquarie and Far North, with the consent of the Monitor, agree on the adjustment of the purchase price under the Stalking Horse Bid to account for the removal of the Excluded SHB Assets and the value of the Alternative Bid; iii) the Monitor determines that the aggregate consideration of the Modified SHB and the proposed Alternative Bid exceeds the value of the Stalking Horse Bid and collectively is a Qualified Bid; and iv) the Alternative Bid meets all of the requirements of a Qualified Bid. However, the Stalking Horse Bidders agree that the Stalking Horse Bid shall remain open for acceptance notwithstanding the Modified SHB such that the original Stalking Horse Bid can be completed if the Modified SHB and the Alternative Bid are not completed.

If a selected Successful Bid is not completed within 30 days following the issuance of the Implementation Order, the Implementation Order is not granted or the Monitor otherwise determines the selected Successful Bid will not be completed, the Monitor shall be permitted to designate one or more alternative Successful Bids from the Qualified Bids received prior to or during the Auction, and such alternative Successful Bid shall be deemed the Successful Bid. The foregoing shall not limit the Monitor's right in these circumstances to terminate the SISP and pursue any alternative process and any alternative transactions determined by the Monitor to be appropriate, in consultation with Macquarie.

4.4 Auction

1. If no Qualified Bids are submitted by the Qualified Bid Deadline, the Stalking Horse Bidders shall be the Successful Bidder.
2. If one or more Qualified Bids are received by the Qualified Bid Deadline, each Qualified Party must inform the Monitor whether it intends to participate in the Auction. The Monitor will promptly thereafter inform in writing each Qualified Party who has expressed its intent to participate in the Auction of the identity of all other Qualified Parties that have indicated their intent to participate in the Auction. If no Qualified Party indicates such expression of intent, the Stalking Horse Offer shall be the Successful Bid.
3. If required, the Monitor will proceed with an auction process (the "Auction") in accordance with the SISP, including as follows:
 - a) bidding at the Auction (which will take place by video conference) shall be conducted in rounds. The Qualified Bid that represents the highest or otherwise best Qualified Bid, as determined by the Monitor, shall constitute the "Initial Bid" for the first round, and any bid made at the Auction by a Qualified Party subsequent to the Monitor's announcement of the Initial Bid (each, an "Overbid") must be made in minimum cash purchase price increments as determined by the Monitor and announced to the Auction participants prior to each round of bidding;
 - b) the Auction shall continue in one or more rounds and will conclude after each participating Qualified Party has had the opportunity to submit an Overbid with full knowledge and confirmation of the then-existing highest or otherwise best bid and no Qualified Party submits an Overbid;

- c) if in any round, a Qualified Party (other than the party who submitted the Lead Bid in such round) does not submit an Overbid, then such Qualified Party will no longer be permitted to participate in any subsequent round of the Auction; and
- d) during the Auction, the Monitor will review each subsequent Qualified Bid, considering the factors for a Qualified Bid as set out in the SISP, and identify the highest or otherwise best bid received at the Auction as the “Successful Bid”.

4.5 The Stalking Horse Offer

1. The Stalking Horse Offer contemplates a transaction whereby Macquarie and Far North, if selected as the Successful Bidder in the SISP, will acquire all or substantially all of the assets of the Validus Entities.
2. The Stalking Horse Offer is contemplated to be completed pursuant to an RVO as the Validus Entities hold numerous permits and licenses that allow it to operate in a highly regulated industry and the Stalking Horse Bidders require that an RVO be issued due to, among other things, uncertainty related to the transferability of these licenses and permits in a commercially reasonable timeframe. The Monitor anticipates that any other purchaser would also require the preservation of permits and licenses pursuant to an RVO. A draft of the proposed RVO is provided as a schedule to the Stalking Horse Offer.
3. The following is a summary description of the Stalking Horse Offer only. Readers are encouraged to read the entirety of the Stalking Horse Offer for its terms and conditions, a copy of which is provided in Appendix “H”.
4. The key terms and conditions of the Stalking Horse Offer are provided below.
 - **Transaction Structure:** The Stalking Horse Offer is structured as a “sign and close” transaction. The Stalking Horse Bidders signed the Offer Letter and have agreed to sign the Transaction Agreement at the Effective Time (as defined therein). Subject to the terms and conditions set out in the Offer Letter (including Schedule “B” thereto), the offer is irrevocable by Macquarie and Far North, but the Monitor will not sign or accept the Transaction Agreement unless and until: i) the Stalking Horse Bid is confirmed as the Successful Bid; and ii) the conditions precedent to Closing in the Transaction Agreement have been satisfied. At this time, the Monitor has only signed the Break Fee Agreement, a copy of which is attached as Appendix “I”, which has been signed subject to Court approval. Macquarie is not related to any of the Validus Entities. Macquarie and Far North have advised the Monitor that they do not want to be deemed to control IFPC for income tax purposes (and be deemed related to the Validus Entities) prior to the time that the applicable Stalking Horse Bidder actually acquires control at the closing by virtue of a bid that provides for a closing that is not coincident with execution of the Transaction Agreement. If the Stalking Horse Offer is selected as the Successful Bid, then on the Effective Date, among other things, the following steps shall occur in accordance with the proposed RVO in the manner and sequence provided for in the Implementation Steps:
 - a) the Excluded Assets and Excluded Liabilities will be assigned to, assumed by and vest in Residualco;
 - b) the Monitor will sign the Monitor’s Certificate;

- c) concurrently with the step in (b), the Monitor will sign the Transaction Agreement, on behalf of the Validus Entities;
 - d) VPC, by the Monitor, will assign all of the equity securities (and in the case of Kingston LP, limited partnership units) in each of Kap, Bay, Kingston GP and Kingston LP to Far North in consideration for the release of VPC and the Purchased Entities (other than IFPC) from their obligations under the Lease Agreement and related security;
 - e) VPC will assign the Purchase Validus Parent Assets to Far North;
 - f) Macquarie will assign the Leased Property to IFPC in consideration for the: (i) IFPC Note 1; (ii) IFPC Note 2; (iii) IFPC Note 3; and (iv) IFPC Interests (comprising newly issued common shares of IFPC representing 99.999% of the issued and outstanding IFPC shares), which IFPC shares will, at the direction of Macquarie, be issued to Far North; and
 - g) the IFPC Legacy Shares held by VPC will be cancelled without any payment thereon such that the IFPC Interests represent 100% of the outstanding Equity Interests in IFPC.
- **Purchased Assets:**
 - a) all of VPC's right, title and interest in the issued and outstanding shares in the capital of Bay, Kap and Kingston GP and the issued and outstanding limited partnership units of Kingston LP;
 - b) all of VPC's right, title and interest in certain assigned employment agreements as set out in the Disclosure Schedule, all of VPC's right, title and interest in the Hut 8 Litigation, all issued and outstanding shares of Hosting⁹, all of VPC's right, title and interest in the Firm Transportation Service Contract dated July 25, 2022 between TransCanada Pipelines Limited and VPC, all of VPC's right, title and interest in the Letter Agreement dated September 30, 2023 between VPC and Macquarie Energy Canada Ltd. and all of VPC's right, title and interest in the Continuous Safety Services (CSS) Agreement between Electrical Safety Authority and VPC (collectively, the "Purchased Validus Parent Assets");
 - c) IFPC Note 1, IFPC Note 2 and IFPC Note 3; and
 - d) the IFPC Interests, being the newly issued common equity of IFPC (or its successor), free and clear of all Encumbrances other than Permitted Encumbrances, which represents 99.999% of the issued and outstanding common equity in IFPC immediately prior to the redemption of the IFPC Legacy Shares in accordance with the Transaction Agreement.

⁹ This entity is believed to be inactive and to not have any assets.

- **Purchase Price Consideration:** The Credit Bid Consideration is comprised of:
 - a) Far North paying to the Monitor the Priority Payments Closing Amount (being \$1.5 million as a genuine pre-estimate of VPC's Priority Payment obligations) and indemnifying the Monitor and the Receiver for any liability in respect of the Priority Payments of Validus Parent that are in excess of the Priority Payments Closing Amount (the "Priority Payments Indemnity"), which indemnity shall be secured by the Priority Payments Indemnity Charge (defined below);
 - b) Far North also paying to the Monitor the Administrative Expense Closing Amount (to be finally estimated by the Monitor three business days prior to the Effective Date, which amount shall be held in trust by the Monitor for the benefit of Persons entitled to be paid the Administrative Expense Costs);
 - c) Macquarie releasing the Validus Entities from all amounts outstanding and obligations owing by the Validus Entities to Macquarie pursuant to the Lease Transaction Documents; and
 - d) Macquarie conveying and delivering to IFPC title to the Leased Property held by Macquarie free and clear of all liens, claims and encumbrances on an "as is, where is" basis, pursuant to the RVO.

Far North shall pay any applicable Transfer Taxes in addition to the Credit Bid Consideration.

- **Disclosure Schedule:** The Disclosure Schedule sets out the permitted encumbrances, excluded contracts, excluded assets, letters of credit, employee information and other items which are typically identified in schedules to an agreement of purchase and sale. A redacted version of the employee schedule is being filed with the Court to exclude the identity, compensation or other personal information of the employees listed on that schedule.
- **Excluded Assets:** Include, among other things:
 - a) the Tax Records and Tax Returns;
 - b) any cash, deposits or other amounts owned or in the name of VPC (this includes any return of cash as a result of the return of deposits or cancellation of outstanding letters of credit in VPC's name, which amounts will be used to fund the cost of these proceedings);
 - c) any other assets of VPC that are not Purchased Validus Parent Assets or contemplated in (b) above;
 - d) the Administrative Expense Closing Amount;
 - e) the Excluded Contracts;
 - f) all communication, information or records that are in any way related to: (i) the transactions contemplated by the Transaction Agreement; (ii) the sale of the Purchased Assets; (iii) any Excluded Asset; or (iv) any Excluded Liability;

- g) the equity interests of Validus Power Services Inc., Validus Digital Inc. and Validus Solutions Inc.¹⁰; and
- h) any rights that accrue to Residualco under the transaction documents.

Pursuant to the RVO, and in accordance with the Implementation Steps, the Monitor will assign, transfer and convey the Excluded Assets of the Purchased Entities to Residualco, and the Excluded Assets of the Purchased Entities will be vested in Residualco as of the Effective Date.

- **Assumed Liabilities:** Include, among other things:
 - a) all Post-Filing Claims;
 - b) all liabilities of IFPC under IFPC Note 1, IFPC Note 2 and IFPC Note 3;
 - c) ordinary course liabilities of the Purchased Entities that arise solely and exclusively from events occurring from and after the Effective Date;
 - d) tax liabilities of the Purchased Entities for any period beginning on or after the Effective Time (other than Taxes assessed after the Effective Time that are in respect of transactions or events that occurred prior to the Effective Time) and any Transfer Taxes exigible in respect of the transfer and issuance of the Purchased Assets or any refunds of taxes relating thereto, but excluding any Tax Liability of VPC for which any of the Purchased Entities have joint or several liability whether occurring before or after the Effective Time and whether assessed or not, including, for greater certainty, HST arrears;
 - e) all municipal taxes owing with respect to any real property owned by any of the Purchased Entities which have priority over the security interest of Macquarie pursuant to section 349(3) of the *Municipal Act* (Ontario);
 - f) Intercompany Claims against a Purchased Entity that may be asserted by or on behalf of another Purchased Entity (but excluding any Intercompany Claims set forth in the Disclosure Schedule);
 - g) the Priority Payments of the Purchased Entities; and
 - h) any other liabilities set out in the Disclosure Schedule.
- **Priority Payments Indemnity Charge:** To secure the Priority Payments Indemnity Charge, the Monitor will be granted a super-priority charge (the “Priority Payments Indemnity Charge”) on the Purchased Interests (excluding the Kingston GP Interests and the Kingston LP Interests) pursuant to the RVO. The Priority Payments Indemnity Charge shall terminate automatically upon the later of: (i) the payment in satisfaction of all of the Priority Payments of Validus Parent in excess of the Priority Payments Closing Amount, as such amounts are determined by CRA (if any); and (ii) receipt of confirmation from CRA by Far North, on notice to the Monitor, that no Priority Payments of Validus Parent in excess of the Priority Payment Closing Amount are owing.

¹⁰ Each of which is believed to be inactive and to have no assets.

- **Excluded Liabilities:** All debts, obligations and liabilities of the Validus Entities, or any predecessor thereto, other than the Assumed Liabilities, and specifically including:
 - a) all Intercompany Claims that do not constitute Assumed Liabilities, including any Intercompany Claim asserted by VPC against any Purchased Entity;
 - b) any amounts owing under Receiver's Certificates; and
 - c) any other excluded liabilities set out in the Disclosure Schedule.

Pursuant to the RVO, the Excluded Liabilities of the Purchased Entities will be assigned to and become the sole obligation of Residualco.

- **Employee Matters:** The Assignee shall offer employment to employees it determines, in its sole discretion, on terms and conditions of employment that are substantially similar to and no less favorable than those in effect for each Employee set out in the Disclosure Schedule.

Nothing in the Transaction Agreement prevents the Stalking Horse Bidders from negotiating agreement(s) with bargaining agents who are party to the applicable Collective Agreement(s) regarding the outsourcing of the operating of the Purchased Assets, including the employment of the employees supporting the Purchased Assets post closing, to any Alternative Operator, including NAES Corporation¹¹, which has been in discussions with the Stalking Horse Bidders in connection therewith.

- **Treatment of Letters of Credit:** To the extent required, the Assignee shall have the sole responsibility to have replacement letters of credit (or deposits) issued within 30 days of the Effective Date provided that VPC has no obligation to ensure the existing letters of credit or deposits remain in place after the Effective Date and existing letters of credit or deposits shall not be used as security for obligations after the Effective Date without the consent of the Monitor (who may request security or collateral in connection with providing any such consent).
- **Representations and Warranties:** The Monitor will provide certain limited representations and warranties to the Stalking Horse Bidders, including that the Monitor has the requisite power and authority to enter into the Transaction Agreement and that neither the Receiver nor the Monitor have engaged in any activity resulting in an Encumbrance affecting any of the Purchased Assets, other than a Permitted Encumbrance or any charge created by the Receivership Order, the SISP Approval Order or the RVO. The Disclosure Schedule specifically provides that it was prepared by the Stalking Horse Bidders and the Monitor/ Receiver makes no representation as to accuracy or completeness of any exhibit therein.

¹¹ The Monitor understands that NAES Corporation is a third-party operator that has been in discussions with the Stalking Horse Bidder about potentially overseeing the post-closing operations of the Validus Entities, should the Stalking Horse Bidder be the Successful Bidder.

Each of Macquarie and Far North have also provided representations and warranties, including that the completion of the sale will not require the consent or approval or other action by any Governmental Authority, other than any order made by the Court or Governmental Authority.

None of these representations and warranties survive closing and the Purchased Assets shall be sold and delivered to the Stalking Horse Bidders on an “as is, where is” basis.

- **Outside Date:** December 29, 2023.
- **Conditions to Closing:** Include, among other things:
 - a) **Mutual Conditions**
 - i. the Receivership Order, the Initial Order, the SISP Approval Order and the RVO shall have been issued, entered and shall be Final Orders;
 - ii. the Monitor and the Stalking Horse Bidders shall have agreed upon the Implementation Steps by no later than seven days prior to the Effective Time in accordance with Section 2.3.2 of the Terms and Conditions, and the Validus Entities shall have completed the Implementation Steps that are required to be completed prior to Closing, in form and substance satisfactory to each Stalking Horse Bidder.
 - b) **Buyer Conditions**
 - i. from the date of the Offer Letter, there shall not have occurred any change effect, event or development that resulted in, or would reasonably be expected to result in, a Material Adverse Effect;
 - ii. each of the counterparties set forth on Part B of Exhibit 3.1(f) of the Terms and Conditions shall have confirmed in writing, to the Vendors, the Assignee and Macquarie that it will not exercise any termination rights under its Continuing Contracts solely as a result of the transactions contemplated by the Transaction Agreement;
 - iii. such number of Employees that is determined by the Assignee, shall have accepted offers of employment from the Assignee or a Purchased Entity (at the Assignee's election) or, if the Assignee is successful in negotiating agreements with the bargaining agents who are parties to Collective Agreements under which the required contracting out is permitted, NAES Corporation (or an alternative third-party power plant operator, as determined by the Assignee), such offers (conditional upon the Stalking Horse Bid being selected as the Successful Bid) to have been accepted no later than seven Business Days following the Qualified Bid Deadline; and
 - iv. the Monitor shall have accepted and executed the Transaction Agreement.

- c) Seller Conditions
 - i. as of immediately prior to the Closing, Far North shall have sufficient funds to pay the Administrative Expense Closing Amount and the Priority Payments Closing Amount.
- **Termination:** The Stalking Horse Offer can be terminated by Macquarie:
 - a) if the Monitor, Macquarie and Far North mutually agree in writing;
 - b) if the Stalking Horse Offer is not selected as the Successful Bid (as determined pursuant to the SISP) or if the Court otherwise approves a transaction other than the Stalking Horse Offer, subject to certain restrictions;
 - c) if the RVO is not granted by December 15, 2023;
 - d) if the Effective Time has not occurred by December 29, 2023 or such later date as agreed to by the Monitor, Macquarie and Far North;
 - e) upon the appointment of a trustee in bankruptcy or similar official by or in respect of any Validus Entity or any of the property of any Validus Entity, other than with the prior written consent of Macquarie;
 - f) upon the termination, dismissal or conversion of the Receivership Proceedings or the CCAA Proceedings; or
 - g) upon denial of the SISP Order or the RVO (or if any such order is stayed or varied without the consent of each of Macquarie and Far North).

4.6 HST Considerations

1. As set out above and in the Stevens Affidavit, when IFPC sold the Leased Property to Macquarie, Macquarie paid approximately \$6 million to IFPC in respect of HST payable on the Leased Property (the "Purchase Price HST"). IFPC did not remit the Purchase Price HST to CRA.
2. As previously disclosed to the Court, one of the consequences of the commencement of the CCAA proceeding is that the obligation of IFPC to pay the Purchase Price HST will be treated as an unsecured claim and, pursuant to the RVO, vest in ResidualCo.
3. At the hearing for the CCAA application, counsel for the Validus Entities expressed concern about the treatment of certain post filing input tax credits ("ITCs") which may otherwise serve to reduce the Purchase Price HST, which is presumably a concern given the potential personal liability for directors of IFPC. Although CRA had been served with the CCAA application, it did not appear or make submissions at that hearing.

4. In that regard, the Monitor has considered the proposed tax treatment under the Stalking Horse Offer and notes the following:
 - a) although the Monitor is unaware whether any such applications for ITCs were ever filed by the Validus Entities' management, to the extent that IFPC is entitled to ITCs in respect of HST on pre-filing base rent payments that were actually made by IFPC to Macquarie under the Lease Agreement, any such entitlements are treated as an Excluded Asset under the Transaction Agreement and will be vested in ResidualCo;
 - b) any HST paid by IFPC in respect of the transaction contemplated by the Stalking Horse Offer (the payment of which will be satisfied through the delivery of IFPC Note 3) is considered to be a post-filing payment of HST and, correspondingly, any ITCs generated as a result of such payment of HST cannot be set off against the pre-filing Purchase Price HST obligation; and
 - c) any ITCs generated from the payment of HST on obligations of VPC during the Receivership or CCAA period will continue to be assets of VPC or ResidualCo, but also cannot be set off against the pre-filing Purchase Price HST.
5. Based on the foregoing, the Monitor believes that the treatment of any entitlements to ITCs under the transaction and within the course of these proceedings is appropriately allocated. Based on conversations with counsel for the Validus Entities, the Monitor understands that the Validus Entities (or their former management) may object to the tax treatment under the Stalking Horse Offer. In the Monitor's view, it is premature for this issue to be addressed in connection with the SISP hearing and is appropriately heard in connection with any motion for an RVO, in the event that the Stalking Horse Offer is the ultimate successful bid under the SISP.

4.7 The Purchased Validus Parent Assets

1. As set out above, the security given to Macquarie by VPC is limited to the pledge of shares/units of IFPC, Kap, Bay, Kingston GP and Kingston LP. The Macquarie security, as it relates to VPC, does not attach to other assets of VPC, including the Purchased Validus Parent Assets. The Monitor has considered whether sufficient consideration is being provided for such assets (or any other assets of VPC that may be added to the Disclosure Schedule in accordance with the Terms and Conditions).
2. In this regard:
 - a) the Monitor is of the view that it is appropriate for all assets subject to these proceedings, including the Purchased Validus Parent Assets, be made available for sale under the SISP;
 - b) there is considerable consideration and benefit being provided for under the proposed Stalking Horse Offer over and above the release of the Macquarie debt and security, including, without limitation, the ongoing employment of VPC employees and assumption of associated liabilities, the payment of the Priority Payments Closing Amount, the granting of the Priority Payments Indemnity (and Priority Payments Indemnity Charge) and the funding of the Administrative Expense Closing Amount;
 - c) the Monitor's counsel has observed there is unlikely to be material value to VPC in respect of the counterclaim of VPC in the Hut 8 Litigation;

- d) the Monitor is unaware of any material value in Hosting, which is inactive and has no assets, to the Monitor's knowledge;
- e) the TransCanada Contract, although held in the name of VPC, is used in the course of the business of Bay at that plant (and available to Kap and IFPC) and is unlikely to be monetized on a standalone basis and, based on the obligations thereunder, is a cost to the VPC's estate (and thus these proceedings), and Far North is required to replace a cash deposit held by TransCanada with respect to the TransCanada Contract that has the potential to result in a return of the existing deposit to VPC; and
- f) the Transaction Agreement requires an allocation of the consideration payable among the Purchased Assets and provides that the consideration payable for the Purchased Validus Parent Assets shall be paid and satisfied by the assumption of certain of the Priority Payments of Validus Parent.

4.8 Bid Protections

1. The Break Fee Agreement includes an Expense Reimbursement of up to \$1 million in cash for reasonable out-of-pocket third-party expenses incurred by Macquarie in connection with the Transaction Agreement and/or the transactions contemplated thereby, and a Break-Up Fee of \$1.26 million in cash.
2. The Expense Reimbursement and Break-Up Fee are intended to compensate Macquarie and Far North for their significant expenditures of time and money and their agreement to act as the stalking horse bidders, including the preparation of the Stalking Horse Offer and in performing due diligence which will be made available in the VDR for the benefit of all Potential Bidders.
3. The Monitor is of the view that the benefits of a Stalking Horse Offer, including the certainty it provides to stakeholders, such as employees and the IESO, that the Validus Entities' business will continue on a going concern basis warrants payment of the Bid Protections.
4. The Bid Protections are to be payable out of the sale proceeds of the Successful Bid, if it is not the Stalking Horse Offer, concurrently with the consummation of that transaction. The Break Fee Agreement provides that the Monitor will obtain, in the SISP Approval Order, a Court-ordered charge in favor of Macquarie in the full amount of the Bid Protections to secure the payment of the Bid Protections, which charge will crystallize in the event that the Court approves an alternative transaction as the Successful Bid.
5. The maximum amount of the Bid Protections (\$2.26 million) represents approximately 3.85% of the Credit Bid Consideration before taking into account certain amounts of the Credit Bid Consideration being provided for under the Stalking Horse Offer such as the payment of the Administrative Expense Closing Amount. The Monitor compared the Bid Protections to other bid protection amounts approved by Canadian courts in insolvency proceedings commenced between 2020 to 2023. The comparison is provided in Appendix "J". Based on this analysis, the Monitor is of the view that the Bid Protections are within the range of reasonableness when compared to the bid protections approved in other restructuring proceedings, particularly given the fees and costs incurred by Macquarie and Far North in connection with this transaction.

4.9 Considerations Regarding the Stalking Horse Offer

1. The Monitor considered whether the Stalking Horse Bidders' offer warrants it being a stalking horse bid, as opposed to the Stalking Horse Bidders simply participating as bidders in the SISP. The Monitor's considerations included that the Stalking Horse Offer provides a degree of certainty to the Validus Entities' employees and other stakeholders that there is a going-concern solution for the business. It is principally for this reason that the Monitor pursued negotiations of the Stalking Horse Offer notwithstanding that those negotiations took longer than anticipated.
2. KSV, as Interim Receiver, advised in its report dated August 9, 2023 that the Companies' employees had significant concerns about the role of former management, which led to frustration and a lack of confidence in the business. The Interim Receiver advised that stability was required among the workforce so that employees do not look for new employment. Since the start of these proceedings, the Validus Entities have lost a small number of employees. The remaining employees have communicated to the Monitor that they are encouraged by the steps taken in these proceedings to date and were encouraged to learn that a stalking horse bid was being prepared by a reputable prospective purchaser.
3. Given the highly specialized and regulated nature of the Validus Entities' business, the employees are integral to facilitating the continued operation of the power plants and to address regulatory reporting and IESO requirements. Preserving the employee base is also important given the small size of the communities in which the plants operate, and therefore the challenges finding replacement staff. The Monitor understands that the IESO may levy significant penalties if certain standards are not met at the plants, including, for example, if the Iroquois Falls and/or the Kingston plants are unable to provide energy capacity to the system if called upon by IESO. The employees are also able to assist with due diligence requests from Potential Bidders and Potential Bidders may not participate in the SISP if they are of the view that there are currently insufficient employees to maintain and operate the plants.
4. The Stalking Horse Bidders have invested significant resources and undertaken extensive diligence preparing the Stalking Horse Offer and negotiating the transaction with the Monitor. Macquarie and Hut 8 are both sophisticated parties that are familiar with the Validus Entities' business, or have affiliates that operate in the energy sector.
5. As noted in the Pre-Filing Report, the Validus Entities need to participate in an annual capacity auction conducted by IESO, which will enable it to participate in IESO's capacity market and generate standby revenues. These standby revenues are currently the sole source of revenue for the Validus Entities. The Monitor is currently taking steps on behalf of the Validus Entities, in consultation with the IESO, to participate in the upcoming auction, which has a bid deadline of November 29, 2023. In the Monitor's opinion, the Validus Entities are more likely to be successful in the capacity auction process if there is a stalking horse bidder as it provides a degree of certainty to IESO that there will be a going concern solution for the business. There are milestones that the Monitor, on behalf of the Validus Entities, must achieve to preserve the ability of the Validus Entities or their successors to participate in the auction. Identifying a buyer in accordance with the timeline of the auction schedule is important to provide certainty and continuity for the IESO. The Monitor understands that missing this annual auction would preclude the Validus Entities from continuing to act as a participant in the IESO capacity auction market starting in the spring of 2024, which could significantly impair the value of the Property to the detriment of all stakeholders as the next IESO annual capacity auction will not take place until late 2024.

6. In respect of the Kingston plant, the deadline to apply for a long term IESO contract referred to as a “LT1 RFP Proposal” is December 12, 2023. The Monitor has been advised that being awarded this contract by IESO can generate a significant revenue stream from 2027 to 2040 relative to the current annual contract with the IESO. Given that the proposal is a substantial workstream that will require any purchaser to prepare a comprehensive business plan, it is critical for the SISP to commence at this time so that purchasers can plan for and prepare this IESO submission contemporaneously with performing diligence to submit a bid for the Kingston plant. Mr. Forget and employees at the Kingston plant are advancing the application process contemporaneously with the SISP so that a purchaser has the ability to pursue this opportunity.
7. Most importantly, in accepting the Stalking Horse Offer, the Monitor was mindful of the results of the EY Sale Process and that the Stalking Horse Offer is for an amount well in excess of the purchase price paid by VPC for each plant. In that regard, prior to the appointment of the Receiver, the Validus Entities took the position that the Receivership Order should not be granted and that the Validus Entities’ business could be stabilized during the interim receivership proceedings. The Validus Entities advised that Macquarie’s position was well secured, the power plants are extremely valuable, VPC was able to purchase the power plants at very low prices in comparison to their potential value and that the value of the plants have increased due to significant changes in the energy market. This view was based on an appraisal of the Iroquois Falls plant dated November 8, 2022 by Kroll Canada Limited (“Kroll”), which provided an enterprise value of IFPC in the range of \$157 million to \$215 million (midpoint of \$189 million). Notwithstanding this appraisal, the EY Sale Process did not result in any material unconditional offer for IFPC, which is considered one of the two most valuable plants. As noted above, the Monitor is preparing a list of potential bidders, including the parties that participated in the EY Sale Process. The Monitor is of the view that the SISP will provide the bidders that participated in the EY Sale Process with an additional opportunity to consider an acquisition and that the SISP will provide a clear indication of the current market value of the Property. In addition, nothing precludes Mr. Shortt or his affiliates from making a bid for the Property in the SISP. The Monitor expects to provide the Court with further details regarding the value of the Property when it seeks approval of a Successful Bid. The Monitor is not seeking approval of the Stalking Horse Offer at this time, but rather is seeking authorization to enter into the Stalking Horse Offer for purposes of conducting the SISP, given that it provides for a purchase price well in excess of the value paid by VPC for each plant in 2021/2022, being approximately \$45 million.
8. For the reasons discussed above, the Monitor is of the view that the degree of stability and certainty provided by a stalking horse in this situation will assist to complete a going-concern transaction for the Validus Entities’ business within a reasonable amount of time.

4.10 SISP Recommendation

1. The Monitor recommends that this Court issue the SISP Approval Order, among other things, approving the Stalking Horse Offer and the Bid Protections Charge for the following reasons:
 - a) stalking horse sale processes are a recognized mechanism in restructuring processes to maximize recoveries, while creating stability and certainty of a going-concern transaction, which is particularly important as it relates to employees and for the Validus Entities’ participation in IESO’s upcoming capacity auction;

- b) the Stalking Horse Offer is contemplated to preserve employment for the Validus Entities' employees on terms and conditions that are substantially similar to existing employment terms;
- c) the SISP provides an opportunity to complete one or more transactions with greater value than the Stalking Horse Offer, if one is identified, which benefits all stakeholders;
- d) it is in the best interests of the Validus Entities' stakeholders that the Stalking Horse Offer be preserved in order to have the opportunity to maximize value and to protect downside risk in the event that a superior offer is not submitted. As noted above, there is a risk of employee attrition without the degree of certainty provided by the Stalking Horse Offer, which may significantly impair the value of the Validus Entities;
- e) in the Monitor's view, the 35-day bid period duration of the SISP is sufficient in the circumstances to allow interested parties to perform diligence and submit offers. In addition, the SISP has been telegraphed to the market since August 11, 2023, when Hut 8 issued a press release announcing that it executed the Transaction Support Agreement. The Monitor has received several unsolicited enquiries from prospective purchasers resulting from these proceedings, the EY Sale Process and the Hut 8 press release. The Monitor also notes that the duration of the SISP reflects a balancing between ensuring that sufficient time is available to attempt to identify a superior transaction, the upcoming IESO auction timelines/requirements and the costs of conducting this proceeding for a further period of time (which excess costs would be borne by stakeholders). The Monitor also notes that any interested parties will have the benefit of using the Template PSA to submit an offer. Further, the Qualified Bid Deadline can be extended by the Monitor by a total of up to 14 days, if necessary;
- f) the Monitor is of the view that the Bid Protections, which represent approximately 3.85% of the Credit Bid Consideration under the Stalking Horse Offer, are reasonable in the circumstances and will not discourage interested parties from submitting offers in the SISP;
- g) the Stalking Horse Offer provides a mechanism to pay the Priority Payments of the Purchased Entities and the Priority Payments of Validus Parent, which include statutory deemed trust claims for unremitted source deductions;
- h) the SISP provides flexibility for Prospective Bidders to submit bids for certain of the plants/assets, and for those bids, together with the Stalking Horse Offer, to be the Successful Bid; and
- i) the consideration contemplated by the Stalking Horse Offer significantly exceeds the aggregate value that the Validus Entities paid for the four plants in 2021/2022, being \$45 million. The value is also supported by the results of the EY Sale Process, which failed to generate any unconditional offers for the IFPC plant. The Kap and Kingston plants are not presently operating and are in need of significant repair and are believed to have less value than IFPC.

5.0 Unknown Contract Bar Process

1. Given the incomplete and unreliable nature of the Validus Entities' books and records, the proposed SISP Approval Order provides for a process to identify any unknown contract counterparties for the purposes of notifying any such party that an RVO will be sought at the conclusion of the SISP.
2. The proposed Unknown Contract Bar Process is summarized as follows:
 - a) a list of known contracts (the "Known Contract List") will be posted on the Monitor's website, which will include the contract counterparty and applicable contract, with the exception of employee agreements;
 - b) counterparties appearing on the Known Contract List will receive notice of the RVO, including how their contract is going to be treated in the context of the Successful Bid;
 - c) to identify whether there are any unknown excluded contracts/liabilities (the "Unknown Contracts") that would be affected by an RVO, the Monitor will:
 - post notices in the Globe and Mail (National Edition) and other local publications requesting that any party who believes they have a contract with one of the Validus Entities to confirm they are on the Known Contract List; and
 - require that any contract counterparty contact the Monitor by no later than November 28, 2023 (the "Unknown Contract Bar Date") to advise of the contract and provide an executed copy of that contract. Any contract counterparties identified through this process will receive notice of the hearing seeking the RVO to be sought at the conclusion of the SISP.
 - d) any party who does not respond by the Unknown Contract Bar Date will be deemed to be forever barred from asserting that it did not receive adequate notice of any treatment of any contractual right or claim in connection with these proceedings. Those parties would be able to assert claims against ResidualCo at the appropriate time.
3. The Monitor is cognizant of the notice and service issues raised by Canadian Courts in the context of RVO approval motions. The Monitor believes the proposed Unknown Contract Bar Process provides for a fair and reasonable process, well in advance of an RVO approval motion in these proceedings, to identify any unknown contract counterparties so that any such party can receive notice of an RVO approval motion and understand the proposed treatment of their contract(s), while providing certainty to the successful bidder in the SISP. The Monitor believes the proposed process is particularly appropriate in these circumstances given the state of the Validus Entities' books and records, including the risk that there may be unknown contracts affected by an RVO, should one be granted at the conclusion of these proceedings.

6.0 Receiver's Borrowings

1. The Receivership Order authorized the Receiver to borrow monies up to the principal amount of \$1 million (the "Maximum Borrowing Amount"), which borrowings (plus interest and fees) were secured by a Receiver's Borrowing Charge, subordinate only to the Receiver's Charge. Both of these Court-ordered charges were recognized and preserved in these CCAA proceedings pursuant to paragraph 3 of the Initial Order.
2. As a result of certain unanticipated and contingent costs, including property insurance renewal premiums, reimbursement to employees of certain payroll related items outstanding as of the date of the Receivership Order and increased professional fees as a result of the complexity of this transaction, it is likely that an increase to the Maximum Borrowing Amount will be required in due course.
3. The Monitor has worked with Macquarie to prepare the Revised Cash Flow Forecast, which reflects the Validus Entities are projected to require borrowings under Receiver's Certificates in the amount of approximately \$1.3 million to December 31, 2023, being the current proposed expiry of the CCAA stay of proceedings, as discussed below. The Monitor is recommending the Receiver's Borrowings Charge be increased from \$1 million to \$1.5 million to provide some additional flexibility should actual cash flow requirements exceed the Revised Cash Flow Forecast.
4. Based on the Monitor's review of the Revised Cash Flow Forecast, the probable and hypothetical assumptions appear reasonably supported. As stated in the scope and terms of reference to this Report, the Revised Cash Flow Forecast is based on assumptions regarding future events. Actual events are likely to vary from forecasted results and such variances may be material. The Revised Cash Flow Forecast has been prepared solely for the purpose of this Report and is not appropriate for any other purpose. The Validus Entities' and the Monitor's statutory reports on the Revised Cash Flow Forecast are collectively attached as Appendix "K".
5. The Monitor understands that Macquarie is prepared to fund these proceedings up to a maximum amount of \$1.5 million in accordance with the Revised Cash Flow Forecast provided the proposed increase to the Maximum Borrowing Amount and corresponding increase to the Receiver's Borrowings Charge is granted by the Court.

7.0 Extension of the Stay of Proceedings

1. The Monitor recommends that the Court issue an order granting an extension of the stay of proceedings from December 1 to December 31, 2023 for the following reasons:
 - a) as the Monitor is providing the overall supervision for the business during these proceedings, it is its view that the good faith and due diligence standard should be based on its conduct during these proceedings. The Monitor (and Receiver) are of the view that they have advanced these proceedings in good faith and with due diligence and that they are carrying out their obligations in accordance with the orders issued in these proceedings;

- b) an extension will provide sufficient time for the Monitor to conduct the proposed SISP, subject to the SISP Approval Order being issued by the Court. Without the extension, it is likely that a further motion will be required in November for the sole purpose of extending the stay of proceedings beyond December 1, 2023, the date on which the stay presently expires. The Monitor believes that it will reduce costs to address the extension of the stay of proceedings on the return of this motion;
- c) subject to the proposed increase to the Receiver's Borrowings Charge, sufficient funding is projected to be available to the Validus Entities to fund these proceedings; and
- d) terminating the stay of proceedings on December 1, 2023 may result in enforcement actions by creditors and other parties, as well as significant diminution in value to the detriment of stakeholders resulting from the lost opportunity to complete a going-concern transaction.

8.0 Conclusion and Recommendation

1. Based on the foregoing, the Monitor respectfully recommends that this Honourable Court grant the relief sought by the Monitor in section 1.1.1(f) of this Report.

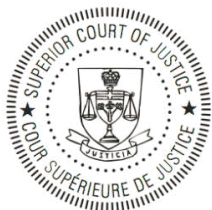
* * *

All of which is respectfully submitted,

KSV Restructuring Inc.

**KSV RESTRUCTURING INC.
SOLELY IN ITS CAPACITY AS MONITOR IN THE CCAA PROCEEDINGS OF
VALIDUS POWER CORP., IROQUOIS FALLS POWER CORP., BAY POWER CORP.,
KAP POWER CORP., VALIDUS HOSTING INC.,
AND KINGSTON COGEN GP INC.
AND NOT IN ITS PERSONAL CAPACITY**

Appendix “A”



Court File No. CV-23-00703754-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE) THURSDAY, THE 10th
JUSTICE OSBORNE) DAY OF AUGUST, 2023

B E T W E E N:

MACQUARIE EQUIPMENT FINANCE LIMITED

Applicant

- and -

**VALIDUS POWER CORP., IROQUOIS FALLS POWER CORP., BAY
POWER CORP., KAP POWER CORP., VALIDUS HOSTING INC.,
KINGSTON COGEN LIMITED PARTNERSHIP AND
KINGSTON COGEN GP INC.**

Respondents

APPLICATION UNDER SECTION 243(1) OF THE *BANKRUPTCY AND
INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED; AND SECTION 101 OF
THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED

ORDER
(Appointing Receiver)

THIS APPLICATION made by Macquarie Equipment Finance Ltd. (the “**Applicant**”) for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the “**CJA**”) appointing KSV Restructuring Inc. (“**KSV**”) as receiver and manager (in such capacities, the “**Receiver**”) without security, of all of the assets, undertakings and properties

APPOINTMENT

2. **THIS COURT ORDERS** that pursuant to section 243(1) of the BIA and section 101 of the CJA, KSV is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtors acquired for, or used in relation to a business carried on by the Debtors, or any of them, including, without limitation, the real property known described in Schedule “A” hereto (the “**Property**”).

RECEIVER’S POWERS

3. **THIS COURT ORDERS** that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property, including, without limitation the Debtors’ bank accounts wherever located;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of the Debtors, or any of them, including the powers to enter into any agreements, incur any obligations in the ordinary course of business in connection with the Property, cease to carry on all or any part of the business, reject or cease to perform any contracts of the Debtors, or any of them, or in respect of the Property;
- (d) to engage construction managers, project managers, contractors, subcontractors, consultants, appraisers, agents, real estate brokers, experts, auditors, accountants,

managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;

- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtors, or any of them, or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtors, or any of them, and to exercise all remedies of the Debtors, or any of them, in collecting such monies or accounts, including, without limitation, to enforce any security held by the Debtors, or any of them;
- (g) to settle, extend or compromise any indebtedness owing to the Debtors, or any of them;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, including, without limitation, in respect of construction permits and any requirements related thereto, whether in the Receiver's name or in the name and on behalf of the Debtors, or any of them, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtors, or any of them, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (j) to investigate, and report to this Court on, intercompany payments, transactions and other arrangements between any of the Debtors and other Persons (as defined below), including without limitation the Validus Group (as defined below), that

appear to the Receiver to be out of the ordinary course of business. All Persons shall be required to provide any and all information and documents related to the Debtors requested by the Receiver in connection with such investigations;

- (k) to market any or all of the Property, including advertising and soliciting offers in respect of any and all such Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion, and with the Applicant's consent, may deem appropriate;
- (l) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
 - (i) without the approval of this Court in respect of any transaction not exceeding \$500,000, provided that the aggregate consideration for all such transactions does not exceed \$1,000,000; and
 - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required;

- (m) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property in these proceedings;
- (n) to report to, meet with and discuss with such affected Persons as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;

8. **THIS COURT ORDERS** that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days notice to such landlord and any such secured creditors.

NO PROCEEDINGS AGAINST THE RECEIVER

9. **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTORS OR THE PROPERTY

10. **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtors, or any of them, or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtors, or any of them, or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

11. **THIS COURT ORDERS** that all rights and remedies against the Debtors, or any of them, the Receiver, or affecting the Property, including, without limitation, licences and permits, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall: (i) empower the Receiver or the Debtors, or any of them, to carry on any business which the Debtors, or any of them, is not lawfully entitled to carry on; (ii) exempt the Receiver or the

one or more sales of the Property (each, a “Sale”). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtors, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

18. **THIS COURT ORDERS** that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, “**Possession**”) of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the “**Environmental Legislation**”), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver’s duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER’S LIABILITY

19. **THIS COURT ORDERS** that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any

gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

20. **THIS COURT ORDERS** that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the “**Receiver’s Charge**”) on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver’s Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

21. **THIS COURT ORDERS** that the Receiver and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

22. **THIS COURT ORDERS** that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

23. **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow from the Applicant by way of a credit facility, such monies from time to time as it may

consider necessary or desirable, provided that the outstanding principal amount does not exceed \$1,000,000 (or such greater amount that is acceptable to the Applicant and as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the “**Receiver’s Borrowings Charge**”) as security for the payment of the monies borrowed, together with interest, fees and charges thereon, in priority to all security interests, trusts (including, without limitation, deemed trusts), liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver’s Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

24. **THIS COURT ORDERS** that neither the Receiver’s Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

25. **THIS COURT ORDERS** that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule “B” hereto (the “**Receiver’s Certificates**”), as modified to reflect the terms of the credit facility between the Receiver and Applicant referred to in paragraph 23, for any amount borrowed by it pursuant to this Order.

26. **THIS COURT ORDERS** that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver’s Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver’s Certificates.

SERVICE AND NOTICE

27. **THIS COURT ORDERS** that The Guide Concerning Commercial List E-Service (the “**Protocol**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <https://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice->

the operation of the Debtors and/or for any matter concerning safe care and operation of the Debtors; provided that any such payment that exceeds \$25,000, or where the aggregate of all such payments exceeds \$200,000 shall require the prior written consent of the Applicant.

GENERAL

31. **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

32. **THIS COURT ORDERS** that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy or monitor of the Debtors, or any of them.

33. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

34. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

35. **THIS COURT ORDERS** that the Applicant shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Receiver from the estates of the Debtors, or any of them, with such priority and at such time as this Court may determine.

PIN 65337-0373 (LT)

PCL 9070 SEC NEC; LOCATION RY 357 TEEFY COMPOSED OF THOSE PARTS OF THE BED OF THE ABITIBI RIVER LYING IN FRONT OF LT 11, CON 3, PT 1, 6R6853; DISTRICT OF COCHRANE

Kap Power Corp.

Firstly:

PIN 65095-0051 (LT)

PCL 12700 SEC CC; PT LT 24 CON 11 O'BRIEN PT 2, 6R6749 T/W PT 3, CR548 AS IN C478024; TOWN OF KAPUSKASING

Secondly:

PIN 65095-0052 (LT)

PCL 12927 SEC CC; PT LT 23 CON 10 O'BRIEN PT 1, 6R5800 T/W PARTS 1 & 2, 6R6731 AS IN C452347 T/W PT 3, 6R6731 AS IN C451853 T/W PARTS 4 & 5, 6R6731 AS IN C451851 T/W PARTS 3 TO 7, 6R6749 AS IN C453701 T/W PT 3, CR548 AS IN C478024; TOWN OF KAPUSKASING

Bay Power Corp.

PIN 49127-0021 (LT)

PCL 18734 SEC WF; PT LT 21 CON 2 WIDDIFIELD PT 7 & 8, 36R9382 T/W PT 1, 36R9384 AS IN LT332823, PT 1, 36R9381 AS IN LT332824, PT 2, 36R9381 AS IN LT332826, PT 2, 36R9384 AS IN LT332902, PT 3 & 9, 36R9381 AS IN LT332885, PT 7 & 8, 36R9381 AS IN LT333337, PT 4-6, 36R9381 AS IN LT339664, PT 2, 36R9382 & PT 1, 2, 3 & 5, 36R10374 AS IN LT366707, PT 1-3, 36R10375 AS IN LT366710; T/W LT366708 & LT366709; NORTH BAY ; DISTRICT OF NIPISSING

Kingston Cogen GP Inc.

Firstly:

PIN 45132-0375 (LT)

PT LT 23 CON 1 ERNESTOWN PT 1 29R6737; TOGETHER WITH AN EASEMENT AS IN LA69824; TOGETHER WITH AN EASEMENT AS IN LA208637; TOGETHER WITH AN EASEMENT AS IN LA208644; TOGETHER WITH AN EASEMENT AS IN LA210426; TOGETHER WITH AN EASEMENT AS IN LA210734; TOGETHER WITH AN EASEMENT AS IN LA210736; TOGETHER WITH AN EASEMENT AS IN LA210738; TOGETHER WITH AN EASEMENT OVER PTS 1 - 49 29R9849 UNTIL 2025/12/31 AS IN LX37160;

SCHEDULE “B”

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that KSV Restructuring Inc., the receiver (the “**Receiver**”) of the assets, undertakings and properties of Validus Power Corp., Iroquois Falls Power Corp., Bay Power Corp., Kap Power Corp., Validus Hosting Inc., Kingston Cogen Limited Partnership and Kingston Cogen GP Inc. acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the “**Property**”) appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated the 10th day of August, 2023 (the “**Order**”) made in an action having Court file number _____, has received as such Receiver from the holder of this certificate (the “**Lender**”) the principal sum of \$ _____, being part of the total principal sum of \$ _____, which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the ___ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

MACQUARIE EQUIPMENT FINANCE LIMITED v VALIDUS POWER CORP. et al.

Court File No. CV-23-00703754-00CL

IN THE MATTER OF AN APPLICATION UNDER SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3, AS AMENDED; AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, C. C.43, AS AMENDED

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at TORONTO

ORDER
(Appointing Receiver)

Torys LLP

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Toronto, ON M5K 1N2
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Lawyers for Macquarie Equipment Finance Limited,
the Applicant

Appendix “B”



SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

COUNSEL SLIP / ENDORSEMENT

COURT FILE NO.: CV-23-00703754-00CL

DATE: August 18th 2023

REGISTRAR: Tiana Khan

NO. ON LIST: 4

TITLE OF PROCEEDING: **MACQUARIE EQUIPMENT FINANCE LIMITED v VALIDUS
POWER CORP. et al**

BEFORE JUSTICE: **Justice Osborne**

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party, Crown:

Name of Person Appearing	Name of Party	Contact Info
NOEL, MICHAEL	MACQUARIE EQUIPMENT FINANCE LIMITED	mnoel@torys.com (416) 865-7378
BOMHOF, SCOTT	MACQUARIE EQUIPMENT FINANCE LIMITED	sbomhof@torys.com (416) 865-7370
OPOLSKY, JEREMY	MACQUARIE EQUIPMENT FINANCE LIMITED	jopolsky@torys.com (416) 865-8117
BUTT, ALINA	MACQUARIE EQUIPMENT FINANCE LIMITED	abutt@torys.com (416) 865-7973

For Defendant, Respondent, Responding Party, Defence:

Name of Person Appearing	Name of Party	Contact Info
FRANCIS, CATHERINE LOUIS	VALIDUS POWER CORP.	cfrancis@mindengross.com (416) 369-4137

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info

HARRISON, BRETT	CIBC - Canadian Imperial Bank of Commerce	Brett.harrison@mcmillan.ca (416) 865-7932
COBB, EVAN	Counsel KSV Restructuring Inc. (Proposed Receiver)	Evan.cobb@nortonrosefulbright.com (416) 216-1929
SIERADZKI, DAVID	KSV Restructuring Inc. (Proposed Receiver)	dsieradzki@ksvadvisory.com 416-932-6030
KOFMAN, BOBBY	KSV Restructuring Inc. (Proposed Receiver)	bkofman@ksvadvisory.com (416) 932-6228

ENDORSEMENT OF JUSTICE OSBORNE:

1. The Applicant, Macquarie Equipment Finance Limited, seeks the appointment of a receiver over the properties and assets of the Respondents/Debtors pursuant to both section 243 of the *Bankruptcy and Insolvency Act* (BIA) and section 101 of the *Courts of Justice Act* (CJA). The Respondents oppose the appointment of a full Receiver today, but consent to the continuation of the previously ordered interim receivership.
2. This Application originally came on before Kimmel, J. on August 2, 2023 at which time an interim receivership order (limited in scope) was made, and the matter was adjourned until the hearing of this Application on August 10, 2023, to give the Respondents a full opportunity to file materials and respond.
3. Defined terms in this Endorsement have the meaning given to them in the motion materials, the August 2 Endorsement, and/or the First Report of the Interim Receiver dated August 9, 2023, unless otherwise stated.
4. At the conclusion of the two hour hearing, I granted the relief sought by the Applicant in the form of a full receivership, following which I signed and released an order that had been approved by the parties as to form and content. It was important to the parties that the Application be disposed of promptly, since the interim receivership expired on the day of the hearing. I indicated that reasons would follow. These are those reasons.
6. The test for the appointment of a receiver pursuant to section 243 of the *BIA* or section 101 of the *CJA* is not in dispute. Is it just or convenient to do so?
7. In making a determination about whether it is, in the circumstances of a particular case, just or convenient to appoint a receiver, the Court must have regard to all of the circumstances, but in particular the nature of the property and the rights and interests of all parties in relation thereto. These include the rights of the secured creditor pursuant to its security: *Bank of Nova Scotia v. Freure Village on the Clair Creek*, 1996 O.J. No. 5088, 1996 CanLII 8258.
8. Where the rights of the secured creditor include, pursuant to the terms of its security, the right to seek the appointment of a receiver, the burden on the applicant is lessened: while the appointment of a receiver is generally an extraordinary equitable remedy, the courts do not so regard the nature of the remedy where the relevant security permits the appointment and as a result, the applicant is merely seeking to enforce a term of an agreement already made by both parties: *Elleway Acquisitions Ltd. v. Cruise Professionals Ltd.*, 2013 ONSC 6866 at para. 27. However, the presence or lack of such a contractual entitlement is not determinative of the issue.
9. The appointment of a receiver becomes even less extraordinary when dealing with a default under a mortgage: *BCIMI Construction Fund Corporation et al v. The Clover on Yonge Inc.*, 2020 ONSC 1953 at paras. 43-44.

10. As I observed in *Canadian Equipment Finance and Leasing Inc. v. The Hypoint Company Limited*, 2022 ONSC 6186, the Supreme Court of British Columbia, citing *Bennett on Receivership*, 2nd ed. (Toronto, Carswell, 1999) listed numerous factors which have been historically taken into account in the determination of whether it is appropriate to appoint a receiver and with which I agree: *Maple Trade Finance Inc. v. CY Oriental Holdings Ltd.*, 2009 BCSC 1527 at para. 25):
- a. whether irreparable harm might be caused if no order is made, although as stated above, it is not essential for a creditor to establish irreparable harm if a receiver is not appointed where the appointment is authorized by the security documentation;
 - b. the risk to the security holder taking into consideration the size of the debtor's equity in the assets and the need for protection or safeguarding of assets while litigation takes place;
 - c. the nature of the property;
 - d. the apprehended or actual waste of the debtor's assets;
 - e. the preservation and protection of the property pending judicial resolution;
 - f. the balance of convenience to the parties;
 - g. the fact that the creditor has a right to appointment under the loan documentation;
 - h. the enforcement of rights under a security instrument where the security-holder encounters or expects to encounter difficulties with the debtor;
 - i. the principle that the appointment of a receiver should be granted cautiously;
 - j. the consideration of whether a court appointment is necessary to enable the receiver to carry out its duties efficiently;
 - k. the effect of the order upon the parties;
 - l. the conduct of the parties;
 - m. the length of time that a receiver may be in place;
 - n. the cost to the parties;
 - o. the likelihood of maximizing return to the parties; and
 - p. the goal of facilitating the duties of the receiver.
11. How are these factors to be applied? The British Columbia Supreme Court put it, I think, correctly: "these factors are not a checklist but a collection of considerations to be viewed holistically in an assessment as to whether, in all the circumstances, the appointment of a receiver is just or convenient: *Pandion Mine Finance Fund LP v. Otso Gold Corp.*, 2022 BCSC 136 at para. 54).
12. It is not essential that the moving party establish, prior to the appointment of a receiver, that it will suffer irreparable harm or that the situation is urgent. However, where the evidence respecting the conduct of the debtor suggests that a creditor's attempts to privately enforce its security will be delayed or otherwise fail, a court-appointed receiver may be warranted: *Bank of Montreal v. Carnival National Leasing Ltd.*, 2011 ONSC 1007 at paras. 24, 28-29.
13. Accordingly, is it just or convenient to appoint a receiver in the particular circumstances of this case?

14. As stated, in my view it is not only just *or* convenient, but indeed it is just *and* convenient to appoint a receiver here.
15. Much of the context of, and background to, this Application are set out in the Endorsement of Justice Kimmel dated August 2 and need not be repeated here. Moreover, much of the underlying chronology of events is not in dispute. Most of the key events in the chronology are set out in the Chronological Summary found at Tab 1 of the Applicant's Compendium.
16. In the main, The Validus Group is a power generation company that generates and then sells power to the Independent Energy System Operator (IESO) as a participant in IESO's capacity auction market. The principal operations of The Validus Group consist of four power plants Located in Ontario: North Bay, Kapuskasing and Kingston. There is a data centre in North Bay.
17. Validus Power Corp. is a holding company, the primary or sole assets of which consist of the shares or units held in each of the other Debtors, each of which are direct or indirect wholly-owned subsidiaries. Four of those Debtors, in turn, own the operating assets corresponding to the four power plants.¹
18. Pursuant to what, for today's purposes, can generally be described as the loan agreements between the Applicants on the one hand and the Debtors/Respondents on the other hand, the Debtors are indebted to the Applicant in a significant amount.
19. The parties entered into a sale and leaseback transaction originally in respect of the Iroquois Falls power plant, pursuant to which the Applicants purchased substantially all of the turbines, plant and equipment used in that plant operation from Iroquois Falls Power Corp. (IFPC). The Applicant paid a purchase price of \$45 million plus HST.
20. The Applicants then leased the purchased assets back to IFPC under a lease agreement which required IFPC to make regular monthly rent payments and pay all other amounts when due. The Applicant was (and is) entitled to accelerate all payments due as liquidated damages and demand payment of same if there is a default by IFPC or any of the other Debtors. Each of the other Debtors guaranteed both the obligations of IFPC and the guarantee obligations of the other guarantors.²
21. All of the Debtors provided the Applicant with first ranking security over substantially all of their property and assets, subject to certain limited exceptions set out in the materials and about which there is no issue today.
22. While there was, as at the hearing of the Application, some dispute as to the precise amount and whether or not there had been double counting as to certain input factors, the Applicants submit that the total outstanding amount was, as of July 31, 2023, \$55,598,575. The Respondents expressly conceded in argument that the amount was at least in excess of \$40 million.
23. Pursuant to the loan agreements, the Applicant has a contractual right to appoint a receiver if an event of default has occurred. The Applicant has first-in-time registrations against each of the debtors under the *PPSA* and against all of the real property of the Debtors registered on title, as well as physical possession of the shares and units that Validus Parent pledged pursuant to the loan agreements.
24. Events of default have clearly occurred. In addition to the fundamental monetary defaults in the form of the failure to repay amounts when due, there are additional covenant and operating defaults, including the failure to pay rent, the failure to remit HST and other taxes, the breach of an agreement with a key customer, and the failure to properly maintain books and records, and to maintain insurance.

¹ The one exception to that is the turbines, plant and equipment for the Iroquois Falls plant, which is all owned by the Applicant.

² The guarantees are unlimited with the exception of Validus Holdings which provided a limited recourse guarantee.

25. I observe, as did Justice Kimmel, that during 2023, the Applicant has made various payments on behalf of the Debtors in respect of critical items, in order to protect further erosion from its collateral and, as Justice Kimmel noted, to minimize the risk of potential destabilization of the Debtors and their operations.
26. The parties entered into a forbearance agreement in February, 2023. The Debtors have breached the terms of that forbearance agreement. The Applicant issued demands and section 244 *BIA* Notices on June 9, 2023 and again on July 24, 2023. The proposed Receiver has made arrangements with a licensed operator who can assume control of the Property of the Debtors in the event the Application is granted.
27. The Application was adjourned on August 2 at the request of the Debtors to permit them an opportunity to file responding materials and attempt to find an alternative source of debt or equity financing to permit the repayment of the Applicant. Justice Kimmel observed that this was something on which the Debtors had been working since the beginning of 2023, although they submitted to the Court on August 2 that there may be a recent development offering greater hope for success.
28. The Applicant submits that it has lost confidence in management of the Respondents, that (as further described below) a recent sales process completely failed, that there is no apparent liquidity in the Property of the Debtors, the books and records are in disarray with the result that an accurate valuation is difficult if not impossible, and that it is contractually entitled to the appointment of a Receiver which is now appropriate.
29. The principals of the Debtors are alleged to have misappropriated and failed to return funds from a bank account to which they were erroneously granted access (CIBC) and are alleged to have failed to provide benefits and RRSP contributions to their unionized employees pursuant to a collective bargaining agreement.
30. The Applicant submits that its significant efforts to accommodate the Debtors have included the provision of a four month rent holiday in February of this year, and the facilitating, at their expense, of an unsuccessful out of court sales and marketing process in respect of one of the Debtors, in addition to the payments on behalf of the debtors referred to above, in the aggregate amount of at least \$1,421,370.38. Unfortunately, none of these efforts has led to a viable path forward.
31. The sale and marketing process took place. in March and April of this year. For parties submitted nonbinding expressions of interest. One bid or made a binding offer on which it defaulted. The process concluded unsuccessfully.
32. The Applicant observes that one of its intended objectives in the receivership, if granted, is a sales process which will likely include a stalking horse bid for substantially all of the assets of the Debtors, in turn likely in conjunction with a filing pursuant to the CCAA. The Debtors submit that they will object to this and indeed this entire Application is a ruse to allow the Applicants to acquire their assets at less than full value.
33. As stated, I was satisfied at the conclusion of oral argument that a full receivership was appropriate and I so ordered. The parties agreed on the form and content of the order given that disposition, and I was satisfied that the draft order was both consistent with the terms of the Model Order of the Commercial List and appropriate in the circumstances of this case, with the one exception that I declined to grant an order authorizing the Applicant to commence a CCAA process. In my view, that was premature, although I was clear that my decision in declining to grant that relief was without prejudice to the ability of the Applicant to seek that relief in the future.
34. I accept the position of the Applicant that it has not acted in a rushed or rash fashion. Indeed, the chronology of the events since the original defaults as summarized above demonstrate that the contrary is true. The Respondents submitted that the Application on August 2 before Justice Kimmel came out of the blue and took them by surprise.

35. I appreciate that the preference of the Respondents would have been to avoid such an Application, but in my view they can hardly be surprised given the defaults, the terms of the forbearance agreement, the contractual consent to the appointment of a receiver in the event of default, the failed sales process, the continued HST arrears (and corresponding Canada Revenue Agency lien for approximately \$6 million) the continued arrears of municipal taxes, and most fundamentally, the continued default and demands under the loan agreements notwithstanding the demands made on June 9, 2023 together with corresponding section 244 *BIA* Notices, demanding payment of the Base Rent and HST arrears.
36. In any event, the Respondents filed full responding materials and made submissions at the hearing of the Application.
37. I am satisfied that, as submitted by the Applicant, there is disarray in management of the Applicant, and there is a real risk both to the existing employees of the Respondents in terms of the payment of salaries and wages and the remittance of statutory source deductions, and also to the stability of the operations of the Debtors in the sense of a real risk that the existing employees may leave. That would without question destabilize if not impair irrevocably the operation of the Debtors.
38. In this regard, I observe the position of the Interim Receiver as set out in its First Report to the Court dated August 9, 2023, in which the Interim Receiver observes among other things that the employees have expressed a lack of confidence in management; concern if management remains in control of the business of the Debtors; and frustration with respect to benefit and RRSP amounts withdrawn from their payroll but not remitted as required. All of these factors contributed to the expressed view of the Interim Receiver that mass resignation is a risk.
39. Moreover, the First Report reflects that the cash flow prepared for the receivership period reflects that substantially all cash receipts will be required to maintain the operations of the business. The result, as reflected in the cash flow, is that the projected cash receipts are not sufficient to service the lease arrangements of the Debtors by way of payment of the monthly base rent of \$1.4125 million. In addition, there is no funding to service the past-due amounts which total approximately \$9.6 million inclusive of HST, representing six monthly payments, before interest and costs.
40. Further as noted above, there has been a default in the payment of insurance premiums, some of which have already been paid by the Applicant to protect its position. Additional funding to maintain coverage will be required. No prudent operator would continue to own let alone operate power plant assets without appropriate insurance coverage in place.
41. Within the next 10 days alone, \$306,000 will be required for insurance premiums together with \$108,000 for payroll. There is no funding available for immediate payroll needs.
42. In short, there is just no funding available either to finance the immediate operational and/or debt servicing needs and obligations of the Respondents, nor to begin to repay the amounts already overdue. I conclude that the collateral of the Applicant is at risk.
43. The Respondents rely upon the Affidavit of Mr. Todd Shortt sworn August 7, 2023 and the Supplementary Affidavit of Mr. Shortt sworn August 10, 2023 together with the exhibits thereto. Mr. Shortt concedes that the Debtors have struggled with their operations and that a dispute with Hut 8 Mining Corp. in respect of a lease in North Bay, Ontario has resulted in the Debtors losing an important source of revenue which in turn had a snowball effect on the rest of the operations (para. 22).
44. Mr. Shortt also states that the Debtors have been working to obtain alternative financing to fully repay the Applicant and that indeed financing has been arranged although it needs to be formally documented. He states that he believes that the appointment of a full receiver would destroy the business.

45. The financing commitment the Debtors say they have received is attached as Exhibit “A” to Mr. Shortt’s Supplementary Affidavit. He states that the conditions are marked as fulfilled. Indeed, the document reflects that certain documentation has been “provided”.
46. I agree with the concerns expressed by counsel to the Applicant that this commitment letter does not provide the certainty urged upon me that the Applicant will be repaid in full, let alone by a date certain. I say this for a number of reasons.
47. First, the commitment is from a broker, not from the lender or syndicate of lenders itself or themselves (which are not identified). The commitment is “based on the information provided to us” which is not defined in the commitment letter nor elsewhere in the record, such as by an affidavit from or own behalf of the proposed lender(s).
48. The concern of the Applicant, with which I agree and accept, is exacerbated by the inadequate record keeping of the Debtors (see, for example, the Affidavit of Joshua Stevens sworn July 31, 2023, para 54(a), and the April 16, 2023 Notice of Default and Reservation of Rights from the Applicant to the Debtors setting out Specified Events of Default, including among other things, a breach of the obligation to provide annual financial statements, semi-annual financial statements, bank statements and other reports required (d); and a breach of the obligation to maintain proper books, accounts and records in accordance with Section 4.23 of the Participation Agreement (p)).
49. How, the Applicant asks rhetorically, can the Debtors purport to have satisfied the proposed lenders represented by the letter of commitment, in the absence of books and records, and financial statements?
50. I accept that concern, which I share. I further observe that even if the proposed lender or lenders were in fact satisfied, there is no evidence in the record to demonstrate this. There is nothing beyond the commitment letter. There is no affidavit, as noted above, from or on behalf of the proposed lenders addressing this issue or even stating more generally that the financing commitment was unconditional and unequivocal and that the lenders were prepared to advance funds immediately or by any date certain.
51. Second, the proposed financing commitment is expressly conditional on factors, in addition to those that are indicated on the document as having been provided, in respect of which there is no evidence that they have been satisfied.
52. For example, Mr. Shortt is required to be a guarantor. It may be reasonable to assume that he would agree to such an obligation, but there is no evidence of this, and there is certainly no guarantee to which the terms have already been agreed. Presumably, that remains to be done.
53. Moreover, the “Lender Fee” is stated as being: “1.50% plus 20% equity in the four power plants”. There is no evidence of any agreements in place pursuant to which the transfer of 20% of the equity in the four power plants is to be transferred. Such agreements would require the consent of the Applicant as a first order of business. Even if that were forthcoming, as it may well be, the complexity of the existing loan agreements between the Applicants and the Debtors suggests that there would be significant time required to negotiate and finalize the terms of this 20% equity purchase.
54. At a minimum, I am comfortable concluding that the result, for the purposes of the disposition of the Application today, is that there remains significant uncertainty in the conditionality of the financing required. Even if the proposed transactions proceeded expeditiously and smoothly, a certain amount of time would be required to negotiate and conclude the equity purchase agreements, with the additional result that there is no certainty as to the date upon which the funding would be available even if the agreements all closed seamlessly.
55. Required “standard loan documentation” has not yet been reflected as having been provided.

56. Most fundamentally, however, if the proposed commitment letter represents a financing commitment that can be closed, and funds advanced, in relatively short order, so much the better. Nothing in my conclusion to appoint a full receiver prevents or prohibits the Receiver from continuing discussions with the proposed lender or lenders to pursue this proposed commitment and determine whether it is in the best interests of stakeholders. Indeed, I was clear at the hearing of the motion and am clear now that I would expect the Receiver to do nothing less.
57. If that funding commitment closed relatively quickly, it follows that the cost of the Receivership would be minimized. However, in the interim, stability will be maximized and the Receiver could pursue this possible commitment together with, and in addition to, any possible alternative commitments such as might be revealed through a court supervised sales process.
58. In any event, the complete absence of any interim funding from any source further reinforces my conclusion that a full Receiver should be appointed now since, in the absence of funding available to continue operations even in the immediate term (and to pay, among other things, payroll to maintain the employees), the circumstances all but guarantee the further destabilization of the business of the Debtors, the further erosion of the security of the Applicant, and the further risk to all stakeholders of an outcome that is less than optimal.
59. Considering all of the factors relevant to the appointment of a receiver, and in particular the relative prejudice to the Applicant on the one hand and the Debtors and other stakeholders on the other hand, the balance of convenience clearly favours the appointment of a full Receiver at this time in my view.
60. The Receiver can and I expect will sort out issues such as the potential for double counting in respect of certain stipulated loss amounts. I expect that it goes without saying that nothing in my decision to appoint a full Receiver would entitle the Applicant to recover amounts in excess of those which it is owed. But again, the Receiver will sort all of that out. It can also address matters such as the inadvertent payment, and refusal to repay, the amounts in respect of CIBC.
61. For all of these reasons, I am satisfied that the Receiver should be appointed on the terms set out in the order agreed as to form and content (without, for the time being, the authority to commence a CCAA proceeding).
62. I am grateful to all counsel for their submissions.

Oleau, J.

Appendix “C”



**First Report to Court of
KSV Restructuring Inc. as
Receiver and Manager of
Validus Power Corp., Iroquois Falls
Power Corp., Bay Power Corp., Kap
Power Corp., Validus Hosting Inc.,
Kingston Cogen Limited Partnership and
Kingston Cogen GP Inc.**

August 23, 2023

- and -

**Pre-Filing Report of
KSV Restructuring Inc. as
Proposed Monitor of
Validus Power Corp., Iroquois Falls
Power Corp., Bay Power Corp., Kap
Power Corp., Validus Hosting Inc. and
Kingston Cogen GP Inc.**

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COURT FILE NO.: CV-23-00703754-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY AND INSOLVENCY)
COMMERCIAL LIST

MACQUARIE EQUIPMENT FINANCE LIMITED

Applicant

- and -

VALIDUS POWER CORP., IROQUOIS FALLS POWER CORP., BAY POWER
CORP., KAP POWER CORP., VALIDUS HOSTING INC., KINGSTON COGEN
LIMITED PARTNERSHIP AND KINGSTON COGEN GP INC.

Respondents

IN THE MATTER OF AN APPLICATION UNDER SECTION 243(1) OF THE
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, C. B-3, AS AMENDED;
AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, C. C.43,
AS AMENDED

- and -

IN THE MATTER OF THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF VALIDUS POWER CORP., IROQUOIS
FALLS POWER CORP., BAY POWER CORP., KAP POWER
CORP., VALIDUS HOSTING INC. AND KINGSTON COGEN GP
INC., EACH BY THEIR COURT APPOINTED RECEIVER AND
MANAGER, KSV RESTRUCTURING INC.

FIRST REPORT OF KSV RESTRUCTURING INC.
AS RECEIVER AND MANAGER
AND
PRE-FILING REPORT OF KSV RESTRUCTURING INC.
AS PROPOSED MONITOR

AUGUST 23, 2023

1.0 Introduction

1. Pursuant to an application filed by Macquarie Equipment Finance Limited (“Macquarie”), the Ontario Superior Court of Justice (Commercial List) (the “Court”) issued an order on August 2, 2023 (the “Interim Receivership Order”) adjourning Macquarie’s application until August 10, 2023 and appointing KSV Restructuring Inc. (“KSV”) as the interim receiver, under section 47.1 of the *Bankruptcy and Insolvency Act* (the “BIA”), of all of the property, assets and undertaking of Validus Power Corp. (“VPC”), Iroquois Falls Power Corp. (“IFPC”), Bay Power Corp. (“Bay”), Kap Power Corp. (“Kap”), Validus Hosting Inc. (“Hosting”), Kingston Cogen GP Inc. (“Kingston GP” and collectively, the “Companies”) and Kingston Cogen Limited Partnership (“Kingston LP” and together with the Companies, the “Validus Entities”) acquired for, or used in relation to, the business carried on by the Validus Entities (the “Property”) until the earlier of:
 - a) the taking of possession of the Property by a receiver, within the meaning of subsection 243 of the BIA; and
 - b) August 10, 2023.

A copy of the Endorsement of the Honourable Justice Kimmel dated August 2, 2023 issued in connection with the Interim Receivership Order is attached as Appendix “A”.

2. On August 10, 2023, following that adjournment, the Court issued an order (the “Receivership Order”) appointing KSV as receiver and manager (in such capacity, the “Receiver”) of the Property. A copy of the Receivership Order is attached as Appendix “B”. On August 18, 2023, the Honourable Justice Osborne issued an endorsement in connection with the Receivership Order (the “Endorsement”), a copy of which is attached as Appendix “C”.
3. The principal purpose of the receivership proceedings is to create a stabilized environment to enable the Receiver to take possession and control of the Property, including replacing management so that the Validus Entities’ business can continue to operate in the normal course.
4. The Receiver is currently in the process of negotiating a proposed offer (the “Offer”) with Macquarie and Hut 8 Power Inc., as Macquarie’s designated nominee (jointly, the “Potential Purchaser”), which contemplates, *inter alia*, that subject to this Court’s approval:
 - a) the Offer would be a “stalking horse bid” in a sale and investment solicitation process (the “SISP”) to be carried out in proceedings to be commenced in respect of the Validus Entities by the Receiver under the *Companies’ Creditors Arrangement Act* (“CCAA”);

- b) a break-up fee and expense reimbursement would become payable upon the closing of a superior bid submitted and selected during the SISP; and
 - c) if the Offer is the successful bid in the SISP, the transaction would be completed pursuant to a Reverse Vesting Order (“RVO”) to be sought in the proposed CCAA proceedings.
5. Subject to the Court granting the proposed initial order (the “Initial Order”), it is contemplated that Court approval of a SISP will be sought once the Offer has been finalized in a form acceptable to the Potential Purchaser and the Monitor.
 6. This report (the “Report”) is filed by KSV in its capacity as Receiver and Proposed Monitor (as defined below).

1.1 Purposes of this Report

1. The purposes of this Report are to provide the Court with:
 - a) background information with respect to the Validus Entities;
 - b) the basis on which the Receiver is seeking authorization to bring the proposed CCAA application on behalf of the Companies;
 - c) KSV’s qualifications to act as monitor (prior to such appointment, the “Proposed Monitor” and following such appointment, the “Monitor”) of the Companies;
 - d) the Validus Entities’ cash flow projection for the period August 19 to December 1, 2023 (the “Cash Flow Forecast”);
 - e) a summary of the anticipated next steps in the CCAA proceedings, should the Court grant the proposed Initial Order; and
 - f) the rationale for the proposed Initial Order, including the orders:
 - i. declaring that Kingston LP shall be granted the protections provided to the Companies under the Initial Order; and
 - ii. recognizing the Court-ordered charges created in the Receivership Order (the “Charges”).

1.2 Currency

1. Unless otherwise noted, all currency references in this Report are to Canadian dollars.

1.3 Restrictions

1. In preparing this Report, the Receiver and the Proposed Monitor have relied upon unaudited financial information provided by the Validus Entities' employees, the books and records of the Validus Entities¹ and discussions with representatives of the Validus Entities, Macquarie and its legal counsel. The Receiver has not performed an audit or otherwise attempted to verify the accuracy or completeness of the financial information relied on in a manner that complies with Canadian Auditing Standards ("CAS") pursuant to the Chartered Professional Accountants of Canada Handbook and, accordingly, the Receiver expresses no opinion or other form of assurance contemplated under the CAS in respect of such information. Any party wishing to place reliance on the financial information should perform its own diligence.
2. With the exception of the Court, the Receiver accepts no responsibility for any reliance placed by any third party on the Validus Entities' financial information presented herein.
3. An examination of the Cash Flow Forecast as outlined in the Chartered Professional Accountants of Canada Handbook has not been performed. Future oriented financial information relied upon in this Report is based upon assumptions regarding future events; actual results achieved may vary from this information and these variations may be material. The Receiver expresses no opinion or other form of assurance as to whether the Cash Flow Forecast will be achieved.

1.4 KSV's Qualifications to Act as Monitor

1. KSV is a licensed trustee within the meaning of subsection 2(1) of the BIA. KSV is not subject to any of the restrictions to act as Monitor set out in Section 11.7(2) of the CCAA.
2. KSV has consented to act as Monitor in the CCAA proceedings should the Initial Order be granted. A copy of KSV's consent to act as Monitor is attached hereto as Appendix "D".
3. Neither KSV nor any of its representatives or affiliates has at any time in the past two years been: (a) a director, officer or employee of any member of the Companies; (b) related to any member of the Companies, or to any director or officer of any member of the Companies; or (c) the auditor, accountant or legal counsel, or a partner or an employee of the auditor, accountant or legal counsel, of any member of the Companies.

¹ As discussed in the Affidavit of Joshua Stevens of Macquarie dated July 31, 2023, the Validus Entities' books and records have not been kept current and otherwise appear to be significantly deficient. As of the date of this Report, the Receiver has had limited access to the Validus Entities' books and records. The Receiver was only recently provided with access to the Validus Entities' electronic records, which required negotiation with its data hosting service in respect of pre-filing amounts owing to it, and with both the data hosting service and the Validus Entities' legal counsel in respect of privilege issues raised by the Validus Entities' management.

2.0 Background

1. The Validus Entities are a group of privately-held entities that own power generation stations that generate and sell capacity and power to the Independent Electricity System Operator (“IESO”) as a participant in its “capacity auction” market. VPC is a corporation incorporated pursuant to the *Canada Business Corporations Act* and, based on a corporate profile provided to the Receiver, has its registered office at 100 Wellington Street West, Suite 2300, Toronto, Ontario. Each of the other Companies is incorporated pursuant to the Business Corporations Act (Ontario) and, based on corporate profiles provided to the Receiver, has their registered offices as follows:
 - a) IFPC: 1500 Sandhill Drive, 2b, Ancaster, ON; and
 - b) Bay, Power, Hosting, Kingston GP and Kingston LP: 100 Wellington Street West, Suite 2300, Toronto, Ontario.

A copy of the corporate structure for the Validus Entities is attached as Appendix “E”.

2. The Property is principally comprised of four power plants in Ontario located in North Bay, Kapuskasing, Iroquois Falls and Kingston. As at the date of this Report, only the plants in Kingston and Iroquois Falls are operational; these plants are on standby and can supply power to the IESO if called upon as a participant in its capacity auction market. The Kapuskasing and North Bay plants are being maintained and secured but are not otherwise operational at this time.
3. Immediately following its appointment, the Receiver engaged Ryan Forget of Complete Energy Consulting Inc. to act as a consultant to the Receiver to assist with day-to-day operational, security and asset maintenance issues. Mr. Forget is a former senior employee of the Validus Entities.
4. The Receiver has been provided with unaudited financial statements for the period ended July 31, 2023 for VPC, IFPC and Kingston LP, copies of which are attached as Appendix “F”. The Receiver has not been provided, nor has it been able to locate, any financial statements for the other Validus Entities, being Bay, Kap, Hosting and Kingston GP. The Receiver is continuing to search for financial statements for those entities and, if located, will file a supplemental report prior to the return of this motion. Given the state of the Validus Entities’ books and records, the book values of the Property, to the extent available, may not be reliable. The ultimate realizable value of the Property will be determined by the outcome of a Court-supervised SISP.
5. Based on the Receivership Application Materials, the following creditors have security interests against the Property:
 - a) Macquarie demanded \$55,598,575 as of July 24, 2023 and holds senior security against substantially all Property. The responding materials filed by the Validus Entities in the receivership proceedings made claims disputing approximately \$9 million of the amount demanded by Macquarie. The Receiver is reviewing this issue;

- b) Canada Revenue Agency (“CRA”), which registered a lien in the amount of approximately \$6 million against certain real property owned by IFPC. CRA’s lien was registered due to IFPC’s failure to remit HST collected by IFPC as part of the sale and leaseback transaction between Macquarie and IFPC in April 2022;
 - c) TD Bank (“TD”), which registered a security interest against VPC pursuant to the *Personal Property Security Act* (Ontario) in respect of amounts that TD claims relate to six letters of credit issued by TD against which TD holds guaranteed investment certificate security (the Receiver has not yet verified TD’s security and is unaware of the quantum of its potential claims); and
 - d) Mercedes-Benz Financial and Mercedes-Benz Financial Services Canada Corporation, which registered security in the amount of \$179,206 against VPC in respect of a motor vehicle (a Mercedes G-63 G-Wagon SUV).
6. Each of the Companies has liabilities exceeding \$5 million.
 7. The Receivership Application Materials provide additional background information about the Validus Entities, their financial position, the Validus Entities’ defaults under their lease arrangements with Macquarie, and the basis for Macquarie’s application for the Receivership Order. Court materials filed in the receivership proceedings and the CCAA proceedings, including the Receivership Application Materials, are available on the Receiver’s website at: <https://www.ksvadvisory.com/experience/case/validus-power-corp>.

3.0 The CCAA Application

1. As set out in the Receivership Application Materials, the Potential Purchaser advised that it intends to submit a bid for all or substantially all of the Property, which transaction is proposed to be effected pursuant to an RVO to be issued by the Court in the proposed CCAA proceedings.
2. At the hearing to consider the receivership application, the Validus Entities’ legal counsel raised concerns with respect to a provision that was included in the draft receivership order, which granted the Receiver the authority to commence a CCAA proceeding. Paragraph 61 of the Endorsement provides that the Receivership Order would need to be amended to authorize the Receiver to bring a CCAA application on behalf of the Companies.
3. The Receiver has considered whether it is reasonable and appropriate, at this time, to commence CCAA proceedings on behalf of the Companies. The Receiver believes it is for the following reasons:
 - a) the Offer is conditional on the Court issuing an RVO in the context of a CCAA proceeding;
 - b) the Validus Entities hold numerous permits and licences that allow it to operate in a highly regulated industry. As such, the Potential Purchaser requires that an RVO be issued due to, *inter alia*, uncertainty related to the transferability of these licenses and permits in a commercially reasonable timeframe;

- c) the Receiver is of the view that it is likely that any other purchaser would also require the preservation of permits and licenses pursuant to an RVO;
- d) the implementation steps also contemplate a corporate arrangement pursuant to one or both of the *Business Corporations Act* (Ontario) and the *Canada Business Corporations Act*, which is more commonly completed in CCAA proceedings than in receivership proceedings;
- e) the Potential Purchaser has indicated that it is not prepared to pay any amounts owing to CRA in respect of the HST obligation that IFPC failed to remit when it entered into the sale leaseback transaction with Macquarie. Completion of the contemplated transaction under the CCAA will reverse the priority of the HST obligation;
- f) the Receiver is of the view that any purchaser will also require that the HST obligation be reversed and that the super-priority status of this obligation outside of the CCAA is an impediment to a going-concern transaction. Reversing priorities in insolvency proceedings is a common consideration in choice of insolvency proceeding²;
- g) there is significantly more precedent for the issuance of RVOs in a CCAA proceeding than in a receivership or other insolvency processes;
- h) as a result of issues concerning the transferability of the licenses and the unpaid HST obligation, there is a greater likelihood that the SISP will result in a going-concern transaction if conducted under the CCAA than in a receivership;
- i) given the forgoing, the Receiver believes conducting the SISP through the CCAA process may enhance interest from other potential bidders;
- j) commencement of the CCAA proceedings now will permit the 10-day statutory comeback to run while the parties continue to negotiate the Offer and finalize the terms of the SISP;
- k) timing is important – the SISP should commence as quickly as possible due to the following issues:
 - i. KSV, as interim receiver, advised in its report dated August 9, 2023 that the Companies' employees had significant concerns about the role of former management, which led to frustration and a lack of confidence in the business. This is due to, *inter alia*, the Validus Entities deducting RRSP contributions from payroll but not remitting them to the Validus Entities' RRSP plan at Canada Life, and the termination of health benefits. Stability is required among the workforce so that employees do not look for new employment. The Validus Entities have already lost one former plant manager since these proceedings commenced. The Receiver is of

² The Receiver notes that the Validus Entities took the position at the receivership application that there are sufficient input tax credits ("ITCs") to offset the entirety of the potential HST obligation for which CRA registered a \$6 million lien against IFPC's real property. Given the state of the Validus Entities' books and records, the Receiver has not been able to verify the HST obligation and/or the extent of any offsetting ITCs. The Receiver has been in contact with CRA representatives and has requested that CRA perform a trust exam to determine the Validus Entities' source deduction and HST obligations.

the view that mass resignation is a risk without a reasonably clear plan to preserve the business as a going concern. A stalking horse bid provides employees with certainty that there is a going-concern solution for the business; and

- ii. in order to generate revenue for the business, the Validus Entities need to participate in an annual capacity auction conducted by IESO. The Receiver needs to take steps to participate in the auction commencing immediately. In the Receiver's opinion, the Validus Entities are more likely to be successful in the capacity auction process if there is a stalking horse buyer as it provides a degree of certainty to IESO that there will be a going-concern solution for the business. Without knowing that there is a buyer, IESO may have concerns awarding the Receiver a contract to provide energy. The bid deadline for participating in the auction is November 29, 2023 and there are milestones that the Receiver will need to satisfy before then to preserve the ability of the Validus Entities or their successors to participate in the auction. The Receiver understands that missing this auction would preclude the Validus Entities from continuing to act as a participant in the IESO capacity auction market for 2024, which could significantly impair the value of the Property to the detriment of all stakeholders.
4. Based on the foregoing, the Receiver is of the view that it should be authorized to bring the proposed CCAA application on the Companies' behalf so that a SISP can be commenced as soon as possible in the CCAA.
 5. As at the date of this Report, the Receiver is reviewing the Offer and issues related to the Offer. The Receiver intends to bring a motion in the CCAA proceeding to approve the SISP once the Offer has been finalized in a form acceptable to the Potential Purchaser and the Monitor.

4.0 Validus Entities' Refinancing Efforts

1. The Validus Entities' former President and Chief Executive Officer of the Companies, Todd Shortt, discussed in his affidavit sworn on August 10, 2023 a potential refinancing transaction he is negotiating with Dominion Lending Centres ("Dominion"), as broker. The Receiver has not received an update concerning the refinancing since the receivership application. The relief being sought at this time does not preclude Mr. Shortt from continuing to advance and complete the refinancing or from otherwise participating in a SISP. Pursuing both of these initiatives contemporaneously is consistent with paragraph 57 of the Endorsement, which states:

"...the Receiver could pursue this possible commitment together with, and in addition to, any possible alternative commitments such as might be revealed through a court supervised sales process."

2. As discussed in the Endorsement, the Receiver has communicated with the Validus Entities, via its legal counsel, concerning the status of the refinancing and offering to assist in that regard. As of the date of this Report, the Receiver has not had a response.

5.0 Proposed Initial Order

1. The Receiver is seeking an Initial Order, which is largely consistent with the model Initial Order (the “Model Order”), however certain provisions, such as requirement for cash management, an administration charge, directors’ charge or DIP charge are unnecessary largely as a result of the ongoing receivership.
2. The Receiver highlights the following two provisions that deviate from the Model Order:
 - a) Kingston LP, being a limited partnership, cannot be an applicant under the CCAA. However, it is contemplated to be involved in the SISF and any resulting transaction with the Potential Purchaser. Accordingly, Kingston LP requires the benefit of the stay of proceedings in the CCAA to prevent any disruption to its business and operations, and so that its assets can be conveyed in the CCAA proceedings. In the Receiver’s view, there is no prejudice to any stakeholder by extending the stay to Kingston LP and it is consistent with the typical treatment of a limited partnership when its affiliates are subject to CCAA proceedings; and
 - b) the Charges created under the Receivership Order, being the Receiver’s Charge and the Receiver’s Borrowings Charge (of up to \$1 million), are to be recognized under the proposed Initial Order. The Receiver’s Charge is in respect of the fees and disbursements of the Monitor and its legal counsel. Any funding required during the CCAA proceedings will be advanced pursuant to Receiver’s Certificates and secured by the Receiver’s Borrowings Charge, in accordance with the Receivership Order, with such charge recognized in the Initial Order.
3. Based on the foregoing, the Receiver believes the provisions of the proposed Initial Order are reasonable and appropriate in the circumstances.

6.0 Cash Flow Forecast

1. The Receiver has assisted with the preparation of a cash flow forecast for the period August 19, 2023 to December 1, 2023. The Cash Flow Forecast and the Validus Entities’ statutory report thereon pursuant to Section 10(2)(b) of the CCAA (which is executed by the Receiver on behalf of the Validus Entities), are attached hereto as Appendix “G”.
2. The Cash Flow Forecast reflects that the Validus Entities will not require additional funding during the projection period. To the extent actual cash receipts are lower than projected and insufficient to cover projected expenses, the Receiver has the authority to borrow pursuant to the terms of the Receivership Order. As at the date of this Report, there have been no advances made to the Receiver under the Receiver’s Borrowings Charge and/or Receiver’s Certificates issued by the Receiver.
3. Based on the Receiver’s review of the Cash Flow Forecast, the cash flow assumptions appear reasonable. KSV’s statutory report on the Cash Flow Forecast is attached hereto as Appendix “H”.

7.0 Anticipated Next Steps

1. Should the Initial Order be granted, the Receiver intends to:
 - a) finalize the terms of a SISP to be conducted by the Monitor, subject to Court approval, which is intended to include the Offer by the Potential Purchaser as the stalking horse bid;
 - b) work with the Potential Purchaser with a view to settling the terms of the Offer;
 - c) review issues related to the Offer, including reviewing the concerns raised by the Validus Entities concerning the amount of Macquarie's debt;
 - d) prepare motion materials for the comeback motion or shortly thereafter, which may include approval of the SISP, subject to the status of the negotiation of the Offer;
 - e) continue its ongoing efforts to stabilize the Validus Entities' operations, including working to restore coverage under the Validus Entities' employee benefit plans, which Canada Life is presently refusing to do. (This may require an urgent motion before the Court); and
 - f) continue to follow up with the Validus Entities' legal counsel on the status of a refinancing transaction with Dominion, as broker, in accordance with paragraphs 56 and 57 of the Endorsement.

8.0 Conclusion and Recommendation

1. Based on the foregoing, the Receiver respectfully recommends that this Court:
 - a) authorize the Receiver to bring a CCAA application on behalf of the Companies; and
 - b) grant an Initial Order under the CCAA on the terms of the draft Initial Order set out in the application materials filed by the Receiver on behalf of the Companies.

* * *

All of which is respectfully submitted,

KSV Restructuring Inc.

**KSV RESTRUCTURING INC.
SOLELY IN ITS CAPACITY AS RECEIVER AND MANAGER AND PROPOSED MONITOR OF
VALIDUS POWER CORP., IROQUOIS FALLS POWER CORP., BAY POWER CORP.,
KAP POWER CORP., VALIDUS HOSTING INC.,
KINGSTON COGEN LIMITED PARTNERSHIP AND KINGSTON COGEN GP INC.
AND NOT IN ITS PERSONAL CAPACITY**

Appendix “D”



Court File No. CV-23-00705215-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.) TUESDAY, THE 29th
)
JUSTICE OSBORNE) DAY OF AUGUST, 2023

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF VALIDUS POWER CORP., IROQUOIS FALLS POWER CORP., BAY POWER CORP., KAP POWER CORP., VALIDUS HOSTING INC. AND KINGSTON COGEN GP INC., EACH BY THEIR COURT APPOINTED RECEIVER AND MANAGER, KSV RESTRUCTURING INC.

INITIAL ORDER

THIS APPLICATION, made by Validus Power Corp., Iroquois Falls Power Corp., Bay Power Corp., Kap Power Corp., Validus Hosting Inc. and Kingston Cogen GP Inc. (each, a "**Company**" and collectively, the "**Companies**"), each by their court appointed receiver and manager, KSV Restructuring Inc. ("**KSV**" and in such capacity, the "**Receiver**"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), for an Initial Order, was heard this day via videoconference.

ON READING the First Report of KSV as receiver and manager of the Companies and Kingston Cogen Limited Partnership ("**Kingston LP**" and together with the Companies, the "**Validus Entities**") and the Report of KSV as proposed Monitor dated August 23, 2023, and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel to the Receiver, Macquarie Equipment Finance Limited, and those other parties present, no one else on the Service List appearing although duly served as appears from the affidavit of service of Katie

Parent sworn August 23, 2023 and on reading the consent of KSV to act as the Monitor of the Validus Entities,

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

APPLICATION

2. THIS COURT ORDERS AND DECLARES that each Company is a company to which the CCAA applies. Although not an Applicant, Kingston LP shall have the benefits of the protections and authorizations provided by this Order.

RECEIVERSHIP ORDER

3. THIS COURT ORDERS that nothing in this Order shall operate to interfere, stay or limit the provisions of the Order of this Court made on August 10, 2023 (the “**Receivership Order**”), pursuant to which KSV was appointed receiver and manager of the Property (defined below) or the powers given to the Receiver pursuant to the Receivership Order including, for greater certainty, (a) organizational control and executory authority in respect of the Validus Entities and the Business (as defined below); (b) the ability of the Receiver to borrow funds pursuant to paragraphs 23-26 of the Receivership Order including to fund the administrative costs of this proceeding; and (c) the granting and enforceability of the Receiver’s Charge and the Receiver’s Borrowing Charge (as defined below in the Receivership Order).

PLAN OF ARRANGEMENT

4. THIS COURT ORDERS that the Validus Entities, by the Receiver, shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the “**Plan**”).

POSSESSION OF PROPERTY AND OPERATIONS

5. THIS COURT ORDERS that, subject to paragraph 3 above, the Validus Entities shall remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the

“Property”). Subject to paragraph 3 above, and further Order of this Court, the Validus Entities shall continue to carry on business in a manner consistent with the preservation of their business (the **“Business”**) and Property. The Validus Entities, by the Receiver, are authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively **“Assistants”**) currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

6. THIS COURT ORDERS that the Validus Entities, by the Receiver, shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and
- (b) the fees and disbursements of any Assistants retained or employed by the Validus Entities in respect of these proceedings, at their standard rates and charges.

7. THIS COURT ORDERS that, except as otherwise provided to the contrary herein, the Validus Entities, by the Receiver, shall be entitled but not required to pay all reasonable expenses incurred by the Validus Entities, by the Receiver, in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and
- (b) payment for goods or services actually supplied to the Validus Entities or the Receiver following the date of this Order.

8. THIS COURT ORDERS that the Validus Entities, by the Receiver, shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be

RESTRUCTURING

11. THIS COURT ORDERS that the Validus Entities, by the Receiver, shall, subject to such requirements as are imposed by the CCAA, have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of their business or operations, and to dispose of redundant or non-material assets not exceeding \$250,000 in any one transaction or \$1,000,000 in the aggregate;
- (b) terminate the employment of such of their employees or temporarily lay off such of their employees as it deems appropriate; and
- (c) pursue all avenues of refinancing of their Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing,

all of the foregoing to permit the Validus Entities, by the Receiver, to proceed with an orderly restructuring of the Business (the “**Restructuring**”).

12. THIS COURT ORDERS that the Validus Entities, by the Receiver, shall provide each of the relevant landlords with notice of the Validus Entities’ intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Validus Entities’ entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Validus Entities, by the Receiver, or by further Order of this Court upon application by the Validus Entities, by the Receiver, on at least two (2) days notice to such landlord and any such secured creditors. If the Validus Entities, by the Receiver, disclaim the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer of the lease shall be without prejudice to the Validus Entities’ claim to the fixtures in dispute.

13. THIS COURT ORDERS that if a notice of disclaimer is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Receiver, on behalf of the Validus Entities, and the Monitor 24 hours' prior

written notice, and (b) at the effective time of the disclaimer, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Validus Entities in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

NO PROCEEDINGS AGAINST THE VALIDUS ENTITIES OR THE PROPERTY

14. THIS COURT ORDERS that until and including September 8, 2023, or such later date as this Court may order (the “**Stay Period**”), no proceeding or enforcement process, which for greater certainty shall not include the Receivership Order, in any court or tribunal (each, a “**Proceeding**”) shall be commenced or continued against or in respect of the Validus Entities or the Monitor, or affecting the Business or the Property, except with the written consent of the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Validus Entities or their employees or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

15. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being “**Persons**” and each being a “**Person**”) against or in respect of the Validus Entities or the Monitor, or affecting the Business or the Property, including, without limitation, licences and permits, are hereby stayed and suspended except with the written consent of the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Validus Entities to carry on any business which the Validus Entities are not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH RIGHTS

16. THIS COURT ORDERS that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Validus Entities, except with the written consent of the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

17. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with the Validus Entities or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, construction management service, project management services, permit and planning management services, accounting services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business or the Validus Entities, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Validus Entities, and, subject to the Receivership Order, that the Validus Entities shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Validus Entities, by the Receiver, in accordance with normal payment practices of the Validus Entities or such other practices as may be agreed upon by the supplier or service provider and each of the Validus Entities, by the Receiver, and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

18. THIS COURT ORDERS that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Validus Entities. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

APPOINTMENT OF MONITOR

19. THIS COURT ORDERS that KSV is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Validus Entities with the powers and obligations set out in the CCAA or set forth herein, and the Validus Entities and their officers and directors, if any, and employees shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

20. THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Validus Entities' receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Validus Entities, to the extent that is necessary to adequately assess the Validus Entities' business and financial affairs or to perform their duties arising under this Order;
- (d) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and
- (e) perform such other duties as are required by this Order or by this Court from time to time.

21. THIS COURT ORDERS that KSV, in its capacity as Monitor, shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

22. THIS COURT ORDERS that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall

exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

23. THIS COURT ORDERS that that the Monitor shall provide any creditor of the Validus Entities with information of the Validus Entities as may be available in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor determines is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor may agree.

24. THIS COURT ORDERS that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

25. THIS COURT ORDERS that the Monitor and counsel to the Monitor shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Validus Entities as part of the costs of these proceedings. The Validus Entities, by the Receiver, are hereby authorized and directed to pay the accounts of the Monitor and counsel for the Monitor on such terms as they may agree.

26. THIS COURT ORDERS that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

SERVICE AND NOTICE

27. THIS COURT ORDERS that the Monitor shall (i) without delay, publish in The Globe and Mail (National Edition) a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Validus Entities of more than \$1000, and (C) prepare a list

showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

28. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the “**Protocol**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL <https://www.ksvadvisory.com/experience/case/validus-power-corp.>

29. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Validus Entities and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Validus Entities’ creditors or other interested parties at their respective addresses as last shown on the records of the Validus Entities and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

30. THIS COURT ORDERS that the Validus Entities, by the Receiver, the Monitor and their respective counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Validus Entities’ creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the Electronic Commerce Protection Regulations, Reg. 8100-2-175 (SOR/DORS).

GENERAL

31. THIS COURT ORDERS that the Validus Entities, by the Receiver, or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

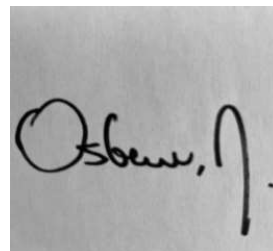
32. THIS COURT ORDERS that nothing in this Order shall prevent the Monitor from acting as a trustee in bankruptcy of the Validus Entities, the Business or the Property.

33. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Validus Entities, by the Receiver, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Validus Entities, by the Receiver, and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Validus Entities, by the Receiver, and the Monitor and their respective agents in carrying out the terms of this Order.

34. THIS COURT ORDERS that each of the Validus Entities, by the Receiver, and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

35. THIS COURT ORDERS that any interested party (including the Validus Entities, by the Receiver, and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

36. THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order, without any need for entry and/or filing.



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IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

Court File No. CV-23-00705215-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF VALIDUS POWER CORP., IROQUOIS FALLS POWER CORP., BAY POWER CORP., KAP POWER CORP., VALIDUS HOSTING INC. AND KINGSTON COGEN GP INC. EACH BY THEIR COURT APPOINTED RECEIVER AND MANAGER, KSV RESTRUCTURING INC.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at TORONTO

INITIAL ORDER

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Appendix “E”



SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

COUNSEL SLIP / ENDORSEMENT

COURT FILE
NO.:

CV-23-00703754-00CL

DATE: 29 August 2023

NO. ON LIST: 4

TITLE OF PROCEEDING: **MACQUARIE EQUIPMENT FINANCE LIMITED v.
VALIDUS POWER CORP. et al**

BEFORE JUSTICE: **OSBORNE**

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party, Crown:

Name of Person Appearing	Name of Party	Contact Info
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Name of Person Appearing	Name of Party	Contact Info
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For Other:

Name of Person Appearing	Name of Party	Contact Info
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ENDORSEMENT OF JUSTICE OSBORNE:

1. This Endorsement should be read together with my Endorsement of the same date released in CV-23-00703754-00CL the receivership proceeding involving the same entities.
2. By order dated August 10, 2023 made in that earlier proceeding, I appointed KSV Restructuring Inc. as Receiver and Manager of Validus Power Corp., Iroquois Falls Power Corp., Bay Power Corp., Kap Power Corp., Validus Hosting Inc. and Kingston Cogen GP Inc. (each, a “Company” and collectively, the “Companies”). The Companies now bring this Application, by and through the Receiver (the “Receiver” or the “Applicant”).
3. By Endorsement of today’s date also made in that earlier proceeding, I granted an order authorizing a Receiver to commence an application and seek relief pursuant to the CCAA. Immediately upon granting that order, I heard submissions in what is now this proceeding as to whether the relief sought in the form of an initial order and so-called “first date relief” should be granted.
4. For the reasons set out below, I am satisfied that it should be.
5. The Service List has been served with the materials. This matter did not proceed *ex parte*. Of course, this is only the initial return of the Application.
6. The relief sought today is unopposed, and in particular is not opposed by the Companies/Respondents or by the CRA. The Respondents are represented in Court today and the CRA has received the materials and counsel have advised the Applicant of the fact that the CRA is not opposing the relief sought.
7. The Receiver relies on the First Report of the Receiver, which is also the Pre-filing Report of the Proposed Monitor (KSV in each case) dated August 23, 2023, together with Appendices thereto.
8. The Report sets out the basis for the relief sought. Defined terms in this Endorsement have the meaning given to them in the Report and/or my earlier Endorsement made in the receivership proceeding.
9. At the time I granted the receivership order on August 10, 2023, appointing the Receiver in the earlier proceeding, I was of the view that the relief sought in respect of authorizing the Receiver to commence a proceeding pursuant to the CCAA was premature and while I declined to grant that relief then, I was clear that my decision was without prejudice to the ability of the Receiver to seek that relief in the future. My view on August 10 was that affected stakeholders needed more time to absorb what would be a somewhat fundamental step.

10. As contemplated, that relief was sought and granted today in the receivership proceeding. Once authorized, the Receiver immediately commence to this Application. Accordingly, the issue in this Application is whether the relief that the Receiver has been authorized to seek, should in fact be granted.
11. The principal purpose for the CCAA application is to provide a forum for the conduct of a sale and investment solicitation process (“SISP”) in respect of the assets and operations of the Companies.
12. Obviously, a SISP could be conducted within the previously existing receivership. However, for the reasons expressed by the Applicant, fully supported and strongly recommended by the proposed Monitor (KSV, who is already the Receiver), I am satisfied that relief under the CCAA should be granted.
13. The granting of the order sought provides the maximum chance that the business of the Respondents can be preserved as a going concern, in turn maximizing the chances of continuing the employment for some of the existing employees and maximizing the outcome for all stakeholders.
14. The background to, and context for, this Application is in large part set out in my Endorsement of August 10 made in the receivership proceeding. I have not repeated those here, but incorporate them by reference.
15. The Companies own and operate for power plants in Ontario, two of which provide electricity generation capacity to Ontario’s electricity grid, controlled by the Independent Electricity System Operator (“IESO”).
16. Macquarie Equipment Finance Limited brought the receivership application on August 2, 2023 for the appointment of a receiver. It holds security in respect of obligations under a secured lease as described in my endorsement of August 10. The obligations of the Companies have not been performed and they are in default.
17. The defaults include monetary repayment defaults, operating defaults, and covenant defaults including the failure to remit HST and other taxes, maintain insurance, and the failure to maintain books and records.
18. The receivership order was granted to provide stability to the business, which included the replacement of management and the planned implementation of a SISP in an effort to preserve and maximize value for stakeholders.
19. At the time, the Companies submitted that they were making efforts to attempt to secure a refinancing commitment which, if completed, was intended to be in a quantum sufficient to pay out the significant indebtedness owed to Macquarie, and the tax arrears and other obligations outstanding. That has not occurred.
20. Since that time, the Receiver has not received any response or indication from the Respondents that the previously contemplated Refinancing would be forthcoming imminently. I pause to observe, however, that counsel for the Respondents advised the Court that they intend to participate in the proposed SISP by submitting a bid.
21. The Receiver has, however, received a proposed Offer from a Potential Purchaser which includes both a reverse vesting structure, and a proposed stalking horse bid, both to be effected within a CCAA proceeding.
22. It is the strong view of the Receiver, with no contrary view expressed by any party, that any other potential bids are expected to be structured in the same way, and similarly be proposed to be effected within a CCAA proceeding.
23. This make sense in the circumstances and given the business of the Respondents since they hold numerous permits and licenses that allow them to operate in a highly regulated energy industry. A reverse vesting structure would reduce, among other things, the uncertainty related to the transfer and transferability of those licenses and permits in any commercially reasonable time frame.

24. The Potential Purchaser has indicated that it is not prepared to pay arrears owing to the CRA in respect of HST remittances owing. I observe as noted by counsel that completion of the contemplated transaction under the CCAA will reverse the priority of the HST obligation.
25. The Receiver submits that any other purchaser will likely also require that the HST obligation be reversed with the result that the super priority status of this obligation, absent a CCAA proceeding, is very likely to be an impediment to any going concern transaction in this case.
26. Here, the HST obligations exceed approximately \$6 million. I note, as submitted by counsel for the Respondents, that there are input tax credits. It is not clear as to the extent to which those input tax credits will reduce the arrears owing, and the CRA has not conducted an HST audit. Court approval of any transaction resulting from a sales process is for another day, but it will be a factor, presumably, in such approval, how the HST obligations are treated so as to not separate those from potential benefits achieved by the application of input tax credits.
27. Granting relief pursuant to the CCAA now will permit the 10 day statutory comeback period to run, while the parties continue to negotiate terms with the Potential Purchaser and also finalize the terms of the proposed SISP.
28. I am also satisfied that there is some urgency to this matter given that the business of the Debtors is electrical power, and if there is to be participation in the IESO's capacity auction market, the bid deadline for participation is November 29, 2023. There is much to be done between now and then, with the result that the process should begin as quickly as possible.
29. I am satisfied that the CCAA applies, as the Companies are "debtor companies" or affiliated "debtor companies" where the total claims exceed \$5 million. The claims of Macquarie alone exceed \$55 million.
30. The Companies have assets in Canada and are insolvent in that they are reasonably expected to run out of liquidity within a reasonable proximity of time as compared with the time reasonably required to implement a restructuring (See *Stelco, Inc. (Re)*).
31. This Court has jurisdiction to extend the CCAA protection to limited partnerships to ensure that the purposes of the CCAA can be achieved where the operation of such partnerships are tied to the operations of the business (See, for example, *Target Canada Co. (Re)*, *Just Energy Corp. (Re)*, and *Bed Bath & Beyond Canada Limited (Re)*).
32. Kingston LP owns one of the four powerplants. It is also subject to the security held by Macquarie. To adequately market the Property, and thereby maximize recovery for stakeholders, I am satisfied that the CCAA protection granted to the Companies should also be granted in respect of Kingston LP.
33. Indeed, the Companies together with Kingston LP are insolvent and already subject to the receivership order. The Receiver has complied with the requirements set out in s. 10(2) of the CCAA and filed a 13 week projected cash flow together with financial statements to the extent they exist.
34. As noted above, no refinancing appears forthcoming from the Companies. The offer from the Potential Purchaser is conditional upon the issuance of a reverse vesting order in the context of a CCAA proceeding. A stay of proceedings will maintain the status quo while the Receiver develops a plan for the benefit of creditors.
35. I am satisfied that creditors will not be prejudiced by the grant of a stay of proceedings under an initial order. They are already aware of the receivership order and that already includes a stay. Service of the materials for this Application was effected six days in advance of the return today, so this Application is already on notice. In short, the stay sought today, for a period not exceeding 10 days, is proportionate and appropriate. It does not seek to stay the receivership order.

36. KSV has already been appointed Receiver and is an appropriate Monitor.
37. For all of these reasons, the relief is granted. I am satisfied that the form of order is appropriate and includes those provisions, and only those provisions, absolutely necessary for the initial 10 day stay period. Of note, no relief is sought or granted in respect of any charges, such as an administration charge, a directors' charge or a DIP charge.
38. Initial order to go in the form signed by me, which is effective immediately and without the necessity of issuing and entering.
39. The **10 day comeback hearing will take place before me on Friday, September 8, 2023 commencing at 8:30 AM**, given scheduling difficulties presented by the statutory Court conference next week. In the circumstances, counsel are not required to be gowned.
40. As stated above, Receiver in its capacity as Applicant intends to seek approval in respect of the proposed SISP. **That motion will proceed on September 19, 2023 commencing at 10 AM and continuing as necessary for 90 minutes.**

O'Shea, J.

Appendix “F”

AMENDED AND RESTATED PARTICIPATION AGREEMENT

dated as of February 24, 2023

between

IROQUOIS FALLS POWER CORP.,
as Lessee

MACQUARIE EQUIPMENT FINANCE LTD.,
as Lessor

Lease of Combined Cycle Turbines and related Equipment - Iroquois Falls Cogeneration Station
Located in
Iroquois Falls,
Ontario, Canada

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Schedule 1	Lessor's Cost
Schedule 2	Addresses for Notice and Payment
Schedule 3	Land and Site Descriptions
Schedule 4	Pension Plans
Schedule 5	Instruments for Registration
Schedule 6	Authorizations and Government Actions
Schedule 7	Ownership Structure
Schedule 8	Environmental Matters
Schedule 9	<i>Intentionally Deleted</i>
Schedule 10	<i>Intentionally Deleted</i>
Schedule 11	<i>Intentionally Deleted</i>
Schedule 12	<i>Intentionally Deleted</i>
Appendix A	Definitions

AMENDED AND RESTATED PARTICIPATION AGREEMENT dated as of February 24, 2023 (this “**Agreement**” or this “**Participation Agreement**”; capitalized terms herein being used as defined in Article 1) among, Iroquois Falls Power Corp., a corporation organized under the laws of Ontario (“**Lessee**”), the guarantors party hereto from time to time, as Guarantors, and Macquarie Equipment Finance Ltd., a corporation incorporated under the laws of Canada (“**Lessor**”).

RECITALS

- A. On the Original Closing Date, the parties hereto executed and delivered a participation agreement (the “**Existing Participation Agreement**”), pursuant to which, among other things, (1) Lessor agreed to purchase the Leased Property from Lessee for a purchase price equal to Lessor’s Cost, and (2) Lessee agreed to lease the Leased Property from Lessor.
- B. The Lessor and the Lessee have agreed to amend and restated the Existing Participation Agreement in its entirety as set out herein.

NOW, THEREFORE, in consideration of the mutual agreements herein contained and other good and valuable consideration, receipt of which is acknowledged, the parties hereto agree as follows:

ARTICLE 1 DEFINITIONS

1.1 Definitions.

Capitalized terms used herein have the meanings assigned to them in Appendix A.

1.2 Rules of Interpretation

Except as otherwise expressly provided herein or any other Transaction Document, in this Agreement and each other Transaction Document:

(1) each reference to, and the definition of, any agreement, instrument or other document (including any Transaction Document) herein or in any other Transaction Document shall be deemed to refer to such agreement, instrument or other document as it may be amended, amended and restated, supplemented, revised or otherwise modified from time to time in accordance with its terms and, to the extent applicable, the terms of this Agreement and the other Transaction Documents, and shall be deemed to incorporate any appendices, annexes, schedules or exhibits to such agreement, instrument or other document;

(2) each reference to an Applicable Law or Authorization shall be deemed to refer to such Applicable Law or Authorization as the same may be amended, supplemented or otherwise modified from time to time;

(3) any reference to a Person in any capacity includes a reference to its successors and assigns in such capacity to the extent permitted under the terms of this Agreement and the other Transaction Documents and, in the case of any Government Body, any Person succeeding to any of its functions and capacities;

(4) references to days shall refer to calendar days unless Business Days are specified; references to weeks, months or years shall be to calendar weeks, months or years, respectively;

(5) all references in a Transaction Document to a “Section”, “clause”, “paragraph”, “sub paragraph”, “Appendix”, “Annex”, “Schedule” or “Exhibit” are to a Section, clause, paragraph or sub paragraph of such Transaction Document or to an Appendix, Annex, Schedule or Exhibit attached thereto;

(6) the table of contents and Section headings and other captions in a Transaction Document are for the purpose of reference only and do not affect the interpretation of such Transaction Document;

(7) defined terms in the singular shall include the plural and vice versa, and the masculine, feminine or neuter gender shall include all genders;

(8) the words “hereof”, “herein” and “hereunder”, and words of similar import, when used in any Transaction Document, shall refer to such Transaction Document as a whole and not to any particular provision of such Transaction Document;

(9) the words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”;

(10) where the terms of any Transaction Document require that the approval, opinion, consent or other input of any party be obtained, such requirement shall be deemed satisfied only where the requisite approval, opinion, consent or other input is given by or on behalf of the relevant party in writing;

(11) the word “will” shall be construed to have the same meaning and effect as the word “shall”;

(12) the word “notice” means written notice;

(13) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights;

(14) references to a time of day means such time in Toronto, Ontario, Canada, unless otherwise specified herein; and

(15) all amounts payable under a Transaction Document shall be amounts in Dollars.

ARTICLE 2 CLOSING DATE; CLOSING

2.1 Lessor’s Cost.

Subject to the terms and conditions of the Original Participation Agreement and on the basis of the representations and warranties set forth therein, Lessor paid on the Original Closing Date, the Lessor’s Cost.

2.2 Sale and Purchase

Subject to the terms and conditions of the Original Participation Agreement and on the basis of the representations and warranties set forth therein, on the Original Closing Date, Lessor purchased from Lessee the Leased Property.

2.3 HST and Other Sales Taxes.

Lessee shall pay on behalf of Lessor when due (unless otherwise paid by Lessee) all applicable sales, use, or transfer taxes other than HST imposed by any Canadian taxing authority with respect to the transactions consummated on the Original Closing Date (including the purchase and sale of the Leased Property) and shall provide appropriate evidence to Lessor of such payment.

With respect to HST levied upon Lessor with respect to the transactions consummated on the Original Closing Date, Lessee shall credit Lessor for such HST and shall consider Lessor to have paid such HST on the Original Closing Date and Lessee shall be considered to have made an advance to Lessor in an equal amount. Lessee will provide Lessor with written notice five (5) Business Days prior to the date on which Lessee is required to remit HST in respect of the transactions consummated on the Original Closing Date and Lessor shall promptly pay the advance in immediately available funds, two (2) Business Days prior to such date, and Lessee shall remit such amount (plus any additional HST collected by the Lessee for the period that includes the Original Closing Date but net of any applicable input tax credits for the period that includes the Original Closing Date) and shall promptly thereafter provide a copy of its HST return for the period that includes the Original Closing Date and confirmation of remittance of the full amount shown payable in its HST return for the period that includes the Original Closing Date.

All amounts specified in this Agreement or in any other Basic Document are expressed exclusive of applicable sales, use, goods and services or transfer taxes including HST imposed by any Canadian taxing authority, and all such applicable sales, use, goods and services or transfer taxes including HST shall be added to each amount required to be paid by the Person making the payment.

2.4 Closing Date Procedures

(1) Original Closing Date. Consummation of the Transaction (the “**Original Closing**”) took place on the Original Closing Date.

(2) Funding. On the Original Closing Date, Lessor paid Lessee the Lessor’s Cost as follows:

- (a) \$36,000,000, by wire transfer to the account(s) and in the manner described in the Funds Flow Memorandum; and
- (b) the balance of the Lessor’s Cost, was paid to (or retained in) an account of Lessor and retained by Lessor as security for the prepayment obligation set out in the last sentence of 4.48(3).

2.5 Transaction Costs and Other Expenses

(1) Transaction Costs. Lessee (i) shall bear its own fees, costs and expenses and (ii) shall pay, on demand, all reasonable fees, costs, and expenses of the Lessor, in each case, incurred in connection with the in respect of the negotiation, preparation, execution and delivery of the Transaction Documents and any documents delivered in relation to or for the purposes of the Closing. (“**Transaction Costs**”).

(2) Other Expenses. Lessee shall pay when due or, if no due date is specified, on demand: (i) the reasonable fees, out-of-pocket expenses and other customary reimbursable expenses of Lessor (including reasonable legal fees, including allocated time charges of internal counsel, out-of-pocket expenses and other customary reimbursable expenses) incurred in connection with any supplements, amendments, modifications or alterations of or to any of the Transaction Documents (whether or not such supplements, amendments, modifications or alterations are finalized) or in connection with preserving,

enforcing (through negotiations, legal proceedings or otherwise) or determining whether or how to enforce or protect its rights under or in connection with the Transaction Documents.

ARTICLE 3 REPRESENTATIONS AND WARRANTIES

3.1 Obligors

Each Obligor (except as otherwise specifically noted below) represents and warrants to the Lessor that as of the Closing Date:

- (a) Due Incorporation, etc. Each Obligor is duly incorporated, organized or formed and is validly existing and in good standing under the laws of its jurisdiction of incorporation, organization or formation and is qualified to do business and in good standing as a body corporate under the laws of the province of Ontario and in each other jurisdiction in which it carries on business or owns, leases or operates property. Each Obligor has the corporate, partnership or other constitutional power and authority to own or hold under lease its properties and to enter into and perform its obligations under this Agreement and the other Transaction Documents.
- (b) Authorization. The execution, delivery and performance by each Obligor of this Agreement and the other Transaction Documents are within the corporate powers of such Obligor, have been duly authorized by all necessary corporate action on the part of such Obligor, require no action by or in respect of or filing with any shareholders or obligees of such Obligor or any Government Body (except for actions and filings contemplated by the Basic Documents which have been duly taken or made or for which adequate provision has been made) and do not (i) contravene, or constitute a default under, its Constituent Documents, any Authorizations or Government Actions or any Applicable Law binding on such Obligor or its property or any agreement, judgment, injunction, order, decree or other instrument by which such Obligor or its property is bound, (ii) result in or require the creation of any Lien upon any of the Leased Property or other Collateral, revenues or assets of such Obligor (other than in favour of Lessor pursuant to the Security Documents and Permitted Liens) or (iii) contravene or conflict with in any material respect or result in any material breach or constitute any material default under, the Material Project Documents, any other material document which is binding upon such Obligor or any of the Leased Property or other Collateral, revenues or assets.
- (c) Government Action. On the Closing Date, except for the Material Authorizations listed in Part B of Schedule 6 which shall be obtained after the Closing Date, (a) all Material Authorizations listed in Part A of Schedule 6 required in connection with the execution, delivery and performance by each Obligor of the Transaction Documents have been obtained, given or made, and (b) all other Authorizations, and Government Actions required in connection with the execution, delivery and performance by each Obligor of the Transaction Documents, as listed in Part C of Schedule 6, have been obtained, except to the extent that the failure to obtain any such Authorization will not result in an adverse effect on the enforceability or consummation of the transactions contemplated by the Transaction Documents, or materially adversely affect the value of any of the Lands, the Project Facilities, the Project Sites, the Leased Property or any other Collateral, or the financial position or performance by an Obligor of its obligations thereunder.

- (d) Execution; Enforceability. This Agreement and each other Transaction Document to which it is a party has been duly executed and delivered by the Obligor and, assuming due authorization, execution and delivery thereof by Lessor, constitutes the legal, valid and binding obligation of each Obligor, enforceable against them in accordance with its terms, except as enforceability thereof may be affected by bankruptcy, insolvency or similar laws affecting the enforcement of creditors' or lessors' rights generally and the availability of equitable remedies may be limited by equitable principles of general applicability (regardless of whether such enforceability is considered in a proceeding in equity or at law).
- (e) Litigation. Other than as disclosed in writing to Lessor, there is no action, suit, proceeding, arbitration, administrative proceeding or governmental investigation (whether or not purportedly on behalf of Lessee) at law or in equity or before or by any Government Body, domestic or foreign, pending or, to the knowledge of a Responsible Officer of each of the Obligors, threatened, against or affecting any Obligor or any property of the Obligors (including the Collateral) that has resulted in, or is reasonably likely to result in, a Material Adverse Effect, nor is any Obligor in default with respect to any order of any Government Body that could reasonably be expected to adversely affect the enforceability or consummation of the transactions contemplated by the Transaction Documents, or materially adversely affect the value of any of the Lands, the Project Facilities, the Project Sites, the Leased Property or any other Collateral, or the financial position or performance by an Obligor of its obligations thereunder.
- (f) Absence of Events. No Lease Default or Lease Event of Default exists, and no Obligor is in default in, nor has any non-permanent waiver been granted to an Obligor with respect to the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any agreement to which it is a party which default could have a Material Adverse Effect.
- (g) Financial Advisors; Broker's Fee. The Obligors have not retained any broker, finder, agent or financial advisor in connection with the Transaction, and neither the Obligors nor any Person authorized or employed by the Obligors as agent or otherwise has taken any action the effect of which would be to cause the Obligors to be liable for any brokers', finders', agents' or advisors' fees or commissions or costs of any nature or kind claimed by or on behalf of brokers, finders, agents or advisors in respect of the Transaction.
- (h) Applicable Law. The current condition and use of the Leased Property, the Project Sites and the Project Facilities do not materially violate any Applicable Law, including laws relating to occupational safety or health or Environmental Laws, or Government Action. Lessee and each other Obligor is in compliance in all material respects with Applicable Law. None of the transactions contemplated by the Basic Documents will result in a violation of any Applicable Laws.
- (i) Loss; Expropriation. No damage, loss, condemnation, confiscation, theft or seizure has occurred with respect to any portion of the Lands, the Project Facilities, Project Sites, the Leased Property or any other Collateral that would materially and adversely affect the value, utility, residual value or economic useful life of the Lands, the Project Facilities, Project Sites, the Leased Property or any other Collateral; and there is no action pending or, to the knowledge of any Responsible Officer of any Obligor, threatened by any Government Body or other Person to initiate a taking or use of the Lands, the Project Facilities, Project Sites, the Leased Property or any other Collateral or any part or portion

of any thereof through condemnation, seizure, requisition of title, power of expropriation or otherwise. No Event of Loss has occurred; no event or condition has occurred which, with the passage of time or the giving of notice, or both, would constitute an Event of Loss.

- (j) Certificates; Permits. The Obligors have obtained and are in compliance with all Government Actions and all Authorizations then required from all Government Bodies or from private parties for the possession, occupation, construction, maintenance, normal use and operation of the Projects, the failure to obtain or comply with which would materially and adversely affect the value, utility, residual value or economic useful life of the Lands, the Project Facilities, Project Sites, the Leased Property or any other Collateral, and all such Government Actions and Authorizations will be in full force and effect on the Closing Date and are not subject to any actual, pending or, to the Obligors' knowledge, threatened appeal or review by the granting entity or any third party.
- (i) Ownership Structure. As of the Closing Date, the corporate structure is as set forth in Schedule 7 and such structure is true and correct. No Person has any agreement, option, right or privilege, whether by Applicable Law, pre-emptive or contractual for the purchase of securities in the capital of any Obligor (other than the Parent) or any of such Obligor's property or assets except pursuant to the Transaction Documents. Each Obligor's jurisdiction of formation and the location of all of the Collateral of such Obligor, the chief executive office, principal place of business and registered office of such Obligor are set forth in Schedule 7.
- (k) Taxes. Each Obligor has timely filed or caused to be filed all tax returns, declarations, reports, estimates, information returns, statements and other information related to Taxes of all jurisdictions in which such returns are required to be filed by it and has (i) paid or caused to be paid all Taxes required to have been paid by it, except Taxes being contested pursuant to a Permitted Contest and for which such Obligor has set aside on its books adequate reserves and (ii) deducted or withheld all Taxes required to be deducted or withheld from payments by such Obligor and properly paid to the appropriate Government Body, and no material controversy, audits, examinations, investigations, proceedings or claims in respect of Taxes due is pending or, to the knowledge of any Responsible Officer of any Obligor, threatened.
- (l) Disclosure. As of the date it was stated to be given or as at the date it was delivered, all written factual information supplied by or on behalf of any Obligor to Lessor and its consultants and advisors in connection with the Transaction, fairly describes and described (when taken as a whole) in all material respects the business of such Obligor and is and was, as at the date (if any) at which it was stated to be given or as at the date it was supplied, true, complete and correct in all material respects and does not and did not, as of such date, contain any untrue statement of a material fact or omit to state a material fact or any fact necessary to make the statements contained therein not misleading at such time in light of the circumstances under which such information was provided. All financial statements that have been provided to Lessor in respect of the Obligors fairly present in all material respects the assets, liabilities and financial position of each such Obligor as of the respective dates of the financial statements.
- (m) Goods and Services Tax. Each Obligor is duly registered for the purposes of the HST under the following registration numbers: North Bay Subsidiary - 77628 7062 RT0001; Kapuskasing Subsidiary - 77705 6946 RT0001; Parent - 74759 4133 RT0001; Lessee - 88667 4696 RT0001; Kingston Subsidiary - 140263690RT0001.

- (n) Description of Leased Property; Location. The description of the Leased Property set forth in Schedule 1 to the Lease Supplement executed on the Closing Date is a true and accurate description in all material respects. The Leased Property is located within the boundaries of the Iroquois Falls Project Site.
- (o) Real Property Interests. The Obligors hold all the Real Property Interests necessary to own, maintain, and operate the Projects, including, but not limited to, the Lands.
- (p) Title to Leased Property and Other Collateral. Good and valid ownership of the Leased Property will, on the Closing Date, be validly and effectively conveyed to and vested in, Lessor, free and clear of all Liens. Each Obligor holds good and legal title to all Collateral (other than the Leased Property) or assets that it owns and on which it purports to grant Liens pursuant to the Security Documents, and such Collateral is not subject to any Liens and no Person has any agreement or right to acquire an interest in the Collateral other than Lessor.
- (q) Intellectual Property. As of the Closing Date all licenses, patents, trademarks, trade names and similar rights, if any, necessary for the use and operation of the Project Facilities are in full force and effect. No Obligor has received any written or actual notice that (a) any material product, process, method, substance, part or other material presently contemplated to be employed by an Obligor in connection with its business, will infringe in any material manner any intellectual property owned by any other Person or (b) there is pending or threatened any claim or litigation against or affecting the Obligors contesting its right to sell any such product, process, method, substance, part or other material, which could reasonably be expected to have a Material Adverse Effect.
- (r) Environmental Matters. Except as set forth in Schedule 8 or in any environmental report delivered by any of the Obligors to Lessor:
- (i) (1) the Project Facilities and the applicable Project Sites (other than in respect of the Iroquois Falls Project) have been, and continue to be, owned and operated by Lessee and (2) the Iroquois Falls Project and the Iroquois Falls Project Site have been owned and operated by Northland Power Inc. prior to the Closing Date and will be owned and operated by Lessee on and after the Closing Date, in each case, in compliance with all Environmental Laws;
 - (ii)
 - (A) In respect of the Iroquois Falls Project Site and Iroquois Falls Project, as far as the Obligors are aware, there have been no past (within the two (2) year period before the Closing Date),
 - (B) in respect of the Project Facilities and Project Sites (other than the Iroquois Falls Project Site and Iroquois Falls Project), there have been no past (within the two (2) year period before the Closing Date), and
 - (C) there are no present, pending or, to the knowledge of any Responsible Officer of an Obligor, threatened:
 - (X) Environmental Claims with respect to the Project Facilities or Project Sites, complaints, notices or requests for information received by any

Obligor with respect to any actual or alleged violation of any Environmental Law with respect to the Project Facilities or Project Sites, or

(Y) Environmental Claims with respect to the Project Facilities or Project Sites, complaints, notices or inquiries to an Obligor regarding actual or potential liability under any Environmental Law with respect to the Project Facilities or Project Sites;

- (iii) no Specified Substances have been generated, used, treated, recycled, stored on or transported to or from, or Released on, are migrating to or from, or are present at all or any portion of the Project Facilities or Project Sites, other than the safe use, transportation and handling of natural gas carried out in the ordinary course of business in accordance with Applicable Laws and Government Actions, or except where the same could not reasonably be expected to give rise to a material liability under or material breach of Environmental Laws or Government Actions;
- (iv) to the knowledge of any Responsible Officer of the Obligors, there have been no Releases of Specified Substances from a facility owned or operated by third parties, but with respect to which an Obligor has or is alleged to have liability, that, singly or in the aggregate, would give rise to, or would reasonably be expected to give rise to, a material liability under or material breach of Environmental Laws or Government Actions;
- (v) the Obligors have been issued and is in compliance with all Government Actions relating to Environmental matters with respect to, and necessary or desirable for the construction, ownership, leasing, use, operation and maintenance of, the Project Facilities and the Project Sites, and all such Government Actions (including Authorizations required under Environmental Laws) are in full force and effect;
- (vi) the Project Facilities and the Project Sites have not been identified or listed by or pursuant to any Applicable Law or Government Action as requiring or potentially requiring investigation, Cleanup or other Environmental remedial action or liability;
- (vii) there are no underground storage tanks, active or abandoned, including petroleum storage tanks, on or under the Project Facilities or Project Sites that, singly or in the aggregate, would give rise to, or would reasonably be expected to give rise to, a material liability under or material breach of Environmental Laws or Government Actions;
- (viii) the Obligors have not transported or arranged for the transportation of any Specified Substances to any location which has been identified or listed by or pursuant to any Applicable Law or Government Action as requiring investigation, Cleanup, or other Environmental remedial action or which is the subject of any enforcement action or other investigation by any Government Body, which in each case would reasonably be expected to lead to material claims against any Obligor, the Project Facilities or Project Sites for any remedial work, property damage, Cleanup costs, reclamation damages and costs, conservation, damage to natural resources or personal injury;

- (ix) there are no toxic mold, polychlorinated biphenyls or friable asbestos present at the Project Facilities or Project Sites that, singly or in the aggregate, would give rise to, or may reasonably be expected to give rise to, a material liability under or material breach of Environmental Laws or Government Actions;
 - (x) all Specified Substances used in whole or in part by the Project Facilities or Project Sites have been manufactured, processed, disposed of, transported, treated and stored in compliance with all Environmental Laws and Government Actions;
 - (xi) none of the Lessee or Obligors has contractually assumed any liability under any Environmental Law or contractually indemnified another Person for any liability under any Environmental Law in relation to the Project Facilities, Project Sites or any other Collateral; and
 - (xii) Obligors have provided to Lessor true and complete copies of all environmental site assessments, environmental sampling and other material environmental records and documents (including correspondence with Government Bodies) with respect to the Project Facilities, Project Sites and Collateral, which are in the possession or control of the Obligors.
- (s) Compliance with Applicable Law. Each Obligor and the Projects are in compliance in all material respects with Applicable Laws (other than Environmental Laws which are treated in clause (r) above, and other than Anti-Money Laundering Laws, Anti-Corruption Laws and Sanctions, which are treated in clause (w) below).
- (t) No Conflict or Breach. Neither the execution and delivery by the Obligors of the Transaction Documents nor the consummation by the Obligors of the transactions therein contemplated nor the fulfillment of, or compliance with, the terms and provisions thereof by the Obligors will contravene, violate, conflict with, or result in a breach of, any of the terms, conditions or provisions of (i) such Obligor's Constituent Documents, (ii) any material order, writ, injunction, resolution, judgment or decree of any court or other tribunal or Government Body, (iii) any Applicable Law or (iv) any material document which is binding upon such Obligor or any of the Project Facilities, Project Sites or other Collateral, which conflict or breach could have a Material Adverse Effect.
- (u) Utility Services. All Utility Services necessary for the operation of the Projects for its intended purposes are available at the Project Sites or will be so available as and when required on commercially reasonable terms.
- (v) Indebtedness. No Obligor has any outstanding Indebtedness other than Permitted Indebtedness and is not in default under any agreement providing for such Permitted Indebtedness.
- (w) Anti-Money Laundering Laws; Anti-Corruption Laws. Neither the Obligors nor any of their directors, officers or, to the Obligors' knowledge, any of their respective Affiliates, representatives or agents is a Sanctions Target. The Obligors and their officers and, to the knowledge of the Obligors, their Affiliates, representatives, directors and agents, are, and have been, (i) in compliance with applicable Sanctions and (ii) in compliance with applicable Anti-Money Laundering Laws and Anti-Corruption Laws. The Obligors have not received from any Government Body notice of any action, suit, proceeding or

investigation against it with respect to an actual or alleged violation by an Obligor of applicable Sanctions, Anti-Money Laundering Laws or Anti-Corruption Laws.

- (x) Force Majeure. No force majeure or other event that would excuse an Obligor from the duty to perform any material obligation of such party under any Transaction Document has occurred and is continuing, in each case, that has not been disclosed in writing to Lessor.
- (y) Insurance. All Insurance Policies are in full force and effect and all premiums then due and payable on all such Insurance Policies have been paid (and in the case of Lessee, in accordance with the terms of the Lease).
- (z) First Nations Matters. The Obligors have not received notice that the Project Facilities, Project Sites or any other Collateral are subject to, and, to the Obligors' knowledge, there are no current or pending First Nations Claims affecting the Project Facilities, Project Sites or any other Collateral which would reasonably be expected to have a Material Adverse Effect. Other than as disclosed in writing to Lessor, to the knowledge of the Obligors, the Obligors have not entered into any written or oral agreements with First Nations to provide benefits, pecuniary or otherwise, with respect to the Project Facilities, Project Sites or any other Collateral at any stage of development that could result in a Material Adverse Effect and the Obligors have not offered First Nations any benefits with respect to the Project Facilities, Project Sites or any other Collateral at any stage of development.

(aa) Labour Matters

The Obligors have disclosed all material labour and employment contracts or agreements, including all collective bargaining agreements. Except as in the aggregate could reasonably be expected to have a Material Adverse Effect:

- (i) there are no strikes, work stoppage, slowdowns, lockouts, unfair labour practice complaints, union certification or organizing drives or applications, successor or related employer applications, or other labour disputes pending or, to the knowledge of the Obligors, threatened, against any Obligor or their employees;
- (ii) there are no complaints, grievances, claims, applications, proceedings, judgments or orders filed, made, threatened or commenced against any of the Obligors or their employees concerning or affecting any of their employees, and to the knowledge of the Obligors, no event has occurred or circumstance exists that may give rise to or serve as a basis for any such complaints, grievances, claims, applications, proceedings, judgments or orders; and
- (iii) each of the Obligors is in compliance with all Applicable Law, contracts and agreements respecting labour and employment.

(bb) Pension and Benefit Plans.

- (i) The Obligors have disclosed all material Pension Plans and Benefit Plans in effect or to be established. Other than the Pension Plan(s) disclosed in Schedule 4 no Obligor maintains or contributes to, is not required to maintain or contribute to, is not a party to, or bound by, and has no liability or contingent liability under any Pension Plan.

- (ii) All Pension Plans and Benefit Plans are established, registered, funded, invested, administered, operated and maintained under, and in compliance in all material respects with, all requirements of Applicable Law, including Pension and Benefit Laws. No promises or commitments have been made by to amend any Pension Plans or Benefit Plans, to provide increased benefits or to establish any new plan.
 - (iii) No Pension Plan is a defined benefit pension plan.
 - (iv) All employer and employee payments, contributions, premiums and other amounts, reports, returns and filings required to be made, remitted or paid under Pension and Benefit Laws in respect of Pension Plans and Benefit Plans have been made, remitted or paid and all such plans are fully funded both on a going concern basis and on a solvency basis pursuant to their most recent actuarial valuations filed with the applicable Government Body and in accordance with applicable Pension and Benefit Laws. All post-retirement liabilities (if any) under Pension Plans and Benefit Plans have been properly identified in the Obligors' consolidated financial statements, and there are no going concern, past service or solvency deficiencies.
 - (v) In respect of Pension Plans which are registered pension plans within the meaning of the *Income Tax Act* (Canada), to the best of the knowledge of the Obligors, no steps have been taken to terminate or wind up any such plans (wholly or in part), no unauthorized merger of such plans, no unauthorized withdrawal of funds from such plans and no improper contribution holidays taken in respect of such plans.
 - (vi) There are no actions, claims or proceedings existing, pending or threatened against any Pension Plan, Benefit Plan or the assets of any such plan which could be reasonably expected to have a Material Adverse Effect.
- (cc) Security. Upon the execution of the Security Documents, the provisions of the Security Documents shall be effective to create, in favour of Lessor, a legal, valid and effective Lien on all of the Collateral purported to be covered thereby. All necessary and appropriate action will be taken so that the Security Documents create first-priority, perfected Liens on and security interests in the Collateral, prior and superior to all other Liens (subject only to Permitted Liens having priority as a matter of law). All necessary and appropriate consents to the creation, effectiveness, priority, perfection and enforcement of such Liens will be obtained from all relevant parties including, where applicable, each of the parties to, or the Government Bodies issuing, the Transaction Documents and Authorizations intended by the Security Documents to be pledged, as Collateral. No Obligor has granted "control" (within the meaning of the PPSA) over any investment property (as such term is defined in the PPSA) forming part of the Collateral to any person other than Lessor.
- (dd) Material Project Documents. The Material Project Documents constitute and include all material contracts and agreements that are necessary for (i) the operation and ownership of the Project Facilities, and (ii) the conduct of the business of Obligors as contemplated by the Transaction Documents. Each Material Project Document is as of the Closing Date, in full force and effect and, except as permitted pursuant to the Transaction Documents, has not been amended, modified, supplemented, rescinded, terminated or waived as of the Closing Date. Lessee is not a party to or is not bound by any contract other than the Transaction Documents, the Material Project Documents and any non-material Project Documents.

- (ee) Investments. Lessee has no investments except Permitted Investments.
- (ff) Liens. Except for Permitted Liens, each Obligor has no Lien (and has agreed to no Lien) upon any of its present or future revenues, properties or assets or share capital. Each Obligor has no obligation to create Liens on or with respect to any of its Collateral, revenues or assets, other than Permitted Liens, and, except for the Transaction Documents, each Obligor is not restricted by contract, Applicable Law or otherwise from creating Liens on any of its Collateral, revenues or assets.
- (gg) Priority. The Obligations are senior, unconditional, secured and unsubordinated obligations and rank and will rank at senior in priority of payment and in all other respects with all other Indebtedness of the Obligors and unsecured obligations of the Obligors outstanding at any time except for any obligations of the Obligors (including any pension, social security and employment obligations) held by those whose claims are preferred under any bankruptcy or insolvency procedures to the extent required by the terms of any Applicable Law.
- (hh) Transactions with Affiliates. Except as expressly permitted under the Transaction Documents other than pursuant to the Transaction Documents and Constituent Documents to which it is a party, as of the Closing Date (and not, for greater certainty, at any later date), no Obligor has directly or indirectly entered into any other transaction with or for the benefit of an Affiliate, other than transactions entered into in the ordinary course of business on commercially reasonable terms.
- (ii) Casualty Event. Other than as disclosed in writing to Lessor, no Casualty Event or Condemnation Event has occurred and is continuing that could reasonably be expected to have a Material Adverse Effect.
- (jj) Competition. The aggregate value of the assets in Canada that are owned by Lessee, or Persons or entities controlled by Lessee, and the gross revenues from sales in or from Canada generated from those assets, all as determined in accordance with Part IX of the *Competition Act* (Canada) and the *Notifiable Transactions Regulations* thereunder, do not exceed \$93 million. The aggregate value of the assets in Canada that are owned by each of Kingston Subsidiary and NPIF Kingston CoGen Corp., or Persons or entities controlled by either of them, and the gross revenues from sales in or from Canada generated from those assets, all as determined in accordance with Part IX of the *Competition Act* (Canada) and the *Notifiable Transactions Regulations* thereunder, do not exceed \$93 million. Notification under Part IX of the *Competition Act* (Canada) is not required in connection with the transactions contemplated by the Northland Securities Purchase Agreement.
- (kk) Resources. The Obligors and Hosting hold or have the benefit of all Authorizations, Material Project Documents, Utility Services, labour and employment contracts and such other contracts, approvals or services required in order to operate in all material respects, maintain and preserve the Project Facilities and Project Sites in accordance with Good Industry Practices, Applicable Law, the Transaction Documents, any power purchase agreements, hosting agreements or other off-take agreements and the applicable operating manuals.

3.2 Lessor

Lessor represents and warrants to the other parties hereto that, as of the Closing Date:

- (a) Due Incorporation, etc. Lessor is a corporation duly organized, validly existing and in good standing under the laws of Canada, is resident in Canada for the purposes of the *Income Tax Act* (Canada), is qualified to do business and in good standing as a body corporate under the laws of the province of Ontario, and has the corporate power and authority to execute and deliver the Transaction Documents to which it is a party, to fulfill and comply with the terms, conditions and provisions thereof and to perform its obligations thereunder.
- (b) Authorization. All Authorizations and Government Actions required in connection with the execution, delivery and performance by Lessor of the Transaction Documents to which it is a party have been or will have been obtained, given or made, but for those Authorizations and Government Actions (x) that are not required on the Closing Date or (y) for which the failure to obtain, give or make will not have a material adverse effect. Except as otherwise set out herein, Lessor makes no representation or warranty relating to the Project Facilities, the Leased Property, the Collateral, the Projects Sites or approvals relating to any of the foregoing.
- (c) Execution: Enforceability. The Transaction Documents to which it is a party have been duly authorized, executed and delivered by Lessor and, assuming due authorization, execution and delivery thereof by the other parties thereto, constitute, on the Closing Date, legal, valid and binding agreements of Lessor, enforceable against Lessor in accordance with their terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforcement of creditors' rights generally and by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).
- (d) Execution Not a Breach. Neither the execution and delivery by Lessor of the Transaction Documents to which it is a party nor the consummation by Lessor of the transactions therein contemplated, nor the fulfillment of, or compliance with, the terms, conditions and provisions thereof by Lessor will contravene, violate conflict with, or result in a breach, of any of the terms, conditions or provisions of its Constituent Documents or of any bond, debenture, note, Mortgage, indenture, agreement or other instrument to which Lessor is now a party or by which it or its property may be bound, or constitute (with the giving of notice or the passage of time or both) a default thereunder, which breach or default would reasonably be expected to have a material adverse effect.
- (e) No Conflict or Breach. Neither the execution and delivery by Lessor of the Transaction Documents to which it is a party nor the consummation by Lessor of the transactions therein contemplated nor the fulfillment of, or compliance with, the terms, conditions and provisions thereof by Lessor will contravene, violate, conflict with, or result in a breach of, any of the terms, conditions or provisions of (i) any material order, writ, injunction, resolution, judgment or decree of any court or other tribunal or Government Body or (ii) any Applicable Law, which conflict or breach could have a material adverse effect. Except as otherwise set out herein, Lessor makes no representation or warranty relating to the Leased Property or the laws relating thereto.
- (f) Sufficient Capital. Lessor is sufficiently capitalized in light of its permitted business and to carry out its obligations incurred under the Transaction Documents.
- (g) Voluntary Petition. Lessor does not currently intend to file a voluntary petition for relief under the *Bankruptcy and Insolvency Act* (Canada) or any similar law.

ARTICLE 4 OBLIGOR COVENANTS

4.1 Financial and Other Reports

During the term of this Agreement, the Obligors, jointly and severally, on their own behalf and on behalf of each other, covenant and agree that they shall:

(1) Annual Financial Statements. As soon as available, but in any event within 90 days after the end of each fiscal year of the Parent, a copy of the unaudited consolidated balance sheet of the Parent and its Subsidiaries as at the end of such year and the related unaudited consolidated statements of income and of cash flows for such year, setting forth, in each case, in comparative form the figures for the previous year; provided that, in the event of any change in generally accepted accounting principles used in the preparation of such financial statements, the Parent shall also provide a reconciliation of such financial statements to GAAP.

(2) Semi-Annual Financial Statements. As soon as available, but in any event not later than 45 days after the end of each of the second fiscal quarter of the Parent, the unaudited consolidated balance sheet of the Parent and its Subsidiaries as at the end of such fiscal quarter and the related unaudited consolidated statements of income and of cash flows for such two quarters and the portion of the fiscal year through the end of such quarter, setting forth in each case in comparative form the figures for the preceding two fiscal quarters.

(3) Bank Statements. As soon as available, but in any event not later than five (5) Business Days after the half and end of each fiscal year of the Parent, the last monthly account statement generated by the applicable financial institution for each bank account of the Parent. As soon as available, but in any event not later than five (5) Business Days after the end of each month in a fiscal year of the Lessee, account statements generated by the applicable financial institution for each bank account of the Lessee.

(4) All financial statements delivered to Lessor shall be complete and correct and shall be prepared in reasonable detail and in accordance with GAAP applied (except as approved by accountants of the Obligors and disclosed in reasonable detail therein) consistently throughout the periods reflected therein and with prior periods.

4.2 Merger Covenant

(1) Merger. The Obligors shall not, and shall cause Hosting to not, consolidate or amalgamate with or merge into any other Person, or permit any other Person to merge, consolidate or amalgamate with or into it, or convey, transfer, assign or lease all or substantially all of its assets as an entirety to any Person without the prior written consent of Lessor.

(2) Lease, Sublease or Assignment. Nothing contained in this Section 4.2 shall permit any lease, sublease, or other arrangement for the use, operation or possession of the Project Facilities or the Project Sites (or any portion thereof) except (i) in compliance with Section 4.40 hereof or (ii) the grant of non-exclusive licenses to access Land provided that such non-exclusive license may be terminated at the discretion of an Obligor (and Lessor following a Lease Event of Default) with or without notice and is consented to in writing by Lessor.

4.3 Obligors Not to Own Leased Property

No Obligor nor any of their respective Affiliates will at any time own any of the Leased Property unless Lessor consents thereto, except as is expressly contemplated by the Basic Documents.

4.4 Broker's Fees

The Obligors shall hold Lessor harmless from and against any claim, demand or liability for any broker's, finder's or placement fees or commission alleged to have been incurred as a result of any action or inaction by any Obligor in connection with the Transaction, except for any such fee or commission included in Lessor's Cost or Transaction Costs.

4.5 Notification of Relocation or Name Change

No Obligor shall change its name or merge or amalgamate with another Person under a different name, or move its principal place of business and chief executive office to a location other than that shown in the instruments listed in Schedule 5, without giving at least ten (10) Business Days' prior notice to Lessor of the new name or location and the date upon which such change of name, amalgamation, merger or change of location is to take effect and, within five (5) Business Days of the change of name, amalgamation or change of location, the Obligors shall provide Lessor with (i) in the case of a change of name or amalgamation, a notarial or certified copy of the articles of amendment or articles of amalgamation effecting the change of name (or similar); and (ii) in any case, an opinion from legal counsel reasonably satisfactory to Lessor as to the correct name of the applicable Obligor, confirming that all appropriate registrations, filings or recordings have been made on behalf of Lessor to fully and effectively maintain the interest of Lessor in the Leased Property and all other Collateral and the perfection and priority of the Liens created by the Security Documents.

4.6 Corporate Existence

Except as otherwise provided in Section 4.2, each Obligor shall at all times maintain its corporate or partnership existence and all of its rights, privileges and franchises necessary in the normal conduct of its business, except for any corporate or partnership right, privilege or franchise that such Obligor determines, in its reasonable, good faith business judgment, is no longer necessary or desirable (A) in the conduct of its business, or (B) in connection with the Transaction.

4.7 Compliance with Laws

Each Obligor shall comply with all Applicable Laws to which it may be subject and with all Good Industry Practices, except where the failure so to comply would not (a) have a Material Adverse Effect (other than in the case of any Applicable Law that might impose criminal or quasi-criminal penalties, as to which no exception shall apply), (b) pose a material risk of sale, forfeiture or loss of any interest in the Project Facilities, the Project Sites or any other Collateral, (c) interfere in any material manner with the use or operation of the Project Facilities, the Project Sites, or any other Collateral or (d) pose any risk of interference with the payment of rent or interest or any other payments to or for the account of Lessor, including compliance with all Environmental Laws in each jurisdiction in which it is presently doing business. Notwithstanding the foregoing, the Obligors may contest any provision of Applicable Law pursuant to a Permitted Contest.

4.8 Notice of Default

If any Responsible Officer of an Obligor has actual knowledge of a Lease Default, Lease Event of Default, Event of Loss, default under any of the Transaction Documents or event that with the giving of notice or passage of time would constitute a Lease Default, Lease Event of Default, Event of Loss, default under any of the Transaction Documents, such Obligor shall promptly give notice thereof to each other party to this Agreement.

4.9 Authorizations, Intellectual Property

Each Obligor shall maintain (i) all Material Authorizations and (ii) in all material respects, all Authorizations and Intellectual Property Rights necessary for the use, operation and maintenance of the Project Facilities, the Project Sites and the other Collateral in accordance with the plans and specifications and any easements necessary for access to and operation of the Project Facilities, the Project Sites and the other Collateral.

4.10 Taxes

Each Obligor shall pay promptly when due all Taxes imposed upon it with respect to or affecting the Project Facilities, Project Sites, the Leased Property and the other Collateral; but no such Tax need be paid for so long as such Obligor is contesting the same by a Permitted Contest.

4.11 Offer for Sale

Neither any Obligor nor any Person acting on its behalf will offer the Leased Property or any part thereof or any security similar thereto for issue or sale to, or solicit any offer to acquire any of the Leased Property from anyone.

4.12 Inspection and Reports

(1) The Obligors shall cause to be prepared and filed in a timely fashion, or, if Lessor is required to file, the Obligors shall prepare and deliver to Lessor within a reasonable time before the date for filing, any material reports with respect to the condition or operation of the Projects, the Project Facilities and other Collateral required to be filed by Applicable Law (except for general filings with a Government Body required of Lessor pursuant to banking, financial institution and securities laws of general application) or by any Government Body.

(2) The Obligors will permit, upon reasonable advance notice, with respect to Lessor or officers and designated representatives of Lessor acting as a group (including its technical advisor), not more than twice per calendar year (unless any Lease Event of Default or Lease Default has occurred and is continuing in which case such reasonable notice requirement and restriction on the number of annual visits shall not apply), to visit and inspect (at the cost and expense of the Obligors) the Project Facilities and Project Sites, to examine and make copies of the books of record, accounts and documents of the Obligors and discuss the affairs and accounts of the Obligors with and be advised as to the same by, their officers, subject to reasonable security and health and safety requirements, in accordance with Applicable Law and within ordinary business hours on Business Days at the Obligors' expense; provided that, in each case no such visit shall interfere with or interrupt, the operations of the Project Facilities or the Project Sites. Notwithstanding any of the foregoing, Lessor's technical advisor may request additional inspections or testing to confirm the condition and operation of any equipment used at the Project Sites or in connection with the Project Facilities.

(3) The Obligors will permit, upon reasonable advance notice, with respect to Lessor or officers and designated representatives of Lessor acting as a group, not more than once per calendar year (unless any Lease Event of Default or Lease Default has occurred and is continuing in which case such reasonable notice requirement and restriction on the number of annual visits shall not apply), to conduct a “desktop review” of the Project Facilities and Project Sites, which such review shall include (i) inspection reports for all major equipment, combustion turbines, generators, steam turbines, heat recovery steam generators, once-through steam generators, cooling towers, generator step-up transformers and major auxiliary transformers, major pumps, relay calibration reports, high-pressure piping (incl. flow-assisted corrosion), pipe hanger inspection, jurisdictional inspection reports, and infrared inspection reports, (ii) vibration reports for the Leased Property, being turbines and any other steam and gas turbines.

(4) The Obligors shall promptly deliver to Lessor any inspection reports prepared by and/or provided by any insurance provider with respect to the Project Facilities and Project Sites.

(5) The Obligors shall promptly deliver to Lessor any borescope reports obtained by an Obligor (typically once annually) within ten (10) Business Days after the end of the fiscal year of the Parent.

(6) As soon as available, but in any event not later than ten (10) Business Days after the end of each calendar month, the Obligors shall deliver to Lessor the following reporting, in form and substance satisfactory to Lessor, acting reasonable:

- (a) a production report;
- (b) a fuel consumption report;
- (c) fired / operating hours per item of Leased Property being a turbine and any other gas or stream turbine;
- (d) start attempts, failed starts, trips from load, and reasons thereof;
- (e) types and volumes of electricity sold into the Independent Electricity System Operator market (e.g., energy, regulation service, 10-minute synchronized / spinning reserve, 10-minute non-synchronized / non-spinning reserve, 30-minute / non-synchronized reserve);
- (f) maintenance work orders opened and completed;
- (g) total work order backlog;
- (h) a memo on operation & maintenance relatively noteworthy events (e.g., calibrations, results of material inspections, loss of equipment redundancy, generally routine operation);
- (i) major original equipment manufacturers service bulletins issued;
- (j) safety incident log; and
- (k) water chemistry report.

4.13 Maintenance of Filing

The Obligors will promptly prepare, register and file all documents and take all actions necessary to preserve, protect and maintain any and all registrations, including caveat filings under the *Conveyancing*

and Law of Property Act (Ontario), made with any Government Body in respect of Lessor's interests in the Leased Property and the other Collateral (other than general filings with any Government Body required of Lessor pursuant to banking, financial institution and securities laws of general application). Each Obligor will, at its own expense, take (or will cause to be taken) all actions that are reasonably required to establish, maintain, protect and preserve (i) the Liens created by each Security Document, the required priority (to the extent available under Applicable Law) of such Liens and the effectiveness of the powers of attorney granted pursuant to such Security Documents and (ii) good and valid title to or rights in, such Obligor's Collateral (including Real Property Interests) such Obligor purports to own, lease or otherwise possess.

4.14 Cooperation

The Obligors will cooperate with Lessor in obtaining the valid and effective issuance or, as the case may be, transfer or amendment of all Authorizations and Government Actions, if any, related to the Transaction that may be necessary for the construction, ownership, leasing, use, operation and maintenance of the Project Facilities, the Project Sites and the other Collateral.

4.15 Pension and Benefit Plans

The Obligors shall comply in all material respects with all Applicable Laws, contracts and agreements respecting labour and employment. Each Obligor shall operate and administer all Pensions Plans and Benefit Plans in compliance with the terms of such plans and all applicable Pension and Benefits Laws and shall maintain all necessary governmental approvals which are material in respect of the operation of such plans and comply, in all respects, with its obligations under such plans and applicable Pension and Benefits Laws including, without limitation, making all contributions and payments required to be made under the terms of such plans, applicable Pension and Benefits Laws and any applicable valuation report.

4.16 Liens

Each Obligor will not and will not agree to, create, incur, assume, suffer to occur or permit to subsist any Lien upon or with respect to any of its property, revenues or assets (real, personal or mixed, tangible or intangible) whether now owned or hereafter acquired, except for Permitted Liens.

4.17 Operation and Maintenance of Project Facilities

The Obligors shall operate, maintain and preserve the Project Facilities and the Project Sites (or cause that they be operated, maintained and preserved) in accordance with Good Industry Practices, Applicable Law, the Transaction Documents and the applicable operating manuals. For the duration of the Lease Term, the Obligors shall ensure that the Supports are reasonably in place to enable Lessor or any designee or assignee thereof to maintain, use and operate the Projects in Commercial Operation for the Lease Term and to sell and remove the Collateral located on the Project Sites.

4.18 Restricted Payments

No Obligor shall directly or indirectly, declare or make any Restricted Payment without the prior written consent of Lessor other than Permitted Restricted Payments.

4.19 Information and Notices

Lessee shall furnish to Lessor:

- (a) Within five (5) Business Days of any Obligor becoming aware of them, written notice, including reasonable details, together with such notice, a description of the action that the applicable Obligor has taken and/or proposes to take with respect thereto (if any), of:
- (i) any event which constitutes a Lease Event of Default or Lease Default, or any material breach or event of default by any Obligor under any Material Project Document;
 - (ii) the filing of any Lien that is not a Permitted Lien;
 - (iii) any event which is reasonably likely to have a Material Adverse Effect;
 - (iv) any event of force majeure of which an Obligor is aware;
 - (v) any material notices, directives or written communication relating to the Project Facilities or the Project Sites received by an Obligor from any Government Body that could have an adverse impact on any Collateral or the value thereof, or the financial condition, business, assets or operations of the Obligors, Project Facilities or the Project Sites;
 - (vi) any challenge, revocation, material adverse modification, denial or non-renewal of any Authorization;
 - (vii) any event which is reasonably likely to result in rights for any Person to cancel or suspend a material customer contract;
 - (viii) any intentional withholding of material compensation to any Obligor under any Material Project Document;
 - (ix) any proposed issuance or transfer of any common shares, equity interests or any other security convertible into common shares or any other equity interests in any Obligor's capital (other than the Parent) to any Person;
 - (x) within five (5) Business Days thereof, any change in the Responsible Officers of an Obligor, in which case the notice shall include a certified specimen signature of any new officer so appointed and, if requested by Lessor, reasonably satisfactory evidence of the authority of such new Responsible Officer;
 - (xi) following receipt of the same, certified copies of any amendments or waivers to any Material Project Document or to the Constituent Documents of any Obligor and any additional Material Project Document or any Replacement Agreement executed after the Closing Date.
- (b) Forthwith upon becoming aware of them (but in any case unless otherwise set forth below, within five (5) Business Days), written notice, including reasonable details, together with such notice, a description of the action that Lessee or any other Obligor has taken and/or proposes to take with respect thereto (if any), of:
- (i) major equipment failures at any of the Project Facilities, together with ongoing and regular updates thereafter until such equipment failure is resolved.

- (c) Within five (5) Business Days upon becoming aware thereof, written notice of any events or occurrences that could have a material impact on the operations of the Project Facilities within the immediately following three (3) month period, including but not limited to, planned maintenance outages and discussions with counterparties to any Material Project Documents.
- (d) Within five (5) Business Days of receipt thereof, copies of all internal and external audit reports with respect to regulatory compliance.
- (e) Within five (5) Business Days upon becoming aware thereof, written notice including the details of any pending or threatened (in writing) material litigation, Environmental Claim (including written notices and requests for information forming part of a regulatory enforcement action), arbitration or administrative proceedings by or against any Obligor, Project Facilities or the Project Sites, together with a description of the action that Obligors has taken and/or proposes to take with respect thereto. For the purposes of this clause only, such claims shall be considered material only if such claim could reasonably be expected to result in a Material Adverse Effect.
- (f) Unless such disclosure would constitute a breach of any Applicable Law, each Obligor shall supply to Lessor, promptly upon becoming aware thereof, notice of the commencement by an applicable regulatory authority of any enforcement action, proceeding or investigation targeting such Obligor, or any agent, director or officer of such Obligor, in connection with the Project Facilities or the Project Sites, and relating to an actual, alleged or suspected violation of applicable Anti-Corruption Laws, Anti-Money Laundering Laws or Sanctions by such Obligor, agent, director or officer, as applicable.
- (g) Within five (5) Business Days, such other information in relation to the Project Facilities, the Project Sites and the Obligors, as may be reasonably requested from time to time by Lessor (including copies of any notices given to any Obligor as a requirement of Applicable Law).

4.20 Compliance; Enforcement of Material Project Documents

Each Obligor will (a) comply with all material obligations, covenants and undertakings binding on it under the Material Project Documents to which it is a party, (b) enforce, exercise or preserve the material rights granted to it under, pursuant to or in connection with, each such Material Project Document, and (c) take any and all reasonable and prudent action to prevent the termination of any Material Project Document for reasons attributable to it.

4.21 Ranking

Each Obligor will take all action necessary to ensure that its Obligations are senior, unconditional, secured and unsubordinated obligations and rank and will rank at senior in priority of payment and in all other respects with all unsecured Indebtedness and other obligations of the Obligors outstanding at any time except for (i) any obligations of the Obligors (including any pension, social security and employment obligations) held by those whose claims are preferred under any bankruptcy or insolvency procedures to the extent required by the terms of any Applicable Law, and (ii) any obligations of the Obligors in respect of Permitted Liens.

4.22 Insurance

(1) Specific Requirements. Without limiting Section 11 of the Lease, the Obligors will be required to keep their insurance property and assets adequately insured (the “**Insurance Policies**”) by financially sound and reputable insurers, and maintain such other insurance, to such extent and against such risks as is customary with companies in the same or similar business operating in the same or similar locations (including property damage and public liability insurance). Lessor shall be designated as loss payee or additional insured on the Obligors’ applicable insurance policies, and any insurance proceeds shall be applied in accordance with Section 4.22(2).

(2) Application of Loss Proceeds. If an Obligor receives proceeds from Insurance Policies (“**Insurance Proceeds**”) in respect of any of its property or assets in respect of which a Security Interest has been granted pursuant to the Security Documents, as a result of one or more insurable events during the term of this Agreement, the applicable Obligor, shall forthwith deposit or cause such proceeds to be applied as follows:

- (a) if the aggregate amount of Insurance Proceeds received at such time is less than the Insurance Threshold and no Lease Event of Default is then in effect (except for any Lease Default or Lease Event of Default related to the event giving rise to the Insurance Proceeds), to be used, or committed to be used, to repair or replace the applicable property or assets in respect of which the insurance proceeds were received with any balance remaining thereafter to be used at the discretion of the Obligors in accordance with the Transaction Documents;
- (b) if the aggregate amount of Insurance Proceeds received at such time is greater than the Insurance Threshold and no Lease Default or Lease Event of Default is (except for any Lease Default or Lease Event of Default related to the event giving rise to the Insurance Proceeds), the application of such proceeds shall be subject to the direction and consent of Lessor; and
- (c) (i) if a Lease Default or Lease Event of Default is then in effect (except for any Lease Default or Lease Event of Default related to the event giving rise to the Insurance Proceeds) or (ii) if the insurance proceeds arise in connection with an Event of Loss, if so required by Lessor, all such Insurance Proceeds shall be held as security for Obligors obligations and may be applied to amounts due and payable to Lessor under the Basic Documents.

4.23 Books and Records

Parent will maintain proper books, accounts and records (with respect to its financial statements, in accordance with the applicable accounting principles) adequate to reflect truly and fairly the financial condition of Parent and its Subsidiaries, and the results of its operations and which shall be kept separate from those of any other Person.

4.24 Use of Proceeds

Lessee will use the proceeds of the Transaction only to finance the acquisition to be made pursuant to the Northland Securities Purchase Agreement by way of intercompany loan to Parent and for general working capital purposes of Lessee in accordance with the terms and conditions herein.

4.25 Payment

The Obligors will pay all sums due hereunder and under the other Basic Documents according to the terms hereof and thereof.

4.26 Further Assurances

From time to time as reasonably requested by Lessor, the Obligors will execute, record, register, deliver, file (or any combination of the foregoing) all such notices, statements, instruments and other documents (including any financing statement, financing change statement, continuation statement or fixture filing), execute such acknowledgements relating to the Obligations stating the interest and charges then due and any known defaults, and take such other steps as may be necessary or advisable to render fully valid and enforceable under all Applicable Law the rights, Liens and priorities of Lessor with respect to all Collateral and other security from time to time furnished hereunder and under the other Basic Documents or intended to be so furnished, in each case in such form and at such times as shall be reasonably satisfactory to Lessor, and pay all reasonable fees and expenses (including legal counsel fees) incident to compliance herewith.

4.27 Personal Property

Each Obligor shall (i) obtain and maintain good and valid title or the right to use all its personal property, assets and revenues at the times necessary for the design, development, engineering, construction, procurement, installation, operation and maintenance of the Projects in accordance, in all material respects, with the Transaction Documents and Applicable Law and (ii) obtain and maintain good and valid title or the right to use, and protect (except for any assignments of intellectual property), its intellectual property and conduct its business and affairs without infringement of or interference with any intellectual property of any other Person and shall comply with the terms of its licenses except, in each case, where failure to do so does not have, or would not reasonably be expected to have, a Material Adverse Effect.

4.28 Real Property Interests

The Obligors will obtain and maintain all Real Property Interests required to construct, design, commission and operate the Projects and the Project Sites and it will comply with all agreements and documents relating to the Real Property Interests held by it and do all things necessary to obtain, renew and maintain in good standing, from time to time all of its Real Property Interests, except to the extent that a failure to do so could not reasonably be expected to result in a material and adverse effect on the value of any of the Lands, the Project Facilities, the Project Sites, the Leased Property or any other Collateral. The Obligors will ensure that the Real Property Interests which are capable of registration are properly registered at the Ontario Land Registry Office, and shall promptly ensure the registration of all instruments necessary or desirable from time to time to protect the priority required herein (subject to Permitted Liens) and enforceability of such registrable Real Property Interests. The Obligors will promptly defend and take all action necessary or advisable at any time and from time to time to maintain and defend the priority (subject to Permitted Liens) and enforceability of such Real Property Interests and registration in any offices of public record relating thereto.

4.29 Other Business

No Obligor (other than the Parent) will engage in any business or activity other than the development and operation of, or business or activities that are in connection with, the Project Facilities or the Project Sites as contemplated by the Transaction Documents.

4.30 Indebtedness

No Obligor will contract, create, incur, become liable for, assume or permit to subsist any Indebtedness except for Permitted Indebtedness.

4.31 Disposal of Assets

No Obligor shall directly or indirectly sell, transfer or otherwise dispose of any of its Collateral or assets except (i) as expressly permitted by any Transaction Document; (ii) any sales or dispositions of obsolete or redundant Collateral gas, vehicles, plant or equipment that are not useful or necessary for the operation of the Project Facilities or the Project Sites or are replaced with assets comparable or superior as to type, value or quality (unless otherwise approved by Lessor); (iii) any sales or dispositions where the net cash proceeds therefrom in the aggregate do not in any financial year exceed \$500,000 provided that such sale, transfer or disposal shall not materially adversely impact the operation of the Project Facilities or the Project Sites; or (iv) any sales or disposition by Parent of equity interests in its Subsidiaries that are not Obligor which is made on an arm's length basis on commercial reasonable terms.

4.32 Termination, Assignment etc. of Material Project Documents

Except as otherwise provided herein, no Obligor will:

- (a) suspend, cancel or terminate or waive compliance with any material obligation under (including any liquidated damages payable by any Obligor) or agree to any assignment, sale or transfer of rights or obligations or waive any material default under or material breach of, under, or waive, defer, release, reduce or adversely modify any guarantee or surety under any Material Project Document to which it is a party;
- (b) grant any consent or acceptance under, or agree, authorize or otherwise consent to any proposed settlement, resolution or compromise with respect to the payment or amount of any settlement or termination payments under any Material Project Document in excess of \$500,000 without the prior written consent of Lessor;
- (c) voluntarily agree to any settlement or compromise relating to any Condemnation Event or otherwise voluntarily dispose of any rights, power, interests or claims arising as a result of any Condemnation Event, in each case, without the written consent of Lessor; and
- (d) suspend, cancel or terminate, agree to or permit the cancellation, suspension or termination of any Material Project Document without the prior written approval of Lessor, unless, the applicable Obligor shall have entered into a Replacement Agreement for such Material Project Document (if such approval is required by the definition of Replacement Agreement) and such Replacement Agreement is entered into prior to or contemporaneously with the termination or cancellation of such Material Project Document.

4.33 Amendments to Constituent Documents

No Obligor will change its legal form or the nature of its business or amend or modify its Constituent Documents in a manner that could be prejudicial to the interest of Lessor under the Transaction Documents without the prior written approval of Lessor.

4.34 Amendments to or Cancellations of Material Authorizations

Except for minor ministerial or administrative amendments, supplements or modifications to any Material Authorization, no Obligor may amend, supplement or modify any Material Authorization to which it is a party, without the prior written approval of Lessor. No Obligor may suspend, cancel or terminate, agree to or permit the cancellation, suspension or termination of any Material Authorization without the prior written approval of Lessor.

4.35 Amendments to Material Project Documents

Except for minor ministerial or administrative amendments, supplements or modifications to any Material Project Document, no Obligor may amend, supplement or modify any Material Project Document to which it is a party without the prior written approval of Lessor.

4.36 Additional Material Project Documents

No Obligor shall enter into any Additional Material Project Document without the prior written consent of Lessor. Unless otherwise advised in writing by Lessor, Obligor shall obtain a consent to assignment from the counterparty of such Additional Material Project Document, in form and substance satisfactory to Lessor, acting reasonably, concurrently upon execution and delivery of such Additional Material Project Document.

4.37 Investments

No Obligor will make and will not instruct any relevant Person to make any investments except to acquire and hold Permitted Investments.

4.38 Subsidiaries

No Obligor (other than the Parent) will form, own or have any Subsidiaries or otherwise own beneficially an ownership interest in any Person, will not become a partner in any partnership or joint venture, or enter into any profit-sharing or royalty agreement or similar arrangement whereby such Person's income or profits are shared with any other Person.

4.39 Abandonment

No Obligor will permit or suffer to exist an Event of Abandonment.

4.40 Transactions with Obligors or Affiliates

(1) No Obligor will enter into any transaction or agreement with its Affiliates (other than the Transaction Documents or as expressly contemplated therein and in connection with transactions in the ordinary course of business on terms and conditions at least as favourable to such Obligor as would be obtainable by such Obligor at the time in a comparable arm's-length transaction on commercial arm's length terms) except with the written approval of Lessor.

(2) No Obligor will enter into any transaction or agreement with any of the Parent's shareholders or any of the affiliates of such shareholders except (i) Parent may issue securities to its shareholders, (ii) Obligors may enter into personnel services contracts with shareholders or any of the affiliates of such shareholders, as service provider, in the ordinary course of business on terms and conditions at least as favourable to such Obligor as would be obtainable by such Obligor at the time in a

comparable arm's-length transaction on commercial arm's length terms, or (iii) with the prior written approval of Lessor.

(3) Notwithstanding anything to the contrary herein, no Obligor shall enter into any agreement (including hosting agreements) with Hosting without the prior written consent of Lessor.

4.41 Disputes

No Obligor will agree, authorize or otherwise consent to any proposed settlement, resolution or compromise of any litigation, arbitration or other dispute with any Person with a potential liability in excess of \$1,000,000 without the prior written authorization of Lessor; provided that such consent shall be deemed to have been given if Lessor has not responded within thirty (30) days of a request for such consent.

4.42 Equity Issuance

Otherwise as permitted pursuant to the Transaction Documents, no Obligor (other than the Parent) will issue, or authorize the transfer of, any partnership units, common shares, equity interests or any other security convertible into partnership units, common shares or any other equity interests in such Obligor's capital to any Person other than to Parent.

4.43 Accounting Changes

After the Closing Date, Parent will not make any change in its accounting or reporting policies, except as required by its accounting principles, or change its financial year.

4.44 Sanctions; Anti-Corruption Laws

- (a) No Obligor shall directly or indirectly, use any of the proceeds of the Transaction or lend, contribute or otherwise make available such proceeds to any other Person (i) for the purpose of funding, financing or facilitating any activity, business or transaction of or with any Obligor, or in any country or territory that is the subject of country-wide or territory-wide Sanctions, or (ii) that would constitute or give rise to a violation of any Sanctions by any party hereto, including Lessor.
- (b) Lessee and any each Obligor and their respective directors, officers and agents shall not, directly or indirectly, use any of the proceeds of the Transaction or lend, contribute or otherwise make available such proceeds to any other Person: (i) in furtherance of an offer, payment, promise to pay, or authorization or approval of the payment or giving of money, property, gifts or anything else of value, directly or indirectly, to any "government official" (including any officer or employee of a government or government-owned or controlled entity or of a public international organization, or any person acting in an official capacity for or on behalf of any of the foregoing, or any political party or party official or candidate for political office) to influence official action or secure an improper advantage, in each case, in violation of applicable Anti-Corruption Laws; or (ii) in any manner that would constitute a violation of any applicable Anti-Corruption Laws.
- (c) The Obligors agree that no portion of the funds used to repay their obligations under the Transaction Documents will be sourced or derived, in whole or in part, from activities (A) in violation of applicable Sanctions or (B) between an Obligor and a Sanctions Target in a manner that would constitute or give rise to a violation of any Sanctions by any party hereto, including Lessor.

4.45 Discharge of Real Property Interests

The Obligors will not permit the discharge, transfer or postponement of any instrument registered in respect of the Real Property Interests applicable to the Project Facilities or the Project Sites in a manner that would be prejudicial to Lessor or that would adversely impact any Collateral or the value thereof, or the financial condition, business, assets or operations of the Obligors, Project Facilities or the Project Sites.

4.46 Hedging

No Obligor will, and will not agree to, enter into any Commodity Hedge Agreement other than Permitted Commodity Hedges, provided that in any event, each such Commodity Hedge Agreement may only be entered into by an Obligor bona fide and in good faith in the ordinary course of its business for the purpose of carrying on the same and not for speculative purposes and otherwise in accordance with the terms of this Agreement.

4.47 Specified Substances

No Obligor shall cause or permit a Release of any Specified Substance on, in, at, under, above, to, from or about the Project Sites, Project Facilities or any other property owned by such Obligor or under its control where such Release could create or form the basis for any Environmental Claim or material liability under, or constitute a material violation of any Environmental Law.

4.48 Post-Closing Covenants

The Obligors shall:

- (1) promptly (and no later than April 30, 2022 or such later date as agreed by Lessor),
 - (i) assign the Hut 8 PPA from the Parent to the North Bay Subsidiary and provide a duly executed and delivered copy of such assignment agreement to Lessor, in form and substance satisfactory to Lessor; and
 - (ii) amend the Hut 8 PPA to clarify the provisions for charges and rebates, and establish new dates for phases 1, 2 and 3 as set out therein, in form and substance satisfactory to Lessor;
- (2) promptly (and no later than July 31, 2022), provide evidence to Lessor (in a form and substance satisfactory to Lessor), that the Obligors are able to manage the dual participation of Lessee as a capacity market participant with capacity obligations in the IESO-administered markets (as those terms are defined in the IESO's Market Rules for the Ontario Electricity Market) and other offtake agreements, together with reasonable details and a description of the actions that the applicable Obligors will take to manage such dual participation (including compliance in full with all applicable rules and requirements, and responding to dispatch instructions as required), and promptly respond to reasonable inquiries from Lessor in respect of the foregoing, provided that if Lessee buys out or transfers in full its capacity obligations in the IESO-administered markets, or otherwise ceases to have any capacity obligations in the IESO-administered markets and provides evidence of the same to Lessor, in form and substance satisfactory to Lessor, Lessee shall cease to be required to provide the evidence contemplated by the first sentence of this Section 4.48(2);
- (3) within 30 days of the Original Closing Date, promptly provide evidence, in form and substance satisfactory to Lessor, that the payment by Start Mining of a deposit in the amount of \$6,387,500

in accordance with the Start Mining Agreement was made and received by Hosting or an Obligor (the “**Start Mining Covenant**”). Notwithstanding anything to the contrary herein or in any other Transaction Document, if the Start Mining Covenant is not satisfied within 30 days of the Original Closing Date, the balance of the Lessor’s Cost retained by Lessor as contemplated by Section 2.4(2)(b) hereof shall be treated (without any further action on behalf of Lessee) as a prepayment of Base Rent by Lessee to Lessor and Section 3.3(c) of the Lease shall apply thereto;

(4) obtain and deliver to Lessor, as soon as possible following the Original Closing Date (and in any event, no later than 60 days from the Original Closing Date), all of the real property items listed below and further undertake to promptly rectify any deficiencies revealed by such items, in each case, to the satisfaction of the Lessor.¹

- (a) evidence of all real property rights required for the operation and maintenance of the Iroquois Falls Project Site, including without limit, sufficient benefitting easements rights, permit rights, and all other real property agreements that may be required thereto, together with evidence that the Lessee has the following real property rights in its favour to the extent required to operate and maintain the Iroquois Falls Project Site:
 - (i) an easement along and upon the Twin Falls Road as referenced to in Instrument No. C469026 registered on February 28, 1997;
 - (ii) all necessary access agreements, laydown agreements, road crossing permits, land use permits required for the purposes of crossing the Abitibi River;
 - (iii) a land use permit for the intake pumphouse and diffuser;
 - (iv) a specific benefitting easement for gas supply; and
 - (v) an appropriate permit for the discharge pipe into the Abitibi River.

(5) On or prior to June 30, 2022, promptly provide evidence, in form and substance satisfactory to Lessor, that Lessee has been granted an electricity retailer license from the OEB on terms and conditions satisfactory to Lessor.

(6) On or prior to April 30, 2022, promptly provide evidence, in form and substance satisfactory to Lessor, of receipt by Lessee of the amended OEB Electricity Generation License on terms and conditions satisfactory to Lessor, authorizing Lessee to, among other things, own and operate the Iroquois Falls Project (including the combined cycle gas fired generating station portion thereof) of Lessee at the Iroquois Falls Project Site.

(7) Promptly (and in any event, no later than 60 days from the Original Closing Date) provide evidence, in form and substance satisfactory to Lessor, that Hosting has been granted an electricity wholesaler license from the OEB, on terms and conditions satisfactory to Lessor, prior to Hosting purchasing any electricity from any Obligor or any other Person.

(8) Provide all assistance reasonably requested by Lessor to procure, and enter into, within sixty (60) days from the Original Closing Date, a subordination and non-disturbance agreement, in a form acceptable to the Lessor, between Lessor, the Parent, the North Bay Subsidiary, and Hut 8 Mining Corp.

¹ NTD: Validus/Minden Gross to provide update. Torys acknowledges receipt of the officer certificate.

with respect to the lease dated October 27, 2021 made between the Parent, North Bay Subsidiary and Hut 8 Mining Corp.

ARTICLE 5 OTHER COVENANTS

5.1 Cooperation

Lessor shall use commercially reasonable efforts to cooperate with the Obligors, at Lessee's sole cost and expense, in obtaining the valid and effective issuance or, as the case may be, transfer or amendment of all Authorizations and Government Actions necessary or desirable for the construction, installation, ownership, leasing and operation of the Leased Property by Lessor or any transferee or assignee thereof.

5.2 Compliance with Laws While on Site

(1) Lessor shall, and shall cause each of its Related Persons, to materially comply with all Applicable Laws known to Lessor that relate to such Person's conduct or activity while physically present at the Project Sites.

(2) Without limiting the generality of Section 5.2(1), each Obligor hereby assumes liability for and agrees to indemnify, defend, protect, save and keep harmless, on an After-Tax Basis, Lessor from and against any and all Environmental Claims arising under Environmental Laws which may be imposed on, incurred by or asserted against Lessor, in any capacity, including to the extent that such Environmental Claim results from or arises out of the failure of the Leased Property or the Iroquois Falls Project Site to be in the condition required by the Lease on the date the Leased Property is surrendered to Lessor under Section 6 of the Lease, except to the extent that such Environmental Claim is the result of or arises out of any negligent act or omission or willful misconduct of Lessor or any of its Affiliates occurring after the Transition Date. For purposes of clarity, it is expressly understood that Lessor shall not be liable under the preceding sentence for any contamination identified in any environmental engineer's due diligence compliance assessment delivered to Lessor by Lessee.

ARTICLE 6 LESSEE'S INDEMNITIES

6.1 General Tax Indemnity.

All payments by the Obligors to Lessor under this Agreement and the other Transaction Documents shall be made free and clear of, and without reduction for or on account of, any present or future income, stamp or other taxes, levies, imposts, duties, charges, fees, deductions or withholdings, now or hereafter imposed, levied, collected, withheld or assessed by any country or any political subdivision thereof; provided, however, that if any Taxes are required to be withheld from any amount payable to Lessor, the amount so payable to Lessor shall be increased to the extent necessary to yield to Lessor, on a net basis after payment of all Taxes imposed by any relevant jurisdiction on any additional amounts payable under this section, interest or any such other amount payable hereunder at the rate or in the amount specified in this Agreement and the other Transaction Documents. Each Obligor shall be fully liable and responsible for and shall, promptly following receipt of a request from Lessor, pay to Lessor any and all sales, goods and services taxes payable under the laws of Canada or any political subdivision thereof with respect to any and all goods and services made available hereunder and the other Transaction Documents to the Obligors by Lessor, and such taxes shall be included in the definition of "Taxes" for all purposes hereof. Whenever any Taxes are payable by an Obligor, as promptly as possible thereafter it shall send to Lessor, a certified copy of an original official receipt showing payment thereof. If any Obligor fails to pay any Taxes when

due or fails to remit to Lessor as aforesaid the required documentary evidence thereof, such Obligor shall indemnify and save harmless Lessor from any incremental taxes, interest, penalties or other liabilities that may become payable by Lessor or to which Lessor may be subjected as a result of any such failure. A certificate of Lessor as to the amount of any such taxes, interest or penalties and containing reasonable details of the calculation thereof shall be *prima facie* evidence thereof.

6.2 General Indemnity; Waiver of Certain Claims; Limitation of Liability

(1) Claims Defined. For the purposes of this Section 6.2, “**Claims**” shall mean any and all costs, expenses, liabilities, obligations, losses, damages, penalties, proceedings, actions or suits or claims of whatsoever kind or nature (whether or not on the basis of negligence, strict or absolute liability or liability in tort or arising out of regulatory requirements of any kind) imposed on, incurred by, suffered by, or asserted against an Indemnified Person, the Project Facilities, the Project Sites, the Leased Property, the other Collateral or any portion thereof and, except as otherwise expressly provided in this Section 6.2, shall include all reasonable costs, disbursements and expenses (including reasonable attorneys fees and allocated time charges of internal counsel) paid or incurred by an Indemnified Person in connection therewith or related thereto.

(2) Indemnified Person Defined. For purposes of this Section 6.2, “**Indemnified Person**” means Lessor, each Affiliate of Lessor, and the respective directors, officers, employees, successors and permitted assigns, agents and servants of Lessor and each Affiliate of Lessor.

(3) Claims Indemnified. Whether or not any of the transactions contemplated hereby are consummated, Lessee shall indemnify, protect, defend and hold harmless each Indemnified Person on an After-Tax Basis for, from and against any and all Claims relating to, resulting from or arising out of the Project Facilities, the Collateral, the Transaction Documents or the transactions contemplated thereby (whether or not such Indemnified Person is indemnified as to such Claim by any other Person), including: (i) the Project Facilities, the Project Sites, the Leased Property, the Collateral or any portion thereof or the enforcement by any Indemnified Person of any of its rights under the Transaction Documents or any other transaction contemplated by the Transaction Documents; (ii) the regulation of the ownership, construction, installation, leasing, licensing or operation of the Project Facilities, the Project Sites, the Leased Property, the Collateral or any portion thereof; (iii) the offer, financing, refinancing, inspection, mortgaging, granting of a security interest in, design, manufacture, construction, purchase, ownership, acquisition, acceptance, rejection, delivery, non-delivery, redelivery, possession, transportation, lease, sublease, licensing, installation, condition, transfer of title, rental, use, operation, storage, maintenance, modification, alteration, repair, assembly, sale, return, abandonment or other application or disposition of all or any part of the Project Facilities, the Project Sites, the Leased Property, the Collateral or any interest therein or improvements thereto; (iv) injury, death, or property damage or strict liability in tort; (v) latent or patent defects, whether or not discoverable, and any claim for patent, trademark, copyright or other intellectual property right infringement or misappropriation; (vi) the administration of this Agreement or any of the other Transaction Documents (excluding normal, internal overhead charges); (vii) a breach by Lessee or any Guarantor of any of its covenants under the Transaction Documents or a misrepresentation by Lessee or any Guarantor in any Transaction Document or any certificate or other document delivered by Lessee or any Guarantor pursuant to any Transaction Document; (viii) Environmental Claims; (ix) the existence or imposition of any Lien (including Permitted Liens) on Lessor’s right, title and interest in the Project Facilities, the Project Sites, the Leased Property, the Collateral or any portion thereof; (x) endeavoring to enforce the Transaction Documents; and (xi) any violation of Applicable Law by Lessee or any of its Affiliates or their respective directors, officers, employees, agents or servants.

(4) Claims Excluded. The following are excluded from the agreement to indemnify under this Section 6.2 or any other section of this Agreement or any Transaction Document:

- (a) any Claim of (and only of) an Indemnified Person to the extent attributable to the willful misconduct or gross negligence of such Indemnified Person (not including any willful misconduct or gross negligence imputed to any of the foregoing as a result of any of their participation in the Transaction);
- (b) any Claim of an Indemnified Person to the extent caused by the act or process of disposing or transferring (whether voluntary or involuntary) by such Indemnified Person of all or part of the Project Facilities, the Project Sites, the Leased Property, the other Collateral or any portion thereof that is not in accordance with or contemplated by the Transaction Documents or not resulting from (A) the exercise of remedies during the period while a Lease Event of Default exists, (B) an Event of Loss, or (C) a refinancing pursuant to and in accordance with the Transaction Documents (other than the obligation of Lessee to reimburse Lessor for its costs and expenses in connection with such refinancing);
- (c) any Claim of an Indemnified Person for an expense for which such Indemnified Person is expressly liable under a Transaction Document;
- (d) any Claim of an Indemnified Person to the extent resulting from the breach by such Indemnified Person of any of its representations or warranties in any of the Transaction Documents;
- (e) any Claim of an Indemnified Person to the extent resulting from the failure by such Indemnified Person to perform or observe any agreement, covenant or condition to be performed or observed by it in any of the Transaction Documents;
- (f) any Claim by or on behalf of Lessor directly resulting from the regulation of Lessor other than solely by virtue of the transactions contemplated by the Transaction Documents;
- (g) any Claim to the extent attributable to acts or events which occur after the expiration of the Lease Term or earlier termination of the Lease and return to Lessor of the Leased Property in accordance with the Transaction Documents (including any storage period) (except (A) to the extent fairly attributable to acts or events or liabilities or damages occurring or accruing prior thereto, (B) Claims arising following the termination or expiration of the Lease Term (including, without limitation, as a result of a Material Event) and the termination of the Iroquois Falls Site Interest substantially contemporaneously therewith or (C) to the extent arising as a result of a default by Lessee of its obligations with respect to the Debentures); and
- (h) any Claim in respect of Taxes (which are governed by the provisions of Section 6.1), other than a payment necessary to make payments under this Section 6.2 on an After-Tax Basis.

The indemnity in this Section 6.2 shall be construed as an indemnity only, and not as a guaranty of residual value of the Leased Property.

(5) Insured Claims. In the case of any Claim indemnified by Lessee hereunder that is covered by an Insurance Policy or otherwise, each Indemnified Person agrees to provide at Lessee's sole cost and expense reasonable cooperation to the insurers in the exercise of their rights to investigate, defend or compromise such Claim as may be required to retain the benefits of such insurance with respect to such Claim.

(6) Claims Procedure. An Indemnified Person shall, after obtaining actual knowledge thereof, promptly notify Lessee of any Claim as to which indemnification is sought (unless Lessee theretofore has notified such Indemnified Person of such Claim); except that the failure to give such notice shall not release Lessee from any of its obligations under this Article 6. Subject to the provisions of the following paragraph, Lessee shall at its sole cost and expense be entitled to control, and shall assume full responsibility for, the defense of such Claim; except that Lessee shall keep the Indemnified Person which is the subject of such proceeding fully apprised of the status of such proceeding and shall provide such Indemnified Person with all information with respect to such proceeding as such Indemnified Person shall reasonably request.

Notwithstanding any of the foregoing to the contrary, Lessee shall not be entitled to control and assume responsibility for the defense of such Claim if (1) a Lease Default or Lease Event of Default exists, (2) there exists a real and imminent risk of sale, forfeiture or loss of any part of the Project Facilities, Project Sites, Leased Property or Collateral or such proceeding will involve any material danger of the sale, forfeiture or loss of, or the creation of any Lien (other than any Permitted Lien) on, any part of the Project Facilities, Project Sites, Leased Property or Collateral, (3) the amounts involved, in the reasonable opinion of such Indemnified Person, are likely to have a material adverse effect on such Indemnified Person other than the ownership, leasing and financing of the Project Facilities, Project Sites, Leased Property or Collateral and it is reasonably likely that such material adverse effect will occur notwithstanding the indemnification obligations hereunder, (4) in the reasonable opinion of such Indemnified Person, there exists an actual or potential conflict of interest such that it is advisable for such Indemnified Person to retain control of such proceeding, (5) Lessee has not acknowledged its liability under this Section 6.2 to the Indemnified Person with respect to such Claim or (6) such Claim involves the risk of criminal or quasi-criminal sanctions or liability to such Indemnified Person. In the circumstances described in clauses (1) through (5), the Indemnified Person shall be entitled to control and assume responsibility for the defense of such Claim or liability at the expense of Lessee. In addition, any Indemnified Person, at its own expense, may participate in any proceeding controlled by Lessee pursuant to this Section 6.2(6). Lessee may in any event participate in all such proceedings at its own cost. Nothing contained in this Section 6.2(6) shall be deemed to require an Indemnified Person to contest any Claim or to assume responsibility for or control of any judicial proceeding with respect thereto. Neither Lessee nor such Indemnified Person shall enter into a settlement or other compromise with respect to any Claim without the prior written consent of the other, which consent shall not unreasonably be withheld or delayed, unless (x) with respect to a settlement by such Indemnified Person, such Indemnified Person waives its right to be indemnified with respect to such Claim under this Section 6.2(6) or a Lease Event of Default exists, or (y) with respect to a settlement by Lessee, the settlement involves only money damages to be paid by Lessee and includes a full and complete release of liability (satisfactory to the Indemnified Person) of the Indemnified Person.

(7) Subrogation. If a Claim indemnified by Lessee under this Section 6.2 is paid in full by Lessee or an insurer under a policy of insurance maintained by Lessee, or if payment of the Claim has otherwise been provided for in full in a manner reasonably satisfactory to the Indemnified Person, then Lessee or such insurer, as the case may be, shall be subrogated to the extent of such payment (or provision) to the rights and remedies of the Indemnified Person (other than under insurance policies maintained by such Indemnified Person) on whose behalf such Claim was paid (or provided for) with respect to the act or event giving rise to such Claim. While no Lease Default or Lease Event of Default exists, if an Indemnified Person receives any refund or amount, in whole or in part, with respect to any Claim paid by Lessee hereunder, it shall promptly pay over the amount received (but not in excess of the amount Lessee or any of its insurers has paid in respect of such Claim paid or payable by such Indemnified Person on account of such refund) to Lessee.

(8) Waiver of Certain Claims. Each Obligor hereby irrevocably and unconditionally waives and releases any Claim now or hereafter existing against any Indemnified Person, including any Claim arising out of, relating to or resulting from death or personal injury to personnel of the Obligors (including

its directors, officers, employees, agents and servants), loss or damage to property of the Obligors or their Affiliates, or the loss of use of any property of the Obligors or their Affiliates, which may result from or arise out of the condition, use or operation of the Leased Property during the Lease Term, including any latent or patent defect whether or not discoverable, other than any Claim brought by an Obligor against any Indemnified Person for breach in bad faith of such Indemnified Person's obligations under the Transaction Documents if a court of competent jurisdiction has rendered a final and non-appealable judgment in favour of the applicable Obligor on such Claim.

(9) Limitation of Liability. Notwithstanding anything to the contrary herein or in any other Transaction Document, Lessor shall have no liability to any Person based upon its errors in judgment, its performance of its duties under this Agreement or any other Transaction Document, any claimed failure to perform its duties hereunder or thereunder, any action taken or omitted in good faith or any mistake of fact or law. Lender was automatically released from all obligation and liability hereunder upon the payment of Lessor of Lessor's Cost on the Original Closing Date in accordance with the terms of the Original Participation Agreement.

ARTICLE 7 TRANSFERS OF INTERESTS

7.1 Transfer of rights and obligations by Lessor.

(1) So long as the Lease is in effect, Lessor (or any permitted successor of Lessor) shall have the right, at its sole cost and expense and without the approval of Lessee, to assign, convey, or otherwise transfer or sell all or a portion of its Leased Property and its right, title, interest and obligations in or under the Transaction Documents:

- (a) to an Affiliate of Lessor; or
- (b) to any other Person,

if in each case:

- (i) the transferee or successor makes the representations and warranties and agrees to be bound by the covenants of the transferring Lessor contained in the Transaction Documents subject to necessary changes to reflect the transfer;
- (ii) immediately after giving effect to such transfer or assignment, no breach by Lessor of its obligations under the Transaction Documents would result from such transfer or assignment; and
- (iii) the transferee or successor has all Authorizations from the Ontario Energy Board required in connection with such transfer.

Lessor shall give to Lessee, 20 Business Days' notice of any assignment, transfer or continuance intended to meet the foregoing conditions accompanied by the proposed forms of the foregoing documentation and opinions. If Lessee, does not object in writing within 20 Business Days of receipt of such notice, the foregoing documentation or opinions presented with such notice shall be conclusively deemed satisfactory.

Upon completion of a transfer in compliance with this Section 7.1(1), Lessor shall be released from any and all obligations and responsibilities under this Agreement and each of the other Transaction

Documents, except any obligation or indemnity undertaken in compliance with this Section 7.1(1) which shall survive the transfer and remain the obligation of the party providing indemnity and any guarantor or surety therefor.

ARTICLE 8 FURTHER ASSURANCES

Each party hereto will cause to be promptly and duly taken, executed, acknowledged and delivered all such further acts, documents and assurances as any other party reasonably may request from time to time in order to carry out more effectively the intent and purpose of this Agreement, the other Basic Documents and the Transaction. Each Obligor, at the Obligors' own cost and expense, will cause any and all documents, instruments or other writings necessary or reasonably required to consummate and give notice to third parties of the interests created or conveyed by the Transaction Documents to be recorded or filed at such places and times in such manner and will take all such other actions or cause such actions to be taken as may be necessary in order to establish, preserve, protect and perfect the right, title and interest of Lessor in and to the Project Facilities, the Project Sites, the Leased Property, the other Collateral, subject only to Permitted Liens. Each Obligor will cooperate with Lessee to enable it to perform its obligations under this Article 8.

ARTICLE 9 MISCELLANEOUS

9.1 Illegality

If, after the Closing Date, (i) a Cap and Trade System comes into effect (or is scheduled to come into effect) or (ii) Lessor determines that the adoption of, or change to, any Applicable Law, regulation, treaty or official directive (whether or not having the force of law) or any change therein or in the interpretation or application thereof by any court or by any Government Body or any other entity charged with the interpretation or administration thereof, now or hereafter makes it unlawful or impossible for the Lessor to give effect to its obligations in respect of the Transaction Documents or be involved in the transactions contemplated thereunder, Lessor may, in the period commencing 180 days prior to the date upon which a Cap and Trade System or change, as the case may be, becomes effective, by written notice to Lessee, declare a Lease Event of Default effective as of the date being the earlier of (x) sixty (60) days from the written notice, or (y) the effective date of the Cap and Trade System or change, as the case may be, and exercise all rights and remedies in respect thereof held by Lessor under the Transaction Documents or otherwise available under Applicable Law.

9.2 Change in Law; Increased Costs

- (1) If any Change in Law shall:
 - (i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, Lessor;
 - (ii) subject Lessor to any Taxes of any kind whatsoever with respect to the Transaction Documents, change the basis of taxation of payments due to Lessor in respect thereof or increase any existing Taxes in respect thereof; or
 - (iii) impose on Lessor any other condition, cost or expense (other than Taxes) affecting the Transaction Documents;

and the result of any of the foregoing shall be to increase the cost to Lessor of continuing or maintaining its obligations under the Transaction Documents, or to reduce the amount of any sum received or receivable by Lessor under the Transaction Documents then, upon request of Lessor, the Obligors will pay to Lessor such additional amount or amounts as will compensate Lessor for such additional costs incurred or reduction suffered.

(2) A certificate from Lessor setting forth the amount or amounts necessary to compensate it, as specified in Section 9.2(1) (collectively, "**Additional Compensation**"), including reasonable detail of the basis of calculation of the amount or amounts, and delivered to Lessee, shall be conclusive absent manifest error. The Obligors shall pay the Additional Compensation to Lessor promptly and in any event, within 10 days after receipt of any such certificate.

(3) Failure or delay on the part of Lessor to demand Additional Compensation pursuant to this Section shall not constitute a waiver of the Lessor's right to demand such compensation prior to the date that Lessor notifies Lessee of the Change in Law giving rise to such increased costs or reductions and of the Lessor's intention to claim compensation therefor.

9.3 Set-Off

If a Lease Events of Default shall have occurred and is continuing, Lessor and each of its Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off, appropriate and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency, and including prepayments) at any time held and other obligations (in whatever currency) at any time owing by Lessor or its Affiliates to or for the credit or the account of Lessee or any Obligor against any and all of the Obligations now or hereafter existing, whether direct or indirect, absolute or contingent, matured or unmatured, and irrespective of whether or not Lessor or any of its Affiliates shall have made any demand under the Transaction Documents. Lessor agrees to notify Lessee promptly after any such set off and appropriation and application; provided that, the failure to give such notice shall not affect the validity of such set off and appropriation and application. The rights of Lessor and each of its Affiliates under this Section are in addition to any other rights and remedies available to them (including, without limitation, other rights of set-off or consolidation of accounts).

9.4 Survival

All warranties, representations, indemnities and covenants made by any party hereto, whether herein or in any certificate or other instrument delivered by any such party or on behalf of any such party under this Agreement, shall be considered to have been relied upon by each other party hereto and shall survive the consummation of the Transaction on the Closing Date regardless of any investigation made by any such party or on behalf of any such party and shall continue in full force and effect as long as the any amount payable under this Agreement or any other Transaction Document is outstanding. All indemnities made by any party hereto, whether herein or in any certificate or other instrument delivered by any such party or on behalf of any such party under this Agreement, shall survive the termination of this Agreement or any other Transaction Document.

9.5 Waiver of Jury Trial

THE PARTIES HERETO WAIVE ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY MATTER ARISING UNDER THE BASIC DOCUMENTS.

9.6 Notices

Unless otherwise expressly specified or permitted hereby, all communications, requests, consents and notices provided for herein or in any other Transaction Document shall be in writing, and any such communication shall become effective when received (and notices given pursuant to clause (b) shall be deemed received three (3) days after being deposited in the mail). Any written communication shall be by (a) personal delivery thereof, including, without limitation, by overnight mail and courier service, (b) Canadian mail, registered, postage prepaid, return receipt requested or (c) receipt of telecopy transmission (as evidenced by the sender's receipt of electronic confirmation of the addressee's receipt) or email, in each case addressed to the Person at its respective address set forth on Schedule 2 or at such other address as such Person may from time to time designate by written notice in accordance herewith to the other Persons on such Schedule 2.

9.7 Successors and Assigns

This Agreement shall be binding upon the parties hereto and their respective successors and assigns and shall inure to the benefit of, and shall be enforceable by, the parties hereto and their respective successors and assigns, in each case as permitted by and in accordance with the terms hereof, including each successive holder of the Leased Property permitted under Section 7.1. Except as expressly provided herein or in the other Transaction Documents, no party hereto may assign its interests herein, in whole or in part, without the consent of the other parties hereto.

9.8 Business Day

If the date on which any payment is to be made pursuant to this Agreement or any other Basic Document is not a Business Day, the payment otherwise payable on such date shall be payable on the immediately preceding Business Day, with the same force and effect as if made on the date when such payment is due.

9.9 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.

9.10 Severability

Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under Applicable Law, but if any provision of this Agreement shall be prohibited by or invalid under the laws of any jurisdiction, such provision, as to such jurisdiction, shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement as to such jurisdiction or any other jurisdiction.

9.11 Counterparts

This Agreement may be executed in any number of counterparts and by the parties hereto on separate signature pages, each such executed counterpart constituting an original but all together only one Agreement.

9.12 Termination of Transaction Documents

This Agreement and all other Transaction Documents shall terminate upon the indefeasible payment, performance and satisfaction of all Indebtedness, liabilities and obligations of the Obligors arising under the Transaction Documents and delivery of an acknowledgement from Lessor to Lessee in writing of such termination, not to be unreasonably withheld or delayed.

9.13 Heading and Table of Contents

The headings of the Sections of this Agreement and the Table of Contents are inserted for purposes of convenience only and shall not be construed to affect the meaning or construction of any of the provisions hereof.

9.14 Reproduction of Documents

This Agreement, all documents constituting exhibits hereto, and all documents relating hereto received by a party hereto, including, without limitation, (a) consents, waivers and modifications that may hereafter be executed, (b) documents received by Lessor in connection with the purchase of the Leased Property and (c) financial statements, certificates, and other information previously or hereafter furnished to Lessor may be reproduced by the party receiving the same by any photographic, photostatic, microfilm, micro-card, miniature photographic or other similar process. Each party hereto agrees and stipulates that, to the extent permitted by law, any such reproduction shall be admissible in evidence as the original itself in any judicial or administrative proceeding (whether or not the original is in existence and whether or not such reproduction was made by such party in the regular course of business) and that, to the extent permitted by law, any enlargement, facsimile, or further reproduction of such reproduction shall likewise be admissible in evidence.

9.15 Limitation of Liability of the Lessor

The Lessor shall not have any obligation or duty to the Obligors or to others with respect to the Transaction, except those obligations or duties expressly set forth with respect to it in this Agreement and the other Transaction Documents; and the Lessor shall not be liable for performance by any other party hereto of such other party's obligations or duties hereunder.

9.16 Amendments and Waivers

This Agreement may not be terminated or amended, or compliance herewith waived (either generally or in a particular instance, retroactively or prospectively) except by an instrument or instruments in writing executed by each party hereto.

9.17 Confidential Information

For the purposes of this Section 9.17 "**Confidential Information**" means information delivered to Lessor by or on behalf of an Obligor or any Affiliate thereof in connection with the Transaction that is proprietary in nature, provided that such term does not include information that (a) was publicly known or otherwise known to Lessor prior to the time of Lessor's disclosure, (b) subsequently becomes publicly known through no act or omission by Lessor or any Person acting on Lessor's behalf, (c) otherwise becomes known to Lessor other than through disclosure by an Obligor or any Affiliate thereof or (d) constitutes financial statements delivered to Lessor under Section 4.1 that are otherwise publicly available. The Lessor will maintain the confidentiality of such Confidential Information in accordance with procedures adopted by Lessor in good faith to protect confidential information of third parties delivered to Lessor, provided

that Lessor may deliver or disclose Confidential Information to (i) Lessor's directors, officers, employees, agents, attorneys and Affiliates (to the extent such disclosure reasonably relates to the administration of the investment represented by Lessor's investment in the Transaction), (ii) Lessor's financial advisors and other professional advisors who agree to hold confidential the Confidential Information substantially in accordance with the terms of this Section 9.17, (iii) any Person from which Lessor offers to purchase any security of an Obligor or any Affiliate thereof (if such Person has agreed in writing prior to its receipt of such Confidential Information to be bound by the provisions of this Section 9.17), (iv) any federal or state regulatory authority having jurisdiction over Lessor, (v) the National Association of Insurance Commissioners or any similar organization, bank examiners or any nationally recognized rating agency that requires access to information about Lessor's investment portfolio or (vi) any other Person to which such delivery or disclosure may be necessary or appropriate (w) to effect compliance with any law, rule, regulation or order applicable to Lessor, (x) in response to any subpoena or other legal process or (y) in connection with any litigation to which Lessor is a party. With respect to disclosures under clause (vi)(y) above, Lessor will give to Lessee reasonable prior notice of such disclosure; provided, however, that any failure to give such notice shall not give rise to any default or breach by Lessor or any claim or right against Lessor for damages.

9.18 Forum Selection and Consent to Jurisdiction

Each party hereto irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of the courts of Ontario, in any action or proceeding arising out of or relating to this Agreement or any other Transaction Document, or for recognition or enforcement of any judgment, and each of the parties hereto irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such court. Each party hereto hereby irrevocably waives, to the fullest extent it may effectively do so, the defence of inconvenient forum to the maintenance of such action or proceeding. Nothing in this Agreement or in any other Transaction Document shall affect any right that Lessor may otherwise have to bring any action or proceeding relating to this Agreement or any other Transaction Document against any Obligor or its properties in the courts of any jurisdiction having jurisdiction over an Obligor or any of its property or assets.

9.19 Interest Act (Canada)

If applicable, each rate of interest referred to in the Transaction Documents which is calculated with reference to a period (the "**deemed interest period**") that is less than the actual number of days in the calendar year of calculation is, for the purposes of the *Interest Act* (Canada), equivalent to a rate based on a calendar year equal to such rate of interest multiplied by the actual number of days in the calendar year of calculation and divided by the number of days in the deemed interest period.

9.20 Maximum Rate

(1) If any provision of any Transaction Document would oblige a party to make any payment of interest or other amount payable to any Person in an amount or calculated at a rate prohibited by law or would result in a receipt by that Person of interest at a criminal rate (as such terms are construed under the *Criminal Code* (Canada)), then notwithstanding such provision, such amount or rate shall be deemed to have been adjusted with retroactive effect to the maximum amount or rate of interest, as the case may be, as would not be so prohibited by law or so result in a receipt by that Person of interest at a criminal rate, such adjustment to be effected, to the extent necessary, as follows:

- (a) firstly, by reducing the amount or rate of interest required to be paid to such Person under the Transaction Document; and

(b) thereafter, by reducing any fees, commissions, premiums and other amounts required to be paid to such Person that would constitute interest for purposes of Section 347 of the *Criminal Code* (Canada).

(2) Notwithstanding Section 9.20(1) and after giving effect to all adjustments contemplated thereby, if any Person receives an amount in excess of the maximum permitted by that Section, then the relevant party shall be entitled, by notice in writing to such Person, to obtain reimbursement from that Person in an amount equal to such excess, and pending such reimbursement, such amount shall be deemed to be an amount payable by that Person to the relevant party.

(3) Any amount or rate of interest referred to in this Section 9.20 shall be determined in accordance with generally accepted actuarial practices and principles as an effective annual rate of interest over the term of any Transaction Document on the assumption that any charges, fees or expenses that fall within the meaning of "interest" (as defined in the *Criminal Code* (Canada)) shall, if they relate to a specific period of time, be pro-rated over the period of time and otherwise be pro-rated over the period from the Closing Date to the Base Term Expiration Date, and, if there is a dispute, a certificate of a Fellow of the Canadian Institute of Actuaries appointed by Lessor shall be conclusive for the purposes of such determination.

9.21 Integrated Contract

This Agreement and the other Transaction Documents have been entered into by the parties hereto in consideration of all such agreements and documents, and all thereof constitute a single and integrated contract. The parties make no representations, warranties or covenants except as set forth in this Agreement, the other Transaction Documents and the items delivered pursuant thereto, and all prior agreements and negotiations are superseded thereby, unless, with respect to the parties to such agreements, such agreements are in writing and expressly provide that such agreements shall not be superseded by any other agreements.

9.22 Cooperation among Parties

Each party hereto agrees that at any time and from time to time, upon request of any other party hereto, it will, at the cost and reasonable expense of the party making such a request (except that if the Transaction Documents provide that any of the foregoing are to be at the expense of another party, such other party shall bear such expense) execute, deliver or furnish or cause to be executed, delivered or furnished, such further assurances, certificates, powers of attorney, affidavits, opinions and other documents and writings, and perform or cause to be performed such other acts and things, as such other party may deem reasonably necessary in order to carry out or further the purposes of this Participation Agreement, the other Transaction Documents and the Transaction.

9.23 Electronic Execution; Counterparts

This Agreement and any other Transaction Document may be signed by way of associating or otherwise appending an electronic signature or other facsimile signature of the applicable signatory and the words "execution", "signed", "signature", and words of like import in this Agreement and any other Transaction Document shall be deemed to include electronic signatures or other facsimile signature, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature.

This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract.

9.24 Amendment and Restatement

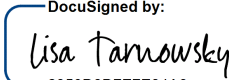
This Participation Agreement is an amendment and restatement of the Existing Participation Agreement and not a novation of the Existing Participation Agreement. For greater certainty, all Indebtedness and other Obligations under the Existing Participation Agreement and other Transaction Documents that remains outstanding on the date hereof shall, with effect from the date hereof, constitute Indebtedness or other Obligations hereunder or under the Transaction Documents, as applicable, governed by the terms hereof and shall continue to be secured by the Security Documents. Such Indebtedness and other Obligations shall be continuing in all respects, and this Participation Agreement shall not be deemed to be evidence of, or result in, a novation of such Indebtedness and other Obligations. This Participation Agreement reflects amendments to the Existing Participation Agreement and has been restated solely for the purposes of reflecting amendments to the Existing Participation Agreement which the Lessor and the Lessee have agreed upon. All references to the "Participation Agreement" or similar references contained in the documents delivered prior to the effectiveness of this Participation Agreement in connection or under the Existing Participation Agreement (including for certainty the Transaction Documents) shall be references to this Participation Agreement without further amendment to those documents. The Lessee confirms that each of the foregoing documents, including without limitation any delivered under the Existing Participation Agreement and other Transaction Documents, remains in full force and effect. For the purposes of the Security Documents, all references therein to the "Participation Agreement" shall be to this Participation Agreement, as the same may be amended, restated, supplemented or modified from time to time.

* * * * *

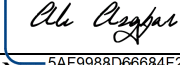
IN WITNESS WHEREOF, the parties hereto have caused this Participation Agreement to be executed and delivered all as of the date first above written.

Lessor:

MACQUARIE EQUIPMENT FINANCE LTD.

By: 
Name: Lisa Tarnowsky

Title: Authorized Signatory

By: 
Name: Ali Asghar

Title: Authorized Signatory

Lessee:


IROQUOIS FALLS POWER CORP.

By: 


Name: Todd Shortt
Title: President and CEO

Guarantors


VALIDUS POWER CORP.

By: 
Name: Todd Shortt
Title: President and CEO


BAY POWER CORP.

By: 
Name: Todd Shortt
Title: President and CEO


KAP POWER CORP.

By: 
Name: Todd Shortt
Title: President and CEO

**KINGSTON COGEN LIMITED
PARTNERSHIP, by its general partner,
KINGSTON COGEN GP INC.**

By: 
Name: Todd Shortt
Title: President and CEO

KINGSTON COGEN GP INC.

By: 
Name: Todd Shortt
Title: President and CEO

**EXHIBIT A
TO
PARTICIPATION AGREEMENT**

BILL OF SALE FORM

BILL OF SALE

Dated April 7, 2022

from

**IROQUOIS FALLS POWER CORP.,
("Seller")**

to

**MACQUARIE EQUIPMENT FINANCE LTD.,
("Purchaser")**

Relating to Lease of Combined Cycle Turbines

Iroquois Falls Cogeneration Station
Located in Iroquois Falls, Ontario, Canada

BILL OF SALE

This Bill of Sale is made this 7th day of April, 2022.

BY:

IROQUOIS FALLS POWER CORP., a corporation organized under the laws of the Province of Ontario, Canada (“**Seller**”)

IN FAVOUR OF:

MACQUARAIE EQUIPEMNT FINANCE LIMITED, a corporation organized under the laws of Canada (“**Purchaser**”)

WITNESSETH THAT:

WHEREAS Seller and Purchaser are parties to the participation agreement dated as of April 7, 2022 (the “**Participation Agreement**”);

AND WHEREAS the Participation Agreement provides that it is a condition precedent to the obligations of Purchaser under the Participation Agreement that Seller provide to Purchaser this Bill of Sale covering the matters specified herein;

AND WHEREAS Seller intends that the Leased Property be severed from the Land and be and remain personal property notwithstanding the manner in which it may be attached or affixed to the Land;

Unless otherwise defined herein, capitalized terms used herein have the meanings ascribed thereto in the Participation Agreement.

NOW THEREFORE, for the consideration provided for in the Participation Agreement and other good and valuable consideration, receipt of which is acknowledged by Seller, Seller hereby bargains, sells, transfers, conveys, assigns and quitclaims to Purchaser:

1. all of Seller’s right, title and interest in and to the Leased Property, including legal and beneficial ownership thereof (the “**Transferred Property**”), free and clear of all Liens; and
2. to the fullest extent assignable, all of Seller’s right, title and interest in, to and under, any and all warranties of and other claims against dealers, manufacturers, vendors, contractors and subcontractors relating to the construction, use and maintenance of the Leased Property or any portion thereof now existing or hereafter acquired (excluding from such assignment any such warranties and claims in respect of any property title to which, in accordance with the Lease, is vested in Seller) (collectively, the “**Transferred Rights**”; the Transferred Property and the Transferred Rights are collectively referred to herein as the “**Transferred Assets**”).

TO HAVE AND TO HOLD the Transferred Assets, and every item and part thereof, with the appurtenances and all the right, title and interest of Seller thereto and therein, as aforesaid, unto and to the use of Purchaser.

AND Seller warrants to Purchaser that it has good and valid ownership of the Transferred Assets and good and lawful right to sell the same, and the Transferred Assets are free and clear of all Liens, and

this Bill of Sale is valid and effective to transfer, and does transfer, good and valid ownership of the Transferred Assets to Purchaser, free and clear of all Liens.

AND Seller certifies that no filings or recordings are necessary to validly and effectively convey to Purchaser good and valid ownership of the Transferred Assets in all cases free and clear of all Liens.

AND Seller covenants and agrees that it will defend Purchaser's ownership interest in the Transferred Assets against the claims and demands of all Persons whomsoever.

AND Seller warrants that it is the Seller's fullest intention that the Leased Property, to the maximum extent permitted by applicable law, is severed-in-fact and shall be and remain severed from the real property constituting the Lands and even if physically attached thereto, shall retain its character as and shall constitute personal property with respect to the rights of all Persons whomsoever and shall not be property of Seller, regardless of the manner or degree of installation, annexation or affixation of such improvements on the Land.

AND MOREOVER, Seller shall, from time to time and at all times hereafter, upon every reasonable request of Purchaser, make, do and execute or cause or procure to be made, done and executed without further consideration all such further acts, deeds and assurances for the effectual assigning and assuring of the Transferred Assets unto Purchaser, according to the true intent and meaning of these presents.

THIS Bill of Sale shall be governed by and construed in accordance with the laws in force in the Province of Ontario and shall be binding upon Seller and shall enure to the benefit of Purchaser and their respective successors and assigns, as the case may be.

-Signature Page Follows-

IN WITNESS WHEREOF the Seller has executed this Bill of Sale as of the date and year first above written.

IROQUOIS FALLS POWER CORP.

By: _____
Name:
Title:

**SCHEDULE 1
TO
PARTICIPATION AGREEMENT**

LESSOR'S COST

Lessor:	Lessor's Cost
MACQUARIE EQUIPMENT FINANCE LTD.	\$45,000,000

**SCHEDULE 2
TO
PARTICIPATION AGREEMENT**

ADDRESSES FOR NOTICE AND PAYMENT

1. Lessor:

Notice:

Macquarie Equipment Finance Ltd.
181 Bay Street, Toronto, Ontario M5J 2T3 Canada

Attention: Legal Department, Specialized and Asset Finance Division
Email: nasr.jeries@macquarie.com, Joshua.Stevens@macquarie.com and
ronnie.alam@macquarie.com

With a copy to:

Torys LLP
79 Wellington St W #3300, Toronto, ON M5K 1N2

Attention: Scott Kraag
Email: skraag@torys.com

2. Lessee:

Notice:

Iroquois Falls Power Corp.
c/o Validus Power Corp.
2300-100 Wellington Street West
Toronto, ON
Canada M5J 2R2

Attention: Todd Shortt
Email: todd.shortt@validuspower.com

With a copy to:

Attention: General Counsel
Email: legal@validuspower.com

**SCHEDULE 3²
TO
PARTICIPATION AGREEMENT**

LAND AND SITE DESCRIPTIONS

Iroquois Falls Land:

PIN 65337-0369(LT)

PCL 9012 SEC NEC SRO; PT LT 11 CON 5 TEEFY PT 1, 6R6645 T/W PT 1 TO 4, 6R6644 & 1 TO 6, 6R6626 AS IN C447208 AMENDED BY C470222 T/W PT 2 TO 7 & 13 TO 16, 6R6645 AS IN C447209 AMENDED BY C470223 T/W PT 2, 6 TO 12, 6R6645 AS IN C447211 AMENDED BY C470225 T/W PT 17 TO 19, 6R6645 AS IN C447212 AMENDED BY C470226 T/W PT 1, 6R6898 AS IN C469024 AMENDED BY C470227 T/W PT 4 & 5, 6R6896 AS IN C469025 AMENDED BY C470228 T/W C469026 AMENDED BY C470229 T/W PT 1 & 2, 6R6853 AS IN C474890 AMENDED BY C521180 ; TOWN OF IROQUOIS FALLS

PIN 65337-0456(LT)

SURFACE RIGHTS ONLY; PT S 1/2 LT 12 CON 3 TEEFY PT 1, 6R5962 EXCEPT PT 1, 6R8283 S/T PT 2, 6R6832 AS IN C469070 AMENDED BY C470222, C470223, C470224, C470225, C470226, C470227, C470228, C470229 & C470230; DISTRICT OF COCHRANE

PIN 65337-0458(LT)

SURFACE RIGHTS ONLY; S 1/2 LT 12 CON 3 TEEFY EXCEPT PT 1, 6R5962, PTS 2 & 3, 6R8283 & PT 1, 6R8318, S/T PT 1, 3 & 4, 6R6832 AS IN C469070 AMENDED BY C470222, C470223, C470224, C470225, C470226, C470227, C470228, C470229 & C470230; DISTRICT OF COCHRANE

PIN 65337-0372(LT)

PCL 9070 SEC NEC; LOCATION RY 357 TEEFY COMPOSED OF THOSE PARTS OF THE BED OF THE ABITIBI RIVER LYING IN FRONT OF LT 11, CON 5, PT 2, 6R6853; DISTRICT OF COCHRANE

PIN 65337-0373(LT)

PCL 9070 SEC NEC; LOCATION RY 357 TEEFY COMPOSED OF THOSE PARTS OF THE BED OF THE ABITIBI RIVER LYING IN FRONT OF LT 11, CON 3, PT 1, 6R6853; DISTRICT OF COCHRANE

Kapuskasing Land:

PIN 65095-0051(LT)

² NTD: All disclosure schedules to be updated by Validus to reflect Kingston and new Closing Date.

PCL 12700 SEC CC; PT LT 24 CON 11 O'BRIEN PT 2, 6R6749 T/W PT 3, CR548 AS IN C478024; TOWN OF KAPUSKASING

PIN 65095-0052(LT)

PCL 12927 SEC CC; PT LT 23 CON 10 O'BRIEN PT 1, 6R5800 T/W PARTS 1 & 2, 6R6731 AS IN C452347 T/W PT 3, 6R6731 AS IN C451853 T/W PARTS 4 & 5, 6R6731 AS

IN C451851 T/W PARTS 3 TO 7, 6R6749 AS IN C453701 T/W PT 3, CR548 AS IN C478024; TOWN OF KAPUSKASING

North Bay Land:

PIN 49127-0021(LT)

PCL 18734 SEC WF; PT LT 21 CON 2 WIDDIFIELD PT 7 & 8, 36R9382 T/W PT 1, 36R9384 AS IN LT332823, PT 1, 36R9381 AS IN LT332824, PT 2, 36R9381 AS IN LT332826, PT 2, 36R9384 AS IN LT332902, PT 3 & 9, 36R9381 AS IN LT332885, PT 7 & 8, 36R9381 AS IN LT333337, PT 4-6, 36R9381 AS IN LT339664, PT 2, 36R9382 & PT 1, 2, 3 & 5, 36R10374 AS IN LT366707, PT 1-3, 36R10375 AS IN LT366710; T/W LT366708 & LT366709; NORTH BAY; DISTRICT OF NIPISSING

Kingston Land:

Fee Simple/Owned Lands:

1. **PIN 45132-0375(LT)**

PT LT 23 CON 1 ERNESTOWN PT 1 29R6737,; TOGETHER WITH AN EASEMENT AS IN LA69824; TOGETHER WITH AN EASEMENT AS IN LA208637; TOGETHER WITH AN EASEMENT AS IN LA208644; TOGETHER WITH AN EASEMENT AS IN LA210426; TOGETHER WITH AN EASEMENT AS IN LA210734; TOGETHER WITH AN EASEMENT AS IN LA210736; TOGETHER WITH AN EASEMENT AS IN LA210738; TOGETHER WITH AN EASEMENT OVER PTS 1 - 49 29R9849 UNTIL 2025/12/31 AS IN LX37160; TOGETHER WITH AN EASEMENT OVER PTS 1,3,4 29R6966 UNTIL 2025/12/31 AS IN LX37161; TOGETHER WITH AN EASEMENT OVER PTS 1 - 50 29R9850 UNTIL 2025/12/31 AS IN LX37162; TOGETHER WITH AN EASEMENT OVER PTS 1 - 11 29R9845 UNTIL 2030/12/31 AS IN LX37163; TOGETHER WITH AN EASEMENT OVER PTS 1 - 71 29R9851 UNTIL 2025/12/31 AS IN LX37164; TOGETHER WITH AN EASEMENT OVER PTS 1 - 14 29R9846 UNTIL 2025/12/31 AS IN LX37165; TOGETHER WITH AN EASEMENT OVER PTS 1 - 16 29R9847 AS IN LX37166; TOGETHER WITH AN EASEMENT OVER PTS 1 - 7 29R6860, PTS 1 & 2 29R7373, PTS 1 - 13 29R7650 AS IN LX37167; LOYALIST TOWNSHIP

Leasehold Lands:

1. **PIN 45132-0377(LT)(Leasehold PIN)**

PT LT 24 CON BROKEN FRONT ERNESTOWN, PTS 1 TO 12 29R9843; T/W LA69824;; TOGETHER WITH AN EASEMENT OVER PTS 1 - 49 29R9849 UNTIL 2025/12/31 AS IN LX37160; TOGETHER WITH AN EASEMENT OVER PTS 1,3,4 29R6966 UNTIL

2025/12/31 AS IN LX37161; TOGETHER WITH AN EASEMENT OVER PTS 1 - 50 29R9850 UNTIL 2025/12/31 AS IN LX37162; TOGETHER WITH AN EASEMENT OVER PTS 1 - 11 29R9845 UNTIL 2030/12/31 AS IN LX37163; TOGETHER WITH AN EASEMENT OVER PTS 1 - 4 29R9844 AS IN LX37168; TOGETHER WITH AN EASEMENT OVER PTS 1 - 12 29R9843 AS IN LX37169; SUBJECT TO AN EASEMENT OVER PTS 1 - 12 29R9843 IN FAVOUR OF LA285539 (PARCELS 1,2,3); EXCEPT PTS 1 - 12 29R9843 & LA285539 (PARCEL 4) AS IN LX37170; LOYALIST TOWNSHIP

- a. Pursuant to Instrument No. LX36982 registered September 28, 2011 being a Notice of Lease over PART OF LOT 24, BROKEN FRONT CONCESSION ERNESTOWN, DESIGNATED AS PARTS 1 TO 12, PLAN 29R9843; LOYALIST TOWNSHIP, COUNTY OF LENNOX AND ADDINGTON registered against Fee Simple PIN 45132-0378(LT)

Sublease Interest:

1. **PIN 45132-0362(LT)**

LOC. CL14116, BEING PT OF THE BED OF LAKE ONTARIO IN FRONT OF LT 24, BROKEN FRONT CON. ERNESTOWN, PT 1 29R9227; LOYALIST

- a. Pursuant to Instrument No. LX37609 registered on October 26, 2011 being an Application General (Sublease).

Easement Interests:

1. **PIN 45132-0379(LT):**

PT LT 23, 24 & 25 CON 1, PT LT 23, 24 & 25 CON BROKEN FRONT, PT RDAL BTN CON 1 & CON BROKEN FRONT CLOSED BY LA45719 AS IN LA285539 ERNESTOWN (PARCELS 1,2 & 3); EXCEPT PTS 1 TO 12 29R9843; S/T LA58484, LA184396; T/W LA69824; SUBJECT TO AN EASEMENT OVER PTS 1 - 49 29R9849 IN FAVOUR OF PT 1 29R6737 & PTS 1 - 12 29R9843 UNTIL 2025/12/31 AS IN LX37160; SUBJECT TO AN EASEMENT OVER PTS 1,3,4 29R6966 IN FAVOUR OF PT 1 29R6737 & PTS 1 - 12 29R9843 UNTIL 2025/12/31 AS IN LX37161; SUBJECT TO AN EASEMENT OVER PTS 1 - 50 29R9850 IN FAVOUR OF PT 1 29R6737 & PTS 1 - 12 29R9843 UNTIL 2025/12/31 AS IN LX37162; SUBJECT TO AN EASEMENT OVER PTS 1 - 11 29R9845 IN FAVOUR OF PT 1 29R6737 & PTS 1 - 12 29R9843 UNTIL 2030/12/31 AS IN LX37163; SUBJECT TO AN EASEMENT OVER PTS 1 - 71 29R9851 IN FAVOUR OF PT 1 29R6737 UNTIL 2025/12/31 AS IN LX37164; SUBJECT TO AN EASEMENT OVER PTS 1 - 14 29R9846 IN FAVOUR OF PT 1 29R6737 UNTIL 2025/12/31 AS IN LX37165; SUBJECT TO AN EASEMENT OVER PTS 1 - 16 29R9847 IN FAVOUR OF PT 1 29R6737 AS IN LX37166; SUBJECT TO AN EASEMENT OVER PTS 1 - 7 29R6860, PTS 1 & 2 29R7373, PTS 1 - 13 29R7650 IN FAVOUR OF PT 1 29R6737 AS IN LX37167; SUBJECT TO AN EASEMENT OVER PTS 1 - 4 29R9844 IN FAVOUR OF PTS 1 - 12 29R9843 AS IN LX37168; TOGETHER WITH AN EASEMENT OVER PTS 1 - 12 29R9843 AS IN LX37170; SUBJECT TO AN EASEMENT OVER PARTS 1 TO 15 PLAN 29R10514 IN FAVOUR OF PT LT 35 CON 1 ERNESTOWN AS IN

LA44574 AS IN LX80512; SUBJECT TO AN EASEMENT IN GROSS OVER PARTS 15 TO 17 PLAN 29R10514 AS IN LX80513; LOYALIST TOWNSHIP

- a. Pursuant to Instrument No. LX37160 registered October 4, 2011 being a Fire Water Line over PARTS OF LOTS 23, 24 AND 25, CONCESSION 1 ERNESTOWN; PART OF LOT 24, BROKEN FRONT CONCESSION ERNESTOWN; PART OF THE ROAD ALLOWANCE BETWEEN SAID CONCESSION 1 AND THE BROKEN FRONT CONCESSION (CLOSED BY BY-LAW 322-1966 REGISTERED AS LA45719) ERNESTOWN, DESIGNATED AS PARTS 1 TO 49, PLAN 29R9849; LOYALIST TOWNSHIP, COUNTY OF LENNOX AND ADDINGTON
- b. Pursuant to Instrument No. LX37161 registered October 4, 2011 being the Process Waste Water Easement over PARTS OF LOTS 23 AND 24, CONCESSION 1 ERNESTOWN; PART OF LOT 24, BROKEN FRONT CONCESSION ERNESTOWN; PART OF THE ROAD ALLOWANCE BETWEEN SAID CONCESSION 1 AND THE BROKEN FRONT CONCESSION (CLOSED BY BY- LAW 322-1966 REGISTERED AS LA45719) ERNESTOWN, DESIGNATED AS PARTS 1, 3 AND 4, PLAN 29R6966, AND PARTS 1 TO 26, PLAN 29R9848; LOYALIST TOWNSHIP, COUNTY OF LENNOX AND ADDINGTON
- c. Pursuant to Instrument No. LX37162 registered October 4, 2011 being an Additional Transmission Line Easement over PARTS OF LOTS 23 AND 24, CONCESSION 1 ERNESTOWN; PART OF LOT 24, BROKEN FRONT CONCESSION ERNESTOWN; PART OF THE ROAD ALLOWANCE BETWEEN SAID CONCESSION 1 AND THE BROKEN FRONT CONCESSION (CLOSED BY BY-LAW 322-1966 REGISTERED AS LA45719) ERNESTOWN, LOYALIST TOWNSHIP, COUNTY OF LENNOX AND ADDINGTON DESIGNATED AS: Firstly: PARTS 1 TO 17, PLAN 29R9850 [115kv electricity transmissions lines]
Secondly: PARTS 17 TO 26, 39 TO 45, AND 47 TO 50, PLAN 29R9850 [13.8kv electricity transmissions lines]
Thirdly: PARTS 26 TO 38, AND 46 TO 50, PLAN 29R9850 [electrical and/or telemetry lines]
- d. Pursuant to Instrument No. LX37163 registered October 4, 2011 being a Corridor Easement over PARTS OF LOTS 23 AND 24, CONCESSION 1 ERNESTOWN; PART OF LOT 24, BROKEN FRONT CONCESSION ERNESTOWN; PART OF THE ROAD ALLOWANCE BETWEEN SAID CONCESSION 1 AND THE BROKEN FRONT CONCESSION (CLOSED BY BY- LAW 322-1966 REGISTERED AS LA45719) ERNESTOWN, DESIGNATED AS PARTS 1 TO 11, PLAN 29R9845; LOYALIST TOWNSHIP, COUNTY OF LENNOX AND ADDINGTON
- e. Pursuant to Instrument No. LX37164 registered October 4, 2011 being a Maintenance Easement over PARTS OF LOTS 23, 24 AND 25,

CONCESSION 1 ERNESTOWN; PART OF LOT 25, BROKEN FRONT CONCESSION ERNESTOWN; PART OF THE ROAD ALLOWANCE BETWEEN SAID CONCESSION 1 AND THE BROKEN FRONT CONCESSION (CLOSED BY BY-LAW 322-1966 REGISTERED AS LA45719) ERNESTOWN, DESIGNATED AS PARTS 1 TO 71, PLAN 29R9851; LOYALIST TOWNSHIP, COUNTY OF LENNOX AND ADDINGTON

- f. Pursuant to Instrument No. LX37165 registered October 4, 2011 being a Stormwater Line Easement over PARTS OF LOTS 23 AND 24, CONCESSION 1 ERNESTOWN, DESIGNATED AS PARTS 1 TO 14, PLAN 29R9846; LOYALIST TOWNSHIP, COUNTY OF LENNOX AND ADDINGTON
 - g. Pursuant to Instrument No. LX37166 registered October 4, 2011 being the Taylor-Kidd Utilities Easement over PARTS OF LOTS 23 AND 24, CONCESSION 1 ERNESTOWN, DESIGNATED AS PARTS 1 TO 16, PLAN 29R9847; LOYALIST TOWNSHIP, COUNTY OF LENNOX AND ADDINGTON
 - h. Pursuant to Instrument No. LX37167 registered October 4, 2011 being a Transmission Line Easement over PARTS OF LOTS 23, 24 AND 25, CONCESSION 1 ERNESTOWN, LOYALIST TOWNSHIP, COUNTY OF LENNOX AND ADDINGTON, DESIGNATED AS:
 Firstly: PARTS 1, 3, 4, 5 AND 6, PLAN 29R6860, AND PART 2, PLAN 29R7373 [Main Easement]
 Secondly: PARTS 2 AND 7, PLAN 29R6860, PART 1, PLAN 29R7373 [Air Easement]
 Thirdly: PARTS 1 TO 13, PLAN 29R7650 [Back-up Power]
 - i. Pursuant to Instrument No. LX37168 registered October 4, 2011 being the Pump House Road Access Easement over PART OF LOT 24, CONCESSION 1 ERNESTOWN; PARTS OF LOTS 23 AND 24, BROKEN FRONT CONCESSION ERNESTOWN; PART OF THE ROAD ALLOWANCE BETWEEN SAID CONCESSION 1 AND THE BROKEN FRONT CONCESSION (CLOSED BY BY-LAW 322-1966 REGISTERED AS LA45719) ERNESTOWN, DESIGNATED AS PARTS 1 TO 4, PLAN 29R9844; LOYALIST TOWNSHIP, COUNTY OF LENNOX AND ADDINGTON
2. **PIN 45312-0373(LT)**
 PT LT 23-24 CON BROKEN FRONT ERNESTOWN; AS IN LA285539 (PARCEL 4); TOGETHER WITH AN EASEMENT OVER PTS 1 - 12 29R9843 AS IN LX37170; SUBJECT TO AN EASEMENT OVER PTS 23 & 24 29R6889 IN FAVOUR OF PTS 1 - 12 29R9843 AS IN LX37169; LOYALIST TOWNSHIP

- a. Pursuant to Instrument No. LX37169 registered October 4, 2011 being the Intake-Outfall Easement over PART OF LOT 24, BROKEN FRONT CONCESSION ERNESTOWN, DESIGNATED AS PARTS 23 AND 24, PLAN 29R6889; LOYALIST TOWNSHIP, COUNTY OF LENNOX AND ADDINGTON

**SCHEDULE 4
TO
PARTICIPATION AGREEMENT**

PENSION PLANS

1. Group retirement savings plan and policy issued by The Canada Life Assurance Company (Canada Life).
 - a. Eligible employee class: employees at the Project Sites (and other locations).
 - b. Employer Contributions: The employer will match 100% of the member's regular contribution, up to an annual maximum of \$10,000. Collection of payroll deduction amounts is to be captured by Canada Life at the initial plan launch only. Payroll change functionality to be turned off after initial plan launch. Employees will provide payroll deduction changes directly to the Parent.

**SCHEDULE 5
TO
PARTICIPATION AGREEMENT**

INSTRUMENTS FOR REGISTRATION

A. *Ontario Land Titles Office Registrations*

1. Debenture granted by Lessee in favour of Lessor on the Iroquois Falls Land
2. Debenture granted by Kapuskasing Subsidiary in favour of Lessor on the Kapuskasing Land
3. Debenture granted by North Bay Subsidiary in favour of Lessor on the North Bay Land
4. Debenture granted by Kingston Subsidiary in favour of Lessor on the Kingston Land

B. *Personal Property Security Act (Ontario) Registrations*

1. Financing Statement in favour of Lessor respecting Lease
2. Financing Statements in favour of Lessor respecting the Security Documents

**SCHEDULE 6
TO
PARTICIPATION AGREEMENT**

AUTHORIZATIONS AND GOVERNMENT ACTIONS

PART A – OBTAINED MATERIAL AUTHORIZATIONS

See below and table below.

Iroquois Falls Project

1. Transmission Connection Agreement between IFPC and Hydro One Networks Inc. dated October 23, 2002. Letter from Transport Canada confirming compliance with Air Navigation Standards for Stacks to Facility dated July 25, 1994
2. Certificate of Approval – Air issued by the Ministry of Environment.
3. Certificate of Approval – Industrial Sewage issued by the Ministry of Environment.
4. Permit to Take Water dated March 15, 2016
5. Hazardous Waste Information Network Registration (HWIN) # ON1524602.
6. Plant Pressure Vessels Approvals from the TSSA.
7. Generator Licence issued by the Ontario Energy Board to IFPC to own the Iroquois Falls Facility
8. IESO Registration as a Generator. – Generator, Capacity Market, Capacity Market Participant
9. Certificates of Operating Engineers & Operators. - TSSA
10. Market Participation Agreement between Lessee and IESO
11. Facility Registrations and Metering Registrations with the IESO

North Bay Project

12. Electricity Generation Licence from the OEB authorizing ownership and operation of the generation facility
13. Electricity Retailer Licence from the OEB authorizing sale of electricity directly to a large consumer
14. Transmission Connection Agreement with Hydro One.

Kapuskasing Project

15. Electricity Generation Licence from the OEB authorizing ownership and operation of the generation facility

16. Electricity Retailer Licence from the OEB authorizing sale of electricity directly to a large consumer

17. Transmission Connection Agreement with Hydro One.

Kingston Project

18. See table below

PART B – IN PROCESS MATERIAL AUTHORIZATIONS

Iroquois Falls Project

19. OEB Generator Licence to be issued by the Ontario Energy Board to IFPC to operate the Facility.

20. Electricity Retailer Licence from the OEB authorizing sale of electricity directly to a large consumer

North Bay Project

None.

Kapuskasing Project

None.

Kingston Project

Electricity Retailer Licence from the OEB authorizing sale of electricity

PART C – OTHER AUTHORIZATIONS AND GOVERNMENT ACTION

Iroquois Falls Project

None.

North Bay Project

None.

Kapuskasing Project

21. Parent

- a. - Letter of No Review from the OEB in response to Notices of Proposal under Section 81 of the Ontario Energy Board Act, 1998 OEB File Nos. EB-2022-0009 and EB-2022-0010 (MAADs application)

- b. Letter of No Review from the OEB in response to Notice of Proposal under Section 81 of the *Ontario Energy Board Act, 1998* OEB File No. EB-2022-0076 (construction of DX line)
22. Kap Subsidiary
- a. Letter of No Review from the OEB in response to Notice of Proposal under Section 81 of the Ontario Energy Board Act, 1998 OEB File No. EB-2022-0077 (**construction of DX line**)
23. Hosting: Hosting will obtain Electricity Wholesaler Licence from the OEB (for the offtake customer) authorizing purchase of electricity directly from a generator

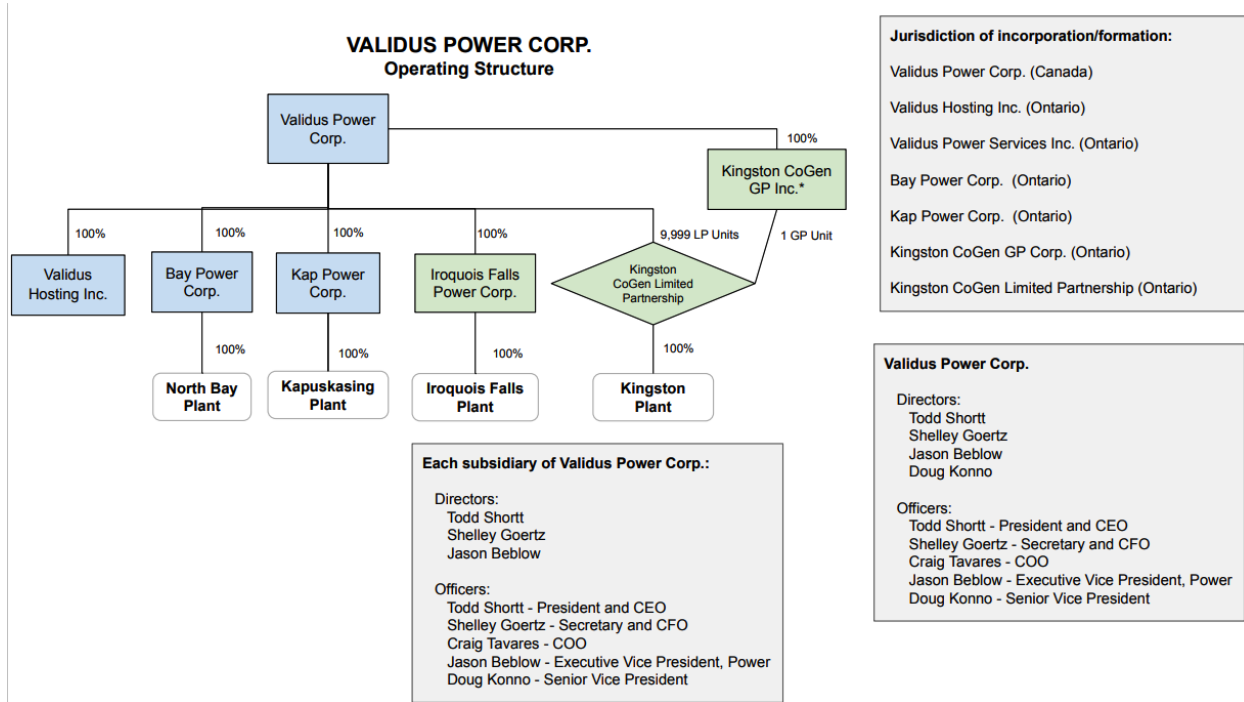
Kingston Project

N/A

Site	Name	Authorizing Body	Legislation/ Regulation	Entity on Permit	Status (Applied or Obtained)	Permit Number	Issue Date	Expiry Date	Notes
North Bay	Sign Permit	Ministry of Transportation	Public Transportation and Highway Improvement Act	Atlantic Power	Obtained				Need to update
North Bay	Permit to Take Water	Ministry of the Environment, Conservation and Parks	Ontario Water Resources Act	N/A	N/A	N/A	N/A	N/A	Did not re-apply when sold from Atlantic. Don't need for less than 50,000 L/day
North Bay	Electricity Generation License	Ontario Energy Board	Ontario Energy Board Act, 1998	Bay Power Corp	Obtained	EG-2021-0295	2/10/2022	2/9/2042	
North Bay	Electricity Retailer License	Ontario Energy Board	Ontario Energy Board Act, 1998	Bay Power Corp	Obtained	ER-2021-0329	2/10/2022	2/9/2027	
North Bay	Environmental Compliance Approval for Air	Ministry of the Environment, Conservation and Parks	Environmental Protection Act	Atlantic Power GP Inc.	Obtained	7326-9XHGKX	8/7/2015	N/A	MECP verifying if administrative amendment for change of ownership was submitted
North Bay	Environmental Compliance Approval for Industrial Sewage	Ministry of the Environment, Conservation and Parks	Ontario Water Resources Act	TransCanada PipeLines Limited	Obtained	4-0014-92-957	2/9/1995	N/A	MECP verifying if administrative amendment for change of ownership was submitted
North Bay	Radio License	Innovation, Science and Economic Development Canada	Radiocommunication Act			010346249-001	5/25/1998	Annually on March 31	Base station
						010550799-01			Mobile radios
North Bay	Waste Generation License	Ministry of the Environment, Conservation and Parks	Reg 347 - Hazardous Waste Charge Initiative	Bay Power Corp	Obtained	ON9250417	N/A	N/A	Annual renewal
North Bay	Plant Registration	Technical Standards and Safety Authority	Technical Standards and Safety Act, 2000		Applied	R-8350		N/A	Waiting for certificate with new name.
Kapuskasing	Permit to Take Water	Ministry of the Environment, Conservation and Parks	Ontario Water Resources Act	N/A	N/A	N/A	N/A	N/A	Did not re-apply when sold from Atlantic. Don't need for less than 50,000 L/day
Kapuskasing	Electricity Generation License	Ontario Energy Board	Ontario Energy Board Act, 1998	Kap Power Corp	Obtained	EG-2021-0298	2/10/2022	2/9/2042	
Kapuskasing	Electricity Retailer License	Ontario Energy Board	Ontario Energy Board Act, 1998	Kap Power Corp	Obtained	ER-2021-0331	2/10/2022	2/9/2027	
Kapuskasing	Environmental Compliance Approval for Air	Ministry of the Environment, Conservation and Parks	Environmental Protection Act	Atlantic Power GP Inc.	Obtained	7978-A4RRJF	12/17/2015	N/A	MECP verifying if administrative amendment for change of ownership was submitted
Kapuskasing	Environmental Compliance Approval for Industrial Sewage	Ministry of the Environment, Conservation and Parks	Ontario Water Resources Act	TransCanada PipeLines Limited	Obtained	4-0015-92-957	9/7/1995	N/A	MECP verifying if administrative amendment for change of ownership was submitted
Kapuskasing	Radio License	Innovation, Science and Economic Development Canada	Radiocommunication Act		Obtained	010608243-001	4/1/2006	Annually on March 31	Mobile radios
						010413777-001	4/1/2006	Annually on March 31	Base station
Kapuskasing	Waste Generation License	Ministry of the Environment, Conservation and Parks	Reg 347 - Hazardous Waste Charge Initiative	Kap Power Corp	Obtained	ON9719652	N/A	N/A	Annual renewal
Kapuskasing	Plant Registration	Technical Standards and Safety Authority	Technical Standards and Safety Act, 2000		Applied	R-8353		N/A	Waiting for certificate with new name.
All Ontario	Continuous Safety Services Agreement	Electrical Safety Authority	Electricity Act, 1998 Ontario Electrical Safety Code	Validus Power Corp	Obtained	N/A	N/A	N/A	Annual renewal
Iroquois Falls	Permit to Take Water	Ministry of the Environment, Conservation and Parks	Ontario Water Resources Act	Iroquois Falls Power Corp	Obtained	5368-A7ULKF	3/15/2016	3/15/2026	
Iroquois Falls	Electricity Generation License	Ontario Energy Board	Ontario Energy Board Act, 1998	Iroquois Falls Power Corp	Obtained	EG-2003-0144	10/21/2003	10/20/2023	
Iroquois Falls	Electricity Retailer License	Ontario Energy Board	Ontario Energy Board Act, 1998	Iroquois Falls Power Corp	Obtained	ER-20220304	1/26/2023	1/25/2028	
Iroquois Falls	Environmental Compliance Approval for Air	Ministry of the Environment, Conservation and Parks	Environmental Protection Act	Iroquois Falls Power Corp	Obtained	1113-5JRKTP	2/14/2003	N/A	
Iroquois Falls	Environmental Compliance Approval for Industrial Sewage	Ministry of the Environment, Conservation and Parks	Ontario Water Resources Act	Iroquois Falls Power Corp	Obtained	4818-4WHJL6	5/30/2001	N/A	
Iroquois Falls	Radio License	Innovation, Science and Economic Development Canada	Radiocommunication Act	Iroquois Falls Power Corp	Obtained	010531775-001	9/30/1996	Annually on March 31	Mobile Radios
Iroquois Falls	Waste Generation License	Ministry of the Environment, Conservation and Parks	Reg 347 - Hazardous Waste Charge Initiative	Iroquois Falls Power Corp	Obtained	ON1524602	N/A	N/A	Annual renewal
Iroquois Falls	Plant Registration	Technical Standards and Safety Authority	Technical Standards and Safety Act, 2000		Obtained	R-8345		N/A	
Kingston	Permit to Take Water	Ministry of the Environment, Conservation and Parks	Ontario Water Resources Act	NPIF Kingston Cogen Corp	Obtained	2410-B4JQMJ	11/22/2019	11/20/2029	
Kingston	Electricity Generation License	Ontario Energy Board	Ontario Energy Board Act, 1998	Kingston Cogen Limited Partnership	Obtained	EG-2003-0137	10/17/2003	10/16/2023	
Kingston	Electricity Retailer License	Ontario Energy Board	Ontario Energy Board Act, 1998	Kingston Cogen Limited Partnership	Obtained	ER-2017-0312	3/15/2018	3/14/2023	
Kingston	Environmental Compliance Approval for Air	Ministry of the Environment, Conservation and Parks	Environmental Protection Act	Kingston Cogen Limited Partnership	Obtained	8575-7VZKNV	12/1/2009	N/A	
Kingston	Environmental Compliance Approval for Industrial Sewage	Ministry of the Environment, Conservation and Parks	Ontario Water Resources Act	NPIF Kingston Cogen Corp	Obtained	9067-8W5HBH	9/11/2012	N/A	
Kingston	Radio License	Innovation, Science and Economic Development Canada	Radiocommunication Act	Kingston Cogen LP	Obtained	010345465-001		Annually on March 31	Base station
						010495233-001			Mobile radios
						010604793-001			Mobile radios
Kingston	Waste Generation License	Ministry of the Environment, Conservation and Parks	Reg 347 - Hazardous Waste Charge Initiative		Obtained	ON2118900	N/A	N/A	Annual renewal
Kingston	Plant Registration	Technical Standards and Safety Authority	Technical Standards and Safety Act, 2000	Kingston Cogen	Obtained	R-8359	6/27/2005	N/A	

**SCHEDULE 7
TO
PARTICIPATION AGREEMENT**

OWNERSHIP STRUCTURE



	Jurisdiction of Organization/Formation	Chief Executive Office / Registered Office / Principal Place of Business	Location of Collateral
Iroquois Falls Power Corp.	Ontario	1 Northwest Industrial Rd, Iroquois Falls, ON P0K 1E0	Ontario
Bay Power Corp.	Ontario	Registered Office: 2300-100 Wellington Street West, Toronto ON, M5J 2R2	Ontario

		Facility Address: 4001 Highway 11, North Bay ON P1B 8G4	
Kap Power Corp.	Ontario	Registered Office: 2300-100 Wellington Street West, Toronto ON, M5j 2r2 Facility Address: 47 Gough Road Kapuskasing, ON P5N 2X7	Ontario
Kingston CoGen Limited Partnership	Ontario	Registered Office: 100 Wellington Street West, 2300, Toronto, Ontario, Canada, M5J 2R2 Facility Address: 100 Wellington St W TD West Tower Suite 2300, P.O. Box 155 Toronto, ON, M5K 1H1	Ontario

**SCHEDULE 8
TO
PARTICIPATION AGREEMENT**

ENVIRONMENTAL MATTERS

None.

**SCHEDULE 9
TO
PARTICIPATION AGREEMENT**

Intentionally Deleted

**SCHEDULE 10
TO
PARTICIPATION AGREEMENT**

INTENTIONALLY DELETED

**SCHEDULE 11
TO
PARTICIPATION AGREEMENT**

INTENTIONALLY DELETED

**SCHEDULE 12
TO
PARTICIPATION AGREEMENT**

INTENTIONALLY DELETED

**APPENDIX A
TO
PARTICIPATION AGREEMENT**

DEFINITIONS

The following terms shall have the following meanings for all purposes of the Basic Documents referred to below, unless otherwise defined in a Basic Document or the context thereof otherwise requires.

“Accounting Principles” means, with respect to the Lessee, GAAP and with respect to any other Person, GAAP or the generally accepted accounting principles and standards (as may be modified from time to time by the organization promulgating such principles or standards in the applicable jurisdiction for such Person) then in effect in such Person’s jurisdiction of incorporation or formation or, if such Person is a Subsidiary of another Person (the **“Applicable Parent”**) and does not prepare financials independently of such Applicable Parent, the jurisdiction of incorporation or formation of the Applicable Parent, as the case may be.

“Acknowledgement, Confirmation and Amendment Agreement” means the acknowledgement, confirmation and amendment agreement dated as of the Closing Date by the Lessee and each Guarantor (other than the Kingston Subsidiary) for the benefit of the Lessor.

“Additional Material Project Document” means (A) any Replacement Agreement, any power purchase agreement (whether public or private), any electricity power agreement, any operating and/or maintenance agreements, any connection or interconnection agreements, any agreements related to waste disposal, any agreements related to waste disposal or other waste arrangements, any agreement for the provision of hosting or co-location arrangements, any transmission agreements (or related), any gas arrangements (including gas transportation or supply contracts), any Real Property Interests, any leases or licenses or in each case, entered into at any time (prior to and after the Closing Date) by (I) an Obligor or (II) Hosting in connection with or with any reliance upon a Project in respect of which Lessor holds a Security Interest, in each case, from time to time, or (B) any additional Project Document (a) if the aggregate cost or value of goods, services, equipment and property to be acquired or sold by the Obligor pursuant thereto could reasonably be expected to exceed (i) \$250,000 (or the equivalent) in the aggregate in any single fiscal year or (ii) \$250,000 (or the equivalent) in the aggregate, (b) if the aggregate amount of termination fees or liquidated damages that could be incurred or received by such Person in respect of such Additional Material Project Document in any single calendar year could reasonably be expected to exceed (i) \$250,000 (or the equivalent) in the aggregate in any single calendar year or (ii) \$250,000 (or the equivalent) in the aggregate, or (c) if the goods, services, equipment or property to be provided thereunder to or by such Person or for the any Project are such that the absence thereof could reasonably be expected to result in or cause a Material Adverse Effect.

“Affiliate” of any Person means any other Person which directly or indirectly Controls, or is Controlled by, or is under common Control with, such Person.

“After-Tax Basis” means, with respect to any indemnity payment to be received by any Person, the amount of such payment (the base payment) supplemented by a further payment (the additional payment) to that Person so that the sum of the base payment plus the additional payment shall, after deduction of the amount of all federal and provincial income taxes, if any, required to be paid by such Person in respect of the receipt or accrual of the base payment and the additional payment (taking into account any reduction in such income taxes resulting from tax benefits realized or to be realized by the recipient as a result of the payment or the event giving rise to the payment), be equal to the amount required to be received. Such calculations shall be made on the basis of the highest applicable federal and provincial

income tax rates applicable to the corporation or entity for whom the calculation is being made for all relevant periods in effect for the year of the payment, and shall take into account the deductibility of provincial income taxes for federal income tax purposes.

“**Anti-Corruption Laws**” means the *Corruption of Foreign Public Officials Act* (Canada) and all laws, rules and regulations of any jurisdiction applicable to Lessee or any of its Affiliates from time to time concerning or relating to bribery or corruption.

“**Anti-Money Laundering Laws**” means any law relating to money laundering or terrorism, including the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (Canada), the *Criminal Code* (Canada), Executive Order No. 13224, and in each case the regulations promulgated thereunder.

“**Applicable Law**” means with respect to any Person or property and as the context may require, all laws, including Canadian common law, Canadian federal, provincial, state, municipal and local banking, securities, personal and real property security, water, energy, investment, doing business, property ownership, land use and zoning, sanitary and occupational health and safety laws, Environmental Laws, treaties, statutes, ordinances, by-laws, judgments, decrees, injunctions, writs and orders of any Government Body (to the extent the Person or property is subject to the jurisdiction of such Government Body) and rules, regulations, policies and guidelines (having the force of law), directives, interpretations, approvals, licenses, exemptions and permits of any Government Body, in each case applicable from time to time to such Person or property within the jurisdiction of such Government Body.

“**Assignment of Material Project Documents**” means the assignment of material project documents dated as of the Original Closing Date granted by Hosting in favour of Lessor.

“**Authorizations**” means (a) the Authorizations set out in Schedule 6 and (b) at any relevant time, any other permits, entitlements, licenses, orders, consents, approvals, exemptions, authorities, certifications, franchises, building permits, authorities to construct, permits to operate, certificates of occupancy, plot plan approvals, subdivision approvals, site plan reviews, environmental approvals, registrations, certificates, certificates of approval and licenses (including an environmental impact assessment, statement or report if required under Applicable Law), sewer and waste discharge permits, industrial development permits, water pollution discharge permits, water and air permits, zoning and land use entitlements and other authorizations whether now existing or hereafter issued to or obtained by or required to be issued to or obtained by or on behalf of Lessee, any other Obligor or Lessor or that relate to or concern in any way the Project Facilities, the Project Sites, the Leased Property or any other Collateral, any ground lease relating to the Project Sites, any license relating to the Project Sites, including, pursuant to any Environmental Laws, and are given or issued by any Government Body, or quasi-Government Body or administrative or regulatory agency pursuant to Applicable Law, whether now existing or hereafter created.

“**Base Rent**” means with respect to the Leased Property all rent from time to time payable by Lessee to Lessor pursuant to Section 3.2 of the Lease during the Lease Term.

“**Base Term**” has the meaning set out in Section 3.1 of the Lease.

“**Base Term Expiration Date**” has the meaning set out in Section 3.1 of the Lease.

“**Basic Documents**” means the Participation Agreement, the Bill(s) of Sale, the Lease (including each Lease Supplement), the Security Documents, the Guarantee, the Limited Recourse Guarantee, and any other document entered into by an Obligor with, or for the benefit of, the Lessor, or is agreed to be a Basic Document by the Lessor and the Lessee.

"Benefit Plan" means any employee benefit, fringe benefit, supplemental unemployment benefit, bonus, incentive, profit sharing, termination, change of control, stock, stock option, stock purchase, stock appreciation, health, welfare, medical, dental, disability, life insurance and other benefit plan, program or arrangement (other than a Pension Plan) established, contributed to or maintained by or on behalf of an Obligor for the benefit of current or former employees, or dependents or beneficiaries of either of them.

"Bill of Sale" means the bill of sale dated as of the Original Closing Date from Lessee to Lessor covering the Leased Property, substantially in the form of Exhibit A to the Participation Agreement.

"Business Day" means any day other than a Saturday, Sunday or a day on which commercial banking institutions are authorized or required by law, regulation or executive order to be closed in Toronto, Ontario or the city and province in Canada in which the principal offices of Lessee is located.

"Cap and Trade System" means any regional, national provincial, or North American cap and trade system for greenhouse gases that (i) is applicable to any of the Projects; (ii) is linked, pursuant to the Western Climate Initiative, to the cap and trade system established by the California Air Resources Board; and (iii) could reasonably be expected to affect the purchase or holding limits of any Affiliate of the Lessor under such cap and trade system described in (ii).

"Casualty Event" means any loss of, destruction of or damage to the Project Facilities or the Project Sites.

"CAD", "Cdn. \$", "Cdn. dollar", "Dollars" or "\$" means lawful currency of Canada.

"Change in Law" means the occurrence of: (a) the adoption or effectiveness of any law, rule, regulation, judicial ruling, judgment or treaty; (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application by any Government Body of any law, rule, regulation or treaty; or (c) the making or issuance by any Government Body of any request, rule, guideline or directive, whether or not having the force of law, including, without limitation, the introduction and implementation of a Cap and Trade System.

"Claims" has the meaning set out in Section 6.2(1) of the Participation Agreement.

"Cleanup" means all actions required to: (1) clean up, remove, treat or remediate Specified Substances in the Environment; (2) control or prevent the Release of Specified Substances so that they do not migrate, endanger or threaten to endanger public health or welfare of the Environment; (3) perform pre-remedial studies and investigations and post-remedial monitoring and care; or (4) respond to any requests of Government Bodies for information or documents in any way relating to cleanup, removal, treatment or remediation or potential cleanup, removal, treatment or remediation of Specified Substances in the Environment.

"Closing" has the meaning set out in Section 2.4 of the Participation Agreement.

"Closing Date" means the date that the Closing occurred (being February 24, 2023).

"Collateral" means: (i) with respect to Parent, its equity interests in Lessee, Kapuskasing Subsidiary, North Bay Subsidiary and Kingston Subsidiary; (ii) with respect to each Obligor other than Parent, all real and personal property (and the rents, insurance proceeds, issues, profits, proceeds and products of the foregoing), assets and undertaking of such Obligor and (iii) with respect to Hosting, the Collateral (as defined in the Assignment of Material Project Documents), in each case, together with all

other real and personal property, assets and undertaking which are subject, or are intended or required to become subject, to the Liens granted under any of the Security Documents.

“Commercial Operation” means, (i) in respect of the Iroquois Falls Project, that the Iroquois Falls Project is capable of generating electricity in compliance with all laws and regulations on a daily basis (except for scheduled maintenance) at an uninterrupted rate of 100% of the Rated Capacity in accordance with its plans and specifications, (ii) in respect of the North Bay Project, that the North Bay Project is capable of generating electricity in compliance with all laws and regulations on a daily basis (except for scheduled maintenance) at an uninterrupted rate of 100% of the Rated Capacity in accordance with its plans and specifications, (iii) in respect of the Kapuskasing Project, that the Kapuskasing Project is capable of generating electricity in compliance with all laws and regulations on a daily basis (except for scheduled maintenance) at an uninterrupted rate of 100% of the Rated Capacity in accordance with its plans and specifications; and (iv) in respect of the Kingston Project, that the Kingston Project is capable of generating electricity in compliance with all laws and regulations on a daily basis (except for scheduled maintenance) at an uninterrupted rate of 100% of the Rated Capacity in accordance with its plans and specifications

“Commodity Hedge Agreement” means any power or gas swap, cap, collar, forward agreement or similar arrangement entered for the purpose of managing, mitigating or eliminating risks relating to natural gas and electricity price fluctuations.

“Condemnation Event” means any taking, seizure, confiscation, requisition, exercise of rights of eminent domain, public improvement, inverse condemnation, condemnation or similar action or threat of any such action of or proceeding by any Government Body or other Person relating to all or any part of the Project Facilities or Project Sites.

“Constituent Documents” means, with respect to any Person, the constituting and organizational documents of such Person.

“Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise, and **“Controlled”** shall have a meaning correlative to the foregoing.

“DBRS” means Dominion Bond Rating Service Limited.

“Debentures” means each debenture, dated as of the Original Closing Date or the Closing Date, granted by Lessee and each Guarantor (other than the Parent), as grantor, and Lessor, as grantee.

“Deposit” has the meaning set out in Section 4.48(3) of the Participation Agreement.

“Environment” means the indoor and outdoor environment, including: (i) water (whether surface water or groundwater); (ii) air (whether ambient air or the earth’s atmosphere); (iii) soil, land surface and subsurface strata (whether submerged or covered by a structure); (iv) organic and inorganic matter, (v) living species and organisms; or (vi) a combination of any of the foregoing; and **“Environmental”** shall have a corresponding meaning.

“Environmental Claim” means any action, cause of action, notice of violation, prosecution, claim, demand, abatement order, enforcement action or other order or direction (conditional or otherwise), or other mandatory communication by any Government Body or any Person for any damage, including, without limitation, personal injury (including sickness, disease or death), tangible or intangible property damage, contribution, indemnity, indirect or consequential damages, investigatory costs, Cleanup costs, damage to the Environment, violation of pollution standards, nuisance, pollution, contamination or other adverse

effects on the Environment, and/or for fines, penalties or restrictions, resulting from or based upon at any time (whether or not on the basis of negligence, strict or absolute liability or liability in tort or arising out of regulatory requirements of any kind) (i) the existence of a Release (whether sudden or non-sudden or accidental or non-accidental) of, or exposure to, any Specified Substance, in, into, out of or onto the Environment at, in, by, from or related to the Leased Property, the Project Facilities, the Project Sites or the Collateral; (ii) the use, manufacture, processing, handling, transportation, storage, treatment or disposal of Specified Substances in connection with the operation of the Leased Property, the Project Facilities, the Project Sites or the Collateral; or (iii) the violation, or alleged violation, of any Environmental Law or any Authorization required by or issued pursuant to any Environmental Law in connection with the Leased Property, the Project Facilities, the Project Sites or the Collateral.

“Environmental Event” means any occurrence which might give rise to an Environmental Claim or the discovery of any environmental condition in, on, from, beneath or involving the Project Facilities, the Project Sites, any other Collateral or any part thereof (including the presence, emission or Release of any Specified Substance or the violation of any applicable Environmental Law) that would have a material adverse effect on the use, occupancy, possession, ownership, or operation of the Project Facilities, the Project Sites, any other Collateral or any part thereof or the improvements thereon or the value or condition of the Project Facilities, the Project Sites, any other Collateral or any part thereof.

“Environmental Laws” means all federal, state, provincial, municipal or local laws, statutes, ordinances, by-laws, orders, directives, judgments, decrees, injunctions, writs, policies and guidelines (having the force of law), approvals, notices, rules, regulations, common law and other Applicable Laws relating to Environmental matters, and occupational health and safety matters including those relating to the Release or threatened Release of Specified Substances and to the generation, use, storage, treatment, disposal or transportation of Specified Substances, including, without limitation, the *Environmental Protection Act* (Ontario), *Ontario Water Resources Act*, and comparable Canadian federal, provincial or local laws, and any similar or analogous local, provincial and federal statutes and regulations promulgated pursuant thereto.

“Event of Abandonment” means (a) a written announcement by an Obligor of a decision to abandon or indefinitely defer or the abandonment of, the construction, completion or operation of a material portion of a Project Facility or a Project Site for any reason, (b) the voluntary suspension or abandonment of all or substantially all activities in respect of a Project Facility or a Project Site for more than ninety (90) consecutive days or (c) Lessee, shall make any filing with a Government Body giving notice of the intent or requesting authority to abandon the construction, completion or operation of a Project Facility or a Project Site for any reason.

“Event of Loss” has the meaning set out in Section 10.1 of the Lease.

“First Nations” means any first nations, Métis and/or indigenous and/or aboriginal person(s), tribe(s) and/or band(s) of Canada.

“First Nations Claims” means any claims, assertions or demands, written or oral, whether proven or unproven, made by any First Nations to Lessee, Obligor or a Government Body, or any representatives thereof, in respect of aboriginal rights, aboriginal title, treaty rights or any other aboriginal interest in or to all or any portion of the Project Sites, Project Facilities or Leased Property.

“Funds Flow Memorandum” means that certain funds flow memorandum, dated the Original Closing Date, executed by Lessee.

“**GAAP**” means the generally accepted accounting principles which are in effect from time to time approved by the Chartered Professional Accountants of Canada or any successor institute as applicable including, without limitation, International Financial Reporting Standards to the extent consistent such generally accepted accounting principles.

“**General Security Agreements**” means each General Security Agreement dated as of the Closing Date or the Original Closing Date granted by the Lessee and each Guarantor in favour of the Lessor.

“**Good Industry Practices**” means those practices, methods, equipment, specifications and standards of safety and performance, as are commonly accepted in Canada and in the international independent power project industry as good, safe and prudent practices in connection with the design, construction, operation, maintenance, repair and use of the Project Facilities or the Project Sites, as they may change from time to time. “Good Industry Practices” as defined herein does not necessarily mean one particular practice, method, equipment specification or standard in all cases, but is instead intended to encompass a broad range of acceptable practices, methods, equipment specifications and standards for power plants that are actively operating or for power plants that are in a dormant or mothballed state, as applicable.

“**Government Action**” means all consents, approvals or Authorizations of, or filings, registrations or qualifications with, or the giving of notice or taking of any other action with respect to, any Government Body.

“**Government Body**” means any nation or government, any state, province, county, territory, municipality, or other government, quasi-government, administrative or regulatory authority, agency, board, body, commission, instrumentality, court or tribunal or other political subdivision thereof, or any central bank (or similar monetary or regulatory authority) thereof, any tax authority, any ministry or department or agency of the foregoing, any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, and any corporation or other entity owned or controlled, through stock or capital ownership or otherwise, by any of the foregoing or any arbitrator or panel of arbitrators, including the IESO.

“**Guarantors**” means the Parent, the Lessee, Kapuskasing Subsidiary, North Bay Subsidiary and Kingston Subsidiary.

“**Guarantee**” means the amended and restated guarantee dated as of the Closing Date, executed by each Guarantor in favor of the Lessor.

“**Hosting**” means Validus Hosting Inc.

“**Hut 8 Lease**” means the indenture dated as of October 27, 2021 between the Parent and Hut 8 Mining Corp.

“**Hut 8 PPA**” means the power purchase agreement dated as of October 22, 2021 between the Parent, as seller and Hut 8 Mining Corp., as buyer.

“**HST**” means the goods and services tax levied under Part IX of the *Excise Tax Act* (Canada).

“**IESO**” means the Independent Electricity System Operator of Ontario established under Part II of the Electricity Act, 1998 S.O. 1998, c.15, Sch. A, as amended or replaced from time to time, or its successor.

“**Income Tax Act (Canada)**” means the *Income Tax Act*, Revised Statutes of Canada, 1985 c.1 (5th Supplement).

“**Indebtedness**” means, as to any Person, without duplication (i) all indebtedness (including principal, interest, fees and charges) of such Person for borrowed money, (ii) all obligations of such Person for the deferred purchase price of property, goods or services that in accordance with the Accounting Principles would be shown on the liability side of the balance sheet of such Person, (iii) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (iv) obligations of such Person in respect of letters of credit, bank guarantees or similar instruments issued or accepted for the account of such Person and, without duplication, all outstanding reimbursement obligations and drafts drawn with respect thereto (excluding letters of credit that are cash collateralized on a Dollar (or other currency) for Dollar (or such other currency) basis and only to the extent of such cash collateral and to the extent that the such Person is permitted to grant a Lien over such cash collateral), (v) all liabilities secured by any Lien on any property owned by such Person, whether or not such liabilities have been assumed by such Person, (vi) any guarantee of Indebtedness by such Person, (vii) all obligations under trade or bankers’ acceptances, (viii) capitalized amounts of obligations under leases (whether in respect of land, machinery, equipment or otherwise) entered into by such Person primarily as a method of raising financing or of financing the acquisition of the asset leased, (ix) without duplication, any amounts due to trade creditors and accrued expenses, (x) all obligations under agreements providing for swaps, ceiling rates, ceiling and floor rates, contingent participation or other hedging mechanisms with respect to the payment of interest, the convertibility of currency or the price of any commodity, (xi) all obligations under any conditional sale agreement, capital lease or other title retention agreement, (xii) the Indebtedness of any partnership or joint venture (other than a joint venture that is itself a corporation or a limited liability company) in which such Person is a general partner or a joint venture, unless such Indebtedness is expressly made non-recourse to such Person, (xiii) all unconditional obligations of such Person to purchase, redeem, retire, defease or otherwise require for value any capital stock or other equity interests of such Person, or any warrants, rights or options to acquire such capital stock or other equity interests, and (xiv) obligations of such Person in respect of surety bonds or other similar instruments. For all purposes hereof, the Indebtedness of any Person shall include the Indebtedness of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner or a joint venturer, unless such Indebtedness is expressly made non-recourse to such Person.

“**Indemnified Person**” has the meaning set out in Section 6.2(2) of the Participation Agreement.

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

- (a) an order is made that a body corporate be wound up;
- (b) an order appointing a liquidator, an administrator or a provisional liquidator in respect of a body corporate is made, or one of them is appointed;
- (c) a receiver, receiver and manager, statutory manager, trustee or other similar official, is appointed in respect of a body corporate or all or substantially all of its assets (other than assets which are subject to a limited recourse obligation of such body corporate);
- (d) a body corporate enters into, or resolves to enter into, an arrangement or reconstruction or composition with, or assignment for the benefit of, all or any class of its creditors or it proposes a reorganization, moratorium or other administration involving any of them for reasons relating to insolvency;

- (e) a body corporate is or states that it is unable to pay its debts generally when they fall due (other than limited recourse obligations of such body corporate);
- (f) a body corporate resolves to wind itself up, assigns itself into bankruptcy or commits any act of bankruptcy as such term is defined in Section 42 of the *Bankruptcy and Insolvency Act* (Canada), or gives notice of intention to do so for reasons relating to insolvency;
- (g) a body corporate takes any steps to obtain or is granted protection from its creditors, under any applicable legislation;
- (h) (A) commencement of an involuntary proceeding against a body corporate (X) seeking bankruptcy, liquidation, reorganization, dissolution, winding up, a composition or arrangement with creditors, a readjustment of debts, or other relief with respect to it or its debts under any bankruptcy or insolvency laws or other customary insolvency actions or (Y) seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its assets, the issuance of a writ of attachment or execution, or similar process, or like relief if, in each such case, subparagraphs (B), (C) and (D) of this paragraph (h) do not apply and such involuntary proceeding shall remain undismissed and unstayed for a period of 60 days, (B) an order for relief is entered against a body corporate under the bankruptcy or insolvency laws of Canada as now or hereafter in effect, (C) filing by a body corporate of an answer admitting the material allegations of a petition filed against it in any involuntary proceeding commenced against it, or (D) consent by a body corporate to any relief referred to in this paragraph (h) or to the appointment of or taking possession by any such official in any involuntary proceeding commenced against it;
- (i) anything analogous or having a substantially similar effect to any of the events specified above in relation to a trust, trust estate, trustee of a trust or any other Person; or
- (j) anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction.

“**Insurance Policies**” has the meaning set out in Section 4.22.

“**Insurance Requirements**” means all terms and conditions of any insurance policy providing coverage to the Obligors or their Affiliates (including with respect to the Collateral) or otherwise maintained by the Obligors and their Affiliates, and all requirements of the issuer of any such policy.

“**Insurance Threshold**” means \$1,000,000.

“**Intellectual Property Rights**” means all patents, patent applications, proprietary computer software, manuals, “know-how,” copyrights and trade secrets, whether owned, leased or licensed, used or to be used in the ordinary course of operation of the Project Facilities or the Project Sites that are necessary or desirable for Commercial Operation of the Iroquois Falls Project.

“**Iroquois Falls Land**” means the parcels of land in Iroquois Falls, Ontario, Canada described in Schedule 3 to the Participation Agreement on which the Iroquois Falls Project (including the Leased Property) is located.

“**Iroquois Falls Project**” means the 120MW natural gas-fired combined-cycle power plant and all associated ancillary facilities located on the Iroquois Falls Land, together with all buildings, structures or

improvements owned or leased by Lessee erected on the Iroquois Falls Project Site in connection therewith, all electrical interconnections thereto, all alterations thereto or replacements thereof, all fixtures, attachments, appliances, equipment, machinery and other articles attached thereto or used in connection therewith and all parts which may from time to time be incorporated or installed in or attached thereto, all contracts and agreements for the purchase or sale of commodities or other personal property related thereto, all leases of real or personal property related thereto, and all other real and tangible and intangible personal property leased or owned by Lessee.

“Iroquois Falls Project Site” means the Iroquois Falls Land, upon which the Iroquois Falls Project is located, and all rights of way, and real estate properties or rights required to develop, construct, operate and maintain the Iroquois Falls Project.

“Iroquois Falls Site Interest” means Lessor’s leasehold interest in the Iroquois Falls Project Site.

“Kapusksasing Land” means the parcels of land in Kapuskasing, Ontario, Canada described in Schedule 3 to the Participation Agreement on which the Kapuskasing Project is located.

“Kapusksasing Project” means the 40MW natural gas-fired combined-cycle power plant and all associated ancillary facilities located on the Kapuskasing Land, together with all buildings, structures or improvements owned or leased by Kapuskasing Subsidiary erected on the Kapuskasing Project Site in connection therewith, all electrical interconnections thereto, all alterations thereto or replacements thereof, all fixtures, attachments, appliances, equipment, machinery and other articles attached thereto or used in connection therewith and all parts which may from time to time be incorporated or installed in or attached thereto, all contracts and agreements for the purchase or sale of commodities or other personal property related thereto, all leases of real or personal property related thereto, and all other real and tangible and intangible personal property leased or owned by Kapuskasing Subsidiary.

“Kapusksasing Project Site” means the Kapuskasing Land, upon which the Kapuskasing Project is located, and all rights of way, and real estate properties or rights required to develop, construct, operate and maintain the Kapuskasing Project.

“Kapusksasing Subsidiary” means Kap Power Corp.

“Kingston Land” means the parcels of land in Ernestown, Loyalist Township, County of Lennox and Addington, Ontario, Canada described in Schedule 3 to the Participation Agreement on which the Kingston Project is located.

“Kingston Project” means the 110MW natural gas-fired combined-cycle power plant and all associated ancillary facilities located on the Kingston Land, together with all buildings, structures or improvements owned or leased by Kingston Subsidiary erected on the Kingston Project Site in connection therewith, all electrical interconnections thereto, all alterations thereto or replacements thereof, all fixtures, attachments, appliances, equipment, machinery and other articles attached thereto or used in connection therewith and all parts which may from time to time be incorporated or installed in or attached thereto, all contracts and agreements for the purchase or sale of commodities or other personal property related thereto, all leases of real or personal property related thereto, and all other real and tangible and intangible personal property leased or owned by Kingston Subsidiary.

“Kingston Project Site” means the Kingston Land, upon which the Kingston Project is located, and all rights of way, and real estate properties or rights required to develop, construct, operate and maintain the Kingston Project.

“**Kingston Subsidiary**” means Kingston CoGen Limited Partnership.

“**Lands**” means the Iroquois Falls Land, the North Bay Land, the Kapuskasing Land and the Kingston Land.

“**Late Rate**” means an annual rate of 18%.

“**Lease**” means the amended and restated lease agreement, dated as of the Closing Date, between Lessor, as lessor, and Lessee, as lessee, and each Lease Supplement entered into pursuant thereto.

“**Lease Default**” means an event which with notice or lapse of time or both would become a Lease Event of Default.

“**Lease Events of Default**” has the meaning set out in Section 12 of the Lease.

“**Lease Supplement**” means (i) a Lease Supplement, in the form of Exhibit A to the Lease, dated as of the Original Closing Date, between Lessor and Lessee, covering the Leased Property, (ii) a Lease Supplement, in the form of Exhibit A to the Lease, dated as of the Closing Date, between Lessor and Lessee or (iii) any supplement or amendment to the Lease entered into from time to time between Lessor and Lessee.

“**Lease Term**” has the meaning set out in Section 3.1 of the Lease.

“**Leased Property**” means the property and assets set out in Schedule 1 of the Lease Supplement, including for certainty, the any and all Modifications made pursuant the Lease and Parts incorporated in, installed on or attached to any thereof pursuant to the Lease.

“**Lessee**” means Iroquois Falls Power Corp., a corporation organized under the laws of Ontario.

“**Lessor**” means Macquarie Equipment Finance Ltd.

“**Lessor’s Cost**” means the amount set forth in Section 3 of the Lease Supplement and Schedule 1 of the Participation Agreement.

“**Lessor Liens**” means any Lien on any portion of the Leased Property arising as a result of (i) claims against Lessor or any other Obligor not related to the transactions contemplated by the Basic Documents or not indemnified against by Lessee in the Basic Documents, (ii) acts or omissions of Lessor not related to the transactions contemplated by the Basic Documents or in breach of any covenant or agreement of such Person set forth in any of the Basic Documents or which are not indemnified against or assumed by Lessee in the Basic Documents or (iii) claims against Lessor arising out of the transfer (whether voluntary or involuntary) by Lessor of the Leased Property without the consent of Lessee of all or any portion of the Leased Property or the rights of Lessor under the Basic Documents.

“**Lessor Transfer**” means a transfer by Lessor, without recourse or warranty (except that Lessor has not previously conveyed all or any part of its interest in the Leased Property other than as permitted by the Basic Documents and as to the absence of any Lessor Liens), of all of Lessor’s right, title and interest in the Leased Property, “as-is, where-is,” to a Person.

“**Lien**” means any security interest, Mortgage, deed of trust, pledge, hypothecation, assignment, charge or deposit arrangement, license, garnishment, trust (actual or deemed) intended as a security device, encumbrance, easement, preference, priority, lease (including those intended as a security device), lien

(statutory or other) or preferential arrangement of any kind or nature whatsoever in respect of any property including those created by, arising under or evidenced by any conditional sale or other title retention agreement, the interest of a lessor under a capital lease, a lease having the characteristics of a secured lending arrangement, any financing lease having substantially the same economic effect as any of the foregoing, or the filing of any financing statement naming the owner or conditional purchaser of the asset to which such lien relates as debtor, under the PPSA or any comparable law, but not including the interest of a lessor under an operating lease.

“Limited Recourse Guarantee” means the limited recourse guarantee dated as of the Original Closing Date granted by Hosting in favour of Lessor.

“Material Adverse Effect” means with respect to the Obligors, taken as a whole, any change or changes, effect or effects or condition or conditions that individually or in the aggregate are or are reasonably expected to be materially adverse to (i) the financial position, operations, properties or assets of the Obligors, (ii) the ability of the Obligors to perform their obligations under the Transaction Documents, or (iii) the validity or enforceability of any of the Transaction Documents or any rights or remedies under any thereof.

“Material Authorizations” means the material Authorizations required in the ordinary course of business for the financing, development, construction and operation of the Projects.

“Material Event” means an Environmental Event which could not be cured by a Permitted Remediation.

“Material Project Documents” means the following Project Documents:

(a) the Hut 8 PPA;

(b) the Hut 8 Lease; and

(c) the Additional Material Project Documents with respect to any Project, provided that the respective Subsidiary managing such Project has not been released from its obligations hereunder in accordance with the term hereof.

“Modification” has the meaning set out in Section 9.1 of the Lease.

“Moody’s” means Moody’s Investors Service, Inc.

“Mortgage” means any mortgage, leasehold mortgage, deed of trust or indenture of mortgage and deed of trust and any modification, amendment, consolidation or renewal thereof.

“North Bay Land” means the parcels of land in North Bay, Ontario, Canada described in Schedule 3 to the Participation Agreement on which the North Bay Project is located.

“North Bay Project” means the 40MW natural gas-fired combined-cycle power plant and all associated ancillary facilities located on the North Bay Land, together with all buildings, structures or improvements owned or leased by North Bay Subsidiary erected on the North Bay Project Site in connection therewith, all electrical interconnections thereto, all alterations thereto or replacements thereof, all fixtures, attachments, appliances, equipment, machinery and other articles attached thereto or used in connection therewith and all parts which may from time to time be incorporated or installed in or attached thereto, all contracts and agreements for the purchase or sale of commodities or other personal property related thereto,

all leases of real or personal property related thereto, and all other real and tangible and intangible personal property leased or owned by North Bay Subsidiary.

“**North Bay Project Site**” means the North Bay Land, upon which the North Bay Project is located, and all rights of way, and real estate properties or rights required to develop, construct, operate and maintain the North Bay Project.

“**North Bay Subsidiary**” means Bay Power Corp.

“**Northland Securities Purchase Agreement**” means the securities purchase agreement dated December 9, 2021 among, *inter alios*, Northland Power Inc., NPIF Kingston L.P. and the Parent, as the same may be amended, supplemented or amended and restated from time to time.

“**Obligations**” means, collectively, all obligations of the Obligor now existing or hereinafter arising, direct or indirect, absolute or contingent, due or to become due, to Lessor under the Transaction Documents or otherwise, and in respect of an Obligor, all obligations of that Obligor now existing or hereinafter arising, direct or indirect, absolute or contingent, due or to become due, to Lessor under the Transaction Documents or otherwise.

“**Obligors**” means the Lessee and the Guarantors.

“**OEB Act**” means the *Ontario Energy Board Act, 1998*

“**OEB Electricity Generation License**” means the electricity generation license(s) issued by the Ontario Energy Board pursuant the OEB Act to Lessee designated as EG-2003-0144.

“**Officer’s Certificate**” means a certificate signed (i) in the case of an Obligor, by a Responsible Officer, (ii) in the case of any other corporation or company, by the President, any Vice President, any Assistant Vice President, the Treasurer or an Assistant Treasurer, (iii) in the case of a partnership by the President, any Vice President, the Treasurer or an Assistant Treasurer of a corporate general partner, and (iv) in the case of a commercial bank or trust company, the President, any Vice President, any Trust Officer or any other officer customarily performing the functions similar to those performed by the persons who at the time shall be such officers, or to whom any corporate trust matter is referred because of his knowledge of and familiarity with the particular subject.

“**Operating Capacity**” means, (i) in the case of the Iroquois Falls Project, the ability of the Iroquois Falls Project to produce at least 120MWh of electricity per year, (ii) in the case of the North Bay Project, the ability of the North Bay Project to produce at least 40MWh of electricity per year, (iii) in the case of the Kapuskasing Project, the ability of the Kapuskasing Project to produce at least 40MWh of electricity per year and (iv) in the case of the Kingston Project, the ability of the Kingston Project to produce at least 110MWh of electricity per year.

“**Operating Inputs**” means any services, products or things consumed directly or indirectly, wholly or in part, in the Process and which are in the opinion of the Lessor, reasonably necessary therefor including gas, steam, utility water, electricity and cooling water.

“**Original Closing**” has the meaning set out in Section 2.4 of the Participation Agreement.

“**Original Closing Date**” means April 7, 2022.

“**Original Participation Agreement**” has the meaning set out in recitals of the Participation Agreement.

“**out-of-pocket costs**” and “**out-of-pocket expenses**” means, whether or not capitalized, properly documented costs and expenses of travel, lodging, meals and other incidental expenses of a Person or its Affiliates which are directly related to the Transaction and which are paid to any Person who is not an Affiliate of the payor.

“**Parent**” means Validus Power Corp.

“**Participation Agreement**” has the meaning set out in the preamble.

“**Parts**” has the meaning set out in Section 8.4 of the Lease.

“**Pension Plan**” means any pension, retirement or supplemental retirement benefit plans, arrangements or agreements, including any defined benefit or defined contribution pension plans and any group registered retirement savings plans, employee benefit plans and any other similar employee benefit plans, arrangements or agreements, whether oral or written, formal or informal, funded or unfunded, that are, in each case, sponsored, contributed to by or maintained by the any Obligor providing for retirement income for the benefit of any such party’s employees or former employees, or dependents or beneficiaries of either of them, whether or not insured.

“**Pension and Benefit Laws**” means the *Pension Benefits Act* (Ontario), and any other law, rule, regulation, guideline, directive, order or notice of any Government Body having jurisdiction over or affecting any Pension Plan or Benefit Plan.

“**Permitted Commodity Hedge**” means a Commodity Hedge Agreement entered into by the an Obligor and a counterparty acceptable to Lessor in good faith in the ordinary course of business providing for the non-speculative transfer or mitigation of gas or energy price risks either generally or under specific contingencies on terms and conditions acceptable to Lessor (including a monthly reporting protocol in respect thereof if requested by Lessor).

“**Permitted Contest**” means in respect of any Person, a contest of any Claim, Tax, Lien or Applicable Law in good faith and by appropriate proceedings diligently conducted, so long as the proceedings do not (i) involve any danger of criminal, quasi-criminal or material unindemnified penalties or liability on the part of any other Person that is a party to a Basic Document or of the loss of priority of Liens created by the Security Documents, (ii) pose a material risk of sale, forfeiture or loss of any part of the Leased Property, the Project Facilities, the Project Sites or the Collateral, (iii) interfere in any material manner with the use or operation of the Leased Property, the Project Facilities, the Project Sites or the Collateral; (iv) pose any risk of interference with the payment of rent or interest or any other payments to or for the account of Lessor or (v) subject any other Person that is a party to a Transaction Document to any material civil liability.

“**Permitted Indebtedness**” means the following, except that no Indebtedness counted under a category shall be counted under any other category:

- (a) Indebtedness under the Transaction Documents;
- (b) any trade or other similar unsecured Indebtedness in each case that is incurred in the ordinary course of Lessee’s business (provided, that it does not involve advance or deferred

payment for a period of more than six (6) months after incurrence thereof) that is not past due or is being contested in good faith;

- (c) Indebtedness under any Material Project Document;
- (d) Indebtedness in respect of Purchase Money Security Interests, capital leases or sale and lease back transactions (other than the Transaction) granted by the Obligor in an aggregate amount not to exceed \$1,000,000 in the aggregate, at any time;
- (e) Indebtedness arising in respect of any security instrument (including any letter of credit) posted by, for or on behalf of any Obligor with the IESO in the ordinary course of business;
- (f) guarantees, bonds and letters of credit in relation to Material Project Documents and otherwise in the ordinary course of business, in aggregate up to a maximum of \$1,000,000;
- (g) unsecured Indebtedness owing from one Obligor to another Obligor (other than the Parent);
- (h) unsecured Indebtedness owing from an Obligor to Parent provided payments are postponed to after the Lease has terminated in accordance with its terms, and such postponement is in form and substance satisfactory to Lessor, and any and all amounts under the Basic Documents are fully and finally paid and discharged;
- (i) unsecured Indebtedness of Parent owing to Lessee in the amount of \$36,000,000 that is incurred pursuant to a promissory note, the proceeds of which will be used to partially fund the acquisition by Parent under the Northland Securities Purchase Agreement and in accordance with 4.24;
- (j) in the case of Parent, Indebtedness arising pursuant to any limited recourse obligation granted to a third party in support of financing for any Subsidiary or Affiliate of Parent (other than Kapuskasing Subsidiary, North Bay Subsidiary and Lessee);
- (k) *Intentionally Deleted;*
- (l) unsecured Indebtedness of the Parent owing to its shareholders that is subject to a subordination and postponement agreement, in form and substance satisfactory to Lessor;
- (m) any other unsecured Indebtedness of the Obligor up to the aggregate outstanding amount of \$500,000.

“Permitted Investment” means each of the following investments with no more than one year remaining on the Base Term from time of acquisition (i) obligations of, or guaranteed by, the United States government or the Government of Canada or any province of Canada or agencies of the foregoing, (ii) open market commercial paper of any corporation (other than Lessee or one of its Affiliates) incorporated under the laws of the United States of America or any State thereof or Canada or any province thereof rated at least P-1 or its equivalent by Moody’s or at least A-1 or its equivalent by S&P or at least R-1 (low) or its equivalent by DBRS, (iii) certificates of deposit issued by commercial banks organized under the laws of the United States or of any political subdivision thereof having a combined capital and surplus in excess of \$500,000,000, which banks or their holding companies have a rating of A or its equivalent by Moody’s or S&P, or by any one of the five largest (in terms of assets) chartered banks incorporated in Canada, (iv) money market mutual funds registered under the *Investment Company Act of 1940*, as amended, having a commercial paper rating to the time of such investment of not less than P-1 by Moody’s or A- by S&P or

the equivalent by DBRS, (v) notes, bonds, debentures or other debt securities issued by any Canadian corporation or other issuer (other than Lessee or one of its Affiliates) which are rated at least A (low) or its equivalent by DBRS; (vi) notes, bonds, debentures or other debt securities issued by any United States corporation or other issuer (other than Lessee or one of its Affiliates) which are rated at least A or its equivalent by S&P or which are rated at least A or its equivalent by Moody's; (vii) U.S. or Canadian dollar denominated offshore certificates of deposit issued or guaranteed by, or demand, notice or time deposits with, any commercial bank described in clause (iii), (viii) repurchase agreements with any financial institution having combined capital and surplus of at least \$500,000,000 with any of the obligations described in clause (i) as collateral and (xiv) each Obligor (other than Parent) may invest in improvements at its Project Site, including the development and building of data centers on such Project Site and the expansion of power generation at such Project Site.

“Permitted Liens” means (i) the respective rights and interests of Lessee, each Guarantor and Lessor under the Transaction Documents, (ii) Liens for Taxes assessed against an Obligor or Lessee as owner of the Land either not delinquent or being contested by Permitted Contests, (iii) builder's, materialmen's and mechanics' Liens arising in the ordinary course of constructing, improving, using, operating or maintaining the Project Facilities, the Leased Property or the Land (or any portion thereof) for amounts either not delinquent or being contested by Permitted Contests, (iv) Liens arising out of judgments or awards against an Obligor or Lessee as owner of the Project Facilities, Project Sites or the Leased Property with respect to which at the time an appeal or proceeding for review is being diligently prosecuted in good faith and either which have been bonded or for the payment of which adequate reserves shall have been provided in accordance with GAAP, (v) *Intentionally Deleted*, (vi) *Intentionally Deleted*; (vii) *Intentionally Deleted*, (viii) Liens arising in support of any security instrument (including any letter of credit) posted by, for or on behalf of any Obligor with the IESO in the ordinary course of business, (ix) Liens against the Parent over its equity interests in its Subsidiaries that are not Obligors, (x) easements, rights-of-way, servitudes or other similar rights in or in respect of any Land (including rights-of-way and servitudes for railways, sewers, drains, gas and oil pipelines, gas and water mains, electrical light and power and telecommunication conduits, poles, wires and cables) registered on title as of the Closing Date; (xi) *Intentionally Deleted* (xii) Liens over specific personal property securing Permitted Indebtedness pursuant to clause (d) (*PMSI & Capital Lease*) of such definition, (xiii) construction, repair and storage liens and other similar Liens imposed by law, arising in the ordinary course of business and securing obligations that are not overdue by more than 30 days or that are being contested in good faith and by appropriate proceedings diligently conducted, (xiv) Liens arising in connection with workers' compensation, employment insurance, pension and employment or other social security laws or regulations in respect of amounts which are not due or delinquent.

“Permitted Remediation” means any remediation of an Environmental Event (i) the cost of which is not anticipated, in the reasonable judgment of Lessor (at Lessor's discretion, after consulting with an environmental consultant), to exceed \$1,000,000 over and above the amount of any available insurance proceeds and (ii) which could not be expected to result in any additional liability for which Lessor and any other Indemnified Person have not received an adequate indemnity in an amount and from Guarantor or another Person reasonably satisfactory to Lessor.

“Permitted Restricted Payments” means any dividend or distribution on or any other payment or distribution on account of or any payment for or any purchase, redemption, retirement or other acquisition, directly or indirectly of, any equity interests in the Parent, provided that Lessee (or the Parent at the direction of Lessee) concurrently with such dividend, distribution or other payment, pays to Lessor as a prepayment of the Base Rent in accordance with Section 3.3(b)(ii) of the Lease, an amount equal to:

(i) if the aggregate amount of Base Rent previously paid to Lessor (including any prepayments thereof) is less than or equal to the product of 12 and \$1,250,000, 50% of such dividend, distribution or other payment;

(ii) if the aggregate amount of Base Rent previously paid to Lessor (including any prepayments thereof) is greater than the product of 12 and \$1,250,000, but less than or equal to the product of 24 and \$1,250,000, 25% of such dividend, distribution or other payment;

(iii) if the aggregate amount of Base Rent previously paid to Lessor (including any prepayments thereof) is greater than the product of 24 and \$1,250,000, but less than or equal to the product of 36 and \$1,250,000, 10% of such dividend, distribution or other payment; and

(iv) if the aggregate amount of Base Rent previously paid to Lessor (including any prepayments thereof) is greater than the product of 36 and \$1,250,000, \$0.

“**Person**” means an individual, partnership, joint venture, corporation, trust, limited liability company, unlimited liability company, association or unincorporated organization, and a government or agency or political subdivision thereof.

“**Pledge Agreement**” means the securities pledge agreement dated as of the Original Closing Date granted by the Parent in favour of Lessor, as amended on the Closing Date.

“**PPSA**” means the *Personal Property Security Act* in effect in the Province of Ontario, Canada.

“**Proceeds**” has the meaning set out in the PPSA.

“**Process**” means the use, occupancy, maintenance and operation of the Leased Property and other Collateral in commercial operation at Operating Capacity for the generation of electricity in a manner that complies with Applicable Law, Insurance Requirements and prudent industry practice.

“**Project Document**” means any contract or agreement (including each Material Project Document) relating to the development, construction, testing, operation, maintenance, repair, financing or use of the Projects entered into by an Obligor with any other Person (including any contract(s) or agreement(s) entered into in substitution for any Project Document that has been terminated in accordance with its terms or otherwise).

“**Project Facilities**” means the Projects and any other equipment or ancillary facility required for the performance of the Projects including but not limited to any facilities for the water supply, delivery, storage or treatment as well as the air monitoring stations, in each case, on the Project Sites.

“**Project Sites**” means Iroquois Falls Project Site, the North Bay Project Site, the Kapuskasing Project Site and the Kingston Project Site.

“**Projects**” means the Iroquois Falls Project, the North Bay Project, the Kapuskasing Project and the Kingston Project.

“**Property**” means any right or interest in or to property of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible.

“**Purchase Money Security Interest**” means a Lien on property (including, for certainty, any Lien created by a title retention arrangement or other form of conditional sale or sale and lease-back): (a) taken

or reserved by the seller of such property to secure payment of all or part of the purchase price of such property; or (b) taken by a Person who gives value to a purchaser of such property for the purpose of permitting the purchaser to acquire rights in or to the property, provided that (i) such Lien is created substantially simultaneously with the acquisition of such property, (ii) such Lien does not at any time create a Lien on any property (including any proceeds thereof) other than the property financed by such Indebtedness, (iii) the principal amount of Indebtedness secured thereby is not increased subsequent to such acquisition, and (iv) the principal amount of Indebtedness secured by any such Lien at no time exceeds 100% of the original purchase price of such property at the time it was acquired, and for the purposes of this definition the term “acquisition” shall include, without limitation, a capital lease and the term “acquire” shall have a corresponding meaning.

“**Rated Capacity**” means, (i) in respect of the Iroquois Falls Project, the nameplate capacity of the Iroquois Falls Project, being 120MW, (ii) in respect of the North Bay Project, the nameplate capacity of the North Bay Project, being 40MW, (iii) in respect of the Kapuskasing Project, the nameplate capacity of the Kapuskasing Project, being 40MW and (iv) in respect of the Kingston Project, the nameplate capacity of the Kingston Project, being 110MW.

“**Real Property Interests**” means the leasehold, fee simple and occupancy interests of the Obligors in the Project Sites, together with any easements, rights of way, crossing agreements and other property rights, required for the construction and operation of the Project Facilities.

“**Related Person**” means with respect to any Person, an Affiliate, director, officer, employee, agent or servant of such Person.

“**Release**” means any release, spill, emission, leaking, pumping, pouring, injection, escaping, deposit, disposal, discharge, dispersal, leaching or migration in, into, upon or out of the Environment (including the abandonment or disposal of any barrels, containers or other closed receptacles containing any Specified Substance), or in, into or out of any vessel or facility, including the movement of any Specified Substance through the air, soil, surface water, groundwater or property, and when used as a verb has a like meaning.

“**Renewal Term**” has the meaning set out in Section 3.1 of the Lease.

“**Rent**” means all Base Rent and Supplemental Rent.

“**Rent Payment Date**” means the Rent Payment Dates as set out in Schedule 1 to the Lease, unless Lessor and Lessee otherwise agree in writing.

“**Replacement Agreement**” means any agreement, contract or document entered into in replacement of a Material Project Document that (a) (i) has substantially the same or more favourable terms (taken as a whole) for the applicable Obligor compared with the Material Project Document being replaced, or (ii) is otherwise in form and substance satisfactory to Lessor, acting reasonably; and (b) is with a replacement counterparty (or is guaranteed by a replacement counterparty) that (i) has experience and credit-worthiness (or is guaranteed by a Person with such experience or credit-worthiness) that is similar or better to that of the counterparty to the Material Project Document (or its guarantor) being replaced at the time such replaced Material Project Document was originally entered into; or (ii) is satisfactory to Lessor, acting reasonably.

“**Responsible Officer**” means with respect to Lessee or Guarantor, the President, the Treasurer, the Assistant Treasurer, the Controller, the Chief Financial Officer or the General Counsel of Lessee or Guarantor, respectively.

“Restricted Payments” means any of the following:

- (a) (i) any dividend or distribution (in cash, property or obligations) on or any other payment or distribution on account of or any payment for or any purchase, redemption, retirement or other acquisition, directly or indirectly of, any equity interests (or any shareholder loan) in any Obligor, (ii) any option or warrant for the purchase or acquisition of any such equity interests (or shareholder loans), (iii) interest and principal repayment on shareholder loans, or (iv) the setting apart of any money for a sinking or other analogous fund for any of the foregoing;
- (b) (i) any payment (in cash, property or obligations) with respect to principal or interest on or any other payment or distribution on account of or any payment for, the purchase, redemption, retirement or other acquisition of, shareholder loans or (ii) the setting apart of any money for a sinking or other analogous fund for any of the foregoing; or
- (c) any management fee or equivalent and any bonus or premium or other amount payable by or on behalf of any Obligor to any Affiliate of such Obligor (including for any loans or disbursements made by such Affiliate of such Obligor) that is not otherwise expressly permitted to be made under the Transaction Documents.

“S&P” means Standard and Poor’s, a division of The McGraw-Hill Companies.

“Sanctioned Jurisdiction” means, at any time, a country or territory which is, or whose government is, the subject or target of any applicable Sanctions broadly restricting or prohibiting dealings with such country, territory or government (currently including, but not limited to, Cuba, Iran, North Korea, Sudan, and Syria).

“Sanctions” means economic or financial sanctions or trade embargoes or restrictive measures enacted, imposed, administered or enforced from time to time by (a) the U.S. government, including the Office of Foreign Assets Control of the U.S. Department of the Treasury, the U.S. Department of State, or the U.S. Department of Commerce (b) the United Nations Security Council; (c) the European Union or any of its member states; (d) Her Majesty’s Treasury; (e) the Canadian Government; (f) Switzerland; or (g) any other relevant authority.

“Sanctions Target” means, at any time, any Person with whom dealings are restricted or prohibited under applicable Sanctions, including (a) any Person listed in any Sanctions-related list of designated or identified Persons maintained by the United States (including by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the U.S. Department of State, or the U.S. Department of Commerce), the United Nations Security Council, the European Union or any of its member states, Her Majesty’s Treasury, the Canadian Government, Switzerland or any other relevant authority, (b) any Person located, organized or resident in, or any governmental entity or governmental instrumentality of, a Sanctioned Jurisdiction or (c) any Person directly or indirectly owned by, controlled by, or acting for the benefit or on behalf of, any Person described in clauses (a) or (b) hereof.

“Security Documents” means the following:

- (a) each General Security Agreement;
- (b) each Debenture;
- (c) the Pledge Agreement;

- (d) the Guarantee;
- (e) the Limited Recourse Guarantee;
- (f) the Assignment of Material Project Documents;
- (g) the Acknowledgement Confirmation and Amendment Agreement; and
- (h) any other security document, agreement, instrument or filing, including the addition of the Lessor as additional insured and loss payee under the Insurance Policies, executed in favour of the Lessor.

“**Security Interest**” means, collectively, the first-ranking Lien given by each Obligor and Hosting in favour of Lessor pursuant to the Security Documents.

“**Seller**” means the Lessee, in its capacity as seller under the Bill of Sale.

“**Specified Substances**” means (i) any chemical, waste, material, pollutant or substance defined as or included in the definition of “hazardous substances”, “hazardous wastes”, “hazardous materials,” “extremely hazardous waste,” “restricted hazardous waste” or “toxic substances” or words of similar import under any applicable Environmental Laws; (ii) any substance, waste or material which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, pathological, or otherwise hazardous by listing, characteristic or definition under any Environmental Law; (iii) any (A) oil, natural gas, petroleum or petroleum derived substance, any drilling fluids, wastes produced in association with the exploration, development or production of crude oil, natural gas or geothermal fluid, any flammable substances or explosives, any radioactive materials, any hazardous wastes or substances, any toxic wastes or substances or (B) other materials or pollutants that, in the case of both (A) and (B), (1) pose a hazard to the Project Facilities or the Project Sites or to Persons on or about such property or to any other property that may be affected by the Release of such materials or pollutants from the Project Facilities or the Project Sites or to Persons on or about such property or (2) cause such property or such other property to be in violation of any Environmental Law or Authorization; (iv) asbestos, urea formaldehyde foam insulation, toluene, lead, radon gas, polychlorinated biphenyls and any electrical equipment which contains any oil or dielectric fluid containing levels of polychlorinated biphenyls in excess of fifty parts per million; and (v) any solid, liquid, gas, odor, sound, vibration, heat, radiation or other form of energy or combination of any of them and any other chemical, waste, material or substance, exposure to which is prohibited, limited or regulated by any Environmental Law or Government Body.

“**Start Mining**” means StartMining SAS, a société par actions simplifiée organized under the laws of France with a share capital of 26,100 euros registered with the Trade Register of Toulon under number 853 111 698.

“**Start Mining Agreement**” means Hosting Agreement between Validus Hosting Inc., StartMining SAS and Europe Invest Consulting C&P SAS executed on 28 March 2022.

“**Start Mining Covenant**” has the meaning set out in Section 4.48(3) of the Participation Agreement.

“**Stipulated Loss Value**” has the meaning given to such term under the Lease.

“**Subsidiary**” means, for any Person, any other Person (whether now existing or hereafter organized) for which at least a majority of the securities or other ownership interests having ordinary voting

power for the election of directors, managers or other Persons performing similar functions are at the time owned or Controlled by such first Person or one or more Subsidiaries of such first Person or any combination thereof.

“Supplemental Rent” means all amounts, liabilities and obligations (other than Base Rent) which Lessee is from time to time obligated to pay under the Basic Documents to or on behalf of any of the other parties thereto, including Stipulated Loss Value payments, and payments pursuant to Article 6 of the Participation Agreement and Section 3.4 of the Lease.

“Support Facilities” means any property of any kind whatsoever, in which an Obligor has an interest, whether real or personal, now or hereafter installed or constructed on, incorporated into, attached to, or located in, on, over or under a Project Site, including any equipment, improvement, structure or fixture, used or necessary in the reasonable opinion of Lessor in connection with the Process, including all roads, pipes, transfer lines, tanks, sewers, ditches, ducts, pumps, compressors, boilers, substations, electric generating facilities, wires, conduits, lines, storage tanks, loading and unloading docks, control rooms, computer equipment and software, shared flare header systems, and the circulation and treatment system in connection therewith and all replacements and substitutions of, additions to, and proceeds of the foregoing.

“Support Services” means all materials, facilities, equipment, services, utilities, personnel and supplies that any Obligor has available for use, or would use, including those obtained from Affiliates of Lessee and other third parties, which are or may reasonably be expected to be necessary for the access to or operation or use of the Leased Property or other Collateral at Operating Capacity for the duration of the Lease Term or to conduct the Process and rights pursuant to contracts or otherwise to obtain or use the same or relating to the Process.

- (a) Utility Services;
- (b) copies of manuals for the ownership, use, operation and maintenance of the Iroquois Falls Project;
- (c) (x) rights to Operating Inputs to the extent not otherwise commercially available on commercially reasonable terms to a person unrelated to Lessee; and (y) assistance in identifying (A) sources for the provision of Operating Inputs; and (B) providers of transportation services for the provision of Operating Inputs and removal of all outputs;
- (d) access to and use of and, to the extent permitted under Applicable Law, assignments of all Authorizations necessary for operation of the Iroquois Falls Project other than emissions credits or similar credits;
- (e) to the extent that Lessee has the right to provide or grant such rights, use, by non-exclusive, royalty-free irrevocable licenses or similar arrangements, of all computers and Intellectual Property Rights, and, if Lessee does not have the right to provide or grant such rights, Lessee will use commercially reasonable efforts to obtain such rights or to cause such rights to be provided to Lessor;
- (f) access to and use of information provided by pollution control and monitoring equipment and services;
- (g) use of the analytical services of the onsite laboratory in conjunction with the operation of the Iroquois Falls Project;

- (h) use of information systems;
- (i) use of any process control system which Lessee may have commenced to utilize before or during the prior 12-month period of operation for use exclusively at the Iroquois Falls Project Site, and for these purposes a process control system shall include hardware and all relevant software, in source code and object code form, to operate and control the Iroquois Falls Project and, in addition, Lessee shall make available personnel knowledgeable with respect to such hardware and software if requested by Lessor (or its successor) in order to modify, upgrade or improve the process control system without any warranty for or liability to Lessee as to or resulting from any such modifications, upgrades or improvements;
- (j) to the extent not otherwise commercially available on commercially reasonable terms to a person unrelated to Lessee, waste disposal and management services (including offsite disposal services), including those provided by third party vendors; and
- (k) use of cooling towers, saltwater injection well, storm water and process water disposal system.

“**Supports**” means rights to use Support Facilities and receive Support Services upon payment of fair value therefor, and a royalty-free and non-exclusive right to Intellectual Property Rights, in each case during the Lease Term.

“**Taxes**” means any and all present or future income, stamp or other taxes, levies, imposts, duties, deductions, charges, fees or withholdings imposed, levied, withheld or assessed by any Government Body, together with any interest, additions to tax or penalties imposed thereon and with respect thereto.

“**Transaction**” means the purchase of the Leased Property by Lessor, the lease of the Leased Property by Lessor to Lessee and the payment of Lessor’s Cost, pursuant to the Basic Documents, and the transactions contemplated by the Basic Documents relating thereto.

“**Transaction Costs**” has the meaning set out in Section 2.5 of the Participation Agreement.

“**Transition Date**” means the earlier of (a) the later of: (i) the date of termination of the Lease pursuant to Section 13 thereof, and (ii) the first to occur of Lessor’s or its assignee’s or designee’s receipt of possession of the Leased Property on the Iroquois Falls Project Site and (b) the date Lessee delivers possession to Lessor or its assignee or designee of the Leased Property following expiration of the Lease at the end of the Lease Term and Lessee has satisfied each of the conditions to such return in the Lease set out in the Lease and any other applicable Transaction Documents.

“**Transaction Documents**” means, collectively, the Basic Documents and any other document agreed as such by the Lessor and the Lessee.

“**Utility Services**” means utility and similar services including:

- (a) natural or synthetic gas or such other fuels as may be used from time to time as an energy source for the Leased Property;
- (b) electric power and power distribution for lighting, production and other electrical uses;
- (c) telephone services and other data communication services;

- (d) waste material storage, disposal and purification services and systems, including sewer services;
- (e) fresh water;
- (f) fire and explosion protection and safety facilities services and systems;
- (g) heating, ventilation and air conditioning systems; and
- (h) steam.

Appendix “G”

AMENDED AND RESTATED LEASE AGREEMENT

dated as of February 24, 2023

between

MACQUARIE EQUIPMENT FINANCE LTD.,
as Lessor

and

IROQUOIS FALLS POWER CORP.
as Lessee

THIS LEASE HAS BEEN EXECUTED IN SEVERAL COUNTERPARTS, BUT ONLY THE COUNTERPART TO BE DEEMED THE ORIGINAL FOR CHATTEL PAPER PURPOSES CONTAINS THE RECEIPT THEREFOR EXECUTED BY IROQUOIS FALLS POWER CORP. AS LESSEE ON THE SIGNATURE PAGES THEREOF.

Lease of Combined Cycle Turbines and related Equipment - Iroquois Falls Cogeneration Station
Located in
Iroquois Falls,
Ontario, Canada

LEASE

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Attachments:

Exhibit A Lease Supplement Form

AMENDED AND RESTATED LEASE AGREEMENT dated as of February 24, 2023 (this “**Lease**”) between Macquarie Equipment Finance Ltd., a corporation organized under the laws of Canada (“**Lessor**”), and Iroquois Falls Power Corp., a corporation continued under the laws of the Province of Ontario (“**Lessee**”).

WHEREAS the Lessor and the Lessee are party to a lease agreement dated as of April 7, 2022 (as amended, amended and restated, supplemented, revised or otherwise modified from time to time prior to the date hereof, the “**Existing Lease**”).

AND WHEREAS the Lessor and the Lessee wish to make certain amendments to the Original Lease on the terms and conditions set forth herein.

In consideration of the mutual agreements herein contained and other good and valuable consideration, receipt of which is hereby acknowledged, Lessor and Lessee agree as follows:

SECTION 1. DEFINITIONS.

For all purposes of this Lease, except as otherwise defined herein or unless the context otherwise requires, capitalized terms used herein shall have the meanings assigned thereto in the participation agreement dated as of the date hereof (the “**Participation Agreement**”) between Lessee, the Guarantors and Lessor.

Reference is made to Section 1.2 (*Rules of Interpretation*) of the Participation Agreement for general rules of construction, which are applicable to this Lease.

SECTION 2. LEASE; ACCEPTANCE OF LEASED ASSETS; SUBLEASE.

On the Closing Date, Lessor agreed to lease the Leased Property to Lessee and Lessee agreed to lease the Leased Property from Lessor by the execution and delivery of a Lease Supplement in the form of Exhibit A, on the terms and conditions set forth herein. Execution and delivery of such Lease Supplement by Lessee shall, without further act, irrevocably constitute acceptance by Lessee of the Leased Property under and on the terms of this Lease, and all risk of loss of the Leased Property during the Lease Term shall pass to Lessee upon such acceptance.

SECTION 3. TERM AND RENT.

3.1 Lease Term.

Unless earlier terminated in accordance with the terms of this Lease, the term of this Lease (the “**Lease Term**”) shall begin on the Closing Date and shall consist of (i) a base term (the “**Base Term**”) that shall expire at 11:59 p.m. (Iroquois Falls time) on the day being thirty-six (36) months after the Closing Date (“**Initial Base Term**”, and as such Initial Base Term may be reduced in accordance with Section 3.3(c) from time to time to reflect prepayments of Base Rent in accordance with the terms of the Transaction Documents, the “**Base Term Expiration Date**”) and (ii) a month to month renewal term (the “**Renewal Term**”) of this Lease in accordance with Section 19.1, if applicable, until Lessee terminates the Renewal Term in accordance with Section 19.1 in which case, the Renewal Term shall expire at 11:59 p.m. (Iroquois Falls time) on the day on which the renewal terminates in accordance with Section 19.1 (the “**Renewal Term Expiration Date**”), and that the Lease Term shall expire upon any earlier termination of this Lease in accordance with its terms. Lessee shall have no right to terminate the Lease other than in accordance with the express terms set out herein.

3.2 Base Rent.

Lessee hereby agrees to pay Base Rent for the Leased Property throughout the Lease Term in consecutive monthly payments payable on each Rent Payment Date in the amounts and on the date set forth on Schedule A hereto. Base Rent shall accrue during the Lease Term, beginning on and from the Closing Date.

3.3 Prepayment of Base Rent.

(a) Except as otherwise expressly contemplated in this Section 3.3, Lessee shall not have the right to prepay, at any time or times, the whole or any part of the Base Rents which have not yet become payable under the Lease and have not already been prepaid, without penalty or bonus.

(b) Lessee may prepay the whole or any part of the Base Rents which have not yet become payable under the Lease during the Base Term and have not already been prepaid as follows:

(i) in accordance with the definition of "Permitted Restricted Payments" in the Participation Agreement as well as Section 4.48(3) (*Start Mining Covenants*) of the Participation Agreement; and

(ii) should Lessee otherwise wish to make a prepayment towards Base Rent which have not yet become payable under the Lease during the Base Term and have not already been prepaid, Lessee shall give Lessor at least five (5) Business Days prior written notice that it intends to make such a prepayment (which notice shall include the amount of such intended prepayment), and by expiry of such notice Lessee shall pay such prepayment to Lessor together with any applicable taxes or duties thereon.

(c) Where Lessee has made, and Lessor has received, a prepayment in respect of Base Rent as contemplated by Section 3.3(b):

(i) such prepayment shall be applied by Lessor to the outstanding Base Rent in inverse order of maturity, beginning with the last payment of Base Rent remaining due during the remainder of the Base Term, and any applicable taxes or duties thereon;

(ii) following such application, for each Base Rent instalment (together with any applicable taxes or duties thereon) discharged in full by such application, the Initial Base Term shall be reduced by one (1) month; and

(iii) in all cases, all prepayments of Base Rent shall be non-refundable for any reason and shall be property of the Lessor upon receipt.

3.4 Supplemental Rent.

Lessee shall pay to Lessor, or to whomsoever is entitled thereto, any and all Supplemental Rent, promptly when due, or where no due date is specified, promptly after written demand by the Person entitled thereto is received by Lessee as provided in Section 18, and in any event within 10 Business Days after receipt of such demand. If Lessee fails to pay any Supplemental Rent, Lessor shall have all rights, powers and remedies provided for herein or by law or equity or otherwise as in the case of nonpayment of Base Rent. Lessee will also pay to Lessor, as Supplemental Rent, on demand, to the extent permitted by Applicable Law, an amount equal to interest at the Late Rate on any part of any payment of Base Rent not paid when due for any period for which the same is overdue and on any payment of Supplemental Rent

payable to any Indemnified Person not paid when due or demanded, as the case may be, for the period from the earlier of such due date or demand until paid. All Supplemental Rent to be paid pursuant to this Section 3.4 shall be payable in the type of funds and in the manner set forth in Section 3.6 and be payable on an After-Tax Basis.

3.5 *Intentionally Deleted.*

3.6 Manner of Payments.

All Rent and other amounts, other than Supplemental Rent payable to Persons other than Lessor, unless otherwise provided in any of the Basic Documents, shall be paid by Lessee to Lessor by transferring or delivering such amounts in immediately available funds to Lessor at the account listed on Schedule 2 to the Participation Agreement or to such other account in Canada as Lessor specifies in writing. Supplemental Rent payable to Persons other than Lessor shall be payable to such other Persons in accordance with written instructions furnished to Lessee by such Persons.

3.7 Net Lease, Warranties, Etc.

(a) NET LEASE. THIS LEASE IS A NET LEASE AND LESSEE'S OBLIGATION TO PAY ALL RENT PAYABLE HEREUNDER IS ABSOLUTE, UNCONDITIONAL AND IRREVOCABLE AND SHALL NOT BE AFFECTED BY ANY CIRCUMSTANCE OF ANY CHARACTER WHATSOEVER, INCLUDING, (a) ANY SET-OFF, ABATEMENT, COUNTERCLAIM, SUSPENSION, RECOUPMENT, REDUCTION, RESCISSION, DEFENSE OR OTHER RIGHT THAT LESSEE MAY HAVE AGAINST LESSOR, ANY VENDOR OR MANUFACTURER OF THE LEASED PROPERTY OR ANY PART THEREOF OR ANY OTHER PERSON FOR ANY REASON WHATSOEVER, (b) ANY DEFECT IN OR FAILURE OF TITLE, MERCHANTABILITY, CONDITION, DESIGN, COMPLIANCE WITH SPECIFICATIONS, OPERATION OR FITNESS FOR USE OF ALL OR ANY PART OF THE LEASED PROPERTY, (c) ANY DAMAGE TO, OR REMOVAL, ABANDONMENT, REQUISITION, TAKING, CONDEMNATION, LOSS, THEFT OR DESTRUCTION OF ALL OR ANY PART OF THE LEASED PROPERTY OR ANY INTERFERENCE, INTERRUPTION, RESTRICTION, CURTAILMENT OR CESSATION IN THE USE OR POSSESSION OF THE LEASED PROPERTY BY LESSEE OR ANY OTHER PERSON FOR ANY REASON WHATSOEVER OR OF WHATEVER DURATION, (d) ANY INSOLVENCY, BANKRUPTCY, REORGANIZATION OR SIMILAR PROCEEDING BY OR AGAINST LESSEE, LESSOR, OR ANY OTHER PERSON, (e) THE INVALIDITY, ILLEGALITY OR UNENFORCEABILITY OF THIS LEASE, ANY OTHER BASIC DOCUMENT, OR ANY OTHER AGREEMENT, DOCUMENT OR INSTRUMENT REFERRED TO HEREIN OR THEREIN OR ANY OTHER INFIRMITY HEREIN OR THEREIN OR ANY LACK OF RIGHT, POWER OR AUTHORITY OR AUTHORIZATION OF LESSEE, LESSOR, OR ANY OTHER PERSON TO ENTER INTO THIS LEASE OR ANY OTHER BASIC DOCUMENT OR TO PERFORM THE OBLIGATIONS HEREUNDER OR THEREUNDER OR CONSUMMATE THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY OR ANY DOCTRINE OF FORCE MAJEURE, IMPOSSIBILITY, FRUSTRATION OR FAILURE OF CONSIDERATION, (f) THE BREACH OR FAILURE OF ANY WARRANTY OR REPRESENTATION MADE IN THIS LEASE OR ANY OTHER BASIC DOCUMENT BY LESSEE, LESSOR, OR ANY OTHER PERSON, OR (g) TO THE EXTENT PERMITTED BY APPLICABLE LAW, ANY OTHER CIRCUMSTANCE OR HAPPENING WHATSOEVER, WHETHER OR NOT SIMILAR TO ANY OF THE FOREGOING, ANY PRESENT OR FUTURE LAW NOTWITHSTANDING, it being the intention of the parties hereto that all Rent payable by Lessee shall continue to be payable in all events in the manner and at the times provided herein. To the maximum extent permitted by law, Lessee hereby waives any and all rights which it may now have or at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender this Lease, except in accordance with the express terms hereof. If for

any reason whatsoever this Lease is terminated in whole or in part by operation of law or otherwise, except as specifically provided herein, Lessee nonetheless agrees to the maximum extent permitted by law, to pay to Lessor and/or to any other Person entitled thereto, amounts equal to each payment of Base Rent and all Supplemental Rent due and owing at the time such payment would have become due and payable in accordance with the terms hereof had this Lease not been terminated in whole or in part. The obligations of Lessee in the immediately preceding sentence shall survive the expiration or termination of this Lease other than in accordance with its terms. Absent manifest error, each payment of Rent made by Lessee hereunder (or by any other Person under a Basic Document) shall be final and Lessee shall not seek or have any right to recover all or any part of such payment from Lessor or any Person for any reason whatsoever. Nothing contained in this Section 3.7 shall be construed as a waiver of any warranty or other claim against any manufacturer, supplier, dealer, vendor, contractor, subcontractor or installer. Lessor expressly acknowledges and agrees that nothing contained in this Section 3.7 in any way modifies, limits or diminishes any covenant or obligation of Lessor expressly set out in this Lease or in any way restricts the rights of Lessee to pursue independently any other remedies it may have (in law or in equity), unless expressly waived herein, against Lessor if Lessor fails to perform its covenants and obligations hereunder.

(b) Assertion of Rights under Warranties. Unless a Lease Event of Default shall exist and Lessor has notified Lessee that the authorization contemplated herein no longer is effective, Lessor authorizes Lessee (directly or through agents), at Lessee's expense, to assert during the Lease Term, all of Lessor's rights (if any) under any applicable warranty and any other claim that Lessee or Lessor may have against any vendor, manufacturer, contractor or subcontractor (other than Lessee or a Guarantor) with respect to any part of the Leased Property or any portion thereof, and Lessor agrees to cooperate, at Lessee's expense (on an After-Tax Basis), with Lessee and its agents in asserting such rights. Any amount recovered by Lessee under any such warranty or other claim against any vendor, manufacturer, contractor or subcontractor shall be applied first to meet the requirements of Section 8 or, if appropriate, in accordance with Section 10 or Section 13, and, upon completion of any repairs or replacement in connection with such warranty or other claim, the balance, if any, of amounts received from such vendor, manufacturer, contractor or subcontractor shall be released to Lessee.

3.8 HST and Other Taxes.

All sales, value added or similar taxes imposed shall be added to, and are payable at the same time as, each amount (calculated exclusive of any forementioned taxes) required to be paid by Lessee to Lessor pursuant to this Lease (except any amount that is not subject to the taxes described in this Section 3.8), including HST at the rate of 13% (or such other rate as may be imposed at the relevant time). Notwithstanding that any HST is collectible by Lessor in respect of payments required to be paid by Lessee to Lessor pursuant to this Lease (except any amount that is not subject to HST) at the time any such payment is due, Lessee shall pay the HST to Lessor and Lessor will, by the time required under applicable law, remit to the Canada Revenue Agency the applicable HST in immediately available Canadian funds, in an amount equal to the Canadian dollar equivalent of the HST imposed. Lessee agrees to defend and indemnify Lessor on a net after-tax basis against (a) liability for all license and/or registration fees, assessments, and other charges or fees now or hereafter imposed by any governmental body or agency upon the Leased Property; and (b) any penalties, charges, interest or costs imposed with respect to any sales, value added or similar taxes imposed but not paid by Lessee in accordance with this Section.

SECTION 4. OWNERSHIP AND MARKING OF UNIT; PERSONAL PROPERTY.

4.1 Retention of Title.

Lessor shall retain title to and ownership of the Leased Property notwithstanding the delivery to and possession and use of the Leased Property by Lessee hereunder. Lessee does not and will not have or

obtain any title, right, or interest, legal or equitable, in the Leased Property, other than its rights and interests as a lessee hereunder and subject to all the terms hereof.

4.2 Duty to Mark Leased Property.

Lessee shall cause signs bearing the legend set forth below to be plainly, permanently and conspicuously placed at the entrance to the Iroquois Falls Project and in the proximity of each Leased Property being a turbine:

“THE TURBINE AND VARIOUS OTHER EQUIPMENT IS OWNED AND LEASED BY MACQUARAIE EQUIPEMNT FINANCE LTD. TO IROQUOIS FALLS POWER CORP.”

Lessee shall replace promptly any legend that may be removed, defaced, obliterated or destroyed. Lessee shall make all appropriate changes and additions to such legend as may be required from time to time in order to protect Lessor’s right, title and interest in and to the Leased Property, its rights under this Lease.

4.3 Prohibition Against Certain Designations.

Except as above provided and as provided in the Basic Documents, and other than Lessee putting its name and company trademark on the Iroquois Falls Project or other equipment located within the Iroquois Falls Project, Lessee will not allow the name of any Person to be placed on the Iroquois Falls Project or any Leased Property as a designation that might reasonably be interpreted as a claim of ownership or of any Lien other than as created under the Basic Documents.

4.4 Personal Property.

Lessor and Lessee agree that the Leased Property is and shall be and remain personal property notwithstanding the manner in which it may be attached or affixed to the Iroquois Falls Project Site, and Lessee waives and disclaims any and all claims and causes of action the Lessee may make to the contrary.

SECTION 5. DISCLAIMER OF WARRANTIES.

Without waiving any claim Lessee may have against any seller, supplier or manufacturer, **LESSEE ACKNOWLEDGES AND AGREES THAT, (a) THE LEASED PROPERTY IS OF A SIZE, DESIGN, CAPACITY AND MANUFACTURE SELECTED BY AND ACCEPTABLE TO LESSEE, AND THAT LESSEE HAS EXAMINED AND APPROVED ALL SUPPLY CONTRACTS RELATING TO THE LEASED PROPERTY, (b) LESSEE IS SATISFIED THAT THE LEASED PROPERTY IS SUITABLE FOR ITS INTENDED PURPOSES, (c) LESSOR IS NOT A MANUFACTURER OF OR A DEALER IN PROPERTY OF SUCH KIND, (d) THE LEASED PROPERTY IS LEASED HEREUNDER SUBJECT TO ALL APPLICABLE LAWS NOW IN EFFECT OR HEREAFTER ADOPTED AND IT AND THE LEASED PROPERTY IS IN THE STATE AND CONDITION OF EVERY PART THEREOF WHEN THE SAME FIRST BECAME SUBJECT TO THIS LEASE, WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND BY LESSOR, (e) LESSOR LEASES AND LESSEE TAKES THE LEASED PROPERTY (A) “AS-IS”, “WHERE-IS” AND “WITH ALL FAULTS”, IN WHATEVER CONDITION IT MAY BE, (B) SUBJECT TO ALL APPLICABLE (1) ZONING REGULATIONS, (2) ENVIRONMENTAL LAWS, (3) BUILDING RESTRICTIONS AND (4) OTHER APPLICABLE LAWS NOW IN EFFECT OR HEREAFTER ADOPTED AND (f) LESSOR DOES NOT MAKE ANY, NOR SHALL LESSOR BE DEEMED TO HAVE MADE ANY, AND LESSOR EXPRESSLY DISCLAIMS ANY AND ALL,**

WARRANTIES OR REPRESENTATIONS, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, CONDITION, FITNESS FOR ANY PARTICULAR PURPOSE, DESIGN, OPERATION, MERCHANTABILITY, OR TITLE, OF THE LEASED PROPERTY, THE QUALITY OF THE MATERIAL THEREIN OR WORKMANSHIP THEREOF OR CONFORMITY THEREOF TO SPECIFICATIONS, FREEDOM FROM PATENT, COPYRIGHT OR TRADEMARK INFRINGEMENT, THE ABSENCE OF ANY LATENT OR OTHER DEFECT, WHETHER OR NOT DISCOVERABLE, OR AS TO THE ABSENCE OF ANY OBLIGATIONS BASED ON STRICT LIABILITY IN TORT OR ANY OTHER EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY WHATSOEVER WITH RESPECT THERETO, IT BEING AGREED THAT ALL SUCH RISKS, AS BETWEEN LESSOR AND LESSEE, ARE TO BE BORNE BY LESSEE, except that Lessor hereby represents and warrants that (i) Lessor received whatever title to or interest in the Leased Property as was conveyed to it by Lessee and (ii) the Leased Property is free and clear of Liens. It is also agreed that, as between the Indemnified Persons and Lessee, all risks incident to the matters discussed in the preceding sentence are to be borne by Lessee. The provisions of this Section 5 have been negotiated and, except to the extent otherwise stated in the Basic Documents, the foregoing provisions are intended to be a complete exclusion and negation of any representations or warranties, express or implied, by Lessor with respect to the Leased Property or any part thereof, that may arise pursuant to any Applicable Law, or otherwise. Lessor shall have no responsibility or liability to Lessee or any other Person with respect to any of the following, to the extent that any of the following arise on or before the last day of the Lease Term: (w) any liability, loss or damage caused or alleged to be caused directly or indirectly by the Leased Property or any part thereof or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (x) the use, operation or performance of the Leased Property or any part thereof, or any risks relating thereto; (y) any interruption of service, loss of business or anticipated profits or consequential damages arising directly or indirectly from the use, operation or maintenance of the Leased Property; or (z) the delivery, operation, servicing, maintenance, repair, improvement or replacement of the Leased Property or any part thereof. Lessee's delivery of the Lease Supplement on the Closing Date and any other Lease Supplement thereafter shall be conclusive evidence as between Lessee and Lessor that the Leased Property described therein is in good order and condition, conforms to specifications applicable thereto and to all government standards and requirements reasonably interpreted as being applicable thereto and is in all respects satisfactory to Lessee, and Lessee will not assert any claim of any nature whatsoever against Lessor based on any of the foregoing matters.

SECTION 6. RETURN OF LEASED PROPERTY; CONDITION.

6.1 Return of Leased Property.

(a) Upon termination of the Lease or on the date Lessee is to return Leased Property pursuant to Section 19.1, Lessee, at its cost and expense, will surrender possession of, and return, the Leased Property to Lessor by complying with the requirements of this Section 6.

(b) At any time that Lessee delivers physical possession of the Leased Property to Lessor:

(i) Lessee also shall deliver originals or copies of all documents, instruments, plans, maps, specifications, manuals, drawings and other materials relating to the installation, operation, maintenance, sale, construction, design, modification and repair of the Leased Property, together with all maintenance, repair and upgrade logs then in the possession of Lessee or any Affiliate of Lessee as may reasonably be necessary for the continued operation of the Leased Property.

(ii) At its expense, Lessee shall cause any licenses, patents, copyrights, trade secrets and similar rights necessary for the operation of the Leased Property to be assigned or conveyed to Lessor or its designee; except that if Lessee is unable to obtain such assignment or conveyance of

such rights, Lessee shall notify Lessor immediately, and at Lessor's election such failure shall be deemed an Event of Loss as of the last day of the Lease Term.

6.2 Condition of Leased Property.

When Lessee returns the Leased Property to Lessor pursuant to Section 6.1, the Leased Property shall be free and clear of all Liens and any damage caused by such removal shall have been repaired; the Leased Property shall be in the condition required by Section 8.1; and the Iroquois Falls Project Site shall be free and clear of all Liens.

Without limiting any of the other terms of this Lease or any other Basic Document, Lessee shall be liable to Lessor for: (i) any reasonable costs and expenses incurred by Lessor as a result of any damage caused by removal of the Leased Property, and (ii) any costs and expenses incurred by Lessor as a result of Lessee's failure to duly perform and comply with any of the terms of this Section 6.

6.3 Dismantling of Leased Property.

Lessor shall have no duty or obligation to disassemble the Leased Property or remove the Leased Property or further duty or obligation upon the expiration or termination of the Lease.

In order for Lessee to return the Leased Property to Lessor pursuant to Section 6.1, Lessee, at its own risk and expense, shall dismantle and disassemble the Leased Property and properly prepare for shipment, and arrange for the transportation of the Leased Property, in whole or in part, at Lessee's risk and expense, to a destination of Lessor's choice in Canada, and the return of the Leased Property shall be in accordance with the requirements set out below:

(a) All equipment purchased in connection with the Leased Property from the original equipment manufacturer or replaced as a capital replacement or upgrade shall be deemed to be part of the Leased Property and returned to Lessor;

(b) The Leased Property shall be undamaged (prior to and after removal from the Project Site), be in the condition required under Section 8 and fit for sale or redeployment elsewhere;

(c) For all Leased Property being gas turbines, the gas turbines (as well as all life-limited parts) shall have at least 10,000 hours remaining before their next hot section and / or major overhaul;

(d) The Leased Property shall be crated such that it is protected from the elements and from any potential damage during the shipping process (including from humidity);

(e) The Leased Property should be "match-marked" and mapped for reassembly such that a reasonably qualified individual or entity would be able to reassemble such Leased Property;

(f) All fasteners should be packed and kept together with the applicable Leased Property; and

(g) The Leased Property shall be loaded and ready for transport.

Any such dismantling and disassembling of the Leased Property will be supervised, at Lessee's expense, by a qualified engineer, acceptable to Lessor and Lessee (which engineer will also certify that the Leased Property, including each component thereof, is in the condition required by Section 8) and will be done so as to (x) best preserve the Leased Property for reinstallation at another location, (y) comply with procedures recommended by the manufacturer or designer to the maximum extent practicable and (z)

minimize the cost of such reinstallation at another location. Without limiting the foregoing, the following actions, as applicable, shall be taken in connection with the dismantling and disassembly of the Leased Property:

(i) Combustion Turbines. (a) enclosures are to be returned together with the turbines, remove lube oil (2-300 gallons, synthetic); Disconnect all wiring and cables. De-couple generator from low-pressure turbine ("LPT", LM6000) power turbine ("PT", FT8); Remove generator from enclosure and ship separately due to weight; Remove filter house; Unbolt/remove exhaust, inlet, and low-pressure compressor/high pressure compressor bleed air (LM6000) expansion joints; Unbolt enclosure sections from one another and foundation.; Prepare for removal external skids such as start system as well as fire system bottles; Remove from control room control cabinets containing controls and relays, plus external equipment such as exciter.

(ii) Steam Turbines. Remove lubricating and hydraulic oil; De-couple from generator.; Remove trip/throttle valve.; Disconnect non-return valve, other piping; Remove exhaust trunk.; Lift top case; Remove rotor, place in shipping stand; Unbolt lower case from foundation, front stand.; Unbolt generator from foundation.; Disconnect controls and relays; and prepare all for shipping.

Lessee also shall deliver to Lessor originals or copies of all documents, instruments, plans, maps, specifications, manuals, drawings and other materials relating to the installation, operation, maintenance, sale, construction, design, modification and repair of the Leased Property, together with all maintenance, repair and upgrade logs then in the possession of Lessee or any Affiliate of Lessee.

SECTION 7. LIENS; CONVEYANCES.

Lessee will not directly or indirectly create, incur, assume, permit or suffer to exist any Lien on or with respect to the Leased Property, the Iroquois Falls Project Site or Lessee's leasehold interest in the Leased Property and the Iroquois Falls Project Site, except Permitted Liens (which such Liens must be released and discharged prior to the occurrence of a Lease Default or Lease Event of Default, or the return of the Leased Property in accordance with Section 6). Lessee shall promptly, at its own expense, take such action or cause such action to be taken as may be necessary to duly discharge (by bonding or otherwise) any such Lien not excepted above that may arise at any time. Without limiting the foregoing, Lessee covenants and agrees that it will keep the Leased Property, the Iroquois Falls Project Site, its leasehold interest in the Leased Property and the Iroquois Falls Project Site free and clear of any Liens of or on the owner or owners of any interest in the Iroquois Falls Land or any other real estate on which the Leased Property may from time to time be located and any purchaser, or present or future creditor of, such real estate owner or owners. Lessee will obtain and deliver on the Closing Date, and promptly after delivery or change in location of any part of the Leased Property, or any sale or encumbrance of the Iroquois Falls Project Site or such other real estate, waivers and acknowledgments of the priority of, and subordination to, Lessor's rights in the Leased Property and the Iroquois Falls Project Site, in recordable form, reasonably satisfactory to Lessor necessary to maintain Lessor's interests in the Leased Property and the Iroquois Falls Project Site, and to maintain the Leased Property, the Iroquois Falls Project Site, Lessee's leasehold interest in the Leased Property and the Iroquois Falls Project Site, free and clear of all Liens other than, and subject only to, Permitted Liens (which such Liens must be released and discharged prior to the occurrence of a Lease Default or Lease Event of Default, or the return of the Leased Property in accordance with Section 6). Except as otherwise provided in a Basic Document, Lessee shall not sell or assign its rights in the Leased Property, the Iroquois Falls Project Site, its leasehold interests in the Leased Property or the Iroquois Falls Project Site.

SECTION 8. MAINTENANCE; OPERATION; POSSESSION; INSPECTION

8.1 Maintenance and Operation.

Lessee, at its own cost and expense, shall maintain, service, repair, operate, protect and keep, or shall cause to be maintained, serviced, repaired, operated, protected and kept, the Leased Property (a) in good operating order and repair, (b) in at least as good condition, ordinary wear and tear excepted, as on the Closing Date, (c) in a manner comparable to and no less favorable than maintenance and repair practices (including the periodicity of rebuilding and maintenance or record keeping in respect of the Leased Property) used by Lessee or any Affiliate thereof in respect of plants owned or leased by Lessee or any Affiliate thereof substantially similar in type to the Leased Property, but, in any case, in a manner that is in accordance with the customary industry standards for prudent owners for property substantially similar in type to the Leased Property, and as required by the manufacturer(s) for maintenance, operation and the preservation of warranties, (d) in accordance with all insurance policies required to be maintained pursuant to Section 11, if applicable, and (e) so that it is readily capable of being used in Commercial Operation. Lessee shall use the Leased Property only in the manner for which it was designed and intended. Lessee shall maintain all blueprints, operating manuals, maintenance manuals, parts lists and other technical documents and information necessary for the assembly and operation of the Leased Property in accordance with past practices and all records, logs and other materials for the Leased Property or any component or part thereof required by any Government Body, all as if Lessee were the owner of the Leased Property, regardless of whether any such requirements, by their terms, are nominally imposed on Lessee or Lessor. In no event shall Lessee adversely discriminate as to the use or maintenance of the Leased Property (including the periodicity of maintenance, rebuilds, or record keeping in respect of the Leased Property) as compared to property of a substantially similar nature that Lessee or its Affiliates owns or leases.

Without limiting the requirements of the preceding paragraph, the Leased Property shall be operated in accordance with "Good Engineering and Operating Practices", which such term shall mean any of the practices, methods and activities adopted by a significant portion of the North American electric utility industry as good practices applicable to the design, building, and operation of generating facilities of similar type, size and capacity or any of the practices, methods or activities which, in the exercise of skill, diligence, prudence, foresight and reasonable judgement by a prudent generator in light of the facts known at the time the decision was made, could reasonably have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety, expedition and Applicable Laws. Good Engineering and Operating 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 acceptable practices, methods, or acts generally accepted in the North American electric utility industry. Without limiting the generality of the foregoing and in respect of the operation of the Iroquois Falls Project and the Leased Property, Good Engineering and Operating Practices include taking reasonable steps to ensure that:

a) adequate materials, resources and supplies, including fuel, are available to meet the Iroquois Falls Project's and Leased Property's needs under reasonable conditions and reasonably anticipated abnormal conditions;

b) sufficient operating personnel are available and are adequately experienced and trained to operate the Iroquois Falls Project and Leased Property properly, efficiently and taking into account manufacturers' guidelines and specifications and are capable of responding to abnormal conditions;

c) preventative, routine and non-routine maintenance and repairs are performed on a basis on the Iroquois Falls Project and Leased Property that ensures reliable long-term and safe operation and taking into account manufacturers' recommendations and are performed by knowledgeable, trained and experienced personnel utilising proper equipment, tools and procedures; and

d) appropriate monitoring and testing is done to ensure equipment used in connection with the Iroquois Falls Project and Leased Property is functioning as designed and to provide assurance that equipment will function properly under both normal and abnormal conditions.

8.2 Possession and Use.

Lessee will use the Leased Property for operation of the Iroquois Falls Project and the Iroquois Falls Project Site. Subject to Section 8.3, (a) Lessee will use the Leased Property and the Iroquois Falls Project Site solely in the conduct of its business, (b) the Leased Property will at all times remain in the possession and control of Lessee on the Iroquois Falls Project Site and (c) Lessee will maintain, use and operate the Leased Property, or will cause the Leased Property and the Iroquois Falls Project Site to be maintained, used and operated at all times under and in compliance with all Applicable Laws in all material respects or as required by any Government Body having power to regulate or supervise the use of the Leased Property and the Iroquois Falls Project Site.

8.3 Sublease or Assignment.

Lessee shall not without the prior written consent of Lessor (which consent may be given or withheld in Lessor's sole and absolute discretion) sublease all or a portion of the Leased Property, its leasehold rights in the Leased Property or the Iroquois Falls Project Site; and shall not assign all or a portion of the Leased Property, its leasehold rights in the Leased Property or the Iroquois Falls Project Site or assign all or any portion of its rights under this Lease. In providing its consent, Lessor may do so on such terms, conditions and requirements as it may consider necessary in its sole and absolute discretion, including the requirement for Lessee or any other Person to enter into or provide any documents Lessor may require.

8.4 Replacement of Parts.

Subject to Section 10, Lessee, at its sole cost and expense, will promptly replace all appliances, parts, instruments, appurtenances, accessories, furnishings, fixtures and other equipment of whatever nature (herein collectively called "**Parts**") from time to time incorporated or installed in or attached to the Leased Property and which may from time to time become worn out, lost, stolen, destroyed, seized, confiscated, damaged beyond repair or permanently rendered unfit for use by damage or obsolescence so that upon completion of any replacing, restoring or repairing of Parts, the Leased Property is in the same condition as required by Section 8.1. All replacement Parts shall be free and clear of all Liens and rights of others on the date they become subject to this Lease and shall be in as good operating condition as, and shall have a utility and estimated value at least equal to, the Parts replaced, assuming such replaced Parts were in at least the condition and repair required to be maintained by the terms of this Lease.

All Parts at any time removed from the Leased Property shall remain subject to the rights of Lessor no matter where located, until Parts replacing such Parts are incorporated or installed in or attached to the Leased Property and which meet the requirements for replacement Parts specified above. Immediately upon any replacement Part becoming incorporated or installed in or attached to the Leased Property as above provided, without further act:

- (i) title to the removed Part shall thereupon vest in such Person as Lessee may designate, free and clear of all rights of Lessor on an "as is, where is" and with all faults basis;
- (ii) the replacement Part shall become subject to this Lease and such replacement Part shall be deemed part of the Leased Property for all purposes hereof to the same extent as the Parts originally incorporated or installed in the Leased Property; and

- (iii) title to such replacement Part shall thereupon vest in Lessor.

8.5 Maintenance of Authorizations.

In the furtherance of, and not in limitation of, Lessee's obligations under Section 8.2, throughout the Lease Term, Lessee shall do and cause to be done all things reasonably necessary to preserve and keep in full force and effect all Authorizations required for the conduct of its business and operations with respect to the Leased Property and the Iroquois Falls Project Site from time to time in effect. Lessee shall retain copies of all records and reports required pursuant to all Authorizations, for the period mandated by Applicable Law, and shall, upon return of the Leased Property to Lessor, turn over to Lessor all such records and reports required to be maintained under Applicable Law by the owner or operator of the Leased Property or the Iroquois Falls Project Site.

8.6 Inspection.

Without limiting any inspection rights set out in the Participation Agreement, during the Lease Term, Lessor shall have the right, but not the obligation, at its sole risk, cost and expense (except that if a Lease Default or Lease Event of Default exists such inspection shall be at the sole risk (other than with respect to gross negligence or willful misconduct by the inspector), cost and expense of Lessee) by its authorized representatives to inspect the Leased Property and all logs, records, books and other materials relating to the use, damage, repair and maintenance of the Leased Property and the Iroquois Falls Project Site, to make copies and take extracts therefrom, and to discuss the affairs, finances and accounts of Lessee and the Guarantors with Lessee's and Guarantor's officers, in each case during Lessee's normal business hours so as not to materially interrupt the commercial operation of the Leased Property, subject to Lessee's standard security and safety rules and procedures and, unless a Lease Event of Default exists, upon five Business Days' prior notice to Lessee (such notice being waived by Lessee during the continuance of a Lease Event of Default). Without limiting the foregoing, Lessee shall promptly furnish to Lessor such information with respect to the Leased Property, the Iroquois Falls Project Site, Lessee, each Guarantor, this Lease and the other Basic Documents as Lessor may from time to time reasonably request.

SECTION 9. MODIFICATIONS.

9.1 Required Modifications.

Lessee, at its own expense, shall make such alterations, modifications, reconfigurations, improvements and additions to the Leased Property (collectively, "**Modifications**") as may be reasonably required from time to time to meet the requirements of Section 8.1, or of Applicable Law or to maintain the insurance coverage of Section 11 (collectively, a "**Required Modification**"). Title to any Required Modification shall immediately vest in Lessor. All Modifications shall be located wholly within the Iroquois Falls Project Site. Lessee shall not make any Modification to Leased Property other than a Required Modification.

SECTION 10. LOSS, DESTRUCTION, REQUISITION, ETC.

10.1 Event of Loss.

- (a) The term "**Event of Loss**" shall mean, with respect to the Leased Property, any of the following events:

(i) Any item of the Leased Property is totally destroyed, or a constructive total loss of the Leased Property under applicable insurance policies and in accordance with standard industry practice occurs, or a compromised total loss of the Leased Property occurs;

(ii) Any item of the Leased Property is damaged beyond economic repair; or the Leased Property (in its entirety or a substantial portion thereof such that the then remaining portion cannot practically be utilized for the purposes intended) is permanently rendered unfit for normal use;

(iii) Any item of the Leased Property (in its entirety or a substantial portion thereof such that the remaining portion cannot practically be utilized for the purposes intended) or the Iroquois Falls Project Site is condemned, confiscated or seized, or title thereto or use thereof is expropriated by any Government Body and, in the case of any such expropriation of use, Lessor or Lessee loses, or is expected from the circumstances of such expropriation to lose, the use or possession of all or a substantial portion of its interest in any of the Leased Property or the Iroquois Falls Project Site for a period either (A) exceeding 6 months or (B) ending after the last day of the Base Term;

(iv) the occurrence of a Material Event; or

(v) the occurrence of any damage or casualty beyond economic repair to the Iroquois Falls Project Site or any portion thereof which, as a consequence thereof, would result in the Leased Property not being capable of Commercial Operation throughout the balance of its economic useful life (a “**Material Casualty**”).

(b) The date of occurrence of any Event of Loss shall be, in the case of an Event of Loss arising pursuant to Section 10.1(a)(i) or (ii), the date of the event or condition giving rise thereto; and in the case of an Event of Loss arising pursuant to Section 10.1(a)(iii), the date on which the expropriation of title or use becomes effective. The date of occurrence of an Event of Loss shall be, in the case of an Event of Loss arising pursuant to Section 10.1(a)(iv), the date on which Lessee first became aware of, or reasonably should have become aware of, the fact that the environmental condition could not be cured by a Permitted Remediation; and in the case of an Event of Loss arising pursuant to Section 10.1(a)(v), the date of the Material Casualty. If in the case of the Event of Loss arising pursuant to Section 10.1(a)(i) or (ii), the date of the subject event or condition is uncertain, such date shall be the date on which Lessee first became aware of, or reasonably should have become aware of, such event or condition.

10.2 Consequence of Event of Loss.

Upon the occurrence of an Event of Loss, Lessee shall promptly give Lessor written notice thereof (or Lessor may alternatively give Lessee written notice thereof) and, on the date (the “**Settlement Date**”) which is the earlier of (i) the first Rent Payment Date occurring at least 90 days after the date on which the Event of Loss occurred and (ii) the Base Term Expiration Date, Lessee shall pay or cause to be paid to Lessor in funds of the type specified in Section 3.6, the sum of (x) an amount equal to the Stipulated Loss Value, determined as of such Settlement Date, of the Leased Property, (y) to the extent not theretofore paid, Base Rent and other amounts due and payable before, and in arrears on, such Settlement Date, and (z) all other accrued and unpaid Supplemental Rent, together with any applicable taxes or duties on any such amounts, and upon such payment Lessor will make a Lessor Transfer to Lessee.

10.3 Rent Termination.

Upon the payment of all sums required to be paid pursuant to Section 10.2, the Lease with respect to the Leased Property and the obligation to pay Rent for the Leased Property due and accruing after the latter of (i) the date of payment of Stipulated Loss Value and other required amounts owing under Section 10.2 and (ii) the date of the Lessor Transfer, shall terminate in accordance with the terms hereof, without prejudice to the continuation of those obligations.

10.4 Disposition of Leased Property.

Upon the payment of all sums required to be paid pursuant to Section 10.2 and satisfaction of all conditions in Section 10.2, Lessor will make a Lessor Transfer to Lessee.

10.5 Application of Event of Loss Proceeds.

Lessor shall be entitled to receive, and Lessee hereby irrevocably assigns to Lessor, all right, title and interest of Lessee in and to any proceeds of any claims for damage, insurance or award received on account of an Event of Loss insofar as they are related to the Leased Property; except that the insurance proceeds and claims for damage, in each case with respect to insurance carried by Lessee, shall be treated in the manner set forth in Section 11.3.

10.6 Expropriation.

If during the Lease Term the use of the Leased Property is requisitioned or taken by any Government Body under the power of confiscation, seizure or expropriation or otherwise and such event does not constitute an Event of Loss, Lessee's obligation to pay all payments of Rent shall continue for the duration of such requisitioning or taking. Lessee shall be entitled to receive and retain for its own account all sums payable for any such period by such Government Body as compensation for requisition or taking of possession. Nothing herein contained shall affect the obligations of Lessee contained in Section 6 with respect to the condition in which the Leased Property is to be when the Leased Property is surrendered to Lessor. A requisition or taking of use for an indefinite period shall not be deemed to exceed the remaining Base Term until the period of such requisition or taking does, in fact, exceed the remaining Base Term. In such case, the Event of Loss shall be deemed to have occurred on the 10th day preceding the last day of the Base Term.

10.7 Lease Event of Default.

Any amount referred to in Section 10.5 or 10.6 that is payable to Lessee shall not be paid to Lessee, or if it has been previously paid directly to Lessee, shall not be retained by Lessee, if at the time of such payment a Lease Default or Lease Event of Default exists, but shall be paid to and held by Lessor as security for the obligations of Lessee under this Lease and when there shall not exist any such Lease Default or Lease Event of Default, such amount (unless theretofore otherwise applied to the obligations of Lessee hereunder) shall be paid over to Lessee.

SECTION 11. INSURANCE.

11.1 Property Damage and Public Liability Insurance.

Subject to the proviso in clause (a) below, Lessee will at all times at its own expense cause to be carried and maintained with reputable insurance companies of recognized responsibility, such insurance in such amounts against such risks and with such terms (including co-insurance, deductibles and limits of

liability and loss payment provisions) as is customary for similar facilities and projects of similar type, nature and size to the Leased Property and the Iroquois Falls Project Site which have risks associated with them substantially similar to those anticipated in connection with the operation, maintenance and use of similar equipment, fixtures and improvements owned or leased by Lessee and its Affiliates and in keeping with prudent industry practice including (a) no later than three (3) months from the date hereof, property insurance in respect of the Leased Property in an amount at all times at least equal to the \$30,000,000 less any deductible amount or self-insurance amount not to exceed \$1,000,000 per occurrence, (b) public liability insurance (including contractual liability) against loss or damage including for personal injury, death or property damage occurring as a result of the ownership, use, maintenance or operation of the Leased Property or the Iroquois Falls Project Site, and in any event insuring against such loss or damage from such risks and in such amounts as is maintained by Lessee in respect of similar equipment, fixtures and improvements owned or leased by it; except that such public liability insurance shall at least be sufficient to afford protection to the limit of \$100,000,000 in respect of any one occurrence, subject to a deductible provision not exceeding \$1,000,000 per occurrence and (c) pollution insurance coverage. Such liability insurance may be carried under blanket policies maintained by Lessee so long as such policies otherwise comply with the provisions of this Section 11. Lessee may reduce the limits of liability of its public liability insurance (but not below \$30,000,000 per occurrence) to the extent (i) public liability insurance is not commercially available on terms and conditions reasonable to it and (ii) Lessee delivers to Lessor a certificate of an independent, reputable insurance broker that is not an Affiliate of Lessee and that is familiar with facilities and projects of similar type, nature and size of the Leased Property to the effect that the proposed insurable limit per occurrence is consistent with prudent gas generated electricity industry practice. All such insurance shall cover the interests of Lessor in the Leased Property and shall protect Lessor and Lessee in respect of the above-described risks and shall be no less favorable than insurance maintained by Lessee and its Affiliates with respect to facilities and projects of similar type, nature and size as the Leased Property. Any property insurance which Lessee obtains in respect of the Leased Property in excess of the amounts required hereunder shall be obtained as insurance of Lessee's rights and interests under this Lease.

11.2 Policy Provisions.

(a) All policies required by Section 11.1 which cover loss or damage to the Leased Property insofar as it relates to the Leased Property shall name Lessor as insured as sole loss payee (except as provided in Section 11.3).

(b) All liability policies required by Section 11.1 shall name Lessor (collectively, "**Additional Insured**") and Lessee as additional insureds.

(c) All policies described in this Section 11 shall expressly provide that: (i) coverage thereunder shall not be canceled, reduced or otherwise materially changed without at least 30 days' prior written notice from the insurer to Lessor, (ii) no loss payee or Additional Insured shall have any obligation or liability for premiums in connection with such insurance, (iii) the insurers waive any rights of subrogation against loss payee and Additional Insureds, except for claims that arise from the willful misconduct or gross negligence of any such loss payee or Additional Insured, (iv) such insurance shall be primary, without right of contribution from any other insurance carried by any loss payee or Additional Insured and shall not be invalidated as against such loss payee or Additional Insured by any act or neglect of Lessee or of any other Person (other than, with respect to such Person, the acts of such Person) or by any breach or violation by Lessee or by any other Person (other than, with respect to such Person, breaches or violations by such Person) of any warranties, declarations or conditions contained in such policies or by any change in the title or ownership of the Leased Property or any interest therein or with respect thereto and (v) all provisions thereof except the limits of liability and deductibles shall operate in the same manner as if there were a separate policy insuring each insured.

11.3 Proceeds of Insurance.

(a) So long as no Lease Default or Lease Event of Default exists, any loss with respect to the Leased Property under any policy carried by Lessee covering the Leased Property shall be adjusted with the insurance companies by Lessor, at its option, and all insurance proceeds with respect to any losses relating to the Leased Property shall be paid directly to Lessor. Lessee shall promptly pay to Lessor any proceeds of insurance that Lessee receives covering loss or damage to the Leased Property relating to the Leased Property payable to Lessor under this Section 11.3. The proceeds of any insurance carried by Lessee received by Lessor on account of or for any loss or damage in respect of the Leased Property relating to the Leased Property shall be applied as follows:

(i) If the Leased Property is to be repaired or replaced, the insurance proceeds shall be released, to Lessee or as it may direct from time to time as restoration, replacement, rebuilding, alterations and additions (collectively, the “**Restoration**”) proceeds to pay (or reimburse Lessee for), the cost of the Restoration, but only upon receipt by Lessor of an Officer’s Certificate of Lessee in form and substance reasonably acceptable to Lessor showing in reasonable detail the nature of the Restoration, the purpose for which the expenditures were made, the actual cash expenditures made for such purpose and stating that the remaining insurance proceeds, are at least 105% of the remaining cost to complete the Restoration and that there is no Lease Default or Lease Event of Default; or

(ii) If this Lease is terminated in accordance with Section 10.2 and all amounts payable by Lessee under Section 10.2 are paid, such insurance proceeds shall be released to Lessee;

except that any amount referred to herein that is payable to Lessee shall not be paid to Lessee if at the time a Lease Default or Lease Event of Default exists, in which event all such amounts shall be paid to and held by Lessor as security for the obligations of Lessee to make payments under and perform this Lease. When a Lease Default or Lease Event of Default no longer exists, all such amounts (unless theretofore otherwise applied to the obligations of Lessee hereunder) shall be paid to Lessee.

11.4 Notice, Etc.

Lessee will, or will cause Lessee’s independent insurance broker to, advise Lessor in writing promptly of any default in the payment of any premium and of any other act or omission on the part of Lessee that might invalidate or render unenforceable, in whole or in part, any insurance on or with respect to the Leased Property or the Iroquois Falls Project Site. Lessee will, or will cause Lessee’s independent insurance broker to, advise Lessor in writing of the expiration, termination or any material change of any insurance carried and maintained on or with respect to the Leased Property or the Iroquois Falls Project Site pursuant to this Section 11 at least 30 days before the expiration or termination date or effective date of any material change unless such insurance has been replaced. If Lessee fails to maintain insurance as herein provided, Lessor may at its sole option provide such insurance and, in such event, Lessee shall thereupon reimburse Lessor, as Supplemental Rent, for the reasonable cost thereof. The exercise by Lessor of that option shall not affect the provisions of this Lease, including the provisions that failure by Lessee to maintain the prescribed insurance constitutes a Lease Event of Default.

11.5 Reports and Certificates.

On the Closing Date, and annually upon renewal of the insurance policies carried by Lessee pursuant to this Section 11, and upon any material modification of such policies, Lessee will furnish to Lessor all applicable certificates of insurance and a report from Lessee’s insurance broker describing in

reasonable detail the insurance then carried and maintained on and with respect to the Leased Property and with respect to the Leased Property, certifying that such insurance complies with the terms hereof.

11.6 Additional Insurance.

At any time Lessor may at its own expense carry insurance with respect to the Leased Property if such insurance does not interfere with Lessee's ability to maintain the insurance required by this Section 11 or adversely affect Lessee's insurance, or the ability of Lessee to collect a claim under any such insurance policy, it being understood that all salvage rights to the Leased Property and all primary subrogation rights shall remain with Lessee's insurers at all times. Any insurance payments received from policies maintained by Lessor pursuant to the previous sentence shall be retained by Lessor without reducing or otherwise affecting Lessee's obligations hereunder.

SECTION 12. LEASE EVENTS OF DEFAULT.

The following events shall constitute "**Lease Events of Default**" hereunder (whether any such event is voluntary or involuntary or comes about or is effected by operation of law or pursuant to or in compliance with any judgment, decree or order of any court or any order, rule or regulation of any Government Body):

(a) Lessee fails to make within seven (7) Business Days after the same becomes due (x) any payment of Base Rent or other amount under this Lease, or (y) any payment under Section 10.2 or Section 20 hereof;

(b) Any Obligor or Hosting fails to make any other payment under the Basic Documents after the same becomes due and such failure continues unremedied for seven (7) Business Days after receipt by Lessee of written notice of such failure from Lessor;

(c) Lessee fails to maintain the insurance coverages required by Section 11, except that, in the case of failure to deliver certificates, notices and reports pursuant to Sections 11.4 and 11.5, Lessee shall have 30 days after written notice of such failure to deliver before a related Lease Event of Default occurs hereunder;

(d) Any Obligor or Hosting consummates a merger or other transaction in violation of Section 4.2 (*Merger Covenant*) of the Participation Agreement;

(e) Any Obligor or Hosting fails to observe or perform any of its covenants or agreements set out in Sections 4.48(1), (2), (3), (5), (6) or (7) of the Participation Agreement and remains unremedied for 30 days after written notice to Lessee of such breach;

(f) the representation or warranty made by the Obligors in Section 3.1(jj) (*Competition*) of the Participation Agreement was untrue or incorrect in any respect as of the date of making thereof;

(g) any representation or warranty made by any Obligor or Hosting in this Lease, the Guarantee, or in any other Basic Document or in any other certificate furnished by an Obligor or Hosting (or a Responsible Officer of either) pursuant to the Basic Documents (other than Section 3.1(jj) of the Participation Agreement) was untrue or incorrect in any material respect as of the date of making thereof, and remains material and unremedied for 30 days after written notice to the party issuing or making such incorrect representation or warranty of the inaccuracy thereof, except if (i) the inaccuracy is capable of being corrected, (ii) such inaccuracy cannot, with diligence be corrected within 30 days of such notice and (iii) such party is diligently proceeding in good faith to correct such inaccuracy, no such inaccuracy shall

constitute a Lease Event of Default so long as such party is diligently proceeding to correct the inaccuracy, if such inaccuracy does not (w) pose a material risk of sale, forfeiture or loss of any interest in the Leased Property or the Iroquois Falls Project Site, (x) interfere in any material respect with the use or operation of the Leased Property, (y) pose any risk of interference with the payment of Rent or any other payment to or for the account of Lessor, or (z) subject Lessor to any criminal, quasi-criminal or material civil liability, but in no case shall such inaccuracy continue uncorrected for a period ending on the earlier of 60 days from the date of such notice and the Base Term Expiration Date;

(h) the occurrence of an Insolvency Event in respect of any Obligor or Hosting;

(i) Lessee (in any capacity), each other Obligor or Hosting fails to observe or perform any of its covenants or agreements (other than those described elsewhere in this Section 12) to be observed or performed by Lessee, any other Obligor or Hosting hereunder or under the Participation Agreement or any other Basic Document and the failure continues unremedied for 30 days after such failure becomes known to a Responsible Officer of Lessee, any other Obligor or Hosting; except, if (i) the failure is capable of being remedied, (ii) such failure cannot, with diligence, be cured within 30 days of such notice, and (iii) Lessee, the applicable Obligor or Hosting is diligently proceeding in good faith to cure such failure, no such failure shall constitute a Lease Event of Default so long as Lessee or the applicable Obligor is diligently proceeding to remedy the failure, if such failure does not (w) pose a material risk of sale, forfeiture or loss of any interest in the Leased Property, (x) interfere in any material manner with the use or operation of the Leased Property, (y) pose any risk of interference with the payment of Rent or interest or any other payments for the account of Lessor, or (z) subject Lessor to any criminal, quasi-criminal or material civil liability, but in no event shall the failure continue unremedied for a period in excess of the lesser of 120 days from the date such failure becomes known to a Responsible Officer of Lessee, any other Obligor or Hosting and the remaining number of days in the Base Term;

(j) (A) Any breach of any Material Project Document by a party thereto, and such default is not remedied within the grace period specified therein or (B) any breach, amendment, supplement, modification, suspension, cancellation or termination of any Material Authorization; provided that, there shall be no Lease Event of Default under this clause (i) in respect of a breach by a Material Project Document if the applicable Obligor or Hosting, as applicable, executes and delivers a Replacement Agreement satisfactory to Lessor with the original counterparty or another Person of similar or superior creditworthiness and experience as the original counterparty at the time such replaced Material Project Document was originally entered into (as confirmed by Lessor in consultation with its advisors, such confirmation not to be unreasonably withheld or delayed) within forty-five (45) days of the occurrence of such event or circumstance or, if within such forty-five (45) day period the applicable Obligor or Hosting has prepared and delivered a written replacement plan to the reasonable satisfaction of Lessor (acting in consultation with its advisors) and has started to implement and comply with such replacement plan, such forty-five (45) day period shall be extended so long as such replacement plan is capable of being performed in full during such extension period and so long as the applicable Obligor or Hosting is continuing during such extension period to implement and comply with such replacement plan to the reasonable satisfaction of Lessor (acting in consultation with its advisors) until it has been performed in all material respects;

(k) any Material Project Document or Authorization (A) ceases to be binding, is repudiated, revoked, cancelled, suspended or terminated or (B) becomes illegal or invalid; provided that if such ceasing to be binding, repudiation, revocation, cancellation, suspension, termination, illegality or invalidity is not as a result of the breach by an Obligor or Hosting of the Material Project Document, the Authorization or any Basic Document, there shall be no Lease Event of Default under this clause (k) in respect of a Material Project Document or Authorization to which an Obligor or Hosting is a party if the applicable Obligor or Hosting executes and delivers a Replacement Agreement or Authorization with the original counterparty or another Person of similar or superior creditworthiness and experience as the original counterparty at the

time such replaced Material Project Document was originally entered into (as confirmed by Lessor in consultation with its advisors, such confirmation not to be unreasonably withheld or delayed) within sixty (60) days of the occurrence of such event or circumstance or, if within such sixty (60) day period the applicable Obligor or Hosting has prepared and delivered a written replacement plan to the reasonable satisfaction of the Lessor (acting in consultation with its advisors) and has started to implement and comply with such replacement plan, such sixty (60) day period shall be extended so long as such replacement plan is capable of being performed in full during such extension period and so long as the applicable Obligor or Hosting is continuing during such extension period to implement and comply with such replacement plan to the reasonable satisfaction of Lessor (acting in consultation with its advisors) until it has been performed in all material respects;

(l) any Obligor or Hosting (i) repudiates, otherwise declares unenforceable or fails to perform any of its covenants or obligations under any Security Document, Guarantee and/or the Limited Recourse Guarantee, as applicable, or fails to make any payments when due under any Security Document, Guarantee or the Limited Recourse Guarantee, as applicable, and such failure continues unwaived and uncured for five (5) Business Days or (ii) fails to keep any Security Document, Guarantee or Limited Recourse Guarantee, as applicable, in full force and effect; or any of the material obligations of any Guarantor or Hosting, as applicable, under any Security Document, Guarantee or Limited Recourse Guarantee are found to be unenforceable by a court of competent jurisdiction;

(m) the failure of Lessee or any other Obligor to make any payment, before the expiration of any applicable grace period in respect of indebtedness (including lease obligations) that causes or permits the acceleration of such indebtedness;

(n) the loss, for any reason whatsoever, of any Real Property Interests necessary to own and operate the Projects, provided such loss is not a result of fraud, gross negligence, or willful misconduct on the part of the Lessor or its Affiliates or any of their respective representatives or agents;

(o) the declaration of a Lease Event of Default by Lessor in accordance with Section 9.1 of the Participation Agreement; or

(p) if any of the Obligors enter into any written or oral agreements with First Nations to provide benefits, pecuniary or otherwise, with respect to the Project Facilities, Project Sites or any other Collateral at any stage of development that could result in a Material Adverse Effect.

SECTION 13. REMEDIES.

13.1 Remedies.

If a Lease Event of Default exists, Lessor may, at its option, declare this Lease to be in default by a written notice to Lessee (but this Lease shall be deemed to be in default and no written notice to Lessee shall be required if a Lease Event of Default occurs under Section 12(h)); and at any time thereafter, so long as Lessee has not remedied all outstanding Lease Events of Default before the exercise of any remedy below, Lessor may do one or more of the following as Lessor in its sole discretion may elect, to the extent permitted by, and subject to compliance with any mandatory requirement of, Applicable Law then in effect, whether or not Lessor rescinds or terminates this Lease (other than clause (b)(i) below):

(a) proceed by appropriate court action or actions, either at law or in equity, to enforce performance by Lessee of this Lease or the other Basic Documents or to recover damages for the breach thereof;

(b) by notice in writing to Lessee, (i) rescind or terminate this Lease; (ii) demand in writing that Lessee, and Lessee shall forthwith upon such demand and at Lessee's expense, return the Leased Property to Lessor in the manner and condition required by, and otherwise in accordance with, this Lease; and (iii) whether or not Lessor exercises the remedies in Section 13.1(b)(i) or (ii), with or without judicial process and without the necessity for first instituting any proceedings, or by summary proceedings or otherwise, itself or by its agents (together with the owners of all other undivided interests in the Leased Property, other than Lessee) enter upon the Iroquois Falls Project Site or other premises where the Leased Property or any part thereof may be located or believed to be located and take immediate possession of the Leased Property (to the exclusion of Lessee) and if it so chooses, cause the Leased Property to be operated at the Iroquois Falls Project Site, remove the Leased Property and thenceforth hold, possess and enjoy the same free from any right of Lessee, its successors or assigns to use the Leased Property or the Leased Property for any purpose whatever, all without liability of Lessor or its agents (except liability for fraud, gross negligence or willful misconduct) for or by reason of such entry or taking of possession, whether for the restoration of damage to property caused by such action or otherwise;

(c) enforce and realize upon all or part of the Security Interest and/or with or without taking possession thereof, sell or otherwise dispose of all or part of the Leased Property at public or private sale, in accordance with or as permitted by Applicable Law, and Lessor may hold Lessee liable for any payment of Base Rent and other amounts due on or before the date of such sale or disposition (and, if payable in arrears, the pro rata portion of the payment of Base Rent due on the next succeeding Rent Payment Date in respect of any period beginning on the immediately preceding Rent Payment Date to the date of such sale or disposition, in which event Lessee's obligation to pay Base Rent with respect to such Leased Property hereunder due for any periods after the date of such sale shall terminate (except to the extent that Base Rent is to be included in computations under Section 13.1(e) or (f) if Lessor elects to exercise its rights under either of said Sections));

(d) repossess and hold, use, operate or lease to others or keep idle the Leased Property as Lessor in its sole discretion may determine, free and clear of any rights of Lessee, and Lessee's obligation to pay Base Rent with respect to such Leased Property due for any periods after the date upon which Lessee shall have been deprived of possession and use of such Leased Property pursuant to this Section 13 shall be reduced by the net proceeds, if any, received by Lessor from leasing such Leased Property to any Person other than Lessee (other than to the extent that Base Rent is to be included in amounts payable under Sections 13.1(e) and (f) if Lessor elects to exercise its rights under either of such Sections);

(e) if Lessor has exercised its rights under Section 13.1(c) or (d), by written notice to Lessee specifying a payment date, which shall be not earlier than ten (10) days after the date of such notice (for purposes of Sections 13.1(e) and (f), the "**Default Payment Date**"), demand that Lessee pay to Lessor, and Lessee shall pay to Lessor, on the Default Payment Date, as a genuine pre-estimate of liquidated damages and not as a penalty (in lieu of the Base Rent due thereafter), the sum of:

(w) any unpaid Base Rent and other amounts due before, and in arrears on, the Default Payment Date; plus

(x) an amount equal to the excess, if any, of (a) the Stipulated Loss Value for the Leased Property determined as of the date of written notice from Lessor to Lessee under this Section 13.1(e), over (b) the net proceeds after deduction of all of Lessor's costs and expenses of sale or lease as contemplated under Section 13.1(c) or (d), including sales or transfer taxes, and any expenses of repossession, overhaul, maintenance, preparation, transportation, sale or lease of the Leased Property, and service provider's, brokers' and attorneys' fees; plus

(y) interest on the sum of (w) and (x) at the Late Rate from the Default Payment Date to the date of actual payment;

and upon payment in full of such amount, together with payment of all other amounts of Supplemental Rent then and any applicable taxes or duties on any amounts hereunder due, the Lease for the Leased Property, if not theretofore ended, shall end;

(f) unless Lessor exercises its rights under Section 13.1(e), Lessor, by written notice to Lessee specifying a Default Payment Date, may require that Lessee pay to Lessor, and Lessee shall pay to Lessor, on the Default Payment Date as a genuine pre-estimate of liquidated damages and not as a penalty (in lieu of scheduled Base Rent due thereafter and in respect of the Leased Property), the sum of:

(w) any unpaid Base Rent and other amounts due before, and in arrears on, the Default Payment Date; plus

(x) the Stipulated Loss Value for the Leased Property, as specified on Schedule 3 to the initial Lease Supplement determined as of the date of written notice from Lessor to Lessee under this Section 13.1(f); plus

(y) interest on such sum of (w) and (x) at the Late Rate from the Default Payment Date to the date of actual payment;

and upon payment in full of such amount, together with all other amounts of Supplemental Rent then due and any applicable taxes or duties on any amounts hereunder, Lessor shall make a Lessor Transfer to Lessee or as it may direct, and the Lease for the Leased Property, if not theretofore ended, shall end;

(g) Lessor may apply to a court of competent jurisdiction for the appointment of a receiver or receiver and manager to take possession of all or such part of the Leased Property as Lessor shall designate, with such duties, powers and obligations as the court making the appointment shall confer; and upon the appointment of any such receiver or receivers from time to time, in the absence of any provisions in the court order to the contrary, the following provisions shall apply:

(i) every such receiver shall be the irrevocable agent or attorney of Lessee in respect of the Leased Property or any part thereof and all rents, income or proceeds in respect thereof;

(1) every such receiver may, at the discretion of such court, be vested with all or any of the powers and discretions as such court shall see fit;

(2) every such receiver shall, so far as concerns the responsibility for his acts or omissions, be deemed the agent or attorney of Lessee and in no event the agent of the Lessor;

(3) every such receiver shall from time to time have the power to rent any portion of the Leased Property which may become vacant for such term and subject to such provisions as he or she may deem advisable or expedient and in so doing every such receiver shall act as the attorney or agent of Lessee and he or she shall have authority to execute under seal any lease of any such premises in the name and on behalf of Lessee and Lessee undertakes to ratify and confirm whatever any such receiver may do in the premises;

(4) every such receiver shall have full power to manage, operate, amend, repair, alter or extend the Leased Property or any part thereof in the name of Lessee; and

(5) no such receiver shall be liable to Lessee to account for monies other than monies received by such receiver in respect of the Leased Property or any part thereof and every such receiver shall apply such monies so received to pay in the following order: (i) such receiver's remuneration; (ii) all expenses made or incurred by such receiver in connection with the management, operations, amendment, repair, alteration or extension of the Leased Property or any part thereof; (iii) money or Liens which may from time to time become charged upon the Leased Property in priority to this Lease and all taxes, utility charges, insurance premiums and every other proper expenditure made or incurred by such receiver in respect of the Leased Property or any part thereof; (iv) to Lessor all amounts due or falling due under this Lease; and (v) thereafter any surplus remaining in the hand of every such receiver to any Person legally entitled thereto; and

(6) the appointment of any such receiver shall not incur or create any liability on the part of Lessor to the receiver in any respect and such appointment or anything which may be done by any such receiver or the removal of any such receiver or the termination of any such receivership shall not have the effect of constituting in itself Lessor a mortgagee in possession in respect of the Leased Property or any part thereof.

(ii) Lessor may exercise any other right or remedy that may be available to it under Applicable Law, whether at law, in equity or by statute.

In addition, Lessee shall be liable, except as otherwise provided above, for any and all unpaid Rent and other amounts due hereunder before, during and after the exercise of any of the foregoing remedies (together with interest thereon at the Late Rate from the due date thereof until paid), for all amounts payable by Lessee under the Participation Agreement and the other Basic Documents before and after any termination thereof, and for reasonable legal fees (including reasonable allocated time charges of internal counsel) and other costs and expenses incurred by Lessor by reason of the occurrence of any Lease Event of Default or the exercise of Lessor's remedies with respect thereto, including all costs and expenses incurred in connection with the surrender of the Leased Property in accordance with the terms of this Lease or in placing the Leased Property in the condition required by this Lease or in connection with any use, operation, maintenance, storage or leasing carried out as part of such exercise of remedies. Sums recovered by Lessor shall be applied in respect of obligations owing to Lessor hereunder, as Lessor shall determine in its discretion.

13.2 Cumulative Remedies.

Except as otherwise provided in this Section 13, each right, power and remedy in this Lease provided in favor of Lessor shall not be deemed exclusive, but shall be cumulative and shall be in addition to all other rights, powers and remedies in its favor existing under any other Basic Document, at law, in equity or by statute; and the exercise or beginning of exercise by Lessor of any one or more of such remedies shall not preclude the simultaneous or later exercise by Lessor of any or all other remedies. **LESSEE HEREBY WAIVES ANY AND ALL EXISTING OR FUTURE CLAIMS OF ANY RIGHT TO ASSERT ANY OFFSET OR COUNTERCLAIM AGAINST THE PAYMENTS DUE FROM IT UNDER THIS SECTION 13, AND AGREES TO MAKE SUCH PAYMENTS REGARDLESS OF ANY OFFSET OR COUNTERCLAIM OR CLAIM THAT MAY BE ASSERTED BY LESSEE OR ON ITS BEHALF IN CONNECTION THEREWITH.** Lessor expressly acknowledges and agrees that nothing contained in this Section 13.2 in any way modifies, limits or diminishes any covenant or obligation of Lessor under this Lease or in any way restricts the rights of Lessee to pursue independently any other remedies it may have (at law or in equity), unless expressly waived herein, against Lessor if Lessor fails to perform its covenants and obligations under this Lease.

13.3 No Waiver.

No delay or omission to exercise any right, power or remedy accruing to Lessor upon any breach or default by Lessee under this Lease shall impair any such right, power or remedy of Lessor, nor shall any such delay or omission be construed as a waiver of any breach or default, or of any similar breach or default, thereafter occurring; nor shall any express or implied waiver of a single breach or default be deemed a waiver of any subsequent breach or default.

13.4 Notice of Lease Default.

Lessee agrees to furnish to Lessor promptly upon any Responsible Officer becoming aware of any condition that constitutes a Lease Default or Lease Event of Default, an Officer's Certificate of Lessee specifying such condition or event and the nature, period of existence and status thereof and what action Lessee has taken or proposes to take with respect thereto.

13.5 Waiver of Mitigation Rights.

To the extent permitted by Applicable Law, Lessee hereby waives any right to mitigation of damages now or in the future conferred by statute or otherwise to the extent that such right to mitigation may limit or modify any remedy of damages measured by reference to liquidated damages.

13.6 Specific Performance; Appointment of Agent.

The surrender of possession of the Leased Property and return thereof as provided in Section 6.1 or Section 13.1 is of the essence of this Lease and shall not be impaired. Upon application to any court of competent jurisdiction in the premises, Lessor shall be entitled to a decree against Lessee requiring specific performance of the covenants of Lessee so to surrender possession of the Leased Property. Without in any way limiting the obligation of Lessee under Section 6.1 or Section 13.1, Lessee hereby irrevocably appoints Lessor as the agent and attorney of Lessee, with full power and authority, at any time while Lessee is obligated to surrender possession of the Leased Property to Lessor pursuant to this Section 13, to demand and take possession of such Leased Property and any materials or property required to fully use the Leased Property in the name and on behalf of Lessee from whosoever shall be at the time in possession thereof.

SECTION 14. FURTHER ASSURANCES; REPORTS.

14.1 Further Assurances.

Lessee will, at its own expense, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, transfers and assurances as Lessor may reasonably request in order to protect the right, title and interest of Lessor hereunder or in the Leased Property or the perfection or protection of the Lien granted by the Security Documents, including ordering such searches for recorded liens as Lessor may reasonably request. Without limiting the foregoing, Lessee, at its own expense, will take, or cause to be taken, such action with respect to the recording, filing, re-recording and re-filing of this Lease, any supplements thereto or hereto and any financing statements and continuation statements or other instruments deemed necessary or advisable and requested by Lessor to maintain the perfection of the first lien or security interest created by the Security Documents and the protection of Lessor's right and title to the Leased Property as against Lessee and any third parties, or will furnish to Lessor timely notice of the necessity of such action, together with such instruments, in execution and recordable form, and such information as may be reasonably required to enable Lessor to take such action in a timely manner and at Lessee's expense.

14.2 Reports.

Lessee will, at its own expense, promptly file any reports (other than reports required to be filed generally with a Government Body by Lessor pursuant to banking, financial institution and securities laws of general application) or (at Lessor's option) furnish to Lessor such information as may be reasonably required to enable Lessor timely to file any reports, reasonably required to be filed by Lessor with any Government Body with respect to the Basic Documents or the ownership of the Leased Property.

SECTION 15. LESSOR'S RIGHT TO PERFORM.

If Lessee fails to make any payment required to be made by it hereunder or in any other Transaction Document, or fails to perform or comply with any of its other agreements contained herein or in any other Transaction Documents, Lessor may itself make such payment or perform or comply with such agreement, but shall not be obligated hereunder to do so, and the amount of such payment and of the reasonable expenses of Lessor incurred in connection with such payment or the performance of or compliance with such agreement, as the case may be, together with interest thereon at the Late Rate from the date of such payment or incurrence of expenditure until Lessor has been fully reimbursed therefor, to the extent permitted by Applicable Law, shall be deemed to be Supplemental Rent, payable by Lessee to Lessor on demand. Any such payment by Lessor shall not discharge Lessee's liability therefor and Lessor may demand of Lessee payment of, and may enforce Lessee's obligation to make, such payment by proceeding by appropriate court action (at law or in equity).

SECTION 16. *INTENTIONALLY DELETED*

SECTION 17. SECURITY FUNDS.

Any moneys received by Lessor that are required to be paid to Lessee pursuant to Section 10.5, 10.6, 10.7 or 11.3, as the case may be, until paid to Lessee as provided in Section 10.5, 10.6, 10.7 or 11.3, or as otherwise applied as provided herein, shall be held by Lessor in such account or investment as Lessor determines in its sole and absolute discretion from time to time.

SECTION 18. NOTICES.

Unless otherwise expressly specified or permitted by the terms hereof, all communications and notices provided for herein shall be in writing, and shall be given in the manner and to the address set forth in Section 9.3 (*Notice*) of the Participation Agreement.

SECTION 19. LEASE RENEWAL.

19.1 Lease Renewal.

(a) Unless this Lease has been earlier terminated in accordance with its terms, and subject to payment to Lessor of all Rent and other amounts payable under this Lease and the Basic Documents, Lessee may terminate the Lease at the end of the Base Term or a month during any Renewal Term thereafter, if Lessee (i) provides Lessor an irrevocable written notice not less than (A) if the Leased Property is to be returned at the end of the Base Term, 180 days before expiry of the Base Term or (B) if the Leased Property is to be returned at the end of a month during a Renewal Term, 180 days before the proposed date for the return to Lessor of the Leased Property, as applicable, of its intention to return to Lessor the Leased Property; (ii) provides Lessor, together with such notice, an environmental due diligence compliance assessment with respect to the Leased Property and the Iroquois Falls Project Site by a reputable environmental engineering firm reasonably acceptable to Lessor upon which Lessor may rely certifying as

to (A) the extent of the contamination, if any, to the Environment comprising the water, land and air and any combination of them and as to compliance with all Environmental Laws applicable to the Leased Property and the Iroquois Falls Project Site, and (B) that no Material Event that could result in an Event of Loss under Section 10.1(a)(iv) exists; and (iii) returns all of the Leased Property to Lessor on the Base Term Expiration Date, or if applicable, the last day of the month during the Renewal Term, in accordance with Section 6.

(b) If this Lease has not been terminated by Lessee in accordance with Section 19.1(a) or earlier terminated in accordance with its terms, this Lease will automatically renew on a month to month basis and all the terms and conditions of the Lease shall continue in full force and effect, including the obligation upon Lessee to pay Rent on each Rent Payment Date during the Lease Term.

SECTION 20. PURCHASE OPTION

(a) Provided that no Lease Event of Default subsists, Lessee may purchase all (but not less than all) of the Leased Property then leased hereunder on the Base Term Expiration Date (the “**Purchase Option Date**”) at an amount equal to the aggregate of (i) \$16,200,000.00, (ii) the greater of (A) the amount being 13% of the Fair Market Value of the Plant (w/o Behind the Meter) and (B) \$0 and (iii) the greater of (A) the amount being 5% of the Fair Market Value of the Plant (w/Behind the Meter) and (b) \$0, (the aggregate amount being the “**Purchase Option Price**”), pursuant to, and subject to compliance with, this Section 20 (the “**Purchase Option**”). If Lessee would like to purchase all of the Leased Property on the Purchase Option Date under the Purchase Option and no Lease Event of Default subsists, Lessee shall give Lessor irrevocable written notice (the “**Purchase Option Notice**”) not more than six (6) months and not less than three (3) months before the Purchase Option Date of its election to exercise the Purchase Option. Lessor shall then determine each Fair Market Value of the Plant and shall provide a written notice (the “**Lessor FMV Notice**”) thereof and of the Purchase Option Price to Lessee within ten (10) Business Days of receiving the Purchase Option Notice. Lessee must then inform the Lessor of whether it accepts or rejects the determination by Lessor of each Fair Market Value of the Plant and the Purchase Option Price by providing a written notice thereof to the Lessor within ten (10) Business Days of receiving the Lessor FMV Notice. If Lessee accepts the determination by Lessor of each Fair Market Value of the Plant and the Purchase Option Price as set out in the Lessor FMV Notice, such Purchase Option Price shall be the Purchase Option Price for the purposes of the Purchase Option. If Lessee rejects the determination by the Lessor of each Fair Market Values of the Plant and Purchase Option Price as set out in the Lessor FMV Notice, Lessor shall appoint a suitably experienced third-party valuer (“**Valuer**”) to determine each Fair Market Value of the Plant and the cost of the Valuer shall be borne by Lessor. Lessee shall promptly upon request provide such information, documents and access to inspect the Lessee Plant, as the Valuer may require for the purposes of determining each Fair Market Value of the Plant. Upon each party receiving the Valuer’s written determination of each Fair Market Value of the Plant, the Purchase Option Price shall be determined by using the Fair Market Value of the Plant (w/o Behind the Meter) and the Fair Market Value of the Plant (w/Behind the Meter) determined by the Valuer for the purposes of clause (ii) and (iii) of the definition of the Purchase Option Price respectively. Following determination of the Purchase Option Price in accordance with this Section, and provided that no Lease Event of Default subsists, Lessee shall purchase the Leased Property on the Purchase Option Date by paying to Lessor the Purchase Option Price together with any and all taxes applicable thereto on the Purchase Option Date, together with any and all Rent and other amounts due and owing by Lessee under the Basic Documents, at the place of payment specified in writing by Lessor in immediately available funds, and upon receipt of such payment Lessor shall transfer to Lessee, without recourse or warranty (except that Lessor has not previously conveyed all or part of its interest in the Leased Property other than as permitted by the Basic Documents and as to the absence of any Lessor Liens) all of Lessor’s right, title and interest in the Leased Property “as-is,” “where-is.” If Lessee fails to comply with any of the foregoing terms in this Section or if a Lease Event of Default occurs or is continuing after the giving of a Purchase Option Notice, Lessor may in its absolute discretion

elect to terminate the Purchase Option Notice by giving notice thereof to Lessee. If Lessor gives such a notice to terminate the Purchase Option Notice, or if, as of the Purchase Option Date, a Lease Event of Default subsists, or if Lessee fails to pay, as required, the Purchase Option Price and all other Rent and amounts as required under the Purchase Option on the Purchase Option Date (including all Rent and other amounts under the Basic Documents becoming due and payable up to and including the Purchase Option Date), the Purchase Option Notice given by Lessee will be null and void and the terms of the Lease shall apply as if no Purchase Option Notice were given, and Lessor may proceed as otherwise permitted by this Lease, including exercising any remedies provided for in this Lease or at law.

(b) The terms “Fair Market Value of the Plant”, “Fair Market Value of the Plant (w/o Behind the Meter)”, “Fair Market Value of the Plant (w/Behind the Meter)” and “Lessee Plant” as used in this Section 20 have the meanings set out below:

“Fair Market Value of the Plant” means the Fair Market Value of the Plant (w/Behind the Meter) and/or the Fair Market Value of the Plant (w/o Behind the Meter), as the context requires.

“Fair Market Value of the Plant (w/o Behind the Meter)” means the price that a willing purchaser would pay to a willing seller (both dealing with each other at arm’s length without compulsion) of the Lessee Plant, determined according to the present value of the cash flows projected to be generated by the Lessee Plant operating at full power and capacity and assuming the Lessee Plant is in the condition required under the Basic Documents, and all energy, capacity, ancillary services and other products, services or assets generated by, at or from the Lessee Plant are sold into markets administrated by the Independent Electricity System Operator (“**IESO**”) for the Province of Ontario or any successor thereto or any other Government Body or pursuant to stand-alone agreements with the IESO or other Government Body, excluding, for greater certainty, the sale of output from the Lessee Plant to any person other than the IESO pursuant to a behind-the-meter agreement.

“Fair Market Value of the Plant (w/Behind the Meter)” means the price that a willing purchaser would pay to a willing seller (both dealing with each other at arm’s length without compulsion) of the Lessee Plant, determined according to the present value of the cash flows projected to be generated by the Lessee Plant operating at full power and capacity and assuming the Plant is in the condition required under the Basic Documents, , including the sale of output from the Lessee Plant to any person other than the IESO pursuant to a behind-the-meter agreement.

“Lessee Plant” means the 120 MW Iroquois Falls Natural Gas Combined-Cycle Cogeneration Station located at 1 Northwest Industrial Rd, Iroquois Falls, ON P0K 1E0, and all assets that contribute to power generation on the Iroquois Falls Project Site in connection therewith and all assets owned, leased or used by Lessee including all buildings, structures or improvements owned or leased by Lessee erected on the site upon which it is located, all alterations thereto or replacements thereof, all fixtures, attachments, appliances, equipment, machinery and other articles attached thereto or used in connection therewith and all parts which may from time to time be incorporated or installed in or attached thereto, all contracts and agreements for the purchase or sale of commodities or other personal property related thereto, all leases of real or personal property related thereto, and all other real and tangible and intangible personal property leased or owned by Lessee and placed upon or used in connection with the generation of electricity.

SECTION 21. MISCELLANEOUS.

21.1 Governing Law; Severability.

THIS LEASE HAS BEEN, AND ANY EXTENSIONS, AMENDMENTS, MODIFICATIONS, RENEWALS OR SUPPLEMENTS HERETO SHALL BE DELIVERED IN, AND ALL SUCH INSTRUMENTS SHALL BE IN ALL RESPECTS GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF ONTARIO, CANADA AND THE LAWS OF CANADA APPLICABLE THEREIN. Whenever possible, each provision of this Lease shall be interpreted in such manner as to be effective and valid under Applicable Law, but if any provision of this Lease is prohibited by or invalid under the laws of any jurisdiction, such provision, as to such jurisdiction, shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Lease as to such jurisdiction or in any other jurisdiction.

21.2 Execution in Counterparts.

This Lease is being executed in a number of counterparts and by the parties hereto on separate signature pages, each such executed counterpart constituting an original, but all together only one agreement. To the extent that this Lease constitutes chattel paper (as such term is defined in the PPSA) no security interest in this Lease may be created through the transfer or possession of any counterpart hereof other than the counterpart bearing the receipt therefor executed by Lessor on the signature page thereof, which counterpart shall constitute the only “original” hereof for purposes of the PPSA.

21.3 Headings; Section References.

The headings of the sections of this Lease and the table of contents are inserted for purposes of convenience only and shall not be construed to affect the meaning or construction of any of the provisions hereof.

21.4 Successors and Assigns.

This Lease shall be binding upon the parties hereto and their respective successors and assigns and shall inure to the benefit of, and shall be enforceable by, the parties hereto and their respective permitted successors and assigns. Except as provided herein and in the Participation Agreement, no party hereto may assign its interests herein.

21.5 Amendments and Waivers.

Subject to Section 9.12 of the Participation Agreement, no term, covenant, agreement or condition of this Lease may be terminated, amended or compliance therewith waived (either generally or in a particular instance, retroactively or prospectively) except by an instrument or instruments in writing executed by each party hereto.

21.6 Survival.

All warranties, representations, indemnities and covenants made by either party hereto herein or in any certificate or other instrument delivered by such party or on the behalf of any such party under this Lease shall be considered to have been relied upon by the other party hereto and shall survive the consummation of the transactions contemplated hereby on the Closing Date regardless of any investigation made by either such party or on behalf of either such party.

21.7 Lessee's Right of Possession and Use.

Lessor agrees that it shall not take, or cause to be taken, any action contrary to Lessee's right to quiet possession of the Leased Property by Lessee unless a Lease Event of Default exists or the term of the Lease expires (and Lessee has not exercised its option to purchase the Leased Property) or is terminated in accordance with the terms hereof.

21.8 No Merger.

There shall be no merger of this Lease or of the leasehold estates in the Leased Property created hereby with any other estate in the Leased Property or the Iroquois Falls Project Site, or any part thereof, by reason of the fact that the same Person may acquire or own such estates, directly or indirectly.

21.9 Incorporation by Reference.

The indemnity obligations of Lessee set forth in Sections 6.1 and 6.2 (*Indemnities*) of the Participation Agreement are hereby incorporated by reference and such obligations shall continue notwithstanding expiration or termination of this Lease.

21.10 True Lease.

It is the intent of the parties to this Lease that it will be a true lease and not a "conditional sale" or a financing arrangement. Lessor shall at all times be considered to be the owner of the Leased Property for all purposes, including the purposes of all Federal, provincial, state, city and local income and capital taxes or for franchise taxes measured by income, and that this Lease conveys to Lessee no right, title or interest in the Leased Property except as lessee. Nothing contained in this Section 21.10 shall be construed to limit Lessee's use or operation of the Leased Property in accordance with the terms hereof or to constitute a representation, warranty or covenant by Lessee as to tax consequences except as specifically set forth in the Basic Documents.

21.11 Amendment and Restatement.


This Lease is an amendment and restatement of the Existing Lease and not a novation of the Existing Lease. For greater certainty, all Indebtedness and other Obligations under the Existing Lease and other Transaction Documents that remains outstanding on the date hereof shall, with effect from the date hereof, constitute Indebtedness or other Obligations hereunder or under the Transaction Documents, as applicable, governed by the terms hereof and shall continue to be secured by the Security Documents. Such Indebtedness and other Obligations shall be continuing in all respects, and this Lease shall not be deemed to be evidence of, or result in, a novation of such Indebtedness and other Obligations. This Lease reflects amendments to the Existing Lease and has been restated solely for the purposes of reflecting amendments to the Existing Lease which the Lessor and the Lessee have agreed upon. All references to the "Lease" or similar references contained in the documents delivered prior to the effectiveness of this Agreement in connection or under the Existing Lease (including for certainty the Transaction Documents) shall be references to this Lease without further amendment to those documents. The Lessee confirms that each of the foregoing documents, including without limitation any delivered under the Existing Lease and other Transaction Documents, remains in full force and effect. For the purposes of the Security Documents, all references therein to the "Lease" shall be to this Agreement, as the same may be amended, restated, supplemented or modified from time to time.

* * * * *

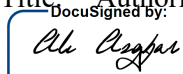
IN WITNESS WHEREOF, Lessor and Lessee have caused this Lease to be duly executed and delivered on the date first above written.

LESSOR:

MACQUARIE EQUIPMENT FINANCE LTD.

By:  DocuSigned by:
2950D8D7E7E84A6...

Name: Lisa Tarnowsky
Title: Authorized Signatory

By:  DocuSigned by:
5AF9988D66684F2...

Name: Ali Asghar
Title: Authorized Signatory

LESSEE:

IROQUOIS FALLS POWER CORP.

By: 

Name: Todd Shortt
Title: President and CEO

EXHIBIT A
SUPPLEMENT TO AMENDED AND RESTATED LEASE AGREEMENT

LEASE SUPPLEMENT NO. ____

dated _____, _____

between

MACQUARIE EQUIPMENT FINANCE LTD.

Lessor

and

IROQUOIS FALLS POWER CORP.

Lessee.

THIS LEASE SUPPLEMENT HAS BEEN EXECUTED IN SEVERAL COUNTERPARTS, BUT ONLY THE COUNTERPART TO BE DEEMED THE ORIGINAL COUNTERPART FOR CHATTEL PAPER PURPOSES CONTAINS THE RECEIPT THEREFOR EXECUTED BY IROQUOIS FALLS POWER CORP. AS LESSEE ON THE SIGNATURE PAGES THEREOF.

LEASE SUPPLEMENT No. 1 dated _____, ____ (this “**Lease Supplement**”) between Macquarie Equipment Finance Ltd. (“**Lessor**”) and **Iroquois Falls Power Corp.** (“**Lessee**”).

R E C I T A L S:

- A. Lessor and Lessee have entered into a Lease Agreement, dated as of April 7, 2022, as amended and restated on February 24, 2023 (the “**Lease**”). Unless otherwise defined herein, capitalized terms used herein shall have the meanings specified in the Lease.
- B. Lessor and Lessee entered into a Lease Supplement dated as of April 7, 2022 (the “**Existing Lease Supplement**”).
- C. The Lease provides for the execution and delivery of a Lease Supplement on the Closing Date substantially in the form hereof for the purpose of confirming the acceptance and lease of the Leased Property under the Lease in accordance with the terms thereof.

NOW, THEREFORE, in consideration of the premises and other good and sufficient consideration, Lessor and Lessee hereby agree as follows:

- 1. Inspection and Approval. Lessee hereby acknowledges and confirms that it has inspected and approved the Leased Property described in Schedule 1 (the “**Leased Property**”) and, as between Lessor and Lessee, the Leased Property complies in all material respects with the specifications for the Leased Property and is in good working order.
- 2. Delivery and Acceptance. Lessor hereby confirms delivery and lease to Lessee, and Lessee hereby confirms acceptance and lease from Lessor, under the Lease as hereby supplemented, of the Leased Property.
- 3. Representations and Warranties. Lessee hereby represents and warrants that:
 - (a) No event that would constitute an Event of Loss under the Lease exists with respect to the Leased Property as of the date hereof;
 - (b) Lessor’s Cost for the Leased Property is \$45,000,000;
 - (c) The Leased Property has been assembled and installed at the Iroquois Falls Project Site set out in Schedule 2 of this Lease Supplement.
 - (d) The Leased Property is free and clear of all Liens.
 - (e) The Leased Property, the Iroquois Falls Project Site and the Iroquois Falls Land and the current operation, use and possession thereof do not violate in any material respect any Applicable Laws, including any such law, regulation or order relating to matters of occupational safety and health or the Environment, other than those being contested pursuant to a Permitted Contest; and
 - (f) The Leased Property, taken as a whole, and each major component thereof, is substantially complete such that it is ready and available to perform in Commercial Operation the function for which it was designed. In addition: (i) all material approvals of any Government Body necessary for Commercial Operation of the Leased Property have been received and are in full force and effect; (ii) during the time that Lessee has owned or been

in possession of the Leased Property has been maintained, serviced and repaired in a manner consistent with prudent industry practice and in compliance in all material respects with (A) Applicable Law and (B) all requirements of manufacturers of the Leased Property for maintaining in full force and effect any warranties of such manufacturers with respect to the Leased Property; (iii) there is no present event or condition that is directed, addressed or relates specifically to the Leased Property and that would materially and adversely affect the capability of the Leased Property to operate as intended by Lessee or materially impair its fair market value, utility, condition, remaining economic useful life or expected residual value; and (iv) all licenses, patents, trademarks, trade names and similar rights, if any, relating to the Leased Property insofar as the Leased Property is concerned, are in full force and effect.

4. Base Rent and Stipulated Loss Values. The Base Rent payable under Section 3.2 of the Lease, and Stipulated Loss Values are set forth and attached as Schedule 3 to this Lease Supplement.
5. Confirmation. Lessee hereby confirms its agreement, in accordance with the Lease as supplemented by this Lease Supplement, to pay Rent to Lessor for the Leased Property as provided for in the Lease.
6. Incorporation into Lease. This Lease Supplement shall be construed in connection with and as part of the Lease, and all terms, conditions and covenants contained in the Lease, as supplemented by this Lease Supplement, shall be and remain in full force and effect.
7. References. Any and all notices, requests, certificates and other instruments executed and delivered concurrently with or after the execution and delivery of this Lease Supplement may refer to the “Amended and Restated Lease Agreement dated as of February 24, 2023” or may identify the Lease in any other respect without making specific reference to this Lease Supplement, but nevertheless all such references shall be deemed to include this Lease Supplement, unless the context shall otherwise require.
8. Counterparts. This Lease Supplement is being executed in a number of counterparts and by the parties hereto on separate signature pages, each such executed counterpart constituting an original, but all together only one agreement. To the extent that this Lease Supplement constitutes chattel paper (as such term is defined in the PPSA) no security interest in this Lease Supplement may be created through the transfer or possession of any counterpart hereof other than the counterpart bearing the receipt therefor executed by Lessor on the signature page thereof, which counterpart shall constitute the only “original” hereof for purposes of the PPSA.
9. Governing Law. **THIS LEASE SUPPLEMENT HAS BEEN DELIVERED IN, AND SHALL BE IN ALL RESPECTS GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF ONTARIO CANADA AND THE LAWS OF CANADA APPLICABLE THEREIN.**
10. This Lease Supplement is an amendment and restatement of the Existing Lease Supplement and not a novation of the Existing Lease Supplement. This Lease Supplement reflects amendments to the Existing Lease Supplement and has been restated solely for the purposes of reflecting amendments to the Existing Lease Supplement which the Lessor and the Lessee have agreed upon. All applicable references to the “Lease Supplement” or similar references contained in the documents delivered prior to the effectiveness of this Lease Supplement in connection or under the Existing Lease Supplement (including for certainty the Transaction Documents) shall be references to this Lease Supplement without further amendment to those documents.

IN WITNESS WHEREOF, Lessor and Lessee have caused this Lease Supplement No. 1 to be duly executed and delivered on the date first above written.

LESSOR:

MACQUARIE EQUIPMENT FINANCE LTD.

By: _____
Name: Lisa Tarnowsky
Title: Authorized Signatory

By: _____
Name: Ali Asghar
Title: Authorized Signatory

LESSEE:

IROQUOIS FALLS POWER CORP.

By: _____
Name:
Title:

Receipt of the original counterpart
of the foregoing Lease Supplement No. ____ is
hereby acknowledged on _____

SCHEDULE 1
TO LEASE SUPPLEMENT NO. 1

Leased Property

Quantity	Item
2	47 MW GE LM6000 PD gas turbines with dry low NOx combustors including filterhouses, ductwork, and stacks. Life-limited parts to have sufficient remaining hours and cycles to reasonably assure each gas turbine will make it to the next major overhaul. All spare parts. Including water-wash systems, SPRINT systems, natural gas receiving systems associated with the turbines.
1	32 MW GE 16-stage sliding pressure steam turbine, exhaust trunk, and all spare parts
2	55.4 MVA GE gas turbine synchronous generators and excitation system and voltage regulation system
2	Babcock & Wilcox heat recovery heat generators (HRSGs) and all appurtenances, walkways, platforms
2	duct burner systems
1	37.4 MVA GE steam turbine synchronous generator, all attached piping, valves and appurtenances
1	steam turbine lubrication oil system
1	steam turbine hydraulic system
2	gas fired Volcano auxiliary boilers
1	150 MVA main step-up transformer (13.8 kV to 230 kV)
1	spare transformer coils in an outdoor purpose-built oil tank
1	230-kV 52A-1 Breaker
Lot	All relays and metering systems
3	13.8-kV to 240-V distribution transformers
2	Emergency Generators
1	Condenser (steam turbine exhaust and dumps)
3	boiler high pressure feed water pumps
2	intake water screens
2	fire water pumps, 1 x jockey pump
4	plant cooling water pump
2	cooling water booster pump
2	station service transformers
Lot	13.8 kV MCCs and switchgear
Lot	600 V MCCs and switchgear
1	Uninterrupted power supply (UPS) system
1	Plant electrical protection panel
Lot	600V motor control centers
1	Plant Bailey DCS system, complete
Lot	All flow and pressure control valves

Lot	All carbon steel pipe and valves
Lot	All stainless-steel pipe and valves
3	low pressure boiler feedwater pump
3	condensate (Hotwell) pumps
1	deaerator tank
1	fuel oil tank
1	demineralized water storage tank
3	air compressors
2	air dryers
Lot	Automatic carbon dioxide fire extinguishing systems
1	complete water treatment system including acid and caustic tanks
Lot	Pre-fab buildings
<i>For each of the above, such asset to include associated pieces (e.g., safety valves, I/O cards, PLCs). In each case all spares on hand at the time of asset transfer to Lessor to be included.</i>	

**SCHEDULE 2
TO LEASE SUPPLEMENT NO. 1**

Legal Description of Iroquois Falls Project Site

PIN 65337-0369(LT)

PCL 9012 SEC NEC SRO; PT LT 11 CON 5 TEEFY PT 1, 6R6645 T/W PT 1 TO 4, 6R6644 & 1 TO 6, 6R6626 AS IN C447208 AMENDED BY C470222 T/W PT 2 TO 7 & 13 TO 16, 6R6645 AS IN C447209 AMENDED BY C470223 T/W PT 2, 6 TO 12, 6R6645 AS IN C447211 AMENDED BY C470225 T/W PT 17 TO 19, 6R6645 AS IN C447212 AMENDED BY C470226 T/W PT 1, 6R6898 AS IN C469024 AMENDED BY C470227 T/W PT 4 & 5, 6R6896 AS IN C469025 AMENDED BY C470228 T/W C469026 AMENDED BY C470229 T/W PT 1 & 2, 6R6853 AS IN C474890 AMENDED BY C521180 ; TOWN OF IROQUOIS FALLS

PIN 65337-0456(LT)

SURFACE RIGHTS ONLY; PT S 1/2 LT 12 CON 3 TEEFY PT 1, 6R5962 EXCEPT PT 1, 6R8283 S/T PT 2, 6R6832 AS IN C469070 AMENDED BY C470222, C470223, C470224, C470225, C470226, C470227, C470228, C470229 & C470230; DISTRICT OF COCHRANE

PIN 65337-0458(LT)

SURFACE RIGHTS ONLY; S 1/2 LT 12 CON 3 TEEFY EXCEPT PT 1, 6R5962, PTS 2 & 3, 6R8283 & PT 1, 6R8318, S/T PT 1, 3 & 4, 6R6832 AS IN C469070 AMENDED BY C470222, C470223, C470224, C470225, C470226, C470227, C470228, C470229 & C470230; DISTRICT OF COCHRANE

PIN 65337-0372(LT)

PCL 9070 SEC NEC; LOCATION RY 357 TEEFY COMPOSED OF THOSE PARTS OF THE BED OF THE ABITIBI RIVER LYING IN FRONT OF LT 11, CON 5, PT 2, 6R6853; DISTRICT OF COCHRANE

PIN 65337-0373(LT)

PCL 9070 SEC NEC; LOCATION RY 357 TEEFY COMPOSED OF THOSE PARTS OF THE BED OF THE ABITIBI RIVER LYING IN FRONT OF LT 11, CON 3, PT 1, 6R6853; DISTRICT OF COCHRANE

SCHEDULE 3
TO LEASE SUPPLEMENT NO. 1

Stipulated Loss Values

The amount determined at the relevant time using the following table:

Number of Base Rents paid (including, without double counting, prepaid Base Rent in accordance with the Lease) at the relevant time	\$ Amount
1	54,000,000
2	53,100,000
3	52,200,000
4	51,300,000
5	50,400,000
6	49,500,000
7	48,600,000
8	47,700,000
9	46,800,000
10	45,900,000
11	45,000,000
12	44,100,000
13	43,200,000
14	42,300,000
15	41,400,000
16	40,500,000
17	39,600,000
18	38,700,000

19	37,800,000
20	36,900,000
21	36,000,000
22	35,100,000
23	34,200,000
24	33,300,000
25	32,400,000
26	31,500,000
27	30,600,000
28	29,700,000
29	28,800,000
30	27,900,000
31	27,000,000
32	26,100,000
33	25,200,000
34	24,300,000
35	23,400,000
36	22,500,000
37	21,600,000
38	20,700,000
39	19,800,000
40	18,900,000
41	18,000,000
42	17,100,000
43	16,200,000

44	15,300,000
45	14,400,000
46	13,500,000
47	12,600,000
48	11,700,000
49	10,800,000
50	9,900,000
51	9,000,000
52	8,100,000
53	7,200,000
54	6,300,000
55	5,400,000
56	4,500,000
57	3,600,000
58	2,700,000
59	1,800,000
60+	900,000

SCHEDULE 1 TO LEASE

BASE RENT

Base Term

Rent Payment Date	Amount in \$
15-Apr-22	\$1,250,000
7-May-22	\$1,250,000
7-Jun-22	\$1,250,000
7-Jul-22	\$1,250,000
7-Aug-22	\$1,250,000
7-Sep-22	\$1,250,000
7-Oct-22	\$1,250,000
7-Nov-22	\$1,250,000
7-Dec-22	\$1,250,000
7-Jan-23	\$1,250,000
31-May-23	\$6,000,000
7-Jun-23	\$1,250,000
7-Jul-23	\$1,250,000
7-Aug-23	\$1,250,000
7-Sep-23	\$1,250,000
7-Oct-23	\$1,250,000
7-Nov-23	\$1,250,000
7-Dec-23	\$1,250,000
7-Jan-24	\$1,250,000
7-Feb-24	\$1,250,000
7-Mar-24	\$1,250,000

7-Apr-24	\$1,250,000
7-May-24	\$1,250,000
7-Jun-24	\$1,250,000
7-Jul-24	\$1,250,000
7-Aug-24	\$1,250,000
7-Sep-24	\$1,250,000
7-Oct-24	\$1,250,000
7-Nov-24	\$1,250,000
7-Dec-24	\$1,250,000
7-Jan-25	\$1,250,000
7-Feb-25	\$1,250,000
7-Mar-25	\$1,250,000

Renewal Term

During the Renewal Term, the Base Rent payable in respect of each successive month in a Renewal Term is equal to \$1,000,000, and the Rent Payment Date thereof is the first day of each such month.

Appendix “H”

October 16, 2023

DELIVERED VIA E-MAIL

KSV Restructuring Inc.
220 Bay Street, 13th Floor
P.O. Box 20
Toronto, ON M5J 2W4

Attention: Mr. Bobby Kofman (bkofman@ksvadvisory.com)

Dear Sirs and Mesdames:

Re: Receivership proceedings of Validus Power Corp., Iroquois Falls Power Corp., Bay Power Corp., Kap Power Corp., Kingston Cogen Limited Partnership, Kingston Cogen GP Inc. and Validus Hosting Inc. (collectively, the “Validus Entities”)

Binding offer to enter into a transaction agreement for, among other things, the purchase and sale of substantially all of the assets of the Validus Entities (the “Transaction Agreement”)

Each of Macquarie Equipment Finance Ltd. (“MEFL”) and Far North Power Corp. (the “Assignee”) are pleased to present you, in your capacity as court-appointed monitor of the Validus Entities, a binding offer for the purchase and sale of substantially all of the assets of the Validus Entities in accordance with the terms and conditions set forth in the Transaction Agreement (this “Offer”).

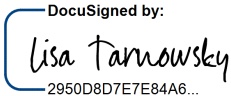
A copy of the Transaction Agreement, which is to be duly executed by MEFL, the Assignee and the Vendors (as defined in the Transaction Agreement) at the Effective Time (as defined in the Transaction Agreement) if this Offer is selected as the Successful Bid (as defined in the SISP (as defined herein)) in the SISP, is attached hereto as Schedule “A” for your consideration, execution and acceptance in accordance with the terms and conditions set forth herein as Schedule “B” (the “Terms and Conditions”). This Offer, and the effectiveness of the Transaction Agreement and MEFL’s and the Assignee’s signatures thereto, are irrevocable other than the Offer is subject in all respects to the Terms and Conditions, including, without limitation, the Offer Conditions (as defined therein). Each of MEFL and the Assignee reserves the right to withdraw and terminate the Offer: (i) if you do not countersign the “Break-Up Fee Agreement” delivered concurrently herewith on the date of the SISP Order (as defined in the Transaction Agreement); or (ii) in accordance with the Terms and Conditions.

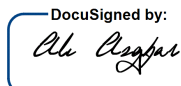
It is intended that this Offer serve as the stalking horse bid in the sale and investment solicitation process to be commenced under substantially the same terms as are appended as Schedule “B” to the Transaction Agreement (the “SISP”), which SISP shall commence upon, and shall be subject to the terms of, the order to be granted by the Ontario Superior Court of Justice (Commercial List) in substantially the form appended as Schedule “C” to the Transaction Agreement, under the provisions of the *Companies’ Creditors Arrangement Act* (Canada).

[Remainder of page left intentionally blank]

Yours very truly,

**MACQUARIE EQUIPMENT
FINANCE LTD.**

By: 
2950D8D7E7E84A6...
Name: Lisa Tarnowsky
Title: Associate Director

By: 
5AF9988D66684F2...
Name: Ali Asghar
Title: Team Lead, Operations

FAR NORTH POWER CORP.

By: _____
Name:
Title:

cc: Jennifer Stam, Norton Rose Fulbright, counsel
to the Monitor

Scott Kraag, Scott Bomhof and Kendall Grant,
Torys LLP, counsel to Macquarie Equipment
Finance Ltd.


Jesse Mighton and Matthew Hunt, Bennett Jones
LLP, counsel to Far North Power Corp.

Yours very truly,

**MACQUARIE EQUIPMENT
FINANCE LTD.**

By: _____
Name:
Title:

FAR NORTH POWER CORP.

By:  _____
Name: Jaime Leverton
Title: Chief Executive Officer

cc: Jennifer Stam, Norton Rose Fulbright, counsel
to the Monitor

Scott Kraag, Scott Bomhof and Kendall Grant,
Torys LLP, counsel to Macquarie Equipment
Finance Ltd.

Jesse Mighton and Matthew Hunt, Bennett Jones
LLP, counsel to Far North Power Corp.

SCHEDULE “A”

Transaction Agreement

(See attached.)

TRANSACTION AGREEMENT

**VALIDUS POWER CORP., IROQUOIS FALLS POWER CORP., BAY
POWER CORP., KAP POWER CORP., KINGSTON COGEN LIMITED
PARTNERSHIP, KINGSTON COGEN GP INC. and VALIDUS
HOSTING INC., each by KSV RESTRUCTURING INC., in its capacity as
court-appointed Monitor in the CCAA Proceedings**

as the Vendors

- and -

FAR NORTH POWER CORP.

as the Assignee

- and -

MACQUARIE EQUIPMENT FINANCE LTD.

as MEFL

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SCHEDULE "A" FORM OF REVERSE VESTING ORDER

SCHEDULE "B" FORM OF SISP

SCHEDULE "C" FORM OF SISP ORDER

TRANSACTION AGREEMENT

THIS AGREEMENT is made as of the Effective Date (as defined below),

AMONG:

VALIDUS POWER CORP. (“Validus Parent”), **IROQUOIS FALLS POWER CORP.** (“IFPC”), **BAY POWER CORP.** (“Bay Power”), **KAP POWER CORP.** (“Kap Power”), **KINGSTON COGEN LIMITED PARTNERSHIP** (“Kingston LP”), **KINGSTON COGEN GP INC.** (“Kingston GP”) and **VALIDUS HOSTING INC.** (“Validus Hosting”, and together with IFPC, Bay Power, Kap Power, Kingston LP, Kingston GP and Validus Parent, collectively, the “**Validus Entities**”), each by **KSV RESTRUCTURING INC.** (“**KSV**”), in its capacity as court-appointed Monitor (as defined below) in the CCAA Proceedings (as defined below)

(the “**Vendors**”)

- and -

FAR NORTH POWER CORP., a company governed by the laws of Ontario

(the “**Assignee**”)

- and -

MACQUARIE EQUIPMENT FINANCE LTD., a company governed by the laws of Canada

(“**MEFL**”)

RECITALS:

- A. The Validus Entities carry on the business, taken as a whole, of: (i) the maintenance and operation of power generation facilities in Ontario located at North Bay, Kapuskasing, Iroquois Falls and Kingston; and (ii) the ownership and maintenance of a data centre in North Bay, Ontario (collectively, the “**Business**”).
- B. On August 10, 2023, MEFL sought and obtained an Order (as defined below), pursuant to subsection 243(1) of the BIA (as defined below) and subsection 101(1) of the *Courts of Justice Act* (Ontario) (as may be further amended, restated or varied, the “**Appointment Order**”) from the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) for the appointment of the Receiver (as defined below) as receiver over, among other things, all of the assets, undertakings and properties of the Validus Entities (the “**Property**”).

- C. On August 29, 2023, on application by the Receiver, the Validus Entities were granted relief in the form of an Initial Order (as amended, the “**Initial Order**”) pursuant to the *Companies’ Creditors Arrangement Act* (Canada), as amended (the “**CCA**”), and KSV was appointed as monitor of the Validus Entities (in such capacity, the “**Monitor**”, and such proceedings, the “**CCA Proceedings**”).
- D. In connection with the CCA Proceedings, the Monitor intends to seek the approval of the Court to run a SISP (as defined below) pursuant to which the transactions contemplated by the Transaction Documents will serve as the “stalking horse bid” for the Purchased Assets (as defined below).
- E. In the event that this Agreement is selected as the Successful Bid (as defined below) in the SISP, subject to the granting of the Reverse Vesting Order, at the Effective Time (as defined below): (i) the Vendors will sell and transfer to MEFL or the Assignee, as applicable, and MEFL and the Assignee, as applicable, will purchase from Vendors, all of the Validus Entities’ right, title and interest in and to the Purchased Assets, subject to and in accordance with the terms and conditions set forth in this Agreement, and (ii) the Parties wish to assign and transfer the Excluded Liabilities (as defined below) and the Excluded Assets (as defined below) to Residualco (as defined below) in accordance with the terms of this Agreement and the Reverse Vesting Order.

NOW THEREFORE, the Parties agree as follows:

ARTICLE 1 INTERPRETATION

1.1 Definitions

In this Agreement:

“**Administrative Expense Closing Amount**” means cash, which shall be transferred to the Monitor in accordance with Section 6.4, and held in trust by the Monitor for the benefit of Persons entitled to be paid the Administrative Expense Costs (or such portion thereof as can be reasonably determined by the Monitor prior to the Effective Date), subject to the terms hereof, the amount of which will be determined by the Monitor not less than 3 Business Days prior to the Effective Date.

“**Administrative Expense Costs**” means the reasonable and documented fees and costs of the Receiver and the Monitor and its professional advisors relating directly or indirectly to the Receivership Proceedings, the CCA Proceedings and this Agreement and including, without limitation: (i) costs required to wind down, dissolve and/or bankrupt any or all of the Receivership Debtors, including, without limitation, any amounts in respect of goods and services provided by third parties or Employees (including all wages and accrued vacation pay for the post-filing period) that are not Post-Filing Claims; and (ii) costs and expenses required to administer the Excluded Assets and the Excluded Liabilities and to wind-up Residualco.

“**Affiliate**” means, with respect to any specified Person, any other Person which, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common

control with, such specified Person. For purposes of this definition, “control” (including, with correlative meanings, the terms “controlling”, “controlled by” and “under common control with”), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise. For greater certainty, an Affiliate of a Person shall include such Person’s investment funds and managed accounts and any funds managed or directed by the same investment advisor.

“**Agreement**” means this transaction agreement and all attachments hereto, including the Schedules, the Disclosure Schedule and Exhibits, in each case as the same may be supplemented, amended, restated or replaced from time to time, and the expressions “hereof”, “herein”, “hereto”, “hereunder”, “hereby” and similar expressions refer to this transaction agreement and all attached Schedules, and unless otherwise indicated, references to Articles, Sections, Schedules, the Disclosure Schedule and Exhibits are to Articles, Sections, Schedules, the Disclosure Schedule and Exhibits in this transaction agreement.

“**Applicable Law**” means any transnational, domestic or foreign, federal, provincial, territorial, state, local or municipal (or any subdivision of any of them) law (including common law and civil law), statute, ordinance, rule, regulation, restriction, limit, by-law (zoning or otherwise), judgment, order, direction or any consent, exemption, Transaction Regulatory Approval (as defined in the Offer Letter), or any other legal requirements of, or agreements with, any Governmental Authority, that applies in whole or in part to the transactions contemplated by this Agreement, the Validus Entities, MEFL (or any of its Affiliates), the Assignee (or any of its Affiliates), the Business or any of the Purchased Assets or the Assumed Liabilities.

“**Appointment Order**” has the meaning given to such term in Recital B.

“**Assignee**” has the meaning given to such term in the preamble to this Agreement.

“**Assumed Liabilities**” has the meaning given to such term in Section 2.3.

“**Bay Power**” has the meaning given to such term in the preamble.

“**Bay Power Interests**” has the meaning given to such term in Section 2.1.1(a)(i).

“**BIA**” means the *Bankruptcy and Insolvency Act* (Canada), as amended.

“**Business**” has the meaning given to such term in Recital A.

“**Business Day**” means any day, other than a Saturday or Sunday, on which the principal commercial banks in Toronto, Ontario are open for commercial banking business during normal banking hours.

“**Causes of Action**” means any action, claim, cross claim, third party claim, damage, judgment, cause of action, controversy, demand, right, action, suit, obligation, liability, debt, account, defense, offset, power, privilege, license, lien, indemnity, interest, guaranty, or franchise of any kind or character whatsoever, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, contingent or non-contingent, liquidated or unliquidated, disputed or

undisputed, secured or unsecured, assertable directly or derivatively, matured or unmatured, suspected or unsuspected, in contract or in tort, at law or in equity, or pursuant to any other theory of law or otherwise, of any of the Validus Entities against any Person, in each case based in whole or in part on any act or omission, transaction, dealing or other occurrence existing or taking place on or prior to the Effective Time (which Causes of Action, for the avoidance of doubt, shall be retained by the Purchased Entities on Closing).

“**CCAA**” has the meaning given to such term in Recital C.

“**CCAA Proceedings**” has the meaning given to such term in Recital C.

“**Claim**” means any and all demands, claims, liabilities, actions, causes of action, counterclaims, expenses, costs, damages, losses, suits, debts, sums of money, refunds, accounts, indebtedness, rights of recovery, rights of set-off, rights of recoupment and liens of whatever nature (whether direct or indirect, absolute or contingent, asserted or unasserted, secured or unsecured, matured or not yet matured due or to become due, accrued or unaccrued or liquidated or unliquidated) and including all costs, fees and expenses relating thereto, against any Person.

“**Claim Amount**” means \$57,218,822 plus any interest thereon arising on or after September 22, 2023, and any other amounts under the Participation Agreement Documents, including in respect of indemnified costs and expenses as provided thereunder.

“**Closing**” means the completion of the transfer of the Purchased Assets, including the Purchased Interests to the Assignee and the issuance of certain indebtedness and shares in the capital of IFPC to MEFL and the Assignee, as applicable, and the transfer by MEFL of the Leased Property to IFPC, subject and pursuant to this Agreement and the Reverse Vesting Order at the Effective Time, and all other transactions contemplated by this Agreement that are to occur contemporaneously therewith.

“**Collective Agreement**” means any collective bargaining agreement or union agreement applicable to Validus, any Validus Entity or the Business, and all related documents, including letters or memoranda of understanding, letters of intent and other written communications with bargaining agents which impose any obligations upon Validus and/or any of the Validus Entities.

“**Confidential Information**” means non-public, confidential, personal or proprietary information which is furnished to MEFL, the Assignee or any of their Affiliates or representatives by any of the Validus Entities’ representatives by the Monitor on or after the date of this Agreement, including information about identifiable individuals, any information relating to the Validus Entities, or any customer or supplier of the Validus Entities, but does not include information that is or becomes generally available to the public other than as a result of disclosure by MEFL, the Assignee or their Affiliates or representatives in breach of this Agreement or Applicable Law or that is received by MEFL or the Assignee from an independent third party that, to the knowledge of MEFL or the Assignee, as applicable, obtained it lawfully and was under no duty of confidentiality (except to the extent that applicable privacy laws do not exclude such information from the definition of personal information) or that is independently developed by MEFL, the Assignee or their representatives without reference to any Confidential Information.

“**Continuing Contract**” means a contract, arrangement, or other agreement (oral or written): (i) for which a notice of disclaimer or similar notice has not been sent by the Receiver or the Monitor; and (ii) that is not an Excluded Contract.

“**Court**” has the meaning given to such term in Recital B.

“**Credit Bid Consideration**” has the meaning given to such term in Section 2.8(a).

“**Disclosure Schedule**” means the Disclosure Schedule dated the date hereof regarding this Agreement.

“**Effective Date**” means the date on which the Vendors, MEFL and the Assignee contemporaneously accept and execute this Agreement.

“**Effective Time**” means the time when the Vendors, MEFL and the Assignee contemporaneously accept and execute this Agreement on the Effective Date.

“**Employee Plans**” means all the employee benefit, fringe benefit, deferred compensation, commission, equity-based compensation, management compensation, supplemental unemployment benefit, bonus, incentive, profit sharing, termination, severance, change of control, transaction bonus, retention bonus, pension, supplemental pension, retirement, stock option, stock purchase, stock appreciation, health, welfare, medical, dental, disability, life insurance and any other or similar plans, programs, arrangements or practices, whether funded or unfunded, insured or self-insured, registered or unregistered, relating to the current or former directors, officers or Employees of the Validus Entities, or the beneficiaries or dependents of any such Persons, and that is maintained, sponsored, contributed to, or required to be contributed to by any of the Validus Entities, or with respect to which any of the Validus Entities has any actual or contingent liability, other than any plan, program or arrangement sponsored, maintained or administered by a Governmental Authority.

“**Employees**” means the employees of the Validus Entities whose services are provided exclusively in respect of the Business and whose responsibilities relate to the operation and maintenance of the plants owned and operated by the Purchased Entities.

“**Employment Agreements**” means, collectively, the written employment agreements, Collective Agreements, Employee Plans and indemnification agreements of, or for the benefit of, the directors, officers and Employees of any of the Validus Entities that, on or prior to the Closing, have not resigned, in each case, in existence on the date hereof; *provided, however*, that Employment Agreements shall not include Excluded Contracts or any employment agreements, Employee Plans or indemnification agreements of, or for the benefit of, the directors, officers and employees of any of the Validus Entities that have been terminated or disclaimed without the consent of MEFL.

“**Encumbrance**” means any security interest (whether contractual, statutory or otherwise), pledge, assignment, lien, prior claim, charge, hypothec, reservation of ownership, pledge, encumbrance, mortgage, trust (including any statutory, deemed or constructive trust, actual or deemed), option, preferential arrangement of any kind or nature whatsoever or adverse claim or encumbrance of any nature or kind.

“**Energy Regulator**” means any federal or provincial Governmental Authority having jurisdiction to regulate the generation, transmission, distribution, retailing or wholesaling of electricity and/or the purchase, sale and use of electricity or natural gas in Ontario, foreign regulatory authority having jurisdiction over matters relating to electricity and/or natural gas, authorized electricity or natural gas transmitter or distributor, or regional transmission organization or independent system operator, including but not limited to the Independent Electricity System Operator and the Ontario Energy Board.

“**Equity Interests**” means any capital share, capital stock, partnership, membership, joint venture or other ownership or equity interest, participation or securities (whether voting or nonvoting, whether preferred, common or otherwise, and including share appreciation, contingent interest or similar rights) of a Person.

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

“**Excluded Assets**” has the meaning given to such term in Section 2.2.

“**Excluded Contracts**” means contracts of the Validus Entities as specified in Exhibit 2.2(e) of the Disclosure Schedule.

“**Excluded Liabilities**” has the meaning given to such term in Section 2.4.

“**Filing Date**” means August 10, 2023.

“**Final Order**”, with respect to any order of any court of competent jurisdiction, means that: (i) such order shall not have been stayed, appealed, varied (except with the consent of MEFL, the Assignee and the Vendors) or vacated, and all time periods within which such order could at law be appealed shall have expired; or (ii) such order is no longer the subject of any continuing proceedings seeking to stay, appeal, vary (except with the consent of MEFL, the Assignee and the Vendors) or vacate such order, all such proceedings having been discontinued, denied, dismissed and otherwise unsuccessfully concluded, and the time for appealing or further appealing the disposition of such proceedings shall have expired.

“**Governmental Authority**” means any government, regulatory authority (including any Energy Regulator), governmental department, agency, commission, bureau, official, minister, Crown corporation, court, board, tribunal or dispute settlement panel or other law, rule or regulation-making organization or entity: (a) having or purporting to have jurisdiction on behalf of any nation, province, territory or state or any other geographic or political subdivision of any of them; or (b) exercising, or entitled or purporting to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power.

“**GST/HST**” means all goods and services tax and harmonized sales tax imposed under Part IX of the ETA and any similar tax imposed pursuant to any other statute in any jurisdiction of Canada.

“**HST Amount**” means \$6,435,000.

“**Hut 8**” means Hut 8 Mining Corp.

“**Hut 8 Litigation**” means, collectively: (i) the civil claim commenced by Hut 8, as plaintiff, against Validus Parent and Bay Power, as defendants, in the Ontario Superior Court of Justice; and (ii) the counterclaim of Validus Parent and Bay Power against Hut 8, the foregoing bearing Court File No. CV-23-00693515-0000.

“**IFPC**” has the meaning given to such term in the preamble.

“**IFPC Interests**” has the meaning given to such term in Section 2.1.1(d)(iv).

“**IFPC Legacy Shares**” has the meaning given to such term in Section 2.1.1(e).

“**IFPC Note 1**” has the meaning given to such term in Section 2.1.1(d)(i).

“**IFPC Note 2**” has the meaning given to such term in Section 2.1.1(d)(ii).

“**IFPC Note 3**” has the meaning given to such term in Section 2.1.1(d)(iii).

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

“**Implementation Steps**” has the meaning given to such term in the Terms and Conditions.

“**Initial Order**” has the meaning given to such term in Recital C.

“**Intercompany Claim**” means any claim that may be asserted against a Validus Entity by or on behalf of any of the other Validus Entities or any of their affiliated companies, partnerships or other corporate entities.

“**Investment Canada Act**” means the *Investment Canada Act* (Canada), R.S.C., 1985, c. 28 (1st Supp), as amended, including the regulations promulgated thereunder.

“**Kap Power**” has the meaning given to such term in the preamble.

“**Kap Power Interests**” has the meaning given to such term in Section 2.1.1(a)(i).

“**Kingston GP**” has the meaning given to such term in the preamble.

“**Kingston GP Interests**” has the meaning given to such term in Section 2.1.1(a)(iii).

“**Kingston LP**” has the meaning given to such term in the preamble.

“**Kingston LP Interests**” has the meaning given to such term in Section 2.1.1(a)(iii).

“**KSV**” has the meaning given to such term in the preamble.

“**Lease Agreement**” means the amended and restated lease agreement dated February 24, 2023 between MEFL, as lessor, and IFPC, as lessee, pursuant to which MEFL has leased the Leased Property to IFPC on the terms and conditions set forth in the Lease Agreement.

“**Leased Property**” has the meaning given to such term in the Lease Agreement.

“**Monitor**” has the meaning given to such term in Recital C.

“**Monitor’s Certificate**” means the certificate to be filed with the Court by the Monitor in accordance with the Reverse Vesting Order certifying that the Effective Time has occurred.

“**Offer Letter**” means the binding offer letter, including the terms and conditions contained in Schedule “B” thereto, delivered by MEFL and the Assignee to the Monitor on [■], 2023, providing, among other things, MEFL’s and the Assignee’s binding offer to enter into this Agreement and the transactions contemplated hereby with the Vendors and the terms and conditions of same.

“**Order**” means any order of the Court made in the Receivership Proceedings, the CCAA Proceedings or any order, directive, judgment, decree, injunction, decision, ruling, award or writ of any Governmental Authority.

“**Participation Agreement**” means the Amended and Restated Participation Agreement dated February 24, 2023, between IFPC, as lessee, MEFL, as lessor, and Validus Parent, Bay Power, Kap Power, Kingston LP and Kingston GP, as guarantors.

“**Participation Agreement Documents**” means, collectively: (i) the Participation Agreement; (ii) the Lease Agreement; and (iii) all related documentation and agreements, including all guarantee and security documentation and supplements related to the foregoing.

“**Parties**” means, collectively, the Vendors, the Assignee and MEFL, and “**Party**” means any of the Vendors, the Assignee and MEFL, as the context requires.

“**Permitted Encumbrances**” means the Encumbrances listed in Exhibit 1.1 of the Disclosure Schedule.

“**Person**” means an individual, partnership, firm, joint venture, venture capital fund, limited liability company, unlimited liability company, association, trust, entity, corporation, unincorporated association, or organization, syndicate, committee, court appointed representative, the government of a country or any political subdivision thereof, or any agency, board, tribunal, commission, bureau, instrumentality, or department of such government or political subdivision, or any other entity, howsoever designated or constituted, including any Taxing Authority, and the trustees, executors, administrators or other legal representatives of an individual, and, for greater certainty, includes any Governmental Authority.

“**Post-Closing Straddle Tax Period**” has the meaning given to such term in Section 6.3.3.

“**Post-Filing Claim**” or “**Post-Filing Claims**” means any or all Claims, indebtedness, liability or obligation of the Purchased Entities of any kind that arises during and in respect of the period commencing on the Filing Date and ending at the time immediately preceding the Effective Time in respect of services rendered or supplies provided to the Purchased Entities during such period or under or in accordance with any Continuing Contract.

“**Pre-Closing Straddle Tax Period**” has the meaning given to such term in Section 6.3.3.

“**Priority Payments Closing Amount**” means cash in the amount of \$1,500,000.

“**Priority Payments Indemnity**” has the meaning given to such term in Section 2.8(a)(i).

“**Priority Payments Indemnity Charge**” has the meaning given to such term in Section 2.8(b).

“**Priority Payments of the Purchased Entities**” means all liabilities of the Purchased Entities in respect of any payments or amounts subject to a statutory deemed trust in favour of His Majesty in right of Canada or a province, to the extent that such statutory deemed trust remains valid and enforceable by the Canada Revenue Agency in the CCAA Proceedings or the Receivership Proceedings pursuant to the following legislative provisions:

- (i) subsection 227(4) or (4.1) of the *Income Tax Act*;
- (ii) subsection 23(3) or (4) of the *Canada Pension Plan* (Canada); and
- (iii) subsection 86(2) or (2.1) of the *Employment Insurance Act* (Canada).

“**Priority Payments of Validus Parent**” means all liabilities of Validus Parent in respect of any payments or amounts subject to a statutory deemed trust in favour of His Majesty in right of Canada or a province, to the extent that such statutory deemed trust remains valid and enforceable by the Canada Revenue Agency in the CCAA Proceedings or the Receivership Proceedings pursuant to the following legislative provisions:

- (i) subsection 227(4) or (4.1) of the *Income Tax Act*;
- (ii) subsection 23(3) or (4) of the *Canada Pension Plan* (Canada); and
- (iii) subsection 86(2) or (2.1) of the *Employment Insurance Act* (Canada).

“**Purchased Assets**” means, collectively: (i) the Purchased Interests; (ii) the Purchased Validus Parent Assets; (iii) the IFPC Note 1; (iv) the IFPC Note 2; (v) the IFPC Note 3; and (vi) the IFPC Interests.

“**Purchased Entities**” means IFPC, Bay Power, Kap Power, Kingston LP, Kingston GP and Validus Hosting, and “**Purchased Entity**” means any one of them.

“**Purchased Interests**” means the property described in Sections 2.1.1(a)(i) to 2.1.1(a)(iv), inclusive.

“**Purchased Validus Parent Assets**” has the meaning given to such term in Section 2.1.1(b).

“**Receiver**” means KSV in its capacity as court-appointed receiver over, among other things, all of the assets, undertakings and properties of the Validus Entities.

“Receivership Debtors” means: (i) prior to the Effective Time, the Validus Entities and Residualco (at such time as, but only to the extent that, Residualco becomes a Receivership Debtor prior to the Effective Time); and (ii) following the Effective Time, Validus Parent and Residualco.

“Receivership Proceedings” means the receivership proceedings in respect of the Validus Entities commenced under the BIA and the *Courts of Justice Act* (Ontario) by MEFL pursuant to the Appointment Order, bearing Court File No. CV-23-00703754-00CL.

“Released Claims” means all Claims, demands, complaints, grievances, actions, applications, suits, causes of action, Orders, charges, indictments, prosecutions, informations or other similar processes, assessments or reassessments, judgments, debts, liabilities, expenses, costs, damages or losses, contingent or otherwise, whether liquidated or unliquidated, matured or unmatured, disputed or undisputed, contractual, legal or equitable, including loss of value, professional fees, including “provable claims” as defined in the BIA and including fees and disbursements of legal counsel on a full indemnity basis, and all costs incurred in investigating or pursuing any of the foregoing or any proceeding relating to any of the foregoing.

“Residualco” means one or more entities formed by the Receiver for the sole purpose of performing the obligations set out herein.

“Reverse Vesting Order” means an order of the Court substantially in the form of Schedule “A” hereto (or with such updates and amendments as may be acceptable to MEFL, the Assignee and the Vendors, each acting reasonably).

“SISP” means the sale and investment solicitation process substantially in the form as appended as Schedule “B” hereto (or otherwise in form and substance satisfactory to MEFL, the Assignee and the Monitor, each acting reasonably).

“SISP Order” means an order of the Court that, among other things, approves the SISP and related matters, substantially in the form as appended as Schedule “C” hereto (or as otherwise acceptable to MEFL, the Assignee and the Monitor, each acting reasonably).

“Straddle Period” has the meaning given to such term in Section 6.3.3.

“Successful Bid” has the meaning given to such term in the SISP.

“Tax” and **“Taxes”** means taxes, duties, fees, premiums, assessments, imposts, levies and other charges of any kind whatsoever (including withholding on amounts paid to or by any Person) imposed by any Taxing Authority, including all interest, penalties, fines, additions to tax or other additional amounts imposed by any Taxing Authority in respect thereof, and including those levied on, or measured by, or referred to as, income, gross receipts, profits, capital, transfer, land transfer, sales, goods and services, harmonized sales, use, value-added, excise, stamp, withholding, business, franchising, escheat, property, development, occupancy, employer health, payroll, employment, health, disability, severance, unemployment, social services, education and social security taxes, all surtaxes, all customs duties and import and export taxes, countervail and anti-dumping, all license, franchise and registration fees and all employment insurance, health insurance and Canada, Ontario and other government pension plan premiums or contributions.

“**Tax Act**” means the *Income Tax Act* (Canada) and shall also include a reference to any applicable and corresponding provisions under the income tax laws of a province or territory of Canada, as applicable.

“**Tax Return**” means any return, declaration, report, statement, information statement, form, election, amendment, claim for refund, schedule or attachment thereto or other document filed or required to be filed with a Taxing Authority with respect to Taxes.

“**Taxing Authorities**” means His Majesty the King in right of Canada, His Majesty the King in right of any province or territory of Canada, the Canada Revenue Agency, any similar revenue or taxing authority of Canada and each and every province or territory of Canada and any political subdivision thereof, and any Canadian or other Governmental Authority exercising taxing authority or power, and “**Taxing Authority**” means any one of the Taxing Authorities.

“**Terms and Conditions**” means the terms and conditions set forth in Schedule “B” to the Offer Letter.

“**Transaction Documents**” means all contracts, agreements, certificates and instruments required by this Agreement to be delivered at or in connection herewith.

“**Transfer Taxes**” means all transfer, documentary, sales, use, stamp, registration, customs duties, import and export taxes, surtaxes, value added, GST/HST, provincial sales/retail Taxes, conveyance fees, security interest filing or recording fee and any other similar Taxes (including any real property transfer Tax and any other similar Tax), any governmental assessment, and any related penalties and interest.

“**U.S.**” means the United States of America.

“**Validus Entities**” has the meaning given to such term in the preamble, and “**Validus Entity**” means any one of them.

“**Validus Hosting**” has the meaning attributed thereto in the preamble.

“**Validus Hosting Interests**” has the meaning attributed thereto in Section 2.1.1(b)(ii).

“**Validus Parent**” has the meaning given to such term in the preamble.

“**Vendors**” has the meaning given to such term in the preamble.

1.2 Statutes and Agreements

- (a) Except as otherwise provided in this Agreement, any reference in this Agreement to a statute refers to such statute and all rules and regulations made under it, as it or they may have been or may from time to time be amended, re-enacted or replaced.
- (b) Each reference to, and the definition of, any agreement, instrument or other document (including any Transaction Document) herein or in any other Transaction Document shall be deemed to refer to such agreement, instrument or other

document as it may be amended, amended and restated, supplemented, revised or otherwise modified from time to time in accordance with its terms and, to the extent applicable, the terms of this Agreement and the other Transaction Documents shall be deemed to incorporate any appendices, annexes, schedules or exhibits to such agreement, instrument or other document.

1.3 Headings, Table of Contents, etc.

The provision of a table of contents, the division of this Agreement into Articles, Sections and other subdivisions and the insertion of headings are for convenient reference only and do not affect the interpretation of this Agreement. The recitals to this Agreement are an integral part 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.

1.5 Currency

Except where otherwise expressly provided, all amounts in this Agreement are stated and shall be paid in Canadian dollars. References to "\$" are to Canadian dollars. References to "US\$", if any, are to U.S. dollars.

1.6 Certain Phrases

In this Agreement: (a) the words "including", "includes" and "include" and any derivatives of such words mean "including (or includes or include) without limitation"; and (b) the words "the aggregate of", "the total of", "the sum of" or a phrase of similar meaning means "the aggregate (or total or sum), without duplication, of". The expression "Article", "Section" and other subdivision followed by a number, mean and refer to the specified Article, Section or other subdivision of this Agreement.

1.7 Invalidity of Provisions

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction shall not affect the validity or enforceability of any other provision hereof so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any Party. Upon: (a) such a determination of invalidity or unenforceability; or (b) any change in Applicable Law or other action by any Governmental Authority which materially detracts from the legal or economic rights or benefits, or materially increases the obligations, of any Party or any of its Affiliates under this Agreement, the Parties shall negotiate to modify this Agreement in good faith so as to effect the original intent of the Parties as closely as possible in an acceptable manner so that the transactions contemplated by this Agreement be consummated as originally contemplated to the fullest extent possible.

1.8 Entire Agreement

This Agreement, the Disclosure Schedule and the agreements and other documents required to be delivered pursuant to this Agreement constitute the entire agreement among the Parties, and set out all the covenants, promises, warranties, representations, conditions and agreements among the Parties in connection with the subject matter of this Agreement, and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, pre-contractual or otherwise. There are no covenants, promises, warranties, representations, conditions, understandings or other agreements, whether oral or written, pre-contractual or otherwise, express, implied or collateral among the Parties in connection with the subject matter of this Agreement, except as specifically set forth in this Agreement and any document required to be delivered pursuant to this Agreement.

1.9 Waiver, Amendment

Except as expressly provided in this Agreement, no amendment or waiver of this Agreement shall be binding unless executed in writing by all Parties hereto. 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 unless otherwise expressly provided.

1.10 Governing Law; Jurisdiction and Venue

This Agreement and the rights and obligations of the Parties under this Agreement, and any Claim or controversy directly or indirectly based upon or arising out of this Agreement or the transactions contemplated by this Agreement (whether based on contract, tort or any other theory), including all matters of construction, validity and performance, shall in all respects be governed by, and interpreted, construed and determined in accordance with, the laws of the Province of Ontario and the federal laws of Canada applicable therein, without regard to the conflicts of law principles thereof. The Parties consent to the jurisdiction and venue of the Court for the resolution of any such disputes arising under this Agreement. Each Party agrees that service of process on such Party as provided in Section 9.6 shall be deemed effective service of process on such Party.

1.11 Accounting Terms

All accounting terms used in this Agreement are to be interpreted in accordance with IFRS unless otherwise specified.

1.12 Non-Business Days

Whenever payments are to be made or an action is to be taken on a day which is not a Business Day, such payment will be made, or such action will be taken on or not later than the next succeeding Business Day.

1.13 Computation of Time Periods

If any action may be taken within, or any right or obligation is to expire at the end of, a period of days under this Agreement, then the first day of the period is not counted, but the day of its expiry is counted.

1.14 Time of Essence

Time shall be of the essence of this Agreement in all respects.

1.15 Schedules

- (a) The following are the Schedules attached to and incorporated in this Agreement by reference and deemed to be a part hereof:

Schedule “A” - Form of Reverse Vesting Order

Schedule “B” - Form of SISP

Schedule “C” - Form of SISP Order

- (b) Unless the context otherwise requires, words and expressions defined in this Agreement shall have the same meanings in the Schedules and the interpretation provisions set out in this Agreement apply to the Schedules. Unless the context otherwise requires, or a contrary intention appears, references in the Schedules to a designated Article, Section or other subdivision refer to the Article, Section or other subdivision, respectively, of this Agreement.

1.16 Disclosure Schedule and Exhibits

The Disclosure Schedule and Exhibits referred to herein shall be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein.

ARTICLE 2 ASSETS PURCHASED IN SATISFACTION OF CLAIMS

2.1 Assignment and Issuance of Purchased Assets to the Assignee and MEFL

2.1.1 In consideration for the payment of the Credit Bid Consideration in accordance with Section 2.8, upon and subject to the terms and conditions of this Agreement (including Sections 2.2, 2.4, 2.5 and 2.6):

- (a) Validus Parent, by the Monitor, hereby sells, transfers, assigns and conveys to the Assignee, as MEFL’s designated and nominated assignee, effective at the Effective Time, inclusive of the additional GST/HST, if any, applicable to the portion of the Claim Amount being settled in satisfaction of these transfers, all of Validus Parent’s right, title and interest in and to:

- (i) all of the issued and outstanding shares in the capital of Bay Power held by Validus Parent (or its successor if converted into other Equity Interests or another entity prior to the Effective Time in accordance with the Implementation Steps) (the “**Bay Power Interests**”), free and clear of all Encumbrances (other than Permitted Encumbrances);
 - (ii) all of the issued and outstanding shares in the capital of Kap Power held by Validus Parent (or its successor if converted into other Equity Interests or another entity prior to the Effective Time in accordance with the Implementation Steps) (the “**Kap Power Interests**”), free and clear of all Encumbrances (other than Permitted Encumbrances);
 - (iii) all of the issued and outstanding limited partnership units of Kingston LP held by Validus Parent (or its successor if converted into other Equity Interests or another entity prior to the Effective Time in accordance with the Implementation Steps) (the “**Kingston LP Interests**”), free and clear of all Encumbrances (other than Permitted Encumbrances); and
 - (iv) all of the issued and outstanding shares in the capital of Kingston GP held by Validus Parent (or its successor if converted into other Equity Interests or another entity prior to the Effective Time in accordance with the Implementation Steps) (the “**Kingston GP Interests**”), free and clear of all Encumbrances (other than Permitted Encumbrances);
- (b) Validus Parent, by the Monitor, hereby sells, transfers, assigns and conveys to the Assignee, effective at the Effective Time, all of Validus Parent’s right, title and interest in and to the following assets, together with the assets specified in Exhibit 2.1.1(b) of the Disclosure Schedule, of Validus Parent (collectively, the “**Purchased Validus Parent Assets**”), free and clear of all Encumbrances (other than Permitted Encumbrances):
- (i) all right, title and interest of Validus Parent in the Hut 8 Litigation;
 - (ii) all of the issued and outstanding shares in the capital of Validus Hosting held by Validus Parent (or its successor if converted into another entity prior to the Effective Time in accordance with the Implementation Steps) (the “**Validus Hosting Interests**”), free and clear of all Encumbrances (other than Permitted Encumbrances);
 - (iii) all right, title and interest of Validus Parent in the Firm Transportation Service Contract made as of July 25, 2022 between TransCanada Pipelines Limited and Validus Parent; and
 - (iv) all right, title and interest of Validus Parent in the Letter Agreement dated September 30, 2023 between Validus Parent and Macquarie Energy Canada Ltd.;

- (c) effective as at the Effective Time,
- (i) subject to subparagraph (iii) below, for any Employee of Validus Parent, the Assignee or a Purchased Entity, at the Assignee's election, shall offer to employ such of the Employees as the Assignee determines in its sole discretion, on terms and conditions of employment that are substantially similar to, and in the aggregate no less favourable than, those in effect for each such Employee as disclosed in Exhibit 2.1.1(c)(i) of the Disclosure Schedule. If any Employee of Validus Parent receives an offer of employment hereunder but does not accept such offer for any reason, then all liabilities associated with such Employee shall remain the responsibility of Validus Parent and shall not be assumed by any Purchased Entity or any other Person hereunder;
 - (ii) subject to subparagraph (iii) below, for any Employee of the Purchased Entities, such of the Employees as the Assignee determines in its sole discretion shall continue to be an Employee of such Purchased Entity; and
 - (iii) for clarity, and without prejudice to the Assignee's position that the Assignee (or the Validus Entities) is not a successor employer to, and is not bound by any Collective Agreement, nothing in this Agreement prevents the Assignee from negotiating agreement(s) with the bargaining agent(s) who are party to the applicable Collective Agreement(s) regarding the outsourcing of the operation of the Purchased Assets, including the employment of the Employees supporting the Purchased Assets, to NAES Corporation ("NAES") or an alternative third party power plant operator (an "**Alternative Operator**"), which would employ the Employees effective upon Closing. In the event that such arrangements are reached with respect to the bargaining agents on or prior to the Effective Date, such offers in (i) and (ii) above may be extended by NAES or such Alternative Operator as may be determined by the Assignee, in its sole discretion. Regardless of whether any arrangement is made with the bargaining agent(s) who are party to the applicable Collective Agreement(s), the offers of employment to non-union Employees outside the scope of the bargaining rights asserted by the bargaining agents may be made by NAES or an Alternative Operator, at the Assignee's election;
- (d) at the Effective Time (and simultaneous with the transfers in Section 2.1.1(a) and 2.1(b)), IFPC, by the Monitor, hereby pays to MEFL as consideration for the transfer of the Leased Property under Section 2.8(a)(vii) and in satisfaction of the remaining amounts due under the Lease Agreement (after taking into account the portion of the Claim Amount that is settled in satisfaction of the transfers in Section 2.1.1(a)), plus applicable GST/HST, as follows:
- (i) in respect of \$29,000,000, IFPC, by the Monitor, hereby issues to MEFL, a promissory note with a principal amount of \$29,000,000 and the other terms

- set forth in Exhibit 2.1.1(d)(i) of the Disclosure Schedule (the “**IFPC Note 1**”);
- (ii) in respect of \$10,000,000, IFPC, by the Monitor, hereby issues to the Assignee, as MEFL’s designated and nominated assignee, a promissory note with a principal amount of \$10,000,000 and the other terms set forth in Exhibit 2.1.1(d)(ii) of the Disclosure Schedule (the “**IFPC Note 2**”);
 - (iii) in respect of the HST Amount, IFPC, by the Monitor, hereby issues to MEFL a promissory note with a principal amount equal to the HST Amount, and with the other terms set forth in Exhibit 2.1.1(d)(iii) of the Disclosure Schedule (the “**IFPC Note 3**”); and
 - (iv) in respect of all amounts due and owing by IFPC to MEFL under the Lease Agreement after receipt of the amounts described in Section 2.1.1(a) and Sections 2.1.1(d)(i), (ii) and (iii) (the “**Claim Amount Balance**”), IFPC, by the Monitor, hereby issues to the Assignee, as MEFL’s designated and nominated assignee, newly issued common equity of IFPC (or its successor if converted into another entity prior to the Effective Time in accordance with the Implementation Steps) (the “**IFPC Interests**”), free and clear of all Encumbrances (other than Permitted Encumbrances), which IFPC Interests represent 99.999% of the issued and outstanding common equity in IFPC immediately prior to the redemption of the IFPC Legacy Shares in accordance with Section 2.1.1(e); and
- (e) pursuant to the Reverse Vesting Order, effective as of immediately following the issuance of the IFPC Interests in accordance with Section 2.1.1(d)(iv), all Equity Interests of IFPC outstanding prior to the issuance of the IFPC Interests (excluding, for the avoidance of doubt, the IFPC Interests) (the “**IFPC Legacy Shares**”) shall be cancelled without any payment thereon, so that immediately following such cancellation the IFPC Interests shall represent 100% of the outstanding Equity Interests in IFPC.

2.1.2 MEFL hereby designates the Assignee as MEFL’s designated and nominated assignee for the purposes of Sections 2.1.1(a) and 2.1.1(d)(ii) and (iv), and directs the Vendors (by the Monitor) to transfer, assign, convey and/or issue all right, title and interest in such Purchased Assets directly to the Assignee. For the avoidance of doubt, upon the consummation of the transfers contemplated by Section 2.1.1(a) and Section 2.1.1(b), the issuances contemplated by Section 2.1.1(d) and the cancellation of the IFPC Legacy Shares contemplated by Section 2.1.1(e), each Purchased Entity, and every other direct and indirect subsidiary of any Purchased Entity, except those listed in Exhibit 2.2(g) of the Disclosure Schedule, shall be wholly owned, directly or indirectly, by the Assignee.

2.2 Excluded Assets

Notwithstanding any provision of this Agreement to the contrary, as of the Effective Time the assets of the Purchased Entities do not include any of the following assets, together with any

other assets as set forth in Exhibit 2.2 of the Disclosure Schedule (collectively, the “**Excluded Assets**”):

- (a) the Tax records and Tax Returns, and books and records pertaining thereto and other documents, in each case, that primarily or solely relate to any of the Excluded Liabilities; *provided* that the applicable Purchased Entity may take copies of all Tax records and books and records pertaining to such records (as redacted, if applicable) to the extent necessary or useful for the carrying on of the Business after Closing, including the filing of any Tax Return; *provided*, however, that Residualco shall retain the original copies of any of the records required to be provided to the applicable Purchased Entity hereunder (and provide the applicable Purchased Entity with a copy thereof) to the extent Residualco is required to do so under Applicable Law;
- (b) any cash, deposits or other amounts owned or in the name of Validus Parent;
- (c) any other assets of Validus Parent that are not Purchased Validus Parent Assets or contemplated in Section 2.2(b);
- (d) the Administrative Expense Closing Amount;
- (e) the Excluded Contracts;
- (f) all communications, information or records, written or oral, that are in any way related to: (i) the transactions contemplated by this Agreement; (ii) the sale of the Purchased Assets; (iii) any Excluded Asset; or (iv) any Excluded Liability;
- (g) the equity interests of each entity set forth in Exhibit 2.2(g) of the Disclosure Schedule; and
- (h) any rights that accrue to Residualco under the transaction documents.

but for greater certainty, “Excluded Assets” shall not include any right, title and interest of the Purchased Entities in and to any input tax credits or rebates that may become due and payable thereto in respect of GST/HST on or after the Effective Time as a result of taxes paid on or after the Effective Time, notwithstanding that they relate to supplies arising prior to the Effective Time for which payment was made on or after the Effective Time and not prior thereto.

2.3 Liabilities of Purchased Entities

Pursuant to the Reverse Vesting Order, and in accordance with the Implementation Steps and this Agreement (including Section 2.4), as of the Effective Time the only obligations and liabilities of the respective Purchased Entities consist of the items specifically set forth below (collectively, the “**Assumed Liabilities**”) with respect to such Purchased Entity:

- (a) *Post-Filing Claims* – all Post-Filing Claims;
- (b) *IFPC Note 1* – all liabilities of IFPC under the IFPC Note 1;

- (c) *IFPC Note 2* – all liabilities of IFPC under the IFPC Note 2;
- (d) *IFPC Note 3* – all liabilities of IFPC under the IFPC Note 3;
- (e) *Ordinary Course Liabilities of Purchased Entities* – all ordinary course liabilities of the Purchased Entities to be performed after the Effective Time and that arise solely and exclusively from events occurring from and after the Effective Time including, without limitation, liabilities relating to Employees who are hired or whose employment continues pursuant to Section 2.1.1(c) and all ordinary course liabilities that arise before or after the Effective Date pursuant to Continuing Contracts and Continuing Employee Claims;
- (f) *Taxes* – Tax liabilities of the Purchased Entities for any tax period or the portion thereof (allocated in accordance with Section 6.3.3 in respect of Straddle Periods) beginning on or after the Effective Time (other than Taxes assessed after the Effective Time that are in respect of any transactions or event that occurred prior to the Effective Time; but for greater certainty, this proviso shall not include or limit any right, title and interest of the Purchased Entities in and to any amounts that may become payable by any Governmental Authority on or after the Effective Time as a result of taxes paid by the Purchased Entities on or after the Effective Time, notwithstanding that they relate to supplies arising prior to the Effective Time for which payment was made on or after the Effective Time and not prior thereto) and for greater certainty, including any Transfer Taxes exigible in respect of the transfer and issuance of the Purchased Assets in consideration for the Credit Bid Consideration or any refunds of taxes relating thereto, but excluding any Tax liability of Validus Parent (or any person related to it) for which any of the Purchased Entities may have joint or several liability under the Tax Act whether occurring before or after the Effective Time and whether assessed or not;
- (g) *Municipal Taxes* – all municipal taxes owing with respect to any real property owned by any of the Purchased Entities which have priority over the security interest of MEFL pursuant to section 349(3) of the *Municipal Act* (Ontario);
- (h) *Intercompany Claims* – any Intercompany Claim against such Purchased Entity that may be asserted by or on behalf of another Purchased Entity (but excluding any such Intercompany Claim set forth in Exhibit 2.3(h) of the Disclosure Schedule);
- (i) *Priority Payments* – the Priority Payments of the Purchased Entities; and
- (j) *Further Assumed Liabilities* – all liabilities set forth in Exhibit 2.3(j) of the Disclosure Schedule.

Notwithstanding the foregoing, nothing in this Agreement shall give or shall be interpreted as giving any rights to any Person in respect of Claims against any Purchased Entity.

2.4 Excluded Liabilities

Except to the extent expressly assumed pursuant to or specifically contemplated by Section 2.3, all Claims and all debts, obligations and liabilities of the Purchased Entities, or any predecessors of the Purchased Entities, of any kind or nature, whether accrued, contingent, known or unknown, express or implied, primary or secondary, direct or indirect, liquidated, unliquidated, absolute, accrued, contingent or otherwise, and whether due or to become due (collectively, the “**Excluded Liabilities**”) are, in accordance with Section 2.5, hereby assigned to and become the sole obligation of Residualco pursuant to the terms of the Reverse Vesting Order, so that as of and from the Effective Time, the Purchased Entities shall not have any obligation, duty, or liability of any kind whatsoever with respect to any such Excluded Liabilities. For the avoidance of doubt, each of the liabilities set forth in Exhibit 2.4 of the Disclosure Schedule is an Excluded Liability. All Intercompany Claims that do not constitute Assumed Liabilities in accordance with Section 2.3(g) (including, for the avoidance of doubt, any Intercompany Claim that may be asserted by or on behalf of Validus Parent against any Purchased Entity) shall be Excluded Liabilities.

2.5 Transfer of Excluded Liabilities to Residualco

Pursuant to the Reverse Vesting Order, and in accordance with the Implementation Steps, the Purchased Entities, by the Monitor, hereby assign, transfer and convey the Excluded Liabilities to Residualco, and Residualco henceforth assumes the applicable Excluded Liabilities. All of the Excluded Liabilities are hereby discharged from the Purchased Entities pursuant to the Reverse Vesting Order.

2.6 Transfer of Excluded Assets to Residualco

Pursuant to the Reverse Vesting Order, and in accordance with the Implementation Steps, the Purchased Entities, by the Monitor, hereby assign, transfer and convey the Excluded Assets to Residualco, and the Excluded Assets as of the Effective Date are vested in Residualco pursuant to the Reverse Vesting Order.

2.7 Closing Reorganization

- (a) On or prior to the Effective Date, the Vendors shall effect the Implementation Steps.
- (b) The Implementation Steps shall occur and be deemed to have occurred in the order and manner to be set out therein.
- (c) The steps to be taken and the compromises and releases to be effective on the Effective Date shall occur and be deemed to occur and be effected in the steps and sequential order set forth in the Implementation Steps.

2.8 Consideration for Purchased Assets

- (a) As consideration for the Purchased Assets (the “**Credit Bid Consideration**”), effective as of the Effective Time:

- (i) the Assignee (x) shall pay to the Monitor the Priority Payments Closing Amount, such amount to be distributed by the Monitor in accordance with Section 6.11, (y) shall assume the Priority Payments of Validus Parent that are in excess of the Priority Payments Closing Amount, if any, on the Effective Date, and (z) hereby indemnifies and holds harmless the Monitor and the Receiver for any liability in respect of the Priority Payments of Validus Parent that are in excess of the Priority Payments Closing Amount, if any (together with any fees and expenses of the Monitor or the Receiver incurred in connection therewith, the “**Priority Payments Indemnity**”);
 - (ii) the Assignee shall pay to the Monitor the Administrative Expense Closing Amount;
 - (iii) MEFL releases Validus Parent and the Purchased Entities from all amounts outstanding and obligations owing by Validus Parent and the Purchased Entities to MEFL pursuant to the Participation Agreement Documents; and
 - (iv) MEFL conveys and delivers to IFPC the title to the Leased Property held by MEFL on an “as is, where is” basis pursuant and subject to the Reverse Vesting Order.
- (b) To secure the Priority Payments Indemnity set out in Section 2.8(a)(i), the Monitor shall be granted a super-priority charge on the Purchased Interests (excluding the Kingston GP Interests and the Kingston LP Interests) pursuant to the Reverse Vesting Order (the “**Priority Payments Indemnity Charge**”). The Priority Payments Indemnity Charge shall terminate automatically upon the later of (i) the payment in satisfaction of all of the Priority Payments of Validus Parent in excess of the Priority Payments Closing Amount, as determined by the Canada Revenue Agency (if any); and (ii) receipt of confirmation from the Canada Revenue Agency by the Assignee, on notice to the Monitor, that no Priority Payments of Validus Parent in excess of the Priority Payment Closing Amount are owing.
- (c) For the avoidance of doubt, all outstanding obligations of IFPC and MEFL, as applicable, owing under the Lease Agreement hereby merge, and each of IFPC and MEFL is hereby released from all such Claims, obligations and liabilities under the Lease Agreement effective as of the Effective Time.
- (d) MEFL and its Affiliates or the Assignee and its Affiliates, on the one hand, and the Vendors, and any of their Affiliates, on the other hand, shall be entitled to deduct and withhold from any amounts otherwise payable pursuant to this Agreement such amounts as such Person is required to deduct and withhold under Applicable Law. Before making any such deduction or withholding, the withholding agent shall use commercially reasonable efforts to provide the Person in respect of which deduction or withholding is proposed to be made reasonable advance written notice of the intention to make such deduction or withholding, and the withholding agent shall cooperate with any reasonable request from such Person to obtain reduction of or relief from such deduction or withholding to the extent permitted by

Applicable Law. To the extent that amounts are so deducted and withheld and remitted to the appropriate Taxing Authority, such amounts shall be treated for all purposes of this Agreement as having been paid to the Person in respect of which such deduction and withholding was made.

- (e) The Credit Bid Consideration shall be allocated among the Purchased Assets as mutually agreed in writing by MEFL, the Assignee and the Vendors prior to the Effective Date. Notwithstanding the foregoing, the Parties agree that the consideration payable for the Purchased Validus Parent Assets shall be paid and satisfied by the assumption by the Assignee of the Priority Payments of Validus Parent on the Effective Date under Section 2.8(a)(i) in an amount to be agreed in writing by MEFL, the Assignee and the Vendors.

2.9 As is, Where is

Each of MEFL and the Assignee acknowledges, agrees and confirms that, at the Effective Time, the Purchased Assets shall be sold and delivered to MEFL or the Assignee, as applicable, on an “as is, where is” basis, subject only to the representations and warranties contained herein. Other than those representations and warranties contained herein, none of which shall survive closing, no representation, warranty or condition is expressed or can be implied as to title, encumbrances, description, fitness for purpose, merchantability, condition or quality or in respect of any other matter or thing whatsoever. Any information provided in any schedule, exhibit or appendix to a Transaction Document, including any information contained in the Disclosure Schedule, shall not constitute a representation or warranty given by any of the Receiver, the Monitor or a Validus Entity.

ARTICLE 3 REPRESENTATIONS AND WARRANTIES OF THE VENDORS

The Vendors represent and warrant as of the Effective Date to MEFL and the Assignee as follows, and acknowledge and agree that MEFL and the Assignee are relying upon such representations and warranties in connection with the assignment of the Purchased Assets and the delivery of title to the Leased Property hereunder:

3.1 Due Authorization and Enforceability of Obligations

Subject to the Court’s granting of the CCAA Initial Order, the SISP Order and the Reverse Vesting Order, the Vendors have the requisite power and authority to enter into this Agreement and to carry out the obligations of the Vendors under this Agreement, and this Agreement constitutes a legal, valid and binding obligation of them, enforceable against them in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium, or other similar laws relating to or limiting creditors’ rights generally or by equitable principles relating to enforceability.

3.2 Residence

None of the Vendors is a non-resident of Canada for the purposes of the Tax Act (and the Kingston LP is a “Canadian partnership” as defined in the Tax Act).

3.3 GST/HST Registration

The Validus Entities (other than Validus Hosting) are registered for GST/HST purposes under Part IX of the ETA with the registration numbers set forth below:

Validus Parent	-	747594133 RT0002
IFPC	-	886674696 RT0002
Bay Power	-	776287062 RT0002
Kap Power	-	777056946 RT0002
Kingston LP	-	777056946 RT0002
Kingston GP	-	777056946 RT0002

3.4 No Encumbrances

Neither the Receiver or the Monitor nor the Vendors have engaged in any act that has resulted in an Encumbrance affecting any of the Purchased Assets or the Leased Property, other than a Permitted Encumbrance or any charge created by the Appointment Order, the SISP Order or the Reverse Vesting Order or arising by operation of Applicable Law in the ordinary course of the Business.

ARTICLE 4 REPRESENTATIONS AND WARRANTIES OF THE ASSIGNEE

The Assignee represents and warrants as of the Effective Date to the Vendors as follows, and acknowledges that the Vendors are relying upon the following representations and warranties in connection with the assignment of the Purchased Assets and the delivery of title to the Leased Property hereunder:

4.1 Due Authorization and Enforceability of Obligations

Subject to this Agreement being selected as the Successful Bid, this Agreement has been duly authorized, executed and delivered by the Assignee and constitutes a legal, valid and binding obligation of it, enforceable against it in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium, or other similar laws relating to or limiting creditors' rights generally or by equitable principles relating to enforceability.

4.2 Existence and Good Standing

The Assignee is validly existing and in good standing under the laws of Ontario and has all requisite power and authority to execute and deliver this Agreement and to perform its obligations hereunder and consummate the transactions contemplated by this Agreement.

4.3 Sophisticated Party

The Assignee: (a) is a sophisticated party with sufficient knowledge and experience to evaluate properly the terms and conditions of this Agreement, (b) has conducted its own analysis and made its own decision to enter into this Agreement and has obtained such independent advice in this regard as it deemed appropriate; and (c) has not relied on such analysis or decision of any Person other than its own independent advisors.

4.4 Absence of Conflicts

Subject to this Agreement being selected as the Successful Bid, the execution and delivery of this Agreement by and the completion by the Assignee of its obligations hereunder and the consummation of the transactions contemplated herein do not and will not violate or conflict with any Applicable Law, or any of its properties or assets, and will not result (with due notice or the passage of time or both) in a violation, conflict or breach of, or constitute a default under, or require any consent to be obtained under its certificate of incorporation, articles, by-laws or other constituent documents.

4.5 Approvals and Consents

Subject to this Agreement being selected as the Successful Bid, the execution and delivery of this Agreement by the Assignee, the completion by the Assignee of its obligations hereunder and the consummation by the Assignee of the transactions contemplated herein, do not and will not require any consent or approval or other action, with or by, any Governmental Authority, other than as contemplated by any Order.

4.6 No Actions

There is not, as of the date hereof, pending or, to the Assignee's knowledge, threatened against it or any of its properties, nor has the Assignee received notice in respect of, any claim, potential claim, litigation, action, suit, arbitration, investigation or other proceeding before any Governmental Authority or legislative body that, would prevent it from executing and delivering this Agreement, performing its obligations hereunder and consummating the transactions and agreements contemplated by this Agreement.

4.7 Financial Ability

The Assignee has and will have, at all relevant times, the financial ability and sufficient funds to perform all of its obligations under this Agreement, and the availability of such funds will not be subject to the consent, approval or authorization of any Person or the availability of any financing.

4.8 Authorization of Delivery of the Credit Bid Consideration

The Assignee is duly authorized to deliver the Credit Bid Consideration to be delivered by it in connection with the consummation of this Agreement and the transactions contemplated hereunder.

4.9 Investment Canada Act

The Assignee is not a “non-Canadian” or is a “trade agreement investor”, each within the meaning of the Investment Canada Act.

4.10 Residence

The Assignee is not a non-resident of Canada for the purposes of the Tax Act.

ARTICLE 5 REPRESENTATIONS AND WARRANTIES OF MEFL

MEFL represents and warrants as of the Effective Date to the Vendors as follows, and acknowledges that the Vendors are relying upon the following representations and warranties in connection with the assignment of the Purchased Assets and the delivery of title to the Leased Property hereunder:

5.1 Due Authorization and Enforceability of Obligations

Subject to this Agreement being selected as the Successful Bid, this Agreement has been duly authorized, executed and delivered by MEFL, and, assuming the due authorization, execution and delivery by it, this Agreement constitutes a legal, valid and binding obligation of it, enforceable against it in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or limiting creditors' rights generally or by equitable principles relating to enforceability.

5.2 Existence and Good Standing

MEFL is validly existing and in good standing under the laws of Canada and has all requisite power and authority to execute and deliver this Agreement and to perform its obligations hereunder and consummate the transactions contemplated by this Agreement.

5.3 Sophisticated Party

MEFL: (a) is a sophisticated party with sufficient knowledge and experience to evaluate properly the terms and conditions of this Agreement; (b) has conducted its own analysis and made its own decision to enter into this Agreement and has obtained such independent advice in this regard as it deemed appropriate; and (c) has not relied on such analysis or decision of any Person other than its own independent advisors.

5.4 Absence of Conflicts

Subject to this Agreement being selected as the Successful Bid, the execution and delivery of this Agreement by and the completion by MEFL of its obligations hereunder and the consummation of the transactions contemplated herein by it do not and will not violate or conflict with any Applicable Law, or any of its properties or assets, and will not result (with due notice or the passage of time or both) in a violation, conflict or breach by it of, or constitute a default by it

under, or require any consent to be obtained by it under its certificate of incorporation, articles, by-laws or other constituent documents.

5.5 Approvals and Consents

Subject to this Agreement being selected as the Successful Bid, the execution and delivery of this Agreement by MEFL, the completion by MEFL of its obligations hereunder and the consummation by MEFL of the transactions contemplated herein, do not and will not require any consent or approval or other action, with or by, any Governmental Authority, other than as contemplated by any Order.

5.6 No Actions

There is not, as of the date hereof, pending or, to MEFL's knowledge, threatened against it or any of its properties, nor has MEFL received notice in respect of, any claim, potential claim, litigation, action, suit, arbitration, investigation or other proceeding before any Governmental Authority or legislative body that, would prevent it from executing and delivering this Agreement, performing its obligations hereunder and consummating the transactions and agreements contemplated by this Agreement.

5.7 Financial Ability

MEFL has and will have at all relevant times, the financial ability and sufficient funds to perform all of its obligations under this Agreement, and the availability of such funds will not be subject to the consent, approval or authorization of any Person or the availability of any financing.

5.8 Authorization of Delivery of the Credit Bid Consideration

MEFL is duly authorized to deliver the Credit Bid Consideration to be delivered by it in connection with the consummation of this Agreement and the transactions contemplated hereunder.

5.9 Investment Canada Act

MEFL is a "trade agreement investor" within the meaning of the Investment Canada Act.

5.10 GST/HST Registration

MEFL is registered for GST/HST purposes under Part IX of the ETA and its registration number is 86299 2021 RT001.

5.11 Residence

MEFL is not a non-resident of Canada for the purposes of the Tax Act.

ARTICLE 6 ADDITIONAL AGREEMENTS OF THE PARTIES

6.1 Access to Information

Following the Effective Date, the Assignee shall retain and make all books and records of the Purchased Entities available to the Receiver, the Monitor, any trustee in bankruptcy of the Receivership Debtors or any of their respective Affiliates upon at least three (3) Business Days' prior notice, for a period of three (3) years after the Effective Date, and shall, at such party's expense, permit any of the foregoing Persons to take copies thereof as they may determine to be necessary or useful to accomplish their respective roles; *provided* that the Assignee shall not be obligated to make such books and records available to the extent that doing so would: (a) violate Applicable Law; or (b) jeopardize the protection of a solicitor-client privilege.

6.2 Covenants Relating to this Agreement

6.2.1 Each of the Parties shall perform all obligations required to be performed by the applicable Party under this Agreement and do all such other acts and things as may be necessary or desirable in order to consummate and make effective, as soon as reasonably practicable, the transactions contemplated by this Agreement and, without limiting the generality of the foregoing, each Party shall and, where appropriate, shall cause each of its Affiliates and representatives to not take any action, or refrain from taking any action, or permit any action to be taken or not taken, which would reasonably be expected to prevent, materially delay or otherwise impede the consummation of the transactions contemplated by this Agreement.

6.2.2 The Vendors, the Assignee and MEFL agree to execute and deliver such other documents, certificates, agreements and other writings, and to take such other actions to consummate or implement as soon as reasonably practicable, the transactions contemplated by this Agreement.

6.2.3 The Vendors, the Assignee and MEFL agree to use commercial reasonable efforts to timely prepare and file all documentation and pursue all steps reasonably necessary to obtain any material third-party consents and approvals as may be required in connection with the transaction contemplated by this Agreement.

6.3 Tax Matters

6.3.1 Each of MEFL, the Assignee and the Vendors agrees to furnish or cause to be furnished to each other, as promptly as practicable, such information and assistance relating to the Leased Property, the Purchased Assets and the Assumed Liabilities as is reasonably necessary for the preparation and filing of any Tax Return, claim for refund or other required filings relating to Tax matters, for the preparation for and proof of facts during any Tax audit, for the preparation for any Tax protest, for the prosecution of any suit or other proceedings relating to Tax matters and for the answer to any governmental or regulatory inquiry relating to Tax matters. Each of MEFL, the Assignee and the Vendors also agrees to furnish or cause to be furnished to each other, as promptly as practicable, such information and assistance relating to the Validus Entities and the Purchased Assets as is reasonably necessary for MEFL to assign or transfer Purchased Assets to the Assignee in a tax-efficient manner, including making such joint elections at such amounts in

respect of such property as MEFL may reasonably require. Each of MEFL, the Assignee and the Vendors agrees to elect pursuant to subsection 256(9) of the Tax Act that the time of any acquisition of control of a Purchased Entity acquired under this Agreement is the Effective Time.

6.3.2 MEFL, the Assignee and the Vendors shall each be responsible for the preparation of their own Tax Returns required to be filed under the Tax Act and the ETA and other similar forms and returns in accordance with Applicable Law but shall cooperate to execute any joint tax elections as MEFL may reasonably require and agreed to by the Vendors, acting reasonably. The Purchased Entities shall not amend a Tax Return of any Purchased Entity related to a Tax period ending on or before the Effective Date without the consent of the Monitor.

6.3.3 For all purposes under this Agreement for which it is necessary to apportion taxes in a taxable period which includes (but does not end on) the Effective Date (a “**Straddle Period**”) between the portion of such period ending immediately prior to the Effective Time (such portion of such Straddle Period, the “**Pre-Closing Straddle Tax Period**”) and the portion of such period beginning at the Effective Time (such portion of such Straddle Period, the “**Post-Closing Straddle Tax Period**”): (i) all personal property Taxes and similar ad valorem obligations shall be apportioned between the Pre-Closing Straddle Tax Period and the Post-Closing Straddle Tax Period on a per diem basis, with the portion allocated to the Pre-Closing Straddle Tax Period including the Effective Date for these purposes; and (ii) in the case of any Tax based upon or related to income, receipts, sales, use, GST/HST, payroll or withholding, the portion of such Tax allocable to the Pre-Closing Straddle Tax Period shall be deemed to be the amount that would be payable if any relevant tax period ended immediately before the Effective Time (but taking into account in that tax period any settlement of or extinguishment of any amount under the Reverse Vesting Order, whether it occurred prior to or at the Effective Time). To the extent such closing of the books method is not incorporated under the law of a jurisdiction for particular types of entities, allocations of income among the periods shall be made to replicate the closing of the books method to the maximum extent possible.

6.3.4 The Assignee shall be responsible for and shall pay, or cause to be paid, any Transfer Tax in respect of the purchase and sale of the Purchased Assets under this Agreement and such Transfer Tax shall be remitted to the appropriate Governmental Authority as provided for under Applicable Law (except any Transfer Tax which, under Applicable Law, is collectible by Validus Parent, in which case such Transfer Tax shall be collected by and remitted by Validus Parent to the appropriate Governmental Authority as provided for under the Applicable Law). The Parties shall reasonably cooperate to mitigate and/or eliminate the amount of Transfer Taxes resulting from the transactions contemplated herein. MEFL, the Assignee and the Vendors acknowledge and agree that no GST/HST is exigible from the Assignee or MEFL in respect of the purchase of the Hut 8 Litigation, the Purchased Interests or the Validus Hosting Interests or the issuance or transfer of the IFPC Note 1, the IFPC Note 2, the IFPC Note 3 and the IFPC Interests.

6.3.5 IFPC shall be responsible for and shall pay, or cause to be paid, any Transfer Tax in respect of the payment of any amount by IFPC under or in respect of the Lease Agreement or any other Participation Agreement Document (including for greater certainty the transfer of the Leased Property by MEFL to IFPC under this Agreement) and the unpaid GST/HST in respect of amounts due under or in respect of the Lease Agreement or any other Participation Agreement Document that are paid by IFPC hereunder and such Transfer Tax shall be remitted to the

appropriate Governmental Authority as provided for under Applicable Law; *provided* that GST/HST in respect thereof shall be fully paid and satisfied by IFPC to MEFL by the issuance of the IFPC Note 3 by IFPC to MEFL, and MEFL shall remit such GST/HST to the appropriate Governmental Authority as provided for under the ETA.

6.4 Administrative Expense Closing Amount

6.4.1 The Assignee shall pay the Administrative Expense Closing Amount to the Monitor on the Effective Date, which Administrative Expense Closing Amount shall be held in trust by the Monitor for the benefit of Persons entitled to be paid the Administrative Expense Costs.

6.4.2 From time to time after the Effective Date, the Monitor may pay from the Administrative Expense Closing Amount the Administrative Expense Costs at its sole discretion and without further authorization from the Assignee or MEFL. Any unused portion of the Administrative Expense Closing Amount after payment or reservation for all Administrative Expense Costs, as determined by the Monitor, shall be transferred by the Monitor to the Assignee.

6.5 Assumption of Liabilities

Effective as of the Effective Time (and without duplication), each of the Purchased Entities retains and remains liable for the Assumed Liabilities of such Purchased Entity in accordance with Sections 2.3, 2.4 and 2.5 and the Reverse Vesting Order; *provided* that all of the Priority Payments of Validus Parent, if any, that are in excess of the Priority Payments Closing Amount shall be assumed by the Assignee and shall be paid or otherwise discharged within six (6) months of assessment from the Canada Revenue Agency, or such other period of time as agreed between the Assignee and the Canada Revenue Agency.

For greater certainty, the retention of the Assumed Liabilities by the Purchased Entities, shall not constitute part of the consideration payable by the Assignee (or MEFL) for the Purchased Assets hereunder.

6.6 Certain Payments or Instruments Received from Third Persons

6.6.1 To the extent that, after the Effective Date: (i) the Assignee or any of its Affiliates receives any payment or instrument that is for the account of the Vendors according to the terms of any Transaction Document, the Assignee shall promptly deliver such amount or instrument to the Vendors; or (ii) the Vendors receive any payment or instrument that is for the account of the Assignee or any Purchased Entity according to the terms of any Transaction Document or that relates to the Business, including any governmental assistance refunds so received after the Effective Date, the Vendors shall promptly deliver such amount or instrument to the Assignee.

6.6.2 All amounts due and payable under this Section 6.6 shall be due and payable by the applicable Party in immediately available funds, by wire transfer to the account designated in writing by the relevant Party. Notwithstanding the foregoing, each Party hereby undertakes to use its commercially reasonable efforts to direct or forward all bills, invoices or like instruments to the appropriate Party.

6.7 Misallocated Assets

6.7.1 If: (i) after the Effective Date, Validus Parent or Residualco is the owner of, receives or otherwise comes to possess any property that was designated under this Agreement to be Purchased Assets or Assumed Liabilities or any assets of the Validus Entities that were not Excluded Assets, or (ii) at any time after the Effective Date, with the consent of the Monitor and MEFL (not to be unreasonably withheld), the Assignee designates an Excluded Contract to be an Assumed Liability: (a) the Assignee will promptly give written notice to the Monitor; and (b) the Monitor will promptly cause Validus Parent or Residualco, as applicable, to transfer, assign, convey and deliver (or cause to be transferred, assigned, conveyed and delivered) such assets or liabilities to the Assignee. Each Party will cooperate with the other Party and use its commercially reasonable efforts to set up procedures and notifications as are reasonably necessary or advisable to effectuate the assignment, transfer, conveyance and delivery, or assumption, contemplated by this Section 6.7.1.

6.7.2 In the event that the Vendors refuse to consent to the Assignee's designation after the Effective Date of any Excluded Asset or Excluded Liability as a Purchased Asset or as an Assumed Liability, as applicable, the Assignee or the Vendors may submit such dispute to the Court for final determination. Each Party shall bear its own costs and expenses in connection with any such dispute.

6.7.3 Nothing in this Section 6.7 shall prevent the Receiver or the Monitor from completing the administration of the Receivership Proceedings or the CCAA Proceedings and seeking Orders discharging or terminating such proceedings.

6.8 Releases by the Assignee and MEFL

6.8.1 Except in connection with any obligations of the Receiver or the Monitor contained in this Agreement and any Transaction Documents, each of the Assignee and MEFL hereby releases and forever discharges KSV, in its capacity as the Receiver and the Monitor, and its successors and assigns, and all officers, directors, partners, members, shareholders, limited partners, employees, agents, financial and legal advisors of each of them, from any and all actual or potential Released Claims which such Person had, has or may have in the future to the extent relating to transactions contemplated by the Transaction Documents, including the Leased Property, the Purchased Assets or the Assumed Liabilities, save and except for Released Claims arising out of fraud, bad faith or illegal acts (unless such Person believed in good faith that its conduct was legal).

6.8.2 Except in connection with any obligations of the Receiver or the Monitor contained in this Agreement and any Transaction Documents, immediately following the Effective Time, the Assignee shall cause the Purchased Entities to release and forever discharge KSV, in its capacity as the Receiver and the Monitor, and its successors and assigns, and all officers, directors, partners, members, shareholders, limited partners, employees, agents, financial and legal advisors of each of them, from any and all actual or potential Causes of Action against such Persons, except for Causes of Action related to any act or omission that is determined in a Final Order of a court of competent jurisdiction to have constituted actual fraud, willful misconduct, or gross negligence (*provided* that in all respects such Persons shall be entitled to reasonably rely upon the advice of

counsel with respect to their applicable duties and responsibilities), and such release to be in the form as agreed among the Parties.

6.9 Release by the Receiver

Except in connection with any obligations of the Assignee and MEFL contained in this Agreement and any Transaction Documents, the Receiver hereby releases and forever discharges the Assignee, MEFL, the Purchased Entities and their respective Affiliates, and each of their respective successors and assigns, and all officers, directors, partners, members, shareholders, limited partners, employees, agents, financial and legal advisors of each of them, from any and all actual or potential Released Claims which such Person had, has or may have in the future to the extent relating to the transactions contemplated by the Transaction Documents, including the Leased Property, the Purchased Assets or the Assumed Liabilities, save and except for Released Claims arising out of fraud, bad faith or illegal acts (unless such Person believed in good faith that its conduct was legal).

6.10 Letters of Credit and Deposits

To the extent required, it shall be the sole responsibility of the Assignee, and the Assignee hereby covenants and agrees, within 30 days of the Effective Date, to issue replacement letters of credit and/or deposits which have currently been provided by Validus Parent and are listed in Exhibit 6.10 of the Disclosure Schedule; *provided* that Validus Parent shall have no obligation to ensure that any such existing letters of credit or deposits remain in place after the Effective Date and existing letters of credit or deposits shall not be used as security for obligations after the Effective Date without the consent of the Monitor (who may request security or collateral in connection with providing any such consent).

6.11 Monitor to Distribute the Priority Payments Closing Amount

Promptly following the receipt of the Priority Payments Closing Amount, but in any event no later than five (5) Business Days after the Effective Date, the Monitor shall distribute to such parties as may be entitled to payment such amounts as may be required to satisfy the Priority Payments of Validus Parent known at the Effective Time and, after such obligations are paid in full, such amounts as may be required to satisfy the Priority Payments of the Purchased Entities known at the Effective Time. The Monitor shall promptly provide proof of such payments to the Assignee and MEFL.

ARTICLE 7 INSOLVENCY PROVISIONS

7.1 Court Orders and Related Matters

In the event that, following the Effective Time, an appeal is taken or a stay pending appeal is requested from the Reverse Vesting Order, the Monitor shall promptly notify MEFL and the Assignee of such appeal or stay request and shall promptly provide MEFL and the Assignee copies of the related notice of appeal or order of stay. The Monitor shall also provide MEFL and the Assignee with written notice of any motion or application filed in connection with any appeal from

such orders. The Monitor agrees to take all action as may be reasonable and appropriate to defend against such appeal or stay request.

ARTICLE 8 CLOSING

8.1 Location and Time of the Closing

The Closing shall take place at the Effective Time on the Effective Date by means of an electronic closing, or such other place or fashion as may be agreed in writing upon by the Vendors and MEFL in which the Transaction Documentation will be delivered by e-mail exchange of signature pages in PDF or functionally equivalent electronic format, which delivery will be effective without any further physical exchange of the originals or copies of the originals except as otherwise provided in this Agreement.

8.2 The Vendors' Deliveries at Closing

The Vendors hereby deliver to MEFL or the Assignee, as the case may be and as specified herein, contemporaneously with the execution and acceptance of this Agreement, the following:

- (a) a true copy of each of the Appointment Order, the SISP Order and the Reverse Vesting Order, each of which shall be Final Orders;
- (b) the share and unit certificates representing the Purchased Interests and the Validus Hosting Interests endorsed in blank for transfer or accompanied by irrevocable stock transfers executed in blank by the holders of record and an updated register of common equity or record of limited partners, as applicable, maintained by or on behalf of each of Bay Power, Kap Power, Kingston GP, Kingston LP and Validus Hosting reflecting the transfer of the Purchased Interests and the Validus Hosting Interests;
- (c) the IFPC Note 1, the IFPC Note 2 and the IFPC Note 3;
- (d) a share certificate in the name of the Assignee representing the IFPC Interests in accordance with Section 2.1.1(d);
- (e) actual possession of the Purchased Assets;
- (f) the Disclosure Schedule; and
- (g) evidence of the cancellation of the IFPC Legacy Shares in accordance with Section 2.1.1(e).

8.3 Assignee's Deliveries at Closing

The Assignee hereby delivers to the Vendors, contemporaneously with the execution and acceptance of this Agreement, the following:

- (a) a certificate of an authorized signatory of the Assignee (in such capacity and without personal liability), in form and substance reasonably satisfactory to the Vendors: (i) certifying that the Assignee has adopted resolutions (in a form attached to such certificate) authorizing the execution, delivery and performance of this Agreement and the transactions contemplated herein, as applicable, which resolutions are in full force and effect and have not been superseded, amended or modified as of the Effective Date; and (ii) certifying as to the incumbency and signature of the authorized signatory of the Assignee executing this Agreement and the other transaction documents contemplated herein, as applicable;
- (b) a certificate of an authorized signatory of the Assignee (in such capacity and without personal liability), in form and substance reasonably satisfactory to the Monitor, confirming that each of the conditions precedent in Section 3.1 of the Terms and Conditions have been fulfilled, performed or waived;
- (c) the release contemplated by Section 6.8.2; and
- (d) all other documents required to be delivered by the Assignee on the Effective Date pursuant to this Agreement or Applicable Law or that have been reasonably requested by the Receiver in good faith prior to the Effective Time.

8.4 MEFL's Deliveries at Closing

MEFL hereby delivers to the Monitor, contemporaneously with the execution and acceptance of this Agreement, the following:

- (a) a copy of a Bill of Sale addressed to IFPC for the Leased Property on an "as is, where is" basis, in a form and on terms acceptable to MEFL, acting reasonably;
- (b) a certificate of an authorized signatory of MEFL (in such capacity and without personal liability), in form and substance reasonably satisfactory to the Monitor, certifying that MEFL has adopted resolutions (in a form attached to such certificate) authorizing the execution, delivery and performance of this Agreement and the transactions contemplated herein, as applicable, which resolutions are in full force and effect and have not been superseded, amended or modified as of the Effective Date; and certifying as to the incumbency and signature of the authorized signatory of MEFL executing this Agreement and the other transaction documents contemplated herein, as applicable;
- (c) a certificate of an authorized signatory of MEFL (in such capacity and without personal liability), in form and substance reasonably satisfactory to the Monitor, confirming that each of the conditions precedent in Section 3.1 of the Terms and Conditions have been fulfilled, performed or waived; and
- (d) all other documents required to be delivered by MEFL on the Effective Date pursuant to this Agreement or Applicable Law or that have been reasonably requested by the Receiver in good faith prior to the Effective Time.

8.5 Monitor's Certificate

As soon as practicable following the Effective Time, the Monitor shall file a copy of the Monitor's Certificate with the Court (and shall provide a true copy of such filed certificate to MEFL and the Assignee). The Parties hereby acknowledge and agree that the Monitor will be entitled to file the Monitor's Certificate with the Court, without independent investigation, upon receiving written confirmation from the Vendors, MEFL and the Assignee that the Effective Time and Closing have occurred, and the Monitor will have no liability to the Assignee, MEFL or any other Person as a result of filing the Monitor's Certificate in accordance with this Section 8.5.

8.6 Ordering of Closing Transactions

Notwithstanding any term to the contrary herein, all actions taken and transactions consummated at the Closing shall be deemed to have occurred in the manner and sequence set forth in the Implementation Steps and the Reverse Vesting Order (subject to the terms of any escrow agreement or arrangement among the Parties relating to the Closing), and no such transaction shall be considered consummated unless all are consummated.

8.7 Further Assurances

As reasonably required by a Party in order to effectuate the transactions contemplated by this Agreement, the Assignee, MEFL and the Vendors shall execute and deliver after the Closing such other documents, and shall take such other actions, as are necessary or appropriate, to implement and make effective the transactions contemplated by this Agreement.

ARTICLE 9 GENERAL MATTERS

9.1 Confidentiality

After the Effective Time, the Receiver and the Monitor shall maintain the confidentiality of all confidential information relating to the Business and the Validus Entities (but does not include information that is or becomes generally available to the public other than as a result of disclosure by the Receiver, the Monitor or their representatives in breach of this Agreement or that is received by the Receiver or the Monitor from an independent third party that, to the knowledge of the Receiver or the Monitor, as applicable, obtained it lawfully and was under no duty of confidentiality (except to the extent that applicable privacy laws do not exclude such information from the definition of personal information) or that is independently developed by the Receiver or the Monitor or their representatives without reference to any Confidential Information), including the Confidential Information, except any disclosure of such information and records as may be required by Applicable Law. If the Receiver, the Monitor, Validus Parent or Residualco, or any of its or their respective representatives, becomes legally compelled by deposition, interrogatory, request for documents, subpoena, civil investigative demand, or similar judicial or administrative process, to disclose any such information, such party shall use its commercially reasonable efforts, or shall use its commercially reasonable efforts to cause the Receiver or its representative to, provide the Assignee with reasonably prompt prior oral or written notice of such requirement (including any report, statement, testimony or other submission to such Governmental Authority) to the extent legally permissible and reasonably practicable, and cooperate with the Assignee, at

the Assignee's sole expense, to obtain a protective order or similar remedy to cause such information not to be disclosed; *provided* that in the event that such protective order or other similar remedy is not obtained, the Receiver or the Monitor shall, or shall cause Validus Parent or Residualco, or a representative to, furnish only that portion of such information that has been legally compelled, and shall, or shall cause Validus Parent or Residualco, or a representative to, exercise its commercially reasonable efforts to obtain assurance that confidential treatment will be accorded such disclosed information. The Receiver and the Monitor shall instruct Validus Parent, Residualco and representatives having access to such information of such obligation of confidentiality.

9.2 Public Notices

9.2.1 No press release or other announcement concerning the consummation of the transactions contemplated by this Agreement shall be made by the Receiver, the Monitor, MEFL or the Assignee without the prior consent of the other Parties (such consent not to be unreasonably withheld, conditioned or delayed); *provided, however*, that subject to the last sentence of this Section 9.2, any Party may, without such consent, make such disclosure if the same is required by Applicable Law (including the Receivership Proceedings and the CCAA Proceedings) or by any insolvency or other court or securities commission, or other similar Governmental Authority having jurisdiction over such Party or any of its Affiliates, and, if such disclosure is required, the Party making such disclosure shall use commercially reasonable efforts to give prompt prior oral or written notice to the other Party to the extent legally permissible and reasonably practicable, and if such prior notice is not legally permissible or reasonably practicable, to give such notice reasonably promptly following the making of such disclosure. Notwithstanding the foregoing: (a) this Agreement may be filed by the Receiver or the Monitor: (i) with the Court; and (ii) on one or more webpages on the Receiver's and the Monitor's public websites established pursuant to the Appointment Order and the Initial Order, respectively, to provide public notice of the Receivership Proceedings and the CCAA Proceedings and the documents and materials filed therein; and (b) the transactions contemplated in this Agreement may be disclosed by the Receiver and the Monitor to the Court, subject to redacting confidential or sensitive information as permitted by Applicable Law. The Parties further agree that:

- (i) the Receiver and the Monitor may prepare and file reports and other documents with the Court containing references to the transactions contemplated by this Agreement and the terms of such transactions; and
- (ii) the Receiver, the Monitor, MEFL and their respective professional advisors may prepare and file such reports and other documents with the Court containing references to the transactions contemplated by this Agreement and the terms of such transactions as may reasonably be necessary to complete the transactions contemplated by this Agreement or to comply with their obligations in connection therewith.

The Assignee and MEFL may issue a joint press release announcing the execution, delivery and consummation of this Agreement, in form and substance mutually agreed to by them.

9.3 Non-Recourse

No past, present or future director, officer, employee, incorporator, member, partner, securityholder, Affiliate, agent, lawyer or representative of the Monitor or the Receiver, in such capacity, shall have any liability for any obligations or liabilities of the Monitor or the Receiver, as applicable, under this Agreement, or for any Causes of Action based on, in respect of or by reason of the transactions contemplated hereby.

9.4 Receivership Liability

Notwithstanding the foregoing or anything else contained herein or elsewhere, each of the Receiver, MEFL and the Assignee acknowledges and agrees that KSV is acting solely in its capacity as the Court-appointed receiver of the Receivership Debtors pursuant to the Appointment Order and the Monitor pursuant to the Initial Order and not in its personal or corporate capacity, and neither the Receiver nor the Monitor has any liability in connection with this Agreement whatsoever, in its personal or corporate capacity or otherwise.

9.5 Assignment of Agreement

No Party may assign its rights, benefits or obligations under this Agreement without the consent of each of the other Parties, except that, without the consent of the Receiver or the Assignee, MEFL may, upon prior written notice to the Receiver and the Assignee assign this Agreement, or any or all of its rights and obligations thereunder, to one or more of its Affiliates; *provided* that no such assignment or direction shall relieve MEFL of its obligations hereunder.

9.6 Notices

9.6.1 Any notice, request, demand or other communication required or permitted to be given to a Party pursuant to the provisions of this Agreement will be in writing and will be effective and deemed given under this Agreement on the earliest of: (a) the date of personal delivery; (b) the date of transmission by email, with confirmed transmission and receipt (if sent during normal business hours of the recipient, if not, then on the next Business Day); (c) two (2) days after deposit with a nationally-recognized courier or overnight service such as Federal Express; or (d) five (5) days after mailing via certified mail, return receipt requested. All notices not delivered personally or by email will be sent with postage and other charges prepaid and properly addressed to the Party to be notified at the address set forth for such Party:

- (i) if to the Assignee at:

Far North Power Corp.
24 Duncan Street, Suite 500,
Toronto, Ontario
M5V 2B8

Attention: Aniss Amdiss
E-mail: aniss.amdiss@hut8.io

with required copies (which shall not be deemed notice) to:

Bennett Jones LLP
1 First Canadian Place, Suite 3400
Toronto, Ontario
M5X 1A4

Attention: Curtis Cusinato / Jesse Mighton
E-mail: CusinatoC@bennettjones.com /
MightonJ@bennettjones.com

(ii) if to MEFL at:

Macquarie Equipment Finance Ltd.
181 Bay Street
Toronto, Ontario
M5J 2T3

Attention: Lisa Tarnowsky
E-mail: lisa.tarnowsky@macquarie.com

and to:

with required copies (which shall not be deemed notice) to:

Torys LLP
79 Wellington St., 30th Floor
Toronto, Ontario
M5K 1N2

Attention: Scott Bomhof / Scott Kraag
E-mail: sbomhof@torys.com / skraag@torys.com

(iii) if to the Vendors, by the Monitor, at:

KSV Restructuring Inc.
220 Bay Street, Suite 1300
Toronto, Ontario
M5J 2W3

Attention: Bobby Kofman
E-mail: bkofman@ksvadvisory.com

with a required copy (which shall not be deemed notice) to:

Norton Rose Fulbright Canada LLP
222 Bay Street, Suite 3000, P.O. Box 53
Toronto, Ontario
M5K 1E7

Attention: Jennifer Stam
E-mail: jennifer.stam@nortonrosefulbright.com

9.6.2 Any Party may change its address for service from time to time by notice given in accordance with the foregoing and any subsequent notice shall be sent to such Party at its changed address.

9.7 Counterparts; Electronic Signatures

This Agreement may be signed in counterparts and each of such counterparts shall constitute an original document and such counterparts, taken together, shall constitute one and the same instrument. Execution of this Agreement may be made by electronic signature which, for all purposes, shall be deemed to be an original signature.

9.8 Language

The Parties have expressly required that this Agreement and all documents and notices relating hereto be drafted in English. *Les parties aux présents ont exigés que la présente convention ainsi que tous les documents et avis qui s'y rattachent ou qui en découleront soit rédigés en la langue anglaise.*

[Remainder of page intentionally left blank; signature pages follow]

IN WITNESS WHEREOF, MEFL and the Assignee have executed this Agreement as of [■], 2023.

FAR NORTH POWER CORP.

By: _____
Name:
Title:

**MACQUARIE EQUIPMENT
FINANCE LTD.**

By: _____
Name:
Title:

By: _____
Name:
Title:

IN WITNESS WHEREOF the Vendors have accepted and executed this Agreement as of _____, 2023, the Effective Time.

VALIDUS POWER CORP., IROQUOIS FALLS POWER CORP., BAY POWER CORP., KAP POWER CORP., KINGSTON COGEN LIMITED PARTNERSHIP, KINGSTON COGEN GP INC. and VALIDUS HOSTING INC., each by KSV RESTRUCTURING INC., in its capacity as court-appointed Monitor in the CCAA Proceedings

By: _____
Name:
Title:

SCHEDULE "A"

Form of Reverse Vesting Order

(See attached.)

Court File No. CV-23-00705215-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE) [■], THE [■]
)
JUSTICE [■]) DAY OF [■], 2023
)

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT
ACT, R.S.C. 1985, C. C-36, AS AMENDED***

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT INVOLVING VALIDUS POWER CORP., IROQUOIS
FALLS POWER CORP., BAY POWER CORP., KAP POWER CORP.,
VALIDUS HOSTING INC. AND KINGSTON COGEN GP INC.**

APPROVAL AND VESTING ORDER

THIS MOTION, made by KSV Restructuring Inc. ("**KSV**"), in its capacity as monitor (in such capacity, the "**Monitor**") of Validus Power Corp. ("**Validus Parent**"), Iroquois Falls Power Corp. ("**IFPC**"), Bay Power Corp. ("**Bay Power**"), Kap Power Corp. ("**Kap Power**"), Validus Hosting Inc. ("**Validus Hosting**"), Kingston Cogen Limited Partnership ("**Kingston LP**") and Kingston Cogen GP Inc. ("**Kingston GP**", and collectively with each of the foregoing entities, the "**Vendors**"), for an Order, among other things, at the time and in the manner set out herein:

- (a) approving: (i) the acceptance and execution by the Vendors, each by KSV in its capacity as the Monitor, of the Transaction Agreement (as may be amended from time to time, the "**Transaction Agreement**", and the acceptance and execution by the Vendors thereof, each by KSV in its capacity as the Monitor, the "**Vendors' Acceptance**") that was executed by Macquarie Equipment Finance Ltd. ("**MEFL**") and Far North Power Corp. (the "**Assignee**") on [■], 2023 in connection with the offer letter delivered by MEFL and the Assignee to the Monitor on [■], 2023 (the "**Offer Letter**") (which Offer Letter was attached as [Exhibit "[■]"] to the [[■] Report of the Monitor dated [■], 2023] (the "**[■] Report**")); and (ii) the

consummation of the transactions contemplated in the Transaction Agreement (collectively, the “**Transactions**”), including the Implementation Steps, upon the satisfaction of the Offer Conditions;

- (b) adding [■] (“**Residualco**”) as a Debtor Company (as defined in the Initial Order of this Court dated August 29, 2023 (the “**Initial Order**”)) to these CCAA proceedings and as a Debtor (as defined in the Appointment Order of this Court dated August 10, 2023 (the “**Appointment Order**”) issued in the receivership proceedings in Court File No.: CV-23-00703754-00CL (the “**Receivership Proceedings**”)), effective as of the Effective Time;
- (c) vesting in and to Residualco, as and to the extent applicable, absolutely and exclusively, all of the right, title and interest of, and all liabilities and obligations of, IFPC, Bay Power, Kap Power, Validus Hosting, Kingston LP and Kingston GP (collectively, the “**Purchased Entities**”) in and to the Excluded Assets, the Excluded Contracts and the Excluded Liabilities, as applicable;
- (d) discharging the Claims (as defined herein) and Encumbrances (as defined herein) against the Purchased Entities and the Retained Assets (as defined herein);
- (e) authorizing and directing the Vendors, by KSV in its capacity as the Monitor, to issue the IFPC Interests, and vesting all of the right, title and interest in and to the IFPC Interests absolutely and exclusively in and to the Assignee, as nominee and designated assignee of MEFL, free and clear of any Claims and Encumbrances;
- (f) vesting all of Validus Parent’s right, title and interest in and to the Bay Power Interests, the Kap Power Interests, the Kingston LP Interests and the Kingston GP Interests absolutely and exclusively in and to the Assignee, as nominee and designated assignee of MEFL, free and clear of any Claims and Encumbrances;
- (g) vesting all of Validus Parent’s right, title and interest in and to the Purchased Validus Parent Assets absolutely and exclusively in and to the Assignee, free and clear of any Claims and Encumbrances;
- (h) authorizing and directing the Vendors, by KSV in its capacity as the Monitor, to issue the IFPC Note 1, the IFPC Note 2 and the IFPC Note 3, and vesting: (i) all of

the right, title and interest in and to the IFPC Note 1 and the IFPC Note 3 in and to MEFL, free and clear of any Claims and Encumbrances; and (ii) all of the right, title and interest in and to the IFPC Note 2 absolutely and exclusively in and to the Assignee, as nominee and designated assignee of MEFL, free and clear of any Claims and Encumbrances;

- (i) redeeming, terminating and cancelling the IFPC Legacy Shares and the other Subject Interests (as defined herein) for no consideration; and
- (j) granting certain related relief,

was heard this day by judicial video conference via Zoom in Toronto, Ontario.

ON READING the Monitor’s Motion Record in respect of this motion, filed, the [■] report of the Monitor dated [■], 2023, filed[, and the affidavit of [■] sworn [■], 2023 and the Exhibits thereto, filed];

AND UPON hearing the submissions of counsel for the Monitor and for the Receiver, counsel for MEFL, counsel for the Assignee, counsel for [■] and such other counsel who were present, no one else appearing although duly served as appears from the affidavit of service of [■] sworn [■], 2023, filed, and the affidavit of service of [■] sworn [■], 2023, filed.

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record herein is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that all capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Transaction Agreement.

APPROVAL AND VESTING

3. **THIS COURT ORDERS** that, without derogating in any way from the relief contained in the SISP Approval Order of this Court dated [■], 2023 (the “**SISP Approval Order**”), the Transaction Agreement and the Transactions (including the Implementation Steps) are hereby approved and the acceptance and execution of the Transaction Agreement by the Vendors, each

by KSV in its capacity as the Monitor, is hereby authorized and approved, with such minor amendments thereto as the Monitor, MEFL and the Assignee may deem necessary. The Vendors, each by KSV in its capacity as the Monitor, are hereby authorized and directed, upon the Vendors' Acceptance, to perform their respective obligations under the Transaction Agreement, including the issuance of the IFPC Interests, the IFPC Note 1, the IFPC Note 2 and the IFPC Note 3, and the redemption, termination and cancellation of the IFPC Legacy Shares (in each case as provided for in the Implementation Steps), and to take such additional steps and execute such additional documents (including the Transaction Documents) as may be necessary or desirable for the completion of the Transactions.

4. **THIS COURT ORDERS** that this Order shall constitute the only authorization required by the Vendors, each by KSV in its capacity as the Monitor, to proceed with the Vendors' Acceptance and the Transactions and that no other approval shall be required in connection therewith.

5. **THIS COURT ORDERS** that, upon the occurrence of the Effective Time, or at such time as indicated herein, the following shall occur and shall be deemed to have occurred in the sequence set out in the Implementation Steps:

- (a) immediately prior to the Effective Time, all of the right, title and interest in and to the Excluded Assets of IFPC, Bay Power, Kap Power, Validus Hosting, Kingston LP and Kingston GP shall vest absolutely and exclusively in Residualco, and, in each case, all applicable Claims and Encumbrances shall continue to attach to such Excluded Assets with the same nature and priority as they had immediately prior to their transfer; provided that, for certainty, the Excluded Assets transferred hereby shall not include the Administrative Expense Closing Amount, which shall be paid to and held by the Monitor in accordance with paragraph 24 hereof;
- (b) immediately prior to the Effective Time, all of the Excluded Contracts and the Excluded Liabilities (which, for certainty includes all debts, liabilities, obligations, indebtedness, contracts, leases, agreements, and undertakings of any kind or nature whatsoever, whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, matured or unmatured or due or

not yet due, in law or equity and whether based in statute or otherwise) of IFPC, Bay Power, Kap Power, Validus Hosting, Kingston LP and Kingston GP (in each case, other than the liabilities of the Purchased Entities to be retained or assumed by the Purchased Entities at the Effective Time in accordance with the Transaction Agreement (such liabilities of the Purchased Entities, together with those liabilities of Validus Parent to be assumed by the Assignee in accordance with the Transaction Agreement, collectively, the “**Assumed Liabilities**”) shall be transferred to, assumed by and vest absolutely and exclusively in Residualco, and shall no longer be obligations of any of the Purchased Entities, and the Purchased Entities and all of the Purchased Entities’ remaining assets, permits, licenses, undertakings and properties of every nature and kind whatsoever and wherever situate (collectively, the “**Retained Assets**”) shall be and are hereby forever released and discharged from all of the Excluded Contracts and the Excluded Liabilities, and all related Claims and Encumbrances, other than the permitted encumbrances, easements and restrictive covenants affecting or relating to the Retained Assets or the Purchased Assets listed on Schedule “B” (the “**Permitted Encumbrances**”), shall be expunged and discharged as against the Retained Assets and the Purchased Assets;

- (c) at the Effective Time, concurrently with the acceptance and execution by the Vendors, each by KSV in its capacity as the Monitor, of the Transaction Agreement, each of the following actions described under this paragraph 5(c) shall occur concurrently: (i) the IFPC Interests shall be issued as fully paid and non-assessable shares; and (ii) all right, title and interest in and to the IFPC Interests and the IFPC Note 2, and all of Validus Parent’s right, title and interest in and to the Bay Power Interests, the Kap Power Interests, the Kingston LP Interests, the Kingston GP Interests and the Purchased Validus Parent Assets shall vest absolutely and exclusively in the Assignee, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), pledges, assignments, hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, preferential arrangements of any kind or nature whatsoever or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and

whether secured, unsecured or otherwise (collectively, the “**Claims**”) including, without limiting the generality of the foregoing: (x) any encumbrances or charges created by the Appointment Order, the SISP Approval Order, or any other Order of this Court; and (y) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system (all of which are collectively referred to as the “**Encumbrances**”, which term shall not include the Permitted Encumbrances) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Retained Assets or the Purchased Assets (other than the IFPC Note 3) are hereby expunged and discharged as against the Retained Assets and the Purchased Assets, as applicable (other than the IFPC Note 1 and the IFPC Note 3, which are dealt with in accordance with paragraph 5(d));

- (d) all right, title and interest in and to the IFPC Note 1 and the IFPC Note 3 shall vest absolutely and exclusively in MEFL free and clear of and from any and all Claims and Encumbrances and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the IFPC Note 1 and the IFPC Note 3 are hereby expunged and discharged as against the IFPC Note 1 and the IFPC Note 3;
- (e) all right, title and interest in and to the Leased Property shall vest absolutely and exclusively in IFPC, free and clear of and from any and all Claims and Encumbrances and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Leased Property are hereby expunged and discharged as against the Leased Property;
- (f) upon the assignment and issuance of the Purchased Assets to MEFL and/or the Assignee, the Vendors shall be and are hereby forever released and discharged from all liabilities and obligations flowing from, or in respect of, the Participation Agreement Documents including all amounts and obligations owing by the Vendors in connection therewith, and all related Claims and Encumbrances are hereby expunged and discharged including any rights of subrogation of *Validus Parent* in respect of any of the payment or transfers under the Transaction Agreement;

- (g) all equity interests of IFPC existing prior to the Effective Time (for greater certainty, including the IFPC Legacy Shares, but excluding the IFPC Interests), as well as all options, conversion privileges, equity-based awards, warrants, securities, debentures, loans, notes or other rights, agreements or commitments of any character whatsoever that are held by any Person (as defined herein) and are convertible or exchangeable for any securities of IFPC or that require the issuance, sale or transfer by IFPC, of any shares or other securities of IFPC, or otherwise evidencing a right to acquire the IFPC Interests and/or the share or unit capital of IFPC, as applicable, or otherwise relating thereto (but excluding, for greater certainty, the IFPC Interests, the IFPC Note 1, the IFPC Note 2 and the IFPC Note 3) (collectively, the “**Subject Interests**”), shall be deemed redeemed, terminated and cancelled as provided in the Implementation Steps; and
- (h) the Purchased Entities shall and shall be deemed to cease to be Debtor Companies in these CCAA proceedings and Debtors in the Receivership Proceedings, and the Purchased Entities shall be deemed to be released from the purview of the Appointment Order, the Initial Order and all other Orders of this Court granted in respect of these CCAA proceedings and the Receivership Proceedings, save and except for this Order, the provisions of which (as they relate to the Purchased Entities) shall continue to apply in all respects.

6. **THIS COURT ORDERS** that, for greater certainty: (i) each of the steps provided for in paragraphs 5(a) and (b) are deemed to have occurred contemporaneously with each other and immediately prior to the occurrence of the Effective Time; and (ii) each of the steps provided for in paragraph 5(c) are deemed to have occurred contemporaneously with each other and at the Effective Time.

7. **THIS COURT ORDERS** that, at or after the Effective Time, MEFL is hereby authorized to assign to the Assignee, and the Assignee is hereby authorized to assume, all of MEFL’s right, title and interest in and to the Receiver’s Certificates that the Receiver has, as of the Effective Time, issued pursuant to the Appointment Order; for greater certainty, upon such assignment and assumption, the Assignee shall enjoy the benefit of the Receiver’s Borrowings Charge (as defined in the Appointment Order) as security for the payment of the monies borrowed pursuant to such

Receiver's Certificates, together with interest, fees and charges thereon, in accordance with the Appointment Order.

8. **THIS COURT ORDERS** that upon the registration in The Land Registry Offices for the Land Titles Divisions of Cochrane (No. 6), Lennox (No. 29) and Nipissing (No. 36) (collectively, the "**LRO**") of an Application for Vesting Order in the form prescribed by the *Land Titles Act* (Ontario), together with the Monitor's Certificate, the LRO is hereby directed to delete and expunge from title to the Property all of the Claims listed in Schedule "C" hereto pertaining to the Property.

9. **THIS COURT ORDERS AND DIRECTS** the Monitor to file with this Court a copy of the Monitor's Certificate forthwith after delivery to MEFL and the Assignee thereof in connection with the Transactions as well as a copy of the final form of the Transaction Agreement and all related schedules.

10. **THIS COURT ORDERS** that the Monitor may rely on written notice from MEFL and/or the Assignee regarding the satisfaction or waiver of conditions to closing under the Transaction Agreement and shall have no liability with respect to delivery of the Monitor's Certificate.

11. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, from and after the Effective Time, subject to the retention or assumption of the Priority Payments of the Purchased Entities by the Purchased Entities or the Priority Payments of Validus Parent by the Assignee, as the case may be, and the satisfaction of the Administrative Expense Amount in accordance with the Transaction Agreement and paragraph 24 hereof, all Claims and Encumbrances released, expunged and discharged pursuant to paragraph 5 hereof, including as against the Purchased Entities, the Retained Assets and the Purchased Assets, shall attach to the Excluded Assets with the same nature and priority as they had immediately prior to the Transactions, as if the Transactions had not occurred.

12. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Personal Information Protection and Electronic Documents Act* (Canada), the Vendors, by KSV in its capacity as the Monitor, are authorized, permitted and directed to, at the Effective Time, disclose to MEFL and/or the Assignee all human resources and payroll information in the Vendors' records pertaining to

past and current employees of the Vendors. MEFL and the Assignee shall maintain and protect the privacy of such information in accordance with applicable law and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Vendors prior to the Effective Time.

13. **THIS COURT ORDERS** that, at the Effective Time and without limiting the provisions of paragraph 5 hereof, MEFL, the Assignee and the Purchased Entities shall be deemed released from any and all claims, liabilities (direct, indirect, absolute or contingent) or obligations with respect to any Taxes or any part thereof (including penalties and interest thereon) of, or that relate to, the Vendors (provided, as it relates to the Purchased Entities, such release shall not: (a) effect a transfer or assignment to Residualco of Taxes where such transfer or assignment of such particular Taxes is prohibited by statute, but MEFL and the Assignee shall still be released therefrom; (b) apply to Taxes in respect of the business and operations conducted by the Purchased Entities concurrent with or after the Effective Time and, for greater certainty, shall not restrict or affect in any manner any right, title and interest of the Purchased Entities in and to any amounts that may become due and payable thereto from any governmental authority on or after the Effective Time as a result of Taxes paid concurrent with or after the Effective Time, notwithstanding that they relate to supplies arising prior to the Effective Time for which payment was made concurrent with or after the Effective Time and not prior thereto; or (c) apply to Taxes expressly assumed as Assumed Liabilities pursuant to the Transaction Agreement), including, without limiting the generality of the foregoing, all Taxes that could be assessed against MEFL, the Assignee or the Purchased Entities (including their affiliates or any predecessor corporations), or for which they could otherwise have joint or several liability, in respect of Taxes of Validus Parent or the Purchased Entities. For greater certainty, nothing in this paragraph shall: (i) release or discharge any Claims or Encumbrances against Residualco with respect to Taxes that are vested in or assumed by Residualco; or (ii) affect any tax attributes of the Purchased Entities, which shall be retained by the Purchased Entities and may be used to the maximum extent possible as permitted by Applicable Laws to reduce the Purchased Entities' taxable income.

14. **THIS COURT ORDERS** that the Transactions are exempt from the application of the *Bulk Sales Act* (Ontario), as it read immediately before it was repealed, or any similar legislation

in any other province and section 6 of the *Retail Sales Tax Act* (Ontario) or any equivalent or corresponding provision under any other applicable tax legislation.

15. **THIS COURT ORDERS** that all Continuing Contracts and Permits and Licenses (as defined in the terms and conditions set forth in Schedule “B” to the Offer Letter) to which any of the Purchased Entities are a party at the Effective Time will be and shall remain in full force and effect upon and following the Effective Time, except to the extent expressly contemplated by the Transaction Agreement and no individual, firm, corporation, governmental body or agency, or any other entity (all of the foregoing, collectively being “**Persons**” and each being a “**Person**”) who is a party to any such Continuing Contracts or Permits and Licenses may, as applicable, accelerate, terminate, rescind, refuse to perform or otherwise repudiate its obligations thereunder, or enforce or exercise any right (including any right of set-off, dilution or other remedy) or make any demand under or in respect of any such arrangement and no automatic termination will have any validity or effect, by reason of:

- (a) any event that occurred on or prior to the Effective Time and is not continuing that would have entitled such Person to enforce those rights or remedies (including defaults or events of default arising as a result of the insolvency of any of the Vendors);
- (b) the insolvency of any Vendor or the fact that the Receiver was appointed as receiver in respect of the Vendors or the commencement of these CCAA proceedings;
- (c) any compromises, releases, discharges, cancellations, transactions, arrangements, reorganizations or other steps taken or effected pursuant to the Transaction Agreement, the Transactions or the provisions of this Order, any other Order of this Court in CCAA proceedings or any Order of this Court in the Receivership Proceedings; or
- (d) any transfer or assignment, or any change of control of the Purchased Entities arising from the implementation of the Transaction Agreement, the Transactions or the provisions of this Order.

16. **THIS COURT ORDERS**, for greater certainty, that: (a) nothing in paragraph 15 hereof shall waive, compromise or discharge any obligations of the Purchased Entities in respect of any

Assumed Liabilities, including, for greater certainty, the Priority Payments of the Purchased Entities; (b) the designation of any Claim as an Assumed Liability is without prejudice to the Purchased Entities' and the Assignee's right to dispute the existence, validity or quantum of any such Assumed Liability; and (c) nothing in this Order or the Transaction Agreement shall affect or waive the Purchased Entities' or the Assignee's rights and defences, both legal and equitable, with respect to any Assumed Liability, including, but not limited to, all rights with respect to entitlements to set-offs or recoupments against such Assumed Liability.

17. **THIS COURT ORDERS** that, from and after the Effective Time, all Persons shall be deemed to have waived any and all defaults of any Vendor then existing or previously committed by any Vendor, or caused by any Vendor, directly or indirectly, or noncompliance with any covenant, warranty, representation, undertaking, positive or negative pledge, term, provision, condition or obligation, expressed or implied, in any Continuing Contract or a Permit and License, existing between such Person and any Purchased Entity directly or indirectly from the appointment of the Receiver as receiver in the Receivership Proceedings, or the commencement of these CCAA proceedings, in respect of the Vendors and the implementation of the Transactions, including without limitation any of the matters or events listed in paragraph 15 hereof, and any and all notices of default, notice of non-compliance or similar notice, and demands for payment or any step or proceeding taken or commenced in connection therewith under a Continuing Contract or a Permit and License shall be deemed to have been rescinded and of no further force or effect; provided that, nothing herein shall be deemed to excuse MEFL, the Assignee or the Vendors from performing their obligations under, or be a waiver of defaults by MEFL, the Assignee or the Vendors under, the Transaction Agreement and the related agreements and documents, or affect the validity of the Implementation Steps.

18. **THIS COURT ORDERS** that, from and after the Effective Time, any and all Persons shall be and are hereby forever barred, estopped, stayed and enjoined from commencing, taking, applying for or issuing or continuing any and all steps or proceedings, whether directly, derivatively or otherwise, and including without limitation, administrative hearings and orders, declarations and assessment, commenced, taken or proceeded with or that may be commenced, taken or proceeded with against MEFL, the Assignee or the Purchased Entities relating in any way to or in respect of any Excluded Assets, Excluded Contracts or Excluded Liabilities and any other

claims, obligations and other matters which are waived, released, expunged or discharged pursuant to this Order; provided that, nothing herein shall affect the validity of the Implementation Steps.

19. **THIS COURT ORDERS** that, from and after the Effective Time:

- (a) the nature of the Assumed Liabilities assumed by the Assignee or retained by the Purchased Entities, including, without limitation, their amount and their secured or unsecured status, shall not be affected or altered as a result of the Transactions or this Order;
- (b) the nature of the Excluded Liabilities, including, without limitation, their amount and their secured or unsecured status, shall not be affected or altered as a result of their transfer to Residualco;
- (c) any Person that prior to the Effective Time had a valid right or claim against the Purchased Entities under or in respect of any Excluded Contract or Excluded Liability (each an “**Excluded Liability Claim**”) shall no longer have such right or claim against the Purchased Entities but will have an equivalent Excluded Liability Claim against the Residualco in respect of the Excluded Contract and Excluded Liability from and after the Effective Time in its place and stead, and nothing in this Order limits, lessens or extinguishes the Excluded Liability Claim of any Person as against Residualco;
- (d) the Excluded Liability Claim of any Person against Residualco following the Effective Time shall have the same rights, priority and entitlement as such Excluded Liability Claim had against the applicable Purchased Entity prior to the Effective Time; and
- (e) the Receiver’s Charge (as defined in the Appointment Order) and the Receiver’s Borrowings Charge shall continue to apply to the Property of Validus Parent and Residualco in accordance with the provisions of the Appointment Order, the Initial Order and paragraph 7 herein.

20. **THIS COURT ORDERS** that following the Effective Date, the Assignee may seek a further order, on notice to the Monitor and any affected party, declaring that any contract of a

Purchased Entity that is not identified as a Continuing Contract is an Excluded Contract and that the provisions of paragraphs 5(b), 17 and 18 apply to such contract.

21. **THIS COURT ORDERS** that, as of the Effective Time, Residualco shall be added as a Debtor Company in these CCAA proceedings and all references in any Order of this Court in respect of these CCAA proceedings to: (i) a “Debtor Company” or the “Debtor Companies” shall refer to and include Residualco, *mutatis mutandis*, and (ii) “Property” shall include the current and future assets, licenses, undertakings and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof, of Residualco, including the Remaining Proceeds (the “**Residualco Property**”).

22. **THIS COURT ORDERS** that, as of the Effective Time, Residualco shall be added as a Debtor in the Receivership Proceedings and all references in any Order of this Court in respect of the Receivership Proceedings to: (i) a “Debtor” or the “Debtors” shall refer to and include Residualco, *mutatis mutandis*, and (ii) “Property” shall include the Residualco Property, and, for greater certainty, any remaining Charges, shall constitute charges on the Residualco Property.

23. **THIS COURT ORDERS** that, upon the occurrence of the Effective Time, the Bid Protections Charge shall be and is hereby terminated, released and discharged.

24. **THIS COURT ORDERS** that the Administrative Expense Amount held by the Monitor shall be subject to the Receiver’s Charge and the Receiver’s Borrowings Charge, and any remaining portion thereof after payment of the Administrative Expense Costs (as defined in the Transaction Agreement) shall be paid to the Assignee in accordance with the terms of the Transaction Agreement.

CHARGES

25. **THIS COURT ORDERS** that the Monitor shall be entitled to the benefit of and is hereby granted a charge (the “**Priority Payments Indemnity Charge**”) on the Bay Power Interests, the Kap Power Interests and the IFPC Interests (but excluding for greater certainty the Kingston LP Interests and the Kingston GP Interests) as security in respect of the Priority Payments Indemnity (as defined in the Transaction Agreement) in accordance with the terms of the Transaction Agreement.

26. **THIS COURT ORDERS** that the Priority Payments Indemnity Charge shall terminate automatically upon the later of (i) the payment in satisfaction of all of the Priority Payments of Validus Parent in excess of the Priority Payments Closing Amount, as determined by Canada Revenue Agency (if any), or (ii) receipt of confirmation from Canada Revenue Agency by the Assignee, on notice to the Monitor, that no Priority Payments of Validus Parent in excess of the Priority Payment Closing Amount are owing.

POST-CLOSING RESERVE

27. **THIS COURT ORDERS** that the Monitor is hereby authorized and directed to establish a cash reserve (the “**Post-Closing Reserve**”) from the Administrative Expense Closing Amount, which shall be held in a segregated account and shall be used to pay costs and fees reasonably incurred by the Monitor following the Effective Time in connection with completing these CCAA proceedings, the Receivership Proceedings and any BIA proceedings commenced in respect of Residualco, including payment of the Administrative Expense Costs (collectively, the “**Post-Closing Costs**”).

28. **THIS COURT ORDERS** that the Monitor is hereby authorized to pay any Post-Closing Costs as it, acting reasonably, deems necessary, appropriate or desirable.

29. **THIS COURT ORDERS** that the Monitor is hereby authorized and directed to return any balance remaining in the Post-Closing Reserve that is funded by the Assignee pursuant to Section 6.4 of the Transaction Agreement following payment in satisfaction of all reasonably incurred Post-Closing Costs to the Assignee.

RELEASES AND OTHER PROTECTIONS

30. **THIS COURT ORDERS** that, effective as of the Effective Time: (a) KSV, in its capacities both as the Receiver in the Receivership Proceedings and as the Monitor in these CCAA proceedings, and its legal counsel; and (b) MEFL, the Assignee and their respective current and former directors, officers, employees, legal counsel and advisors (in such capacities, collectively, the “**Released Parties**”) shall be deemed to be forever irrevocably released by the Releasing Parties (as defined herein) and discharged from any and all present and future claims (including, without limitation, claims for contribution or indemnity), liabilities, indebtedness, demands,

actions, causes of action, counterclaims, suits, damages, judgments, executions, recoupments, debts, sums of money, expenses, accounts, liens, taxes, recoveries, and obligations of any nature or kind whatsoever (whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, matured or unmatured or due or not yet due, in law or equity and whether based in statute or otherwise) based in whole or in part on any act or omission, transaction, dealing or other occurrence existing or taking place on or prior to the Effective Time or undertaken or completed in connection with or pursuant to the terms of this Order in respect of, relating to, or arising out of: (i) the Vendors, the business, operations, assets, property and affairs of the Vendors wherever or however conducted or governed, the administration and/or management of the Vendors and/or these CCAA proceedings or the Receivership Proceedings; or (ii) the Offer Letter, the Transaction Agreement, the Transaction Documents and/or any agreement, document, instrument, matter or transaction involving the Vendors arising in connection with or pursuant to any of the foregoing, and/or the consummation of the Transactions (collectively, subject to the excluded matters below, the “**Released Claims**”), which Released Claims shall be deemed to be fully, finally, irrevocably and forever waived, discharged, released, cancelled and barred as against the Released Parties; provided that, nothing in this paragraph shall waive, discharge, release, cancel or bar: (x) any claim that is not permitted to be released pursuant to section 5.1(2) of the *Companies’ Creditors Arrangement Act* (Canada) (the “**CCAA**”) or claim with respect to any act or omission that is determined by a court of competent jurisdiction to have constituted actual fraud, willful misconduct, or gross negligence; or (y) any obligations of any of the Released Parties under or in connection with the Offer Letter, the Transaction Agreement, the Transaction Documents and/or any agreement, document, instrument, matter or transaction involving the Vendors arising in connection with or pursuant to any of the foregoing. “**Releasing Parties**” means any and all Persons, and their current and former affiliates’ current and former members, directors, managers, officers, investment committee members, special committee members, equity holders (regardless of whether such interests are held directly or indirectly), predecessors, successors, assigns, participants, subsidiaries, affiliates, partners, limited partners, general partners, affiliated investment funds or investment vehicles, managed accounts or funds, and each of their respective current and former members, equity holders, officers, directors, managers, principals, members, management companies, advisory board members, investment fund advisors or managers, employees, agents, trustees, investment managers, financial advisors,

partners, legal counsel, accountants, investment bankers, consultants, representatives, and other professionals, each in their capacity as such.

31. **THIS COURT ORDERS** that, without affecting or limiting the release set forth in paragraph 30 hereof, effective as of the Effective Time, none of: (a) KSV, in its capacities both as the Receiver and as the Monitor, and its legal counsel; and (b) MEFL, the Assignee and their respective current and former directors, officers, employees, legal counsel and advisors (in such capacities, collectively, the “**Exculpated Parties**”), shall have or incur, and each Exculpated Party is released and exculpated from, any Causes of Action (as defined herein) against such Exculpated Party for any act or omission in respect of, relating to, or arising out of the Offer Letter, the Transaction Agreement, the Transaction Documents and/or the consummation of the Transactions, these CCAA proceedings, the Receivership Proceedings, the formulation, preparation, dissemination, negotiation, filing or consummation of the Offer Letter, the Transaction Agreement, the Transaction Documents and all related agreements and documents, any transaction, contract, instrument, release, or other agreement or document created or entered into in connection with the Transactions, the pursuit of approval and consummation of the Transactions and/or the transfer of assets and liabilities pursuant to this Order, except for Causes of Action related to any act or omission that is determined by a court of competent jurisdiction to have constituted actual fraud, willful misconduct, or gross negligence. “**Causes of Action**” means any action, claim, cross-claim, third-party claim, damage, judgment, cause of action, controversy, demand, right, action, suit, obligation, liability, debt, account, defense, offset, power, privilege, license, lien, indemnity, interest, guaranty, or franchise of any kind or character whatsoever, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, contingent or non-contingent, liquidated or unliquidated, disputed or undisputed, secured or unsecured, assertable directly or derivatively, matured or unmatured, suspected or unsuspected, in contract or in tort, at law or in equity, or pursuant to any other theory of law or otherwise.

32. **THIS COURT ORDERS** that all Persons are permanently and forever barred, estopped, stayed and enjoined, on and after the Effective Time, with respect to any and all claims or Cause of Actions released pursuant to this Order (including but not limited to the Released Claims), from: (a) commencing, conducting or continuing in any manner, directly or indirectly, any action, suits, demands or other proceedings of any nature or kind whatsoever (including, without limitation, any

proceeding in a judicial, arbitral, administrative or other forum) against any of the Released Parties; (b) enforcing, levying, attaching, collecting or otherwise recovering or enforcing by any manner or means, directly or indirectly, any judgment, award, decree or order against any of the Released Parties or their respective property; (c) commencing, conducting, continuing or making in any manner, directly or indirectly, any action, suit, claim, demand or other proceeding of any nature or kind whatsoever (including any proceeding in a judicial, arbitral, administrative or other forum) against any Person who makes a claim or might reasonably be expected to make a claim, in any manner or forum, including by way of contribution or indemnity or other relief, against one or more of the Released Parties; (d) creating, perfecting, asserting or otherwise enforcing, directly or indirectly, any Encumbrance of any kind against the Released Parties or their respective property; or (e) taking any actions to interfere with the consummation of the Transactions; and any such proceedings will be deemed to have no further effect against such parties and will be released, discharged or vacated without cost.

33. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these CCAA proceedings or the Receivership Proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the BIA in respect of any of the Vendors or Residualco, and any bankruptcy order issued pursuant to any such applications; or
- (c) any assignment in bankruptcy made in respect of any of the Vendors or Residualco,

the Offer Letter, the Transaction Agreement, the Transaction Documents, the consummation of the Transactions (including without limitation the transfer and vesting of the Excluded Assets, the Excluded Contracts and the Excluded Liabilities in and to Residualco, the transfer and vesting of the Purchased Assets in and to the Assignee or MEFL, as applicable, the transfer of title in and to the Leased Property from MEFL to IFPC, the assumption or retention of the Priority Payments of Validus Parent by the Assignee or the Priority Payments of the Purchased Entities by the Purchased Entities, as the case may be, and any payments by or to MEFL, the Assignee, the Receiver, the Monitor or the Vendors authorized herein or pursuant to the Offer Letter, the Transaction Agreement and/or the Transaction Documents) shall be binding on any trustee in bankruptcy that may be appointed in respect of Validus Parent or Residualco, and shall not be void or voidable by

creditors of Validus Parent or Residualco, as applicable, nor shall they constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the CCAA, the BIA or any other applicable federal or provincial legislation, nor shall they constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

34. **THIS COURT ORDERS** that nothing in this Order, including the release and discharge of the Purchased Entities from the purview of these CCAA proceedings or the Receivership Proceedings pursuant to paragraph 5(h) hereof and the addition of Residualco as a Debtor Company in these CCAA proceedings and as a respondent in the Receivership Proceedings, shall affect, vary, derogate from, limit or amend, and KSV shall continue to have the benefit of, any and all rights and approvals and protections in favour of the Receiver and the Monitor at law or pursuant to the BIA, the Appointment Order, the Initial Order, this Order, any other Orders in these CCAA proceedings or the Receivership Proceedings or otherwise, including all approvals, protections and stays of proceedings in favour of KSV in its capacity as Receiver and in its capacity as the Monitor, as applicable, all of which are expressly continued and confirmed.

EMPLOYEES

35. **THIS COURT ORDERS** that Residualco shall be deemed to be the former employer of any former employees of the corresponding Purchased Entities who were terminated between the date of the Appointment Order and the Effective Time, if any, whose claims against the Purchased Entities are transferred to Residualco pursuant to this Order, provided that such deeming: (i) shall be effective immediately after the Effective Time; and (ii) will solely be for the purposes of termination pay and severance pay pursuant to the *Wage Earners Protection Program*.

GENERAL

36. **THIS COURT ORDERS** that, following the Effective Time, the Assignee shall be authorized to take all steps as may be necessary to effect the discharge of the Claims and Encumbrances (other than the Permitted Encumbrances) as against the Purchased Interests, the Purchased Entities, the Retained Assets and the remainder of the Purchased Assets.

37. **THIS COURT ORDERS** that the Monitor be and is hereby authorized to distribute the Priority Payments Closing Amount to such parties as may be entitled to payment to satisfy the Priority Payments of Validus Parent known at the Effective Time and, after such obligations are paid in full, such amounts as may be required to satisfy the Priority Payments of the Purchased Entities known at the Effective Time, in accordance with the Transaction Agreement.

38. **THIS COURT ORDERS** that, following the Effective Time, the style of cause of these CCAA proceedings shall be hereby amended by being deleted and replaced in its entirety by the following:

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT*
ACT, R.S.C. 1985, C. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT INVOLVING VALIDUS POWER CORP. and
[RESIDUALCO NAME TO BE ADDED]**

39. **THIS COURT ORDERS** that, following the Effective Time, the style of cause of the Receivership Proceedings shall be hereby amended by being deleted and replaced in its entirety by the following:

MACQUARIE EQUIPMENT FINANCE LIMITED

Applicant

- and -

VALIDUS POWER CORP. and [RESIDUALCO NAME TO BE ADDED]

Respondents

**APPLICATION UNDER SECTION 243(1) OF THE *BANKRUPTCY AND
INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED; AND SECTION 101 OF
THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED**

40. **THIS COURT ORDERS** that, following the Effective Time, the Appointment Order is amended by deleting Schedule "A" thereto in its entirety.

41. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada.

42. **THIS COURT ORDERS** that the Receiver and the Monitor shall be authorized to apply as it may consider necessary or desirable, with or without notice, to any other court or administrative body, whether in Canada or elsewhere, for orders that aid and complement this Order. All courts and administrative bodies of all such jurisdictions are hereby respectfully requested to make such orders and to provide such assistance to the Receiver and/or the Monitor as may be deemed necessary or appropriate for that purpose.

43. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body, having jurisdiction in Canada or elsewhere, to give effect to this Order and to assist the Receiver, the Monitor and/or its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver and/or the Monitor, in each case as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Receiver and/or the Monitor in any foreign proceeding, or to assist the Receiver and its agents in carrying out the terms of this Order.

44. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Prevailing Eastern Time on the date hereof without any need for entry and/or filing; provided that the transaction steps set out in paragraph 5 hereof and each of the transactions set out in the Implementation Steps shall be deemed to have occurred in the order set out in the Implementation Steps.

**SCHEDULE “A”
FORM OF MONITOR’S CERTIFICATE**

Court File No. CV-23-00705215-00CL

ONTARIO

SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST

**IN THE MATTER OF THE *COMPANIES’ CREDITORS ARRANGEMENT
ACT, R.S.C. 1985, C. C-36, AS AMENDED***

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT INVOLVING VALIDUS POWER CORP., IROQUOIS
FALLS POWER CORP., BAY POWER CORP., KAP POWER CORP.,
VALIDUS HOSTING INC., KINGSTON COGEN LIMITED PARTNERSHIP
AND KINGSTON COGEN GP INC.**

MONITOR’S CERTIFICATE

RECITALS

1. Pursuant to the Appointment Order of Justice Osborne of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated August 10, 2023, KSV Restructuring Inc. (“**KSV**”) was appointed as receiver and manager (in such capacity, the “**Receiver**”) of the assets, property and undertaking of Validus Power Corp., Iroquois Falls Power Corp., Bay Power Corp., Kap Power Corp., Validus Hosting Inc., Kingston Cogen Limited Partnership and Kingston Cogen GP Inc. (collectively, the “**Vendors**”).
2. Pursuant to the Initial Order of Justice Osborne of the Court dated August 29, 2023, KSV was appointed as monitor (in such capacity, the “**Monitor**”) of the Vendors.
3. Pursuant to a Sale and Investment Solicitation Process Order of the Court dated [■], 2023 (the “**SISP Order**”), the Monitor was authorized and directed to, among other things, carry out the SISP (as defined the SISP Order).
4. Pursuant to an Approval and Vesting Order of the Court dated [■], 2023 (the “**Order**”), the Court approved the transactions (collectively, the “**Transactions**”) contemplated by the

Transaction Agreement dated [■], 2023 (as may be amended from time to time, the “**Transaction Agreement**”) between the Vendors, by KSV in its capacity as the Monitor, Macquarie Equipment Finance Ltd. (“**MEFL**”) and Far North Power Corp. (the “**Assignee**”), and ordered, among other things that upon the Effective Time: (a) that all of the Purchased Entities’ right, title and interest in and to the Excluded Assets, the Excluded Contracts and the Excluded Liabilities shall vest absolutely and exclusively in and to Residualco; (b) the Vendors, by KSV in its capacity as the Monitor, to issue the IFPC Interests, the IFPC Note 1, the IFPC Note 2 and the IFPC Note 3, and the vesting of: (i) all of the right, title and interest in and to the IFPC Interests and the IFPC Note 2; and (ii) all of Validus Parent’s right, title and interest in and to Bay Power Interests, the Kap Power Interests, the Kingston LP Interests, the Kingston GP Interests, the Validus Hosting Interests, and the Purchased Validus Parent Assets absolutely and exclusively in and to the Assignee, free and clear of any Encumbrances; (c) the vesting of all right, title and interest in and to the IFPC Note 1 and the IFPC Note 3 absolutely and exclusively in and to MEFL, free and clear of any Encumbrances; and (d) the termination and cancellation or redemption of the Subject Interests for no consideration (as provided for in the Implementation Steps).

5. Capitalized terms used but not defined herein have the meanings ascribed to them in the Order.

THE MONITOR CERTIFIES the following:

1. The Monitor has received the Administrative Expense Amount.
2. The Monitor has received written confirmation from MEFL, on its own behalf and on behalf of the Assignee, in form and substance satisfactory to the Monitor, that (a) all of the Offer Conditions (including, for clarity, the Vendors’ Acceptance) have been satisfied or waived by MEFL, on its own behalf and on behalf of the Assignee, as applicable, and (b) the Effective Time has occurred.

3. This Monitor's Certificate was delivered by the Monitor at _____ [TIME] on _____, 2023.

**KSV RESTRUCTURING INC., in its
capacity as the Monitor of the Vendors,
and not in its personal capacity**

By: _____

Name:

Title:

SCHEDULE “B”
PERMITTED ENCUMBRANCES

- Encumbrances securing Assumed Liabilities to the extent that such Assumed Liabilities are secured by Encumbrances as of the Closing Time

Capitalized terms in this Schedule “B” shall have the meanings ascribed thereto in the Transaction Agreement.

SCHEDULE “C”
ENCUMBRANCES TO BE EXPUNGED

1. Instrument No. CB184081 registered on March 8, 2023, being a lien in the original principal amount of \$6,002,211 in favour of Her Majesty the Queen in Right of Canada as represented by The Minister of National Revenue

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, C. C-36, AS AMENDED Court File No. CV-23-00705215-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT INVOLVING VALIDUS POWER CORP., IROQUOIS FALLS POWER CORP., BAY POWER CORP., KAP POWER CORP., VALIDUS HOSTING INC., KINGSTON COGEN LIMITED PARTNERSHIP AND KINGSTON COGEN GP INC.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at TORONTO

APPROVAL AND VESTING ORDER

[NORTON ROSE]

SCHEDULE "B"

Form of SISP

(See attached.)

Sale and Investment Solicitation Process

1. On August 10, 2023, the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) granted an order, among other things, appointing KSV Restructuring Inc. (“**KSV**”) as receiver and manager (in such capacity, the “**Receiver**”) of the property and undertakings of Validus Power Corp., Iroquois Falls Power Corp., Bay Power Corp., Kap Power Corp., Kingston Cogen Limited Partnership, Kingston Cogen GP Inc. and Validus Hosting Inc. (collectively, the “**Validus Entities**”) pursuant to section 243(1) of the *Bankruptcy and Insolvency Act* (Canada) and section 101(1) of the *Courts of Justice Act* (Ontario).
2. On application by the Receiver, on August 29, 2023, the Court granted an order (the “**Initial Order**”), among other things, granting the Validus Entities relief pursuant to the *Companies’ Creditors Arrangement Act* (Canada) and appointing KSV as monitor (in such capacity, the “**Monitor**”) of the Validus Entities.
3. On [■], 2023, the Court granted a further order (the “**SISP Order**”), among other things: (a) authorizing the Monitor to implement a sale and investment solicitation process (“**SISP**”) in accordance with the terms hereof; (b) approving, for purposes of acting as the stalking horse bid in the SISP, the transaction agreement (the “**Stalking Horse Transaction Agreement**”) appended as Schedule “A” to the offer letter delivered by Macquarie Equipment Finance Limited (the “**Proponent**”) and Far North Power Corp. (the “**Assignee**”) to the Monitor on [■], 2023 (the Proponent and the Assignee’s offer for the entry by the Validus Entities into the Stalking Horse Transaction Agreement set out therein, the “**Stalking Horse Bid**”); (c) approving the Monitor’s entry into the Break-Up Fee Agreement and the Break-Up Fee and the Expense Reimbursement; and (d) granting the Bid Protections Charge. Capitalized terms that are not defined herein have the meanings ascribed thereto in the Initial Order or the SISP Order, as applicable.
4. This SISP sets out the manner in which: (a) binding bids for executable transaction alternatives that are superior to the Stalking Horse Bid involving the shares and/or the business and assets of the Validus Entities will be solicited from interested parties; (b) any such bids received will be addressed; (c) any Successful Bid (as defined below) will be selected; and (d) Court approval of any Successful Bid will be sought. Such transaction alternatives may include, among other things, a sale of some or all of the Validus Entities’ shares, assets and/or business and/or an investment in the Validus Entities, each of which shall be subject to all terms set forth in this SISP.
5. The SISP shall be conducted by the Monitor.
6. Parties who wish to have their bids considered shall be expected to participate in the SISP as conducted by the Monitor.
7. The SISP will be conducted such that the Monitor will:
 - (a) prepare marketing materials and a process letter;

- (b) prepare and provide applicable parties with access to a virtual data room containing diligence information;
 - (c) prepare and include in the data room one or more template forms of purchase agreements to be used by interested parties when submitting a proposed bid (“**Form of Agreement**”);
 - (d) solicit interest from parties to enter into non-disclosure agreements (parties shall only obtain access to the data room and be permitted to participate in the SISP if they execute a non-disclosure agreement that is in form and substance satisfactory to the Monitor); and
 - (e) request that such parties (other than the Proponent and the Assignee) submit a binding offer meeting at least the requirements set forth in Section 9, as determined by the Monitor (a “**Qualified Bid**”) by the Qualified Bid Deadline (as defined below).
8. The SISP shall be conducted subject to the terms hereof and the following key milestones:
- (a) Court approval of SISP and the Stalking Horse Bid to serve as stalking horse bid in the SISP – [■], 2023;
 - (b) The Monitor to commence solicitation process – [■], 2023;
 - (c) Deadline to submit a Qualified Bid – 11:59 p.m. (Toronto time) on [■], 2023 (the “**Qualified Bid Deadline**”);¹
 - (d) Deadline to determine whether a bid is a Qualified Bid and, if applicable, to notify those parties who submitted a Qualified Bid of the Auction (as defined below) – 5:00 p.m. (Toronto time) on [■], 2023;
 - (e) The Monitor to hold the Auction (if applicable) – [■], 2023; and
 - (f) Implementation Order (as defined below) hearing by no later than [■], 2023, subject to Court availability.

The Monitor may, in its discretion, seek court approval for the termination of the SISP and for approval of implementation of the Stalking Horse Bid if no potentially interested parties have executed non-disclosure agreements and commenced due diligence on or prior to [■], 2023, or if thereafter all parties who executed non-disclosure agreements and conducted due diligence have advised the Monitor that they no longer intend to participate in the SISP.

¹ [NTD: Date to be 35 days after the start of SISP process.]

9. In order to constitute a Qualified Bid, a bid (including an Aggregated Bid (as defined below)) must comply with the following:
- (a) it provides for: (i) the payment in full in cash on closing of the Claim Amount (as defined in the Stalking Horse Transaction Agreement); (ii) the purchase of all of the Proponent's interest in the Receiver's Certificates (as defined in the Appointment Order), if any; (iii) the payment in full in cash on closing of any claims ranking in priority to the claims set forth in subparagraphs (i) and (ii) of this Subsection 9(a), including any claims secured by Court-ordered charges (other than the Receiver's Borrowings Charge (as defined in the Appointment Order)), unless otherwise agreed to by the applicable holders thereof in their sole discretion, and the Break-Up Fee and the maximum amount of the Expense Reimbursement (as such terms are defined in the Stalking Horse Transaction Agreement); and (iv) a minimum overbid increment of \$750,000 (the "**Overbid Increment**");
 - (b) An allocation of the purchase price under such bid among the purchased assets of Validus Power Corp. and all other property to be acquired.
 - (c) it provides a detailed sources and uses schedule that identifies, with specificity, the amount of cash consideration (the "**Cash Consideration Value**") and any assumptions that could reduce the net consideration payable. At a minimum, the Cash Consideration Value plus the Validus Entities' aggregate cash on hand must be sufficient for payment in full of the items contemplated in subparagraphs (i) to (iii) of Subsection 9(a), including the Break-Up Fee and the maximum amount of the Expense Reimbursement, plus the Overbid Increment, on closing, which Cash Consideration Value is estimated to be \$60,228,822 as of September 22, 2023;
 - (d) it provides details of any assumption of liabilities;
 - (e) it is reasonably capable of being consummated by 30 days after issuance of the Implementation Order if selected as a Successful Bid;
 - (f) it contains:
 - (i) duly executed binding transaction document(s);
 - (ii) the legal name and identity (including jurisdiction of existence) and contact information of the bidder, full disclosure of its direct and indirect principals, and the name(s) of its controlling equityholder(s);
 - (iii) a redline to the applicable Form of Agreement provided by the Monitor as described in Subsection 7(c);
 - (iv) evidence of authorization and approval from the bidder's board of directors (or comparable governing body) and, if necessary to complete the transaction, the bidder's equityholder(s);

- (v) disclosure of any connections or agreements with any of the Validus Entities or any of their affiliates, any known, potential, prospective bidder, or any officer, manager, director, or known equity security holder of any Validus Entity or any of their affiliates; and
- (vi) such other information as may be reasonably requested by the Monitor, in its discretion;
- (g) it includes a letter stating that the bid is submitted in good faith, is binding and is irrevocable until the earlier of (i) completion of a Successful Bid or (ii) **[December 29], 2023**; *provided*, however, that if such bid is selected as a Successful Bid, it shall remain irrevocable until the closing of the Successful Bid;
- (h) it provides written evidence of a bidder's ability to fully fund and consummate the transaction and satisfy its obligations under the transaction documents, including binding equity/debt commitment letters and/or guarantees (i.e., bank guarantees) covering the full value of all cash consideration;
- (i) it does not include any request for or entitlement to any break fee, expense reimbursement or similar type of payment;
- (j) it is not conditional upon:
 - (i) approval from the bidder's board of directors (or comparable governing body) or equityholder(s);
 - (ii) the outcome of any due diligence by the bidder; or
 - (iii) the bidder obtaining financing;
- (k) it includes an acknowledgment and representation that the bidder has had an opportunity to conduct any and all required due diligence prior to making its bid;
- (l) it specifies any regulatory or other third-party approvals the party anticipates would be required to complete the transaction (including the anticipated timing necessary to obtain such approvals) and, in connection therewith, specifies whether the bidder or any of its affiliates is involved in any part of the Canadian energy sector, including an electricity generator, electric utility, retail service provider, or a registered participant with the Ontario Independent Electricity System Operator;
- (m) it includes full details of the bidder's intended treatment of the Validus Entities' employees under the proposed bid;
- (n) it is accompanied by a cash deposit (the "**Deposit**") by wire transfer of immediately available funds equal to 10% of the Cash Consideration Value, which Deposit shall be retained by the Monitor in a non-interest bearing trust account in accordance with Section 18;

- (o) it includes a statement that the bidder will bear its own costs and expenses (including legal and advisor fees) in connection with the proposed transaction, and by submitting its bid is agreeing to refrain from and waive any assertion or request for reimbursement on any basis;
 - (p) it contains a written acknowledgment that the transaction will proceed on an “as is, where is” basis, without representations or warranties by the sellers except as expressly set out therein; and
 - (q) it is received by the Qualified Bid Deadline.
10. The Qualified Bid Deadline may be extended: (i) by the Monitor for no longer than 7 days in the Monitor’s discretion; or (ii) by further order of the Court. In such circumstances, the milestones contained in Subsections 8(d) through 8(f) shall be extended by the same amount of time. Any other milestone dates in Section 8 may be extended in the Monitor’s discretion; *provided* that the aggregate of all such discretionary extensions shall not exceed 14 days.
 11. The Monitor may combine bids received for individual assets of the Validus Entities for the purpose of determining if such bids, collectively, will be treated as a Qualified Bid (such bid being an “**Aggregated Bid**”); *provided* that any Aggregated Bid must comply with each of the requirements set out in Section 9 (as may be modified in accordance with Section 12) in order to be a Qualified Bid.
 12. The Monitor may waive compliance with any one or more of the requirements specified in Section 9 above and deem a non-compliant bid to be a Qualified Bid; *provided* that the Monitor shall not waive compliance with the requirements specified in Subsections 9(a), (c), (f), (g), (h), (i), (j), (k), (l) or (n) without the prior written consent of the Proponent and the Assignee, each acting reasonably, or further order of the Court. If a bid received is not a Qualified Bid, the Monitor may provide the bidder with an opportunity to remedy any deficiencies and render such bid a Qualified Bid; *provided* that such defects are remedied on or before the deadline set out in Subsection 8(d).
 13. Notwithstanding the requirements specified in Section 9, the transactions contemplated by the Stalking Horse Bid (collectively, the “**Stalking Horse Transaction**”), are deemed to be a Qualified Bid; *provided* that, for greater certainty, no Deposit shall be required to be submitted in connection with the Stalking Horse Transaction.
 14. If one or more Qualified Bids (other than the Stalking Horse Transaction) has been received by the Monitor on or before the Qualified Bid Deadline, the Monitor shall proceed with an auction to determine the successful bid(s) (the “**Auction**”), which Auction shall be administered in accordance with Schedule “A” hereto, subject to such additional procedural rules as may be determined by the Monitor to be necessary or desirable in the conduct of the Auction. The successful bid(s) selected within the Auction shall constitute the “**Successful Bid**”. Forthwith upon determining to proceed with an Auction, the Monitor shall provide written notice to each party that submitted a Qualified Bid (including the

Stalking Horse Transaction), along with copies of all Qualified Bids and a statement by the Monitor specifying which Qualified Bid is the leading bid.

15. Following selection of a Successful Bid, the Validus Entities shall seek to finalize any remaining necessary definitive agreement(s) with respect to the Successful Bid in accordance with the key milestones set out in Section 8. Once the necessary definitive agreement(s) with respect to a Successful Bid have been finalized, as determined by the Monitor, the Monitor shall apply to the Court for an order or orders, among other things, approving such Successful Bid and/or the mechanics to authorize the Validus Entities and the Monitor, as the case may be, to complete the transactions contemplated thereby, as applicable, and authorizing the Validus Entities or the Monitor, as the case may be, to: (i) enter into any and all necessary agreements and related documentation with respect to the Successful Bid; (ii) undertake such other actions as may be necessary to give effect to such Successful Bid; and (iii) implement the transaction(s) contemplated in such Successful Bid (each, an “**Implementation Order**”).
16. If a selected Successful Bid is not completed within 30 days following issuance of the Implementation Order, the Implementation Order is not granted, or the Monitor otherwise determines a selected Successful Bid will not be completed, the Monitor shall be permitted to designate one or more alternative Successful Bids from the Qualified Bids received prior to or during the Auction, and such alternative Successful Bid shall be deemed the Successful Bid for all purposes hereunder. The foregoing shall not limit the Monitor’s right in the foregoing circumstances to terminate these SISP procedures and pursue any alternative process and any alternative transactions determined by the Monitor to be appropriate, in consultation with the Proponent, as secured creditor.
17. The Validus Entities, the Proponent and the Assignee, with the consent of the Monitor, shall be permitted to modify the Stalking Horse Transaction to exclude any asset for which an alternative bid (an “**Alternative Bid**”, and the assets subject to such Alternative Bid, the “**Excluded SHB Assets**”) is received if:
 - (a) the Proponent and the Assignee agree in writing, in their respective sole discretion, to modify the Stalking Horse Transaction in order to accommodate such proposed Alternative Bid;
 - (b) the Validus Entities, the Proponent and the Assignee, with the consent of the Monitor, agree on the adjustment of the purchase price under the Stalking Horse Transaction to account for the removal of the Excluded SHB Assets and the value of the Alternative Bid;
 - (c) the Monitor determines that the aggregate consideration to be offered by (i) the Stalking Horse Transaction, as so modified (the “**Modified SHB**”) and (ii) the proposed Alternative Bid for the Excluded SHB Assets, would exceed the value of the Stalking Horse Transaction (the “**Excluded Assets Sale**”);
 - (d) the Alternative Bid combined with the Modified SHB meet all of the requirements of a Qualified Bid;

- (e) the Monitor determines that the Modified SHB and the Excluded Assets Sale, collectively, are a Qualified Bid; and
- (f) the Proponent and the Assignee agree that the original Stalking Horse Transaction shall remain open for acceptance notwithstanding the Modified SHB, such that the Stalking Horse Transaction can be completed if for any reason the Modified SHB and the Excluded Assets Sale are not completed.

For greater certainty, if the Modified SHB and Excluded Assets Sale are each designated as a Successful Bid, then the Proponent and the Assignee shall not be entitled to receive any Break Fee or Expense Reimbursement Amount as a result of the completion of such transaction. If the Modified SHB and the Excluded Asset Sale are not selected as a Successful Bid, then the Proponent and the Assignee shall continue to be entitled to receive any Break Fee and Expense Reimbursement (in accordance with the Stalking Horse Transaction Agreement) upon completion of an alternative Successful Bid to which the Proponent and the Assignee are not parties.

18. All Deposits shall be retained by the Monitor in a non-interest bearing trust account. If a Successful Bid is selected and an Implementation Order authorizing the consummation of the transaction contemplated thereunder is granted, any Deposit paid in connection with such Successful Bid will be non-refundable and shall, upon closing of the transaction contemplated by such Successful Bid, be applied to the cash consideration to be paid in connection with such Successful Bid or be dealt with as otherwise set out in the definitive agreement(s) entered into in connection with such Successful Bid. In the event that the Successful Bid is not completed due to a breach or default of the bidder's obligations thereunder, the Deposit shall be forfeited to the Validus Entities as damages and such Deposit shall be in addition to, and not in lieu of, any other rights in law or equity that the Validus Entities have in respect of such breach or default. Any Deposit delivered with a Qualified Bid that is not selected as a Successful Bid will be returned to the applicable bidder as soon as reasonably practicable (but not later than ten (10) business days) after the earliest of (i) completion of a Successful Bid; (ii) December 29, 2023; or (iii) the date of the Monitor's determination that such bid will not be pursued further.
19. Except as expressly set out herein, the Monitor may not modify the SISP without court approval; *provided*, however, that the Monitor may implement additional procedural rules that the Monitor determines will better promote the goals of the SISP; *provided* that any additional procedural rules shall not be inconsistent with the Stalking Horse Agreement unless agreed by the Proponent and the Assignee or otherwise ordered by the Court.

SCHEDULE “A”
AUCTION PROCEDURES

1. **Auction.** If the Monitor receives at least one Qualified Bid (other than the Stalking Horse Transaction) including any Aggregated Bid, the Monitor shall conduct and administer the Auction in accordance with the terms of the SISP. Instructions to participate in the Auction, which will take place via video conferencing, will be provided to Qualified Parties (as defined below) not less than 24 hours prior to the Auction.
2. **Participation.** Only parties that submit a Qualified Bid by the Qualified Bid Deadline, including the Stalking Horse Transaction and, collectively, the parties submitting any Aggregated Bid (collectively, the “**Qualified Parties**”), shall be eligible to participate in the Auction. No later than 5:00 p.m. (Toronto time) on the day prior to the Auction, each Qualified Party (other than the Proponent and the Assignee, in respect of the Stalking Horse Transaction) must inform the Monitor whether it intends to participate in the Auction. The Monitor will promptly thereafter inform in writing each Qualified Party who has expressed its intent to participate in the Auction of the identity of all other Qualified Parties that have indicated their intent to participate in the Auction. If no Qualified Party indicates such expression of intent, the Stalking Horse Transaction shall be the Successful Bid.
3. **Auction Procedures.**
 - (a) **Procedures.** The Auction shall be governed by the following procedures:
 - (i) **Attendance.** Only the Monitor, representatives of the Qualified Parties and each of their respective advisors, and any other person admitted with the consent of the Monitor will be entitled to attend the Auction, and only the Qualified Parties will be entitled to make any subsequent Overbids (as defined below) at the Auction;
 - (ii) **No Collusion.** Each Qualified Party participating at the Auction shall be required to confirm on the record at the Auction that: (i) it has not engaged in any collusion with respect to the Auction and the bid process (excluding, for greater certainty, any discussions among those parties who are bidders in an Aggregated Bid); and (ii) its bid is a good-faith *bona fide* offer and it intends to consummate the proposed transaction if selected as the Successful Bid (as defined below);
 - (iii) **Minimum Overbid.** The Auction shall begin with the Qualified Bid that represents the highest or otherwise best Qualified Bid as determined by the Monitor (the “**Initial Bid**”), and any bid made at the Auction by a Qualified Party subsequent to the Monitor’s announcement of the Initial Bid (each, an “**Overbid**”), must proceed in minimum additional cash increments as determined by the Monitor and announced to the Auction participants prior to each round of bidding (the “**Required Bid Increment**”). At the end of

each round of bidding, the Monitor will identify the highest or otherwise best Overbid as the leading bid for the subsequent round (the “**Lead Bid**”);

- (iv) **Bidding Conclusion.** The Auction shall continue in one or more rounds and will conclude after each participating Qualified Party (including parties to an Aggregated Bid) has had the opportunity to submit an additional bid or refused to submit an additional bid with full knowledge and written confirmation of the then-existing Lead Bid for that round. If at the commencement of the Auction, no party submits a bid that exceeds the Initial Bid by the Required Bid Increment, then the Initial Bid will be the Successful Bid. If in any round, a Qualified Party (other than the party who submitted the Lead Bid in such round) does not submit an Overbid satisfying the Required Bid Increment, then such Qualified Party (including the parties to any Aggregated Bid if no Aggregated Bid is submitted in a particular round) will no longer be permitted to participate in any subsequent round of the Auction; and
 - (v) **No Post-Auction Bids.** No bids will be considered for any purpose after the Auction has concluded.
- (b) **Additional Procedures.** The Monitor may announce prior to or during the Auction additional procedural rules, including the process for submission and review of bids, that are reasonable under the circumstances for conducting the Auction; *provided* that those rules are not inconsistent in any material respects with the SISP or the Stalking Horse Agreement.

Selection of Successful Bid

4. **Selection.** Before the conclusion of the Auction, the Monitor will: (a) review each Qualified Bid and Overbid, considering the factors set out in Section 9 of the SISP and, among other things: (i) the amount of consideration being offered and, if applicable, the proposed form, composition and allocation of same; (ii) the value of any assumption of liabilities or waiver of liabilities not otherwise accounted for in prong (i) above; (iii) the likelihood of the Qualified Party’s ability to close a transaction by [30] days after issuance of the Implementation Order and the timing thereof (including factors such as the transaction structure and execution risk, including conditions to, timing of, and certainty of closing; termination provisions; availability of financing and financial wherewithal to meet all commitments; and required governmental or other approvals); (iv) the likelihood of the Court’s approval of such Overbid; (v) the net benefit to the estate of the Validus Entities of such Overbid; and (vi) any other factors the Monitor may, consistent with its duties, reasonably deem relevant; and (b) identify the highest or otherwise best bid received at the Auction (the “**Successful Bid**” and the Qualified Party making such bid, the “**Successful Party**”).
5. **Acknowledgement.** The Successful Party shall complete and execute all agreements, contracts, instruments or other documents evidencing and containing the terms and conditions upon which the Successful Bid was made within one business day of the

Successful Bid being selected as such, unless extended by the Monitor, subject to the milestones set forth in Section 8 of the SISP.

SCHEDULE “C”

Form of SISP Order

(See attached.)

Court File No. [■]

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE) [■], THE [■]
))
JUSTICE [■]) DAY OF [■], 2023

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT*
ACT, R.S.C. 1985, C. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF VALIDUS POWER CORP., IROQUOIS FALLS
POWER CORP., BAY POWER CORP., KAP POWER CORP., VALIDUS
HOSTING INC. AND KINGSTON COGEN GP INC., EACH BY THEIR
COURT APPOINTED RECEIVER AND MANAGER, KSV
RESTRUCTURING INC.

SISP APPROVAL ORDER

THIS MOTION, made by **KSV Restructuring Inc.** ("**KSV**"), in its capacity as the Court-appointed monitor (in such capacity, the "**Monitor**") of Validus Power Corp. ("**Validus Parent**"), Iroquois Falls Power Corp. ("**IFPC**"), Bay Power Corp. ("**Bay Power**"), Kap Power Corp. ("**Kap Power**"), Validus Hosting Inc. ("**Validus Hosting**"), Kingston Cogen GP Inc. ("**Kingston GP**", and collectively with each of the foregoing entities, the "**Companies**") and Kingston Cogen Limited Partnership ("**Kingston LP**", and together with the Companies, the "**Validus Entities**"), for an Order, among other things, approving a sale and investment solicitation process for the Validus Entities was heard this day [by judicial videoconference via Zoom] in Toronto, Ontario.

ON READING the Motion Record in respect of this motion, filed, the Second Report of the Monitor dated [■], 2023 (the "**[Second] Report**"), filed;

AND UPON hearing the submissions of counsel for the Monitor, counsel for Macquarie Equipment Finance Ltd. (the "**Stalking Horse Bidder**"), counsel for Far North Power Corp. (the "**Assignee**"), counsel for [■], and such other counsel who were present, no one else appearing although duly served as appears from the affidavit of service of [■] sworn [■], 2023 and the affidavit of service of [■] sworn [■], 2023, filed.

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS** that capitalized terms used in this Order and not otherwise defined herein shall have the meanings ascribed to them in the Sale and Investment Solicitation Process attached as Schedule "A" (the "**SISP**"), the Appointment Order of this Court dated August 10, 2023 issued in the Receivership Proceedings (as defined below) (the "**Appointment Order**") or the Initial Order of this Court dated August 29, 2023 (the "**Initial Order**"), as applicable.

SALE AND INVESTMENT SOLICITATION PROCESS

3. **THIS COURT ORDERS** that the SISP is hereby approved and the Monitor is hereby authorized to implement the SISP pursuant to the terms thereof. The Monitor is hereby authorized to perform to do all things reasonably necessary to carry out the SISP.

4. **THIS COURT ORDERS** that the Monitor shall have no liability with respect to any and all losses, claims, damages or liabilities of any nature or kind to any person in connection with or as a result of the SISP, except to the extent of losses, claims, damages or liabilities that arise or

result from the gross negligence or willful misconduct of the Monitor in performing its obligations under the SISP, as determined by this Court.

STALKING HORSE BID

5. **THIS COURT ORDERS** that the transaction agreement (the "**Transaction Agreement**") appended as Schedule "A" to the offer letter delivered by the Stalking Horse Bidder and the Assignee to the Monitor (the "**Offer Letter**", and the Stalking Horse Bidder and the Assignee's offer for the Receiver's entry into the Transaction Agreement set out therein, the "**Stalking Horse Bid**") is hereby approved solely as the stalking horse bid in the SISP; provided that, nothing herein approves: (i) the acceptance and/or execution of the Transaction Agreement by the Vendors (as defined in the Stalking Horse Bid); or (ii) the sale and the vesting of any Property to the Stalking Horse Bidder, the Assignee or any of their respective designees, if applicable, pursuant to the Transaction Agreement and that the approval of the Vendors' acceptance and execution of the Transaction Agreement and/or any sale and vesting of any such Property shall be considered by this Court on a subsequent motion made to this Court if the Stalking Horse Bid is the Successful Bid pursuant to the SISP.

6. **THIS COURT ORDERS** that, as soon as reasonably practicable following the Vendors agreeing upon the final Implementation Steps (as defined in the Offer Letter and the Transaction Agreement), the Monitor shall, in each such case: (i) file a copy thereof with this Court; (ii) serve a copy thereof on the Service List, and (iii) provide a copy thereof to each SISP Participant (as hereinafter defined), excluding from the public record any confidential information that the Monitor, the Stalking Horse Bidder and the Assignee agree should be redacted.

BID PROTECTIONS

7. **THIS COURT ORDERS** that the Monitor is hereby authorized and empowered to enter into the break fee agreement (the "**Break Fee Agreement**") dated as of [■], 2023, between the Monitor and the Stalking Horse Bidder and attached as [■] to the Second Report of the Monitor dated [■], 2023, *nunc pro tunc*, and the Break-Up Fee (as defined in the Break Fee Agreement) and the Expense Reimbursement (as defined in the Break Fee Agreement) are hereby approved and the Vendors are hereby authorized and directed to pay the Break Fee and the Expense Reimbursement to the Stalking Horse Bidder (or as it may direct) in the manner and circumstances described in the Break Fee Agreement out of the proceeds from and upon completion of any Successful Bid with any party other than the Stalking Horse Bidder.

8. **THIS COURT ORDERS** that the Stalking Horse Bidder shall be entitled to the benefit of and is hereby granted a charge (the "**Bid Protections Charge**") on the Property, which charge shall not exceed \$2,260,000, as security for payment of the Break Fee and the Expense Reimbursement in the manner and circumstances described in the Break Fee Agreement.

9. **THIS COURT ORDERS** that the filing, registration or perfection of the Bid Protections Charge shall not be required, and that the Bid Protections Charge shall be valid and enforceable for all purposes, including against any right, title or interest filed, registered, recorded or perfected subsequent to the Bid Protections Charge, notwithstanding any such failure to file, register, record or perfect.

10. **THIS COURT ORDERS** that the Bid Protections Charge shall constitute a charge on the Property and the Bid Protections Charge shall rank in priority to all other Encumbrances in favour of any Person notwithstanding the order of perfection or attachment, other than (i) any Person with

a properly perfected purchase money security interest under the *Personal Property Security Act* (Ontario) or such other applicable legislation; (ii) the Receiver's Borrowing Charge (as defined in the Appointment Order).

11. **THIS COURT ORDERS** that except for the Charges or as may be approved by this Court on notice to parties in interest, the Applicant shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, the Bid Protections Charge, unless the Applicant also obtains the prior written consent of the Monitor and the Stalking Horse Purchaser, or further Order of this Court.

12. **THIS COURT ORDERS** that the Bid Protections Charge shall not be rendered invalid or unenforceable and the rights and remedies of the Stalking Horse Purchaser shall not otherwise be limited or impaired in any way by: (i) the pendency of these proceedings and the declarations of insolvency made herein; (ii) any application(s) for bankruptcy order(s) or receivership order(s) issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”) or otherwise, or any bankruptcy order or receivership order made pursuant to such applications; (iii) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (iv) the provisions of any federal or provincial statutes; or (v) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an “Agreement”) which binds the Applicant, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Bid Protections Charge nor the execution, delivery, perfection, registration or performance of the Transaction Agreement shall create,

cause or be deemed to constitute a breach by the Applicant of any Agreement to which it is a party;

- (b) the Stalking Horse Bidder shall not have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Bid Protections Charge or the execution, delivery or performance of the Transaction Agreement; and
- (c) the payments made by the Applicant pursuant to this Order, the Transaction Agreement and the granting of the Bid Protections Charge, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

PIPEDA

13. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Monitor and its respective advisors are hereby authorized and permitted to disclose and transfer to prospective SISP participants (each, a "**SISP Participant**") and their advisors personal information of identifiable individuals but only to the extent desirable or required to negotiate or attempt to complete a transaction pursuant to the SISP (a "**Transaction**"). Each SISP Participant to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation for the purpose of effecting a Transaction, and if it does not complete a Transaction, shall return all such information to the Monitor, or in the alternative destroy all such information and provide confirmation of its destruction if requested by the Monitor. Any Successful Party shall maintain and protect the privacy of such information and, upon closing of the Transaction(s) contemplated in the Successful Bid(s), shall be entitled to use the personal information provided

to it that is related to the Business and/or Property acquired pursuant to the SISP in a manner that is in all material respects identical to the prior use of such information by the CCAA Parties, and shall return all other personal information to the Monitor, or ensure that all other personal information is destroyed and provide confirmation of its destruction if requested by the Monitor.

UNKNOWN CONTRACT BAR PROCESS

14. **THIS COURT ORDERS** that capitalized terms used in this section of the Order shall have the following meanings:

- (a) **"Excluded Contract Counterparties"** means any contracts for employment with any of the employees of the Companies;
- (b) **"Known Contract Counterparties"** means a counterparty with a contract with one or more of the Companies who is known to the Monitor based on the books and records of the Companies or who is otherwise known by the Monitor as having a contract with the Companies but, for greater certainty, excluding Excluded Contract Counterparties;
- (c) **"Known Contracts"** means all contracts with the Companies listed on the Known Contract Counterparty List;
- (d) **"Monitor's Website"** means <https://www.ksvadvisory.com/experience/case/validus-power-corp;>
- (e) **"Publication Notice"** means the notice to be published by the Monitor requesting parties to confirm on the Monitor's Website that they are a Known Contract Counterparty and that all of their contracts with the Companies are listed on the Known Contract Counterparty List; and

(f) **"Unknown Contract Counterparty"** means any Person who has a contract with one or more of the Companies who is not a Known Contract Counterparty.

15. **THIS COURT ORDERS** that within 3 business days from the date of this Order, the Monitor shall post on the Monitor's Website a list of all Known Contract Counterparties and Known Contracts (the **"Known Contract Counterparty List"**).

16. **THIS COURT ORDERS** that as soon as reasonably practicable after the date of this Order, the Monitor shall cause to be published the Publication Notice in [■].

17. **THIS COURT ORDERS** that any person who believes it may have one or more contracts with one or more of the Companies whose identity and/or contract is not listed on the Known Contract Counterparty List shall contact the Monitor by no later than [■], 2023¹ (the **"Unknown Contract Bar Date"**) and provide the Monitor with a copy or copies of any or all outstanding contracts.

18. **THIS COURT ORDERS** that any Unknown Contract Counterparty who complies with paragraph 17 above, shall be treated as a Known Contract Counterparty in connection with any motions whereby Known Contract Counterparties are provided with notice.

19. **THIS COURT ORDERS** that upon expiration of the Unknown Contract Bar Date, all other Unknown Contract Counterparties shall be forever barred from asserting that it did not receive adequate notice of any treatment of any contractual right or claim in the connection with these proceedings including, without limitation, any motion or motions for approval of a sale approval order, vesting order, reverse vesting order, distribution order or otherwise; provide that

¹ Date to be approximately 4 weeks from the date of the SISP Order.

nothing in herein prevents any such Unknown Contract Counterparty from asserting a claim against any residual proceeds of sale, residualco or in the bankruptcy of the Companies.

APPROVAL OF KSV'S ACTIVITIES AND REPORTS

20. **THIS COURT ORDERS** that the activities and conduct of KSV, in its capacities as the Monitor and as the Receiver, prior to the date hereof in relation to the CCAA Parties or the Validus Entities, as the case may be, in these CCAA proceedings and the Receivership Proceedings, as the case may be, are hereby ratified and approved.

21. **THIS COURT ORDERS** that the Pre-Filing Report dated August 23, 2023, the First Report dated September 1, 2023 and Second Report be and is hereby approved.

22. **THIS COURT ORDERS** that only KSV in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way the approvals set forth in paragraphs 20 and 21 of this Order.

EXTENSION OF THE STAY PERIOD

23. **THIS COURT ORDERS** that the Stay Period, as defined in the Initial Order dated August 29, 2023 in this proceeding be and is hereby extended up to and including December 31, 2023

GENERAL

24. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada.

25. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal and regulatory or administrative bodies, having jurisdiction in Canada or in any foreign jurisdiction, to

give effect to this Order and to assist the Monitor, and its agents in carrying out the terms of this Order. All courts, tribunals and regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Monitor, in each case as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Monitor and its agents in carrying out the terms of this Order.

26. **THIS COURT ORDERS** that this Order and all of its provisions are effective from the date it is made without any need for entry and/or filing.

SCHEDULE "A"
SALE AND INVESTMENT SOLICITATION PROCESS

See attached.

Sale and Investment Solicitation Process

1. On August 10, 2023, the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) granted an order, among other things, appointing KSV Restructuring Inc. (“**KSV**”) as receiver and manager (in such capacity, the “**Receiver**”) of the property and undertakings of Validus Power Corp., Iroquois Falls Power Corp., Bay Power Corp., Kap Power Corp., Kingston Cogen Limited Partnership, Kingston Cogen GP Inc. and Validus Hosting Inc. (collectively, the “**Validus Entities**”) pursuant to section 243(1) of the *Bankruptcy and Insolvency Act* (Canada) and section 101(1) of the *Courts of Justice Act* (Ontario).
2. On application by the Receiver, on August 29, 2023, the Court granted an order (the “**Initial Order**”), among other things, granting the Validus Entities relief pursuant to the *Companies’ Creditors Arrangement Act* (Canada) and appointing KSV as monitor (in such capacity, the “**Monitor**”) of the Validus Entities.
3. On [■], 2023, the Court granted a further order (the “**SISP Order**”), among other things: (a) authorizing the Monitor to implement a sale and investment solicitation process (“**SISP**”) in accordance with the terms hereof; (b) approving, for purposes of acting as the stalking horse bid in the SISP, the transaction agreement (the “**Stalking Horse Transaction Agreement**”) appended as Schedule “A” to the offer letter delivered by Macquarie Equipment Finance Limited (the “**Proponent**”) and Far North Power Corp. (the “**Assignee**”) to the Monitor on [■], 2023 (the Proponent and the Assignee’s offer for the entry by the Validus Entities into the Stalking Horse Transaction Agreement set out therein, the “**Stalking Horse Bid**”); (c) approving the Monitor’s entry into the Break-Up Fee Agreement and the Break-Up Fee and the Expense Reimbursement; and (d) granting the Bid Protections Charge. Capitalized terms that are not defined herein have the meanings ascribed thereto in the Initial Order or the SISP Order, as applicable.
4. This SISP sets out the manner in which: (a) binding bids for executable transaction alternatives that are superior to the Stalking Horse Bid involving the shares and/or the business and assets of the Validus Entities will be solicited from interested parties; (b) any such bids received will be addressed; (c) any Successful Bid (as defined below) will be selected; and (d) Court approval of any Successful Bid will be sought. Such transaction alternatives may include, among other things, a sale of some or all of the Validus Entities’ shares, assets and/or business and/or an investment in the Validus Entities, each of which shall be subject to all terms set forth in this SISP.
5. The SISP shall be conducted by the Monitor.
6. Parties who wish to have their bids considered shall be expected to participate in the SISP as conducted by the Monitor.
7. The SISP will be conducted such that the Monitor will:
 - (a) prepare marketing materials and a process letter;

- (b) prepare and provide applicable parties with access to a virtual data room containing diligence information;
 - (c) prepare and include in the data room one or more template forms of purchase agreements to be used by interested parties when submitting a proposed bid (“**Form of Agreement**”);
 - (d) solicit interest from parties to enter into non-disclosure agreements (parties shall only obtain access to the data room and be permitted to participate in the SISP if they execute a non-disclosure agreement that is in form and substance satisfactory to the Monitor); and
 - (e) request that such parties (other than the Proponent and the Assignee) submit a binding offer meeting at least the requirements set forth in Section 9, as determined by the Monitor (a “**Qualified Bid**”) by the Qualified Bid Deadline (as defined below).
8. The SISP shall be conducted subject to the terms hereof and the following key milestones:
- (a) Court approval of SISP and the Stalking Horse Bid to serve as stalking horse bid in the SISP – [■], 2023;
 - (b) The Monitor to commence solicitation process – [■], 2023;
 - (c) Deadline to submit a Qualified Bid – 11:59 p.m. (Toronto time) on [■], 2023 (the “**Qualified Bid Deadline**”);¹
 - (d) Deadline to determine whether a bid is a Qualified Bid and, if applicable, to notify those parties who submitted a Qualified Bid of the Auction (as defined below) – 5:00 p.m. (Toronto time) on [■], 2023;
 - (e) The Monitor to hold the Auction (if applicable) – [■], 2023; and
 - (f) Implementation Order (as defined below) hearing by no later than [■], 2023, subject to Court availability.

The Monitor may, in its discretion, seek court approval for the termination of the SISP and for approval of implementation of the Stalking Horse Bid if no potentially interested parties have executed non-disclosure agreements and commenced due diligence on or prior to [■], 2023, or if thereafter all parties who executed non-disclosure agreements and conducted due diligence have advised the Monitor that they no longer intend to participate in the SISP.

¹ [NTD: Date to be 35 days after the start of SISP process.]

9. In order to constitute a Qualified Bid, a bid (including an Aggregated Bid (as defined below)) must comply with the following:
- (a) it provides for: (i) the payment in full in cash on closing of the Claim Amount (as defined in the Stalking Horse Transaction Agreement); (ii) the payment in full in cash on closing of all indebtedness owing under the Receiver's Certificates (as defined in the Appointment Order), if any; (iii) the payment in full in cash on closing of any claims ranking in priority to the claims set forth in subparagraphs (i) and (ii) of this Subsection 9(a), including any claims secured by Court-ordered charges, unless otherwise agreed to by the applicable holders thereof in their sole discretion, and the Break-Up Fee and the maximum amount of the Expense Reimbursement (as such terms are defined in the Stalking Horse Transaction Agreement); and (iv) a minimum overbid increment of \$750,000 (the "**Overbid Increment**");
 - (b) An allocation of the purchase price under such bid among the purchased assets of Validus Power Corp. and all other property to be acquired.
 - (c) it provides a detailed sources and uses schedule that identifies, with specificity, the amount of cash consideration (the "**Cash Consideration Value**") and any assumptions that could reduce the net consideration payable. At a minimum, the Cash Consideration Value plus the Validus Entities' aggregate cash on hand must be sufficient for payment in full of the items contemplated in subparagraphs (i) to (iii) of Subsection 9(a), including the Break-Up Fee and the maximum amount of the Expense Reimbursement, plus the Overbid Increment, on closing, which Cash Consideration Value is estimated to be \$60,228,822 as of September 22, 2023;
 - (d) it provides details of any assumption of liabilities;
 - (e) it is reasonably capable of being consummated by 30 days after issuance of the Implementation Order if selected as a Successful Bid;
 - (f) it contains:
 - (i) duly executed binding transaction document(s);
 - (ii) the legal name and identity (including jurisdiction of existence) and contact information of the bidder, full disclosure of its direct and indirect principals, and the name(s) of its controlling equityholder(s);
 - (iii) a redline to the applicable Form of Agreement provided by the Monitor as described in Subsection 7(c);
 - (iv) evidence of authorization and approval from the bidder's board of directors (or comparable governing body) and, if necessary to complete the transaction, the bidder's equityholder(s);

- (v) disclosure of any connections or agreements with any of the Validus Entities or any of their affiliates, any known, potential, prospective bidder, or any officer, manager, director, or known equity security holder of any Validus Entity or any of their affiliates; and
- (vi) such other information as may be reasonably requested by the Monitor, in its discretion;
- (g) it includes a letter stating that the bid is submitted in good faith, is binding and is irrevocable until the earlier of (i) completion of a Successful Bid or (ii) **[December 29], 2023**; *provided*, however, that if such bid is selected as a Successful Bid, it shall remain irrevocable until the closing of the Successful Bid;
- (h) it provides written evidence of a bidder's ability to fully fund and consummate the transaction and satisfy its obligations under the transaction documents, including binding equity/debt commitment letters and/or guarantees (i.e., bank guarantees) covering the full value of all cash consideration;
- (i) it does not include any request for or entitlement to any break fee, expense reimbursement or similar type of payment;
- (j) it is not conditional upon:
 - (i) approval from the bidder's board of directors (or comparable governing body) or equityholder(s);
 - (ii) the outcome of any due diligence by the bidder; or
 - (iii) the bidder obtaining financing;
- (k) it includes an acknowledgment and representation that the bidder has had an opportunity to conduct any and all required due diligence prior to making its bid;
- (l) it specifies any regulatory or other third-party approvals the party anticipates would be required to complete the transaction (including the anticipated timing necessary to obtain such approvals) and, in connection therewith, specifies whether the bidder or any of its affiliates is involved in any part of the Canadian energy sector, including an electricity generator, electric utility, retail service provider, or a registered participant with the Ontario Independent Electricity System Operator;
- (m) it includes full details of the bidder's intended treatment of the Validus Entities' employees under the proposed bid;
- (n) it is accompanied by a cash deposit (the "**Deposit**") by wire transfer of immediately available funds equal to 10% of the Cash Consideration Value, which Deposit shall be retained by the Monitor in a non-interest bearing trust account in accordance with Section 18;

- (o) it includes a statement that the bidder will bear its own costs and expenses (including legal and advisor fees) in connection with the proposed transaction, and by submitting its bid is agreeing to refrain from and waive any assertion or request for reimbursement on any basis;
 - (p) it contains a written acknowledgment that the transaction will proceed on an “as is, where is” basis, without representations or warranties by the sellers except as expressly set out therein; and
 - (q) it is received by the Qualified Bid Deadline.
10. The Qualified Bid Deadline may be extended: (i) by the Monitor for no longer than 7 days in the Monitor’s discretion; or (ii) by further order of the Court. In such circumstances, the milestones contained in Subsections 8(d) through 8(f) shall be extended by the same amount of time. Any other milestone dates in Section 8 may be extended in the Monitor’s discretion; *provided* that the aggregate of all such discretionary extensions shall not exceed 14 days.
 11. The Monitor may combine bids received for individual assets of the Validus Entities for the purpose of determining if such bids, collectively, will be treated as a Qualified Bid (such bid being an “**Aggregated Bid**”); *provided* that any Aggregated Bid must comply with each of the requirements set out in Section 9 (as may be modified in accordance with Section 12) in order to be a Qualified Bid.
 12. The Monitor may waive compliance with any one or more of the requirements specified in Section 9 above and deem a non-compliant bid to be a Qualified Bid; *provided* that the Monitor shall not waive compliance with the requirements specified in Subsections 9(a), (c), (f), (g), (h), (i), (j), (k), (l) or (n) without the prior written consent of the Proponent and the Assignee, each acting reasonably, or further order of the Court. If a bid received is not a Qualified Bid, the Monitor may provide the bidder with an opportunity to remedy any deficiencies and render such bid a Qualified Bid; *provided* that such defects are remedied on or before the deadline set out in Subsection 8(d).
 13. Notwithstanding the requirements specified in Section 9, the transactions contemplated by the Stalking Horse Bid (collectively, the “**Stalking Horse Transaction**”), are deemed to be a Qualified Bid; *provided* that, for greater certainty, no Deposit shall be required to be submitted in connection with the Stalking Horse Transaction.
 14. If one or more Qualified Bids (other than the Stalking Horse Transaction) has been received by the Monitor on or before the Qualified Bid Deadline, the Monitor shall proceed with an auction to determine the successful bid(s) (the “**Auction**”), which Auction shall be administered in accordance with Schedule “A” hereto, subject to such additional procedural rules as may be determined by the Monitor to be necessary or desirable in the conduct of the Auction. The successful bid(s) selected within the Auction shall constitute the “**Successful Bid**”. Forthwith upon determining to proceed with an Auction, the Monitor shall provide written notice to each party that submitted a Qualified Bid (including the

Stalking Horse Transaction), along with copies of all Qualified Bids and a statement by the Monitor specifying which Qualified Bid is the leading bid.

15. Following selection of a Successful Bid, the Validus Entities shall seek to finalize any remaining necessary definitive agreement(s) with respect to the Successful Bid in accordance with the key milestones set out in Section 8. Once the necessary definitive agreement(s) with respect to a Successful Bid have been finalized, as determined by the Monitor, the Monitor shall apply to the Court for an order or orders, among other things, approving such Successful Bid and/or the mechanics to authorize the Validus Entities and the Monitor, as the case may be, to complete the transactions contemplated thereby, as applicable, and authorizing the Validus Entities or the Monitor, as the case may be, to: (i) enter into any and all necessary agreements and related documentation with respect to the Successful Bid; (ii) undertake such other actions as may be necessary to give effect to such Successful Bid; and (iii) implement the transaction(s) contemplated in such Successful Bid (each, an “**Implementation Order**”).
16. If a selected Successful Bid is not completed within 30 days following issuance of the Implementation Order, the Implementation Order is not granted, or the Monitor otherwise determines a selected Successful Bid will not be completed, the Monitor shall be permitted to designate one or more alternative Successful Bids from the Qualified Bids received prior to or during the Auction, and such alternative Successful Bid shall be deemed the Successful Bid for all purposes hereunder. The foregoing shall not limit the Monitor’s right in the foregoing circumstances to terminate these SISP procedures and pursue any alternative process and any alternative transactions determined by the Monitor to be appropriate, in consultation with the Proponent, as secured creditor.
17. The Validus Entities, the Proponent and the Assignee, with the consent of the Monitor, shall be permitted to modify the Stalking Horse Transaction to exclude any asset for which an alternative bid (an “**Alternative Bid**”, and the assets subject to such Alternative Bid, the “**Excluded SHB Assets**”) is received if:
 - (a) the Proponent and the Assignee agree in writing, in their respective sole discretion, to modify the Stalking Horse Transaction in order to accommodate such proposed Alternative Bid;
 - (b) the Validus Entities, the Proponent and the Assignee, with the consent of the Monitor, agree on the adjustment of the purchase price under the Stalking Horse Transaction to account for the removal of the Excluded SHB Assets and the value of the Alternative Bid;
 - (c) the Monitor determines that the aggregate consideration to be offered by (i) the Stalking Horse Transaction, as so modified (the “**Modified SHB**”) and (ii) the proposed Alternative Bid for the Excluded SHB Assets, would exceed the value of the Stalking Horse Transaction (the “**Excluded Assets Sale**”);
 - (d) the Alternative Bid combined with the Modified SHB meet all of the requirements of a Qualified Bid;

- (e) the Monitor determines that the Modified SHB and the Excluded Assets Sale, collectively, are a Qualified Bid; and
- (f) the Proponent and the Assignee agree that the original Stalking Horse Transaction shall remain open for acceptance notwithstanding the Modified SHB, such that the Stalking Horse Transaction can be completed if for any reason the Modified SHB and the Excluded Assets Sale are not completed.

For greater certainty, if the Modified SHB and Excluded Assets Sale are each designated as a Successful Bid, then the Proponent and the Assignee shall not be entitled to receive any Break Fee or Expense Reimbursement Amount as a result of the completion of such transaction. If the Modified SHB and the Excluded Asset Sale are not selected as a Successful Bid, then the Proponent and the Assignee shall continue to be entitled to receive any Break Fee and Expense Reimbursement (in accordance with the Stalking Horse Transaction Agreement) upon completion of an alternative Successful Bid to which the Proponent and the Assignee are not parties.

18. All Deposits shall be retained by the Monitor in a non-interest bearing trust account. If a Successful Bid is selected and an Implementation Order authorizing the consummation of the transaction contemplated thereunder is granted, any Deposit paid in connection with such Successful Bid will be non-refundable and shall, upon closing of the transaction contemplated by such Successful Bid, be applied to the cash consideration to be paid in connection with such Successful Bid or be dealt with as otherwise set out in the definitive agreement(s) entered into in connection with such Successful Bid. In the event that the Successful Bid is not completed due to a breach or default of the bidder's obligations thereunder, the Deposit shall be forfeited to the Validus Entities as damages and such Deposit shall be in addition to, and not in lieu of, any other rights in law or equity that the Validus Entities have in respect of such breach or default. Any Deposit delivered with a Qualified Bid that is not selected as a Successful Bid will be returned to the applicable bidder as soon as reasonably practicable (but not later than ten (10) business days) after the earliest of (i) completion of a Successful Bid; (ii) December 29, 2023; or (iii) the date of the Monitor's determination that such bid will not be pursued further.
19. Except as expressly set out herein, the Monitor may not modify the SISP without court approval; *provided*, however, that the Monitor may implement additional procedural rules that the Monitor determines will better promote the goals of the SISP; *provided* that any additional procedural rules shall not be inconsistent with the Stalking Horse Agreement unless agreed by the Proponent and the Assignee or otherwise ordered by the Court.

SCHEDULE “A”
AUCTION PROCEDURES

1. **Auction.** If the Monitor receives at least one Qualified Bid (other than the Stalking Horse Transaction) including any Aggregated Bid, the Monitor shall conduct and administer the Auction in accordance with the terms of the SISP. Instructions to participate in the Auction, which will take place via video conferencing, will be provided to Qualified Parties (as defined below) not less than 24 hours prior to the Auction.

2. **Participation.** Only parties that submit a Qualified Bid by the Qualified Bid Deadline, including the Stalking Horse Transaction and, collectively, the parties submitting any Aggregated Bid (collectively, the “**Qualified Parties**”), shall be eligible to participate in the Auction. No later than 5:00 p.m. (Toronto time) on the day prior to the Auction, each Qualified Party (other than the Proponent and the Assignee, in respect of the Stalking Horse Transaction) must inform the Monitor whether it intends to participate in the Auction. The Monitor will promptly thereafter inform in writing each Qualified Party who has expressed its intent to participate in the Auction of the identity of all other Qualified Parties that have indicated their intent to participate in the Auction. If no Qualified Party indicates such expression of intent, the Stalking Horse Transaction shall be the Successful Bid.

3. **Auction Procedures.**
 - (a) **Procedures.** The Auction shall be governed by the following procedures:
 - (i) **Attendance.** Only the Monitor, representatives of the Qualified Parties and each of their respective advisors, and any other person admitted with the consent of the Monitor will be entitled to attend the Auction, and only the Qualified Parties will be entitled to make any subsequent Overbids (as defined below) at the Auction;

 - (ii) **No Collusion.** Each Qualified Party participating at the Auction shall be required to confirm on the record at the Auction that: (i) it has not engaged in any collusion with respect to the Auction and the bid process (excluding, for greater certainty, any discussions among those parties who are bidders in an Aggregated Bid); and (ii) its bid is a good-faith *bona fide* offer and it intends to consummate the proposed transaction if selected as the Successful Bid (as defined below);

 - (iii) **Minimum Overbid.** The Auction shall begin with the Qualified Bid that represents the highest or otherwise best Qualified Bid as determined by the Monitor (the “**Initial Bid**”), and any bid made at the Auction by a Qualified Party subsequent to the Monitor’s announcement of the Initial Bid (each, an “**Overbid**”), must proceed in minimum additional cash increments as determined by the Monitor and announced to the Auction participants prior to each round of bidding (the “**Required Bid Increment**”). At the end of

each round of bidding, the Monitor will identify the highest or otherwise best Overbid as the leading bid for the subsequent round (the “**Lead Bid**”);

- (iv) **Bidding Conclusion.** The Auction shall continue in one or more rounds and will conclude after each participating Qualified Party (including parties to an Aggregated Bid) has had the opportunity to submit an additional bid or refused to submit an additional bid with full knowledge and written confirmation of the then-existing Lead Bid for that round. If at the commencement of the Auction, no party submits a bid that exceeds the Initial Bid by the Required Bid Increment, then the Initial Bid will be the Successful Bid. If in any round, a Qualified Party (other than the party who submitted the Lead Bid in such round) does not submit an Overbid satisfying the Required Bid Increment, then such Qualified Party (including the parties to any Aggregated Bid if no Aggregated Bid is submitted in a particular round) will no longer be permitted to participate in any subsequent round of the Auction; and
 - (v) **No Post-Auction Bids.** No bids will be considered for any purpose after the Auction has concluded.
- (b) **Additional Procedures.** The Monitor may announce prior to or during the Auction additional procedural rules, including the process for submission and review of bids, that are reasonable under the circumstances for conducting the Auction; *provided* that those rules are not inconsistent in any material respects with the SISP or the Stalking Horse Agreement.

Selection of Successful Bid

4. **Selection.** Before the conclusion of the Auction, the Monitor will: (a) review each Qualified Bid and Overbid, considering the factors set out in Section 9 of the SISP and, among other things: (i) the amount of consideration being offered and, if applicable, the proposed form, composition and allocation of same; (ii) the value of any assumption of liabilities or waiver of liabilities not otherwise accounted for in prong (i) above; (iii) the likelihood of the Qualified Party’s ability to close a transaction by [30] days after issuance of the Implementation Order and the timing thereof (including factors such as the transaction structure and execution risk, including conditions to, timing of, and certainty of closing; termination provisions; availability of financing and financial wherewithal to meet all commitments; and required governmental or other approvals); (iv) the likelihood of the Court’s approval of such Overbid; (v) the net benefit to the estate of the Validus Entities of such Overbid; and (vi) any other factors the Monitor may, consistent with its duties, reasonably deem relevant; and (b) identify the highest or otherwise best bid received at the Auction (the “**Successful Bid**” and the Qualified Party making such bid, the “**Successful Party**”).
5. **Acknowledgement.** The Successful Party shall complete and execute all agreements, contracts, instruments or other documents evidencing and containing the terms and conditions upon which the Successful Bid was made within one business day of the

Successful Bid being selected as such, unless extended by the Monitor, subject to the milestones set forth in Section 8 of the SISP.

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, C. C-36, AS Court File No. ■
AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT INVOLVING VALIDUS
POWER CORP., IROQUOIS FALLS POWER CORP., BAY POWER CORP., KAP POWER CORP.,
VALIDUS HOSTING INC., KINGSTON COGEN LIMITED PARTNERSHIP AND KINGSTON COGEN
GP INC.

ONTARIO
**SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at TORONTO

SISP APPROVAL ORDER

[NORTON ROSE]

SCHEDULE "B"

Terms and Conditions

(See attached.)

TERMS AND CONDITIONS

THESE TERMS AND CONDITIONS apply to the binding offer letter dated [■], 2023 (the “**Offer Letter**”), delivered by Macquarie Equipment Finance Ltd. (“**MEFL**”) and Far North Power Corp. (the “**Assignee**”) to the Validus Entities (as defined below), each by KSV Restructuring Inc. (“**KSV**”), in its capacity as the Monitor (as defined below) in the CCAA Proceedings (as defined below) (collectively, the “**Vendors**”, and each, a “**Vendor**”), for the entry into the Transaction Agreement (as defined below) and the transactions contemplated thereby.

ARTICLE 1 INTERPRETATION

1.1 Definitions

In these Terms and Conditions:

“**Administrative Expense Closing Amount**” has the meaning given to such term in the Transaction Agreement.

“**Affiliate**” means, with respect to any specified Person, any other Person which, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such specified Person. For purposes of this definition, “control” (including, with correlative meanings, the terms “controlling”, “controlled by” and “under common control with”), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise. For greater certainty, an Affiliate of a Person shall include such Person’s investment funds and managed accounts and any funds managed or directed by the same investment advisor.

“**Applicable Law**” means any transnational, domestic or foreign, federal, provincial, territorial, state, local or municipal (or any subdivision of any of them) law (including common law and civil law), statute, ordinance, rule, regulation, restriction, limit, by-law (zoning or otherwise), judgment, order, direction or any consent, exemption, or any other legal requirements of, or agreements with, any Governmental Authority, that applies in whole or in part to the transactions contemplated by the Transaction Agreement, the Validus Entities, MEFL (or any of its Affiliates), the Assignee (or any of its Affiliates), the Business, or any of the Purchased Assets or the Assumed Liabilities.

“**Appointment Order**” has the meaning given to such term in the Transaction Agreement.

“**Assignee**” has the meaning given to such term in the preamble.

“**Assumed Liabilities**” has the meaning given to such term in the Transaction Agreement.

“**BIA**” means the *Bankruptcy and Insolvency Act* (Canada), as amended.

“**Business**” has the meaning given to such term in the Transaction Agreement.

“**Business Day**” means any day, other than a Saturday or Sunday, on which the principal commercial banks in Toronto, Ontario are open for commercial banking business during normal banking hours.

“**CCAA**” means the *Companies’ Creditors Arrangement Act* (Canada), as amended.

“**CCAA Proceedings**” has the meaning given to such term in the Transaction Agreement.

“**Claim**” means any and all demands, claims, liabilities, actions, causes of action, counterclaims, expenses, costs, damages, losses, suits, debts, sums of money, refunds, accounts, indebtedness, rights of recovery, rights of set-off, rights of recoupment and liens of whatever nature (whether direct or indirect, absolute or contingent, asserted or unasserted, secured or unsecured, matured or not yet matured due or to become due, accrued or unaccrued or liquidated or unliquidated) and including all costs, fees and expenses relating thereto, against any Person.

“**Closing**” has the meaning given to such term in the Transaction Agreement.

“**Collective Agreement**” means any collective bargaining agreement or union agreement applicable to Validus, any Validus Entity or the Business, and all related documents, including letters or memoranda of understanding, letters of intent and other written communications with bargaining agents which impose any obligations upon Validus and/or any of the Validus Entities.

“**Continuing Contract**” means a contract, arrangement, or other agreement (oral or written): (i) for which a notice of rejection or similar notice has not been sent by the Receiver or the Monitor; and (ii) that is not an Excluded Contract.

“**Court**” has the meaning given to such term in the Transaction Agreement.

“**Disclosure Schedule**” has the meaning given to such term in the Transaction Agreement.

“**Effective Date**” has the meaning given to such term in the Transaction Agreement.

“**Effective Time**” has the meaning given to such term in the Transaction Agreement.

“**Employees**” has the meaning given to such term in the Transaction Agreement.

“**Energy Regulator**” means any federal or provincial Governmental Authority having jurisdiction to regulate the generation, transmission, distribution, retailing or wholesaling of electricity and/or the purchase, sale and use of electricity or natural gas in Ontario, foreign regulatory authority having jurisdiction over matters relating to electricity and/or natural gas, authorized electricity or natural gas transmitter or distributor, or regional transmission organization or independent system operator, including but not limited to the Independent Electricity System Operator and the Ontario Energy Board.

“**Energy Regulator Notices**” means notice of the Transaction Agreement to an Energy Regulator in the time and manner required by Applicable Law and includes, but is not limited to, notice to an Energy Regulator regarding potential implications to performance guarantees (including, but not limited to, prudential support) that might have been provided in support of an

application for a licence, order or permit or an electricity market participant agreement or registration, as the case may be.

“**Excluded Contracts**” has the meaning given to such term in the Transaction Agreement.

“**Final Order**”, with respect to any order of any court of competent jurisdiction, means that: (i) such order shall not have been stayed, appealed, varied (except with the consent of MEFL, the Assignee and the Monitor) or vacated, and all time periods within which such order could at law be appealed shall have expired; or (ii) such order is no longer the subject of any continuing proceedings seeking to stay, appeal, vary (except with the consent of MEFL, the Assignee and the Monitor) or vacate such order, all such proceedings having been discontinued, denied, dismissed and otherwise unsuccessfully concluded, and the time for appealing or further appealing the disposition of such proceedings shall have expired.

“**Governmental Authority**” means any government, regulatory authority (including any Energy Regulator), governmental department, agency, commission, bureau, official, minister, Crown corporation, court, board, tribunal or dispute settlement panel or other law, rule or regulation-making organization or entity: (a) having or purporting to have jurisdiction on behalf of any nation, province, territory or state or any other geographic or political subdivision of any of them; or (b) exercising, or entitled or purporting to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power.

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

“**Implementation Steps**” has the meaning given to such term in Section 2.3.1.

“**Initial Order**” has the meaning given to such term in the Transaction Agreement.

“**KSV**” has the meaning given to such term in the preamble.

“**Leased Property**” has the meaning given to such term in the Transaction Agreement.

“**Material Adverse Effect**” means any change, effect, event, occurrence, state of facts or development that has had a material adverse effect on the business, assets, liabilities, financial condition or results of operations of any of the Validus Entities, in each case except to the extent that any such change, effect, event, occurrence, state of facts or development is attributable to, results from or arises in connection with: (i) general economic or business conditions; (ii) Canada, the U.S. or foreign economies, or financial, banking, credit or securities markets in general, or other general business, banking, credit, financial or economic conditions (including: (A) any disruption in any of the foregoing markets; (B) any change in the currency exchange rates; or (C) any decline or rise in the price of any security, commodity, contract or index); (iii) acts of God or other calamities, national or international political or social conditions, including the engagement and/or escalation by the U.S. or Canada in hostilities, whether or not pursuant to the declaration of a national emergency or war, or the occurrence of any military or terrorist attack upon the U.S. or Canada or any of their territories, possessions or diplomatic or consular offices or upon any military installation, equipment or personnel of the U.S. or Canada; (iv) conditions affecting generally the industry in which the Validus Entities operate; (v) the public announcement of, entry into or pendency of, actions required or contemplated by or performance of obligations

under, the Transaction Agreement or the transactions contemplated thereby, or the identity of the Parties, including any termination of, reduction in or similar adverse impact or threatened adverse impact on relationships, contractual or otherwise, with any customers, suppliers, financing sources, licensors, licensees, distributors, partners, employees or others having relationships with the Validus Entities; (vi) changes in Applicable Laws or the interpretation, application or non-application thereof by any Governmental Authority; (vii) any change in IFRS or other accounting or tax requirements or principles; (viii) regional, national or international political, regulatory, business, labour or social conditions; (ix) the failure of the Validus Entities to meet or achieve the results set forth in any internal projections (but not the underlying facts giving rise to such failure unless such facts are otherwise excluded pursuant to the clauses contained in this definition); or (x) any change resulting from compliance with the terms of, or any actions taken (or not taken) by any Party pursuant to or in accordance with, the Transaction Agreement; *provided* that the exceptions set forth in clauses (i), (ii), (iii), (iv), (vi), (vii) or (viii) shall not apply to the extent that such event is disproportionately adverse to the Validus Entities, taken as a whole, as compared to other companies and entities operating in the industry in which the Validus Entities operate.

“**Monitor**” means KSV, in its capacity as court-appointed monitor in the CCAA Proceedings.

“**Offer**” has the meaning given to such term in the Offer Letter.

“**Offer Conditions**” means each of the conditions precedent set forth in Section 3.1.

“**Offer Letter**” has the meaning given to such term in the Transaction Agreement.

“**Order**” means any order of the Court made in the Receivership Proceedings, the CCAA Proceedings or any order, directive, judgment, decree, injunction, decision, ruling, award or writ of any Governmental Authority.

“**Outside Date**” has the meaning given to such term in Section 4.1.1(d).

“**Parties**” means, collectively, the Vendors, MEFL and the Assignee, and “**Party**” means any of the Vendors, MEFL or the Assignee, as the context requires.

“**Permits and Licenses**” means: (i) any electricity generator, retailer or wholesaler licenses from the Ontario Energy Board; (ii) any electricity market participation authorizations or facility registrations from the Independent Electricity System Operator; and (iii) any other permits, licenses, authorizations, approvals or other evidence of authority, permission or entitlement related to the Business or any part thereof granted by a Governmental Authority.

“**Person**” means an individual, partnership, firm, joint venture, venture capital fund, limited liability company, unlimited liability company, association, trust, entity, corporation, unincorporated association, or organization, syndicate, committee, court appointed representative, the government of a country or any political subdivision thereof, or any agency, board, tribunal, commission, bureau, instrumentality, or department of such government or political subdivision, or any other entity, howsoever designated or constituted, including any Taxing Authority, and the

trustees, executors, administrators or other legal representatives of an individual, and, for greater certainty, includes any Governmental Authority.

“Post-Filing Claim” or **“Post-Filing Claims”** means any or all Claims, indebtedness, liability, or obligation of the Purchased Entities of any kind that arises during and in respect of the period commencing on the Filing Date (as defined in the Transaction Agreement) and ending at the time immediately preceding the Effective Time in respect of services rendered or supplies provided to the Purchased Entities during such period or under or in accordance with any Continuing Contract.

“Priority Payments” has the meaning given to such term in the Transaction Agreement.

“Priority Payments Closing Amount” has the meaning given to such term in the Transaction Agreement.

“Purchased Assets” has the meaning given to such term in the Transaction Agreement.

“Purchased Entities” has the meaning given to such term in the Transaction Agreement.

“Purchased Interests” has the meaning given to such term in the Transaction Agreement.

“Purchased Validus Parent Assets” has the meaning given to such term in the Transaction Agreement.

“Receiver” means KSV, in its capacity as court-appointed receiver of the assets, properties and undertakings of the Validus Entities in the Receivership Proceedings.

“Receivership Proceedings” means the receivership proceedings in respect of the Validus Entities commenced under the BIA and the *Courts of Justice Act* (Ontario) by MEFL pursuant to the Appointment Order, bearing Court File No. CV-23-00703754-00CL.

“Reverse Vesting Order” has the meaning given to such term in the Transaction Agreement.

“SISP” has the meaning given to such term in the Transaction Agreement.

“SISP Order” has the meaning given to such term in the Transaction Agreement.

“Successful Bid” has the meaning given to such term in the SISP.

“Tax” and **“Taxes”** means taxes, duties, fees, premiums, assessments, imposts, levies and other charges of any kind whatsoever (including withholding on amounts paid to or by any Person) imposed by any Taxing Authority, including all interest, penalties, fines, additions to tax or other additional amounts imposed by any Taxing Authority in respect thereof, and including those levied on, or measured by, or referred to as, income, gross receipts, profits, capital, transfer, land transfer, sales, goods and services, harmonized sales, use, value-added, excise, stamp, withholding, business, franchising, escheat, property, development, occupancy, employer health, payroll, employment, health, disability, severance, unemployment, social services, education and social

security taxes, all surtaxes, all customs duties and import and export taxes, countervail and anti-dumping, all license, franchise and registration fees and all employment insurance, health insurance and Canada, Ontario and other government pension plan premiums or contributions.

“**Taxing Authorities**” means His Majesty the King in right of Canada, His Majesty the King in right of any province or territory of Canada, the Canada Revenue Agency, any similar revenue or taxing authority of Canada and each and every province or territory of Canada and any political subdivision thereof, and any Canadian or other Governmental Authority exercising taxing authority or power, and “**Taxing Authority**” means any one of the Taxing Authorities.

“**Terms and Conditions**” means these Terms and Conditions, and unless otherwise indicated, references to Articles, Sections and Exhibits are to Articles, Sections and Exhibits in these terms and conditions.

“**Transaction Agreement**” means the transaction agreement attached as Schedule “A” to the Offer Letter.

“**U.S.**” means the United States of America.

“**Validus Entities**” has the meaning given to such term in the Transaction Agreement, and “**Validus Entity**” means any one of them.

“**Validus Parent**” has the meaning given to such term in the Transaction Agreement.

“**Vendors**” has the meaning given to such term in the preamble, and “**Vendor**” has the meaning given to such term in the preamble.

1.2 Statutes and Agreements

- (a) Except as otherwise provided in these Terms and Conditions, any reference in these Terms and Conditions to a statute refers to such statute and all rules and regulations made under it, as it or they may have been or may from time to time be amended, re-enacted or replaced.
- (b) Each reference to, and the definition of, any agreement, instrument or other document herein shall be deemed to refer to such agreement, instrument or other document as it may be amended, amended and restated, supplemented, revised or otherwise modified from time to time in accordance with its terms and, to the extent applicable, the terms of any such agreement, instrument or other document shall be deemed to incorporate any appendices, annexes, schedules or exhibits to such agreement, instrument or other document.

1.3 Headings, etc.

The division of these Terms and Conditions into Articles, Sections and other subdivisions and the insertion of headings are for convenient reference only and do not affect the interpretation of these Terms and Conditions.

1.4 Gender and Number

In these Terms and Conditions, unless the context otherwise requires, words importing the singular include the plural and vice versa, and words importing gender include all genders.

1.5 Currency

Except where otherwise expressly provided, all amounts in these Terms and Conditions are stated in Canadian dollars. References to “\$” are to Canadian dollars.

1.6 Certain Phrases

In these Terms and Conditions: (a) the words “including”, “includes” and “include” and any derivatives of such words mean “including (or includes or include) without limitation”; and (b) the words “the aggregate of”, “the total of”, “the sum of” or a phrase of similar meaning means “the aggregate (or total or sum), without duplication, of”. The expression “Article”, “Section” and other subdivision followed by a number, mean and refer to the specified Article, Section or other subdivision of these Terms and Conditions.

1.7 Invalidity of Provisions

Each of the provisions contained in these Terms and Conditions is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction shall not affect the validity or enforceability of any other provision hereof so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to MEFL or the Assignee. Upon: (a) such a determination of invalidity or unenforceability; or (b) any change in Applicable Law or other action by any Governmental Authority which materially detracts from the legal or economic rights or benefits, or materially increases the obligations, of MEFL or the Assignee or any of their Affiliates under these Terms and Conditions, MEFL or the Assignee shall be entitled to modify these Terms and Conditions, acting reasonably, so as to effect the original intent of these Terms and Conditions as closely as possible in an acceptable manner so that the terms and conditions contemplated by these Terms and Conditions be given such effect as originally contemplated to the fullest extent possible.

1.8 Governing Law

These Terms and Conditions and the terms and conditions provided herein, and any Claim or controversy directly or indirectly based upon or arising out of these Terms and Conditions or the transactions contemplated by these Terms and Conditions (whether based on contract, tort or any other theory), including all matters of construction, validity and performance, shall in all respects be governed by, and interpreted, construed and determined in accordance with, the laws of the Province of Ontario and the federal laws of Canada applicable therein, without regard to the conflicts of law principles thereof.

1.9 Accounting Terms

All accounting terms used in these Terms and Conditions are to be interpreted in accordance with IFRS unless otherwise specified.

1.10 Non-Business Days

Whenever these Terms and Conditions require payments to be made or an action to be taken on a day that is not a Business Day, such payment to be made, or such action to be taken, shall be deemed to be required on or not later than the next succeeding Business Day.

1.11 Computation of Time Periods

If any action may be taken within, or any right or obligation is to expire at the end of, a period of days under these Terms and Conditions, then the first day of the period is not counted, but the day of its expiry is counted.

1.12 Time of Essence

Time shall be of the essence of these Terms and Conditions in all respects.

1.13 Exhibits

- (a) The following are the Exhibits attached to and incorporated by reference in these Terms and Conditions and deemed to be a part hereof:

Exhibit 3.1(f) - Continuing Contracts

- (b) Unless the context otherwise requires, words and expressions defined in these Terms and Conditions shall have the same meanings in the Exhibits and the interpretation provisions set out in these Terms and Conditions apply to the Exhibits. Unless the context otherwise requires, or a contrary intention appears, references in the Exhibits to a designated Article, Section or other subdivision refer to the Article, Section or other subdivision, respectively, of these Terms and Conditions.
- (c) MEFL and the Assignee may, on mutual agreement, amend, modify or supplement all Exhibits at any time prior to the Effective Date.

1.14 Offer Letter and Terms and Conditions

These Terms and Conditions shall be construed with, and as an integral part of, the Offer Letter to the same extent as if they were set forth verbatim therein, and all references herein to the "Offer Letter" shall include these Terms and Conditions.

1.15 Notices

Any notice, request, demand or other communication required, permitted or contemplated to be given to MEFL, the Assignee or the Vendors pursuant to the provisions of these Terms and Conditions shall be given in accordance with the notice provisions set forth in the Transaction Agreement.

1.16 MEFL as Secured Creditor

Notwithstanding anything in these Terms and Conditions to the contrary, nothing in these Terms and Conditions shall affect, alter, impede or restrict MEFL's rights as a secured creditor in any respect provided that MEFL shall not be entitled to information or details in respect of the SISP other than as specifically contemplated by the SISP.

ARTICLE 2 PRE-CLOSING MATTERS

2.1 Amendments to Transaction Agreement, Disclosure Schedule and Terms and Conditions

2.1.1 The Transaction Agreement, including all schedules thereto, and all exhibits to the Disclosure Schedule, may be amended, modified or supplemented on the mutual written consent of MEFL, the Assignee and the Vendors at any time prior to the Effective Date; *provided*, however, that the Assignee shall retain the right for a period of up to and including 7 Business Days prior to the hearing of the motion for the Reverse Vesting Order to amend, modify or supplement Exhibits 2.1(b), 2.1(c)(i), 2.2, 2.2(d), 2.2(f), 2.3(h), 2.3(j), 2.4 and 6.10 of the Disclosure Schedule with the prior written consent of MEFL, which consent shall not be unreasonably withheld, conditioned or delayed; and that no such amendment, modification or supplement shall reduce or diminish the Credit Bid Consideration (as defined in the Transaction Agreement) provided for in the Transaction Agreement. The Parties acknowledge and agree that Exhibit 2.2 of the Disclosure Schedule may not be amended to add any Excluded Asset contemplated by Section 2.2(b), (d), (f) or (h) of the Transaction Agreement; *provided* that such restriction with respect to Section 2.2(h) does not impair the Assignee's rights pursuant to Section 6.7 of the Transaction Agreement.

2.1.2 These Terms and Conditions may be amended, modified or supplemented on the mutual written consent of MEFL, the Assignee and the Vendors at any time prior to the Effective Date; *provided*, however, that no such amendment, modification or supplement shall reduce or diminish the Credit Bid Consideration provided for in the Transaction Agreement; and *provided further*, that the Assignee shall retain the right for a period of up to 7 Business Days prior to the hearing of the motion for the Reverse Vesting Order, to amend, modify or supplement Exhibit 3.1(f) hereto with the prior written consent of MEFL, which consent shall not be unreasonably withheld, conditioned or delayed; *provided*, however, that no such amendment, modification or supplement shall reduce or diminish the Credit Bid Consideration provided for in the Transaction Agreement.

2.1.3 For greater certainty, unless expressly stated otherwise, all consents and determinations to be made pursuant to these Terms and Conditions shall be in the sole discretion of the party entitled to make such determination.

2.2 Priority Payments Closing Amount and Administrative Expense Closing Amount

2.2.1 By not later than ten (10) days prior to the date of the hearing before the Court for the issuance of the Reverse Vesting Order, the Monitor shall deliver to MEFL, in each case, based

on circumstances known at the time: (i) an estimate of the Priority Payments Closing Amount, which estimate shall include, for each of the Priority Payments of Validus Parent (as defined in the Transaction Agreement), the quantum and nature of such payment and the party to whom such payment is to be made; and (ii) an estimate of the Administrative Expense Closing Amount.

2.2.2 By not later than three (3) Business Days prior to the Effective Date, the Monitor shall notify the Assignee and MEFL of the final amount of the Administrative Expense Closing Amount to be delivered to the Monitor pursuant to Section 6.4 of the Transaction Agreement.

2.3 Pre-Closing and Closing Reorganization

2.3.1 The specific steps for implementing the Closing and the transactions contemplated by Article 2 of the Transaction Agreement, including payment of the Credit Bid Consideration, shall be structured in a manner mutually agreed upon by MEFL, the Assignee and the Vendors, and set forth on a schedule at least seven (7) days prior to the hearing of the motion to the Court seeking the Reverse Vesting Order (collectively, the “**Implementation Steps**”), having regard to, among other things, the minimization of any Taxes payable by any of MEFL, the Assignee or any of the Purchased Entities in connection with such transactions; *provided* that in no event will the Implementation Steps be prejudicial to the interests of MEFL or the Assignee. The Implementation Steps may include, without limitation, resolving intercompany obligations, the formation of new entities required to implement the transactions contemplated by the Transaction Agreement in a Tax-efficient manner, amending partnership agreements to reflect the economic arrangement of the Parties and transfers of Equity Interests in the Validus Entities as agreed upon by the Vendors, MEFL and the Assignee in accordance with this Section 2.3.1.

2.3.2 On or prior to the Effective Date, the Vendors shall effect the Implementation Steps as agreed upon by the Vendors, MEFL and the Assignee in accordance with Section 2.3.1.

2.3.3 The Implementation Steps shall occur and be deemed to have occurred in the order and manner to be set out therein.

2.3.4 The steps to be taken and the compromises and releases to be effective on the Effective Date shall occur and be deemed to occur and be effected in the steps and sequential order set forth in the Implementation Steps.

2.4 Access to Information

2.4.1 From the date hereof until the date on which the Offer is determined to be the Successful Bid, any information relating to the Business, the Validus Entities and the Assumed Liabilities that is provided to MEFL and the Assignee, in their capacity as parties to the Offer, and their respective personnel engaged in the transactions contemplated by the Transaction Agreement and their accountants, legal advisors, consultants, financial advisors and representatives shall be provided to the other parties participating in the SISP.

2.4.2 Until the Effective Time, (b) upon no less than 48 hours’ notice to the Monitor, the Monitor shall give to MEFL’s and the Assignee’s personnel engaged in the transactions contemplated by the Transaction Agreement and their accountants, legal advisors, consultants, financial advisors and representatives during normal business hours reasonable access to its

premises to conduct a reasonable number of site visits; (b) upon request from MEFL or the Assignee, the Monitor shall provide electronic access to all of the books and records relating to the Business, the Validus Entities, the Assumed Liabilities and the employees, and shall furnish them with all such information relating to the Business, the Validus Entities, the Assumed Liabilities and the employees as MEFL or the Assignee may reasonably request in connection with the transactions contemplated by the Transaction Agreement; *provided* that such access shall be conducted at MEFL's or the Assignee's exclusive risk and cost in accordance with Applicable Law and under supervision of the Monitor's personnel and in such a manner as to maintain confidentiality, and the Monitor will not be required to provide access to or copies of any such books and records if: (a) the provision thereof would cause the Monitor to be in contravention of any Applicable Law; (b) making such information available would: (i) result in the loss of any lawyer-client or other legal privilege; or (ii) cause the Monitor to be found in contravention of any Applicable Law, or contravene any fiduciary duty or agreement (including any confidentiality agreement to which the Monitor or any of its Affiliates are a party); or (c) cause undue interference with the Business. Such access shall include access for such environmental investigations deemed appropriate by MEFL or the Assignee, acting reasonably; *provided* that any intrusive environmental investigation shall be subject to the prior written approval of the Monitor, acting reasonably. Notwithstanding anything in this Section 2.4 to the contrary, any such investigation shall be conducted upon reasonable advance notice and in such manner as does not materially disrupt the conduct of the Business or the possible sale thereof to any other Person; and *provided further* that the same information may be provided to other parties participating in the SISP. The Monitor shall use commercially reasonable efforts to obtain information in respect of the Validus Entities from the files of such Governmental Authorities as reasonably requested by MEFL or the Assignee, which information may be shared with other parties participating in the SISP.

2.5 Energy Regulator Notices

In the event that this offer is selected as the Successful Bid in the SISP, the Parties shall use commercially reasonable efforts to file any Energy Regulator Notices as soon as reasonably practicable and no later than the time limits imposed by Applicable Laws, in each case at the sole cost and expense of the Assignee.

2.6 Further Terms

2.6.1 Subject to and without amending any terms of these Terms and Conditions (except as permitted herein), each of the Parties shall perform all of the acts and things contemplated to be performed by the applicable Party under these Terms and Conditions, co-operate and negotiate in good faith with the other Parties in connection therewith and use its commercially reasonable efforts to do all such other acts and things as may be necessary or desirable in order to consummate and make effective, as soon as reasonably practicable, the transactions contemplated by the Transaction Agreement.

2.6.2 From the date hereof until the earlier of the Effective Date and the Outside Date, each of the Assignee and MEFL shall use commercially reasonable efforts to, or shall use commercially reasonable efforts to cause their representatives to, keep the Monitor informed on a reasonably current basis, and from time to time through teleconference or other meeting, and as

reasonably requested by the Monitor, as to the Assignee's and MEFL's progress in terms of the satisfaction of the Offer Conditions.

2.6.3 From the date hereof until the earlier of the Effective Date and the Outside Date, the Monitor shall use commercially reasonable efforts to, and shall use commercially reasonable efforts to cause its representatives to, keep MEFL and the Assignee informed on a reasonably current basis, and from time to time through teleconference or other meeting, and as reasonably requested by MEFL or the Assignee, as to the Monitor's progress in terms of the satisfaction of the Offer Conditions.

2.6.4 Subject to these Terms and Conditions, the Vendors, the Assignee and MEFL shall execute and deliver such other documents, certificates, agreements and other writings, and to take such other actions to consummate or implement as soon as reasonably practicable, the transactions contemplated by the Transaction Agreement.

2.6.5 From the date hereof until the earlier of the Effective Date and the Outside Date, the Monitor shall, and shall cause its representatives to, promptly notify MEFL and the Assignee of any Material Adverse Effect occurring from and after the date hereof.

2.7 Court Orders and Related Matters

2.7.1 Subject to Court availability, the Monitor shall apply to the Court by no later than October 20, 2023 for the SISP Order, substantially in the form of Schedule "C" to the Transaction Agreement, and each of the Parties shall use commercially reasonable efforts to have the SISP Order issued.

2.7.2 From and after the date of the Offer Letter and until the earlier of the Effective Date and the Outside Date, the Receiver and the Monitor, as the case may be, shall deliver to MEFL and the Assignee drafts of any and all pleadings, motions, applications and facta to be filed or submitted by the Receiver or the Monitor in connection with or related to the Transaction Agreement, including with respect to the SISP Order and the Reverse Vesting Order, for MEFL's and the Assignee's prior review at least three (3) days in advance of service and filing of such materials (or where circumstances make it impracticable to allow for three (3) days' review, with as much opportunity for review and comment as is practically possible in the circumstances). Any such pleadings, motions, applications or facta shall be in form and substance satisfactory to each of MEFL and the Assignee, each acting reasonably. The Receiver and the Monitor shall consult and cooperate with MEFL and the Assignee regarding any discovery, examinations and hearing in respect of any of the foregoing, including the submission of any evidence, including witnesses' testimony, in connection with such hearing.

2.7.3 Notice of the motions seeking the issuance of the SISP Order and the Reverse Vesting Order shall be served by the Receiver or the Monitor, as the case may be, on all Persons required to receive notice under Applicable Law and the requirements of the BIA, the CCAA, the Court and any other Person determined necessary by the Receiver, the Monitor or the Assignee, acting reasonably.

2.7.4 In the event an appeal is taken or a stay pending appeal is requested from the Appointment Order, the SISP Order or the Reverse Vesting Order, the Receiver and the Monitor

shall promptly notify MEFL and the Assignee of such appeal or stay request and shall promptly provide MEFL and the Assignee copies of the related notice of appeal or order of stay. The Receiver and the Monitor shall also provide MEFL and the Assignee with written notice of any motion or application filed in connection with any appeal from such orders. The Receiver and the Monitor shall take all action as may be reasonable and appropriate to defend against such appeal or stay request and the resolution of such appeal or stay request; *provided* that nothing herein shall preclude the Parties hereto from consummating the Transaction Agreement and the transactions contemplated thereby, if the Reverse Vesting Order shall have been issued and has not been stayed and if each of MEFL and the Assignee waives in writing the condition that the Reverse Vesting Order be a Final Order.

2.7.5 The Reverse Vesting Order shall provide that, on the Effective Date and concurrently with the Closing, the Purchased Assets shall be transferred to the Assignee free and clear of all Encumbrances (as defined in the Transaction Agreement), other than Permitted Encumbrances (as defined in the Transaction Agreement).

2.7.6 To the extent that any Purchased Validus Parent Asset is not assignable without the consent of the counterparty or any other Person, and such consent has not been obtained prior to the hearing before the Court for the Vendors' motion for the Reverse Vesting Order and such Purchased Validus Parent Asset is one that is capable of being assigned pursuant to section 11.3 of the CCAA: (a) Validus Parent's rights, benefits and interests in, to and under such Purchased Validus Parent Asset may be assigned to the Assignee pursuant to the Reverse Vesting Order or further order made pursuant to section 11.3 of the CCAA; (b) the Vendors will use commercially reasonable efforts to obtain the Reverse Vesting Order or such further order made pursuant to section 11.3 of the CCAA on such terms as are necessary to give effect to such assignment and on requisite notice to the affected contractual counterparty(ies); and (c) if such an assignment occurs, the Assignee shall accept the assignment of such Purchased Validus Parent Asset on the terms provided by the Reverse Vesting Order or such further order made pursuant to section 11.3 of the CCAA.

2.8 Public Notices

No press release or other announcement concerning the transactions contemplated by the Offer Letter or the Transaction Agreement shall be made by the Receiver, the Monitor, MEFL or the Assignee without the prior consent of the other Parties (such consent not to be unreasonably withheld, conditioned or delayed); *provided*, however, that any Party may, without such consent, make such disclosure if the same is required by Applicable Law (including the Receivership Proceedings and the CCAA Proceedings) or by any insolvency or other court or securities commission, or other similar Governmental Authority having jurisdiction over such Party or any of its Affiliates, and, if such disclosure is required, the Party making such disclosure shall use commercially reasonable efforts to give prompt prior oral or written notice to the other Parties and to afford the other Parties an opportunity to comment on such disclosure to the extent legally permissible and reasonably practicable, and if such prior notice is not legally permissible or reasonably practicable, to give such notice reasonably promptly following the making of such disclosure. Notwithstanding the foregoing: (a) the Offer Letter and the Transaction Agreement may be filed by the Receiver or the Monitor: (i) with the Court; and (ii) on one or more webpages on the Receiver's and the Monitor's public websites established pursuant to the Appointment

Order and the Initial Order, respectively, to provide public notice of the Receivership Proceedings and the CCAA Proceedings and the documents and materials filed therein; and (b) the transactions contemplated in the Offer Letter and the Transaction Agreement may be disclosed by the Receiver and the Monitor to the Court, subject to redacting confidential or sensitive information as permitted by Applicable Law. Additionally:

- (a) the Receiver and the Monitor may prepare and file reports and other documents with the Court containing references to the transactions contemplated by the Transaction Agreement and the terms of such transactions; and
- (b) the Receiver, the Monitor, MEFL and their respective professional advisors may prepare and file such reports and other documents with the Court containing references to the transactions contemplated by the Offer Letter and the Transaction Agreement and the terms of such transactions as may reasonably be necessary to complete the transactions contemplated by the Transaction Agreement or to comply with their obligations in connection therewith.

2.9 Assignment of Transaction Agreement

No Party may assign its right, benefits or obligations under this Agreement without the consent of each of the other Parties, except that, without the consent of the Vendors or the Assignee, MEFL may, upon prior written notice to the Vendors and the Assignee assign the Transaction Agreement, or any or all of its rights and obligations thereunder, to one or more of its Affiliates; *provided* that no such assignment or direction shall relieve MEFL of its obligations hereunder.

2.10 Allocation of Credit Bid Consideration

On or before the Effective Date, the Vendors, each of the Assignee and MEFL covenants and agrees to determine an allocation, as mutually agreed in writing among the Parties, of the Credit Bid Consideration among the Purchased Interests and the Purchased Validus Parent Assets, as contemplated in Section 2.8(e) of the Transaction Agreement.

ARTICLE 3 CONDITIONS

3.1 Conditions to the Offer in Favour of the Assignee and MEFL

The Offer, the effectiveness of the Transaction Agreement and the respective obligations of each of the Assignee and MEFL to consummate the transactions contemplated by the Transaction Agreement are subject to the satisfaction of or compliance with, at or prior to the Effective Time, each of the following conditions precedent:

- (a) *No Law* – no provision of any Applicable Law and no judgment, injunction or Order preventing or otherwise frustrating the consummation of the delivery of title to the Leased Property and purchase and sale of the Purchased Assets or any of the other transactions pursuant to the Transaction Agreement, including, for the avoidance

of doubt, a cease trade or similar order issued by a Governmental Authority in respect of any Validus Entity, shall be in effect;

- (b) *Final Orders* – each of the Appointment Order, the Initial Order, the SISP Order and the Reverse Vesting Order shall have been issued and entered and shall be Final Orders;
- (c) *No Material Adverse Effect* – since the date of the Offer Letter, no change, effect, event, occurrence, state of facts or development shall have occurred that resulted in, or would reasonably be expected to result in, a Material Adverse Effect;
- (d) *Vendors' Deliverables* – the Vendors shall have delivered to the Assignee and MEFL all of the deliverables set forth in Section 8.2 of the Transaction Agreement in form and substance reasonably satisfactory to MEFL and the Assignee;
- (e) *Implementation Steps* – MEFL, the Assignee and the Vendors shall have agreed upon the Implementation Steps by no later than seven (7) days prior to hearing of the motion to the Court seeking the Reverse Vesting Order in accordance with Section 2.3.1 of these Terms and Conditions in the manner agreed to by MEFL and the Assignee, each in their sole discretion, and the Validus Entities shall have completed the Implementation Steps that are required to be completed prior to Closing, in form and substance satisfactory to MEFL and the Assignee;
- (f) *Continuing Contracts* – each of the counterparties set forth on Part B of Exhibit 3.1(f) shall have confirmed in writing, to the Vendors, the Assignee and MEFL that it will not exercise any termination rights under its Continuing Contracts solely as a result of the transactions contemplated by the Transaction Agreement;
- (g) *Employee Matters* – such number of Employees that is determined by the Assignee, shall have accepted offers of employment from the Assignee or a Purchased Entity (at the Assignee's election) or, if the Assignee is successful in negotiating agreements with the bargaining agents who are parties to Collective Agreements under which the required contracting out is permitted, NAES Corporation (or an alternative third-party power plant operator, as determined by the Assignee), as determined by the Assignee. The Assignee shall have received all required offers (to be made in accordance with Section 2.1(c)(iii) of the Transaction Agreement) by no later than 7 Business Days following the Qualified Bid Deadline (as defined in the SISP); and
- (h) *Vendors' Acceptance and Execution* – the Vendors shall have accepted and executed the Transaction Agreement.

The foregoing conditions are for the sole benefit of each of the Assignee and MEFL. Each condition in this Section 3.1 must be satisfied or otherwise waived by each of the Assignee and MEFL on and for their own behalf. Any condition in this Section 3.1 may be waived by the Assignee or MEFL, each on its own behalf, as applicable, in any case in whole or in part and any waiver of the foregoing conditions requires the consent of each of the Assignee and MEFL. Any such waiver will be binding on the Assignee or MEFL, as applicable, only if made in writing.

3.2 Conditions to the Offer in Favour of the Vendors

The Vendors shall not accept the Offer unless at or prior to the Effective Time, each of the following conditions have been satisfied:

- (a) *No Law* – no provision of any Applicable Law and no judgment, injunction or Order preventing or otherwise frustrating the consummation of the delivery of title to the Leased Property and purchase and sale of the Purchased Assets or any of the other transactions pursuant to the Transaction Agreement, including, for the avoidance of doubt, a cease trade or similar order issued by a Governmental Authority in respect of any Validus Entity, shall be in effect;
- (b) *Final Orders* – each of the Appointment Order, the Initial Order, the SISP Order and the Reverse Vesting Order shall have been issued and entered and shall be Final Orders;
- (c) *MEFL's and the Assignee's Deliverables* – each of MEFL and the Assignee shall have delivered to the Vendors all of the deliverables set forth in Section 8.2 and Section 8.3, respectively, of the Transaction Agreement in form and substance reasonably satisfactory to the Vendors;
- (d) *Agreement and Completion of Pre-Closing Implementation Steps* – MEFL, the Assignee and the Vendors shall have agreed upon the Implementation Steps in accordance with Section 2.3.1 of these Terms and Conditions, and the Validus Entities shall have completed the Implementation Steps that are required to be completed prior to Closing, in form and substance reasonably satisfactory to the Vendors; and
- (e) *Sufficient Funds* – as of immediately prior to the Closing, the Assignee shall have sufficient funds to pay the Administrative Expense Closing Amount and the Priority Payments Closing Amount.

ARTICLE 4 TERMINATION OF OFFER

4.1 Termination of Offer

4.1.1 MEFL may terminate the Offer at any time prior to the Effective Date:

- (a) if the Vendors, MEFL and the Assignee mutually agree in writing;
- (b) if the Offer is not the Successful Bid (as determined pursuant to the SISP);
- (c) if the Reverse Vesting Order is not granted by December 15, 2023;
- (d) if the Effective Time has not occurred on or before December 29, 2023 or such later date agreed to by the Vendors, MEFL and the Assignee in writing (the “**Outside Date**”);

- (e) upon the appointment of a trustee in bankruptcy or similar official by or in respect of any Validus Entity or any of the property of any Validus Entity, other than with the prior written consent of MEFL;
- (f) upon the termination, dismissal or conversion of the Receivership Proceedings or the CCAA Proceedings; or
- (g) upon denial of the SISP Order or the Reverse Vesting Order (or if any such order is stayed, vacated or varied without the consent of each of MEFL and the Assignee).

4.1.2 MEFL shall give written notice of such termination to the Vendors specifying in reasonable detail the basis for its exercise of its termination rights.

4.2 Effect of Termination

Upon MEFL's termination of the Offer in accordance with Section 4.1.1, the Offer shall become void and of no further force and effect without liability to MEFL or the Assignee, and neither MEFL or the Assignee shall have any obligations to the Vendors or any other Party under, or in respect of, the Offer Letter, the Offer, the Transaction Agreement or any of the transactions or agreements contemplated thereby or entered into in furtherance thereof; and provided further, for greater certainty, upon termination, MEFL and the Assignee shall be deemed to have forfeited any right or claim to a break fee or expense reimbursement.

4.3 Termination Upon Effectiveness of Transaction Agreement

Immediately following the occurrence of the Effective Time, the Offer Letter, including, for certainty, these Terms and Conditions, shall automatically terminate and become void and of no further force and effect.

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EXHIBIT 3.1(f)

Continuing Contracts

(See attached.)

PART A

Contract	Counterparty
Bay Power Corp. (North Bay)	
Simplified Connection and Cost Recovery Agreement dated March 31, 2023	Hydro One Networks Inc.
Transmission Connection Agreements: (1) dated January 07, 2003; and (2) dated August 26, 2008	Hydro One Networks Inc.
Amendment Agreement to Transmission Connection Agreement (August 26, 2008), dated July 26, 2010	Hydro One Networks Inc.
Assignment and Assumption Agreement to Transmission Connection Agreements (January 07, 2003 and August 26, 2008), dated February 10, 2022 (effective May 20, 2021)	Hydro One Networks Inc. and Atlantic Power Limited Partnership (as Assignor)
Participation Agreement dated May 16, 2022	Independent Electricity System Operator
Waste Heat Agreement – North Bay , dated June 18, 1997	Transcanada Pipelines Limited
Amending Agreement to Waste Heat Agreement – North Bay, dated June 19, 2017	Transcanada Pipelines Limited
Assignment and Novation Agreement to Waste Heat Agreement – North Bay, dated May 19, 2021	Transcanada Pipelines Limited and Atlantic Power Limited Partnership (as Assignor)
Metering Service Provider Agreement*	Rodan Energy Solutions Inc.
Gas distribution contract(s)	Enbridge
Kap Power Corp. (Kapusksing)	
Transmission Connection Agreement dated October 22, 2008	Hydro One Networks Inc.

Contract	Counterparty
Amendment Agreement to Transmission Connection Agreement dated July 26, 2010	Hydro One Networks Inc.
Assignment and Assumption Agreement to Transmission Connection Agreement dated February 10, 2022 (effective May 20, 2021)	Hydro One Networks Inc. and Atlantic Power Limited Partnership (as Assignor)
Participation Agreement dated May 16, 2022	Independent Electricity System Operator
Waste Heat Agreement – Kapuskasing dated June 18, 1997	Transcanada Pipelines Limited
Waste Heat Agreement – Kapuskasing dated March 31, 1998	
Assignment and Novation Agreement to Waste Heat Agreement – Kapuskasing dated March 31, 1998	Transcanada Pipelines Limited
Amending Agreement to Waste Heat Agreement – Kapuskasing dated June 19, 2017	Transcanada Pipelines Limited
Assignment and Novation Agreement to Waste Heat Agreement – Kapuskasing dated May 19, 2021	Transcanada Pipelines Limited and Atlantic Power Limited Partnership (as Assignor)
Metering Service Provider Agreement*	Rodan Energy Solutions Inc.
Gas distribution contract(s)*	Enbridge
Iroquois Falls Power Corp. (Iroquois Falls)	
Enbridge: Northern Gas Distribution Contract dated May 16, 2023 and Schedule 1 dated July 1, 2023	Enbridge Gas Inc.
Transmission Connection Agreement dated October 23, 2022	Hydro One Networks Inc.
Metering Service Provider Agreement dated August 1, 2017	Rodan Energy Solutions Inc.
Energy Market Participant and Capacity Market Participant registration.*	Independent Electricity System Operator
Participation Agreement*	Independent Electricity System Operator

Contract	Counterparty
Kingston CoGen Limited Partnership / Kingston CoGen GP Inc. (Kingston)	
Firefighting Water Service Agreement dated October 4, 2011	Bombardier Transportation Canada Inc.
Firefighting Water Service Agreement dated March 22, 2013	Coco Paving Inc.
Firefighting Water Service Agreement dated November 17, 2011	Direct Coil Inc.
Metering Service Provider Agreement dated February 1, 2017	Rodan Energy Solutions Inc.
Memorandum of Agreement dated June 10, 2011 (Amending Agreements dated June 10, 2011 and August 4, 2011)	Invista (Canada) Company
Future Supply Agreement dated September 28, 2011	Invista (Canada) Company
Indemnity Agreement dated September 28, 2011	Invista (Canada) Company
Schedule 1 to Enbridge: Northern Gas Distribution Contract dated February 1, 2021	Enbridge Gas Inc.
Transmission Connection Agreement dated April 17, 2002	Hydro One Networks Inc.
Amending Agreement to Transmission Connection Agreement dated February 29, 2008	Hydro One Networks Inc.
Amending Agreement to Transmission Connection Agreement dated July 29, 2010.	Hydro One Networks Inc.
Energy Market Participant and Capacity Market Participant registration.*	Independent Electricity System Operator
Participation Agreement*	Independent Electricity System Operator

Easements Schedule

Easement	Counterparty
North Bay	
<p>**Instrument No. unknown** Easement in favour of North Bay Hydro Distribution Ltd over Property 4001 Highway 11 North – City of North Bay, Ontario, agreed to by the registered owner of the property, Bay Power Corp.</p>	North Bay Hydro Distribution Ltd
<p>Instrument No. LT332823 Transfer Easement re Transmission Line Easement registered</p>	Longyear Canada Inc transfer to Transcanada Pipelines Limited
<p>Instrument No. LT332824 Transfer Easement re Transfer of Transmission Line Easement registered</p>	Garnet Paul Abel to Transcanada Pipelines Limited
<p>Instrument No. LT332826 Transfer Easement re Transmission Line Easement registered</p>	Bradley Charles Beaver and Valerie Lynn Beaver (as joint tenants) transfer to Transcanada Pipelines Limited
<p>Instrument No. LT332885 Transfer Easement re Transmission Line Easement registered</p>	The Corporation of the City of North Bay transfer to Transcanada Pipelines Limited
<p>Instrument No. LT332902 Transfer Easement re Transmission Line Easement registered</p>	Lauretta Lucenti (Estate), Florence Grassi (Executrix) and Evelyn Marshall (Executrix) Transfer to Transcanada Pipelines Limited
<p>Instrument No. LT333337 Transfer Easement re Transmission Line Easement registered</p>	Christine Sloan Transfer to Transcanada Pipelines Limited
<p>Instrument No. LT339664 Transfer Easement re Transmission Line Easement registered</p>	John Fonteine and Johanna Fonteine Transfer to Transcanada Pipelines Limited
<p>Instrument No. LT366707 Transfer Easement registered</p>	Transcanada Pipelines Limited Transfer to Transcanada Power Services Ltd.

Easement	Counterparty
Instrument No. LT336708 Transfer Easement registered	Transcanada Pipelines Limited Transfer to Transcanada Power Services Ltd.
Instrument No. LT366709 Transfer Easement registered	Transcanada Pipelines Limited Transfer to Transcanada Power Services Ltd.
Instrument No. LT366710 Transfer Easement registered	Transcanada Pipelines Limited to Transcanada Power Services Ltd
Kapuskasing	
Instrument No. C136268 Transfer Easement registered October 21, 1963	Charles Donnelly, Violet Donnelly and Northern Ontario Natural Gas Company Limited
Instrument No. C388641 Transfer Easement registered September 25, 1989	Bell Canada
Instrument No. C478024 Transfer Easement registered December 5, 1997	Transcanada Power Services Ltd.
Instrument No. C102164 Transfer Easement registered June 17, 1958	Transcanada Power Services Ltd.
Instrument No. C203212 Transfer Easement registered January 2, 1973	Transcanada Power Services Ltd.
Instrument No. C388641 Transfer Easement registered September 25, 1989	Bell Canada
Instrument No. C452347 Transfer Easement registered	
Instrument No. C451853 Transfer Easement registered	

Easement	Counterparty
Instrument No. C451851 Transfer Easement registered	
Instrument No. C453701 Transfer Easement registered	
Iroquois Falls	
No. 332 Parts 1 and 2, Plan 6R-6853 Abitibi River Easement – Grant of Easement (registered as Instrument No. C474890 on August 29, 1997 Instrument No. C521180 registered June 7, 2002 Replaces Schedule “A” in instrument No. C474890)	Minister of Natural Resources for the Province of Ontario (Grantor) in favour of Iroquois Falls Power Corp. (Grantee)
Instrument No. C447211 Transfer of Easement registered Dec 29, 1994 Instrument No. C470225 registered April 17, 1997 Release of obligations contained in Transfer of Easement No. C447211.	Abitibi-Price and Ontario Clean Water Agency (OWCA)
Instrument No. C447212 Transfer of Easement registered Dec 29, 1994 Instrument No. C470226 registered April 17, 1997 Release of obligations contained in Transfer of Easement No. C447212.	Abitibi-Price

Easement	Counterparty
Instrument No. C469025 Transfer of Easement registered Feb 28, 1997 Instrument No. C470228 registered April 17, 1997 Release of obligations contained in Transfer of Easement No. C469025.	Abitibi-Price
Instrument No. C447209 Transfer of Easement registered December 29, 1994 Instrument No. C470223 registered April 17, 1997 Release of obligations in the transfer of easement No. C447209	Abitibi-Price and Ontario Clean Water Agency
EC-2015-53C-23 (MTO) Encroachment Permit	Provided by MTO to IFPC
3373-16 (Town of Iroquois Falls) Encroachment Permit	Town of Iroquois Falls
Instrument No.C469026 registered February 28, 1997 Transfer of the Twin Falls Road Easement registered February 28, 1997 Instrument No.C470229 registered April 17, 1997 Release of obligations contained in Transfer of Easement No. C4690026.	Abitibi-Price
Instrument No.C469024 Transfer of the Transmission Line Access Easement registered Feb 28, 1997 Instrument No.C470227 registered April 17, 1997 Release of obligations contained in Transfer of Easement No. C469024.	Abitibi-Price

Easement	Counterparty
Instrument No. C447208 Transfer of Easement registered Dec 29, 1994 Instrument No. C470222 registered April 17, 1997 Agreement amending Transfer of Easement No. C447208.	Abitibi-Price
Instrument No. 447210 Abitibi-Price Spur Easement for transmission line registered December 29, 1994	Abitibi-Price
Kingston	
Instrument No. LX37162 Transfer Easement re Additional Transmission Line Easement registered October 4, 2011	Invista (Canada) Company (Transferor) to NPIF Kingston Cogen Corp (Transferee)
Instrument No. LX37161 Transfer Easement re Process Wastewater Easement registered October 4, 2011	Invista (Canada) Company (Transferor) to NPIF Kingston Cogen Corp (Transferee)
Instrument No. LX37170 Transfer Easement registered October 4, 2011 re Pump House Easement registered October 4, 2011	NPIF Kingston Cogen Corp (Transferor) to Invista (Canada) Company (Transferee)
Instrument No. LX37163 Transfer Easement re Corridor Easement registered October 4, 2011	Invista (Canada) Company (Transferor) to NPIF Kingston Cogen Corp (Transferee)
Instrument No. LX37160 Transfer Easement re Firewater Line Easement registered October 4, 2011	Invista (Canada) Company (Transferor) to NPIF Kingston Cogen Corp (Transferee)
Instrument No. LX37169 Transfer Easement re Intake Outfall Easement registered October 4, 2011	Invista (Canada) Company (Transferor) to NPIF Kingston Cogen Corp (Transferee)
Instrument No. LX37168 Transfer Easement re Pump House Road Access Easement registered October 4, 2011	Invista (Canada) Company (Transferor) to NPIF Kingston Cogen Corp (Transferee)

Easement	Counterparty
Instrument No. LX37166 Transfer of Utilities Easement registered October 4, 2011	Invista (Canada) Company (Transferor) to NPIF Kingston Cogen Corp (Transferee)
Instrument No. LX37167 Transfer Easement re Transmission Line Easement registered October 4, 2011	Invista (Canada) Company (Transferor) to NPIF Kingston Cogen Corp (Transferee)
Instrument No. LX37165 Transfer Easement re Stormwater Line Easement registered October 4, 2011	Invista (Canada) Company (Transferor) to NPIF Kingston Cogen Corp (Transferee)
Instrument No. LX37164 Transfer Easement re Maintenance registered October 4, 2011	Invista (Canada) Company (Transferor) to NPIF Kingston Cogen Corp (Transferee)
Instrument No. LX80512 Transfer Easement registered February 28, 2018	Invista (Canada) Company (Transferor) to Hydro One Networks Inc. (Transferee)
Instrument No. LX80513 Transfer Easement registered February 28, 2018	Invista (Canada) Company (Transferor) to Hydro One Networks Inc. (Transferee)
Instrument No. LA69824 Transfer Easement re Industrial Railway Spur registered March 6, 1972	Canadian Industries Limited, as owner and Millhaven Fibres Limited
Instrument No. LA208637 Transfer Easement re Electrical Transmission Line registered	
Instrument No. LA208644 Transfer Easement re Electrical Transmission Line registered as amended by Instrument No. LX52043 registered November 14, 2013	Among The Corporation of Loyalist Township and NPIF Kingston Cogen Corp.
Instrument No. LA210426 Transfer Easement re Electrical Transmission Line registered	
Instrument No. LA210734 Transfer Easement re Access Road registered	

Easement	Counterparty
Instrument No. LA210736 Transfer Easement registered	
Instrument No. LA210738 Transfer Easement registered	
Instrument No. LA184396 Transfer Easement registered	
Instrument No. LA58484 Transfer Easement registered	
Lease	
Unregistered Lease among Validus Power Corp. and Hut 8 Mining Corp. dated October 27, 2021	With respect to 4001 Hwy 11 North, North Bay, On
Instrument No. LX36982 Notice of Lease registered September 28, 2011	NPIF Kingston Cogen Corp., as tenant
Sublease	
Instrument No. LX37609 Application re Sublease registered October 26, 2011	Invista (Canada) Company, as sublandlord and NPIF Kingston Cogen Corp., as subtenant.
Municipal Agreements	
Instrument No. BS213742 Site Plan Agreement registered May 4, 2022	Among the Corporation of the City of North Bay and Bay Power Corp.
Instrument No. LA208787 Site Plan Agreement registered February 24, 1995	In favour of Township of Ernestown

Easement	Counterparty
Airport Zoning	
Instrument No. C366646 Notice of Airport Zoning registered March 23, 1988	
Instrument No. LT135401 registered October 18, 1971 As amended by Instrument No. LT212097 registered August 28, 1980 Instrument No. LT212098 registered August 28, 1980 Instrument No. LT224812 registered June 21, 1982 Instrument No. LT245558 registered January 31, 1985	
Other Agreements	
Instrument No. C385680 Agreement registered July 14, 1989	TransCanada Pipelines Limited and Bell Canada
Restrictive Agreements	
Instrument No. LT235848z registered October 10, 1983	
Instrument No. LT235849z registered October 10, 1983	

PART B

[■]

DISCLOSURE SCHEDULE
to
TRANSACTION AGREEMENT¹

by and among

**VALIDUS POWER CORP., IROQUOIS FALLS POWER CORP., BAY
POWER CORP., KAP POWER CORP., KINGSTON COGEN LIMITED
PARTNERSHIP, KINGSTON COGEN GP INC. and VALIDUS
HOSTING INC., each by KSV RESTRUCTURING INC., in its capacity as
court-appointed Monitor in the CCAA Proceedings**

as the Vendors

- and -

FAR NORTH POWER CORP.

as the Assignee

- and -

MACQUARIE EQUIPMENT FINANCE LTD.

as MEFL

¹ Without limiting or detracting from Section 2.9 of the Transaction Agreement, MEFL and the Assignee acknowledge and agree that the descriptions set out in this Disclosure Schedule have been prepared by MEFL and/or the Assignee and neither the Receiver nor the Monitor make any representation or warranty as to the accuracy or completeness of any exhibit herein.

Exhibit 1.1
Permitted Encumbrances

KAP POWER CORP. (Kapuskasing)
LRO #6

PIN 65095-0051(LT)

1. C366646 registered March 23, 1988 is a Notice of Airport Zoning.
2. CB164060 registered May 20, 2021 is a Transfer to Kap Power Corp.
3. C478024 is a document that contains a together with in favour of the property.
(thumbnail only)

PIN 65095-0052(LT)

1. C366646 registered March 23, 1988 is a Notice of Airport Zoning.
2. C385680 registered July 14, 1989 is a Notice of Agreement among TransCanada Pipelines Limited and Bell Canada.
3. CB164060 registered May 20, 2021 is a Transfer to Kap Power Corp.
5. C478024 is a document that contains a together with in favour of the property.
(thumbnail only)
6. C452347 is a document that contains a together with in favour of the property.
(thumbnail only)
7. C451853 is a document that contains a together with in favour of the property.
(thumbnail only)
8. C451851 is a document that contains a together with in favour of the property.
(thumbnail only)
9. C453701 is a document that contains a together with in favour of the property.
(thumbnail only)

IROQUOIS FALLS POWER CORP. (Iroquois Falls)
LRO #6

PIN 65337-0369(LT)

1. C447207 registered December 29, 1994 is a Transfer to 956978 Ontario Limited which has been amended under instruments C470107 and C470233.

2. C447208 amended by C470222 is a document that contains a together with in favour of the property. (thumbnail only)
3. C447209 amended by C470223 is a document that contains a together with in favour of the property. (thumbnail only)
4. C447211 amended by C470225 is a document that contains a together with in favour of the property. (thumbnail only)
5. C447212 amended by C470226 is a document that contains a together with in favour of the property. (thumbnail only)
6. C469024 amended by C470227 is a document that contains a together with in favour of the property. (thumbnail only)
7. C469025 amended by C470228 is a document that contains a together with in favour of the property. (thumbnail only)
8. C469026 amended by C470229 is a document that contains a together with in favour of the property. (thumbnail only)
9. C474890 amended by C521180 is a document that contains a together with in favour of the property. (thumbnail only)

PIN 65337-0372(LT)

1. C474890 registered August 29, 1997 is a Transfer of Easement in favour of Iroquois Falls Power Corp.
2. C521180 registered June 7, 2002 is a Notice of Amendment.

PIN 65337-0373(LT)

1. C474890 registered August 29, 1997 is a Transfer of Easement in favour of Iroquois Falls Power Corp.
2. C521180 registered June 7, 2002 is a Notice of Amendment.

PIN 65337-0456(LT)

1. C425641 registered November 20, 1992 is a Transfer to 956978 Ontario Limited which has been amended under instruments C470107 and C470233.
2. Property is subject to C469070 amended by C470222, C470223, C470224, C470225, C470226, C470227, C470228, C470229 and C470230 (as described in thumbnail description).

PIN 65337-0458(LT)

1. C439377 registered April 11, 1994 is a Transfer to 956978 Ontario Limited which has been amended under instruments C470107 and C470233.
2. CB61039 registered February 12, 2010 is an LR's Order.
3. Property is subject to C469070 amended by C470222, C470223, C470224, C470225, C470226, C470227, C470228, C470229 and C470230 (as described in thumbnail description).

**KINGSTON COGEN Limited Partnership/ Kingston CoGen GP Inc. (Kingston)
LRO #29**

PIN 45132-0362(LT)(Leasehold PIN, sublease interest only)

1. LX11671 registered May 29, 2008 is a Crown Patent to Invista (Canada) Company.
2. LX37609 registered October 26, 2011 is an Application (Sublease) from Invista (Canada) Company in favour of NPIF Kingston CoGen Corp.
3. LX52940 registered January 16, 2014 is a Transfer to 3274376 Nova Scotia Company.
4. LX52941 registered January 16, 2014 is an Application to Change Name – Owner.
5. LX119670 registered April 19, 2023 is an Application to Change Name – Instrument re: LX37609.

PIN 45132-0373(LT) (Easement Interest only)

1. LA119096 registered April 15, 1981 is a Provisional Certificate of Approval re Waste Disposal Site.
2. LX37169 registered October 4, 2011 is a Transfer of Easement in favour of NPIF Kingston Cogen Corp.
3. LX51782 registered October 30, 2013 is a Transfer to 3274376 Nova Scotia Company.
4. LX52039 registered November 14, 2013 is an Application to Change Name – Owner.
5. LX52905 registered January 14, 2014 is a Notice of Option to Lease in favour of Windlectric Inc.
6. LX63673 registered September 4, 2015 is a Certificate of Requirement registered by Her Majesty the Queen in Right of Ontario as represented by the Minister of the Environment and Climate Change.

7. LX80405 registered February 22, 2018 is a Notice of Lease in favour of Windlectric Inc.
8. LX80406 registered February 22, 2018 is a Notice of Lease in favour of Windlectric Inc.
9. LX37170 is a document that contains a together with in favour of the property.
(thumbnail only)

PIN 45132-0375(LT)

1. LA208787 registered February 24, 1995 is a Site Plan Control Agreement.
2. LA285538 registered January 25, 2011 is a Transfer to NPIF Kingston Cogen Corp.
3. LX52043 registered November 14, 2013 is a Notice of Easement Amending Agreement among The Corporation of Loyalist Township and NPIF Kingston CoGen Corp.
4. LX118877 registered March 1, 2023 is an Application to Change Name – Owner.
5. LA69824 is a document that contains a together with in favour of the property.
(thumbnail only)
6. LA208637 is a document that contains a together with in favour of the property.
(thumbnail only)
7. LA208644 is a document that contains a together with in favour of the property.
(thumbnail only)
8. LA210426 is a document that contains a together with in favour of the property.
(thumbnail only)
9. LA210734 is a document that contains a together with in favour of the property.
(thumbnail only)
10. LA210736 is a document that contains a together with in favour of the property.
(thumbnail only)
11. LA210738 is a document that contains a together with in favour of the property.
(thumbnail only)
12. LX37160 is a document that contains a together with in favour of the property.
(thumbnail only)
13. LX37161 is a document that contains a together with in favour of the property.
(thumbnail only)
14. LX37162 is a document that contains a together with in favour of the property.
(thumbnail only)

15. LX37163 is a document that contains a together with in favour of the property.
(thumbnail only)
16. LX37164 is a document that contains a together with in favour of the property.
(thumbnail only)
17. LX37165 is a document that contains a together with in favour of the property.
(thumbnail only)
18. LX37166 is a document that contains a together with in favour of the property.
(thumbnail only)
19. LX37167 is a document that contains a together with in favour of the property.
(thumbnail only)

PIN 45132-0377(LT)(Leasehold PIN, Sublease interest only)

1. LA116957 registered October 16, 1980 is a Provisional Certificate of Approval re Waste Disposal Site.
2. LA119096 registered April 15, 1981 is a Provisional Certificate of Approval re Waste Disposal Site.
3. LA122730 registered March 24, 1982 is a Provisional Certificate of Approval re Waste Disposal Site.
4. LX36982 registered September 28, 2011 is a Notice of Lease to NPIF Kingston Cogen Corp.
5. LX36984 registered September 28, 2011 is an Application for Leasehold Parcel.
6. LX37170 registered October 4, 2011 is a Transfer of Easement in favour of Invista (Canada) Company.
7. LX118877 registered March 1, 2023 is an Application to Change Name – Owner.
8. LA69824 is a document that contains a together with in favour of the property.
(thumbnail only)
9. LX37160 is a document that contains a together with in favour of the property.
(thumbnail only)
10. LX37161 is a document that contains a together with in favour of the property.
(thumbnail only)
11. LX37162 is a document that contains a together with in favour of the property.
(thumbnail only)

12. LX37163 is a document that contains a together with in favour of the property.
(thumbnail only)
13. LX37168 is a document that contains a together with in favour of the property.
(thumbnail only)
14. LX37169 is a document that contains a together with in favour of the property.
(thumbnail only)

PIN 45132-0379(LT) (Easement interests only)

1. LA45719 registered September 30, 1966 is a Bylaw.
2. LA58484 registered September 11, 1970 is a Transfer of Easement in favour of The Hydro-Electric Power Commission of Ontario.
3. LA69824 registered December 22, 1972 is an Easement Agreement re Industrial Railway Spur.
4. LA116957 registered October 16, 1980 is Provisional Certificate of Approval re Waste Disposal Site.
5. LA119096 registered April 15, 1981 is a Provisional Certificate of Approval re Waste Disposal Site.
6. LA122730 registered March 24, 1982 is a Provisional Certificate of Approval re Waste Disposal Site.
7. LA167630 registered April 13, 1989 is a Provisional Certificate of Approval re Waste Disposal Site.
8. LA184396 registered April 30, 1991 is a Transfer of Easement in favour of Queen – Ministry of Transportation of Province of Ontario.
9. LA210656 registered June 30, 1995 is a Bylaw.
10. LA212073 registered October 5, 1995 is a Bylaw
11. LX37160 registered October 4, 2011 is a Transfer of Easement in favour of NPIF Kingston Cogen Corp.
12. LX37161 registered October 4, 2011 is a Transfer of Easement in favour of NPIF Kingston Cogen Corp.
13. LX37162 registered October 4, 2011 is a Transfer of Easement in favour of NPIF Kingston Cogen Corp.
14. LX37163 registered October 4, 2011 is a Transfer of Easement in favour of NPIF Kingston Cogen Corp.

15. LX37164 registered October 4, 2011 is a Transfer of Easement in favour of NPIF Kingston Cogen Corp.
16. LX37165 registered October 4, 2011 is a Transfer of Easement in favour of NPIF Kingston Cogen Corp.
17. LX37166 registered October 4, 2011 is a Transfer of Easement in favour of NPIF Kingston Cogen Corp.
18. LX37167 registered October 4, 2011 is a Transfer of Easement in favour of NPIF Kingston Cogen Corp.
19. LX37168 registered October 4, 2011 is a Transfer of Easement in favour of NPIF Kingston Cogen Corp.
20. LX51782 registered October 30, 2013 is a Transfer to 3274376 Nova Scotia Company.
21. LX52039 registered November 14, 2013 is an Application to Change Name – Owner.
22. LX52905 registered January 14, 2014 is a Notice of Option to Lease in favour of Windlectric Inc.
23. LX63672 registered September 4, 2015 is a Certificate registered by Her Majesty the Queen in Right of Ontario as represented by the Minister of the Environment and Climate Change.
24. LX80405 registered February 22, 2018 is a Notice of Lease in favour of Windlectric Inc.
25. LX80406 registered February 22, 2018 is a Notice of Lease in favour of Windlectric Inc.
26. LX80512 registered February 28, 2018 is a Transfer of Easement in favour of Hydro One Networks Inc.
27. LX80513 registered February 28, 2018 is a Transfer of Easement in favour of Hydro One Networks Inc.
28. LX37170 is a document that contains a together with in favour of the property.
(thumbnail only)

BAY POWER CORP. (NORTH BAY)
LRO #36

PIN 49127-0021(LT)

1. LT135401 registered October 18, 1971 is a Notice of Airport Zoning Regulations.

2. LT212097 registered August 28, 1980 is a Notice of Amendments to Airport Zoning Regulations.
3. LT212098 registered August 28, 1980 is a Notice of Amendments to Airport Zoning Regulations.
4. LT224812 registered June 21, 1982 is a Notice of Amendments to Airport Zoning Regulations.
5. LT235848Z registered October 19, 1983 is Application to Annex Restrictive Covenants.
6. LT235849Z registered October 19, 1983 is Application to Annex Restrictive Covenants.
7. LT245558 registered January 31, 1985 is a Notice of Amendments to Airport Zoning Regulations.
8. BS199111 registered May 20, 2021 is a Transfer to Bay Power Corp.
9. BS213742 registered May 4, 2022 is a Notice of Site Plan Agreement.
10. LT332823 is a document that contains a together with in favour of the property.
(thumbnail only)
11. LT332824 is a document that contains a together with in favour of the property.
(thumbnail only)
12. LT332826 is a document that contains a together with in favour of the property.
(thumbnail only)
13. LT332902 is a document that contains a together with in favour of the property.
(thumbnail only)
14. LT332885 is a document that contains a together with in favour of the property.
(thumbnail only)
15. LT333337 is a document that contains a together with in favour of the property.
(thumbnail only)
16. LT339664 is a document that contains a together with in favour of the property.
(thumbnail only)
17. LT366707 is a document that contains a together with in favour of the property.
(thumbnail only)
18. LT366710 is a document that contains a together with in favour of the property.
(thumbnail only)
19. LT366708 is a document that contains a together with in favour of the property.
(thumbnail only)

20. LT366709 is a document that contains a together with in favour of the property.
(thumbnail only)

Exhibit 2.1.1(b)
Purchased Validus Parent Assets

1. All right, title and interest of Validus Power Corp. in the Continuous Safety Services (CSS) Agreement dated [■] between Electrical Safety Authority and Validus Power Corp.

Exhibit 2.1.1(c)(i)
Terms of Employment

See attached.

DRAFT

Employing Entity*	Last Name	First Name	Status	Job Title	Service Date	Annual Vacation Entitlement	Annual Salary or Hourly Wage Rate	If Successor Employer Applications are Successful, Union or Non-Union Status**	Personal Merit Bonus Target	Plant Performance Bonus Target	Target Bonus	Eligible for Group Benefits provided by Employer (Yes or No)?	RRSP Company Match Percentage
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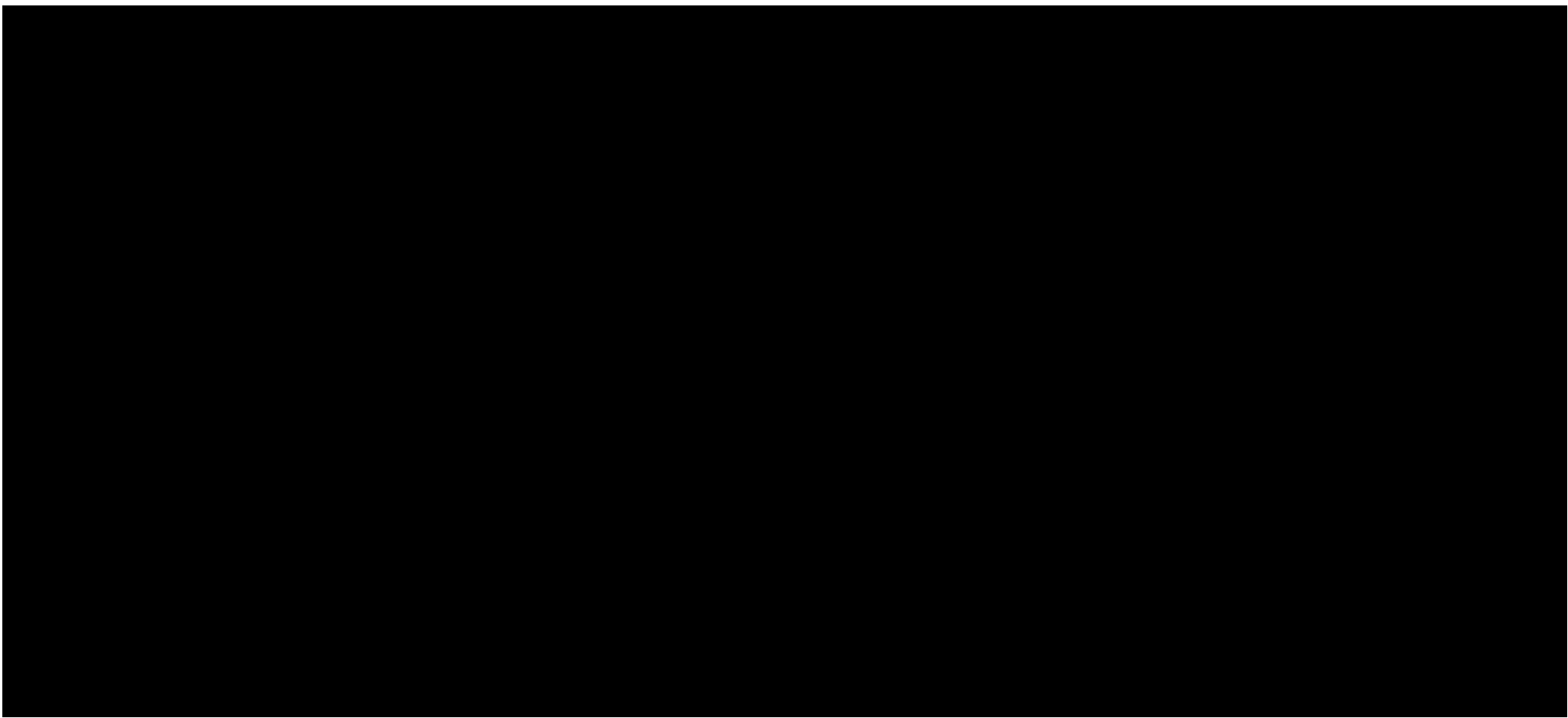


Exhibit 2.1.1(d)(i)
IFPC Note 1

See attached.

PROMISSORY NOTE

Issue Date: [■], 2023

Principal Amount: \$29,000,000

This Promissory Note is dated as of [■], 2023 (as amended, restated, renewed or replaced from time to time, this “**Note**”) and issued by IROQUOIS FALLS POWER CORP. (together with its successors and permitted assigns, the “**Issuer**”), in favour of MACQUARIE EQUIPMENT FINANCE LTD. (together with its successors and permitted assigns, the “**Holder**”) on the terms set forth below.

Recitals:

1. The Issuer and the Holder, among others, are party to a transaction agreement dated as of the date hereof (the “**Transaction Agreement**”) with respect to, among other things, the sale and transfer to the Holder and Hut 8 Power Inc. by the Vendors of the Purchased Assets subject to and accordance with the terms and conditions set forth therein (the “**Transaction**”).
2. Pursuant to Section 2.1(d)(i) of the Transaction Agreement, the Issuer agreed to issue to the Holder this Note as partial consideration for the transfer of the Leased Property, and hereby acknowledges itself indebted to the Holder in an amount equal to the Principal Amount (the “**Debt**”).

FOR VALUE RECEIVED, the Issuer unconditionally promises to pay to the Holder the Principal Amount plus any accrued and unpaid interest thereon on demand in accordance with the provisions hereof.

The following terms and conditions apply to this Note:

1. Definitions

Capitalized terms used but not otherwise defined in this Note shall have the meanings given to them in the Transaction Agreement, and the following terms used in this Note have the following meanings:

“**Demand**” has the meaning ascribed thereto in Section 7(a).

“**Issue Date**” means the date of issuance of this Note as specified at the top left of the first page hereof.

“**Note**” has the meaning specified in the introductory paragraph hereto.

“**Obligations**” means all indebtedness, liabilities and obligations, of any nature or kind, present or future, direct or indirect, absolute or contingent, whether as primary debtor or surety, matured or not and at any time owing by the Issuer to the Holder arising under, by reason of, or otherwise in, this Note.

“**Principal Amount**” means, with respect to this Note, the principal amount of this Note specified at the top of the first page hereof, less any repayments of principal made pursuant to Section 7.

2. Interpretation

- (a) In the event that any day on or before which any action is required to be taken hereunder is not a Business Day, then such action shall be required to be taken on the requisite time on or before the first (1st) succeeding day that is a Business Day thereafter.

- (b) The division of this Note into Sections, clauses and portions thereof and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation hereof.
- (c) All dollar amounts herein refer to lawful money of Canada.
- (d) This Note shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

3. **Grid**

The Principal Amount outstanding under this Note, shall be recorded from time to time in the column headed "Principal Amount" on the record (the "**Grid**") attached hereto as Schedule "A" and forming part of this Note. The Holder shall record on the Grid the date and amount of each repayment or prepayment of the Principal Amount hereunder and the resulting decrease in such Principal Amount. Such recordings, in the absence of manifest mathematical error, shall be *prima facie* evidence of such repayments or prepayments; provided that the failure of the Holder to make such recording shall not affect the obligation of the Issuer to repay the Principal Amount, in accordance with the terms hereof.

4. **Interest**

The Debt shall be free of interest.

5. **Waiver by the Issuer**

The Issuer hereby waives presentment for payment, notice of non-payment, notice of dishonour and notice of protest of this Note. The Issuer also waives the benefits of division and discussion and the right to assert in any action or proceeding with respect to this Note any set-off or counterclaims which the Issuer may have.

6. **No Waiver by the Holder**

Neither the extension of time for making any payment which is due and payable under this Note at any time or times, nor the failure, delay or omission of the Holder to exercise or enforce any of its rights or remedies with respect to this Note, will constitute a waiver by the Holder of its right to enforce any such rights and remedies. The single or partial exercise of any such rights or remedies will not preclude the Holder's further exercise of such rights or remedies or any other right or remedy.

7. **Repayment and Prepayment**

- (a) The Issuer shall repay the entire Principal Amount on demand made and as directed by the Holder in writing (a "**Demand**").
- (b) The Issuer may repay the Principal Amount or any portion thereof (in minimum amounts of \$25,000) at any time prior to a Demand.

8. **Payments Generally**

All payments in respect of this Note shall be made in lawful money of Canada.

9. **Set-off**

The Issuer and Holder agree that, upon any amounts becoming due and payable by the Holder to the Issuer pursuant to the Transaction and the related transactions described in the Transaction Agreement, any such amount may, at the election of the Holder (regardless of whether a Demand has occurred or the Principal Amount is otherwise then due or payable), be immediately set-off against the Principal Amount as a repayment thereof.

10. Notices

Any demand, notice, or other communication under the provisions of or in connection with this Note shall be given in accordance with the terms of the Transaction Agreement.

11. Severability

The invalidity or unenforceability of any provision herein contained shall not affect the validity or enforceability of any other provision or covenant hereof or herein contained and this Note shall be construed as if such invalid or unenforceable provision or covenant were omitted.

12. Further Assurances

The Issuer shall, upon request by the Holder, execute and deliver such further documents and do all such further acts and things as may be reasonably necessary or desirable at any time or times to give effect to the terms and conditions of this Note.

13. Amendments

This Note may not be amended, restated, supplemented or modified without the prior written agreement of the Issuer and the Holder.

14. Binding Effect/ Restrictions on Assignment

This Note shall be binding upon the parties and their respective successors and assigns. Neither the Issuer's nor the Holder's rights or obligations hereunder nor any interest herein may be assigned or delegated by such party, without the prior written consent of the other party hereto.

15. Entire Agreement

This Note, together with the Transaction Agreement and the other Transaction Documents, contains and constitutes the entire agreement and understanding between the parties concerning the subject matter hereof and supersedes all prior written and oral agreements and understandings between the parties with respect to the subject matter hereof.

16. Costs

All reasonable legal and other out of pocket costs incurred by the Holder with respect to any enforcement of this Note (including reasonable legal fees and disbursements of the Holder's counsel on a solicitor and his own client basis) shall be for the account of the Issuer.

17. Counterparts

This Note may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A party's transmission by electronic mail of

this Note duly executed by that party shall constitute effective delivery by that party of an executed copy of this Note.

- signature pages follow -

IN WITNESS WHEREOF the Issuer has executed this Note on the Issue Date specified on the first page above.

IROQUOIS FALLS POWER CORP., by
KSV RESTRUCTURING INC., solely in its
capacity as court-appointed Monitor in the
CCAA Proceedings, as Issuer

By:

Name:

Title:

ACKNOWLEDGED AND AGREED on the ____ day of _____, 2023:

MACQUARIE EQUIPMENT FINANCE LTD., as Holder

By:

Name:
Title:

**SCHEDULE "A"
TO
NOTE**

GRID

Date	Amount of Repayment	Updated Principal Amount

Exhibit 2.1.1(d)(ii)
IFPC Note 2

See attached.

PROMISSORY NOTE

Issue Date: [■], 2023

Principal Amount: **\$10,000,000**

This Promissory Note is dated as of [■], 2023 (as amended, restated, renewed or replaced from time to time, this “**Note**”) and issued by IROQUOIS FALLS POWER CORP. (together with its successors and permitted assigns, the “**Issuer**”), in favour of HUT 8 POWER INC. (together with its successors and permitted assigns, the “**Holder**”), as the designated and nominated assignee of Macquarie Equipment Finance Ltd. (“**MEFL**”), on the terms set forth below.

Recitals:

1. The Issuer and the Holder, among others, are party to a transaction agreement dated as of the date hereof (the “**Transaction Agreement**”) with respect to, among other things, the sale and transfer to the Holder and MEFL by the Vendors of the Purchased Assets subject to and accordance with the terms and conditions set forth therein (the “**Transaction**”).
2. Pursuant to Section 2.1(d)(ii) of the Transaction Agreement, the Issuer agreed to issue to the Holder this Note as partial consideration for the transfer of the Leased Property, and hereby acknowledges itself indebted to the Holder in an amount equal to the Principal Amount (the “**Debt**”).

FOR VALUE RECEIVED, the Issuer unconditionally promises to pay to the Holder the Principal Amount plus any accrued and unpaid interest thereon on demand in accordance with the provisions hereof.

The following terms and conditions apply to this Note:

1. Definitions

Capitalized terms used but not otherwise defined in this Note shall have the meanings given to them in the Transaction Agreement, and the following terms used in this Note have the following meanings:

“**Demand**” has the meaning ascribed thereto in Section 7(a).

“**Issue Date**” means the date of issuance of this Note as specified at the top left of the first page hereof.

“**Note**” has the meaning specified in the introductory paragraph hereto.

“**Obligations**” means all indebtedness, liabilities and obligations, of any nature or kind, present or future, direct or indirect, absolute or contingent, whether as primary debtor or surety, matured or not and at any time owing by the Issuer to the Holder arising under, by reason of, or otherwise in, this Note.

“**Principal Amount**” means, with respect to this Note, the principal amount of this Note specified at the top of the first page hereof, less any repayments of principal made pursuant to Section 7.

2. Interpretation

- (a) In the event that any day on or before which any action is required to be taken hereunder is not a Business Day, then such action shall be required to be taken on the requisite time on or before the first (1st) succeeding day that is a Business Day thereafter.

- (b) The division of this Note into Sections, clauses and portions thereof and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation hereof.
- (c) All dollar amounts herein refer to lawful money of Canada.
- (d) This Note shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

3. **Grid**

The Principal Amount outstanding under this Note, shall be recorded from time to time in the column headed "Principal Amount" on the record (the "**Grid**") attached hereto as Schedule "A" and forming part of this Note. The Holder shall record on the Grid the date and amount of each repayment or prepayment of the Principal Amount hereunder and the resulting decrease in such Principal Amount. Such recordings, in the absence of manifest mathematical error, shall be *prima facie* evidence of such repayments or prepayments; provided that the failure of the Holder to make such recording shall not affect the obligation of the Issuer to repay the Principal Amount, in accordance with the terms hereof.

4. **Interest**

The Debt shall be free of interest.

5. **Waiver by the Issuer**

The Issuer hereby waives presentment for payment, notice of non-payment, notice of dishonour and notice of protest of this Note. The Issuer also waives the benefits of division and discussion and the right to assert in any action or proceeding with respect to this Note any set-off or counterclaims which the Issuer may have.

6. **No Waiver by the Holder**

Neither the extension of time for making any payment which is due and payable under this Note at any time or times, nor the failure, delay or omission of the Holder to exercise or enforce any of its rights or remedies with respect to this Note, will constitute a waiver by the Holder of its right to enforce any such rights and remedies. The single or partial exercise of any such rights or remedies will not preclude the Holder's further exercise of such rights or remedies or any other right or remedy.

7. **Repayment and Prepayment**

- (a) The Issuer shall repay the entire Principal Amount on demand made and as directed by the Holder in writing (a "**Demand**").
- (b) The Issuer may repay the Principal Amount or any portion thereof (in minimum amounts of \$25,000) at any time prior to a Demand.

8. **Payments Generally**

All payments in respect of this Note shall be made in lawful money of Canada.

9. **Set-off**

The Issuer and Holder agree that, upon any amounts becoming due and payable by the Holder to the Issuer pursuant to the Transaction and the related transactions described in the Transaction Agreement, any such amount may, at the election of the Holder (regardless of whether a Demand has occurred or the Principal Amount is otherwise then due or payable), be immediately set-off against the Principal Amount as a repayment thereof.

10. Notices

Any demand, notice, or other communication under the provisions of or in connection with this Note shall be given in accordance with the terms of the Transaction Agreement.

11. Severability

The invalidity or unenforceability of any provision herein contained shall not affect the validity or enforceability of any other provision or covenant hereof or herein contained and this Note shall be construed as if such invalid or unenforceable provision or covenant were omitted.

12. Further Assurances

The Issuer shall, upon request by the Holder, execute and deliver such further documents and do all such further acts and things as may be reasonably necessary or desirable at any time or times to give effect to the terms and conditions of this Note.

13. Amendments

This Note may not be amended, restated, supplemented or modified without the prior written agreement of the Issuer and the Holder.

14. Binding Effect/ Restrictions on Assignment

This Note shall be binding upon the parties and their respective successors and assigns. Neither the Issuer's nor the Holder's rights or obligations hereunder nor any interest herein may be assigned or delegated by such party, without the prior written consent of the other party hereto.

15. Entire Agreement

This Note, together with the Transaction Agreement and the other Transaction Documents, contains and constitutes the entire agreement and understanding between the parties concerning the subject matter hereof and supersedes all prior written and oral agreements and understandings between the parties with respect to the subject matter hereof.

16. Costs

All reasonable legal and other out of pocket costs incurred by the Holder with respect to any enforcement of this Note (including reasonable legal fees and disbursements of the Holder's counsel on a solicitor and his own client basis) shall be for the account of the Issuer.

17. Counterparts

This Note may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A party's transmission by electronic mail of

this Note duly executed by that party shall constitute effective delivery by that party of an executed copy of this Note.

- signature pages follow -

IN WITNESS WHEREOF the Issuer has executed this Note on the Issue Date specified on the first page above.

IROQUOIS FALLS POWER CORP., by
KSV RESTRUCTURING INC., solely in its
capacity as court-appointed Monitor in the
CCAA Proceedings, as Issuer

By:

Name:

Title:

ACKNOWLEDGED AND AGREED on the ____ day of _____, 2023:

HUT 8 POWER INC., as Holder

By:

Name:
Title:

**SCHEDULE "A"
TO
NOTE**

GRID

Date	Amount of Repayment	Updated Principal Amount

Exhibit 2.1.1(d)(iii)
IFPC Note 3

See attached.

PROMISSORY NOTE

Issue Date: [■], 2023

Principal Amount: \$6,435,000

This Promissory Note is dated as of [■], 2023 (as amended, restated, renewed or replaced from time to time, this “**Note**”) and issued by IROQUOIS FALLS POWER CORP. (together with its successors and permitted assigns, the “**Issuer**”), in favour of MACQUARIE EQUIPMENT FINANCE LTD. (together with its successors and permitted assigns, the “**Holder**”) on the terms set forth below.

Recitals:

1. The Issuer and the Holder, among others, are party to a transaction agreement dated as of the date hereof (the “**Transaction Agreement**”) with respect to, among other things, the sale and transfer to the Holder and Hut 8 Power Inc. by the Vendors of the Purchased Assets subject to and accordance with the terms and conditions set forth therein (the “**Transaction**”).
2. Pursuant to Section 2.1(d)(iii) of the Transaction Agreement, the Issuer agreed to issue to the Holder this Note as partial consideration for the transfer of the Leased Property, and hereby acknowledges itself indebted to the Holder in an amount equal to the Principal Amount (the “**Debt**”).

FOR VALUE RECEIVED, the Issuer unconditionally promises to pay to the Holder the Principal Amount plus any accrued and unpaid interest thereon on demand in accordance with the provisions hereof.

The following terms and conditions apply to this Note:

1. Definitions

Capitalized terms used but not otherwise defined in this Note shall have the meanings given to them in the Transaction Agreement, and the following terms used in this Note have the following meanings:

“**Demand**” has the meaning ascribed thereto in Section 7(a).

“**Issue Date**” means the date of issuance of this Note as specified at the top left of the first page hereof.

“**Note**” has the meaning specified in the introductory paragraph hereto.

“**Obligations**” means all indebtedness, liabilities and obligations, of any nature or kind, present or future, direct or indirect, absolute or contingent, whether as primary debtor or surety, matured or not and at any time owing by the Issuer to the Holder arising under, by reason of, or otherwise in, this Note.

“**Principal Amount**” means, with respect to this Note, the principal amount of this Note specified at the top of the first page hereof, less any repayments of principal made pursuant to Section 7.

2. Interpretation

- (a) In the event that any day on or before which any action is required to be taken hereunder is not a Business Day, then such action shall be required to be taken on the requisite time on or before the first (1st) succeeding day that is a Business Day thereafter.

- (b) The division of this Note into Sections, clauses and portions thereof and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation hereof.
- (c) All dollar amounts herein refer to lawful money of Canada.
- (d) This Note shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

3. **Grid**

The Principal Amount outstanding under this Note, shall be recorded from time to time in the column headed "Principal Amount" on the record (the "**Grid**") attached hereto as Schedule "A" and forming part of this Note. The Holder shall record on the Grid the date and amount of each repayment or prepayment of the Principal Amount hereunder and the resulting decrease in such Principal Amount. Such recordings, in the absence of manifest mathematical error, shall be *prima facie* evidence of such repayments or prepayments; provided that the failure of the Holder to make such recording shall not affect the obligation of the Issuer to repay the Principal Amount, in accordance with the terms hereof.

4. **Interest**

The Debt shall be free of interest.

5. **Waiver by the Issuer**

The Issuer hereby waives presentment for payment, notice of non-payment, notice of dishonour and notice of protest of this Note. The Issuer also waives the benefits of division and discussion and the right to assert in any action or proceeding with respect to this Note any set-off or counterclaims which the Issuer may have.

6. **No Waiver by the Holder**

Neither the extension of time for making any payment which is due and payable under this Note at any time or times, nor the failure, delay or omission of the Holder to exercise or enforce any of its rights or remedies with respect to this Note, will constitute a waiver by the Holder of its right to enforce any such rights and remedies. The single or partial exercise of any such rights or remedies will not preclude the Holder's further exercise of such rights or remedies or any other right or remedy.

7. **Repayment and Prepayment**

- (a) The Issuer shall repay the entire Principal Amount on demand made and as directed by the Holder in writing (a "**Demand**").
- (b) The Issuer may repay the Principal Amount or any portion thereof (in minimum amounts of \$25,000) at any time prior to a Demand.

8. **Payments Generally**

All payments in respect of this Note shall be made in lawful money of Canada.

9. **Set-off**

The Issuer and Holder agree that, upon any amounts becoming due and payable by the Holder to the Issuer pursuant to the Transaction and the related transactions described in the Transaction Agreement, any such amount may, at the election of the Holder (regardless of whether a Demand has occurred or the Principal Amount is otherwise then due or payable), be immediately set-off against the Principal Amount as a repayment thereof.

10. **Notices**

Any demand, notice, or other communication under the provisions of or in connection with this Note shall be given in accordance with the terms of the Transaction Agreement.

11. **Severability**

The invalidity or unenforceability of any provision herein contained shall not affect the validity or enforceability of any other provision or covenant hereof or herein contained and this Note shall be construed as if such invalid or unenforceable provision or covenant were omitted.

12. **Further Assurances**

The Issuer shall, upon request by the Holder, execute and deliver such further documents and do all such further acts and things as may be reasonably necessary or desirable at any time or times to give effect to the terms and conditions of this Note.

13. **Amendments**

This Note may not be amended, restated, supplemented or modified without the prior written agreement of the Issuer and the Holder.

14. **Binding Effect/ Restrictions on Assignment**

This Note shall be binding upon the parties and their respective successors and assigns. Neither the Issuer's nor the Holder's rights or obligations hereunder nor any interest herein may be assigned or delegated by such party, without the prior written consent of the other party hereto.

15. **Entire Agreement**

This Note, together with the Transaction Agreement and the other Transaction Documents, contains and constitutes the entire agreement and understanding between the parties concerning the subject matter hereof and supersedes all prior written and oral agreements and understandings between the parties with respect to the subject matter hereof.

16. **Costs**

All reasonable legal and other out of pocket costs incurred by the Holder with respect to any enforcement of this Note (including reasonable legal fees and disbursements of the Holder's counsel on a solicitor and his own client basis) shall be for the account of the Issuer.

17. **Counterparts**

This Note may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A party's transmission by electronic mail of

this Note duly executed by that party shall constitute effective delivery by that party of an executed copy of this Note.

- signature pages follow -

IN WITNESS WHEREOF the Issuer has executed this Note on the Issue Date specified on the first page above.

IROQUOIS FALLS POWER CORP., by
KSV RESTRUCTURING INC., solely in its
capacity as court-appointed Monitor in the
CCAA Proceedings, as Issuer

By:

Name:

Title:

ACKNOWLEDGED AND AGREED on the ____ day of _____, 2023:

MACQUARIE EQUIPMENT FINANCE LTD., as Holder

By:

Name:
Title:

**SCHEDULE "A"
TO
NOTE**

GRID

Date	Amount of Repayment	Updated Principal Amount

Exhibit 2.2
Excluded Assets

None.

Exhibit 2.2(e)
Excluded Contracts

Any contract that is not listed as a Continuing Contract in Exhibit 3.1(f) of the Terms and Conditions.

Exhibit 2.2(g)
Excluded Entities

1. Validus Digital Inc., a corporation duly formed and existing under the laws of Ontario.
2. Validus Power Services Inc., a corporation duly formed and existing under the laws of Ontario.
3. Validus Solutions Inc., a corporation duly formed and existing under the laws of Ontario.

Exhibit 2.3(h)
Excluded Intercompany Claims

None.

Exhibit 2.3(j)
Further Assumed Liabilities

None.

Exhibit 2.4
Excluded Liabilities

None.

Exhibit 6.10
Letters of Credit and Deposits

1. Letter of Credit from The Toronto-Dominion Bank issued to Validus Power Corp. on May 4, 2022[, as **subsequently replaced/extended on [■],**] in the amount of \$495,290.00, listing Independent Electricity System Operator as beneficiary and bearing Letter of Credit No. 0202-9226834-01.
2. Letter of Credit from The Toronto-Dominion Bank issued to Validus Power Corp. on May 4, 2022[, as **subsequently replaced/extended on [■],**] in the amount of \$536,755.00, listing Independent Electricity System Operator as beneficiary and bearing Letter of Credit No. 0202-9226834-02.
3. Letter of Credit from The Toronto-Dominion Bank issued to Validus Power Corp. on May 4, 2022[, as **subsequently replaced/extended on [■],**] in the amount of \$150,000.00, listing Independent Electricity System Operator as beneficiary and bearing Letter of Credit No. 0202-9226834-03.
4. Letter of Credit from TD Bank issued to Validus Power Corp., on behalf of Iroquois Falls Power Corp., on June 10, 2022[, as **subsequently replaced/extended on [■],**] in the amount of \$154,810.00, listing Enbridge Gas Inc. as beneficiary and bearing Letter of Credit No. 0202-9226834-04.
5. Letter of Credit from TD Bank issued to Validus Power Corp., on behalf of Kingston Cogen Limited Partnership, on June 10, 2022[, as **subsequently replaced/extended on [■],**] in the amount of \$116,900.00, listing Enbridge Gas Inc. as beneficiary and bearing Letter of Credit No. 0202-9226834-05.
6. Letter of Credit from TD Bank issued to Validus Power Corp., on behalf of Kingston Cogen Limited Partnership, on June 10, 2022[, as **subsequently replaced/extended on [■],**] in the amount of \$52,690.00, listing Enbridge Gas Inc. as beneficiary and bearing Letter of Credit No. 0202-9226834-06.
7. Letter of Credit from the Royal Bank of Canada issued to Validus Power Corp., on behalf of Kap Power Corp., on April 4, 2023 in the amount of \$68,561.00, listing Independent Electricity System Operator as beneficiary and bearing Standby Letter of Credit No. 2546187.
8. Cash Collateral Agreement between TransCanada Pipelines Limited and Validus Power Corp. dated September 20, 2022.

Appendix “I”

BREAK-UP FEE AGREEMENT

THIS AGREEMENT is made as of October 16, 2023

AMONG:

VALIDUS POWER CORP., IROQUOIS FALLS POWER CORP., BAY POWER CORP., KAP POWER CORP., KINGSTON COGEN LIMITED PARTNERSHIP, KINGSTON COGEN GP INC. and VALIDUS HOSTING INC. (collectively, the “**Validus Entities**”), each by **KSV RESTRUCTURING INC.** (“**KSV**”), in its capacity as court-appointed Monitor (as defined below) in the CCAA Proceedings (as defined below)

(the “**Vendors**”)

- and -

MACQUARIE EQUIPMENT FINANCE LTD., a company governed by the laws of Canada

(“**MEFL**”).

RECITALS:

- A. The Validus Entities carry on the business, taken as a whole, of: (i) the maintenance and operation of power generation facilities in Ontario located at North Bay, Kapuskasing, Iroquois Falls and Kingston; and (ii) the ownership and maintenance of a data centre in North Bay, Ontario (collectively, the “**Business**”).
- B. On August 10, 2023, MEFL sought and obtained an Order (as defined below), pursuant to subsection 243(1) of the BIA (as defined below) and subsection 101(1) of the *Courts of Justice Act* (Ontario) (as may be further amended, restated or varied, the “**Appointment Order**”) from the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) for the appointment of KSV, as receiver over, among other things, all of the assets, undertakings and properties of the Validus Entities (the “**Property**”).
- C. On August 29, 2023, on application by KSV, as receiver, the Validus Entities were granted relief in the form of an Initial Order (the “**Initial Order**”) pursuant to the *Companies’ Creditors Arrangement Act* (Canada), as amended (the “**CCAA**”), and KSV was appointed as monitor of the Validus Entities (in such capacity, the “**Monitor**”, and such proceedings, the “**CCAA Proceedings**”).
- D. In order to allow for an orderly continuation of the Business and satisfy the Validus Entities’ indebtedness to MEFL, MEFL and Far North Power Corp. (the “**Assignee**”) made a binding offer to enter into the Transaction Agreement (as defined below) and the transactions contemplated therein with the Vendors upon the terms and conditions outlined

therein, including, among other things, the purchase and sale of substantially all of the assets of the Validus Entities (the “**Offer Letter**”).

- E. The Parties anticipate that the Monitor will seek the SISP Order (as defined herein) in order to obtain Court approval of the Transaction Agreement as a “stalking horse bid” and the SISP (as defined herein).
- F. The Vendors wish to enter into this Agreement providing for, among other things, the payment of the Break-Up Fee (as defined below) and the Expense Reimbursement (as defined below) and court-ordered charges in the full amount of same in favour of MEFL against the Validus Entities’ property, all of which the Vendors and MEFL acknowledge and agree is subject to Court approval.

NOW THEREFORE, the Parties agree as follows:

ARTICLE 1 INTERPRETATION

1.1 Definitions

In this Agreement:

“**Affiliate**” means, with respect to any specified Person, any other Person which, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such specified Person. For purposes of this definition, “control” (including, with correlative meanings, the terms “controlling”, “controlled by” and “under common control with”), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise. For greater certainty, an Affiliate of a Person shall include such Person’s investment funds and managed accounts and any funds managed or directed by the same investment advisor.

“**Agreement**” means this agreement, and the expressions “hereof”, “herein”, “hereto”, “hereunder”, “hereby” and similar expressions refer to this agreement, and unless otherwise indicated, references to Articles and Sections are to Articles and Sections in this agreement.

“**Alternative Restructuring Proposal**” means any inquiry, proposal, offer, expression of interest, bid, term sheet, discussion, or agreement with respect to a sale, disposition, new-money investment, restructuring, reorganization, merger, amalgamation, acquisition, consolidation, dissolution, debt investment, equity investment, liquidation, tender offer, recapitalization, plan of reorganization, share exchange, business combination, or similar transaction involving any one or more Validus Entity, one or more Validus Entity’s material assets, or the debt, equity, or other interests in any one or more Validus Entity that is an alternative to or otherwise inconsistent with the transaction contemplated hereby and any amendment to or variation of any such inquiry, proposal, offer, expression of interest, bid, term sheet, discussion, or agreement, and is with a counterparty other than MEFL, the Assignee or any Affiliate of MEFL or the Assignee.

“**Applicable Law**” means any transnational, domestic or foreign, federal, provincial, territorial, state, local or municipal (or any subdivision of any of them) law (including common law and civil law), statute, ordinance, rule, regulation, restriction, limit, by-law (zoning or otherwise), judgment, order, direction or any consent or exemption, or any other legal requirements of, or agreements with, any Governmental Authority, that applies in whole or in part to the transactions contemplated by this Agreement, the Validus Entities, MEFL (or any of its Affiliates), the Assignee (or any of its Affiliates) or the Business.

“**Appointment Order**” has the meaning given to such term in Recital B.

“**Assignee**” has the meaning given to such term in Recital D.

“**BIA**” means the *Bankruptcy and Insolvency Act* (Canada), as amended.

“**Bid Protections Charge**” has the meaning given to such term in Section 5.1.2.

“**Break-Up Fee**” has the meaning given to such term in Section 5.1.1.

“**Business**” has the meaning given to such term in Recital A.

“**Business Day**” means any day, other than a Saturday or Sunday, on which the principal commercial banks in Toronto, Ontario are open for commercial banking business during normal banking hours.

“**CCAA**” has the meaning given to such term in Recital C.

“**CCAA Proceedings**” has the meaning given to such term in Recital C.

“**Court**” has the meaning given to such term in Recital B.

“**Energy Regulator**” means any federal or provincial Governmental Authority having jurisdiction to regulate the generation, transmission, distribution, retailing or wholesaling of electricity and/or the purchase, sale and use of electricity or natural gas in Ontario, foreign regulatory authority having jurisdiction over matters relating to electricity and/or natural gas, authorized electricity or natural gas transmitter or distributor, or regional transmission organization or independent system operator, including but not limited to the Independent Electricity System Operator and the Ontario Energy Board.

“**Expense Reimbursement**” has the meaning given to such term in Section 5.1.1.

“**Governmental Authority**” means any government, regulatory authority (including any Energy Regulator), governmental department, agency, commission, bureau, official, minister, Crown corporation, court, board, tribunal or dispute settlement panel or other law, rule or regulation-making organization or entity: (a) having or purporting to have jurisdiction on behalf of any nation, province, territory or state or any other geographic or political subdivision of any of them; or (b) exercising, or entitled or purporting to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power.

“**Initial Order**” has the meaning given to such term in Recital C.

“**KSV**” has the meaning given to such term in the preamble.

“**Monitor**” has the meaning given to such term in Recital C.

“**Offer Letter**” has the meaning given to such term in Recital D.

“**Order**” means any order of the Court made in the Receivership Proceedings or the CCAA Proceedings or any order, directive, judgment, decree, injunction, decision, ruling, award or writ of any Governmental Authority.

“**Parties**” means, together, the Vendors and MEFL, and “**Party**” means either of the Vendors or MEFL, as the context requires.

“**Person**” means an individual, partnership, firm, joint venture, venture capital fund, limited liability company, unlimited liability company, association, trust, entity, corporation, unincorporated association, or organization, syndicate, committee, court appointed representative, the government of a country or any political subdivision thereof, or any agency, board, tribunal, commission, bureau, instrumentality, or department of such government or political subdivision, or any other entity, howsoever designated or constituted, including the trustees, executors, administrators or other legal representatives of an individual, and, for greater certainty, includes any Governmental Authority.

“**Receivership Proceedings**” means the receivership proceedings in respect of the Validus Entities commenced under the BIA and the *Courts of Justice Act* (Ontario) by MEFL pursuant to the Appointment Order, bearing Court File No. CV-23-00703754-00CL.

“**SISP**” means the sale and investment solicitation process in the form as appended as Schedule “B” to the Transaction Agreement (or otherwise in form and substance satisfactory to each of MEFL, the Assignee and the Monitor, each acting reasonably).

“**SISP Order**” means an order of the Court in the CCAA Proceedings that, among other things, approves the SISP and related matters, in the form as appended as Schedule “C” to the Transaction Agreement (or otherwise in form and substance satisfactory to each of MEFL, the Assignee and the Monitor, each acting reasonably).

“**Successful Bid**” has the meaning given to such term in the SISP.

“**Transaction Agreement**” means the transaction agreement attached as Schedule “A” to the Offer Letter.

“**Validus Entities**” has the meaning given to such term in the preamble, and “**Validus Entity**” means any one of them.

ARTICLE 2 INTERPRETATION

2.1 Statutes and Agreements

2.1.1 Except as otherwise provided in this Agreement, any reference in this Agreement to a statute refers to such statute and all rules and regulations made under it, as it or they may have been or may from time to time be amended, re-enacted or replaced.

2.1.2 Each reference to, and the definition of, any agreement, instrument or other document herein shall be deemed to refer to such agreement, instrument or other document as it may be amended, amended and restated, supplemented, revised or otherwise modified from time to time in accordance with its terms.

2.2 Headings, etc.

The division of this Agreement into Articles, Sections and other subdivisions and the insertion of headings are for convenient reference only and do not affect the interpretation of this Agreement. The recitals to this Agreement are an integral part of this Agreement.

2.3 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.

2.4 Currency

Except where otherwise expressly provided, all amounts in this Agreement are stated and shall be paid in Canadian dollars. References to "\$" are to Canadian dollars.

2.5 Certain Phrases

In this Agreement: (a) the words "including", "includes" and "include" and any derivatives of such words mean "including (or includes or include) without limitation"; and (b) the words "the aggregate of", "the total of", "the sum of" or a phrase of similar meaning means "the aggregate (or total or sum), without duplication, of". The expression "Article", "Section" and other subdivision followed by a number, mean and refer to the specified Article, Section or other subdivision of this Agreement.

2.6 Invalidity of Provisions

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction shall not affect the validity or enforceability of any other provision hereof so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any Party. Upon: (a) such a determination of invalidity or unenforceability; or (b) any change in Applicable Law or other action by any Governmental Authority which materially detracts from the legal or economic rights or benefits, or materially

increases the obligations, of any Party or any of its Affiliates under this Agreement, the Parties shall negotiate to modify this Agreement in good faith so as to effect the original intent of the Parties as closely as possible in an acceptable manner so that the transactions contemplated by this Agreement be consummated as originally contemplated to the fullest extent possible.

2.7 Entire Agreement

This Agreement and any agreements and other documents required to be delivered pursuant to this Agreement constitute the entire agreement among the Parties, and set out all the covenants, promises, warranties, representations, conditions and agreements among the Parties in connection with the subject matter of this Agreement, and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, pre-contractual or otherwise. There are no covenants, promises, warranties, representations, conditions, understandings or other agreements, whether oral or written, pre-contractual or otherwise, express, implied or collateral among the Parties in connection with the subject matter of this Agreement, except as specifically set forth in this Agreement and any document required to be delivered pursuant to this Agreement.

2.8 Waiver, Amendment

Except as expressly provided in this Agreement, no amendment or waiver of this Agreement shall be binding unless executed in writing by all Parties hereto. 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 unless otherwise expressly provided.

2.9 Governing Law; Jurisdiction and Venue

This Agreement and the rights and obligations of the Parties under this Agreement, and any claim or controversy directly or indirectly based upon or arising out of this Agreement or the transactions contemplated by this Agreement (whether based on contract, tort or any other theory), including all matters of construction, validity and performance, shall in all respects be governed by, and interpreted, construed and determined in accordance with, the laws of the Province of Ontario and the federal laws of Canada applicable therein, without regard to the conflicts of law principles thereof. The Parties consent to the jurisdiction and venue of the Court for the resolution of any such disputes arising under this Agreement. Each Party agrees that service of process on such Party as provided in Section 2.15 shall be deemed effective service of process on such Party.

2.10 Non-Business Days

Whenever payments are to be made or an action is to be taken on a day which is not a Business Day, such payment will be made, or such action will be taken on or not later than the next succeeding Business Day.

2.11 Computation of Time Periods

If any action may be taken within, or any right or obligation is to expire at the end of, a period of days under this Agreement, then the first day of the period is not counted, but the day of its expiry is counted.

2.12 Time of Essence

Time shall be of the essence of this Agreement in all respects.

2.13 KSV's Capacity as Monitor

Notwithstanding anything contained herein or elsewhere, MEFL acknowledges and agrees that KSV is acting solely in its capacity as the Court-appointed Monitor pursuant to the Initial Order and not in its personal or corporate capacity, and the Monitor has no liability in connection with this Agreement whatsoever, in its personal or corporate capacity or otherwise, save and except for and only to the extent of the Monitor's gross negligence or intentional fault.

2.14 Assignment; Binding Effect

No Party may assign its right or benefits under this Agreement without the prior written consent of the other Party. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective permitted successors and permitted assigns. Nothing in this Agreement shall create or be deemed to create any third Person beneficiary rights in any Person not a Party to this Agreement.

2.15 Notices

Any notice, request, demand or other communication required, permitted or contemplated to be given to the Vendors or MEFL pursuant to the provisions of this Agreement shall be given in accordance with the notice provisions set forth in the Transaction Agreement.

2.16 Counterparts; Electronic Signatures

This Agreement may be signed in counterparts and each of such counterparts shall constitute an original document and such counterparts, taken together, shall constitute one and the same instrument. Execution of this Agreement may be made by electronic signature which, for all purposes, shall be deemed to be an original signature.

**ARTICLE 3
REPRESENTATIONS AND WARRANTIES OF THE VENDORS**

The Vendors represent and warrant to MEFL as follows, and acknowledge and agree that MEFL is relying upon such representations and warranties in connection with its entry into this Agreement:

3.1 Due Authorization and Enforceability of Obligations

Subject to the issuance of the SISP Order, this Agreement has been duly authorized, executed and delivered by the Vendors and the Vendors have all necessary power and authority to enter into this Agreement and to carry out the obligations of the Vendors under this Agreement, and this Agreement constitutes the legal, valid and binding obligation of it, enforceable against it in accordance with its terms, subject to any limitations imposed by Applicable Laws.

ARTICLE 4 REPRESENTATIONS AND WARRANTIES OF MEFL

MEFL represents and warrants to the Vendors as follows, and acknowledges that the Vendors are relying upon the following representations and warranties in connection with its entry into this Agreement:

4.1 Due Authorization and Enforceability of Obligations

This Agreement has been duly authorized, executed and delivered by MEFL and MEFL has all necessary power and authority to enter into this Agreement and to carry out the obligations of MEFL under this Agreement, and this Agreement constitutes the legal, valid and binding obligation of it, enforceable against it in accordance with its terms, subject to any limitations imposed by Applicable Laws.

4.2 Existence and Good Standing

MEFL is validly existing and in good standing under the laws of Canada.

ARTICLE 5 BREAK-UP FEE AND EXPENSE REIMBURSEMENT

5.1 Break-Up Fee and Expense Reimbursement

5.1.1 Conditional upon the closing of a transaction for an Alternative Restructuring Proposal as the Successful Bid in accordance with the terms of the SISP Order: (a) a fee in cash equal to, in the aggregate, \$1,260,000 (the “**Break-Up Fee**”); and (b) an expense reimbursement for MEFL’s and the Assignee’s documented reasonable out-of-pocket third party expenses incurred in connection with the Offer Letter and the Transaction Agreement and/or the transactions contemplated thereby in an aggregate amount equal to the amount of such expenses, plus applicable taxes, up to a maximum of \$1,000,000 (the “**Expense Reimbursement**”), shall be payable by the Vendors to MEFL out of the sale proceeds resulting from the Alternative Restructuring Proposal concurrently with the consummation of such Alternative Restructuring Proposal.

5.1.2 The Monitor shall obtain within the SISP Order a court-ordered charge in favour of MEFL in the full amount of the Break-Up Fee and the Expense Reimbursement to secure the payment of the Break-Up Fee and the Expense Reimbursement (the “**Bid Protections Charge**”), which charge shall have the priority given to it pursuant to the SISP Order.

5.1.3 For the avoidance of doubt, and notwithstanding anything to the contrary set forth in this Section 5.1: (a) under no circumstances shall the Vendors be obligated to pay the Break-Up Fee or the Expense Reimbursement more than once; and (b) in no event shall the Vendors be required to pay all or any portion of the Break-Up Fee or the Expense Reimbursement to MEFL other than in connection with Court approval of an Alternative Restructuring Proposal as the Successful Bid in accordance with the terms of the SISP Order.

5.1.4 The Vendors acknowledge: (a) that MEFL and the Assignee have made a substantial investment of management time and incurred substantial out-of-pocket expenses in connection with the negotiation and execution of the Transaction Agreement, their due diligence of the Business and the Validus Entities, and their efforts to consummate the transactions contemplated in the Offer Letter and the Transaction Agreement; and (b) that the Parties' efforts have substantially benefited the Validus Entities through the submission of the offer that is reflected in the Offer Letter and the Transaction Agreement, that will serve as a minimum bid on which other potentially interested SISP bidders can rely, thus increasing the likelihood that the price at which the Validus Entities or their assets are sold will reflect their true worth. The Parties hereby acknowledge that the amounts payable pursuant to this Section 5.1 are commercially reasonable and necessary to induce MEFL and the Assignee to enter into the Offer Letter and the Transaction Agreement and consummate the transactions contemplated thereby.

[Remainder of page intentionally left blank; signature page follows]

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

VALIDUS POWER CORP., IROQUOIS FALLS POWER CORP., BAY POWER CORP., KAP POWER CORP., KINGSTON COGEN LIMITED PARTNERSHIP, KINGSTON COGEN GP INC. and VALIDUS HOSTING INC., each by KSV RESTRUCTURING INC., in its capacity as court-appointed Monitor in the CCAA Proceedings



By: _____
Name: David Sieradzki
Title: Managing Director

MACQUARIE EQUIPMENT FINANCE LTD.

By: _____
Name:
Title:

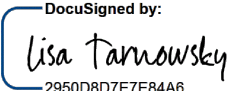
By: _____
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Title:

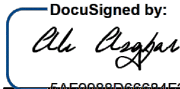
IN WITNESS WHEREOF the Parties have executed this Agreement as of the date first written above.

VALIDUS POWER CORP., IROQUOIS FALLS POWER CORP., BAY POWER CORP., KAP POWER CORP., KINGSTON COGEN LIMITED PARTNERSHIP, KINGSTON COGEN GP INC. and VALIDUS HOSTING INC., each by KSV RESTRUCTURING INC., in its capacity as court-appointed Monitor in the CCAA Proceedings

By: _____
Name:
Title:

MACQUARIE EQUIPMENT FINANCE LTD.

By:  _____
Name: Lisa Tarnowsky
Title: Associate Director

By:  _____
Name: Ali Asghar
Title: Team Lead, Operations

Appendix “J”

Comparative Summary of Break Fees
January 2020 to August 2023

Debtor	Purchaser	Proceeding Type	Trustee	APA date	Jurisdiction	Industry	A Termination Fee	B Expense Reimbursement	C = A + B Total Break Fee ("BF")	Estimated Transaction Value ("TV")	BF as a % of TV
1194038 Alberta Ltd.	2262576 Alberta Ltd.	Receivership	EY	05-Jun-23	Alberta	Real Estate	125,000	-	125,000	4375000	2.80%
GreenSpace Brands Inc.	2762454 Ontario Inc.	Ontario	PwC	05-Apr-23	Ontario	Food & Accommodation	150,000	-	150,000	~9 million, plus certain assumed liabilities and other amounts	1.70%
LoyaltyOne Co. (dba AIR MILES®)	BMO	CCAA	KSV	10-Mar-23	Ontario	Other	3 million	1 million	4 million	US 160 million	2.50%
DCL Corporation	Pigments Holdings, Inc.	CCAA	A&M	21-Dec-22	Ontario	Distribution	-	-	-	\$166.2 million to \$170.9 million	0.00%
11157353 Canada Corporation	ReFlourish Capital Limited	NOI	EY	14-Feb-23	Ontario	Cannabis	20,000	25,000	45,000	400,000 euros	
Tehama Inc.	14667913 Canada Inc.	CCAA	Deloitte	07-Feb-23	Ontario	Technology	-	-	-	2.8 million credit bid, plus assumed liabilities, for total consideration of approximately 3 million	
Trichome Financial Corp.	L5 Capital Inc.	CCAA	KSV	12-Dec-22	Ontario	Cannabis	-	200,000	200,000	5,000,000 and certain deferred consideration payable pursuant to secured limited recourse promissory notes	4.00%
Westoak Naturals Inc.	Avena Foods Limited	Receivership	BDO	09-Nov-22	Ontario	Distribution	30,000	25,000	55,000	1,000,000 credit bid plus the costs of the receivership	5.50%
Robus Resources Inc.	Robus Equity Acquisition Corporation, as nominee of Blue Fin Group LLP and Robus Services LLC	Receivership	A&M	08-Dec-22	Alberta	Oil & Gas	182,000	-	182,000	USD\$9,100,000	2.00%
The Flowr Corporation et al.	1000343100 Ontario Inc.	CCAA	EY	31-Oct-22	Ontario	Cannabis	185,000	-	185,000	\$3,888,888.88 plus the Closing DIP Loan (as defined below) and Assumed Liabilities	4.76%
Solvaqua Inc.	2464525 Alberta Ltd.	Receivership	MNP	01-Oct-22	Alberta	Other	175,000	-	175,000	A cash payment sufficient to cover various security interests, a CRA claim and a holdback, plus the payment of the balance of the purchase price being \$2.5 million, to be paid by way of set-off against (as a non-cash credit reduction of) the Arnaki Claim.	7.00%
Cannapie Group Inc. et al.	Cardinal Advisory Limited	CCAA	BDO	08-Nov-22	Ontario	Cannabis	175,000	25,000	200,000	\$3.5 million cash, plus Assumed Liabilities, if any	5.70%
i55 Communications Inc.	Elektrophenix GmbH	NOI	Grant Thornton	17-Oct-22	Ontario	Technology	USD \$200,000	USD \$200,000	USD \$250,000	USD \$5 million, a portion of which will be comprised of a "credit bid" of amounts owing under the DIP Term Sheet	5.00%
Go-To Developments Holdings Inc.	2357616 Ontario Inc.	Receivership	KSV	08-Aug-22	Ontario	Real Estate	-	60,000	60,000	9.5 million or greater	1.00%
Just Energy Group	The DIP lenders and one of their affiliates	CCAA	FTI	04-Aug-22	Ontario	Oil & Gas	US\$14.66 million	-	US\$14.66 million	US\$184.9 million in cash, plus up to an additional \$10 million, a credit bid of US\$252.7 million, plus the assumption of certain liabilities	3.40%
Zenabis Group	2657408 Ontario Inc.	CCAA	EY	16-Jun-22	Quebec	Cannabis	-	750,000	750,000	Unclear - confidential	Unclear
Freshlocal Solutions Inc.	Third Eye Capital Corporation	CCAA	EY	17-Jun-22	British Columbia	Retail	Unclear - confidential	Unclear - confidential	Unclear - confidential	Unclear - confidential	2.50%
Cura-Can Health Corp. and its wholly-owned subsidiary The Clinic Network Canada Inc.	Avonlea-Drewry Holdings Inc.	Receivership	KPMG	14-Mar-22	Alberta	Cannabis	325,000	-	325,000	Approximately \$6,750,000 of which \$6,500,000 will be credited against the indebtedness owing to the purchaser	4.8
Balanced Energy Oilfield Services Inc. et al.	XDI Energy Solutions Inc.	Receivership	FTI	21-Mar-22	Alberta	Oil & Gas	250,000	-	250,000	(i) CA \$11,250,000 in cash; (ii) such amount as it required to pay out and satisfy, in full, the first charge held by Laurentian Bank over certain equipment held by BUSA (currently estimated at approximately CA\$900,000); (iii) the dollar amount equal of costs funded by the Senior Secured Lender to repair the damaged coiled tubing unit of BCAN having serial No. 27124977-0435A-1013 (the "Damaged Unit"), (iv) the dollar amount equal to the value of any coiled tubing used by the Receiver in the ongoing operation of the Debtors' business prior to closing (estimated at approximately \$150,000); and (v) the dollar amount equal to the costs incurred by the Receiver in conducting annual maintenance on the Debtors' equipment, less revenue earned, all during the period after the date of the SSP Approval Order until closing	Unclear
BlackRock Metals Inc. et al.	OMF Fund II H Ltd. and Investissement Québec	CCAA	Deloitte	22-Dec-21	Quebec	Mining	2.5 million	-	2.5 million	Credit bid of \$90,759M	2.75
Behr Technologies Inc.	13486826 Canada Inc.	NOI	Farber	19-Jan-22	Ontario	Technology	75,000	-	75,000	Purchase price comprised of a credit bid of \$1,000,000 in debt owing under the DIP Facility plus cash in a to-be-determined amount for priority payables and any assumed contract cure payments plus the assumption of certain liabilities	Unclear
McEwan Enterprises Inc.	2864785 Ontario Corp.	CCAA	A&M	-	Ontario	Food & Accommodation	390,000	-	390,000	(A) \$2,200,000, plus (B) an amount equal to Cure Costs, plus (C) the assumption of the Assumed Obligations by the Purchaser	Unclear
Junction Craft Brewing Inc.	1000033509 Ontario Limited	NOI	Richter	05-Nov-21	Ontario	Food & Accommodation	50,000	25,000	75,000	400,000 cash plus the assumption of certain liabilities	Unclear
Nimbus Water Systems Inc.	2752837 Ontario Inc.	Receivership	BDO	06-Sep-21	Ontario	Professional Services	250,000	50,000	300,000	13000000	2.31%
O2 Industries Inc.	2841551 Ontario Limited	Receivership	RSM	2021	Ontario	Healthcare	-	-	-	0	0.00%
Turuss (Canada) Industry Co. Ltd.	Westmount Park Investments Inc.	Receivership	MNP	13-Apr-21	Ontario	Manufacturing	Combined break fee and expense reimbursement amount of \$175,000	Combined break fee and expense reimbursement amount of \$175,000	175,000	6500000	2.69%
Salt Bush Energy Ltd.	Ironbark Energy Ltd.	NOI	Deloitte	02-Feb-21	Alberta	Oil & Gas	50,000	25,000	75,000	Unclear	Unclear

Allied Track Services Inc.	2806401 Ontario Inc.	NOI	KSV	21-Jan-21	Ontario	Professional Services	-	-	-	104800000	0.00%
Family Fitness Inc.	BTA Real Estate Group Inc.	Receivership	A&M	15-Jan-21	Saskatchewan	Other	40,000		40,000	800,000 plus the assumption of assumed liabilities	5.00%
Avenir Sports Entertainment Limited	Avina Acquisition Corp.	Receivership	KSV	15-Dec-20	Alberta	Entertainment	186,000		186,000	4650000	4.00%
Urthecast Corp. (TSX:UR)	Antarctica Infrastructure Partners, LLC, an affiliate of Antarctica Capital LLC	CCAA	EY	15-Oct-20	British Columbia	Technology	2,070,000	1,000,000	3,070,000	69000000	4.45%
110-112 Avenue Road; 114 Avenue Road and 116 Avenue Road	SC Land Inc.	Receivership	RSM	09-Oct-20	Ontario	Financial Services	-	385,000	385,000	16100000	2.39%
Fun and Fitness Trampolines Inc.	2786323 Ontario Inc.	NOI	Crowe Soberman Inc.	26-Oct-20	Ontario	Entertainment	10,000	-	10,000	Purchase price confidential	Unclear - purchase price confidential
Muskoka Grown	Arthur Zwingenberger, in trust for a corporation to be formed under the laws of the Province of Ontario, and 2685164 Ontario Inc.	NOI	Farber	27-Jul-20	Ontario	Cannabis	-	113,000	113,000	11961394	<1%
Wire IE (Canada) Inc.	Crown Capital Private Credit Fund, LP	NOI	Farber	20-Jul-20	Ontario	Technology	-	200,000	200,000	\$9.5 million plus the assumption or satisfaction of certain liabilities	-%
Bow River Energy Ltd.	2270943 Alberta Ltd.	CCAA	BDO	17-Jul-20	Alberta	Oil & Gas	175,000	-	175,000	4290221	4.08%
Cirque du Soleil	Spectacle Bidco LP	CCAA	EY	15-Jul-20	Quebec	Media	-	-	-	US\$1,215 million	-%
Dominion Diamond Mines	Washington Diamond	CCAA	FTI	21-May-20	Alberta	Mining	US2,522,000	US2,250,000	4,772,000	US\$126.1 million in cash, plus up to US\$5.0 million in respect of any	2.0%
Penady (Barrie) Ltd.	Choice Properties Limited	Receivership	RSM	02-Jun-20	Ontario	Real Estate	-	400,000	400,000	Unclear - credit bid	Unclear
James E. Wagner Cultivation Corporation	Trichome Financial Corp.	CCAA	KSV	31-Mar-20	Ontario	Cannabis	-	100,000	100,000	11700000	0.9%
Traverse Energy Ltd.	Barrel Oil Corp.	Receivership	EY	05-Feb-20	Alberta	Oil & Gas	97,500	-	97,500	3250000	3.0%
Viafoura Inc.	Intercap Equity Inc.	NOI	KSV	22-Jan-20	Ontario	Technology	25,000	45,000	70,000	1491000	4.7%
Waves E-Gaming Inc.	Amulka Ventures Inc.	Receivership	Dodick	16-Jan-20	Ontario	E-gaming	-	-	-	370000	0.0%

Appendix “K”

Validus Power Corp., Iroquois Falls Power Corp., Bay Power Corp., Kap Power Corp., Validus Hosting Inc., Kingston Cogen Limited Partnership and Kingston Cogen GP Inc.

Projected Statement of Cash Flow

For the Period October 14 to December 31, 2023

(Unaudited; \$C)

Week	Notes	For the weeks ending										Total	
		20-Oct-23	27-Oct-23	03-Nov-23	10-Nov-23	17-Nov-23	24-Nov-23	01-Dec-23	08-Dec-23	15-Dec-23	22-Dec-23		31-Dec-23
		1	2	3	4	5	6	7	8	9	10	11	
<i>Receipts</i>													
	1												
	2	-	1,705,755	-	-	-	1,408,000	-	-	-	1,408,000	-	4,521,755
	3	-	-	-	-	-	-	-	-	-	891,000	-	891,000
		-	1,705,755	-	-	-	1,408,000	-	-	-	2,299,000	-	5,412,755
<i>Disbursements</i>													
	4	125,000	206,000	125,000	55,000	125,000	55,000	125,000	55,000	125,000	55,000	125,000	1,176,000
	5	50,000	60,000	65,000	115,000	50,000	143,000	50,000	50,000	50,000	143,000	50,000	826,000
	6	-	743,495	-	-	-	-	-	-	-	-	-	743,495
	7	-	-	28,000	-	-	-	-	28,000	-	-	-	56,000
		-	-	267,000	-	-	-	32,000	-	-	-	88,000	387,000
	8	-	-	-	-	-	-	-	-	-	-	1,500,000	1,500,000
	9	-	-	-	-	1,440,000	-	-	-	-	-	-	1,440,000
		175,000	1,009,495	485,000	170,000	1,615,000	198,000	207,000	133,000	175,000	198,000	1,763,000	6,128,495
<i>Net cash flow before the undernoted</i>													
		(175,000)	696,260	(485,000)	(170,000)	(1,615,000)	1,210,000	(207,000)	(133,000)	(175,000)	2,101,000	(1,763,000)	(715,740)
	10	-	385,684	-	-	-	300,000	-	-	-	350,000	-	1,035,684
		(175,000)	310,576	(485,000)	(170,000)	(1,615,000)	910,000	(207,000)	(133,000)	(175,000)	1,751,000	(1,763,000)	(1,751,424)
<i>Opening Cash Balance</i>													
		811,647	636,647	947,223	462,223	292,223	(1,322,777)	(412,777)	(619,777)	(752,777)	(927,777)	823,223	811,647
<i>Net cash flow</i>													
		(175,000)	310,576	(485,000)	(170,000)	(1,615,000)	910,000	(207,000)	(133,000)	(175,000)	1,751,000	(1,763,000)	(1,751,424)
<i>Closing Cash Balance</i>													
		636,647	947,223	462,223	292,223	(1,322,777)	(412,777)	(619,777)	(752,777)	(927,777)	823,223	(939,777)	(939,777)

Validus Power Corp., Iroquois Falls Power Corp., Bay Power Corp., Kap Power Corp., Validus Hosting Inc., Kingston Cogen Limited Partnership and Kingston Cogen GP Inc. (the "Applicants")

Notes to Projected Statement of Cash Flow

For the Period October 14 to December 31, 2023

(Unaudited; \$C)

Purpose and General Assumptions

1. The purpose of the projection is to present a cash flow forecast of the Applicants for the period October 14, 2023 to December 31, 2023 (the "Period").

The cash flow projection has been prepared based on hypothetical and most probable assumptions.

Assumes the Iroquois Falls Power Corp. ("IFPC") and Kingston Cogen Limited Partnership ("KCLP") plants are not called upon to provide power during the Period

Probable and Hypothetical Assumptions

2. Represents payments from the Independent Electricity System Operator ("IESO") to IFPC and KGLP for being a capacity market participant and on standby to provide electricity generation to the market if requested by IESO.
3. Represents an estimate of a partial return of the capacity market deposit for IFPC and KCLP discussed in note 9.
4. Includes employment related disbursements, including payroll, source deductions and other amounts.
5. Includes costs associated with Validus Power Corp.'s firm transportation contract with TransCanada Pipelines Limited, which is effective October 1, 2023.
6. Represents insurance premiums for the renewal of the Applicants' insurance policy for the period October 1, 2023 to October 1, 2024.
7. Represents the estimated fees of consultants retained during these proceedings.
8. Represents payment of pre-filing unremitted employee source deductions which are contemplated to be funded on or around closing of the transaction. The amount is subject to audit by Canada Revenue Agency.
9. Represents the full-year deposit paid to IESO by IFPC, KCLP, Bay Power Corp. and Kap Power Corp. to participate in the capacity auction.
10. Represents the estimated fees of KSV as receiver/CCAA monitor, as well as those of its legal counsel.

COURT FILE NO.: CV-23-00705215-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT
OF VALIDUS POWER CORP., IROQUOIS FALLS POWER CORP., BAY
POWER CORP., KAP POWER CORP., VALIDUS HOSTING INC., KINGSTON
COGEN LIMITED PARTNERSHIP AND KINGSTON COGEN GP INC.

APPLICANTS

MANAGEMENT'S REPORT ON CASH FLOW STATEMENT
(paragraph 10(2)(b) of the CCAA)

KSV Restructuring Inc. as Receiver and Manager of Validus Power Corp., Iroquois Falls Power Corp., Bay Power Corp., Kap Power Corp., Validus Hosting Inc., Kingston Cogen Limited Partnership and Kingston Cogen GP Inc. (collectively, the "Applicants") has developed the assumptions and prepared the attached statement of projected cash flow as of the 18th day of October, 2023 for the period October 14, 2023 to December 31, 2023 ("Cash Flow"). All such assumptions are disclosed in the notes to the Cash Flow.

The hypothetical assumptions are reasonable and consistent with the purpose of the Cash Flow as described in Note 1 to the Cash Flow, and the probable assumptions are suitably supported and consistent with the plans of the Applicants and provide a reasonable basis for the Cash Flow.

Since the Cash Flow is based on assumptions regarding future events, actual events will vary from the information presented and the variations may be material.

The Cash Flow has been prepared solely for the purpose outlined in Note 1 using a set of hypothetical and probable assumptions set out therein. Consequently, readers are cautioned that the Cash Flow may not be appropriate for other purposes.

Dated at Toronto, Ontario this 18th day of October, 2023.

KSV Restructuring Inc.

**KSV RESTRUCTURING INC.
IN ITS CAPACITY AS RECEIVER AND MANAGER OF
VALIDUS POWER CORP., IROQUOIS FALLS POWER CORP., BAY POWER CORP., KAP
POWER CORP., VALIDUS HOSTING INC., KINGSTON COGEN LIMITED PARTNERSHIP
AND KINGSTON COGEN GP INC.**

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c.C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF VALIDUS
POWER CORP., IROQUOIS FALLS POWER CORP., BAY POWER CORP., KAP POWER CORP.,
VALIDUS HOSTING INC., KINGSTON COGEN LIMITED PARTNERSHIP AND KINGSTON
COGEN GP INC.

MONITOR'S REPORT ON CASH FLOW STATEMENT
(paragraph 23(1)(b) of the CCAA)

The attached statement of projected cash-flow of Validus Power Corp., Iroquois Falls Power Corp., Bay Power Corp., Kap Power Corp., Validus Hosting Inc., Kingston Cogen Limited Partnership and Kingston Cogen GP Inc. (collectively, the "Applicants") as of the 18th day October, 2023, consisting of a weekly projected cash flow statement for the period October 14, 2023 to December 31, 2023 (the "Cash Flow") has been prepared by KSV Restructuring Inc. in its capacity as Receiver and Manager of the Applicants (the "Receiver") for the purpose described in Note 1, using probable and hypothetical assumptions set out in the notes to the Cash Flow.

Our review consisted of inquiries, analytical procedures and discussions related to information supplied by the Receiver. We have reviewed the support provided by the Receiver for the probable and hypothetical assumptions and the preparation and presentation of the Cash Flow.

Based on our review, nothing has come to our attention that causes us to believe that, in all material respects:

- a) the hypothetical assumptions are not consistent with the purpose of the Cash Flow;
- b) as at the date of this report, the probable assumptions developed by the Receiver are not suitably supported and consistent with the plans of the Applicants or do not provide a reasonable basis for the Cash Flow, given the hypothetical assumptions; or
- c) the Cash Flow does not reflect the probable and hypothetical assumptions.

Since the Cash Flow is based on assumptions regarding future events, actual results will vary from the information presented, and the variations may be material. Accordingly, we express no assurance as to whether the Cash Flow will be achieved. We express no opinion or other form of assurance with respect to the accuracy of any financial information presented in this report, or relied upon in preparing this report.

The Cash Flow has been prepared solely for the purpose described in Note 1 and readers are cautioned that it may not be appropriate for other purposes.

Dated at Toronto this 18th day of October, 2023.

KSV Restructuring Inc.

KSV RESTRUCTURING INC.
IN ITS CAPACITY AS PROPOSED CCAA MONITOR OF
VALIDUS POWER CORP., IROQUOIS FALLS POWER CORP., BAY POWER CORP., KAP
POWER CORP., VALIDUS HOSTING INC., KINGSTON COGEN LIMITED PARTNERSHIP AND
KINGSTON COGEN GP INC.

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,
R.S.C. 1985, c. C-36, AS AMENDED

Court File No.: CV-23-00705215-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
VALIDUS POWER CORP., IROQUOIS FALLS POWER CORP., BAY POWER
CORP., KAP POWER CORP., VALIDUS HOSTING INC. AND KINGSTON
COGEN GP INC., EACH BY THEIR COURT APPOINTED RECEIVER AND
MANAGER, KSV RESTRUCTURING INC.

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceeding commenced at Toronto

**SECOND REPORT OF THE MONITOR DATED
OCTOBER 19, 2023**

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**First Report to Court of
KSV Restructuring Inc. as
Monitor of
Validus Power Corp., Iroquois Falls
Power Corp., Bay Power Corp., Kap
Power Corp., Validus Hosting Inc. and
Kingston Cogen GP Inc.**

September 1, 2023

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COURT FILE NO.: CV-23-00705215-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN THE MATTER OF THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF VALIDUS POWER CORP., IROQUOIS
FALLS POWER CORP., BAY POWER CORP., KAP POWER
CORP., VALIDUS HOSTING INC. AND KINGSTON COGEN GP
INC., EACH BY THEIR COURT APPOINTED RECEIVER AND
MANAGER, KSV RESTRUCTURING INC.

FIRST REPORT OF KSV RESTRUCTURING INC.
AS MONITOR

SEPTEMBER 1, 2023

1.0 Introduction

1. Pursuant to an application filed by Macquarie Equipment Finance Limited (“Macquarie”), the Ontario Superior Court of Justice (Commercial List) (the “Court”) issued an order on August 2, 2023 (the “Interim Receivership Order”) adjourning Macquarie’s application until August 10, 2023 and appointing KSV Restructuring Inc. (“KSV”) as the interim receiver, under section 47.1 of the *Bankruptcy and Insolvency Act* (the “BIA”) of all of the property, assets and undertaking of Validus Power Corp. (“VPC”), Iroquois Falls Power Corp. (“IFPC”), Bay Power Corp. (“Bay”), Kap Power Corp. (“Kap”), Validus Hosting Inc. (“Hosting”), Kingston Cogen GP Inc. (“Kingston GP” and collectively, the “Companies”) and Kingston Cogen Limited Partnership (“Kingston LP” and together with the Companies, the “Validus Entities”) acquired for, or used in relation to, the business carried on by the Validus Entities (the “Property”) until the earlier of:
 - a) the taking possession of the Property by a receiver, within the meaning of subsection 243 of the BIA; and
 - b) August 10, 2023.
2. On August 10, 2023, following that adjournment, the Court issued an order (the “Receivership Order”) appointing KSV as receiver and manager (in such capacity, the “Receiver”) of the Property. A copy of the Receivership Order is attached as Appendix “A”. On August 18, 2023, the Honourable Justice Osborne issued an endorsement in connection with the Receivership Order (the “Endorsement”), a copy of which is attached as Appendix “B”.

3. The principal purpose of the receivership proceedings was to create a stabilized environment to enable the Receiver to take possession and control of the Property, including replacing management so that the Validus Entities' business can continue to operate in the normal course. Macquarie's application materials also indicated that it intended to submit an offer to serve as a stalking horse bid in a Sale and Investment Solicitation Process (the "SISP") and that a condition of that bid would be that the SISP and transaction be implemented within proceedings under the *Companies' Creditors Arrangement Act* ("CCAA").
4. On August 29, 2023, the Receiver brought a motion seeking authority to bring an application to have the Companies granted protection under the CCAA, and, if granted such authority, an application to have the Companies granted protection under the CCAA. The Receiver also sought to extend the stay of proceedings in the CCAA proceedings to Kingston LP. The Receiver's rationale for seeking protection for the Validus Entities under the CCAA was set out in its first report dated August 23, 2023, which was also the pre-filing report of KSV as proposed monitor. A copy of this report is provided in Appendix "C", without attachments.
5. The Court granted the Receiver its requested relief and issued an initial order on August 29, 2023 (the "Initial Order"). A copy of the Initial Order, the endorsement of Mr. Justice Osbourne setting out his rationale for authorizing the Receiver to commence CCAA proceedings on behalf of the Companies and his endorsement setting out his rationale for granting the Initial Order are provided in Appendices "D", "E" and "F", respectively.
6. This report (the "Report") is filed by KSV as Monitor.

1.1 Purposes of this Report

1. The purposes of this Report are to provide:
 - a) the Court with background information with respect to the Validus Entities and these proceedings;
 - b) the Monitor's rationale for recommending that the stay of proceedings be extended from September 8 to December 1, 2023;
 - c) the Court with the Validus Entities' cash flow statement from August 18 to December 1, 2023 (the "Cash Flow Forecast");
 - d) a summary of the anticipated next steps in the CCAA proceedings; and
 - e) the Monitor's recommendation that the Court issue an order granting the Companies an extension of the stay of proceedings to December 1, 2023.

1.2 Currency

1. All currency references in this Report are to Canadian dollars.

1.3 Restrictions¹

1. In preparing this Report, KSV has relied upon unaudited financial information provided by the Validus Entities' employees and consultants², the books and records of the Validus Entities³ and discussions with representatives of the Validus Entities, Macquarie and its legal counsel. KSV has not performed an audit or otherwise attempted to verify the accuracy or completeness of the financial information relied on in a manner that complies with Canadian Auditing Standards ("CAS") pursuant to the Chartered Professional Accountants of Canada Handbook and, accordingly, KSV expresses no opinion or other form of assurance contemplated under the CAS in respect of such information. Any party wishing to place reliance on the financial information should perform its own diligence.
2. With the exception of the Court, KSV accepts no responsibility for any reliance placed by any third party on the Validus Entities' financial information presented herein.
3. An examination of the Cash Flow Forecast as outlined in the Chartered Professional Accountants of Canada Handbook has not been performed. Future oriented financial information relied upon in this Report is based upon assumptions regarding future events; actual results achieved may vary from this information and these variations may be material. KSV expresses no opinion or other form of assurance as to whether the Cash Flow Forecast will be achieved.

2.0 Background

1. The Validus Entities are a group of privately-held companies that own and operate power generation plants and sell capacity and power to the Independent Electricity System Operator ("IESO") as a participant in its "capacity auction" market. The Property is principally comprised of four power plants in Ontario located in North Bay, Kapuskasing, Iroquois Falls and Kingston. As at the date of this Report, only the plants in Kingston and Iroquois Falls are operational; these plants are on standby and can supply power to the IESO if called upon as a participant in the capacity auction market. The Kapuskasing and North Bay plants are being maintained and secured but are not otherwise operational at this time.
2. Immediately following its appointment, the Receiver engaged Ryan Forget of Complete Energy Consulting Inc. to act as a consultant to the Receiver to assist with day-to-day operational, security and asset maintenance issues. Mr. Forget is a former senior employee of the Validus Entities.

¹ In this section, references to KSV refer to its capacity as Receiver, Monitor and in its personal capacity.

² Certain individuals having titles as executive were retained pursuant to consulting agreements.

³ As discussed in the Affidavit of Joshua Stevens of Macquarie dated July 31, 2023, the Validus Entities' books and records have not been kept current and otherwise appear to be significantly deficient. As of the date of this Report, the Receiver has had limited access to the Validus Entities' books and records. The Receiver was recently provided with access to the Validus Entities' electronic records, which required negotiation with its data hosting service in respect of pre-filing amounts owing to it, and with both the data hosting service and the Validus Entities' legal counsel in respect of privilege issues raised by the Validus Entities' management.

3. Based on the Receivership Application Materials, the following creditors have security interests against the Property:
 - a) Macquarie demanded \$55,598,575 as of July 24, 2023 and holds senior security against substantially all Property. The responding materials filed by the Validus Entities in the receivership proceedings made claims disputing approximately \$9 million of the amount demanded by Macquarie. The Receiver is reviewing this issue;
 - b) Canada Revenue Agency (“CRA”), which registered a lien in the amount of approximately \$6 million against certain real property owned by IFPC. CRA’s lien was registered due to IFPC’s failure to remit HST collected by IFPC as part of the sale and leaseback transaction between Macquarie and IFPC in April 2022;
 - c) TD Bank (“TD”), which registered a security interest against VPC pursuant to the *Personal Property Security Act* (Ontario) in respect of amounts that TD claims relate to six letters of credit issued by TD against which TD holds guaranteed investment certificate security (the Receiver has not yet verified TD’s security and is unaware of the quantum of its potential claims); and
 - d) Mercedes-Benz Financial and Mercedes-Benz Financial Services Canada Corporation, which registered security in the amount of \$179,206 against VPC in respect of a motor vehicle (a Mercedes G-63 “G-Wagon” SUV).
4. The Receivership Application Materials provide additional background information about the Validus Entities, their financial position, the Validus Entities’ defaults under their lease arrangements with Macquarie, and the basis for Macquarie’s application for the Receivership Order. Court materials filed in these proceedings, including the Receivership Application Materials and the prior reports filed by KSV as Interim Receiver, Receiver and Proposed Monitor (the “Prior Reports”), are available on KSV’s website at: <https://www.ksvadvisory.com/experience/case/validus-power-corp>.

3.0 Stalking Horse Offer and Sale and Investment Solicitation Process

1. The Receiver has received a proposed offer (the “Offer”) with Macquarie and Hut 8 Power Inc., as Macquarie’s designated and nominated assignee (jointly, the “Potential Purchaser”), which contemplates, *inter alia*, that subject to this Court’s approval:
 - a) the Offer would be a “stalking horse bid” in the SISP, which is to be carried out in proceedings under CCAA;
 - b) a break-up fee and expense reimbursement would become payable upon the closing of a superior bid submitted and selected during the SISP; and
 - c) if the Offer is the successful bid in the SISP, the transaction would be completed pursuant to a Reverse Vesting Order to be sought in the CCAA proceedings.

2. In connection with above, negotiations are now ongoing with the Potential Purchaser with a view to: (i) completing the Offer; and (ii) developing the terms of the SISP. A motion has been scheduled to be heard on September 19, 2023 to approve the SISP, including the Offer as the stalking horse purchaser in that process. The Monitor notes that it has also been contacted by several parties expressing an interest in this opportunity. Additionally, counsel for the Respondents made submissions at the motions heard on August 29, 2023 that her client is considering submitting an offer in the SISP.

4.0 Cash Flow Forecast

1. As detailed in the First Report, a cash flow has been prepared for the period August 18 to December 1, 2023. The Cash Flow Forecast and the required statutory report thereon pursuant to Section 10(2)(b) of the CCAA, which is executed by the Receiver on behalf of the Validus Entities, are attached hereto as Appendix "G".
2. The Cash Flow Forecast reflects that the Validus Entities are projected to be funded from the monthly IESO collections. To the extent actual cash receipts are lower than projected and insufficient to cover projected expenses, the Receiver has the authority to borrow pursuant to the terms of the Receivership Order. As at the date of this Report, no such advances have been required.
3. Based on the Monitor's review of the Cash Flow Forecast, the cash flow assumptions appear reasonable. KSV's statutory report on the Cash Flow Forecast is attached hereto as Appendix "H".

5.0 Anticipated Next Steps

1. Should the Court grant the extension of the stay of proceedings, the Monitor intends to:
 - a) work with the Potential Purchaser to settle the terms of the Offer;
 - b) review issues that affect the Offer, including concerns raised by the Validus Entities regarding the amount of Macquarie's debt;
 - c) finalize the terms of a SISP, which is intended to include the Offer by the Potential Purchaser as the stalking horse;
 - d) prepare motion materials seeking approval of the SISP;
 - e) prepare SISP materials, including, among other things, a confidentiality agreement, brief confidential information memorandum and virtual data room; and
 - f) continue its efforts to stabilize the Validus Entities' operations.

6.0 Conclusion and Recommendation

1. In order to be granted the requested extension of the stay of proceedings, the Companies are required to act in good faith and with due diligence. The Receiver and Monitor are of the view that given their roles in the circumstances of this proceeding, this test should be based on their conduct. Accordingly, the Receiver and Monitor recommend that the Court issue an order granting an extension of the stay of proceedings to December 1, 2023 for the following reasons:
 - a) the Receiver and Monitor are acting in good faith and with due diligence to assist to stabilize the Validus Entities' business and advance the SISP;
 - b) conducting the SISP will provide the opportunity for a going-concern transaction to be completed for the Validus Entities, which is in the interests of the Validus Entities' stakeholders, including their employees;
 - c) the Validus Entities are projected to have sufficient cash flow to operate to December 1, 2023, the outside date of the Cash Flow Forecast. In the event of any cash flow deficiency, the Receivership Order provides that advances could be made under Receivership Certificates; and
 - d) terminating the stay of proceedings may result in enforcement actions by creditors and other parties, which would disrupt the Validus Entities' operations, thereby significantly reducing the ability to find a going-concern solution.

* * *

All of which is respectfully submitted,

KSV Restructuring Inc.

**KSV RESTRUCTURING INC.
SOLELY IN ITS CAPACITY AS MONITOR IN THE CCAA PROCEEDINGS OF
VALIDUS POWER CORP., IROQUOIS FALLS POWER CORP., BAY POWER CORP.,
KAP POWER CORP., VALIDUS HOSTING INC.,
AND KINGSTON COGEN GP INC.
AND NOT IN ITS PERSONAL CAPACITY**

Court File No.: CV-23-00705215-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.)	
)	[■], THE [■]
JUSTICE OSBORNE)	DAY OF [■], 2023

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, C. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
VALIDUS POWER CORP., IROQUOIS FALLS POWER CORP., BAY POWER
CORP., KAP POWER CORP., VALIDUS HOSTING INC. AND KINGSTON
COGEN GP INC., EACH BY THEIR COURT APPOINTED RECEIVER AND
MANAGER, KSV RESTRUCTURING INC.**

SISP APPROVAL ORDER

THIS MOTION, made by **KSV Restructuring Inc. ("KSV")**, in its capacity as the Court-appointed monitor (in such capacity, the "**Monitor**") of Validus Power Corp. ("**VPI**"), Iroquois Falls Power Corp., Bay Power Corp., Kap Power Corp., Validus Hosting Inc. ("**Hosting**"), Kingston Cogen GP Inc. ("**Kingston GP**", and collectively with each of the foregoing entities, the "**Companies**") and Kingston Cogen Limited Partnership ("**Kingston LP**", and together with the Companies, the "**Validus Entities**"), for an Order, among other things, approving a sale and investment solicitation process for the Validus Entities was heard this day by judicial videoconference via Zoom in Toronto, Ontario.

ON READING the Motion Record in respect of this motion, filed, the Second Report of the Monitor dated October 19, 2023 (the "**Second Report**"), filed;

AND UPON hearing the submissions of counsel for the Monitor, counsel for Macquarie Equipment Finance Ltd. (the "**Stalking Horse Bidder**"), counsel for Far North Power Corp. (the "**Assignee**"), counsel for [■], and such other counsel who were present, no one else appearing

although duly served as appears from the affidavit of service of [■] sworn [■], 2023 and the affidavit of service of [■] sworn [■], 2023, filed.

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS** that capitalized terms used in this Order and not otherwise defined herein shall have the meanings ascribed to them in the Sale and Investment Solicitation Process attached as Schedule "A" (the "**SISP**"), the Order of this Court dated August 10, 2023 (the "**Receivership Order**") issued in the receivership proceedings bearing Court File No. CV-23-00703754-00CL (the "**Receivership Proceedings**") or the Initial Order of this Court dated August 29, 2023 (the "**Initial Order**"), as applicable.

SALE AND INVESTMENT SOLICITATION PROCESS

3. **THIS COURT ORDERS** that the SISP is hereby approved and the Monitor is hereby authorized to implement the SISP pursuant to the terms thereof. The Monitor is hereby authorized to perform all things reasonably necessary to carry out the SISP.

4. **THIS COURT ORDERS** that the Monitor shall have no liability with respect to any and all losses, claims, damages or liabilities of any nature or kind to any person in connection with or as a result of the SISP, except to the extent of losses, claims, damages or liabilities that arise or result from the gross negligence or willful misconduct of the Monitor in performing its obligations under the SISP, as determined by this Court.

STALKING HORSE BID

5. **THIS COURT ORDERS** that the transaction agreement (the "**Transaction Agreement**") appended as Schedule "A" to the offer letter delivered by the Stalking Horse Bidder and the Assignee to the Monitor (the "**Offer Letter**", and the Stalking Horse Bidder and the Assignee's offer for the Receiver's entry into the Transaction Agreement set out therein, the "**Stalking Horse Bid**") is hereby approved solely as the stalking horse bid in the SISP, provided that, nothing herein approves: (i) the acceptance and/or execution of the Transaction Agreement by the Vendors (as defined in the Stalking Horse Bid); or (ii) the sale and the vesting of any Property to the Stalking Horse Bidder, the Assignee or any of their respective designees, if applicable, pursuant to the Transaction Agreement and that the approval of the Vendors' acceptance and execution of the Transaction Agreement and/or any sale and vesting of any such Property shall be considered by this Court on a subsequent motion made to this Court if the Stalking Horse Bid is the Successful Bid pursuant to the SISP.

6. **THIS COURT ORDERS** that, as soon as reasonably practicable following the Vendors agreeing upon the final Implementation Steps (as defined in the Offer Letter and the Transaction Agreement), the Monitor shall, in each such case: (i) file a copy thereof with this Court; (ii) serve a copy thereof on the Service List; and (iii) provide a copy thereof to each SISP Participant (as hereinafter defined), excluding from the public record any confidential information that the Monitor, the Stalking Horse Bidder and the Assignee agree should be redacted.

BID PROTECTIONS

7. **THIS COURT ORDERS** that the Monitor is hereby authorized and empowered to enter into the break fee agreement (the "**Break Fee Agreement**") dated as of October 16, 2023, between the Monitor and the Stalking Horse Bidder and attached as Appendix "I" to the Second Report, *nunc pro tunc*, and the Break-Up Fee (as defined in the Break Fee Agreement) and the

Expense Reimbursement (as defined in the Break Fee Agreement) are hereby approved and the Vendors are hereby authorized and directed to pay the Break-Up Fee and the Expense Reimbursement to the Stalking Horse Bidder (or as it may direct) in the manner and circumstances described in the Break Fee Agreement out of the proceeds from and upon completion of any Successful Bid with any party other than the Stalking Horse Bidder.

8. **THIS COURT ORDERS** that the Stalking Horse Bidder shall be entitled to the benefit of and is hereby granted a charge (the "**Bid Protections Charge**") on the Property, which charge shall not exceed \$2,260,000, as security for payment of the Break-Up Fee and the Expense Reimbursement in the manner and circumstances described in the Break Fee Agreement.

9. **THIS COURT ORDERS** that the filing, registration or perfection of the Bid Protections Charge shall not be required, and that the Bid Protections Charge shall be valid and enforceable for all purposes, including against any right, title or interest filed, registered, recorded or perfected subsequent to the Bid Protections Charge, notwithstanding any such failure to file, register, record or perfect.

10. **THIS COURT ORDERS** that the Bid Protections Charge shall constitute a charge on the Property and the Bid Protections Charge shall rank in priority to all other Encumbrances in favour of any Person notwithstanding the order of perfection or attachment, other than (i) any Person with a properly perfected purchase money security interest under the *Personal Property Security Act* (Ontario) or such other applicable legislation; and (ii) the Receiver's Borrowing Charge (as defined in the Receivership Order).

11. **THIS COURT ORDERS** that, except for the Charges or as may be approved by this Court on notice to parties in interest, the Applicant shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, the Bid Protections Charge, unless the Applicant also

obtains the prior written consent of the Monitor and the Stalking Horse Bidder, or further Order of this Court.

12. **THIS COURT ORDERS** that the Bid Protections Charge shall not be rendered invalid or unenforceable and the rights and remedies of the Stalking Horse Bidder shall not otherwise be limited or impaired in any way by: (i) the pendency of these proceedings and the declarations of insolvency made herein; (ii) any application(s) for bankruptcy order(s) or receivership order(s) issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”) or otherwise, or any bankruptcy order or receivership order made pursuant to such applications; (iii) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (iv) the provisions of any federal or provincial statutes; or (v) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an “**Agreement**”) which binds the Applicant, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Bid Protections Charge nor the execution, delivery, perfection, registration or performance of the Transaction Agreement shall create, cause or be deemed to constitute a breach by the Applicant of any Agreement to which it is a party;
- (b) the Stalking Horse Bidder shall not have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Bid Protections Charge or the execution, delivery or performance of the Transaction Agreement; and
- (c) the payments made by the Applicant pursuant to this Order, the Transaction Agreement and the granting of the Bid Protections Charge, do not and will not

constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

PIPEDA

13. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Monitor and its respective advisors are hereby authorized and permitted to disclose and transfer to prospective SISP participants (each, a "**SISP Participant**") and their advisors personal information of identifiable individuals but only to the extent desirable or required to negotiate or attempt to complete a transaction pursuant to the SISP (a "**Transaction**"). Each SISP Participant to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation for the purpose of effecting a Transaction, and if it does not complete a Transaction, shall return all such information to the Monitor, or in the alternative destroy all such information and provide confirmation of its destruction if requested by the Monitor. Any Successful Party shall maintain and protect the privacy of such information and, upon closing of the Transaction(s) contemplated in the Successful Bid(s), shall be entitled to use the personal information provided to it that is related to the Business and/or Property acquired pursuant to the SISP in a manner that is in all material respects identical to the prior use of such information by the CCAA Parties, and shall return all other personal information to the Monitor, or ensure that all other personal information is destroyed and provide confirmation of its destruction if requested by the Monitor.

UNKNOWN CONTRACT BAR PROCESS

14. **THIS COURT ORDERS** that capitalized terms used in this section of the Order shall have the following meanings:

- (a) **"Excluded Contract Counterparties"** means any contracts for employment with any of the employees of the Companies;
- (b) **"Known Contract Counterparties"** means a counterparty with a contract with one or more of the Companies who is known to the Monitor based on the books and records of the Companies or who is otherwise known by the Monitor as having a contract with the Companies but, for greater certainty, excluding Excluded Contract Counterparties;
- (c) **"Known Contracts"** means all contracts with the Companies listed on the Known Contract Counterparty List;
- (d) **"Monitor's Website"** means <https://www.ksvadvisory.com/experience/case/validus-power-corp;>
- (e) **"Publication Notice"** means the notice to be published by the Monitor requesting parties to confirm on the Monitor's Website that they are a Known Contract Counterparty and that all of their contracts with the Companies are listed on the Known Contract Counterparty List; and
- (f) **"Unknown Contract Counterparty"** means any Person who has a contract with one or more of the Companies who is not a Known Contract Counterparty.

15. **THIS COURT ORDERS** that within 3 business days from the date of this Order, the Monitor shall post on the Monitor's Website a list of all Known Contract Counterparties and Known Contracts (the **"Known Contract Counterparty List"**).

16. **THIS COURT ORDERS** that as soon as reasonably practicable after the date of this Order, the Monitor shall cause to be published the Publication Notice in the Globe and Mail (National Edition) and such other publications as the Monitor may consider appropriate.

17. **THIS COURT ORDERS** that any person who believes it may have one or more contracts with one or more of the Companies whose identity and/or contract is not listed on the Known Contract Counterparty List shall contact the Monitor by no later than November 28, 2023 (the “**Unknown Contract Bar Date**”) and provide the Monitor with a copy or copies of any or all outstanding contracts.

18. **THIS COURT ORDERS** that any Unknown Contract Counterparty who complies with paragraph 17 above, shall be treated as a Known Contract Counterparty in connection with any motions whereby Known Contract Counterparties are provided with notice.

19. **THIS COURT ORDERS** that upon expiration of the Unknown Contract Bar Date, all other Unknown Contract Counterparties shall be forever barred from asserting that it did not receive adequate notice of any treatment of any contractual right or claim in the connection with these proceedings including, without limitation, any motion or motions for approval of a sale approval order, vesting order, reverse vesting order, distribution order or otherwise, provided that nothing herein prevents any such Unknown Contract Counterparty from asserting a claim against any residual proceeds of sale, Residualco or in the bankruptcy of the Companies.

APPROVAL OF KSV’S ACTIVITIES AND REPORTS

20. **THIS COURT ORDERS** that the activities and conduct of KSV, in its capacities as the Monitor and as the Receiver, prior to the date hereof in relation to the CCAA Parties or the Validus Entities, as the case may be, in these CCAA proceedings and the Receivership Proceedings, as the case may be, are hereby ratified and approved.

21. **THIS COURT ORDERS** that the pre-filing report of the Monitor dated August 23, 2023, the first report of the Monitor dated September 1, 2023 and Second Report be and are hereby approved.

22. **THIS COURT ORDERS** that only KSV in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way the approvals set forth in paragraphs 20 and 21 of this Order.

EXTENSION OF THE STAY PERIOD

23. **THIS COURT ORDERS** that the Stay Period, as defined in the Initial Order dated August 29, 2023 in this proceeding, be and is hereby extended up to and including December 31, 2023.

GENERAL

24. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada.

25. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal and regulatory or administrative bodies, having jurisdiction in Canada or in any foreign jurisdiction, to give effect to this Order and to assist the Monitor, and its agents, in carrying out the terms of this Order. All courts, tribunals and regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Monitor, in each case as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Monitor and its agents in carrying out the terms of this Order.

26. **THIS COURT ORDERS** that this Order and all of its provisions are effective from the date it is made without any need for entry and/or filing.

SCHEDULE "A"
SALE AND INVESTMENT SOLICITATION PROCESS

See attached.

Sale and Investment Solicitation Process

1. On August 10, 2023, the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) granted an order, among other things, appointing KSV Restructuring Inc. (“**KSV**”) as receiver and manager (in such capacity, the “**Receiver**”) of the property and undertakings of Validus Power Corp., Iroquois Falls Power Corp., Bay Power Corp., Kap Power Corp., Kingston Cogen Limited Partnership, Kingston Cogen GP Inc. and Validus Hosting Inc. (collectively, the “**Validus Entities**”) pursuant to section 243(1) of the *Bankruptcy and Insolvency Act* (Canada) and section 101(1) of the *Courts of Justice Act* (Ontario).
2. On application by the Receiver, on August 29, 2023, the Court granted an order (the “**Initial Order**”), among other things, granting the Validus Entities relief pursuant to the *Companies’ Creditors Arrangement Act* (Canada) and appointing KSV as monitor (in such capacity, the “**Monitor**”) of the Validus Entities.
3. On [■], 2023, the Court granted a further order (the “**SISP Order**”), among other things: (a) authorizing the Monitor to implement a sale and investment solicitation process (“**SISP**”) in accordance with the terms hereof; (b) approving, for purposes of acting as the stalking horse bid in the SISP, the transaction agreement (the “**Stalking Horse Transaction Agreement**”) appended as Schedule “A” to the offer letter delivered by Macquarie Equipment Finance Limited (the “**Proponent**”) and Far North Power Corp. (the “**Assignee**”) to the Monitor on October 16, 2023 (the Proponent and the Assignee’s offer for the entry by the Validus Entities into the Stalking Horse Transaction Agreement set out therein, the “**Stalking Horse Bid**”); (c) approving the Monitor’s entry into the Break-Up Fee Agreement and the Break-Up Fee and the Expense Reimbursement; and (d) granting the Bid Protections Charge. Capitalized terms that are not defined herein have the meanings ascribed thereto in the Initial Order or the SISP Order, as applicable.
4. This SISP sets out the manner in which: (a) binding bids for executable transaction alternatives that are superior to the Stalking Horse Bid involving the shares and/or the business and assets of the Validus Entities will be solicited from interested parties; (b) any such bids received will be addressed; (c) any Successful Bid (as defined below) will be selected; and (d) Court approval of any Successful Bid will be sought. Such transaction alternatives may include, among other things, a sale of some or all of the Validus Entities’ shares, assets and/or business and/or an investment in the Validus Entities, each of which shall be subject to all terms set forth in this SISP.
5. The SISP shall be conducted by the Monitor.
6. Parties who wish to have their bids considered shall be expected to participate in the SISP as conducted by the Monitor.
7. The SISP will be conducted such that the Monitor will:
 - (a) prepare marketing materials and a process letter;

- (b) prepare and provide applicable parties with access to a virtual data room containing diligence information;
 - (c) prepare and include in the data room one or more template forms of purchase agreements to be used by interested parties when submitting a proposed bid (“**Form of Agreement**”);
 - (d) solicit interest from parties to enter into non-disclosure agreements (parties shall only obtain access to the data room and be permitted to participate in the SISP if they execute a non-disclosure agreement that is in form and substance satisfactory to the Monitor); and
 - (e) request that such parties (other than the Proponent and the Assignee) submit a binding offer meeting at least the requirements set forth in Section 9, as determined by the Monitor (a “**Qualified Bid**”) by the Qualified Bid Deadline (as defined below).
8. The SISP shall be conducted subject to the terms hereof and the following key milestones:
- (a) Court approval of SISP and the Stalking Horse Bid to serve as stalking horse bid in the SISP – October 26, 2023;
 - (b) The Monitor to commence solicitation process – October 27, 2023;
 - (c) Deadline to submit a Qualified Bid – 11:59 p.m. (Toronto time) on December 1, 2023 (the “**Qualified Bid Deadline**”);
 - (d) Deadline to determine whether a bid is a Qualified Bid and, if applicable, to notify those parties who submitted a Qualified Bid of the Auction (as defined below) – As soon as possible after the Qualified Bid Deadline
 - (e) The Monitor to hold the Auction (if applicable) – on or about December 7, 2023; and
 - (f) Implementation Order (as defined below) hearing by no later than December 15, 2023, subject to Court availability.

The Monitor may, in its discretion, seek court approval for the termination of the SISP and for approval of implementation of the Stalking Horse Bid if no potentially interested parties have executed non-disclosure agreements and commenced due diligence on or prior to November 16, 2023, or if thereafter all parties who executed non-disclosure agreements and conducted due diligence have advised the Monitor that they no longer intend to participate in the SISP.

9. In order to constitute a Qualified Bid, a bid (including an Aggregated Bid (as defined below)) must comply with the following:
- (a) it provides for: (i) the payment in full in cash on closing of the Claim Amount (as defined in the Stalking Horse Transaction Agreement); (ii) the purchase of all of the Proponent's interest in the Receiver's Certificates (as defined in the Appointment Order), if any; (iii) the payment in full in cash on closing of any claims ranking in priority to the claims set forth in subparagraphs (i) and (ii) of this Subsection 9(a), including any claims secured by Court-ordered charges (other than the Receiver's Borrowings Charge (as defined in the Appointment Order)), unless otherwise agreed to by the applicable holders thereof in their sole discretion, and the Break-Up Fee and the maximum amount of the Expense Reimbursement (as such terms are defined in the Stalking Horse Transaction Agreement); and (iv) a minimum overbid increment of \$750,000 (the "**Overbid Increment**");
 - (b) An allocation of the purchase price under such bid among the purchased assets of Validus Power Corp. and all other property to be acquired.
 - (c) it provides a detailed sources and uses schedule that identifies, with specificity, the amount of cash consideration (the "**Cash Consideration Value**") and any assumptions that could reduce the net consideration payable. At a minimum, the Cash Consideration Value plus the Validus Entities' aggregate cash on hand must be sufficient for payment in full of the items contemplated in subparagraphs (i) to (iii) of Subsection 9(a), including the Break-Up Fee and the maximum amount of the Expense Reimbursement, plus the Overbid Increment, on closing, which Cash Consideration Value is estimated to be \$60,228,822 as of September 22, 2023;
 - (d) it provides details of any assumption of liabilities;
 - (e) it is reasonably capable of being consummated by 30 days after issuance of the Implementation Order if selected as a Successful Bid;
 - (f) it contains:
 - (i) duly executed binding transaction document(s);
 - (ii) the legal name and identity (including jurisdiction of existence) and contact information of the bidder, full disclosure of its direct and indirect principals, and the name(s) of its controlling equityholder(s);
 - (iii) a redline to the applicable Form of Agreement provided by the Monitor as described in Subsection 7(c);
 - (iv) evidence of authorization and approval from the bidder's board of directors (or comparable governing body) and, if necessary to complete the transaction, the bidder's equityholder(s);

- (v) disclosure of any connections or agreements with any of the Validus Entities or any of their affiliates, any known, potential, prospective bidder, or any officer, manager, director, or known equity security holder of any Validus Entity or any of their affiliates; and
- (vi) such other information as may be reasonably requested by the Monitor, in its discretion;
- (g) it includes a letter stating that the bid is submitted in good faith, is binding and is irrevocable until the earlier of (i) completion of a Successful Bid or (ii) **[December 29], 2023**; *provided*, however, that if such bid is selected as a Successful Bid, it shall remain irrevocable until the closing of the Successful Bid;
- (h) it provides written evidence of a bidder's ability to fully fund and consummate the transaction and satisfy its obligations under the transaction documents, including binding equity/debt commitment letters and/or guarantees (i.e., bank guarantees) covering the full value of all cash consideration;
- (i) it does not include any request for or entitlement to any break fee, expense reimbursement or similar type of payment;
- (j) it is not conditional upon:
 - (i) approval from the bidder's board of directors (or comparable governing body) or equityholder(s);
 - (ii) the outcome of any due diligence by the bidder; or
 - (iii) the bidder obtaining financing;
- (k) it includes an acknowledgment and representation that the bidder has had an opportunity to conduct any and all required due diligence prior to making its bid;
- (l) it specifies any regulatory or other third-party approvals the party anticipates would be required to complete the transaction (including the anticipated timing necessary to obtain such approvals) and, in connection therewith, specifies whether the bidder or any of its affiliates is involved in any part of the Canadian energy sector, including an electricity generator, electric utility, retail service provider, or a registered participant with the Ontario Independent Electricity System Operator;
- (m) it includes full details of the bidder's intended treatment of the Validus Entities' employees under the proposed bid;
- (n) it is accompanied by a cash deposit (the "**Deposit**") by wire transfer of immediately available funds equal to 10% of the Cash Consideration Value, which Deposit shall be retained by the Monitor in a non-interest bearing trust account in accordance with Section 18;

- (o) it includes a statement that the bidder will bear its own costs and expenses (including legal and advisor fees) in connection with the proposed transaction, and by submitting its bid is agreeing to refrain from and waive any assertion or request for reimbursement on any basis;
 - (p) it contains a written acknowledgment that the transaction will proceed on an “as is, where is” basis, without representations or warranties by the sellers except as expressly set out therein; and
 - (q) it is received by the Qualified Bid Deadline.
10. The Qualified Bid Deadline may be extended: (i) by the Monitor for no longer than 7 days in the Monitor’s discretion; or (ii) by further order of the Court. In such circumstances, the milestones contained in Subsections 8(d) through 8(f) shall be extended by the same amount of time. Any other milestone dates in Section 8 may be extended in the Monitor’s discretion; *provided* that the aggregate of all such discretionary extensions shall not exceed 14 days.
 11. The Monitor may combine bids received for individual assets of the Validus Entities for the purpose of determining if such bids, collectively, will be treated as a Qualified Bid (such bid being an “**Aggregated Bid**”); *provided* that any Aggregated Bid must comply with each of the requirements set out in Section 9 (as may be modified in accordance with Section 12) in order to be a Qualified Bid.
 12. The Monitor may waive compliance with any one or more of the requirements specified in Section 9 above and deem a non-compliant bid to be a Qualified Bid; *provided* that the Monitor shall not waive compliance with the requirements specified in Subsections 9(a), (c), (f), (g), (h), (i), (j), (k), (l) or (n) without the prior written consent of the Proponent and the Assignee, each acting reasonably, or further order of the Court. If a bid received is not a Qualified Bid, the Monitor may provide the bidder with an opportunity to remedy any deficiencies and render such bid a Qualified Bid; *provided* that such defects are remedied on or before the deadline set out in Subsection 8(d).
 13. Notwithstanding the requirements specified in Section 9, the transactions contemplated by the Stalking Horse Bid (collectively, the “**Stalking Horse Transaction**”), are deemed to be a Qualified Bid; *provided* that, for greater certainty, no Deposit shall be required to be submitted in connection with the Stalking Horse Transaction.
 14. If one or more Qualified Bids (other than the Stalking Horse Transaction) has been received by the Monitor on or before the Qualified Bid Deadline, the Monitor shall proceed with an auction to determine the successful bid(s) (the “**Auction**”), which Auction shall be administered in accordance with Schedule “A” hereto, subject to such additional procedural rules as may be determined by the Monitor to be necessary or desirable in the conduct of the Auction. The successful bid(s) selected within the Auction shall constitute the “**Successful Bid**”. Forthwith upon determining to proceed with an Auction, the Monitor shall provide written notice to each party that submitted a Qualified Bid (including the

Stalking Horse Transaction), along with copies of all Qualified Bids and a statement by the Monitor specifying which Qualified Bid is the leading bid.

15. Following selection of a Successful Bid, the Validus Entities shall seek to finalize any remaining necessary definitive agreement(s) with respect to the Successful Bid in accordance with the key milestones set out in Section 8. Once the necessary definitive agreement(s) with respect to a Successful Bid have been finalized, as determined by the Monitor, the Monitor shall apply to the Court for an order or orders, among other things, approving such Successful Bid and/or the mechanics to authorize the Validus Entities and the Monitor, as the case may be, to complete the transactions contemplated thereby, as applicable, and authorizing the Validus Entities or the Monitor, as the case may be, to: (i) enter into any and all necessary agreements and related documentation with respect to the Successful Bid; (ii) undertake such other actions as may be necessary to give effect to such Successful Bid; and (iii) implement the transaction(s) contemplated in such Successful Bid (each, an “**Implementation Order**”).
16. If a selected Successful Bid is not completed within 30 days following issuance of the Implementation Order, the Implementation Order is not granted, or the Monitor otherwise determines a selected Successful Bid will not be completed, the Monitor shall be permitted to designate one or more alternative Successful Bids from the Qualified Bids received prior to or during the Auction, and such alternative Successful Bid shall be deemed the Successful Bid for all purposes hereunder. The foregoing shall not limit the Monitor’s right in the foregoing circumstances to terminate these SISP procedures and pursue any alternative process and any alternative transactions determined by the Monitor to be appropriate, in consultation with the Proponent, as secured creditor.
17. The Validus Entities, the Proponent and the Assignee, with the consent of the Monitor, shall be permitted to modify the Stalking Horse Transaction to exclude any asset for which an alternative bid (an “**Alternative Bid**”, and the assets subject to such Alternative Bid, the “**Excluded SHB Assets**”) is received if:
 - (a) the Proponent and the Assignee agree in writing, in their respective sole discretion, to modify the Stalking Horse Transaction in order to accommodate such proposed Alternative Bid;
 - (b) the Validus Entities, the Proponent and the Assignee, with the consent of the Monitor, agree on the adjustment of the purchase price under the Stalking Horse Transaction to account for the removal of the Excluded SHB Assets and the value of the Alternative Bid;
 - (c) the Monitor determines that the aggregate consideration to be offered by (i) the Stalking Horse Transaction, as so modified (the “**Modified SHB**”) and (ii) the proposed Alternative Bid for the Excluded SHB Assets, would exceed the value of the Stalking Horse Transaction (the “**Excluded Assets Sale**”);
 - (d) the Alternative Bid combined with the Modified SHB meet all of the requirements of a Qualified Bid;

- (e) the Monitor determines that the Modified SHB and the Excluded Assets Sale, collectively, are a Qualified Bid; and
- (f) the Proponent and the Assignee agree that the original Stalking Horse Transaction shall remain open for acceptance notwithstanding the Modified SHB, such that the Stalking Horse Transaction can be completed if for any reason the Modified SHB and the Excluded Assets Sale are not completed.

For greater certainty, if the Modified SHB and Excluded Assets Sale are each designated as a Successful Bid, then the Proponent and the Assignee shall not be entitled to receive any Break Fee or Expense Reimbursement Amount as a result of the completion of such transaction. If the Modified SHB and the Excluded Asset Sale are not selected as a Successful Bid, then the Proponent and the Assignee shall continue to be entitled to receive any Break Fee and Expense Reimbursement (in accordance with the Stalking Horse Transaction Agreement) upon completion of an alternative Successful Bid to which the Proponent and the Assignee are not parties.

18. All Deposits shall be retained by the Monitor in a non-interest bearing trust account. If a Successful Bid is selected and an Implementation Order authorizing the consummation of the transaction contemplated thereunder is granted, any Deposit paid in connection with such Successful Bid will be non-refundable and shall, upon closing of the transaction contemplated by such Successful Bid, be applied to the cash consideration to be paid in connection with such Successful Bid or be dealt with as otherwise set out in the definitive agreement(s) entered into in connection with such Successful Bid. In the event that the Successful Bid is not completed due to a breach or default of the bidder's obligations thereunder, the Deposit shall be forfeited to the Validus Entities as damages and such Deposit shall be in addition to, and not in lieu of, any other rights in law or equity that the Validus Entities have in respect of such breach or default. Any Deposit delivered with a Qualified Bid that is not selected as a Successful Bid will be returned to the applicable bidder as soon as reasonably practicable (but not later than ten (10) business days) after the earliest of (i) completion of a Successful Bid; (ii) December 29, 2023; or (iii) the date of the Monitor's determination that such bid will not be pursued further.
19. Except as expressly set out herein, the Monitor may not modify the SISF without court approval; *provided*, however, that the Monitor may implement additional procedural rules that the Monitor determines will better promote the goals of the SISF; *provided* that any additional procedural rules shall not be inconsistent with the Stalking Horse Agreement unless agreed by the Proponent and the Assignee or otherwise ordered by the Court.

SCHEDULE “A”
AUCTION PROCEDURES

1. **Auction.** If the Monitor receives at least one Qualified Bid (other than the Stalking Horse Transaction) including any Aggregated Bid, the Monitor shall conduct and administer the Auction in accordance with the terms of the SISP. Instructions to participate in the Auction, which will take place via video conferencing, will be provided to Qualified Parties (as defined below) not less than 24 hours prior to the Auction.
2. **Participation.** Only parties that submit a Qualified Bid by the Qualified Bid Deadline, including the Stalking Horse Transaction and, collectively, the parties submitting any Aggregated Bid (collectively, the “**Qualified Parties**”), shall be eligible to participate in the Auction. No later than 5:00 p.m. (Toronto time) on the day prior to the Auction, each Qualified Party (other than the Proponent and the Assignee, in respect of the Stalking Horse Transaction) must inform the Monitor whether it intends to participate in the Auction. The Monitor will promptly thereafter inform in writing each Qualified Party who has expressed its intent to participate in the Auction of the identity of all other Qualified Parties that have indicated their intent to participate in the Auction. If no Qualified Party indicates such expression of intent, the Stalking Horse Transaction shall be the Successful Bid.
3. **Auction Procedures.**
 - (a) **Procedures.** The Auction shall be governed by the following procedures:
 - (i) **Attendance.** Only the Monitor, representatives of the Qualified Parties and each of their respective advisors, and any other person admitted with the consent of the Monitor will be entitled to attend the Auction, and only the Qualified Parties will be entitled to make any subsequent Overbids (as defined below) at the Auction;
 - (ii) **No Collusion.** Each Qualified Party participating at the Auction shall be required to confirm on the record at the Auction that: (i) it has not engaged in any collusion with respect to the Auction and the bid process (excluding, for greater certainty, any discussions among those parties who are bidders in an Aggregated Bid); and (ii) its bid is a good-faith *bona fide* offer and it intends to consummate the proposed transaction if selected as the Successful Bid (as defined below);
 - (iii) **Minimum Overbid.** The Auction shall begin with the Qualified Bid that represents the highest or otherwise best Qualified Bid as determined by the Monitor (the “**Initial Bid**”), and any bid made at the Auction by a Qualified Party subsequent to the Monitor’s announcement of the Initial Bid (each, an “**Overbid**”), must proceed in minimum additional cash increments as determined by the Monitor and announced to the Auction participants prior to each round of bidding (the “**Required Bid Increment**”). At the end of

each round of bidding, the Monitor will identify the highest or otherwise best Overbid as the leading bid for the subsequent round (the “**Lead Bid**”);

- (iv) **Bidding Conclusion.** The Auction shall continue in one or more rounds and will conclude after each participating Qualified Party (including parties to an Aggregated Bid) has had the opportunity to submit an additional bid or refused to submit an additional bid with full knowledge and written confirmation of the then-existing Lead Bid for that round. If at the commencement of the Auction, no party submits a bid that exceeds the Initial Bid by the Required Bid Increment, then the Initial Bid will be the Successful Bid. If in any round, a Qualified Party (other than the party who submitted the Lead Bid in such round) does not submit an Overbid satisfying the Required Bid Increment, then such Qualified Party (including the parties to any Aggregated Bid if no Aggregated Bid is submitted in a particular round) will no longer be permitted to participate in any subsequent round of the Auction; and
 - (v) **No Post-Auction Bids.** No bids will be considered for any purpose after the Auction has concluded.
- (b) **Additional Procedures.** The Monitor may announce prior to or during the Auction additional procedural rules, including the process for submission and review of bids, that are reasonable under the circumstances for conducting the Auction; *provided* that those rules are not inconsistent in any material respects with the SISP or the Stalking Horse Agreement.

Selection of Successful Bid

4. **Selection.** Before the conclusion of the Auction, the Monitor will: (a) review each Qualified Bid and Overbid, considering the factors set out in Section 9 of the SISP and, among other things: (i) the amount of consideration being offered and, if applicable, the proposed form, composition and allocation of same; (ii) the value of any assumption of liabilities or waiver of liabilities not otherwise accounted for in prong (i) above; (iii) the likelihood of the Qualified Party’s ability to close a transaction by 30 days after issuance of the Implementation Order and the timing thereof (including factors such as the transaction structure and execution risk, including conditions to, timing of, and certainty of closing; termination provisions; availability of financing and financial wherewithal to meet all commitments; and required governmental or other approvals); (iv) the likelihood of the Court’s approval of such Overbid; (v) the net benefit to the estate of the Validus Entities of such Overbid; and (vi) any other factors the Monitor may, consistent with its duties, reasonably deem relevant; and (b) identify the highest or otherwise best bid received at the Auction (the “**Successful Bid**” and the Qualified Party making such bid, the “**Successful Party**”).
5. **Acknowledgement.** The Successful Party shall complete and execute all agreements, contracts, instruments or other documents evidencing and containing the terms and conditions upon which the Successful Bid was made within one business day of the

Successful Bid being selected as such, unless extended by the Monitor, subject to the milestones set forth in Section 8 of the SISP.

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IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, C. C-36, AS AMENDED Court File No. CV-23-00705215-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT INVOLVING VALIDUS POWER CORP., IROQUOIS FALLS POWER CORP., BAY POWER CORP., KAP POWER CORP., VALIDUS HOSTING INC., KINGSTON COGEN LIMITED PARTNERSHIP AND KINGSTON COGEN GP INC.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at TORONTO

SISP APPROVAL ORDER

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IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

Court File No.: CV-23-00705215-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF VALIDUS POWER CORP., IROQUOIS FALLS POWER CORP., BAY POWER CORP., KAP POWER CORP., VALIDUS HOSTING INC. AND KINGSTON COGEN GP INC., EACH BY THEIR COURT APPOINTED RECEIVER AND MANAGER, KSV RESTRUCTURING INC.

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceeding commenced at Toronto

**MOTION RECORD
(SISP Approval Order)**

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