



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

December 22, 2023

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COURT FILE NO.: CV-23-00705215-00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

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

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

FOURTH REPORT OF KSV RESTRUCTURING INC.  
AS MONITOR

DECEMBER 22, 2023

## 1.0 Introduction

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

3. The principal purpose of the receivership proceedings was to create a stabilized environment to enable the Receiver to take possession and control of the Property, including replacing the Validus Entities' executive management team, so that the business of the Validus Entities could continue to operate in the normal course, while steps were being taken by the Receiver and Macquarie to prepare for a sale and investment solicitation process (the "SISP"). In that regard, Macquarie's application materials also indicated that it intended to submit an offer to serve as a stalking horse bid in a SISP and that a condition of that bid would be that the SISP and resulting transaction be implemented within proceedings under the *Companies' Creditors Arrangement Act* (Canada) ("CCAA").
4. On August 11, 2023, Hut 8 Mining Corp. (now known as Hut 8 Corp., "Hut 8"),<sup>1</sup> a public company listed on the Nasdaq and Toronto Stock Exchange, announced that it had entered into a transaction support agreement (the "Transaction Support Agreement") with Macquarie to potentially acquire certain assets of the Validus Entities through a stalking horse bid in the SISP that was intended to be submitted to the Receiver.
5. On August 29, 2023, the Receiver brought a motion seeking authority to bring an application to have the Companies granted protection under the CCAA, and, if granted such authority, a concurrent application to have the Companies granted protection under the CCAA. The Receiver also sought to extend the stay of proceedings in the CCAA proceedings to Kingston LP. The Receiver's rationale for seeking CCAA protection for the Validus Entities was set out in its first report to Court dated August 23, 2023, which was also the pre-filing report of KSV as proposed monitor in the CCAA proceedings (the "Pre-Filing Report"). A copy of the Pre-Filing Report is provided in Appendix "C", without attachments.
6. One of the reasons for the proposed CCAA proceedings is that the stalking horse bid was contemplated to be completed pursuant to a reverse vesting order ("RVO") and that the bid would be conditional on the Court issuing the RVO in a CCAA proceeding. An RVO structure was considered the preferred structure for any potential bid in the circumstances as the Validus Entities hold various licenses and permits required to operate their businesses in the highly regulated Ontario power industry (the "Permits and Licenses"), and the time and cost of transferring them absent an RVO could impair the businesses of the Validus Entities and unduly complicate and/or delay completion of a transaction.
7. On August 29, 2023, the Court granted an initial order under the CCAA in respect of the Validus Entities (the "Initial Order"). Copies of the Initial Order and the endorsement of Mr. Justice Osborne dated August 29, 2023 are provided in Appendices "D" and "E", respectively.
8. On September 8, 2023, the Court granted an extension of the stay of proceedings in the CCAA proceedings from September 8 to December 1, 2023.

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<sup>1</sup> On December 1, 2023, Hut 8 issued a press release announcing it had merged with US Bitcoin Corp. The merged entity continues business as "Hut 8 Corp."

9. On November 1, 2023, the Court granted an extension of the stay of proceedings in the CCAA proceedings from December 1 to December 31, 2023 and approved the SISP (the "SISP Approval Order"). Copies of the SISP Approval Order and the endorsement of Mr. Justice Osborne dated November 1, 2023 are provided in Appendices "F" and "G", respectively.
10. On December 22, 2023, the Court granted an extension of the stay of proceedings in the CCAA proceedings from December 31, 2023 to January 31, 2024.
11. A motion has been scheduled to be heard on January 4, 2024 to seek approval of the Transaction (as defined below).
12. This report (the "Report") is filed by KSV as Monitor. Capitalized terms used in this Report and not otherwise defined have the meaning given to them in the Transaction Documents (defined below).

## 1.1 Purposes of this Report

1. The purposes of this Report are to:
  - a) provide background information with respect to the Validus Entities and these proceedings;
  - b) summarize the results of the SISP, which included a stalking horse bid submitted by Macquarie and Far North Power Corp. ("Far North"), an entity incorporated by Hut 8 (jointly, Macquarie and Far North are defined as the "Purchasers");
  - c) summarize the proposed transaction (the "Transaction"), which is documented in, *inter alia*, an offer letter dated October 16, 2023 from the Purchasers (the "Offer Letter"), a transaction agreement between the Validus Entities, by the Monitor, and the Purchasers (as amended and restated, and as may be further amended from time to time, the "Transaction Agreement"), a document setting out the terms and conditions of the Offer Letter, including with respect to the transaction contemplated by the Transaction Agreement (as amended and restated, and as may be further amended from time to time, the "Terms and Conditions") (collectively, the Offer Letter, Transaction Agreement and Terms and Conditions are referred to as the "Transaction Documents");
  - d) summarize the steps to be implemented in connection with the Transaction (the "Implementation Steps");
  - e) provide the Monitor's rationale for recommending that the Court approve the Transaction and why, in the Monitor's view, it is appropriate that the Transaction be completed pursuant to an RVO;
  - f) describe the results of the contract counterparty notification process (the "Unknown Contract Bar Process") implemented pursuant to the SISP Approval Order in order to notify any known and potentially unknown contract counterparties that an RVO was contemplated to be sought in these proceedings and the contemplated treatment of their contract/s in the Transaction;
  - g) summarize the Validus Entities' cash flow forecast (the "Cash Flow Forecast") for the period December 16, 2023 to February 29, 2024 (the "Forecast Period");

- h) summarize the fees and disbursements of the Monitor/Receiver incurred from the commencement of these CCAA proceedings and the receivership proceedings to November 30, 2023, as well as those of its legal counsel, Norton Rose Fulbright Canada LLP (“NRF”), each as described and detailed further in the Fee Affidavits (as defined below); and
- i) provide the Monitor’s recommendations for orders, among other things:
- approving the Transaction Documents and the Transaction;
  - adding 1000745924 Ontario Inc. (“ResidualCo”) as a debtor company in these CCAA proceedings and the receivership proceedings;
  - approving the transfer to and vesting in ResidualCo of the Validus Entities’ right, title and interest in and to, and liabilities and obligations under, the Excluded Assets, the Excluded Contracts and the Excluded Liabilities;
  - authorizing and directing the Validus Entities, by KSV in its capacity as Monitor, to issue the IFPC Note 1, the IFPC Note 2 and the IFPC Note 3, and vesting: (i) all of the right, title and interest in and to the IFPC Note 1 and the IFPC Note 3 in and to Macquarie; and (ii) all of the right, title and interest in and to the IFPC Note 2 absolutely and exclusively in and to the Assignee, as nominee and designated assignee of Macquarie;
  - redeeming, terminating and cancelling the IFPC Legacy Shares and the other Subject Interests for no consideration;
  - approving the conveyance to the Purchasers of the Purchased Assets, free and clear of and from any and all claims, liabilities, liens and encumbrances, other than the Permitted Encumbrances;
  - discharging KSV as Monitor and Receiver of the Purchased Entities, being IFPC, Bay, Kap, Hosting, Kingston LP and Kingston GP, upon the closing of the Transaction;
  - granting the Priority Payments Indemnity Charge;
  - confirming that all Continuing Contracts and Permits and Licenses to which any of the Validus Entities (other than Validus Parent) are a party at the Effective Time will be and shall remain in full force and effect upon and following the Effective Time;
  - releasing the Released Parties from the Released Claims (as those terms are defined in Section 7 below);
  - authorizing but not obligating the Monitor to take all required steps to rectify the minute books of the Validus Entities, including, without limitation, signing directors’ and/or shareholders’ resolutions on behalf of the Validus Entities;
  - authorizing Ryan Chua to act as the first director of ResidualCo (the “First Director”) and confirming that the First Director shall have no liability as a result of becoming the First Director save and except as may result from his own gross negligence or wilful misconduct;

- approving the fees and disbursements of KSV, in its capacities as Monitor and Receiver, and of NRF, counsel to the Monitor and Receiver, as described in this Report and the Fee Affidavits;
- approving the Monitor’s third report to Court dated December 15, 2023 (the “Third Report”) and this Report, including the activities of the Monitor described therein; and
- extending the Stay Period (as defined in the Initial Order) to February 29, 2024.

## 1.2 Currency

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

## 1.3 Restrictions<sup>2</sup>

1. In preparing this Report, KSV has relied upon unaudited financial information provided by the Validus Entities’ employees and consultants<sup>3</sup>, the books and records of the Validus Entities<sup>4</sup> and discussions with representatives of the Validus Entities, Macquarie and its legal counsel. KSV has not performed an audit or otherwise attempted to verify the accuracy or completeness of the financial information relied on in a manner that complies with Canadian Auditing Standards (“CAS”) pursuant to the Chartered Professional Accountants of Canada Handbook and, accordingly, KSV expresses no opinion or other form of assurance contemplated under the CAS in respect of such information. Any party wishing to place reliance on the financial information should perform its own diligence.
2. An examination of the Cash Flow Forecast, as outlined in the Chartered Professional Accountants of Canada Handbook, has not been performed. Future oriented financial information relied upon in this Report is based upon assumptions regarding future events; actual results achieved may vary from this information and these variations may be material.
3. With the exception of the Court, KSV accepts no responsibility for any reliance placed by any third party on the Validus Entities’ financial information presented herein.

## 2.0 Background

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

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<sup>2</sup> In this section, references to KSV refer to its capacity as Receiver, Monitor and in its personal capacity.

<sup>3</sup> Certain individuals having executive titles were retained pursuant to consulting agreements.

<sup>4</sup> As discussed in the Affidavit of Joshua Stevens of Macquarie dated July 31, 2023, the Validus Entities’ books and records were not kept current and otherwise appear to be significantly deficient.



2. VPC acquired the four plants in 2021/2022 in two separate transactions, as set out in the table below.

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

3. Immediately following its appointment, the Receiver engaged Ryan Forget of Complete Energy Consulting Inc. to act as a consultant to the Receiver to assist with day-to-day operational, security and asset maintenance issues at the plants. Mr. Forget is a former senior employee of the Validus Entities.
4. At the commencement of the receivership, the Receiver terminated substantially all Validus Entities' employees whose work was not involved in plant operations and who had or may have had working arrangements with the Validus Entities. Since that time, the Receiver has engaged Mr. Chua, the former general counsel of the Validus Entities, to assist in certain matters related to the SISF. As set out in Section 9 of this Report, Mr. Chua has also agreed to act as the First Director.
5. The receivership application materials provide additional background information about the Validus Entities, their financial position, the Validus Entities' defaults under their secured lease arrangements with Macquarie and the basis for Macquarie's application for the Receivership Order. Court materials filed in these proceedings, including the prior reports filed by KSV as Interim Receiver, Receiver and Proposed Monitor, are available on KSV's website at: <https://www.ksvadvisory.com/experience/case/validus-power-corp>.

## 3.0 Creditors and Other Stakeholders

### 3.1 Secured Creditors

1. The following is a summary of the Validus Entities' known secured creditors:
- a) Macquarie holds security against substantially all Property, excluding VPC's property, assets and undertaking other than the shares of its subsidiaries. As of December 22, 2023, Macquarie calculated that it is owed at least \$59.4 million, including HST and overdue interest to that date, (the "Macquarie Claim Amount"), which amount has continued to increase since that date for costs and interest. The Validus Entities disputed at least \$9 million of the amount demanded by Macquarie. That dispute was the subject of a contested hearing on November 1, 2023. The nature of the dispute was set out in the Monitor's second report to Court dated October 23, 2023 (the "Second Report"), and accordingly, is not repeated herein. A copy of the Second Report is attached as Appendix "H", without attachments. In its decision dated November 1, 2023 (Appendix "G"), the Court accepted Macquarie's calculation of the Macquarie Claim Amount. As of the date of this Report, it is estimated that Macquarie is owed approximately \$61 million, comprising the Macquarie Claim Amount plus an additional \$1.5 million advanced by Macquarie to the Receiver pursuant to Receiver Certificates;

- b) Canada Revenue Agency (“CRA”), which registered a lien in the amount of approximately \$6 million against certain real property owned by IFPC. CRA’s lien was registered due to IFPC’s failure to remit HST collected by IFPC as part of a sale leaseback transaction between Macquarie and IFPC completed in April 2022. The Validus Entities have advised that there are input tax credits which may reduce the arrears owing to CRA. The Monitor has requested CRA perform a GST/HST examination with respect to the pre-filing amounts. Certain issues related to HST are discussed in greater detail below;
  - c) TD Bank (“TD”), in respect of amounts that it claims relate to six letters of credit issued by TD in the aggregate amount of \$1,506,445 against which TD holds guaranteed investment certificate security. Enbridge has recently drawn approximately \$127,000 against these letters of credit;
  - d) Royal Bank of Canada (“RBC”), which the Monitor understands holds cash collateral as security for obligations of VPC in respect of an outstanding letter of credit issued by RBC in the amount of \$68,561;
  - e) TransCanada Pipelines Limited holds cash collateral of approximately \$600,000 in connection with certain contracts between it and certain Validus Entities; and
  - f) Mercedes-Benz Financial and Mercedes-Benz Financial Services Canada Corporation in the amount of \$179,206 against VPC in respect of a motor vehicle (a Mercedes G-63 “G-Wagon” SUV).
2. The Monitor notes that following its review of recent *Personal Property Security Act* (Ontario) searches, Sprung Instant Services Structures Ltd. registered a financing statement on October 5, 2023 in connection with certain amounts claimed to be owed to it by VPC. The Monitor is unaware of any security granted to this party, which appears to have been registered in respect of a pre-filing unsecured claim.
  3. Based on discussions with Shelly Goertz, the Validus Entities’ former Chief Financial Officer, the Monitor understands that VPC<sup>5</sup> has failed to remit source deductions to CRA since approximately October 2022. Based on a letter from CRA dated December 21, 2023, it appears that the employee portion<sup>6</sup> of the source deduction obligation is approximately \$1.67.

### 3.2 Unions

1. The Monitor understands that prior to VPC’s acquisition of IFPC, certain of the employees working at the Iroquois Falls plant were members of The International Union of Operating Engineers Local 865 (the “OE Union”) pursuant to a collective bargaining agreement for the period July 1, 2019 to June 30, 2023 (the “OE CBA”). NRF has corresponded with the OE Union’s counsel regarding an application filed by the OE Union to the Ontario Labour Relations Board (“OLRB”) on July 3, 2023 alleging that IFPC sold its business to VPC and/or that these entities are related parties for the purposes of *Labour Relations Act* of Ontario (the “LRA”). A response was due on August 17, 2023 but has not been filed as a result of the Validus entities’ insolvency proceedings. The OLRB has confirmed that the application is stayed until December 31, 2023 given the stay in the CCAA proceedings. If the stay is further

<sup>5</sup> It is the Monitor’s understanding that all or substantially all of the Validus Entities’ employees were employed by VPC, including those that worked in plants owned by VPC’s subsidiaries.

<sup>6</sup> Being the portion for which a deemed trust exists in favour of CRA.

extended on December 22, 2023, the Monitor will instruct NRF to provide a further update to the OLRB as to the further extension of the stay.

2. In addition to the application, at the time of the receivership, the OE Union filed a grievance with respect to certain benefits and past due amounts that had not been paid to employees. Since the filing, such amounts have been paid and it is the Monitor's understanding that IFPC is current in respect of all such amounts. On September 28, 2023, counsel for the OE Union confirmed that the issues in the grievance had been addressed.
3. NRF has corresponded with counsel to Power Workers' Union – CUPE Local 1000 (the "PWU"), Goldblatt Partners LLP ("Goldblatt"), in connection with its client's ongoing OLRB application alleging that Atlantic Power Services Canada LP sold its business to VPC or that these entities are related parties for the purposes of the LRA. Goldblatt, on PWU's behalf, is on the Service List in these proceedings. The Monitor has been engaged with Goldblatt with respect to this motion.

#### 4.0 SISP<sup>7</sup>

1. The SISP was carried out by the Monitor in accordance with the SISP Approval Order. The SISP contemplated the following milestones and timelines:

<b>Milestone</b>	<b>Deadline</b>
Motion to approve SISP	November 1, 2023
Monitor to commence marketing process	November 3, 2023
Qualified Bid Deadline	11:59 p.m. on December 8, 2023
Notification to Qualified Bidders of Auction (if any)	As soon as possible after the Qualified Bid Deadline
Auction (if any)	On or about December 14, 2023
Implementation Order motion	December 22, 2023

2. A summary of the SISP is as follows:
  - a) the Monitor launched the SISP on November 3, 2023 by distributing an interest solicitation letter detailing the acquisition opportunity (the "Teaser") to potential purchasers and investors;
  - b) the Teaser was sent to 146 prospective purchasers, comprised of 127 strategic parties (68 independent power producers and 59 crypto companies) and 19 financial parties (including private equity funds, infrastructure funds, investment banks and advisors). The prospective purchasers approached in the SISP included the parties solicited in a pre-filing sale process for IFPC conducted by Ernst & Young Corporate Finance (Canada) Inc. ("EY") during the period March to July 2023 (the "EY Sale Process"), as summarized in the Second Report;
  - c) attached to the Teaser was a form of confidentiality agreement ("CA"). Parties that executed the CA were provided the opportunity to access a virtual data room (the "VDR") maintained by the Monitor;

<sup>7</sup> Capitalized terms in this section have the meaning provided to them in the SISP.

- d) the VDR contained historical and projected financial information and certain other relevant diligence information, including a template form of purchase agreement (based on the stalking horse purchase agreement), financial information, employee information, information regarding the Permits and Licenses and material contracts and agreements;
- e) prospective purchasers were given the opportunity to attend the sites and to meet with plant managers; and
- f) pursuant to the SISP, the deadline for interested parties to submit a Qualified Bid was 11:59 p.m. (Eastern Time) on December 8, 2023 (the “Bid Deadline”).

#### 4.1 SISP Results

1. A summary of the results of the SISP is as follows:
  - a) 16 parties executed the CA and were given the opportunity to access the VDR to perform due diligence;
  - b) over the course of the SISP, several parties indicated they would be submitting a bid on or prior to the Bid Deadline. However, in the days immediately preceding the Bid Deadline, all but one<sup>8</sup> of those parties withdrew from the process and that party (the “Prospective Bidder”) advised on the day of the Bid Deadline that it intended to submit an offer by the Bid Deadline. During the SISP, the Monitor and its legal counsel worked with the Prospective Bidder, its legal counsel and its financial advisor to facilitate its diligence requests, including arranging a site visit on December 5, 2023. However, the Prospective Bidder did not submit a bid by the Bid Deadline;
  - c) on December 9 and 10, 2023, the Monitor and its legal counsel followed up with the Prospective Bidders’ legal and financial advisors to understand the status of its bid and whether an offer would be submitted. In light of assurances provided by the Prospective Bidder concerning its bid, including that a deposit, evidence of committed financing and an unconditional offer would be submitted by 4:00 p.m. on December 11, 2023, the Monitor confirmed by email that it would extend the Bid Deadline to that date and time (the “Extended Bid Deadline”), as permitted by paragraph 10 of the SISP;
  - d) on December 10, 2023, the Prospective Bidder submitted its offer, including a commitment letter from a proposed lender. The offer was largely unconditional. The Monitor and its counsel performed cursory diligence on the prospective lender which uncovered that the lender entity was incorporated on December 6, 2023 and has a residential address listed as its head office located in North York, Ontario. There also appeared to be a number of typos in the “letterhead” of the proposed lender as evidenced by inconsistencies with the corporate profile obtained by NRF. Notwithstanding the additional time granted to the Prospective Bidder, the Prospective Bidder did not submit its deposit by the Extended Bid Deadline and the Monitor has not been contacted by the Prospective Bidder and/or its advisors since the Extended Bid Deadline.

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<sup>8</sup> In addition to the Purchaser.

2. Accordingly, on December 11, 2023, the Monitor advised the Purchasers that their bid was the Successful Bid under the SISP.

## 5.0 The Transaction<sup>9</sup>

1. The Transaction is contemplated to be completed pursuant to an RVO, which is necessary as, among other things, the Validus Entities hold numerous Permits and Licenses that allow them to operate in a highly regulated industry. The Purchasers require that an RVO be issued due to, among other things, uncertainty related to the transferability of these Permits and Licenses in a commercially reasonable timeframe.
2. The following is a summary description of the Transaction. Readers are encouraged to read the entirety of the Transaction Documents and the Implementation Steps, copies of which are provided in Appendix “I”. A blackline of the Transaction Documents to the original Transaction Documents filed as the Stalking Horse Bid are attached as Appendix “J”.
3. The key terms and conditions of the Transaction are provided below.
  - **Transaction Structure:** The Transaction is structured as a “sign and close” transaction. The Purchasers signed the Offer Letter and have agreed to sign the Transaction Agreement at the Effective Time. Neither Macquarie nor Far North are related to any of the Validus Entities. Macquarie and Far North have advised the Monitor that they are concerned not to be deemed to control any of the Validus Entities for income tax purposes (and be deemed related to the Validus Entities) prior to the time that the applicable Purchaser actually acquires ownership of shares sufficient for it to actually control those entities at the closing, which deeming could happen by virtue of their bid becoming a binding agreement of purchase and sale on the part of the Validus Entities prior to closing. On the Effective Date, among other things, the following steps shall occur in accordance with the proposed RVO:
    - a) the Excluded Assets and Excluded Liabilities will be assigned to, assumed by and vest in ResidualCo;
    - b) the Monitor will sign the Monitor’s Certificate;
    - c) the Monitor will sign the Transaction Agreement on behalf of the Validus Entities;
    - d) concurrently with the step in (c), VPC, by the Monitor, will assign all of the equity securities (and in the case of Kingston LP, limited partnership units) in each of Kap, Bay, Kingston GP and Kingston LP to Far North in consideration for the release of VPC and the Purchased Entities (other than IFPC) from their obligations under the Lease Agreement and related security;
    - e) concurrently with the step in (c), VPC will assign the Purchased Validus Parent Assets to Far North;

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<sup>9</sup> Capitalized terms in this section have the meaning provided to them in the Transaction Documents. The descriptions of these documents in this Report are for informational purposes only. Reference should be made to the relevant documents in order to have a complete understanding of those documents and agreements.

- f) concurrently with the step in (c), Macquarie will assign the Leased Property to IFPC in consideration for the: (i) IFPC Note 1; (ii) IFPC Note 2; (iii) IFPC Note 3; and (iv) IFPC Interests (comprising newly issued common shares of IFPC representing 99.999% of the issued and outstanding IFPC shares), which IFPC shares will, at the direction of Macquarie, be issued to Far North; and
  - g) the IFPC Legacy Shares held by VPC will be cancelled without any payment thereon such that the IFPC Interests issued to Far North in step (f) represent 100% of the outstanding Equity Interests in IFPC.
- **Purchased Assets:**
    - a) all of VPC's right, title and interest in the issued and outstanding shares in the capital of Bay, Kap and Kingston GP and the issued and outstanding limited partnership units of Kingston LP;
    - b) all of VPC's right, title and interest in certain assigned employment agreements as set out in the Disclosure Schedule, all of VPC's right, title and interest in the Hut 8 Litigation, all issued and outstanding shares of Hosting<sup>10</sup>, all of VPC's right, title and interest in the Firm Transportation Service Contract dated July 25, 2022 between TransCanada Pipelines Limited and VPC, all of VPC's right, title and interest in the Letter Agreement dated September 30, 2023 between VPC and Macquarie Energy Canada Ltd., all of VPC's right, title and interest in the Master Temporary Assignment Notice dated September 28, 2023 between VPC and TransCanada Pipelines Limited and all of VPC's right, title and interest in the Continuous Safety Services (CSS) Agreement between Electrical Safety Authority and VPC (collectively, the "Purchased Validus Parent Assets");
    - c) IFPC Note 1, IFPC Note 2 and IFPC Note 3; and
    - d) the IFPC Interests, being the newly issued common equity of IFPC (or its successor), free and clear of all Encumbrances other than Permitted Encumbrances, which represents 99.999% of the issued and outstanding common equity in IFPC immediately prior to the redemption of the IFPC Legacy Shares in accordance with the Transaction Agreement.
  - **Purchase Price Consideration:** The Credit Bid Consideration is comprised of:
    - a) Far North paying to the Monitor the Priority Payments Closing Amount (being \$1.5 million as a genuine pre-estimate of VPC's Priority Payment obligations) and indemnifying the Monitor and the Receiver for any liability in respect of the Priority Payments of Validus Parent that are in excess of the Priority Payments Closing Amount (the "Priority Payments Indemnity"), which indemnity shall be secured by the proposed Priority Payments Indemnity Charge (as defined and discussed below);

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<sup>10</sup> This entity is believed to be inactive and to not have any assets.

- b) Far North also paying to the Monitor the Administrative Expense Closing Amount (to be finally estimated by the Monitor three business days prior to the Effective Date, which amount shall be held in trust by the Monitor for the benefit of Persons entitled to be paid the Administrative Expense Costs, including the Monitor and its legal counsel);
- c) Macquarie releasing the Validus Entities from all amounts outstanding and obligations owing by the Validus Entities to Macquarie pursuant to the Participation Agreement Documents; and
- d) Macquarie conveying and delivering to IFPC title to the Leased Property held by Macquarie free and clear of all liens, claims and encumbrances on an “as is, where is” basis, pursuant to the RVO.

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

- **Disclosure Schedule:** The Disclosure Schedule sets out the Permitted Encumbrances, Excluded Contracts, certain Excluded Assets, letters of credit, employee information and other items which are typically identified in schedules to an agreement of purchase and sale. A redacted version of the employee schedule is being filed with the Court to exclude the identity, compensation or other personal and financial information of the employees listed on that schedule.
- **Permits and Licenses:** All of the permits and licenses of the Purchased Entities are preserved, including permits and licenses issued by Ontario Energy Board, Technical Standards and Safety Authority, Ministry of the Environment and Climate Change, Ministry of the Environment, Conservation and Parks, Environment and Climate Change Canada and Innovation, Science and Economic Development Canada. A listing of the known Permits and Licenses is attached as Appendix “K”.
- **Excluded Assets:** Include, among other things:
  - a) the Tax Records and Tax Returns;
  - b) any cash, deposits or other amounts owned or in the name of VPC (this includes any return of cash as a result of the return of deposits or cancellation of outstanding letters of credit in VPC’s name, which amounts can be used to fund the cost of these proceedings after the Closing Date);
  - c) any other assets of VPC that are not Purchased Validus Parent Assets or contemplated in (b) above;
  - d) the Administrative Expense Closing Amount;
  - e) the Excluded Contracts;
  - f) all communication, information or records that are in any way related to: (i) the transactions contemplated by the Transaction Agreement; (ii) the sale of the Purchased Assets; (iii) any Excluded Asset; or (iv) any Excluded Liability;

- g) the equity interests of Validus Power Services Inc., Validus Digital Inc. and Validus Solutions Inc.<sup>11</sup>; and
- h) any rights that accrue to ResidualCo under the Transaction Documents.

Pursuant to the RVO, the Monitor will assign, transfer and convey the Excluded Assets of the Purchased Entities to ResidualCo, and the Excluded Assets of the Purchased Entities will be vested in ResidualCo as of the Effective Date.

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

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<sup>11</sup> Each of which is believed to be inactive and to have no assets.



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

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

- **Employee Matters:** The Assignee presently intends to engage an Alternative Operator, NAES Corporation ("NAES")<sup>12</sup>, and as such it is contemplated that NAES will offer employment to employees it determines, in its/the Assignee's sole discretion, on terms and conditions of employment that are substantially similar in the aggregate to, and no less favorable in the aggregate than, those in effect for each Employee set out in the Disclosure Schedule.

Nothing in the Transaction Agreement prevents the Purchasers from negotiating agreement(s) with bargaining agents who are party to the applicable Collective Agreement(s) regarding the outsourcing of the operating of the Purchased Assets, including the employment of the employees supporting the Purchased Assets post closing, to any Alternative Operator, including NAES, which has been in discussions with the Purchasers in connection therewith. The Monitor understands that the NAES engagement with employees and the unions is actively underway. If NAES (or another Alternative Operator) is not engaged by the Assignee, the Assignee or a Purchased Entity will offer employment to employees it determines, in its sole discretion, on terms and conditions of employment that are substantially similar in the aggregate to, and no less favourable in the aggregate than, those in effect for each Employee set out in the Disclosure Schedule.

- **Treatment of Letters of Credit:** To the extent required, the Assignee shall have the sole responsibility to have replacement letters of credit (or deposits) issued within 30 days of the Effective Date provided that VPC has no obligation to ensure the existing letters of credit or deposits remain in place after the Effective Date and existing letters of credit or deposits shall not be used as security for obligations after the Effective Date without the consent of the Monitor (who may request security or collateral in connection with providing any such consent). This provision is not intended to impair the rights of any third-party beneficiary under an existing letter of credit or deposit who will require replacement collateral in order for its contract to be continued or assigned.

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<sup>12</sup> NAES Corporation is a third-party operator that the Monitor is advised has extensive experience in the operation of power plant assets throughout North America, and which has been working with the Purchasers in respect of the post-closing operations of the Validus Entities.

- **Representations and Warranties:** The Monitor will provide certain limited representations and warranties to the Purchasers, including that the Monitor has the requisite power and authority to enter into the Transaction Agreement and that neither the Receiver nor the Monitor have engaged in any activity resulting in an Encumbrance affecting any of the Purchased Assets, other than a Permitted Encumbrance or any charge created by the Receivership Order, the SISP Approval Order or the RVO. The Disclosure Schedule specifically provides that it was prepared by the Purchasers and that the Monitor/ Receiver makes no representation as to accuracy or completeness of any exhibit therein.

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

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

- **Outside Date:** February 15, 2024.
- **Conditions to Closing:** Include, among other things:
  - a) **Mutual Conditions**
    - i. the Receivership Order, the Initial Order, the SISP Approval Order and the RVO shall have been issued, entered and shall be Final Orders; and
    - ii. the Monitor and the Purchasers shall have agreed upon the Implementation Steps by no later than seven days prior to the Effective Time in accordance with Section 2.3.2 of the Terms and Conditions, and the Validus Entities shall have completed the Implementation Steps that are required to be completed prior to Closing, in form and substance satisfactory to the Purchasers.
  - b) **Buyer Conditions**
    - i. from the date of the Offer Letter, there shall not have occurred any change effect, event or development that resulted in, or would reasonably be expected to result in, a Material Adverse Effect;
    - ii. each of the counterparties set forth on Part B of Exhibit 3.1(f) of the Terms and Conditions shall have confirmed in writing, to the Vendors, the Assignee and Macquarie that it will not exercise any termination rights under its Continuing Contracts solely as a result of the transactions contemplated by the Transaction Agreement. The Purchasers have not advised that there are any confirmations required in this regard;
    - iii. the Monitor shall have accepted and executed the Transaction Agreement.

- c) Seller Conditions
  - i. as of immediately prior to the Closing, Far North shall have sufficient funds to pay the Administrative Expense Closing Amount and the Priority Payments Closing Amount.
- **Termination:** The Transaction can be terminated by Macquarie under the following circumstances:
  - a) if the Monitor, Macquarie and Far North mutually agree in writing;
  - b) if the Stalking Horse Bid is not selected as the Successful Bid (as determined pursuant to the SISP) or if the Court otherwise approves a transaction other than the Stalking Horse Offer, subject to certain restrictions;
  - c) if the RVO is not granted by January 8, 2024;
  - d) if the Effective Time has not occurred by February 15, 2024 or such later date as agreed to by the Monitor, Macquarie and Far North;
  - e) upon the appointment of a trustee in bankruptcy or similar official by or in respect of any Validus Entity or any of the property of any Validus Entity, other than with the prior written consent of Macquarie;
  - f) upon the termination, dismissal or conversion of the Receivership Proceedings or the CCAA proceedings; or
  - g) upon denial of the SISP Order or the RVO (or if any such order is stayed or varied without the consent of each of Macquarie and Far North).
- **Implementation Steps:** The Implementation Steps are to address the following, among other things:
  - a) the manner in which the Purchased Entities' outstanding HST returns are to be filed;
  - b) the Monitor causing Kingston GP, in its capacity as general partner of Kingston LP, to not make any distribution of income or capital;
  - c) the rectification of certain deficiencies in the Purchased Entities' minute books so that the Monitor can issue shares for Hosting, as contemplated by the Transaction Documents; and
  - d) the manner in which Pre-Filing Intercompany Claims will be treated, setoff and/or assigned among the Validus Entities.

## 5.1 HST Considerations

1. As set out above, when IFPC sold the Leased Property to Macquarie, Macquarie paid approximately \$6 million to IFPC in respect of HST payable on the Leased Property (the “Purchase Price HST”). IFPC did not remit the Purchase Price HST to CRA.
2. As previously disclosed to the Court, one of the consequences of the commencement of the CCAA proceedings is that the obligation of IFPC to pay the Purchase Price HST will be treated as an unsecured claim and, pursuant to the RVO, vest in ResidualCo.
3. At the hearing for the CCAA application, counsel for the Validus Entities expressed concern about the treatment of certain post filing input tax credits (“ITCs”) which may otherwise serve to reduce the Purchase Price HST, which is presumably a concern given the potential personal liability for directors of IFPC. Although CRA had been served with the CCAA application, it did not appear or make submissions at that hearing.
4. The issue of the HST claim of CRA (the “Pre-Filing HST Claim”) resulting from the failure to remit the Purchase Price HST was also raised at the SISF motion on November 1, 2023. At that motion, the Monitor took the position that the determination of the appropriate time to address the tax treatment and structure under the Transaction was in connection with the motion for approval of the RVO and not at the SISF motion. The Department of Justice (appearing on behalf of CRA) supported that position.
5. Under the Transaction Documents, the treatment of HST and ITCs follows the following principles:
  - a. the Pre-Filing HST Claim is vested into ResidualCo;
  - b. any entitlement to ITCs generated in respect of HST paid pre-filing continues in ResidualCo (the “Pre-Filing ITCs”). In respect of the Pre-Filing ITCs, the Monitor continues to work to assess what has been claimed and what remains outstanding. However, based on preliminary work done, it appears that IFPC filed HST returns through March 2023, with the balance of April through July 2023 remaining outstanding. For the periods already filed by IFPC, it appears to have claimed approximately \$3.4 million in respect of Pre-Filing ITCs. The Monitor understands that there may be further Pre-Filing ITCs available to claim by IFPC; and
  - c. ITCs which are generated in respect of HST being paid to Macquarie pursuant to the transaction on closing will be for the benefit of the “restructured” IFPC.
6. From April 2023 to July 2023, IFPC made no lease payments under the Lease Agreement. Notwithstanding that IFPC did not make any payments, Macquarie remitted HST to CRA out of its own funds during that time.
7. Pursuant to the Transaction Agreement, upon closing of the Transaction, IFPC will purchase back the Leased Property from Macquarie and discharge rental arrears, in part, through its issuance of IFPC Note 1 (\$29 million), IFPC Note 2 (\$10 million) and IFPC Note 3 (\$6,435,000).

8. IFPC Note 3 represents the amount of the HST payable by IFPC in respect of the purchase of the Leased Property by IFPC and payment of arrears rent by IFPC, as contemplated by the Transaction Agreement, and consists of approx. \$5.85 million in respect of the Leased Property plus approx. \$585,000 in respect of lease arrears (collectively, the “HST Amount”). Following Closing, Macquarie will (to the extent it has not already done so) be responsible for remitting the HST Amount to CRA (subject to ITCs to which Macquarie itself is entitled from the conduct of Macquarie’s business), and IFPC will be entitled to claim an ITC in respect of the HST Amount paid by IFPC to Macquarie by way of issuance of IFPC Note 3 (the “Post-Filing ITC Entitlements”). These Post-Filing ITC Entitlements are generated in respect of HST paid as a result of the transactions that take place pursuant to the Transaction Agreement on Closing, and in respect of the payment of HST owing to Macquarie which Macquarie has already reported as HST in its net tax for HST purposes. Accordingly, IFPC will retain the entitlement to the Post-Filing ITC Entitlements. Such amounts will not be available to set off against the Pre-Filing HST Claim, which remains with ResidualCo.
9. In that regard, the Monitor has considered the proposed tax treatment under the Transaction Documents and notes the following:
- a) the treatment of HST and ITCs under the Transaction is consistent with the well-established doctrine of preserving set off but only to the degree of allowing “pre-pre” and “post-post” set offs in that:
    - i. the Pre-Filing ITCs will be vested into ResidualCo along with the Pre-Filing HST Claim;
    - ii. HST paid by IFPC in respect of the purchase of Leased Property would only become payable on the closing of the Transaction and so is a post-filing payment of HST. Correspondingly, any ITCs generated as a result of such payment of HST cannot be set off against the pre-filing Purchase Price HST obligation; and
    - iii. rental arrears and associated HST are being satisfied by IFPC on closing. HST in respect of rental arrears is being paid by IFPC on closing through the issuance of promissory notes and is therefore effectively being funded by Macquarie on the closing of the Transaction. While the entitlement to claim an ITC, as well as the obligation to pay the corresponding HST, arises at the time the consideration for the taxable supply (in this case, the rent) becomes payable, there is no requirement to claim ITCs only in the period in which they arise (provided claims are made within the limitations provided in the HST legislation). As the HST in respect of the rental arrears is being funded by Macquarie, it is appropriate that the related ITC is claimed post-filing and is therefore a post-filing ITC;
  - b) HST is being actually funded and paid for by Macquarie - the equities weigh in favour of the funding party continuing to have the benefit of the offsetting ITCs;
  - c) the parties are free to structure their transaction in a tax efficient manner; and
  - d) any ITCs generated from the payment of HST on obligations of VPC during the Receivership or CCAA period will continue to be assets of VPC or ResidualCo, but also cannot be set off against the pre-filing Purchase Price HST.

10. Based on the foregoing, the Monitor believes that the treatment of any entitlements to ITCs under the Transaction and within the course of these proceedings is appropriate.

## 5.2 The Purchased Validus Parent Assets

1. As set out above, Macquarie has security over the shares/units of IFPC, Kap, Bay, Kingston GP and Kingston LP. The Macquarie security, as it relates to VPC, does not attach to other assets of VPC, including the Purchased Validus Parent Assets, which are set out in the Disclosure Schedule.
2. As previously reported, the Monitor has received an independent legal opinion from its counsel as to the validity and enforceability of the security held by Macquarie.
3. The Monitor has considered whether sufficient consideration is being paid for the Purchased Validus Parent Assets (and any other assets of VPC that may be added to the Disclosure Schedule, as permitted by the Terms and Conditions).
4. In this regard:
  - a) all assets subject to these proceedings, including the Purchased Validus Parent Assets, were made available for sale under the SISP and no qualified bids were received;
  - b) there is significant consideration and benefit provided under the proposed Transaction Documents over and above the release of the Macquarie debt and security, including, without limitation, the ongoing employment of VPC employees and assumption of associated liabilities, the payment of the Priority Payments Closing Amount, the granting of the Priority Payments Indemnity (and Priority Payments Indemnity Charge) and the funding of the Administrative Expense Closing Amount;
  - c) based on the Monitor's review of the litigation between VPC and Hut 8 by NRF, it appears that there is a lack of evidence to support VPC's claim against Hut 8 and that there is considerable strength in Hut 8's claim against VPC;
  - d) the Monitor is unaware of any material value in Hosting, which, to the Monitor's knowledge, is inactive and has no assets;
  - e) the TransCanada Contract, although held in the name of VPC, is used in the course of Bay's business (and available to Kap and IFPC) and is unlikely to be monetized on a standalone basis. Based on the obligations thereunder, the contract is a cost to VPC's estate (and thus these proceedings), and Far North is required to replace a cash deposit held by TransCanada with respect to the TransCanada Contract that has the potential to result in a return of the existing deposit to VPC; and
  - f) the Transaction Agreement requires an allocation of the consideration payable among the Purchased Assets and provides that the consideration payable for the Purchased Validus Parent Assets shall be paid and satisfied by the assumption by the Purchasers of certain of the Priority Payments of Validus Parent.

## 6.0 Recommendation

1. The Monitor recommends that the Court approve the Transaction and grant the RVO for the following reasons:
  - a) in the Monitor's view, the SISP was commercially reasonable and conducted in accordance with the SISP Approval Order, including its timelines, which allowed the opportunity for the market to be broadly canvassed and provided an opportunity for parties to perform due diligence. The Monitor notes that the intention to use a stalking horse bid in this process was initially disclosed in Macquarie's receivership materials filed in August, 2023, and in Hut 8's press release dated August 11, 2023, and accordingly, the acquisition opportunity was in the public domain for approximately three months prior to the commencement of the SISP;
  - b) the SISP provided interested parties an opportunity to submit bids for certain of the plants/assets, and for those bids to be aggregated with the Purchaser's Stalking Horse Bid;
  - c) the Transaction provides for the greatest recovery available in the circumstances as there were no Qualified Bids other than the Stalking Horse Bid submitted in the SISP;
  - d) Macquarie, being the Validus Entities' principal secured creditor, was consulted in the development and negotiation of the Transaction and the SISP and has consented to all of the relief sought;
  - e) the Transaction provides a going-concern solution for the Validus Entities (other than VPC, which has no active business other than holding the shares of the Purchased Entities). It contemplates the continuation of operations and preserves employment for all, or substantially all, of the existing employees on terms and conditions of employment that are substantially similar in the aggregate to, and no less favourable in the aggregate than, those in effect for each Employee set out in the Disclosure Schedule. This is particularly beneficial in these circumstances as certain of the plants operate in rural communities where the Validus Entities are a significant employer;
  - f) the Monitor does not believe that further time spent marketing the Validus Entities' businesses and assets will result in a superior transaction. Moreover, the Validus Entities do not have the funding required to continue operating in the normal course, nor this CCAA proceeding, during any further marketing process;
  - g) the purchase price under the Transaction significantly exceeds the price VPC paid for the four plants (\$44.7 million) in the last 2 years and represents the greatest recovery available in the circumstances. It is also structured as a share deal that provides for the retention by the Purchased Entities of certain of their liabilities, other than the Excluded Liabilities, which further enhances the value of the Transaction as well as the assumption of certain liabilities by Assignee from VPC. The value is also supported by the results of the EY Sale Process, which failed to generate any unconditional offers for the IFPC plant. The Kap

and Bay plants are not presently operating and are in need of significant repair and are believed to have less value than IFPC;

- h) absent the Transaction, Macquarie is not prepared to continue to fund the Validus Entities. Funding available at this time is projected to be exhausted on or around February 15, 2024;
- i) certainty is required for the Validus Entities and their employees, as has been communicated by the Monitor throughout these proceedings. It is critical and urgent that the Transaction be completed expeditiously. By using an RVO structure to complete the Transaction, the Validus Entities' Permits and Licenses will be preserved. The Transaction as contemplated could not be completed if the Purchasers do not have certainty that they can acquire the Permits and Licenses on a timely basis;
- j) in the Monitor's view, the terms and conditions of the Transaction Agreement are commercially reasonable; and
- k) the Monitor and its counsel worked with the Purchasers and their counsel to settle the Implementation Steps. The Monitor does not believe any party is prejudiced by the Implementation Steps, which are required to complete the Transaction in accordance with the Transaction Documents.

## 6.1 RVO Considerations

1. The Monitor believes it is necessary and appropriate for the Transaction to be completed pursuant to an RVO. In forming its view, the Monitor considered the issues raised by Canadian Courts in CCAA proceedings when considering granting an RVO, including the considerations in the *Harte Gold* case set out below.

- a) *Why is the RVO necessary in this case?*

Preserving the Validus Entities' Permits and Licenses required to operate in the highly regulated Ontario power industry is the principal factor driving the requirement that the Transaction be completed through an RVO. An RVO provides for the seamless preservation of the Permits and Licenses required to operate the Validus Entities' businesses - the time and cost of transferring them absent an RVO, if even possible, could impair the businesses of the Validus Entities and unduly complicate and/or delay completion of a transaction. The Purchasers are not prepared to acquire the businesses under an alternative structure and there is no funding available to continue to operate the business while steps are taken to have the Permits and Licenses transferred to the Purchasers.

Completing the Transaction through a CCAA plan of arrangement ("Plan") is not a viable alternative as no party has been identified to sponsor a Plan given there is no value for any stakeholder in these proceedings other than Macquarie. Additionally, the cost of drafting a Plan, convening a meeting of creditors to vote on the Plan and conducting a claims process would be wasteful in the circumstances as Macquarie is the only creditor with an economic interest based on the results of the SISF. The Monitor understands that Macquarie would not fund such a process. The delay and uncertainty on the businesses resulting



from a Plan process would impair value as employees would likely seek alternative employment. Employee flight risk has been highlighted to the Court since the commencement of these proceedings. The RVO effectively provides all the benefits of a Plan, while providing more certainty, with less cost, risk and instability.

- b) *Does the RVO structure produce an economic result at least as favourable as any other viable alternative?*

The RVO allows for the expedient conveyance of the Purchased Entities to the Purchasers. Without an RVO, there would be substantial delay transferring the Permits and Licenses, and the ability to transfer some or all of them at all may be at risk. Macquarie has advised the Monitor that it is not prepared to continue to provide funding absent the certainty of a transaction, meaning the operations of the Validus Entities would need to be discontinued, resulting in a loss of employment in rural communities, as well as a cascading number of issues and problems which may arise as a result of the power plants not being maintained. The issuance of an RVO is a material condition of the Transaction and is integral to completing the Transaction. Accordingly, there does not appear to be any viable alternative to an RVO.

There is no other viable alternative as the Purchasers have insisted on the RVO as the proposed structure and there were no other Qualified Bids submitted in the SISP. The only alternative would be a liquidation of the plant assets, which would result in a significantly worse outcome for many stakeholders including counterparties, whose contracts are continuing (and whose pre-filing liabilities are being assumed) and employees who would be terminated in such circumstances.

- c) *Is any stakeholder worse off under the RVO structure than they would have been under any other viable alternative?*

In the Monitor's view, no stakeholders are prejudiced by the issuance of an RVO relative to their treatment and outcome, particularly given the Monitor's views as to the lack of any other viable option noted above. In particular, the claims/liabilities being transferred to ResidualCo are unsecured and/or would receive no distribution or consideration under any transaction structure. Given the value of Macquarie's secured claim, there would be no funds available for distribution to any of the Validus Entities' creditors subordinate to Macquarie under any other realization scenario. The Monitor is of the view that many stakeholders will have an improved outcome as a result of the RVO given the treatment of pre-filing liabilities related to Continuing Contracts and the ongoing employment opportunities for employees. Further, the proposed Transaction accounts for payment of priority payables in respect of outstanding source deduction liabilities and the ongoing assumption of outstanding property taxes owing to the municipalities on the plants.

- d) *Does the consideration being paid for the debtor's business reflect the importance and value of the licenses and permits (or other intangible assets) being preserved under the RVO structure?*

For the reasons noted in 1(a) above, in the Monitor's view, the value of the Validus Entities' Permits and Licenses preserved under the RVO structure is the critical consideration in structuring the Transaction. These assets were extensively marketed for sale in the SISP and, in the case of IFPC, in a pre-filing EY Sale Process. The consideration being paid by the Purchasers is directly attributable to their importance and value, which provides significant benefit for additional for other stakeholders, including contract counterparties and the Validus Entities' employees.

2. Based on the foregoing, the Monitor recommends that this Court approve the Transaction and grant the proposed RVO.

## 7.0 Releases

1. The RVO provides for: (i) KSV, in its personal capacity and its capacities as Receiver and Monitor, and its legal counsel, and (ii) Macquarie, Far North and their respective current and former directors, officers, employees, legal counsel and representatives; and (iii) Ryan Chua, in his capacity as the First Director (collectively, the "Released Parties") to be released from the Released Claims (as defined in the proposed RVO).
2. The claims to be released include any claims arising out of the Validus Entities' business, assets, operations and affairs or the Transaction Documents.
3. The proposed release does not release:
  - a) any claim that is not permitted to be released pursuant to section 5.1(2) of the CCAA;
  - b) any obligations of any of the Released Parties under or in connection with the Offer Letter, the Transaction Agreement, the Transaction Documents and/or any agreement, document, instrument, matter or transaction involving the Validus Entities arising in connection with or pursuant to any of the foregoing;
  - c) any claims related to the pre-closing arrangements between Macquarie and Far North or any claims arising from the arrangements entered into between any of Macquarie, Far North or the Purchased Entities on or after the Effective Time.
4. In the Monitor's view:
  - a) during these proceedings, the Released Parties have been integral to the conduct of the SISP and the negotiation of the Transaction;
  - b) other than Mr. Chua, the Released Parties do not include any present or former director or officer of the Validus Entities given they have not been involved in these proceedings, the SISP and/or the negotiation and execution of the Transaction; and
  - c) the exclusions noted above are in accordance with the CCAA.

5. Additionally, the Monitor is of the view that the scope of the Released Claims is reasonable in the circumstances as, among other things: (i) there has been significant opposition by the Validus Entities and Mr. Shortt at times in these proceedings; and (ii) the records and information that the parties have had to rely upon in structuring the Transaction and in the course of the business operations has been unreliable or non-existent. The release of such claims in favour of the proposed Released Parties will assist in completing the administration of the estate for which reserves or charges might otherwise be required.
6. Based on the foregoing, the Monitor is of the view that the scope of the proposed releases in favour of the Released Parties is fair and reasonable in the circumstances.

## 8.0 Service and Notice

1. In preparing for this motion, the Monitor, Purchasers and their respective legal counsel were cognizant of the service and notice requirements related to parties which may be affected by the granting of an RVO, as well as the state of the Validus Entities' books and records. It was for this reason that the Monitor sought approval of the Unknown Contract Bar Process, which process, as previously noted, was approved on November 1, 2023 pursuant to the SISP Approval Order. In this regard, the Monitor:
  - a) posted a list of known contracts (the "Known Contract List") on the Monitor's website; and
  - b) arranged for a notice, a copy of which is attached as Appendix "L", to be published in the following national and local publications:

Publication	Publication Date
The Globe & Mail (National Edition)	November 13, 2023
North Bay Nugget	November 13, 2023
Kingston Whig Standard	November 13, 2023
Timmins Daily	November 14, 2023
Iroquois Falls News	November 16, 2023

2. The Monitor was not contacted by any unknown contract counterparties prior to November 28, 2023, being the bar date under the Unknown Contract Bar Process.
3. The Monitor will be serving its Motion Record to all known contract counterparties appearing on the Known Contract List (other than those with a pure right in land evidenced by an easement), as well as the regulators that have issued all of the Permits and Licenses.
4. In the Monitor's view, the service considerations related to an RVO motion have been adequately addressed, including the efforts undertaken to identify unknown contract counterparties pursuant to the Unknown Contract Bar Process and the length of notice provided to parties on the Known Contract List to understand how their rights are being affected, to engage in discussions with the Monitor regarding same and to raise objections.
5. Based on the foregoing, the Monitor believes that service of this motion is adequate.

## 9.0 ResidualCo

1. It is contemplated that, pursuant to the terms of the RVO, the liabilities of the Purchased Entities excluded from the Transaction will vest in ResidualCo and that ResidualCo would become a debtor company subject to the receivership and CCAA proceedings upon the issuance of the order sought.
2. All liabilities being transferred to ResidualCo pursuant to the Transaction and proposed RVO are unsecured. In other words, there would be no funds available for distribution to these creditors under any circumstance based on the economics of the Transaction and lack of viable alternatives, as outlined above. The Monitor is not aware of any environmental, priority or deemed trust claims being transferred to ResidualCo. Accordingly, as Macquarie is the only creditor with an economic interest in the Transaction, there does not appear to be any prejudice to the parties that will become creditors of ResidualCo should the relief sought be granted.
3. The Monitor is aware that a creditor trust is an alternative structure to establishing a separate legal entity for the purposes of vesting the excluded liabilities in an RVO transaction. The use of ResidualCo has no practical difference to the stakeholders than a creditor trust as the claims would be administered by the court officer in the same manner and there would be no funds available to creditors in either structure. In this case, the Purchasers have agreed to fund the nominal incremental costs associated with the incorporation of ResidualCo, and Mr. Chua has agreed to serve as ResidualCo's sole director if authorized to do so by the Court in accordance with the RVO. Mr. Chua has agreed to serve in this role to facilitate the Transaction and on the understanding the ResidualCo is an entity that is to become subject to these and the receivership proceedings as a result of the structure of the RVO and not because of any operational or other decisions that he will make or made as a director of ResidualCo.
4. The Monitor believes that the proposed protections to be afforded to Mr. Chua, in his capacity as ResidualCo's sole director, are reasonable and appropriate in the circumstances. Mr. Chua is serving as a director of ResidualCo for the sole purpose of implementing the Transaction. It is contemplated that ResidualCo will make an assignment in bankruptcy shortly following closing of the Transaction.

## 10.0 Cash Flow Forecast

1. The Receivership Order authorized the Receiver to borrow monies up to the principal amount of \$1 million, which borrowings (plus interest and fees) were secured by a Receiver's Borrowing Charge, subordinate only to the Receiver's Charge. Both of these Court-ordered charges were recognized and preserved in these CCAA proceedings pursuant to paragraph 3 of the Initial Order.
2. On November 1, 2023, the Court authorized an increase in the Receiver's Borrowings Charge from \$1 million to \$1.5 million. As at the date of this Report, Macquarie has advanced \$1.5 million to the Receiver to fund these proceedings. On November 17, 2023, the Receiver issued a Receiver's Certificate evidencing this advance.

3. The Cash Flow Forecast provides a projection through the Forecast Period and reflects that no additional borrowings are required to that date. Based on the Monitor's review of the Cash Flow Forecast, the probable and hypothetical assumptions appear reasonably supported. As stated in the scope and terms of reference to this Report, the Cash Flow Forecast is based on assumptions regarding future events. Actual events are likely to vary from forecasted results and such variances may be material. The Cash Flow Forecast has been prepared solely for the purpose of this Report and is not appropriate for any other purpose. The Cash Flow Forecast and the Validus Entities' and the Monitor's statutory reports on the Cash Flow Forecast are collectively attached as Appendix "M".

## 11.0 Extension of the Stay of Proceedings

1. The Monitor recommends that the Court issue an order granting an extension of the stay of proceedings to February 29, 2024 for the following reasons:
  - a) as the Monitor is providing the overall supervision for the business during these proceedings, and the Company does not have any executive level management, it is its view that the good faith and due diligence standard should be based on its conduct during these proceedings. The Monitor (and Receiver) are of the view that they have advanced these proceedings in good faith and with due diligence and that they are causing the Validus Entities to carry out their obligations in accordance with the orders issued in these proceedings;
  - b) an extension will provide sufficient time for the Monitor to complete the SISP and to work with the Purchasers to complete the Transaction, should it be approved by this Court;
  - c) based on the Cash Flow Forecast, no additional borrowing is required during the Forecast Period and the Validus Entities are projected to have sufficient liquidity to fund their operations in the normal course; and
  - d) terminating the stay of proceedings on January 31, 2024 could result in the loss of the Transaction, and the resultant benefits, including the inability to maximize value for stakeholders and the loss of employment opportunities for the Validus Entities' employees, which is of vital importance given the remoteness of the communities in which some of the Validus Entities operate.

## 12.0 Professional Fees

1. The fees (excluding disbursements and HST) of the Monitor, Receiver and NRF from the commencement of the CCAA and receivership proceedings to November 30, 2023 are approximately \$171,000, \$478,000 and \$524,000, respectively.
2. The average hourly rates for KSV and NRF for the referenced billing periods were \$524.68 and \$737.61, respectively.
3. Detailed invoices in respect of the fees and disbursements of the Monitor, Receiver and NRF are provided in appendices to the affidavits (the "Fee Affidavits") filed by KSV and NRF attached as Appendices "N" and "O", respectively.

4. The Monitor is of the view that the hourly rates charged by NRF are consistent with the rates charged by large corporate law firms practicing in the area of corporate insolvency and restructuring in the Toronto market, that NRF's billings reflect work performed consistent with the Monitor's instructions, and that the overall fees charged by NRF, the Monitor and the Receiver are reasonable and appropriate in the circumstances.

### 13.0 Conclusion and Recommendation

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

\* \* \*

All of which is respectfully submitted,

*KSV Restructuring Inc.*

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

## Appendix “A”



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

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

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

B E T W E E N:

**MACQUARIE EQUIPMENT FINANCE LIMITED**

Applicant

- and -

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

Respondents

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

**ORDER**  
**(Appointing Receiver)**

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



of Validus Power Corp., Iroquois Falls Power Corp., Bay Power Corp., Kap Power Corp., Validus Hosting Inc., Kingston Cogen Limited Partnership and Kingston Cogen GP Inc. (collectively, the “**Debtors**”, and each a “**Debtor**”) acquired for, or used in relation to a business carried on by the Debtors, or any of them, including, without limitation, the real property described in Schedule “A” hereto, was heard this day by judicial video conference via Zoom in Toronto, Ontario.

**ON READING** the Notice of Application of the Applicant, dated July 31, 2023, filed; the affidavit of Joshua Hamilton Stevens, sworn July 31, 2023 (the “**Stevens Affidavit**”) and the exhibits thereto, filed; the factum of the Applicant, dated July 31, 2023, filed; the consent of KSV to act as Receiver, dated July 24, 2023, filed; the supplemental affidavit of Joshua Hamilton Stevens, sworn August 2, 2023, and the exhibits thereto, filed; the second supplemental affidavit of Joshua Hamilton Stevens, sworn August 8, 2023, and the exhibits thereto, filed; the reply factum of the Applicant, dated August 9, 2023, filed; the affidavit of Todd Shortt, sworn August 7, 2023, filed; the affidavit of Todd Shortt, sworn August 10, 2023, and the exhibits thereto, filed; and the first report of KSV as interim receiver of the Debtors, dated August 9, 2023, filed;

**AND UPON** hearing the submissions of counsel for the Receiver, counsel for the Applicant, counsel for the Debtors, counsel for Canadian Imperial Bank of Commerce, and such other counsel who were present, no one else appearing although duly served as appears from the lawyer’s certificates of service of Mike Noel sworn August 1, 2, 8 and 9, 2023, filed; the affidavit of service of Kunalan Shelvarajah sworn August 1, 2023, filed; and the affidavit of service of Sivarajah Sivaperuman sworn August 9, 2023, filed.

## **SERVICE**

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

## APPOINTMENT

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

## RECEIVER’S POWERS

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

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

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

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

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

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

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

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

- (o) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (p) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority, including, without limitation, the Independent Electricity System Operator and the Ontario Energy Board, and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtors, or any of them, or any person that the Receiver engages pursuant to paragraph 3(d), and to meet with and discuss with such governmental authority and execute any agreements, or provide any notices, required in connection with or as a result of such permits, licenses, approvals or permissions (but solely in its capacity as Receiver and not in its personal or corporate capacity);
- (q) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtors, or any of them, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtors, or any of them;
- (r) to undertake any investigations deemed appropriate by the Receiver with respect to the location and/or disposition of assets reasonably believed to be, or to have been, Property;
- (s) to apply to this Court for such further relief, advice and directions as the Receiver may determine as necessary or desirable;
- (t) to exercise any shareholder, partnership, joint venture or other rights which the Debtors, or any of them, may have; and
- (u) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations, including opening any mail or other correspondence addressed to any of the Debtors.

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons, including the Debtors, or any of them, and without interference from any other Person.

#### **DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER**

4. **THIS COURT ORDERS** that: (i) the Debtors; (ii) all of their current and former directors, officers, employees, agents, accountants, legal counsel, equity holders, including, without limitation, investors and shareholders, and all other persons acting on their instructions or behalf; (iii) all construction managers, project managers, contractors, subcontractors and service providers, and all other persons acting on their instructions or behalf; and (iv) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being “**Persons**” and each being a “**Person**”) shall forthwith advise the Receiver of the existence of any Property in such Person’s possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver’s request.

5. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records, information and cloud-based data of any kind related to the business or affairs of the Debtors, and any computer programs, computer tapes, computer disks, cloud or other data storage media containing any such information (the foregoing, collectively, the “**Records**”) in that Person’s possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software, cloud and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer, in the cloud or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer, cloud or other system and providing the Receiver with any and all access codes, account names, account numbers, account creating credentials that may be required to gain access to the information.

7. **THIS COURT ORDERS** that all Persons, including, without limitation, Validus Power Services Inc., other entities within the Validus group of companies and entities and any other affiliates of the Debtors (collectively, the “**Validus Group**”), and each of them, shall be required to cooperate, and share information, with the Receiver in connection with all books and records, contracts, agreements, permits, licenses and insurance policies and other documents in respect of the Debtors, or any of them, and/or the Property. In addition to the foregoing general cooperation and information sharing requirements, the Validus Group, or any of them, shall be required to do the following things: (a) in respect of any and all such contracts, agreements, permits, licenses and insurance policies and other documents: (1) maintain them in good standing and provide immediate notice and copies to the Receiver of any communications received from regulators or providers in respect thereof; (2) provide immediate notice to the Receiver of any material change and/or pending material change to the status quo in respect thereof; and (3) provide thirty (30) days’ notice of any renewal date, termination date, election date or similar date in respect thereof; and (b) assist, and cooperate with, the Receiver in obtaining any further permits and licenses that may be required.

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

#### **NO PROCEEDINGS AGAINST THE RECEIVER**

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

#### **NO PROCEEDINGS AGAINST THE DEBTORS OR THE PROPERTY**

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

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

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



Debtors, or any of them, from compliance with statutory or regulatory provisions relating to health, safety or the environment; (iii) prevent the filing of any registration to preserve or perfect a security interest; or (iv) prevent the registration of a claim for lien.

#### **NO INTERFERENCE WITH THE RECEIVER**

12. **THIS COURT ORDERS** that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtors, or any of them, without written consent of the Receiver or leave of this Court.

#### **ACCELERATED LEASE PAYMENTS**

13. **THIS COURT ORDERS** that notwithstanding anything in this Order to the contrary, nothing in this Order shall prohibit, restrict, pause or interfere with the running of the notice period in respect of the Accelerated Payments (as defined in the Stevens Affidavit), and the Debtors' respective obligations therefor, pursuant to the July Demand Letters (as defined in the Stevens Affidavit) delivered by the Applicant to the Debtors.

#### **CONTINUATION OF SERVICES**

14. **THIS COURT ORDERS** that all Persons, including, without limitation, the Validus Group, having oral or written agreements with the Debtors, or any of them, or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, construction management services, project management services, permit and planning management services, accounting services, centralized banking services, payroll services, insurance, employee benefits, transportation services, utility or other services to the Debtors, or any of them, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver (including, where a notice of termination may have been given with an effective date after the date of this Order), and that the Receiver shall be entitled to the continued use of the Debtors' current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal

prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtors or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

#### **RECEIVER TO HOLD FUNDS**

15. **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the “**Post Receivership Accounts**”) and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

#### **EMPLOYEES**

16. **THIS COURT ORDERS** that all employees of the Debtors, or any of them, shall remain the employees of the applicable Debtor until such time as the Receiver, on behalf of the applicable Debtor, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

#### **PIPEDA**

17. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete

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

#### **LIMITATION ON ENVIRONMENTAL LIABILITIES**

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

#### **LIMITATION ON THE RECEIVER’S LIABILITY**

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

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

### RECEIVER'S ACCOUNTS

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

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

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

### FUNDING OF THE RECEIVERSHIP

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

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

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

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

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

## **SERVICE AND NOTICE**

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

commercial/) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: <https://www.ksvadvisory.com/experience/case/validus-power-corp>.

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

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

### **CRITICAL PAYMENTS**

30. **THIS COURT ORDERS** that the Receiver may make payments owing by the Debtors, or any of them, to suppliers, contractors, subcontractors and other creditors in respect of amounts owing prior to the date of this Order where such payments are deemed by the Receiver critical to

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

## **GENERAL**

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

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

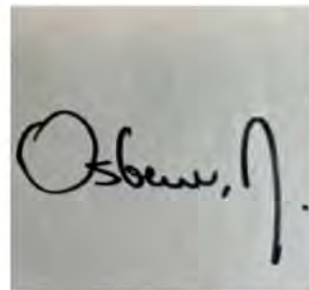
33. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals,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

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

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

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

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



2023.08.1

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## SCHEDULE "A"

### DESCRIPTION OF REAL PROPERTY

#### Iroquois Falls Power Corp.

##### **Firstly:**

##### **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

##### **Secondly:**

##### **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

##### **Thirdly:**

##### **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

##### **Fourthly:**

##### **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

##### **Fifthly:**

**PIN 65337-0373 (LT)**

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

**Kap Power Corp.**

**Firstly:**

**PIN 65095-0051 (LT)**

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

**Secondly:**

**PIN 65095-0052 (LT)**

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

**Bay Power Corp.**

**PIN 49127-0021 (LT)**

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

**Kingston Cogen GP Inc.**

**Firstly:**

**PIN 45132-0375 (LT)**

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

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

**Secondly:**

**PIN 45132-0377 (LT)**

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

**Thirdly:**

**PIN 45132-0362 (LT) – (Registered Owner: Invista (Canada) Company)**

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

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

## SCHEDULE "B"

### RECEIVER CERTIFICATE

CERTIFICATE NO. \_\_\_\_\_

AMOUNT \$ \_\_\_\_\_

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

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

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

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

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the \_\_\_\_ day of \_\_\_\_\_, 2023.

**KSV RESTRUCTURING INC.**, solely in its capacity as Receiver of the Property, and not in its personal capacity

Per: \_\_\_\_\_  
Name:  
Title:

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

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

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

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

Proceeding commenced at TORONTO

**ORDER**  
**(Appointing Receiver)**

**Torys LLP**

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Box 270, TD South Tower  
Toronto, ON M5K 1N2  
Fax: 416.865.7380

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Alina Butt (LSO#: 84168W)  
Tel: 416.865.7973 | [abutt@torys.com](mailto:abutt@torys.com)

Lawyers for Macquarie Equipment Finance Limited,  
the Applicant

## Appendix “B”



SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

**COUNSEL SLIP / ENDORSEMENT**

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

DATE: August 18<sup>th</sup> 2023

REGISTRAR: Tiana Khan

NO. ON LIST: 4

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

BEFORE JUSTICE: **Justice Osborne**

**PARTICIPANT INFORMATION**

**For Plaintiff, Applicant, Moving Party, Crown:**

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

**For Defendant, Respondent, Responding Party, Defence:**

Name of Person Appearing	Name of Party	Contact Info
FRANCIS, CATHERINE LOUIS	VALIDUS POWER CORP.	<a href="mailto:cfrancis@mindengross.com">cfrancis@mindengross.com</a> (416) 369-4137

**For Other, Self-Represented:**

Name of Person Appearing	Name of Party	Contact Info



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

### **ENDORSEMENT OF JUSTICE OSBORNE:**

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

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

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

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

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

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

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

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

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

Oleary, J.

## Appendix “C”





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

August 23, 2023

- and -

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

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

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

MACQUARIE EQUIPMENT FINANCE LIMITED

Applicant

- and -

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

Respondents

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

- and -

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

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

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

AUGUST 23, 2023

## 1.0 Introduction

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

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

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

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

### 1.1 Purposes of this Report

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

### 1.2 Currency

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

### 1.3 Restrictions

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

### 1.4 KSV's Qualifications to Act as Monitor

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

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

## 2.0 Background

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

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

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

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

### 3.0 The CCAA Application

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



- c) the Receiver is of the view that it is likely that any other purchaser would also require the preservation of permits and licenses pursuant to an RVO;
- d) the implementation steps also contemplate a corporate arrangement pursuant to one or both of the *Business Corporations Act* (Ontario) and the *Canada Business Corporations Act*, which is more commonly completed in CCAA proceedings than in receivership proceedings;
- e) the Potential Purchaser has indicated that it is not prepared to pay any amounts owing to CRA in respect of the HST obligation that IFPC failed to remit when it entered into the sale leaseback transaction with Macquarie. Completion of the contemplated transaction under the CCAA will reverse the priority of the HST obligation;
- f) the Receiver is of the view that any purchaser will also require that the HST obligation be reversed and that the super-priority status of this obligation outside of the CCAA is an impediment to a going-concern transaction. Reversing priorities in insolvency proceedings is a common consideration in choice of insolvency proceeding<sup>2</sup>;
- g) there is significantly more precedent for the issuance of RVOs in a CCAA proceeding than in a receivership or other insolvency processes;
- h) as a result of issues concerning the transferability of the licenses and the unpaid HST obligation, there is a greater likelihood that the SISP will result in a going-concern transaction if conducted under the CCAA than in a receivership;
- i) given the forgoing, the Receiver believes conducting the SISP through the CCAA process may enhance interest from other potential bidders;
- j) commencement of the CCAA proceedings now will permit the 10-day statutory comeback to run while the parties continue to negotiate the Offer and finalize the terms of the SISP;
- k) timing is important – the SISP should commence as quickly as possible due to the following issues:
  - i. KSV, as interim receiver, advised in its report dated August 9, 2023 that the Companies' employees had significant concerns about the role of former management, which led to frustration and a lack of confidence in the business. This is due to, *inter alia*, the Validus Entities deducting RRSP contributions from payroll but not remitting them to the Validus Entities' RRSP plan at Canada Life, and the termination of health benefits. Stability is required among the workforce so that employees do not look for new employment. The Validus Entities have already lost one former plant manager since these proceedings commenced. The Receiver is of

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

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

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

#### 4.0 Validus Entities' Refinancing Efforts

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

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

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

## 5.0 Proposed Initial Order

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

## 6.0 Cash Flow Forecast

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

## 7.0 Anticipated Next Steps

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

## 8.0 Conclusion and Recommendation

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

\* \* \*

All of which is respectfully submitted,

*KSV Restructuring Inc.*

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

## Appendix “D”



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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

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

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

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

**INITIAL ORDER**

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

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

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

### **SERVICE**

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

### **APPLICATION**

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

### **RECEIVERSHIP ORDER**

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

### **PLAN OF ARRANGEMENT**

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

### **POSSESSION OF PROPERTY AND OPERATIONS**

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

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

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

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

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

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

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

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



- deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Validus Entities in connection with the sale of goods and services by the Validus Entities, but only where such Sales Taxes are accrued or collected after the date of the Receivership Order, or where such Sales Taxes were accrued or collected prior to the date of the Receivership Order but not required to be remitted until on or after the date of the Receivership Order, and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Validus Entities.

9. THIS COURT ORDERS that until a real property lease is disclaimed in accordance with the CCAA, the Validus Entities, by the Receiver, shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the Validus Entities, by the Receiver, and the landlord from time to time ("**Rent**"), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

10. THIS COURT ORDERS that, except as specifically permitted herein or in the Receivership Order, the Validus Entities are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Validus Entities to any of their creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of their Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

## RESTRUCTURING

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

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

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

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

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

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

#### **NO PROCEEDINGS AGAINST THE VALIDUS ENTITIES OR THE PROPERTY**

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

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

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

#### **NO INTERFERENCE WITH RIGHTS**

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

## **CONTINUATION OF SERVICES**

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

## **NON-DEROGATION OF RIGHTS**

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

## **APPOINTMENT OF MONITOR**

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

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

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

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

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

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

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

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

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

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

### **SERVICE AND NOTICE**

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

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

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

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

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

## GENERAL

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

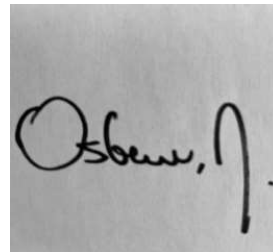
32. THIS COURT ORDERS that nothing in this Order shall prevent the Monitor from acting as a trustee in bankruptcy of the Validus Entities, the Business or the Property.

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

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

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

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



2023.08.30

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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.

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at TORONTO

**INITIAL ORDER**

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Lawyers for the Applicants, each by the Receiver

## Appendix “E”



SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

**COUNSEL SLIP / ENDORSEMENT**

COURT FILE  
NO.:

CV-23-00703754-00CL

DATE: 29 August 2023

NO. ON LIST: 4

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

BEFORE JUSTICE: **OSBORNE**

**PARTICIPANT INFORMATION**

**For Plaintiff, Applicant, Moving Party, Crown:**

Name of Person Appearing	Name of Party	Contact Info
Jennifer Stam	KSV Restructuring Inc.	jennifer.stam@nortonrosefulbright.com

**For Defendant, Respondent, Responding Party, Defence:**

Name of Person Appearing	Name of Party	Contact Info
Scott A. Bomhof	Macquarie Equipment Finance Limited	sbomhof@torys.com
Jeremy Opolsky	Macquarie Equipment Finance Limited	jopolsky@torys.com
Ryan Gelbart	Validus Power Corp., Iroquois Falls Power Corp., Bay Power Corp, Kap Power Corp., Validus Hosting Inc. and Kingston Cogen GP Inc, and Kingston Cogen Limited Partnership	rgelbart@mindengross.com
Catherine Francis	Validus Power Corp., Iroquois Falls Power Corp., Bay Power Corp, Kap Power Corp., Validus Hosting Inc. and Kingston Cogen GP Inc,	cfrancis@mindengross.com

	and Kingston Cogen Limited Partnership	
Jesse Mighton	Hut 8 Mining Corp.	mightonj@bennettjones.com

**For Other:**

Name of Person Appearing	Name of Party	Contact Info
Bobby Kofman	KSV Restructuring Inc.	bkofman@ksvadvisory.com
Jordan Wong	KSV Restructuring Inc.	jwong@ksvadvisory.com

**ENDORSEMENT OF JUSTICE OSBORNE:**

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

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

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

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

Oleau, J.

## Appendix “F”





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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR. ) WEDNESDAY, THE 1<sup>ST</sup>  
 )  
JUSTICE OSBORNE ) DAY OF NOVEMBER, 2023  
 )

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

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

**SISP APPROVAL ORDER**

**THIS MOTION**, made by **KSV Restructuring Inc. ("KSV")**, in its capacity as the Court-appointed monitor (in such capacity, the "**Monitor**") of Validus Power Corp. ("**VPI**"), Iroquois Falls Power Corp., Bay Power Corp., Kap Power Corp., Validus Hosting Inc. ("**Hosting**"), Kingston Cogen GP Inc. ("**Kingston GP**", and collectively with each of the foregoing entities, the "**Companies**") and Kingston Cogen Limited Partnership ("**Kingston LP**", and together with the Companies, the "**Validus Entities**"), for an Order, among other things, approving a sale and investment solicitation process for the Validus Entities was heard this day at 330 University Ave, Toronto, Ontario.

**ON READING** the Motion Record in respect of this motion, filed, the Second Report of the Monitor dated October 19, 2023 (the "**Second Report**"), filed, the Reply Record of Macquarie Equipment Finance Limited, filed, and the Responding Record and Supplementary Responding Record of the Validus Entities, filed in the receivership proceedings, bearing Court File No.: CV-23-00703754-00CL;

**AND UPON** hearing the submissions of counsel for the Monitor, counsel for Macquarie Equipment Finance Ltd. (the "**Stalking Horse Bidder**"), counsel for Far North Power Corp. (the "**Assignee**"), counsel for the Validus Entities, and such other counsel who were present, no one else appearing although duly served as appears from the affidavit of service of Katie Parent sworn October 26, 2023, filed.

### **SERVICE AND DEFINITIONS**

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that capitalized terms used in this Order and not otherwise defined herein shall have the meanings ascribed to them in the Sale and Investment Solicitation Process attached as Schedule "A" (the "**SISP**"), the Order of this Court dated August 10, 2023 (the "**Receivership Order**") issued in the receivership proceedings bearing Court File No. CV-23-00703754-00CL (the "**Receivership Proceedings**") or the Initial Order of this Court dated August 29, 2023 (the "**Initial Order**"), as applicable.

### **SALE AND INVESTMENT SOLICITATION PROCESS**

3. **THIS COURT ORDERS** that the SISP is hereby approved and the Monitor is hereby authorized to implement the SISP pursuant to the terms thereof. The Monitor is hereby authorized to perform all things reasonably necessary to carry out the SISP.
4. **THIS COURT ORDERS** that the Monitor shall have no liability with respect to any and all losses, claims, damages or liabilities of any nature or kind to any person in connection with or as a result of the SISP, except to the extent of losses, claims, damages or liabilities that arise or

result from the gross negligence or willful misconduct of the Monitor in performing its obligations under the SISP, as determined by this Court.

### **STALKING HORSE BID**

5. **THIS COURT ORDERS** that the transaction agreement (the "**Transaction Agreement**") appended as Schedule "A" to the offer letter delivered by the Stalking Horse Bidder and the Assignee to the Monitor (the "**Offer Letter**", and the Stalking Horse Bidder and the Assignee's offer for the Receiver's entry into the Transaction Agreement set out therein, the "**Stalking Horse Bid**") is hereby approved solely as the stalking horse bid in the SISP, provided that, nothing herein approves: (i) the acceptance and/or execution of the Transaction Agreement by the Vendors (as defined in the Stalking Horse Bid); or (ii) the sale and the vesting of any Property to the Stalking Horse Bidder, the Assignee or any of their respective designees, if applicable, pursuant to the Transaction Agreement and that the approval of the Vendors' acceptance and execution of the Transaction Agreement and/or any sale and vesting of any such Property shall be considered by this Court on a subsequent motion made to this Court if the Stalking Horse Bid is the Successful Bid pursuant to the SISP.

6. **THIS COURT ORDERS** that, as soon as reasonably practicable following the Vendors agreeing upon the final Implementation Steps (as defined in the Offer Letter and the Transaction Agreement), the Monitor shall, in each such case: (i) file a copy thereof with this Court; (ii) serve a copy thereof on the Service List; and (iii) provide a copy thereof to each SISP Participant (as hereinafter defined), excluding from the public record any confidential information that the Monitor, the Stalking Horse Bidder and the Assignee agree should be redacted.

### **BID PROTECTIONS**

7. **THIS COURT ORDERS** that the Monitor is hereby authorized and empowered to enter into the break fee agreement (the "**Break Fee Agreement**") dated as of October 16, 2023,

between the Monitor and the Stalking Horse Bidder and attached as Appendix "I" to the Second Report, *nunc pro tunc*, and the Break-Up Fee (as defined in the Break Fee Agreement) and the Expense Reimbursement (as defined in the Break Fee Agreement) are hereby approved and the Vendors are hereby authorized and directed to pay the Break-Up Fee and the Expense Reimbursement to the Stalking Horse Bidder (or as it may direct) in the manner and circumstances described in the Break Fee Agreement out of the proceeds from and upon completion of any Successful Bid with any party other than the Stalking Horse Bidder.

8. **THIS COURT ORDERS** that the Stalking Horse Bidder shall be entitled to the benefit of and is hereby granted a charge (the "**Bid Protections Charge**") on the Property, which charge shall not exceed \$2,260,000, as security for payment of the Break-Up Fee and the Expense Reimbursement in the manner and circumstances described in the Break Fee Agreement.

9. **THIS COURT ORDERS** that the filing, registration or perfection of the Bid Protections Charge shall not be required, and that the Bid Protections Charge shall be valid and enforceable for all purposes, including against any right, title or interest filed, registered, recorded or perfected subsequent to the Bid Protections Charge, notwithstanding any such failure to file, register, record or perfect.

10. **THIS COURT ORDERS** that the Bid Protections Charge shall constitute a charge on the Property and the Bid Protections Charge shall rank in priority to all other Encumbrances in favour of any Person notwithstanding the order of perfection or attachment, other than (i) any Person with a properly perfected purchase money security interest under the *Personal Property Security Act* (Ontario) or such other applicable legislation; and (ii) the Receiver's Borrowing Charge (as defined in the Receivership Order).

11. **THIS COURT ORDERS** that, except for the Charges or as may be approved by this Court on notice to parties in interest, the Applicant shall not grant any Encumbrances over any Property

that rank in priority to, or *pari passu* with, the Bid Protections Charge, unless the Applicant also obtains the prior written consent of the Monitor and the Stalking Horse Bidder, or further Order of this Court.

12. **THIS COURT ORDERS** that the Bid Protections Charge shall not be rendered invalid or unenforceable and the rights and remedies of the Stalking Horse Bidder shall not otherwise be limited or impaired in any way by: (i) the pendency of these proceedings and the declarations of insolvency made herein; (ii) any application(s) for bankruptcy order(s) or receivership order(s) issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”) or otherwise, or any bankruptcy order or receivership order made pursuant to such applications; (iii) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (iv) the provisions of any federal or provincial statutes; or (v) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an “**Agreement**”) which binds the Applicant, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Bid Protections Charge nor the execution, delivery, perfection, registration or performance of the Transaction Agreement shall create, cause or be deemed to constitute a breach by the Applicant of any Agreement to which it is a party;
- (b) the Stalking Horse Bidder shall not have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Bid Protections Charge or the execution, delivery or performance of the Transaction Agreement; and

- (c) the payments made by the Applicant pursuant to this Order, the Transaction Agreement and the granting of the Bid Protections Charge, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

## PIPEDA

13. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Monitor and its respective advisors are hereby authorized and permitted to disclose and transfer to prospective SISP participants (each, a "**SISP Participant**") and their advisors personal information of identifiable individuals but only to the extent desirable or required to negotiate or attempt to complete a transaction pursuant to the SISP (a "**Transaction**"). Each SISP Participant to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation for the purpose of effecting a Transaction, and if it does not complete a Transaction, shall return all such information to the Monitor, or in the alternative destroy all such information and provide confirmation of its destruction if requested by the Monitor. Any Successful Party shall maintain and protect the privacy of such information and, upon closing of the Transaction(s) contemplated in the Successful Bid(s), shall be entitled to use the personal information provided to it that is related to the Business and/or Property acquired pursuant to the SISP in a manner that is in all material respects identical to the prior use of such information by the CCAA Parties, and shall return all other personal information to the Monitor, or ensure that all other personal information is destroyed and provide confirmation of its destruction if requested by the Monitor.

## UNKNOWN CONTRACT BAR PROCESS

14. **THIS COURT ORDERS** that capitalized terms used in this section of the Order shall have the following meanings:

- (a) **"Excluded Contract Counterparties"** means any contracts for employment with any of the employees of the Companies;
- (b) **"Known Contract Counterparties"** means a counterparty with a contract with one or more of the Companies who is known to the Monitor based on the books and records of the Companies or who is otherwise known by the Monitor as having a contract with the Companies but, for greater certainty, excluding Excluded Contract Counterparties;
- (c) **"Known Contracts"** means all contracts with the Companies listed on the Known Contract Counterparty List;
- (d) **"Monitor's Website"** means <https://www.ksvadvisory.com/experience/case/validus-power-corp;>
- (e) **"Publication Notice"** means the notice to be published by the Monitor requesting parties to confirm on the Monitor's Website that they are a Known Contract Counterparty and that all of their contracts with the Companies are listed on the Known Contract Counterparty List; and
- (f) **"Unknown Contract Counterparty"** means any Person who has a contract with one or more of the Companies who is not a Known Contract Counterparty.

15. **THIS COURT ORDERS** that within 3 business days from the date of this Order, the Monitor shall post on the Monitor's Website a list of all Known Contract Counterparties and Known Contracts (the **"Known Contract Counterparty List"**).

16. **THIS COURT ORDERS** that as soon as reasonably practicable after the date of this Order, the Monitor shall cause to be published the Publication Notice in the Globe and Mail (National Edition) and such other publications as the Monitor may consider appropriate.

17. **THIS COURT ORDERS** that any person who believes it may have one or more contracts with one or more of the Companies whose identity and/or contract is not listed on the Known Contract Counterparty List shall contact the Monitor by no later than November 28, 2023 (the “**Unknown Contract Bar Date**”) and provide the Monitor with a copy or copies of any or all outstanding contracts.

18. **THIS COURT ORDERS** that any Unknown Contract Counterparty who complies with paragraph 17 above, shall be treated as a Known Contract Counterparty in connection with any motions whereby Known Contract Counterparties are provided with notice.

19. **THIS COURT ORDERS** that upon expiration of the Unknown Contract Bar Date, all other Unknown Contract Counterparties shall be forever barred from asserting that it did not receive adequate notice of any treatment of any contractual right or claim in the connection with these proceedings including, without limitation, any motion or motions for approval of a sale approval order, vesting order, reverse vesting order, distribution order or otherwise, provided that nothing herein prevents any such Unknown Contract Counterparty from asserting a claim against any residual proceeds of sale, Residualco or in the bankruptcy of the Companies.

#### **APPROVAL OF KSV'S ACTIVITIES AND REPORTS**

20. **THIS COURT ORDERS** that the activities and conduct of KSV, in its capacities as the Monitor and as the Receiver, prior to the date hereof in relation to the CCAA Parties or the Validus Entities, as the case may be, in these CCAA proceedings and the Receivership Proceedings, as the case may be, are hereby ratified and approved.



21. **THIS COURT ORDERS** that the pre-filing report of the Monitor dated August 23, 2023, the first report of the Monitor dated September 1, 2023 and Second Report be and are hereby approved.

22. **THIS COURT ORDERS** that only KSV in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way the approvals set forth in paragraphs 20 and 21 of this Order.

### **EXTENSION OF THE STAY PERIOD**

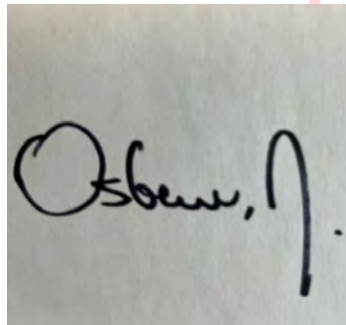
23. **THIS COURT ORDERS** that the Stay Period, as defined in the Initial Order dated August 29, 2023 in this proceeding, be and is hereby extended up to and including December 31, 2023.

### **GENERAL**

24. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada.

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

26. **THIS COURT ORDERS** that this Order and all of its provisions are effective from the date it is made without any need for entry and/or filing.



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**SCHEDULE "A"**  
**SALE AND INVESTMENT SOLICITATION PROCESS**

See attached.

# Sale and Investment Solicitation Process

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1. On August 10, 2023, the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) granted an order, among other things, appointing KSV Restructuring Inc. (“**KSV**”) as receiver and manager (in such capacity, the “**Receiver**”) of the property and undertakings of Validus Power Corp., Iroquois Falls Power Corp., Bay Power Corp., Kap Power Corp., Kingston Cogen Limited Partnership, Kingston Cogen GP Inc. and Validus Hosting Inc. (collectively, the “**Validus Entities**”) pursuant to section 243(1) of the *Bankruptcy and Insolvency Act* (Canada) and section 101(1) of the *Courts of Justice Act* (Ontario).
2. On application by the Receiver, on August 29, 2023, the Court granted an order (the “**Initial Order**”), among other things, granting the Validus Entities relief pursuant to the *Companies’ Creditors Arrangement Act* (Canada) and appointing KSV as monitor (in such capacity, the “**Monitor**”) of the Validus Entities.
3. On November 1, 2023, the Court granted a further order (the “**SISP Order**”), among other things: (a) authorizing the Monitor to implement a sale and investment solicitation process (“**SISP**”) in accordance with the terms hereof; (b) approving, for purposes of acting as the stalking horse bid in the SISP, the transaction agreement (the “**Stalking Horse Transaction Agreement**”) appended as Schedule “A” to the offer letter delivered by Macquarie Equipment Finance Limited (the “**Proponent**”) and Far North Power Corp. (the “**Assignee**”) to the Monitor on October 16, 2023 (the Proponent and the Assignee’s offer for the entry by the Validus Entities into the Stalking Horse Transaction Agreement set out therein, the “**Stalking Horse Bid**”); (c) approving the Monitor’s entry into the Break-Up Fee Agreement and the Break-Up Fee and the Expense Reimbursement; and (d) granting the Bid Protections Charge. Capitalized terms that are not defined herein have the meanings ascribed thereto in the Initial Order or the SISP Order, as applicable.
4. This SISP sets out the manner in which: (a) binding bids for executable transaction alternatives that are superior to the Stalking Horse Bid involving the shares and/or the business and assets of the Validus Entities will be solicited from interested parties; (b) any such bids received will be addressed; (c) any Successful Bid (as defined below) will be selected; and (d) Court approval of any Successful Bid will be sought. Such transaction alternatives may include, among other things, a sale of some or all of the Validus Entities’ shares, assets and/or business and/or an investment in the Validus Entities, each of which shall be subject to all terms set forth in this SISP.
5. The SISP shall be conducted by the Monitor.
6. Parties who wish to have their bids considered shall be expected to participate in the SISP as conducted by the Monitor.
7. The SISP will be conducted such that the Monitor will:
  - (a) prepare marketing materials and a process letter;

- (b) prepare and provide applicable parties with access to a virtual data room containing diligence information;
  - (c) prepare and include in the data room one or more template forms of purchase agreements to be used by interested parties when submitting a proposed bid (“**Form of Agreement**”);
  - (d) solicit interest from parties to enter into non-disclosure agreements (parties shall only obtain access to the data room and be permitted to participate in the SISP if they execute a non-disclosure agreement that is in form and substance satisfactory to the Monitor); and
  - (e) request that such parties (other than the Proponent and the Assignee) submit a binding offer meeting at least the requirements set forth in Section 9, as determined by the Monitor (a “**Qualified Bid**”) by the Qualified Bid Deadline (as defined below).
8. The SISP shall be conducted subject to the terms hereof and the following key milestones:
- (a) Court approval of SISP and the Stalking Horse Bid to serve as stalking horse bid in the SISP – November 1, 2023;
  - (b) The Monitor to commence solicitation process – November 2, 2023;
  - (c) Deadline to submit a Qualified Bid – 11:59 p.m. (Toronto time) on December 7, 2023 (the “**Qualified Bid Deadline**”);
  - (d) Deadline to determine whether a bid is a Qualified Bid and, if applicable, to notify those parties who submitted a Qualified Bid of the Auction (as defined below) – As soon as possible after the Qualified Bid Deadline
  - (e) The Monitor to hold the Auction (if applicable) – on or about December 13, 2023; and
  - (f) Implementation Order (as defined below) hearing by no later than December 21, 2023, subject to Court availability.

The Monitor may, in its discretion, seek court approval for the termination of the SISP and for approval of implementation of the Stalking Horse Bid if no potentially interested parties have executed non-disclosure agreements and commenced due diligence on or prior to November 22, 2023, or if thereafter all parties who executed non-disclosure agreements and conducted due diligence have advised the Monitor that they no longer intend to participate in the SISP.

9. In order to constitute a Qualified Bid, a bid (including an Aggregated Bid (as defined below)) must comply with the following:
- (a) it provides for: (i) the payment in full in cash on closing of the Claim Amount (as defined in the Stalking Horse Transaction Agreement); (ii) the purchase of all of the Proponent's interest in the Receiver's Certificates (as defined in the Appointment Order), if any; (iii) the payment in full in cash on closing of any claims ranking in priority to the claims set forth in subparagraphs (i) and (ii) of this Subsection 9(a), including any claims secured by Court-ordered charges (other than the Receiver's Borrowings Charge (as defined in the Appointment Order)), unless otherwise agreed to by the applicable holders thereof in their sole discretion, and the Break-Up Fee and the maximum amount of the Expense Reimbursement (as such terms are defined in the Stalking Horse Transaction Agreement); and (iv) a minimum overbid increment of \$750,000 (the "**Overbid Increment**");
  - (b) An allocation of the purchase price under such bid among the purchased assets of Validus Power Corp. and all other property to be acquired.
  - (c) it provides a detailed sources and uses schedule that identifies, with specificity, the amount of cash consideration (the "**Cash Consideration Value**") and any assumptions that could reduce the net consideration payable. At a minimum, the Cash Consideration Value plus the Validus Entities' aggregate cash on hand must be sufficient for payment in full of the items contemplated in subparagraphs (i) to (iii) of Subsection 9(a), including the Break-Up Fee and the maximum amount of the Expense Reimbursement, plus the Overbid Increment, on closing, which Cash Consideration Value is estimated to be \$60,228,822 as of September 22, 2023;
  - (d) it provides details of any assumption of liabilities;
  - (e) it is reasonably capable of being consummated by 30 days after issuance of the Implementation Order if selected as a Successful Bid;
  - (f) it contains:
    - (i) duly executed binding transaction document(s);
    - (ii) the legal name and identity (including jurisdiction of existence) and contact information of the bidder, full disclosure of its direct and indirect principals, and the name(s) of its controlling equityholder(s);
    - (iii) a redline to the applicable Form of Agreement provided by the Monitor as described in Subsection 7(c);
    - (iv) evidence of authorization and approval from the bidder's board of directors (or comparable governing body) and, if necessary to complete the transaction, the bidder's equityholder(s);

- (v) disclosure of any connections or agreements with any of the Validus Entities or any of their affiliates, any known, potential, prospective bidder, or any officer, manager, director, or known equity security holder of any Validus Entity or any of their affiliates; and
- (vi) such other information as may be reasonably requested by the Monitor, in its discretion;
- (g) it includes a letter stating that the bid is submitted in good faith, is binding and is irrevocable until the earlier of (i) completion of a Successful Bid or (ii) December 29, 2023; *provided*, however, that if such bid is selected as a Successful Bid, it shall remain irrevocable until the closing of the Successful Bid;
- (h) it provides written evidence of a bidder's ability to fully fund and consummate the transaction and satisfy its obligations under the transaction documents, including binding equity/debt commitment letters and/or guarantees (i.e., bank guarantees) covering the full value of all cash consideration;
- (i) it does not include any request for or entitlement to any break fee, expense reimbursement or similar type of payment;
- (j) it is not conditional upon:
  - (i) approval from the bidder's board of directors (or comparable governing body) or equityholder(s);
  - (ii) the outcome of any due diligence by the bidder; or
  - (iii) the bidder obtaining financing;
- (k) it includes an acknowledgment and representation that the bidder has had an opportunity to conduct any and all required due diligence prior to making its bid;
- (l) it specifies any regulatory or other third-party approvals the party anticipates would be required to complete the transaction (including the anticipated timing necessary to obtain such approvals) and, in connection therewith, specifies whether the bidder or any of its affiliates is involved in any part of the Canadian energy sector, including an electricity generator, electric utility, retail service provider, or a registered participant with the Ontario Independent Electricity System Operator;
- (m) it includes full details of the bidder's intended treatment of the Validus Entities' employees under the proposed bid;
- (n) it is accompanied by a cash deposit (the "**Deposit**") by wire transfer of immediately available funds equal to 10% of the Cash Consideration Value, which Deposit shall be retained by the Monitor in a non-interest bearing trust account in accordance with Section 18;

- (o) it includes a statement that the bidder will bear its own costs and expenses (including legal and advisor fees) in connection with the proposed transaction, and by submitting its bid is agreeing to refrain from and waive any assertion or request for reimbursement on any basis;
  - (p) it contains a written acknowledgment that the transaction will proceed on an “as is, where is” basis, without representations or warranties by the sellers except as expressly set out therein; and
  - (q) it is received by the Qualified Bid Deadline.
10. The Qualified Bid Deadline may be extended: (i) by the Monitor for no longer than 7 days in the Monitor’s discretion; or (ii) by further order of the Court. In such circumstances, the milestones contained in Subsections 8(d) through 8(f) shall be extended by the same amount of time. Any other milestone dates in Section 8 may be extended in the Monitor’s discretion; *provided* that the aggregate of all such discretionary extensions shall not exceed 14 days.
  11. The Monitor may combine bids received for individual assets of the Validus Entities for the purpose of determining if such bids, collectively, will be treated as a Qualified Bid (such bid being an “**Aggregated Bid**”); *provided* that any Aggregated Bid must comply with each of the requirements set out in Section 9 (as may be modified in accordance with Section 12) in order to be a Qualified Bid.
  12. The Monitor may waive compliance with any one or more of the requirements specified in Section 9 above and deem a non-compliant bid to be a Qualified Bid; *provided* that the Monitor shall not waive compliance with the requirements specified in Subsections 9(a), (c), (f), (g), (h), (i), (j), (k), (l) or (n) without the prior written consent of the Proponent and the Assignee, each acting reasonably, or further order of the Court. If a bid received is not a Qualified Bid, the Monitor may provide the bidder with an opportunity to remedy any deficiencies and render such bid a Qualified Bid; *provided* that such defects are remedied on or before the deadline set out in Subsection 8(d).
  13. Notwithstanding the requirements specified in Section 9, the transactions contemplated by the Stalking Horse Bid (collectively, the “**Stalking Horse Transaction**”), are deemed to be a Qualified Bid; *provided* that, for greater certainty, no Deposit shall be required to be submitted in connection with the Stalking Horse Transaction.
  14. If one or more Qualified Bids (other than the Stalking Horse Transaction) has been received by the Monitor on or before the Qualified Bid Deadline, the Monitor shall proceed with an auction to determine the successful bid(s) (the “**Auction**”), which Auction shall be administered in accordance with Schedule “A” hereto, subject to such additional procedural rules as may be determined by the Monitor to be necessary or desirable in the conduct of the Auction. The successful bid(s) selected within the Auction shall constitute the “**Successful Bid**”. Forthwith upon determining to proceed with an Auction, the Monitor shall provide written notice to each party that submitted a Qualified Bid (including the



- Stalking Horse Transaction), along with copies of all Qualified Bids and a statement by the Monitor specifying which Qualified Bid is the leading bid.
15. Following selection of a Successful Bid, the Validus Entities shall seek to finalize any remaining necessary definitive agreement(s) with respect to the Successful Bid in accordance with the key milestones set out in Section 8. Once the necessary definitive agreement(s) with respect to a Successful Bid have been finalized, as determined by the Monitor, the Monitor shall apply to the Court for an order or orders, among other things, approving such Successful Bid and/or the mechanics to authorize the Validus Entities and the Monitor, as the case may be, to complete the transactions contemplated thereby, as applicable, and authorizing the Validus Entities or the Monitor, as the case may be, to: (i) enter into any and all necessary agreements and related documentation with respect to the Successful Bid; (ii) undertake such other actions as may be necessary to give effect to such Successful Bid; and (iii) implement the transaction(s) contemplated in such Successful Bid (each, an “**Implementation Order**”).
  16. If a selected Successful Bid is not completed within 30 days following issuance of the Implementation Order, the Implementation Order is not granted, or the Monitor otherwise determines a selected Successful Bid will not be completed, the Monitor shall be permitted to designate one or more alternative Successful Bids from the Qualified Bids received prior to or during the Auction, and such alternative Successful Bid shall be deemed the Successful Bid for all purposes hereunder. The foregoing shall not limit the Monitor’s right in the foregoing circumstances to terminate these SISP procedures and pursue any alternative process and any alternative transactions determined by the Monitor to be appropriate, in consultation with the Proponent, as secured creditor.
  17. The Validus Entities, the Proponent and the Assignee, with the consent of the Monitor, shall be permitted to modify the Stalking Horse Transaction to exclude any asset for which an alternative bid (an “**Alternative Bid**”, and the assets subject to such Alternative Bid, the “**Excluded SHB Assets**”) is received if:
    - (a) the Proponent and the Assignee agree in writing, in their respective sole discretion, to modify the Stalking Horse Transaction in order to accommodate such proposed Alternative Bid;
    - (b) the Validus Entities, the Proponent and the Assignee, with the consent of the Monitor, agree on the adjustment of the purchase price under the Stalking Horse Transaction to account for the removal of the Excluded SHB Assets and the value of the Alternative Bid;
    - (c) the Monitor determines that the aggregate consideration to be offered by (i) the Stalking Horse Transaction, as so modified (the “**Modified SHB**”) and (ii) the proposed Alternative Bid for the Excluded SHB Assets, would exceed the value of the Stalking Horse Transaction (the “**Excluded Assets Sale**”);
    - (d) the Alternative Bid combined with the Modified SHB meet all of the requirements of a Qualified Bid;

- (e) the Monitor determines that the Modified SHB and the Excluded Assets Sale, collectively, are a Qualified Bid; and
- (f) the Proponent and the Assignee agree that the original Stalking Horse Transaction shall remain open for acceptance notwithstanding the Modified SHB, such that the Stalking Horse Transaction can be completed if for any reason the Modified SHB and the Excluded Assets Sale are not completed.

For greater certainty, if the Modified SHB and Excluded Assets Sale are each designated as a Successful Bid, then the Proponent and the Assignee shall not be entitled to receive any Break Fee or Expense Reimbursement Amount as a result of the completion of such transaction. If the Modified SHB and the Excluded Asset Sale are not selected as a Successful Bid, then the Proponent and the Assignee shall continue to be entitled to receive any Break Fee and Expense Reimbursement (in accordance with the Stalking Horse Transaction Agreement) upon completion of an alternative Successful Bid to which the Proponent and the Assignee are not parties.

18. All Deposits shall be retained by the Monitor in a non-interest bearing trust account. If a Successful Bid is selected and an Implementation Order authorizing the consummation of the transaction contemplated thereunder is granted, any Deposit paid in connection with such Successful Bid will be non-refundable and shall, upon closing of the transaction contemplated by such Successful Bid, be applied to the cash consideration to be paid in connection with such Successful Bid or be dealt with as otherwise set out in the definitive agreement(s) entered into in connection with such Successful Bid. In the event that the Successful Bid is not completed due to a breach or default of the bidder's obligations thereunder, the Deposit shall be forfeited to the Validus Entities as damages and such Deposit shall be in addition to, and not in lieu of, any other rights in law or equity that the Validus Entities have in respect of such breach or default. Any Deposit delivered with a Qualified Bid that is not selected as a Successful Bid will be returned to the applicable bidder as soon as reasonably practicable (but not later than ten (10) business days) after the earliest of (i) completion of a Successful Bid; (ii) December 29, 2023; or (iii) the date of the Monitor's determination that such bid will not be pursued further.
19. Except as expressly set out herein, the Monitor may not modify the SISP without court approval; *provided*, however, that the Monitor may implement additional procedural rules that the Monitor determines will better promote the goals of the SISP; *provided* that any additional procedural rules shall not be inconsistent with the Stalking Horse Agreement unless agreed by the Proponent and the Assignee or otherwise ordered by the Court.

**SCHEDULE “A”**  
**AUCTION PROCEDURES**

1. **Auction.** If the Monitor receives at least one Qualified Bid (other than the Stalking Horse Transaction) including any Aggregated Bid, the Monitor shall conduct and administer the Auction in accordance with the terms of the SISP. Instructions to participate in the Auction, which will take place via video conferencing, will be provided to Qualified Parties (as defined below) not less than 24 hours prior to the Auction.
2. **Participation.** Only parties that submit a Qualified Bid by the Qualified Bid Deadline, including the Stalking Horse Transaction and, collectively, the parties submitting any Aggregated Bid (collectively, the “**Qualified Parties**”), shall be eligible to participate in the Auction. No later than 5:00 p.m. (Toronto time) on the day prior to the Auction, each Qualified Party (other than the Proponent and the Assignee, in respect of the Stalking Horse Transaction) must inform the Monitor whether it intends to participate in the Auction. The Monitor will promptly thereafter inform in writing each Qualified Party who has expressed its intent to participate in the Auction of the identity of all other Qualified Parties that have indicated their intent to participate in the Auction. If no Qualified Party indicates such expression of intent, the Stalking Horse Transaction shall be the Successful Bid.
3. **Auction Procedures.**
  - (a) **Procedures.** The Auction shall be governed by the following procedures:
    - (i) **Attendance.** Only the Monitor, representatives of the Qualified Parties and each of their respective advisors, and any other person admitted with the consent of the Monitor will be entitled to attend the Auction, and only the Qualified Parties will be entitled to make any subsequent Overbids (as defined below) at the Auction;
    - (ii) **No Collusion.** Each Qualified Party participating at the Auction shall be required to confirm on the record at the Auction that: (i) it has not engaged in any collusion with respect to the Auction and the bid process (excluding, for greater certainty, any discussions among those parties who are bidders in an Aggregated Bid); and (ii) its bid is a good-faith *bona fide* offer and it intends to consummate the proposed transaction if selected as the Successful Bid (as defined below);
    - (iii) **Minimum Overbid.** The Auction shall begin with the Qualified Bid that represents the highest or otherwise best Qualified Bid as determined by the Monitor (the “**Initial Bid**”), and any bid made at the Auction by a Qualified Party subsequent to the Monitor’s announcement of the Initial Bid (each, an “**Overbid**”), must proceed in minimum additional cash increments as determined by the Monitor and announced to the Auction participants prior to each round of bidding (the “**Required Bid Increment**”). At the end of

each round of bidding, the Monitor will identify the highest or otherwise best Overbid as the leading bid for the subsequent round (the “**Lead Bid**”);

- (iv) **Bidding Conclusion.** The Auction shall continue in one or more rounds and will conclude after each participating Qualified Party (including parties to an Aggregated Bid) has had the opportunity to submit an additional bid or refused to submit an additional bid with full knowledge and written confirmation of the then-existing Lead Bid for that round. If at the commencement of the Auction, no party submits a bid that exceeds the Initial Bid by the Required Bid Increment, then the Initial Bid will be the Successful Bid. If in any round, a Qualified Party (other than the party who submitted the Lead Bid in such round) does not submit an Overbid satisfying the Required Bid Increment, then such Qualified Party (including the parties to any Aggregated Bid if no Aggregated Bid is submitted in a particular round) will no longer be permitted to participate in any subsequent round of the Auction; and
  - (v) **No Post-Auction Bids.** No bids will be considered for any purpose after the Auction has concluded.
- (b) **Additional Procedures.** The Monitor may announce prior to or during the Auction additional procedural rules, including the process for submission and review of bids, that are reasonable under the circumstances for conducting the Auction; *provided* that those rules are not inconsistent in any material respects with the SISP or the Stalking Horse Agreement.

#### **Selection of Successful Bid**

4. **Selection.** Before the conclusion of the Auction, the Monitor will: (a) review each Qualified Bid and Overbid, considering the factors set out in Section 9 of the SISP and, among other things: (i) the amount of consideration being offered and, if applicable, the proposed form, composition and allocation of same; (ii) the value of any assumption of liabilities or waiver of liabilities not otherwise accounted for in prong (i) above; (iii) the likelihood of the Qualified Party’s ability to close a transaction by 30 days after issuance of the Implementation Order and the timing thereof (including factors such as the transaction structure and execution risk, including conditions to, timing of, and certainty of closing; termination provisions; availability of financing and financial wherewithal to meet all commitments; and required governmental or other approvals); (iv) the likelihood of the Court’s approval of such Overbid; (v) the net benefit to the estate of the Validus Entities of such Overbid; and (vi) any other factors the Monitor may, consistent with its duties, reasonably deem relevant; and (b) identify the highest or otherwise best bid received at the Auction (the “**Successful Bid**” and the Qualified Party making such bid, the “**Successful Party**”).
5. **Acknowledgement.** The Successful Party shall complete and execute all agreements, contracts, instruments or other documents evidencing and containing the terms and conditions upon which the Successful Bid was made within one business day of the

Successful Bid being selected as such, unless extended by the Monitor, subject to the milestones set forth in Section 8 of the SISP.

CAN\_DMS: \1001755658

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT INVOLVING  
VALIDUS POWER CORP., IROQUOIS FALLS POWER CORP., BAY POWER CORP., KAP  
POWER CORP., VALIDUS HOSTING INC., KINGSTON COGEN LIMITED PARTNERSHIP AND  
KINGSTON COGEN GP INC.

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at TORONTO

**SISP APPROVAL ORDER**

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Lawyers for the Monitor

## Appendix “G”



SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

**ENDORSEMENT**

COURT FILE NO.: CV-23-0070521500CL and DATE: November 1, 2023  
CV-2300703754-00CL

NO. ON LIST: 2

TITLE OF PROCEEDING: IN THE MATTER OF VALIDUS POWER CORP. et al

And

MACQUARIE EQUIPMENT FINANCE LIMITED, Applicant  
v.  
VALIDUS POWER CORP.

BEFORE: JUSTICE OSBORNE

**PARTICIPANT INFORMATION**

**For Applicant:**

Name of Person Appearing	Name of Party	Contact Info
JENNIFER STAM	MONITOR	<a href="mailto:Jennifer.stam@nortonrosefulbright.com">Jennifer.stam@nortonrosefulbright.com</a>
JAMES RENIHAN	MONITOR	<a href="mailto:James.renihan@nortonrosefulbright.com">James.renihan@nortonrosefulbright.com</a>

**For Respondent:**

Name of Person Appearing	Name of Party	Contact Info
CATHERINE FRANCIS	VALIDUS ENTITIES ET AL.	<a href="mailto:cfrancis@mindengross.com">cfrancis@mindengross.com</a>
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**Other:**

Name of Person Appearing	Name of Party	Contact Info
EDWARD PARK	DOJ for CRA	<a href="mailto:Edward.park@justice.gc.ca">Edward.park@justice.gc.ca</a>
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**ENDORSEMENT OF JUSTICE OSBORNE:****The Motions**

[1] KSV Restructuring Inc. brings motions in each of these two companion proceedings. I heard both of these motions yesterday, and this Endorsement applies to both motions in both proceedings.

- [2] KSV, as Court-appointed Monitor of the Validus Entities in the CCAA Proceeding, seeks an order:
- a. approving a SISP for the Validus Entities;
  - b. authorizing the Monitor to implement the SISP;
  - c. approving the Transaction Agreement between the Validus Entities by KSV as Monitor, and Kingston LP, and Macquarie Equipment Finance Ltd. (“Macquarie”) and Far North Power Corp. (“Far North”) as Assignee (Macquarie and Far North together referred to as the “Stalking Horse Bidder”), solely for the purpose of constituting the Stalking Horse Bid in the SISP;
  - d. authorizing the Monitor to enter into the Break Fee Agreement and approving the Break Fee and the Expense Reimbursement;
  - e. granting the Bid Protections Charge on the Property in favour of Macquarie as security for the Break Fee and the Expense Reimbursement;
  - f. approving the Unknown Contract Bar Process;
  - g. approving the Pre-Filing report of the Monitor dated August 23, 2023, the First Report dated September 1, 2023, and the Second Report dated October 19, 2023; and
  - h. extending the Stay Period to December 31, 2023.

[3] KSV, as court-appointed Receiver of the Validus Entities in the Receivership Proceeding seeks an order amending paragraph 23 of the Receivership Order to increase the Receiver’s borrowing limit under the Receiver’s Borrowing Charge by \$500,000 from \$1 million to \$1.5 million.

[4] Defined terms in this Endorsement have the meaning given to them in the motion materials, the Reports of the Monitor/Receiver or earlier Endorsements made in these proceedings, unless otherwise stated.

[5] All of the relief sought in both proceedings is unopposed by any party, except for the Validus Entities, who do not oppose approval of a SISP but oppose certain terms of this proposed SISP, and who oppose approval of the Stalking Horse Offer. The relief sought by the Monitor/Receiver is strongly supported by Macquarie, the largest secured creditor of the Validus Entities, and Hut 8 Mining Corp., now known as Far North Power Corp.

[6] The Validus Entities do not agree with the calculation of the quantum of the obligations owing to Macquarie. Since the proposed Stalking Horse Offer is essentially a credit bid by Macquarie based on the amounts owing to it, the Validus Entities oppose approval of that Stalking Horse Offer.

[7] In the alternative, and if the calculation is correct, the Validus Entities submit that the amount owing to Macquarie is unconscionable and violates the anti-deprivation rule.

[8] Finally, the Validus entities oppose, although the points were not pressed vigorously in argument, other terms of the SISP including the quantum of the break fee and the tight timing for the receipt of bids.

**BACKGROUND, the MACQUARIE AGREEMENTS and the DEFAULTS**

[9] A more detailed background to, and context for, these motions is set out in earlier Endorsements.

[10] The Validus Entities are a group of privately held companies that own and operate power generation plants located in North Bay, Kapuskasing, Iroquois Falls and Kingston, Ontario. They sell capacity and power to the Independent Electricity System Operator (“IESO”) as a participant in the IESO’s capacity auction market.

[11] Macquarie is the senior secured lender of the Validus Entities. In April, 2022, Iroquois Falls Power Corp. (“IFPC”), one of the Validus Entities, entered into a sale-leaseback transaction with Macquarie pursuant to several transaction agreements which work together and are all part of the relationship between Macquarie and the Validus Entities.

[12] Those transaction agreements include an Amended and Restated Lease Agreement (the “Lease Agreement”), an Amended and Restated Participation Agreement (the “Participation Agreement”) and certain guarantees and security provided by the Validus Entities (collectively the “Lease Transaction Documents”).

[13] In summary, and as part of that transaction, IFPC sold certain Leased Property to Macquarie pursuant to the Participation Agreement, and that Leased Property was then leased back to IFPC pursuant to a Lease Agreement. Macquarie was granted security for the amounts owing to it.

[14] The first ranking security held by Macquarie includes a pledge of the interests of the Validus Parent in certain of the power generation plants, general security and mortgages on substantially all real and personal property of the Validus Entities in respect of the four power plants except for turbines, plant and equipment that is owned by Macquarie and leased to IFPC under the Lease Agreement, and a pledge of various material agreements.

[15] As is further explained below, it is important to understand that the Macquarie transaction was a sale lease-back transaction, and not simply a loan.

[16] Macquarie calculates its claim as at September 22, 2023 to be \$57,218,822, to which amount it adds costs and overdue interest accruing after that date.

**THE PROPOSED SISP, STALKING HORSE AGREEMENT and RELATED RELIEF**

[17] A SISP was contemplated from virtually the outset of the CCAA Proceeding. The particulars and full terms of the proposed SISP are set out in the Second Report and I have not summarized all of them here unless they are contested or centrally relevant to the disposition of the motions.

[18] In summary, the SISP contemplates a relatively tight timeframe for the commencement of a marketing process by the Monitor, the receipt and evaluation of Bids and Qualified Bids, the conduct of an Auction (if any), followed by a motion for approval of the transaction reflected in the Successful Bid (whatever Bid that may be), which approval will likely include a reverse vesting order structure.

[19] A reverse vesting order structure is contemplated since the Validus Entities hold numerous permits and licences that allow them to operate in a highly regulated industry. The Stalking Horse Bidder requires such a structure to minimize uncertainty related to the transferability of those licences and permits in any commercially reasonable time frame. The Monitor anticipates that other bidders would require the same terms.

[20] It is also important to note that approval of any transaction, including but not limited to the transaction reflected in the Stalking Horse Offer, and approval of any reverse vesting order structure, is not being sought

today (and to be very clear, nor is it being granted). Rather, and as discussed below, approval of the Stalking Horse Offer is sought as just that: a stalking horse bid as a term of the proposed SISP to provide a “floor” or minimum initial bid only.

[21] The proposed SISP include some significant flexibility to give the Monitor the latitude and discretion to conduct the process in a manner that is likely to maximize recovery for stakeholders, but to do so pursuant to a process that is transparent, fair and efficient.

[22] For example, interested parties may submit Bids for individual assets or plants, and multiple Bids may be aggregated to form together a Qualified Bid, including in conjunction with the Stalking Horse Offer to form an Alternative Bid.

[23] In order to be considered a “Qualified Bid” under the SISP, a Bid must meet the criteria clearly set out in the SISP. Those criteria include a minimum aggregate consideration of \$60,228,822. That figure represents the sum of:

- a. the Macquarie Claim Amount referred to above of \$57,218,822 (as of September 22, 2023);
- b. the Priority Payments Closing amount of \$1.5 million;
- c. the Bid Protections of \$2.26 million; and
- d. a \$750,000 minimum overbid.

[24] In addition, Qualified Bids must also provide for the purchase of the interest of Macquarie in the Receiver’s Certificates which are projected to be approximately \$1.3 million - \$1.5 million plus fees and interest: see the Second Report of the Monitor, Cash Flow Forecast Appendix.

[25] The Stalking Horse Offer has been structured to be what is referred to colloquially as a “sign and close” transaction with the intention that Macquarie and Far North are not deemed to control IFPC for income tax purposes prior to the time that the applicable Stalking Horse Bidder actually acquires control at closing (if in fact that occurs).

[26] Macquarie and Far North has advised the Monitor that there is a risk that such deeming for income tax purposes would occur if the bid provided for a closing date that did not occur contemporaneously with the execution by the parties of the Transaction Agreement.

[27] Importantly, however, the Stalking Horse Offer is irrevocable subject to its Terms and Conditions. It contemplates a transaction pursuant to which Macquarie and Far North would acquire (in summary):

- a. the shares/units of Validus Parent held in the Validus Entities except for IFPC;
- b. newly issued shares of IFPC; and
- c. certain assets of Validus Parent that are not subject to the Macquarie Security, as fully described in the motion materials and the Second Report.

[28] The Stalking Horse Offer is effectively a credit bid. The consideration payable would be comprised of:

- a. payment by the Assignee of \$1.5 million in respect of certain estimated “priority payments” owing by Validus Parent in respect of unremitted employee source deductions (and an indemnity with a corresponding charge to secure those priority amounts);

- b. payment by the Assignee of an amount to be determined by the Monitor prior to closing in respect of administrative expenses;
- c. Macquarie releasing the Validus Entities from all outstanding obligations under the Lease Transaction Documents and security; and
- d. Macquarie transferring to IFPC the Leased Property (pursuant to a contemplated reverse vesting order structure).

[29] The Stalking Horse Offer also contemplates the opportunity for ongoing employment opportunities for employees of the Validus Entities as well as the assumption of all pre-and post-filing liabilities relating to Continuing Contracts and liabilities for municipal taxes.

[30] It contemplates an Outside Date of December 29, 2023. If it is Terminated (i.e., not selected as the Successful Bid or not approved by the Court, among other things), a break fee would be payable. Pursuant to the proposed Break Fee Agreement, the Monitor has agreed to a Break Fee of \$1.25 million plus an expense reimbursement of up to \$1 million (collectively, the (Bid Protections”) together with a Bid Protections Charge on the Property as security for the payment of the Bid Protections, which would be payable only out of the proceeds of sale on the closing of another Qualified Bid.

[31] As observed above, no party opposes the approval of a SISP. I am satisfied that the particular SISP proposed here should be approved.

[32] Courts have recognized that the broad, remedial nature of the CCAA, and the discretion in s.11 in particular, conferred the power to approve a SISP in respect of CCAA debtors and their property: *Nortel Networks Corporation (Re)*, [2009] O.J. No. 3169, 2009 CanLII 39492 (ONSC) (“*Nortel*”) at para. 36.

[33] This Court has held that when considering a sales solicitation process, including the use of a stalking horse bid, the Court should assess the following factors (See: *CCM Master Qualified Fund v. Bluetip Power Technologies*, 2012 ONSC 1750 at para. 6):

- a. the fairness, transparency and integrity of the proposed process;
- b. the commercial efficacy of the proposed process in light of the specific circumstances facing the receiver; and
- c. whether the sales process will optimize the chances, in the particular circumstances, of securing the best possible price for the assets up for sale.

[34] The British Columbia Supreme Court recently surveyed the Canadian authorities relevant to consideration of stalking horse bids, including those referred to above, and expressed the relevant factors as follows (See: *Re Freshlocal Solutions Inc.*, 2022 BCSC 1616 at paras. 24-32):

- a. how did the stalking horse agreement arise?
- b. what are the stability benefits?
- c. does the timing support approval?
- d. who supports or objects to the stalking horse agreement?
- e. what is the true cost of the stalking horse agreement? and
- f. is there an alternative?

[35] In my view, these authorities are entirely consistent with one another and, while articulating the factors in a slightly different manner, each approaches the analysis in the same way and with the same objectives. The

slightly more detailed list of factors set out by Justice Fitzpatrick in *Freshlocal* are in my view all subsumed, or they should be, in the three factors set out by Justice Brown in *CCM*.

[36] Moreover, both of those authorities are also consistent with the approach of the Québec Superior Court which set out a list of non-exhaustive factors relevant to the approval of stalking horse bids in *Boutique Euphoria Inc. (Re)*, 2007 QCCS 7129 at para. 37 (as well as with the approach taken in *DCL Corporation, (Re)*, 2023 ONSC 3686 (CanLII), at para. 19).

[37] These analyses distill, essentially, to this question: taking into account the support for and opposition to the terms of the proposed SISP and stalking horse agreement, while recognizing whether and how those parties supporting or opposing it are economically affected by the outcome, will the proposed process (including its stalking horse bid component and all other material terms), if approved and approved at this time, likely result in the best recovery on the assets being sold pursuant to a fair and transparent process?

[38] These factors are to be considered in light of the well-known *Soundair* Principles, which, while applicable to the test for approving a transaction following a sales process, not surprisingly track the same principles applicable to that process itself. (See *Royal Bank of Canada v. Soundair Corp.*, (1991), 4 O.R. (3d) 1 (Ont. C.A.) at para. 16):

- a. whether the party made a sufficient effort to obtain the best price and to not act improvidently;
- b. the interests of all parties;
- c. the efficacy and integrity of the process by which the party obtained offers; and
- d. whether the working out of the process was unfair.

[39] In *Nortel*, Morawetz, J. (now Chief Justice Morawetz) described several factors to be considered in a determination of whether to approve a proposed sales process, including:

- a. is a sale transaction warranted at this time?
- b. will it benefit the whole economic community?
- c. do any of the debtor's creditors have a *bona fide* reason to object to a sale? and
- d. is there a better viable alternative?

[40] Subsequent to that decision, the *CCAA* was amended in 2009 to clarify the jurisdiction of this Court to authorize a sale of assets of the debtor outside a plan of arrangement according to the non-exhaustive list of factors set out in section 36 of the *CCAA*. The section 36 factors apply to approval of a sale rather than a sale process, but Chief Justice Morawetz' *Nortel* factors continue to apply post-2009 amendments: *Brainhunter Inc.*, 2009 62 CBR (5<sup>th</sup>) 41.

[41] Notwithstanding that the section 36 factors are not directly applicable to the relief sought on this motion, in my view they should be kept in mind since they will be considered when this Court is asked to approve a sale resulting from the very process now under consideration.

[42] The use of stalking horse bids to set a baseline for a sales process can be a reasonable and useful approach. As observed by Justice Penny of this Court, they can maximize value of a business for the benefit of stakeholders and enhance the fairness of the sales process as they establish a baseline price and transactional structure for any superior bids. (See *Danier Leather Inc., Re*, 2016 ONSC 1044 at para. 20).

[43] The challenge in this particular proceeding, as is often the case, is one of stability and time: the former is required and the latter is lacking.

[44] If recovery here is to be maximized, the business must be stabilized, and stabilized in a manner that is apparent to those inside such as employees, and to those outside the business such as potential bidders, future debt lenders or equity investors, and regulators.

[45] This means, among other things, that the preservation of value in the Validus Entities depends in large part on the ability of those entities or their successors to participate in the upcoming IESO capacity auction. The bid deadline for participating in the IESO capacity auction is November 29, 2023 (just over two weeks from now) and there are corresponding milestones to be met in advance of that bid deadline towards the achievement of which the Monitor, on behalf of the Validus Entities, is already working.

[46] It is therefore critical for the SISP (any SISP) to start as soon as possible to permit participation in the IESO's capacity auction and also continue the work streams that require the development of a comprehensive business plan for the Validus Entities more broadly. It follows that the timing is necessarily extremely limited.

[47] The SISP has been developed and will be conducted by the Court-appointed Monitor. To state the obvious, that Court Officer has, and I am certain will fulfil, the obligation to conduct that process in a fair and transparent manner.

[48] The proposed SISP contemplates and facilitates possible transactions with greater value than the Stalking Horse Offer if one is identified. The Monitor is of the view that the 35 day bid period is sufficient in the circumstances to allow interested parties to perform due diligence (there will be a virtual data room).

[49] I observe that the Monitor has been mindful of the sale process conducted by Ernst & Young Corporate Finance earlier this year (discussed in the Monitor's Reports and my earlier Endorsements in this proceeding), which did not yield any material unconditional offer for IFPC, and it is considered to be one of the two most valuable powerplants. In addition, the Validus Entities attempted without success to arrange alternative financing transactions at or about the time the Receivership Order was made (which they had opposed).

[50] Moreover, I am satisfied that the opportunity presented by the SISP is unlikely to take the market of potential bidders, (which is limited and highly sophisticated, given the nature of the business of the Validus Entities), by surprise. Hut 8 issued a press release on August 11, 2023 announcing the execution of the Transaction Support Agreement which effectively telegraphed to the market the very process for which approval is now being sought.

[51] I also note that the consideration contemplated by the Stalking Horse Offer exceeds materially the aggregate value that Validus Power Corp. paid when it acquired plants in 2021/2022, of approximately \$45 million.

[52] I am also satisfied that the inclusion in the SISP of the Stalking Horse Offer is appropriate in the particular circumstances of this proceeding. The Monitor considered one of the obvious questions; namely, whether a stalking horse bid was required at all or whether the process might be just as effective if those parties simply participated in the sales process by submitting whatever offer they might consider appropriate.

[53] I accept and agree with the recommendation of the Monitor that the Stalking Horse Offer provides an important degree of certainty to the employees of the Validus Entities and other stakeholders who may take some comfort that there is a possible going-concern solution for the business.

[54] As reflected in the Second Report, employees of the Validus Entities have communicated to the Monitor that they are encouraged by the steps taken to date in these proceedings and were further encouraged to learn that a stalking horse bid was being prepared and would likely be submitted by a prospective purchaser who is substantive and reputable. The Pre-Filing Report referenced the risk of significant employee resignations, and the

consequent effect on the continued operation of the Validus Entities and the preservation of their value. That risk is further mitigated by the Stalking Horse Offer.

[55] This is contrasted with the risks of conducting a SISP without a stalking horse, which risks include the absence of support from Macquarie as the senior secured creditor, the possible resignation of the employees and consequent shutdown of all plants, and the virtual certain detrimental, yet material, impact on value.

[56] As stated at the beginning of this Endorsement, the Validus Entities oppose certain terms of the Stalking Horse Offer.

[57] Leaving aside the issue raised by Macquarie as to what interests the Validus Entities are in fact advancing and for whose benefit, given that those Entities are currently being operated by the Receiver, I have considered the objections they have raised.

[58] First, as stated above and as was confirmed repeatedly in both written and oral submissions by the Receiver, the Monitor and the Stalking Horse Bidders (Macquarie and Far North), this Court is not being asked to approve today, and nor is it approving, the Stalking Horse Offer other than for the limited and exclusive purpose of having it serve as a stalking horse in the SISP.

[59] If, and only if, the Stalking Horse Offer is the Successful Bid in the SISP, further approval of the Court will be sought and required for the approval of such Successful Bid and the transaction contemplated thereby. This includes approval of its terms, the proposed reverse vesting order structure and the proposed tax treatment, including HST issues, and the inclusion or exclusion of assets.

[60] This Court has previously held that it is not in all cases necessary for the full terms of the stalking horse bid to be considered at the time of approval of an SISP: *Kingsett Mortgage Corporation et al v. Stateview Homes (Minu Towns) Inc., et al*, July 19, 2023, Ontario Superior Court of Justice (Commercial List) at paras. 7, 12 and 17; and *Fire & Flower Holdings Corp. et al*, 2023 ONSC 4048 (CanLII) at para. 23.

[61] I agree with that approach. That is not to say, however, that the terms of a stalking horse bid, including its overall economic value or the consideration payable if the transaction is approved, are irrelevant at the time of approval of a SISP. They are not. In my view, there is no purpose served by approving a stalking horse bid even if for the limited purpose of acting as such in a sales process, if it is clear from the outset that it would not be approved at the conclusion of the sales process even if no other bid, or no superior bid, were made. That sets up the process for failure and would likely result in a waste of time and financial resources all to the detriment of stakeholders and to the ultimate outcome achieved.

[62] To be clear, the value of the consideration to be paid in a stalking horse bid is a relevant consideration at the time of SISP approval. It is by no means determinative and is not the exclusive factor, but it is a relevant factor. This is particularly so, where, as here, the Stalking Horse Offer is a credit bid. That in turn means that the value of that credit (or really, debt) that is being bid, is a relevant consideration at the SISP approval stage.

[63] What all of this means is that the economically affected stakeholders, including in this case Macquarie who is the senior secured creditor and also the Stalking Horse Offer sponsor (with Far North), and also including the Court-appointed Officers (being the Receiver and the Monitor in making their recommendations to this Court), must go into the SISP process fully armed with the knowledge that even if the Stalking Horse Offer turns out to be the Successful Bid, there is a risk that it may not be approved by the Court. That determination is for another day, but the parties need to understand and recognize now the risk that a SISP with the Stalking Horse Offer has the possibility of not succeeding just as does a SISP without any stalking horse bid.

[64] I am satisfied that all parties understand this here; indeed, it is expressly recognized by the Receiver, the Monitor and the Stalking Horse Bidders as stated above. Appropriate parties will have the opportunity to oppose approval of the transaction contemplated by the Stalking Horse Offer, including the reverse vesting order structure, on the approval motion if it is the Successful Bid.

[65] Having considered all of the factors, I am satisfied that in the circumstances of this case, the SISP with the Stalking Horse Offer is the far preferable alternative to a SISP without a stalking horse.

### **The Objections Raised**

[66] I have not set out in this Endorsement every particular of the objections raised by the Validus Entities, nor every particular of the points raised in answer to the objections by the Monitor and by Macquarie.

[67] In summary, the principal objections of the Validus Entities to approval of the Stalking Horse Offer, even for the limited purposes of the SISP as stated above, are three-fold:

- a. it overstates the quantum of the amounts owing to Macquarie which forms the basis of the credit bid, with the result that the consideration that must be offered by any alternative bidder to be deemed to be a Superior Bid is artificially inflated;
- b. in the alternative, if it does not overstate the quantum owing pursuant to the Lease Transaction Documents, that quantum is unconscionable and violates the anti-deprivation rule, with the result that the effect on the SISP and alternative bids is the same as above; and
- c. it contemplates a structure which should never be approved even if it is the Superior Bid since it would mean that the Validus Entities, through the Monitor, pay to Macquarie material amounts in respect of HST for remittance to the CRA, but the input tax credits generated by the HST payments are unavailable to offset outstanding HST liabilities to the CRA, all of which is to the detriment of the CRA and all other creditors of the Validus Entities.

[68] I am satisfied that the Stalking Horse Offer should be approved notwithstanding these objections, whether considered separately or in the aggregate.

### **The Quantum Owing to Macquarie**

[69] First, I am satisfied that the amount owing to Macquarie is correct for the purposes of this motion, and accords with the Lease Transaction Documents and the calculation of that amount in the event of a default, as has occurred here.

[70] I draw significant comfort from the very strong support of the Court-appointed Monitor, having conducted its own extensive analysis and calculations, that the quantum is correct.

[71] In my view, much of the disagreement results from the issue foreshadowed at the outset of this Endorsement: the Lease Transaction Documents set out the terms not of a simple loan from Macquarie secured by equipment, but rather of a much more nuanced sale and lease-back transaction.

[72] The Validus Entities argue that the quantum that Macquarie says is outstanding and on which the credit bid is based materially exceeds the aggregate of all amounts advanced by Macquarie, net of repayments, as a result of double-counting of certain components of that quantum.

[73] I am satisfied for the purposes of this motion that it does not do so. Without question, the quantum sought by Macquarie is greater than the net amount advanced plus accrued interest. But that is not the end of the analysis



given the conceptual structure of the transaction in the first place and the application of the specific provisions of the Lease Transaction Agreements in particular.

[74] Counsel to the Monitor has provided an opinion that, subject to the standard assumptions and qualifications, the security granted by each of the Validus Entities to Macquarie is valid and enforceable.

[75] Pursuant to the terms of the Participation Agreement, the purchase price for the Leased Property was \$45 million plus \$5.85 million in HST. Of that \$45 million purchase price, the amount of \$9 million was agreed by the parties to be paid to IFPC upon it and other Validus Entities meeting a certain condition, failing which such amount was to be used to prepay rent under the Lease Agreement.

[76] Ultimately, the condition was not met, with the result that as contemplated by the parties and provided for in the Participation Agreement, that \$9 million was applied to pre-pay rent under the Lease Agreement.

[77] Pursuant to the Lease Agreement, IFPC agreed to make monthly rent payments to Macquarie in the amount of \$1.25 million (the “Base Rent”) plus HST during the 36 month base term of the Lease. IFPC also agreed to pay all other amounts and obligations it was required to pay under the Lease Transaction Documents.

[78] In the event of default, Macquarie had various contractual remedies provided, including the right to demand from IFPC liquidated damages in an amount equal to the sum of three components:

- a. any unpaid Base Rent in arrears;
- b. the Stipulated Loss Value (“SLV”) for the Leased Property; and
- c. interest on both of those amounts.

[79] The SLV is not a fixed value but rather, according to the terms of the Lease Transaction Documents, is determined as provided for in Schedule 3 to the Lease Agreement. Initially, the SLV was \$54 million, but was reduced with each rent payment made by IFPC. As provided for in the Lease Transaction Documents however, the relationship between the quantum of each rent payment, and the reduction in the-then amount of the SLV, is not linear (i.e., the two amounts do not reduce on a dollar for dollar basis at the same time).

[80] The amount of the SLV payable by IFPC in the event of a default was the SLV as of the date of written notice that Macquarie was exercising its remedies. Upon payment of these amounts, pursuant to section 13.1(f) of the Lease Agreement, IFPC would become the owner of the Leased Property.

[81] IFPC failed to make required payments under the Lease Agreement as due on each of May 31, 2023, June 7, 2023 and July 7, 2023. Pursuant to amendments made to the Lease Agreement on February 24, 2023, Macquarie provided IFPC a four-month “rent holiday” by amending the rent payment schedule (Schedule 3).

[82] As a result, IFPC was relieved of the obligation to pay rent from February through April, but was instead required to make a single, larger, rent payment in May (the “balloon payment”), followed by regular monthly payments in June and beyond. The total rent payable during that period was increased by \$1 million as is clear from a plain reading of the terms of the Lease Agreement.

[83] In other words, the parties agreed that a premium was to be paid for the rent holiday. In my view, therefore, it is not a fair characterization of the operation of the provisions of the relevant agreements to say that the aggregate rent payments due and owing exceed the sum of the original rent payments due monthly that were forgiven in exchange for the four-month rent holiday and the balloon payment thereafter. There has been no overstatement of rent arrears.

[84] Similarly, I am satisfied that there has not been a double-counting, as alleged by the Validus Entities, of \$8.5 million in the calculation of the SLV.

[85] The Lease Agreement specifies that the quantum of the SLV is determined upon reference to the “number of Base Rents paid ... at the relevant time”. The basis for the SLV is described above. I recognize that the operation of the Lease Transaction Documents results, given the default, in a contractual entitlement of Macquarie to collect both the rental arrears and an SLV that is not calculated in a manner that accounts for those rental payments. The Monitor is satisfied, however, that it is calculated exactly in accordance with the language of section 13.1(f) of the Lease Agreement.

[86] Finally, I am also satisfied that there has been no failure to credit the \$9 million in prepaid rent. Pursuant to the Lease Agreement, the Pre-Paid Rent is to be applied to the last payments of the Base Term. Macquarie submits, and the Monitor agrees, that the quantum sought gives credit for these payments when determining the quantum of the SLV.

[87] Macquarie gave notice that it was exercising its right to terminate the Lease Agreement on July 24, 2023. It demanded payment pursuant to section 13.1(f) of the Lease Agreement of \$55,598,575, comprised of:

- a. \$8.5 million of unpaid Base Rent;
- b. \$40.5 million in respect of the SLV;
- c. \$6,370,000 in respect of HST payable on the above amounts; and
- d. \$228,575 in respect of interest on the Base Rent.

[88] That quantum has increased, and continues to increase, as interest accrues (see paragraph 16 above).

[89] For all of these reasons, I am satisfied that the amount claimed is appropriate for the purposes of this motion and flows from the operation of the bargain made by the parties as reflected in the Lease Transaction Documents.

### **The Anti-Deprivation Rule**

[90] Even if I am right in accepting the recommendation of the Monitor that the calculation is correct, the Validus Entities submit that such a calculation violates the anti-deprivation rule and would result in the unjust enrichment of Macquarie, to the detriment of other creditors and the Validus Entities.

[91] The anti-deprivation rule has its origins in the common law. It is intended to prohibit contracts that frustrate statutory insolvency schemes and was originally directed against fraudulent conduct.

[92] The Supreme Court of Canada considered the anti-deprivation rule in *Chandos Construction Ltd. v Deloitte Restructuring Inc.*, [2020] 3 S.C.R. 3, 2020 SCC 25 (“*Chandos*”), and shifted the focus from the nature of the conduct to the nature of the result, and rejected an intention-based test in favour of a result-based test.

[93] The Validus Entities argue that Macquarie invoked the SLV provision after issuing demands for repayment and serving a Notice pursuant to section 244 of the *BIA*, with the result that the anti-deprivation rule is engaged and should operate here to prohibit the operation of that contractual provision.

[94] The Supreme Court stated in *Chandos* that the rule renders void any provision in an agreement which provides that upon an insolvency (or bankruptcy), value is removed from the reach of the insolvent person’s creditors which would otherwise have been available to them, and places that value in the hands of others.

[95] In *Chandos*, that is exactly what happened. A general construction contractor entered into a construction subcontract which provided, in relevant part, that the subcontractor would pay the general contractor 10% of the subcontract price as a fee for the inconvenience or for monitoring the work in the event of a bankruptcy of the subcontractor.

[96] The fee was triggered and indeed was expressly conditional upon the event of bankruptcy. It was not payable otherwise in the event of a default or indeed in any circumstance absent a bankruptcy. It was a clear example of a provision that was triggered by an event of insolvency or bankruptcy. In fact, it could not have been clearer, as it stated that: “in the event that [subcontractor] commits any act of bankruptcy, [subcontractor] shall forfeit 10% of the subcontract price”.

[97] The present case is distinguishable. In my view, the anti-deprivation rule is not engaged in the circumstances of this case so as to prevent operation of the agreements according to their terms. The entitlements pursuant to the SLV provision (and the related provisions discussed above) did not arise as a result of the insolvency of the Validus Entities (and there has been no bankruptcy). They arose, as intended by the parties in making their bargain, on the default by the Validus Entities of their contractual obligation to make the rent payments when due.

[98] It is irrelevant whether those entities were insolvent, at the time of the defaults, or now when the amounts calculated by operation of the contractual provisions are being claimed. Those amounts did not arise, and were not triggered, by the insolvency. Macquarie would have been no less entitled to the amounts it is now claiming if the Validus Entities were not insolvent at all (then or now) but rather had simply breached the Lease Transaction Agreements in the absence of an insolvency.

[99] Moreover, Macquarie will not have been unjustly enriched if it is found to be entitled to the amounts it is claiming. The Validus Entities cannot meet the requirement of demonstrating that there was no juristic reason for the benefit and the loss, in circumstances where the Lease Transaction Documents, representing the bargain freely made by highly sophisticated parties engaged in an extremely complex transaction and represented by counsel throughout, specifically and expressly contemplated exactly this result.

[100] As observed by the Supreme Court, the anti-deprivation rule is based on the common law public policy against agreements entered into for the unlawful purpose of defrauding or otherwise injuring third parties. The Supreme Court concluded that Parliament intended to prohibit a debtor from contracting with creditors for a different distribution of the debtor’s assets in bankruptcy than that provided in the *BIA*. That is not what is happening here. In my view, it was neither the intent of the parties, nor the effect of the agreements, to circumvent the statutory regime that provides that all claims proved in a bankruptcy shall be paid rateably.

### **Unfairness Regarding HST Treatment**

[101] With respect to the payment of HST, I am also satisfied that if an issue exists at all, it is an issue properly argued on the motion for approval of the transaction resulting from the Successful Bid, whether or not that is the Stalking Horse Offer.

[102] The Validus Entities submit, and in fairness to them submitted earlier on the motion to appoint a receiver, that they had concerns about the treatment of certain post-filing input tax credits (“ITCs”) which may otherwise serve to reduce the Purchase Price HST.

[103] First, counsel for the Canada Revenue Agency was present in Court on these motions and took no position on the issue. The CRA agrees that the issue is properly addressed at the time of the transaction approval motion, and moreover, the CRA is still in the process of completing its HST audit, with the result that it was not in a

position at the hearing to make any submissions with respect to what amounts were owing, what ITCs may be available, or to any other particulars of the HST issue.

[104] The Monitor/Receiver and Macquarie also submit that this issue is properly addressed on a transaction approval motion, since any Successful Bidder will be responsible for HST obligations arising on the transaction, and can and should take its own advice as to whether and the extent to which ITCs may be available to it, to subsequently set-off HST remittance obligations otherwise owing.

[105] Moreover, the Monitor has considered the proposed tax treatment under the Stalking Horse Offer, and is unaware as to whether any ITC applications were previously filed by the Validus Entities (largely due to the poor state of the books and records of the business, which has presented a continuing challenge for both the Receiver and the Monitor).

[106] Nonetheless, it is of the view that to the extent that IFPC is entitled to any ITCs in respect of HST on pre-filing base rent payments that were actually made by IFPC to Macquarie pursuant to the Lease Agreement, any such entitlements are Excluded Assets pursuant to the Transaction Agreement which would be vested, if the transaction is approved, in ResidualCo.

[107] In addition, the Monitor has concluded that any HST paid by IFPC in respect of the transaction contemplated by the Stalking Horse Offer is considered to be a post-filing payment of HST, and correspondingly, any ITCs generated as a result of such payment of HST cannot be set off against the pre-filing Purchase Price HST obligation in any event. Finally, any ITCs generated from the payment of HST on obligations of Validus Power Corp. during the receivership or CCAA period will continue to be assets of that entity or of ResidualCo, but also cannot be set off against the pre-filing Purchase Price HST.

[108] For all of those reasons, the Monitor is of the view that the treatment of any entitlements to ITCs under the transaction and within the course of these proceedings, is appropriately allocated. Even if it is not, the issue can be argued and determined as part of a sale approval motion.

[109] For all of these reasons, I am satisfied that the HST issues have been appropriately allocated to the extent they can be at present, and will in any event be the subject of the sale approval motion such that they need not be finally determined today. As stated above, and given the position of the CRA, they could not be determined today in any event.

### **Bid Protections**

[110] The Break Fee Agreement includes a Break Fee of \$1.26 million and an Expense Reimbursement of up to \$1 million for reasonable out-of-pocket third-party expenses incurred by Macquarie.

[111] The Monitor has considered the range of acceptable bid protections in the context of stalking horse bids (see: Comparative Summary of Break Fees, Appendix 'J' to the Second Report). This Court has previously noted that bid protections within the range of 1.8% - 5% may be reasonable: *CCM*, at para. 13. Here, the maximum amount of the Bid Protections represent approximately 3.85% of the proposed consideration.

[112] The Monitor is of the view that the Bid Protections properly recognize the benefit being conveyed to the estate by the Stalking Horse Offer setting the floor for a sales process, as well as the time, effort and resources spent by the stalking horse buyer who may ultimately be outbid in the SISP.

[113] In the particular circumstances of this matter, I am prepared to accept the strong recommendations of the Monitor and Receiver, and approve the Bid Protections. I am doing so given my conclusions about the stability that the Stalking Horse Offer brings to the process which is particularly critical giving the upcoming IESO auction.

[114] That should not be taken as any statement as to the appropriateness generally of a break fee in the context of a credit bid, or at least a break fee that goes beyond the reasonable costs and expenses incurred in preparing a bid. It may be that a break fee over and above an expense reimbursement, which is effectively a premium, could be appropriate in some circumstances. However, the onus will be on the proposed stalking horse bidder seeking that break fee to demonstrate why it is appropriate in the circumstances and what additional value it brings to the particular situation, given that there is no new capital or funding being exposed or made available as part of the bid.

[115] In the circumstances here, and as I have concluded that the Bid Protections should be approved, I am also satisfied that the Bid Protections Charge, which I note is a condition of the Stalking Horse Offer, should be approved as this Court has done in other cases: see, for example, *In the Matter of LoyaltyOne Co.*, (March 20, 2023), Toronto, Superior Court of Justice (Commercial List), CV-23-0069601700CL.

[116] Although the Bid Protections Charge encumbers the Property, the Bid Protections themselves are payable only out of closing proceeds from a different successful transaction. The Monitor believes that such a charge is reasonable in the circumstances.

### **Unknown Contract Bar Process**

[117] I am also satisfied that the Unknown Contract Bar Process should be approved. It is perhaps somewhat atypical, but I am satisfied that it is appropriate here. Part of the challenge faced by the Receiver and by the Monitor has been the fact that the books and records of the Validus Entities are incomplete and in disarray. The Monitor in particular has struggled to identify even material contracts to which the Validus Entities are parties, and therefore in some cases the counterparties are unknown.

[118] In other cases, the existence of a contractual arrangement and the identity of a counterparty may be known, but the material terms of the contractual arrangement are unknown or unclear. The Monitor has retained the services of a former senior officer of the Validus Entities to assist with its efforts in this regard.

[119] Courts have expressed concern in other cases, and properly so, regarding the notice to contractual counterparties as to the potential effects of a proposed reverse vesting order on the treatment of their contracts with the debtors: see, for example, *Re PaySlate Inc.* 2023 BCSC 608 at paras. 64, 71 and 75, where Justice Walker of the British Columbia Supreme Court declined to approve a proposed reverse vesting order transaction on the basis that, among other things, the debtor had not provided notice of the hearing for approval of the proposed transaction to counterparties in contracts that were proposed to be retained.

[120] In that case, the reverse vesting order transaction was subsequently approved, but only after notice had been given to those counterparties (2023 BCSC 977).

[121] The proposed Unknown Contract Bar Process here will provide for publication of the notice in both national and local publications. In addition, the Monitor is making best efforts to ensure that those known counterparties or possible counterparties are also advised. The Process contemplates that the Monitor will post on its website a list of known contracts, with the exception of employee agreements. Counterparties on that Known Contract List will receive notice of the anticipated reverse vesting order transaction, including notice as to how their contracts will be treated in the context of the Successful Bid.

[122] To identify whether there are any unknown excluded contracts or liabilities that would be affected by a reverse vesting order, the Monitor will post the notices as described above and require any contract counterparty to contact the Monitor by the Unknown Contract Bar Date to advise of the contract and provide an executed copy.

[123] The proposed Process does not bar any party from ultimately submitting unsecured claims, although those claims will be made in ResidualCo, if the anticipated reverse vesting order transaction (or any other reverse vesting order transaction) is approved, with the result that in my view it is very appropriate now that those contractual counterparties be given notice of what is afoot. The Monitor believes that the Proposed Unknown Contract Bar Process provides a fair and reasonable process to identify any unknown contract counterparties.

### **Activities of the Monitor**

[124] The activities of the Monitor are set out in detail in the three reports: the Pre-Filing Report, the First Report and the Second Report. Approval of those activities is not opposed by any party and I am satisfied that the activities are both appropriate and consistent with the exercise of the mandate given to the Monitor pursuant to the Initial Order.

### **Stay Extension**

[125] The stay of proceedings currently in effect expires on December 1, 2023. An extension is clearly appropriate to afford the Monitor sufficient time to conduct the proposed SISP. It makes good practical sense to seek that extension now, albeit approximately three weeks before the current stay expires, to avoid the expense incurred with bringing a separate motion for a stay extension in the very near future.

[126] I am satisfied that the Receiver and Monitor, respectively on behalf of the Validus Entities, have acted and continue to act in good faith and with due diligence.

### **Receiver's Borrowing Charge**

[127] Concurrent with the stay extension, the Receiver seeks in the Receivership Proceeding the approval of an increase in the borrowing amount available pursuant to the Receiver's Borrowing Charge of \$500,000, from \$1 million to \$1.5 million. This, too, is unopposed.

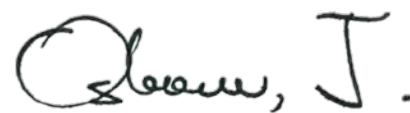
[128] The revised cash flow forecast reflects that, provided that the increase in the Borrowing Charge is granted, the Validus Entities are projected to have sufficient liquidity to fund operations through the proposed stay extension period.

[129] The increase is approved.

### **Disposition**

[130] For all of these reasons, the motions are granted. I have signed two orders, the first approving the increase in the Receiver's Borrowing Limit in the Receivership Proceeding, and the second approving the SISP, including the Stalking Horse Offer, approving the reports of the Monitor and the activities described therein, and extending the stay, all in the CCAA Proceeding.

[131] Both orders have immediate effect without the necessity of issuing and entering.

A handwritten signature in black ink that reads "Owen, J." The signature is written in a cursive, slightly slanted style.

## Appendix “H”



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

October 19, 2023



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COURT FILE NO.: CV-23-00705215-00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

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

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

SECOND REPORT OF KSV RESTRUCTURING INC.  
AS MONITOR

OCTOBER 19, 2023

## 1.0 Introduction

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

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

## 1.1 Purposes of this Report`

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

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

## 1.2 Currency

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

## 1.3 Restrictions<sup>1</sup>

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

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

<sup>2</sup> Certain individuals having executive titles were retained pursuant to consulting agreements.

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

## 2.0 Background

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

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

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

## 3.0 Creditors and Other Stakeholders

### 3.1 Secured Creditors

1. The following is a summary of the Validus Entities' known secured creditors:
  - a) Macquarie made demand against the Validus Entities, as discussed below, in the amount of \$55,598,575 as of July 24, 2023 (the "Macquarie Demand Amount"). Macquarie holds security against substantially all Property, excluding VPC's property other than the shares of its subsidiaries. As of September 22, 2023, Macquarie calculated that it is owed at least \$57,218,822, including overdue interest to that date and HST, but excluding costs and overdue interest following that date, each of which continues to accrue (the "Macquarie Claim Amount"). As set out in responding materials filed by the Validus Entities in the receivership proceedings, the Validus Entities dispute at least \$9 million of the amount demanded by Macquarie. A description of this dispute and the Monitor's view on the quantification of the Macquarie debt is provided in Section 3.2 of this Report;
  - b) Canada Revenue Agency ("CRA"), which registered a lien in the amount of approximately \$6 million against certain real property owned by IFPC. CRA's lien was registered due to IFPC's failure to remit HST collected by IFPC as part of a sale leaseback transaction between Macquarie and IFPC completed in April 2022. The Validus Entities have advised that there are input tax credits (i.e. HST paid to vendors) which may reduce the arrears owing to CRA. The Monitor has requested CRA perform an examination with respect to pre-filing GST/HST amounts. Certain issues related to HST are discussed in greater detail below;
  - c) TD Bank ("TD"), which registered a security interest against VPC pursuant to the *Personal Property Security Act* (Ontario), in respect of amounts that TD claims relate to six letters of credit issued by TD in the aggregate amount of \$1,506,445 against which TD holds guaranteed investment certificate security. The Monitor has requested that its counsel, Norton Rose Fulbright Canada LLP ("Norton Rose"), conduct a review of TD's security;
  - d) Royal Bank of Canada ("RBC"), which the Monitor understands holds cash collateral as security for obligations of VPC in respect of an outstanding letter of credit issued by RBC in the amount of \$68,561; and
  - e) Mercedes-Benz Financial and Mercedes-Benz Financial Services Canada Corporation in the amount of \$179,206 against VPC in respect of a motor vehicle (a Mercedes G-63 "G-Wagon" SUV).
2. Based on discussions with Ms. Goertz, the Monitor understands that VPC<sup>4</sup> has failed to remit source deductions to CRA since approximately October 2022. Based on VPC's payroll records and CRA's statements/assessments, the Monitor's estimate of the employee portion<sup>5</sup> of the source deduction obligation is approximately \$1.5 million. The Monitor has requested that CRA also perform an examination with respect to the Validus Entities' pre-filing source deduction obligations, including the amount which may be subject to a deemed trust.

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

<sup>5</sup> Being the portion for which a deemed trust exists in favour of CRA.

### 3.2 Macquarie Secured Debt Amount

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

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

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

#### 3.2.1 The Participation Agreement and Lease Agreement

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



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

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

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

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

### 3.3 Unions

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

### 3.4 Hut 8 Litigation

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

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

## 4.0 SISP and Stalking Horse Offer<sup>6</sup>

### 4.1 SISP

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

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

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

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

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

## 4.2 Solicitation of Interest

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

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

<sup>8</sup> The Court dates are subject to Court availability.

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

### 4.3 Qualified Bids

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

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

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

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

#### 4.4 Auction

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



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

#### 4.5 The Stalking Horse Offer

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

- c) concurrently with the step in (b), the Monitor will sign the Transaction Agreement, on behalf of the Validus Entities;
  - d) VPC, by the Monitor, will assign all of the equity securities (and in the case of Kingston LP, limited partnership units) in each of Kap, Bay, Kingston GP and Kingston LP to Far North in consideration for the release of VPC and the Purchased Entities (other than IFPC) from their obligations under the Lease Agreement and related security;
  - e) VPC will assign the Purchase Validus Parent Assets to Far North;
  - f) Macquarie will assign the Leased Property to IFPC in consideration for the: (i) IFPC Note 1; (ii) IFPC Note 2; (iii) IFPC Note 3; and (iv) IFPC Interests (comprising newly issued common shares of IFPC representing 99.999% of the issued and outstanding IFPC shares), which IFPC shares will, at the direction of Macquarie, be issued to Far North; and
  - g) the IFPC Legacy Shares held by VPC will be cancelled without any payment thereon such that the IFPC Interests represent 100% of the outstanding Equity Interests in IFPC.
- **Purchased Assets:**
    - a) all of VPC's right, title and interest in the issued and outstanding shares in the capital of Bay, Kap and Kingston GP and the issued and outstanding limited partnership units of Kingston LP;
    - b) all of VPC's right, title and interest in certain assigned employment agreements as set out in the Disclosure Schedule, all of VPC's right, title and interest in the Hut 8 Litigation, all issued and outstanding shares of Hosting<sup>9</sup>, all of VPC's right, title and interest in the Firm Transportation Service Contract dated July 25, 2022 between TransCanada Pipelines Limited and VPC, all of VPC's right, title and interest in the Letter Agreement dated September 30, 2023 between VPC and Macquarie Energy Canada Ltd. and all of VPC's right, title and interest in the Continuous Safety Services (CSS) Agreement between Electrical Safety Authority and VPC (collectively, the "Purchased Validus Parent Assets");
    - c) IFPC Note 1, IFPC Note 2 and IFPC Note 3; and
    - d) the IFPC Interests, being the newly issued common equity of IFPC (or its successor), free and clear of all Encumbrances other than Permitted Encumbrances, which represents 99.999% of the issued and outstanding common equity in IFPC immediately prior to the redemption of the IFPC Legacy Shares in accordance with the Transaction Agreement.

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<sup>9</sup> This entity is believed to be inactive and to not have any assets.

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

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

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

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

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

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

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<sup>10</sup> Each of which is believed to be inactive and to have no assets.

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

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

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

Nothing in the Transaction Agreement prevents the Stalking Horse Bidders from negotiating agreement(s) with bargaining agents who are party to the applicable Collective Agreement(s) regarding the outsourcing of the operating of the Purchased Assets, including the employment of the employees supporting the Purchased Assets post closing, to any Alternative Operator, including NAES Corporation<sup>11</sup>, which has been in discussions with the Stalking Horse Bidders in connection therewith.

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

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

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

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

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

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

#### 4.6 HST Considerations

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

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

#### 4.7 The Purchased Validus Parent Assets

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



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

#### 4.8 Bid Protections

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

#### 4.9 Considerations Regarding the Stalking Horse Offer

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

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

#### **4.10 SISP Recommendation**

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

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

## 5.0 Unknown Contract Bar Process

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

## 6.0 Receiver's Borrowings

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

## 7.0 Extension of the Stay of Proceedings

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

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

## 8.0 Conclusion and Recommendation

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

\* \* \*

All of which is respectfully submitted,

*KSV Restructuring Inc.*

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

## Appendix “I”



**AMENDED AND RESTATED TRANSACTION AGREEMENT**

**VALIDUS POWER CORP., IROQUOIS FALLS POWER CORP., BAY  
POWER CORP., KAP POWER CORP., KINGSTON COGEN LIMITED  
PARTNERSHIP, KINGSTON COGEN GP INC. and VALIDUS  
HOSTING INC., each by KSV RESTRUCTURING INC., in its capacity as  
court-appointed Monitor in the CCAA Proceedings**

as the Vendors

- and -

**FAR NORTH POWER CORP.**

as the Assignee

- and -

**MACQUARIE EQUIPMENT FINANCE LTD.**

as MEFL

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**AMENDED AND RESTATED TRANSACTION AGREEMENT**

**THIS AMENDED AND RESTATED AGREEMENT** is made as of the Effective Date (as defined below),

**AMONG:**

**VALIDUS POWER CORP.** (“Validus Parent”), **IROQUOIS FALLS POWER CORP.** (“IFPC”), **BAY POWER CORP.** (“Bay Power”), **KAP POWER CORP.** (“Kap Power”), **KINGSTON COGEN LIMITED PARTNERSHIP** (“Kingston LP”), **KINGSTON COGEN GP INC.** (“Kingston GP”) and **VALIDUS HOSTING INC.** (“Validus Hosting”, and together with IFPC, Bay Power, Kap Power, Kingston LP, Kingston GP and Validus Parent, collectively, the “**Validus Entities**”), each by **KSV RESTRUCTURING INC.** (“KSV”), in its capacity as court-appointed Monitor (as defined below) in the CCAA Proceedings (as defined below)

(the “**Vendors**”)

- and -

**FAR NORTH POWER CORP.**, a company governed by the laws of Ontario

(the “**Assignee**”)

- and -

**MACQUARIE EQUIPMENT FINANCE LTD.**, a company governed by the laws of Canada

(“**MEFL**”)

**RECITALS:**

- A. The Validus Entities carry on the business, taken as a whole, of: (i) the maintenance and operation of power generation facilities in Ontario located at North Bay, Kapuskasing, Iroquois Falls and Kingston; and (ii) the ownership and maintenance of a data centre in North Bay, Ontario (collectively, the “**Business**”).
- B. On August 10, 2023, MEFL sought and obtained an Order (as defined below), pursuant to subsection 243(1) of the BIA (as defined below) and subsection 101(1) of the *Courts of Justice Act* (Ontario) (as may be further amended, restated or varied, the “**Appointment Order**”) from the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) for

the appointment of the Receiver (as defined below) as receiver over, among other things, all of the assets, undertakings and properties of the Validus Entities.

- C. On August 29, 2023, on application by the Receiver, the Validus Entities were granted relief in the form of an Initial Order (as amended, the “**Initial Order**”) pursuant to the *Companies’ Creditors Arrangement Act* (Canada), as amended (the “**CCAA**”), and KSV was appointed as monitor of the Validus Entities (in such capacity, the “**Monitor**”, and such proceedings, the “**CCAA Proceedings**”).
- D. On November 1, 2023, in connection with the CCAA Proceedings, the Court granted the SISP Order (as defined below), which, among other things, approved the SISP (as defined below) pursuant to which the transactions contemplated by the Transaction Documents (as defined below) served as the “stalking horse bid” for the Purchased Assets (as defined below).
- E. On December 11, 2023, the Monitor notified MEFL and the Assignee that this Agreement was selected as the Successful Bid (as defined below) in the SISP.
- F. Subject to the granting of the Reverse Vesting Order (as defined below), at the Effective Time (as defined below): (i) the Vendors will sell and transfer to MEFL or the Assignee, as applicable, and MEFL and the Assignee, as applicable, will purchase from Vendors, all of the Validus Entities’ right, title and interest in and to the Purchased Assets, subject to and in accordance with the terms and conditions set forth in this Agreement, and (ii) the Parties wish to assign and transfer the Excluded Liabilities (as defined below) and the Excluded Assets (as defined below) to Residualco (as defined below) in accordance with the terms of this Agreement and the Reverse Vesting Order.

**NOW THEREFORE**, the Parties agree as follows:

## **ARTICLE 1 INTERPRETATION**

### **1.1 Definitions**

In this Agreement:

“**Administrative Expense Closing Amount**” means cash, which shall be transferred to the Monitor in accordance with Section 6.4, and held in trust by the Monitor for the benefit of Persons entitled to be paid the Administrative Expense Costs (or such portion thereof as can be reasonably determined by the Monitor prior to the Effective Date), subject to the terms hereof, the amount of which will be determined by the Monitor not less than three (3) Business Days prior to the Effective Date.

“**Administrative Expense Costs**” means the reasonable and documented fees and costs of the Receiver and the Monitor and its professional advisors relating directly or indirectly to the Receivership Proceedings, the CCAA Proceedings and this Agreement and including, without

limitation: (i) costs required to wind down, dissolve and/or bankrupt any or all of the Receivership Debtors, including, without limitation, any amounts in respect of goods and services provided by third parties or Employees (including all wages and accrued vacation pay for the post-filing period) that are not Post-Filing Claims; and (ii) costs and expenses required to administer the Excluded Assets and the Excluded Liabilities and to wind-up Residualco.

**“Affiliate”** means, with respect to any specified Person, any other Person which, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such specified Person. For purposes of this definition, “control” (including, with correlative meanings, the terms “controlling”, “controlled by” and “under common control with”), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise. For greater certainty, an Affiliate of a Person shall include such Person’s investment funds and managed accounts and any funds managed or directed by the same investment advisor.

**“Agreement”** means this amended and restated transaction agreement and all attachments hereto, including the Schedules, the Disclosure Schedule and Exhibits, in each case as the same may be supplemented, amended, restated or replaced from time to time, and the expressions “hereof”, “herein”, “hereto”, “hereunder”, “hereby” and similar expressions refer to this amended and restated transaction agreement and all attached Schedules, and unless otherwise indicated, references to Articles, Sections, Schedules, the Disclosure Schedule and Exhibits are to Articles, Sections, Schedules, the Disclosure Schedule and Exhibits in this amended and restated transaction agreement. For greater certainty, this Agreement supersedes the Original Agreement.

**“Applicable Law”** means any transnational, domestic or foreign, federal, provincial, territorial, state, local or municipal (or any subdivision of any of them) law (including common law and civil law), statute, ordinance, rule, regulation, restriction, limit, by-law (zoning or otherwise), judgment, order, direction or any consent, exemption, Transaction Regulatory Approval (as defined in the Offer Letter), or any other legal requirements of, or agreements with, any Governmental Authority, that applies in whole or in part to the transactions contemplated by this Agreement, the Validus Entities, MEFL (or any of its Affiliates), the Assignee (or any of its Affiliates), the Business or any of the Purchased Assets or the Assumed Liabilities.

**“Appointment Order”** has the meaning given to such term in Recital B.

**“Assignee”** has the meaning given to such term in the preamble to this Agreement.

**“Assumed Liabilities”** has the meaning given to such term in Section 2.3.

**“Bay Power”** has the meaning given to such term in the preamble.

**“Bay Power Interests”** has the meaning given to such term in Section 2.1.1(a)(i).

**“BIA”** means the *Bankruptcy and Insolvency Act* (Canada), as amended.

“**Business**” has the meaning given to such term in Recital A.

“**Business Day**” means any day, other than a Saturday or Sunday, on which the principal commercial banks in Toronto, Ontario are open for commercial banking business during normal banking hours.

“**Causes of Action**” means any action, claim, cross claim, third party claim, damage, judgment, cause of action, controversy, demand, right, action, suit, obligation, liability, debt, account, defense, offset, power, privilege, license, lien, indemnity, interest, guaranty, or franchise of any kind or character whatsoever, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, contingent or non-contingent, liquidated or unliquidated, disputed or undisputed, secured or unsecured, assertable directly or derivatively, matured or unmatured, suspected or unsuspected, in contract or in tort, at law or in equity, or pursuant to any other theory of law or otherwise, of any of the Validus Entities against any Person, in each case based in whole or in part on any act or omission, transaction, dealing or other occurrence existing or taking place on or prior to the Effective Time (which Causes of Action, for the avoidance of doubt, shall be retained by the Purchased Entities on Closing).

“**CCA**” has the meaning given to such term in Recital C.

“**CCA Proceedings**” has the meaning given to such term in Recital C.

“**Claim**” means any and all demands, claims, liabilities, actions, Causes of Action, counterclaims, expenses, costs, damages, losses, suits, debts, sums of money, refunds, accounts, indebtedness, rights of recovery, rights of set-off, rights of recoupment and liens of whatever nature (whether direct or indirect, absolute or contingent, asserted or unasserted, secured or unsecured, matured or not yet matured due or to become due, accrued or unaccrued or liquidated or unliquidated) and including all costs, fees and expenses relating thereto, against any Person.

“**Claim Amount**” means \$57,218,822 plus any interest thereon arising on or after September 22, 2023, and any other amounts under the Participation Agreement Documents, including in respect of indemnified costs and expenses as provided thereunder.

“**Closing**” means the completion of the transfer of the Purchased Assets, including the Purchased Interests to the Assignee and the issuance of certain indebtedness and shares in the capital of IFPC to MEFL and the Assignee, as applicable, and the transfer by MEFL of the Leased Property to IFPC, subject and pursuant to this Agreement and the Reverse Vesting Order at the Effective Time, and all other transactions contemplated by this Agreement that are to occur contemporaneously therewith.

“**Collective Agreement**” means any collective bargaining agreement or union agreement applicable to any Validus Entity or the Business, and all related documents, including letters or memoranda of understanding, letters of intent and other written communications with bargaining agents which impose any obligations upon any of the Validus Entities.



**“Confidential Information”** means non-public, confidential, personal or proprietary information which is furnished to MEFL, the Assignee or any of their Affiliates or representatives by any of the Validus Entities’ representatives by the Monitor on or after the date of this Agreement, including information about identifiable individuals, any information relating to the Validus Entities, or any customer or supplier of the Validus Entities, but does not include information that is or becomes generally available to the public other than as a result of disclosure by MEFL, the Assignee or their Affiliates or representatives in breach of this Agreement or Applicable Law or that is received by MEFL or the Assignee from an independent third party that, to the knowledge of MEFL or the Assignee, as applicable, obtained it lawfully and was under no duty of confidentiality (except to the extent that applicable privacy laws do not exclude such information from the definition of personal information) or that is independently developed by MEFL, the Assignee or their representatives without reference to any Confidential Information.

**“Continuing Contract”** means a contract, arrangement, or other agreement (oral or written): (i) for which a notice of disclaimer or similar notice has not been sent by the Receiver or the Monitor; and (ii) that is not an Excluded Contract.

**“Court”** has the meaning given to such term in Recital B.

**“Credit Bid Consideration”** has the meaning given to such term in Section 2.8(a).

**“Disclosure Schedule”** means the Disclosure Schedule dated the date hereof regarding this Agreement.

**“Effective Date”** means the date on which the Vendors, MEFL and the Assignee contemporaneously accept and execute this Agreement.

**“Effective Time”** means the time when the Vendors, MEFL and the Assignee contemporaneously accept and execute this Agreement on the Effective Date.

**“Employee Plans”** means all the employee benefit, fringe benefit, deferred compensation, commission, equity-based compensation, management compensation, supplemental unemployment benefit, bonus, incentive, profit sharing, termination, severance, change of control, transaction bonus, retention bonus, pension, supplemental pension, retirement, stock option, stock purchase, stock appreciation, health, welfare, medical, dental, disability, life insurance and any other or similar plans, programs, arrangements or practices, whether funded or unfunded, insured or self-insured, registered or unregistered, relating to the current or former directors, officers or Employees of the Validus Entities, or the beneficiaries or dependents of any such Persons, and that is maintained, sponsored, contributed to, or required to be contributed to by any of the Validus Entities, or with respect to which any of the Validus Entities has any actual or contingent liability, other than any plan, program or arrangement sponsored, maintained or administered by a Governmental Authority.

**“Employees”** means the employees of the Validus Entities whose services are provided exclusively in respect of the Business and whose responsibilities relate to the operation and maintenance of the plants owned and operated by the Purchased Entities.

“**Employment Agreements**” means, collectively, the written employment agreements, Collective Agreements, Employee Plans and indemnification agreements of, or for the benefit of, the directors, officers and Employees of any of the Validus Entities that, on or prior to the Closing, have not resigned, in each case, in existence on the date hereof; *provided, however*, that Employment Agreements shall not include Excluded Contracts or any employment agreements, Employee Plans or indemnification agreements of, or for the benefit of, the directors, officers and employees of any of the Validus Entities that have been terminated or disclaimed without the consent of MEFL.

“**Encumbrance**” means any security interest (whether contractual, statutory or otherwise), pledge, assignment, lien, prior claim, charge, hypothec, reservation of ownership, pledge, encumbrance, mortgage, trust (including any statutory, deemed or constructive trust, actual or deemed), option, preferential arrangement of any kind or nature whatsoever or adverse claim or encumbrance of any nature or kind.

“**Energy Regulator**” means any federal or provincial Governmental Authority having jurisdiction to regulate the generation, transmission, distribution, retailing or wholesaling of electricity and/or the purchase, sale and use of electricity or natural gas in Ontario, foreign regulatory authority having jurisdiction over matters relating to electricity and/or natural gas, authorized electricity or natural gas transmitter or distributor, or regional transmission organization or independent system operator, including but not limited to the Independent Electricity System Operator and the Ontario Energy Board.

“**Equity Interests**” means any capital share, capital stock, partnership, membership, joint venture or other ownership or equity interest, participation or securities (whether voting or nonvoting, whether preferred, common or otherwise, and including share appreciation, contingent interest or similar rights) of a Person.

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

“**Excluded Assets**” has the meaning given to such term in Section 2.2.

“**Excluded Contracts**” means contracts of the Validus Entities as specified in Exhibit 2.2(e) of the Disclosure Schedule.

“**Excluded Liabilities**” has the meaning given to such term in Section 2.4.

“**Filing Date**” means August 10, 2023.

“**Final Order**”, with respect to any order of any court of competent jurisdiction, means that: (i) such order shall not have been stayed, appealed, varied (except with the consent of MEFL, the Assignee and the Vendors) or vacated, and all time periods within which such order could at law be appealed shall have expired; or (ii) such order is no longer the subject of any continuing proceedings seeking to stay, appeal, vary (except with the consent of MEFL, the Assignee and the Vendors) or vacate such order, all such proceedings having been discontinued, denied, dismissed

and otherwise unsuccessfully concluded, and the time for appealing or further appealing the disposition of such proceedings shall have expired.

**“Governmental Authority”** means any government, regulatory authority (including any Energy Regulator), governmental department, agency, commission, bureau, official, minister, Crown corporation, court, board, tribunal or dispute settlement panel or other law, rule or regulation-making organization or entity: (a) having or purporting to have jurisdiction on behalf of any nation, province, territory or state or any other geographic or political subdivision of any of them; or (b) exercising, or entitled or purporting to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power.

**“GST/HST”** means all goods and services tax and harmonized sales tax imposed under Part IX of the ETA and any similar tax imposed pursuant to any other statute in any jurisdiction of Canada.

**“HST Amount”** means \$6,435,000.

**“Hut 8”** means Hut 8 Mining Corp.

**“Hut 8 Litigation”** means, collectively: (i) the civil claim commenced by Hut 8, as plaintiff, against Validus Parent and Bay Power, as defendants, in the Ontario Superior Court of Justice; and (ii) the counterclaim of Validus Parent and Bay Power against Hut 8, the foregoing bearing Court File No. CV-23-00693515-0000.

**“IFPC”** has the meaning given to such term in the preamble.

**“IFPC Interests”** has the meaning given to such term in Section 2.1.1(d)(iv).

**“IFPC Legacy Shares”** has the meaning given to such term in Section 2.1.1(e).

**“IFPC Note 1”** has the meaning given to such term in Section 2.1.1(d)(i).

**“IFPC Note 2”** has the meaning given to such term in Section 2.1.1(d)(ii).

**“IFPC Note 3”** has the meaning given to such term in Section 2.1.1(d)(iii).

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

**“Implementation Steps”** has the meaning given to such term in the Terms and Conditions.

**“Initial Order”** has the meaning given to such term in Recital C.

**“Intercompany Claim”** means any claim that may be asserted against a Validus Entity by or on behalf of any of the other Validus Entities or any of their affiliated companies, partnerships or other corporate entities.

“**Investment Canada Act**” means the *Investment Canada Act* (Canada), R.S.C., 1985, c. 28 (1st Supp), as amended, including the regulations promulgated thereunder.

“**Kap Power**” has the meaning given to such term in the preamble.

“**Kap Power Interests**” has the meaning given to such term in Section 2.1.1(a)(ii).

“**Kingston GP**” has the meaning given to such term in the preamble.

“**Kingston GP Interests**” has the meaning given to such term in Section 2.1.1(a)(iv).

“**Kingston LP**” has the meaning given to such term in the preamble.

“**Kingston LP Interests**” has the meaning given to such term in Section 2.1.1(a)(iii).

“**KSV**” has the meaning given to such term in the preamble.

“**Lease Agreement**” means the amended and restated lease agreement dated February 24, 2023 between MEFL, as lessor, and IFPC, as lessee, pursuant to which MEFL has leased the Leased Property to IFPC on the terms and conditions set forth in the Lease Agreement.

“**Leased Property**” has the meaning given to such term in the Lease Agreement.

“**Monitor**” has the meaning given to such term in Recital C.

“**Monitor’s Certificate**” means the certificate to be filed with the Court by the Monitor in accordance with the Reverse Vesting Order certifying that the Effective Time has occurred.

“**Offer Letter**” means the binding offer letter, including the terms and conditions contained in Schedule “B” thereto, delivered by MEFL and the Assignee to the Monitor on October 16, 2023, providing, among other things, MEFL’s and the Assignee’s binding offer to enter into this Agreement and the transactions contemplated hereby with the Vendors and the terms and conditions of same.

“**Order**” means any order of the Court made in the Receivership Proceedings, the CCAA Proceedings or any order, directive, judgment, decree, injunction, decision, ruling, award or writ of any Governmental Authority.

“**Original Agreement**” means the original form of transaction agreement that was appended as Schedule “A” to the Offer Letter. For greater certainty, the Original Agreement was superseded by this Agreement.

“**Original Terms and Conditions**” means the original form of terms and conditions that was appended as Schedule “B” to the Offer Letter. For greater certainty, the Original Terms and Conditions was superseded by the Terms and Conditions.

**“Participation Agreement”** means the Amended and Restated Participation Agreement dated February 24, 2023, between IFPC, as lessee, MEFL, as lessor, and Validus Parent, Bay Power, Kap Power, Kingston LP and Kingston GP, as guarantors.

**“Participation Agreement Documents”** means, collectively: (i) the Participation Agreement; (ii) the Lease Agreement; and (iii) all related documentation and agreements, including all guarantee and security documentation and supplements related to the foregoing.

**“Parties”** means, collectively, the Vendors, the Assignee and MEFL, and **“Party”** means any of the Vendors, the Assignee and MEFL, as the context requires.

**“Permitted Encumbrances”** means the Encumbrances listed in Exhibit 1.1 of the Disclosure Schedule.

**“Person”** means an individual, partnership, firm, joint venture, venture capital fund, limited liability company, unlimited liability company, association, trust, entity, corporation, unincorporated association, or organization, syndicate, committee, court appointed representative, the government of a country or any political subdivision thereof, or any agency, board, tribunal, commission, bureau, instrumentality, or department of such government or political subdivision, or any other entity, howsoever designated or constituted, including any Taxing Authority, and the trustees, executors, administrators or other legal representatives of an individual, and, for greater certainty, includes any Governmental Authority.

**“Post-Closing Straddle Tax Period”** has the meaning given to such term in Section 6.3.3.

**“Post-Filing Claim”** or **“Post-Filing Claims”** means any or all Claims, indebtedness, liability or obligation of the Purchased Entities of any kind that arises during and in respect of the period commencing on the Filing Date and ending at the time immediately preceding the Effective Time in respect of services rendered or supplies provided to the Purchased Entities during such period or under or in accordance with any Continuing Contract.

**“Pre-Closing Straddle Tax Period”** has the meaning given to such term in Section 6.3.3.

**“Priority Payments Closing Amount”** means cash in the amount of \$1,500,000.

**“Priority Payments Indemnity”** has the meaning given to such term in Section 2.8(a)(i).

**“Priority Payments Indemnity Charge”** has the meaning given to such term in Section 2.8(b).

**“Priority Payments of the Purchased Entities”** means all liabilities of the Purchased Entities in respect of any payments or amounts subject to a statutory deemed trust in favour of His Majesty in right of Canada or a province, to the extent that such statutory deemed trust remains valid and enforceable by the Canada Revenue Agency in the CCAA Proceedings or the Receivership Proceedings pursuant to the following legislative provisions:

- (i) subsection 227(4) or (4.1) of the *Income Tax Act*;

- (ii) subsection 23(3) or (4) of the *Canada Pension Plan* (Canada); and
- (iii) subsection 86(2) or (2.1) of the *Employment Insurance Act* (Canada).

“**Priority Payments of Validus Parent**” means all liabilities of Validus Parent in respect of any payments or amounts subject to a statutory deemed trust in favour of His Majesty in right of Canada or a province, to the extent that such statutory deemed trust remains valid and enforceable by the Canada Revenue Agency in the CCAA Proceedings or the Receivership Proceedings pursuant to the following legislative provisions:

- (i) subsection 227(4) or (4.1) of the *Income Tax Act*;
- (ii) subsection 23(3) or (4) of the *Canada Pension Plan* (Canada); and
- (iii) subsection 86(2) or (2.1) of the *Employment Insurance Act* (Canada).

“**Purchased Assets**” means, collectively: (i) the Purchased Interests; (ii) the Purchased Validus Parent Assets; (iii) the IFPC Note 1; (iv) the IFPC Note 2; (v) the IFPC Note 3; and (vi) the IFPC Interests.

“**Purchased Entities**” means IFPC, Bay Power, Kap Power, Kingston LP, Kingston GP and Validus Hosting, and “**Purchased Entity**” means any one of them.

“**Purchased Interests**” means the property described in Sections 2.1.1(a)(i) to 2.1.1(a)(iv), inclusive.

“**Purchased Validus Parent Assets**” has the meaning given to such term in Section 2.1.1(b).

“**Receiver**” means KSV in its capacity as court-appointed receiver over, among other things, all of the assets, undertakings and properties of the Validus Entities.

“**Receivership Debtors**” means: (i) prior to the Effective Time, the Validus Entities and Residualco (at such time as, but only to the extent that, Residualco becomes a Receivership Debtor prior to the Effective Time); and (ii) following the Effective Time, Validus Parent and Residualco.

“**Receivership Proceedings**” means the receivership proceedings in respect of the Validus Entities commenced under the BIA and the *Courts of Justice Act* (Ontario) by MEFL pursuant to the Appointment Order, bearing Court File No. CV-23-00703754-00CL.

“**Released Claims**” means all Claims, demands, complaints, grievances, actions, applications, suits, Causes of Action, Orders, charges, indictments, prosecutions, informations or other similar processes, assessments or reassessments, judgments, debts, liabilities, expenses, costs, damages or losses, contingent or otherwise, whether liquidated or unliquidated, matured or unmatured, disputed or undisputed, contractual, legal or equitable, including loss of value, professional fees, including “provable claims” as defined in the BIA and including fees and

disbursements of legal counsel on a full indemnity basis, and all costs incurred in investigating or pursuing any of the foregoing or any proceeding relating to any of the foregoing.

“**Residualco**” means one or more entities formed by the Receiver for the sole purpose of performing the obligations set out herein.

“**Reverse Vesting Order**” means an order of the Court substantially in the form of Schedule “A” hereto (or with such updates and amendments as may be acceptable to MEFL, the Assignee and the Vendors, each acting reasonably).

“**SISP**” means the sale and investment solicitation process that was approved by the Court in the SISP Order on November 1, 2023.

“**SISP Order**” means the order appended as Schedule “C” hereto that the Court granted on November 1, 2023 in the CCAA Proceedings, which, among other things, approved the SISP and related matters,.

“**Straddle Period**” has the meaning given to such term in Section 6.3.3.

“**Successful Bid**” has the meaning given to such term in the SISP.

“**Tax**” and “**Taxes**” means taxes, duties, fees, premiums, assessments, imposts, levies and other charges of any kind whatsoever (including withholding on amounts paid to or by any Person) imposed by any Taxing Authority, including all interest, penalties, fines, additions to tax or other additional amounts imposed by any Taxing Authority in respect thereof, and including those levied on, or measured by, or referred to as, income, gross receipts, profits, capital, transfer, land transfer, sales, goods and services, harmonized sales, use, value-added, excise, stamp, withholding, business, franchising, escheat, property, development, occupancy, employer health, payroll, employment, health, disability, severance, unemployment, social services, education and social security taxes, all surtaxes, all customs duties and import and export taxes, countervail and anti-dumping, all license, franchise and registration fees and all employment insurance, health insurance and Canada, Ontario and other government pension plan premiums or contributions.

“**Tax Act**” means the *Income Tax Act* (Canada) and shall also include a reference to any applicable and corresponding provisions under the income tax laws of a province or territory of Canada, as applicable.

“**Tax Return**” means any return, declaration, report, statement, information statement, form, election, amendment, claim for refund, schedule or attachment thereto or other document filed or required to be filed with a Taxing Authority with respect to Taxes.

“**Taxing Authorities**” means His Majesty the King in right of Canada, His Majesty the King in right of any province or territory of Canada, the Canada Revenue Agency, any similar revenue or taxing authority of Canada and each and every province or territory of Canada and any political subdivision thereof, and any Canadian or other Governmental Authority exercising taxing authority or power, and “**Taxing Authority**” means any one of the Taxing Authorities.

“**Terms and Conditions**” means the amended and restated terms and conditions that MEFL and the Assignee delivered to the Monitor in connection with this Agreement on December 21, 2023. For greater certainty, the Terms and Conditions superseded the Original Terms and Conditions.

“**Transaction Documents**” means all contracts, agreements, certificates and instruments required by this Agreement to be delivered at or in connection herewith.

“**Transfer Taxes**” means all transfer, documentary, sales, use, stamp, registration, customs duties, import and export taxes, surtaxes, value added, GST/HST, provincial sales/retail Taxes, conveyance fees, security interest filing or recording fee and any other similar Taxes (including any real property transfer Tax and any other similar Tax), any governmental assessment, and any related penalties and interest.

“**U.S.**” means the United States of America.

“**Validus Entities**” has the meaning given to such term in the preamble, and “**Validus Entity**” means any one of them.

“**Validus Hosting**” has the meaning attributed thereto in the preamble.

“**Validus Hosting Interests**” has the meaning attributed thereto in Section 2.1.1(b)(ii).

“**Validus Parent**” has the meaning given to such term in the preamble.

“**Vendors**” has the meaning given to such term in the preamble.

## 1.2 Statutes and Agreements

- (a) Except as otherwise provided in this Agreement, any reference in this Agreement to a statute refers to such statute and all rules and regulations made under it, as it or they may have been or may from time to time be amended, re-enacted or replaced.
- (b) Each reference to, and the definition of, any agreement, instrument or other document (including any Transaction Document) herein or in any other Transaction Document shall be deemed to refer to such agreement, instrument or other document as it may be amended, amended and restated, supplemented, revised or otherwise modified from time to time in accordance with its terms and, to the extent applicable, the terms of this Agreement and the other Transaction Documents shall be deemed to incorporate any appendices, annexes, schedules or exhibits to such agreement, instrument or other document.

## 1.3 Headings, Table of Contents, etc.

The provision of a table of contents, the division of this Agreement into Articles, Sections and other subdivisions and the insertion of headings are for convenient reference only and do not



affect the interpretation of this Agreement. The recitals to this Agreement are an integral part of this Agreement.

#### **1.4 Gender and Number**

In this Agreement, unless the context otherwise requires, words importing the singular include the plural and vice versa, and words importing gender include all genders.

#### **1.5 Currency**

Except where otherwise expressly provided, all amounts in this Agreement are stated and shall be paid in Canadian dollars. References to “\$” are to Canadian dollars. References to “US\$”, if any, are to U.S. dollars.

#### **1.6 Certain Phrases**

In this Agreement: (a) the words “including”, “includes” and “include” and any derivatives of such words mean “including (or includes or include) without limitation”; and (b) the words “the aggregate of”, “the total of”, “the sum of” or a phrase of similar meaning means “the aggregate (or total or sum), without duplication, of”. The expression “Article”, “Section” and other subdivision followed by a number, mean and refer to the specified Article, Section or other subdivision of this Agreement.

#### **1.7 Invalidity of Provisions**

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction shall not affect the validity or enforceability of any other provision hereof so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any Party. Upon: (a) such a determination of invalidity or unenforceability; or (b) any change in Applicable Law or other action by any Governmental Authority which materially detracts from the legal or economic rights or benefits, or materially increases the obligations, of any Party or any of its Affiliates under this Agreement, the Parties shall negotiate to modify this Agreement in good faith so as to effect the original intent of the Parties as closely as possible in an acceptable manner so that the transactions contemplated by this Agreement be consummated as originally contemplated to the fullest extent possible.

#### **1.8 Entire Agreement**

This Agreement, the Disclosure Schedule and the agreements and other documents required to be delivered pursuant to this Agreement constitute the entire agreement among the Parties, and set out all the covenants, promises, warranties, representations, conditions and agreements among the Parties in connection with the subject matter of this Agreement, and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, pre-contractual or otherwise. There are no covenants, promises, warranties, representations, conditions, understandings or other agreements, whether oral or written, pre-

contractual or otherwise, express, implied or collateral among the Parties in connection with the subject matter of this Agreement, except as specifically set forth in this Agreement and any document required to be delivered pursuant to this Agreement.

### **1.9 Waiver, Amendment**

Except as expressly provided in this Agreement, no amendment or waiver of this Agreement shall be binding unless executed in writing by all Parties hereto. No waiver of any provision of this Agreement shall constitute a waiver of any other provision nor shall any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided.

### **1.10 Governing Law; Jurisdiction and Venue**

This Agreement and the rights and obligations of the Parties under this Agreement, and any Claim or controversy directly or indirectly based upon or arising out of this Agreement or the transactions contemplated by this Agreement (whether based on contract, tort or any other theory), including all matters of construction, validity and performance, shall in all respects be governed by, and interpreted, construed and determined in accordance with, the laws of the Province of Ontario and the federal laws of Canada applicable therein, without regard to the conflicts of law principles thereof. The Parties consent to the jurisdiction and venue of the Court for the resolution of any such disputes arising under this Agreement. Each Party agrees that service of process on such Party as provided in Section 9.6 shall be deemed effective service of process on such Party.

### **1.11 Accounting Terms**

All accounting terms used in this Agreement are to be interpreted in accordance with IFRS unless otherwise specified.

### **1.12 Non-Business Days**

Whenever payments are to be made or an action is to be taken on a day which is not a Business Day, such payment will be made, or such action will be taken on or not later than the next succeeding Business Day.

### **1.13 Computation of Time Periods**

If any action may be taken within, or any right or obligation is to expire at the end of a period of days under this Agreement, then the first day of the period is not counted, but the day of its expiry is counted.

### **1.14 Time of Essence**

Time shall be of the essence of this Agreement in all respects.

### 1.15 Schedules

- (a) The following are the Schedules attached to and incorporated in this Agreement by reference and deemed to be a part hereof:

Schedule “A” - Form of Reverse Vesting Order

Schedule “B” - [*Intentionally Deleted*]

Schedule “C” - SISP Order

- (b) Unless the context otherwise requires, words and expressions defined in this Agreement shall have the same meanings in the Schedules and the interpretation provisions set out in this Agreement apply to the Schedules. Unless the context otherwise requires, or a contrary intention appears, references in the Schedules to a designated Article, Section or other subdivision refer to the Article, Section or other subdivision, respectively, of this Agreement.

### 1.16 Disclosure Schedule and Exhibits

The Disclosure Schedule and Exhibits referred to herein shall be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein.

## ARTICLE 2 ASSETS PURCHASED IN SATISFACTION OF CLAIMS

### 2.1 Assignment and Issuance of Purchased Assets to the Assignee and MEFL

2.1.1 In consideration for the payment of the Credit Bid Consideration in accordance with Section 2.8, upon and subject to the terms and conditions of this Agreement (including Sections 2.2, 2.4, 2.5 and 2.6):

- (a) Validus Parent, by the Monitor, hereby sells, transfers, assigns and conveys to the Assignee, as MEFL’s designated and nominated assignee, effective at the Effective Time, inclusive of the additional GST/HST, if any, applicable to the portion of the Claim Amount being settled in satisfaction of these transfers, all of Validus Parent’s right, title and interest in and to:
- (i) all of the issued and outstanding shares in the capital of Bay Power held by Validus Parent (or its successor if converted into other Equity Interests or another entity prior to the Effective Time in accordance with the Implementation Steps) (the “**Bay Power Interests**”), free and clear of all Encumbrances (other than Permitted Encumbrances);
  - (ii) all of the issued and outstanding shares in the capital of Kap Power held by Validus Parent (or its successor if converted into other Equity Interests or

- another entity prior to the Effective Time in accordance with the Implementation Steps) (the “**Kap Power Interests**”), free and clear of all Encumbrances (other than Permitted Encumbrances);
- (iii) all of the issued and outstanding limited partnership units of Kingston LP held by Validus Parent (or its successor if converted into other Equity Interests or another entity prior to the Effective Time in accordance with the Implementation Steps) (the “**Kingston LP Interests**”), free and clear of all Encumbrances (other than Permitted Encumbrances); and
  - (iv) all of the issued and outstanding shares in the capital of Kingston GP held by Validus Parent (or its successor if converted into other Equity Interests or another entity prior to the Effective Time in accordance with the Implementation Steps) (the “**Kingston GP Interests**”), free and clear of all Encumbrances (other than Permitted Encumbrances);
- (b) Validus Parent, by the Monitor, hereby sells, transfers, assigns and conveys to the Assignee, effective at the Effective Time, all of Validus Parent’s right, title and interest in and to the following assets, together with the assets specified in Exhibit 2.1.1(b) of the Disclosure Schedule, of Validus Parent (collectively, the “**Purchased Validus Parent Assets**”), free and clear of all Encumbrances (other than Permitted Encumbrances):
- (i) all right, title and interest of Validus Parent in the Hut 8 Litigation;
  - (ii) all of the issued and outstanding shares in the capital of Validus Hosting held by Validus Parent (or its successor if converted into another entity prior to the Effective Time in accordance with the Implementation Steps) (the “**Validus Hosting Interests**”), free and clear of all Encumbrances (other than Permitted Encumbrances);
  - (iii) all right, title and interest of Validus Parent in the Firm Transportation Service Contract made as of July 25, 2022 between TransCanada Pipelines Limited and Validus Parent; and
  - (iv) all right, title and interest of Validus Parent in the Letter Agreement dated September 30, 2023 between Validus Parent and Macquarie Energy Canada Ltd.;
- (c) effective as at the Effective Time,
- (i) subject to subparagraph (iii) below, for any Employee of Validus Parent, the Assignee or a Purchased Entity, at the Assignee’s election, shall offer to employ such of the Employees as the Assignee determines in its sole discretion, on terms and conditions of employment that are substantially similar to, and in the aggregate no less favourable than, those in effect for

each such Employee as disclosed in Exhibit 2.1.1(c)(i) of the Disclosure Schedule. If any Employee of Validus Parent receives an offer of employment hereunder but does not accept such offer for any reason, then all liabilities associated with such Employee shall remain the responsibility of Validus Parent and shall not be assumed by any Purchased Entity or any other Person hereunder;

- (ii) subject to subparagraph (iii) below, for any Employee of the Purchased Entities, such of the Employees as the Assignee determines in its sole discretion shall continue to be an Employee of such Purchased Entity; and
  - (iii) for clarity, and without prejudice to the Assignee's position that the Assignee (or the Validus Entities) is not a successor employer to, and is not bound by any Collective Agreement, nothing in this Agreement prevents the Assignee from negotiating agreement(s) with the bargaining agent(s) who are party to the applicable Collective Agreement(s) regarding the outsourcing of the operation of the Purchased Assets, including the employment of the Employees supporting the Purchased Assets, to NAES Corporation ("NAES") or an alternative third party power plant operator (an "**Alternative Operator**"), which would employ the Employees effective upon Closing. In the event that such arrangements are reached with respect to the bargaining agents on or prior to the Effective Date, such offers in (i) and (ii) above may be extended by NAES or such Alternative Operator as may be determined by the Assignee, in its sole discretion. Regardless of whether any arrangement is made with the bargaining agent(s) who are party to the applicable Collective Agreement(s), the offers of employment to non-union Employees outside the scope of the bargaining rights asserted by the bargaining agents may be made by NAES or an Alternative Operator, at the Assignee's election;
- (d) at the Effective Time (and simultaneous with the transfers in Section 2.1.1(a) and 2.1.1(b)), IFPC, by the Monitor, hereby pays to MEFL as consideration for the transfer of the Leased Property under Section 2.8(a)(iv) and in satisfaction of the remaining amounts due under the Lease Agreement (after taking into account the portion of the Claim Amount that is settled in satisfaction of the transfers in Section 2.1.1(a)), plus applicable GST/HST, as follows:
- (i) in respect of \$29,000,000, IFPC, by the Monitor, hereby issues to MEFL, a promissory note with a principal amount of \$29,000,000 and the other terms set forth in Exhibit 2.1.1(d)(i) of the Disclosure Schedule (the "**IFPC Note 1**");
  - (ii) in respect of \$10,000,000, IFPC, by the Monitor, hereby issues to the Assignee, as MEFL's designated and nominated assignee, a promissory note with a principal amount of \$10,000,000 and the other terms set forth in Exhibit 2.1.1(d)(ii) of the Disclosure Schedule (the "**IFPC Note 2**");

- (iii) in respect of the HST Amount, IFPC, by the Monitor, hereby issues to MEFL a promissory note with a principal amount equal to the HST Amount, and with the other terms set forth in Exhibit 2.1.1(d)(iii) of the Disclosure Schedule (the “**IFPC Note 3**”); and
- (iv) in respect of all amounts due and owing by IFPC to MEFL under the Lease Agreement after receipt of the amounts described in Section 2.1.1(a) and Sections 2.1.1(d)(i), (ii) and (iii), IFPC, by the Monitor, hereby issues to the Assignee, as MEFL’s designated and nominated assignee, newly issued common equity of IFPC (or its successor if converted into another entity prior to the Effective Time in accordance with the Implementation Steps) (the “**IFPC Interests**”), free and clear of all Encumbrances (other than Permitted Encumbrances), which IFPC Interests represent 99.999% of the issued and outstanding common equity in IFPC immediately prior to the redemption of the IFPC Legacy Shares in accordance with Section 2.1.1(e); and
- (e) pursuant to the Reverse Vesting Order, effective as of immediately following the issuance of the IFPC Interests in accordance with Section 2.1.1(d)(iv), all Equity Interests of IFPC outstanding prior to the issuance of the IFPC Interests (excluding, for the avoidance of doubt, the IFPC Interests) (the “**IFPC Legacy Shares**”) shall be cancelled without any payment thereon, so that immediately following such cancellation the IFPC Interests shall represent 100% of the outstanding Equity Interests in IFPC.

2.1.2 MEFL hereby designates the Assignee as MEFL’s designated and nominated assignee for the purposes of Sections 2.1.1(a) and 2.1.1(d)(ii) and (iv), and directs the Vendors (by the Monitor) to transfer, assign, convey and/or issue all right, title and interest in such Purchased Assets directly to the Assignee. For the avoidance of doubt, upon the consummation of the transfers contemplated by Section 2.1.1(a) and Section 2.1.1(b), the issuances contemplated by Section 2.1.1(d) and the cancellation of the IFPC Legacy Shares contemplated by Section 2.1.1(e), each Purchased Entity, and every other direct and indirect subsidiary of any Purchased Entity, except those listed in Exhibit 2.2(g) of the Disclosure Schedule, shall be wholly owned, directly or indirectly, by the Assignee.

## 2.2 Excluded Assets

Notwithstanding any provision of this Agreement to the contrary, as of the Effective Time the assets of the Purchased Entities do not include any of the following assets, together with any other assets as set forth in Exhibit 2.2 of the Disclosure Schedule (collectively, the “**Excluded Assets**”):

- (a) the Tax records and Tax Returns, and books and records pertaining thereto and other documents, in each case, that primarily or solely relate to any of the Excluded Liabilities; *provided* that the applicable Purchased Entity may take copies of all Tax records and books and records pertaining to such records (as redacted, if applicable)

to the extent necessary or useful for the carrying on of the Business after Closing, including the filing of any Tax Return; *provided*, however, that Residualco shall retain the original copies of any of the records required to be provided to the applicable Purchased Entity hereunder (and provide the applicable Purchased Entity with a copy thereof) to the extent Residualco is required to do so under Applicable Law;

- (b) any cash, deposits or other amounts owned or in the name of Validus Parent;
- (c) any other assets of Validus Parent that are not Purchased Validus Parent Assets or contemplated in Section 2.2(b);
- (d) the Administrative Expense Closing Amount;
- (e) the Excluded Contracts;
- (f) all communications, information or records, written or oral, that are in any way related to: (i) the transactions contemplated by this Agreement; (ii) the sale of the Purchased Assets; (iii) any Excluded Asset; or (iv) any Excluded Liability;
- (g) the Equity Interests of each entity set forth in Exhibit 2.2(g) of the Disclosure Schedule; and
- (h) any rights that accrue to Residualco under the Transaction Documents.

but for greater certainty, “Excluded Assets” shall not include any right, title and interest of the Purchased Entities in and to any input tax credits or rebates that may become due and payable thereto in respect of GST/HST on or after the Effective Time as a result of taxes paid on or after the Effective Time, notwithstanding that they relate to supplies arising prior to the Effective Time for which payment was made on or after the Effective Time and not prior thereto.

### 2.3 Liabilities of Purchased Entities

Pursuant to the Reverse Vesting Order, and in accordance with the Implementation Steps and this Agreement (including Section 2.4), as of the Effective Time the only obligations and liabilities of the respective Purchased Entities consist of the items specifically set forth below (collectively, the “**Assumed Liabilities**”) with respect to such Purchased Entity:

- (a) *Post-Filing Claims* – all Post-Filing Claims;
- (b) *IFPC Note 1* – all liabilities of IFPC under the IFPC Note 1;
- (c) *IFPC Note 2* – all liabilities of IFPC under the IFPC Note 2;
- (d) *IFPC Note 3* – all liabilities of IFPC under the IFPC Note 3;

- (e) *Ordinary Course Liabilities of Purchased Entities* – all ordinary course liabilities of the Purchased Entities to be performed after the Effective Time and that arise solely and exclusively from events occurring from and after the Effective Time including, without limitation, liabilities relating to Employees who are hired or whose employment continues pursuant to Section 2.1.1(c) and all ordinary course liabilities that arise before or after the Effective Date pursuant to Continuing Contracts;
- (f) *Taxes* – Tax liabilities of the Purchased Entities for any tax period or the portion thereof (allocated in accordance with Section 6.3.3 in respect of Straddle Periods) beginning on or after the Effective Time (other than Taxes assessed after the Effective Time that are in respect of any transactions or event that occurred prior to the Effective Time; but for greater certainty, this proviso shall not include or limit any right, title and interest of the Purchased Entities in and to any amounts that may become payable by any Governmental Authority on or after the Effective Time as a result of taxes paid by the Purchased Entities on or after the Effective Time, notwithstanding that they relate to supplies arising prior to the Effective Time for which payment was made on or after the Effective Time and not prior thereto) and for greater certainty, including any Transfer Taxes exigible in respect of the transfer and issuance of the Purchased Assets in consideration for the Credit Bid Consideration or any refunds of taxes relating thereto, but excluding any Tax liability of Validus Parent (or any person related to it) for which any of the Purchased Entities may have joint or several liability under the Tax Act whether occurring before or after the Effective Time and whether assessed or not;
- (g) *Municipal Taxes* – all municipal taxes owing with respect to any real property owned by any of the Purchased Entities which have priority over the security interest of MEFL pursuant to section 349(3) of the *Municipal Act* (Ontario);
- (h) *Intercompany Claims* – any Intercompany Claim against such Purchased Entity that may be asserted by or on behalf of another Purchased Entity (but excluding any such Intercompany Claim set forth in Exhibit 2.3(h) of the Disclosure Schedule);
- (i) *Priority Payments* – the Priority Payments of the Purchased Entities; and
- (j) *Further Assumed Liabilities* – all liabilities set forth in Exhibit 2.3(j) of the Disclosure Schedule.

Notwithstanding the foregoing, nothing in this Agreement shall give or shall be interpreted as giving any rights to any Person in respect of Claims against any Purchased Entity.

## **2.4 Excluded Liabilities**

Except to the extent expressly assumed pursuant to or specifically contemplated by Section 2.3, all Claims against the Purchased Entities and all debts, obligations and liabilities of the Purchased Entities, or any predecessors of the Purchased Entities, of any kind or nature,



whether accrued, contingent, known or unknown, express or implied, primary or secondary, direct or indirect, liquidated, unliquidated, absolute, accrued, contingent or otherwise, and whether due or to become due (collectively, the “**Excluded Liabilities**”) are, in accordance with Section 2.5, hereby assigned to and become the sole obligation of Residualco pursuant to the terms of the Reverse Vesting Order, so that as of and from the Effective Time, the Purchased Entities shall not have any obligation, duty, or liability of any kind whatsoever with respect to any such Excluded Liabilities. For the avoidance of doubt, each of the liabilities set forth in Exhibit 2.4 of the Disclosure Schedule is an Excluded Liability. All Intercompany Claims that do not constitute Assumed Liabilities in accordance with Section 2.3(h) (including, for the avoidance of doubt, any Intercompany Claim that may be asserted by or on behalf of Validus Parent against any Purchased Entity) shall be Excluded Liabilities.

## **2.5 Transfer of Excluded Liabilities to Residualco**

Pursuant to the Reverse Vesting Order, and in accordance with the Implementation Steps, the Purchased Entities, by the Monitor, hereby assign, transfer and convey the Excluded Liabilities to Residualco, and Residualco henceforth assumes the applicable Excluded Liabilities. All of the Excluded Liabilities are hereby discharged from the Purchased Entities pursuant to the Reverse Vesting Order.

## **2.6 Transfer of Excluded Assets to Residualco**

Pursuant to the Reverse Vesting Order, and in accordance with the Implementation Steps, the Purchased Entities, by the Monitor, hereby assign, transfer and convey the Excluded Assets to Residualco, and the Excluded Assets as of the Effective Date are vested in Residualco pursuant to the Reverse Vesting Order.

## **2.7 Closing Reorganization**

- (a) On or prior to the Effective Date, the Vendors shall effect the Implementation Steps.
- (b) The Implementation Steps shall occur and be deemed to have occurred in the order and manner to be set out therein.
- (c) The steps to be taken and the compromises and releases to be effective on the Effective Date shall occur and be deemed to occur and be effected in the steps and sequential order set forth in the Implementation Steps.

## **2.8 Consideration for Purchased Assets**

- (a) As consideration for the Purchased Assets (the “**Credit Bid Consideration**”), effective as of the Effective Time:
  - (i) the Assignee (x) shall pay to the Monitor the Priority Payments Closing Amount, such amount to be distributed by the Monitor in accordance with Section 6.11, (y) shall assume the Priority Payments of Validus Parent that are in excess of the Priority Payments Closing Amount, if any, on the

- Effective Date, and (z) hereby indemnifies and holds harmless the Monitor and the Receiver for any liability in respect of the Priority Payments of Validus Parent that are in excess of the Priority Payments Closing Amount, if any (together with any fees and expenses of the Monitor or the Receiver incurred in connection therewith, the “**Priority Payments Indemnity**”);
- (ii) the Assignee shall pay to the Monitor the Administrative Expense Closing Amount;
  - (iii) MEFL releases Validus Parent and the Purchased Entities from all amounts outstanding and obligations owing by Validus Parent and the Purchased Entities to MEFL pursuant to the Participation Agreement Documents; and
  - (iv) MEFL conveys and delivers to IFPC the title to the Leased Property held by MEFL on an “as is, where is” basis pursuant and subject to the Reverse Vesting Order.
- (b) To secure the Priority Payments Indemnity set out in Section 2.8(a)(i), the Monitor shall be granted a super-priority charge on the Purchased Interests (excluding the Kingston GP Interests and the Kingston LP Interests) pursuant to the Reverse Vesting Order (the “**Priority Payments Indemnity Charge**”). The Priority Payments Indemnity Charge shall terminate automatically upon the later of (i) the payment in satisfaction of all of the Priority Payments of Validus Parent in excess of the Priority Payments Closing Amount, as determined by the Canada Revenue Agency (if any); and (ii) receipt of confirmation from the Canada Revenue Agency by the Assignee, on notice to the Monitor, that no Priority Payments of Validus Parent in excess of the Priority Payment Closing Amount are owing.
- (c) For the avoidance of doubt, all outstanding obligations of IFPC and MEFL, as applicable, owing under the Lease Agreement hereby merge, and each of IFPC and MEFL is hereby released from all such Claims, obligations and liabilities under the Lease Agreement effective as of the Effective Time.
- (d) MEFL and its Affiliates or the Assignee and its Affiliates, on the one hand, and the Vendors, and any of their Affiliates, on the other hand, shall be entitled to deduct and withhold from any amounts otherwise payable pursuant to this Agreement such amounts as such Person is required to deduct and withhold under Applicable Law. Before making any such deduction or withholding, the withholding agent shall use commercially reasonable efforts to provide the Person in respect of which deduction or withholding is proposed to be made reasonable advance written notice of the intention to make such deduction or withholding, and the withholding agent shall cooperate with any reasonable request from such Person to obtain reduction of or relief from such deduction or withholding to the extent permitted by Applicable Law. To the extent that amounts are so deducted and withheld and remitted to the appropriate Taxing Authority, such amounts shall be treated for all

purposes of this Agreement as having been paid to the Person in respect of which such deduction and withholding was made.

- (e) The Credit Bid Consideration shall be allocated among the Purchased Assets as mutually agreed in writing by MEFL, the Assignee and the Vendors prior to the Effective Date. Notwithstanding the foregoing, the Parties agree that the consideration payable for the Purchased Validus Parent Assets shall be paid and satisfied by the assumption by the Assignee of the Priority Payments of Validus Parent on the Effective Date under Section 2.8(a)(i) in an amount to be agreed in writing by MEFL, the Assignee and the Vendors.

## **2.9 As is, Where is**

Each of MEFL and the Assignee acknowledges, agrees and confirms that, at the Effective Time, the Purchased Assets shall be sold and delivered to MEFL or the Assignee, as applicable, on an “as is, where is” basis, subject only to the representations and warranties contained herein. Other than those representations and warranties contained herein, none of which shall survive closing, no representation, warranty or condition is expressed or can be implied as to title, encumbrances, description, fitness for purpose, merchantability, condition or quality or in respect of any other matter or thing whatsoever. Any information provided in any schedule, exhibit or appendix to a Transaction Document, including any information contained in the Disclosure Schedule, shall not constitute a representation or warranty given by any of the Receiver, the Monitor or a Validus Entity.

## **ARTICLE 3 REPRESENTATIONS AND WARRANTIES OF THE VENDORS**

The Vendors represent and warrant as of the Effective Date to MEFL and the Assignee as follows, and acknowledge and agree that MEFL and the Assignee are relying upon such representations and warranties in connection with the assignment of the Purchased Assets and the delivery of title to the Leased Property hereunder:

### **3.1 Due Authorization and Enforceability of Obligations**

Subject to the Court’s granting of the Initial Order, the SISP Order and the Reverse Vesting Order, the Vendors have the requisite power and authority to enter into this Agreement and to carry out the obligations of the Vendors under this Agreement, and this Agreement constitutes a legal, valid and binding obligation of them, enforceable against them in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium, or other similar laws relating to or limiting creditors’ rights generally or by equitable principles relating to enforceability.

### **3.2 Residence**

None of the Vendors is a non-resident of Canada for the purposes of the Tax Act (and the Kingston LP is a “Canadian partnership” as defined in the Tax Act).

### 3.3 GST/HST Registration

The Validus Entities (other than Validus Hosting) are registered for GST/HST purposes under Part IX of the ETA with the registration numbers set forth below:

Validus Parent	-	747594133 RT0002
IFPC	-	886674696 RT0002
Bay Power	-	776287062 RT0002
Kap Power	-	777056946 RT0002
Kingston LP	-	777056946 RT0002
Kingston GP	-	777056946 RT0002

### 3.4 No Encumbrances

Neither the Receiver or the Monitor nor the Vendors have engaged in any act that has resulted in an Encumbrance affecting any of the Purchased Assets or the Leased Property, other than a Permitted Encumbrance or any charge created by the Appointment Order, the SISP Order or the Reverse Vesting Order or arising by operation of Applicable Law in the ordinary course of the Business.

## ARTICLE 4 REPRESENTATIONS AND WARRANTIES OF THE ASSIGNEE

The Assignee represents and warrants as of the Effective Date to the Vendors as follows, and acknowledges that the Vendors are relying upon the following representations and warranties in connection with the assignment of the Purchased Assets and the delivery of title to the Leased Property hereunder:

#### 4.1 Due Authorization and Enforceability of Obligations

Subject to this Agreement being selected as the Successful Bid, this Agreement has been duly authorized, executed and delivered by the Assignee and constitutes a legal, valid and binding obligation of it, enforceable against it in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium, or other similar laws relating to or limiting creditors' rights generally or by equitable principles relating to enforceability.

#### 4.2 Existence and Good Standing

The Assignee is validly existing and in good standing under the laws of Ontario and has all requisite power and authority to execute and deliver this Agreement and to perform its obligations hereunder and consummate the transactions contemplated by this Agreement.

#### **4.3 Sophisticated Party**

The Assignee: (a) is a sophisticated party with sufficient knowledge and experience to evaluate properly the terms and conditions of this Agreement, (b) has conducted its own analysis and made its own decision to enter into this Agreement and has obtained such independent advice in this regard as it deemed appropriate; and (c) has not relied on such analysis or decision of any Person other than its own independent advisors.

#### **4.4 Absence of Conflicts**

Subject to this Agreement being selected as the Successful Bid, the execution and delivery of this Agreement by and the completion by the Assignee of its obligations hereunder and the consummation of the transactions contemplated herein do not and will not violate or conflict with any Applicable Law, or any of its properties or assets, and will not result (with due notice or the passage of time or both) in a violation, conflict or breach of, or constitute a default under, or require any consent to be obtained under its certificate of incorporation, articles, by-laws or other constituent documents.

#### **4.5 Approvals and Consents**

Subject to this Agreement being selected as the Successful Bid, the execution and delivery of this Agreement by the Assignee, the completion by the Assignee of its obligations hereunder and the consummation by the Assignee of the transactions contemplated herein, do not and will not require any consent or approval or other action, with or by, any Governmental Authority, other than as contemplated by any Order.

#### **4.6 No Actions**

There is not, as of the date hereof, pending or, to the Assignee's knowledge, threatened against it or any of its properties, nor has the Assignee received notice in respect of, any claim, potential claim, litigation, action, suit, arbitration, investigation or other proceeding before any Governmental Authority or legislative body that, would prevent it from executing and delivering this Agreement, performing its obligations hereunder and consummating the transactions and agreements contemplated by this Agreement.

#### **4.7 Financial Ability**

The Assignee has and will have, at all relevant times, the financial ability and sufficient funds to perform all of its obligations under this Agreement, and the availability of such funds will not be subject to the consent, approval or authorization of any Person or the availability of any financing.

#### **4.8 Authorization of Delivery of the Credit Bid Consideration**

The Assignee is duly authorized to deliver the Credit Bid Consideration to be delivered by it in connection with the consummation of this Agreement and the transactions contemplated hereunder.

#### **4.9 Investment Canada Act**

The Assignee is not a “non-Canadian” or is a “trade agreement investor”, each within the meaning of the Investment Canada Act.

#### **4.10 Residence**

The Assignee is not a non-resident of Canada for the purposes of the Tax Act.

### **ARTICLE 5 REPRESENTATIONS AND WARRANTIES OF MEFL**

MEFL represents and warrants as of the Effective Date to the Vendors as follows, and acknowledges that the Vendors are relying upon the following representations and warranties in connection with the assignment of the Purchased Assets and the delivery of title to the Leased Property hereunder:

#### **5.1 Due Authorization and Enforceability of Obligations**

Subject to this Agreement being selected as the Successful Bid, this Agreement has been duly authorized, executed and delivered by MEFL, and, assuming the due authorization, execution and delivery by it, this Agreement constitutes a legal, valid and binding obligation of it, enforceable against it in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or limiting creditors' rights generally or by equitable principles relating to enforceability.

#### **5.2 Existence and Good Standing**

MEFL is validly existing and in good standing under the laws of Canada and has all requisite power and authority to execute and deliver this Agreement and to perform its obligations hereunder and consummate the transactions contemplated by this Agreement.

#### **5.3 Sophisticated Party**

MEFL: (a) is a sophisticated party with sufficient knowledge and experience to evaluate properly the terms and conditions of this Agreement; (b) has conducted its own analysis and made its own decision to enter into this Agreement and has obtained such independent advice in this regard as it deemed appropriate; and (c) has not relied on such analysis or decision of any Person other than its own independent advisors.

#### **5.4 Absence of Conflicts**

Subject to this Agreement being selected as the Successful Bid, the execution and delivery of this Agreement by and the completion by MEFL of its obligations hereunder and the consummation of the transactions contemplated herein by it do not and will not violate or conflict with any Applicable Law, or any of its properties or assets, and will not result (with due notice or the passage of time or both) in a violation, conflict or breach by it of, or constitute a default by it

under, or require any consent to be obtained by it under its certificate of incorporation, articles, by-laws or other constituent documents.

### **5.5 Approvals and Consents**

Subject to this Agreement being selected as the Successful Bid, the execution and delivery of this Agreement by MEFL, the completion by MEFL of its obligations hereunder and the consummation by MEFL of the transactions contemplated herein, do not and will not require any consent or approval or other action, with or by, any Governmental Authority, other than as contemplated by any Order.

### **5.6 No Actions**

There is not, as of the date hereof, pending or, to MEFL's knowledge, threatened against it or any of its properties, nor has MEFL received notice in respect of, any claim, potential claim, litigation, action, suit, arbitration, investigation or other proceeding before any Governmental Authority or legislative body that, would prevent it from executing and delivering this Agreement, performing its obligations hereunder and consummating the transactions and agreements contemplated by this Agreement.

### **5.7 Financial Ability**

MEFL has and will have at all relevant times, the financial ability and sufficient funds to perform all of its obligations under this Agreement, and the availability of such funds will not be subject to the consent, approval or authorization of any Person or the availability of any financing.

### **5.8 Authorization of Delivery of the Credit Bid Consideration**

MEFL is duly authorized to deliver the Credit Bid Consideration to be delivered by it in connection with the consummation of this Agreement and the transactions contemplated hereunder.

### **5.9 Investment Canada Act**

MEFL is a "trade agreement investor" within the meaning of the Investment Canada Act.

### **5.10 GST/HST Registration**

MEFL is registered for GST/HST purposes under Part IX of the ETA and its registration number is 86299 2021 RT001.

### **5.11 Residence**

MEFL is not a non-resident of Canada for the purposes of the Tax Act.

**ARTICLE 6**  
**ADDITIONAL AGREEMENTS OF THE PARTIES**

**6.1 Access to Information**

Following the Effective Date, the Assignee shall retain and make all books and records of the Purchased Entities available to the Receiver, the Monitor, any trustee in bankruptcy of the Receivership Debtors or any of their respective Affiliates upon at least three (3) Business Days' prior notice, for a period of three (3) years after the Effective Date, and shall, at such party's expense, permit any of the foregoing Persons to take copies thereof as they may determine to be necessary or useful to accomplish their respective roles; *provided* that the Assignee shall not be obligated to make such books and records available to the extent that doing so would: (a) violate Applicable Law; or (b) jeopardize the protection of a solicitor-client privilege.

**6.2 Covenants Relating to this Agreement**

6.2.1 Each of the Parties shall perform all obligations required to be performed by the applicable Party under this Agreement and do all such other acts and things as may be necessary or desirable in order to consummate and make effective, as soon as reasonably practicable, the transactions contemplated by this Agreement and, without limiting the generality of the foregoing, each Party shall and, where appropriate, shall cause each of its Affiliates and representatives to not take any action, or refrain from taking any action, or permit any action to be taken or not taken, which would reasonably be expected to prevent, materially delay or otherwise impede the consummation of the transactions contemplated by this Agreement.

6.2.2 The Vendors, the Assignee and MEFL agree to execute and deliver such other documents, certificates, agreements and other writings, and to take such other actions to consummate or implement as soon as reasonably practicable, the transactions contemplated by this Agreement.

6.2.3 The Vendors, the Assignee and MEFL agree to use commercial reasonable efforts to timely prepare and file all documentation and pursue all steps reasonably necessary to obtain any material third-party consents and approvals as may be required in connection with the transaction contemplated by this Agreement.

**6.3 Tax Matters**

6.3.1 Each of MEFL, the Assignee and the Vendors agrees to furnish or cause to be furnished to each other, as promptly as practicable, such information and assistance relating to the Leased Property, the Purchased Assets and the Assumed Liabilities as is reasonably necessary for the preparation and filing of any Tax Return, claim for refund or other required filings relating to Tax matters, for the preparation for and proof of facts during any Tax audit, for the preparation for any Tax protest, for the prosecution of any suit or other proceedings relating to Tax matters and for the answer to any governmental or regulatory inquiry relating to Tax matters. Each of MEFL, the Assignee and the Vendors also agrees to furnish or cause to be furnished to each other, as promptly as practicable, such information and assistance relating to the Validus Entities and the



Purchased Assets as is reasonably necessary for MEFL to assign or transfer Purchased Assets to the Assignee in a tax-efficient manner, including making such joint elections at such amounts in respect of such property as MEFL may reasonably require. Each of MEFL, the Assignee and the Vendors agrees to elect pursuant to subsection 256(9) of the Tax Act that the time of any acquisition of control of a Purchased Entity acquired under this Agreement is the Effective Time.

6.3.2 MEFL, the Assignee and the Vendors shall each be responsible for the preparation of their own Tax Returns required to be filed under the Tax Act and the ETA and other similar forms and returns in accordance with Applicable Law but shall cooperate to execute any joint tax elections as MEFL may reasonably require and agreed to by the Vendors, acting reasonably. The Purchased Entities shall not amend a Tax Return of any Purchased Entity related to a Tax period ending on or before the Effective Date without the consent of the Monitor.

6.3.3 For all purposes under this Agreement for which it is necessary to apportion taxes in a taxable period which includes (but does not end on) the Effective Date (a “**Straddle Period**”) between the portion of such period ending immediately prior to the Effective Time (such portion of such Straddle Period, the “**Pre-Closing Straddle Tax Period**”) and the portion of such period beginning at the Effective Time (such portion of such Straddle Period, the “**Post-Closing Straddle Tax Period**”): (i) all personal property Taxes and similar ad valorem obligations shall be apportioned between the Pre-Closing Straddle Tax Period and the Post-Closing Straddle Tax Period on a per diem basis, with the portion allocated to the Pre-Closing Straddle Tax Period including the Effective Date for these purposes; and (ii) in the case of any Tax based upon or related to income, receipts, sales, use, GST/HST, payroll or withholding, the portion of such Tax allocable to the Pre-Closing Straddle Tax Period shall be deemed to be the amount that would be payable if any relevant tax period ended immediately before the Effective Time (but taking into account in that tax period any settlement of or extinguishment of any amount under the Reverse Vesting Order, whether it occurred prior to or at the Effective Time). To the extent such closing of the books method is not incorporated under the law of a jurisdiction for particular types of entities, allocations of income among the periods shall be made to replicate the closing of the books method to the maximum extent possible.

6.3.4 The Assignee shall be responsible for and shall pay, or cause to be paid, any Transfer Tax in respect of the purchase and sale of the Purchased Assets under this Agreement and such Transfer Tax shall be remitted to the appropriate Governmental Authority as provided for under Applicable Law (except any Transfer Tax which, under Applicable Law, is collectible by Validus Parent, in which case such Transfer Tax shall be collected by and remitted by Validus Parent to the appropriate Governmental Authority as provided for under the Applicable Law). The Parties shall reasonably cooperate to mitigate and/or eliminate the amount of Transfer Taxes resulting from the transactions contemplated herein. MEFL, the Assignee and the Vendors acknowledge and agree that no GST/HST is exigible from the Assignee or MEFL in respect of the purchase of the Hut 8 Litigation, the Purchased Interests or the Validus Hosting Interests or the issuance or transfer of the IFPC Note 1, the IFPC Note 2, the IFPC Note 3 and the IFPC Interests.

6.3.5 IFPC shall be responsible for and shall pay, or cause to be paid, any Transfer Tax in respect of the payment of any amount by IFPC under or in respect of the Lease Agreement or any other Participation Agreement Document (including for greater certainty the transfer of the

Leased Property by MEFL to IFPC under this Agreement) and the unpaid GST/HST in respect of amounts due under or in respect of the Lease Agreement or any other Participation Agreement Document that are paid by IFPC hereunder and such Transfer Tax shall be remitted to the appropriate Governmental Authority as provided for under Applicable Law; *provided* that GST/HST in respect thereof shall be fully paid and satisfied by IFPC to MEFL by the issuance of the IFPC Note 3 by IFPC to MEFL, and MEFL shall remit such GST/HST to the appropriate Governmental Authority as provided for under the ETA.

#### **6.4 Administrative Expense Closing Amount**

6.4.1 The Assignee shall pay the Administrative Expense Closing Amount to the Monitor on the Effective Date, which Administrative Expense Closing Amount shall be held in trust by the Monitor for the benefit of Persons entitled to be paid the Administrative Expense Costs.

6.4.2 From time to time after the Effective Date, the Monitor may pay from the Administrative Expense Closing Amount the Administrative Expense Costs at its sole discretion and without further authorization from the Assignee or MEFL. Any unused portion of the Administrative Expense Closing Amount after payment or reservation for all Administrative Expense Costs, as determined by the Monitor, shall be transferred by the Monitor to the Assignee.

#### **6.5 Assumption of Liabilities**

Effective as of the Effective Time (and without duplication), each of the Purchased Entities retains and remains liable for the Assumed Liabilities of such Purchased Entity in accordance with Sections 2.3, 2.4 and 2.5 and the Reverse Vesting Order; *provided* that all of the Priority Payments of Validus Parent, if any, that are in excess of the Priority Payments Closing Amount shall be assumed by the Assignee and shall be paid or otherwise discharged within six (6) months of assessment from the Canada Revenue Agency, or such other period of time as agreed between the Assignee and the Canada Revenue Agency.

For greater certainty, the retention of the Assumed Liabilities by the Purchased Entities, shall not constitute part of the consideration payable by the Assignee (or MEFL) for the Purchased Assets hereunder.

#### **6.6 Certain Payments or Instruments Received from Third Persons**

6.6.1 To the extent that, after the Effective Date: (i) the Assignee or any of its Affiliates receives any payment or instrument that is for the account of the Vendors according to the terms of any Transaction Document, the Assignee shall promptly deliver such amount or instrument to the Vendors; or (ii) the Vendors receive any payment or instrument that is for the account of the Assignee or any Purchased Entity according to the terms of any Transaction Document or that relates to the Business, including any governmental assistance refunds so received after the Effective Date, the Vendors shall promptly deliver such amount or instrument to the Assignee.

6.6.2 All amounts due and payable under this Section 6.6 shall be due and payable by the applicable Party in immediately available funds, by wire transfer to the account designated in

writing by the relevant Party. Notwithstanding the foregoing, each Party hereby undertakes to use its commercially reasonable efforts to direct or forward all bills, invoices or like instruments to the appropriate Party.

## **6.7 Misallocated Assets**

6.7.1 If: (i) after the Effective Date, Validus Parent or Residualco is the owner of, receives or otherwise comes to possess any property that was designated under this Agreement to be Purchased Assets or Assumed Liabilities or any assets of the Validus Entities that were not Excluded Assets, or (ii) at any time after the Effective Date, with the consent of the Monitor and MEFL (both such consents not to be unreasonably withheld), the Assignee designates an Excluded Contract to be an Assumed Liability: (a) the Assignee will promptly give written notice to the Monitor; and (b) the Monitor will promptly cause Validus Parent or Residualco, as applicable, to transfer, assign, convey and deliver (or cause to be transferred, assigned, conveyed and delivered) such assets or liabilities to the Assignee. Each Party will cooperate with the other Party and use its commercially reasonable efforts to set up procedures and notifications as are reasonably necessary or advisable to effectuate the assignment, transfer, conveyance and delivery, or assumption, contemplated by this Section 6.7.1.

6.7.2 In the event that the Vendors refuse to consent to the Assignee's designation after the Effective Date of any Excluded Asset or Excluded Liability as a Purchased Asset or as an Assumed Liability, as applicable, the Assignee or the Vendors may submit such dispute to the Court for final determination. Each Party shall bear its own costs and expenses in connection with any such dispute.

6.7.3 Nothing in this Section 6.7 shall prevent the Receiver or the Monitor from completing the administration of the Receivership Proceedings or the CCAA Proceedings and seeking Orders discharging or terminating such proceedings.

## **6.8 Releases by the Assignee and MEFL**

6.8.1 Except in connection with any obligations of the Receiver or the Monitor contained in this Agreement and any Transaction Documents, each of the Assignee and MEFL hereby releases and forever discharges KSV, in its capacity as the Receiver and the Monitor, and its successors and assigns, and all officers, directors, partners, members, shareholders, limited partners, employees, agents, financial and legal advisors of each of them, from any and all actual or potential Released Claims which such Person had, has or may have in the future to the extent relating to transactions contemplated by the Transaction Documents, including the Leased Property, the Purchased Assets or the Assumed Liabilities, save and except for Released Claims arising out of fraud, bad faith or illegal acts (unless such Person believed in good faith that its conduct was legal).

6.8.2 Except in connection with any obligations of the Receiver or the Monitor contained in this Agreement and any Transaction Documents, immediately following the Effective Time, the Assignee shall cause the Purchased Entities to release and forever discharge KSV, in its capacity as the Receiver and the Monitor, and its successors and assigns, and all officers, directors,

partners, members, shareholders, limited partners, employees, agents, financial and legal advisors of each of them, from any and all actual or potential Causes of Action against such Persons, except for Causes of Action related to any act or omission that is determined in a Final Order of a court of competent jurisdiction to have constituted actual fraud, willful misconduct, or gross negligence (*provided* that in all respects such Persons shall be entitled to reasonably rely upon the advice of counsel with respect to their applicable duties and responsibilities), and such release to be in the form as agreed among the Parties.

#### **6.9 Release by the Receiver**

Except in connection with any obligations of the Assignee and MEFL contained in this Agreement and any Transaction Documents, the Receiver hereby releases and forever discharges the Assignee, MEFL, the Purchased Entities and their respective Affiliates, and each of their respective successors and assigns, and all officers, directors, partners, members, shareholders, limited partners, employees, agents, financial and legal advisors of each of them, from any and all actual or potential Released Claims which such Person had, has or may have in the future to the extent relating to the transactions contemplated by the Transaction Documents, including the Leased Property, the Purchased Assets or the Assumed Liabilities, save and except for Released Claims arising out of fraud, bad faith or illegal acts (unless such Person believed in good faith that its conduct was legal).

#### **6.10 Letters of Credit and Deposits**

To the extent required, it shall be the sole responsibility of the Assignee, and the Assignee hereby covenants and agrees, within thirty (30) days of the Effective Date, to issue replacement letters of credit and/or deposits which have currently been provided by Validus Parent and are listed in Exhibit 6.10 of the Disclosure Schedule; *provided* that Validus Parent shall have no obligation to ensure that any such existing letters of credit or deposits remain in place after the Effective Date and existing letters of credit or deposits shall not be used as security for obligations after the Effective Date without the consent of the Monitor (who may request security or collateral in connection with providing any such consent).

#### **6.11 Monitor to Distribute the Priority Payments Closing Amount**

Promptly following the receipt of the Priority Payments Closing Amount, but in any event no later than five (5) Business Days after the Effective Date, the Monitor shall distribute to such parties as may be entitled to payment such amounts as may be required to satisfy the Priority Payments of Validus Parent known at the Effective Time and, after such obligations are paid in full, such amounts as may be required to satisfy the Priority Payments of the Purchased Entities known at the Effective Time. The Monitor shall promptly provide proof of such payments to the Assignee and MEFL.

**ARTICLE 7  
INSOLVENCY PROVISIONS**

**7.1 Court Orders and Related Matters**

In the event that, following the Effective Time, an appeal is taken or a stay pending appeal is requested from the Reverse Vesting Order, the Monitor shall promptly notify MEFL and the Assignee of such appeal or stay request and shall promptly provide MEFL and the Assignee copies of the related notice of appeal or order of stay. The Monitor shall also provide MEFL and the Assignee with written notice of any motion or application filed in connection with any appeal from such orders. The Monitor agrees to take all action as may be reasonable and appropriate to defend against such appeal or stay request.

**ARTICLE 8  
CLOSING**

**8.1 Location and Time of the Closing**

The Closing shall take place at the Effective Time on the Effective Date by means of an electronic closing, or such other place or fashion as may be agreed in writing upon by the Vendors and MEFL in which the Transaction Documents will be delivered by e-mail exchange of signature pages in PDF or functionally equivalent electronic format, which delivery will be effective without any further physical exchange of the originals or copies of the originals except as otherwise provided in this Agreement.

**8.2 The Vendors' Deliveries at Closing**

The Vendors hereby deliver to MEFL or the Assignee, as the case may be and as specified herein, contemporaneously with the execution and acceptance of this Agreement, the following:

- (a) a true copy of each of the Appointment Order, the SISP Order and the Reverse Vesting Order, each of which shall be Final Orders;
- (b) the share and unit certificates representing the Purchased Interests and the Validus Hosting Interests endorsed in blank for transfer or accompanied by irrevocable stock transfers executed in blank by the holders of record and an updated register of common equity or record of limited partners, as applicable, maintained by or on behalf of each of Bay Power, Kap Power, Kingston GP, Kingston LP and Validus Hosting reflecting the transfer of the Purchased Interests and the Validus Hosting Interests;
- (c) the IFPC Note 1, the IFPC Note 2 and the IFPC Note 3;
- (d) a share certificate in the name of the Assignee representing the IFPC Interests in accordance with Section 2.1.1(d);
- (e) actual possession of the Purchased Assets;

- (f) the Disclosure Schedule; and
- (g) evidence of the cancellation of the IFPC Legacy Shares in accordance with Section 2.1.1(e).

### **8.3 Assignee's Deliveries at Closing**

The Assignee hereby delivers to the Vendors, contemporaneously with the execution and acceptance of this Agreement, the following:

- (a) a certificate of an authorized signatory of the Assignee (in such capacity and without personal liability), in form and substance reasonably satisfactory to the Vendors: (i) certifying that the Assignee has adopted resolutions (in a form attached to such certificate) authorizing the execution, delivery and performance of this Agreement and the transactions contemplated herein, as applicable, which resolutions are in full force and effect and have not been superseded, amended or modified as of the Effective Date; and (ii) certifying as to the incumbency and signature of the authorized signatory of the Assignee executing this Agreement and the other Transaction Documents contemplated herein, as applicable;
- (b) a certificate of an authorized signatory of the Assignee (in such capacity and without personal liability), in form and substance reasonably satisfactory to the Monitor, confirming that each of the conditions precedent in Section 3.1 of the Terms and Conditions have been fulfilled, performed or waived;
- (c) the release contemplated by Section 6.8.2; and
- (d) all other documents required to be delivered by the Assignee on the Effective Date pursuant to this Agreement or Applicable Law or that have been reasonably requested by the Receiver in good faith prior to the Effective Time.

### **8.4 MEFL's Deliveries at Closing**

MEFL hereby delivers to the Monitor, contemporaneously with the execution and acceptance of this Agreement, the following:

- (a) a copy of a Bill of Sale addressed to IFPC for the Leased Property on an "as is, where is" basis, in a form and on terms acceptable to MEFL, acting reasonably;
- (b) a certificate of an authorized signatory of MEFL (in such capacity and without personal liability), in form and substance reasonably satisfactory to the Monitor, certifying that MEFL has adopted resolutions (in a form attached to such certificate) authorizing the execution, delivery and performance of this Agreement and the transactions contemplated herein, as applicable, which resolutions are in full force and effect and have not been superseded, amended or modified as of the Effective Date, and certifying as to the incumbency and signature of the authorized signatory

of MEFL executing this Agreement and the other Transaction Documents contemplated herein, as applicable;

- (c) a certificate of an authorized signatory of MEFL (in such capacity and without personal liability), in form and substance reasonably satisfactory to the Monitor, confirming that each of the conditions precedent in Section 3.1 of the Terms and Conditions have been fulfilled, performed or waived; and
- (d) all other documents required to be delivered by MEFL on the Effective Date pursuant to this Agreement or Applicable Law or that have been reasonably requested by the Receiver in good faith prior to the Effective Time.

### **8.5 Monitor's Certificate**

As soon as practicable following the Effective Time, the Monitor shall file a copy of the Monitor's Certificate with the Court (and shall provide a true copy of such filed certificate to MEFL and the Assignee). The Parties hereby acknowledge and agree that the Monitor will be entitled to file the Monitor's Certificate with the Court, without independent investigation, upon receiving written confirmation from the Vendors, MEFL and the Assignee that the Effective Time and Closing have occurred, and the Monitor will have no liability to the Assignee, MEFL or any other Person as a result of filing the Monitor's Certificate in accordance with this Section 8.5.

### **8.6 Ordering of Closing Transactions**

Notwithstanding any term to the contrary herein, all actions taken and transactions consummated at the Closing shall be deemed to have occurred in the manner and sequence set forth in the Implementation Steps and the Reverse Vesting Order (subject to the terms of any escrow agreement or arrangement among the Parties relating to the Closing), and no such transaction shall be considered consummated unless all are consummated.

### **8.7 Further Assurances**

As reasonably required by a Party in order to effectuate the transactions contemplated by this Agreement, the Assignee, MEFL and the Vendors shall execute and deliver after the Closing such other documents, and shall take such other actions, as are necessary or appropriate, to implement and make effective the transactions contemplated by this Agreement.

## **ARTICLE 9 GENERAL MATTERS**

### **9.1 Confidentiality**

After the Effective Time, the Receiver and the Monitor shall maintain the confidentiality of all confidential information relating to the Business and the Validus Entities (but does not include information that is or becomes generally available to the public other than as a result of disclosure by the Receiver, the Monitor or their representatives in breach of this Agreement or that is received by the Receiver or the Monitor from an independent third party that, to the knowledge

of the Receiver or the Monitor, as applicable, obtained it lawfully and was under no duty of confidentiality (except to the extent that applicable privacy laws do not exclude such information from the definition of personal information) or that is independently developed by the Receiver or the Monitor or their representatives without reference to any Confidential Information), including the Confidential Information, except any disclosure of such information and records as may be required by Applicable Law. If the Receiver, the Monitor, Validus Parent or Residualco, or any of its or their respective representatives, becomes legally compelled by deposition, interrogatory, request for documents, subpoena, civil investigative demand, or similar judicial or administrative process, to disclose any such information, such party shall use its commercially reasonable efforts, or shall use its commercially reasonable efforts to cause the Receiver or its representative to, provide the Assignee with reasonably prompt prior oral or written notice of such requirement (including any report, statement, testimony or other submission to such Governmental Authority) to the extent legally permissible and reasonably practicable, and cooperate with the Assignee, at the Assignee's sole expense, to obtain a protective order or similar remedy to cause such information not to be disclosed; *provided* that in the event that such protective order or other similar remedy is not obtained, the Receiver or the Monitor shall, or shall cause Validus Parent or Residualco, or a representative to, furnish only that portion of such information that has been legally compelled, and shall, or shall cause Validus Parent or Residualco, or a representative to, exercise its commercially reasonable efforts to obtain assurance that confidential treatment will be accorded such disclosed information. The Receiver and the Monitor shall instruct Validus Parent, Residualco and representatives having access to such information of such obligation of confidentiality.

## 9.2 Public Notices

9.2.1 No press release or other announcement concerning the consummation of the transactions contemplated by this Agreement shall be made by the Receiver, the Monitor, MEFL or the Assignee without the prior consent of the other Parties (such consent not to be unreasonably withheld, conditioned or delayed); *provided, however*, that subject to the last sentence of this Section 9.2, any Party may, without such consent, make such disclosure if the same is required by Applicable Law (including the Receivership Proceedings and the CCAA Proceedings) or by any insolvency or other court or securities commission, or other similar Governmental Authority having jurisdiction over such Party or any of its Affiliates, and, if such disclosure is required, the Party making such disclosure shall use commercially reasonable efforts to give prompt prior oral or written notice to the other Party to the extent legally permissible and reasonably practicable, and if such prior notice is not legally permissible or reasonably practicable, to give such notice reasonably promptly following the making of such disclosure. Notwithstanding the foregoing: (a) this Agreement may be filed by the Receiver or the Monitor: (i) with the Court; and (ii) on one or more webpages on the Receiver's and the Monitor's public websites established pursuant to the Appointment Order and the Initial Order, respectively, to provide public notice of the Receivership Proceedings and the CCAA Proceedings and the documents and materials filed therein; and (b) the transactions contemplated in this Agreement may be disclosed by the Receiver and the Monitor to the Court, subject to redacting confidential or sensitive information as permitted by Applicable Law. The Parties further agree that:



- (i) the Receiver and the Monitor may prepare and file reports and other documents with the Court containing references to the transactions contemplated by this Agreement and the terms of such transactions; and
- (ii) the Receiver, the Monitor, MEFL and their respective professional advisors may prepare and file such reports and other documents with the Court containing references to the transactions contemplated by this Agreement and the terms of such transactions as may reasonably be necessary to complete the transactions contemplated by this Agreement or to comply with their obligations in connection therewith.

The Assignee and MEFL may issue a joint press release announcing the execution, delivery and consummation of this Agreement, in form and substance mutually agreed to by them.

### **9.3 Non-Recourse**

No past, present or future director, officer, employee, incorporator, member, partner, securityholder, Affiliate, agent, lawyer or representative of the Monitor or the Receiver, in such capacity, shall have any liability for any obligations or liabilities of the Monitor or the Receiver, as applicable, under this Agreement, or for any Causes of Action based on, in respect of or by reason of the transactions contemplated hereby.

### **9.4 Receivership Liability**

Notwithstanding the foregoing or anything else contained herein or elsewhere, each of the Receiver, MEFL and the Assignee acknowledges and agrees that KSV is acting solely in its capacity as the Court-appointed receiver of the Receivership Debtors pursuant to the Appointment Order and the Monitor pursuant to the Initial Order and not in its personal or corporate capacity, and neither the Receiver nor the Monitor has any liability in connection with this Agreement whatsoever, in its personal or corporate capacity or otherwise.

### **9.5 Assignment of Agreement**

No Party may assign its rights, benefits or obligations under this Agreement without the consent of each of the other Parties, except that, without the consent of the Receiver or the Assignee, MEFL may, upon prior written notice to the Receiver and the Assignee assign this Agreement, or any or all of its rights and obligations thereunder, to one or more of its Affiliates; *provided* that no such assignment or direction shall relieve MEFL of its obligations hereunder.

### **9.6 Notices**

9.6.1 Any notice, request, demand or other communication required or permitted to be given to a Party pursuant to the provisions of this Agreement will be in writing and will be effective and deemed given under this Agreement on the earliest of: (a) the date of personal delivery; (b) the date of transmission by email, with confirmed transmission and receipt (if sent during normal business hours of the recipient, if not, then on the next Business Day); (c) two (2) days after deposit

with a nationally-recognized courier or overnight service such as Federal Express; or (d) five (5) days after mailing via certified mail, return receipt requested. All notices not delivered personally or by email will be sent with postage and other charges prepaid and properly addressed to the Party to be notified at the address set forth for such Party:

- (i) if to the Assignee at:

Far North Power Corp.  
24 Duncan Street, Suite 500,  
Toronto, Ontario  
M5V 2B8

Attention: Aniss Amdiss  
E-mail: [aniss.amdiss@hut8.io](mailto:aniss.amdiss@hut8.io)

with required copies (which shall not be deemed notice) to:

Bennett Jones LLP  
1 First Canadian Place, Suite 3400  
Toronto, Ontario  
M5X 1A4

Attention: Curtis Cusinato / Jesse Mighton  
E-mail: [CusinatoC@bennettjones.com](mailto:CusinatoC@bennettjones.com) /  
[MightonJ@bennettjones.com](mailto:MightonJ@bennettjones.com)

- (ii) if to MEFL at:

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

Attention: Lisa Tarnowsky  
E-mail: [lisa.tarnowsky@macquarie.com](mailto:lisa.tarnowsky@macquarie.com)

and to:

with required copies (which shall not be deemed notice) to:

Torys LLP  
79 Wellington St., 30th Floor  
Toronto, Ontario  
M5K 1N2

Attention: Scott Bomhof / Scott Kraag  
E-mail: [sbomhof@torys.com](mailto:sbomhof@torys.com) / [skraag@torys.com](mailto:skraag@torys.com)

(iii) if to the Vendors, by the Monitor, at:

KSV Restructuring Inc.  
220 Bay Street, Suite 1300  
Toronto, Ontario  
M5J 2W3

Attention: Bobby Kofman  
E-mail: [bkofman@ksvadvisory.com](mailto:bkofman@ksvadvisory.com)

with a required copy (which shall not be deemed notice) to:

Norton Rose Fulbright Canada LLP  
222 Bay Street, Suite 3000, P.O. Box 53  
Toronto, Ontario  
M5K 1E7

Attention: Jennifer Stam  
E-mail: [jennifer.stam@nortonrosefulbright.com](mailto:jennifer.stam@nortonrosefulbright.com)

9.6.2 Any Party may change its address for service from time to time by notice given in accordance with the foregoing and any subsequent notice shall be sent to such Party at its changed address.

## 9.7 Counterparts; Electronic Signatures

This Agreement may be signed in counterparts and each of such counterparts shall constitute an original document and such counterparts, taken together, shall constitute one and the same instrument. Execution of this Agreement may be made by electronic signature which, for all purposes, shall be deemed to be an original signature.

## 9.8 Language

The Parties have expressly required that this Agreement and all documents and notices relating hereto be drafted in English. *Les parties aux présents ont exigés que la présente convention ainsi que tous les documents et avis qui s'y rattachent ou qui en découleront soit rédigés en la langue anglaise.*

## 9.9 Amendment and Restatement

This Agreement is an amendment and restatement of the Original Agreement. This Agreement reflects amendments to the Original Agreement and has been restated solely for the purposes of reflecting amendments to the Original Agreement. All references to this Agreement, the "Transaction Agreement" or similar references to the Original Agreement contained in any of the documents or agreements relating to this Agreement or the Transaction Documents (including, for greater certainty, the Offer Letter and the Terms and Conditions) shall be deemed to refer to

this Agreement, as it may be amended, restated, supplemented or replaced from time to time, without further amendment to those documents or agreements.

*[Remainder of page intentionally left blank; signature pages follow]*

IN WITNESS WHEREOF, MEFL and the Assignee have executed this Agreement as of [■], 2024.

**FAR NORTH POWER CORP.**

By: \_\_\_\_\_  
Name:  
Title:

**MACQUARIE EQUIPMENT  
FINANCE LTD.**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

**IN WITNESS WHEREOF** the Vendors have accepted and executed this Agreement as of \_\_\_\_\_, 2024, the Effective Time.

**VALIDUS POWER CORP., IROQUOIS FALLS POWER CORP., BAY POWER CORP., KAP POWER CORP., KINGSTON COGEN LIMITED PARTNERSHIP, KINGSTON COGEN GP INC. and VALIDUS HOSTING INC., each by KSV RESTRUCTURING INC., in its capacity as court-appointed Monitor in the CCAA Proceedings**

By: \_\_\_\_\_  
Name:  
Title:

*[Signature Page to Transaction Agreement]*

**SCHEDULE “A”**

**Form of Reverse Vesting Order**

*(See attached.)*

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

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

THE HONOURABLE	)	THURSDAY, THE 4 <sup>th</sup>
	)	
JUSTICE OSBORNE	)	DAY OF JANUARY, 2024

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR**  
**ARRANGEMENT INVOLVING VALIDUS POWER CORP., IROQUOIS**  
**FALLS POWER CORP., BAY POWER CORP., KAP POWER CORP.,**  
**VALIDUS HOSTING INC. AND KINGSTON COGEN GP INC.**

**APPROVAL AND VESTING ORDER**

**THIS MOTION**, made by KSV Restructuring Inc. (“**KSV**”), in its capacity as monitor (in such capacity, the “**Monitor**”) of Validus Power Corp. (“**Validus Parent**”), Iroquois Falls Power Corp. (“**IFPC**”), Bay Power Corp. (“**Bay Power**”), Kap Power Corp. (“**Kap Power**”), Validus Hosting Inc. (“**Validus Hosting**”), Kingston Cogen Limited Partnership (“**Kingston LP**”) and Kingston Cogen GP Inc. (“**Kingston GP**”, and collectively with each of the foregoing entities, the “**Vendors**”), for an Order, among other things, at the time and in the manner set out herein:

- (a) approving: (i) the acceptance and execution by the Vendors, each by KSV in its capacity as the Monitor, of the Transaction Agreement (as amended and restated, and as may be further amended from time to time, the “**Transaction Agreement**”, and the acceptance and execution by the Vendors thereof, each by KSV in its capacity as the Monitor, the “**Vendors’ Acceptance**”) that was submitted by Macquarie Equipment Finance Ltd. (“**MEFL**”) and Far North Power Corp. (the “**Assignee**”) along with the offer letter delivered by MEFL and the Assignee to the Monitor on October 16, 2023 (as amended on December ■, 2023) (the “**Offer Letter**”) (which Offer Letter is attached as Appendix ■ to the fourth report of the



monitor dated December ■, 2023 (the “**Fourth Report**”); and (ii) the consummation of the transactions contemplated in the Transaction Agreement (collectively, the “**Transactions**”), including the Implementation Steps, upon the satisfaction of the Offer Conditions (as defined in the terms and conditions set forth in Schedule “B” to the Offer Letter (as amended and restated, and as may be further amended from time to time, the “**Terms and Conditions**”));

- (b) adding 1000745924 Ontario Inc. (“**Residualco**”) as a Debtor Company (as defined in the Initial Order of this Court dated August 29, 2023 (the “**Initial Order**”)) to these CCAA proceedings and as a Debtor (as defined in the Appointment Order of this Court dated August 10, 2023 (the “**Appointment Order**”) issued in the receivership proceedings in Court File No.: CV-23-00703754-00CL (the “**Receivership Proceedings**”)), effective as of the issuance of this Order;
- (c) vesting in and to Residualco, as and to the extent applicable, absolutely and exclusively, all of the right, title and interest of, and all liabilities and obligations of, IFPC, Bay Power, Kap Power, Validus Hosting, Kingston LP and Kingston GP (collectively, the “**Purchased Entities**”) in and to the Excluded Assets, the Excluded Contracts and the Excluded Liabilities, as applicable;
- (d) discharging the Claims (as defined herein) and Encumbrances (as defined herein) against the Purchased Entities and the Retained Assets (as defined herein);
- (e) authorizing and directing the Vendors, by KSV in its capacity as the Monitor, to issue the IFPC Interests, and vesting all of the right, title and interest in and to the IFPC Interests absolutely and exclusively in and to the Assignee, as nominee and designated assignee of MEFL, free and clear of any Claims and Encumbrances;
- (f) vesting all of Validus Parent’s right, title and interest in and to the Bay Power Interests, the Kap Power Interests, the Kingston LP Interests and the Kingston GP Interests absolutely and exclusively in and to the Assignee, as nominee and designated assignee of MEFL, free and clear of any Claims and Encumbrances;

- (g) vesting all of Validus Parent's right, title and interest in and to the Purchased Validus Parent Assets absolutely and exclusively in and to the Assignee, free and clear of any Claims and Encumbrances;
- (h) authorizing and directing the Vendors, by KSV in its capacity as the Monitor, to issue the IFPC Note 1, the IFPC Note 2 and the IFPC Note 3, and vesting: (i) all of the right, title and interest in and to the IFPC Note 1 and the IFPC Note 3 in and to MEFL, free and clear of any Claims and Encumbrances; and (ii) all of the right, title and interest in and to the IFPC Note 2 absolutely and exclusively in and to the Assignee, as nominee and designated assignee of MEFL, free and clear of any Claims and Encumbrances;
- (i) redeeming, terminating and cancelling the IFPC Legacy Shares and the other Subject Interests (as defined herein) for no consideration;
- (j) granting the Priority Payments Indemnity Charge;
- (k) confirming that all Continuing Contracts and Permits and Licenses to which any of the Validus Entities (other than Validus Parent) are a party at the Effective Time will be and shall remain in full force and effect upon and following the Effective Time;
- (l) authorizing the Monitor to take all required steps to rectify the minute books of the Validus Entities including, without limitation, signing directors' and/or shareholders' resolutions on behalf of the Validus Entities;
- (m) authorizing Ryan Chua (the "**First Director**") to act as the first director of Residualco and confirming that the First Director shall have no liability as a result of becoming the First Director save and except his own gross negligence or wilful misconduct; and
- (n) granting certain related relief,

was heard this day by judicial video conference via Zoom in Toronto, Ontario.

**ON READING** the Monitor's Motion Record in respect of this motion, filed, the Fourth Report;

**AND UPON** hearing the submissions of counsel for the Monitor and for the Receiver, counsel for MEFL, counsel for the Assignee, counsel for [■] and such other counsel who were present, no one else appearing although duly served as appears from the affidavit of service of [■] sworn [■], 2023, filed, and the affidavit of service of [■] sworn [■], 2023, filed.

### **SERVICE AND DEFINITIONS**

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

2. **THIS COURT ORDERS** that all capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Transaction Agreement.

### **APPROVAL AND VESTING**

3. **THIS COURT ORDERS** that, without derogating in any way from the relief contained in the SISP Approval Order of this Court dated November 2, 2023 (the “**SISP Approval Order**”), the Transaction Agreement and the Transactions (including the Implementation Steps) are hereby approved and the acceptance and execution of the Transaction Agreement by the Vendors, each by KSV in its capacity as the Monitor, is hereby authorized and approved, with such minor amendments thereto as the Monitor, MEFL and the Assignee may deem necessary. The Vendors, each by KSV in its capacity as the Monitor, are hereby authorized and directed, upon the Vendors’ Acceptance, to perform their respective obligations under the Transaction Agreement (including, for greater certainty, the Implementation Steps), including the issuance of the IFPC Interests, the IFPC Note 1, the IFPC Note 2 and the IFPC Note 3, and the redemption, termination and cancellation of the IFPC Legacy Shares, and to take such additional steps and execute such additional documents (including the Transaction Documents) as may be necessary or desirable for the completion of the Transactions.

4. **THIS COURT ORDERS** that this Order shall constitute the only authorization required by the Vendors, each by KSV in its capacity as the Monitor, to proceed with the Vendors’ Acceptance and the Transactions and that no other approval shall be required in connection therewith.

5. **THIS COURT ORDERS** that, subject to the occurrence of the Effective Time, the following shall occur and shall be deemed to have occurred in the sequence and at the effective times set out in this paragraph:

- (a) the transactions regarding Pre-Filing Intercompany Claims (as defined in the Implementation Steps) described in sections 3.2, 4.1 and 4.2 of the Implementation Steps shall, and shall be deemed to, be effected at the times set out therein;
- (b) immediately prior to the Effective Time, all of the right, title and interest in and to the Excluded Assets of IFPC, Bay Power, Kap Power, Validus Hosting, Kingston LP and Kingston GP shall vest absolutely and exclusively in Residualco, and, in each case, all applicable Claims and Encumbrances shall continue to attach to such Excluded Assets with the same nature and priority as they had immediately prior to their transfer; provided that, for certainty, the Excluded Assets transferred hereby shall not include the Administrative Expense Closing Amount, which shall be paid to and held by the Monitor in accordance with paragraph 23 hereof;
- (c) immediately prior to the Effective Time, all of the Excluded Contracts and the Excluded Liabilities (which, for certainty includes all debts, liabilities, obligations, indebtedness, contracts, leases, agreements, and undertakings of any kind or nature whatsoever, whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, matured or unmatured or due or not yet due, in law or equity and whether based in statute or otherwise) of IFPC, Bay Power, Kap Power, Validus Hosting, Kingston LP and Kingston GP (in each case, other than the liabilities of the Purchased Entities to be retained or assumed by the Purchased Entities at the Effective Time in accordance with the Transaction Agreement (such liabilities of the Purchased Entities, together with those liabilities of Validus Parent to be assumed by the Assignee in accordance with the Transaction Agreement, collectively, the “**Assumed Liabilities**”) shall be transferred to, assumed by and vest absolutely and exclusively in Residualco, and shall no longer be obligations of any of the Purchased Entities, and the Purchased Entities and all of the Purchased Entities’ remaining assets, permits, licenses, undertakings and properties of every nature and kind whatsoever and wherever situate (collectively,

the “**Retained Assets**”) shall be and are hereby forever released and discharged from all of the Excluded Contracts and the Excluded Liabilities, and all related Claims and Encumbrances, other than the permitted encumbrances, easements and restrictive covenants affecting or relating to the Retained Assets or the Purchased Assets listed on Schedule “B” (the “**Permitted Encumbrances**”), shall be expunged and discharged as against the Retained Assets and the Purchased Assets;

- (d) at the Effective Time, concurrently with the acceptance and execution by the Vendors, each by KSV in its capacity as the Monitor, of the Transaction Agreement, each of the following actions described under this paragraph 5(d) and those in paragraphs 5(e) and 5(f) shall occur concurrently: (i) the IFPC Interests shall be issued as fully paid and non-assessable shares; and (ii) all right, title and interest in and to the IFPC Interests and the IFPC Note 2, and all of Validus Parent’s right, title and interest in and to the Bay Power Interests, the Kap Power Interests, the Kingston LP Interests, the Kingston GP Interests and the Purchased Validus Parent Assets shall vest absolutely and exclusively in the Assignee, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), pledges, assignments, hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, preferential arrangements of any kind or nature whatsoever or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the “**Claims**”) including, without limiting the generality of the foregoing: (x) any encumbrances or charges created by the Appointment Order, the SISP Approval Order, or any other Order of this Court; and (y) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system (all of which are collectively referred to as the “**Encumbrances**”, which term shall not include the Permitted Encumbrances) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Retained Assets or the Purchased Assets (other than the IFPC Note 3) are hereby expunged and discharged as against the Retained Assets and the

Purchased Assets, as applicable (other than the IFPC Note 1 and the IFPC Note 3, which are dealt with in accordance with paragraph 5(e));

- (e) at the Effective Time, concurrently with the acceptance and execution by the Vendors, each by KSV in its capacity as the Monitor, of the Transaction Agreement, each of the following actions described under this paragraph 5(e) and those in paragraphs 5(d) and 5(f) shall occur concurrently: all right, title and interest in and to the IFPC Note 1 and the IFPC Note 3 shall vest absolutely and exclusively in MEFL free and clear of and from any and all Claims and Encumbrances and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the IFPC Note 1 and the IFPC Note 3 are hereby expunged and discharged as against the IFPC Note 1 and the IFPC Note 3;
- (f) at the Effective Time, concurrently with the acceptance and execution by the Vendors, each by KSV in its capacity as the Monitor, of the Transaction Agreement, each of the following actions described under this paragraph 5(f) and those in paragraphs 5(d) and 5(e) shall occur concurrently: all right, title and interest in and to the Leased Property shall vest absolutely and exclusively in IFPC, free and clear of and from any and all Claims and Encumbrances and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Leased Property are hereby expunged and discharged as against the Leased Property;
- (g) upon the assignment and issuance of the Purchased Assets to MEFL and/or the Assignee, the Vendors shall be and are hereby forever released and discharged from all liabilities and obligations flowing from, or in respect of, the Participation Agreement Documents including all amounts and obligations owing by the Vendors in connection therewith, and all related Claims and Encumbrances are hereby expunged and discharged including any rights of subrogation of Validus Parent in respect of any of the payment or transfers under the Transaction Agreement;
- (h) immediately following the Effective Time, all equity interests of the Purchased Entities existing prior to the Effective Time (for greater certainty, including the

IFPC Legacy Shares), but excluding the IFPC Interests, the Bay Power Interests, the Kap Power Interests, the Kingston LP Interests, the Kingston GP Interests and the Validus Hosting Interests, as well as all options, conversion privileges, equity-based awards, warrants, securities, debentures, loans, notes or other rights, agreements or commitments of any character whatsoever that are held by any Person (as defined herein) and are convertible or exchangeable for any securities of the Purchased Entities, or that require the issuance, sale or transfer by the Purchased Entities of any shares or other securities of the Purchased Entities, or otherwise evidencing a right to acquire the IFPC Interests, the Bay Power Interests, the Kap Power Interests, the Kingston LP Interests, the Kingston GP Interests, the Validus Hosting Interests and/or the share or unit capital of the Purchased Entities, as applicable, or otherwise relating thereto (but excluding, for greater certainty, the IFPC Interests, the Bay Power Interests, the Kap Power Interests, the Kingston LP Interests, the Kingston GP Interests, the Validus Hosting Interests, the IFPC Note 1, the IFPC Note 2 and the IFPC Note 3) (collectively, the “**Subject Interests**”), shall be deemed redeemed, terminated and cancelled; and

- (i) the Purchased Entities shall and shall be deemed to cease to be Debtor Companies in these CCAA proceedings and Debtors in the Receivership Proceedings, and the Purchased Entities shall be deemed to be released from the purview of the Appointment Order, the Initial Order and all other Orders of this Court granted in respect of these CCAA proceedings and the Receivership Proceedings, save and except for this Order, the provisions of which (as they relate to the Purchased Entities) shall continue to apply in all respects.

6. **THIS COURT ORDERS** that, for greater certainty: (i) each of the steps provided for in paragraphs 5(b) and (c) are deemed to have occurred contemporaneously with each other and immediately prior to the occurrence of the Effective Time; and (ii) each of the steps provided for in paragraphs 5(d), 5(e), and 5(f) are deemed to have occurred contemporaneously with each other and at the Effective Time.

7. **THIS COURT ORDERS** that, at or after the Effective Time, MEFL is hereby authorized to assign to the Assignee, and the Assignee is hereby authorized to assume, all of MEFL’s right,

title and interest in and to the Receiver's Certificates that the Receiver has, as of the Effective Time, issued pursuant to the Appointment Order; for greater certainty, upon such assignment and assumption, the Assignee shall enjoy the benefit of the Receiver's Borrowings Charge (as defined in the Appointment Order) as security for the payment of the monies borrowed pursuant to such Receiver's Certificates, together with interest, fees and charges thereon, in accordance with the Appointment Order.

8. **THIS COURT ORDERS AND DIRECTS** that upon the registration in the Land Registry Offices for the Land Titles Divisions of Cochrane (No. 6), Lennox (No. 29) and Nipissing (No. 36) (collectively, the "**LRO**") of an Application for Vesting Order in the form prescribed by the *Land Titles Act* (Ontario), together with the Monitor's Certificate, the LRO is hereby directed to delete and expunge from title to the applicable Property (as defined in the Fourth Report) all of the Claims listed in Schedule "C" hereto pertaining to the applicable Property (as defined in the Fourth Report).

9. **THIS COURT ORDERS AND DIRECTS** the Monitor to file with this Court a copy of the Monitor's Certificate forthwith after delivery to MEFL and the Assignee thereof in connection with the Transactions as well as a copy of the final form of the Transaction Agreement and all related schedules.

10. **THIS COURT ORDERS** that the Monitor may rely on written notice from MEFL and/or the Assignee regarding the satisfaction or waiver of conditions to closing under the Transaction Agreement and shall have no liability with respect to delivery of the Monitor's Certificate.

11. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, from and after the Effective Time, subject to the retention or assumption of the Priority Payments of the Purchased Entities by the Purchased Entities or the Priority Payments of Validus Parent by the Assignee, as the case may be, and the satisfaction of the Administrative Expense Closing Amount in accordance with the Transaction Agreement and paragraph 23 hereof, all Claims and Encumbrances released, expunged and discharged pursuant to paragraph 5 hereof, including as against the Purchased Entities, the Retained Assets and the Purchased Assets, shall attach to the Excluded Assets with the same nature and priority as they had immediately prior to the Transactions, as if the Transactions had not occurred.



12. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Personal Information Protection and Electronic Documents Act* (Canada), the Vendors, by KSV in its capacity as the Monitor, are authorized, permitted and directed to, at the Effective Time, disclose to MEFL and/or the Assignee all human resources and payroll information in the Vendors' records pertaining to past and current employees of the Vendors. MEFL and the Assignee shall maintain and protect the privacy of such information in accordance with applicable law and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Vendors prior to the Effective Time.

13. **THIS COURT ORDERS** that, at the Effective Time and without limiting the provisions of paragraph 5 hereof, MEFL, the Assignee and the Purchased Entities shall be deemed released from any and all claims, liabilities (direct, indirect, absolute or contingent) or obligations with respect to any Taxes or any part thereof (including penalties and interest thereon) of, or that relate to, the Vendors (provided, as it relates to the Purchased Entities, such release shall not: (a) effect a transfer or assignment to Residualco of Taxes where such transfer or assignment of such particular Taxes is prohibited by statute, but MEFL and the Assignee shall still be released therefrom; (b) apply to Taxes in respect of the business and operations conducted by the Purchased Entities concurrent with or after the Effective Time and, for greater certainty, shall not restrict or affect in any manner any right, title and interest of the Purchased Entities in and to any amounts that may become due and payable thereto from any governmental authority on or after the Effective Time as a result of Taxes paid concurrent with or after the Effective Time, notwithstanding that they relate to supplies arising prior to the Effective Time for which payment was made concurrent with or after the Effective Time and not prior thereto; or (c) apply to Taxes expressly assumed as Assumed Liabilities pursuant to the Transaction Agreement), including, without limiting the generality of the foregoing, all Taxes that could be assessed against MEFL, the Assignee or the Purchased Entities (including their affiliates or any predecessor corporations), or for which they could otherwise have joint or several liability, in respect of Taxes of Validus Parent or the Purchased Entities. For greater certainty, nothing in this paragraph shall: (i) release or discharge any Claims or Encumbrances against Residualco with respect to Taxes that are vested in or assumed by Residualco; or (ii) affect any tax attributes of the Purchased Entities, which shall be retained by the Purchased Entities and may be used to the maximum extent possible as permitted by Applicable Laws to reduce the Purchased Entities' taxable income.

14. **THIS COURT ORDERS** that all Continuing Contracts and Permits and Licenses (as defined in the Terms and Conditions) to which any of the Purchased Entities are a party at the Effective Time will be and shall remain in full force and effect upon and following the Effective Time, except to the extent expressly contemplated by the Transaction Agreement and no individual, firm, corporation, governmental body or agency, or any other entity (all of the foregoing, collectively being “**Persons**” and each being a “**Person**”) who is a party to any such Continuing Contracts or Permits and Licenses may, as applicable, accelerate, terminate, rescind, refuse to perform or otherwise repudiate its obligations thereunder, or enforce or exercise any right (including any right of set-off, dilution or other remedy) or make any demand under or in respect of any such arrangement and no automatic termination will have any validity or effect, by reason of:

- (a) any event that occurred on or prior to the Effective Time and is not continuing that would have entitled such Person to enforce those rights or remedies (including defaults or events of default arising as a result of the insolvency of any of the Vendors);
- (b) the insolvency of any Vendor or the fact that the Receiver was appointed as receiver in respect of the Vendors or the commencement of these CCAA proceedings;
- (c) any compromises, releases, discharges, cancellations, transactions, arrangements, reorganizations or other steps taken or effected pursuant to the Transaction Agreement, the Transactions or the provisions of this Order, any other Order of this Court in CCAA proceedings or any Order of this Court in the Receivership Proceedings; or
- (d) any transfer or assignment, or any change of control of the Purchased Entities arising from the implementation of the Transaction Agreement, the Transactions or the provisions of this Order.

15. **THIS COURT ORDERS**, for greater certainty, that: (a) nothing in paragraph 14 hereof shall waive, compromise or discharge any obligations of the Purchased Entities in respect of any Assumed Liabilities, including, for greater certainty, the Priority Payments of the Purchased Entities; (b) the designation of any Claim as an Assumed Liability is without prejudice to the

Purchased Entities' and the Assignee's right to dispute the existence, validity or quantum of any such Assumed Liability; and (c) nothing in this Order or the Transaction Agreement shall affect or waive the Purchased Entities' or the Assignee's rights and defences, both legal and equitable, with respect to any Assumed Liability, including, but not limited to, all rights with respect to entitlements to set-offs or recoupments against such Assumed Liability.

16. **THIS COURT ORDERS** that, from and after the Effective Time, all Persons shall be deemed to have waived any and all defaults of any Vendor then existing or previously committed by any Vendor, or caused by any Vendor, directly or indirectly, or noncompliance with any covenant, warranty, representation, undertaking, positive or negative pledge, term, provision, condition or obligation, expressed or implied, in any Continuing Contract or a Permit and License, existing between such Person and any Purchased Entity directly or indirectly from the appointment of the Receiver as receiver in the Receivership Proceedings, or the commencement of these CCAA proceedings, in respect of the Vendors and the implementation of the Transactions, including without limitation any of the matters or events listed in paragraph 14 hereof, and any and all notices of default, notice of non-compliance or similar notice, and demands for payment or any step or proceeding taken or commenced in connection therewith under a Continuing Contract or a Permit and License shall be deemed to have been rescinded and of no further force or effect; provided that, nothing herein shall be deemed to excuse MEFL, the Assignee or the Vendors from performing their obligations under, or be a waiver of defaults by MEFL, the Assignee or the Vendors under, the Transaction Agreement and the related agreements and documents, or affect the validity of the Implementation Steps.

17. **THIS COURT ORDERS** that, from and after the Effective Time, any and all Persons shall be and are hereby forever barred, estopped, stayed and enjoined from commencing, taking, applying for or issuing or continuing any and all steps or proceedings, whether directly, derivatively or otherwise, and including without limitation, administrative hearings and orders, declarations and assessment, commenced, taken or proceeded with or that may be commenced, taken or proceeded with against MEFL, the Assignee or the Purchased Entities relating in any way to or in respect of any Excluded Assets, Excluded Contracts or Excluded Liabilities and any other claims, obligations and other matters which are waived, released, expunged or discharged pursuant to this Order; provided that, nothing herein shall affect the validity of the Implementation Steps.

18. **THIS COURT ORDERS** that, from and after the Effective Time:
- (a) the nature of the Assumed Liabilities assumed by the Assignee or retained by the Purchased Entities, including, without limitation, their amount and their secured or unsecured status, shall not be affected or altered as a result of the Transactions or this Order;
  - (b) the nature of the Excluded Liabilities, including, without limitation, their amount and their secured or unsecured status, shall not be affected or altered as a result of their transfer to Residualco;
  - (c) any Person that prior to the Effective Time had a valid right or claim against the Purchased Entities under or in respect of any Excluded Contract or Excluded Liability (each an “**Excluded Liability Claim**”) shall no longer have such right or claim against the Purchased Entities but will have an equivalent Excluded Liability Claim against the Residualco in respect of the Excluded Contract and Excluded Liability from and after the Effective Time in its place and stead, and nothing in this Order limits, lessens or extinguishes the Excluded Liability Claim of any Person as against Residualco;
  - (d) the Excluded Liability Claim of any Person against Residualco following the Effective Time shall have the same rights, priority and entitlement as such Excluded Liability Claim had against the applicable Purchased Entity prior to the Effective Time; and
  - (e) the Receiver’s Charge (as defined in the Appointment Order) and the Receiver’s Borrowings Charge shall continue to apply to the Property (as defined in the Fourth Report) of Validus Parent and Residualco in accordance with the provisions of the Appointment Order, the Initial Order and paragraph 7 herein.
19. **THIS COURT ORDERS** that following the Effective Date, the Assignee may seek a further order, on notice to the Monitor and any affected party, declaring that any contract of a Purchased Entity that is not identified as a Continuing Contract is an Excluded Contract and that the provisions of paragraphs 5(b), 17 and 18 apply to such contract.

20. **THIS COURT ORDERS** that, effective as of the issuance of this Order, Residualco shall be added as a Debtor Company in these CCAA proceedings and all references in any Order of this Court in respect of these CCAA proceedings to: (i) a “Debtor Company” or the “Debtor Companies” shall refer to and include Residualco, *mutatis mutandis*, and (ii) “Property” shall be interpreted to mean the current and future assets, licenses, undertakings and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof, of Residualco, including the Administrative Expense Closing Amount and the Priority Payments Closing Amount (the “**Residualco Property**”).

21. **THIS COURT ORDERS** that, effective as of the issuance of this Order, Residualco shall be added as a Debtor in the Receivership Proceedings and all references in any Order of this Court in respect of the Receivership Proceedings to: (i) a “Debtor” or the “Debtors” shall refer to and include Residualco, *mutatis mutandis*, and (ii) “Property” shall be interpreted to mean the Residualco Property, and, for greater certainty, any remaining charges, shall constitute charges on the Residualco Property.

22. **THIS COURT ORDERS** that, upon the occurrence of the Effective Time, the Bid Protections Charge (as defined in the SISP Approval Order) shall be and is hereby terminated, released and discharged.

23. **THIS COURT ORDERS** that the Administrative Expense Closing Amount held by the Monitor shall be subject to the Receiver’s Charge and the Receiver’s Borrowings Charge, and any remaining portion of the Administrative Expense Amount after payment of the Administrative Expense Costs (as defined in the Transaction Agreement) shall be paid to the Assignee in accordance with the terms of the Transaction Agreement.

## **CHARGES**

24. **THIS COURT ORDERS** that the Monitor shall be entitled to the benefit of and is hereby granted a charge (the “**Priority Payments Indemnity Charge**”) on the Bay Power Interests, the Kap Power Interests and the IFPC Interests (but excluding for greater certainty the Kingston LP Interests and the Kingston GP Interests) as security in respect of the Priority Payments Indemnity (as defined in the Transaction Agreement) in accordance with the terms of the Transaction Agreement.

25. **THIS COURT ORDERS** that the Priority Payments Indemnity Charge shall terminate automatically upon the later of (i) the payment in satisfaction of all of the Priority Payments of Validus Parent in excess of the Priority Payments Closing Amount, as determined by Canada Revenue Agency (if any), or (ii) receipt of confirmation from Canada Revenue Agency by the Assignee, on notice to the Monitor, that no Priority Payments of Validus Parent in excess of the Priority Payment Closing Amount are owing.

#### **POST-CLOSING RESERVE**

26. **THIS COURT ORDERS** that the Monitor is hereby authorized and directed to establish a cash reserve (the “**Post-Closing Reserve**”) that consists of Administrative Expense Closing Amount, which shall be held in a segregated account and shall be used to pay costs and fees reasonably incurred by the Monitor following the Effective Time in connection with completing these CCAA proceedings, the Receivership Proceedings and any BIA proceedings commenced in respect of Residualco, including payment of the Administrative Expense Costs (collectively, the “**Post-Closing Costs**”).

27. **THIS COURT ORDERS** that the Monitor is hereby authorized to pay any Post-Closing Costs as it, acting reasonably, deems necessary, appropriate or desirable.

28. **THIS COURT ORDERS** that the Monitor is hereby authorized and directed to return to the Assignee any balance remaining in the Post-Closing Reserve that is funded by the Assignee pursuant to Section 6.4 of the Transaction Agreement following payment in satisfaction of all reasonably incurred Post-Closing Costs.

#### **RELEASES AND OTHER PROTECTIONS**

29. **THIS COURT ORDERS** that, effective as of the Effective Time: (a) KSV, in its personal capacity and in its capacities both as the Receiver in the Receivership Proceedings and as the Monitor in these CCAA proceedings, and its legal counsel; (b) MEFL, the Assignee and their respective current and former directors, officers, employees, legal counsel, representatives and advisors; and (c) the First Director (in such capacities, collectively, the “**Released Parties**”) shall be deemed to be forever irrevocably released by the Releasing Parties (as defined herein) and discharged from any and all present and future claims (including, without limitation, claims for

contribution or indemnity), liabilities, indebtedness, demands, actions, causes of action, counterclaims, suits, damages, judgments, executions, recoupments, debts, sums of money, expenses, accounts, liens, taxes, recoveries, and obligations of any nature or kind whatsoever (whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, matured or unmatured or due or not yet due, in law or equity and whether based in statute or otherwise) based in whole or in part on any act or omission, transaction, dealing or other occurrence existing or taking place on or prior to the Effective Time or undertaken or completed in connection with or pursuant to the terms of this Order in respect of, relating to, or arising out of: (i) the Vendors, the business, operations, assets, property and affairs of the Vendors wherever or however conducted or governed, the administration and/or management of the Vendors and/or these CCAA proceedings or the Receivership Proceedings; or (ii) the Offer Letter, the Transaction Agreement, the Transaction Documents and/or any agreement, document, instrument, matter or transaction involving the Vendors arising in connection with or pursuant to any of the foregoing, and/or the consummation of the Transactions (collectively, subject to the excluded matters below, the “**Released Claims**”), which Released Claims shall be deemed to be fully, finally, irrevocably and forever waived, discharged, released, cancelled and barred as against the Released Parties; provided that, nothing in this paragraph shall waive, discharge, release, cancel or bar: (x) any claim that is not permitted to be released pursuant to section 5.1(2) of the *Companies’ Creditors Arrangement Act* (Canada) (the “**CCAA**”) or claim with respect to any act or omission that is determined by a court of competent jurisdiction to have constituted actual fraud, willful misconduct, or gross negligence; (y) any obligations of any of the Released Parties under or in connection with the Offer Letter, the Transaction Agreement, the Transaction Documents and/or any agreement, document, instrument, matter or transaction involving the Vendors arising in connection with or pursuant to any of the foregoing; or (z) any obligations under or related to any agreement: (i) to which MEFL and the Assignee are both party (whether or not any of their respective affiliates are also party thereto) entered into before the Effective Time; or (ii) to which MEFL, the Assignee, the Purchased Entities or any of their respective affiliates (in any combination thereof) are party entered into on or after the Effective Time (collectively, the “**Assignee Arrangements**”). “**Releasing Parties**” means any and all Persons, and their current and former affiliates’ current and former members, directors, managers, officers, investment committee members, special committee members, equity holders (regardless of whether such

interests are held directly or indirectly), predecessors, successors, assigns, participants, subsidiaries, affiliates, partners, limited partners, general partners, affiliated investment funds or investment vehicles, managed accounts or funds, and each of their respective current and former members, equity holders, officers, directors, managers, principals, members, management companies, advisory board members, investment fund advisors or managers, employees, agents, trustees, investment managers, financial advisors, partners, legal counsel, accountants, investment bankers, consultants, representatives, and other professionals, each in their capacity as such.

30. **THIS COURT ORDERS** that, without affecting or limiting the release set forth in paragraph 29 hereof, effective as of the Effective Time, none of: (a) KSV, in its capacities both as the Receiver and as the Monitor, and its legal counsel; (b) MEFL, the Assignee and their respective current and former directors, officers, employees, legal counsel, representatives and advisors; and (c) the First Director (in such capacities, collectively, the “**Exculpated Parties**”), shall have or incur, and each Exculpated Party is released and exculpated from, any Causes of Action (as defined herein) against such Exculpated Party for any act or omission in respect of, relating to, or arising out of the Offer Letter, the Transaction Agreement, the Transaction Documents and/or the consummation of the Transactions, these CCAA proceedings, the Receivership Proceedings, the formulation, preparation, dissemination, negotiation, filing or consummation of the Offer Letter, the Transaction Agreement, the Transaction Documents and all related agreements and documents, any transaction, contract, instrument, release, or other agreement or document created or entered into in connection with the Transactions, the pursuit of approval and consummation of the Transactions and/or the transfer of assets and liabilities pursuant to this Order, except for: (x) Causes of Action related to any act or omission that is determined by a court of competent jurisdiction to have constituted actual fraud, willful misconduct, or gross negligence; and (y) the Assignee Arrangements. “**Causes of Action**” means any action, claim, cross-claim, third-party claim, damage, judgment, cause of action, controversy, demand, right, action, suit, obligation, liability, debt, account, defense, offset, power, privilege, license, lien, indemnity, interest, guaranty, or franchise of any kind or character whatsoever, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, contingent or non-contingent, liquidated or unliquidated, disputed or undisputed, secured or unsecured, assertable directly or derivatively, matured or unmatured, suspected or unsuspected, in contract or in tort, at law or in equity, or pursuant to any other theory of law or otherwise.



31. **THIS COURT ORDERS** that all Persons are permanently and forever barred, estopped, stayed and enjoined, on and after the Effective Time, with respect to any and all claims or Cause of Actions released pursuant to this Order (including but not limited to the Released Claims), from: (a) commencing, conducting or continuing in any manner, directly or indirectly, any action, suits, demands or other proceedings of any nature or kind whatsoever (including, without limitation, any proceeding in a judicial, arbitral, administrative or other forum) against any of the Released Parties; (b) enforcing, levying, attaching, collecting or otherwise recovering or enforcing by any manner or means, directly or indirectly, any judgment, award, decree or order against any of the Released Parties or their respective property; (c) commencing, conducting, continuing or making in any manner, directly or indirectly, any action, suit, claim, demand or other proceeding of any nature or kind whatsoever (including any proceeding in a judicial, arbitral, administrative or other forum) against any Person who makes a claim or might reasonably be expected to make a claim, in any manner or forum, including by way of contribution or indemnity or other relief, against one or more of the Released Parties; (d) creating, perfecting, asserting or otherwise enforcing, directly or indirectly, any Encumbrance of any kind against the Released Parties or their respective property; or (e) taking any actions to interfere with the consummation of the Transactions; and any such proceedings will be deemed to have no further effect against the Released Parties and will be released, discharged or vacated without cost.

32. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these CCAA proceedings or the Receivership Proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the BIA in respect of any of the Vendors or Residualco, and any bankruptcy order issued pursuant to any such applications; or
- (c) any assignment in bankruptcy made in respect of any of the Vendors or Residualco,

the Offer Letter, the Transaction Agreement, the Transaction Documents, the consummation of the Transactions (including without limitation the transfer and vesting of the Excluded Assets, the Excluded Contracts and the Excluded Liabilities in and to Residualco, the transfer and vesting of the Purchased Assets in and to the Assignee or MEFL, as applicable, the transfer of title in and to the Leased Property from MEFL to IFPC, the assumption or retention of the Priority Payments of

Validus Parent by the Assignee or the Priority Payments of the Purchased Entities by the Purchased Entities, as the case may be, and any payments by or to MEFL, the Assignee, the Receiver, the Monitor or the Vendors authorized herein or pursuant to the Offer Letter, the Transaction Agreement and/or the Transaction Documents) shall be binding on any trustee in bankruptcy that may be appointed in respect of Validus Parent or Residualco, and shall not be void or voidable by creditors of Validus Parent or Residualco, as applicable, nor shall they constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the CCAA, the BIA or any other applicable federal or provincial legislation, nor shall they constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

33. **THIS COURT ORDERS** that nothing in this Order, including the release and discharge of the Purchased Entities from the purview of these CCAA proceedings or the Receivership Proceedings pursuant to paragraph 5(i) hereof and the addition of Residualco as a Debtor Company in these CCAA proceedings and as a respondent in the Receivership Proceedings, shall affect, vary, derogate from, limit or amend, and KSV shall continue to have the benefit of, any and all rights and approvals and protections in favour of the Receiver and the Monitor at law or pursuant to the BIA, the Appointment Order, the Initial Order, this Order, any other Orders in these CCAA proceedings or the Receivership Proceedings or otherwise, including all approvals, protections and stays of proceedings in favour of KSV in its capacity as Receiver and in its capacity as the Monitor, as applicable, all of which are expressly continued and confirmed.

#### **EMPLOYEES**

34. **THIS COURT ORDERS** that Residualco shall be deemed to be the former employer of any former employees of the corresponding Purchased Entities who were terminated between the date of the Appointment Order and the Effective Time, if any, whose claims against the Purchased Entities are transferred to Residualco pursuant to this Order, provided that such deeming: (i) shall be effective immediately after the Effective Time; and (ii) will solely be for the purposes of termination pay and severance pay pursuant to the *Wage Earners Protection Program*.

## ADDITIONAL MATTERS

35. **THIS COURT ORDERS** that in addition to the powers and authorities afforded to the Monitor pursuant to the CCAA, the Initial Order and all other orders in these proceedings (the “**CCAA Orders**”), the Monitor is hereby authorized, but not directed, to take any steps reasonably required to rectify the minute books of the Validus Entities including, without limitation, signing directors’ resolutions and/or shareholders’ resolutions on behalf of the Validus Entities and that in doing so, and without limiting the protections afforded to the Monitor pursuant to the CCAA and other CCAA Orders, the Monitor shall not incur any liability, save and except any liability or obligation incurred as a result of gross negligence or wilful misconduct on its part.

36. **THIS COURT ORDERS** that Ryan Chua (the “**First Director**”) is hereby authorized, *nunc pro tunc*, to act as a director and officer of Residualco and, in such capacity, is hereby authorized to take such steps and perform such tasks are necessary or desirable to facilitate the Transactions.

37. **THIS COURT ORDERS** that notwithstanding Section 119 of the *Business Corporations Act* (Ontario), the First Director shall be entitled to tender his resignation as a director and officer upon the appointment of the Receiver in respect of Residualco in the Receivership and the granting and issuance of this Order.

38. **THIS COURT ORDERS** that the First Director shall not incur any liability as a result of becoming a director or officer of Residualco, save and except any liability or obligation incurred as a result of gross negligence or wilful misconduct on his part.

## GENERAL

39. **THIS COURT ORDERS** that, following the Effective Time, the Assignee shall be authorized to take all steps as may be necessary to effect the discharge of the Claims and Encumbrances (other than the Permitted Encumbrances) as against the Purchased Interests, the Purchased Entities, the Retained Assets and the remainder of the Purchased Assets.

40. **THIS COURT ORDERS** that the Monitor be and is hereby authorized to distribute the Priority Payments Closing Amount to such parties as may be entitled to payment to satisfy the

Priority Payments of Validus Parent known at the Effective Time and, after such obligations are paid in full, such amounts as may be required to satisfy the Priority Payments of the Purchased Entities known at the Effective Time, in accordance with the Transaction Agreement.

41. **THIS COURT ORDERS** that, following the Effective Time, the style of cause of these CCAA proceedings shall be hereby amended by being deleted and replaced in its entirety by the following:

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT INVOLVING VALIDUS POWER CORP. and [RESIDUALCO NAME TO BE ADDED]**

42. **THIS COURT ORDERS** that, following the Effective Time, the style of cause of the Receivership Proceedings shall be hereby amended by being deleted and replaced in its entirety by the following:

**MACQUARIE EQUIPMENT FINANCE LIMITED**

Applicant

- and -

**VALIDUS POWER CORP. and [RESIDUALCO NAME TO BE ADDED]**

Respondents

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

43. **THIS COURT ORDERS** that, following the Effective Time, the Appointment Order is amended by deleting Schedule "A" thereto in its entirety.

44. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada.

45. **THIS COURT ORDERS** that the Receiver and the Monitor shall be authorized to apply as it may consider necessary or desirable, with or without notice, to any other court or administrative body, whether in Canada or elsewhere, for orders that aid and complement this Order. All courts and administrative bodies of all such jurisdictions are hereby respectfully requested to make such orders and to provide such assistance to the Receiver and/or the Monitor as may be deemed necessary or appropriate for that purpose.

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

47. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Prevailing Eastern Time on the date hereof without any need for entry and/or filing; provided that the transaction steps set out in paragraph 5 hereof shall be deemed to have occurred in the order set out therein.

**SCHEDULE “A”  
FORM OF MONITOR’S CERTIFICATE**

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

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**COMMERCIAL LIST**

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT INVOLVING VALIDUS POWER CORP., IROQUOIS  
FALLS POWER CORP., BAY POWER CORP., KAP POWER CORP.,  
VALIDUS HOSTING INC., KINGSTON COGEN LIMITED PARTNERSHIP  
AND KINGSTON COGEN GP INC.**

**MONITOR’S CERTIFICATE**

**RECITALS**

1. Pursuant to the Appointment Order of Justice Osborne of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated August 10, 2023, KSV Restructuring Inc. (“**KSV**”) was appointed as receiver and manager (in such capacity, the “**Receiver**”) of the assets, property and undertaking of Validus Power Corp., Iroquois Falls Power Corp., Bay Power Corp., Kap Power Corp., Validus Hosting Inc., Kingston Cogen Limited Partnership and Kingston Cogen GP Inc. (collectively, the “**Vendors**”).
2. Pursuant to the Initial Order of Justice Osborne of the Court dated August 29, 2023, KSV was appointed as monitor (in such capacity, the “**Monitor**”) of the Vendors.

3. Pursuant to a Sale and Investment Solicitation Process Order of the Court dated November 2, 2023 (the “**SISP Order**”), the Monitor was authorized and directed to, among other things, carry out the SISP (as defined the SISP Order).

4. Pursuant to an Approval and Vesting Order of the Court dated [■], 2024 (the “**Order**”), the Court approved the transactions (collectively, the “**Transactions**”) contemplated by the Transaction Agreement dated [■], 2024 (as may be amended from time to time, the “**Transaction Agreement**”) between the Vendors, by KSV in its capacity as the Monitor, Macquarie Equipment Finance Ltd. (“**MEFL**”) and Far North Power Corp. (the “**Assignee**”), and ordered, among other things that upon the Effective Time: (a) that all of the Purchased Entities’ right, title and interest in and to the Excluded Assets, the Excluded Contracts and the Excluded Liabilities shall vest absolutely and exclusively in and to Residualco; (b) the Vendors, by KSV in its capacity as the Monitor, shall issue the IFPC Interests, the IFPC Note 1, the IFPC Note 2 and the IFPC Note 3, and the vesting of: (i) all of the right, title and interest in and to the IFPC Interests and the IFPC Note 2; and (ii) all of Validus Parent’s right, title and interest in and to the Bay Power Interests, the Kap Power Interests, the Kingston LP Interests, the Kingston GP Interests, the Validus Hosting Interests, and the Purchased Validus Parent Assets absolutely and exclusively in and to the Assignee, free and clear of any Encumbrances; (c) the vesting of all right, title and interest in and to the IFPC Note 1 and the IFPC Note 3 absolutely and exclusively in and to MEFL, free and clear of any Encumbrances; and (d) the termination and cancellation or redemption of the Subject Interests for no consideration.

5. Capitalized terms used but not defined herein have the meanings ascribed to them in the Order.

**THE MONITOR CERTIFIES** the following:

1. The Monitor has received the Administrative Expense Closing Amount.
2. The Monitor has received written confirmation from MEFL, on its own behalf and on behalf of the Assignee, in form and substance satisfactory to the Monitor, that (a) all of the Offer Conditions (as defined in the Terms and Conditions) (including, for clarity, the Vendors’ Acceptance) have been satisfied or waived by MEFL, on its own behalf and on behalf of the Assignee, as applicable, and (b) the Effective Time has occurred.

3. This Monitor's Certificate was delivered by the Monitor at \_\_\_\_\_ [TIME] on \_\_\_\_\_, 2024.

**KSV RESTRUCTURING INC., in its  
capacity as the Monitor of the Vendors,  
and not in its personal capacity**

By: \_\_\_\_\_

Name:

Title:



**SCHEDULE "B"**  
**PERMITTED ENCUMBRANCES**

Permitted Encumbrances (as such term is defined in the Transaction Agreement).

**SCHEDULE "C"**  
**ENCUMBRANCES TO BE EXPUNGED**

**KAP POWER CORP. (KapusKasing)**  
**LRO #6**

PIN 65095-0051(LT)

1. CB174196 registered April 7, 2022 is a Charge in favour of Macquarie Equipment Finance Ltd., in the amount of \$60,000,000.00.

PIN 65095-0052(LT)

1. CB174196 registered April 7, 2022 is a Charge in favour of Macquarie Equipment Finance Ltd., in the amount of \$60,000,000.00.

**IROQUOIS FALLS POWER CORP. (Iroquois Falls)**  
**LRO #6**

PIN 65337-0369(LT)

1. CB174195 registered April 7, 2022 is a Charge in favour of Macquarie Equipment Finance Ltd., in the amount of \$60,000,000.00.

2. CB184081 registered March 8, 2023 is a Lien by Her Majesty the Queen in Right of Canada as represented by The Minister of National Revenue in the amount of \$6,002,211.00.

PIN 65337-0372(LT)

1. CB174195 registered April 7, 2022 is a Charge in favour of Macquarie Equipment Finance Ltd., in the amount of \$60,000,000.00.

PIN 65337-0373(LT)

1. CB174195 registered April 7, 2022 is a Charge in favour of Macquarie Equipment Finance Ltd., in the amount of \$60,000,000.00.

PIN 65337-0456(LT)

1. CB174195 registered April 7, 2022 is a Charge in favour of Macquarie Equipment Finance Ltd., in the amount of \$60,000,000.00.

PIN 65337-0458(LT)

1. CB174195 registered April 7, 2022 is a Charge in favour of Macquarie Equipment Finance Ltd., in the amount of \$60,000,000.00.

2. CB184081 registered March 8, 2023 is a Lien by Her Majesty the Queen in Right of Canada as represented by The Minister of National Revenue in the amount of \$6,002,211.00

**KINGSTON COGEN LIMITED PARTNERSHIP/ KINGSTON COGEN GP INC.  
(Kingston)  
LRO #29**

PIN 45132-0362(LT)(Leasehold)

1. LX120618 registered June 6, 2023 is an Application re Charge of Sublease.

PIN 45132-0373(LT)

None

PIN 45132-0375(LT)

1. LX118878 registered March 1, 2023 is a Charge in favour of Macquarie Equipment Finance Ltd., in the amount of \$60,000,000.00.

PIN 45132-0377(LT)(Leasehold)

1. LX118878 registered March 1, 2023 is a Charge in favour of Macquarie Equipment Finance Ltd., in the amount of \$60,000,000.00.

PIN 45132-0379(LT)

None

**BAY POWER CORP. (North Bay)  
LRO #36**

PIN 49127-0021(LT)

1. BS212204 registered April 7, 2022 is a Charge in favour of Macquarie Equipment Finance Ltd., in the amount of \$60,000,000.00

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

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

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

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

Proceeding commenced at TORONTO

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**APPROVAL AND VESTING ORDER**

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Lawyers for the Monitor

**SCHEDULE “B”**

***[Intentionally Deleted]***

**SCHEDULE “C”**

**SISP Order**

*(See attached.)*

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR.	)	WEDNESDAY, THE 1 <sup>ST</sup>
	)	
JUSTICE OSBORNE	)	DAY OF NOVEMBER, 2023

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

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

**SISP APPROVAL ORDER**

**THIS MOTION**, made by **KSV Restructuring Inc. ("KSV")**, in its capacity as the Court-appointed monitor (in such capacity, the "**Monitor**") of Validus Power Corp. ("**VPI**"), Iroquois Falls Power Corp., Bay Power Corp., Kap Power Corp., Validus Hosting Inc. ("**Hosting**"), Kingston Cogen GP Inc. ("**Kingston GP**", and collectively with each of the foregoing entities, the "**Companies**") and Kingston Cogen Limited Partnership ("**Kingston LP**", and together with the Companies, the "**Validus Entities**"), for an Order, among other things, approving a sale and investment solicitation process for the Validus Entities was heard this day at 330 University Ave, Toronto, Ontario.

**ON READING** the Motion Record in respect of this motion, filed, the Second Report of the Monitor dated October 19, 2023 (the "**Second Report**"), filed, the Reply Record of Macquarie Equipment Finance Limited, filed, and the Responding Record and Supplementary Responding Record of the Validus Entities, filed in the receivership proceedings, bearing Court File No.: CV-23-00703754-00CL;



**AND UPON** hearing the submissions of counsel for the Monitor, counsel for Macquarie Equipment Finance Ltd. (the "**Stalking Horse Bidder**"), counsel for Far North Power Corp. (the "**Assignee**"), counsel for the Validus Entities, and such other counsel who were present, no one else appearing although duly served as appears from the affidavit of service of Katie Parent sworn October 26, 2023, filed.

### **SERVICE AND DEFINITIONS**

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that capitalized terms used in this Order and not otherwise defined herein shall have the meanings ascribed to them in the Sale and Investment Solicitation Process attached as Schedule "A" (the "**SISP**"), the Order of this Court dated August 10, 2023 (the "**Receivership Order**") issued in the receivership proceedings bearing Court File No. CV-23-00703754-00CL (the "**Receivership Proceedings**") or the Initial Order of this Court dated August 29, 2023 (the "**Initial Order**"), as applicable.

### **SALE AND INVESTMENT SOLICITATION PROCESS**

3. **THIS COURT ORDERS** that the SISP is hereby approved and the Monitor is hereby authorized to implement the SISP pursuant to the terms thereof. The Monitor is hereby authorized to perform all things reasonably necessary to carry out the SISP.
4. **THIS COURT ORDERS** that the Monitor shall have no liability with respect to any and all losses, claims, damages or liabilities of any nature or kind to any person in connection with or as a result of the SISP, except to the extent of losses, claims, damages or liabilities that arise or

result from the gross negligence or willful misconduct of the Monitor in performing its obligations under the SISP, as determined by this Court.

### **STALKING HORSE BID**

5. **THIS COURT ORDERS** that the transaction agreement (the "**Transaction Agreement**") appended as Schedule "A" to the offer letter delivered by the Stalking Horse Bidder and the Assignee to the Monitor (the "**Offer Letter**", and the Stalking Horse Bidder and the Assignee's offer for the Receiver's entry into the Transaction Agreement set out therein, the "**Stalking Horse Bid**") is hereby approved solely as the stalking horse bid in the SISP, provided that, nothing herein approves: (i) the acceptance and/or execution of the Transaction Agreement by the Vendors (as defined in the Stalking Horse Bid); or (ii) the sale and the vesting of any Property to the Stalking Horse Bidder, the Assignee or any of their respective designees, if applicable, pursuant to the Transaction Agreement and that the approval of the Vendors' acceptance and execution of the Transaction Agreement and/or any sale and vesting of any such Property shall be considered by this Court on a subsequent motion made to this Court if the Stalking Horse Bid is the Successful Bid pursuant to the SISP.

6. **THIS COURT ORDERS** that, as soon as reasonably practicable following the Vendors agreeing upon the final Implementation Steps (as defined in the Offer Letter and the Transaction Agreement), the Monitor shall, in each such case: (i) file a copy thereof with this Court; (ii) serve a copy thereof on the Service List; and (iii) provide a copy thereof to each SISP Participant (as hereinafter defined), excluding from the public record any confidential information that the Monitor, the Stalking Horse Bidder and the Assignee agree should be redacted.

### **BID PROTECTIONS**

7. **THIS COURT ORDERS** that the Monitor is hereby authorized and empowered to enter into the break fee agreement (the "**Break Fee Agreement**") dated as of October 16, 2023,

between the Monitor and the Stalking Horse Bidder and attached as Appendix "1" to the Second Report, *nunc pro tunc*, and the Break-Up Fee (as defined in the Break Fee Agreement) and the Expense Reimbursement (as defined in the Break Fee Agreement) are hereby approved and the Vendors are hereby authorized and directed to pay the Break-Up Fee and the Expense Reimbursement to the Stalking Horse Bidder (or as it may direct) in the manner and circumstances described in the Break Fee Agreement out of the proceeds from and upon completion of any Successful Bid with any party other than the Stalking Horse Bidder.

8. **THIS COURT ORDERS** that the Stalking Horse Bidder shall be entitled to the benefit of and is hereby granted a charge (the "**Bid Protections Charge**") on the Property, which charge shall not exceed \$2,260,000, as security for payment of the Break-Up Fee and the Expense Reimbursement in the manner and circumstances described in the Break Fee Agreement.

9. **THIS COURT ORDERS** that the filing, registration or perfection of the Bid Protections Charge shall not be required, and that the Bid Protections Charge shall be valid and enforceable for all purposes, including against any right, title or interest filed, registered, recorded or perfected subsequent to the Bid Protections Charge, notwithstanding any such failure to file, register, record or perfect.

10. **THIS COURT ORDERS** that the Bid Protections Charge shall constitute a charge on the Property and the Bid Protections Charge shall rank in priority to all other Encumbrances in favour of any Person notwithstanding the order of perfection or attachment, other than (i) any Person with a properly perfected purchase money security interest under the *Personal Property Security Act* (Ontario) or such other applicable legislation; and (ii) the Receiver's Borrowing Charge (as defined in the Receivership Order).

11. **THIS COURT ORDERS** that, except for the Charges or as may be approved by this Court on notice to parties in interest, the Applicant shall not grant any Encumbrances over any Property

that rank in priority to, or *pari passu* with, the Bid Protections Charge, unless the Applicant also obtains the prior written consent of the Monitor and the Stalking Horse Bidder, or further Order of this Court.

12. **THIS COURT ORDERS** that the Bid Protections Charge shall not be rendered invalid or unenforceable and the rights and remedies of the Stalking Horse Bidder shall not otherwise be limited or impaired in any way by: (i) the pendency of these proceedings and the declarations of insolvency made herein; (ii) any application(s) for bankruptcy order(s) or receivership order(s) issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”) or otherwise, or any bankruptcy order or receivership order made pursuant to such applications; (iii) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (iv) the provisions of any federal or provincial statutes; or (v) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an “**Agreement**”) which binds the Applicant, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Bid Protections Charge nor the execution, delivery, perfection, registration or performance of the Transaction Agreement shall create, cause or be deemed to constitute a breach by the Applicant of any Agreement to which it is a party;
- (b) the Stalking Horse Bidder shall not have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Bid Protections Charge or the execution, delivery or performance of the Transaction Agreement; and

- (c) the payments made by the Applicant pursuant to this Order, the Transaction Agreement and the granting of the Bid Protections Charge, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

## PIPEDA

13. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Monitor and its respective advisors are hereby authorized and permitted to disclose and transfer to prospective SISP participants (each, a "**SISP Participant**") and their advisors personal information of identifiable individuals but only to the extent desirable or required to negotiate or attempt to complete a transaction pursuant to the SISP (a "**Transaction**"). Each SISP Participant to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation for the purpose of effecting a Transaction, and if it does not complete a Transaction, shall return all such information to the Monitor, or in the alternative destroy all such information and provide confirmation of its destruction if requested by the Monitor. Any Successful Party shall maintain and protect the privacy of such information and, upon closing of the Transaction(s) contemplated in the Successful Bid(s), shall be entitled to use the personal information provided to it that is related to the Business and/or Property acquired pursuant to the SISP in a manner that is in all material respects identical to the prior use of such information by the CCAA Parties, and shall return all other personal information to the Monitor, or ensure that all other personal information is destroyed and provide confirmation of its destruction if requested by the Monitor.

**UNKNOWN CONTRACT BAR PROCESS**

14. **THIS COURT ORDERS** that capitalized terms used in this section of the Order shall have the following meanings:

- (a) **"Excluded Contract Counterparties"** means any contracts for employment with any of the employees of the Companies;
- (b) **"Known Contract Counterparties"** means a counterparty with a contract with one or more of the Companies who is known to the Monitor based on the books and records of the Companies or who is otherwise known by the Monitor as having a contract with the Companies but, for greater certainty, excluding Excluded Contract Counterparties;
- (c) **"Known Contracts"** means all contracts with the Companies listed on the Known Contract Counterparty List;
- (d) **"Monitor's Website"** means <https://www.ksvadvisory.com/experience/case/validus-power-corp;>
- (e) **"Publication Notice"** means the notice to be published by the Monitor requesting parties to confirm on the Monitor's Website that they are a Known Contract Counterparty and that all of their contracts with the Companies are listed on the Known Contract Counterparty List; and
- (f) **"Unknown Contract Counterparty"** means any Person who has a contract with one or more of the Companies who is not a Known Contract Counterparty.

15. **THIS COURT ORDERS** that within 3 business days from the date of this Order, the Monitor shall post on the Monitor's Website a list of all Known Contract Counterparties and Known Contracts (the **"Known Contract Counterparty List"**).

16. **THIS COURT ORDERS** that as soon as reasonably practicable after the date of this Order, the Monitor shall cause to be published the Publication Notice in the Globe and Mail (National Edition) and such other publications as the Monitor may consider appropriate.

17. **THIS COURT ORDERS** that any person who believes it may have one or more contracts with one or more of the Companies whose identity and/or contract is not listed on the Known Contract Counterparty List shall contact the Monitor by no later than November 28, 2023 (the “**Unknown Contract Bar Date**”) and provide the Monitor with a copy or copies of any or all outstanding contracts.

18. **THIS COURT ORDERS** that any Unknown Contract Counterparty who complies with paragraph 17 above, shall be treated as a Known Contract Counterparty in connection with any motions whereby Known Contract Counterparties are provided with notice.

19. **THIS COURT ORDERS** that upon expiration of the Unknown Contract Bar Date, all other Unknown Contract Counterparties shall be forever barred from asserting that it did not receive adequate notice of any treatment of any contractual right or claim in the connection with these proceedings including, without limitation, any motion or motions for approval of a sale approval order, vesting order, reverse vesting order, distribution order or otherwise, provided that nothing herein prevents any such Unknown Contract Counterparty from asserting a claim against any residual proceeds of sale, Residualco or in the bankruptcy of the Companies.

#### **APPROVAL OF KSV’S ACTIVITIES AND REPORTS**

20. **THIS COURT ORDERS** that the activities and conduct of KSV, in its capacities as the Monitor and as the Receiver, prior to the date hereof in relation to the CCAA Parties or the Validus Entities, as the case may be, in these CCAA proceedings and the Receivership Proceedings, as the case may be, are hereby ratified and approved.

21. **THIS COURT ORDERS** that the pre-filing report of the Monitor dated August 23, 2023, the first report of the Monitor dated September 1, 2023 and Second Report be and are hereby approved.

22. **THIS COURT ORDERS** that only KSV in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way the approvals set forth in paragraphs 20 and 21 of this Order.

#### **EXTENSION OF THE STAY PERIOD**

23. **THIS COURT ORDERS** that the Stay Period, as defined in the Initial Order dated August 29, 2023 in this proceeding, be and is hereby extended up to and including December 31, 2023.

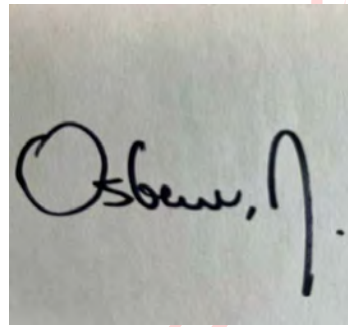
#### **GENERAL**

24. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada.

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



26. **THIS COURT ORDERS** that this Order and all of its provisions are effective from the date it is made without any need for entry and/or filing.



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**SCHEDULE "A"**  
**SALE AND INVESTMENT SOLICITATION PROCESS**

See attached.

# Sale and Investment Solicitation Process

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1. On August 10, 2023, the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) granted an order, among other things, appointing KSV Restructuring Inc. (“**KSV**”) as receiver and manager (in such capacity, the “**Receiver**”) of the property and undertakings of Validus Power Corp., Iroquois Falls Power Corp., Bay Power Corp., Kap Power Corp., Kingston Cogen Limited Partnership, Kingston Cogen GP Inc. and Validus Hosting Inc. (collectively, the “**Validus Entities**”) pursuant to section 243(1) of the *Bankruptcy and Insolvency Act* (Canada) and section 101(1) of the *Courts of Justice Act* (Ontario).
2. On application by the Receiver, on August 29, 2023, the Court granted an order (the “**Initial Order**”), among other things, granting the Validus Entities relief pursuant to the *Companies’ Creditors Arrangement Act* (Canada) and appointing KSV as monitor (in such capacity, the “**Monitor**”) of the Validus Entities.
3. On November 1, 2023, the Court granted a further order (the “**SISP Order**”), among other things: (a) authorizing the Monitor to implement a sale and investment solicitation process (“**SISP**”) in accordance with the terms hereof; (b) approving, for purposes of acting as the stalking horse bid in the SISP, the transaction agreement (the “**Stalking Horse Transaction Agreement**”) appended as Schedule “A” to the offer letter delivered by Macquarie Equipment Finance Limited (the “**Proponent**”) and Far North Power Corp. (the “**Assignee**”) to the Monitor on October 16, 2023 (the Proponent and the Assignee’s offer for the entry by the Validus Entities into the Stalking Horse Transaction Agreement set out therein, the “**Stalking Horse Bid**”); (c) approving the Monitor’s entry into the Break-Up Fee Agreement and the Break-Up Fee and the Expense Reimbursement; and (d) granting the Bid Protections Charge. Capitalized terms that are not defined herein have the meanings ascribed thereto in the Initial Order or the SISP Order, as applicable.
4. This SISP sets out the manner in which: (a) binding bids for executable transaction alternatives that are superior to the Stalking Horse Bid involving the shares and/or the business and assets of the Validus Entities will be solicited from interested parties; (b) any such bids received will be addressed; (c) any Successful Bid (as defined below) will be selected; and (d) Court approval of any Successful Bid will be sought. Such transaction alternatives may include, among other things, a sale of some or all of the Validus Entities’ shares, assets and/or business and/or an investment in the Validus Entities, each of which shall be subject to all terms set forth in this SISP.
5. The SISP shall be conducted by the Monitor.
6. Parties who wish to have their bids considered shall be expected to participate in the SISP as conducted by the Monitor.
7. The SISP will be conducted such that the Monitor will:
  - (a) prepare marketing materials and a process letter;

- (b) prepare and provide applicable parties with access to a virtual data room containing diligence information;
  - (c) prepare and include in the data room one or more template forms of purchase agreements to be used by interested parties when submitting a proposed bid (“**Form of Agreement**”);
  - (d) solicit interest from parties to enter into non-disclosure agreements (parties shall only obtain access to the data room and be permitted to participate in the SISP if they execute a non-disclosure agreement that is in form and substance satisfactory to the Monitor); and
  - (e) request that such parties (other than the Proponent and the Assignee) submit a binding offer meeting at least the requirements set forth in Section 9, as determined by the Monitor (a “**Qualified Bid**”) by the Qualified Bid Deadline (as defined below).
8. The SISP shall be conducted subject to the terms hereof and the following key milestones:
- (a) Court approval of SISP and the Stalking Horse Bid to serve as stalking horse bid in the SISP – November 1, 2023;
  - (b) The Monitor to commence solicitation process – November 2, 2023;
  - (c) Deadline to submit a Qualified Bid – 11:59 p.m. (Toronto time) on December 7, 2023 (the “**Qualified Bid Deadline**”);
  - (d) Deadline to determine whether a bid is a Qualified Bid and, if applicable, to notify those parties who submitted a Qualified Bid of the Auction (as defined below) – As soon as possible after the Qualified Bid Deadline
  - (e) The Monitor to hold the Auction (if applicable) – on or about December 13, 2023; and
  - (f) Implementation Order (as defined below) hearing by no later than December 21, 2023, subject to Court availability.

The Monitor may, in its discretion, seek court approval for the termination of the SISP and for approval of implementation of the Stalking Horse Bid if no potentially interested parties have executed non-disclosure agreements and commenced due diligence on or prior to November 22, 2023, or if thereafter all parties who executed non-disclosure agreements and conducted due diligence have advised the Monitor that they no longer intend to participate in the SISP.

9. In order to constitute a Qualified Bid, a bid (including an Aggregated Bid (as defined below)) must comply with the following:
- (a) it provides for: (i) the payment in full in cash on closing of the Claim Amount (as defined in the Stalking Horse Transaction Agreement); (ii) the purchase of all of the Proponent's interest in the Receiver's Certificates (as defined in the Appointment Order), if any; (iii) the payment in full in cash on closing of any claims ranking in priority to the claims set forth in subparagraphs (i) and (ii) of this Subsection 9(a), including any claims secured by Court-ordered charges (other than the Receiver's Borrowings Charge (as defined in the Appointment Order)), unless otherwise agreed to by the applicable holders thereof in their sole discretion, and the Break-Up Fee and the maximum amount of the Expense Reimbursement (as such terms are defined in the Stalking Horse Transaction Agreement); and (iv) a minimum overbid increment of \$750,000 (the "**Overbid Increment**");
  - (b) An allocation of the purchase price under such bid among the purchased assets of Validus Power Corp. and all other property to be acquired.
  - (c) it provides a detailed sources and uses schedule that identifies, with specificity, the amount of cash consideration (the "**Cash Consideration Value**") and any assumptions that could reduce the net consideration payable. At a minimum, the Cash Consideration Value plus the Validus Entities' aggregate cash on hand must be sufficient for payment in full of the items contemplated in subparagraphs (i) to (iii) of Subsection 9(a), including the Break-Up Fee and the maximum amount of the Expense Reimbursement, plus the Overbid Increment, on closing, which Cash Consideration Value is estimated to be \$60,228,822 as of September 22, 2023;
  - (d) it provides details of any assumption of liabilities;
  - (e) it is reasonably capable of being consummated by 30 days after issuance of the Implementation Order if selected as a Successful Bid;
  - (f) it contains:
    - (i) duly executed binding transaction document(s);
    - (ii) the legal name and identity (including jurisdiction of existence) and contact information of the bidder, full disclosure of its direct and indirect principals, and the name(s) of its controlling equityholder(s);
    - (iii) a redline to the applicable Form of Agreement provided by the Monitor as described in Subsection 7(c);
    - (iv) evidence of authorization and approval from the bidder's board of directors (or comparable governing body) and, if necessary to complete the transaction, the bidder's equityholder(s);

- (v) disclosure of any connections or agreements with any of the Validus Entities or any of their affiliates, any known, potential, prospective bidder, or any officer, manager, director, or known equity security holder of any Validus Entity or any of their affiliates; and
- (vi) such other information as may be reasonably requested by the Monitor, in its discretion;
- (g) it includes a letter stating that the bid is submitted in good faith, is binding and is irrevocable until the earlier of (i) completion of a Successful Bid or (ii) December 29, 2023; *provided*, however, that if such bid is selected as a Successful Bid, it shall remain irrevocable until the closing of the Successful Bid;
- (h) it provides written evidence of a bidder's ability to fully fund and consummate the transaction and satisfy its obligations under the transaction documents, including binding equity/debt commitment letters and/or guarantees (i.e., bank guarantees) covering the full value of all cash consideration;
- (i) it does not include any request for or entitlement to any break fee, expense reimbursement or similar type of payment;
- (j) it is not conditional upon:
  - (i) approval from the bidder's board of directors (or comparable governing body) or equityholder(s);
  - (ii) the outcome of any due diligence by the bidder; or
  - (iii) the bidder obtaining financing;
- (k) it includes an acknowledgment and representation that the bidder has had an opportunity to conduct any and all required due diligence prior to making its bid;
- (l) it specifies any regulatory or other third-party approvals the party anticipates would be required to complete the transaction (including the anticipated timing necessary to obtain such approvals) and, in connection therewith, specifies whether the bidder or any of its affiliates is involved in any part of the Canadian energy sector, including an electricity generator, electric utility, retail service provider, or a registered participant with the Ontario Independent Electricity System Operator;
- (m) it includes full details of the bidder's intended treatment of the Validus Entities' employees under the proposed bid;
- (n) it is accompanied by a cash deposit (the "**Deposit**") by wire transfer of immediately available funds equal to 10% of the Cash Consideration Value, which Deposit shall be retained by the Monitor in a non-interest bearing trust account in accordance with Section 18;

- (o) it includes a statement that the bidder will bear its own costs and expenses (including legal and advisor fees) in connection with the proposed transaction, and by submitting its bid is agreeing to refrain from and waive any assertion or request for reimbursement on any basis;
  - (p) it contains a written acknowledgment that the transaction will proceed on an “as is, where is” basis, without representations or warranties by the sellers except as expressly set out therein; and
  - (q) it is received by the Qualified Bid Deadline.
10. The Qualified Bid Deadline may be extended: (i) by the Monitor for no longer than 7 days in the Monitor’s discretion; or (ii) by further order of the Court. In such circumstances, the milestones contained in Subsections 8(d) through 8(f) shall be extended by the same amount of time. Any other milestone dates in Section 8 may be extended in the Monitor’s discretion; *provided* that the aggregate of all such discretionary extensions shall not exceed 14 days.
  11. The Monitor may combine bids received for individual assets of the Validus Entities for the purpose of determining if such bids, collectively, will be treated as a Qualified Bid (such bid being an “**Aggregated Bid**”); *provided* that any Aggregated Bid must comply with each of the requirements set out in Section 9 (as may be modified in accordance with Section 12) in order to be a Qualified Bid.
  12. The Monitor may waive compliance with any one or more of the requirements specified in Section 9 above and deem a non-compliant bid to be a Qualified Bid; *provided* that the Monitor shall not waive compliance with the requirements specified in Subsections 9(a), (c), (f), (g), (h), (i), (j), (k), (l) or (n) without the prior written consent of the Proponent and the Assignee, each acting reasonably, or further order of the Court. If a bid received is not a Qualified Bid, the Monitor may provide the bidder with an opportunity to remedy any deficiencies and render such bid a Qualified Bid; *provided* that such defects are remedied on or before the deadline set out in Subsection 8(d).
  13. Notwithstanding the requirements specified in Section 9, the transactions contemplated by the Stalking Horse Bid (collectively, the “**Stalking Horse Transaction**”), are deemed to be a Qualified Bid; *provided* that, for greater certainty, no Deposit shall be required to be submitted in connection with the Stalking Horse Transaction.
  14. If one or more Qualified Bids (other than the Stalking Horse Transaction) has been received by the Monitor on or before the Qualified Bid Deadline, the Monitor shall proceed with an auction to determine the successful bid(s) (the “**Auction**”), which Auction shall be administered in accordance with Schedule “A” hereto, subject to such additional procedural rules as may be determined by the Monitor to be necessary or desirable in the conduct of the Auction. The successful bid(s) selected within the Auction shall constitute the “**Successful Bid**”. Forthwith upon determining to proceed with an Auction, the Monitor shall provide written notice to each party that submitted a Qualified Bid (including the

Stalking Horse Transaction), along with copies of all Qualified Bids and a statement by the Monitor specifying which Qualified Bid is the leading bid.

15. Following selection of a Successful Bid, the Validus Entities shall seek to finalize any remaining necessary definitive agreement(s) with respect to the Successful Bid in accordance with the key milestones set out in Section 8. Once the necessary definitive agreement(s) with respect to a Successful Bid have been finalized, as determined by the Monitor, the Monitor shall apply to the Court for an order or orders, among other things, approving such Successful Bid and/or the mechanics to authorize the Validus Entities and the Monitor, as the case may be, to complete the transactions contemplated thereby, as applicable, and authorizing the Validus Entities or the Monitor, as the case may be, to: (i) enter into any and all necessary agreements and related documentation with respect to the Successful Bid; (ii) undertake such other actions as may be necessary to give effect to such Successful Bid; and (iii) implement the transaction(s) contemplated in such Successful Bid (each, an “**Implementation Order**”).
16. If a selected Successful Bid is not completed within 30 days following issuance of the Implementation Order, the Implementation Order is not granted, or the Monitor otherwise determines a selected Successful Bid will not be completed, the Monitor shall be permitted to designate one or more alternative Successful Bids from the Qualified Bids received prior to or during the Auction, and such alternative Successful Bid shall be deemed the Successful Bid for all purposes hereunder. The foregoing shall not limit the Monitor’s right in the foregoing circumstances to terminate these SISP procedures and pursue any alternative process and any alternative transactions determined by the Monitor to be appropriate, in consultation with the Proponent, as secured creditor.
17. The Validus Entities, the Proponent and the Assignee, with the consent of the Monitor, shall be permitted to modify the Stalking Horse Transaction to exclude any asset for which an alternative bid (an “**Alternative Bid**”, and the assets subject to such Alternative Bid, the “**Excluded SHB Assets**”) is received if:
  - (a) the Proponent and the Assignee agree in writing, in their respective sole discretion, to modify the Stalking Horse Transaction in order to accommodate such proposed Alternative Bid;
  - (b) the Validus Entities, the Proponent and the Assignee, with the consent of the Monitor, agree on the adjustment of the purchase price under the Stalking Horse Transaction to account for the removal of the Excluded SHB Assets and the value of the Alternative Bid;
  - (c) the Monitor determines that the aggregate consideration to be offered by (i) the Stalking Horse Transaction, as so modified (the “**Modified SHB**”) and (ii) the proposed Alternative Bid for the Excluded SHB Assets, would exceed the value of the Stalking Horse Transaction (the “**Excluded Assets Sale**”);
  - (d) the Alternative Bid combined with the Modified SHB meet all of the requirements of a Qualified Bid;



- (e) the Monitor determines that the Modified SHB and the Excluded Assets Sale, collectively, are a Qualified Bid; and
- (f) the Proponent and the Assignee agree that the original Stalking Horse Transaction shall remain open for acceptance notwithstanding the Modified SHB, such that the Stalking Horse Transaction can be completed if for any reason the Modified SHB and the Excluded Assets Sale are not completed.

For greater certainty, if the Modified SHB and Excluded Assets Sale are each designated as a Successful Bid, then the Proponent and the Assignee shall not be entitled to receive any Break Fee or Expense Reimbursement Amount as a result of the completion of such transaction. If the Modified SHB and the Excluded Asset Sale are not selected as a Successful Bid, then the Proponent and the Assignee shall continue to be entitled to receive any Break Fee and Expense Reimbursement (in accordance with the Stalking Horse Transaction Agreement) upon completion of an alternative Successful Bid to which the Proponent and the Assignee are not parties.

18. All Deposits shall be retained by the Monitor in a non-interest bearing trust account. If a Successful Bid is selected and an Implementation Order authorizing the consummation of the transaction contemplated thereunder is granted, any Deposit paid in connection with such Successful Bid will be non-refundable and shall, upon closing of the transaction contemplated by such Successful Bid, be applied to the cash consideration to be paid in connection with such Successful Bid or be dealt with as otherwise set out in the definitive agreement(s) entered into in connection with such Successful Bid. In the event that the Successful Bid is not completed due to a breach or default of the bidder's obligations thereunder, the Deposit shall be forfeited to the Validus Entities as damages and such Deposit shall be in addition to, and not in lieu of, any other rights in law or equity that the Validus Entities have in respect of such breach or default. Any Deposit delivered with a Qualified Bid that is not selected as a Successful Bid will be returned to the applicable bidder as soon as reasonably practicable (but not later than ten (10) business days) after the earliest of (i) completion of a Successful Bid; (ii) December 29, 2023; or (iii) the date of the Monitor's determination that such bid will not be pursued further.
19. Except as expressly set out herein, the Monitor may not modify the SISP without court approval; *provided*, however, that the Monitor may implement additional procedural rules that the Monitor determines will better promote the goals of the SISP; *provided* that any additional procedural rules shall not be inconsistent with the Stalking Horse Agreement unless agreed by the Proponent and the Assignee or otherwise ordered by the Court.

**SCHEDULE “A”**  
**AUCTION PROCEDURES**

1. **Auction.** If the Monitor receives at least one Qualified Bid (other than the Stalking Horse Transaction) including any Aggregated Bid, the Monitor shall conduct and administer the Auction in accordance with the terms of the SISP. Instructions to participate in the Auction, which will take place via video conferencing, will be provided to Qualified Parties (as defined below) not less than 24 hours prior to the Auction.
2. **Participation.** Only parties that submit a Qualified Bid by the Qualified Bid Deadline, including the Stalking Horse Transaction and, collectively, the parties submitting any Aggregated Bid (collectively, the “**Qualified Parties**”), shall be eligible to participate in the Auction. No later than 5:00 p.m. (Toronto time) on the day prior to the Auction, each Qualified Party (other than the Proponent and the Assignee, in respect of the Stalking Horse Transaction) must inform the Monitor whether it intends to participate in the Auction. The Monitor will promptly thereafter inform in writing each Qualified Party who has expressed its intent to participate in the Auction of the identity of all other Qualified Parties that have indicated their intent to participate in the Auction. If no Qualified Party indicates such expression of intent, the Stalking Horse Transaction shall be the Successful Bid.
3. **Auction Procedures.**
  - (a) **Procedures.** The Auction shall be governed by the following procedures:
    - (i) **Attendance.** Only the Monitor, representatives of the Qualified Parties and each of their respective advisors, and any other person admitted with the consent of the Monitor will be entitled to attend the Auction, and only the Qualified Parties will be entitled to make any subsequent Overbids (as defined below) at the Auction;
    - (ii) **No Collusion.** Each Qualified Party participating at the Auction shall be required to confirm on the record at the Auction that: (i) it has not engaged in any collusion with respect to the Auction and the bid process (excluding, for greater certainty, any discussions among those parties who are bidders in an Aggregated Bid); and (ii) its bid is a good-faith *bona fide* offer and it intends to consummate the proposed transaction if selected as the Successful Bid (as defined below);
    - (iii) **Minimum Overbid.** The Auction shall begin with the Qualified Bid that represents the highest or otherwise best Qualified Bid as determined by the Monitor (the “**Initial Bid**”), and any bid made at the Auction by a Qualified Party subsequent to the Monitor’s announcement of the Initial Bid (each, an “**Overbid**”), must proceed in minimum additional cash increments as determined by the Monitor and announced to the Auction participants prior to each round of bidding (the “**Required Bid Increment**”). At the end of

each round of bidding, the Monitor will identify the highest or otherwise best Overbid as the leading bid for the subsequent round (the “**Lead Bid**”);

- (iv) **Bidding Conclusion.** The Auction shall continue in one or more rounds and will conclude after each participating Qualified Party (including parties to an Aggregated Bid) has had the opportunity to submit an additional bid or refused to submit an additional bid with full knowledge and written confirmation of the then-existing Lead Bid for that round. If at the commencement of the Auction, no party submits a bid that exceeds the Initial Bid by the Required Bid Increment, then the Initial Bid will be the Successful Bid. If in any round, a Qualified Party (other than the party who submitted the Lead Bid in such round) does not submit an Overbid satisfying the Required Bid Increment, then such Qualified Party (including the parties to any Aggregated Bid if no Aggregated Bid is submitted in a particular round) will no longer be permitted to participate in any subsequent round of the Auction; and
  - (v) **No Post-Auction Bids.** No bids will be considered for any purpose after the Auction has concluded.
- (b) **Additional Procedures.** The Monitor may announce prior to or during the Auction additional procedural rules, including the process for submission and review of bids, that are reasonable under the circumstances for conducting the Auction; *provided* that those rules are not inconsistent in any material respects with the SISP or the Stalking Horse Agreement.

#### **Selection of Successful Bid**

4. **Selection.** Before the conclusion of the Auction, the Monitor will: (a) review each Qualified Bid and Overbid, considering the factors set out in Section 9 of the SISP and, among other things: (i) the amount of consideration being offered and, if applicable, the proposed form, composition and allocation of same; (ii) the value of any assumption of liabilities or waiver of liabilities not otherwise accounted for in prong (i) above; (iii) the likelihood of the Qualified Party’s ability to close a transaction by 30 days after issuance of the Implementation Order and the timing thereof (including factors such as the transaction structure and execution risk, including conditions to, timing of, and certainty of closing; termination provisions; availability of financing and financial wherewithal to meet all commitments; and required governmental or other approvals); (iv) the likelihood of the Court’s approval of such Overbid; (v) the net benefit to the estate of the Validus Entities of such Overbid; and (vi) any other factors the Monitor may, consistent with its duties, reasonably deem relevant; and (b) identify the highest or otherwise best bid received at the Auction (the “**Successful Bid**” and the Qualified Party making such bid, the “**Successful Party**”).
5. **Acknowledgement.** The Successful Party shall complete and execute all agreements, contracts, instruments or other documents evidencing and containing the terms and conditions upon which the Successful Bid was made within one business day of the

Successful Bid being selected as such, unless extended by the Monitor, subject to the milestones set forth in Section 8 of the SISP.

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT INVOLVING  
VALIDUS POWER CORP., IROQUOIS FALLS POWER CORP., BAY POWER CORP., KAP  
POWER CORP., VALIDUS HOSTING INC., KINGSTON COGEN LIMITED PARTNERSHIP AND  
KINGSTON COGEN GP INC.

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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at TORONTO

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**SISP APPROVAL ORDER**

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Lawyers for the Monitor

## AMENDED AND RESTATED TERMS AND CONDITIONS

**THESE AMENDED AND RESTATED TERMS AND CONDITIONS** apply to the binding offer letter dated October 16, 2023 (the “**Offer Letter**”), delivered by Macquarie Equipment Finance Ltd. (“**MEFL**”) and Far North Power Corp. (the “**Assignee**”) to the Validus Entities (as defined below), each by KSV Restructuring Inc. (“**KSV**”), in its capacity as the Monitor (as defined below) in the CCAA Proceedings (as defined below) (collectively, the “**Vendors**”, and each, a “**Vendor**”), for the entry into the Transaction Agreement (as defined below) and the transactions contemplated thereby.

### ARTICLE 1 INTERPRETATION

#### 1.1 Definitions

In these Terms and Conditions:

“**Administrative Expense Closing Amount**” has the meaning given to such term in the Transaction Agreement.

“**Affiliate**” means, with respect to any specified Person, any other Person which, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such specified Person. For purposes of this definition, “control” (including, with correlative meanings, the terms “controlling”, “controlled by” and “under common control with”), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise. For greater certainty, an Affiliate of a Person shall include such Person’s investment funds and managed accounts and any funds managed or directed by the same investment advisor.

“**Applicable Law**” means any transnational, domestic or foreign, federal, provincial, territorial, state, local or municipal (or any subdivision of any of them) law (including common law and civil law), statute, ordinance, rule, regulation, restriction, limit, by-law (zoning or otherwise), judgment, order, direction or any consent, exemption, or any other legal requirements of, or agreements with, any Governmental Authority, that applies in whole or in part to the transactions contemplated by the Transaction Agreement, the Validus Entities, MEFL (or any of its Affiliates), the Assignee (or any of its Affiliates), the Business, or any of the Purchased Assets or the Assumed Liabilities.

“**Appointment Order**” has the meaning given to such term in the Transaction Agreement.

“**Assignee**” has the meaning given to such term in the preamble.

“**Assumed Liabilities**” has the meaning given to such term in the Transaction Agreement.

“**BIA**” means the *Bankruptcy and Insolvency Act* (Canada), as amended.

“**Business**” has the meaning given to such term in the Transaction Agreement.

“**Business Day**” means any day, other than a Saturday or Sunday, on which the principal commercial banks in Toronto, Ontario are open for commercial banking business during normal banking hours.

“**CCAA**” means the *Companies’ Creditors Arrangement Act* (Canada), as amended.

“**CCAA Proceedings**” has the meaning given to such term in the Transaction Agreement.

“**Claim**” means any and all demands, claims, liabilities, actions, causes of action, counterclaims, expenses, costs, damages, losses, suits, debts, sums of money, refunds, accounts, indebtedness, rights of recovery, rights of set-off, rights of recoupment and liens of whatever nature (whether direct or indirect, absolute or contingent, asserted or unasserted, secured or unsecured, matured or not yet matured due or to become due, accrued or unaccrued or liquidated or unliquidated) and including all costs, fees and expenses relating thereto, against any Person.

“**Closing**” has the meaning given to such term in the Transaction Agreement.

“**Collective Agreement**” means any collective bargaining agreement or union agreement applicable to any Validus Entity or the Business, and all related documents, including letters or memoranda of understanding, letters of intent and other written communications with bargaining agents which impose any obligations upon any of the Validus Entities.

“**Continuing Contract**” means a contract, arrangement, or other agreement (oral or written): (i) for which a notice of rejection or similar notice has not been sent by the Receiver or the Monitor; and (ii) that is not an Excluded Contract.

“**Court**” has the meaning given to such term in the Transaction Agreement.

“**Disclosure Schedule**” has the meaning given to such term in the Transaction Agreement.

“**Effective Date**” has the meaning given to such term in the Transaction Agreement.

“**Effective Time**” has the meaning given to such term in the Transaction Agreement.

“**Employees**” has the meaning given to such term in the Transaction Agreement.

“**Energy Regulator**” means any federal or provincial Governmental Authority having jurisdiction to regulate the generation, transmission, distribution, retailing or wholesaling of electricity and/or the purchase, sale and use of electricity or natural gas in Ontario, foreign regulatory authority having jurisdiction over matters relating to electricity and/or natural gas, authorized electricity or natural gas transmitter or distributor, or regional transmission organization or independent system operator, including but not limited to the Independent Electricity System Operator and the Ontario Energy Board.

“**Energy Regulator Notices**” means notice of the Transaction Agreement to an Energy Regulator in the time and manner required by Applicable Law and includes, but is not limited to, notice to an Energy Regulator regarding potential implications to performance guarantees (including, but not limited to, prudential support) that might have been provided in support of an

application for a licence, order or permit or an electricity market participant agreement or registration, as the case may be.

“**Excluded Contracts**” has the meaning given to such term in the Transaction Agreement.

“**Final Order**”, with respect to any order of any court of competent jurisdiction, means that: (i) such order shall not have been stayed, appealed, varied (except with the consent of MEFL, the Assignee and the Monitor) or vacated, and all time periods within which such order could at law be appealed shall have expired; or (ii) such order is no longer the subject of any continuing proceedings seeking to stay, appeal, vary (except with the consent of MEFL, the Assignee and the Monitor) or vacate such order, all such proceedings having been discontinued, denied, dismissed and otherwise unsuccessfully concluded, and the time for appealing or further appealing the disposition of such proceedings shall have expired.

“**Governmental Authority**” means any government, regulatory authority (including any Energy Regulator), governmental department, agency, commission, bureau, official, minister, Crown corporation, court, board, tribunal or dispute settlement panel or other law, rule or regulation-making organization or entity: (a) having or purporting to have jurisdiction on behalf of any nation, province, territory or state or any other geographic or political subdivision of any of them; or (b) exercising, or entitled or purporting to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power.

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

“**Implementation Steps**” has the meaning given to such term in Section 2.3.1.

“**Initial Order**” has the meaning given to such term in the Transaction Agreement.

“**KSV**” has the meaning given to such term in the preamble.

“**Leased Property**” has the meaning given to such term in the Transaction Agreement.

“**Material Adverse Effect**” means any change, effect, event, occurrence, state of facts or development that has had a material adverse effect on the business, assets, liabilities, financial condition or results of operations of any of the Validus Entities, in each case except to the extent that any such change, effect, event, occurrence, state of facts or development is attributable to, results from or arises in connection with: (i) general economic or business conditions; (ii) Canada, the U.S. or foreign economies, or financial, banking, credit or securities markets in general, or other general business, banking, credit, financial or economic conditions (including: (A) any disruption in any of the foregoing markets; (B) any change in the currency exchange rates; or (C) any decline or rise in the price of any security, commodity, contract or index); (iii) acts of God or other calamities, national or international political or social conditions, including the engagement and/or escalation by the U.S. or Canada in hostilities, whether or not pursuant to the declaration of a national emergency or war, or the occurrence of any military or terrorist attack upon the U.S. or Canada or any of their territories, possessions or diplomatic or consular offices or upon any military installation, equipment or personnel of the U.S. or Canada; (iv) conditions affecting generally the industry in which the Validus Entities operate; (v) the public announcement of, entry into or pendency of, actions required or contemplated by or performance of obligations



under, the Transaction Agreement or the transactions contemplated thereby, or the identity of the Parties, including any termination of, reduction in or similar adverse impact or threatened adverse impact on relationships, contractual or otherwise, with any customers, suppliers, financing sources, licensors, licensees, distributors, partners, employees or others having relationships with the Validus Entities; (vi) changes in Applicable Laws or the interpretation, application or non-application thereof by any Governmental Authority; (vii) any change in IFRS or other accounting or tax requirements or principles; (viii) regional, national or international political, regulatory, business, labour or social conditions; (ix) the failure of the Validus Entities to meet or achieve the results set forth in any internal projections (but not the underlying facts giving rise to such failure unless such facts are otherwise excluded pursuant to the clauses contained in this definition); or (x) any change resulting from compliance with the terms of, or any actions taken (or not taken) by any Party pursuant to or in accordance with, the Transaction Agreement; *provided* that the exceptions set forth in clauses (i), (ii), (iii), (iv), (vi), (vii) or (viii) shall not apply to the extent that such event is disproportionately adverse to the Validus Entities, taken as a whole, as compared to other companies and entities operating in the industry in which the Validus Entities operate.

“**Monitor**” means KSV, in its capacity as court-appointed monitor in the CCAA Proceedings.

“**Offer**” has the meaning given to such term in the Offer Letter.

“**Offer Conditions**” means each of the conditions precedent set forth in Section 3.1.

“**Offer Letter**” has the meaning given to such term in the Transaction Agreement.

“**Order**” means any order of the Court made in the Receivership Proceedings, the CCAA Proceedings or any order, directive, judgment, decree, injunction, decision, ruling, award or writ of any Governmental Authority.

“**Original Terms and Conditions**” means the original form of terms and conditions that was appended as Schedule “B” to the Offer Letter. For greater certainty, the Original Terms and Conditions are superseded by these Terms and Conditions.

“**Original Transaction Agreement**” means the original form of transaction agreement that was appended as Schedule “A” to the Offer Letter. For greater certainty, the Original Transaction Agreement is superseded by the Transaction Agreement.

“**Outside Date**” has the meaning given to such term in Section 4.1.1(d).

“**Parties**” means, collectively, the Vendors, MEFL and the Assignee, and “**Party**” means any of the Vendors, MEFL or the Assignee, as the context requires.

“**Permits and Licenses**” means: (i) any electricity generator, retailer or wholesaler licenses from the Ontario Energy Board; (ii) any electricity market participation authorizations or facility registrations from the Independent Electricity System Operator; and (iii) any other permits, licenses, authorizations, approvals or other evidence of authority, permission or entitlement related to the Business or any part thereof granted by a Governmental Authority.

“**Person**” means an individual, partnership, firm, joint venture, venture capital fund, limited liability company, unlimited liability company, association, trust, entity, corporation, unincorporated association, or organization, syndicate, committee, court appointed representative, the government of a country or any political subdivision thereof, or any agency, board, tribunal, commission, bureau, instrumentality, or department of such government or political subdivision, or any other entity, howsoever designated or constituted, including any Taxing Authority, and the trustees, executors, administrators or other legal representatives of an individual, and, for greater certainty, includes any Governmental Authority.

“**Priority Payments**” has the meaning given to such term in the Transaction Agreement.

“**Priority Payments Closing Amount**” has the meaning given to such term in the Transaction Agreement.

“**Purchased Assets**” has the meaning given to such term in the Transaction Agreement.

“**Purchased Entities**” has the meaning given to such term in the Transaction Agreement.

“**Purchased Interests**” has the meaning given to such term in the Transaction Agreement.

“**Purchased Validus Parent Assets**” has the meaning given to such term in the Transaction Agreement.

“**Receiver**” means KSV, in its capacity as court-appointed receiver of the assets, properties and undertakings of the Validus Entities in the Receivership Proceedings.

“**Receivership Proceedings**” means the receivership proceedings in respect of the Validus Entities commenced under the BIA and the *Courts of Justice Act* (Ontario) by MEFL pursuant to the Appointment Order, bearing Court File No. CV-23-00703754-00CL.

“**Reverse Vesting Order**” has the meaning given to such term in the Transaction Agreement.

“**SISP**” has the meaning given to such term in the Transaction Agreement.

“**SISP Order**” has the meaning given to such term in the Transaction Agreement.

“**Successful Bid**” has the meaning given to such term in the SISP.

“**Tax**” and “**Taxes**” means taxes, duties, fees, premiums, assessments, imposts, levies and other charges of any kind whatsoever (including withholding on amounts paid to or by any Person) imposed by any Taxing Authority, including all interest, penalties, fines, additions to tax or other additional amounts imposed by any Taxing Authority in respect thereof, and including those levied on, or measured by, or referred to as, income, gross receipts, profits, capital, transfer, land transfer, sales, goods and services, harmonized sales, use, value-added, excise, stamp, withholding, business, franchising, escheat, property, development, occupancy, employer health, payroll, employment, health, disability, severance, unemployment, social services, education and social security taxes, all surtaxes, all customs duties and import and export taxes, countervail and

anti-dumping, all license, franchise and registration fees and all employment insurance, health insurance and Canada, Ontario and other government pension plan premiums or contributions.

“**Taxing Authorities**” means His Majesty the King in right of Canada, His Majesty the King in right of any province or territory of Canada, the Canada Revenue Agency, any similar revenue or taxing authority of Canada and each and every province or territory of Canada and any political subdivision thereof, and any Canadian or other Governmental Authority exercising taxing authority or power, and “**Taxing Authority**” means any one of the Taxing Authorities.

“**Terms and Conditions**” means these amended and restated terms and conditions, and unless otherwise indicated, references to Articles, Sections and Exhibits are to Articles, Sections and Exhibits in these terms and conditions. For greater certainty, these Terms and Conditions supersede the Original Terms and Conditions.

“**Transaction Agreement**” means the amended and restated transaction agreement, a form of which MEFL and the Assignee delivered to the Monitor in connection with these Terms and Conditions on December 21, 2023. For greater certainty, the Transaction Agreement supersedes the Original Transaction Agreement.

“**U.S.**” means the United States of America.

“**Validus Entities**” has the meaning given to such term in the Transaction Agreement, and “**Validus Entity**” means any one of them.

“**Validus Parent**” has the meaning given to such term in the Transaction Agreement.

“**Vendors**” has the meaning given to such term in the preamble, and “**Vendor**” has the meaning given to such term in the preamble.

## 1.2 Statutes and Agreements

- (a) Except as otherwise provided in these Terms and Conditions, any reference in these Terms and Conditions to a statute refers to such statute and all rules and regulations made under it, as it or they may have been or may from time to time be amended, re-enacted or replaced.
- (b) Each reference to, and the definition of, any agreement, instrument or other document herein shall be deemed to refer to such agreement, instrument or other document as it may be amended, amended and restated, supplemented, revised or otherwise modified from time to time in accordance with its terms and, to the extent applicable, the terms of any such agreement, instrument or other document shall be deemed to incorporate any appendices, annexes, schedules or exhibits to such agreement, instrument or other document.

### **1.3 Headings, etc.**

The division of these Terms and Conditions into Articles, Sections and other subdivisions and the insertion of headings are for convenient reference only and do not affect the interpretation of these Terms and Conditions.

### **1.4 Gender and Number**

In these Terms and Conditions, unless the context otherwise requires, words importing the singular include the plural and vice versa, and words importing gender include all genders.

### **1.5 Currency**

Except where otherwise expressly provided, all amounts in these Terms and Conditions are stated in Canadian dollars. References to “\$” are to Canadian dollars.

### **1.6 Certain Phrases**

In these Terms and Conditions: (a) the words “including”, “includes” and “include” and any derivatives of such words mean “including (or includes or include) without limitation”; and (b) the words “the aggregate of”, “the total of”, “the sum of” or a phrase of similar meaning means “the aggregate (or total or sum), without duplication, of”. The expression “Article”, “Section” and other subdivision followed by a number, mean and refer to the specified Article, Section or other subdivision of these Terms and Conditions.

### **1.7 Invalidity of Provisions**

Each of the provisions contained in these Terms and Conditions is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction shall not affect the validity or enforceability of any other provision hereof so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to MEFL or the Assignee. Upon: (a) such a determination of invalidity or unenforceability; or (b) any change in Applicable Law or other action by any Governmental Authority which materially detracts from the legal or economic rights or benefits, or materially increases the obligations, of MEFL or the Assignee or any of their Affiliates under these Terms and Conditions, MEFL or the Assignee shall be entitled to modify these Terms and Conditions, acting reasonably, so as to effect the original intent of these Terms and Conditions as closely as possible in an acceptable manner so that the terms and conditions contemplated by these Terms and Conditions be given such effect as originally contemplated to the fullest extent possible.

### **1.8 Governing Law**

These Terms and Conditions and the terms and conditions provided herein, and any Claim or controversy directly or indirectly based upon or arising out of these Terms and Conditions or the transactions contemplated by these Terms and Conditions (whether based on contract, tort or any other theory), including all matters of construction, validity and performance, shall in all respects be governed by, and interpreted, construed and determined in accordance with, the laws

of the Province of Ontario and the federal laws of Canada applicable therein, without regard to the conflicts of law principles thereof.

### **1.9 Accounting Terms**

All accounting terms used in these Terms and Conditions are to be interpreted in accordance with IFRS unless otherwise specified.

### **1.10 Non-Business Days**

Whenever these Terms and Conditions require payments to be made or an action to be taken on a day that is not a Business Day, such payment to be made, or such action to be taken, shall be deemed to be required on or not later than the next succeeding Business Day.

### **1.11 Computation of Time Periods**

If any action may be taken within, or any right or obligation is to expire at the end of, a period of days under these Terms and Conditions, then the first day of the period is not counted, but the day of its expiry is counted.

### **1.12 Time of Essence**

Time shall be of the essence of these Terms and Conditions in all respects.

### **1.13 Exhibits**

- (a) The following are the Exhibits attached to and incorporated by reference in these Terms and Conditions and deemed to be a part hereof:

Exhibit 3.1(f) - Continuing Contracts

- (b) Unless the context otherwise requires, words and expressions defined in these Terms and Conditions shall have the same meanings in the Exhibits and the interpretation provisions set out in these Terms and Conditions apply to the Exhibits. Unless the context otherwise requires, or a contrary intention appears, references in the Exhibits to a designated Article, Section or other subdivision refer to the Article, Section or other subdivision, respectively, of these Terms and Conditions.
- (c) MEFL and the Assignee may, on mutual agreement, amend, modify or supplement all Exhibits at any time prior to the Effective Date.

### **1.14 Offer Letter and Terms and Conditions**

These Terms and Conditions shall be construed with, and as an integral part of, the Offer Letter to the same extent as if they were set forth verbatim therein, and all references herein to the "Offer Letter" shall include these Terms and Conditions.

### **1.15 Notices**

Any notice, request, demand or other communication required, permitted or contemplated to be given to MEFL, the Assignee or the Vendors pursuant to the provisions of these Terms and Conditions shall be given in accordance with the notice provisions set forth in the Transaction Agreement.

### **1.16 MEFL as Secured Creditor**

Notwithstanding anything in these Terms and Conditions to the contrary, nothing in these Terms and Conditions shall affect, alter, impede or restrict MEFL's rights as a secured creditor in any respect provided that MEFL shall not be entitled to information or details in respect of the SISP other than as specifically contemplated by the SISP.

### **1.17 Amendment and Restatement**

These Terms and Conditions are an amendment and restatement of the Original Terms and Conditions. These Terms and Conditions reflect amendments to the Original Terms and Conditions and have been restated solely for the purposes of reflecting amendments to the Original Terms and Conditions. All references to these Terms and Conditions, the "Conditions," the "Offer Letter Conditions" or similar references to the Original Terms and Conditions contained in any of the documents or agreements relating to these Terms and Conditions or the Transaction Documents (as defined in the Transaction Agreement) (including, for greater certainty, the Offer Letter and the Transaction Agreement) shall be deemed to refer to these Terms and Conditions, as they may be amended, restated, supplemented or replaced from time to time, without further amendment to those documents or agreements.

## **ARTICLE 2 PRE-CLOSING MATTERS**

### **2.1 Amendments to Transaction Agreement, Disclosure Schedule and Terms and Conditions**

2.1.1 The Transaction Agreement, including all schedules thereto, and all exhibits to the Disclosure Schedule, may be amended, modified or supplemented on the mutual written consent of MEFL, the Assignee and the Vendors at any time prior to the Effective Date; *provided*, however, that the Assignee shall, until December 20, 2023, retain the right to amend, modify or supplement Exhibits 2.1.1(b), 2.1.1(c)(i), 2.2, 2.2(e), 2.2(g), 2.3(h), 2.3(j), 2.4 and 6.10 of the Disclosure Schedule with the prior written consent of MEFL, which consent shall not be unreasonably withheld, conditioned or delayed; and that no such amendment, modification or supplement shall reduce or diminish the Credit Bid Consideration (as defined in the Transaction Agreement) provided for in the Transaction Agreement. The Parties acknowledge and agree that Exhibit 2.2 of the Disclosure Schedule may not be amended to add any Excluded Asset (as defined in the Transaction Agreement) contemplated by Section 2.2(b), (d), (f) or (h) of the Transaction Agreement; *provided* that such restriction with respect to Section 2.2(h) does not impair the Assignee's rights pursuant to Section 6.7 of the Transaction Agreement.

2.1.2 These Terms and Conditions may be amended, modified or supplemented on the mutual written consent of MEFL, the Assignee and the Vendors at any time prior to the Effective Date; *provided*, however, that no such amendment, modification or supplement shall reduce or diminish the Credit Bid Consideration provided for in the Transaction Agreement; and *provided further*, that the Assignee shall, until 5:00 p.m. (EST) December 28, 2023, retain the right to supplement Exhibit 3.1(f) hereto with the prior written consent of MEFL, which consent shall not be unreasonably withheld, conditioned or delayed; *provided*, however, that no such amendment, modification or supplement shall reduce or diminish the Credit Bid Consideration provided for in the Transaction Agreement.

2.1.3 For greater certainty, unless expressly stated otherwise, all consents and determinations to be made pursuant to these Terms and Conditions shall be in the sole discretion of the party entitled to make such determination.

## **2.2 Priority Payments Closing Amount and Administrative Expense Closing Amount**

2.2.1 By not later than ten (10) days prior to the date of the hearing before the Court for the issuance of the Reverse Vesting Order, the Monitor shall deliver to MEFL, in each case, based on circumstances known at the time: (i) an estimate of the Priority Payments Closing Amount, which estimate shall include, for each of the Priority Payments of Validus Parent (as defined in the Transaction Agreement), the quantum and nature of such payment and the party to whom such payment is to be made; and (ii) an estimate of the Administrative Expense Closing Amount.

2.2.2 By not later than three (3) Business Days prior to the Effective Date, the Monitor shall notify the Assignee and MEFL of the final amount of the Administrative Expense Closing Amount to be delivered to the Monitor pursuant to Section 6.4 of the Transaction Agreement.

## **2.3 Pre-Closing and Closing Reorganization**

2.3.1 The specific steps for implementing the Closing and the transactions contemplated by Article 2 of the Transaction Agreement, including payment of the Credit Bid Consideration, shall be structured in a manner mutually agreed upon by MEFL, the Assignee and the Vendors, and set forth on a schedule at least seven (7) days prior to the hearing of the motion to the Court seeking the Reverse Vesting Order (collectively, the “**Implementation Steps**”), having regard to, among other things, the minimization of any Taxes payable by any of MEFL, the Assignee or any of the Purchased Entities in connection with such transactions; *provided* that in no event will the Implementation Steps be prejudicial to the interests of MEFL or the Assignee. The Implementation Steps may include, without limitation, resolving intercompany obligations, the formation of new entities required to implement the transactions contemplated by the Transaction Agreement in a Tax-efficient manner, amending partnership agreements to reflect the economic arrangement of the Parties and transfers of Equity Interests (as defined in the Transaction Agreement) in the Validus Entities as agreed upon by the Vendors, MEFL and the Assignee in accordance with this Section 2.3.1.

2.3.2 On or prior to the Effective Date, the Vendors shall effect the Implementation Steps as agreed upon by the Vendors, MEFL and the Assignee in accordance with Section 2.3.1.

2.3.3 The Implementation Steps shall occur and be deemed to have occurred in the order and manner to be set out therein.

2.3.4 The steps to be taken and the compromises and releases to be effective on the Effective Date shall occur and be deemed to occur and be effected in the steps and sequential order set forth in the Implementation Steps.

## 2.4 Access to Information

2.4.1 From the date hereof until the date on which the Offer is determined to be the Successful Bid, any information relating to the Business, the Validus Entities and the Assumed Liabilities that is provided to MEFL and the Assignee, in their capacity as parties to the Offer, and their respective personnel engaged in the transactions contemplated by the Transaction Agreement and their accountants, legal advisors, consultants, financial advisors and representatives shall be provided to the other parties participating in the SISP.

2.4.2 Until the Effective Time, (a) upon no less than 48 hours' notice to the Monitor, the Monitor shall give to MEFL's and the Assignee's personnel engaged in the transactions contemplated by the Transaction Agreement and their accountants, legal advisors, consultants, financial advisors and representatives during normal business hours reasonable access to its premises to conduct a reasonable number of site visits; and (b) upon request from MEFL or the Assignee, the Monitor shall provide electronic access to all of the books and records relating to the Business, the Validus Entities, the Assumed Liabilities and the employees, and shall furnish them with all such information relating to the Business, the Validus Entities, the Assumed Liabilities and the employees as MEFL or the Assignee may reasonably request in connection with the transactions contemplated by the Transaction Agreement; *provided* that such access shall be conducted at MEFL's or the Assignee's exclusive risk and cost in accordance with Applicable Law and under supervision of the Monitor's personnel and in such a manner as to maintain confidentiality, and the Monitor will not be required to provide access to or copies of any such books and records if: (a) the provision thereof would cause the Monitor to be in contravention of any Applicable Law; (b) making such information available would: (i) result in the loss of any lawyer-client or other legal privilege; or (ii) cause the Monitor to be found in contravention of any Applicable Law, or contravene any fiduciary duty or agreement (including any confidentiality agreement to which the Monitor or any of its Affiliates are a party); or (c) cause undue interference with the Business. Such access shall include access for such environmental investigations deemed appropriate by MEFL or the Assignee, acting reasonably; *provided* that any intrusive environmental investigation shall be subject to the prior written approval of the Monitor, acting reasonably. Notwithstanding anything in this Section 2.4 to the contrary, any such investigation shall be conducted upon reasonable advance notice and in such manner as does not materially disrupt the conduct of the Business or the possible sale thereof to any other Person; and *provided further* that the same information may be provided to other parties participating in the SISP. The Monitor shall use commercially reasonable efforts to obtain information in respect of the Validus Entities from the files of such Governmental Authorities as reasonably requested by MEFL or the Assignee, which information may be shared with other parties participating in the SISP.



## **2.5 Energy Regulator Notices**

In the event that the Offer is selected as the Successful Bid in the SISP, the Parties shall use commercially reasonable efforts to file any Energy Regulator Notices as soon as reasonably practicable and no later than the time limits imposed by Applicable Laws, in each case at the sole cost and expense of the Assignee.

## **2.6 Further Terms**

2.6.1 Subject to and without amending any terms of these Terms and Conditions (except as permitted herein), each of the Parties shall perform all of the acts and things contemplated to be performed by the applicable Party under these Terms and Conditions, co-operate and negotiate in good faith with the other Parties in connection therewith and use its commercially reasonable efforts to do all such other acts and things as may be necessary or desirable in order to consummate and make effective, as soon as reasonably practicable, the transactions contemplated by the Transaction Agreement.

2.6.2 From the date hereof until the earlier of the Effective Date and the Outside Date, each of the Assignee and MEFL shall use commercially reasonable efforts to, or shall use commercially reasonable efforts to cause their representatives to, keep the Monitor informed on a reasonably current basis, and from time to time through teleconference or other meeting, and as reasonably requested by the Monitor, as to the Assignee's and MEFL's progress in terms of the satisfaction of the Offer Conditions.

2.6.3 From the date hereof until the earlier of the Effective Date and the Outside Date, the Monitor shall use commercially reasonable efforts to, and shall use commercially reasonable efforts to cause its representatives to, keep MEFL and the Assignee informed on a reasonably current basis, and from time to time through teleconference or other meeting, and as reasonably requested by MEFL or the Assignee, as to the Monitor's progress in terms of the satisfaction of the Offer Conditions.

2.6.4 Subject to these Terms and Conditions, the Vendors, the Assignee and MEFL shall execute and deliver such other documents, certificates, agreements and other writings, and to take such other actions to consummate or implement as soon as reasonably practicable, the transactions contemplated by the Transaction Agreement.

2.6.5 From the date hereof until the earlier of the Effective Date and the Outside Date, the Monitor shall, and shall cause its representatives to, promptly notify MEFL and the Assignee of any Material Adverse Effect occurring from and after the date hereof.

## **2.7 Court Orders and Related Matters**

2.7.1 Subject to Court availability, the Monitor shall apply to the Court by no later than October 20, 2023 for the SISP Order, substantially in the form of Schedule "C" to the Transaction Agreement, and each of the Parties shall use commercially reasonable efforts to have the SISP Order issued.

2.7.2 From and after the date of the Offer Letter and until the earlier of the Effective Date and the Outside Date, the Receiver and the Monitor, as the case may be, shall deliver to MEFL and the Assignee drafts of any and all pleadings, motions, applications and facts to be filed or submitted by the Receiver or the Monitor in connection with or related to the Transaction Agreement, including with respect to the SISP Order and the Reverse Vesting Order, for MEFL's and the Assignee's prior review at least three (3) days in advance of service and filing of such materials (or where circumstances make it impracticable to allow for three (3) days' review, with as much opportunity for review and comment as is practically possible in the circumstances). Any such pleadings, motions, applications or facts shall be in form and substance satisfactory to each of MEFL and the Assignee, each acting reasonably. The Receiver and the Monitor shall consult and cooperate with MEFL and the Assignee regarding any discovery, examinations and hearing in respect of any of the foregoing, including the submission of any evidence, including witnesses' testimony, in connection with such hearing.

2.7.3 Notice of the motions seeking the issuance of the SISP Order and the Reverse Vesting Order shall be served by the Receiver or the Monitor, as the case may be, on all Persons required to receive notice under Applicable Law and the requirements of the BIA, the CCAA, the Court and any other Person determined necessary by the Receiver, the Monitor or the Assignee, acting reasonably.

2.7.4 In the event an appeal is taken or a stay pending appeal is requested from the Appointment Order, the SISP Order or the Reverse Vesting Order, the Receiver and the Monitor shall promptly notify MEFL and the Assignee of such appeal or stay request and shall promptly provide MEFL and the Assignee copies of the related notice of appeal or order of stay. The Receiver and the Monitor shall also provide MEFL and the Assignee with written notice of any motion or application filed in connection with any appeal from such orders. The Receiver and the Monitor shall take all action as may be reasonable and appropriate to defend against such appeal or stay request and the resolution of such appeal or stay request; *provided* that nothing herein shall preclude the Parties hereto from consummating the Transaction Agreement and the transactions contemplated thereby, if the Reverse Vesting Order shall have been issued and has not been stayed and if each of MEFL and the Assignee waives in writing the condition that the Reverse Vesting Order be a Final Order.

2.7.5 The Reverse Vesting Order shall provide that, on the Effective Date and concurrently with the Closing, the Purchased Assets shall be transferred to the Assignee free and clear of all Encumbrances (as defined in the Transaction Agreement), other than Permitted Encumbrances (as defined in the Transaction Agreement).

2.7.6 To the extent that any Purchased Validus Parent Asset is not assignable without the consent of the counterparty or any other Person, and such consent has not been obtained prior to the hearing before the Court for the Vendors' motion for the Reverse Vesting Order and such Purchased Validus Parent Asset is one that is capable of being assigned pursuant to section 11.3 of the CCAA: (a) Validus Parent's rights, benefits and interests in, to and under such Purchased Validus Parent Asset may be assigned to the Assignee pursuant to the Reverse Vesting Order or further order made pursuant to section 11.3 of the CCAA; (b) the Vendors will use commercially reasonable efforts to obtain the Reverse Vesting Order or such further order made pursuant to section 11.3 of the CCAA on such terms as are necessary to give effect to such assignment and on

requisite notice to the affected contractual counterparty(ies); and (c) if such an assignment occurs, the Assignee shall accept the assignment of such Purchased Validus Parent Asset on the terms provided by the Reverse Vesting Order or such further order made pursuant to section 11.3 of the CCAA.

## **2.8 Public Notices**

No press release or other announcement concerning the transactions contemplated by the Offer Letter or the Transaction Agreement shall be made by the Receiver, the Monitor, MEFL or the Assignee without the prior consent of the other Parties (such consent not to be unreasonably withheld, conditioned or delayed); *provided*, however, that any Party may, without such consent, make such disclosure if the same is required by Applicable Law (including the Receivership Proceedings and the CCAA Proceedings) or by any insolvency or other court or securities commission, or other similar Governmental Authority having jurisdiction over such Party or any of its Affiliates, and, if such disclosure is required, the Party making such disclosure shall use commercially reasonable efforts to give prompt prior oral or written notice to the other Parties and to afford the other Parties an opportunity to comment on such disclosure to the extent legally permissible and reasonably practicable, and if such prior notice is not legally permissible or reasonably practicable, to give such notice reasonably promptly following the making of such disclosure. Notwithstanding the foregoing: (a) the Offer Letter and the Transaction Agreement may be filed by the Receiver or the Monitor: (i) with the Court; and (ii) on one or more webpages on the Receiver's and the Monitor's public websites established pursuant to the Appointment Order and the Initial Order, respectively, to provide public notice of the Receivership Proceedings and the CCAA Proceedings and the documents and materials filed therein; and (b) the transactions contemplated in the Offer Letter and the Transaction Agreement may be disclosed by the Receiver and the Monitor to the Court, subject to redacting confidential or sensitive information as permitted by Applicable Law. Additionally:

- (a) the Receiver and the Monitor may prepare and file reports and other documents with the Court containing references to the transactions contemplated by the Transaction Agreement and the terms of such transactions; and
- (b) the Receiver, the Monitor, MEFL and their respective professional advisors may prepare and file such reports and other documents with the Court containing references to the transactions contemplated by the Offer Letter and the Transaction Agreement and the terms of such transactions as may reasonably be necessary to complete the transactions contemplated by the Transaction Agreement or to comply with their obligations in connection therewith.

## **2.9 Assignment of Transaction Agreement**

No Party may assign its right, benefits or obligations under this Agreement without the consent of each of the other Parties, except that, without the consent of the Vendors or the Assignee, MEFL may, upon prior written notice to the Vendors and the Assignee assign the Transaction Agreement, or any or all of its rights and obligations thereunder, to one or more of its Affiliates; *provided* that no such assignment or direction shall relieve MEFL of its obligations hereunder.

## 2.10 Allocation of Credit Bid Consideration

On or before the Effective Date, the Vendors, each of the Assignee and MEFL covenants and agrees to determine an allocation, as mutually agreed in writing among the Parties, of the Credit Bid Consideration among the Purchased Interests and the Purchased Validus Parent Assets, as contemplated in Section 2.8(e) of the Transaction Agreement.

## ARTICLE 3 CONDITIONS

### 3.1 Conditions to the Offer in Favour of the Assignee and MEFL

The Offer, the effectiveness of the Transaction Agreement and the respective obligations of each of the Assignee and MEFL to consummate the transactions contemplated by the Transaction Agreement are subject to the satisfaction of or compliance with, at or prior to the Effective Time, each of the following conditions precedent:

- (a) *No Law* – no provision of any Applicable Law and no judgment, injunction or Order preventing or otherwise frustrating the consummation of the delivery of title to the Leased Property and purchase and sale of the Purchased Assets or any of the other transactions pursuant to the Transaction Agreement, including, for the avoidance of doubt, a cease trade or similar order issued by a Governmental Authority in respect of any Validus Entity, shall be in effect;
- (b) *Final Orders* – each of the Appointment Order, the Initial Order, the SISP Order and the Reverse Vesting Order shall have been issued and entered and shall be Final Orders;
- (c) *No Material Adverse Effect* – since the date of the Offer Letter, no change, effect, event, occurrence, state of facts or development shall have occurred that resulted in, or would reasonably be expected to result in, a Material Adverse Effect;
- (d) *Vendors' Deliverables* – the Vendors shall have delivered to the Assignee and MEFL all of the deliverables set forth in Section 8.2 of the Transaction Agreement in form and substance reasonably satisfactory to MEFL and the Assignee;
- (e) *Implementation Steps* – MEFL, the Assignee and the Vendors shall have agreed upon the Implementation Steps by no later than seven (7) days prior to hearing of the motion to the Court seeking the Reverse Vesting Order in accordance with Section 2.3.1 of these Terms and Conditions in the manner agreed to by MEFL and the Assignee, each in their sole discretion, and the Validus Entities shall have completed the Implementation Steps that are required to be completed prior to Closing, in form and substance satisfactory to MEFL and the Assignee;
- (f) *Continuing Contracts* – each of the counterparties set forth on Part B of Exhibit 3.1(f) shall have confirmed in writing, to the Vendors, the Assignee and MEFL that it will not exercise any termination rights under its Continuing Contracts solely as a result of the transactions contemplated by the Transaction Agreement;

- (g) [*Intentionally Deleted*]; and
- (h) *Vendors' Acceptance and Execution* – the Vendors shall have accepted and executed the Transaction Agreement.

The foregoing conditions are for the sole benefit of each of the Assignee and MEFL. Each condition in this Section 3.1 must be satisfied or otherwise waived by each of the Assignee and MEFL on and for their own behalf. Any condition in this Section 3.1 may be waived by the Assignee or MEFL, each on its own behalf, as applicable, in any case in whole or in part and any waiver of the foregoing conditions requires the consent of each of the Assignee and MEFL. Any such waiver will be binding on the Assignee or MEFL, as applicable, only if made in writing.

### **3.2 Conditions to the Offer in Favour of the Vendors**

The Vendors shall not accept the Offer unless at or prior to the Effective Time, each of the following conditions have been satisfied:

- (a) *No Law* – no provision of any Applicable Law and no judgment, injunction or Order preventing or otherwise frustrating the consummation of the delivery of title to the Leased Property and purchase and sale of the Purchased Assets or any of the other transactions pursuant to the Transaction Agreement, including, for the avoidance of doubt, a cease trade or similar order issued by a Governmental Authority in respect of any Validus Entity, shall be in effect;
- (b) *Final Orders* – each of the Appointment Order, the Initial Order, the SISP Order and the Reverse Vesting Order shall have been issued and entered and shall be Final Orders;
- (c) *MEFL's and the Assignee's Deliverables* – each of MEFL and the Assignee shall have delivered to the Vendors all of the deliverables set forth in Section 8.2 and Section 8.3, respectively, of the Transaction Agreement in form and substance reasonably satisfactory to the Vendors;
- (d) *Agreement and Completion of Pre-Closing Implementation Steps* – MEFL, the Assignee and the Vendors shall have agreed upon the Implementation Steps in accordance with Section 2.3.1 of these Terms and Conditions, and the Validus Entities shall have completed the Implementation Steps that are required to be completed prior to Closing, in form and substance reasonably satisfactory to the Vendors; and
- (e) *Sufficient Funds* – as of immediately prior to the Closing, the Assignee shall have sufficient funds to pay the Administrative Expense Closing Amount and the Priority Payments Closing Amount.

**ARTICLE 4  
TERMINATION OF OFFER**

**4.1 Termination of Offer**

4.1.1 MEFL may terminate the Offer at any time prior to the Effective Date:

- (a) if the Vendors, MEFL and the Assignee mutually agree in writing;
- (b) if the Offer is not the Successful Bid (as determined pursuant to the SISP);
- (c) if the Reverse Vesting Order is not granted by January 8, 2024;
- (d) if the Effective Time has not occurred on or before February 15, 2024 or such later date agreed to by the Vendors, MEFL and the Assignee in writing (the “**Outside Date**”);
- (e) upon the appointment of a trustee in bankruptcy or similar official by or in respect of any Validus Entity or any of the property of any Validus Entity, other than with the prior written consent of MEFL;
- (f) upon the termination, dismissal or conversion of the Receivership Proceedings or the CCAA Proceedings; or
- (g) upon denial of the SISP Order or the Reverse Vesting Order (or if any such order is stayed, vacated or varied without the consent of each of MEFL and the Assignee).

4.1.2 MEFL shall give written notice of such termination to the Vendors specifying in reasonable detail the basis for its exercise of its termination rights.

**4.2 Effect of Termination**

Upon MEFL’s termination of the Offer in accordance with Section 4.1.1, the Offer shall become void and of no further force and effect without liability to MEFL or the Assignee, and neither MEFL or the Assignee shall have any obligations to the Vendors or any other Party under, or in respect of, the Offer Letter, the Offer, the Transaction Agreement or any of the transactions or agreements contemplated thereby or entered into in furtherance thereof; and provided further, for greater certainty, upon termination, MEFL and the Assignee shall be deemed to have forfeited any right or Claim to a break fee or expense reimbursement.

**4.3 Termination Upon Effectiveness of Transaction Agreement**

Immediately following the occurrence of the Effective Time, the Offer Letter, including, for certainty, these Terms and Conditions, shall automatically terminate and become void and of no further force and effect.

*[Remainder of page left intentionally blank]*

**EXHIBIT 3.1(f)**  
**Continuing Contracts**  
*(See attached.)*

**PART A**

Contract	Counterparty/ies
<b>Bay Power Corp. (North Bay)</b>	
<p><b>Transmission Connection Agreements</b>, including, without limitation:</p> <ul style="list-style-type: none"> <li>• that certain <b>Transmission Connection Agreement</b> dated January 7, 2003, by and between Hydro One Networks Inc. and TransCanada Power L.P.; and</li> <li>• that certain <b>Transmission Connection Agreement</b> dated August 26, 2008, by and between Hydro One Networks Inc. and Epcor Power L.P., as amended, restated and supplemented from time to time, including, without limitation, by way of that certain <b>Amendment Agreement</b> to Transmission Connection Agreement dated July 26, 2010, by and between Hydro One Networks Inc. and Capital Power Income L.P.,</li> </ul> <p>and both as assigned by that certain <b>Assignment and Assumption Agreement</b> to Transmission Connection Agreements, dated February 10, 2022 (effective May 20, 2021), by and between Hydro One Networks Inc., Atlantic Power Limited Partnership, as assignor, and Bay Power Corp., as assignee.</p>	Hydro One Networks Inc.
<b>Energy Market Participant and Capacity Market Participant registration.</b>	Independent Electricity System Operator
<b>Participation Agreements</b> , including, without limitation, as relates to Capacity Market Obligation Period May 1, 2024 to April 30, 2025	Independent Electricity System Operator
<b>Metering Service Provider Agreement</b> dated March 29, 2023	Rodan Energy Solutions Inc.
<b>Gas Distribution Contracts</b> , including, without limitation, that certain Gas Distribution Contract dated as of November 15, 2021, as amended by the First Amending Agreement dated as of December 15, 2021, and Schedule 1 Northern Gas Distribution Contract dated March 1, 2023	Enbridge Gas Inc.
<b>Access Licence</b> , dated as of May 31, 2021 by and between TransCanada Pipelines Limited and Bay Power Corp.	TransCanada Pipelines Limited
<b>Kap Power Corp. (Kapusksing)</b>	



Contract	Counterparty/ies
<p><b>Transmission Connection Agreements</b>, including, without limitation, that certain <b>Transmission Connection Agreement</b> dated October 22, 2008 by and between EPCOR Power L.P. and Hydro One Networks Inc., as:</p> <ul style="list-style-type: none"> <li>• amended, restated and supplemented from time to time, including, without limitation, by way of an <b>Amendment Agreement</b> dated July 26, 2010 by and between Hydro One Networks Inc. and Capital Power Income L.P.; and</li> <li>• assigned by way of an <b>Assignment and Assumption Agreement</b> to Transmission Connection Agreement dated February 10, 2022 (effective May 20, 2021) by and between Hydro One Networks Inc., Atlantic Power Limited Partnership, as assignor, and Kap Power Corp., as assignee.</li> </ul>	Hydro One Networks Inc.
<p><b>Energy Market Participant and Capacity Market Participant registration.</b></p>	Independent Electricity System Operator
<p><b>Participation Agreements</b>, including, without limitation:</p> <ul style="list-style-type: none"> <li>• as relates to Capacity Market Obligation Period May 1, 2024 to April 30, 2025</li> </ul>	Independent Electricity System Operator
<p><b>Metering Service Provider Agreement</b> dated March 29, 2023</p>	Rodan Energy Solutions Inc.
<p><b>Gas Distribution Contracts</b></p>	Enbridge Gas Inc.
<b>Iroquois Falls Power Corp. (Iroquois Falls)</b>	
<p><b>Gas Distribution Contracts</b>, including, without limitation, that certain Gas Distribution Contract dated as of May 16, 2023, and Schedule 1 Northern Gas Distribution Contract dated July 1, 2023</p>	Enbridge Gas Inc
<p><b>Transmission Connection Agreements</b>, including, without limitation, that certain <b>Transmission Connection Agreement</b> dated October 23, 2002 by and between Hydro One Networks Inc. and Iroquois Falls Power Corp.</p>	Hydro One Networks Inc.
<p><b>Metering Service Provider Agreement</b> dated March 29, 2023</p>	Rodan Energy Solutions Inc.
<p><b>Energy Market Participant and Capacity Market Participant registration.</b></p>	Independent Electricity System Operator
<p><b>Participation Agreements</b>, including, without limitation:</p>	Independent Electricity System Operator

Contract	Counterparty/ies
<ul style="list-style-type: none"> <li>• as relates to Capacity Market Obligation Period May 1, 2023 to April 30, 2024</li> <li>• as relates to Capacity Market Obligation Period May 1, 2024 to April 30, 2025</li> </ul>	
<b>Kingston CoGen Limited Partnership / Kingston CoGen GP Inc. (Kingston)</b>	
<b>Firefighting Water Service Agreement</b> dated October 4, 2011	Bombardier Transportation Canada Inc.
<b>Firefighting Water Service Agreement</b> dated March 22, 2013	Coco Paving Inc.
<b>Firefighting Water Service Agreement</b> dated November 17, 2011	Direct Coil Inc.
<b>Metering Service Provider Agreement</b> dated March 29, 2023	Rodan Energy Solutions Inc.
<b>Memorandum of Agreement</b> dated June 10, 2011, as amended, restated and supplemented from time to time, including, without limitation, by way of <b>Amending Agreements</b> dated June 10, 2011 and August 4, 2011	Invista (Canada) Company
<b>Future Supply Agreement</b> dated September 28, 2011	Invista (Canada) Company
<b>Indemnity Agreement</b> dated September 28, 2011	Invista (Canada) Company
<b>Amending Agreement</b> dated June 30, 2011, by and between NPIF Kingston Cogen Corp., Kingston Cogen Limited Partnership and Invista (Canada) Company	Invista (Canada) Company
<b>Amending Agreement</b> dated August 4, 2011, by and between NPIF Kingston Cogen Corp., Kingston Cogen Limited Partnership and Invista (Canada) Company	Invista (Canada) Company
<b>Gas Distribution Contracts</b>	Enbridge Gas Inc.
<b>Transmission Connection Agreements</b> , including, without limitation, that certain Transmission Connection Agreement dated April 17, 2002 by and between Hydro One Networks Inc. and Kingston Cogen Limited Partnership, by its general partner, AES Kingston ULC, as amended, restated and supplemented from time to time, including, without limitation, by way of the following: <ul style="list-style-type: none"> <li>• <b>Amending Agreement</b> to Transmission Connection Agreement dated February 29, 2008, by and between Hydro One Networks Inc. and NPIF Kingston Cogen Corp.; and</li> </ul>	Hydro One Networks Inc.

Contract	Counterparty/ies
<ul style="list-style-type: none"> <li>• <b>Amending Agreement</b> to Transmission Connection Agreement dated July 29, 2010, by and between Hydro One Networks Inc. and NPIF Kingston Cogen Corp.</li> </ul>	
<b>Energy Market Participant and Capacity Market Participant registration.</b>	Independent Electricity System Operator
<b>Participation Agreements</b> , including, without limitation: <ul style="list-style-type: none"> <li>• as relates to Capacity Market Obligation Period May 1, 2023 to April 30, 2024</li> <li>• as relates to Capacity Market Obligation Period May 1, 2024 to April 30, 2025</li> </ul>	Independent Electricity System Operator

Each contract specified above includes, without limitation, all amendments, restatements, supplements, schedules and attachments thereto.

## Easements Schedule

Easement	Counterparty
<b>North Bay</b>	
<p><i>**Instrument No. unknown**</i></p> <p>Easement in favour of North Bay Hydro Distribution Ltd over Property 4001 Highway 11 North – City of North Bay, Ontario, agreed to by the registered owner of the property, Bay Power Corp.</p>	North Bay Hydro Distribution Ltd
<p>Instrument No. LT332823</p> <p>Transfer Easement re Transmission Line Easement</p>	Longyear Canada Inc transfer to Transcanada Pipelines Limited
<p>Instrument No. LT332824</p> <p>Transfer Easement re Transfer of Transmission Line Easement</p>	Garnet Paul Abel to Transcanada Pipelines Limited
<p>Instrument No. LT332826</p> <p>Transfer Easement re Transmission Line Easement</p>	Bradley Charles Beaver and Valerie Lynn Beaver (as joint tenants) transfer to Transcanada Pipelines Limited
<p>Instrument No. LT332885</p> <p>Transfer Easement re Transmission Line Easement</p>	The Corporation of the City of North Bay transfer to Transcanada Pipelines Limited
<p>Instrument No. LT332902</p> <p>Transfer Easement re Transmission Line Easement</p>	Lauretta Lucenti (Estate), Florence Grassi (Executrix) and Evelyn Marshall (Executrix) Transfer to Transcanada Pipelines Limited
<p>Instrument No. LT333337</p> <p>Transfer Easement re Transmission Line Easement</p>	Christine Sloan Transfer to Transcanada Pipelines Limited
<p>Instrument No. LT339664</p> <p>Transfer Easement re Transmission Line Easement</p>	John Fontaine and Johanna Fontaine Transfer to Transcanada Pipelines Limited
<p>Instrument No. LT366707</p> <p>Transfer Easement</p>	Transcanada Pipelines Limited Transfer to Transcanada Power Services Ltd.

Easement	Counterparty
Instrument No. LT336708 Transfer Easement	Transcanada Pipelines Limited Transfer to Transcanada Power Services Ltd.
Instrument No. LT366709 Transfer Easement	Transcanada Pipelines Limited Transfer to Transcanada Power Services Ltd.
Instrument No. LT366710 Transfer Easement	Transcanada Pipelines Limited to Transcanada Power Services Ltd
Access Licence re Parcel 6543 W&F (PIN 49127-0063(LT)) dated May 14, 2021	TransCanada Pipelines Limited
<b>Kapuskasing</b>	
Instrument No. C136268 Transfer Easement registered October 21, 1963	Charles Donnelly, Violet Donnelly and Northern Ontario Natural Gas Company Limited
Instrument No. C388641 Transfer Easement registered September 25, 1989	Bell Canada
Instrument No. C478024 Transfer Easement registered December 5, 1997	Transcanada Power Services Ltd.
Instrument No. C102164 Transfer Easement registered June 17, 1958	Transcanada Power Services Ltd.
Instrument No. C203212 Transfer Easement registered January 2, 1973	Transcanada Power Services Ltd.
Instrument No. C388641 Transfer Easement registered September 25, 1989	Bell Canada
Instrument No. C452347 Transfer Easement	

Easement	Counterparty
Instrument No. C451853 Transfer Easement	
Instrument No. C451851 Transfer Easement	
Instrument No. C453701 Transfer Easement	
<b>Iroquois Falls</b>	
No. 332 Parts 1 and 2, Plan 6R-6853 Abitibi River Easement – Grant of Easement (registered as Instrument No. C474890 on August 29, 1997 Instrument No. C521180 registered June 7, 2002 Replaces Schedule “A” in instrument No. C474890)	Minister of Natural Resources for the Province of Ontario (Grantor) in favour of Iroquois Falls Power Corp. (Grantee)
Instrument No. C447211 Transfer of Easement registered Dec 29, 1994  Instrument No. C470225 registered April 17, 1997 Release of obligations contained in Transfer of Easement No. C447211.	Abitibi-Price and Ontario Clean Water Agency (OWCA)
Instrument No. C447212 Transfer of Easement registered Dec 29, 1994  Instrument No. C470226 registered April 17, 1997 Release of obligations contained in Transfer of Easement No. C447212.	Abitibi-Price

Easement	Counterparty
Instrument No. C469025 Transfer of Easement registered Feb 28, 1997  Instrument No. C470228 registered April 17, 1997 Release of obligations contained in Transfer of Easement No. C469025.	Abitibi-Price
Instrument No. C447209 Transfer of Easement registered December 29, 1994  Instrument No. C470223 registered April 17, 1997 Release of obligations in the transfer of easement No. C447209	Abitibi-Price and Ontario Clean Water Agency
EC-2015-53C-23 (MTO) Encroachment Permit	Provided by MTO to IFPC
3373-16 (Town of Iroquois Falls) Encroachment Permit	Town of Iroquois Falls
Instrument No.C469026 registered February 28, 1997 Transfer of the Twin Falls Road Easement registered February 28, 1997  Instrument No.C470229 registered April 17, 1997 Release of obligations contained in Transfer of Easement No. C4690026.	Abitibi-Price
Instrument No.C469024 Transfer of the Transmission Line Access Easement registered Feb 28, 1997  Instrument No.C470227 registered April 17, 1997 Release of obligations contained in Transfer of Easement No. C469024.	Abitibi-Price

Easement	Counterparty
Instrument No. C447208 Transfer of Easement registered Dec 29, 1994  Instrument No. C470222 registered April 17, 1997 Agreement amending Transfer of Easement No. C447208.	Abitibi-Price
Instrument No. 447210 Abitibi-Price Spur Easement for transmission line registered December 29, 1994	Abitibi-Price
8200-94-6543 Declaration of Exemption dated October 18, 1994	Canadian Coast Guard
<b>Other Agreements</b>	
License Agreement re Ansonville Transformer Station dated November 13, 1995	Ontario Hydro
<b>Kingston</b>	
Instrument No. LX37162 Transfer Easement re Additional Transmission Line Easement registered October 4, 2011	Invista (Canada) Company (Transferor) to NPIF Kingston Cogen Corp (Transferee)
Instrument No. LX37161 Transfer Easement re Process Wastewater Easement registered October 4, 2011	Invista (Canada) Company (Transferor) to NPIF Kingston Cogen Corp (Transferee)
Instrument No. LX37170 Transfer Easement registered October 4, 2011 re Pump House Easement registered October 4, 2011	NPIF Kingston Cogen Corp (Transferor) to Invista (Canada) Company (Transferee)
Instrument No. LX37163 Transfer Easement re Corridor Easement registered October 4, 2011	Invista (Canada) Company (Transferor) to NPIF Kingston Cogen Corp (Transferee)
Instrument No. LX37160 Transfer Easement re Firewater Line Easement registered October 4, 2011	Invista (Canada) Company (Transferor) to NPIF Kingston Cogen Corp (Transferee)



Easement	Counterparty
Instrument No. LX37169 Transfer Easement re Intake Outfall Easement registered October 4, 2011	Invista (Canada) Company (Transferor) to NPIF Kingston Cogen Corp (Transferee)
Instrument No. LX37168 Transfer Easement re Pump House Road Access Easement registered October 4, 2011	Invista (Canada) Company (Transferor) to NPIF Kingston Cogen Corp (Transferee)
Instrument No. LX37166 Transfer of Utilities Easement registered October 4, 2011	Invista (Canada) Company (Transferor) to NPIF Kingston Cogen Corp (Transferee)
Instrument No. LX37167 Transfer Easement re Transmission Line Easement registered October 4, 2011	Invista (Canada) Company (Transferor) to NPIF Kingston Cogen Corp (Transferee)
Instrument No. LX37165 Transfer Easement re Stormwater Line Easement registered October 4, 2011	Invista (Canada) Company (Transferor) to NPIF Kingston Cogen Corp (Transferee)
Instrument No. LX37164 Transfer Easement re Maintenance registered October 4, 2011	Invista (Canada) Company (Transferor) to NPIF Kingston Cogen Corp (Transferee)
Instrument No. LX80512 Transfer Easement registered February 28, 2018	Invista (Canada) Company (Transferor) to Hydro One Networks Inc. (Transferee)
Instrument No. LX80513 Transfer Easement registered February 28, 2018	Invista (Canada) Company (Transferor) to Hydro One Networks Inc. (Transferee)
Instrument No. LA69824 Transfer Easement re Industrial Railway Spur registered March 6, 1972	Canadian Industries Limited, as owner and Millhaven Fibres Limited
Instrument No. LA208637 Transfer Easement re Electrical Transmission Line registered	
Instrument No. LA208644 Transfer Easement re Electrical Transmission Line registered as amended by Instrument No. LX52043 registered November 14, 2013	Among The Corporation of Loyalist Township and NPIF Kingston Cogen Corp.

Easement	Counterparty
Instrument No. LA210426 Transfer Easement re Electrical Transmission Line registered June 22, 1995	
Instrument No. LA210734 Transfer Easement re Access Road registered July 5, 1995	
Instrument No. LA210736 Transfer Easement registered July 5, 1995	
Instrument No. LA210738 Transfer Easement registered July 5, 1995	
Instrument No. LA184396 Transfer Easement registered April 30, 1991	
Instrument No. LA58484 Transfer Easement registered September 11, 1970	
Instrument No. LA208644 Transfer Easement registered February 15, 1995	
Instrument No. LX52894 Notice of Crossing Agreement dated May 24, 2012 and registered January 14, 2014	Ernestown Windpark L.P.
<b>Lease</b>	
Unregistered Lease among Validus Power Corp. and Hut 8 Mining Corp. dated October 27, 2021	With respect to 4001 Hwy 11 North, North Bay, On
Instrument No. LX36982 Notice of Lease registered September 28, 2011	Invista (Canada) Company, as landlord NPIF Kingston Cogen Corp., as tenant

Easement	Counterparty
<b>Sublease</b>	
Instrument No. LX37609 Application re Sublease registered October 26, 2011	Invista (Canada) Company, as sublandlord and NPIF Kingston Cogen Corp., as subtenant.
<b>Municipal Agreements</b>	
Instrument No. BS213742 Site Plan Agreement registered May 4, 2022	Among the Corporation of the City of North Bay and Bay Power Corp.
Instrument No. LA208787 Site Plan Agreement registered February 24, 1995	In favour of Township of Ernestown
<b>Airport Zoning</b>	
Instrument No. C366646 Notice of Airport Zoning registered March 23, 1988	
Instrument No. LT135401 registered October 18, 1971 As amended by: Instrument No. LT212097 registered August 28, 1980 Instrument No. LT212098 registered August 28, 1980 Instrument No. LT224812 registered June 21, 1982 Instrument No. LT245558 registered January 31, 1985	
<b>Other Agreements</b>	
Instrument No. C385680 Agreement registered July 14, 1989	TransCanada Pipelines Limited and Bell Canada
<b>Restrictive Agreements</b>	
Instrument No. LT235848z registered October 10, 1983	
Instrument No. LT235849z registered October 10, 1983	

Each contract specified above includes, without limitation, all amendments, restatements, supplements, schedules and attachments thereto.

**PART B**

**Nil**

**DISCLOSURE SCHEDULE**  
**to**  
**TRANSACTION AGREEMENT<sup>1</sup>**

**by and among**

**VALIDUS POWER CORP., IROQUOIS FALLS POWER CORP., BAY POWER CORP.,  
KAP POWER CORP., KINGSTON COGEN LIMITED PARTNERSHIP, KINGSTON  
COGEN GP INC. and VALIDUS HOSTING INC., each by KSV RESTRUCTURING  
INC., in its capacity as court-appointed Monitor in the CCAA Proceedings**

as the Vendors

- and -

**FAR NORTH POWER CORP.**

as the Assignee

- and -

**MACQUARIE EQUIPMENT FINANCE LTD.**

as MEFL

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<sup>1</sup> Without limiting or detracting from Section 2.9 of the Transaction Agreement, MEFL and the Assignee acknowledge and agree that the descriptions set out in this Disclosure Schedule have been prepared by MEFL and/or the Assignee and neither the Receiver nor the Monitor make any representation or warranty as to the accuracy or completeness of any exhibit herein.

Exhibit 1.1  
Permitted Encumbrances

**KAP POWER CORP. (Kapuskasing)**  
**LRO #6**

PIN 65095-0051(LT)

1. C366646 registered March 23, 1988 is a Notice of Airport Zoning.
2. CB164060 registered May 20, 2021 is a Transfer to Kap Power Corp.
3. C478024 is a document that contains a together with in favour of the property. (thumbnail only)

PIN 65095-0052(LT)

1. C366646 registered March 23, 1988 is a Notice of Airport Zoning.
2. C385680 registered July 14, 1989 is a Notice of Agreement among TransCanada Pipelines Limited and Bell Canada.
3. CB164060 registered May 20, 2021 is a Transfer to Kap Power Corp.
4. C478024 is a document that contains a together with in favour of the property. (thumbnail only)
5. C452347 is a document that contains a together with in favour of the property. (thumbnail only)
6. C451853 is a document that contains a together with in favour of the property. (thumbnail only)
7. C451851 is a document that contains a together with in favour of the property. (thumbnail only)
8. C453701 is a document that contains a together with in favour of the property. (thumbnail only)

**IROQUOIS FALLS POWER CORP.**  
**(Iroquois Falls) LRO #6**

PIN 65337-0369(LT)

1. C447207 registered December 29, 1994 is a Transfer to 956978 Ontario Limited which has been amended under instruments C470107 and C470233.
2. C447208 amended by C470222 is a document that contains a together with in favour of the property. (thumbnail only)

3. C447209 amended by C470223 is a document that contains a together with in favour of the property. (thumbnail only)
4. C447211 amended by C470225 is a document that contains a together with in favour of the property. (thumbnail only)
5. C447212 amended by C470226 is a document that contains a together with in favour of the property. (thumbnail only)
6. C469024 amended by C470227 is a document that contains a together with in favour of the property. (thumbnail only)
7. C469025 amended by C470228 is a document that contains a together with in favour of the property. (thumbnail only)
8. C469026 amended by C470229 is a document that contains a together with in favour of the property. (thumbnail only)
9. C474890 amended by C521180 is a document that contains a together with in favour of the property. (thumbnail only)

PIN 65337-0372(LT)

1. C474890 registered August 29, 1997 is a Transfer of Easement in favour of Iroquois Falls Power Corp.
2. C521180 registered June 7, 2002 is a Notice of Amendment.

PIN 65337-0373(LT)

1. C474890 registered August 29, 1997 is a Transfer of Easement in favour of Iroquois Falls Power Corp.
2. C521180 registered June 7, 2002 is a Notice of Amendment.

PIN 65337-0456(LT)

1. C425641 registered November 20, 1992 is a Transfer to 956978 Ontario Limited which has been amended under instruments C470107 and C470233.
2. Property is subject to C469070 amended by C470222, C470223, C470224, C470225, C470226, C470227, C470228, C470229 and C470230 (as described in thumbnail description).

PIN 65337-0458(LT)

1. C439377 registered April 11, 1994 is a Transfer to 956978 Ontario Limited which has been amended under instruments C470107 and C470233.



2. CB61039 registered February 12, 2010 is an LR's Order.
3. Property is subject to C469070 amended by C470222, C470223, C470224, C470225, C470226, C470227, C470228, C470229 and C470230 (as described in thumbnail description).

**KINGSTON COGEN Limited Partnership/ Kingston CoGen GP Inc. (Kingston)  
LRO #29**

PIN 45132-0362(LT)(Leasehold PIN, sublease interest only)

1. LX11671 registered May 29, 2008 is a Crown Patent to Invista (Canada) Company.
2. LX37609 registered October 26, 2011 is an Application (Sublease) from Invista (Canada) Company in favour of NPIF Kingston CoGen Corp.
3. LX52940 registered January 16, 2014 is a Transfer to 3274376 Nova Scotia Company.
4. LX52941 registered January 16, 2014 is an Application to Change Name – Owner.
5. LX119670 registered April 19, 2023 is an Application to Change Name – Instrument re: LX37609.

PIN 45132-0373(LT) (Easement Interest only)

1. LA119096 registered April 15, 1981 is a Provisional Certificate of Approval re Waste Disposal Site.
2. LX37169 registered October 4, 2011 is a Transfer of Easement in favour of NPIF Kingston Cogen Corp.
3. LX51782 registered October 30, 2013 is a Transfer to 3274376 Nova Scotia Company.
4. LX52039 registered November 14, 2013 is an Application to Change Name – Owner.
5. LX52905 registered January 14, 2014 is a Notice of Option to Lease in favour of Windlectric Inc.
6. LX63673 registered September 4, 2015 is a Certificate of Requirement registered by Her Majesty the Queen in Right of Ontario as represented by the Minister of the Environment and Climate Change.
7. LX80405 registered February 22, 2018 is a Notice of Lease in favour of Windlectric Inc.
8. LX80406 registered February 22, 2018 is a Notice of Lease in favour of Windlectric Inc.
9. LX37170 is a document that contains a together with in favour of the property. (thumbnail only)

PIN 45132-0375(LT)

1. LA208787 registered February 24, 1995 is a Site Plan Control Agreement.
2. LA285538 registered January 25, 2011 is a Transfer to NPIF Kingston Cogen Corp.
3. LX52043 registered November 14, 2013 is a Notice of Easement Amending Agreement among The Corporation of Loyalist Township and NPIF Kingston CoGen Corp.
4. LX118877 registered March 1, 2023 is an Application to Change Name – Owner.
5. LA69824 is a document that contains a together with in favour of the property. (thumbnail only)
6. LA208637 is a document that contains a together with in favour of the property. (thumbnail only)
7. LA208644 is a document that contains a together with in favour of the property. (thumbnail only)
8. LA210426 is a document that contains a together with in favour of the property. (thumbnail only)
9. LA210734 is a document that contains a together with in favour of the property. (thumbnail only)
10. LA210736 is a document that contains a together with in favour of the property. (thumbnail only)
11. LA210738 is a document that contains a together with in favour of the property. (thumbnail only)
12. LX37160 is a document that contains a together with in favour of the property. (thumbnail only)
13. LX37161 is a document that contains a together with in favour of the property. (thumbnail only)
14. LX37162 is a document that contains a together with in favour of the property. (thumbnail only)
15. LX37163 is a document that contains a together with in favour of the property. (thumbnail only)
16. LX37164 is a document that contains a together with in favour of the property. (thumbnail only)
17. LX37165 is a document that contains a together with in favour of the property. (thumbnail only)

18. LX37166 is a document that contains a together with in favour of the property. (thumbnail only)
19. LX37167 is a document that contains a together with in favour of the property. (thumbnail only)

PIN 45132-0377(LT)(Leasehold PIN, Sublease interest only)

1. LA116957 registered October 16, 1980 is a Provisional Certificate of Approval re Waste Disposal Site.
2. LA119096 registered April 15, 1981 is a Provisional Certificate of Approval re Waste Disposal Site.
3. LA122730 registered March 24, 1982 is a Provisional Certificate of Approval re Waste Disposal Site.
4. LX36982 registered September 28, 2011 is a Notice of Lease to NPIF Kingston Cogen Corp.
5. LX36984 registered September 28, 2011 is an Application for Leasehold Parcel.
6. LX37170 registered October 4, 2011 is a Transfer of Easement in favour of Invista (Canada) Company.
7. LX118877 registered March 1, 2023 is an Application to Change Name – Owner.
8. LA69824 is a document that contains a together with in favour of the property. (thumbnail only)
9. LX37160 is a document that contains a together with in favour of the property. (thumbnail only)
10. LX37161 is a document that contains a together with in favour of the property. (thumbnail only)
11. LX37162 is a document that contains a together with in favour of the property. (thumbnail only)
12. LX37163 is a document that contains a together with in favour of the property. (thumbnail only)
13. LX37168 is a document that contains a together with in favour of the property. (thumbnail only)
14. LX37169 is a document that contains a together with in favour of the property. (thumbnail only)

PIN 45132-0379(LT) (Easement interests only)

1. LA45719 registered September 30, 1966 is a Bylaw.
2. LA58484 registered September 11, 1970 is a Transfer of Easement in favour of The Hydro-Electric Power Commission of Ontario.
3. LA69824 registered December 22, 1972 is an Easement Agreement re Industrial Railway Spur.
4. LA116957 registered October 16, 1980 is Provisional Certificate of Approval re Waste Disposal Site.
5. LA119096 registered April 15, 1981 is a Provisional Certificate of Approval re Waste Disposal Site.
6. LA122730 registered March 24, 1982 is a Provisional Certificate of Approval re Waste Disposal Site.
7. LA167630 registered April 13, 1989 is a Provisional Certificate of Approval re Waste Disposal Site.
8. LA184396 registered April 30, 1991 is a Transfer of Easement in favour of Queen – Ministry of Transportation of Province of Ontario.
9. LA210656 registered June 30, 1995 is a Bylaw.
10. LA212073 registered October 5, 1995 is a Bylaw
11. LX37160 registered October 4, 2011 is a Transfer of Easement in favour of NPIF Kingston Cogen Corp.
12. LX37161 registered October 4, 2011 is a Transfer of Easement in favour of NPIF Kingston Cogen Corp.
13. LX37162 registered October 4, 2011 is a Transfer of Easement in favour of NPIF Kingston Cogen Corp.
14. LX37163 registered October 4, 2011 is a Transfer of Easement in favour of NPIF Kingston Cogen Corp.
15. LX37164 registered October 4, 2011 is a Transfer of Easement in favour of NPIF Kingston Cogen Corp.
16. LX37165 registered October 4, 2011 is a Transfer of Easement in favour of NPIF Kingston Cogen Corp.
17. LX37166 registered October 4, 2011 is a Transfer of Easement in favour of NPIF Kingston Cogen Corp.

18. LX37167 registered October 4, 2011 is a Transfer of Easement in favour of NPIF Kingston Cogen Corp.
19. LX37168 registered October 4, 2011 is a Transfer of Easement in favour of NPIF Kingston Cogen Corp.
20. LX51782 registered October 30, 2013 is a Transfer to 3274376 Nova Scotia Company.
21. LX52039 registered November 14, 2013 is an Application to Change Name – Owner.
22. LX52905 registered January 14, 2014 is a Notice of Option to Lease in favour of Windlectric Inc.
23. LX63672 registered September 4, 2015 is a Certificate registered by Her Majesty the Queen in Right of Ontario as represented by the Minister of the Environment and Climate Change.
24. LX80405 registered February 22, 2018 is a Notice of Lease in favour of Windlectric Inc.
25. LX80406 registered February 22, 2018 is a Notice of Lease in favour of Windlectric Inc.
26. LX80512 registered February 28, 2018 is a Transfer of Easement in favour of Hydro One Networks Inc.
27. LX80513 registered February 28, 2018 is a Transfer of Easement in favour of Hydro One Networks Inc.
28. LX37170 is a document that contains a together with in favour of the property. (thumbnail only)
29. LA69824 is a document that contains a together with in favour of the property. (thumbnail only)

**BAY POWER CORP. (NORTH BAY)**

**LRO #36**

PIN 49127-0021(LT)

1. LT135401 registered October 18, 1971 is a Notice of Airport Zoning Regulations.
2. LT212097 registered August 28, 1980 is a Notice of Amendments to Airport Zoning Regulations.
3. LT212098 registered August 28, 1980 is a Notice of Amendments to Airport Zoning Regulations.
4. LT224812 registered June 21, 1982 is a Notice of Amendments to Airport Zoning Regulations.

5. LT235848Z registered October 19, 1983 is Application to Annex Restrictive Covenants.
6. LT235849Z registered October 19, 1983 is Application to Annex Restrictive Covenants.
7. LT245558 registered January 31, 1985 is a Notice of Amendments to Airport Zoning Regulations.
8. BS199111 registered May 20, 2021 is a Transfer to Bay Power Corp.
9. BS213742 registered May 4, 2022 is a Notice of Site Plan Agreement.
10. LT332823 is a document that contains a together with in favour of the property. (thumbnail only)
11. LT332824 is a document that contains a together with in favour of the property. (thumbnail only)
12. LT332826 is a document that contains a together with in favour of the property. (thumbnail only)
13. LT332902 is a document that contains a together with in favour of the property. (thumbnail only)
14. LT332885 is a document that contains a together with in favour of the property. (thumbnail only)
15. LT333337 is a document that contains a together with in favour of the property. (thumbnail only)
16. LT339664 is a document that contains a together with in favour of the property. (thumbnail only)
17. LT366707 is a document that contains a together with in favour of the property. (thumbnail only)
18. LT366710 is a document that contains a together with in favour of the property. (thumbnail only)
19. LT366708 is a document that contains a together with in favour of the property. (thumbnail only)
20. LT366709 is a document that contains a together with in favour of the property. (thumbnail only)

Exhibit 2.1.1(b)  
Purchased Validus Parent Assets

1. All right, title and interest of Validus Power Corp. in the Continuous Safety Services Agreement entered into on or about September 1, 2021 between Validus Power Corp and the Electrical Safety Authority, as amended, restated and supplemented from time to time, including without limitation by way of Amending Agreement entered into on or about May 27, 2022.
2. Subject to the transfer to the Assignee of the Firm Transportation Service Contract made as of July 25, 2022 between TransCanada Pipelines Limited and Validus Parent:
  - (a) all right, title and interest of Validus Power Corp. in the Master Temporary Assignment Notice dated September 28, 2023 between Validus Power Corp and TransCanada Pipelines Ltd; and
  - (b) all right, title and interest of Validus Power Corp. in the Agreement for Temporary Assignment of FT-D Capacity dated September 2023 between Validus Power Corp and Macquarie Energy Canada Ltd.

Exhibit 2.1.1(c)(i)  
Terms of Employment

See attached.









Exhibit 2.1.1(d)(i)  
IFPC Note 1

See attached.

## PROMISSORY NOTE

Issue Date: [●], 2024

Principal Amount: \$29,000,000

This Promissory Note is dated as of [●], 2024 (as amended, restated, renewed or replaced from time to time, this “**Note**”) and issued by IROQUOIS FALLS POWER CORP. (together with its successors and permitted assigns, the “**Issuer**”), in favour of MACQUARIE EQUIPMENT FINANCE LTD. (together with its successors and permitted assigns, the “**Holder**”) on the terms set forth below.

Recitals:

1. The Issuer and the Holder, among others, are party to a transaction agreement dated as of the date hereof (the “**Transaction Agreement**”) with respect to, among other things, the sale and transfer to the Holder and Hut 8 Power Inc. by the Vendors of the Purchased Assets subject to and accordance with the terms and conditions set forth therein (the “**Transaction**”).
2. Pursuant to Section 2.1(d)(i) of the Transaction Agreement, the Issuer agreed to issue to the Holder this Note as partial consideration for the transfer of the Leased Property, and hereby acknowledges itself indebted to the Holder in an amount equal to the Principal Amount (the “**Debt**”).

**FOR VALUE RECEIVED**, the Issuer unconditionally promises to pay to the Holder the Principal Amount plus any accrued and unpaid interest thereon on demand in accordance with the provisions hereof.

The following terms and conditions apply to this Note:

### 1. **Definitions**

Capitalized terms used but not otherwise defined in this Note shall have the meanings given to them in the Transaction Agreement, and the following terms used in this Note have the following meanings:

“**Demand**” has the meaning ascribed thereto in Section 7(a).

“**Issue Date**” means the date of issuance of this Note as specified at the top left of the first page hereof. “**Note**” has the meaning specified in the introductory paragraph hereto.

“**Obligations**” means all indebtedness, liabilities and obligations, of any nature or kind, present or future, direct or indirect, absolute or contingent, whether as primary debtor or surety, matured or not and at any time owing by the Issuer to the Holder arising under, by reason of, or otherwise in, this Note.

“**Principal Amount**” means, with respect to this Note, the principal amount of this Note specified at the top of the first page hereof, less any repayments of principal made pursuant to Section 7.

## 2. Interpretation

- (a) In the event that any day on or before which any action is required to be taken hereunder is not a Business Day, then such action shall be required to be taken on the requisite time on or before the first (1st) succeeding day that is a Business Day thereafter.
- (b) The division of this Note into Sections, clauses and portions thereof and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation hereof.
- (c) All dollar amounts herein refer to lawful money of Canada.
- (d) This Note shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

## 3. Grid

The Principal Amount outstanding under this Note, shall be recorded from time to time in the column headed “**Principal Amount**” on the record (the “**Grid**”) attached hereto as Schedule “**A**” and forming part of this Note. The Holder shall record on the Grid the date and amount of each repayment or prepayment of the Principal Amount hereunder and the resulting decrease in such Principal Amount. Such recordings, in the absence of manifest mathematical error, shall be prima facie evidence of such repayments or prepayments; provided that the failure of the Holder to make such recording shall not affect the obligation of the Issuer to repay the Principal Amount, in accordance with the terms hereof.

## 4. Interest

The Debt shall be free of interest.

## 5. Waiver by the Issuer

The Issuer hereby waives presentment for payment, notice of non-payment, notice of dishonour and notice of protest of this Note. The Issuer also waives the benefits of division and discussion and the right to assert in any action or proceeding with respect to this Note any set-off or counterclaims which the Issuer may have.

## 6. No Waiver by the Holder

Neither the extension of time for making any payment which is due and payable under this Note at any time or times, nor the failure, delay or omission of the Holder to exercise or enforce any of its rights or remedies with respect to this Note, will constitute a waiver by the Holder of its right to enforce any such rights and remedies. The single or partial exercise of any such rights or remedies will not preclude the Holder’s further exercise of such rights or remedies or any other right or remedy.

## 7. Repayment and Prepayment

- (a) The Issuer shall repay the entire Principal Amount on demand made and as directed by the Holder in writing (a “**Demand**”).
- (b) The Issuer may repay the Principal Amount or any portion thereof (in minimum amounts of \$25,000) at any time prior to a Demand.

## 8. **Payments Generally**

All payments in respect of this Note shall be made in lawful money of Canada.

## 9. **Set-off**

The Issuer and Holder agree that, upon any amounts becoming due and payable by the Holder to the Issuer pursuant to the Transaction and the related transactions described in the Transaction Agreement, any such amount may, at the election of the Holder (regardless of whether a Demand has occurred or the Principal Amount is otherwise then due or payable), be immediately set-off against the Principal Amount as a repayment thereof.

## 10. **Notices**

Any demand, notice, or other communication under the provisions of or in connection with this Note shall be given in accordance with the terms of the Transaction Agreement.

## 11. **Severability**

The invalidity or unenforceability of any provision herein contained shall not affect the validity or enforceability of any other provision or covenant hereof or herein contained and this Note shall be construed as if such invalid or unenforceable provision or covenant were omitted.

## 12. **Further Assurances**

The Issuer shall, upon request by the Holder, execute and deliver such further documents and do all such further acts and things as may be reasonably necessary or desirable at any time or times to give effect to the terms and conditions of this Note.

## 13. **Amendments**

This Note may not be amended, restated, supplemented or modified without the prior written agreement of the Issuer and the Holder.

## 14. **Binding Effect/ Restrictions on Assignment**

This Note shall be binding upon the parties and their respective successors and assigns. Neither the Issuer’s nor the Holder’s rights or obligations hereunder nor any interest herein may be assigned or delegated by such party, without the prior written consent of the other party hereto.

## 15. **Entire Agreement**

This Note, together with the Transaction Agreement and the other Transaction Documents, contains and constitutes the entire agreement and understanding between the parties concerning the subject matter hereof and supersedes all prior written and oral agreements and understandings between the parties with respect to the subject matter hereof.

**16. Costs**

All reasonable legal and other out of pocket costs incurred by the Holder with respect to any enforcement of this Note (including reasonable legal fees and disbursements of the Holder's counsel on a solicitor and his own client basis) shall be for the account of the Issuer.

**17. Counterparts**

This Note may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A party's transmission by electronic mail of this Note duly executed by that party shall constitute effective delivery by that party of an executed copy of this Note.

*- signature pages follow -*



**IN WITNESS WHEREOF** the Issuer has executed this Note on the Issue Date specified on the first page above.

**IROQUOIS FALLS POWER CORP., by  
KSV RESTRUCTURING INC., solely in  
its capacity as court-appointed Monitor in  
the CCAA Proceedings, as Issuer**

By: \_\_\_\_\_

[Name]

[Title]

**ACKNOWLEDGED AND AGREED** on the \_\_\_\_ day of \_\_\_\_\_, 2024:

**MACQUARIE EQUIPMENT FINANCE LTD., as Holder**

By: \_\_\_\_\_  
[Name]  
[Title]

**SCHEDULE "A"**  
**TO**  
**NOTE**  
  
**GRID**

<b>Date</b>	<b>Amount of Repayment</b>	<b>Updated Principal Amount</b>

Exhibit 2.1.1(d)(ii)  
IFPC Note 2

See attached.

## PROMISSORY NOTE

Issue Date: [●], 2024

Principal Amount: \$10,000,000

This Promissory Note is dated as of [●], 2024 (as amended, restated, renewed or replaced from time to time, this “**Note**”) and issued by IROQUOIS FALLS POWER CORP. (together with its successors and permitted assigns, the “**Issuer**”), in favour of HUT 8 POWER INC. (together with its successors and permitted assigns, the “**Holder**”), as the designated and nominated assignee of Macquarie Equipment Finance Ltd. (“**MEFL**”), on the terms set forth below.

### Recitals:

1. The Issuer and the Holder, among others, are party to a transaction agreement dated as of the date hereof (the “**Transaction Agreement**”) with respect to, among other things, the sale and transfer to the Holder and MEFL by the Vendors of the Purchased Assets subject to and accordance with the terms and conditions set forth therein (the “**Transaction**”).
2. Pursuant to Section 2.1(d)(ii) of the Transaction Agreement, the Issuer agreed to issue to the Holder this Note as partial consideration for the transfer of the Leased Property, and hereby acknowledges itself indebted to the Holder in an amount equal to the Principal Amount (the “**Debt**”).

**FOR VALUE RECEIVED**, the Issuer unconditionally promises to pay to the Holder the Principal Amount plus any accrued and unpaid interest thereon on demand in accordance with the provisions hereof.

The following terms and conditions apply to this Note:

### 1. Definitions

Capitalized terms used but not otherwise defined in this Note shall have the meanings given to them in the Transaction Agreement, and the following terms used in this Note have the following meanings:

“**Demand**” has the meaning ascribed thereto in Section 7(a).

“**Issue Date**” means the date of issuance of this Note as specified at the top left of the first page hereof. “**Note**” has the meaning specified in the introductory paragraph hereto.

“**Obligations**” means all indebtedness, liabilities and obligations, of any nature or kind, present or future, direct or indirect, absolute or contingent, whether as primary debtor or surety, matured or not and at any time owing by the Issuer to the Holder arising under, by reason of, or otherwise in, this Note.

“**Principal Amount**” means, with respect to this Note, the principal amount of this Note specified at the top of the first page hereof, less any repayments of principal made pursuant to Section 7.

### 2. Interpretation

- (a) In the event that any day on or before which any action is required to be taken hereunder is not a Business Day, then such action shall be required to be taken on the requisite time on or before the first (1st) succeeding day that is a Business Day thereafter.
- (b) The division of this Note into Sections, clauses and portions thereof and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation hereof.
- (c) All dollar amounts herein refer to lawful money of Canada.
- (d) This Note shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

### 3. **Grid**

The Principal Amount outstanding under this Note, shall be recorded from time to time in the column headed “Principal Amount” on the record (the “**Grid**”) attached hereto as Schedule “**A**” and forming part of this Note. The Holder shall record on the Grid the date and amount of each repayment or prepayment of the Principal Amount hereunder and the resulting decrease in such Principal Amount. Such recordings, in the absence of manifest mathematical error, shall be prima facie evidence of such repayments or prepayments; provided that the failure of the Holder to make such recording shall not affect the obligation of the Issuer to repay the Principal Amount, in accordance with the terms hereof.

### 4. **Interest**

The Debt shall be free of interest.

### 5. **Waiver by the Issuer**

The Issuer hereby waives presentment for payment, notice of non-payment, notice of dishonour and notice of protest of this Note. The Issuer also waives the benefits of division and discussion and the right to assert in any action or proceeding with respect to this Note any set-off or counterclaims which the Issuer may have.

### 6. **No Waiver by the Holder**

Neither the extension of time for making any payment which is due and payable under this Note at any time or times, nor the failure, delay or omission of the Holder to exercise or enforce any of its rights or remedies with respect to this Note, will constitute a waiver by the Holder of its right to enforce any such rights and remedies. The single or partial exercise of any such rights or remedies will not preclude the Holder’s further exercise of such rights or remedies or any other right or remedy.

### 7. **Repayment and Prepayment**

- (a) The Issuer shall repay the entire Principal Amount on demand made and as directed by the Holder in writing (a “**Demand**”).
- (b) The Issuer may repay the Principal Amount or any portion thereof (in minimum amounts of \$25,000) at any time prior to a Demand.

## 8. **Payments Generally**

All payments in respect of this Note shall be made in lawful money of Canada.

## 9. **Set-off**

The Issuer and Holder agree that, upon any amounts becoming due and payable by the Holder to the Issuer pursuant to the Transaction and the related transactions described in the Transaction Agreement, any such amount may, at the election of the Holder (regardless of whether a Demand has occurred or the Principal Amount is otherwise then due or payable), be immediately set-off against the Principal Amount as a repayment thereof.

## 10. **Notices**

Any demand, notice, or other communication under the provisions of or in connection with this Note shall be given in accordance with the terms of the Transaction Agreement.

## 11. **Severability**

The invalidity or unenforceability of any provision herein contained shall not affect the validity or enforceability of any other provision or covenant hereof or herein contained and this Note shall be construed as if such invalid or unenforceable provision or covenant were omitted.

## 12. **Further Assurances**

The Issuer shall, upon request by the Holder, execute and deliver such further documents and do all such further acts and things as may be reasonably necessary or desirable at any time or times to give effect to the terms and conditions of this Note.

## 13. **Amendments**

This Note may not be amended, restated, supplemented or modified without the prior written agreement of the Issuer and the Holder.

## 14. **Binding Effect/ Restrictions on Assignment**

This Note shall be binding upon the parties and their respective successors and assigns. Neither the Issuer’s nor the Holder’s rights or obligations hereunder nor any interest herein may be assigned or delegated by such party, without the prior written consent of the other party hereto.

## 15. **Entire Agreement**

This Note, together with the Transaction Agreement and the other Transaction Documents, contains and constitutes the entire agreement and understanding between the parties concerning the subject matter hereof and supersedes all prior written and oral agreements and understandings between the parties with respect to the subject matter hereof.

**16. Costs**

All reasonable legal and other out of pocket costs incurred by the Holder with respect to any enforcement of this Note (including reasonable legal fees and disbursements of the Holder's counsel on a solicitor and his own client basis) shall be for the account of the Issuer.

**17. Counterparts**

This Note may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A party's transmission by electronic mail of

this Note duly executed by that party shall constitute effective delivery by that party of an executed copy of this Note.

- signature pages follow -



**IN WITNESS WHEREOF** the Issuer has executed this Note on the Issue Date specified on the first page above.

**IROQUOIS FALLS POWER CORP.**, by  
**KSV RESTRUCTURING INC.**, solely in  
its capacity as court-appointed Monitor in the  
CCA Proceedings, as Issuer

By: \_\_\_\_\_  
Name:  
Title:

**ACKNOWLEDGED AND AGREED** on the \_\_\_\_ day of \_\_\_\_\_, 2024:

**HUT 8 POWER INC.**, as Holder

By: \_\_\_\_\_  
Name:  
Title:

**SCHEDULE "A"**  
**TO**  
**NOTE**  
**GRID**

<b>Date</b>	<b>Amount of Repayment</b>	<b>Updated Principal Amount</b>

Exhibit 2.1.1(d)(iii)  
IFPC Note 3

See attached.

## PROMISSORY NOTE

Issue Date: [●], 2024 Principal Amount: \$6,435,000

This Promissory Note is dated as of [●], 2024 (as amended, restated, renewed or replaced from time to time, this “**Note**”) and issued by IROQUOIS FALLS POWER CORP. (together with its successors and permitted assigns, the “**Issuer**”), in favour of MACQUARIE EQUIPMENT FINANCE LTD. (together with its successors and permitted assigns, the “**Holder**”) on the terms set forth below.

Recitals:

1. The Issuer and the Holder, among others, are party to a transaction agreement dated as of the date hereof (the “**Transaction Agreement**”) with respect to, among other things, the sale and transfer to the Holder and Hut 8 Power Inc. by the Vendors of the Purchased Assets subject to and accordance with the terms and conditions set forth therein (the “**Transaction**”).
2. Pursuant to Section 2.1(d)(iii) of the Transaction Agreement, the Issuer agreed to issue to the Holder this Note as partial consideration for the transfer of the Leased Property, and hereby acknowledges itself indebted to the Holder in an amount equal to the Principal Amount (the “**Debt**”).

**FOR VALUE RECEIVED**, the Issuer unconditionally promises to pay to the Holder the Principal Amount plus any accrued and unpaid interest thereon on demand in accordance with the provisions hereof.

The following terms and conditions apply to this Note:

### 1. **Definitions**

Capitalized terms used but not otherwise defined in this Note shall have the meanings given to them in the Transaction Agreement, and the following terms used in this Note have the following meanings:

“**Demand**” has the meaning ascribed thereto in Section 7(a).

“**Issue Date**” means the date of issuance of this Note as specified at the top left of the first page hereof. “**Note**” has the meaning specified in the introductory paragraph hereto.

“**Obligations**” means all indebtedness, liabilities and obligations, of any nature or kind, present or future, direct or indirect, absolute or contingent, whether as primary debtor or surety, matured or not and at any time owing by the Issuer to the Holder arising under, by reason of, or otherwise in, this Note.

“**Principal Amount**” means, with respect to this Note, the principal amount of this Note specified at the top of the first page hereof, less any repayments of principal made pursuant to Section 7.

## 2. Interpretation

- (a) In the event that any day on or before which any action is required to be taken hereunder is not a Business Day, then such action shall be required to be taken on the requisite time on or before the first (1st) succeeding day that is a Business Day thereafter.
- (b) The division of this Note into Sections, clauses and portions thereof and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation hereof.
- (c) All dollar amounts herein refer to lawful money of Canada.
- (d) This Note shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

## 3. Grid

The Principal Amount outstanding under this Note, shall be recorded from time to time in the column headed “**Principal Amount**” on the record (the “**Grid**”) attached hereto as Schedule “**A**” and forming part of this Note. The Holder shall record on the Grid the date and amount of each repayment or prepayment of the Principal Amount hereunder and the resulting decrease in such Principal Amount. Such recordings, in the absence of manifest mathematical error, shall be prima facie evidence of such repayments or prepayments; provided that the failure of the Holder to make such recording shall not affect the obligation of the Issuer to repay the Principal Amount, in accordance with the terms hereof.

## 4. Interest

The Debt shall be free of interest.

## 5. Waiver by the Issuer

The Issuer hereby waives presentment for payment, notice of non-payment, notice of dishonour and notice of protest of this Note. The Issuer also waives the benefits of division and discussion and the right to assert in any action or proceeding with respect to this Note any set-off or counterclaims which the Issuer may have.

## 6. No Waiver by the Holder

Neither the extension of time for making any payment which is due and payable under this Note at any time or times, nor the failure, delay or omission of the Holder to exercise or enforce any of its rights or remedies with respect to this Note, will constitute a waiver by the Holder of its right to enforce any such rights and remedies. The single or partial exercise of any such rights or remedies will not preclude the Holder’s further exercise of such rights or remedies or any other right or remedy.

## 7. Repayment and Prepayment

- (a) The Issuer shall repay the entire Principal Amount on demand made and as directed by the Holder in writing (a “**Demand**”).
- (b) The Issuer may repay the Principal Amount or any portion thereof (in minimum amounts of \$25,000) at any time prior to a Demand.

## 8. **Payments Generally**

All payments in respect of this Note shall be made in lawful money of Canada.

## 9. **Set-off**

The Issuer and Holder agree that, upon any amounts becoming due and payable by the Holder to the Issuer pursuant to the Transaction and the related transactions described in the Transaction Agreement, any such amount may, at the election of the Holder (regardless of whether a Demand has occurred or the Principal Amount is otherwise then due or payable), be immediately set-off against the Principal Amount as a repayment thereof.

## 10. **Notices**

Any demand, notice, or other communication under the provisions of or in connection with this Note shall be given in accordance with the terms of the Transaction Agreement.

## 11. **Severability**

The invalidity or unenforceability of any provision herein contained shall not affect the validity or enforceability of any other provision or covenant hereof or herein contained and this Note shall be construed as if such invalid or unenforceable provision or covenant were omitted.

## 12. **Further Assurances**

The Issuer shall, upon request by the Holder, execute and deliver such further documents and do all such further acts and things as may be reasonably necessary or desirable at any time or times to give effect to the terms and conditions of this Note.

## 13. **Amendments**

This Note may not be amended, restated, supplemented or modified without the prior written agreement of the Issuer and the Holder.

## 14. **Binding Effect/ Restrictions on Assignment**

This Note shall be binding upon the parties and their respective successors and assigns. Neither the Issuer’s nor the Holder’s rights or obligations hereunder nor any interest herein may be assigned or delegated by such party, without the prior written consent of the other party hereto.

## 15. **Entire Agreement**

This Note, together with the Transaction Agreement and the other Transaction Documents, contains and constitutes the entire agreement and understanding between the parties concerning the subject matter hereof and supersedes all prior written and oral agreements and understandings between the parties with respect to the subject matter hereof.

**16. Costs**

All reasonable legal and other out of pocket costs incurred by the Holder with respect to any enforcement of this Note (including reasonable legal fees and disbursements of the Holder's counsel on a solicitor and his own client basis) shall be for the account of the Issuer.

**17. Counterparts**

This Note may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A party's transmission by electronic mail of this Note duly executed by that party shall constitute effective delivery by that party of an executed copy of this Note.

- signature pages follow -



**IN WITNESS WHEREOF** the Issuer has executed this Note on the Issue Date specified on the first page above.

**IROQUOIS FALLS POWER CORP.**, by  
**KSV RESTRUCTURING INC.**, solely in  
its capacity as court-appointed Monitor in the  
CCA Proceedings, as Issuer

By: \_\_\_\_\_  
Name:  
Title:

ACKNOWLEDGED AND AGREED on the \_\_\_\_ day of \_\_\_\_\_, 2024:

**MACQUARIE EQUIPMENT FINANCE LTD., as Holder**

By: \_\_\_\_\_  
Name:  
Title:

**SCHEDULE "A"**  
**TO**  
**NOTE**  
**GRID**

<b>Date</b>	<b>Amount of Repayment</b>	<b>Updated Principal Amount</b>

Exhibit 2.2  
Excluded Assets

None.

Exhibit 2.2(e)  
Excluded Contracts

Any contract that is not listed as a Continuing Contract in Exhibit 3.1(f) of the Terms and Conditions.

Exhibit 2.2(g)  
Excluded Entities

1. Validus Digital Inc., a corporation duly formed and existing under the laws of Ontario.
2. Validus Power Services Inc., a corporation duly formed and existing under the laws of Ontario.
3. Validus Solutions Inc., a corporation duly formed and existing under the laws of Ontario.

Exhibit 2.3(h)  
Excluded Intercompany Claims

1. All Intercompany Claims against any Purchased Entity that may be asserted by or on behalf of another Purchased Entity.

Exhibit 2.3(j)  
Further Assumed Liabilities

None.



Exhibit 2.4  
Excluded Liabilities

None.

Exhibit 6.10  
Letters of Credit and Deposits

1. Letter of Credit from The Toronto-Dominion Bank issued to Validus Power Corp. on May 4, 2022 in the amount of \$495,290.00, listing Independent Electricity System Operator as beneficiary and bearing Letter of Credit No. 0202- 9226834-01.
2. Letter of Credit from The Toronto-Dominion Bank issued to Validus Power Corp. on May 4, 2022 in the amount of \$536,755.00, listing Independent Electricity System Operator as beneficiary and bearing Letter of Credit No. 0202- 9226834-02.
3. Letter of Credit from The Toronto-Dominion Bank issued to Validus Power Corp. on May 4, 2022 in the amount of \$150,000.00, listing Independent Electricity System Operator as beneficiary and bearing Letter of Credit No. 0202- 9226834-03.
4. Letter of Credit from TD Bank issued to Validus Power Corp., on behalf of Iroquois Falls Power Corp., on June 10, 2022 in the amount of \$154,810.00, listing Enbridge Gas Inc. as beneficiary and bearing Letter of Credit No. 0202- 9226834-04.
5. Letter of Credit from TD Bank issued to Validus Power Corp., on behalf of Kingston Cogen Limited Partnership, on June 10, 2022 in the amount of \$116,900.00, listing Enbridge Gas Inc. as beneficiary and bearing Letter of Credit No. 0202-9226834-05.
6. Letter of Credit from TD Bank issued to Validus Power Corp., on behalf of Kingston Cogen Limited Partnership, on June 10, 2022 in the amount of \$52,690.00, listing Enbridge Gas Inc. as beneficiary and bearing Letter of Credit No. 0202-9226834-06.
7. Letter of Credit from the Royal Bank of Canada issued to Validus Power Corp., on behalf of Kap Power Corp., on April 4, 2023 in the amount of \$68,561.00, listing Independent Electricity System Operator as beneficiary and bearing Standby Letter of Credit No. 2546187.
8. Cash Collateral Agreement between TransCanada Pipelines Limited and Validus Power Corp. dated September 20, 2022.

## IMPLEMENTATION STEPS

### ARTICLE 1 INTERPRETATION

#### 1.1 Definitions

In these Implementation Steps, capitalized terms that are undefined herein have the meaning ascribed to them in the Transaction Agreement, and unless otherwise stated or unless the subject matter or context otherwise requires:

“**CRA**” means the Canada Revenue Agency.

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

“**ITC**” means an input tax credit under subsection 169(1) of the ETA that is available to reduce the net tax of a person under subsection 225(1) of the ETA.

“**Kingston LPA**” means the fourth amended and restated limited partnership agreement dated April 7, 2022 by and between Kingston GP and Validus Parent.

“**Offer Letter**” means the binding offer letter, including the terms and conditions contained in Schedule “B” thereto, delivered by MEFL and the Assignee to the Monitor on October 16, 2023, providing, among other things, MEFL’s and the Assignee’s binding offer to enter into the Transaction Agreement and the transactions contemplated thereby with the Vendors and the terms and conditions of same (as amended on December 22, 2023).

“**Pre-Filing Intercompany Claims**” has the meaning given to such term in Section 3.1.

“**Rectification Order**” means an order of the Court authorizing but not obligating the Monitor to take any steps reasonably required to rectify the minute books of the Validus Entities including, without limitation, signing directors’ resolutions and/or shareholders’ resolutions on behalf of the Validus Entities.

“**Return Release**” means a release and confirmation of no action provided by each of MEFL, Hut 8, Assignee and the Purchased Entities (the “**Releasing Parties**”) in favour of KSV in its capacity as Receiver and Monitor confirming that each such Releasing Party releases the beneficiary from any and all claims and liabilities in connection with the filing of the GST/HST returns set out in Section 2.1 and cooperation and assistance in Section 2.2, in form and substance reasonably acceptable to the Releasing Parties and KSV.

“**Terms and Conditions**” means the terms and conditions attached as Schedule “B” to the Offer Letter.

“**Transaction Agreement**” means the form of transaction agreement attached as Schedule “A” to the Offer Letter.

## **1.2 Currency**

Currency amounts in these Implementation Steps are in Canadian dollars unless stated otherwise.

## **ARTICLE 2 PRE-CLOSING STEPS**

### **2.1 HST Filings**

The Monitor covenants and agrees to file with CRA, no later than 3 Business Days prior to the Effective Date, (i) in consultation with MEFL and the Assignee (acting reasonably, and for greater certainty only to the extent such returns have not been filed prior to December 22, 2023), GST/HST returns on behalf of each of the Purchased Entities (other than Validus Hosting) for all completed periods commencing on or after the Filing Date and ending on or before the end of the month immediately preceding the month in which the Effective Date occurs reporting all GST/HST collected and paid by each applicable Purchased Entity in the applicable reporting period; and (ii) in consultation with MEFL and the Assignee, GST/HST returns on behalf of IFPC for all completed periods commencing prior to the Filing Date for which such returns have not already been filed by IFPC.

### **2.2 Post Effective Date Cooperation and Assistance re GST/HST Returns**

Subject to receipt of the Return Release, the Monitor hereby covenants and agrees that it will cooperate and assist in the preparation of any additional GST/HST returns in respect of the Purchased Entities (other than IFPC) that remain outstanding and not filed in respect of periods commencing prior to the Filing Date, provided that such returns will be executed by an officer of, and filed by, such Purchased Entity once completed.

### **2.3 Conduct of Kingston GP**

Up to and including the Effective Time, the Monitor shall cause Kingston GP, in its capacity as general partner of Kingston LP, to not make any distribution of income or capital out of the Partnership Assets (as defined in the Kingston LPA).

### **2.4 Minute Book Rectification**

- (a) The Monitor shall seek the Court's entry of the Rectification Order (as part of the Reverse Vesting Order), in form and substance satisfactory to the Monitor, MEFL and the Assignee, each acting reasonably, as part of its motion for the Reverse Vesting Order in the CCAA Proceedings.
- (b) If the Court grants the Rectification Order following the motion referred to in Section 2.4(a), then the Monitor shall take all steps agreed on to rectify the share registers of the Purchased Entities, certificate the shares of Validus Hosting and any other steps as MEFL and the Assignee may request and the Monitor agrees at least 1 Business Day prior to the Effective Date

**ARTICLE 3**  
**PRELIMINARY STEPS IN RESPECT OF**  
**PRE-FILING INTERCOMPANY CLAIMS**

**3.1 Separation of Pre-Filing and Post-Filing Balances**

All Intercompany Claims that arose prior to the Filing Date (such claims, the “**Pre-Filing Intercompany Claims**”) shall be deemed to be separate claims from any Intercompany Claims that arose or arise on or after the Filing Date.

**3.2 Preliminary Steps in respect of Pre-Filing Intercompany Claims**

- (a) Any debt constituting a Pre-Filing Intercompany Claim is agreed, and is deemed, to be non-interest bearing and payable on demand, and to allow the creditor to enforce its creditor rights on a payment default.
- (b) 3 Business Days before the Effective Date, for each Pre-Filing Intercompany Claim, a formal demand for payment shall be, and shall be deemed to be, made by the creditor to the debtor, and after 1 day has passed, a notice of default shall be, and shall be deemed to be, delivered.

**ARTICLE 4**  
**SETTLEMENT OF CERTAIN INTERCOMPANY BALANCES**

**4.1 Set-off of Pre-Filing Intercompany Claims between Validus Entities**

Effective on the Business Day immediately prior to the Effective Date at 12:01 a.m. (Toronto time), or such other date and time prior to the Effective Date as agreed to between the Parties, acting reasonably: in each case where (i) any Validus Entity (the “**First Validus Entity**”) owes a Pre-Filing Intercompany Claim (the “**First Debt**”) to another Validus Entity (the “**Second Validus Entity**”), and (ii) the Second Validus Entity owes a Pre-Filing Intercompany Claim (the “**Second Debt**”) in an amount less than or equal to the amount of the First Debt to the First Validus Entity, the First Validus Entity and the Second Validus Entity shall, and shall be deemed to, set off, on a dollar for dollar basis, the amount owing by the Second Validus Entity to the First Validus Entity under the Second Debt against a corresponding amount owing by the First Validus Entity to the Second Validus Entity under the First Debt, with the effect that immediately following such set-off (x) the Second Debt shall be fully satisfied and settled, and (y) the amount owing under the First Debt shall be reduced by the amount of the Second Debt so set off.

**4.2 Assignment and Further Set-off of Pre-Filing Intercompany Claims between Validus Entities**

- (a) If, following the completion of the steps described in Section 4.1: (a) any Validus Entity (such entity, a “**Remaining Debtor**”) still owes a Pre-Filing Intercompany Claim to another Validus Entity (in respect of such Remaining Debtor, the “**First Creditor**”, and such claim, the “**First Creditor Payable**”); (b) the Remaining Debtor is owed a Pre-Filing Intercompany Claim by another Validus Entity (in respect of such Remaining Debtor, the “**Second Debtor**”, and such claim, the

“**Second Debtor Receivable**”); and (c) the First Creditor owes a Pre-Filing Intercompany Claim to the Second Debtor (such claim, the “**Set-Off Claim**”), then, following, and on the same date as, the completion of the steps described in Section 4.1 (but in any event prior to the Effective Date):

- (i) such Remaining Debtor shall, and shall be deemed to, assign the Second Debtor Receivable (or a portion thereof in the amount of the First Creditor Payable, in the event the Second Debtor Receivable exceeds the First Creditor Payable) to the First Creditor in satisfaction (on a dollar for dollar basis) of the First Creditor Payable (or a portion thereof in the amount of the Second Debtor Receivable, in the event the First Creditor Payable exceeds the Second Debtor Receivable); and
  - (ii) the First Creditor and the Second Debtor shall, and shall be deemed to, set-off the Second Debtor Receivable against the Set-Off Claim (on a dollar for dollar basis), with the effect that immediately following such set-off (x) the smaller of the Second Debtor Receivable and the Set-Off Claim shall be fully satisfied and settled, and (y) the amount owing under the larger of the Second Debtor Receivable and the Set-Off Claim shall be reduced by the amount of the other debt so set off.
- (b) The steps described in Section 4.2(a) shall, and shall be deemed to, be repeated for each permutation of Remaining Debtor, First Creditor and Second Debtor, in such a manner and in such sequence as to maximize inter-company set-offs and to minimize the aggregate quantum of Pre-Filing Intercompany Claims remaining outstanding against or owing by the Purchased Entities, until no further set-offs or assignments can be made.

### **4.3 Vesting of Remaining Pre-Filing Intercompany Claims**

To the extent any outstanding Pre-Filing Intercompany Claims against or owing by any Purchased Entity remain following completion of the steps described in Sections 4.1 and 4.2, such Pre-Filing Intercompany Claims shall be treated as Excluded Liabilities under, and in accordance with, the Transaction Agreement.

## **ARTICLE 5 EFFECTIVE DATE TRANSACTIONS AND STEPS**

### **5.1 Effective Date Transactions and Steps**

- (a) Subject to Section 5.1(b), the transactions and steps described in Section 2.1 of the Transaction Agreement shall, in accordance therewith, occur and be deemed to have occurred on the Effective Date, in the manner and sequence and at the effective times set forth therein.
- (b) The transactions and steps described in Paragraph 5 of the Reverse Vesting Order shall, in accordance therewith, occur and be deemed to have occurred on the

Effective Date, in the manner and sequence and at the effective times set forth therein.

**ARTICLE 6**  
**GENERAL MATTERS**

**6.1 Amendments**

These Implementation Steps may be amended, modified or supplemented on the mutual written consent of MEFL, the Assignee and the Vendors at any time prior to the Effective Date.

*[Remainder of page left intentionally blank]*

## Appendix “J”



**AMENDED AND RESTATED TRANSACTION AGREEMENT**

**VALIDUS POWER CORP., IROQUOIS FALLS POWER CORP., BAY  
POWER CORP., KAP POWER CORP., KINGSTON COGEN LIMITED  
PARTNERSHIP, KINGSTON COGEN GP INC. and VALIDUS  
HOSTING INC., each by KSV RESTRUCTURING INC., in its capacity as  
court-appointed Monitor in the CCAA Proceedings**

as the Vendors

- and -

**FAR NORTH POWER CORP.**

as the Assignee

- and -

**MACQUARIE EQUIPMENT FINANCE LTD.**

as MEFL

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SCHEDULE "A" FORM OF REVERSE VESTING ORDER

SCHEDULE "B" ~~FORM OF SISP~~ *INTENTIONALLY DELETED*

SCHEDULE "C" ~~FORM OF~~ SISP ORDER

**AMENDED AND RESTATED TRANSACTION AGREEMENT**

**THIS AMENDED AND RESTATED AGREEMENT** is made as of the Effective Date (as defined below),

**AMONG:**

**VALIDUS POWER CORP. (“Validus Parent”), IROQUOIS FALLS POWER CORP. (“IFPC”), BAY POWER CORP. (“Bay Power”), KAP POWER CORP. (“Kap Power”), KINGSTON COGEN LIMITED PARTNERSHIP (“Kingston LP”), KINGSTON COGEN GP INC. (“Kingston GP”) and VALIDUS HOSTING INC. (“Validus Hosting”**, and together with IFPC, Bay Power, Kap Power, Kingston LP, Kingston GP and Validus Parent, collectively, the **“Validus Entities”**), each by **KSV RESTRUCTURING INC. (“KSV”)**, in its capacity as court-appointed Monitor (as defined below) in the CCAA Proceedings (as defined below)

(the **“Vendors”**)

- and -

**FAR NORTH POWER CORP.**, a company governed by the laws of Ontario

(the **“Assignee”**)

- and -

**MACQUARIE EQUIPMENT FINANCE LTD.**, a company governed by the laws of Canada

(**“MEFL”**)

**RECITALS:**

- A. The Validus Entities carry on the business, taken as a whole, of: (i) the maintenance and operation of power generation facilities in Ontario located at North Bay, Kapuskasing, Iroquois Falls and Kingston; and (ii) the ownership and maintenance of a data centre in North Bay, Ontario (collectively, the **“Business”**).
- B. On August 10, 2023, MEFL sought and obtained an Order (as defined below), pursuant to subsection 243(1) of the BIA (as defined below) and subsection 101(1) of the *Courts of Justice Act* (Ontario) (as may be further amended, restated or varied, the **“Appointment**

**Order**) from the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) for the appointment of the Receiver (as defined below) as receiver over, among other things, all of the assets, undertakings and properties of the Validus Entities (~~the “**Property**”~~).

- C. On August 29, 2023, on application by the Receiver, the Validus Entities were granted relief in the form of an Initial Order (as amended, the “**Initial Order**”) pursuant to the *Companies’ Creditors Arrangement Act* (Canada), as amended (the “**CCAA**”), and KSV was appointed as monitor of the Validus Entities (in such capacity, the “**Monitor**”, and such proceedings, the “**CCAA Proceedings**”).
- D. ~~In~~ On November 1, 2023, in connection with the CCAA Proceedings, the ~~Monitor intends to seek the approval of~~ Court granted the SISP Order (as defined below), which, among other things, approved the ~~Court to run a~~ SISP (as defined below) pursuant to which the transactions contemplated by the Transaction Documents ~~will serve~~ (as defined below) served as the “stalking horse bid” for the Purchased Assets (as defined below).
- E. ~~In~~ On December 11, 2023, the ~~event~~ Monitor notified MEFL and the Assignee that this Agreement ~~is~~ was selected as the Successful Bid (as defined below) in the SISP, ~~subject,~~
- F. Subject to the granting of the Reverse Vesting Order (as defined below), at the Effective Time (as defined below): (i) the Vendors will sell and transfer to MEFL or the Assignee, as applicable, and MEFL and the Assignee, as applicable, will purchase from Vendors, all of the Validus Entities’ right, title and interest in and to the Purchased Assets, subject to and in accordance with the terms and conditions set forth in this Agreement, and (ii) the Parties wish to assign and transfer the Excluded Liabilities (as defined below) and the Excluded Assets (as defined below) to Residualco (as defined below) in accordance with the terms of this Agreement and the Reverse Vesting Order.

NOW THEREFORE, the Parties agree as follows:

## ARTICLE 1 INTERPRETATION

### 1.1 Definitions

In this Agreement:

“**Administrative Expense Closing Amount**” means cash, which shall be transferred to the Monitor in accordance with Section 6.4, and held in trust by the Monitor for the benefit of Persons entitled to be paid the Administrative Expense Costs (or such portion thereof as can be reasonably determined by the Monitor prior to the Effective Date), subject to the terms hereof, the amount of which will be determined by the Monitor not less than three (3) Business Days prior to the Effective Date.

“**Administrative Expense Costs**” means the reasonable and documented fees and costs of the Receiver and the Monitor and its professional advisors relating directly or indirectly to the Receivership Proceedings, the CCAA Proceedings and this Agreement and including, without limitation: (i) costs required to wind down, dissolve and/or bankrupt any or all of the Receivership Debtors, including, without limitation, any amounts in respect of goods and services provided by third parties or Employees (including all wages and accrued vacation pay for the post-filing period) that are not Post-Filing Claims; and (ii) costs and expenses required to administer the Excluded Assets and the Excluded Liabilities and to wind-up Residualco.

“**Affiliate**” means, with respect to any specified Person, any other Person which, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such specified Person. For purposes of this definition, “control” (including, with correlative meanings, the terms “controlling”, “controlled by” and “under common control with”), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise. For greater certainty, an Affiliate of a Person shall include such Person’s investment funds and managed accounts and any funds managed or directed by the same investment advisor.

“**Agreement**” means this amended and restated transaction agreement and all attachments hereto, including the Schedules, the Disclosure Schedule and Exhibits, in each case as the same may be supplemented, amended, restated or replaced from time to time, and the expressions “hereof”, “herein”, “hereto”, “hereunder”, “hereby” and similar expressions refer to this amended and restated transaction agreement and all attached Schedules, and unless otherwise indicated, references to Articles, Sections, Schedules, the Disclosure Schedule and Exhibits are to Articles, Sections, Schedules, the Disclosure Schedule and Exhibits in this amended and restated transaction agreement. For greater certainty, this Agreement supersedes the Original Agreement.

“**Applicable Law**” means any transnational, domestic or foreign, federal, provincial, territorial, state, local or municipal (or any subdivision of any of them) law (including common law and civil law), statute, ordinance, rule, regulation, restriction, limit, by-law (zoning or otherwise), judgment, order, direction or any consent, exemption, Transaction Regulatory Approval (as defined in the Offer Letter), or any other legal requirements of, or agreements with, any Governmental Authority, that applies in whole or in part to the transactions contemplated by this Agreement, the Validus Entities, MEFL (or any of its Affiliates), the Assignee (or any of its Affiliates), the Business or any of the Purchased Assets or the Assumed Liabilities.

“**Appointment Order**” has the meaning given to such term in Recital B.

“**Assignee**” has the meaning given to such term in the preamble to this Agreement.

“**Assumed Liabilities**” has the meaning given to such term in Section 2.3.

“**Bay Power**” has the meaning given to such term in the preamble.

“**Bay Power Interests**” has the meaning given to such term in Section 2.1.1(a)(i).

“**BIA**” means the *Bankruptcy and Insolvency Act* (Canada), as amended.

“**Business**” has the meaning given to such term in Recital A.

“**Business Day**” means any day, other than a Saturday or Sunday, on which the principal commercial banks in Toronto, Ontario are open for commercial banking business during normal banking hours.

“**Causes of Action**” means any action, claim, cross claim, third party claim, damage, judgment, cause of action, controversy, demand, right, action, suit, obligation, liability, debt, account, defense, offset, power, privilege, license, lien, indemnity, interest, guaranty, or franchise of any kind or character whatsoever, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, contingent or non-contingent, liquidated or unliquidated, disputed or undisputed, secured or unsecured, assertable directly or derivatively, matured or unmatured, suspected or unsuspected, in contract or in tort, at law or in equity, or pursuant to any other theory of law or otherwise, of any of the Validus Entities against any Person, in each case based in whole or in part on any act or omission, transaction, dealing or other occurrence existing or taking place on or prior to the Effective Time (which Causes of Action, for the avoidance of doubt, shall be retained by the Purchased Entities on Closing).

“**CCAA**” has the meaning given to such term in Recital C.

“**CCAA Proceedings**” has the meaning given to such term in Recital C.

“**Claim**” means any and all demands, claims, liabilities, actions, ~~causes~~Causes of ~~action~~Action, counterclaims, expenses, costs, damages, losses, suits, debts, sums of money, refunds, accounts, indebtedness, rights of recovery, rights of set-off, rights of recoupment and liens of whatever nature (whether direct or indirect, absolute or contingent, asserted or unasserted, secured or unsecured, matured or not yet matured due or to become due, accrued or unaccrued or liquidated or unliquidated) and including all costs, fees and expenses relating thereto, against any Person.

“**Claim Amount**” means \$57,218,822 plus any interest thereon arising on or after September 22, 2023, and any other amounts under the Participation Agreement Documents, including in respect of indemnified costs and expenses as provided thereunder.

“**Closing**” means the completion of the transfer of the Purchased Assets, including the Purchased Interests to the Assignee and the issuance of certain indebtedness and shares in the capital of IFPC to MEFL and the Assignee, as applicable, and the transfer by MEFL of the Leased Property to IFPC, subject and pursuant to this Agreement and the Reverse Vesting Order at the Effective Time, and all other transactions contemplated by this Agreement that are to occur contemporaneously therewith.



“**Collective Agreement**” means any collective bargaining agreement or union agreement applicable to ~~Validus~~, any Validus Entity or the Business, and all related documents, including letters or memoranda of understanding, letters of intent and other written communications with bargaining agents which impose any obligations upon ~~Validus and/or~~ any of the Validus Entities.

“**Confidential Information**” means non-public, confidential, personal or proprietary information which is furnished to MEFL, the Assignee or any of their Affiliates or representatives by any of the Validus Entities’ representatives by the Monitor on or after the date of this Agreement, including information about identifiable individuals, any information relating to the Validus Entities, or any customer or supplier of the Validus Entities, but does not include information that is or becomes generally available to the public other than as a result of disclosure by MEFL, the Assignee or their Affiliates or representatives in breach of this Agreement or Applicable Law or that is received by MEFL or the Assignee from an independent third party that, to the knowledge of MEFL or the Assignee, as applicable, obtained it lawfully and was under no duty of confidentiality (except to the extent that applicable privacy laws do not exclude such information from the definition of personal information) or that is independently developed by MEFL, the Assignee or their representatives without reference to any Confidential Information.

“**Continuing Contract**” means a contract, arrangement, or other agreement (oral or written): (i) for which a notice of disclaimer or similar notice has not been sent by the Receiver or the Monitor; and (ii) that is not an Excluded Contract.

“**Court**” has the meaning given to such term in Recital B.

“**Credit Bid Consideration**” has the meaning given to such term in Section 2.8(a).

“**Disclosure Schedule**” means the Disclosure Schedule dated the date hereof regarding this Agreement.

“**Effective Date**” means the date on which the Vendors, MEFL and the Assignee contemporaneously accept and execute this Agreement.

“**Effective Time**” means the time when the Vendors, MEFL and the Assignee contemporaneously accept and execute this Agreement on the Effective Date.

“**Employee Plans**” means all the employee benefit, fringe benefit, deferred compensation, commission, equity-based compensation, management compensation, supplemental unemployment benefit, bonus, incentive, profit sharing, termination, severance, change of control, transaction bonus, retention bonus, pension, supplemental pension, retirement, stock option, stock purchase, stock appreciation, health, welfare, medical, dental, disability, life insurance and any other or similar plans, programs, arrangements or practices, whether funded or unfunded, insured or self-insured, registered or unregistered, relating to the current or former directors, officers or Employees of the Validus Entities, or the beneficiaries or dependents of any such Persons, and that is maintained, sponsored, contributed to, or required to be contributed to by any of the Validus Entities, or with respect to which any of the Validus Entities has any actual

or contingent liability, other than any plan, program or arrangement sponsored, maintained or administered by a Governmental Authority.

“**Employees**” means the employees of the Validus Entities whose services are provided exclusively in respect of the Business and whose responsibilities relate to the operation and maintenance of the plants owned and operated by the Purchased Entities.

“**Employment Agreements**” means, collectively, the written employment agreements, Collective Agreements, Employee Plans and indemnification agreements of, or for the benefit of, the directors, officers and Employees of any of the Validus Entities that, on or prior to the Closing, have not resigned, in each case, in existence on the date hereof; *provided, however*, that Employment Agreements shall not include Excluded Contracts or any employment agreements, Employee Plans or indemnification agreements of, or for the benefit of, the directors, officers and employees of any of the Validus Entities that have been terminated or disclaimed without the consent of MEFL.

“**Encumbrance**” means any security interest (whether contractual, statutory or otherwise), pledge, assignment, lien, prior claim, charge, hypothec, reservation of ownership, pledge, encumbrance, mortgage, trust (including any statutory, deemed or constructive trust, actual or deemed), option, preferential arrangement of any kind or nature whatsoever or adverse claim or encumbrance of any nature or kind.

“**Energy Regulator**” means any federal or provincial Governmental Authority having jurisdiction to regulate the generation, transmission, distribution, retailing or wholesaling of electricity and/or the purchase, sale and use of electricity or natural gas in Ontario, foreign regulatory authority having jurisdiction over matters relating to electricity and/or natural gas, authorized electricity or natural gas transmitter or distributor, or regional transmission organization or independent system operator, including but not limited to the Independent Electricity System Operator and the Ontario Energy Board.

“**Equity Interests**” means any capital share, capital stock, partnership, membership, joint venture or other ownership or equity interest, participation or securities (whether voting or nonvoting, whether preferred, common or otherwise, and including share appreciation, contingent interest or similar rights) of a Person.

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

“**Excluded Assets**” has the meaning given to such term in Section 2.2.

“**Excluded Contracts**” means contracts of the Validus Entities as specified in Exhibit 2.2(e) of the Disclosure Schedule.

“**Excluded Liabilities**” has the meaning given to such term in Section 2.4.

“**Filing Date**” means August 10, 2023.

“**Final Order**”, with respect to any order of any court of competent jurisdiction, means that: (i) such order shall not have been stayed, appealed, varied (except with the consent of MEFL, the Assignee and the Vendors) or vacated, and all time periods within which such order could at law be appealed shall have expired; or (ii) such order is no longer the subject of any continuing proceedings seeking to stay, appeal, vary (except with the consent of MEFL, the Assignee and the Vendors) or vacate such order, all such proceedings having been discontinued, denied, dismissed and otherwise unsuccessfully concluded, and the time for appealing or further appealing the disposition of such proceedings shall have expired.

“**Governmental Authority**” means any government, regulatory authority (including any Energy Regulator), governmental department, agency, commission, bureau, official, minister, Crown corporation, court, board, tribunal or dispute settlement panel or other law, rule or regulation-making organization or entity: (a) having or purporting to have jurisdiction on behalf of any nation, province, territory or state or any other geographic or political subdivision of any of them; or (b) exercising, or entitled or purporting to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power.

“**GST/HST**” means all goods and services tax and harmonized sales tax imposed under Part IX of the ETA and any similar tax imposed pursuant to any other statute in any jurisdiction of Canada.

“**HST Amount**” means \$6,435,000.

“**Hut 8**” means Hut 8 Mining Corp.

“**Hut 8 Litigation**” means, collectively: (i) the civil claim commenced by Hut 8, as plaintiff, against Validus Parent and Bay Power, as defendants, in the Ontario Superior Court of Justice; and (ii) the counterclaim of Validus Parent and Bay Power against Hut 8, the foregoing bearing Court File No. CV-23-00693515-0000.

“**IFPC**” has the meaning given to such term in the preamble.

“**IFPC Interests**” has the meaning given to such term in Section 2.1.1(d)(iv).

“**IFPC Legacy Shares**” has the meaning given to such term in Section 2.1.1(e).

“**IFPC Note 1**” has the meaning given to such term in Section 2.1.1(d)(i).

“**IFPC Note 2**” has the meaning given to such term in Section 2.1.1(d)(ii).

“**IFPC Note 3**” has the meaning given to such term in Section 2.1.1(d)(iii).

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

“**Implementation Steps**” has the meaning given to such term in the Terms and Conditions.

“**Initial Order**” has the meaning given to such term in Recital C.

“**Intercompany Claim**” means any claim that may be asserted against a Validus Entity by or on behalf of any of the other Validus Entities or any of their affiliated companies, partnerships or other corporate entities.

“**Investment Canada Act**” means the *Investment Canada Act* (Canada), R.S.C., 1985, c. 28 (1st Supp), as amended, including the regulations promulgated thereunder.

“**Kap Power**” has the meaning given to such term in the preamble.

“**Kap Power Interests**” has the meaning given to such term in Section 2.1.1(a)(ii).

“**Kingston GP**” has the meaning given to such term in the preamble.

“**Kingston GP Interests**” has the meaning given to such term in Section 2.1.1(a)(iii).

“**Kingston LP**” has the meaning given to such term in the preamble.

“**Kingston LP Interests**” has the meaning given to such term in Section 2.1.1(a)(iii).

“**KSV**” has the meaning given to such term in the preamble.

“**Lease Agreement**” means the amended and restated lease agreement dated February 24, 2023 between MEFL, as lessor, and IFPC, as lessee, pursuant to which MEFL has leased the Leased Property to IFPC on the terms and conditions set forth in the Lease Agreement.

“**Leased Property**” has the meaning given to such term in the Lease Agreement.

“**Monitor**” has the meaning given to such term in Recital C.

“**Monitor’s Certificate**” means the certificate to be filed with the Court by the Monitor in accordance with the Reverse Vesting Order certifying that the Effective Time has occurred.

“**Offer Letter**” means the binding offer letter, including the terms and conditions contained in Schedule “B” thereto, delivered by MEFL and the Assignee to the Monitor on ~~+~~ **October 16**, 2023, providing, among other things, MEFL’s and the Assignee’s binding offer to enter into this Agreement and the transactions contemplated hereby with the Vendors and the terms and conditions of same.

“**Order**” means any order of the Court made in the Receivership Proceedings, the CCAA Proceedings or any order, directive, judgment, decree, injunction, decision, ruling, award or writ of any Governmental Authority.

**“Original Agreement” means the original form of transaction agreement that was appended as Schedule “A” to the Offer Letter. For greater certainty, the Original Agreement was superseded by this Agreement.**

**“Original Terms and Conditions” means the original form of terms and conditions that was appended as Schedule “B” to the Offer Letter. For greater certainty, the Original Terms and Conditions was superseded by the Terms and Conditions.**

**“Participation Agreement”** means the Amended and Restated Participation Agreement dated February 24, 2023, between IFPC, as lessee, MEFL, as lessor, and Validus Parent, Bay Power, Kap Power, Kingston LP and Kingston GP, as guarantors.

**“Participation Agreement Documents”** means, collectively: (i) the Participation Agreement; (ii) the Lease Agreement; and (iii) all related documentation and agreements, including all guarantee and security documentation and supplements related to the foregoing.

**“Parties”** means, collectively, the Vendors, the Assignee and MEFL, and **“Party”** means any of the Vendors, the Assignee and MEFL, as the context requires.

**“Permitted Encumbrances”** means the Encumbrances listed in Exhibit 1.1 of the Disclosure Schedule.

**“Person”** means an individual, partnership, firm, joint venture, venture capital fund, limited liability company, unlimited liability company, association, trust, entity, corporation, unincorporated association, or organization, syndicate, committee, court appointed representative, the government of a country or any political subdivision thereof, or any agency, board, tribunal, commission, bureau, instrumentality, or department of such government or political subdivision, or any other entity, howsoever designated or constituted, including any Taxing Authority, and the trustees, executors, administrators or other legal representatives of an individual, and, for greater certainty, includes any Governmental Authority.

**“Post-Closing Straddle Tax Period”** has the meaning given to such term in Section 6.3.3.

**“Post-Filing Claim”** or **“Post-Filing Claims”** means any or all Claims, indebtedness, liability or obligation of the Purchased Entities of any kind that arises during and in respect of the period commencing on the Filing Date and ending at the time immediately preceding the Effective Time in respect of services rendered or supplies provided to the Purchased Entities during such period or under or in accordance with any Continuing Contract.

**“Pre-Closing Straddle Tax Period”** has the meaning given to such term in Section 6.3.3.

**“Priority Payments Closing Amount”** means cash in the amount of \$1,500,000.

**“Priority Payments Indemnity”** has the meaning given to such term in Section 2.8(a)(i).

“**Priority Payments Indemnity Charge**” has the meaning given to such term in Section 2.8(b).

“**Priority Payments of the Purchased Entities**” means all liabilities of the Purchased Entities in respect of any payments or amounts subject to a statutory deemed trust in favour of His Majesty in right of Canada or a province, to the extent that such statutory deemed trust remains valid and enforceable by the Canada Revenue Agency in the CCAA Proceedings or the Receivership Proceedings pursuant to the following legislative provisions:

- (i) subsection 227(4) or (4.1) of the *Income Tax Act*;
- (ii) subsection 23(3) or (4) of the *Canada Pension Plan (Canada)*; and
- (iii) subsection 86(2) or (2.1) of the *Employment Insurance Act (Canada)*.

“**Priority Payments of Validus Parent**” means all liabilities of Validus Parent in respect of any payments or amounts subject to a statutory deemed trust in favour of His Majesty in right of Canada or a province, to the extent that such statutory deemed trust remains valid and enforceable by the Canada Revenue Agency in the CCAA Proceedings or the Receivership Proceedings pursuant to the following legislative provisions:

- (i) subsection 227(4) or (4.1) of the *Income Tax Act*;
- (ii) subsection 23(3) or (4) of the *Canada Pension Plan (Canada)*; and
- (iii) subsection 86(2) or (2.1) of the *Employment Insurance Act (Canada)*.

“**Purchased Assets**” means, collectively: (i) the Purchased Interests; (ii) the Purchased Validus Parent Assets; (iii) the IFPC Note 1; (iv) the IFPC Note 2; (v) the IFPC Note 3; and (vi) the IFPC Interests.

“**Purchased Entities**” means IFPC, Bay Power, Kap Power, Kingston LP, Kingston GP and Validus Hosting, and “**Purchased Entity**” means any one of them.

“**Purchased Interests**” means the property described in Sections 2.1.1(a)(i) to 2.1.1(a)(iv), inclusive.

“**Purchased Validus Parent Assets**” has the meaning given to such term in Section 2.1.1(b).

“**Receiver**” means KSV in its capacity as court-appointed receiver over, among other things, all of the assets, undertakings and properties of the Validus Entities.

“**Receivership Debtors**” means: (i) prior to the Effective Time, the Validus Entities and Residualco (at such time as, but only to the extent that, Residualco becomes a Receivership

Debtor prior to the Effective Time); and (ii) following the Effective Time, Validus Parent and Residualco.

“**Receivership Proceedings**” means the receivership proceedings in respect of the Validus Entities commenced under the BIA and the *Courts of Justice Act* (Ontario) by MEFL pursuant to the Appointment Order, bearing Court File No. CV-23-00703754-00CL.

“**Released Claims**” means all Claims, demands, complaints, grievances, actions, applications, suits, ~~causes~~Causes of ~~action~~Action, Orders, charges, indictments, prosecutions, informations or other similar processes, assessments or reassessments, judgments, debts, liabilities, expenses, costs, damages or losses, contingent or otherwise, whether liquidated or unliquidated, matured or unmatured, disputed or undisputed, contractual, legal or equitable, including loss of value, professional fees, including “provable claims” as defined in the BIA and including fees and disbursements of legal counsel on a full indemnity basis, and all costs incurred in investigating or pursuing any of the foregoing or any proceeding relating to any of the foregoing.

“**Residualco**” means one or more entities formed by the Receiver for the sole purpose of performing the obligations set out herein.

“**Reverse Vesting Order**” means an order of the Court substantially in the form of Schedule “A” hereto (or with such updates and amendments as may be acceptable to MEFL, the Assignee and the Vendors, each acting reasonably).

“**SISP**” means the sale and investment solicitation process ~~substantially in the form as appended as Schedule “B” hereto (or otherwise in form and substance satisfactory to MEFL, the Assignee and the Monitor, each acting reasonably)~~that was approved by the Court in the SISP Order on November 1, 2023.

“**SISP Order**” means ~~an~~the order ~~of~~appended as Schedule “C” hereto that the Court ~~that granted on November 1, 2023 in the CCAA Proceedings, which,~~ among other things, approves~~approved~~ the SISP and related matters, ~~substantially in the form as appended as Schedule “C” hereto (or as otherwise acceptable to MEFL, the Assignee and the Monitor, each acting reasonably).~~

“**Straddle Period**” has the meaning given to such term in Section 6.3.3.

“**Successful Bid**” has the meaning given to such term in the SISP.

“**Tax**” and “**Taxes**” means taxes, duties, fees, premiums, assessments, imposts, levies and other charges of any kind whatsoever (including withholding on amounts paid to or by any Person) imposed by any Taxing Authority, including all interest, penalties, fines, additions to tax or other additional amounts imposed by any Taxing Authority in respect thereof, and including those levied on, or measured by, or referred to as, income, gross receipts, profits, capital, transfer, land transfer, sales, goods and services, harmonized sales, use, value-added, excise, stamp, withholding, business, franchising, escheat, property, development, occupancy, employer

health, payroll, employment, health, disability, severance, unemployment, social services, education and social security taxes, all surtaxes, all customs duties and import and export taxes, countervail and anti-dumping, all license, franchise and registration fees and all employment insurance, health insurance and Canada, Ontario and other government pension plan premiums or contributions.

“**Tax Act**” means the *Income Tax Act* (Canada) and shall also include a reference to any applicable and corresponding provisions under the income tax laws of a province or territory of Canada, as applicable.

“**Tax Return**” means any return, declaration, report, statement, information statement, form, election, amendment, claim for refund, schedule or attachment thereto or other document filed or required to be filed with a Taxing Authority with respect to Taxes.

“**Taxing Authorities**” means His Majesty the King in right of Canada, His Majesty the King in right of any province or territory of Canada, the Canada Revenue Agency, any similar revenue or taxing authority of Canada and each and every province or territory of Canada and any political subdivision thereof, and any Canadian or other Governmental Authority exercising taxing authority or power, and “**Taxing Authority**” means any one of the Taxing Authorities.

“**Terms and Conditions**” means the amended and restated terms and conditions ~~set forth in Schedule “B” to the Offer Letter~~ that MEFL and the Assignee delivered to the Monitor in connection with this Agreement on December 21, 2023. For greater certainty, the Terms and Conditions superseded the Original Terms and Conditions.

“**Transaction Documents**” means all contracts, agreements, certificates and instruments required by this Agreement to be delivered at or in connection herewith.

“**Transfer Taxes**” means all transfer, documentary, sales, use, stamp, registration, customs duties, import and export taxes, surtaxes, value added, GST/HST, provincial sales/retail Taxes, conveyance fees, security interest filing or recording fee and any other similar Taxes (including any real property transfer Tax and any other similar Tax), any governmental assessment, and any related penalties and interest.

“**U.S.**” means the United States of America.

“**Validus Entities**” has the meaning given to such term in the preamble, and “**Validus Entity**” means any one of them.

“**Validus Hosting**” has the meaning attributed thereto in the preamble.

“**Validus Hosting Interests**” has the meaning attributed thereto in Section 2.1.1(b)(ii).

“**Validus Parent**” has the meaning given to such term in the preamble.

“**Vendors**” has the meaning given to such term in the preamble.



## **1.2 Statutes and Agreements**

- (a) Except as otherwise provided in this Agreement, any reference in this Agreement to a statute refers to such statute and all rules and regulations made under it, as it or they may have been or may from time to time be amended, re-enacted or replaced.
- (b) Each reference to, and the definition of, any agreement, instrument or other document (including any Transaction Document) herein or in any other Transaction Document shall be deemed to refer to such agreement, instrument or other document as it may be amended, amended and restated, supplemented, revised or otherwise modified from time to time in accordance with its terms and, to the extent applicable, the terms of this Agreement and the other Transaction Documents shall be deemed to incorporate any appendices, annexes, schedules or exhibits to such agreement, instrument or other document.

## **1.3 Headings, Table of Contents, etc.**

The provision of a table of contents, the division of this Agreement into Articles, Sections and other subdivisions and the insertion of headings are for convenient reference only and do not affect the interpretation of this Agreement. The recitals to this Agreement are an integral part of this Agreement.

## **1.4 Gender and Number**

In this Agreement, unless the context otherwise requires, words importing the singular include the plural and vice versa, and words importing gender include all genders.

## **1.5 Currency**

Except where otherwise expressly provided, all amounts in this Agreement are stated and shall be paid in Canadian dollars. References to “\$” are to Canadian dollars. References to “US\$”, if any, are to U.S. dollars.

## **1.6 Certain Phrases**

In this Agreement: (a) the words “including”, “includes” and “include” and any derivatives of such words mean “including (or includes or include) without limitation”; and (b) the words “the aggregate of”, “the total of”, “the sum of” or a phrase of similar meaning means “the aggregate (or total or sum), without duplication, of”. The expression “Article”, “Section” and other subdivision followed by a number, mean and refer to the specified Article, Section or other subdivision of this Agreement.

## **1.7 Invalidity of Provisions**

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of

competent jurisdiction shall not affect the validity or enforceability of any other provision hereof so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any Party. Upon: (a) such a determination of invalidity or unenforceability; or (b) any change in Applicable Law or other action by any Governmental Authority which materially detracts from the legal or economic rights or benefits, or materially increases the obligations, of any Party or any of its Affiliates under this Agreement, the Parties shall negotiate to modify this Agreement in good faith so as to effect the original intent of the Parties as closely as possible in an acceptable manner so that the transactions contemplated by this Agreement be consummated as originally contemplated to the fullest extent possible.

### **1.8 Entire Agreement**

This Agreement, the Disclosure Schedule and the agreements and other documents required to be delivered pursuant to this Agreement constitute the entire agreement among the Parties, and set out all the covenants, promises, warranties, representations, conditions and agreements among the Parties in connection with the subject matter of this Agreement, and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, pre-contractual or otherwise. There are no covenants, promises, warranties, representations, conditions, understandings or other agreements, whether oral or written, pre-contractual or otherwise, express, implied or collateral among the Parties in connection with the subject matter of this Agreement, except as specifically set forth in this Agreement and any document required to be delivered pursuant to this Agreement.

### **1.9 Waiver, Amendment**

Except as expressly provided in this Agreement, no amendment or waiver of this Agreement shall be binding unless executed in writing by all Parties hereto. No waiver of any provision of this Agreement shall constitute a waiver of any other provision nor shall any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided.

### **1.10 Governing Law; Jurisdiction and Venue**

This Agreement and the rights and obligations of the Parties under this Agreement, and any Claim or controversy directly or indirectly based upon or arising out of this Agreement or the transactions contemplated by this Agreement (whether based on contract, tort or any other theory), including all matters of construction, validity and performance, shall in all respects be governed by, and interpreted, construed and determined in accordance with, the laws of the Province of Ontario and the federal laws of Canada applicable therein, without regard to the conflicts of law principles thereof. The Parties consent to the jurisdiction and venue of the Court for the resolution of any such disputes arising under this Agreement. Each Party agrees that service of process on such Party as provided in Section 9.6 shall be deemed effective service of process on such Party.

### 1.11 Accounting Terms

All accounting terms used in this Agreement are to be interpreted in accordance with IFRS unless otherwise specified.

### 1.12 Non-Business Days

Whenever payments are to be made or an action is to be taken on a day which is not a Business Day, such payment will be made, or such action will be taken on or not later than the next succeeding Business Day.

### 1.13 Computation of Time Periods

If any action may be taken within, or any right or obligation is to expire at the end of, a period of days under this Agreement, then the first day of the period is not counted, but the day of its expiry is counted.

### 1.14 Time of Essence

Time shall be of the essence of this Agreement in all respects.

### 1.15 Schedules

- (a) The following are the Schedules attached to and incorporated in this Agreement by reference and deemed to be a part hereof:

Schedule "A" - Form of Reverse Vesting Order

Schedule "B" - ~~Form of SISP~~ [\[Intentionally Deleted\]](#)

Schedule "C" - ~~Form of SISP~~ Order

- (b) Unless the context otherwise requires, words and expressions defined in this Agreement shall have the same meanings in the Schedules and the interpretation provisions set out in this Agreement apply to the Schedules. Unless the context otherwise requires, or a contrary intention appears, references in the Schedules to a designated Article, Section or other subdivision refer to the Article, Section or other subdivision, respectively, of this Agreement.

### 1.16 Disclosure Schedule and Exhibits

The Disclosure Schedule and Exhibits referred to herein shall be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein.

**ARTICLE 2**  
**ASSETS PURCHASED IN SATISFACTION OF CLAIMS**

**2.1 Assignment and Issuance of Purchased Assets to the Assignee and MEFL**

2.1.1 In consideration for the payment of the Credit Bid Consideration in accordance with Section 2.8, upon and subject to the terms and conditions of this Agreement (including Sections 2.2, 2.4, 2.5 and 2.6):

- (a) Validus Parent, by the Monitor, hereby sells, transfers, assigns and conveys to the Assignee, as MEFL's designated and nominated assignee, effective at the Effective Time, inclusive of the additional GST/HST, if any, applicable to the portion of the Claim Amount being settled in satisfaction of these transfers, all of Validus Parent's right, title and interest in and to:
  - (i) all of the issued and outstanding shares in the capital of Bay Power held by Validus Parent (or its successor if converted into other Equity Interests or another entity prior to the Effective Time in accordance with the Implementation Steps) (the "**Bay Power Interests**"), free and clear of all Encumbrances (other than Permitted Encumbrances);
  - (ii) all of the issued and outstanding shares in the capital of Kap Power held by Validus Parent (or its successor if converted into other Equity Interests or another entity prior to the Effective Time in accordance with the Implementation Steps) (the "**Kap Power Interests**"), free and clear of all Encumbrances (other than Permitted Encumbrances);
  - (iii) all of the issued and outstanding limited partnership units of Kingston LP held by Validus Parent (or its successor if converted into other Equity Interests or another entity prior to the Effective Time in accordance with the Implementation Steps) (the "**Kingston LP Interests**"), free and clear of all Encumbrances (other than Permitted Encumbrances); and
  - (iv) all of the issued and outstanding shares in the capital of Kingston GP held by Validus Parent (or its successor if converted into other Equity Interests or another entity prior to the Effective Time in accordance with the Implementation Steps) (the "**Kingston GP Interests**"), free and clear of all Encumbrances (other than Permitted Encumbrances);
- (b) Validus Parent, by the Monitor, hereby sells, transfers, assigns and conveys to the Assignee, effective at the Effective Time, all of Validus Parent's right, title and interest in and to the following assets, together with the assets specified in Exhibit 2.1.1(b) of the Disclosure Schedule, of Validus Parent (collectively, the

“**Purchased Validus Parent Assets**”), free and clear of all Encumbrances (other than Permitted Encumbrances):

- (i) all right, title and interest of Validus Parent in the Hut 8 Litigation;
  - (ii) all of the issued and outstanding shares in the capital of Validus Hosting held by Validus Parent (or its successor if converted into another entity prior to the Effective Time in accordance with the Implementation Steps) (the “**Validus Hosting Interests**”), free and clear of all Encumbrances (other than Permitted Encumbrances);
  - (iii) all right, title and interest of Validus Parent in the Firm Transportation Service Contract made as of July 25, 2022 between TransCanada Pipelines Limited and Validus Parent; and
  - (iv) all right, title and interest of Validus Parent in the Letter Agreement dated September 30, 2023 between Validus Parent and Macquarie Energy Canada Ltd.;
- (c) effective as at the Effective Time,
- (i) subject to subparagraph (iii) below, for any Employee of Validus Parent, the Assignee or a Purchased Entity, at the Assignee’s election, shall offer to employ such of the Employees as the Assignee determines in its sole discretion, on terms and conditions of employment that are substantially similar to, and in the aggregate no less favourable than, those in effect for each such Employee as disclosed in Exhibit 2.1.1(c)(i) of the Disclosure Schedule. If any Employee of Validus Parent receives an offer of employment hereunder but does not accept such offer for any reason, then all liabilities associated with such Employee shall remain the responsibility of Validus Parent and shall not be assumed by any Purchased Entity or any other Person hereunder;
  - (ii) subject to subparagraph (iii) below, for any Employee of the Purchased Entities, such of the Employees as the Assignee determines in its sole discretion shall continue to be an Employee of such Purchased Entity; and
  - (iii) for clarity, and without prejudice to the Assignee’s position that the Assignee (or the Validus Entities) is not a successor employer to, and is not bound by any Collective Agreement, nothing in this Agreement prevents the Assignee from negotiating agreement(s) with the bargaining agent(s) who are party to the applicable Collective Agreement(s) regarding the outsourcing of the operation of the Purchased Assets, including the employment of the Employees supporting the Purchased Assets, to NAES Corporation (“**NAES**”) or an alternative third party power plant operator (an “**Alternative Operator**”), which would employ the Employees

effective upon Closing. In the event that such arrangements are reached with respect to the bargaining agents on or prior to the Effective Date, such offers in (i) and (ii) above may be extended by NAES or such Alternative Operator as may be determined by the Assignee, in its sole discretion. Regardless of whether any arrangement is made with the bargaining agent(s) who are party to the applicable Collective Agreement(s), the offers of employment to non-union Employees outside the scope of the bargaining rights asserted by the bargaining agents may be made by NAES or an Alternative Operator, at the Assignee's election;

- (d) at the Effective Time (and simultaneous with the transfers in Section 2.1.1(a) and ~~2.1~~2.1.1(b)), IFPC, by the Monitor, hereby pays to MEFL as consideration for the transfer of the Leased Property under Section 2.8(a)(~~viii~~iv) and in satisfaction of the remaining amounts due under the Lease Agreement (after taking into account the portion of the Claim Amount that is settled in satisfaction of the transfers in Section 2.1.1(a)), plus applicable GST/HST, as follows:
- (i) in respect of \$29,000,000, IFPC, by the Monitor, hereby issues to MEFL, a promissory note with a principal amount of \$29,000,000 and the other terms set forth in Exhibit 2.1.1(d)(i) of the Disclosure Schedule (the “**IFPC Note 1**”);
  - (ii) in respect of \$10,000,000, IFPC, by the Monitor, hereby issues to the Assignee, as MEFL's designated and nominated assignee, a promissory note with a principal amount of \$10,000,000 and the other terms set forth in Exhibit 2.1.1(d)(ii) of the Disclosure Schedule (the “**IFPC Note 2**”);
  - (iii) in respect of the HST Amount, IFPC, by the Monitor, hereby issues to MEFL a promissory note with a principal amount equal to the HST Amount, and with the other terms set forth in Exhibit 2.1.1(d)(iii) of the Disclosure Schedule (the “**IFPC Note 3**”); and
  - (iv) in respect of all amounts due and owing by IFPC to MEFL under the Lease Agreement after receipt of the amounts described in Section 2.1.1(a) and Sections 2.1.1(d)(i), (ii) and (iii) ~~(the “**Claim Amount Balance**”)~~, IFPC, by the Monitor, hereby issues to the Assignee, as MEFL's designated and nominated assignee, newly issued common equity of IFPC (or its successor if converted into another entity prior to the Effective Time in accordance with the Implementation Steps) (the “**IFPC Interests**”), free and clear of all Encumbrances (other than Permitted Encumbrances), which IFPC Interests represent 99.999% of the issued and outstanding common equity in IFPC immediately prior to the redemption of the IFPC Legacy Shares in accordance with Section 2.1.1(e); and
- (e) pursuant to the Reverse Vesting Order, effective as of immediately following the issuance of the IFPC Interests in accordance with Section 2.1.1(d)(iv), all Equity

Interests of IFPC outstanding prior to the issuance of the IFPC Interests (excluding, for the avoidance of doubt, the IFPC Interests) (the “**IFPC Legacy Shares**”) shall be cancelled without any payment thereon, so that immediately following such cancellation the IFPC Interests shall represent 100% of the outstanding Equity Interests in IFPC.

2.1.2 MEFL hereby designates the Assignee as MEFL’s designated and nominated assignee for the purposes of Sections 2.1.1(a) and 2.1.1(d)(ii) and (iv), and directs the Vendors (by the Monitor) to transfer, assign, convey and/or issue all right, title and interest in such Purchased Assets directly to the Assignee. For the avoidance of doubt, upon the consummation of the transfers contemplated by Section 2.1.1(a) and Section 2.1.1(b), the issuances contemplated by Section 2.1.1(d) and the cancellation of the IFPC Legacy Shares contemplated by Section 2.1.1(e), each Purchased Entity, and every other direct and indirect subsidiary of any Purchased Entity, except those listed in Exhibit 2.2(g) of the Disclosure Schedule, shall be wholly owned, directly or indirectly, by the Assignee.

## 2.2 Excluded Assets

Notwithstanding any provision of this Agreement to the contrary, as of the Effective Time the assets of the Purchased Entities do not include any of the following assets, together with any other assets as set forth in Exhibit 2.2 of the Disclosure Schedule (collectively, the “**Excluded Assets**”):

- (a) the Tax records and Tax Returns, and books and records pertaining thereto and other documents, in each case, that primarily or solely relate to any of the Excluded Liabilities; *provided* that the applicable Purchased Entity may take copies of all Tax records and books and records pertaining to such records (as redacted, if applicable) to the extent necessary or useful for the carrying on of the Business after Closing, including the filing of any Tax Return; *provided*, however, that Residualco shall retain the original copies of any of the records required to be provided to the applicable Purchased Entity hereunder (and provide the applicable Purchased Entity with a copy thereof) to the extent Residualco is required to do so under Applicable Law;
- (b) any cash, deposits or other amounts owned or in the name of Validus Parent;
- (c) any other assets of Validus Parent that are not Purchased Validus Parent Assets or contemplated in Section 2.2(b);
- (d) the Administrative Expense Closing Amount;
- (e) the Excluded Contracts;

- (f) all communications, information or records, written or oral, that are in any way related to: (i) the transactions contemplated by this Agreement; (ii) the sale of the Purchased Assets; (iii) any Excluded Asset; or (iv) any Excluded Liability;
- (g) the ~~equity interests~~ Equity Interests of each entity set forth in Exhibit 2.2(g) of the Disclosure Schedule; and
- (h) any rights that accrue to Residualco under the ~~transaction documents~~ Transaction Documents.

but for greater certainty, “Excluded Assets” shall not include any right, title and interest of the Purchased Entities in and to any input tax credits or rebates that may become due and payable thereto in respect of GST/HST on or after the Effective Time as a result of taxes paid on or after the Effective Time, notwithstanding that they relate to supplies arising prior to the Effective Time for which payment was made on or after the Effective Time and not prior thereto.

### 2.3 Liabilities of Purchased Entities

Pursuant to the Reverse Vesting Order, and in accordance with the Implementation Steps and this Agreement (including Section 2.4), as of the Effective Time the only obligations and liabilities of the respective Purchased Entities consist of the items specifically set forth below (collectively, the “**Assumed Liabilities**”) with respect to such Purchased Entity:

- (a) *Post-Filing Claims* – all Post-Filing Claims;
- (b) *IFPC Note 1* – all liabilities of IFPC under the IFPC Note 1;
- (c) *IFPC Note 2* – all liabilities of IFPC under the IFPC Note 2;
- (d) *IFPC Note 3* – all liabilities of IFPC under the IFPC Note 3;
- (e) *Ordinary Course Liabilities of Purchased Entities* – all ordinary course liabilities of the Purchased Entities to be performed after the Effective Time and that arise solely and exclusively from events occurring from and after the Effective Time including, without limitation, liabilities relating to Employees who are hired or whose employment continues pursuant to Section 2.1.1(c) and all ordinary course liabilities that arise before or after the Effective Date pursuant to Continuing Contracts ~~and Continuing Employee Claims~~;
- (f) *Taxes* – Tax liabilities of the Purchased Entities for any tax period or the portion thereof (allocated in accordance with Section 6.3.3 in respect of Straddle Periods) beginning on or after the Effective Time (other than Taxes assessed after the Effective Time that are in respect of any transactions or event that occurred prior to the Effective Time; but for greater certainty, this proviso shall not include or limit any right, title and interest of the Purchased Entities in and to any amounts that may become payable by any Governmental Authority on or after the Effective Time as a result of taxes paid by the Purchased Entities on or after the Effective



Time, notwithstanding that they relate to supplies arising prior to the Effective Time for which payment was made on or after the Effective Time and not prior thereto) and for greater certainty, including any Transfer Taxes exigible in respect of the transfer and issuance of the Purchased Assets in consideration for the Credit Bid Consideration or any refunds of taxes relating thereto, but excluding any Tax liability of Validus Parent (or any person related to it) for which any of the Purchased Entities may have joint or several liability under the Tax Act whether occurring before or after the Effective Time and whether assessed or not;

- (g) *Municipal Taxes* – all municipal taxes owing with respect to any real property owned by any of the Purchased Entities which have priority over the security interest of MEFL pursuant to section 349(3) of the *Municipal Act* (Ontario);
- (h) *Intercompany Claims* – any Intercompany Claim against such Purchased Entity that may be asserted by or on behalf of another Purchased Entity (but excluding any such Intercompany Claim set forth in Exhibit 2.3(h) of the Disclosure Schedule);
- (i) *Priority Payments* – the Priority Payments of the Purchased Entities; and
- (j) *Further Assumed Liabilities* – all liabilities set forth in Exhibit 2.3(j) of the Disclosure Schedule.

Notwithstanding the foregoing, nothing in this Agreement shall give or shall be interpreted as giving any rights to any Person in respect of Claims against any Purchased Entity.

## 2.4 Excluded Liabilities

Except to the extent expressly assumed pursuant to or specifically contemplated by Section 2.3, all Claims against the Purchased Entities and all debts, obligations and liabilities of the Purchased Entities, or any predecessors of the Purchased Entities, of any kind or nature, whether accrued, contingent, known or unknown, express or implied, primary or secondary, direct or indirect, liquidated, unliquidated, absolute, accrued, contingent or otherwise, and whether due or to become due (collectively, the “**Excluded Liabilities**”) are, in accordance with Section 2.5, hereby assigned to and become the sole obligation of Residualco pursuant to the terms of the Reverse Vesting Order, so that as of and from the Effective Time, the Purchased Entities shall not have any obligation, duty, or liability of any kind whatsoever with respect to any such Excluded Liabilities. For the avoidance of doubt, each of the liabilities set forth in Exhibit 2.4 of the Disclosure Schedule is an Excluded Liability. All Intercompany Claims that do not constitute Assumed Liabilities in accordance with Section 2.3(gh) (including, for the avoidance of doubt, any Intercompany Claim that may be asserted by or on behalf of Validus Parent against any Purchased Entity) shall be Excluded Liabilities.

## 2.5 Transfer of Excluded Liabilities to Residualco

Pursuant to the Reverse Vesting Order, and in accordance with the Implementation Steps, the Purchased Entities, by the Monitor, hereby assign, transfer and convey the Excluded Liabilities to Residualco, and Residualco henceforth assumes the applicable Excluded Liabilities. All of the Excluded Liabilities are hereby discharged from the Purchased Entities pursuant to the Reverse Vesting Order.

## 2.6 Transfer of Excluded Assets to Residualco

Pursuant to the Reverse Vesting Order, and in accordance with the Implementation Steps, the Purchased Entities, by the Monitor, hereby assign, transfer and convey the Excluded Assets to Residualco, and the Excluded Assets as of the Effective Date are vested in Residualco pursuant to the Reverse Vesting Order.

## 2.7 Closing Reorganization

- (a) On or prior to the Effective Date, the Vendors shall effect the Implementation Steps.
- (b) The Implementation Steps shall occur and be deemed to have occurred in the order and manner to be set out therein.
- (c) The steps to be taken and the compromises and releases to be effective on the Effective Date shall occur and be deemed to occur and be effected in the steps and sequential order set forth in the Implementation Steps.

## 2.8 Consideration for Purchased Assets

- (a) As consideration for the Purchased Assets (the “**Credit Bid Consideration**”), effective as of the Effective Time:
  - (i) the Assignee (x) shall pay to the Monitor the Priority Payments Closing Amount, such amount to be distributed by the Monitor in accordance with Section 6.11, (y) shall assume the Priority Payments of Validus Parent that are in excess of the Priority Payments Closing Amount, if any, on the Effective Date, and (z) hereby indemnifies and holds harmless the Monitor and the Receiver for any liability in respect of the Priority Payments of Validus Parent that are in excess of the Priority Payments Closing Amount, if any (together with any fees and expenses of the Monitor or the Receiver incurred in connection therewith, the “**Priority Payments Indemnity**”);
  - (ii) the Assignee shall pay to the Monitor the Administrative Expense Closing Amount;

- (iii) MEFL releases Validus Parent and the Purchased Entities from all amounts outstanding and obligations owing by Validus Parent and the Purchased Entities to MEFL pursuant to the Participation Agreement Documents; and
  - (iv) MEFL conveys and delivers to IFPC the title to the Leased Property held by MEFL on an “as is, where is” basis pursuant and subject to the Reverse Vesting Order.
- (b) To secure the Priority Payments Indemnity set out in Section 2.8(a)(i), the Monitor shall be granted a super-priority charge on the Purchased Interests (excluding the Kingston GP Interests and the Kingston LP Interests) pursuant to the Reverse Vesting Order (the “**Priority Payments Indemnity Charge**”). The Priority Payments Indemnity Charge shall terminate automatically upon the later of (i) the payment in satisfaction of all of the Priority Payments of Validus Parent in excess of the Priority Payments Closing Amount, as determined by the Canada Revenue Agency (if any); and (ii) receipt of confirmation from the Canada Revenue Agency by the Assignee, on notice to the Monitor, that no Priority Payments of Validus Parent in excess of the Priority Payment Closing Amount are owing.
- (c) For the avoidance of doubt, all outstanding obligations of IFPC and MEFL, as applicable, owing under the Lease Agreement hereby merge, and each of IFPC and MEFL is hereby released from all such Claims, obligations and liabilities under the Lease Agreement effective as of the Effective Time.
- (d) MEFL and its Affiliates or the Assignee and its Affiliates, on the one hand, and the Vendors, and any of their Affiliates, on the other hand, shall be entitled to deduct and withhold from any amounts otherwise payable pursuant to this Agreement such amounts as such Person is required to deduct and withhold under Applicable Law. Before making any such deduction or withholding, the withholding agent shall use commercially reasonable efforts to provide the Person in respect of which deduction or withholding is proposed to be made reasonable advance written notice of the intention to make such deduction or withholding, and the withholding agent shall cooperate with any reasonable request from such Person to obtain reduction of or relief from such deduction or withholding to the extent permitted by Applicable Law. To the extent that amounts are so deducted and withheld and remitted to the appropriate Taxing Authority, such amounts shall be treated for all purposes of this Agreement as having been paid to the Person in respect of which such deduction and withholding was made.
- (e) The Credit Bid Consideration shall be allocated among the Purchased Assets as mutually agreed in writing by MEFL, the Assignee and the Vendors prior to the Effective Date. Notwithstanding the foregoing, the Parties agree that the consideration payable for the Purchased Validus Parent Assets shall be paid and satisfied by the assumption by the Assignee of the Priority Payments of Validus

Parent on the Effective Date under Section 2.8(a)(i) in an amount to be agreed in writing by MEFL, the Assignee and the Vendors.

## **2.9 As is, Where is**

Each of MEFL and the Assignee acknowledges, agrees and confirms that, at the Effective Time, the Purchased Assets shall be sold and delivered to MEFL or the Assignee, as applicable, on an “as is, where is” basis, subject only to the representations and warranties contained herein. Other than those representations and warranties contained herein, none of which shall survive closing, no representation, warranty or condition is expressed or can be implied as to title, encumbrances, description, fitness for purpose, merchantability, condition or quality or in respect of any other matter or thing whatsoever. Any information provided in any schedule, exhibit or appendix to a Transaction Document, including any information contained in the Disclosure Schedule, shall not constitute a representation or warranty given by any of the Receiver, the Monitor or a Validus Entity.

## **ARTICLE 3 REPRESENTATIONS AND WARRANTIES OF THE VENDORS**

The Vendors represent and warrant as of the Effective Date to MEFL and the Assignee as follows, and acknowledge and agree that MEFL and the Assignee are relying upon such representations and warranties in connection with the assignment of the Purchased Assets and the delivery of title to the Leased Property hereunder:

### **3.1 Due Authorization and Enforceability of Obligations**

Subject to the Court’s granting of the ~~CCAA~~ Initial Order, the SISP Order and the Reverse Vesting Order, the Vendors have the requisite power and authority to enter into this Agreement and to carry out the obligations of the Vendors under this Agreement, and this Agreement constitutes a legal, valid and binding obligation of them, enforceable against them in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium, or other similar laws relating to or limiting creditors’ rights generally or by equitable principles relating to enforceability.

### **3.2 Residence**

None of the Vendors is a non-resident of Canada for the purposes of the Tax Act (and the Kingston LP is a “Canadian partnership” as defined in the Tax Act).

### **3.3 GST/HST Registration**

The Validus Entities (other than Validus Hosting) are registered for GST/HST purposes under Part IX of the ETA with the registration numbers set forth below:

Validus Parent - 747594133 RT0002

IFPC	-	886674696 RT0002
Bay Power	-	776287062 RT0002
Kap Power	-	777056946 RT0002
Kingston LP	-	777056946 RT0002
Kingston GP	-	777056946 RT0002

### **3.4 No Encumbrances**

Neither the Receiver or the Monitor nor the Vendors have engaged in any act that has resulted in an Encumbrance affecting any of the Purchased Assets or the Leased Property, other than a Permitted Encumbrance or any charge created by the Appointment Order, the SISP Order or the Reverse Vesting Order or arising by operation of Applicable Law in the ordinary course of the Business.

## **ARTICLE 4 REPRESENTATIONS AND WARRANTIES OF THE ASSIGNEE**

The Assignee represents and warrants as of the Effective Date to the Vendors as follows, and acknowledges that the Vendors are relying upon the following representations and warranties in connection with the assignment of the Purchased Assets and the delivery of title to the Leased Property hereunder:

### **4.1 Due Authorization and Enforceability of Obligations**

Subject to this Agreement being selected as the Successful Bid, this Agreement has been duly authorized, executed and delivered by the Assignee and constitutes a legal, valid and binding obligation of it, enforceable against it in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium, or other similar laws relating to or limiting creditors' rights generally or by equitable principles relating to enforceability.

### **4.2 Existence and Good Standing**

The Assignee is validly existing and in good standing under the laws of Ontario and has all requisite power and authority to execute and deliver this Agreement and to perform its obligations hereunder and consummate the transactions contemplated by this Agreement.

### **4.3 Sophisticated Party**

The Assignee: (a) is a sophisticated party with sufficient knowledge and experience to evaluate properly the terms and conditions of this Agreement, (b) has conducted its own analysis and made its own decision to enter into this Agreement and has obtained such independent

advice in this regard as it deemed appropriate; and (c) has not relied on such analysis or decision of any Person other than its own independent advisors.

#### **4.4 Absence of Conflicts**

Subject to this Agreement being selected as the Successful Bid, the execution and delivery of this Agreement by and the completion by the Assignee of its obligations hereunder and the consummation of the transactions contemplated herein do not and will not violate or conflict with any Applicable Law, or any of its properties or assets, and will not result (with due notice or the passage of time or both) in a violation, conflict or breach of, or constitute a default under, or require any consent to be obtained under its certificate of incorporation, articles, by-laws or other constituent documents.

#### **4.5 Approvals and Consents**

Subject to this Agreement being selected as the Successful Bid, the execution and delivery of this Agreement by the Assignee, the completion by the Assignee of its obligations hereunder and the consummation by the Assignee of the transactions contemplated herein, do not and will not require any consent or approval or other action, with or by, any Governmental Authority, other than as contemplated by any Order.

#### **4.6 No Actions**

There is not, as of the date hereof, pending or, to the Assignee's knowledge, threatened against it or any of its properties, nor has the Assignee received notice in respect of, any claim, potential claim, litigation, action, suit, arbitration, investigation or other proceeding before any Governmental Authority or legislative body that, would prevent it from executing and delivering this Agreement, performing its obligations hereunder and consummating the transactions and agreements contemplated by this Agreement.

#### **4.7 Financial Ability**

The Assignee has and will have, at all relevant times, the financial ability and sufficient funds to perform all of its obligations under this Agreement, and the availability of such funds will not be subject to the consent, approval or authorization of any Person or the availability of any financing.

#### **4.8 Authorization of Delivery of the Credit Bid Consideration**

The Assignee is duly authorized to deliver the Credit Bid Consideration to be delivered by it in connection with the consummation of this Agreement and the transactions contemplated hereunder.

#### **4.9 Investment Canada Act**

The Assignee is not a “non-Canadian” or is a “trade agreement investor”, each within the meaning of the Investment Canada Act.

#### **4.10 Residence**

The Assignee is not a non-resident of Canada for the purposes of the Tax Act.

### **ARTICLE 5 REPRESENTATIONS AND WARRANTIES OF MEFL**

MEFL represents and warrants as of the Effective Date to the Vendors as follows, and acknowledges that the Vendors are relying upon the following representations and warranties in connection with the assignment of the Purchased Assets and the delivery of title to the Leased Property hereunder:

#### **5.1 Due Authorization and Enforceability of Obligations**

Subject to this Agreement being selected as the Successful Bid, this Agreement has been duly authorized, executed and delivered by MEFL, and, assuming the due authorization, execution and delivery by it, this Agreement constitutes a legal, valid and binding obligation of it, enforceable against it in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or limiting creditors’ rights generally or by equitable principles relating to enforceability.

#### **5.2 Existence and Good Standing**

MEFL is validly existing and in good standing under the laws of Canada and has all requisite power and authority to execute and deliver this Agreement and to perform its obligations hereunder and consummate the transactions contemplated by this Agreement.

#### **5.3 Sophisticated Party**

MEFL: (a) is a sophisticated party with sufficient knowledge and experience to evaluate properly the terms and conditions of this Agreement; (b) has conducted its own analysis and made its own decision to enter into this Agreement and has obtained such independent advice in this regard as it deemed appropriate; and (c) has not relied on such analysis or decision of any Person other than its own independent advisors.

#### **5.4 Absence of Conflicts**

Subject to this Agreement being selected as the Successful Bid, the execution and delivery of this Agreement by and the completion by MEFL of its obligations hereunder and the consummation of the transactions contemplated herein by it do not and will not violate or conflict with any Applicable Law, or any of its properties or assets, and will not result (with due notice or the passage of time or both) in a violation, conflict or breach by it of, or constitute a

default by it under, or require any consent to be obtained by it under its certificate of incorporation, articles, by-laws or other constituent documents.

### **5.5 Approvals and Consents**

Subject to this Agreement being selected as the Successful Bid, the execution and delivery of this Agreement by MEFL, the completion by MEFL of its obligations hereunder and the consummation by MEFL of the transactions contemplated herein, do not and will not require any consent or approval or other action, with or by, any Governmental Authority, other than as contemplated by any Order.

### **5.6 No Actions**

There is not, as of the date hereof, pending or, to MEFL's knowledge, threatened against it or any of its properties, nor has MEFL received notice in respect of, any claim, potential claim, litigation, action, suit, arbitration, investigation or other proceeding before any Governmental Authority or legislative body that, would prevent it from executing and delivering this Agreement, performing its obligations hereunder and consummating the transactions and agreements contemplated by this Agreement.

### **5.7 Financial Ability**

MEFL has and will have at all relevant times, the financial ability and sufficient funds to perform all of its obligations under this Agreement, and the availability of such funds will not be subject to the consent, approval or authorization of any Person or the availability of any financing.

### **5.8 Authorization of Delivery of the Credit Bid Consideration**

MEFL is duly authorized to deliver the Credit Bid Consideration to be delivered by it in connection with the consummation of this Agreement and the transactions contemplated hereunder.

### **5.9 Investment Canada Act**

MEFL is a "trade agreement investor" within the meaning of the Investment Canada Act.

### **5.10 GST/HST Registration**

MEFL is registered for GST/HST purposes under Part IX of the ETA and its registration number is 86299 2021 RT001.

### **5.11 Residence**

MEFL is not a non-resident of Canada for the purposes of the Tax Act.



## ARTICLE 6 ADDITIONAL AGREEMENTS OF THE PARTIES

### 6.1 Access to Information

Following the Effective Date, the Assignee shall retain and make all books and records of the Purchased Entities available to the Receiver, the Monitor, any trustee in bankruptcy of the Receivership Debtors or any of their respective Affiliates upon at least three (3) Business Days' prior notice, for a period of three (3) years after the Effective Date, and shall, at such party's expense, permit any of the foregoing Persons to take copies thereof as they may determine to be necessary or useful to accomplish their respective roles; *provided* that the Assignee shall not be obligated to make such books and records available to the extent that doing so would: (a) violate Applicable Law; or (b) jeopardize the protection of a solicitor-client privilege.

### 6.2 Covenants Relating to this Agreement

6.2.1 Each of the Parties shall perform all obligations required to be performed by the applicable Party under this Agreement and do all such other acts and things as may be necessary or desirable in order to consummate and make effective, as soon as reasonably practicable, the transactions contemplated by this Agreement and, without limiting the generality of the foregoing, each Party shall and, where appropriate, shall cause each of its Affiliates and representatives to not take any action, or refrain from taking any action, or permit any action to be taken or not taken, which would reasonably be expected to prevent, materially delay or otherwise impede the consummation of the transactions contemplated by this Agreement.

6.2.2 The Vendors, the Assignee and MEFL agree to execute and deliver such other documents, certificates, agreements and other writings, and to take such other actions to consummate or implement as soon as reasonably practicable, the transactions contemplated by this Agreement.

6.2.3 The Vendors, the Assignee and MEFL agree to use commercial reasonable efforts to timely prepare and file all documentation and pursue all steps reasonably necessary to obtain any material third-party consents and approvals as may be required in connection with the transaction contemplated by this Agreement.

### 6.3 Tax Matters

6.3.1 Each of MEFL, the Assignee and the Vendors agrees to furnish or cause to be furnished to each other, as promptly as practicable, such information and assistance relating to the Leased Property, the Purchased Assets and the Assumed Liabilities as is reasonably necessary for the preparation and filing of any Tax Return, claim for refund or other required filings relating to Tax matters, for the preparation for and proof of facts during any Tax audit, for the preparation for any Tax protest, for the prosecution of any suit or other proceedings relating to Tax matters and for the answer to any governmental or regulatory inquiry relating to Tax matters. Each of MEFL, the Assignee and the Vendors also agrees to furnish or cause to be

furnished to each other, as promptly as practicable, such information and assistance relating to the Validus Entities and the Purchased Assets as is reasonably necessary for MEFL to assign or transfer Purchased Assets to the Assignee in a tax-efficient manner, including making such joint elections at such amounts in respect of such property as MEFL may reasonably require. Each of MEFL, the Assignee and the Vendors agrees to elect pursuant to subsection 256(9) of the Tax Act that the time of any acquisition of control of a Purchased Entity acquired under this Agreement is the Effective Time.

6.3.2 MEFL, the Assignee and the Vendors shall each be responsible for the preparation of their own Tax Returns required to be filed under the Tax Act and the ETA and other similar forms and returns in accordance with Applicable Law but shall cooperate to execute any joint tax elections as MEFL may reasonably require and agreed to by the Vendors, acting reasonably. The Purchased Entities shall not amend a Tax Return of any Purchased Entity related to a Tax period ending on or before the Effective Date without the consent of the Monitor.

6.3.3 For all purposes under this Agreement for which it is necessary to apportion taxes in a taxable period which includes (but does not end on) the Effective Date (a “**Straddle Period**”) between the portion of such period ending immediately prior to the Effective Time (such portion of such Straddle Period, the “**Pre-Closing Straddle Tax Period**”) and the portion of such period beginning at the Effective Time (such portion of such Straddle Period, the “**Post-Closing Straddle Tax Period**”): (i) all personal property Taxes and similar ad valorem obligations shall be apportioned between the Pre-Closing Straddle Tax Period and the Post-Closing Straddle Tax Period on a per diem basis, with the portion allocated to the Pre-Closing Straddle Tax Period including the Effective Date for these purposes; and (ii) in the case of any Tax based upon or related to income, receipts, sales, use, GST/HST, payroll or withholding, the portion of such Tax allocable to the Pre-Closing Straddle Tax Period shall be deemed to be the amount that would be payable if any relevant tax period ended immediately before the Effective Time (but taking into account in that tax period any settlement of or extinguishment of any amount under the Reverse Vesting Order, whether it occurred prior to or at the Effective Time). To the extent such closing of the books method is not incorporated under the law of a jurisdiction for particular types of entities, allocations of income among the periods shall be made to replicate the closing of the books method to the maximum extent possible.

6.3.4 The Assignee shall be responsible for and shall pay, or cause to be paid, any Transfer Tax in respect of the purchase and sale of the Purchased Assets under this Agreement and such Transfer Tax shall be remitted to the appropriate Governmental Authority as provided for under Applicable Law (except any Transfer Tax which, under Applicable Law, is collectible by Validus Parent, in which case such Transfer Tax shall be collected by and remitted by Validus Parent to the appropriate Governmental Authority as provided for under the Applicable Law). The Parties shall reasonably cooperate to mitigate and/or eliminate the amount of Transfer Taxes resulting from the transactions contemplated herein. MEFL, the Assignee and the Vendors acknowledge and agree that no GST/HST is exigible from the Assignee or MEFL in respect of the purchase of the Hut 8 Litigation, the Purchased Interests or the Validus Hosting Interests or

the issuance or transfer of the IFPC Note 1, the IFPC Note 2, the IFPC Note 3 and the IFPC Interests.

6.3.5 IFPC shall be responsible for and shall pay, or cause to be paid, any Transfer Tax in respect of the payment of any amount by IFPC under or in respect of the Lease Agreement or any other Participation Agreement Document (including for greater certainty the transfer of the Leased Property by MEFL to IFPC under this Agreement) and the unpaid GST/HST in respect of amounts due under or in respect of the Lease Agreement or any other Participation Agreement Document that are paid by IFPC hereunder and such Transfer Tax shall be remitted to the appropriate Governmental Authority as provided for under Applicable Law; *provided* that GST/HST in respect thereof shall be fully paid and satisfied by IFPC to MEFL by the issuance of the IFPC Note 3 by IFPC to MEFL, and MEFL shall remit such GST/HST to the appropriate Governmental Authority as provided for under the ETA.

#### **6.4 Administrative Expense Closing Amount**

6.4.1 The Assignee shall pay the Administrative Expense Closing Amount to the Monitor on the Effective Date, which Administrative Expense Closing Amount shall be held in trust by the Monitor for the benefit of Persons entitled to be paid the Administrative Expense Costs.

6.4.2 From time to time after the Effective Date, the Monitor may pay from the Administrative Expense Closing Amount the Administrative Expense Costs at its sole discretion and without further authorization from the Assignee or MEFL. Any unused portion of the Administrative Expense Closing Amount after payment or reservation for all Administrative Expense Costs, as determined by the Monitor, shall be transferred by the Monitor to the Assignee.

#### **6.5 Assumption of Liabilities**

Effective as of the Effective Time (and without duplication), each of the Purchased Entities retains and remains liable for the Assumed Liabilities of such Purchased Entity in accordance with Sections 2.3, 2.4 and 2.5 and the Reverse Vesting Order; *provided* that all of the Priority Payments of Validus Parent, if any, that are in excess of the Priority Payments Closing Amount shall be assumed by the Assignee and shall be paid or otherwise discharged within six (6) months of assessment from the Canada Revenue Agency, or such other period of time as agreed between the Assignee and the Canada Revenue Agency.

For greater certainty, the retention of the Assumed Liabilities by the Purchased Entities, shall not constitute part of the consideration payable by the Assignee (or MEFL) for the Purchased Assets hereunder.

#### **6.6 Certain Payments or Instruments Received from Third Persons**

6.6.1 To the extent that, after the Effective Date: (i) the Assignee or any of its Affiliates receives any payment or instrument that is for the account of the Vendors according to

the terms of any Transaction Document, the Assignee shall promptly deliver such amount or instrument to the Vendors; or (ii) the Vendors receive any payment or instrument that is for the account of the Assignee or any Purchased Entity according to the terms of any Transaction Document or that relates to the Business, including any governmental assistance refunds so received after the Effective Date, the Vendors shall promptly deliver such amount or instrument to the Assignee.

6.6.2 All amounts due and payable under this Section 6.6 shall be due and payable by the applicable Party in immediately available funds, by wire transfer to the account designated in writing by the relevant Party. Notwithstanding the foregoing, each Party hereby undertakes to use its commercially reasonable efforts to direct or forward all bills, invoices or like instruments to the appropriate Party.

## **6.7 Misallocated Assets**

6.7.1 If: (i) after the Effective Date, Validus Parent or Residualco is the owner of, receives or otherwise comes to possess any property that was designated under this Agreement to be Purchased Assets or Assumed Liabilities or any assets of the Validus Entities that were not Excluded Assets, or (ii) at any time after the Effective Date, with the consent of the Monitor and MEFL (both such consents not to be unreasonably withheld), the Assignee designates an Excluded Contract to be an Assumed Liability: (a) the Assignee will promptly give written notice to the Monitor; and (b) the Monitor will promptly cause Validus Parent or Residualco, as applicable, to transfer, assign, convey and deliver (or cause to be transferred, assigned, conveyed and delivered) such assets or liabilities to the Assignee. Each Party will cooperate with the other Party and use its commercially reasonable efforts to set up procedures and notifications as are reasonably necessary or advisable to effectuate the assignment, transfer, conveyance and delivery, or assumption, contemplated by this Section 6.7.1.

6.7.2 In the event that the Vendors refuse to consent to the Assignee's designation after the Effective Date of any Excluded Asset or Excluded Liability as a Purchased Asset or as an Assumed Liability, as applicable, the Assignee or the Vendors may submit such dispute to the Court for final determination. Each Party shall bear its own costs and expenses in connection with any such dispute.

6.7.3 Nothing in this Section 6.7 shall prevent the Receiver or the Monitor from completing the administration of the Receivership Proceedings or the CCAA Proceedings and seeking Orders discharging or terminating such proceedings.

## **6.8 Releases by the Assignee and MEFL**

6.8.1 Except in connection with any obligations of the Receiver or the Monitor contained in this Agreement and any Transaction Documents, each of the Assignee and MEFL hereby releases and forever discharges KSV, in its capacity as the Receiver and the Monitor, and its successors and assigns, and all officers, directors, partners, members, shareholders, limited partners, employees, agents, financial and legal advisors of each of them, from any and all actual or potential Released Claims which such Person had, has or may have in the future to the extent

relating to transactions contemplated by the Transaction Documents, including the Leased Property, the Purchased Assets or the Assumed Liabilities, save and except for Released Claims arising out of fraud, bad faith or illegal acts (unless such Person believed in good faith that its conduct was legal).

6.8.2 Except in connection with any obligations of the Receiver or the Monitor contained in this Agreement and any Transaction Documents, immediately following the Effective Time, the Assignee shall cause the Purchased Entities to release and forever discharge KSV, in its capacity as the Receiver and the Monitor, and its successors and assigns, and all officers, directors, partners, members, shareholders, limited partners, employees, agents, financial and legal advisors of each of them, from any and all actual or potential Causes of Action against such Persons, except for Causes of Action related to any act or omission that is determined in a Final Order of a court of competent jurisdiction to have constituted actual fraud, willful misconduct, or gross negligence (*provided* that in all respects such Persons shall be entitled to reasonably rely upon the advice of counsel with respect to their applicable duties and responsibilities), and such release to be in the form as agreed among the Parties.

## **6.9 Release by the Receiver**

Except in connection with any obligations of the Assignee and MEFL contained in this Agreement and any Transaction Documents, the Receiver hereby releases and forever discharges the Assignee, MEFL, the Purchased Entities and their respective Affiliates, and each of their respective successors and assigns, and all officers, directors, partners, members, shareholders, limited partners, employees, agents, financial and legal advisors of each of them, from any and all actual or potential Released Claims which such Person had, has or may have in the future to the extent relating to the transactions contemplated by the Transaction Documents, including the Leased Property, the Purchased Assets or the Assumed Liabilities, save and except for Released Claims arising out of fraud, bad faith or illegal acts (unless such Person believed in good faith that its conduct was legal).

## **6.10 Letters of Credit and Deposits**

To the extent required, it shall be the sole responsibility of the Assignee, and the Assignee hereby covenants and agrees, within thirty (30) days of the Effective Date, to issue replacement letters of credit and/or deposits which have currently been provided by Validus Parent and are listed in Exhibit 6.10 of the Disclosure Schedule; *provided* that Validus Parent shall have no obligation to ensure that any such existing letters of credit or deposits remain in place after the Effective Date and existing letters of credit or deposits shall not be used as security for obligations after the Effective Date without the consent of the Monitor (who may request security or collateral in connection with providing any such consent).

## **6.11 Monitor to Distribute the Priority Payments Closing Amount**

Promptly following the receipt of the Priority Payments Closing Amount, but in any event no later than five (5) Business Days after the Effective Date, the Monitor shall distribute to such parties as may be entitled to payment such amounts as may be required to satisfy the

Priority Payments of Validus Parent known at the Effective Time and, after such obligations are paid in full, such amounts as may be required to satisfy the Priority Payments of the Purchased Entities known at the Effective Time. The Monitor shall promptly provide proof of such payments to the Assignee and MEFL.

## **ARTICLE 7 INSOLVENCY PROVISIONS**

### **7.1 Court Orders and Related Matters**

In the event that, following the Effective Time, an appeal is taken or a stay pending appeal is requested from the Reverse Vesting Order, the Monitor shall promptly notify MEFL and the Assignee of such appeal or stay request and shall promptly provide MEFL and the Assignee copies of the related notice of appeal or order of stay. The Monitor shall also provide MEFL and the Assignee with written notice of any motion or application filed in connection with any appeal from such orders. The Monitor agrees to take all action as may be reasonable and appropriate to defend against such appeal or stay request.

## **ARTICLE 8 CLOSING**

### **8.1 Location and Time of the Closing**

The Closing shall take place at the Effective Time on the Effective Date by means of an electronic closing, or such other place or fashion as may be agreed in writing upon by the Vendors and MEFL in which the Transaction ~~Documentation~~Documents will be delivered by e-mail exchange of signature pages in PDF or functionally equivalent electronic format, which delivery will be effective without any further physical exchange of the originals or copies of the originals except as otherwise provided in this Agreement.

### **8.2 The Vendors' Deliveries at Closing**

The Vendors hereby deliver to MEFL or the Assignee, as the case may be and as specified herein, contemporaneously with the execution and acceptance of this Agreement, the following:

- (a) a true copy of each of the Appointment Order, the SISP Order and the Reverse Vesting Order, each of which shall be Final Orders;
- (b) the share and unit certificates representing the Purchased Interests and the Validus Hosting Interests endorsed in blank for transfer or accompanied by irrevocable stock transfers executed in blank by the holders of record and an updated register of common equity or record of limited partners, as applicable, maintained by or on behalf of each of Bay Power, Kap Power, Kingston GP, Kingston LP and Validus Hosting reflecting the transfer of the Purchased Interests and the Validus Hosting Interests;

- (c) the IFPC Note 1, the IFPC Note 2 and the IFPC Note 3;
- (d) a share certificate in the name of the Assignee representing the IFPC Interests in accordance with Section 2.1.1(d);
- (e) actual possession of the Purchased Assets;
- (f) the Disclosure Schedule; and
- (g) evidence of the cancellation of the IFPC Legacy Shares in accordance with Section 2.1.1(e).

### **8.3 Assignee's Deliveries at Closing**

The Assignee hereby delivers to the Vendors, contemporaneously with the execution and acceptance of this Agreement, the following:

- (a) a certificate of an authorized signatory of the Assignee (in such capacity and without personal liability), in form and substance reasonably satisfactory to the Vendors: (i) certifying that the Assignee has adopted resolutions (in a form attached to such certificate) authorizing the execution, delivery and performance of this Agreement and the transactions contemplated herein, as applicable, which resolutions are in full force and effect and have not been superseded, amended or modified as of the Effective Date; and (ii) certifying as to the incumbency and signature of the authorized signatory of the Assignee executing this Agreement and the other ~~transaction documents~~ Transaction Documents contemplated herein, as applicable;
- (b) a certificate of an authorized signatory of the Assignee (in such capacity and without personal liability), in form and substance reasonably satisfactory to the Monitor, confirming that each of the conditions precedent in Section 3.1 of the Terms and Conditions have been fulfilled, performed or waived;
- (c) the release contemplated by Section 6.8.2; and
- (d) all other documents required to be delivered by the Assignee on the Effective Date pursuant to this Agreement or Applicable Law or that have been reasonably requested by the Receiver in good faith prior to the Effective Time.

### **8.4 MEFL's Deliveries at Closing**

MEFL hereby delivers to the Monitor, contemporaneously with the execution and acceptance of this Agreement, the following:

- (a) a copy of a Bill of Sale addressed to IFPC for the Leased Property on an "as is, where is" basis, in a form and on terms acceptable to MEFL, acting reasonably;

- (b) a certificate of an authorized signatory of MEFL (in such capacity and without personal liability), in form and substance reasonably satisfactory to the Monitor, certifying that MEFL has adopted resolutions (in a form attached to such certificate) authorizing the execution, delivery and performance of this Agreement and the transactions contemplated herein, as applicable, which resolutions are in full force and effect and have not been superseded, amended or modified as of the Effective Date<sup>2</sup>; and certifying as to the incumbency and signature of the authorized signatory of MEFL executing this Agreement and the other ~~transaction documents~~ Transaction Documents contemplated herein, as applicable;
- (c) a certificate of an authorized signatory of MEFL (in such capacity and without personal liability), in form and substance reasonably satisfactory to the Monitor, confirming that each of the conditions precedent in Section 3.1 of the Terms and Conditions have been fulfilled, performed or waived; and
- (d) all other documents required to be delivered by MEFL on the Effective Date pursuant to this Agreement or Applicable Law or that have been reasonably requested by the Receiver in good faith prior to the Effective Time.

#### **8.5 Monitor's Certificate**

As soon as practicable following the Effective Time, the Monitor shall file a copy of the Monitor's Certificate with the Court (and shall provide a true copy of such filed certificate to MEFL and the Assignee). The Parties hereby acknowledge and agree that the Monitor will be entitled to file the Monitor's Certificate with the Court, without independent investigation, upon receiving written confirmation from the Vendors, MEFL and the Assignee that the Effective Time and Closing have occurred, and the Monitor will have no liability to the Assignee, MEFL or any other Person as a result of filing the Monitor's Certificate in accordance with this Section 8.5.

#### **8.6 Ordering of Closing Transactions**

Notwithstanding any term to the contrary herein, all actions taken and transactions consummated at the Closing shall be deemed to have occurred in the manner and sequence set forth in the Implementation Steps and the Reverse Vesting Order (subject to the terms of any escrow agreement or arrangement among the Parties relating to the Closing), and no such transaction shall be considered consummated unless all are consummated.

#### **8.7 Further Assurances**

As reasonably required by a Party in order to effectuate the transactions contemplated by this Agreement, the Assignee, MEFL and the Vendors shall execute and deliver after the Closing such other documents, and shall take such other actions, as are necessary or appropriate, to implement and make effective the transactions contemplated by this Agreement.



## ARTICLE 9 GENERAL MATTERS

### 9.1 Confidentiality

After the Effective Time, the Receiver and the Monitor shall maintain the confidentiality of all confidential information relating to the Business and the Validus Entities (but does not include information that is or becomes generally available to the public other than as a result of disclosure by the Receiver, the Monitor or their representatives in breach of this Agreement or that is received by the Receiver or the Monitor from an independent third party that, to the knowledge of the Receiver or the Monitor, as applicable, obtained it lawfully and was under no duty of confidentiality (except to the extent that applicable privacy laws do not exclude such information from the definition of personal information) or that is independently developed by the Receiver or the Monitor or their representatives without reference to any Confidential Information), including the Confidential Information, except any disclosure of such information and records as may be required by Applicable Law. If the Receiver, the Monitor, Validus Parent or Residualco, or any of its or their respective representatives, becomes legally compelled by deposition, interrogatory, request for documents, subpoena, civil investigative demand, or similar judicial or administrative process, to disclose any such information, such party shall use its commercially reasonable efforts, or shall use its commercially reasonable efforts to cause the Receiver or its representative to, provide the Assignee with reasonably prompt prior oral or written notice of such requirement (including any report, statement, testimony or other submission to such Governmental Authority) to the extent legally permissible and reasonably practicable, and cooperate with the Assignee, at the Assignee's sole expense, to obtain a protective order or similar remedy to cause such information not to be disclosed; *provided* that in the event that such protective order or other similar remedy is not obtained, the Receiver or the Monitor shall, or shall cause Validus Parent or Residualco, or a representative to, furnish only that portion of such information that has been legally compelled, and shall, or shall cause Validus Parent or Residualco, or a representative to, exercise its commercially reasonable efforts to obtain assurance that confidential treatment will be accorded such disclosed information. The Receiver and the Monitor shall instruct Validus Parent, Residualco and representatives having access to such information of such obligation of confidentiality.

### 9.2 Public Notices

9.2.1 No press release or other announcement concerning the consummation of the transactions contemplated by this Agreement shall be made by the Receiver, the Monitor, MEFL or the Assignee without the prior consent of the other Parties (such consent not to be unreasonably withheld, conditioned or delayed); *provided, however*, that subject to the last sentence of this Section 9.2, any Party may, without such consent, make such disclosure if the same is required by Applicable Law (including the Receivership Proceedings and the CCAA Proceedings) or by any insolvency or other court or securities commission, or other similar Governmental Authority having jurisdiction over such Party or any of its Affiliates, and, if such disclosure is required, the Party making such disclosure shall use commercially reasonable efforts to give prompt prior oral or written notice to the other Party to the extent legally

permissible and reasonably practicable, and if such prior notice is not legally permissible or reasonably practicable, to give such notice reasonably promptly following the making of such disclosure. Notwithstanding the foregoing: (a) this Agreement may be filed by the Receiver or the Monitor: (i) with the Court; and (ii) on one or more webpages on the Receiver's and the Monitor's public websites established pursuant to the Appointment Order and the Initial Order, respectively, to provide public notice of the Receivership Proceedings and the CCAA Proceedings and the documents and materials filed therein; and (b) the transactions contemplated in this Agreement may be disclosed by the Receiver and the Monitor to the Court, subject to redacting confidential or sensitive information as permitted by Applicable Law. The Parties further agree that:

- (i) the Receiver and the Monitor may prepare and file reports and other documents with the Court containing references to the transactions contemplated by this Agreement and the terms of such transactions; and
- (ii) the Receiver, the Monitor, MEFL and their respective professional advisors may prepare and file such reports and other documents with the Court containing references to the transactions contemplated by this Agreement and the terms of such transactions as may reasonably be necessary to complete the transactions contemplated by this Agreement or to comply with their obligations in connection therewith.

The Assignee and MEFL may issue a joint press release announcing the execution, delivery and consummation of this Agreement, in form and substance mutually agreed to by them.

### **9.3 Non-Recourse**

No past, present or future director, officer, employee, incorporator, member, partner, securityholder, Affiliate, agent, lawyer or representative of the Monitor or the Receiver, in such capacity, shall have any liability for any obligations or liabilities of the Monitor or the Receiver, as applicable, under this Agreement, or for any Causes of Action based on, in respect of or by reason of the transactions contemplated hereby.

### **9.4 Receivership Liability**

Notwithstanding the foregoing or anything else contained herein or elsewhere, each of the Receiver, MEFL and the Assignee acknowledges and agrees that KSV is acting solely in its capacity as the Court-appointed receiver of the Receivership Debtors pursuant to the Appointment Order and the Monitor pursuant to the Initial Order and not in its personal or corporate capacity, and neither the Receiver nor the Monitor has any liability in connection with this Agreement whatsoever, in its personal or corporate capacity or otherwise.

### **9.5 Assignment of Agreement**

No Party may assign its rights, benefits or obligations under this Agreement without the consent of each of the other Parties, except that, without the consent of the Receiver or the

Assignee, MEFL may, upon prior written notice to the Receiver and the Assignee assign this Agreement, or any or all of its rights and obligations thereunder, to one or more of its Affiliates; *provided* that no such assignment or direction shall relieve MEFL of its obligations hereunder.

## 9.6 Notices

9.6.1 Any notice, request, demand or other communication required or permitted to be given to a Party pursuant to the provisions of this Agreement will be in writing and will be effective and deemed given under this Agreement on the earliest of: (a) the date of personal delivery; (b) the date of transmission by email, with confirmed transmission and receipt (if sent during normal business hours of the recipient, if not, then on the next Business Day); (c) two (2) days after deposit with a nationally-recognized courier or overnight service such as Federal Express; or (d) five (5) days after mailing via certified mail, return receipt requested. All notices not delivered personally or by email will be sent with postage and other charges prepaid and properly addressed to the Party to be notified at the address set forth for such Party:

- (i) if to the Assignee at:

Far North Power Corp.  
24 Duncan Street, Suite 500,  
Toronto, Ontario  
M5V 2B8

Attention: Aniss Amdiss  
E-mail: [aniss.amdiss@hut8.io](mailto:aniss.amdiss@hut8.io)

with required copies (which shall not be deemed notice) to:

Bennett Jones LLP  
1 First Canadian Place, Suite 3400  
Toronto, Ontario  
M5X 1A4

Attention: Curtis Cusinato / Jesse Mighton  
E-mail: [CusinatoC@bennettjones.com](mailto:CusinatoC@bennettjones.com) /  
[MightonJ@bennettjones.com](mailto:MightonJ@bennettjones.com)

- (ii) if to MEFL at:

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

Attention: Lisa Tarnowsky  
E-mail: [lisa.tarnowsky@macquarie.com](mailto:lisa.tarnowsky@macquarie.com)

and to:

with required copies (which shall not be deemed notice) to:

Torys LLP  
79 Wellington St., 30th Floor  
Toronto, Ontario  
M5K 1N2

Attention: Scott Bomhof / Scott Kraag  
E-mail: [sbomhof@torys.com](mailto:sbomhof@torys.com) / [skraag@torys.com](mailto:skraag@torys.com)

(iii) if to the Vendors, by the Monitor, at:

KSV Restructuring Inc.  
220 Bay Street, Suite 1300  
Toronto, Ontario  
M5J 2W3

Attention: Bobby Kofman  
E-mail: [bkofman@ksvadvisory.com](mailto:bkofman@ksvadvisory.com)

with a required copy (which shall not be deemed notice) to:

Norton Rose Fulbright Canada LLP  
222 Bay Street, Suite 3000, P.O. Box 53  
Toronto, Ontario  
M5K 1E7

Attention: Jennifer Stam  
E-mail: [jennifer.stam@nortonrosefulbright.com](mailto:jennifer.stam@nortonrosefulbright.com)

9.6.2 Any Party may change its address for service from time to time by notice given in accordance with the foregoing and any subsequent notice shall be sent to such Party at its changed address.

## 9.7 Counterparts; Electronic Signatures

This Agreement may be signed in counterparts and each of such counterparts shall constitute an original document and such counterparts, taken together, shall constitute one and the same instrument. Execution of this Agreement may be made by electronic signature which, for all purposes, shall be deemed to be an original signature.

## 9.8 Language

The Parties have expressly required that this Agreement and all documents and notices relating hereto be drafted in English. *Les parties aux présents ont exigés que la présente*

convention ainsi que tous les documents et avis qui s'y rattachent ou qui en découleront soit rédigés en la langue anglaise.

## 9.9                    Amendment and Restatement

This Agreement is an amendment and restatement of the Original Agreement. This Agreement reflects amendments to the Original Agreement and has been restated solely for the purposes of reflecting amendments to the Original Agreement. All references to this Agreement, the "Transaction Agreement" or similar references to the Original Agreement contained in any of the documents or agreements relating to this Agreement or the Transaction Documents (including, for greater certainty, the Offer Letter and the Terms and Conditions) shall be deemed to refer to this Agreement, as it may be amended, restated, supplemented or replaced from time to time, without further amendment to those documents or agreements.

*[Remainder of page intentionally left blank; signature pages follow]*

IN WITNESS WHEREOF, MEFL and the Assignee have executed this Agreement as of [■], ~~2023~~2024.

**FAR NORTH POWER CORP.**

By: \_\_\_\_\_  
Name:  
Title:

**MACQUARIE EQUIPMENT  
FINANCE LTD.**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

IN WITNESS WHEREOF the Vendors have accepted and executed this Agreement as of \_\_\_\_\_, ~~2023~~2024, the Effective Time.

**VALIDUS POWER CORP., IROQUOIS FALLS POWER CORP., BAY POWER CORP., KAP POWER CORP., KINGSTON COGEN LIMITED PARTNERSHIP, KINGSTON COGEN GP INC. and VALIDUS HOSTING INC., each by KSV RESTRUCTURING INC., in its capacity as court-appointed Monitor in the CCAA Proceedings**

By: \_\_\_\_\_  
Name:  
Title:

*[Signature Page to Transaction Agreement]*

**SCHEDULE “A”**

**Form of Reverse Vesting Order**

*(See attached.)*



**SCHEDULE "B"**

**Form of SISP**

*(See attached.)*

*[Intentionally Deleted]*

**SCHEDULE “C”**

**Form of** ~~SISP~~ Order

*(See attached.)*

Document comparison by Workshare Compare on Friday, December 22, 2023  
12:04:19 AM

Input:	
Document 1 ID	iManage://inventorystory.com/torystatwork/38880405/46
Description	#38880405v46<inventorystory.com> - Project Far North (Validus) - Transaction Agreement
Document 2 ID	iManage://inventorystory.com/torystatwork/40320978/3
Description	#40320978v3<inventorystory.com> - Project Far North (Validus) - Amended and Restated Transaction Agreement
Rendering set	Firm_Standard

Legend:	
<u>Insertion</u>	
<del>Deletion</del>	
Moved from	
<u>Moved to</u>	
Style change	
Format change	
<del>Moved deletion</del>	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	141
Deletions	93
Moved from	1
Moved to	1
Style changes	0
Format changes	0

Total changes	236
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**AMENDED AND RESTATED TERMS AND CONDITIONS**

**THESE AMENDED AND RESTATED TERMS AND CONDITIONS**

~~THESE TERMS AND CONDITIONS~~ apply to the binding offer letter dated ~~1~~ **October 16**, 2023 (the “**Offer Letter**”), delivered by Macquarie Equipment Finance Ltd. (“**MEFL**”) and Far North Power Corp. (the “**Assignee**”) to the Validus Entities (as defined below), each by KSV Restructuring Inc. (“**KSV**”), in its capacity as the Monitor (as defined below) in the CCAA Proceedings (as defined below) (collectively, the “**Vendors**”, and each, a “**Vendor**”), for the entry into the Transaction Agreement (as defined below) and the transactions contemplated thereby.

**ARTICLE 1  
INTERPRETATION**

**1.1 Definitions**

In these Terms and Conditions:

“**Administrative Expense Closing Amount**” has the meaning given to such term in the Transaction Agreement.

“**Affiliate**” means, with respect to any specified Person, any other Person which, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such specified Person. For purposes of this definition, “control” (including, with correlative meanings, the terms “controlling”, “controlled by” and “under common control with”), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise. For greater certainty, an Affiliate of a Person shall include such Person’s investment funds and managed accounts and any funds managed or directed by the same investment advisor.

“**Applicable Law**” means any transnational, domestic or foreign, federal, provincial, territorial, state, local or municipal (or any subdivision of any of them) law (including common law and civil law), statute, ordinance, rule, regulation, restriction, limit, by-law (zoning or otherwise), judgment, order, direction or any consent, exemption, or any other legal requirements of, or agreements with, any Governmental Authority, that applies in whole or in part to the transactions contemplated by the Transaction Agreement, the Validus Entities, MEFL (or any of its Affiliates), the Assignee (or any of its Affiliates), the Business, or any of the Purchased Assets or the Assumed Liabilities.

“**Appointment Order**” has the meaning given to such term in the Transaction Agreement.

“**Assignee**” has the meaning given to such term in the preamble.

“**Assumed Liabilities**” has the meaning given to such term in the Transaction Agreement.

“**BIA**” means the *Bankruptcy and Insolvency Act* (Canada), as amended.

“**Business**” has the meaning given to such term in the Transaction Agreement.

“**Business Day**” means any day, other than a Saturday or Sunday, on which the principal commercial banks in Toronto, Ontario are open for commercial banking business during normal banking hours.

“**CCAA**” means the *Companies’ Creditors Arrangement Act* (Canada), as amended.

“**CCAA Proceedings**” has the meaning given to such term in the Transaction Agreement.

“**Claim**” means any and all demands, claims, liabilities, actions, causes of action, counterclaims, expenses, costs, damages, losses, suits, debts, sums of money, refunds, accounts, indebtedness, rights of recovery, rights of set-off, rights of recoupment and liens of whatever nature (whether direct or indirect, absolute or contingent, asserted or unasserted, secured or unsecured, matured or not yet matured due or to become due, accrued or unaccrued or liquidated or unliquidated) and including all costs, fees and expenses relating thereto, against any Person.

“**Closing**” has the meaning given to such term in the Transaction Agreement.

“**Collective Agreement**” means any collective bargaining agreement or union agreement applicable to ~~Validus~~, any Validus Entity or the Business, and all related documents, including letters or memoranda of understanding, letters of intent and other written communications with bargaining agents which impose any obligations upon ~~Validus and/or~~ any of the Validus Entities.

“**Continuing Contract**” means a contract, arrangement, or other agreement (oral or written): (i) for which a notice of rejection or similar notice has not been sent by the Receiver or the Monitor; and (ii) that is not an Excluded Contract.

“**Court**” has the meaning given to such term in the Transaction Agreement.

“**Disclosure Schedule**” has the meaning given to such term in the Transaction Agreement.

“**Effective Date**” has the meaning given to such term in the Transaction Agreement.

“**Effective Time**” has the meaning given to such term in the Transaction Agreement.

“**Employees**” has the meaning given to such term in the Transaction Agreement.

“**Energy Regulator**” means any federal or provincial Governmental Authority having jurisdiction to regulate the generation, transmission, distribution, retailing or wholesaling of electricity and/or the purchase, sale and use of electricity or natural gas in Ontario, foreign

regulatory authority having jurisdiction over matters relating to electricity and/or natural gas, authorized electricity or natural gas transmitter or distributor, or regional transmission organization or independent system operator, including but not limited to the Independent Electricity System Operator and the Ontario Energy Board.

**“Energy Regulator Notices”** means notice of the Transaction Agreement to an Energy Regulator in the time and manner required by Applicable Law and includes, but is not limited to, notice to an Energy Regulator regarding potential implications to performance guarantees (including, but not limited to, prudential support) that might have been provided in support of an application for a licence, order or permit or an electricity market participant agreement or registration, as the case may be.

**“Excluded Contracts”** has the meaning given to such term in the Transaction Agreement.

**“Final Order”**, with respect to any order of any court of competent jurisdiction, means that: (i) such order shall not have been stayed, appealed, varied (except with the consent of MEFL, the Assignee and the Monitor) or vacated, and all time periods within which such order could at law be appealed shall have expired; or (ii) such order is no longer the subject of any continuing proceedings seeking to stay, appeal, vary (except with the consent of MEFL, the Assignee and the Monitor) or vacate such order, all such proceedings having been discontinued, denied, dismissed and otherwise unsuccessfully concluded, and the time for appealing or further appealing the disposition of such proceedings shall have expired.

**“Governmental Authority”** means any government, regulatory authority (including any Energy Regulator), governmental department, agency, commission, bureau, official, minister, Crown corporation, court, board, tribunal or dispute settlement panel or other law, rule or regulation-making organization or entity: (a) having or purporting to have jurisdiction on behalf of any nation, province, territory or state or any other geographic or political subdivision of any of them; or (b) exercising, or entitled or purporting to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power.

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

**“Implementation Steps”** has the meaning given to such term in Section 2.3.1.

**“Initial Order”** has the meaning given to such term in the Transaction Agreement.

**“KSV”** has the meaning given to such term in the preamble.

**“Leased Property”** has the meaning given to such term in the Transaction Agreement.

**“Material Adverse Effect”** means any change, effect, event, occurrence, state of facts or development that has had a material adverse effect on the business, assets, liabilities, financial condition or results of operations of any of the Validus Entities, in each case except to the extent that any such change, effect, event, occurrence, state of facts or development is attributable to, results from or arises in connection with: (i) general economic or business conditions; (ii) Canada, the U.S. or foreign economies, or financial, banking, credit or securities markets in

general, or other general business, banking, credit, financial or economic conditions (including: (A) any disruption in any of the foregoing markets; (B) any change in the currency exchange rates; or (C) any decline or rise in the price of any security, commodity, contract or index); (iii) acts of God or other calamities, national or international political or social conditions, including the engagement and/or escalation by the U.S. or Canada in hostilities, whether or not pursuant to the declaration of a national emergency or war, or the occurrence of any military or terrorist attack upon the U.S. or Canada or any of their territories, possessions or diplomatic or consular offices or upon any military installation, equipment or personnel of the U.S. or Canada; (iv) conditions affecting generally the industry in which the Validus Entities operate; (v) the public announcement of, entry into or pendency of, actions required or contemplated by or performance of obligations under, the Transaction Agreement or the transactions contemplated thereby, or the identity of the Parties, including any termination of, reduction in or similar adverse impact or threatened adverse impact on relationships, contractual or otherwise, with any customers, suppliers, financing sources, licensors, licensees, distributors, partners, employees or others having relationships with the Validus Entities; (vi) changes in Applicable Laws or the interpretation, application or non-application thereof by any Governmental Authority; (vii) any change in IFRS or other accounting or tax requirements or principles; (viii) regional, national or international political, regulatory, business, labour or social conditions; (ix) the failure of the Validus Entities to meet or achieve the results set forth in any internal projections (but not the underlying facts giving rise to such failure unless such facts are otherwise excluded pursuant to the clauses contained in this definition); or (x) any change resulting from compliance with the terms of, or any actions taken (or not taken) by any Party pursuant to or in accordance with, the Transaction Agreement; *provided* that the exceptions set forth in clauses (i), (ii), (iii), (iv), (vi), (vii) or (viii) shall not apply to the extent that such event is disproportionately adverse to the Validus Entities, taken as a whole, as compared to other companies and entities operating in the industry in which the Validus Entities operate.

“**Monitor**” means KSV, in its capacity as court-appointed monitor in the CCAA Proceedings.

“**Offer**” has the meaning given to such term in the Offer Letter.

“**Offer Conditions**” means each of the conditions precedent set forth in Section 3.1.

“**Offer Letter**” has the meaning given to such term in the Transaction Agreement.

“**Order**” means any order of the Court made in the Receivership Proceedings, the CCAA Proceedings or any order, directive, judgment, decree, injunction, decision, ruling, award or writ of any Governmental Authority.

“**Original Terms and Conditions**” means the original form of terms and conditions that was appended as Schedule “B” to the Offer Letter. For greater certainty, the Original Terms and Conditions are superseded by these Terms and Conditions.

“**Original Transaction Agreement**” means the original form of transaction agreement that was appended as Schedule “A” to the Offer Letter. For greater certainty, the Original Transaction Agreement is superseded by the Transaction Agreement.



“**Outside Date**” has the meaning given to such term in Section 4.1.1(d).

“**Parties**” means, collectively, the Vendors, MEFL and the Assignee, and “**Party**” means any of the Vendors, MEFL or the Assignee, as the context requires.

“**Permits and Licenses**” means: (i) any electricity generator, retailer or wholesaler licenses from the Ontario Energy Board; (ii) any electricity market participation authorizations or facility registrations from the Independent Electricity System Operator; and (iii) any other permits, licenses, authorizations, approvals or other evidence of authority, permission or entitlement related to the Business or any part thereof granted by a Governmental Authority.

“**Person**” means an individual, partnership, firm, joint venture, venture capital fund, limited liability company, unlimited liability company, association, trust, entity, corporation, unincorporated association, or organization, syndicate, committee, court appointed representative, the government of a country or any political subdivision thereof, or any agency, board, tribunal, commission, bureau, instrumentality, or department of such government or political subdivision, or any other entity, howsoever designated or constituted, including any Taxing Authority, and the trustees, executors, administrators or other legal representatives of an individual, and, for greater certainty, includes any Governmental Authority.

~~“**Post-Filing Claim**” or “**Post-Filing Claims**” means any or all Claims, indebtedness, liability, or obligation of the Purchased Entities of any kind that arises during and in respect of the period commencing on the Filing Date (as defined in the Transaction Agreement) and ending at the time immediately preceding the Effective Time in respect of services rendered or supplies provided to the Purchased Entities during such period or under or in accordance with any Continuing Contract.~~

“**Priority Payments**” has the meaning given to such term in the Transaction Agreement.

“**Priority Payments Closing Amount**” has the meaning given to such term in the Transaction Agreement.

“**Purchased Assets**” has the meaning given to such term in the Transaction Agreement.

“**Purchased Entities**” has the meaning given to such term in the Transaction Agreement.

“**Purchased Interests**” has the meaning given to such term in the Transaction Agreement.

“**Purchased Validus Parent Assets**” has the meaning given to such term in the Transaction Agreement.

“**Receiver**” means KSV, in its capacity as court-appointed receiver of the assets, properties and undertakings of the Validus Entities in the Receivership Proceedings.

“**Receivership Proceedings**” means the receivership proceedings in respect of the Validus Entities commenced under the BIA and the *Courts of Justice Act* (Ontario) by MEFL pursuant to the Appointment Order, bearing Court File No. CV-23-00703754-00CL.

“**Reverse Vesting Order**” has the meaning given to such term in the Transaction Agreement.

“**SISP**” has the meaning given to such term in the Transaction Agreement.

“**SISP Order**” has the meaning given to such term in the Transaction Agreement.

“**Successful Bid**” has the meaning given to such term in the SISP.

“**Tax**” and “**Taxes**” means taxes, duties, fees, premiums, assessments, imposts, levies and other charges of any kind whatsoever (including withholding on amounts paid to or by any Person) imposed by any Taxing Authority, including all interest, penalties, fines, additions to tax or other additional amounts imposed by any Taxing Authority in respect thereof, and including those levied on, or measured by, or referred to as, income, gross receipts, profits, capital, transfer, land transfer, sales, goods and services, harmonized sales, use, value-added, excise, stamp, withholding, business, franchising, escheat, property, development, occupancy, employer health, payroll, employment, health, disability, severance, unemployment, social services, education and social security taxes, all surtaxes, all customs duties and import and export taxes, countervail and anti-dumping, all license, franchise and registration fees and all employment insurance, health insurance and Canada, Ontario and other government pension plan premiums or contributions.

“**Taxing Authorities**” means His Majesty the King in right of Canada, His Majesty the King in right of any province or territory of Canada, the Canada Revenue Agency, any similar revenue or taxing authority of Canada and each and every province or territory of Canada and any political subdivision thereof, and any Canadian or other Governmental Authority exercising taxing authority or power, and “**Taxing Authority**” means any one of the Taxing Authorities.

“**Terms and Conditions**” means these **Terms amended** and **Conditions restated terms and conditions**, and unless otherwise indicated, references to Articles, Sections and Exhibits are to Articles, Sections and Exhibits in these terms and conditions. **For greater certainty, these Terms and Conditions supersede the Original Terms and Conditions.**

“**Transaction Agreement**” means the **amended and restated** transaction agreement ~~attached as Schedule “A” to the Offer Letter~~, **a form of which MEFL and the Assignee delivered to the Monitor in connection with these Terms and Conditions on December 21, 2023. For greater certainty, the Transaction Agreement supersedes the Original Transaction Agreement.**

“**U.S.**” means the United States of America.

“**Validus Entities**” has the meaning given to such term in the Transaction Agreement, and “**Validus Entity**” means any one of them.

“**Validus Parent**” has the meaning given to such term in the Transaction Agreement.

“**Vendors**” has the meaning given to such term in the preamble, and “**Vendor**” has the meaning given to such term in the preamble.

## **1.2 Statutes and Agreements**

- (a) Except as otherwise provided in these Terms and Conditions, any reference in these Terms and Conditions to a statute refers to such statute and all rules and regulations made under it, as it or they may have been or may from time to time be amended, re-enacted or replaced.
- (b) Each reference to, and the definition of, any agreement, instrument or other document herein shall be deemed to refer to such agreement, instrument or other document as it may be amended, amended and restated, supplemented, revised or otherwise modified from time to time in accordance with its terms and, to the extent applicable, the terms of any such agreement, instrument or other document shall be deemed to incorporate any appendices, annexes, schedules or exhibits to such agreement, instrument or other document.

## **1.3 Headings, etc.**

The division of these Terms and Conditions into Articles, Sections and other subdivisions and the insertion of headings are for convenient reference only and do not affect the interpretation of these Terms and Conditions.

## **1.4 Gender and Number**

In these Terms and Conditions, unless the context otherwise requires, words importing the singular include the plural and vice versa, and words importing gender include all genders.

## **1.5 Currency**

Except where otherwise expressly provided, all amounts in these Terms and Conditions are stated in Canadian dollars. References to “\$” are to Canadian dollars.

## **1.6 Certain Phrases**

In these Terms and Conditions: (a) the words “including”, “includes” and “include” and any derivatives of such words mean “including (or includes or include) without limitation”; and (b) the words “the aggregate of”, “the total of”, “the sum of” or a phrase of similar meaning means “the aggregate (or total or sum), without duplication, of”. The expression “Article”, “Section” and other subdivision followed by a number, mean and refer to the specified Article, Section or other subdivision of these Terms and Conditions.

### **1.7 Invalidity of Provisions**

Each of the provisions contained in these Terms and Conditions is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction shall not affect the validity or enforceability of any other provision hereof so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to MEFL or the Assignee. Upon: (a) such a determination of invalidity or unenforceability; or (b) any change in Applicable Law or other action by any Governmental Authority which materially detracts from the legal or economic rights or benefits, or materially increases the obligations, of MEFL or the Assignee or any of their Affiliates under these Terms and Conditions, MEFL or the Assignee shall be entitled to modify these Terms and Conditions, acting reasonably, so as to effect the original intent of these Terms and Conditions as closely as possible in an acceptable manner so that the terms and conditions contemplated by these Terms and Conditions be given such effect as originally contemplated to the fullest extent possible.

### **1.8 Governing Law**

These Terms and Conditions and the terms and conditions provided herein, and any Claim or controversy directly or indirectly based upon or arising out of these Terms and Conditions or the transactions contemplated by these Terms and Conditions (whether based on contract, tort or any other theory), including all matters of construction, validity and performance, shall in all respects be governed by, and interpreted, construed and determined in accordance with, the laws of the Province of Ontario and the federal laws of Canada applicable therein, without regard to the conflicts of law principles thereof.

### **1.9 Accounting Terms**

All accounting terms used in these Terms and Conditions are to be interpreted in accordance with IFRS unless otherwise specified.

### **1.10 Non-Business Days**

Whenever these Terms and Conditions require payments to be made or an action to be taken on a day that is not a Business Day, such payment to be made, or such action to be taken, shall be deemed to be required on or not later than the next succeeding Business Day.

### **1.11 Computation of Time Periods**

If any action may be taken within, or any right or obligation is to expire at the end of, a period of days under these Terms and Conditions, then the first day of the period is not counted, but the day of its expiry is counted.

### **1.12 Time of Essence**

Time shall be of the essence of these Terms and Conditions in all respects.

### 1.13 Exhibits

- (a) The following are the Exhibits attached to and incorporated by reference in these Terms and Conditions and deemed to be a part hereof:

Exhibit 3.1(f) - Continuing Contracts

- (b) Unless the context otherwise requires, words and expressions defined in these Terms and Conditions shall have the same meanings in the Exhibits and the interpretation provisions set out in these Terms and Conditions apply to the Exhibits. Unless the context otherwise requires, or a contrary intention appears, references in the Exhibits to a designated Article, Section or other subdivision refer to the Article, Section or other subdivision, respectively, of these Terms and Conditions.
- (c) MEFL and the Assignee may, on mutual agreement, amend, modify or supplement all Exhibits at any time prior to the Effective Date.

### 1.14 Offer Letter and Terms and Conditions

These Terms and Conditions shall be construed with, and as an integral part of, the Offer Letter to the same extent as if they were set forth verbatim therein, and all references herein to the “Offer Letter” shall include these Terms and Conditions.

### 1.15 Notices

Any notice, request, demand or other communication required, permitted or contemplated to be given to MEFL, the Assignee or the Vendors pursuant to the provisions of these Terms and Conditions shall be given in accordance with the notice provisions set forth in the Transaction Agreement.

### 1.16 MEFL as Secured Creditor

Notwithstanding anything in these Terms and Conditions to the contrary, nothing in these Terms and Conditions shall affect, alter, impede or restrict MEFL’s rights as a secured creditor in any respect provided that MEFL shall not be entitled to information or details in respect of the SISP other than as specifically contemplated by the SISP.

### 1.17 Amendment and Restatement

These Terms and Conditions are an amendment and restatement of the Original Terms and Conditions. These Terms and Conditions reflect amendments to the Original Terms and Conditions and have been restated solely for the purposes of reflecting amendments to the Original Terms and Conditions. All references to these Terms and Conditions, the “Conditions,” the “Offer Letter Conditions” or similar references to the Original Terms and Conditions contained in any of the documents or agreements relating to these Terms and Conditions or the Transaction Documents (as defined in the Transaction

Agreement) (including, for greater certainty, the Offer Letter and the Transaction Agreement) shall be deemed to refer to these Terms and Conditions, as they may be amended, restated, supplemented or replaced from time to time, without further amendment to those documents or agreements.

## ARTICLE 2 PRE-CLOSING MATTERS

### 2.1 Amendments to Transaction Agreement, Disclosure Schedule and Terms and Conditions

2.1.1 The Transaction Agreement, including all schedules thereto, and all exhibits to the Disclosure Schedule, may be amended, modified or supplemented on the mutual written consent of MEFL, the Assignee and the Vendors at any time prior to the Effective Date; *provided*, however, that the Assignee shall, until December 20, 2023, retain the right ~~for a period of up to and including 7 Business Days prior to the hearing of the motion for the Reverse Vesting Order~~ to amend, modify or supplement Exhibits ~~2.1~~2.1.1(b), ~~2.1~~2.1.1(c)(i), 2.2, 2.2(~~de~~), 2.2(~~fg~~), 2.3(h), 2.3(j), 2.4 and 6.10 of the Disclosure Schedule with the prior written consent of MEFL, which consent shall not be unreasonably withheld, conditioned or delayed; and that no such amendment, modification or supplement shall reduce or diminish the Credit Bid Consideration (as defined in the Transaction Agreement) provided for in the Transaction Agreement. The Parties acknowledge and agree that Exhibit 2.2 of the Disclosure Schedule may not be amended to add any Excluded Asset (as defined in the Transaction Agreement) contemplated by Section 2.2(b), (d), (f) or (h) of the Transaction Agreement; *provided* that such restriction with respect to Section 2.2(h) does not impair the Assignee's rights pursuant to Section 6.7 of the Transaction Agreement.

2.1.2 These Terms and Conditions may be amended, modified or supplemented on the mutual written consent of MEFL, the Assignee and the Vendors at any time prior to the Effective Date; *provided*, however, that no such amendment, modification or supplement shall reduce or diminish the Credit Bid Consideration provided for in the Transaction Agreement; and *provided further*, that the Assignee shall, until 5:00 p.m. (EST) December 28, 2023, retain the right ~~for a period of up to 7 Business Days prior to the hearing of the motion for the Reverse Vesting Order, to amend, modify or~~ to supplement Exhibit 3.1(f) hereto with the prior written consent of MEFL, which consent shall not be unreasonably withheld, conditioned or delayed; *provided*, however, that no such amendment, modification or supplement shall reduce or diminish the Credit Bid Consideration provided for in the Transaction Agreement.

2.1.3 For greater certainty, unless expressly stated otherwise, all consents and determinations to be made pursuant to these Terms and Conditions shall be in the sole discretion of the party entitled to make such determination.

### 2.2 Priority Payments Closing Amount and Administrative Expense Closing Amount

2.2.1 By not later than ten (10) days prior to the date of the hearing before the Court for the issuance of the Reverse Vesting Order, the Monitor shall deliver to MEFL, in each case,

based on circumstances known at the time: (i) an estimate of the Priority Payments Closing Amount, which estimate shall include, for each of the Priority Payments of Validus Parent (as defined in the Transaction Agreement), the quantum and nature of such payment and the party to whom such payment is to be made; and (ii) an estimate of the Administrative Expense Closing Amount.

2.2.2 By not later than three (3) Business Days prior to the Effective Date, the Monitor shall notify the Assignee and MEFL of the final amount of the Administrative Expense Closing Amount to be delivered to the Monitor pursuant to Section 6.4 of the Transaction Agreement.

### 2.3 Pre-Closing and Closing Reorganization

2.3.1 The specific steps for implementing the Closing and the transactions contemplated by Article 2 of the Transaction Agreement, including payment of the Credit Bid Consideration, shall be structured in a manner mutually agreed upon by MEFL, the Assignee and the Vendors, and set forth on a schedule at least seven (7) days prior to the hearing of the motion to the Court seeking the Reverse Vesting Order (collectively, the “**Implementation Steps**”), having regard to, among other things, the minimization of any Taxes payable by any of MEFL, the Assignee or any of the Purchased Entities in connection with such transactions; *provided* that in no event will the Implementation Steps be prejudicial to the interests of MEFL or the Assignee. The Implementation Steps may include, without limitation, resolving intercompany obligations, the formation of new entities required to implement the transactions contemplated by the Transaction Agreement in a Tax-efficient manner, amending partnership agreements to reflect the economic arrangement of the Parties and transfers of Equity Interests ([as defined in the Transaction Agreement](#)) in the Validus Entities as agreed upon by the Vendors, MEFL and the Assignee in accordance with this Section 2.3.1.

2.3.2 On or prior to the Effective Date, the Vendors shall effect the Implementation Steps as agreed upon by the Vendors, MEFL and the Assignee in accordance with Section 2.3.1.

2.3.3 The Implementation Steps shall occur and be deemed to have occurred in the order and manner to be set out therein.

2.3.4 The steps to be taken and the compromises and releases to be effective on the Effective Date shall occur and be deemed to occur and be effected in the steps and sequential order set forth in the Implementation Steps.

### 2.4 Access to Information

2.4.1 From the date hereof until the date on which the Offer is determined to be the Successful Bid, any information relating to the Business, the Validus Entities and the Assumed Liabilities that is provided to MEFL and the Assignee, in their capacity as parties to the Offer, and their respective personnel engaged in the transactions contemplated by the Transaction Agreement and their accountants, legal advisors, consultants, financial advisors and representatives shall be provided to the other parties participating in the SISF.

2.4.2 Until the Effective Time, ~~(ba)~~ upon no less than 48 hours' notice to the Monitor, the Monitor shall give to MEFL's and the Assignee's personnel engaged in the transactions contemplated by the Transaction Agreement and their accountants, legal advisors, consultants, financial advisors and representatives during normal business hours reasonable access to its premises to conduct a reasonable number of site visits; and (b) upon request from MEFL or the Assignee, the Monitor shall provide electronic access to all of the books and records relating to the Business, the Validus Entities, the Assumed Liabilities and the employees, and shall furnish them with all such information relating to the Business, the Validus Entities, the Assumed Liabilities and the employees as MEFL or the Assignee may reasonably request in connection with the transactions contemplated by the Transaction Agreement; *provided* that such access shall be conducted at MEFL's or the Assignee's exclusive risk and cost in accordance with Applicable Law and under supervision of the Monitor's personnel and in such a manner as to maintain confidentiality, and the Monitor will not be required to provide access to or copies of any such books and records if: (a) the provision thereof would cause the Monitor to be in contravention of any Applicable Law; (b) making such information available would: (i) result in the loss of any lawyer-client or other legal privilege; or (ii) cause the Monitor to be found in contravention of any Applicable Law, or contravene any fiduciary duty or agreement (including any confidentiality agreement to which the Monitor or any of its Affiliates are a party); or (c) cause undue interference with the Business. Such access shall include access for such environmental investigations deemed appropriate by MEFL or the Assignee, acting reasonably; *provided* that any intrusive environmental investigation shall be subject to the prior written approval of the Monitor, acting reasonably. Notwithstanding anything in this Section 2.4 to the contrary, any such investigation shall be conducted upon reasonable advance notice and in such manner as does not materially disrupt the conduct of the Business or the possible sale thereof to any other Person; and *provided further* that the same information may be provided to other parties participating in the SISP. The Monitor shall use commercially reasonable efforts to obtain information in respect of the Validus Entities from the files of such Governmental Authorities as reasonably requested by MEFL or the Assignee, which information may be shared with other parties participating in the SISP.

## 2.5 Energy Regulator Notices

In the event that ~~this offer~~the Offer is selected as the Successful Bid in the SISP, the Parties shall use commercially reasonable efforts to file any Energy Regulator Notices as soon as reasonably practicable and no later than the time limits imposed by Applicable Laws, in each case at the sole cost and expense of the Assignee.

## 2.6 Further Terms

2.6.1 Subject to and without amending any terms of these Terms and Conditions (except as permitted herein), each of the Parties shall perform all of the acts and things contemplated to be performed by the applicable Party under these Terms and Conditions, co-operate and negotiate in good faith with the other Parties in connection therewith and use its commercially reasonable efforts to do all such other acts and things as may be necessary or desirable in order to consummate and make effective, as soon as reasonably practicable, the transactions contemplated by the Transaction Agreement.



2.6.2 From the date hereof until the earlier of the Effective Date and the Outside Date, each of the Assignee and MEFL shall use commercially reasonable efforts to, or shall use commercially reasonable efforts to cause their representatives to, keep the Monitor informed on a reasonably current basis, and from time to time through teleconference or other meeting, and as reasonably requested by the Monitor, as to the Assignee's and MEFL's progress in terms of the satisfaction of the Offer Conditions.

2.6.3 From the date hereof until the earlier of the Effective Date and the Outside Date, the Monitor shall use commercially reasonable efforts to, and shall use commercially reasonable efforts to cause its representatives to, keep MEFL and the Assignee informed on a reasonably current basis, and from time to time through teleconference or other meeting, and as reasonably requested by MEFL or the Assignee, as to the Monitor's progress in terms of the satisfaction of the Offer Conditions.

2.6.4 Subject to these Terms and Conditions, the Vendors, the Assignee and MEFL shall execute and deliver such other documents, certificates, agreements and other writings, and to take such other actions to consummate or implement as soon as reasonably practicable, the transactions contemplated by the Transaction Agreement.

2.6.5 From the date hereof until the earlier of the Effective Date and the Outside Date, the Monitor shall, and shall cause its representatives to, promptly notify MEFL and the Assignee of any Material Adverse Effect occurring from and after the date hereof.

## **2.7 Court Orders and Related Matters**

2.7.1 Subject to Court availability, the Monitor shall apply to the Court by no later than October 20, 2023 for the SISP Order, substantially in the form of Schedule "C" to the Transaction Agreement, and each of the Parties shall use commercially reasonable efforts to have the SISP Order issued.

2.7.2 From and after the date of the Offer Letter and until the earlier of the Effective Date and the Outside Date, the Receiver and the Monitor, as the case may be, shall deliver to MEFL and the Assignee drafts of any and all pleadings, motions, applications and facta to be filed or submitted by the Receiver or the Monitor in connection with or related to the Transaction Agreement, including with respect to the SISP Order and the Reverse Vesting Order, for MEFL's and the Assignee's prior review at least three (3) days in advance of service and filing of such materials (or where circumstances make it impracticable to allow for three (3) days' review, with as much opportunity for review and comment as is practically possible in the circumstances). Any such pleadings, motions, applications or facta shall be in form and substance satisfactory to each of MEFL and the Assignee, each acting reasonably. The Receiver and the Monitor shall consult and cooperate with MEFL and the Assignee regarding any discovery, examinations and hearing in respect of any of the foregoing, including the submission of any evidence, including witnesses' testimony, in connection with such hearing.

2.7.3 Notice of the motions seeking the issuance of the SISP Order and the Reverse Vesting Order shall be served by the Receiver or the Monitor, as the case may be, on all Persons required to receive notice under Applicable Law and the requirements of the BIA, the CCAA, the

Court and any other Person determined necessary by the Receiver, the Monitor or the Assignee, acting reasonably.

2.7.4 In the event an appeal is taken or a stay pending appeal is requested from the Appointment Order, the SISP Order or the Reverse Vesting Order, the Receiver and the Monitor shall promptly notify MEFL and the Assignee of such appeal or stay request and shall promptly provide MEFL and the Assignee copies of the related notice of appeal or order of stay. The Receiver and the Monitor shall also provide MEFL and the Assignee with written notice of any motion or application filed in connection with any appeal from such orders. The Receiver and the Monitor shall take all action as may be reasonable and appropriate to defend against such appeal or stay request and the resolution of such appeal or stay request; *provided* that nothing herein shall preclude the Parties hereto from consummating the Transaction Agreement and the transactions contemplated thereby, if the Reverse Vesting Order shall have been issued and has not been stayed and if each of MEFL and the Assignee waives in writing the condition that the Reverse Vesting Order be a Final Order.

2.7.5 The Reverse Vesting Order shall provide that, on the Effective Date and concurrently with the Closing, the Purchased Assets shall be transferred to the Assignee free and clear of all Encumbrances (as defined in the Transaction Agreement), other than Permitted Encumbrances (as defined in the Transaction Agreement).

2.7.6 To the extent that any Purchased Validus Parent Asset is not assignable without the consent of the counterparty or any other Person, and such consent has not been obtained prior to the hearing before the Court for the Vendors' motion for the Reverse Vesting Order and such Purchased Validus Parent Asset is one that is capable of being assigned pursuant to section 11.3 of the CCAA: (a) Validus Parent's rights, benefits and interests in, to and under such Purchased Validus Parent Asset may be assigned to the Assignee pursuant to the Reverse Vesting Order or further order made pursuant to section 11.3 of the CCAA; (b) the Vendors will use commercially reasonable efforts to obtain the Reverse Vesting Order or such further order made pursuant to section 11.3 of the CCAA on such terms as are necessary to give effect to such assignment and on requisite notice to the affected contractual counterparty(ies); and (c) if such an assignment occurs, the Assignee shall accept the assignment of such Purchased Validus Parent Asset on the terms provided by the Reverse Vesting Order or such further order made pursuant to section 11.3 of the CCAA.

## **2.8 Public Notices**

No press release or other announcement concerning the transactions contemplated by the Offer Letter or the Transaction Agreement shall be made by the Receiver, the Monitor, MEFL or the Assignee without the prior consent of the other Parties (such consent not to be unreasonably withheld, conditioned or delayed); *provided*, however, that any Party may, without such consent, make such disclosure if the same is required by Applicable Law (including the Receivership Proceedings and the CCAA Proceedings) or by any insolvency or other court or securities commission, or other similar Governmental Authority having jurisdiction over such Party or any of its Affiliates, and, if such disclosure is required, the Party making such disclosure shall use commercially reasonable efforts to give prompt prior oral or written notice to the other Parties and to afford the other Parties an opportunity to comment on such disclosure to the extent legally

permissible and reasonably practicable, and if such prior notice is not legally permissible or reasonably practicable, to give such notice reasonably promptly following the making of such disclosure. Notwithstanding the foregoing: (a) the Offer Letter and the Transaction Agreement may be filed by the Receiver or the Monitor: (i) with the Court; and (ii) on one or more webpages on the Receiver's and the Monitor's public websites established pursuant to the Appointment Order and the Initial Order, respectively, to provide public notice of the Receivership Proceedings and the CCAA Proceedings and the documents and materials filed therein; and (b) the transactions contemplated in the Offer Letter and the Transaction Agreement may be disclosed by the Receiver and the Monitor to the Court, subject to redacting confidential or sensitive information as permitted by Applicable Law. Additionally:

- (a) the Receiver and the Monitor may prepare and file reports and other documents with the Court containing references to the transactions contemplated by the Transaction Agreement and the terms of such transactions; and
- (b) the Receiver, the Monitor, MEFL and their respective professional advisors may prepare and file such reports and other documents with the Court containing references to the transactions contemplated by the Offer Letter and the Transaction Agreement and the terms of such transactions as may reasonably be necessary to complete the transactions contemplated by the Transaction Agreement or to comply with their obligations in connection therewith.

## **2.9 Assignment of Transaction Agreement**

No Party may assign its right, benefits or obligations under this Agreement without the consent of each of the other Parties, except that, without the consent of the Vendors or the Assignee, MEFL may, upon prior written notice to the Vendors and the Assignee assign the Transaction Agreement, or any or all of its rights and obligations thereunder, to one or more of its Affiliates; *provided* that no such assignment or direction shall relieve MEFL of its obligations hereunder.

## **2.10 Allocation of Credit Bid Consideration**

On or before the Effective Date, the Vendors, each of the Assignee and MEFL covenants and agrees to determine an allocation, as mutually agreed in writing among the Parties, of the Credit Bid Consideration among the Purchased Interests and the Purchased Validus Parent Assets, as contemplated in Section 2.8(e) of the Transaction Agreement.

# **ARTICLE 3 CONDITIONS**

## **3.1 Conditions to the Offer in Favour of the Assignee and MEFL**

The Offer, the effectiveness of the Transaction Agreement and the respective obligations of each of the Assignee and MEFL to consummate the transactions contemplated by the Transaction Agreement are subject to the satisfaction of or compliance with, at or prior to the Effective Time, each of the following conditions precedent:

- (a) *No Law* – no provision of any Applicable Law and no judgment, injunction or Order preventing or otherwise frustrating the consummation of the delivery of title to the Leased Property and purchase and sale of the Purchased Assets or any of the other transactions pursuant to the Transaction Agreement, including, for the avoidance of doubt, a cease trade or similar order issued by a Governmental Authority in respect of any Validus Entity, shall be in effect;
- (b) *Final Orders* – each of the Appointment Order, the Initial Order, the SISP Order and the Reverse Vesting Order shall have been issued and entered and shall be Final Orders;
- (c) *No Material Adverse Effect* – since the date of the Offer Letter, no change, effect, event, occurrence, state of facts or development shall have occurred that resulted in, or would reasonably be expected to result in, a Material Adverse Effect;
- (d) *Vendors' Deliverables* – the Vendors shall have delivered to the Assignee and MEFL all of the deliverables set forth in Section 8.2 of the Transaction Agreement in form and substance reasonably satisfactory to MEFL and the Assignee;
- (e) *Implementation Steps* – MEFL, the Assignee and the Vendors shall have agreed upon the Implementation Steps by no later than seven (7) days prior to hearing of the motion to the Court seeking the Reverse Vesting Order in accordance with Section 2.3.1 of these Terms and Conditions in the manner agreed to by MEFL and the Assignee, each in their sole discretion, and the Validus Entities shall have completed the Implementation Steps that are required to be completed prior to Closing, in form and substance satisfactory to MEFL and the Assignee;
- (f) *Continuing Contracts* – each of the counterparties set forth on Part B of Exhibit 3.1(f) shall have confirmed in writing, to the Vendors, the Assignee and MEFL that it will not exercise any termination rights under its Continuing Contracts solely as a result of the transactions contemplated by the Transaction Agreement;
- (g) ~~*Employee Matters* – such number of Employees that is determined by the Assignee, shall have accepted offers of employment from the Assignee or a Purchased Entity (at the Assignee's election) or, if the Assignee is successful in negotiating agreements with the bargaining agents who are parties to Collective Agreements under which the required contracting out is permitted, NAES Corporation (or an alternative third party power plant operator, as determined by the Assignee), as determined by the Assignee. The Assignee shall have received all required offers (to be made in accordance with Section 2.1(c)(iii) of the Transaction Agreement) by no later than 7 Business Days following the Qualified Bid Deadline (as defined in the SISP)~~ *Intentionally Deleted*; and
- (h) *Vendors' Acceptance and Execution* – the Vendors shall have accepted and executed the Transaction Agreement.

The foregoing conditions are for the sole benefit of each of the Assignee and MEFL. Each condition in this Section 3.1 must be satisfied or otherwise waived by each of the Assignee and MEFL on and for their own behalf. Any condition in this Section 3.1 may be waived by the Assignee or MEFL, each on its own behalf, as applicable, in any case in whole or in part and any waiver of the foregoing conditions requires the consent of each of the Assignee and MEFL. Any such waiver will be binding on the Assignee or MEFL, as applicable, only if made in writing.

### **3.2 Conditions to the Offer in Favour of the Vendors**

The Vendors shall not accept the Offer unless at or prior to the Effective Time, each of the following conditions have been satisfied:

- (a) *No Law* – no provision of any Applicable Law and no judgment, injunction or Order preventing or otherwise frustrating the consummation of the delivery of title to the Leased Property and purchase and sale of the Purchased Assets or any of the other transactions pursuant to the Transaction Agreement, including, for the avoidance of doubt, a cease trade or similar order issued by a Governmental Authority in respect of any Validus Entity, shall be in effect;
- (b) *Final Orders* – each of the Appointment Order, the Initial Order, the SISP Order and the Reverse Vesting Order shall have been issued and entered and shall be Final Orders;
- (c) *MEFL's and the Assignee's Deliverables* – each of MEFL and the Assignee shall have delivered to the Vendors all of the deliverables set forth in Section 8.2 and Section 8.3, respectively, of the Transaction Agreement in form and substance reasonably satisfactory to the Vendors;
- (d) *Agreement and Completion of Pre-Closing Implementation Steps* – MEFL, the Assignee and the Vendors shall have agreed upon the Implementation Steps in accordance with Section 2.3.1 of these Terms and Conditions, and the Validus Entities shall have completed the Implementation Steps that are required to be completed prior to Closing, in form and substance reasonably satisfactory to the Vendors; and
- (e) *Sufficient Funds* – as of immediately prior to the Closing, the Assignee shall have sufficient funds to pay the Administrative Expense Closing Amount and the Priority Payments Closing Amount.

## **ARTICLE 4 TERMINATION OF OFFER**

### **4.1 Termination of Offer**

- 4.1.1 MEFL may terminate the Offer at any time prior to the Effective Date:
  - (a) if the Vendors, MEFL and the Assignee mutually agree in writing;

- (b) if the Offer is not the Successful Bid (as determined pursuant to the SISP);
- (c) if the Reverse Vesting Order is not granted by ~~December 15~~January 8, 20232024;
- (d) if the Effective Time has not occurred on or before ~~December 29~~February 15, 20232024 or such later date agreed to by the Vendors, MEFL and the Assignee in writing (the “**Outside Date**”);
- (e) upon the appointment of a trustee in bankruptcy or similar official by or in respect of any Validus Entity or any of the property of any Validus Entity, other than with the prior written consent of MEFL;
- (f) upon the termination, dismissal or conversion of the Receivership Proceedings or the CCAA Proceedings; or
- (g) upon denial of the SISP Order or the Reverse Vesting Order (or if any such order is stayed, vacated or varied without the consent of each of MEFL and the Assignee).

4.1.2 MEFL shall give written notice of such termination to the Vendors specifying in reasonable detail the basis for its exercise of its termination rights.

#### **4.2 Effect of Termination**

Upon MEFL’s termination of the Offer in accordance with Section 4.1.1, the Offer shall become void and of no further force and effect without liability to MEFL or the Assignee, and neither MEFL or the Assignee shall have any obligations to the Vendors or any other Party under, or in respect of, the Offer Letter, the Offer, the Transaction Agreement or any of the transactions or agreements contemplated thereby or entered into in furtherance thereof; and provided further, for greater certainty, upon termination, MEFL and the Assignee shall be deemed to have forfeited any right or ~~claim~~Claim to a break fee or expense reimbursement.

#### **4.3 Termination Upon Effectiveness of Transaction Agreement**

Immediately following the occurrence of the Effective Time, the Offer Letter, including, for certainty, these Terms and Conditions, shall automatically terminate and become void and of no further force and effect.

*[Remainder of page left intentionally blank]*

**EXHIBIT 3.1(f)**  
**Continuing Contracts**  
*(See attached.)*

Document comparison by Workshare Compare on Friday, December 22, 2023  
12:05:39 AM

Input:	
Document 1 ID	iManage://inventorystory.com/torystatwork/39050796/35
Description	#39050796v35<inventorystory.com> - Project Far North (Validus) - Terms and Conditions of Offer
Document 2 ID	iManage://inventorystory.com/torystatwork/40322411/3
Description	#40322411v3<inventorystory.com> - Project Far North (Validus) - Amended and Restated Terms and Conditions of Offer
Rendering set	Firm_Standard

Legend:	
<u>Insertion</u>	
<del>Deletion</del>	
Moved from	
<u>Moved to</u>	
Style change	
Format change	
<del>Moved deletion</del>	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	46
Deletions	24
Moved from	2
Moved to	2
Style changes	0
Format changes	0



Total changes	74
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**DISCLOSURE SCHEDULE**

to

**TRANSACTION AGREEMENT<sup>1</sup>**

by and among

**VALIDUS POWER CORP., IROQUOIS FALLS POWER CORP., BAY POWER CORP., KAP POWER CORP., KINGSTON COGEN LIMITED PARTNERSHIP, KINGSTON COGEN GP INC. and VALIDUS HOSTING INC., each by KSV RESTRUCTURING INC., in its capacity as court-appointed Monitor in the CCAA Proceedings**

as the Vendors

- and -

**FAR NORTH POWER CORP.**

as the Assignee

- and -

**MACQUARIE EQUIPMENT FINANCE LTD.**

as MEFL

<sup>1</sup> Without limiting or detracting from Section 2.9 of the Transaction Agreement, MEFL and the Assignee acknowledge and agree that the descriptions set out in this Disclosure Schedule have been prepared by MEFL and/or the Assignee and neither the Receiver nor the Monitor make any representation or warranty as to the accuracy or completeness of any exhibit herein.

Exhibit 1.1  
Permitted Encumbrances

**KAP POWER CORP. (Kapusking)**  
**LRO #6**

PIN 65095-0051(LT)

1. C366646 registered March 23, 1988 is a Notice of Airport Zoning.
2. CB164060 registered May 20, 2021 is a Transfer to Kap Power Corp.
3. C478024 is a document that contains a together with in favour of the property.  
(thumbnail only)

PIN 65095-0052(LT)

1. C366646 registered March 23, 1988 is a Notice of Airport Zoning.
2. C385680 registered July 14, 1989 is a Notice of Agreement among TransCanada Pipelines Limited and Bell Canada.
3. CB164060 registered May 20, 2021 is a Transfer to Kap Power Corp.
4. ~~5.~~C478024 is a document that contains a together with in favour of the property.  
(thumbnail only)
5. ~~6.~~C452347 is a document that contains a together with in favour of the property.  
(thumbnail only)
6. ~~7.~~C451853 is a document that contains a together with in favour of the property.  
(thumbnail only)
7. ~~8.~~C451851 is a document that contains a together with in favour of the property.  
(thumbnail only)
8. ~~9.~~C453701 is a document that contains a together with in favour of the property.  
(thumbnail only)

**IROQUOIS FALLS POWER CORP.**  
**(Iroquois Falls) LRO #6**

PIN 65337-0369(LT)

1. C447207 registered December 29, 1994 is a Transfer to 956978 Ontario Limited which has been amended under instruments C470107 and C470233.

2. C447208 amended by C470222 is a document that contains a together with in favour of the property. (thumbnail only)
3. C447209 amended by C470223 is a document that contains a together with in favour of the property. (thumbnail only)
4. C447211 amended by C470225 is a document that contains a together with in favour of the property. (thumbnail only)
5. C447212 amended by C470226 is a document that contains a together with in favour of the property. (thumbnail only)
6. C469024 amended by C470227 is a document that contains a together with in favour of the property. (thumbnail only)
7. C469025 amended by C470228 is a document that contains a together with in favour of the property. (thumbnail only)
8. C469026 amended by C470229 is a document that contains a together with in favour of the property. (thumbnail only)
9. C474890 amended by C521180 is a document that contains a together with in favour of the property. (thumbnail only)

PIN 65337-0372(LT)

1. C474890 registered August 29, 1997 is a Transfer of Easement in favour of Iroquois Falls Power Corp.
2. C521180 registered June 7, 2002 is a Notice of Amendment.

PIN 65337-0373(LT)

1. C474890 registered August 29, 1997 is a Transfer of Easement in favour of Iroquois Falls Power Corp.
2. C521180 registered June 7, 2002 is a Notice of Amendment.

PIN 65337-0456(LT)

1. C425641 registered November 20, 1992 is a Transfer to 956978 Ontario Limited which has been amended under instruments C470107 and C470233.
2. Property is subject to C469070 amended by C470222, C470223, C470224, C470225, C470226, C470227, C470228, C470229 and C470230 (as described in thumbnail description).

PIN 65337-0458(LT)

1. C439377 registered April 11, 1994 is a Transfer to 956978 Ontario Limited which has been amended under instruments C470107 and C470233.
2. CB61039 registered February 12, 2010 is an LR's Order.
3. Property is subject to C469070 amended by C470222, C470223, C470224, C470225, C470226, C470227, C470228, C470229 and C470230 (as described in thumbnail description).

**KINGSTON COGEN Limited Partnership/ Kingston CoGen GP Inc. (Kingston)  
LRO #29**

PIN 45132-0362(LT)(Leasehold PIN, sublease interest only)

1. LX11671 registered May 29, 2008 is a Crown Patent to Invista (Canada) Company.
2. LX37609 registered October 26, 2011 is an Application (Sublease) from Invista (Canada) Company in favour of NPIF Kingston CoGen Corp.
3. LX52940 registered January 16, 2014 is a Transfer to 3274376 Nova Scotia Company.
4. LX52941 registered January 16, 2014 is an Application to Change Name ~~—~~ Owner.
5. LX119670 registered April 19, 2023 is an Application to Change Name ~~—~~ Instrument re: LX37609.

PIN 45132-0373(LT) (Easement Interest only)

1. LA119096 registered April 15, 1981 is a Provisional Certificate of Approval re Waste Disposal Site.
2. LX37169 registered October 4, 2011 is a Transfer of Easement in favour of NPIF Kingston Cogen Corp.
3. LX51782 registered October 30, 2013 is a Transfer to 3274376 Nova Scotia Company.
4. LX52039 registered November 14, 2013 is an Application to Change Name ~~—~~ Owner.
5. LX52905 registered January 14, 2014 is a Notice of Option to Lease in favour of Windlectric Inc.
6. LX63673 registered September 4, 2015 is a Certificate of Requirement registered by Her Majesty the Queen in Right of Ontario as represented by the Minister of the Environment and Climate Change.
7. LX80405 registered February 22, 2018 is a Notice of Lease in favour of Windlectric Inc.
8. LX80406 registered February 22, 2018 is a Notice of Lease in favour of Windlectric Inc.

9. LX37170 is a document that contains a together with in favour of the property. (thumbnail only)

PIN 45132-0375(LT)

1. LA208787 registered February 24, 1995 is a Site Plan Control Agreement.
2. LA285538 registered January 25, 2011 is a Transfer to NPIF Kingston Cogen Corp.
3. LX52043 registered November 14, 2013 is a Notice of Easement Amending Agreement among The Corporation of Loyalist Township and NPIF Kingston CoGen Corp.
4. LX118877 registered March 1, 2023 is an Application to Change Name = Owner.
5. LA69824 is a document that contains a together with in favour of the property. (thumbnail only)
6. LA208637 is a document that contains a together with in favour of the property. (thumbnail only)
7. LA208644 is a document that contains a together with in favour of the property. (thumbnail only)
8. LA210426 is a document that contains a together with in favour of the property. (thumbnail only)
9. LA210734 is a document that contains a together with in favour of the property. (thumbnail only)
10. LA210736 is a document that contains a together with in favour of the property. (thumbnail only)
11. LA210738 is a document that contains a together with in favour of the property. (thumbnail only)
12. LX37160 is a document that contains a together with in favour of the property. (thumbnail only)
13. LX37161 is a document that contains a together with in favour of the property. (thumbnail only)
14. LX37162 is a document that contains a together with in favour of the property. (thumbnail only)
15. LX37163 is a document that contains a together with in favour of the property. (thumbnail only)


16. LX37164 is a document that contains a together with in favour of the property. (thumbnail only)
17. LX37165 is a document that contains a together with in favour of the property. (thumbnail only)
18. LX37166 is a document that contains a together with in favour of the property. (thumbnail only)
19. LX37167 is a document that contains a together with in favour of the property. (thumbnail only)

PIN 45132-0377(LT)(Leasehold PIN, Sublease interest only)

1. LA116957 registered October 16, 1980 is a Provisional Certificate of Approval re Waste Disposal Site.
2. LA119096 registered April 15, 1981 is a Provisional Certificate of Approval re Waste Disposal Site.
3. LA122730 registered March 24, 1982 is a Provisional Certificate of Approval re Waste Disposal Site.
4. LX36982 registered September 28, 2011 is a Notice of Lease to NPIF Kingston Cogen Corp.
5. LX36984 registered September 28, 2011 is an Application for Leasehold Parcel.
6. LX37170 registered October 4, 2011 is a Transfer of Easement in favour of Invista (Canada) Company.
7. LX118877 registered March 1, 2023 is an Application to Change Name ~~—~~ Owner.
8. LA69824 is a document that contains a together with in favour of the property. (thumbnail only)
9. LX37160 is a document that contains a together with in favour of the property. (thumbnail only)
10. LX37161 is a document that contains a together with in favour of the property. (thumbnail only)
11. LX37162 is a document that contains a together with in favour of the property. (thumbnail only)
12. LX37163 is a document that contains a together with in favour of the property. (thumbnail only)

13. LX37168 is a document that contains a together with in favour of the property. (thumbnail only)
14. LX37169 is a document that contains a together with in favour of the property. (thumbnail only)

PIN 45132-0379(LT) (Easement interests only)

1. LA45719 registered September 30, 1966 is a Bylaw.
2. LA58484 registered September 11, 1970 is a Transfer of Easement in favour of The Hydro-Electric Power Commission of Ontario.
3. LA69824 registered December 22, 1972 is an Easement Agreement re Industrial Railway Spur.
4. LA116957 registered October 16, 1980 is Provisional Certificate of Approval re Waste Disposal Site.
5. LA119096 registered April 15, 1981 is a Provisional Certificate of Approval re Waste Disposal Site.
6. LA122730 registered March 24, 1982 is a Provisional Certificate of Approval re Waste Disposal Site.
7. LA167630 registered April 13, 1989 is a Provisional Certificate of Approval re Waste Disposal Site.
8. LA184396 registered April 30, 1991 is a Transfer of Easement in favour of Queen  Ministry of Transportation of Province of Ontario.
9. LA210656 registered June 30, 1995 is a Bylaw.
10. LA212073 registered October 5, 1995 is a Bylaw
11. LX37160 registered October 4, 2011 is a Transfer of Easement in favour of NPIF Kingston Cogen Corp.
12. LX37161 registered October 4, 2011 is a Transfer of Easement in favour of NPIF Kingston Cogen Corp.
13. LX37162 registered October 4, 2011 is a Transfer of Easement in favour of NPIF Kingston Cogen Corp.
14. LX37163 registered October 4, 2011 is a Transfer of Easement in favour of NPIF Kingston Cogen Corp.



15. LX37164 registered October 4, 2011 is a Transfer of Easement in favour of NPIF Kingston Cogen Corp.
16. LX37165 registered October 4, 2011 is a Transfer of Easement in favour of NPIF Kingston Cogen Corp.
17. LX37166 registered October 4, 2011 is a Transfer of Easement in favour of NPIF Kingston Cogen Corp.
18. LX37167 registered October 4, 2011 is a Transfer of Easement in favour of NPIF Kingston Cogen Corp.
19. LX37168 registered October 4, 2011 is a Transfer of Easement in favour of NPIF Kingston Cogen Corp.
20. LX51782 registered October 30, 2013 is a Transfer to 3274376 Nova Scotia Company.
21. LX52039 registered November 14, 2013 is an Application to Change Name = Owner.
22. LX52905 registered January 14, 2014 is a Notice of Option to Lease in favour of Windlectric Inc.
23. LX63672 registered September 4, 2015 is a Certificate registered by Her Majesty the Queen in Right of Ontario as represented by the Minister of the Environment and Climate Change.
24. LX80405 registered February 22, 2018 is a Notice of Lease in favour of Windlectric Inc.
25. LX80406 registered February 22, 2018 is a Notice of Lease in favour of Windlectric Inc.
26. LX80512 registered February 28, 2018 is a Transfer of Easement in favour of Hydro One Networks Inc.
27. LX80513 registered February 28, 2018 is a Transfer of Easement in favour of Hydro One Networks Inc.
28. LX37170 is a document that contains a together with in favour of the property. (thumbnail only)
29. [LA69824 is a document that contains a together with in favour of the property. \(thumbnail only\)](#)

**BAY POWER CORP. (NORTH BAY)**  
**LRO #36**

PIN 49127-0021(LT)

1. LT135401 registered October 18, 1971 is a Notice of Airport Zoning Regulations.

2. LT212097 registered August 28, 1980 is a Notice of Amendments to Airport Zoning Regulations.
3. LT212098 registered August 28, 1980 is a Notice of Amendments to Airport Zoning Regulations.
4. LT224812 registered June 21, 1982 is a Notice of Amendments to Airport Zoning Regulations.
5. LT235848Z registered October 19, 1983 is Application to Annex Restrictive Covenants.
6. LT235849Z registered October 19, 1983 is Application to Annex Restrictive Covenants.
7. LT245558 registered January 31, 1985 is a Notice of Amendments to Airport Zoning Regulations.
8. BS199111 registered May 20, 2021 is a Transfer to Bay Power Corp.
9. BS213742 registered May 4, 2022 is a Notice of Site Plan Agreement.
10. LT332823 is a document that contains a together with in favour of the property. (thumbnail only)
11. LT332824 is a document that contains a together with in favour of the property. (thumbnail only)
12. LT332826 is a document that contains a together with in favour of the property. (thumbnail only)
13. LT332902 is a document that contains a together with in favour of the property. (thumbnail only)
14. LT332885 is a document that contains a together with in favour of the property. (thumbnail only)
15. LT333337 is a document that contains a together with in favour of the property. (thumbnail only)
16. LT339664 is a document that contains a together with in favour of the property. (thumbnail only)
17. LT366707 is a document that contains a together with in favour of the property. (thumbnail only)
18. LT366710 is a document that contains a together with in favour of the property. (thumbnail only)

19. LT366708 is a document that contains a together with in favour of the property.  
(thumbnail only)
20. LT366709 is a document that contains a together with in favour of the property.  
(thumbnail only)

Exhibit 2.1.1(b)  
Purchased Validus Parent Assets

1. All right, title and interest of Validus Power Corp. in the Continuous Safety Services ~~(CSS)~~ Agreement ~~dated [■]~~ entered into on or about September 1, 2021 between Validus Power Corp and the Electrical Safety Authority ~~and~~, as amended, restated and supplemented from time to time, including without limitation by way of Amending Agreement entered into on or about May 27, 2022.
  
2. Subject to the transfer to the Assignee of the Firm Transportation Service Contract made as of July 25, 2022 between TransCanada Pipelines Limited and Validus Parent:
  - (a) all right, title and interest of Validus Power Corp. in the Master Temporary Assignment Notice dated September 28, 2023 between Validus Power Corp and TransCanada Pipelines Ltd; and
  
  - (b) all right, title and interest of Validus Power Corp. in the Agreement for Temporary Assignment of FT-D Capacity dated September 2023 between Validus Power Corp and Macquarie Energy Canada Ltd.

~~-12-~~

See attached.

Exhibit 2.1.1(c)(i)  
Terms of Employment









Exhibit 2.1.1(d)(i)  
IFPC Note 1

See attached.

**PROMISSORY NOTE**Issue Date: [●], ~~2023~~2024

Principal Amount: \$29,000,000

This Promissory Note is dated as of [●], ~~2023~~2024 (as amended, restated, renewed or replaced from time to time, this “**Note**”) and issued by IROQUOIS FALLS POWER CORP. (together with its successors and permitted assigns, the “**Issuer**”), in favour of MACQUARIE EQUIPMENT FINANCE LTD. (together with its successors and permitted assigns, the “**Holder**”) on the terms set forth below.

Recitals:

1. The Issuer and the Holder, among others, are party to a transaction agreement dated as of the date hereof (the “**Transaction Agreement**”) with respect to, among other things, the sale and transfer to the Holder and Hut 8 Power Inc. by the Vendors of the Purchased Assets subject to and accordance with the terms and conditions set forth therein (the “**Transaction**”).
2. Pursuant to Section 2.1(d)(i) of the Transaction Agreement, the Issuer agreed to issue to the Holder this Note as partial consideration for the transfer of the Leased Property, and hereby acknowledges itself indebted to the Holder in an amount equal to the Principal Amount (the “**Debt**”).

**FOR VALUE RECEIVED**, the Issuer unconditionally promises to pay to the Holder the Principal Amount plus any accrued and unpaid interest thereon on demand in accordance with the provisions hereof.

The following terms and conditions apply to this Note:

**1. Definitions**

Capitalized terms used but not otherwise defined in this Note shall have the meanings given to them in the Transaction Agreement, and the following terms used in this Note have the following meanings:

“**Demand**” has the meaning ascribed thereto in Section 7(a).

“**Issue Date**” means the date of issuance of this Note as specified at the top left of the first page hereof. “**Note**” has the meaning specified in the introductory paragraph hereto.

“**Obligations**” means all indebtedness, liabilities and obligations, of any nature or kind, present or future, direct or indirect, absolute or contingent, whether as primary debtor or surety, matured or not and at any time owing by the Issuer to the Holder arising under, by reason of, or otherwise in, this Note.

“**Principal Amount**” means, with respect to this Note, the principal amount of this Note specified at the top of the first page hereof, less any repayments of principal made pursuant to Section 7.

2. **Interpretation**

- (a) In the event that any day on or before which any action is required to be taken hereunder is not a Business Day, then such action shall be required to be taken on the requisite time on or before the first (1st) succeeding day that is a Business Day thereafter.

2

- (b) The division of this Note into Sections, clauses and portions thereof and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation hereof.
- (c) All dollar amounts herein refer to lawful money of Canada.
- (d) This Note shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

### 3. **Grid**

The Principal Amount outstanding under this Note, shall be recorded from time to time in the column headed “**Principal Amount**” on the record (the “**Grid**”) attached hereto as Schedule “**A**” and forming part of this Note. The Holder shall record on the Grid the date and amount of each repayment or prepayment of the Principal Amount hereunder and the resulting decrease in such Principal Amount. Such recordings, in the absence of manifest mathematical error, shall be prima facie evidence of such repayments or prepayments; provided that the failure of the Holder to make such recording shall not affect the obligation of the Issuer to repay the Principal Amount, in accordance with the terms hereof.

### 4. **Interest**

The Debt shall be free of interest.

### 5. **Waiver by the Issuer**

The Issuer hereby waives presentment for payment, notice of non-payment, notice of dishonour and notice of protest of this Note. The Issuer also waives the benefits of division and discussion and the right to assert in any action or proceeding with respect to this Note any set-off or counterclaims which the Issuer may have.

### 6. **No Waiver by the Holder**

Neither the extension of time for making any payment which is due and payable under this Note at any time or times, nor the failure, delay or omission of the Holder to exercise or enforce any of its rights or remedies with respect to this Note, will constitute a waiver by the Holder of its right to enforce any such rights and remedies. The single or partial exercise of any such rights or remedies will not preclude the Holder’s further exercise of such rights or remedies or any other right or remedy.

### 7. **Repayment and Prepayment**

- (a) The Issuer shall repay the entire Principal Amount on demand made and as directed by the Holder in writing (a “**Demand**”).
- (b) The Issuer may repay the Principal Amount or any portion thereof (in minimum amounts of \$25,000) at any time prior to a Demand.

### 8. **Payments Generally**

All payments in respect of this Note shall be made in lawful money of Canada.

**9. Set-off**

The Issuer and Holder agree that, upon any amounts becoming due and payable by the Holder to the Issuer pursuant to the Transaction and the related transactions described in the Transaction Agreement, any such amount may, at the election of the Holder (regardless of whether a Demand has occurred or the Principal Amount is otherwise then due or payable), be immediately set-off against the Principal Amount as a repayment thereof.

**10. Notices**

Any demand, notice, or other communication under the provisions of or in connection with this Note shall be given in accordance with the terms of the Transaction Agreement.

**11. Severability**

The invalidity or unenforceability of any provision herein contained shall not affect the validity or enforceability of any other provision or covenant hereof or herein contained and this Note shall be construed as if such invalid or unenforceable provision or covenant were omitted.

**12. Further Assurances**

The Issuer shall, upon request by the Holder, execute and deliver such further documents and do all such further acts and things as may be reasonably necessary or desirable at any time or times to give effect to the terms and conditions of this Note.

**13. Amendments**

This Note may not be amended, restated, supplemented or modified without the prior written agreement of the Issuer and the Holder.

**14. Binding Effect/ Restrictions on Assignment**

This Note shall be binding upon the parties and their respective successors and assigns. Neither the Issuer's nor the Holder's rights or obligations hereunder nor any interest herein may be assigned or delegated by such party, without the prior written consent of the other party hereto.

**15. Entire Agreement**

This Note, together with the Transaction Agreement and the other Transaction Documents, contains and constitutes the entire agreement and understanding between the parties concerning the subject matter hereof and supersedes all prior written and oral agreements and understandings between the parties with respect to the subject matter hereof.

**16. Costs**

All reasonable legal and other out of pocket costs incurred by the Holder with respect to any enforcement of this Note (including reasonable legal fees and disbursements of the Holder's counsel on a solicitor and his own client basis) shall be for the account of the Issuer.

**17. Counterparts**

This Note may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A party's transmission by electronic mail of this Note duly executed by that party shall constitute effective delivery by that party of an executed copy of this Note.

|  
- *signature pages follow* —

IN WITNESS WHEREOF the Issuer has executed this Note on the Issue Date specified on the first page above.

**IROQUOIS FALLS POWER CORP., by KSV RESTRUCTURING INC., solely in its capacity as court-appointed Monitor in the CCAA Proceedings, as Issuer**

By:

                     [Name:]  
[Title:]

*{Signature Page to IFPC Note 1}*



ACKNOWLEDGED AND AGREED on the \_        day of            , ~~2023:~~

~~MACQUARIE EQUIPMENT FINANCE LTD., as Holder~~

~~By:~~

~~Name: Title~~2024:

MACQUARIE EQUIPMENT FINANCE LTD., as Holder

By:

[Name]  
[Title]

**SCHEDULE "A"  
TO  
NOTE**

**GRID**

<b>Date</b>	<b>Amount of Repayment</b>	<b>Updated Principal Amount</b>

- 8 -

~~-14-~~

~~See attached.~~

| Exhibit 2.1.1(d)(ii)  
IFPC Note 2

| [See attached.](#)

## PROMISSORY NOTE

Issue Date: [●], ~~2023~~2024

Principal Amount: \$10,000,000

This Promissory Note is dated as of [●], ~~2023~~2024 (as amended, restated, renewed or replaced from time to time, this “**Note**”) and issued by IROQUOIS FALLS POWER CORP. (together with its successors and permitted assigns, the “**Issuer**”), in favour of HUT 8 POWER INC. (together with its successors and permitted assigns, the “**Holder**”), as the designated and nominated assignee of Macquarie Equipment Finance Ltd. (“**MEFL**”), on the terms set forth below.

### Recitals:

1. The Issuer and the Holder, among others, are party to a transaction agreement dated as of the date hereof (the “**Transaction Agreement**”) with respect to, among other things, the sale and transfer to the Holder and MEFL by the Vendors of the Purchased Assets subject to and accordance with the terms and conditions set forth therein (the “**Transaction**”).
2. Pursuant to Section 2.1(d)(ii) of the Transaction Agreement, the Issuer agreed to issue to the Holder this Note as partial consideration for the transfer of the Leased Property, and hereby acknowledges itself indebted to the Holder in an amount equal to the Principal Amount (the “**Debt**”).

**FOR VALUE RECEIVED**, the Issuer unconditionally promises to pay to the Holder the Principal Amount plus any accrued and unpaid interest thereon on demand in accordance with the provisions hereof.

The following terms and conditions apply to this Note:

### 1. Definitions

Capitalized terms used but not otherwise defined in this Note shall have the meanings given to them in the Transaction Agreement, and the following terms used in this Note have the following meanings:

“**Demand**” has the meaning ascribed thereto in Section 7(a).

“**Issue Date**” means the date of issuance of this Note as specified at the top left of the first page hereof. “**Note**” has the meaning specified in the introductory paragraph hereto.

“**Obligations**” means all indebtedness, liabilities and obligations, of any nature or kind, present or future, direct or indirect, absolute or contingent, whether as primary debtor or surety, matured or not and at any time owing by the Issuer to the Holder arising under, by reason of, or otherwise in, this Note.

“**Principal Amount**” means, with respect to this Note, the principal amount of this Note specified at the top of the first page hereof, less any repayments of principal made pursuant to Section 7.

2. **Interpretation**

- (a) In the event that any day on or before which any action is required to be taken hereunder is not a Business Day, then such action shall be required to be taken on the requisite time on or before the first (1st) succeeding day that is a Business Day thereafter.

2

- (b) The division of this Note into Sections, clauses and portions thereof and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation hereof.
- (c) All dollar amounts herein refer to lawful money of Canada.
- (d) This Note shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

### 3. **Grid**

The Principal Amount outstanding under this Note, shall be recorded from time to time in the column headed "Principal Amount" on the record (the "**Grid**") attached hereto as Schedule "A" and forming part of this Note. The Holder shall record on the Grid the date and amount of each repayment or prepayment of the Principal Amount hereunder and the resulting decrease in such Principal Amount. Such recordings, in the absence of manifest mathematical error, shall be prima facie evidence of such repayments or prepayments; provided that the failure of the Holder to make such recording shall not affect the obligation of the Issuer to repay the Principal Amount, in accordance with the terms hereof.

### 4. **Interest**

The Debt shall be free of interest.

### 5. **Waiver by the Issuer**

The Issuer hereby waives presentment for payment, notice of non-payment, notice of dishonour and notice of protest of this Note. The Issuer also waives the benefits of division and discussion and the right to assert in any action or proceeding with respect to this Note any set-off or counterclaims which the Issuer may have.

### 6. **No Waiver by the Holder**

Neither the extension of time for making any payment which is due and payable under this Note at any time or times, nor the failure, delay or omission of the Holder to exercise or enforce any of its rights or remedies with respect to this Note, will constitute a waiver by the Holder of its right to enforce any such rights and remedies. The single or partial exercise of any such rights or remedies will not preclude the Holder's further exercise of such rights or remedies or any other right or remedy.

### 7. **Repayment and Prepayment**

- (a) The Issuer shall repay the entire Principal Amount on demand made and as directed by the Holder in writing (a "**Demand**").
- (b) The Issuer may repay the Principal Amount or any portion thereof (in minimum amounts of \$25,000) at any time prior to a Demand.

### 8. **Payments Generally**

All payments in respect of this Note shall be made in lawful money of Canada.

**9. Set-off**

The Issuer and Holder agree that, upon any amounts becoming due and payable by the Holder to the Issuer pursuant to the Transaction and the related transactions described in the Transaction Agreement, any such amount may, at the election of the Holder (regardless of whether a Demand has occurred or the Principal Amount is otherwise then due or payable), be immediately set-off against the Principal Amount as a repayment thereof.

**10. Notices**

Any demand, notice, or other communication under the provisions of or in connection with this Note shall be given in accordance with the terms of the Transaction Agreement.

**11. Severability**

The invalidity or unenforceability of any provision herein contained shall not affect the validity or enforceability of any other provision or covenant hereof or herein contained and this Note shall be construed as if such invalid or unenforceable provision or covenant were omitted.

**12. Further Assurances**

The Issuer shall, upon request by the Holder, execute and deliver such further documents and do all such further acts and things as may be reasonably necessary or desirable at any time or times to give effect to the terms and conditions of this Note.

**13. Amendments**

This Note may not be amended, restated, supplemented or modified without the prior written agreement of the Issuer and the Holder.

**14. Binding Effect/ Restrictions on Assignment**

This Note shall be binding upon the parties and their respective successors and assigns. Neither the Issuer's nor the Holder's rights or obligations hereunder nor any interest herein may be assigned or delegated by such party, without the prior written consent of the other party hereto.

**15. Entire Agreement**

This Note, together with the Transaction Agreement and the other Transaction Documents, contains and constitutes the entire agreement and understanding between the parties concerning the subject matter hereof and supersedes all prior written and oral agreements and understandings between the parties with respect to the subject matter hereof.

**16. Costs**

All reasonable legal and other out of pocket costs incurred by the Holder with respect to any enforcement of this Note (including reasonable legal fees and disbursements of the Holder's counsel on a solicitor and his own client basis) shall be for the account of the Issuer.

**17. Counterparts**



This Note may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A party's transmission by electronic mail of

this Note duly executed by that party shall constitute effective delivery by that party of an executed copy of this Note.

- signature pages follow -

**IN WITNESS WHEREOF** the Issuer has executed this Note on the Issue Date specified on the first page above.

**IROQUOIS FALLS POWER CORP.**, by  
**KSV RESTRUCTURING INC.**, solely in its capacity as court-appointed Monitor in the CCAA Proceedings, as Issuer

By:

Name:  
Title:

*[Signature Page to IFPC Note 2]*

ACKNOWLEDGED AND AGREED on the \_\_\_\_ day of \_\_\_\_\_, 2023:

**HUT 8 POWER INC., as**

**Holder-By:**

**Name: Title \_\_\_\_\_, 2024:**

HUT 8 POWER INC., as Holder

By:

Name:

Title:

**SCHEDULE "A"**  
**TO**  
**NOTE**  
**GRID**

<b>Date</b>	<b>Amount of Repayment</b>	<b>Updated Principal Amount</b>

| ~~-15-~~

| ~~See attached.~~

| Exhibit 2.1.1(d)(iii)

| IFPC Note 3

| [See attached.](#)

## PROMISSORY NOTE

Issue Date: [●], ~~2023~~2024 Principal Amount: \$6,435,000

This Promissory Note is dated as of [●], ~~2023~~2024 (as amended, restated, renewed or replaced from time to time, this “**Note**”) and issued by IROQUOIS FALLS POWER CORP. (together with its successors and permitted assigns, the “**Issuer**”), in favour of MACQUARIE EQUIPMENT FINANCE LTD. (together with its successors and permitted assigns, the “**Holder**”) on the terms set forth below.

Recitals:

1. The Issuer and the Holder, among others, are party to a transaction agreement dated as of the date hereof (the “**Transaction Agreement**”) with respect to, among other things, the sale and transfer to the Holder and Hut 8 Power Inc. by the Vendors of the Purchased Assets subject to and accordance with the terms and conditions set forth therein (the “**Transaction**”).
2. Pursuant to Section 2.1(d)(iii) of the Transaction Agreement, the Issuer agreed to issue to the Holder this Note as partial consideration for the transfer of the Leased Property, and hereby acknowledges itself indebted to the Holder in an amount equal to the Principal Amount (the “**Debt**”).

**FOR VALUE RECEIVED**, the Issuer unconditionally promises to pay to the Holder the Principal Amount plus any accrued and unpaid interest thereon on demand in accordance with the provisions hereof.

The following terms and conditions apply to this Note:

### 1. **Definitions**

Capitalized terms used but not otherwise defined in this Note shall have the meanings given to them in the Transaction Agreement, and the following terms used in this Note have the following meanings:

“**Demand**” has the meaning ascribed thereto in Section 7(a).

“**Issue Date**” means the date of issuance of this Note as specified at the top left of the first page hereof. “**Note**” has the meaning specified in the introductory paragraph hereto.

“**Obligations**” means all indebtedness, liabilities and obligations, of any nature or kind, present or future, direct or indirect, absolute or contingent, whether as primary debtor or surety, matured or not and at any time owing by the Issuer to the Holder arising under, by reason of, or otherwise in, this Note.

“**Principal Amount**” means, with respect to this Note, the principal amount of this Note specified at the top of the first page hereof, less any repayments of principal made pursuant to Section 7.

2. **Interpretation**

- (a) In the event that any day on or before which any action is required to be taken hereunder is not a Business Day, then such action shall be required to be taken on the requisite time on or before the first (1st) succeeding day that is a Business Day thereafter.

2



- (b) The division of this Note into Sections, clauses and portions thereof and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation hereof.
- (c) All dollar amounts herein refer to lawful money of Canada.
- (d) This Note shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

### 3. **Grid**

The Principal Amount outstanding under this Note, shall be recorded from time to time in the column headed "**Principal Amount**" on the record (the "**Grid**") attached hereto as Schedule "**A**" and forming part of this Note. The Holder shall record on the Grid the date and amount of each repayment or prepayment of the Principal Amount hereunder and the resulting decrease in such Principal Amount. Such recordings, in the absence of manifest mathematical error, shall be prima facie evidence of such repayments or prepayments; provided that the failure of the Holder to make such recording shall not affect the obligation of the Issuer to repay the Principal Amount, in accordance with the terms hereof.

### 4. **Interest**

The Debt shall be free of interest.

### 5. **Waiver by the Issuer**

The Issuer hereby waives presentment for payment, notice of non-payment, notice of dishonour and notice of protest of this Note. The Issuer also waives the benefits of division and discussion and the right to assert in any action or proceeding with respect to this Note any set-off or counterclaims which the Issuer may have.

### 6. **No Waiver by the Holder**

Neither the extension of time for making any payment which is due and payable under this Note at any time or times, nor the failure, delay or omission of the Holder to exercise or enforce any of its rights or remedies with respect to this Note, will constitute a waiver by the Holder of its right to enforce any such rights and remedies. The single or partial exercise of any such rights or remedies will not preclude the Holder's further exercise of such rights or remedies or any other right or remedy.

### 7. **Repayment and Prepayment**

- (a) The Issuer shall repay the entire Principal Amount on demand made and as directed by the Holder in writing (a "**Demand**").
- (b) The Issuer may repay the Principal Amount or any portion thereof (in minimum amounts of \$25,000) at any time prior to a Demand.

### 8. **Payments Generally**

All payments in respect of this Note shall be made in lawful money of Canada.

**9. Set-off**

The Issuer and Holder agree that, upon any amounts becoming due and payable by the Holder to the Issuer pursuant to the Transaction and the related transactions described in the Transaction Agreement, any such amount may, at the election of the Holder (regardless of whether a Demand has occurred or the Principal Amount is otherwise then due or payable), be immediately set-off against the Principal Amount as a repayment thereof.

**10. Notices**

Any demand, notice, or other communication under the provisions of or in connection with this Note shall be given in accordance with the terms of the Transaction Agreement.

**11. Severability**

The invalidity or unenforceability of any provision herein contained shall not affect the validity or enforceability of any other provision or covenant hereof or herein contained and this Note shall be construed as if such invalid or unenforceable provision or covenant were omitted.

**12. Further Assurances**

The Issuer shall, upon request by the Holder, execute and deliver such further documents and do all such further acts and things as may be reasonably necessary or desirable at any time or times to give effect to the terms and conditions of this Note.

**13. Amendments**

This Note may not be amended, restated, supplemented or modified without the prior written agreement of the Issuer and the Holder.

**14. Binding Effect/ Restrictions on Assignment**

This Note shall be binding upon the parties and their respective successors and assigns. Neither the Issuer's nor the Holder's rights or obligations hereunder nor any interest herein may be assigned or delegated by such party, without the prior written consent of the other party hereto.

**15. Entire Agreement**

This Note, together with the Transaction Agreement and the other Transaction Documents, contains and constitutes the entire agreement and understanding between the parties concerning the subject matter hereof and supersedes all prior written and oral agreements and understandings between the parties with respect to the subject matter hereof.

**16. Costs**

All reasonable legal and other out of pocket costs incurred by the Holder with respect to any enforcement of this Note (including reasonable legal fees and disbursements of the Holder's counsel on a solicitor and his own client basis) shall be for the account of the Issuer.

**17. Counterparts**

This Note may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A party's transmission by electronic mail of this Note duly executed by that party shall constitute effective delivery by that party of an executed copy of this Note.

- signature pages follow -

**IN WITNESS WHEREOF** the Issuer has executed this Note on the Issue Date specified on the first page above.

**IROQUOIS FALLS POWER CORP.**, by  
**KSV RESTRUCTURING INC.**, solely in its capacity as court-appointed Monitor in the CCAA Proceedings, as Issuer

By:

Name:  
Title:

*[Signature Page to IFPC Note 3]*

ACKNOWLEDGED AND AGREED on the \_\_\_\_\_ day of \_\_\_\_\_, 2023:

~~MACQUARIE EQUIPMENT FINANCE LTD., as Holder~~

By:

Name: \_\_\_\_\_ Title \_\_\_\_\_,  
2024: MACQUARIE EQUIPMENT FINANCE LTD., as Holder

By:

Name:  
Title:

**SCHEDULE "A"  
TO  
NOTE  
GRID**

<b>Date</b>	<b>Amount of Repayment</b>	<b>Updated Principal Amount</b>

| [39544191.1](#)

| [39379175.12](#)

~~9~~

None.



~~-10-~~

Exhibit 2.2  
Excluded Assets

None.

~~11~~

Exhibit 2.2(e)  
Excluded Contracts

Any contract that is not listed as a Continuing Contract in Exhibit 3.1(f) of the Terms and Conditions.

|

Exhibit 2.2(g)  
Excluded Entities

1. Validus Digital Inc., a corporation duly formed and existing under the laws of Ontario.
2. Validus Power Services Inc., a corporation duly formed and existing under the laws of Ontario.
3. Validus Solutions Inc., a corporation duly formed and existing under the laws of Ontario.

~~-13-~~

None.

~~-14-~~

Exhibit 2.3(h)  
Excluded Intercompany Claims

1. All Intercompany Claims against any Purchased Entity that may be asserted by or on behalf of another Purchased Entity.

~~-15-~~

~~None.~~

Exhibit 2.3(j)  
Further Assumed Liabilities

None.



|  
Exhibit 2.4  
Excluded Liabilities

| None.

Exhibit 6.10  
Letters of Credit and Deposits

1. Letter of Credit from The Toronto-Dominion Bank issued to Validus Power Corp. on May 4, 2022~~[, as subsequently replaced/extended on {■},]~~ in the amount of \$495,290.00, listing Independent Electricity System Operator as beneficiary and bearing Letter of Credit No. 0202- 9226834-01.
2. Letter of Credit from The Toronto-Dominion Bank issued to Validus Power Corp. on May 4, 2022~~[, as subsequently replaced/extended on {■},]~~ in the amount of \$536,755.00, listing Independent Electricity System Operator as beneficiary and bearing Letter of Credit No. 0202- 9226834-02.
3. Letter of Credit from The Toronto-Dominion Bank issued to Validus Power Corp. on May 4, 2022~~[, as subsequently replaced/extended on {■},]~~ in the amount of \$150,000.00, listing Independent Electricity System Operator as beneficiary and bearing Letter of Credit No. 0202- 9226834-03.
4. Letter of Credit from TD Bank issued to Validus Power Corp., on behalf of Iroquois Falls Power Corp., on June 10, 2022~~[, as subsequently replaced/extended on {■},]~~ in the amount of \$154,810.00, listing Enbridge Gas Inc. as beneficiary and bearing Letter of Credit No. 0202- 9226834-04.
5. Letter of Credit from TD Bank issued to Validus Power Corp., on behalf of Kingston Cogen Limited Partnership, on June 10, 2022~~[, as subsequently replaced/extended on {■},]~~ in the amount of \$116,900.00, listing Enbridge Gas Inc. as beneficiary and bearing Letter of Credit No. 0202-9226834-05.
6. Letter of Credit from TD Bank issued to Validus Power Corp., on behalf of Kingston Cogen Limited Partnership, on June 10, 2022~~[, as subsequently replaced/extended on {■},]~~ in the amount of \$52,690.00, listing Enbridge Gas Inc. as beneficiary and bearing Letter of Credit No. 0202-9226834-06.
7. Letter of Credit from the Royal Bank of Canada issued to Validus Power Corp., on behalf of Kap Power Corp., on April 4, 2023 in the amount of \$68,561.00, listing Independent Electricity System Operator as beneficiary and bearing Standby Letter of Credit No. 2546187.

Cash Collateral Agreement between TransCanada Pipelines Limited and Validus Power Corp.  
dated September 20, 2022.

Document comparison by Workshare Compare on Friday, December 22, 2023  
12:07:27 AM

Input:	
Document 1 ID	file://C:\Users\mnoel\Onedrive - Torys LLP\Work Folders\_tmp\Project Far North - Disclosure Schedule to Transaction Agreement as of Offer Letter (40069508.1).pdf
Description	Project Far North - Disclosure Schedule to Transaction Agreement as of Offer Letter (40069508.1)
Document 2 ID	file://C:\Users\mnoel\AppData\Local\Temp\Workshare\tmp6B1C\Project Far North - Disclosure Schedule to Transaction Agreement.docx
Description	Project Far North - Disclosure Schedule to Transaction Agreement
Rendering set	Firm_Standard

Legend:	
<u>Insertion</u>	
<del>Deletion</del>	
<u>Moved from</u>	
<u>Moved to</u>	
Style change	
Format change	
<del>Moved deletion</del>	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	151
Deletions	597
Moved from	0
Moved to	0

Style changes	0
Format changes	0
Total changes	748

## Appendix “K”

Item No.	Permit and License	Regulator
1	Ontario Certificate of Registration of a Plant, issued in favour of Atlantic Power LP as plant user of the plant known as North Bay Power Plant.	Technical Standards and Safety Authority
2	Electricity Generation Licence: EG-2021-0295. Applicable to Bay Power Corp. <sup>(1)</sup>	Ontario Energy Board
3	Electricity Retailer Licence: ER-2021-0329. Applicable to Bay Power Corp. <sup>(1)</sup>	Ontario Energy Board
4	TransCanada PipeLines Limited: North Bay Power Project Sewage – Certificate of Approval No. 4-0014-92-957.	Ministry of the Environment and Climate Change (now MECP)
5	Certificate of Approval – Industrial Sewage Number 4-0014-92-957	Ministry of the Environment and Climate Change
6	Amended Environmental Compliance Approval, Air, Number 7326-9XHG XK, August 7, 2015	Ministry of the Environment and Climate Change (now MECP)
7	Waste Generation License - Generator No. ON9250417	Ministry of the Environment, Conservation and Parks

Item No.	Permit and License	Regulator
8	Ontario Emissions Performance Standard – GHGRP ID No. G10432	Ministry of the Environment, Conservation and Parks (MECP)
9	Greenhouse Gas Reporting Program registration	Environment and Climate Change Canada (ECCC)
10	Registration in National Pollutant Release Inventory program	Environment and Climate Change Canada
11	Radio Licence – Licence No. 010346249-001.	Innovation, Science and Economic Development Canada
12	Radio Licence – Licence No. 010550799-01.	Innovation, Science and Economic Development Canada
13	Registration as hazardous waste generator*	Environmental and Climate Change Canada

Item No.	Permit and License	Regulator
14	Registration of a power plant – Kapuskasing*	Technical Standards and Safety Authority
15	Electricity Generation Licence: EG-2021-0298. <sup>(1)</sup>	Ontario Energy Board
16	Electricity Retailer Licence: ER-2021-0331. <sup>(1)</sup>	Ontario Energy Board
17	Amended Environmental Compliance Approval: Number 7978-A4RRJF –(ECA), Air	Ministry of the Environment and Climate Change (now the MECP)
18	Certificate of approval for Industrial Treatment and Disposal Facilities - KAP 19950907 - Industrial Sewage 4-0015-92-957	Ministry of the Environment (now the MECP)
19	Waste Generation License – Generator No. ON9719652	Ministry of the Environment, Conservation and Parks
20	Ontario Emissions Performance Standard – GHGRP ID No. G10410	Ministry of the Environment, Conservation and Parks
21	Greenhouse Gas Reporting Program registration	Environment and Climate Change Canada
22	Registration as hazardous waste generator	Ministry of the Environment, Conservation and Parks
23	Registration in National Pollutant Release Inventory program	Environment and Climate Change Canada



Item No.	Permit and License	Regulator
24	Radio Licence – Licence No. 010608243-001.	Innovation, Science and Economic Development Canada
25	Radio Licence – Licence No. 010413777-001.	Innovation, Science and Economic Development Canada

Item No.	Permit and License	Regulator
26	Amended Certificate of Approval – Air, 1113-5JRKTP, February 14, 2003	Ontario Ministry of the Environment and Energy (now MECP)
27	Certificate of Approval – Industrial Sewage Works, 4818-4WHJL6, May 30, 2001	Ontario Ministry of the Environment (now the MECP)
28	Permit to Take Water – Surface Water No. 5368-A7ULKF, March 15, 2016.	Ontario Ministry of the Environment and Climate Change (now the MECP)
29	Acknowledgment of Subject Waste Registration. Generator Registration No. ON1524602	Resource Productivity and Recovery Authority
30	Amended Certificate of Approval (Industrial Sewage) for once-through, non-contact cooling water system and associated discharge return to the Abitibi-River under the OWRA (Certificate Number 4818-4WHJL6)	Ontario Ministry of the Environment
31	Electricity Generation Licence: EG-2003-0144. <sup>(1)</sup>	Ontario Energy Board
32	Electricity Retailer Licence – Large Volume Consumers Only: ER-2022-0304 <sup>(1)</sup>	Ontario Energy Board
33	Land Use Permit for Northland Power Iroquois Falls Partnership (No. 32 00515).	Ontario Ministry of Natural Resources

Item No.	Permit and License	Regulator
34	Radio Licence – Licence No. 010531775-001.	Innovation, Science and Economic Development Canada
35	Certificate of Registration of a Plant. Registration No. R-8345.	Ontario Technical Standards and Safety Authority
36	Encroachment Permit No. EC-2015-53C-23	Ontario Ministry of Transportation
37	Encroachment Permit No. 3373-16	The Corporation of the Town of Iroquois Falls
38	Declaration of Exemption (reference 8200-94-6543)	Canadian Coast Guard
39	Ontario Emissions Performance Standard GHGRP ID No. G10151	Ministry of the Environment, Conservation and Parks
40	Greenhouse Gas Reporting Program registration	Environment and Climate Change Canada
41	Registration in National Pollutant Release Inventory program	Environment and Climate Change Canada

Item No.	Permit and License	Regulator
42	Registration of a power plant – Kingston Cogen.	Technical Standards and Safety Authority
43	Electricity Generation Licence: EG-2007-0796 <sup>(1)</sup>	Ontario Energy Board
44	Electricity Retailer Licence (Large Volume Consumers Only): ER-2023-0151 <sup>(1)</sup>	Ontario Energy Board
45	Amended Certificate of Approval, Air, 8575-7VZKNV, December 1, 2009; Amendment September 27, 2012	Ministry of the Environment (now the MECP)
46	Amended Environmental Compliance Approval, Sewage, 9067-8W5HBH	Ministry of the Environment (now the MECP)
47	Permit to Take Water, Surface Water, 2410-BJ4QMJ	Ministry of the Environment, Conservation and Parks (now the MECP)
48	Amended Environmental Compliance Approval for the intake of water, and chlorination works – applicable to the pump house on site: Sewage_9067-8W5HBH.	Ministry of the Environment
49	Radio License	Innovation, Science and Economic Development Canada

Item No.	Permit and License	Regulator
50	Waste Generation License	Ministry of the Environment, Conservation and Parks
51	Ontario Emissions Performance Standard – GHGRP ID No. G10004	Ministry of the Environment, Conservation and Parks
52	Greenhouse Gas Reporting Program registration	Environment and Climate Change Canada
53	Registration in National Pollutant Release Inventory program	Environment and Climate Change Canada
54	34452 Encroachment Permit dated August 10, 1994	Ministry of Transportation
55	32-00515 Land Use Permit dated October 7, 1994	Ministry of Natural Resources
56	EC-2021-43S-00000130 V1 Encroachment Permit	Ministry of Transportation
<b>Validus Power Corp.</b>		
57	Registered emitter status under the Greenhouse Gas Pollution Pricing Act.	Canada Revenue Agency
58	Ontario EPS program registration*	Ministry of the Environment, Conservation and Parks
<b>Validus Hosting Inc.</b>		

Item No.	Permit and License	Regulator
59	[Electricity Retailer Licence] <sup>(1)</sup>	Ontario Energy Board
55		

## Appendix “L”

COURT FILE NO.: CV-23-00705215-00CL

**NOTICE RE UNKNOWN CONTRACT BAR PROCESS  
AND SALE AND INVESTMENT SOLICITATION PROCESS 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.**

On November 2, 2023, the Ontario Superior Court of Justice (Commercial List) granted an order in the *Companies' Creditors Arrangement Act* ("CCAA") proceedings of Validus Power Corp., Iroquois Falls Power Corp., Bay Power Corp., Kap Power Corp., Validus Hosting Inc., Kingston Cogen GP Inc. and Kingston Cogen Limited Partnership (collectively, the "Validus Entities") approving, among other things, a sale and investment solicitation process (the "SISP") and accepting a stalking horse offer (the "Stalking Horse Offer") submitted jointly by Macquarie Equipment Finance Limited and Far North Power Corp. and a certain process to call for parties who have contracts with the Validus Entities.

**UNKNOWN CONTRACT BAR PROCESS**

**TAKE NOTICE THAT** a list (the "List") of all known contract counterparties ("Known Contract Counterparties") and known contracts based on the Validus Entities' books and records, has been posted on the website of KSV Restructuring Inc. ("KSV"), in its capacity as Monitor (the "Monitor") in the CCAA proceedings at <https://www.ksvadvisory.com/experience/case/validus-power-corp> (the "Website").

**FURTHER TAKE NOTICE THAT** any person having one or more contracts with any of the Validus Entities, must immediately check the Website to make sure that such person and all of their contracts with the Validus Entities are listed on the List in order to ensure that such person receives further notices relating to the Court approval of the Stalking Horse Offer or any other transaction that is successful under the SISP.

**FURTHER TAKE NOTICE THAT** any person who believes it may have one or more contracts with any Validus Entities whose identity and/or contract is not listed on the List shall contact the Monitor by no later than **November 28, 2023** (the "Unknown Contract Bar Date") and provide the Monitor with a copy of any and all outstanding contracts by emailing Jordan Wong ([Jwong@ksvadvisory.com](mailto:Jwong@ksvadvisory.com)) so that they may be added as a Known Contract Counterparty List may be updated.

**FURTHER TAKE NOTICE THAT** upon expiration of the Unknown Contract Bar Date, all other persons shall be forever barred from asserting that they did not receive adequate notice of any treatment of any contractual right or claim in the connection with these proceedings including, without limitation, any motion or motions for approval of a sale approval order, vesting order, reverse vesting order, distribution order or otherwise.

**SISP**

**TAKE NOTICE THAT** in accordance with the SISP Order, the Monitor is soliciting interest from all interested parties who may wish to make an offer for the Validus Entities or any of their assets or property. The deadline for submitting offers is **December 8, 2023 at 11:59 p.m. ET.**

**FURTHER TAKE NOTICE THAT** additional information regarding the SISP may be found on the Website. Any person interested in this opportunity should contact the Monitor by emailing Eli Brenner ([ebrenner@ksvadvisory.com](mailto:ebrenner@ksvadvisory.com)).



**KSV RESTRUCTURING INC.  
LICENSED INSOLVENCY TRUSTEE**  
220 Bay Street, Suite 1300, PO Box 20  
Toronto, Ontario M5J 2W4



## Appendix “M”

Validus Power Corp., Iroquois Falls Power Corp., Bay Power Corp., Kap Power Corp., Validus Hosting Inc., Kingston Cogen Limited Partnership and Kingston Cogen GP Inc.

**Projected Statement of Cash Flow**

For the Period December 16 to February 29, 2024

(Unaudited; \$C)

Week	Notes	22-Dec-23	29-Dec-23	05-Jan-24	12-Jan-24	19-Jan-24	26-Jan-24	02-Feb-24	09-Feb-24	16-Feb-24	23-Feb-24	29-Feb-24	Total
		1	2	3	4	5	6	7	8	9	10	11	
<i>Receipts</i>													
	1												
	2	1,405,000	-	-	-	621,000	-	-	-	-	591,000	-	2,617,000
	3	1,025,471	-	-	-	-	-	-	-	-	-	-	1,025,471
	4	-	-	-	-	-	-	-	-	-	2,666,400	-	2,666,400
		2,430,471	-	-	-	621,000	-	-	-	-	3,257,400	-	6,308,871
<i>Disbursements</i>													
	5	159,000	-	43,000	120,000	43,000	120,000	43,000	120,000	43,000	265,000	-	956,000
	6	184,000	169,000	82,000	81,000	60,000	133,000	44,000	40,000	40,000	133,000	-	966,000
	7	257,655	-	-	-	-	-	-	-	-	-	-	257,655
	8	-	-	49,303	-	-	-	-	23,000	-	-	-	72,303
		290,000	125,000	-	-	-	-	72,000	-	-	-	-	487,000
	9	-	-	-	-	-	-	-	-	-	1,666,400	-	1,666,400
	10	-	-	15,000	-	-	-	-	-	-	-	-	15,000
		890,655	294,000	189,303	201,000	103,000	253,000	159,000	183,000	83,000	2,064,400	-	4,420,358
<i>Net cash flow before the undernoted</i>													
		1,539,816	(294,000)	(189,303)	(201,000)	518,000	(253,000)	(159,000)	(183,000)	(83,000)	1,193,000	-	1,888,513
	11	193,000	-	-	-	400,000	-	-	300,000	-	-	500,000	1,393,000
		1,346,816	(294,000)	(189,303)	(201,000)	118,000	(253,000)	(159,000)	(483,000)	(83,000)	1,193,000	(500,000)	495,513
<i>Opening Cash Balance</i>													
		231,894	1,578,711	1,284,711	1,095,408	894,408	1,012,408	759,408	600,408	117,408	34,408	1,227,408	231,894
<i>Net cash flow</i>													
		1,346,816	(294,000)	(189,303)	(201,000)	118,000	(253,000)	(159,000)	(483,000)	(83,000)	1,193,000	(500,000)	495,513
<i>Closing Cash Balance</i>													
		1,578,711	1,284,711	1,095,408	894,408	1,012,408	759,408	600,408	117,408	34,408	1,227,408	727,408	727,408

Validus Power Corp., Iroquois Falls Power Corp., Bay Power Corp., Kap Power Corp., Validus Hosting Inc., Kingston Cogen Limited Partnership and Kingston Cogen GP Inc. (the "Applicants").

**Notes to Projected Statement of Cash Flow**

For the Period December 16 to February 29, 2024

(Unaudited; \$C)

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**Purpose and General Assumptions**

1. The purpose of the projection is to present a cash flow forecast of the Applicants for the period December 9, 2023 to February 29, 2024 (the "Period").

The cash flow projection has been prepared based on hypothetical and most probable assumptions.

Assumes the Iroquois Falls Power Corp. ("IFPC") and Kingston Cogen Limited Partnership ("KCLP") plants are not called upon to provide power during the Period

Assumes the sale transaction closes by mid February, 2024.

**Hypothetical Assumptions**

2. Represents payments from the Independent Electricity System Operator ("IESO") to IFPC and KCLP for being a capacity market participant and on standby to provide electricity generation to the market if requested by IESO. Assumes IESO pays the full amount reflected.
3. Represents a refund of the capacity market deposit paid for IFPC, KCLP and Kap Power Corp. as confirmed by IESO.

**Probable Assumptions**

4. Represents the cash consideration payable on closing of the Transaction, which is projected to cover the Priority Payments Closing Amount and Administrative Expense Closing Amount (both as defined in the Transaction Documents).
5. Includes employment related disbursements, including payroll, source deductions and other amounts. Payroll for the week ended December 29, 2023 was paid during the week ended December 22, 2023.
6. Includes costs associated with Validus Power Corp.'s firm transportation contract with TransCanada Pipelines Limited.
7. Represents insurance premiums for the period October 1, 2023 to October 1, 2024.
8. Represents the estimated fees of consultants retained during the CCAA proceedings.
9. Represents the pre-filing unremitted employee source deductions which are contemplated to be funded on or around closing of the transaction. The amount is based on an audit conducted by Canada Revenue Agency.
10. Represents a fee for the director of residualco.
11. Represents the estimated fees of KSV as receiver/CCAA monitor, as well as those of its legal counsel.

COURT FILE NO.: CV-23-00705215-00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT  
OF VALIDUS POWER CORP., IROQUOIS FALLS POWER CORP., BAY  
POWER CORP., KAP POWER CORP., VALIDUS HOSTING INC., KINGSTON  
COGEN LIMITED PARTNERSHIP AND KINGSTON COGEN GP INC.

APPLICANTS

**MANAGEMENT'S REPORT ON CASH FLOW STATEMENT**  
(paragraph 10(2)(b) of the CCAA)

KSV Restructuring Inc. as Receiver and Manager of Validus Power Corp., Iroquois Falls Power Corp., Bay Power Corp., Kap Power Corp., Validus Hosting Inc., Kingston Cogen Limited Partnership and Kingston Cogen GP Inc. (collectively, the "Applicants") has developed the assumptions and prepared the attached statement of projected cash flow as of the 22<sup>nd</sup> day of December, 2023 for the period December 16, 2023 to February 29, 2024 ("Cash Flow"). All such assumptions are disclosed in the notes to the Cash Flow.

The hypothetical assumptions are reasonable and consistent with the purpose of the Cash Flow as described in Note 1 to the Cash Flow, and the probable assumptions are suitably supported and consistent with the plans of the Applicants and provide a reasonable basis for the Cash Flow.

Since the Cash Flow is based on assumptions regarding future events, actual events will vary from the information presented and the variations may be material.

The Cash Flow has been prepared solely for the purpose outlined in Note 1 using a set of hypothetical and probable assumptions set out therein. Consequently, readers are cautioned that the Cash Flow may not be appropriate for other purposes.

Dated at Toronto, Ontario this 21<sup>st</sup> day of December, 2023.

*KSV Restructuring Inc.*

**KSV RESTRUCTURING INC.  
IN ITS CAPACITY AS RECEIVER AND MANAGER OF  
VALIDUS POWER CORP., IROQUOIS FALLS POWER CORP., BAY POWER CORP., KAP  
POWER CORP., VALIDUS HOSTING INC., KINGSTON COGEN LIMITED PARTNERSHIP  
AND KINGSTON COGEN GP INC.**

COURT FILE NO.: CV-23-00705215-00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF VALIDUS  
POWER CORP., IROQUOIS FALLS POWER CORP., BAY POWER CORP., KAP POWER  
CORP., VALIDUS HOSTING INC., KINGSTON COGEN LIMITED PARTNERSHIP AND  
KINGSTON COGEN GP INC.

**MONITOR'S REPORT ON CASH FLOW STATEMENT**  
(paragraph 23(1)(b) of the CCAA)

The attached statement of projected cash-flow of Validus Power Corp., Iroquois Falls Power Corp., Bay Power Corp., Kap Power Corp., Validus Hosting Inc., Kingston Cogen Limited Partnership and Kingston Cogen GP Inc. (collectively, the "Applicants") as of the 22<sup>nd</sup> day December, 2023, consisting of a weekly projected cash flow statement for the period December 16, 2023 to February 29, 2024 (the "Cash Flow") has been prepared by KSV Restructuring Inc. in its capacity as Receiver and Manager of the Applicants (the "Receiver") for the purpose described in Note 1, using probable and hypothetical assumptions set out in the notes to the Cash Flow.

Our review consisted of inquiries, analytical procedures and discussions related to information supplied by the Receiver. We have reviewed the support provided by the Receiver for the probable and hypothetical assumptions and the preparation and presentation of the Cash Flow.

Based on our review, nothing has come to our attention that causes us to believe that, in all material respects:

- a) the hypothetical assumptions are not consistent with the purpose of the Cash Flow;
- b) as at the date of this report, the probable assumptions developed by the Receiver are not suitably supported and consistent with the plans of the Applicants or do not provide a reasonable basis for the Cash Flow, given the hypothetical assumptions; or
- c) the Cash Flow does not reflect the probable and hypothetical assumptions.

Since the Cash Flow is based on assumptions regarding future events, actual results will vary from the information presented, and the variations may be material. Accordingly, we express no assurance as to whether the Cash Flow will be achieved. We express no opinion or other form of assurance with respect to the accuracy of any financial information presented in this report, or relied upon in preparing this report.

The Cash Flow has been prepared solely for the purpose described in Note 1 and readers are cautioned that it may not be appropriate for other purposes.

Dated at Toronto this 22<sup>nd</sup> day of December, 2023.

A handwritten signature in blue ink that reads "KSV Restructuring Inc." The signature is written in a cursive, flowing style.

**KSV RESTRUCTURING INC.  
IN ITS CAPACITY AS CCAA MONITOR OF  
VALIDUS POWER CORP., IROQUOIS FALLS POWER CORP., BAY POWER CORP., KAP  
POWER CORP., VALIDUS HOSTING INC. AND KINGSTON COGEN GP INC.**

## Appendix “N”

COURT FILE NO.: CV-23-00705215-00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

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

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

AFFIDAVIT OF ROBERT KOFMAN  
(sworn December 22, 2023)

I, **ROBERT KOFMAN**, of the City of Toronto, in the Province of Ontario, **MAKE OATH AND SAY AS FOLLOWS:**

1. I am the President of KSV Restructuring Inc. ("KSV"), the Court-appointed receiver and manager (the "Receiver") and monitor (the "Monitor") under the *Companies' Creditors Arrangement Act* (the "CCAA") of Validus Power Corp., Iroquois Falls Power Corp., Bay Power Corp., Kap Power Corp., Validus Hosting Inc., Kingston Cogen GP Inc. and Kingston Cogen Limited Partnership. (collectively, the "Companies"), and as such, I have knowledge of the matters deposed to herein.
2. Pursuant to an order of the Ontario Superior Court of Justice ("Court") made on August 10, 2023, KSV was appointed Receiver of the Companies' property, assets and undertaking. Pursuant to a Court order made on August 29, 2023, the Companies were granted protection under the CCAA and KSV was appointed as the Monitor in these proceedings.
3. This Affidavit is sworn in support of a motion seeking, among other things, approval of the Receiver's and the Monitor's fees and disbursements for the period August 1, 2023 to November 30, 2023 (the "Period").





Attached is Exhibit "A"

Referred to in the

AFFIDAVIT OF ROBERT KOFMAN

Sworn before me

This 22nd day of December, 2023



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Rajinder Kashyap, a Commissioner, etc.,  
Province of Ontario, for KSV Restructuring Inc.  
Expires January 27, 2024



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F +1 416 932 6266  
  
ksvadvisory.com

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## INVOICE

Validus Power Corp. et al  
c/o KSV Restructuring Inc.  
220 Bay Street, Suite 1300  
Toronto, ON M5J 2W4

September 21, 2023

Invoice No: 3276  
HST #: 818808768RT0001

**Re: Validus Power Corp. et al (collectively, the “Company”)**

For professional services rendered from August 2 to August 31, 2023 by KSV Restructuring Inc. (“KSV”), in its capacities as interim receiver (the “Interim Receiver”) pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the “Court”) dated August 2, 2023 and as receiver and manager (the “Receiver”) pursuant to a Court order dated August 10, 2023, including:

- corresponding regularly with Torys LLP (“Torys”), legal counsel to Macquarie Equipment Finance Limited (“Macquarie”), and Norton Rose Fullbright (Canada) LLP (“NRF”), legal counsel to the Interim Receiver and Receiver, in connection with all matters in the interim receivership and receivership proceedings;
- attending at Court on August 2, 2023 for the hearing of the interim receivership application;
- convening a townhall meeting with all employees on August 3, 2023 to advise of the interim receivership order and address any questions;
- preparing scripts to assist employees to address vendor or stakeholder questions regarding the interim receivership proceedings;
- drafting the statement and notice of the interim receiver as required under Subsections 245 and 246 of the Bankruptcy and Insolvency Act and arranging for same to be sent to the Company’s creditors and filed with the Office of the Superintendent of Bankruptcy;
- reviewing and commenting on draft supplemental receivership application materials filed by Macquarie, including the draft supplemental affidavit of Josh Stevens sworn August 2, 2023, the second supplemental affidavit of Josh Stevens sworn August 8, 2023 and a reply factum dated August 9, 2023;

- reviewing the Company's responding materials, including the affidavit of Todd Shortt sworn August 7, 2023 and its supplementary responding motion record of the respondents dated August 10, 2023;
- drafting the Interim Receiver's first report to court dated August 9, 2023;
- attending at Court on August 10, 2023 for the hearing of the receivership application;
- convening a townhall meeting on August 11, 2023 to discuss the appointment of KSV as Receiver;
- drafting termination letters to certain members of the Company's management team;
- corresponding with Ryan Forget of Complete Energy Consulting in respect of the retention of Mr. Forget to assist the receiver oversee the Company's operations;
- negotiating a consulting agreement between the Receiver and Mr. Forget;
- engaging with the Company's plant managers and Mr. Forget on all operational issues, including attending weekly management meetings on August 8, 15, 22 and 29, 2023;
- attending at numerous meetings on a near daily basis at the outset of these proceedings between Mr. Forget and the Company's management team;
- reviewing and commenting on several versions of updated cash flow forecasts and working with Macquarie thereon;
- corresponding regularly with representatives of Macquarie regarding critical issues, including in respect of the state of the Company's books and records, Enbridge gas, insurance matters, security and employee issues;
- arranging for the payment of unpaid wages, RRSP contributions and other benefits following consultation with Macquarie;
- corresponding with NRF in connection with its dealings with legal counsel to the two unions involved in these proceedings, being the Power Workers Union and the International Union of Operating Engineers, and reviewing correspondence and materials in respect thereof;
- corresponding with Shelley Goertz, the Company's former CFO, regarding various accounting, finance and payroll issues;
- dealing with Ms. Goertz to obtain information needed for various receivership matters;
- arranging for a backup of a Company laptop in Ms. Goertz's possession;
- reviewing documents and information concerning letters of credit issued by TD Bank in favour of IESO, Enbridge and other parties and discussing same with NRF;

- corresponding with Bennett Jones LLP, legal counsel to Hut 8 Mining Corp. (“Hut8”), to understand the litigation between the Company and Hut8;
- corresponding with NRF in connection with certain legal issues, including the Hut8 litigation and a dispute over certain funds being held by CIBC;
- reviewing correspondence between NRF and CIBC’s legal counsel in connection with CIBC’s hold on approximately \$550,000 in the Company’s bank accounts;
- corresponding with CIBC to arrange for the transfer of funds into the Receiver’s accounts;
- processing payments from the receivership accounts for post-filing expenses, including payroll;
- corresponding with Canada Revenue Agency (“CRA”) to arrange for payroll and HST audits on the Company’s accounts;
- reviewing correspondence from CRA in respect of the Company’s source deduction remittances;
- corresponding with the IESO in connection with its monthly remittances to the Company and reviewing supporting documentation in respect thereof;
- attending at the Company’s leased head office premises in downtown Toronto (which is vacant) to view the office contents and any books and records on the premises;
- arranging for a desktop appraisal of certain equipment at the Company’s plant in Iroquois Falls, Ontario;
- arranging for the Company’s payroll to be process by ADP and providing ADP with the information to commence the payroll transition process;
- drafting the Receiver’s first report to Court dated August 23, 2023 (the “First Report”), the purpose of which was to seek authorization for the Receiver to commence proceedings under the *Companies’ Creditors Arrangement Act* (“CCAA”);
- reviewing and commenting on all Court materials filed in connection with the Receiver’s motion returnable August 29, 2023, including the draft factum, notice of motion and order;
- attending at Court on August 29, 2023;
- to all other meetings, correspondence, etc. pertaining to this matter.

Total fees and disbursements per attached time summary	\$ 171,812.83
HST	22,335.67
Total Due	\$ <u>194,148.50</u>

KSV Restructuring Inc.  
Interim Receivership and Receivership of Validus Power Corp. et al

**Time Summary**

For the period ended August 31, 2023

<b>Personnel</b>	<b>Rate (\$)</b>	<b>Hours</b>	<b>Amount (\$)</b>
Bobby Kofman	800	44.80	35,840.00
David Sieradzki	700	30.00	21,000.00
Jordan Wong	525	161.00	84,525.00
Meg Ostling	425	14.00	5,950.00
Nikita Gupta	325	23.65	7,686.25
Catherine Theriault	225	46.00	10,350.00
Other Staff and Administration			5,684.75
Total Fees			<u>171,036.00</u>
Disbursements			776.83
Total Fees and Disbursements			<u><u>171,812.83</u></u>



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## INVOICE

Validus Power Corp. et al  
c/o KSV Restructuring Inc.  
220 Bay Street, Suite 1300  
Toronto, ON M5J 2W4

September 21, 2023

Invoice No: 3277  
HST #: 818808768RT0001

**Re: Validus Power Corp. et al (collectively, the “Company”)**

For professional services rendered during August 2023 by KSV Restructuring Inc. (“KSV”), in its capacity as Court-appointed Monitor (the “Monitor”) in connection with proceedings under the *Companies’ Creditors Arrangement Act* (“CCAA”), including:

- corresponding regularly with Torys LLP (“Torys”), legal counsel to Macquarie Equipment Finance Limited (“Macquarie”), and Norton Rose Fullbright (Canada) LLP (“NRF”), legal counsel to the Monitor, to prepare for a CCAA application heard on August 29, 2023;
- drafting the report of the proposed Monitor dated August 23, 2023 (the “Pre-Filing Report”);
- corresponding with NRF and Torys regarding the draft Pre-Filing Report and incorporating comments thereon;
- working with Macquarie to finalize a cash flow forecast which was appended to the Pre-Filing Report;
- reviewing and commenting on all Court materials filed in connection with the CCAA application;
- attending at Court on August 29, 2023 for the CCAA application;
- corresponding extensively by phone and email with Bennett Jones LLP, legal counsel to Hut 8 Mining Corp. (“Hut8”), and Torys, to discuss the sale and investment solicitation process (“SISP”), a potential stalking horse transaction agreement and related issues;

- reviewing and commenting several versions of draft transaction agreements in connection with a stalking horse offer to be submitted by Macquarie and Hut8, including drafts of:
  - an offer letter from the stalking horse bidder;
  - a transaction agreement with the stalking horse bidder;
  - a document setting out the terms and conditions of the proposed transaction; and
  - a break-up fee agreement;
- corresponding with Torys, NRF and Bennett Jones regarding a planned sale and investment solicitation process (“SISP”) and reviewing and commenting on multiple versions of the draft SISP;
- corresponding extensively with NRF regarding the draft SISP, transaction agreement and the scheduling of a hearing to approve the SISP;
- responding to numerous information requests provided by Torys, Bennett Jones, Macquarie and Hut8;
- reviewing certain matters involving a contract with TransCanada Pipelines and discussing same with Ryan Forget;
- considering timing for deposits and other issues in connection with the upcoming IESO capacity auction;
- to all other meetings, correspondence, etc. pertaining to this matter.

Total fees and disbursements per attached time summary	\$ 39,982.50
HST	<u>5,197.73</u>
Total Due	<u>\$ 45,180.23</u>



KSV Restructuring Inc.  
CCAA of Validus Power Corp. et al

**Time Summary**

For the period ended August 31, 2023

<b>Personnel</b>	<b>Rate (\$)</b>	<b>Hours</b>	<b>Amount (\$)</b>
Bobby Kofman	800	12.50	10,000.00
David Sieradzki	700	11.50	8,050.00
Eli Brenner	535	17.00	9,095.00
Jordan Wong	525	22.50	11,812.50
Other Staff and Administration			1,025.00
Total Fees			39,982.50
Disbursements			-
Total Fees and Disbursements			39,982.50



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## INVOICE

Validus Power Corp. et al  
c/o KSV Restructuring Inc.  
220 Bay Street, Suite 1300  
Toronto, ON M5J 2W4

October 30, 2023

Invoice No: 3334  
HST #: 818808768RT0001

**Re: Validus Power Corp. et al (collectively, the “Company”)**

For professional services rendered during September 2023 by KSV Restructuring Inc. (“KSV”), in its capacity as Court-appointed Monitor (the “Monitor”) in connection with proceedings under the *Companies’ Creditors Arrangement Act* (“CCAA”), including:

**General**

- corresponding regularly with Norton Rose Fullbright (Canada) LLP (“NRF”), legal counsel to the Monitor, regarding all aspects of the CCAA and receivership proceedings;
- corresponding regularly with Torys LLP (“Torys”), legal counsel to Macquarie Equipment Finance Limited (“Macquarie”), Bennett Jones LLP (“Bennett Jones”), legal counsel to Hut 8 Mining Corp. (“Hut8” and with Macquarie, the “Stalking Horse Bidders”), regarding all aspects of the proposed stalking horse offer (the “SH Offer) submitted by the Stalking Horse Bidders in October 2023;
- corresponding with Torys, NRF and Bennett Jones regarding a planned sale and investment solicitation process (“SISP”) and reviewing and commenting on multiple versions of the draft SISP;
- drafting the Monitor’s first report to Court dated September 1, 2023, the purpose of which was to seek an extension of the stay of proceedings;
- reviewing and commenting on all Court materials filed in connection with a motion returnable September 8, 2023, including the draft notice of motion and order;
- attending at Court (virtually) on September 8, 2023;
- reviewing the Court’s endorsement and order granted on September 8, 2023;
- reviewing a desktop appraisal for certain equipment at the Company’s IFPC plant;

- corresponding extensively with representatives of Arthur J. Gallagher Canada Limited, the Company's insurance broker, regarding the renewal of insurance coverage beyond October 1, 2023 and corresponding with Macquarie regarding same;
- reviewing documents and information concerning letters of credit issued by TD Bank in favour of IESO, Enbridge and other parties and discussing same with NRF;
- corresponding with NRF in connection with certain legal issues, including the Hut8 litigation and a dispute over certain funds being held by CIBC;
- corresponding with Macquarie and Torys regarding the funds held by CIBC;
- attending a call on September 11, 2023 with NRF and Goldblatt Partners LLP, legal counsel for the Power Worker's Union;

### **SISP and SH Offer**

- reviewing and commenting on multiple versions of draft transaction agreements in connection with the SH Offer to be submitted by the Stalking Horse Bidders, including drafts of:
  - an offer letter from the stalking horse bidder;
  - a transaction agreement with the stalking horse bidder;
  - a document setting out the terms and conditions of the proposed transaction; and
  - a break-up fee agreement;
- corresponding extensively with NRF regarding the draft SISP, SH Offer and the scheduling of a hearing to approve the SISP and attending numerous calls in respect of same;
- responding to numerous information requests from Torys, Bennett Jones and the Stalking Horse Bidders;
- attending numerous calls with NRF, Torys and Bennett Jones regarding the SH Offer and the SISP;
- reviewing marketing materials used in the sale process conducted by Ernst & Young Corporate Finance (Canada) Inc. for Iroquois Falls Power Corp. ("IFPC") in the summer of 2023;
- preparing a teaser, data room and a listing of potential buyers in preparation for the SISP;
- responding to unsolicited inquiries from third parties regarding the SISP;
- corresponding with the Stalking Horse Bidders regarding priority claims, including with respect to the Company's unremitted source deductions;

### Secured Creditor Dealings

- corresponding extensively with Macquarie to provide updates and discuss operational and financial matters;
- corresponding with Macquarie regarding payment of pre-filing employee RRSP arrears;
- corresponding with NRF and Torys regarding the quantum of Macquarie's secured claim;
- reviewing a draft memo prepared by NRF in respect of the calculation of Macquarie's claim and the Company's litigation with Hut 8;
- reviewing the lease agreement between Macquarie and the Company;
- corresponding with Macquarie regarding a change in Bay Power Corp.'s account with Enbridge Gas Inc. ("Enbridge");
- corresponding with Macquarie regarding the retention of Ryan Chua, the Company's former general counsel;
- negotiating a consulting agreement between the Monitor and Mr. Chua;

### Operations

- corresponding with Ryan Forget of Complete Energy Consulting in respect of key operating matters, including regulation, safety and technical matters;
- engaging with the Company's plant managers and Mr. Forget on all operational issues, including attending weekly management meetings on September 5, 12, 19 and 26, 2023;
- corresponding with Mr. Forget and the IFPC plant manager regarding logistics for IFPC's electricity generation regulatory testing and maintenance performed on September 5, 6 and 7, 2023;
- corresponding with Macquarie Energy Canada Ltd. and Enbridge regarding the supply of gas and pipeline availability for IFPC's testing;
- corresponding with Mr. Forget regarding environmental testing at each of the plants;
- corresponding with Enbridge regarding the continued provision of gas pipeline availability to each of the plants and Enbridge's security pursuant to letters of credit issued by the Company;
- corresponding with NRF regarding Enbridge's security and attending a call with NRF and Enbridge on September 7, 2023 in respect of same;
- reviewing certain matters involving a contract with TransCanada Pipelines and discussing same with Mr. Forget;

- corresponding with Mr. Forget regarding the upcoming Independent Electricity System Operator (“IESO”) capacity auction;
- corresponding with Mr. Forget regarding an extension of the Company’s electricity generation license and reviewing and commenting on Mr. Forget’s letter to the Ontario Energy Board in respect of same;
- corresponding regularly with employees regarding payroll, RRSP contributions and benefit coverage;

### **Finance and Accounting**

- working with Macquarie to update a cash flow forecast and discussing potential funding requirements;
- corresponding with Mr. Forget regarding the cash flow forecast and details regarding the deposit required for the upcoming IESO capacity auction;
- preparing a cash flow variance analysis and monitoring cash flow activity on a weekly basis;
- corresponding with Shelley Goertz, the Company’s former CFO, regarding various accounting, finance and payroll issues;
- dealing with Ms. Goertz to obtain information needed for various matters, including with respect to the Stalking Horse Bidder’s due diligence requests;
- corresponding with Ms. Goertz to process payroll;
- arranging for the Company’s payroll to be processed by ADP Canada Co. (“ADP”) and providing ADP with the information to commence the payroll transition process;
- attending several calls with ADP to set up payroll and review weekly payroll reports;
- corresponding with Canada Life regarding the payment of RRSP contributions;
- reviewing a draft valuation report prepared by Kroll Canada Limited regarding its valuation of Iroquois Falls Power Corp.;
- attending several calls with a representative of Canada Revenue Agency (“CRA”) regarding its payroll examination;
- preparing a response to CRA’s payroll examination and reviewing information provided by Ms. Goertz;

### **Other**

- corresponding with CIBC to arrange for the transfer of funds into the Receiver’s accounts;
- dealing with a setoff claim advanced by CIBC and discussing same with Macquarie, Torys and NRF;

- processing payments from the receivership accounts for post-filing expenses, including payroll;
- responding to numerous enquiries received from the Company's creditors;
- arranging for the continued supply of goods and services with vendors;
- maintaining the Monitor's case website; and
- to all other meetings, correspondence, etc. pertaining to this matter.

Total fees and disbursements per attached time summary	\$ 194,857.49
HST	<u>25,331.47</u>
Total Due	\$ <u><u>220,188.96</u></u>

KSV Restructuring Inc.  
CCAA of Validus Power Corp. et al

**Time Summary**

For the month ended September 30, 2023

<b>Personnel</b>	<b>Rate (\$)</b>	<b>Hours</b>	<b>Amount (\$)</b>
Bobby Kofman	800	66.10	52,880.00
David Sieradzki	700	55.00	38,500.00
Eli Brenner	535	19.50	10,432.50
Jordan Wong	525	112.75	59,193.75
Meg Ostling	425	25.50	10,837.50
Other Staff and Administration			22,876.25
Total Fees			194,720.00
Disbursements (postage and photocopies)			137.49
Total Fees and Disbursements			194,857.49



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## INVOICE

Validus Power Corp. et al  
c/o KSV Restructuring Inc.  
220 Bay Street, Suite 1300  
Toronto, ON M5J 2W4

November 17, 2023

Invoice No: 3363  
HST #: 818808768RT0001

**Re: Validus Power Corp. et al (collectively, the “Company”)**

For professional services rendered during October 2023 by KSV Restructuring Inc. (“KSV”), in its capacity as Court-appointed Monitor (the “Monitor”) in connection with proceedings under the *Companies’ Creditors Arrangement Act* (“CCAA”), including:

**General**

- corresponding regularly with Norton Rose Fullbright (Canada) LLP (“NRF”), legal counsel to the Monitor, regarding all aspects of the CCAA and receivership proceedings;
- corresponding regularly with Torys LLP (“Torys”), legal counsel to Macquarie Equipment Finance Limited (“Macquarie”), Bennett Jones LLP (“Bennett Jones”), legal counsel to Hut 8 Mining Corp. (“Hut8” and with Macquarie, the “Stalking Horse Bidders”), regarding all aspects of their stalking horse offer dated October 16, 2023 (the “SH Offer”);
- corresponding extensively with Torys, NRF and Bennett Jones regarding a sale and investment solicitation process (“SISP”) and reviewing and commenting on multiple versions of the draft SISP;
- drafting the Monitor’s second report to Court dated October 19, 2023, the purpose of which was to recommend Court approval of the SISP and the SH Offer;
- reviewing and commenting on all Court materials filed in connection with a SISP approval motion returnable November 1, 2023, including the:
  - notice of motion;
  - order;
  - factum of the Monitor dated October 23, 2023;



- responding factum dated October 26, 2023 filed by Minden Gross LLP on behalf of the Company;
- factum of Macquarie dated October 30, 2023;
- reply record of Macquarie dated October 30, 2023;
- attending at Court (virtually) on October 23, 2023 for a scheduling motion;
- reviewing the Court's endorsement dated October 23, 2023;
- corresponding extensively with representatives of Arthur J. Gallagher Canada Limited, the Company's insurance broker, to renew insurance coverage beyond October 1, 2023 and corresponding with Macquarie regarding same;
- reviewing documents and information concerning letters of credit issued by TD Bank in favour of Independent Electricity System Operator ("IESO"), Enbridge and other parties and discussing same with NRF;
- corresponding with NRF in connection with certain legal issues, including the Hut8 litigation and a dispute over certain funds being held by CIBC;
- corresponding with Macquarie and Torys regarding the funds held by CIBC;

#### **SISP and SH Offer**

- reviewing and commenting on multiple versions of draft transaction agreements in connection with the SH Offer prior to submission on October 16, 2023, including drafts of:
  - an offer letter from the Stalking Horse Bidders;
  - a transaction agreement with the Stalking Horse Bidders;
  - a document setting out the terms and conditions of the proposed transaction; and
  - a break-up fee agreement;
- corresponding extensively with NRF regarding the draft SISP and SH Offer and attending numerous calls in respect of same;
- responding to numerous information requests from Torys, Bennett Jones and the Stalking Horse Bidders;
- attending numerous calls with NRF, Torys and Bennett Jones regarding the SH Offer and the SISP;
- preparing and finalizing a teaser and a listing of potential buyers in preparation for the SISP;
- setting up a virtual data room for the SISP;
- responding to unsolicited inquiries from third parties regarding the SISP;

- corresponding with the Stalking Horse Bidders regarding priority claims, including with respect to the Company's unremitted source deductions;

### **Secured Creditor Dealings**

- corresponding extensively with Macquarie to provide updates and discuss operational and financial matters;
- corresponding with NRF and Torys regarding the quantum of Macquarie's secured claim;
- considering legal issues in respect of the calculation of Macquarie's claim and the Company's litigation with Hut 8;
- corresponding with Macquarie regarding a change in Bay Power Corp.'s account with Enbridge Gas Inc. ("Enbridge");
- corresponding with Macquarie regarding the retention of Ryan Chua, the Company's former general counsel;

### **Operations**

- corresponding with Ryan Forget of Complete Energy Consulting, a consultant retained during these proceedings, in respect of key operating matters, including regulation, safety and technical matters;
- engaging with the Company's plant managers and Mr. Forget on all operational issues, including attending weekly management meetings on October 3, 10, 17, 23 and 31, 2023;
- corresponding with Macquarie Energy Canada Ltd. and Enbridge regarding the supply of gas and pipeline availability for IFPC's testing;
- corresponding with Mr. Forget regarding environmental testing at each of the plants;
- corresponding with Enbridge regarding the continued provision of gas pipeline availability to each of the plants and Enbridge's security pursuant to letters of credit issued by the Company;
- reviewing certain matters involving a contract with TransCanada Pipelines and discussing same with Mr. Forget;
- corresponding with Mr. Forget regarding the upcoming Independent Electricity System Operator ("IESO") capacity auction;
- reviewing documents in connection with IESO's "LT1" bid submission process and discussing same with Mr. Forget and Macquarie;
- corresponding with Mr. Forget regarding an extension of the Company's electricity generation license and reviewing and commenting on Mr. Forget's letter to the Ontario Energy Board in respect of same;
- corresponding regularly with employees regarding payroll, RRSP contributions and benefit coverage;

**Finance and Accounting**

- working with Macquarie to update a cash flow forecast and discussing potential funding requirements;
- corresponding with Mr. Forget regarding the cash flow forecast and details regarding the deposit required for the upcoming IESO capacity auction;
- preparing a cash flow variance analysis and monitoring cash flow activity on a weekly basis;
- corresponding with Shelley Goertz, the Company's former CFO, regarding various accounting, finance and payroll issues;
- dealing with Ms. Goertz to obtain information needed for various matters, including with respect to the Stalking Horse Bidder's due diligence requests;
- dealing with the Company's payroll provider, ADP Canada Co. ("ADP"), and providing ADP with the information to commence the payroll transition process;
- attending several calls with a representative of Canada Revenue Agency ("CRA") regarding its payroll examination;

**Other**

- corresponding with CIBC to arrange for the transfer of funds into the Receiver's accounts;
- dealing with a setoff claim advanced by CIBC and discussing same with Macquarie, Torys and NRF;
- processing payments from the receivership accounts for post-filing expenses, including payroll;
- corresponding with Mr. Forget and legal counsel in connection with a potential carbon tax obligation and reviewing information in respect thereof;
- responding to numerous enquiries received from the Company's creditors;
- arranging for the continued supply of goods and services with vendors;
- maintaining the Monitor's case website; and
- to all other meetings, correspondence, etc. pertaining to this matter.

Total fees and disbursements per attached time summary	\$ 135,840.22
HST	<u>17,659.23</u>
Total Due	<u>\$ 153,499.45</u>

KSV Restructuring Inc.  
 CCAA of Validus Power Corp. et al

**Time Summary**

For the month ended October 31, 2023

<b>Personnel</b>	<b>Rate (\$)</b>	<b>Hours</b>	<b>Amount (\$)</b>
Bobby Kofman	800	47.30	37,840.00
David Sieradzki	700	67.50	47,250.00
Eli Brenner	535	17.75	9,496.25
Jordan Wong	525	48.00	25,200.00
Catherine Theriault	225	22.25	5,006.25
Lynne Quintos	175	17.90	3,132.50
Other Staff and Administration	175 - 210	42.50	7,872.25
Total Fees			<u>135,797.25</u>
Disbursements			42.97
Total Fees and Disbursements			<u><u>135,840.22</u></u>



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## INVOICE

Validus Power Corp. et al  
c/o KSV Restructuring Inc.  
220 Bay Street, Suite 1300  
Toronto, ON M5J 2W4

November 17, 2023

Invoice No: 3363  
HST #: 818808768RT0001

**Re: Validus Power Corp. et al (collectively, the “Company”)**

For professional services rendered during October 2023 by KSV Restructuring Inc. (“KSV”), in its capacity as Court-appointed Monitor (the “Monitor”) in connection with proceedings under the *Companies’ Creditors Arrangement Act* (“CCAA”), including:

**General**

- corresponding regularly with Norton Rose Fullbright (Canada) LLP (“NRF”), legal counsel to the Monitor, regarding all aspects of the CCAA and receivership proceedings;
- corresponding regularly with Torys LLP (“Torys”), legal counsel to Macquarie Equipment Finance Limited (“Macquarie”), Bennett Jones LLP (“Bennett Jones”), legal counsel to Hut 8 Mining Corp. (“Hut8” and with Macquarie, the “Stalking Horse Bidders”), regarding all aspects of their stalking horse offer dated October 16, 2023 (the “SH Offer”);
- corresponding extensively with Torys, NRF and Bennett Jones regarding a sale and investment solicitation process (“SISP”) and reviewing and commenting on multiple versions of the draft SISP;
- drafting the Monitor’s second report to Court dated October 19, 2023, the purpose of which was to recommend Court approval of the SISP and the SH Offer;
- reviewing and commenting on all Court materials filed in connection with a SISP approval motion returnable November 1, 2023, including the:
  - notice of motion;
  - order;
  - factum of the Monitor dated October 23, 2023;

- responding factum dated October 26, 2023 filed by Minden Gross LLP on behalf of the Company;
- factum of Macquarie dated October 30, 2023;
- reply record of Macquarie dated October 30, 2023;
- attending at Court (virtually) on October 23, 2023 for a scheduling motion;
- reviewing the Court's endorsement dated October 23, 2023;
- corresponding extensively with representatives of Arthur J. Gallagher Canada Limited, the Company's insurance broker, to renew insurance coverage beyond October 1, 2023 and corresponding with Macquarie regarding same;
- reviewing documents and information concerning letters of credit issued by TD Bank in favour of Independent Electricity System Operator ("IESO"), Enbridge and other parties and discussing same with NRF;
- corresponding with NRF in connection with certain legal issues, including the Hut8 litigation and a dispute over certain funds being held by CIBC;
- corresponding with Macquarie and Torys regarding the funds held by CIBC;

#### **SISP and SH Offer**

- reviewing and commenting on multiple versions of draft transaction agreements in connection with the SH Offer prior to submission on October 16, 2023, including drafts of:
  - an offer letter from the Stalking Horse Bidders;
  - a transaction agreement with the Stalking Horse Bidders;
  - a document setting out the terms and conditions of the proposed transaction; and
  - a break-up fee agreement;
- corresponding extensively with NRF regarding the draft SISP and SH Offer and attending numerous calls in respect of same;
- responding to numerous information requests from Torys, Bennett Jones and the Stalking Horse Bidders;
- attending numerous calls with NRF, Torys and Bennett Jones regarding the SH Offer and the SISP;
- preparing and finalizing a teaser and a listing of potential buyers in preparation for the SISP;
- setting up a virtual data room for the SISP;
- responding to unsolicited inquiries from third parties regarding the SISP;

- corresponding with the Stalking Horse Bidders regarding priority claims, including with respect to the Company's unremitted source deductions;

### **Secured Creditor Dealings**

- corresponding extensively with Macquarie to provide updates and discuss operational and financial matters;
- corresponding with NRF and Torys regarding the quantum of Macquarie's secured claim;
- considering legal issues in respect of the calculation of Macquarie's claim and the Company's litigation with Hut 8;
- corresponding with Macquarie regarding a change in Bay Power Corp.'s account with Enbridge Gas Inc. ("Enbridge");
- corresponding with Macquarie regarding the retention of Ryan Chua, the Company's former general counsel;

### **Operations**

- corresponding with Ryan Forget of Complete Energy Consulting, a consultant retained during these proceedings, in respect of key operating matters, including regulation, safety and technical matters;
- engaging with the Company's plant managers and Mr. Forget on all operational issues, including attending weekly management meetings on October 3, 10, 17, 23 and 31, 2023;
- corresponding with Macquarie Energy Canada Ltd. and Enbridge regarding the supply of gas and pipeline availability for IFPC's testing;
- corresponding with Mr. Forget regarding environmental testing at each of the plants;
- corresponding with Enbridge regarding the continued provision of gas pipeline availability to each of the plants and Enbridge's security pursuant to letters of credit issued by the Company;
- reviewing certain matters involving a contract with TransCanada Pipelines and discussing same with Mr. Forget;
- corresponding with Mr. Forget regarding the upcoming Independent Electricity System Operator ("IESO") capacity auction;
- reviewing documents in connection with IESO's "LT1" bid submission process and discussing same with Mr. Forget and Macquarie;
- corresponding with Mr. Forget regarding an extension of the Company's electricity generation license and reviewing and commenting on Mr. Forget's letter to the Ontario Energy Board in respect of same;
- corresponding regularly with employees regarding payroll, RRSP contributions and benefit coverage;

**Finance and Accounting**

- working with Macquarie to update a cash flow forecast and discussing potential funding requirements;
- corresponding with Mr. Forget regarding the cash flow forecast and details regarding the deposit required for the upcoming IESO capacity auction;
- preparing a cash flow variance analysis and monitoring cash flow activity on a weekly basis;
- corresponding with Shelley Goertz, the Company's former CFO, regarding various accounting, finance and payroll issues;
- dealing with Ms. Goertz to obtain information needed for various matters, including with respect to the Stalking Horse Bidder's due diligence requests;
- dealing with the Company's payroll provider, ADP Canada Co. ("ADP"), and providing ADP with the information to commence the payroll transition process;
- attending several calls with a representative of Canada Revenue Agency ("CRA") regarding its payroll examination;

**Other**

- corresponding with CIBC to arrange for the transfer of funds into the Receiver's accounts;
- dealing with a setoff claim advanced by CIBC and discussing same with Macquarie, Torys and NRF;
- processing payments from the receivership accounts for post-filing expenses, including payroll;
- corresponding with Mr. Forget and legal counsel in connection with a potential carbon tax obligation and reviewing information in respect thereof;
- responding to numerous enquiries received from the Company's creditors;
- arranging for the continued supply of goods and services with vendors;
- maintaining the Monitor's case website; and
- to all other meetings, correspondence, etc. pertaining to this matter.

Total fees and disbursements per attached time summary	\$ 135,840.22
HST	<u>17,659.23</u>
Total Due	<u>\$ 153,499.45</u>



KSV Restructuring Inc.  
 CCAA of Validus Power Corp. et al

**Time Summary**

For the month ended October 31, 2023

<b>Personnel</b>	<b>Rate (\$)</b>	<b>Hours</b>	<b>Amount (\$)</b>
Bobby Kofman	800	47.30	37,840.00
David Sieradzki	700	67.50	47,250.00
Eli Brenner	535	17.75	9,496.25
Jordan Wong	525	48.00	25,200.00
Catherine Theriault	225	22.25	5,006.25
Lynne Quintos	175	17.90	3,132.50
Other Staff and Administration	175 - 210	42.50	7,872.25
Total Fees			<u>135,797.25</u>
Disbursements			42.97
Total Fees and Disbursements			<u><u>135,840.22</u></u>

Attached is Exhibit "B"

Referred to in the

AFFIDAVIT OF ROBERT KOFMAN

Sworn before me

this 22nd day of December, 2023



---

Rajinder Kashyap, a Commissioner, etc.,  
Province of Ontario, for KSV Restructuring Inc.  
Expires January 27, 2024

Validus Power Corp. et al

**Time Summary**

For the Period from August 1 to November 30, 2023

Personnel	Title	Hours	Billing Rate (\$ per hour)	Amount (\$)
Robert Kofman	Managing Director	197.80	800	158,240.00
David Sieradzki	Managing Director	202.00	700	141,400.00
Eli Brenner	Managing Director	95.25	535	50,958.75
Jordan Wong	Director	388.00	525	203,700.00
Meg Ostling	Manager	39.50	425	16,787.50
Nikita Gupta	Associate	23.65	325	7,686.25
Catherine Theriault	Bankruptcy Administrator	108.00	225	24,300.00
Lynne Quintos	Assistant	79.15	175	13,851.25
Other staff and administrative	Assistant	104.25	175-205	32,416.25
Total fees		<u>1,237.60</u>		<u>649,340.00</u>
Average hourly rate				<u>\$ 524.68</u>

## Appendix “O”

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

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

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

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

**AFFIDAVIT OF JENNIFER STAM**  
(sworn December 21, 2023)

I, Jennifer Stam, of the City of Toronto, **MAKE OATH AND SAY:**

1. I am a barrister and solicitor qualified to practice law in the Province of Ontario and a partner with Norton Rose Fulbright Canada LLP ("**NRFC**"), counsel to KSV Restructuring Inc. ("**KSV**"), in its capacity as Court-appointed monitor (the "**Monitor**") in these CCAA proceedings and in its capacity as Court-appointed receiver (the "**Receiver**") in the related receivership proceedings, bearing Court File No.: CV-23-00703754-00CL (collectively, the "**Proceedings**"), and as such have knowledge of the matters herein deposed to. Where I have indicated that I have obtained facts from other sources, I believe those facts to be true.
2. I make this affidavit in support of a motion by the Monitor for, among other things, approval of the fees and disbursements of the Monitor, the Receiver and its counsel.
3. Attached hereto as **Exhibit "A"** is a schedule summarizing the accounts of NRFC rendered to KSV for fees and disbursements incurred by NRFC in connection with the Proceedings for the period between August 2, 2023 and November 30, 2023.
4. Attached hereto as **Exhibit "B"** is a statement of experience summarizing the respective years of call and billing rates of each of the professionals at NRFC that rendered services to KSV, the hours worked by each such individual and a blended hourly rate for the file.

5. Attached hereto as **Exhibit “C”** are true copies of the accounts rendered to KSV for the above-noted period. I confirm that these accounts accurately reflect the services provided by NRFC in the Proceedings for this period and the fees and disbursements claimed by it for this period.

6. To the best of my knowledge, the rates charged by NRFC throughout the course of the Proceedings are comparable to the rates charged by other law firms in the Toronto market for the provision of similar services. I believe that the total hours, fees and disbursements incurred by NRFC on this matter are reasonable and appropriate in the circumstances.

**SWORN** by Jennifer Stam, before me at the City of Toronto, in the Province of Ontario, on December 21, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



*Katie Parent*

Commissioner for Taking Affidavits  
(or as may be)

*Jennifer Stam*

**JENNIFER STAM**

Katie Marie Parent, a Commissioner, etc.,  
Province of Ontario,  
for Norton Rose Fulbright Canada LLP /  
S.E.N.C.R.L., s.r.l., Barristers and Solicitors.  
Expires July 9, 2024

THIS IS **EXHIBIT "A"** REFERRED TO IN THE  
AFFIDAVIT OF JENNIFER STAM, SWORN BEFORE ME  
AT THE CITY OF TORONTO, IN THE PROVINCE OF  
ONTARIO, ON DECEMBER 21, 2023 IN ACCORDANCE  
WITH O. REG. 431/20, ADMINISTERING OATH OR  
DECLARATION REMOTELY.

*Katie Parent*

---

*A Commissioner for taking Affidavits (or as may be)*

Katie Marie Parent, a Commissioner, etc.,  
Province of Ontario,  
for Norton Rose Fulbright Canada LLP /  
S.E.N.C.R.L., s.r.l., Barristers and Solicitors.  
Expires July 9, 2024

**SCHEDULE OF ACCOUNTS**

<b>Account Date</b>	<b>For Billing Period Ending</b>	<b>Fees</b>	<b>Costs</b>	<b>Tax</b>	<b>TOTAL</b>
September 6, 2023	August 31, 2023	\$ 167,909.00	\$ 1,348.45	\$ 21,885.65	<b>\$ 191,143.09</b>
December 21, 2023	September 30, 2023	\$ 145,547.50	\$ 721.05	\$ 18,939.25	<b>\$ 165,207.80</b>
November 3, 2023	October 31, 2023	\$ 148,633.50	\$ 66.39	\$ 19,330.99	<b>\$ 168,030.88</b>
December 7, 2023	November 30, 2023	\$ 62,135.00	\$ 806.24	\$ 8,094.22	<b>\$ 71,035.46</b>
<b>TOTAL:</b>		<b>\$ 524,225.00</b>	<b>\$ 2,942.13</b>	<b>\$ 68,250.11</b>	<b>\$ 595,417.24</b>



THIS IS **EXHIBIT "B"** REFERRED TO IN THE  
AFFIDAVIT OF JENNIFER STAM, SWORN BEFORE ME  
AT THE CITY OF TORONTO, IN THE PROVINCE OF  
ONTARIO, ON DECEMBER 21, 2023 IN ACCORDANCE  
WITH O. REG. 431/20, ADMINISTERING OATH OR  
DECLARATION REMOTELY.

*Katie Parent*

---

*A Commissioner for taking Affidavits (or as may be)*

Katie Marie Parent, a Commissioner, etc.,  
Province of Ontario.  
for Norton Rose Fulbright Canada LLP /  
S.E.N.C.R.L., s.r.l., Barristers and Solicitors.  
Expires July 9, 2024

## STATEMENT OF EXPERIENCE

Name	Year of Call	Billing Rate	Hours Worked
R. Charney	1983	\$ 780.00	0.30
A. Oliver	1993	\$ 1,225.00	39.30
A. Gallop	2000	\$ 725.00	0.40
C. Hersh	2000	\$ 1,150.00	4.30
B. Segal	2000	\$ 1,175.00	0.30
A. Grossman	2001	\$ 1,150.00	39.50
J. Stam	2002	\$ 895.00	259.10
J. Sprague	2007	\$ 480.00	2.50
E. Cobb	2008	\$ 895.00	31.20
J. Renihan	2009	\$ 750.00	30.90
J. Kirkness	2010	\$ 575.00	27.60
D. Weir	2014	\$ 725.00	6.70
M. Bissegger	2017	\$ 635.00	21.40
B. Mayes	2019	\$ 535.00	32.50
E. Vice	2019	\$ 565.00	6.80
T. Morrison	2020	\$ 485.00	4.0
B. Felsher	2022	\$ 485.00	26.70
F. Bellissimo	Law Clerk	\$ 515.00	11.0
R. Cardillo	Law Clerk	\$ 400.00	14.0
D. Doucet	Law Clerk	\$ 445.00	6.40
K. Parent	Law Clerk	\$ 400.00	94.50
A. Jivraj	Student-at-law	\$ 340.00	36.0
D. Vujovic	Student-at-law	\$ 340.00	15.30

<b>TOTAL HOURS:</b>	<b>710.70</b>
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<b>Blended Rate:</b> (excl. Disbursements and HST)
$\$524,225.00 \div 710.70 \text{ hours} = \$ 737.61$

THIS IS **EXHIBIT "C"** REFERRED TO IN THE  
AFFIDAVIT OF JENNIFER STAM, SWORN BEFORE ME  
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*Katie Parent*

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*A Commissioner for taking Affidavits (or as may be)*

**Katie Marie Parent, a Commissioner, etc.,  
Province of Ontario,  
for Norton Rose Fulbright Canada LLP /  
S.E.N.C.R.L., s.r.l., Barristers and Solicitors.  
Expires July 9, 2024**

# INVOICE

**Invoice Number** 9090587804  
**Matter Number** 1001261124  
**Invoice Date** September 06, 2023  
**NRF Contact** Jennifer Stam



Norton Rose Fulbright Canada LLP  
222 Bay Street, Suite 3000, P.O. Box 53  
Toronto ON M5K 1E7  
Canada  
Tel: +1 416-216-4000  
Fax: +1 416-216-3930  
www.nortonrosefulbright.com  
GST/HST No. 111340006  
Accounts Contact:  
nrcreceivables@nortonrosefulbright.com

For the attention of: Bobby Kofman,  
President and Managing Director  
bkofman@ksvadvisory.com

**KSV Restructuring Inc.**  
**150 King Street West**  
**Suite 2308, Box 42**  
**Toronto ON M5H 1J9**

## Insolvency of Validus Power Corp.

Professional Services Rendered to August 31, 2023

Charges  
CAD

### SUMMARY

Taxable Fees		██████████
Taxable Disbursements		██████████
		-----
Taxable Amount		██████████
HST 13.000%		██████████
		-----
Non-Taxable Disbursements		██████████
		-----
<b>TOTAL AMOUNT DUE AND PAYABLE</b>	<b>CAD</b>	<b>██████████</b>

### Payable Upon Receipt PAYMENT INFORMATION

Beneficiary: Norton Rose Fulbright Canada S.E.N.C.R.L., s.r./ LLP 1, Place Ville Marie, suite 2500 Montreal Quebec, CANADA H3B 1R1  
Bank information: RBC Financial Group, 1 Place Ville Marie, Montreal, Quebec, CANADA H3C 3B5, Bank 003, Transit 00001, ACC. No. 161-327-2, Swift Code # ROYCCAT2. Include invoice number on transfer order.

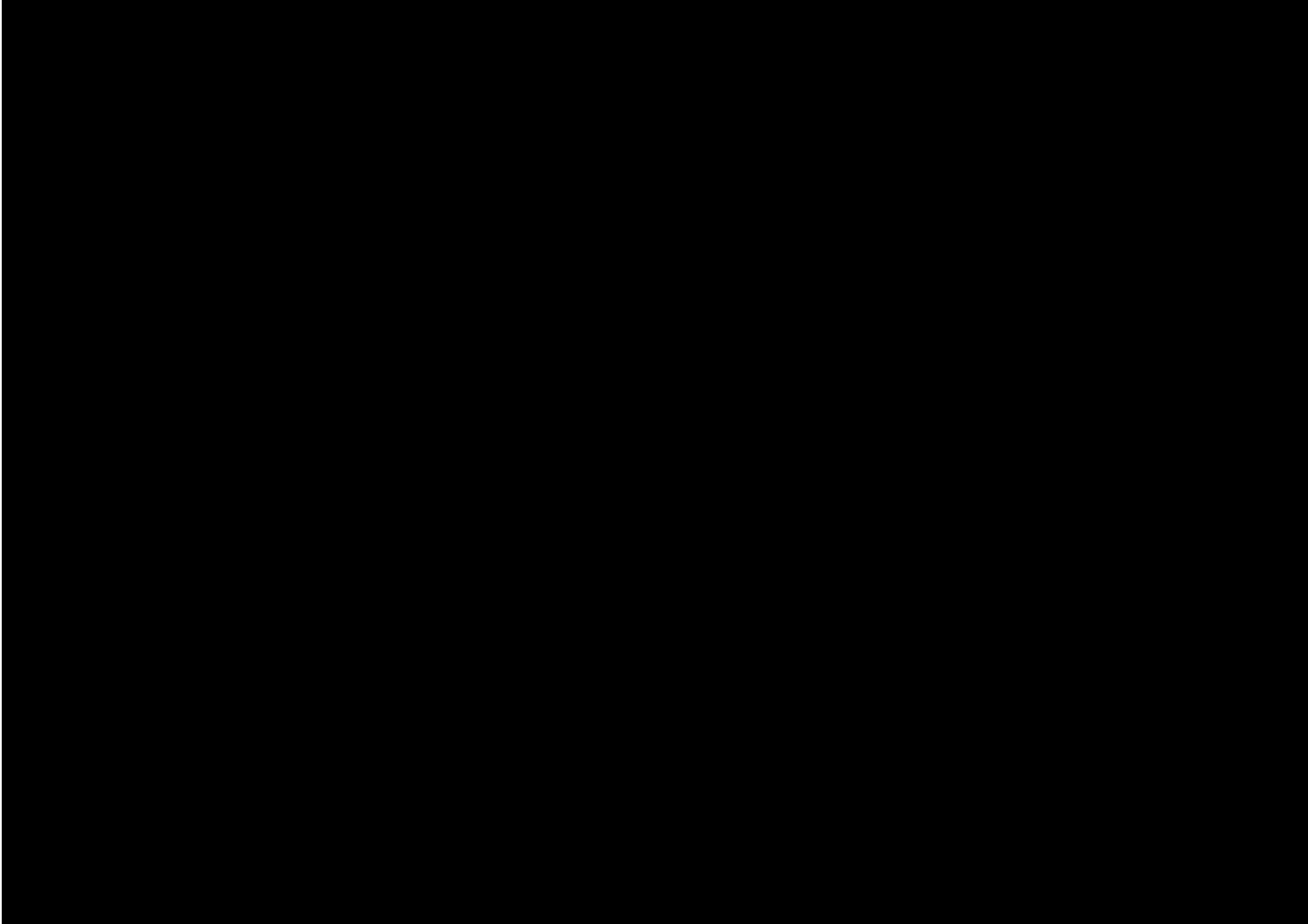
Please be alert to the risks of cyber-crime and email impersonation attempts to redirect funds inappropriately. We will not under usual circumstances change our bank account details during the course of a transaction. Any communication which you receive advising otherwise could be fraudulent and should urgently be orally verified with your known contact at our firm, or a member of our Finance department.

**Invoice Date** September 06, 2023 **Invoice Number** 9090587804  
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**Matter Description** Insolvency of Validus Power Corp.

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**TIME DETAILS**

**DATE** **NAME** **HOURS** **DESCRIPTION**



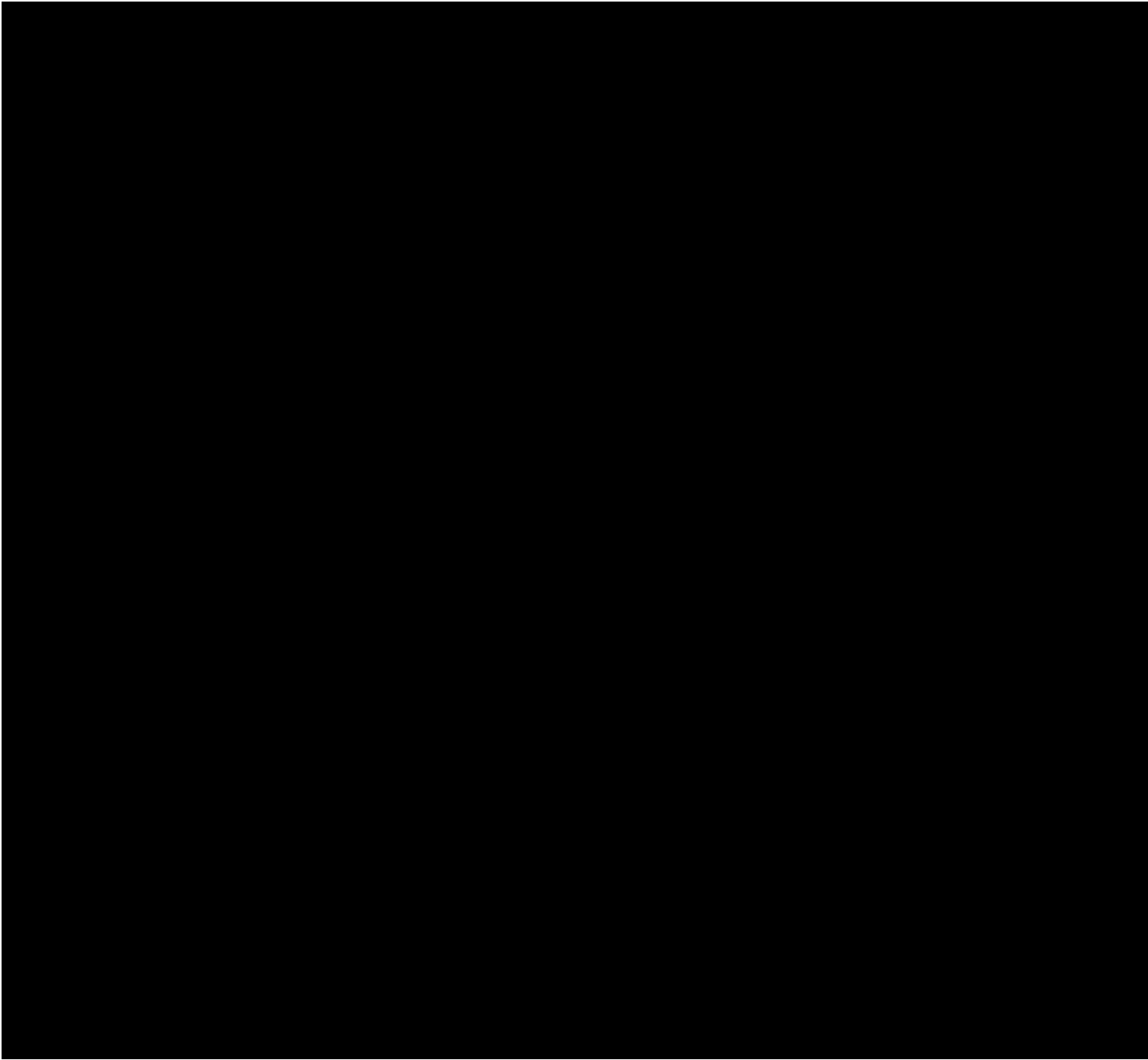
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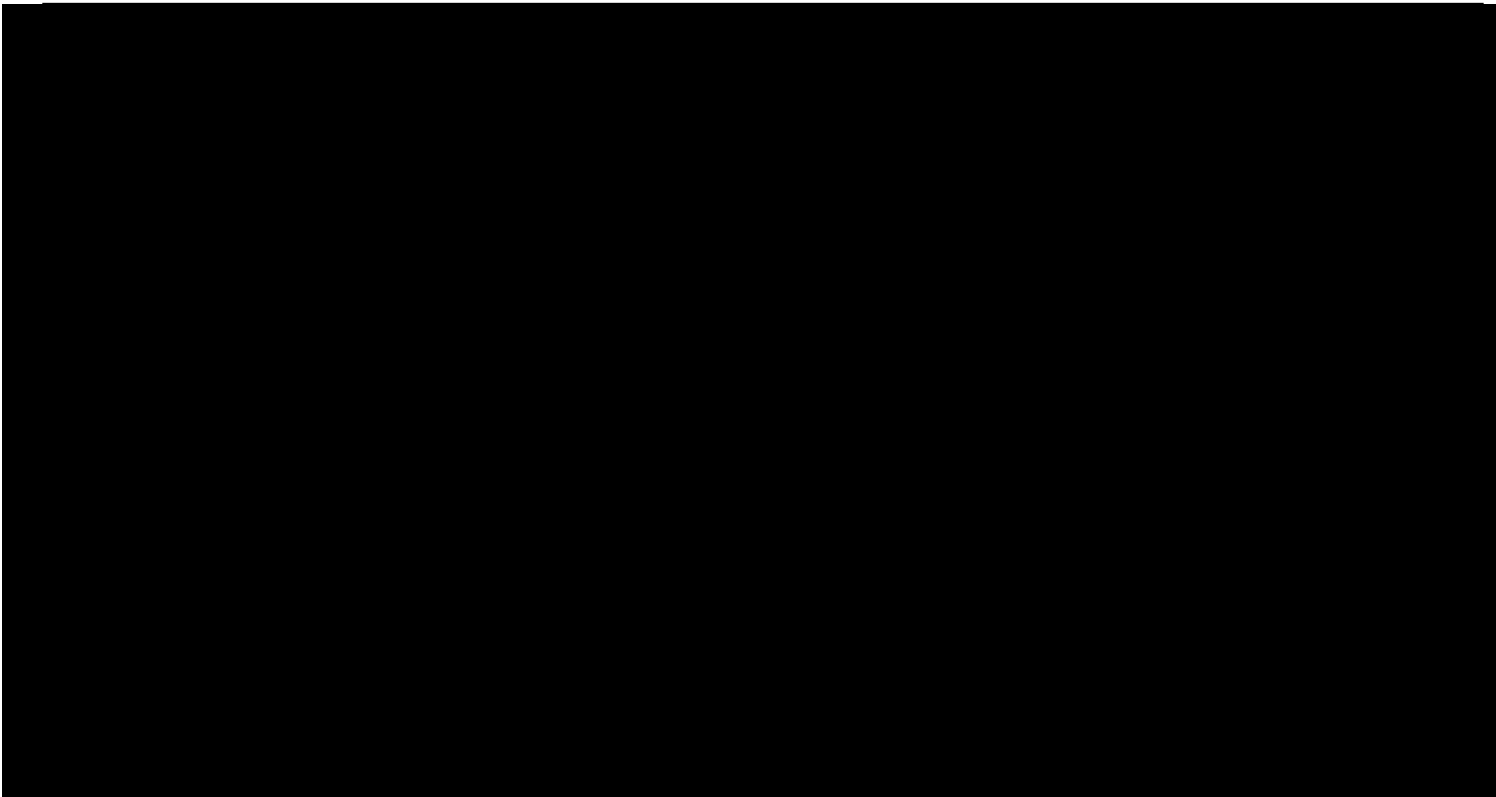
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08/02/2023	Cobb, E	2.70	Attending at Receivership Application. Calls and emails regarding Interim Receivership Order.
08/02/2023	Parent, K	1.20	Reviewing updating Notice of Application. Reviewing and revising draft initial order.
08/03/2023	Cobb, E	0.80	Calls and emails [REDACTED]
08/03/2023	Stam, J	0.40	Internal discussion re status and outstanding issues; [REDACTED]; correspondence re same
08/04/2023	Cobb, E	0.40	Emails and calls [REDACTED].
08/04/2023	Parent, K	2.10	Revising draft initial order, draft Notice of Application and Factum shell. Reviewing precedents for same. Discussion with J. Stam. Reporting to J. Stam with updated drafts.
08/04/2023	Stam, J	3.70	Discussion with S. Bomhof re status and next steps; considering same; internal discussion re same; reviewing draft CCAA materials; considering legal issues and research re same; reviewing court endorsement and IR order

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08/05/2023	Stam, J	1.00	Working on CCAA materials; correspondence re same
08/07/2023	Stam, J	0.30	Reviewing reply affidavit from T. Shortt; correspondence re various
08/08/2023	Cobb, E	0.50	Review of response and reply materials.
08/08/2023	Parent, K	0.30	Preparing materials for service of report. Correspondence with M. Noel regarding CaseLines access.
08/08/2023	Stam, J	2.70	Discussion with S. Bomhof re application, CCAA materials and other; revising same; reviewing reply factum and other materials; comments re same; reviewing draft report; correspondence re same
08/09/2023	Cobb, E	1.00	Reviewing supplemental materials. Considering issues [REDACTED]
08/09/2023	Parent, K	0.70	Preparing First Report for service. Attending to service and filing of same. Uploading same to CaseLines in advance of hearing. Correspondence with J. Stam and M. Noel regarding same.
08/09/2023	Stam, J	0.90	Discussion with S. Bomhof re court proceeding and various issues; reviewing final report; correspondence re same; internal discussions re same
08/10/2023	Cobb, E	2.60	Attending at Receivership Application. Reviewing additional served materials for Receivership Application.
08/10/2023	Parent, K	0.30	Receipt of updated service list. Receipt and organization of supplemental motion material for today's hearing.
08/10/2023	Stam, J	0.30	Correspondence re receivership hearing and other matters; conversation with TD representative; correspondence re same
08/11/2023	Stam, J	1.10	Conversations and correspondence re data issues, other receivership matters; correspondence re CCAA
08/13/2023	Kirkness, J	0.20	Corresponding with J. Stam regarding obtaining documents relating to Ontario Labour Relations Board proceedings.
08/14/2023	Cobb, E	1.00	Discussions regarding status of file. Emails [REDACTED]. Reviewing claims [REDACTED]. Correspondence regarding [REDACTED]
08/14/2023	Stam, J	1.90	Discussion with S. Bomhof re status and next steps; considering same; internal discussions re same; correspondence with various parties on receivership issues; working on court materials
08/15/2023	Cobb, E	2.50	Considering and advising [REDACTED]

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08/15/2023	Kirkness, J	0.40	Corresponding with J. Stam and C. Fiore regarding obtaining documents relating to Ontario Labour Relations Board proceedings [REDACTED].
08/15/2023	Parent, K	1.10	Drafting Notice of Motion and Order for motion for advice and directions in receivership proceeding.
08/15/2023	Stam, J	4.10	Discussion with various parties re status, SISP and related matters; considering same; follow up conversations with client re same; attending to matters [REDACTED] and other receivership matters; reviewing security opinion; internal discussions re same; working on receivership materials; correspondence re same; discussion with C. Fiore re labour matters; considering same and reviewing correspondence re same; correspondence with C. Fiore re next steps
08/16/2023	Vice, E	1.00	Revising opinion; correspondence with J. Stam re: same.
08/16/2023	Stam, J	1.80	Several conversations and correspondence [REDACTED] [REDACTED] correspondence [REDACTED]; internal discussion with J. Kirkness re labour issues; considering same; reviewing draft correspondence re same
08/16/2023	Parent, K	0.30	Correspondence with Court regarding motion availability and scheduling. Review current service list. Correspondence with J. Stam.
08/16/2023	Kirkness, J	2.30	Conferencing and corresponding with J. Stam regarding next steps including writing to the Ontario Labour Relations Board concerning receivership. Drafting Ontario Labour Relations Board letter. Drafting correspondence with union counsel. Reviewing related documents and information. Filing correspondence with Ontario Labour Relations Board.
08/16/2023	Cobb, E	0.20	Emails [REDACTED].
08/17/2023	Cobb, E	0.50	Conference call [REDACTED]. Emails regarding registration of order.
08/17/2023	Kirkness, J	0.20	Corresponding with J. Stam regarding collective agreements and correspondence with C. Fior.
08/17/2023	Parent, K	1.00	Correspondence with Court regarding entered initial order. Following up regarding availability for scheduling motion. Correspondence with J. Stam regarding same. Updating and circulating service list.
08/17/2023	Stam, J	2.40	Conversations and correspondence re purchase agreement and related matters; correspondence re TD letters of credit; [REDACTED]

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		correspondence re data back up; discussion with G. Gilati re Cadillac Fairview; drafting letter to TD counsel; discussions re next steps and court time; correspondence re same; discussions re [REDACTED]; considering same
08/18/2023	Kirkness, J	1.40 Corresponding with J. Stam regarding [REDACTED] and obtaining copies of Ontario Labour Relations Board pleadings. Drafting, serving and filing requests for pleadings from Ontario Labour Relations Board.
08/18/2023	Oliver, A	1.60 Review of documents. Teleconference with J Stam regarding proposed transaction. Teleconference with KSV and counsel for creditors.
08/18/2023	Parent, K	0.70 Preparing and finalizing requests forms for Receivership proceeding and new CCAA application. Correspondence with J. Stam regarding same. Correspondence with Court regarding scheduling.
08/18/2023	Stam, J	3.50 Conversations re stalking horse proposal; internal discussions re same; conference call with Torys, Bennett Jones, KSV re same; considering points re same; review of court endorsement; correspondence re benefits and data collection; correspondence re proposed refinancing; working on security opinion; discussion re CCAA materials; considering same
08/19/2023	Kirkness, J	0.10 Corresponding with counsel to Power Workers' Union regarding scheduling call.
08/19/2023	Oliver, A	3.70 Review of documents. Considering tax issues. Email correspondence to T Bauer and J Tobin.
08/19/2023	Stam, J	3.70 Reviewing draft transaction documents; reviewing draft court materials; revising CCAA materials; correspondence with KSV re various matters
08/20/2023	Grossman, A	1.20 Correspondence from/to J. Stam re transaction matters and documents; initial review of same, etc
08/20/2023	Kirkness, J	0.10 Corresponding further with counsel to Power Workers' Union regarding scheduling call.
08/20/2023	Stam, J	4.30 Discussion with B. Kofman, D. Sieradzki re CCAA matters and related issues; considering draft transaction documents; discussion with KSV re transaction and other matters; considering same; working on court materials
08/21/2023	Stam, J	8.60 Several conversations and correspondence re CCAA

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proceedings and next steps re same; reviewing court materials and revising same; reviewing draft report re same; working on transaction documents; internal discussions re same; discussion with PWU lawyers re status of application; internal discussions re labour and other issues; [REDACTED] working on NDA for [REDACTED] further review of transaction documents; [REDACTED]

08/21/2023 Parent, K 3.60 Correspondence with Commercial List attaching draft Notice of Application. Call with J. Stam regarding status of matter and upcoming tasks. Preparing consent to act. Preparing CCAA service list. Revising same. Obtaining corporate profiles. Reviewing same and reporting to J. Stam. Updating Notice of Motion and draft order and circulating to J. Stam for review.

08/21/2023 Oliver, A 1.50 Teleconference with Tory's and Bennett Jones regarding structure. Considering tax issues. Email correspondence.

08/21/2023 Kirkness, J 1.20 Preparing and conferencing with counsel to Power Workers Union. Corresponding with counsel to Operating Engineers. Corresponding with J. Wong [REDACTED]

08/21/2023 Hersh, C 0.60 Telephone discussion with J. Stam. Review commercial documents.

08/21/2023 Grossman, A 1.30 Prepare for and call re various transaction matters and advice; consider next steps and deliverables and communications re same, etc.

08/22/2023 Bissegger, M 2.10 Reviewing and revising transaction agreements. Discussions with J. Stam and A. Jivraj regarding the same.

08/22/2023 Grossman, A 0.70 Follow up discussions with J. Stam re drafting matters, document preparation and advice; call with M. Bissegger re same; advice, instructions and various communications, etc

08/22/2023 Jivraj, A 0.50 Meeting with K. Parent to discuss insolvency file with J. Stam.

08/22/2023 Kirkness, J 1.10 Corresponding with J. Stam and B. Kofman [REDACTED] Preparing, conferencing and corresponding with C. Hart and J. Stam regarding Ontario Labour Relations Board application.

08/22/2023 Parent, K 3.20 Drafting order [REDACTED]. Reviewing and revising motion and application materials. Updating service list. Preparing Factum shell for Application hearing. Correspondence with J. Stam. Meeting with A. Jivraj regarding file and upcoming tasks.

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08/22/2023	Renihan, J	0.30	Call with J. Stam re background and claims review.
08/22/2023	Stam, J	8.30	Working on CCAA materials; conversations and correspondence re same; discussions re transaction documents; considering issues re same; conference call with C. Hart re union issues; considering same; considering [REDACTED] internal discussion [REDACTED] [REDACTED] working on CCAA factum
08/23/2023	Bissegger, M	7.30	Reviewing and revising transaction agreements. Discussions with J. Stam and A. Jivraj regarding the same.
08/23/2023	Jivraj, A	5.50	Meeting with J. Stam and M. Bissegger to discuss file and deliverables; and Reviewing and revising purchase agreement and terms and conditions document for M. Bissegger.
08/23/2023	Kirkness, J	1.40	Corresponding with J. Stam and B. Kofman regarding [REDACTED] and collective agreement. Corresponding with Ontario Labour Relations Board regarding document disclosure. Corresponding with M. Bissegger regarding reviewing transaction agreement. Reviewing transaction agreement.
08/23/2023	Oliver, A	0.80	Considering tax issues regarding structure.
08/23/2023	Parent, K	5.60	Preparing and finalizing motion record and application record for service and filing. Correspondence with J. Stam regarding same. Attending to service and filing of same. Uploading to CaseLines. Reviewing draft Factum to prepare citations for same.
08/23/2023	Stam, J	7.80	Finalizing motion record and CCAA application record; conversations and correspondence re same; internal discussions re transaction documents and review of same; correspondence re various receivership matters; working on facta re August 29 hearing; correspondence re same
08/24/2023	Stam, J	6.90	Working on facta and other court materials; internal meeting re transaction documents; reviewing same; conference call with client and A. Oliver, J. Kirkness re tax and labour issues; considering same; discussion with [REDACTED] re various; revising [REDACTED] NDA; working on various issues; reviewing draft RVO and SISP materials
08/24/2023	Renihan, J	1.20	Reviewing documents related to [REDACTED] Discussing same with J. Stam.
08/24/2023	Parent, K	5.20	Reviewing and revising Facta for Aug 29 hearing. Completing citations for same. Preparing copies of

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		materials for J. Stam. Correspondence with J Stam and A Jivraj regarding hearing prep and facta service. Preparing materials for same. Instructions R. Cardillo regarding hearing preparation and issuance of Notice of Application. Preparing Participant Information Form. Call with J. Stam regarding status of materials for next week.
08/24/2023	Oliver, A	3.00 Teleconference regarding Transaction Agreement. Review and comment on Transaction Agreement and Term and Conditions. Email correspondence.
08/24/2023	Kirkness, J	2.50 Reviewing and revising transaction agreement. Corresponding with J. Stam regarding collective agreements. Reviewing registered retirement savings plans. Reviewing Ontario Labour Relations Board jurisprudence regarding successor in receivership. Reviewing and revising terms and conditions.
08/24/2023	Jivraj, A	6.40 Attending meeting with J. Stam and M. Bissegger to review transaction documents; Revising transaction documents; and Attending meeting with K. Parent to discuss hearing materials.
08/24/2023	Cobb, E	0.50 Conference call with counsel [REDACTED]
08/24/2023	Bissegger, M	4.50 Reviewing and revising transaction agreements. Discussions with J. Stam and A. Jivraj regarding the same.
08/25/2023	Bissegger, M	0.70 Call with KSV and J. Stam to discuss transaction documents.
08/25/2023	Charney, R	0.30 Video conference with J. Kirkness re options.
08/25/2023	Cobb, E	4.40 Reviewing SISP materials and commenting on same. Reviewing issues in connection with successor employer matters.
08/25/2023	Gallop, A	0.40 Teams meeting with J. Kirkness [REDACTED].
08/25/2023	Jivraj, A	5.00 Attending client meeting with J. Stam to discuss transaction documents; Updating participant information form for hearing; and Reviewing and revising facta for the receivership motion and the CCAA initial application for J. Stam.
08/25/2023	Kirkness, J	1.90 Reviewing and revising terms and conditions and transaction agreement. Conferencing and corresponding with J. Stam and E. Cobb regarding [REDACTED]. Reviewing and revising labour. summary

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<b>Invoice Date</b>	September 06, 2023	<b>Invoice Number</b>	9090587804
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<b>Matter Description</b>	Insolvency of Validus Power Corp.		

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08/25/2023	Stam, J	7.10	Conference call re transaction documents; considering points on same; revising and finalizing facta; addressing [REDACTED] internal discussions re same; correspondence re same
08/26/2023	Bissegger, M	3.40	Call with KSV and J. Stam to discuss transaction documents and revising the same.
08/26/2023	Jivraj, A	4.50	Meeting with J. Stam, M. Bissegger and clients to discuss transaction documents; and Revising transaction documents.
08/26/2023	Stam, J	1.80	Conference call with client, others to review transaction documents; review of same
08/27/2023	Jivraj, A	0.50	Reviewing and revising transaction agreements for J. Stam.
08/27/2023	Stam, J	4.80	Working on transaction documents; discussion with B. Kofman re various; working on draft court materials; updating summary [REDACTED]; correspondence re same
08/28/2023	Stam, J	3.80	Preparing for August 29 hearing; working on submissions re same; internal discussions re same; correspondence re SISP and SISP process; conference call with S. Bomhof, J. Renihan re [REDACTED]
08/28/2023	Renihan, J	0.90	Call with J. Stam and S. Bomhof re Macquarie claim. Reviewing Macquarie documents.
08/28/2023	Jivraj, A	2.50	Meeting with J. Stam and R. Cardillo to discuss hearing materials and logistics; Preparing notice of application for filing; Updating participant information sheet; and Reviewing factum.
08/28/2023	Cobb, E	0.20	Email correspondence.
08/28/2023	Cobb, E	1.60	Reviewing and updating sale process documentation.
08/28/2023	Cardillo, R	2.50	Updating Service Lists and providing same to J. Wong. Discussion with J. Stam and A. Jivraj regarding hearing August 29, 2023. Preparing Factum hyperlinks in Caselines.
08/29/2023	Cardillo, R	3.50	Preparing final form of Draft Order and Participant Information Form for uploading to Caselines. Preparing Notice of Application in CCAA matter and efile same. Various correspondence with J. Stam and A. Jivraj. Revising Initial Order to reflect issuance of Notice of Application.
08/29/2023	Cobb, E	0.60	Updates to court materials regarding SISP.

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08/29/2023	Felsher, B	0.60	Researching [REDACTED]
08/29/2023	Jivraj, A	3.80	Preparing for receivership hearing; Updating participant information form; Attending CCAA application hearing; Issuing the notice of application; and Meeting with J. Stam to discuss next steps.
08/29/2023	Kirkness, J	0.50	Corresponding with J. Stam regarding labour issues and request for additional documents from Ontario Labour Relations Board. Reviewing Ontario Labour Relations Board documents.
08/29/2023	Oliver, A	1.50	[REDACTED]
08/29/2023	Renihan, J	2.50	Reviewing materials and law re [REDACTED]
08/29/2023	Segal, B	0.30	Consider [REDACTED] and discuss with A. Oliver.
08/29/2023	Stam, J	2.80	Preparing for and attending receivership motion/ ccaa; several discussions re same; conversations with C. Francis re same; working on SISP and SISP Order; correspondence re same
08/30/2023	Stam, J	3.50	Conference call with B. Kofman, J. Renihan [REDACTED]; considering same; internal correspondence re tax issues; working on stay extension materials
08/30/2023	Renihan, J	1.90	Reviewing background material for [REDACTED] [REDACTED] Call with B. Kofman and J. Stam to discuss same. Emails with A. Oliver and J. Stam re [REDACTED]
08/30/2023	Oliver, A	2.60	Review of [REDACTED] Analysis of [REDACTED]
08/30/2023	Kirkness, J	0.30	Corresponding with B. Kofman [REDACTED]
08/30/2023	Kirkness, J	0.50	Reviewing and compiling Ontario Labour Relations Board documents. Corresponding with Ontario Labour Relations Board regarding additional documents relating to proceedings.
08/30/2023	Jivraj, A	4.30	Meeting with J. Stam to discuss notice of motion and order; Drafting notice of motion and order for J. Stam; and Reviewing changes.
08/30/2023	Felsher, B	1.70	[REDACTED]
08/30/2023	Cardillo, R	2.00	Uploading Application Record, Factum, Affidavit of E. Cobb

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			and issued Notice of Application in Receivership matter in Caselines and granting access to Tory's, Minden Gross and Bennett Jones legal team members to Caselines. Various correspondence with J. Stam regarding same. Corresponding with the court regarding additional dates for hearings on September 8 and 19, 2023.
08/31/2023	Cardillo, R	1.50	Preparing Request forms for hearings September 8 and 19th and Arranging for issuance of Orders. Preparing Motion Record for stay.
08/31/2023	Felsher, B	1.70	[REDACTED]
08/31/2023	Oliver, A	0.50	Teleconference regarding [REDACTED]
08/31/2023	Renihan, J	0.50	Call with J. Stam and A. Oliver re [REDACTED] Reviewing agreements re same.
08/31/2023	Stam, J	1.10	Working on stay extension materials; correspondence with B. Kofman re same; reviewing draft report re same; internal discussion re [REDACTED] re same
<b>Total</b>		<b>318.50</b>	

**TIME SUMMARY**

<u>NAME</u>	<u>HOURS</u>	<u>RATE</u>	<u>AMOUNT</u>
<b>Partner</b>			
Charney, R	[REDACTED]	780.00	[REDACTED]
Chiasson, D	[REDACTED]	1,095.00	[REDACTED]
Cobb, E	[REDACTED]	895.00	[REDACTED]
Gallop, A	[REDACTED]	725.00	[REDACTED]
Grossman, A	[REDACTED]	1,150.00	[REDACTED]
Hersh, C	[REDACTED]	1,150.00	[REDACTED]
Kelly, M	[REDACTED]	1,110.00	[REDACTED]
Kirkness, J	[REDACTED]	575.00	[REDACTED]
Oliver, A	[REDACTED]	1,225.00	[REDACTED]

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Renihan, J		750.00	
Segal, B		1,175.00	
Sprague, J		480.00	
Stam, J		895.00	
		<b>Sub Total</b>	
<b><u>NAME</u></b>	<b><u>HOURS</u></b>	<b><u>RATE</u></b>	<b><u>AMOUNT</u></b>
<b>Senior Associate</b>			
Bissegger, M		635.00	
		<b>Sub Total</b>	
<b><u>NAME</u></b>	<b><u>HOURS</u></b>	<b><u>RATE</u></b>	<b><u>AMOUNT</u></b>
<b>Associate</b>			
Felsher, B		485.00	
Vice, E		565.00	
		<b>Sub Total</b>	
<b><u>NAME</u></b>	<b><u>HOURS</u></b>	<b><u>RATE</u></b>	<b><u>AMOUNT</u></b>
<b>Trainee</b>			
Jivraj, A		340.00	
		<b>Sub Total</b>	
<b><u>NAME</u></b>	<b><u>HOURS</u></b>	<b><u>RATE</u></b>	<b><u>AMOUNT</u></b>
<b>Paralegal</b>			
Cardillo, R		400.00	
Huntley, S		255.00	
Parent, K		400.00	
Tsetsos, M		400.00	
		<b>Sub Total</b>	
<b>Total</b>			

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**DISBURSEMENT SUMMARY**

<u>DESCRIPTION</u>	<u>QTY</u>	<u>AMOUNT</u>
<b>Montreal</b>		
<b>Non-Taxable</b>		
Court Fee	1.00	339.00
██████████	████	████
Search Fee	1.00	447.35
<b>Taxable</b>		
██████████	████	████
Search Fee	1.00	562.10
	<b>Sub Total</b>	████
	<b>TOTAL</b>	████

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# INVOICE

**Invoice Number** 9090621740  
**Matter Number** 1001261124  
**Invoice Date** December 21, 2023  
**NRF Contact** Jennifer Stam



Norton Rose Fulbright Canada LLP  
222 Bay Street, Suite 3000, P.O. Box 53  
Toronto ON M5K 1E7  
Canada  
Tel: +1 416-216-4000  
Fax: +1 416-216-3930  
www.nortonrosefulbright.com  
GST/HST No. 111340006  
Accounts Contact:  
nrcreceivables@nortonrosefulbright.com

For the attention of: Bobby Kofman,  
President and Managing Director  
bkofman@ksvadvisory.com

**KSV Restructuring Inc.**  
**150 King Street West**  
**Suite 2308, Box 42**  
**Toronto ON M5H 1J9**

## Insolvency of Validus Power Corp.

Professional Services Rendered to September 30, 2023

Charges  
CAD

### SUMMARY

Taxable Fees	145,547.50
Taxable Disbursements	139.05
Taxable Amount	145,686.55
HST 13.000%	18,939.25
Non-Taxable Disbursements	582.00
<b>TOTAL AMOUNT DUE AND PAYABLE</b>	<b>CAD 165,207.80</b>

### Payable Upon Receipt PAYMENT INFORMATION

Beneficiary: Norton Rose Fulbright Canada S.E.N.C.R.L., s.r./ LLP 1, Place Ville Marie, suite 2500 Montreal Quebec, CANADA H3B 1R1  
Bank information: RBC Financial Group, 1 Place Ville Marie, Montreal, Quebec, CANADA H3C 3B5, Bank 003, Transit 00001, ACC. No. 161-327-2, Swift Code # ROYCCAT2. Include invoice number on transfer order.

Please be alert to the risks of cyber-crime and email impersonation attempts to redirect funds inappropriately. We will not under usual circumstances change our bank account details during the course of a transaction. Any communication which you receive advising otherwise could be fraudulent and should urgently be orally verified with your known contact at our firm, or a member of our Finance department.

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**TIME DETAILS**

<u>DATE</u>	<u>NAME</u>	<u>HOURS</u>	<u>DESCRIPTION</u>
09/01/2023	Cardillo, R	4.50	Receiving issued Orders re: Initial Order and Order Authorizing CCAA dated August 29, 2023 and circulating to J. Stamm. Preparing Motion Record returnable September 8, 2023. Preparing covering letter to Mercedes Benz Financial & Mercedes-Benz Financial serving the motion record for stay. Preparing service email and affidavit of service regarding service of motion record for stay.
09/01/2023	Kirkness, J	0.50	Corresponding with J. Stam regarding [REDACTED] Ontario Labour Relations Board application. Reviewing related documents and information.
09/01/2023	Oliver, A	0.40	Considering tax issues. Email correspondence (J Tobin).
09/01/2023	Stam, J	1.80	Working on stay extension motion; finalizing and serving same; correspondence re union and other issues
09/05/2023	Grossman, A	0.70	Call with J. Stam re next steps and related advice and correspondence; communications internally and with counsel to Macquarie
09/05/2023	Hersh, C	0.60	Emails to and from J. Stam. Telephone discussion with J. Stam. Emails to and from counsel to other parties regarding [REDACTED].
09/05/2023	Jivraj, A	0.30	Updating participant list for CCAA Stay of Proceedings hearing for J. Stam and K. Parent.
09/05/2023	Parent, K	0.20	Telephone call with J. Stam regarding status of matter and next steps and tasks.
09/05/2023	Renihan, J	0.60	Calls with counsel for Hut8 and Validus [REDACTED]
09/05/2023	Stam, J	1.70	Conference call with B. Kofman, J. Wong, D. Sieradzki re various matters and outstanding issues; considering same; correspondence and conversations [REDACTED]; discussion with Bennett Jones re same; discussion with S. Bomhoff re various matters
09/06/2023	Stam, J	2.70	Reviewing revised SISP; discussion with S. Bomhoff re status; discussion with J. Mighton re status; discussion with J. Wong re [REDACTED]; review of background materials re same; conference call with Torys re [REDACTED]; review of memo and related materials re same; finalizing security opinion; discussion with S. Philpott re PWU issues and related matters

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09/06/2023	Renihan, J	0.80	Call with Torys [REDACTED]. Discussing same with J. Stam.
09/06/2023	Parent, K	1.10	Preparing shell Notice of Motion and reviewing draft SISP order. Correspondence with J. Stam. Telephone call with A. Jivraj regarding status of SISP motion scheduled for Sept. 19 and Stay Extension.
09/06/2023	Oliver, A	0.60	Considering tax issues. Email correspondence with J Stam regarding [REDACTED].
09/06/2023	Oliver, A	0.50	Teleconference regarding tax issues.
09/06/2023	Kirkness, J	1.50	Corresponding with J. Stam and counsel to the power workers' union regarding litigation and stay. Reviewing documents disclosed by the Ontario Labour Relations Board.
09/06/2023	Jivraj, A	0.70	Meeting with K. Parent to discuss stay extension CCAA hearing deliverables.
09/06/2023	Hersh, C	1.50	Emails to and from counsel regarding regulatory thresholds. Emails to and from A. Grossman. Review and comment on transaction documents.
09/06/2023	Cobb, E	0.10	Email correspondence to counsel for CIBC.
09/06/2023	Cobb, E	0.30	Review of SISP comments.
09/07/2023	Stam, J	6.90	Conference call with Enbridge, J. Wong re L/Cs and related issues; discussions with B. Kofman re SISP and other matters; discussion with D. Sieradzki re same; discussions with S. Bomhof, J. Mighton and others re process and timing issues; correspondence with various parties re stay extension motion; conference call with Bennett Jones, Torys, KSV re SISP draft; reviewing comments on transaction documents; reviewing summary [REDACTED] and other issues; discussions with B. Kofman and E. Cobb [REDACTED]
09/07/2023	Renihan, J	3.40	Drafting memo [REDACTED]
09/07/2023	Parent, K	3.30	Drafting Notice of Motion for SISP motion. Reviewing transaction documents and SISP for same. Preparing Factum shell for SISP motion. Updating Participant Information Form and draft Order for Stay Extension motion on September 9th. Uploading same to CaseLines. Updating Service Lists. Correspondence with J. Stam and A. Jivraj regarding materials.
09/07/2023	Jivraj, A	0.60	Updating participant information form; and Attending

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		meeting with K. Parent to discuss CCAA stay of proceedings hearing.
09/07/2023	Hersh, C	1.10 Discussion with A. Grossman. Conference call with A. Grossman and counsel regarding Competition Act and ICA thresholds and relevant provisions in purchase agreement. Emails to and from J. Stam.
09/07/2023	Grossman, A	2.30 Call with working group re competition and Investment Canada matters; all communications and correspondence re same; correspondence from J. Stam re revised agreements; initial review of same; call with J. Stam to discuss; advice re next steps and consideration of issues; correspondence and dealings re energy regulatory matters, etc.
09/07/2023	Felsher, B	2.40 Reviewing Canadian tax treatment of [REDACTED]
09/07/2023	Felsher, B	2.50 Reviewing transaction documents for [REDACTED]
09/07/2023	Cobb, E	2.50 Considering updated SISP issues. Conference call with Bennett Jones, Torys and KSV. Revising SISP.
09/07/2023	Bissegger, M	0.80 Review of transaction agreement and terms and conditions.
09/08/2023	Stam, J	6.40 Several conversations and correspondence re transaction documents and issues re same; working on documents; conference call with KSV re transaction documents; discussions with Bennett Jones, Torys and others re transaction documents, regulatory issues and others; preparing for and attending stay extension motion
09/08/2023	Renihan, J	0.20 Emails with B. Kofman re memo. Reviewing [REDACTED] from A. Oliver.
09/08/2023	Parent, K	1.10 Revising draft order and uploading to CaseLines. Attending to entering of signed order. Circulating same to Service List. Reviewing and revising draft Notice of Motion for SISP motion. Reporting to J. Stam.
09/08/2023	Parent, K	0.50 Preparing Motion Record and Affidavit of Service shells for SISP motion. Preparing PDF brief and FTP site for OLRB materials as requested by J. Stam.
09/08/2023	Oliver, A	1.50 Review of Transaction Agreement and comments thereon. Email correspondence.
09/08/2023	Oliver, A	1.00 Review of memorandum regarding [REDACTED] and commenting thereon.
09/08/2023	Kirkness, J	1.70 Reviewing documents disclosed by the Ontario Labour

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			Relations Board. Summarizing and Corresponding with J. Stam in this regard and others in this regard. Reviewing Ontario Labour Relations Board request for submissions. Corresponding with counsel to Northland Power regarding Ontario Labour Relations Board documents.
09/08/2023	Jivraj, A	0.60	Attending CCAA stay of proceedings hearing with J. Stam; and Reviewing and integrating transaction agreements for M. Bissegger.
09/08/2023	Hersh, C	0.50	Emails to and from J. Stam. Emails regarding purchase agreement. Review and comment on purchase agreement.
09/08/2023	Grossman, A	2.50	Review and comments on terms and conditions and call with J. Stam re same; attend call with working group re energy regulatory matters; follow up with team re validation of issues; follow calls and correspondence, etc.
09/08/2023	Cobb, E	2.30	Conference calls regarding SISP matters. Revising SISP. Call regarding set off issues.
09/08/2023	Bissegger, M	2.60	Review of transaction agreement and terms and conditions. Call with J. Stam and KSV regarding transaction status. Call with working group regarding transaction status.
09/09/2023	Cobb, E	0.30	Call with J. Mighton.
09/09/2023	Kirkness, J	2.00	Reviewing and summarizing documents disclosed by the Ontario Labour Relations Board. Corresponding with J. Stam in this regard
09/09/2023	Oliver, A	2.40	Review of jurisprudence regarding [REDACTED] [REDACTED] Review of Lease. Email correspondence with J Stam.
09/10/2023	Oliver, A	2.00	Analysis of [REDACTED]. Email memorandum to J Stam.
09/10/2023	Stam, J	0.70	Discussion with S. Bomhof re various issues; correspondence re transaction and other documents; discussion with B. Kofman re various
09/11/2023	Cobb, E	0.50	Coordinating registration of Receivership Order on title to real property.
09/11/2023	Doucet, D	1.20	Preparing Applications to Register Court Order in three Land Titles Offices and circulating for sign-off.
09/11/2023	Grossman, A	0.50	Review and prepare for call with D. Weir re environmental permits and notices; instructions re same
09/11/2023	Oliver, A	0.50	Email correspondence [REDACTED].
09/11/2023	Renihan, J	0.30	Emails re application of [REDACTED]. Emails with B. Kofman re report.

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09/11/2023	Stam, J	1.50	Discussion with S. Bomhof re various; discussion with Goldblatt, KSV re PWU matters; correspondence re various; considering Macquarie debt claim and tax issues
09/11/2023	Weir, D	0.80	Engaging in meeting with A. Grossman to discuss environmental permitting review. Conducting initial review of environmental permits.
09/12/2023	Weir, D	3.80	Conducting review of environmental permits to assess restrictions on change of control. Corresponding with A. Grossman regarding environmental permit review assessment.
09/12/2023	Stam, J	1.70	Discussion with Bennett Jones re employment and litigation issues; discussion with KSV re transaction and other issues; considering same; correspondence re same; review revised SISP; correspondence re same
09/12/2023	Sprague, J	0.60	Review, revise and register applications for court orders and discussion with D. Doucet regarding same.
09/12/2023	Renihan, J	0.40	Call with J Stam and counsel for Hut 8 [REDACTED]
09/12/2023	Oliver, A	3.00	Email correspondence (J Stam). Analysis of [REDACTED]
09/12/2023	Grossman, A	0.70	Correspondence re permits and licenses; consider and advise re same; email/communications re recommended next steps, etc.
09/12/2023	Doucet, D	0.50	Completing and registering court orders to the subject properties. Circulating registered copies to team and confirming no additional action required.
09/13/2023	Grossman, A	0.80	Correspondence re disclosure letter and promissory note; initial review and considerations re promissory note; communications re same
09/13/2023	Parent, K	0.20	Email to court regarding vacating September 19th hearing date and rescheduling same. Reporting to J. Stam regarding same.
09/13/2023	Stam, J	2.20	Several discussions re issues and next steps; considering same; working on same; correspondence with court; correspondence re deal terms and issues; discussion re revised SISP; review disclosure schedules; considering same
09/14/2023	Cobb, E	0.60	Call with counsel [REDACTED]. Emails [REDACTED].
09/14/2023	Grossman, A	0.40	Correspondence with team and follow up on outstanding points and issues including re regulatory

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<b>Invoice Date</b>	December 21, 2023	<b>Invoice Number</b>	9090621740
<b>Matter Number</b>	1001261124		
<b>Matter Description</b>	Insolvency of Validus Power Corp.		

09/14/2023	Kirkness, J	0.50	Compiling and serving book of documents for disclosure to other parties regarding OLRB File No. 1670-21-R.
09/14/2023	Parent, K	0.40	Updating and circulating service list. Circulating case conference hearing details for September 18th.
09/14/2023	Stam, J	1.70	Discussions with S. Bomhof re various; discussion with B. Kofman re various; correspondence re various issues; discssion with C. Francis re various; considering next steps; correspondence re court hearing
09/15/2023	Stam, J	2.30	Conference call re Macquarie claim issues, stalking horse and SISP issues; considering same; discussion with S. Bomhoff and KSV re same; correspondence re various issues; considering tax issues;
09/15/2023	Renihan, J	0.90	Call with client and J. Stam re status of receivership and issues re Macquarie claim.
09/15/2023	Kirkness, J	0.50	Reviewing submissions of the operating engineers and Nortland Power regarding OLRB File No. 0963-23-R. Corresponding with J. Stam in this regard.
09/17/2023	Parent, K	0.30	Preparing counsel slip for case conference on September 18, 2023. Reporting to J. Stam and uploading same to CaseLines.
09/17/2023	Stam, J	1.10	Conversation with B. Kofman, D. Sieradzki re status, court and other matters; conversation and correspondence with S. Bomhof re same; internal discussion re tax issues; initial review of revised docs
09/18/2023	Cobb, E	1.80	Considering [REDACTED]. Drafting analysis regarding same.
09/18/2023	Grossman, A	1.20	Correspondence re updated agreements and discussions re next steps; initial review of revised documents; correspondence and dealings/advice re regulatory matters, etc
09/18/2023	Jivraj, A	0.30	Reviewing transaction agreement and terms and conditions for J. Stam.
09/18/2023	Kirkness, J	0.80	Corresponding with J. Stam regarding update on transaction agreement. Drafting letter to Ontario Labour Relations Board in reply to submissions of the Operating Engineers and Northland Power. Reviewing related documents and information.
09/18/2023	Renihan, J	0.50	Call with counsel for Macquarie re claim [REDACTED]
09/18/2023	Stam, J	4.10	Preparing for and attending court re scheduling; follow up discussions re same; reviewing transaction documents;

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		considering same; correspondence re same; conference call re [REDACTED] and next steps; considering same; reviewing draft OLRB correspondence
09/19/2023	Stam, J	6.80 Conference call with C. Francis, Torys, J. Renihan re various issues; follow up discussions re same; correspondence re transaction documents; correspondence re OLRB; reviewing draft RVO; considering deal issues; conference call with B. Kofman, D. Sieradzki re transaction documents; discussion with S. Bomhof re same; working on revised drafts of same; considering tax issues re same; discussion with [REDACTED] re various
09/19/2023	Renihan, J	0.50 Call with counsel for Macquarie and Validus re Macquarie claim and SISP procedure.
09/19/2023	Oliver, A	0.50 Teleconference with J Stam regarding tax issues.
09/19/2023	Oliver, A	3.00 Review of revised agreements. Discussion with J Stam. Email correspondence with J Tobin.
09/19/2023	Morrison, T	3.00 Reviewing deal documents and details of energy assets and reviewing energy regulatory considerations.
09/19/2023	Kirkness, J	0.70 Reviewing, revising and filing letter with Ontario Labour Relations Board in reply to submissions of the Operating Engineers and Northland Power. Corresponding with B. Kofman and others in this regard.
09/19/2023	Grossman, A	2.40 Correspondence re updated agreements; communications and calls re same; review and comments; correspondence re regulatory matters and advice re next steps; etc.
09/19/2023	Felsher, B	5.00 Reviewing transaction documents for Canadian tax.
09/19/2023	Felsher, B	2.90 Reviewing transaction documents for treatment of Canadian tax liabilities and credits.
09/19/2023	Doucet, D	0.50 Purviewing court order and disclosure statement and responding to J. Stam.
09/19/2023	Cobb, E	0.60 Updating SISP and emails regarding same.
09/19/2023	Cobb, E	0.60 Conference call [REDACTED] and advising on same.
09/19/2023	Chiasson, D	1.10 Discussion with E Cobb [REDACTED] Discussion with A Oliver regarding post-filing, pre-closing tax liabilities.
09/20/2023	Cobb, E	0.30 Conference call with [REDACTED] and calls regarding same.
09/20/2023	Doucet, D	1.60 Reviewing disclosure statement with parcel registers to ensure accuracy. Emailing results and comments to team.

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**Matter Number** 1001261124  
**Matter Description** Insolvency of Validus Power Corp.

09/20/2023	Felsher, B	1.50	Revising allocation of tax refunds in transaction documents.
09/20/2023	Felsher, B	0.90	Analyzing sales tax treatment of [REDACTED]
09/20/2023	Felsher, B	3.90	Reviewing allocation [REDACTED] in transaction documents.
09/20/2023	Grossman, A	0.70	Correspondence re documentation matters, IESO prudential requirements and instructions; dealings and advice re same, etc
09/20/2023	Kirkness, J	0.40	Reviewing decision of Ontario Labour Relations Board confirming stay. Corresponding with J. Stam, B. Kofman and D. Sieradzki in this regard.
09/20/2023	Morrison, T	1.00	Preparing for and attending call with J.Myers with respect to energy regulatory matters. Reporting to deal team regarding same.
09/20/2023	Oliver, A	1.50	Discussion with J Stam. Further revisions to Transaction Agreement. Email correspondence.
09/20/2023	Stam, J	1.30	Discussions re next steps; discussions re excluded contracts with S. Bomhof, J. Mighton; Sending revised documents
09/21/2023	Stam, J	2.60	Preparing for all hands call; attending all hands call to review remaining transaction agreement issues; follow up re same
09/21/2023	Kirkness, J	0.20	Corresponding with S. Bomhof among others regarding grievances.
09/21/2023	Cobb, E	0.20	[REDACTED].
09/22/2023	Cobb, E	0.70	Call with KSV and Torys. Call regarding tax issues and claim amount. Updating SISP.
09/22/2023	Felsher, B	1.80	Reviewing [REDACTED]
09/22/2023	Oliver, A	3.50	Teleconference with J Tobin regarding tax matters. Teleconference with B Felsher regarding tax issues. Teleconference with E Cobb regarding SISP. Teleconference and email correspondence with J Stam. Review [REDACTED].
09/22/2023	Stam, J	1.60	Reviewing R. Chua engagement; correspondence re various transaction matters; internal discussion re tax; internal discussion re SISP; [REDACTED]; correspondence re same
09/24/2023	Felsher, B	1.80	Reviewing transaction documents received from Macquarie counsel for conformity with previous discussions.

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09/24/2023	Kirkness, J	1.00	Reviewing proposed temporary employment agreement for Iroquois Falls Power Corp. Corresponding with J. Stam in this regard.
09/24/2023	Stam, J	1.70	Reviewing revised draft transaction documents; discussion with S. Bomhof re same; considering employment issues; correspondence re same
09/25/2023	Stam, J	1.70	Discussion with M. Hunt and S. Bomhof re various points; correspondence re same; discussion with B. Kofman re documents; revising same; correspondence re same
09/26/2023	Sprague, J	1.20	Conference with J. Stam. Review of commentary and legislative provisions regarding [REDACTED] and follow up with J. Stam regarding same.
09/26/2023	Stam, J	2.70	Several conversations and correspondence re outstanding issues; Revising transaction documents; correspondence re same; discussions re same
09/27/2023	Stam, J	2.60	Conversations with B. Kofman and D. Sieradzki re various outstanding points; discussion with S. Bomhof and J. Mighton re various points; follow up discussions with B. Kofman and D. Sieradzki re same; reviewing revised draft RVO; correspondence re same
09/28/2023	Kirkness, J	0.10	Corresponding with counsel to operating engineers [REDACTED].
09/28/2023	Stam, J	1.70	Conference call with Torys, Bennett Jones, B. Kofman re remaining issues; follow up discussions re same; reviewing TCE and Enbridge contracts; correspondence re same; correspondence re OE grievance
09/29/2023	Stam, J	1.10	Conference call re outstanding issues; correspondence re various issues; follow up call re same
09/30/2023	Stam, J	1.20	Correspondence re LCs and other matters; working on contract bar process order; correspondence re same
<b>Total</b>		<b>179.90</b>	

**TIME SUMMARY**

<u>NAME</u>	<u>HOURS</u>	<u>RATE</u>	<u>AMOUNT</u>
<b>Partner</b>			
Chiasson, D	1.10	1,095.00	1,204.50

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<u>NAME</u>	<u>HOURS</u>	<u>RATE</u>	<u>AMOUNT</u>
<b>Paralegal</b>			
Cardillo, R	4.50	400.00	1,800.00
Doucet, D	3.80	445.00	1,691.00
Parent, K	7.10	400.00	2,840.00
		<b>Sub Total</b>	<b>6,331.00</b>
<b>Total</b>		<b>179.90</b>	<b>145,547.50</b>

**DISBURSEMENT SUMMARY**

<u>DESCRIPTION</u>	<u>QTY</u>	<u>AMOUNT</u>
<b>Montreal</b>		
<b>Non-Taxable</b>		
Court Fee	1.00	582.00
<b>Taxable</b>		
Courier Fee	1.00	64.05
Process Servers' Charges	1.00	75.00
	<b>Sub Total</b>	<b>721.05</b>
	<b>TOTAL</b>	<b>721.05</b>

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# INVOICE

**Invoice Number** 9090604598  
**Matter Number** 1001261124  
**Invoice Date** November 03, 2023  
**NRF Contact** Jennifer Stam



Norton Rose Fulbright Canada LLP  
222 Bay Street, Suite 3000, P.O. Box 53  
Toronto ON M5K 1E7  
Canada  
Tel: +1 416-216-4000  
Fax: +1 416-216-3930  
www.nortonrosefulbright.com  
GST/HST No. 111340006  
Accounts Contact:  
nrcreceivables@nortonrosefulbright.com

For the attention of: Bobby Kofman,  
President and Managing Director  
bkofman@ksvadvisory.com

**KSV Restructuring Inc.**  
**150 King Street West**  
**Suite 2308, Box 42**  
**Toronto ON M5H 1J9**

## Insolvency of Validus Power Corp.

Professional Services Rendered to October 31, 2023

Charges  
CAD

### SUMMARY

Taxable Fees	148,633.50
Taxable Disbursements	66.39
Taxable Amount	148,699.89
HST 13.000%	19,330.99
<b>TOTAL AMOUNT DUE AND PAYABLE</b>	<b>CAD 168,030.88</b>

### Payable Upon Receipt PAYMENT INFORMATION

Beneficiary: Norton Rose Fulbright Canada S.E.N.C.R.L., s.r./ LLP 1, Place Ville Marie, suite 2500 Montreal Quebec, CANADA H3B 1R1  
Bank information: RBC Financial Group, 1 Place Ville Marie, Montreal, Quebec, CANADA H3C 3B5, Bank 003, Transit 00001, ACC. No. 161-327-2, Swift Code # ROYCCAT2. Include invoice number on transfer order.

Please be alert to the risks of cyber-crime and email impersonation attempts to redirect funds inappropriately. We will not under usual circumstances change our bank account details during the course of a transaction. Any communication which you receive advising otherwise could be fraudulent and should urgently be orally verified with your known contact at our firm, or a member of our Finance department.

<b>Invoice Date</b>	November 03, 2023	<b>Invoice Number</b>	9090604598
<b>Matter Number</b>	1001261124		
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**TIME DETAILS**

<u>DATE</u>	<u>NAME</u>	<u>HOURS</u>	<u>DESCRIPTION</u>
09/12/2023	Kirkness, J	1.00	Summarizing correspondence, submissions and decision for Ontario Labour Relations Board matter number 0963-23-R, involving the Operating Engineers, Iroquois Falls Power Corp, Northland Power Inc, and Validus Power Corp. Corresponding with J. Stam in this regard.
10/01/2023	Stam, J	1.80	Reviewing revised documents; correspondence re same; correspondence re SISP order
10/02/2023	Stam, J	3.90	Call with B. Kofman, D. Sieradzki re comments; revising same; discussions with S. Bomhof, J. Mighton re same; correspondence re same; working on revisions to same
10/03/2023	Cobb, E	0.30	Call with ██████████ counsel and reporting on same.
10/03/2023	Jivraj, A	0.50	Attending meeting with D. Vujovic to discuss file transfer.
10/03/2023	Oliver, A	0.70	Review of revised transaction documents.
10/03/2023	Renihan, J	0.20	Call with J. Stam re receiver's report.
10/03/2023	Stam, J	1.20	Correspondence re revised draft documents; conversation with S. Bomhof and M. Hunt re same; correspondence re various; internal discussions re motion materials
10/04/2023	Renihan, J	1.00	Drafting summary of disputes for Receiver's report.
10/04/2023	Stam, J	0.80	Discussion with S. Bomhof and M. Hunt re transaction documents and related matters; discussion with G. Galati re Wellington; correspondence re same
10/05/2023	Stam, J	3.40	Review revised transaction documents; discussion with B. Kofman, D. Sieradzki re same; discussion with S. Bomhof and M. Hunt re same; correspondence re same
10/05/2023	Parent, K	2.10	Reviewing updated SISP material and draft notice of motion. Reporting to J. Stam. Correspondence with Court regarding availability for three hour hearing.
10/06/2023	Doucet, D	0.40	Reviewing updated Permitted Encumbrances to court order and providing comments to J. Stam.
10/06/2023	Stam, J	1.20	reviewing revised documents; conversations and correspondence re same; preliminary review of draft report
10/07/2023	Stam, J	3.20	Reviewing and revising draft report re SISP; considering issues re same
10/08/2023	Renihan, J	0.40	Revising report re ██████████.

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10/08/2023	Stam, J	1.80	Reviewing and commenting on draft report; working on notice of motion and other court materials; correspondence re same
10/09/2023	Stam, J	1.30	Working on notice of motion; correspondence re same
10/10/2023	Cobb, E	0.60	Review and emails regarding Report of the Monitor.
10/10/2023	Grossman, A	1.80	Correspondence with internal team and instructions re next steps; review latest draft transaction documents; review and consider drafting matters and advice; call and instructions with B. Mayes; etc.
10/10/2023	Mayes, B	2.60	Conferring with A. Grossman. Reviewing transaction agreement. Reviewing terms and conditions.
10/10/2023	Parent, K	2.30	Drafting notice of motion and draft order for receivership motion to increase borrowing limits. Reviewing draft second report. Reporting to J. Stam.
10/10/2023	Stam, J	1.10	Further review of report; considering additional comments; discussion with E.Cobb re same; discussions with S. Bomhof and J. Mighton re various; correspondence re same
10/11/2023	Stam, J	3.70	Working on factum and other court materials
10/11/2023	Parent, K	1.10	Revising and updating Notice of Motion and draft Order for SISP approval. Reporting to J. Stam. Updating Service Lists and circulating same for posting on website.
10/11/2023	Grossman, A	0.80	Advice and instructions re preparing auction draft SPA; reviews and drafting points; correspondence/calls re same, etc
10/12/2023	Doucet, D	0.40	Emailing to and from Torys and providing update to J. Stam.
10/12/2023	Grossman, A	2.30	Calls and correspondence re analysis and drafting matters for purposes of preparing auction draft SPA; reviews, comments and drafting matters and advice, etc.
10/12/2023	Kirkness, J	1.00	Summarizing correspondence, submissions and decision for Ontario Labour Relations Board matter number 0963-23-R, involving the Operating Engineers, Iroquois Falls Power Corp, Northland Power Inc, and Validus Power Corp. Corresponding with J. Stam in this regard.
10/12/2023	Mayes, B	6.60	Reviewing transaction agreement, offer letter terms and conditions, initial order, and sale and investment solicitation process. Conferring with A. Grossman. Drafting model share purchase agreement for the auction.
10/12/2023	Parent, K	0.60	Reviewing comments from KSV on Notice of Motion. Revising Notice of Motion. Reporting to J. Stam.

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10/12/2023	Stam, J	1.20	Internal discussions re form of SPA; considering issues re same; conversation with S. Bomhof re various; reviewing revised offer letter; correspondence with KSV re court materials
10/12/2023	Vice, E	1.00	Reviewing security agreement, indemnities and PPSA searches; correspondence with J. Stam re: same.
10/13/2023	Grossman, A	0.50	Correspondence and advice re preparing updated auction draft SPA
10/13/2023	Mayes, B	2.20	Reviewing transaction agreement, offer letter terms and conditions, initial order, and sale and investment solicitation process. Drafting model share purchase agreement for the auction. Email correspondence to A. Grossman with draft model share purchase agreement.
10/14/2023	Stam, J	1.70	Further review of draft report; correspondence re same
10/15/2023	Stam, J	0.70	Conversation with S. Bomhof and J. Mighton re status; correspondence re same
10/16/2023	Vice, E	2.00	Drafting opinion; correspondence with J. Stam re: same.
10/16/2023	Stam, J	1.60	Conversations and correspondence re next steps, scheduling and related matters; considering same; reviewing comments on report from Torys
10/16/2023	Renihan, J	0.20	Reviewing proposed revisions to report and emailing with J. Stam re same.
10/16/2023	Parent, K	0.50	Email to Commercial List regarding availability. Preparing request form for October 26 delivery. Reporting to J. Stam.
10/16/2023	Mayes, B	2.40	Conferring with A. Grossman. Reviewing and revising model share purchase agreement.
10/16/2023	Grossman, A	4.40	Review and comments on updated auction draft SPA; correspondence and instructions re same and related advice, etc.
10/16/2023	Doucet, D	0.70	Completing final review of permitted encumbrances list and emailing Torys with respect to same.
10/17/2023	Grossman, A	4.20	Various dealings, advice, drafting and comments on updated auction SPA; reviews/analysis re certain precedents; all communications and correspondence, etc.
10/17/2023	Mayes, B	6.90	Conferring with J. Stam and A. Grossman. Reviewing and revising purchase agreement. Conferring with A. Grossman. Email correspondence to J. Stam and A. Oliver regarding draft form of purchase agreement.
10/17/2023	Parent, K	3.10	Correspondence with Court regarding hearing availability.

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			Reviewing and revising Receivership proceeding motion materials for increase in borrowing limit. Preparing motion record index for same. Reporting to J. Stam. Revising SISP draft motion materials. Reporting to J. Stam.
10/17/2023	Renihan, J	0.50	Call with counsel for Macquarie and Validus re schedule.
10/17/2023	Stam, J	4.70	Several discussions re SISP motion and related matters; considering same; reviewing form of purchase agreement; working on court materials re SISP motion; reviewing revised court report; conversations with S. Bomhof and J. Mighton re various; conference call with C. Francis, Torgs, others re motion and scheduling issues
10/18/2023	Vujovic, D	4.10	Proofreading Notice of Motion for SISP approval and draft SISP Order.
10/18/2023	Stam, J	5.20	Working on court materials; revising same; discussions with S. Bomhof and J. Mighton re various; finalizing SISP and related materials; reviewing form of SPA; internal discussions re same
10/18/2023	Renihan, J	0.30	Emails re draft report and revising same.
10/18/2023	Parent, K	6.30	Correspondence with Court regarding availability and scheduling. Discussions with J. Stam. Preparing draft motion record for SISP approval. Revising Notice of Motion and draft orders. Redacting schedules as per J. Stam. Preparing excerpts of report for J. Stam. Reviewing draft report. Finalizing drafts for inclusion in Motion Record for service on Thursday.
10/18/2023	Oliver, A	2.20	Review and comment on Share Purchase Agreement. Email correspondence. Discussion with A Grossman.
10/18/2023	Mayes, B	4.10	Reviewing and revising form of purchase agreement. Conferring with J. Stam and A. Grossman.
10/18/2023	Grossman, A	2.20	Review comments on auction SPA; consider same; call with team; review and comments on updated draft; related dealings, instructions and advice, etc.
10/19/2023	Grossman, A	0.50	Discussion with B. Mayes re drafting updates and finalizing draft auction SPA for clients, etc
10/19/2023	Mayes, B	0.40	Reviewing and revising form of purchase agreement.
10/19/2023	Oliver, A	0.80	Validus. Email correspondence regarding SPA.
10/19/2023	Parent, K	5.10	Correspondence with Court regarding scheduling of October 23 appointment and submitting request form for same. Attending to uploading to CaseLines. Revising and

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<b>Invoice Date</b>	November 03, 2023	<b>Invoice Number</b>	9090604598
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			finalizing Motion Records for CCAA and Receivership Proceedings. Attending to service of same. Revising draft orders and preparing blacklines for same. Reviewing practice directions for Aide Memoire requirements and obtaining precedents. Reporting to J. Stam.
10/19/2023	Stam, J	4.60	Finalizing court materials for service; correspondence re same; review of SPA; working on draft factum; discussions with S. Bomhof re various
10/20/2023	Vujovic, D	6.70	Proofreading draft Factum of the Monitor (SISP Approval Order). Researching case law to support arguments made in the draft Factum.
10/20/2023	Stam, J	5.80	Working on factum and related materials; working on aide memoir; correspondence re scheduling; discussions with Torys re same; consideration of form of SPA; correspondence with B. Kofman and D. Sieradzki re various; conversation with J. Cameron re TC Energy; conversation with M. Konuyhkova re IESO; correspondence with S. Philpott re PWU; correspondence re SISP hearing
10/20/2023	Renihan, J	0.20	Reviewing draft submissions for scheduling hearing.
10/20/2023	Parent, K	6.70	Reviewing draft Factum and completing footnotes and citations. Correspondence with J. Stam regarding Aide Memoire and scheduling details.
10/20/2023	Mayes, B	0.60	Conferring with J. Stam. Reviewing and revising form of purchase agreement.
10/21/2023	Parent, K	5.20	Revising Factum and completing additional footnotes. Preparing schedules for same. Preparing and finalizing Aide Memoire. Attending to service and filing of same. Uploading to CaseLines. Correspondence with J. Stam and D. Vujovic.
10/21/2023	Renihan, J	1.70	Call with J. Stam re scheduling and SISP approval motion. Revising aide memoire and factum for motion.
10/21/2023	Stam, J	2.70	Working on aide memoir and scheduling matters; working on factum; correspondence re same; internal discussions re same; correspondence with KSV, Torys and Bennett Jones re same
10/22/2023	Parent, K	2.80	Updating and revising footnotes and citations. Reviewing decisions. Correspondence with D. Vujovic regarding same. Correspondence with J. Stam. Email to Torys regarding scheduling hearing. Preparing participant form for October 23 hearing.

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10/22/2023	Stam, J	1.10	Revising factum; research re specific points; correspondence re same
10/23/2023	Mayes, B	1.00	Conferring with J. Stam. Reviewing transaction agreement. Preparing list of clean up edits for transaction agreement and terms and conditions.
10/23/2023	Parent, K	6.10	Revising and finalizing Factum for the SISP Approval. Attending to the service of same. Circulating scheduling endorsement. Correspondence with J. Stam. Uploading participant form to CaseLines for scheduling attendance.
10/23/2023	Renihan, J	1.40	Preparing for and attending scheduling conference. Reviewing and revising factum for SISP approval motion.
10/23/2023	Stam, J	3.60	Preparing for and attending scheduling hearing re SISP motion; follow up discussions re same; finalizing factum and several conversations and correspondence re same; correspondence with IESO, DOJ and others
10/23/2023	Vujovic, D	1.00	Proofreading draft Factum of the Monitor (SISP Approval Order).
10/24/2023	Vujovic, D	0.50	Updating the dates in the Sale and Investment Solicitation Process.
10/24/2023	Stam, J	1.60	Conversation with Goldblatt re PWU questions; conversation with DOJ, Torys, Bennett Jones, KSV re tax; conversation with IESO, M. Konukohva re questions; internal discussions re same
10/24/2023	Parent, K	0.20	Attending to scheduling of November 1 hearing for SISP Approval.
10/25/2023	Parent, K	0.60	Correspondence with Court regarding November 1 hearing scheduling. Preparing request form for Receivership Proceeding. Correspondence with J. Stam. Updating CaseLines participants for matter.
10/25/2023	Renihan, J	0.20	Discussing SISP approval motion with J. Stam.
10/25/2023	Stam, J	1.10	Conference call with TCE, Torys, Bennett Jones, KSV re TCE contract; attending to matters re SISP motion; correspondence with DOJ; Correspondence with S. Bomhof re SNS; correspondence with KSV re same
10/26/2023	Parent, K	2.60	Correspondence with Court regarding CaseLines bundles. Email to service list regarding same. Preparing affidavits of service and attending to filing of SISP motion materials and Increase of Receiver's Borrowing Amount motion materials with Court. Uploading same to CaseLines. Hyperlinking Factum on CaseLines pursuant to practice direction.

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			Reporting to J. Stam.
10/26/2023	Stam, J	1.70	Discussions with S. Bomhof re [REDACTED] and related issues; correspondence re same; reviewing background documents re same; reviewing responding factum from Minden Gross; considering issues re same
10/27/2023	Grossman, A	0.40	Correspondence from lender's counsel at Torys re revised auction draft; initial review of same and correspondence with team, etc
10/27/2023	Mayes, B	1.10	Reviewing and summarizing TransCanada [REDACTED]
10/27/2023	Renihan, J	1.50	Reviewing factum of Validus entities. Calls with client and Torys re motion and response to Validus factum.
10/27/2023	Stam, J	2.30	Conference call with KSV, J. Renihan re responding materials; considering same; conference call with Torys, J. Renihan re same; correspondence re [REDACTED]; reviewing materials re same
10/29/2023	Stam, J	1.80	Correspondence re [REDACTED] and related matters; further consideration of Minden Gross factum; preparing for court; reviewing Torys comments on SPA ; reviewing draft reply materials
10/29/2023	Renihan, J	0.20	Reviewing affidavit from Macquarie for SISP approval motion.
10/29/2023	Grossman, A	0.80	Review revised auction SPA from lender's counsel at Torys; correspondence with team; seeking additional supporting documents and advice re next steps
10/30/2023	Grossman, A	2.20	Review of supporting agreements referenced in auction SPA draft; consider drafting changes from MEFL draft and advice re same; instructions for drafting updates and correspondence/calls with team; correspondence re corporate minute books; etc
10/30/2023	Mayes, B	0.80	Conferring with A. Grossman. Reviewing and revising form of purchase agreement.
10/30/2023	Renihan, J	0.70	Reviewing factum of Macquarie for SISP approval motion and commenting on same.
10/30/2023	Stam, J	4.90	Discussion with S. Bomhof re various; preparing for Nov 1 motion; considering applicable law and various factors; internal discussion re form of SPA; internal discussion re [REDACTED]; correspondence re same
10/31/2023	Grossman, A	0.80	Review comments on auction SPA; calls with B. Mayes; various instructions re drafting matters and comments;

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			advice re next steps; etc
10/31/2023	Mayes, B	2.60	Reviewing and revising form of purchase agreement. Conferring with A. Grossman. Email correspondence with J. Stam regarding form of purchase agreement.
10/31/2023	Parent, K	6.10	Preparing for November 1 hearing. Assisting with submissions of counsel. Attending to CaseLines organization and hyperlinking. Revising and finalizing draft orders. Assisting counsel with hearing preparation.
10/31/2023	Renihan, J	2.10	Preparing for SISP approval motion.
10/31/2023	Stam, J	4.20	Preparing for Nov 1 motion; internal discussions re same; conference call with Torys/Bennett Jones; discussion with KSV re various; reviewing revised form of SPA; correspondence re same
<b>Total</b>		<b>212.00</b>	

**TIME SUMMARY**

<u>NAME</u>	<u>HOURS</u>	<u>RATE</u>	<u>AMOUNT</u>
<b>Partner</b>			
Cobb, E	0.90	895.00	805.50
Grossman, A	20.90	1,150.00	24,035.00
Kirkness, J	2.00	575.00	1,150.00
Oliver, A	3.70	1,225.00	4,532.50
Renihan, J	10.60	750.00	7,950.00
Stam, J	73.90	895.00	66,140.50
		<b>Sub Total</b>	<b>104,613.50</b>

<u>NAME</u>	<u>HOURS</u>	<u>RATE</u>	<u>AMOUNT</u>
<b>Associate</b>			
Mayes, B	31.30	535.00	16,745.50
Vice, E	3.00	565.00	1,695.00
		<b>Sub Total</b>	<b>18,440.50</b>

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<u>NAME</u>	<u>HOURS</u>	<u>RATE</u>	<u>AMOUNT</u>
<b>Trainee</b>			
Jivraj, A	0.50	340.00	170.00
Vujovic, D	12.30	340.00	4,182.00
		<b>Sub Total</b>	<b>4,352.00</b>
<u>NAME</u>	<u>HOURS</u>	<u>RATE</u>	<u>AMOUNT</u>
<b>Paralegal</b>			
Doucet, D	1.50	445.00	667.50
Parent, K	51.40	400.00	20,560.00
		<b>Sub Total</b>	<b>21,227.50</b>
<b>Total</b>		<b>212.00</b>	<b>148,633.50</b>

**DISBURSEMENT SUMMARY**

<u>DESCRIPTION</u>	<u>QTY</u>	<u>AMOUNT</u>
<b>Montreal</b>		
<b>Taxable</b>		
Courier Fee	1.00	66.39
		<b>Sub Total</b>
		<b>66.39</b>
	<b>TOTAL</b>	<b>66.39</b>

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# INVOICE

**Invoice Number** 9090614861  
**Matter Number** 1001261124  
**Invoice Date** December 07, 2023  
**NRF Contact** Jennifer Stam



Norton Rose Fulbright Canada LLP  
222 Bay Street, Suite 3000, P.O. Box 53  
Toronto ON M5K 1E7  
Canada  
Tel: +1 416-216-4000  
Fax: +1 416-216-3930  
www.nortonrosefulbright.com  
GST/HST No. 111340006  
Accounts Contact:  
nrcreceivables@nortonrosefulbright.com

For the attention of: Bobby Kofman,  
President and Managing Director  
bkofman@ksvadvisory.com

**KSV Restructuring Inc.**  
**150 King Street West**  
**Suite 2308, Box 42**  
**Toronto ON M5H 1J9**

## Insolvency of Validus Power Corp.

Professional Services Rendered to November 30, 2023

Charges  
CAD

### SUMMARY

Taxable Fees	62,135.00
Taxable Disbursements	128.24
Taxable Amount	62,263.24
HST 13.000%	8,094.22
Non-Taxable Disbursements	678.00
<b>TOTAL AMOUNT DUE AND PAYABLE</b>	<b>CAD 71,035.46</b>

### Payable Upon Receipt PAYMENT INFORMATION

Beneficiary: Norton Rose Fulbright Canada S.E.N.C.R.L., s.r./ LLP 1, Place Ville Marie, suite 2500 Montreal Quebec, CANADA H3B 1R1  
Bank information: RBC Financial Group, 1 Place Ville Marie, Montreal, Quebec, CANADA H3C 3B5, Bank 003, Transit 00001, ACC. No. 161-327-2, Swift Code # ROYCCAT2. Include invoice number on transfer order.

Please be alert to the risks of cyber-crime and email impersonation attempts to redirect funds inappropriately. We will not under usual circumstances change our bank account details during the course of a transaction. Any communication which you receive advising otherwise could be fraudulent and should urgently be orally verified with your known contact at our firm, or a member of our Finance department.

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**TIME DETAILS**

<u>DATE</u>	<u>NAME</u>	<u>HOURS</u>	<u>DESCRIPTION</u>
11/01/2023	Grossman, A	1.00	Receipt and review of additional comments on auction draft from MEFL; discussions with team; provide drafting changes and mark up; instructions re same; correspondence, etc
11/01/2023	Mayes, B	1.20	Conferring with A. Grossman. Reviewing and revising form of purchase agreement.
11/01/2023	Parent, K	4.60	Preparing for and attending SISP Approval hearing. Correspondence to Commercial List regarding orders.
11/01/2023	Renihan, J	4.70	Preparing for and attending SISP approval motion.
11/01/2023	Stam, J	6.80	Preparing for and attending court re SISP motion; follow up conversations and correspondence re same; correspondence re ██████████ and security; internal discussion re form of SPA
11/01/2023	Vice, E	0.80	Correspondence with J. Stam re: ██████████ documents and other other opinion matters.
11/01/2023	Vice, E	1.00	Reviewing deal documents and call with J. Stam re: same.
11/01/2023	Vujovic, D	3.00	Attending court hearing.
11/02/2023	Grossman, A	0.60	Review revised/updated auction SPA draft; correspondence with team, etc
11/02/2023	Parent, K	0.20	Correspondence with Court regarding draft orders. Reporting to J. Stam.
11/02/2023	Renihan, J	0.20	Reviewing decision of Justice Osborne on SISP approval motion.
11/02/2023	Stam, J	0.70	Reviewing endorsement and orders; conversations and correspondence re same; reviewing form of SPA; correspondence with M. Kestenburg re TD security
11/03/2023	Stam, J	0.70	Follow up re SISP order; drafting contract notice; correspondence re various
11/05/2023	Stam, J	0.40	Revising notice; correspondence re same
11/06/2023	Vice, E	0.80	Call with J. Stam and TD counsel ██████████ correspondence re: missing documents.
11/06/2023	Stam, J	1.20	revising key dates summary; working on RVO; discussion with S. Bomhof re various; discussion with M. Kestenberg and E. Vice re TD; correspondence re purchaser NDAs

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11/07/2023	Kirkness, J	0.20	Corresponding with J. Stam regarding extension of stay and notifying the Ontario Labour Relations Board.
11/07/2023	Parent, K	0.20	Correspondence with Court regarding availability for RVO motion.
11/07/2023	Stam, J	1.10	Discussions with S. Bomhof re next steps and various; considering same; reviewing NAES letter; discussions re NDA and issues re same; correspondence re same
11/08/2023	Kirkness, J	0.50	Drafting, serving and filing letter with Ontario Labour Relations Board regarding extension of stay.
11/08/2023	Parent, K	0.30	Correspondence with Court regarding scheduling appointment for RVO motion. Preparing request form and submitting same. Reporting to J. Stam.
11/08/2023	Stam, J	1.20	Working on form of RVO; correspondence re same; working on issues re RVO motion and scheduling, strategic issues re same
11/09/2023	Kirkness, J	0.20	Reviewing decision of Ontario Labour Relations Board to extend adjournment in response to stay. Corresponding with J. Stam in this regard.
11/09/2023	Parent, K	0.20	Correspondence with Court regarding scheduling matters for November 17, 2023. Confirmation from Court regarding same.
11/09/2023	Stam, J	0.90	Correspondence re scheduling and related matters; correspondence re next steps and planning; revising form of RVO; correspondence re form of RVO
11/10/2023	Stam, J	1.10	Considering next steps re transaction; discussion with S. Bomhof re same; correspondence re documents
11/13/2023	Stam, J	0.70	Discussion with M. Kestenberg re TD security; reviewing documents re same; correspondence re same
11/14/2023	Parent, K	0.50	Instructions from J. Stam regarding RVO materials and service. Reviewing list of contract counterparties for service. Preparing shell of Factum for RVO hearing.
11/14/2023	Stam, J	1.70	Discussion with J. Mighton, S. Bomhof re scheduling and related matters; considering same; internal discussion re minute book review and related matters; considering issues re RVO motion and legal issues re same; considering CRA issues and tax matter re transaction
11/15/2023	Weir, D	0.20	Assessing [REDACTED].
11/15/2023	Stam, J	2.70	Discussion re various with B. Kofman, D. Sieradzki; working on and finalizing aide memoire re Nov 17 appearance;

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			considering legal issues re RVO motion; legal research re same; internal discussion re [REDACTED]; correspondence re same
11/15/2023	Parent, K	0.40	Finalizing Aide Memoire for service on November 16th. Drafting service email for same.
11/16/2023	Parent, K	0.70	Attending to service and filing of Aide Memoire. Preparing participant information form for November 17 court attendance. Uploading Aide Memoire and Participant Info form to CaseLines.
11/16/2023	Stam, J	3.90	Working on court materials re approval motion; research re same; internal discussion re [REDACTED]; discussion with R. Forget, KSV, D. Weir re same; correspondence re same
11/16/2023	Weir, D	1.90	Reviewing emissions performance standard compliance and enforcement requirements. Continuing to assess [REDACTED] [REDACTED] Engaging in Teams meeting with J. Stam, R. Forget and D. Sieradzki to [REDACTED] [REDACTED]
11/17/2023	Grossman, A	1.20	Dealings, review and response re draft NDA comments and call with team; dealings re comments from MEFL and Hut 8 counsel on auction SPA and consider same; call with team, etc.
11/17/2023	Kirkness, J	0.30	Corresponding with union counsel and J. Stam regarding [REDACTED].
11/17/2023	Parent, K	3.20	Preparing Counterparty Service List template to be forwarded to Monitor and R. Chua to be completed. Preparing Receiver's Borrowing Certificate. Discussion with J. Stam regarding same. Correspondence regarding today's scheduling appointment. Correspondence with Commercial List regarding scheduling of December 22, 2023 hearing. Drafting, reviewing and revising draft Notice of Motion for RVO approval hearing.
11/17/2023	Stam, J	3.70	Working on SISP matters; discussion with E. Brenner re same; working on NDAs; correspondence re various; attending to receiver borrowing and other matters; working on court materials; reviewing comments on form of SPA and RVO; considering same; correspondence re same
11/18/2023	Stam, J	1.30	Working on form of SPA and RVO for data room; correspondence re same
11/19/2023	Stam, J	0.70	Correspondence re form of SPA and form of RVO for data room; final review of same

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11/20/2023	Vice, E	0.20	Correspondence with J. Stam re: opinion and related matters.
11/20/2023	Stam, J	1.40	Finalizing materials for data room; review of data room re updated information; reviewing revised bidder NDA; discussion with S. Bomhof re various
11/20/2023	Sprague, J	0.70	Review of wording of vesting order and correspondence from and to J. Stam and D. Doucet regarding same.
11/20/2023	Parent, K	0.20	Updating form of RVO and reporting to J. Stam.
11/20/2023	Doucet, D	1.10	Reviewing and clarifying instructions from J. Stam. Reviewing draft vesting order with title opinion and parcel registers for accuracy and revision. Circulating back to J. Stam.
11/21/2023	Grossman, A	0.40	Correspondence and call with J. Stam re NDA matters and comments from counterparty; discussion and advice re same, etc.
11/21/2023	Parent, K	0.20	Updating Stalking Horse RVO. Correspondence with J. Stam.
11/21/2023	Stam, J	1.40	Discussion re bidder NDA; revising same; working on tax analysis and legal argument re same; considering issues re same; correspondence re carbon taxes
11/22/2023	Stam, J	1.30	Discussion re bidder NDA; correspondence re same; discussion with S. Bomhof re various; correspondence re taxes and other matters
11/23/2023	Stam, J	0.30	Correspondence re diligence and other matters re Macquarie
11/24/2023	Kirkness, J	0.40	Corresponding further with union counsel and J. Stam regarding payment of union dues.
11/24/2023	Stam, J	2.10	Discussion with S. Bomhof re various; discussion with J. Mighton re various; discussion with D. Sieradzki re various; correspondence re carbon taxes and other matters; correspondence re deposits and related issues; considering same
11/27/2023	Bellissimo, F	3.20	Conducting due diligence reviews.
11/28/2023	Bellissimo, F	7.80	Continued due diligence review and drafting reports.
11/28/2023	Stam, J	3.10	Discussion with S. Bomhof re waste heat agreements and other; discussion with bidder group re questions; follow up diligence re same; considering sale process issues and reviewing documents re same
11/29/2023	Stam, J	2.90	Discussion with M. Noel re stalking horse and related

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<b>Invoice Date</b>	December 07, 2023	<b>Invoice Number</b>	9090614861
<b>Matter Number</b>	1001261124		
<b>Matter Description</b>	Insolvency of Validus Power Corp.		

			matters; discussion with S. Bomhof re waste heat agreements and other issues; correspondence with KSV re various; considering issues and working on same; correspondence re corporate matters and reviewing internal correspondence re same; considering sale approval issues and working on same
11/30/2023	Renihan, J	0.50	Call with J. Stam re potential tax dispute at approval hearing.
11/30/2023	Stam, J	1.10	Working on response to Mac questions; discussion with R. Forget re various; correspondence re various; internal discussion re tax and related issues; considering same
<b>Total</b>		<b>85.20</b>	

**TIME SUMMARY**

<u>NAME</u>	<u>HOURS</u>	<u>RATE</u>	<u>AMOUNT</u>
<b>Partner</b>			
Grossman, A	3.20	1,150.00	3,680.00
Kirkness, J	1.60	575.00	920.00
Renihan, J	5.40	750.00	4,050.00
Sprague, J	0.70	480.00	336.00
Stam, J	42.40	895.00	37,948.00
		<b>Sub Total</b>	<b>46,934.00</b>

<u>NAME</u>	<u>HOURS</u>	<u>RATE</u>	<u>AMOUNT</u>
<b>Of Counsel</b>			
Weir, D	2.10	725.00	1,522.50
		<b>Sub Total</b>	<b>1,522.50</b>

<u>NAME</u>	<u>HOURS</u>	<u>RATE</u>	<u>AMOUNT</u>
<b>Associate</b>			
Mayes, B	1.20	535.00	642.00

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<b>Invoice Date</b>	December 07, 2023	<b>Invoice Number</b>	9090614861
<b>Matter Number</b>	1001261124		
<b>Matter Description</b>	Insolvency of Validus Power Corp.		

Vice, E	2.80	565.00	1,582.00
		<b>Sub Total</b>	<b>2,224.00</b>
<b><u>NAME</u></b>	<b><u>HOURS</u></b>	<b><u>RATE</u></b>	<b><u>AMOUNT</u></b>
<b>Trainee</b>			
Vujovic, D	3.00	340.00	1,020.00
		<b>Sub Total</b>	<b>1,020.00</b>
<b><u>NAME</u></b>	<b><u>HOURS</u></b>	<b><u>RATE</u></b>	<b><u>AMOUNT</u></b>
<b>Paralegal</b>			
Bellissimo, F	11.00	515.00	5,665.00
Doucet, D	1.10	445.00	489.50
Parent, K	10.70	400.00	4,280.00
		<b>Sub Total</b>	<b>10,434.50</b>
<b>Total</b>		<b>85.20</b>	<b>62,135.00</b>

**DISBURSEMENT SUMMARY**

<b><u>DESCRIPTION</u></b>	<b><u>QTY</u></b>	<b><u>AMOUNT</u></b>
<b>Montreal</b>		
<b>Non-Taxable</b>		
Court Fee	1.00	678.00
<b>Taxable</b>		
Courier Fee	1.00	18.24
Information Service Cost	1.00	110.00
	<b>Sub Total</b>	<b>806.24</b>
	<b>TOTAL</b>	<b>806.24</b>

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

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

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

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

Proceeding commenced at TORONTO

**AFFIDAVIT OF JENNIFER STAM  
(SWORN DECEMBER 21, 2023)**

**NORTON ROSE FULBRIGHT CANADA LLP**

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Toronto, ON M5K 1E7

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Lawyers for the Monitor