

**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.**

**REPLY RECORD OF MACQUARIE EQUIPMENT FINANCE LTD
(Responding to the Submissions of Todd Shortt Opposing
the Monitor's Motion for SISP Approval)**

October 30, 2023

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Lawyers for Macquarie Equipment Finance
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TO: SERVICE LIST

TABLE OF CONTENTS

| TAB | DOCUMENT | |
|----------|--|--|
| 1 | Affidavit of Joshua Hamilton Stevens, sworn October 29, 2023 | |
| | Exhibit “A” | Letter from Macquarie to the Validus Entities dated May 4, 2023 |
| | Exhibit “B” | Letter from Torys LLP to Minden Gross dated October 24, 2023 |
| 2 | Affidavit of Joshua Hamilton Stevens sworn July 31, 2023, in support of receivership application (with selected key exhibits) | |
| | Exhibit “B” | Amended and Restated Participation Agreement dated February 24, 2023 |
| | Exhibit “C” | Amended and Restated Lease Agreement dated February 24, 2023 |
| | Exhibit “D” | Acknowledgement and Reservation of Rights Agreement dated February 24, 2023 |
| | Exhibit “E” | Acknowledgement, Confirmation and Amendment Agreement dated February 24, 2023 |
| | Exhibit “F” | Supplement to Amended and Restated Lease Agreement No. 1 dated February 24, 2023 |
| | Exhibit “HH” | Demand Letter and Section 244 Notice delivered to Iroquois Falls Power Corp. on June 9, 2023 |
| | Exhibit “YY” | Demand Letter re: Arrears delivered to Iroquois Falls Power Corp. on July 24, 2023 |
| | Exhibit “FFF” | Demand Letter re: Accelerated Payment delivered to Iroquois Falls Power Corp. on July 24, 2023 |
| 3 | Supplemental Affidavit of Joshua Hamilton Stevens sworn August 2, 2023, in support of receivership application (without exhibits) | |
| 4 | Second Supplemental Affidavit of Joshua Hamilton Stevens sworn August 8, 2023, in support of receivership application (without exhibits) | |



TAB1

**ONTARIO
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(COMMERCIAL LIST)**

**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT
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RESTRUCTURING INC.**

**AFFIDAVIT OF JOSHUA HAMILTON STEVENS
(SWORN OCTOBER 29, 2023)**

TABLE OF CONTENTS

| | Page |
|---|-------------|
| I. OVERVIEW | 1 |
| II. SALE AND LEASEBACK TRANSACTION (APRIL 2022)..... | 1 |
| III. THE PARTIES' FORBEARANCE DISCUSSIONS (JANUARY/FEBRUARY 2023) | 3 |
| A. The Parties' Negotiations..... | 3 |
| B. The Iroquois Falls Plant was Central to the Negotiations..... | 4 |
| C. Forbearance Terms and Consideration | 5 |
| D. Liquidated Damages Clause | 6 |
| IV. THE DEBTORS MISS PAYMENT AND MACQUARIE COMMENCES ENFORCEMENT (JUNE/JULY 2023)..... | 9 |

I, Joshua Hamilton Stevens, of the City of Sydney, in the State of New South Wales, in the Country of Australia, MAKE OATH AND SAY:

I. OVERVIEW

1. I swear this affidavit in response to the objections filed on behalf of Validus Power Corp. and its subsidiaries to the motion of KSV Restructuring Inc., the Court-appointed monitor (in such capacity, the “**Monitor**”), for this Court’s approval of, among other things, the stalking horse bid (“**Stalking Horse Bid**”) put forward by Macquarie Equipment Finance Ltd. (“**Macquarie**”) and Far North Power Corp. Those submissions oppose the Monitor’s motion on the basis that the quantum of Macquarie’s claim against the Debtors¹ does not support the valuation assigned to the Stalking Horse Bid, among other things.

2. I am an Associate Director of the Commodities and Global Markets division of Macquarie’s ultimate parent company, Macquarie Group Limited. My prior work experience is summarized in three affidavits that I swore on July 31, August 2 and August 8, 2023, in support of Macquarie’s application for a receivership order over the Debtors and their real and personal property. Those affidavits also provide an in-depth background of Macquarie’s relationship with the Debtors and its decision to seek the appointment of a receiver.

3. For convenience, I have reproduced at Appendix “A” the chronology of key events that was included in my July 31 affidavit. That chronology provides a summary of the key events that led to Macquarie’s decision to bring its receivership application.

4. I either have direct knowledge of the facts set out herein or, where indicated, I have been advised by the Debtors’ management and/or representatives, by employees of the Macquarie Group and/or by counsel, and believe such information to be true. Unless otherwise stated, all dollar amounts specified herein are in Canadian currency.

II. SALE AND LEASEBACK TRANSACTION (APRIL 2022)

5. As I described in my previous affidavits, Macquarie and the Debtors entered into a sale and leaseback transaction in April 2022 in respect of the Iroquois Falls power plant. Under this

¹ The “**Debtors**” are: Iroquois Falls Power Corp., Validus Power Corp., Bay Power Corp., Kap Power Corp., Validus Hosting Inc., Kingston Cogen Limited Partnership and Kingston Cogen GP Inc.

transaction, Macquarie purchased from Iroquois Falls Power Corp. (“**IFPC**”), the lessee, materially all of the turbines, plant and equipment (collectively, the “**Leased Property**”) related to the power plant located at Iroquois Falls, Ontario.

6. The sale and leaseback transaction was implemented by the following key transaction documents, among others: (i) a participation agreement dated April 7, 2022 (the “**Participation Agreement**”); (ii) a lease agreement dated April 7, 2022 (the “**Lease Agreement**”); (iii) a lease supplement dated April 7, 2022 (the “**Lease Supplement**”); and (iv) a package of guarantee and security documents under which each of the Debtors guaranteed IFPC’s and each of the other Debtor’s obligations under the transaction documents and provided security in respect of those obligations.

7. These agreements, together with all other agreements, documents and instruments relating to the sale and leaseback transaction, as amended, are referred to in this affidavit collectively as the “**Lease Documents**”. As discussed below, the Lease Documents were amended or amended and restated on February 24, 2023 as part of Macquarie’s and the Debtors’ forbearance arrangements.

8. Macquarie paid an aggregate purchase price for the Leased Property of \$50,850,000 (*i.e.*, \$45,000,000 plus HST) under the Participation Agreement. The Participation Agreement provided that Macquarie was to satisfy, and Macquarie did satisfy, that purchase price by paying consideration in the following agreed manner:

- (a) a cash payment of \$36,000,000;
- (b) an amount of \$9,000,000, which was to be applied as follows:
 - (i) paid to IFPC upon the delivery of evidence of receipt of a deposit from a third-party cryptocurrency mining company in respect of an agreement between certain Debtor(s) and that company; or
 - (ii) failing the occurrence of condition (i), applied as a prepayment of Base Rent under the Lease Agreement; and
- (c) a payment of \$5,850,000 on account of HST for the sale.

9. The \$9,000,000 amount referred to in paragraph (b) above was ultimately applied as a prepayment of Base Rent plus applicable HST in accordance with paragraph (b)(ii).

10. Under the Lease Agreement, IFPC leased the Leased Property from Macquarie for an initial base term of 36 months, renewable on a month-to-month renewal term. IFPC agreed under the Lease Agreement (and the Participation Agreement) to, among other things, make regular monthly rent payments to Macquarie (such payments, the “**Base Rent**”) and to pay all other amounts, liabilities and obligations that IFPC is from time to time obligated to pay under the Lease Documents.

III. THE PARTIES’ FORBEARANCE DISCUSSIONS (JANUARY/FEBRUARY 2023)

A. The Parties’ Negotiations

11. As described in my previous affidavit, Macquarie’s forbearance discussions with the Debtors started in mid-January 2023 after the Debtors were unable to resolve a prior default under the Lease Agreement. While Macquarie at that time had the right to exercise its remedies under the Lease Documents and to enforce its security, Macquarie chose instead to enter into forbearance negotiations with the Debtors.

12. From mid-January to February 18, those negotiations occurred mostly over phone calls with Mr. Shortt and other members of the Debtors’ management. On February 19, I flew from Sydney, Australia to Toronto to continue and finalize the negotiations in-person. On or around that date, two other members from my team—Ronnie Alam and Nasr Jeries—also flew to Toronto. During the period that we were in Toronto, Messrs. Alam and Jeries and I were regularly based in the Debtors’ offices. Negotiations were held regularly, generally several times a day, with various members of the Debtors’ staff, including their CEO and President, Todd Shortt, their COO, Craig Tavares, and their General Counsel, Ryan Chua.

13. I believe that those forbearance negotiations were fair and balanced between the parties. Macquarie and the Debtors are both sophisticated commercial entities that were represented by legal counsel—Ryan Chua, the Debtors’ General Counsel, was regularly engaged in those discussions.

14. Macquarie primarily approached those negotiations with the intention of finding a mutually agreeable path forward with the Debtors. However, Macquarie also sought to mitigate considerable inherent commercial uncertainty and risk. In particular, we were keen to address the risks of:

- (a) Further deterioration of financial condition. There was a real likelihood that the Debtors' financial condition could deteriorate further without changes to its business.
- (b) Risk to Leased Property and other collateral. Macquarie knew that its Leased Property and its other collateral—complex equipment that requires substantial ongoing expense, maintenance and repair by skilled technicians—was exposed to considerable risk while under the Debtors' possession and operation.

B. The Iroquois Falls Plant was Central to the Negotiations

15. As the forbearance negotiations progressed, it became clear to all parties that the monetization of the Iroquois Falls power plant would be the lynchpin of any forbearance deal. The Iroquois Falls power plant was producing revenues for the Debtors at that time. My team and I were led to believe—by Todd Shortt, the Debtors' CEO and President—that there was significant value to unlock in that plant that the Debtors could use to satisfy their obligations to Macquarie.

16. In the week of February 20 leading up to parties entering into the forbearance arrangements, Mr. Shortt told me and my team that the Debtors had commissioned a report from Kroll that placed the value of the Iroquois Falls plant at between approximately \$150 million and \$200 million. As I noted in my August 8 affidavit, I never saw that Kroll report. That same week, Mr. Short also told me and my team that he had been texting a wealthy investor based in the U.S. who was willing to purchase the Iroquois Falls power plant for US\$80 million.

17. As a result of Mr. Shortt's representations, Macquarie and the Debtors expected throughout the forbearance negotiations that the Iroquois Falls plant would generate proceeds of approximately \$100 million. This mutual understanding, and the fact that Macquarie and the Debtors held this mutual understanding and were relying on Mr. Shortt's representations at that

time, was reduced to writing in a letter from Macquarie dated May 3, 2023 that Todd Short, the CEO of the Validus Group, signed on May 4. A copy of that letter is attached as **Exhibit “A”**.

18. On the basis of this representation and the negotiation discussions, Macquarie expected to receive a buyout price of approximately \$68 million, based on the prepayment and purchase option contemplated in the Lease Agreement, including section 20. That figure was comprised of the sum of the remaining 20 Base Rent payments equal to approximately \$25.5 million (including the \$6 million May Base Rent), a \$16.2 million fixed amount, plus the amount that would be payable under section 20 of the Lease Agreement, plus HST.

C. Forbearance Terms and Consideration

19. As a result of our negotiations, Macquarie and the Debtors reached a deal for forbearance arrangements on February 24, 2023 (the “**Forbearance Arrangements**”). At that time, I viewed the deal as fair. Macquarie and the Debtors each received significant commitments as a result of those negotiations. Both thought that it was in their interest to enter into the deal.

20. Macquarie, on the one hand, provided the Debtors with significant accommodations that gave them breathing room to work towards resolving their financial and operational issues and to find a path forward that would permit them to satisfy their obligations to Macquarie, retain autonomy over their business and free up cash for critical obligations. Those accommodations included:

- (a) Rent Holiday. Macquarie provided the Debtors with a four-month “rent holiday” from Base Rent payments, which merged four months of Base Rent payments into a single \$6,000,000 Base Rent due on May 31, 2023.
- (b) Enforcement Pause. Macquarie agreed to forgo enforcing its rights and remedies that had arisen under the Lease Documents during that four-month period.
- (c) IFPC Marketing Process. Finally, Macquarie agreed to fund—and did fund—costs, fees and expenses of the M&A advisor in respect of the Debtors’ efforts to monetize the Iroquois Falls Plant (the “**IFPC Marketing Process**”). I provided a detailed description of the IFPC Marketing Process in paras 81-84 of my July 31 affidavit.

21. The Debtors, on the other hand, provided Macquarie with concessions that compensated Macquarie for these accommodations and the additional risks that Macquarie took on by forbearing, including:

- (a) Deferred Payment. The Debtors agreed to pay Macquarie an additional \$1,000,000 that was incorporated into the new, single Base Rent payment of \$6,000,000 due May 31, 2023.
- (b) Additional Collateral. The Debtors provided Macquarie with additional collateral in respect of their power plant in Kingston, Ontario, as security for their obligations under the Lease Documents.
- (c) Monetization Process. The Debtors agreed to commence the IFPC Marketing Process.
- (d) Amended Lease Documents. The Debtors executed an amended package of Lease Documents, including to amend and restate the Participation Agreement, the Lease Agreement and the Lease Supplement.
- (e) Liquidated Damages Clause. Finally, the Debtors agreed to amendments to the Lease Agreement and Lease Supplement that affected the go-forward calculation of the liquidated damages that Macquarie would be entitled to demand if the Debtors' defaults continued. This change is further described in the next section of this affidavit.

D. Liquidated Damages Clause

22. Section 13.1(f) of the Lease Agreement provides a remedy that Macquarie could exercise if IFPC committed an event of default. Under Section 13.1(f), Macquarie would specify a “default payment date” on which IFPC would be required to pay to Macquarie, as a pre-estimate of liquidated damages, an amount equal to the sum of:

- (a) any unpaid Base Rent and other amounts in arrears as of the default payment date;
- (b) the “Stipulated Loss Value” for the Leased Property, as set out in Schedule 3 to the Lease Supplement; and
- (c) interest on (a) and (b) at a rate of 18%.

Upon IFPC's payment in full of the liquidated damages, Macquarie is required to transfer ownership of the Leased Property to IFPC, or as IFPC directs, and the Lease Agreement will terminate.

23. The amendments to the Lease Supplement in the Forbearance Arrangements replaced the existing monthly Base Rents payable for February to May with a new Base Rent of \$6,000,000 due on May 31, while the "Stipulated Loss Value" portion of the liquidated damages calculation in section 13.1(f) of the Lease Agreement was left unchanged. The Stipulated Loss Value calculation is found in Schedule 3 to the Lease Supplement, which contains a schedule that sets out a "starting" Stipulated Loss Value of \$54,000,000 and decreases by \$900,000 each time IFPC makes a Base Rent payment under the Lease Agreement.

24. I understand that the Debtors have asserted that the Lease Agreement's method for calculating the liquidated damages is unfair—that by not decreasing the Stipulated Loss Value by the amount of Base Rent that was deferred by the Forbearance Agreement but unpaid, Macquarie is effectively "double counting" those unpaid Base Rent amounts by claiming them both as unpaid Base Rent and through the Stipulated Loss Value (*i.e.*, through branches (a) and (b) of the liquidated damages calculation noted above).

25. The Debtors' current assertions do not reflect the purpose of the liquidated damages calculation and the Stipulated Loss Value. The Stipulated Loss Value is not a simple sum of future Base Rent payments. Rather, the Stipulated Loss Value's purpose is to capture primarily three sources of value in a single, holistic calculation: the value of the Leased Property, the loss of stable cash flow and the uncertainty in calculating the foregoing.

26. Leased Property Value. First, as noted, Macquarie's ownership of the Leased Property is transferred to IFPC following payment of the liquidated damages amount. The Stipulated Loss Value's main function includes compensating Macquarie for the agreed value of the transferred Leased Property.

27. Section 13.1(f)'s capture of that Leased Property value is illustrated by contrasting with section 13.1(e) of the Lease Agreement. Section 13.1(e) provides a similar formula for calculating Macquarie's liquidated damages as section 13.1(f), except it applies in the scenario

where Macquarie first repossesses or sells the Leased Property. In that alternative liquidated damages calculation, an amount is subtracted from the Stipulated Loss Value to reflect the recoveries, if any, that Macquarie obtains from operating the Leased Property or selling such assets to a third party.

28. The potential transfer of the Leased Property between the parties—and a formula that captured its value—was also contemplated in section 20 of the Lease Agreement. This provision provided IFPC with a purchase option under which IFPC could purchase the Leased Property according to a commercially agreed calculation of the purchase price of the property.

29. Section 20 outlines the purchase price for that option as consisting of the sum of:

- (a) a fixed amount equal to \$16,200,000;
- (b) the greater of: (i) 13% of the fair market value a purchaser would be willing to pay where the plant were selling only in markets administered by the Independent Electricity System Operator (the “**IESO**”), and (ii) \$0; and
- (c) the greater of: (i) 5% of the fair market value a purchaser would be willing to pay where the plant were also selling to anyone other than the IESO pursuant to behind-the-meter agreements, and (ii) \$0.

30. Loss of Future Cashflows. Second, the Stipulated Loss Value was also intended to compensate Macquarie for losing its stable cash flow under the Lease Agreement. During the original negotiations of the Lease Documents, the parties discussed the fact that the Leased Property could continue in use for an extended period beyond the base term and that the return of the Leased Property at the end of the base term was highly remote.

31. If IFPC did not exercise its purchase option to acquire the Leased Property at the end of its base term, the parties expected that the lease would continue for a lengthy period of time thereafter. This expectation is also illustrated by the incentives provided to the Debtors through the reduced monthly Base Rent of \$1,000,000 during the renewal term and the substantially high cost to the Debtors of replacing the Leased Property, which could continue in use for up to ten years if properly maintained. Macquarie’s expectation was that those incentives would entice the Debtors to continue the Lease Agreement well beyond the base term.

32. Uncertainty Risk Premium. Lastly, the Stipulated Loss Value captured a risk premium to compensate for the inherent uncertainty with estimating the future value of the Leased Property and lost Base Rent payments. Other factors, such as rising interest rates and potential volatility in the power generation market further made long term projections difficult. The Stipulated Loss Value was developed to also provide a satisfactory return to Macquarie in light of this uncertainty.

33. As a final note, the inclusion of unpaid Base Rent in the liquidated damages calculation partially compensated Macquarie for the interest it lost by not demanding the liquidated damages in February and for the Debtors' continued use of the Leased Property during the forbearance period.

34. As noted, the third element of the liquidated damages calculation provides for an accrual of interest on the unpaid Base Rents and Stipulated Loss Value at an annual rate of 18%. That accrual would have commenced in February had Macquarie demanded payment of the liquidated damages under section 13.1(f) at that time, resulting in interest accruing on the Stipulated Loss Value at a rate of approximately \$600,000 per month.

35. This interest amount is roughly two-thirds of the \$900,000 amount that the Stipulated Loss Value is reduced by with each Base Rent payment. Accordingly, there would only be a total differential of approximately \$300,000 per month over the forbearance period between the scenario where Macquarie decreased the Stipulated Loss Value by an amount equal to the four deferred Base Rent payments and exercised its remedy on July 24 (when it actually did so), and the scenario where Macquarie exercised its remedy on February 24.

IV. THE DEBTORS MISS PAYMENT AND MACQUARIE COMMENCES ENFORCEMENT (JUNE/JULY 2023)

36. Following the four-month forbearance period, the Debtors failed to make the agreed \$6,000,000 Base Rent payment on May 31, 2023. Accordingly, Macquarie first issued a notice of default, together with a section 244 notice on June 2, 2023. On July 24, after the IFPC Marketing Process concluded, Macquarie sent out two further sets of demand letters to the Debtors, one demanding immediate repayment of all arrears outstanding as of that date, and the other

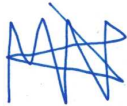
demanding immediate payment of the liquidated damages pursuant to section 13.1(f) of the Lease Agreement.

37. As of September 22, 2023, the total amount of the indebtedness owing by the Debtors to Macquarie was \$57,218,822, comprised of: (i) \$9,605,000 of unpaid base rents plus HST; (ii) \$45,765,000, being the Stipulated Loss Value plus HST; and (iii) \$1,848,822 of interest accrued on the foregoing.

38. As a final note, I am advised by Mike Noel of Torys LLP, counsel to Macquarie, that Torys sent a letter to Minden Gross on October 24, 2023 providing Minden Gross with notice that Macquarie intended to raise certain objections to the submissions that had been previewed by Minden Gross at that time. A copy of that October 24 letter is attached as **Exhibit "B"**.

SWORN REMOTELY by Joshua Hamilton Stevens at the City of Sydney, in the State of New South Wales, in the Country of Australia, before me on October 29, 2023 in accordance with O.Reg. 431/20, Administering Oath or Declaration Remotely.

}



Commissioner for Taking Affidavits
(or as may be)

MICHAEL NOEL
(LSO#: 80130F)



Joshua Hamilton Stevens

APPENDIX “A”

Chronological Summary of Key Events

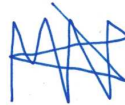
The following is a reproduction of the table that was attached my July 31, 2023 affidavit in support of Macquarie’s receivership application. The table provides a chronological summary of the key events that led to Macquarie’s decision to seek a receiver over the Debtors and their assets. Events described in rows highlighted orange constitute events of default (or allegations that would constitute event of defaults if proven true) under the applicable Lease Documents.

| Date | Event |
|------------------|---|
| April 2022 | Macquarie enters into the original sale and leaseback transaction with the Debtors. Security is given by each of the Debtors, except for Kingston LP and Kingston GP and Validus Parent’s shares and units in those entities (which was given as security in February 2023). |
| January 2023 | Hut 8 files a statement of claim against the Validus Defendants in the Hut 8 Litigation. Macquarie discovers that the Validus Defendants allegedly breached the Hut 8 PPA. |
| January 16, 2023 | IFPC fails to make a prepayment of Base Rent and HST under the Prepayment Arrangement. |
| February 2023 | Macquarie and the Debtors enter into the Forbearance Arrangements which provide for, among other things: <ul style="list-style-type: none">• a four-month rent holiday;• as further security, substantially all of Kingston GP’s and Kingston LP’s real and personal property and Validus Parent’s shares and units in those entities; and• the commencement of the IFPC Marketing Process. |

| Date | Event |
|-------------------|--|
| March 8, 2023 | CRA registers liens for unpaid taxes against certain of the real property associated with the Iroquois Falls power plant. |
| April 5, 2023 | The M&A Advisor commences the IFPC Marketing Process. |
| April – May, 2023 | Upon review of the Debtors’ books and records in the IFPC Marketing Process, Macquarie discovers that the Debtors failed to adequately maintain their books and records. |
| March – May, 2023 | <p>Upon review of the Debtors’ books and records in the IFPC Marketing Process, Macquarie discovers that certain Debtors, among other things:</p> <ul style="list-style-type: none"> • failed to remit HST to CRA (including \$5,850,000 of HST Macquarie paid to the Debtors as part of the sale and leaseback transaction); • failed to pay municipal taxes; and • possibly failed to remit source deductions to CRA. |
| April 11, 2023 | The Validus Defendants file an amended statement of defence and counterclaim against Hut 8. |
| April 16, 2023 | Macquarie delivers a further notice of default to the Debtors. |
| May 12, 2023 | CIBC delivers a letter to certain Debtors alleging that Kingston GP misappropriated, and failed to return, funds that they were not entitled to access. |
| May 25, 2023 | The Union representing IFPC’s employees delivers a grievance to IFPC and Validus Parent alleging that those Debtors failed to provide group benefit coverage and to match and/or remit RRSP contributions for those employees. |

| Date | Event |
|------------------|---|
| May – July, 2023 | The Debtors fail to make three payments of Base Rent and HST to Macquarie that came due after the four-month rent holiday expired. |
| June 9, 2023 | Macquarie delivers letters demanding payment of the Base Rent and HST in arrears and section 244 notices to each of the Debtors. |
| June – July 2023 | The Debtors fail to pay insurance premiums that are required to maintain their property and commercial general liability insurance policies. Macquarie pays, on the Debtors’ behalf, an aggregate amount of \$675,379.60 on account of those premiums to prevent the Debtors’ insurance from lapsing. |
| July 2023 | The IFPC Marketing Process unsuccessfully concludes without any viable bids in respect of IFPC. |
| July 21, 2023 | Macquarie causes IFPC to transfer a total of \$2,012,950 of cash received from the IESO from IFPC’s and Kingston LP’s bank accounts and applies those amounts to the Debtors’ outstanding indebtedness by way of a set-off in accordance with the Lease Transaction Documents. |
| July 24, 2023 | Macquarie delivers further letters demanding payment of: <ul style="list-style-type: none"> • the Base Rent and HST in arrears; and • the Accelerated Payments. |
| July 31, 2023 | Macquarie commences the within receivership proceedings. |

THIS IS **EXHIBIT “A”** REFERRED TO IN THE
AFFIDAVIT OF JOSHUA HAMILTON STEVENS,
SWORN REMOTELY BY JOSHUA HAMILTON
STEVENS BEFORE ME *BY VIDEO CONFERENCE*,
THIS 29th DAY OF OCTOBER, 2023.



Michael Noel
Commissioner for Taking Affidavits

Macquarie Equipment Finance Ltd

A member of the Macquarie Group of Companies

181 Bay Street,
Toronto, Ontario M5J 2T3
CANADA

Internet

www.macquarie.com.au

May 3, 2023

Todd Shortt
Chief Executive Officer and Chairman
Validus Power Corp.



Dear Todd,

Transaction Documents between, among others, Validus Power Corp., Iroquois Falls Power Corp. and Macquarie Equipment Finance Limited

1. **Transaction Documents.** We refer to certain agreements and documents, including the following:
 - a. the Amended and Restated Participation Agreement as of February 24, 2023, between, among others, Validus Power Corp. ("**Validus**"), Iroquois Falls Power Corp. ("**IFPC**") and Macquarie Equipment Finance Limited ("**Macquarie**") (the "**Amended and Restated Participation Agreement**");
 - b. the Amended and Restated Lease Agreement as of February 24, 2023, between IFPC and Macquarie (the "**Amended and Restated Lease Agreement**"); and
 - c. the Acknowledgment and Reservation of Rights Agreement as of February 24, 2023, between, among others, Validus and Macquarie (the "**Reservation of Rights Agreement**").Capitalised terms not otherwise defined in this letter have the same meaning given to them under the Amended and Restated Participation Agreement.
2. **Notice of Default and Reservation of Rights.** Further to the Notice of Default and Reservation of Rights delivered to you April 16, 2023, numerous serious Lease Defaults, Lease Events of Default and other defaults have occurred and are continuing (collectively the "**Existing Specified Defaults**") and Macquarie continues to reserve any and all actions, rights, remedies and powers it has under or in connection with the Transaction Documents or otherwise available to Macquarie at law, under statute or in equity in connection with such Existing Specified Defaults, including, without limitation, the following defaults:
 - i. the non-payment of HST;
 - ii. the breach of covenants relating to the Liens under the Security Documents, including non-preservation of the priority of such Liens;
 - iii. the breach of obligations to comply with Applicable Laws;
 - iv. the breach of obligations to maintain proper books and records;
 - v. the breach of obligations to provide financials, reports, information and notices;
 - vi. the failure to maintain insurances as required;
 - vii. the termination of, and breach of covenants relating to, Material Project Documents, including the Hut 8 PPA; and
 - viii. the breach of certain covenants under the Reservation of Rights Agreement.
3. **Sale Process for IFPC.** We wish to draw to your attention your agreement to undertake a process for the sale of the equity interests in IFPC as contemplated by the Reservation of Rights Agreement (the "**Sale Process**"). In connection therewith, you had given us sale value expectations in respect of IFPC of up to \$100m, which indicated that we could expect a material buyout price for the purchase of the Leased Property from Macquarie (using a buyout price along the lines of the purchase option contemplated in the Amended and Restated Lease Agreement, notably, made up of remaining rental payments, plus \$16.2m, plus 18% of Fair Market Value, plus expenses).

Based on that understanding (among other things), Macquarie agreed to enter into the Amended and Restated Lease Agreement, which provided for, among other things, the delay of four-months of rent to May 31, 2023. As of today's date, we note the following:

- a. The sale process was commenced in March 2023, invited the participation of 48 prospective buyers (list compiled in consultation with Validus), from these buyers 7 Non-Disclosure Agreements were executed, and 4 initial indicative bids were received April 24, 2023.
 - b. The highest credible indication of interest for an acquisition of the equity in IFPC on a 'debt-free, cash-free' basis is \$35m, received from Capital Power Corporation. Macquarie expects bids to be negotiated as the Sale Process progresses. However, in all cases, it is clear that the sale value for IFPC will only be a fraction of the sale value expectation you had provided.
4. **Preparations for Commencement of Enforcement.** In order to further protect Macquarie's rights and remedies, including, without limitation, in connection with the Existing Specified Defaults and the Sale Process not generating the expected funds, we wish to notify you that we have engaged our legal counsel Torys LLP with respect to a full enforcement of our rights and remedies, including, without limitation, (1) enforcing Macquarie's rights and remedies under any Security Documents, which may be done without any additional notice, presentation, demand or notice to you; (2) commencing appropriate proceedings to enforce the Security Documents against any or all of the Obligor; (3) arranging for the appointment of a receiver, trustee or sequestrator or other custodian with respect to the assets of any or all of the Obligor, and/or (4) bringing other legal proceedings against, without limitation, Validus and/or any or all of the Obligor or other persons.
5. **Potential Transaction.** Given that it appears that the Sale Process will not generate the expected funds, Macquarie wishes to provide you with the following alternative potential transaction, comprising each of the following components (a), (b) and (c):
- a. **IFPC Sale Proposal.** Validus to continue the Sale Process and proceed with the sale of IFPC on terms and at a value approved in writing by Macquarie.

The net proceeds of such a sale of IFPC approved by Macquarie to be applied in the following order:

| Waterfall | Paid to whom | Calculation | Notes |
|-------------|-----------------------------|---|--|
| First \$17m | Validus (and its creditors) | Funding liabilities plus working capital. Firstly, to CRA for CRA liabilities, then to creditors for other current liabilities, and finally, balance to Validus. | Final tax and liability numbers to be confirmed by Ernst and Young (EY). If the ultimate purchase price is below \$35m, Validus' first \$17m will be reduced accordingly. |
| Next \$20m | Macquarie | Cash to pay down Macquarie exposure. | Paying down exposure to solve for remaining value to equal buyout claim. |
| Balance | Validus | Remaining proceeds accrue to Validus | - |

- b. **Kingston Lease Agreement.** Kingston Cogen Limited Partnership (**Kingston LP**) and Kingston Cogen GP Inc. (**Kingston GP**, and together with Kingston LP, **Kingston**) will enter into a sale and lease back transaction with Macquarie in relation to the turbines and related equipment used at the Kingston Project (the **Kingston Lease**), the transaction documents (including security) for which shall be based on the Transaction Documents and must be satisfactory in form and substance to Macquarie.

The proceeds of sale of the relevant turbines and equipment under the Kingston Lease are to be used to pay the balance owing to Macquarie with respect to the Amended and Restated Lease Agreement.

The first lease payment will be September 7, 2023, when \$15m will fall due, thereafter \$2m per month will be payable. All amounts are exclusive of HST.

Kingston Lease will contain an option in favour of Validus pursuant to which Validus may purchase the leased property under the Kingston Lease on or before July 31, 2023 (**Buyout**). Buyout is calculated in a similar method to the end of lease buyout mechanism of the IFPC Transaction Documents (noted above). Outstanding rentals (at that time expected to be \$25.5m), plus a fixed amount (\$16.2m), plus 18% of Fair Market Value (here, deemed to be the sale price of all of the shares in IFPC by Validus), plus expenses incurred by Macquarie (expected to be \$2-4m), less proceeds received by Macquarie from the IFPC sale.

For example, if all of the shares in IFPC are sold for \$35m, and Macquarie incurs \$2m of expenses, the calculation would be: $\$25.5\text{m} + \$16.2\text{m} + 18\% * \$35\text{m} + \$2\text{m} - (\$35\text{m} - \$17\text{m}) = \$32\text{m}$.

The Kingston Lease will commence immediately upon completion of the sale of all of the shares in IFPC.

- c. **Kingston and Kapuskasing Sale.** Validus shall agree to commence a sale process for the sale of the equity in Kingston and the Kapuskasing Subsidiary. For this purpose, a sale process agreement is to be entered into on terms satisfactory to Macquarie in form and substance.

Under this agreement, Validus must undertake, among other things, to work constructively with Macquarie to remarket each of Kingston and the Kapuskasing Subsidiary targeting a sale completion date of September 7, 2023.

In exchange for a discharge of its security, Macquarie shall receive the first \$27m of cash proceeds from the sale of all of the equity in Kingston and Kapuskasing Subsidiary, net of reasonable fees and expenses related to the sale transactions, with any further cash proceeds attributable to that equity being split 50% to Validus and 50% to Macquarie.

Preparation for the sales processes concerning all of the shares and units in each of Kingston and Kapuskasing is intended to begin immediately upon signing of this letter, with a target date to commence bidder outreach of June 15, 2023 (aligning with both the expected end date of IFPC Sales Process and the expected commencement of Kingston Lease).

6. We note that based on our understanding, the Potential Transaction should generate sufficient funds to allow Validus to repay all amounts identified as owing to the CRA. Discharging such CRA liabilities may assist with mitigating personal liability that could accrue to the officers and directors of the Obligors, including Mr. Shortt. Validus, the other Obligors and their officers and directors, should seek their own independent, professional advice with respect to this matter.
7. The Potential Transaction as outlined herein is provided by Macquarie for discussion purposes, is subject to the Important Note set out below, is not binding upon Macquarie, and remains subject to, among other things, the due execution of definitive transaction documents and the completion of diligence satisfactory to Macquarie.
8. We further note the Potential Transaction is also subject to the closing of the IFPC sale and the consideration for such sale being not less than \$35m. We reiterate the importance of EY receiving all required financial information related to IFPC for the progress of the Sale Process.
9. Should Validus wish to pursue the Potential Transaction, Validus must:
 - a. **(Kingston and the Kapuskasing Subsidiary)** by May 30, 2023, provide to Macquarie all information and materials relating to every transaction involving Kingston and the Kapuskasing Subsidiary on and from their acquisition by Validus, including, without limitation, access to their bank accounts, access to their CRA accounts, and copies of all their financial and other books and records; **(CFO)** upon Macquarie request, arrange for its CFO to respond any and all questions and inquiries relating to the information and materials involving Kingston and the Kapuskasing Subsidiary; and
 - b. **(Bank Account Control Agreement)** upon Macquarie request do all things, including provide and/or sign such documents and agreements, as Macquarie requires to provide Macquarie sole control of the bank accounts of the Obligors and to direct all revenues and counterpart payments to such accounts.
10. If you wish to accept the Proposal, please indicate as such by signing and returning this letter as indicated below and attend to the matters in paragraph 9 above.

This matter requires your immediate attention.

If you have questions, please contact Nasr Jeries or Joshua Stevens.

Yours faithfully,
Macquarie Equipment Finance Ltd

Validus Power Corp. acknowledges and agrees the terms of the letter to Todd Shortt, Chief Executive Officer and Chairman, Validus Power Corp. dated May 1, 2023, and confirms Validus Power Corp. wishes to proceed with the Proposed Transaction.

Signed



Todd Shortt

Chief Executive Officer and Chairman
Validus Power Corp.

Date: May 4, 2023

Important Note:

This letter does not constitute an agreement, commitment, assurance or intention of Macquarie with respect to any of the Transaction Documents, or an offer capable of acceptance, and nor does it constitute any binding commitment or obligation on Macquarie or any of its affiliates, employees or representatives whatsoever, including, without limitation, any commitment to enter into any agreement or transaction, or to provide financial accommodation of any kind. Macquarie reserves the right to vary any of the terms of the Proposed Transaction as set out in this letter. Any transaction or agreement, including any provision of financial accommodation, is subject to, among other things, Macquarie receiving all credit and other approvals, Macquarie confirming the structure and transaction details, due diligence being completed to Macquarie's satisfaction, Macquarie receiving satisfactory legal, tax and other opinions and the execution of mutually acceptable transaction documentation. Macquarie will not be otherwise bound unless and until final terms are agreed, formal transaction documentation is executed and all conditions precedent set out therein are satisfied, in form and substance satisfactory to Macquarie. Nothing in this letter should be construed as legal, financial, accounting, tax or other advice, and you should seek your own independent professional advice.

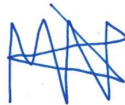
This letter is given in addition to and without prejudice to any prior notice given in connection with the Transaction Documents or any part thereof. Macquarie (i) expressly retains and reserves the right to invoke any and all rights and remedies available to it at any time and without further notice, except for notice, if any required by the Transaction Documents or applicable law and (ii) does not, and does not intend to waive the Specified Events of Default or any other Lease Default, Lease Event of Default or other default, or agree to forbear from any rights or remedies with respect thereto.

No failure or delay by Macquarie with respect to the exercise of any right, power, privilege or remedy under the Transaction Documents or applicable law shall (i) operate as a waiver thereof, and the single or partial exercise of any such right, power, privilege or remedy shall not preclude any later exercise of any other right, power, privilege or remedy, or (ii) be sufficient, by itself or together with any other action or inaction by Macquarie, to establish a course of dealing or course of conduct by Macquarie upon which you shall be entitled to rely. Neither this letter, nor any action or inaction by Macquarie or the passage of time, shall imply a waiver or forbearance of, or an amendment to, the Transaction Documents. Macquarie hereby reserves expressly all of its rights, remedies, and powers under the Transaction Documents, at law, in equity, or otherwise. Further, events additional to the Specified Event[s] of Default may have occurred, or may occur in the future, that would constitute Lease Defaults, Lease Events of Default or other defaults, and Macquarie hereby reserves the right to declare any such events as such at any time. Any failure to specify such events in this letter or otherwise give notice of such events shall in no way constitute a waiver of any Lease Defaults, Lease Events of Default or other defaults.

No communication, written or oral, which you have had or may have with Macquarie (or any other person on its behalf) concerning the Transaction Documents or any obligations thereunder (including this letter), or waiver of deficiency in any way modifies or constitutes consent to any non-performance or Lease Default, Lease Event of Default or other default of any Transaction Document, or a waiver by Macquarie of any of the remedies described in any notice or in the Transaction Documents or under law or in equity. There are currently no modification, renewal, extension or settlement agreements between you and Macquarie with regard to the terms of the Transaction Documents and all proposals made by you to Macquarie for any of the foregoing are hereby rejected. Any agreement, commitment, assurance or intention of Macquarie with respect to any of the Transaction Documents shall be effective only if in writing and duly executed on behalf of Macquarie.

Nothing contained in this letter is intended to (i) limit Macquarie's rights, remedies or recourses, including rights to demand any and all other sums that are or may hereafter become due and payable under the Transaction Documents or otherwise, including, without limitation, default interest, costs of collection, costs of enforcement and attorneys' fees, (ii) waive any default, Lease Default or Lease Event of Default, (iii) waive any rights, remedies, or recourses available to Macquarie, (iv) constitute an election of remedies resulting from any default, with respect to any Transaction Document, or (v) vary any of the terms of the Transaction Documents.

THIS IS **EXHIBIT “B”** REFERRED TO IN THE
AFFIDAVIT OF JOSHUA HAMILTON STEVENS,
SWORN REMOTELY BY JOSHUA HAMILTON
STEVENS BEFORE ME *BY VIDEO CONFERENCE*,
THIS 29th DAY OF OCTOBER, 2023.



Michael Noel
Commissioner for Taking Affidavits

October 24, 2023

VIA EMAIL

Minden Gross LLP
145 King Street West
Suite 2100
Toronto, ON M5H 4G2

Attention: Catherine Francis (cfrancis@mindengross.com)

Dear Sirs/Mesdames:

**Re: Monitor's motion for approval of sale and investment solicitation process ("SISP") and stalking horse bid (the "Stalking Horse Bid"), returnable November 1, 2023
In the Matter of Validus Power Corp., et al. - Court File No. CV-23-00705215-00CL**

As you are aware, we represent Macquarie Equipment Finance Ltd. ("**Macquarie**") in these proceedings.

We understand that your office intends to raise objections, ostensibly on behalf of the Validus Entities, to the Monitor's motion by challenging the quantum of Macquarie's secured claim and the treatment of certain HST assets/liabilities in the Stalking Horse Bid.

During the scheduling conference before Justice Osborne held on October 23, 2023, His Honour expressly asked the parties, including Macquarie, to ensure that all parties had fair notice of arguments. Accordingly, we write to inform you that Macquarie currently intends to include in its reply to the Debtors' objections that they lack standing to bring these arguments.

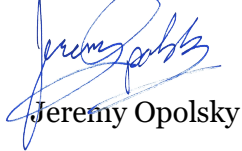
We cannot formulate these objections until we fully understand the interests that your clients purport to take in the SISP. We understand no basis for companies subject to receivership and CCAA proceedings to have standing to object to a SISP, or to a sale transaction, for the sale of their assets or business. By operation of Justice Osborne's August 10 receivership order, KSV Restructuring Inc. was appointed as receiver and manager over the Validus Entities and, in that capacity, has taken possession and control over the Validus Entities and their property for the benefit of their creditors. The Validus Entities have no interest in these proceedings. They lack the capacity and the standing to bring these arguments.

Further, the Ontario Court of Appeal has made it clear that potential bidders have no standing

to object to the approval of a SISP or the approval of the successful bid in a SISP.¹ The law is likewise clear that equity claimants generally lack an economic interest in CCAA proceedings and therefore lack standing to object to any restructuring.² To the extent that the Validus Entities' objections are ultimately the arguments of the Validus Entities' former management as potential bidders in the SISP or in their capacity as shareholders of the Validus Entities, they also lack standing to raise those arguments.

We reserve our rights to expand upon these arguments once we are in receipt of your record and factum. Nonetheless, we write not to avoid any concerns that there was insufficient notice of our position.

Yours truly,



Jeremy Opolsky

JO

cc: Scott Bomhof & Mike Noel, Torys LLP, counsel to Macquarie Equipment Finance Ltd.
Jennifer Stam, Norton Rose Fulbright Canada LLP, counsel to the Monitor
Bobby Kofman & David Sieradzki, KSV Restructuring Inc., the Monitor
Jesse Mighton, Bennett Jones LLP, counsel to Hut 8 Mining Corp.

¹ *Skyepharma PLC v Hyal Pharmaceutical Corporation*, 47 O.R. (3d) 234, 2000 CanLII 5650 (Ont. C.A.).

² *Canadian Airlines Corp., Re*, 2000 ABQB 442, para 143.

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS Court File No. CV-23-00705215-00CL
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.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at TORONTO

**AFFIDAVIT OF JOSHUA HAMILTON STEVENS
(Sworn October 29, 2023)**

Torys LLP

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Lawyers for Macquarie Equipment Finance Limited



TAB2

Court File No.

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

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

**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**

**AFFIDAVIT OF JOSHUA HAMILTON STEVENS
(SWORN JULY 31, 2023)**

TABLE OF CONTENTS

| | Page |
|---|------|
| I. OVERVIEW | 1 |
| II. BACKGROUND AND BUSINESS OVERVIEW | 4 |
| Corporate Structure | 5 |
| III. INDEBTEDNESS OWING TO THE APPLICANTS AND RELATED SECURITY | 8 |
| A. Overview – Lease Transaction..... | 8 |
| B. Guarantees..... | 10 |
| C. Security Granted to the Applicant..... | 11 |
| D. Registration of Applicant’s Security Interests | 14 |
| E. Other Secured Creditors..... | 15 |
| IV. MISMANAGEMENT, FINANCIAL PROBLEMS AND DEFAULTS OF THE VALIDUS GROUP | 16 |
| A. Serious Problems and Mismanagement | 16 |
| B. Defaults Under the Lease Transaction Documents..... | 20 |
| (i) <i>Monetary Defaults</i> | 20 |
| (ii) <i>CRA Liens</i> | 20 |
| (iii) <i>Failure to Pay Municipal Taxes</i> | 21 |
| (iv) <i>Failure to Maintain Insurance Coverage</i> | 21 |
| (v) <i>Hut 8 Litigation</i> | 22 |
| (vi) <i>Breach of Covenants</i> | 23 |
| V. MACQUARIE’S SIGNIFICANT EFFORTS TO ACCOMMODATE THE DEBTORS | 24 |
| A. Unsuccessful Sale Process | 24 |
| B. Funding of Certain Amounts Required for the Debtors’ Operations..... | 25 |
| C. Demand Letters and Section 244 Notices | 26 |
| D. Cash Set-Off..... | 28 |
| VI. REQUEST FOR APPOINTMENT OF KSV AS RECEIVER..... | 28 |
| A. Need for the Proposed Receivership..... | 28 |
| B. Purpose of Proposed Receivership..... | 29 |
| C. Appointment of KSV as Receiver..... | 31 |
| VII. CONCLUSION..... | 31 |

I, Joshua Hamilton Stevens, of the City of Sydney, in the State of New South Wales, in the Country of Australia, MAKE OATH AND SAY:

I. OVERVIEW

1. I swear this affidavit in support of an application by Macquarie Equipment Finance Ltd. (“**Macquarie**”, or the “**Applicant**”), to appoint KSV Restructuring Inc. (“**KSV**”) as receiver and manager (in such capacity, the “**Receiver**”), without security, to take steps to preserve the value of the Debtors’ (defined below) business and assets (collectively, the “**Property**”) pursuant to section 243(1) of the *Bankruptcy and Insolvency Act* (the “**BIA**”) and section 101 of the *Courts of Justice Act* (Ontario).

2. I am an Associate Director of the Commodities and Global Markets division of Macquarie’s ultimate parent company, Macquarie Group Limited. I have held this role for the past three years and have over twelve years of experience in the finance sector working for the Macquarie group.

3. Macquarie is a member of the Macquarie Group of companies—a group of asset management and financial services companies with expertise in, among other things, the infrastructure, energy, technology and commodities sectors. The Macquarie Group’s parent, Macquarie Group Limited, is a company incorporated in Australia and publicly listed as ASX: MQG.

4. As described below, KSV has consented to act as receiver.

5. I either have direct knowledge of the facts set out herein or, where indicated, I have been advised by the Debtors’ management and/or representatives and believe such information to be true. Unless otherwise stated, all dollar amounts specified herein are in Canadian currency.

6. The respondents to this application are 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 LP**”), and collectively with each of the foregoing debtors, the “**Validus Group**” or the “**Debtors**” and each a

“Debtor”). Validus Parent is the ultimate parent company of each of the other Debtors, each of which are wholly-owned subsidiaries, directly or indirectly, of Validus Parent.

7. The Validus Group, through its operating entities, owns and operates electricity generation facilities that provide electricity generation capacity to Ontario’s electricity grid, controlled by Ontario’s Independent Energy System Operator (IESO). The Validus Group is a capacity market participant with obligations to provide generation capacity during specific periods from each of its generation facilities in return for availability payments, as determined through capacity auctions held by the IESO from time to time. The IESO is currently the only person to whom the Validus Group sells power or generation capacity. The Validus Group’s operations consist primarily of maintaining and operating four electricity generation facilities in Ontario, located in the regions of North Bay, Kapuskasing, Iroquois Falls and Kingston. The Validus Group also owns a non-operational data centre on the same premises as its generation facilities in North Bay, Ontario.

8. In April 2022, Macquarie entered into a sale and leaseback transaction, whereby IFPC sold to Macquarie materially all of the turbines, plant and equipment in respect of the power plant located near the town of Iroquois Falls, Ontario, and Macquarie leased those assets back to IFPC under the terms of the Lease Transaction Documents (defined below). IFPC is the lessee under the Lease Transaction Documents, and its obligations include obligations for the payment of rent, interest, fees and other amounts, and each of the other Debtors guaranteed those obligations. As security for those obligations: (i) the Debtors, other than Validus Parent and Validus Hosting, granted the Applicant a first-ranking security interest over their assets; and (ii) Validus Parent and Validus Hosting granted the Applicant a first-ranking security interest in specific assets (collectively, the “**Secured Assets**”). These arrangements are further described in Section III.

9. As of July 31, 2023, the total amount of the indebtedness owing by the Debtors to the Applicant under the Lease Transaction Documents (defined below) was \$55,598,575 (\$49,228,575 excluding HST), which amount consists of: (i) the Accelerated Payment (defined below)—*i.e.*, an accelerated payment under the Lease Transaction Documents in the amount of \$55,370,000 (\$9,605,000 of which represents outstanding Base Rent plus HST in arrears); plus

(ii) overdue interest in the aggregate amount of \$228,575 (which amounts the Debtors are required to repay under the Lease Transaction Documents). The Debtors' obligations in respect of the payment of rent was first in default in February 2023 and continues to the date hereof.

10. Since the parties entered into the sale and leaseback and related documentation, numerous problems have arisen with the Debtors that have caused the Applicant to completely lose faith in the Debtors' management and force it to take necessary steps to preserve the value of its collateral. In addition to the monetary defaults noted above, the Debtors have also committed a number of serious defaults under the Lease Transaction Documents, including, without limitation: (i) incurring a lien in respect of GST/HST amounts owing to Canada Revenue Agency as a result of their failure to remit HST amounts and to file taxes; (ii) failing to pay municipal taxes; (iii) failing to pay insurance premiums required to maintain insurance coverage over the Property (which amounts were ultimately paid by the Applicant to avoid the potentially destabilizing consequences that would have resulted from the loss of said coverage); (iv) breaching the Hut 8 PPA (defined below); (v) breaching their covenants, including by failing to maintain proper books, accounts and records and failing to provide the Applicant with regular financial and operational reports. As described in paragraphs 60 and 61, the Applicant provided notice to the Debtors of these defaults, many of which the Debtors have admitted to.

11. In addition, the Applicant has become aware of concerning developments with the Debtors, including: (i) allegations that Kingston GP swept, and subsequently did not return, monies from an internal Canadian Imperial Bank of Commerce bank account that Kingston GP was erroneously granted access to; (ii) allegations that certain Debtors failed to provide group benefit coverage and to match and/or remit RRSP contributions for their unionized employees, as is required under a collective bargaining agreement with those employees; and (iii) that the Debtors failed to satisfy tax claims on multiple fronts (including a potential failure to remit employee source deductions, which the Applicant is unable to definitively verify).

12. Despite the Applicant's significant efforts to accommodate the Debtors—including the implementation of an ultimately unsuccessful out-of-court marketing and sale process for IFPC that was undertaken for several months—the parties have been unable to work out a viable

solution to these issues. As a result, the Applicant is seeking to appoint a receiver over the Property.

13. For ease of reference, a chronological summary of the key events that led to the Applicant's decision to seek the appointment of a receiver in respect of the Debtors is attached as **Appendix "A"** to this affidavit.

14. One of the Applicant's key objectives in these receivership proceedings is the implementation of a sale and investment solicitation process (a "**SISP**") in respect of the Secured Assets and assets as soon as reasonably practicable. As discussed in Section VI, the Applicant is in the process of finalizing a stalking horse bid for substantially all of the Secured Assets in connection with that SISP. It is a condition of the anticipated bid that the proposed transaction be completed in the context of a *Companies' Creditors Arrangement Act* (Canada) ("**CCAA**") proceeding. As such, the Applicant understands that the Receiver, if appointed, would shortly file an application for an initial order in respect of the Debtors pursuant to the CCAA. In such event, the motion to seek approval of the SISP and stalking horse bid would occur in the context of that CCAA proceeding. For clarity, the Applicant is not seeking this Court's approval of a SISP or a stalking horse bid at this time, nor does it seek any relief under the CCAA.

II. BACKGROUND AND BUSINESS OVERVIEW

15. The Validus Group is a power plant operator that bills itself as a global leader in advanced power solutions and lifecycle management. While its recent focus has been on establishing generation capacity for the bitcoin and cryptocurrency mining industry, it currently only provides electricity generation capacity and energy to the IESO pursuant to the IESO's "capacity auction" process. Through that capacity auction process, the IESO competitively procures the electricity generation capacity it needs to ensure a consistent and reliable balance on a short-term basis between the load of electricity drawn by consumers and storage facilities on Ontario's power grid (*i.e.*, demand) and the supply of electricity from generators, imports and storage facilities (*i.e.*, supply). That is, if demand for electricity exceeds supply, capacity market participants with obligations to provide capacity at the relevant times may be dispatched by the IESO to supply the additional energy needed to match that excess demand on the IESO-controlled grid.

16. According to the IESO's website, the Iroquois Falls and Kingston power plants are together expected to contribute approximately 14.3% of the total electricity generation capacity in that capacity auction market for all of Ontario for this summer period and approximately 19.5% for the upcoming winter period.

17. I understand from my discussions with the Validus Group's management and the materials they have shared with the Applicant that most or all of the Validus Group's employees are employees of Validus Parent, which then contracts those employees out to the other Debtors on a site-by-site basis. Including corporate management, the Debtors employ approximately 41 individuals, most of whom perform operational and technical services at the four power plants—engineers, technicians, plant managers and similar roles.

18. I further understand from discussions with management that, pursuant to a collective agreement with IFPC (the "**Collective Agreement**"), eight out of the twelve Validus Group employees who work at the Iroquois Falls power plant are unionized under the International Union of Operating Engineers Local 865.

Corporate Structure

19. I understand from my discussions with management that Todd Short, the Validus Group's CEO, owns a controlling majority stake in the shares of Validus Parent. Validus Parent, in turn, is the ultimate parent company of each of the other Debtors. More particularly, based on information I have been provided by management, I understand that Validus Parent owns all of the issued and outstanding shares of IFPC, Bay Power, Kap Power, Validus Hosting, and Kingston GP, along with 9,999 of the limited partnership units in Kingston LP. Kingston GP owns 1 general partnership unit in Kingston LP. Attached as **Exhibit "A"** is an organization chart of the Validus Group that the company provided to my team.

20. Based on my discussions with management, I understand that Validus Parent is primarily a holding company whose assets consist mostly or entirely of the shares or units it owns in the other members of the Validus Group, and that it is the operating subsidiaries of Validus Parent that own the assets associated with, and operate, the Validus Group's power plants (except, as noted, materially all of the turbines, plant and equipment in respect of the Iroquois Falls plant, which are owned by the Applicant). Those operating subsidiaries, and their respective assets and

operations, are described in the remainder of this section, which information is based on discussions I have had with, or materials I have received from, the Validus Group's management.

(i) Iroquois Falls Power Corp.

21. IFPC operates the Iroquois Falls plant, which consists of two natural gas fired turbine generators, one steam turbine generator and one heat recovery steam generator. The plant has a "nameplate" capacity of approximately 120 megawatts. According to the IESO's website, the Iroquois Falls plant is expected to contribute approximately 10% of the total electricity generation capacity in the capacity auction market for all of Ontario for the upcoming winter period and approximately 7.2% for this summer period. Pursuant to the Lease Agreement (as defined and described below), IFPC leases from the Applicant the turbines, plant and equipment associated with the Iroquois Falls plant.

22. Twelve of the Validus Group's employees work at the Iroquois Falls plant site as engineers, mechanics, operations coordinators, and similar technical roles. As noted, most of the employees who work at the Iroquois Falls plant are subject to the Collective Agreement with IFPC.

(ii) Kingston Cogen Limited Partnership and Kingston Cogen GP Inc.

23. Kingston GP is the general partner of Kingston LP. These entities together own and operate the power plant located in Kingston, Ontario—Kingston GP is the legal owner of that real property and holds it as bare trustee for the benefit of Kingston LP.

24. The Kingston plant consists of a gas turbine, steam turbine and two "once-through" steam generators, which produce a total generation capacity of 110 megawatts. According to the IESO's website, the Kingston plant is expected to contribute approximately 9.5% of the total electricity generation capacity in the capacity auction market for all of Ontario for the upcoming winter period and approximately 7.1% for this summer period.

25. Approximately twelve of the Validus Group's employees work at the Kingston plant in technical and operational roles—engineers, operators, plant managers, millwrights, etc. I am not

aware of any collective agreements that are currently in place in respect of any employees employed in connection with the Kingston plant.

(iii) Bay Power Corp.

26. Bay Power owns the North Bay plant, along with a data centre at the North Bay facilities that is not currently operational (although I understand that it could be rendered operational with sufficient capital investment after the Debtors' insolvency proceedings have concluded). The Bay Power plant consists of a gas turbine, steam turbine, generator and a "once-through" steam generator. According to materials provided by the Debtors' management, the plant has a nameplate capacity of approximately 40 megawatts; however, as noted, the plant is not currently operational.

27. Approximately nine of the Validus Group's employees work at the North Bay plant site in technical operations roles. I understand that there used to be a collective agreement in place in respect of these employees, but that such agreement has expired.

(iv) Kap Power Corp.

28. Kap Power owns and operates the power plant located in Kapuskasing, Ontario. That plant consists of a gas turbine, steam turbine, generator and two "once-through" steam generators. According to materials provided by the Debtors' management, the plant has a nameplate capacity of approximately 40 megawatts; however, Kap Power was unable to satisfy the IESO's requirements to participate in the capacity auction market for the 2023 summer period and does not currently provide power in that market.

29. Approximately four of the Validus Group's employees work at the Kapuskasing plant as technicians, engineers and plant managers. I understand that there used to be a collective agreement in place in respect of these employees, but that such agreement has also expired.

(v) Validus Hosting Inc.

30. Validus Hosting is the newest member of the Validus Group. It was incorporated in or around April 2022 for the purpose of negotiating and executing agreements with cryptocurrency miners, which agreements would, in turn, be subcontracted or assigned by Validus Hosting to the

Validus Group's operating entities discussed above. However, I am not aware of any material agreements having been executed since Validus Hosting was incorporated.

III. INDEBTEDNESS OWING TO THE APPLICANTS AND RELATED SECURITY

A. Overview – Lease Transaction

31. As mentioned, in April 2022, the Applicant entered into a sale and leaseback transaction in respect of the Iroquois Falls power plant. The key terms of the sale and leaseback transaction are the following:

- (a) Purchase and Sale: Pursuant to a participation agreement dated April 7, 2022, as amended and restated on February 24, 2023 (the "**Participation Agreement**"), between the Applicant, as purchaser and lessor, IFPC, as vendor and lessee, and each of the other Debtors, as guarantors, the Applicant purchased, among other things, turbines, plant and equipment located on and related to the Iroquois Falls power plant as described in the Lease Supplement No. 1 (defined below) (collectively, the "**Leased Property**") from IFPC for an aggregate purchase price of \$45,000,000 plus HST. The Applicant satisfied that purchase price by:
 - (i) a cash payment of \$36,000,000;
 - (ii) the payment of an amount of \$9,000,000, which payment was to be either: (A) paid to IFPC upon the delivery of a deposit from a third-party cryptocurrency mining company in respect of an agreement between Validus Hosting and that company; or, failing the occurrence of condition (A), (B) applied as a prepayment of Base Rent (defined below)—the amount was ultimately applied as a prepayment of Base Rent in accordance with (B); and
 - (iii) a payment of \$5,850,000 on account of HST for the sale, which IFPC was required to remit to CRA.
- (b) Leaseback: Pursuant to a lease agreement dated April 7, 2022, as amended and restated on February 24, 2023 (the "**Lease Agreement**"), between the Applicant, as lessor, and IFPC, as lessee, IFPC leased the Leased Property from the

Applicant for an initial base term of 36 months, renewable on a month-to-month renewal term. IFPC agreed under the Lease Agreement (and the Participation Agreement) to, among other things: (i) make regular monthly rent payments to the Applicant (such payments, the “**Base Rent**”), subject to the rent holiday described in paragraph 33; (ii) to pay all other amounts, liabilities and obligations that IFPC is from time to time obligated to pay under the Lease Transaction Documents (defined below) (the “**Supplemental Rent**”); and/or (iii) in the event that the Applicant exercises its right to accelerate payments, to pay liquidated damages in an amount set out in the Lease Agreement (the “**Accelerated Payments**”). As discussed below, the Applicant exercised its right to accelerate the Accelerated Payments on July 24, 2023.

- (c) Guarantees: As described in further detail below, each of the other Debtors (collectively, the “**Guarantors**”) provided guarantees to the Applicant of all of the obligations of each of the Debtors under the Lease Transaction Documents, including in respect of IFPC’s payment of all Base Rent, Supplemental Rent and Accelerated Payments.
- (d) Security: Also as described in further detail below, IFPC and each of the Guarantors provided the Applicant with security in substantially all of their real and personal property, assets and undertaking (except for Validus Parent and Validus Hosting, which provided security over specific property).

32. The Participation Agreement and the Lease Agreement, collectively with each of the Security Documents (as defined and described in paragraph 39 below) and all other agreements, documents and instruments relating to the foregoing, are referred to herein as the “**Lease Transaction Documents**”.

33. In February 2023, following the Debtors’ defaults under the Lease Transaction Documents (as described in further detail in Section IV), the Applicant agreed, among other things, to give the Debtors an accommodation by agreeing to an approximately four-month “rent holiday” under the Lease Agreement (the “**Forbearance Arrangements**”). As part, and in consideration, of the Forbearance Arrangements, the Debtors agreed to provide the Applicant with new security over Validus Parent’s limited partnership units and shares in Kingston LP and

Kingston GP, respectively, along with substantially all of the assets of those two entities. The Applicant and the Debtors also affirmed, amended or amended and restated, as applicable, the original Lease Transaction Documents, and entered into the following two new agreements:

- (a) an acknowledgement and reservation of rights agreement dated February 24, 2023 (the “**Reservation of Rights Agreement**”), whereby the Debtors admitted to many of their defaults (as described in paragraph 61) and the Applicant reserved its rights in respect of same, and the parties agreed to take steps to market and sell IFPC on or by May 31, 2023 (as described in Section V); and
- (b) an acknowledgement, confirmation and amendment agreement dated February 24, 2023 (the “**Acknowledgement Agreement**”) made by each Guarantor, whereby certain of the original Lease Transaction Documents were amended.

34. Copies of the Participation Agreement, the Lease Agreement, the Reservation of Rights Agreement and the Acknowledgement Agreement are attached as **Exhibits “B” to “E”**, respectively. Also attached as **Exhibit “F”** is the lease supplement no. 1 entered into between IFPC and the Applicant in connection with the Lease Agreement on February 24, 2023 (which replaced a previous lease supplement dated April 7, 2022) (the “**Lease Supplement No. 1**”).

35. As of July 31, 2023, the Debtors are indebted to the Applicant under the Lease Transaction Documents for a total amount of \$55,598,575, which amount consists of: (i) the Accelerated Payment of \$55,370,000 (\$9,605,000 of which represents outstanding Base Rent plus HST in arrears); plus (ii) overdue interest in the aggregate amount of \$228,575.

36. The remainder of this section details the guarantees provided by the Guarantors, the Applicant’s security in the Debtors’ property and the Applicant’s registration of that security.

B. Guarantees

37. As noted, all obligations of IFPC under the Lease Transaction Documents are guaranteed by the Guarantors (*i.e.*, each of the other Debtors). Those guarantees provide for, among other things:

- (a) pursuant to an amended and restated guarantee dated February 24, 2023 (the “**Unlimited Guarantee**”), made by Validus Parent, Bay Power, Kap Power, Kingston LP and Kingston GP (the “**Unlimited Guarantors**”) in favour of the Applicant, each of the Unlimited Guarantors absolutely, unconditionally and irrevocably guaranteed to the Applicant the full and punctual payment and/or performance when due of all amounts due from, and liabilities and obligations owed by, IFPC and each other Guarantor under the Lease Transaction Documents (including, without limitation, all Base Rent, Supplemental Rent and Accelerated Payments) (all such amounts, liabilities and obligations, collectively, the “**Obligations**”); and
- (b) pursuant to an amended and restated limited recourse guarantee dated February 24, 2023 (the “**Limited Recourse Guarantee**”, and together with the Unlimited Guarantee, the “**Guarantees**”), made by Validus Hosting (the “**Limited Guarantor**”) in favour of the Applicant, the Limited Guarantor absolutely, unconditionally and irrevocably guaranteed to the Applicant the full and punctual payment and/or performance when due of all Obligations; however, the Limited Recourse Guarantee limited the Applicant’s recourse against the Limited Guarantor to only the realization upon certain material contracts and documents held, and assigned by way of security, by the Limited Guarantor in respect of the Debtors’ business and operations (the “**Assigned Documents**”).

38. Copies of the Unlimited Guarantee and the Limited Recourse Guarantee are attached to this affidavit as **Exhibits “G” and “H”**.

C. Security Granted to the Applicant

39. As general and continuing security for the Obligations, the Debtors granted various first-priority security to the Applicant. The security granted to the Applicant includes, among other things:

- (a) a demand debenture dated April 7, 2022 (the “**IFPC Debenture**”), made by IFPC in favour of the Applicant, granting the Applicant a security interest in all of the

real property held by IFPC relating to the Iroquois Falls power plant and legally described by the following property identification numbers (PINs):

- (i) PIN 65337-0369 (LT);
 - (ii) PIN 65337-0456 (LT);
 - (iii) PIN 65337-0458 (LT);
 - (iv) PIN 65337-0372 (LT); and
 - (v) PIN 65337-0373 (LT);
- (b) a demand debenture dated April 7, 2022 (the “**Bay Power Debenture**”), made by Bay Power in favour of the Applicant, granting the Applicant a security interest in all of the real property held by Bay Power relating to the North Bay power plant and data centre and legally described by the following PIN:
- (i) PIN 49127-0021 (LT);
- (c) a demand debenture dated April 7, 2022 (the “**Kap Power Debenture**”), made by Kap Power in favour of the Applicant, granting the Applicant a security interest in all of the real property held by Kap Power relating to the Kapuskasing power plant and legally described by the following PINs:
- (i) PIN 65095-0051 (LT); and
 - (ii) PIN 65095-0052 (LT);
- (d) a demand debenture dated February 24, 2023 (the “**Kingston GP Debenture**”), made by Kingston GP in favour of the Applicant, granting the Applicant a security interest in all of the real property held by Kingston GP relating to the Kingston power plant and legally described by the following PINs:
- (i) PIN 45132-0375 (LT);
 - (ii) PIN 45132-0377 (LT) (leasehold lands);
 - (iii) PIN 45132-0362 (LT) (sublease interest);
 - (iv) Part of PIN 45132-0379 (easement interest); and
 - (v) Part of PIN 45132-0373 (easement interest);

- (e) a demand debenture dated February 24, 2023 (the “**Kingston LP Debenture**”), made by Kingston LP, by its general partner, Kingston GP, in favour of the Applicant, granting the Applicant a security interest in all of Kingston LP’s beneficial interest in and to the real property held by Kingston GP relating to the Kingston power plant and legally described by the following PINs:
 - (i) PIN 45132-0375 (LT);
 - (ii) PIN 45132-0377 (LT) (leasehold lands);
 - (iii) PIN 45132-0362 (LT) (sublease interest);
 - (iv) Part of PIN 45132-0379 (easement interest); and
 - (v) Part of PIN 45132-0373 (easement interest);
- (f) a general security agreement dated April 7, 2022 (the “**IFPC GSA**”), made by IFPC in favour of the Applicant, granting the Applicant a security interest in substantially all of the property, assets and undertaking of IFPC;
- (g) a general security agreement dated April 7, 2022 (the “**Bay Power GSA**”), made by Bay Power in favour of the Applicant, granting the Applicant a security interest in substantially all of the property, assets and undertaking of Bay Power;
- (h) a general security agreement dated April 7, 2022 (the “**Kap Power GSA**”), made by Kap Power in favour of the Applicant, granting the Applicant a security interest in substantially all of the property, assets and undertaking of Kap Power;
- (i) a general security agreement dated February 24, 2023 (the “**Kingston GSA**”), made by Kingston GP, on its own behalf and on behalf of Kingston LP, as its general partner, in favour of the Applicant, granting the Applicant a security interest in substantially all of the property, assets and undertaking of Kingston GP and Kingston LP;
- (j) a securities pledge agreement dated April 7, 2022, as amended by the Acknowledgement Agreement (the “**Securities Pledge Agreement**”), made by Validus Parent in favour of the Applicant, granting the Applicant a security interest in all of the issued and outstanding shares and limited partner units, as

applicable, held by Validus Parent in IFPC, Bay Power, Kap Power, Validus Hosting, Kingston LP and Kingston GP; and

- (k) an assignment of material project documents dated April 7, 2022, as amended by the Acknowledgement Agreement (the “**Assignment Agreement**”), made by Validus Hosting in favour of the Applicant, assigning the Assigned Documents to the Applicant by way of a specific assignment,

((a) through (k), collectively, and together with the Acknowledgement Agreement, the “**Security Documents**”).

40. Copies of the IFPC Debenture, Bay Power Debenture, Kap Power Debenture, Kingston GP Debenture, Kingston LP Debenture, IFPC GSA, Bay Power GSA, Kap Power GSA, Kingston GSA, Securities Pledge Agreement and Assignment Agreement are attached as **Exhibits “I” to “S”**, respectively, to this affidavit. Additionally, scans of the share and unit certificates that are the subject of the Securities Pledge Agreement are attached as **Exhibit “T”**. I am advised by Scott Bomhof of Torys LLP, counsel to the Applicant, that Torys has possession of the originals of each of those certificates at its Toronto office on behalf of the Applicant.

41. The Security Documents provide the Applicant with numerous remedies upon default by the Debtors under the Lease Transaction Documents. Among other remedies, the Security Documents provide the Applicant with the explicit contractual right to appoint a receiver in respect of each of the Debtors, other than in respect of Validus Hosting.

D. Registration of Applicant’s Security Interests

42. The Applicant made two sets of registrations against the Debtors’ assets under the Ontario *Personal Property Security Act* (the “**Ontario PPSA**”). First, on or about April 7, 2022, the Applicant registered its security interests in respect of IFPC, Validus Parent, Bay Power, Kap Power and Validus Hosting. Second, on or about February 24, 2023, in connection with the Forbearance Arrangements (more particularly, the Acknowledgement Agreement, the Kingston GSA, the Kingston GP Debenture and the Kingston LP Debenture), the Applicant registered its security interests in respect of Kingston LP and Kingston GP and amended its registration against Validus Parent to encompass the new collateral in the shares of those two entities. Copies of searches ran in the Ontario PPSA registry against each of the Debtors, together with corporate

profile reports for each of the Debtors—all of which are current as at July 24, 2023—are attached as **Exhibit “U”** to this affidavit (and which are bookmarked for each entity by search type).

43. The Applicant also registered the IFPC Debenture, the Bay Power Debenture and the Kap Power Debenture on or around April 7, 2022, and the Kingston GP Debenture on or around February 24, 2023, under the Ontario Land Registry against the real property encumbered thereby (collectively, the **“Real Property”**). Copies of the property registers in respect of the Real Property showing the registration of those debentures on title are attached as **Exhibit “V”** to this affidavit (and are bookmarked by PIN). The Applicant has first-in-time charges over all of the Real Property.

E. Other Secured Creditors

44. In addition to the Applicant, there are other known secured creditors that have security interests in respect of certain of the Debtors’ property. These known secured creditors are: (i) Canada Revenue Agency (**“CRA”**); (ii) the Toronto-Dominion Bank (**“TD”**); and (iii) Mercedes-Benz Financial and Mercedes-Benz Financial Services Canada Corporation (together, **“Mercedes”**, and collectively with CRA and TD, the **“Third Party Secured Creditors”**).

45. On or around March 8, 2023, CRA registered a lien under the Ontario Land Registry against two PINs (PIN 65337-0369(LT) and PIN 65337-0458(LT)) that correspond to the real property held by IFPC in respect of the Iroquois Falls power plant. Those registrations indicate a secured amount of \$6,002,211 representing outstanding GST/HST arrears. A copy of the Ontario Registry searches for both of those PINs prepared on July 24, 2023, are attached as **Exhibit “W”**. The Ontario Registry searches for the remainder of the Real Property are attached as Exhibit “V”, as noted.

46. The remaining two Third Party Secured Creditors registered security interests against Validus Parent under the Ontario PPSA, in both cases subsequently in time to the Applicant’s original registration against Validus Parent, but prior in time to the Applicant’s amended registration against Validus Parent in connection with the Forbearance Arrangements. These registrations are:

- (a) a registration in favour of TD made on or around May 10, 2022, under Registration Number: 20220510 1448 1530 9888; and
- (b) a registration in favour of Mercedes made on or around September 1, 2022, under Registration Number: 20220901 1309 1532 0195.

47. As noted, copies of the PPSA searches against each of the Debtors, including Validus Parent, are attached as Exhibit “U” to this affidavit.

IV. MISMANAGEMENT, FINANCIAL PROBLEMS AND DEFAULTS OF THE VALIDUS GROUP

48. For ease of reference, a chronological summary of the key events described in this section that led to the Applicant’s decision to seek the appointment of a receiver in respect of the Debtors is attached as **Appendix “A”** to this affidavit.

A. Serious Problems and Mismanagement

49. Numerous critical problems with the Debtors have emerged that have undermined the Applicant’s trust in the Debtors’ management. As a result of mismanagement, the condition of the Debtors’ business and Property is rapidly deteriorating, and the value of the Applicant’s security is degrading materially. Further delay risks significant irreparable degradation and operational collapse.

50. The Applicant learned in late 2022 that Validus Parent may have breached a power purchase agreement with Hut 8 Mining Corp. (“**Hut 8**”, and such agreement, the “**Hut 8 PPA**”). Under the Hut 8 PPA, Validus Parent had agreed to supply power from its North Bay power plant operations to Hut 8 for Hut 8’s cryptocurrency mining operations. The Applicant viewed the Hut 8 PPA as an important source of future revenue for the Debtors. Therefore, under the applicable Lease Transaction Documents it was an event of default for the Debtors to breach that agreement. As discussed below, Hut 8 later filed a statement of claim against Validus Parent and Bay Power on January 25, 2023 for allegedly breaching that agreement.

51. Following the Applicant’s discovery of Validus Parent’s alleged breach of the Hut 8 PPA, the Applicant and the Debtors entered into an arrangement to potentially resolve the default under the Lease Transaction Documents that was caused by such alleged breach (the

“**Prepayment Arrangement**”). Under the Prepayment Arrangement, if IFPC made a prepayment of Base Rent plus HST to the Applicant on or by January 16, 2023, the Applicant would: (i) agree that the specific defaults that were caused by Validus Parent’s breach of the Hut 8 PPA would be cured under the Lease Transaction Documents; and (ii) release the Debtors from further obligations to comply with the Hut 8 PPA under the Lease Transaction Documents.

52. On January 16, 2023, IFPC failed to make that prepayment of Base Rent plus HST. This failure prompted discussions between the Applicant and the Debtors, which eventually led to the parties entering into the Forbearance Arrangements in February 2023.

53. As is discussed further below, those Forbearance Arrangements provided for the commencement of a sale process in respect of IFPC. In early March 2023, as part of that sale process, the M&A Advisor (as defined below) was engaged to run the sale process, and certain books and records of the Debtors were collected.

54. The Applicant was given the opportunity to review those books and records, which led to it discovering the following troubling deficiencies (among others):

- (a) Inadequate Recordkeeping. As a general matter, the Debtors’ recordkeeping is severely deficient. In connection with the Debtors’ reporting obligations, the records relating to the Debtors’ finances, operations, contracts and other key items were often incomplete or simply did not exist. The M&A Advisor provided a bookkeeper to attempt to organize the Debtors’ records, but this process yielded only limited, unsatisfactory results.
- (b) Unremitted HST. Those books and records revealed that IFPC never remitted to CRA any of the \$5,850,000 of HST that the Applicant paid to IFPC as part of the Lease Transaction Documents in April 2022. In addition, the books and records did not contain any evidence that either IFPC, Kingston GP or Kingston LP had made HST filings or otherwise remitted HST amounts since March or April 2022. Indeed, the M&A Advisor’s bookkeeper attempted, but was unable, to find any books and records indicating that HST filings were ever completed for those entities or remittances to CRA made with respect to HST for those entities since that time; with the bookkeeper’s support, HST filings for IFPC were only

partially, but not fully, completed on or by June 19, 2023. While the Applicant lacks full visibility into the books and records for the other Debtors, I am deeply concerned that those entities have also failed to remit HST payments to CRA.

- (c) Unremitted Source Deductions. The Debtors' payroll records for June 29 and July 7, 2023 do not list any disbursements corresponding to the remittance of source deductions to CRA, despite those same records showing that those amounts were deducted from the employees' payroll. I would have expected to see those source deductions in those payroll records. Given the Debtors' unremitted HST, I am concerned that the Debtors have also failed to remit employee source deductions to CRA.
- (d) Unpaid Municipal Taxes. The Debtors' books and records also show that, as at July 4, 2023, the applicable Debtors have failed to pay an aggregate of approximately \$109,727 of municipal taxes to the Town of Iroquois Falls, the City of Kapuskasing and the Loyalist Township (Kingston) (collectively, the "**Municipalities**").

55. Allegations of Misappropriated Funds. On May 18, 2023 the Applicant learned of serious allegations related to Canadian Imperial Bank of Commerce ("**CIBC**"). In a letter dated May 12, 2023 to the Debtors, CIBC alleges that Kingston GP "erroneously wired \$550,000 from an internal CIBC account" that the Debtors "had no right to access" to Validus Parent on October 19 and November 4, 2022. The letter further states that the Debtors' Chief Financial Officer attended a meeting with CIBC to discuss the issue and agreed at that time to return the funds pending CIBC's delivery of wire instructions. CIBC subsequently delivered those wire instructions to the Debtors and sent numerous follow-up requests, but, as of the date of the letter, the funds had not been returned. According to the letter, the misappropriated funds were instead being improperly held by Validus Parent. A copy of that letter is attached as **Exhibit "X"**.

56. Union Grievance. In early April, 2023, the Applicant became aware of allegations made by the International Union of Operating Engineers Local 865, the union that represents most of IFPC's employees at the Iroquois Falls plant (the "**Union**"), that IFPC and/or Validus Parent had failed to provide group benefit coverage and to match and/or remit RRSP contributions for those unionized employees, contrary to the Union's collective agreement with IFPC. On May 25,

2023, the Union delivered a grievance notice to IFPC and Validus Parent in which it provided notice of those claims and demanded, among other things, remittance and/or reinstatement of those amounts. While the Applicant has no further information on this dispute, based on this letter, I am concerned that IFPC and/or Validus Parent (and possibly other Debtors) have not properly paid their employees all amounts that they are entitled to. The Union's grievance notice is attached as **Exhibit "Y"**.

57. Failure to Pay Insurance Amounts. In May 2023, the Applicant was notified that the Debtors had failed to pay all insurance premiums that came due: (i) on October 12, 2022 in an aggregate amount of \$1,455,218.46 in respect of their property insurance policy (the "**Property Insurance Policy**"); and (ii) on March 8, 2023 in an aggregate amount of \$63,369.60 in respect of their commercial general liability and commercial umbrella insurance policy (the "**CGL Insurance Policy**"). Those insurance policies together covered, among other things, losses or damage relating to the Debtors' real and personal property, interruptions to their business and general commercial liability. The lead insurer of the Property Insurance Policy had provided the Debtors with notices that the policies would be canceled effective June 18, 2023, unless those premiums were paid.

58. In respect of the Property Insurance Policy, the Applicant, the lead insurer on the Property Insurance Policy and the Debtors' insurance broker, Arthur J. Gallagher Canada Limited ("**AJ Gallagher**"), reached a settlement to have 60% of the premium for the Property Insurance Policy amount paid by the Debtors in three installments of \$306,005. Accordingly, on each of June 15 and July 14, 2023, the Applicant paid both of those \$306,005 payments on behalf of the Debtors to AJ Gallagher (*i.e.*, a total of \$612,010). In respect of the CGL Insurance Policy, the Applicant also paid an aggregate amount of \$63,369.60 to AJ Gallagher on the Debtors' behalf on June 2, 2023 in satisfaction of those premiums. Copies of the email correspondence with AJ Gallagher confirming its receipt of the payments regarding the Property Insurance Policy and the CGL insurance Policy are attached as **Exhibits "Z" and "AA"**, respectively. Additionally, the notice of cancellation from the lead insurer for the Property Insurance Policy together with a notice of reinstatement following receipt of the applicable payments are attached as **Exhibits "BB" to "CC"**, respectively.

59. Failure to Pay Base Rent. Finally, the Debtors have failed to make three payments of Base Rent and HST on May, June and July 2023, following the four-month rent holiday under the Forbearance Arrangements. As of July 24, 2023, the Debtors owe the Applicant a total of \$9,605,000 on account of Base Rent and HST arrears.

B. Defaults Under the Lease Transaction Documents

60. In addition to these examples of bad management, the Debtors committed defaults under the Lease Transaction Documents. My team delivered, among other things, notices of default and reservations of rights on each of May 12, 2022, July 12, 2022, November 16, 2022, April 16, 2023 and June 2, 2023 (collectively, the “**Notices of Default**”). Copies of the Notices of Default are attached as **Exhibit “DD”** to this affidavit (and are bookmarked by notice).

61. The Notices of Default set out a non-exhaustive list of the various defaults that the Applicant was aware the Debtors had committed, up to the respective dates thereof, under the Lease Transaction Documents (the “**Defaults**”). In connection with the Reservation of Rights Agreement, the Debtors admitted to the following defaults: (i) the Debtors’ monetary defaults under the Project Documents; (ii) the Debtors’ breach of the Hut 8 PPA; and (iii) the Debtors’ non-performance of certain covenants in the Participation Agreement.

62. The following is a non-exhaustive summary of the Defaults that have occurred and/or that are occurring as of the date of this affidavit:

(i) Monetary Defaults

63. IFPC, as the principal obligor, and each of the Guarantors, as guarantors, have been in arrears in respect of the Base Rent, associated HST and other amounts owing under the Lease Transaction Documents since February 2023. As of July 24, 2023, IFPC and the Guarantors owe the Applicant \$9,605,000 in respect of those amounts. Under the Lease Agreement, a “Lease Event of Default” occurs where IFPC fails to pay any amounts due under the Lease Agreement (including Base Rent) within 7 days of such amounts becoming due.

(ii) CRA Liens

64. As noted, CRA registered liens against certain of the real property associated with the Iroquois Falls power plant on or around March 8, 2023 as a result of outstanding GST/HST

arrears. Copies of the land registry searches showing those encumbrances are attached as Exhibit “W”.

65. Under the Lease Agreement, IFPC covenanted not to create, incur, assume, permit or suffer to exist any lien on or with respect to the Leased Property; IFPC further covenanted under the Lease Agreement and Participation Agreement to pay and remit to CRA all HST that becomes payable under the Lease Agreement in accordance with applicable law. It is a Lease Event of Default for IFPC or any of the other Debtors to fail to observe or perform any of their covenants or agreements in any of the Lease Transaction Documents where such failure is not remedied within 30 days that it becomes known to the Debtors’ management.

(iii) Failure to Pay Municipal Taxes

66. As noted, the Debtors’ books and records indicate that the Municipalities are owed approximately \$109,727 in unpaid municipal taxes.

67. Under the Participation Agreement, each of the Debtors covenanted to promptly pay when due all taxes imposed on them with respect to, or affecting, the power plant facilities, the Leased Property and the Applicant’s other collateral. As noted, it is a Lease Event of Default for IFPC or any of the other Debtors to fail to observe or perform any of their covenants or agreements in any of the Lease Transaction Documents where such failure is not remedied within 30 days that it becomes known to the Debtors’ management.

(iv) Failure to Maintain Insurance Coverage

68. As noted, the Debtors failed to pay insurance premiums that were required to maintain their Property Insurance Policy and their CGL Insurance Policy. As a result, in June and July, 2023, the Applicant paid on behalf of the Debtors an aggregate amount of \$675,379.60 on account of those insurance premiums to prevent the Debtors’ insurance coverage from lapsing.

69. Under the Lease Agreement and the Participation Agreement, the Debtors are required to, among other things, keep their property, assets and operations adequately insured in sufficient amounts, and with sufficient coverage, as is customary for similar companies in the power generation industry. As noted, it is a Lease Event of Default for IFPC or any of the other Debtors to fail to observe or perform any of their covenants or agreements in any of the Lease

Transaction Documents where such failure is not rectified within 30 days that it becomes known to the Debtors' management.

(v) ***Hut 8 Litigation***

70. According to the terms of the Participation Agreement and the Lease Agreement, the Debtors agreed to comply with all material obligations, covenants and undertakings binding on them in respect of, among other things, the Hut 8 PPA. Any breach by a Debtor, or the termination, of the Hut 8 PPA is an event of default under the Lease Transaction Documents.

71. I understand from my discussions with the Debtors' management that, under the Hut 8 PPA, Validus Parent agreed to supply power from its North Bay power plant operations to Hut 8 for Hut 8's cryptocurrency mining operations, in accordance with a prescribed delivery schedule. I further understand from those discussions that, as part of that transaction, Hut 8 advanced \$20,000,000 to Validus Parent for, among other things, capital expenditures required to power up the North Bay plant.

72. On January 25, 2023, Hut 8 issued a statement of claim against Validus Parent and Bay Power (together, the "**Validus Defendants**") before the Ontario Superior Court of Justice in Toronto, Ontario (the "**Hut 8 Litigation**").¹ A copy of that issued statement of claim is attached as **Exhibit "EE"**.

73. In the Hut 8 Litigation, Hut 8 alleges that the Validus Defendants breached the Hut 8 PPA by failing to meet all of the critical contractual milestones for the delivery of power and has since completely shut off the flow of power to Hut 8. Hut 8 further alleges that these breaches are the result of the Validus Defendants' bad faith attempts to leverage Hut 8's reliance on the supply of power from the North Bay plant in order to obtain a higher price for power than the parties agreed to in the Hut 8 PPA.

74. On April 11, 2023, the Validus Defendants filed an amended statement of defence and counterclaim in the Hut 8 Litigation. A copy of that filing is attached as **Exhibit "FF"**. Among other things, the Validus Defendants allege in their counterclaim that it was Hut 8 that failed to

¹ The Hut 8 Litigation was brought under Court File No.: CV-23-00693515-0000.

meet the applicable milestones for the construction of its cryptocurrency mining facilities, and that it was that failure that prevented the Validus Defendants from delivering power under the Hut 8 PPA. The Validus Defendants also contest Hut 8's description of the milestones and pricing mechanics under the Hut 8 PPA, and allege that Hut 8 was indebted to the Validus Defendants for outstanding energy payments. As a result, the Validus Defendants seek damages against Hut 8 for breach of contract and payment of arrears (among other things).

75. As noted, any breach by a Debtor, or the termination, of the Hut 8 PPA is an event of default under the Lease Transaction Documents. Accordingly, the events alleged by Hut 8 in the Hut 8 Litigation, if true, constitute events of default under the applicable Lease Transaction Documents. These developments and allegations also raise serious concerns about the viability of the Debtors' operations.

(vi) Breach of Covenants

76. As discussed above, the Applicant was given the opportunity to review certain books and records of the Debtors as part of the IFPC Marketing Process (defined and described below), and discovered that the recordkeeping appears to be severely deficient. Pursuant to the Participation Agreement, Validus Parent is required to maintain proper books, records and accounts adequate to reflect truly and fairly the financial conditions of the Debtors and the results of their operations.

77. The Debtors have also failed to comply with numerous reporting covenants under the Lease Transaction Documents. Among other things, the Debtors have never provided the Applicant with inspection reports regarding the Debtors' operations or other similar reports.

78. As noted, it is a Lease Event of Default for IFPC or any of the other Debtors to fail to observe or perform any of their covenants or agreements in any of the Lease Transaction Documents where such failure is not rectified within 30 days that it becomes known to the Debtors' management.

V. MACQUARIE’S SIGNIFICANT EFFORTS TO ACCOMMODATE THE DEBTORS

79. In response to the numerous and significant issues and defaults noted above, the Applicant has made considerable efforts to both accommodate the Debtors and to find a workable solution to resolve their issues and their indebtedness to the Applicant.

80. As noted, in February 2023, the Applicant provided the Debtors with breathing room and accommodation through the Forbearance Arrangements. Among other things, the Applicant gave the Debtors a “rent holiday” (providing for \$6,000,000 in deferred Base Rent, which amounts came due on May 31, 2023 and have never been paid) and agreed to forbear from exercising its enforcement remedies under the Lease Transaction Documents for an approximately four-month period during which period a sales process would be carried out.

A. Unsuccessful Sale Process

81. The Forbearance Arrangements also provided for a marketing and sale process for the business, assets and/or shares of IFPC (the “**IFPC Marketing Process**”). On March 9, 2023, with the consent of the Applicant, the Debtors retained an M&A advisor (the “**M&A Advisor**”)² to conduct the IFPC Marketing Process. The Applicant agreed to pay, and did pay, all costs, fees and expenses incurred by the Debtors in respect of the IFPC Marketing Process (which amounts the Debtors are required to repay the Applicant pursuant to the Lease Transaction Documents).

82. The M&A Advisor commenced the IFPC Marketing Process and issued a confidential information memorandum to potential bidders on or around April 5, 2023. By April 24, 2023, four parties had submitted non-binding expressions of interest in IFPC’s shares. However, one of those parties withdrew its offer, citing, among other things, various issues relating to the revenue and cash flow opportunities at the Iroquois Falls power plant.

83. On or around May 3, 2023, the M&A Advisor provided the three remaining interested parties with a form of draft share purchase agreement. Only one of those parties delivered a binding offer, but that offer was conditional on the bidder raising the equity and debt capital it required for the acquisition. The bidder later defaulted on its offer and ceased communication

² The M&A Advisor is unrelated to, and at arm’s length with, KSV.

with the M&A Advisor. Attached as **Exhibit “GG”** is a note from the M&A Advisor dated July 17, 2023, where it describes that the offeror ultimately failed to move forward with the offer.

84. Despite the parties’ best efforts, the IFPC Marketing Process ultimately did not result in the sale of IFPC’s business, assets or shares.

B. Funding of Certain Amounts Required for the Debtors’ Operations

85. As a result of the deteriorating condition of the Debtors’ business, the Applicant paid the following amounts on behalf of the Debtors between June and July 2023, in order to protect its collateral and minimize the risk of potential destabilization of the Debtors and their operations:

- (a) Insurance Amounts. As discussed above, in June and July, 2023, the Applicant paid various amounts on account of insurance premiums in the aggregate amount of \$675,379.60 that were required to prevent the cancelation of the Debtors’ Property Insurance Policy and CGL Insurance Policy. Those payments were necessary to avoid the potentially destabilizing consequences of the resulting loss of insurance coverage.
- (b) Accounts Payable. The Applicant has made payments on behalf of certain Debtors to their vendors on account of such Debtors’ accounts payable, including in respect of amounts for gas transportation services, gas procurement services, legal fees and information technology services. As at July 7, 2023, the Applicant has paid in excess of \$745,990.78 on account of those amounts.

The amounts described in this paragraph were fully repaid to the Applicant on July 21, 2023, pursuant to the set-off described in paragraph 98.

86. In addition to the amounts contemplated in the previous paragraph, the Applicant has incurred expenses in respect of which it is entitled to be indemnified under the Lease Transaction Documents. Some of those expenses were also repaid to the Applicant on July 21, 2023, pursuant to the set-off described in paragraph 98.

87. Under the terms of the Lease Transaction Documents, the Debtors are required to indemnify and repay the Applicant for amounts that the Applicant funds or pays in order to

prevent any loss or damage in respect of the Applicant's collateral (which amounts the Debtors ratified and reaffirmed are subject to the existing security and the new security granted to the Applicant in February 2023 under the Forbearance Arrangements).

88. Absent a receiver being appointed in respect of the Debtors, the Applicant has no intention (and no obligation) to continue paying for or funding the Debtors' obligations going forward.

C. Demand Letters and Section 244 Notices

89. As a result of the unsuccessful IFPC Marketing Process, the compounding problems with the Debtors' business and management, and the ongoing defaults under the applicable Lease Transaction Documents—including the Debtors' failure to make payments on account of Base Rent plus HST that came due at the end of May, June and July of this year—the Applicant concluded that it had no option but to issue demand letters and notices under section 244 of the BIA. Since June 2023, the Applicant has issued two sets of demand letters to the Debtors.

(i) June 9, 2023: First Set of Demand Letters and Section 244 Notices

90. On June 9, 2023, the Applicant sent out demand letters to IFPC (as the primary obligor) and each of the other Debtors (as guarantors) (collectively, the "**June Demand Letters**"). The June Demand Letters provided further notice of the various defaults under the Lease Transaction Documents to their recipients and demanded immediate repayment of all arrears then outstanding, including Base Rent, under the Lease Transaction Documents. The Applicant did not accelerate the amounts owing under the Lease Agreement at such time, but reserved its right to do so.

91. On the same day, June 9, 2023, the Applicant sent out corresponding notices under section 244 of the BIA giving notice to the Debtors of the Applicant's intention to enforce against its security. Copies of the June Demand Letters sent to the Debtors and the section 244 notices enclosed therein are attached as **Exhibits "HH" to "NN"** to this affidavit.

92. My team delivered (and, as discussed below, attempted to deliver) the June Demand Letters and section 244 notices using three delivery methods. First, Ronnie Alam, Division Director – Legal Counsel, delivered, on behalf of Macquarie, electronic copies of the June

Demand Letters and section 244 notices to the Debtors' management via email. A copy of that email, together with an email from the Debtors' general counsel acknowledging receipt of same, is attached as **Exhibit "OO"** to this affidavit. That email was sent in accordance with the conventional lines of communication that had been established during the IFPC Marketing Process.

93. Second, I am advised by Scott Bomhof of Torys LLP, counsel to the Applicant, that Torys caused the June Demand Letters and section 244 notices to be sent for delivery via registered mail through Canada Post to the addresses specified in the notice provisions of the applicable Lease Transaction Documents. A copy of the affidavit sworn by the member of Torys' staff describing that delivery process is attached as **Exhibit "PP"**.

94. Finally, I am advised by Mr. Bomhof that Torys caused the June Demand Letters and section 244 notices to be sent for delivery via courier to the addresses specified in the notice provisions of the applicable Lease Transaction Documents. A copy of the affidavit sworn by a member of the courier's staff describing that delivery is attached as **Exhibit "QQ"**.

95. I am advised by Mr. Bomhof that the second and third delivery methods did not ultimately successfully reach the Debtors, because the Debtors had previously vacated the premises located at the addresses specified in the notice sections of the Lease Transaction Documents. A copy of an affidavit sworn by a member of Torys' staff describing this unsuccessful delivery is attached as **Exhibit "RR"**. The Debtors did not provide a new address for delivery of notices under the Participation Finance Documents, despite certain Lease Transaction Documents (including the Participation Agreement and Lease Agreement) explicitly requiring them to do so.

(ii) July 24, 2023: Second Set of Demand Letters

96. On July 24, 2023, the Applicant sent out two further sets of demand letters to IFPC (as the primary obligor) and each of the other Debtors (as guarantors). One set of demand letters demanded immediate repayment of all arrears outstanding as of that date, including Base Rent and HST, and the other set of demand letters, in accordance with the Lease Agreement, accelerated the Accelerated Payments (*i.e.*, liquidated damages in an amount specified in the Lease Agreement) and demanded immediate repayment thereof in accordance with the Lease

Transaction Documents (collectively, the “**July Demand Letters**”). Copies of the July Demand Letters that demanded repayment of the arrears are attached as **Exhibits “SS” to “YY”**, and copies of the July Demand Letters that accelerated and demanded payment of the Accelerated Payments are attached as **Exhibits “ZZ” to “FFF”**.

97. My team delivered the July Demand Letters by email to the Debtors’ management, including their principal, in accordance with the conventional lines of communication that had been established during the IFPC Marketing Process. A copy of that email is attached as **Exhibit “GGG”**.

D. Cash Set-Off

98. On July 21, 2023, IFPC and Kingston LP each received a cash payment from the IESO in an amount of \$1,983,523.93 and \$829,370.65, respectively, in respect of power that certain Debtors provided under the IESO’s capacity auction process. The IESO made that payment directly to bank accounts held by the Debtors; any disbursements from those bank accounts have required the Applicant’s approval since May 26, 2023. On July 21, 2023, that same day, the Applicant caused IFPC and Kingston LP to transfer a total of \$2,012,950 from those accounts to an account controlled by the Applicant and applied those amounts to the Debtors’ outstanding indebtedness by way of a set-off in accordance with the Lease Transaction Documents. The Debtors’ Chief Financial Officer approved those transfers to the Applicant’s account. The Applicant also delivered a notice of set-off to the Debtors on July 24, 2023, a copy of which is attached as **Exhibit “HHH”**. After the transfer, there remained approximately \$800,000 in the relevant accounts to provide for immediate operational needs.

VI. REQUEST FOR APPOINTMENT OF KSV AS RECEIVER

A. Need for the Proposed Receivership

99. The Debtors are in default of their obligations to the Applicant under the Lease Transaction Documents and are unable to satisfy their obligations as they become due, including their indebtedness owing to the Applicant. As noted above, pursuant to the Security Documents, the Applicant has the contractual right to appoint a receiver in respect of the Debtors and their respective property, including the Real Property, except in respect of Validus Hosting.

100. In addition to the indebtedness being due and owing to the Applicant, the urgent need to appoint a receiver is highlighted by the concerning number of problems that have arisen in respect of the Debtors' business and operations in recent months, all pointing towards deep dysfunction in the Debtors' management, a lack of oversight of the Debtors' business and a potential erosion in the value of the Applicant's collateral. As discussed above, many of those problems constitute events of default under the Lease Transaction Documents. Additional funds are also required to finance the Debtors' ongoing operations, including insurance payments (which includes payment of a final insurance premium of \$306,005 that comes due on August 15, 2023 in respect of the Property Insurance Policy), failing which the Debtors' insurance coverage from their Property Insurance Policy is likely to lapse; the Applicant is not willing to continue to provide any further funding with the current management and ownership in control. Only the appointment of a receiver will allow the Applicant (and the Debtors' other stakeholders) to have confidence in the Debtors' business.

101. If the Debtors' operations were to suffer a severe disruption, the consequences for Ontario's power generation market could be significant. As noted, the IESO expects the Iroquois Falls and Kingston power plants to together contribute approximately 14.3% of the total electricity generation capacity in that capacity auction market for all of Ontario for this summer period and approximately 19.5% for the upcoming winter period. The loss of this source of capacity may increase the price of power in Ontario.

102. Despite my team's numerous attempts over the previous six months to work out a path forward with the Debtors—including an unsuccessful sale process for the shares in IFPC—none of those efforts have resulted in a tenable go-forward solution. Accordingly, the immediate appointment of a receiver is required in order to mitigate these risks to the extent possible and to preserve the value of the Debtors' Property for the benefit of the Applicant and the Debtors' other stakeholders.

B. Purpose of Proposed Receivership

103. I am advised by Mr. Bomhof of Torys that the terms of the appointment order sought by the Applicant are substantially consistent with the model order of the Ontario Superior Court of Justice (Commercial List), or otherwise typical in receiverships involving similar companies as

the Debtors. To that end, a blackline of the proposed appointment order to the Commercial List's model order is included as Tab 4 to the Applicant's application record.

104. The Applicant brings this application with two primary objectives: (i) providing stability and supervision of the Debtors' business; and (ii) implementing a SISP, pursuant to which the Applicant intends to submit a stalking horse bid with the Receiver acting as the vendor on behalf of the Debtors (the "**Stalking Horse Bid**"). As noted, the Applicant anticipates that the Receiver will file an application for an initial order in respect of the Debtors under the CCAA and will seek approval of the SISP and stalking horse bid under the provisions of that statute. I am advised by Mr. Bomhof that the reason neither the Applicant nor the Receiver are seeking relief under the CCAA at this time is because, among other reasons, time will be required for the Receiver to obtain access to the Debtors' books and records and control over their business before any party will be in a position to seek such relief.

105. The Applicant anticipates that if the Receiver is appointed on the terms sought, the receivership proceedings will provide the Debtors' property and business with urgently-needed stability and supervision. If appointed by this Court, the Receiver will take steps to preserve the value of the power plants, attempt to resolve the numerous issues with the Debtors' other stakeholders described above and will be authorized to fund further maintenance at the Debtors' power plants and administer the estate, all with a view to maximizing recoveries for the Debtors' stakeholders. From its recent activities, KSV has familiarized itself with the Debtors' property and business.

106. If this Court grants the proposed Appointment Order, the Applicant anticipates that the next step in these receivership proceedings will be for the Receiver to seek an initial order in respect of the Debtors under the CCAA, along with this Court's approval of a SISP under the provisions of that statute, pursuant to which KSV, in its capacity as either Receiver or Monitor, would canvass the market and solicit bids superior to the Stalking Horse Bid for some or all of the Debtors' business and assets. As part of that SISP, the Applicant anticipates that the Stalking Horse Bid would be put forward as the stalking horse in that process, serving as a minimum bid for the Secured Assets. My team has been working diligently to advance the Stalking Horse Bid so it can be provided to the Receiver as soon as practicable with a view to being presented to this

Court expeditiously thereafter for its consideration. For clarity, the Applicant is not seeking this Court's approval of a SISP or a stalking horse bid at this time, nor does it seek any relief under the CCAA.

C. Appointment of KSV as Receiver

107. Pursuant to an engagement letter dated July 7, 2023, the Applicant engaged KSV concerning the Debtors' situation, the proposed receivership and the within application. Accordingly, KSV has acquired knowledge of the matters discussed herein since first being contacted. I am advised by Bobby Kofman, the President of KSV, that KSV is a licensed insolvency trustee, as defined in the BIA, and the senior professionals involved are all registered members of the Canadian Association of Insolvency and Restructuring Professionals with significant experience in Canadian insolvency proceedings, including receiverships. KSV has provided a written consent to act as Receiver in these proceedings. Given KSV's understanding of the current situation and its ability to hit the ground running to mitigate the risks described above, I believe that KSV is the appropriate firm to be appointed as Receiver.

108. A copy of KSV's consent to act as Receiver is attached as Tab 5 to the Applicant's application record.

VII. CONCLUSION

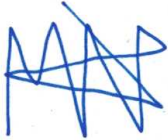
109. The Debtors are seriously mismanaged, and the problems outlined in this affidavit suggest that they are in immediate risk of financial and operational collapse. The Debtors' management has failed to, and is unable to, repay the substantial indebtedness owing by the Debtors to the Applicant, and the related Lease Transaction Documents have been in default for months. The Debtors have also failed to satisfy tax claims on multiple fronts (including a potential failure to remit source deductions), maintain adequate recordkeeping, pay amounts required for continued insurance coverage and, allegedly, provide their unionized employees with benefits and match and/or remit RRSP contributions. There are also serious allegations that the Debtors have misappropriated funds belonging to CIBC.

110. In order to protect the Applicant's collateral, provide much-needed stability to the Debtors' business and operations for the benefit of numerous stakeholders and prevent the

further impairment of the value of the Applicant's collateral, the Applicants require the immediate appointment of the Receiver.

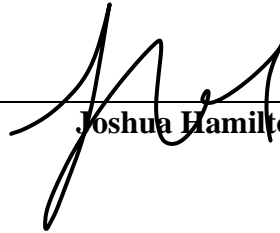
SWORN REMOTELY by Joshua Hamilton Stevens at the City of Sydney, in the State of New South Wales, in the Country of Australia, before me on July 31, 2023 in accordance with O.Reg. 431/20, Administering Oath or Declaration Remotely.

}



Commissioner for Taking Affidavits
(or as may be)

MICHAEL NOEL
(LSO#: 80130F)



Joshua Hamilton Stevens

APPENDIX “A”

Chronological Summary of Key Events

The following table provides a chronological summary of the key events that led to the Applicant’s decision to seek the appointment of a receiver in respect of the Debtors by commencing the within receivership proceedings. Events described in rows highlighted orange constitute events of default (or allegations that would constitute event of defaults if proven true) under the applicable Lending Transaction Documents. Capitalized terms used in this summary have the meanings given to them in the body of this affidavit.

| Date | Event |
|------------------|---|
| April 2022 | The Applicant enters into the original sale and leaseback transaction with the Debtors. Security is given by each of the Debtors, except for Kingston LP and Kingston GP and Validus Parent’s shares and units in those entities (which was given as security in February 2023). |
| January 2023 | Hut 8 files a statement of claim against the Validus Defendants in the Hut 8 Litigation. The Applicant discovers that the Validus Defendants allegedly breached the Hut 8 PPA. |
| January 16, 2023 | IFPC fails to make a prepayment of Base Rent and HST under the Prepayment Arrangement. |
| February 2023 | The Applicant and the Debtors enter into the Forbearance Arrangements which provide for, among other things: <ul style="list-style-type: none">• a four-month rent holiday;• as further security, substantially all of Kingston GP’s and Kingston LP’s real and personal property and Validus Parent’s shares and units in those entities; and• the commencement of the IFPC Marketing Process. |

| Date | Event |
|-------------------|--|
| March 8, 2023 | CRA registers liens for unpaid taxes against certain of the real property associated with the Iroquois Falls power plant. |
| April 5, 2023 | The M&A Advisor commences the IFPC Marketing Process. |
| April – May, 2023 | Upon review of the Debtors’ books and records in the IFPC Marketing Process, the Applicant discovers that the Debtors failed to adequately maintain their books and records. |
| March – May, 2023 | <p>Upon review of the Debtors’ books and records in the IFPC Marketing Process, the Applicant discovers that certain Debtors, among other things:</p> <ul style="list-style-type: none"> • failed to remit HST to CRA (including \$5,850,000 of HST the Applicant paid to the Debtors as part of the sale and leaseback transaction); • failed to pay municipal taxes; and • possibly failed to remit source deductions to CRA. |
| April 11, 2023 | The Validus Defendants file an amended statement of defence and counterclaim against Hut 8. |
| April 16, 2023 | The Applicant delivers a further notice of default to the Debtors. |
| May 12, 2023 | CIBC delivers a letter to certain Debtors alleging that Kingston GP misappropriated, and failed to return, funds that they were not entitled to access. |
| May 25, 2023 | The Union representing IFPC’s employees delivers a grievance to IFPC and Validus Parent alleging that those Debtors failed to provide group benefit coverage and to match and/or remit RRSP contributions for those employees. |

| Date | Event |
|------------------|---|
| May – July, 2023 | The Debtors fail to make three payments of Base Rent and HST to the Applicant that came due after the four-month rent holiday expired. |
| June 9, 2023 | The Applicant delivers letters demanding payment of the Base Rent and HST in arrears and section 244 notices to each of the Debtors. |
| June – July 2023 | The Debtors fail to pay insurance premiums that are required to maintain their property and commercial general liability insurance policies. The Applicant pays, on the Debtors’ behalf, an aggregate amount of \$675,379.60 on account of those premiums to prevent the Debtors’ insurance from lapsing. |
| July 2023 | The IFPC Marketing Process unsuccessfully concludes without any viable bids in respect of IFPC. |
| July 21, 2023 | The Applicant causes IFPC to transfer a total of \$2,012,950 of cash received from the IESO from IFPC’s and Kingston LP’s bank accounts and applies those amounts to the Debtors’ outstanding indebtedness by way of a set-off in accordance with the Lease Transaction Documents. |
| July 24, 2023 | The Applicant delivers further letters demanding payment of: <ul style="list-style-type: none">• the Base Rent and HST in arrears; and• the Accelerated Payments. |
| July 31, 2023 | The Applicant commences the within receivership proceedings. |

THIS IS **EXHIBIT “B”** REFERRED TO IN THE
AFFIDAVIT OF JOSHUA HAMILTON STEVENS,
AFFIRMED REMOTELY BY JOSHUA HAMILTON
STEVENS BEFORE ME *BY VIDEO CONFERENCE*,

THIS 31st DAY OF JULY, 2023.



Michael Noel

Commissioner for Taking Affidavits

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

TABLE OF CONTENTS

| | Page |
|--|------|
| ARTICLE 1 DEFINITIONS..... | 1 |
| 1.1 Definitions..... | 1 |
| 1.2 Rules of Interpretation | 1 |
| ARTICLE 2 CLOSING DATE; CLOSING | 2 |
| 2.1 Lessor’s Cost..... | 2 |
| 2.2 Sale and Purchase | 2 |
| 2.3 HST and Other Sales Taxes..... | 3 |
| 2.4 Closing Date Procedures..... | 3 |
| 2.5 Transaction Costs and Other Expenses..... | 3 |
| ARTICLE 3 REPRESENTATIONS AND WARRANTIES..... | 4 |
| 3.1 Obligors..... | 4 |
| 3.2 Lessor..... | 12 |
| ARTICLE 4 OBLIGOR COVENANTS..... | 14 |
| 4.1 Financial and Other Reports | 14 |
| 4.2 Merger Covenant | 14 |
| 4.3 Obligors Not to Own Leased Property..... | 15 |
| 4.4 Broker’s Fees | 15 |
| 4.5 Notification of Relocation or Name Change | 15 |
| 4.6 Corporate Existence | 15 |
| 4.7 Compliance with Laws | 15 |
| 4.8 Notice of Default..... | 16 |
| 4.9 Authorizations, Intellectual Property | 16 |
| 4.10 Taxes..... | 16 |
| 4.11 Offer for Sale | 16 |
| 4.12 Inspection and Reports..... | 16 |
| 4.13 Maintenance of Filing..... | 17 |
| 4.14 Cooperation..... | 18 |
| 4.15 Pension and Benefit Plans..... | 18 |
| 4.16 Liens..... | 18 |
| 4.17 Operation and Maintenance of Project Facilities..... | 18 |
| 4.18 Restricted Payments..... | 18 |
| 4.19 Information and Notices | 18 |
| 4.20 Compliance; Enforcement of Material Project Documents | 20 |
| 4.21 Ranking..... | 20 |
| 4.22 Insurance..... | 21 |
| 4.23 Books and Records | 21 |
| 4.24 Use of Proceeds..... | 21 |
| 4.25 Payment..... | 22 |
| 4.26 Further Assurances..... | 22 |
| 4.27 Personal Property | 22 |

TABLE OF CONTENTS

(continued)

| | Page |
|---|-------------|
| 4.28 Real Property Interests | 22 |
| 4.29 Other Business | 22 |
| 4.30 Indebtedness..... | 23 |
| 4.31 Disposal of Assets..... | 23 |
| 4.32 Termination, Assignment etc. of Material Project Documents..... | 23 |
| 4.33 Amendments to Constituent Documents | 23 |
| 4.34 Amendments to or Cancellations of Material Authorizations | 24 |
| 4.35 Amendments to Material Project Documents | 24 |
| 4.36 Additional Material Project Documents | 24 |
| 4.37 Investments | 24 |
| 4.38 Subsidiaries | 24 |
| 4.39 Abandonment..... | 24 |
| 4.40 Transactions with Obligors or Affiliates..... | 24 |
| 4.41 Disputes..... | 25 |
| 4.42 Equity Issuance | 25 |
| 4.43 Accounting Changes | 25 |
| 4.44 Sanctions; Anti-Corruption Laws | 25 |
| 4.45 Discharge of Real Property Interests | 26 |
| 4.46 Hedging..... | 26 |
| 4.47 Specified Substances..... | 26 |
| 4.48 Post-Closing Covenants | 26 |
| | |
| ARTICLE 5 OTHER COVENANTS | 28 |
| 5.1 Cooperation..... | 28 |
| 5.2 Compliance with Laws While on Site | 28 |
| | |
| ARTICLE 6 LESSEE’S INDEMNITIES | 28 |
| 6.1 General Tax Indemnity. | 28 |
| 6.2 General Indemnity; Waiver of Certain Claims; Limitation of Liability..... | 29 |
| | |
| ARTICLE 7 TRANSFERS OF INTERESTS..... | 32 |
| 7.1 Transfer of rights and obligations by Lessor. | 32 |
| | |
| ARTICLE 8 FURTHER ASSURANCES | 33 |
| | |
| ARTICLE 9 MISCELLANEOUS | 33 |
| 9.1 Illegality | 33 |
| 9.2 Change in Law; Increased Costs..... | 33 |
| 9.3 Set-Off..... | 34 |
| 9.4 Survival..... | 34 |
| 9.5 Waiver of Jury Trial..... | 34 |
| 9.6 Notices | 35 |

TABLE OF CONTENTS
(continued)

| | Page |
|--|-------------|
| 9.7 Successors and Assigns..... | 35 |
| 9.8 Business Day..... | 35 |
| 9.9 Governing Law | 35 |
| 9.10 Severability | 35 |
| 9.11 Counterparts..... | 35 |
| 9.12 Termination of Transaction Documents | 36 |
| 9.13 Heading and Table of Contents..... | 36 |
| 9.14 Reproduction of Documents | 36 |
| 9.15 Limitation of Liability of the Lessor..... | 36 |
| 9.16 Amendments and Waivers | 36 |
| 9.17 Confidential Information | 36 |
| 9.18 Forum Selection and Consent to Jurisdiction | 37 |
| 9.19 <i>Interest Act</i> (Canada) | 37 |
| 9.20 Maximum Rate..... | 37 |
| 9.21 Integrated Contract..... | 38 |
| 9.22 Cooperation among Parties | 38 |
| 9.23 Electronic Execution; Counterparts | 38 |
| 9.24 Amendment and Restatement | 39 |

Attachments:

| | |
|-------------|---------------------------------------|
| Exhibit A | Bill of Sale Form |
| 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 Obligors 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

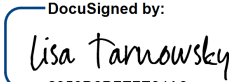
This Participation Agreement is an amendment and restatement of the Existing Participation Agreement and not a novation of the Existing Participation Agreement. For greater certainty, all Indebtedness and other Obligations under the Existing Participation Agreement and other Transaction Documents that 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.

* * * * *

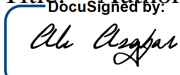
IN WITNESS WHEREOF, the parties hereto have caused this Participation Agreement to be executed and delivered all as of the date first above written.

Lessor:

MACQUARIE EQUIPMENT FINANCE LTD.

By:  _____
DocuSigned by: Lisa Tarnowsky

2950D8D7E7E846...
Name: Lisa Tarnowsky
Title: Authorized Signatory

By:  _____
DocuSigned by: Ali Asghar

5AF9988D66684F2...
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

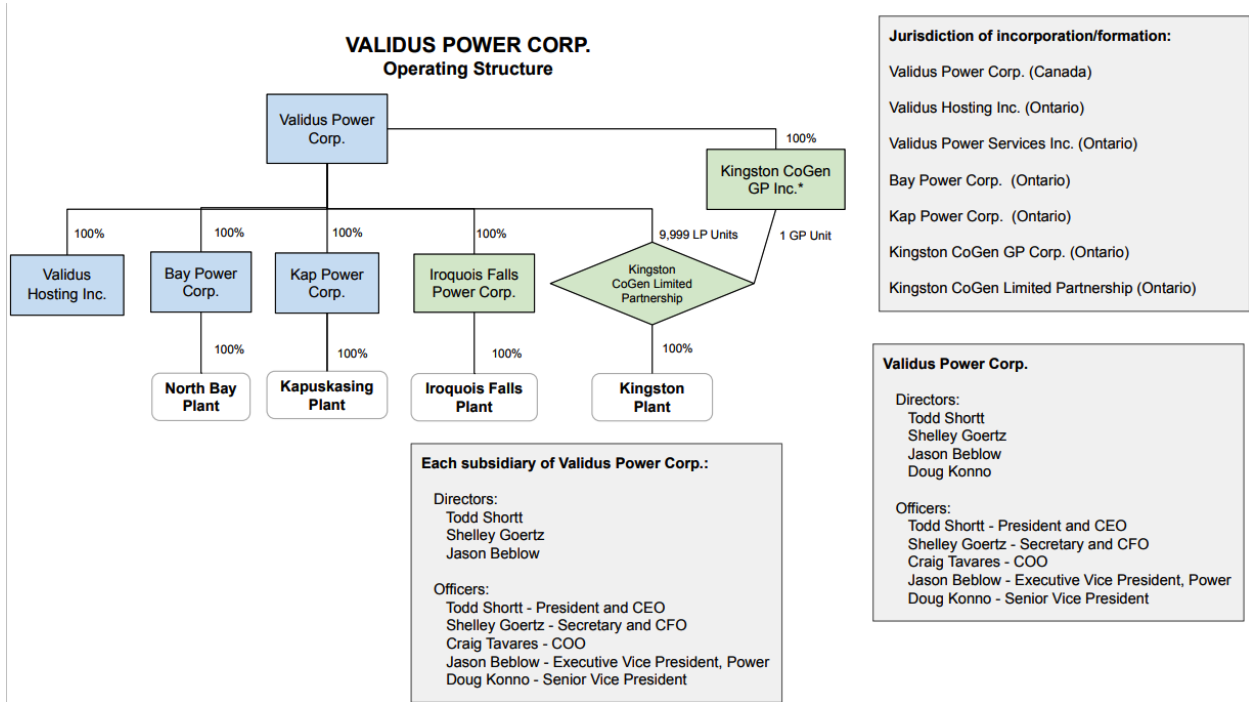
Kingston Project

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.

“Kapuskasung 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.

“Kapuskasung 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.

“Kapuskasung 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.

“Kapuskasung 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 Obligors 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 Obligors 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.

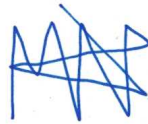
“**Transaction Documents**” means, collectively, the Basic Documents and any other document agreed as such by the Lessor and the Lessee.

“**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.

THIS IS **EXHIBIT “C”** REFERRED TO IN THE
AFFIDAVIT OF JOSHUA HAMILTON STEVENS,
AFFIRMED REMOTELY BY JOSHUA HAMILTON
STEVENS BEFORE ME *BY VIDEO CONFERENCE*,
THIS 31st DAY OF JULY, 2023.



Michael Noel

Commissioner for Taking Affidavits

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

TABLE OF CONTENTS

| | Page |
|--|------|
| SECTION 1. DEFINITIONS..... | 1 |
| SECTION 2. LEASE; ACCEPTANCE OF LEASED ASSETS; SUBLEASE..... | 1 |
| SECTION 3. TERM AND RENT..... | 1 |
| 3.1 Lease Term..... | 1 |
| 3.2 Base Rent..... | 2 |
| 3.3 Prepayment of Base Rent..... | 2 |
| 3.4 Supplemental Rent..... | 2 |
| 3.5 <i>Intentionally Deleted</i> | 3 |
| 3.6 Manner of Payments..... | 3 |
| 3.7 Net Lease, Warranties, Etc..... | 3 |
| 3.8 HST and Other Taxes..... | 4 |
| SECTION 4. OWNERSHIP AND MARKING OF UNIT; PERSONAL PROPERTY..... | 4 |
| 4.1 Retention of Title..... | 4 |
| 4.2 Duty to Mark Leased Property..... | 5 |
| 4.3 Prohibition Against Certain Designations..... | 5 |
| 4.4 Personal Property..... | 5 |
| SECTION 5. DISCLAIMER OF WARRANTIES..... | 5 |
| SECTION 6. RETURN OF LEASED PROPERTY; CONDITION..... | 6 |
| 6.1 Return of Leased Property..... | 6 |
| 6.2 Condition of Leased Property..... | 7 |
| 6.3 Dismantling of Leased Property..... | 7 |
| SECTION 7. LIENS; CONVEYANCES..... | 8 |
| SECTION 8. MAINTENANCE; OPERATION; POSSESSION; INSPECTION..... | 9 |
| 8.1 Maintenance and Operation..... | 9 |
| 8.2 Possession and Use..... | 10 |
| 8.3 Sublease or Assignment..... | 10 |
| 8.4 Replacement of Parts..... | 10 |
| 8.5 Maintenance of Authorizations..... | 11 |
| 8.6 Inspection..... | 11 |
| SECTION 9. MODIFICATIONS..... | 11 |
| 9.1 Required Modifications..... | 11 |
| SECTION 10. LOSS, DESTRUCTION, REQUISITION, ETC..... | 11 |
| 10.1 Event of Loss..... | 11 |

TABLE OF CONTENTS
(continued)

| | Page |
|---|-------------|
| 10.2 Consequence of Event of Loss. | 12 |
| 10.3 Rent Termination. | 13 |
| 10.4 Disposition of Leased Property. | 13 |
| 10.5 Application of Event of Loss Proceeds. | 13 |
| 10.6 Expropriation. | 13 |
| 10.7 Lease Event of Default. | 13 |
| SECTION 11. INSURANCE. | 13 |
| 11.1 Property Damage and Public Liability Insurance. | 13 |
| 11.2 Policy Provisions. | 14 |
| 11.3 Proceeds of Insurance. | 15 |
| 11.4 Notice, Etc. | 15 |
| 11.5 Reports and Certificates. | 15 |
| 11.6 Additional Insurance. | 16 |
| SECTION 12. LEASE EVENTS OF DEFAULT. | 16 |
| SECTION 13. REMEDIES. | 18 |
| 13.1 Remedies. | 18 |
| 13.2 Cumulative Remedies. | 21 |
| 13.3 No Waiver. | 22 |
| 13.4 Notice of Lease Default. | 22 |
| 13.5 Waiver of Mitigation Rights. | 22 |
| 13.6 Specific Performance; Appointment of Agent. | 22 |
| SECTION 14. FURTHER ASSURANCES; REPORTS. | 22 |
| 14.1 Further Assurances. | 22 |
| 14.2 Reports. | 23 |
| SECTION 15. LESSOR’S RIGHT TO PERFORM. | 23 |
| SECTION 16. <i>INTENTIONALLY DELETED</i> | 23 |
| SECTION 17. SECURITY FUNDS. | 23 |
| SECTION 18. NOTICES. | 23 |
| SECTION 19. LEASE RENEWAL. | 23 |
| 19.1 Lease Renewal. | 23 |
| SECTION 20. PURCHASE OPTION. | 24 |
| SECTION 21. MISCELLANEOUS. | 26 |

TABLE OF CONTENTS
(continued)

| | Page |
|--|-------------|
| 21.1 Governing Law; Severability..... | 26 |
| 21.2 Execution in Counterparts. | 26 |
| 21.3 Headings; Section References. | 26 |
| 21.4 Successors and Assigns. | 26 |
| 21.5 Amendments and Waivers..... | 26 |
| 21.6 Survival..... | 26 |
| 21.7 Lessee’s Right of Possession and Use..... | 27 |
| 21.8 No Merger..... | 27 |
| 21.9 Incorporation by Reference. | 27 |
| 21.10 True Lease. | 27 |
| 21.11 Amendment and Restatement. | 27 |

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.

* * * * *

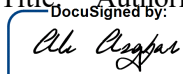
IN WITNESS WHEREOF, Lessor and Lessee have caused this Lease to be duly executed and delivered on the date first above written.

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

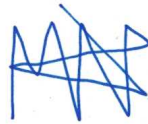
| Rent Payment Date | Amount in \$ |
|--------------------------|---------------------|
| 15-Apr-22 | \$1,250,000 |
| 7-May-22 | \$1,250,000 |
| 7-Jun-22 | \$1,250,000 |
| 7-Jul-22 | \$1,250,000 |
| 7-Aug-22 | \$1,250,000 |
| 7-Sep-22 | \$1,250,000 |
| 7-Oct-22 | \$1,250,000 |
| 7-Nov-22 | \$1,250,000 |
| 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.

THIS IS **EXHIBIT “D”** REFERRED TO IN THE
AFFIDAVIT OF JOSHUA HAMILTON STEVENS,
AFFIRMED REMOTELY BY JOSHUA HAMILTON
STEVENS BEFORE ME *BY VIDEO CONFERENCE*,
THIS 31st DAY OF JULY, 2023.



Michael Noel

Commissioner for Taking Affidavits

ACKNOWLEDGMENT AND RESERVATION OF RIGHTS AGREEMENT

This Acknowledgment and Reservation of Rights Agreement (the “**Agreement**”) is made this 24th day of February 2023, by and between Validus Power Corp. (“**VPC**”), Iroquois Falls Power Corp. (“**IFPC**”), Bay Power Corp. (“**BPC**”), Kap Power Corp. (“**KPC**”), Kingston Cogen Limited Partnership (“**Kingston LP**”), Kingston Cogen GP Inc. (“**Kingston GP**”) and Validus Hosting Inc. (“**VHI**”, and individually and together with VPC, IFPC, BPC, KPC, Kingston LP and Kingston GP, the “**Validus Parties**”) and Macquarie Equipment Finance Limited (“**Macquarie**”, and together with the Validus Parties, collectively, the “**Parties**”, and each individually, a “**Party**”).

RECITALS:

- A. VPC and Macquarie are, among others, parties to certain agreements and documents entered into on or about April 7, 2022, including the following:
- (i) the Participation Agreement dated April 7, 2022 between, among others, IFPC and Macquarie (the “**Participation Agreement**”); and
 - (ii) the Lease Agreement dated April 7, 2022 between IFPC and Macquarie (the “**Lease Agreement**”).
- B. Macquarie has sent to Validus Parties a number of notices of default and reservations of rights relating to the Participation Agreement, Lease Agreement and other Transaction Documents, including notices sent on or about May 17, 2022, July 13, 2022, November 16, 2022 and January 17, 2023 (each and together “**Default Notices**”).
- C. The Default Notices have included reference to, and reserved rights in respect of, among others, the following:
- (i) non-performance of certain post-closing covenants in accordance with Section 4.48 of the Participation Agreement;
 - (ii) a breach of the Hut 8 PPA (a Material Project Document) by one or both parties thereto; and
 - (iii) non-payment of a prepayment due January 16, 2022 in accordance with Section 3.3 of the Lease Agreement.
- D. In connection with the Default Notices, the Parties entered into a Heads of Agreement (the “**HOA**”) dated February 6, 2023 pursuant to which (i) the Parties agreed to consider the Prospective Transaction (as defined in the HOA), and (ii) certain terms of forbearance and standstill were agreed to in connection with certain Existing Specified Defaults (as defined in the HOA) (the “**Existing Specified Defaults**”);
- E. Macquarie wishes to exercise its right to terminate the HOA and to (i) amend or amend and restate, as applicable, the Participation Agreement, the Lease Agreement (including to provide a three-month rent holiday (the “**Rent Holiday**”)) and the Security Documents (the “**Amendments**”), (ii) enter into new Security Documents in respect of the Kingston Subsidiary and

the Kingston Project (as each term is defined in the Participation Agreement) (the “**Kingston Security**”), (iii) reserve its rights in respect of the Existing Specified Defaults and any other defaults or events of default under the Participation Agreement or Lease Agreement; and (iv) set out the terms pursuant to which Validus will be required to commence the process of selling its interest in IFPC;

- F. Each of the parties hereto acknowledge and agree that the Rent Holiday is adequate and fair consideration for the covenants of the Validus Parties herein and in each other Transaction Document;
- G. For the purposes of the Parties’ further discussions, consideration and potential negotiation of a prospective transaction, the Parties have agreed to enter into this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Definitions and Interpretation.

1.1 Capitalized terms used but not otherwise defined in this Agreement have the same meaning given to them under the Participation Agreement (including terms defined by way of incorporation).

1.2 Except as otherwise expressly provided herein, in this Agreement:

- (a) each reference to, and the definition of, any agreement, instrument or other document (including any Transaction 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 such agreement, instrument or other document shall be deemed to incorporate any appendices, annexes, schedules or exhibits to such agreement, instrument or other document;
- (b) 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;
- (c) 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, in the case of any Government Body, any Person succeeding to any of its functions and capacities;
- (d) 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;
- (e) all references to a “Section”, “clause”, “paragraph”, “sub paragraph”, “Appendix”, “Annex”, “Schedule” or “Exhibit” are to a Section, clause, paragraph or sub paragraph of this Agreement or to an Appendix, Annex, Schedule or Exhibit attached thereto;

- (f) Section headings and other captions are for the purpose of reference only and do not affect the interpretation of this Agreement;
- (g) defined terms in the singular shall include the plural and vice versa, and the masculine, feminine or neuter gender shall include all genders;
- (h) the words “hereof”, “herein” and “hereunder”, and words of similar import, when used in this Agreement, shall refer to the Agreement as a whole and not to any particular provision of the Agreement;
- (i) the words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”;
- (j) where the terms of this Agreement 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;
- (k) the word “will” shall be construed to have the same meaning and effect as the word “shall”;
- (l) the word “notice” means written notice;
- (m) 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;
- (n) references to a time of day means such time in Toronto, Ontario, Canada, unless otherwise specified herein; and
- (o) all amounts payable shall be amounts in Canadian Dollars.

2. Termination of HOA.

2.1 The HOA is hereby terminated and of no further force and effect and each of the parties thereto is released from all obligations, liabilities and duties thereunder.

2.2 The termination of the HOA shall be effective upon the date hereof and shall be binding upon and shall enure to the benefit of the parties thereto and their respective successors and assigns.

2.3 For greater certainty, the Parties acknowledge and agree that the forbearance provided for in Section 4.2 of the HOA has been terminated and no longer has any further force or effect whatsoever, effective immediately.

3. Reservation of Rights

3.1 In this Section,

“Existing Specified Defaults” means each and together the following:

- (a) non-performance of certain post-closing covenants in accordance with Section 4.48 of the Participation Agreement;
- (b) a breach of the Hut 8 PPA (a Material Project Document) by one or both parties thereto; and
- (c) non-payment of a prepayment due January 16, 2022 in accordance with Section 3.3 of the Lease Agreement.

3.2 Each of the Validus Parties acknowledge and agree that, notwithstanding that the Parties are entering into this Agreement, the Amendments and the Kingston Security and have initiated the IFPC Sale process, Macquarie reserves any and all actions, rights, remedies and powers it has under or in connection with the Transaction Documents, including in respect of the Existing Specified Defaults, each other circumstance, default or Lease Event of Default (known or unknown to any one or more Parties) or otherwise available to Macquarie at law, under statute or in equity. Specifically and without limiting the foregoing, the Validus Parties acknowledge and agree that:

- (a) Macquarie may at any time immediately proceed to exercise any and all actions, rights, powers and remedies it has, including with respect to the Existing Specified Defaults, as exist under and in accordance with the Transaction Documents and/or applicable law, or any of its enforcement and foreclosure rights and remedies under the Security Documents;
- (b) nothing shall preclude Macquarie from filing, commencing and prosecuting any legal or equitable actions, or initiating or taking any legal or equitable right, power, remedy or action against a party to the Transaction Documents, including on the basis of an Existing Specified Default at any time; and
- (c) nothing affects or in any way limits the actions, rights, powers, and remedies of Macquarie arising from or on the basis of any other fact, matter, event and/or circumstance, including those in existence as of the date hereof, and whether or not known to Macquarie at the date hereof.

3.3 Macquarie's agreement to enter into this Agreement, the Amendments or the Kingston Security and to take part in the IFPC Sale process in accordance herewith, should not in any way be construed to be an agreement not to enforce rights, or a waiver of, and this Section 3.3 is without prejudice to, any actions, rights, powers and remedies which Macquarie may have now or in the future, including in relation to the Existing Specified Defaults or any other matter whether or not known to Macquarie at the date hereof, and Macquarie expressly reserves its rights in connection therewith.

3.4 Each of the Validus Parties acknowledge, consent to and agree that:

- (a) all Transaction Documents remain in full force and effect and are enforceable in accordance with their terms;
- (b) Base Rent and Supplemental Rent will continue to be accrued and paid by IFPC in accordance with the terms and conditions of the Lease Agreement;
- (c) nothing in this Agreement:

- (i) amends, supplements, waives or otherwise affects any of the terms and conditions of the Transaction Documents;
 - (ii) prejudices or adversely affects any of Macquarie's right, power, authority, discretion, action or remedy arising under or in relation to any Transaction Document; or
 - (iii) discharges, releases or otherwise affects any liability or obligations arising under or in connection with any Transaction Document; and
- (d) the Validus Parties must continue to comply with all the terms and conditions of the Transaction Documents.

4. Covenants.

In consideration of Macquarie entering into this Agreement and the Amendments, the Validus Parties hereby agree to the following covenants in each case subject, and without prejudice, to any provision set forth in the Transaction Documents:

- (a) ***Proposed Sale of IFPC.***
- (i) The Validus Parties will take all steps required to undertake a process for the sale of the equity interests in IFPC (the "**IFPC Sale**"), targeted to complete as soon as may be commercially reasonable and in any case by 31 May 2023 (or such later date as Macquarie may in its discretion agree in writing) in compliance with this Section;
 - (ii) *Macquarie Consultation and Consent Required.* The Validus Parties agree to work in close consultation with Macquarie throughout the process of promoting, marketing, negotiating and documenting the IFPC Sale and shall not proceed with the IFPC Sale without the express written consent and approval of Macquarie, which may be given or withheld in Macquarie's absolute discretion and if given, on such terms as Macquarie sees fit.
 - (iii) *Ownership of IFPC.* The Validus Parties acknowledge that ownership of the Leased Property is governed by the Lease Agreement, the Participation Agreement and other Transaction Documents, and no sale of the Leased Property shall proceed except as permitted pursuant to the Lease Agreement, the Participation Agreement and the other Transaction Documents.
 - (iv) *Information Regarding IFPC Sale.* The Validus Parties will at all times provide to Macquarie and the advisors timely and accurate information regarding or for the purposes of the IFPC Sale.
 - (v) *Right to Enforce Security.* Notwithstanding that the process for the IFPC Sale may have commenced, Macquarie's rights under the Security Documents (including, without limitation, its right to foreclose on the equity interests of IFPC) shall remain unaffected and unamended and Macquarie may at any time immediately proceed to exercise any and all of its rights and remedies it has, including with

respect to the Existing Specified Defaults (or any other default or event of default that may occur and then be continuing) in accordance with the Transaction Documents and/or applicable law, and its rights and remedies under the Security Documents.

(b) **Other Covenants.**

- (i) *Opinion.* Deliver to Macquarie on the date hereof, a legal opinion from external counsel to the Validus Parties regarding, among other things, the due execution and delivery of the Kingston Security and the enforceability of the Kingston Security, in form and substance satisfactory to Macquarie, together with supporting certificates and resolutions and other necessary documentation.
- (ii) *Registration of Name Change.* On the date hereof, register or cause to be registered, a registration of name change of NPIF KINGSTON COGEN CORP. in each applicable real property or land registry reasonable requested by Macquarie in order to permit the registration of the Security Interest referenced in clause (iii) below.
- (iii) *Registrations.* Deliver to Macquarie, on the date hereof, evidence of registration (or the extension/renewal of existing registrations), or arrangements satisfactory to Macquarie for registration, in the necessary jurisdictions of the Security Interest or notice thereof in favour of Macquarie, created by the Security Documents in order to preserve or protect the Liens created thereby or other arrangements for effecting such registrations (or extensions/renewals of such registrations) acceptable to Macquarie;
- (iv) *Survey.* Deliver to Macquarie on the date hereof, a current survey of the Kingston Land prepared by an accredited Ontario Land Surveyor (or such other person reasonably satisfactory to Macquarie) in the Validus Parties' possession or control;
- (v) *Title Insurance.* Deliver to Macquarie on the date hereof, a commitment to title insure in favour of Macquarie in respect of the Kingston Project Site and/or Kingston Land, as applicable, together with such endorsements and any officer's certificates as to any title and off-title matters as are reasonably required by Macquarie, in form and substance satisfactory to Macquarie;
- (vi) *Ministry of Natural Resources.* Delivery to Macquarie (or cause to be delivered to Macquarie), consent from the Ministry of Natural Resources in connection with the charge of the Sublease Interest set out in Schedule 3 of the Participation Agreement in respect of the Kingston Land;
- (vii) *Notice to Landlord and Landlord Consent.* Deliver to Macquarie on the date hereof, notices to landlords and landlord consent agreement(s) in respect of any leased properties where requested by Macquarie in respect of the Kingston Land.
- (viii) *Environmental Permits.* Within 30 days of the date hereof, deliver to Macquarie amended versions of the Amended Environmental Compliance Approvals for Air

and Sewage Works and the Permit to Take Water to change the name of the permit holder to be Kingston CoGen GP Inc.;

- (ix) *Environmental Reports.* Within 30 days of the date hereof, deliver to Macquarie updated and recently dated versions of the environmental reports detailing subsurface conditions in respect of the Kingston Land;
- (x) *TCA.* Within 30 days of the date hereof, deliver to Macquarie an amended Transmission Connection Agreement with Hydro One which (a) reflects that the “Customer” thereunder is the current general partner of Kingston Cogen LP, and (b) reflects that the “Customer thereunder” is the current general partner acting “as general partner on behalf of Kingston Cogen LP;
- (xi) *KCLP Electricity License.* Within 30 days of the date hereof, provide evidence satisfactory to Macquarie of renewal of the KCLP Electricity Retailer License from the Ontario Energy Board; and
- (xii) *Employment.* Deliver to Macquarie (a) within 30 days of the date hereof, current copies of all employment agreements, offer letters or similar for Jacob Richardson, Curtis Carriere, Stephen Ukatu, Chris Jarvis and Derek Blais, and (b) promptly following execution, the assignment agreements with each employee transferring their employment from Validus to one of Validus’ Subsidiaries.

5. Prospective Kingston Financing.

The Validus Parties confirm they are in discussion with third party financiers to consider obtaining a financing facility which may be secured by the assets of Kingston (“**Prospective Kingston Financing**”), and acknowledge such Prospective Kingston Financing is subject to the terms and conditions of the Transaction Documents. Should any of the Validus Parties (or their affiliates) receive transaction documents for a proposal of Prospective Kingston Financing that it wishes to proceed with, and without any affect on or prejudice to the Transaction Documents:

- (a) the Validus Parties must, prior to committing to or executing any such transaction documents, request the approval of Macquarie as required under the Transaction Documents; and
- (b) following receipt of such Validus Party request, Macquarie agrees to consider the request in good faith and provide a response thereto in a timely manner, where such response (including whether or not approval is given, and if given, on such terms such approval may be given upon) remains and is at the discretion of Macquarie.

6. Ratification of Liability.

Each of the Validus Parties as debtors, grantors, pledgors, guarantors, assignors, or in other similar capacities in which such parties grant liens or security interests in their properties or otherwise act as accommodation parties or guarantors, as the case may be, under the Transaction Documents, hereby ratifies and reaffirms all of its payment and performance obligations and obligations to indemnify, contingent or otherwise, under each of such Transaction Documents to which such party is a party, and each such party hereby ratifies and reaffirms its grant of liens on or security interests in its properties

pursuant to such Transaction Documents to which it is a party as security for the Obligations under or with respect to the Lease Agreement, and confirms and agrees that such liens and security interests hereafter secure all of the obligations, including, without limitation, all additional obligations hereafter arising or incurred pursuant to or in connection with this Agreement, the Lease Agreement or any other Transaction Document.

7. No Waiver or Release.

Nothing in this Agreement will be construed to be a waiver or release of any cause of action, claim, defence or right that either Party may have.

8. Representations and Warranties.

Each of the Validus Parties makes, as of the date hereof, the representations and warranties of the Obligors set out in Section 3.1, and where applicable, in respect of this Agreement, mutatis mutandis.

9. Notices.

Notices to be given under this Agreement shall be given the manner, and on the terms, set out in Section 9.6 of the Participation Agreement, mutatis mutandis.

10. Enurement.

This Agreement shall be binding upon and enure to the benefit of the Parties and their respective successors and assigns. Further, provisions expressed in favour of, in respect of or for the benefit of Macquarie Parties not being a Party, shall inure to the benefit of, and shall be enforceable by, such parties directly or by Macquarie on their behalf and for their benefit.

11. Governing Law; Forum Selection and Consent to Jurisdiction; Waiver of Jury Trial.

11.1 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.

11.2 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 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 shall affect any right that Macquarie may otherwise have to bring any action or proceeding relating to this Agreement against any Obligor or its properties in the courts of any jurisdiction having jurisdiction over an Obligor or any of its property or assets.

11.3 THE PARTIES HERETO WAIVE ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY MATTER ARISING UNDER THIS AGREEMENT.

12. Severability.

Each provision of this Agreement shall be interpreted in such manner as to be valid under Applicable Law, but if any provision of this Agreement shall be ruled invalid or prohibited thereunder, such provision's invalidity or prohibition shall not invalidate or render unenforceable the remaining provisions of this Agreement.

13. Counterparts.

This Agreement may be executed, including by electronic means, in any number of counterparts, each of which is deemed an original, including any electronic transmission of an executed signature page, and all of which together are deemed to be one and the same agreement.

14. Basic Document.

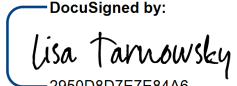
This Agreement, and each document, agreement and instrument executed by any of the Validus Parties pursuant to this Agreement, shall each constitute a Basic Document for all purposes. For the avoidance of doubt, the breach by any Validus Party of any of the terms, conditions or covenants under this Agreement is a Lease Event of Default (without the benefit of any cure periods).

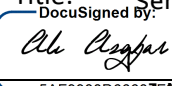
15. Entire Agreement; Amendment.

This Agreement constitutes the sole and entire agreement between the Parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to the subject matter. No provision of this Agreement may be amended, modified, waived or changed unless made in writing and signed by the Parties.


IN WITNESS WHEREOF the Parties have executed this Agreement on the date set forth above.

MACQUARIE EQUIPMENT FINANCE LTD.


By: 
DocuSigned by:
2050D8D7E7E94A6...
Name: Lisa Tarnowsky
Title: Senior Manager, Operations

By: 
DocuSigned by:
5AF9988D66684F2...
Name: Ali Asghar
Title: Team Lead, Operations


IROQUOIS FALLS POWER CORP.

By: 
Name: Todd Shortt
Title: President and CEO


VALIDUS POWER CORP.

By: 
Name: Todd Shortt
Title: President and CEO


VALIDUS HOSTING INC.

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

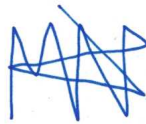
**KINGSTON COGEN LIMITED PARTNERSHIP, by
its general partner KINGSTON COGEN GP
INC., as a Guarantor**

By: 
Name: Todd Shortt
Title: President and CEO

KINGSTON COGEN INC.

By: 
Name: Todd Shortt
Title: President and CEO

THIS IS **EXHIBIT “E”** REFERRED TO IN THE
AFFIDAVIT OF JOSHUA HAMILTON STEVENS,
AFFIRMED REMOTELY BY JOSHUA HAMILTON
STEVENS BEFORE ME *BY VIDEO CONFERENCE*,
THIS 31st DAY OF JULY, 2023.



Michael Noel
Commissioner for Taking Affidavits

**ACKNOWLEDGEMENT,
CONFIRMATION AND AMENDMENT AGREEMENT**

TO: Macquarie Equipment Finance Ltd. (together with its successors and assigns, the “**Lessor**”)

RE: (i) Amended and restated participation agreement dated as of the date hereof (the “**Participation Agreement**”) between Iroquois Falls Power Corp., as lessee (“**IFPC**”), and the Lessor, as lessor, and (ii) amended and restated lease agreement dated as of the date hereof (together with the Participation Agreement, the “**A&R Agreements**”) between IFPC, as lessee, and the Lessor, as lessor

DATE: February 24, 2023

RECITALS:

- A. Pursuant to the terms of (i) a participation agreement dated as of April 7, 2022 and (ii) a lease agreement dated as of April 7, 2022 (collectively, the “**Original Agreements**”), each between IFPC, as lessee, and the Lessor, as lessor, the Lessor agreed to purchase the Leased Property from IFPC and the IFPC agreed to lease the Leased Property from the Lessor;
- B. Each of IFPC, Validus Power Corp. (“**Parent**”), Bay Power Corp. (“**Bay**”), Kap Power Corp. (“**Kap**”) and Validus Hosting Inc. (“**Hosting**” and collectively with IFPC, Parent, Bay and Kap, the “**Credit Parties**”) executed and delivered certain guarantees and security documents in favour of the Lessor in support of the Credit Parties’ obligations as described on Schedule I attached hereto (collectively and as amended by this Agreement, as applicable, the “**Existing Documents**”);
- C. IFPC and the Lessor have agreed to amend and restate, in their entirety, each of the Original Agreements pursuant to the terms of the A&R Agreements; and
- D. The undersigned have entered into this Acknowledgement, Confirmation and Amendment Agreement (this “**Agreement**”) to (i) acknowledge and confirm the continuing enforceability and effect of the Existing Documents, notwithstanding the entering into of the A&R Agreements and (ii) amend certain of the Existing Documents on the terms and conditions set out herein.

THIS AGREEMENT WITNESSES THAT for good and valuable consideration (the receipt and sufficiency of which are hereby irrevocably acknowledged) each of the undersigned hereby covenants, agrees and confirms with the Lessor as follows:

- 1. Defined terms used herein and not otherwise defined herein shall have the meanings given to them in the Participation Agreement.

2. Each Credit Party hereby acknowledges the execution and delivery of the A&R Agreements and agrees that the entering into of the A&R Agreements does not and shall not limit or diminish in any manner its obligations under the Existing Documents.

3. Effective as of the date hereof, the Pledge Agreement is amended as follows:

(a) Deleting the definition of “**Pledged Issuer**” in Section 1 in its entirety and replacing it with the following:

““**Pledged Issuer**” means each of the following:

- (a) the Lessee;
- (b) Bay Power Corp.;
- (c) Kap Power Corp.;
- (d) Kingston Cogen GP Inc.; and
- (e) Kingston Cogen Limited Partnership.”

(b) Deleting the first sentence of Section 8 in its entirety and replacing it with the following:

“Unless a Lease Event of Default (and for greater clarity, whether or not the Lease has been rescinded or terminated) pursuant to and as permitted by Section 13 of the Lease (an “**Event of Acceleration**”) has occurred and is continuing, the Debtor shall be entitled to exercise all voting power from time to time exercisable with respect to the Pledged Shares and give consents, waivers and ratifications with respect thereto; provided, however, that no vote shall be cast or consent, waiver or ratification given or action taken which would be, or would have a reasonably likelihood of being, prejudicial to the interests of the Lessor or which would have the effect of reducing the value of the Collateral as security for the Secured Liabilities or imposing any restriction on the transferability of any of the Collateral.”

(c) Adding the following to Section 10 as new clauses (h) and (i):

(h) Appoint Receiver. Appoint by instrument in writing one or more Receivers of the Debtor or any or all of the Collateral with such rights, powers and authority (including any or all of the rights, powers and authority of the Lessor under this Agreement) as may be provided for in the instrument of appointment or any supplemental instrument, and remove and replace any such Receiver from time to time. To the extent permitted by Applicable Law, any Receiver appointed by the Lessor shall (for purposes relating to responsibility for the Receiver’s acts or omissions) be considered to be the agent of the Debtor and not of the Lessor.

- (i) Court-Appointed Receiver. Obtain from any court of competent jurisdiction an order for the appointment of a Receiver of the Debtor or of any or all of the Collateral.
 - (d) Deleting Schedule A in its entirety and replacing it with Schedule A attached hereto.
- 4. Effective as of the date hereof, each of the Security Agreements is amended by deleting the first sentence of Section 3 in its entirety and replacing it with the following:

“If the grant of the Security Interests with respect to any Contract, Intellectual Property Right or Permit under Section 2 would result in the termination or breach of such Contract, Intellectual Property Right or Permit or is otherwise prohibited or ineffective (whether by the terms thereof or under Applicable Law), then such Contract, Intellectual Property Right or Permit shall not be subject to the Security Interests but shall be held in trust by the Debtor for the benefit of the Lessor and, on the exercise by the Lessor of any of its rights or remedies under this Agreement following a Lease Event of Default (and for greater clarity, whether or not the Lease has been rescinded or terminated) pursuant to and as permitted by Section 13 of the Lease (an “**Event of Acceleration**”), shall be assigned by the Debtor as directed by the Lessor; provided that: (a) the Security Interests shall attach to such Contract, Intellectual Property Right or Permit, or applicable portion thereof, immediately at such time as the condition causing such termination or breach is remedied, and (b) if a term in a Contract that prohibits or restricts the grant of the Security Interests in the whole of an Account or Chattel Paper forming part of the Collateral is unenforceable against the Lessor under Applicable Law, then the exclusion from the Security Interests set out above shall not apply to such Account or Chattel Paper.”
- 5. Effective as of the date hereof, each of the Debentures is amended by deleting the first clause of Section 3.1 in its entirety and replacing it with the following:

“On or after the occurrence and during the continuance of a Lease Event of Default that has not been waived or cured (and for greater clarity, whether or not the Lease Agreement has been rescinded or terminated), in accordance with the provisions of the Participation Agreement or the Lease Agreement, as applicable, the Lessor may do any one or more of the following:”
- 6. Effective as of the date hereof, the Assignment is amended by deleting Section 2 in its entirety and replacing it with the following:

“As general and continuing security for the due payment and performance of the Secured Liabilities, the Assignor hereby grants to the Lessor as and by way of a specific assignment (the “Assignment”) all of the right, title and interest of the Assignor in and to each of the Material Project Documents (together with all amendments, modifications, supplements, restatements or replacements, if any, from time to time thereafter made thereto, and subject to any consent and acknowledgment agreements obtained in connection therewith, if any, collectively, the “Assigned Documents”) including, without

limitation, (i) all deeds, documents, writings, papers, books, books of account and other records relating to the Assigned Documents, (ii) all revenues and other moneys due and payable or hereafter to become due and payable to the Assignor under or in connection with the Assigned Documents, (iii) the benefit of any guarantees or indemnities relating to any of the foregoing, (iv) the rights and benefits of any warranties and any confirmation letters relating thereto and (v) all benefit, power and advantage of the Assignor to be derived therefrom, including, without limitation, the benefit, power and advantage to enforce the rights of the Assignor thereunder in the name of the Assignor after a Lease Event of Default (and for greater clarity, whether or not the Lease has been rescinded or terminated) pursuant to and as permitted by Section 13 of the Lease (an “**Event of Acceleration**”) has occurred and is continuing.”


7. Each Credit Party hereby acknowledges, confirms and agrees that:
 - (a) all of the Existing Documents (as amended by this Agreement, as to which it is a party shall continue in full force and effect as continuing security for the Obligations;
 - (b) all of the Existing Documents to which it is a party constitute a legal, valid and binding obligation of it enforceable against it in accordance with its terms;
 - (c) all of the Existing Documents to which it is a party are hereby ratified and confirmed;
 - (d) all of the mortgages, charges, pledges, assignments and security interests contained in or created by the Existing Documents provided by any one or more Credit Parties continue in full force and effect, without novation, and constitute good and valid mortgages, charges, pledges, assignments and security interests on such Credit Party’s interests in the property and the other collateral described in the Existing Documents and secure the due and punctual payment of all Obligations, and without limiting the generality of the foregoing, each Credit Party hereby further ratifies and confirms its obligations under the Existing Documents; and
 - (e) all filings and registrations with respect to the Existing Documents remain in place and continue to be binding and effective as against each Credit Party.
8. The provision of this Agreement shall be binding upon the undersigned and their respective successors and assigns and shall enure to the benefit of the Lessor and its successors and permitted assigns under the A&R Agreements.
9. In the event of any conflict or inconsistency between any provisions of this Agreement and any provision of the Participation Agreement, the provisions of the Participation Agreement will prevail and be paramount.
10. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

11. This Agreement may be executed in any number of counterparts and all of such counterparts taken together shall be deemed to constitute one and the same document. Delivery of an executed signature page to this Agreement by facsimile or in electronic (i.e., "pdf" or "tif") format and other electronic signatures (including, without limitation, DocuSign and AdobeSign) shall be as effective as delivery of a manually executed counterpart of this Agreement.


[signature pages to follow]

IN WITNESS WHEREOF the undersigned have each caused this Agreement to be duly executed and delivered by its respective officer(s).


IROQUOIS FALLS POWER CORP.

By: 
Name: Todd Shortt
Title: President and CEO


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.

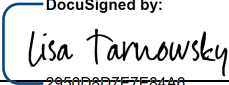
By: 
Name: Todd Shortt
Title: President and CEO

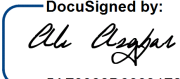
VALIDUS HOSTING INC.

By: 
Name: Todd Shortt
Title: President and CEO

ACCEPTED AND ACKNOWLEDGED BY:

MACQUARIE EQUIPMENT FINANCE LTD., as Lessor

DocuSigned by:

By: _____
Name: Lisa Tarnowsky
Title: Authorized Signatory

DocuSigned by:

By: _____
Name: Ali Asghar
Title: Authorized Signatory

SCHEDULE I

EXISTING DOCUMENTS

1. General security agreement dated as of April 7, 2022, granted by IFPC to the Lessor;
2. Debenture dated as of April 7, 2022, granted by IFPC in favour of the Lessor;
3. General security agreement dated as of April 7, 2022, granted by Bay to the Lessor;
4. Debenture dated as of April 7, 2022, granted by Bay in favour of the Lessor;
5. General security agreement dated as of April 7, 2022, granted by Kap to the Lessor;
6. Debenture dated as of April 7, 2022, granted by Kap in favour of the Lessor;
7. Securities pledge agreement dated as of April 7, 2022, granted by Parent in favour of the Lessor (the “**Pledge Agreement**”); and
8. Assignment of material project documents dated as of April 7, 2022, granted by Hosting in favour of the Lessor (the “**Assignment**”).

Item 1, 3 and 5 above are collectively referred to herein as the “**Security Agreements**”, and items 2, 4 and 6 above are collectively referred to herein as the “**Debentures**”.

SCHEDULE A

DEBTOR & PLEDGED PROPERTY INFORMATION

Full legal name:

Validus Power Corp.

Prior names:

None

Predecessor companies:

None

Jurisdiction of incorporation or organization:

Canada

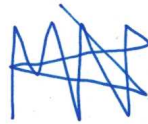
Address of chief executive office:

2B-1500 Sandhill Drive, Ancaster, Ontario, L9G 4V5

Pledged Certificated Securities:

| Pledged Issuer | Securities Owned | % of issued and outstanding Securities of Pledged Issuer | Security Certificate Numbers | Security Certificate Location |
|------------------------------------|---------------------------------|---|-------------------------------------|--------------------------------------|
| Iroquois Falls Power Corp. | 57,041,211 | 100% | C-07 | Ontario |
| Bay Power Corp. | 1,000 | 100% | AC-1 | Ontario |
| Kap Power Corp. | 1,000 | 100% | AC-1 | Ontario |
| Kingston Cogen GP Inc. | 1 common share | 100% | C-06 | Ontario |
| Kingston Cogen Limited Partnership | 4,529,051 Limited Partner Units | 100% of Limited Partner Units | LP-04 | Ontario |

THIS IS **EXHIBIT “F”** REFERRED TO IN THE
AFFIDAVIT OF JOSHUA HAMILTON STEVENS,
AFFIRMED REMOTELY BY JOSHUA HAMILTON
STEVENS BEFORE ME *BY VIDEO CONFERENCE*,
THIS 31st DAY OF JULY, 2023.



Michael Noel

Commissioner for Taking Affidavits

SUPPLEMENT TO AMENDED AND RESTATED LEASE AGREEMENT

LEASE SUPPLEMENT NO. 1

dated February 24, 2023

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

LEASE SUPPLEMENT No. 1 dated February 24, 2023 (this “**Lease Supplement**”) between Macquarie Equipment Finance Ltd. (“**Lessor**”) and **Iroquois Falls Power Corp.** (“**Lessee**”).

R E C I T A L S :

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.

Lessor and Lessee entered into a Lease Supplement dated as of April 7, 2022 (the “**Existing Lease Supplement**”).

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:

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.

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.

Representations and Warranties. Lessee hereby represents and warrants that:

No event that would constitute an Event of Loss under the Lease exists with respect to the Leased Property as of the date hereof;

Lessor’s Cost for the Leased Property is \$45,000,000;

The Leased Property has been assembled and installed at the Iroquois Falls Project Site set out in Schedule 2 of this Lease Supplement.

The Leased Property is free and clear of all Liens.

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

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.

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.

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.

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.

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.

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.


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.**

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.

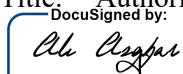
IN WITNESS WHEREOF, Lessor and Lessee have caused this Lease Supplement No. 1 to be duly executed and delivered on the date first above written.

LESSOR:

MACQUARIE EQUIPMENT FINANCE LTD.

By: 
2950D8D7E7E84A6...

Name: Lisa Tarnowsky
Title: Authorized Signatory

By: 
5AF9980D6684F21

Name: Ali Asghar
Title: Authorized Signatory

LESSEE:

IROQUOIS FALLS POWER CORP.

By: 

Name: Todd Shortt
Title: President and CEO

**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.

THIS IS **EXHIBIT “HH”** REFERRED TO IN THE
AFFIDAVIT OF JOSHUA HAMILTON STEVENS,
AFFIRMED REMOTELY BY JOSHUA HAMILTON
STEVENS BEFORE ME *BY VIDEO CONFERENCE*,

THIS 31st DAY OF JULY, 2023.



Michael Noel

Commissioner for Taking Affidavits

June 9, 2023

VIA PERSONAL DELIVERY AND REGISTERED MAIL

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

Attention: Mr. Todd Shortt

Dear Sirs/Mesdames:

**Re: Lease Agreement dated April 7, 2022, as amended and restated pursuant to the Amended and Restated Lease Agreement dated February 24, 2023 (the “Lease”), between Macquarie Equipment Finance Ltd. (the “Lessor”) and Iroquois Falls Power Corp. (the “Lessee”); General Security Agreement made as of April 7, 2022, as amended and confirmed by the Acknowledgement, Confirmation and Amendment Agreement dated February 24, 2023 (the “GSA”) by the Lessee in favour of the Lessor and the other documents listed in Schedule “A” (collectively, the “Security Documents”)
and
Notices of Default and Reservation of Rights letters set out in Schedule “B” (collectively, the “Notices of Default”)**

We refer to the Security Documents and the Notices of Default. Unless otherwise defined, capitalized terms used herein have the meanings attributed to such terms in the Lease or the GSA.

As the Lessor advised under the Notices of Default, events of default and other similar events have occurred under the Security Documents. In addition, the Lessor has failed to pay the Base Rent (and associated HST) due on May 31, 2023. This is a non-exhaustive list of events of default and other similar events under the Security Documents. One or more of the foregoing events of default and other similar events are Lease Events of Default, Lease Defaults (as defined in the GSA) and/or other defaults or acceleration events under the Security Documents, have continued since the Notices of Default were delivered and are continuing as of the date hereof. Where notice of such events of default and other similar events is required under the Security Documents and has not previously been provided by the Lessor to the Lessee, this letter shall constitute such notice.

Pursuant to the Lease, upon the occurrence of a Lease Event of Default, the Lessor may in its sole and absolute discretion, among other things, enforce the rights and remedies set out in section 13.1 of the Lease.

Pursuant to the GSA, upon the occurrence of an Event of Acceleration, the Lessor may in its sole and absolute discretion, among other things, declare the Secured Liabilities to be immediately due and payable and the Security Interests to be immediately enforceable, demand the amounts

payable and/or demand possession of and realize upon all or any part of the Collateral pursuant to the Security Interests.

Pursuant to the relevant provisions of the Security Documents, including, without limitation, the Lease and the GSA, the Lessor hereby demands payment of the overdue amounts owing, by no later than June 19, 2023. Payment should be made to our last notified bank account for payments.

As at June 9, 2023, the aggregate amount of the overdue Base Rent and associated HST owing pursuant to the Lease is \$6,780,000.00 (the "**Arrears**"). This amount is exclusive of legal and other adviser expenses and other amounts payable, including interest, costs, charges and fees accrued or incurred to such date, and the Lessor reserves the right to demand such amounts. The Lessor is not exercising its rights to demand payment of the amounts set out in sections 13.1 (e) or 13.1 (f) of the Lease at this time but reserves the right to do so. The exact amount of the Obligations and/or the Secured Liabilities may be obtained at any time by contacting the Lessor.

[Remainder left intentionally blank]

Enclosed is a Notice of Intention to Enforce a Security pursuant to section 244 of the *Bankruptcy and Insolvency Act* (Canada). Please be advised that if payment as aforesaid is not made, the Lessor will take such further steps as it deems necessary or advisable to recover the Arrears and other amounts owed to the Lessor under the Security Documents. This letter further informs you that the Lessor hereby expressly reserves all available rights, remedies and claims in their entirety—including, without limitation, the appointment by a court of competent jurisdiction of a receiver to realize on the business, property, assets and undertaking of the Lessee and/or Validus Hosting Inc., Validus Power Corp., Bay Power Corp., Kap Power Corp., Kingston CoGen GP Inc. or Kingston CoGen Limited Partnership (collectively, the “**Guarantors**”)—any of which may be exercised or otherwise pursued at any time, and from time to time, and without further notice to you, in the sole and absolute discretion of the Lessor, as the case may be, in accordance with the Security Documents, or at law and in equity.

Yours truly,

Macquarie Equipment Finance Ltd.

DocuSigned by:

Lisa Tamowsky

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Schedule "A"

Security Documents

- a) The Lease
- b) The GSA
- c) Participation Agreement dated April 7, 2022, as amended and restated pursuant to the Amended and Restated Participation Agreement dated February 24, 2023, between the Lessor, the Lessee and the Guarantors
- d) Lease Supplement No. 1 dated April 7, 2022 and Lease Supplement No. 1 to Amended and Restated Lease Agreement dated February 24, 2023, each between the Lessor and the Lessee
- e) Guarantee made as of April 7, 2022, as amended and restated pursuant to the Amended and Restated Guarantee dated February 24, 2023, in favour of the Lessor by the Lessee and the Guarantors
- f) Demand Debenture made as of April 7, 2022, as amended and confirmed by the Acknowledgement, Confirmation and Amendment Agreement dated February 24, 2023, in favour of the Lessor by the Lessee
- g) Ontario PPSA Registration registered against the Lessee in favour of the Lessor and bearing Reference File Number "781679718"
- h) The Notices of Default

Schedule "B"

Notices of Default and Reservation of Rights Letters

- a) Notice of default dated May 12, 2022
- b) Notice of default dated July 12, 2022
- c) Notice of default dated November 16, 2022
- d) Notice of default and reservation of rights dated November 16, 2022
- e) Acknowledgement and reservation of rights agreement dated February 24, 2023
- f) Notice of default and reservation of rights dated April 16, 2023
- g) Acknowledgment and reservation of rights agreement no. 2 dated May 19, 2023
- h) Notice of default and reservation of rights dated June 2, 2023

**NOTICE OF INTENTION TO
ENFORCE A SECURITY**
(Rule 124)
(Pursuant to Subsection 244(1)
of the *Bankruptcy and Insolvency Act*)

TO:

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

Attention: Mr. Todd Shortt

TAKE NOTICE THAT:

1. Macquarie Equipment Finance Ltd. (the "Lessor"), a secured creditor, intends to enforce its security on the insolvent person's property, including, without limitation, as described below:
 - (a) All "Leased Property" of the insolvent person, as such term is defined in the Lease Agreement dated April 7, 2022, as amended and restated pursuant to the Amended and Restated Lease Agreement dated February 24, 2023 (the "Lease"), between the Lessor and the insolvent person
 - (b) All "Collateral" of the insolvent person, as such term is defined in the General Security Agreement dated April 7, 2022, as amended and confirmed by the Acknowledgement, Confirmation and Amendment Agreement dated February 24, 2023 (the "GSA"), between the Lessor and the insolvent person
 - (c) All property and collateral that was assigned, transferred, pledged, granted, mortgaged, charged and/or similarly secured pursuant to the Security Documents (as such term is defined below)
 - (d) All property and collateral against which the security interests bearing Reference File Number "781679718" have been registered pursuant to the *Personal Property Security Act* (Ontario) (the "PPSA Registration")
2. The security that is to be enforced is the following:
 - (a) The Lease
 - (b) The GSA
 - (c) The PPSA Registration

- (d) Participation Agreement dated April 7, 2022, as amended and restated pursuant to the Amended and Restated Participation Agreement dated February 24, 2023, between the Lessor, the insolvent person and Validus Power Corp., Bay Power Corp., Kap Power Corp., Kingston CoGen Limited Partnership and Kingston CoGen GP Inc. (collectively, the "Guarantors")
- (e) Lease Supplement No. 1 dated April 7, 2022 and Lease Supplement No. 1 to Amended and Restated Lease Agreement dated February 24, 2023, each between the Lessor and the insolvent person
- (f) Guarantee made as of April 7, 2022, as amended and restated pursuant to the Amended and Restated Guarantee dated February 24, 2023, in favour of the Lessor by the insolvent person and the Guarantors
- (g) Demand Debenture made as of April 7, 2022, as amended and confirmed by the Acknowledgement, Confirmation and Amendment Agreement dated February 24, 2023, in favour of the Lessor by the insolvent person

(the foregoing, together with all other agreements and security documents related to the foregoing, collectively, the "Security Documents")

- 3. The total amount of indebtedness subject to a demand for payment secured by the security is \$6,780,000.00, as at June 9, 2023. This amount is exclusive of legal and other adviser expenses and other amounts payable, including interest, costs, charges and fees accrued or incurred to such date, and the Lessor reserves the right to demand such amounts.
- 4. The secured creditor will not have the right to enforce the security until after the expiry of the 10-day period after this notice is sent unless the insolvent person consents to an earlier enforcement. A Consent is included herewith as Schedule "A".

Dated at Toronto, Ontario this 9th day of June, 2023.

Macquarie Equipment Finance Ltd.

DocuSigned by:
Lisa Tarnowsky
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Schedule "A"

CONSENT

TO: Macquarie Equipment Finance Ltd.

FROM: Iroquois Falls Power Corp., an insolvent person

The insolvent person acknowledges receipt of a Notice of Intention to Enforce a Security delivered by Macquarie Equipment Finance Ltd. (the "Lessor").

For consideration received, the receipt and sufficiency of which is hereby irrevocably acknowledged, the insolvent person hereby consents to the immediate enforcement by the Lessor of the security held by the Lessor from the insolvent person, and for the same consideration waives completely all rights to any delay by or any further notice from the Lessor with respect to the enforcement of its security and the exercise of the other remedies of the Lessor against the insolvent person.


DATED at _____ this ____ day of _____, 2023.

IROQUOIS FALLS POWER CORP.

Per: _____
Name:
Title:

I have the authority to bind the corporation.

THIS IS **EXHIBIT “YY”** REFERRED TO IN THE
AFFIDAVIT OF JOSHUA HAMILTON STEVENS,
AFFIRMED REMOTELY BY JOSHUA HAMILTON
STEVENS BEFORE ME *BY VIDEO CONFERENCE*,
THIS 31st DAY OF JULY, 2023.



Michael Noel

Commissioner for Taking Affidavits

July 24, 2023

VIA EMAIL

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

Attention: Mr. Todd Shortt

Dear Sirs/Mesdames:

Re: Lease Agreement dated April 7, 2022, as amended and restated pursuant to the Amended and Restated Lease Agreement dated February 24, 2023 (the “Lease”), between Macquarie Equipment Finance Ltd. (the “Lessor”) and Iroquois Falls Power Corp. (the “Lessee”); General Security Agreement made as of April 7, 2022, as amended and confirmed by the Acknowledgement, Confirmation and Amendment Agreement dated February 24, 2023 (the “GSA”) by the Lessee in favour of the Lessor and the other documents listed in Schedule “A” (collectively, the “Security Documents”)
and
Notices of Default, Reservation of Rights letters, Demand Letter and Section 244 Notice set out in Schedule “B” (collectively, the “Notices and Demand Letter”)

We refer to the Security Documents and the Notices and Demand Letter. Unless otherwise defined, capitalized terms used herein have the meanings attributed to such terms in the Lease or the GSA.

As the Lessor advised under the Notices and Demand Letter, events of default and other similar events have occurred under the Security Documents. In addition, the Lessor has failed to pay three installments of Base Rent (and associated HST) due on May 31, June 7 and July 7, 2023. This is a non-exhaustive list of events of default and other similar events under the Security Documents. One or more of the foregoing events of default and other similar events are Lease Events of Default, Lease Defaults (as defined in the GSA) and/or other defaults or acceleration events under the Security Documents, have continued since the Notices and Demand Letter were delivered and are continuing as of the date hereof. Where notice of such events of default and other similar events is required under the Security Documents and has not previously been provided by the Lessor to the Lessee, this letter shall constitute such notice.

Pursuant to the Lease, upon the occurrence of a Lease Event of Default, the Lessor may in its sole and absolute discretion, among other things, enforce the rights and remedies set out in section 13.1 of the Lease.

Pursuant to the GSA, upon the occurrence of an Event of Acceleration, the Lessor may in its sole and absolute discretion, among other things, declare the Secured Liabilities to be immediately

due and payable and the Security Interests to be immediately enforceable, demand the amounts payable and/or demand possession of and realize upon all or any part of the Collateral pursuant to the Security Interests.

Pursuant to the relevant provisions of the Security Documents, including, without limitation, the Lease and the GSA, the Lessor hereby demands immediate payment of the overdue amounts owing. Payment should be made to our last notified bank account for payments.

As at July 24, 2023, the aggregate amount of the overdue Base Rent and associated HST owing pursuant to the Lease is \$9,605,000 (the “**Arrears**”). This amount is exclusive of legal and other adviser expenses and other amounts payable, including interest, costs, charges and fees accrued or incurred to such date, and the Lessor reserves the right to demand such amounts. The exact amount of the Obligations and/or the Secured Liabilities may be obtained at any time by contacting the Lessor.

[Remainder left intentionally blank]

Yours truly,

Macquarie Equipment Finance Ltd.

DocuSigned by:
Lisa Tarnowsky
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Schedule "A"

Security Documents

- a) The Lease
- b) The GSA
- c) Participation Agreement dated April 7, 2022, as amended and restated pursuant to the Amended and Restated Participation Agreement dated February 24, 2023, between the Lessor, the Lessee and the Guarantors
- d) Lease Supplement No. 1 dated April 7, 2022 and Lease Supplement No. 1 to Amended and Restated Lease Agreement dated February 24, 2023, each between the Lessor and the Lessee
- e) Guarantee made as of April 7, 2022, as amended and restated pursuant to the Amended and Restated Guarantee dated February 24, 2023, in favour of the Lessor by the Lessee and the Guarantors
- f) Demand Debenture made as of April 7, 2022, as amended and confirmed by the Acknowledgement, Confirmation and Amendment Agreement dated February 24, 2023, in favour of the Lessor by the Lessee
- g) Ontario PPSA Registration registered against the Lessee in favour of the Lessor and bearing Reference File Number "781679718"
- h) The Notices and Demand Letter

Schedule "B"

**Notices of Default, Reservation of Rights letters,
Demand Letter and Section 244 Notice**

- a) Notice of default dated May 12, 2022
- b) Notice of default dated July 12, 2022
- c) Notice of default dated November 16, 2022
- d) Notice of default and reservation of rights dated November 16, 2022
- e) Acknowledgement and reservation of rights agreement dated February 24, 2023
- f) Notice of default and reservation of rights dated April 16, 2023
- g) Acknowledgment and reservation of rights agreement no. 2 dated May 19, 2023
- h) Notice of default and reservation of rights dated June 2, 2023
- i) Demand Letter dated June 9, 2023
- j) Section 244 Notice dated June 9, 2023

July 24, 2023

VIA EMAIL

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

Attention: Mr. Todd Shortt

Dear Sirs/Mesdames:

Re: Lease Agreement dated April 7, 2022, as amended and restated pursuant to the Amended and Restated Lease Agreement dated February 24, 2023 (the “Lease”), between Macquarie Equipment Finance Ltd. (the “Lessor”) and Iroquois Falls Power Corp. (the “Lessee”); General Security Agreement made as of April 7, 2022, as amended and confirmed by the Acknowledgement, Confirmation and Amendment Agreement dated February 24, 2023 (the “GSA”) by the Lessee in favour of the Lessor and the other documents listed in Schedule “A” (collectively, the “Security Documents”)
and
Notices of Default, Reservation of Rights letters, Demand Letter and Section 244 Notice set out in Schedule “B” (collectively, the “Notices and Demand Letter”)

We refer to the Security Documents and the Notices and Demand Letter. Unless otherwise defined, capitalized terms used herein have the meanings attributed to such terms in the Lease or the GSA.

As the Lessor advised under the Notices and Demand Letter, events of default and other similar events have occurred under the Security Documents. In addition, the Lessor has failed to pay three installments of Base Rent (and associated HST) due on May 31, June 7 and July 7, 2023. This is a non-exhaustive list of events of default and other similar events under the Security Documents. One or more of the foregoing events of default and other similar events are Lease Events of Default, Lease Defaults (as defined in the GSA) and/or other defaults or acceleration events under the Security Documents, have continued since the Notices and Demand Letter were delivered and are continuing as of the date hereof. Where notice of such events of default and other similar events is required under the Security Documents and has not previously been provided by the Lessor to the Lessee, this letter shall constitute such notice.

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Pursuant to the GSA, upon the occurrence of an Event of Acceleration, the Lessor may in its sole and absolute discretion, among other things, declare the Secured Liabilities to be immediately

due and payable and the Security Interests to be immediately enforceable, demand the amounts payable and/or demand possession of and realize upon all or any part of the Collateral pursuant to the Security Interests.

Pursuant to the relevant provisions of the Security Documents, including, without limitation, the Lease and the GSA, the Lessor hereby demands immediate payment of the overdue amounts owing. Payment should be made to our last notified bank account for payments.

As at July 24, 2023, the aggregate amount of the overdue Base Rent and associated HST owing pursuant to the Lease is \$9,605,000 (the “**Arrears**”). This amount is exclusive of legal and other adviser expenses and other amounts payable, including interest, costs, charges and fees accrued or incurred to such date, and the Lessor reserves the right to demand such amounts. The exact amount of the Obligations and/or the Secured Liabilities may be obtained at any time by contacting the Lessor.

[Remainder left intentionally blank]

Yours truly,

Macquarie Equipment Finance Ltd.

DocuSigned by:

Lisa Tarnowsky

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Schedule "A"

Security Documents

- a) The Lease
- b) The GSA
- c) Participation Agreement dated April 7, 2022, as amended and restated pursuant to the Amended and Restated Participation Agreement dated February 24, 2023, between the Lessor, the Lessee and the Guarantors
- d) Lease Supplement No. 1 dated April 7, 2022 and Lease Supplement No. 1 to Amended and Restated Lease Agreement dated February 24, 2023, each between the Lessor and the Lessee
- e) Guarantee made as of April 7, 2022, as amended and restated pursuant to the Amended and Restated Guarantee dated February 24, 2023, in favour of the Lessor by the Lessee and the Guarantors
- f) Demand Debenture made as of April 7, 2022, as amended and confirmed by the Acknowledgement, Confirmation and Amendment Agreement dated February 24, 2023, in favour of the Lessor by the Lessee
- g) Ontario PPSA Registration registered against the Lessee in favour of the Lessor and bearing Reference File Number "781679718"
- h) The Notices and Demand Letter

Schedule "B"

**Notices of Default, Reservation of Rights letters,
Demand Letter and Section 244 Notice**

- a) Notice of default dated May 12, 2022
- b) Notice of default dated July 12, 2022
- c) Notice of default dated November 16, 2022
- d) Notice of default and reservation of rights dated November 16, 2022
- e) Acknowledgement and reservation of rights agreement dated February 24, 2023
- f) Notice of default and reservation of rights dated April 16, 2023
- g) Acknowledgment and reservation of rights agreement no. 2 dated May 19, 2023
- h) Notice of default and reservation of rights dated June 2, 2023
- i) Demand Letter dated June 9, 2023
- j) Section 244 Notice dated June 9, 2023

THIS IS **EXHIBIT “FFF”** REFERRED TO IN THE
AFFIDAVIT OF JOSHUA HAMILTON STEVENS,
AFFIRMED REMOTELY BY JOSHUA HAMILTON
STEVENS BEFORE ME *BY VIDEO CONFERENCE*,

THIS 31st DAY OF JULY, 2023.



Michael Noel

Commissioner for Taking Affidavits

July 24, 2023

VIA EMAIL

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

Attention: Mr. Todd Shortt

Dear Sirs/Mesdames:

Re: Lease Agreement dated April 7, 2022, as amended and restated pursuant to the Amended and Restated Lease Agreement dated February 24, 2023 (the “Lease”), between Macquarie Equipment Finance Ltd. (the “Lessor”) and Iroquois Falls Power Corp. (the “Lessee”); General Security Agreement made as of April 7, 2022, as amended and confirmed by the Acknowledgement, Confirmation and Amendment Agreement dated February 24, 2023 (the “GSA”) by the Lessee in favour of the Lessor and the other documents listed in Schedule “A” (collectively, the “Security Documents”)
and
Notices of Default, Reservation of Rights letters, Demand Letter and Section 244 Notice set out in Schedule “B” (collectively, the “Notices and Demand Letter”)

We refer to the Security Documents and the Notices and Demand Letter. Unless otherwise defined, capitalized terms used herein have the meanings attributed to such terms in the Lease or the GSA.

As the Lessor advised under the Notices and Demand Letter, events of default and other similar events have occurred under the Security Documents. In addition, the Lessor has failed to pay three installments of Base Rent (and associated HST) due on May 31, June 7 and July 7, 2023. This is a non-exhaustive list of events of default and other similar events under the Security Documents. One or more of the foregoing events of default and other similar events are Lease Events of Default, Lease Defaults (as defined in the GSA) and/or other defaults or acceleration events under the Security Documents, have continued since the Notices and Demand Letter were delivered and are continuing as of the date hereof. Where notice of such events of default and other similar events is required under the Security Documents and has not previously been provided by the Lessor to the Lessee, this letter shall constitute such notice.

Pursuant to the Lease, upon the occurrence of a Lease Event of Default, the Lessor may in its sole and absolute discretion, among other things, enforce the rights and remedies set out in section 13.1 of the Lease, including that the Lessor may, by specifying a Default Payment Date, require that the Lessee pay to Lessor as a genuine pre-estimate of liquidated damages, the sum of (such sum, the “**Accelerated Payment**”): (i) any unpaid Base Rent and other amounts due before, and in arrears on, the Default Payment Date; *plus* (ii) the Stipulated Loss Value for the

Leased Property determined as of the date of the Lessor's written notice in respect thereof; *plus* (iii) interest on the sum of (i) and (ii) at the Late Rate from the Default Payment Date to the date of actual payment. Subject to the below, the Default Payment Date is specified as August 3, 2023.

Pursuant to the GSA, upon the occurrence of an Event of Acceleration, the Lessor may in its sole and absolute discretion, among other things, declare the Secured Liabilities to be immediately due and payable and the Security Interests to be immediately enforceable, demand the amounts payable and/or demand possession of and realize upon all or any part of the Collateral pursuant to the Security Interests. Pursuant to the GSA, the Lessor hereby declares that all Accelerated Payment is immediately due and payable.

Pursuant to the relevant provisions of the Security Documents, including, without limitation, the Lease and the GSA, the Lessor hereby demands immediate payment of the Accelerated Payment. Payment should be made to our last notified bank account for payments.

As at July 24, 2023, the aggregate amount of the Accelerated Payment owing pursuant to the Lease is \$55,595,133. The exact amount of the Accelerated Payment, Obligations and/or the Secured Liabilities may be obtained at any time by contacting the Lessor.

[Remainder left intentionally blank]

Yours truly,

Macquarie Equipment Finance Ltd.

DocuSigned by:

Lisa Tamowsky

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Schedule "A"

Security Documents

- a) The Lease
- b) The GSA
- c) Participation Agreement dated April 7, 2022, as amended and restated pursuant to the Amended and Restated Participation Agreement dated February 24, 2023, between the Lessor, the Lessee and the Guarantors
- d) Lease Supplement No. 1 dated April 7, 2022 and Lease Supplement No. 1 to Amended and Restated Lease Agreement dated February 24, 2023, each between the Lessor and the Lessee
- e) Guarantee made as of April 7, 2022, as amended and restated pursuant to the Amended and Restated Guarantee dated February 24, 2023, in favour of the Lessor by the Lessee and the Guarantors
- f) Demand Debenture made as of April 7, 2022, as amended and confirmed by the Acknowledgement, Confirmation and Amendment Agreement dated February 24, 2023, in favour of the Lessor by the Lessee
- g) Ontario PPSA Registration registered against the Lessee in favour of the Lessor and bearing Reference File Number "781679718"
- h) The Notices and Demand Letter

Schedule "B"

**Notices of Default, Reservation of Rights letters,
Demand Letter and Section 244 Notice**

- a) Notice of default dated May 12, 2022
- b) Notice of default dated July 12, 2022
- c) Notice of default dated November 16, 2022
- d) Notice of default and reservation of rights dated November 16, 2022
- e) Acknowledgement and reservation of rights agreement dated February 24, 2023
- f) Notice of default and reservation of rights dated April 16, 2023
- g) Acknowledgment and reservation of rights agreement no. 2 dated May 19, 2023
- h) Notice of default and reservation of rights dated June 2, 2023
- i) Demand Letter dated June 9, 2023
- j) Section 244 Notice dated June 9, 2023

July 24, 2023

VIA EMAIL

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

Attention: Mr. Todd Shortt

Dear Sirs/Mesdames:

Re: Lease Agreement dated April 7, 2022, as amended and restated pursuant to the Amended and Restated Lease Agreement dated February 24, 2023 (the “Lease”), between Macquarie Equipment Finance Ltd. (the “Lessor”) and Iroquois Falls Power Corp. (the “Lessee”); General Security Agreement made as of April 7, 2022, as amended and confirmed by the Acknowledgement, Confirmation and Amendment Agreement dated February 24, 2023 (the “GSA”) by the Lessee in favour of the Lessor and the other documents listed in Schedule “A” (collectively, the “Security Documents”)
and
Notices of Default, Reservation of Rights letters, Demand Letter and Section 244 Notice set out in Schedule “B” (collectively, the “Notices and Demand Letter”)

We refer to the Security Documents and the Notices and Demand Letter. Unless otherwise defined, capitalized terms used herein have the meanings attributed to such terms in the Lease or the GSA.

As the Lessor advised under the Notices and Demand Letter, events of default and other similar events have occurred under the Security Documents. In addition, the Lessor has failed to pay three installments of Base Rent (and associated HST) due on May 31, June 7 and July 7, 2023. This is a non-exhaustive list of events of default and other similar events under the Security Documents. One or more of the foregoing events of default and other similar events are Lease Events of Default, Lease Defaults (as defined in the GSA) and/or other defaults or acceleration events under the Security Documents, have continued since the Notices and Demand Letter were delivered and are continuing as of the date hereof. Where notice of such events of default and other similar events is required under the Security Documents and has not previously been provided by the Lessor to the Lessee, this letter shall constitute such notice.

Pursuant to the Lease, upon the occurrence of a Lease Event of Default, the Lessor may in its sole and absolute discretion, among other things, enforce the rights and remedies set out in section 13.1 of the Lease, including that the Lessor may, by specifying a Default Payment Date, require that the Lessee pay to Lessor as a genuine pre-estimate of liquidated damages, the sum of (such sum, the “**Accelerated Payment**”): (i) any unpaid Base Rent and other amounts due before, and in arrears on, the Default Payment Date; *plus* (ii) the Stipulated Loss Value for the

Leased Property determined as of the date of the Lessor's written notice in respect thereof; *plus* (iii) interest on the sum of (i) and (ii) at the Late Rate from the Default Payment Date to the date of actual payment. Subject to the below, the Default Payment Date is specified as August 3, 2023.

Pursuant to the GSA, upon the occurrence of an Event of Acceleration, the Lessor may in its sole and absolute discretion, among other things, declare the Secured Liabilities to be immediately due and payable and the Security Interests to be immediately enforceable, demand the amounts payable and/or demand possession of and realize upon all or any part of the Collateral pursuant to the Security Interests. Pursuant to the GSA, the Lessor hereby declares that all Accelerated Payment is immediately due and payable.

Pursuant to the relevant provisions of the Security Documents, including, without limitation, the Lease and the GSA, the Lessor hereby demands immediate payment of the Accelerated Payment. Payment should be made to our last notified bank account for payments.

As at July 24, 2023, the aggregate amount of the Accelerated Payment owing pursuant to the Lease is \$55,595,133. The exact amount of the Accelerated Payment, Obligations and/or the Secured Liabilities may be obtained at any time by contacting the Lessor.

[Remainder left intentionally blank]

Yours truly,

Macquarie Equipment Finance Ltd.

DocuSigned by:

Lisa Tamowsky

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Schedule "A"

Security Documents

- a) The Lease
- b) The GSA
- c) Participation Agreement dated April 7, 2022, as amended and restated pursuant to the Amended and Restated Participation Agreement dated February 24, 2023, between the Lessor, the Lessee and the Guarantors
- d) Lease Supplement No. 1 dated April 7, 2022 and Lease Supplement No. 1 to Amended and Restated Lease Agreement dated February 24, 2023, each between the Lessor and the Lessee
- e) Guarantee made as of April 7, 2022, as amended and restated pursuant to the Amended and Restated Guarantee dated February 24, 2023, in favour of the Lessor by the Lessee and the Guarantors
- f) Demand Debenture made as of April 7, 2022, as amended and confirmed by the Acknowledgement, Confirmation and Amendment Agreement dated February 24, 2023, in favour of the Lessor by the Lessee
- g) Ontario PPSA Registration registered against the Lessee in favour of the Lessor and bearing Reference File Number "781679718"
- h) The Notices and Demand Letter

Schedule "B"

**Notices of Default, Reservation of Rights letters,
Demand Letter and Section 244 Notice**

- a) Notice of default dated May 12, 2022
- b) Notice of default dated July 12, 2022
- c) Notice of default dated November 16, 2022
- d) Notice of default and reservation of rights dated November 16, 2022
- e) Acknowledgement and reservation of rights agreement dated February 24, 2023
- f) Notice of default and reservation of rights dated April 16, 2023
- g) Acknowledgment and reservation of rights agreement no. 2 dated May 19, 2023
- h) Notice of default and reservation of rights dated June 2, 2023
- i) Demand Letter dated June 9, 2023
- j) Section 244 Notice dated June 9, 2023



TAB3

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

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

**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**

**SUPPLEMENTAL AFFIDAVIT OF JOSHUA HAMILTON STEVENS
(SWORN AUGUST 2, 2023)**

I, Joshua Hamilton Stevens, of the City of Sydney, in the State of New South Wales, in the Country of Australia, MAKE OATH AND SAY:

I. OVERVIEW

1. I swear this supplemental affidavit in support of an application by Macquarie Equipment Finance Ltd. (the “**Applicant**”), to appoint KSV Restructuring Inc. as receiver and manager in respect of the Validus Group. Unless otherwise indicated, capitalized terms used in this supplemental affidavit and not otherwise defined shall have the meanings given to them in the affidavit I previously swore in support of this application on July 31, 2023.

2. I either have direct knowledge of the facts set out herein or, where indicated, I have been advised by the indicated individuals and believe such information to be true.

II. THE DEBTORS’ STAKEHOLDERS CANNOT WAIT FOR A RECEIVERSHIP

3. I am advised by Mike Noel of Torys LLP, counsel to the Applicant, that, following the service of the Applicant’s application record, the Debtors requested a significant adjournment of the Applicant’s receivership application on the afternoon of August 1.

4. There is an imminent and serious risk of significant and irreparable value destruction of the Debtors’ business and the Applicant’s collateral if the Receiver is not appointed as soon as possible. In addition to the risks outlined in my July 31 affidavit, I have learned of significant concerns regarding the Debtors’ ability to manage, safely operate and staff their various plants.

5. First, the Debtors’ senior management are in disarray. They appear to lack adequate—or any—executive leadership:

- (a) I am advised by Craig Tavares, the Debtors’ Chief Operating Officer (COO) that Todd Shortt, the Debtors’ Chief Executive Officer (CEO), announced during the week of July 17 that he wished to resign from that role and requested that Mr. Tavares assume the role of CEO.
- (b) Mr. Tavares wrote in an email on July 26th that he is no longer involved in the day-to-day operations at the Validus Group and has been strictly acting as an

advisor to help facilitate the IFPC Marketing Process. A copy of that email is attached as **Exhibit “A”**.

6. Second, the Debtors are fast losing critical employees. I am concerned that further critical employees will quit their roles based on the matters alleged in the union grievance described in my July 31 affidavit and other discussions I have had with the Debtors’ staff.

7. As an example of the Debtors’ non-payment of their staff, I was advised over email by Ryan Chua, the Debtors’ General Counsel, that as of July 25th, he is owed approximately \$57,500 in unpaid wages. Mr. Chua also paid over \$35,000 of the Debtors’ regulatory and legal expenses on his personal credit card and has yet to be reimbursed. Due to the Debtors’ failure to pay for employees’ group benefits, Mr. Chua has also been paying out of pocket for personal healthcare expenses. Mr. Chua informed me that he was last paid on April 15th—approximately three and a half months ago. He reached out to me personally for help resolving these issues after his extensive discussions with the Debtors’ management did not result in him being paid these foregoing amounts. Due to the personal information contained in my email correspondence with Mr. Chua, that email correspondence is not attached to this affidavit. I am concerned that other employees are in similarly dire situations and will soon quit.

8. Indeed, many of the Debtors’ critical employees have quit in the previous six weeks, and I am concerned that, given the Debtors’ recent staff turnover rate and the generally tight labour market in Ontario, the Debtors may shortly be forced to shut down some or all of their plant operations due to lack of staff.

9. Examples of recently departed employees include Ryan Forget, the General Manager of Power Generation and the key manager of all of the Debtors’ power generation facilities, who played a critical role in managing the Debtors’ operations. Additionally, I am advised by Mr. Tavares that one of the Debtors’ plant managers has received another job offer and is considering resigning. I am also advised by Mr. Forget that the Debtors’ electricians for the North Bay and Iroquois Falls plants have quit recently, which has likely left those plants without the direct ability to perform various types of maintenance if required.

III. THE DEBTORS' REMAINING FUNDS ARE AT RISK OF BEING DISSIPATED

10. I am also concerned that the remaining cash in the Debtors' bank accounts will be used by the Debtors' management for improper purposes, leaving the Debtors with insufficient funds to carry on business in the ordinary course.

11. On July 21, Shelley Goertz, the Debtors' Chief Financial Officer, requested on behalf of Mr. Shortt approximately \$20,000 be released to pay Mr. Shortt's personal credit card which Ms. Goertz noted included significant entertainment and dining expenses. On July 31, Ms. Goertz attempted to withdraw approximately \$85,000 from the Debtors' bank account to her personal holding company without substantiation. I am surprised and concerned that these requests and attempts are being made given the circumstances of the company as I understand them.

12. If the Receiver is not appointed immediately, I believe there is a real risk that the Debtors' management will attempt to remove some or all of the Debtors' remaining funds for similar inappropriate or improper personal uses over the coming days or weeks.

IV. THERE IS NO OTHER PATH FORWARD

13. The Debtors do not have a viable path forward outside of a receivership. The Debtors' management has been telling the Applicant since January of this year that equity and debt financing was just around the corner, but financing never materialized. As I described in my July 31 affidavit, the Debtors have not maintained proper books and records for at least the previous twelve months; I believe that those books and records would need to be substantially rectified and brought current before any sophisticated investors or financiers would be willing to either buy the Debtors' business or make an investment.

14. The Debtors have had months to repay their indebtedness to the Applicant and other secured creditors, including nearly two months since the Applicant delivered its first demand letters and its section 244 notices. The Debtors owe the Applicant \$55,598,575 as of July 31st and over \$6,000,000 to CRA according to CRA's lien registration. These amounts (among others) would need to be repaid for an investor to hold first-ranking security or for a new owner to acquire the business. Furthermore, as I described in my July 31 affidavit, a four-month out-of-

court sale process was undertaken in respect of IFPC that ultimately did not result in any successful bids.

V. EXPEDITED TIMELINE FOR SERVICE

15. The Applicant’s service timeline for its application materials was unavoidable in the circumstances. A number of steps have had to be taken to be prepared to take over the Debtors’ plants and operations, including ensuring that experienced power plant operational oversight is available to the Receiver. Those arrangements were only finalized over the course of this last weekend. Given Ryan Forget is no longer employed by the Debtors and Craig Tavares is no longer in an operating role, these arrangements were necessary to ensure that the Debtors’ operations can be safely, legally and continuously managed.

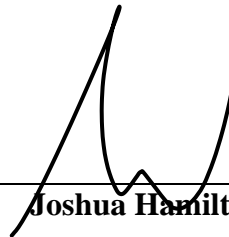
SWORN REMOTELY by Joshua Hamilton Stevens at the City of Sydney, in the State of New South Wales, in the Country of Australia, before me on August 2, 2023 in accordance with O.Reg. 431/20, Administering Oath or Declaration Remotely.

}



Commissioner for Taking Affidavits
(or as may be)

MICHAEL NOEL
(LSO#: 80130F)



Joshua Hamilton Stevens



TAB4

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

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

**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**

**SECOND SUPPLEMENTAL AFFIDAVIT OF JOSHUA HAMILTON STEVENS
(SWORN AUGUST 8, 2023)**

I, Joshua Hamilton Stevens, of the City of Sydney, in the State of New South Wales, in the Country of Australia, MAKE OATH AND SAY:

I. OVERVIEW

1. I swear this second supplemental affidavit in support of an application by Macquarie Equipment Finance Ltd. (the “**Applicant**”), to appoint KSV Restructuring Inc. (“**KSV**”) as receiver and manager in respect of the Validus Group. Unless otherwise indicated, capitalized terms used in this second supplemental affidavit and not otherwise defined shall have the meanings given to them in the affidavits I previously swore in support of this application on July 31 and August 2, 2023.

2. I either have direct knowledge of the facts set out herein or, where indicated, I have been advised by the indicated individuals and believe such information to be true.

3. Since the Applicant’s receivership application was adjourned on August 2, the Applicant has received further information about the Debtors from KSV, in its capacity as interim receiver of the Debtors (in such capacity, the “**Interim Receiver**”) that the Interim Receiver uncovered during its preliminary investigation into the Debtors’ affairs following its appointment. A copy of Justice Kimmel’s interim receivership order dated August 2, 2023 providing for such appointment and Her Honour’s accompanying endorsement are attached as **Exhibits “A” and “B”**, respectively.

4. During that period, the Debtors have also filed an affidavit sworn by Todd Shortt on August 7, 2023 in opposition to this application.

II. THE DEBTORS WILL COLLAPSE WITHOUT INTERVENTION

5. In the six days since that August 2 adjournment, the Debtors’ situation has become so dire that I believe they will collapse by the middle of next week unless this Court intervenes with a receivership.

6. Only hours after that August 2 adjournment, CIBC appears to have frozen \$550,000 of funds that were in two of the Debtors’ bank accounts and claimed to have a right to such amount in connection with the funds that certain Debtors allegedly misappropriated, as described at para

55 of my July 31 affidavit. Following the Debtors' payment of their last payroll on August 3, they had just \$122,862.66 left unfrozen in those bank accounts to satisfy their ongoing financial obligations and to safely operate their power generation plants.

7. The next payments to the Debtors from the IESO for participation in the capacity auction market—the Debtors' only source of income and cash flow, as I understand—are not payable to the Debtors until August 21. The quantum of that payment will not be ascertained until August 15 when the IESO issues its statement to the Debtors. In the meantime, the Debtors have numerous upcoming critical accounts payable, including payroll due on August 10, 14 and 18 in amounts of \$72,277.56, \$11,107.70 and \$24,797.76, respectively (*i.e.*, a combined total of \$108,183.02 for those three payroll dates). These amounts are net of source deductions. If plant staff leave as a result of not being paid, it is likely the plants will not be able to be operated and should be shut down.

8. Further, as I described in my July 31 affidavit, the Debtors' next insurance settlement payment—an amount of \$306,005—comes due on August 15, only *three business days* following the upcoming August 10 hearing for the Applicant's receivership application. If the Debtors fail to make that payment, their property insurance can be terminated, and continued operation of their power plants would become extremely risky and improvident. No prudent plant operator operates a power plant without insurance.

9. Any plant shutdown as a result of non-payment of payroll or insurance would result in the loss of revenues from the Debtors' arrangements with the IESO. That would cut off the Debtors' sole source of income for an extended length of time: it could potentially be months before the Debtors' power plants could be restarted.

10. However, this timeline might not even be possible, given the general disarray of the Debtors' affairs caused by their mismanagement. Specifically, I believe the Debtors could suffer an exodus of employees if the Debtors fail to make their next payroll on time. This risk is now severe. When I swore my July 31 and August 2 affidavits (and as I described therein), the Applicant suspected that the Debtors were behind on their payroll obligations based on: (i) the May 25, 2023 grievance from the union representing IFPC's employees; (ii) the absence of source deduction disbursements to CRA in certain Debtors' payroll records; and (iii) my

correspondence with Ryan Chua, the Debtors' General Counsel, about his significant unpaid wages, unreimbursed expenses he was told by the Debtors to incur, health benefits he had no choice but to pay out of pocket and the desperation he felt after receiving no help from the Debtors' management.

11. These suspicions have now been confirmed. On August 4, the Interim Receiver received an unverified breakdown of payroll liabilities from Shelley Goertz, the Debtors' Chief Financial Officer, which was shared with the Applicant that same day. According to that breakdown, the Debtors are a total of \$1,955,470.84 behind on their payroll obligations as of August 3. A full \$1,180,666.84 of those arrears are on account of unremitted source deductions according to that breakdown, and the Debtors have been behind on payroll obligations since October of last year—roughly ten months. Attached as **Exhibit "C"** is a copy of that breakdown. I am advised by Scott Bomhof of Torys LLP, counsel to the Applicant, and do believe, that the Interim Receiver has not verified the amounts set out in Exhibit "C" or verified that they represent all of the amounts owing with respect to payroll obligations.

12. The consequences of a mass employee resignation—an acute and imminent risk, based on these payroll arrears—is exacerbated by Ontario's very tight labour market for skilled power plant managers, operators and similar technical personnel. Any departed staff would be difficult, if not impossible, to replace in the short- or possibly even medium-term. This void would leave the Debtors' assets, the Applicant's collateral, effectively stranded without the ongoing operations and maintenance staff that are required to operate and prevent irreparable physical damage and degradation of the plants and equipment. Repair or replacement of such assets would be very costly and time-consuming and would only further impair the Applicant's collateral and delay the Debtors' ability to resume generating income.

III. MR. SHORTT'S AFFIDAVIT

13. Mr. Shortt's August 7 affidavit further illustrates the disconnect between the Debtors' management and the Debtors' actual state of disarray. In this section, I respond to points and allegations contained in that affidavit.

A. Alternative Sources of Funding will not Materialize

14. Mr Shortt claims at para 28 of his affidavit that he has “successfully arranged” alternative financing to take out the Applicant’s position. But Mr. Shortt does not provide any documentation in support of this claim, nor does he even provide basic details such as who the financier would be, what the principal amount would be or on what terms or timeline the financing would be advanced.

15. Mr. Shortt has been claiming that financing was just around the corner since at least January of this year. For example, Mr. Shortt signed a term sheet with a potential lender that outlined the terms and conditions under which that lender would consider providing a senior secured credit facility with a maximum availability of \$5,000,000 in respect of the Kingston plant on March 1 of this year. That funding ultimately failed to close. Redacted copies of that term sheet and an email from Craig Tavares forwarding that term sheet to me on May 5 are attached as **Exhibits “D” and “E”**, respectively. Those materials are redacted to comply with potential confidentiality obligations in respect of the term sheet.

16. To the best of my knowledge, funding never materialized at any point this year. I believe it is virtually impossible that funding would materialize now, given the state of the Debtors’ affairs, including their deficient books and records and extensive liabilities, the majority of which cannot even be ascertained at this time without access to the Debtors’ records. Among other things, any financier or equity investor would, at minimum, require copies of the Debtors’ books and records with reasonably detailed, accurate and verifiable financial and operational information. As I described in my July 31 affidavit, the Debtors’ books and records are extremely deficient and, in many cases, simply do not exist.

17. Fixing and preparing those records would be a costly process and require the intensive work of third-party professionals, as would any process for the marketing and solicitation of funding or an investment. The Debtors do not have the means to fund professionals to advance such a process, nor would the Applicant be willing to fund that in the absence of a court-supervised SISP led by a receiver. The Applicant has already provided funding for the Debtors’ failed four-month IFPC marketing and sale process, as detailed in paras 81 to 84 of my July 31 affidavit.

18. Additionally, with the Debtors' incredibly high risk profile, I believe that long term financing or investment would only be provided if the financier or investor received first-ranking security over the Debtors' assets—something that could only be obtained if the investment provided enough funds to take out, in full, the Applicant's claim, CRA's claims and the other secured creditors' claims. That total amount would exceed \$60 million, a sum that I believe would be virtually impossible for the Debtors to obtain before their business otherwise collapses.

19. Indeed, one of the prospective bidders in the IFPC sale process cited "reputational damages with suppliers/employees and the liens that have been put on" as reasons for not pursuing a bid. Attached as **Exhibit "F"** is an email I received on June 12, 2023 from the M&A Advisor relaying those concerns to me, the Debtors' Chief Operating Officer and the Debtors' General Counsel.

B. The Only Evidence of Value is the Failed IFPC Sale Process

20. Mr. Shortt, without providing any evidence, asserts that there is substantial value in the Debtors' assets just waiting to be unlocked. He claims at paras 19, 20, 23 and 30 of his affidavit that the Debtors are sitting on unrealized potential that far exceeds the Applicant's secured debt. However, Mr. Shortt puts forward no evidence on this.

21. Indeed, the only evidence in the record that touches on the value of the Debtors' business is the reality that the Debtors, with the M&A Advisor's assistance, were unable to find a buyer for IFPC during the sale and marketing process that ran between March and July of this year. Additionally, as described in para 15 above, Mr. Shortt was only able to obtain a non-committed term sheet in respect of the Kingston plant for a \$5,000,000 secured lending facility in March of this year that ultimately failed to close—an amount that does not support the value that Mr. Shortt attributes to the Debtors' assets in his affidavit.

22. Contrast that failed sale and marketing process to Mr. Shortt's unsupported claim at para 20 of his affidavit that IFPC alone is worth upwards of \$157 to \$215 million based on an appraisal from Kroll Canada Limited. Mr. Shortt failed to attach the Kroll report or to include any documentary proof to substantiate this appraisal. No information was provided on the currency or valuation date, the assumptions in the report or the information provided to Kroll. The Applicant was not involved in that valuation, and I have never received a copy of any such

appraisal. If IFPC is indeed worth what Mr. Shortt claims, I would have expected that value to be realized during the IFPC sale and marketing process. I also expect that a court-supervised sale process, if one is approved by this Court, will allow such valuations to be tested.

23. Mr. Shortt also claims at para 19 that the Kingston and North Bay plants have recently been approved for increased capacity of 500MW and 30MW, respectively. Based on my understanding, this is not accurate. Rather, I understand that Kingston LP and Bay Power submitted “deliverability tests” to the IESO that allowed them to enter into a request for proposal process to expand their capacity by those stated power amounts; this was not an award of a contract from the IESO. Both plants would therefore still be required to submit competitive proposals to the IESO, receive the IESO’s acceptance and receive a contract from the IESO before they could start generating revenue, a process that I understand can take up to one or two years to complete. If either plant were ultimately successful and were to receive a contract from the IESO, an outcome that is not guaranteed, the Debtors would then be required to earmark millions of dollars of investment in the plants to meet the resulting obligations under such IESO contract. I am not aware of any of the foregoing having occurred in respect of the Kingston or North Bay plants. An email from Craig Tavares sent on December 9, 2023 to my colleague describing those deliverability test results is attached as **Exhibit “G”**.

24. Mr. Shortt also describes in para 16 of his affidavit how it is “advantageous to own and operate a natural gas power plant today” and cites various generic reasons in support of that proposition, including increased demand for electricity, reduced supply of generation capacity and the general state of Ontario’s market for natural gas-driven electricity generation. Mr. Shortt does not tie any of these elements back to the Debtors’ operations, nor are any of these claims recent enough developments to have affected the value of the IFPC plant since the sale process failed last month. In fact, some of the factors that Mr. Shortt cites as proof of an improved market outlook are either unsupported by the data or the data otherwise supports the opposite conclusion.

25. For example, I am advised by Yining Yuan, Professional Engineer and Investment Banking Associate at Macquarie Group Company, that the average hourly demand for electricity in Ontario for the period of January 1 to August 1 was approximately 17.9 GW in 2022 and 17.5

GW in 2023—essentially unchanged. Likewise, I am further advised by Ms. Yuan that the available supply capacity in Ontario has remained essentially the same, moving only from 26.4 GW as of August 1, 2022 to 26.6 GW as of August 1, 2023. Additionally, since the Applicant’s sale and leaseback transaction in April 2022, the Canadian federal government announced its plan to develop its Clean Electricity Regulations, targeting a net zero grid by 2035. This development, and those regulations, have lowered the market interest in merchant natural gas power plants in Ontario due to their inability to pass through more burdensome and higher carbon costs to consumers.

C. Validus’ Problems are of their Own Making

26. Mr. Shortt claims in his affidavit that Validus’ numerous problems were somehow caused by the Applicant, rather than by the Debtors’ own mismanagement. The Applicant has not been “thwarting” the Debtors, as Mr. Shortt claims. To the contrary, as I described in detail in my July 31 affidavit, the Applicant has given substantial time and accommodation to the Debtors since their first monetary default in February of this year, including: (i) providing a four-month rent holiday; (ii) paying over \$1,421,369 of the Debtors critical expenses, including insurance payments; (iii) paying for a four-month sales process for IFPC; and (iv) otherwise waiting 54 days between delivering its notices of intention to enforce security to the Debtors and filing application materials.

27. As an example, Mr. Shortt claims that the Applicant’s transfer of cash from the Debtors’ accounts on July 31, 2023 and its subsequent set-off restricted Validus’ ability to satisfy its obligations. What Mr. Shortt fails to mention is that the Applicant left approximately \$800,000 in the Debtors’ accounts specifically so the Debtors could continue to meet their obligations, and that the transfer was approved by the Debtors’ Chief Financial Officer—all of which I described at para 98 of my July 31 affidavit. Instead, as noted, it was steps taken by CIBC to freeze \$550,000 of the Debtors’ funds on August 3 that left the Debtors with insufficient cash to meet their obligations. That action appears to be in response to the Debtors’ alleged misappropriation of that amount from CIBC’s internal accounts, as I described at para 55 of my July 31 affidavit.

28. Mr. Shortt further implies at para 18 of his affidavit, without substantiation or elaboration, that the Applicant restricted the Debtors’ ability to use its funds to pay and

reimburse legitimate expenses. The Applicant denies this. The Applicant obtained certain account controls on or around May 26, 2023 as part of the arrangements whereby the Debtors agreed to indemnify the Applicant for amounts the Applicant paid or funded to maintain the Debtors' operations. The Applicant was concerned that Debtor funds might be used for non-essential expenses, given that the Applicant intended to pay the Debtors' essential expenses. In that context, the Applicant and the Debtors therefore agreed that the Applicant would have the right to approve disbursements from certain Debtor accounts.

29. The Applicant was given disbursement approval rights only over three of the Debtors' accounts: two associated with IFPC and one associated with Kingston LP, not for other IFPC and Kingston LP accounts or any accounts of the remaining Debtors. The Applicant therefore never had full control over the Debtors' disbursements. Those disbursement approval rights were also put in place over a year after the Debtors had already failed to pay and remit HST, and months after the Debtors had failed to pay and remit municipal taxes, source deductions, RRSP contributions and other payroll obligations, among other things. The Applicant never blocked the Debtors from paying any proper and documented essential operating expenses that were loaded into the Debtors' accounts for disbursement.

30. Mr. Shortt also claims at para 17 that somehow "due to Macquarie's interference" the North Bay and Kapuskasing plants failed to meet their deadlines to participate in the IESO's capacity market. It is unclear to me what Mr. Shortt is referring to because no details were provided. The North Bay plant was not invited to participate in the IESO's capacity market for the Summer 2023 period. Furthermore, according to a letter from the IESO dated June 9, 2023, the Kapuskasing plant forfeited its capacity auction deposit and capacity obligation for the Summer 2023 period as a result of its failure to satisfy the applicable eligibility requirements. Ryan Forget, the Debtors' former General Manager of Power Generation, called this "good news" in a June 13 email because Kap Power would not incur penalties on a go forward basis. Copies of that June 9 letter and June 13 email are attached as **Exhibits "H" and "I"**, respectively.

D. The Kingston Purchase was an Improvident Default under the Lease Transaction Documents

31. In further support of Mr. Shortt's claim at para 27 of his affidavit that the Applicant has been actively "thwarting" the Debtors' attempts to improve their situation, Mr. Shortt cites a failed sale of land adjacent to the Kingston plant as evidence of the Applicant's interference. Mr. Shortt does not substantiate or elaborate on that claim. However, not only was Mr. Shortt's attempt to purchase that Kingston land a default under the Lease Transaction Documents, as reflected in the paragraphs that follow, it also illustrates management's misguided priorities, lack of transactional expertise to close deals (finance-related or otherwise) and unwillingness to make responsible use of the Debtors' limited funds.

32. The Applicant had no advance knowledge of the Kingston land transaction. Instead, I was advised by Craig Tavares, the Debtors' Chief Operating Officer,¹ on or around June 23, 2023, that a company outside of the Validus Group known as 2308189 Ontario Inc. ("**Non-Debtor Holdco**") had entered into a purchase agreement with Invista (Canada) Company ("**Invista**") dated March 27, 2023 to purchase the real property adjoining the Kingston power plant (the "**Kingston APA**"). Non-Debtor Holdco was incorporated on December 5, 2011, with Sandra Watt as its director and, according to Non-Debtor Holdco's signature block in the Kingston APA, Mr. Shortt as its President and CEO. A copy of a corporate profile report on Non-Debtor Holdco that was run on June 28, 2023, is attached as **Exhibit "J"**.

33. As part of that transaction, Non-Debtor Holdco paid or caused to be paid a total deposit to Invista of \$300,000; Mr. Shortt claims at para 27 of his affidavit that he provided those funds personally, but he has never provided proof of this to the Applicant and it is unclear whether it instead came from the Debtors' funds. In any event, for reasons unknown to the Applicant, and contrary to the express terms of the Lease Transaction Documents (including, among others, section 4.30 of the Participation Agreement), Validus Power Corp. guaranteed Non-Debtor Holdco's obligations under the Kingston APA pursuant to an amendment of the Kingston APA dated June 15, 2023, in exchange for an extension of the due date of that deposit from June 26 to

¹ As I described in my August 2 affidavit, Mr. Tavares wrote in an email on July 26 that he no longer has any involvement in the Debtors' day-to-day operations. The title of Chief Operating Officer is now therefore likely a formality, rather than a description of his actual role in the Debtors' business.

July 24, 2023. Copies of the Kingston APA and the amendment thereto are attached as **Exhibits “K” and “L”**, respectively.

34. On July 3, 2023, the Applicant notified the Debtors by email that Validus Power Corp.’s guarantee of the obligations of Non-Debtor Holdco under the amended Kingston APA was an event of default under the Lease Transaction Documents. A copy of that July 3 email is attached as **Exhibit “M”**.

35. I am not aware of any business need or other justification for Non-Debtor Holdco’s attempted purchase of this land. It is also unclear to the Applicant what motives were behind the decision to use Non-Debtor Holdco as purchaser, rather than a Debtor. I note my concern, however, that any benefits that would have accrued to Non-Debtor Holdco under this transaction would have been outside of the Applicant’s security.

36. Based on email correspondence from Invista’s counsel dated July 24, 2023, Non-Debtor Holdco failed to close the deal for this adjacent Kingston property on its July 24 closing date, and, as a result, it forfeited the \$300,000 deposit to Invista. A copy of that July 24 email is attached as **Exhibit “N”**. This failure shows that the Debtors’ management lacks the ability to competently complete or close corporate transactions.

37. The fact that the Debtors’ management decided to spend time and use \$300,000 of funds to pursue this transaction while their critical obligations went unpaid, including nearly \$2,000,000 of payroll arrears and critical insurance payments, also illustrates management’s lack of diligence and urgency in the face of a deteriorating business.

E. Mr. Shortt’s Other Miscellaneous Claims

38. Mr. Shortt also makes the following claims in his affidavit that warrant a response from the Applicant:

39. The interim receivership is not a solution. Mr. Shortt suggests at paras 30-31 of his affidavit that the interim receivership implemented by Justice Kimmel on August 2 fully protects the Applicant’s position and allows KSV to monitor and control the business. In reality, the interim receivership is only a temporary solution that was implemented to permit the Debtors

time to file reply materials to the within application, and the Applicant will not provide ongoing funding to the Debtors unless a full receivership order is granted by this Court, regardless of whether the Interim Receiver remains in place. The Applicant will also not consent to any court-ordered charges in favour of an alternative lender that would have the effect of subordinating its security interest in the Debtors' property.

40. Mr. Shortt was involved in the IFPC sale process. Mr. Shortt claims at para 21 of his affidavit that he "was not involved in the earlier sale process through Ernst & Young". However, Mr. Shortt himself signed an engagement letter and a representation letter to the M&A Advisor in that sale process and was regularly copied on email correspondence in respect of that sale process. Copies of that engagement letter and that representation letter with Mr. Shortt's signature are attached as **Exhibits "O" and "P"**. Mr. Shortt even invited staff of the M&A Advisor and the Applicant to attend a Blue Jays game in his corporate box. A copy of an email from Mr. Shortt dated April 25, 2023 with his invitation to that Blue Jays game is attached as **Exhibit "Q"**.

41. The Debtors' income fluctuates month-to-month. Mr. Shortt notes at para 17 of his affidavit that the Debtors currently receive over \$2,000,000 per month in income. However, the actual amount of income generated from their arrangements with the IESO fluctuates month-to-month. For example, it is unclear how much the Debtors will receive from their next IESO payment until August 15 when the IESO delivers its statement for the previous month. The Debtors income will also drop during the upcoming winter period, when the per unit revenues for electricity capacity are around half of those for the summer period.

42. Receivership would save, not destroy, the business. Mr. Shortt claims at para 29 that a receivership would "destroy" the Debtors' business. To the contrary, the Debtors' business is on the verge of collapse, as I described above, and the only solution to the Debtors' many problems is a receivership that puts competent leadership in charge and provides for court-approved funding from the Applicant while a SISF is undertaken for the benefit of stakeholders.

43. The Applicant advanced \$45 million plus HST, not \$36 million. Mr. Shortt mistakenly writes at para 7 of his affidavit that the Applicant only advanced \$36 million to the Debtors. In

fact, the Applicant advanced \$45 million plus HST on April 7, 2022 under the Lease Transaction Documents, as I describe in para 31(a) of my July 31 affidavit.

44. The Debtors have already paid back millions to the Applicant. Mr. Shortt claims at para 7 of his affidavit that the Debtors have “already paid back millions of dollars” to the Applicant. As noted at para 27 above and para 98 of my July 31 affidavit, the Applicant indeed transferred \$2,012,950 from the Debtors’ accounts and applied those amounts to the Debtors’ outstanding indebtedness by way of a set-off in accordance with the Lease Transaction Documents. To be clear, however, that set-off is the only amount that the Applicant has ever received from the Debtors on account of their indebtedness following their first failure to pay rent in February of this year.

45. Reimbursements remain unsubstantiated. Mr. Shortt notes at para 25 that the approximately \$20,000 and \$85,000 that he and Ms. Goertz sought to be paid from the Debtors’ funds were for “company expenses”, and that the Applicant had “promised to reimburse” those amounts. However, Mr. Shortt did not actually provide substantiation of those amounts in his affidavit. Nor did the Applicant ever promise to pay those amounts. Rather, Ms. Goertz told me in her July 31 email where she requested reimbursement that she would provide the Applicant with “108 receipts” to substantiate her request. The Applicant never received those receipts or any other form of substantiation from Ms. Goertz. A copy of Ms. Goertz’s July 31 email is attached as **Exhibit “R”**.

46. The Applicant has provided a claim breakdown. Mr. Shortt writes at para 8 of his affidavit that the Applicant did not provide the Debtors with a breakdown of its claim. I provided a breakdown of the Applicant’s claim against the Debtors at para 9 of my July 31 affidavit, which breakdown follows the provisions set out at section 13.1(f) of the Lease Agreement, itself attached as Exhibit “C” to my July 31 affidavit (which provisions were referenced in the Applicant’s demand letters for the Accelerated Payment delivered to the Debtors on July 24, 2023). Mr. Bomhof has advised me that he has also provided a detailed breakdown to the Debtors’ counsel on August 8, 2023.

IV. CONCLUSION: THE APPLICANT WOULD NOT SUPPORT ANY PATH FORWARD WITH MANAGEMENT IN CHARGE

47. The Applicant strongly opposes any path forward that keeps the Debtors' management in charge of the business. The Applicant will not provide funding to the Debtors if the adjournment that was granted by this Court on August 2 were to be extended for any length of time, regardless of whether the Interim Receiver remains in place.

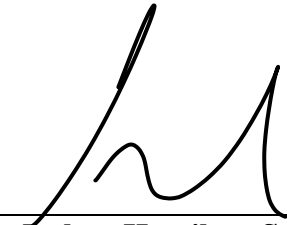
SWORN REMOTELY by Joshua Hamilton Stevens at the City of Sydney, in the State of New South Wales, in the Country of Australia, before me on August 8, 2023 in accordance with O.Reg. 431/20, Administering Oath or Declaration Remotely.

}



Commissioner for Taking Affidavits
(or as may be)

MICHAEL NOEL
(LSO#: 80130F)



Joshua Hamilton Stevens

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, Court File No. CV-23-00705215-00CL
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.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at TORONTO

**REPLY RECORD
OF MACQUARIE EQUIPMENT FINANCE LTD
(Responding to the Submissions of Todd Shortt
Opposing the Monitor's Motion for SISP Approval)**

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