

**Distributed Resource
Interconnection Procedures**

**Interconnection and Operating Agreement
for Non-utility Generation Producers**

Effective: 2020 11 27

Available in accessible formats upon request.



INTERCONNECTION AND OPERATING AGREEMENT

made between

MANITOBA HYDRO

and

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INTERCONNECTION AND OPERATING AGREEMENT

THIS AGREEMENT is made and entered as of the ___ day of _____, 202•,

BETWEEN:

MANITOBA HYDRO

(“Manitoba Hydro”),

- and -

[INSERT NAME OF GENERATOR]

(“Generator”),

WHEREAS, Generator owns and operates or intends to own and operate the Facility;

AND WHEREAS, the Facility is located adjacent to the System owned by Manitoba Hydro;

AND WHEREAS, Generator has requested, and Manitoba Hydro has agreed to enter into this Agreement with Generator for the purposes of interconnecting the Facility with the System and to define the continuing responsibilities and obligations of the Parties with respect thereto;

NOW, THEREFORE, in consideration of and subject to the mutual covenants contained herein, it is agreed:

ARTICLE 1 - INTERPRETATION

1.1 Definitions. In this Agreement, unless the context or subject matter indicates otherwise, the following words and phrases shall have the following meanings:

- (1) **“Applicable Laws”** shall mean Canadian federal, provincial and local laws, ordinances, rules, codes and regulations, and all duly promulgated orders and other duly authorized actions of any Governmental Authority having jurisdiction over the Parties, their respective facilities and/or the respective services they provide, including all applicable codes and standards;
- (2) **“Bi-Directional Metering Equipment”** shall mean metering equipment installed at the Point of Interconnection or as otherwise designated by mutual agreement between Manitoba Hydro and the Generator for the purposes of measuring electrical energy supplied by Manitoba Hydro to the Generator as well as electrical energy supplied by the Generator to Manitoba Hydro;
- (3) **“Breach”** the failure to comply with any term or condition of this Agreement, including but not limited to any breach of a representation, warranty or covenant made in this Agreement;
- (4) **“Construction Expenditures”** shall have the meaning ascribed thereto in Section 4.2;

- (5) **“Default”** shall mean the failure of a Party in Breach of this Agreement to cure such Breach in accordance with the provisions of Article 11 of the Agreement;
- (6) **“Effective Date”** shall mean the date on which this Agreement is made and entered into;
- (7) **“Electric Service Agreement”** shall mean the electric service agreement, if any, entered into between the Parties with respect to the Interconnection System Upgrades;
- (8) **“Emergency Condition”** shall mean a condition or situation: (i) that in the judgment of either Party is imminently likely to endanger life or property; or (ii) that in the judgment of Manitoba Hydro is imminently likely to cause a material adverse effect on the security of, or damage to the System or the electrical or transmission systems of others to which the System is directly or indirectly connected; or (iii) that in the judgment of Generator is imminently likely to cause damage to the Facility. Any condition or situation that results from lack of sufficient generating capacity to meet load requirements or that results solely from economic conditions shall not constitute an Emergency Condition, unless one of the enumerated conditions or situations identified in this definition also exists;
- (9) **“Engineering Study”** shall mean the Engineering Study for the Facility dated ● prepared by Manitoba Hydro for Generator;
- (10) **“Facility”** means the Generator’s electric generating facility located on the Property and identified in the Engineering Study, but shall not include Generator Interconnection Facilities;
- (11) **“Force Majeure”** shall mean any cause beyond the control of the Party affected, including but not restricted to, acts of God, flood, drought, earthquake, storm, fire, lightning, epidemic, war, riot, civil disturbance or disobedience, labour dispute, labour or material shortage, sabotage, acts of public enemy, explosions, orders, regulations or restrictions imposed by governmental, military, or lawfully established civilian authorities, which, in any of the foregoing cases, by exercise of due diligence such Party could not reasonably have been expected to avoid, and which, by the exercise of due diligence, it has been unable to overcome. No Party shall be relieved of liability for failure of performance to the extent that such failure is due to causes arising out of its own negligence or due to removable or remediable causes which it fails to remove or remedy within a reasonable time. Nothing contained in this Agreement shall be construed to require a Party to settle any strike or labour dispute. Mere economic hardship of a Party does not constitute Force Majeure. A Force Majeure event does not include an act of negligence or intentional wrongdoing;
- (12) **“Generator Interconnection Facilities”** shall mean all facilities and equipment owned and/or controlled, operated and maintained by Generator on Generator’s side of the Point of Interconnection for the purpose of connecting the Facility to the System, including Generator’s System Protection Facilities, and including any modifications, additions, or upgrades made to such facilities and equipment;
- (13) **“Generator’s System Protection Facilities”** shall mean the System Protection Facilities on Generator’s side of the Point of Interconnection;

- (14) **“Governmental Authority”** shall mean any federal, provincial, local or other governmental, regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, tribunal, arbitrating body, or other governmental authority having jurisdiction over either Party;
- (15) **“Interconnection Request”** shall mean the information submitted by the Generator to Manitoba Hydro for the Facility and other requirements prescribed by Attachment 1 of the *Manitoba Hydro Distributed Resource Interconnection Procedure*;
- (16) **“Interconnection Requirements”** shall mean Manitoba Hydro’s *Technical Requirements for Connecting Distributed Resources to the Manitoba Hydro Distribution System (DRG2003)* as published and revised from time to time together with both the Engineering Study and the Operating Requirements;
- (17) **“Interconnection Service”** shall mean the services provided by Manitoba Hydro to interconnect the Facility with the System pursuant to this Agreement;
- (18) **“Interconnection System Upgrades”** shall mean the minimum necessary upgrades to the System that would not have been required but for an Interconnection Request as identified in Appendix A to the Agreement and are owned by Manitoba Hydro;
- (19) **“Manitoba Hydro Interconnection Facilities”** shall mean all facilities and equipment owned and controlled, operated and maintained by Manitoba Hydro on Manitoba Hydro’s side of the Point of Interconnection as identified in Appendix A, including Manitoba Hydro’s System Protection Facilities, and including any modifications, additions or upgrades made to such facilities and equipment that are necessary to physically and electrically interconnect the Facility to the System. Manitoba Hydro Interconnection Facilities do not include Interconnection System Upgrades, which are separately identified in Appendix A to the Agreement;
- (20) **“Manitoba Hydro’s System Protection Facilities”** shall mean the System Protection Facilities on Manitoba Hydro’s side of the Point of Interconnection;
- (21) **“Operation Date”** shall be the date that the installation and testing of the Facility, the Generator Interconnection Facilities, the Manitoba Hydro Interconnection Facilities and the Interconnection System Upgrades have all been as determined by Manitoba Hydro and as communicated to the Generator by a notice delivered pursuant to Section 13.6;
- (22) **“Operating Requirements”** shall mean the operating requirements as identified in Appendix B;
- (23) **“Party”** means, as the case may be Manitoba Hydro and its successors and permitted assigns or Generator and its successors and permitted assigns; and **“Parties”** means all of Manitoba Hydro, Generator and their respective successors and permitted assigns;
- (24) **“Point of Interconnection”** shall mean the location of the electrical connection between the Generator Interconnection Facility and the System;

- (25) **“Property”** means the parcel of real property legally described as ● on which the Facility will be constructed and located, including any easements, rights of way, surface use agreements, fixture rights and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of the Facility;
- (26) **“Subsequent Modification”** shall have the meaning ascribed thereto in Section 4.3.1;
- (27) **“System”** shall mean the transmission, sub-transmission and distribution facilities owned and operated by Manitoba Hydro; and
- (28) **“System Protection Facilities”** shall mean the equipment required to protect (i) the System, other delivery systems and/or other generating systems connected to the System from faults or other electrical disturbance occurring at the Facility, and (ii) the Facility from faults or other electrical disturbance occurring on the System or on other delivery systems and/or other generating systems to which the System is directly or indirectly connected. System Protection Facilities shall include such protective and regulating devices as are identified in the Interconnection Requirements or that are required by Applicable Law and Regulations.

1.2 Attachments and Appendices. The following attachments and appendices shall form part of this Agreement:

Appendix A - Point of Interconnection, Manitoba Hydro Interconnection Facilities and Interconnection System Upgrades

Schedule 1: Point of Interconnection and Metering Points

Appendix B - Operating Requirements

ARTICLE 2 - TERM OF AGREEMENT

2.1 Term. This Agreement shall become effective on the Effective Date and shall continue in full force and effect until: (i) the Parties mutually agree to terminate this Agreement; (ii) the date on which the Facility permanently ceases operations; (iii) termination for Default occurs pursuant to Section 11.2 of this Agreement; or (iv) the Agreement is deemed terminated after suspension of construction pursuant to Section 4.1.5.

2.2 Survival. The applicable provisions of this Agreement shall continue in effect after termination hereof to the extent necessary to provide for final billings, billing adjustments, the determination and enforcement of liability and indemnification obligations arising from acts or events that occurred while this Agreement was in effect and for the enforcement of obligations that continue beyond the term of this Agreement as specifically provided herein.

ARTICLE 3 - INTERCONNECTION SERVICE

3.1 Obligation to Provide Service. Manitoba Hydro shall provide Generator with Interconnection Service for the Facility at the Point of Interconnection from the Operation Date until the end of the term of this Agreement.

ARTICLE 4 – CONSTRUCTION, CONSTRUCTION EXPENDITURES, PAYMENT AND MODIFICATIONS

4.1 Construction.

4.1.1 Generator Specifications. Generator shall submit all final specifications for Generator Interconnection Facilities and Generator System Protection Facilities to Manitoba Hydro for review at least ninety (90) days prior to interconnecting Generator Interconnection Facilities with the System in order to ensure that the design, construction and installation of the Generator Interconnection Facilities are consistent with operational control, reliability, and/or safety standards or requirements of the Interconnection Requirements.

4.1.2 Manitoba Hydro Review. Manitoba Hydro's review of Generator's specifications shall be construed neither as confirming nor as endorsing the design, nor as any warranty as to fitness, safety, durability or reliability of the Generator Interconnection Facilities. Manitoba Hydro shall not, by reason of such review or failure to review, be responsible for strength, details of design, adequacy or capacity of Generator Interconnection Facilities, nor shall Manitoba Hydro's acceptance be deemed to be an endorsement of all or any part of the Generator Interconnection Facilities. Generator shall make changes to the Generator Interconnection Facilities as may reasonably be required by Manitoba Hydro. The cost of such changes shall be borne by Generator.

4.1.3 Generator Obligations. Generator shall, at its expense, design, procure, construct, install and test the Facility and the Generator Interconnection Facilities in accordance with the Interconnection Requirements, all requirements of applicable safety and/or engineering codes, including those of Manitoba Hydro and Applicable Laws.

4.1.4 Manitoba Hydro Obligations. Manitoba Hydro shall design, procure, construct, install, and test the Manitoba Hydro Interconnection Facilities and Interconnection System Upgrades. Manitoba Hydro Interconnection Facilities and Interconnection System Upgrades shall be owned by Manitoba Hydro.

4.1.5 Manitoba Hydro Right to Suspend Due to Default. Manitoba Hydro has the right, upon written notice to Generator, to suspend, at any time until the cure or remedy thereof, work by Manitoba Hydro and the incurrence of additional expenses associated with the construction and installation of the Manitoba Hydro Interconnection Facilities and/or the Interconnection System Upgrades upon the occurrence of a Default by Generator pursuant to Section 11.1. Suspension by Manitoba Hydro shall not affect Manitoba Hydro's right to terminate the work or this Agreement pursuant to Section 11.2. In such events, Generator shall be responsible for costs which Manitoba Hydro incurs.

4.1.6 Generator Right to Suspend Due to Default. Generator has the right, upon written notice to Manitoba Hydro, to suspend, at any time until the cure or remedy thereof, work by Generator and the incurrence of additional expenses associated with the construction and installation of the Generator Interconnection Facilities and/or the Generator System Protection Facilities upon the occurrence of a Default by Manitoba Hydro pursuant to Section 11.1. Suspension by Generator shall not affect Generator's right to terminate the work or this Agreement pursuant to Section 11.2. In such events, Manitoba Hydro shall be responsible for costs which Generator incurs.

4.1.7 Land Rights. Generator grants to Manitoba Hydro at all reasonable times and with reasonable supervision, the right of free ingress and egress to Generator's premises for the purpose of installing, testing, reading, inspecting, repairing, operating, altering or removing any of Manitoba Hydro's property located on Generator's premises.

4.1.6.1 Other Property Owners. Unless Generator is directed to do so by Manitoba Hydro, Manitoba Hydro shall make reasonable efforts to procure from the owners of any property not owned by Generator upon which the Manitoba Hydro Interconnection Facilities are to be installed any necessary rights of use, licenses, rights of way and easements, in a form reasonably satisfactory to Manitoba Hydro, for the construction, operation, maintenance and replacement of the Manitoba Hydro Interconnection Facilities upon such property. Generator shall reimburse Manitoba Hydro for all reasonable and documented costs incurred by Manitoba Hydro in securing such rights.

4.1.8 Pre-Operational Testing. Prior to the Operation Date, the Generator Interconnection Facilities and Interconnection System Upgrades shall be tested to ensure, to Manitoba Hydro's satisfaction, their safe and reliable operation in accordance with Interconnection Requirements and any Applicable Laws ("**Pre-Operational Testing**"). Similar testing may be required after initial energization, but prior to Operation Date and again as required by Manitoba Hydro. The cost of all such testing shall be borne by Generator.

4.1.9 Modifications Prior to Operation Date. Based upon the Pre-Operational Testing, Generator shall be responsible for making any modifications prior to the Operation Date that are necessary to ensure the safe and reliable operation of the Facility and Generator Interconnection Facilities in accordance with all Applicable Laws, and Manitoba Hydro shall be responsible for making any modifications prior to the Operation Date that are necessary to ensure the safe and reliable operation of the Manitoba Hydro Interconnection Facilities and Interconnection System Upgrades in accordance with all Applicable Laws. The costs of all such modifications are to be borne by Generator.

4.2 Construction Costs and Payment. Generator shall pay to Manitoba Hydro the costs (including taxes, amounts in lieu thereof, interest, financing costs and travel costs) associated with seeking and obtaining all necessary approvals and of designing, engineering, constructing and testing the Manitoba Hydro Interconnection Facilities and the Interconnection System Upgrades ("**Construction Expenditures**"), in accordance with this Section 4.2.

4.2.1 Payment. The amount of Construction Expenditures is estimated, as of the Effective Date, to be ● (\$●) plus applicable GST. Generator has agreed to pay (paid) to Manitoba Hydro the full amount of the Construction Expenditures in advance by installments on account of the Construction Expenditures, such that the installments received are sufficient to allow Manitoba Hydro to have funds in its possession reasonably in excess of the amount required to pay for work to be performed prior to the next installment. The Parties have therefore determined that the Construction Expenditures shall be paid by Generator according to the following schedule of payments:

- (a) the amount of \$● plus applicable GST within ● (●) days the Effective Date;

- (b) [NTD: Insert payment terms]
- (c) the amount of the Construction Expenditures incurred plus applicable GST less the amounts paid pursuant to Sections 4.2 (a) within thirty (30) days of receipt of Manitoba Hydro's final invoice for same.

4.2.2 Method of Payment. All payments required to be made pursuant to this Section 4.2 shall be made in immediately available funds by wire transfer to a bank named and account designated by Manitoba Hydro.

4.2.3 Governmental Charges. Each Party shall be solely responsible for and shall pay or cause to be paid all governmental charges imposed on that Party in respect of any matters related to this Agreement. In the event that Manitoba Hydro is required by law or regulation to remit or pay governmental charges that are Generator's responsibility hereunder, Generator shall promptly reimburse Manitoba Hydro for such governmental charges. In the event that Generator is required by law or regulation to remit or pay governmental charges that are Manitoba Hydro's responsibility hereunder, Manitoba Hydro shall promptly reimburse Generator Customer for such governmental charges.

4.2.4 Payment for Materials. Manitoba Hydro shall promptly pay for all materials, labour and services obtained or required for the completion of Manitoba Hydro's work contemplated by this Agreement and shall be responsible for the discharge and payment of any liens on the Generator's property or the property installed to serve Generator that arise from or through Manitoba Hydro's work.

4.2.5 Interest. Interest on any unpaid amounts owing pursuant to this Section 4.2 or on funds provided by the Generator and held to support procurement, engineering or construction activities shall be calculated and compounded monthly both before and after any judgment, at ● per month, from the date the invoice is received or funds are provided until the date upon which payment is made or funds are expended or refunded.

4.3 Subsequent Modifications

4.3.1 General. Subject to 4.3.2, Generator may undertake modifications, additions or replacements to the Facility or Generator Interconnection Facilities subsequent to the Operation Date ("**Subsequent Modification**") provided that: (i) the Generator notify Manitoba Hydro of such Subsequent Modifications; and (ii) any Subsequent Modification shall be constructed and operated in accordance with this Agreement and Applicable Laws. Generator shall be responsible for the costs of any Subsequent Modification.

4.3.2 Capacity Increases. The provisions of this Section 4.3 shall not apply to a Subsequent Modification which increases or decreases the capacity of the Facility. Such Subsequent Modification shall require the submission of an Interconnection Request.

ARTICLE 5 – OPERATIONS and MAINTENANCE

5.1 General. The respective operations of Manitoba Hydro and Generator under this Agreement shall comply with Interconnection Requirements and Applicable Laws.

5.2 Manitoba Hydro Obligations. Manitoba Hydro shall cause the Manitoba Hydro Interconnection Facilities to be operated, maintained and controlled: (i) in a safe and reliable

manner; and (ii) in accordance with the Interconnection Requirements, Applicable Laws and the provisions of this Agreement.

5.3 Generator Obligations. Generator shall operate, control and maintain the Facility and the Generator Interconnection Facilities: (i) in a safe and reliable manner; and (ii) in accordance with the Power Quality Interconnection Requirements, (iii) Applicable Laws, and (iv) the provisions of this Agreement. Generator shall be responsible for all expenses associated with maintaining the Facility and the Generator Interconnection Facilities.

5.4 Operating Requirements. Generator shall comply with the Operating Requirements. Manitoba Hydro shall have the right to revise the Operating Requirements from time to time as deemed necessary without the consent of Generator. Written notice of the revised Operating Requirements and their effective date shall be provided to Generator. Operating Requirements as amended from time to time by Manitoba Hydro shall be incorporated into and form part of this Agreement.

5.5 System Protection Facilities. Generator shall, at its expense, install, maintain, and operate Generator System Protection Facilities. Generator shall be solely responsible for provisions to disconnect the Facility and Generator's other equipment when conditions on the System could adversely affect the Facility.

5.6 Power Quality. The design and operation of the Facility shall not adversely impact power quality as specified in the Manitoba Hydro Power Quality Interconnection Requirements as may be amended or replaced from time to time.

5.7 Notice of Changes. Generator shall notify Manitoba Hydro thirty (30) days in advance of any changes to the Generator's System Protection Facilities that the Generator intends to make. Manitoba Hydro may disallow any changes that, in Manitoba Hydro's reasonably exercised discretion would result in a negative impact on Manitoba Hydro's operation of its System.

5.8 Manitoba Hydro Right to Inspect. Manitoba Hydro shall have the right, but shall have no obligation or responsibility, upon reasonable notice to Generator to (i) observe Generator's tests and/or inspection of any of Generator's System Protection Facilities and other protective equipment; (ii) review the settings of Generator's System Protection Facilities and other protective equipment; and (iii) review Generator's maintenance records relative to the Facility, Generator Interconnection Facilities and/or Generator's System Protection Facilities and other protective equipment; (iv) direct changes to be undertaken by Generator to the Facility, Generator Interconnection Facilities, Generator's System Protection Facilities and other protective equipment, based on such observations and/or reviews, for lack of compliance with Interconnection Requirements. However, the exercise or non-exercise by the Manitoba Hydro of any of the foregoing rights of observation, review or inspection shall be construed neither as an endorsement or confirmation of any aspect, feature, element, or condition of the Facility, the Generator Interconnection Facilities or Generator's System Protection Facilities or other protective equipment or the operation thereof, nor as a warranty as to the fitness, safety, desirability, or reliability of same.

5.8 Interruptions. Notwithstanding any other provision of this Agreement, Manitoba Hydro shall not be obligated to accept, and Manitoba Hydro may require Generator to curtail, interrupt or reduce, deliveries of energy if such delivery of energy impairs the ability of Manitoba Hydro to construct, install, repair, replace or remove any of its equipment or any part of the System, or if such delivery of electricity adversely affects Manitoba Hydro's ability to perform such activities as are necessary to safely and reliably operate the System or if Manitoba Hydro determines that

curtailment, interruption or reduction is necessary because of an Emergency Condition.

ARTICLE 6 - EMERGENCIES

6.1 Obligations. Generator agrees to comply with all reasonable Emergency Condition procedures of Manitoba Hydro.

6.2 Manitoba Hydro Authority. Manitoba Hydro may take whatever actions with regard to the System it deems necessary during an Emergency Condition in order to (i) preserve public health and safety; (ii) preserve the reliability of the System; (iii) limit or prevent damage; and (iv) expedite restoration of service.

6.3 Generator Authority. Generator may take whatever actions with regard to the Facility it deems necessary during an Emergency Condition in order to (i) preserve public health and safety; (ii) preserve the reliability of the Facility; (iii) limit or prevent damage; and (iv) expedite restoration of service. Generator shall use reasonable efforts to minimize the effect of such actions on the System.

6.4 Limited Liability. No Party shall be liable to any other for any action it takes in responding to an Emergency Condition so long as such action is made in good faith.

ARTICLE 7 - SAFETY

7.1 General. All work performed by either Party that may reasonably be expected to affect the other Party shall be performed in accordance with all Applicable Laws pertaining to the safety of persons or property.

ARTICLE 8 - METERING

8.1 Bi-Directional Metering Equipment. Manitoba Hydro shall, prior to any operation of the Facility, provide, install, operate, maintain, own and/or control suitable Bi-Directional Metering Equipment at or near the Point of Interconnection. The Generator shall supply, own, install and maintain any additional metering if Generator determines that such metering is desirable. Power flows to and from the Facility shall be measured at or, at Manitoba Hydro's option, adjusted to the Point of Interconnection. All reasonable costs associated with either the initial installation of metering or any changes to Bi-Directional Metering Equipment, shall be borne by Generator. All costs associated with the operation, maintenance and replacement of the Bi-Directional Metering Equipment shall be borne by Generator. The cost of provision of Bi-Directional Metering Equipment data to Generator shall be borne by Generator.

8.2 Standards. Bi-Directional Metering Equipment shall be installed, calibrated, repaired, replaced, maintained and tested in accordance with the provisions of the *Electricity and Gas Inspection Act* (R.S.C. 1985, c.E-4) as amended from time to time, Interconnection Requirements, and any policies of Manitoba Hydro.

8.3 Testing of Metering Equipment. Manitoba Hydro may test, calibrate, remove and replace the Bi-Directional Metering Equipment at any time. If Manitoba Hydro receives notice from Generator to test the Bi-Directional Metering Equipment used for the purposes of this Agreement, Manitoba Hydro shall perform testing of such metering equipment at Generator's location. If Generator is not satisfied with the results, Generator may request testing of the Bi-Directional Metering Equipment by Measurement Canada, upon payment of a fee to Manitoba Hydro. Generator shall be notified in advance by Measurement Canada of the time and place of

all tests and shall be entitled to be present or represented at such tests. If the tests prove or indicate the Bi-Directional Metering Equipment is within commercial accuracy, as required by the *Electricity and Gas Inspection Act*, R.S.C. 1985, c. E 4, as revised from time to time, the fee will be forfeited by Generator. If such tests prove or indicate that the Bi-Directional Metering Equipment is not within commercial accuracy, then Manitoba Hydro shall refund the fee paid by Generator and Generator's account shall be adjusted in accordance with Measurement Canada's findings.

ARTICLE 9 - FORCE MAJEURE

9.1 Notice. The Party unable to carry out an obligation imposed on it by this Agreement due to Force Majeure shall notify the other Party in writing or by telephone within a reasonable time after the occurrence of the cause relied on.

9.2 Duration of Force Majeure. A Party shall not be responsible for any non-performance or be considered in Breach or Default under this Agreement due to Force Majeure whether occurring on the System, the Facility, the Manitoba Hydro Interconnection Facilities, or the Generator Interconnection System. A Party shall be excused from whatever performance is affected only for the duration of the Force Majeure and while the Party exercises reasonable efforts to alleviate such situation. As soon as the non-performing Party is able to resume performance of its obligations excused as a result of the occurrence of Force Majeure, such Party shall give prompt notice thereof to the other Parties.

ARTICLE 10 - INDEMNITY AND LIMITATION ON DAMAGES

10.1 General. Each Party shall indemnify and hold harmless the other Party, and the other Party's respective officers, shareholders, stakeholders, managers, representatives, directors, agents and employees, and affiliated and associated companies, from and against any and all loss, liability, damage, cost or expense, including damage and liability for bodily injury to or death of persons, or damage to property of persons (including reasonable legal fees and expenses, litigation costs, consultant fees, investigation fees and sums paid in settlements of claims and any such fees and expenses incurred in enforcing this indemnity or collecting any sums due hereunder) to the extent arising out of, in connection with or resulting from (i) the indemnifying Party's Breach of any of the representations or warranties made in, or failure to perform any of its obligations under, this Agreement; or (ii) the negligence or willful misconduct of the indemnifying Party or its contractors and regardless whether arising under Applicable Laws or otherwise; provided, however, that no Party shall have any indemnification obligations under this Section 10.1 with respect to any loss to the extent the loss results from the gross negligence or willful misconduct of the Party seeking indemnity.

10.2 Limitation on Damages. Manitoba Hydro shall not be liable, whether based on contract, indemnification, warranty, tort, strict liability or otherwise to Generator or any third party for any damages whatsoever, including without limitation, direct, incidental, consequential, punitive, special, exemplary or indirect damages arising or resulting from any act or omission in any way associated with service provided under this Agreement, including but not limited to any act or omission that results in an interruption, deficiency or imperfection of service, except to the extent that Manitoba Hydro is found liable for gross negligence or intentional misconduct, in which case Manitoba Hydro shall not be liable for any incidental, consequential, punitive, special, exemplary or indirect damages.

ARTICLE 11 - BREACH, DEFAULT and TERMINATION

11.1 Default. A Party shall be considered in Default: (a) in the event of a Breach; or (b) in the event that a Party (i) is adjudicated bankrupt, (ii) files a voluntary petition in bankruptcy under any provision of any bankruptcy law or becomes subject to the filing of any bankruptcy or reorganization petition against it under any similar law, (iii) makes a general assignment for the benefit of its creditors or (iv) has a receiver, trustee or liquidator appointed with respect to its assets.

11.2 Right to Terminate. A Party may terminate this Agreement upon the Default of the other Party in accordance with this Agreement. In the event of a Default, a non-defaulting Party may terminate this Agreement only upon its giving a minimum of ten (10) days written notice of termination to the other Party.

11.3 Termination of Interconnection Service. Subject to the provisions of this Article, upon termination of this Agreement in accordance with Section 2.1 and, if applicable, Section 11.2:

- (a) Interconnection Service for the Facility shall terminate;
- (b) Manitoba Hydro may require the Generator to disconnect the Facility from the System; and
- (c) Manitoba Hydro may remove Bi-Directional Metering Equipment.

11.4 Disposition of Facilities Upon Termination of Agreement.

11.4.1 Manitoba Hydro Obligations. Upon termination of this Agreement, unless otherwise agreed by the Generator in writing, Manitoba Hydro shall:

- (a) prior to the construction and installation of any portion of the Manitoba Hydro Interconnection Facilities and Interconnection System Upgrades and to the extent possible, cancel any pending orders of, or return, such facilities;
- (b) keep in place any portion of the Manitoba Hydro Interconnection Facilities and Interconnection System Upgrades already constructed and installed, that are necessary to maintain System reliability; and
- (c) perform such work as may be necessary to ensure the safety of persons and property and to preserve the integrity of the System.

11.4.2 Generator Obligations. Unless this Agreement is terminated as a result of a Default by Manitoba Hydro, upon billing by Manitoba Hydro, Generator shall reimburse Manitoba Hydro for any reasonable and documented costs incurred by Manitoba Hydro in performance of the actions required or permitted by Section 11.4.1 and for the cost of any Manitoba Hydro Interconnection Facilities and Interconnection System Upgrades described in Appendix A. Manitoba Hydro shall use reasonable efforts to minimize costs and shall offset the amounts owed by any salvage value of facilities, if applicable. Generator shall pay these costs.

11.5 Pre-construction or Installation. Upon termination of this Agreement prior to the construction and installation of any portion of the Manitoba Hydro Interconnection Facilities or Interconnection System Upgrades, Manitoba Hydro may, at its option, retain any portion of such facilities not able to be cancelled or returned in accordance with Section 11.4.1(a), in which case

Manitoba Hydro shall be responsible for all costs associated with procuring such facilities. To the extent that Generator has already paid Manitoba Hydro for any or all of such costs, Manitoba Hydro shall refund such amounts to Generator.

11.6 Survival of Rights. Termination of this Agreement shall not relieve any Party of any of its liabilities and obligations arising hereunder prior to the date termination becomes effective, and each Party may take whatever judicial or administrative actions as appear necessary or desirable to enforce its rights hereunder.

ARTICLE 12 - REPRESENTATIONS AND WARRANTIES

12.1 General. Each Party hereby represents, warrants and covenants as follows with these representations, warranties, and covenants effective as to the Party during the full time this Agreement is effective:

12.1.1 Good Standing. Such Party is duly organized or formed, as applicable, validly existing and in good standing under the laws of its jurisdiction, and is in good standing under the laws of its jurisdiction.

12.1.2 Authority. Such Party has the right, power and authority to enter into this Agreement, to become a party hereto and to perform its obligations hereunder.

12.1.3 No Conflict. The execution, delivery and performance of this Agreement does not violate or conflict with the organizational or formation documents, or bylaws or operating agreement, of either Party, or any judgment, license, permit or order or material agreement or instrument applicable to or binding upon either Party or any of its assets.

12.1.4 Consent and Approval. That it has sought or obtained, or, in accordance with this Agreement will seek or obtain, each consent, approval, authorization or order of, or acceptance of a filing with, or notice to, any Governmental Authority with jurisdiction concerning this Agreement, in connection with the execution, delivery and performance of this Agreement.

ARTICLE 13 - MISCELLANEOUS

13.1 Waiver. Any waiver at any time by a Party of its rights with respect to a Default under this Agreement, or with respect to any other matters arising in connection with this Agreement, shall not be deemed a waiver or continuing waiver with respect to any subsequent Default or other matter.

13.2 Governing Law. The validity, interpretation and performance of this Agreement and each of its provisions shall be governed by the laws of the Province of Manitoba without regard to the conflicts of law provisions.

13.3 Amendments. This Agreement may be amended by and only by a written instrument duly executed by the Parties. Upon satisfaction of all Applicable Laws, an amendment to this Agreement shall become effective and a part of this Agreement.

13.4 Entire Agreement. This Agreement constitutes the entire agreement among the Parties hereto with reference to the subject matter hereof and supersedes all prior oral and written communications pertaining hereto, except as specifically incorporated herein.

13.5 Assignment. Neither Party shall voluntarily assign its rights nor delegate its duties under this Agreement, or any part of such rights or duties, without the written consent of the other Party, which consent shall not be unreasonably withheld or delayed except in connection with the sale or transfer of the Property so long as the assignee in such a sale or transfer directly assumes in writing all rights, duties and obligations arising under this Agreement. Any such assignment or delegation made without such written consent shall be null and void.

13.6 Notice. Any notice, demand or request required or permitted to be given by a Party to the other and any instrument required or permitted to be tendered or delivered by a Party in writing to the other shall be so given, tendered or delivered, as the case may be, by personal delivery to the Party or sent by electronic mail to the Party, at the address set out below:

To Manitoba Hydro:

Customer Energy Services Department Manager
Manitoba Hydro
360 Portage Avenue (14)
Winnipeg, Manitoba R3C 2P4
Email: ●@hydro.mb.ca

To Generator:

●

If notice is personally delivered, such notice shall be effective on the day so delivered. If notice is given by email, and if the recipient does not acknowledge receipt, the email must be followed within three (3) business days by a true copy of the notice, including all transmission and address information details, sent by one of the other methods of delivery outlined in the above paragraph. Email notice shall not be effective, until either receipt has been acknowledged by the recipient, or if not acknowledged, in accordance with the alternate delivery method selected from the above paragraph, whichever is earlier; provided that, an automatic "read receipt" shall not constitute acknowledgement of an email.

13.7 Counterparts. This Agreement may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument.

13.8 Binding Effect. This Agreement and the rights and obligations hereof, shall be binding upon and shall enure to the benefit of the successors and assigns of the Parties hereto.

13.9 Conflicts. In the event of a conflict between the body of this Agreement and any attachment, appendix or exhibit hereto, the terms and provisions of the body of this Agreement shall prevail and be deemed to be the final intent of the Parties.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed by their duly authorized officers or agents on the day and year first above written.

MANITOBA HYDRO

By: _____
Name:
Title: Customer Energy Services Department Manager

[INSERT NAME OF GENERATOR]

By: _____
Name:
Title:

APPENDIX A
POINT OF INTERCONNECTION, MANITOBA HYDRO INTERCONNECTION
FACILITIES AND INTERCONNECTION SYSTEM UPGRADES

This Appendix A is a part of the Interconnection and Operating Agreement between Generator and Manitoba Hydro.

- 1.1 Point of Interconnection.** The Point of Interconnection shall be at the point indicated as the “Point of Interconnection” in the drawing attached hereto as Schedule 1. The metering point(s) shall be located at the point(s) indicated in the drawing attached hereto as Schedule 1.
- 1.2 Manitoba Hydro Interconnection Facilities (including metering equipment) to be constructed and/or installed by Manitoba Hydro.** Manitoba Hydro shall construct and/or install • and Bi-Directional Metering Equipment.
- 1.3 Manitoba Hydro Interconnection Facilities (including metering equipment) to be constructed and/or installed by Generator.**
- 1.4 Interconnection System Upgrades to be constructed and/or installed by Manitoba Hydro.** Manitoba Hydro shall construct and/or install Interconnection System Upgrades

Schedule 1 to Appendix A – Point of Interconnection and Metering Points

APPENDIX B – OPERATING REQUIREMENTS

This Appendix B is a part of the Interconnection and Operating Agreement between Generator and Manitoba Hydro.

[NTD: The unique requirements of each generation interconnection shall dictate the establishment of Operating Requirements by Manitoba Hydro that further define the requirements of this Interconnection and Operating Agreement.]